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# Finance for Restorative Justice: Volume II

*Discussion Paper*

Hogan Lovells, Global Survivors Fund,  
REDRESS and Goldsmith Chambers

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for the Elimination of Sexual Violence in Conflict*

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# Foreword

We are all aware of the degree to which conflict-related sexual violence has devastating effects on individuals, as well as their families and communities. At the Panzi Hospital and the Panzi Foundation, on a daily basis we witness the physical and mental traumas caused by this calamity.

Over the years, we have cared for the victims using a holistic approach, which includes medical surgeries, psychological counseling as well as socio-economic and legal support. However, we also understand, this is not enough.

The survivors of war-time rape and other forms of conflict-related sexual violence need and deserve their right to reparations. This was the main motivation behind the creation of the Global Survivors Fund under the initiative of Ms. Nadia Murad and myself.

It is obvious to all of us that the primary responsibility for providing reparations is incumbent upon the perpetrators of these crimes and upon the responsible states, but who cannot or do not provide them. Furthermore, it is also their due responsibility to protect, however in reality we see that this very rarely happens.

Financing reparations is a real challenge to which we must respond by finding innovative solutions. One of the options worth exploring is re-purposing the assets seized through sanctions regimes and associated fines for the purpose of reparations for survivors of conflict-related sexual violence and other human rights violations. In my view this will only be fair.

More concretely, this would mean the allocation of assets of human rights violators for the benefit of the victims who desperately need the means to rebuild their lives. I realize that the challenges in finding solutions are immense, but I also have hope that proposals such as this one will elucidate resourceful ways to work together and overcome the obstacles in the interest of the survivors of wartime rape, conflict-related sexual violence and other human rights violations around the world.



**Dr Denis Mukwege**  
Co-Founder of the Global Survivors Fund  
2018 Nobel Laureate

“Repurposing the assets seized through sanctions regimes for the purpose of #reparations for survivors of conflict-related sexual violence and other human rights violations is worth exploring. (...) This will only be fair,” he writes in the Foreword to the paper.

*Dr Denis Mukwege*

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Between 2014 and 2017, thousands of Yazidis lost their lives, family members, homes, and freedom to one of the most brutal and murderous terrorist organizations of the 21st century, the Islamic State of Iraq and Syria (ISIS). Thousands of women, girls, and boys were abducted, enslaved, and subjected to horrific acts of sexual violence. Many of these women and children are still held captive today, while many of the criminals who tortured them walk free.

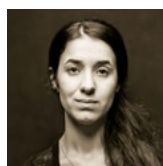
Since then, the international community has worked with Iraq and the Kurdistan Regional Government to defeat ISIS' territorial control, impose sanctions against individuals and entities associated with ISIS, and establish the United Nations Investigative Team to promote Accountability for Crimes committed by Daesh (UNITAD). UNITAD's evidence collection has set the stage for domestic proceedings to try Iraqi and foreign nationals who perpetrated crimes of genocide and sexual violence. The Government of Iraq has also taken an important step by passing the Yazidi Female Survivors Law, which is intended to provide access to reparations and support for survivors as they heal and restart their lives. However, both the evidence collected by UNITAD and the Survivors Law will provide little change in the daily lives of survivors if relevant authorities lack the political will to follow through on prosecuting perpetrators and implementing a reparations system.

Therefore, numerous challenges remain and much more action is needed from the international community. Investment is critical to rebuilding the basic infrastructure and services in Sinjar that would allow the Yazidi community to return to their homeland and live with dignity. Many hurdles also remain for survivors of sexual violence to access the reparations they are owed.

Sadly, the use of sexual violence in conflict is not unique to the Yazidi Genocide. Women treated at the Panzi Hospital, as well as those who are affected by conflict in every corner of the globe, share heartbreakingly similar stories.

They also share the need for support and the right to reparations. Sexual violence is strategically used as a weapon of war in order to rip communities apart from within. Reparations empower survivors to restore their own lives along with the fabric of their communities.

Financing reparations will undoubtedly present a particular challenge. Reparations for Yazidi survivors are impeded by the reality that the Iraqi government struggles with multiple crises and limited resources. Other governments have frozen and sometimes confiscated significant assets associated with ISIS. Ways to use these assets to fund reparations would be welcomed by Yazidis and would set a precedent to help survivors around the world access the reparations they deserve. I hope this paper will guide policymakers and government officials across the world to find and act on such solutions.



**Ms. Nadia Murad**  
Co-Founder of the Global  
Survivors Fund  
2018 Nobel Laureate

“

Ways to use the sanctioned assets to fund reparations would be welcomed by Yazidis and would set a precedent to help survivors around the world access the reparations they deserve.

*Nadia Murad*

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# Executive Summary

In January 2020, we published our first proposal (*Finance for Restorative Justice*) advocating that frozen assets and financial penalties imposed for breaches of sanctions and terrorist financing legislation be used to fund reparations for victims of sexual violence in conflict.

As we stated then, while numerous proposals concerning reparations funds had been developed over the years, there have not been many efforts to explore innovative and sustainable ways of financing reparations.

Sadly, in many cases, reparations do not reach those who are entitled to them, as the perpetrators are often indigent, states responsible for reparations do not have sufficient resources and donations from the international community are not commensurate with the scale of the crisis. It is our contention that the global counter-terrorist financing and other financial sanctions frameworks can be used to fill this gap.

Since last year, we have had the honour of partnering with the *Global Survivors Fund* (“GSF”), with whom we and REDRESS publish this report. Launched in October 2019 by Nobel Peace Prize Laureates Dr Denis Mukwege and Nadia Murad, GSF’s mission is to enhance access to reparations for survivors of conflict-related sexual violence globally. We are also grateful for the collaboration we have had with *Goldsmith Chambers*, who we instructed to provide a detailed Opinion on the repurposing of assets. Together, we have developed our thinking on this incredibly important topic, and we hope that this report proves to be useful to the international community in improving how it fulfills the rights of victims of sexual violence in conflict to reparations.

Following the publication of *Finance for Restorative Justice*, we had numerous fruitful discussions and engagements with key stakeholders from around the world. During these discussions, two key issues arose: (a) the existence of a legal obligation on States to contribute to a central, international fund which may provide reparations to victims all over the world regardless of their nationality, the nationality of the perpetrator, or where the violation occurred; and (b) concerns as to the operation of existing financial sanctions regimes and the way in which confiscation mechanisms could be lawfully incorporated. This second volume explores these two issues in detail.

It should be noted that this volume focuses largely on the proposal to finance reparations by way of assets frozen pursuant to financial sanctions regimes, as opposed to by way of fines and penalties imposed due to breaches of those regimes and terrorist financing legislation. This is because the latter is currently legally possible – it merely requires the recognition of the legal obligation on States to finance reparations (as explored below) and political will to deliver. (see Box 1) This is compared to the use of frozen assets, which will require legal change at both a national and international level.

## The legal obligation on States

In our view, there is a legal obligation on States to fulfil or guarantee the rights of victims of sexual violence in conflict to reparations, and to argue that this duty can be owed regardless of whether their victimhood has been judicially assessed; whether the perpetrator has been identified or prosecuted; and whether there is criminal or territorial responsibility on the obliged State.

Moreover, to give full effect to the rights of victims to reparations, this obligation must extend to financing those reparations, as confirmed by the authorising effect 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 (“**Basic Principles**”). The primary obligation is owed by the perpetrators and States where the offending conduct has occurred. However, all States have a duty to guarantee reparations where there is a nexus to the offences, particularly where the State has frozen assets or has issued fines to entities for breaches of counter-terrorist financing regimes or sanctions regimes which have been enacted as a result of human rights breaches. This is especially pertinent if those monies are then used to fund domestic budgets

rather than assisting victims. The argument is supported by a reading together of the various international human rights law instruments applicable in the context of sexual violence in conflict amounting to crimes against humanity.

In addition to the obligations extolled in the Basic Principles, States must recognise that there is increasing recognition of the entitlement to victims to compensation at an international level, with the United Nations Security Council and General Assembly urging all States to establish and finance reparations programmes; and that there is an emerging practice of States repurposing fines and penalties for the benefit of survivors.

It is on the basis that we argue that States are required to contribute to an international reparations fund, which would provide reparations not only to their nationals, or to those who have suffered at the hands of their nationals or on their territory, but to all victims of sexual violence in conflict, which constitutes a crime against humanity, regardless of their nationality.



## Financial Sanctions regimes

Having established the duty on States to facilitate and finance reparations, our paper identified the ways in which financial sanctions regimes can be used to fund these programmes. We address ways in which practice can be improved upon and advance a progressive approach.

There are two parts to this issue:

- Well-founded concerns as to due process and transparency in financial sanctions regimes. With regards to due process, such concerns focus on the Ombudsperson process and victim participation at the UN level, and in EU and UK systems. There is also a clear need for States to be transparent and public about the amount of assets frozen in their domestic systems under counter-terrorist financing sanctions regimes.

Increased transparency will ensure that victims and the global community are aware of how the international regimes are working. Furthermore, this will enable litigation efforts to be enacted on behalf of victims.

- The way in which confiscation and repurposing of frozen assets can be lawfully integrated into existing financial sanctions regimes, and how the existing confiscation and sanctions regimes can work together rather than in silo.

A review of existing national confiscation regimes and regional and international laws demonstrates that a confiscation and repurposing regime based on sanctions designations could be human rights-compliant if it retained three key characteristics: the relevant State needs to be satisfied that the relevant designation on which they are relying is not arbitrary; procedural safeguards must be implemented to allow for challenges to designation and confiscation; and the property to be confiscated must have an element of illegitimacy.

The authors of this report are continuing to consider the extent to which assets could be lawfully confiscated and repurposed where: (a) there is no evidence that the asset was unlawfully obtained or represents proceeds of crime, but (b) there is a "reasonable suspicion" that the designated individual is involved in serious human rights violations and that those assets will be used to finance such violations.

