



# HRC 2012

## BACKGROUND GUIDE



2012



## LETTER FROM THE DAIS

Welcome MITMUNC 2012 Delegates!

I am thrilled and excited to welcome you to the conference and to the HRC in particular. My name is Bahar Shah, Head Chair for this year's HRC. I am a junior majoring in Mathematics and Computer Science, or as it is known at MIT in Course 18C. This is my third year participating in MITMUNC and I am excited to be back. My co-chair, Michael Veldman, is a sophomore majoring in Political Science. This is his first time at MITMUNC, but both he and I are looking forward to meeting you and hearing you debate.

The Human Rights Council is a forum through which important topics pertaining to the preservation of human rights are discussed. This year, the HRC will be examining "Promoting the Use of DNA Genetics in Protecting Human Rights" along with "The Prevention of Illegal Organ Trading in Disaster Affected Areas."

Each of these topics addresses a different part of the issue of preserving human rights and so debate on both topics should prove to be diverse and exciting. By picking these topics, we hope to give you the chance to research, think about, and discuss crucial human rights issues that you may not have seen in Model UN before.

As you prepare for MITMUNC this year, there are just a few things we would like you to keep in mind. Firstly, be creative

and think outside of the box. Just because a solution has not been reached yet, that doesn't mean there aren't exciting areas and ideas to explore. Secondly, remember that compromise is key. Figure out which nations will help you. And lastly and most importantly, have fun and enjoy yourself!

Until February,

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**Topic 1:****PROMOTING THE USE  
OF DNA GENETICS IN  
PROTECTING HUMAN  
RIGHTS****Introduction**

The use of DNA profiling to track people who have committed crimes has become invaluable in policing. When it is used wisely it can help convict people who have committed serious crimes or exonerate people who are innocent. Yet, in recent years, concerns over the indefinite storage of tissue samples, computerized DNA profiles and personal data in a DNA database have emerged. The concerns primarily deal with the possibility that this information could be used in ways that threaten individual's privacy and rights as well as those of their families.

Many countries in the world use forensic DNA, however rules on what data can be collected and stored and how it can be used differ greatly between the different countries. As DNA sequencing technology advances and becomes cheaper, there are plans to set up new databases or expand existing databases in many countries. In some countries, databases that used to contain records only from people convicted of serious crimes are being expanded to include many innocent people who have been arrested but not convicted as well as people convicted or given police warnings for minor crimes. These people are treated as a 'risky

population' who may commit future offences.

In other countries, a DNA database of the whole population has been proposed. Data-sharing, involving the transfer of information across international borders is also on the rise. Anyone who can access an individual's forensic DNA profile can use it to track the individual or their relatives and access to a DNA sample can reveal more detailed information about a person's health. DNA evidence is not foolproof and mistakes can be made in laboratories or in court. However, there are currently no international safeguards that would protect people's privacy and rights and prevent miscarriages of justice.

**Timeline of Genetics**

1866 Mendel's paper is published: units of inheritance in pairs; dominance and recessiveness; equal segregation; independent assortment

1869 DNA is identified by Friedrich Miescher as an acidic substance found in cell nuclei

1902 The chromosome theory of heredity is proposed by Sutton

1905 The word "genetics" is coined by William Bateson

1905 Bateson and Punnett say some genes are linked and do not show independent assortment

1910-11 The chromosome theory of heredity is by T.H. Morgan and colleagues

1910's-30's The eugenics movement is popular, fueling racist sentiment and leading to involuntary sterilization laws

1931 Genetic recombination is caused by a physical exchange of chromosomal pieces

1941 One gene encodes one protein, as described by Beadle and Tatum

1944 DNA is the molecule that mediates heredity. Most people were skeptical of these findings until 1952

1952 DNA is the molecule that mediates heredity. This confirmation of the 1944 results really convinced everyone

1953 DNA is in the shape of a double helix with antiparallel nucleotide chains and specific base pairing. This was deduced by Watson and Crick

1959 Messenger RNA is the intermediate between DNA and protein

1966 The genetic code is cracked by a number of researchers using RNA homopolymer and heteropolymer experiments as well as tRNA labeling experiments

