

February 2025

RESEARCH REPORT

Of Two Minds

Sanctions as a Form of Accountability
and the Dilemmas for Transitional Justice



Cover Images: Left, protesters demonstrate against U.S.-imposed sanctions on Zimbabwe in front of the United States Embassy in Harare, Zimbabwe, on October 25, 2024 (Tafara Mugwara/Xinhua/Alamy Stock Photo). Right, thousands of people in London demonstrate against the Russian invasion of Ukraine on February 26, 2022 (Amani A/Alamy Stock Photo).

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About ICTJ

The International Center for Transitional Justice works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit www.ictj.org

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Executive Summary

Globally, the accountability deficit facing victims of war crimes, crimes against humanity, and genocide is enormous. An overstretched International Criminal Court, weak national justice systems, and a lack of political will to investigate crimes and prosecute those who are responsible are among the reasons for this justice gap. As a result, in many situations, the victims of human rights violations, survivors, and their families, together with civil society and other justice actors, face long odds in their fight to hold the perpetrators responsible and to seek a remedy for the harms victims have suffered.

Transitional justice offers approaches for providing accountability, redress, and the critical recognition that victims demand and deserve by both addressing the legacies of past violations and helping societies prevent the recurrence of future abuses. It does this in a broad and holistic way that, depending on the local situation, can encompass both judicial accountability mechanisms like criminal prosecutions and civil lawsuits and nonjudicial measures, including truth commissions, official apologies, administrative reparation programs, memorialization efforts, and institutional reforms.

This report considers the role that international economic sanctions—tools that are primarily associated with issues of foreign policy, peace, and security—may play in advancing or hindering transitional justice goals and processes. This is a new area of inquiry. Previously, international economic sanctions have not been considered within the framework of transitional justice.

This oversight is unsurprising given that transitional justice places the victims of massive and serious international crimes at its center and embraces approaches drawn from criminal justice, restorative justice, economic justice, and social justice. International economic sanctions, on the other hand, are often deployed as a nonkinetic tool of coercive diplomacy by a nation or group of nations against another country or against individuals, groups, organizations, or public or private entities to induce a change in behavior or policy. Sanctions are primarily geopolitical tools like those imposed by the United Nations Security Council in response to acts of aggression and threats to and breaches of the peace under Chapter VII of the United Nations (UN) Charter, by regional actors like the European Union under its Common Foreign and Security Policy, or unilaterally under domestic legislation like the United States' International Emergency Economic Powers Act of 1977 that grants broad sanctions powers to respond to “any unusual and extraordinary threat.”

However, in recent years, as transitional justice and sanctions have continued to evolve as policy tools, there is expanded potential for greater engagement in the future on justice goals

like accountability and redress for human rights abuses. Like UN special procedures, universal jurisdiction, and restorative justice processes, international sanctions may provide an alternative or complementary means of advancing or pursuing accountability for serious and massive human rights violations in contexts of impunity, including in societies where significant political transitions have not yet begun. Much like these processes, sanctions mechanisms also offer opportunities for victim participation, while at the same time presenting risks for victims and human rights activists who support the imposition of sanctions, for instance against a dictatorial regime, or who help monitor sanctions compliance during conflict.

An analysis of sanctions from a transitional justice perspective is particularly timely now, given the recent normative shift since 2016 in autonomous sanctions law toward accountability for human rights violations and corruption with the passage of global Magnitsky-style sanctions laws that target individual human rights abusers and corrupt actors. These laws, like transitional justice, have both backward-looking and forward-looking components and seek to hold accountable the most responsible actors, while also working to disrupt, deter, and prevent the recurrence of violations and abuses in the future and to promote reform.

The goal of this report is to achieve a clearer understanding of whether these largely independent processes can be better aligned in the future, while still reflecting the separate and unique role each process plays in countries that are responding to serious and massive violations of human rights and humanitarian law and their distinct goals and approaches. In addition, it is important to ensure that the consideration of sanctions within the transitional justice agenda does not result in instrumentalizing transitional justice rather than supporting victims' rights.

To this end, the report gathers the lessons that have been learned from transitional justice's interactions with sanctions processes, both past and present, to provide guidance and to provoke discussion about whether and how international economic sanctions function in support of *transitional justice goals* (e.g., punishing perpetrators, recognizing victims and repairing the harms they have suffered, advancing the truth, and preventing a recurrence of violations) and *transitional justice processes* (e.g., documenting human rights violations and identifying those who are responsible, supporting trials and truth commissions, and funding reparations).

The report concludes that international sanctions can contribute to efforts to provide accountability for serious and massive human rights violations, as follows:

- **Sanctions as a form of punishment and censure:** Sanctions can function as a form of retributive justice by directly punishing the targets, including the responsible individuals and their families, through travel bans, asset freezes, and an immediate form of reputational impact. The most direct examples arise in the context of targeted sanctions like those that are available under Magnitsky-style legislation against individuals, companies, and organizations. They can, as the United States asserts, “impose tangible and significant consequences” by targeting both the leaders and the foot soldiers of repressive or corrupt regimes for their atrocities, as well as other actors who are complicit in or facilitate those abuses. They can offer a measure of international accountability in the form of punitive and moral censure and in some instances have been used in support of ongoing criminal investigations and prosecutions. Importantly, sanctions also offer an “alternative path to accountability” in the form of sanctions evasion enforcement actions in which prosecutors can charge sanctions evasion as a criminal act and can elevate the attention that is paid to certain crimes and vulnerable victim populations who are sometimes overlooked, for instance victims of sexual violence.

- **Sanctions in support of truth:** Sanctioning bodies can share common interests and functions with truth-seeking efforts, most notably around the collecting of information and evidence. Today, within the context of Magnitsky-style sanctions, sanctions authorities are coordinating and consulting with transitional justice actors, civil society organizations, human rights defenders, and other activists as part of sanctions listing and delisting procedures. That process and the dossiers, sanctions listings, and regulations that are issued as a result help to recognize victims and to compile and promote the truth about the crimes that occurred, the rights that were violated, and the nature of the harms that were suffered. Although to date the history of direct engagement between truth commissions and sanctioning authorities has been limited, in the cases where such coordination has occurred, it often involved information-sharing and helped build a record of what happened. In a few instances, truth commissions were informed by or based their findings and recommendations on the data that was compiled during investigations carried out by UN sanctions committees and panels of experts. Others considered the history of sanctions and their impact on the country's political economy, as well as the consequences for civilians of failing to impose sanctions in response to acts of aggression or other violations of international law. Those examples highlight some potential areas for future collaboration.
- **Sanctions' contributions to processes of repair:** Sanctions can also offer a measure of repair to victims by supporting efforts to combat impunity through the tracing, freezing, confiscating, and repurposing of misappropriated assets to fund victim reparations. These efforts take into account the complementary role that international sanctions authorities, together with national law enforcement and prosecutorial authorities, play in pursuing and repatriating assets outside their country's borders. Sanctions in the form of asset freezes provide a mechanism for identifying and fixing assets in place as a potential funding source for reparations, while at the same time reinforcing and supporting prior, parallel, or later national transitional justice processes to establish the case for confiscating perpetrator assets to fund victim reparations.
- **Sanctions' prevention of future violations:** Sanctions also are designed to change behavior and policy going forward, which often includes seeking to prevent future violations. Although sanctions are sometimes lifted before such changes and reforms are finalized, opportunities exist for future strategic engagement to enhance the transformative and preventative potential of both sanctions and transitional justice.

The report also examines the challenges that sanctions pose to transitional justice processes and actors, including their negative humanitarian impact. Some issues are unique to transitional justice actors; others are shared by everyone who is affected by sanctions, both victims and nonvictims alike. This discussion focuses on the obstacles that sanctions pose to accountability, starting with the questions of legitimacy that are frequently raised by transitional justice actors, followed by practical difficulties that may undermine sanctions' potential impact on the justice agenda. This report finds evidence of the following:

- **Selectivity in the choice of targets:** Because human rights sanctions, like other sanctions, are tools of foreign policy, there are many apparent inconsistencies in the imposition of sanctions internationally, both at the individual and the country level, with decisions to impose (or not impose) sanctions seemingly based on self-interested geopolitical and economic interests that favor allies and domestic actors at the expense of others. These inconsistencies can undermine sanctions' legitimacy between and among countries and for many victims, victims' groups, and human rights defenders working on transitional justice who see a lack of shared commitment to basic principles and beliefs that underpin the international order, or even hypocrisy.

- **Negative humanitarian impact:** Today, despite dedicated international efforts to rethink the use of comprehensive sanctions and to prioritize the use of individual targeted sanctions—so-called smart sanctions—international economic sanctions, in particular unilateral coercive measures, continue to devastate the economies in the target countries. The results are often detrimental to civilians and violate economic, social, and cultural rights, often with particular consequences for human rights victims and other vulnerable populations.
- **Sanctions evasion and the empowerment of authoritarian and corrupt actors:** In many circumstances, sanctions can be ineffective and even counterproductive. Along with exacerbating economic crises and hindering human rights, sectoral sanctions, for instance, can precipitate shifts in the political economy of the target country by encouraging the creation of black-market networks for evading sanctions; such networks often empower oppressive elites and may even allow them to prosper while they are under sanction. As such, sanctions' capacities as an accountability tool are tempered by the fact that those in power and their enablers often are unaffected while victims of human rights violations and human rights defenders suffer from the consequences of sanctions.
- **Limited tangible impact on targets:** Targeted sanctions, much like other international accountability mechanisms, are seen by many victims and transitional justice actors as giving mere lip service to justice. There are various reasons for this perception. For instance, targeted sanctions like travel bans and visa restrictions have little or no impact on many perpetrators because they have no intention to travel, and for those with no or well-hidden assets, financial sanctions provide little tangible threat. These challenges are not merely messaging issues. Instead, they reflect the reality that although sanctions are believed to achieve their main objective roughly one-third of the time, the experience on the ground for justice actors can feel more like a form of political theater between elites at the international level rather than a provision of accountability.
- **Undermining of justice processes and justice actors:** Sanctions and sanctions compliance measures present many logistical challenges for victims of human rights violations, civil society organizations, human rights defenders, and activists when they are doing the work that is needed to document human rights abuses, expose wrongdoing, and prevent illegal activities. These logistical obstacles include restrictions on basic tasks like banking, opening offices, and operating offices, which sometimes result in increased costs, time-consuming compliance efforts, and decisions to pull back on essential activities. At the same time, justice actors may also face threats, arbitrary detention, torture, and extrajudicial killing because of their advocacy in support of sanctions for human rights violations and their role in sanctions monitoring.
- **Lack of outreach:** Sanctions can create unrealistic victim expectations and increase the potential risks to civil society, human rights defenders, and other activists who support sanctions or work to prevent sanctions evasion. Sanctioning authorities therefore often need to do more meaningful outreach and messaging, especially to justice actors, including civil society and victim populations who are marginalized by geography, poverty, illiteracy, ethnicity, caste, or gender, to elicit their views on sanctions and their impacts on victim populations and on transitional justice initiatives. Better outreach and messaging increase the potential for sanctions to recognize victims.
- **Legal and practical challenges to repurposing assets:** The process of repurposing sanctioned assets for victims' reparations involves a series of complex legal steps, as well as significant political will and cooperation between different national authorities. These steps include

investigatory, prosecutorial, and judicial processes, whether criminal or civil, for establishing a legal basis for seizing and confiscating illegally obtained assets or assets that are tied to human rights violations in the sanctioning state and the country that is seeking to repatriate the assets.

- **Lack of coordination and coherence:** Decisions about sanctions are usually made in isolation from transitional justice processes, including those that are occurring in parallel or close in time. This failure to coordinate can happen at various times during the sanctioning process and can include a lack of meaningful engagement on issues of accountability and when decisions are being made for the lifting of sanctions, which can have potential implications for transitional justice actors and processes on the ground in the target state.

Recommendations

The report identifies areas where increased engagement between justice practitioners and sanctions authorities could take advantage of the synergies in their work at various stages of the sanctioning process. This includes when information is being compiled about possible sanctions targets; again while sanctions and justice processes are being announced, implemented, and evaluated; and finally at the back end, when assessments are being made around the lifting of sanctions.

For the United Nations

- Enhance coordination between sanctions committees and panels of experts and those who are implementing transitional justice processes, including truth commissions and reparations programs. This collaboration should encompass the processes of documenting human rights violations and economic crimes, monitoring sanctions compliance, and reporting sanctions evasion. Sanctions committees and panels of experts should engage more systematically with justice actors to help mitigate their risks of threats, arrest, or physical harm in connection with sanctions operations.

For sanctioning authorities

- Make “smart” sanctions smarter by increasing coordination between and among sanctioning jurisdictions and justice actors and by encouraging multilateral action to increase pressure on targets and to deter evasion efforts.
- Enhance ongoing consultative processes during the sanctioning process with victims, victims’ groups, civil society, and other justice actors who see firsthand the humanitarian and other impacts of sanctions on victims and their communities on the ground and thus often have critical and relevant information to share about whether the imposition of sanctions will provide a useful form of leverage, or, if sanctions are already being implemented, if they are causing more harm than good and should be lifted. These consultative processes could help mitigate some of the negative impacts of sanctions on civilians or encourage sanctions authorities to consider calibrating sanctions decisions by issuing a warning before imposing them or putting benchmarks in place in advance of issuing new designations.
- Ensure transparency and encourage consultations between transitional justice actors, legislators, law enforcement, prosecutors, and sanctions authorities who are working on the tracing and freezing of assets and on the potential earmarking of recovered assets to ensure that the victims of mass atrocities and economic crimes benefit from the confiscation and repatria-

tion of those assets. This work should encompass discussions at both the international and national level to address legal challenges to confiscating assets to fund victims' reparations, for instance under the Rome Statute's forfeiture provision, as well as proposals for confiscating the interest income that is produced by seized assets, rather than the assets themselves.

- Widen the scope of sanctions investigatory processes to look into those who facilitate human rights violations, corruption, and sanctions evasion, for example bankers and other commercial entities, and expand coordination with victims' groups and civil society actors who research these complex networks.

For justice actors

- In relevant contexts, assess the implications that sanctions could have or are having on transitional justice processes, victims, and civil society; the dilemmas they create for transitional justice actors; and the challenges of keeping reasonable expectations about their effectiveness. This research could include consideration of the following:
 - The existing forms of victim and civil society participation in sanctions formulation and the role, if any, that improved outreach could play in making the process more inclusive and impactful.
 - Areas of potential cooperation between sanctioning authorities and truth commissions, including during the formulation of the truth commission mandate, when investigating and documenting atrocities and economic crimes, and in the implementation of a truth commission's findings and recommendations, including those on funding reparations.
 - The complex dynamics between transitional justice processes and decisions to lift sanctions. This includes the impact of these decisions on proposed, soon-to-be-implemented, or ongoing accountability processes. It also includes recent instances of sanctions that condition the suspension or lifting of sanctions on the implementation of transitional justice aims and processes, with special attention paid to understanding whether and how they advance or hinder the implementation of a transitional justice agenda.
- Promote the importance of sanctions and processes for freezing, seizing, and recovering assets as a source of funding for victim reparation and their contribution to efforts to address the legacies of human rights violations and economic crimes.

Introduction

In recent years, there has been a substantial increase in the imposition of international sanctions globally,¹ a trend that intensified following the latest war of aggression launched by the Russian Federation against Ukraine on February 24, 2022, with more than 19,535 new sanctions generated since the invasion.² Despite long-standing criticisms of sanctions, including for violating the economic, social, and cultural rights of civilian populations, as well as serious questions about their effectiveness, sanctions in their various forms nonetheless remain a tool of choice for many of the world's most economically and militarily powerful countries.

As a result, today it is estimated that sanctions are being applied in some form against approximately one-third of the world's population,³ with the United States (US) by far the "world's most prolific user."⁴ Among the sanctions in effect today are a subset that potentially contribute to accountability for human rights violations.

These actions include human rights sanctions, such as asset freezes and visa bans, that target individuals and entities that are responsible for serious human rights violations and corruption, as well as unilateral and multilateral trade and financial sanctions that cite human rights violations among the main reasons for their application.⁵ Examples include sanctions that have been imposed since 2016 to provide accountability for human rights violations and corruption

1 For the period from 2016 to 2019, Aleksandra Kirilakha, Gabriel Felbermayr, Constantinos Syropoulos, Erdal Yalcin, and Yoto Yotov, "The Global Sanctions Data Base: An Update That Includes the Years of the Trump Presidency," Drexel University Working Paper (2021), https://ideas.repec.org/p/ris/drxlwp/2021_010.html. The paper is being reprinted in the forthcoming volume edited by Peter A. G. van Bergeijk, *The Research Handbook on Economic Sanctions*.

2 Castellum.AI, "Russia Sanctions Dashboard," as of August 2, 2024, <https://www.castellum.ai/russia-sanctions-dashboard>.

3 Nicholas Mulder, *The Economic Weapon: The Rise of Sanctions as a Tool of Modern War* (Yale University Press, 2022), 613–614, citing Idriss Jazairy, "Un tiers de la population mondiale habite ans des pays touches par des sanctions" (September 2015).

4 Amanda Shendruk and Ana Campoy, "Sanctions Have Been a Predominantly American Weapon Since WWII," *Quartz*, March 11, 2022.

5 US Executive Order 13067, Blocking Sudanese Government Property and Prohibiting Transactions with Sudan, Federal Register, Vol. 62, No. 214, November 3, 1997 ("the policies and actions of the Government of Sudan, including continued support for international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence of human rights violations, including slavery and the denial of religious freedom, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States").

under so-called Magnitsky-style sanctions legislation,⁶ like those imposed in the Central Africa Republic, Myanmar, South Sudan, Sudan, Syria, Ukraine, Venezuela, and Yemen.⁷

Still other sanctions do not attempt to respond directly to human rights violations, but nonetheless have the potential to support (or hinder) transitional justice goals or processes. These can include sanctions imposed by the United Nations Security Council (UNSC) in the form of prohibitions, for instance, on arms sales and trade in high-value commodities in response to threats to and breaches of the peace. In the past, such sectoral sanctions have led to direct engagement between sanctions authorities and transitional justice mechanisms, like truth commissions, or have informed later trials or discussions for funding administrative reparations programs.

To better understand these dynamics, this report analyzes sanctions from a transitional justice perspective, in particular their use as a form of accountability for human rights violations and economic crimes and the role they play in advancing or hindering victims' rights. It seeks to gather the lessons that have been learned from transitional justice's interactions with sanction processes, both past and present, and to assess whether these largely independent processes can be better aligned in the future, while still reflecting the separate and unique role each process plays in countries that are responding to serious and massive violations of human rights and humanitarian law and their distinct goals and approaches.

There is wide variety in transitional justice processes and the diversity of contexts where they have been and are being applied; they can take place in situations of armed conflict; before, during, or after transitions from corrupt authoritarian rule; and amid post-conflict reconstruction and peacebuilding efforts. Consequently, this report examines a range of sanction *types* (e.g., targeted asset freezes and travel bans; trade sanctions that are imposed, for instance, on arms and commodities such as diamonds; conditionalities on foreign aid; and investment bans) and *asserted objectives* (e.g., deployed in response to violence; human rights abuses; corruption; and the persecution of political opponents, human rights defenders, and the press), including those that are deployed by the UNSC, by regional actors such as the European Union (EU), or unilaterally by individual governments.

When parsing out whether and how international sanctions advance or hinder accountability in these different contexts, this report includes examples where the sanctions function in support of either *transitional justice goals* (e.g., punishing perpetrators, recognizing victims and repairing the harms they have suffered, advancing the truth, and preventing a recurrence of violations) or *transitional justice processes* (e.g., documenting human rights violations and identifying those who are responsible, supporting trials and truth commissions, and funding reparations).

6 This generation of human rights sanctions legislation was enacted by the US, Canada, the United Kingdom (UK), the European Union (EU), and other Global North countries followed the 2009 killing of Sergei Magnitsky, a Ukrainian-born tax advisor, who was killed while in custody in Russia. See, e.g., the US Global Magnitsky Human Rights Accountability Act (Public Law 114-328), part of the National Defense Authorization Act for Fiscal Year 2017; Canada's Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), S.C. 2017, Ch. 21, October 18, 2017; EU Council Decision (CFSP) 2020/1999 of December 7, 2020, and Council Regulation 2020/1998 of December 7, 2020, both concerning restrictive measures against serious human rights violations and abuses. Magnitsky-style legislation has also been adopted in Czechia, Estonia, Gibraltar, Jersey, Latvia, and Lithuania.

