

The Legitimacy and Effectiveness of the UK Sanctions Regime as a Human Rights Tool

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Executive Summary

This report provides an overview and analysis of the UK's 2020 Human Rights Sanctions Regime, known as The Global Human Rights (GHR) regime, and evaluates its potential as an example of 'smart sanctions'. Based on a review of existing empirical studies and legal analyses, the report examines the application of the GHR to date. Whilst the GHR is a recent development with few existing applications, this report identifies several possible limitations and outlines recommendations that would enable the regime to reach its full potential.

Recommendations going forward include:

1. Development of a clear delisting process that eliminates the applied sanctions for reformed parties.
2. Consistent, transparent, and regulated application to maximise the effectiveness and humanitarian impact of the sanctions.
3. Coordination with other regimes and integration with the new 2021 Global Anti-Corruption Sanctions Regulations.

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A Review of the UK Global Human Rights Regime

The Global Human Rights (GHR) sanctions regime was established on 6 July 2020 via The Global Human Rights Sanctions Regulations 2020.¹ This regime allows the UK government to “put in place sanctions measures to deter, and provide accountability for, activities” that infringe on an individual’s right to life, freedom from torture, and freedom of slavery.² The aim is to “deter” perpetrators from committing human rights violations, “champion human rights, good governance, and the rule of law,” whilst simultaneously preventing any humanitarian drawbacks for the wider population.³ The primary legislation underpinning the Regulations is the Sanctions and Anti-Money Laundering Act (SAML) 2018.⁴ To specifically target money laundering, terrorist financing and the transfer of illegal funds overseas, the National Crime Agency (NCA), HM Treasury, Home Office and Office of Financial Sanctions (OFSI) enacted The Money Laundering and Terrorist Financing (Amendment) Regulations 2019.⁵ It came into force on 10 January 2020 and builds upon existing 2017 legislation of the same name.

Described by then UK foreign secretary Dominic Raab as an example of a post-Brexit “global Britain,” the sanctions regime is indicative of the UK government’s national security objectives and strategies for simultaneously maintaining international peace and security and promoting human rights.⁶ Thus, the background to the policy’s development must be understood in conjunction with the UK’s departure from the European Union (EU), which provided the opportunity for the UK to “independently” sanction individuals or organisations “under a UK-only regime” and to explore a US-style of sanctions such as: longer prison sentences, deferred prosecution agreements (DPAs), civil Monetary Penalties, and Serious Crime Prevention Orders.⁷ In order to impose ‘tougher’ sanctions, the UK established the Office for Financial Sanctions Implementations.⁸ Within this post-Brexit context, the development of a unilateral GHR sanctions regime independent of EU multilateral policy communicates the desire for the UK, as per Shadow

¹ Legislation.gov.uk. 2021. *The Global Human Rights Sanctions Regulations 2020*. [online] Available at: <<https://www.legislation.gov.uk/ukxi/2020/680/contents/made>> [Accessed 11 October 2021].

² GOV.UK. 2021. *UK sanctions relating to global human rights*. [online] Available at: <<https://www.gov.uk/government/collections/uk-global-human-rights-sanctions>> [Accessed 11 October 2021].

³ Legislation.gov.uk. 2021. [online] Available at: <https://www.legislation.gov.uk/ukxi/2020/680/pdfs/ukxiem_20200680_en.pdf> [Accessed 11 October 2021].

⁴Ibid.

⁵Ibid.

⁶ Foreign, Commonwealth & Development Office (FCDO). 2019. ‘UK Sanctions’, GOV.UK, August 28. Available at: <https://www.gov.uk/guidance/uk-sanctions> [Accessed on 5 June 2021]; UK Parliament. (2020) ‘Global Human Rights Sanctions Regime: Volume 678: debated on Monday 6 July 2020’, *House of Commons Hansard*. Available at: <https://hansard.parliament.uk/Commons/2020-07-06/debates/24B78A01-061C-48A8-AA92-8E53C17516E3/GlobalHumanRightsSanctionsRegime> [Accessed on 10 June 2021].

⁷ Smith, T., 2021. *UK announces first sanctions under new 'post-Brexit' global human rights regime on 49 people and organisations*. [online] Travers Smith. Available at: <<https://www.traverssmith.com/knowledge/knowledge-container/uk-announces-first-sanctions-under-new-post-brexit-global-human-rights-regime-on-49-people-and-organisations/>> [Accessed 11 October 2021].

