

GUIDE TO CRIMINAL JUSTICE AND PREVENTING MASS ATROCITIES

PROGRAMMATIC GUIDE

JUNE 2023



UNITED STATES
HOLOCAUST
MEMORIAL
MUSEUM



Guide to Criminal Justice and Preventing Mass Atrocities

ABOUT THIS PUBLICATION

The *Guide to Criminal Justice and Preventing Mass Atrocities* (Guide) was developed as part of the multiyear International Criminal Justice Leadership Project created through an interagency agreement between the United States Department of State's Bureau of International Narcotics and Law Enforcement Affairs and the United States Holocaust Memorial Museum (Museum). This Guide would not have been possible without insights and review from a range of experts. These include colleagues from the US Department of State and the Museum, specifically representatives from its Simon-Skjodt Center for the Prevention of Genocide and its William Levine Family Institute for Holocaust Education. Experts around the world working in diverse fields such as criminal justice, rule of law, mass atrocity prevention, transitional justice, Holocaust studies, and leadership education and development generously shared their perspectives. Essential insights were gratefully received from the police, prosecutors, and judges who participated in the International Law Enforcement Academy Budapest courses developed in conjunction with this Guide. Dr. Vivienne Gluck wrote an early draft that inspired this final Guide. Special gratitude goes to Dr. Katherine Southwick, who served as the key author on this text.

Cover: Flower boxes mark the entrance to the military camp in Kigali, where ten Belgian peacekeepers were tortured and murdered at the beginning of the genocide in Rwanda. *US Holocaust Memorial Museum*

FOREWORD

History demonstrates that police and other criminal justice professionals can play a role in promulgating, lamenting, or preventing mass atrocities. Understanding this, the United States Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL)—which partners with more than 90 countries to improve the effectiveness of law enforcement and criminal justice systems around the world—collaborated with the United States Holocaust Memorial Museum (Museum) through the International Criminal Justice Leadership Project. As part of this initiative, the Museum has built on historical cases and best practices from the field of atrocity prevention leadership, as well as its approach for training US-based police, to develop this *INL Guide to Criminal Justice and Preventing Mass Atrocities*.

Atrocity prevention starts with understanding what mass atrocities are, identifying the risk factors and warning signs that precede or contribute to them, and engaging to prevent or stop them. An essential component to prevention is strengthening criminal justice system actors' understanding of the role they may play in preventing atrocities. Security assistance can bolster weak institutions and promote democracy, transparency, and respect for human rights. INL is proud to be in the forefront of such important work, in coordination with partner governments and international, civil society, and local partners.

INL's collaboration with the Museum has been groundbreaking in bringing together, for the first time, academics and practitioners from the fields of atrocities prevention and criminal justice system reform to determine those factors and tools that mitigate or prevent atrocities and to develop atrocity prevention training focused on criminal justice actors.

Atrocity prevention is a core national security commitment and moral responsibility of the United States. Continued mass violence throughout the world serves as a solemn reminder of the unspeakable human toll of these vicious acts and the traumatic consequences that scar communities for generations.

We stand firm in our commitment to help strengthen criminal justice practitioners in carrying out their duties with professionalism and pride.



TODD D. ROBINSON

Assistant Secretary
Bureau of International Narcotics and Law Enforcement Affairs

In the United States Holocaust Memorial Museum's (Museum) founding charter, Holocaust survivor Elie Wiesel wrote, "Only a conscious, concerted attempt to learn from past errors can prevent recurrence to any racial, religious, ethnic, or national group. A memorial unresponsive to the future would also violate the memory of the past." The Museum's educational approach examines how and why the Holocaust took place and promotes understanding that the Holocaust was preventable. Wiesel's words underscore our commitment to advance preventive action at all levels. By heeding warning signs and taking early action, individuals and governments can save lives.

The Museum's long standing programs for officials from government, the judiciary, law enforcement, and the military examine the role of these institutions in making the Holocaust possible and explore how reflecting on choice and decision making is essential for prevention. These programs draw on the Museum's Simon-Skjoldt Center for the Prevention of Genocide, which, through early warning research and policy engagement, seeks to stimulate global action to prevent genocide and related crimes against humanity and to advance justice and accountability.

Research has helped clarify tools to avert mass atrocities and has illuminated the roles various actors play in prevention. Criminal justice professionals are critical given their efforts to provide protection and uphold rule of law. For this project, the Museum is grateful for insights shared by scholars, practitioners, and criminal justice professionals from every continent.

In support of the mission of the United States Department of State's Bureau of International Narcotics and Law Enforcement Affairs, this *Guide to Criminal Justice and Preventing Mass Atrocities* and complementary course curriculum blend the Museum's educational practice and scholarship to create a professional development program that engages criminal justice leaders to better understand their roles and related tools before, during, and after mass atrocities. In doing so, we seek to empower practitioners around the world to do for the victims of genocide today what the world failed to do for the Jews of Europe in the 1930s and 1940s.



SARAH OGILVIE

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Executive Summary

This *Guide to Criminal Justice and Preventing Mass Atrocities* (Guide) is an educational resource for program implementers and criminal justice professionals who seek to strengthen the role of criminal justice in preventing mass atrocities. The Guide provides essential content to inform criminal justice approaches before, during, and after mass atrocities, defined as “large-scale, systematic violence against civilian populations.”¹ It describes mass atrocities, including genocide, crimes against humanity, war crimes, and ethnic cleansing; explains atrocity risk and resilience, and how they connect with criminal justice; and offers a range of criminal justice prevention tools applicable inside and outside the justice sector at different stages of risk and violence. Box ES. 1 below contains definitions for criminal justice, the justice sector, and mass atrocities.

Criminal justice professionals have a key leadership role to play in reducing risk of mass atrocities. Risk factors and warning signs include armed conflict, political instability, exclusionary ideology, legacies of past violence and discrimination, rising tension and polarization, emergency or discriminatory legislation, and the growth of irregular armed forces, among others.² Criminal justice professionals can also lead in building national and local resilience, the conditions that help limit the likelihood of violence, such as good governance, state legitimacy, social cohesion, and inclusive economic development.³ This leadership role is rooted in professional responsibilities to prevent and stop violence, preserve life and public safety, and uphold rule of law and human rights, particularly the rights to security and equality of vulnerable or marginalized groups.⁴ These responsibilities correspond with the objectives of mass atrocity prevention.

Exercising leadership in mass atrocity prevention requires that criminal justice professionals also hold themselves accountable to these responsibilities. As the history of the Holocaust and other examples demonstrate, police, prosecutors, judges, and other officials can enable or commit mass atrocities.⁵ Since the early 1990s state actors at all levels within government, the military, and the justice sector are estimated to commit mass atrocities at least twice as frequently as nonstate actors.⁶ Social psychologists have found that all humans are capable of becoming perpetrators.⁷ The willingness to commit atrocities can increase incrementally through routinization and as perpetrators rationalize to themselves that they are doing right.⁸ By understanding how and why individuals and institutions—including those in the justice sector—can become vulnerable to enabling or perpetrating mass atrocities, criminal justice professionals are more able to identify risk factors inside their agencies and well beyond them. In turn, they can implement tools that help avoid complicity, build resilience, support systemic change, and maintain leadership skills to prevent mass atrocities.

Criminal justice professionals’ role in mass atrocity prevention encompasses prevention, response, and redress, which broadly align with before, during, and after stages.⁹ Before mass atrocities, the criminal justice system is uniquely positioned to identify and either preempt or respond to mass atrocity risks and warning signs that threaten public safety or violate the laws and norms that justice institutions should uphold. They can promote rule of law, human rights, and state legitimacy. During mass atrocities, when violence is imminent or ongoing, the focus becomes protecting civilians and targeted groups, as well as stopping or dissuading suspected and potential perpetrators from committing violence. After mass atrocities, criminal justice professionals can provide public safety while also pursuing transitional justice and rule of law measures to support political and economic stability and recovery, and thus help avoid recurrence of violence.

While each stage is distinct to some degree, these stages can overlap. For instance, recent violence may be rooted in past episodes of mass atrocities, or it may portend more devastating forms of mass atrocities. Moreover, the overall goal to prevent harm and avoid recurrence of violence against civilian populations is constant across stages. To support that goal, criminal justice professionals can draw from a variety of tools before, during, and after mass atrocities, some of which are surveyed in this Guide and listed in appendix A, “Criminal Justice Tools for Mass Atrocity Prevention.” Prevention tools share a common objective to promote positive, protective relationships with the public. These relationships are based on upholding rule of law and human rights, and preventing violence and abuse of state power, particularly against vulnerable groups.

Some of these tools may be familiar to the extent they are already used in broader settings. However, these tools can become more valuable for prevention when—in close consultation with local partners and other stakeholders—they are chosen and designed to target atrocity risks or build key areas of resilience in light of the history and dynamics in a particular place.

Finally, in addition to *what* professionals can do for prevention, this Guide addresses *how* they can do so effectively. Chapter 4 integrates leadership skills needed to foster a professional culture that aligns with mass atrocity prevention. These skills include ethical leadership, self-reflection, change management, and action planning. Developing these skills can help professionals recognize and sharpen their unique capacity to incorporate mass atrocity prevention into their work. On this foundation, program implementers and criminal justice professionals are more able to apply an atrocity prevention lens to the local justice sector to identify tools and hone approaches to prevent or respond to mass atrocities.

BOX ES.1. KEY TERMS

“**Criminal justice**” (or the “**justice sector**”) refers to the institutions and professionals involved in criminal matters, such as police, prosecutors, defense counsel, judges, and court administrators. It also encompasses legal assistance providers; bar associations; social workers; civil society; government agencies such as human rights commissions, ministries of justice and internal affairs, or prison administrations; and applicable laws.¹⁰

“**Mass atrocities**” refers to “large-scale, systematic violence against civilian populations.”¹¹ Such violence is generally understood to include genocide, crimes against humanity, war crimes, and ethnic cleansing.

“**Mass atrocity prevention**” constitutes the norms, laws, institutions, and policies that seek to prevent or respond to mass atrocities.¹²

Table ES.1. Prevention Tools in Before, During, and After Stages

The criminal justice prevention tools are loosely grouped according to before, during, and after stages, while taking into account that certain tools may be appropriate in other stages or as different stages of risk and violence overlap or recur.

BEFORE	DURING	AFTER
<ul style="list-style-type: none"> • Integrate mass atrocity prevention training and education • Build community relationships • Conduct early warning analysis • Be alert to dangerous speech¹³ and hate incidents • Respond sensitively to hate crimes and bias-motivated violence • Prosecute past violence • Support restorative justice • Safely manage public protests • Plan ahead for emergencies • Promote rule of law with a focus on reducing atrocity risk in context (consider legal framework for prevention; access to justice; professional ethics; anti-corruption; and human rights, including nondiscrimination and economic and livelihood issues) 	<p>Protect civilians and targeted groups</p> <ul style="list-style-type: none"> • Deploy emergency plans (developed <i>before</i>, for quick response and adaptability in fluid environment) • Conduct public consultations and community outreach (to understand threats and protection needs, gather intelligence on perpetrators, or deescalate tensions) • Deploy police to protect targeted communities, especially women and children • Ensure the justice sector upholds fair trial rights and avoids arbitrary arrest and detention, torture, and enforced disappearances • Where possible, apply personal discretion to mitigate risk and save a life <p>Apply criminal justice strategy that applies pressure or incentives to deter (potential) perpetrators</p> <ul style="list-style-type: none"> • Reaffirm and enforce professional oaths to uphold Constitution, rule of law, and codes of conduct • Investigate and prosecute suspected atrocity crimes • Lawfully apprehend suspected perpetrators • Disrupt criminal networks that enable armed groups or mass atrocities (e.g., money laundering; trafficking in drugs, arms, precious gems, persons; and illegal natural resource extraction) • Establish appropriate communication and information sharing with other security agencies, media, and nongovernmental organizations • Seek cooperation with international organizations and fact-finding missions 	<p>Develop transitional justice approach, which may include</p> <ul style="list-style-type: none"> • Criminal trials (domestic, hybrid, international) • International non-prosecutorial legal bodies (International Court of Justice, international claims commissions, United Nations human rights committees and special procedures) • Fact-finding or truth-telling bodies • Restorative justice • Reparations • Lustration/vetting • Memorialization • Rule of law reform <p>Draw from tools used in the before and during stages to help establish security and reduce ongoing or renewed risks</p>

Introduction

WHY THIS GUIDE?

Especially since the Holocaust (1933–1945), US policymakers and the international community have sought to strengthen the prevention of mass atrocities.¹⁴ Recent trends demand determined focus on and collaborative approaches to this challenge. The UN Refugee Agency (UNHCR) estimates that between 2011 and 2021, the number of people displaced as a result of violence, persecution, or human rights violations more than doubled, climbing to 89.3 million, the highest since World War II.¹⁵ According to the 2022 Global Peace Index, the number and intensity of conflicts have increased since 2008.¹⁶ These figures partly reflect rising civic discontent worldwide. In this same period, the frequency and severity of violent demonstrations have worsened in at least 126 countries in nearly all regions of the world, including in full democracies, by nearly 50 percent.¹⁷

As these situations persist, their risks and consequences—significant loss of life and collective trauma, forced displacement, political and economic instability, democratic decline, and threats to regional and international security—magnify. These trends can feed dynamics of repeated violence and instability.¹⁸ Professionals in all regions can ground their own commitment to prevention through acknowledging this human toll, as well as the vulnerabilities to mass atrocities that their own countries may face.

The US government has strengthened its commitment to preventing mass atrocities through decades-long efforts to promote peace, human rights, and development. The Elie Wiesel Genocide and Atrocities Prevention Act of 2018 affirms that preventing mass atrocities is a national interest and that US policy requires “work[ing] with partners and allies, including to build their capacity, and enhance the capacity of the United States.”¹⁹ The first goal of the 2022 United States Strategy to Anticipate, Prevent, and Respond to Mass Atrocities is to “pursue early action and locally driven solutions in priority countries.”²⁰ The strategy highlights strengthening criminal justice systems among illustrative tools to reduce atrocity risk and prevent recurrence.²¹ This *Guide to Criminal Justice and Preventing Mass Atrocities* (Guide) is therefore intended to help program implementers and criminal justice professionals advance national and local initiatives for prevention. When based on domestic will and sufficient support, such initiatives “are likely to have the greatest preventive effect.”²²

WHO IS THIS GUIDE FOR?

This Guide is a joint publication of the United States Department of State’s Bureau of International Narcotics and Law Enforcement Affairs (INL) and the United States Holocaust Memorial Museum (Museum).²³ The primary audience is INL staff based in Washington, DC, and in US embassies abroad who plan and support foreign assistance programs involving the justice sector.²⁴ The content may also be relevant to other international and national professionals who work in or support criminal justice systems or mass atrocity prevention. Such persons may be working in or with domestic justice sector institutions, nongovernmental organizations, research or educational institutions, private companies, and regional and multilateral organizations.²⁵

This Guide can support a wide range of programs, including professional development and training programs about preventing mass atrocities for criminal justice professionals. For example, this Guide supplements the educational materials “Lessons in Leadership: Criminal Justice Approaches for

Preventing Mass Atrocities.” The “Lessons in Leadership” materials include nine modules designed to increase criminal justice professionals’ knowledge, skills, and leadership abilities in prevention. Through interactive exercises, case studies, discussions, and short videos, participants can explore many of the themes covered in this Guide, examine cases beginning with the Holocaust and including modern situations, connect criminal justice to atrocity risk and resilience, and develop action plans to implement prevention tools.²⁶

This Guide can also help strengthen how rule of law programs—such as those focused on judicial efficiency, professional ethics, anti-corruption, or human rights, among others—can address atrocity risk and resilience. Additionally, this Guide can support initiatives specifically focused on mass atrocities, such as war crimes investigation and prosecution, outreach to counter violent extremism, emergency planning, or restorative justice efforts to help redress past violence.

