**UNODC Comments on the Draft Convention on the Right to Development**

**Second Round**

The United Nations Office on Drugs and Crime compliments the Chair of the Intergovernmental Working Group on the Right to Development for its ongoing work on the Draft Convention on the Right to Development. UNODC supports the overall content and structure of the Draft Convention and would like to present the following comments and suggestions, for the consideration of the Working Group.

**PART III**

**Article 13: Duty to cooperate**

1) In sub-paragraph 13.4 (j), UNODC suggests:

* Moving the corruption related aspects of "*strengthening the recovery and return of stolen assets*" to the newly introduced article 18, as reflected in the proposed language for paragraph 18(b) (see below).
* Adding reference to “*organized crime*” after “tax evasion”.
* Based on the above proposals, the text of Article 13.4(j) would read as follows:

*Eliminating illicit financial flows by combating tax evasion****, organized crime*** *and corruption, reducing opportunities for tax avoidance and enhancing disclosure and transparency in financial transactions in both source and destination countries.  ~~and strengthening the recovery and return of stolen assets.~~*

2) After sub-paragraph 13.4(j), UNODC suggests adding a new sub-paragraph on illicit financial flows.

* The proposed text for sub-paragraph 13.4(j.bis) would read as follows:

***Eliminating illicit arms flows by preventing, combatting and eradicating all forms of diversion of arms and ammunition, including their illicit manufacturing and trafficking, through the effective management of stockpiles, marking and record-keeping measures and tracing efforts to prevent unauthorized recipients, including criminals and terrorists, from acquiring arms and ammunitions, and to cooperate effectively with each with a view to investigate and prosecute these offences and bring perpetrators to justice.***

* The reason for the above proposal is that SDG 16 of the Agenda for Sustainable Development on promoting peaceful and inclusive societies for sustainable development recognizes, in target 16.4, the negative impact of illicit financial and arms flows as impediments to development and commits Member States to “significantly reducing “illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime”. As sub-paragraph 13.4(j) already addresses illicit financial flows, adding specific details relating to tax evasion, corruption, transparency in financial transactions etc, UNODC suggests adding a separate sub-paragraph on illicit financial flows.
* The proposed language for this additional sub-paragraph stems partially from 1) operational paragraph 2 of the General Assembly's resolution [76/232](https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F76%2F232&Language=E&DeviceType=Desktop&LangRequested=False) on the illicit trade in small arms and light weapons in all its aspects of 24 December 2021; 2) operational paragraphs 3 and 7-10 of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects ([A/CONF.192/15](https://undocs.org/Home/Mobile?FinalSymbol=A%2FCONF.192%2F15&Language=E&DeviceType=Desktop&LangRequested=False)); and 3) the United Nations Firearms Protocol.

3) In sub-paragraph 13.4(l) UNODC would like to re-propose the following suggestions:

* Add reference to vulnerable people, noting the complex, but established connections between, on the one hand, irregular migration, trafficking in persons and diverse vulnerabilities and, on the other hand, obstacles to opportunity and development.
* Extend the text, by adding reference to legislative and other measures to prevent and combat trafficking in persons and smuggling of migrants. In this re-submission, modified language is proposed, which reflects OPs 16, 60 and 61 of the [*Progress Declaration of the International Migration Review Forum*](https://migrationnetwork.un.org/system/files/docs/A%20AC.293%202022%20L.1%20English.pdf) adopted by the General Assembly in May 2022, and in line with the [*Global Compact for Safe, Orderly and Regular Migration*](https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf).
* The insertion of these references in sub-paragraph 13.4(l), would read as follows:

*Facilitating safe, orderly and regular migration and mobility of people, including through the implementation of planned and well managed rights-based migration policies* ***and legislative and other measures to prevent and combat trafficking in persons, smuggling of migrants and crimes against migrants, which continue to pose significant threats to the lives and well-being of migrants and other vulnerable groups.***

**Article 16: Equality between men and women**

4) In sub-paragraph 2(a), UNODC suggests either of the following amendments:

*a1) To prevent and eliminate all forms of violence and harmful practices against all women and girls in the public and private spheres online and offline, including ~~trafficking and~~ sexual and other types of exploitation****, as well as trafficking in persons***

*a2) To prevent and eliminate all forms of violence and harmful practices against all women and girls in the public and private spheres online and offline, including trafficking* ***in persons*** *and* ***all forms of*** *sexual and other types of exploitation*

* The primary point of the suggestion is to ensure consistency with existing international law, noting that the UN Trafficking in Persons Protocol, which moves steadily towards universal ratification (178 States parties), provides the only international definition of trafficking (trafficking in persons) and is widely implemented in national law.
* Related to this, ‘exploitation’ is the key, but only element of trafficking in persons, hence the suggestion to slightly modify the current language.
* While the current language reflects SDG 5.2 (as noted in the commentaries) and the Sustainable Development Goals explicitly refer to ‘human trafficking’ in SDG 8.7, most UN and international sources refer to ‘trafficking in persons’, including in relation to the 2030 Agenda for Sustainable Development – see, for example, the Interagency Coordination Group Against Trafficking in Persons’, [*The Role Of The Sustainable Development Goals (SDGs) In Combating Trafficking In Persons*](https://icat.un.org/sites/g/files/tmzbdl461/files/publications/icat_issue_brief_sdgs_2018.pdf). – and multiple UN resolutions refer to ‘trafficking in persons’ or ‘human trafficking’ when addressing violence against women (see, for example, GA resolution [75/158](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/371/89/PDF/N2037189.pdf?OpenElement), ‘Trafficking in Women and Girls’; draft GA resolution [76/L.11](https://digitallibrary.un.org/record/3948046), ‘2021 Political Declaration on the Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons’).