# Conclusions and recommendations

- Based on the provisions contained in a number of international conventions, international practice and the UN Basic Principles on the Right to Remedy and Reparations, States should accept an extra-territorial responsibility to guarantee and, in some cases, finance, reparations for survivors of conflict-related sexual violence and victims of international crimes and terrorism. Evolving international legal practice in this sphere should become an obligation.
- States should fulfil their obligations to guarantee and, in some cases, finance reparations by using the existing counter-terrorism and other financial sanction regimes and enable repurposing of the sanctioned assets and related penalties for the purpose of reparations. Specifically, where States have imposed fines on entities for breaches of counter-terrorist financing and sanctions regimes targeting human rights abusers, these funds should be used to finance reparations programmes.
- In order to facilitate the repurposing of sanctioned assets, the procedures for designation, confiscation and repurposing need to be transparent and legally valid.
- In order to ensure legal validity of the sanctioning, confiscating and repurposing processes, States and international bodies responsible for managing sanction regimes should set out procedures and mechanisms which will guarantee due process for (i) receiving and resolving complaints by the designated individuals and entities on (ii) and participation of victims and other affected parties.

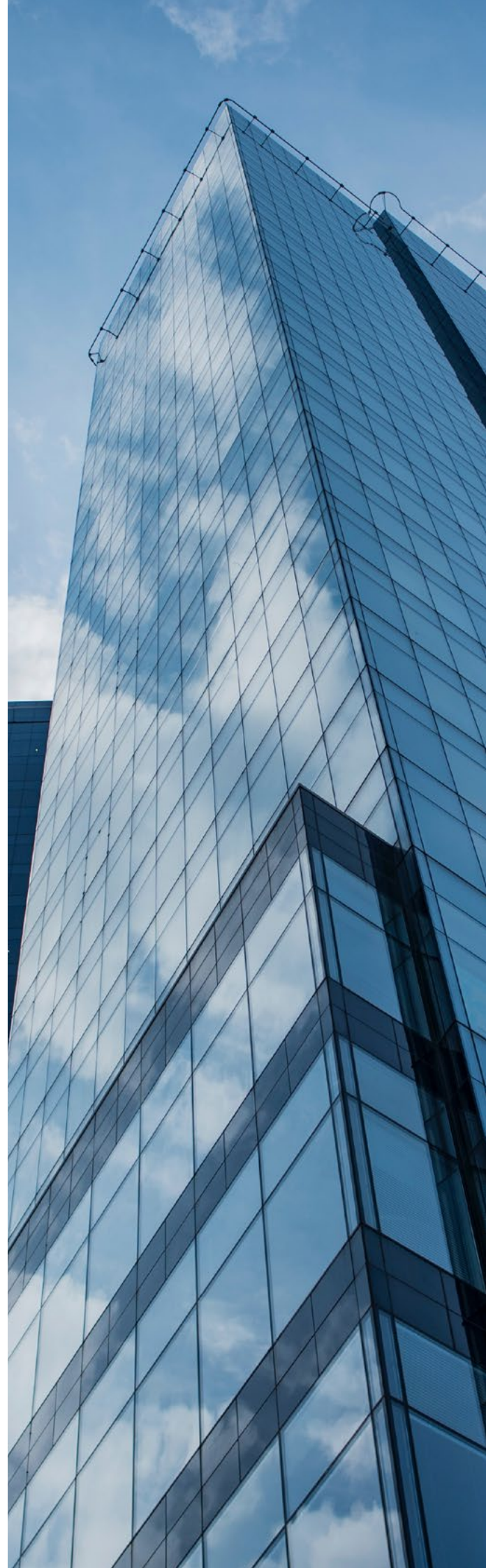
## Confiscation

1. States and the international community should recognise the lawfulness of confiscation and repurposing of assets pursuant to financial sanctions regimes at a national level where: (a) the relevant State has satisfied itself that the relevant designation on which it is relying is not arbitrary; (b) procedural safeguards exist allowing the designated person to challenge the measures; and (c) the property to be confiscated has an element of illegitimacy.
2. Existing national confiscation and financial sanctions regimes must work together to facilitate confiscation and repurposing of frozen assets, by, for example:
  - a. imposing obligation on competent authorities to pursue criminal and/or non-conviction based confiscation routes when assets are frozen, to determine whether the relevant thresholds are met;
  - b. imposing obligations on competent national authorities to engage in criminal investigations when financial sanctions are imposed (as proposed by CiFAR)<sup>1</sup>; and
  - c. incorporating asset recovery provisions and mechanisms into anti-corruption financial sanction regimes (as proposed by CiFAR)<sup>2</sup>.
3. The international community should consider the extent to which assets could be lawfully confiscated and repurposed where: (a) there is no evidence that the asset was unlawfully obtained or represents proceeds of crime, but (b) there is a "reasonable suspicion" that the designated individual is involved in serious human rights violations and that those assets will be used to finance such violations.



## Due Process & Transparency

4. In order to facilitate victim involvement, accountability and increased effectiveness of sanctions regimes, it is essential that victims are formally involved in domestic processes whereby individuals and entities are nominated for listing under the various sanctions regimes. When a listed person applies to be removed from the list, it is imperative that victims are also engaged at this stage.
5. The United Kingdom must ensure that mandatory quarterly reporting from HM Treasury concerning the amount of assets frozen is re-introduced for the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 and mandated in all other UK sanctions legislation or regulations.
6. All bodies involved in designating persons must respect fundamental rights and due process, and proposals for listing (and delisting) should be based on clear criteria and accompanied by accurate statements of reasons. States should not solely base their listings on secretive and classified information, and must ensure that they are sharing all evidence with the UN Ombudsperson.



## The obligation on States to finance reparations

1. The individual right of victims to reparations, and the obligation on States to facilitate or fulfil that right, is well-established in international law. The obligation on States is found in a variety of international treaties which are likely to be relevant in the context of sexual violence in conflict, including the Convention Against Torture, and is reaffirmed and expanded upon in the **Basic Principles and Guidelines**.
2. In our view, one reading of the jurisprudence of international human rights and humanitarian law leads to three conclusions as to States' obligations to facilitate or fulfil the right of victims to reparations:
  - a. it can be owed to victims regardless of whether their victimhood has been judicially assessed or whether the perpetrator has been identified or prosecuted;<sup>3</sup>
  - b. it can be owed to victims regardless of whether there is criminal or territorial responsibility on the obliged State; and
  - c. in order to give full effect to the rights of victims, States' obligations must extend to *financing* reparations.
3. This is a basis on which it can be argued that States are legally required to contribute to an international reparations fund, which would provide reparations not only to their nationals, or to those who have suffered at the hands of their nationals or on their territory, but to all victims of sexual violence in conflict constituting a crime against humanity, regardless of their nationality. This obligation can be fulfilled by using fines imposed for breaches of financial sanctions and terrorist financing legislation and repurposing frozen assets.

### The right to reparations and States' corresponding obligation

4. A victim's right to an effective remedy, including reparations, is a well-established right in international human rights and international humanitarian law, and is enshrined in various international treaties. These include Article 8 of the Universal Declaration of Human Rights ("UDHR"); Article 9 of the International Covenant on Civil and Political Rights ("ICCPR"); Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"); Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearances ("ICPPED"); and Article 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UNCAT"). Considering the varying contexts in which sexual violence in conflict is committed, and the fact that it constitutes inhuman and degrading treatment and, in many cases, torture, all of these texts are likely to apply to victims of sexual violence in conflict.



5. The willingness and need to provide reparations specifically to victims of sexual violence in conflict has been confirmed on numerous occasions. In particular, the UN Secretary-General's Guidance Note on Reparations for Conflict-Related Sexual Violence identifies that "*judicial and / or administrative reparations should be available to victims of conflict-related sexual violence as part of their right to obtain prompt, adequate and effective remedies*".<sup>4</sup> This has also been recognised by the UN Security Council; in Resolution 2467 (2019) it encouraged Member States to "give due consideration to the establishment of a survivors' fund" and, in the context of terrorism in Resolution 2331 (2016), it affirmed that victims of sexual violence committed by terrorist groups should be classified as victims of terrorism and "*have access to relief and national reparations programmes*".
6. There are two key common threads running through the relevant international law instruments:
  - a. the status of a "victim" does not depend upon whether their victimhood has been judicially assessed or whether the perpetrator is identifiable;<sup>5</sup> and
  - b. States are obliged to give effect to, or fulfil, the individual right to reparations, without a reservation on territoriality, i.e. the State's obligation to ensure victims obtain compensation is not limited to actions which occurred on State territory, or to or by that State's nationals.
7. These are examples of a progressive and evolving approach to reparations and by whom they are owed:<sup>6</sup>
  - a. Article 14 of UNCAT, as expanded upon by the Committee Against Torture, including in its General Comment No. 3, imposes an obligation on States to not only facilitate the provision of reparation to victims, but to *guarantee* it.<sup>7</sup> The concept of

a "victim" is not defined by reference to any judicial assessment or prosecution of the perpetrator, and the Committee has made clear that where the torture or ill-treatment has been committed by non-State officials or private actors, and the State has "*failed to exercise due diligence to prevent, investigate, prosecute and punish*" those actors, it will bear responsibility for providing redress.<sup>8</sup>

Moreover, the obligation on States to "*ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible*" is imposed without any limitation to instances of territorial responsibility.<sup>9</sup> The Committee has clearly stated that "*the application of article 14 is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party. The Committee has commended the efforts of States parties for providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory. This is particularly important when a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place. Indeed, article 14 requires States parties to ensure that all victims of torture and ill-treatment are able to access remedy and obtain redress.*"<sup>10</sup>

- b. Article 9 of the ICCPR, creates an absolute right for all victims of unlawful arrest or detention to compensation, irrespective of whether their victimhood has been judicially assessed, whether the perpetrator is identifiable, or where the crime occurred. The Human Rights Committee has clearly recognised that the ICCPR creates proactive legal duties upon States to fulfil that right.<sup>11</sup>

- c. While the UDHR does define "victim" by reference to a judicial assessment, it does expand Member States' obligation to "*secure*" the right to an effective remedy, to include "*everyone... no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*"<sup>12</sup> This is supported by its preamble, which obligates States "to secure" the rights of the Declaration "*both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.*"<sup>13</sup>

- d. The preamble to the Basic Principles and Guidelines explicitly affirms the international community's "*human solidarity with victims of violations of international law*". This reflects the principle of cooperation, which is fundamental to the UN system (as set out in Articles 1(3) and 55(c) of the UN Charter).