HOW TO USE THIS GUIDE

This Guide brings together research and experience from the fields of criminal justice, rule of law, mass atrocity prevention, transitional justice, Holocaust studies, and leadership education and development. Weaving these threads, this Guide aims to provide an overview of key concepts and tools to assist a variety of program implementers and criminal justice professionals in leveraging the potential of the justice sector to lead in preventing mass atrocities.

The chapters of this Guide build on each other to support understanding and skills in evaluating risk and resilience, identifying criminal justice prevention tools, and honing a plan and professional commitment to implement those tools to their greatest effect. Although criminal justice professionals may sharpen their effectiveness by seeing their work through an atrocity prevention lens, this Guide’s criminal justice orientation may also help experts in atrocity prevention expand their toolkits.

The Guide can be read as a whole or in parts, depending on which content is most relevant to the reader’s needs.

For a baseline understanding

- Read the executive summary.
- Review the key points at the beginning of chapters 1–4.
- Scan the tables in appendix A (“Criminal Justice Tools for Mass Atrocity Prevention”).
- Refer to the Guide’s table of contents to find more information on specific tools of interest.

For professionals in specific roles

- Providers of training and education may refer to chapter 4 to help program implementers and criminal justice professionals explore these topics in a class or group setting.
- Program managers are encouraged to review chapter 4’s content on change management and action planning, as these topics provide building blocks for developing a well-grounded approach to program design and implementation. Chapter 3 offers an approach to identifying appropriate criminal justice prevention tools, which can be developed and applied through programs.

- Professionals in supervisory or policy planning roles may find especially relevant the introductory section “Why This Guide?,” chapter 1’s discussion of how justice officials can become complicit in mass atrocities, chapter 2’s analysis of how the justice sector connects with risk and resilience, and in chapter 3, the methodology to identify criminal justice prevention tools that connect to broader prevention measures.

To find and further examine specific topics of interest, readers may refer to this road map of the Guide’s first four chapters:

- **Chapter 1, “What Are Mass Atrocities?”** describes common characteristics of mass atrocities and identifies how certain types—specifically genocide, crimes against humanity, and war crimes—have been codified under international law. This chapter also highlights the potential role played by members of criminal justice systems in perpetration and mitigation.
- **Chapter 2, “Risk and Resilience in the Criminal Justice System,”** helps identify areas of focus for assistance programs by describing how the justice sector intersects with risk factors associated with mass atrocities. This chapter also considers sources of resilience, or factors that can preempt, limit, or counteract risk in a given context.
- **Chapter 3, “Criminal Justice Prevention Tools: Before, During, and After Mass Atrocities,”** describes one approach to identifying criminal justice tools to support prevention and surveys a range of criminal justice tools to reduce risk or build resilience that may be applicable before, during, or after mass atrocities. This chapter complements the detailed tables in appendix A (“Criminal Justice Tools for Mass Atrocity Prevention”).
- **Chapter 4, “Leadership Skills in Mass Atrocity Prevention,”** reviews crosscutting skills that can strengthen the effectiveness of criminal justice professionals in mass atrocity prevention. These skills include ethical leadership, self-reflection, change management, and action planning. Together, these skills help professionals understand their own role in prevention, improve program design, and manage implementation challenges that often arise.

Additionally, as the subject of this Guide cuts across a range of areas, those using this resource may consider referring to other INL guides that focus on the justice sector, gender in the criminal justice system, and corrections.²⁷ Museum publications on mass atrocity prevention and victim support also provide important background,²⁸ as do many other scholarly and institutional sources cited throughout this Guide. Others are invited to engage with and build on this publication and related resources.

Finally, in using this Guide to develop programs, implementers should be familiar with the Guiding Principles of INL Justice Sector Assistance (Box I.1), based on widely accepted international norms.²⁹

BOX I.1. GUIDING PRINCIPLES OF INL JUSTICE SECTOR ASSISTANCE

- National ownership
- Contextual and responsive assistance
- Complementary approaches to national justice strategies and plans of action
- Whole-of-system approach
- Citizen engagement and participation
- Management for results
- Coordination of assistance
- Sustainability

Supporting these principles and “locally driven solutions”³⁰ in a particular country requires seeking to understand local perspectives and working collaboratively. Rigorous background research on national history, cultures, legal systems, past experiences of mass atrocities, and previous or existing domestic efforts to address atrocity risk and mass atrocities provides essential context so that program design and implementation align with local concerns, priorities, practices, and realities.³¹ A responsive, whole-of-system approach that coordinates through agreed processes with domestic, regional, and international organizations is crucial to promoting sustainability and avoiding counterproductive outcomes.³²

1. What Are Mass Atrocities?

KEY POINTS

Mass atrocities means “large-scale, systematic violence against civilian populations.”³³ Four forms of violence are associated with mass atrocities: genocide, crimes against humanity, war crimes, and ethnic cleansing. The first three terms have international legal codifications.

When mass atrocities result from government policies, such as in armed conflict or under repressive regimes, criminal justice professionals may become complicit. During the Holocaust (1933–1945), through changes in professional norms and the passage of emergency and discriminatory laws, the German criminal justice sector facilitated or committed mass atrocities as part of the Nazi regime.

The key question in prevention is: What can be done to avoid or mitigate risks and dynamics that lead to mass atrocities well before large-scale violence arises? This inquiry is consistent with prevention obligations in the 1948 Genocide Convention and the Responsibility to Protect.

This chapter describes what mass atrocities are, including how criminal justice professionals can become perpetrators. It also covers international legal definitions for genocide, crimes against humanity, and war crimes, and how mass atrocities could be addressed under domestic laws.

OVERVIEW

The term **mass atrocities** is not defined in international law. In this Guide, mass atrocities means “large-scale, systematic violence against civilian populations.”³⁴ The term covers a broad range of acts that constitute a pattern of violence by state or nonstate actors against a large number of victims. Such forms of violence or harm include murder, extermination, enslavement, enforced disappearance, torture, deprivation of food or other means of survival, attacks on hospitals or places of worship, rape, and forced sterilization. Civilian populations refer to persons not participating in hostilities. They can include citizens, refugees, stateless persons, prisoners of war, men, women, and children.

Mass atrocities usually occur during armed conflict. They can also take place during and after significant political instability, including adverse regime change, such as a coup or revolution. They tend to occur in autocracies and anocracies (which are partly autocratic and partly democratic, such as in periods of political transition or democratic backsliding). Mass atrocities can happen when a regime targets civilians in the absence of all-out armed conflict, such as in North Korea;³⁵ or in China, where numerous organizations have documented large-scale, extreme abuses against the Uyghur minority;³⁶ or in the United States, such as past forced displacement and violence against Native American populations.³⁷

Populations are targeted for a range of reasons. In the case of genocide, they are targeted on the basis of their membership in a national, religious, racial, or ethnic group. In other circumstances, they are targeted because of their political opinions, gender, perceived connection with other armed groups, or because—typically in the case of attacks on men and boys—they are of “fighting age.”³⁸

When mass atrocities result from government policies, such as in armed conflict or under repressive regimes,³⁹ criminal justice professionals may become complicit. During the Holocaust (1933–1945), members of the German criminal justice sector facilitated or committed mass atrocities as part of the Nazi regime. During World War II (1939–1945), German police guarded ghettos (enclosed districts that separated Jews from non-Jews) in occupied lands, rounded up Jews and other “enemies of the state,” and participated in mass shooting operations that resulted in the murder of as many as two million Jewish people.⁴⁰

In the 1930s before the war, warning signs existed, suggesting the eventual involvement of justice sector professionals in genocide and other mass atrocities. These warning signs included

- **Blurring of boundaries between police and other security forces:** For instance, soon after Adolf Hitler became Chancellor of Germany in January 1933, Nazi Party leaders used their new government positions to deputize members of Nazi paramilitary organizations as police. They carried out patrols with police and brutally arrested political opponents.⁴¹
- **Changes in laws, professional codes, oaths, or norms that limited professionals’ accountability to law or judicial review:** For example, on February 28, 1933, one day after a Dutch militant set fire to the German Parliament (Reichstag) building, the Nazi government falsely characterized the arson as a Communist attempt to overthrow the government and passed what is known as the Reichstag Fire Decree. This measure suspended parts of the German Constitution, including rights to due process.⁴²
- **The passage of emergency and discriminatory laws targeting political opponents and vulnerable groups⁴³:** For instance, in the name of crime prevention, the regime afforded police significant power to surveil and detain people without charges.⁴⁴ The Nuremberg Race Laws—passed in September 1935 and grounded in false racial theories—stripped Jews and eventually other minorities, namely Black people and Roma and Sinti, of the rights of citizenship. Among other restrictions, the laws prohibited marriage and criminalized sexual relations with non-Jewish Germans.⁴⁵

German judges are another example of the role criminal justice actors played in the Holocaust. As the Nazis transformed Germany from a democracy into a fascist dictatorship, most judges enabled these changes. They “not only upheld the law, but interpreted it in broad and far-reaching ways that facilitated, rather than hindered, the Nazis’ ability to carry out their agenda.”⁴⁶

Explanations for why the judiciary did not challenge Nazi efforts to erode democracy, restrict rights, and pursue policies of mass murder are complex. Some of the relevant factors include opportunities for career advancement and a lack of faith in the Weimar Republic’s legitimacy in light of its revolutionary origins following World War I. Other factors include judges’ concerns that the political left would undermine the state’s authority, antisemitism among judges, and Hitler’s pledge to strengthen judges’ authority and insulate them from public criticism.⁴⁷

In other cases of mass atrocities, such as in the former Yugoslavia, Guatemala, and the Democratic Republic of Congo, law enforcement officers participated in a range of mass atrocity crimes, including murder, torture, sexual violence, enforced disappearance, and extrajudicial killings.⁴⁸ Courts helped validate and implement repressive or discriminatory policies or enabled a climate of impunity for mass atrocity crimes by not holding perpetrators accountable.⁴⁹

However, some criminal justice leaders in these situations were able to use their positions and discretion to mitigate risk and reduce harm to communities and individuals.⁵⁰ Chapter 3, which surveys criminal justice tools for prevention, highlights some of these examples.

DEFINITIONS

Four forms of violence are associated with mass atrocities: genocide, crimes against humanity, war crimes, and ethnic cleansing.⁵¹ The first three terms have international legal codifications. As noted in Box 1.1, clear definitions are important, but challenges that may arise in legal interpretation and application should not undercut prevention.

Genocide

Under Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide,

Genocide means any of the following acts committed with intent to destroy in whole or in part a national, ethnical, racial or religious group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- Imposing measures intended to prevent births within the group; and
- Forcibly transferring children of the group to another group.⁵²

The key distinction of genocide is the requirement to prove that the perpetrator possessed the specific intent to commit one of the enumerated acts with “the intent to destroy, in whole or in part” a protected group under the convention. Destruction typically has been interpreted as limited to physical or biological destruction. While a “part” of the group that is targeted must be “substantial” or “significant,” the perpetrator may be involved in only one or a few killings or other punishable acts.⁵³

The intent requirement is the most difficult element to establish. Since perpetrators rarely express that they intend to commit genocide, courts often infer intent from surrounding facts and circumstances, such as the perpetrator’s speeches, the presence of a political doctrine or plan that promotes or enables the acts, repetition of discriminatory acts, the systematic nature of the acts, or acts that seem to violate the foundation or essential identity of the group.⁵⁴

Crimes against Humanity

Unlike war crimes and genocide, crimes against humanity are not yet codified in any stand-alone convention. Under Article 7 of the Rome Statute of the International Criminal Court (ICC), **crimes against humanity** means any of the acts enumerated in that provision “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”⁵⁵ Such acts include murder, extermination, enslavement, deportation, or forcible transfer of a population; torture; sexual violence; persecution on political, ethnic, religious, or gender grounds; enforced disappearance of persons; apartheid; and other inhumane acts causing great suffering or serious injury.⁵⁶



The Assad regime in Syria has repeatedly faced allegations of war crimes due to indiscriminate attacks on civilians.
REUTERS/Alamy Stock Photo

War Crimes

War crimes are violations of international humanitarian law, also known as the laws of armed conflict, largely codified in the 1949 Geneva Conventions and their Additional Protocols.⁵⁷ These laws seek to limit the effects of armed conflict and protect people not taking part in hostilities and those unable to fight, including wounded or sick soldiers or prisoners of war.

Article 8 of the Rome Statute sets out a full list of violations in international and non-international armed conflicts that establish criminal offenses under international law and have been adopted in some domestic jurisdictions. Some of these violations include willful killing; torture or inhuman treatment; willfully causing great suffering or serious injury to body or health; unlawful deportation or transfer; taking of hostages; killing or wounding a combatant who has surrendered or has no means of defense; employing poisonous weapons or gases; sexual violence, including forced sterilization; conscripting children under the age of 15; and attacking medical units or personnel involved in humanitarian assistance.⁵⁸

Ethnic Cleansing

According to the International Committee of the Red Cross, **ethnic cleansing** refers to “a purposeful policy designed by one ethnic or religious group to remove by violent or terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.”⁵⁹ While the term itself is not recognized as a distinct crime under international law, practices used to remove the civilian population—such as murder, torture, arbitrary arrest, sexual assaults, forcible removal, deportation, and destruction of property—can amount to crimes against humanity, war crimes, or genocide if the legal elements of any of these respective crimes are established.⁶⁰

TYPES OF LIABILITY

Criminal liability for atrocity crimes can take different forms. In addition to direct perpetration, individuals can be liable under theories of attempt, incitement, ordering, soliciting, inducing, aiding, abetting, or otherwise assisting a perpetrator.⁶¹ Theories of participation that have developed under international criminal law include superior responsibility. This is when a superior who has effective control over those who committed crimes knew or had reason to know these persons committed or were about to commit crimes and failed to take “all necessary and reasonable measures in their power to prevent or repress their commission, or to submit the matter to the competent authorities for investigation and prosecution.”⁶² Joint criminal enterprise or co-perpetration involves liability on the basis of committing or attempting to commit a crime by “a group of persons acting with a common purpose.”⁶³

MASS ATROCITIES AND DOMESTIC LAW

Some countries have not incorporated international legal definitions of mass atrocities into domestic law. Regardless, governments may nonetheless be bound by international law. Governments are legally bound to enforce laws ratified in international treaties, including human rights and humanitarian laws. According to the International Court of Justice, the duty to prevent and punish genocide is part of customary law, binding on all states.⁶⁴ Moreover, all UN member states have endorsed the Responsibility to Protect, demonstrating a policy commitment to preventing mass atrocities.

Absent codification of mass atrocity crimes, acts constituting mass atrocities could fall under existing domestic law, such as murder, rape, assault, torture, unlawful restraint, enslavement, or hate crimes. In contexts lacking mass atrocity-specific codification, criminal justice professionals can consider applying an atrocity prevention lens to existing laws in at least two ways:

- **Apply domestic laws preventively:** Applying existing laws to investigate or prosecute crimes associated with mass atrocity risks could help avoid future violence. Arson against a religious minority’s sacred buildings or patterns of cattle rustling among ethnic groups are examples in which an existing law could address a warning sign. Similarly, failure to discipline or prosecute officials who commit violations of civil liberties could constitute warning signs of mass atrocities that could increase risk if left unaddressed.
- **Frame accountability within the context of transitional justice:** Professionals can also prosecute perpetrators of mass atrocities under other domestic laws while signaling the state’s awareness that mass atrocities have taken place. They can impose penalties in ways that reflect the gravity of the crimes, or they can call for the creation of a special unit to prosecute and adjudicate such

crimes, perhaps seeking regional or international cooperation in establishing a special tribunal or providing technical assistance. States and other institutions can strengthen accountability and further address the consequences of mass atrocities by complementing trials with other transitional justice tools and rule of law reform efforts reviewed in chapter 3.

BOX 1.1. A NOTE ON LEGAL DEFINITIONS

Reducing risk that any mass atrocity—whether war crimes, crimes against humanity, genocide, or ethnic cleansing—will actually be committed is at the heart of prevention. Labeling or forging consensus on which specific atrocity crimes could emerge or may be occurring can undercut this focus on addressing situations before they become catastrophic and incur substantial loss of life.

