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**MEMORANDUM ON CRIMINAL JUSTICE APPROACHES TO  
THE LINKAGES BETWEEN TERRORISM AND CORE  
INTERNATIONAL CRIMES, SEXUAL AND GENDER-BASED  
VIOLENCE CRIMES, HUMAN TRAFFICKING, MIGRANT  
SMUGGLING, SLAVERY, AND CRIMES AGAINST CHILDREN**



**GCTF**

GLOBAL COUNTERTERRORISM FORUM



## MEMORANDUM ON CRIMINAL JUSTICE APPROACHES TO THE LINKAGES BETWEEN TERRORISM AND CORE INTERNATIONAL CRIMES, SEXUAL AND GENDER-BASED VIOLENCE CRIMES, HUMAN TRAFFICKING, MIGRANT SMUGGLING, SLAVERY, AND CRIMES AGAINST CHILDREN

1. As part of its Work Plan for 2019-2022, the GCTF Criminal Justice and Rule of Law (CJ-ROL) Working Group is focusing on Criminal Justice Approaches to the Linkages between Terrorism, Transnational Organized Crimes, and International Crimes. The first part of the Initiative (2019/2020) resulted in the [\*Addendum to The Hague Good Practices on the Nexus between Transnational Organized Crime and Terrorism: Focus on Criminal Justice\*](#), which was endorsed by the GCTF in September 2020. The Addendum explores criminal justice responses to the linkages between terrorism, financing of terrorism, and transnational organized crime from a criminal justice perspective.
2. The second part of the Initiative (2020/2021) addresses Criminal Justice Approaches to the Linkages Between Terrorism and Core International Crimes, Sexual and Gender-based Violence (SGBV) Crimes, Human Trafficking, Migrant Smuggling, and Crimes against Children. The first expert meeting under this initiative was held virtually on 4 – 5 November 2020 and focused on “criminal justice approaches to the linkages between terrorism and SGBV crimes, human trafficking, and migrant smuggling.” The second expert meeting was held virtually on 10 – 11 February 2021 and focused on “criminal justice approaches to the linkages between terrorism and core international crimes” (understood for purposes of this project as referring to war crimes, crimes against humanity, and genocide).
3. The Initiative builds on the following GCTF framework documents:
  - [\*Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects\*](#)
  - [\*Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector\*](#)
  - [\*Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context\*](#)
  - [\*Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings\*](#)
  - [\*Addendum to The Hague Good Practices on the Nexus between Transnational Organized Crime and Terrorism: Focus on Criminal Justice\*](#).
4. Bringing alleged terrorists to justice within a rule of law framework is a vital component of an effective counterterrorism strategy. Several United Nations Security Council resolutions (UNSCRs), most notably UNSCRs 1373 (2001), 2178 (2014), and 2396 (2017), oblige States to



ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offenses and crimes related to terrorist acts. States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law, underscoring that respect for human rights, fundamental freedoms, and the rule of law are complementary and mutually reinforcing with effective counterterrorism measures and are an essential part of a successful counterterrorism effort. This initiative aims to support practitioners and policymakers in boosting their efforts to strengthen the criminal justice responses with a view to ending impunity for terrorist offenses, holding terrorists accountable for the full range of crimes they committed, developing methodologies to repair harm and restore dignity for victims, and preventing the commission of these serious crimes in the future.

5. This Memorandum provides non-binding recommendations to GCTF Members on how to address linkages between terrorism and international core crimes, SGBV crimes, human trafficking, migrant smuggling, slavery, and crimes against children by terrorist groups from a criminal justice perspective. When this Memorandum refers to binding international legal obligations, this does not change or alter the nature and status of these binding obligations.
6. The Memorandum addresses criminal justice responses to linkages between terrorism and core international crimes, SGBV crimes, human trafficking, migrant smuggling, slavery, and crimes against children. Whilst it is recognized that these crimes can occur without any links to terrorism or to each other, the Memorandum focuses on these offenses, when such links do exist. For the purposes of this Memorandum, core international crimes refer to war crimes, crimes against humanity, and genocide. References to crimes against children in this Memorandum refer to the recruitment or use of or trafficking in children by terrorist groups. This Memorandum also covers SGBV crimes, human trafficking, and migrant smuggling committed by terrorist groups.
7. In certain circumstances, prosecuting alleged perpetrators for terrorist offenses only may not duly reflect the full extent of the perpetrator's criminal conduct. One of the objectives of this Memorandum is to assist States in holding alleged terrorists accountable for the full range of crimes they have committed. This could mean that alleged perpetrators could be charged not only with terrorist offenses but also, when appropriate, with other crimes they committed that fall under the scope of this Memorandum.
8. The UNSCRs 2331 (2016) and 2388 (2017) recognize the linkages between terrorist groups and human trafficking and SGBV crimes in conflict and post-conflict situations. Trafficking in persons, in particular in women and girls, remains a critical component of the financial flows to certain terrorist groups.
9. The UN Secretary General noted in his Report on Conflict-related Sexual Violence (S/2021/312) that sexual violence as a tactic of war and terrorism continues to be employed in numerous countries, having been recently verified in 18 countries in the Middle East, Africa, Asia, and South



America. The nature and the extent of links between terrorism and SGBV crimes varies significantly. Several terrorist groups, including those designated by the UN Security Council, such as ISIL/Da'esh, al-Qaeda, Boko Haram, Al-Shabaab, and Ansar Eddine, are known to perpetrate SGBV crimes within and outside the context of armed conflict.

10. The crimes of human trafficking and migrant smuggling are distinct in definition but can have some common characteristics; individuals who are smuggled are often vulnerable to becoming victims of human trafficking. Human trafficking refers to the recruitment, transportation, transfer, harboring, or receipt of people through force, fraud, or coercion, with the aim of exploiting people for the traffickers' benefit. Migrant smuggling refers to the facilitation, for financial or other material gain, of a migrant's irregular entry into a country where the migrant is not a national or resident. Criminal groups involved in these activities often commit other crimes, such as money laundering and document fraud. Migrant smuggling generally has a transnational element, whereas human trafficking can take place within one country or across national borders. Some terrorist groups that have been involved in human trafficking have also been known to engage in migrant smuggling. Terrorist groups have also been known to utilize the criminal groups that are involved in human trafficking or migrant smuggling. There have been instances of human smuggling and/or related immigration document fraud offenses involving material support for terrorism. In some circumstances, transnational criminal networks and terrorist groups that engage in this conduct use the same routes and methods of transportation. Additionally, some smuggled migrants may become victims of human trafficking.
11. Recruitment, use, or trafficking of children by terrorist groups can take place both within and outside the context of armed conflict and is a serious concern. Targeted activities are being conducted by several terrorist groups, such as Boko Haram, ISIL/Da'esh, and Al-Shabaab, who have sought to capitalize on the vulnerabilities of children. As stated in UNSCR 2427 (2018), all parties to armed conflict must comply strictly with the obligations applicable to them under international law for the protection of children in armed conflict. The resolution also underlines that the best interests of the child, as well as the specific gendered needs and vulnerabilities of girls and boys, should receive due consideration in planning and carrying out actions concerning children in situations of armed conflict. In the sixth biennial review of UN Global Counter-Terrorism Strategy, the General Assembly (A/RES/72/284) condemned systematic recruitment and use of children to perpetrate terrorist attacks, as well as violations and abuses committed by terrorist groups against children, and noted that such violations and abuses may amount to war crimes and crimes against humanity.
12. Some terrorist groups who engage in SGBV crimes, human trafficking, migrant smuggling, slavery, and crimes against children may also commit core international crimes. Several designated terrorist groups have committed war crimes during armed conflicts, such as in Iraq, Nigeria, Syria, Mali, Somalia, and Libya, including pillaging/unlawful destruction of private property, destruction of cultural property, torture, unlawful confinement, and murder. Some terrorist groups have committed multiple crimes against humanity, such as murder, persecution, enslavement, and a range of SGBV crimes, including sexual slavery and rape, and have even engaged in genocide.



Certain acts linked with human trafficking in the context of armed conflict may constitute war crimes.

13. States should seek to end impunity and investigate and, as appropriate, prosecute, where they have jurisdiction to do so, those responsible for genocide, crimes against humanity, and war crimes, as well as for other crimes under international law. States have a primary responsibility to do so. How these acts can actually be prosecuted depends on whether and how core international crimes and other crimes have been implemented in domestic legislation, as well as the jurisdiction of relevant foreign courts and international judicial bodies. States should adopt appropriate measures within their national legal and policy frameworks to prevent crimes, criminalize offenses, make available a range of appropriate penalties, and investigate and prosecute alleged perpetrators. The UN Secretary General, in a Report to the Security Council on Women, Peace and Security (S/2017/861), has called upon national justice systems to take the full body of international criminal law into consideration with regard to SGBV crimes, including crimes against humanity and genocide, to the extent appropriate, and not to limit consideration to those crimes of violence traditionally labeled as terrorist offenses, when sufficient linkages with other crimes exist, particularly in cases of crimes involving SGBV.
14. One of the key challenges regarding the prosecution of terrorist offenses with linkages to core international crimes, SGBV crimes, human trafficking, migrant smuggling, and crimes against children is that victims and witnesses may be reluctant to report the crimes. This reluctance to participate in investigations and prosecutions may particularly be the case, if appropriate protection, support, and assistance is not provided to victims and witnesses. Such protection, support, and assistance can be very difficult for some countries with ongoing conflicts or those recently emerging from conflict. Reasons for this can relate to the fear of retaliation, stigmatization, and shame and to the lack of available remedies. Such people might also struggle due to displacement or lack of access to humanitarian needs, such as shelter, access to proper medical, psychological, and disability care, or physical safety. Fear of social stigma might prevent them from reintegrating into society, discourage them from seeking safe medical treatment, and lead them to seek unsafe abortions or be forced into marriage. In some circumstances, this could also result in the risk that survivors of these crimes are victimized by so-called “honor-driven” violence, lethal retaliation arising from perceived shame in “dishonoring” the family.
15. National prosecutors may often rely on domestic counterterrorism legislation when bringing alleged terrorists to justice for terrorist and terrorism-related offenses. Counterterrorism statutes hold an advantage for prosecutors, in that they can include more straightforward membership offenses, in which the key element to the crime is joining, providing support to, being a member of, or commanding a terrorist group. The defendant need not be linked to any other specific crime, and as a result it may not be necessary to introduce evidence located overseas, potentially in a conflict zone. Furthermore, domestic counterterrorism laws can criminalize a range of preparatory acts such as planning and attempting, as well as aiding and abetting, and offenses that precede the commission of a terrorist attack and thus contribute to a preventive criminal justice approach to terrorism. Domestic counterterrorism laws and



regulations can be seen as a strong basis for proactive investigations that aim to disrupt terrorist plots before an attack occurs.

