

REDRESS

Ending torture, seeking justice for survivors

ASP Plenary on cooperation of the 20th session of the Assembly of States Parties

Segment II – cooperation in the field of financial investigations, identification and freezing of assets

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Thank you, Ambassadors Luis Vassy (France) and Momar Guèye (Senegal), for convening this panel, for inviting REDRESS, and for your efforts to promote State cooperation on this important topic as co-facilitators of the working group.

The issue of asset recovery is a core topic for REDRESS. For the last few years, we have been working on the connection between corruption, grave human rights abuses and the legal avenues available to seize the assets of high-profile human rights abusers to have them assigned, when possible, as reparations to victims. In 2020 we published a [Framework](#) for Financial Accountability for Torture and other Human Rights Abuses, as a tool for practitioners in this field.

The right to obtain reparations, including compensation, is a fundamental right for victims of human rights violations and international humanitarian law.

However, victims face many obstacles to realize this right, including the inability to directly access the assets of perpetrators of these crimes. Reparation orders are difficult to implement, and trust funds such as the Trust Fund for Victims at the ICC, set up to fill the gap when convicted persons are found indigent, suffer from a lack of sustainable funding. While delays in obtaining reparations adversely affect all victims, those in situations of vulnerability, including women and children, experience higher levels of trauma and revictimization due to the lack of redress.

The legal texts of the ICC outline a framework for the recovery of assets and property of convicted persons for the purposes of reparations to victims. So far, however, the practical implementation of this framework has not been very successful. The experience in the Bemba case illustrates the complexity of the issues involved.

In this regard, additional measures should be taken to improve the ICC's performance in this area, understanding that asset recovery is a complex technical area that requires the allocation of funding and specific skills. There is a need to keep strengthening the capacity of Court officials to deal with these matters. In this regard, for example, the International Expert Review panel recommended in its Final Report that training of ICC judges includes the law relating to tracing, seizure and forfeiture of assets (para. 436).

There is also a need to keep strengthening the ICC's partnership with national and international authorities involved in asset tracing and confiscation. In this regard, we welcome the proposal of the co-facilitators to consider setting up a network of national focal points to make cooperation more efficient in this regard.

We also note that many States Parties are involved in the drafting of the Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes. The Draft Convention offers a great opportunity to encourage State cooperation in securing the payment of reparations for victims. For that reason, REDRESS and other colleagues from civil society have proposed the inclusion of provisions on cooperation regarding the preservation of assets, including but not limited to the proceeds of crime, which may be used to finance reparations for victims. If adopted, we believe the Convention would also facilitate cooperation with the ICC when relevant.

Sharing of knowledge, good practices and comparative experiences among States and international institutions could also be useful in this field.

For example, Eurojust has extensive experience on asset recovery in the context of cross-border and organized crime, and in 2019 it published a report identifying best practices within its casework. Since December 2020, a new [Regulation](#) applies at the EU level on mutual recognition of freezing and confiscation orders. The Regulation recognizes that victims' right to compensation and restitution should have priority over the interests of the executing and issuing States, and over the disposal of frozen or confiscated property.

There are also some good practices developing at the national level. For example, in 2015, Switzerland enacted [legislation](#), allowing for assets deposited in Switzerland by foreign corrupt officials or their close associates to be frozen, confiscated and restored to the country of origin for the purpose of improving "the living conditions of the inhabitants of the country of origin".

In March this year, the French National Assembly unanimously adopted legal provisions allowing ill-gotten gains confiscated in France, to be returned to the populations in the country of origin. This followed the [conviction of Teodorin Obiang](#), the Vice President of Equatorial Guinea, and seizing of approximately 150 million euros.

Civil society also has a role to play. Investigative journalists and anti-corruption NGOs have for many years worked to expose the wealth hidden by corrupt leaders who use oppression to maintain their position of power. NGOs can bring claims on behalf of survivors to freeze assets under Magnitsky sanctions, can seek the repurposing of frozen assets, and can advocate for changes in national laws to make such procedures easier. Were such assets to be made available to reparations funds, they could have a transformative effect.

In conclusion, we applaud the efforts of the co-facilitators and encourage States to cooperate in securing the payment of reparations for victims, ensuring that victims' rights to reparations are upheld; that perpetrators do not profit from their illicit conduct and do not evade accountability; and the financial burden on donors and third States to support victims is alleviated.

Thank you.