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Centre for International  
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World Refugee Council Discussion Paper No. 2

# Using Frozen Assets to Assist the Forcibly Displaced

## A Policy Proposal for Canada





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Governance Innovation

The logo for the World Refugee Council, featuring a purple square with a white box containing the text "WORLD REFUGEE COUNCIL" and a purple pentagon shape to its right.

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## Centre for International Governance Innovation

67 Erb Street West  
Waterloo, ON, Canada N2L 6C2  
[www.cigionline.org](http://www.cigionline.org)

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## About the Series

World Refugee Council discussion papers are thought-provoking pieces intended to stimulate thought and discussion among political leaders, refugee experts, academics and civil society actors to help generate ideas and solutions for the global refugee system. The measures and concepts in these documents do not necessarily reflect the views of the World Refugee Council.

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## Acronyms and Abbreviations

FAAE	Standing Committee on Foreign Affairs and International Development
FACFOA	Freezing Assets of Corrupt Foreign Officials Act
FIAA	Foreign Illicit Assets Act
IEEPA	International Emergency and Economic Powers Act
IRA	Irish Republican Army
NGO	non-governmental organization
SEMA	Special Economic Measures Act
SPMA	Seized Property Management Act
UNA	United Nations Act
UNSC	United Nations Security Council
WRC	World Refugee Council

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## Introduction

With the number of refugees and internally displaced persons currently more than 70 million, the global level of forced migration is now greater than ever. The present arrangements for responding to their needs are falling far short in almost every respect. Fresh thinking is required to develop a more effective legal, social and financial framework to meet this challenge.

The World Refugee Council (WRC) was created as a catalyst for that fresh thinking, and as a forum in which policy innovations can be developed. The WRC's starting point is the principle of shared responsibility, leading to a more equitable distribution of the tasks involved in hosting, settling and integrating refugees, and providing support and protection to those who are internally displaced.

The WRC recognizes that a framework based on shared responsibility will only endure if there are mechanisms for enforcement and accountability. At the same time, the framework must include incentives for states to comply with their obligations, and resources to assist them in doing so.

In considering accountability, it is important to remember that forced displacement is often the result of bad governance. Violent or oppressive regimes, or those that fail or refuse to protect their populations, are responsible for much of the forced migration in the world today. Those regimes are also often corrupt, stealing from their treasuries and placing the money and other assets offshore for the unlawful benefit of the rulers and their associates.

When the jurisdictions in which the purloined assets are placed become aware of the assets' existence, they frequently "freeze" them and, if the property can be traced, seize it. These steps may be authorized by court order, by domestic legislation or through sanctions imposed by the United Nations Security Council (UNSC).

As a result, such assets are often tied up for extended periods. Meanwhile, host countries struggle to manage the cost of accommodating large numbers of refugees or displaced persons whose dislocation was caused by the very regime that stole the money.

To achieve both greater accountability and a fairer allocation of responsibility, could the stolen money be used in such cases to assist the forcibly displaced? If the money is to be returned to the country from which it was stolen, can conditions be attached, requiring that it be used for the fair treatment and safe resettlement of refugees and the internally displaced? Can the money be paid out jointly to the country of origin and, say, the Office of the United Nations High Commissioner for Refugees?

These questions raise complex, sensitive and sometimes unprecedented issues, but given the acute shortage of resources to assist refugees, they are well worth pursuing. It is estimated that corrupt leaders of countries with a large number of refugees, or of countries whose population has been displaced, have deposited billions of dollars in cash and assets in foreign jurisdictions.

Although reference will be made in the paragraphs that follow to the experience of other countries in dealing with these issues, the scope of this paper's legal analysis will be limited to the Canadian context. In due course, the WRC will be provided with research concerning the legal framework in other leading jurisdictions.

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## Freezing Assets in Canada: By What Authority?