16. Prosecuting alleged terrorists for the full range of crimes they have committed presents several challenges, such as the evidence that is often located in conflict zones. Challenges with respect to obtaining information from the conflict zone include accessibility, crime scene management, maintenance of a thorough chain of custody, and safety conditions. Information collected or obtained by the military and other actors could, in addition to traditional ways of collecting evidence, be useful as evidence in court to bring alleged terrorists to justice.
17. Considering that investigating and prosecuting crimes that fall within the scope of this Memorandum are resource intensive and complicated and require a high degree of expertise, prosecutors in some countries have adopted a comprehensive prosecutorial strategy and engage in extensive coordination and cooperation. Comprehensive prosecutorial strategies can be supported by the use of specialized units and integration and close coordination between investigators and prosecutors. Enhancing inter-agency coordination and international cooperation is also vital when prosecuting alleged terrorists for the full range of crimes they have committed. Through comprehensive or, depending on the country, structural investigations, the relevant authorities could collect evidence, including witness and victim testimonies that can later result in person-specific investigations into the acts of identified perpetrators. Complementary processes such as restorative justice and rehabilitation and reintegration programs can be added.
18. If permitted, cumulative charging of alleged terrorists for terrorist offenses, core international crimes, and other crimes can offer certain advantages in seeking accountability for the crimes that have been committed, such as the possibility to impose high(er) sentences, if domestic laws provide for high(er) penalties in such circumstances and lead to more justice for the victims. In addition to holding those accountable for aiding and abetting a criminal activity, in some countries, it may be possible to use the concept of command or superior responsibility or similar concepts to capture the full scope of a perpetrator's actions. This can help States to hold superiors or those with effective control over others that fail to take the necessary measures to prevent or punish crimes committed by their subordinates accountable, even if these superiors do not directly participate in the crime. Furthermore, victims of terrorism and crimes that fall within the scope of this Memorandum may be afforded different protection and remedies under domestic law. Some States could also prosecute certain acts committed by members of terrorist groups as core international crimes, including on the basis of universal jurisdiction as authorized in domestic law. There are also certain international judicial institutions with jurisdiction to prosecute core international crimes in certain instances, which could provide additional avenues for prosecution, particularly given challenges for conducting domestic prosecutions. The number of prosecutions of certain acts committed by members of terrorist groups, such as SGBV crimes, human trafficking, migrant smuggling, slavery and crimes against children, remains relatively low.

**PART 1: LEGAL FRAMEWORK****Recommendation #1: Improving the implementation of relevant international legal frameworks in domestic legislation**

19. In order to support effective accountability, States are recommended to improve the implementation of applicable international legal frameworks in domestic legislation to ensure consistency and improve interoperability.
20. States should consider becoming party to the relevant international conventions and protocols relating to terrorism, bearing in mind the necessity of increasing cooperation and fully implementing the relevant international conventions and protocols.
21. States should also consider becoming party to the relevant international and regional criminal, human rights, and international humanitarian law conventions. Ensuring the implementation of a State's international obligations domestically could help support a more effective response to addressing the linkages between terrorism and core international crimes, SGBV crimes, human trafficking, migrant smuggling, and crimes against children.
22. Certain acts committed by terrorist groups that constitute SGBV crimes, human trafficking, migrant smuggling, slavery, and crimes against children and/or amount to core international crimes can potentially implicate different criminal offenses. How these offenses are set out in domestic law determines which elements need to be proven, the jurisdictional scope, and which applicable penalties are available under domestic law. States are recommended to adopt laws on relevant criminal offenses and apply them in a manner that allows all alleged victims access to justice and to protection and remedies and holds alleged terrorists accountable for the full range of crimes they have committed.
23. Several terrorist groups operate within a situation of armed conflict. International humanitarian law applies to armed conflicts. International humanitarian law also specifically prohibits acts or threats of violence, the primary purpose of which is to spread terror among the civilian population. Regardless of whether terrorist groups have been designated by the UN, regionally or nationally, they may be party to an armed conflict, provided that the hostilities reach a minimum level of intensity, and the group is sufficiently organized to meet the minimum threshold under customary international law. Certain acts committed by terrorist groups, including crimes committed by foreign terrorist fighters (FTFs), can constitute crimes under IHL. How IHL and the international counterterrorist framework are incorporated domestically differs. States are therefore recommended to assess how IHL and counterterrorist legislation can be applied appropriately to ensure effective prosecution of alleged terrorists who have committed crimes, including those that amount to core international crimes, in order to hold them accountable for the full range of crimes they have committed.

**Recommendation #2: Criminalizing sexual and gender-based violence crimes, human trafficking, migrant smuggling and slavery**

24. Crimes related to SGBV, human trafficking, migrant smuggling, and slavery committed by terrorist groups can be interrelated, including for the purpose of various forms of sexual exploitation, forced labor, servitude, or the removal of organs, and/or obtaining a financial or other material benefit. SGBV crimes can thus be committed for exploitative purposes and at the same time can also be a method used by terrorist groups to manipulate and control populations. The UN Secretary General has reported annually in his reports on Conflict-related Sexual Violence on how sexual violence is employed as a tactic of war and may constitute a form of torture and terrorism. UNSCR 2467 (2019) urges States to strengthen legislation and enhance investigation and prosecution of sexual violence in conflict and post-conflict situations consistent with fair trial guarantees under international law. If SGBV is criminalized in domestic legislation, prosecutors could consider indicting and prosecuting alleged terrorists who have also been involved in such crimes, if possible and appropriate.
25. Notwithstanding the challenges countries in conflict and post-conflict situations face, States are recommended to ensure that a proper legal framework is in place to allow for the prosecution of these crimes and address the specific circumstances of their commission by members of terrorist groups. This could include removing discriminatory provisions that may prevent victims from reporting crimes, ensuring that time limits for filing a complaint are adequate, allowing victims to submit evidence in alternative forms such as sworn statements and giving evidence in courts via in-camera proceedings or video links or in a manner that allows the alleged perpetrator to confront and question the accused but also allows the victim to participate in the justice process in a trauma-informed manner, or considering including an aggravating circumstance when certain crimes, such as SGBV crimes, human trafficking, migrant smuggling, or slavery, have been committed by members of terrorist groups.
26. Furthermore, the status of the perpetrator as a victim of human trafficking, and whether he or she was compelled to engage in terrorism or terrorist acts should, as appropriate, be considered when the person is prosecuted.
27. Prosecution of human trafficking and migrant smuggling offenders and protection of any victims can fall under the 2000 UN Convention against Transnational Organized Crime and its Protocols thereto. Human trafficking and migrant smuggling are distinct, given the fact that migrant smuggling in itself does not involve a crime against the migrant. However, these smuggled migrants can nevertheless be extremely vulnerable to human trafficking and SGBV crimes, when, for example, their dependent relationship to the smuggler turns into an exploitative relationship. Additionally, law enforcement should screen migrant smuggling cases for indicators of human trafficking and, when appropriate, recognize smuggled individuals as victims of human trafficking.
28. States are also recommended to consider becoming party to the international instruments related to migrant smuggling and trafficking in persons, namely the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the 2000 UN





Convention against Transnational Organized Crime. States are recommended to regularly conduct assessments on the implementation of these instruments, submit periodic reports, and participate actively in applicable review mechanisms.

