



# UPDATING AND HARMONIZING LEGISLATION: A PROACTIVE STEP IN COMBATING TRANSNATIONAL ORGANIZED CRIME

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## ABSTRACT

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Organized crime has emerged as one of the most formidable challenges globally, existing as an unavoidable reality with such severe implications that the international community is compelled to unite efforts to counteract it. Its intricate criminal structures and the multiplicity of its criminal activities characterise it.

Owing to its pervasive influence across various crucial sectors, notably the economic, security, and social realms, many nations have been overwhelmed by their inability to tackle it independently, thus underscoring the urgent need for innovative mechanisms to mitigate its adverse impacts and ramifications.

Therefore, updating and approximating legislation is an essential proactive step to combat organized crime by providing modern legal tools that allow the security and judicial agencies to keep pace with the evolving methods of this crime, starting with formulating a comprehensive definition of organized crime that includes all its components and characteristics, and enacting laws that criminalize all organized criminal activities, such as Drug trafficking, money laundering, and human trafficking, enacting other laws that allow the confiscation of profits from organized crime and their reuse in anti-crime programs, and establishing mechanisms to enhance cooperation between security and judicial agencies and other government bodies.

## INTRODUCTION

Organized crime represents an acute threat to both national and international security and stability, effectively assaulting state sovereignty by undermining and potentially demolishing social and economic institutions. It obstructs development, misdirects economies from their intended trajectories, and inflicts harm globally.

The advent of economic globalization, coupled with advancements in communication and transportation technologies, has notably facilitated the expansion of organized crime networks across borders, enhancing the variety of criminal activities they engage in.

Organized crime is by no means a novel phenomenon; it has been acknowledged for an extensive period, originating with the mafia and organized gangs in America from the start of this century. However, since the latter half of the century, as Europe began assimilating the American socio-economic model, American influences have markedly shaped European life, bringing the organized crime scenario in Europe into closer alignment with that of post-World War II America. As a result, developing nations such as Afghanistan, India, Egypt, and Iraq have become highly susceptible arenas for the deleterious effects of organized crime.<sup>1</sup>

Considering the escalation of violence, corruption, bribery, and the inclination towards unlawful vengeance, the significance of addressing organized crime is apparent both theoretically and practically. Theoretically, the discourse on organized crime pertains to a global understanding of criminality and the adverse effects organized crime imposes on developing countries vulnerable to security breaches and exploitation.

From a practical and operational viewpoint, organized crime involves activities crucial to both national and global economies, potentially jeopardizing these economies through illicit associations and activities such as narcotics and arms trafficking, trade in human organs, and money laundering. The tangible increase in organized crime's magnitude has been emphatically highlighted at various

United Nations summits, particularly concerning the deregulation of international trade.<sup>2</sup>

Organized crime has been labelled variously as predatory crime, criminal syndicates, or criminal organizations. Irrespective of the terminology used, the essence remains constant, leading to an enfeebled economy, societal disintegration, pervasive administrative corruption, and political dependence.

Such dynamics pose grave threats to state sovereignty and may even jeopardize their existence. Given its detrimental aftermath and impact across diverse sectors, especially the economic and security domains, which affect the foundational values of society, numerous countries find themselves incapable of combating it unilaterally, thus necessitating the exploration of alternative strategies to eradicate its enduring effects and residues. Consequently, this raises a pivotal question: How effective is the modernization of legislation as a preemptive strategy in combating organized crime?

To draw this study to a close in its comprehensive form, the analysis relies on a binary division structured around the following elements:

- The conceptual framework of organized crime.
- The extent of the effectiveness of approximating and updating legislation in combating organized crime.

## 1. THE CONCEPTUAL FRAMEWORK FOR ORGANIZED CRIME

The designation "organized crime" does not merely refer to a category of crime identifiable by name, such as bribery, but rather describes a set of criminal activities distinguished by specific attributes. These crimes share elements and conditions unique to each, unified by the gravity of their offenses and the structured manner in which their perpetrators operate. Detailed discussion of this aspect follows below.

1 Laghidze, E. (2024). Seizure and confiscation as an effective means of combating transnational organized crime. *Law and World*, 9 (1), p. 1-19.

