

Sanctions Crippling Human Rights

*Corruption and Money-Laundering:
Mal-Effects of Economic Sanctions*

Report No 2
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Organization for Defending
Victims of Violence

ODVV

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1

Introduction

Much has been said on why and how sanctions in general, and unilateral sanctions in particular, may be categorized as violations of international human rights. Harsh sanctions or, as the U.S. administrations prefer to call them, ‘crippling sanctions’ may result in depriving people of the target country of a wide range of their human rights, including the most essential one of them: right to life. But there is one aspect of the sanctions’ contradiction with both international law and international human rights law that attracts less attention and is usually neglected. This aspect refers to an immediate, definite and long-lasting effect of sanctions on trade, banking and financial sectors of a country: expansion and deepening of corruption and money-laundering. Sanctions may or may not bring about the outcome desired by their imposers (which the history shows they don’t). They may or may not be ‘crippling’ when it comes to the economy of the country in general; and they may or may not weaken the position of that country in international arena. But one thing that sanctions do cripple for sure is the ability of the target government in fight against corruption and money-laundering; and these two in their turn are disastrously detrimental for human rights. Here is why.

Impact of corruption on human rights

2

United Nations General Assembly has repeatedly expressed concern about the “seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.”¹ In accordance with the Universal Declaration of Human Rights, “the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights”². And one cannot think of many things that jeopardize such conditions, as gravely, as widely and with such long-lasting effect as corruption does. No one can doubt that consequences of corruption adversely affect all human rights — civil, political, economic, social and cultural, as well as the right to development. Corruption is “a threat to the sustainable development of people”, as the World Summit on Sustainable Development (2002)

Kofi Annan: Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.”

Source: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

declared³, and this declaration has been recalled and reaffirmed in many international fora since then.

Kofi Annan described corruption as an “insidious plague” with a wide range of corrosive effects on societies: “It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.”⁴ He rightly believed that corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government’s ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a main element in economic underperformance and a key hurdle to development and poverty alleviation. It weakens the government’s ability to plan and implement delivering services, including health, educational and welfare services, which are essential for the realization of economic, social and cultural rights. Civil and political rights

are also affected by corruption. Democratic institutions are very much vulnerable against corruption.

Corruption leads to a less public support for democratic institutions and discourages people from demanding respect for their civil and political rights and from exercising such rights.



Extraterritorial obligations of states to combat corruption and money-laundering

3

Corruption destabilizes any political order in any society and decreases people's enjoyment of civil and political rights. Extraterritorial obligations Corruption and money-laundering provide rocket fuel for other crimes. Links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering are evident and undisputable.

States Parties to the UN Convention against Corruption (UNCAC), that is so say all countries of the world but a few, have expressed conviction that corruption is “not a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential”.⁵ States are obliged to prevent and combat corruption and money-laundering within their own territory. But this is not the whole story. The coin has another side too. As elaborated in the UNCAC itself, this is not a local matter and therefore obligation to prevent and combat corruption and money-laundering is not limited to countries' borders. Therefore, in addition to what they have to do internally for that goal, states are also under obligation to cooperate and help others prevent

and combat corruption and money-laundering. Though such cooperation shall be consistent with their domestic legal system, the rational conclusion that one may think of in this regard is that the least obligation on the shoulders of the states is that they shall not act against the cause of prevention and combatting corruption and money-laundering in the world, i.e. in other countries. This is the basic logical deduction that can be made. You have to help others fight corruption, but if you can't help, at least do not put obstacles in their way towards that goal.

UN Convention against Corruption (UNCAC):

Corruption is not a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential. States are obliged to prevent and combat corruption and money-laundering not only within their own territory but also beyond their borders and in the international level. In addition to what the states territorial obligations, they are also under urged to cooperate and help others prevent and combat corruption and money-laundering.
Source: Preamble of the Convention



Sanctions facilitate corruption and money-laundering

4

With that in mind, let's turn to the very direct and obvious but mostly neglected nexus between sanctions on one hand and corruption and money-laundering on the other hand. Financial and banking sanctions have direct impacts on various sections of the economy of the target country, including increase of poverty, inflation, unemployment etc. But these sort of sanctions also have more indirect, deep and long-term consequences that may be less visible. The rather unobserved repercussions of the economic sanctions include weakening (or even destroying) the abilities of relevant authorities of the victim country to supervise, monitor and control monetary transactions and financial processes. Corruption and dirty money, like bacteria, can emerge in very diverse conditions, which explains why they can be found nearly in all countries on