29. In addition to criminalizing human trafficking and migrant smuggling, States could strengthen early detection and provide support to victims by considering new methods to identify victims of trafficking based on detection of vulnerabilities to trafficking and exploitation.
30. Furthermore, States could strengthen the domestic legal framework on addressing such crimes committed by terrorist groups by adopting relevant regional instruments such as the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, the 2007 Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, the 2005 Maputo Protocol to the African Charter and the 2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children, and the 2007 Commonwealth of Independent States Agreement on Cooperation amongst CIS Member States in Countering Trafficking in Persons, Human Organs and Tissues.
31. In some circumstances and depending on the facts, some acts committed by members of terrorist groups could also constitute slavery, which is prohibited under international law. If committed as part of a widespread or systematic attack directed against a civilian population, some forms of SGBV, including slavery could be a crime against humanity or, if done with intent to destroy a protected group in whole or in part, could be genocide. States should criminalize the acts constituting slavery as well as torture and should establish appropriate penalties in their domestic legislation. States that have ratified the Convention on the Prevention and Punishment of the Crime of Genocide or any other relevant conventions should take actions to ensure that those responsible for these acts are extradited or prosecuted. Furthermore, prosecutors should undertake a prompt and impartial investigation and, as appropriate, prosecution of any alleged incidents of these crimes.
32. In order to strengthen the domestic legal framework on addressing crimes committed by terrorist groups that constitute forced labor, States should consider becoming party to relevant International Labour Organisation (ILO) conventions. These include the ILO Forced Labour Convention (Convention No. 29 of 1930) and its Protocol and the ILO Abolition of Forced Labour Convention (Convention No. 105 of 1957).
33. Finally, SGBV crimes committed by members of terrorist groups can be prosecuted under domestic legislation for core international crimes, terrorist offenses, or other crimes. In a few States, specific sexual offenses with a terrorist intent have been included in legislation on terrorism. In many States, legislation on terrorism does not explicitly address SGBV crimes. In some domestic laws sexual offenses or offenses relating to bodily integrity typically do not specifically address their commission by terrorist groups. States should ensure that the definitions of sexual crimes or offenses relating to violations of bodily integrity are not too



narrow, and that applicable penalties adequately reflect the gravity of these offenses. States could consider establishing in their domestic law an aggravating circumstance for SGBV crimes, including factors such as when they are committed in the context of a terrorist act.

**Recommendation #3: Criminalizing crimes related to recruitment, use, or trafficking of children by terrorist groups**

34. Within the scope of this Memorandum crimes against children refer to crimes related to recruitment and use or trafficking of children by terrorist groups, which can take place both during and outside of armed conflict. For the purposes of this Memorandum, recruitment and use refer to compulsory, forced, and voluntary conscription or enlistment of children into terrorist or violent extremist groups. In the context of trafficking, exploitation includes but is not limited to the prostitution of others or other forms of sexual exploitation, forced labor, or services, including the commission of crime, slavery, or practices similar to slavery, and constituting trafficking in persons. Children are often exploited to perform support roles and active roles as fighters in armed conflict or as perpetrators of terrorist attacks. In particular, girls are being exploited and subjected to sexual violence. In order to protect children, States are recommended to criminalize in their domestic laws crimes related to the recruitment, use, or trafficking of children in accordance with their international legal obligations, where applicable.
35. Several terrorist groups operate within a situation of armed conflict. States that are party to an armed conflict must comply strictly with the obligations applicable to them under international law for the protection of children in armed conflict, as has been restated in UNSCR 2427 (2018). States are encouraged to consider ratifying and implementing conventions that prohibit certain forms of recruitment, use or trafficking of children during armed conflict, including the 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the involvement of children in armed conflict and the four Geneva Conventions of 1949 and their Additional Protocols of 1977. Furthermore, the Worst Forms of Child Labor Recommendation (No. 190 of 1999) of the ILO recommends that all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict, should be criminalized in domestic legislation.
36. Trafficking of children by terrorist groups can also take place outside armed conflict and is addressed in the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the 2000 UN Convention against Transnational Organized Crime. According to article 3 (c) of the Protocol, when an act of trafficking and the purpose of trafficking have been established, the consent of children is irrelevant, even when they gave their consent without being threatened, forced, coerced, abducted, or deceived. Considering the special rights and needs of child victims of trafficking, States are recommended to provide appropriate protection.



37. In order to strengthen and complement the legal framework on terrorism, States are encouraged to adopt effective prevention strategies to protect children from being recruited, used, and trafficked by terrorist groups. States are also recommended to invest in identifying and detecting the recruitment, use, or trafficking of children by terrorist groups. With proper and effective training, child protection actors, including teachers and youth workers, can play a role in prevention, monitoring, and detection.
38. The Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict established by UNSCR 1612 (2005) promotes accountability and compliance with international law taking into account internationally recognized child protection guidelines. States are recommended to provide support to this mechanism, for example by ensuring sufficient resources, funding child protection staff in the United Nations Children's Fund (UNICEF), or ensuring that UN peace operations and special political missions have dedicated child protection mandates as appropriate.
39. States should take all appropriate measures to protect children from all forms of violence, including sexual abuse and exploitation by terrorist groups. In adopting measures, the best interest of the child should be a primary consideration.

#### **Recommendation #4: Criminalizing core international crimes**

40. When certain acts committed by members of terrorist groups amount to core international crimes, States should similarly consider ensuring that such acts or those underlying them are established as serious criminal offenses under domestic law, and that the penalties available under domestic law duly reflect the seriousness of such offenses.
41. Certain acts committed by members of terrorist groups, such as SGBV crimes, human trafficking, migrant smuggling, slavery, and crimes against children, can, depending on the facts and the relevant legal framework, amount to core international crimes. States have a primary responsibility to investigate and if appropriate prosecute core international crimes over which they have jurisdiction. In practice, how these acts can actually be prosecuted depends on how core international crimes have been implemented in domestic legislation, or on whether foreign or international courts have jurisdiction over them.
42. Certain acts committed by members of terrorist groups during armed conflict can amount to war crimes. In some situations, certain acts committed by members of terrorist groups may also constitute genocide. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the four Geneva Conventions of 1949 and their Additional Protocols create obligations for State parties to prevent and punish the relevant crimes and impose obligations on State parties to criminalize genocide and relevant war crimes respectively, in domestic legislation.



43. When certain specific acts committed by members of terrorist groups are conducted as part of a widespread or systematic attack directed against a civilian population with knowledge of the attack, they can constitute crimes against humanity. Whilst there is no encompassing convention addressing crimes against humanity, the concept of crimes against humanity has evolved and has been refined in statutes of various international criminal courts and tribunals, as well as in international jurisprudence, including those of the International Military Tribunal, the International Military Tribunal for the Far East, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court. Crimes against humanity encompass rape, other forms of sexual violence, enslavement, torture, and enforced disappearances, as well as other inhumane acts. States are recommended to consider criminalizing crimes against humanity, as such, in their national legislation.
44. States are recommended to consider removing statutes of limitations to core international crimes, in accordance with applicable international law. This could include implementing the 1968 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, the 1974 European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes, and the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

#### **Recommendation #5: Preparatory acts and modes of liability**

45. In addition to criminalizing the acts discussed above, States are recommended also to consider criminalizing different modes of liability for committing terrorism and the other crimes that fall within the scope of this Memorandum, including facilitating, aiding and abetting, attempting, conspiring, instigating, or inciting the commission of relevant crimes. The 2000 UN Convention Against Transnational Organized Crime and its Additional Protocols also require States to establish different modes of liability in accordance with domestic legislation. Furthermore, establishing the age for criminal responsibility of children should be consistent with the applicable international legal obligations and domestic laws.
46. Several States have adopted the concept of command responsibility or superior responsibility in their legislation on genocide, crimes against humanity, and war crimes. Considering the gravity and the scale of crimes committed by some terrorist groups, in some States the concept of command or superior responsibility or similar concepts to that in domestic law could be suitable for building cases against specific members of terrorist groups such as ISIL/Da'esh. The applicability of this concept may depend in each specific case on several factors, including whether certain members of the group are able to exercise effective control over other members. In order to prosecute successfully superiors, commanders, and high-ranking officials – whether military or civilian – for acts committed by members of the entity under their effective control, States could consider incorporating the concept of command or superior responsibility in domestic legislation. Under relevant international law, which could include Additional Protocol I of the Geneva Conventions and relevant international criminal tribunal statutes, as



well as domestic statutes, commanders and other superiors may be criminally responsible for core international crimes committed by those over whom they had effective control, if they knew or had reason to know that these individuals were about to commit or were committing such crimes and did not take all necessary and reasonable measures to prevent their commission or, if such crimes had been committed, to punish the persons responsible.

47. States are recommended to consider ensuring narrow definitions of the grounds for excluding criminal responsibility for core international crimes. Although there may be appropriate grounds for excluding criminal responsibility for core international crimes in some cases, such as duress, self-defense, involuntary intoxication, and lack of mental capacity, States are recommended to consider precluding orders from superiors being used as a defense. With respect to SGBV crimes, States should not permit honor, provocation, and voluntary intoxication as grounds of defense that would exclude criminal responsibility.

#### **Recommendation #6: Establishing jurisdiction**

48. To be able to prosecute SGBV crimes, human trafficking, migrant smuggling, crimes against children or core international crimes committed by members of terrorist groups, States should establish jurisdiction in accordance with relevant international law and domestic legislation. States may exercise jurisdiction on the basis of the territoriality principle, active personality principle, passive personality principle, or protective/security principle.
49. Certain treaties, such as the four Geneva Conventions and their Additional Protocols, require State parties to establish what some refer to as “universal jurisdiction” for particular crimes. Some States have established universal jurisdiction over some international crimes in their domestic legislation. The scope and application of the universal jurisdiction varies, and some countries have imposed certain conditions ranging from requiring the presence of the accused on their territory to coordinating with the country of the nationality of the accused or requiring approval from a high level government official. States could consider establishing universal jurisdiction over offenses committed by members of terrorist groups that amount to core international crimes.
50. The legal possibility for trying persons in absentia may also be available in some domestic systems and may also assist in providing justice to victims with a sense of accountability. Depending on the domestic law, trials in absentia usually may be conducted, only if the accused has committed the crimes in the State’s own territory, or when jurisdiction is otherwise based on nationality. Some States may allow this only if certain conditions are met, such as notifying the accused of the hearing or appointing a public defense attorney for the accused. Alternatively, some States allow only sentencing in absentia. States that permit trials in absentia should ensure that trials are conducted in conformity with the right to a fair trial as prescribed by Article 14 of the ICCPR.