⁸ Ashford, E. (2016) ‘The Failure of Western Restrictions Against Russia’, p. 10. *CONSOLIDATED LIST OF FINANCIAL SANCTIONS TARGETS IN THE UK* (no date). Available at: <https://ofsistorage.blob.core.windows.net/publishlive/ConList.html> [Accessed on 19 June 2021]; <https://www.nortonrosefulbright.com/en-it/knowledge/publications/8594deec/a-tougher-stance-on-sanctions-enforcement-in-the-uk>

Secretary of State for Foreign and Commonwealth Affairs Lisa Nandy, to “lead the way at home and abroad” against corruption through its own “autonomous” regime.⁹

UK GHR as an Example of Smart Sanctions

The new UK Global Human Rights Sanctions legislation can be seen as an example of ‘smart’ or ‘targeted’ sanctions.¹⁰ By targeting specific individuals, the GHR is designed to avoid punishing the population of a country from which the alleged perpetrators originate; a strategy that originated in response to the adverse humanitarian impacts associated with traditional comprehensive sanctions previously adopted by the UK.¹¹ The term ‘smart’ thus illustrates the assumption that targeted sanctions are both more humane and more effective than traditional trade sanctions in achieving their aims.¹² The sanctions regime has the two-pronged objective of enforcing accountability for existing perpetrators of human rights violations, whilst simultaneously deterring potential perpetrators from committing human rights abuses. Accordingly, under the new sanction’s regime, a person may be designated only if they are clearly linked to human rights violations in one of the ways established in the legislation. These include responsibility for, engagement in, profit from, contribution to, and facilitation or concealment of an activity which violates human rights, as well as the failure to fulfil a duty to investigate such an activity.¹³ When considering designations, the Minister responsible should be ‘satisfied’ that the sanctions imposed would contribute towards the goal of deterrence or accountability for their human rights violations.

Effectiveness of Smart Sanctions

Having reviewed the existing literature on smart and comprehensive sanctions, there is not sufficient evidence to suggest that smart sanctions are more effective. Proponents of smart sanctions argue that these measures limit the diplomatic and financial costs for sender states.¹⁴ It

⁹ UK Parliament. (2020) ‘Global Human Rights Sanctions Regime: Volume 678: debated on Monday 6 July 2020’, *House of Commons Hansard*. Available at: <https://hansard.parliament.uk/Commons/2020-07-06/debates/24B78A01-061C-48A8-AA92-8E53C17516E3/GlobalHumanRightsSanctionsRegime>; Moran, M (2020). Why is the new Global Human Rights Sanctions Regime Significant?. King’s College London. Available at: <https://www.kcl.ac.uk/why-is-the-new-global-human-rights-sanctions-regime-significant> [Accessed on 11 June 2021]

¹⁰ The terms ‘smart’ and ‘targeted’ sanctions are used interchangeably throughout this report.

¹¹ Perhaps the most pertinent example of the negative humanitarian impact of comprehensive sanctions is the case of United Nations Security Council-led financial and trade sanctions against Iraq (1990-2003), which were imposed during the First Gulf War and both proved to be ‘devastating’ to the Iraqi economy (Gordon, 2011) and have been cited as responsible for 500,000 additional deaths (Cosette, 2000). It was not until the case of Sergei Magnitsky, however, that financial and travel sanctions began to dominate the smart human rights sanctions regimes that have been flourishing around the globe. Countries having passed such legislation include the US (2012 and 2016), Estonia (2016), Canada (2017), Latvia (2018) and now, the UK (Moran, 2020).

¹² Cortright, D. & G. Lopez (2002). Smart Sanctions: Targeting Economic Statecraft. *Ethics and International Affairs* 16 (2); Peksen, D., (2009) Better or Worse? The Effect of Economic Sanctions on Human Rights. *Journal of Peace Research*, 46(1), pp.59-77; Drezner, D. 2003. How Smart are Smart Sanctions?. *International Studies Review* 5(1), pp.107-110.; Crossette, B. 2000. Iraq Won't Let Outside Experts Assess Sanctions' Impact On Lives. *New York Times*. Available at: <https://www.nytimes.com/2000/09/12/world/iraq-won-t-let-outside-experts-assess-sanctions-impact-on-lives.html> [Accessed on 10 June 2021]; Portela, C. (2020). ‘A Blacklist is (almost) born: Building a resilient human rights sanctions regime’, *Union Institute for Security Studies (EUISS)*.

