



**GLOBAL
INITIATIVE**
AGAINST TRANSNATIONAL
ORGANIZED CRIME

FOUR REASONS WHY

ORGANIZED CRIME
IS A HUMAN RIGHTS ISSUE

¡JUSTICIA PARA
MARÍA ELENA
FERRAL!

Ana Paula Oliveira

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**RESILIENCE
FUND**

Supporting community
responses to organized crime



Por el Acceso y Uso de Periodistas
Asesinados y Desaparecidos

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Cover: Demonstrators call for justice for the murder of Mexican journalist
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FROM VISION TO ACTION: A DECADE OF ANALYSIS, DISRUPTION AND RESILIENCE

The Global Initiative Against Transnational Organized Crime was founded in 2013. Its vision was to mobilize a global strategic approach to tackling organized crime by strengthening political commitment to address the challenge, building the analytical evidence base on organized crime, disrupting criminal economies and developing networks of resilience in affected communities. Ten years on, the threat of organized crime is greater than ever before and it is critical that we continue to take action by building a coordinated global response to meet the challenge.



SUMMARY

Human rights and anti-crime regimes are grounded in two distinct but interconnected legal frameworks. While human rights frameworks aim to protect individuals from the state (and other violators), the legal framework designed to combat organized crime – the UNTOC and its protocols¹ – aims to protect the state from criminal interests. However, the legal provisions governing human rights and organized crime are not concepts that are, or should be, at odds – in fact, they should inform and complement one another. State responses to organized crime should not leave human rights unguarded or unprotected. Complementarity between the two legal domains needs to be strengthened, especially in contexts of vulnerable communities exposed to organized crime.

This report draws attention to four areas where synergies in the two regimes should be enhanced, so that safeguards for human rights are woven into states' policy responses to transnational organized crime.

- The first is the intersection between organized crime and states' protection of the civil and political rights of citizens, in particular those in marginalized communities and those exposed to crime.
- The second is the fulfilment of economic, social and cultural rights in the face of the threat of organized crime.
- The third is where human rights are violated by repressive state responses to crime.
- The fourth concerns access to justice by victims of organized crime and rights of redress.

The paper illustrates these four areas using case studies that exemplify where human rights protections can be improved, drawing from the experience of the Global Initiative Against Transnational Organized Crime (GI-TOC)'s Resilience Fund,² an initiative working to mitigate the impact of organized crime and build resilience to it in communities around the world. The paper concludes by discussing the implications that the different legal frameworks have for victims seeking to obtain redress. It outlines two factors to consider when discussing the implications of organized crime for human rights policies: the potential for the risks posed by organized crime to trigger state responsibility to prevent human rights violations committed by third parties, and the role that state actions and policies play in assessing the impact of human rights on organized crime.



INTRODUCTION

Organized crime poses significant threats, direct and indirect, to human rights. These include rights to life, liberty and the security of the person, and other inhuman and degrading treatments. Many illicit economies directly violate human rights, such as human trafficking; others, such as environmental crimes and cybercrime, impose limitations on rights. Criminal groups controlling illicit markets exploit and threaten people's livelihoods. Specific groups, such as women, youth and the LGBTQIA+ community, are especially vulnerable and may face displacement, discrimination and exploitation, and other abuses of their fundamental rights.

At the same time, however, policies and international laws designed to address transnational organized crime also pose notable challenges to human rights by not providing for adequate protection of rights. For victims of organized crime, justice is often elusive, and as a consequence, their rights to life, liberty and security of person, property, freedom of movement, and freedom of speech, among many other fundamental rights, are limited or non-existent.

Despite the undeniable impact of criminal activity on these rights, the criminal justice and human rights legal agendas are still largely disengaged.³ They are like separate committees that do not meet. One obstacle to achieving closer engagement is a view that applying human rights law for criminal justice reasons would supersede state sovereignty and national criminal justice frameworks. This objection has been used by some governments in multilateral settings to try to limit references to human rights obligations from criminal justice directives, such as resolutions and treaties. But it is also voiced by human rights proponents, who view this approach as diminishing the role of human rights laws as a bulwark against states and governments as rights violators.

Despite these obstacles, human rights and organized crime are areas that interact with and impact one another in multifaceted ways, so the response required for one is relevant to the other. From a normative perspective, state responses to crime should be guided and informed by human rights law and principles. This is why, for example, due process rights and legal safeguards should inform criminal justice instruments and criminal codes.

Enforcement-led responses are obviously core to tackling transnational organized crime, but at the same time one needs to consider how a human rights framework can better guide responses so that they do not remain mired in the securitization model, with all of its potentially negative outcomes. A human rights perspective can be a key component in guiding preventive policy solutions and development actors in how they engage with organized crime programming to help them see beyond

enforcement-led and reactive practices. Human rights are the best starting point to prevent instability and build sustainable peace in a preventive way.⁴

Research on the impact of organized crime on economic, social and cultural rights can be helpful to shape policies and laws that promote such rights, including areas such as asset recovery and how the proceeds of crime can be redistributed to benefit society. Looking at areas of accountability for human rights violations deriving from criminal violence and governance can help find avenues for redress to victims of organized crime that are beyond the scope of criminal justice solutions.

Through its Resilience Fund programmes, the GI-TOC documents how organized crime threatens the just enjoyment of human rights in a variety of contexts. Without purporting to provide an exhaustive account of all human rights issues related to organized crime and resilience, this paper focuses on four key areas, as mentioned above, where the Resilience Fund constituency have worked to mitigate the negative impact of organized crime on human rights. It finds that organized crime is not a homogeneous phenomenon requiring uniform responses, but rather that communities respond to their specific contextual needs in terms of how organized crime impacts on their rights. This calls for greater consideration of criminal justice and human rights frameworks, and more in-depth engagement between civil society, private stakeholders and multilateral actors. The paper concludes by highlighting how the human rights paradigm for accountability may overlook victims of organized crime, and presents some policy implications for moving the discussion on this issue forward.

Methodology

The research builds upon a forthcoming policy brief on human rights and organized crime.⁵ The research stems primarily from the experience gained by the GI-TOC's Resilience Fund – a grant-making mechanism designed to support community-based responses to organized crime globally – analyzed against the rights set forth in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁶ Data was collected on the 229 projects supported by the Resilience Fund between 2019 and 2023, and categorized according to the grantees' areas of work and the groups of people affected by their projects. The principles set out in the legal framework were tested in the context of the grantees' work in communities around the world to see how they apply in these specific contexts of organized crime (and, in some cases, contexts of repressive state interventions), as well as how they relate to the GI-TOC's broader fieldwork, research and experience of working on organized crime-related issues, and to the wider literature on human rights and organized crime.

The analysis was complemented by a semi-structured questionnaire completed by a pool of Resilience Fund grantees, recipients of the GIZ Human Rights Defenders grant. A summarized version of this report informed the structured engagements with Resilience Fund Fellows and grantees during activities that formed part of the Resilience Fund 2023 Fellowship in July 2023. The feedback given by grantees was incorporated into the report, before the analysis was refined and submitted for peer review.



ORGANIZED CRIME AND HUMAN RIGHTS

'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

ARTICLE 2. UNIVERSAL DECLARATION OF HUMAN RIGHTS

Human rights and transnational organized crime regulatory frameworks differ in terms of their scopes and objectives.⁷ While the international human rights regime imposes obligations on states to respect, protect and fulfil rights that individuals are entitled to, the anti-crime framework aims to protect the state from illegal activity committed by criminal actors. However, there are common denominators, which should inform more holistic responses to organized crime while respecting human rights.

Considering the relatively narrow scope of criminal justice instruments designed to combat crime and promote international cooperation in criminal matters, they tend to be limited in language that safeguards human rights.⁸ The UNTOC, for example, uses soft human rights language – for example, references can be found in provisions related to border measures, mutual legal assistance, extradition and the protection of victims and witnesses.⁹ However, it does not contain specific reference to human rights instruments.

