

INNOVATIVE AVENUES TO FINANCE REPARATION IN THE UK

Briefing Paper

January 2024



REDRESS

Ending torture, seeking justice for survivors

■ TABLE OF CONTENTS

EXECUTIVE SUMMARY AND RECOMMENDATIONS	4
BACKGROUND	7
REPURPOSING SANCTIONS VIOLATION PENALTIES AS REPARATIONS	10
What are sanctions and what impact do they have?	10
How are sanctions enforced in the UK?	11
How to repurpose fines for sanctions violations?	14
Are there other options for repurposing assets linked to sanctions violations?	17
How can the UK Government improve its enforcement of sanctions violations?	24
USING ASSET RECOVERY TOOLS TO SEIZE THE PROCEEDS OF HUMAN RIGHTS VIOLATIONS	27
Using civil recovery orders to seize the proceeds of human rights violations	27
Expanding the definition of 'unlawful conduct' to include all human rights violations	28
EXPLORING ALTERNATIVE FINANCING MECHANISMS	29
Supporting victims through voluntary donations by sanctioned persons	29
Taxing profits generated by frozen assets	30
CREATING NEW REPARATION MECHANISMS FOR VICTIMS	32
CONCLUSION	35

LIST OF ACRONYMS

ARIS	Asset Recovery Incentivisation Scheme
CF	Consolidated Fund
CICS	Criminal Injuries Compensation Scheme
CKC	Combatting Kleptocracy Cell
CPS	Crown Prosecution Service
CRO	Civil Recovery Orders
DP	Designated Person
DPA	Deferred Prosecution Agreement
ECHR	European Convention on Human Rights
FCA	Financial Conduct Authority
FCDO	Foreign, Commonwealth & Development Office
GHRS	Global Human Rights Sanctions Regulations 2020
GSF	Global Survivors Fund
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
NCA	National Crime Agency
OFSI	Office of Financial Sanctions Implementation
POCA	Proceeds of Crime Act 2002
SAMLA	Sanctions and Anti-Money Laundering Act 2018
SFO	Serious Fraud Office
UN	United Nations
US DOJ	US Department of Justice
UWO	Unexplained Wealth Orders

EXECUTIVE SUMMARY AND RECOMMENDATIONS



Photo by REUTERS/Carlos Barria. A woman pays tribute to civilians killed by a Russian missile strike in the town of Uman, Ukraine.

Victims of international human rights and humanitarian law violations have the right to effective reparations for the suffering inflicted on them.¹ However, those reparations are not always accessible in practice, leaving victims without redress. Meanwhile, those responsible for the harm inflicted continue to profit from their abuses. It is high time for legal and policy reforms to challenge the financial impunity enjoyed by perpetrators, and fund reparations for victims.

In this report, REDRESS has identified important legal and policy reforms that the UK Government should implement to ensure the repurposing of profits derived from violations of human rights and humanitarian law to provide reparations to victims. Our recommendations show that innovative avenues are available to produce significant funds that would have a transformative impact on the lives of victims. The UK Government must now seize the opportunity to implement these solutions and fulfil victims' rights to reparation.

¹ See for example, Article 8 of the Universal Declaration of Human Rights; Article 2, 3, 9(5) and 14(6) of the International Covenant on Civil and Political Rights (ICCPR); Article 5(5), 13 and 41 of the European Convention on Human Rights (ECHR); Article 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearances.

■ Recommendations to the UK Government:²

Repurposing sanctions violation penalties as reparations

- (1) **Introduce measures to allow for fines imposed for sanction breaches relating to violations of human rights or humanitarian law to be re-directed as reparations to victims.** The UK enforcement authorities have the power to impose significant fines, against those involved in breaching UK sanctions. However, there is currently no legal basis under English law allowing for fines to be repurposed as reparations for victims. In the absence of such legal basis, these funds are paid into the Government's general bank account at the Bank of England (the Consolidated Fund), allowing the Government to inadvertently benefit from the violations.
- (2) **Introduce new procedures to allocate a percentage of confiscated proceeds from sanctions breaches relating to violations of human rights or humanitarian law towards reparations.** UK law does not currently require that the proceeds of confiscated assets derived from criminal conduct be used as compensation for victims of the offence. Any amount confiscated is usually shared on a 50/50 basis between the Home Office and operational partners, such as the relevant police force, the HM Courts and Tribunals Service, and the CPS, as part of the Asset Recovery Incentivisation Scheme (ARIS), rewarding even those who have not participated in the recovery of assets. Meanwhile, victims are usually not allocated any percentage of the sums recovered unless this has been specifically requested by the prosecution or where the relevant agencies agree to make compensation from the proceeds.
- (3) **Introduce an overarching policy framework, requiring UK enforcement agencies to consider reparations for victims of human rights or humanitarian law violations as a factor in the imposition of penalties and consult with affected stakeholders to support the effective delivery of reparations.** This framework would complement existing guidelines, including the 'General Principles to compensate overseas victims of economic crime', and provide a more comprehensive approach to addressing the needs of those affected by human rights and humanitarian law violations.
- (4) **Increase resources for enforcement agencies responsible for investigating and prosecuting sanctions breaches.** The small number of civil fines imposed and the lack of any criminal prosecution for sanctions breaches since 2010 suggests that there is still insufficient resourcing, affecting the enforcement of UK sanctions. The UK Government must effectively enforce UK sanctions to protect the integrity of those regimes and ensure that funds are available to compensate victims. To achieve these objectives, the UK's enforcement agencies require long-term funding, allowing them to build capacity for investigating and prosecuting complex sanctions evasion schemes.
- (5) **Expand the scope of the sanction evasion regime by making failure to disclose assets belonging to a sanctioned person a criminal offence subject to civil fines and criminal penalties.** This amendment would ensure that 'sanction evasion' also captures sanctioned persons seeking to conceal their property and so provide greater transparency about sanctioned assets in the UK. It could also support efforts to seize assets that may be the proceeds of a sanction evasion and repurpose them for the benefit of victims.

2 The UK sanctions individuals and entities for a variety of reasons and uses several different sanctions regimes to designate persons. Therefore, not all individuals or entities on the UK sanctions lists may be sanctioned for their participation or involvement in international human rights or humanitarian law violations. The statement of reasons behind sanctions which the UK Government publishes are often short and do not provide detail as to the alleged activities of the designated persons. However, where there are clear links between a designated person and the perpetration of human rights violations, this report proposes several avenues linked to the designation through which the UK Government could support reparations to victims of those violations.

- (6) **Publish more information about enforcement action taken for sanctions violations and the amount of assets frozen in the UK to date.** The UK's enforcement bodies only publish limited information about how many investigations have been initiated for sanction breaches. Likewise, the UK Government does not publish detailed information about UK frozen assets, including those owned by individual perpetrators, State-owned enterprises and State assets. This lack of transparency prevents affected stakeholders from monitoring enforcement activities and impedes access to information of where missing assets may be and how to best target them.

Using asset recovery tools to seize the proceeds of human rights abuses

- (1) **Expand the scope of 'unlawful conduct' for the purpose of civil asset recovery proceedings to include core human rights violations.** Civil asset recovery orders can provide a powerful route to confiscate assets in the UK that are derived from "*gross human rights violations*". However, the definition of this term is currently too narrowly focused, preventing prosecuting authorities from confiscating illicit wealth derived from some of the most serious human rights violations.

Exploring alternative financing mechanisms, including voluntary donations and targeted taxation

- (1) **Clarify the procedural mechanisms the UK Government intends to put in place for receiving donations from sanctioned persons and repurposing them as victim reparations.** This process should be transparent and allow for victims and civil society to play a role in ensuring that funds are used to deliver effective reparations. It should also include oversight mechanisms to protect due process and provide a measure of accountability, for example by requiring sanctioned persons to commit to the non-repetition of the acts that led to their designations.
- (2) **Support the EU's proposal for a G7-wide windfall tax on the profits of frozen assets and repurpose part of these funds to finance reparations for victims.** The potential of targeted taxation in raising mass funds for reparations was demonstrated by the Belgian Government, which announced in October 2023 that it would invest €1.7 billion in Ukraine, sourced from tax revenue generated from frozen Russian central bank assets.

Creating new reparation mechanisms for victims

- (1) **Commit to transferring repurposed funds to a new reparation scheme for 'victims of internationally wrongful conduct with a relevant UK nexus'.** This nexus may be established where the violations abroad were committed against UK citizens, were perpetrated by UK persons, or where the perpetrators' assets are in the UK.

BACKGROUND

Victims of gross human rights violations, including genocide, torture, slavery, enforced disappearances, or prolonged arbitrary detention, have the right to receive adequate, effective, and prompt reparations under international law, for the abuses suffered.³ This encompasses compensation, restitution, satisfaction, rehabilitation, and non-repetition measures.⁴

The obligation to provide reparations lies with the perpetrator or the State where the violations were committed.⁵ However, when those liable for the harm suffered are unable or unwilling to meet these obligations, other States should take measures to ensure the right to reparations of victims.⁶ Yet, in practice many challenges remain around securing sufficient funding to provide full reparations to victims. At the same time, perpetrators of human rights violations often continue to profit from their abuses, channelling their ill-gotten wealth into safe havens around the world.

To challenge this status quo, States, victim groups, civil society and practitioners have been exploring alternative mechanisms to secure reparations, including by seizing perpetrators' assets⁷ - an endeavour which gathered momentum following Russia's full-scale invasion of Ukraine in February 2022. For example, in June 2022, Canada became the first, and only, G7 country to introduce legislation enabling the confiscation and repurposing of assets frozen under sanctions to compensate victims, aid in reconstructing a foreign State, or restore international peace and security.⁸

However, the legality of such confiscation mechanisms remains the subject of debate. The lack of adequate judicial scrutiny and the fact that they aim to deprive sanctioned targets of their assets permanently raises questions surrounding property rights and due process protections afforded under human rights law.⁹ Further, if such mechanisms were also applied to State-linked assets, it would raise additional concerns regarding possible infringements of domestic and international laws relating to State immunity. This continuing tension with fundamental rights protections has so far stood in the way of other jurisdictions, including the UK and EU, adopting similar legislation.

With legislative reforms on asset confiscation currently stalling, the UK Government should explore alternative avenues to finance reparations in the shorter term.¹⁰ For example, the repurposing of fines for, or assets involved in, breaches of sanctions related to international human rights or humanitarian law violations can potentially offer a particularly abundant source of untapped funding, if channelled correctly.¹¹ Likewise, assets linked to

³ Ibid.

