Hogan Lovells

Finance for Restorative Justice

Using sanctions and terrorist financing legislation to fund reparations for victims of sexual violence in conflict

Policy proposal

January 2020

Table of Contents

"For the thousands of Yezidi women, enslaved by ISIL members and their families, including so-called foreign fighters, subjected to the worse possible forms of sexual violence, there has been no victory, no peace, no justice, no reparations. Just largely official indifference to their plight and cold-hearted judicial decisions rejecting jurisdiction and denying them remedies. What the decision highlights is the need for an international process to devise an accountability framework and establish and implement accountability mechanisms for the victims of Daesh, including reparation packages. Justice for crimes against humanity and genocide cannot be held hostage by ill-fitted laws. The roots of the accountability deficits for the victims of Daesh are political first and foremost."

Agnès Callamard, the Special Rapporteur on extrajudicial, summary or arbitrary executions at the Office of the UN High Commissioner for Human Rights

Executive summary

The 2014 Global Summit to End Sexual Violence in Conflict was hosted by former Foreign Secretary William Hague and Angelina Jolie, Special Envoy for the United Nations ("UN") High Commissioner for Refugees. It was ground-breaking as it represented the largest gathering ever brought together on this subject, involving 70 foreign ministers and 900 experts.

Since then there has been much discussion about the need to make real change to the lives of survivors of sexual violence in conflict. Whilst there have been a number of initiatives seeking to "put survivors first", there has been little progress made around wider justice efforts for survivors. A further conference on preventing sexual violence in conflict is planned for 2019, which aims to focus on justice and accountability. The following discussion is aimed at informing that debate.

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. This paper therefore explores the opportunities for the financing of reparations for victims of sexual violence in conflict based on both the international and national systems of sanctions and fines relating to counter-terrorism regimes.

It is our contention that the international community can improve the mechanisms by which those who have suffered sexual violence in conflict are able to access compensation. The purpose of financial sanctions regimes that focus on counter-terrorism and fine companies that have been found to have breached their obligations under applicable counter-terrorist financing laws is to ensure that international peace and security is maintained and any support for terrorism is punished. It can then reasonably be asserted that creating a fund that compensates victims from such fines is in keeping with that purpose.

We will show that there are domestic mechanisms in place that could address these issues in various countries, and that it is possible for the international community to adapt such mechanisms on a global level. These avenues are explored through looking at sanctions regimes, fines and the seizure of assets.

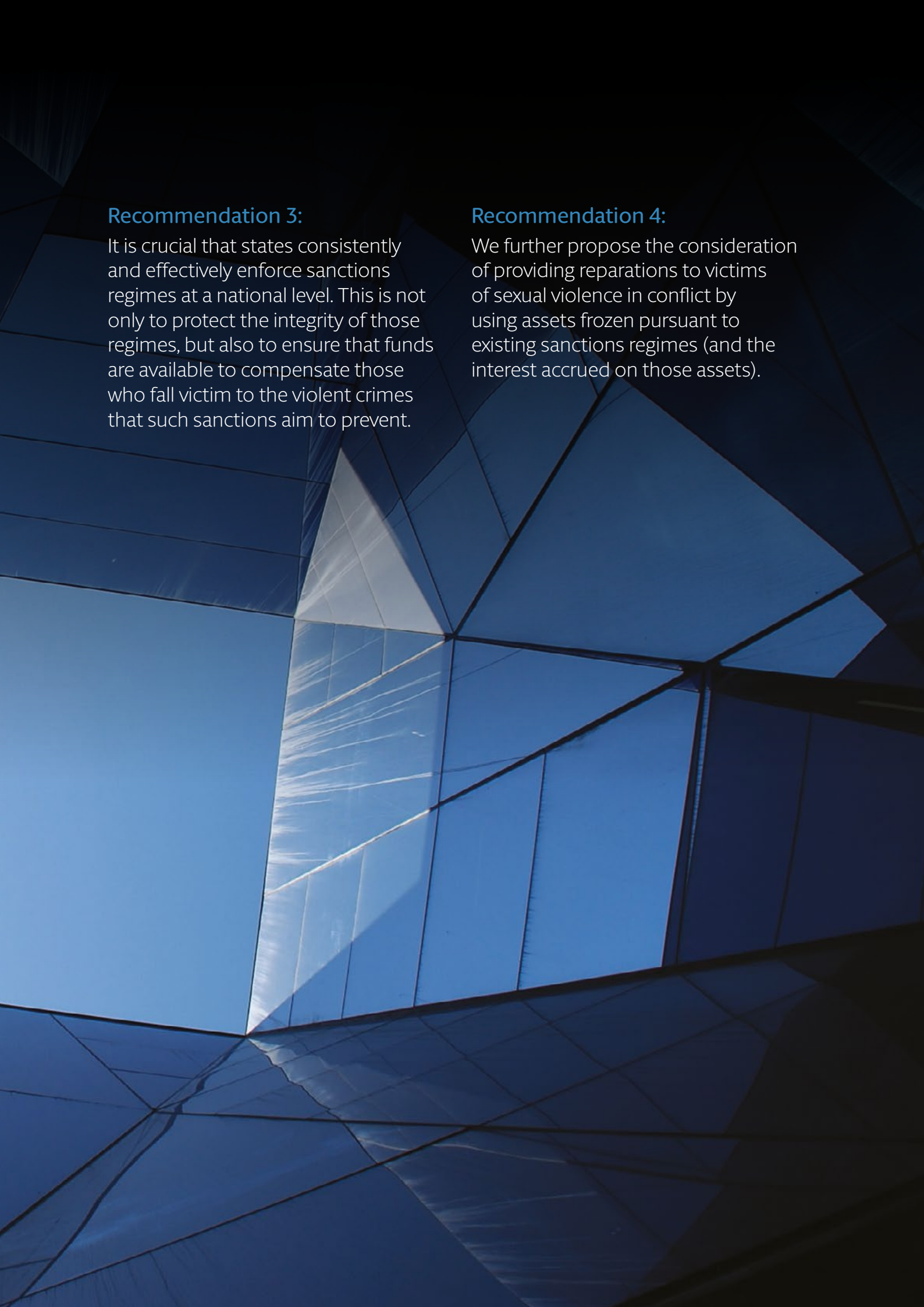
Recommendations

Recommendation 1:

We propose that the obligation to provide reparations to victims of sexual violence in conflict can and should be met by using the international and national legal frameworks relating to financial sanctions and counter-terrorism. One way to achieve this is to use monetary penalties, such as fines and forfeited assets, levied against regulated persons (including but not limited to financial institutions) and other relevant organisations for violations of both relevant sanctions and counter-terrorist financing legislation.

Recommendation 2:

To facilitate the use of financial penalties imposed for breaches of sanctions to provide compensation, it is crucial that the UN Security Council continues to act on its statements in Resolutions 2242 and 2467. Existing and new resolutions relating to armed conflict and terrorism must include sexual violence as a specific designation criterion. Sanctions Committees must then ensure that, where appropriate, individual listings are made on that basis.



Recommendation 3:

It is crucial that states consistently and effectively enforce sanctions regimes at a national level. This is not only to protect the integrity of those regimes, but also to ensure that funds are available to compensate those who fall victim to the violent crimes that such sanctions aim to prevent.

Recommendation 4:

We further propose the consideration of providing reparations to victims of sexual violence in conflict by using assets frozen pursuant to existing sanctions regimes (and the interest accrued on those assets).

Background

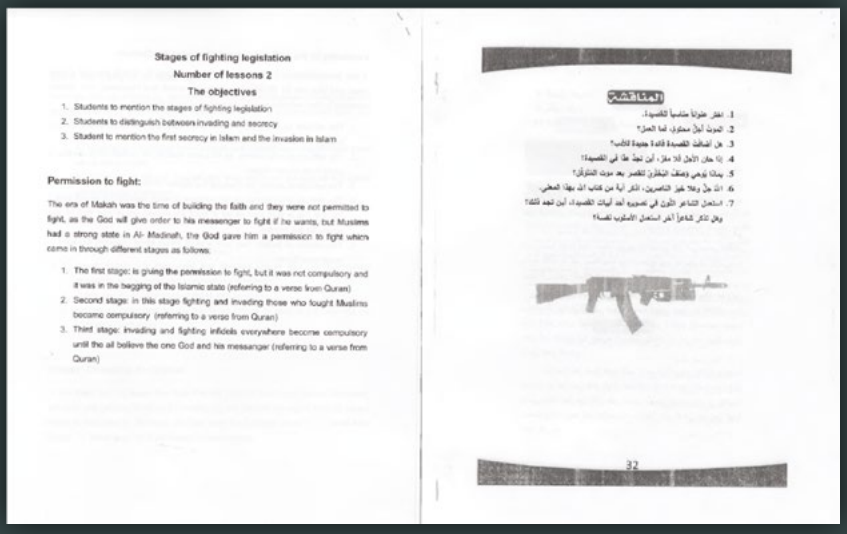
Lotus Flower, a UK charity led by genocide survivor Taban Shoresh, which supports Yazidi survivors who were victims of sexual violence, is working with Hogan Lovells International LLP ("Hogan Lovells") to ensure that there are practical mechanisms for survivors to secure justice and reparations for the crimes committed against them.

This report is also written in conjunction with REDRESS, an international human rights organisation that represents victims of torture in obtaining justice and reparations, and has extensive experience documenting and monitoring cases of sexual violence in conflict.

Sexual violence in conflict can include rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict.[1]

It has devastating effects on survivors and their communities. The physical, psychological, psychosocial, socio-economic and legal consequences of sexual violence in conflict can destroy lives and undermine the social fabric of communities. The effects transcend generations, as survivors and their children often face stigma, poverty, poor health and unwanted pregnancy.[2] Sexual violence in conflict has also been seen to normalise sexual and gender-based violence in the wider community, even after the conflict has ended.[3] It remains difficult to ascertain the exact prevalence of the practice owing to a wide range of challenges that include stigmatisation and intimidation of survivors.