7 See, e.g., US Department of the Treasury, "Treasury Sanctions UPC Militia Leader in Central African Republic for Serious Human Rights Abuse," press release, March 21, 2023; US Department of the Treasury, "Treasury Prohibits Financial Services with Myanmar Oil and Gas Enterprise and Imposes Additional Sanctions on Burma Military Regime Officials and Supporters," press release, October 31, 2023; US Department of the Treasury, "Treasury Sanctions Sudanese Paramilitary Leader," press release, September 6, 2023; Council of the European Union, "Russia's Aggression Against Ukraine: The EU Targets Additional 65 Individuals and 18 Entities," press release, June 3, 2022; US 113th Congress, Venezuela Defense of Human Rights and Civil Society Act of 2014, Public Law No. 113-278, December 18, 2014, <https://ofac.treasury.gov/media/5821/download?inline>; European Council, Council Decision (CFSP) 2017/2074 of November 13, 2017; US Dept of the Treasury Sanctions, "Serious Human Rights Abusers on International Human Rights Day," press release, December 10, 2020.

Accountability is the primary lens of analysis, because sanctions are generally understood most directly as a way of holding actors responsible for their actions. However, a broad understanding of accountability is not limited to punishment or retribution alone, but rather includes the ways in which truth, reparation, and prevention contribute to determining and acknowledging harms and responsibility.

This approach avoids an overreliance on the publicly asserted goals of sanctioning authorities, which sometimes demonstrate stark differences between the tone and purposes that are asserted in the authorizing law (e.g., supporting “democratic values”) and the accompanying political rhetoric that is offered to domestic audiences (e.g., promoting “regime change”), as was the case when the United States sanctioned Cuba.⁸ It also takes account of the complexities of the motivations underlying sanctions, which can be challenging to trace, given that they sometimes serve multiple purposes at the same time or shift their focus over time in response to changes on the ground,⁹ both in the sending and the target states—a common situation when sanctions remain in place for decades, even though they are meant to be temporary.

At the center of this inquiry is the real-world impact that sanctions are having on justice actors in the fight against impunity, including victims and victims’ groups and those who work alongside them, whether in civil society or government, and the dilemmas sanctions present both morally and practically for these actors and broader efforts to advance transitional justice.

In some situations, justice actors are among the strongest advocates for the application of sanctions because they are often one of the only accountability tools available, especially in societies where significant political transitions have not yet begun. For some activists, like those who are behind the current boycott, divestment, and sanction campaigns relating to Myanmar and the Occupied Palestinian Territory, sanctions are also a grassroots tool for forcing changes in the behavior not only of foreign governments but also of complicit public and private actors, including corporations, by raising awareness among the broadest audience about the immorality and illegality of the ongoing human rights violations, internationally as well as domestically. In some instances, support for sanctions puts those who are working on justice issues at great personal risk. The work of collecting the evidence that is needed by sanctioning authorities to identify those who are responsible for human rights violations and corruption is dangerous work in countries that are in conflict and those that are under corrupt or repressive regimes.

At the same time and sometimes in the very same contexts, other justice activists may oppose sanctions and demand that they be lifted because of their devastating humanitarian effects and their toll on civilians’ health and on economic, social, and cultural rights. Although sanctions can be calibrated to different levels of severity in response to the nature of the offending behavior or policy and the level of the perceived threat (e.g., from the recall of diplomatic representatives to targeted travel bans and asset freezes to comprehensive cross-sectoral trade restrictions), they remain imprecise (and even “blunt”) instruments and present ethical challenges for those people who are working with or on behalf of victims of human rights abuses and other vulner-

8 In that case, the promotion of human rights was a cited objective of the 1992 Cuban Democracy Act, which references Fidel Castro’s “consistent disregard for internationally accepted standards of human rights and for democratic values” and Cuba’s failure to admit the UN Human Rights Commission into the country to “investigate human rights violations.” The political messaging was often different, as evidenced by then-President George H. W. Bush’s statements during his reelection campaign: “For freedom to rise in Cuba, Fidel Castro must fall.” See, e.g., Cuban Democracy Act, 22 USC Ch. 69, Sec. 6001; The American Presidency Project, “George Bush Remarks on Signing the Cuban Democracy Act of 1992 in Miami, Florida,” October 23, 1992.

9 Yoto Yotov, Erdal Yalcin, Aleksandra Kirilakha, Constantinos Syropoulos, and Gabriel Felbermayr, “The ‘Global Sanctions Data Base’: Mapping International Sanction Policies from 1950-2019,” *VoxEU*, CEPR, May 18, 2021, <https://cepr.org/voxeu/columns/global-sanctions-data-base-mapping-international-sanction-policies-1950-2019>.

able populations.¹⁰ These negative impacts can play out not only within national borders but also regionally, when sender states deploy economic sanctions against multiple countries with intersecting impacts on trade, and sometimes worsening dislocations of people across borders.

As such, there is rarely a clear through line for many transitional justice actors, including victims and their families and civil society organizations, when thinking about sanctions. Instead, victims' groups and civil society actors are often of two minds in discussions about sanctions and the conditions for imposing and lifting them, referring to them both as a bulwark against impunity and as an obstacle to their work and the cause of severe humanitarian consequences for civilians. As one civil society actor working on Syria phrased it, "We are with sanctions but not with suffering."¹¹

"We are with sanctions but not with suffering."

— Syrian civil society actor

Notably, because sanctions cause scarcity and can seriously degrade a country's economy, they may also reinforce rather than change the sanctioned behavior, for instance by incentivizing sanctions evasion rather than compliance.¹² As a result, in some instances, "sanctions can have the perverse effect of bolstering authoritarian, statist societies" and may undermine the very forces, like civil society, that are needed for reform and that report sanctions evasion.¹³

In addition, in many places in the world, international sanctions prompt cries of hypocrisy because of their apparent selective deployment as a weapon of geopolitical and economic power and their use in support of wide-ranging counterterrorism programs.¹⁴ Although the reasons to impose or not impose sanctions are complex and the incongruities in their application may ultimately be justifiable,¹⁵ they nonetheless present serious questions of moral legitimacy for transitional justice's main constituencies, including victims' groups and civil society. As one civil society actor working in Sudan explained, "You can't just impose sanctions without convincing the population about why you are imposing them.... Legitimacy comes not just from the international community or from those who have power. Legitimacy comes from the normal citizen."¹⁶

Unfortunately, there is no ready solution to resolve these dilemmas, given that sanctions are foreign policy tools that are imposed across national borders, most often in support of international peace, security, and other geopolitical goals. Transitional justice, in contrast, consists primarily of national responses that are implemented by societies confronting their own records of past or ongoing international humanitarian law and human rights violations.

To provide guidance and to provoke further discussion on the intersection of sanctions and transitional justice, this report addresses the following three questions:

10 Despite recent statements to the contrary: UN News, "Security Council Sanctions: From Blunt Instrument to Vital Tool," February 7, 2022.

11 Focus group discussion with Syrian civil society, January 31, 2023, on file with ICTJ.

12 Mulder, *The Economic Weapon*, 24.

13 Richard N. Haass, "Economic Sanctions: Too Much of a Bad Thing," Brookings Institution, June 1, 1988.

14 For instance, in 2020 the United States wielded its power to obstruct votes on funding in the International Monetary Fund (IMF) to block an IMF loan for Iran's fight against COVID-19. Bill Van Auken, "US Blocks IMF Loan for Iran's Fight Against COVID-19," World Socialist Web Site, April 11, 2020. In addition, the same year, the country sought to "decouple" from China by limiting access to American technology, such as semiconductors. Reuters, "Trump Again Raises Idea of Decoupling Economy From China," September 7, 2020.

15 Nina M. Brehl, "The Inconsistency of EU Sanctions in Sub-Saharan Africa: Hypocrisy or Careful Policy Making? A Systematic Literature Review," International Institute of Social Studies, Working Paper No. 713, (March 2023).

16 Interview, October 18, 2023, on file with ICTJ.

- To what extent do international sanctions function as a form of accountability and redress for serious and massive human rights violations and prevent the recurrence of violations?
- What challenges do sanctions pose for victims, victims' groups, civil society organizations, and broader efforts to advance transitional justice goals?
- What steps should be followed to take advantage of sanctions as a tool to advance human rights, to address past abuses, and to prevent future violations in contexts where transitional justice is under discussion or is being implemented?

This analysis is based on a literature review and information that was gathered during bilateral interviews conducted in 2023 and 2024 with experts in sanctions and transitional justice and with representatives of civil society organizations and victims' groups that are working on situations where individuals and entities were or are being sanctioned.

Identifying Common Ground in Contested Contexts

Transitional justice and international economic sanctions are broadly seen as separate policy tools in the contexts where they operate, with each playing a unique role and employing distinct approaches in support of their specific objectives. At the same time, however, because they are often applied or could be applied in the same contexts, these two tools have implications for each other that should be taken into account. Depending on the specific nature of those contexts and the type of sanctions that are employed, the tools can have overlapping objectives or can change the dynamics of the environment in which the other one operates. For transitional justice, sanctions can be relevant even when they are not applied or are no longer applied, because this too has implications for how accountability and other related objectives can be achieved.

At its core, transitional justice is about a society coming together to address the legacies of years or even decades of war or repression and to provide accountability and redress for the victims of massive and serious international crimes, including genocide, crimes against humanity, and war crimes. It consists of a framework of principles and approaches with the rights and dignity of victims at their center and combines both retributive and restorative justice processes. These processes include judicial accountability mechanisms like criminal prosecutions and civil lawsuits and nonjudicial measures such as truth commissions, official apologies, administrative reparation programs, memorialization efforts, institutional reforms, and the vetting of government agencies.

In addition to addressing the wounds of the past, transitional justice also operates to help societies avoid and prevent the recurrence of human rights abuses and to address the common drivers of violence and conflict, such as inequality, historical exclusion, and marginalization.

To do this, transitional justice processes are implemented primarily within a nation's borders by domestic actors, including government officials, victims' groups, and civil society actors, with the involvement of diaspora communities and marginalized populations like internally displaced people and families of the forcibly disappeared. It functions as both a "catalyst for change for societies at large" and "a critical modality of redress for victims,"¹⁷ and as such seeks, among other things, to acknowledge victims and the harms they suffered, to empower victims through participation in inclusive processes, to foster civic and institutional trust, and to identify the

17 UN Secretary General, "Guidance Note of the Secretary-General on Transitional Justice: A Strategic Tool for People, Prevention and Peace," October 11, 2023.

roots causes of conflict and human rights abuses and to prevent their recurrence—most of which are not outcomes that are commonly associated with sanctions.

International economic sanctions, on the other hand, are essentially top-down approaches within the purview of sovereign nations for implementing foreign policy priorities. Under Chapter VII of the United Nations (UN) Charter, sanctions are imposed for reasons of international peace and security by the UNSC in response to acts of aggression and threats to and breaches of the peace. In contrast, the EU can impose sanctions (or what it calls “restrictive measures”) under its Common Foreign and Security Policy not only “to preserve the peace” but also “to safeguard its values, fundamental interests, security, independence, and integrity” and to “support democracy, the rule of law, human rights and principles of international law.”¹⁸ Similarly, the United States can respond to “any unusual and extraordinary threat to the national security, foreign policy or economy” under its International Emergency Economic Powers Act of 1977, among other statutes.¹⁹

Unlike transitional justice, which emerged in the late 1980s and early 1990s, sanctions have a long history, dating back in modern times to the early 20th century and the creation of the League of Nations in 1920.²⁰ Although sanctions are generally seen as a preferred alternative to war, they remain inherently coercive and imprecise tools that are deployed by a nation or group of nations against another country or against individuals, groups, organizations, or public or private entities to induce a change in the behavior or policies of foreign actors. Too often, they wreak havoc on the economy of the country that is under sanction and cause significant, albeit sometimes unintended, harm to the “very populations they are meant to protect.”²¹ In addition, their track record of (in)effectiveness remains a matter of continuing debate.²²

Too often sanctions harm the very populations they are meant to protect.

Consequently, although sanctions are often well-intentioned, in many countries that are under sanction, they are seen as malign tools wielded by powerful countries at the expense of another nation’s sovereignty.

Yet, while acknowledging these realities and their often-problematic history, sanctions are often one of the few forms of leverage against perpetrators of human rights violations, corruption, and repression in contexts facing impunity and legacies of massive human rights abuses. This is particularly true in situations where a transition has not yet occurred but can also include situations of armed conflict, active shifts away from corrupt authoritarian rule, and post-conflict reconstruction and peacebuilding efforts. In these contexts, sanctions and transitional justice can share desired outcomes both as general catalysts for change and as tools for promoting human rights and accountability.

18 Treaty on European Union, Art. 21.2.

19 International Emergency Economic Powers Act, 50 U.S. Code, Ch. 35, Sec. 1701 et seq., Title II of Pub.L. 95-223, 91 Stat. 1626, enacted October 28, 1977, <https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter35&edition=prelim>.

20 The Covenant of the League of Nations, Art. 16. There are also instances where sanctions were imposed in ancient times, but they are less relevant to this study.

21 UN, “Concerned by Unintended Negative Impact of Sanctions, Speakers in Security Council Urge Action to Better Protect Civilians, Ensure Humanitarian Needs Are Met,” SC/14788, meeting coverage, February 7, 2022.

22 Daniel McCormack and Henry Pascoe, “Sanctions and Preventive War,” *The Journal of Conflict Resolution* 61, no. 8 (September 2017): 1711–1739.

For example, today, among the most frequently cited policy goals by sanctions policymakers are human rights and “the restoration of democracy,” followed by “‘end wars’ and ‘policy change,’”²³ areas of compatibility with one or more outcomes associated with transitional justice, which include addressing accountability and reinforcing respect for human rights, promoting the rule of law and more responsive justice and security institutions, hindering the repression of civil society and the democratic opposition, and preventing the recurrence of massive human rights violations.

Targeted individual sanctions like asset freezes and visa restrictions are among the international economic sanctions most closely aligned with transitional justice aims and processes, as both serve as a response to human rights abuses and corruption and seek to hold responsible the perpetrating actor, while also attempting to disrupt, deter, and prevent the reoccurrence of future abuses and promote reform. This area of overlap is particularly relevant since 2016, with the enactment of global Magnitsky-style sanctions laws providing for the extraterritorial application of targeted sanctions by the US, Canada, the United Kingdom (UK), the EU, and other countries following the 2009 killing of Sergei Magnitsky.

Similarly, many unilateral trade, financial, and foreign aid sanctions cite human rights violations among the main reasons for their deployment.²⁴ These can include sectoral sanctions on arms and equipment and limitations that are imposed, for instance, on transactions related to new debt, existing bonds, and the payment of dividends and distribution of profits.²⁵ Other sanctions take the form of the suspension of preferential trade agreements, like those implemented by the European Commission against Sri Lanka in 2010 and by the United States against Ethiopia, Guinea, and Mali in 2021 under its African Growth and Opportunity Act, which cites the protection of human rights among its objectives.²⁶ They may also include trade sanctions on high-commodity natural resources that are intended to prevent violations of civil and political rights as well as economic and social rights violations.

In addition, today, some UNSC Chapter VII sanctions regimes draw explicit links to transitional justice processes and signal support for specific transitional justice processes and aims, including, among other things, “accountability, reconciliation, and healing as prominent elements of a transitional agenda.”²⁷ Some sanctions also condition relief from sanctions on progress around transitional justice measures, like those set down in the US Caesar Syria Civilian Protection Act (Caesar Act).²⁸

23 Kirilakha et al., “The Global Sanctions Data Base.”

24 US Executive Order 13067.

25 Ibid. See also US Executive Order 13808, Imposing Additional Sanctions with Respect to the Situation in Venezuela, Federal Register, Vol. 82, No. 166, August 24, 2017, <https://ofac.treasury.gov/media/5476/download?inline>.

26 To be eligible for the EU’s Generalized Scheme of Preferences Plus (GSP+), a country must meet sustainable development criteria, including ratifying the 27 GSP+ international conventions on human rights, labor rights, the environment, and good governance. Countries undergo regular monitoring, including visits, and “continuous dialogue on GSP+ compliance.” The European Commission presents a report on each beneficiary country’s implementation of the 27 conventions to the European Parliament and the Council of the European Union every two years. See European Commission, “Generalised Scheme of Preferences Plus (GSP+),” <https://trade.ec.europa.eu/access-to-markets/en/content/generalised-scheme-preferences-plus-gsp>.

Similarly, under the US African Growth and Opportunity Act, eligible sub-Saharan African countries can access the US market duty-free if they can show they have made or are making progress toward “establishing a market-based economy, the rule of law, political pluralism, and the right to due process” and “enact[ing] policies to reduce poverty, combat corruption, and protect human rights.” Noncompliance with these requirements led in November 2021 to the termination of Ethiopia, Guinea, and Mali for lack of progress in those areas. See, e.g., the White House, “A Message to the Congress on the Termination of the Designation of the Federal Democratic Republic of Ethiopia (Ethiopia), the Republic of Guinea (Guinea), and the Republic of Mali (Mali) as Beneficiary Sub-Saharan African Countries Under the African Growth and Opportunity Act (AGOA),” November 2, 2021.

27 Security Council Report, “Transitional Justice: What Role for the UN Security Council?” (October 27, 2022), 45.

28 US Caesar Syria Civilian Protection Act of 2019, Sec. 52, 116th Congress, December 20, 2019, <https://www.govinfo.gov/content/pkg/BILLS-116S52IS/pdf/BILLS-116S52IS.pdf>.

Besides these direct links, it is also important to consider the more diffuse impacts that sanctions can have on transitional justice. Sanctions can widely affect the political economy of the country where they operate, thereby reworking the landscape where transitional justice is being or will be implemented. This means that sanctions may be of concern to justice actors even after they have been withdrawn. In South Africa, for example, although sanctions were no longer in effect at the time the transitional justice process began in the mid-1990s,²⁹ their impacts on the political and social movement in support of change and on society broadly, including on the ruling coalition, civil society, business interests, and opposition forces, were examined closely by South Africa's Truth and Reconciliation Commission (TRC). It found that sanctions were an organizing factor not only for the anti-apartheid movement but also for the apartheid regime and its corporate enablers, who helped facilitate sanctions-busting operations.³⁰ As a result, in the TRC's final report, significant consideration was given to the apartheid regime's role in setting up covert sanctions-busting operations, including financial trusts, front companies, criminal networks, and organizations in locations around the world;³¹ to disagreements in the reform movement over sanctions;³² and to the role and responsibilities of the business community in supporting and complying with sanctions.

Similarly, in some limited circumstances, the absence of sanctions may also be relevant to transitional justice. For instance, East Timor's Commission for Reception, Truth, and Reconciliation (Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste, or CAVR) reflected on the *withholding* of sanctions, finding that the UNSC's failure to impose sanctions had dire consequences for civilians, including in the form of an illegal occupation and the suppression of the right of the people of the territory to self-determination:

The Security Council recognised the right of the people of Timor-Leste to self-determination in 1975 and 1976, but failed to effectively uphold this right until 1999. It did not intervene to halt the Indonesian invasion although at least two of its members knew of Indonesia's intentions; it expressed concern at the loss of life and the need to avoid further bloodshed, but did not provide for emergency humanitarian assistance; it did not sanction Indonesia for non-compliance with its wishes; it did not follow-up Resolution 389 and it shelved the question until 1999. This failure to uphold Timor-Leste's right to self-determination was the responsibility of the Permanent Members of the Security Council each of whom, with the exception of China, was dismissive of the Timor question and chose to shield Indonesia from international reaction at Timor's expense.³³

In situations like that of East Timor, the achievement of transitional justice objectives potentially may have been undermined by the decision of political actors not to pursue accountability in the form of international sanctions, sometimes in seeming contradiction to the very norms and principles that sanction regimes are asserted to uphold.