**Recommendation #7: Strengthening extradition and mutual legal assistance**

51. Some counterterrorism conventions and certain other treaties require States to “extradite or prosecute” alleged offenders present in their territory. These include the four Geneva Conventions, the 1984 UN Convention against Torture, and the 2000 UN Convention against Transnational Organized Crime and its Protocols. In accordance with Recommendation 9 of the [Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector](#), States are recommended to facilitate and encourage effective extradition and mutual legal assistance.
52. Any specific obligation to prosecute imposes the duty to submit the case to the relevant prosecutorial authorities for consideration. The conditions of any specific treaty-based obligation to “extradite or prosecute” differ between conventions.
53. In order to facilitate extradition, States are recommended to criminalize all of the relevant offenses to ensure that they can extradite consistent with their domestic law and international obligations. Additionally, States should apply the multilateral conventions to expand the bases for extradition on a bilateral basis. In the absence of appropriate bilateral extradition arrangements, States may be able to make use of the extradition provisions included in counterterrorism conventions or the 1984 UN Convention against Torture.
54. States are recommended to refrain from extradition, if a State knows or should have known that a person accused of a terrorist offense will not receive a fair trial. Furthermore, States should ensure that extraditions are consistent with their obligations related to *non-refoulement*.
55. When members of terrorist groups have engaged in human trafficking and migrant smuggling, States may want to rely on the 2000 UN Convention against Transnational Organized Crime. This convention and its comprehensive articles on extradition (art. 16), transfer of sentenced persons (art. 17), and mutual legal assistance, including transfer of detained persons or persons serving a sentence for the purposes of identification, testimony, or other investigative purposes (art. 18), constitute a reliable framework for the provision of international cooperation in criminal matters. Moreover, parties to the UN Convention against Transnational Organized Crime are reminded of their obligation to implement article 18 on mutual legal assistance, which includes, inter alia, the designation of central authorities.
56. UNSCR 2322 (2016) underlines the importance of international cooperation, in particular mutual legal assistance and extradition, as a vital tool to bring suspected terrorists to justice. In accordance with Good Practice 18 of the [Addendum to The Hague Good Practices to the Nexus between Terrorism and Transnational Organized Crime](#), States are encouraged to ratify multilateral, regional, or bilateral conventions that provide a legal basis for mutual legal assistance and extradition of alleged terrorists. In the absence of appropriate international multilateral or bilateral extradition treaties, States are also encouraged to provide mutual legal assistance on the basis of reciprocity or national law.



57. In many jurisdictions mutual legal assistance and extradition are permitted, only if these offenses are criminalized by both States (the “double criminality” rule). In order to facilitate international cooperation in criminal matters related to terrorism, States should, where necessary, establish appropriate offenses and penalties, taking into account the gravity of the crimes.
58. When the custodial States receive a request for extradition of a person accused or convicted of terrorism or a related crime, the relevant authorities of the custodial State should consider, where appropriate, whether to extradite or prosecute on the basis of whether the requesting State, under its own relevant domestic legislation and international law, has valid jurisdiction to prosecute the crime, rather than simply whether the crime was committed in the requesting State.

**Recommendation #8: Establishing appropriate penalties (and sentencing considerations)**

59. In line with UNSCRs 1373 (2001) and 2178 (2014) States are required to criminalize certain terrorist offenses in a manner that duly reflects the seriousness of the criminal offenses. In addition, the Genocide Convention, the UN Convention against Torture, the four Geneva Conventions and their Additional Protocols, and the Protocol supplementing the 2000 UN Convention against Transnational Organized Crime on human trafficking require State parties to establish appropriate penalties in accordance with their domestic legislation. Some States have done so by prescribing maximum or minimum sentences, while others provide scales of punishments. In all cases, penalties should be in accordance with domestic law and international human rights law.
60. According to the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the protection of society against crime and the reduction of recidivism are considered the primary purposes of a sentence of imprisonment or similar measure depriving a person of liberty. In accordance with domestic law, in some States the courts may also rely on additional purposes of punishment, such as deterrence and rehabilitation, reintegration, reconciliation between offender and victims, and reparation.
61. In some States, charges and convictions are rendered only for one crime, even though the underlying criminal conduct could encompass multiple different crimes. If, however, a perpetrator has committed numerous distinct crimes as a result of the underlying conduct, this could lead to multiple criminal charges and potentially multiple convictions for terrorist offenses, core international crimes, and other crimes. Courts could, in accordance with domestic laws, determine the appropriate structure for sentences. Whilst making these considerations, States should ensure at all times that the principle of *ne bis in idem* is respected. In determining the appropriate sentence, the courts will assess how the gravity of the offense will be taken into account to determine the appropriate penalty.
62. In determining an appropriate sentence for terrorist offenses, while bearing in mind rights related to a fair trial, aggravating and mitigating circumstances may be taken into consideration



in accordance with domestic law. Depending on the domestic system, some of the aggravating circumstances with respect to core international crimes could potentially include the scale, intensity, duration, or cruelty of the crime, whether the crime was premeditated, the number of victims, the suffering or defenselessness of victims, apparent enjoyment of an accused derived from the criminal act in question, abuse of power (in particular the position as a superior), and any discriminatory intent. Depending on the domestic system, some mitigating circumstances could potentially include a lesser degree of culpability, voluntary surrender to law enforcement, or cooperation during the investigation and prosecution, willingness to provide reparations to victims or to show remorse, age, good behavior, or prospects of rehabilitation.

63. Considering the complexity and gravity of terrorism and the other crimes that fall within the scope of this Memorandum, States may want to develop domestic guidelines on sentencing in accordance with domestic laws. Since in many countries, courts may not frequently encounter the linkages between terrorism and the crimes covered in this Memorandum, domestic sentencing guidelines may assist in helping to provide appropriate sentences and contribute to more consistency in sentencing in such cases.



**PART 2: PROSECUTORIAL STRATEGY****Recommendation #9: Establishing the linkages and prosecutorial considerations**

64. Prosecutors should aim to prosecute the full range of the crimes committed by terrorist groups, in accordance with international legal obligations and criminal conduct, as appropriate under domestic laws. In order to understand the gravity, scale, and intensity of the linkages between the crimes committed by terrorist groups that fall under the scope of this Memorandum, it is useful to develop indicators. These indicators could help to distinguish between singular crimes and patterns. Particularly in situations where investigators can recognize patterns and terrorists have committed these crimes on a large scale, it is important that appropriate expertise is available among the law enforcement actors, and that sufficient resources are available to facilitate effective investigation and prosecution of these crimes.
65. The scope of prosecutorial discretion, as may be used in some countries, may vary between countries when it comes to prosecution of crimes. States could, following the example of some States, consider developing guidelines for prosecutors to assist in determining whether and when prosecutions should be initiated with respect to certain crimes, including factors that could be taken into consideration, when appropriate. Developing such guidelines can help promote transparency and avoid the discretion being used in an arbitrary manner.
66. In accordance with domestic legislation, an investigation may be initiated by competent investigative authorities. In several countries civil society organizations (CSOs) that represent victims of certain crimes committed by terrorist groups such as core international crimes can, in addition to the victims themselves, file a complaint to the competent authorities, requesting that an investigation be launched.
67. When certain acts committed by terrorist groups constitute core international crimes, SGBV crimes, human trafficking, migrant smuggling, slavery, or crimes against children, prosecutors in those States in which cumulative charging is allowed may, in accordance with their domestic laws, consider charging alleged suspects for the full range of the crimes committed. By doing so, the perpetrator can be held accountable for the full extent of crimes committed, which can lead to a sentence reflecting the seriousness of that full range of crimes.

**Recommendation #10: Developing a comprehensive and holistic prosecutorial strategy**

68. Given the fact that linkages between the terrorism and core international crimes, SGBV crimes, human trafficking, migrant smuggling, and crimes committed against children by terrorist groups are complex, resource intensive, and often involve a large number of victims, witnesses, and perpetrators, investigation and prosecution authorities are recommended to develop a comprehensive and holistic prosecutorial strategy towards an effective criminal justice response to these crimes. In addition, such a strategy could also include a vision and working plan concerning the way victims and witnesses are taken into consideration and/or can participate



in the proceedings and specify which, if any, complementary processes in terms of transitional justice or restorative justice could be included in the overall strategy to ensure justice.

69. In addition to the more policy-related issues mentioned above, the prosecutors appointed for a specific case dealing with crimes committed by members of terrorist groups are also advised to consider these issues more specifically in relation to the prosecutorial strategy for each specific case, which might include an assessment of the estimated success rate of the various prosecutorial approaches.
70. With a view to minimizing hardship on witnesses, States are also recommended in general to make efforts to sensitize the general public with regard to the importance of the investigation and prosecution of the full range of crimes that fall within the scope of this Memorandum. General outreach activities can also be used to explain the importance of witnesses stepping forward or of providing information on the support and protection that can be offered to witnesses and victims. Authorities could also use television programs or other advertisement campaigns to reach out to the witnesses of a specific event or to individuals who were present in a certain region during a certain period to contribute to evidence gathering through discrete and secure means of communication, if needed.

