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## Commission on Crime Prevention and Criminal Justice Background Guide 2021

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# NATIONAL MODEL UNITED NATIONS



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Dear Delegates,

Welcome to the 2021 National Model United Nations New York Conference (NMUN•NY)! We are pleased to introduce you to our committee, the Commission on Crime Prevention and Criminal Justice (CCPCJ). This year's staff is: Directors Vikram Sakkia (Conference A) and Brian Tomblin (Conference B), and Assistant Directors Matthias Burtscheidt (Conference A) and Theresa McMackin (Conference B). Vikram holds a B.S. from the American University of Sharjah and is currently pursuing a M.S. at New York University, both in Computer Engineering. Brian holds an M.S. in Biomedical Engineering and is currently a graduate student at the University of Pittsburgh pursuing an M.P.H. in Health Policy and Global Health. Matthias completed his B.A. in Political Science and Sociology and is currently enrolled in a Masters in International Relations and Diplomacy at the University of Trier. Theresa holds a B.A. in Historical Studies and an M.A. in Holocaust and Genocide Studies with a Certificate in Genocide Prevention.

The topics under discussion for Commission on Crime Prevention and Criminal Justice are:

- I. Improving Vulnerable Persons' Access to Justice Including a Fair Trial
- II. Combating Organized Cybercrime
- III. Combating Illicit Organ Trafficking

CCPCJ is the principal policy making body and governing body of the UN Office on Drugs and Crime (UNODC), and is a functional commission of the Economic and Social Council (ECOSOC); it also approves the budget of the UN Crime Prevention and Criminal Justice Fund. Recent threats to international peace and security have made CCPCJ's role even more relevant, while the adoption of the 2030 Agenda for Sustainable Development has also significantly influenced the work of the Commission.

This Background Guide serves as an introduction to the topics for this committee. However, it is not intended to replace individual research. We encourage you to explore your Member State's policies in depth and use the Annotated Bibliography and Bibliography to further your knowledge on these topics. In preparation for the Conference, each delegation will submit a Position Paper by 11:59 p.m. (Eastern) on 1 March 2021 in accordance with the guidelines in the [Position Paper Guide](#) and the [NMUN•NY Position Papers](#) website.

Two resources, available to download from the [NMUN website](#), that serve as essential instruments in preparing for the Conference and as a reference during committee sessions are the:

1. [NMUN Delegate Preparation Guide](#) - explains each step in the delegate process, from pre-Conference research to the committee debate and resolution drafting processes. Please take note of the information on plagiarism, and the prohibition on pre-written working papers and resolutions. Delegates should not start discussion on the topics with other members of their committee until the first committee session.
2. [NMUN Rules of Procedure](#) - include the long and short form of the rules, as well as an explanatory narrative and example script of the flow of procedure.

In addition, please review the mandatory [NMUN Conduct Expectations](#) on the NMUN website. They include the Conference dress code and other expectations of all attendees. We want to emphasize that any instances of sexual harassment or discrimination based on race, gender, sexual orientation, national origin, religion, age, or disability will not be tolerated. If you have any questions concerning your preparation for the committee or the Conference itself, please contact the Under-Secretaries-General for the ECOSOC Department, Aiskell Roman (Conference A) and Chase Mitchell (Conference B), at [usg.ecosoc@nmun.org](mailto:usg.ecosoc@nmun.org).

We wish you all the best in your preparations and look forward to seeing you at the Conference!

Sincerely,

**Conference A**

Vikram Sakkia, *Director*

Matthias Burtscheidt, *Assistant Director*

**Conference B**

Brian T. Tomblin, *Director*

Theresa M. McMackin, *Assistant Director*

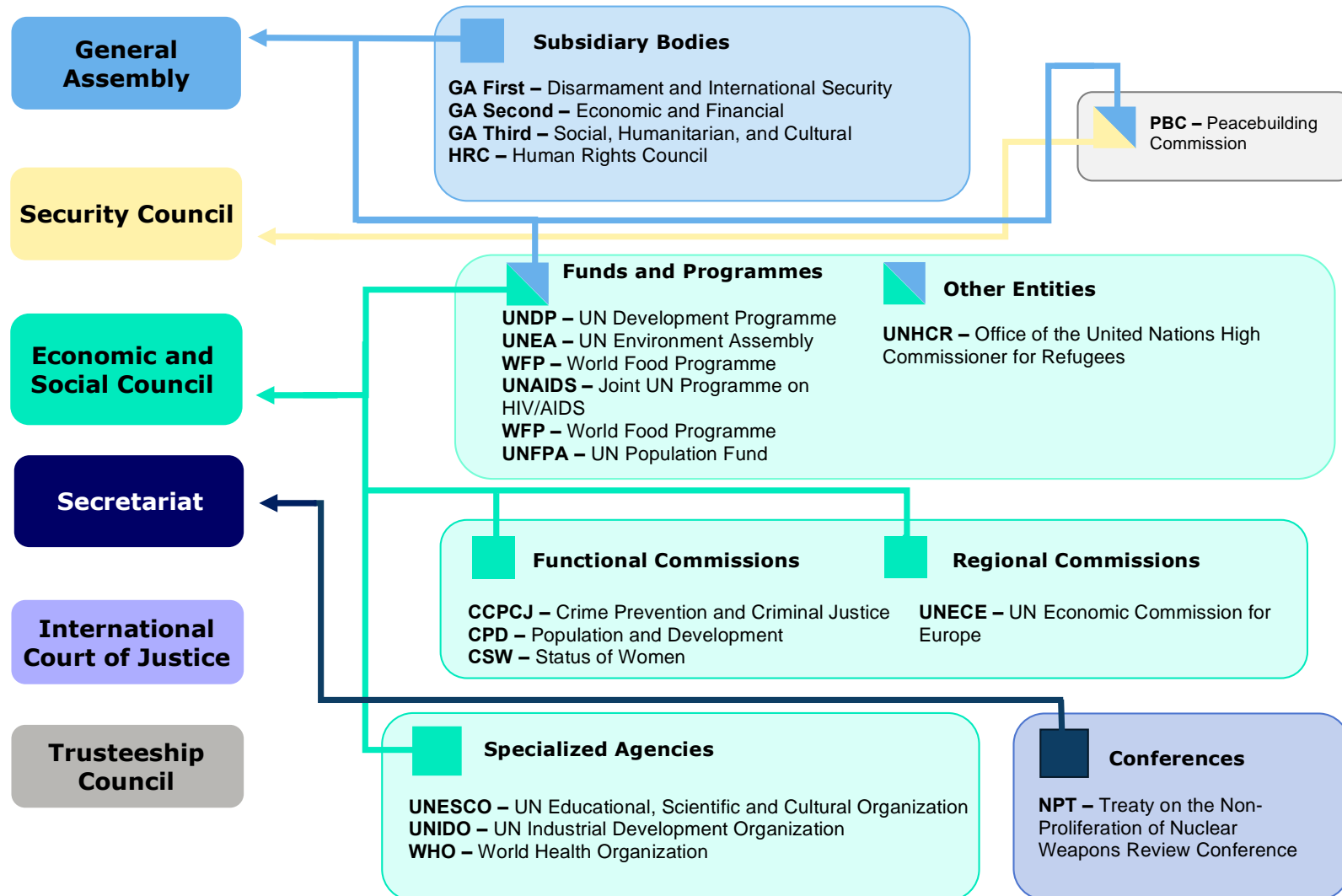


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## United Nations System at NMUN•NY

This diagram illustrates the UN system simulated at NMUN•NY and demonstrates the reportage and relationships between entities. Examine the diagram alongside the Committee Overview to gain a clear picture of the committee's position, purpose, and powers within the UN system.



## Committee Overview

### Introduction

The Commission on Crime Prevention and Criminal Justice (CCPCJ) is the main body within the United Nations (UN) that addresses issues related to crime and justice systems and is the main forum for Member States to debate standards and norms in this area.<sup>1</sup> CCPCJ is a subsidiary organ and functional commission of the Economic and Social Council (ECOSOC).<sup>2</sup> CCPCJ collaborates with other UN bodies working in the field of crime and criminal justice, and it is a significant actor in the efforts for creating conditions for sustainable development, peace, and security enabling the 16<sup>th</sup> Sustainable Development Goal of the *2030 Agenda for Sustainable Development (2030 Agenda)* (2015).<sup>3</sup> CCPCJ reports to ECOSOC and the Third Committee (Humanitarian and Cultural Affairs) of the UN General Assembly, and adopts its resolutions through these entities.<sup>4</sup> Together with the Commission on Narcotic Drugs (CND), CCPCJ is part of the UN Office on Drugs and Crime (UNODC).<sup>5</sup> Furthermore, CCPCJ is the preparatory body for the UN Congress on Crime Prevention and Criminal Justice (UN Crime Congress), and it also manages the finances of the UN Crime Prevention and Criminal Justice Fund.<sup>6</sup>

ECOSOC created CCPCJ under ECOSOC resolution 1992/1, following the request of the General Assembly in resolution 46/152, and established the mandate of CCPCJ in resolution 1992/22.<sup>7</sup> In 2006, the General Assembly adopted resolution 61/252 to further expand the mandate of CCPCJ.<sup>8</sup> The mandate of CCPCJ aims to improve equity and equality of criminal justice administration services and provide tools such as policy suggestions and voluntary crime reporting to help with the elimination of national and transnational crime.<sup>9</sup> CCPCJ works in congruence with various UN bodies that work primarily with criminal justice and crime prevention.<sup>10</sup> CCPCJ holds regular annual and intersessional meetings throughout the year to provide guidance to UNODC on policy and initiatives related to crime prevention and criminal justice.<sup>11</sup> Since the expansion of the mandate, the debate in the new Commission has gradually become politicized as diplomats, rather than experts, have become responsible for the deliberations.<sup>12</sup> These changes reflect the growing necessity of governments discussing criminal issues at the international level, especially within the UN system.<sup>13</sup> With the rise in transnational crime in the past 20 years, CCPCJ has assumed a central role in the discussion on the measures to improve international coordination to combat national and transnational crime, and to strengthen criminal justice administration systems.<sup>14</sup>

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<sup>1</sup> UNODC, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, 2006; UNODC, *CCPCJ: Commission on Crime Prevention and Criminal Justice*, 2020.

<sup>2</sup> UNODC, *CCPCJ: Mandate and Functions*, 2020.

<sup>3</sup> UNODC, *CCPCJ: Commission on Crime Prevention and Criminal Justice*, 2020; UNODC, *Resolution Database: CCPCJ*, 2020.

<sup>4</sup> UN CND, *Commission on Narcotic Drugs and Commission on Crime Prevention and Criminal Justice: General Information on Draft Resolutions and Draft Decisions*.

<sup>5</sup> UNODC, *Commissions*, 2020.

<sup>6</sup> UNODC, *CCPCJ: Mandate and Functions*, 2020.

<sup>7</sup> UNODC, *CCPCJ: Commission on Crime Prevention and Criminal Justice*, 2020.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 228.

<sup>13</sup> *Ibid.*, p. 229.

<sup>14</sup> UNODC, *CCPCJ: Commission on Crime Prevention and Criminal Justice*, 2020.

## **Governance, Structure, and Membership**

CCPCJ consists of 40 Member States, elected by ECOSOC, each serving a three-year term.<sup>15</sup> The members are chosen according to equitable geographical allocation and are composed of 12 African states, nine Asian-Pacific states, four Eastern European states, eight Latin American and Caribbean states, and seven Western European and other states.<sup>16</sup> The body meets biannually at the UNODC headquarters in Vienna, Austria to consider administrative and budgetary matters.<sup>17</sup> There are also inter-sessional meetings to finalize the provisional agenda, address formal and substantive matters, and to offer effective policy guidance to UNODC.<sup>18</sup> At each session, CCPCJ approaches a thematic discussion chaired by the Bureau of the CCPCJ on a priority issue identified at its previous sessions.<sup>19</sup>

The Bureau and Extended Bureau of the Commission assist CCPCJ in organizing and preparing its work thoroughly and in advance of the various sessions.<sup>20</sup> The Bureau's Chairperson, three Vice-Chairpersons, and Rapporteur rotate amongst Member States after each session, and the Extended Bureau consists of the chairpersons of the five regional groups, the European Union, China, and the Group of 77.<sup>21</sup> For the 29<sup>th</sup> session of the commission, the following members were elected: Ambassador Jose Antonio Marcondes de Carvalho of Brazil as Chairperson, along with Ambassador Khojesta Fana Ebrahimkhel of Afghanistan, as Mr. Ivan Gospodinov of Bulgaria was then elected as the rapporteur of the Bureau.<sup>22</sup> The Bureau and Extended Bureau receive assistance from the Secretariat to the Governing Bodies (SGB).<sup>23</sup> The SGB serves as a link between CCPCJ and CND, as well as other parts of UNODC, and as an administrative link to the General Assembly and ECOSOC.<sup>24</sup>

Due to the great variety of topics covered by CCPCJ, the Commission has several external experts and working groups.<sup>25</sup> These include a standing open-ended intergovernmental working group paired with CND on improving governance and establishing stable funding for UNODC, an expert group on protection against trafficking in cultural property, and a group on standard minimum rules for the treatment of prisoners.<sup>26</sup> Other expert group meetings have also been held in Vienna and in other Member States; one was held in 2014 on gender-related killings of women and girls, while another was held in 2013 on strengthening access to legal aid in criminal justice systems.<sup>27</sup>

CCPCJ is reliant on funding provided by Member States, the amount of which is largely at each state's own discretion.<sup>28</sup> While UNODC's administrative infrastructure and core normative work are financed

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<sup>15</sup> UN General Assembly, *Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme (A/RES/46/152)*, 1991.

<sup>16</sup> New Zealand, Ministry of Foreign Affairs and Trade, *United Nations Handbook 2018-2019*, 2019, pp. 168-170.

<sup>17</sup> UNODC, *CCPCJ: Meetings*, 2020; UNODC, *Documentation*, 2020; UN ECOSOC, *Frequency and Duration of the Reconvened Sessions of the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice (Decision 2009/251)*, 2009.

<sup>18</sup> UNODC, *CCPCJ: Meetings*, 2020.

<sup>19</sup> *Ibid.*; UNODC, *CCPCJ: Commission on Crime Prevention and Criminal Justice*, 2020.

<sup>20</sup> UNODC, *CCPCJ: Bureau and Extended Bureau*, 2020.

<sup>21</sup> *Ibid.*

<sup>22</sup> UN CCPCJ, *CCPCJ Newsletter: January – June 2020: 29th session of CCPCJ and 14th Crime Congress postponed due to COVID-19 outbreak*, 2020.

<sup>23</sup> UNODC, *Secretariat to the Governing Bodies*, 2020.

<sup>24</sup> *Ibid.*

<sup>25</sup> UNODC, *CCPCJ: Expert Groups and Working Groups*, 2020.

<sup>26</sup> UNODC, *Standard Minimum Rules for the Treatment of Prisoners*, 2019; UNODC, *Standing Open-Ended Intergovernmental Working Group on Improving the Governance and Financial Situation of the United Nations Office on Drugs and Crime*, 2015; UNODC, *Third Meeting of the Open-Ended Intergovernmental Expert Group on Protection Against Trafficking in Cultural Property*, Vienna, 15-17 January 2014, 2016.

<sup>27</sup> UNODC, *Open-Ended Intergovernmental Expert Group Meeting on Gender-Related Killing of Women and Girls, 11-13 November 2014*, 2019; UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2013.