29 Sanctions had effectively ended by the time the transitional justice process began. The United States, Britain, and the European community lifted most sanctions in 1991, and the country was able to participate in the Cricket World Cup and the Olympic Games in Barcelona in 1992. Neta C. Crawford and Audie Klotz, eds., *How Sanctions Work: Lessons from South Africa* (Palgrave MacMillan, 1999), 283–287, <https://www.sahistory.org.za/sites/default/files/archive-files/neta-crawford-audie-klotz-how-sanctions-work-sbook4you.org.pdf>.

30 South Africa Truth and Reconciliation Commission, "Final Report of the Truth and Reconciliation Commission" (1998), Vol. 2, 524–540.

31 *Ibid.*, 524–540. These networks were extensive, as documented by a report of the government's auditor-general that listed a total of 417 projects that were paid out of secret funds for the purpose of controlling sanctions and disinvestment.

32 South Africa Truth and Reconciliation Commission, "Final Report of the Truth and Reconciliation Commission" (1998), Vol. 4, 88.

33 Commission for Reception, Truth, and Reconciliation Timor-Leste, "Chega! Final Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste" (2005), Executive Summary, 49, <https://www.etan.org/news/2006/cavr.htm>.

Sanctions Contributions to Transitional Justice Goals and Processes

Within transitional justice contexts, international sanctions can function as both a step toward accountability and a form of accountability in their own right. They can do this in different ways and in support of various transitional justice aims (e.g., punishing those who are responsible, providing recognition to victims, establishing the truth, and preventing the recurrence of gross human rights violations), and transitional justice processes (e.g., documenting human rights violations and identifying responsible parties, trials, truth commissions, and administrative reparations programs), both retributive and restorative.

Sanctions can support accountability at various stages of the sanctioning process, including when information is being compiled about possible sanctions targets; again while sanctions and transitional justice processes are being announced, implemented, and evaluated; and finally at the back end, when assessments are being made around the lifting of sanctions.

As such, there is no shortage of political and practical entry points for a discussion of transitional justice and economic sanctions, although the timing and sequencing of their overlap vary greatly by context, as do the complex political considerations at play, depending on whether armed conflict and atrocities have ceased, whether the transition away from mass atrocities and repressive rule has begun, and whether efforts to advance transitional justice are being undertaken in the absence of a political transition or before the end of conflict. The report does not undertake a full contextual analysis of each of these variables, but instead assesses sanctions' possibilities for synergies of process and purpose with transitional justice.

Because the notion of accountability in transitional justice contexts cannot be reduced to criminal prosecution or retribution alone, the report considers sanctions as a potential form of punishment but also as a source of information and evidence for future prosecutions and claims for reparations. It also considers the role that sanctions and transitional justice can play in helping prevent future abuses, recognizing victims, and reinforcing respect for human rights. Finally, it looks at the connections between transitional justice and economic sanctions in efforts to combat impunity by tracing and freezing misappropriated assets to fund reparations for the victims of human rights violations and the related economic crimes that fuel conflict, foment violence, and sustain dictatorships.

As a Form of Punishment and Censure

Because targeted sanctions can be imposed quickly and involve tangible action against the individuals or entities that are suspected of human rights abuses and corruption, they offer the appearance of “doing something” and are seen as an important step in the accountability process by sanctions proponents and some actors who are working on transitional justice. This is true, for instance, of targeted individual sanctions that are imposed in response to and reference specific criminal acts, such as those that are alleged to have been committed by Azatbek Omurbekov, the so-called Butcher of Bucha, and Mikhail Mizintsev, the general who oversaw the siege and bombardment of Mariupol in Ukraine.³⁴

These sanctions can function as a form of retributive justice by directly punishing the targets, including the responsible individual and often their family, through travel bans, asset freezes, and an immediate form of reputational impact. Although there is usually a foreign policy goal as well, the intention, as the word “sanction” conveys, is to “provide an immediate, tangible consequence which directly affects an individual where it hurts them the most—in their pocket.”³⁵

The most direct links between sanctions, accountability, and punishment are made in Magnitsky-style sanctions legislation, which in some instances makes the link explicit, like the US Global Magnitsky Human Rights Accountability Act (Magnitsky Act): “The United States seeks to impose tangible and significant consequences on those who commit serious human rights abuse or engage in corruption, as well as to protect the financial system of the United States from abuse by these same persons.”³⁶ Likewise, the EU’s special representative for human rights, Eamon Gilmore, explained that the EU’s Magnitsky regime (known as the Global Human Rights Sanctions Regime) “will further strengthen our collective action on human rights and ensure perpetrators of human rights violations and abuses have nowhere to hide.”³⁷

The Magnitsky Act sanctions imposed by the United States against the Rapid Action Battalion and its leadership in response to “widespread allegations of serious human rights abuse in Bangladesh,” including extrajudicial killings, enforced disappearance, and torture, were “‘widely popular’ among ordinary Bangladeshis, and civil society activists and human rights groups,” because for them, the sanctions represented “the most important condemnation of the regime’s abuses and form of accountability...in decades.”³⁸

However, despite the often-sought-after immediate impact, some sanctioning authorities like the EU emphasize that sanctions “are not intended to be punitive, but rather forward-looking, designed to affect behavioural and policy change and to promote the bloc’s values.”³⁹ Yet, no

34 European Council, “Russia’s Aggression Against Ukraine: the EU Targets Additional 65 Individuals and 18 Entities,” June 3, 2022.

35 Testimony of William Browder, Hearing on the Global Magnitsky Human Rights Accountability Act before the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations of the Committee on Foreign Affairs, US House of Representatives, April 29, 2015, <https://www.govinfo.gov/content/pkg/CHRG-114hhrg94388/html/CHRG-114hhrg94388.htm>.

36 US Department of the Treasury, “Treasury Sanctions over 40 Individuals and Entities Across Nine Countries Connected to Corruption and Human Rights Abuse,” press release, December 9, 2022.

37 Eamon Gilmore, “Launch of EU Action Plan on Human Rights and Democracy 2020–2024,” keynote address, November 23, 2020.

38 Redress, Human Rights First, Open Society Foundations, Raoul Wallenberg Centre for Human Rights, and Pan American Development Foundation, “Evaluating Targeted Sanctions: A Flexible Framework for Impact Analysis” (November 2023), 37.

39 International Partnership for Human Rights, “Practical Guide to EU Sanctions for Civil Society” (2023), 5, <https://www.iphonline.org/wp-content/uploads/2023/12/Practical-guide-to-EU-sanctions-for-civil-society.pdf>. Similarly, there are inconsistencies in the rationales provided by the US Office of Foreign Assets Control, which says that because of the office’s expressed willingness to remove people from the Specially Designated Nationals and Blocked Persons (SDN) list, “the ultimate goal of sanctions is not to punish, but to bring about a positive change in behavior.” US Office of Foreign

matter the framing, targeted sanctions often have at their core an inherent punitive intent, directed at the leaders of repressive or corrupt regimes who are suppressing, for instance, the opposition, peaceful protesters, human rights activists, and journalists and are responsible for mass atrocities and/or corruption.⁴⁰

This is particularly true of targeted sanctions that are imposed for *past acts*, and are therefore both backward-looking and forward-looking; this category includes sanctions that are enforced against former government officials, such as Iran's former president Mahmoud Ahmadinejad. The United States designated Ahmadinejad in September 2023 for, among other things, providing material support to the Ministries of Intelligence and Security and appointing two ministers back in 2009 and 2010, respectively, who enabled "the wrongful detention of our citizens, causing immeasurable pain and suffering for both the victims and their families."⁴¹

There is a sense that, at least in the short term, sanctions can shift political dynamics toward accountability by demonstrating that human rights abusers are not immune from international scrutiny or consequences. In the context of extraterritorial Magnitsky-style sanctions, they can eliminate the need for sanctioning states to condemn another nation-state, sometimes an ally—which many are reticent to do—and instead can allow them to focus on the crimes and those who are responsible for them.⁴² As William Browder, an American financier and key impetus behind the Global Magnitsky Human Rights Accountability Act, testified during US congressional hearings in support of passage of the law, "Global Magnitsky sanctions will issue a stark warning to human rights abusers and kleptocrats around the world, that no longer will they be able to commit atrocities with complete impunity."⁴³

"Global Magnitsky sanctions will issue a stark warning to human rights abusers and kleptocrats around the world, that no longer will they be able to commit atrocities with complete impunity."

— William Browder

Thus, much like other alternative or complementary means of pursuing accountability, including UN special procedures and universal jurisdiction, international sanctions provide a form of both punitive and moral censure in response to the failure to act at the national level to the overwhelming reality that serious human rights violations "are taking place in many parts of the world—frequently without any consequences for the perpetrators."⁴⁴

Sanctions have also been used in support of ongoing criminal investigations and prosecutions. For instance, international sanctions have been sought and sometimes continued in order to encourage cooperation in the arrest and surrender of indicted leaders to courts with pending

Assets Control, Filing a Petition for Removal from an OFAC List, <https://ofac.treasury.gov/specially-designated-nations-list-sdn-list/filing-a-petition-for-removal-from-an-ofac-list>.

40 Targeted sanctions are, of course, not new—indeed, asset freezes and restrictions on financial transactions date back as early as 1993, when they were imposed against 83 military leaders and 35 institutions in Haiti after the overthrow of Haiti's democratically elected president, the Reverend Jean-Bertrand Aristide. Steven A. Holmes, "Haitian Rulers Are Target of New Sanctions by U.S.," *New York Times*, June 5, 1993. However, the scale of sanctions use has escalated recently; in particular, the use of sanctions against Russian officials, military commanders, propagandists, companies, banks, and private individuals following the invasion of Ukraine has been unprecedented in scale, with, for instance, the United States adding over 2,500 Russia-related targets to the SDN list. US Department of the Treasury, "FACT SHEET: Disrupting and Degrading—One Year of U.S. Sanctions on Russia and Its Enablers," press release, February 24, 2023.

41 US Department of the Treasury, "Treasury Designates Former President of Iran," press release, September 18, 2023.

42 In the United States, for instance, country-wide sanctions allow for the imposition of sanctions in response, for instance, to "any unusual and extraordinary threat" emanating from outside the country, under legislation like the United States' International Emergency Economic Powers Act of 1977, which grants broad powers to the US president.

43 Testimony of William Browder, Hearing on the Global Magnitsky Human Rights Accountability Act.

44 The Diplomatic Service of the European Union, "Questions and Answers: EU Global Human Rights Sanctions Regime," December 7, 2020, https://www.eeas.europa.eu/eeas/questions-and-answers-eu-global-human-rights-sanctions-regime_en.

charges. This was attempted in connection with cases before the International Criminal Tribunal for the Former Yugoslavia (ICTY), for instance against Radovan Karadzic, Dario Kordic, Milan Martić, and Ratko Mladic,⁴⁵ albeit with limited success. The United States also applied economic rewards and sanctions to push for compliance with the ICTY's orders.⁴⁶

Sanctions have also been combined with a referral to the International Criminal Court (ICC). That was the case in the 2011 UNSC's resolution sanctioning Libya, which invoked Article 13(b) of the Rome Statute and referred the situation in Libya to the ICC for potential action.⁴⁷ There, the UN ordered the imposition of sanctions, including an arms embargo, a travel ban, and an asset freeze against Muammar Qadhafi and members of his family.⁴⁸

However, more can be done to strengthen the connection between sanctions and criminal processes. For instance, Canada considered a proposal to strengthen international justice and accountability mechanisms by amending their sanctions laws to expressly include a request from the prosecutor of the ICC, pursuant to the issuance of an ICC arrest warrant, as a trigger for consideration of a sanctions designation, which would make the ties more explicit.⁴⁹

In addition, sanctions evasion is itself a costly venture, especially in the short term as those under sanction find alternative strategies, for instance, to conduct business, export sanctioned products, and import necessities. Over time, most societies that are under sanctions can find ways to insulate themselves from the effects of sanctions. However, these efforts can themselves be a criminal act or subject to enforcement action,⁵⁰ offering an "alternative path to accountability" where proving "complicity in core international crimes may be too complex."⁵¹ For example, Guus Kouwenhoven, the Dutch national who operated the Oriental Timber Corporation in Liberia during President Charles Taylor's regime, was convicted of being an accessory to war crimes and arms trafficking in contravention of a UNSC and Liberian arms ban, but was acquitted of war crimes in the first instance.⁵² This decision was based in part on a 2002 report on sanctions issued by a UN panel of experts and a 2001 Global Witness report.⁵³

45 ICTY, "The President of the International Criminal Tribunal for the Former Yugoslavia Calls for a Sports Boycott," CC/PIO/088-E, press release, June 13, 1996; Dianne Rennack, "Economic Sanctions and the Former Yugoslavia: Current Status and Policy Considerations Through 1996," CRS Report for Congress (December 16, 1996), https://www.everycrsreport.com/files/19961216_97-20_92de1e618a5d683521ce8f1eb5d8f7cbf212d9c8.pdf.

46 Jenia Iontcheva Turner, "Transnational Networks and International Criminal Justice," *Michigan Law Review* 105, no. 5 (2007), 1029, https://scholar.smu.edu/law_faculty/275/.

47 UNSC Resolution 1970 (February 26, 2011), <http://unscr.com/en/resolutions/doc/1970>.

48 They included his daughter Aisha and his sons Hannibal, Khamis, Mutassim, and Saif.

49 Ali Ehsassi, Canada, House of Commons, Canada's Sanctions Regime: Transparency, Accountability and Effectiveness: Report on the Standing Committee on Foreign Affairs and International Development, January 2024, 44th Parliament, 1st Session, https://sencanada.ca/content/sen/committee/441/AEFA/reports/SEMAandMagnitsky_Final_10report_e.pdf.

50 Council of the European Union, "EU Sanctions: Council Finalises Position on Law That Aligns Penalties for Violations," press release, June 9, 2023. See, e.g., Jonathan C. Poling et al., "DOJ Focuses on Corporate Crime Involving Sanctions Evasion, Export Controls Violations and Similar Economic Crimes," Akin, March 7, 2023.

51 The Genocide Network and Eurojust, "Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions: A Comparative Analysis" (December 2021), https://www.eurojust.europa.eu/sites/default/files/assets/genocide_network_report_on_prosecution_of_sanctions_restrictive_measures_violations_23_11_2021.pdf.

52 Judgment of the District Court of the Hague, June 7, 2006, <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RB SGR:2006:AY5160>.

53 UNSC, "Letter Dated 24 October 2002 from the Chairman of the Security Council Committee Established Pursuant to Resolution 1343 (2001) Concerning Liberia Addressed to the President of the Security Council," S/2002/1115 (October 25, 2002), para. 16, <https://reliefweb.int/attachments/18e09417-e0d8-3146-a00b-2990c7935b93/D5FA5B63184345C5C1256C7E00456BF3-UNSC-lib-25oct.pdf>; Global Witness, "Taylor Made: The Pivotal Role of Liberia's Forests and Flag of Convenience in Regional Conflict" (September 7, 2007), <https://www.globalwitness.org/library/taylor-made>.

In Support of Truth

In the shifting and contested political landscapes where both transitional justice and sanctions are implemented, truth-seeking presents another area where sanctioning bodies and transitional justice can share common interests and functions. These interactions often occur when decisions are being made about the imposition of sanctions and in connection with the work of truth commissions.

Coordinated efforts include the gathering and sharing of evidence and information by justice actors about possible sanctions targets and in support of sanctions-monitoring bodies like UN sanctions committees and panels of experts. They also can involve direct engagement by sanctions authorities and truth commissions when determining the truth about what happened, patterns of abuse, and who is responsible for human rights violations and/or corruption, as well as who was complicit in those offenses or benefited from the sanctions or sanctions evasion.

These interactions present different levels of risk for justice actors, depending on whether they are residing inside or outside the country under sanction. Yet, in most situations, the purpose is the same: to seek and share the truth about the crimes that were committed, the identity of those who were responsible, and the social, economic, and political dynamics in the country for the purpose of informing decisions about the continuation or lifting of sanctions.

Documenting Human Rights Violations and Identifying Responsible Parties

Today, within the context of targeted Magnitsky-style sanctions, there has been an expansion in coordination and consultation by sanctions authorities with justice actors, civil society organizations, human rights defenders, and other activists to identify and document human rights abuses as part of sanctions listing and delisting procedures. For instance, in early 2023, Human Rights First estimated that “one-third of all U.S. Global Magnitsky sanctions have had a basis in recommendations provided by civil society.”⁵⁴

Most of these documentation efforts are related to the requirements by governments like those of the United States to establish a “reason to believe based on credible information” that the person or entity has engaged in the acts for which they are accused and require that each piece of evidence must be corroborated by at least two independent, credible sources.⁵⁵ Similarly, the UK’s regulations stipulate that there must be “reasonable grounds to suspect that that person is an involved person.”⁵⁶

Information indicating a person’s or entity’s involvement may be submitted under the US Magnitsky Act by “non-government organizations that monitor violations of human rights,” as well as by congressional committees, foreign governments, and assistant secretaries of state, with online templates available for civil society organizations who are interested in making sanctions recommendations.⁵⁷ That is the case in Sri Lanka, where justice and accountability actors,

54 Amanda Strayer, “Comprehensive Review of the Provisions and Operation of the Sergei Magnitsky Law and the Special Economic Measures Act,” Human Rights First, March 6, 2023. However, in December 2023, Human Rights First noted that there were “significantly fewer Global Magnitsky sanctions [in response to civil society recommendations] than in previous years.” Human Rights First, “Slow Progress: U.S. Global Magnitsky Sanctions in Their Sixth Year” (December 2023), 2.

55 Human Rights First, “Global Magnitsky Sanctions: Frequently Asked Questions,” July 2020, 8.

56 UK Global Human Rights Sanctions Regulations 2020, No. 680, Pt. 2, Reg. 6 (designation criteria), <https://www.legislation.gov.uk/ukSI/2020/680/regulation/6>.

57 See e.g., Redress, “Magnitsky Sanctions Submission Template,” October 7, 2021, <https://redress.org/news/magnitsky-sanctions-submission-template/>; Human Rights First, “Submission Template with Sample Text for Targeted Human Rights and Anti-Corruption Sanctions Recommendations to the United States Government,” Version 02.05.2021, <https://humanrightsfirst.org/wp-content/uploads/2022/09/Model-template-for-Global-Magnitsky-sanctions-recommendation.docx>.

including British Tamils and human rights organizations like the International Truth and Justice Project (ITJP), launched the Time to Sanction campaign in January 2022, calling on the UK government to sanction Sri Lankan generals under its version of the Global Magnitsky Act.⁵⁸ That campaign combined the submission of dossiers calling for the imposition by the UK, Canada, and Australia of Magnitsky-style sanctions against these individuals who were responsible for human rights violations in Sri Lanka and the filing of lawsuits under principles of universal jurisdiction.⁵⁹ One of the dossiers laid out allegations of command responsibility for alleged war crimes against, among others, retired general Jagath Jayasuriya, and urged his arrest during his possible attendance at the Commonwealth Games that same year. As one proponent emphasized, “This is not the criminal accountability victims deserve but sanctions are a first step towards recognition of what our community has suffered at the hands of these men who now flaunt their impunity.”⁶⁰

Other groups, like Justice for Myanmar, are charting networks of individuals and entities, including some state-owned companies like India’s arms manufacturer Bharat Electronics Limited, that continue to do business with the junta. They are also calling on countries that have not issued sanctions to do so.⁶¹

Similarly, Russian pro-democracy groups are actively involved in identifying sanctions targets who have been involved in grave human rights abuses and the members of Russia’s political and economic elite who enable those crimes and benefit from corruption, while also advocating for broader economic sanctions.⁶² These abuses include grave violations inside and outside Russia, including in eastern Ukraine controlled by Russia-backed forces, such as those committed in the notorious Izolatsiya (Isolation) prison in Donetsk.⁶³ A list has also been compiled by the Anti-Corruption Foundation, the organization founded by Alexei Navalny in 2011, of over 6,000 “war enablers” who are involved in or are contributing to the Russian aggression against Ukraine (this includes individuals and their family members who profit from, facilitate, or underwrite the war in Ukraine).⁶⁴ Likewise, in the first days of the invasion of Ukraine in 2022, the Ukraine Ministry of Foreign Affairs and the National Agency on Corruption Prevention established the “War and Sanctions” database to provide allies and partners abroad with “useful insights” and “leads on sanctions targets.”⁶⁵ That database, which has since been redirected to the State Sanctions Registry, also provides information about international businesses who are

“Sanctions are a first step towards recognition of what our community has suffered at the hands of these men who now flaunt their impunity.”

