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## Commission on Crime Prevention and Criminal Justice Background Guide 2020

Written by: Alliyah L. Edwards and Brian Tomblin, Directors  
Sarah Ali and Ho-Ly Ha, Assistant Directors



# NATIONAL MODEL UNITED NATIONS



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Dear Delegates,

Welcome to the 2020 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 Alliyah Edwards (Conference A) and Brian Tomblin (Conference B), and Assistant Directors Sarah Ali (Conference A) and Ho-Ly Ha (Conference B). Alliyah is finalizing her studies on Political Science and Criminology at the University of South Florida, and she hopes to attend law school next. Brian holds an MS in Biomedical Engineering and is currently a graduate student at the University of Pittsburgh pursuing an MPH in Health Policy and Global Health. Sarah Ali is a law student at the Faculty of Law of the University of Ottawa completing her Licentiate in Law (LL.L) and Juris Doctor, as well as an Honors BSocSc in International Development and Globalization. Ho-Ly recently graduated from law school, successfully obtaining a Licentiate in Law, and is now pursuing a Juris Doctor.

The topics under discussion for the Commission on Crime Prevention and Criminal Justice (CCPCJ) are:

1. Improving Vulnerable Persons' Access to Justice Including a Fair Trial
2. Combating Organized Cybercrime
3. Combating Illicit Organ Trafficking

CCPCJ is a subsidiary organ of the United Nations (UN) Economic and Social Council (ECOSOC) and represents the main forum where Member States debate standards and norms in the fields of crime prevention and criminal justice. CCPCJ is also a governing body of the UN Office on Drugs and Crime (UNODC), and it prepares the UN Congress on Crime Prevention and Criminal Justice. 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 2020 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 Marleen Schreier (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

Alliyah Edwards, *Director*  
Sarah Ali, *Assistant Director*

## Conference B

Brian Tomblin, *Director*  
Ho-Ly Ha, *Assistant Director*



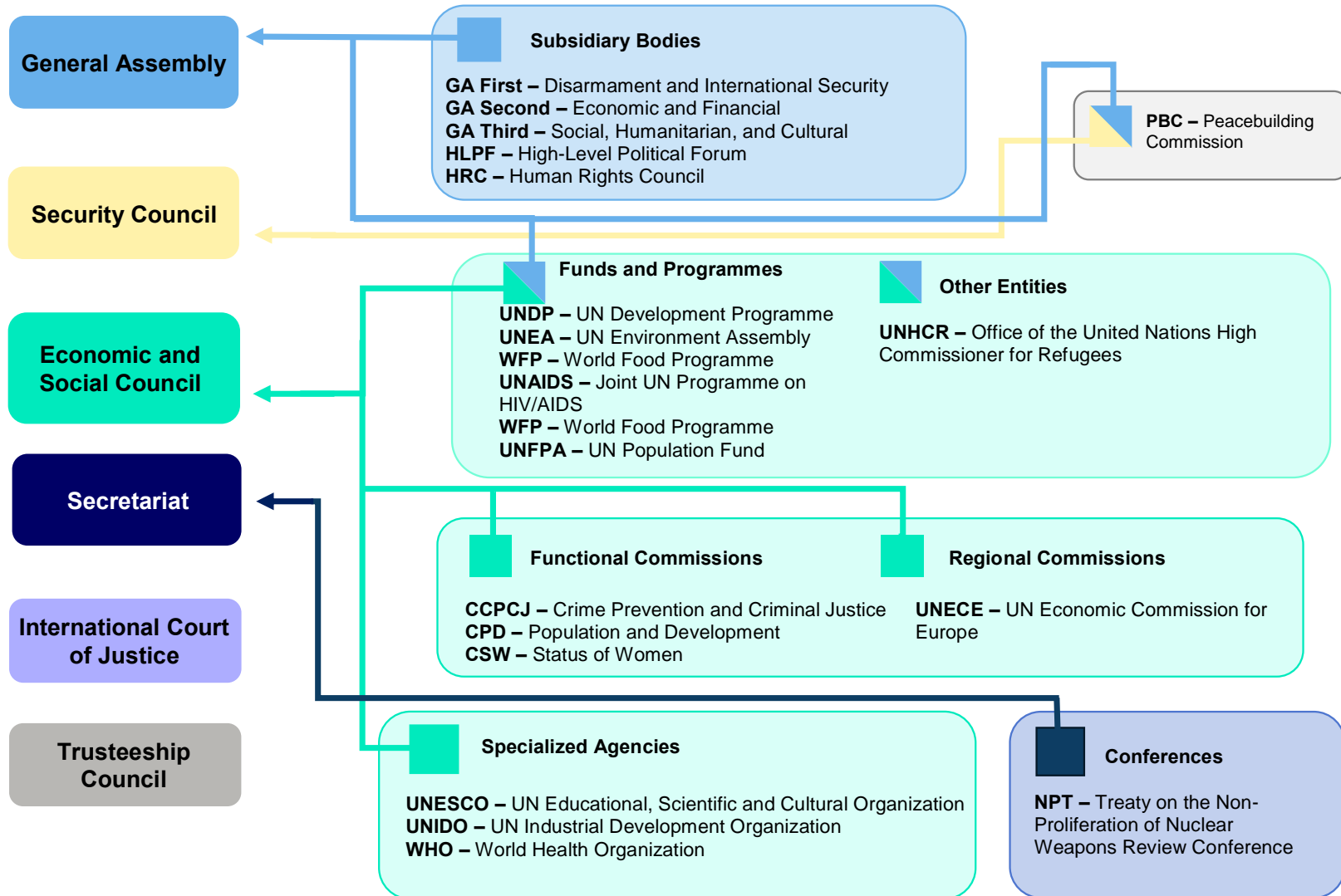


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## United Nations System at NMUN•NY

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.<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 61/253 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 meetings throughout the year to provide guidance to UNODC on policy and initiatives related to crime prevention and criminal justice.<sup>11</sup> Since then, 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>

### **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

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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*, 2019.

<sup>2</sup> UNODC, *CCPCJ: Mandate and Functions*, 2019.

<sup>3</sup> UNODC, *CCPCJ: Commission on Crime Prevention and Criminal Justice*, 2019.

<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*, 2019.

<sup>6</sup> UNODC, *CCPCJ: Mandate and Functions*, 2019.

<sup>7</sup> UNODC, *CCPCJ: Commission on Crime Prevention and Criminal Justice*, 2019.

<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*, 2019.

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

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 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> During the 28<sup>th</sup> session, the following members were elected: Ambassador Alena Kupchyna of Belarus as Chairperson, along with Ambassador J. Antonio Marcondes of Brazil, Ambassador Gabriela Sellner of Austria, and Ambassador Kazem Gharib Abadi of Islamic Republic of Iran as Vice-Chairpersons and Mr. Ahmed Maaty of Egypt 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 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 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 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>

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<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*, 2019; UNODC, *Documentation*, 2019; 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*, 2019.

<sup>19</sup> *Ibid.*

<sup>20</sup> UNODC, *CCPCJ: Bureau and Extended Bureau*, 2019.

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

<sup>22</sup> UNODC, *Bureau of Commissions*, 2019.

<sup>23</sup> UNODC, *Secretariat to the Governing Bodies*, 2019.

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

<sup>25</sup> UNODC, *CCPCJ: Expert Groups and Working Groups*, 2019.

<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.

<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*

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

CCPCJ is mandated 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>31</sup> CCPCJ's mandate was further expanded in 2006, making CCPCJ a governing body of UNODC, 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>32</sup> CCPCJ is also mandated to coordinate 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>33</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>34</sup> Through the preparation of the congresses, CCPCJ has contributed to international law in the form of guidelines and other recommendations, and encouraged the establishment of national and regional preparatory committees.<sup>35</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>36</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>37</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>38</sup> CCPCJ also cooperates with the UN Interregional Crime and Justice Research Institute (UNICRI), and invites the institute to report on issues

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

<sup>32</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*, 2019.

<sup>33</sup> UN ECOSOC, *Establishment of the Commission on Crime Prevention and Criminal Justice (E/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/1992/22)*, 1992; UNODC, *United Nations Crime Congresses*; UNODC, *Fourteenth United Nations Congress on Crime Prevention and Criminal Justice - About*, 2018.

<sup>34</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.

<sup>35</sup> UN CCPCJ, *Four transitions in the United Nations Crime Program*, 2017; UNODC, *2019 Regional Preparatory Meetings*, 2019.

<sup>36</sup> Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 229.

