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Via Electronic Submission

February 4, 2022

Financial Crimes Enforcement Network
Box 39
Vienna, VA 22183

Re: Docket Number FINCEN–2021– 0005 and RIN 1506–AB49; Human Rights Organizations’ Comment on NPRM Related to Beneficial Ownership

Dear Acting Director Das:

The undersigned organizations submit this comment in general support of the Financial Crimes Enforcement Network’s (FinCEN) above-referenced notice of proposed rulemaking to implement the Corporate Transparency Act’s provisions related to beneficial ownership (“the Rule”). As drafted, the Rule would mark a substantial advance in the effort to curb abuse of anonymous companies by those, including human rights abusers, seeking to engage in illicit financial activity, and we look forward to its final adoption and robust implementation as a means of supporting respect for human rights.

We focus our comments below on three key issues: (i) human rights as a further justification for the rule, (ii) the importance of beneficial ownership information to law enforcement and others imposing accountability on human rights, and (iii) the need to prevent loopholes in the final version of the Rule.

Human Rights as a Justification for the Rule

In the [Background to the Rule](#), FinCEN rightly focuses on the connection of beneficial ownership information to the efforts of law enforcement and regulators to prevent abuse of the financial system for illicit purposes. The Background section goes on to say that the collection of beneficial ownership information “would also impede malign actors from abusing legal entities to conceal proceeds from criminal acts that undermine U.S. national security, such as corruption, human smuggling, drug and arms trafficking, and terrorist financing.”

The Rule should also enumerate “human rights abuse” in the final list of such acts that can be impeded by the collection of beneficial ownership information. The interconnection between human rights abuse and corruption is well-documented and elaborated on by the U.S. government, including in the recent [Strategy on Countering Corruption](#). In the Strategy, the White House noted that corruption “often contributes to human rights violations and abuses” and that “[c]ountries with high levels of corruption are more likely to have populations that suffer from human rights abuses, and are less likely to address those abuses.”

Moreover, in 2018, FinCEN issued the groundbreaking “[Advisory on Human Rights Abuses Enabled by Corrupt Senior Foreign Political Figures and their Financial Facilitators](#)” (the “Advisory”). In the Preamble to the Advisory, FinCEN confirmed the connection between corruption and human rights abuse:

Corrupt senior foreign political figures, their subordinates and facilitators, through their corrupt actions, often contribute directly or indirectly to human rights abuses, which have a devastating impact on individual citizens and societies, undermining markets and economic development and creating instability in a region. The use of financial facilitators is one way that corrupt senior foreign political figures access the U.S. and international financial system to move or hide illicit proceeds, evade U.S. and global sanctions, or otherwise engage in illegal activity, including related human rights abuses.

The Rule will play a key role in curbing the role of financial facilitators and enablers, particularly through the use of corporate vehicles, such as shell companies. The Advisory provided a range of examples of human rights abusers benefiting from the lack of corporate transparency, from the Iranian regime to former President of the Gambia Yahya Jammeh to senior Venezuelan officials.

Our organizations monitor, report on, and seek to address human rights abuses around the world. The Rule will directly and substantially contribute to the goal of making it more difficult for human rights abusers and their facilitators and enablers to reap the rewards of their malign activities by hiding assets in corporate entities without having to reveal the role they play as beneficial owners.

Beneficial Ownership Information Critical to Accountability for Human Rights Abuse...

Accountability for those committing and enabling human rights abuses remains elusive, as a general matter. But in several high profile cases in recent years, corporate information has been at the center of U.S. government efforts to tackle the corrupt dealings of human rights abusers

and their allies. Expansion of collection of this information will assist the U.S., and potentially other, governments in expanding the universe of prosecutions, sanctions, and regulatory actions taken against such actors. In order to achieve this result, we urge FinCEN to maintain the proposed scope of the Rule, including the proposed definition of who is a beneficial owner at 31 CFR 1010.380(d) and that of which companies are required to report at 31 CFR 1010.380(c).

For example, as [noted by many of our organizations in 2019](#), the son of Equatorial Guinea's president, Teodoro Nguema Obiang Mangue, was able to purchase a \$35 million California mansion, a Gulfstream Jet airplane, and millions of dollars' worth of art in the United States. A 2010 US Senate Permanent Subcommittee on Investigations report found that Obiang used US "shell company accounts as conduits for his funds." In 2011, the Department of Justice seized the mansion and other assets. It later settled the case after Nguema agreed to forfeit \$30 million to be repatriated for the benefit of the Equatoguinean people. That case gave rise to two money laundering investigations in France and Switzerland that recovered tens of millions of euros from Nguema; a third investigation, in Spain, is ongoing, involving a dozen government officials including the president. The United Kingdom subsequently imposed sanctions on him in June 2021.

Governments have an obligation to use their available resources to protect human rights. In Equatorial Guinea, research by Human Rights Watch has found that rampant corruption by the political elite in the oil-rich nation, including by Nguema, has robbed the country of its vast resources and contributes to its severe neglect of a range of human rights obligations, from access to and quality of health care, education, clean water, adequate housing, and other rights. Equatoguinean authorities have also engaged in a longstanding pattern of threatening, arbitrarily detaining and physically attacking transparency advocates in order to shield official corruption from public view. Although accountability for Nguema's corruption in different forums has not transformed the human rights situation in Equatorial Guinea, it has marked an important shift in the U.S. and international community's approach to the country and broader awareness of concerns there.