⁴ UN General Assembly, 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, 21 March 2006, A/RES/60/147 (**UN Basic Principles**); see also, UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985, Resolution 40/34.

⁵ Ibid.

⁶ Ibid.

⁷ Global Survivors Fund, 'Reparations are affordable: pathways to financing reparations owed to survivors of conflict-related sexual violence', 22 September 2023.

⁸ Canada, 'Canada starts first process to seize and pursue the forfeiture of assets of sanctioned Russian oligarch', 19 December 2022. See also, Bill S-278, An Act to amend the Special Economic Measures Act (disposal of foreign state assets).

⁹ REDRESS, 'Briefing: Comparative Laws for Confiscating and Repurposing Russian Oligarch Assets', September 2022.

¹⁰ UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 'Financing Reparation for victims of serious violations of human rights and humanitarian law', 14 July 2023, A/78/181, at paragraph 72: "*The redistribution for reparation of fines imposed on persons or entities that violate sanctions faces fewer legal obstacles than the repurposing of frozen sanctioned assets and may provide an easier avenue for funding reparations*".

¹¹ Global Survivors Fund, "Reparations are affordable: pathways to financing reparations owed to survivors of conflict-related sexual violence", 22 September 2023.

unlawful conduct, including human rights violations, may be confiscated for the benefit of victims by deploying traditional asset recovery mechanisms. In addition, innovative financing methods, such as targeted taxation of profits generated by frozen perpetrator assets and incentivising sanctioned persons to donate part of their wealth, can provide powerful complementary funding streams.

This briefing explores these alternative avenues for financing reparations in the UK context and urges the UK Government to take steps to maximise their effectiveness. In the face of billions of dollars amassed by perpetrators and their associates, the UK Government must use all available models to finance reparations and establish mechanisms for delivering them meaningfully to victims and affected communities.

In July 2023, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, specifically recommended that States in the international community should “*consider repurposing frozen assets and fines collected through sanctions against persons involved in human rights violations to repurpose them for reparations of victims*”.¹² Adopting the recommendations set out in this briefing would allow the UK Government to implement this guidance and establish itself as an international leader in the financing of reparations for victims of serious human rights and humanitarian law violations.

A note on terminology

Victims: For the purposes of this briefing, victims include those recognised as victims under Article V of the UN Basic Principles, namely all those “*who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law*”.¹³ Where appropriate, and in accordance with domestic law, the term “*victim*” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

In many cases, the commission of severe human rights violations is also inextricably linked to corruption. As stressed by the UN Special Rapporteur on Torture, corruption can be closely connected to the maintenance and proliferation of violent and discriminatory social orders which disproportionately impact persons who are marginalized or in otherwise vulnerable or precarious situations.¹⁴ As such, there is often a significant overlap between victims of gross human rights violations and corruption.

A conscious decision has been taken to use the word ‘victim’ rather than ‘survivor’. The term ‘survivor’ is in many contexts more empowering for individuals. However, not all victims of torture and other human rights abuses survive, and many who survive continue to be victimised physically, psychologically, financially, and socially. While recognising that many victims are not the passive subjects of crime, the term ‘victim’ has a technical legal meaning in international law and in many domestic systems and is therefore used in this briefing.

The right to reparations: Victims of internationally wrongful acts have the right to receive “*adequate, effective and prompt reparation*”, which should be proportional to the gravity of the violations and the harm suffered.¹⁵ Effective reparations include the following five elements:

¹² UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, ‘Financing Reparation for victims of serious violations of human rights and humanitarian law’, 14 July 2023, A/78/181, para.97.

¹³ UN General Assembly, 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, 21 March 2006, A/RES/60/147.

¹⁴ UN Special Rapporteur on Torture, ‘The relationship between torture and corruption’, March 2019

¹⁵ Ibid.

- **Restitution**, restoring the victim to their original situation before the violation occurred, e.g., restoration of liberty, reinstatement of employment, return of property, and return to one's place of residence.
- **Compensation**, for any economically assessable damage, loss of earnings, property, economic opportunities, legal or medical costs, or moral damages.
- **Rehabilitation**, including medical and psychological care, legal and social services.
- **Satisfaction**, ceasing the continuation of violations, truth-seeking, searching for the disappeared or their remains, recovery, reburial of remains, public apologies, judicial and administrative sanctions, memorials, and commemorations.
- **Guarantees of non-repetition**, including measures to address structural causes of the violation, including, where appropriate, legal, and constitutional reforms.
- These elements complement each other to address different harms suffered, and amount to 'full reparations' when combined.

The rights of the accused: States must respect the right of access to justice and to a fair hearing in all proceedings that determine rights or obligations (see Article 14(1) ICCPR; Article 6(1) ECHR). In criminal proceedings, States must respect the fair trial rights of accused persons, who are entitled to be heard in front of an impartial, competent tribunal and to be presumed innocent until proven guilty (see Article 14(2) ICCPR; Article 6(2) ECHR).

Accused persons also enjoy the right to the protection of property. For example, Article 1 of Protocol No. 1 ECHR protects persons' right to peaceful enjoyment to their possessions, which includes not being subjected to unlawful and arbitrary confiscation. Nevertheless, a person may be deprived of their property under that Article if the confiscations are lawful, proportionate and serve a legitimate public interest. The legal basis must be precise, foreseeable and non-arbitrary and any interference with the individual's right must be reasonably proportionate to the public interest the measure aims to serve.¹⁶

¹⁶ *Dimitrovi v Bulgaria*, App no 12655/09, 3 March 2015.

REPURPOSING SANCTIONS VIOLATION PENALTIES AS REPARATIONS

What are sanctions and what impact do they have?

Sanctions are a unique mechanism in the UK Government’s foreign policy toolkit to seek accountability for, and deter, serious violations of human rights and humanitarian law.¹⁷ The primary legislation underlying the UK’s sanctions regimes is the Sanctions and Anti-Money Laundering Act 2018¹⁸ (**SAMLA**). SAMLA gives powers to the Foreign, Commonwealth and Development Office (**FCDO**) or HM Treasury to make regulations imposing **trade sanctions** (including arms embargoes and export or import controls on certain objects), as well as targeted **financial sanctions** (such as asset freezes), and **travel bans** on individuals or entities (also referred to as **designated persons**, or **DP**) who are deemed by the UK Foreign Secretary to be involved in internationally wrongful conduct.

The UK Government has adopted several targeted financial sanctions regimes related to violations of human rights and humanitarian law under SAMLA, including the UK’s Global Human Rights Sanctions Regulations (**GHRS**)¹⁹, as well as its country-specific regimes, including Iran (Human Rights)²⁰, Myanmar²¹ and Russia²² Sanctions Regulations (among others). Once a target has been designated under these regulations, all assets they own in the UK will be frozen, meaning that the DP cannot access, transfer, or otherwise deal with the assets until sanctions are lifted again. This process therefore does not mean that assets are permanently confiscated or change ownership.²³

Further, UK individuals and entities are prohibited from dealing with the DP. If complied with, these restrictions can be particularly powerful, effectively cutting off DPs from the UK’s financial system. In order for sanctions to be effective, UK authorities must therefore robustly enforce existing designations and penalise any attempt to violate them.²⁴ Without proper and consistent enforcement of sanctions, there is a higher likelihood of circumvention and evasion, thus reducing their overall impact.²⁵ Investigating and prosecuting sanctions violations can also prove critical in the fight against impunity and quest for reparations for victims of human rights and humanitarian law violations – in particular where corporate actors are involved.²⁶

17 REDRESS, ‘Evaluating Targeted Sanctions: A Flexible Framework for Impact Analysis’, November 2023.

18 Sanctions and Anti-Money Laundering Act 2018.

19 The Global Human Rights Sanctions Regulations 2020.

20 The Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019.

21 The Myanmar (Sanctions) Regulations 2021.

22 The Russia (Sanctions) (EU Exit) Regulations 2019. See Regulation 6(2)(a)(i), “an involved person means a person who is or has been involved in destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine.

23 Office of Financial Sanctions Implementation (OFSI), ‘UK Financial Sanctions. General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018’, August 2022.

24 REDRESS, ‘Evaluating Targeted Sanctions: A Flexible Framework for Impact Analysis’, November 2023. p.11

25 Ibid.

26 Genocide Network, ‘Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions: A Comparative Analysis’ (December 2021), p.4.

These actors may operate, or have business interests in parts of the world where gross human rights or humanitarian law violations are being committed.²⁷ Some actors may even play a direct role in facilitating the violations by providing the means by which atrocities are committed and conflicts financed. Where the international nature and complexity of such involvement prevents prosecution for complicity in international crimes, the prosecution of sanctions breaches may provide an alternative avenue for accountability.²⁸

This briefing submits that it also provides an alternative avenue for reparations. The UK's enforcement agencies can already impose significant penalties for violations of UK sanctions related to human rights or humanitarian law violations. If channelled correctly, a proportion of these penalties could be repurposed to provide reparations for victims of the conduct sanctions seek to prevent.

How are sanctions enforced in the UK?

Targeted financial sanctions generally prohibit any UK national or entity anywhere in the world or any person in the territory of the UK or whose activity has a sufficient UK “nexus” from:

- dealing with funds or economic resources owned, held, or controlled by a DP;²⁹
- making funds or economic resources available, directly, or indirectly to a DP³⁰ or for the benefit of a DP;³¹
- making funds or economic resources available to an entity that is ‘owned or controlled’, ‘directly or indirectly’, by a DP, even if that entity is not explicitly recorded on the UK sanction list; and/or³²
- engaging in activities that directly or indirectly circumvent, enable, or facilitate, the contravention of any of the above prohibitions.³³

The practical effect of these prohibitions is that an individual or company subject to UK sanctions legislation is prohibited from having almost any dealing of an economic nature with a DP or any entity they own or control unless a licence or (narrowly drawn) exception applies.³⁴

In the UK, civil and criminal enforcement options are available to remedy breaches of targeted financial sanctions. The Office for Financial Sanctions Implementation (**OFSI** as part of HM Treasury) is responsible for the civil enforcement of sanctions breaches and is the primary sanctions enforcement authority in the UK. On the criminal enforcement side, the responsible authorities are:

- National Crime Agency (**NCA**)
- Crown Prosecution Service (**CPS**)
- Serious Fraud Office (**SFO**)

27 Ibid.

28 Ibid.

29 See for example GHRS at Regulation 11.

30 See for example GHRS at Regulation 12.

31 See for example GHRS at Regulation 13.

32 This may include circumstances where a DP (I) holds (directly or indirectly) more than 50% of the shares or voting rights in an entity; (ii) has the right (directly or indirectly) to appoint or remove most of the board of directors of the entity; or (iii) is otherwise able to ensure the affairs of the entity are conducted in accordance with the person's wishes. Please note that this is a broad and purposive limb of the test intended to capture *de facto* control in a range of circumstances. It could, for example, include appointing, solely, a majority of the members of the administrative, management or supervisory bodies of an entity; controlling the entity alone, pursuant to an agreement with other shareholders; having the right to exercise a dominant influence over an entity; or having the ability to direct another entity in accordance with one's wishes; see for example OFSI, ‘UK Financial Sanctions. General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018’, August 2022, at paragraph 4.1).

