

August 2017



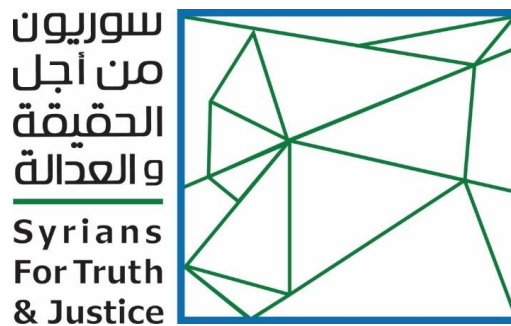
“The Relationship between Business and Human Rights”

A Joint Paper between “Syrians for Truth and Justice-STJ” and the “Syrian Legal Development Programme-SLDP”

The Partner Organizations:

SYRIANS FOR TRUTH AND JUSTICE/STJ

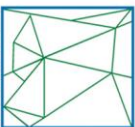
“[Syrians for truth and Justice/STJ](#) is an independent, non-governmental and non-profit Syrian organization. Many defenders and human rights defenders from Syrians of different backgrounds and affiliations are included in the founding team of academics of other nationalities. The organization works for Syria in which all citizens enjoy dignity, justice and equal human rights.”



SYRIAN LEGAL DEVELOPMENT PROGRAMME

“[The Syrian legal Development Programme/SLDP](#) was established in 2013 and operates as a non-aligned, non- governmental organization working in non-state controlled areas of Syria. The idea of SLDP emerged as a result of the Syrian conflict, after realizing the importance of addressing complex legal needs triggered by conflicts.”





Background

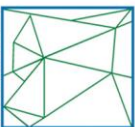
Through this joint paper, the [Syrians for truth and justice/STJ](#) along with the [Syrian Legal Development Programme/SLDP](#) are trying to shed light on the relationship between business and human rights specifically in the Syrian context. This is especially important given that there have been a lot of talks recently surrounding the issue of "reconstruction in Syria" despite the absence of any definitive settlement of the Syrian crisis and despite the failure to adopt any real "transitional justice" mechanisms that could avert the country from the scourge of war. Over the past few years, Syrian/international organizations and UN committees have issued hundreds of legal reports on a variety of violations taking place on the Syrian territory without any real progress at initiating accountability or even manifesting the truth at the national, or regional or even international level.

This paper is part of a broader approach of networking pursued by STJ, especially in their relationship with other Syrian local organizations. Over the past months, STJ issued a series of joint reports and papers, including [A Special Report on the Chemical Attack against Khan Sheikhoun in Idlib Province on April 4, 2017](#), in conjunction with Justice for Life Organization. STJ issued another joint report on eight attacks that targeted medical facilities in Idlib province during April 2017, the report entitled [Medical Facilities Under fire](#) was shared among STJ, [Syrian Archive](#) and [Justice for Life Organization](#). In response to some misconceptions about the International, Impartial and Independent Mechanism (IIIM) on Syria adopted by the General Assembly on December 2016, STJ, [Syria Justice and Accountability Centre/SJAC](#) and [Violations Documentation Centre/VDC](#) in Syria issued a joint paper entitled "[Responding to Misconceptions Regarding the IIIM](#)" in which they tried to answer some inquiries regarding the mechanism.

Preface

Since the outbreak of the Syrian conflict until this day, all parties to the conflict, especially the Syrian government forces and its allied Russian forces, committed war crimes and other serious violations of International Humanitarian Law/IHL in addition to gross violations of human rights¹. The annual Amnesty International report for the year 2016/2017 stated that the government forces and its allied Russian forces had launched "indiscriminate attacks and direct attacks on civilians and civilian objects using aerial bombing and artillery, causing thousands of civilian

¹ Amnesty International, the annual report for 2016/2017 page 200, for more information: <https://www.amnesty.org/en/countries/middle-east-and-north-africa/syria/report-syria/>



casualties." There were reports that stated that, "Government forces used chemical agents."² The government forces also "maintained lengthy sieges that trapped civilians and cut their access to essential goods and services. The authorities arbitrarily arrested and detained thousands, subjecting many to enforced disappearance, prolonged detention and unfair trials, and continued to systematically torture and otherwise ill-treat detainees causing deaths in detention. They also committed unlawful killings, including extrajudicial executions."³

