



# **Increasing the Prospects of Corporate Accountability, Compensation, and Financial Health for Victims and Survivors of Forced Labour and Human Trafficking**

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## **Abstract**

Although billions of dollars in illicit profits are generated each year from human trafficking and forced labour, a paltry amount is usually returned to victims/survivors in the form of compensation. To enable greater compensation for victims and survivors, the Asset Recovery and Restitution Initiative proposes a new strategy, i.e. the combined use of trade and anti-money laundering frameworks and inter-agency and multi-stakeholder cooperation (both domestically and internationally). Financial access/inclusion, and financial literacy/education are other important considerations in the receipt of compensation.

**Key words:** remedy; compensation; asset recovery; import bans; financial inclusion.

## **Introduction**

The notion of remedy for human rights abuses such as forced labour and human trafficking gives implicit recognition of at least two core realities: the harm committed by at least one party against another, and the obligation of the perpetrator (be it an individual, business or even a State) to extend actions towards restoring the victim/survivor to the status or position that they had before they were harmed. However, victims do not always receive remedy for the harms they suffer. The reality of insufficient remedy for victims and survivors of forced labour and human trafficking raises questions about the measures taken to reduce the disparity between the billions of dollars generated from these crimes<sup>1</sup> and the compensation provided to those

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<sup>1</sup> ILO, *Profits and Poverty: The Economics of Forced Labour* (Geneva: International Labour Office, 2014), 13; Katherine Taken Smith, Hannah Russell, and Murphy Smith, "Human Trafficking: A Global Multi-Billion Dollar Criminal Industry," *International Journal of Public Law and Policy*, 4(3), 2014, 293-308, <http://dx.doi.org/10.2139/ssrn.2316169>.

affected.<sup>2</sup> The apparent disconnect between national laws and practices and the requirements and expectations of remedy under international law is due to a number of different factors and challenges. These include the lack of legal and other support for victims/survivors, not recognizing and identifying victims/survivors of human trafficking and forced labour, high judicial thresholds to successfully prosecute cases for human trafficking for the purpose of labour exploitation, inadequate legal frameworks, the lack of effective international legal cooperation, and the inability to trace and seize assets and proceeds generated from these crimes.<sup>3</sup> Such gaps are further contextualized and complemented by factors that have created an enabling environment for the sustained trafficking of persons and exploitation of workers across the globe. These factors range from lax labour standards and market failures, to structural and situational inequalities, and low levels of criminal prosecutions for companies.<sup>4</sup>

While the provision of effective and appropriate remedies is a responsive measure and cannot undo harms caused, it has the *potential* to alleviate the effects of harm, and restore the victim/survivor to at least the state that they were before the harm was committed. The latter would however be undesirable where such restoration would result in a risk of exploitation or other violation of rights. For example, restoring a victim/survivor to a context where human trafficking is prevalent and where viable economic activities do not exist can increase their risk of re-exploitation. Pursuing all measures to provide remedy to victims/survivors and reduce the current gap in the provision of remedy is therefore a form of justice through which perpetrators can be held accountable for their actions and make amends for the loss or harms that they inflict

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<sup>2</sup> Similar to its detailing in an OSCE Compensation report, compensation is taken to mean, “the overall concept of payment to a person, regardless of the source of payment or the mechanism used or the types of losses to be compensated. Compensation thus includes awards made by state-funded schemes as well as awards made in criminal, civil or labour law proceedings.” [Accessible at: Katy Thompson and Allison Jernow, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw, Poland: OSCE, 2008), 15, <https://www.osce.org/files/f/documents/8/e/32023.pdf>.]

<sup>3</sup> Anne T Gallagher, “The right to an effective remedy for victims of trafficking in persons: A survey of international law and policy,” (2010), 2-3. Accessible at: [https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Bratislava\\_Background\\_paper1.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Bratislava_Background_paper1.pdf); Irene Wintermayr and Amy Weatherburn, *Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands*, (Geneva: ILO, 2021), 8. Accessible at: [https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms\\_783811.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms_783811.pdf); Claire Methven O'Brien and Amy Weatherburn. *Commission Proposal for a Regulation on prohibiting products made with forced labour on the Union market: The issue of remedies*, (Belgium, Brussels: European Parliament: 2023), 5-6. Accessible at: <https://discovery.dundee.ac.uk/en/publications/commission-proposal-for-a-regulation-on-prohibiting-products-made>