It will first be useful to review the sources of lawful authority in Canada for the freezing of assets. There are four Canadian statutes that provide that authority.<sup>1</sup>

### United Nations Act

Through the United Nations Act (UNA), the Government of Canada gives effect to sanctions imposed by the UNSC, meeting its obligation under the Charter of the United Nations. The

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<sup>1</sup> There are provisions in Canada's Criminal Code dealing with the forfeiture of proceeds of crime, or of assets used in committing crime. Forfeiture of assets in that context is quite different and is not considered here.

UNA allows the Cabinet to enact regulations that implement UN sanctions, including asset freezes, and create offences for contravening them.

It should be noted that UNSC resolutions imposing asset freezes may include provisions that directly or by implication limit the member state's ability to confiscate or "repurpose" the frozen assets, or may impose conditions before such repurposing may take place. Where repurposing is being considered, the resolutions that impose asset freezes will therefore have to be examined closely to determine the effect of their provisions.

## Special Economic Measures Act

The Special Economic Measures Act (SEMA) enables the Governor in Council to make regulations restricting or prohibiting certain activities in relation to a foreign state, or any person in a foreign state or a national of a foreign state, as well as to freeze or seize assets. SEMA regulations include a schedule listing individuals and entities subject to sanctions (including asset freezes). There are SEMA regulations for the following countries: Burma (Myanmar), Iran, Iraq, Libya, North Korea, Russia, Syria, Ukraine and Yemen.

## Freezing Assets of Corrupt Foreign Officials Act

The Freezing Assets of Corrupt Foreign Officials Act (FACFOA) enables the Government of Canada to comply with a demand from a country in turmoil to freeze the assets or restrain the property of its current or former government officials or politicians. The FACFOA is not sanctions-based legislation, which is generally punitive; rather, the asset freeze under the FACFOA is a type of assistance that Canada provides to the requesting country.

The objective is "to allow the foreign state the opportunity to seek the ultimate seizure and recovery of assets through mutual legal assistance frameworks." The FACFOA regulations include a list of "Politically Exposed Foreign Persons" who are subject to an asset freeze in Canada under those regulations. There are currently FACFOA regulations for Tunisia and Ukraine.

## Justice for Victims of Corrupt Foreign Officials Act

The recently adopted Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), the so-called Magnitsky Act,<sup>2</sup> provides for "the taking of restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights."<sup>3</sup> The purpose of the statute is to authorize the imposition of sanctions, including asset freezes, against foreign nationals who have committed gross violations of internationally recognized human rights, or acts of significant corruption.

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## Getting Access to Frozen Assets

None of those four statutes provides a procedure for gaining access to seized or frozen assets for the purposes discussed in this paper. Nor are there other Canadian statutes that do so.<sup>4</sup>

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2 This law is named in honour of an activist who was murdered while fighting corruption in Russia.

3 Bill S-226, *An Act to provide for the taking of restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act*, 1st Sess, 42nd Parl (assented to 18 October 2017, c 21).

4 The Seized Property Management Act (SPMA) allows the Attorney General (or anyone with the Attorney General's consent) to apply to the courts for a management order in respect of any "seized property." However, the SPMA's provisions make clear that the statute relates to property forfeited (seized, and not frozen) in the context of a prosecution in Canada where the owner was found to be engaged in criminal conduct. It does not, therefore, provide a basis for an order permitting the release of foreign assets frozen in Canada, in the context of assistance to the forcibly displaced in the country of origin.

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# The Experience in Other Countries

It may be instructive to consider the experience in other countries in examining ways in which frozen assets in Canada might be used for the benefit of refugees and displaced persons.

## Switzerland

In 2015, Switzerland enacted the Foreign Illicit Assets Act (FIAA), allowing for assets deposited in Switzerland by foreign corrupt officials or their close associates to be frozen, confiscated and restituted.<sup>5</sup> The FIAA came into force on July 1, 2016.