33 See for example GHRS at Regulation 16.

34 OFSI, ‘UK Financial Sanctions. General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018’, August 2022.

OFSI

OFSI will generally investigate a potential sanctions breach using its civil powers first before any criminal investigation commences. Where OFSI determines that a breach has occurred on the balance of probabilities, it can impose a civil fine for the offence of up to £1,000,000 or 50% of the estimated value of the funds or economic resources related to the breach, whichever is greater. There is no longer a requirement to prove that a person must have known or suspected that they were breaching UK sanctions law, effectively making breaching sanctions a strict liability civil offence.³⁵

Most of OFSI's enforcement action is not publicised and in its annual review OFSI only publishes limited information regarding the number of cases under investigation and the penalties imposed.³⁶ Therefore, the full extent to which OFSI has been active in enforcing sanctions is not in the public domain. Since 2019, OFSI has imposed civil fines on only six entities, with a combined value of £20,762,734.³⁷

STANDARD CHARTERED BANK



In 2020, OFSI fined **Standard Chartered Bank (SCB)** £20.4 million for breaching EU Russia sanctions by making funds available to a subsidiary of Sberbank of Russia. Sberbank was first sanctioned under the regime in 2014 following Russia's illegal annexation of Crimea due to its close links to the Kremlin.

Photo by Adam Jones, Global Photo Archive (CC BY 2.0)

35 To challenge an OFSI fine, the affected person can seek ministerial review under the Policing and Crime Act 2017 before appealing to the Upper Tribunal. In addition, OFSI has other civil powers available to it short of imposing a fine, including for example issuing a warning or public disclosure in response to a breach (see for example HM Treasury, 'Guidance: Monetary penalties for breaches of financial sanctions', January 2023).

36 OFSI HM Treasury, 'OFSI Annual Review 2022-23 Strengthening our Sanctions', December 2023.

37 UK Government, 'Enforcement of financial sanctions' 31 August 2023

NCA, CPS and SFO

Where OFSI believes that an individual or corporate entity is criminally liable, it will refer the case to the NCA. In February 2022, the UK Government established the 'Combatting Kleptocracy Cell' (**CKC**) within the NCA to investigate criminal sanctions evasion and high-end money laundering.³⁸

A breach of sanctions may be a criminal offence if a person knows or has reasonable cause to suspect that the person, they are dealing with is a DP and continues to engage in prohibited conduct with the DP without a licence. Where the NCA suspects that a crime has been committed, it typically refers the case to the CPS for prosecution or, more rarely, to the SFO (if the relevant offence intersects with international bribery or serious or complex fraud).

The CPS or SFO will then determine whether the case should proceed in accordance with their own policies. If there is a conviction, a judge may impose an unlimited fine or a prison sentence of up to 10 years.³⁹ As discussed further below at pages 17 to 23, the NCA, CPS and SFO also have a range of tools available under the Proceeds of Crime Act 2002 (**POCA**) to pursue the permanent confiscation of assets derived through criminal conduct.

It is unclear how many criminal investigations for sanctions evasion have been initiated by the NCA as it has declined to openly publish this information.⁴⁰ Meanwhile, the investigations that have come to public attention have struggled to progress.⁴¹

MIKHAIL FRIDMAN

In December 2022, a 50-person team from the NCA conducted a dawn raid at Russian businessman **Mikhail Fridman's** London mansion and arrested Fridman himself over an alleged conspiracy to evade UK sanctions, relating to a loan made by Alfa Bank to Fridman's executive assistant before he was sanctioned. However, Fridman's subsequent court challenge exposed several mistakes by the NCA and forced the agency to concede that the search warrant was unlawful and eventually drop its investigation into Fridman for suspected sanctions evasion.

In addition, neither the SFO nor the CPS have made any statements about their policy for prosecuting sanctions breaches, and no such prosecutions have been reported since 2010.

WEIR GROUP

In 2010, the engineering firm **Weir Group** pleaded guilty to breaching UN sanctions in relation to Iraq through the payments of kickbacks in return for lucrative contracts from Saddam Hussein's Government. It was sentenced to financial penalties of £3 million and received a confiscation order for £13.9 million.

38 UK Government, 'Policy Paper. Factsheet: economic crime in the UK', 26 October 2023.

39 SAMLA at Section 17(5)(a). Any penalty imposed following conviction can be challenged via established appeal routes under domestic criminal law. The law relating to appeals from the Crown Court against conviction or sentence is largely contained in the Criminal Appeal Act 1968, the Criminal Appeal Act 1995, Criminal Procedure Rules Part 39 and the Consolidated Criminal Practice Direction. A confiscation order can be appealed by the defendant under section 1 of the Criminal Appeal Act 1968.

40 Home Office Written Questions on Freezing Assets answered on 9 March 2023.

41 Spotlight for Corruption, 'Written evidence submission to the House of Lords European Affairs Committee inquiry on Implications of Russia's invasion of Ukraine for UK-EU relations', 10 November 2023, para. 8. This paragraph also cites the NCA's case against Aven. In May 2022, the NCA secured nine Account Freezing Orders against corporate accounts linked to sanctioned oligarch Petr Aven and seized roughly £80,000 in cash from his business associate Stephen Gater. However, the orders have since been set aside and the NCA recently returned a large number of digital devices seized as part of their investigation due to errors in the handling of legally privileged materials.

Enforcement of other sanctions-related offences

As acknowledged by OFSI, there is a significant overlap ‘in threats, issues and stakeholders’ in sanctions violations and broader economic crime.⁴² For example, a breach of sanctions may also demonstrate a material weakness in a financial institution’s financial crime systems and controls, for which the UK’s financial supervisory authority, the Financial Conduct Authority (FCA), can take separate enforcement action.⁴³

Last year, the FCA reviewed nearly 100 suspected sanctions breaches and conducted 38 proactive assessments looking at firms’ systems and controls.⁴⁴ While the FCA is not responsible for enforcing sanctions *per se* and can only act against financial institutions regulated by it, the fines imposed for any failings can be sizeable.

ROYAL BANK OF SCOTLAND GROUP

In 2010, the FCA’s predecessor fined the Royal Bank of Scotland Group £5.6 million for deficiencies in its systems and controls to prevent breaches of UK sanctions. The regulator found that these deficiencies resulted in an unacceptable risk that the bank could have facilitated transactions involving sanctions targets, including terrorist financing.

How to repurpose fines for sanctions violations?

OFSI can impose significant civil fines for a sanctions violation. At the same time, a criminal conviction could result in the imposition of an unlimited fine and the FCA has regularly imposed fines that exceed £100 million for compliance failings related to financial crime.⁴⁵ As a result, the potential amounts recoverable under such penalties can be substantial. Indeed, other jurisdictions have already demonstrated the potential to realise significant sums by enforcing violations of financial sanctions, export control restrictions or terrorism-financing legislation linked to human rights violations. For example:

42 HM Treasury and HM Home Office ‘Economic Crime Plan, 2019 to 2022’, 13 September 2019, para. 1.12. This chapter focuses primarily on financial sanctions enforcement. The role of the new Director of the Office of Financial Sanctions Implementation (OFSI) has been expanded to include economic crime policy at HM Treasury. In his first blog, the new Director stated of his twin roles: “*This brings HMT’s sanctions policy and operational implementation roles together . . . and integrates them into the government’s broader economic crime agenda. . . I hope to use my expanded role to build stronger links between sanctions and broader economic crime work, exploiting the large overlap in threats, issues, and stakeholders*” (see OFSI, ‘An Introduction from new OFSI director Giles Thomson’, 4 February 2021)

43 On 22 February 2022, the FCA issued a statement which emphasised that firms must have established systems and controls to counter the risk that they might be used to further financial crime and that “*this includes compliance with financial sanctions obligations*” (see FCA, ‘New Financial Sanctions Measures in Relation to Russia’, 22 February 2022). The FCA has subsequently confirmed that, whilst OFSI is responsible for enforcing breaches of the sanctions regimes (which may arise from a failure to have appropriate systems and controls), the FCA may consider taking action “outside” any potential enforcement action taken by OFSI where there is a material weakness of a relevant financial crime system and/or control (see FCA, ‘Letter to the Treasury Committee’s Inquiry on ‘Russia: Effective Economic Sanctions’, 4 July 2022, p.3.)

44 FCA, ‘Our Annual Report and Accounts 2022/23’, p.15.

45 For example, in 2017, the FCA fined Deutsche Bank AG an amount of £163m for failure to maintain an adequate anti-money laundering (AML) framework from the beginning of 2012 to the end of 2015. Due to the bank’s failings in properly overseeing new customer relationships and booking global business in the UK, it exposed the UK financial systems to financial crime risks (see FCA Press Release, ‘FCA fines Deutsche Bank £163 million for serious anti-money laundering controls failings’, 31 January 2017). Further, in 2021, the FCA fined Credit Suisse over £147 million for serious financial crime due to diligence failings related to loans worth over \$1.3 billion, which the bank arranged for the Republic of Mozambique. The bank had arranged these loans, and a bond exchange, for the Republic of Mozambique. Due to this corruption, Credit Suisse agreed to forgive US\$200 million of debt owed by the Republic of Mozambique (see FCA Press Release, ‘Credit Suisse fines £147,190,276 and undertakes to the FCA to forgive US\$200 million of Mozambican debt’, 19 October 2021).

