

REDRESS

Ending torture, seeking justice for survivors

Implementing the Right to Reparation: Confiscation of the assets of oligarchs and human rights abusers for the benefit of victims March 2022

OVERVIEW

1. Corrupt actors and human rights abusers around the world acquire significant wealth through nefarious means. Oligarchs and kleptocrats benefit from corrupt systems, which allow vast amounts of money to be embezzled from their communities, leaving a select few with multi-million or even billion-pound estates, and many ordinary citizens impoverished. Corrupt systems are commonly perpetuated through repressive and abusive practices, such as violations of the right to freedom of speech and assembly, arbitrary detentions, enforced disappearances and torture. In this context, those responsible for human rights abuses both sustain and benefit from corruption; and corrupt actors sustain and benefit from the human rights abuses. Often, perpetrators live in luxury with assets spirited abroad, while victims remain vulnerable and without the means to rebuild their lives. This is despite the victims' rights to reparation under international law.
2. Russia's invasion of Ukraine has shone a spotlight on this issue, with increasing calls for oligarchs and kleptocrats who support Putin's regime to be stripped of their assets and for the proceeds to be returned to, or repurposed for, the benefit of victims, including victims of the war in Ukraine, as well as Russian citizens from whom the corrupt money has been stolen.
3. REDRESS is calling on the UK government to seize this opportunity to effectively implement the right to reparation in international law and ensure that perpetrators are deprived of their assets, and victims receive redress. This may be achieved through the Economic Crime (Transparency and Enforcement) Bill 2022 to allow assets frozen under sanctions connected to human rights abuses and corruption to be repurposed for the benefit of victims.

VICTIMS' RIGHTS TO REPARATION

4. The right of victims to an effective remedy, including reparation, is a well-established right in international human rights law and international humanitarian law, and is enshrined in various international treaties. These include: Article 8 of the Universal Declaration of Human Rights ("UDHR");¹ Article 2 of the International Covenant on Civil and Political Rights ("ICCPR");² Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD");³ Article 24 of the International Convention for the Protection of All Persons from

¹ "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

² "3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted."

³ "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

Enforced Disappearances (“**ICPPED**”);⁴ Article 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“**UNCAT**”);⁵ Article 75 of the Rome Statute of the International Criminal Court (“**Rome Statute**”);⁶ Article 3 of the 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land (“**Hague Convention (IV)**”);⁷ and Rule 150 of ICRC Customary International Humanitarian Law.⁸

5. Part IX of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*⁹ (“**the Basic Principles on the Right to a Remedy and Reparations**”) outlines the different forms of reparation that should be available to victims, including: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Principle 20 states that compensation should be provided for economically assessable damage, such as physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs for legal or expert assistance, medicine and medical services, and psychological and social services.
6. Moreover, the UN Convention Against Corruption (“**UNCAC**”), which aims to prevent and combat corruption, requires property confiscated by a State Party as proceeds of crime to be disposed of, including by return to its prior legitimate owners.¹⁰
7. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power develops guidelines and standards regarding abuse of economic and political power. Article 8 states that offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, including the return of property or payment for harm suffered.

STATE PRACTICE – ASSET RECOVERY FOR REPARATION

8. Legal mechanisms to confiscate or forfeit assets in order to provide reparation for victims exist in some domestic jurisdictions, and are becoming increasingly common. In particular, the corruption context provides some illustrative examples.
9. In 2021, the French *Assemblée Nationale* adopted provisions allowing the return of ill-gotten gains to victims, following the conviction of Vice President Nguema Obiang of Equatorial Guinea

⁴ “4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation [...]”

⁵ “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”

6 “1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.”

7 “A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.”

⁸ Also see the analysis of Hogan Lovells, Global Survivors Fund, REDRESS and Goldsmith Chambers in their report: ‘Finance for Restorative Justice: Volume II’, 19 June 2021. Available here:

https://www.hoganlovells.com/-/media/hogan-lovells/pdf/2021-pdfs/2021_06_25_finance_for_restorative_justice_-_volume_ii_stage_5.pdf

⁹ Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

¹⁰ Article 57.

on corruption charges, which left France with over 150 million euros in stolen assets to be returned to the people of Equatorial Guinea.¹¹ The draft law establishes that where a politically exposed person has been convicted in the French courts of laundering embezzled public funds or the proceeds of corruption, their assets can be seized, confiscated, and sold. The proceeds will be returned to the population from which they were stolen.¹² Moreover, following the conviction of Rifaat Al Assad, Syrian president Bashar Al Assad's uncle, for money laundering, French authorities are looking to sell his luxury properties and return the proceeds to victims in Syria.¹³