Under the FIAA, the Swiss Federal Council may order assets to be frozen, provided certain circumstances have been met.<sup>6</sup> The FIAA then provides a procedure by which the Swiss government can seek an order of the Federal Administrative Court to confiscate those frozen assets. Once the assets have been confiscated, Switzerland can seek to restore the assets to the country of origin for the purpose of improving “the living conditions of the inhabitants of the country of origin,” and strengthening “the rule of law in the country of origin and thus... [contributing] to the fight against impunity.”<sup>7</sup>

The Swiss statute also makes provision for those cases in which it is not possible, for one reason or another, to come to an agreement with the government of the country of origin. Articles 18(4) and 18(5) of the FIAA provide, in substance, as follows:

18 (4). In the absence of an agreement with the country of origin, the Federal

Council shall determine the process of restitution. It may, in particular, return confiscated assets via international or national organizations, and provide for the supervision of the FDFA [Federal Department of Foreign Affairs].

18 (5). To the extent possible, it shall include non-governmental organizations in the restitution process.<sup>8</sup>

Switzerland has also used civil society organizations to help ensure transparency when assets are returned to the countries of origin, and to monitor the process. For example, in returning assets to Kazakhstan following criminal bribery proceedings in Switzerland, an independent non-profit foundation was set up to monitor the return of the assets. As an added layer of transparency, the foundation was supervised by the International Research & Exchanges Board (Washington) and Save the Children (Fenner Zinkernagel and Attisso 2013, 340).

## The United States

In the United States, the International Emergency and Economic Powers Act (IEEPA) authorizes the president to impose financial sanctions, including asset freezes on other nation-states<sup>9</sup> in circumstances that are found to pose an “unusual and extraordinary threat” to national security, foreign policy or the US economy.

In February 2011, President Barack Obama used the authority of the IEEPA to order a freeze on all Libyan property and interests in the United States after finding that the government of Moammar Gadhafi had used violence against unarmed civilians (Levey 2011). Although the IEEPA does not change the ownership of the frozen assets, it gives the president the power to confiscate the property of any person, organization or country determined to be responsible for attacks against the United States or US interests.<sup>10</sup> The president is then authorized to use those assets in any way determined to be in the best interest of the United States.<sup>11</sup>

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5 *Loi sur les valeurs patrimoniales d'origine illicite, Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act, FIAA)*, 1 July 2016, 196.1 [translation provided by the Official Publications Centre of the Federal Council] [FIAA], online: <[www.admin.ch/opc/en/classified-compilation/20131214/index.html](http://www.admin.ch/opc/en/classified-compilation/20131214/index.html)>.

6 The FIAA states the conditions: “a. the government or certain members of the government of the country of origin have lost power, or a change in power appears inexorable; b. the level of corruption in the country of origin is notoriously high; c. it appears likely that the assets were acquired through acts of corruption, criminal mismanagement or other felonies; d. the safeguarding of Switzerland’s interests requires the freezing of the assets.” *FIAA*, 1 July 2016, 196.1, art 3(2).

7 *Ibid.*, art 17.

8 *Ibid.*, arts 18(4)–18(5).

9 35 USC tit 50 (1977).

10 *Ibid.* at § 1702(1)(c).

11 *Ibid.*

An illustration of the exercise of that authority was provided when President George W. Bush issued an executive order under the IEEPA on March 20, 2003, confiscating certain Iraqi government property for the purpose of using that property “to assist the Iraqi people and to assist in the reconstruction of Iraq” (ibid.; Federal Register 2003). This order applied the approximately US\$1.7 billion in assets that had been frozen by sanctions on Iraq to the reconstruction effort (Levey 2011).

## The United Kingdom

The British House of Lords is currently debating a private member’s bill that would provide for the repurposing of frozen assets for humanitarian compensation.<sup>12</sup> The bill would impose “restrictions on assets owned by persons involved in conduct that gives support and assistance to terrorist organisations in the United Kingdom” and would allow the use of those assets to compensate UK citizens affected by terrorism.<sup>13</sup>