#### **Recommendation #11: Proving the elements and underlying crimes**

71. In order to successfully prosecute members of terrorist groups that have committed certain acts that fall under the scope of this Memorandum, the relevant elements of the crime need to be proven. The elements of the crime are found in domestic law and are based on how States have domestically implemented crimes relating to, for example, terrorism and core international crimes. In situations where the suspect is also prosecuted for war crimes, the existence of an (international or non-international) armed conflict needs to be proven to demonstrate that relevant international humanitarian law obligations apply. In situations where crimes against humanity are also part of the indictment, the widespread or systematic nature of the attack directed against a civilian population as a contextual element needs to be proven, in addition to the knowledge that a certain conduct was part of such an attack.
72. In addition, for the charge of genocide, the intent to destroy in whole or in part a national, ethnic, racial, or religious group as such needs to be proven as the specific intent of the crime of genocide.
73. To establish the necessary elements, the prosecution could seek to introduce evidence including, as appropriate and in accordance with domestic law, open-source information such as reports from UN institutions or CSO reports, photos, videos, and satellite imaging technology. Expert witnesses may also be called. States should, however, observe the right to a fair trial and should allow the accused to challenge these facts. States could also consider, as appropriate, publishing judgements or summaries of judgements for the cases that fall within the scope of



this Memorandum in other languages in order to assist prosecutors in other countries in the prosecution of such cases.

**Recommendation #12: Developing comprehensive investigation approaches**

74. Particularly in situations of mass atrocities and crimes committed during armed conflict, investigation and prosecution of individual crimes that fall within the context of this Memorandum pose specific challenges with regard to the evidence needed. For example, this is the case with the elements for crimes against humanity: the requirement that the crimes committed are part of a widespread or systematic attack directed against a civilian population. Also, crimes that are conducted in a structured pattern, such as human trafficking, unlawful recruitment or use of child soldiers, or the mass commission of SGBV crimes, might benefit from a comprehensive investigative approach. In such situations, investigation and prosecution authorities are recommended to consider developing a comprehensive or structural investigation as available under domestic law. This investigation approach could, for example, focus on proving contextual elements and lay the basis for further investigation conducted against suspects that have been identified in the course of the investigations or have become known in some other way. It could also focus on certain command structures and organizational structures of the terrorist group involved.
75. These crimes committed by terrorist groups often have several transboundary investigative needs, and multiple States might be investigating the same events or suspects related to these events. There are States that submit mutual legal assistance requests to other national or international prosecution authorities. To further facilitate this cooperation, States are recommended to share information and, if possible, official translations of the findings of structural investigations, as appropriate, with foreign partners. Prosecutors could also use, in accordance with domestic legislation, informal channels to share information.

**PART 3: COLLECTING INFORMATION FROM A CONFLICT ZONE****Recommendation #13: Collecting information from a conflict zone**

76. Given that in many cases the crimes that fall within the scope of this Memorandum are committed in a conflict or post-conflict situation, useful information could be located in the conflict zone. In order to establish a link between the perpetrators and the full range of crimes they committed, prosecutors may need information that is located in a conflict zone. Traditionally, law enforcement officials are in charge of collecting evidence but are often not able to collect relevant information themselves from a conflict zone themselves, whereas the military may have access to this information for its own purposes, which may later be assessed to be relevant for criminal prosecutions. Consistent with the [\*Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects\*](#) and the [\*Guidelines to Facilitate the Use and Admissibility as Evidence in National Criminal Courts of Information Collected, Handled, Preserved and Shared by the Military to Prosecute Terrorist Offences\*](#) developed within in the framework of the United Nations Global Counter-Terrorism Coordination Compact Task Force Working Group on Criminal Justice, Legal Responses and Countering the Financing of Terrorism, States are recommended, where possible and in accordance with domestic law, to use information that has been collected from conflict zones by the military as evidence in court. Furthermore, collecting such information from the conflict zone should be consistent with the Charter of the United Nations and international law, including international humanitarian law, international human rights law, and international refugee law, as applicable.
77. Information obtained from conflict zones could consist of documents such as payroll information, membership lists of a terrorist group, cell phones, fingerprints on unexploded improvised explosive devices (IEDs), or witness statements. Information obtained by the military from the conflict zones can be used for multiple purposes, including in investigations and prosecutions of alleged terrorists. Recognizing the difficult circumstances in collecting information in and from a conflict zone, the information collected by the military should, as much as possible, be collected, analyzed, and preserved in a manner that provides the best opportunity for multiple countries to use this information in investigations and prosecutions. Ultimately, it will be up to the court where this information is presented as evidence to assess the reliability and admissibility of the evidence.
78. States are recommended to ensure that effective mechanisms and lines of communication are in place to enable the relevant criminal justice authorities to use information from the conflict zone as evidence in court. Furthermore, States are recommended to, where appropriate, strengthen mutual legal assistance to facilitate the sharing of information from the conflict zone among States, as well as with relevant regional and international organizations, such as INTERPOL. Prosecutors are encouraged, if permitted, to make use of informal channels to facilitate and expedite formal requests for mutual legal assistance.

**Recommendation #14: Cooperating with international mechanisms**

79. International mechanisms that have been established in accordance with international law could assist in establishing facts and providing information that can be used as evidence in court for the prosecution of crimes that fall within the scope of this Memorandum. Some of the mechanisms are operational in the country in which the information is located, whilst some operate from countries other than where the crimes were committed and work closely with local CSOs, neighboring countries, or refugee populations. In accordance with their respective mandates, these international mechanisms can collect information from different sources ranging from forensic experts, CSOs, governments, and, if applicable, through the investigators of governments. The mechanisms, in accordance with their respective mandates, can, in addition to obtaining documents such as court files and medical records, also identify witnesses, conduct interviews, take witness statements, or acquire forensic material. States may need to adjust their legal framework and/or conclude cooperation arrangements with these international mechanisms to enable prosecutors to receive and submit requests for information with these mechanisms.
80. States may also want to be able to request relevant information from international courts and tribunals and might therefore need to alter their legal framework and/or create cooperation arrangements. States are also encouraged to share relevant information with international mechanisms in accordance with their domestic laws and applicable international human rights law.
81. Information from international mechanisms or international courts and tribunals can, where possible and appropriate, help detect any evidentiary gaps, identify patterns, or provide an analytical overview. In collecting information, the international mechanisms maintain their own rules regarding the chain of custody and establishing the provenance of the materials.
82. Prosecutors are recommended to reach out informally to the international mechanisms to facilitate and expedite formal requests. Prosecutors are recommended to ensure that their formal request is as specific as possible and should indicate whether the information is required to prove the contextual elements or underlying criminal acts of any given case.

**Recommendation #15: Analyzing and storing data**

83. Since some of the information relevant for prosecution of the crimes that fall within the scope of this Memorandum is located in conflict zones and is in a digital format, handling and analyzing this information and digital data may pose some challenges. The information is often in a foreign language or dialect. Furthermore, documents can be handwritten, and the files may be in an irregular format, damaged, or of poor quality. In such cases, modern technology used in accordance with applicable laws could prove to be useful. Data mining, artificial intelligence, cloud computing, machine learning, facial recognition techniques, and specialized software can



help analyze these data effectively and efficiently. States could consider utilizing the services of the private sector to structure and analyze data that could potentially be used as evidence in court where appropriate and in accordance with applicable privacy or data protection and other laws. States are also encouraged to use the services of regional and international organizations such as INTERPOL or Europol to deploy the means to support development of these skills and tools at national level within the competent authorities.

84. Sometimes the information held by States becomes relevant in criminal prosecutions years later. It is therefore important to ensure the longevity of data. Considering the large amount of data that has been collected by these international mechanisms and the military, storing the data in a secure environment is vital.
85. The storage of data by service providers depends on the data retention, privacy, and data protection laws where the service providers are based. States are henceforth recommended to consider adopting adequate legal safeguards to ensure that relevant data for criminal prosecutions is stored properly and to strengthen public-private partnerships that respect criteria regarding the storage of data while preventing any arbitrary or unlawful interference with privacy.

#### **Recommendation #16: Engaging with Civil Society Organizations (CSOs)**

86. Considering the difficulty of obtaining information from conflict zones, even through the use of mutual legal assistance, States could consider cooperating with responsible CSOs in obtaining relevant information for the prosecution of terrorists for crimes that fall within the scope of this Memorandum.
87. Some of these CSOs are actively involved in documenting violations and abuses of human rights and violations of international humanitarian law in conflict-related countries. Representatives from these CSOs often speak the local language and have established a relationship of trust with the local community, which may make it easier for victims and witnesses to come forward. Other CSOs could specialize as investigators or human rights litigation firms. When the collection of information is conducted in accordance with the highest evidentiary standards (for example by maintaining a chain of custody register), cooperation with CSOs can strengthen the overall process of documenting and increasing the usability of this information as evidence in court, if in accordance with domestic law, and if the court decides the information is admissible as evidence. Certain CSOs may be reluctant to appear in court and/or provide witness statements, as they may perceive that cooperation with law enforcement may jeopardize their independence or appearance of impartiality in a conflict or their safety. Prosecutors could consider to what extent information from CSOs can be used as admissible evidence.
88. Some of the CSOs have a code of conduct or ethical standards to ensure they operate in an independent and impartial manner, free of influence from any other actor, and without any bias or conflict of interest. States are recommended to verify that the monitoring and documenting



methods used by CSOs maintain sufficient independence and impartiality whilst documenting crimes. Whether information obtained from CSOs can ultimately be used as evidence is determined by domestic law.

89. Prosecutors might consider, in accordance with domestic legislation, engaging with CSOs in their respective countries and setting up an informal network to improve their understanding of the background of the conflict and the contextual circumstances in which the crimes are committed abroad. States could consider assigning this role to a dedicated information officer that collects information and assesses the reliability of the information shared by CSOs. Furthermore, States might also want to consider training CSOs in the collection and handling of evidence in order to improve the gathering of information that could be used in prosecution.