10. Switzerland's Foreign Illicit Assets Act allows for assets deposited in Switzerland by foreign corrupt officials or their close associates to be frozen, confiscated and restituted.¹⁴ Once the assets have been confiscated, Switzerland can seek to restore the assets to the country of origin for the purpose of improving *"the living conditions of the inhabitants of the country of origin,"* and strengthening *"the rule of law in the country of origin and thus...[contributing] to the fight against impunity."*¹⁵
11. Similarly, the UK has used its non-conviction based mechanisms to confiscate Chadian money recovered from corrupt oil transactions in order to provide £4.4 million in aid for vulnerable people of Chad.¹⁶
12. More broadly, the US has seized millions of dollars in cryptocurrency used to finance terrorism related to al-Qassam Brigades, al-Qaeda and Islamic State of Iraq and the Levant, which may be directed to the United States Victims of State Sponsored Terrorism Fund at the conclusion of the case.¹⁷
13. In another example, Italy's 'Anti-Mafia Code' allows for the confiscation of assets and funds related to organised crime, without the conviction of the perpetrator, to be repurposed as compensation for victims of such crimes.¹⁸

¹¹ HRW, 'France: Equatorial Guinea Vice President's Conviction Upheld', 28 July 2021, available here: <https://www.hrw.org/news/2021/07/28/france-equatorial-guinea-vice-presidents-conviction-upheld>

¹² Insights from U4 Anti-Corruption Resource Centre. 'The ill-gotten gains of corruption: a possible French model for restitution', 27 April 2021. Available here: <https://medium.com/u4-anti-corruption-resource-centre/ill-gotten-gains-of-corruption-french-model-restitution-932a7452baaa>

¹³ The National News. 'Frozen, the disputed European property empire of Rifaat Al Assad', 23 November 2021. Available here: <https://www.thenationalnews.com/world/uk-news/2021/11/23/frozen-the-disputed-european-property-empire-of-rifaat-al-assad/>
<https://www.bbc.co.uk/news/world-europe-53077818>

¹⁴ Available at UNODC, CAC/COSP/WG.2/2016/CRP.2, 16 August 2016. <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1605154e.pdf>

¹⁵ Hogan Lovells, 'Finance for Restorative Justice: Using sanctions and terrorist financing legislation to fund reparations for victims of sexual violence in conflict', January 2020, p.23. https://www.hoganlovells.com/-/media/hogan-lovells/pdf/2020-pdfs/2020_01_29_rethinking-reparations-report.pdf?cfchljschltk=AZqpxoaQlo66HA0UfasHWfyzkmJMnitvOsr7h7dhv74-1643034337-0-gaNycGzNCf0

¹⁶ 'UK aid Supports Vulnerable People in Chad Using Millions of Pounds Recover During Corruption Case', 29 November 2021. Available here: <https://www.gov.uk/government/news/uk-aid-supports-vulnerable-people-in-chad-using-millions-of-pounds-recovered-during-corruption-case>; <https://www.sfo.gov.uk/2018/03/22/sfo-recovers-4-4m-from-corrupt-diplomats-in-chad-oil-share-deal/>

¹⁷ <https://www.justice.gov/opa/pr/global-disruption-three-terror-finance-cyber-enabled-campaigns>

¹⁸ Hogan Lovells, 'Finance for Restorative Justice: Using sanctions and terrorist financing legislation to fund reparations for victims of sexual violence in conflict', January 2020, pp. 23-26. Available here: https://www.hoganlovells.com/-/media/hogan-lovells/pdf/2020-pdfs/2020_01_29_rethinking-reparations-report.pdf, and https://www.hoganlovells.com/-/media/hogan-lovells/pdf/2021-pdfs/2021_06_25_finance_for_restorative_justice_-_volume_ii_stage_5.pdf pp. 26-33.

CONFISCATING ASSETS FROZEN UNDER SANCTIONS

14. In response to Russia's invasion of Ukraine, the UK government has joined allied States in imposing targeted sanctions, including asset freezes and travel bans, on Russian oligarchs and those who support or facilitate Putin's regime.
15. Under the current system, assets frozen under sanctions are highly unlikely to be confiscated by the UK government. This means that millions or even billions of pounds of assets belonging to perpetrators are being frozen (and unable to be used) indefinitely, while victims are not being compensated for the abuses they have suffered.
16. This is largely because the existing legal routes to confiscation of assets are narrow, slow and inflexible. In addition, there is a lack of coordination between the sanctions system (managed by the Foreign, Commonwealth & Development Office (**FCDO**) and the Office of Financial Sanctions Implementation (**OFSI**)), and routes to confiscating unlawful assets (managed by the National Crime Agency (**NCA**) and Serious Fraud Office (**SFO**), using the Proceeds of Crime Act 2002).
17. Following Russia's invasion of Ukraine, we have seen a significant increase in political and public interest in ensuring that the assets of oligarchs frozen under sanctions can be confiscated by the UK government and repurposed for victims. For example, on 28 February 2022 Foreign Secretary Liz Truss said she would look into this following a question from the Foreign Affairs Committee Chair Tom Tugendhat.¹⁹ Justice Secretary and Deputy Prime Minister, Dominic Raab,²⁰ and Secretary of State for Levelling Up, Housing and Communities, Michael Gove,²¹ have made similar proposals in recent days.