**Article 18: Corruption**

5) UNODC welcomes the introduction of Article 18 in the second iteration of the Draft Convention and suggests the following changes, also reflected below, in the proposed amended draft of the Article:

* Replacing in the title of the Article the term “suppression” with the term “combating”. This would also align the language with the title of the UNGASS Political Declaration of 2 June 2021, entitled “[Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation](mailto:https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/138/82/PDF/N2113882.pdf?OpenElement)”.
* Adding reference to the United Nations Convention against Corruption (UNCAC), which is the only legally binding universal anti-corruption instrument. To date, UNCAC has 189 parties, 184 of which are UN Member States. The Parties to the Convention on the Right to Development will be the same Member States. Therefore, a reference to UNCAC in Article 18 would avoid fragmentation of the international legal framework on corruption. It would further ensure that the article is read in conjunction with the broader anti-corruption framework provided by UNCAC.
* Adding the words “more efficiently and effectively” to sub-paragraph (a). This change would align the first sub-paragraph of Article 18 with Article 1 of UNCAC, which is already agreed text and may therefore facilitate the acceptance of draft Article 18.
* Making reference to the recovery and return of stolen assets, by reproducing the language used in the UN Convention against Corruption (UNCAC) and the political declaration adopted by the United Nations General Assembly Special Session (UNGASS) against corruption.
* Removing sub-paragraph (d) as it is already covered in subparagraphs (a) and (c). With regard to the term “taxation”, it is not per se a corruption-related issue, though it may be relevant to other provisions of the draft Convention.
* Based on the above proposals, Article 18 would read as follows:

**ARTICLE 18**

**Measures to Prevent~~ion~~ and Combat Corruption**

States Parties recognize that corruption represents a serious obstacle to the realization of the right to development. States Parties shall, **in accordance** **with the United Nations Convention against Corruption**, individually and jointly:

1. Promote and strengthen measures to prevent and combat corruption **more efficiently and effectively**;
2. Promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption **and in the recovery and return of stolen assets;**
3. Promote integrity, accountability and proper management of public affairs and public property;
4. ~~Ensure financial integrity and transparency in international financial architecture, taxation and transactions~~.

**Article 18bis: Organized crime**

6) UNODC would like to propose a separate article on organized crime, so as to highlight its relevance as serious impediment to sustainable development. The language for the proposed Article 18bis stems from the GA resolution 55/25 of 2000 that adopts UNTOC and would read as follows:

***Article 18bis: Prevention and combating transnational organized crime***

***States parties recognize the negative economic and social implications related to organized crime activities, which represent a serious threat to peace and security and an obstacle to sustainable development. To this end, States Parties, in accordance with the United Nations Convention on Transnational Organized Crime, shall, individually and jointly:***

1. ***Promote and strengthen measures as may be necessary, to prevent and combat all forms of organized crime;***
2. ***Establish criminal offences and other measures as may be necessary, in line also with international legal instruments, to prevent and combat transnational organized crime;***
3. ***Promote, facilitate and strengthen international cooperation and technical assistance to prevent and combat such activities more effectively at the national, regional and international levels, and to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at international level this end.***

**Article 22: International peace and security**

7) UNODC noticed that, while the concept of disarmament is mentioned in paragraph 2 of Article 22, the inclusion of reference to “*illicit arms flows*” would further align article 22.3 with the wording of the Agenda for Sustainable Development and add the important component of illicit arms transfers to criminals and non-state armed groups to the text of the convention.

* The suggestion of adding reference to illicit arms flows is based on the General Assembly's acknowledgment that “the issue of the illicit trade in small arms and light weapons […] and their uncontrolled spread in many regions of the world has a wide range of humanitarian and socioeconomic consequences and poses a serious threat to peace, reconciliation, safety, security, stability ***and sustainable development*** at the individual, local, national, regional and international levels” (See e.g. [A/RES/76/232](https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F76%2F232&Language=E&DeviceType=Desktop&LangRequested=False)). The importance of combating illicit arms flows to ensure peace and stability has also been recognized in Security Council's resolution [2117 (2013)](http://unscr.com/en/resolutions/doc/2117), which “recall[ed] with grave concern that the illicit transfer, destabilizing accumulation and misuse of small arms and light weapons fuel armed conflicts and have a wide range of negative human rights, humanitarian, ***development and socioeconomic consequences***”.
* For the above reasons, UNODC suggests amending paragraph 22.3 to read as follows:

*22.3 States Parties undertake* ***to significantly reduce illicit arms flows and*** *promote peace and inclusive societies within their territories for the full realization of the right to development for all.*