8. In summary, we suggest that the principles above on reparations including UN Basic Principles should be read in the light of the evolving legal principles on compensating victims of terrorism, including UN Security Council and General Assembly provisions. A key example is UN General Assembly RES/73/305 on the enhancement of international cooperation to assist victims of terrorism, which calls on Member States to develop comprehensive assistance plans to address the needs of victims of terrorism and their families. Further, legal provisions relating to the control of terrorist financing develop the evolving legal and moral obligation on the part of all states to fund victims reparations. This reflects the complexity of how international crimes are now increasingly financed globally.

## The obligation to finance reparations

9. The Basic Principles and Guidelines provide the greatest clarity and detail on States' responsibilities to provide reparations for victims under international law. The extent to which that responsibility can be interpreted as a legal obligation depends on whether the Basic Principles and Guidelines are viewed as soft law, or as a text that identifies existing legal obligations under international human rights law.
10. While General Assembly recommendations, such as the Basic Principles and Guidelines, are, formally, non-binding decisions (in that they do not create binding legal effects), they can lay out legal obligations under international law that do not stem from the resolution itself.<sup>14</sup> Therefore, whilst not having binding effect, the Basic Principles and Guidelines may nonetheless have "authorising effect" and imply reciprocal obligations on contracting State parties.
11. If it is accepted that the Basic Principles and Guidelines do in fact imply reciprocal obligations on States (as it is accepted in ICJ jurisprudence)<sup>15</sup>, it is submitted that these obligations include an obligation to *finance* reparations. There are a number of key features of the Basic Principles and Guidelines which provide support for this:
  - a. The preamble (while not binding itself) emphasises that it is the *international community's* responsibility (not the victim's State of residence) to honour victims' rights to remedies and reparations.
  - b. Article 3 provides: "*the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to... (c) provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective*



access to justice...irrespective of who may ultimately be the bearer of responsibility for the violation; and (d) provide effective remedies to victims, including reparation..”. As such, there is no requirement for the perpetrator(s) to be identified, identifiable, prosecuted or convicted. Moreover, there is no provision as to territorial jurisdiction, i.e. there is no legal requirement for a State to have a relationship with the victim, crime or perpetrator for the obligation to have legal effect.

- c. As explored in this report, there is developing legal practice and policy that is moving towards an obligation to “finance” reparations being implied by the spirit of the Recommendation and read into the word “provide” in Article 3. This is supported by the fact that the Basic Principles refer to: “adequate, effective and prompt reparation...intended to promote justice by redressing gross violations”; “States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for harm suffered are unable or unwilling to meet their obligations”; and victims being provided with “full and effective reparation...which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition”.
- d. Where the violations were not carried out on a State’s territory or by State actors, there will still be a nexus to the victim if the State has frozen the assets of those who committed the crime or has fined entities that breached the international regimes put in place to halt the financing of human rights abuses. This is especially true if the fines are used to fund domestic budgets, rather than being paid to the victims, to whom this duty is owed.

#### An example of the obligation in action: Fines for breach of sanction [Box 1]

In 2010, one of Scotland’s largest companies, Weir Group Plc, was fined £3m for breaching UN sanctions imposed on Iraq by making payments of about £3.1m to Saddam Hussein’s government between 2000 and 2002 to secure lucrative business contracts worth around £1.4m in breach of UN’s Oil for Food programme introduced to enable Iraq to sell oil as long as the income was used for food, medicine and other humanitarian needs and not spent on weapons. A sum of £13.9m was also confiscated from the firm as proceeds of crime.

The Scottish Government made the decision to channel a significant proportion of this sum back into humanitarian projects in Iraq to help improve the lives of Iraqi people, for example, by supporting water development and other programmes in Iraq; a donation was also made to the Linda Norgrove Foundation in Afghanistan to support women and children in rural areas, and which was created in honour of the Scottish aid worker kidnapped and killed in Afghanistan. Additionally, the Iraqi Youth Orchestra was also given £100,000 to tour the Edinburgh Festival, in association with the British Council, with £1m set aside for Scottish non-governmental organisations to work with Iraqi partners.

This is an example of the obligation in action, as there was a clear nexus between Scotland, the fine and confiscated assets and those who benefited from the action.

In many cases, “adequate, effective and prompt reparation”, in all of its five forms, will not be accessible to victims without financing by States. In particular, financing is likely to be needed to provide compensation for economically assessable damage, especially when it cannot be obtained from the perpetrator or by the state in which territory the violation occurred; medical and psychological care, and legal and social services to guarantee victim rehabilitation; and restitution, to restore the victim to their original situation, especially when the harm suffered has impacted upon their place of residence, employment or property. In such a situation, it is clear that, in order to render States’ obligation to facilitate or fulfil the individual right to reparations, there must be an implicit obligation to also finance reparations. Without that, the individual right would be nothing more than an empty shell.

12. It is recognised that, notwithstanding all of the above, there is likely to be resistance to, or at least a lack of political will to act upon, the assertion that States are obliged to guarantee victims’ right to reparations, including by financing them, without any territorial restrictions. One way in which this legal obligation could be implemented would be to designate responsibility

for financing reparations based on “concentric circles”. The obligation to finance would start at the point of direct accountability and responsibility for the human rights violation, i.e. those who committed the violation. If that person, entity or State is unable or unwilling to finance reparations, that obligation would move outwards, towards those who were complicit and/or those who failed to uphold international law and security and prevent the violations from taking place (for example, States which prevent their nationals from joining terrorist groups abroad), and then to the wider international community. This would mean apportioning, in practice, the responsibility for reparations, with responsibility to finance at the “inward circles” and responsibility to guarantee and, in some cases, finance reparations in the “outward circles”.

13. The authors of this report are continuing to develop the above legal analysis and ways in which the legal obligation on States could be implemented in practice, with input from key stakeholders, including through a series of roundtables hosted by GSF.





# Due process concerns and transparency

As previously indicated, the purpose of this volume is to further examine the ways in which sanctioned assets can be used for the purpose of providing survivors of conflict-related sexual violence and other grave human rights violations with reparations.

By pursuing such options, financial sanctions regimes will, in addition to their preventative and corrective functions, also acquire restitutive and reparative functions. This will ultimately benefit the victims, who are frequently in dire need of rehabilitation and would otherwise not be able to have access to reparations. However, moving in this direction also requires overcoming of several policy and legal challenges. In regards to policy, it requires improvement of the transparency regarding the scope and modalities of the financial sanction regimes and its designations' process. In regards to legal, it will require improvements in terms of application of due process in order that processes by which asset confiscation and subsequent repurposing for reparations are developed.

Accountability comes in many forms and one method is ensuring that the international mechanisms put in place to stop the funding of future terrorist activities are working. Counter-terrorist financing infrastructure has been in place for decades, but the results of such measures are not always clear. In particular, very few states publish the amount of assets that their treasury has frozen under any sanctions regime. Transparency over the amount of assets frozen in each country would demonstrate the efficiency and effectiveness of Member State actions to address the financing of terrorism, and provide victims with reassurance that action is being taken to curb terrorist activity.

Furthermore, in any process that seeks to assist victims, it is abundantly important that it is human rights compliant. This means that the process itself must be as transparent as possible, with Member States clarifying the means by which persons are sanctioned, and sharing all relevant designation evidence with the United Nations and European Union.

## UN Member States - Transparency Of Frozen Funds

13. UN Member States have been under an obligation to freeze assets of individuals and entities supporting ISIL since the Security Council unanimously passed resolution 2253 (2015). This resolution reaffirmed the obligations that States have been under since the adoption of resolution 1373 (2001), which requires all States to prevent and suppress the financing of terrorist acts and refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts.
14. However, there is not a provision that mandates transparency with regard to the total amount of assets held by each Member State, although some States have been proactively publishing this data. For example, Section 30 of the United Kingdom's *Terrorist Asset-Freezing etc. Act 2010* (repealed) obligated HM Treasury to prepare a report on the exercise of its duties pursuant to Part 1 of the legislation, which included the designation of persons that they

reasonably believed was or had been involved in terrorist activity, along with their implementation of *Council Regulation (EC) No 2580/2001 of 27 December 2001*. This Regulation imposes the duties outlined in UN resolution 1373 (2001) into domestic legislation in EU member states.

15. The report that was published by HM Treasury contained information on the total amount of funds frozen by TAFE 2010, EU Reg (EC) 2580/2001, EU Reg 881/2002 and EU Reg 2016/1686. This included a cumulative figure of the number of total accounts/payments frozen, the total GBP amount and how many new designations there had been in the preceding quarter. As of 31 December 2020, there was £102,000 in accounts frozen across the various counter-terrorism regimes.<sup>16</sup> This was a welcome development. As of 11pm on 31 December 2020, the UK no longer applies EU sanctions legislation and instead gives effect to its international obligations under UN Security Council Resolution 1373 through the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019. The HM Treasury annual reporting obligation is not replicated in the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 (or in other UK sanctions legislation or regulations), which is an unfortunate development. The UK should update its new counter-terrorism sanctions regimes and every domestic regime to ensure that reporting is required. Victims of state-specific, human rights and corruption sanctions regimes also need to know this information.
16. Furthermore, the US Treasury publishes a 'Terrorist Assets Report' each year, which informs Congress of the assets frozen in the United States relating to blacklisted countries and organisations engaged in international terrorism.<sup>17</sup> The latest published version is from 2019,

and states that there are \$63,108,291 worth of blocked funds in the US relating to the Global Terrorism Sanctions Regulations; Terrorism Sanctions Regulations and Foreign Terrorist Organisations Sanctions Regulations.