<sup>4</sup> Liechtenstein Initiative, *Unlocking Potential: A Blueprint for Mobilizing Finance Against Slavery and Trafficking: Final Report of the Liechtenstein Initiative's Financial Sector Commission on Modern Slavery and Human Trafficking* (New York: United Nations University, 2019). Accessible at: <https://www.fastinitiative.org/the-blueprint/download-report>; John R Barner, David Okech, and Meghan A. Camp. 2014. "Socio-Economic Inequality, Human Trafficking, and the Global Slave Trade", *Societies* 4, no. 2: 148-160; Amol Mehra and Katie Shay. “Corporate Responsibility and Accountability for Modern Forms of Slavery”, *Journal of International Criminal Justice*, Volume 14, Issue 2, May 2016, Pages 453–468.

on victims/survivors.<sup>5</sup> Following these realities and the potential of compensation to reduce vulnerability to (re)trafficking/(re)victimization,<sup>6</sup> a strong case exists for States, multilateral organizations, financial institutions, and civil society organizations to direct their attention and efforts towards the recovery of illicit assets and proceeds derived from human trafficking and forced labour, and the use of such money to compensate victims/survivors. This compensation should be “proportional to the gravity of the violation and the circumstances of each case”.<sup>7</sup>

Within this context, the Asset Recovery and Restitution Initiative (ARRI), established in 2022 following consultations with key partners and stakeholders, proposes a new strategy to close the remedy gap. ARRI is a project under the Finance against Slavery and Trafficking (FAST) Initiative, United Nations University Centre for Policy Research (UNU-CPR), which is funded by the Governments of Australia, Liechtenstein, Luxembourg, the Netherlands, Norway, and private sector and charitable donors. Remedy is a central aim of the FAST Initiative and ARRI explores how the financial sector, through legal and policy reform and capacity-building, can contribute to increased remedy and compensation for victims/survivors of human trafficking and forced labour. It proposes the following combined means through which compensation can be increased: (i) work alongside laws (currently existing in the USA, Canada and Mexico, and proposed in the European Union) that prevent the importation of goods produced by forced labour – a process which currently involves research and investigations on forced labour in global value chains; (ii) the use of the Anti-Money Laundering (AML) framework comprising the freezing, seizure and confiscation of illicit assets and proceeds – in this case applied to proceeds derived from the sale of goods produced by forced labour and/or human trafficking; and (iii) cooperation and collaboration among government agencies, multilateral organizations, financial institutions, and civil society organizations (CSOs) to facilitate and enable compensation for victims/survivors. The government agencies/entities include Customs authorities, Financial Intelligence Units (FIUs), law enforcement, Ministries of Justice, and other competent authorities.

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<sup>5</sup> Para 20, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* refers to the following gross violations of international human rights law and serious violations of international humanitarian law: physical or mental harm; Lost opportunities, including employment, education and social benefits; Material damages and loss of earnings, including loss of earning potential; Moral damage; Costs required for legal or expert assistance, medicine and medical services, and psychological and social services. [Accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>]

<sup>6</sup> Ainhoa Barrenechea, *Access To Compensation For Victims Of Human Trafficking* (FLEX, 2016). Accessible at: <https://www.antislaverycommissioner.co.uk/media/1066/dwp-compensation-f.pdf>; Fiona David and Jacqueline Joudo Larsen, *Migrants and Their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour* (Geneva: International Organization for Migration, 2019). Accessible at: [https://publications.iom.int/system/files/pdf/migrants\\_and\\_their\\_vulnerability.pdf](https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf).

<sup>7</sup> Para 20, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* [Accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>]

## **Remedy and compensation: Legal frameworks and guidelines**

Remedy for victims is a human right that is enshrined in international treaties and reflected in soft law. Requirements and recommendations for its provision apply to both States and businesses. Forms of remedy can include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>8</sup>

Art 25(2) of the United Nations Convention Against Transnational Organized Crime provides that States should establish appropriate procedures for access to compensation and restitution for victims of offences under the Convention. Further, Art 14(2) of the Convention focuses on compensation via the return of confiscated proceeds of crime or property to a requesting State Party. A link is made here (and more directly in Principle 16 and Guideline 4.4 of the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking) between confiscated assets and compensation, demonstrating the potential that exists for the use of anti-money laundering frameworks for the provision of compensation – one of the key features of the Asset Recovery and Restitution Initiative. Gallagher notably observes that, “[w]hile the Organized Crime Convention does not contain any mandatory provisions with respect to disposal of confiscated proceeds or property, States Parties are required to consider specific disposal options. The priority option relates to victim compensation.”<sup>9</sup>