That does not mean, however, that measures taken by state agents when enforcing, prosecuting or adjudicating crimes should not be conducted in compliance with human rights law. Indeed, states that are party to the UNTOC are also bound to human rights law (customary or treaty-based), which obligates them to act in compliance with human rights and to confer certain procedural rights¹⁰ to accused persons, suspects, victims and witnesses during the course of all criminal process – from investigations to adjudication of organized crime cases.

In a similar fashion, the human rights regulatory framework does not emphasize provisions related to crime or the recognition that certain crimes amount to human rights violations. However, certain human rights instruments do indicate the state's obligation to criminalize such conduct.¹¹ For example, human trafficking is acknowledged by human rights bodies as a human rights violation,¹² and two core human rights instruments expressly cover forms of trafficking, recognizing vulnerabilities among women and children.¹³ International human rights law also recognizes the prohibition of slavery, forced labour and human trafficking.¹⁴

From a normative perspective, then, these two branches of international law are distinct in purpose, yet simultaneously intertwined¹⁵ – they should be informed by one another more than they currently are. For example, criminal procedures conducted under the UNTOC framework or domestic criminal law should respect human rights standards and safeguards during all stages – from the crime scene to the courtroom. The rights to a fair trial, presumption of innocence and equal treatment before a court are just some of rights provided by article 14 of the ICCPR, and these should therefore inform criminal law procedures.

At the heart of the problem is a disconnected narrative. On the one hand, security actors tend to see human rights as a secondary consideration to security concerns based on what has been described as the ‘mutual exclusivity between protection of security and human rights.’¹⁶ Securitized agendas are guided by states’ policies aimed at tackling illicit economies, often shaped by prohibition and supply reduction. This way of thinking often engenders human rights abuses, such as the kinds of militarized responses we have seen targeting (usually) marginalized communities or crackdowns on drug markets that overlook the needs of people who use drugs (PWUD) and deploy excessive force. Thus, when responses to criminal activities shift the power towards security agencies and criminal justice systems, inequalities are reinforced.¹⁷ As a consequence, securitized narratives that ignore the tenets of international human rights law play a key role in sustaining violence, which can trigger human rights abuses.

On the other hand, the human rights regime may not be seen as an appropriate instrument for transnational organized crime, on the basis of the argument that it could diminish the role of states as perpetrators of human rights violations. This thinking perhaps does not consider all the possibilities related to states’ obligations to protect individuals against human rights violations,¹⁸ and these include acts committed by criminal groups. For instance, the Human Rights Committee recognizes states’ obligation to protect individuals against acts committed by criminals and groups.¹⁹ Human rights special procedures have drawn attention to how the ‘war on drugs’ has disproportionately impacted marginalized and minority groups,²⁰ and described criminal groups as perpetrators of human rights violations in Mali.²¹

Nevertheless, the fact is that discussions around dealing with criminal groups in human rights settings are marginal, and establishing avenues for accountability has been a challenge for communities affected by organized crime, in particular in contexts where state-embedded actors hamper efforts to hold perpetrators of crime to account.

Although transnational organized crime and human rights are global concepts, the shaping and implementation of these frameworks are felt locally. Nor should they be seen as mutually exclusive, as the prevailing narrative would suggest. The harms caused by organized crime – and by the responses to it – threaten individuals and communities, and infiltrate public institutions, impeding the right to access to justice and truth. In that sense, organized crime poses varied and profound challenges to states’ compliance with their obligation to protect human rights, and their responsibility for human rights violations caused by criminal interests. Criminal justice and human rights communities should come together to reinforce the two regimes, with a view to expanding the discussion on the relationship between organized crime and human rights in relevant forums.

Civil society organizations and grass-roots initiatives have galvanized efforts to mitigate this impact and some of their experiences of human rights on contexts of organized crime are presented in the next section.

What are human rights?

The nature of human rights is complex and subject to debate among scholars. However, there is widespread acceptance of human rights as the rights inherent to all humankind, regardless of any particular characteristic. This is set out in Article 2 of the Universal Declaration of Human Rights (UDHR).²² Human rights can vary from the most fundamental right – the right to life – to those that enable an adequate standard of living, such as the rights to food, education, work and health. They are also characterized for being universal, unalienable, indivisible, interdependent and interrelated.

Within the international system, the UDHR inspired many of the human rights treaties, in particular the ICCPR and the ICECSR, which confer a legal form to inherent human rights and set forth the state's duties and obligations to uphold those rights. Sources of human rights can be found in various regional instruments, customary international law and domestic laws. States may be subject to different human rights obligations depending on the source of human rights law. A human rights violation is a failure (normally of the state) to comply with the duty and obligation to respect, protect and fulfil human rights that they have committed to comply with.

Respect, protect and fulfil human rights

- Respect – states obligation not to interfere with or diminish the enjoyment of human rights.
- Protect – states obligation to protect individuals and groups against human rights abuses.
- Fulfil – states obligation to take positive action to facilitate the enjoyment of human rights.

SOURCE: OHCHR

What is transnational organized crime?

The United Nations Convention against Transnational Organized Crime (UNTOC) is the main international instrument agreed by member states to enhance international cooperation in order to tackle transnational organized crime.²³ The Convention does not contain a definition of transnational organized crime or organized crime. Rather, the UNTOC defines what constitutes an 'organized criminal group' and 'serious crimes', enabling both categories to be targeted through its implementation.²⁴ For the purpose of this brief, organized crime will be considered as defined by the GI-TOC's Global Organized Crime Index: 'Illegal activities, conducted by groups or networks acting in concert, by engaging in violence, corruption or related activities in order to obtain, directly or indirectly, a financial or material benefit.'²⁵ ■



HOW ORGANIZED CRIME IMPACTS HUMAN RIGHTS

The Resilience Fund has supported over 170 beneficiaries – individuals and organizations that provide responses to organized crime and contribute to increasing community resilience in 55 countries. For this study, information on 229 Resilience Fund projects carried out between 2019 to 2023 was collected and the data classified according to grantees’ thematic areas of work (see Figure 1).

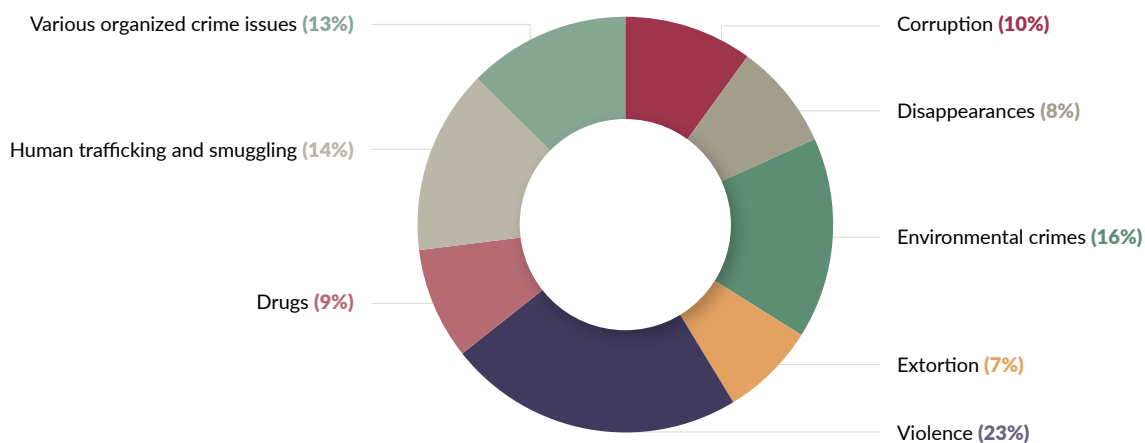


FIGURE 1 Resilience Fund grantees’ areas of work, as of September 2023.

The data suggests that certain individuals and groups are disproportionately affected by acts of organized crime. The impact is most pronounced in the case of groups who are structurally vulnerable: at-risk youth (22%); women and LGBTQIA+ communities (10%); victims of crime (20%); and those living in communities affected by violence and poverty, which account for 19% of the Resilience Fund grantees’ constituency (Figure 2).²⁶ These groups are further examined in the case studies included in this report.

