

THE EFFECTIVENESS OF SANCTIONS AS A TOOL FOR ACCOUNTABILITY AND BEHAVIOURAL CHANGE AMONG SYRIAN BUSINESSPERSONS IN THE SYRIAN CONTEXT

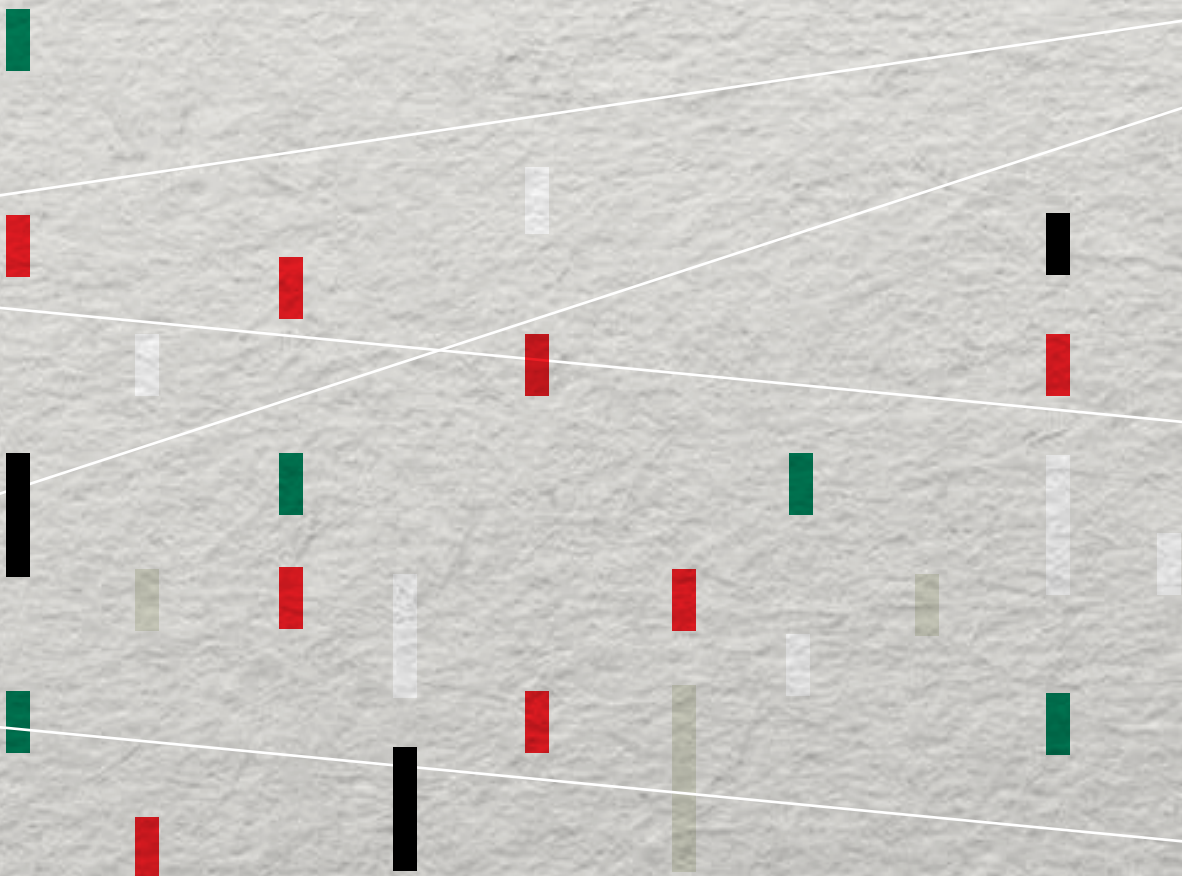


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INTRODUCTION

The Syrian conflict has seen gross human rights abuses committed by many different players, most prominently the Syrian regime. Among the available tools in international law used in an attempt to address this issue, Western states have imposed economic sanctions on individuals and entities involved in human rights abuses in Syria. The European Union, the United States and the United Kingdom are among the states and intergovernmental organisations to have imposed sanctions on certain sectors of the Syrian economy and on figures connected to the Syrian regime.