Against the backdrop of all these grave violations and despite the ongoing war, the Syrian government and its Russian ally began to talk about their plans to "rebuild and reconstruct Syria". [Sergei Shoygu, the Russian Defense Minister](#) stated at a press conference that it is time now to talk about the reconstruction of Syria; he specifically said that Russia believes that "it is time to start talking about the reconstruction of facilities in Syria in the post-armed conflict stage, and the involvement of a broad international coalition in these efforts."⁴

Earlier this year, several International newspapers showed great interest in the issue of reconstructing Syria. The Financial Times published an article entitled "Russia asks world powers to pay for Syria reconstruction."⁵ The article mentioned how "European and Gulf states, angered by Russia's military intervention that titled the war in favor of President Bashar al-Assad, will only contribute if Moscow secures a peace settlement that sets the terms for an eventual political transition."

A recently published report by World Bank found that the toll gross domestic product losses since Syria's conflict erupted were estimated at \$226 billion dollars. The report estimated that the conflict had damaged or destroyed (27%)⁶ of Syria's housing stock. Despite the ongoing armed conflict, more and more states and businesses are starting to think about the reconstruction phase and the huge projects that are supposed to be built in Syria. Syrian President Bashar al-Assad has already offered assurances that the "largest portion of the reconstruction contracts in Syria will be allocated to Russian firms."⁷

² Ibid

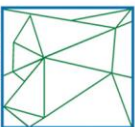
³ Ibid

⁴ Russia Today: Shoygu : It is time to talk about reconstruction in Syria in the post-armed conflict, for more information: https://arabic.rt.com/middle_east/868952-%D8%B4%D9%88%D9%8A%D8%BA%D9%88-%D8%AD%D8%A7%D9%86-%D8%A7%D9%84%D9%88%D9%82%D8%AA-%D9%84%D9%84%D8%AD%D8%AF%D9%8A%D8%AB-%D8%B9%D9%86-%D8%A5%D8%B9%D8%A7%D8%AF%D8%A9-%D8%A8%D9%86%D8%A7%D8%A1-%D8%B3%D9%88%D8%B1%D9%8A%D8%A7-%D9%81%D9%8A-%D9%85%D8%B1%D8%AD%D9%84%D8%A9-%D9%85%D8%A7-%D8%A8%D8%B9%D8%AF-%D8%A7%D9%84%D8%AD%D8%B1%D8%A8/

⁵ source: <https://www.ft.com/content/47933554-f847-11e6-9516-2d969e0d3b65>

⁶ <http://www.worldbank.org/en/country/syria/publication/the-toll-of-war-the-economic-and-social-consequences-of-the-conflict-in-syria>

⁷ <https://www.enabbaladi.net/archives/163533>



Foreign Policy magazine published in late July 2017, a report entitled "Russia Looks to U.N. to Help It Profit from Syria Conquests- Critics suspects the Kremlin is looking to the west to pay price to make Palmyra safe for Russian business."⁸ The report noted that Russia "has stepped up a campaign to get the United Nations to remove Syria majestic Roman ruins in Palmyra, but that some Western diplomats fear the Kremlin is only seeking to get other countries to help it exploit the city's rich natural resources."⁹ It also pointed out that "the Russian government's push to protect Syria's ancient ruins, these diplomats note, coincides with reports of an effort by Russia to convince private security companies to secure territory around Palmyra from the Islamic State militants in exchange for the rights to lucrative gas and mining rights."¹⁰

On the 1st of August 2017, Bloomberg BusinessWeek disclosed that the United Nations paid at least \$18 million last year to companies with close ties to Bashar al-Assad,¹¹ according to the UN's annual report on procurement for 2016 published in June this year¹². Some of these companies are run by cronies of the Syrian president who are on U.S. and European Union blacklists¹³. The report noted that contracts for telecommunications and security "were awarded to regime insiders including Rami Makhlouf, Assad cousin¹⁴." It should be noted that the U.N. "has its own global blacklist and isn't bound by sanctions imposed by Member States or regional blocs such as the EU¹⁵." The report said the UN staff spent more than \$9.5 million at the Four Seasons hotel in Damascus which is co-owned by Syria's Ministry of Tourism¹⁶. The report also revealed that UN gave aid deliveries to a charity headed by Asma al-Assad, Bashar al-Assad' wife¹⁷.