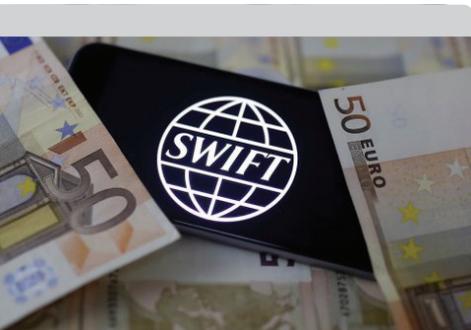
What the sanctions do is that they cut the normal and formal channels of transfers of funds a many persons, entities or bodies, including financial and credit institutions in various countries on one hand, and persons, entities or bodies inside the victim country on the other hand. For example, natural and legal persons in the victim country lose access to specialized financial messaging services that facilitates money transfers; as was the case for the sanctions imposed against Iran by the EU cutting Iran from SWIFT services, before the nuclear deal of 2015.

Earth. Yet, certain conditions promote corruption and other economic and financial crimes more than others. The most important condition that helps create the ultimate environment for corruption and other economic crimes, is lack of transparency and oversight. And sanctions create such environment, in ways described below.

What the sanctions do is that they cut the normal and formal channels of transfers of funds between persons, entities or bodies, including financial and credit institutions in various countries on one hand, and persons, entities or bodies inside the victim country on the other hand. For example, natural and legal persons in the victim country lose access to specialized financial messaging services that facilitates money transfers; as was the case for the sanctions imposed against Iran by the EU cutting Iran from SWIFT services,

before the nuclear deal of 2015.

Let's have a look at methods prescribed by UNCAC and see how they are affected by sanctions. Dealing with measures to deter and detect all forms of money-laundering, the UN Convention against Corruption requires each State Party to “institute a comprehensive domestic regulatory and supervisory



regime” for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value within its competence.⁶ To that end, such regulatory and supervisory regime shall ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering have the ability to cooperate and exchange information at the national and international levels. The UNCAC also requires States Parties to implement “feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital.”⁷ Also, states are required to implement “appropriate and feasible measures to require financial institutions, including money remittance bodies: (a) to indicate accurate and meaningful information on the originator of the money in electronic transfer forms; (b) to maintain such information throughout the payment chain; and (c) to apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.”

Sanctions simply tie the hands of the government and society, leaving them helpless against all the infectious wounds caused as a result of economic crimes, including corruption and money-laundering. How can a government ensure dominance of its regulatory and supervisory authorities over formal or informal services for foreign transmission of money or value, when all legal and natural persons need to do all their transmissions in a clandestine manner?

These provisions sound like impossible tasks when a country is under certain sanctions. In a situation of sanctions, where all trans-boundary transfers are done through hidden channels, these provisions sound like a sad joke. Let's visualize what happens in a situation whereby all ordinary and transparent routes of money and value transfers are blocked due to sanctions.

A country consists of millions of people. People who have needs. People who need to find ways to meet their needs. Needs that range from food and medicine to luxurious commodities. In spite of sanctions, both the government and the private sector, including ordinary citizens need to do many monetary and financial transactions with the outside world; from parents who need to send money in order to pay for the tuition fees of their children who study abroad, to the national health network of the country that is responsible for provision of people's medical and medicinal needs. When normal channels of money transfer are blocked, all these legitimate and reasonable needs must inevitably be addressed through alternative channels. This is the same phenomenon that is being called 'sanctions circumvention'. And these 'alternative channels' by definition are non-transparent, unofficial and unmonitorable, since if they were supposed to be transparent, official and monitorable, they too would soon fall in the net of sanctions and be blocked.

In such situation, methods like transfer of money through remittance by currency-exchange offices (instead of banks) or in the form of cash, and other methods of money and value transfer which leave no trace and record in relevant authorities will gradually become a norm – something natural and ordinary. Efforts to evade sanctions usually include registering multiple companies and creating a sophisticated involute network of companies. Such methods could seriously make it difficult for the opponents' eyes to successfully exercise their job of detecting and identifying the examples

of sanctions circumvention. But at the same time, they make it almost as difficult for internal and national authorities of the sanctioned country itself to regulate, monitor and supervise the trends and transactions. Inspection and auditing such multi-layered network of financial, monetary and trade companies and institutions can prove to be close to impossible. In addition, again for the purpose of better protecting such schemes and tactics against exposure to the sanctioning parties, almost always such measures are kept secret and classified. This clandestineness in its turn adds up to the challenges and difficulties of control and monitoring. This is the ideal situation for corruption and money-laundering. For example, in normal situation if a considerable amount of money is withdrawn from the bank, exchanged into foreign currencies and is supposed to leave the country in cash (or vice versa), this will alert the monitoring authorities and financial intelligence units about a very probable case of an illicit process related to a crime. But in a situation where all legitimate needs of people and government have to be met through unofficial 'underground' channels, i.e. channels that in normal situations are only used by criminals and offenders, then obviously distinguishing between the two will be greatly difficult for relevant authorities. Basically, how is it even possible to monitor and supervise such huge number of unofficial and non-transparent activities?