17. However, in the majority of UN member states, this information is not publicly available, and in order to get access to it, relevant stakeholders must make a request to the relevant domestic body in charge of enforcing counter-terrorism financing regulations. Even then, such requests are often met with statements from authorities that assert that they have a lack of oversight on such matters. In fact, they prefer to give that responsibility to the private sector, which is not the purpose of such Security Council resolutions.
18. It is notable that under the Al-Qaida and Taliban sanctions regime, UN SC Resolution 1455 (2003) specifically called upon States to report to the Committee with 'a comprehensive summary of frozen assets of listed individuals and entities within Member State territories'. In turn, States from around the globe submitted reports with this financial information, which are publicly available.<sup>18</sup> However, there are no recent publicly available reports from States with this information under the ISIL terrorist financing regime.
19. There is a lack of transparency about which countries have frozen significant amounts of money which would ordinarily be used for terrorist purposes, and this is a problem.
20. A number of proposals concerning reparation funds for victims of human rights violations have been developed over the years, but they are lacking detail on how they can be financed. One way in which this could be moved forward would be for UN member states to proactively publish the figures of the frozen assets that they hold. If done in



the same way as the United Kingdom and the United States of America, there is no need to publish the details of the person who owns the account. Simply knowing the amount of assets that are held by the respective Treasury department assists survivors, as they can use this knowledge to litigate against perpetrators and hold States to account.

21. This is one of a number of first steps that must be taken to improve access to reparations and support for victims of ISIL and other terrorist groups.

#### UN System – Procedures for Listing & Ombudsperson Process

22. In order for an individual to be designated by the ISIL (Da'esh) and Al-Qaida Sanctions Committee (**“the Committee”**), they have to be nominated by a State. The State is asked to provide as much information as possible to support this, but as the process is very opaque, these listing forms are not made public.
23. Owing to the secretive nature of the process, the need for an independent and impartial review of terrorist designations has been recognised by the Security Council, and culminated in the establishment of the Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee in 2009.<sup>19</sup> Its mandate has continually been extended over the years.<sup>20</sup> A similar process exists for other sanctions regimes, and is called the focal point for de-listing.<sup>21</sup>
24. When a designated person requests to be delisted from the counter-terrorist sanctions regime, a process is

commenced by which the Ombudsperson accepts the request and communicates with relevant States, UN bodies and the Al-Qaida Sanctions Committee. The purpose of this stage is to gather information in order to begin a dialogue with the petitioner and allow them to address this evidence and give them an opportunity to plead their case.

25. The Ombudsperson then prepares a report to the Committee and recommends whether the petitioner should be de-listed or not on the basis of these initial phases. Where the Ombudsperson recommends that the Committee consider delisting, the individual or entity will be removed from the list within 60 days, unless the Committee decides, by consensus, that the individual or entity should remain subject to the sanctions. Where consensus does not exist, the Committee Chair, on request of a Committee Member can refer the question of delisting to the Security Council. The Security Council then has a further 60 days to make its decision. While the Committee and the Security Council are considering the delisting question, the sanctions measures remain in place.
26. Since the Office of the Ombudsperson was established, 84 cases have been fully completed through the process, with 62 delisting requests granted and 22 requests denied.<sup>22</sup> In total, almost 74% of the total petitions have been granted. This suggests that the review process is robust, but also raises concerns about the quality of the underlying information and evidence used to list the person in the first instance. The number of requests also confirms that such a process is needed.





UK sanctions regime

- 26.1 In order for designations or de-listing to be challenged in the UK, the applicant must establish grounds for annulment under the Sanctions & Money Laundering Act 2018 (“SAMLA”), including: a lack of evidence disclosed for a listing or re-listing; a failure to follow due process in the listing procedure; vague reasons for the listing or re-listing; errors in the factual assessment made against the sanctioned party; and infringements of the rights of defence. SAMLA therefore provides a mechanism by which individuals and entities can challenge their listing in the UK (section 23 of SAMLA), and to request the UK’s assistance to secure their removal from a UN list (section 25 of SAMLA). UN listed persons, or a person acting on their behalf, have the right to request that the UK use its best endeavours to secure the removal of their name from the relevant UN list. This request may be made if the sanctioned person does not consider that it meets the criteria set out in the relevant UN Security Council resolutions or are otherwise no longer eligible for inclusion on the relevant UN list. The standard of the listing criteria (as set out in the relevant UN Security Council resolutions) is low, and this makes challenging a designation decision incredibly difficult.
- 26.2 As part of an applicant’s request for review of their sanctions designation, applicants must provide an explanation for why the designation should be varied or revoked, or why their name should be removed from the relevant UN list. Additionally, guidance states that the applicant should also provide supporting evidence to meet these

- requirements. Once the request has been made, the appropriate minister who made the designation has the discretion to revoke or vary that designation (eg updating information used to identify an individual).
- 26.3 The UK procedure also provides a route for applicants to challenge and set aside governmental decisions regarding designation or de-listing in the UK High Court via section 38 of SAMLA, namely: (i) a request to review, or a decision after the request, on whether a UK designation should be varied or revoked; or (ii) if the appropriate minister did not comply with the request to use best endeavours to persuade the UN to remove them from the relevant UN instrument. Section 38 of SAMLA expressly provides that in determining whether a decision should be set aside, the court must apply judicial review principles.
- 26.4 SAMLA also requires the government to conduct a periodic review of sanctions regulations and any designations made by an appropriate minister. The appropriate minister must review each designation and decide whether to revoke, vary, or take no action with it. A review must occur within three years of a designations being made. After this initial review, a further review must be conducted within three years of the preceding review, for as long as the designation remains in place.
- 26.5 However, there is yet to be a formal mechanism under the UK sanctions regime by which victims can input into either the consideration of an applicant’s request for de-listing, or the periodic reviews of designations.

Problems with the Process

27. Current and former Ombudspersons have pointed out the lack of transparency in the process, as well as insufficient guarantees of the independence of the Office. They have also highlighted issues in accessing confidential and sensitive information from States, without which the Office cannot make a full and frank decision.
28. In her outgoing letter<sup>23</sup> to the Secretary-General upon resigning from her role, former Ombudsperson Catherine Marchi-Uhel had the following to say about the process:  
*However, in the last two years, I have observed an increasing intrusion of the Committee in a sensitive area for the fairness to petitioners of the Ombudsperson’s process. I have witnessed a set-back imposed by the Committee concerning the right of petitioners to receive substantive reasons when they are retained on the sanctions list as a result of the Ombudsperson’s recommendation. In my opinion, this situation also affects the general credibility of the Ombudsperson mechanism. Such practice lends support to those who consider that, short of a judicial mechanism, full fairness and transparency cannot be guaranteed.*
29. Furthermore, in his letter<sup>24</sup> to the President of the Security Council dated 1 August 2019, current Ombudsperson Daniel Kipfer Fasciati noted that when Member States are in favour of a petitioner remaining on the sanctions list, they have continued to communicate their view without providing reasons or submitting any information relevant to the case. He has encouraged States to provide both open-source information, as well as intelligence sources.
30. There are cases where all of the available information is traced back to intelligence sources, which results in the Ombudsperson and the petitioner

- being put in a position where they have no access to the underlying evidence. This has severe implications on the due process of the system, and of the effective implementation of assessing delisting petitions.
31. These issues have a severe impact on the rights of petitioners and those listed under the sanctions regimes.
32. In contrast, the EU sanctions listing and de-listing process is generally considered more transparent and compliant with the rights of petitioners and those listed under sanctions regimes. The EU implements UNSC sanctions regimes and listings, and also imposes autonomous sanctions regimes and listings. With respect to EU autonomous sanctions, the competent national authorities of EU Member States issue proposals to sanction individuals or entities and the Council of the EU makes a decision on whether to proceed with listing based on "precise information or material in the relevant file". The Council regularly reviews existing listings and has adopted guidelines on the implementation and evaluation of restrictive measures.
33. The guidelines provide that, in respect of EU autonomous sanctions, listings must respect fundamental rights and due process, and that proposals for listing (and delisting) should be based on clear criteria and accompanied by accurate statements of reasons. A request for de-listing concerning an EU autonomous listing can be made directly to the Council, and listed persons and entities may also initiate proceedings for delisting before the EU courts.
- 33.1 Notably, the CJEU has ruled that EU autonomous listing decisions cannot be based on secret information that cannot be the object of judicial scrutiny and that Member States could not avoid judicial scrutiny by basing the listings on classified intelligence or confidential information.



## Victims

34. Furthermore, victims are negatively impacted by this dearth of justice and a lack of structural respect for human rights guarantees. There is a lack of co-ordinated evidence building and sharing between parties such as national police forces, international bodies and the NGO community. Ensuring that victims are comfortable enough to give accurate witness statements that can lead to the prosecution of their offenders is a complex and delicate process, and it is vital that such evidence is analysed and used by States when they are submitting listing applications.
35. It is also essential that victims are consulted during the de-listing process through representative organisations. There is a lack of information as to the scale of interaction between the Ombudsperson and non-government organisations.
36. As Secretary General Guterres duly noted in his April 2020 report on *Progress made by the United Nations system in supporting Member States in assisting victims of terrorism*, victims of terrorism require dedicated and targeted support that includes access to justice and compensation.<sup>25</sup> This report states that women and girls are disproportionately affected by conflict and terrorism<sup>26</sup>, and reflects on the need to improve the compensatory mechanisms available to victims of terrorism. (see Box 2)
37. It is submitted that the analysis of funding options for such mechanisms carried out in SG Guterres' report does not take into account a system that has long been used to deter terrorist activity and prevent terrorist activity from being financed – namely, global counter-terrorist sanctions regimes. There exist provisions to confiscate and repurpose assets frozen under global financial sanctions regimes to fund reparations for survivors, as well as implementing a process where a percentage of fines for breaches of counter-terrorist sanctions regimes are used for such purposes.
38. Ensuring sustainable and long-term funding of reparations processes has the added benefit of providing security and rehabilitation for survivors, which could give them the confidence to co-operate with law enforcement, notwithstanding issues of trust and confidence that can arise from situations where human rights violations have been perpetrated. This will lead to an increase in evidence building that can be used for international or domestic prosecutions, and complement the sanctions process.

## UN General Assembly Resolution 73/305<sup>27</sup> [Box 2]

Calls upon all Member States to develop comprehensive assistance plans for victims of terrorism, consistent with domestic law, taking into account a gender perspective, to address the immediate, short-term and long-term needs of victims of terrorism and their families with regard to their relief and rehabilitation, ensuring that they are provided with proper support and assistance, both immediately after an attack and in the long term, including through the sharing of best practices and lessons learned related to the protection of and assistance to victims of terrorism;

Urges Member States to establish systems of assistance, consistent with domestic law, that would address the needs of victims of terrorism and their families and promote and protect their rights, including by partnering with health professionals, emergency planning managers and members of law enforcement, prosecutors' offices and civil society, where applicable, to institutionalize the provision of assistance to victims.