— Member of British Tamil Conservatives

58 Tamil Guardian, “#TimetoSanction Campaign Calls for Bans on Sri Lankan Generals,” January 13, 2022; UK Sanctions and Anti-Money Laundering Act 2018, UK Public General Acts 2018, Ch. 13, <https://www.legislation.gov.uk/ukpga/2018/13/contents>.

59 See, e.g., Australian Centre for International Justice, “Joint Media Release: AFP Fails to Investigate Visiting Sri Lankan General for War Crimes; Groups Now Declare #TimetoSanction Under Australia’s New Magnitsky Regime,” March 31, 2022.

60 International Truth and Justice Project, “#TimetoSanction Sri Lankan Generals Under UK Global Magnitsky Act,” press release, January 13, 2022, https://itjpsi.com/assets/v-2-Final-IJ-UK-Magnitskysubmission_press_release-copy-copy.pdf.

61 See, e.g., Justice for Myanmar, “International Sanctions Since the Myanmar Military’s Illegal Attempted Coup,” February 5, 2024.

62 Gita Howard and Adam Keith, “Targeted Sanctions on Corrupt and Abusive Russian Officials: What Civil Society Is Calling For,” Human Rights First, February 25, 2022.

63 Pen America, “Letter: President Biden Must Sanction Individuals Responsible for Human Rights Violations in Eastern Ukraine,” December 23, 2021.

64 ACF, “Sanctions Tracker,” <https://sanctions.acf.international/>.

65 National Security and Defense Council of Ukraine, “State Register of Sanctions,” <https://sanctions.nazk.gov.ua/en/action-plan/>. The “War and Sanctions” database drew on the efforts of the International Working Group on Russian Sanctions at Stanford University (<https://fsi.stanford.edu/working-group-sanctions>), which works to “increase the cost to Russia of invading Ukraine, and support democratic Ukraine in the defense of its territorial integrity and national sovereignty.”

“sponsors of war” and, together with the independent International Working Group on Russian sanctions, helps coordinate efforts around sanctions.⁶⁶

In connection with the conflict in Yemen, sending states like the United States, for instance, are soliciting civil society and survivor-led groups to develop dossiers for referral in connection with international sanctions and accountability initiatives.⁶⁷ In addition, under the US Caesar Act, support may be provided to “entities that are conducting criminal investigations, supporting prosecutions, or collecting evidence and preserving the chain of custody for such evidence for eventual prosecution, against those who have committed war crimes or crimes against humanity in Syria.”⁶⁸

Separately, under the United States’ Leahy Law, which prohibits the US Departments of State and Defense from using funds to assist foreign security forces if they are implicated in the “commission of gross violations of human rights,” such as torture, extrajudicial killing, enforced disappearance, and rape,⁶⁹ a vetting process is undertaken to assess the human rights records of those applying for assistance, including for training, equipment, and other activities. Vetting is based on information from a variety of sources, including nongovernmental organizations and press reports.

In all these instances, victims, victims’ groups, human rights defenders, anti-corruption activists, and the media can play a role in the identification of targets for sanctions and the process of lifting them and can help document cases against perpetrators of human rights abuses. However, as discussed below, they can also become the targets of the corrupt actors and their enablers.

Like transitional justice processes, which help create an accurate historical record about the truth of what happened, sanctions-related documentation procedures can start the process of building an accurate historical record, often in real time, about the truth of what is happening or did happen. They can also contribute to and help animate transitional justice processes, recognize victims, and advance victims’ right to truth and accountability for human rights violations by signaling that no one is above the law and catalyzing actors toward justice goals.

This is particularly true when efforts are accompanied by powerful public messages from the sender state and, when possible, by domestic actors in the target state that emphasize the truth about the crimes that occurred, the rights that were violated, and victims’ needs and interests. Depending on the nature and level of detail, these announcements can help promote understanding, sustain a base level of support, and increase the potential leverage that sanctions offer, both nationally and internationally, around justice processes. The level of public detail provided in the public-facing announcements that are issued by sanctioning authorities, for instance in listings of people and entities, is important in this regard, a topic that is discussed further in the section on lack of outreach.

The announcements can also function as a form of leverage in support of accountability, for instance by elevating the attention that is paid to crimes and vulnerable victim populations who are sometimes overlooked. For example, “rape and other forms of sexual violence against women and girls in situations of armed conflict” were added as a stand-alone criterion for designating sanctions targets under UN Resolution 1820.⁷⁰

66 National Security and Defense Council of Ukraine, “State Register of Sanctions,” <https://drs.nsd.gov.ua/>.

67 See, e.g., in connection with Yemen funding, US Department of State, “DRL Supporting Efforts to Advance Accountability and Justice in Yemen,” February 15, 2023.

68 US Caesar Syria Civilian Protection Act of 2019, Sec. 303.

69 US Department of State, “About the Leahy Law: Fact Sheet,” January 20, 2021.

70 UNSC Resolution 1820 (June 19, 2008), 3, para. 5, <http://unscr.com/en/resolutions/doc/1820>.

Sanctions can provide incentives for action on key issues at the center of transitional justice, such as the tracing of missing persons. They can also offer a much-needed signal of support to those who are resisting oppression within a country. Furthermore, sanctions and their social movement counterpart, boycott campaigns encouraged by social resistance movements, can help raise awareness outside the country about ongoing atrocities.

The evidentiary threshold for sanctions submissions (e.g., a “reason to believe based on credible information”) does not meet the formalities that are required in criminal processes, nor does it aim to create a full evidentiary record of the events or a comprehensive narrative about the past.⁷¹ However, like truth commissions, sanctions offer a focal point around which victims’ groups and civil society can organize and advocate for justice goals, much like other documentation efforts. The dossiers submitted by the ITJP as part of its Time to Sanction campaign, for instance, go a long way toward that goal by detailing the evidence for consideration by sanctions authorities, such as photographs and witness testimonies, including from insiders, as well as findings of past UN investigative reports.⁷² In this way, sanctioning processes assist in compiling information, which may help promote greater understanding of the crimes, the causes for them, and the consequences to victims and society; they may also be involved in tracing and freezing perpetrator assets, and eventually in supporting judicial processes for confiscating and returning the assets.

Sanctions documentation can also help present information about the networks of criminality around human rights violations, like the network exposed by Justice for Myanmar, which helped determine the origins of the assets that allowed for the transfer of arms and materials by Sky Aviator Company Limited to the military.⁷³ Efforts to document the roles of those who assist in or facilitate grave violation of human rights are another area of overlap with transitional justice.

In addition, although these documentation processes offer opportunities for victim participation, an important aspect of the right to truth, they also present risks for victims and human rights activists who support the imposition of sanctions, for instance against a dictatorial regime, or who help monitor sanctions compliance during conflict. Additionally, documentation efforts unfortunately do not always reach victim communities, limiting the potential for public acknowledgment. In most situations, the listings are unavailable in victims’ native languages or do not include sufficient detail. As a result, they are not always effective in revealing much of the truth of what happened, and rarely do they assist victims in their efforts to receive meaningful redress for the harm that was suffered.

Truth Commissions and UN Sanctions Authorities

Since the advent of transitional justice as a field in the mid-1990s, there have been examples of engagement between truth commissions and UN sanctions authorities. That engagement is yet another area where sanctions can advance victims’ rights to truth and, as discussed in the next section, to redress.

Much like the ongoing collaboration between sanctions authorities, civil society, and victims’ groups, the investigatory work that is conducted by truth commissions and sanctioning authorities shares substantive areas of overlap. In Sierra Leone, for instance, sanctions were first imposed by the UNSC in response to the violence and deteriorating humanitarian conditions

71 Human Rights First, “Global Magnitsky Sanctions,” 8.

72 See, e.g., International Truth and Justice Project, “Shavendra Silva Chief of Army Staff Sri Lanka, Dossier,” January 29, 2019, <https://itjpsl.com/assets/shavendra-silva-final-dossier.pdf>.

73 Human Rights Council, “The Billion Dollar Death Trade: The International Arms Networks That Enable Human Rights Violations in Myanmar,” A/HRC/53/CRP.2 (May 17, 2023).

following the military coup of May 25, 1997,⁷⁴ years before the establishment of both the Sierra Leone Truth and Reconciliation Commission (TRC) and the Special Court for Sierra Leone (SCSL), which began operations in 2002.⁷⁵ In that case, although the UN panel of experts for Sierra Leone had concluded its work before the TRC began operations,⁷⁶ and as such the commission did not interact directly with the panel, the commission did rely upon and build on the panel's previous investigations monitoring the sanctions regimes, including the arms embargo, travel restrictions, and the ban on the import of rough diamonds.⁷⁷

As such, the 2004 final report of the Sierra Leone TRC directly references the data and evidence that were gathered by the UN panel of experts relating to diamond imports and smuggling operations into neighboring countries, such as Guinea, The Gambia, and Liberia, and into Europe, including Belgium, and the use of profits from diamond sales to purchase weapons, ammunition, food, and equipment for combatants.⁷⁸ The TRC also relied on the panel's efforts tracing the shipments of weapons into Sierra Leone starting in eastern Europe, following their transshipment through Burkina Faso and Libya, and ending with their import into Liberia, and it commented on the usefulness of that data to its own investigations, saying the panel's information "provided great insights into the relationship between diamond smuggling and arms trafficking."⁷⁹ The TRC also conducted its own extensive investigations into the webs of criminality around diamonds and arms and their role in targeting victims for human rights abuses, all spelled out in the chapter of its final report dedicated to "Mineral Resources, Their Use and Their Impact on the Conflict and the Country."

The mutually reinforcing relationship between sanctions, truth-seeking, and accountability was also on display a few years later in Liberia. There, the UNSC sanctions measures included an arms embargo and trade sanctions against Liberia, as well as an asset freeze on Charles Taylor, his immediate family, and some of his associates. The Truth and Reconciliation Commission (TRC) of Liberia and the UN panel of experts for Liberia, some of whom had also served on the panel for Sierra Leone, actively engaged with one another in the period of 2008 and 2009 by exchanging information and contributing to each other's operations, including on sanctions evasion and by investigating funding sources for Taylor and others on the asset freeze list.⁸⁰

In addition, the findings and recommendations of the final report of Liberia's TRC were based in part on the findings of the panel of experts, including its findings on sanctions evasion, cor-

74 UNSC Resolution 1132 (October 8, 1997), <http://unscr.com/en/resolutions/doc/1132>.

75 Legislation establishing the TRC was passed in 2000; see the Truth and Reconciliation Commission Act, 2000, Supplement to the Sierra Leone Gazette, Vol. CXXXI, No. 9, February 10, 2000. However, a resurgence of violence delayed the TRC's formal inauguration until July 5, 2002. The SCSL was established by the 2002 Special Court Agreement Act, (Ratification) Act, which was signed by the Government of Sierra Leone and the UN in April 2002. The registrar and chief prosecutor arrived in Freetown in late July and early August 2002, and the first indictments were issued in March 2003.

76 The panel of experts for Sierra Leone was not reappointed in 2001, although four of its members did move over to the panel of experts for Liberia, given the role that diamonds were playing in funding and fueling conflict not only in Sierra Leone but also in Liberia.

77 Regarding the panel's previous investigations, see, e.g., "Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission" (2004), Vol. 3B, Ch. 1 ("Mineral Resources, Their Use and Their Impact on the Conflict and the Country"), 15–16, 26, 28–30, 46, https://hmcwordpress.humanities.mcmaster.ca/Truthcommissions/wp-content/uploads/2018/10/Sierra_Leone_TRC-Report-FULL.pdf. Regarding the sanctions, see, e.g., UNSC Resolution 1132 and UNSC Resolution 1306 (July 5, 2000), <http://unscr.com/en/resolutions/doc/1306>.

78 UNSC, "Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1306 (2000), Paragraph 19, in Relation to Sierra Leone," S/2000/1195 (December 2000), <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SL%20S2000%201195.pdf>. See, e.g., "Witness to Truth," Vol. 3B, 15–16, 18, 26, 28–30, 46.

79 *Ibid.*, 18.

80 For instance, in May 2009, the panel of experts met with Liberia's TRC to discuss investigations, including of sanctions evasion. UNSC, "Letter Dated 20 May 2009 from the Panel of Experts on Liberia Addressed to the Chairman of the Security Council Committee Established Pursuant to Resolution 1521 (2003)," S/2009/290 (June 5, 2009), <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Liberia%20S%202009%20290.pdf>.

ruption and economic crimes in the telecommunications sector, and the diversion of millions of dollars from the shipping industry by Charles Taylor for the delivery of weapons.⁸¹ The findings further supported possible efforts toward accountability,⁸² with the naming of individuals for possible future investigations into the economic crimes that helped feed the conflict and mass atrocities.⁸³ The Liberian TRC also conducted its own investigations of the links between natural resource extraction and human rights violations.

In turn, the SCSL relied on the findings of both panels of experts and Sierra Leone's TRC relating to, among other things, killings, forced labor, mutilation, sanctions evasion, and the judgment convicting Liberia's former president Charles Taylor in April 2012 of 11 charges of aiding and abetting the crimes of murder, rape, and pillage in Sierra Leone.⁸⁴

In these interactions, both sanctions authorities and transitional justice mechanisms helped make the links between atrocity and economic crimes, including large-scale corruption involving the embezzlement of state funds and the pillaging of natural resources, for instance, and the consequences for victims and societies—and ultimately aided with the recovery of assets discussed in the next section on repair and in the section discussing legal challenges. Unfortunately, despite the substantive overlap in the mandates of the sanctions and truth commissions' operations in Sierra Leone and Liberia, the opportunities for potential collaboration were not always fully taken advantage of, a topic elaborated on in the discussion of lack of coordination and coherence below.

Contributions to Processes of Repair

Sanctions also share areas of compatibility with other aspects of transitional justice's victim-centered approach by offering a measure of repair to victims, including by recognizing victims, reinforcing due process standards, and signaling that no one is above the law. They can also set in motion processes for the recovery of assets to redress the harm and consequences that were suffered and to promote reforms, for instance to combat corruption.

As a Funding Source for Victim Reparations

Links between transitional justice and economic sanctions are found in efforts to combat impunity through the tracing, freezing, confiscating, and repurposing of assets to fund reparations for the victims of human rights violations and related economic crimes.⁸⁵ Because a lack of funding

81 See, e.g., Truth and Reconciliation Commission of Liberia, "Final Report of the Truth and Reconciliation Commission of Liberia (TRC), Volume 1: Findings and Determinations" (December 2008), 245, 293, https://hmcwordpress.humanities.mcmaster.ca/Truthcommissions/wp-content/uploads/2018/10/Liberia.TRC_Report-FULL.pdf.

82 Ruben Carranza, "Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?," *International Journal of Transitional Justice* 2, no. 3 (December 2008): 310–330, <https://doi.org/10.1093/ijtj/ijno23>.

83 The Liberia TRC's final report identified individuals, groups of people, institutions, and corporate entities that were responsible for economic crimes and included a list for further investigations by the government of Liberia, foreign law enforcement, and intelligence agencies. Truth and Reconciliation Commission of Liberia, "Final Report of the Truth and Reconciliation Commission of Liberia (TRC), Volume 1: Findings and Determinations" (December 2008), 293, 361–369, https://hmcwordpress.humanities.mcmaster.ca/Truthcommissions/wp-content/uploads/2018/10/Liberia.TRC_Report-FULL.pdf. Truth commission and UN-acquired data was also used in bringing Guus Kouwenhoven, the president of the Oriental Timber Company, to justice for supplying weapons, material, and other resources to Charles Taylor. Dieneke De Vos, "Corporate Accountability: Dutch Court Convicts Former 'Timber Baron' of War Crimes in Liberia," European University Institute, April 24, 2017, <https://me.eui.eu/dieneke-de-vos/blog/corporate-accountability-dutch-court-convicts-former-timber-baron-of-war-crimes-in-liberia/>.

84 See, e.g., SCSL, Judgment, *Prosecutor v. Charles Ghankay Taylor*, April 26, 2012, SCSL-03-01-T, 60, 185, 195, 888, 891, 933, 1630.

85 These include claims based on economic crimes, which have been criminalized, for instance, through international conventions prohibiting corruption and fraudulent enrichment. See, e.g., the United Nations Convention Against Corruption (2003), the African Union Convention on Preventing and Combating Corruption (2003), the Council of Europe Civil Law Convention on Corruption (1999), the Organisation for Economic Co-Operation and Development

remains a major challenge in the implementation of victim reparations programs worldwide, to bridge that gap, increased attention has been paid to the potential that asset-freezing international sanctions have as a funding source for victim reparations and the role that international actors can play in “ensuring the success” of domestic efforts to recover assets and “making more funding potentially available for reparations.”⁸⁶

As the special rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence has concluded, “Asset recovery allows a State to simultaneously pursue several transitional justice goals. It funds reparations, supports truth-telling about the corruption and human rights violations committed by perpetrators and makes individual and corporate accountability possible.”⁸⁷ Here, the focus is on international sanctions as a funding source for reparations and their potential earmarking for programs benefitting the victims of human rights abuses.

In societies that are dealing with massive and widespread human rights violations, asset-freezing international sanctions are often among the only mechanisms that are available for identifying and “fix[ing] potentially stolen assets in place” until the necessary legal steps are concluded to confiscate and return them to the national authorities.⁸⁸ In situations like these, efforts to trace and freeze assets using international economic sanctions involve attempts within and across international borders to confiscate and then repatriate assets that have been misappropriated from countries that have experienced or are experiencing both large-scale corruption and mass atrocities and economic crimes at the hands of dictators or warlords.⁸⁹

Asset-freezing international sanctions are often among the only mechanisms that are available for identifying and fixing potentially stolen assets in place.

In most situations, the funding of reparations from frozen assets is more of a potentiality than a reality given the legal and constitutional guarantees protecting private and sovereign property and the legal requirements for confiscating them, which often involve multiple jurisdictions and different legal systems, procedures, and approaches at different stages in these processes. That said, asset freezes may present opportunities for exchanges across borders and between and among law enforcement, prosecutorial authorities, justice actors, and sanctions authorities, as well as for information-sharing with victims, victims’ groups, and communities who were affected by the crimes.⁹⁰

For instance, in 2011, domestic efforts to claw back the assets of former leaders, senior officials, and their associates and family members in Tunisia included asset freezes imposed under foreign sanctions regimes, including Canada’s Freezing Assets of Corrupt Foreign Officials Act and the provisions of the EU’s Common Foreign and Security Policy for issuing restrictive

(OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), and the Inter-American Convention Against Corruption (1996). Economic crimes have also been criminalized under domestic law, for instance in countries like the United States and Kenya. See, e.g., the US Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. Secs. 78dd-1 et seq., and the Republic of Kenya Anti-Corruption and Economic Crimes Act, No. 3, of 2003, revised 2012, and the Bribery Act, No. 47, of 2016.

86 UN General Assembly, “Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli: Financing of Reparation for Victims of Serious Violations of Human Rights and Humanitarian Law,” A/78/181 (July 14, 2023), 13.

87 Ibid.

88 Jackson Oldfield, “The Challenges of Asset Freezing Sanctions as an Anti-Corruption Tool,” Transparency International (May 4, 2022).

89 Carranza, “Plunder and Pain,” 310–330.

90 Other approaches to asset recovery with no direct connection to international sanctions, including those that are based on bilateral mutual legal assistance treaties, private civil actions, or criminal prosecutions, are beyond the scope of this report.

measures.⁹¹ Among the assets frozen were a \$2.5 million mansion owned by Belhassen Trabelsi, the brother-in-law of Tunisia's president Ben Ali, and \$100,000 in bank accounts in Canada and an undisclosed amount in the UK.⁹² Canada's regulations froze the assets of 48 politically exposed people in part for "depriving Tunisians not only of basic economic well-being but fundamental human rights" so that the "Tunisian national unity government [could] recover the misappropriated assets...to help alleviate poverty, instil a sense of justice to appease its population and ensure that these assets are not utilized to undermine a fragile democracy."⁹³ As of now, eight individuals remain on the list of politically exposed people pursuant to an order extending the asset freezes until March 2026.⁹⁴

Along with asset freezes, international sanctions provide another potential funding source for future reparations in the form of financial penalties paid by nonsanctioned people or legal entities that transacted with the target.