<sup>28</sup> UNODC, *2016 Annual Appeal*, 2016, p. 5.

through a regular budget, the largest part of its budget is made up of extra-budgetary resources.<sup>29</sup> Approximately 80-85% of the total budget is comprised of special-purpose funds, and donations by Member States are most important.<sup>30</sup>

### **Mandate, Function, and Powers**

The Commission acts as the principal policymaking body of the United Nations in the field of crime prevention and criminal justice.<sup>31</sup> As one of ECOSOC's functional commissions, CCPCJ's role is to consider and make recommendations to ECOSOC through a deliberative process in its fields of expertise and responsibility.<sup>32</sup> General Assembly resolution 46/152 of 1991 establishes five main functions to be fulfilled by the CCPCJ: to offer policy guidance in the area of crime prevention and criminal justice; to design, monitor, and review the UN crime program's implementation; to enable and coordinate assistance for UN entities for the prevention of crime and treatment of offenders; to help Member States become aligned and active for the goals of the program; and to plan and manage the UN Crime Congresses.<sup>33</sup>

Thereafter, ECOSOC mandated in its resolution 1922/22 for CCPCJ to approach issues of national, transnational, and financial crime; to promote the implementation of criminal law and all forms of crime prevention measures; and to assist in the management and improvement of criminal justice and related systems, particularly in strengthening national capacities in developing and implementing policies.<sup>34</sup> ECOSOC further expanded CCPCJ's mandate in 2006, making CCPCJ a governing body of UNODC as per General Assembly resolution 61/252, and giving the Commission the responsibility to approve the general budget of the UN Crime Prevention and Criminal Justice Fund, which consists of the financial resources allocated to provide technical assistance in crime-related issues.<sup>35</sup>

CCPCJ coordinates with other UN agencies and Member States to hold preparatory meetings in the lead up to the UN Crime Congress, which has been held every five years since 1955 to consider specific crime-related topics.<sup>36</sup> The Congresses influence national and international crime prevention and criminal justice practices through the sharing of information, the formulation of policy recommendations, and by mobilizing public opinion for crime and justice reforms.<sup>37</sup> Through the preparation of the congresses, CCPCJ has contributed to international law in the form of guidelines and other recommendations, and

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<sup>29</sup> UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2013.

<sup>30</sup> Bewley-Taylor & Trace, *The Funding of the United Nations Office on Drugs and Crime: An Unfinished Jigsaw*, 2006, pp. 2-6; UNODC, *Fundraising Strategy 2012-2015: United Nations Office on Drugs and Crime (UNODC)*, 2012, pp. 33-34; UN CCPCJ, *Improving the Governance and Financial Situation of the United Nations Office on Drugs and Crime: Recommendations of the Standing Open-Ended Intergovernmental Working Group on Improving the Governance and Financial Situation of the United Nations Office on Drugs and Crime (Resolution 24/2)*, 2013.

<sup>31</sup> UNODC, *CCPCJ: Commission on Crime Prevention and Criminal Justice*, 2020.

<sup>32</sup> UNODC, *CCPCJ: Newsletter January-June 2019 – 28<sup>th</sup> Session of the CCPCJ*, 2019; Guide to UN Documentation, Dag Hammarskjöld Library at Uppsala University, *Functional Commissions*, 2018.

<sup>33</sup> UN General Assembly, *Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme (A/RES/46/152)*, 1991.

<sup>34</sup> UN ECOSOC, *Implementation of General Assembly Resolution 46/152 Concerning Operational Activities and Coordination in the Field of Crime Prevention and Criminal Justice (E/RES/1992/22)*, 1992.

<sup>35</sup> UN General Assembly, *Questions Relating to the Programme Budget for the Biennium 2006–2007 (A/RES/61/252)*, 2006; UNODC, *Crime Prevention and Criminal Justice*, 2020.

<sup>36</sup> UN ECOSOC, *Establishment of the Commission on Crime Prevention and Criminal Justice (E/RES/1992/1)*, 1992; UN ECOSOC, *Implementation of General Assembly Resolution 46/152 Concerning Operational Activities and Coordination in the Field of Crime Prevention and Criminal Justice (E/RES/1992/22)*, 1992; UNODC, *United Nations Crime Congresses: UNODC, Fourteenth United Nations Congress on Crime Prevention and Criminal Justice - About*, 2018.

<sup>37</sup> Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 229; UN General Assembly, *Follow-up to the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice and Preparations for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice (A/RES/72/192)*, 2018.

encouraged the establishment of national and regional preparatory committees.<sup>38</sup> Furthermore, CCPCJ's actions have contributed to strengthening law through the consolidation of the UN crime program, for instance by initiating the deliberations on the *United Nations Convention against Transnational Organized Crime* (2000).<sup>39</sup>

CCPCJ also cooperates with the UN Interregional Crime and Justice Research Institute (UNICRI), and invites the institute to report on issues related to its work.<sup>40</sup> Together with UNICRI and other UN bodies, CCPCJ is part of the UN Crime Prevention and Criminal Justice Programme Network.<sup>41</sup> The network was developed to strengthen co-operation in the field of crime prevention and criminal justice by providing a platform for the exchange of information, research, training, and public education.<sup>42</sup>

### **Recent Sessions and Current Priorities**

The last held session by the Commission was the 28<sup>th</sup> session, in May 2019, with a thematic discussion on "The responsibility of effective, fair, humane and accountable criminal justice systems in preventing and countering crime motivated by intolerance or discrimination of any kind."<sup>43</sup> Participants of the session discussed a wide range of topics, including better ways to improve the role of youth and their contribution to crime prevention, as well as a call for better education on their rights as youth.<sup>44</sup> The adopted resolutions covered an assortment of topics to ensure international peace and justice.<sup>45</sup> These resolutions are vital as their primary goal is to protect persons against crimes as well as to find more stringent ways to hold those who inflict these crimes on others accountable.<sup>46</sup>

Due to the global circumstances in relation to the COVID-19 pandemic, the 29<sup>th</sup> session of the commission to be held in Vienna, Austria has been postponed to 3 December 2020 and will take place in a scaled-down format.<sup>47</sup> The thematic discussion is set to focus on "Effective measures to prevent and counter the smuggling of migrants, while protecting the rights of smuggled migrants, particularly women and children and those unaccompanied migrant children."<sup>48</sup> The 29<sup>th</sup> session will consider the possible implementation of policy reviews and other ways to protect migrants who are smuggled illegally.<sup>49</sup> The primary focus is aimed at vulnerable groups, such as women and children, who need to be educated of their rights as migrants and be provided with safe and secure locations to go when trying to flee from unfavorable circumstances.<sup>50</sup>

The 14<sup>th</sup> Crime Congress, which was set to take place April 2020 in Kyoto, Japan, was postponed to March 2021 due to the COVID-19 pandemic.<sup>51</sup> The thematic discussion for this session is titled "Advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030

<sup>38</sup> UN CCPCJ, *Four transitions in the United Nations Crime Program, 2017*; UNODC, *2019 Regional Preparatory Meetings*, 2019.

<sup>39</sup> Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 229.

<sup>40</sup> UN CCPCJ, *Strengthening Crime Prevention and Criminal Justice Responses to Counterfeiting and Piracy (Decision 19/1)*, 2010; UNICRI, *United Nations Crime Prevention and Criminal Justice Programme Network*, 2019.

<sup>41</sup> UNODC, *Institutes of the UN Crime Prevention and Criminal Justice Programme Network (PNI)*, 2020.

<sup>42</sup> *Ibid.*

<sup>43</sup> UNODC, *CCPCJ: Thematic Discussion*, 2020.

<sup>44</sup> UN ECOSOC, *UN CCPCJ, Report on the Twenty-Eighth Session (7 December 2018 and 20-24 May 2019) (E/2019/30)*, 2019.

<sup>45</sup> *Ibid.*

<sup>46</sup> UNODC, *Resolution Database: CCPCJ*, 2020.

<sup>47</sup> UN CCPCJ, *CCPCJ Newsletter: January – June 2020: 29th session of CCPCJ and 14th Crime Congress postponed due to COVID-19 outbreak*, 2020.

<sup>48</sup> UNODC, *CCPCJ: Thematic Discussions*, 2020.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> UNODC, *The Fourteenth United Nations Congress on Crime Prevention and Criminal Justice – About*, 2020; UN General Assembly, *Fourteenth United Nations Congress on Crime Prevention and Criminal Justice (A/74/L.47)*, 2020.



Agenda.”<sup>52</sup> As decided by General Assembly resolution 72/192 of 2018, the upcoming Congress will include workshops to discuss evidence-based crime prevention, reducing reoffending, current crime trends, and education and youth engagement as key to making societies resilient to crime.<sup>53</sup>

The CND and the CCPCJ explored the opportunities of holding virtual meetings to still ensure vital discussion during the COVID-19 pandemic.<sup>54</sup> On 12 June 2020, the CCPCJ and the CND hosted a joint virtual high-level special event in commemoration of the 25<sup>th</sup> anniversary of the Fourth World Conference on Women and adoption of the Beijing Declaration and Platform for Action (1995).<sup>55</sup> The conferences organized in 2020 focused on the accelerated realization of gender equality and the empowerment of all women and girls, towards achieving the SDGs.<sup>56</sup> The event raised awareness about the commitments made at the 1995 conference in Beijing, in particular in relation to the work of the Commissions in Vienna and UNODC.<sup>57</sup> Thus highlighting the contributions made by UNODC and CCPCJ towards alleviating the pre-existing inequalities affecting women and girls and preventing the further deepening due to the COVID-19 pandemic.<sup>58</sup>

CCPCJ continues to incorporate the SDGs into its work and duties.<sup>59</sup> The Commission held a debate on the topic of enhancing the role of CCPCJ and its implementation of the SDGs; it discussed, for instance, having criminal justice systems become more accountable and humane when it comes to equality of treatment and to counter discriminatory behavior when it comes to crime prevention and criminal justice.<sup>60</sup> CCPCJ’s work has been significantly influenced by the 2030 Agenda, in particular by SDG 16 (peace, justice, and strong institutions).<sup>61</sup> With SDG 16 being one that is focused on making sure institutions are equal and fair when it comes to crime and justice, the mission of the Commission is one that mimics that of the SDGs and the 2030 Agenda.<sup>62</sup> The High-level Political Forum (HLPF) looked over several SDGs in an in depth review, including Goal 16.<sup>63</sup> The theme for the virtual forum held in July 2020 was “Accelerated action and transformative pathways: realizing the decade of action and delivery for sustainable development.”<sup>64</sup> The draft declaration was adopted by consensus and it highlighted the impact of the COVID-19 pandemic on the SDGs, and it calls for international cooperation and solidarity to build back after the pandemic.<sup>65</sup>

## Conclusion

CCPCJ plays a significant role in the promotion of the rule of law, a continually pertinent international topic in light of the post-2015 development agenda.<sup>66</sup> While CCPCJ cannot formulate binding decisions for Member States directly, it influences the evolution of soft and hard international law.<sup>67</sup> Looking forward to the 29<sup>th</sup> session, one of the commission’s goals is to increase youth participation on crime prevention

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<sup>52</sup> UNODC, *The Fourteenth United Nations Congress on Crime Prevention and Criminal Justice – About*, 2020.

<sup>53</sup> Ibid.

<sup>54</sup> UN CCPCJ, *CCPCJ Newsletter: January – June 2020: 29th session of CCPCJ and 14th Crime Congress postponed due to COVID-19 outbreak*, 2020.

<sup>55</sup> Ibid.

<sup>56</sup> UNODC, *Beijing+25: Realizing Gender Equality and the Empowerment of all Women and Girls*, 2020.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> UNODC, *Resolution Database: CCPCJ*, 2020.

<sup>60</sup> UNODC, *CCPCJ: Newsletter January – June 2019 – 28<sup>th</sup> Session of the CCPCJ*, 2019.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> UN DESA, *2019 High-Level Political Forum on Sustainable Development*, 2019.

<sup>64</sup> UN DESA, *2020 High-Level Political Forum on Sustainable Development*, 2020.

<sup>65</sup> UN ECOSOC, *High-level segment: ministerial meeting of the high-level political forum on sustainable development, convened under the auspices of the Economic and Social Council (E/2020/L.20)*, 2020.

<sup>66</sup> UN CCPCJ, *Note on the Contribution of the Commission on Crime Prevention and Criminal Justice to the 2016 High-level Political Forum on Sustainable Development on “Ensuring that No One is Left Behind”*, 2016, pp. 1 – 2.

<sup>67</sup> Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 228.

measures, support Member States to develop national policies to educate communities to recognize the signs of crime and the importance of crime prevention, and encourage Member States to adopt and enhance reporting measures to ensure transparency of the types of conflict is presented and where crime is happening in all regions.<sup>68</sup> It is important to remember CCPCJ's position within the UN crime prevention program and to consider with which other UN and external entities it can work with effectively in order to realize the potential that the Commission offers to Member States and the global community towards crime prevention and criminal justice.<sup>69</sup>

## Annotated Bibliography

United Nations, Commission on Crime Prevention and Criminal Justice. (2020). *CCPCJ Newsletter: January – June 2020: 29th session of CCPCJ and 14th Crime Congress postponed due to COVID-19 outbreak*. Retrieved 20 September 2020 from:

[https://www.unodc.org/documents/commissions/Secretariat/Secretariat\\_Publications/Newsletters/CCPCJ\\_newsletter\\_Jan\\_Jun\\_2020.pdf](https://www.unodc.org/documents/commissions/Secretariat/Secretariat_Publications/Newsletters/CCPCJ_newsletter_Jan_Jun_2020.pdf)

*CCPCJ was scheduled to meet in May 2020, but due to the COVID-19 pandemic, it was unable to meet. The overall theme of which was set to be “Advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda.” The Newsletter provides valuable information as to the future of the 29<sup>th</sup> session of the CCPCJ and the 14<sup>th</sup> session of the Crime Congress indicating that virtual options have been explored for alternate sessions and might be the direction the CCPCJ and CND proceed in. Delegates will find this document useful as it provides the latest information on the CCPCJ, ECOSOC, and GA recently adopted resolutions on topics related to crime and criminal justice.*

United Nations, Economic and Social Council. (1992). *Implementation of General Assembly Resolution 46/152 Concerning Operational Activities and Coordination in the Field of Crime Prevention and Criminal Justice (E/RES/1992/22)*. Retrieved 20 September 2020 from: <http://www.undocs.org/E/RES/1992/22>

*ECOSOC adopted this resolution 1992 in order to replace the Committee on Crime Prevention and Control (CCPC) with CCPCJ, and expand the mandate and priorities of the body. Reading this resolution, delegates will be able to understand CCPCJ's mandate and thus the scope of their possible actions. Further, the Annex also helps to contextualize the mandate and clarify its focal points. Understanding CCPCJ's role in the broader UN crime program is paramount for realizing the full potential of CCPCJ as a functional commission of ECOSOC. It also helps in envisioning possible and realistic cooperation with other UN entities.*

United Nations Office on Drugs and Crime. (2020). *CCPCJ: Commission on Crime Prevention and Criminal Justice*. Retrieved 20 September 2020 from:

<https://www.unodc.org/unodc/en/commissions/CCPCJ/index.html>

*This source provides information on the foundation of the CCPCJ from the creation to the implementation of power and structure. Other UN bodies that sought to create CCPCJ such as the General Assembly is highlights in resolution 42/152. The mandate and the remaining powers of CCPCJ are outlined in this source, with more information on the expansion of the commission mandate included in General Assembly resolution 61/252. The mandate of the CCPCJ is crucial as its main goals look to achieve SDG 16, which aims to ensure equality in crime prevention as well as ensuring institutions treat all persons with equality and respect to due process.*

## Bibliography

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<sup>68</sup> UNODC, *CCPCJ: Thematic Discussions*, 2019.

<sup>69</sup> UN CCPCJ, Commission on Crime Prevention and Criminal Justice, 2019; UNICRI, *United Nations Crime Prevention and Criminal Justice Programme Network*, 2019.