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In a situation in which the abnormal becomes normal, the irregular becomes regular, and being stealthy about money and value transfers is recognized (or rather encouraged) as the main way to evade sanctions and meet the legitimate needs of citizens, there remains no room at all for supervision, control, monitoring and transparency. And regrettably, when such behavior gradually crystallizes into solid norms and reaches epidemic proportions, then even after lifting of sanctions and opening of the channels, it will be an extremely challenging task to restore things back to normal. A corrupt and non-transparent economic structure will resist against all effort aimed at prevention and combatting economic crimes.

The Group of 77 and China (consisting of 134 developing countries) called upon all UN Member States as well as other relevant regional and international organizations to avoid “unilateral actions and sanctions that might weaken the international cooperation framework and Member States capabilities to fight against such crimes.”

Source: <http://www.g77.org/vienna/13thUNCC.htm>



Conclusion

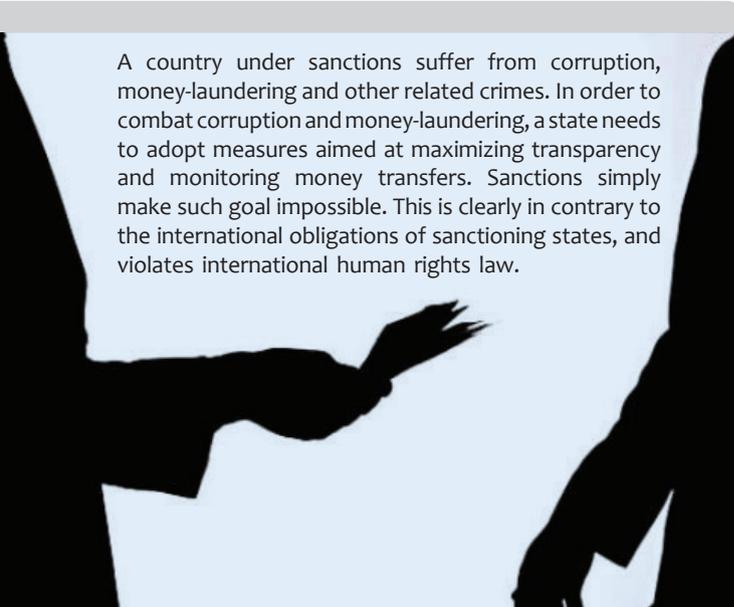
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This piece is not suggesting that a country free from financial and banking sanctions is necessarily a corruption-free country. But the opposite is certainly true: a country under sanctions will definitely suffer from unimaginable corruption, money-laundering and other related crimes.

In normal circumstances, if a government has the will to fight corruption and money-laundering, one of the most essential things to do is adopting measures aimed at maximizing transparency and monitoring all transfers of money and value. Sanctions simply make such goal impossible. Sanctions cause corruption, and destroy transparency and control over money and value transfers. This is against international obligations of the sanctioning states, and clearly contradicts with the international human rights law.

It is worth noting that many developing countries have repeatedly expressed their serious concerns over the disastrous consequences of such sanctions for the cause of prevention and combatting corruption and transnational organized crimes. On several occasions, the Group of 77 and China (consisting of 134 developing countries) called upon all UN Member States as well as other relevant regional and international

organizations to avoid “unilateral actions and sanctions that might weaken the international cooperation framework and Member States capabilities to fight against such crimes.”⁸



A country under sanctions suffer from corruption, money-laundering and other related crimes. In order to combat corruption and money-laundering, a state needs to adopt measures aimed at maximizing transparency and monitoring money transfers. Sanctions simply make such goal impossible. This is clearly in contrary to the international obligations of sanctioning states, and violates international human rights law.

Sources:

- 1-See for example, General Assembly resolution 58/4.
- 2- Preamble of the International Covenant on Economic, Social and Cultural Rights
- 3-Johannesburg Declaration on Sustainable Development of 2002
- 4-Foreword to the text of the UN Convention against Corruption, Published by the UNODC
- 5-Preamble of the Convention
- 6-UNCAC, Article 14(1)(a)
- 7-UNCAC, Article 14(2)
- 8-See for example: Statement of the G-77 and China during the 13th UN Congress on Crime Prevention and Criminal Justice, Doha, Qatar, 12-19 April 2015



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