However, despite the potential, assets that are frozen pursuant to sanctions and fines and penalties for sanctions evasion do not consistently make their way to victims as reparations. For instance, in 2013, Tunisia received USD \$28.8 million in assets that had been held in a Lebanese account in the name of Ben Ali's wife as a result of the concerted efforts of the Tunisian government and regional actors, including the Arab Forum on Asset Recovery, and technical assistance from the Stolen Asset Recovery Initiative.⁹⁵ Switzerland also returned over USD \$250,000 in May 2016,⁹⁶ an additional USD \$3.91 million in 2017,⁹⁷ and USD \$1.27 million in 2021, with the help of the state body known as the Confiscation Committee. However, although some of those efforts led to the repatriation of assets, that occurred without any assurances that the monies would be used to fund reparations, even collective ones for areas of the country that had faced marginalization and were recognized by the truth commission as "victims' regions." This discussion is picked up again in the section on legal and practical challenges to repurposing assets.

One notable exception is the case of Riggs Bank in the context of sanctions evasion in which assets did make their way to victims. In 2005, Riggs Bank and two members of the bank's controlling family agreed to pay USD \$9 million to a fund for victims of former Chilean dictator Augusto Pinochet for the bank's role in transferring "large sums of money in a highly suspicious manner and fail[ing] to report such transactions to the proper authorities, as required by [sanctions] law."⁹⁸

Yet, today, innovation around the use of asset-freezing international sanctions has the potential to help fund future reparations. For instance, in June 2024, in a groundbreaking decision during the G7 summit, an agreement was reached to provide a USD \$50 billion loan to Ukraine collateralized by the future interest from the almost USD \$300 billion of Russian assets that have

91 Canada, Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law); European Union, Council Implementing Decision 2011/79/CFSP, February 4, 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011D0079>.

92 Fadi Aliriza, "The Godfathers of Tunis," *Foreign Policy*, May 25, 2012.

93 Government of Canada, "Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations," P.C. 2011-427, March 23, 2011, <https://gazette.gc.ca/rp-pr/p2/2011/2011-04-13/html/sor-dors78-eng.html>.

94 Government of Canada, "Canadian Sanctions Related to Tunisia," https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/tunisia-tunisie.aspx?lang=eng.

95 BBC, "Tunisia Recovers Money 'Stolen' by Ex President Ben Ali," April 11, 2013; World Bank and UNODC, Stolen Asset Recovery Initiative website, <https://star.worldbank.org/blog/tunisias-cash-back>.

96 Africanews, "Swiss Return over \$3m 'Stolen' by Ex-President Ben Ali to Tunisia," May 26, 2017.

97 Ibid.

98 Under the terms of the January 2005 settlement, a total of USD \$9 million was agreed to be paid to the Salvador Allende Foundation Riggs Bank, with \$8 million to be paid by Riggs Bank and \$1 million by the members of the Allbritton family. That settlement was to fund a pension fund for victims of the Pinochet regime and their family members. See US Securities and Exchange Commission, Riggs National Corporation, Form 10-K, December 31, 2004, 18, <https://www.sec.gov/Archives/edgar/data/350847/000095013305001344/w06439e10vk.htm>

been frozen since the invasion of Ukraine.⁹⁹ That loan is intended to fund Ukraine's ongoing "military, budget and reconstruction needs," which are estimated at almost USD \$486 billion over the next decade. Whether any of that money can or will ultimately be used for victim reparations remains an open question, but ongoing efforts to register victim claims may eventually provide a mechanism for making that happen. Previously, the Council of Europe and representatives of the EU, Canada, Japan, and the United States established the Register of Damages Caused by the Aggression of the Russian Federation against Ukraine, which began accepting claims for property damage and destruction in April 2024 and is mandated to eventually accept individuals' claims for personal integrity violations, including sexual violence, torture, forced labor, and forcible transfer and deportation.¹⁰⁰ As part of that effort, a coordination platform of civil society organizations and international and national partners was launched in November 2024 to provide victims with necessary, assistance, and support.¹⁰¹ This is the type of multilateral action that could begin the process of providing a measure of accountability and redress for Ukraine and potentially the many victims of Russia's ongoing war of aggression.

These ongoing processes for repurposing frozen assets for possibly addressing the many needs of Ukraine and Ukrainian victims are reminiscent of efforts like those of the UN Compensation Commission. The commission was set up in 1991 after Saddam Hussein's unlawful invasion and occupation of Kuwait; it was funded in part by frozen Iraqi assets and eventually by the proceeds from the lifting of the ban on imports and the sale of Iraqi oil under the so-called oil-for-food program.¹⁰²

Asset-freezing international sanctions also pick up on innovative proposals that were made years ago by South Africa's TRC to finance victim reparations in part out of the profits that were earned illegitimately by corporations during the sanctions period.¹⁰³ In its final report, released in October 1998, the TRC proposed to finance victim reparations from the relatively high interest rates that were earned by lenders because of international sanctions and by businesses like Swiss banks, who profited for decades on the backs of black gold miners under apartheid policies, and who also ignored the call to participate in sanctions measures while continuing to enrich themselves by trading gold and lending to the apartheid regime.¹⁰⁴ To date, that proposal has not been implemented, in part because of a lack of political will among South Africa's leaders and the unwillingness of corporations to acknowledge responsibility, either for their financial complicity in gross human rights violations or for their roles in helping the apartheid government evade sanctions; however, efforts continue in that regard today.¹⁰⁵

99 This loan was announced during the June 2024 G7 summit as the launch of the Extraordinary Revenue Acceleration Loans for Ukraine, which were intended to "provide financing that will be serviced and repaid by future flows of extraordinary revenues stemming from the immobilization of Russian Sovereign Assets held in the European Union and other relevant jurisdictions." US White House, G7 Apulia Leaders' Communiqué, June 14, 2024.

100 RD4U, "Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine: Categories of Claims Eligible for Recording," <https://rd4u.coe.int/en/claims-and-process#:~:text=The%20Register%20is%20preparing%20for,damage%20and%20destruction%20of%20property>. See also Parliamentary Assembly, "Support for the Reconstruction of Ukraine," Recommendation 2271, April 2024, <https://pace.coe.int/en/files/33495/html>; Federica Paddeu, "Transferring Russian Assets to Compensate Ukraine: Some Reflections on Countermeasures," Just Security, March 1, 2024.

101 RD4U, "Together for Justice: Register of Damage for Ukraine Launches Coordination Platform to Strengthen Civil Society Cooperation," November 1, 2024.

102 UNSC Resolution 778 (October 2, 1992), <http://unscr.com/en/resolutions/doc/778>.

103 The South Africa TRC also proposed such things as a wealth tax, a one-off levy on corporate or private income, and a surcharge on so-called golden-handshakes that were given to senior public servants.

104 South Africa Truth and Reconciliation Commission, "Final Report of the Truth and Reconciliation Commission" (1998), Vol. 6, Sec. 2, 141–143, 146.

105 Meron Tesfa Michael, "South Africa's Truth and Reconciliation Commission Closes Its Doors," Worldpress.org, May 2, 2003, <https://www.worldpress.org/Africa/1077.cfm>. The People's Tribunal on Economic Crime in South Africa, for instance, which followed the TRC, recommended the prosecution of Kredietbank and the French government for aiding and abetting the crime of apartheid in part through the evasion of the arms embargo. In 2018, the Centre for Applied Legal Studies and Open Secrets submitted a complaint with the OECD against Belgium's Kredietbank and KBL, its subsidiary in Luxembourg,

Nonetheless, asset-freezing international sanctions and sanctions penalties have potential as funding sources in favor of redress for victims, as do opportunities for information-sharing and cooperation between and among law enforcement, prosecutorial authorities, justice actors, and sanctions authorities, and for participation by victims, victims' groups, and communities who were affected by crimes.

Facilitating Asset Recovery

In addition to being a source of potential funds for reparations, international sanctions have played and continue to play a role in reparation efforts by complementing and supporting prior, parallel, or later *national* processes to establish a case for confiscating perpetrator assets. These can include investigations by truth commissions and stand-alone national commissions of inquiry, as well as judicial asset recovery or forfeiture actions within criminal and civil proceedings, that seek to repatriate assets outside their borders.

That is the case in particular with UN panels of experts in their role of facilitating and monitoring efforts to identify and freeze the assets of designated individuals, investigating the ownership of companies, tracing money flows in connection with sanctions evasion, and managing the assets to preserve their value. Sierra Leone's TRC recognized that role in its final report in relation to tracing and recovering the assets of Charles Taylor and the National Patriotic Front of Liberia, and as such recommended that "the Government of Sierra Leone elicit the support of the UN in tracing all assets acquired by the RUF in other countries including bank accounts and other assets."¹⁰⁶ The TRC also called on the "Governments of Cote d'Ivoire, Liberia, Burkina Faso and Libya to publicly commit to assisting the Government of Sierra Leone in this endeavour" and "to recover the assets and ensure that they become part of the War Victims Fund."¹⁰⁷

Similarly, in Liberia, the UN panel of experts undertook extensive investigations, both inside and outside the country, into the assets and funding sources of designated individuals, including Charles Taylor, and provided the information to the government and to the Liberian TRC. It also followed up with member states to obtain information about the assets they had frozen pursuant to Resolution 1532 of 2004 and with the government of Liberia about what, if any, progress it was making in that regard.¹⁰⁸ In all these roles, the UN panel of experts on Liberia acted as a conduit and a facilitator for asset recovery efforts globally.

Cross-border efforts with the affected countries by national sanctions authorities are yet another element of compatibility as a part of asset-recovery efforts to identify and repatriate illegally obtained assets and an area of collaboration. That was the case, for instance, with the approximately USD \$30 million in assets of Victor Yanukovych and his inner circle that were frozen under Liechtenstein's National Law on International Sanctions that implements EU and UN sanctions. As part of that support, Liechtenstein took part in the Ukraine Forum on Asset Recovery that was held in London in April 2014, organized by the United States and the United Kingdom. That event sought in part to "facilitate international cooperation for the early freezing, tracing and ultimate recovery of stolen assets, in support of the government of Ukraine."¹⁰⁹

However, although sanctions authorities can help facilitate interactions related to asset recovery, sanctions ultimately are a political tool, not a legal one, and thus in the absence of action by the

for facilitating the arms transactions in violation of a mandatory UN arms embargo during the period of 1977 to 1994. The People's Tribunal on Economic Crime, "Arms Trade" (September 20, 2018), <https://corruptiontribunal.org.za/>.

¹⁰⁶ Sierra Leone Truth and Reconciliation Commission, "Witness to Truth, Final Report" (2004), Vol. 2, Ch. 3, 183.

¹⁰⁷ Ibid.

¹⁰⁸ UNSC Resolution 1532 (March 12, 2004), <https://documents.un.org/doc/undoc/gen/no4/268/48/pdf/no426848.pdf>.

¹⁰⁹ UK Foreign and Commonwealth Office, "The Ukraine Forum on Asset Recovery (UFAR): A Case Study from the 2014 Human Rights and Democracy Report" (March 12, 2015).

authorities where the assets were misappropriated, it is not unusual for the assets to be returned to the person who is alleged to have obtained them corruptly. Strengthening cooperation and information-sharing among the different actors who are involved in asset recovery could help mitigate that challenge, something that is being done in the context of the EU's strategy for fighting organized crimes by, for instance, setting up registries with information on frozen and confiscated assets.¹¹⁰

Prevention of Future Violations

Some sanctions also seek to prevent or deter future violations; as one member of civil society phrased it, victims “understand sanctions as a form of human rights protection.”¹¹¹ The preventative aspects of sanctions take different forms depending on the context.

In the case of Syria, for instance, US sanctions are intended in part to disrupt and, if possible, prevent ongoing violations while dismantling the networks that help facilitate the illicit trafficking of goods, money, and weapons that enable the regime. The US Caesar Act, for example, is designed to prevent ongoing efforts by the regime to develop Syrians' property for political reasons or as a form of ethnic cleansing under the guise of reconstruction.¹¹² Thus, among the first sanctions announced by the United States were those against targets for seeking to “profit from the large-scale displacement of Syrian civilians” and “actively supporting the corrupt reconstruction efforts of Syrian president Bashar al-Assad.”¹¹³ These included individuals and entities, including the Damascus Cham Holding Company, that were “involved in large-scale real estate development projects and the development of land that was expropriated from Syrians displaced by the Assad regime.”

The act also seeks to disrupt the illicit drug trade in captagon that is helping to prop up the government by similarly restricting the provision of “financial, material, or technological support” or using the US financial system to launder drug proceeds.¹¹⁴

That being said, because sanctions, like other international accountability mechanisms, focus on those who are primarily responsible and do not consistently target others who may be complicit in the atrocities or who may have enabled the crimes, the reach of such preventative measures is unsure. In many instances, the imposition of direct sanctions often does not include “facilitators” such as bankers, attorneys, accountants, and real estate brokers who provide services that enable economic crimes. In addition, often only individuals from the country where the corruption occurred are sanctioned, not the facilitators of that corruption who often reside in other countries. Secondary sanctions like those imposed under the US Caesar Act extend that reach. Yet, the unintended consequences of secondary sanctions, including for justice actors, presents a countervailing concern. More research in this regard is needed.

110 European Commission, “Confiscation and Asset Recovery,” accessed June 17, 2024, https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/confiscation-and-asset-recovery_en#:~:text=The%20new%20rules%20will%20also,made%20in%20tackling%20criminal%20finances.

111 Interview, February 27, 2023, on file with ICTJ.

112 On December 8, 2024, the Assad regime collapsed and Bashar al-Assad fled the country. At the time of writing, the status of the Caesar Act and other sanctions has yet to be determined.

113 US Department of the Treasury, “Treasury Sanctions Investors Supporting Assad Regime’s Corrupt Reconstruction Efforts,” press release, June 17, 2020. Under the Caesar Act, secondary sanctions can be applied, among other things, to restrict foreign people from providing “significant construction or engineering services.” Caesar Act, Sec. 7412(a)(2).

114 Captagon is the commonly known name for fenethylamine, a synthetic amphetamine-type stimulant. US Department of Justice, “Fenethylamine and the Middle East: A Brief Summary,” NCJ No. 202737 (November 6, 2003). US Department of State, “Report to Congress on a Written Strategy to Disrupt and Dismantle Narcotics Production and Trafficking and Affiliated Networks Linked to the Regime of Bashar al-Assad in Syria Sec. 1238(c) of the National Defense Authorization Act for Fiscal Year 2023, P.L. 117-263” (June 29, 2023).

Challenges and Threats to Transitional Justice Goals, Processes, and Actors

Transitional justice as a victim-centered approach must reckon not only with the potentialities that are presented by economic sanctions as a form of accountability but also with the challenges that sanctions pose for victims, victims' groups, civil society organizations, and broader efforts to advance transitional justice aims and processes. Some of these challenges are unique to transitional justice actors; others are shared by everyone who is affected by sanctions.

In many places around the world, sanctions provoke controversy and dysfunction. They generate tensions within victims' communities and within society as a whole, with some proponents supporting sanctions as a tool of accountability and an instrument of change and other actors opposing them because of their negative impacts. In some cases, sanctions are seen as a tool of raw power, no different from military action, that raises serious questions of legitimacy. In other cases, sanctions may be seen as a necessary, yet largely ineffective and even counterproductive tool with little or no meaningful impact.

Selectivity in the Choice of Targets

Because sanctions too often appear to be wielded selectively as a weapon of geopolitical power and to maintain economic supremacy,¹¹⁵ they are often met with cries of hypocrisy. This selectivity is particularly troubling for human rights defenders when sanctions are ostensibly being imposed in response to human rights violations, as happened, for instance, when the United States imposed sanctions following the extrajudicial killing of Jamal Khashoggi in 2018. In that case, sanctions were implemented against 18 individuals and Saudi Arabia's Rapid Intervention Force but omitted Crown Prince Mohammed Bin Salman, despite a National Intelligence assessment finding that he had approved the murder.¹¹⁶

115 For instance, the United States in 2020 wielded its power to block an IMF loan for Iran's fight against COVID-19 and to limit China's access to American technology. Van Auken, "US Blocks IMF Loan"; Reuters, "Trump Again Raises Idea of Decoupling Economy."

116 US Department of the Treasury, "Treasury Sanctions the Saudi Rapid Intervention Force and Former Deputy Head of Saudi Arabia's General Intelligence Presidency for Roles in the Murder of Journalist Jamal Khashoggi," press release February 26, 2021; US Department of the Treasury, "Treasury Sanctions 17 Individuals for Their Roles in the Killing of Jamal Khashoggi," press release, November 15, 2018. However, the failure to sanction the crown prince was sharply criticized by members of Congress. Jesus Rodriguez, "Trump Administration Sanctions Saudi officials, but Not Crown Prince, over Khashoggi," *Politico*, November 15, 2018. That omission was made worse when the crown prince was granted immunity for his involvement in the murder on the recommendation of the US State Department. See, e.g., Alex Marquardt and Tierney Sneed, "Lawsuit Against Saudi Crown Prince Dismissed After Biden Administration Recommended He Is Given Immunity," CNN, December 6, 2022.

Charges of double standards are also often raised when sanctions are withheld, as already mentioned in relation to the findings of East Timor's truth commission on the withholding of sanctions against Indonesia and the impact of its occupation on civilians. Similarly, the withholding of sanctions was also an issue for Liberia's TRC, which found that US lobbying efforts on behalf of Firestone prevented the UNSC from acting in that regard.¹¹⁷ The TRC concluded that the international community's failure to impose economic sanctions on Firestone for its use of forced and child labor permitted the company to export rubber throughout the conflict period, despite its financial entanglements with Charles Taylor.¹¹⁸

A more current example is the recent inaction by the United States in response to Israel's attack on Gaza and the long delay in sanctioning West Bank settlers who are responsible for violence against Palestinians and their property. That inaction has stoked anger among victims' communities and civil society across the Middle East and North Africa region, with negative comparisons being made to the quick response to Russia's invasion of Ukraine.¹¹⁹ Similar inaction by the United States against Israel under the Leahy Law, which prohibits aid to any foreign security force that is involved "in the commission of gross violations of human rights," has likewise been condemned as an example of double standards—including by one of the original sponsors of the law, former senator Patrick Leahy, who concluded, "Though the Leahy law applies the same requirements to every country, it has not always been equally enforced. Israel, among the largest recipients of U.S. military aid, is a glaring example."¹²⁰

The influence of apparent political and economic interests in relation to the withholding of sanctions on Israel is sharply contrasted by decisions to continue decades-long sanctions, for instance against Cuba, or to lift sanctions elsewhere. This is not a new phenomenon. For example, in 1979, the United States imposed diplomatic and export–import financial restrictions on the Chilean government under anti-terrorism laws in response to the Chilean government's failure to cooperate with the investigation into the 1976 assassination of former Chilean ambassador Orlando Letelier and his assistant Ronni Moffitt in Washington, DC, and the extradition of those who were believed to be responsible. Yet, at the same time, the United States allowed the continuation of exports to the Chilean Armed Forces,¹²¹ and then promptly lifted the sanctions with a change of presidential administrations.¹²²

Making matters worse, in many instances, sanctions are also wielded to prioritize accountability and redress for victims in economically and militarily powerful countries. The United States has a particularly bad track record in that regard. For instance, in 2010, in return for the United States' support to lift UN sanctions, the Iraqi government paid USD \$400 million to settle the claims of US nationals who were tortured or traumatized by Saddam Hussein's regime after his 1990 invasion of Kuwait.¹²³ The money came out of the Development Fund for Iraq, which was funded by Iraqi oil revenue, money from the Oil-for-Food Programme, and frozen assets. Meanwhile, millions of Iraqi victims of human rights and humanitarian law violations—includ-

117 Truth and Reconciliation Commission of Liberia, "Final Report of the Truth and Reconciliation Commission of Liberia (TRC), Volume 1: Findings and Determinations" (December 2008), 127, 244 https://hmcwordpress.humanities.mcmaster.ca/Truthcommissions/wp-content/uploads/2018/10/Liberia.TR_C_Report-FULL.pdf.