The sanctions imposed have sparked great controversy in the Syrian context. The discourse on sanctions has mainly focused on two main issues: the negative humanitarian impacts they cause and the “chilling effect” of sanctions, which deters NGOs and other aid organisations from operating in the Syrian context due to concerns over being subject to sanctions. However, limited research has been done to assess whether sanctions are effective in holding perpetrators of human rights abuses to account and in changing their behaviour.

This document identifies **key factors impacting the effectiveness of sanctions as an accountability and behavioural change tool with regards to a particular group of sanctioned individuals, namely Syrian businesspeople.**

Factors 1–4 look at the issues related to states imposing sanctions, while factors 5–8 address the issues relating to Syrian context. In addition, the paper provides recommendations on how to improve the effectiveness of sanctions, both in terms of design and implementation.

This document is a summary of a more extensive report that was shared with relevant stakeholders.

THE KEY FACTORS IMPACTING THE EFFECTIVENESS OF SANCTIONS

1 | The lack of clarity in communicating the objectives of sanctions

The objectives that states aim to achieve with targeted sanctions are not clearly communicated and send mixed messages to businesspersons. An analysis of the official communications on sanctions and the relevant legislative instruments adopted by the United States, the European Union and the United Kingdom revealed a lack of clarity as to whether sanctions imposed on Syrian businesspersons intend to:

- hold them to account for past actions, without requiring them to take further action;
- coerce them to alter their future behaviour; or
- achieve a combination of the two aforementioned objectives and, if so, how the objectives are interlinked.

When it is unclear whether the person was listed as a punishment for past behaviour, meaning nothing can be done to change that listing, or as an incentive to change in the future (promising delisting if certain actions are taken by that individual), sanctioned businesspersons are less likely to cease their sanctionable behaviour. In fact, some may double down as they believe they can do nothing to be delisted as the sanctions are based on past actions.

2 | Limited research and due diligence on individuals prior to listing

The sanctions programmes examined rely primarily on secondary data and rarely use primary, on-the-ground information to build a file against a businessperson.

Secondary data is often inadequate to fully capture the Syrian business scene, which is complex and constantly changing. Sometimes businesspersons who have just appeared on the radar of states might have actually been on the scene for a while. Furthermore, businesspeople are rarely in the public eye and are often more nuanced in their positions than political and military leaders. Another issue is that information from secondary sources is not always reliable even when corroborated by other secondary sources. Our research revealed that in one instance, the articles reporting on the activity of a sanctioned businessperson could all be traced back to the same two original articles, both of which relied on an anonymous source. Lastly, the lack of access to field knowledge limits the ability of states to detect the steps taken by sanctioned individuals to circumvent sanctions.

3 | Unwillingness to leverage sanctions before or after listing

Following interviews with Syrian businesspersons, as well as state representatives, it was found that there seems to be a lack of ability and willingness to engage in negotiation or conversation with the sanctioned persons, either before or after sanctions are imposed. Businesspersons clearly indicated that once they are listed, it becomes more difficult to alter their behaviour as they are forced into the limelight. A line of communication with sanctioned individuals would present states with an opportunity to leverage sanctions, before or after listing, in order to glean information from those individuals and allow them to fulfil certain requirements, as well as to incentivise them to change their behaviour.

4 | The challenges of behavioural change and the shortcomings of the delisting process

Our research found that the ability of sanctioned businesspersons to get removed from the sanctions list depends heavily on their relationship with the regime and on the characteristics of their business operations. Those who are closely connected to the regime and whose business operations are predominantly limited to Syria would find it more challenging to alter their conduct due to regime pressure and the fear of potential repercussions for their safety and that of their family. Consequently, if they have the opportunity to change their behaviour, they are more likely to do so secretly prior to getting listed.