Emphasizes that the granting of such assistance should be provided, in accordance with domestic law, to victims of terrorist acts regardless of whether the perpetrator of the terrorist act is identified, apprehended, prosecuted or convicted.



Informal mechanisms in place

- 38.1 The Foreign Commonwealth & Development Office (the “**FCDO**”) has published a policy paper that highlights factors relevant to whether a person may be designated under the Global Human Rights Sanctions Regulations 2020 (“**The Regulations**”). The note sets out a non-exhaustive list of factors that are relevant. The views or input from victims are not expressly provided for here, but the fact that this is a non-exhaustive list means that, in theory, there is scope for the input of victims to constitute a “relevant consideration”. Notably, one of the factors included in the list is “the nature of the victim”: *“in line with human rights priorities, HMG is likely to give particular attention to activities that are carried out in relation to individuals who seek to obtain, exercise, defend or promote human rights, such as journalists, civil society activists, human rights defenders and whistle-blowers. The safety of these individuals is our priority, and we will take particular care in cases where a designation might result in any reprisals or physical or mental harm to such persons. We may also consider whether the victim of the human rights violation or abuse has any particular links to the UK.”*
- 38.2 It is positive that victims are expressly listed as a “relevant consideration” and the impact on the physical and mental health of those victims is taken into account, in the context of considering designations under the Regulations. However this is still limited in scope. The categories of victims are limited to only those “individuals who seek to obtain, exercise, defend or promote human rights priorities”. It is key that the pool of victims considered

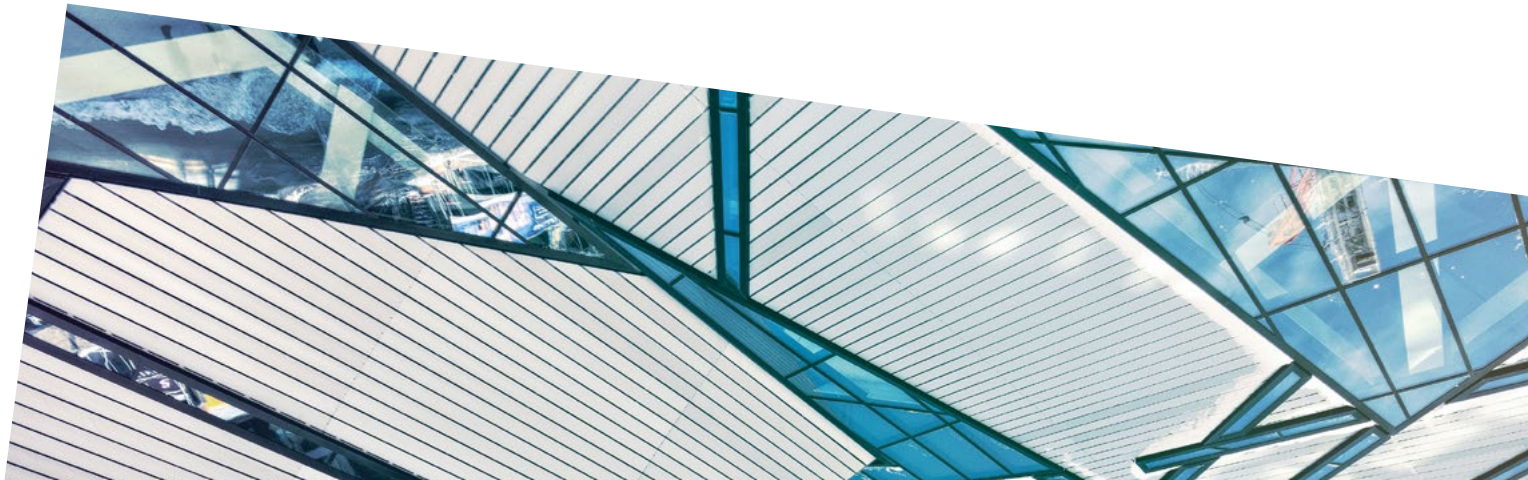
- in this context is widened to any victims of serious human rights abuses through representative organisations. Moreover, it appears that the focus is on the nature of the victims; it is essential that victims can occupy an active space by being consulted during the listing and de-listing processes.
- 38.3 The policy paper provides that the Government “will have regard to all relevant considerations” when considering designations under The Regulations. This supports the position that there is theoretically a way for the views and perspectives of victims to be heard during the relevant process. The FCDO published an information note for NGOs and Civil Society on 6 July 2020 to provide further information about the Global Human Rights sanctions regime (the “**GHR Regime**”), including its purpose and scope, and the information required in considering designations. The information required is stated to be:
- a. What is the activity that justifies the application of sanctions?
  - b. Who is the person?
  - c. How, and to what extent, is the person involved in the activity?

In respect of the first of these information requirements, the note makes clear that a range of activity could potentially result in designation under the GHR Regime, including *“rape and other forms of sexual violence, including sexual slavery, forced prostitution, forced pregnancy, forced abortion and enforced sterilization”*. The relevance of the impact on the victims of these activities, or the importance of their input into the designation process (and whether victim input is something that should be considered) is not expressly addressed or included as an information requirement.

- 38.4 The FCDO provides an email address for use by “any person or organisation” who wishes to submit information to the FCDO, but states that it will be “unable to provide comments updates or feedback in proposed designations, evidence or other information that has been submitted”. In light of this and given that the policy paper confirms that the Government will “have regard to all relevant considerations” when making a designation decision, it is reasonable to infer that any interested person (a victim) can, therefore, submit information directly to the FCDO (outside of the categories set out above) and the FCDO will take this information into account. This wording also appears to suggest that interested persons can also request that a specific person be considered for designation under the GHR Regime. However, we propose that a more express provision is made for victim input in the FCDO’s consideration of designations under the GHR Regime.

Recommendations

1. In order to facilitate survivor involvement, accountability and increased effectiveness of financial sanctions regimes, it is essential that victims are formally involved in domestic processes whereby individuals and entities are designated for listing under the various sanctions regimes. When a listed person applies to be removed from the list, it is imperative that victims are also engaged at this stage.
2. The United Kingdom must ensure that mandatory quarterly reporting from HM Treasury concerning the amount of assets frozen is re-introduced for the Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 and mandated in all other UK sanctions legislation or regulations.
3. All bodies involved in designating persons must respect fundamental rights and due process, and proposals for listing (and delisting) should be based on clear criteria and accompanied by accurate statements of reasons. States should not solely base their listings on secretive and classified information, and must ensure that they are sharing all evidence with the UN Ombudsperson.





# Confiscation and repurposing of frozen assets

## A lawful confiscation and repurposing regime and the rights to property and due process.

39. A key proposal advanced by this report is the confiscation and repurposing of assets frozen pursuant to sanctions regimes to finance reparations for victims of sexual violence in conflict [REF original report]. A lawful designation, confiscation and repurposing processes, compliant with human rights law, are prerequisites for achieving such solutions.

Any regime facilitating this would require three elements: (a) lawful designation and freezing of assets; (b) lawful confiscation; and (c) lawful repurposing, and in order to achieve this, the regime must strike an appropriate balance between the rights of the designated individual or entity to property (i.e. a qualified right) and due process (e.g. the right to judicial review and to an effective remedy), and the rights of victims to effective reparations.

40. In our view, in building on the existing financial sanctions regimes, the key focus is on the need for lawful confiscation. If a human rights compliant mechanism can be established at the confiscation stage, the question of how any confiscated funds are then redistributed or “repurposed” will likely only form a lesser part of any proportionality or other legality assessment of the regime in its entirety.

The dual-purpose of the regime

41. A key preliminary point is the purpose of such a regime which seeks to confiscate and repurpose assets for the benefit of victims of sexual violence in conflict. The purpose of this would be:

- a. preventative at the freezing and confiscation stages (i.e. to frustrate future conduct in violation of international human rights and criminal law); and
- b. reparatory at the repurposing stage.

42. Such coercive and restrictive measures imposed for these purposes would be aligned with the purpose and functions of current sanctions regimes, including, but not limited to, those which are seeking to provide accountability for human rights violations,<sup>28</sup> and would keep the regime within the civil (as opposed to criminal) arena.

43. The preventative nature of asset freezing is uncontroversial. Financial sanctions as a means of depriving individuals of financial resources through denying access to the international finance system is a well-established concept.<sup>29</sup> Moreover, the introduction of a non-punitive, reparatory element would further the aims of sanctions regimes, particularly enhancing the “signalling-effect”<sup>30</sup> of sanctions; it would reaffirm the international community’s commitment to the aim of, and value in, ensuring reparation for victims of serious human rights violations.<sup>31</sup> (see Box 3)

## An example: Libya Victims [Box 3]

In United Nations Security Council Resolutions 1970 and 1973 (2011), it is expressly stated that the Security Council intends to ensure that any assets, funds or economic resources frozen by Member States pursuant to the Libyan sanctions regime are used for the benefit of the Libyan people. In the same resolutions, the Council recognises and deplores the gross and systematic violations of human rights.

As well as ensuring that this commitment is put into practice, the international community should use this wording in further sanctions regimes. It would require individual Member States to use assets which have originated from States that have violated human rights law for the benefit of victims. It is also a concrete duty that victims can rely upon and challenge domestically.

## Lawful designation and freezing: The implementation of UN Sanctions at EU level

44. In overseeing the implementation of UN sanctions, the CJEU has sought to achieve the balance set out above, i.e. between the absolute obligation on States to implement UN sanctions decisions and respect for the rule of law, requiring independent, meaningful judicial scrutiny to protect the rights of designated individuals, including a specific protection of the right to property (under Article 1 Protocol 1 ECHR).
45. In doing so, the CJEU has held that where there is a UN listing, a Member State must still be satisfied that there is a “sufficiently solid factual basis to substantiate the reasons for the listing”,

and the measures are necessary and proportionate to a legitimate aim in the specific circumstances of the individual concerned. It has also been held that there should be meaningful judicial scrutiny at the point of implementation of a sanction such that it can be concluded that the measure is not “arbitrary”. In our view, any scheme which has as its ultimate aim the seizing and repurposing of assets must include such an assessment.