#### **Recommendation #17: Admissibility, credibility, and reliability of evidence**

90. In accordance with international and domestic law, States should seek to ensure that information obtained in the conflict zone in relation to the investigation and prosecution of the crimes that fall within the scope of this Memorandum, including from international mechanisms or other actors, is admissible as evidence in court. States may wish to consider revising their laws on criminal procedure to address the use of such forms of information from the conflict zone as evidence in court. Rules of evidence and of criminal procedure should equally empower the courts to exclude inadmissible evidence and to address the consequences of improperly obtained or stored evidence, including situations where obtaining the evidence involves violations or abuses of international human rights law or violations of international humanitarian law.
91. The rights of the accused to a fair trial must be respected in all stages of any criminal proceedings, from when the individual is charged through sentencing and any appeals. The right to a fair trial is a fundamental guarantee under both international humanitarian law and international human rights law. The right to a fair trial can be promoted by safeguarding the provenance of evidence and working to ensure that the information is collected properly. States should therefore seek to increase the chances that the information obtained from the conflict zone or by international mechanisms and other actors is collected in a way that increases its admissibility as evidence in court. Where possible, the information should systematically be organized, catalogued, recorded, preserved, and stored in accordance with applicable international standards and domestic rules of evidence to be admissible in court. Prosecutors should seek to rely on information when the chain of custody has been observed and the provenance of the information can be established. States should follow their domestic laws in introducing evidence; any irregularities in how the information is collected from the conflict zone may impact the weight that can be given to such information in court and the admissibility of the information as evidence in court.
92. When international mechanisms and other relevant actors are involved in interviewing and taking witness statements, it would be paramount to facilitate cooperation in seeking to ensure



that those witness statements are taken in accordance with relevant human rights law, and that guarantees of a fair trial, including the presumption of innocence and not being compelled to testify against oneself or to confess guilt, are respected for criminal defendants. States are encouraged to verify that experts of international mechanisms and other relevant actors have well-trained staff, who have operational expertise, are skilled in investigation techniques, and are able to ensure the security of victims and witnesses, in particular vulnerable victims.

93. Some of the information obtained from international mechanisms or other actors may be redacted due to the shielding of the identity of the sources or the sensitive nature of the material. Prosecutors should ensure that they use information collected by international mechanisms and other actors in a manner that is consistent with the right to a fair trial. In accordance with Article 14 (3) (e) of the ICCPR, the accused shall be entitled to examine or have examined the witnesses against him and to obtain attendance by and examination of witnesses on his behalf under the same conditions as witnesses against him. At the same time, prosecutors must respect the rights of victims and witnesses and take all appropriate steps to ensure their safety and security.
94. In order to allow the accused to prepare his or her defense in accordance with domestic legal requirements, it is important that the prosecutors share appropriate information obtained from the conflict zone with the defense, including both incriminating and exculpatory information, in a timely manner. The court could consider requesting that providers of the relevant information appear in court to provide testimony regarding the nature of the information in question in accordance with domestic laws.



**PART 4: INTERAGENCY COORDINATION, INTERNATIONAL COOPERATION, AND EXPERTISE****Recommendation #18: Strengthening multidisciplinary coordination**

95. Prosecution of crimes by terrorist groups that fall within the scope of this Memorandum can be strengthened, where applicable, by improving law enforcement cooperation. Some States make use of war crimes units and counterterrorism cooperation units, which may result, for example, in the fact that not all units have access to the same information. It is furthermore not always possible to share everything with other agencies, if no action is taken to overcome existing impediments to allow sharing information while respecting classification rules in specific circumstances. Where appropriate, cooperation between experts should also extend beyond criminal proceedings to a more strategic and tactical level to ensure better understanding of each other's mandate and to facilitate information sharing. This could take the form of establishing a matrix of responsibilities for each unit or outlining responsibilities and limitations, with the aim of identifying common opportunities and strengthening cooperation. States are therefore recommended to set up clear reporting channels and information management platforms and enhance referral mechanisms with clear indicators on when referral is necessary. Especially in countries with a federal system, cooperation between the federal and state/province/canton levels could be strengthened, as appropriate, by appointing dedicated focal points at both levels and ensuring that a systematic flow of (instructive) information is provided.
96. In some countries, setting up *ad hoc* or permanent multidisciplinary teams, such as task forces, has proven useful to understand better the complexities of the crimes that fall within the scope of this Memorandum and to facilitate information sharing. States are therefore recommended to consider the establishment of such teams, which may also include professionals with expertise on (mental) health issues. Furthermore, establishing good cooperation links with health and social services may be particularly important in emergency situations for the purposes of reporting, recording, and responding appropriately to acts of violence against women, while protecting the privacy of the victims.
97. Even in situations where multidisciplinary cooperation is less institutionalized, organizing technical meetings or sharing a physical workspace can prove beneficial for exchanging knowledge and information.
98. Finally, and in line with UNSCR 2331 (2016), States that have not yet done so are recommended to develop the expertise of their Financial Intelligence Units (FIUs) to analyze cases of trafficking in persons that finance terrorism.

**Recommendation #19: Strengthening cooperation with border control, customs control, and immigration authorities**

99. In situations where linkages are suspected between crimes that fall within the scope of this Memorandum, it is important to gather the relevant expertise within the police and investigative authorities and to ensure that other relevant agencies, such as border control and customs and immigration authorities with different mandates, are able to share information as appropriate to strengthen the investigation, screening, and vetting capacity of the State, as well as for prosecution. States are recommended to equip border control and customs and immigration authorities with dedicated questionnaires and protocols to detect human trafficking and migrant smuggling with linkages to terrorist crimes, as well as to identify the victims and perpetrators of these crimes. States could furthermore process and analyze Advance Passenger Information (API) and Passenger Name Record (PNR) data, in line with UNSCRs 2178 (2014), 2396 (2017) and 2482 (2019), which call upon Member States to use such data to identify and prosecute individuals associated with organized crime and terrorism and to detect and disrupt human trafficking and migrant smuggling, SGBV crimes, slavery, and exploitation of children with linkages to terrorist crimes.
100. Amongst the flow of migrants entering States from conflict zones in which terrorist groups operate, there might be victims, witnesses, and potential perpetrators of the crimes that fall within the scope of this Memorandum. It is therefore important that border control and customs and immigration officers are aware of these possibilities and stay alert to pick up signals from victims and witnesses who may recognize alleged perpetrators among the group of immigrants. If such situations occur, it is especially important that they liaise with prosecutors or law enforcement officers who can start an investigation.
101. Especially considering the fact that building trust between witnesses and victims and government authorities is crucial to motivate victims and witnesses to step forward to report crimes, border control, customs, and immigration authorities, as the first authorities with which asylum-seekers have contact, should invest in building this trust. This could be achieved by informing asylum-seekers who present themselves as witnesses and victims about their ability to seek justice and get legal support to assist them as victims and witnesses and the measures for protection from intimidation or physical threats that can be taken if needed, in languages they understand.

**Recommendation #20: Strengthening expertise and setting up specialist units**

102. Measurable data sets regarding the crimes that fall within the scope of this Memorandum committed by terrorist groups worldwide are lacking. Lack of data subsequently impacts the thorough understanding needed by relevant government authorities to develop effective prevention programs and criminal justice approaches. States are therefore recommended to strengthen collection of data on these crimes, including as committed by terrorist groups, in order to deepen understanding of the problem and to develop more effective (preventive)



responses to these threats. Collection and analysis of data can furthermore contribute to the development of indicators as mentioned in Recommendation 9, which can help distinguish between singular crimes and patterns of crimes. States can take guidance on how to organize data collection, analysis, and publication from the International Classification of Crime for Statistical Purposes. For data collection on SGBV crimes with linkages to terrorist crimes, whether committed against men, women, or children, guidance can be taken from the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice. Keeping in mind the potential fear of retaliation and stigmatization among victims of these crimes, it is important that States do so in a trauma-informed and victim- and gender-sensitive manner.

103. Given the sensitivity of some of the crimes, particularly for the victims of SGBV crimes with linkages to terrorist crimes, States are recommended to invest in training in gender-sensitive approaches throughout the investigation and prosecution. For example, they are recommended to invest in training a sufficient number of female investigators and prosecutors in order to have them conduct interviews, in case victims or witnesses are more comfortable being interviewed by them. Regardless of the gender of the victim or the criminal justice actor, states are recommended to invest in and employ training in trauma-informed, gender-sensitive interview techniques.
104. When the investigation and prosecution concern crimes that fall within the scope of this Memorandum, and where victims play a role in the proceedings, criminal justice authorities are recommended to facilitate effective cooperation with CSOs that represent and assist victims, in particular with child protection actors. Criminal justice authorities could consider assigning a dedicated information officer for interactions with CSOs that represent victims.
105. Prosecuting the crimes that fall within the scope of this Memorandum also has some practical and operational challenges. In addition to language and cultural barriers, there may also be challenges related to limited resources and the availability of specialized skills to conduct such cases in a country. States are therefore recommended to ensure that investigators and prosecutors working on these cases have the necessary expertise and to offer additional training to stay up to date with international developments and jurisprudence. States are furthermore recommended to ensure that the investments in knowledge and skills are institutionalized.
106. In States where the criminal justice authorities are confronted with cases concerning members of terrorist groups that commit crimes that fall within the scope of this Memorandum at a large scale, States should seek to develop sufficient expertise and capacity in addressing these crimes and may wish to consider exploring the feasibility, where appropriate, of establishing specialized chambers in courts and prosecution units to concentrate resources and expertise. States could consider establishing a one-stop national desk for information requests that can be (pro-actively) retrieved from international partners that collect information on mass atrocities, and that can be beneficial, for example, as contextual information for human trafficking, migrant smuggling, SGBV crimes, crimes against children, and core international crimes with linkages to terrorist



crimes. This desk could furthermore operate to provide information to other countries and international partners.