Without doubt, definitions matter for criminal prosecution and state responsibility and for acknowledging victims and history after the fact. Distinctions among crimes may call for nuanced policy responses as those crimes emerge and evolve. However, as discussed in chapter 2, risk factors and warning signs for different mass atrocities often overlap, and the consequences—of large-scale violence, death and serious bodily harm, profound social dislocation, and traumatization—share fundamental similarities.

Consistent with the prevention obligations in the 1948 Genocide Convention and the Responsibility to Protect, *the key question in prevention is what can be done to avoid or mitigate risks and dynamics that lead to mass atrocities well before large-scale violence arises.*

2. Risk and Resilience in the Criminal Justice System

KEY POINTS

Conditions that create risk can be understood as macro-level risk factors, warning signs, and triggers.

Macro-level risk factors include large-scale instability, armed conflict, and ethnic dynamics (such as prior discrimination or exclusionary ideology). Weak economic conditions and regimes with authoritarian characteristics can also be risk factors.⁶⁵ Warning signs relate to “short-term dynamics”—such as heightened tensions and polarization, or emergency or discriminatory legislation—that just precede or appear in early stages of mass atrocities.⁶⁶ Triggers are events that spark an intense “escalation in violence,” such as an assassination or attempted coup.

Evaluating overall risk also includes assessing resilience, or the factors that help avoid, mitigate, or counter risk. Sources of resilience can often be understood as the reverse of risk factors, such as social cohesion, good governance, and economic strength.

Connections between the justice sector and atrocity risk and resilience illuminate the frontline role of criminal justice in prevention. Criminal justice professionals are in positions to influence an array of factors related to risk and resilience and to observe broader trends that indicate the potential for violence.

This chapter identifies risk factors associated with mass atrocities and sources of resilience, which can preempt, limit, or counteract risk in a given context. Intersections between risk, resilience, and the criminal justice system are highlighted so that program implementers and criminal justice professionals can identify areas of focus for assistance programs and then formulate prevention measures and select specific criminal justice prevention tools to implement those measures (discussed more in chapter 3).

These intersections between the justice sector and atrocity risk and resilience illuminate the frontline role of criminal justice in prevention. Criminal justice professionals are in positions to influence an array of factors related to risk and resilience and to observe broader trends that indicate the potential for violence.⁶⁷

BOX 2.1. MEASURING RISK: AN IMPERFECT SCIENCE⁶⁸

Although understanding risk and resilience is a critical part of supporting prevention, no straightforward formula exists for measuring risk, as factors will weigh differently across contexts and research is thin. Explaining the causes of mass atrocities is complex, and the timing of mass atrocities is difficult to predict. Not all risk factors are found in every case, and the presence of any particular factor does not automatically mean that mass atrocities will take place. Similarly, the presence of certain types of resilience does not necessarily mean peace will prevail. Frameworks referenced here are thus not rigid, but are intended to help guide analysis and prompt deeper consideration of specific contexts.⁶⁹

RISK FACTORS FOR MASS ATROCITIES

Different frameworks from the United Nations (UN) and other institutions can support risk analysis.⁷⁰ While each of these frameworks has unique strengths, their contents overlap. This Guide incorporates content from these frameworks while primarily referring to the Museum’s publication by Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention*. Straus loosely separates risk factors into macro-level risk factors, warning signs, and triggers.⁷¹ Macro-level risk factors are “measured at the country level,”⁷² such as armed conflict, regime type, tense ethnic dynamics, or weak economic conditions.⁷³ Warning signs relate to “short-term dynamics”—such as heightened tensions, polarization, or distrust among governments and citizens—that just precede or appear in early stages of mass atrocities.⁷⁴ Triggers are events that spark an intense “escalation in violence,” such as an assassination or attempted coup.⁷⁵ Triggers can sometimes give the impression that mass atrocities arise spontaneously, but “elites deliberately plan and orchestrate mass atrocity.”⁷⁶ Types of perpetrators and their motivations also inform why mass atrocities occur and may inform program design. Links between risk factors and the justice sector are highlighted at the end of this section.

Macro-Level Risk Factors

Table 2.1. Macro-Level Risk Factors⁷⁷

COMMON FINDINGS	MIXED FINDINGS
Large-scale instability	Deep-seated hatreds
Armed conflict	Government capacity
Transformative or exclusionary ideology	Authoritarianism
Prior discrimination or violence against a particular group	Economic causes

Note the following about common findings:

- **Large-scale instability, particularly armed conflict or adverse regime change**, is considered the strongest predictor of genocide and mass killing. In such contexts, elites and citizens feel threatened and laws may be suspended, creating an environment in which leaders and citizens become more willing to consider or use violence to protect themselves and core interests.⁷⁸ The availability of weapons and capacity to carry out violence also increase during armed conflict.
- **Elites who promote ideologies focused on radical social transformation or exclusion** of some categories of persons are another significant risk factor. Such ideologies may be framed as revolutions (and thus targeting perceived enemies of revolution) or as exclusionary nationalism based on ethnicity, religion, or other social identity.⁷⁹
- **Past genocide or mass killing, as well as prior systematic discrimination**, are also strong predictors of recurrence. Scholars offer different explanations. One such explanation is that past violence or discrimination is a part of a process of escalation; another is that impunity inspires revenge, diminishes confidence in state institutions to resolve disputes fairly, or conditions leaders and citizens to view violence as acceptable against those who challenge their interests or who are deemed inferior.⁸⁰

Note the following about mixed findings:

- **While deep-seated hatreds are popularly understood as a cause of violence**, most scholars do not recognize them as a primary driver, partly because social divisions and prejudice exist in most countries.⁸¹
- **On government capacity**, empirically, poor countries with high infant mortality rates are more prone to experience mass atrocities than wealthier countries. At the same time, while many countries are poor, mass atrocities are infrequent. Among poor countries where mass atrocities have occurred, government capacity to identify and separate victims varied.⁸²
- **With respect to authoritarianism**, there are indications that both autocratic regimes and regimes with mixed democratic and autocratic features may be more likely to experience mass atrocities. Several cases of genocide or mass killing have taken place under autocratic regimes in which power was concentrated in a ruling elite with few restraints on its power (e.g., in the Nazi, Soviet, Cambodian, Syrian, Libyan, or Chinese cases). States with mixed democratic and autocratic features that are transitioning to democracy, backsliding toward autocracy, or otherwise politically unstable can also present risk, as was the case in Germany in the 1920s and early 1930s, and in more recent decades in Rwanda, Burundi, the former Yugoslavia, and East Timor. In healthy democracies, mass atrocities are rare.⁸³ However, some studies conclude that authoritarianism does not increase the likelihood of mass atrocities.⁸⁴
- **Finally, economic crises can sometimes play a role in increasing risk.** In the case of the Holocaust, before the Nazis came to power, Germany had experienced more than a decade of intermittent economic troubles caused by World War I (1914–18) and its aftermath. The Great Depression, which began in late 1929, fostered further deprivation and uncertainty, which in turn primed the German public to embrace anti-democratic leaders such as Hitler and scapegoat the Jewish community. Studies suggest that trade openness and economic integration help limit mass atrocity risk, as elites consider that an escalation in violence could degrade international revenue streams and tax bases. Economies based on natural resource extraction, however, may be less vulnerable

if violence escalates.⁸⁵ States that “place less emphasis on the provision of public goods to their citizens,”⁸⁶ or whose economic policies do not promote inclusive growth, may also face greater risk.⁸⁷

Warning Signs

Warning signs are conditions that may be present shortly before the onset of mass atrocities.⁸⁸ As Table 2.2 shows, warning signs reflect how macro-level risk factors may play out or intensify. They are conditions that indicate the increasing likelihood of mass violence.

Table 2.2. Warning Signs

Tension and polarization	Widening gulf between groups either in social life or in conflict; the situation is charged with emotion, anxiety, and fear.
Apocalyptic public rhetoric	Leaders claim they face a great danger and in doing so justify violence.
Labeling civilian groups as the “enemy”	Descriptions of a particular group as dangerous, homogenous, or worthless.
Development and deployment of irregular armed forces	Increased empowerment and arming of irregular armed groups that may be tasked with attacking civilian populations.
Stockpiling weapons	Significant accumulation of weapons, especially weapons that could be used against civilian populations.
Emergency or discriminatory legislation	Authorities create laws to facilitate or support state-led or group-targeted violence.
Removing moderates from leadership or public service	Those interested in perpetrating or supporting violent acts remove political opposition to such crimes.
Impunity for past crimes	Acts of violence that go unpunished indicate a willingness to condone violence against civilians and may give a green light for more violence in the future.

Triggers

Triggers are events that—against a backdrop of tension, militarization, or other warning signs—can set off a sudden escalation in violence. They include

- High-level assassinations or terrorist acts
- Coups, attempted coups, or abrupt or irregular regime changes
- Change in conflict dynamics, such as sudden deployment of security forces, significant battlefield gain, or spillover of conflict into or from a neighboring country
- Crackdowns on protests
- Symbolically significant attacks against individuals or physical sites
- Measures that destabilize elections or census efforts
- Sudden changes affecting the economy, resulting from a financial crisis, natural disaster, epidemic, or other shock
- Launching of natural resource exploitation projects that have a serious impact on a group or civilian population⁸⁹

Triggers are “turning points in a crisis” that often carry political or symbolic meaning. However, triggers do not appear in all cases of mass atrocities.⁹⁰

Perpetrators and Their Motivations

Understanding risk also includes individual-level dynamics that enable and drive mass atrocities. Sustaining large-scale violence—whether by state or nonstate actors—requires involvement from perpetrators at different social and organizational levels (see Table 2.3).⁹¹

Table 2.3. Types of Perpetrators

TYPE OF PERPETRATOR	EXAMPLE	ROLE IN VIOLENCE
High-level authorities	Heads of state, military generals, rebel leaders, political leaders	Plan, authorize, legitimize violence
Mid-level actors	Government, military, militia, insurgents, civil society actors	Mobilize and authorize violence
Low-level actors	Low-level officials, soldiers, rebel fighters, civilians	Identify victims, conduct violent attacks

Individual motivations for why perpetrators take part in mass violence vary and can change over time. The capacity to commit such violence often develops incrementally, beginning with small acts of abuse and leading to more serious acts of violence. Routinization facilitates perpetrating harm. To mitigate the psychological stress (or cognitive dissonance) of committing heinous acts, perpetrators may rationalize their actions and convince themselves that what they are doing is right.⁹² Psychological histories of perpetrators defy the assumption that sadism or aggression are defining traits. Rather, perpetrators are “ordinary men,” influenced by different factors, such as conformity, peer pressure and meeting comrades’ expectations, and deference to authority.⁹³ Ideological indoctrination, acting to fulfill a role (e.g., “defender of the nation”), dehumanization of victims, a climate of total war, fear (based on a belief that the victim group must be stopped before it commits massive harm), greed, and opportunism (or careerism) can also influence perpetrators.⁹⁴

Links between Risk Factors and the Justice Sector

Reviewing these macro-level risk factors, warning signs, and triggers with the criminal justice system in mind can reveal intersections in which justice professionals could be potential perpetrators or play a preventive role in countering risk.

Macro-Level Risk Factors: Past violence and prior discrimination raise questions about criminal justice involvement in either combating impunity and upholding basic human rights, or in enabling or carrying out mass atrocities.

Warning Signs: Emergency or discriminatory legislation could alter the mandates and operations of criminal justice professionals, loosening protections of civil liberties and compelling justice actors to enforce laws that target specific groups.

Triggers: Assassinations or attempted coups, for instance, can alert members of the criminal justice system to an increased likelihood of violence or unlawful acts.

Among other actions, criminal justice actors might consider

- Increasing protection and communication channels for vulnerable groups
- Taking note of dangerous speech (expressions that increase the risk that their audience will condone or commit violence⁹⁵)
- Taking proactive steps to speak against, investigate, and prosecute incitement and bias-motivated violence against such groups
- Emphasizing staff training and compliance regarding humanitarian law or safe strategies to handle public protests
- Reminding staff of their constitutional oaths, codes of conduct, and rewards for exemplary service (to help mitigate pressures on individuals to perpetrate violence)
- Increasing security for judicial officials to help uphold judicial independence amid rising tension and polarization

Chapter 3 of this Guide explores in more detail how criminal justice professionals might relate their roles to some of the risks associated with mass atrocities and tools the criminal justice system may use to counter these factors.

SOURCES OF RESILIENCE

Evaluating overall risk also includes assessing resilience—the factors that help avoid, mitigate, or counter risk. Sources of resilience can often be understood as the reverse of risk factors, such as peaceful resolution of disputes, stability, and inclusive development, and other conditions listed in this subsection. The last section of this chapter links resilience with criminal justice.

General Sources of Resilience⁹⁶

General sources of resilience can influence society or substantial parts of society as a whole.

Table 2.4. General Sources of Resilience

Social cohesion	<ul style="list-style-type: none"> • Religious, ethnic cohesion • Social, economic, and political inclusion
Good governance	<ul style="list-style-type: none"> • Strong rule of law • Transparent and functioning democratic system • Constraints on the power of the chief executive
Economic strength	<ul style="list-style-type: none"> • Trade openness • Equality of economic opportunity • Sustained economic growth

Additional Factors Relating to Good Governance and Civil Society

The United Nations Framework Analysis for Atrocity Crimes cites as a risk factor “an absence of mitigating factors.”⁹⁷ These mitigating factors describe conditions relating to democratic governance, the strength of civil society, and international engagement.

- Early warning mechanisms to prevent mass atrocities
- Strong, organized, and representative national civil society
- Support from international civil society
- Independent and diverse national media
- International media access
- Resources and allies to protect targeted groups or individuals
- Willingness of or incentives for parties of conflict to engage in dialogue
- Openness or establishment of political or economic relations with other states and international organizations
- Support from neighboring countries or regional organizations to protect populations

Systemic Capabilities

United States Government Conflict and Atrocity Assessment Frameworks identify specific attributes of governance, civil society, and targeted groups that support resilience.

Table 2.5. Systemic Capabilities

Comity	Availability of social entities and institutions promoting tolerance and peaceful resolution of disputes
Flexibility	The system's ability to change, including the speed and the degree of adjustment
Diversity	Variety of actors and approaches that contribute to the performance of a system's essential functions
Adaptive Learning	Integration of new knowledge into planning and execution of essential functions
Collective Action and Cohesion	Mobilization of capacities to jointly decide and work toward common goals
Self-Reliance	Capacity to self-organize and use internal resources and assets, with minimal external support ⁹⁸
Targeted Groups Can Advocate for Themselves⁹⁹	<ul style="list-style-type: none"> • Deploy methods of civil resistance • Counter propaganda • Diversify media reporting • Initiate efforts to resolve underlying conflicts • Build alliances with moderates in the perpetrator group or third parties • Conduct nonviolent protests • Document and publicize the threat or actual atrocities • Take legal action

Considering resilience can support the identification of strengths on which to build or resources, networks, or opportunities that can be leveraged to help reduce risk.

Links between Resilience and the Justice Sector

For any country context, program implementers and criminal justice professionals can consider how conditions for resilience relate to the justice sector in at least two ways: (1) whether and how the justice sector itself reflects or lacks those conditions and (2) whether the sector has a role or responsibility in strengthening particular areas of resilience.

For example, does or can the justice sector promote social cohesion through efforts to recruit staff that reflect the country's diversity? Can it promote inclusion by ensuring that police stations and courts are safe and accessible for members of vulnerable communities, including women or persons with disabilities? With respect to other forms of resilience, criminal justice professionals have a clear role in developing early warning capacity; upholding rule of law and public integrity; devoting resources to

protect vulnerable groups, as well as supporting their ability to seek justice and peacefully advocate for themselves; and preserving the independence of media and civil society. Cultivating flexibility and adaptive learning would support the justice sector's overall effectiveness.