118 Ibid.

119 Neil MacFarquhar, "Developing World Sees Double Standard in West's Actions in Gaza and Ukraine," *New York Times*, October 23, 2023.

120 Patrick Leahy, "I Created the Leahy Law. It Should Be Applied to Israel," *Washington Post*, May 20, 2024.

121 US National Archives, "Sanctions Policy Towards Chile," GDS 11/18/86 (1979), <https://www.archives.gov/files/argentina/data/docid-33069310.pdf>.

122 John M. Goshko, "U.S. Cancels 2 Sanctions Against Chile," *Washington Post*, February 21, 1981.

123 Jane Arraf, "Iraq to Pay \$400 Million for Saddam's Mistreatment of Americans," *Christian Science Monitor*, September 9, 2010.

ing those that were committed during the US occupation—have not received reparations.¹²⁴ Likewise, in February 2023, “the Biden administration began the process of liquidating around \$7 billion in assets of the defunct Afghan central bank rather than hand them over to the Taliban, reserving half for Afghan humanitarian efforts and half to satisfy court judgments in suits filed by the relatives of those killed or wounded in the Sept. 11 attacks.”¹²⁵

Similarly, the United States has also used the imposition of regulatory schema, for instance on money laundering or even the lifting of foreign sovereign immunity, which is one of the measures that is imposed by the United States on any country that is declared to be a “state sponsor of terrorism,” to advance victim litigation.¹²⁶ That was the case in connection with reparations for bombings in Sudan. At the end of March 2021, the United States removed Sudan from the country’s list of “state sponsors of terrorism” in return for the payment of USD \$335 million in compensation for the victims of attacks, including those that were perpetrated against the US embassies in Kenya and Tanzania in 1998,¹²⁷ and of USD \$70 million to families of victims of the 2000 USS *Cole* bombing incident in Yemen in February 2020.¹²⁸

In each of these cases, the disregard for victims of mass atrocities in less powerful countries dehumanizes those victims and often has significant humanitarian consequences. For the Sudanese people, for instance, the payment came on the heels of almost three decades of sanctions and an economic crisis that was made worse by the COVID-19 pandemic and significant political uncertainties. Instead of using the nation’s revenues to finance reparations for Sudanese victims of mass atrocity, the government was forced to pay victims in the United States. Meanwhile, hundreds of thousands of victims of war crimes, crimes against humanity, and genocide in Sudan, including victims of the 2004-2020 war in Darfur, have been waiting for justice.¹²⁹ For these victims, the decision to siphon off funds from a country that was in need of debt relief and still facing conflict, in the words of a civil society activist, “damaged the reputation of the US,” especially as the money did not come from recovered assets misappropriated by Omar al-Bashir, but from public funds. “They effectively took money from the poorest of the poor.”¹³⁰

“They effectively took money
from the poorest of the poor.”

— Sudanese civil society activist

As such, more needs to be done to ensure that victims, victims’ groups, and civil society are consulted, not only in the sender state but also in the target state.¹³¹ Efforts must be made to mitigate the extent of the unjust consequences of these types of policy decisions.

124 Clara Sandoval and Miriam Puttick, Ceasefire Centre for Civilian Rights and Minority Rights Group International, “Reparations for the Victims of Conflict in Iraq: Lessons Learned from Comparative Practice” (November 2017).

125 Andrew Boyle, “Why Proposals for U.S. to Liquidate and Use Russian Central Bank Assets Are Legally Unavailable,” Just Security, April 18, 2022.

126 When the United States declared Sudan a state sponsor of terrorism in 1993, Sudan lost its sovereign immunity in the United States and was subject to litigation, including claims that were advanced by families of the victims of 9/11. Nesrine Malik, “‘Is This Justice?’: Why Sudan Is Facing a Multibillion-Dollar Bill for 9/11,” *The Guardian*, August 26, 2021.

127 US Department of State, “Receipt of Funds for Resolution of Certain Claims Against Sudan,” press statement, March 31, 2021.

128 Hirak Jyoti Das, “Sudan’s Fate: Revolution, Coup and Civil War,” Vivekananda International Foundation (May 2023).

129 Aljazeera, “Timeline: Darfur Crisis: Timeline of Important Events in Sudan, Starting in 2004,” February 23, 2010, <https://www.aljazeera.com/news/2010/2/23/timeline-darfur-crisis>.

130 Interview, October 18, 2023, on file with ICTJ.

131 Kelli Muddell and Anna Myriam Roccatello, ICTJ, “Reflections on Victim-Centered Accountability in Ukraine” (February 2023), 12–14.

Negative Humanitarian Impact

Today, despite dedicated international efforts to rethink the use of sanctions to prioritize targeted, or “smart,” sanctions over comprehensive sanctions,¹³² international economic sanctions, including unilateral coercive measures, continue to cause deep economic, social, and humanitarian disruptions in the targeted countries and enormous suffering for civilians, a matter of particular concern for human rights victims and other marginalized groups, who are often among the most vulnerable populations.¹³³ In addition, sanctions often have a gendered impact, worsening women’s rights and increasing women’s burdens of tending to their households and children.¹³⁴

One oft-cited example is Iraq, where ICTJ observed the impact that a decade of devastating economic sanctions and the UN’s dysfunctional Oil-for-Food Programme had on Iraqi’s social and economic rights and on victims’ priorities for truth, justice, and redress. As the report “Iraqi Voices: Attitudes Toward Transitional Justice and Social Reconstruction” found, sanctions and the Oil-for-Food Programme led to forced migration and economic and food insecurity and were “an additional source of anger and mistrust toward the international community,” with potential ramifications for the implementation of transitional justice measures around reconciliation and social reconstruction.¹³⁵

Similarly, in Venezuela today, the broad financial and sectoral sanctions that have been imposed by the United States since August 2017 have had a marked negative impact. Restrictions on borrowing by state-owned companies, like Petroleos de Venezuela, S.A., and targeted sanctions freezing billions of dollars of Venezuelan assets have “increased disease and mortality...[and] displaced millions of Venezuelans who fled the country as a result of the worsening economic depression and hyperinflation.”¹³⁶ That sanctions regime is currently the subject of a preliminary examination before the ICC, following the Venezuelan government’s referral under the Rome Statute.¹³⁷

Likewise, in Syria, harsh sanctions, combined with government mismanagement, are believed to have exacerbated the economic crisis in the country,¹³⁸ resulting in some 90 percent of the

132 Joy Gordon, “Smart Sanctions Revisited,” *Ethics and International Affairs* 25, no. 3 (Fall 2011): 315–335, <https://www.cambridge.org/core/journals/ethics-and-international-affairs/article/smart-sanctions-revisited/14E85413C04EE483370E6A23CB7C7225>.

133 Economic sanctions violate economic, social, and cultural rights: “In considering the negative impacts of sanctions, the Committee on Economic, Social and Cultural Rights concluded that human rights should be taken fully into account when designing sanctions regimes, that effective monitoring should be undertaken throughout the period that sanctions are in force, and that the external entity imposing sanctions has an obligation to take steps, individually and through international assistance, to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country.” Human Rights Council, “Thematic Study of the Office of the United Nations High Commissioner for Human Rights on the Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Including Recommendations on Actions Aimed at Ending Such Measures,” A/HRC/19/33, January 11, 2012, 5. See also UN Office of the High Commissioner for Human Rights (OHCHR), “High Commissioner Calls for Critical Re-Evaluation of the Human Rights Impact of Unilateral Sanctions,” September 16, 2021, and Amy Howlett, “Getting ‘Smart’: Crafting Economic Sanctions That Respect All Human Rights,” *Fordham Law Review* 73, no. 3 (2004): 1199.

134 See, e.g., Lori Buck, Nicole Gallant, and Kim Richard Nossal, “Sanctions as a Gendered Instrument of Statecraft: The Case of Iraq,” *Review of International Studies* 24, no. 1 (1998): 69–84, <https://doi.org/10.1017/S0260210598000692>.

135 ICTJ and the Human Rights Center, “Iraqi Voices: Attitudes Toward Transitional Justice and Social Reconstruction” (May 2004), ii, 23, 58, <https://www.ictj.org/publication/iraqi-voices-attitudes-toward-transitional-justice-and-social-reconstruction>.

136 Mark Weisbrot and Jeffrey Sachs, “Economic Sanctions as Collective Punishment: The Case of Venezuela,” Center for Economic and Policy Research (April 2019), 1. See also the OHCHR statement regarding Venezuela: “While the roots of Venezuela’s economic crisis predate the imposition of economic sanctions, as I highlighted in my interactions, it is clear that the sectorial sanctions imposed since August 2017 have exacerbated the economic crisis and hindered human rights. My Office has repeatedly recommended that Member States suspend or lift measures that have a detrimental effect on human rights and that are aggravating the humanitarian situation, a call we make with regard to unilateral coercive measures imposed on other countries too.” UN OHCHR, “UN High Commissioner for Human Rights Volker Türk Concludes Official Mission to Venezuela,” January 28, 2023.

137 ICC, “Preliminary Examination: Venezuela II,” ICC-01/20 (ongoing).

138 The expansion to secondary sanctions by the United States in 2020 has been seen as contributing to the humanitarian crisis and has precipitated additional criticism. For instance, there are a number of “dual-use” items that

population living below the poverty line and triggering calls for the lifting of “long-lasting unilateral sanctions” by the UN special rapporteur on unilateral coercive measures and human rights Alena Douha.¹³⁹ That reality undermines an often already weak legal and moral case for sanctions and gives credence to the claims that are leveled by those under sanction that sanctions are the source of society’s ills. As a Syrian civil society actor reported, “The regime points to sanctions as the reason why Syrians cannot work and are dying. They say ‘The UN is doing this to you. The US is doing this to you.’ At the same time, the regime avoids the impact of sanctions.”¹⁴⁰

In the face of these challenges, the states imposing the sanctions sometimes take steps to mitigate their humanitarian consequences, with mixed results.¹⁴¹ For instance, in December 2021, the UNSC acknowledged the “humanitarian situation in Afghanistan” and carved out a humanitarian exemption to the sanctions regime there.¹⁴² Similarly, on March 10, 2017, following an EU decision to facilitate the purchase and financing of petroleum products for humanitarian organizations operating in Syria, the Swiss Federal Council lifted selected sanctions against Syria. And, on June 10, 2022, the US Office of Foreign Assets Control authorized certain COVID-19–related transactions that were prohibited by the Syrian Sanctions Regulations, including the exportation of services related to COVID-19 and COVID-19–related transactions involving certain blocked people.¹⁴³

Another, but less common, mitigating option is to calibrate sanctions decisions by issuing a warning before imposing them or putting benchmarks in place.¹⁴⁴ Similarly, sanctioning bodies can refrain from issuing new designations, as the United States did after the signing of the Doha Agreement with the Taliban, rather than providing immediate sanctions relief.¹⁴⁵

Sanctions Evasion and the Empowerment of Authoritarian and Corrupt Actors

Along with exacerbating economic crises and hindering human rights, including economic, social, and cultural rights,¹⁴⁶ sanctions can also precipitate shifts in the political economy of the target country by encouraging, for instance, the creation of black-market networks for evading sanctions that often empower oppressive elites. For instance, in the Balkans, sanctions led to profiteering in weapons, oil, and other commodities and helped promote criminality dur-

are prohibited and require a specific license; many items that are needed for project implementation in the areas of water, sanitation and hygiene, power supply, agriculture, and reconstruction of schools and hospitals fall under the category of controlled dual-use goods.

139 UN OHCHR, “UN Expert Calls for Lifting of Long-Lasting Unilateral Sanctions ‘Suffocating’ Syrian People,” press release, November 10, 2022.

140 Focus group discussion, January 31, 2023, on file with ICTJ.

141 See, e.g., Korea Peace Now, “The Human Costs and Gendered Impact of Sanctions on North Korea” (October 2019).

142 UNSC Resolution 2615 (December 22, 2021), [https://undocs.org/en/S/RES/2615\(2021\)](https://undocs.org/en/S/RES/2615(2021)).

143 US Department of the Treasury, Office of Foreign Assets Control, “Syria Sanctions,” 31 CFR Pt. 542, General License No. 21A, Authorizing Certain Activities to Respond to the Coronavirus Disease 2019, June 10, 2022, <https://ofac.treasury.gov/media/923686/download?inline>. This license superseded a similar COVID-19–related general license from June 17, 2021 (GL 21).

144 Dawid Walentek, Joris Broere, Matteo Cinelli, Mark M. Dekker, and Jonas M. B. Haslbeck, “Success of Economic Sanctions Threats: Coercion, Information and Commitment,” *International Interactions* 47, no. 3 (January 7, 2021), <https://www.tandfonline.com/doi/full/10.1080/03050629.2021.1860034>.

145 Jason Bartlett, “Sanctions by the Numbers: Spotlight on Afghanistan,” Center for a New American Security (October 28, 2021), <https://www.cnas.org/publications/reports/sanctions-by-the-numbers-afghanistan>. For additional research on the effectiveness of sanction threats, see Walentek et al., “Success of Economic Sanctions Threats,” 417–448.

146 UN Committee on Economic, Social and Cultural Rights, “General Comment No. 8: The Relationship Between Economic Sanctions and Respect for Economic, Social and Cultural Rights,” E/C.12/1997/8, December 12, 1997, <https://www.refworld.org/docid/47a7079e0.html>.

ing and after the civil war.¹⁴⁷ As one civil society actor working on Libya summed it up, “They always circumvent.”¹⁴⁸

The same pattern is being repeated in Syria, where sanctions remain a key component of victims’ demand for accountability and are seen as one of the only avenues for future action against the perpetrators of crimes, alongside universal jurisdictions cases. However, the demand for accountability is leavened by the knowledge that sanctions are often easily circumvented and that the conditions on lifting sanctions, like those related to the release of detainees, may ultimately be manipulated by the regime to its advantage.¹⁴⁹

As already mentioned, that was true in the early case of South Africa, where sanctions evasion played a significant role for a time in sustaining the apartheid regime. For instance, the South Africa Department of Foreign Affairs set up covert structures and operations, including financial trusts, front companies, criminal networks, and organizations around the world, to facilitate its sanctions-busting operations.¹⁵⁰ These networks were extensive, as documented by a report of the government’s auditor-general, which listed a total of 417 projects that were paid out of secret funds for the purpose of controlling sanctions and disinvestment.¹⁵¹ Even worse, the South African government also apparently conducted overseas assassinations, including the killing of Robert and Jean-Cora Smit, in part to undermine sanctions regimes.¹⁵²

As Lee Jones has concluded in his study “South Africa: Sanctioning Apartheid”:

The oil and arms embargoes initially had counterproductive effects, expanding and consolidating apartheid’s ruling coalition rather than weakening it. Sanctions-busting costs were shouldered as the price of Afrikaner domination and actually complemented the regime’s ruling strategy. It was only amidst the mid-1980s social, political, and economic crises that these embargoes began directly undermining the regime by limiting the resources available to finance reform apartheid. Without the popular resistance that necessitated reform apartheid, these sanctions would simply not have “worked” in this way.¹⁵³

Although sanctions authorities work to mitigate these realities through the establishment of sanctions compliance mechanisms to ensure adherence with restrictions and through sanctions enforcement actions, sanctions evaders are often still able to circumvent sanctions using all manner of schemes for moving money to prevent their seizure and rerouting goods to evade trade restrictions. For instance, in Tunisia, after Zine al-Abidine Ben Ali stepped down as president in 2011 and fled the country following mass protests during the Arab Spring,¹⁵⁴ asset freezes against him and his wife were set in place by the EU while the national unity government was being sworn in.¹⁵⁵ The Swiss authorities likewise imposed a 10-year freeze on assets belonging to Ben Ali and his family after a corruption investigation was initiated,¹⁵⁶ and national-level measures were taken, including in the form of the seizure and public auction of

147 UN Office on Drugs and Crime, “Crime and Its Impact on the Balkans and Affected Countries” (March 2008).

148 Interview, February 1, 2023, on file with ICTJ.

149 Focus group discussion, January 31, 2023, on file with ICTJ.

150 South Africa Truth and Reconciliation Commission, “Final Report of the Truth and Reconciliation Commission” (1998), Vol. 2, 524–540.

151 *Ibid.*, 540.

152 *Ibid.*, 267.

153 Lee Jones, “South Africa: Sanctioning Apartheid,” in *Societies Under Siege: Exploring How International Economic Sanctions (Do Not) Work* (Oxford University Press, October 2015), 52–92, <https://doi.org/10.1093/acprof:oso/9780198749325.001.0001>.

154 Interview, February 1, 2023, on file with ICTJ.

155 The Daily Star, “Ben Ali Assets Frozen as Tunisia’s New Government Sworn In,” February 1, 2011.

156 See, e.g., Middle East Monitor, “Ben Ali Assets in Switzerland Transferred to Tunisia Central Bank,” March 11, 2021.

cars, jewels, and other luxury items.¹⁵⁷ Ultimately, however, investigations show that despite the freezes, illicit transfers still occurred,¹⁵⁸ and attempts were made to reassign ownership to avoid the freezes.¹⁵⁹

In June 2024, the EU adopted its 14th sanctions package against Russia “to target high-value sectors of the Russian economy, like energy, finance and trade, and make it ever more difficult to circumvent EU sanctions.”¹⁶⁰ That package outlawed, among other things, the use of a specialized financial messaging service developed by Russia’s Central Bank to “neutralize the effect of restrictive measures” and crypto assets, while also widening the EU flight ban and prohibitions on the transport of goods by road by EU operators that are owned 25% or more by Russian natural or legal persons.¹⁶¹

These cycles of sanctions evasion and escalating sanctions compliance measures, with every innovation in compliance and enforcement met with equal innovation in evasion, only add to the many challenges that justice actors face. Justice actors who assist with monitoring sanctions must keep up with the latest tactics of the evaders, and those who are working on behalf of justice in the sanctioned country must ensure that they do not run afoul of new compliance rules.

As a result, victims and human rights defenders often express deep dissatisfaction with this situation and the impunity with which the country’s leadership, including the targets and their families, operate, with many maintaining lives of comfort while the rest of the population suffers and violations continue. Sanctions evasion, as one Sierra Leonean civil society actor explained, also “emboldens the very regimes who are presiding over the violations of human rights.”¹⁶²

“Sanctions evasion emboldens the very regimes who are presiding over the violations of human rights.”

— Transitional justice expert

Limited Tangible Impact on Targets

Although sanctions may in some instances advance and recognize victims’ rights, they do not always encompass tangible elements of “punishment,” nor do they elicit acknowledgments of responsibility by the individual perpetrators or state authorities. Instead, perpetrators usually just go on with their lives, with some able to run for office and continue to reap the benefits of power.¹⁶³ As a result, in many instances, sanctions are seen by victims and transitional justice actors as giving mere lip service to justice.

157 Monica Marks, “Tunisian Dictator’s Possessions to Be Sold at Public Auction,” *New York Times*, December 21, 2012.

158 Alexandre Brutelle and Osama Al Sayyad, “Freezing Ben Ali and Mubarak’s Assets: Many Violations, Few Results,” *Inkyfada*, March 13, 2023.

159 See, e.g., David Gauthier-Villars and Gabriela Baczynska, “How a Russian Billionaire Shielded Assets from European Sanctions,” *Reuters*, June 1, 2022.

160 Council of the European Union, “Russia’s War of Aggression Against Ukraine: Comprehensive EU’s 14th Package of Sanctions Cracks Down on Circumvention and Adopts Energy Measures,” press release, June 24, 2024.