The bill originated with demands for compensation arising from victims who sustained injuries as a result of Irish Republican Army (IRA) attacks in the United Kingdom from the 1970s to the 1990s.<sup>14</sup> It is alleged that Libya’s President Gadhafi supplied the IRA with weapons, including bomb material, during those years. The bill would allow victims of the attacks to seek compensation from Gadhafi’s almost £9.5 billion of assets currently frozen in the United Kingdom. The bill has not yet been adopted and is being opposed by the UK government.<sup>15</sup>

12 Bill 6, *Asset Freezing (Compensation) Bill* [HL] 2017–2019 sess, 2017.

13 UK, HL, *Parliamentary Debates*, vol 785, col 1077 (27 October 2017).

14 UK, House of Lords Library, *Asset Freezing (Compensation) Bill [HL] (HL Bill 6 of 2017-19)* (Briefing Paper), online: <<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2017-0061>>.

15 *Ibid* at 3, n 13. The government argues that since the resolutions of the United Nations and the European Union do not provide for transferring the assets to a third party, the bill cannot lawfully establish a means for doing so. The government’s second argument is that since the resolutions provide for recourse to the assets only for limited purposes, such as providing for the “basic needs” of the person sanctioned, no other use can be permitted.

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## The Canadian Charter of Rights and Freedoms

Would a statute providing for confiscation by the Government of Canada of frozen assets and their repurposing for the relief and support of those forcibly displaced in and from the country of origin survive a constitutional challenge in Canada?

More particularly, would such legislation be lawful, having regard to the provisions of the Canadian Charter of Rights and Freedoms?

The “Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with... the Constitution is...of no force or effect.”<sup>16</sup> The Constitution also includes the Charter of Rights and Freedoms, which outlines specific rights of all individuals in Canada (Macklem et al. 2010, chapter 16). As a result, any legislation that is passed in Canada at the federal level must be compliant with the provisions of the Constitution, including the Charter.

Property interests are not governed by the Charter,<sup>17</sup> so there is no basis strictly on that ground for challenging legislation that freezes or confiscates assets. However, the Canadian Bill of Rights protects property interests in its section 1(a).<sup>18</sup> But, because the Bill of Rights is an ordinary statute and not a part of the Canadian Constitution, its application can be avoided simply by adding a provision that permits a statute’s effect on property notwithstanding the Bill of Rights guarantee.<sup>19</sup>

The section of the Charter that could potentially be invoked to attack asset freezes and confiscation is section 7 — the right to life, liberty and security of the person. Section 7 protection applies to every person who is physically present in Canada, regardless of their citizenship status.<sup>20</sup> Although

16 *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 52(1).

17 *Siemens v Manitoba (Attorney General)*, 2003 SCC 3, [2003] 1 SCR 6 at paras 45, 46 [Siemens].

18 *Canadian Bill of Rights*, SC 1960, c 44, s 1(a).

19 *Ibid* at s 2. It may therefore be prudent to include a brief provision excluding the application of the Bill of Rights in the legislation proposed in this paper.

20 *Singh v Canada (Minister of Employment and Immigration)*, [1985] 1 SCR 177, 17 DLR (4th) 422 [Singh].

this section has been held by the courts to be very broad, the jurisprudence has also made clear that section 7 generally does not protect and apply to the economic rights of the applicant.<sup>21</sup>

In *Djilani v Canada*,<sup>22</sup> the Federal Court of Canada considered an application for judicial review of a ministerial order freezing the Canadian assets of relatives of former President Ben-Ali of Tunisia. Justice Gagné rejected the family's application. She ruled that the Charter challenge under section 7 could not be considered because of the applicants' failure to give the Attorney General the required notice. She nonetheless cited and followed *Siemens*, adding, in *obiter dictum*, that "generally, neither the right to hold employment nor the economic interests of the applicants are protected by the Charter."<sup>23</sup>

In summary, it is unlikely that an applicant would be successful in challenging Canadian legislation providing for the freezing and confiscation of the assets of corrupt foreign officials on the ground that it contravenes the Charter.

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## The Way Forward in Canada: A Policy Proposal

If there is to be a means in Canada for repurposing frozen assets, it will have to be provided by federal legislation.