The connection between criminal justice professionals and risk and resilience highlights potential areas for foreign assistance programs. Engaging domestic criminal justice professionals in how they see intersections between their work or mandates and mass atrocity risk and resilience is valuable for identifying actions that suit local conditions.¹⁰⁰ Chapter 3 describes how program implementers and criminal justice professionals can draw from these analyses to develop prevention tools for criminal justice professionals.

3. Criminal Justice Prevention Tools: Before, During, and After Mass Atrocities

KEY POINTS

The criminal justice system is uniquely positioned to support early prevention, as professionals can identify and either preempt or respond to mass atrocity risks and warning signs that threaten public safety and vulnerable groups or violate the laws and norms that justice institutions should uphold.

Criminal justice professionals can draw from a variety of tools before, during, and after mass atrocities to prevent large-scale harm or recurrence of violence. These tools broadly align with early prevention, mitigation and response, and redress.

Although each stage is distinct, stages can also overlap, which means that the tools may apply at more than one stage. Additionally, depending on the situation, each tool or combination of tools can address more than one risk factor or source of resilience.

The overall goal to prevent large-scale harm and avoid recurrence of mass atrocities against civilian populations is constant across the before, during, and after stages. To serve that goal, criminal justice prevention tools build resilience by promoting positive, protective relationships with the public. These relationships are based on upholding rule of law and human rights, and preventing violence and abuse of state power, particularly against vulnerable and marginalized groups.

This chapter surveys diverse criminal justice prevention tools to help reduce risk and build resilience. The first section offers a method for identifying criminal justice tools by relating them to risk factors and prevention measures at a more general level. The second section summarizes each tool, the risk factors each tool addresses, and each tool’s intended effects. Examples help illustrate how certain tools have been applied or could be adapted in different prevention settings.

In several countries, criminal justice professionals may already be using some of these tools, which can help ease the introduction of atrocity prevention concepts and approaches. By applying an atrocity lens, program implementers and criminal justice professionals can determine how to adjust a tool or its implementation to address risk factors and resilience more directly and effectively.

The tools highlighted here are non-exhaustive. Appendix A, “Criminal Justice Tools for Mass Atrocity Prevention,” offers a more detailed table with corresponding risk factors and prevention measures. Depending on the situation, each tool or combination of tools can address more than one risk factor or source of resilience.

The tools are loosely grouped under the headings “before,” “during,” and “after” mass atrocities even as some may be relevant in different stages.¹⁰¹ For instance, prosecution may be applicable in the before stage to reduce risk associated with a past episode of mass killing. It may be appropriate during ongoing violence as a means to deter or restrain the commission of war crimes, credibly signaling to potential

perpetrators that they could face penalties for violations. After mass atrocities, prosecution may serve to promote justice and accountability. Similarly, community dialogues may be a useful mechanism before, during, or after mass atrocities to bring together key stakeholders to clear misperceptions and propose approaches to reducing risk and promoting security. Different considerations influence which tools are more likely to be effective in a specific context (see Box 3.1).

This framework for criminal justice tools, therefore, implies that prevention has a role in each stage. Moreover, the after stage can resemble the before stage, with risk factors such as past unpunished violence, divisive ideologies, discrimination, tension and polarization, economic problems, and low public trust in governance. Regardless of whether mass atrocities are ongoing, actions should be taken to prevent future atrocities. Each context will inform which tools are preferred at which stage.

BOX 3.1. FINDING TOOLS THAT ARE EFFECTIVE

As with evaluating risk and resilience, measuring the effectiveness of tools, or “what works,” is not clear-cut, due in part to the challenges of research in this field and contextual differences. An underlying assumption in this Guide is that tools are likely to be more effective when they align with the objectives of mass atrocity prevention, and when they are implemented with contextual awareness, in partnership with the stakeholders most affected. These assumptions resonate with a 2022 study published by the Simon-Skjoldt Center for the Prevention of Genocide, *Lessons Learned in Preventing and Responding to Mass Atrocities*.¹⁰² The study sought to identify lessons from the prevention field through an extensive literature review of select tools. The review

*found relatively strong evidence that commitment on the part of the preventive actor, international support or coordination, use of multiple atrocity prevention tools concurrently, and use of prevention tools without bias toward any group are associated with greater effectiveness of multiple tools. We found evidence, albeit somewhat less strong, supporting another set of success factors across multiple tools: cooperation or support from the national government for the use of the tool, support for the tool’s use from the local population where atrocities were committed or threatened, use of the tool early in the course of the crisis or conflict, and the preventive actor being well-informed and/or skilled at use of the tool.*¹⁰³

The tools, approaches, and leadership skills featured in this Guide build on these observations and are open to adjustment and refinement as research and practice continues.

IDENTIFYING CRIMINAL JUSTICE PREVENTION TOOLS

Resources that systematically focus on a toolbox for criminal justice professionals to support mass atrocity prevention are limited.¹⁰⁴ This Guide derives specific criminal justice tools from what is known about risk factors and resilience, and from the prevention measures the UN and other sources have suggested for a range of actors (including criminal justice professionals) to mitigate risk and reinforce resilience.

Prevention measures tend to be stated at a general level, while the tools in this guide are proposed as specific examples of prevention measures relevant to criminal justice professionals. Some prevention measures connect more clearly to the justice sector, which encompasses judges, prosecutors, police, and others. These measures include¹⁰⁵

- **Uphold human rights and protect vulnerable groups**
 - Promote constitutional arrangements that protect fundamental rights and provide for nondiscrimination and protection of vulnerable groups, such as minorities, women, and children
 - Ensure equal access to justice and redress for violations of basic rights, including the rights of certain groups (end impunity)
 - Support public education efforts to promote respect for human rights
- **Maintain good governance and rule of law**
 - Increase legitimacy of state institutions
 - Increase legitimacy of elections
 - Deepen democracy and restrain abuse of power
 - Preserve independence of judiciary
 - Preserve freedom of expression, including independence of civil society and the media
 - Prevent violent conflict
- **Support security sector reform**
 - Provide training and education for police, soldiers, the judiciary, and legislators on early warning, mass atrocity prevention, human rights, and humanitarian law
- **Support transitional justice processes that are inclusive and fair**
- **Promote values such as tolerance, pluralism, and inclusion to counter divisive ideologies**

BOX 3.2. COMMON OBJECTIVE OF PREVENTION MEASURES

Taken together, prevention measures suggest that to decrease mass atrocity risk and strengthen resilience, the state should uphold human rights and rule of law. It should protect the public from violence and abuse of state power, particularly against vulnerable and marginalized groups.

Table 3.1. Prevention Measures

This table is an excerpt adapted from Straus and helps visualize the relationships between risk factors (and related warning signs and triggers), prevention measures, examples of those measures (which in this table go beyond criminal justice), and the intended effects of those measures.¹⁰⁶

RISK FACTORS: Warning Signs, Triggers	PREVENTION MEASURES	EXAMPLES	INTENDED EFFECTS
<p>Macro-Level Risk Factors</p> <ul style="list-style-type: none"> • Instability: Armed conflict or political turmoil <p>Warning Signs, Triggers</p> <ul style="list-style-type: none"> • Adverse regime change • High-level assassination • Political tension arising from severe political repression • Growth of armed opposition groups or radical movements • Imposition of emergency laws that curtail fundamental rights • Mobilization of the security apparatus against protected groups or individuals • Stockpiling of weapons 	Prevent conflict	<ul style="list-style-type: none"> • Conduct early warning analysis • Hold spaces to foster dialogue • Share power among rival groups • Ensure nonviolent means to compete for power • Reduce poverty or economic inequity • Promote inclusive growth and employment • Increase legitimacy of state institutions (see next row) 	Reduce the risk of armed conflict through fair processes that resolve disputes peacefully and address citizens' needs and concerns
	Increase legitimacy of state institutions	<ul style="list-style-type: none"> • Hold leaders accountable and end impunity • Promote equality and equal access to law • Clamp down on corruption 	Increase confidence in the functioning of government, thereby decreasing alienation and distrust that leads to armed conflict

Table 3.2. Criminal Justice Tools for Mass Atrocity Prevention

The additional blue column lists actions that criminal justice professionals could take—or tools—to complement the prevention measures. A comprehensive table appears in appendix A, “Criminal Justice Tools for Mass Atrocity Prevention.”

RISK FACTORS: Warning Signs, Triggers	PREVENTION MEASURES	EXAMPLES	CRIMINAL JUSTICE TOOLS	INTENDED EFFECTS
<p>Macro-Level Risk Factors</p> <ul style="list-style-type: none"> Instability: Armed conflict or political turmoil <p>Warning Signs, Triggers</p> <ul style="list-style-type: none"> Adverse regime change High-level assassinations Political tension arising from severe political repression Growth of armed opposition groups or radical movements Imposition of emergency laws that curtail fundamental rights Mobilization of the security apparatus against protected groups or individuals Stockpiling of weapons 	<p>Prevent conflict</p> <ul style="list-style-type: none"> Peaceful dispute resolution Fairness and equal rights Economic opportunities and livelihoods 	<ul style="list-style-type: none"> Conduct early warning analysis Hold spaces to foster dialogue Share power among rival groups Ensure nonviolent means to compete for power Reduce poverty or strengthen economic equity Promote inclusive growth and sustainable livelihoods Increase legitimacy of state institutions (see next row) 	<ul style="list-style-type: none"> Integrate training and education for justice sector professionals (judges, prosecutors, law enforcement, and others) in mass atrocity prevention (understanding mass atrocities, early warning analysis and risk assessment, prevention tools) Strengthen capacity in early warning analysis (track risks, warning signs, potential triggers; provide training for justice sector; dedicate resources and staff; coordinate across agencies) Implement community dialogues and policing, especially in vulnerable communities Pursue deradicalization strategies inside and outside justice sector Train law enforcement in de-escalation strategies Increase access to justice for vulnerable communities (minorities, economically disadvantaged, women, children, disabled) Plan ahead for emergencies Coordinate and share information with state agencies responsible for addressing root causes relating to economy, social services, youth, women, or group rights 	<p>Reduce the risk of armed conflict through fair processes to resolve disputes peacefully and address citizens’ needs and concerns</p>
	<p>Increase legitimacy of state institutions</p>	<ul style="list-style-type: none"> Hold leaders accountable and end impunity Promote equality and equal access to law Clamp down on corruption 	<ul style="list-style-type: none"> Prosecute officials who break the law and commit serious crimes (mass atrocities, public corruption, or human rights violations) Establish and enforce consequences for police and prosecutorial misconduct or judicial corruption Promote rule of law reform tailored to atrocity risks (judicial efficiency, nondiscrimination, access to justice, public integrity and anti-corruption) 	<p>Increase confidence in the functioning of government, thereby decreasing alienation and distrust that leads to armed conflict</p>

Program implementers and criminal justice professionals can review the full table in appendix A to identify tools that may be applicable or useful in their specific country situation. They are also invited to adjust or refine the table with other tools and additional content.

SURVEY OF CRIMINAL JUSTICE PREVENTION TOOLS

Surveyed in this section is a representative selection of the tools that appear in appendix A. Discussion of each tool in this section includes a brief description, the risk factors the tool can address, and its intended effects. Examples either illustrate how the tools have been applied in mass atrocity prevention scenarios *or* suggest how the tools could be tailored to serve the goal of prevention.

Note that while the tools are grouped under the headings “before,” “during,” and “after” mass atrocities in Table 3.3 and the following text, they may be relevant at any stage, depending on the context.¹⁰⁷ This division recognizes that certain dynamics generally prevail before, during, or after mass atrocities. However, because these stages can overlap, implementers need a flexible understanding for which tools could be useful and when.

- **Before:** In the before stage, some risk factors and warning signs reflect structural challenges in political, economic, or sociocultural institutions and practices that may require strategic and long-term planning and reform. While not necessarily straightforward or easy, the before stage presents the greatest opportunity for prevention with the least amount of financial, political, and human cost.
- **During:** In the during stage, opportunities for prevention shrink considerably, as emergency conditions demand focus on protecting lives and introduce more uncertainty and unpredictability. State agencies, including the justice sector, may face fewer legal constraints under emergency laws and are more vulnerable to perpetration.
- **After:** In the after stage, many lives have been lost, and survivors suffer trauma, displacement, and challenges in accessing basic services. Conditions similar to the before stage may exist—such as tension and polarization, sporadic violence, economic problems, and low trust in state institutions—but the conditions may be much worse and take longer to address.¹⁰⁸ In some cases, because of state agents’ involvement in mass atrocities, government institutions may experience internal pressure not to seek accountability.

Table 3.3. Prevention Tools in Before, During, and After Stages

The tools listed are generally suited to the prevailing conditions of each stage, but could be applicable in other stages.

BEFORE	DURING	AFTER
<ul style="list-style-type: none"> • Integrate mass atrocity prevention training and education • Build community relationships • Conduct early warning analysis • Be alert to dangerous speech¹⁰⁹ and hate incidents • Respond sensitively to hate crimes and bias-motivated violence • Prosecute past violence • Support restorative justice • Safely manage public protests • Plan ahead for emergencies • Promote rule of law with a focus on reducing atrocity risk (consider legal framework for prevention; access to justice; professional ethics; anti-corruption; and human rights, including nondiscrimination and economic and livelihood issues) 	<p>Protect civilians and targeted groups</p> <ul style="list-style-type: none"> • Deploy emergency plans (developed <i>before</i>, for quick response and adaptability in fluid environment) • Conduct public consultations and community outreach (to understand threats and protection needs, gather intelligence on perpetrators, or deescalate tensions) • Deploy police to protect targeted communities, especially women and children • Ensure the justice sector upholds fair trial rights and avoids arbitrary arrest and detention, torture, and enforced disappearances • Where possible, apply personal discretion to mitigate risk and save a life <p>Apply criminal justice strategy that applies pressure or incentives to deter (potential) perpetrators</p> <ul style="list-style-type: none"> • Reaffirm and enforce professional oath to uphold Constitution, rule of law, and codes of conduct • Investigate and prosecute suspected atrocity crimes • Lawfully apprehend suspected perpetrators • Disrupt criminal networks that enable armed groups or mass atrocities (e.g., money laundering; trafficking in drugs, arms, precious gems, persons; and illegal natural resource extraction) • Establish appropriate communication and information sharing with other security agencies, media, and nongovernmental organizations • Seek cooperation with international organizations and fact-finding missions 	<p>Develop transitional justice approach</p> <ul style="list-style-type: none"> • Criminal trials (domestic, hybrid, international) • International non-prosecutorial legal bodies (International Court of Justice, international claims commissions, United Nations human rights committees and special procedures) • Fact-finding or truth-telling bodies • Restorative justice • Reparations • Lustration/vetting • Memorialization • Rule of law reform <p>Draw from tools used in the before and during stages to help establish security and reduce ongoing or renewed risks</p>

BOX 3.3. COMMON OBJECTIVE OF CRIMINAL JUSTICE PREVENTION TOOLS

Similar to the prevention measures summarized in the first section of this chapter, the common objective of these tools is to promote positive, protective relationships with the public. These relationships are based on upholding rule of law and human rights, and preventing violence and abuse of state power, particularly against vulnerable and marginalized groups.

BEFORE ATROCITIES

The following tools are especially relevant to risk factors and warning signs associated with the before stage of mass atrocities. They can help address longer-term structural challenges that may contribute to atrocity risk, though they may also be relevant during and after mass atrocities.

- Integrate education and training on mass atrocity prevention
- Build relationships with the community (community dialogues, community policing, and outreach)
- Conduct early warning analysis
- Be alert to dangerous speech and bias incidents
- Respond sensitively to hate crimes and bias-motivated violence
- Prosecute past violence
- Support restorative justice
- Plan ahead for emergencies
- Safely manage public protests
- Promote rule of law in ways that connect with atrocity risks in context (consider human rights and nondiscrimination, access to justice, professional ethics, judicial efficiency, anti-corruption)

Integrate Education and Training on Mass Atrocity Prevention

To support prevention, criminal justice institutions need to foster their professionals' knowledge, skills, and commitment with respect to preventing mass atrocities. Professional education and training can provide the foundation for leaders to apply an atrocity prevention lens to the justice sector and adjust their approaches to address risk and resilience more effectively. Such programs should support an understanding of what mass atrocities are; how and why individuals, including justice officials, can become complicit in committing mass atrocities; how to apply assessment frameworks through which to analyze a situation and evaluate risk and resilience; how risk and resilience connect to criminal justice institutions and different professional roles within them; and how to identify, develop, and implement relevant tools, such as the ones featured in this Guide and in other sources.