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## I. Improving Vulnerable Persons' Access to Justice Including a Fair Trial

### **Introduction**

The promotion of human rights requires a fair, humane, and efficient criminal justice system; one that offers the estimated 5 billion people with limited access to justice fair trials and equality under the law.<sup>70</sup> The right to a fair trial, a key principle of legal access, is realized when hearings are performed by inclusive and impartial courts.<sup>71</sup> Over 40% of all global human rights violations pertain to unfair trials despite 90% of countries having signed international agreements requiring them to hold fair trials.<sup>72</sup> Since the state holds the authority during the process of determining a criminal charge, the right to a fair trial requires that the accused be entitled to a proper defense through legal aid.<sup>73</sup> Legal aid includes legal advice, assistance, and representation for offenders, victims, and witnesses at no cost.<sup>74</sup> While national legislation of many Member States provides the right to access legal aid in the criminal process, many also have restrictive conditions governing eligibility to legal aid that limit practical and meaningful access.<sup>75</sup>

The *Global Study on Legal Aid* (2016) found that children represent the most common state obligation in relation to the provision of legal aid services (57%).<sup>76</sup> The study also shows that specialized legal aid provisions that cater to other vulnerable populations are limited, with 37% of Member States providing specialized legal aid services for women and only 22% for indigenous peoples.<sup>77</sup> Other vulnerable populations include migrants, people living in extreme poverty, people of African descent, and national, ethnic, religious, and linguistic minorities.<sup>78</sup> The lack of access to effective legal aid places millions of vulnerable persons at risk of illegal pretrial detentions, torture, wrongful convictions, forced convictions, and social stigmas that may impact their health and livelihood.<sup>79</sup>

In 2012, the United Nations (UN) Commission on Crime Prevention and Criminal Justice (CCPCJ) drafted the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* to address the importance of legal aid and a functional criminal justice system.<sup>80</sup> CCPCJ has continued to promote these principles, calling for Member States to ensure that those affected by the criminal justice process, including vulnerable populations, receive legal aid through state-funded legal services.<sup>81</sup>

### **International and Regional Framework**

The *Universal Declaration of Human Rights* (1948) is one of the main international frameworks that recognizes the importance of equal access to justice and the right to a fair trial.<sup>82</sup> Article 10 of the

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<sup>70</sup> World Justice Project, *Measuring the Justice Gap*, 2019, p. 5; OECD & OSF, *Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All*, 2016, p. 7; UNODC, *Crime Prevention and Criminal Justice*, 2019.

<sup>71</sup> UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 A (XXI))*, 1966.

<sup>72</sup> Fair Trials, *The Right to a Fair Trial*, 2019.

<sup>73</sup> *Ibid.*; UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 A (XXI))*, 1966.

<sup>74</sup> UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2012.

<sup>75</sup> UNODC, *E4J University Module Series: Crime Prevention and Criminal Justice, Doha Declaration: Promoting a Culture of Lawfulness*, 2015; UNODC, *Model Law on Legal Aid in Criminal Justice Systems with Commentaries*, 2017.

<sup>76</sup> UNDP & UNODC, *Global Study on Legal Aid: Global Report*, 2016.

<sup>77</sup> *Ibid.*, pp. 75 & 167.

<sup>78</sup> United Nations, *Vulnerable People*, 2020.

<sup>79</sup> International Conference on Access to Legal Aid in Criminal Justice Systems, *Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 2014.

<sup>80</sup> CCPCJ, *Report on the Twenty-First Session*, 2012.

<sup>81</sup> UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2012.

<sup>82</sup> UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

declaration provides the right to an independent and impartial tribunal, while Article 11(1) pertains to the guarantees necessary for a proper defense.<sup>83</sup> These rights are reiterated in Article 14 of the 1966 *International Covenant on Civil and Political Rights* (ICCPR).<sup>84</sup> Article 14(4) of the ICCPR specifically addresses children, giving special attention to their age and the promotion of their rehabilitation while Article 17 supports the rights of ethnic, religious, and linguistic minorities to enjoy and practice their culture, religions, and language, respectively.<sup>85</sup>

Adopted by the UN General Assembly in 2015, the *2030 Agenda for Sustainable Development* and its SDGs highlight the importance of equal access to justice for the establishment of peaceful, just, and inclusive societies.<sup>86</sup> SDG 16.3 calls for the development of effective, accountable, and transparent local and national institutions.<sup>87</sup> SDG 10.3 set targets for ensuring equal opportunities and reducing inequalities by eliminating discriminatory laws, policies, and practices through legislation and policies.<sup>88</sup> On gender equality, SDG 5.c discusses the need for legislation and policies, including legal frameworks, to promote and empower the vulnerable population of women and girls.<sup>89</sup> While legal rights amongst indigenous populations is not represented in the SDGs, the Office of the United Nations Office of the High Commissioner for Human Rights (OHCHR) has encouraged national governments to establish local systems that would help indigenous populations manage crises.<sup>90</sup>

Between 1985 and 1990, the United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a series of principles and guidelines addressing criminal hearings to emphasize the importance of the right to a fair trial.<sup>91</sup> Criminal hearings are comprised of three main components: the judiciary, the prosecutors, and the legal counsel.<sup>92</sup> The 1985 *Basic Principles on the Independence of the Judiciary* were adopted to address the right to an independent and impartial tribunal.<sup>93</sup> These principles provide guidelines relating to the selection, training, and proper conduct of judges.<sup>94</sup> Recognizing the importance of prosecutors in the administration of criminal justice, the 1990 *Guidelines on the Role of Prosecutors* provides instructions pertaining to the professional qualification and the training required by prosecutors and their responsibilities in criminal proceedings.<sup>95</sup> The 1990 *Basic Principles on the Role of Lawyers* addresses the guarantees required for a proper defense by defining the requirements leading to access to independent legal counsel and by providing instructions as to the rights and responsibilities of lawyers.<sup>96</sup> While widely encompassing for many aspects in legal aid, none of these frameworks have specific provisions pertaining to vulnerable persons' access to justice.<sup>97</sup> Provisions can be found in the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, with

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<sup>83</sup> UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

<sup>84</sup> UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 A (XXI))*, 1966.

<sup>85</sup> *Ibid.*

<sup>86</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> UNOCHR, "COVID-19 is devastating indigenous communities worldwide, and it's not only about health," 2020.

<sup>91</sup> Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Independence of the Judiciary*, 1985; Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Guidelines on the Role of Prosecutors*, 1990; Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Role of Lawyers*, 1990.

<sup>92</sup> *Ibid.*

<sup>93</sup> Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Independence of the Judiciary*, 1985.

<sup>94</sup> *Ibid.*

<sup>95</sup> Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Guidelines on the Role of Prosecutors*, 1990.

<sup>96</sup> *Ibid.*

<sup>97</sup> Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Independence of the Judiciary*, 1985; Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Guidelines on the Role of Prosecutors*, 1990; Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Role of Lawyers*, 1990.



Principle 10 discussing the necessity for special measures in ensuring access to legal aid for vulnerable persons such as women, children, and groups with special needs.<sup>98</sup>

On a regional level, the Inter-American Human Rights System, tasked with the promotion and the protection of human rights among members of the Organization of American States, adopted standards for access to justice in 2007.<sup>99</sup> These standards outline the scope of judicial remedies, such as the right to a fair trial.<sup>100</sup> The European Union also sets out the right to an effective remedy and to a fair trial in Article 47 of the 2012 *Charter of the Fundamental Rights of the European Union*.<sup>101</sup> Under this provision, a fair and public hearing at an independent and impartial court within a reasonable timeframe is guaranteed for all.<sup>102</sup> People finding themselves in the criminal justice system are entitled to receive advice, adequate defense, representation, and legal aid when lacking sufficient resources to acquire aid themselves.<sup>103</sup> Article 7 of the *African Charter on Human and People's Rights* guarantees one's right to a defense and the right to an impartial trial in a timely manner.<sup>104</sup> The 2012 *Association of Southeast Asian Nations Human Rights Declaration* gives persons the right to fair trials and a guaranteed defense lawyer.<sup>105</sup> However, this declaration only references the rights of women and children in relation to motherhood and early childhood securities such as paid leave and social protections for children born outside of legal marriage.<sup>106</sup>

### **Role of the International System**

At the International Conference on Access to Legal Aid in Criminal Justice Systems in 2016, policy makers and practitioners from 50 Member States highlighted the global efforts towards implementing the *United Nations Principles and Guidelines on Access to Justice in Criminal Justice Systems* and discussed the importance of national and regional legal aid service provider networks.<sup>107</sup> For the latter, CCPCJ adopted resolution 25/2 in 2016 to encourage Member States to improve legal aid through the adoption or strengthening of national legislation, emphasize the needs of children and women, and highlight a need for an international network of legal aid providers.<sup>108</sup> To reach this goal, CCPCJ created the International Legal Aid Network, a network of legal aid providers that facilitates information sharing, such as technological advances in criminal justice.<sup>109</sup> On a regional level, the Africa Legal Aid (AFLA) network provides targeted legal assistance in cases of human rights violations and assists organizations in the provision of legal aid services.<sup>110</sup> The United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP) published the *Global Study on Legal Aid* (2016), a collection of findings on the global status of legal aid.<sup>111</sup>

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<sup>98</sup> UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2012; Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Role of Lawyers*, 1990.

<sup>99</sup> CEDAW, *General Recommendation No. 33 on Women's Access to Justice*, 2015; Organization of American States Inter-American Commission on Human Rights, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, 2007.

<sup>100</sup> Inter-American Commission on Human Rights, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, 2007.

<sup>101</sup> European Union, *Charter of Fundamental Rights of the European Union*, 2012.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> Organization of African Unity, *African Charter on Human and People's Rights*, 1981.

<sup>105</sup> The Association of Southeast Asian Nations, *ASEAN Human Rights Declaration*, 2012.

<sup>106</sup> *Ibid.*

<sup>107</sup> International Conference on Access to Legal Aid in Criminal Justice Systems, *Buenos Aires Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 2016.

<sup>108</sup> UN CCPCJ, *Promoting Legal Aid, including through a Network of Legal Aid Providers (Resolution 25/2)*, 2016.

<sup>109</sup> International Legal Aid Group, *About Us*, 2019.

<sup>110</sup> Africa Legal Aid, *Accomplishments*, 2019.

<sup>111</sup> UNDP & UNODC, *Global Study on Legal Aid: Global Report*, 2016.

At the 13<sup>th</sup> United Nations Congress on Crime Prevention and Criminal Justice in 2015, the UNODC adopted the *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation*.<sup>112</sup> This declaration has led to the establishment of the Doha Declaration Global Programme, a four-year programme tackling judicial integrity, prisoner rehabilitation, youth crime prevention, and the promotion of the rule of law.<sup>113</sup> Non-governmental organizations in Asia and South America have partnered with the program to address criminal rehabilitation amongst young offenders and women as well as gender-based violence prevention.<sup>114</sup>

In addition to the UN's efforts, other intergovernmental organizations, such as the Organisation for Economic Co-operation and Development (OECD), work on improving access to justice for all.<sup>115</sup> The OECD works in conjunction with governments and policy makers on the establishment of international norms.<sup>116</sup> The OECD conducts legal needs surveys, participates in policy dialogues, and conducts reviews to measure effective access to justice and address the gaps in the justice services.<sup>117</sup> Within civil society, the World Justice Project (WJP) is working globally for the advancement of the rule of law.<sup>118</sup> WJP has worked on the 2019 study *Global insights on Access to Justice 2019: Findings from the World Justice Project General Population Poll in 101 Countries*, the first global study regarding legal needs and access to justice.<sup>119</sup> In its findings, WJP provides data on the scope of legal problems, an assessment on legal capacities, and the obstacles to access to justice.<sup>120</sup>

In 2018, the UN General Assembly adopted resolution 73/185 encouraging Member States to adopt measures to promote equal access to justice.<sup>121</sup> Member States were urged to ensure equal access to justice for women and to consider the adoption of a gender-sensitive approach to the prosecution and punishment of violent crimes against women and girls.<sup>122</sup> The resolution also promoted advancement in legal literacy by inviting Member States to promote educational programs relevant to crime prevention and criminal justice.<sup>123</sup>

### ***Specific Rights and Needs of Women and Children***

#### *Specific Rights and Needs of Women*

Based on a 2017 WJP study, 53% of women globally experienced some form of legal problem, but only 13% of those women knew how to resolve their situation.<sup>124</sup> The lack of the necessary educational and legal literacy available to women to properly articulate their needs and to defend their rights remains an obstacle to achieving access to justice.<sup>125</sup> In 2016, of the 750 million illiterate adults, two-thirds were

<sup>112</sup> UNODC, *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation*, 2015.

<sup>113</sup> UNODC, *Implementation of the Doha Declaration Focus of Upcoming 2015 UN Crime Commission, Doha Declaration: Promoting a Culture of Lawfulness*, 2015.

<sup>114</sup> UNODC, *The Doha Declaration: Partnerships*, 2020.

<sup>115</sup> Organisation for Economic Co-operation and Development, *Who we are - About*, 2019.

<sup>116</sup> *Ibid.*

<sup>117</sup> Open Society Foundations & Organisation for Economic Co-operation and Development, *Legal Needs Surveys and Access to Justice*, 2019; Organisation for Economic Co-operation and Development, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, 2019.

<sup>118</sup> World Justice Project, *About Us*, 2019.

<sup>119</sup> World Justice Project, *Global Insights on Access to Justice*, 2019.

<sup>120</sup> *Ibid.*

<sup>121</sup> UN General Assembly, *The Rule of Law, Crime Prevention and Criminal Justice in the Context of the Sustainable Development Goals (A/RES/73/185)*, 2018.

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> World Justice Project, *Women's Access to Justice: A Global Snapshot*, 2019.

<sup>125</sup> UNICEF, *Children's Equitable Access to Justice: Central and Eastern Europe and Central Asia*, 2015, p. 19; UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 240.

women.<sup>126</sup> Due to high rates of illiteracy, many women are susceptible to misinterpreting existing legislation or being coerced into making harmful legal statements without proper knowledge.<sup>127</sup> Judicial stereotyping has also been highlighted as a barrier to equal access to justice for women.<sup>128</sup> Judicial stereotyping on the basis of gender can lead to the distortion of the judge's perception of a woman's credibility, the admission of irrelevant or prejudicial evidence, or the alteration of directions given to juries.<sup>129</sup> Women's equal access to justice is also affected by perceived gender-neutral legal language, which often do not take into consideration the different needs and conditions of women affected.<sup>130</sup> The lack of gender-sensitive legislation is particularly influential with the definitions of crimes, punitive regimes, and remedies as androcentric definitions can negatively affect women in court.<sup>131</sup>

In 2017, CCPCJ adopted resolution 26/3 on mainstreaming a gender perspective into crime prevention and criminal justice policies, encouraging Member States to consider the specific needs and circumstances of women throughout the entire criminal justice process.<sup>132</sup> The resolution recommended gender sensitivity training for stakeholders in the criminal justice system, including judges, prosecutors, and legislators.<sup>133</sup> In 2018, the UN Entity for Gender Equality and the Empowerment of Women, UNDP, UNODC, and OHCHR published the *Practitioner's Toolkit on Women's Access to Justice Programming* to provide practical guidance aiming to improve the delivery of justice for women, including addressing institutional reform and identifying flaws in female offender court trials.<sup>134</sup>

### *Specific Rights and Needs of Children*

For children, due to the impact of age on cognitive and mental capacities, there is great complexity in effectively answering to their rights and needs.<sup>135</sup> While not directly pertaining to a child's right to fair trial, the *Convention on the Rights of the Child* (1989) contains provisions addressing the child's best interest in all actions concerning them and their participation in judicial proceedings.<sup>136</sup> Article 12 of the convention establishes that children are entitled to proper participation in the trial and decision-making affecting them, either directly or with assistance.<sup>137</sup> In 2013, Penal Reform International, a non-governmental organization working on global criminal justice problems, published a training manual regarding children's rights within the criminal justice system.<sup>138</sup> The manual recommends the judiciary to take responsibility in ensuring that children understand the charge they are faced with, the subsequent consequences, and their choice of issuing either a guilty or non-guilty plea.<sup>139</sup> In the United States, the Southern Law Poverty Center advocates for young people, especially those of color, who can be unfairly targeted by the legal system.<sup>140</sup> They also advocate for the fair trial of minors in age-appropriate courtroom settings and an end to the practice of incarcerating minors in adult prisons and jails.<sup>141</sup> The center makes a clear connection between younger incarcerated minorities and the lack of regard to their

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<sup>126</sup> ECOSOC, *Special edition: Progress towards the Sustainable Development Goals (E/2019/68)*, 2019, p.11.

<sup>127</sup> *Ibid.*, p.11; UN-Women et al, *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 271.

<sup>128</sup> UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, pp. 89, 240.

<sup>129</sup> Commonwealth Secretariat, *Judicial Resource Book on Violence against Women for Asia: Combating Violence against Women and Girls for Cambodia, India, Pakistan and Thailand*, 2018.

<sup>130</sup> UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 59.

<sup>131</sup> *Ibid.*, p. 59.