- In 2019, a Belgian court convicted **AAE Chemie Trading, Anex Customs, Danmar Logistics**, and two managers of violating EU trade sanctions by shipping 168 tons of isopropanol – a substance that can be used in the production of chemical weapons—to Syria between 2014 and 2016 without submitting the appropriate export licenses.⁴⁶ The Penal Court of Antwerp fined AAE Chemie Trading, a wholesaler that supplied the chemicals, €346,433 and Anex Customs and Danmar Logistics each €500,000, resulting in combined fine monies of €1,346,433.
- In 2021, the **Danish company Bunker Holding**, its chief executive, and a subsidiary company were convicted of breaching EU trade sanctions for delivering jet fuel at a total value of DKK 647 million to Syria that was subsequently used in Russian bombing raids.⁴⁷ On 14 December 2021, the Court of Odense fined the subsidiary, Dan-Bunkering, DKK 30 million (US\$ 4.56 million) and confiscated DKK 15.65 million of profit—totalling over US\$6.5million. Bunker Holding was additionally fined DKK 4 million, or over US\$580,000.⁴⁸
- In October 2022, the French building materials manufacturer **Lafarge S.A.** and its **Syrian Subsidiary Lafarge Cement Syria** pleaded guilty to conspiring to provide material support and resources to ISIS and the al-Nusra Front in breach of terrorist financing laws.⁴⁹ Between 2013 and 2014 Lafarge made payments to ISIS and the al-Nusra Front in exchange for permission to operate a cement plant in Jalabiyeh in Northern Syria. ISIS and the al-Nusra Front are both US-designated foreign terrorist organisations. The plant enabled Lafarge to earn US\$70.3 million in revenue.⁵⁰ Lafarge agreed to pay US\$778 million in fines and forfeiture as part of the plea agreement.
- In September 2023, **3M Company**, a global manufacturing company, agreed to pay US\$9.6 million to settle its potential civil liability for 54 suspected violations of US sanctions imposed on Iran.⁵¹ It was alleged that, between 2016 and 2018, a 3M subsidiary in Switzerland knowingly sold reflective license plate sheeting through a German reseller to Bonyad Taavon Najam.⁵² Bonyad Taavon Najam is controlled by Iran’s Law Enforcement Forces, who are responsible for widespread human rights abuses in Iran and Syria.⁵³

If channelled correctly, fines for financial sanctions or export control violations inked to human rights or humanitarian law violations could be a potentially abundant source of funding for reparations for victims. However, there is currently no established legal basis under UK law, enabling the repurposing of civil, criminal, or regulatory fines for the benefit of victims.

While OFSI can issue civil fines for sanctions breaches, section 146 of the Police and Crime Act 2017 provides that any monetary penalty must be paid into the Consolidated Fund (**CF**) - the Government’s general bank account at the Bank of England. Likewise, fines imposed after conviction for a criminal sanctions breach⁵⁴ and all financial penalties collected by the FCA⁵⁵ are equally surrendered to the CF after any retentions permitted by HM Treasury.

Fines for sanction breaches should not be allocated fully to the CF, as this risks the UK Government inadvertently benefitting from the violations that triggered sanctions.

46 Syrian Archive, ‘Antwerp court convicts three Flemish firms for shipping 168 tonnes of isopropanol to Syria’, 7 February 2019.

47 Manifold Times, ‘Dan-Bunkering, Bunker Holding and CEO guilty of Syria sanctions violations; fined USD 5.17 million in total’, 14 December 2021.

48 Reuters, ‘Danish fuel trader convicted over exports to war-torn Syrian’, 14 December 2021.

49 US Department of Justice, ‘Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations’, 18 October 2022.

50 Ibid.

51 US Department of the Treasury, ‘Enforcement Release: OFAC Settles with 3M Company for \$9,618,466 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations’, 21 September 2023.

52 CNN Business, ‘3M agrees to pay almost \$10 million to settle apparent Iran sanctions violations’, 26 September 2023.

53 US Department of the Treasury, ‘Enforcement Release: OFAC Settles with 3M Company for \$9,618,466 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations’, 21 September 2023.

54 See section 38 of the Courts Act 2003 as regards fines imposed by a magistrates’ court. A combination of section 38 of the 2003 Act, section 140 of the Powers of Criminal Courts (Sentencing) Act 2000 and section 17(2) of the Interpretation Act 1978 seems to produce the same result as regards fines imposed by the Crown Court (by treating them as if they were imposed by a magistrates’ court) (see UK Government, ‘Guidance: Financial Resolutions Pamphlet’, 5 April 2023). See also HM Courts & Tribunals Services, ‘Trust Statement 2022-23’, 19 July 2023.

55 See for example, under the Financial Services and Markets Act 2000, Schedule 1ZA, Part 1, para. 19.

Recommendation 1: The UK Government should introduce measures to allow for fines imposed for sanctions breaches relating to violations of human rights or humanitarian law to be re-directed as reparations to victims.

There are two potential routes for the UK Government to do so:

(a) Annual parliamentary approvals of disbursements from the CF: Most payments out of the CF require annual authorisation by the House of Commons to remove the monies.⁵⁶ This authorisation is usually provided via annual ‘Supply and Appropriation Acts’,⁵⁷ that outline the estimates that have been approved per Government department.⁵⁸ Fines collected from sanctions violations could be released from the CF and sent to specific Government departments to allocate the funds to victims. In this case, the relevant department, for example the FCDO, could request to drawdown extra funds representing the value of the fine monies via its annual ‘Supply Estimate’ as part of its budgetary resources.⁵⁹ To add the amounts generated by fines imposed for sanctions breaches related to human rights or humanitarian law violations, the FCDO would need to enter into an agreement with OFSI and other UK law enforcement agencies, allowing them to drawdown the funds obtained through fines and setting out how they will be spent.

If fine monies are to be transferred out of the CF as a ‘single payment’ either to a separate fund or a Government department (rather than it being an increase to the relevant department’s budget), the House of Commons must pass an additional Money resolution, authorising new charges upon the public revenue.⁶⁰ A similar approach has been adopted, for example, by the US Government, which, in its 2023 Consolidated Appropriations Act, included a bill allowing the Attorney General to transfer to the Secretary of State the proceeds of any assets seized from sanctioned Russian oligarchs, or assets used in a sanctions violation, to fund the rebuilding of Ukraine.⁶¹ The bill was first put into practice in May 2023, when US Attorney General Merrick Garland authorised the transfer of assets confiscated from Russian oligarch Konstantin Malofeyev for use in Ukraine.⁶²

Relying on annual expenditure authorisations by Parliament may provide a pragmatic and relatively efficient solution for making the proceeds of sanctions violations available to victims as reparation. However, it also risks creating an ad hoc solution, dependent on political will, whereas victims require access to long-term and impartial support.

(b) Introducing new laws to allow for the repurposing of fines: To avoid the need for annual parliamentary approval and create a firm legal basis for the repurposing of sanctions violation penalties, the UK Government could also introduce an ‘original authorising statute’, for example by amending SAMLA. This could stipulate that, rather than going into the Consolidated Fund, in certain circumstances, a proportion of the fines imposed for sanctions violations should be re-directed to a dedicated reparation scheme for victims of internationally wrongful conduct (see discussed further below at pages 32 to 34). Such circumstances may include where the sanction that has been violated has been imposed in response to the commission of serious human rights or humanitarian law violations.

56 UK Parliament, ‘Erskine May – The Consolidated Fund Chapter 35’.

57 Daniel Greenberg, ‘Consolidated Fund’, 7 November 2022.

58 UK Parliament, ‘MPs’ Guide to Procedure – Supply and Appropriation Bills’.

59 ‘Consolidated Fund’ Daniel Greenberg 7 November 2022; see also HM Treasury, ‘Supply Estimates: a guidance manual’, July 2011.

60 Ibid.

61 Section 1708. See also CBS News, ‘House passes \$1.7 trillion spending bill in sprint to avert government shutdown’, 23 December 2022.

62 Reuters, ‘U.S. attorney general OKs transfer of forfeited funds from Russia oligarch for use in Ukraine’, 10 May 2023.

KONSTANTIN MALOFEYEV



In April 2022, the Russian investor and founder of a pro-Putin media empire, **Konstantin Malofeyev**, was indicted by a New York court for violations of US Russia sanctions. Along with the indictment, the US issued a seizure warrant for US investments that Malofeyev allegedly conspired to transfer out of the US in violation of sanctions issued against him in relation to Russia's 2014 invasion of Ukraine.

In November 2022, the US initiated a civil forfeiture action to confiscate US\$5.4 million from a US bank account belonging to Malofeyev. On 2 February 2023, a US federal judge ordered the funds to be forfeited. A day later, Attorney General Garland announced that he had ordered that these funds be sent to the US Department of State for dispersal in Ukraine in accordance with the new legal authority granted under the 2023 Consolidated Appropriations Act. On 10 May 2023, Attorney General Garland announced that he had authorised the transfer of the funds for *"the rebuilding of Ukraine"*.

Photo by Пресс-служба Президента Приднестровья (CC BY 4.0)

Are there other options for repurposing assets linked to sanctions violations?

Beyond the repurposing of fines for sanctions violations, mechanisms exist under English law and within the CPS, NCA, and SFO to confiscate linked to criminal conduct and compensate those (both in the UK and internationally) who are victims of crime, including in the context of a criminal sanctions breach.

Recovering assets involved in sanctions violations

Property or funds obtained as a result of sanctions violations may be pursued through confiscation proceedings following prosecution and conviction or in separate civil proceedings.

Under Part 2 of POCA, a court may make a **confiscation order** against a defendant convicted of an offence before the UK's Crown Court and who has been found to have benefitted from criminal conduct, including sanctions violations. While proof of 'beyond reasonable doubt' is required for the underlying conviction, the prosecutors only need to demonstrate on 'the balance of probabilities' that the assets were derived from the crime. A confiscation order will require the defendant to pay an amount equivalent to the value of the benefit they received.

R V. MCDOWELL

In *R v. McDowell* [2015] 2 Cr App R (S) 14 (CA), M had negotiated the sale of prohibited items from China to Ghana without a licence, in contravention of Articles 4 and 9(2) of the Trade in Goods (Control) Order 2003. The confiscation order made against M was based on his gross receipts for the trades (approximately £2.5 million) and the commission payments.

Assets involved in sanction breaches may also be recovered through separate **civil asset recovery proceedings** under Part 5 of POCA as an alternative to conviction.⁶³ Such proceedings may include Account Freezing Orders under Chapter 3B of the Criminal Finances Act 2017, which give the courts the power to freeze money held in an account, when it is believed that the money derives from, or is intended for use, in unlawful conduct. The frozen funds can then be seized. It also includes civil recovery orders (**CROs**), allowing for the confiscation of proceeds of crime, where a criminal confiscation is not possible.

ANISEH CHAWKAT

In 2019, monies received by Aniseh Chawkat, a **niece of Syrian president Bashar al-Assad** in breach of the UK's Syria sanctions were subject to a magistrates' court bank account forfeiture order. The court found that more than £150,000 had been paid into her Barclays account via 56 cash deposits made around the country in 2017 and 2018. The money is believed to have been transferred from members of the Assad regime via a Middle East middleman using a money laundering network in the UK.