Image shows a lesson on 'invading and fighting' infidels and those who fought Muslims.



Stages of fighting legislation

Number of lessons 2

The objectives

1. Students to mention the stages of fighting legislation
2. Students to distinguish between invading and secrecy
3. Student to mention the first secrecy in Islam and the invasion in Islam

Permission to fight:

The era of Makah was the time of building the faith and they were not permitted to fight, as the God will give order to his messenger to fight if he wants, but Muslims had a strong state in Al- Madinah, the God gave him a permission to fight which come in through different stages as follows:

1. The first stage: is giving the permission to fight, but it was not compulsory and it was in the begging of the Islamic state (referring to a verse from Quran)
2. Second stage: in this stage fighting and invading those who fought Muslims become compulsory (referring to a verse from Quran)
3. Third stage: invading and fighting infidels everywhere become compulsory until the all believe the one God and his messenger (referring to a verse from Quran)

32

The Yazidi women have been the victims of a concerted campaign of sexual violence and slavery at the hands of ISIL. This is evidenced by the Fatwas that the terrorist group disseminated and also in the materials provided to school children that are filled with violent text and iconography.

In a document produced by the terrorist group's 'Committee of Research and Fatwas', rules for how to treat a female captive include referring to the women as property to be bought and sold. There are detailed instructions on when fathers and sons can have intercourse with slaves and note that 'if the female captive becomes pregnant by her owner, he cannot sell her and she is released after his death.'[4]

Statements given by the enslaved women cast a harrowing light on how ISIL members treated them when they were in captivity. They describe being locked in rooms with firearms, and being physically attacked by the terrorists. Sexual abuse is described as follows:

> *"When [ISIL member] said that he would marry us, I knew this to mean that he would rape us. The word 'marry' was used by Daesh fighters to mean rape. They did not mean that they would take us as wives. It meant that they would take us for a few days to rape us and then sell us to other men."*

It should be noted that the term 'marry' is used frequently in the witness statements, which demonstrates that this behaviour was widespread and concerted. These women suffered horrendous treatment that violates international law, and they are entitled to justice. The international community has mainly focused on militarily defeating ISIL, rather than ensuring justice for the victims.

ISIL's genocidal "movement" was in some ways unusual in the sense that it represented a multi-national operation, which was engaged with and supported by Western nationals and allegedly businesses. A report[5] from the International Federation for Human Rights noted the following:

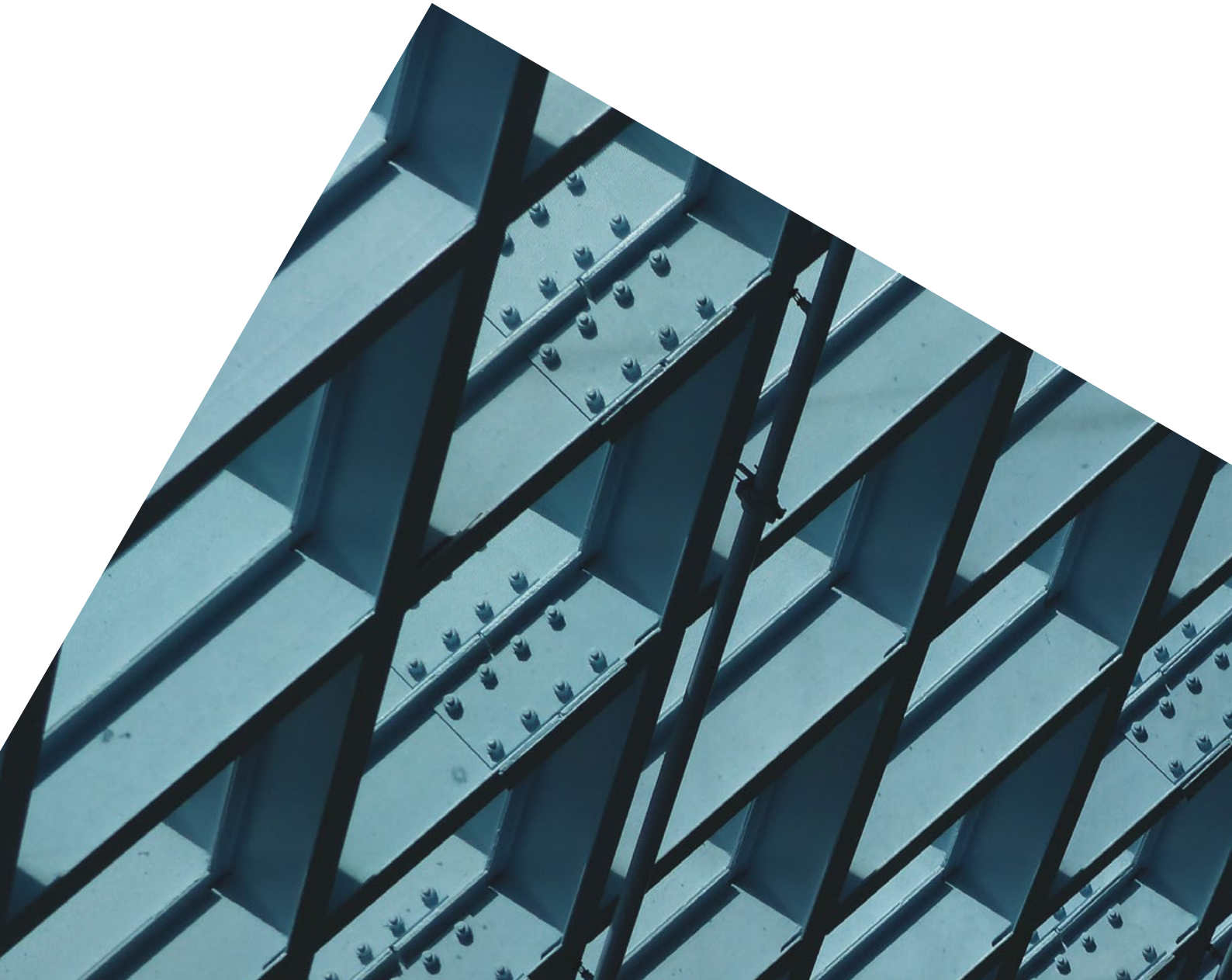
> *In 2014, an estimated 12,000 foreign fighters from 81 countries were present in Syria. By the end of 2015, the number of foreign fighters had nearly doubled, despite international efforts to contain ISIL and stem the flow of militants travelling to Syria. According to figures published in December 2015, between 27,000 and 31,000 militants in Syria and Iraq joined ISIL and other violent extremist groups from at least 86 countries...*

A relatively large number of German (915) and British (850) nationals are also understood to have been part of ISIL's ranks.

The brutal treatment inflicted on the Yazidi women by ISIL fighters is just one of many instances where crimes of sexual violence have been left largely unaddressed by the international legal system. REDRESS has worked with partner NGOs on responding to sexual violence in conflict in Uganda, the Democratic Republic of Congo, Sudan, Myanmar, Nepal, Kenya, Sri Lanka, Peru and other States. It has sought to ensure the effective documentation of sexual violence in conflict, to provide support to victims, and to bring legal claims against perpetrators.

Examples include the case of *Purna Maya v Nepal*[6], in which a Nepalese woman was raped by four soldiers during Nepal's internal armed conflict. In 2017 the UN Human Rights Committee ordered Nepal to pay compensation and provide other forms of reparation. In *SA v DRC*[7] REDRESS's client was raped by a solider during the armed conflict in the Eastern Democratic Republic of the Congo. The case seeks enforcement of a domestic judgment for compensation and reform to laws and institutions to prevent sexual violence. The case is currently pending before the African Commission of Human and Peoples' Rights.

Additionally, the consequences of ISIL actions prompted a refugee crisis, which has impacted both neighbouring countries and those further afield. As a result, any solution that concerns accountability and reparations for victims needs to be tackled on a multi-lateral basis.



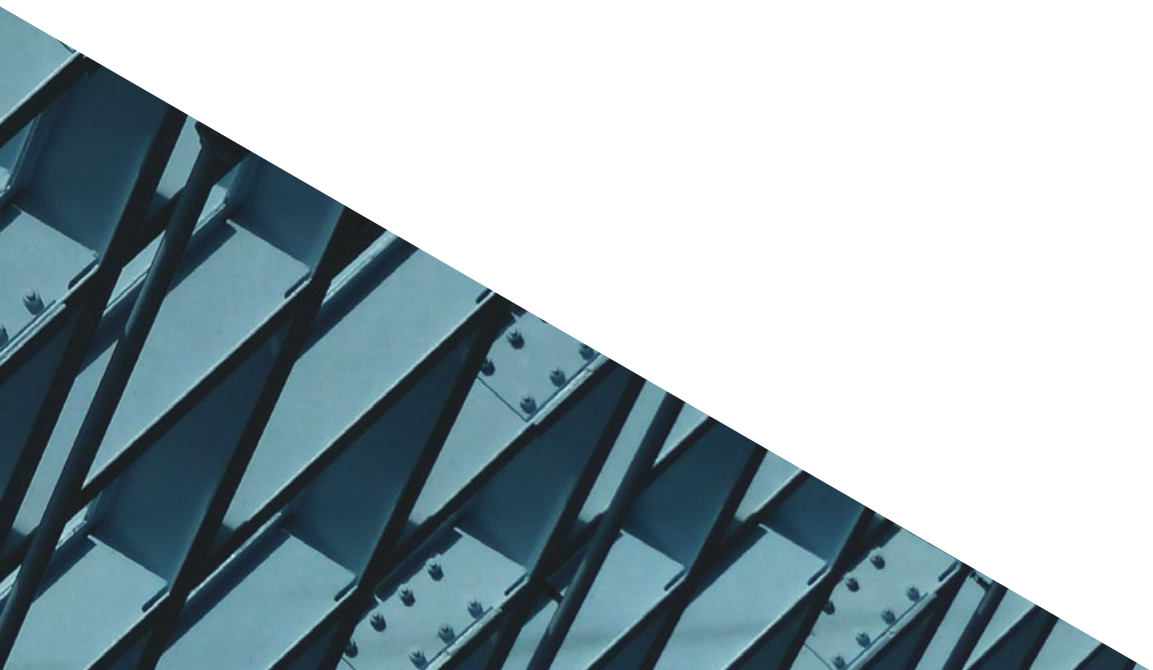
International law on reparations

It is a well-established concept of international law that justice should include reparations for victims of sexual violence in conflict. States have the primary responsibility to investigate and prosecute perpetrators as well as provide effective remedies and reparations to victims of Conflict and Atrocity Related Sexual Violence.[8]