<sup>132</sup> UN CCPCJ, *Mainstreaming a Gender Perspective into Crime Prevention and Criminal Justice Policies and Programmes and into Efforts to Prevent and Combat Transnational Organized Crime (Resolution 26/3)*, 2017.

<sup>133</sup> *Ibid.*

<sup>134</sup> UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 3.

<sup>135</sup> UNICEF, *Children's Equitable Access to Justice: Central and Eastern Europe and Central Asia*, 2015, p. 21.

<sup>136</sup> UN General Assembly, *Convention on the Rights of the Child (Resolution 44/25)*, 1989.

<sup>137</sup> Penal Reform International, *Protecting Children's Rights in Criminal Justice Systems: A Training Manual and Reference Point for Professionals and Policymakers*, 2013, p. 75.

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*

<sup>140</sup> Southern Poverty Law Center, *Our Issues: Criminal Justice Reform*, 2020.

<sup>141</sup> *Ibid.*

human rights and personal needs, such as mental and physical welfare.<sup>142</sup> With estimates that 85% of youth involved in criminal activities are illiterate, legal literacy is one of the major barriers to child justice.<sup>143</sup> A remedy proposed by the UNODC is legal literacy programs which aim to inform the people of their rights and how to claim them.<sup>144</sup> An example of youth literacy programs is India's Basic Literacy Program for Juveniles in Sindh which offers both legal and basic literacy programs for youth at risk and in conflict with the law.<sup>145</sup>

### ***Specific Rights and Needs of Indigenous Peoples***

According to a 2019 Annual Review of Criminology article overviewing criminal justice for indigenous people, socioeconomic marginalization resulting from centuries of colonization plays a significant role in the over-representation of indigenous peoples in every stage of the criminal justice system.<sup>146</sup> The authors describe the indigenous peoples' experience with the national criminal justice system being rife with high rates of targeting, arrests, convictions, and imprisonment.<sup>147</sup> For example, in Canada, indigenous peoples represent 28% of admissions into federal prisons while only making up 3% of the national population.<sup>148</sup> Between 2017 and 2018, indigenous youth made up 43% of admissions to correctional services, despite representing 8% of Canada's youth population.<sup>149</sup> Conclusions of the article found that failings of the national criminal justice systems lie in the reliance of Western policy practices and the indigenous people's lack of the right to self-determination.<sup>150</sup> Recommendations for possible resolutions included the consideration and implementation of indigenous knowledge and customary practices into national legal systems.<sup>151</sup>

Indigenous peoples' right to self-determination has been internationally recognized in the 2007 *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).<sup>152</sup> In the context of access to justice in the criminal justice system, these rights involve a criminal justice process that is operated by the indigenous peoples and their active participation in the national criminal justice system.<sup>153</sup> As an example, *Bringing Them Home*, a report resulting from an inquiry launched by the Australian government in 1995 addressing the country's former policy of forced child removal, recommends that in cases where indigenous youth are in conflict with the criminal justice system, legal jurisdiction be handed to accredited indigenous organizations.<sup>154</sup> In line with the right to self-determination, Article 34 of UNDRIP highlights the right of the indigenous peoples to continue utilizing their own judicial system.<sup>155</sup> Article 40 addresses the indigenous peoples' right to utilize their traditional customs and legal systems.<sup>156</sup> According to the Human Rights Council, indigenous judicial systems and laws are based on indigenous conceptions of justice.<sup>157</sup> A 2014 study from the Expert Mechanism on the Rights of Indigenous Peoples stated that the indigenous

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<sup>142</sup> Southern Poverty Law Center, *Our Issues: Criminal Justice Reform*, 2020.

<sup>143</sup> World Literacy Foundation, *Home*, 2019.

<sup>144</sup> UNODC, *Criminal Justice Assessment Toolkit, Cross-Cutting Issues, Gender in the Criminal Justice System Assessment Tool*, 2010, p. 43.

<sup>145</sup> Legal Aid Society, *Basic Literacy Program*, 2019.

<sup>146</sup> Cunneen & Tauri, *Indigenous Peoples, Criminology, and Criminal Justice*, 2019.

<sup>147</sup> *Ibid.*

<sup>148</sup> Reitano, *Adult Correctional Statistics in Canada 2015/2016, 2017*; Canadian Department of Justice, *Indigenous overrepresentation in the criminal justice system*, 2019.

<sup>149</sup> Canadian Department of Justice, *Indigenous overrepresentation in the criminal justice system*, 2019.

<sup>150</sup> Cunneen & Tauri, *Indigenous Peoples, Criminology, and Criminal Justice*, 2019.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*; General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, 2007.

<sup>153</sup> *Ibid.*

<sup>154</sup> Australian Human Rights Commission, *Bringing Them Home: Appendix 9 Recommendations*, 2019.

<sup>155</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, 2007.

<sup>156</sup> *Ibid.*

<sup>157</sup> HRC, *Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples: Restorative Justice, Indigenous Juridical Systems and Access to Justice for Indigenous Women, Children and Youth, and Persons with Disabilities (A/HRC/27/65)*, 2014, p. 4.

peoples' customary laws and traditional justice systems have been cast aside in favor of national legal systems, creating obstacles for them in accessing justice.<sup>158</sup>

### **Conclusion**

Guided by the 2030 Agenda, particularly SDGs 5, 10, and 16, the international community has made progress on providing access to justice for vulnerable persons.<sup>159</sup> However, much work still needs to be done, especially in terms of training criminal justice system personnel and encouraging Member States to make legal aid services available and accessible to vulnerable persons.<sup>160</sup> Recognizing that legal aid is central to providing equal access to justice, CCPCJ has drafted frameworks addressing legal aid and has worked to establish a legal aid network.<sup>161</sup> It is important that further steps are taken by the international community to follow these principles and guidelines to strengthen all stakeholders in the criminal justice system.

### **Further Research**

Moving forward, delegates should consider the following questions: How can the establishment of an International Legal Aid Network be effective and help ensure equal access to justice including a fair trial? What resources are needed to establish population-specific legislation? How can legal practitioners help in the achievement of SDG 16, particularly target 16.3? Who are the relevant stakeholders in the achievement of ensuring access to justice and the right to fair trial for vulnerable persons? What roles can non-legal practitioners play in the achievement of access to justice and the right to fair trial? Can national and customary judicial systems coexist?

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*This report gives an overview of the progress made by UNODC in regard to the use and application of various United Nations standards and norms in crime prevention and criminal justice. It describes various works of UNODC such as the Global Study on Legal Aid and the Model Law on Legal Aid in Criminal Justice Systems with Commentaries. It also mentions assistance delivered to support capacity building concerning protecting children from violence and empowering them to demand remedies. This report will provide delegates with real life examples of technical assistance efforts as well as the partnerships involved in this effort, such as implementing activities discussed in the Doha Declaration.*

Commission on Crime Prevention and Criminal Justice. (2016). *Promoting legal aid, including through a network of legal aid providers (Resolution 25/2)*. Retrieved 18 August 2020 from: [https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_25/2016\\_Resolutions\\_Decisions/03.CCPCJ\\_2016/Resolution\\_25\\_2.pdf](https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_25/2016_Resolutions_Decisions/03.CCPCJ_2016/Resolution_25_2.pdf)

*While encouraging Member States to strengthen efforts and measures towards providing effective legal aid, this resolution sets forth the importance of an International Legal Aid Network. This network encourages collaboration amongst members of the international*

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<sup>158</sup> Ibid., p. 4.

<sup>159</sup> ECOSOC, *Special edition: Progress towards the Sustainable Development Goals (E/2019/68)*, 2019.

<sup>160</sup> UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018; UNICEF, *Children's Equitable Access to Justice: Central and Eastern Europe and Central Asia*, 2015; HRC, *Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples: Restorative Justice, Indigenous Juridical Systems and Access to Justice for Indigenous Women, Children and Youth, and Persons with Disabilities (A/HRC/27/65)*, 2014, p.7.

<sup>161</sup> CCPCJ, *Report on the Twenty-First Session*, 2012; CCPCJ, *Promoting Legal Aid, including through a Network of Legal Aid Providers (Resolution 25/2)*, 2016.

*community in the sharing of information, practices and expertise regarding to the provision of legal aid. The resolution further urges Member States to ensure women and children's access to legal support during the criminal justice process, providing delegates*

Committee on the Elimination of Discrimination against Women. (2015). *General Recommendation on Women's Access to Justice (CEDAW/C/GC/33)*. Retrieved 14 August 2020 from: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_33\\_7767\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf)

*The General Recommendation on Women's Access to Justice details the issues and concerns that need to be addressed by Member States to realize women's equality under the law. The Recommendations, written out of concern for societal and institutional inequalities within national governments, addresses the prejudices of judicial mechanisms and the burdens that fall on women when it comes to defending themselves in a court of law. In addition to the recommendations, the document also calls on national and international monitoring of cases related to women to ensure that equality mechanisms are being adhered to. These recommendations will give delegates insight into systemic issues of gender inequality and avenues through which change can be implemented.*

United Nations, General Assembly, Sixty-first session. (2007). *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*. Retrieved 12 August 2020 from: <https://undocs.org/A/RES/61/295>

*The Declaration on the Rights of Indigenous Peoples is a significant document that outlines the rights of indigenous peoples. The document reiterates these rights in an effort to reform past instances where indigenous rights have been ignored. In a similar format to the Universal Declaration of Human Rights, the document aims to reinforce their political, economic, social and cultural rights to allow the strengthening and maintenance of these institutions. This declaration will give delegates an overview of the expectations the United Nations has in regard to the rights of minority groups.*

United Nations Office on Drugs and Crime, Thirteenth United Nations Congress on Crime Prevention and Criminal Justice. (2015). *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation*. Retrieved 18 August 2020 from: [https://www.unodc.org/documents/congress/Declaration/V1504151\\_English.pdf](https://www.unodc.org/documents/congress/Declaration/V1504151_English.pdf)

*The Doha Declaration is an action-oriented document aiming to further strengthen the international community's collective efforts on crime prevention and criminal justice, namely through the promotion of the rule of law. Headed by UNODC, this declaration has led to the creation of the Global Programme, a four-year people-centered initiative to promote access to justice and build effective and accountable institutions at all levels. The Global Programmes comprises of four components: education for justice, judicial integrity, prisoner rehabilitation and crime prevention through sport. This declaration will provide delegates with context to formulate more creative solutions to the topic.*

United Nations Office on Drugs and Crime. (2016). *Global Study on Legal Aid: Global Report*. Retrieved 18 August 2020 from: [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global\\_Study\\_on\\_Legal\\_Aid\\_-\\_FINAL.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf)

*This report provides an extremely detailed study of the current global state of access to legal aid. From data analysis to case studies, this document allows for a global, thorough understanding of the progress and challenges various Member States face concerning the provision of legal aid. This provides delegates with more specific areas of interest that need further attention as well as data to support legal aid solutions.*

United Nations Office on Drugs and Crime. (2017). *Model Law on Legal Aid in Criminal Justice Systems with Commentaries*. Retrieved 18 August 2020 from: [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model\\_Law\\_on\\_Legal\\_Aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf)

*This Model Law provides a concrete example of prospective legislative frameworks for the administration and delivery of legal aid services. In order to guarantee the right to criminal defense, it is important that access to legal aid services is governed by a strong and inclusive framework. This model will provide delegates with all the necessary legislative components to ensuring equal access to legal aid.*

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## II. Combating Organized Cybercrime

“Cybercriminal activity is one of the biggest challenges that humanity will face in the next two decades.”<sup>162</sup>

### Introduction

In a world more connected than ever before, networks have created new global capabilities and unprecedented economic opportunities for businesses, individuals, and states.<sup>163</sup> It did not take long for organized criminal groups to also make use of sophisticated computer networks for the purpose of carrying out a criminal activity for profit.<sup>164</sup> In wake of COVID-19 pandemic, society is relying more than ever on networks to work, communicate, and shop.<sup>165</sup> Cybercriminals are taking advantage of the widespread global communications and the spread of fake news to extract payments and attack critical infrastructures.<sup>166</sup> Malware attacks, payment fraud, phishing, crypto-jacking, and darknet markets are a few of the many ways that organized criminal groups use technology unlawfully to generate as much as \$1.5 trillion dollars in illicit revenue per year.<sup>167</sup> Consequently, the recovery from cyberattacks cost the global economy \$600 billion dollars in 2018, which amounts to 0.8% of the total global gross domestic product (GDP), and is projected to reach \$6 trillion dollars annually by 2021.<sup>168</sup> According to a 2018 global report presented by the Center for Strategic and International Studies, cybercrime makes up for one seventh of all transnational organized crimes.<sup>169</sup>

The United Nations *Convention Against Transnational Organized Crime* (UNTOC), adopted in November 2000 under UN General Assembly resolution 55/25, defines an organized criminal group in Article 2 (a) as 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 in order to obtain, directly or indirectly, a financial or other material benefit.<sup>170</sup> The 5<sup>th</sup> session of the Conference of Parties to UNTOC held on 18 October 2010 highlighted that cybercrime is one of the many forms of emerging crimes into which organized criminal groups have expanded their activities.<sup>171</sup> Although there is no universal definition of cybercrime, it is mainly associated with Internet and computer-related crimes and is classified into two categories: cyber-dependent crimes, such as the spread of malware, ransomware, and attacks on critical national infrastructure, and cyber-enabled crimes, including online frauds, purchases of drugs online, and online money laundering.<sup>172</sup> The United Nations (UN) Commission on Crime Prevention and Criminal Justice (CCPCJ), as the main organization that coordinates international action to combat national and transnational crime, focuses also on providing policy recommendations and criminal justice measures for organized crime in the cybersphere.<sup>173</sup>

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<sup>162</sup> Morgan, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>163</sup> WIPO, *The Internet: An Unprecedented and Unparalleled Platform for Innovation and Change*, 2012, p. 157.

<sup>164</sup> UNTOC COP, *Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its Sixth Session, Held in Vienna from 15 to 19 October 2012*, 2012, p. 31.

<sup>165</sup> Council of Europe, *Cybercrime and COVID-19*, 2020.

<sup>166</sup> *Ibid.*

<sup>167</sup> UN DGC, ‘*Much Work to Do and no Time to Waste*’ in *Cybercrime Fight, Says UN Chief*, 2018.

<sup>168</sup> Morgan, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>169</sup> Lewis, *Economic Impact of Cybercrime – No Slowing Down*, 2018, p. 9.

<sup>170</sup> UN General Assembly, *United Nations Convention against Transnational Organized Crime (A/RES/55/25)*, 2001; UNODC, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, 2004, p. 5.

<sup>171</sup> UNTOC COP, *Activities of the United Nations Office on Drugs and Crime to Address Emerging Forms of Crime*, 2010, p. 3.

<sup>172</sup> UNODC, *Global Programme on Cybercrime*, 2019.

<sup>173</sup> UN ECOSOC, *Implementation of General Assembly Resolution 46/152 Concerning Operational Activities and Coordination in the Field of Crime Prevention and Criminal Justice (1992/22)*, 1992.

## ***International and Regional Framework***

CCPCJ, as the governing body of the United Nations Office on Drugs and Crime (UNODC), works alongside UNODC to fight organized crime.<sup>174</sup> The UNTOC is the main international instrument for the prevention and repression of organized crime in all its forms.<sup>175</sup> As of 2020, 190 Member States have committed to taking an active role to uphold the provisions of UNTOC and to strengthen cooperation to effectively combat organized cybercrime at the national, regional and international levels, through improved law enforcement efforts, capacity-building measures, and technical assistance.<sup>176</sup>

At the 12<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice in 2010, Member States expressed concern about how organized criminal groups adapt and use rapidly evolving technologies to commit forms of cybercrime such as hacking, spamming, phishing, digital piracy, and malware.<sup>177</sup> The Congress adopted the *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World*, which calls on Member States to adapt their criminal justice systems to new evolving forms of crime.<sup>178</sup> Paragraphs 41 and 42 of this declaration underlined the need for improved knowledge on recent cybercrime developments through public-private cooperation, which is of importance in monitoring the effectiveness and efficiency of measures currently in place to combat cybercrime.<sup>179</sup>

In 2015, the 13<sup>th</sup> United Nations Crime Congress recognized organized crime as a key challenge to sustainable development.<sup>180</sup> In 2015, the Congress adopted the *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation* as part of the transformative post-2015 development agenda.<sup>181</sup> The Declaration acknowledges that sustainable development cannot be achieved without the respect of the rule of law.<sup>182</sup> In the context of organized crime, Member States are urged to comply with or to ratify UNTOC because it offers specific criminal justice responses by promoting the development of international, regional, and domestic laws towards “combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology.”<sup>183</sup> In regard to cybercrime, paragraph 9 (b) of the Declaration calls for Member States to make positive use of

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<sup>174</sup> UNODC, *Mandate and Functions*, 2019; CCPCJ, *Promotion of Activities Relating to Combating Cybercrime, Including Technical Assistance and Capacity-Building (20/7)*, 2011.