### **Recommendation #21: Strengthening international cooperation**

107. Often, the investigation and prosecution of crimes that fall within the scope of this Memorandum may have a transnational aspect, with perpetrators, victims, and witnesses coming from different countries. Also, physical evidence might be located in conflict-prone areas, complicating access. International law enforcement, prosecutorial, and judicial cooperation are therefore paramount to facilitate exchanging evidence, questioning witnesses, and making arrests, including those made pursuant to requests for extradition. Investigators and prosecutors are therefore encouraged to reach out to their respective counterparts to coordinate their efforts in practical terms. This is particularly important, when several countries are involved in prosecuting the same crime or different members from the same terrorist groups or criminal network to avoid gaps or competing requests for mutual legal assistance and potential double jeopardy issues, which in some contexts could be a ground for refusing extradition. It might be helpful, in this context, to appoint special law enforcement liaison officers at embassies in countries with which regular bilateral cooperation takes place. Using law enforcement to law enforcement channels could facilitate and expedite formal requests for mutual legal assistance and should maintain the chain of custody. Communication between investigators and prosecutors in their home countries should be encouraged. Likewise, communication between prosecutors in different countries should also be encouraged, as it can help facilitate the execution of mutual legal assistance requests.
108. In accordance with Good Practice 11 of the [\*Addendum to the Hague Good Practices to the Nexus between Terrorism and Transnational Organized Crime: Focus on Criminal Justice\*](#), States are recommended to use platforms and strengthen their cooperation with regional and international institutions of which they are members. Through cooperation within such institutions, arrangements already exist regarding, for example, information exchange, provision of operational analysis in support of operations, appointment of liaison officers or focal points, or assistance through expertise and technical support.
109. Where permitted under domestic legislation and in appropriate cases, consideration may be given to setting up joint investigation teams (JITs) concerned with specific investigation of a case with transnational aspects. JITs can be enabled by an international agreement, on a case-by-case basis, or follow pre-set models and arrangements to facilitate strategic and operational technical assistance in evidence gathering and analysis. They can be used to share information and coordinate between States and other actors, for example between source countries, countries from which operations are coordinated, transit countries, or destination countries. Considering the differences between legal obligations and frameworks of States involved in an investigation, deciding how to share evidence within the framework of a JIT and developing an overview concerning the different evidentiary thresholds that apply in the countries participating in the JIT might also be helpful.



110. Mindful of the transnational aspects of these criminal acts, it can be useful if States organize, as appropriate, informal meetings with authorities from partner countries to exchange experiences, findings, and good practices that could be mutually beneficial, for example regarding the establishment of elements of a case.
  
111. In line with UNSCR 2331, States should consider reinforcing legal and regulatory measures to facilitate the sharing of information, both domestically and internationally, between law enforcement and regulatory actors and the private sector, as well as within the private sector, in line with applicable international and national law, to help identify and detect suspicious financial activity related to trafficking in persons that finances terrorism, while also recognizing the need to protect the confidentiality of personal data of victims.

**PART 5: ROLE, RIGHTS AND NEEDS OF VICTIMS AND WITNESSES****Recommendation #22: Responding to the unique needs of victims and witnesses**

112. Current international guidelines and norms do not differentiate between the types of victims. In some States, criminal justice responses to support the victims of terrorism is basically not different from the support offered to victims of other serious crimes; in others, specialized support to victims of terrorism may be available. Given the fact that the crimes committed by terrorist groups that fall within the scope of this Memorandum have a direct impact on the lives of victims, good practices for ensuring a victim-sensitive approach are shared below.
113. Witnesses can potentially play an important role in securing convictions for the full range of crimes committed. Due to ongoing power dynamics, the fear of intimidation, stigmatization, and shame, some victims of and witnesses to the crimes that fall within the scope of this Memorandum can be reluctant to report the crimes committed. States are therefore advised to provide victims of and witnesses to these crimes with assistance and appropriate protection as available under domestic law, during the various stages of the criminal proceedings to help shield them from intimidation or worse and to offer them the support that they need, including medical, mental and financial support. Offering assistance to victims and witnesses, where appropriate, should not be dependent on their willingness to cooperate in criminal justice proceedings. It is furthermore important that States communicate these assistance measures to the public to encourage, facilitate, and support victims and witnesses to report the crimes they have witnessed or of which they have been victims. Notwithstanding the above, in some cases it might not be necessary to make use of witness testimonies, if it is possible to build the case on other evidence, which is also an option to avoid potential re-traumatization.
114. It is of the utmost importance that States take the needs and concerns of victims into account, in line with the [\*Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings\*](#). To this end, States should consider taking guidance from the model legislative provisions and guidance developed under the auspices of the UN Special Representative of the Secretary-General on Sexual Violence in Conflict as well as the Draft Global Code of Conduct for Investigating and Documenting Conflict-Related Sexual Violence (draft Murad Code) as a basis for survivor-sensitive legal reform in relation to dealing with those SGBV crimes that amount to serious international crimes.
115. UNSCR 2467 (2019) encourages States to adopt a survivor-centered approach in preventing and responding to sexual violence in conflict and post-conflict situations. Such an approach should respect the rights and prioritize needs of victims including survivors and ensure that they have access to appropriate and essential restitution and/or reparation mechanisms.
116. A survivor- or victim-sensitive approach aims to avoid traumatization, and/or secondary victimization of victims. States are recommended to make arrangements in their domestic law and/or policy frameworks to ensure that victims who suffered violence or trauma benefit from



assistance to avoid re-traumatization. Various forms of (legal, medical, financial, psycho-social) assistance can be offered to support victims and witnesses.

117. To respond to the unique needs of victims and witnesses to the crimes that fall within the scope of this Memorandum, States are recommended to limit the number of justice actors with whom victims and witnesses need to interact in order to prevent revictimization and/or compounding trauma. This can be avoided, for example, by adopting trauma informed interview techniques. Another responsive practice is to appoint a liaison officer or victims advocate to whom victims and witnesses can turn to for information and assistance. This will help provide the necessary information regarding, for example, the various phases in the criminal proceedings, to provide information about rights to seek redress or to make a victim statement, to facilitate translation services, to assist in facilitating law enforcement communication regarding witness protection, and to provide resources for financial and professional health support, including but not limited to mental health support.
118. It is furthermore recommended to improve the accessibility of information about support that can be offered to victims and witnesses by setting up secure websites, phone helplines, and internet applications, by using advertisements at bus stops or other widely used public places, by placing information on radio and television ads and news programs, and through flyers or information cards at police stations, courthouses, prosecutor's offices, clinics, and hospitals.
119. Finally, States are recommended to engage with CSOs that can assist in recognizing and identifying victims of the crimes that fall within the scope of this Memorandum and can also help advocate for and support victims or assist victims with various forms of support.

**Recommendation #23: Facilitating access to justice for victims and improving the rights of victims and witnesses within the criminal justice system**

120. States are advised to identify and address legal and practical barriers that exist for victims of the crimes that fall within the scope of this Memorandum to receive access to justice, some of which might lie outside the criminal law context.
121. In addition to addressing the general needs of victims of and witnesses to the crimes that fall within the scope of this Memorandum, States should ensure that victims of these crimes shall have equal access in a non-discriminatory manner to an effective judicial remedy as provided for under international or domestic law. States are furthermore recommended to proactively facilitate this access to justice for victims. This includes proactively informing victims about the case and their rights to participate or to seek redress, remedies, and reparation, if applicable according to domestic law. Also, if applicable, the Council of Europe's Guidelines on the Protection of Victims of Terrorist Acts (2005) provide relevant guidance on how to support victims.



122. Particularly when victims of the crimes committed by terrorist groups that fall within the scope of this Memorandum are located abroad and in an area remote from where the criminal justice proceedings take place, States are recommended to make available legal, diplomatic, and consular assistance, as appropriate, to assist victims in gaining access to justice.
123. In some States victims of crimes, including those committed by terrorist groups within the scope of this Memorandum, are offered the opportunity to participate in the criminal proceedings, if applicable under domestic law, as joint plaintiffs with, for example, the right to pose questions or to make a request for evidence. If States also consider allowing victims to make a victim statement during the proceedings, it will also be important, however, to respect the right of the accused to be tried without undue delay in accordance with Article 14 ICCPR.
124. Some States furthermore appoint a legal representative for victims free of charge. States are recommended to consider facilitating legal aid or witness services to assist with legal representation or to act on their behalf during the (criminal) judicial proceedings, as appropriate and in accordance with domestic law. This legal representative could, for example, assist victims who also act as witnesses with their testimony or with their victim statements during the trial.

**Recommendation #24: Ensuring domestic law provides for the possibility to seek redress and compensation for damages**

125. There are various options for providing victims with reparations for the damages they have suffered. In accordance with domestic law and international law and taking into account individual circumstances, victims of crimes within the scope of this Memorandum should be provided with an opportunity to receive one or more of the following: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These could take a variety of forms, including lump-sum compensation, specific reimbursement for material, financial, psycho-social, and physical damages, life-time pension in case of permanent health impairments, or additional benefits for assistance in housekeeping and care assistance due to health issues. While financial assistance need not be tied to any criminal proceeding, States are recommended, in accordance with domestic law, to facilitate various ways for victims to seek redress during the criminal procedure or in ancillary proceedings after the sentence in the criminal case or to enter a court-certified civil settlement during a criminal trial. Claims for damages could be addressed to the suspect and/or could include compensation claims that are implemented by the State. Following the example in UNSCR 2467 (2019), which encourages States to establish a survivor's fund to compensate victims of SGBV, States are recommended to consider establishing a fund under domestic law, to facilitate access to compensation for victims of crimes that fall within the scope of this Memorandum.
126. States could offer victims the opportunity to file a claim for redress for damages suffered due to the crimes during criminal or civil proceedings irrespective of nationality or location where they were harmed. However, considering the length of some of the criminal trials or even the lack of a criminal trial and in order to provide victims with, for example, the timely medical,





psychological, or socio-economic support they need, it might be important to consider other ways to offer assistance that are not court-ordered on behalf of the State, if appropriate, especially if there is no criminal or civil procedure or prior to the outcome of the criminal procedure.