¹³ Foreign, Commonwealth & Development Office (FCDO). 2019. ‘UK Sanctions’, GOV.UK, August 28. Available at: <https://www.gov.uk/guidance/uk-sanctions> [Accessed on 5 June 2021].

¹⁴ Drezner, D. W. (2011) ‘Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice: Sanctions Sometimes Smart’, *International Studies Review*, 13(1), pp. 96–108. doi: [10.1111/j.1468-2486.2010.01001.x](https://doi.org/10.1111/j.1468-2486.2010.01001.x).

is argued that smart sanctions do not have a significant adverse effect on trade flows and that they do not create the same level of diplomatic tension or criticism from global civil society. Yet, whilst there is a lack of consensus on the efficacy of smart sanctions in comparison with comprehensive sanctions, the ‘obvious conclusion is that comprehensive sanctions are more effective than targeted or selective measures... Where economic and social impact have been greatest, political effects have also been most significant.’¹⁵ Meanwhile, smart sanctions primarily denote the sender state’s disapproval of the target states, doing very little to coerce the target states into meaningful policy changes and frequently causing target states to increase repressive measures.

Case Studies Suggesting that Smart Sanctions are Ineffective in Changing Target Individual and/or Organisation Behaviour	
Iraq. <i>See Drezner (2003).</i> ¹⁶	“...the sanctions have failed to coerce the Iraqi regime into full compliance with the requisite UN Security Council...”
North Korea. <i>See Park and Choi, (2020).</i> ¹⁷	Smart sanctions imposed on North Korea have not changed the regime's behaviour.
Russia. <i>See Ashford (2016).</i> ¹⁸	Smart sanctions imposed on Russia by the US have been ineffective and flawed, were largely seen as harmless, and have made it easier for Putin to “sell his anti-Western narrative.”
Multi-country study. <i>See Gordon (2011).</i> ¹⁹	SIPRI, a Swedish research institute, found that in 27 cases involving mandatory arms embargoes, the behaviour of the target state improved only a quarter of the time.

Impact of Smart Sanctions

Moreover, throughout our analysis, it has become evident that despite their humanitarian aims, smart sanctions can equally infringe on human rights. Current scholarship on comprehensive sanctions argues that they are ‘disproportional in their collateral effects for the harm caused to

¹⁵ Drezner, D. 2003. How Smart are Smart Sanctions?. *International Studies Review* 5(1), pp.107-110.

¹⁶ Drezner, D. 2003. How Smart are Smart Sanctions?. *International Studies Review* 5(1), pp.107-110.

¹⁷ Park, J. and Choi, H. J. (2020) ‘Are smart sanctions smart enough? An inquiry into when leaders oppress civilians under UN targeted sanctions’, *International Political Science Review*, pp. 1-17.

¹⁸ Ashford, E. (2016) ‘The Failure of Western Restrictions Against Russia’, p. 10.

CONSOLIDATED LIST OF FINANCIAL SANCTIONS TARGETS IN THE UK (no date). Available at: <https://ofsistorage.blob.core.windows.net/publishlive/ConList.html> [Accessed on 19 June 2021].

¹⁹ Gordon, J., (2011). Smart Sanctions Revisited. *Ethics & International Affairs*, 25(3), pp.315-335.

the populations of sanctioned states'.²⁰ However, several academic studies have similarly shown that smart sanctions may also violate human rights.