Compensation specifically to victims of human trafficking is covered under Article 6(6) of the Palermo Protocol,<sup>10</sup> which requires States parties to accommodate measures in their domestic legal systems to offer compensation to victims of trafficking for damage suffered. Where forced labour is concerned, Art. 2(3) of the International Covenant on Civil and Political Rights obliges Members that ratified the Convention to provide for an effective remedy for those whose rights and freedoms are violated. Art 1(1) of the Protocol of 2014 to the Forced Labour Convention, 1930 (No 29) provides for access to appropriate and effective remedies, such as compensation for victims, while Art 4(1) makes it clear that a victim’s presence or legal status in the national territory should not have a bearing on their access to such remedies. These international legal instruments codify victims’ right to remedy and compensation and are legally binding on States Parties. They cover the State’s role in enabling and facilitating access to remedy and compensation for victims of trafficking and forced labour, whether through laws, mechanisms or procedures. These international legal instruments are notably complemented by soft law such as the Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons (paras. 5, 6, 8, 10, and 12), the Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (paras. 18 and 20), the

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<sup>8</sup> Ibid, para18.

<sup>9</sup> Anne T Gallagher, “The right to an effective remedy for victims of trafficking in persons: A survey of international law and policy,” (2010), 12, Accessible at: [https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Bratislava\\_Background\\_paper1.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Bratislava_Background_paper1.pdf).

<sup>10</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (paras. 19 and 21), and the Office of the High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking (Guideline 4, para. 4).

Where businesses are concerned, access to effective remedy for business-related human rights abuses is covered under the UN Guiding Principles on Business and Human Rights (UNGPs). Further, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct provides the recommendation that enterprises should “...provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.”<sup>11</sup> In spite of such business-related guidelines, the duty of States to ensure access to effective remedy is, in these instruments, limited to domestic human rights abuses. However subsequent initiatives such as the UN Working Group on Business and Human Rights, and the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights have advocated for States’ protection of human rights both inside and outside their territory, and ensuring access to effective remedy for human rights abuses wherever they may occur.

### **Proceeds of crime and compensation**

The use of proceeds of crime to compensate victims/survivors is not new.

For example, Section 7 of the UK’s Modern Slavery Act 2015 makes reference to an amendment of the Proceeds of Crime Act 2002 which enables the confiscation of assets in respect of slavery, servitude and forced or compulsory labour. Further Sections 8 to 10 provide coverage on slavery and trafficking reparation orders. Accordingly, under Section 8(1)(b) of this Act,

“The court may make a slavery and trafficking reparation order against a person if -  
(a) the person has been convicted of an offence under section 1, 2 or 4, and  
(b) a confiscation order is made against the person in respect of the offence.”

As reported by the UK Independent Anti-Slavery Commissioner, there were 206 confiscation orders since 2015. These orders were valued at over £5.8m and were granted in cases where slavery or trafficking were listed as the primary offence. However, of these confiscation orders, only 41 compensation orders and eight reparation orders were granted<sup>12</sup> which jointly amount to 23.8 percent of confiscation orders. While this example demonstrates that the use of proceeds of crime to compensate survivors is possible, it likewise demonstrates that challenges need to be overcome. In the UK context, these challenges include (but are not

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<sup>11</sup> OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Publishing, 2023), 25. Accessible at: <https://doi.org/10.1787/81f92357-en>.