161 *Ibid.*

162 Interview, February 27, 2023, on file with ICTJ.

163 In Liberia, the Comprehensive Peace Agreement did not restrict people who were on the UN asset freeze and travel ban lists. As a result, six people who had been on those lists, including Jewel Howard-Taylor, the wife of Charles Taylor, successfully ran for office. “Letter Dated 25 November 2005 from the Panel of Experts on Liberia Addressed to the Chairman of the Security Council Committee Established Pursuant to Resolution 1521 (2003) Concerning Liberia,” Annex to Letter dated 7 December 2005 from the Chairman of the Security Council Committee Established Pursuant to Resolution 1521 (2003) Concerning Liberia Addressed to the President of the Security Council, S/2005/745, December 7, 2005, 9-10, <https://reliefweb.int/attachments/3c30990f-d5af-3cf1-91f2-0509c3ee26a0/8AAF34995CDA6F64852570D2006F8D61-UNSC-lbr2-07dec.pdf>. Similarly, Abd Al Rahman Al-Milad was promoted despite being under sanction for human trafficking in Libya. UN News, “As Security Council Imposes Sanctions on Six Human Traffickers in Libya, UN Chief Calls for More Accountability,” June 8, 2018.

This view is frequently expressed in connection with travel bans and visa restrictions, which often have little impact on the target because the person has no intention of traveling. As one Sudanese activist said when discussing the lack of impact of the travel ban that was imposed on the paramilitary leader Abdul Rahman Juma for human rights violations, including the killing of the governor of West Darfur, Khamis Abbakar, sanctions often are “targeting the right person but in the wrong way. We need you to target the right person in the right way.”¹⁶⁴

The same holds for those targets with no or well-hidden assets. In 2015, the panel of experts on Yemen, for instance, reflected on the lack of impact on two of the targets, Abd Al-Khaliq Al-Huthi and Abdullah Yahya Al Hakim, as neither owned any assets or traveled.¹⁶⁵ Cryptocurrency markets have only made the impact of asset freezes more uncertain and sanctions evasion more likely.¹⁶⁶

Likewise, even frozen assets that are held in foreign banks, including those assets that are tied to corruption, are sometimes returned to the perpetrators or their families, which can enable perpetrators to access resources that allow them to “defeat or delay attempts at prosecution” and ultimately escape accountability.¹⁶⁷ This has real-world consequences for human rights defenders who may face retribution, as well as for victims who still face the legacies of human rights violations.

These challenges are not merely messaging issues. Instead, they reflect the reality that sanctions often do not effectuate a change in behavior. While some analyses have found that sanctions achieve their main objective roughly one-third of the time,¹⁶⁸ the experience of sanctions on the ground can feel quite different, even for those who pay close attention to sanctions designations, like human rights defenders. For victims and societies that are in transition, the imposition of sanctions can feel more like a form of political theater between elites at the international level rather than a tool that provides accountability in the form, for instance, of criminal prosecution. Nor do the sanctions necessarily usher in the kinds of changes that are meaningful to victims and help repair fractured societies.

As such, sanctions, like individual transitional justice mechanisms, are likely to have limited impact when they are implemented in isolation. Instead, the establishment of complementary national-level processes for advancing criminal prosecutions, reparations initiatives, truth-seeking and memory, and institutional reform are needed. This kind of work can, for instance, build the capacity of judges and prosecutors and reassure victims that their national legal system is worthy of trust and is effective, something sanctions cannot do. In fact, quite the opposite, if anything—sanctions may contribute to eroding domestic criminal processes by starving these institutions of necessary resources and may even undermine trust in institutional mechanisms.

164 Interview, October 18, 2023, on file with ICTJ; US Department of State, “Actions Against Senior Rapid Support Forces Commanders in Sudan,” press statement, September 6, 2023.

165 “Many interlocutors have informed the Panel that the sanctions measures, including the travel ban, are unlikely to have any effect on these two individuals, as they do not own any assets and they do not travel.” UNSC, “Letter Dated 20 February 2015 from the Panel of Experts on Yemen Established Pursuant to Security Council Resolution 2140 (2014) Addressed to the President of the Security Council,” S/2015/125 (February 20, 2015).

166 US Government Accountability Office, “The Effectiveness of Economic Sanctions at Risk from Digital Asset Growth,” January 16, 2024.

167 Carranza, “Plunder and Pain,” 310–330.

168 Gary Clyde Hufbauer, Jeffrey J. Schott, Kimberly Ann Elliott, and Barbara Oegg, *Economic Sanctions Reconsidered*, 3rd ed. (Peterson Institute for International Economics, 2007), https://dh.cuni.cz/pluginfile.php/863435/mod_resource/content/o/Gary%20Clyde%20Hufbauer%2C%20Jeffrey%20J.%20Schott%2C%20Kimberly%20Ann%20Elliott%2C%20Barbara%20Oegg-Economic%20Sanctions%20Reconsidered%20%282008%29.pdf.

Undermining of Justice Processes and Justice Actors

Although the impact on the targets of sanctions is often limited, sanctions and sanctions compliance can and often do create significant challenges and risks for justice actors and their work promoting human rights and ensuring justice.

Sanctions and sanctions compliance measures can impose many logistical challenges for victims of human rights violations, civil society organizations, human rights defenders, and activists when they are doing the work that is needed to document human rights abuses, expose wrongdoing, and prevent illegal activities. For example, restrictions placed on banking and financial transactions can complicate simple tasks like paying staff and consultants, opening and operating offices, and conducting basic activities. Under US sanctions in Afghanistan, for example, restrictions were imposed on operators within the *hawala* system, a centuries-old, informal method of transferring money. Those restrictions were designed to prevent money laundering, the financing of terrorism, and the Taliban insurgency.¹⁶⁹ In response to the restrictions, donors directed nongovernmental organizations like ICTJ to stop using *hawala* to wire money to implement activities at the community and grassroots level, which made justice initiatives on the ground more difficult to advance.

Civil society organizations also are forced to pull back activities to avoid potential fines or costly and time-consuming compliance efforts, a practice known as de-risking. Sanctioned countries in Africa face some of the most significant impacts from de-risking, with severe humanitarian consequences; Sudan, for instance, lost “50 percent of its correspondent banking relationships between 2012 and 2015.”¹⁷⁰ Similarly, the Democratic People’s Republic of Korea faced significant difficulties in reviving its banking channel for humanitarian transfers after it collapsed in 2017.¹⁷¹

Justice actors continue to report that the exceptions process does not function as intended and that there are many hiccups in implementation, for instance relating to licensing requirements and increased costs associated with transferring funds because they must first go through third- and fourth-party intermediaries. Although those restrictions are usually felt most directly by domestic actors in the sanctioned state, they also increase transactional costs among the diaspora community and introduce a degree of friction into efforts that are designed to advance accountability and redress for human rights violations, slowing on-the-ground operations that are necessary to effectuate change and build democratic institutions.¹⁷² Meanwhile, leaders of repressive regimes live lives of luxury, often with millions of dollars in misappropriated assets.

At the same time, human rights defenders face threats, arbitrary detention, torture, and extrajudicial killing because of their advocacy in support of sanctions for human rights violations and because of the role some play in sanctions monitoring.¹⁷³ As a result, justice actors, including those who are working in support of the transitional justice agenda, often must choose whether they will advocate in support of the imposition of sanctions on bad actors, including domestic officials who are committing human rights abuses or corruption, or remain silent because of the

169 US Department of the Treasury, “Treasury Imposes Sanctions on a Hawala and Two Individuals Linked to the Taliban,” press release, November 20, 2012.

170 Hilary Mossberg, “Beyond Carrots, Better Sticks: Measuring and Improving the Effectiveness of Sanctions in Africa,” *The Sentry*, October 2019, 11.

171 UNSC, “Concerned by Unintended Negative Impact of Sanctions, Speakers in Security Council Urge Action to Better Protect Civilians, Ensure Humanitarian Needs Are Met,” SC/14788, February 7, 2022.

172 For instance, Syrians in Europe have reported having difficulties opening bank accounts and raising money for operations.

173 In Sierra Leone, for instance, Civil Society Movement (CSM-SL) was in the corridors of power, lobbying for the imposition of sanctions. Interview, February 27, 2023, on file with ICTJ.

risk to themselves. When they speak up, they are scapegoated by sanctions opponents, who tie them to the negative economic and social consequences that sanctions often precipitate. As such, it is necessary for sanctions monitors and policymakers to engage more systematically with justice actors to ensure they are not unduly hampered in their work in the fight against impunity.

Lack of Outreach

Sanctions as foreign policy tools often do not warrant attention from the populations that are under sanction until the impacts of the sanctions are felt, most often when the conditions of scarcity reach down into the communities where people reside. As such, civil society's impressions of sanctions are rarely positive. This is also true of some activists who are working on behalf of the victims of mass atrocities, who may be aware of the sanctions but have not been brought into the sanctions discussions and may not currently have the resources or capacities to reach out for the purpose of influencing decisions about sanctions.

In the absence of meaningful outreach, concrete monitoring, and follow-up, sanctions can create unrealistic victim expectations and increase the potential risks to civil society, human rights defenders, and other activists who are working on sanctions, especially in contexts where the negative effects of sanctions become a talking point of those who are seeking to prop up a repressive regime. To bridge this gap, more can be done to improve outreach and messaging by sender states to emphasize the truth about the crimes that occurred and the rights that were violated, and their pertinence to victims' needs and interests.

As of now, the level of public detail that is provided in public-facing announcements that have been issued by sanctioning authorities, for instance listings of people and entities, varies greatly by issuing authority and is not readily accessible to victim communities and civil society. Some documents, like the US Office of Foreign Assets Control's specially designated national list, provide mainly basic information (e.g., name, title, date and place of birth, and nationality) but do not include the details of the alleged violations of human rights and humanitarian law, which are usually released separately.¹⁷⁴

Other sanctions authorities offer a consolidated list that provides a summary of key allegations, like those maintained by the UK's Office of Financial Sanctions Implementation and those annexed to the European Council's regulations concerning restrictive measures.¹⁷⁵ These listings offer a source of consolidated public information, like that gathered by commissions of inquiry, for victims who are seeking justice and their representatives, for instance before the ICC when an investigation is underway.¹⁷⁶ Yet even the consolidated lists can be difficult to navigate and require Internet access.

Additional consideration should be given to strengthening outreach around sanctions to improve understanding and access by civil society and to reach victim populations, including those who are marginalized by geography, poverty, illiteracy, ethnicity, caste, or gender.¹⁷⁷ This

174 US Department of the Treasury, Office of Foreign Assets Control, "Sanctions List Search," <https://sanctionssearch.ofac.treas.gov/>.

175 See, e.g., UK Treasury and Office of Financial Sanctions Implementation, "Collection: Financial Sanctions Targets by Regime," October 11, 2013, last updated December 14, 2023, <https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>; "Consolidated Text: Council Regulation (EU) 2017/2063 of 13 November 2017 Concerning Restrictive Measures in View of the Situation in Venezuela," Document 02017R2063-20231129, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02017R2063-20231129>.

176 ICC, "Venezuela I: Situation in the Bolivarian Republic of Venezuela I," ICC-02/18, <https://www.icc-cpi.int/venezuela-i>.

177 Clara Ramírez-Barat, ICTJ, "Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice" (January 2011).

outreach can include better messaging in the announcement of sanctions designations and their distribution and availability in local languages.

In this regard, there is already some discussion of how to improve outreach around sanctions to solidify public support. Canada's Standing Senate Committee on Foreign Affairs and International Trade conducted a legislative review of its autonomous sanctions legislation, which included testimonies from civil society, academics, and legal and banking experts, including on the utility of its sanctions list. The witnesses testified that the listing was "not always complete," lacked consistency in the amount of detail provided, and would be more useful if it included "the reason why individuals are being sanctioned."¹⁷⁸

To remedy some of these shortcomings, civil society has urged the Canadian government to increase the level of detail in its sanctions announcements "to help strengthen this messaging."¹⁷⁹ In an article, three advocates wrote:

More specific information would amplify the impact of sanctions announcements and solidify public support for the system. Indeed, the "naming and shaming" components of sanctions—stigmatizing perpetrators while providing accountability for victims and elevating their voices—would be strengthened by such measures. At the same time, it could help support media freedom and civil society efforts on the ground by mitigating disinformation and providing credible data to pro-democracy and human rights campaigns. On a practical level, this shift would also provide critical data for Canadian civil society research and analysis to inform more effective and transparent policymaking.¹⁸⁰

Canada's Standing Committee on Foreign Affairs and International Development is also considering "the establishment of an external consultative body on sanctions, including representatives from civil society, the financial sector and the private sector, which would meet regularly, advance meaningful dialogue on Canada's sanctions regime, and develop an effective process for collecting feedback and documentation."¹⁸¹

That messaging could constitute a form of recognition for victims and help promote understanding; it could also sustain a base level of support and increase the potential leverage that sanctions offer, both nationally and internationally, around justice processes.

Legal and Practical Challenges to Repurposing Assets

The process of repurposing sanctioned assets for victims' reparations is a long and difficult one. It involves a series of complex legal steps, as well as significant political will and cooperation between different national authorities. These steps encompass investigatory, prosecutorial, and judicial processes, whether criminal or civil, for establishing a legal basis for seizing and confiscating illegally obtained assets or assets that are tied to human rights violations in the sanctioning state and the country that is seeking to repatriate the assets. Each step is dependent on each country's political will to implement sanctions and the independence of each country's national-

178 Senate Standing Committee on Foreign Affairs and International Trade, "Strengthening Canada's Autonomous Sanctions Architecture," 36.

179 Brandon Silver, Irwin Cotler, and Bill Browder, "Ten Ways to Strengthen Canada's Magnitsky Sanctions, Canadian Politics and Public Policy," February 27, 2023, <https://www.policymagazine.ca/ten-ways-to-strengthen-canadas-magnitsky-sanctions/>.

180 Ibid.

181 Ali Ehsassi, "Canada's Sanctions Regime: Transparency, Accountability and Effectiveness: Report of the Standing Committee on Foreign Affairs and International Development," 44th Parliament, 1st Session (January 2024), <https://www.ourcommons.ca/Content/Committee/441/FAAE/Reports/RP12803021/faaerp23/faaerp23-e.pdf>.

level investigators, prosecutors, and courts. This is true regardless of whether the assets were frozen pursuant to administrative sanctions resolutions or laws or following a criminal conviction or civil action.

The difficulties of repurposing assets are illustrated at the international level by the forfeiture requirements in the Rome Statute's forfeiture provision, which allows for the ICC to order "a forfeiture of proceeds, property and assets *derived directly or indirectly from that crime*, without prejudice to the rights of bona fide third parties,"¹⁸² a requirement that is rarely met. For instance, although ultimately Jean-Pierre Bemba Gombo was acquitted at the ICC, and thus no reparations judgment was issued, the difficulties that were involved in making such a case were nonetheless in view. The court would likely have faced significant challenges establishing that Bemba's assets—including an aircraft and a house in Lisbon that were obtained through corruption—were "derived directly or indirectly" from the war crimes and crimes against humanity, including pillage, murder, and rape, for which he was accused. Acts of pillage, for instance, were carried out by subordinates, none of whom were charged at the ICC.¹⁸³

These court processes for confiscating frozen assets are expensive and time-consuming. In addition, beyond establishing a legal nexus, there are other legal, political, and logistical challenges to confiscating assets to fund reparations. In some instances, a breakdown in the process can occur in the country that is holding the frozen assets. In 2021, for instance, the EU lifted sanctions that it had imposed for the purpose of helping Egyptian authorities recover "misappropriated state assets."¹⁸⁴ In that case, the EU "concluded that the [sanctions] regime had served its purpose."¹⁸⁵ Yet, few of the frozen assets had been returned to the Egyptian government. This was due in part to a successful challenge by the Mubarak family to the sanctions, but it also reflected a political decision by the European Council.¹⁸⁶

In other cases, foreign bank regulators may require a country that is seeking mutual legal assistance to prove the assets were misappropriated in order to recover them.¹⁸⁷ This can be difficult to prove, especially in former dictatorial regimes where the laws may have allowed such transactions at the time.

On the other side, in many cases, the national government that is seeking to repatriate the assets has neither the political will nor the means to build a case for pursuing assets and repatriating them. For example, Liberia's TRC examined economic crimes as gross human rights violations and recommended the prosecution of "all those persons, natural and artificial... responsible for the commission of economic crimes during the period of the Liberian conflict."¹⁸⁸ It appended

182 Rome Statute, Art. 77(2)(b); italics added. State parties are obligated to comply with requests from the court to provide assistance with the "identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties." Rome Statute, Art. 93(1)(k). States are also required to take measures to recover the value of proceeds, property, or assets ordered by the court to be forfeited, if they are unable to give effect to an order for forfeiture. Rome Statute, Art. 109(2).

183 See ICC, Bemba et al. Case, ICC-01/05-01/13, <https://www.icc-cpi.int/car/Bemba-et-al>. The court also faced a claim in the amount of €42 million for allegedly failing to properly manage the frozen property and assets, a claim that was ultimately dismissed. ICC, Case of the Prosecutor v. Jean-Pierre Bemba Gombo: Pre-Trial Chamber II, No. ICC-01/05-01/08, May 18, 2020, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01979.PDF.

184 Council of the EU, "Egypt: EU Revokes Sanctions Framework and Delists 9 People," press release, March 12, 2021.

185 Ibid.

186 Lucia Cismaziova, "The EU and UK Are Releasing the Money of Deposed Dictators," Open Democracy, April 7, 2021.

187 For example, Switzerland's act related to these types of assets requires that the "assets were acquired through acts of corruption, criminal mismanagement or other felonies." Federal Act on the Freezing and the Restitution of Illicit Assets Held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act, FIAA) of December 18, 2015, <https://www.fedlex.admin.ch/eli/cc/2016/322/en>.

188 Truth and Reconciliation Commission of Liberia, "Final Report of the Truth and Reconciliation Commission of Liberia (TRC), Volume 1: Findings and Determinations" (December 2008), 274, https://hmcwordpress.humanities.mcmaster.ca/Truthcommissions/wp-content/uploads/2018/10/Liberia.TR_C_Report-FULL.pdf.

a list of individuals, corporations, institutions, and state actors who were responsible for those crimes, a measure of accountability in the form of naming and shaming.¹⁸⁹ It also called for the seizure or confiscation of assets that were unlawfully acquired as proceeds of economic crimes.

However, it did not specifically call for victims' reparations to be funded from those confiscated assets and proceeds. Instead, it issued only a general recommendation that recovered and nationalized assets should be used "for the public good only."¹⁹⁰ And, it did not use its power to recommend the appointment of a special magistrate for the purpose of issuing related warrants of search and seizure.¹⁹¹

Meanwhile, Liberia's government never implemented the necessary national asset freeze measures,¹⁹² despite efforts to pass legislation in July 2007 that would have allowed for the seizure of the property of Charles Taylor, his relatives, and his associates, which was ultimately rejected. In addition, despite the attention paid by the TRC to both physical integrity violations and economic crimes and its recommendations to hold businesspeople accountable for their role in these crimes, additional charges against corporate actors and others for economic crimes were not pursued.¹⁹³

As a result, despite efforts at both the national and international level over a course of years to trace frozen assets that were alleged to have been misappropriated by Liberia's former president Charles Taylor, his family, and others by the UN panel of experts, other national authorities, and the TRC,¹⁹⁴ only small amounts of assets were frozen, with none recovered for reparations.¹⁹⁵

Even if these legal challenges had been overcome, recovered funds rarely make their way to victims as reparations. One of the reasons is that often they have already been earmarked for other purposes, such as development programs or, more troublingly, as already discussed, for victims of other crimes, decisions that may not easily be reversed. For instance, the blocked assets of former Iraqi officials and their families were transferred to the Development Fund for Iraq that was established by UNSC Resolution 1483 "to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, for the cost of Iraqi civilian administration, and for other purposes benefitting of the Iraqi people."¹⁹⁶ As mentioned already, some of those assets were used to compensate US victims

189 Ibid., 361–369.

190 Ibid., 274.

191 An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia, Sec. 27, <https://www.trcofliberia.org/resources/documents/trc-act.pdf>.

192 The Liberian government cited the 1986 constitution as a reason not to freeze assets, although high-ranking legislators and legal scholars disagreed with that assessment. See, e.g., "Report of the Panel of Experts on Liberia Submitted Pursuant to Paragraph 5 (e) of Security Council Resolution 1792 (2007) Concerning Liberia," attached to "Letter Dated 12 June 2008 from the Chairman of the Security Council Committee Established Pursuant to Resolution 1521 (2003) Concerning Liberia Addressed to the President of the Security Council," S/2008/371 (June 12, 2008), <https://digitallibrary.un.org/record/629328?v=pdf>.