<sup>37</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>38</sup> UN General Assembly, *Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme (A/RES/46/152)*, 1991.

related to its work.<sup>39</sup> Together with UNICRI and other UN bodies, CCPCJ is part of the UN Crime Prevention and Criminal Justice Programme Network.<sup>40</sup>

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

The Commission's 28<sup>th</sup> session, concluding in May 2019, held its 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>41</sup> 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>42</sup> Topics discussed at this session seek to hold those who commit crime accountable as well as creating more ways to educate and protect those who are more vulnerable when it comes to being victims of a crime.<sup>43</sup> Furthermore, the adopted resolutions covered an assortment of topics to ensure international peace and justice.<sup>44</sup> For instance, resolution 25/2, on "Promoting legal aid, including through a network of legal aid providers," resolution 25/3 on "Strengthening crime prevention in support of sustainable development, including sustainable tourism," and resolution 25/1 on "Preventing and combatting trafficking in human organs and trafficking in persons for the purpose or organ removal."<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>

CCPCJ continues to incorporate the Sustainable Development Goals (SDGs) into its work and duties.<sup>47</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 be 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>48</sup> During the 28<sup>th</sup> session, General Assembly resolution 73/183 (2019) was highlighted as it mentioned the importance of Member States and their efforts to raise awareness of the current work of the Commission and how it plans to continue to implement the *2030 Agenda for Sustainable Development* (2030 Agenda) (2015).<sup>49</sup> The resolution also sought to advance the agenda of the commission while ensuring the goals and procedures of the Commission are met.<sup>50</sup> CCPCJ's work has been significantly influenced by the 2030 Agenda, in particular by SDG 16 (peace, justice, and strong institutions).<sup>51</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>52</sup> The High-level Political Forum (HLPF), this past July, looked over several SDGs in an in depth review, including Goal 16.<sup>53</sup> The forum's theme was based on equality and inclusiveness of all

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<sup>39</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>40</sup> UNODC, *Institutes of the UN Crime Prevention and Criminal Justice Programme Network (PNI)*, 2019.

<sup>41</sup> UNODC, *CCPCJ: Thematic Discussion*, 2019.

<sup>42</sup> UN ECOSOC, *UN CCPCJ, Report on the Twenty-Eighth Session (7 December 2018 and 20-24 May 2019) (E/2019/30)*, 2019.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> UN CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (25/1)*, 2016; UN CCPCJ, *Promoting legal aid, including through a network of legal aid providers (25/2)*, 2016; UN CCPCJ, *Strengthening crime prevention in support of sustainable development, including sustainable tourism (25/3)*, 2016.

<sup>46</sup> UNODC, *Resolution Database: CCPCJ*, 2019.

<sup>47</sup> *Ibid.*

<sup>48</sup> UNODC, *CCPCJ: Newsletter January – June 2019 – 28<sup>th</sup> Session of the CCPCJ*, 2019.

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

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

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

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> UN DESA, *2019 High-Level Political Forum on Sustainable Development*, 2019.



Member States, of which by the end of the session, 51 Member States agreed to submit Voluntary National Reviews (VNRs) this year alone.<sup>54</sup> VNRs are intended to allow for a more transparent look on what is going on in that said region.<sup>55</sup> VNRs also aim to highlight people’s experiences and progress made.<sup>56</sup> VNRs play a role in crime prevention by providing a more precise look at what and where crimes are being committed and allowing for follow-up with victims after a crime was committed.<sup>57</sup> These reports will allow for more accurate representation when assessing levels of crime as well as crime prevention.<sup>58</sup>

The 29<sup>th</sup> session of the commission is set to take place in Vienna, Austria in December 2019.<sup>59</sup> The thematic discussion is set to be “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>60</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>61</sup> The primary focus is aimed at vulnerable groups, such as women and children, who need to be educated on their rights and be provided with safe havens and places to go when trying to flee.<sup>62</sup>

The 14<sup>th</sup> session of CCPCJ is set to take place April 2020 in Kyoto, Japan.<sup>63</sup> The thematic discussion is titled “Advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda.”<sup>64</sup> Participation is set to be from both non-governmental organizations (NGOs) and individual experts.<sup>65</sup> As decided by General Assembly resolution 72/192 of 2018, the upcoming session’s workshops include discussions on reducing reoffending: identifying risks and developing solutions, comprehensive strategies when it comes to crime prevention and socio economic development, taking vital statistics to better assess crime and prevention, and education and youth engagement as key to making society resilient.<sup>66</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>67</sup> While CCPCJ cannot formulate binding decisions for Member States directly, it influences the evolution of soft and hard international law.<sup>68</sup> Looking forward to the 29<sup>th</sup> session, one of the commission’s goals is to increase youth participation on crime prevention 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>69</sup> It is important to remember CCPCJ’s position within the UN crime prevention

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<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> UN DESA, *2019 High-Level Political Forum on Sustainable Development*, 2019.

<sup>58</sup> Ibid.

<sup>59</sup> UNODC, *Thematic Discussion*, 2019.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> UNODC, *The Fourteenth United Nations Congress on Crime Prevention and Criminal Justice – About*, 2019.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</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>68</sup> Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 228.

<sup>69</sup> UNODC, *Thematic Discussion*, 2019.

program and to consider with which other UN entities it can work with effectively in order to realize the potential that the Commission offers to Member States and the global community.<sup>70</sup>

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United Nations Office on Drugs and Crime. (2019). *CCPCJ: Newsletter January – June 2019 – 28th Session of the CCPCJ*. Retrieved 21 July 2019 from:

[https://www.unodc.org/documents/commissions/Secretariat/Secretariat\\_Publications/Newsletters/CCPCJ\\_newsletter\\_Jan-Jun\\_2019.pdf](https://www.unodc.org/documents/commissions/Secretariat/Secretariat_Publications/Newsletters/CCPCJ_newsletter_Jan-Jun_2019.pdf)

*CCPCJ met in May 2019 to discuss an array of topics from combating child sexual exploitation, to enhancing transparency in the judicial process. The conference is the time for various UN groups like the CND, ECOSOC, and General Assembly to discuss matters in regard to equality and justice in the world. Reference to resolution 73/184 was made as it established that the 14th Congress session be held in Kyoto, Japan. The conference is set to take place April 2020 and the thematic discussion will be centered around advancing crime prevention and rule of law in accordance to the 2030 Agenda for Sustainable Development. Furthermore, youth participation is also highlighted as a vital part of the innovation of restoring equality in justice and. Delegates will find this document useful as it provides a list of CCPCJ, ECOSOC, and GA recently adopted resolutions on topics related to crime and criminal justice. The 14th Congress session will also discuss the implementation of policies and practices in relation to the crime prevention 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 23 August 2018 from: <http://www.undocs.org/E/RES/1992/22>

*ECOSOC adopted this resolution in 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. (2019). *CCPCJ: Commission on Crime Prevention and Criminal Justice*. Retrieved 22 September 2019 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.*

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<sup>70</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*

Equal access to justice is emphasized in the *2030 Agenda for Sustainable Development* (2015) and in its Sustainable Development Goals (SDGs), particularly SDG 16 (peace, justice and strong institutions).<sup>71</sup> According to the report of the World Justice Project, *Measuring the Justice Gap* (2019), around 5 billion people are affected by gaps regarding access to justice.<sup>72</sup> Financial cost, opportunity cost, and lack of trust in the criminal justice system are amongst the factors hindering equal access to justice.<sup>73</sup> The respect for human rights requires a fair, humane, and efficient criminal justice system.<sup>74</sup> The right to a fair trial, a key principle associated with legal access, is fulfilled when hearings are performed by inclusive and impartial courts.<sup>75</sup> Indeed, every person in conflict with the criminal justice system is entitled to have their guilt or innocence determined by a fair and effective legal process.<sup>76</sup> However, over 40% of the global human rights violations pertain to unfair trials.<sup>77</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 is entitled to a proper defense, either in person or through legal aid.<sup>78</sup>

To respond to the importance of legal aid in ensuring a functional criminal justice system, 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* (2013).<sup>79</sup> These principles require that those affected by the criminal justice process, the accused, the victims, and the witnesses, to receive legal aid if necessary through state-funded legal service.<sup>80</sup> While national legislation of many Member States provide the right to access legal aid in the criminal process, two main concerns remain: the restrictive conditions governing eligibility to legal aid and shortcomings in practical and meaningful access to legal aid.<sup>81</sup> The lack of access to effective legal aid places millions of vulnerable persons at risk of "arbitrary, extended, or illegal pretrial detention, as well as torture, coerced confessions, wrongful convictions, social stigma, detrimental impacts on health and livelihood, and other abuses."<sup>82</sup> According to Principle 10 of the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, special protection is needed to ensure access to legal aid for women, children and groups with special needs, including the elderly, persons with disabilities, and indigenous and aboriginal people.<sup>83</sup>

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<sup>71</sup> UN General Assembly, *Transforming our World: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015.