<sup>175</sup> UN General Assembly, *United Nations Convention against Transnational Organized Crime (A/RES/55/25)*, 2000; UNTOC COP, *Establishment of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto (9/1)*, 2018.

<sup>176</sup> UN Treaty Collection, *Status of Treaties*, 2019; UNODC, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, 2004, p. 2.

<sup>177</sup> UN Crime Congress, *Recent Developments in the use of Science and Technology by Offenders and by Competent Authorities in Fighting Crime, Including the Case of Cybercrime (A/CONF.213/9)*, 2010; UN Crime Congress, *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World (A/CONF.213/18)*, 2010.

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*

<sup>180</sup> UN Crime Congress, *Report of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (A/CONF.222/17)*, 2015; UN DGC, *Preventing Crime to Build Sustainable Development, United Nations Events*, 2015.

<sup>181</sup> UN Crime Congress, *Draft Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation (A/CONF.222/L.6)*, 2015.

<sup>182</sup> UNODC, *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, And Public Participation*, 2015, p. iii.

<sup>183</sup> *Ibid.*, pp. iii, 8.

technological advancements to “create a secure and resilient cyber-environment,” which is essential to each Member State’s security and economic well-being.<sup>184</sup>

Regionally, the Council of Europe adopted the *Convention on Cybercrime* (2001), also known as the *Budapest Convention*.<sup>185</sup> The convention is the most valuable legal framework on cybercrime because it sets the global standard to directly address both Internet and computer-related crimes and to protect rights in cyberspace.<sup>186</sup> There are currently 64 Member States that have ratified this convention and it is open to accession by any state, not requiring them to be Member States of the Council of Europe.<sup>187</sup> As a tool to combat cybercrime, the convention aims to facilitate the detection, investigation, and prosecution of conduct that goes against the confidentiality, integrity, and availability of computer systems, networks, and computer data.<sup>188</sup>

The African Union (AU) established the *Convention on Cyber Security and Personal Data Protection* in July 2014.<sup>189</sup> For a region increasingly prone to cyberattacks, this convention is an exemplary response to cybercrime and it is the only agreement outside of Europe that enacts standards to address cybercrime.<sup>190</sup> Chapter III of the convention calls for cybercrime control and cybersecurity governance to be taken by all AU Member States at the national level.<sup>191</sup> Obligations include the establishment of a national cybersecurity framework, cybersecurity system, legislative and regulatory measures against cybercrime for law enforcement organizations, and monitoring structures serving as Computer Emergency Response Teams for early detection and management of cybersecurity incidents.<sup>192</sup> As of 2020, there are 14 signatories and 5 ratifications for this convention.<sup>193</sup> However, the convention is yet to enter into force.<sup>194</sup>

### **Role of the International System**

CCPCJ consistently notes the importance of UNODC as a leader in providing reliable data, long-term technical assistance, and sustainable capacity-building to combat organized cybercrime.<sup>195</sup> In 2013, UNODC established the Global Programme for Strengthening Capacities to Prevent and Combat Organized and Serious Crime (GPTOC) to “provide technical assistance to States to effectively implement [UNTOC].”<sup>196</sup> The GPTOC developed many initiatives to deal with organized crime, such as the Network of Specialized Prosecutors against Organized Crime and the Criminal Intelligence Programme.<sup>197</sup> These projects were founded on operational links between regional and international organizations, national and international law enforcement agencies, and civil society to achieve dynamic

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<sup>184</sup> Ibid., p. 10.

<sup>185</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 66; UNODC, *Report on the Meeting of the Expert Group to Conduct a Comprehensive Study on Cybercrime Held in Vienna from 27 to 29 March 2019 (UNODC/CCPCJ/EG.4/2019/2)*, 2019, p. 3.

<sup>186</sup> Council of Europe Portal, *Cybercrime*, 2019.

<sup>187</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 66.

<sup>188</sup> Council of Europe, *Convention on Cybercrime (ETS No.185)*, 2001.

<sup>189</sup> AU, *African Union Convention on Cyber Security and Personal Data Protection*, 2014.

<sup>190</sup> Kharouni, *Africa A New Safe Harbor for Cybercriminals?*, 2013; Greenleaf & Georges, *The African Union’s Data Privacy Convention: A Major Step Toward Global Consistency?*, *Privacy Laws & Business International Report*, 2014, p. 1.

<sup>191</sup> AU, *African Union Convention on Cyber Security and Personal Data Protection*, 2014, pp. 24-33.

<sup>192</sup> Ibid., pp. 24-33.

<sup>193</sup> AU, *List of Countries Which Have Signed, Ratified/Acceded to the African Union Convention on Cyber Security and Personal Data Protection*, 2020.

<sup>194</sup> Greenleaf & Georges, *The African Union’s Data Privacy Convention: A Major Step Toward Global Consistency?*, *Privacy Laws & Business International Report*, 2014, p. 2.

<sup>195</sup> CCPCJ, *Strengthening International Cooperation to Combat Cybercrime (22/7)*, 2013; CCPCJ, *Promoting Technical Assistance and Capacity-Building to Strengthen National Measures and International Cooperation against Cybercrime (22/8)*, 2013; UNODC, *Cybercrime*, 2019.

<sup>196</sup> UNODC, *The UNODC Global Programme for Strengthening Capacities to Prevent and Combat Organized and Serious Crime*, 2019.

<sup>197</sup> Ibid.

and cross-border responses to prevent, detect, investigate, prosecute, and combat organized crime.<sup>198</sup> UNODC also developed the Global Programme on Cybercrime, working with UNODC field offices and programs in order to address cybercrime by promoting media campaigns and raising awareness.<sup>199</sup> In 2015, UNODC launched the Cybercrime Repository, a central database of legislation, case law, and lessons-learned on cybercrime, to increase public knowledge of best practices to prevent and combat cybercrime.<sup>200</sup>

In line with paragraph 42 of the Salvador Declaration, in 2011 CCPCJ established the Open-ended Intergovernmental Expert Group to conduct a comprehensive study of the problem of cybercrime.<sup>201</sup> The expert group distributed a questionnaire on crime prevention and criminal justice efforts to prevent and combat cybercrime to Member States, private sector organizations, academic organizations, and intergovernmental organizations.<sup>202</sup> The responses informed the 2013 *Comprehensive Study on Cybercrime*, which thoroughly explores options for strengthening existing and proposing new national and international legal or other responses to cybercrime.<sup>203</sup> This study is extensively noted within the UN system and remains of unique relevance to the crime prevention and criminal justice aspects of preventing and combating cybercrime.<sup>204</sup> The expert group also holds multiple meetings to facilitate discussion and exchanges of views among Member States, the private sector, UN bodies, and intergovernmental institutes on the challenges of cybercrime.<sup>205</sup> At the 5<sup>th</sup> meeting held in 2019, the expert group found that the large majority of cybercrime is committed by organized groups and encouraged Member States to develop law enforcement strategies aimed specifically at disrupting organized cybercriminal networks.<sup>206</sup> This led into the 6<sup>th</sup> session held in 2020 to conduct a comprehensive study of cybercrime.<sup>207</sup>

Law enforcement agencies perform an essential role in protecting and serving the community against organized crime.<sup>208</sup> UNODC repeatedly partnered with the International Criminal Police Organization (INTERPOL) through joint action plans and cooperation arrangements to maximize its resources and networks to effectively address organized crime in all its forms.<sup>209</sup> At the 25<sup>th</sup> CCPCJ session in 2016, UNODC and INTERPOL created a Joint Action Plan to fight transnational organized crime, highlighting cybercrime as one of the main priority areas.<sup>210</sup> This joint initiative promotes SDG 17 (partnerships for the goals) on the importance of establishing global partnerships between different multi-stakeholders to effectively tackle the many challenges posed by organized cybercrime in the achievement of the SDGs.<sup>211</sup>

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<sup>198</sup> Ibid.

<sup>199</sup> UNODC, *Global Programme on Cybercrime*, 2019.

<sup>200</sup> UNODC, *Cybercrime Repository*, 2019.

<sup>201</sup> UNODC, *Comprehensive Study of the Problem of Cybercrime and Responses to it by Member States, the International Community and the Private Sector (UNODC/CCPCJ/EG.4/2013/2)*, 2013, p.1; UN General Assembly, *Twelfth United Nations Congress on Crime Prevention and Criminal Justice (65/230)*, 2010; ECOSOC, *Twelfth United Nations Congress on Crime Prevention and Criminal Justice (2010/18)*, 2010.

<sup>202</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, p. x.

<sup>203</sup> Ibid., p. xi.

<sup>204</sup> UN General Assembly, *Countering the Use of Information and Communications Technologies for Criminal Purposes (A/RES/73/187)*, 2018.

<sup>205</sup> UNODC, *Report on the Meeting of the Expert Group to Conduct a Comprehensive Study on Cybercrime Held in Vienna from 27 to 29 March 2019 (UNODC/CCPCJ/EG.4/2019/2)*, 2019, pp. 1-2.

<sup>206</sup> Ibid.

<sup>207</sup> UNODC, *Report on the Meeting of the Expert Group to Conduct a Comprehensive Study on Cybercrime (UNODC/CCPCJ/EG.4/2020/L.1)*, 2020.

<sup>208</sup> UNODC, *Law Enforcement*, 2019.

<sup>209</sup> UNODC, *UNODC-INTERPOL Agreement Creates Partnership to Tackle Transnational Organized Crime and Terrorism Challenges*, 2016.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.; UN DESA, *Sustainable Development Goal 17*, 2019.

In 2019, the UN General Assembly adopted resolution 74/173, announcing a draft of the first global treaty on cybercrime.<sup>212</sup> This initiative is intended to create global cyber norms and to address serious human rights concerns.<sup>213</sup> More importantly, the convention will focus on countering the use of information and communications technologies for criminal purposes.<sup>214</sup>

### **Countering Global Organized Cybercrime Through International Cooperation**

As organized criminal groups become more proficient with sophisticated tools, a cybercrime attack can span numerous states at the same time, target victims in different regions, and generate costly damages in an instant.<sup>215</sup> According to the European Union Agency for Law Enforcement Cooperation (EUROPOL)'s Internet Organized Crime Threat Assessment (2018), global ransomware is the fastest growing method of attack for organized cybercriminal groups.<sup>216</sup> Ransomware is an advanced malicious software demands a ransom to unencrypt the contents of a device.<sup>217</sup> In 2017, the WannaCry ransomware infected more than 200,000 computers in 150 states in a matter of hours.<sup>218</sup> Businesses and national institutions such as hospitals and banks had to shut down their operations for several days due to lost data, which is estimated to have caused \$1 billion in financial and restoration damage.<sup>219</sup> Following the WannaCry attack, ransomware reached epidemic proportions globally and became the fastest growing method of attack for cybercriminals.<sup>220</sup> Herjavec Group, a global cybersecurity firm, predicts that global ransomware attacks will cost \$20 billion annually by 2021.<sup>221</sup> In 2020, ransomware threatened hospitals, medical centers, and public institutions during the COVID-19 pandemic – since they were overwhelmed with the health crisis and cannot afford to lose invaluable information.<sup>222</sup>

Neil Walsh, Chief of Cyber and Emerging Crime at the UNODC, attributes the success of global cybercrimes such as ransomware to the lack of awareness and capacities of Member States to identify, look for, and respond to them.<sup>223</sup> As discussed at the 2011 ECOSOC special event on cybersecurity, the globalization of organized cybercrime demands cooperation of the same scale.<sup>224</sup> This is further supported through the implementation of the *2030 Agenda for Sustainable Development*.<sup>225</sup> Meeting SDG 16 (peace, justice, and strong institutions) and SDG 17 (global partnerships) can have a positive effect on the global efforts to combat organized cybercrime by strengthening international cooperation among relevant national security and law enforcement institutions and enhancing multi-stakeholder partnerships that mobilize and share knowledge, expertise, technology and financial resources to improve cybersecurity.<sup>226</sup> As stated by Neil Walsh, “[c]ybercrime is ultimately preventable; if you know what the

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<sup>212</sup> UN General Assembly, *Promoting technical assistance and capacity-building to strengthen national measures and international cooperation to combat cybercrime, including information-sharing (A/RES/74/173)*, 2019.

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

<sup>215</sup> UNODC, *Cybercrime*, 2019.

<sup>216</sup> EUROPOL, *Internet Organised Crime Threat Assessment 2018*, 2018, p. 1; Cybersecurity Ventures, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>217</sup> Morgan, *The 2019 Official Annual Cybercrime Report*, 2019; Morgan, Global Ransomware Damage Costs Predicted to Reach \$20 Billion (USD) By 2021, *Cybercrime Magazine*, 2018.

<sup>218</sup> Piper, Cyber Attack Hits 200,000 in at Least 150 Countries: Europol, *Thomson Reuters*, 2017.

<sup>219</sup> KnowBe4, Global Ransomware Damage Costs Predicted to Exceed Five Billion Dollars in 2017, *KnowBe4 Press Releases*, 2017.

<sup>220</sup> EUROPOL, *Internet Organised Crime Threat Assessment 2018*, 2018, p. 1; Morgan, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>221</sup> Herjavec Group, *Who We Are*, 2020; Morgan, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>222</sup> INTERPOL, *COVID-19 cyberthreats*, 2020.

<sup>223</sup> UN DGC, *In Wake of ‘WannaCry’ Attacks, UN Cybersecurity Expert Discusses Internet Safety*, 2017.

<sup>224</sup> UN DESA, *Cybersecurity: A Global Issue Demanding a Global Approach*, 2011; UNODC, *International Cooperation*, 2019; UNODC, *The Globalization of Crime, A Transnational Organised Crime Threat Assessment*, 2010, p. 25.

<sup>225</sup> CCPCJ, *Enhancing the Role of the Commission on Crime Prevention and Criminal Justice in Contributing to the Implementation of the 2030 Agenda for Sustainable Development (E/CN.15/2019/CRP.1)*, 2019, pp. 3-4.

<sup>226</sup> UN DESA, *Sustainable Development Goal 16*, 2019; UN DESA, *Sustainable Development Goal 17*, 2019.



risk is, you're less likely to become a victim."<sup>227</sup> Therefore, international cooperation involving the participation of, but not limited to, the private sector, law enforcement, judges, prosecutors, and civil society, is needed to improve the efficiency of global cyberattack responses.<sup>228</sup>

### **Ensuring Security, Confidence, and Trust in ICTs**

Information and communication technologies (ICTs) are a set of tools and resources used to “transmit, store, create, share or exchange information,” including computers, Internet, radio, television, and mobiles.<sup>229</sup> Today, ICT is the fastest-growing industry with 51.2% of the world's population using the Internet.<sup>230</sup> ICTs form an integral part of everyday life and enable states to overcome the barriers to their development by increasing economic prosperity and expanding access to knowledge.<sup>231</sup> However, the growing access to and dependence on the Internet and computer connectivity leaves our society prone to cyber-related threats.<sup>232</sup> Organized cybercriminal groups search and exploit the lack of security in operating systems to scam and to distribute malware to national infrastructures, businesses, and individuals via ICTs.<sup>233</sup>

The World Summit on the Information Society (WSIS) affirmed the importance of building confidence and security in the use of ICTs for societies to safely benefit from technology.<sup>234</sup> Confidence-building measures include international cooperation, multilateral partnerships, standardization of security policy on an international scale, development of national legal frameworks for cybersecurity, capacity-building at the national and regional level, and cybersecurity training.<sup>235</sup> The implementation of such measures will protect ICTs from being used for criminal purposes and prevent the access of ICTs by organized criminal groups.<sup>236</sup>

The International Telecommunication Union (ITU) has taken the lead in building confidence and security in the use of ICTs by implementing in 2007 the *Global Cybersecurity Agenda* (GCA) which provides international standards to deal with criminal activities committed over ICTs.<sup>237</sup> Under the GCA, the ITU allied with the International Multilateral Partnership Against Cyber Threats (IMPACT), which is the first truly global partnership for cybersecurity.<sup>238</sup> In 2011, the UNODC partnered with the ITU-IMPACT alliance in a *Memorandum of Understanding* to further mitigate cyber risks posed by organized criminal groups.<sup>239</sup> As of 2019, the alliance alongside UNODC supported the creation of 109 National Computer Incident Response Teams across the world.<sup>240</sup> However, ICT governance policies and financial resources are insufficient or absent to protect critical information infrastructure from cyber-attacks in developing states, which will affect how ICTs are developed and used.<sup>241</sup> These challenges have become more apparent as

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<sup>227</sup> UN DGC, *In Wake of 'WannaCry' Attacks, UN Cybersecurity Expert Discusses Internet Safety*, 2017.