Reparations are defined within international law as encompassing a wide range of remedies, which go beyond seeking criminal justice accountability to include compensation and rehabilitation. Compensation plays a transformative role in helping victims improve their position in society. Granting compensation to victims of sexual violence in conflict can alleviate suffering and protect the human dignity of survivors. It can help them obtain medication to treat physical injuries and obtain life-saving psychosocial support to recover from the psychological and social impact of the violence.[9]

The absence of any payment of compensation is not only in breach of international law on victims' rights to reparation but also results in further victimisation for the survivors.[10] Women who have suffered sexual violence and who have had the courage to come forward despite the pressure of their family and community often return home without obtaining any compensation, encouraging further stigma against them.[11]

Certainly, our experience with our clients has demonstrated their wish to obtain compensation to help them deal with the practical consequences of the sexual violence they have endured. Hogan Lovells has provided *pro bono* support to survivors through Lotus Flower on many of their day-to-day needs including housing, training, education, employment and reintegration. Their need for compensation to meet the costs of a dignified recovery is vital and often overlooked. This is separate to and goes beyond the need to see a criminal prosecution.



Domestic mechanisms for seeking reparations for survivors

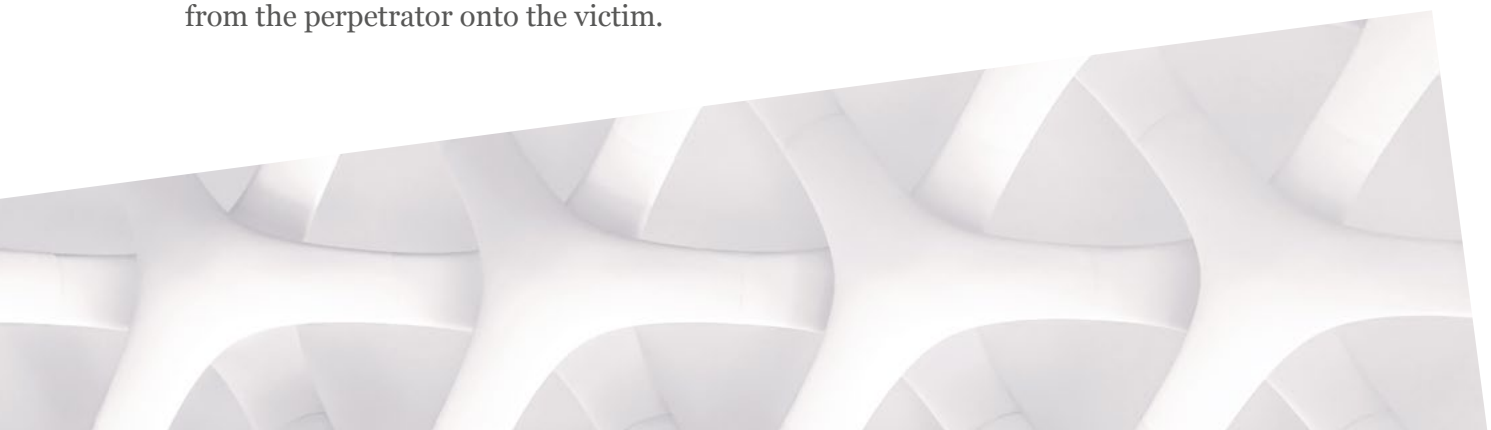
For most survivors of sexual violence in conflict, there are no effective mechanisms to claim reparations or compensation in the countries where such offences were committed.

In fact, the burden of support often falls on the States receiving refugee survivors of sexual violence rather than the State in which the offences were perpetrated. As a result, the provision for survivors is often sporadic and inconsistent, and the evidence gathering process is extremely difficult.

Insofar as States can prosecute perpetrators of sexual violence, their practice is to do so through the domestic criminal justice system. While this can lead to criminal convictions, it rarely provides for reparations for victims. Compensation orders are often not made or, if they can be, it is difficult to enforce them against an individual offender.

Victims may also seek reparation directly against the perpetrator in the civil courts. While this course of action, if successful, could lead to compensation, it is only likely to be possible in a very small number of cases, due to issues including jurisdiction, standing and immunities. It is therefore neither a practicable nor reasonable course of action for the vast majority of victims. It also requires legal assistance and expert legal knowledge that is not available to most victims and, overriding such practical limitations, it places the burden of recovering any compensation from the perpetrator onto the victim.

Terrorist financing offences can take many forms, and have far-reaching consequences. Litigation is in progress against the Australian State on behalf of 5 Yazidi women who were enslaved and persecuted by Australian Foreign Fighter Khaled Sharrouf. He is currently designated by the U.S. Office of Foreign Assets Control and the New South Wales Crime Commission reportedly attempted to seize his property in 2016. Relatedly, a UN report claimed that a money transfer business owned by Sharrouf's sister was suspected of sending up to A$20m to countries neighbouring the conflict zone to finance terrorism. It was shut down by the financial intelligence agency AUSTRAC in 2015.



International mechanisms for seeking reparations for survivors

At the international level, there are various UN Trust Funds that disperse compensation to victims of atrocities.

For the most part, these are voluntary, which means that states are not under an international legal obligation to contribute money. The Trust Funds are managed in different ways, with the UN Trust Fund to End Violence against Women awarding grants to initiatives that systematically address, reduce and eliminate violence against women and girls.[12] In 2015, the Trust Fund had a total grant value of US$57m. [13]

Created in 2004, the International Criminal Court's Trust Fund for Victims (TFV) is funded both by fines and/or forfeitures from those who have been convicted by the Court and voluntary donations. The fund provides two forms of support: reparations and assistance.

Under the ICC Model, reparations need not necessarily take the form of monetary compensation, and can either be awarded to individuals or to divided communities, in order to promote rehabilitation and reconciliation. The ICC may also order an award for reparations be deposited with the Fund should it be impossible or impracticable to make individual awards directly to each victim.

The TFV also has a separate category of assistance, which provides support to victims of crimes and their families who have suffered physical, psychological, and/or material harm as a result of war crimes. The assistance is available separate from, and prior to, a conviction by the ICC. As opposed to reparations, the assistance mandate does not arise from the individual criminal responsibility of a convicted person.

Mr Thomas Lubanga Dylio was found guilty in March 2012 of the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities. Following his conviction, reparations proceedings commenced that have resulted in the award of community and service-based reparations orders, to assist former child soldiers in particular. Mr Lubanga has been found indigent, which has resulted in the TFV making a decision to provide additional funding, in order that the victims can be adequately supported.

As a result of a limited number of convictions at the ICC, combined with indigent perpetrators, the TFV is heavily reliant on voluntary contributions to fund these programmes. In 2018, a total of €3.95m was donated to the TFV, with 23 countries providing these funds. This followed €3.03m being donated in 2017. In the case of Lubanga, the Trial Court set his liability for reparations at $10m, which is significantly more than the total of annual contributions to the TFV. Purely relying on voluntary contributions and fines paid by those convicted of crimes at the ICC is not a sustainable way of ensuring that all victims are adequately supported and compensated.

As Ambassador David Scheffer, one of the founders of the ICC, stated in December 2018, in order to avoid both reputational damage to the ICC and to ensure that victims are adequately compensated: "A way needs to be found to raise additional funds so that the reparations award in any particular case is not dependent solely on funding from the contributions of one or

two well-intentioned donor governments." He implored those seeking to address these challenges to come up with innovative solutions that engage both the public and private sectors. We would attest that such solutions can be found in this paper.[15]

In 2004, Resolution 1566 established a Working Group to examine the possibility of establishing an international fund to compensate victims of terrorist acts and their families.[14] The Resolution noted that this *"might be financed by voluntary contributions, which could consist in part of assets seized from terrorist organizations, their members and sponsors"*. In 2005, the Working Group, which is currently chaired by Peru (and vice-chaired by France, Russia and South Africa) concluded that it was premature to discuss the establishment of an international fund and that individual states should be encouraged to provide assistance at national level. It maintained this view in its most recent published letter in 2010.

However, recognition of the need for a reparations fund has increased, including by the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Pramila Patten, and the UN Security Council.

During 2018's Security Council Open Debate, Special Representative Patten urged the international community to *"give serious consideration to the establishment of a reparations fund for survivors of conflict-related sexual violence"*.