<sup>72</sup> World Justice Project, *Measuring the Justice Gap*, 2019, p. 5.

<sup>73</sup> OECD & OSF, *Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All*, 2016, p. 7.

<sup>74</sup> UNODC, *Crime Prevention and Criminal Justice*, 2019.

<sup>75</sup> UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 A (XXI))*, 1966.

<sup>76</sup> Fair Trials, *The Right to a Fair Trial*, 2019.

<sup>77</sup> *Ibid.*

<sup>78</sup> Fair Trials, *The Right to a Fair Trial*, 2019; UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 A (XXI))*, 1966.

<sup>79</sup> CCPCJ, *Report on the Twenty-First Session*, 2012.

<sup>80</sup> UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2012.

<sup>81</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>82</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>83</sup> UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2012; UNODC, *Crime Prevention and Criminal Justice*, 2019.

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

Adopted by the UN General Assembly in 2015, the *2030 Agenda for Sustainable Development* highlights the importance of equal access to justice for the establishment of peaceful, just and inclusive societies.<sup>84</sup> SDG target 16.3 explicitly addresses the importance of access to justice for all, while equal access to justice also has a direct impact on SDG 5 (gender equality) and SDG 10 (reduced inequalities).<sup>85</sup>

As an important component to equal access to justice, the right to a fair trial has long been recognized as a fundamental human right by the international community and has been enshrined in a multitude of international frameworks such as the *Universal Declaration of Human Rights* (1948).<sup>86</sup> Article 10 provides the right to an independent and impartial tribunal, while Article 11(1) pertains to the guarantees necessary for a proper defense.<sup>87</sup> These rights are reiterated in Article 14 of the *International Covenant on Civil and Political Rights* (1966).<sup>88</sup> In regards to vulnerable persons, Article 14(4) specifically addresses children, giving special attention to their age and the promotion of their rehabilitation.<sup>89</sup>

Criminal hearings comprise of three main components: the judiciary, the prosecutors, and the legal counsel.<sup>90</sup> Therefore, the UN Congress on the Prevention of Crime and the Treatment of Offenders adopted a series of Principles and Guidelines addressing each component to emphasize the importance of the right to fair trial.<sup>91</sup> In 1985, the *Basic Principles on the Independence of the Judiciary* were adopted to address the right to an independent and impartial tribunal.<sup>92</sup> In this regard, these principles provide guidelines relating to the selection, training, and proper conduct of judges.<sup>93</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 most importantly, their responsibilities in criminal proceedings.<sup>94</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>95</sup> While widely encompassing for many aspects in criminal hearings, none of these frameworks have specific provisions pertaining to vulnerable persons' access to justice.<sup>96</sup>

In 2012, the UN General Assembly adopted the first international instrument regarding legal aid, the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.<sup>97</sup> Drafted

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<sup>84</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015.

<sup>85</sup> Ibid.

<sup>86</sup> Fair Trials, *The Right to a Fair Trial*, 2019; UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

<sup>87</sup> UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

<sup>88</sup> UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 A (XXI))*, 1966.

<sup>89</sup> Ibid.

<sup>90</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>91</sup> Ibid.

<sup>92</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>93</sup> Ibid.

<sup>94</sup> Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Guidelines on the Role of Prosecutors*, 1990.

<sup>95</sup> Ibid.

<sup>96</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>97</sup> UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2012.



by CCPCJ, these principles provide guidance on legal aid practices and legal aid eligibility, discuss the role of various legal service providers, define particular needs of victims and witnesses, and highlight the importance of informing the public of their right to legal aid.<sup>98</sup> This framework contains provisions specific to vulnerable persons through Principle 10 on the necessity for special measures in ensuring access to legal aid for women, children, and groups with special needs.<sup>99</sup> Specifically for children, Principle 11 states the best interest of the child as the primary consideration when providing children with legal aid.<sup>100</sup>

Several international frameworks specifically target vulnerable persons.<sup>101</sup> In regard to women, the 1979 *Convention on the Elimination of All Forms of Discrimination against Women* and the *General Recommendation on Women's Access to Justice* (2015) provide possible solutions to the promotion of women's access to justice.<sup>102</sup> The 1989 *Convention on the Rights of the Child* was adopted places the best interest of the child at the center of legal decision-making processes concerning the child in Article 13.<sup>103</sup> The 2007 *United Nations Declaration on the Rights of Indigenous Peoples* highlights the importance of indigenous customary legal systems when counseling the indigenous special needs legal group in Article 40.<sup>104</sup>

On a regional level, the Inter-American System of Human Rights, the principal organ of the Organization of the American States tasked with the promotion and the protection of human rights within the American region, has adopted a standard regarding to access to justice in 2007.<sup>105</sup> These standards outline the scope of judicial remedies such as the right to a fair trial.<sup>106</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>107</sup> Under this provision a fair and public hearing at an independent and impartial court within a reasonable timeframe is guaranteed for all.<sup>108</sup> People finding themselves in the criminal justice system are entitled to receive advice, adequate defense, and representation; as well as to receiving legal aid when lacking sufficient resources to acquire aid themselves "in so far as such aid is necessary to ensure effective access to justice."<sup>109</sup>

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

In 2018, the UN General Assembly adopted resolution 73/185, encouraging Member States to adopt measures to promote equal access to justice.<sup>110</sup> For instance, Member States are urged to adopt measures to ensure equal access to justice for women and to consider the adoption of a gender-sensitive

<sup>98</sup> Ibid.

<sup>99</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>100</sup> UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2012.

<sup>101</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women (Resolution 34/180)*, 1979; UN General Assembly, *Convention on the Rights of the Child (Resolution 44/25)*, 1989; UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, 2007.

<sup>102</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women (Resolution 34/180)*, 1979; CEDAW, *General Recommendation No.33 on Women's Access to Justice*, 2015.

<sup>103</sup> UN General Assembly, *Convention on the Rights of the Child (Resolution 44/25)*, 1989.

<sup>104</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, 2007.

<sup>105</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>106</sup> OAS 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>107</sup> EU, *Charter of Fundamental Rights of the European Union*, 2012.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</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.

approach to the prosecution and punishment of violent crimes against women and girls.<sup>111</sup> The resolution also promotes advancement in legal literacy by inviting Member States to promote educational programs relevant to crime prevention and criminal justice.<sup>112</sup> Despite these recommendations, the Economic and Social Council, in their review of the progress on SDG 16 during the 2019 High-Level Political Forum, determined that progress remained uneven.<sup>113</sup> The review concluded that to achieve equal access to justice, a greater mobilization of political support is required to not only acquire resources but also effectively manage existing resources.<sup>114</sup>

At the 13<sup>th</sup> United Nations Congress on Crime Prevention and Criminal Justice in 2015, the United Nations Office on Drugs and Crime (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>115</sup> The 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>116</sup>

More specifically regarding to legal aid, UNODC and the United Nations Development Programme (UNDP) launched the Global Study on Legal Aid (2016), a collection of findings on the global status of legal aid.<sup>117</sup> The study found that children represent the most common state obligation regarding the provision of legal aid services (57%).<sup>118</sup> In contrast, the study shows that specialized legal aid provisions catered to marginalized population are limited, with 37% of Member States providing specialized legal aid services for women and only 22% for indigenous peoples.<sup>119</sup>

At the International Conference on Access to Legal Aid in Criminal Justice Systems in 2016, policy makers and practitioners from 50 countries 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>120</sup> For the latter, CCPCJ adopted resolution 25/2 in 2016, encouraging Member States to improve legal aid through the adoption or strengthening of national legislation, emphasizing the needs of children and women, and highlighting a need for an international network of legal aid providers.<sup>121</sup> The creation of such a network would allow for technical assistance and exchange of information and best practices among legal aid providers.<sup>122</sup> CCPCJ is developing the International Legal Aid Network, an international network of legal aid providers that would facilitate information sharing and highlight existing regional legal aid networks.<sup>123</sup> One such

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<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> HLPF, *2019 HLPF Review of SDG Implementation: SDG 16 – Promoting Peaceful and Inclusive Societies for Sustainable Development, Providing Access to Justice for All, and Building Effective, Accountable and Inclusive Institutions at all Levels*, 2019, p. 6.