<sup>228</sup> *Ibid.*

<sup>229</sup> UNESCO UIS, *Information and Communication Technologies*, 2019.

<sup>230</sup> ITU, *Understanding Cybercrime: Phenomena, Challenges and Legal Response*, 2012; ITU, *Measuring the Information Society Report*, 2018, p. 2.

<sup>231</sup> Lehr, *Why ICTs Are Critical for Sustainable Development*, *ITU News*, 2018.

<sup>232</sup> ITU, *Understanding Cybercrime: Phenomena, Challenges and Legal Response*, 2012.

<sup>233</sup> Council of Europe, *Capacity Building on Cybercrime*, 2013, p. 10.

<sup>234</sup> ITU, *Confidence and Security in ICTs – WSIS*, 2005; ITU, *Strengthening the Role of ITU in Building Confidence and Security in the Use of Information and Communication Technologies (Resolution 130)*, 2010, p. 25.

<sup>235</sup> *Ibid.*, p. 25.

<sup>236</sup> *Ibid.*, p. 25.

<sup>237</sup> ITU, *Report of the Chairman of HLEG*, 2008, p. 2; ITU, *Global Cybersecurity Agenda*, 2019; ITU, *Building Confidence and Security in the Use of Information and Communication Technologies*, *ITU News*, 2015.

<sup>238</sup> Ntoko, *Global Cybersecurity Agenda (GCA) A Framework for International Cooperation*, 2011, p. 11.

<sup>239</sup> UNODC, *UNODC and ITU Join Forces to Make the Internet Safer*, 2011.

<sup>240</sup> Ntoko, *Global Cybersecurity Agenda (GCA) A Framework for International Cooperation*, 2011, p. 20; ITU, *National CIRT*, 2019.

<sup>241</sup> Council of Europe, *Capacity Building on Cybercrime*, 2013, p. 7; Guermazi & Satola, *Creating the “Right” Enabling Environment for ICT*, 2005, pp. 25-26.

the COVID-19 pandemic exposed the vital role of ICTs.<sup>242</sup> As a result, the ITU launched the Connect2Recover initiative to assist developing states affected by the COVID-19 pandemic to improve digital networks and technologies, strengthen digital infrastructure, and adopt digital policy that promote socioeconomic development.<sup>243</sup>

### ***Policing Challenges and Law Enforcement Training***

Only 1% of cybercrime attacks are reported to the police and very few are detected directly by police investigators.<sup>244</sup> In response, over 90% of Member States put in place specialized structures for the investigation of cybercrime.<sup>245</sup> However, in addition to the fact that developing states have significantly fewer specialized police officers, only 20% of them were reported to possess advanced IT skills and to have access to sophisticated computer equipment.<sup>246</sup> Some developing states even reported that training was either rare or that no training at all was available.<sup>247</sup>

Regular training is an important component of law enforcement capacity as it enables specialized officers to remain up to date with the latest techniques and developments and, consequently, to combat organized cybercrime.<sup>248</sup> The UNODC provides training to improve investigative skills and other capacities of law enforcement agencies to fight organized cybercrime in the form of regional and national workshops.<sup>249</sup> INTERPOL also provides a range of training courses to help police keep pace with cybercrime trends.<sup>250</sup> INTERPOL's annual Digital Security Challenge invites police worldwide to solve a simulated cyberattack, which helps officers "develop the skills necessary to tackle the latest cybercrime threats" and enhance their cybercrime investigation capabilities.<sup>251</sup> The European Union funded the FREETOOL project, a two-year initiative that aims to develop free and reliable cybercrime investigation and forensic tools for the wider law enforcement community.<sup>252</sup> In 2016, the project was extended for a period of two years to further develop tools and to include law enforcement training that will incorporate the tools developed.<sup>253</sup>

In view of the transnational nature of cybercrime and the increasing levels of criminal sophistication, the ability of law enforcement to collect and to handle electronic evidence between and within states is challenged, causing investigations to be delayed and more time-consuming.<sup>254</sup> Electronic evidence is information stored in electronic or digital form that a court may use for trial purposes.<sup>255</sup> As discussed in UNODC's Comprehensive Study on Cybercrime and reiterated by the World Economic Forum's Cybercrime Project, real-time sharing of cyber threat and data collection through a global information-

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<sup>242</sup> Albertini & Gehner, ITU launches Connect2Recover to reinforce digital infrastructure in countries affected by COVID-19, *ITU Media Centre*, 2020.

<sup>243</sup> *Ibid.*

<sup>244</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, pp. 119-120.

<sup>245</sup> *Ibid.*, p. 152.

<sup>246</sup> *Ibid.*, p. 154.

<sup>247</sup> *Ibid.*, p. 156.

<sup>248</sup> UNODC, *Report on the Meeting of the Expert Group to Conduct a Comprehensive Study on Cybercrime Held in Vienna from 3 to 5 April 2018 (E/CN.15/2018/12)*, 2018, p. 10; UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 66; UNODC, *Report on the Meeting of the Expert Group to Conduct a Comprehensive Study on Cybercrime Held in Vienna from 27 to 29 March 2019 (UNODC/CCPCJ/EG.4/2019/2)*, 2019, p. 3.

<sup>249</sup> Fedotov, United Front Key to Fighting Cybercrime, *Arab News*, 2018.

<sup>250</sup> INTERPOL, *Cybercrime Training for Police*, 2019.

<sup>251</sup> INTERPOL, *'Internet of Things' Cyber Risks Tackled During INTERPOL Digital Security Challenge*, 2018.

<sup>252</sup> European Commission, *Freetool Project – Free, Reliable Tools for Investigating Cybercrime*, 2014.

<sup>253</sup> UCD CCI, *Freetool v2.0 - Maturing and Extending the Freetool Tool Development Initiative*, 2016.

<sup>254</sup> UNODC, *Report on the Meeting of the Expert Group to Conduct a Comprehensive Study on Cybercrime Held in Vienna from 27 to 29 March 2019 (UNODC/CCPCJ/EG.4/2019/2)*, 2019, p. 3; UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 121.

<sup>255</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 157.

sharing platform that is based on a centralized depository could have a positive impact since it would allow for quick remedial action while minimizing the damaging effects of organized cybercrime.<sup>256</sup>

### **Conclusion**

Technology fosters innovation and offers the potential for immense profits; thus making it a commodity for organized criminal groups to expand their criminal networks and to create a sophisticated underground economy.<sup>257</sup> The COVID-19 pandemic has led to multiple developments within the cybersecurity field and has laid an unforeseeable burden on cyber networks.<sup>258</sup> Under the auspices of CCPCJ, the UNODC and the Expert Group on Cybercrime foster international cooperation mechanisms, public-private partnerships, capacity-building measures and technical assistance efforts to prevent, detect, investigate, and punish cyber-attacks conducted by organized criminal groups.<sup>259</sup> Despite such initiatives, governments, businesses, and individuals are increasingly falling victim to cyberattacks.<sup>260</sup> Cybercriminals continue to create advanced malware that affects our social and economic development.<sup>261</sup> Creating safe and secure ICTs is necessary to effectively prevent organized cybercrime groups from disrupting and hacking important infrastructures.<sup>262</sup> As stated by President of ECOSOC Mr. Lazarous Kapambwe at the 2011 Special Event on Cybersecurity and Development, “[...] cybersecurity is a global issue that can only be solved through global partnership.”<sup>263</sup>

### **Further Research**

How can CCPCJ take a more proactive role in identifying and preventing potential cyber threats and increase its role as an agenda-setting institution on countering organized crime? How can the international community provide further financial and legal assistance to strengthen ICT security in developing states? How can ICTs provide secured digital access at the local level to ensure uninterrupted access for social and economic services? How can existing the legal framework on organized crime and cybercrime be improved to take into account the concerns, interests, and vulnerabilities of all Member States? What can CCPCJ do to enable electronic evidence to improve investigations and assist Member States in improving their prosecution processes for organized cybercriminal groups? How can partnerships take a greater role in promoting cooperation, capacity-building and knowledge sharing to combat transnational cybercrime?

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<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680081561>

*The Convention on Cybercrime of the Council of Europe (Budapest Convention) was the first binding international framework on the issue of cybercrime. The convention deals particularly with infringements of copyright, computer-related fraud, child pornography, and violations of network security. It also contains a series of powers and procedures such as the search for computer networks and interception. It is commonly cited by the UNGA, CCPCJ, and UNODC on issues and responses regarding cybercrime. Delegates*

<sup>256</sup> WEF, *Recommendations for Public-Private Partnership Against Cybercrime*, 2016, p. 6.; UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 130.

<sup>257</sup> EUROPOL, *The Internet Organised Crime Threat Assessment*, 2014.

<sup>258</sup> INTERPOL, *COVID-19 cyberthreats*, 2020.

<sup>259</sup> CCPCJ, *Report on the Twenty-seventh Session (E/CN.15/2018/15)*, 2018.

<sup>260</sup> Stokel-Walker, *Ransomware Attacks Are on the Rise and the Criminals Are Winning*, *NewScientist*, 2019.

<sup>261</sup> EUROPOL, *Internet Organised Crime Threat Assessment 2018*, 2018, p. 1; Morgan, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>262</sup> UNODC, *Report on the meeting of the Expert Group to Conduct a Comprehensive Study on Cybercrime Held in Vienna from 27 to 29 March 2019 (UNODC/CCPCJ/EG.4/2019/2)*, 2019.

<sup>263</sup> UN DESA, *Cybersecurity: A Global Issue Demanding a Global Approach*, 2011.

*will find this source useful because it serves as a guideline for any Member State developing comprehensive national legislation against cybercrime and as a framework for international cooperation between State Parties to this treaty.*

European Union Agency for Law Enforcement Cooperation. (2018). *Internet Organised Crime Threat Assessment*. Retrieved 13 September 2020 from: <https://www.europol.europa.eu/internet-organised-crime-threat-assessment-2018>

*This report is published by a regional law enforcement agency and is focused on key threats and challenges in the field of organized cybercrime over the year 2018. The report examines cyber-attacks conducted by organized groups often of unprecedented scope and scale. It also describes several key legislative and technological developments in cybersecurity, such as the introduction of the General Data Protection Regulation (GDPR), the Network and Information Security (NIS) directive and 5G technology. This report offers delegates illustrative cases of the many successes of law enforcement in the fight against organized cybercrime, as well as an understanding from the perspective of law enforcement officials as to why organized cybercrime is a threat to which the world must be concerned in the decades ahead.*

United Nations, Congress on Crime Prevention and Criminal Justice, Twelfth session. (2010). *Recent Developments in the use of Science and Technology by Offenders and by Competent Authorities in Fighting crime, Including the Case of Cybercrime (A/CONF.213/9)*. Retrieved 13 September 2020 from: <https://undocs.org/A/CONF.213/9>

*The Crime Congress is a global forum that brings together the largest and most diverse gathering of policymakers and practitioners in the area of crime prevention and criminal justice, as well as individual experts from academia, representatives of intergovernmental and non-governmental organizations, specialized agencies and other United Nations entities, and the media. This working paper prepared by the Secretariat offers a detailed description on the issue of cybercrime, which provides a historical context, the challenges of cybercrime, the differences in national legal approaches, the trend of traditional organized criminal groups getting involved in the area of high-tech crimes, potential responses to cybercrime, and recommendations. This source will help delegates to understand where the CCPCJ mandate stands on this issue.*

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*Several UN General Assembly and CCPCJ resolutions express concerns about the nexus between organized crime and cybercrime and reiterated that the United Nations Convention against Transnational Organized Crime and the Protocols thereto are the principal legal tool to combat all forms of organized crime, including cybercrime, and fosters international cooperation on this issue. The convention provides for the criminalization of participation in an organized criminal group, as well as measures of mutual legal assistance in investigations, joint investigations, special investigative techniques, measures to enhance cooperation with law enforcement authorities, law enforcement cooperation, technical assistance, and other measures that could be of particular importance in combating organized cybercrime. This source will allow delegates to how organized criminal groups are structured and what are the most effective measures to fight them.*

United Nations Office on Drugs and Crime. (2013). *Comprehensive Study on Cybercrime*. Retrieved 13 September 2020 from: [https://www.unodc.org/documents/organized-crime/UNODC\\_CCPCJ\\_EG.4\\_2013/CYBERCRIME\\_STUDY\\_210213.pdf](https://www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.4_2013/CYBERCRIME_STUDY_210213.pdf)

*The CCPCJ established an open-ended intergovernmental expert group to conduct a comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector, including the exchange of information on national legislation, best practices, technical assistance, and international*

cooperation. The study thoroughly analyzes the problem of cybercrime, legal responses to cybercrime, crime prevention, and criminal justice capabilities and other responses by various international organizations and examines options to strengthen existing and to propose new national and international legal responses to cybercrime. This study will serve as a starting point for delegates in understanding the phenomenon of cybercrime, the measures that have been taken by Member States, and the pressing challenges faced by them regarding this crime.

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### III. Combating Illicit Organ Trafficking

#### **Introduction**

Illicit organ trafficking, characterized as the trade of human organs from living donors for profit with or without consent, is a transnational crime that generates up to \$1.7 billion globally each year.<sup>264</sup> Up to 10% of kidney and liver transplants worldwide involve organs obtained illegally, with hearts and lungs also being highly valued.<sup>265</sup> The limited available outcome data for illegal organ donors and recipients show that illicit transplants have higher rates of negative health outcomes such as neurotoxicity, psychological deterioration, and death.<sup>266</sup> Human trafficking for the purpose of organ removal is one method for moving organs, with vulnerable populations such as the poor being the main targets.<sup>267</sup> A 2002 study in India found that 71% of those who illicitly donated an organ were below the poverty line.<sup>268</sup> The high demand for organs is met with a short supply of organs globally; for example, the United States of America, the Member State with the largest annual number of transplants, only performed procedures on a quarter of those on their waiting list in 2018.<sup>269</sup> The 2019 coronavirus pandemic has furthered this problem by reducing organ donations and diverting law enforcement resources away from traffickers.<sup>270</sup>

The United Nations (UN) Commission on Crime Prevention and Criminal Justice (CCPCJ) has considered the illegal harvesting and trading of human organs in committee resolutions since 2014.<sup>271</sup> While not specifically defined, CCPCJ generally refers to illicit organ trafficking as activities that have any of the following characteristics: the unauthorized removal or implantation of organs, the sale of organs for financial gain, and the trafficking of persons for the purpose of organ removal.<sup>272</sup> The *2030 Agenda for Sustainable Development* (2015) highlights the need to tackle transnational crimes affecting global health in its Sustainable Development Goals (SDGs), specifically SDG 3 (good health and well-being) and SDG 16 (peace, justice and strong institutions).<sup>273</sup> CCPCJ has continued to produce policy guidelines, research, and best practices on combating organ trafficking in Member States.<sup>274</sup>

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<sup>264</sup> WHA, *Development of guiding principles for human organ transplants (WHA 40.13)*, 1987; GFI, *Transnational Crime and the Developing World*, 2017, p. 29.

<sup>265</sup> UNODC, *Global Report on Trafficking in Persons*, 2018, p. 30; GFI, *Transnational Crime and the Developing World*, 2017, p. 29.