English law does not currently require that the proceeds of confiscated assets derived from criminal conduct be used as reparation for victims of the offence. Any amount confiscated is typically shared on a 50/50 basis between the Home Office and operational partners, such as the local police force, the HM Courts and Tribunals Service, and the CPS, as part of the Asset Recovery Incentivisation Scheme (**ARIS**).⁶⁴ It is usually not paid to the victim(s), unless the prosecution makes a specific request for, and the Crown Court imposes, a compensation order under the Sentencing Act 2020.

While the Home Office portion of ARIS funds is earmarked as part of its core budget, operational partners may use the funds as they see fit.⁶⁵ The vast majority of ARIS funds are reinvested in future asset recovery work. In the fiscal year 2021/2022, £117.9 million of monies recovered under POCA were distributed among operational partners through ARIS, 71% of which was used by the agencies to fund 'asset recovery work'. Only 8% (or £1.8 million) was used for 'community projects' (in previous years this figure hovered around 3%).⁶⁶ This practice has

⁶³ For example, in *Mabey & Johnson*, the company's parent company settled civil asset recovery proceedings instituted by the SFO in the High Court under Part 5 of POCA, for £130,000 (see The Guardian, 'British firm Mabey and Johnson convicted of bribing foreign politicians', 25 September 2009).

⁶⁴ UK Home Office, 'Asset Recovery Statistical Bulletin 2014/15 – 2019/20'.

⁶⁵ Russell Webster, 'Recovering the Assets of Crime', 13 September 2017.

⁶⁶ UK Home Office, 'Asset Recovery Statistical Bulletin: Financial years ending March 2018 to March 2023', 7 September 2023.

received criticism in terms of ‘policing for profit’ because ARIS also rewards those who have not taken a role in the recovery of assets.⁶⁷ As a result, in 2016 the Home Affairs Committee recommended the return or donation of at least 10% of the criminal assets to the communities affected, for example ‘through charities’.⁶⁸ However this recommendation was rejected by the Government on the basis that operational partners already have the discretion to reinvest ARIS funds into local community activities.⁶⁹

Recommendation 2: The UK Government should introduce new procedures to allocate a percentage of confiscated proceeds from a sanctions breaches relating to violations of human rights or humanitarian law towards reparations.

The UK Government should act upon the recommendation by the Home Affairs Committee and introduce a new formula that requires a percentage of ARIS funds to be re-purposed as reparations for victims of the relevant offence. Where these offences are linked to human rights or humanitarian law violations, funds recovered could be re-directed to dedicated reparation schemes for victims of internationally wrongful conduct.

Obtaining compensation for victims of sanctions violations

In addition to confiscation orders, a court may also order an offender to pay compensation to the victim of the crime. Under Chapter 2, Part 7 of the Powers of Criminal Courts Sentencing Act 2020, a court can make **compensation orders** as part of a defendant’s sentence. The Sentencing Council’s General Guidelines for sentencing explicitly state that *“in all cases, the court should consider whether to make compensation and/or other ancillary orders”*.⁷⁰ A court may therefore order an offender to pay compensation for *“any personal injury, loss or damage”* arising from the offence for which they have been convicted or to pay expenses for the funeral and bereavement where that offence has resulted in death.⁷¹

In the context of a sanctions violation, it would need to be demonstrated that the breach facilitated or enabled the human rights or humanitarian law violations which led to the sanction. Such a clear link between the breach and the underlying violation can be seen, for example, in the trade (rather than financial) sanctions context with the case of Dan-Bunkering, where jet fuel delivered by Dan-Bunkering to the Russian military in breach of trade sanctions was subsequently used in Russian airstrikes in Syria, resulting in civilian deaths and loss of property.⁷²

Compensation is also integral to **plea arrangements** or **deferred prosecution agreements (DPA)** with individual defendants or corporate entities who have pled guilty to a breach of financial sanctions. DPAs are legal arrangements with either the CPS or SFO, subject to approval by a judge, that state that a criminal prosecution will be suspended for a defined period if certain conditions are met. Among these conditions, Schedule 17 of the Crime and Courts Act 2013 states that a DPA may require the defendant to compensate victims of the alleged offence.⁷³ The DPA Code of Practice further adds that it *“is particularly desirable that measures should be included in the terms of the DPA that achieve redress for victims, such as payments of compensation”*.⁷⁴

67 UK Home Affairs Select Committee, ‘Fifth Report of Session 2016-17, Proceeds of Crime (HC 25)’, 15 July 2016.

68 Ibid.

69 UK Government, ‘Proceeds of Crime: Government response to the Committee’s Fifth Report of Session 2016-17’, 21 November 2016.

70 UK Sentencing Council, ‘General guideline: overarching principles’, 1 October 2019.

71 Where a defendant is ordered to pay both a confiscation and compensation order but cannot afford to pay both orders, the court will order them to pay the confiscation order and direct that that amount is used to pay the compensation order as a priority (See CPS, ‘Proceeds of crime’).

72 Syrian Archive, ‘Antwerp court convicts three Flemish firms for shipping 168 tonnes of isopropanol to Syria’, 7 February 2019.

73 Schedule 17, para.5(3)(b).

74 SFO & CPS, ‘Deferred Prosecution Agreements Code of Practice’.

Obtaining compensation for victims ‘overseas’

In 2018, the SFO, CPS, and NCA jointly established some “*General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases*” (the **General Principles**), which aim to use funds paid under those orders, and other powers, to secure compensation for overseas victims of economic crime. Specifically, these principles commit the agencies to consider compensation “*in all relevant cases*” and, where appropriate, use available legal means to secure it. Those means include compensation and confiscation orders, securing compensation as part of the terms of any DPA, or returning funds to victims in cases disposed of via civil asset recovery proceedings.⁷⁵

GRIFFITHS ENERGY



In March 2018, the UK High Court granted the SFO’s civil recovery order of £4.4 million against two Chadian diplomats who took bribes from a Canadian oil company, **Griffiths Energy**, in the US and Canada. In return for securing exclusive contracts with corrupt deals, Griffiths bribed the diplomats with discounted shares deals and ‘consultant fees’. Following the takeover by Griffiths by a UK corporation, the corrupt proceeds entered the UK’s jurisdiction, and the SFO began civil recovery proceedings to secure the share sale profits.

The SFO subsequently confirmed that the money recovered would be held on trust by the SFO and entered into the CF, after which the Department for International Development would identify key projects to invest the money in. In November 2021, it was announced that the funds had been used to support Chad’s Covid-19 response and provide humanitarian assistance to over 150,000 people, including malnourished children, through partners on the ground such as World Food Programme, International Committee of the Red Cross and UNICEF.

Photo by Gareth Williams/Alamy Stock Photo.

⁷⁵ SFO, CPS & NCA, ‘General Principles to compensate overseas victims (including affected States) in bribery, corruption, and economic crime cases’.

The General Principles also state that the agencies should work with the relevant UK Government departments to identify the potential victims overseas, obtain evidence for compensation, and identify “*a suitable means by which compensation can be paid to avoid the risk of further corruption*”. The SFO has published examples of compensation being successfully secured for overseas victims, which, between 2014 and 2018, included a total of £49.2m returned to the authorities in Macao⁷⁶, the Kenyan Government⁷⁷, the Tanzanian Government,⁷⁸ and the UK’s Department for International Development (as it was) to invest in projects in Chad.

The application of the General Principles to date does not suggest that there needs to be a direct relationship between the offence for which the compensation or confiscation order is imposed, and harm caused to the victim to the extent one is readily identifiable. For example, civil asset recovery proceedings brought by the SFO against an energy company for the bribery of Chadian diplomats was put towards humanitarian projects in Chad, which at the time had not yet been identified, without any requirement to prove that the beneficiaries were victims of the offence.⁷⁹

The SFO Chadian corruption case sets a helpful precedent for compensation to be paid to victims of human rights or humanitarian law violations even where the person on whom a compensation order is imposed committed only a breach of sanctions and not the underlying abuses. It further illustrates mechanisms for diverting recovered funds to affected communities – rather than to government authorities in the country of origin.

Recommendation 3: The UK Government should introduce an overarching policy framework that requires all UK enforcement agencies to consider reparations of victims of human rights or humanitarian law violations as a factor in the imposition of penalties.⁸⁰

This framework could provide the foundation for further legislative reforms for diverting fines or recovered funds to victim groups and improve opportunities for affected stakeholders to make representations regarding the case for reparations and how it should be allocated. The General Principles are a welcome development, encouraging enforcement agencies to apply for compensation as means for helping victims of economic crime at an international level. However, they do not provide an overarching framework for ensuring that victim compensation is integrated into a broader enforcement strategy for cases involving human rights or humanitarian law violations. The General Principles only bind those enforcement agencies that subscribed to it, which at present include the SFO, NCA, and CPS, and apply to cases relating to ‘bribery, corruption and economic crime overseas’. This means that they do not bind OFSI or are applicable to victims of other crimes with an international nexus.

Further, as outlined above, the General Principles only encourage the prosecuting authorities to consult with different UK Government departments. In addition, avenues for civil society or victim groups to intervene as third parties in criminal proceedings at the sentencing stage to advocate for reparations are limited.

76 SFO Press Release, ‘New Joint principles published to compensate victims of economic crime overseas’, 1 June 2018.

77 SFO Case Information, ‘Smith and Ouzman Ltd’, 11 September 2014.

78 SFO Press Release, ‘SFO agrees first UK DPA with Standard Bank’, 30 November 2015.

79 SFO Press Release, ‘SFO recovers £4.4m from corrupt diplomats in ‘Chad Oil’ share deal’, 22 March 2018.

80 The Police and Crime Act 2017 already appears to give the UK Treasury (i.e. OFSI) a large degree of latitude in deciding “the circumstances in which it may consider it appropriate to impose a monetary penalty” and how it will determine the amount (s.149), as such there does not appear to be a statutory bar to adding compensation as a factor. (see OFSI, ‘OFSI enforcement and monetary penalties for breaches of financial sanctions – Guidance’, August 2023, p.149).

NIGERIA V. SFO AND GLENCORE



In *Nigeria v. SFO and Glencore* [2022] EWCR 2, the Federal Republic of Nigeria made a bid to claim compensation from the oil and commodities trading company Glencore, which was convicted of bribery that occurred in Nigeria and four other African nations. Nigeria was trying to address the UK Crown Court at Glencore’s sentencing hearing after the SFO declined to seek a compensation order on the country’s behalf.

