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**An Bille um Fháiltas Ó Choireacht  
(Móρθreascairtí Ar Chearta an Duine), 2020  
Proceeds of Crime  
(Gross Human Rights Abuses) Bill 2020**

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*Meabhrán Mínitheach  
Explanatory Memorandum*

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**AN BILLE UM FHÁLTAIS Ó CHOIREACHT  
(MÓRTHREASCAIRTÍ AR CHEARTA AN DUINE), 2020  
PROCEEDS OF CRIME  
(GROSS HUMAN RIGHTS ABUSES) BILL 2020**

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**EXPLANATORY MEMORANDUM**

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**Purpose of Bill**

Since 2012 a number of countries have passed laws providing for financial sanctions against the officials of other states who have committed human rights abuses or have been involved in significant corruption. These are collectively referred to as Magnitsky laws, named after Sergei Magnitsky, an accountant who made serious accusations against Russian tax and law enforcement officials and was in turn accused of aiding tax evasion, was arrested and jailed and, after being allegedly beaten by police, died in prison.

In 2012, the United States Congress passed the Magnitsky Act, which imposed sanctions on the officials involved in that case. Laws along similar lines have been passed in the United Kingdom and Canada.

In this State, powers under the Proceeds of Crime Acts 1996 to 2016 to seize and dispose of assets may be available against corrupt foreign officials who have assets within the jurisdiction. However, in order to apply that legislation a dual criminality test must be satisfied. The conduct giving rise to the acquisition of those assets must be such that it would constitute an offence both under Irish law and also an offence under the law of the foreign state. This may be difficult to establish, e.g., in the case of a senior official of a foreign state where the rule of law does not prevail.

The purpose of this Bill is to make the Proceeds of Crime Acts more easily available to deal with such cases. The Bill provides that certain conduct occurring outside the State is ‘criminal conduct’ for the purposes of the Proceeds of Crime Acts notwithstanding that it does not constitute an offence under the law of the foreign state concerned if the conduct constitutes or is connected with a gross human rights abuse.

**Provisions of Bill**

*Section 1* amends section 1 of the Proceeds of Crime Act 1996 by inserting a new subsection (1B). Under this subsection, conduct occurring outside the State which would be criminally unlawful if it occurred within the State is declared to be ‘criminal conduct’, even if it does not constitute an offence under the law of the state or territory concerned, if it constitutes or is connected with a gross human rights abuse, provided that some property obtained or received by or as a result of or in connection with the conduct is situated within the State.

Conduct is stated to constitute a gross human rights abuse if –

- (a) it is carried out by, or at the instigation or with the consent or acquiescence of, a public official (i.e., a person employed by, or acting on behalf or under the direct or indirect control of, the national, regional or local government or public administration of a foreign state) in the performance or purported performance of official duties,
- (b) it involves the intentional infliction of severe physical or mental pain or suffering, on, or the cruel, inhuman or degrading treatment or punishment of, a person who has sought to expose illegal activity carried out by a public official or to obtain, exercise, defend or promote human rights and fundamental freedoms, and

it is carried out in consequence of that person having sought to do any of those things.

Conduct is stated to be connected with a gross human rights abuse if it involves –

- (a) acting as an agent for another in connection with a gross human rights abuse,
- (b) directing or sponsoring such an activity,
- (c) profiting from such an activity, or
- (d) providing material assistance in support of or in connection with the carrying out of such an activity, including by providing goods or services or financial or technological assistance.

*Subsection (2)* provides that this amendment to the Proceeds of Crime Acts shall apply in relation to conduct, and in relation to property obtained through such conduct, whether the conduct occurs or the property is obtained before or after the passing of the Bill into law.

*Section 2* provides in standard form for the short title and collective citation and construction of the Bill.

*Brendan Howlin TD*

*Nollaig, 2020.*