1977 DNA sequencing technology is developed by Fred Sanger

1986 PCR is developed by Kary Mullis

1990's Genome projects are begun. The yeast genome is complete in 1996, and the *C. elegans* genome is done in 1998

1990's DNA fingerprinting, gene therapy, and genetically modified foods come onto the scene

1996-7 The first cloning of a mammal (Dolly the sheep) is performed by Ian Wilmut and colleagues, from the Roslin institute in Scotland

2000 The *Drosophila* genome is completed. The *Arabidopsis* genome is completed. The human genome is reported to be completed

2001 The sequence of the human genome is released, and the "post-genomic era" officially begins

2003 International Bioethics Committee issues International Declaration on Human Genetic Data

2008 European court of human rights in Strasbourg rules that keeping innocent people's DNA records on a criminal register breaches article eight of the Human Rights Convention

2009 Controversies continue over human and animal cloning, research on stem cells, and genetic modification of crops

2010-2011 DNA databases continue to generate controversy and debate over the ethical ramifications

## Current Issues

The retention of DNA profiles and samples taken from crime scenes can be readily justified because they might be useful if an investigation needs to be re-

opened in the future (either to convict a perpetrator, or to exonerate an innocent person). The major human rights concerns relate to the widening of the group of individuals (not crime scene samples) from whom DNA can be taken and then retained. This is because:

- DNA can be used to track individuals or their relatives, so a DNA database could be misused by governments or anyone who can infiltrate the system;
- In order to be useful to track suspects, DNA records are linked to other computer records such as records of arrest, which can be used to refuse someone a visa or a job, or lead to them being treated differently by the police;
- DNA samples and profiles contain private information about health and genetic relationships.

Expanding the DNA databases to include many people who have merely been arrested represents a significant shift in which the line between guilty and innocent is becoming blurred. It undermines the presumption of innocence by treating people who have merely been arrested as somehow less innocent than others who have not been convicted of any offence. DNA databases also shift the burden of proof because people with records on them may be required to prove their innocence if a match occurs between their DNA profile and a crime scene DNA profile at some point in the future.

DNA is not foolproof so procedures need to be in place to ensure that matches between individuals' DNA profiles and stored DNA profiles do not result in miscarriages of justice. The more DNA profiles that are compared the more likely errors are to occur, and problems can also result due to poor laboratory procedures, failure to require corroborating evidence, or if DNA evidence is planted at a crime scene. These concerns are exacerbated by wider problems within many criminal justice systems, which may result in racial, religious or political bias in whose DNA and personal information is kept, or insensitivity to the impacts on vulnerable people, including children and the mentally ill.

### **DNA Genetics and Human Rights in Specific Countries**

The largest databases of individuals' DNA profiles are in the UK and USA which each store the DNA profiles of about 5 million people. Currently, laboratories in both these countries also store individuals' DNA samples linked to the person's record on the database. In the UK, DNA collected and retained under the Counter-Terrorism Act 2008 can now be used for "identification...of the person from whom the material came". This is a recent change of use which allows biological surveillance of certain individuals (i.e. the ability to use an individual's DNA to track and identify them, whether or not they are suspected of committing a crime). UK Government proposals to collect DNA and fingerprints routinely on arrest for any offence (including dropping litter and parking fines) and use them routinely for

identification purposes (i.e. by matching the individual to their details on the DNA and fingerprint databases, using facilities set up in shopping centers for such purposes) were dropped in 2008 following public outcry.

In the United States, Canada, the United Kingdom, Australia and New Zealand the Innocence Project has been used to prove the innocence of wrongly convicted people through the use of DNA testing, and in reforming the criminal justice systems to prevent future injustice.

The International Declaration on Human Genetic Data addressed the need for developing countries to be able to collect and process human genetic data as well as increase the sharing of resources and access between all nations. However, most developing countries do not have comprehensive databases or access to the methods needed to fully use human genetic data.

Different ethical, legal and technical standards are set for DNA databases in each country.

## Important Questions

- Under what circumstances should the police be allowed to collect DNA and store samples and profiles?
- Are there any procedures to destroy individuals' samples or records when they are no longer needed?