<sup>114</sup> Ibid., p. 10.

<sup>115</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>116</sup> UNODC, *Implementation of the Doha Declaration Focus of Upcoming 2015 UN Crime Commission, Doha Declaration: Promoting a Culture of Lawfulness*, 2015.

<sup>117</sup> UNDP & UNODC, *Global Study on Legal Aid: Global Report*, 2016.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid., pp. 75 & 167.

<sup>120</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>121</sup> CCPCJ, *Promoting Legal Aid, including through a Network of Legal Aid Providers (Resolution 25/2)*, 2016.

<sup>122</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>123</sup> CCPCJ, *Promoting Legal Aid, including through a Network of Legal Aid Providers (Resolution 25/2)*, 2016.

legal aid network is the International Legal Aid Group (ILAG), a network of legal aid specialists who attempt to improve legal policy in low-income areas through dialogue and knowledge sharing.<sup>124</sup> At its most recent meeting in 2019, ILAG discussed the delivery of quality legal services, the role of technology in ensuring access to justice, and providing assistance to the underrepresented.<sup>125</sup> On a regional level, the Africa Legal Aid network provides targeted legal assistance in cases of human rights violations and assists NGOs in the provision of legal aid services.<sup>126</sup>

In addition 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>127</sup> The OECD works in conjunction with governments and policy makers on the establishment of international norms.<sup>128</sup> In seeking to improve access to justice for all, 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>129</sup> On the civil society level, the World Justice Project (WJP) is working globally for the advancement of the rule of law.<sup>130</sup> WJP has worked on the first global study regarding legal needs and access to justice.<sup>131</sup> The study *Global Insights on Access to Justice 2019: Findings from the World Justice Project General Population Poll in 101 Countries* presents data on the scope of legal problems, an assessment on legal capacities, and the obstacles to access to justice.<sup>132</sup>

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

As a first obstacle to achieving access to justice, women and children often lack the necessary educational and legal literacy to properly articulate their needs and to defend their rights.<sup>133</sup> Illiteracy poses an obstacle for women and children to obtain necessary knowledge about their legal rights, to acquire the necessary skills to effectively navigate the criminal justice system, and to interpret existing legislation.<sup>134</sup> In 2016, of the 750 million illiterate adults, two-thirds were women.<sup>135</sup> Due to high rates of illiteracy, many women are susceptible to coercion and may therefore make legal statements that harm their ability to engage fairly in the justice system.<sup>136</sup> Regarding children, the World Literacy Foundation estimates that 85% of youth involved in criminal activities are illiterate.<sup>137</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>138</sup> An example of such a program is India's Basic Literacy Program for Juveniles in Sindh.<sup>139</sup> Piloted by the Indian Legal Aid Society, the project offers both legal and basic literacy programs for youth at risk and in conflict with the law.<sup>140</sup> Other factors restricting access to justice and legal aid for women are disproportionately higher levels of poverty and disadvantaged status within the family and community;

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<sup>124</sup> International Legal Aid Group, *About Us*, 2019.

<sup>125</sup> International Legal Aid Group, *Legal Aid as Public Service: Is it Achievable?*, 2019.

<sup>126</sup> Africa Legal Aid, *Accomplishments*, 2019.

<sup>127</sup> OECD, *Who we are - About*, 2019.

<sup>128</sup> *Ibid.*

<sup>129</sup> OSF & OECD, *Legal Needs Surveys and Access to Justice*, 2019; OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, 2019.

<sup>130</sup> World Justice Project, *About Us*, 2019.

<sup>131</sup> World Justice Project, *Global Insights on Access to Justice*, 2019.

<sup>132</sup> *Ibid.*

<sup>133</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.

<sup>134</sup> UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 240; UNICEF, *Children's Equitable Access to Justice: Central and Eastern Europe and Central Asia*, 2015, p. 19.

<sup>135</sup> ECOSOC, *Special edition: Progress towards the Sustainable Development Goals (E/2019/68)*, 2019, p.11.

<sup>136</sup> *Ibid.*; UN-Women et al, *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 271.

<sup>137</sup> World Literacy Foundation, *Home*, 2019.

<sup>138</sup> UNODC, *Criminal Justice Assessment Toolkit, Cross-Cutting Issues, Gender in the Criminal Justice System Assessment Tool*, 2010, p. 43.

<sup>139</sup> Legal Aid Society, *Basic Literacy Program*, 2019.

<sup>140</sup> *Ibid.*

and for children widely varying levels of maturity and cognitive skills depending on their age.<sup>141</sup> Legal practitioners often lack knowledge and skills to properly address gender and age-related issues within the legal system.<sup>142</sup>

In regards to women's needs in adequately accessing justice, CCPCJ adopted resolution 26/3 on mainstreaming a gender perspective into crime prevention and criminal justice policies in 2017, encouraging Member States to consider the specific needs and circumstances of women throughout the entire criminal justice process.<sup>143</sup> It recommends gender sensitivity training for stakeholders in the criminal justice system, including judges, prosecutors, and legislators.<sup>144</sup> In 2018, the UN Entity for Gender Equality and the Empowerment of Women, UNDP, UNODC, and the Office of the UN High Commissioner for Human Rights published the *Practitioner's Toolkit on Women's Access to Justice Programming*.<sup>145</sup> The toolkit provides practical guidance aiming to improve the delivery of justice for women, including addressing institutional reform.<sup>146</sup> Regarding judges, the toolkit recommends the usage of social-service reports to facilitate the identification of mitigating circumstances of women offenders.<sup>147</sup> This would allow judges to be better aware of women offenders' history and circumstances, thus making appropriate considerations in their decisions.<sup>148</sup> Judicial stereotyping also needs to be addressed to ensure equal access to justice for women.<sup>149</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>150</sup> Prosecutors also perpetuate gender stereotyping, allowing for gender biases to influence their role during trials.<sup>151</sup> In cases of violence against women and girls, prosecutors are faced with the task of balancing their role as representative of the government tasked with upholding the rule of law, their duty to ensure that the accused receives a fair trial, and an added role of ensuring the health and safety of the victims.<sup>152</sup> This is particularly challenging in their duty to address the accused's right to evidentiary disclosure and the victim's privacy.<sup>153</sup> In response to this, some national criminal justice legislation limits the disclosure of certain types of evidence, particularly in sexual violence cases.<sup>154</sup> In Canada, for instance, the Canadian Criminal Code provides for restrictions to the accused's right to access the therapy records of sexual violence victims.<sup>155</sup>

Women's equal access to justice is also affected by perceived gender-neutral legal language.<sup>156</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>157</sup> These laws do not take into consideration the differing needs and conditions of women affected by the criminal justice system.<sup>158</sup> For

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<sup>141</sup> UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 17; UNICEF, *Children's Equitable Access to Justice: Central and Eastern Europe and Central Asia*, 2015, p. 19.

<sup>142</sup> UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 272; Penal Reform International, *Protecting Children's Rights in Criminal Justice Systems: A Training Manual and Reference Point for Professionals and Policymakers*, 2013, p. 76.

<sup>143</sup> 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>144</sup> Ibid.

<sup>145</sup> UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018.

<sup>146</sup> Ibid., p. 3.

<sup>147</sup> Ibid., p. 276.

<sup>148</sup> Ibid., p. 276.

<sup>149</sup> Ibid., p. 89.

<sup>150</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>151</sup> UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 227.

<sup>152</sup> UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, 2014, p. 1.

<sup>153</sup> Ibid., p. 98.

<sup>154</sup> Ibid., p. 98.

<sup>155</sup> Canada, Ministry of Justice, *Criminal Code*, 1985.