This call was echoed in the UN Security Council Resolution adopted on 23 April 2019, which encourages Member States to:

"give due consideration to the establishment of a survivors' fund" and to strengthen access to justice including reparations for victims *"where appropriate"*.[16]

The Global Survivors Fund was launched in October 2019 with the aim of ensuring that victims of conflict-related sexual violence are recognised and adequately compensated through various forms of redress. It was founded by Dr. Denis Mukwege and Ms. Nadia Murad, who won the Nobel Peace Prize in December 2018. The aim of the fund is to establish a survivor-centric mechanism that will raise US$50-100 million to deliver reparations across the world by 2022.

This paper considers how such a fund could be financed. It proposes a course of action that we do not understand to have been actively pursued by Governments or other actors but should now be considered as a serious and credible proposal (as set out further opposite).

Recommendation 1:

We propose that the obligation to provide reparations to victims of sexual violence in conflict can and should be met by using the international and national legal frameworks relating to financial sanctions and counter-terrorism.

One way to achieve this is to use monetary penalties, such as fines and forfeited assets, levied against regulated persons (including but not limited to financial institutions) and other relevant organisations for violations of both relevant sanctions and counter-terrorist financing legislation. This is set out in further detail from pages 14-21.

We are also considering the ways in which assets frozen pursuant to such sanctions and terrorist financing regimes could be repurposed to contribute to reparations. This is set out in further detail on pages 22-26.

An overview of the primary proposal

In summary, this paper advocates that where a financial penalty is imposed on a corporation or individual for a violation of either:

a) terrorist-financing regimes; and/or

b) financial sanctions regimes imposed in relation to a conflict in which sexual violence was prevalent (and particularly in circumstances where rape was used as a weapon of war) or in relation to an actor for its use of sexual violence,

all, or a percentage of, the money recovered should form the financial basis for a collective reparations fund for victims of sexual violence in conflict.

At this stage, our proposal focuses on identifying the potential sources of funds for compensation and the political will to use those sources in such a way. With regards to the mechanisms of contributions to and the operation of the fund, our current proposal is that individual governments should establish their own funds into which financial penalties may be paid either (i) directly by the obliged entity, or (ii) by means of an allocation by the government of a part of collective budgetary resources (to which such penalties contribute). This would then be placed into an international fund to which individual victims of sexual violence in conflict may apply. Such a fund could operate on a tariff basis in much the same way as the Criminal Injuries Compensation Authority works in the UK and other European countries. We are continuing to explore the ways in which a collective reparations fund could be established and administered.

Financing reparations from financial penalties levied for violations of sanctions

Sanctions are imposed by virtue of multi-lateral processes at UN, regional and domestic levels. These sanctions empower and direct Governments to designate individuals and organisations and other Governments which are involved in terrorism and other forms of conflict or violence. The possibility for designations to be made on the basis of sexual and gender-based violence is crucial for the proposal of using financial penalties imposed for compensation when actors breach sanctions regimes.

Sanctions – UN level

Sanctions are imposed by the UN under Chapter VII of the UN Charter, which sets out the UN Security Council's powers to maintain peace and provides for measures to be taken that do not include the use of force (under Article 41). Sanctions regimes are created by Security Council resolutions and, once created, impose an obligation on its members to implement them. The adoption of a UN Security Council resolution imposing sanctions requires the support of a two-thirds majority of all UN Security Council members (Article 27(3), UN Charter), as well as the support of all five permanent members of the UN Security Council (China, France, Russia, the UK, the US).

The sanctions regimes are managed by specific Sanctions Committees, the role of which includes designating individuals who fall within the listing criteria in the relevant resolutions and managing specific Sanctions Lists. Decisions to add or remove individuals from Sanctions Lists require the unanimous consent of all members of the Committee.

UN Members implement UN Security Council resolutions imposing economic sanctions in accordance with their national law. Consequently, the implementation and enforcement of these sanctions may vary from one country to another.

Sanctions – terrorism

There is a specific regime applying to ISIL, Al-Qaida and associated individuals, groups, undertakings and entities.[17] This broadly requires that (i) funds/economic resources belonging to, owned, held or controlled by those persons are frozen, and (ii) no funds/economic resources are to be made available directly or indirectly to or for the benefit of such persons.

The UN Security Council has also expressed its intention to consider targeted sanctions for individuals and entities associated with ISIL or Al-Qaida involved in sexual violence in conflict (in addition to trafficking in persons in areas affected by armed conflict) in Resolution 2368 (2017). Furthermore, it has encouraged all Member States to consider submitting listing requests in this regard to the ISIL and Al-Qaida Sanctions Committee.

Sanctions – armed conflict

There have been a number of UN Security Council Resolutions noting that sanctions can be imposed on parties to an armed conflict in order to protect women from sexual violence. In April 2019, in Resolution 2467 (2019), the UN Security Council urged "*existing Sanctions Committees, where within the scope of the relevant criteria for designation, and consistent with the present and other relevant*

resolutions to apply targeted sanctions against those who perpetrate and direct sexual violence in conflict" and reiterated "*its intention, when adopting or renewing targeted sanctions in situations of armed conflict, to consider including designation criteria pertaining to acts of rape and other forms of sexual violence*". This mirrors the language used in previous UNSC Resolutions, such as Resolution 2242 (2015), which also made specific reference to human rights violations committed by terrorist groups in situations of armed conflicts.

A handful of sanctions regimes do specifically include explicit sexual violence designation criteria, namely those in relation to the Central African Republic[18], the Democratic Republic of Congo[19], Mali[20], Somalia[21] and South Sudan[22].

Recommendation 2:

To facilitate the use of financial penalties imposed for breaches of sanctions to provide compensation, it is crucial that the UN Security Council continues to act on its statements in Resolutions 2242 and 2467. Existing and new resolutions relating to armed conflict and terrorism must include sexual violence as a specific designation criterion. Sanctions Committees must then ensure that, where appropriate, individual listings are made on that basis.

Sanctions - EU level

The European Union ("EU") financial sanctions regimes fall within the framework of the Common Foreign and Security Policy ("CFSP"). Sanctions measures at an EU level are always implemented via a "CFSP Decision" which is then adopted by the European Council. Once the Decision has been passed, the measure will either be: (i) implemented at an EU level via secondary legislation (usually a Council Regulation), or (ii) implemented directly at Member State level. This will depend on whether the measure falls within the EU's competence.

Financial sanctions fall within the EU's competence and so have direct effect in all EU Member States, although Member States' competent authorities are responsible for their application and enforcement at national level, and are legally required to adopt legislation on the penalties for breaching sanctions, which is discussed further below.

Sanctions – terrorism

The EU has a specific "terrorist list" which is a list of persons, groups and entities involved in terrorist acts and subject to financial sanctions. It also provides for a prohibition on making available, directly or indirectly, funds and economic resources to listed parties and to entities which are more than 50% owned or controlled by listed parties. Common Position 2001/931/CFSP (as last amended through Council Decision (CFSP) 2019/25) sets out the criteria for listing persons, groups and entities.

Sexual and gender-based violence is not explicitly listed as a form of "terrorist offence" for the purpose of EU sanctions regimes (and its terrorist financing legislation, which is discussed below). However, it is clear that sexual violence falls within the broader activities identified by the Common Position, specifically it may fall within *"attacks upon the physical integrity of the person"* which may seriously damage a country or international organisation where committed with the aim of (i) seriously intimidating the population or (ii) seriously destabilising or destroying the fundamental political or social structures of a country.

Sexual violence constitutes a serious violation of an individual's physical (and psychological) integrity and is increasingly used as a method to intimidate and destroy populations and undermine and destabilise social structures.

The EU, implementing the UN Security Council Resolutions, has a specific regime for persons/entities associated with ISIL and Al-Qaida, which is separate from the EU terrorist list. This regime is based on Regulation (EU) No 881/2002 (as last amended through Commission Implementing Regulation (EU) 2019/850), and Annex 1 contains a list of persons subject to the measures. The Commission can designate new persons to this regime either on the basis of: (i) a determination by the UN Security Council or Sanctions Committee, or (ii) on the basis of information supplied by an EU Member State.

Sanctions – human rights violations

On 10 December 2018, EU foreign ministers gave political consent to a Dutch proposal, *"Towards An EU Global Human Rights Sanction Regime"*, which aims to introduce a new sanctions regime targeting individual human rights violators. Importantly, this proposal includes the listing of non-state actors. It has been reported that measures include asset freezes for individuals who *"commit serious human rights violations and abuses"*. 'In December 2019, EU foreign ministers agreed that preparatory work should begin on such a regime.

On 14 March 2019, the European Parliament overwhelmingly passed Resolution 2019/2580(RSP) calling on the Council of Europe to establish an EU human rights sanctions regime to punish both state and non-state actors responsible for gross violations of human rights, including through asset freezes.

In particular, it describes the regime as *"an essential part of the EU's existing human rights and foreign policy toolbox and would strengthen...its support to victims of abuse...worldwide"* and emphasises the European Parliament's scrutiny over the regime, *"notably regarding the scope and definition of the listing criteria"*.

The Resolution builds on the Dutch proposal in addition to the various forms of "Magnitsky regimes" that have been developed in a number of countries (named after the Russian tax advisor who discovered a large fraud by Russian officials and was subsequently killed in prison) to specifically target human rights violators. For example, the UK passed a "Magnitsky amendment" to its Sanctions and Anti-Money Laundering Act 2018, which allows Ministers to impose sanctions specifically to *"provide accountability for or be deterrent to gross violations of human rights"*, with similar legislation also being implemented in Estonia and Lithuania. "Magnitsky regimes" have also been implemented outside the EU, in the US and Canada.

There does not seem to have been a discussion on the specific designation of those in terrorist groups engaged in violations of international humanitarian law and human rights abuses through sexual and gender-based violence (as recommended in UN Resolution 2242).

This is a vital opportunity to ensure that such a designation is included in order to create the basis on which financial penalties imposed for breaches of such sanctions could be used to compensate victims of those sexual violence crimes.