Drawing on the experience elsewhere, the Canadian Parliament may wish to consider legislation that contains the following provisions:

- a preamble setting out the background and reciting the policy behind the statute, including the scale and urgency of the challenges posed by forced migration, the need for shared responsibility in responding to those challenges and the related principles of accountability and ending impunity;

- reference to the Canadian statutes that empower the Government of Canada to freeze assets, namely the UNA, the SEMA, the FACFOA and the Magnitsky Act;
- a requirement that, whenever assets are frozen in Canada pursuant to any of those statutes, a record be kept on a register that is publicly available and that discloses the authority by which the freeze was ordered, the value of the assets frozen and their country of origin;
- a prohibition on dealing in any way with frozen assets without the prior approval of the superior court in the province in which the assets are located;
- a procedure for summary application to the court for its approval, providing that the application may be brought either by the Attorney General of Canada or by any person or entity with the consent of the Attorney General;
- reference to the powers of the court in dealing with such an application, which include giving directions as to notice of the application, determining questions of standing and adjudicating competing claims, if any, to the frozen assets;
- recognition of the court's authority to approve, with or without conditions, the disposition of the frozen assets, in whole or in part, including their confiscation by the Government of Canada for the purpose of using them for the benefit of the population of the country in which they originated;
- provision for approval by the court of any agreement governing the use of the frozen assets between the Government of Canada and the government of the country of origin and/or an international organization, including agencies of the United Nations or an approved non-governmental organization (NGO); and
- provision that the court may also establish means to monitor the implementation of its order, and direct that reports be made to it periodically with respect to the disposition of the assets.

Such legislation would allow Canada to lead the world in devising innovative and effective ways to increase the resources available to respond to the needs of the growing number of forcibly displaced

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<sup>21</sup> *Siemens*, *supra* note 17.

<sup>22</sup> *Djilani v Canada (Foreign Affairs and International Trade)*, 2014 FC 631.

<sup>23</sup> *Ibid* at para 20.

people globally. Canadian legislation to this effect could become a model and a precedent for other nations, creating the prospect of a “worldwide web” of complementary laws that both deny a safe haven for those who wish to hide stolen moneys and provide a means to assist some of the world’s most vulnerable — who are also often the victims of those who stole the moneys.

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# Appendix 1: Related Documents

## Legislation

Freezing Assets of Corrupt Foreign Officials Act (FACFOA): <http://laws-lois.justice.gc.ca/eng/acts/F-31.6/page-1.html>.

Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law): [www.parl.ca/DocumentViewer/en/42-1/bill/S-226/royal-assent](http://www.parl.ca/DocumentViewer/en/42-1/bill/S-226/royal-assent).

Seized Property Management Act: <http://laws-lois.justice.gc.ca/eng/acts/S-8.3/FullText.html>.

Special Economic Measures Act: <http://laws-lois.justice.gc.ca/eng/acts/S-14.5/page-1.html>.

United Nations Act: <http://laws-lois.justice.gc.ca/eng/acts/u-2/FullText.html>.

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## Other Sources of Interest

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“Canada’s Standing Committee on Foreign Affairs and International Development Amends Canada’s Magnitsky Act” (LexSage): [www.lexsage.com/Canada%E2%80%99s%20Standing%20Committee%20On%20Foreign%20Affairs%20And%20International%20Development%20Amends%20Canada%E2%80%99s%20Magnitsky%20Act](http://www.lexsage.com/Canada%E2%80%99s%20Standing%20Committee%20On%20Foreign%20Affairs%20And%20International%20Development%20Amends%20Canada%E2%80%99s%20Magnitsky%20Act).

“Canadian Sanctions Legislation” (Global Affairs Canada): [www.international.gc.ca/sanctions/legislation-lois.aspx?lang=eng](http://www.international.gc.ca/sanctions/legislation-lois.aspx?lang=eng).

“Consolidated United Nations Security Council Sanctions List” (United Nations): [www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list](http://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list).