The UN justified dealing with people who are closely associated with Assad's regime by saying that it is difficult to work outside of the framework of local authorities whose representatives own almost everything in the country.¹⁸ But according to the Sky News report, the UN's justifications

⁸ <http://foreignpolicy.com/2017/07/25/russia-looks-to-u-n-to-help-it-profit-from-syria-conquests/>

⁹ Ibid.

¹⁰ Ibid

¹¹ <https://www.bloomberg.com/news/articles/2017-08-01/what-sanctions-assad-allies-got-18-million-in-un-syria-payouts>

¹² https://www.unops.org/SiteCollectionDocuments/ASR/2016_ASR.pdf

¹³ <https://www.bloomberg.com/news/articles/2017-08-01/what-sanctions-assad-allies-got-18-million-in-un-syria-payouts>

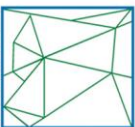
¹⁴ <https://www.bloomberg.com/news/articles/2017-08-01/what-sanctions-assad-allies-got-18-million-in-un-syria-payouts>

¹⁵ Ibid

¹⁶ https://www.unops.org/SiteCollectionDocuments/ASR/2016_ASR.pdf

¹⁷ <https://www.bloomberg.com/news/articles/2017-08-01/what-sanctions-assad-allies-got-18-million-in-un-syria-payouts>

¹⁸ <https://www.skynewsarabia.com/web/article/969222/%D8%AF%D9%81%D8%B9%D8%AA-%D8%A7%D9%84%D8%A7%D9%94%D9%85%D9%85-%D8%A7%D9%84%D9%85%D8%AA%D8%AD%D8%AF%D8%A9-18-%D9%85%D9%84%D9%8A%D9%88%D9%86->



do not persuade humanitarian relief agencies which believe that dealing with symbols of Assad's regime sends the wrong message and can even be considered as being biased towards one side of the conflict. This conflict has claimed about 400,000 Syrian lives so far and the Syrian regime bears the responsibility for the vast majority of them.¹⁹

Reconstruction and the Role of Syrian Civil Society

Against this background, the question is, how can we make sure that businesses will not exploit human rights violations and war crimes in Syria in order to achieve material gains? What role can non-governmental Syrian organizations play to ensure that businesses do not exploit the current conflict in Syria or participate in the destruction of Syria in order to make profit? What are legal and economic pressure techniques that can be used by individuals and non-governmental organizations to urge governments and businesses to abide by the norms of International Human Rights Law and International Humanitarian Law?

In order to find an answer to all of these questions, this paper will explore the legal framework that exists today (namely International Human Rights Law, International Humanitarian Law and the United Nations Mechanisms IIIM), in order to understand the current framework that governs the relationship between international law and business and in order to define the roles and responsibilities of businesses with regards to human rights. It must be cautioned that this report will focus primarily on violations committed by the Syrian government and its allies rather focusing on violations committed by other parties to the conflict. This is the case for the following two reasons:

First, this paper comes as a response to the calls for "reconstructing Syria" put forth by the Syrian government and its Russian ally. Other parties to the conflict have not made similar calls for reconstruction.

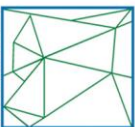
Second, the issue of reconstruction is considered to be one of the core responsibilities of the state, thus it logically follows that the main focus of this paper should be the Syrian regime.

Business and Human Rights from the Viewpoint of International Law

The issue of the relationship between business and human rights is still an emerging issue in international law. International human rights standards have traditionally been the responsibility

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¹⁹ Ibid



of governments. However, the growing reach and impact of business enterprises on the enjoyment of human rights have given rise to a debate about the roles and responsibilities of such actors with regard to human rights. Over the past decades, the Office of the United Nations High Commissioner for Human Rights/OHCHR has been considering this issue and has recently adopted voluntary mechanisms to better define the relationship between business and human rights, and increase the awareness about the roles and responsibilities of transnational corporations and other business enterprises towards human rights. As a result of this process, there is now greater clarity about the respective roles and responsibilities of governments and business with regard to protection and respect for human rights.²⁰ This issue is of great importance to the Syrian crisis, especially given the recent calls for reconstruction, because there is an increasing number of business enterprises that provide support to states that violate International humanitarian and human rights law such as the Syrian regime and Russia.