127. Finally, considering the risks that victims, witnesses, and their families may face in cases within the scope of this Memorandum, States are recommended to facilitate methods to protect the identities of victims, witnesses before, during, and after the trial. Furthermore, in cases where the life, physical integrity, or assets of the persons or their relatives are in danger, States are recommended to offer reasonable witness protection programs. States should ensure that the procedural rights encompassed by the right to a fair trial, in particular the right of the defendant to examine or have examined the witnesses against him or her, are respected in accordance with ICCPR Article 14 (3) (e).

**Recommendation #25: Adopting a gender- and child-sensitive and trauma-informed approach regarding victims and witnesses during the criminal proceedings of crimes within the scope of this Memorandum**

128. Given the importance of encouraging victims of and witnesses to crimes within the scope of this Memorandum to report crimes, it is recommended that criminal justice authorities take into account, in addition to Recommendation 22 and 23, the special needs of specific and vulnerable groups. Special care, protection, and support might furthermore be necessary for children who have been witnesses to violence against their parents or another person with whom they have a close relationship. It is also recommended that authorities permit a support person, such as a family member, friend, or professionally trained support person, to be with the victim or survivor during the criminal justice process. In this respect, the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Resolution 2005/20), the Guidelines for Action on Children in the Criminal Justice Systems (ECOSOC Resolution 1997/30), and the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice set out recommendations specifically related to children and women that should be taken into consideration.
129. States are recommended to ensure that verification of the age of the child victim of or witness to crimes committed by terrorist groups is done in a child-sensitive, independent, and impartial manner. According to the UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006), age determination should be based on birth registration or official documents, or - in case of lack of official certificates - on an examination of the child, taking into account physical appearance, psychological maturity, the child's own statements, the available documents, and checks by embassies or other relevant authorities. With regard to the physical and psychological examinations, it is important to pay special attention to the possible hardship and to traumatic experiences that might impact the maturing process.



130. In situations where the age of the child is uncertain or could, due to the circumstances of the country, not have been examined yet, States are recommended to presume that the victim is a child and to ensure that all special protection measures applicable to child victims are safeguarded.
131. When children are involved as victims or witnesses in criminal investigations related to terrorist crimes committed during an armed conflict, it is paramount that relevant government authorities recognize these children as victims or witnesses. This does not preclude prosecution, if and when a crime has been committed by the child, taking into account, as appropriate, the relevant and applicable standards on juvenile justice, though consideration should be given to whether prosecution is the most appropriate means to achieve justice, including when child perpetrators may have been forcibly recruited or used.
132. Children may be crucial witnesses to terrorist offenses with linkages to crimes that fall under the scope of this Memorandum. It is therefore important that authorities take special caution when bringing children in contact with law enforcement, security, or military personnel by ensuring that these officials are equipped with the requisite skills to adopt a child-sensitive and trauma-informed approach, for example, by using child-appropriate language. To support children during various phases of the criminal justice procedure, it is recommended that they are always accompanied by a trustworthy person. In situations where children have arrived unaccompanied in the destination country, child protection services can act as a guardian. States are also recommended to take into account the UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006) and the [\*Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context\*](#).
133. It is furthermore helpful to create child-friendly areas in courthouses for interviews with children to avoid further traumatization and to strengthen trust in investigative and judicial authorities. In some States, interviews of minors are conducted only by the judge, and child-friendly techniques may be used for questioning, such as the use of images and/or in the presence of a child psychologist.
134. In other situations, when there are signs that a victim is intimidated or uncomfortable in the presence of either a man or a woman or expressly utters the wish to talk to either a male or female investigator or prosecutor, it is recommended to accommodate the wish of the victim or witness, particularly in case of victims of or witnesses to SGBV crimes. While the issue of protecting the identity of victims and witnesses is addressed in the preceding recommendation, a gender-sensitive and trauma-informed approach is particularly important for vulnerable victims and witnesses. States are therefore recommended to enable women subjected to violence to testify in criminal proceedings through adequate measures that facilitate such testimony by protecting the privacy, identity, and dignity of the women while not impacting the right of the accused to due process. Such measures include, for example, limiting or restricting publication by the media of personal information of victims/survivors, removing any personal identifying information, such as names and contact information, from the court's public record,



or using a pseudonym for the victim/survivor. In any case, it is recommended that States provide investigators with special training to interview vulnerable witnesses to ensure that evidence is obtained in an admissible format, with the least adverse impact on the witness or victim.

135. Furthermore, States are recommended to offer possibilities to conduct interviews behind a screen or through a closed-circuit television system from another room or location to ensure that the witness will not be confronted with the suspect and the stress caused by the trial setting. It is also recommended, where appropriate and with respect to the right to a fair trial, to protect the identity of the witness or to conduct an *in-camera* interview, without the suspect present. In addition, States are recommended to consider making use of video or voice recordings of witness statements in order to avoid repeating statements with a risk of re-traumatization.
136. Finally, criminal justice authorities are recommended to minimize the time that victims of and witnesses to the crimes within the scope of this Memorandum are required to be present during criminal trials, in order to reduce the risk of secondary victimization.

**Recommendation #26: Strengthening complementary restorative, transitional, and victim-sensitive justice and rehabilitation and reintegration approaches for victims**

137. Securing convictions can offer a form of justice to the victims of the crimes that fall within the scope of this Memorandum and can contribute to trauma healing of the victims and communities as a whole. However, some victims may have different views on the delivery of justice. For many victims, it is important that the perpetrators are prosecuted for the full range of crimes they have committed; some other victims may not attribute so much importance to criminal justice approaches and may be more interested in other transitional justice mechanisms, including forms of reparation, restorative justice or guarantees of non-recurrence.
138. States are recommended to consider the perception that for some victims of the crimes that fall within the scope of this Memorandum, a criminal conviction may not be enough to heal the traumas and help victims re-build their lives. In such situations and in order to address the specific needs of the victims, States are recommended to consider complementary justice mechanisms, such as transitional justice and restorative justice approaches.
139. Specifically in the aftermath of mass atrocities, in which whole communities fell victim to crimes committed, States are recommended to consider transitional justice strategies that will help find the truth, provide reparations, address non-recurrence, and facilitate reconciliation between victim communities and the offenders. Truth commissions, for example, may be well-placed to address victims' needs for justice. For example, a missing persons commission can provide information about the fate of those who have disappeared, or a truth commission could provide a process for victims of SGBV crimes to tell their stories confidentially without the risk of stigmatization, if they so choose. Such procedures may result in recommendations to address the needs of these victims and prevent recurrence of such abuses in the future. Reparations can also help address the real needs of victims for acknowledgement, as well as material or symbolic



support to address the harms they suffered. Transitional justice mechanisms are furthermore recognized in UNSCR 2122 (2013), which identifies the need to include women in post-conflict reconstruction and peace-building and to offer an opportunity to end impunity of sexual violence as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.

140. In some appropriate circumstances, combining a restorative justice element with a criminal justice approach traditionally based on retributive justice principles, one would furthermore address the unique needs of victims. Restorative justice particularly aims to contribute to healing the trauma suffered by the victims. Restorative justice has three pillars, which focus on victim reparations, communities of care reconciliation, and offender responsibility. In addition to the various forms of support that can be offered to victims as mentioned in Recommendations 23 and 24, criminal courts are recommended to contribute to trauma reparation by acknowledging the victims of specific crimes. This can, for example, be done by reading out names of the victims, while respecting their privacy, if requested, with the delivery of the verdict.
141. In order to improve trust among victims and the affected communities in the administration of justice, criminal justice authorities are recommended to consider organizing round tables where representatives of victim support organizations, public authorities, and investigative and prosecutorial services come together to liaise, exchange information, and discuss further steps in regard to the support of those affected by the crimes.
142. With respect to offender responsibility, States are recommended to consider organizing victim-offender mediation (VOM) for victims who are prepared to face the offender and offenders who are prepared to engage honestly, constructively, and respectfully. These VOMs should be preceded by a validated risk assessment to determine whether the victim or survivor will be at risk. In most cases, VOM is allowed/advised only in situations where the perpetrator has admitted guilt. This should be performed by a special VOM institution or an impartial mediator who is well trained for the practice of facilitating reconciliation. Victims should be fully informed about the process and the measures of protection regarding their safety and should be supported with psychological support services throughout the process, as necessary. These processes should be entirely voluntary, and victims should be allowed to withdraw at any time. The performance of VOM and the outcome can be taken into account in sentencing and early release or special privileges decisions for the convicted during detention if allowed under domestic law.
143. Finally, States are recommended to set up tailor-made rehabilitation and reintegration programs for victims of crimes that fall within the scope of this Memorandum and take into account specific gender and children's needs. In setting up these programs, States are advised to offer both medium-term and long-term assistance that supports victims and communities to which the victims will reintegrate in order to prevent further stigmatization.

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