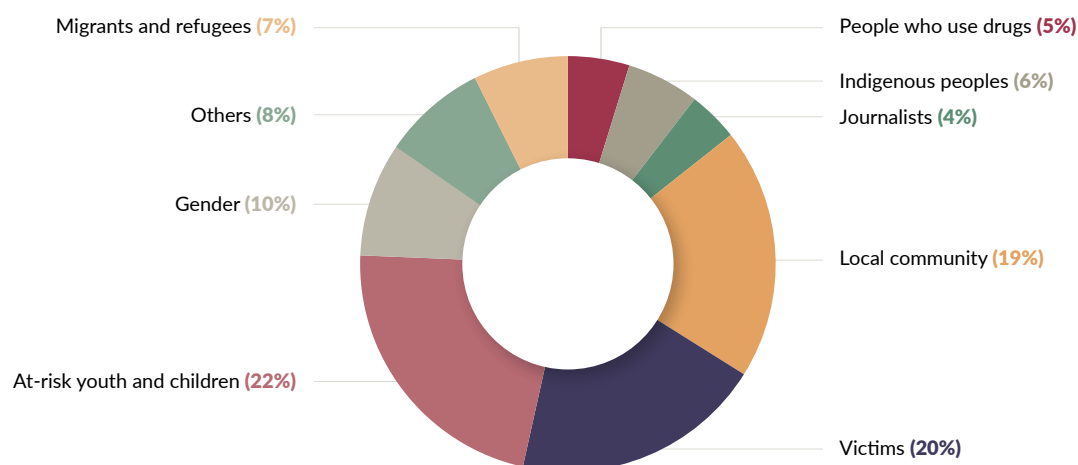


FIGURE 2 Distribution of target groups of Resilience Fund projects, as of September 2023.

Through the work of the Resilience Fund, the GI-TOC has documented organized crime activities that limit the enjoyment and exercise of human rights in several contexts. It is increasingly argued that the current human rights landscape is facing multiple constraints due to global challenges (e.g. greater digitalization, rising conflict levels and climate change). Organized crime permeates many of these challenges and is an obstacle to the realization of human rights. However, there has been little documentation of this impact. By comparing the thematic areas of work of Resilience Fund's constituency – and the GI-TOC's research on organized crime more broadly – with the rights set forth in the ICCPR and the ICESCR, four areas of convergence between transnational organized crime and human rights agendas emerge:

1. Organized crime impairs civil and political rights.

Violence perpetrated by organized crime, and state actors' complicity to it, undermines the authorities' ability to protect, respect and fulfil the civil and political rights of citizens, in particular the rights to life, political participation, freedom and non-discrimination of minority groups and structurally vulnerable groups.

2. Organized crime deprives people of their economic, social and cultural rights.

Organized crime activity impairs the ability of states to fulfil economic, social and cultural rights. Resources that are allocated to combat organized crime and target the consequences and proceeds of criminal activity (e.g. corruption and illicit financial flows) could be better used to address social needs. When such rights are not provided (in the form of access to social services, housing, food, etc.), the inequality gap created in society provides a fertile opportunity for organized crime to exploit, with young people particularly affected.

3. Repressive state responses to crime can lead to human rights violations.

Heavily securitized crackdowns, and certain investigative methods, are deployed to combat crime. In such settings, human rights are violated and legal safeguards swept aside.

4. Victims of organized crime often lack rights to redress and access to justice.

This is particularly evident with regard to the right to criminal justice remedies. Victims' inability to access such mechanisms of redress – in cases where, for example, criminal interests have

captured the institutions of criminal justice or where state agents collude with criminal actors, and where there is failure to support victims and survivors in dealing with trauma – is cited as a factor that contributes to a sense of powerlessness and impunity. The recognition of state embeddedness in crime and the role civil society can play in seeking justice are paramount to breaking impunity cycles and lack of access to justice for victims.

The matrix summarizes the dynamics of how criminal activity impacts on human rights.

TYPE OF ACTIVITY	TYPE OF IMPACT	HUMAN RIGHTS OBLIGATIONS	ACTORS INVOLVED
Violence	Direct and indirect impact on civil and political rights	States' obligation to respect and protect human rights from violations caused by third parties and their agents	Wide range of actors involved in perpetration of violence, including criminal groups alone or in collusion with state-embedded actors
Criminal activity and economic, social and cultural rights	Direct and indirect impact on economic, social and cultural rights	States' obligation to take positive actions to progressively fulfil human rights	Criminal groups involved in provision of services that would otherwise be provided by states State actors do not allocate resources to fulfil economic, social and cultural rights
States' anti-crime laws, policies and responses to crime	Direct impact	States' obligation to respect human rights	Mainly state actors, in particular law enforcement agencies and the military in the 'fight against organized crime'
Lack of access to justice and redress for victims of organized crime	Direct impact	States' obligation to protect human rights	Mainly state actors; lack of institutional responses, in particular from the judiciary, creates human rights violations

The sections below expand on the four points outlined above, drawing from the Resilience Fund experience, particularly those projects involving work with at-risk youth, victims of crime, people living in communities in rural areas or areas affected by violence and poverty, and issues related to gender.

Violence, and civil and political rights

Situations of widespread criminal violence have a violating impact on several human rights, including the most fundamental right – the right to life. Violence associated with criminal groups is responsible for homicide rates that at times are higher than in conflict zones.²⁷ According to the United Nations Office on Drugs and Crime (UNODC), about 65 000 murders each year were related to organized crime and gang violence over the period 2000–2017.²⁸ Research on assassinations also shows how organized crime is responsible for a large number of targeted killings, particularly among specific groups such as environmentalists, journalists and criminal justice actors.²⁹ The disappearances crisis in places such as Mexico and El Salvador can also be attributed in part to the workings of organized crime, causing violations to multiple civil rights.³⁰

However, grantees of the Resilience Fund provide examples of how criminal violence impacts not solely the right to life: several other civil and political rights prescribed by international instruments are also violated. From the perspective of Resilience Fund 2023 fellows,³¹ three areas of rights are of particular concern:

- **Right to equal participation in political and public affairs.** By infiltrating governance structures, organized crime influences and shapes political processes, providing criminals with their own candidates and threatening those who oppose their political aims with violence. Citizens are thus prevented from freely and equally participating in political and public affairs.



Girls displaced by gang violence in Port-au-Prince, Haiti, October 2022. Women and girls in Haiti are disproportionately targeted for sexual violence by gang members. © Ricardo Arduengo/Reuters via Alamy Stock Photo

- **Right to be free from discrimination.** Violence is often pronounced within certain vulnerable, minority and marginalized groups. Groups such as youth, women, indigenous peoples and LGBTQIA+ are most vulnerable to the predations of criminal ecosystems. Factors such as gender, ethnic identity and social class attract discrimination or increase its likelihood. Often rejected by the state and society, these individuals are co-opted by criminal interests for purposes of trafficking and exploitation. Victims and survivors from these communities are further discriminated against when they approach the authorities to report such violations.
- **Right to liberty and security of a person and right to freedom of speech.** Violence is instrumental in silencing individuals and civil society organizations that blow the whistle on criminal activity, including corruption. The fear of being subjected to physical or non-physical violence diminishes willingness to speak out and expose the criminal activities that vulnerable populations are subjected to.

One message that emerged from engagements with the grantees and fellows is that it is not enough to simply assert that violence has a negative impact on civil and political rights. In fact, the situation is more nuanced than that. Rather, when looking at episodes of criminal violence and their impact on human rights, it is essential to take into account various factors, including how organized criminal violence affects diverse individuals and vulnerable groups differently, as well as the role of the state in enabling such violence.

