

REPARATIONS ARE AFFORDABLE:

**Pathways to financing
reparations owed to
survivors of conflict-related
sexual violence**

I. Summary

What is the challenge?

In many countries, rape and other forms of sexual violence are used on a large scale and often to advance military objectives. Survivors of conflict-related sexual violence (CRSV), and victims of other gross human rights violations, suffer a multitude of harms that go beyond deep physical and psychological trauma. Reparations are needed to help victims rebuild their lives. Lengthy delays in receiving reparations compound the harms suffered and contribute to increased intergenerational trauma. Survivors and victims have a right to a remedy and reparation to address the multiple harms they have suffered, yet it is commonly cited that such reparations are not affordable.

Who is responsible and how should they act?

Perpetrators, those associated with these crimes, and States themselves, have a legal responsibility to provide survivors of CRSV and other victims of gross human rights violations with adequate, prompt, and effective access to reparations. State-led administrative reparation programmes can offer comprehensive forms of reparation in a timely, survivor-centred and effective manner, giving victims a sense of recognition and justice and helping them rebuild their lives. However, States are often reluctant to implement these programmes; challenges range from the difficulty of costing reparation programmes to the securing of sufficient and sustainable financing.

What can we do?

We need to explore all avenues to finance reparation. What can be seen as the more traditional financing methods – taxation, trust funds, donor funding – can be complemented by innovative mechanisms. The repurposing of sanctioned assets or fines for breach of sanctions offer a particularly abundant source of untapped funding. Indeed, the fallacious argument that reparation is unaffordable is an insult to survivors, and other victims, in the face of the billions of dollars often amassed by perpetrators and their associates. States and the international community must act now and use all available models to finance reparation. Reparation is affordable if there is political will to utilise these models.

What is reparation?

The right to reparation is the legal right that victims of international wrongful acts have to be repaired for all harms they have suffered as a consequence of those violations. This right is recognised under international and many domestic laws, and can include the following five elements:ⁱⁱ

Restitution

Means restoring the victim, whenever possible, to their original situation prior to the violation. This may include restitution of housing, land and property or relocation, access to educational and other programmes, restoration of liberty and employment and the enjoyment of other human rights.

Compensation

Means providing monetary compensation for economically assessable damage, where appropriate. It includes taking into consideration, for example, physical and mental harm, lost opportunities including employment, moral damage, and medical and legal expenses.

Rehabilitation

Means providing victims with all essential services they need to assist them to carry out their life in a dignified way, including, for example, psychological care, legal and social services and economic rehabilitation.

Satisfaction

Can take many forms and should include, for example, effective measures to end violations, bringing perpetrators to justice, public memorials, commemorations and tributes to the victims and public apologies, including acknowledgment of the facts and responsibility.

Guarantees of non-repetition

Address the structural causes of the violation, and could include, where appropriate, changes in relevant laws and practices, justice system reforms, effective civilian control of military and security forces, training of State officials on international standards and sensitisation campaigns to change discriminatory perceptions and gender bias.

These measures are not mutually exclusive but complement each other as they each address different harms. When all combined, we talk about full, comprehensive, or integral reparation.

II. Background

In 2021, Hogan Lovells, Global Survivors Fund and REDRESS published a paperⁱⁱⁱ arguing that – based on the provisions contained in a number of international conventions, international practice and [the UN Basic Principles on the Right to a Remedy and Reparation](#)^{iv} – States should accept an extra-territorial responsibility to guarantee and, in some cases, finance, reparation for survivors of CRSV and victims of international crimes and terrorism. Despite this responsibility, survivors are, all-too-frequently, met with claims that fulfilling their right to reparation is an unaffordable task. There are multiple routes through which reparation can be made affordable.

Perpetrators of human rights violations often profit financially, either directly or indirectly, from the abuses they carry out,^v channelling billions of dollars of assets through the major financial centres of London, New York, Tokyo and Hong Kong on a daily basis.^{vi} The magnitude of funds that could be made available to victims and survivors through the stemming of these illicit financial flows and the seizing of perpetrators assets would be game-changing.

In parallel, there is emerging best practice in innovative financing mechanisms. These creative financing solutions are helping us to manage some of the world’s most intractable challenges, from climate change to pandemics. We need to explore how these mechanisms could be deployed to deliver reparation to survivors and victims.

We now need leadership and innovation to ensure no survivor is met with the term ‘unaffordable’ when asking that their right to reparation be fulfilled. Solutions exist. Viable, sustainable pathways to financing reparation must be established.