<sup>12</sup> This information is from data provided by the National Crime Agency’s Proceeds of Crime Centre in February 2022. [Source: Independent Anti-Slavery Commissioner, “IASC policy paper: Access to compensation and reparation for survivors of trafficking”, page 4, [https://www.antislaverycommissioner.co.uk/media/1765/iasc-policy-paper\\_access-to-compensation-and-reparation-for-survivors-of-trafficking\\_april-2022.pdf](https://www.antislaverycommissioner.co.uk/media/1765/iasc-policy-paper_access-to-compensation-and-reparation-for-survivors-of-trafficking_april-2022.pdf)]

limited to) the lack of adequate financial investigation support for respective investigations, thereby making it difficult to identify assets for confiscation.<sup>13</sup> Further based on feedback from investigators, more detailed guidance for investigators on compensation and reparation orders is also desirable.<sup>14</sup> The inter-agency and multi-stakeholder model championed under ARRI is one of the strategies that can be used to address such challenges. More concretely, ARRI advocates, *inter alia*, for data sharing among customs authorities, FIUs, law enforcement authorities and ministries of justice, for the purpose of investigating potential violations of AML laws (where applicable) as well as identifying, freezing, seizing, and confiscating illicit assets and proceeds to compensate victims/survivors.<sup>15</sup>

In spite of challenges that may exist and arise from the use of proceeds from human trafficking and/or forced labour to compensate survivors, its use can be considered feasible considering the large quantity of illicit profits that are usually derived from such activities. The use of such proceeds can also be considered advantageous for countries that may not have a victim compensation fund or have the capacity for such a fund. Further, as many victims/survivors have experienced lost wages, material and non-material damages, and incurred debt as a consequence of being exploited, the use of proceeds from the source of their exploitation can be considered a form of restorative justice. Compensation also provides a means for victims/survivors to rebuild their lives, and support their economic empowerment and social integration. In light of this context, while research and investigation to prevent future cases or efforts to support law enforcement activities are crucial, supporting the livelihood of victims and reducing their risk of re-exploitation via proceeds of crime should be given priority. As captured in one of the recommendations emerging from the ARRI project, “[a]ll States should always allow for confiscated assets and proceeds to be used for compensation to victims/survivors of forced labour and/or human trafficking, and where generalized compensation funds are used, ensure there are always sufficient funds to compensate all victims/survivors and give priority to them before all other parties.”<sup>16</sup>

### **The Asset Recovery and Restitution Initiative: Responsibility for remedy, and access to remedy**

Beyond the importance of enabling and facilitating the provision of remedy and the existence of legal support for remedy, it is likewise important to give key consideration to

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<sup>13</sup> Ibid, page 5

<sup>14</sup> Ibid.

<sup>15</sup> Andy Shen and Loria-Mae Heywood, “Asset Recovery and Restitution: Leveraging Interagency and Multi-stakeholder Cooperation to Facilitate Compensation for Victims and Survivors of Forced Labour and Human Trafficking,” *UNU-CPR Research Report* (New York: United Nations University, 2023), 62.

<sup>16</sup> Andy Shen and Loria-Mae Heywood, “Asset Recovery and Restitution: Leveraging Interagency and Multi-stakeholder Cooperation to Facilitate Compensation for Victims and Survivors of Forced Labour and Human Trafficking,” *UNU-CPR Research Report* (New York: United Nations University, 2023), 63.

responsibility over remedy, and access to remedy. Accordingly, research<sup>17</sup> done under the ARRI project examined important questions concerning who should provide compensation, who should ensure that victims/survivors receive compensation, and challenges in the delivery of compensation. Responses to these and other questions were gathered at a key stage of the ARRI research which involved the collection of data via questionnaires. These questionnaires were distributed among agencies/entities/organizations across Africa, the Asia-Pacific, Europe and North America. Of the 47 questionnaire respondents, 78 per cent of respondents from government agencies and CSOs believed that compensation should be sourced from both individuals/companies in the country where the worker was exploited, and individuals/companies in the country where the goods produced by forced labour and/or victims of human trafficking were sold. Within this context, it should be noted that in efforts to recover assets and proceeds from goods produced by forced labour and/or human trafficking, more attention is currently given to investigating responsible individual(s)/company/ies in the country where the worker was exploited.<sup>18</sup> This is largely due to a gap in the anti-money laundering (AML) framework; illicit proceeds that companies in market States derive from the sale of goods produced by forced labour in their value chains are not subject to asset recovery and cannot be used to compensate victims and survivors because such transactions are not considered a predicate offense to money laundering. This reality resulted in the ARRI recommendation for States to consider criminalizing “knowingly benefiting financially from forced labour or human trafficking” and including this in their list of predicate offenses to money laundering. This would enable asset recovery from companies in market States that profit from the sale of goods produced by forced labour or human trafficking and compensation to victims/survivors from the confiscated assets.