## Lawful confiscation and repurposing: examples from Europe

46. As previously detailed, there are also a number of jurisdictions which already use sanctions and asset freezing powers to confiscate and repurpose assets in the anti-corruption and counter-terrorism fields, in a way which achieves the balance outlined above.<sup>32</sup> These examples include the Swiss Foreign Illicit Assets Act 2015, orders made under the US International Emergency and Economic Powers Act, and the proposed Canadian Frozen Assets Repurposing Act (Bill-S259) (see pp. 23 – 25 of the Report).

## France

In March of this year, the French Parliament adopted a series of provisions allowing assets confiscated in “ill-gotten gains” cases to be returned to populations in the countries of origin. At present, once a foreign politically exposed person has been convicted by a French court of laundering the proceeds of corruption or of laundering embezzled public funds, their assets can be seized, confiscated, and then sold.

Under the new law, the revenues from the sale will no longer end up in the French state budget, but will be returned ‘as close as possible to the population of the foreign state in question’, with the aim of financing ‘co-operation and development initiatives’. In practical terms, specific budgetary lines will be created under the auspices of the Public Development Assistance Mission, which falls under the Ministry of Foreign



Affairs. Ring-fencing the revenues in this way gives the Ministry of Foreign Affairs the flexibility to decide on a case-by-case basis how funds will be returned. For example, funds could be allocated to the French Development Agency, to international organisations like the World Bank, to local or international NGOs, or directly back to the national treasury of countries of origin.<sup>33</sup>

Italy

47. A further, interesting, precedent is that of Italy. Aside from conventional post-conviction confiscations, Italy has developed a separate branch of ‘preventative’ seizure and confiscation measures in respect of the property of individuals associated with the Mafia, or Mafia-type organisations (under the “Anti-Mafia Code”).<sup>34</sup> These measures, which were introduced in response to the difficulties in securing convictions of those involved in organised crime, are non-criminal and are classified under Italian law as an administrative fine or penalty – and, part of the assets and funds confiscated are used for the compensation of victims of mafia-related crimes.

48. There are two basic rules underpinning the preventative confiscation of assets:

- a. the measures can be imposed only against one of the possible targets identified by the law; and
- b. the Tribunal can then issue a confiscation order against the property of listed targets if certain further conditions are met.

Targets under the scheme

49. The full list of persons who can be made subject to a measure are identified in legislation on the basis that they are in the process of committing a crime or that they commit crimes in the future (having regard to past conduct giving rise to the suspicion of having committed a serious crime or series of criminal activity). Those who are considered to aid and abet also fall under this remit. These

individuals include those who appear on the UNSC Freezing List, and relevant crimes include national or international terrorism, politically motivated crimes of insurgency, devastation, mass murder and kidnapping.

Preventative confiscation

50. Once it has been established that a person falls within the prescribed list of targets, a preventative confiscation order may be effected against assets which are the fruit of illegal activities or which (i) cannot be shown as having a legitimate origin, and (ii) are disproportionate to that person’s declared income.<sup>35</sup> It is notable that the property does not have to be linked to specific criminal conduct – instead, confiscation is based on the premise that certain assets are subject to confiscation because they are associated with a ‘dangerous’ individual and have not been shown to have a legitimate source. Preventative confiscation is neither quite ‘in rem’ nor ‘in personam’; identification of an individual as a target may be considered a means to identify assets that are deemed to be dangerous, and therefore appropriate for confiscation.

Procedure

51. With regards to procedure, preventative confiscation proceedings can be brought by specific state organs and are heard by a panel of three judges with the individual present (with some specific exceptions). If the Order is granted, the assets are seized and the second stage commences allowing the Tribunal to determine whether the target should be deprived of his proprietary rights to the property through permanent confiscation. The burden of proof is on the authority who brought proceedings to show that the person falls within the prescribed list of targets and that they indirectly controls property that is suspicious, either (i) because it is incongruous with the person’s lifestyle, or (ii) it is of illicit origin. If these elements are proved, the burden shifts

to the defendant to show that the assets were lawfully obtained. The decisions of the Tribunal can be appealed both on procedural grounds and on the merits before the Court of Appeal. A second appeal to the Supreme Court is permitted, however, only on points of law alone.

Compatibility with the ECHR

52. It is notable that the European Court of Human Rights (the “**ECtHR**”) has held, on a number of occasions, that the Italian confiscation regime is compatible with Article 1 Protocol 1. Specifically, it has held that it constitutes control of the use of property under Article 1(1) Protocol 1 and that both the seizure and confiscation aspects of the regime are proportionate to its aim.
53. With regards to seizure, the ECtHR noted that it is “*clearly a provisional measure intended to ensure that property which appears to be the fruit of unlawful activities carried out to the detriment of the community can be confiscated if necessary. The measure as such was justified by the general interest and, in view of the extremely dangerous economic power of an organisation like the Mafia, it cannot be said that taking it at this stage of proceedings was disproportionate to the aim pursued*”.<sup>36</sup>
54. With regards to confiscation, it was recognised as an “*effective and necessary weapon*” to combat the Mafia’s unlawful activities and enormous turnover – “*an effective and necessary weapon in the combat against this cancer...It therefore appears proportionate to the aim pursued*”.<sup>37</sup>

Application to the present proposal

55. It is submitted that the reasoning justifying the freezing and confiscation of assets under the Anti-Mafia Code could apply equally to assets of State and non-State actors which engage in human rights abuses in conflict, including sexual violence, as part of their attempts to

retain political and economic power. (see Box 4) There is a growing recognition of the ways in which human rights abuses, including sexual violence in the context of conflict, are explicitly linked to serious and organised crime, particularly in relation to grand corruption involving repressive regimes and non-state actors.<sup>38</sup> This is reflected in the numerous Magnitsky-type sanction regimes which focus on corrupt individuals, such as in the US and the UK.<sup>39</sup>

56. This is further reflected in the work of the Global Forum on Counter-Terrorism Criminal Justice and Rule of Law (CJ-ROL) Working Group Co-chaired by Nigeria and Switzerland which is currently focussed on criminal justice responses to the linkages between terrorism, transnational organised crimes and international crimes. Many terrorism- and terrorism financing-related crimes have an international dimension and overlap in scope with transnational organized crimes, such as corruption and other financial crimes, kidnapping for ransom, illicit trafficking (arms and weapons, drugs, natural resources, cultural property), trafficking in persons, smuggling of migrants and maritime crimes. The Working Group acknowledge now that terrorist acts can also amount to international crimes, namely crimes against humanity, war crimes and genocide, and torture, slavery, and related sexual and gender-based crimes.

57. Furthermore, UN Security Council Resolution 2331 (2016) addresses the nexus between trafficking, sexual violence, terrorism and transnational organised crime. In this Resolution, the Security Council affirms that victims of trafficking perpetrated by terrorist groups should be classified as victims of terrorism. This renders them eligible for official support, recognition and redress available to victims of terrorism, including national programmes.<sup>40</sup>



58. In terms of criminal accountability, some Member States have been innovative in their use of cumulative prosecutions, charging ISIL members with breaches of International Humanitarian Law, as well as membership in a terrorist organisation, and these prosecutorial strategies should be welcomed. These have been meticulously recorded and reported on by EUROJUST and The Genocide Network<sup>41</sup>:

- In Germany, there have been convictions for the war crimes of outrage upon personal dignity; inhumane treatment of a dead person; pillaging; and killing a protected person. Some of these convictions are of foreign terrorist fighters, and others are of spouses who travelled to Syria and Iraq, and then engaged in horrendous conduct.
- In The Netherlands, there has been a successful prosecution of a foreign terrorist fighter who was pictured laughing next to a deceased man. This photo was shared publicly and disseminated on Facebook. He was convicted for the war crime of outrage upon personal dignity.
- In France, there are several ongoing cases against ISIL fighters - two involving individuals and one implicating a corporate entity. One of these cases is the first example of a French ISIL fighter being prosecuted for both terrorism and core international crimes.

59. Many perpetrators profit from the human rights abuses they direct or carry out; such abuses may be involved in violations that they themselves generate profits; or they may use abuses to sustain oppressive regimes and control, which in turn creates space to facilitate bribery and corruption. (see Box 4) This applies to the use of sexual violence in conflict, by state and non-state actors, who generate revenue from trafficking women, extorting their families and forcing ransoms, as has been seen in recent years in Syria (by ISIL and pro-government militias)<sup>42</sup> and Boko Haram in Nigeria.<sup>43</sup> The freezing and confiscation of the assets of such actors would clearly be in the public interest, as a necessary means of combatting their growth and continued gross human rights violations.

#### ISIL Financing [Box 4]

There is a view that ISIL will attempt a comeback. Reports vary, but as of early 2019, it may have held the equivalent of more than \$400 million in assets. ISIL has always had a diversified revenue stream. At its peak, during the time of the territorial caliphate, this was likely to have amounted to \$1 billion or \$2 billion (or more) in a year. In 2018, members of what has become known as the Islamic State-linked al-Rawi financial network were arrested, which revealed documents about Daesh finances. These revealed an organization with substantial reserves and investments of around US\$280m numerous legitimate businesses. Members of al-Rawi had sanctions imposed and were designated by the United States in 2020.<sup>44</sup>





### Confiscation to repurposing

60. The next step, from confiscation to repurposing, would not be such a leap forward (as from freezing to confiscation). The notion of repurposing necessarily entails confiscation of assets; that is to say a change of ownership and therefore permanent deprivation of property rights over those assets. Once assets have been legally confiscated, the way in which the State (which assumes ownership) chooses to dispose of those assets is far less controversial than the manner in which they were obtained.
61. As set out above, there is one clear reading of international jurisprudence which supports the position that there is a legal obligation on States to contribute to an international compensation fund, in line with its duty to fulfil victims' right to compensation, and its consequent implied obligation to finance that right. It is submitted that when combined with the duty of States to suppress terrorism<sup>43</sup> and prevent sexual violence,<sup>44</sup> the requirement to repurpose assets flows as a logical consequence.

### Key characteristics of a lawful confiscation and repurposing scheme

62. A review of the existing national confiscation regimes, such as that of Italy, and regional and international laws demonstrates that a confiscation and repurposing regime based on financial sanctions could be human rights-compliant if it was implemented at a national level and possessed the following characteristics:
- The relevant State needs to satisfy itself that the relevant designation on which it is relying is not arbitrary.