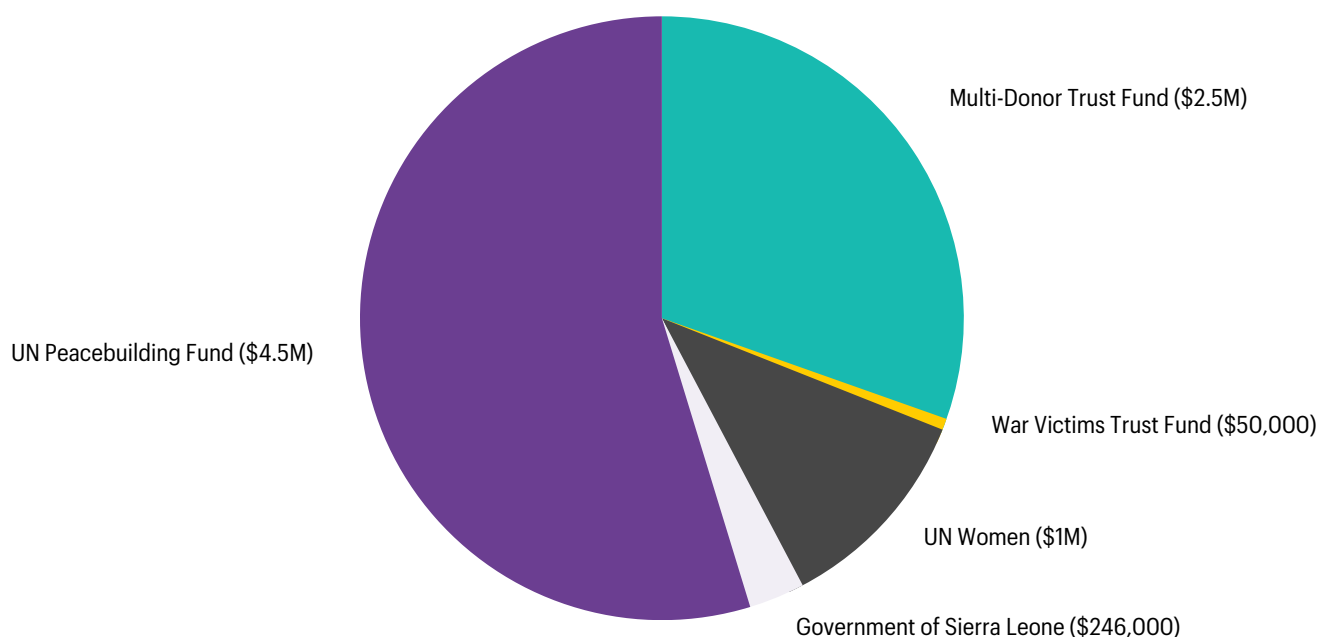
III. Traditional financing mechanisms

Although to date poorly funded due to a lack of political will or competing priorities, pathways for reparation financing have already been tested. These generally include national budgets^{vii} and international cooperation, or a combination of both. At the domestic level, funding can be sourced through the sale of State assets, the reallocation of military budgets, the introduction of new taxes (including on, for example, financial transactions) or modification of existing tax rates, or the issuance of public bonds. Foreign resources, including multilateral aid and loans, and private resources from individuals, foundations or corporations^{viii} offer possible complementary funding streams. At both State and international levels, forecasting for longer-term funding requirements and greater total funding allocations must be a priority to enhance access to reparation.

Chart I gives an example of the traditional funding sources (2009 – 2013) for the Sierra Leone Reparation Programme,^{ix} which was developed on the recommendation of the Sierra Leone Truth

and Reconciliation Commission (SLTRC) and implemented by the National Commission for Social Action (NaCSA);^x while paucity of funding was an issue, the ability to combine donor and government funds is an important example of collaboration through a more traditional financing mechanism.

Chart I: Example of traditional funding sources utilised for Sierra Leone reparations programme



IV. Innovative financing mechanisms

While there is no single agreed definition of ‘innovative financing’, it generally includes mechanisms which increase the volume, efficiency, and effectiveness of financial flows,^{xi} and can encompass a range of non-official development assistance^{xii} solutions that raise funds. In terms of reparation financing, unabashed blue-sky thinking must take place so that finances are available to reparation processes for victims and survivors. Examples here include:

- Debt swaps^{xiii} or debt cancellation;
- Targeted taxes on conflict-related industries;
- The issuance of social or impact bonds;^{xiv}
- A greater role for International Financial Institutions (IFIs) and Central Banks;
- The repurposing of perpetrator/responsible State assets; and
- Fines for breaches of sanctions regimes (for more on this, see Section V).