<sup>156</sup> UN-Women et al., *A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 59.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid., p. 63.



example, seemingly gender-neutral incarceration sentences have different impacts on female offenders, particularly those who are primary caretakers of children.<sup>159</sup> Unlike their male counterparts, most imprisoned women are primary caretakers.<sup>160</sup> Furthermore, while most male offenders can rely on their child's mother for childcare, this is less likely for women offenders.<sup>161</sup> Therefore, uniform sentencing may lead to varying levels of penalty for women and men.<sup>162</sup>

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>163</sup> For instance, more protection may be required for younger children, while greater autonomy may be more appropriate for those who are older.<sup>164</sup> Regarding to the 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>165</sup> Article 3 of the Convention states that the primary consideration in any decision or actions concerning a child is the child's best interests to ensure appropriate decision-making in cases involving children.<sup>166</sup> Juvenile offenders may face disproportionate sentences when they lack the appropriate legal representation or understanding of their rights in the justice system.<sup>167</sup> Article 12 of the convention ensures that children are entitled to proper participation in the trial and decision-making affecting them, either directly or with assistance.<sup>168</sup> In 2013, Penal Reform International, a non-governmental organization working on global criminal justice problems, published a training manual addressing children's rights within the criminal justice system.<sup>169</sup> The training manual recommends the judiciary to take responsibility in ensuring that children understand the charge they are faced with, the subsequent consequences, and their choice regarding a guilty or non-guilty plea.<sup>170</sup> It also recommends age-sensitive training for legal practitioner's representing children, allowing for more appropriate methods in addressing child-related issues and for effective communication at the child's level of understanding.<sup>171</sup>

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

According to the 2019 Annual Review of Criminology, 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>172</sup> The review describes the indigenous peoples' experience with the national criminal justice system being "high rates of victimization, arrests, convictions and imprisonment."<sup>173</sup> For example, in Canada, indigenous peoples represent 28% of admissions into federal prisons while only making up 3% of the national population.<sup>174</sup> Furthermore, the incarceration of indigenous peoples have increased by 47% since the early 2000s.<sup>175</sup> The review also claimed that this problem is rooted in the creation of more punitive approaches to the criminal justice system, particularly with regard to policing and sentencing.<sup>176</sup> It concluded that failings of the national criminal justice systems

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<sup>159</sup> Roberts, *The Meaning of Gender Equality in Criminal Law*, 1994, p. 12.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid.

<sup>163</sup> UNICEF, *Children's Equitable Access to Justice: Central and Eastern Europe and Central Asia*, 2015, p. 21.

<sup>164</sup> Ibid.

<sup>165</sup> UN General Assembly, *Convention on the Rights of the Child (Resolution 44/25)*, 1989.

<sup>166</sup> Ibid.; Committee on the Rights of the Child, *Convention on the Rights of the Child: General Comment No. 10: Children's rights in juvenile justice (CRC/C/GC/10)*, 2007.

<sup>167</sup> Penal Reform International, *Protecting Children's Rights in Criminal Justice Systems: A Training Manual and Reference Point for Professionals and Policymakers*, 2013, p. 78.

<sup>168</sup> Ibid., p. 75.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid., p. 75.

<sup>171</sup> Ibid., p. 76.

<sup>172</sup> Annual Review of Criminology, *Indigenous Peoples, Criminology, and Criminal Justice*, 2019.

<sup>173</sup> Ibid.

<sup>174</sup> Reitano, *Adult Correctional Statistics in Canada 2015/2016*, 2017.

<sup>175</sup> Canada, Department of Public Safety, *2013 Annual Report: Corrections and Conditional Release: Statistical Overview*, 2013.

<sup>176</sup> Annual Review of Criminology, *Indigenous Peoples, Criminology, and Criminal Justice*, 2019.

lie in the reliance of Western policy practices and the indigenous people's lack of the right to self-determination, with a possible recommendation being the consideration and implementation of indigenous knowledge and customary practices into national legal systems.<sup>177</sup>

The indigenous peoples' right to self-determination has been internationally recognized in the *United Nations Declaration on the Rights of Indigenous Peoples* (2007).<sup>178</sup> Despite this recognition, the Annual Review of Criminology found that the current practices of national criminal justice systems do not reflect the rights enshrined in the Declaration.<sup>179</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>180</sup> As an example, *Bringing Them Home*, a report resulting from an inquiry launched by the Australian government in 1995 regarding the forced child removal policy, recommends that in cases where indigenous youth are in conflict with the criminal justice system, legal jurisdiction be handed to accredited indigenous organizations.<sup>181</sup>

In line with the right to self-determination, Article 34 of the *United Nations Declaration on the Rights of Indigenous Peoples* highlights the right of the indigenous peoples to continue utilizing their own judicial system.<sup>182</sup> More specifically in the cases of conflict resolution, Article 40 addresses the indigenous peoples' right to utilize their traditional customs, traditions, and legal systems.<sup>183</sup> Customary laws form the basis of indigenous judicial systems.<sup>184</sup> According to the Human Rights Council, indigenous judicial systems and laws are based on indigenous conceptions of justice.<sup>185</sup> A 2014 study from the Expert Mechanism on the Rights of Indigenous Peoples states that the indigenous peoples' traditional justice systems have been cast aside in favor of national legal systems.<sup>186</sup> The study concludes that denying the indigenous peoples from being able to utilize their traditions and customs creates problems in accessing justice.<sup>187</sup>

## Conclusion

Guided by the 2030 Agenda, particularly SDG 16, the international community has made progress towards providing access to justice for vulnerable persons.<sup>188</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 such as women, children, and indigenous peoples.<sup>189</sup> Recognizing that legal aid is central to providing equal access to justice, CCPCJ has drafted frameworks regarding to legal aid and worked to establish a legal aid network.<sup>190</sup> It is important that further steps are taken by the international community to follow these principles and guidelines and strengthen all stakeholders in the criminal justice system.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.; General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, 2007.

<sup>179</sup> Annual Review of Criminology, *Indigenous Peoples, Criminology, and Criminal Justice*, 2019.

<sup>180</sup> Ibid.

<sup>181</sup> Australian Human Rights Commission, *Bringing Them Home: Appendix 9 Recommendations*, 2019.

<sup>182</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, 2007.

<sup>183</sup> Ibid.

<sup>184</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.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> ECOSOC, *Special edition: Progress towards the Sustainable Development Goals (E/2019/68)*, 2019.

<sup>189</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>190</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.

## 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 20 July 2019 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 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 with an overview of the various current efforts and discussion platforms from CCPCJ relating to legal aid.*

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 20 July 2019 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 Programme 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 20 July 2019 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.*

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*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>191</sup>

### **Introduction**

In a world better connected than ever before, networks have created new global capabilities and unprecedented economic opportunities for businesses, individuals, and states.<sup>192</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>193</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>194</sup> Consequently, the recovery from cyber-attacks cost the global economy \$600 billion dollars in 2018, which amounts to 0.8% of the total global gross domestic product, and is projected to reach \$6 trillion dollars annually by 2021.<sup>195</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>196</sup>

The *United Nations Convention Against Transnational Organized Crime* (UNTOC), adopted in November 2000 by 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>197</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>198</sup> Although there is no universal definition of cybercrime, cybercrime 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>199</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>200</sup>

### **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>201</sup> UNODC's UNTOC, adopted on 15 November 2000, is the

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<sup>191</sup> Morgan, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>192</sup> WIPO, *The Internet: An Unprecedented and Unparalleled Platform for Innovation and Change*, 2012, p. 157.

<sup>193</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>194</sup> UN DGC, *'Much Work to Do and no Time to Waste' in Cybercrime Fight, Says UN Chief*, 2018.

<sup>195</sup> Morgan, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>196</sup> Lewis, *Economic Impact of Cybercrime – No Slowing Down*, 2018, p. 9.

<sup>197</sup> UN General Assembly, *United Nations Convention against Transnational Organized Crime (55/25)*, 2001; UNODC, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, 2004, p. 5.

<sup>198</sup> UNTOC COP, *Activities of the United Nations Office on Drugs and Crime to Address Emerging Forms of Crime*, 2010, p. 3.

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

<sup>200</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.

<sup>201</sup> UNODC, *Mandate and Functions*, 2019; CCPCJ, *Promotion of Activities Relating to Combating Cybercrime, Including Technical Assistance and Capacity-Building (20/7)*, 2011.

main international instrument for the prevention and repression of organized crime in all its forms.<sup>202</sup> As of 2019, 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>203</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 new forms of crime online such as hacking, spamming, phishing, digital piracy, and malware.<sup>204</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>205</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 particular importance in monitoring the effectiveness and efficiency of measures currently in place to combat cybercrime.<sup>206</sup>

In 2015, the 13<sup>th</sup> United Nations Crime Congress recognized organized crime as a key challenge to sustainable development.<sup>207</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>208</sup> The Declaration acknowledges that sustainable development cannot be achieved without the respect of the rule of law.<sup>209</sup> In the particular context of organized crime, Member States are urged to comply with or to ratify UNTOC because it offers specific criminal justice responses such as mutual legal assistance and joint investigations.<sup>210</sup> In regard to cybercrime, paragraph 9 (b) of this declaration calls for Member States to make positive use of technological advancements to “create a secure and resilient cyber-environment,” which is essential to each states security and economic well-being.<sup>211</sup> Regionally, the Council of Europe in 2001 adopted the *Convention on Cybercrime*, also known as the *Budapest Convention*.<sup>212</sup> The convention is the most valuable legal framework on cybercrime because it

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<sup>202</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>203</sup> UN Treaty Collection, *Status of Treaties*, 2019; UNODC, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, 2004, p. 2.