Enforcement of sanctions

The enforcement of sanctions regimes occurs at the national level and may take various forms, including financial penalties. This means that the enforcement of EU sanctions including penalties for infringement is a matter for domestic law.

A number of Member States' competent authorities have the power to impose potentially significant fines for violations of sanctions regimes. For example, the Dutch Central Bank and Financial Markets Authority may impose an administrative fine of up to €4 million per violation if an institution has failed to adequately implement compliance with sanctions regulations.[23] In Germany, the maximum fine that can be imposed for financial crimes including terrorist financing is €10 million.[24] In 2017, the UK introduced a maximum financial penalty of £1 million or 50% of the estimated value of the relevant funds or resources (whichever is greater).[25] The UK Office of Financial Sanctions Implementation (OFSI) can impose a fine if it is satisfied that a breach has been committed and the individual or organisation involved "knew, or had reasonable cause to suspect" that their actions were in breach of sanctions.

In France for example, the Prudential Supervision and Resolution Authority recently fined Western Union €1 million for anti-money laundering violations, including where they failed to report suspicious transactions to the Financial Investigation Unit of the Ministry for the Economy and Finance.

Entities in breach of financial sanctions regimes may also face confiscation of assets or benefits derived from such a breach pursuant to a criminal conviction, such as in France. Interestingly, an EU note on "best practices" states that national legislation relating to the violation of sanctions could provide for seizure and confiscation of assets as penalties (these measures can only be implemented by national legislation).

On 13 February 2019, Dutch Prime Minister Mark Rutte urged the EU to take a tougher approach to sanctions. In particular, he highlighted that US sanctions have more of an impact than the EU's due to their extra-territorial effect and that companies need to know that a breach of sanctions will trigger enforcement actions throughout the EU.

Recommendation 3:

It is crucial that states consistently and effectively enforce sanctions regimes at a national level. This is not only to protect the integrity of those regimes, but also to ensure that funds are available to compensate those who fall victim to the violent crimes that such sanctions aim to prevent.

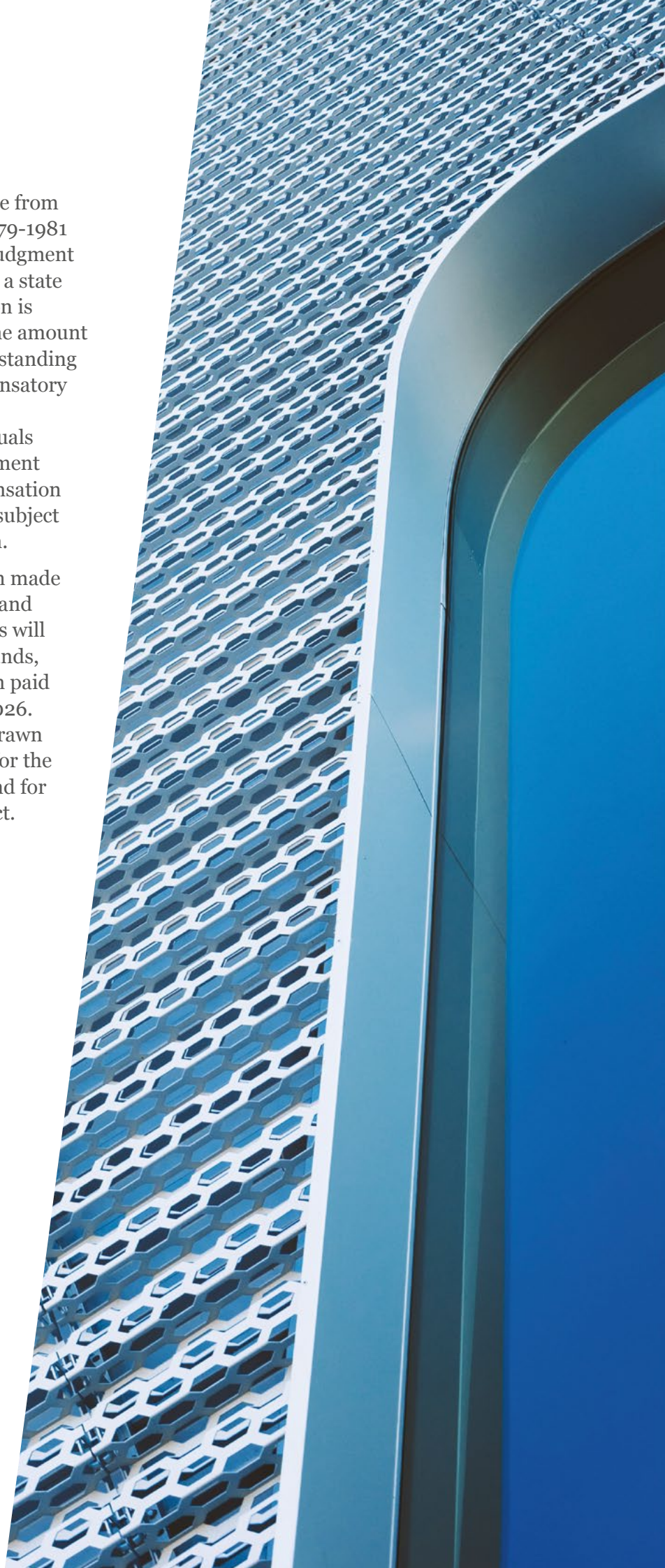
The United States Victims of State Sponsored Terrorism Fund

There is a clear precedent for our proposed approach in US practice. The Justice for United States Victims of State Sponsored Terrorism Act (the "USVSST Act") established the United States Victims of State Sponsored Terrorism Fund (the "Fund"). The USVSST Act provides that fines and forfeitures imposed as a criminal or civil penalty or fine pursuant to breaches of sanctions or other restrictions on financial transactions should be paid into the Fund. It also provides for the transfer of proceeds from the sale of forfeited assets of Iran.

The Fund is managed and invested in the same manner as a trust fund, meaning that the US Secretary of the Treasury is required to report to Congress each year on its financial status and the results of its operations. Any interest accrued is also credited to the Fund.

"Eligible claims" include claims by individuals specifically held hostage from the US embassy in Tehran from 1979-1981 and those in possession of a final judgment for compensatory damages against a state sponsor of terrorism. Compensation is calculated on a pro-rata basis on the amount of available funds based on the outstanding and unpaid amounts on the compensatory damages awarded in the relevant judgment. This means that individuals that have already received full payment of damages will not receive compensation from the Fund. Payments are also subject to a statutory cap of US$20 million.

Payments from the Fund have been made in scheduled distributions in 2016 and 2019. After this year, eligible claims will be paid annually out of available funds, until all eligible amounts have been paid in full or the Fund terminates in 2026. We suggest that lessons could be drawn from the functioning of this Fund for the proposed collective reparations fund for victims of sexual violence in conflict.



Financing reparations from financial penalties levied for violations of counter-terrorist financing legislation

Counter-Terrorist Financing – UN level

In March 2019, the UN Security Council adopted Resolution 2462, calling on Member States to combat and criminalise the financing of terrorists and their activities. It affirmed Resolution 1373 (2001), which reiterates the obligations of States to prevent and suppress the financing of terrorist acts and refrain from providing support to those involved in it.

It further called upon Member States to *"more effectively investigate and prosecute cases of terrorism and to apply, as appropriate, effective, proportionate and dissuasive criminal sanctions to individuals and entities convicted of terrorist financing activity".*

It also highlighted the industries most vulnerable to terrorist financing, including non-financial services such as construction, commodities and pharmaceutical sectors.

The internationally recognised Financial Action Task Force (FATF) Recommendations also urge countries to ensure that there is a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, to deal with those that fail to comply with counter-terrorist financing requirements.

Although there is no single agreed definition of terrorism at UN level, the UN Security Council has recognised, in Resolution 2331(2016), that sexual and gender-based violence is part of the strategic objectives and ideology of certain terrorist groups and used as a tactic of terrorism.

It also affirmed that victims of sexual violence committed by terrorist groups should be classified as victims of terrorism with the purpose of rendering them eligible for official support, recognition and redress available to victims of terrorism.

Counter-Terrorist Financing – EU level

The EU also uses its anti-money laundering provisions to tackle terrorist financing, which is separate from its financial sanctions regimes (although the relevant definition of "terrorist offences" remains the same).

The EU Directive on preventing the use of the financial system for money laundering or terrorist financing (the "Directive"), requires Member States to ensure that entities take measures to detect, prevent and report terrorist financing. Terrorist financing is defined as the *"provision or collection of funds, by any means, directly or indirectly, with the intention that they be used or in the knowledge that they are to be used, in full or in part, to carry out"* terrorist offences (as defined by the Common Position, discussed above).

The Directive mandates that Member States impose administrative sanctions and measures for violations of the requirements imposed. Member States are also free to impose administrative sanctions where criminal sanctions are in place. The Directive provides that in cases of *"serious"*, *"repeated"* and/or *"systematic"* breaches of certain provisions, such as those relating to customer due diligence and record-keeping, authorities should be able to impose a maximum administrative pecuniary sanction of at least twice the amount of the benefit derived from the breach or at least €1 million. It provides for higher fines where the concerned entity is a credit or financial institution, with maximum pecuniary sanctions of €5 million or 10% of annual turnover.