On the next page, examples and ideas related to these possible innovative financing mechanisms are elaborated on, but many more must be explored.

The Role of International Financial Institutions

International Financial Institutions such as the World Bank Group and the European Bank for Reconstruction and Development (EBRD) have a role to play in this space, and not just in supervising the disbursement of recovered funds as demonstrated through the example of the [BOTA Foundation](#).^{xv} Could the World Bank Group ensure that reparation for victims and survivors are included in their Systematic Country Diagnostics (SCDs), which is a tool used as a 'reference point for client consultations on priorities for country engagement' and informs the bank's Country Partnership Framework (CPF), which in turn, guides how they support member countries?

Using Social Bond Principles – the Vaccine Bond example

In 2006, donor governments established the International Finance Facility for Immunization (IFFIm) to provide up-front money for child vaccination. The mechanism received multi-year pledges of over \$6 billion from highly rated governments, enabling it to obtain a AAA rating and start borrowing in international bond markets.^{xvi} So far, the IFFIm has raised \$8.7B USD in global capital markets to fund vaccination programmes.^{xvii} Could a similar mechanism be utilised to guarantee reparation for survivors of CRSV and other gross human rights violations?

Blue-sky thinking: could Central Banks have a role to play?

The 'market neutrality' principle remains the guiding principle driving central banks' portfolio management, in a bid to avoid distortionary effects of interventions on financial markets. However, central banks have a suite of policy tools to promote innovative financing for sustainable development,^{xviii} which are often used to mitigate, for example, the economic impacts of climate or global health risks. Could monetary policy be utilised to create an enabling environment to finance reparation and in turn, mitigate conflict risk?

V. Sanctions, Countermeasures, Fines: Repurposing of assets

The magnitude of wealth in perpetrators' and their associates' assets worldwide makes the repurposing of assets a game-changer in addressing reparation financing concerns, for instance:

\$358 billion USD

As of March 2023, Western allies had blocked \$58 billion USD worth of sanctioned Russian oligarch assets and \$300 billion USD of sovereign assets in response to Russia's full-scale invasion of Ukraine.^{xix}

€90 million EUR

In 2020, a French court ordered the seizure of €90 million EUR of Rifaat Al-Assad's assets for money laundering and embezzlement. Al-Assad is the uncle of current Syrian President Bashar Al-Assad.^{xx}

\$200 million USD

The assets of the family of Equatorial Guinea's President Teodoro Nguema Obiang - valued at \$200 million USD - have been seized in Brazil, France, Switzerland, and the United States (U.S.) in recent years.^{xxi}

If channelled correctly, the repurposing of fines for breach of sanctions regimes could be an abundant source of funding for reparation for victims and survivors. The U.S. Justice Department's groundbreaking prosecution of Lafarge S.A. and its Syrian subsidiary (which admitted to having a revenue-sharing agreement with ISIS) warranted a payment by the company of \$778 million USD in fines and forfeiture.^{xxii} Fines for breach of sanctions should not be fully allocated to treasuries in which the breach took place; governments should commit to repurposing these fines for survivors of CRSV and other human rights violations. In this case, the Lafarge funds should be allocated to those victims and survivors of the gross violations and terrorist activity undertaken by ISIS in Syria and Iraq, in addition to U.S. and other international victims and survivors.

The invasion of Ukraine created unprecedented momentum to explore novel and alternative ways to finance reparation through the repurposing of perpetrators' assets. The confiscation of perpetrators' assets, and the use of state countermeasures^{xxiii} to place culpable States' central bank assets into escrow, all offer a rich seam of possible funding. These financing pathways must urgently be explored, requisite due process procedures must be adopted and fulfilled, and the funds must be utilised to fulfil the right to reparation of victims and survivors of gross human rights violations.

