

REPARATIONS FOR SURVIVORS OF HUMAN RIGHTS VIOLATIONS IN UKRAINE

April 2024

SUMMARY

REDRESS submits this briefing on the current state of reparation initiatives for survivors of human rights violations in Ukraine in advance of the EU's upcoming human rights dialogue with Ukraine. Please note that this briefing does not comprehensively address all human rights issues affecting Ukraine, but instead focuses on how the EU and its allies can support survivors of human rights violations in Ukraine in realizing their right to reparations.

Accordingly, taking account of the EU's stated priorities regarding protecting the role of civil society, encouraging international cooperation in the field of international justice and promotion of democratisation and good governance, this briefing makes the following recommendations for the EU:

1. Together with aid for defence, reconstruction and recovery, to support reparations to survivors of violations of international human rights and humanitarian law in Ukraine. In the delivery of reparations, the EU, Ukraine and their allies should adopt an inclusive, survivor-centered approach involving survivors in the design, implementation and monitoring of any reparation schemes to ensure these initiatives respond to their needs and harm suffered.
2. To explore innovative avenues to finance reparations for survivors of violations of international human rights and humanitarian law in Ukraine, including through the confiscation of Russian frozen assets, and ensure that these efforts are connected to existing mechanisms set up to support the delivery of reparations.

SUPPORT FOR UKRAINE'S RECONSTRUCTION AND RECOVERY MUST INCLUDE REPARATIONS FOR SURVIVORS

A joint [assessment](#) by the World Bank, the Government of Ukraine, the European Commission and the United Nations published in March 2023 estimated the total cost of reconstruction and recovery at US\$486 billion, which includes damage to infrastructure and to the environment, as well as economic and social losses resulting from the conflict.

Since the start of the invasion in 2022, the EU, its Members States and the European financial institutions, have made available almost [€98 billion](#) in financial, humanitarian, emergency, budget and military support and has set up a dedicated instrument to provide Ukraine with up to [€50 billion](#) in stable and predictable financial support for the years 2024 to 2027. Yet, despite these commitments, there are two significant omissions in the narrative and debate on the reconstruction and recovery of Ukraine: (i) the delivery of reparations to survivors of international human rights and humanitarian law violations; and (ii) efforts to affect delivery of reparations while the conflict is ongoing (i.e., not only "post-war").

It is crucial that the EU and Ukraine begin considering reparation processes and how to affect them as early as possible. Such processes are typically long and complex but are also crucial to

the reconstruction and recovery post-conflict. Survivors entitled to reparations as a result of the conflict date back to 2014 when Russia first annexed Crimea. Currently, close to 10 million people are estimated to be internally displaced or refugees abroad. Widespread human rights violations including -Related Sexual Violence (CRSV) and torture, have been reported. In addition to the physical and material suffering caused, Viktor Liashko, Minister of Health of Ukraine, estimated at the end of 2023 that 14 million Ukrainians need psychological aid. at the end of 2023 that 14 million Ukrainians need psychological aid. In line with the [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for survivors](#), Ukraine and third States, including EU Member States, can step in where Russia is unwilling or unable to meet its obligations to provide reparations. There are several [existing or planned mechanisms](#) both at international and national levels that can deliver reparations to survivors of violations of international human rights and humanitarian law in the context of the conflict in Ukraine, which the EU could support:

1. The [Register of Damage for Ukraine](#), which was set up by an agreement between the Council of Europe, 43 States, and the EU to serve as a record of evidence and claims for damage, loss or injury caused to all natural and legal persons concerned, as well as to the State of Ukraine, by Russia's internationally wrongful acts in or against Ukraine. It is envisaged as the first step towards an international fund and claims and compensation mechanism. The mechanism [opened](#) for the submission of a first category of claims on damaged property on 2 April 2024.
2. The [Trust Fund for Victims at the International Criminal Court](#) (ICC), which can provide reparative measures such as rehabilitation and support to victims of crimes against humanity and war crimes in Ukraine, and provide reparations eventually ordered by the Court with respect to cases before the ICC. The Trust Fund for Victims has expressed an intention to pursue an assistance mandate for Ukraine, the scope of which is yet to be defined.
3. The [Global Survivors Fund](#) is currently supporting Ukrainian authorities to provide a legal structure to deliver urgent interim reparations to ensure that the survivors of CRSV receive concrete and life-changing support.
4. In Ukraine, there are also [national administrative mechanisms](#) to deliver reparations in place and in progress, including compensation for property damage, and for those who have suffered human rights violations in detention, and reparations for survivors of CRSV.