Case Studies Suggesting that Smart Sanctions can Violate Human Rights	
Russia and the US. <i>See Ashford (2016).</i> ²¹	Russia responded to US sanctions by banning imports of Western foodstuffs and reducing domestic welfare spending, consequently leading to food shortages, increased food prices and consequences for the quality of life of Russian civilians.
North Korea. <i>See Park and Choi, (2020).</i> ²²	Smart sanctions have exacerbated human rights abuse, spearheaded by Kim Jong-un in North Korea.
Ivory Coast. <i>See Park and Choi, (2020).</i> ²³	In the Ivory Coast, smart sanctions led to both greater levels of corruption in the state-controlled economy and increasing military-backed violence against civilians.
Saudi Arabia and the US. <i>See Gordon (2011).</i> ²⁴	The lack of due process for Saudi businessman Yassin Abdullah Kadi - who was placed on a US blacklist post-9/11- highlights that smart sanctions do not ensure a path to justice or accountability.
Venezuela. <i>See CRS (2021).</i> ²⁵	In Venezuela, US Congress enacted - and extended through to 2023 - the Venezuela Defense of Human Rights and Civil Society Act of 2014, which requires the government to impose sanctions on perpetrators of violence, serious human rights abuses, and anti-democratic actions.

²⁰ Hofer, A. (2020). *The Proportionality of Unilateral "Targeted" Sanctions: Whose Interests Should Count?* in: *Nordic Journal of International Law Volume 89 Issue 3-4*. Available at: https://brill.com/view/journals/nord/89/3-4/article-p399_399.xml?language=en [Accessed on 19 June 2021].

²¹ Ashford, E. (2016) 'The Failure of Western Restrictions Against Russia', p. 10. *CONSOLIDATED LIST OF FINANCIAL SANCTIONS TARGETS IN THE UK* (no date). Available at: <https://ofsistorage.blob.core.windows.net/publishlive/ConList.html> [Accessed on 19 June 2021].

²² Park, J. and Choi, H. J. (2020) 'Are smart sanctions smart enough? An inquiry into when leaders oppress civilians under UN targeted sanctions', *International Political Science Review*, pp. 1-17.

²³ Park, J. and Choi, H. J. (2020) 'Are smart sanctions smart enough? An inquiry into when leaders oppress civilians under UN targeted sanctions', *International Political Science Review*, pp. 1-17.

²⁴ Gordon, J., (2011). Smart Sanctions Revisited. *Ethics & International Affairs*, 25(3), pp.315-335.

²⁵ *See CRS (2021).*

How can a Sender Country Alleviate the Humanitarian Impact of Smart Sanctions?

As mentioned in the previous section, the target governments frequently resort to increasing their oppression of the civilian populations.²⁶ However certain conditions increase or decrease the chances of sanctions having a positive humanitarian impact.

1. The nature of the target government. A democratic target government makes smart sanctions more effective as democracy is directly correlated to fewer human rights violations.²⁷ Yet, an authoritarian target government tends to be less vulnerable to smart sanction. For instance, the smart sanctions against the Ivory Coast (2005-2016) included an arms imports embargo, asset freezes, and travel bans. These were largely ineffective due to the authoritarian nature of the government, which provided ‘greater incentive to oppress people to cut off potential support for challengers. Eventually, these sanctions led to greater levels of corruption in the state-controlled economy and increasing military-backed violence against civilians.’²⁸
2. The narrowness or broadness of the sanctions. If smart sanctions are narrow in scope, with narrowness referring to the fact that they target specific individuals and/or organisations rather than entire countries, their humanitarian impact is markedly better than if they are broad. A 2020 quantitative analysis of 56 UN-imposed smart sanctions revealed that ‘sanctions with a broad scope [...] result in deteriorated human rights conditions, especially in authoritarian countries.’ However, the study found that when sanctions with a narrow scope work effectively, they do not hurt innocent citizens.²⁹

Assessment of Application to Date

Given the novelty of the UK sanctions regime, there is insufficient evidence to consider its effectiveness as a targeted sanctions regime. However, this new regime risks succumbing to the same failings as other ‘smart’ sanctions. Hindered by vague aims and a symbolic nature, through primarily sanctioning those that pose a low political risk to the UK government and the lack of clarity as to whether the sanctions fit into the wider UK humanitarian foreign policy agenda limit its effectiveness. Consequently, the application of said ‘smart’ sanctions act to express Britain’s disapproval of human rights violators and highlights the government’s post-Brexit commitment to global leadership in human rights, the current application may have little effect on diminishing abuses.

²⁶ Park, J. and Choi, H. J. (2020) ‘Are smart sanctions smart enough? An inquiry into when leaders oppress civilians under UN targeted sanctions’, *International Political Science Review*, pp. 1-17.