193 Ruben Carranza, "Dutch Court Convicts Arms Dealer for Role in Liberian Atrocities. What Does It Say About Justice for Economic Crime?," ICTJ, May 4, 2017. There were some judgments in 2022 in foreign courts, including a verdict against Kunti Kamara in France for complicity in crimes against humanity, torture, and acts of barbarism. Kim Willsher, "French Court Convicts Former Liberian Rebel Commander over Atrocities," *The Guardian*, November 2, 2022. There was also a civil judgment against Moses Thomas for the Lutheran Church massacre and an ultimately unpaid \$84 million damage award in the United States. The Center for Justice & Accountability, "Jane W et al. v. Thomas (Lutheran Church Massacre)," <https://cja.org/what-we-do/litigation/jane-v-thomas/>.

194 See UNSC, "Part IX, Subsidiary Organs of the Security Council: Committees, Tribunals and Other Bodies, 2012–2013," 570, <https://main.un.org/securitycouncil/sites/default/files/en/sc/repertoire/2012-2013/Part%20IX/2012-2013%20Part%20IX.pdf>.

195 US ambassador for war crimes Stephen Rapp reported that the sanctions committee "succeeded in freezing \$700 million" in Taylor's funds. News 24, "Not All Charles Taylor Money Traced," October 11, 2012.

196 UNSC Resolution 1483 (May 23, 2003), 4, para. 14, <http://unscr.com/en/resolutions/doc/1483>.

of torture. Similarly, forfeitures for violations of Iranian sanctions are being used to fund the United States Victims of State Sponsored Terrorism Fund.¹⁹⁷

Additional efforts in the form of early coordination and cooperation between sanctioning authorities, investigators, prosecutors, and transitional justice mechanisms and actors, including victims' groups and civil society, could have an impact in this regard. These could include efforts to improve transparency and inclusivity so that victims are informed and involved, and so that their expectations do not get out ahead of the inherent difficulties in confiscation procedures, even if clear connections are made at the beginning to reparations, as could happen in connection with the recently created mechanism to receive claims for damages caused by the Russian crime of aggression in Ukraine.¹⁹⁸ In that situation, the creation of the registry was driven by national and global policymakers, not victims, and the resolution establishing the register does not provide guidance among the many victims and possible claims, which include both physical and property harms.¹⁹⁹

Likewise, additional consideration should be given to earmarking recovered assets for reparations to help facilitate efforts to ensure that the victims of mass atrocities and economic crimes benefit from the repatriation of misappropriated assets. Further, it is necessary to reinforce the importance of including economic crimes in the transitional justice agenda and of connecting sanctions and the freezing of assets to the funding of reparations at the outset of the transitional justice agenda, when the political will to address the legacies of the past is often at its strongest. Early attention paid to reparations in discussions around asset recovery is essential. Otherwise, as a reparations expert interviewed for this report explained, “you are taking away the one logical and morally correct source of funding for reparations, e.g., those who profited from war or from the authoritarian government,”²⁰⁰ leaving litigation as victims' only avenue of remedy.

Lack of Coordination and Coherence

Even in situations of great affinity, too often international sanctions and transitional justice have functioned alongside one another but on parallel and nonintersecting tracks. As a result, in some instances there has been a lack of coherence in the policy choices that are being made, sometimes at the expense of victims. This has been true most notably in decisions about the continuation or lifting of sanctions, which in many cases can have potential implications for transitional justice actors and processes on the ground in the target state.

When the US Congress passed the Caesar Syria Civilian Protection Act as part of the Defense Authorization Act in late 2019, it set criteria for suspending sanctions that are directly linked to transitional justice processes and aims. That legislation went into effect in June 2020 and is designed to target “those who enable the Assad regime to carry out atrocities and to needlessly prolong the Syrian conflict.”²⁰¹ Subsection C of the law, known as General Provisions, lays out criteria for when sanctions may be suspended if certain conditions are met, including when the government of Syria takes “verifiable steps to establish meaningful accountability for

197 US Congressional Research Service, “The International Emergency Economic Powers Act: Origins, Evolution, and Use,” updated January 30, 2024, 33.

198 Council of Europe, Committee of Ministers, Resolution CM/Res(2023)3 Establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine, (adopted May 12, 2023), <https://rm.coe.int/0900001680ab2595>.

199 Anna Myriam Roccatello and Fernando Travesí, “An International Register of Damages for Ukraine Promises Accountability, but Could Victims Be Left Behind?,” ICTJ, June 2, 2023.

200 Interview, March 13, 2023, on file with ICTJ.

201 Howard J. Shatz, “The Power and Limits of Threat: The Caesar Syria Civilian Protection Act at One Year,” Rand, July 8, 2021; US Department of State, “Caesar Syria Civilian Protection Act: Fact Sheet,” June 17, 2020.

perpetrators of war crimes in Syria and justice for victims of war crimes committed by the Assad regime, including through participation in a credible and independent truth and reconciliation process.”²⁰²

As the legislative summary of the Caesar Act explains, the provisions relating to the suspension of sanctions were “held out as a mechanism to reward positive movement towards resolving the crisis.”²⁰³

The UNSC has also considered proposals for conditioning sanctions relief on peace agreement provisions for implementing transitional justice measures. That was the case, for instance, in Resolution 2428 on South Sudan, which in 2018 renewed coercive sanctions against individuals and entities in the form of a travel ban and asset freeze that was first imposed in 2015; it also imposed an arms embargo.²⁰⁴ Among the conditions that were proposed to be considered for modifying, suspending, or lifting the arms embargo was progress on (or the obstruction of) commitments that were made in the peace agreement signed by the government and opponents in 2015,²⁰⁵ and again in the Revitalized Agreement of 2018.²⁰⁶ These included the transitional justice mechanisms contained in the Revitalized Agreement for providing accountability and for promoting reconciliation, including the creation of the Hybrid Court for South Sudan; the Commission for Truth, Reconciliation and Healing; and the Compensation and Reparations Authority.²⁰⁷ Ultimately, progress on the transitional justice processes was not included as a key benchmark, yet they remain a key area of consideration in the UNSC resolution that adopted the benchmarks.²⁰⁸

As of now, in Syria, the links made to transitional justice in the Caesar Act still remain a potential incentive to the new government, although it is still too early to tell whether and how the conditions will help or hinder discussions around and the eventual implementation of critical elements of a transitional justice agenda or whether their inclusion instead threatens to instrumentalize transitional justice.

Yet, there are examples of cases that shed light on how the lifting of sanctions can impact transitional justice aims and processes.

On June 4, 2003, the UNSC ban on the importation of diamonds was lifted in Sierra Leone based on the finding that the country’s government had “increased efforts to control and manage its diamond industry and ensure proper control over diamond mining areas, as well as the Government’s full participation in the KPCS [Kimberley Process Certification Scheme]”²⁰⁹ (which certifies diamonds as “conflict free”), although the import ban on rough diamonds continued in Liberia. Unfortunately, that decision was made before ongoing efforts around transi-

202 US Caesar Syria Civilian Protection Act of 2019, Sec. 52. Also included are the release of political prisoners, the end of the bombing of civilian populations and targeting of medical facilities, and the facilitation of international aid.

203 Report of Edward R. Royce, Chairman, Committee on Foreign Affairs, “Caesar Syria Civilian Protection Act of 2017,” May 11, 2017, 20, <https://www.govinfo.gov/content/pkg/CRPT-115hrpt115/pdf/CRPT-115hrpt115-pt1.pdf>.

204 UNSC Resolution 2428 (July 13, 2018). The travel ban and asset freeze were originally imposed by UNSC Resolution 2206 (March 3, 2015). The resolution also created a sanctions committee and panel of experts to assist with and monitor the implementation of the travel ban and asset freeze.

205 Intergovernmental Authority on Development, Agreement on the Resolution of the Conflict in the Republic of South Sudan (August 17, 2015), Ch. 5.

206 Intergovernmental Authority on Development, Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) (September 12, 2018), Ch. 5.

207 UNSC, “Benchmarks to Assess the Arms Embargo on South Sudan: Report of the Secretary-General,” S/2021/321, (March 31, 2021), 6–7, <https://digitallibrary.un.org/record/3907020?ln=en>.

208 UNSC Resolution 2577 (May 31, 2022), https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2577.pdf.

209 UNSC, “Press Statement on Sierra Leone Diamond Embargo by Security Council President,” SC/7778-APR/634, June 5, 2003.

tional justice had concluded. As a result, the work of Sierra Leone's TRC around the extraction of natural resources, their links to fueling the conflict, and the targeting of victims for violence and abuses, such as forced labor, were not considered, nor were the necessary reforms proposed by the TRC relating to resource extraction.

The UNSC decision preceded the issuance of the TRC report on October 4, 2004, by only 16 months. At the time sanctions were lifted, the TRC was admittedly still struggling to operationalize its mandate. Yet, looking back, there is a case to be made that the decision to lift sanctions might have been informed by the eventual findings the commission issued a little over a year later. As the TRC ultimately concluded, in contradiction to the UNSC, the "successive governments of Sierra Leone have never had effective control over the diamond industry."²¹⁰ It found that "while the present government of Sierra Leone has made significant progress in regulating the industry, much still needs to be done,"²¹¹ including in relation to the "high levels of exports" that still remain "unaccounted for," suggesting "that smuggling continues on a large scale."²¹²

Nor did the decision to lift sanctions fully reflect the provision of the Lomé Peace Agreement, which linked the government's management of the diamond industry to post-conflict development and the needs of tens of thousands of war victims as follows: "The proceeds from the transactions of gold and diamonds shall be public monies which shall enter a special Treasury account to be spent exclusively on the development of the people of Sierra Leone, with appropriations for public education, public health, infrastructural development, and compensation for incapacitated war victims as well as post-war rehabilitation and reconstruction. Priority spending shall go to rural areas."²¹³

That commitment was eventually picked up by the Sierra Leone TRC and was included among its recommendations for the use of the assets recovered from Charles Taylor and others who had profited off of Sierra Leone's diamond resources proceeds: "Any recovered assets or parts of them should, subject to negotiations with the government of Liberia, become part of the War Victims Fund proposed under the Lomé Peace Agreement and used for financing the comprehensive reparations programme recommended by the Commission."²¹⁴ Although Sierra Leone's government eventually established a Diamond Area Community Development Fund in 2021 to fund development projects in chiefdoms and districts with artisanal mining licenses, these projects are not reparative in nature, nor do they benefit victims of the conflict.²¹⁵

In Myanmar, sanctions were imposed and then lifted, most notably in 2016, in response to "Burma's substantial advances to promote democracy... , the release of many political prisoners... and the greater enjoyment of human rights and fundamental freedoms, including freedom of expression and freedom of association and peaceful assembly."²¹⁶ Yet sanctions were quickly reimposed and then expanded in response to the regime's brutal renewed campaign of violence and repression. To some, the original decision to lift sanctions had been made in the interest

210 "Sierra Leone TRC Final Report" (2004), Vol. 2, Ch. 2, 107, para. 556.

211 *Ibid.*

212 Sierra Leone Truth and Reconciliation Commission, "Sierra Leone TRC Final Report (2004), Vol. 3B, Ch. 1, 40, para. 151.

213 Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, Art. 7, para. 6.

214 Sierra Leone Truth and Reconciliation Commission, "Sierra Leone TRC Final Report" (2004), Vol. 2, Ch. 3, 183, paras. 429–430.

215 World Bank Justice for the Poor and Network Movement for Justice and Development, "A Simplified Handbook on the Government of Sierra Leone's New Operational Procedures and Guidelines for the Diamond Area Community Development Fund (DACDF)," January 2009, <https://documents.worldbank.org/curated/en/699581468167370138/pdf/523990BR10P11310090SimplifiedoDACDF.pdf>.

216 See, e.g., US Executive Order 13742, Termination of Emergency with Respect to the Actions and Policies of the Government of Burma, FR Doc. 2016-24847, October 7, 2016.

of “developing economic and military relations [rather] than on human rights protections and accountability.”²¹⁷

Because of the economic nature of most sanctions, in contexts like Myanmar where sanctions have been lifted, the result has often been a prioritization of opening the target country to international markets and undertaking various economic reforms, often with the goal of addressing that society’s basic needs. However, care must be taken to ensure that the particularized needs of victims of human rights abuses, who are often among the most marginalized groups in society, are also considered. In addition, it is important to consult victims’ groups and civil society organizations in transitioning societies, who often have relationships with different actors and knowledge about which ones are better positioned to address past human rights violations and to strengthen state institutions that work on governance, rule of law, and transparency, as well as accountability and reconciliation.

Because sanctions generally reflect political rather than investigatory or truth-seeking imperatives, they do not always consider complementary accountability processes. That was the case, for instance, with the 2010 decision by the European Commission to withdraw Sri Lanka’s preferential trade benefits after an investigation that “identified significant shortcomings” in Sri Lanka’s implementation of three of the 27 UN Conventions that are relevant to Generalized Scheme of Preferences Plus (GSP+) benefits, the International Covenant on Civil and Political Rights, the Convention against Torture, and the Convention on the Rights of the Child. That decision was rendered before the release of final reports by two accountability mechanisms that had been tasked with addressing violations of international humanitarian and human rights law: the Secretary General’s Panel of Experts on Accountability in Sri Lanka and the government’s Commission of Inquiry on Lessons Learnt and Reconciliation. In this instance, although the decision related to GSP+ did not appear to directly undermine the later investigatory processes, it failed to build on them, and did little to reinforce the government’s efforts.

Some of these situations might have been mitigated through additional coordination and by first threatening sanctions or by implementing sanctions overtime in a calibrated and coordinated fashion. That is what happened in The Gambia when the United States froze the assets of former president Yahya Jammeh in December 2017,²¹⁸ after the government had already frozen assets at the national level in May and had begun steps to establish a commission of inquiry into Jammeh’s financial and business dealings.²¹⁹

Importantly, such coordination could also help mitigate the potential for undermining the legitimacy of parallel criminal, truth-seeking, or investigatory processes, whether at the international or national level. This is particularly important for transitional justice processes because international sanctions are not the only externalities with which national justice actors must engage.

Such coordination could be beneficial given the ongoing situation in Syria. As long as sanctions remain in place, they offer leverage in favor of victims of atrocities during the Assad regime and of other warring parties. Decisions around sanctions should be made in consultation with victims, victims’ groups, and civil society, including those in Europe, with knowledge of realities on the ground in Syria.

217 Aileen Thomson, ICTJ, “Opening Up Remedies in Myanmar: Understanding the Range of Options for Dealing with Myanmar’s Past” (December 2015), 10.

218 US Office of Foreign Assets Control, “Notice of OFAC Sanctions Actions,” Document No. 2017-28031, December 28, 2017, 61665-61668, <https://www.federalregister.gov/documents/2017/12/28/2017-28031/notice-of-ofac-sanctions-actions>.

219 Ismail Akwei, “Exiled Jammeh’s Assets Frozen, Accused of Stealing over \$50m State Funds,” *Africanews*, May 23, 2017.

Conclusion

Today, sanctions and transitional justice processes often share common ground and seek to achieve complementary goals, including by responding to human rights violations and by targeting and seeking to hold accountable the actors who are most responsible, including governments, individuals within or connected to governments, and nonstate actors. Therefore, in many contexts, international economic sanctions function in support of transitional justice aims (e.g., punishing perpetrators, recognizing victims and repairing the harms they have suffered, advancing the truth, and preventing a recurrence of violations) and transitional justice processes (e.g., documenting human rights violations and identifying those who are responsible, supporting trials and truth commissions, and funding reparations).

Yet, while remaining cognizant of the affinities sanctions and transitional justice processes share in support of accountability and human rights, it is also important to keep in mind the distinct role that each plays in society and the fundamental differences that may put them in conflict with one another. International economic sanctions are a primarily coercive tool for changing behavior or policy, whereas transitional justice employs a combination of restorative, criminal, and social justice measures that are designed to ensure accountability and build more just and inclusive societies.

As such, time and additional experience are still needed to assess when and how sanctions authorities and transitional justice actors may best engage to advance key elements of a transitional justice agenda, while avoiding approaches that are likely to instrumentalize transitional justice. Future research on the perspectives of victims, victims' groups, and the organizations with whom they work to assess the impact of sanctions on the transitional justice agenda is needed and will inform future discussions on this topic.

Recommendations

It is hoped that the findings and conclusions that have been reached here will prompt further discussions about transitional justice and the social, economic, humanitarian, and political dynamics, both positive and negative, that sanctions policies, strategies, and interventions precipitate on victim communities and those who are working on transitional justice policy.

As of now, we have identified areas where increased engagement between justice practitioners and sanctions authorities could take advantage of synergies in their work at various stages of the sanctioning process. This includes when information is being compiled about possible sanctions

targets; while sanctions and transitional justice processes are being announced, implemented, and evaluated; and finally, at the back end, when assessments are being made around the lifting of sanctions.

For the United Nations

- Enhance coordination between sanctions committees and panels of experts and those who are implementing transitional justice processes, including truth commissions and reparations programs. This collaboration should encompass the processes of documenting human rights violations and economic crimes, monitoring sanctions compliance, and reporting sanctions evasion. Sanctions committees and panels of experts should engage more systematically with justice actors to help mitigate their risks of threats, arrest, or physical harm in connection with sanctions operations.

For sanctioning authorities

- Make “smart” sanctions smarter by increasing coordination between and among sanctioning jurisdictions and justice actors and by encouraging multilateral action to increase pressure on targets and to deter evasion efforts.
- Enhance ongoing consultative processes during the sanctioning process with victims, victims’ groups, civil society, and other justice actors who see firsthand the humanitarian and other impacts of sanctions on victims and their communities on the ground and thus often have critical and relevant information to share about whether the imposition of sanctions will provide a useful form of leverage, or, if sanctions are already being implemented, whether they are causing more harm than good and should be lifted. These consultative processes could help mitigate some of the negative impacts of sanctions on civilians or encourage sanctions authorities to consider calibrating sanctions decisions by issuing a warning before imposing them or putting benchmarks in place in advance of issuing new designations.
- Ensure transparency and encourage consultations between transitional justice actors, legislators, and law enforcement, prosecutors, and sanctions authorities who are working on the tracing and freezing of assets and on the potential earmarking of recovered assets to ensure that the victims of mass atrocities and economic crimes benefit from the confiscation and repatriation of those assets. This should encompass discussions at the international and national level to address legal challenges to confiscating assets to fund victims’ reparations, for instance under the Rome Statute’s forfeiture provision, as well as proposals for confiscating the interest income that is produced by seized assets, rather than the assets themselves.
- Widen the scope of sanctions investigatory processes to look into those who facilitate human rights violations, corruption, and sanctions evasion, for example bankers and other commercial entities, and expand coordination with victims’ groups and civil society actors who research these complex networks.

For justice actors

- In relevant contexts, assess the implications that sanctions could have or are having on transitional justice processes, victims, and civil society; the dilemmas they create for transitional justice actors; and the challenges of keeping reasonable expectations about their effectiveness from a transitional justice perspective. This research could include consideration of the following:

- The existing forms of victim and civil society participation in sanctions formulation and the role, if any, that improved outreach could play in making the process more inclusive and impactful.
- Areas of potential cooperation between sanctioning authorities and truth commissions, including during the formulation of the truth commission mandate, when investigating and documenting atrocities and economic crimes, and in the implementation of a truth commission's findings and recommendations, including those on funding reparations.
- The complex dynamics between transitional justice processes and decisions to lift sanctions. This includes the impact of these decisions on proposed, soon-to-be-implemented, or on-going accountability processes. It also includes recent instances of sanctions that condition the suspension or lifting of sanctions on the implementation of transitional justice aims and processes, with special attention paid to understanding whether and how they advance or hinder the implementation of a transitional justice agenda.
- Highlight the importance of sanctions and processes for freezing, seizing, and recovering assets as a source of funding for victim reparation and their contribution to efforts to address the legacies of human rights violations and economic crimes.

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