Main Mechanisms adopted by the Office of the United Nations High Commissioner for Human Rights on the Issue of Business and Human Rights

- Resolution 2005/69, in which the Commission on Human Rights requested the Secretary-General to appoint a special representative on the issue of human rights and transitional corporations and other business enterprises.²¹
- The United Nations framework entitled "Protection, Respect and Remedy" with regard to human rights and business prepared by the Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

On 18 June 2008, the Human Rights Council unanimously "welcomed" the "Protect, Respect and Remedy" framework proposed by the Special Representative in his final report.²² This policy framework comprises three core principles: the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others; and the need for greater access by victims to effective remedies, judicial and non-judicial.²³

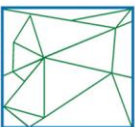
²⁰ <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>

²¹ The Special Representative's mandate concluded in June 2011

<http://www.ohchr.org/EN/Issues/Business/Pages/SRSGTransCorpIndex.aspx>

²² <http://www.ohchr.org/EN/Issues/Business/Pages/SRSGTransCorpIndex.aspx>

²³ <https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-protect-respect-remedy-framework.pdf>



- On 16 June 2011, the Human Rights Council endorsed the Guiding Principles on Business and Human Rights for implementing the UN "Protection, Respect and Remedy" Framework, providing- for the first time- a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.²⁴

Principle number 7 states that: "because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by: A) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships. B) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence. C) Ensuring that their current policies, legislations, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses²⁵."

- The Working Group on the issue of human rights and transitional corporations and other business enterprises was established by the Human Rights Council on 6 June 2011 (resolution 17/4).²⁶

The Human Rights Council in resolution 17/4, para 12 established the UN Forum on Business and Human Rights supervised by the team operating on Human rights and transitional corporations and other business enterprises²⁷.

- At its 26th session, on June 2014, the Human Rights Council adopted resolution 26/9 by which it decide "to establish an open-ended intergovernmental working group on transitional corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, an international human rights law, the activities of transitional corporations and other business enterprises.²⁸"

²⁴ <https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-protect-respect-remedy-framework.pdf>

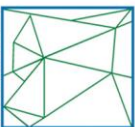
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

²⁵ Ibid, page 13

²⁶ <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

²⁷ The UN Forum on Business and Human Rights is the world's largest gathering on the topic of business and human rights. The Forum is open to all states, community groups, trade unions, civil society organizations, and any relevant parties. <http://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx>

²⁸ <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx>



What are the legal and economic pressure techniques available for Individuals and Non-Governmental Organizations to urge governments that violate international law and businesses that support them to abide by the rules of International Human Rights Law and International Humanitarian Law?

First, it should be noted that currently there is no comprehensive international instrument under which business enterprises could be held accountable for their human rights violations. This has led to an existing legal vacuum and allowed for many human rights violations to take place. It should be noted that the voluntary mechanisms established by the Office of the United Nations High Commissioner for Human Rights (OHCHR) cannot be put on par with legally binding instruments. Businesses enterprises, in particular transnational corporations, are subject only to national courts and laws in the country where the company is located or in the host countries where the company is investing, however, this is gradually changing especially in recent years.

Questions of complicity may arise when a business contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. According to OHCHR's paper "Implementing the United Nations "Protect, Respect and Remedy" Framework", complicity has "both non-legal and legal meanings."²⁹ As a legal matter, "most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Typically, civil actions can also be based on an enterprise's alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime. Non-governmental organizations or civilians could file for civil actions against businesses who are complicit in human rights violations in this legal sense."³⁰

As a non-legal matter, business enterprises may be perceived as being "complicit" in the acts of another party³¹ where, for example, they are seen to benefit from an abuse committed by that party. If the enterprise is found to be complicit in this sense, then non-governmental organizations may resort to pressure techniques such as: disseminating information about human rights violations carried out by these businesses to raise awareness of the public and the international community with these violations, demonstrating peacefully, communicating directly with shareholders or buying shares in the enterprise in order to influence shareholders' decisions. These pressure techniques should not only be used to expose and pressure parties to the conflict

²⁹ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf Page 18

³⁰ Ibid, 19.

³¹ Ibid



responsible for human rights violations but also they should be used as tools to attract the attention of the International Community.