Women and girls are a case in point. Although the dynamics and roles women can play in criminal economies can vary, including with women being perpetrators, women and girls' vulnerabilities to violence are increased in organized crime-controlled settings. A dynamic observed in Colombia is that women and girls are more prone to being forcibly displaced by organized crime groups, increasing their likelihood of being subjected to violence, including of a sexual nature.³² The GI-TOC's research shows how in some contexts women and girls are targeted for forced marriages, with accompanying violence and abuse.³³ A study in Haiti highlights how 'women and girls are disproportionately targeted for sexual violence (including rape) by members of armed gangs'.³⁴ And in Cape Town, female gang members also reported being victims of sexual abuse, rape and gender-based violence.³⁵ Sex is additionally often used as a form of extortion payment (sextortion).³⁶ These cases expose a pattern of violence that can

amount to the violation of rights provided in the ICCPR and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Indigenous communities are also disproportionately subjected to organized crime violence. Often located in remote areas with little state presence, indigenous groups clash with criminal groups over, for example, interests involving natural resources and ancestral lands. In many cases, criminal groups occupy indigenous land or appropriate it for illicit mining, and forcibly remove communities when they refuse to comply to their demands. Forms of violence that ensue include physical harassment, attacks and killings.³⁷

Fund grantees observe how it is crucial to counter narratives that foster violence, narratives from government institutions or organized crime groups. One grantee said that the normalization of violence and criminal structures associated with the 'narco-culture' in Mexico glorifies organized crime and thereby undermines community-based efforts to disrupt it. Proposing alternative narratives to violence is paramount. Several Resilience Fund grantees' work involves initiatives that promote civil mobilization around victims' stories to catalyze alternatives to violence. They foreground victims' voices by setting up public memorials and organizing collectives and groups who have been affected by violence and trauma associated with organized crime. Such strategies allow for experiences, spaces and history of victims of violence to be re-signified in order to build alternative ways out of violence through dialogue, reflection and the development of tools that support new pathways.

LGBTQIA+ community

The LGBTQIA+ community is one of the most overlooked when it comes to violence and discrimination by criminal groups, particularly in countries with a high presence of gangs or criminal governance. Besides the violence engendered against this community by members of organized crime groups involved in a myriad of markets – in particular, human trafficking – the climate of discrimination is sustained by community stigmatization and even discriminatory state policies and laws. Resilience Fund grantees working with LGBTQIA+ communities report various dynamics.

In Nigeria, for example, there are reports by Resilience Fund grantees of vigilante groups targeting members of the LGBTQIA+ community. Physical violence has forced many to migrate through irregular means to escape danger. Lack of access to formal-sector jobs can drive transgender people and others from the LGBTQIA+ community into sex work. Research has found that human trafficking for sexual exploitation is one of the major criminal markets into which LGBTQIA+ identified individuals are sometimes forced.³⁸

Discrimination also incites violence by vigilante groups. A Resilience Fund grantee has reported how organized hate-crime groups target LGBTQIA+ communities with physical violence, death threats and trafficking for sexual exploitation and forced labour. They are known to hack into digital forums, which makes participants believe that they are under surveillance from government or non-state actors. Similarly, a grantee working with LGBTQIA+ communities in Brazil has reported on concerted violence against LGBTQIA+ communities perpetrated by members of criminal organizations, such as the Primeiro Comando da Capital (PCC). Brazil has been cited as the deadliest country for the transgender population in the period between 2020 and 2021.³⁹

Grantees working in the field of LGBTQIA+ and organized crime have intervened in two ways – through research to understand the intersection between LGBTQIA+ communities and organized crime violence, and by providing support to LGBTQIA+ defenders and their families.

Resilience work with the LGBTQIA+ community

In Ghana, a Resilience Fund grantee is producing a baseline study on the impact of anti-gay laws and bills, and their influence on organized crime pertaining to the lives of LGBTQIA+ Ghanaians. Through training, interviews with key actors and stakeholder engagement, the project aims to produce a final report that can aid LGBTQIA+ organizations working against organized crime violence and sexual exploitation. The report is designed to be an advocacy tool for actors to use in interactions with policymakers and support the creation of interventions to mitigate this form of criminality. It will also improve service providers' capacity by giving them more experience working with such victims.

In Brazil, the Mother's Heart project is conducted by a multidisciplinary team of volunteers and partners to support LGBTQIA+ victims of human trafficking for the purpose of forced labour, and their families. The project coordinates a network of 'protection actors', so that beneficiaries have support to counter the network of exploitation that oppresses them and to protect themselves from circumstances that could put their lives at risk.

In Nigeria, a grantee has created an initiative to support victims of violence derived from organized crime and of a sexual nature to reduce the impact of trauma and distress on gender diverse people. The Activist Resilience Initiative (ARI) has so far mobilized 20 LGBTQIA+ front line human rights defenders, representing 20 different organizations that have been at the forefront of fighting organized crime, violence and injustice.

In all three cases, research and advocacy have aimed to inform anti-crime policymakers on the human rights violations experienced by these under-represented groups, who fall outside the various dominant normative identities. This type of work is paramount to better understand how organized crime exploits vulnerabilities and violates the rights of the LGBTQIA+ community. In contexts of persistent discrimination and slow progress on policies for their protection, members of LGBTQIA+ communities face harassment, physical and psychological violence, social exclusion with little support from the state in matters of identity, mental health support, medical services and access to formal sector employment. ■

Economic, social and cultural rights

The second group concerns challenges posed by transnational organized crime to states' obligations in the realization of economic, social and cultural rights. Illicit financial flows, including tax evasion, organized fraud and money laundering, are obstacles to government's fulfilment of its obligations of an economic and social nature.⁴⁰

States' obligations impose upon them the need to take immediate and appropriate steps with the maximum resources available to realize these rights. The biggest constraint is undoubtedly resource allocation. When resources are diverted to, for example, paying for securitized policies as opposed to being allocated to social services and promoting economic opportunities, it impairs the fulfilment of several rights, such as the right to an adequate standard of living, work, healthcare, housing, among others.

However, the impact on social, economic and cultural rights is seen not only in the realm of resource allocation. Lack of fulfilment of such rights by the state opens the space for criminal activity to flourish,



Artisanal miners in DRC. Being deprived of the right to economic opportunities in the formal sector can be a factor in driving communities to turn to informal or illicit activities. © Junior Kannah/AFP via Getty Images

which further diminishes the enjoyment of such rights by citizens. As highlighted by a Resilience Fund grantee working with women and children affected by crime and conflict in DRC, a lack of social and economic opportunities encourages criminal activity. Inadequate access to social services and food, clothing and housing creates a societal need, which criminal groups then exploit, enabling their establishment and consolidation.⁴¹ In contexts where criminal groups control the provision of such services, it makes it increasingly difficult for the state to fulfil this set of rights.

One example is seen in the exploitation of natural resources by criminal groups to the detriment of the livelihood needs of communities. Several organized crime activities, such as illegal mining, illegal fishing, illegal toxic and plastic waste disposal, impact on people's livelihoods and well-being.⁴² Criminal structures profiting from such illegal or grey markets have caused communities to lose their capacity to access goods and services, eventually becoming dependent on criminal activity for their own livelihood. In addition, such activity has irreversible consequences for the planet's biodiversity and drives climate change and conflict, threatening the right to health and a healthy environment.⁴³

Similar dynamics are seen in cases where criminal groups have established their footprint and become service providers. Such criminal governance sees the provision of parallel forms of economic opportunities through which communities fulfil their economic and social needs. Once established, organized crime enterprises disrupt social and economic structures in the community and devoid communities of sources of income.

Organized crime also limits entrepreneurship opportunities. In some contexts, criminal interests regulate access to resources, businesses and property by establishing protection economies.⁴⁴ This plays a role in violence as a means of living, a monetizable commodity, and a justification to the lack of state security services. The result is felt particularly by those who live in crime-affected areas, notably the youth.

The rights to work and education

The rights of every child to education and a standard of living adequate for their physical, mental and social development are provided by the Convention on the Rights of the Child.⁴⁵

Resilience Fund grantees who work with at-risk youth emphasize how low levels of education and lack of employment opportunities lead to high school-dropout rates, making youth vulnerable to gang recruitment.⁴⁶ They are also at risk of falling for trafficking traps masked as employment opportunities, putting them in situations of forced labour and unlawful confinement.