<sup>204</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>205</sup> 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.213/17)*, 2010.

<sup>206</sup> *Ibid.*

<sup>207</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>208</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>209</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>210</sup> *Ibid.*, pp. iii, 8.

<sup>211</sup> *Ibid.*, p. 10.

<sup>212</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.

sets the global standard to directly address both Internet and computer-related crimes and to protect rights in cyberspace.<sup>213</sup> There are currently 64 Member States that ratified this convention and is open to accession by any state, not requiring them to be Member States of the Council of Europe.<sup>214</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>215</sup>

The African Union (AU) established the *Convention on Cyber Security and Personal Data Protection* in July 2014.<sup>216</sup> For a region increasingly prone to cyber-attacks, this convention is an exemplary response to cybercrime as it is the only agreement outside of Europe that enacts standards to address cybercrime.<sup>217</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>218</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>219</sup> As of 2019, there are 14 signatories and five ratifications for this convention.<sup>220</sup> However, the convention is yet to enter into force.<sup>221</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>222</sup> The 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>223</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>224</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 and cross-border responses to prevent, detect, investigate, prosecute, and combat organized crime.<sup>225</sup> UNODC also developed the Global Programme on Cybercrime, an initiative dedicated to providing capacity-building support to developing states in their fight against cybercrime since 2017.<sup>226</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>227</sup>

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<sup>213</sup> Council of Europe Portal, *Cybercrime*, 2019.

<sup>214</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 66.

<sup>215</sup> Council of Europe, *Convention on Cybercrime (ETS No.185)*, 2001.

<sup>216</sup> AU, *African Union Convention on Cyber Security and Personal Data Protection*, 2014.

<sup>217</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>218</sup> AU, *African Union Convention on Cyber Security and Personal Data Protection*, 2014, pp. 24-33.

<sup>219</sup> *Ibid.*

<sup>220</sup> AU, *List of Countries Which Have Signed, Ratified/Acceded to the African Union Convention on Cyber Security and Personal Data Protection*, 2019.

<sup>221</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>222</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>223</sup> UNODC, *The UNODC Global Programme for Strengthening Capacities to Prevent and Combat Organized and Serious Crime*, 2019.

<sup>224</sup> *Ibid.*

<sup>225</sup> *Ibid.*

<sup>226</sup> UNODC, *Global Programme on Cybercrime*, 2019.

<sup>227</sup> UNODC, *Cybercrime Repository*, 2019.

In line with paragraph 42 of the Salvador Declaration, CCPCJ established in 2011 the Open-ended Intergovernmental Expert Group to conduct a comprehensive study of the problem of cybercrime.<sup>228</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>229</sup> The responses received were gathered and used to develop 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>230</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>231</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>232</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>233</sup>

Law enforcement agencies perform an essential role in protecting and serving the community against organized crime.<sup>234</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>235</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>236</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>237</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>238</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>239</sup> Ransomware is an advanced malicious software that can lock a device or encrypt its contents until the money is paid.<sup>240</sup> In 2017, the WannaCry ransomware infected more than 200,000 computers in 150 states in a matter of hours.<sup>241</sup> Businesses and

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<sup>228</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>229</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, p. x.

<sup>230</sup> *Ibid.*, p. xi.

<sup>231</sup> UN General Assembly, *Countering the Use of Information and Communications Technologies for Criminal Purposes (A/RES/73/187)*, 2018.

<sup>232</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>233</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>234</sup> UNODC, *Law Enforcement*, 2019.

<sup>235</sup> UNODC, *UNODC-INTERPOL Agreement Creates Partnership to Tackle Transnational Organized Crime and Terrorism Challenges*, 2016.

<sup>236</sup> *Ibid.*

<sup>237</sup> *Ibid.*; UN DESA, *Sustainable Development Goal 17*, 2019.

<sup>238</sup> UNODC, *Cybercrime*, 2019.

<sup>239</sup> EUROPOL, *Internet Organized Crime Threat Assessment 2018*, 2018, p. 1; Cybersecurity Ventures, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>240</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>241</sup> Piper, *Cyber Attack Hits 200,000 in at Least 150 Countries: Europol*, *Thomson Reuters*, 2017.



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>242</sup> Following the WannaCry attack, ransomware reached epidemic proportions globally and became the fastest-growing method of attack for cybercriminals.<sup>243</sup> Herjavec Group, a global cybersecurity firm, predicts that global ransomware attacks will cost \$20 billion annually by 2021.<sup>244</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>245</sup> As discussed at the 2011 ECOSOC special event on cybersecurity, the globalization of organized cybercrime demands cooperation of the same scale.<sup>246</sup> This is further supported through the implementation of the *2030 Agenda for Sustainable Development*.<sup>247</sup> 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>248</sup> As stated by Neil Walsh, “[c]ybercrime is ultimately preventable; if you know what the risk is, you’re less likely to become a victim.”<sup>249</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>250</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>251</sup> Today, ICT is the fastest-growing industry with 51.2% of the world’s population using the Internet.<sup>252</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>253</sup> However, the growing access to and dependence on the Internet and computer connectivity leaves our society prone to cyber-related threats.<sup>254</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>255</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>256</sup> Confidence-building

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<sup>242</sup> KnowBe4, Global Ransomware Damage Costs Predicted to Exceed Five Billion Dollars in 2017, *KnowBe4 Press Releases*, 2017.

<sup>243</sup> EUROPOL, *Internet Organized Crime Threat Assessment 2018*, 2018, p. 1; Morgan, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>244</sup> Herjavec Group, *Who We Are*, 2019; Morgan, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>245</sup> UN DGC, *In Wake of ‘WannaCry’ Attacks, UN Cybersecurity Expert Discusses Internet Safety*, 2017.

<sup>246</sup> UN DESA, *Cybersecurity: A Global Issue Demanding a Global Approach*, 2011; UNODC, *International Cooperation*, 2019; UNODC, *The Globalization of Crime, A Transnational Organized Crime Threat Assessment*, 2010, p. 25.

<sup>247</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>248</sup> UN DESA, *Sustainable Development Goal 16*, 2019; UN DESA, *Sustainable Development Goal 17*, 2019.

<sup>249</sup> UN DGC, *In Wake of ‘WannaCry’ Attacks, UN Cybersecurity Expert Discusses Internet Safety*, 2017.

<sup>250</sup> *Ibid.*

<sup>251</sup> UNESCO UIS, *Information and Communication Technologies*, 2019.

<sup>252</sup> ITU, *Understanding Cybercrime: Phenomena, Challenges and Legal Response*, 2012; ITU, *Measuring the Information Society Report*, 2018, p. 2.

<sup>253</sup> Lehr, *Why ICTs Are Critical for Sustainable Development*, *ITU News*, 2018.

<sup>254</sup> ITU, *Understanding Cybercrime: Phenomena, Challenges and Legal Response*, 2012.

<sup>255</sup> Council of Europe, *Capacity Building on Cybercrime*, 2013, p. 10.

<sup>256</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.

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>257</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>258</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>259</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>260</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>261</sup> As of 2019, the alliance alongside UNODC supported the creation of 109 National Computer Incident Response Teams across the world.<sup>262</sup> However, the increasing proliferation of ICT in developing states remains of great concern due to insufficient or absence of ICT governance policies and financial resources to protect critical information infrastructure from cyber-attacks, which will affect how ICTs are developed and used.<sup>263</sup>

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

A significant portion of cybercrime goes undetected and numerous hacks and breaches go unreported.<sup>264</sup> Only 1% of cybercrime acts are reported to the police and very few are detected directly by police investigators.<sup>265</sup> In response, over 90% of Member States put in place specialized structures for the investigation of cybercrime.<sup>266</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>267</sup> Some developing states even reported that training was either rare or that no training at all was available.<sup>268</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>269</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>270</sup> INTERPOL also provides a range of training courses to help police keep pace with

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<sup>257</sup> 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>258</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>259</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>260</sup> Ntoko, *Global Cybersecurity Agenda (GCA) A Framework for International Cooperation*, 2011, p. 11.

<sup>261</sup> UNODC, *UNODC and ITU Join Forces to Make the Internet Safer*, 2011.

<sup>262</sup> Ntoko, *Global Cybersecurity Agenda (GCA) A Framework for International Cooperation*, 2011, p. 20; ITU, *National CIRT*, 2019.