- What data is sent to whom and is it kept securely?
- Are quality assurance procedures being followed in the labs that analyze the DNA?
- How are DNA matches used in court and is corroborating evidence needed?
- Can the database and samples be used for additional purposes other than solving crimes?
- Is there any independent oversight and information about how the database operates?
- Are safeguards included in legislation, or only in guidelines that can easily be changed?
- How can the collection and storage of human genetics be conducted in a way that does not violate the Human Rights Convention with respect to individual privacy?

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## TOPIC 2:

## THE PREVENTION OF ILLEGAL ORGAN TRADING IN DISASTER AFFECTED AREAS

### Introduction and Background

Organ trade is essentially the trade involving human organs for transplantation. Possibly as a result of regulations on the worldwide trade of organs, there is a shortage of organs available for transplantation. The demand for human organs has grown due to increased lifespans, more accurate medical diagnoses of organ failure cases, and improved success rate of organ transplants. Trafficking definitely remains to be an issue, since the world's poorest can earn an average of \$5,000 for selling an organ. In disaster affected areas, this is further exacerbated by the basic human need and desire to survive; but the readiness of a person to sell their organs and be exploited both increase. This year, the HRC will tackle the question of preventing these illegal transfers within a comprehensive framework.

This topic is not meant to be so expansive so as to cover all international and intranational organ trading. Rather, as this background guide will show, you are meant to limit your scope to specifically *illegal* organ trading, and to areas where disaster has left a lasting mark or is still currently occurring. Take the definition of “disaster” to include all sorts of disaster, whether natural or artificial. Moreover,

make sure to broaden your scope to include more than just the international trade. Although this has increasingly been witnessed to be an issue for many, including those traveling to other countries and not being fully cognizant of the laws of the land they are visiting, there is still a need to consider and debate the issues of the illegal organ market within specific countries' or regions' boundaries. Of course—and as always—the sovereignty of the soil and of the people need to constantly be taken into consideration when thinking of ideas and solutions to these problems. But then there comes the issues of human rights, which can sometimes supersede the need to respect a specific State's sovereignty. This will all be discussed within this guide.

### Theory Meets Practicality

The first thing to consider is the theory and the pragmatism behind organ trading—whether legal or illegal.

#### *Human Rights Issues*

The UN Declaration of Human Rights states in Article 3: “Everyone has the right to life, *liberty* and security of person” (emphasis added); in Article 12: “No one shall be subjected to *arbitrary interference with his privacy*, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks” (emphasis added); in Article 17 Section 1: “Everyone has the *right to own property alone as well as in association with others*” (emphasis added); and in Article 29 Section 2: “In the



exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the *just requirements of morality, public order and the general welfare in a democratic society*” (emphasis added).

### *Theory*

When analyzing the theory, the first thing to think about is the right to self-determination and the basic human right to autonomy over one’s body. For instance, in most countries you have the right to get piercings and tattoos, to consume most anything you wish, and to *donate* your organs to others (e.g., your relatives). Indeed, you generally have the right to put yourself in harm’s way, as long as you recognize and accept the risks that might be incurred. You can sky-dive, go swimming at the beach, and operate motor vehicles—though all of these things have the risk (some higher than others) of you dying.

### *Practicality*

No matter the amount of examples you can think of to prove that bodily autonomy exists, there are other practicalities to think of—that is, the state’s interest in protecting you. Specifically, you should think of the role of the state in regulating and criminalizing things you consume—like drugs and alcohol—and things you can do to your body—like suicide and prostitution. While some may say that this is the State

overstepping its bounds (and indeed, there are many States who are very lax on many of these issues—you should look into your country’s stance on bodily autonomy) there are others who claim that your well-being (or lack thereof) can have a broader impact on the general welfare of the public, and thus can be regulated.

And remember that just because a State or an international treaty may or may not regulate a certain act that a person may do—that does not make it necessarily justified. (There are plenty of examples in different States of unjust laws that are on the books that may or may not even be followed or enforced.)

### *A Balancing Act between Theory and Practicality*

Furthermore, some like Scheper-Hughes (2002) might argue that human morality and dignity are threatened when the human body is able to be divided and sold. Nevertheless, as Kishore (2005) points out, one can sell one’s own blood, sperm, eggs, etc. legally. Although those specific bodily fluids will eventually be naturally replaced, the fact is that one’s body is one’s own property; something that one can choose to sell if one desires to do so. Additionally, each person has two kidneys, but only needs one, and if someone wants to spare a part of a lung or liver, then that is their choice.