Here, we can look at existing legislations in the fields of counterterrorism and anti-corruption which already allow for asset confiscation and repurposing. The Swiss Foreign Illicit Assets Act 2015, the Italian Anti-Mafia Code and the U.S. International Emergency and Economic Powers Act are prime examples of existing applicable legislations that could inspire the development of progressive new laws. Recent amendments to the Canadian Special Economic Measures Act (SEMA) and the Justice for Victims of Corrupt Foreign Officials Act (Magnitsky Act)^{xxiv} demonstrate States' increasing willingness to ensure accountability for human rights violations across borders. While the legislative landscape is improving, upholding due process of law must remain a priority for lawmakers, so that perpetrator's assets can be repurposed for survivors without fear or favour. States need to articulate in their legislation their fundamental policy preferences for the allocation of confiscated assets, which should include allocation for specific objectives, such as reparation for victims of CRSV.^{xxv}

States and the international community must now work together to ensure that the move from seizure and confiscation of assets to repurposing for the benefit of survivors is cleared of hurdles. In particular:

- There must be increased transparency regarding the amount of assets frozen under sanctions regimes internationally;
- Procedural safeguards allowing for challenges to designation and confiscation, alongside mechanisms to ensure designation is not arbitrary, all need to be established to facilitate human rights-centric processes;^{xxvi}
- In the long term, States must also prevent sanctions regimes from having an adverse impact on access to reparation, as highlighted by examples from Colombia, where demobilised FARC fighters could not take part in demining activities designed to make reparations to communities affected by war due to a certification delay caused by sanctions.^{xxvii}

VI. Endnotes

- [i] Most international human rights law (“IHL”) and international humanitarian law (“IHL”) treaties provide for the right to a remedy and reparation, as outlined in, for example, Ni Aolain, F., O'Rourke, C., & Swaine, A. (2015). ‘Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice’, *Harvard Human Rights Journal*, 28, 97-146, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2572540 accessed 15 August 2023.
- [ii] Amended definitions taken from Ribeiro, S.F., and van der Straten Ponthoz, D., on behalf of the UK Foreign & Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law*, Second Edition, (March 2017) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf
- [iii] Hogan Lovells, Global Survivors Fund, REDRESS, and Goldsmith Chambers, ‘Finance for Restorative Justice: Volume II’ (19 June 2021) https://www.hoganlovells.com/-/media/hogan-lovells/pdf/2021-pdfs/2021_06_21_9015_finance_for_restorative_justice_-_volume_ii_stage_4.pdf?la=en accessed 2 September 2023.
- [iv] OHCHR, ‘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’, (15 December 2005), Resolution 60/147, adopted by the General Assembly at its 60th session on 16 December 2005 <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed 20 August 2023.
- [v] REDRESS and Knowledge Platform for Security and Rule of Law, ‘Financial Accountability for Perpetrators of Torture and Other Serious Human Rights Abuses’, (July 2020) <https://redress.org/wp-content/uploads/2021/03/Policy-Briefing-Financial-Accountability-for-Torture.pdf> accessed 15 August 2023.
- [vi] Pegg, D., Makortoff, K., Chulov, M., Lewis, P., and Harding, L., Revealed: Credit Suisse leak unmasks criminals, fraudsters and corrupt politicians, *The Guardian* (20 February 2022) <https://www.theguardian.com/news/2022/feb/20/credit-suisse-secrets-leak-unmasks-criminals-fraudsters-corrupt-politicians>, accessed 1 September 2023.
- [vii] The Belfast Guidelines on Reparations in Post-Conflict highlight that creating a dedicated line in the national budget over a number of years has been the most effective model so far to ensure sustainable funding; see Moffett, L., Vicente, A., Sandoval, C., Hearty, K., Lawther, C., McEvoy, K., Gallen, J., & Dixon, P. *Belfast Guidelines on Reparations in Post-Conflict Societies*, (2022). <https://reparations.qub.ac.uk/belfast-guidelines-on-reparations-in-post-conflict-societies/> accessed 20 August 2023.
- [viii] Greiff, Pablo de (ed.), *The Handbook of Reparations*, (Oxford Academic online edn 2006), <https://doi.org/10.1093/0199291926.001.0001> accessed 20 August 2023.
- [ix] Ottendörfer, E. and Peace Research Institute Frankfurt, ‘Setting the ground for reparations in Sierra Leone. In *The Fortunate Ones and the Ones Still Waiting: Reparations for War Victims in Sierra Leone*’ (2014) 9–16, <http://www.jstor.org/stable/resrep14526.5> accessed 27 August 2023.
- [x] Ibid. The USD \$1M allocated by UN Women was specifically allocated for ‘sexually abused women and girls’ and contributed to the provision of a six-month skills training for 650 women, in addition to a payment of \$60 USD per month and a start-up kit of \$500 USD per person.
- [xi] Davies, S., and Palacin, J., ‘Policy Brief - Innovative Financing Mechanisms and Solutions’, (United Nations Economist Network) https://www.un.org/sites/un2.un.org/files/innovative_fincancing_14_march.pdf accessed 20 August 2023.
- [xii] The OECD defines official development assistance (ODA) as ‘government aid designed to promote the economic development and welfare of developing countries’, for further information see OECD ‘Net ODA’ website <https://data.oecd.org/oda/net-oda.htm> accessed 05 September 2023.