<sup>263</sup> Council of Europe, *Capacity Building on Cybercrime*, 2013, p. 7; Guerhazi & Satola, *Creating the “Right” Enabling Environment for ICT*, 2005, pp. 25-26.

<sup>264</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, pp. 119-120.

<sup>265</sup> *Ibid.*

<sup>266</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 152.

<sup>267</sup> *Ibid.*, p. 154.

<sup>268</sup> *Ibid.*, p. 156.

<sup>269</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>270</sup> Fedotov, *United Front Key to Fighting Cybercrime*, *Arab News*, 2018.

cybercrime trends.<sup>271</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>272</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>273</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>274</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>275</sup> Electronic evidence is information stored in electronic or digital form that a court may use for trial purposes.<sup>276</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-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>277</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>278</sup> UNODC's UNTOC and the Council of Europe's Budapest Convention are of utmost importance because their objectives are complementary with regard to effectively combating organized cybercrime.<sup>279</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>280</sup> Despite such initiatives, governments, businesses, and individuals are increasingly falling victim to cyber-attacks.<sup>281</sup> Cybercriminals continue to create advanced malware that affects our social and economic development.<sup>282</sup> Creating safe and secure ICTs is necessary to effectively prevent organized cybercrime groups from disrupting and hacking important infrastructures.<sup>283</sup> Law enforcement agencies are also succumbing to the pressure of advanced technology as data-collection for investigation and prosecution purposes becomes more challenging.<sup>284</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>285</sup>

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<sup>271</sup> INTERPOL, *Cybercrime Training for Police*, 2019.

<sup>272</sup> INTERPOL, 'Internet of Things' Cyber Risks Tackled During INTERPOL Digital Security Challenge, *News*, 2018.

<sup>273</sup> European Commission, *Freetool Project – Free, Reliable Tools for Investigating Cybercrime*, 2014.

<sup>274</sup> UCD CCI, *Freetool v2.0 - Maturing and Extending the Freetool Tool Development Initiative*, 2016.

<sup>275</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>276</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 157.

<sup>277</sup> WEF, *Recommendations for Public-Private Partnership Against Cybercrime*, 2016, p. 6.; UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 130.

<sup>278</sup> EUROPOL, *The Internet Organised Crime Threat Assessment*, 2014.

<sup>279</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.

<sup>280</sup> CCPCJ, *Report on the Twenty-seventh Session (E/CN.15/2018/15)*, 2018.

<sup>281</sup> Stokel-Walker, Ransomware Attacks Are on the Rise and the Criminals Are Winning, *NewScientist*, 2019.

<sup>282</sup> EUROPOL, *Internet Organised Crime Threat Assessment 2018*, 2018, p. 1; Morgan, *The 2019 Official Annual Cybercrime Report*, 2019.

<sup>283</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>284</sup> Stokel-Walker, Ransomware Attacks Are on the Rise and the Criminals Are Winning, *NewScientist*, 2019.

<sup>285</sup> UN DESA, *Cybersecurity: A Global Issue Demanding a Global Approach*, 2011.

## 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 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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*The Convention on Cybercrime of the Council of Europe (Budapest Convention) is the only 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 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 17 July 2019 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, the Network and Information Security 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 17 July 2019 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.*



United Nations Office on Drugs and Crime. (2004). *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*. Retrieved 17 July 2019 from:

[https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC\\_Convention/TOCebook-e.pdf](https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC_Convention/TOCebook-e.pdf)

*Several UN General Assembly and CCPCJ resolutions express concerns about the nexus between organized crime and cybercrime and reiterated that the UNTOC 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 17 July 2019 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>286</sup> Up to 10% of kidney and liver transplants worldwide involve organs obtained illegally, with hearts and lungs also being highly valued.<sup>287</sup> The limited available outcome data for illegal organ donors and recipients however show that illicit transplants have higher rates of negative health outcomes such as neurotoxicity, psychological deterioration, and death.<sup>288</sup> Human trafficking for the purpose of organ removal is another illicit method for moving organs, with vulnerable populations such as the poor being the main targets.<sup>289</sup> A 2002 study in India found that 71% of those who illicitly donated an organ were below the poverty line.<sup>290</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 organ transplants, only performed transplants on a quarter of those on their waiting list in 2018.<sup>291</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>292</sup> While not specifically defined, CCPCJ refers to illicit organ trafficking under three 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>293</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>294</sup> CCPCJ has continued to produce policy guidelines, research, and best practices on combating organ trafficking in Member States.<sup>295</sup>

#### **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

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<sup>286</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>287</sup> UNODC, *Global Report on Trafficking in Persons*, 2018, p. 30; GFI, *Transnational Crime and the Developing World*, 2017, p. 29.

<sup>288</sup> Jafar, *Organ Trafficking: Global Solutions for a Global Problem*, 2009, p. 1149; CoE, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, pp. 62-63.

<sup>289</sup> GFI, *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>290</sup> Shimazono, *The state of the international organ trade: a provisional picture based on integration of available information*, 2007.

<sup>291</sup> UNOS, *About UNOS*, 2019; Health Resources and Services Administration, *Organ Donation Statistics*, 2019.

<sup>292</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>293</sup> 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; CoE, *Council of Europe Convention against Trafficking in Human Organs*, 2015; WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010.

<sup>294</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015.

<sup>295</sup> 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.

guidelines for proper removal or implantation of human organs.<sup>296</sup> Principles 1 and 3 in particular discuss the need for informed consent when obtaining organs from a deceased or living donor.<sup>297</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>298</sup> For living donors, physicians must ensure that they are fully informed about the procedure’s dangers before donating.<sup>299</sup> Principle 5 also gives a clear limitation on organ transplantation: all donations should be done altruistically with no monetary reward.<sup>300</sup> Reiterating the 1985 statement from the World Medical Association (WMA), a non-governmental organizations (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>301</sup> However, “compensation for the costs of making donations” is allowed within reason.<sup>302</sup> This compensation clause intends to make the donation process financially neutral naming lost wages and medical cost reimbursement as allowable.<sup>303</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>304</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>305</sup>

The 2030 Agenda established the SDGs, which address both aspects of illicit organ trafficking.<sup>306</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>307</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>308</sup> However, no SDG makes direct mention of organ transplantation.<sup>309</sup> Due to its influence on collaborative medical science and data collection, SDG 17 (partnerships for the goals) is also relevant to both illicit organ and human trafficking.<sup>310</sup>

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*,

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<sup>296</sup> WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010.

<sup>297</sup> *Ibid.*, pp. 2-4.

<sup>298</sup> *Ibid.*, p. 2.

<sup>299</sup> *Ibid.*, p. 4.

<sup>300</sup> *Ibid.*, p. 5.

<sup>301</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>302</sup> WHO, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, 2010, p. 5.

<sup>303</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>304</sup> UNODC, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, 2000, pp. 42-43.

<sup>305</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>306</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015, pp. 16, 25.

<sup>307</sup> *Ibid.*, p. 17.

<sup>308</sup> *Ibid.*, pp. 18, 20, 25.

<sup>309</sup> *Ibid.*

<sup>310</sup> *Ibid.*, pp. 25-27.



being the first multilateral treaty regarding biomedical law.<sup>311</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>312</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>313</sup> In 2015, CoE adopted the *Convention against Trafficking in Human Organs*, which is the only binding convention against organ trafficking and the first legal document to provide a globally-accepted definition of organ trafficking.<sup>314</sup> While these provisions have only been ratified by nine European Member States as of 2019, the convention's recommendations for criminalization of illicit organ removal and transplantation and improving persecution can serve as a foundation for the international community.<sup>315</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>316</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>317</sup> The original declaration and its 2018 update give principles and suggestions to Member 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>318</sup>

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

CCPCJ has consistently reviewed protocols for combating human organ trafficking and advised Member States on their implementation.<sup>319</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>320</sup> In these resolutions, Member States were given numerous

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<sup>311</sup> CoE, *Who we are*, 2019; CoE, *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>312</sup> *Ibid.*

<sup>313</sup> CoE, *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>314</sup> CoE, *Council of Europe Convention against Trafficking in Human Organs*, 2015; DICG, *The Council Of Europe Convention Against Trafficking in Human Organs*, 2014.

<sup>315</sup> CoE, *Chart of signatures and ratification of Treaty 216*, 2019; CoE, *Council of Europe Convention against Trafficking in Human Organs*, 2015.

<sup>316</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>317</sup> Istanbul Summit on Organ Trafficking and Transplant Tourism, *Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008 Edition)*, 2008.

<sup>318</sup> *Ibid.*; International Congress of the Transplantation Society, *Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018 Edition)*, 2018.