Training and education can help strengthen professionals' leadership and management skills so they can promote their colleagues' compliance with professional ethics, as well as help colleagues adopt new approaches to engage more positively with the public and to support prevention. Training and education can grow professional networks that deepen commitment and sharing of resources relating to prevention (see Table 3.4).

Professional development and training can take different forms, including a multi-day course, a one-day workshop, or as a component of a program focused on developing or implementing specific prevention tools. Longer-term mentoring or coaching arrangements can support implementation of prevention

approaches. Incorporating interactive elements such as action planning creates opportunities for participants to connect content with their own expertise and experience, which enhances learning.¹¹⁰ Different pedagogical approaches and examples are discussed further in chapter 4.

Examples

- **The “Lessons in Leadership: Criminal Justice Approaches to Preventing Mass Atrocities”¹¹¹ educational materials**, which complement this Guide and are freely available, aim to “enhance the knowledge, skills, and abilities of global criminal justice professionals to prevent and respond to genocide and mass atrocities.”¹¹² The “Lessons in Leadership” course draws from the history of the Holocaust and other examples to illustrate connections between criminal justice and mass atrocities. These include the processes through which the criminal justice system can become complicit in or serve as a shield against atrocity risk, human rights violations, and abuse of state power. It considers prevention tools and leadership skills and how they may be applicable before, during, or after mass atrocities. The course allocates time for action planning, thus enabling participants to relate concepts and tools to their own work. In surveys and follow-up interviews, participants from pilot courses affirmed that the content was highly relevant to their work and shared examples of how they were applying the concepts.¹¹³ They requested more opportunities for training and mentoring on this topic. Certain participants adapted and shared course materials with colleagues and the communities they serve, some of whom in turn requested more training to reach more people.¹¹⁴
- **The Auschwitz Institute for the Prevention of Genocide and Mass Atrocities** offers educational programs on genocide and mass atrocity prevention for state officials and civil society leaders in Europe, Africa, Latin America, and the United States.¹¹⁵ Their Global Raphael Lemkin Seminar for Genocide Prevention, for example, is organized in partnership with the Auschwitz-Birkenau State Museum¹¹⁶ and the UN’s Joint Office of the Special Advisers on the Prevention of Genocide and the Responsibility to Protect.¹¹⁷ The weeklong program convenes approximately 20 government officials with relevant professional responsibilities from different nations together at the Nazi Concentration and Extermination Camp of Auschwitz-Birkenau in Oświęcim, Poland to examine the topic of genocide. Seminar participants become members of an ongoing alumni network in support of policies to prevent mass atrocities.¹¹⁸

Table 3.4. Tool Summary: Integrate Education and Training

CRIMINAL JUSTICE TOOL	RISK FACTORS	INTENDED EFFECTS
Integrate education and training on mass atrocity prevention.	<ul style="list-style-type: none"> • Armed conflict • Instability • Unpunished past violence • Exclusionary ideology 	<ul style="list-style-type: none"> • Increase criminal justice professionals’ knowledge and commitment, leading them to treat civilians with respect more consistently and to improve coordination with other stakeholders • Prevent conflict • Reduce tension and polarization • Increase trust in government • Signal that human rights violations are not acceptable • Promote tolerance and nondiscrimination

Build Community Relationships

Building community relationships takes different forms, such as public consultation and community dialogues (see Box. 3.4 for examples). It involves opening channels of communication and developing partnerships with stakeholders to help identify and resolve public safety concerns or conflicts. Stakeholders may include other government agencies (e.g., schools, health and social services, local government), traditional leaders, youth or women’s organizations, faith-based groups, advocacy organizations, and the business community.¹¹⁹ With respect to law enforcement, this tool is also called community policing or community-oriented policing.

When implemented effectively, building community relationships can influence changes that support prevention measures. They can help reduce tensions and crime, avoid sectarian attacks, increase information sharing between the public and police, and improve public perceptions of criminal justice actors. By learning citizens’ perspectives and building the public’s trust, officials can evaluate risk and are better positioned for early prevention. As civilians develop trust in justice institutions, they become more willing to settle disputes lawfully and peacefully and are less likely to resort to violence, restraining risk of instability. Civilians can connect with points of contact, understand relevant laws and criminal justice roles, and break down us-them dynamics—which could otherwise fuel polarization—between the public and the criminal justice system.¹²⁰ Vulnerable communities can feel safer and improve their access to justice, helping tackle impunity involving violence against these groups. Community relationship building can also deter potential perpetrators and help reduce recidivism through signaling that state institutions are listening and paying attention.¹²¹



A London policeman visits members of the Chinese community during the Lunar New Year celebration in February 2019. Small acts of outreach can promote tolerance and strengthen mutual trust. They can encourage a community to communicate security concerns to police and increase the likelihood that law enforcement will be responsive and lawfully help preempt bias incidents or violence. *PjrNews / Alamy Stock Photo*

BOX 3.4. EXAMPLES OF COMMUNITY RELATIONSHIP BUILDING**Northern Ireland**

Through 30 years of violent conflict, police in Northern Ireland were disproportionately violent against minority Catholics and were rarely held accountable for human rights violations.¹²² To help restore Catholics' trust in police, the Good Friday Peace Agreement for Northern Ireland required the creation of a commission to explore police reforms.¹²³ Policing partnerships were established to consult with the public on their views and concerns regarding policing in their areas. With information acquired through focus groups, public meetings, and surveys,¹²⁴ law enforcement officials were able to develop interventions that reduced crime and strengthened public safety.¹²⁵ Police performance was also monitored. These local efforts addressed tensions, increased information sharing, and built trust. Scholars have praised these reforms for transforming perceptions of police and sustaining peace in Northern Ireland.¹²⁶

Nepal

In 2007 in Nepal, a long-running civil conflict resulted in a political transition away from the monarchical government. This transition period experienced unrest. A 2007 effort to reduce instability and build public trust and legitimacy of state institutions included a series of dialogues sponsored by the US Institute of Peace and organized at national and local levels among police, political parties, and civil society. Through these dialogues, participants jointly developed recommendations for reform, such as a code of conduct for prosecutors and guidelines for police in evidence collection.¹²⁷ Community dialogues also addressed rising youth crime, a consequence of a "general sense of hopelessness" and the mobilization of youth groups as vigilantes by political parties.¹²⁸ In a transitional stage, these dynamics can render youth vulnerable to recruitment into armed groups, raising the risk of instability and recurrence of conflict. After implementing the program developed through the dialogues, the police reported a dramatic decline (up to 80 percent) in violent demonstrations by youth.¹²⁹ These efforts worked to improve information sharing, reduce tensions, and increase trust in state institutions.

Nigeria

In 2022 as part of the Leaders in Atrocity Prevention program, a Nigerian law enforcement officer carried out an action plan to reduce atrocity risk in a remote part of the country affected by herder-farmer violence. To develop his understanding of core grievances and drivers of conflict, and how he could support peace among the communities, the officer conducted a series of meetings with traditional rulers, religious leaders, vigilante groups (organized to assist police with maintaining security), herdsmen, and others. Through these meetings, he was able to foster dialogue within the communities and identify training gaps for vigilante groups. He organized a two-day training for which he developed a code of conduct for vigilante groups and worked with them to strengthen coordination. Over several months, security improved, with the majority of people displaced by violence returning to their homes. The officer attributed this success in part to the enhanced skills of vigilante groups and communities' increased willingness to share information due to greater public trust in police. Through his community outreach, the officer also approached a philanthropist to help support livelihoods by dredging a local dam.¹³⁰

Table 3.5. Tool Summary: Build Community Relationships

CRIMINAL JUSTICE TOOL	RISK FACTORS	INTENDED EFFECTS
<p>Community relationship building:</p> <ul style="list-style-type: none"> • Public consultation • Community dialogues 	<ul style="list-style-type: none"> • Armed conflict • Instability, regime change • Unpunished past violence • Exclusionary ideology • Economic causes 	<ul style="list-style-type: none"> • Share information and understand community challenges and needs • Identify opportunities for the justice sector to avoid or mitigate risk • Prevent conflict • Reduce tension and polarization • Increase trust in government, limiting likelihood people will resort to violence to address grievances • Encourage officials to treat civilians with respect • Signal that human rights violations are not acceptable • Improve coordination and information sharing among stakeholders for mass atrocity prevention and response

Conduct Early Warning Analysis

Early warning analysis enables criminal justice professionals to apply an atrocity prevention lens to the information they gather, positioning them to address or even avoid risk factors and warning signs well before mass atrocities occur. These skills enable members of the justice system to identify risk and resilience factors, connect risk and resilience to their mandates and roles, and identify and implement relevant tools.

One approach includes integrating early warning analysis into efforts to collect crime and incident statistics. Law enforcement agencies could sort existing data or collect additional data based on risk factors and warning signs particularly relevant to mass atrocity prevention—such as dangerous speech, the rise of extremist groups, stockpiling of weapons, bias incidents, and bias-motivated violence. They could then identify potential perpetrators and groups at risk of violence, and take lawful, preventive steps that are consistent with human rights and due process standards. They could coordinate with other security agencies or relevant stakeholders—such as traditional leaders, civil society groups, or the media—to de-escalate tension or restrain criminal behavior that increases the likelihood of mass violence.

While law enforcement may already be collecting such data, adding the atrocity prevention lens can refine or expand agencies’ understanding of risk and of the potential tools that may help mitigate risk and build resilience. The example from Nigeria in Box 3.5 illustrates this point.

BOX 3.5. EXAMPLE OF EARLY WARNING ANALYSIS

Nigeria: Early Warning Analysis Sharpens Action Plans for Prevention

In 2021 Nigerian law enforcement officers participated in an online, pilot version of the “Lessons in Leadership: Criminal Justice Approaches to Preventing Mass Atrocities” course.¹³¹ Course participants were invited to apply to participate in a follow-on program that paired select course participants with international technical advisors to develop and implement the mass atrocity prevention action plan started during the course. In developing their action plans, participants drew on course materials to identify risk factors and develop relevant tools that they implemented over the course of several months. Through their risk analysis and action plans, they applied more diverse tools than they had in the past, taking into consideration warning signs and public perceptions of police. They conducted community outreach to youth, women, and traditional leaders; identified and supported mechanisms for restorative justice; provided training to colleagues in human rights and mass atrocity prevention concepts; and sought more coordination with economic actors to help alleviate underlying grievances and humanitarian conditions.¹³²

Criminal justice systems can also draw from early warning analyses and country risk assessments carried out by organizations such as the Early Warning Project of the United States Holocaust Memorial Museum and others to develop their perspective on how the focus country may be experiencing mass atrocity risk (see Box 3.6). This information can be considered for its implications for justice sector responses.

BOX 3.6. PUBLISHED RISK ASSESSMENTS: EARLY WARNING PROJECT AND OTHERS

The Early Warning Project is a joint project of the United States Holocaust Memorial Museum’s Simon-Skjodt Center for the Prevention of Genocide and the Dickey Center for International Understanding at Dartmouth College. It “uses quantitative and qualitative methods to spotlight countries where mass atrocities have not begun, but where the risk for such violence is high.”¹³³ An annual statistical risk assessment is published online and lists over 160 countries ranked by the likelihood that they will experience a mass killing episode (defined as at least 1,000 civilian deaths targeted as part of a specific group within one year or less). Some assessments include qualitative country reports that highlight policy options and offer recommendations. Other organizations that collect data and carry out mass atrocity risk assessments and which could serve as references for criminal justice programs include the Armed Conflict Location & Event Data Project (ACLED),¹³⁴ Genocide Watch,¹³⁵ Peoples under Threat,¹³⁶ the Atrocity Forecasting Project,¹³⁷ and the Early Warning System of the Sentinel Project.¹³⁸

Be aware that early warning analysis raises complex operational, legal, and ethical issues. Implementers need to think through how data are collected, with whom data are shared, and how data are acted on consistent with legal standards relating to privacy, due process, and freedom of expression, among others. Resources and training may be required to match these considerations.¹³⁹

Table 3.6. Tool Summary: Conduct Early Warning Analysis

CRIMINAL JUSTICE TOOL	RISK FACTORS	INTENDED EFFECTS
<p>Train criminal justice professionals on risk and resilience, connections to criminal justice system, and criminal justice tools.</p> <p>Appoint criminal justice professionals to strengthen early warning analysis within criminal justice institutions and coordinate with other agencies to analyze and respond to risk.</p> <ul style="list-style-type: none"> • Develop and enforce standards and protocols for data collection, analysis, and response that meet legal and human rights requirements • Secure appropriate resources and training <p>Apply atrocity prevention lens to data collection efforts.</p> <ul style="list-style-type: none"> • Evaluate data collection systems to improve early warning analysis • Connect relevant, existing data to risk factors and warning signs • Add new categories of data collection to track atrocity risk 	<ul style="list-style-type: none"> • Armed conflict • Instability • Unpunished past violence • Prior discrimination • Exclusionary ideology • Tension and polarization • Stockpiling weapons • Removal of moderates 	<ul style="list-style-type: none"> • Use atrocity prevention lens to identify opportunities to reduce risk and expand toolkit for prevention • Prevent conflict • Improve criminal justice capacity to preempt escalation of risk • Signal to officials and society that violence and other abuses will not be tolerated • Improve coordination and information sharing among stakeholders for atrocity prevention and response

Be Alert to Dangerous Speech

Becoming more alert to dangerous speech is part of early warning analysis, but is highlighted separately to underscore its importance to prevention. Dangerous speech, amplified by social media and disinformation campaigns,¹⁴⁰ is a feature of mass atrocity risk across numerous cases.¹⁴¹ It is both “a warning sign and an instrument of group-targeted violence.”¹⁴² With the growth of online communication worldwide, identifying and countering dangerous speech are increasingly likely to feature in atrocity prevention programs involving the criminal justice system.

As defined by the Dangerous Speech Project, dangerous speech is “any form of expression (speech, text, or images) that can increase the risk that its audience will condone or commit violence against members of another group.”¹⁴³ This definition does not refer to a specific criminal act, but rather describes a social phenomenon that people can observe to assess atrocity risk.

The Dangerous Speech Project offers a five-part framework to assess the dangerousness of speech by considering its content and context. The framework analyzes the message, audience, context, speaker, and medium. To count as dangerous speech, two essential elements are necessary: “inflammatory content and a susceptible audience.”¹⁴⁴

Some programs may prefer to use the term *hate speech* in the context of mass atrocity prevention since several countries have laws relating to hate speech. While definitions vary, according to the UN’s nonlegal definition of hate speech, it is any form of speech that promotes or incites hatred against an individual or group based on some feature of identity (e.g., race, religion, immigration status, gender).¹⁴⁵

Hate speech alone does not cause violence, but relies on several contextual features to increase risk of violence.¹⁴⁶ Mass atrocity prevention programs that focus on hate speech laws should take into account that hate speech laws are sometimes applied to silence dissent or restrict freedom of expression.¹⁴⁷ Such

practices “may even increase the risk of violence, by preventing people from expressing and resolving their grievances peacefully.”¹⁴⁸

This Guide uses the term *dangerous speech* to emphasize the contextual elements regarding speech—such as the susceptibility of the audience—that actually increase the risk of violence, or the “dangerousness” of speech. Dangerous speech also refers to expressions against groups that may not be legally protected from domestic nondiscrimination or hate speech laws, but who may become targets of intimidation, repression, or mass atrocities. These groups could include journalists, election workers, political opponents, labor groups, the homeless, the wealthy or other “elites,” sexual minorities, or disabled people.