2 Elachawi, A. A. (2006). *Research in International Criminal Law* (1<sup>st</sup> edition.). Algiers: Houma for Printing, Publishing, and Distribution, p.231.

## 1.1. Definition of Organized Crime

Organized crime impacts more than just the internal security and tranquility of nations; it extends its reach to affect international security and the global community's peace. Its severity is such that despite extensive scholarly discourse, a definitive and universally accepted definition has eluded consensus.<sup>3</sup>

This lack of agreement has spurred international organizations to propose their own definitions to encompass its various manifestations for effective criminalization and subsequent countermeasures.<sup>4</sup>

A pivotal definition provided by Article 2, paragraph "a", of the United Nations Convention Against Transnational Organized Crime states: "An 'organized criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offenses established in accordance with this Convention, to obtain, directly or indirectly, a financial or other material benefit".<sup>5</sup>

## 1.2. Characteristics of Organized Crime

The defining characteristics of organized crime include:

### 1.2.1. Planning and Organization

The elements of planning and organization are fundamental to organized crime, which sets it apart from simpler, opportunistic crimes that lack systematic planning ensuring success and sustainability. Organized crime is marked by a sophisticated human and material structure tailored to its perilous criminal undertakings.

### 1.2.2. Professionalism

Professionalism in organized crime involves adequate maturity and experience, the employment of cunning tactics, a commitment to criminal pursuits, and a willingness to make sacrifices to further these illegal activities.<sup>6</sup>

### 1.2.3. Commitment to the Internal Order of the Group

Members of organized criminal groups are expected to show unwavering loyalty to their leader or boss, adhering strictly to his commands without question. This includes demonstrating their capability to lure others into unlawful situations, thereafter isolating themselves and tackling any challenges through extensive use of harassment, defamation, and violence, potentially escalating to physical elimination. Such actions are carried out under a regime of blind obedience, devoid of any moral conflict.<sup>7</sup>

### 1.2.4. Complexity

The complexity of organized crime is apparent through its meticulous hierarchical structure among participants, astute manipulation of material and human resources, and the extensive array of tactics available to evade detection.

### 1.2.5. Substantial Profit

Organized crime operates on an international scale with the primary aim of amassing significant and swift profits, far outpacing those attainable through legitimate business operations. These illicit earnings are subsequently laundered to obscure their unlawful origins before being reintegrated into the economy as seemingly legitimate assets.<sup>8</sup>

## 1.3. Domains of Organized Crime

Organized crime spans a vast array of domains, which are extensive and diverse. These include trafficking in human beings, also known as white slavery, drug trafficking, arms trafficking, child traf-

3 Finckenauer, J.O. (2005). Problems of definition: What is organized crime? *Trends in Organized Crime*, 8(2), pp. 63-83.

4 Kara, W. (2016). *Fight against organized crime in international legislation* (1<sup>st</sup> edition.). Jordan: Dar Al-Ayyam for Publishing and Distribution, p. 390.

5 United Nations Convention Against Trans-national Organized Crime, 2000 <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> [Last accessed: 24 March, 2024].

6 Bassiouni, M. C. (2004). *Transnational Organized Crime* (1<sup>st</sup> edition.). Lebanon: Dar Al Shorou, p.11.

7 Ramzi, N. (2002). *Money Laundering: Crime of the Age*, (1<sup>st</sup> edition.). Amman: Dar Wael for Publishing, p.56.

8 Daoud, S. (2001). *Money Laundering and Banking Secrecy* (D.T.). Lebanon: Sader Publishers, p. 46.

ficking, as well as trafficking in antiques, artifacts, cultural, and intellectual properties.

Additional areas involve human smuggling, illicit disposal of nuclear waste in developing countries, money laundering, currency forgery, car theft, credit card fraud, and various forms of cybercrimes. The scope of these activities is broad and the profits are significant, making it difficult to envision any lucrative domain that does not attract the involvement of organized crime groups.<sup>9</sup>

## 1.4. Factors Contributing to the Emergence and Spread of Organized Crime

Several factors contribute to the rise and proliferation of organized crime, which include:

### 1.4.1. Free Market System

The free market system provides expansive opportunities for commercial activities, presenting significant opportunities for organized crime groups to conduct operations that escape regulatory oversight. This phenomenon became particularly pronounced following the dissolution of the Soviet communist regime, which had previously imposed strict economic controls.<sup>10</sup>