The most prominent example of using such pressure techniques in the Middle East is the Boycott, Divestment, Sanctions (BDS) movement, which is a movement to boycott I, withdraw investments and impose sanctions on Israel.³² BDS main objective is to pressure Israel into complying with international law and international human rights law. BDS succeeded in isolating the Israeli regime academically, culturally, politically and, to some degree, economically as well, and it is now considered to be one of Israel's most alarming "strategic threats"³³.

How can the above mentioned pressure techniques be used to pressure the Syrian Regime and its allies and urge them to abide by the norms of International Human Rights Law and International Humanitarian Law?

Of all the economic pressure techniques mentioned above, only economic sanctions were used in the Syrian context. The United States and the European Union have imposed sanctions on the Syrian government, these sanctions include an oil embargo, restrictions on some investments, freezing the assets of the Central Bank of the Syrian Arab Republic in the European Union, and restrictions on the export of equipment and technology³⁴. However, the problem is that these sanctions "do not only harm the interests of the Syrian government", but that they also severely affect Syrian civilians living in areas controlled by the Syrian government³⁵. Moreover, the Syrian government has found/created alternative ways to get the money and oil it needs to continue financing its war and continue committing human rights violations in Syria. This is evident by the example mentioned above about how the United Nations has provided funding to companies run by members of President Bashar al-Assad's family and people who have close ties with the regime.

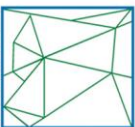
³² <https://bdsmovement.net/en/what-is-bds>

³³ <https://bdsmovement.net/ar/what-is-bds> & <http://www.independent.co.uk/voices/g4s-leaving-israel-shows-that-the-boycott-divestment-and-sanctions-campaign-is-winning-a6926051.html>

³⁴ <http://www.aljazeera.net/news/english/2017/7/18/%D8%A7%D9%84%D8%A7%D8%AA%D8%AD%D8%A7%D8%A7%D8%A7%D9%84%D8%A3%D9%88%D8%B1%D9%88%D8%A8%D9%8A-%D9%8A%D9%81%D8%B1%D8%B6-%D8%B9%D9%82%D9%88%D8%A8%D8%A7%D8%AA-%D8%B9%D9%84%D9%89-%D8%B4%D8%AE%D8%B5%D9%8A%D8%A7%D8%AA-%D8%B3%D9%88%D8%B1%D9%8A%D8%A9>

³⁵ According to an internal UN report leaked in 2016, the US and the European sanctions imposed on Syria supposed to target the President Bashar al-Assad and contribute to his removal from power, cause great suffering to civilians and prevents the delivery of humanitarian aid and prevents the arrival of foodstuffs, fuel and health care to civilians living in areas controlled by the Syrian regime.

<https://theintercept.com/document/2016/09/28/humanitarian-impact-of-syria-related-unilateral-restrictive-measures/>



Until today, there have not been widespread calls to boycott transnational corporations and other business enterprises that were proven to provide direct or indirect support to the Syrian regime, or calls to boycott the national companies of countries that support, finance, or arm the Syrian regime such as Russia and Iran. One of the most important advantages of consumer boycott is that individuals and non-governmental organizations can decide themselves on all the details of the boycott. While in case of sanctions, the governments decide all the details regarding the sanctions. For example, governments decide the timeframe for the sanctions, the conditions under which they will be imposed, the conditions under which they could be lifted, etc. Also, one of the most important advantages of consumer boycott is that the people most affected by the boycott are the capital owners and shareholders of the companies that are being boycotted. These same people are the ones who can directly decide to take the measures necessary to end the boycott. On the other hand, the people most affected by the sanctions in Syria are the civilian population and they don't have the power to directly influence the Syrian regime and pressure it to take the measures necessary in order to lift the sanctions.

The relationship between business and human rights doesn't have to be limited to adopting pressure techniques such as boycotting corporations to pressure or force them to respect human rights. There are other constructive measures that can be taken in order to motivate corporations to respect human rights. As discussions are under way to start projects of reconstruction in Syria with broad international participation, it is possible to motivate transnational corporations and other business enterprises to participate in the financing, reconstruction and rebuilding of Syria. One way to do so is to encourage the public to buy the products of companies involved in these projects; the companies that were proven not be involved in exploiting human rights violations in Syria. Another way is through disseminating positive information about the companies that help promote respect for human rights in Syria.

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