In programs using the term *hate speech* or legal standards relating to *incitement* (a criminal offense encouraging someone to commit a crime),¹⁴⁹ evaluating the dangerousness of hate speech and other forms of speech that incite violence can help maintain focus on the goal to prevent mass atrocities. The dangerousness of the speech then raises the question of what preventive tools might be available under applicable laws while preserving human rights standards, including freedom of expression.¹⁵⁰

BOX 3.7. WHAT IS DANGEROUS SPEECH?

As defined by the Dangerous Speech Project, dangerous speech is “any form of expression (speech, text, or images) that can increase the risk that its audience will condone or commit violence against members of another group.”¹⁵¹

For speech to qualify as dangerous, it must have (1) inflammatory content and (2) a susceptible audience.

As a warning sign, dangerous speech presents an opportunity for prevention (1) by helping identify places at risk of group-targeted violence and (2) by intervention to prevent hate speech or dangerous speech from leading to collective violence¹⁵² (see examples in Box. 3.8). Similar prevention possibilities exist when dangerous speech has already become an instrument of violence. Table 3.7 summarizes the risk factors addressed and intended effects associated with prevention tools focused around dangerous speech.

Programs focusing on dangerous speech could consider

- Building skills in how to identify dangerous speech and methods for collecting information on dangerous speech (including through social media) in accordance with applicable laws and ethical and human rights standards, particularly regarding freedom of expression
- Strengthening strategies for responding to dangerous speech, such as working with civil society and government agencies to create an “alarm network”¹⁵³ to share examples of dangerous speech and jointly develop strategies to “prevent dangerous speech from influencing audiences,”¹⁵⁴ supporting people who are targeted by dangerous speech, persuading people not to post dangerous speech, or sharing best practices regarding counterspeech with the public or other organizations
- Analyzing domestic laws on hate speech or incitement (if applicable) and reviewing how to enforce them while supporting prevention and respecting freedom of expression¹⁵⁵

BOX 3.8. EXAMPLES OF EFFORTS TO ADDRESS DANGEROUS SPEECH**Kenya**

In 2005 the Kenya National Commission on Human Rights (KNCHR), an independent national human rights institution, worked with the nongovernmental Kenya Human Rights Commission (KHRC) to monitor incitement to violence and hate speech by politicians and public officials who gave speeches at rallies during a constitutional referendum campaign. The KNCHR publicly released the names and inflammatory statements of politicians who the commission alleged had violated laws against incitement and who the commission had recommended for investigation and possible prosecution by the Attorney General’s Office. In its report, the commission reported that the lists helped significantly reduce inflammatory speech as the campaign went on: “We received many calls from prominent politicians asking whether they had used inflammatory language after holding rallies.”¹⁵⁶ Moreover, during rallies attended by a KNCHR commissioner who cautioned the leaders that she was monitoring their speech, “[n]o instances of incitement or hate speech were recorded at these rallies.”¹⁵⁷ The data collected also helped bolster the commission’s call for hate speech legislation.¹⁵⁸ This example raises considerations regarding how best to protect the security and rights to expression of alleged perpetrators of incitement or promoters of hate speech when holding them accountable in polarized contexts. It also demonstrates the deterrent effect that monitoring can have on dangerous speech, as well as monitoring’s capacity to increase legal awareness and empirical data to inform legislative advocacy.¹⁵⁹

Germany

Germany’s efforts to regulate hate speech online also illustrates some of the basic tensions between countering dangerous speech and upholding civil liberties such as free speech and privacy.¹⁶⁰ In response to growing right-wing threats to security and democracy—such as the 2019 murder of a conservative politician by a neo-Nazi, the 2019 attempt by a right-wing extremist to attack a synagogue, and the bias-motivated murder of nine people of mostly Turkish descent in local bars—the German government approved laws requiring social media companies like Facebook and Twitter to remove and flag to law enforcement extreme examples of hate speech. The purpose of the laws is to help law enforcement apprehend potential attackers before they commit violence, and to help the government enforce its hate speech laws. In the 1950s, and as a legacy of the Holocaust, Germany enacted strict laws prohibiting incitement to hatred against national, religious, ethnic, and racial groups, as well as the dissemination or display of such content.¹⁶¹ Some people targeted by online hate assert that the laws do not go far enough to protect them, while others warn that the laws could violate free speech and hard-won data protection standards, which are also highly valued as a bulwark against the surveillance and reporting on neighbors that took place during the Nazi period and in East Germany after World War II. While these competing constitutional principles are litigated in the German judicial system under a democratic constitution,¹⁶² less democratic governments such as Russia, Turkey, Venezuela, and Malaysia have passed similar legislation.¹⁶³

Table 3.7. Tool Summary: Be Alert to Dangerous Speech

CRIMINAL JUSTICE TOOL	RISK FACTORS	INTENDED EFFECTS
Be alert to dangerous speech. Counter dangerous speech. Promote tolerance and nondiscrimination (inside and outside agencies).	<ul style="list-style-type: none"> • Exclusionary or nationalist ideology • Apocalyptic public rhetoric • Labeling civilians as the “enemy” • Tension and polarization • Removal of moderates • Prior discrimination • Armed conflict 	<ul style="list-style-type: none"> • Reduce escalation of tensions • Reduce prejudice and exclusion • Signal to officials and society that violence and other abuses will not be tolerated • Improve coordination and information sharing among stakeholders for atrocity prevention and response

Address Hate Crimes and Bias-Motivated Violence

Generally, a hate crime, or bias crime, has two components: (1) a criminal offense, usually involving violence and (2) a bias or prejudice motive based on some status related to the victim’s identity, such as race, religion, language, disability, or other grounds. A hate crime could be an act of intimidation, threats, property damage, assault, murder, or any other criminal offense. The target may be one or more people, or it may be property associated with a group that shares a particular characteristic. Such property could be a mosque, a church, an immigrant legal aid center, or a social venue where members of the LGBTQ+ community typically gather.



Fritz Lichtenstein, a Jewish businessman, surveys the damage to his leather goods store in Berlin, Germany, after the *Kristallnacht* pogrom on November 9–10, 1938. *US Holocaust Memorial Museum, courtesy of National Archives*

Preventing and responding effectively to bias-motivated violence (or hate incidents and crimes) is especially relevant for mass atrocity prevention (see Table 3.8 for a summary of the risk factors addressed and intended effects of this tool). Hate incidents can escalate and prompt retaliatory actions, leading to community-wide unrest.¹⁶⁴ Hate crimes can have deep and far-reaching effects, leaving entire communities who share the characteristics of the victim feeling violated and vulnerable. Inadequate responses to hate crimes can embolden exclusionary ideologies and signal that violence against the target

group is acceptable. Responding promptly and sensitively to bias-motivated violence supports healing for the affected community, communicates to the public that all citizens are entitled to equal protection of the law, encourages public trust in state institutions, and promotes values of tolerance and inclusion.

Even without a hate crime law that specifically protects against this type of violence, criminal justice leaders may have scope under existing laws to consider racist or biased motivations with respect to punishing perpetrators¹⁶⁵ (see Box 3.9 for examples). Possibilities include

- Collecting relevant data and developing appropriate protocols and cross-agency strategies to respond to crimes that are likely motivated by hate or bias
- Creating user-friendly hate crime incident report forms
- Establishing specialized units to investigate or prosecute hate crimes
- Taking into account bias motives in sentencing and court orders, such as in enhanced penalties, restraining orders, and civil damages or compensation¹⁶⁶
- Where applicable, affirming constitutional principles of equality and nondiscrimination in legal decisions or other public documents and statements
- Participating in school or community programs to reduce prejudice¹⁶⁷

BOX 3.9. EXAMPLES OF ADDRESSING BIAS-MOTIVATED VIOLENCE

Brazil: Supreme Court Ruling that Anti-Discrimination Law Applies to Sexual Orientation and Gender

In 2019 the Supreme Federal Court voted that exclusion of sexual orientation and gender from Brazil's anti-discrimination law was unconstitutional. The decision provided a path for alleged victims of discrimination and attacks based on sexual identity to seek legal remedies. In a national context with high levels of transgender homicide, anti-LGBT+ rhetoric by the president at the time, and where the legislature had reportedly moved slowly to enact laws punishing hate crimes based on sexual orientation or gender, the ruling sent a clear message that discrimination and violence against sexual minorities was unacceptable under the law.¹⁶⁸ In promoting nondiscrimination and equal rights, this high-level legal decision works to counter risk factors and warning signs such as exclusionary ideology, discriminatory legislation, impunity for past crimes targeting a marginalized group, and labeling of the group as an enemy.

Sweden: Cross-Agency Strategy to Respond to Hate Crimes

Since 2007, the Stockholm police department has developed a comprehensive approach to hate crimes that includes

- Training for all personnel who come into contact with hate crimes, including dispatch and front desk intake officers
- A standard operating procedure card that lists bias indicators and steps to respond to hate crimes
- Specialized police hate crime units appointed in all policing areas to coordinate hate crimes investigations and training
- Community policing, in which an officer in each policing area is appointed to “actively seek out and work with community associations to encourage reporting of hate crimes, and also to work with schools”¹⁶⁹

- An assigned prosecutor who works with police to investigate and prosecute hate crimes
- A police website that provides information on hate crimes and contact information, to encourage reporting of hate crimes¹⁷⁰

In contexts with warning signs such as group tension and polarization, exclusionary ideologies, labeling of enemies, or past discrimination or violence against certain groups, measures like these can signal that identity-based hostility and violence is unacceptable and help mitigate the risk of wider violence.

Table 3.8. Tool Summary: Address Hate Crimes & Bias-Motivated Violence

CRIMINAL JUSTICE TOOL EXAMPLES	RISK FACTORS	INTENDED EFFECTS
<p>Prevent Bias-Motivated Violence</p> <ul style="list-style-type: none"> • Monitor hate groups • Model tolerance and respect for others • Improve cross-cultural awareness and communication among staff • Participate in community-based programs to reduce prejudice • Attend minority-sponsored cultural events or celebrations <p>Respond to Bias-Motivated Violence</p> <ul style="list-style-type: none"> • Create hate crime incident report forms • Develop protocols to support victims • Engage media in responsible reporting of hate crimes 	<ul style="list-style-type: none"> • Exclusionary or nationalist ideology • Unpunished violence against a particular group 	<ul style="list-style-type: none"> • Reduce prejudice and exclusion • Promote tolerance and inclusion • Foster attitudes to restrain escalation • Signal to officials and society that violence and other abuses will not be tolerated

Prosecute Past Violence

Prosecution of past violence is covered in the “After Atrocities” section as a form of transitional justice, which involves the range of measures countries might apply to redress legacies of mass violence as they transition out of war or a period of repressive governance.¹⁷¹ However, prosecution is also relevant before and during mass atrocities.

Unpunished violence is a commonly cited risk factor for mass atrocities. Lack of accountability (through criminal trials or otherwise) for past violence (and prior discrimination) can create the impression that such violence is acceptable against individuals or groups deemed inferior. It can reinforce perceptions of the target group as unworthy of justice or equal treatment under the law. Impunity can lead to grievances that diminish trust in state institutions, raising the likelihood that disputes will be addressed through violence. Past incidents of violence can create a pattern of escalation, in which large-scale and more serious crimes become more conceivable.¹⁷²

In a number of examples, including the Armenian genocide, the Holocaust, the Rwandan genocide, Darfur, and Syria, policies of discrimination preceded large-scale violence.¹⁷³

Key implementation issues for prosecuting past mass violence include navigating the timing, politics, and perceptions of such trials, as well as upholding the integrity of rule of law and support for victims while mitigating risks of polarization and violence. Ensuring the availability of adequate funding and resources to support domestic capacity to carry out complex trials of large-scale crimes, often lasting over several years, raises questions about the mode of international cooperation. Should trials be held in domestic, hybrid, or international courts? To what extent should foreign personnel be involved as funders, technical advisors, attorneys, or judges? Table 3.9 summarizes the risk factors addressed and intended effects of prosecution as a tool for prevention.

Examples

- **Guatemala (domestic court):** In 2013 retired general and politician Efraín Ríos Montt became the first former head of state to be tried and convicted in a national court of genocide and crimes against humanity. He was sentenced to 80 years in prison for his role in the 1982–83 killing of over 1,700 Maya Ixil people during the Guatemalan Civil War (1960–1996). Ten days later, the Constitutional Court quashed the sentence, prompting concerns of political interference. Montt died in 2018 at the age of 91, before his retrial was completed.¹⁷⁴ Although the legal process did not conclude, the 2013 judgment was seen as a major victory for victims and the organizations and investigators that had gathered evidence over many years.¹⁷⁵ The trial was held in a specialized court to try “high-risk” crimes. These courts were established on the recommendation of the UN-sponsored International Commission against Impunity in Guatemala (CICIG), an independent body set up in 2006 to support the Public Prosecutor’s Office, National Civilian Police, and other agencies in tackling impunity. The CICIG and the public prosecutors who pursued this case and related cases are credited with helping reduce violence, corruption, and organized crime.¹⁷⁶
- **Chad (regional court):** In 2016 the Extraordinary African Chambers in Dakar convicted former president of Chad, Hisssein Habré, of crimes against humanity, war crimes, and torture committed during his rule in the 1980s.¹⁷⁷ The court sentenced him to life in prison and ordered him to pay over USD 140 million to 7,396 victims who had participated in proceedings as civil parties.¹⁷⁸ Habré was the first former head of state to be convicted for mass atrocity crimes in another country’s court, sending a message that officials at the highest levels are not immune from accountability. The Extraordinary African Chambers was set up through an agreement between the African Union and Senegal to try crimes committed in Chad corresponding to the period of Habré’s regime. This agreement was prompted after Belgium instituted proceedings through the International Court of Justice (ICJ) under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment against Senegal for harboring and not prosecuting Habré.¹⁷⁹ In 2021 Habré reportedly contracted COVID-19 in prison and died a few days later in a Dakar hospital.¹⁸⁰ He was 79.

Table 3.9. Tool Summary: Prosecute Past Violence

CRIMINAL JUSTICE TOOL EXAMPLES	RISK FACTORS	INTENDED EFFECTS
Prosecute past violence.	<ul style="list-style-type: none"> • Unpunished violence • Exclusionary or nationalist ideology • Tension and polarization • Prior discrimination • Armed conflict 	<ul style="list-style-type: none"> • Reduce likelihood of revenge attacks • Signal to officials and society that violence and other abuses will not be tolerated • Strengthen public trust and state legitimacy • Strengthen rule of law, equal protection of laws • Improve coordination and information sharing among stakeholders for mass atrocity prevention and response

Support Restorative Justice

Similar to prosecution of past violence, restorative justice is typically associated with the after stage within a broader context of transitional justice. Yet in light of the cyclical dynamic of mass violence, restorative justice can also be an important tool in the before stage. Restorative justice is another way to limit or repair the impact of past violence—such as ongoing tensions and polarization, or discrimination against a particular group—which could otherwise raise the risk of mass atrocities.

BOX 3.10. WHAT IS RESTORATIVE JUSTICE?

Restorative justice emphasizes repairing the harm caused by crimes committed. It involves acknowledging the victims’ harms and needs; the harms’ impact on communities; and encouraging perpetrators to take responsibility, make right the wrongs, and address the causes of their behavior. It seeks to identify appropriate processes to help “put things right” and reintegrate victims and perpetrators into the community.¹⁸¹

Restorative justice processes take many forms, and can take place alongside other justice and reconciliation processes. Some may be rooted in cultural traditions, such as the reconciliation rituals conducted in northern Uganda starting in the 1990s to facilitate reintegration of children abducted into the rebel Lord’s Resistance Army.¹⁸² Some may blend customary practices with formal judicial processes, as the gacaca courts did after the Rwandan genocide in 1994.¹⁸³ Others may involve administrative measures that seek to redress past harm, such as apologies by senior officials, reparations or compensation programs, recruitment efforts to include underrepresented groups, or acts of symbolic significance such as renaming a building or creating a memorial to honor victims.