<sup>266</sup> Jafar, *Organ Trafficking: Global Solutions for a Global Problem*, 2009, p. 1149; Council of Europe, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, pp. 62-63.

<sup>267</sup> Global Financial Integrity, *Transnational Crime and the Developing World*, 2017, p. 33; Hamdo, *The underbelly of Syria's war: a thriving trade in human organs*, *United Press International*, 2016.

<sup>268</sup> Shimazono, *The state of the international organ trade: a provisional picture based on integration of available information*, 2007.

<sup>269</sup> United Network for Organ Sharing, *About UNOS*, 2019; Health Resources and Services Administration, *Organ Donation Statistics*, 2019.

<sup>270</sup> UNODC, *COVID-19: UNODC warns of increased risks to human trafficking victims*, 2020; Rosenbaum, *The Coronavirus Pandemic Has Led To A Decrease In Organ Transplants*, *Forbes*, 2020.

<sup>271</sup> UN ECOSOC, *Implementation of General Assembly resolution 46/152 concerning operational activities and coordination in the field of crime prevention and criminal justice (E/RES/1992/22)*, 1992; CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 23/2)*, 2014.

<sup>272</sup> *Ibid.*; CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 25/1)*, 2016; Council of Europe, *Council of Europe Convention against Trafficking in Human Organs*, 2015; WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010.

<sup>273</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015.

<sup>274</sup> UN CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 23/2)*, 2014; CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 25/1)*, 2016.

## ***International and Regional Framework***

Representing the global medical community's perspective, the World Health Organization's (WHO) 2010 *Guiding Principles on Human Cell, Tissue and Organ Transplantation* provides the foundational guidelines for proper removal or implantation of human organs.<sup>275</sup> Principles 1 and 3 in particular discuss the need for informed consent when obtaining organs from a deceased or living donor.<sup>276</sup> The consent process for deceased donors takes one of two forms based on the national authorities: "opting in," where organs may only be removed if the deceased person gave permission while alive, and "opting out," where organs can be removed from all deceased citizens unless the person requested otherwise.<sup>277</sup> For living donors, physicians must ensure that they are fully informed about the procedure's dangers before donating.<sup>278</sup> Principle 5 also gives a clear limitation on organ transplantation: all donations should be done altruistically with no monetary reward.<sup>279</sup> Reiterating the 1985 statement from the World Medical Association (WMA), a non-governmental organization (NGO) representing physicians from 114 Member States, WHO explains that the use of payment for organs could put undue burden on vulnerable populations like the poor through monetary coercion.<sup>280</sup> However, "compensation for the costs of making donations" is allowed within reason.<sup>281</sup> This compensation clause intends to make the donation process financially neutral by naming lost wages and medical cost reimbursement as allowable.<sup>282</sup>

While illicit organ trafficking is not the subject of any UN legal frameworks, human trafficking for the purpose of organ removal is widely cited due to its inclusion in the definition of "trafficking in persons" in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* in the 2000 *United Nations Convention against Transnational Organized Crime* (UNTOC).<sup>283</sup> Because of this, human trafficking prevention frameworks such as the *United Nation Global Plan of Action to Combat Trafficking in Persons* (2010) and the *New York Declaration for Refugees and Migrants* (2016) also apply to those trafficked for their organs.<sup>284</sup>

The 2030 Agenda established the SDGs, which address both aspects of illicit organ trafficking.<sup>285</sup> The direct trafficking of organs specifically falls under SDG target 3.8 regarding universal access to quality and safe health services, namely transplant surgeries.<sup>286</sup> Preventing human trafficking, whether for organ removal or other purposes, is highlighted in SDG targets 5.2, 8.7, and 16.2, which targets the elimination of female and child trafficking for economic gain.<sup>287</sup> However, no SDG makes direct mention of organ transplantation.<sup>288</sup> Due to its influence on collaborative medical science and data collection, SDG 17 (partnerships for the SDGs) is also relevant to both illicit organ and human trafficking.<sup>289</sup>

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<sup>275</sup> WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010.

<sup>276</sup> *Ibid.*, pp. 2-4.

<sup>277</sup> *Ibid.*, 2010, p. 2.

<sup>278</sup> *Ibid.*, p. 4.

<sup>279</sup> *Ibid.*, p. 5.

<sup>280</sup> World Medical Association, *Statement on Live Organ Trade*, 1985; WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010, p. 5.

<sup>281</sup> WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010, p. 5.

<sup>282</sup> Delmonico et al., *Living and Deceased Organ Donation Should Be Financially Neutral Acts*, 2015; WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010, p. 5.

<sup>283</sup> UNODC, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, 2000, pp. 42-43.

<sup>284</sup> UN General Assembly, *United Nations Global Plan of Action to Combat Trafficking in Persons (A/RES/64/293)*, 2010; UN General Assembly, *New York Declaration for Refugees and Migrants (A/RES/71/1)*, 2016.

<sup>285</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015, pp. 16, 25.

<sup>286</sup> *Ibid.*, p. 17.

<sup>287</sup> *Ibid.*, pp. 18, 20, 25.

<sup>288</sup> *Ibid.*

<sup>289</sup> *Ibid.*, pp. 25-27.

On a regional level, the Council of Europe (CoE), an organization of 47 European Member States tasked with promoting human rights and rule of law in Europe, adopted the 1997 *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine*, being the first multilateral treaty regarding biomedical law.<sup>290</sup> The convention, otherwise known as the *Oviedo Convention*, defines informed consent as well as general rules for organ transplantation, including the prohibition of financial gain from organ donation.<sup>291</sup> This framework was further detailed in the 2002 *Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin*, which removed the prohibition on financial compensation for justifiable expenses similar to the later WHO *Guiding Principles*.<sup>292</sup> In 2015, CoE adopted the *Convention against Trafficking in Human Organs*, which is the only binding convention specifically against organ trafficking and the first legal document to provide a globally-accepted definition of organ trafficking.<sup>293</sup> As of 2020, these provisions have only been ratified by nine European Member States.<sup>294</sup> In 2015, the Association of Southeast Asian Nations (ASEAN), a regional intergovernmental organization of 10 Member States founded in 1967, developed the binding *Convention Against Trafficking in Persons, Especially Women and Children* (ACTIP).<sup>295</sup> ACTIP and its Plan of Action describe how the region can prevent trafficking, protect victims, and improve cooperation through steps such as increasing cross-border communication and providing specialized services to victims.<sup>296</sup> Two recent studies comparing ACTIP with the 2005 CoE *Convention on Action against Trafficking in Human Beings* found that the measures within were not only comparable but also could strengthen one another by sharing best practices and developing joint projects.<sup>297</sup> While CoE and ASEAN remain the only regional groups to adopt legally binding anti-trafficking conventions, these conventions' recommendations could serve as a foundation for the international community.<sup>298</sup>

In 2008, the Transplantation Society (TTS) and the International Society of Nephrology (ISN), two NGOs serving as forums for experts in the organ transplantation field, held the Istanbul Summit on Organ Trafficking and Transplant Tourism with 151 organ transplant representatives from medical organizations and Member State governments.<sup>299</sup> The outcome document, the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, defines transplant tourism as illicit organ trafficking across borders or the use of transplantation resources to aid non-residents of a Member State at the detriment of its residents.<sup>300</sup> The original declaration and its 2018 update give principles and suggestions to Member

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<sup>290</sup> Council of Europe, *Who we are*, 2019; Council of Europe, *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine*, 1997; Andorno, *The Oviedo Convention: a European Legal Framework at the Intersection of Human Rights and Health Law*, 2005, p. 134.

<sup>291</sup> *Ibid.*, pp. 2, 5-6; *Ibid.*, p. 134.

<sup>292</sup> Council of Europe, *Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin*, 2002, p. 5; WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010, p. 5.

<sup>293</sup> Council of Europe, *Council of Europe Convention against Trafficking in Human Organs*, 2015; DICG, *The Council of Europe Convention Against Trafficking in Human Organs*, 2014.

<sup>294</sup> Council of Europe, *Chart of signatures and ratification of Treaty 216*, 2020.

<sup>295</sup> Association of Southeast Asian Nations, *Charter of the Association of Southeast Asian Nations*; Liberty Asia, *ASEAN & ACTIP: Using a Regional Legal Framework to Fight a Global Crime*, 2017; Association of Southeast Asian Nations, *Convention Against Trafficking in Persons, Especially Women and Children*, 2015.

<sup>296</sup> Association of Southeast Asian Nations, *Convention Against Trafficking in Persons, Especially Women and Children*, 2015; Association of Southeast Asian Nations, *Plan of Action Against Trafficking in Persons, Especially Women and Children*, 2015.

<sup>297</sup> Liberty Asia, *ASEAN & ACTIP: Using a Regional Legal Framework to Fight a Global Crime*, 2017; Jovanovic, *Comparison of Anti-Trafficking Legal Regimes and Actions in the Council of Europe and ASEAN: Realities, Frameworks and Possibilities for Collaboration*, 2018.

<sup>298</sup> Jovanovic, *Comparison of Anti-Trafficking Legal Regimes and Actions in the Council of Europe and ASEAN: Realities, Frameworks and Possibilities for Collaboration*, 2018, p. 8.

<sup>299</sup> Istanbul Summit on Organ Trafficking and Transplant Tourism, *Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008 Edition)*, 2008; International Congress of the Transplantation Society, *Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018 Edition)*, 2018.

<sup>300</sup> *Ibid.*

States to prevent organ trafficking and improve consensual organ donation, including promoting safe and financially neutral donations and targeting prosecution at advertisers, physicians, and government officials who support transplant tourism.<sup>301</sup>

### **Role of the International System**

CCPCJ has consistently reviewed protocols for combating human organ trafficking and advised Member States on their implementation.<sup>302</sup> The body adopted its first comprehensive solutions in resolutions 23/2 in 2014 and 25/1 in 2016 on “Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal.”<sup>303</sup> In these resolutions, Member States were given numerous methods for developing legislative measures, conducting awareness campaigns, and sharing information on best practices.<sup>304</sup> Measures recommended by CCPCJ include strengthening regulatory oversight of medical facilities, training both law enforcement and medical professionals on victim identification, and developing prosecution legislation for punishing those involved in the crime.<sup>305</sup> CCPCJ also tasked the UN Office on Drugs and Crime (UNODC) in these resolutions to lead global data analysis on human organ trafficking.<sup>306</sup> Its research has culminated in the biennial *Global Report on Trafficking in Persons*, last released in 2018, with global and regional perspectives and data on the current outlook of human trafficking to inform future legislation.<sup>307</sup> CCPCJ addressed human trafficking most recently in 2018 and 2019 when it discussed how Member States can prevent human trafficking by combating the illicit use of information and communications technologies.<sup>308</sup> UNODC supplements CCPCJ’s trafficking resolutions through the 2015 assessment tool for *Trafficking in Persons for the Purpose of Organ Removal*, giving Member States numerous assessment tools, such as how to detect possible trafficking victims, to promote national solutions.<sup>309</sup> The UN General Assembly has supported CCPCJ and UNODC with resolutions 59/156 in 2004, 71/322 in 2017, and 73/189 in 2019 on combating organ trafficking and human trafficking for the purpose of organ removal.<sup>310</sup> These resolutions include calls for Member States to research the level of organ trafficking within their borders, ratify the UNTOC, and adopt standard measures for transplantation safety and oversight.<sup>311</sup> In 2013, the UN General Assembly *Report of the*

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<sup>301</sup> Ibid.

<sup>302</sup> UN ECOSOC, *Implementation of General Assembly resolution 46/152 concerning operational activities and coordination in the field of crime prevention and criminal justice (E/RES/1992/22)*, 1992; UN CCPCJ, *Efforts in the fight against trafficking in persons (Res 17/1)*, 2008; UN CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 23/2)*, 2014; UN CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 25/1)*, 2016.

<sup>303</sup> UN CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 23/2)*, 2014; UN CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 25/1)*, 2016.

<sup>304</sup> Ibid.

<sup>305</sup> Ibid.

<sup>306</sup> UN ECOSOC, *Implementation of General Assembly resolution 46/152 concerning operational activities and coordination in the field of crime prevention and criminal justice (E/RES/1992/22)*, 1992; UN CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 23/2)*, 2014.

<sup>307</sup> UNODC, *Global Report on Trafficking in Persons*, 2018.

<sup>308</sup> UN CCPCJ, *Improving the protection of children against trafficking in persons, including by addressing the criminal misuse of information and communications technologies (Res 27/3)*, 2018; UN CCPCJ, *Strengthening the engagement of all members of society in crime prevention (Res 28/1)*, 2019.

<sup>309</sup> UNODC, *Trafficking in Persons for the Purpose of Organ Removal: Assessment Tool*, 2015.

<sup>310</sup> UN General Assembly, *Preventing, combating and punishing trafficking in human organs (A/RES/59/156)*, 2004; UN General Assembly, *Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs (A/RES/71/322)*, 2017; UN General Assembly, *Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs (A/RES/73/189)*, 2019.

<sup>311</sup> Ibid.

*Special Rapporteur on trafficking in persons, especially women and children* gave a detailed overview of the state of the illicit organ trade and the recommendations endorsed by the UN General Assembly, including adding the term “removal of organs” to all Member State definitions of human trafficking.<sup>312</sup>

The international medical community has the longest history addressing illicit organ trade, starting with the 1985 WMA guidelines.<sup>313</sup> The World Health Assembly (WHA), the governing forum of WHO, produced the original *Guiding Principles on Human Cell, Tissue and Organ Transplantation* in 1991.<sup>314</sup> WHA has also adopted numerous resolutions since 1987 on proper organ transplantation practices, urging for the development of altruistic donation systems with improved protection for vulnerable groups and national oversight from health authorities.<sup>315</sup> The work of WHA directly led to the development of both the updated WHO *Guiding Principles* and the *Istanbul Declaration*.<sup>316</sup> WHO supports this work by not only producing research on the health implication of illicit organ trade but also by promoting well-being on a national and regional level, as a reduction in disease would in turn reduce the number of persons in need of an organ transplantation.<sup>317</sup> Furthermore, WHO works in conjunction with the Spanish Organización Nacional de Trasplantes on the most up-to-date global database on organ donation, known as the Global Observatory on Donation and Transplantation, to provide statistics such as global annual donors and transplants per organ.<sup>318</sup> In addition to holding the Istanbul Summit on Organ Trafficking and Transplant Tourism, TTS and ISN created the Declaration of Istanbul Custodian Group (DICG).<sup>319</sup> From 2010-2018, the DICG informed Member States about the newly-adopted declaration and learned about their regional challenges, culminating in the 2018 update to the *Istanbul Declaration*.<sup>320</sup> The CoE worked directly with the UN to release a joint study in 2009 reviewing illicit organ trafficking internationally and regionally and providing comprehensive data for Member States to combat the problem.<sup>321</sup> National organizations have also improved the regulation and oversight of organ transplantation by maintaining transplant waiting databases and educating the general public on legal transplantation.<sup>322</sup> Examples of these organizations include the United States’ United Network for Organ Sharing, a non-profit research group, and the Lebanese National Organization for Organ and Tissues Donation and Transplantation, a government agency led by the Lebanese Order of Physicians in Beirut.<sup>323</sup>

### **Challenges in Developing Organ Trafficking Legislation**

Despite the reliable support for developing comprehensive solutions to illicit organ trafficking overall, one consistent question when discussing the scope of the work is whether illicit organ trafficking and human

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<sup>312</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 20.

<sup>313</sup> World Medical Association, *Statement on Live Organ Trade*, 1985.

<sup>314</sup> WHA, *Guiding Principles on Human Cell, Tissue and Organ Transplantation (WHA44/1991/REC/1 Annex 6)*, 1991.

<sup>315</sup> WHA, *Development of guiding principles for human organ transplants (WHA 40.13)*, 1987; WHA, *Preventing the purchase and sale of human organs (WHA 42.5)*, 1989; WHA, *Human organ and tissue transplantation (WHA 57.18)*, 2004; WHA, *Human organ and tissue transplantation (WHA 63.22)*, 2010.

<sup>316</sup> WHA, *Human organ and tissue transplantation (WHA 57.18)*, 2004; WHA, *Human organ and tissue transplantation (WHA 63.22)*, 2010; Istanbul Summit on Organ Trafficking and Transplant Tourism, *Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008 Edition)*, 2008.