### 1.4.2. Weak and Corrupt Criminal Justice System

When the criminal justice system is perceived as ineffective or corrupt, it erodes public trust in its capacity to enforce the law fairly. This disillusionment often drives individuals, especially those from unclassified or politically marginalized groups, towards seeking justice or resolution through organized crime networks, which appear more effective or accessible.<sup>11</sup>

### 1.4.3. Social Decay

A complete disintegration of social and legal norms leads to an increase in crimes such as

prostitution, drug trafficking, gambling, and forgery. Contributing to this decay are the collapse of traditional values and morals, the pursuit of quick profits by any means, the deterioration of educational systems, rising rates of illiteracy and unemployment, widening gaps between social classes, and discrimination based on political, regional, ethnic, or sectarian differences.

The weakening of family bonds further exacerbates this decay, creating fertile ground for the spread of organized crime.

### 1.4.4. Administrative Corruption

When administrative systems are riddled with corruption and bribery, it enables organized crime groups to manipulate or control government bodies.

### 1.4.5. Wars

Wars disrupt the normal functioning of constitutional governance and legal systems, creating environments conducive to the illicit trade in weapons, intellectual property, and cultural artifacts. Such conditions are prevalent in many conflict-ridden Arab countries, where the breakdown of order provides a perfect opportunity for organized crime to flourish.<sup>12</sup>

### 1.4.6. Non-integrated Minorities

Minority groups that find themselves in conflict with prevailing political systems often strive to maintain their original national identities. In doing so, they may establish security and social barriers to protect themselves from state oppression. To support these efforts, they frequently rely on external aid, which may include alliances with organized crime groups that provide necessary resources or interventions within society.<sup>13</sup>

## 1.5. Globalization of Organized Crime

In no prior epoch has such a vast number of individuals worldwide possessed as much aware-

9 Behnam, R. (1996). *The Fight Against Crime* (D.T.). Alexandria: Knowledge Establishment, p. 136.

10 Ramzi, N., op. cit, p. 61.

11 Touhami, M. R. (2018). An analytical study of the phenomenon of money laundering and the efforts made to combat it in Algeria. *Al-Biban Journal for Legal and Political Studies*, 7(2), pp. 85-100.

12 Al-Lamsawi, A. (2007). *Principles of International Humanitarian Law* (1<sup>st</sup> edition). Cairo: National Center, p.66.

13 Jaafar, A. M. (1998). *Combating Organized Crime* (1<sup>st</sup> edition.). Beirut, Lebanon: University Foundation for Studies, Publishing, and Distribution, p. 149.

ness of international events and the distinctive traits of different peoples as they do in the current era. Today, the global population can tap into an unprecedented wealth of information through a plethora of media and communication technologies, of which the Internet is a pivotal component.<sup>14</sup>

However, it is deeply regrettable that these platforms of knowledge, which have the potential for purely legitimate use, are increasingly commandeered by organized crime syndicates. These groups cunningly exploit these technologies for illicit purposes.<sup>15</sup>

The paradigm shift in criminal activity from physical to intellectual effort marks a significant evolution in the nature of crime. Today, a criminal proficient in digital technologies can remotely infiltrate bank accounts, execute transactions, and purchase goods with other people's money. They can also engage in sophisticated cybercrimes, such as credit card fraud, which poses severe risks to the economic stability and security of nations.<sup>16</sup>

The rapid advancements in communication technologies, notably the Internet and electronic media, have endowed organized crime with a distinctly transcontinental character. Traditional geographical and political boundaries have become virtually irrelevant as criminal enterprises operate on a multinational scale.

The orchestrators of these crimes can operate across multiple countries, coordinating actions that are executed globally. This technological prowess, combined with a regulatory environment characterized by economic and social liberties that verge on anarchic, and the generally weak oversight mechanisms, substantially facilitates the operations of organized crime.<sup>17</sup>

These elements enable them to achieve their nefarious objectives with little risk of detection, leaving virtually no evidence that could be traced back to them.<sup>18</sup>

## 2. THE EFFECTIVENESS OF MODERNIZING AND HARMONIZING LEGISLATION IN COMBATING ORGANIZED CRIME

Organized crime entities boast international expertise, proficiency, and a criminal culture adept at crafting effective strategic plans. They exploit disparities in criminal legislation across countries, leveraging the variances spawned by diverse political, economic, and cultural systems.