The links between violations of economic, social and cultural rights, and presence of criminal groups, including co-optation of youth, is reinforced by the GI-TOC's research during the COVID-19 pandemic. In Cape Town, gang recruitment of young people and children increased during the pandemic. A major factor was the lack of safe environments that promote social activity and productivity. Many young people gravitated towards areas of social gatherings such as sports clubs, where gang members were able to scout for children and lure them into criminality.⁴⁷ Youth are a valuable yet disposable human resource for criminal groups. Grantees from India explained how this demographic is recruited because of the lighter sentences juveniles receive, and how they are scapegoated to cover for those that are higher in the criminal hierarchy structure. Imprisoned gang leaders are known to recruit arrested youth, sometimes offering legal support in exchange for their services.⁴⁸ Research on youth and organized crime in south-eastern Europe found similar risks and challenges, highlighting societal factors, such as youth unemployment and insufficient educational opportunities, as conditions that make them vulnerable to organized crime.⁴⁹

Resilience Fund projects working on youth issues have a common denominator: to provide opportunities where children and youth can develop skills and engage with their communities protected from the

violence they are surrounded by, and to give them access to education and culture, providing positive role models that enable them to see an alternative future rather than being co-opted by criminal groups.

A grantee in the DRC provides support to orphaned children and youth in accessing schooling and housing as a way to prevent forced recruitment by criminal groups. While supporting 120 orphans with school fees, the project has developed two programmatic streams. Firstly, it has created an information system that follows legal standards on child protection and is designed to monitor and enforce accountability of orphanages when allocating children to families. The system monitors the movement of children from home to orphanage, between orphanages and from orphanage to host families. This allows for service providers to act pre-emptively and avoid child recruitment by criminal groups and trafficking.

Secondly, the project promotes community dialogues, advocacy and trust-building exercises with the community and authorities. In the context where the project is implemented, misinformation is used by both criminals and political actors to create a distance between local communities and security stakeholders, undermining trust among the two and utilizing the narrative to recruit youth to 'self-defence groups' – a proxy for criminal and rebel groups. The project promotes educational dialogues in conferences and radio programmes as a way to help communication and sharing of information.

Arts and culture is also a positive medium to help deter youth from gang recruitment. The Integral Development Centre Warriors Cultural House in Honduras provides young people with the opportunity to take part in training in a variety of disciplines, such as dance, singing, acting and painting, as a way of developing skills to encourage engagement in the cultural sector. The project allows for youth empowerment and citizen participation, which can lower the propensity to join gangs. ■

Repressive state responses to organized crime

The third set of rights violations can be identified in the context of state responses to crime. Often framed as the authorities' fight against organized crime, heavily securitized or militarized responses can threaten human rights and legal safeguards, in particular due process rights, freedom from arbitrary detention, the right to privacy, and the prohibition of torture and inhuman or degrading treatment or punishment. Many grantees say that their biggest fear, and that of other activists, researchers and investigative journalists, is state reprisal.⁵⁰

According to Resilience Fund grantees, members of civil society, in particular those living and working under authoritarian regimes, are likely to refrain from reporting on crime issues, challenging the authorities and holding them accountable because they face the risk of criminalization and reprisal. Violations range from arbitrary detention of suspects to home searches without a warrant, police raids, and crackdowns on protests and social movements. They may even involve torture and extrajudicial killings.

An example of a repressive state response is the anti-drug campaign in the Philippines, which led to targeted actions against low-level drug retailers and users, resulting in a huge number of extrajudicial killings.⁵¹ Unofficial estimates put the death toll at more than 6 200 suspected drug users or dealers who died at the hands of the state and its agents.⁵² This led to an investigation by the International Criminal Court (ICC) into potential crimes against humanity.⁵³ The crackdown in the Philippines represents violations of several human rights: the right to life, presumption of innocence and right to a fair trial.

In a number of contexts, the treatment given to those who expose criminal activity and malfeasance is often retaliation, including surveillance, cyberattacks, strategic lawsuits against public participation, arbitrary arrests, and death threats – and, in extreme cases, murder.⁵⁴ One Resilience Fund grantee became a victim of the spyware known as Pegasus – allegedly used by some state and non-state actors to spy on the activities of journalists, activists and human rights defenders.⁵⁵ Another was arrested while monitoring illegal logging in Cambodia.⁵⁶ This is an area of particular concern, as many grantees work in investigative journalism and expose criminal behaviour.



Activists in the Philippines during a vigil for victims of extrajudicial killings in the Philippine government's war on drugs. The state's pursuit of drug dealers and users violates several human rights. © Ted Aljibe/AFP via Getty Images.

Freedom of expression and privacy rights

One key concern relates to digital security and the use of technology to curtail freedom rights. Article 20 of the UNTOC is a case in point due to its intrusive nature. It provides for a set of measures that states are encouraged to deploy in criminal investigations, such as surveillance, interception of communication and undercover operations, including in electronic format. Such so-called 'special investigative techniques' may, however, be in violation of the human rights of the parties involved. Therefore, in conducting this type of policing, state powers should be limited to human rights guarantees and safeguards. States, for example, need to specify the competent authority and under which circumstances these special techniques should be deployed. In order to prevent abuses in these measures, supervisory power must be given to an independent authority (in many

cases the judiciary). The use of special techniques should also be compliant with the principles of proportionality and necessity.

Exchange of information, request for data and data storage raise concerns around data privacy, data protection and freedom of expression.

The clashes between investigative powers and human rights have been highlighted in the context of the Ad Hoc Committee mandated to negotiate a new UN treaty on the 'criminal misuse of information and communications technology (ICT)'. States negotiating the treaty diverge in the scope and extent of human rights safeguards, and civil society actors have vocalized the need to incorporate human rights-based safeguards into this criminal justice treaty designed to pursue cybercrime.⁵⁷ ■

These kinds of threats and reprisals jeopardize civil society's ability to contribute to public accountability and good governance, which undermines law enforcement agencies' capacity to counter criminality and fight impunity. Therefore, it is critical to uphold the rights of these groups – in particular, victims, witnesses and those reporting on crime. Responses should avoid criminalization and re-victimization, and safeguard their physical protection.

Impact of drug policies on human rights

Drug policies based on securitized approaches or militarized responses have historically had a disproportionate negative impact on the human rights of vulnerable and often marginalized groups, such as women, indigenous peoples, the LGBTQIA+ community, people of African descent and the youth. Some 5% of the projects supported by the Resilience Fund have therefore chosen to focus on supporting populations that have been adversely affected by responses to the drug trade that do not take into account their specific needs.

Globally, the female prison population is particularly affected by punitive drug policies. According to the

OHCHR, 35% of incarcerated women are being held on drug-related charges.⁵⁸ A Resilience Fund grantee noted how women are disproportionately affected by criminal justice responses to drug-related offences in Indonesia. Most of the women brought into the criminal justice system for drug trafficking were involved in low-level but high-risk activities, such as acting as drug mules. Sometimes these women have been 'tricked', or coerced by partners or relatives, into carrying drugs into and out of Indonesia. This exposes them to severe penalties for drug trafficking charges, including the death penalty.

The burden of proof, in this case, is entirely on the accused, and it has been noted that women may

struggle to find legal representation, which can affect the outcome of their cases. Women who use drugs are particularly vulnerable as they have less access to services, face high levels of physical violence, and experience greater difficulty finding employment opportunities. Projects supported by the Resilience Fund in Tanzania, for example, have provided support to mothers who use drugs and face challenges in accessing health and social services.

A Resilience Fund grantee in Colombia has focused on helping young people – particularly boys aged 14 to 22 – who have come into contact with the criminal justice system, mostly for drug-related offences. The grantees have found that in the Colombian municipalities of Tuluá and Palmira the main reason for children and adolescents facing criminal charges is micro-trafficking, which involves the distribution of small quantities of drugs in limited areas, mainly intended for immediate or medium-term consumption. The young people usually admitted to this rehabilitation programme had often resorted to crime after facing hardships such as homelessness, drug abuse or

being involved in child labour. The programme developed by the grantees, the System of Criminal Responsibility for Adolescents (SRPA), provides psychological and social support to young people who have been found criminally responsible for drug offences and released by the courts under a measure known as ‘supervised release’. Using a restorative justice approach, the programme promotes spaces for self-care; strengthens individual, family and community psychosocial support; and generates changes in their life projects, emphasizing the importance of rehabilitation to prevent recidivism.