“Legislative Summary of Bill C-61: The Freezing Assets of Corrupt Foreign Officials Act” (Library of Parliament): [https://lop.parl.ca/About/Parliament/LegislativeSummaries/bills\\_ls.aspx?Language=E&ls=C61&Parl=40&Ses=3&source=library\\_prb](https://lop.parl.ca/About/Parliament/LegislativeSummaries/bills_ls.aspx?Language=E&ls=C61&Parl=40&Ses=3&source=library_prb).

“Over LE7 billion frozen in Egyptian assets worldwide, says report” (Mada): [www.madamasr.com/en/2014/09/09/news/u/over-le7-billion-frozen-in-egyptian-assets-worldwide-says-report/](http://www.madamasr.com/en/2014/09/09/news/u/over-le7-billion-frozen-in-egyptian-assets-worldwide-says-report/).

“Syria: Hunting for President Assad’s assets” (BBC News): [www.bbc.com/news/business-18901624](http://www.bbc.com/news/business-18901624).

“Types of Sanctions” (Global Affairs Canada): [www.international.gc.ca/sanctions/types.aspx?lang=eng](http://www.international.gc.ca/sanctions/types.aspx?lang=eng).

“Where are Iran’s billions in frozen assets, and how soon will it get them back?” (*Los Angeles Times*): [www.latimes.com/world/middleeast/la-fg-iran-frozen-assets-20160120-story.html](http://www.latimes.com/world/middleeast/la-fg-iran-frozen-assets-20160120-story.html).

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## Appendix 2: Questions and Answers about the Proposed Frozen Assets Legislation

### What are “frozen assets”?

The Canadian government has the authority under various statutes to deny access to cash or property held in Canada by certain persons or governments on grounds of corruption, gross violations of human rights or other serious wrongdoing. Such “freezes” are also put in place by Canada to implement sanctions imposed by the UNSC.

### What is the value of frozen assets in Canada today?

It is difficult to calculate the value of frozen assets because there is no requirement that this information be reported publicly. It appears, however, from periodic press reports that very significant sums have been tied up by asset freezes in Canada in recent years, and it is estimated by knowledgeable observers that many billions of dollars are subject to asset freezes worldwide.

### What effect would the proposed legislation have on the frozen assets?

The proposed legislation would allow a Canadian court to order that frozen assets be used for the benefit of refugees from, or displaced persons in, the country in which the assets originated. The legislation would also require public disclosure of all asset freezes, including the value thereof.

### Shouldn't the assets simply be returned to the country from which they were stolen?

Under the proposed legislation, the court can order that the assets be returned to the country of origin, with or without conditions. For example, the court might order the assets returned on condition that all or part of the money be used for the benefit of refugees or internally displaced persons, or to assist in their safe return and fair treatment by the government in question.

### What if the leadership of the country of origin is still corrupt or the country is in chaos from conflict?

The proposed legislation provides that the court can in such circumstances order that the money be paid out either to an international agency (such as the UN Refugee Agency) or an internationally recognized NGO.

### How will we know that the money was used as intended and not just stolen again?

The court can impose reporting requirements that obligate those receiving the assets to provide a detailed accounting.

### Why should the frozen assets be used for refugees and the internally displaced instead of other worthy causes?

One can imagine many worthwhile causes that could benefit from the frozen assets. However, the world is coping at present with an extraordinary number of people who have been forcibly displaced, at levels not seen since World War II. Their needs are urgent and often involve life-and-death situations. The funding available for those efforts at present is very limited, while the demands are very great.

There is another reason why it is appropriate to use frozen assets for this purpose. One of the most frequent causes of forced displacement is bad governance. Violent, oppressive and corrupt leaders are behind much of the displacement worldwide. In cases where corrupt leaders who have caused these crises have also stolen from their countries and put the purloined assets on deposit abroad for the benefit of themselves or their associates, it is morally right to return the money to help the very people they forced from their homes and country.