On the other hand, sanctions authorities are reluctant to delist sanctioned individuals using confidential administrative/political processes. This does not incentivise a change in behaviour as sanctioned individuals tend to resort to challenging the evidence used for their listing before the judiciary instead of altering their behaviour. By the time cases reach a public court, individuals are less likely to put forward an argument based on a change in behaviour out fear of retaliation from the regime and that confirming past behaviours could be seen as an admission of guilt.

In addition, the businesspersons interviewed lamented the lack of clarity about the reasons for their listing as well as about the delisting process – not least because information is rarely available in Arabic. Furthermore, questions were raised about the feasibility of behavioural change for large-scale businesses.

5 | The relationship between businesspersons and the Syrian regime

Our research showed that the regime compensates businesspersons with whom it has a relationship of interdependence for the economic losses suffered as a result of sanctions. The compensation takes different forms, including tax breaks, direct financial support and help from government officials to establish fictitious identities in order to circumvent sanctions. In some cases, sanctions actually have the effect of strengthening a businessperson's relationship with the regime as they tie their fate to the regime's survival. In addition, as a

result of these dynamics many sanctioned individuals are unlikely to be willing to alter their behaviour, partly because of security concerns.

On the other hand, the impact of sanctions is very different for some businesspersons who are reportedly acting as fronts. From the interviews it emerged that some individuals were forced by the regime to relinquish everything that had been registered in their name after being sanctioned. This finding raises questions about the effectiveness of sanctions in terms of impact on the regime's behaviour, given that the targeted businesspersons seem to be so easily replaceable.

6 | Perceptions of sanctions among businesspersons and their communities

The overall consensus among those interviewed was that no businessperson wanted to be sanctioned, and most would be willing to make substantial efforts to avoid being listed. A businessman interviewed described sanctions as a plague that affects the whole family. This assessment is particularly true for those with international links.

However, there are others that used the pro-regime propaganda depicting sanctions as a war waged by the West against Syria rather than measures targeting human rights abusers to turn sanctions into a badge of honour and to enhance their political standing. For these individuals, sanctions resulted in increased business opportunities rather than negative financial impacts on their activities.

7 | The availability of mechanisms to mitigate or avoid the impact of sanctions

Our research found that sanctioned businesspersons often use different domestic and international methods to mitigate or avoid the impact of sanctions. These methods include the use of shell companies, intermediaries and corporate networks located in neighbouring countries and international tax havens. In addition, sanctioned Syrian businesspersons are reported to have resorted to dealing primarily in cash and to relying on banking systems in certain countries that are not part of the international banking networks. Other methods used

within Syria include increasing prices, which transfers the burden of the price increase onto the buyer and consequently the Syrian public. Covert methods of transactions such as appointing other individuals as fronts are also used to circumvent sanctions.

It is important to note that access to sanctions avoidance mechanisms appears to increase the longer a person is subject to sanctions.

8 | Importance of maintaining lifestyle affects the impact of sanctions on businesspersons

Our research suggested that for some individuals, the biggest incentive to avoid sanctions is maintaining free access to Europe for themselves and their family, rather than avoiding the negative financial implications of sanctions. From the interviews it emerged that Europe is not just valued as a travel destination for leisure or education purposes, but also as an escape route should the situation in Syria deteriorate further. However, others do not attach the same importance to a lifestyle centred on frequent travel to Europe or have simply adjusted their habits by travelling to more accessible countries.

| Conclusion

It is evident that sanctions have the potential to be an effective tool to achieve both accountability and behavioural change with regards to Syrian businessmen – provided significant improvements are made in the design and implementation of sanctions and the following recommendations are taken into account.