## **Country Blocs and Positions**

As usual, depending on your country’s regional placement, your interactions with other countries will vary. After considering these facts, you should also do some

research on how your specific country views and deals with organ trading and other aspects of bodily autonomy. Look at the proffered solutions below and see which one your country may have chosen to combat illegal organ trading; or, see if there is another solution that is not considered in this guide (e.g., a completely new one or a combination of other solutions).

### *Disaster Affected Areas and Others*

Of course, keep in mind that this topic is specific to disaster affected areas (for reasons previously mentioned and to be discussed further), which means that you should be looking at how to solve this issue for people who have limited means as it is, and for governments who in all likelihood cannot easily provide for their people and cannot regulate such an intricate market. Perhaps this description fits your country. Whether or not it does, this topic touches all countries, as those who are most likely to be the buyers or consumers in the organ trade are those who are in well-developed areas and countries (i.e., those who are not in disaster affected areas but are still a part of the illegal or legal organ trading market).

## **A “Simple” Solution**

At this point, you might look at the topic and, when considering the points made earlier in the Declaration of Human Rights, you might think that the best solution is to simply legalize organ trading in these areas and to implement some sort of regulation system to make sure that the trading is done in a fair and safe manner.

However, a further complication is that these disaster affected areas most likely have an incompetent or currently disabled governmental system that simply cannot handle this type of system. After all, most people do not want to enter into the organ-selling business because of its risks and its limitations (i.e., you can only sell one kidney, etc.). Rather, they are somewhat forced to do so because of their economic situations, and since their region or country has gone through some sort of disaster, it is most probable that their government is trying to deal with the disaster if they can, and thusly cannot necessarily deal with the economic situation of their people (i.e., providing welfare, Social Security, unemployment benefits, etc.).

### *Government’s Role*

In addition, some of the ultimate considerations that should be taken include the fact that this possible market would take place just as any other market would in economics: a seller has a product that a buyer is willing and able to buy. Thus, with imagined supply and demand curves, one can understand that there would be a market-clearing price that would benefit and satisfy both parties. Then, one might ask, where is the harm? Well, Shceper-Hughes (2002) contends that the seller does not fully understand the risks, and even presents a few examples of how some organ donors would afterwards become ill and sometimes die. Clearly, this piece of information surpasses the “right to sell” argument. So what can be done?

Despite some people calling for the severance of the tie between the populace and the government, it ought to be noted that some government involvement is healthy—see: Social Security, welfare programs and benefits, national highways, etc. (in fact, the Declaration of Human Rights says that some of these things are *fundamental* rights that every government ought to provide for their people). Nevertheless, the opposite side of the political ideology spectrum sometimes calls for too big of a tie between the populace and the government—which is exactly what Kishore (2002) does when proposing that the government set in place regulations like price ceilings on organ selling. In spite of this, one must note that price ceilings always lead to shortages. (To learn more about price ceilings, you should consult a microeconomics textbook.) Therefore, the amount of government regulation posited is minimal, but undoubtedly required. Because some of the sellers do not fully understand the risks that they are taking when selling their organs, informed consent by law ought to be tacked on to a law that would legitimize organ selling/buying.

### *Consent*

This consent could be that, in order to make the deal, both parties must read and sign a contract, including a disclaimer written up by someone like regulating body (this could be the HRC itself, another body of the UN, or a committee thereof) on behalf of the buyer, and a waiver on behalf of the seller and of the buyer. Then, both parties would be fully aware of the risks involved, including the

likelihood of a mistake happening in surgery, of a body rejecting someone else's organ, of complications due to a missing organ, a combination of the aforementioned, and/or something else altogether. A blaring problem with such a binding contract might be: well, what happens if the seller signs it, but later decides not to go through with the transaction? A simple solution would be to only give the seller the financial incentive—the money from the buyer—after the transplant is complete. Thus, if the seller does decide to discontinue the trade, then neither party would have lost something they had received, but not had before—such a stipulation could be made in the clause of the contract.