Similarly, FinCEN issued an [Advisory in 2017 focused on Political Corruption Risks in South Sudan](#). FinCEN framed the Advisory in the context of the conflict in South Sudan, noting that "[t]he warring parties have failed to adhere to an agreed ceasefire, leaving the civilian population suffering through widespread violence and atrocities, human rights abuses, recruitment and use of child soldiers, attacks on peacekeepers, and obstruction of humanitarian operations."

FinCEN then focused on various forms of corporate manipulation undertaken by South Sudanese officials and their families responsible for the conflict and human rights abuses, including use of anonymous shell companies, contract and procurement fraud, and money laundering through real estate. Reporting from a wide array of sources, including the UN Security Council, The Sentry, Global Witness, and various media outlets have documented specific cases of how South Sudanese political and military leaders, their families, and their business partners have misused shell companies and other corporate forms without sufficient or accurate beneficial ownership available. Although there has been some initial accountability, principally through sanctions on such current and former military officials as [Paul Malong Awan](#), [Gregory Vasili](#), and [Malual Dhal Muorwel](#), improving the dire human rights situation in South Sudan requires additional efforts, such as those envisioned by the Rule, to make further progress.

Finally, we reiterate our previous recommendations during the ANPRM process that FinCEN focus on the utility of the envisioned database for authorized users and ease of access for foreign law enforcement users. This includes using a data infrastructure compatible with the [Open Ownership principles](#) and that eases searchability.

...But Only to the Extent There are No Loopholes

Although we do not provide comment herein on specific provisions of the Rule, we conclude by noting that our comments above regarding the strength of the Rule and importance of beneficial ownership information to the future of human rights accountability presupposes that there are no loopholes in the final version of the Rule. We note three potential concerns here and urge FinCEN to ensure these loopholes are avoided:

- As noted by our colleagues at [Transparency International](#), the text of the CTA itself contains a key exemption from reporting for entities "of which the ownership interests are owned or controlled, directly or indirectly, by 1 or more" other specific exempt entities (including certain nonprofit organizations, political organizations, or trusts, along with many other types of entities). As proposed, the Rule does not sufficiently limit the potential impact of this exemption in proposed 31 CFR 1010.380(c)(2)(xxii). Whereas FinCEN could insert the term "wholly" before both of the terms "owned" and "controlled," the Rule instead only applies it to "owned." If maintained in the Rule, this approach could allow an entity with ownership interests that are *majority* controlled by a specific, exempted entity to fall outside the scope of the law. As described by TI, this approach "would not only exponentially increase the total universe of exempted entities, but would introduce serious risks that bad actors will gain access to the U.S. financial system through jointly owned entities or other types of joint ventures" and would "provide bad actors with a clear road map for penetrating the U.S. financial system." We urge FinCEN to add "wholly" before the term "controlled" in this exemption.
- In order to ensure cases like those described in the previous section can continue to be pursued by law enforcement and regulatory authorities, the final Rule should maintain proposed definitions of "beneficial owner" at 31 CFR 1010.380(d) and the overall scope of which companies are covered, including non-charitable and non-split-interest trusts. For example, [The Sentry recently reported](#) on the use of a family trust by the brother of former Congolese President Joseph Kabila to purchase real estate in the United States, using apparently laundered funds, just as his brother's reign was ending. These types of trusts should clearly be covered within the scope of "other entity" for "reporting company" purposes at 31 CFR 1010.380(c)(1).
- FinCEN should maintain the requirement of each beneficial owner to provide information specific to that owner, such as a residential address for tax purposes, rather than the address of the company. We agree that, through this requirement, proposed 31 CFR 1010.380(b)(1)(ii) will ensure FinCEN is aware of the "unambiguous identity of an identified beneficial owner" and can enable "easier follow-up by law enforcement in the event of investigative need." The additional burden on beneficial owners is minimal and allowing owners simply to use the company's address would be contrary to the intent of the legislation.

Conclusion

We appreciate the opportunity to provide this comment and encourage FinCEN to move swiftly to issue a final version of the Rule that remains robust and comprehensive. Given the timeline for similar measures in the European Union and other jurisdictions, it is critical that the Rule be issued as expeditiously as possible, but at a minimum on the timeline FinCEN has laid out.

Sincerely,

The Sentry

ADISI-Cameroun

Campaign for a New Myanmar

Clooney Foundation for Justice

Collectif SASSOUFIT

Democracy for the Arab World Now (DAWN)

EarthRights International

EG Justice

Friends of Angola

Human Rights First

Human Rights Watch

Humanity United

International Campaign for the Rohingya

International Corporate Accountability Roundtable (ICAR)

Jewish World Watch

Never Again Coalition

No Business With Genocide

The Opening Central Africa Coalition

Oxfam America

Public Interest Law Center (Chad)

Transparency & Accountability Initiative

Uyghur American Association

Uyghur Human Rights Project