Restorative justice can be particularly relevant to mass atrocity prevention because of its regard for community harms and needs, as well as the impact of social psychological trauma. Restorative justice processes may in some cases resonate more broadly than other forms of accountability. While criminal trials focus on individual victims and perpetrators involved in particular incidents, restorative justice processes address community harm and responsibility. Restorative justice can also offer additional approaches to accountability, especially when prosecuting all perpetrators of mass atrocities may not be practical or may face a range of political, cultural, or economic constraints.

Last, restorative justice processes may also be appropriate in addressing violence that took place in the past. In such cases, too much time may have passed to collect sufficient evidence, punish key perpetrators, or address harm caused to specific victims. However, restorative justice efforts, when grounded in local consultation, can help respond to enduring grievances and harm from long-term legacies of mass atrocities.

Criminal justice professionals can legitimize and strengthen restorative justice processes by participating or coordinating with them. Such processes may connect the criminal justice system with customary justice systems, traditional or religious leaders, or civil society groups involved in supporting marginalized communities. In a program in Nigeria, a law enforcement official recommended that police coordinate with social workers and civil society organizations to create a documentation archive to assist communities in locating information about relatives killed in land conflicts.¹⁸⁴ In situations such as the Guinean example in Box 3.11, criminal justice professionals can support participatory research or community dialogues with affected communities and help implement the communities' recommendations through coordinating with state agencies.

BOX 3.11. EXAMPLES OF RESTORATIVE JUSTICE

South Africa: Truth and Reconciliation Commission

The negotiations that ended Apartheid, the system of racial segregation that lasted for over 40 years in South Africa, included a general amnesty. To support accountability alongside amnesty, a year of public consultations led to the creation of the South African Truth and Reconciliation Commission (TRC). Its mandate was to investigate human rights abuses from 1960 to 1994, allow victims to share testimony, consider amnesty applications from perpetrators who participated in proceedings (prosecution remained an option in some cases), establish a reparations policy, publish a comprehensive account of proceedings, and make recommendations for preventing future human rights violations.¹⁸⁵ During proceedings of the TRC, some criminal justice officials acknowledged their role and apologized to victims who had been persecuted or tortured under the Apartheid regime.¹⁸⁶ The TRC was the first commission to hold public hearings with statements from both victims and perpetrators. While the TRC's contributions to democratic transition and accountability remain a subject of debate, the commission is credited with establishing a common record of facts about past violence.¹⁸⁷

Guinea: Livelihood Rehabilitation and Memorialization

In 2012 a Guinean human rights group, Les Mêmes Droits pour Tous, and the American Bar Association Rule of Law Initiative helped a rural community in Guinea conduct participatory research into how the current government could redress human rights violations perpetrated against the community under past regimes. The community requested that as part of the government's transitional justice strategy, the government should support the community's economic development, which suffered following human rights abuses, by paving a road to local markets and inaugurating the road as a memorial to the victims.¹⁸⁸

Nigeria: Livelihood Support

As part of a multipronged strategy to support the reduction of herder-farmer violence, a Nigerian police official approached a local politician and philanthropist to explore ways to assist communities affected by violence. The philanthropist met with community leaders and agreed to help dredge a new dam for the community. In 2022, experts had provided a cost estimate and were waiting to begin construction after the rainy season. In this case, livelihood support helped limit intergroup tensions over access to resources, redirected feelings of despair toward a focus on rebuilding, and fostered trust in law enforcement's role in joint problem-solving.¹⁸⁹

United States: Public Apology for Historical Racial Injustice

In 2017 Louis Dekmar, a police chief from the state of Georgia, made a televised, formal apology condemning the role of his police department in the lynching of a Black teenager, Austin Callaway, in 1940.¹⁹⁰ Callaway was in police custody when he was abducted by a mob and brutally murdered. At that time of racial segregation in the Southern United States, the police department did not pursue an investigation. Callaway's murder was one of at least 6,400 white mob lynchings of Black people between 1865 (when the American Civil War ended) and 1950.¹⁹¹ The police chief stated that the apology was necessary because, “[d]espite the fact that very few people are alive today that were alive then, the attitudes about the police department—and the attitudes as it relates to the city government in general—is influenced by those experiences which are passed down through generations.”¹⁹² A relative of Callaway's acknowledged the apology as a step toward healing and expressed hope that the attention would reveal more information about other cases.¹⁹³ Dekmar is reportedly the first police chief in the American South to apologize for law enforcement's role in the history of lynchings, thereby formally acknowledging prior unpunished violence and discrimination.¹⁹⁴

Table 3.10. Tool Summary: Support Restorative Justice

CRIMINAL JUSTICE TOOL EXAMPLES	RISK FACTORS	INTENDED EFFECTS
<p>Restorative justice procedures and policies:</p> <ul style="list-style-type: none"> • Consultations with affected communities to identify appropriate restorative justice responses • Truth and reconciliation commissions • Traditional truth and reconciliation ceremonies • Reparations or other economic support to victims or targeted communities • Public apologies by state officials or senior perpetrators • Vetting of state institutions to exclude perpetrators • Recruitment of state agents and officers to reflect national diversity to promote tolerance and inclusion • Increased public recognition of past harm to vulnerable communities (through memorials and names for public buildings, roads, parks, legislation, or civic and professional awards) 	<ul style="list-style-type: none"> • Unpunished violence or prior discrimination against a particular group • Exclusionary or nationalist ideology • Labeling civilians as the “enemy” • Tension and polarization 	<ul style="list-style-type: none"> • Reduce impunity • Reduce escalation of tensions • Promote tolerance and pluralism • Reduce prejudice and exclusion • Signal to society that violence and other abuses are unacceptable

Conduct Advance Planning for Emergencies

As the adage goes, failing to plan is planning to fail. Without plans in place for when emergencies arise, criminal justice professionals will be at a disadvantage in protecting civilians and themselves. Lack of planning will cost lives. Programs focused on emergency planning involve imagining a range of scenarios and examining whether agencies have clear policies and procedures in place for response and investigation. Once appropriate policies are in place, agencies should conduct training—through tabletop exercise scenarios, for example—to practice and walk through the response to an emergency. These exercises should include representatives from various components of the criminal justice system to work collaboratively through their respective areas of responsibility in an emergency. Through these exercises, partners build relationships that further prepare them to respond effectively when emergencies arise.

Emergency planning programs could also include providing training, equipment, and resources for civilian protection, evidence collection, and criminal investigations; strengthening relationships with agency counterparts and other influential third parties—such as traditional, religious, or political leaders—who can assist with de-escalation; and regularly evaluating and improving agency capabilities.¹⁹⁵ Additional tools for emergency situations are highlighted in the “During Atrocities” section.

Table 3.11. Tool Summary: Conduct Advance Planning for Emergencies

CRIMINAL JUSTICE TOOL EXAMPLES	RISK FACTORS	INTENDED EFFECTS
Conduct emergency planning.	<ul style="list-style-type: none"> • Armed conflict • Tension and polarization • Emergency legislation • Deployment of irregular armed forces • Coups • Crackdowns on protest • Symbolically significant attacks against individuals or physical sites 	<ul style="list-style-type: none"> • Reduce escalation of tensions • Signal to society that violence and other abuses are unacceptable • Improve coordination and information sharing among stakeholders for atrocity prevention and response • Save lives

Respond Safely to Public Protest

Crackdowns on public protest—such as over a disputed election or relating to a social movement—are a frequently cited trigger of mass atrocities. Protests in themselves are not necessarily a risk, particularly if protestors and state officials remain peaceful and nonviolent. Protests can be an important mechanism to express public grievances and aspirations. Protests become a flashpoint if participants or state officials become violent, risking severe injuries or death and potentially triggering wider unrest and mass atrocities. Mass atrocities in the course of or following crackdowns on public protests in support of democracy have occurred in China, Syria, Myanmar, Sudan, and elsewhere. Box 3.12 describes other examples.



Protestors in Hong Kong hold placards at a rally in 2019 calling for the withdrawal of an extradition bill, which would have enabled China to extradite fugitives to China. They also called for the release and non-prosecution of people arrested for speaking out, an investigation of whether excessive force had been used by the police during protests on June 12, 2019, and the resignation of the chief executive (the highest officeholder) in Hong Kong. *SOPA Images Limited/Alamy Stock Photo*

Highlighting the importance of crackdowns on protests as potential triggers and exploring in more technical detail the relevant resources, de-escalation techniques, use of force principles, and other skills can help ensure protests stay safe. Among other factors, protests are more likely to remain peaceful and avoid escalation when journalists are present to monitor events, and when police limit the use of force, such as rubber bullets or live ammunition, and deploy them only as a last resort in the interest of public safety.¹⁹⁶

BOX 3.12. EXAMPLES OF REFORMS TO PUBLIC PROTEST RESPONSE

Nigeria

In 2021 Nigerian law enforcement officers participated in an online, pilot version of the “Lessons in Leadership: Criminal Justice Approaches to Preventing Mass Atrocities” course.¹⁹⁷ Following the course, a senior law enforcement participant reported that when he returned to his office, he and his unit rewrote standard operating procedures for how they should interact with civilians during public protests. Another participant stated: “The course talked about impact on your subordinates and good leadership. When I came back from the course and from all the experience I got from the training, I talked to them about the need to control your behavior to avoid a crisis. They now want to hear how I score them. I believe they will now interact differently with protesters.”¹⁹⁸ These examples are noteworthy in light of widespread public protests against police abuse that took place in Nigeria in 2020 and 2021.¹⁹⁹

Northern Ireland

On January 30, 1972, British soldiers shot and killed 13 unarmed civilians during a protest in Londonderry, Northern Ireland. At least 15 more were injured, one of whom died later. Protestors were also beaten and injured by rubber bullets and water cannons. The protestors were demonstrating against the government’s policy of detaining without trial persons suspected of supporting the Irish Republican Army (IRA), a paramilitary organization that sought to join Northern Ireland with Ireland. The 1972 massacre became known as Bloody Sunday and was a turning point in the conflict, intensifying hostilities and boosting recruitment to the IRA. The 1998 Good Friday Agreement ended the 30-year conflict, but sporadic violence has flared since. As part of the peace process, then UK Prime Minister Tony Blair agreed to hold a public inquiry into Bloody Sunday. The Saville Inquiry’s report was published in 2010 and detailed the military’s wrongful acts on the day and in the aftermath. Then UK Prime Minister David Cameron fully acknowledged the findings and apologized for the shootings.²⁰⁰ Since Bloody Sunday, the state’s approach to public protests in Northern Ireland has evolved considerably to empower local police services to respond, avoid escalation, and allow transparency.²⁰¹

Table 3.12. Tool Summary: Respond Safely to Public Protest

CRIMINAL JUSTICE TOOL EXAMPLES	RISK FACTORS	INTENDED EFFECTS
Improve public protest response consistent with human rights standards.	<ul style="list-style-type: none"> • Crackdown on public protest (trigger) • Tension and polarization • Instability 	<ul style="list-style-type: none"> • Avoid escalation of tensions • Protect freedom of assembly and expression • Build confidence in state institutions

Promote Rule of Law in Ways that Target Atrocity Risks

The tools covered thus far in this Guide have a relatively clear connection to reducing mass atrocity risk. Because they also involve strengthening the effectiveness of professionals in the justice sector, these tools can also be understood as supporting rule of law. For the purposes of this Guide, the concept of “rule of law” refers to a system of governance in which government officials and citizens are bound by and follow the law, and where the law supports human rights, fairness, and equality.²⁰² These principles underlie many mass atrocity prevention measures.

The tools in this subsection refer to more general areas of rule of law reform, such as judicial efficiency, access to justice, professional ethics, anti-corruption, or law enforcement and prosecution skills. By supporting rule of law and the legitimacy of state institutions, these tools contribute to mass atrocity prevention in a broad sense.

However, *a key question here for atrocity prevention is: Which areas of rule of law reform are most relevant or could be adapted to reducing mass atrocity risks and building resilience in each specific, local context?* Is endemic corruption, systemic judicial delays, suppression of public protest, or impunity for human rights abuses feeding civil unrest, political polarization, or support for violent opposition? Are vulnerable groups able to access the justice system to seek protection or accountability for discrimination, hate crimes, or past violence? The nature of risks and core grievances can illuminate which rule of law challenges are most important for preventing mass atrocities in a specific context.

Following are a range of rule of law programs with reference to how they could relate to mass atrocity prevention in certain contexts. They are also consistent with UN recommendations for security sector reform in implementing the Responsibility to Protect.²⁰³ Examples appear in Table 3.13.

- **Strengthen criminal justice skills in investigating and conducting trials for mass atrocity crimes:** This tool is mentioned under the during and after stages, but is included here to underscore the importance of building skills in the before stage so that criminal justice professionals can respond effectively during and after mass atrocities, as well as potentially address past violence and impunity as a risk factor in the before stage. Building these capabilities early could support deterrence, signaling to potential perpetrators inside or outside the state that domestic capacity and will to seek accountability is growing.
- **Improve and enforce ethical standards for criminal justice professionals:** Initiatives could include
 - Revising, creating, and enforcing professional codes of conduct that are consistent with human rights standards
 - Establishing or revitalizing disciplinary procedures for misconduct or ethics violations, including corruption, that impose significant consequences on wrongdoers

- Vetting staff for past human rights abuses and removing those who have committed such abuses
 - Providing active bystander training for all staff to help mitigate risk of abuses²⁰⁴
 - Strengthening independent oversight mechanisms to ensure accountability for human rights abuses committed by criminal justice actors, such as human rights commissions or ombudsman offices that can monitor compliance with human rights and constitutional protections, investigate complaints, and take remedial actions²⁰⁵
 - Strengthening representation of different groups among staff
 - Ensuring that hiring and promotion procedures are merit-based and transparent
- **Tackle corruption:** Corruption involves the abuse of power or authority for private gain. It falls under professional ethics and conduct but warrants additional focus because it is a complex challenge. It underlies the risk factor of instability, as corruption can lead the public to lose trust in the state and seek illegal or violent methods to resolve disputes or pursue their goals. Corruption corrodes the rule of law and weakens state legitimacy,²⁰⁶ which can lead to protests and civil unrest.²⁰⁷ Measures to address corruption include
 - Passing laws on corruption that provide for enforcement of strong penalties
 - Implementing transparent recruitment and promotion systems
 - Including corruption among the violations within professional and ethical codes of conduct
 - Creating an independent anti-corruption commission or taskforce
 - Requiring that public officials disclose their income
 - Publishing key information on the status of court cases or complaints
 - Providing mechanisms to report corruption safely (such as through hotline numbers, text messages)
 - Providing security for criminal justice professionals working on corruption cases
 - Cooperating with the media and civil society in highlighting acts of corruption
 - Criminal justice leaders' conducting advocacy against corruption (see Tunisia example in Table 3.13)
- **Improve efficiency of the criminal justice system:** Delays in investigation and judicial processes corrode faith in the legal system to resolve disputes and deliver justice.²⁰⁸ Inefficiency also creates opportunities for corruption, as bribes are paid to expedite cases, worsening public trust and diminishing economic productivity.²⁰⁹ Additionally, protracted pretrial detention constitutes human rights abuse and can have other negative social and economic consequences for detainees and their communities.²¹⁰ Criminal justice leaders can consider a number of initiatives to strengthen the speed and efficiency of criminal justice:
 - Evaluate and address staffing needs, unfilled vacancies, gaps in resources or infrastructure, pay compensation, and adherence to merit-based promotions (in part to obviate the need for seeking bribes)
 - Improve, streamline, or automate internal administrative structures and processes to minimize the risk of corruption and expedite the resolution of cases
 - Enhance coordination with other justice institutions and systems to streamline day-to-day functioning and to support the legitimacy of agency decisions.
- **Improve equal access to justice and information:** Criminal justice leaders can help improve access to justice and information through
 - Supporting the creation of freedom of information laws
 - Publishing court orders and judgments