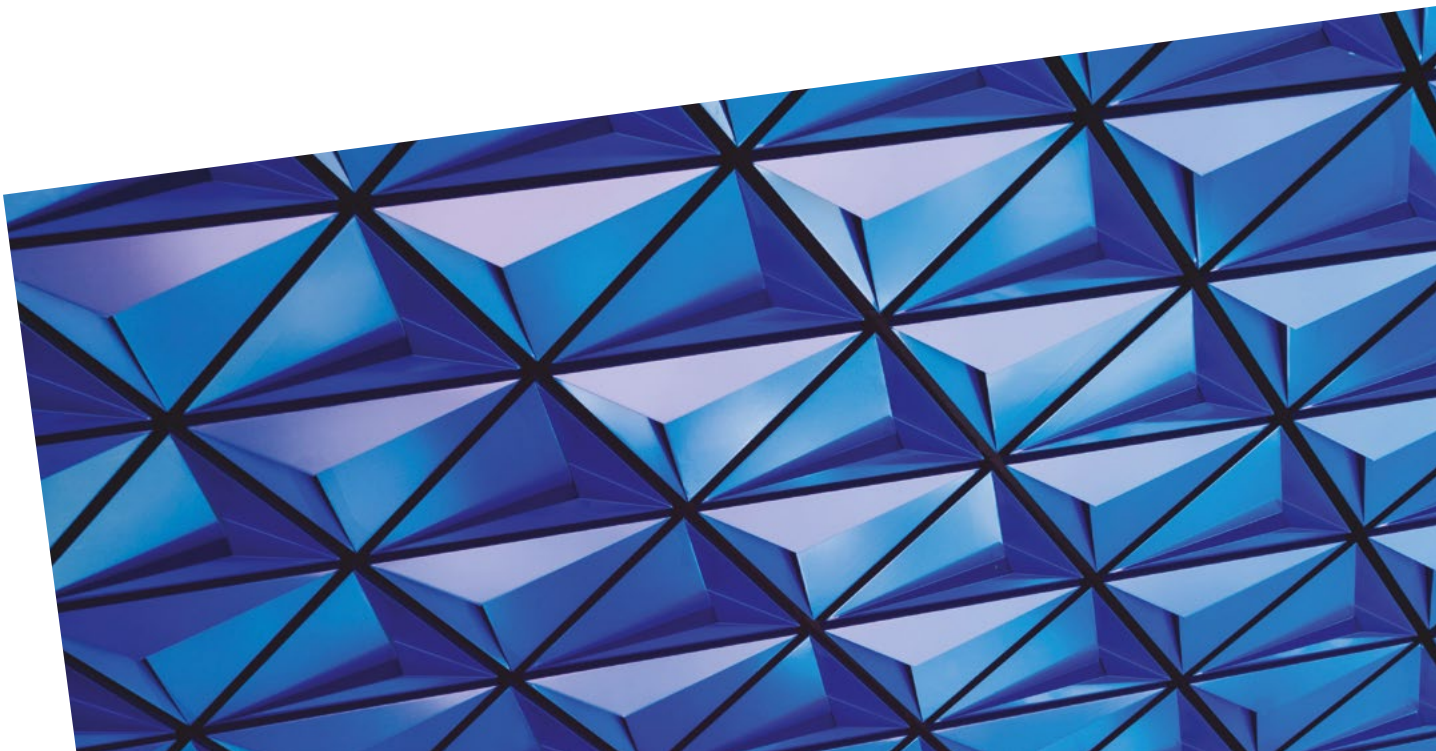
The Directive has been implemented at EU Member State level, with competent authorities empowered to impose significant financial penalties. In June last year, France's banking regulator fined La Banque Postale €50 million for failures to prevent cash transfers to and from people suspected of terrorist activities.

The EU also requires Member States (via Directive 2014/42/EU) to *"take the necessary measures to enable the confiscation, either in whole or in part"* of both the *"instrumentalities"* and proceeds of crime, where there has been a final conviction for a criminal offence. Criminal offences include "terrorist offences", as previously discussed. It seems that only assets linked to terrorism can be confiscated. Implementation of this regime is currently undertaken at a national level.

Counter-terrorism legislation and human rights concerns

Across jurisdictions, national counter-terrorism legislation and the way it has been interpreted and applied has raised serious human rights concerns, including overly broad definitions of "terrorism" and "terrorist offences" and a lack of due process and judicial scrutiny in prosecutions. Due to these concerns, it is often preferable for perpetrators to be charged and prosecuted under international criminal law if possible.

These considerations must be at the forefront of any regime that repurposes financial penalties levied pursuant to counter-terrorism legislation. Any method of financing reparations cannot directly or indirectly support the unjustified encroachment of counter-terrorism regimes on human rights and civil liberties.



Financing reparations from frozen assets

Seizure of assets by virtue of sanctions imposed on individuals and organisations as a consequence of their involvement in conflict is a well-established principle. However, this paper recognises that the repurposing of frozen assets and the interest accrued on them is not an established principle and may require significant changes to existing frameworks.

Recommendation 4:

We further propose the consideration of providing reparations to victims of sexual violence in conflict by using assets frozen pursuant to existing sanctions regimes (and the interest accrued on those assets).

Asset freezing: United Nations

UN Security Council Resolutions 1373 (para 1(c)) and 1452 deal with the freezing of assets. These provide guidelines which States can then use to implement their own asset freezing legislation, and also can be used to freeze assets internationally. The UN has a list of sanctioned individuals who are connected to terrorism and whose assets must be frozen by States. Persons can also be added at the specific request of governments. When a person is placed on the UN list, all UN member states are required to freeze, without delay, their financial assets and economic resources.

UN Security Council resolutions imposing asset freezes may also include provisions that directly, or by implication, limit the Member States' ability to "confiscate or repurpose" the frozen assets, or may impose conditions before such repurposing may take place. Where repurposing is being considered, the resolutions that impose asset freezes will provide for this power on a case by case basis.

When the jurisdictions in which the targeted assets are located become aware of the assets' existence, they frequently "freeze" them under their local powers and, if the property can be traced, seize it. These steps may be authorized by a court order, domestic legislation or through sanctions imposed by the UN Security Council. As a result, such assets are often tied up for extended periods.

Asset freezing: European Union

As noted above, EU sanctions also provide for the freezing of assets and funds. For example, Regulation (EU) No 881/2002 regarding ISIL and Al-Qaida provides for the freezing of funds and financial resources belonging to, owned, held or controlled by such persons. The definition of "funds" includes *"income on or value accruing from or generated by assets"*, which seems wide enough to include interest.

EU Member States may also have in place additional legislative framework, laws or regulations to freeze funds, financial assets and economic resources of persons and entities subject to restrictive measures at a national level.

Frozen Asset Duration

If the freezing order remains in place without being overturned or revoked, assets can remain frozen indefinitely. There are billions of pounds worth of assets that have been frozen for decades. For example, Qaddafi has US$30 billion worth of frozen assets and the UN has recently said that Libyan assets must remain frozen[26].

Further International Country Comparison on powers to confiscate frozen assets

There are a number of jurisdictions which already use their sanctions and asset freezing powers to confiscate assets in the anti-corruption and counter-terrorism fields. The information below is reproduced from the Centre for International Governance Innovation with additional research.

Switzerland

a) In 2015, Switzerland enacted the Foreign Illicit Assets Act (the "FIAA"), allowing for assets deposited in Switzerland by foreign corrupt officials or their close associates to be frozen, confiscated and restituted. The FIAA came into force on 1 July 2016. Under the FIAA, the Swiss Federal Council may order assets to be frozen, provided certain circumstances have been met. The FIAA then provides a procedure by which the Swiss government can seek an order of the Federal Administrative Court to confiscate those frozen assets. Once the assets have been confiscated, Switzerland can seek to restore the assets to the country of origin for the purpose of improving *"the living conditions of the inhabitants of the country of origin,"* and strengthening *"the rule of law in the country of origin and thus…[contributing] to the fight against impunity"*.

b) The FIAA also makes provision for those cases in which it is not possible, for one reason or another, to come to an agreement with the government of the country of origin. Articles 18(4) and 18(5) of the FIAA provide, in substance, as follows:

i) Article 18(4): In the absence of an agreement with the country of origin, the Federal Council shall determine the process of restitution. It may, in particular, return confiscated assets via international or national organizations, and provide for the supervision of the FDFA [Federal Department of Foreign Affairs].

ii) Article 18(5): To the extent possible, it shall include non-governmental organizations in the restitution process.

c) Switzerland has also used civil society organizations to help ensure transparency when assets are returned to the countries of origin, and to monitor the process. For example, in returning assets to Kazakhstan following criminal bribery proceedings in Switzerland, an independent non-profit foundation was set up to monitor the return of the assets. As an added layer of transparency, the foundation was supervised by the International Research & Exchanges Board (Washington) and Save the Children.

d) Arguably, Switzerland is currently leading the way globally in terms of using frozen assets to give back to victims of foreign corrupt officials.

United States

a) In the United States, the International Emergency and Economic Powers Act (the "IEEPA") authorizes the President to impose financial sanctions, including asset freezes, on other nation-states.

b) In February 2011, President Barack Obama used the authority of the IEEPA to order a freeze on all Libyan property and interests in the United States after finding that the government of Moammar Qaddafi had used violence against unarmed civilians. Although the IEEPA does not change the ownership of the frozen assets, it gives the President the power to confiscate the property of any person, organization or country determined to be responsible for attacks against the United States or US interests. The President is then authorised to use those assets in any way determined to be in the best interests of the country.

c) An illustration of the exercise of that authority was provided when President George W. Bush issued an executive order under the IEEPA on 20 March 2003, confiscating certain Iraqi government property for the purpose of using that property *"to assist the Iraqi people and to assist in the reconstruction of Iraq"*[27]. This order applied the approximately US$1.7 billion in assets that had been frozen by sanctions on Iraq to the reconstruction effort.

d) In 2012, Congress passed a law that provided that frozen assets of Iran's Central Bank (which were in a New York Bank) should go toward satisfying a US$2.65 billion judgment won by the families of victims of state-sponsored terrorism against Iran in U.S. federal court in 2007. This was challenged by the Bank before the US Supreme Court, which upheld the result. This is the case that has been challenged by Iran under the Iran-US Bilateral Investment Treaty at the International Court of Justice (now called the *"Certain Iranian Assets case"*).