Similar best practices have been identified by the Resilience Fund community around the world. In the Western Balkans, for example, GI-TOC research has highlighted the positive work of civil society organizations in the drug treatment and rehabilitation of young people, and the resulting successful resocialization and reintegration into society, which has been shown to prevent young people from falling back into the clutches of organized crime.⁵⁹ ■

The links between drug policies and human rights are manifold. A study on arbitrary detention in the context of drug policies by the UN Working Group on Arbitrary Detention highlighted human rights violations worldwide, including in the areas of interrogation, fair trial guarantees and disproportionate sentencing, as well as the targeting of human rights defenders.⁶⁰ And the Human Rights Committee, while recommending that states abolish the death penalty for drug-related offences, has emphasized that this form of sanction should only be used for the ‘most serious’ crimes involving intentional killing.⁶¹

Indeed, there have been calls for drug policies to be more aligned with human rights approaches, with the focus on harm reduction and supporting the rights of users as part of broader health policy interventions. This could include the decriminalization of low-level drug offences and personal use,⁶² safeguards against further stigmatization and discrimination, and the provision of gender- and age-sensitive rehabilitation programmes.

The international guidelines on human rights and drug policy can provide a useful starting point for policy reforms along these lines.⁶³ Policymakers should make more concerted efforts to change the narrative around the fight against low-level drug-related crime. However, civil society participation is also essential in analyzing drug policies, providing support to both low-level offenders and PWUD, and evaluating the human rights impact of existing policies.

Access to justice and redress, and impunity

Organized crime seriously undermines human rights and make it more difficult for states to fulfil their duty to protect those rights, a responsibility that involves both actively preventing human rights violations and responding to them through investigation and prosecution.⁶⁴ The UNTOC also requires states to investigate, prosecute and punish transnational organized crime. In this regard, national and international frameworks are aligned.⁶⁵



Posters of disappeared people displayed in Acapulco, Mexico. Civil society groups across the country made up of family members seek justice for their disappeared. © Técnicas Rudas

However, when it comes to actually delivering justice for victims of organized crime, there are significant shortcomings. Many communities have experienced the inability or unwillingness of the state to conduct thorough investigations into acts of violence. In these situations, states might be failing in their obligations to ensure restitution for human rights violations, provide compensations for such violations, uphold the right to truth (which is crucial to combating criminal impunity) and protect victims, as outlined in article 2, para. 3(a) of the ICCPR and article 25 of the UNTOC.

In many cases, Resilience Fund grantees have stepped in to address the gaps left by states. They do so by providing ways for victims to seek justice, information on the progress of cases, assistance to victims in their pursuit of justice, and compensation for the harms suffered (including restitution, redress, rehabilitation, satisfaction and guarantees of non-repetition). Grantees have sought to bridge the government's failures by granting access to justice and by raising concerns when victims' rights are not being upheld.

Rights to remedy and the implementation of international human rights law

States' obligation to respect, ensure respect for and implement international human rights, as derived from treaties, international customary law and domestic laws, includes:

- taking appropriate legislative and administrative measures to prevent human rights violations;
- investigating violations effectively, promptly, thoroughly and impartially;

- taking action, where appropriate, against those allegedly responsible in accordance with applicable law; and
- providing victims with remedies (including equal and effective access to justice; adequate, effective and prompt reparation; and access to information).

SOURCE: 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, General Assembly resolution 60/147

Investigating organized crime is challenging due to its clandestine nature, and it is made more difficult by widespread corruption, which permeates many transnational organized crime cases. Corruption often discourages the investigation, prosecution and punishment of criminality, resulting in diminished consequences for criminal actors. The 2023 Resilience Fund Fellows unanimously identified state-embedded actors and corporate interests as the main obstacles preventing victims from accessing justice and redress mechanisms.⁶⁶ This aligns with the findings of the GI-TOC's Global Organized Crime Index, which identified state-embedded actors as the most prevalent type of criminal actor worldwide.⁶⁷

In some countries, criminals are able to operate with significant impunity because they have connections to, or act in collusion with, the state. Crime and politics are frequently intertwined, with organized crime playing both active and passive roles in maintaining existing power dynamics.⁶⁸ Some politicians and state officials are complicit with organized crime groups and corrupt private actors, creating a system of patronage and exacerbating white-collar crime. Extortion and the threat of violence by criminal actors can be used to capture judicial actors in order to enforce criminal interests, allowing perpetrators to evade sanctions. Moreover, the judicial system can sometimes show an unconscious bias in favour of those in positions of power. This lack of fairness and impartiality can result in the potential violation of victims' right to a remedy and can create an overwhelming sense of impunity for criminal actors.

Civil society responses to impunity on organized crime cases

Civil society has stepped in to fill for the gap left by inadequate institutional responses to protect the victims of organized crime, including through independent investigations into crime and corruption as a way of promoting the right to truth. Here, investigative journalism has played a pivotal role in exposing criminal networks and related human rights violations.

Victims of crime have also relied heavily on support networks established by civil society organizations. These networks provide various forms of assistance, including legal representation, mental health support and collective platforms to engage with the authorities. The Resilience Fund has backed many of both types of initiative, which make up approximately a third of the Fund's constituency.

One example is the work of Las Buscadoras ('The Searchers') in Mexico. This collective of mothers and relatives of missing people search for their loved ones, who have disappeared at the hands of criminal groups and state officials. Their collective effort arises from the absence of state mechanisms for investigation and

redress, and exposes them to immediate threats to their safety and physical well-being.⁶⁹ They have observed that families often turn to them to report missing relatives instead of approaching the police. Another grantee in Mexico, whose journalist husband was killed, succinctly described the judicial process as marked by 'disinformation, intimidation and bias'.⁷⁰ The collective therefore provides a great alternative for engaging with the criminal justice system.

Resilience Fund grantees have also worked to enhance victim support and self-care. In the Philippines, one grantee project raises awareness about impunity in organized crime cases and its impact on the mental health of environmental campaigners and anti-mining activists in southern Mindanao. This project supports the development of psychosocial interventions to prevent or alleviate prolonged severe trauma reactions through the creation of self-care and collective care practices and systems.

In Vietnam, another grantee focuses on campaigns to encourage children to enrol in the education system and

has developed an early warning system to identify children at risk. They also provide assistance to street children and young victims and survivors of trafficking, helping them access justice through legal representation. Additionally, they promote awareness of the risks of trafficking, the tactics employed by traffickers and the penalties for involvement in trafficking. Another initiative supported by the Resilience Fund involves setting up helplines for relatives of

missing persons, particularly children from rural Cambodia. These helplines serve as a means to report human trafficking incidents and seek assistance from law enforcement. Additionally, youth groups have been formed to disseminate information about the methods used to lure people into trafficking and to provide guidance on how to contact the relevant helpline. ■



THE RIDDLE OF ACCOUNTABILITY: LEGAL AND POLICY IMPLICATIONS

This report has outlined three ways in which organized crime challenges the human rights regime. First, it undermines states' compliance with international norms by making it more difficult for them to fulfil economic, social and cultural rights, as well as to protect and prevent violations of civil and political rights that result from violence and criminal governance. Second, the hardline stance taken against organized crime by state authorities often has adverse consequences for human rights standards. Third, the failure to investigate organized crime can lead to new human rights violations, especially in terms of the rights to truth and redress.

A common thread running through these points is how to activate the human rights framework in the face of violations resulting from organized crime – excluding cases where the state is directly responsible for violations, as these would be attributable to the state under international human rights law. The core of the issue lies in how these two regimes are structured and interact, which complicates efforts to uphold obligations under both criminal justice and human rights instruments. It is important to remember that both the human rights and transnational organized crime regimes, within their respective mandates, establish the duty to investigate, prosecute suspects if there is sufficient evidence, and punish them if found guilty. However, the two frameworks operate differently.