- [xiii] As outlined in a forthcoming Development Reimagined paper, debt-for-development swaps have been used by governments, development agencies and NGOs to purchase sovereign debt at a discount, which they then negotiate with the debtor government to exchange the debt at par or an agreed discount for local currency funding for a development project approved by the country and implemented by the development agencies or NGOs. Development Reimagined, (Paper Forthcoming), 'Making Finance for Reparations and Loss and Damage a reality – what are the options?'.
[xiv] Global Survivors Fund and Hogan Lovells, 'Synthesis Report of Roundtable on Repurposing Sanctioned Assets for Reparations for Victims of Human Rights Violations' (March 2021).
[xv] See, for example, IREX and Save the Children (2015) 'The BOTA Foundation: Final Summative Report', <https://www.irex.org/resource/returning-stolen-assets-bota-foundation-final-report>
[xvi] Fedder, M, Innovative Finance Can Help Rebuild Ukraine, Project Syndicate, (19 August 2022), <https://www.project-syndicate.org/commentary/ukraine-postwar-reconstruction-two-financial-innovations-by-marcus-fedder-2022-08> accessed 5 September 2023.
[xvii] Further information can be found on the IFFIM website <https://iffim.org/>
[xviii] United Nations Environment Programme, 'Inquiry into the Design of a Sustainable Financial System' (2017) [https://unepinquiry.org/wp-content/uploads/2017/02/On the Role of Central Banks in Enhancing Green Finance.pdf](https://unepinquiry.org/wp-content/uploads/2017/02/On_the_Role_of_Central_Banks_in_Enhancing_Green_Finance.pdf) accessed 15 August 2023.
[xix] Atlantic Council, 'Global Sanctions Dashboard: What to do with sanctioned Russian assets' (March 2023).
[xx] For further information, see news stories including: Rifaat al-Assad: Syrian President's uncle jailed in France for money laundering, BBC (20 June 2020) <https://www.bbc.com/news/world-europe-53077818>, accessed 15 August 2023.
[xxi] REDRESS, 'How to Return Teodorin Obiang's Ill-Gotten Assets to their Rightful Recipients: the People of Equatorial Guinea' (12 June 2023) <https://redress.org/news/how-to-return-teodorin-obiangs-ill-gotten-assets-to-their-rightful-recipients-the-people-of-equatorial-guinea/> accessed 25 August 2023.
[xxii] This was the U.S. Justice Department's first corporate material support for terrorism prosecution; for further information see Government of the United States of America, U.S. Department of State website, 'Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organization', <https://www.justice.gov/opa/video/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations> accessed 30 August 2023.
[xxiii] Ziskina, Y. and New Lines Institute, 'Multilateral Asset Transfer: A Proposal for Ensuring Reparations for Ukraine' (June 2023) <https://newlinesinstitute.org/rules-based-international-order/multilateral-asset-transfer-a-proposal-for-ensuring-reparations-for-ukraine/> accessed 28 August 2023.
[xxiv] See the Budget Implementation Act 2023, No. 1 (Bill C-47) available at <https://www.parl.ca/legisinfo/en/bill/44-1/c-47> accessed 11 September 2023.
[xxv] See also the Conference of the States Parties to the UNCAC, Note by the Secretariat, Open-ended Intergovernmental Working Group on Asset Recovery Vienna, Revised Draft Non-Binding Guidelines on the Management of Frozen, Seized and Confiscated assets, (29 - 30 May 2019), UN Doc CAC/COSP/WG.2/2019/3 <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2019-May-29-30/V1901749e.pdf> accessed 30 August 2023.
[xxvi] Hogan Lovells, 'Finance for Restorative Justice report Volume II' (June 2021), https://www.hoganlovells.com/~media/hogan-lovells/pdf/2021-pdfs/2021_06_21_9015_finance_for_restorative_justice_-_volume_ii_stage_4.pdf?la=en accessed 15 August 2023.
[xxvii] International Crisis Group, 'Sanctions, Peacemaking and Reform: Recommendations for U.S. Policymakers United States Report N°8' (28 August 2023) https://icg-prod.s3.amazonaws.com/s3fs-public/2023-08/008-us-sanctions_0.pdf accessed 5 September 2023.

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