<sup>317</sup> Shimazono, *The state of the international organ trade: a provisional picture based on integration of available information*, 2007.

<sup>318</sup> Global Observatory on Donation and Transplantation, *Homepage*, 2016.

<sup>319</sup> The Transplantation Society, *TTS Initiatives and Partnerships*; International Society of Nephrology, *About ISN*, 2019; International Congress of the Transplantation Society, *Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018 Edition)*, 2018.

<sup>320</sup> International Congress of the Transplantation Society, *Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018 Edition)*, 2018.

<sup>321</sup> Council of Europe, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009.

<sup>322</sup> United Network for Organ Sharing, *About UNOS*, 2019; National Organization for Organ and Tissues Donation and Transplantation, *About Us*.

<sup>323</sup> *Ibid.*



trafficking for the purpose of organ removal should be considered at the same time.<sup>324</sup> The 2009 CoE/UN joint study concluded that the two topics are different crimes, regarding different trafficked objects (organs versus humans).<sup>325</sup> The study recommended that each crime be reviewed separately in order to avoid confusion in the public, legal community, and scientific community.<sup>326</sup> However, the 2013 UN General Assembly Special Rapporteur report on organ trafficking expressed concern about this conclusion due to the possibility of a victim receiving solely support from newer, less-comprehensive organ trafficking frameworks instead of the wealth of human trafficking protection available.<sup>327</sup> CCPCJ agreed with the Special Rapporteur in its 2016 resolution, suggesting that both crimes have the same cause: a shortage of organs for transplantation.<sup>328</sup> Therefore, CCPCJ recommends that the crimes of organ trafficking and human trafficking for organ removal be prevented in a coordinated manner.<sup>329</sup>

When developing new legislation to combat organ trafficking, another distinction lies in what type of Member State is affected: a state of “demand” or “supply.”<sup>330</sup> The former consists mainly of developed Member States with populations wealthy enough to pay for needed organs, with legislation focusing on identification and prohibition of transplant tourism and organ sellers.<sup>331</sup> “Supply” Member States, on the other hand, are tasked with protecting the most vulnerable populations, such as the socioeconomically poor, uneducated, children, and refugees, from illicit organ or human trafficking.<sup>332</sup> These groups are mainly targeted due to their desperation for a quick payment to alleviate debt even at the cost of their own body.<sup>333</sup> Particularly for the uneducated, who may not understand the negative health implications of an improper transplant surgery, buyers can be convincing by sharing minimal information on health risks.<sup>334</sup> According to the UN General Assembly Special Rapporteur report, proactive education on victim identification through medical and law officer training, legal assistance to victims and witnesses of trafficking, and awareness campaigns in at-risk populations are avenues for legislation to protect vulnerable populations.<sup>335</sup> However, the legal capacity of a Member State can be a direct factor in the effectiveness of these responses.<sup>336</sup> This can be seen in Syria’s inability to enforce national organ trade legislation during the Syrian conflict, leading to 18,000 Syrian refugees losing organs as of 2016.<sup>337</sup> There may also be an unwillingness to protect a vulnerable group, such as the 1984 China regulation allowing

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<sup>324</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 19.

<sup>325</sup> Council of Europe, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, p. 93.

<sup>326</sup> *Ibid.*, p. 93.

<sup>327</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 19.

<sup>328</sup> UN CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 25/1)*, 2016, p. 1.

<sup>329</sup> *Ibid.*, p. 1.

<sup>330</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 19.

<sup>331</sup> Global Financial Integrity, *Transnational Crime and the Developing World*, 2017, p. 32; UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 20.

<sup>332</sup> Council of Europe, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, p. 95; Jafar, *Organ Trafficking: Global Solutions for a Global Problem*, 2009, p. 1148; UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 19.

<sup>333</sup> Global Financial Integrity, *Transnational Crime and the Developing World*, 2017, p. 32.

<sup>334</sup> *Ibid.*, p. 32.

<sup>335</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, pp. 20-23.

<sup>336</sup> *Ibid.*, pp. 19-21; UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/71/303)*, p. 9.

<sup>337</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/71/303)*, p. 9; Hamdo, *The underbelly of Syria’s war: a thriving trade in human organs*, *United Press International*, 2016.

organs to be removed from executed criminals with consent.<sup>338</sup> Condemned by WMA, TTS, and the UN General Assembly due to the inability to verify the consent of executed prisoners, the Chinese Medical Association agreed to suspend the use of prisoner-sourced organs in 2001.<sup>339</sup> However, independent researchers and tribunals have found the practice continues to the present.<sup>340</sup> Expansion of the legal capacity of “supply” Member States for victim protection is important for legislation to be effective, and fostering international, regional, and national knowledge and resource sharing has been considered a possible avenue for promoting those capabilities.<sup>341</sup>

### **Legalized Organ Trade**

Despite the WHO opposition to financial gain from organ donation since the 1980s, Iran remains the only Member State to allow a regulated organ marketplace for kidneys.<sup>342</sup> In 1988, Iran legalized the selling of kidneys from living donors with non-profit organizations working alongside the Iranian Health Department to arrange donor-recipient matches.<sup>343</sup> Donors are paid in two ways: a fixed compensation of \$1,200 with health coverage for transplant-related complications from the government and a reward from the recipient of between \$2,000 - \$5,000.<sup>344</sup> This cost to the recipient is much less than the cost of a kidney on the black market, which can cost up to \$120,000.<sup>345</sup> The only regulation imposed by the government on both the donor and recipient is that each must be Iranian citizens, meaning refugees and tourists cannot participate.<sup>346</sup> Further regulations apply to the donor, namely they must be healthy, between 20-35 years of age, and receive additional consent from their close family.<sup>347</sup> The Iranian method has shown to be generally successful, with government regulation allowing for safer transplantation sales than if done illegally and a reduction in illegal sales overall.<sup>348</sup> Moreover, a more incentivized donor pool means there are minimal waiting times for kidney transplants in Iran compared to other Member States.<sup>349</sup> However, the trade can still be coercive to poor Iranians as approximately 80% of all donors are socioeconomically poor.<sup>350</sup> While not currently practiced, another model of legal organ transactions known as the Erin Harris Model attempts to combat that coercion by suggesting the government be the sole buyer of organs to promote equitable organ donation and distribution.<sup>351</sup>

While being the only legal organ trade market in the world, Iran is not the only Member State with a financial aspect to its organ donors.<sup>352</sup> The *Guiding Principles on Human Cell, Tissue and Organ Transplantation* permit government compensation for donors to remove the costs of donating without

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<sup>338</sup> Allison et al., *Historical development and current status of organ procurement from death-row prisoners in China*, 2015, p. 2.

<sup>339</sup> Hillman, *Harvesting organs from recently executed prisoners: Practice must be stopped*, 2001; Tibell, *The Transplantation Society's Policy on Interactions With China*, 2007; UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 20; Allison et al., *Historical development and current status of organ procurement from death-row prisoners in China*, 2015, p. 3; Doffman, *China Killing Prisoners To Harvest Organs For Transplant, Tribunal Finds*, 2019.

<sup>340</sup> Ibid.; Robertson et al., *Analysis of official deceased organ donation data casts doubt on the credibility of China's organ transplant reform*, 2019.

<sup>341</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, pp. 20-23.

<sup>342</sup> World Medical Association, *Statement on Live Organ Trade*, 1985; Ghods & Savaj, *Iranian Model of Paid and Regulated Living-Unrelated Kidney Donation*, 2006; Major, *Paying kidney donors: time to follow Iran?*, 2008.

<sup>343</sup> Major, *Paying kidney donors: time to follow Iran?*, 2008.

<sup>344</sup> Schall, *A New Outlook on Compensated Kidney Donations*, 2008.

<sup>345</sup> Global Financial Integrity, *Transnational Crime and the Developing World*, 2017, p. 29.

<sup>346</sup> Griffin, *Kidneys on demand*, 2007, p. 503.

<sup>347</sup> Ibid., p. 503.

<sup>348</sup> Ghods & Savaj, *Iranian Model of Paid and Regulated Living-Unrelated Kidney Donation*, 2006; Major, *Paying kidney donors: time to follow Iran?*, 2008.

<sup>349</sup> Ibid.

<sup>350</sup> Ibid.; Griffin, *Kidneys on demand*, 2007.

<sup>351</sup> Erin & Harris, *An ethical market in human organs*, 2003.

<sup>352</sup> WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010, p. 5; Delmonico et al., *Living and Deceased Organ Donation Should Be Financially Neutral Acts*, 2015.

adding rewards.<sup>353</sup> Australia adopted this method, currently paying up to nine weeks of minimum wage to donors for time they must take off work recovering from surgery.<sup>354</sup> While on a federal level still considered illegal, 17 states in the United States provide limited tax breaks to living donors.<sup>355</sup> In the United States, however, these practices have been found to have no significant effect on donation rates or illicit donation, with the average value of the incentive being too low to offset costs.<sup>356</sup> In addition to financial compensation, kidney paired donation allows for a person to donate a kidney to another person with an expectation that a person close to the recipient will then donate to a person close to the donor, effectively paying for an organ with an organ.<sup>357</sup> This practice is currently legal in Australia, Canada, and the United States.<sup>358</sup>

### **Conclusion**

With severe consequences to not only the health and well-being of those involved but also the reputation of life-saving organ donations, illicit organ trade and human trafficking for the purpose of organ removal are direct threats to the global population.<sup>359</sup> Through coercive tactics and a lack of victim protection, vulnerable populations such as the poor and refugees receive minimal financial gain and face deteriorating health on the illicit organ market.<sup>360</sup> Despite the medical community developing transplant guidelines decades ago, the legal responses and challenges for illicit transplants are much newer, requiring more assessment into the best practices possible.<sup>361</sup> As the main body for legal governance, CCPCJ has improved legal capacity in Member States, promoted educational campaigns to reduce the chances of criminal activity, and continued research into the causes and repercussions of the crime, but illicit organ trafficking continues in both developed and developing Member States to this day.<sup>362</sup>

### **Further Research**

As delegates continue with their research, there are multiple questions to keep in mind: Should organ trafficking and human trafficking for the purpose of organ removal be considered together or separately? What are the possible roles of the governmental/state actors, such as law enforcement and the medical community, in combating illicit organ trafficking? How can CCPCJ support Member States and UNODC in implementing or improving policies regarding organ trafficking? How can the demand for organs be reduced and vulnerable populations be protected from coerced donations? Can anything be learned from the legalized organ markets or compensation models utilized by some Member States?

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<sup>353</sup> Ibid.

<sup>354</sup> Australia, *Supporting Living Organ Donors Program*, 2020.

<sup>355</sup> Fishman, *Are There Tax Incentives for Organ Donations?*.

<sup>356</sup> Venkataramani et al., *The Impact of Tax Policies on Living Organ Donations in the United States*, 2012.

<sup>357</sup> Toews et al., *Kidney Paired Donation and the “Valuable Consideration” Problem: The Experiences of Australia, Canada, and the United States*, 2017.

<sup>358</sup> Ibid.

<sup>359</sup> WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010; CoE, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009.

<sup>360</sup> Council of Europe, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, p. 95; Jafar, *Organ Trafficking: Global Solutions for a Global Problem*, 2009, p. 1148.

<sup>361</sup> World Medical Association, *Statement on Live Organ Trade*, 1985; CoE, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009; UN CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 25/1)*, 2016.

<sup>362</sup> UN CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 23/2)*, 2014; CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 25/1)*, 2016; Global Financial Integrity, *Transnational Crime and the Developing World*, 2017.

Commission on Crime Prevention and Criminal Justice. (2016). *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 25/1)*. Retrieved 22 August 2020 from:

[https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_25/2016\\_Resolutions\\_Decisions/03.CCPCJ\\_2016/Resolution\\_25\\_1.pdf](https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_25/2016_Resolutions_Decisions/03.CCPCJ_2016/Resolution_25_1.pdf)

*As an update to its 2014 resolution of the same name, this is the most recent resolution by CCPCJ on the topic of organ trafficking. CCPCJ recommends Member States combat organ trafficking through strengthening judicial legislation, information sharing, educational campaigns, and international cooperation. The body additionally requests UNODC continue its research into organ trafficking, providing its data to reports such as the Global Report on Trafficking in Persons. Delegates should understand how CCPCJ is currently combating illicit organ trade and how those recommendations can be revised for future resolutions.*

Council of Europe. (2009). *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*. Retrieved 22 August 2020 from: <https://rm.coe.int/16805ad1bb>

*The Council of Europe (CoE), an international organization of 47 European Member States and United Nations Observer, has drafted numerous documents targeting illicit organ trafficking. In 2009, the CoE and UN produced a joint study on organ trafficking, providing overviews on the history, ethics, and outcomes of organ transplantation and trafficking. The report additionally reviews the existing international response to this crime and discusses the gaps in the legislation. Delegates can utilize these recommendations as a starting point for determining the best solutions to ending illicit organ trade.*

Global Financial Integrity. (2017). *Transnational Crime and the Developing World*. Retrieved 22 August 2020 from: [https://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational\\_Crime-final.pdf](https://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational_Crime-final.pdf)

*Global Financial Integrity, a non-profit research organization specializing in illicit financial flow analyses, produced the most up-to-date evaluation of transnational crime finances. Section V of this report goes into detail on the dynamics of illegal organ trade, the value and uses of illicit organs, and how the criminal activity affects national economies. Delegates will not only be able to use this report as a guide to the financial profile of international organ trafficking but can also review the similarities between organ trade and the finances of other transnational crimes.*

United Nations, General Assembly, Sixty-eighth session. (2013). *Trafficking in persons, especially women and children: Note by the Secretary-General (A/68/256)*. Retrieved 22 August 2020 from:

<https://undocs.org/A/68/256>

*From the Special Rapporteur on trafficking in persons, especially women and children, this report provides a global yet detailed view of the issue of human trafficking for organ removal through discussing international, regional, and national responses and actors. The report concludes with recommendations for Member States regarding legal frameworks, victim protection, data collection, and international cooperation. The most emphasized recommendation of the report is the need to include trafficking for the purpose of organ removal into all definitions of human trafficking, international or national. As an overview of not only numerous factors in the illicit organ trade but also recommendations of the General Assembly on the topic, delegates will find this resource to be incredibly helpful when determining the key faults in current organ trafficking protocols.*

United Nations, General Assembly, Seventieth session. (2015). *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*. Retrieved 22 August 2020 from:

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*As human health is intrinsically linked to global sustainable development, delegates will need to fully understand the link between illicit organ trade and the SDGs. While SDG 3 directly discusses what needs to be improved regarding the health and well-being of persons, there is no mention of organs or organ transplants. Stopping the trafficking of*

persons, including for organ removal, is significantly covered, spanning SDGs 5, 8, and 16. As delegates consider the best avenues to ending illicit organ trafficking, they must consider how those solutions can ensure the realization of the SDGs.

United Nations Office on Drugs and Crime. (2015). *Trafficking in Persons for the Purpose of Organ Removal: Assessment Tool*. Retrieved 22 August 2020 from: [https://www.unodc.org/documents/human-trafficking/2015/UNODC\\_Assessment\\_Toolkit\\_TIP\\_for\\_the\\_Purpose\\_of\\_Organ\\_Removal.pdf](https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf)

*Produced by UNODC, the leading body on transnational illicit trafficking, this guide is the body's attempt to educate Member States on good practices for regulating illicit organ trade. This toolkit provides guidance on the terminology in organ transplantation, education on the international conventions related to transnational illicit organ trade, and recommendations on national legislation. Delegates will find this source includes the guidelines necessary to propose effective, realistic regulations to end illicit organ trafficking on the transnational scale.*

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[https://www.who.int/transplantation/Guiding\\_PrinciplesTransplantation\\_WHA63.22en.pdf](https://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf)

*Drafted as an update to the guiding principles from 1991, this document gives the medical community's perspective on the removal of organs from both deceased and living donors for transplantation. In particular, Guiding Principle 5 defines the prohibition of selling organs and states that organs should only be donated freely. While non-binding, this framework is consistently cited by the international community and resolutions, making it a universal standard. Understanding the health principles related to organ transplantation is required for delegates to be able to draft resolutions with the well-being of the organ donors in mind.*

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