Questionnaires for CSOS further made enquiry into who should be responsible for ensuring that victims/survivors *receive* compensation. CSO representatives believed that multiple avenues can be explored: 36 per cent of CSO respondents believed in the responsibility of government agencies in the country of origin, followed by government agencies in the country of exploitation (28 per cent), CSOs representing victims/survivors and/or their families (24 per cent), and government agencies in the market State (12 per cent).

Regarding access to remedy, questionnaire results further revealed that the core challenge experienced by agencies/entities in the delivery of compensation to victims/survivors was their lack of access to an account from a regulated institution other than a bank (for example, mobile money service providers). This was closely followed by the challenge of survivors not having access to a bank account, and that of finding/tracing survivors.<sup>19</sup> Under the auspices of the

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<sup>17</sup> Andy Shen and Loria-Mae Heywood, “Asset Recovery and Restitution: Leveraging Interagency and Multi-stakeholder Cooperation to Facilitate Compensation for Victims and Survivors of Forced Labour and Human Trafficking,” *UNU-CPR Research Report* (New York: United Nations University, 2023).

<sup>18</sup>This contrasts with attention given to investigating the profiting individual(s)/ company/ies in the country where the goods produced by forced labour and/or victims/survivors of human trafficking were sold.

<sup>19</sup> Andy Shen and Loria-Mae Heywood, “Asset Recovery and Restitution: Leveraging Interagency and Multi-stakeholder Cooperation to Facilitate Compensation for Victims and Survivors of Forced Labour and Human Trafficking,” *UNU-CPR Research Report* (New York: United Nations University, 2023).



Survivor Inclusion Initiative (SII),<sup>20</sup> FAST has notably provided support to financial institutions (including supervisors and regulators) and survivor support organizations in facilitating access to basic banking services (e.g. checking and savings accounts) for survivors, with due regard being given to simplified customer due diligence (CDD), and adherence to AML and counter-terrorist financing (CFT) safeguards. Such work occurs in a context where survivors have experienced barriers to banking due to, for example, their lack of an official identity document, and their lack a permanent address – common Know Your Customer requirements for opening a bank account.<sup>21</sup> Based on FAST records, as of November 2023, the Survivor Inclusion Initiative (SII) has facilitated access to financial services for almost 3000 survivors in the UK, US and Canada.

Facilitation of access to compensation and financial goods and services for victims/survivors should be accompanied by targeted efforts to support their financial education and literacy.<sup>22,23</sup> This is necessary to ensure their effective use of the compensation and other resources to which they will have access, and safeguard them against the theft of funds and other circumstances that could increase their risk of exploitation. Such a role can be facilitated and supported by CSOs, financial institutions and other actors and organizations with the capacity to do so. In the ARRI research, the majority of CSO respondents (80 per cent) placed a high level of importance on financial education/literacy (the ability to understand and effectively use various financial skills, including personal financial management, budgeting, and investing) for victims/survivors. Some of the CSOs (in addition to other organizations) also had the experience of providing financial education to victims/survivors who received or were expected to receive compensation.

### **Anticipated challenges under the Asset Recovery and Restitution Initiative**

The combined use of trade regimes (via import bans) and anti-money laundering regimes, with enhanced inter-agency and multi-stakeholder cooperation, is new and could greatly strengthen the recovery of assets and the provision of remedy, including compensation, for

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<sup>20</sup> FAST's SII is a financial access project that was launched in 2019 in the UK, the US, and Canada to remove access barriers to financial services for survivors of modern slavery. *Read more:* "Survivor Inclusion Initiative," <https://www.fastinitiative.org/implementation/survivor-inclusion/>

<sup>21</sup> *Read more:* Finance Against Slavery and Trafficking, *Insight Briefing: Lessons from the Survivor Inclusion Initiative (SII) – the UK, US, and Canada* (New York: United Nations University Centre for Policy Research, 2022); Leona Vaughn and Janina Pescinski, *Insight Briefing: Business banking and start-up support for survivors of modern slavery and human trafficking* (United Nations University, 2022).

<sup>22</sup> David Rothwell, Mohammad Khan, and Katrina Cherney, "Building financial knowledge is not enough: Financial self-efficacy as a mediator in the financial capability of low-income families," *Journal of Community Practice* Vol 24 Issue 4 (2016): 368–388.