RECOMMENDATIONS ON DESIGN AND IMPLEMENTATION

- The objectives of the sanctioning regimes need to be clearly set out and agreed internally, across the relevant political desks within the individual foreign ministries. There needs to be clearer information on what the sanctions aim to achieve in order to gauge their effectiveness. In addition, the link between listing an individual and wider regime engagement needs to be made clearer.
- External communication of objectives needs to be strategic and in Arabic. The laws and regulations underpinning sanctions regimes, court decisions and press releases need to be made available in Arabic to maximise the impact of sanctions. The messages need to be clear and consistent within a given state, and preferably also between like-minded states. It should be clear who is being targeted with sanctions and why, what action would lead to someone being listed, and most importantly, delisted.
- It is highly recommended that states that do not yet have mechanisms for secondary sanctions introduce such a mechanism. This mechanism is key in deterring those not directly involved in sanctionable behaviour but willing to act as a front and facilitate for those on sanctions lists. Until such a mechanism is created, states should consider using the “association” criteria included in many primary sanctions criteria.
- States should exert pressure on those helping listed Syrians to evade sanctions –including through sanctioning non-Syrian entities, such as those from Lebanon and the United Arab Emirates (UAE). States should also consider approaches that focus on banks and other financial institutions operating outside the international SWIFT system, which facilitate evasion of sanctions. Special attention should be paid to and pressure exerted on shell companies used to evade sanctions.
- States need to exert pressure on countries allowing sanctioned individuals to acquire citizenship – such as St. Kitts and Nevis – or harbouring them – such as Lebanon and the UAE.
- States that do not already do so should consider sanctioning relatives, including the spouses and children, of sanctioned individuals who are involved in circumventing sanctions. When it is relevant and just, listing family members, with the prospect of eventually delisting them, also exerts significant pressure on the sanctioned individual to change their behaviour.
- States need to exert pressure on foreign exchange transactions and Hawala mechanisms and the agents conducting such transactions, as these are effective tools for evading sanctions.
- Sanctions should be used as an interim tool for exerting pressure. The longer the sanctions are in place, the more limited the effect on businesspersons, as these will find ways to adapt and circumvent sanctions.
- Particular attention should be paid to businesspersons working and subcontracting locally as a way of bypassing sanctions without feeling the effects.

RECOMMENDATIONS ON LISTING AND DELISTING

| Prior to listing:

- Given the complexity of the business scene in Syria, there needs to be significantly more effort invested into conducting research and due diligence on individuals prior to their listing with a view to maximising behavioural change and accountability. This can take the form of engaging with the Syrian business community, third-party business intelligence companies and regional embassy staff (field diplomats). Sole reliance on secondary data is not sufficient to develop an understanding of the complexity of the business scene and might lead to unfair and/or unhelpful listings.
- Particular attention should be paid to the impact of sanctions on market dynamics, specifically the opportunities sanctions provide for targeted businesspersons to increase their prices and their profit margins.
- The impact of sanctions is highest prior to their imposition due to the deterrence factor. States should be willing to leverage sanctions to meet human rights requirements, such as those related to detainees as well as housing, land and property rights, where such businesspersons might have leverage.
- States should carefully investigate what sort of links an individual has with the sanctioning country to gauge the impact it would have on them. When it comes to individuals with no international links, i.e. local warlords, sanctions need to be approached with extreme caution so as to limit the “badge of honour” effect and prevent these individuals from benefiting from the sanctions.

| After listing

- Depending on the sanctionable behaviour, the willingness to delist must significantly increase in order to promote behavioural change as a response.
- With regards to businesspersons, the evidence required to delist needs to be carefully thought out. In-person meetings are highly encouraged, in neighbouring or regional countries, for example.
- Delisting an individual should be leveraged to meet human rights requirements, if this is within the powers of the individual concerned. The delisting process must be discrete and highly confidential for it to be effective. Consideration must also be given to the protection or facilitation that could be provided to sanctioned individuals in the event of major behavioural changes.
- Sanctions are ultimately a political tool, with dedicated judicial mechanisms to improve due process. However, the delisting process should be made clearer and easier to engage in using political tools – such as negotiation and public statements – and not merely by relying on the judicial mechanisms.



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