- Procedural safeguards must be implemented enabling the person/entity to challenge both their identification as someone from whom assets can be lawfully seized and the targeting of the assets themselves (as is seen in some human rights sanctions regimes).<sup>45</sup>

- The property to be confiscated must have an element of illegitimacy.

This does not mean that a criminal conviction is a prerequisite, but at the very least, there must be "*reasonable suspicion*" of those assets being unlawfully obtained (e.g. their value is disproportionate to the legitimate income of the person) or proceeds of crime (together with a procedure permitting the designated person or entity the opportunity of refuting such a suspicion).

63. It is recognised that the above framework, in particular the third requirement, broadly mirrors existing national frameworks which provide for conviction or non-conviction based confiscation or recovery where there is some form of link between an asset and criminality (such as the mechanisms under the UK Proceeds of Crime Act 2002). As such, it could be said that there is no need to introduce confiscation into sanctions regimes. However, at present, confiscation and sanction regimes often operate separately and are used to the exclusion of the other. As noted by CiFAR, "*sanctions are too often seen as an end point in the process*" - once sanctions are imposed, criminal investigations often stall and no further attempts are made to recover ill-gotten gains. The lack of cohesion between the two types of regimes undermines their

potential effectiveness in providing for the accountability of perpetrators and reparations for their victims.<sup>46</sup>

64. To be entirely effective, asset recovery and financial sanctions regimes must not be seen as mutually exclusive, and further thought must be given to the ways in which they can work together. One way to do this could be to impose an obligation on authorities to pursue criminal and/or non-conviction based confiscation routes when assets are frozen, to determine whether the relevant thresholds are met. Another way, as has been suggested by CiFAR, would be to incorporate asset recovery provisions and mechanisms into anti-corruption sanction regimes<sup>47</sup> (in which the criminality aspect already exists) and/or obligations on national authorities to engage in criminal investigations when sanctions are imposed.<sup>48</sup>
65. A number of procedural safeguards could also be introduced alongside a confiscation mechanism to protect the designated person's right to property. For example:
- Confiscation could take place after a specific period of time within which the designated person could bring a challenge to both their designation, freezing and prospective designation. This would prevent assets being frozen in perpetuity and the point of challenge could provide an opportunity for victims to make representations as to the particular assets.
  - The ambit of confiscation could also be limited to persons with total assets above a certain threshold and at a maximum percentage of those assets.

### Further thoughts

66. During the development of this proposal, it was considered that the UN Sanctions Regime (which is the starting point of the proposed regime) does not incorporate a necessary link between the frozen assets and criminality. In fact, the UN Sanctions Regime expressly provides that funds, assets and economic resources to be frozen "include, but are not limited to the use of proceeds derived from crime". This is reflected in Magnitsky-style sanction regimes in which corruption does not feature as a prerequisite for designation, such as in the UK and EU regimes. As such, it could be said that this should be reflected in the further step of confiscating and repurposing those assets, for which mechanisms could be built into the existing UN Sanctions Regime.
67. However, as detailed in the previous chapter, there are clear concerns as to whether the existing UN Sanction Regime provides sufficient protection for rights of designated individuals to due process and property (especially where that property has been obtained through lawful means). In particular, these concerns relate to the fact that: (a) neither UN resolutions nor guidelines set a specific standard of proof required for designations; (b) there is no independent judicial body to review sanctions decisions and de-listing decisions are ultimately taken by the committees who made them in the first place; and (c) the source of much information put forward in support of an individual designations is held solely at the UN level and will not be shared with the individual concerned or with States. Any introduction of confiscation into the



existing regime will undoubtedly bring these issues into sharper focus and the possibility of assets being confiscated will likely bring more timely challenges by designated persons. In light of these concerns, it is submitted that the three guarantees outlined at paragraph 61 above would have to be incorporated, to create and maintain a lawful confiscation and repurposing regime based upon sanctions.

68. The result of this is that a large number of assets would be excluded from the scope of the regime and from being used to provide reparations to victims. While in many instances there may be a "reasonable suspicion" that frozen assets have been unlawfully obtained or are proceeds of crime, this will not always be the case. For example, the assets or finances of ISIL "foreign fighters" may have been obtained lawfully and will, therefore, fall outside of the scope of any

such regime (in addition to other national confiscation schemes). However, it is still possible that such assets could still be used to finance criminal and/or terrorist acts and gross violations of human rights, which is exactly what the international community is obliged to prevent.

69. In view of the above, the authors of this report are continuing to consider the extent to which assets could be lawfully confiscated and repurposed where: (a) there is no evidence that the asset was unlawfully obtained or represents proceeds of crime, but (b) there is a "reasonable suspicion" that the designated individual is involved in serious human rights violations and that those assets will be used to finance such violations. Under this structure, the focus would be upon the actions of the designated person and potential use of the assets, rather than their origin.

## Recommendations

1. States and the international community should recognise the lawfulness of confiscation and repurposing of assets pursuant to sanctions regimes at a national level where: (a) the relevant State has satisfied itself that the relevant designation on which it is relying is not arbitrary; (b) procedural safeguards exist allow the designated person to challenge the measures; and (c) the property to be confiscated has an element of illegitimacy.
2. Existing national confiscation and sanctions regimes must work together to facilitate confiscation and repurposing of frozen assets, by, for example:
  - a. imposing obligation on authorities to pursue criminal and/or non-conviction based confiscation routes when assets are frozen, to determine whether the relevant thresholds are met;
  - b. imposing obligations on national authorities to engage in criminal investigations when sanctions are imposed (as proposed by CiFAR); and
  - c. incorporating asset recovery provisions and mechanisms into anti-corruption sanction regimes (as proposed by CiFAR).
3. The international community should consider the extent to which assets could be lawfully confiscated and repurposed where: (a) there is no evidence that the asset was unlawfully obtained or represents proceeds of crime, but (b) there is a "reasonable suspicion" that the designated individual is involved in serious human rights violations and that those assets will be used to finance such violations.





## Notes to editors

Hogan Lovells acts on a pro bono basis for Lotus Flower, a UK charity led by genocide survivor Taban Shores, and six Yazidi survivors who were victims of sexual violence and enslaved by identified foreign fighters. These women have never received reparations for the international crimes committed against them.

We want to ensure that our clients, the wider Yazidi community as well as those who experience sexual violence in conflict are able to secure justice, accountability and compensation for gross violations of human rights and sexual violence.

This report is the culmination of a partnership between Hogan Lovells, the Global Survivors Fund, REDRESS and Goldsmith Chambers. We would like to thank Megan Smith, Haylea Campbell, Yasmin Waljee, Aline Doussin, Iris Karaman, Imogen Brooks, Kanchana Harendran, Igor Cvetkovski, Rupert Skilbeck and Leanna Burnard for their work on this paper. We would also like to thank Anthony Metzger QC, Roderick Johnson QC, Sangeetha Iengar, Oliver Newman, Catherine Jaquiss and David Barr, Samina Iqbal, Julia Needham, Sarah Pinder and Amy Held for their work in putting together their detailed Opinion on the matter.

Hogan Lovells is an international law firm that has produced this report as part of our commitment to access to justice and strengthening the rule of law. We have a specialised Sanctions department, which operates seamlessly across all jurisdictions and industries to provide clients with comprehensive and practical advice.

REDRESS is an international human rights organisation that represents victims of torture in obtaining justice and reparations. It brings legal cases on behalf of individual survivors and advocates for better laws to provide effective reparations. In doing so it responds to torture as an individual crime in domestic and international law, as a civil wrong that involves individual responsibility, and as a human rights violation that involves state responsibility.

The Global Survivors Fund (“GSF”) was launched in October 2019 by Dr Denis Mukwege and Nadia Murad, Nobel Peace Prize laureates. Its mission is to enhance access to reparations for survivors of conflict-related sexual violence around the globe, thus responding to a gap long identified by survivors. GSF acts to provide interim reparative measures in situations where states or other parties are unable or unwilling to meet their responsibilities. GSF advocates for duty bearers as well as the international community to develop reparations programmes, and guides states and civil society by providing expertise and technical support for designing reparations programmes. GSF’s survivor-centric approach is the cornerstone of its work.