Canada

a) In March 2019, independent Senator Ratna Omidvar introduced the Frozen Assets Repurposing Act (Bill-S259) in the Canadian Senate (with the support of Allan Rock, the former Liberal attorney general, justice minister and UN ambassador as well as the support of the World Refugee Council, chaired by former foreign minister Lloyd Axworthy).[28]

b) The main aim of this Canadian Bill is to repurpose the frozen assets of corrupt foreign officials through a court order, to alleviate the suffering of the people who have been most harmed by their actions. The Canadian courts would decide how to repurpose the assets, with options including: (i) returning the funds to the country of origin; (ii) donating them to a recognised NGO; or (iii) using them to assist a neighbouring country struggling with an influx of refugees.

c) Canada has already frozen the assets of Burmese military generals who committed grave crimes against the Rohingya, and forced over a million people to flee to

Bangladesh. Once this bill is in force, Canada will be able to seek to repurpose such assets to help the Rohingya that are currently in refugee camps in Bangladesh.

d) In December 2019, the Minister of Foreign Affairs Mandate Letter was published and specifically states that the Minister will develop 'a framework to transfer seized assets from those who commit grave human rights abuses to their victims' building on the Magnitsky sanctions regime.'

United Kingdom

a) In the UK, the main regimes under which assets are frozen by the UK's HM Treasury (through OFSI) are:

i) The Terrorist Asset-Freezing Act 2010 (TAFA 2010) (whereby HM Treasury is required to report to Parliament, quarterly, on its operation of the UK's asset freezing regime mandated by UN Security Council Resolutions 1373 and 1452);

ii) UN Security Council Resolution 1373 (para 1(c)) and 1452;

iii) Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaida and natural and legal persons, entities or bodies associated with them;

iv) Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism; and

v) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban.

vi) The Sanctions and Money Laundering Act 2018 (SAMLA 2018) is enabling legislation that will allow the UK to continue imposing financial sanctions after the UK's departure from the EU. In January 2020, the British Foreign Secretary, Dominic Raab, announced that the UK would 'hold to account those responsible for the worst human rights abuses around the world' by using the 'Magnitsky clause' that exists in SAMLA 2018 to freeze the assets of individuals deemed responsible for such abuses. The Foreign Secretary has stated that the new sanctions regime could be activated immediately after Brexit on 31 January 2020 and a list of new asset freezes is expected in February or March.

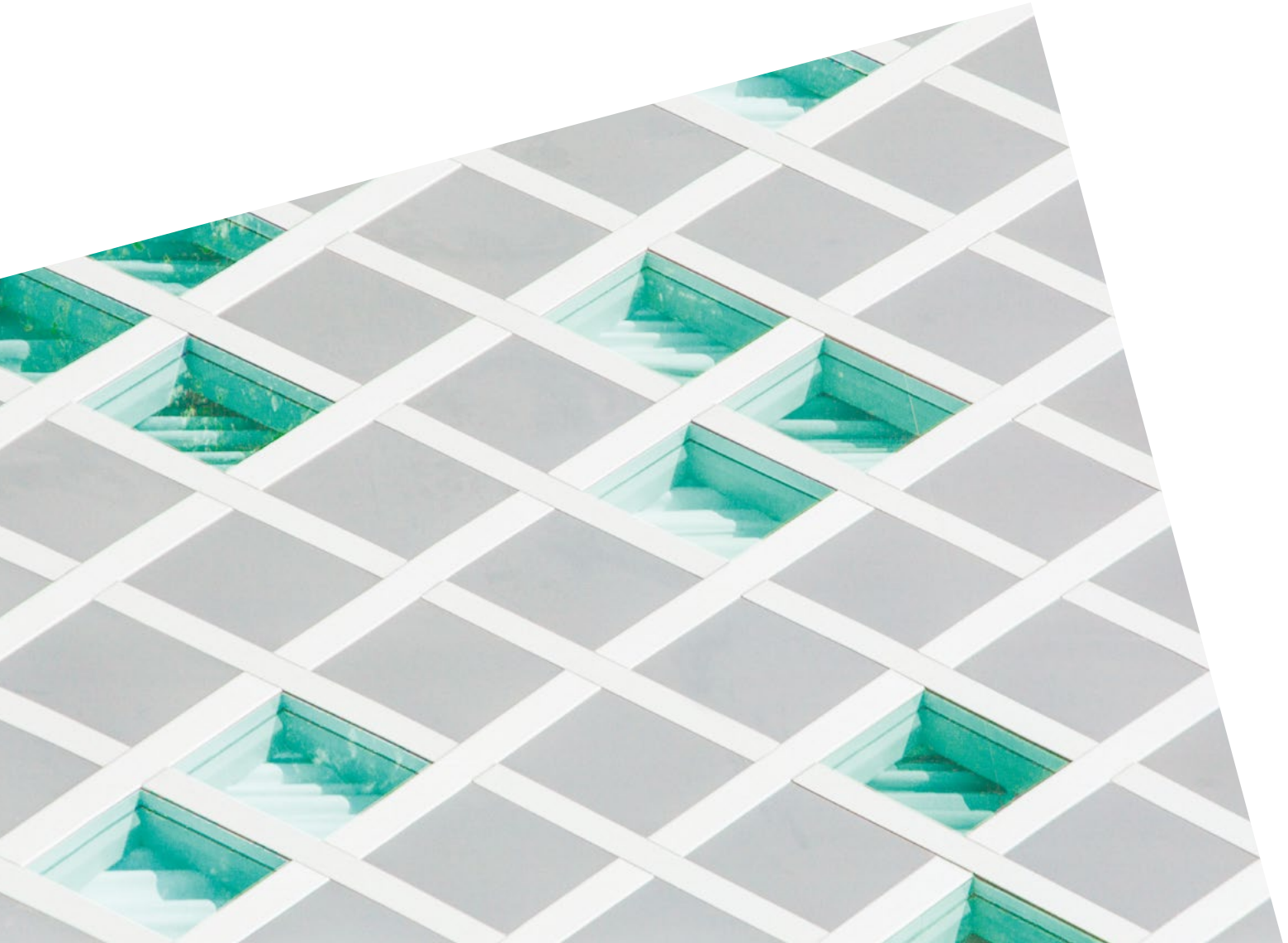
b) There is also a Private Members Bill (started in the House of Lords) named the Asset Freezing (Compensation) Bill [HL] 2017-19 (which only applies to UK citizens). This has not been implemented as the current Government opposes it. The purpose of the Bill is to "allow the use of frozen assets to compensate UK citizens affected by terrorism". The primary argument that the UK government has put forward against the proposal is that since the resolutions of the UN and the EU do not provide for transferring the assets to a third party, the Bill cannot lawfully establish a means for doing so. The government's second argument is that since the resolutions provide for recourse to the assets only for limited purposes, such as providing for the "basic needs" of the person sanctioned, no other use can be permitted. The Government's current position remains that it *"considers compensation claims to be private matters"*. This is clearly inconsistent with the international obligation to provide reparations to victims of sexual violence and sits at odds with the UK's positioning on justice and accountability for victims of sexual violence in conflict where the UK has taken a leadership role.

Sanctions regimes and human rights concerns

The proposal of repurposing frozen assets does raise potential human rights concerns, in addition to those related to the use of counter-terrorism legislation (discussed on page 17). Repurposing assets would engage property rights protected under international law (such as Article 1 of the First Protocol of the European Convention on Human Rights) and the lawfulness of any interference would turn on questions of proportionality and the safeguards that are put in place for those losing their assets. Another concern is one of due process, including the ability of those subject to sanctions, and potentially the repurposing of their assets, to exercise their right to be heard and to have judicial review of such measures. The exact ways in which repurposing could be achieved while avoiding a lack of sufficient legal and human rights protection require further consideration.

British Frozen Assets

HM Treasury produces a Quarterly Report that details its responsibilities under the Terrorist Asset-Freezing etc. Act 2010, as well as the UK's implementation of the UN's ISIL and Al-Qaida asset freezing regime and the EU's regime under EU Regulation (EC) 2580/2001. According to the latest publication[29], as of 30 June 2019, the UK had 45 bank accounts with a total of £97,000 frozen across the various counter-terrorist financing regimes.



Other options for structuring international funds for survivors of conflict-related sexual violence

Unexplained Wealth Orders ("UWO")

A UWO is a UK mechanism designed to confiscate the proceeds of crime by using civil, rather than criminal, powers. It is a civil power and investigative tool introduced by section 1 of the Criminal Finances Act 2017.

It requires the respondent to provide information on their lawful ownership of a property, and the means by which it was obtained. It is important to note that, as an investigation power, a UWO is not (by itself) a power to recover assets. It is an addition to a number of powers already available in the Proceeds of Crime Act 2002 ("POCA") to investigate and recover the proceeds of crime and should therefore be considered in this context.

An enforcement authority, such as the National Crime Agency or the Serious Fraud Office, can make an application to the High Court for a UWO (section 362A(1) of POCA). A UWO can be made in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.

In particular, the High Court must be satisfied that there is reasonable cause to believe that:

a) The respondent holds the property;

b) The value of the property is greater than £50,000;

c) There are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property; and

d) The respondent is either a politically exposed person (PEP) or there are reasonable grounds for suspecting that:

   i) the respondent is, or has been, involved in serious crime (whether in the UK or elsewhere) (the person can be based outside the UK); or

   ii) a person connected with the respondent is, or has been, so involved.