²⁷ <https://www.un.org/en/global-issues/democracy>

²⁸ Park, J. and Choi, H. J. (2020) ‘Are smart sanctions smart enough? An inquiry into when leaders oppress civilians under UN targeted sanctions’, *International Political Science Review*, pp. 1-17.

²⁹ Park, J. and Choi, H. J. (2020) ‘Are smart sanctions smart enough? An inquiry into when leaders oppress civilians under UN targeted sanctions’, *International Political Science Review*, pp. 1-17.

To evaluate the application of the regime, it is necessary to consider the aforementioned two conditions that can ameliorate the humanitarian impact of smart sanctions:

1. Is the UK sanctions regime targeting democratic governments? Thus far, the UK has targeted Saudi Arabian, Russian, Belarusian, Venezuelan, Chinese, Burmese/Myanmarese, Uzbekistani, Azerbaijani, Ukrainian, Gambian, Moroccan, and Pakistani nationals and/or entities. The first eight countries have authoritarian governments, whilst the remaining four have hybrid regimes.
2. Are the smart sanctions imposed by the UK regime narrow in scope? On a country-by-country basis, the smart sanctions imposed by the UK regime are relatively narrow in scope. The sanctions primarily target individuals and/or entities involved with very specific events. For instance, in Russia, individuals and/or entities associated with the murder of Sergei Magnitsky were targeted by the sanctions.³⁰ In Saudi Arabia, individuals and/or entities associated with the assassination of Jamal Ahmad Khashoggi were targeted.³¹

It is worth highlighting that the UK regime is a relatively recent development. The targeted sanctions implemented by the regime need to be monitored for a longer period of time to evaluate their effectiveness. Nonetheless, a flaw within the UK regime is the lack of provisions for a targeted individual and/or entity to be removed from the list, such as by taking steps to improve their behaviour in terms of their record or position on human rights – perhaps because the violations that led to them being sanctioned in the first place can hardly be changed retrospectively. Thus, if the goal of the sanction is to encourage improved behaviour, considerations for how to be removed from a sanctions list should be made. Thus, have the smart sanctions imposed by the UK regime achieved their desired policy goals in terms of encouraging improved behaviour whilst taking into consideration the humanitarian impact of their sanctions?

The regime suggests sanctions which achieve their desired policy goals generally have a positive humanitarian impact. The quantitative analysis in the aforementioned study of 56 UN-imposed smart sanctions (2020) highlights that “human rights conditions are expected to improve over time when sanctions achieve their policy goals.” However, the study highlights that, if the sanctions are not effective in achieving their desired policy goals - and are thereby ineffective in coercing or constraining the sanctioned party - they can cause a spike in political terror.³² For instance, in Russia, the targets of the sanctions are “mid- or low-level officials,” none of whom are believed to own property or substantial assets in the UK. The US sanctions against Putin’s inner circle were even dismissed as “harmless” by Vladislav Surkov who said that “the only things that interest me in the U.S. are Tupac Shakur, Allen Ginsberg, and Jackson Pollock,” he said. “I don’t need a visa to access their work”³³.

We must also consider the predicament of the individuals and/or entities who, despite improving their behaviour, remain on the sanctions list. Such action may undermine the

³⁰ Foreign, Commonwealth & Development Office (FCDO). 2019. ‘UK Sanctions’, GOV.UK, August 28. Available at: <https://www.gov.uk/guidance/uk-sanctions> [Accessed on 5 June 2021].

³¹ Foreign, Commonwealth & Development Office (FCDO). 2019. ‘UK Sanctions’, GOV.UK, August 28. Available at: <https://www.gov.uk/guidance/uk-sanctions> [Accessed on 5 June 2021].

³² Park, J. and Choi, H. J. (2020) ‘Are smart sanctions smart enough? An inquiry into when leaders oppress civilians under UN targeted sanctions’, *International Political Science Review*, pp. 1-17.

³³ Ashford, E. (2016) ‘The Failure of Western Restrictions Against Russia’, p. 10.

CONSOLIDATED LIST OF FINANCIAL SANCTIONS TARGETS IN THE UK (no date). Available at: <https://ofsistorage.blob.core.windows.net/publishlive/ConList.html> [Accessed on 19 June 2021].

humanitarian aims and values of the regime. Section 23 of the 2018 Sanctions Act set out how to challenge sanctions that have been imposed, with further information found on the government website for those appealing.³⁴ This appears to be the method of challenging designations made under the 2020 regime, too, as there is no separate web page or section of the more recent legislation dedicated to challenging designations.