Under the UNTOC and its protocols and criminal codes (which are designed to protect states from the wrongdoing of individuals), those engaged in illicit activities are typically held accountable and face criminal charges in domestic courts. However, they may not necessarily be held accountable for human rights violations. On the other hand, human rights bodies and courts are theoretically only activated to evaluate the responsibility of the state in human rights violations. This does not necessarily address issues related to organized crime, as it falls outside the regime's scope and lacks the authority to impose sanctions. Some are also sceptical about using human rights law in organized crime cases, as it could potentially reduce states' obligations by shifting responsibility to non-state actors. Nonetheless, human rights law has contributed to the discussion on the responsibility of non-state actors, particularly in the context of armed conflict.⁷¹

A significant consequence of organized crime is the potential erosion of fundamental human rights for people living in areas controlled by organized criminal groups, or those especially vulnerable to the harms stemming from the illicit economy. Their access to essential rights, notably the right to

effective remedies, can be severely compromised. For these communities, recourse to an international human rights system is a distant reality. As one Resilience Fund grantee pointed out, organized crime creates an environment where individuals feel overwhelmed when confronted with the architecture of power and it is extremely challenging to seek accountability.

Mechanisms for redress are seldom within reach for these communities, especially when the crime has transnational dimensions. Seeking justice can be financially and emotionally draining. Mental health support for victims of organized crime is often lacking, and the psychological burden and stress on survivors and victims who engage with redress mechanisms is frequently underestimated. Victims also find it difficult to place their trust in a system that has failed them repeatedly. Recognizing the implications of state involvement in crime and supporting civil society actors working at the forefront of truth and justice are essential steps in building a relationship of trust, breaking cycles of impunity and exposing human rights violations.

The implications of the current legal framework for the rights of organized crime victims raises several questions under international human rights law that are beyond the scope of this policy brief. However, some considerations can stimulate further discussion on the issue, particularly with the aim of ensuring redress for victims of human rights violations committed by organized crime groups. There are two key factors to consider regarding the implications of organized crime:

- One aspect pertains to when the risks posed by organized crime or organized criminal groups reach a level that may trigger state responsibility to prevent human rights violations committed by third parties. Under international human rights law, states are obliged to exercise due diligence in protecting individuals from human rights violations caused by third parties, including taking preventive measures. This obligation is not absolute and requires a case-by-case assessment. For instance, with regard to the right to life, the Human Rights Committee has specified that the duty to protect life includes the obligation of states to take appropriate measures to address the social conditions that contribute to high levels of violence, including gun violence, which may result in violations of the right to life.⁷² A critical question in this context is what constitutes 'knowledge of the risk' that would trigger state responsibility. Should the systemic and widespread risk posed by organized crime and criminal groups to human rights, particularly those resulting from pervasive violence and affecting vulnerable groups, trigger state responsibility to prevent such criminal activities and safeguard human rights?
- The second point emphasizes the vital role of state actions and policies in assessing the human rights impact of organized crime. As highlighted by several Resilience Fund grantees, states are not passive observers of criminal activity and violence. In fact, many human rights violations are a direct result of state responses to crime and anti-crime policies. The state's involvement in creating an atmosphere of impunity and corruption that enables violence, allows organized crime to flourish and leads to human rights violations is well-documented. The main consequence of not being able to hold a state internationally accountable for a general failure to prevent human rights violations is that the victim cannot be considered for the purposes of reparations, including measures to avoid recurrence of such violations.⁷³

These discussions are urgent, given the growing protection gaps in the context of organized crime-related violence, governance issues and widespread impunity. Indeed, if one of the core objectives of human rights is to empower individuals to seek redress when their human rights are not respected, it is important to delve deeper into the practical implications for the human rights of victims of organized crime. As highlighted in a joint statement by UN Special Procedures, it is essential that existing international legal norms are effectively implemented to ensure the human rights of individuals and groups of individuals, even in situations of armed conflict and other forms of violence, regardless of the status of the perpetrator.⁷⁴ In essence, states should not be exempt from their responsibilities in this regard.



TOWARDS A BETTER UNDERSTANDING OF HUMAN RIGHTS VIOLATIONS CAUSED BY ORGANIZED CRIME

There is no doubt that organized crime has detrimental effects on human rights in several ways. The UNTOC framework, which is designed to strengthen criminal justice responses to transnational organized crime, is less effective when not complemented by human rights law. Conversely, the human rights framework is challenged when organized criminal activity undermines the ability of states to fulfil their obligations to uphold and protect human rights, particularly when it comes to providing compensation or reparation for victims.

These legal and political obstacles raise important questions that require further discussion. A narrow and exclusively state-centred view of the human rights regime to identify human rights violations and demand reparations may not fully take into account the destructive impact of organized crime. Moreover, criminal justice responses often under-utilize human rights approaches. The advantage of applying a human rights perspective to the analysis of organized crime cases is that it recognizes individuals as potential or actual victims of human rights violations (in addition of being victims of crime), and offers solutions beyond traditional criminal justice responses. A possible way forward is to promote more meaningful integration of the crime prevention and human rights agendas.

1. Strengthen our understanding of how organized crime issues fit into a human rights framework.

There is an urgent need for greater dialogue between human rights frameworks and anti-organized crime regimes. While organized crime frameworks frequently marginalize human rights, human rights discussions do not always pay sufficient attention to the destructive power of organized crime. In particular, further discussion is needed on the intersection between the state and organized crime, recognizing that states can be perpetrators and enablers of human rights abuses, in order to prevent future violations and promote accountability. This includes understanding when states can be held accountable for tolerating, supporting or colluding with organized crime, and how organized criminal groups themselves are understood within a human rights framework. Multilateral forums can facilitate this dialogue, but they are costly for civil society. Efforts to facilitate opportunities for exchange between grassroots organizations and international actors, including human rights practitioners and academics, should be encouraged as a meaningful first step.

2. Enhance the understanding of the impact of organized crime on economic, social and cultural rights.

There is a lack of empirical evidence and research on the relationship between organized crime and specific human rights, in particular economic, social and cultural rights and the rights of minorities. Such studies could be used to guide policy, redirecting budgets away from militarized responses and inform resource allocation in order to meet the obligation to protect victims of transnational organized crime while promoting human rights. An example of this is in confiscating the proceeds of crime and asset recovery. Approaches to asset recovery and confiscation that prioritize human rights have the potential to increase the resources available for the realization of economic, social and cultural rights.⁷⁵ The GI-TOC's research on asset forfeiture – a form of asset recovery whereby security and judicial institutions declare that illegal assets of criminal groups belong instead to the state – has shown that, if widely and effectively used, asset forfeiture can be a useful tool for promoting social justice and enforcing constitutional rights.⁷⁶

3. Strengthen the protection of local actors from the harms caused by organized crime. Civil society has a crucial role to play in exposing and addressing human rights violations associated with organized crime. More evidence is needed on how organized crime affects the rights of specific groups, including women and girls, the LGBTQIA+ community, indigenous peoples and other vulnerable populations. Civil society actors are well-placed to provide this grassroots knowledge as they are often the first responders and focal points for groups of victims and survivors.

Communities are central to uncovering the truth, and they should be supported, empowered and protected, especially as their efforts often come at great cost to their safety. There is a concerning trend of physical attacks and assassinations against civil society actors, as highlighted by the GI-TOC's research on assassinations, with hitmen and members of criminal groups often responsible for this violence. The personal safety and well-being of those on the front line of the response are often overlooked. Initiatives and efforts to support their work should include incentives for risk assessment and management, with a focus on mental health and trauma.

4. Foster safe spaces for civil society engagement and trust-building. Building trust between civil society and governmental institutions is paramount to combating corruption and increasing transparency in public institutions. Efforts to create these safe spaces should be encouraged and facilitated. There are gaps in both information and practical access for communities seeking human rights mechanisms and avenues for redress. To address these gaps, initiatives should focus on raising awareness among victims of criminal violence and their communities about their rights, and the state's obligations towards them, and how can they access redress mechanisms.

