TRANSPARENCY INTERNATIONAL CANADA
77 Bloor Street West, Suite 1600
c/o Maytree Foundation
Toronto, Ontario, M5S 1M2
t: 416.488.3939
e: ti-can@transparencycanada.ca
transparencycanada.ca

**Standing Senate Committee on Foreign Affairs and International Trade**

**BILL S-217 – An Act respecting the repurposing of certain seized, frozen or sequestrated assets**

**March 24, 2022**
**Susan Côté-Freeman**
**Transparency International Canada Testimony**

Deputy Chair, Honourable Senators,

Thank you very much for giving Transparency International Canada the opportunity to speak today on Bill S-217.

TI Canada is the Canadian chapter of the world's leading anti-corruption movement with some 100 independent national affiliates.

First, I would like to say that TI Canada is supportive of the general intent of the Bill.

No one can be insensitive to the plight of refugees and the needs of displaced persons. The current war in Ukraine, with the vivid images of throngs of mothers and children fleeing the country, has once again reminded us of the sad consequences of conflict.

I would add that the issue of justice for the victims of corruption is a missing link in the fight against this scourge and we appreciate the Bill's attempt to address this issue.

However, a close reading of the Act does raise several questions:

**The first of these questions** is the singular focus of the Bill on refugees, particularly in the preamble.

We fully recognize that poor governance and corrupt practices can lead to the forced displacement of persons. But unfortunately, the ill-effects of poor governance and corruption on a grand scale are not limited to refugees.

Citizens living in their own countries can be deeply affected by corruption in many ways: Infrastructure, health care, education and many more necessities will be massively underfunded, depriving citizens of basic rights and services. It may even put lives at risk. Not everyone **can or will** flee these problems as refugees. They will stay in their countries and continue to live under the grind of grand corruption. The worst kleptocrats commit serious

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human rights abuses to enrich themselves and maintain power. But these victims are not necessarily displaced persons.

TI Canada would therefore urge Senators to include a broader range of victims in the Bill, in addition to refugees, who may be equally deserving of repurposed funds.

**Another concern** is that the Bill appears to assume that meaningful sums or assets are being frozen in Canada under the Special Economic Measures Act, the Freezing Assets of Corrupt Foreign Officials and under our own Magnitzky Law, which S-217 builds on.

We are not aware that large sums or assets have, to date, been seized under these laws. In fact, it is our view that the powers granted by these laws are currently vastly underutilized. Canada does have reasonably aggressive civil and criminal forfeiture provisions that are not used to their full potential. We therefore query whether legislation such as Bill S-217 would simply create a new legal infrastructure while existing laws have not been used to full effect.

**In addition, TI Canada urges Senators to explore the constitutional division of powers** involving forfeiture laws. These have previously been considered by the Courts, including the Supreme Court of Canada, in the context of provincial civil forfeiture laws.

The impact of such constitutional questions may be relevant to the procedures and standards set out in the Bill for the Court to determine issues and to order repurposing of seized assets, and for affected parties to be heard. TI Canada takes no particular position on these questions, but rather urges Senators to ensure that these legal issues are fully canvassed as part of the consideration of the Bill.

**Article 8 (1),** proposes that moneys paid into court may be distributed by the Court to any individual or entity, including a foreign state, if the court decides that "the funds will be used for a purpose that the court believes is just and appropriate in the circumstances."

With the greatest respect for Canadian courts, we query whether judges sitting in Canada, where the illicit assets are seized, will be sufficiently knowledgeable of the context of the country or group that might receive these funds. It is imperative that any repurposed funds do not end up in the hands of those who might use them to further perpetuate corruption or human rights abuses. To this end, TI Canada encourages Parliament to integrate concrete mechanisms of accountability for these repurposed funds.

**Finally, a fundamental building block in support of the proposed Bill is missing.** To freeze illicit assets, we must know who the actual owners of these assets are. The war in Ukraine has highlighted how the ill-gotten fortunes of oligarchs have been successfully laundered through complex webs of shell companies behind which they hide. At the moment, Canada does not

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have a public registry of beneficial ownership which would help alleviate this major impediment. Thankfully, Canadians heard this week that the planned implementation of such a registry will move up to 2023 from 2025.

In closing, this is a Bill with noble intent. It rightfully increases the emphasis on the fight against grand corruption. However, to achieve the aims of the Bill, we must think more broadly about the victims of corruption; leverage existing legal mechanisms and with your help prioritize the establishment of a publicly accessible beneficial ownership registry.

Thank you.