Additionally, the uneven development of economic systems across nations allows the material components of crimes to be executed transnationally, thereby complicating enforcement and punishment. Assuming that punitive measures can be effectively applied, this would necessitate a minimum degree of legislative harmony among the various national laws.<sup>19</sup>

Thus, there is a compelling need for countries to modernize and align their legal frameworks to bolster the efficacy of both preventive and repressive measures against organized crime.

The term "legislative system" encompasses a set of written legal rules established by the relevant authorities within a state to regulate the interactions of individuals within society. This system may include constitutional, organic, ordinary, or secondary legislation enacted by legislative or executive powers and applicable across various domains such as constitutional, civil, commercial, criminal, administrative law, and more, at both international and domestic levels.<sup>20</sup>

Legislation is inherently advantageous because it responds dynamically to the shifting demands of society. Its ease of creation, amendment, and repeal allows it to adapt swiftly to new social and economic circumstances. Moreover, the legislation serves as a vehicle for societal reform and advancement by incorporating modern systems, embracing new principles, or adapting successful practices from other nations deemed beneficial by state reformers and thinkers.<sup>21</sup>

The clarity with which legislation is drafted also aids individuals in understanding their rights and responsibilities, thereby providing a level of

14 Touhami, M. R., op. cit, pp. 85-100.

15 Bassiouni, M. C. (2004). *Transnational Organized Crime: Its Nature and Means of Combating it Internationally and Arabically* (2<sup>nd</sup> edition.). Cairo: Dar Al Shorouk, p. 196.

16 Fattach, N. (2021). Globalization and Crime: What is the relationship? *Transnational Organized Crime as a model*. *Journal of Legal Studies, Sovereignty and Globalization Laboratory, Faculty of Law and Political Sciences*, 7(2), pp. 802-824.

17 Bassiouni, M. C., op. cit, p.198.

18 *Ibid*.

19 Touhami, M. R., op. cit, pp. 85-100.

20 Bassiouni, M. C., op. cit, p. 198.

21 Touhami, M. R., op. cit, pp. 85-100.

transactional stability and security.<sup>22</sup>

These attributes refute any notion of legislative rigidity or sanctity and dispel concerns that prevailing authorities could manipulate it for self-serving ends. This perspective is supported by legislative reforms in numerous countries, including France, where legislation has evolved significantly to remain aligned with contemporary realities and intellectual developments.<sup>23</sup>

In this context, it is crucial to confront organized crime by continuously updating and harmonizing legislative frameworks to ensure the effectiveness of preventive and repressive strategies on national and international levels.

## 2.1. Ensuring Preventive Action Against Organized Crime

Given the diversity of causes and motivations behind organized crime, it is imperative that the evolution of legislative frameworks encompasses all facets of society.

### 2.1.1. In the Security Field

The security apparatus within any nation serves as the practical arm of enforcement for existing legislation and is intrinsically linked to the strategies for countering organized crime. Therefore, nations must avoid restrictive legislation that fails to evolve in response to the changing dynamics of crime, particularly organized crime.<sup>24</sup>

This type of crime impacts the security of all nations, threatening their integrity and sovereignty. Consequently, there is a compelling need for countries to collaborate and forge new international cooperation mechanisms under the auspices of both regional and global organizations.<sup>25</sup>

22 Jaafour, M. S. (2011). Introduction to Legal Sciences (1<sup>st</sup> edition.). Algiers: Dar Houma for Printing, Publishing, and Distribution, p. 23.

23 *Ibid.*

24 Global initiative against transnational organized crime. (2024, January 23). Time for a global strategy against organized crime, <<https://globalinitiative.net/analysis/global-strategy-against-organized-crime/>> [Last accessed: 3 March, 2021].

25 Boubaia, K., Wali, A. L. (2021). Problems in Coordinating International Cooperation to Combat Transnational Organized Crime. *Journal of Legal Studies and Research*, 6(1), pp. 93-109.