The Crown Court held that it was “not a suitable venue for hearing representations from the wide range of victims who may want to have compensation orders made in their favour” and therefore concluded that Nigeria had no standing to make representations to the court regarding the making of a compensation order in its favour. This case sets an unhelpful precedent, downplaying the value representations by victims have in advocating for compensation orders, including by providing evidence on the local context and the causal links between the violations and the harm caused.

Photo by Marlon Trottman/iStock.

Delivering recovered or repurposed funds as victim reparations in consultations with affected stakeholders can guard against the misuse of funds and ensure that the interests of victims are prioritised in line with their rights to reparation under international law.⁸¹ In this context the US Government has set a precedent of how such consultations could work in practice.

⁸¹ REDRESS, ‘Equatorial Guinea’s Stolen Assets Framework for Repatriation – Proposal for the repurposing of US\$200 million in stolen Equatorial Guinean assets seized around the world’, February 2023.

BPN PARIBAS



In 2014, **BNP Paribas** pleaded guilty to evading US trade embargoes to help clients in Sudan, Cuba, and Iran between 2002 and 2012, for which it agreed to pay a criminal penalty of US\$8.9 billion. This was the first time a financial institution had been convicted for violations of US sanctions, and, at the time, the total financial penalty was the largest ever imposed by the US Department of Justice (**DOJ**) in a criminal case.

BNP Paribas admitted to acting as Sudan's 'de facto central bank' between 2002 and 2008, processing billions of dollars' worth of transactions on behalf of sanctioned Sudanese entities. During that period, the Sudanese Government committed widespread human rights violations – mass murder, forced displacement, sexual violence, detention, torture, and other forms of inhumane treatment – resulting in the death of more than 300,000 civilians, specifically marginalised communities in Darfur and other areas.

In 2015, the US DOJ announced that it would explore "*ways to use the forfeited funds to compensate individuals who may have been harmed by the sanctioned regime of Sudan*". It subsequently put out a call for individual victims or their representatives to provide information to the US Government describing the nature and value of harm they had suffered. A proposal to use the financial penalties that gained support from Sudanese civil society called for funds to provide emergency humanitarian aid for Sudanese refugees and internally displaced persons and set up a community-based reparation programme focussing on reconstruction and redevelopment at the end of the conflict.

However, despite the initial momentum, Sudanese victims never received compensation from the monetary penalties levied against BNP Paribas. Instead, these funds were diverted to the US's Victims of State-Sponsored Terrorism Fund, which provides compensation to US persons harmed by State-sponsored terrorism.

Photo by Global Panorama (CC BY-SA 2.0)

How can the UK Government improve its enforcement of sanctions violations?

Repurposing fines for, or assets linked to, sanctions violations as reparations for victims ultimately depends on the UK Government's ability to effectively enforce sanctions violations in the first place. Yet, UK sanctions enforcement has been impacted by several challenges to date, including the following:

Lack of resourcing impacting effective enforcement of UK sanctions

Despite the 175% increase in resourcing for OFSI's enforcement team in the financial year 2022-2023⁸² and the UK Government having committed £50 million to tackle sanctions evasion through its Economic Deterrence Initiative in March 2023,⁸³ the low number of fines imposed by OFSI and the lack of any criminal prosecution for sanctions breaches since 2010 suggests that there is still insufficient resourcing and lack of specialism, affecting the effective enforcement of UK sanctions.⁸⁴ For example, since April 2022, OFSI imposed only two fines totalling £45,000 despite receiving at least 463 reports of suspected breaches of targeted financial sanctions in 2022-2023 (excluding oil price cap and counter-terrorism breaches).⁸⁵ There is no public record of prosecutions resulting from the Combatting Kleptocracy Cell's investigations.⁸⁶ While the NCA reported that the CKC had "*secured almost 100 disruptions – actions that remove or reduce a criminal threat – against Putin-linked elites and their enablers*",⁸⁷ there is hardly any publicly available information about their performance and the nature of the cases under investigation.⁸⁸

By contrast, individual EU Member States have taken a more forceful approach to enforcing EU Russia sanctions violations. For example, in March 2023 the Dutch Public Prosecution Service reported 45 live criminal investigations into potential breaches of EU Russia sanctions.⁸⁹ On 14 October 2023, it sentenced four Dutch companies and eight individuals to community service and fines totalling €160,000 for breaching EU Russia sanctions between 2014 and 2017 by helping Moscow build a bridge to Crimea and confiscated €71,330 in profits.⁹⁰ Meanwhile the US reported in February 2023 that it had indicted over 30 individuals and two corporate entities accused of sanctions violations, export control violations, money laundering, and other offences⁹¹ and seized, forfeited, or restrained over US\$500 million in assets belonging to Russian oligarchs and others.⁹²

Recommendation 4: The UK Government should increase resources for enforcement agencies to allow them to build capacity for investigating and prosecuting complex sanctions evasion schemes.⁹³

This is crucial to enable the UK Government to effectively enforce UK sanctions to protect the integrity of those regimes and ensure that funds are available to provide reparation to those who fall victim to the conduct that triggered sanctions.⁹⁴

82 OFSI HM Treasury, 'OFSI Annual Review 2022-23 Strengthening our Sanctions', December 2023.

83 UK Government Press Release, 'New fund announced to support UK's national security priorities', 13 March 2023.

84 Maria Nizzero, 'From Freeze to Seize: How the UK Can Break the Deadlock on Asset Recovery', 10 October 2022, Royal United Services Institute.

85 OFSI HM Treasury, 'OFSI Annual Review 2022-23 Strengthening our Sanctions', December 2023.

86 NCA, 'New sanctions SARS in Action – Issue 15', March 2022.

87 NCA News, 'Wealthy Russian businessman arrested on suspicion of multiple offences'.

88 Spotlight on Corruption, 'Written evidence submission to the House of Lords European Affairs Committee inquiry on Implications of Russia's invasion of Ukraine for UK-EU relations', 10 November 2023, para.7.

89 Baker McKenzie Blog Series, 'Sanctions Enforcement Around the World, the Dutch Perspective', 24 May 2023.

90 Reuters, 'Dutch prosecutor fines four companies that helped Russia build Crimea bridge', 13 October 2023.

91 Spotlight on Corruption, 'Written evidence submission to the House of Lords European Affairs Committee inquiry on Implications of Russia's invasion of Ukraine for UK-EU relations', 10 November 2023, para.13.

92 US Department of Justice, 'Fact Sheet: Justice Department Efforts in Response to Russia's February 2022 Invasion of Ukraine'.

93 Maria Nizzero, 'From Freeze to Seize: How the UK Can Break the Deadlock on Asset Recovery', 10 October 2022, Royal United Services Institute.

94 Hogan Lovells, 'Finance for Restorative Justice – Using sanctions and terrorist financing legislation to fund reparations for victims of sexual violence in conflict', January 2020.

Expanding sanctions evasion laws

It is already a criminal offence in the UK to evade and circumvent sanctions. Any assets that were transferred to evade sanctions can be recovered as proceeds of that evasion via civil or criminal confiscation proceedings under POCA. However, under current law, the assets that can be confiscated are limited to the funds moved in breach of sanctions, which likely represent only a small portion of DPs' assets stashed in the UK.⁹⁵

Building on proposals from civil society⁹⁶, in June 2023, the UK Government announced that it would amend its Russia Sanctions Regulations, introducing a new duty on DPs to disclose all assets held in the UK.⁹⁷ Under the new measure, a DP who fails to disclose their assets in the UK within a prescribed period would commit a criminal offence, subject to civil fines by OFSI and criminal penalties following conviction by a UK Crown Court. The amendment has not yet been passed.

Recommendation 5: The UK Government should expand the scope of sanction evasion under its Russia Sanctions Regulations by making failure to disclose assets belonging to a sanctioned person a criminal offence subject to civil fines and criminal penalties.

It should also introduce this amendment promptly across all its targeted sanctions regimes, including the GHRS.⁹⁸ If introduced, the measure would provide greater transparency about sanctioned assets in the UK and support efforts to seize assets that may be the proceeds of a sanctions evasion, for example where interest is generated on the undisclosed funds.⁹⁹ If supported by relevant legislative reforms to ARIS, a portion of seized assets could then be used to fund reparations for victims of the sanctioned conduct.

Lack of transparency regarding enforcement of sanctions

There is a significant lack of transparency surrounding the enforcement of sanctions in the UK. While OFSI publishes final penalty notices on its website, detailing the violations committed and lessons for future compliance, these notices do not explain the impact the breaches had on the conduct that led to the sanctions or how the UK Government will use any fines imposed. In addition, the Government has repeatedly refused to answer parliamentary questions about the CKC's resources, activities, and how many criminal charges for sanctions-related offences have been made.¹⁰⁰

95 Under section 7 of POCA, the benefit a defendant has derived from their criminal conduct will be calculated by reference to the value of property or pecuniary advantage they have obtained from the offence they have been convicted of. However, if the court finds that the defendant has a 'criminal lifestyle' in accordance with section 6(4)(a) and 75(2) of POCA, the court must make a series of assumptions which can significantly increase that benefit figure. In broad terms, if a person is found to have a 'criminal lifestyle', under section 10 of POCA, the court will examine the defendant's financial history over a six-year period prior to the date of charge. Any property obtained, held or expenditure evident within that period will be added to the benefit figure, and can be subject to a confiscation order.

96 Maria Nizzero, 'Sanctioned oligarchs should have to list their UK assets', 23 February 2023, Royal United Services Institute.

97 UK Government Press Release, 'New legislation allows Russian sanctions to remain until compensation is paid to Kyiv', 19 June 2023.

98 Ibid.

99 Spotlight for Corruption, 'Written evidence submission to the House of Lords European Affairs Committee inquiry on Implications of Russia's invasion of Ukraine for UK-EU relations', 10 November 2023, para.13.

100 Home Office Written Questions on National Crime Agency: Staff answered on 11 July 2023.

This lack of transparency prevents civil society and affected communities from effectively monitoring enforcement activities. In cases where there are victims of gross human rights or humanitarian law violations related to the sanctioned conduct, it also deprives them of a measure of accountability and interferes with their right to information¹⁰¹ and the need for verification of the facts and full and public disclosure of the truth as an element of the right to reparations under international law.¹⁰²

Recommendation 6: The UK Government should encourage its enforcement agencies to publish more information about enforcement action taken for sanctions violations and the amount of assets frozen under sanctions in the UK, with a breakdown by asset class, including those owned by individual perpetrators, State-owned enterprises, and State assets.