In case of non-compliance with a UWO, the property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part 5 of POCA, unless the contrary is shown. It has been used in the UK against Zamira Hajiyeva (the wife of Jahangir Hajiyev, the former chairman of the International Bank of Azerbaijan) to confiscate millions worth of jewellery and properties. As of yet, no guidance as the circumstances in which they will be used has been released.

Criminal Injuries Compensation Schemes

In countries across the world, schemes have been established that allow statutory compensation to be paid to individuals who have suffered physical and/or mental injury as a result of a violent crime.

In the UK, the Criminal Injuries Compensation Scheme can be used by victims of modern slavery and sexual violence to claim compensation for injuries suffered in England, Scotland or Wales. The victim must ordinarily be a UK resident or an EU/EEA citizen. The scheme allows for claims of loss of earnings, and tariffs for various injuries. There is also a Victims of Overseas Terrorism Compensation Scheme, which has been established to compensate UK residents and EU/EEA citizens who have been injured in a designated terrorist attack.

All of the Permanent Members of the Security Council (apart from China) have a scheme in place that allows victims of terrorism to apply for compensation, with the residency requirements varying dependant on the country. Every EU Member State also has a scheme in place to financially assist those injured in terrorist attacks or violent attacks.[30]

While compensation can be life changing, these schemes put the onus on the victims to claim for compensation and ensure that they know about the funds to which they are entitled. In the UK, the application must be submitted within two years of the violence occurring, if the applicant was aged over 18 at the time of the attack. This can be extended if there are extenuating circumstances, but simply not being aware of the scheme is not an adequate reason.

Historic examples of reparations

In 1996 the families of Cuban-American pilots were compensated out of frozen assets of Cuba held for more than 37 years after 2 planes were shot down by the Cuban government. This money was awarded following a successful wrongful death suit against the Cuban government.

The US government has also paid more than US$213 million to eight families that had won judgments against Iran and in exchange, the families dropped their claims against Iran's frozen assets held by the US. The government hopes to collect from Iran using an international tribunal that was established in 1981 to settle billions of dollars in claims after the Iranian hostage crisis.

Over the past 30 years Switzerland has led the way in the freezing and repurposing of assets of PEPs. Since the mid-1980s, Switzerland has returned almost US$2 billion deposited by PEPs, which is more than all other financial centres in the world by far. The list of dictators and other corrupt officials that have used Swiss banks to keep their assets, which Switzerland has frozen and then returned for redistribution, is extensive: Ferdinand Marcos (Philippines), Vladimiro Montesinos (Peru), Mobutu Sese Seko (former Zaire), José Eduardo dos Santos Santos (Angola), Sani Abacha (Nigeria), officials in Kazakhstan, Raul Salinas (Mexico), Jean-Claude Duvalier (Haiti), Zine el-Abidine Ben Ali (Tunisia) and Hosni Mubarak (Egypt).

In July 2016, Switzerland passed new legislation on the freezing, confiscation and restitution of illicitly acquired assets of PEPs. Among other things, the new legislation improves on existing practices by increasing transparency and monitoring of the confiscation and restitution of assets. An example of this concept in action comes from Kazakhstan. During the 1990s, some US$84 million was placed in a Swiss bank as a result of corrupt dealings among Kazakh officials. The United States, Switzerland and Kazakhstan had conflicting claims to the money. The three governments agreed that the money should be placed in a trust foundation for the benefit of poor Kazakh children. A foundation was created to oversee the disbursement of the funds, and just over US$115 million (US$84 million plus accrued interest) was disbursed through conditional cash transfers, scholarships to attend Kazakhstan higher education institutions and grants to support innovative social service provision. Although there is some criticism of the arrangement, it involved a number of monitoring mechanisms and conditions. The government of Kazakhstan was required to make anti-corruption reforms to ensure the funds would be used properly and to promote better governance. The trust foundation tasked with disbursing the funds was monitored and overseen by the World Bank. Most importantly, the confiscated and repurposed money went to support the future development of Kazakhstan’s youth and not to corrupt government officials.

Notes to editors

Hogan Lovells acts on a pro bono basis for Lotus Flower[31], a UK charity led by genocide survivor Taban Shoresh, and six Yazidi survivors who were victims of sexual violence and enslaved by identified foreign fighters.

Through our representation we have conducted an investigation in accordance with the principles set out in the best practice manual on *"documentation of sexual violence as a crime"* published by the Preventing Sexual Violence Initiative (PSVI). 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 the gross violations of human rights and sexual violence committed against them.

This report is the culmination of a partnership between Hogan Lovells and REDRESS. We would like to thank Megan Smith, Haylea Campbell, Mounir Haddad, Helen Boniface, Imogen Brooks, Yasmin Waljee, Aline Doussin and Charlie Loudon for their work on this paper.

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.

Contacts

Yasmin Waljee
International Pro Bono Director (Hogan Lovells)
E yasmin.waljee@hoganlovells.com

Aline Doussin
Partner – International Trade & Investment (Hogan Lovells)
E aline.doussin@hoganlovells.com

Megan Smith
Associate – Public Law & Policy (Hogan Lovells)
E megan.v.smith@hoganlovells.com

References

1 UN Women (2017), *Conflict-Related Sexual Violence in the Pacific: Putting Victims/Survivors First*, p. 68.

2 Report of the Secretary General, *Conflict relate sexual violence* (2018) UN Doc S/2018/250.

3 UN Women (2017), *Conflict-Related Sexual Violence in the Pacific: Putting Victims/Survivors First*, p. 68.

4 International Federation for Human Rights, *Sexual and gender-based crimes against the Yazidi Community: The role of ISIL foreign fighters* (October 2018)

5 Purna Maya v Nepal, UN Human Rights Committee, Communication No. 2245/2013

6 SA v DRC, African Commission on Human and Peoples' Rights, Communication No. 502/14

7 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 adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

8 Report of the Secretary General, *Conflict relate sexual violence* (2019) UN Doc S/2019/280

9 https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annual-report-2018.pdf

10 REDRESS, *Submission to the Committee on the Elimination of Discrimination on the Elimination of Discrimination against Women for consideration of the combined 6th and 7th Report of the Democratic Republic of the Congo'*, June 2013, para 21, available at: https://redress.org/wp-content/uploads/2017/12/June-Access-to-Justice-for-Survivors-of-secual-voilence.pdf

11 REDRESS, *Submission to the Committee on the Elimination of Discrimination on the Elimination of Discrimination against Women for consideration of the combined 6th and 7th Report of the Democratic Republic of the Congo*, June 2013, para 21, available at: https://redress.org/wp-content/uploads/2017/12/June-Access-to-Justice-for-Survivors-of-secual-voilence.pdf

12 UN Women, *UN Trust Fund to End Violence against Women* https://www.unwomen.org/en/trust-funds/un-trust-fund-to-end-violence-against-women

13 United Nations *Trust Fund to End Violence Against Women*, Annual Report 2015, available at: https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2016/untf-annual-report-2015-en.pdf?la=en&vs=5522

14 This was in addition to considering practical measures to be imposed on individuals, groups or entitles involved or associated with terrorist activities, other than those designated by the Al-Qaida/Taliban Sanctions Committee.

15 Ambassador David Scheffer, *The Rising Challenge of Funding Victims' Needs at the International Criminal Court, Just Security*, 3 December 2018, available at: https://www.justsecurity.org/61701/rising-challenge-funding-victims-international-criminal-court/

16 UN Security Council Resolution 2467 (2019), adopted by the Security Council at its 8514th meeting, on 23 April 2019

17 Under Resolutions 1267 (1999), 1988 (2011), 1989 (2011), 2253 (2015) and 2368 (2017)

18 UN Security Council, Resolution 2339, S/RES/2339 (27 January 2017)

19 UN Security Council, Resolution 2293, S/RES/2293 (23 June 2016)

20 UN Security Council, Resolution 2374, S/RES/2374 (5 September 2017)

21 Un Security Council, Resolution 2002, S/RES/2002 (29 July 2011)

22 UN Security Council, Resolution 2206, S/21/2206 (3 March 2015)

23 Thomson Reuters Practical Law, *Financial crime in The Netherlands: overview* (1 March 2019)

24 Section 30(2), Administrative Offences Law (Gesetz über Ordnungswidrigkeiten)

25 Section 146-149, Policing and Crime Act 2017

26 The Libya Observer, *UN Security Council says 25 assets and their interests must remain focused* (2 January 2019) https://www.libyaobserver.ly/news/un-security-council-says-libyan-assets-and-their-interests-must-remain-frozen

27 ibid.; Federal Register 2003

28 Center for Global Development, Justice for the Displaced? Canadian Senator Ratna Omidvar on the CGD Podcast (18 June 2019), https://www.cgdev.org/blog/justice-displaced-canadian-senator-ratna-omidvar-cgd-podcast

20 HM Treasury, Operation of the UK'S Counter-Terrorist Asset Freezing Regime: 1 April 2019 to 30 June 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829765/Quarterly_report_to_Parliament_1_April_2019_to_30_June_2019___TAFA_2010__.pdf

30 Please refer to the Annex to this paper, where details of these schemes are presented.

31 The Lotus Flower, http://www.thelotusflower.org/

Alicante
Amsterdam
Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest
Colorado Springs
Denver
Dubai
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta
Johannesburg
London
Los Angeles
Louisville
Luxembourg
Madrid
Mexico City
Miami
Milan
Minneapolis
Monterrey
Moscow
Munich
New York
Northern Virginia
Paris
Perth
Philadelphia
Riyadh
Rome
San Francisco
São Paulo
Shanghai
Shanghai FTZ
Silicon Valley
Singapore
Sydney
Tokyo
Ulaanbaatar
Warsaw
Washington, D.C.
Zagreb

Our offices
Associated offices

www.hoganlovells.com