This includes the formation of international treaties that allow for the criminalization of diverse criminal activities through specific legal provisions tailored to impose unique criminal sanctions. These agreements must clearly define the material and moral components of crimes to eliminate any ambiguity about the criminal intent and actions of the offenders.<sup>26</sup>

Possible security measures to enhance the level of security include:<sup>27</sup>

- Broadening the reach of criminal laws to combat organized crime and empowering national legislations through international treaties to pursue criminal elements across borders in collaboration with the implicated countries. This approach represents an exception to the principle of the territoriality of criminal law and applies the principle of international solidarity in combating global crime.
- Facilitating coordination between security forces and high-tech companies to ensure that security personnel are informed about the potential criminal use of technological means.
- Establishing operational units affiliated with international police that are technically and administratively equipped to conduct investigations and pursuits. Additionally, creating specialized international units focused on international crime, with interconnected branches across all member states, tasked with research, investigations, scientific analysis, and aggregating and disseminating information that can be exchanged among member nations.

Establishing governmental institutions that legislate and enforce these preventive measures will not only potentially eradicate the phenomenon of organized crime but also enhance the respect and legitimate status of these nations among their citizens and the international community.

### 2.1.2. In the Economic Field

The economy is a primary driver of national development and consequently influences international relations. Control over economic policy is

26 *Ibid.*

27 Touhami, M. R., op. cit, pp. 85-100.

tantamount to control over international strategic decisions.<sup>28</sup>

Conversely, a nation that is unable to stabilize its economic environment is susceptible to external domination, whether by foreign states, international organizations, organized crime syndicates disguised as multinational or tourist corporations, or other entities that ostensibly conduct legitimate operations but generate illicit revenues.<sup>29</sup>

Recognizing that reform starts from within, to combat organized crime at the economic level, nations should implement a range of measures, including:<sup>30</sup>

- Reducing taxes and fees for citizens to prevent the erosion of their financial resources is particularly important as most citizens have limited incomes. This measure should be counterbalanced by increasing the tax burden on wealthier and more influential individuals to lessen the pronounced economic disparities that may push the less affluent towards organized crime as a means of asserting their rights.
- Enhancing the living standards of citizens through equitable redistribution of the national wealth surplus. This approach aims to combat poverty effectively and block any exploitation of citizens' deteriorating economic conditions for recruitment into organized criminal activities such as human trafficking or instances where individuals are compelled to sell their children for sexual exploitation or organ harvesting.
- Enabling the monitoring and tracking suspicious financial transactions and pursuing funds with unclear origins, even those within secretive digital accounts. Additionally, overseeing the economic and commercial activities of individuals associated with these accounts to deter their involvement in organized criminal endeavours.

### 2.1.3. In the Social Field

Social cohesion is indispensable in the battle

28 Zibar, C. (2020). International Criminal Policy Trends as a Legal Mechanism to Confront Transnational Organized Crime. *Journal of Legal and Economic Research*, 3(2), pp. 263-280.

29 Boubaiya, K., Wali, A. L., op. cit, pp. 93-109.

30 Zibar, C., op. cit, pp. 263-280.

against organized crime. Society's confidence in itself, rooted in the respect for its rights and freedoms and the earnest fulfilment of its responsibilities, is key to unlocking its potential and propelling it to higher societal levels. Several strategies can be implemented to foster this cohesion, including:<sup>31</sup>

- Actively combating social and moral malaises by enforcing a framework of esteemed principles. These include the "principle of reward and punishment", the "principle of responsibility", and the "principle of reciprocity between rights and duties in the relationship between individuals and the state". This framework ensures that every individual receives their due rights without bias or detriment and fulfils their obligations fully without circumvention or diminishment.
- Providing employment opportunities for all capable individuals to alleviate the unemployment crisis and offering education to eradicate illiteracy are crucial steps. Maintaining public health through accessible and affordable medical care is also vital, as these measures are among the most effective in deterring individuals from engaging in organized crime.
- Emphasizing the role of youth in society, representing both a significant majority and the driving force of societal progress, is crucial. Investing in youth is essential for economic and social development and preventing the proliferation of organized crime and corruption in all its forms—be it moral, administrative, or otherwise.