Civil society organizations are key allies in helping victims access justice, which is essential for reparations and peacebuilding. Involving victims, whistle-blowers, witnesses, survivors and others affected by crimes in these processes is critical to building trust, preventing re-victimization, enabling safe disclosure and supporting reconciliation.

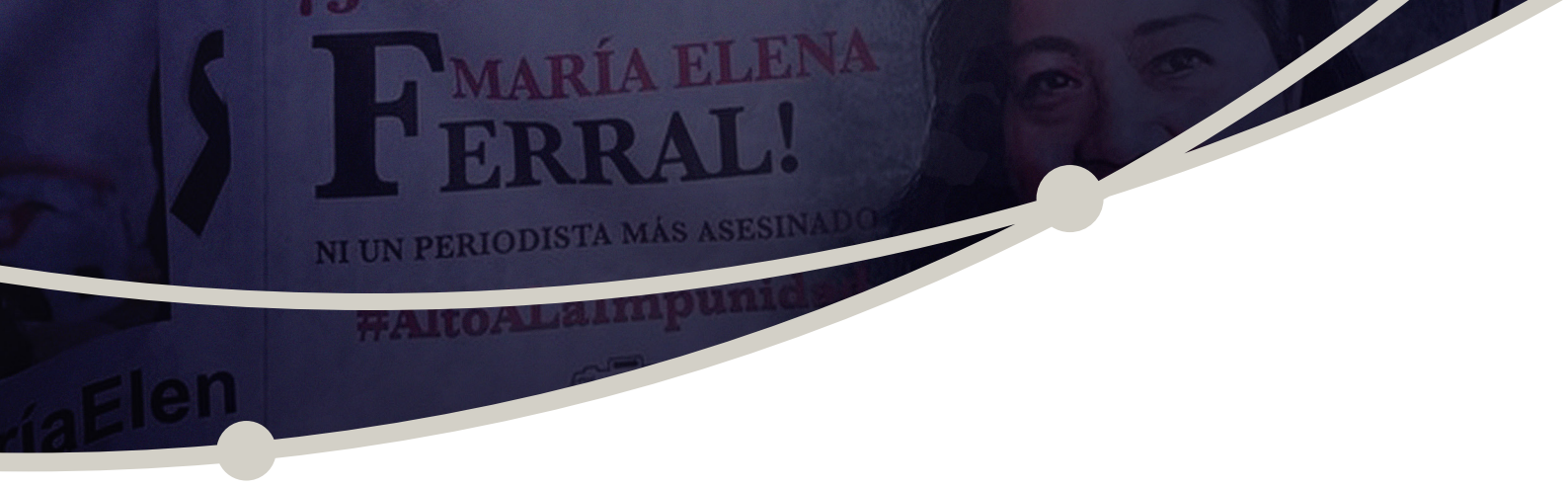
5. Transform the approach to combating crime, and engage practitioners. While integrating human rights safeguards into the development and implementation of laws and policies to combat crime is crucial, it is not enough on its own. It should be accompanied by a change in the behaviour of those responsible for enforcing and operationalizing these laws. Government narratives should move away from militaristic language and adopt a more supportive attitude towards communities and social activities. To facilitate this shift, it is essential that law enforcement agencies receive training in human rights and gender issues. In addition, the establishment of specialized agencies and personnel is essential in this regard.



ANNEX: POTENTIAL HUMAN RIGHTS VIOLATIONS BY CRIME TYPE

It is not possible to compile an exhaustive list of all the human rights that are affected by organized crime, not least because of the principles of interdependence and indivisibility of human rights. However, by way of example, the table below identifies some of the organized crime activities that threaten a number of the human rights outlined in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR).

RIGHT	CRIME	RIGHT CONVENTIONAL BASIS
Right to life	Organized crime-related assassinations and mass killings	ICCPR
Right to liberty and security of a person	Kidnappings, disappearances, human trafficking, forced recruitment	ICCPR
Right to freedom from torture or cruel, inhuman, or degrading treatment or punishment	Human trafficking, drug trafficking	ICCPR
Right to work	Forced labour, extortion	ICESCR
Right to education	Forced recruitment, illicit financial flows	ICESCR
Right to the highest attainable standard of health	Illegal dumping of waste and toxic residues, drug trafficking, illegal wildlife trade, illicit financial flows	ICESCR
Right of non-citizens to freedom from arbitrary expulsion	Human smuggling	ICCPR
Right to non-discrimination	Organized crime and gender-based violence	ICCPR
Right to truth	Impunity on transnational organized crime cases	ICCPR
Right to property	Illicit financial flows	ICCPR
Right to privacy	Cybercrime	ICCPR



NOTES

- 1 The UN Convention against Transnational Organized Crime; see <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.
- 2 For more on the Resilience Fund, see: <https://resiliencefund.globalinitiative.net>.
- 3 The UNODC has recognized that crime prevention and criminal justice 'are inextricably linked to human rights in multiple levels' (UNODC, The United Nations Convention Against Transnational Organized Crime and International Human Rights Law: Issue Paper, Vienna, 2022). The resolutions 5/1 and 6/1 of the Conference of Parties to the UNTOC expressed with great concern the impact of organized crime on human rights, rule of law, security and development (Ibid, 2022). Legal and policy discussions have also advanced in fields such as drug policy, and in the context of some specific markets such as human trafficking and smuggling.
- 4 OHCHR, HR75 Spotlight: Human rights, prevention and peace, 7 July 2023, <https://www.ohchr.org/en/stories/2023/07/hr75-spotlight-human-rights-prevention-and-peace>.
- 5 The policy brief was developed by the author for the Serious Organized Crime & Anti-Corruption Evidence (SOC-ACE) Research Programme.
- 6 Together with the Universal Declaration of Human Rights (UDHR), these form part of the International Bill of Human Rights.
- 7 Math Noortmann and Dawn Sedman, Transnational criminal organisations and human rights, in Pierre Hauck and Sven Peterke (eds), *International Law and Transnational Organized Crime*. Oxford: Oxford University Press, 2016.
- 8 Robert Currie and Sarah Douglas, Human rights and transnational organized crime, in Felia Allum and Stan Gilmore (eds), *Handbook of Transnational Organized Crime*, New York: Routledge, 2021.
- 9 Although the provisions reflect some human rights principles, they do not refer directly to human rights obligations. These are found in articles 11(3), 16 (13), 18, 24(2) and 25(3) the UNTOC.
- 10 Due process rights, such as the right to equality before courts, the right to fair trial and the presumption of innocence, find a strong baseline in the ICCPR.
- 11 For example, see the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 12 UNODC, The United Nations Convention Against Transnational Organized Crime and International Human Rights Law: Issue Paper, Vienna, 2022.
- 13 The Convention on the Rights of the Child explicitly establishes the obligation to protect children from all forms of sexual exploitation and sexual abuse (article 34). The Convention on the Elimination of Discrimination against Women, establishes that states parties shall take all appropriate measures, including legislation, to suppress all forms of trafficking and exploitation of women (article 6).
- 14 Tom Obokata, Combating transnational organised crime through international human rights law, *International Human Rights Law Review*, 8, 1, 1–37.
- 15 Robert Currie and Sarah Douglas, Human rights and transnational organized crime, in Felia Allum and Stan Gilmore (eds), *Handbook of Transnational Organized Crime*, New York: Routledge, 2021.
- 16 See, for example, the analysis of security resolutions in Pedro José Martínez Esponda, The universality of human rights: Developing narratives to overcome polarization, Geneva Academy, Academy Briefing no. 20, August 2022.
- 17 For a full analysis, see Summer Walker, Reforming the response paradigm: What does Black Lives Matter tell us about tackling organized crime?, GI-TOC, September 2020.
- 18 See Human Rights Committee, General comment No. 31 [80] on the nature of the general legal obligation imposed on states parties to the Covenant, 29 March 2004 (CCPR/C/21/Rev.1/Add. 1326 May 2004), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FFP-PRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2B-fud3cPVrcM9YR0iW6Txaxgp3f9kUFpW0q%2FhW%2FTp->

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