Recommendations Going Forward

The following recommendations are aimed at the UK government and other relevant stakeholders. To meet the aims of the new UK regime, namely the amelioration of human rights conditions by motivating change in individuals' behaviour and the political aim of forging a global human rights leadership role for the UK, several deficiencies in the new regime must be addressed.

1. Development of a clear delisting process

One of the major flaws in the regime, as it stands, is the absence of a clear delisting process and therefore the most pressing recommendation is the development of conditions for the removal of individuals from the UK sanctions designations. This will ensure that the new framework meets its aim of ameliorating human rights conditions by encouraging changes in individuals' behaviour.

2. Consistent and transparent application

The narrow scope of the new regime thus far has insulated it from criticisms of politicisation and overuse faced by other individual sanctions regimes, such as the US equivalent Magnitsky Act (Dall, 2021). To ensure that it does not face such criticisms in the future, the UK must ensure consistent and transparent application of the regime and the designation of individuals to the list. Moreover, the development of parliamentary oversight powers with regards to the list of targeted individuals would address the 'subjective' nature of those targeted and may also avoid inconsistencies in an application that would increase the likelihood of litigation (Smith and Dawson, 2020).

A move beyond the initial focus on targeting mid and low-level officials would also ensure that the UK's individual sanctions regime does not become an ineffective political bargaining chip and instead ameliorates human rights conditions by targeting those with more political clout who are directly involved in abuses. In its future use, the UK regime should target individuals from 'hybrid' regimes rather than authoritarian regimes alone, in line with the evidence that targeting democratic regimes is more likely to result in changes of behaviour and an amelioration of human rights conditions.

3. Coordination with other regimes

Individual sanctions regimes are more effective when they are internationally coordinated, especially when targeted individuals do not have substantial assets in the UK and are more reliant on alternative markets, as was the case in the initial designations. Therefore, the UK should coordinate its sanctions framework with concurrent regimes in the US, Canada, and the EU as well as engaging countries in Asia, Africa and Latin America that hold 'closer diplomatic and economic links with the countries it wishes to target (Dall, 2021). This will ensure individual abusers are motivated to change their behaviour and by coordinating with

³⁴ Cortright, D. & G. Lopez (2002). Smart Sanctions: Targeting Economic Statecraft. *Ethics and International Affairs* 16 (2).

other regimes and engaging with ‘non-western’ counterparts, the UK also meets its political aim of global human rights leadership.

4. Integration with the new 2021 Global Anti-Corruption Sanctions Regulations

The recent introduction of the Global Anti-Corruption Sanctions Regulations 2021 addresses one of the initial criticisms of the UK human rights regime by developing a second targeted sanctions regime aimed at those involved in corruption that prevents targeted individuals from moving money through the UK’s financial system. The ‘relationship between corruption and human rights abuse is well established’ and therefore this new framework builds on the 2020 human rights framework (Argent, 2020). However, to ensure that this legislation addresses the gaps in the 2020 framework a clear and robust channel must be developed between the two regimes to target individuals involved in both corruption and human rights abuse.

To close, this report aims to highlight the existing limitations of the current UK sanctions regime. Despite its shortcomings the report acknowledges the potential for effectiveness if the discussed recommendations going forward are followed. There are several potential obstacles to implementation, all of which would require government officials to invest in more robust resources and policy to ensure effective implementation of the regime. Sanctions that appear strong on paper often end up being far weaker in practice due to implementation and enforcement problems. In particular, problems may arise as foreign parties have no legal obligation to abide by the sanctions, rendering the sanctions purely symbolic or mere guidelines to be interpreted. It should also be kept in mind that there may be deliberate violations of the sanction’s regime that are difficult for government officials to identify. To mitigate this, governments must make significant investments in monitoring potentially illicit transactions and in conducting what are often complicated and resource-intensive investigations due to their international nature.

Overall, this report highlights the promising nature of the GHR, both for deterring human rights violators and for alleviating the negative humanitarian impact associated with traditional sanctions. Nevertheless, this report emphasises the need for a strong, regulated, and collaborative infrastructure to ensure that the regime achieves its maximum potential.

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