### What kinds of expenditures are involved in supporting the forcibly displaced?

Needs vary, but refugees and the internally displaced require humanitarian assistance including food, shelter and medical services. It is increasingly common for them to be in temporary

“camps” for extended periods, where their children need access to schooling. Given the already unprecedented numbers of refugees worldwide, the budgets of the UN Refugee Agency and the World Food Programme are simply insufficient to meet the growing demand with each new crisis.

## **Why involve the courts in these decisions? Why not let the Government of Canada decide what to do with the frozen assets?**

Bringing these questions before the courts adds a vital element of transparency, independence and accountability. The proposed legislation would provide “due process” by giving all interested parties the chance to be heard in a public forum before a decision is made about how to distribute those assets.

## **Would the Government of Canada still have a role in relation to frozen assets?**

The Government of Canada would retain a central role in cases of this kind. First, there would be no change in the government’s authority to decide whether the assets should be frozen. Second, under the proposed legislation, only the Attorney General of Canada, or another person with the Attorney General’s consent, would be able to ask the court to make an order that the assets be used for this purpose.

## **What is the Magnitsky Act and what does it have to do with this proposal?**

Canada recently adopted the Justice for Victims of Corrupt Foreign Officials Act, which is also called the Sergei Magnitsky Law in honour of an activist who was murdered while fighting corruption in Russia. This legislation expands the circumstances in which Canada can freeze the assets of foreign nationals to include cases of gross violations of internationally recognized human rights, or significant acts of corruption. Like other Canadian legislation that authorizes asset freezes, the Magnitsky Act is silent about how those assets can be “unfrozen” and dealt with, a gap that the proposed legislation aims to fill.

## **Are there any international precedents for the kind of legislation that is being proposed in Canada?**

There is legislation in the United States that authorizes the president to impose asset freezes and then to confiscate the property of any person or country responsible for attacks against the United States or its interests. The president then has the authority to use those assets in any way he determines to be in the best interests of the United States.

But the example that is closest to this policy proposal is provided by Switzerland. There, legislation has been adopted that allows its government to seek a court order authorizing the confiscation of frozen assets in certain circumstances and their use for humanitarian or related purposes in the country of origin. As is proposed for the Canadian legislation, the Swiss statute also permits the return of the assets through an international agency or an NGO, and includes provisions to achieve accountability and transparency in the use of the funds.

The proposed Canadian legislation differs from the Swiss model, in particular because it is directly focused on providing assistance to the forcibly displaced. Canada can provide global leadership by adopting this innovative approach as the world looks for solutions in meeting the needs of the growing population of refugees and the internally displaced.

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## About CIGI

We are the Centre for International Governance Innovation: an independent, non-partisan think tank with an objective and uniquely global perspective. Our research, opinions and public voice make a difference in today's world by bringing clarity and innovative thinking to global policy making. By working across disciplines and in partnership with the best peers and experts, we are the benchmark for influential research and trusted analysis.

Our research programs focus on governance of the global economy, global security and politics, and international law in collaboration with a range of strategic partners and support from the Government of Canada, the Government of Ontario, as well as founder Jim Balsillie.

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## À propos du CIGI

Au Centre pour l'innovation dans la gouvernance internationale (CIGI), nous formons un groupe de réflexion indépendant et non partisan doté d'un point de vue objectif et unique de portée mondiale. Nos recherches, nos avis et nos interventions publiques ont des effets réels sur le monde d'aujourd'hui car ils apportent de la clarté et une réflexion novatrice pour l'élaboration des politiques à l'échelle internationale. En raison des travaux accomplis en collaboration et en partenariat avec des pairs et des spécialistes interdisciplinaires des plus compétents, nous sommes devenus une référence grâce à l'influence de nos recherches et à la fiabilité de nos analyses.

Nos programmes de recherche ont trait à la gouvernance dans les domaines suivants : l'économie mondiale, la sécurité et les politiques mondiales, et le droit international, et nous les exécutons avec la collaboration de nombreux partenaires stratégiques et le soutien des gouvernements du Canada et de l'Ontario ainsi que du fondateur du CIGI, Jim Balsillie.