<sup>23</sup> David Okech, Claire Bolton, and Elyssa Schroeder, "Financial education in human trafficking interventions: Implications for research, programming and policy," *The Routledge Handbook of Financial Literacy*, eds. Gianni Nicolini and Brenda J. Cude (London & New York: Routledge, 2022).

victims/survivors of human trafficking and forced labour in global value chains.<sup>24</sup> However, the pursuit of this strategy is notwithstanding the need to consider (and address) challenges that may arise in attempts to recover illicit assets and proceeds, including those referenced above as well as those pertaining to data privacy and information-sharing, different levels of understanding regarding money laundering crimes committed via human trafficking offences, and the length of time taken to execute mutual legal assistance requests. Further, one should however bear in mind that there may be varied capacities of States around the globe to provide such compensation. Pursuing training and capacity-building, and creating additional information-sharing arrangements (including via public-private partnerships) are all strategies that can be used in response to such challenges. Further, where the State is unable to enforce compensation orders against perpetrators, States should provide compensation to victims and survivors – a good practice seen in the Netherlands, and one which closely aligns with Art 16 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The Stolen Asset Recovery Initiative, or StAR, a partnership between the World Bank Group and the United Nations Office on Drugs and Crime, has published numerous reports detailing the challenges faced in asset recovery as well as recommendations for overcoming such challenges. While StAR is focused on corruption, some of the experiences in that project can be useful for practitioners focused on human trafficking and forced labour to consider when attempting to address challenges in recovering assets to compensate victims and survivors. For example, the high judicial threshold for securing a criminal conviction for labour trafficking can prevent criminal confiscation in many cases. StAR notes that it may still be possible to recover the proceeds and instrumentalities of crimes like corruption through a private civil action or through non-conviction-based confiscation proceedings which have a lower standard of proof.<sup>25</sup> With regard to the challenge of tracing and seizing assets and proceeds of crimes, StAR's recommendation to "continually assess whether it is possible and practical to adopt provisional measures to seize or restrain assets discovered during tracing efforts"<sup>26</sup> should be considered by practitioners working on human trafficking or forced labour cases. With respect to the broader challenge of the of lack of legal support for victims/survivors, StAR notes "using confiscation to obtain restitution for victims will often save them significant fees or expenses...that are usually required for recovery through a private law (civil) case".<sup>27</sup>

Aside from these technical challenges, the Asset Recovery and Restitution pathway suggested by FAST would likely face political challenges given the fundamental shifts we propose. Some of the legal and policy reforms needed will be easier to achieve than others;

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<sup>24</sup> Stringer et al. (2022) provide coverage on global value chain governance within the context of modern slavery in the Thai fishing industry. See further: Christina Stringer, Brent Burmester, and Snejina Michailova. "Modern Slavery and the Governance of Labor Exploitation in the Thai Fishing Industry", *Journal of cleaner production*, Volume 371, 2022, pages 1-11.

<sup>25</sup> Jean-Pierre Brun, Anastasia Sotiropoulou, Larissa Gray, Clive Scott, and Kevin M. Stephenson, "Asset Recovery Handbook: A Guide for Practitioners, second edition," (Washington, DC: World Bank, 2021), 61.

<sup>26</sup> *Ibid*, 82.

<sup>27</sup> *Ibid*, 211.

survivor access to bank accounts has already increased through FAST's SII, the European Union is considering how to guarantee remedy for victims/survivors of forced labour through an import ban, and the majority of States already allow for confiscated assets and proceeds to be used for victim compensation. However, the FAST recommendation to make "knowingly benefiting financially from forced labour or human trafficking" a predicate offense to money laundering may be more difficult to accomplish. Such a significant reform largely depends on the political will of government leaders and the support of the private sector. While more support from governments, the financial sector, and civil society is needed, the recent updates by the Financial Action Task Force (FATF) to its recommendations on asset recovery may pave the way for some of FAST's recommendations to be adopted by States. Most importantly, the FATF now requires States to establish asset recovery as a priority at the domestic and international levels.<sup>28</sup> While there are no specific references to human trafficking or forced labour, the general reforms do apply to these crimes and the assets/proceeds generated from them. The strengthened international framework, including measures to improve international cooperation on asset recovery, increases the prospects of asset recovery from Global North companies that financially benefit from forced labour or human trafficking in the Global South if/when FAST's proposal for a new predicate offense is adopted.