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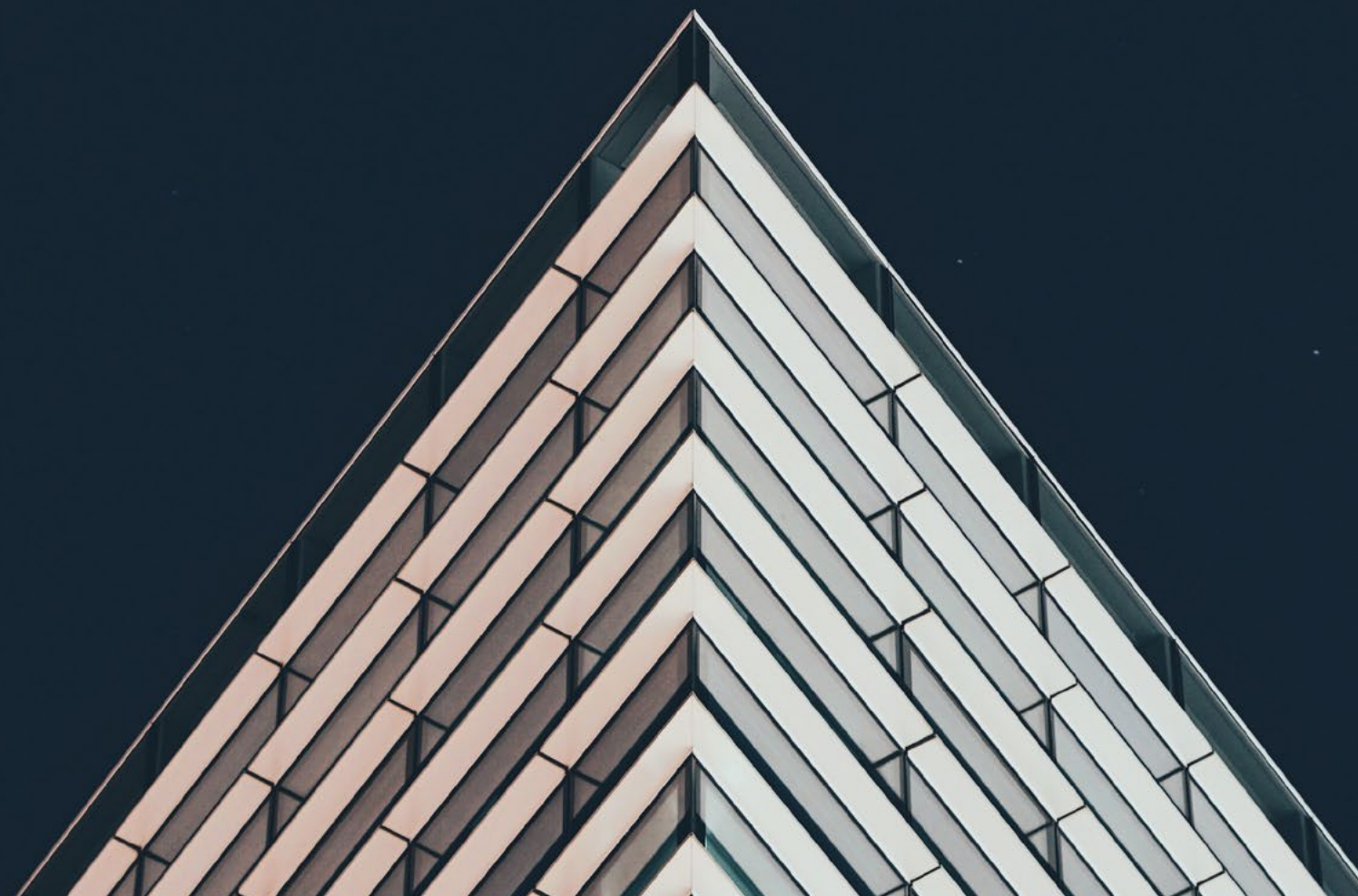
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References

1 CiFAR Research Paper, Sanctions as a tool for asset recovery: a global perspective (“CiFAR Sanctions Paper”) , 2021, accessible at: [https://cifar.eu/wp-content/uploads/2021/05/CiFAR\\_Sanctions-as-a-Tool-for-Asset-Recovery\\_Global-Perspective.pdf](https://cifar.eu/wp-content/uploads/2021/05/CiFAR_Sanctions-as-a-Tool-for-Asset-Recovery_Global-Perspective.pdf)

2 *Ibid*

3 Many states who have accepted the responsibility to develop and implement reparations programmes on their own territory (e.g. Colombia, Kosovo, Sierra Leone), have also recognized that judicially accessed reparations might be cumbersome in regards to process and exclusivist in regards to nature, so they have decided to take an administrative approach and make the process more efficient, inclusive and victim-friendly.

4 Guiding Principle Number 2 of the Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence, June 2014, page 1.

5 This does not apply to the UNHCR, under which a “victim” must be judicially assessed, accepted and identified as having a right to a remedy.

6 There are also a number of examples of a progressive approach to the definition of “victim” at a regional level. For example, in *Plan de Sánchez Massacre v Guatemala*, Judgment of the Inter-American Court of Human Rights (19 November 2004), the Court considered how to award fair reparations in the context of genocide. It recognised the community as the beneficiary of collective reparations. In doing so, the Court acknowledged that there may be many individuals who could not be judicially identified among the victims.

7 *CAT, Kepa Ura Guridi v Spain*, No 212/2002, Final Views, 17 May 2005, paragraph 6.8.

8 *CAT*, General Comment No. 3 (2012), paragraph 7.

9 *Ibid*, paragraph 5.

10 *Ibid*, paragraph 22.

11 UN Human Rights Committee, General Comment No. 31 (2004).

12 Article 2, UNHCR.

13 While some consider the Declaration a statement of aspirational principles and therefore not a statement of law or legal obligation, the jurisprudence of the ICJ has interpreted the Declaration’s provisions as obligating UN Member States under customary international law, for example, see the concurring Opinion of Vice-President Ammoun sitting on Namibia (South-West Africa) Advisory Opinion, 1971 ICJ Report 16, 55.

14 J Castañeda, ‘Legal Effects of UN Resolutions’ (1969) [§ 14]; Johnson, ‘The Effect of Resolutions of the General Assembly of the United Nations’.

15 See, for example, Certain Expenses of the United Nations (Article 17, Paragraph 2 of the Charter), Advisory Opinion [1962] ICJ Rep 151. This view has also been supported by the Committee Against Torture, which made explicit reference to it in its Concluding Observations on Colombia in 2009 when it called for the Reparations Resolution to be taken into account when establishing a national reparations programme.

16 HM Treasury, Written Ministerial Statement: Operation of the UK’s Counter-Terrorist Asset Freezing Regime: 1 January 2020 to 31 March 2020, available at: < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/922252/WMS\\_Q1\\_of\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922252/WMS_Q1_of_2020.pdf)>

17 Office of Foreign Assets Control, Release of the 2019 Terrorist Assets Report, 31 December 2020, available at: < <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20201231>>

18 UN Security Council, Reports from Members States pursuant to Paragraph 6 of Resolution 1455 (2003), available at: <<https://www.un.org/securitycouncil/sanctions/1267/memstatesreports>>

19 UN Security Council Resolution 1904 (2009)

20 By UN Security Council Resolution 1989 (2011); 2083 (2012); 2161 (2014); 2253 (2015) and 2368 (2017).

21 UN Security Council, Focal Point for De-listing, available at: < <https://www.un.org/securitycouncil/sanctions/delisting/>>

22 United Nations, *Letter dated 8 February 2021 from the Ombudsperson addressed to the President of the Security Council*, available at: <[https://www.un.org/securitycouncil/sites/www.un.org/securitycouncil/files/20th\\_biannual\\_report\\_advance\\_unedited\\_version.pdf](https://www.un.org/securitycouncil/sites/www.un.org/securitycouncil/files/20th_biannual_report_advance_unedited_version.pdf)>

23 United Nations, *Outgoing Ombudsperson’s Letter to the Secretary-General* (10 July 2017), available at: <[https://www.un.org/securitycouncil/sites/www.un.org/securitycouncil/files/20170710\\_letter\\_to\\_secretary-general.pdf](https://www.un.org/securitycouncil/sites/www.un.org/securitycouncil/files/20170710_letter_to_secretary-general.pdf)>

24 United Nations Security Council, *Letter dated 1 August 2019 from the Ombudsperson to the President of the Security Council* (S/2019/621), available at: <<https://undocs.org/pdf?symbol=en/S/2019/621>>

25 United Nations General Assembly, *Progress made by the United Nations system in supporting Member States in assisting victims of terrorism* (A/74/790)’ (9 April 2020), available at: <<https://undocs.org/en/A/74/790>>

26 *Ibid*

27 UN Security Council, *Focal Point for De-listing*, available at: < <https://www.un.org/securitycouncil/sanctions/delisting/>>

28 <https://www.undocs.org/S/2021/122>

29 [https://www.un.org/securitycouncil/sites/www.un.org/securitycouncil/files/20170710\\_letter\\_to\\_secretary-general.pdf](https://www.un.org/securitycouncil/sites/www.un.org/securitycouncil/files/20170710_letter_to_secretary-general.pdf)

30 <https://www.undocs.org/S/2019/621>

31 UN General Assembly, *Progress made by the United Nations system in supporting Member States in assisting victims of terrorism: Report of the Secretary-General*, A/74/790 (8 April 2020), para 7

32 *Ibid*, para 18

33 Regulation 4, the UK Human Rights Sanctions Regime: “the purposes of the regulations contained in this instrument are to deter, and provide accountability for” specific human rights violations.

34 S. Eckert, ‘The use of financial measures to promote security’ *Journal of International Affairs*, Vol. 62, No. 1, *Global Finance* (FALL/WINTER2008), pp. 103-111.

35 European Parliamentary Research Service (EPRS) Briefing, ‘EU Sanctions: A key foreign and security policy instrument’, p.9

36 European Court of Human Rights, *Case of Raimondo v. Italy*, Application No. 12954 (22 February 1994)

37 *Ibid*

38 Legislative Decree 159 of 6 September 2011 (as amended by Law 161 of 17 October)

39 If the person cannot justify the lawful origin of the asset, the Court may presume unlawfulness, including in circumstances in which the asset was acquired at a time when the person was living off illicit proceeds and/or when they were “dangerous”. For example, in one recent case, a flat was confiscation on the basis of (a) the historical “dangerousness” of the person, and (b) the fact that the flat was bought during the period of the person’s illegal conduct.

40 See paragraph 10 of the Resolution.

41 EUROJUST and The Genocide Network, Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences, May 2020, accessible at: [https://www.eurojust.europa.eu/sites/default/files/2020-05/2020-05\\_Report-on-cumulative-prosecution-of-FTFs\\_EN.pdf](https://www.eurojust.europa.eu/sites/default/files/2020-05/2020-05_Report-on-cumulative-prosecution-of-FTFs_EN.pdf)

42 United Nations Security Council, *Res 2331* (2006), 20 December 2016

43 Council on Foreign Relations, *Boko Haram’s Violence Against Women and Girls Demands Justice* (11 May 2018), available at: <<https://www.cfr.org/blog/boko-harams-violence-against-women-and-girls-demands-justice>>

44 U.S. Department of the Treasury, *Treasury Designates Key ISIS Financial Facilitators in the Middle East* (28 July 2020), available at: <<https://home.treasury.gov/news/press-releases/sm1070>>

45 United Nations Security Council, *Res 1373* (2001), 28 September 2001

46 Under the Convention Against Torture; Article 3 common to the four Geneva Conventions of 1949; and UNSC Resolution 1960 (2010) does not, UNSC Resolution 2106 (2013)

47 See the UK Human Rights Sanctions Regime, for example

48 *Ibid*, para 18 (see p23)

49 Such as the UK Global Anti-Corruption Sanctions Regulations 2021

50 See page 26 of the CiFAR report, which also proposes the empowering of “tax authorities to seize undeclared assets through administrative proceedings and bring about parallel criminal proceedings on sanctioned individuals”



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