PROPOSAL – IMPLEMENTING INTERNATIONAL LAW

18. On 1 March 2022 the UK government introduced the Economic Crime (Transparency and Enforcement) Bill 2022 to crack down on dirty money in the UK following Russia's invasion of Ukraine. The new legislation aims to help the NCA prevent foreign owners from laundering their money in UK property and ensure more corrupt oligarchs can be handed an Unexplained Wealth Order.²²
19. The Bill presents a timely opportunity to encourage the government to apply international standards relating to reparation through the confiscation of the assets of oligarchs and those supporting Putin's regime to repurpose them for the benefit of victims. Such an undertaking would reflect a Bill that has been put forward in Canada, which seeks the repurposing of frozen assets related to human rights abuses for the benefit of victims.²³
20. To effectively implement the right to reparation in international law, any legislation should:

¹⁹ Hansard, 'Sanctions; Volume 209', 28 February 2022, column 714. Available at:

<https://hansard.parliament.uk/commons/2022-02-28/debates/3D28CB2C-B2E4-40B4-B40A-6D0D1147B6C9/Sanctions>.

²⁰ J. Grierson and R. Mason, 'Property of Russian elites could be handed to Ukrainian refugees, says Raab', 4 March 2022. Available at: <https://www.theguardian.com/world/2022/mar/04/property-of-russian-elites-could-be-handed-to-ukrainian-refugees-says-raab>.

²¹ O. Wright, 'Michael Gove explores options for seizing oligarchs' property', 3 March 2022. Available at: <https://www.thetimes.co.uk/article/michael-gove-explores-options-for-seizing-oligarchs-property-wct37tm2t>.

²² 'Government takes landmark steps to further clamp down on dirty money', 28 February 2020. Available here: <https://www.gov.uk/government/news/government-takes-landmark-steps-to-further-clamp-down-on-dirty-money>.

²³ Bill S-217. Available at: <https://www.parl.ca/DocumentViewer/en/44-1/bill/S-217/first-reading>.

- a) Enable the UK government to confiscate assets frozen under sanctions related to corruption and human rights abuses; and repurpose those assets for the benefit of victims.
- b) Require the government to publish publicly the name of any person or entity associated with frozen assets and the value of that asset.
- c) Create a statutory duty for the NCA to consider whether assets frozen under sanctions could be confiscated under the Proceeds of Crime Act 2002.
- d) Require the government to repurpose monies from financial penalties in accordance with Clause 38 of the Bill for the benefit of victims.²⁴

21. The proposal is designed to achieve the following aims:

- a) Establish an effective and efficient legal route for assets frozen under sanctions connected to human rights abuses and corruption to be repurposed for the benefit of victims, so as to make the right to reparation effective in practice, including by ensuring that government departments collaborate effectively to confiscate frozen assets;²⁵
- b) Ensure that victims' rights to reparation are upheld in accordance with international law;
- c) Ensure that the proceeds of corruption are disposed of, including by return to the legitimate owners, in accordance with UNCAC, the Basic Principles of Justice for Victims of Crime and Abuse of Power, and the Basic Principles on the Right to a Remedy and Reparations;
- d) Ensure that victims have access to information about confiscated assets, which would enhance their access to justice and to relevant information concerning reparation mechanisms, as required by the Basic Principles on the Right to a Remedy and Reparations;
- e) Encourage behavioural change by warning that frozen assets will be confiscated permanently if the target's behaviour does not change; and
- f) Provide an 'off-ramp' for sanctions, ensuring that vast amounts of assets are not simply frozen indefinitely.

²⁴ For further discussion of this area, see: '[Finance for Restorative Justice: Using sanctions and terrorist financing legislation to fund reparations for victims of sexual violence in conflict](#)', Hogan Lovells, 2020; and '[Finance for Restorative Justice: Volume II](#)', Hogan Lovells, 2021.

²⁵ This would ensure that rights are "practical and effective," not "theoretical and illusory", see e.g., European Court of Human Rights, *Airey v. Ireland*, 9 October 1979, para. 24, Series A no. 32.