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## About the World Refugee Council

There are more than 21 million refugees worldwide. Over half are under the age of 18. As a growing number of these individuals are forced to flee their homelands in search of safety, they are faced with severe limitations on the availability and quality of asylum, leading them to spend longer in exile today than ever before.

The current refugee system is not equipped to respond to the refugee crisis in a predictable or comprehensive manner. When a crisis erupts, home countries, countries of first asylum, transit countries and destination countries unexpectedly find themselves coping with large numbers of refugees flowing within or over their borders. Support from the international community is typically ad hoc, sporadic and woefully inadequate.

### Bold Thinking for a New Refugee System

The United Nations High Commissioner for Refugees (UNHCR) is leading a consensus-driven effort to produce a new Global Compact for refugees in 2018. The World Refugee Council (WRC), established in May 2017 by the Centre for International Governance Innovation, is intended to complement its efforts.

The WRC seeks to offer bold strategic thinking about how the international community can comprehensively respond to refugees based on the principles of international cooperation and responsibility sharing. The Council is comprised of thought leaders, practitioners and innovators drawn from regions around the world and is supported by a research advisory network.

The WRC will explore advances in technology, innovative financing opportunities and prospects for strengthening existing international law to craft and advance a strategic vision for refugees and the associated countries.

The Council will produce a final report grounded by empirical research and informed by an extensive program of outreach to governments, intergovernmental organizations and civil society. The Council aims to have concluded its work by early 2019.

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## À propos du Conseil mondial pour les réfugiés

Il y a en ce moment dans le monde plus de 21 millions de réfugiés, et plus de la moitié d'entre eux ont moins de 18 ans. En outre, de plus en plus de personnes sont forcées de quitter leur pays natal et partent à la recherche d'une sécurité, et elles sont alors confrontées aux limites importantes qui existent quant aux possibilités d'accueil et à la qualité de ce dernier. À cause de cette situation, les réfugiés passent maintenant plus de temps que jamais auparavant en exil.

En ce moment, le système de protection des réfugiés ne permet pas de réagir adéquatement à la crise des réfugiés d'une façon planifiée et globale. Quand une crise éclate, les pays de premier asile, les pays de transit et les pays de destination finale se retrouvent sans l'avoir prévu à devoir composer avec un grand nombre de réfugiés qui arrivent sur leur territoire, le traversent ou en partent. Et le soutien fourni dans ce contexte par la communauté internationale est en règle générale ponctuel, irrégulier et nettement inadéquat.

### Des idées audacieuses pour un nouveau système de protection des réfugiés

Le Haut Commissariat des Nations Unies pour les réfugiés (HCR) dirige des efforts découlant d'un consensus et visant à instaurer un nouveau « pacte mondial pour les réfugiés » en 2018. Mis sur pied en mai 2017 par le Centre pour l'innovation dans la gouvernance internationale (CIGI), le Conseil mondial pour les réfugiés (CMR) veut compléter ces efforts.

Le CMR vise à proposer une réflexion stratégique audacieuse sur la manière dont la communauté internationale peut réagir de façon globale aux déplacements de réfugiés, et ce, en se fondant sur les principes de la coopération internationale et du partage des responsabilités. Formé de leaders, de praticiens et d'innovateurs éclairés provenant de toutes les régions du globe, le CMR bénéficie du soutien d'un réseau consultatif de recherche.

Le CMR examinera les progrès techniques, les occasions de financement novatrices ainsi que les possibilités pour ce qui est de renforcer le droit international et d'y intégrer une vision stratégique pour les réfugiés et les pays concernés.

Par ailleurs, le CMR produira un rapport final fondé sur des recherches empiriques et sur les résultats d'un vaste programme de sensibilisation ciblant les gouvernements, les organisations intergouvernementales et la société civile. Son objectif est de terminer son travail au début de 2019.

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**Centre for International  
Governance Innovation**

67 Erb Street West  
Waterloo, ON, Canada N2L 6C2  
[www.cigionline.org](http://www.cigionline.org)