### 2.1.4. In the Cultural Field

Addressing organized crime from a cultural standpoint involves reinforcing societal ethical standards. This is especially pertinent given that the crisis many nations currently face is fundamentally a moral one. Measures that authorities can undertake include:<sup>32</sup>

- Promoting high moral standards, virtuous behaviours, and noble values across various media platforms—print, broadcast, and digital. Enhancing the cultural under-

31 Zibar, C., op. cit, pp. 263-280.

32 *Ibid.*

standing of security issues helps citizens comprehend the risks associated with organized crime and steers them from falling into criminal networks. This approach is preferable to promoting superficial and entertainment-focused media content.

- Organizing and encouraging participation in conferences, seminars, and educational sessions across all levels of education and community gatherings, including religious venues. These events should educate all societal segments about their roles in preserving the political, economic, and primarily cultural independence of their country to prevent their involvement in organized crimes. This educational outreach should leverage the rich civilizational backdrop of the Islamic faith and the heritage of high values that underpin societal norms.
- Significantly valuing intellectuals and elevating the stature of the nation's scholars, thinkers, and innovative minds across all disciplines. These individuals are pivotal to the nation's prosperity, progress, and consciousness, both morally and materially, acting as catalysts for broader societal advancement and enlightenment.

### 2.1.5. In the Political Field

Justice is foundational for establishing and developing states, fostering societies' flourishing in all aspects. Injustice and tyranny, conversely, are the bedrock of societal decline and the proliferation of criminal activities. If they aim to avoid confrontations with organized crime, it is imperative for governing bodies to cultivate and elevate the mutual trust between the governing systems and the populace. This trust must reflect genuine social realities and ongoing material conditions rather than being constituted of hollow organizational manoeuvres or deceptive media displays. For instance:<sup>33</sup>

- Embracing dialogue as a primary methodology and nurturing the principle of mutual good faith between the government and its citizens, founded on the assumption that all actions are initially presumed to be driv-

en by good intentions.<sup>34</sup>

- Enforcing a genuine equality principle among all citizens and eschewing any form of double standards, particularly regarding minority groups. This is crucial to deter these groups from feeling compelled to engage with organized crime syndicates to influence governmental decisions in their favour or to prevent adverse governmental actions.
- Abandoning repressive methods in dealing with citizens, such as arbitrary detention and torture, and other forms of inhumane treatment that contravene basic human rights principles. These practices not only undermine the legitimacy of the state but also aggravate societal tensions and propel individuals towards criminal affiliations.

## 2.2. Ensuring Repressive Action in the Face of Organized Crime

The global focus on organized crime is intensifying as data reveals a significant rise in the frequency and complexity of these offences. These crimes pose a formidable threat to states' national security and underscore the urgent need for robust legislative frameworks that not only deter but also adequately penalize transgressors. This is essential to protect public safety, uphold property rights, and preserve the integrity and sovereignty of the state. This necessity becomes even more critical when existing preventive measures are insufficient to curb the tide of organized criminal activities.<sup>35</sup>

The most important recommendations cover three areas regarding repressive action against organized crime, which are:

### 2.2.1. Extradition of Criminals:

Modern scientific advancements have facilitated the rapid expansion of organized crime networks across multiple countries, thereby creating a

34 Jassem, M. Z. (2006). *The Concept of Globalization in Contemporary International Organization* (3<sup>rd</sup> Edition.). Beirut, Lebanon: Halabi Legal Publications, p. 207.

35 Abdel Maati, A. K. (2022). *Organized Crime and Its National and International Confrontation Methods* (1<sup>st</sup> Edition.). Cairo: Dar Al-Nahda Al-Arabiya, p. 131.

33 Touhami, M. R., op. cit, pp. 85-100.



perilous sense of impunity among criminals shielded from prosecution by affected state authorities. One of the most effective repression tactics is the adoption and enforcement of comprehensive extradition treaties to counteract this. These treaties should be designed to ensure:<sup>36</sup>

- Extradition to states where the crime's consequences are felt, even if the criminal acts did not occur within their territories. This approach is justified as these states are better positioned to assess the impact of the crimes and impose appropriate penalties that reflect the severity of the offences, thereby deterring similar future acts that could undermine state security or stability.
- Extradition to the jurisdiction where the crime occurred is necessary to facilitate the gathering and evaluation of evidence and to enhance the administration of justice. Local prosecution helps ensure that penalties maintain their intended deterrent effect, as punishments meted out in the vicinity of the crime have a stronger impact on both the perpetrator and the community affected by the crime.