However, while these initiatives are laudable, there still appears to be a lack of coordination and overarching strategy on the delivery of reparations among the different actors involved at the domestic and international levels. In addition, the mandates and scope of the existing mechanisms are varied, and none represent a comprehensive reparation scheme for survivors of violations of international human rights and humanitarian law throughout the entirety of the conflict. It is also not entirely clear the extent of which survivor groups have been consulted and involved in the setting up of all these initiatives. This carries the risk of fragmentation or duplication of efforts and the re-traumatisation of survivors registering their claims through multiple initiatives. There are also questions as to whether the initiatives, emphasising compensation, correspond to the needs of many survivors, including of CRSV, who may prioritise reparations in the form of rehabilitation or, in appropriate cases, restitution, in addition to or instead of individual financial reparations.

As a first step, therefore, the EU should engage with the Ukrainian Government, survivor groups and civil society, as well as international and national actors involved in mechanisms for the delivery of reparation to identify where the gaps lie and where more support is needed. The EU

could support national and international initiatives to ensure adequate coordination among those working towards the delivery of reparations. Such consultations would ensure that any support offered is adequate and tailored to the immediate and long-term requirements of survivors, and their rights to reparation is considered alongside efforts towards the defence, reconstruction and recovery of Ukraine.

KEY RECOMMENDATIONS FOR THE EU:

- Ensure that the rights of individual survivors to reparations are considered alongside important efforts towards the defence, reconstruction and recovery of Ukraine.
- Reiterate the need for reparations to be available for persons victimised since the beginning of the conflict in 2014.
- Support Ukraine in developing a coherent strategy to ensure that existing reparations mechanisms work in coordination and represent a comprehensive reparation scheme for survivors, encompassing reparations in multiple forms.
- Work with national and international actors to ensure that reparations are prompt, accessible and effective: survivors should be able to realise this right whether through Ukrainian State-led and/or international or hybrid mechanisms or programmes; and any reparations offered should be adequate and tailored to the immediate and long-term needs of survivors.
- Support Ukraine in ensuring that tools on the national level to promote cooperation and mutual complementarity are effectively utilized.
- Ensure survivors are meaningfully involved in the design, implementation and monitoring of any reparation initiatives.

THE ROLE OF THE INTERNATIONAL COMMUNITY IN FINANCING REPARATIONS FOR UKRAINE

[As of March 2023](#), Western allies had frozen US\$58 billion worth of assets of Russian individuals and entities and US\$300 billion of Russian sovereign assets in response to Russia's invasion of Ukraine. Despite the significant amount of Russian assets frozen or immobilised under sanctions, there is no clear, internationally recognised precedent for confiscating assets of those involved in Russia's violations of international human rights and humanitarian law and redirecting them to survivors.

In [June 2022](#), Canada became the first, and only, G7 country to introduce legislation to enable the confiscation of assets frozen under sanctions and their repurposing for the benefit of survivors. However, it is unclear whether the Canadian law would meet the due process and right to property protections required under the European Convention on Human Rights (ECHR). Although the law includes some protections for the sanctions target, including access to a petition for delisting and judicial review, the threshold for asset confiscation is low, raising due process concerns.

In a first attempt by an EU country to craft a legal basis for asset confiscation, the Estonian parliament passed a [draft law](#) in the first reading that would allow the Estonian Government to confiscate Russian frozen assets belonging to sanctioned individuals and entities and use the revenue as "*prepayment of the compensation for the damage caused to a foreign state by a violation of the prohibition of the use of force under Article 2(4) UN Charter or of the rules of*

warfare during the unlawful use of armed forces". If passed into law, these measures would target the assets of those with a connection to the executive power of the State that has committed or assisted in the relevant violations. While the law includes legal safeguards, including that the Estonian Government would need to apply for permission from the Administrative Court before seizing the assets in question and the asset owner would be given an opportunity for judicial review. It is not clear yet whether these safeguards are sufficient to appropriately protect the due process rights of those affected.