<sup>319</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; CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 25/1)*, 2016.

<sup>320</sup> 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.

methods for developing legislative measures, conducting awareness campaigns, and sharing information on best practices.<sup>321</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>322</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>323</sup> Its research has culminated in the annual *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>324</sup> CCPCJ has been tackling human trafficking most recently in 2018 discussing how Member States can improve laws on illicit recruitment and advertisement for trafficking through the criminal misuse of communication technologies.<sup>325</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 an overview of tools, such as how to detect possible trafficking victims, to promote national solutions.<sup>326</sup> The UN General Assembly has supported CCPCJ and UNODC with resolutions 59/156 in 2004, 70/179 in 2015, and 71/322 in 2017 on combating organ trafficking and human trafficking for the purpose of organ removal.<sup>327</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>328</sup> In 2013, the UN General Assembly *Report of the 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>329</sup>

The international medical community has the longest history addressing illicit organ trade, starting with the 1985 WMA guidelines.<sup>330</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>331</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>332</sup> The work of WHA directly led to the development of both the updated WHO *Guiding Principles* and the *Istanbul Declaration*.<sup>333</sup> WHO supports this work by not only producing

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<sup>321</sup> Ibid.

<sup>322</sup> Ibid.

<sup>323</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>324</sup> UNODC, *Global Report on Trafficking in Persons*, 2018.

<sup>325</sup> CCPCJ, *Efforts in the fight against trafficking in persons (Res 17/1)*, 2008; 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.

<sup>326</sup> UNODC, *Trafficking in Persons for the Purpose of Organ Removal: Assessment Tool*, 2015.

<sup>327</sup> Ibid.

<sup>328</sup> UN General Assembly, *Preventing, combating and punishing trafficking in human organs (A/RES/59/156)*, 2004; UN General Assembly, *Improving the coordination of efforts against trafficking in persons (A/RES/70/179)*, 2015; 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.

<sup>329</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 20.

<sup>330</sup> World Medical Association, *Statement on Live Organ Trade*, 1985.

<sup>331</sup> WHA, *Guiding Principles on Human Cell, Tissue and Organ Transplantation (WHA44/1991/REC/1 Annex 6)*, 1991.

<sup>332</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>333</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.

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>334</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>335</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>336</sup> From 2010-2018, the DICG informed about the newly-adopted declaration and consulted with Member States on their regional challenges, culminating in the 2018 update to the *Istanbul Declaration*.<sup>337</sup> The CoE worked directly with the UN, releasing a joint study in 2009 reviewing illicit organ trafficking internationally and regionally and providing comprehensive data for Member States to combat the problem.<sup>338</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>339</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>340</sup>

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

Despite the consistent support for developing comprehensive solutions to illicit organ trafficking, one of the most significant hurdles when discussing the scope of the work is whether illicit organ trafficking and human trafficking for the purpose of organ removal should be considered at the same time.<sup>341</sup> The 2009 CoE/UN joint study concluded that the two topics are different crimes, regarding different trafficked objects (organs versus humans).<sup>342</sup> The study recommended that each crime be reviewed separately in order to avoid confusion in the public, legal community, and scientific community.<sup>343</sup> However, the 2013 UN General Assembly Special Rapporteur report on organ trafficking was concerned 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>344</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>345</sup> Therefore, CCPCJ recommends that the crimes of organ trafficking and human trafficking for organ removal be prevented in a coordinated manner.<sup>346</sup>

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<sup>334</sup> Shimazono, *The state of the international organ trade: a provisional picture based on integration of available information*, 2007.

<sup>335</sup> Global Observatory on Donation and Transplantation, *Homepage*, 2016.

<sup>336</sup> The Transplantation Society, *About TTS*; 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>337</sup> International Congress of the Transplantation Society, *Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018 Edition)*, 2018.

<sup>338</sup> CoE, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009.

<sup>339</sup> UNOS, *About UNOS*, 2019; National Organization for Organ and Tissues Donation and Transplantation, *About Us*.

<sup>340</sup> *Ibid.*

<sup>341</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 19.

<sup>342</sup> CoE, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, p. 93.

<sup>343</sup> *Ibid.*

<sup>344</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 19.

<sup>345</sup> 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>346</sup> *Ibid.*

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>347</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>348</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>349</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>350</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>351</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>352</sup> However, the legal capacity of a Member State can be a direct factor in the effectiveness of these responses.<sup>353</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>354</sup> There may also be an unwillingness to protect a vulnerable group, such as the 1984 China regulation allowing organs to be removed from executed criminals with consent.<sup>355</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>356</sup> However, independent researchers and tribunals have found the practice to continue to the present.<sup>357</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>358</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>359</sup> In 1988, Iran legalized the selling of kidneys from living donors with non-profit organizations working alongside the Iranian Health Department

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<sup>347</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, p. 19.

<sup>348</sup> GFI, *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>349</sup> CoE, *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>350</sup> GFI, *Transnational Crime and the Developing World*, 2017, p. 32.

<sup>351</sup> *Ibid.*

<sup>352</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>353</sup> UN General Assembly, *Trafficking in persons, especially women and children: Note by the Secretary-General (A/RES/68/256)*, 2013, pp. 19-21.

<sup>354</sup> Hamdo, *The underbelly of Syria’s war: a thriving trade in human organs*, *United Press International*, 2016.

<sup>355</sup> Allison et al., *Historical development and current status of organ procurement from death-row prisoners in China*, 2015, p. 2.

<sup>356</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>357</sup> *Ibid.*

<sup>358</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>359</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.



to arrange donor-recipient matches.<sup>360</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>361</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>362</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>363</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>364</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>365</sup> Moreover, a more incentivized donor pool means there are minimal waiting times for kidney transplants in Iran compared to other Member States.<sup>366</sup> However, the trade can still be coercive to poor Iranians as approximately 80% of all donors are socioeconomically poor.<sup>367</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>368</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>369</sup> The *Guiding Principles on Human Cell, Tissue and Organ Transplantation* permit government compensation for donors to remove the costs of donating without adding rewards.<sup>370</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>371</sup> While on a federal level still considered illegal, 17 states in the United States provide limited tax breaks to living donors.<sup>372</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>373</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>374</sup> This practice is currently legal in Australia, Canada, and the United States.<sup>375</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>376</sup> Through coercive tactics and a lack of victim protection, vulnerable populations such as the poor and refugees receive minimal financial gain and face

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<sup>360</sup> Major, *Paying kidney donors: time to follow Iran?*, 2008.

<sup>361</sup> Schall, *A New Outlook on Compensated Kidney Donations*, 2008.

<sup>362</sup> GFI, *Transnational Crime and the Developing World*, 2017, p. 29.

<sup>363</sup> Griffin, *Kidneys on demand*, 2007, p. 503.

<sup>364</sup> Ibid.

<sup>365</sup> Ghods & Savaj, *Iranian Model of Paid and Regulated Living-Unrelated Kidney Donation*, 2006; Major, *Paying kidney donors: time to follow Iran?*, 2008.

<sup>366</sup> Ibid.

<sup>367</sup> Ghods & Savaj, *Iranian Model of Paid and Regulated Living-Unrelated Kidney Donation*, 2006; Griffin, *Kidneys on demand*, 2007.

<sup>368</sup> Erin & Harris, *An ethical market in human organs*, 2003.

<sup>369</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.

<sup>370</sup> Ibid.

<sup>371</sup> Australia, *Supporting Living Organ Donors Program*, 2019.

<sup>372</sup> Fishman, *Are There Tax Incentives for Organ Donations?*

<sup>373</sup> Venkataramani et al., *The Impact of Tax Policies on Living Organ Donations in the United States*, 2012.

<sup>374</sup> Toews et al., *Kidney Paired Donation and the "Valuable Consideration" Problem: The Experiences of Australia, Canada, and the United States*, 2017.

<sup>375</sup> Ibid.

<sup>376</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.



deteriorating health on the illicit organ market.<sup>377</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>378</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>379</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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*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 20 July 2019 from: <https://rm.coe.int/16805ad1bb>

*The 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.*

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<sup>377</sup> CoE, *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>378</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; CCPCJ, *Preventing and combating trafficking in human organs and trafficking in persons for the purpose of organ removal (Res 25/1)*, 2016.

<sup>379</sup> 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; GFI, *Transnational Crime and the Developing World*, 2017.

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*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/RES/68/256)*. Retrieved 25 August 2019 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 20 July 2019 from: <http://undocs.org/A/RES/70/1>

*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.*

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*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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*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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