### *2.2.2. Shifting the Burden of Proof:*

In organized crime, where the activities are exceptionally perilous and have widespread repercussions, adjusting the standard legal presumptions to better protect societal interests is imperative. Traditionally, the presumption of innocence, as stated in the Universal Declaration of Human Rights<sup>37</sup> and upheld by international and national laws, including Algerian law, affirms that an accused person is considered innocent until proven guilty.

This standard demands that the prosecution bear the burden of proof, granting the accused the right to remain silent, with any ambiguities in evidence interpreted in their favour.<sup>38</sup>

36 Jassem, M. Z., op. cit. p. 213.

37 Universal Declaration of Human Rights, issued by the United Nations General Assembly, 1948, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [Last accessed: 23 March, 2024].

38 Algerian Criminal Procedure Code (1966). In public action and civil action. Preliminary arrangements. Ministry of Justice. Joradp.dz [Last accessed: 22 March, 2024].

Given the severe impact and covert nature of organized crime, however, it is often rational to invert this presumption for specific cases associated with organized crime. This means treating the accused as guilty until proven innocent, thereby shifting the burden of proof onto the accused.

This shift requires the accused to actively demonstrate their innocence rather than the state solely proving their guilt. Such an approach also entails interpreting any doubt arising during the trial as unfavourable to the accused and considering the accused's silence as an admission of guilt. This method significantly enhances the state's ability to combat organized crime effectively, prioritizing society's collective security and welfare over individual rights when strictly necessary.

### *2.2.3. Intensifying Punishments for Perpetrators of Organized Crime*

The rationale behind punishment within the judicial system is to safeguard the collective welfare of the community and individuals' rights. For punishment to serve its purpose effectively against organized crime, it must adhere to a comprehensive framework that encapsulates several core principles:

- The primary function of punishment should be the prevention of crime before its occurrence, the reformation of offenders, and the deterrence of potential criminals by applying strict consequences following criminal acts.
- The severity of punishment should align with the societal necessities and the overarching interests of the community. This alignment means that penalties may be adjusted, either reduced or intensified, based on the needs dictated by the community's higher interests.
- The nature of the punishment should be tailored to what will most effectively protect society, which could range from capital punishment and incarceration to exile, among other forms of legal penalties.
- The system should not be constrained to a fixed type or a limited number of punitive measures. Any punishment that fulfils the community's needs should be considered valid and legitimate, and any argument

against this principle is deemed trivial when serious societal threats are at stake.

In light of the profound impact of organized crime on national and international levels, affecting security, political, economic, social, and cultural domains, there is an unmistakable need for harsher penalties. Such measures are crucial for all involved in organized crime, proportionate to each individual's involvement, the nature of their criminal activities, and the severity of the consequences of these crimes.

After evaluating the grave implications of organized crime and its capacity to destabilize various foundational aspects of countries, it is evident that organized crime ranks among the criminal activities most deserving of escalated punitive measures. Legislators are urged to implement stringent punishments to guarantee the most comprehensive protection possible for societies and sovereign states.

## CONCLUSION

Organized crime is an intricate and multifaceted issue, distinguished by its transnational nature, that affects nations' political, economic, and social equilibriums. The inherent dangers of organized crime stem from its operational modalities, committed by well-organized, specialized gangs that

conduct their illicit activities with a high degree of secrecy and persistence.

This level of organization enhances their threat by employing intimidation, terrorism, violence, and bribery to amalgamate legitimate with illicit operations, thereby maximizing their illegal profits.

The global community now faces the imperative to formulate a cohesive strategy to counteract all manifestations of organized crime, particularly those that traverse national boundaries and compromise neighbouring states' ethical, economic, and political sanctity.

Addressing the challenge of organized crime on an international scale necessitates the establishment of new extraterritorial jurisdictional norms and enhanced frameworks for global cooperation in legislative, judicial, and security dimensions. The effective combat against organized crime mandates an activated international cooperation grounded in authentic and robust collaboration among nations.

Given the escalating nature of organized crime, propelled by global shifts and advancements in technology and media, a concerted effort by all nations to implement both preventative and repressive strategies, as discussed, is essential. This collective endeavour is crucial to curtail organised crime's expanding scope and fortify global security and stability.

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