Providing greater transparency on the amounts frozen would enable better understanding of how many assets there are, where the missing assets may be and how these can be best targeted.¹⁰³

101 See for example Article 10 ECHR; and Article 19 ICCPR

102 See for example Article 22(b) of the UN Basic Principles; See also UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35 and *El-Masri v. the former Yugoslav Republic of Macedonia* Application No. 39630/09, § 202, ECHR 2012

103 Financial Crime News, [‘Where are the Sanctioned Russian Assets Frozen in the West and How Much is actually Frozen?’](#), 23 February 2023.

USING ASSET RECOVERY TOOLS TO SEIZE THE PROCEEDS OF HUMAN RIGHTS VIOLATIONS

The UK Government is not just limited to cases of sanctions violations when using its asset recovery tools. Many individuals currently under UK sanctions have suspected links to violations of international law, human rights abuses, or corruption. As such, there is the possibility that a portion of their assets frozen under sanctions are also the proceeds of crime, and so may be subject to criminal confiscation orders or non-conviction based ‘civil recovery orders’ (CRO).

Using civil recovery orders to seize the proceeds of human rights violations

To obtain a criminal confiscation order, the prosecution must establish beyond reasonable doubt that the person from whom the assets are to be confiscated committed a crime under English law. Such prosecutions are difficult and costly and are unlikely to be successful against perpetrators who are not in the UK.

In contrast, a claim for ‘civil recovery’ targets assets which have been criminally derived, regardless of whether the person holding the asset has committed a crime.¹⁰⁴ Accordingly, CROs under Part 5 of POCA may provide a particularly efficient route to confiscate ill-gotten wealth stored in the UK. Part 5 enables authorities to bring civil proceedings to recover property that ‘on the balance of probabilities’ is, or represents, property obtained through (or connected to) ‘unlawful conduct’.¹⁰⁵

Unlawful conduct – as defined in section 241 of POCA - refers to conduct within the UK that is unlawful under English criminal law, or any other part of the world and would be unlawful if it occurred in the UK. Section 13 of the Criminal Finances Act 2017 expanded this definition to include conduct by a public official outside the UK that ‘constitutes (or is connected with) the commission of gross human rights violations’ - regardless of whether such conduct is contrary to the criminal law of the country in which it occurred. This means that for ‘gross human rights violations’, the standard dual criminality requirement will not apply.

Unexplained wealth orders (UWO) can assist investigating authorities in obtaining information to subsequently seek a CRO. A UWO is an investigative tool that may be used against persons who are politically exposed or connected to serious crime, and where their wealth is disproportionate to their lawfully obtained income.¹⁰⁶ By putting the burden on the respondent to prove that their property was lawfully obtained, a UWO can lay the foundation to subsequently obtain a CRO.

¹⁰⁴ However, civil asset recovery proceeds are not intended to replace criminal conviction-based confiscation. In cases where it is possible to prosecute and obtain a conviction, the conviction should be obtained.

¹⁰⁵ The European Courts of Human Rights has held that deprivation of property under CROs are compliant with the rights to property, a fair trial and private life under the ECHR because (*inter alia*) ‘the recovery order is not punitive in nature’ (*Porter v the United Kingdom* (dec.), no. 1581/02, 8 July 2023,) ‘there is no finding of guilt of offences’ (*Butler v the United Kingdom* (dec.), no. 41661/98 ECHR 2022 VI), the ‘assets did not lawfully belong to the holder in the first place’ (*Butler v the United Kingdom* (dec.), no. 41661/98 ECHR 2022 VI. *R (on the appeal of Director of ARA) (Pual) v Ashton* [2006] EWHC (Admin) 1064); and the measures are justified by the legitimate public interest in the prevention of crime (*Director of the Assets Recovery Agency v Jackson* [2007] EWHC 2553 (QB), para. 220).

¹⁰⁶ UK Government, ‘Policy Paper – Fact sheet: unexplained wealth order reforms’, 26 October 2023.

Expanding the definition of ‘unlawful conduct’ to include all human rights violations

Section 241A of POCA limits the definition of ‘gross violations of human rights’ to torture or cruel, inhuman, or degrading treatment or punishment of a person because they sought to obtain, exercise, defend, or promote human rights or expose illegal activity by a public official. Crucially, the ‘gross human rights violation’ must be carried out in consequence of the person having sought to do these things.

This definition does not correspond to the meaning of ‘gross human rights violations’ under international law. Although not formally defined in international law, ‘gross violations’ or ‘serious violations’ denote types of violations that affect in qualitative and quantitative terms the most basic rights of human beings, including the right to life and the right to physical and moral integrity.¹⁰⁷ It is generally assumed that genocide, slavery, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, deportation or forcible transfer of population, and systematic racial discrimination fall into this category.¹⁰⁸

States’ obligations to ensure accountability and reparation apply equally to all such violations and victims of them, not only to whistle-blowers and human rights defenders.¹⁰⁹ The narrow definition of ‘gross human rights violations’ under POCA therefore risks that victims of these violations are not afforded with the same protections and remedies under English law. This is particularly problematic when such violations are not considered criminal in the country where they occurred. In this case, perpetrators of human rights violations - other than those involved in torture against whistle-blowers and human rights defenders - would fall through the gap between section 241 and section 241A of POCA.

Recommendation: The UK Government should expand the scope of ‘unlawful conduct’ for the purpose of civil asset recovery proceedings to include all types of gross human rights violations under international law and remove the requirement for the victim of that conduct to be a whistle-blower or human rights defender.

Such amendments would bring existing POCA provisions in line with international law and make it easier for UK prosecuting authorities to confiscate illicit wealth derived from or connected to the most prevalent and serious human rights violations.

¹⁰⁷ See for example, International Commission of Jurists, ‘A Practitioners’ Guide to the Right to a Remedy and Reparation for Gross Human Rights Violations’, October 2018. This Guide further notes that Deliberate and systematic deprivation of essential foodstuffs, essential primary health care or basic shelter and housing may also amount to gross violations of human rights. In international humanitarian law, ‘serious violations’ are to be distinguished from ‘grave breaches’. The latter refers to atrocious violations that are defined in international humanitarian law but only relating to international armed conflicts. The term ‘serious violations’ is referred to but not defined in international humanitarian law. It denotes severe violations that constitute crimes under international law, whether committed in international or non-international armed conflict. The acts and elements of ‘serious violations’ (along with ‘grave breaches’) are reflected in article 8 of the Rome Statute of the International Criminal Court under ‘war crimes’; See also, Redress, ‘Implementing Victims’ Rights: A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation’, March 2006; and UN Office of the High Commissioner for Human Rights, ‘Rule-of-Law Tools for Post-Conflict States. Reparations Programmes’, 2008, HR/PUB/08/1.

¹⁰⁸ Ibid.

¹⁰⁹ See for example, Principle 12 of the UN Basic Principles, which states that a “A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law”. In addition, Principle 25 states that “as part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy”.

EXPLORING ALTERNATIVE FINANCING MECHANISMS

Confiscating perpetrator assets or repurposing sanctions violations penalties are only some of several avenues proposed for financing reparations for victims. Other innovative financing proposals have focused on leveraging domestic taxes or incentivising donations by DPs for the benefit of victims.

Supporting victims through voluntary donations by sanctioned persons

In June 2023, the UK proposed a new process whereby individuals sanctioned under the UK's Russia Sanctions Regulations may apply for their frozen funds to be released to support Ukraine's recovery and reconstruction.¹¹⁰ According to the UK Government, "[t]he precise mechanics of the fund which will disburse these donations will be announced in due course", however it previously stated that it does not intend to offer any sanctions relief in return for donating.¹¹¹ To date, these proposals have not been implemented.

Voluntary diversion of frozen assets can present a practical solution for making funds available for victims. Yet concerns persist around how this process may operate in practice. First, if no sanctions relief is envisaged, it is not clear what incentives there would be for DPs to donate their funds beyond any reputational effects that might flow from donating. On the other hand, if sanctions relief is considered, these mechanisms must not allow DPs to 'buy' their way out of accountability and whitewash their reputation. To counter this risk, such arrangements could be subject to certain conditions akin to DPAs, requiring sanctioned persons, for example, to commit to the non-repetition of the acts that led to their designations.¹¹² However, as no sanctions relief is envisaged at this stage by the UK Government, non-compliance with these conditions may not lead to any penalty, other than potentially negatively impacting any future decision regarding their delisting.

Second, due process protections would need to be implemented to ensure fairness and avoid that the process imposes any undue pressure on DPs to donate their funds. Third, it remains unclear if the DP would have a say in how the donated funds should be spent; otherwise, this could impact their willingness to donate; or conversely significantly delay, or even impede, the effective delivery of reparations.

Recommendation 1: The UK Government should clarify the procedural mechanisms it intends to put in place for receiving donations from sanctioned persons and repurposing them as reparations for victims.

This process must be transparent and allow for victims and civil society to play a role in ensuring that funds are used to deliver effective reparations. It should also include oversight mechanisms to protect due process and provide a measure of accountability, beyond financial accountability.

¹¹⁰ UK Government Press Release, 'New legislation allows Russian sanctions to remain until compensation is paid to Kyiv', 19 June 2023.

¹¹¹ Ibid.

¹¹² On 10 October 2023, the Director of OSFI suggested that the agency was "willing to enter into discussions" with DPs on the Russia sanction list if they agree to "voluntarily release frozen assets in the UK to fund the reconstruction of Ukraine" and take various other actions, including denouncing the war in Ukraine (see Global Investigations Review, 'OSFI, OFAC leaders: don't be afraid to self-report', 10 October 2023).

ROMAN ABRAMOVICH



In March 2022, Roman Abramovich, the owner of **Chelsea Football Club**, declared his willingness to sell the club and use the proceeds worth £2.5 billion *“for the benefit of all victims of the war in Ukraine”*. Shortly after, Abramovich became subject to UK sanctions for his close connections with Putin’s regime. With his funds frozen, the sale of Chelsea was made possible by a licence granted by OFSI on 24 May 2022 to create a foundation with *“exclusively humanitarian purposes supporting all victims of the conflict in Ukraine, and its consequences”*.

The Department for Culture, Media and Sport stated, in a unilateral declaration made after the completion of the sale on 30 May 2022, that the funds would be used for *“exclusively humanitarian purposes in Ukraine”*. However, the process has reached a stalemate, with neither the Government nor those tasked with creating the foundation taking responsibility to progress the matter.

Photo by Commission Air/Alamy Stock Photo.