### **Recommended actions for facilitating compensation under the ARRI framework**

The Asset Recovery and Restitution Initiative has proposed a series of actions as a means of facilitating compensation for victims/survivors of forced labour/human trafficking. These include previously mentioned recommendations,<sup>29</sup> as well as the following:

- i. States with forced labour import bans, and those that adopt such bans in the future, should explicitly require entities subject to detention or seizure orders to provide compensation and other forms of remedy, in consultation with victims/survivors and/or their representatives where possible, **as a condition** of lifting such orders;
- ii. All States should establish clear guidance to the competent authorities<sup>30</sup> on the provision and exchange of information, including detailing the steps and potential actors involved in the process to compensate victims/survivors;
- iii. All States should allow for confiscated assets and proceeds to be used for compensation to victims/survivors of forced labour and/or human trafficking, and where generalized

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<sup>28</sup> FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF (Paris, France), [www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html](http://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html)

<sup>29</sup> -All States should consider criminalizing "knowingly benefiting financially from forced labour or human trafficking" and including this in their list of predicate offences to money laundering.  
-All States should always allow for confiscated assets and proceeds to be used for compensation to victims/survivors of forced labour and/or human trafficking, and where generalized compensation funds are used, ensure there are always sufficient funds to compensate all victims/survivors and give priority to them before all other parties.

<sup>30</sup> Potential actors include both governmental and non-governmental, civil society and private sector actors.

compensation funds are used, ensure there are sufficient funds to compensate all victim/survivors and give priority to them before all other parties;

- iv. All States should facilitate and enable victims/survivors' access to bank accounts, or accounts from regulated financial institutions other than banks as a part of the restitution process in forced labour and human trafficking cases, to ensure that victims/survivors receive the money to which they are entitled.

## Conclusion

Leveraging the combined use of trade and anti-money laundering frameworks and inter-agency and multi-stakeholder cooperation (both domestically and internationally) to enable greater compensation for victims and survivors of forced labour and human trafficking can help close the remedy and compensation gap. It is also critical that the money laundering framework is used to freeze, seize and confiscate illicit assets and proceeds derived from forced labour and human trafficking and from individuals and businesses that knowingly source such goods. Not only would such actions hold businesses accountable, but they can also lead to greater human rights due diligence in value chains and conformity to human rights due diligence legislation where they exist. Making “knowingly benefiting financially from forced labour or human trafficking” a crime and a predicate offence to money laundering is the first step to facilitating such asset recovery from market States.

Finally, in the pursuit of greater compensation for victims and survivors of forced labour and human trafficking, it is critical that the needs of such persons are given priority at all times, including pertaining to protection and legal representation. Consultation with victims/survivors and ensuring that all interventions are survivor-informed, trauma-informed and culturally tailored is necessary. Victims/survivors must be given access to a bank account or account from another regulated financial institution (e.g. mobile money service provider) for the purpose of accessing compensation, facilitating their financial inclusion,<sup>31</sup> and safeguarding against their financial exclusion – recognised as a risk multiplier to modern slavery (including forced labour and human trafficking).<sup>32</sup> Such access to financial services should likewise be accompanied by access to financial education and literacy.

A strong case exists for the pursuit of increased remedy in the form of compensation for victims/survivors of forced labour and human trafficking and via the combined use of anti-money laundering regimes, trade regimes, and interagency and multi-stakeholder cooperation to achieve such ends. In all such measures, it is imperative that the needs of victims/survivors remain central, including their need for information on remedy, adequate legal assistance and

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<sup>31</sup> Demirgüç-Kunt, Asli, Leora Klapper, Dorothe Singer, and Saniya Ansar, “The Global Findex Database 2021: Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19.” (World Bank: Washington, DC: World Bank, 2022), <https://doi.org/10.1596/978-1-4648-1897-4>.

<sup>32</sup> Liechtenstein Initiative, *Unlocking Potential: A Blueprint for Mobilizing Finance Against Slavery and Trafficking: Final Report of the Liechtenstein Initiative's Financial Sector Commission on Modern Slavery and Human Trafficking* (New York: United Nations University, 2019). Accessible at: <https://www.fastinitiative.org/the-blueprint/download-report>.

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representation, and financial inclusion. A combined focus on the means of recovering assets and victims'/survivors' needs will better assure access to remedy.