Other proposals for confiscation have focused on employing existing legal bases to confiscate Russian assets when they are demonstrably linked to the proceeds of crime. For example, in February 2024, the US Government transferred nearly US\$500,000 in forfeited Russian funds to Estonia for the purpose of providing aid to Ukraine, pursuant to § 1708 of the [Consolidated Appropriations Act \(2023\)](#). The forfeiture arose following the breakup of an illegal [procurement network](#) attempting to import into Russia a high-precision, US-origin machine tool with uses in the defense and nuclear proliferation sector. Further, in May 2023, US Attorney General Merrick Garland [authorised](#) the transfer of US\$5.4 million taken from a bank account of sanctioned Russian oligarch Konstantin Malofeyev for use in Ukraine. Malofeyev had been [charged](#) with sanctions violations in 2022 and the confiscated funds represented the proceeds of this violation (so constituted the proceeds of a criminal offence). Once implemented, the [EU's directives](#) on strengthening asset recovery and harmonizing the enforcement of EU sanctions across member States could provide for a similar process, allowing for the confiscation and repurposing of funds used in breach of EU sanctions for the benefit of survivors.

In addition, the UK Government has proposed a [voluntary mechanism](#) by which sanctioned individuals could apply for their frozen funds to be released to support Ukraine's recovery and reconstruction, and the EU has adopted a law to set aside windfall profits made on Russian central bank assets. As a result, there is a multitude of proposed avenues for repurposing frozen assets linked to Russia's violations of international human rights and humanitarian law. Yet none are sufficient in their current form to capture the many individuals and entities connected with violations committed by Russia in the conflict against Ukraine, nor are they necessarily aligned. They are also currently not connected to any reparation mechanism established for survivors of violations of international human rights and humanitarian law in Ukraine.

Robust laws are needed to effectively recoup the illicit wealth stored by Russia and Russian oligarchs in the EU for the benefit of survivors. The EU should consult with allies, civil society and experts on the development and implementation of new legal bases to enable the confiscation and repurposing of frozen assets as reparations for survivors of international human rights and humanitarian law violations. Such laws should establish a clear legal basis for confiscating assets, for example, because their owner is complicit in, or has supported or benefited from serious human rights or humanitarian law violations, while ensuring proportionality and respect for property rights, due process, and the law on sovereign immunity. Different categories of assets will require different approaches, and not all assets belonging to affiliates of the Russian regime will necessarily meet the criteria for confiscation. However, repurposing even a small portion of them could make a profound difference for survivors of international human rights and humanitarian law violations in Ukraine.

KEY RECOMMENDATIONS FOR THE EU:

- Consult with civil society and experts on the development and implementation of new legislation to enable the confiscation and repurposing of frozen Russian assets as reparations for survivors of Russia's violations of international human rights and humanitarian law.

- Increase coordination with allied States to ensure greater consistency across jurisdictions in their respective efforts to confiscate and repurpose frozen assets linked to Russia's violations of international human rights and humanitarian law.
- Ensure that discussions surrounding the confiscations and repurposing of frozen Russian assets are linked to established mechanisms set up to provide reparations to survivors of violations of international human rights and humanitarian law in Ukraine.
- Incorporate reparations and support for survivors and affected communities into future EU financial support packages to Ukraine and recoup the costs from frozen Russian assets seized within the EU's jurisdiction.

REDRESS RESOURCES ON ACCOUNTABILITY & REPARATIONS

Below, we have set out several briefings and reports published by REDRESS and our partners on reparations and accountability for survivors of international human rights violations, which could be relevant to the dialogue:

1. [The Delivery of Reparation for Ukraine](#): This briefing examines the complex reparation landscape for victims in Ukraine, including victims of conflict-related sexual violence, and makes recommendations to deliver comprehensive and holistic reparations to victims.
2. [Innovative Avenues to Finance Reparations in the UK](#): This briefing identifies important legal and policy reforms that the UK Government should implement to ensure the repurposing of profits derived from violations of human rights and humanitarian law to provide reparations to victims.
3. [Global Britain, Global Justice: Strengthening Accountability for International Crimes in England and Wales](#): This report sets out reforms that would close loopholes and allow for more successful cases to be brought in English courts against suspects of the most serious international crimes.
4. [A Survivor-Centred Approach to Seeking Reparation for Torture](#): This practice note aims to facilitate the understanding and practice of a survivor-centred approach to strategic human rights litigation and reparation claims.

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