Taxing profits generated by frozen assets

Another option put in motion by the EU is creating a windfall tax on the profits of frozen Russian assets and repurposing the tax collected for Ukraine.¹¹³ The EU currently holds Russian assets worth about €200 billion, of which €100 billion is from Moscow’s foreign reserve, earning roughly 3% in interest a year that would be subject to the proposed tax.¹¹⁴

113 The Financial Times, ‘US backs plans to help Ukraine with profits from Russia’s frozen assets’, 11 October 2023.

114 The Guardian, ‘EU mulls levy on frozen Russian assets to support Ukraine reconstruction’, 29 June 2023.

Most of these funds are in the temporary ownership of Euroclear, the world's largest securities depository, headquartered in Brussels, where interest on any profits they generate is currently taxed at 25% by the Belgian Government.¹¹⁵ Belgium said it would use the tax income it has already collected on Euroclear's profits from the Russian assets to create a €1.7 billion fund dedicated to Ukraine.¹¹⁶ A further 3% levy could raise another €3 billion.¹¹⁷

The European Commission announced in July 2023 that it would present a proposal on whether there was a legally sound way to tax the funds once the G7 agreed in principle.¹¹⁸ In response, on 11 October 2023, US Treasury Secretary Janet Yellen said that the Biden administration supported taxing windfall proceeds from Russian sovereign assets immobilised in particular clearinghouses and using the funds to support Ukraine.¹¹⁹ Similarly, on 14 October 2023, the UK Chancellor of the Exchequer Jeremy Hunt announced that he had asked the Bank of England to look at options for using Russian sovereign assets to fund Ukraine's war efforts, signalling support for the EU's proposal.¹²⁰

Recommendation 2: The UK should support the EU's proposal for a G7-wide windfall tax on the profits of frozen assets that belong to perpetrators of violations of international law and human rights and repurpose part of these funds to finance reparations. A coordinated approach is essential to ensure businesses will not simply re-route from the EU to other international financial markets.¹²¹

115 Ibid.

116 Global Sanctions Blog, 'Belgium to send tax collected on frozen Russian assets to Ukraine', 17 October 2023.

117 The Guardian, 'EU mulls levy on frozen Russian assets to support Ukraine reconstruction', 29 June 2023.

118 Reuters, 'Belgium expects to use US\$2.4 billion in tax on frozen Russian assets to fund Ukraine', 11 October 2023.

119 Reuters, 'Yellen says oil price cap has 'significantly' cut Russia's revenues', 11 October 2023.

120 BBC News, 'UK explores using frozen Russian assets to fund Ukraine defence', 13 October 2023. The Financial Times, 'EU leaders back using earnings from Russia's frozen assets to help Ukraine', 27 October 2023.

121 Reuters, 'EU hopes to advance talks on using Russian assets for Ukraine', 13 October 2023.

CREATING NEW REPARATION MECHANISMS FOR VICTIMS

The proposals set out above would open new avenues for financing reparation for victims of human rights or humanitarian law violations. However, even where such funds have been collated, the UK must address how to deliver them to victims effectively.

There is currently no mechanism for the UK Government to pool repurposed, recovered, or donated funds and enable those who have suffered abuses abroad to access them as reparations. While existing victim compensation funds provide an avenue for reparations in cases of domestic crime, they are unavailable to non-UK or EEA citizens or victims of international crimes. For example, the UK's Criminal Injuries Compensation Scheme (CICS) can only be accessed by UK residents or EU/EEA citizens if the crime occurred in the UK.¹²² Similarly, the Compensation Scheme for Victims of Overseas Terrorist Attacks is limited to victims of a specific list of terrorist attacks who are UK residents or EU/EEA citizens.¹²³

In practice, this means that foreign victims and those who have suffered human rights violations abroad are prevented from claiming reparation, even in cases where there is a nexus to the UK. Any funds that could be repurposed as reparations are instead directed into the CF and used for other governmental purposes, disconnected from the violations that led to the penalties.

Recommendation: The UK Government should commit to disbursing repurposed funds to a new reparation scheme for 'victims of internationally wrongful conduct' or to existing domestic schemes, such as the CICS, provided their eligibility requirements are broadened to allow victims of internationally wrongful conduct with a relevant UK nexus to access them.

This nexus may be established where the violations abroad were committed against UK citizens, were perpetrated by UK persons, or where the perpetrators' assets are in the UK.

This scheme could operate on a tariff basis in the same way as the CICS does and allow for both applications by individual victims for an award as well as offer grants to civil society organisations supporting specific victim groups or affected communities. Such a hybrid model could enable the scheme to address the intimate nature of individual suffering as well as providing redress to affected communities, in situations where violations have affected the entire population of an area or where it is difficult to draw a clear line between victims and non-victims.¹²⁴

While the CICS system currently awards payments purely based on the tariffs assigned to the injury sustained, this system could be revised to allow for additional payments where the victim is deemed vulnerable or sustained particularly severe injuries because of the assault. It could also involve introducing different types of reparations, beyond financial awards, including support for broader reparation initiatives. In this respect, victim participation in designing and implementing reparation schemes is critical to ensure repa-

¹²² UK Government, 'Criminal injuries compensation: a guide', 26 March 2014.

¹²³ UK Government, 'Victims of Overseas Terrorism Compensation Scheme: a guide', 9 June 2014.

¹²⁴ Magarrell, Lisa, 'Reparations in Theory and Practice, Reparative Justice Series', International Centre for Transitional Justice, 2007, pp. 5-6.

rations are inclusive and impactful.¹²⁵ Comprehensive consultations with affected stakeholders can further enhance public trust in the reparation effort and support the long-term sustainability of projects funded.¹²⁶

The importance of meaningful victim and civil society involvement in the delivery of reparations is reflected in international law and human rights principles and is deemed crucial to upholding victims' rights.¹²⁷ Similarly, principles and practices adopted in the corruption context recognise that civil society can and should provide insight into the repurposing of confiscated assets, offering guidance on the most appropriate repurposing mechanisms, ensuring transparency, and representing victims and survivors and their interests.¹²⁸

Where applicable, funds could also be donated to already existing international mechanisms set up to provide reparations for victims of international human rights and humanitarian law violations. These include the International Criminal Court's Trust Fund for Victims, the Ukraine Register of Damages, and the Global Survivors Fund who support survivors of conflict-related sexual violence.

The **Criminal Injuries Compensation Scheme (CICS)** is a Government funded scheme designed to compensate victims of violent crime in the UK. It is administered by the Criminal Injuries Compensation Authority which decides if applicants are eligible and assesses the appropriate value of any award.

The rules of the CICS and the value of payments awarded are set by the Secretary of State and the UK Parliament. Under the current rules, compensation can only be awarded to British or EEA citizens or residents, where the 'crime' took place in the UK. The level of compensation awarded depends on the 'tariff' that is allocated to the injury sustained by the CICS. This is meant to ensure that decisions for all victims are made in a consistent, fair and transparent way. The CICS also provides compensation for loss of earnings. Applicants must prove 'on the balance of probabilities' that they have suffered a specific injury that falls within the tariff and is directly attributable to their being a 'direct victim' of the crime.

The International Criminal Court (ICC)'s Trust Fund for Victims implements reparations ordered by the ICC against convicted persons for the benefit of the victims. Through its assistance mandate, it also provides rehabilitation and support to a broader group of victims and their families who have suffered physical, psychological, or material harm as a result of international crimes (which can be applied before any conviction).

125 Ibid. p.9. See also, 'Belfast Guidelines on Reparations in Post-Conflict Societies'.

126 International Centre for Asset Recovery, 'Guide to the role of civil society organisations in asset recovery', p.28.

127 REDRESS, 'Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations', July 2014, pp.11-14.

128 OHCHR, 'Recommended Principles on Human Rights and Asset Recovery', 2 March 2022, Principle 7 provides that receiving states should allocate returned assets in an accountable, transparent, and participatory manner. The commentary to this principle adds that more 'desirable alternative mechanisms' for returning assets, from an accountability perspective, could involve 'receipt by a third party, such as a non-governmental organisation that works on behalf of victims and is subject to measures to ensure the accountable management of funds'; UN Office on Drugs and Crime, 'Civil Society Principles for Accountable Asset Return', Principle 10 provides that a range of stakeholders, including a broad base of representative, independent civil society organisations, should be involved in determining how recovered assets should be best used to repair the harm caused and to benefit the people of the country; Global Forum on Asset Recovery, 'GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases', Principle 10, states that individuals and groups outside the public sector, such as civil society, non-governmental organisations, and community-based organisations, should be encouraged to participate in the asset return process, including by helping to identify how harm can be remedied, contributing to decisions on return and disposition, and fostering transparency and accountability in the transfer, disposition, and administration of recovered assets.

The **Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine** was created on 16 May 2023 by the Council of Europe, together with a coalition of member and non-member States and the EU, through an Enlarged Partial Agreement, which is based in The Hague. The Register is meant to serve as a record of evidence and claims for damage, loss, or injury caused to all natural and legal persons concerned, as well as the State of Ukraine, by Russia's invasion of Ukraine. It is designed to be the first component of a future international compensation mechanism to be established in co-operation with Ukraine. The Netherlands has already pledged €1.5 million to the Register.

The **Global Survivors Fund (GSF)** was launched in October 2019 by Dr Denis Mukwege and Nadia Murad, Nobel Peace Prize laureates in 2018. 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. Between 2020 and 2022, GSF reached 2,250 individual survivors with full interim reparative measure packages.

CONCLUSION

This report has highlighted key legislative and policy reforms that the UK Government should implement to make significant funds available as reparations to victims of serious human rights and humanitarian law violations.

As things stand, victims of human rights and humanitarian law violations do not receive prompt, adequate or effective reparation, and perpetrators, and their enablers, rarely bear the full costs of the abuses they committed. Further, even in cases where those have been penalised, monetary proceeds from these actions have not been directed to the victims of the underlying abuses. Instead, they have been allocated exclusively to the UK Government, allowing it inadvertently to benefit from the violations that have taken place.

The UK Government should make the changes that are needed to ensure funds are available to repair victims of human rights and humanitarian law violations and distribute funds in consultation with affected stakeholders to support the effective delivery of reparation.

Photo by REUTERS/Bassam Khabieh.
Buildings damaged during the armed
conflict in the town of Douma, Syria.

About REDRESS

REDRESS is an international human rights organisation that represents victims of torture to obtain justice and reparations. We bring legal cases on behalf of individual survivors, and advocate for better laws to provide effective reparations.

redress.org

REDRESS

87 Vauxhall Walk
London, SE11 5HJ
United Kingdom
+44 (0)20 7793 1777
info@redress.org

 [REDRESSTrust](#)

 [redresstrust](#)

 [company/REDRESS](#)

REDRESS

Ending torture, seeking justice for survivors