Here, by implementing a regulatory system, as shown in economic theory, so-called “black” markets are heavily mitigated to the point of extinction. Specifically, by implementing a solution to regulate organ trading (and thus legalizing it) the amount of illegal organ trading would most likely decrease and ultimately die out.

### **Other Solutions**

Still, there are other considerations that need to be taken before implementing any sort of solution. For instance, although people have bodily autonomy and the right to work/sell as they please, does the government of a State not have the right to care for the welfare (and perhaps even the morality) of its people? Perhaps the solution is not to legalize (or decriminalize) organ trading, but rather to keep it illegal and to merely incentivize or

push people to stay away from that path. This could be done in two ways: punishment or positive reinforcement.

### *Punishment*

First, the current system that is in place in many countries where organ trading is illegal in any sort of form is covered by punishment. This is the general method used by governments to mitigate or stop crime. A person commits the crime—selling their organs—and the government punishes them with fines and/or jail/prison time, or other means. This is generally the method used by the government to crack down on illegal organ trading—and it is used on both parties, sometimes on the buyer, or the person who might act as the “middle man”, more severely than on the seller. This is usually because it is recognized that the seller is the one who is in a tough situation (perhaps because they are in a disaster affected area where they cannot find legal work, and their government is ineffectual) and cannot even be justly punished as the others can. This measure, then, tries to combat illegal organ trading by disincentivizing the seller, which makes the willing buyer unable to find someone to buy their “product”; and if they cannot find a willing and able buyer, they obviously cannot sell the item.

### *Internal Development Could Lead to Positive Reinforcement*

On the other hand, a government may wish to use positive reinforcement to get their citizens to participate in other areas of “morally” right or simply more legal

work to make money. The first thing that the government would have to do is put money towards universal, free education for the public to be able to find other jobs, and to maybe even understand how dangerous it is to participate in organ trading in the first place. The government would then have to be able to provide infrastructure for its people, to help the economy when it needs it, and to provide for the people when they are unemployed or unable to work (e.g., disabled, children, or elderly). Take a look at the Declaration of Human Rights and notice how all of these provisions aforementioned are called for by the international community as *basic* human rights that every State should provide for its people. This is generally seen as the more humane way for a government to mitigate or stop illegal activity in general, and can clearly be applied towards the dangerous acts of organ trading. It is especially important to implement these provisions for those people in disaster affected areas, as they are the most likely to turn to illegal activities to make money, even if it might cost them their life.

### *What is the “Right” Solution?*

For the HRC, the latter is the more probable way to go, as it is the more humane way, and is ultimately a better solution because of its long-lasting impacts on other areas of social welfare and the general well-being of the people. Either solution would call for the assistance of the international community because the governments of the States that have been struck by a natural or artificial disaster that have people participating in illegal organ

trading are the most likely to not be able to provide for either of the solutions laid out. Thus, you must think about which other UN bodies to encourage to step in—maybe the UNSC for the first solution, or the UNDP for the second. Also, regulatory and watchdog agencies and bodies (including the HRC) should probably be kept in positions of administrative authority to ensure that the stipulations called for in whichever solution is decided upon are actually fulfilled by the State and the international community.

Here, specificity is key. Timelines and numbers are helpful for the State and the international community to know whether or not their progress is going well—that is, whether or not their goals are being met.

## Concluding Remarks and Questions

There are still unanswered questions and further topics for you to consider when looking at this topic.

For instance, what has the UN done to cut down on illegal organ trading? They have passed resolutions and had many conventions that regulate and discuss international crime (which includes illegal organ trading), but what else needs to be done? What is the correct balance between the rights to bodily autonomy, to work/sell/make contracts, and to liberty—all guaranteed in the Declaration of Human Rights—and the State's role in preserving the general welfare of its people? Should organ trading just be legalized and regulated by the State and/or

the international community? Or should organ trading be illegal? In which case, should the government step in to punish those who commit this crime, or should it try to preemptively stop people from committing this crime in the first place by implementing other basic human rights like welfare and education?

Although there are other questions, they are all for you to think of and to ultimately answer yourself. Just keep in mind the specificity of this topic—but also the broader applications and the scope of it.

## References and Further Readings

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