- Publishing annual reports on the judiciary's performance
 - Supporting public outreach programs regarding court procedures and rules
 - Allowing public access to court hearings
 - Reducing litigation costs and fees for filing documents
 - Eliminating corruption so that litigants do not have to offer bribes to move cases forward
 - Creating small claims tribunals or other alternative dispute resolution mechanisms where disputes can be resolved more quickly, cost-efficiently, and without a lawyer
 - Providing mobile courts to remote or rural areas where there are no courthouses
 - Ensuring that vulnerable groups are not facing additional discriminatory barriers in accessing the justice system, such as through language barriers or prejudicial or hostile treatment from officials
 - Ensuring that laws are accessible and widely disseminated through common modes of communication, either online, through radio, or other forms of media
 - Supporting public awareness of laws through plain language in legislation and in legal documents; hotlines, helpdesks, or kiosks in courts to assist the public with understanding laws and procedures; providing interpreters; and educating and training journalists, civil society actors, and youth on the justice system
 - Providing state legal aid, or supporting paralegals, who do not appear in court but who can offer a range of services that do not necessarily require a lawyer, such as advising on whether a violation has occurred, advising on how to ask for bail or conduct oneself in court, helping litigants to file claims, or conducting community awareness campaigns
 - Supporting civil society and the media as important oversight mechanisms by allowing them to monitor and observe courts or police, coordinating with them in watchdog functions such as public corruption or human rights abuses, or in collaborating to provide holistic responses to complex crimes such as gender-based violence or bias-motivated violence.
- **Reform the legal framework to support mass atrocity prevention:** In some contexts the absence of a clear legal framework can inhibit efforts to pursue prevention. However, new laws that are not enforced can weaken public trust. Whether or not criminal justice professionals can help initiate legislative change, they may be able to advocate for or advise on legislative changes or administrative practices that address mass atrocity risks and build resilience. Governments can
 - Become parties to relevant international instruments on human rights, humanitarian law, and the Rome Statute of the International Criminal Court
 - Amend or draft new laws to implement international law in domestic law, including mass atrocity crimes such as genocide, crimes against humanity, and war crimes
 - Remove statutory limitations, immunities, or amnesties that obstruct prosecution of state officials or other individuals allegedly responsible for mass atrocities
 - Review and amend laws governing liability for mass atrocities, eliminating the defense of superior orders for genocide, crimes against humanity, torture, or enforced disappearance or including command responsibility as a form of participation
 - Ensure that the Constitution provides for nondiscrimination and equality among different groups and sets out mechanisms to accommodate distinct concerns of minorities or vulnerable groups

Examples of how rule of law reforms intersect with mass atrocity prevention efforts appear in Table 3.13.

Table 3.13. Examples of Rule of Law Promotion

AREA OF RULE OF LAW REFORM	EXAMPLES
Strengthen criminal justice skills in investigation and prosecution	<p>Peru. The Peruvian Team of Forensic Anthropology (EPAF) is a nongovernmental organization (NGO) that conducts forensic anthropology investigations of clandestine graves to help identify victims, assist victims' families, and provide evidence for prosecutions. It has provided forensic training programs to prosecutors, judges, and NGOs in Latin America, Asia, and Africa to strengthen capacity to investigate cases of enforced disappearances and extrajudicial killings.²¹¹</p>
Enforce ethical standards	<p>Bosnia and Herzegovina. After the breakup of the former Yugoslavia in the 1990s, the United Nations Mission in Bosnia and Herzegovina instituted a policy to remove suspected violators of human rights from police forces and supported criminal investigations into their wartime conduct.²¹²</p>
Tackle corruption	<p>Tunisia. According to the World Bank, the Tunisian Truth and Dignity Commission “played a significant role in preventing the violent conflict that accompanied some other Arab Spring transitions” by generating a record of abuses, such as systematic corruption, under President Ben Ali (in office from 1987 to 2011).²¹³ The commission’s documentation efforts “laid the groundwork for possible national criminal prosecutions.”²¹⁴</p> <p>Guatemala. In the 2010s the UN-sponsored International Commission against Corruption in Guatemala (CICIG) and national prosecutors identified a strong link between corruption and impunity for serious crimes, including mass atrocities. In 2015, bolstered by widespread public support, national prosecutors with CICIG assistance brought corruption charges against almost 200 officials, including then President Otto Molina, who resigned and to date remains in custody while he awaits trial.²¹⁵</p>
Improve judicial efficiency	<p>Ethiopia. In the 2010s, as part of reform efforts in Ethiopia to strengthen democratic governance, the government sought to build public trust in justice institutions. Among the changes, the judiciary introduced a color-coded record-keeping system that reduced judicial delay and the potential for corruption. The system tracked the movements of case files, which “reduced the temptation to hide files, as it was easy [for court administrators] to identify the person who would be held accountable for the act.”²¹⁶</p> <p>Philippines. In 2008 the Philippines judiciary established small claims courts with simplified procedures to help reduce judicial delay and increase access to justice for civil claimants with disputed amounts below a certain threshold. Small claims cases are resolved faster than regular claims cases and in turn may help support small businesses and address economic inequalities that have led to past societal tensions.²¹⁷</p>

Table 3.13. Examples of Rule of Law Promotion Continued

AREA OF RULE OF LAW REFORM	EXAMPLES
<p>Improve access to justice and information</p>	<p>Bangladesh. In Bangladesh the Madaripur Legal Aid Association (MLAA) has advanced peacebuilding and women’s access to justice through its Madaripur Mediation Model (MMM).²¹⁸ In MMM the association engages with local dispute resolution processes, or “shalish,” often to address family law matters relating to early marriage, dowry, property, divorce, and maintenance, as well as minor assault.²¹⁹ Through community-based mediation, or “NGO shalish,”²²⁰ MLAA provides training for shalish panel members, facilitates mediation, strengthens women’s involvement in the shalish, and documents proceedings. These measures promote transparency, fairness, and satisfaction with outcomes.²²¹ MLAA handles around 5,000 disputes per year, at least two-thirds of which reach positive conclusions.²²²</p> <p>Multiple countries. Namati is an organization that supports paralegal programs that help ordinary citizens address or resolve issues that can feed grievances leading to conflict, such as citizenship rights, environmental justice, and land disputes. For example, in Kenya, Bangladesh, and Jordan, community paralegals assist historically stateless communities with acquiring identity documents in complex bureaucracies.²²³</p>
<p>Strengthen the legal framework</p>	<p>Burundi. In 2004 Burundi enacted the Law on Genocide, Crimes against Humanity and War Crimes to provide a legal basis to prosecute such atrocity crimes.²²⁴</p> <p>Malaysia. In 2019 then Foreign Minister of Malaysia Datuk Saifuddin Abdullah deposited the instrument of accession to the Rome Statute of the International Criminal Court (ICC) as a demonstration of support for cooperation in combating international crimes, including mass atrocities perpetrated against the Rohingya. A month later, Malaysia withdrew from the ICC amid domestic political disagreement.²²⁵ Despite that outcome, the foreign minister’s act was significant because Cambodia is the only Association of Southeast Asian Nations (ASEAN) state that has ratified the Rome Statute.</p> <p>United States. Under the Elie Wiesel Genocide and Atrocities Prevention Act of 2018, the US government pledges to “regard the prevention of atrocities as in its national interest,” to “work with partners and allies...to build their own capacity, and to enhance the capacity of the United States,” and pursue a “[g]overnment-wide strategy to identify, prevent, and respond to the risk of atrocities.”²²⁶</p>

Table 3.14. Tool Summary: Promote Rule of Law to Target Atrocity Risks

CRIMINAL JUSTICE TOOL EXAMPLES	RISK FACTORS	INTENDED EFFECTS
<p>Strengthen skills in investigating and prosecuting mass atrocity crimes.</p> <p>Improve and enforce criminal justice ethics standards Tackle corruption (inside and outside the criminal justice system).</p> <p>Improve efficiency in the criminal justice system.</p> <p>Improve equal access to justice and information.</p> <p>Advocate or advise on legislative actions to support mass atrocity prevention or codify mass atrocity crimes.</p>	<ul style="list-style-type: none"> • Armed conflict • Political instability • Prior discrimination or unpunished violence • Exclusionary or nationalist ideology 	<ul style="list-style-type: none"> • Encourage officials to treat civilians with respect and without discrimination • Increase public trust in the state • Restrain state abuse of power • Reduce escalation of tensions and conflict • Reduce prejudice and exclusion • Signal to officials and society that violence and other abuses will not be tolerated

DURING ATROCITIES

This section covers criminal justice tools in the during stage, when mass atrocities are imminent or underway. While the urgency to prevent mass atrocities is at its height during mass atrocities, this stage is significantly constrained with respect to prevention and mitigation. Dynamics can become fluid and unpredictable. Parts of the justice sector may face pressures—under emergency laws or high-level policies or due to insufficient training, resources, or leadership—that could lead justice professionals to enable or commit mass atrocities. Past cases in which criminal justice actors became perpetrators often took place in the context of armed conflict or under an especially repressive, authoritarian regime.²²⁷

In the during stage the focus of prevention is on saving lives and dissuading or stopping potential perpetrators from committing mass atrocities. These objectives include taking steps to limit criminal justice professionals’ vulnerabilities as potential perpetrators or as targets of mass atrocities. The effectiveness of these tools in the during stage depends significantly on the extent to which the justice sector has prepared for using them in the before stage. The dynamics of each context will shape what political and practical space is available, if any, to apply a particular tool or combination of tools. The tools covered in this section include

Protecting Civilians and Targeted Groups

- Deploying emergency plans developed in the before stage
- Deploying police to protect civilians and targeted communities, including women and children
- Conducting community outreach (to learn protection needs, identify opportunities to stop perpetrators, or reduce tensions among hostile groups)
- Ensuring prosecutors and judges uphold fair trial rights and counter other abuses of state power, such as arbitrary arrest and detention, torture, and enforced disappearances
- Applying personal discretion—when possible—to mitigate risk or save lives

Applying Strategies to Deter (Potential) Perpetrators

- Reaffirming professional oaths to uphold the Constitution and rule of law
- Enforcing professional codes of conduct against justice professionals and other state actors who violate their ethical responsibilities
- Disrupting criminal networks or recruitment strategies that enable armed groups or perpetrators through coercive measures such as lawful arrests, asset freezes, and civil forfeiture, or through incentives such as economic assistance or legal guidance
- Gathering and preserving evidence of suspected atrocity crimes
- Prosecuting alleged perpetrators

Protect Civilians and Targeted Groups

This subsection covers specific tools that support direct protection of civilians and targeted groups. Box 3.13 includes some examples.

- **Deploy emergency plans:** As mentioned in the “Before Atrocities” section, criminal justice professionals and coordinating agencies should have in place emergency plans that clarify roles, priorities, and procedures when mass atrocities are imminent or arise. Professionals should have trained in advance to deploy emergency plans and have established communication networks and resources to help them adapt plans as dynamics evolve.
- **Deploy police to protect civilians and targeted communities:** Police leaders can direct subordinates to provide physical protection to civilians in general or to specific groups who may be targeted. Law enforcement officials may end up protecting civilians in the course of police functions.²²⁸ In the context of communal violence, police may play a role in separating warring groups.

BOX 3.13. EXAMPLES OF POLICE PROTECTION

“Peace Walls” in Northern Ireland

In Northern Ireland, police monitor “peace walls,” which have developed since the 1960s to separate different segments of major cities with the purpose of reducing communal violence and civil unrest between Catholics (nationalists) and Protestants (unionists).²²⁹ Police continue to line roads between Protestant loyalist groups and Catholic groups during public demonstrations.²³⁰

Nazi Germany: Police Officer Prevents Destruction of New Synagogue in Berlin during *Kristallnacht* Riot, November 1938



Left: Lebrecht Music & Arts / Alamy Stock Photo

Right: Staatsbibliothek zu Berlin—Preußischer Kulturbesitz, Handschriften Abteilung, Nachlass 353 (Heinz Knobloch)

By the time the Nazis came to power in Germany, Wilhelm Krützfeld (born 1880) had been a police officer in Berlin for decades.²³¹ Although he continued to serve as a policeman under the Nazi regime, he never joined the Nazi Party.

When Nazi officials organized a violent, antisemitic riot in November 1938 (*Kristallnacht*, or The Night of Broken Glass), Krützfeld (seen in the photo on the right above) was in charge of a precinct in central Berlin.²³² The night of November 9, 1938, Nazis vandalized Jewish-owned property and set fire to synagogues throughout Germany, including in Berlin. An officer in Krützfeld’s precinct telephoned to report that he saw smoke coming from the New Synagogue, one of the most notable and architecturally significant synagogues in the city.²³³ Krützfeld and several other police officers then headed toward the building and witnessed Nazi storm troopers setting fire to the building. Krützfeld brandished his weapon and ordered them away. He produced documentation of the synagogue’s protected status as an important architectural structure and ordered the fire department

to douse the flames to prevent any further damage. The next day Nazi officials, including the police chief of Berlin, heard of Krützfeld's intervention, but they took no action against him. Krützfeld's son remembered that his father had been outraged after his conversation with the Nazi police chief who justified the Nazi violence and arson. Krützfeld insisted that it was the duty of the police to promote peace, order, and respect for the law.²³⁴

His son later revealed that during World War II, Krützfeld requested retirement after a high-ranking police official had hinted about the mass murder of Europe's Jews to Krützfeld. He officially retired effective November 1, 1943.²³⁵ On November 23, 1943, during World War II, the New Synagogue was destroyed in the Allied bombing of Berlin. Krützfeld passed away in Berlin in 1953.

Although Krützfeld was neither a resistance fighter nor a victim of the Nazi regime, a plaque on Oranienburger Street in Berlin memorializes his act of civil courage in standing up to the Nazi storm troopers.²³⁶ In 1993 the German state of Schleswig-Holstein, which incorporates his hometown, renamed its police academy in his honor.²³⁷

- **Conduct community outreach:** As in the before stage, criminal justice professionals can leverage relationships and communication structures they have built with the community to gather information and identify and implement opportunities for mitigation. Through established networks, public consultations, or community dialogues, law enforcement can collect information about threats to public safety; protection needs, including those of women and children; and intelligence on suspected perpetrators. These networks may also be important for gathering evidence for criminal investigation and prosecution. When tensions between groups arise, criminal justice professionals can work with local networks to support dialogue and dispute resolution and address misperceptions and risks.

BOX 3.14. EXAMPLES OF COMMUNITY OUTREACH

Iraq: Preexisting Dialogue Network Mitigates Tensions

In Iraq local nonstate actors participated in the Justice and Security Dialogue Project (JSD, supported by the US Institute of Peace) to address tensions between internally displaced persons (IDPs) and local residents. At the time the extremist Islamic State of Iraq and the Levant occupied large swaths of Iraq, displacing over three million people. Local communities in Baghdad, Kirkuk, and Karbala provinces were suspicious that IDPs were linked with the Islamic State. Sectarian tensions and strained local resources also threatened to spark conflict between IDPs and host communities.

To address the growing risks, JSD committees incorporated IDP representatives and facilitated dialogues that brought together law enforcement agencies, IDPs, and other community members. The process addressed misperceptions and fostered collaboration to address national security threats linked with the IDP crisis, such as the recruitment of some IDPs into criminal or terrorist activities.²³⁸

South Africa: Peace Infrastructure for Interim Justice and Security Issues

As South Africa transitioned from apartheid to democracy, control over justice and security institutions was unclear. Violence and crime increased, and injuries and fatalities at large public gatherings were common.

South African political parties negotiated the National Peace Accord, which created a “peace infrastructure” consisting of a national committee, 11 regional peace committees, and local peace committees. Representatives from the parties to the agreement served on regional committees, while local committees were established with the consent of the local population.

The local committees played an active role in preventing violence associated with protests. Because of their social networks and closeness to the community, they acted as early warning mechanisms for impending violence. Local committees mediated disputes between political and nonpolitical groups, and between individuals and the police. They enabled communities to solve problems through dialogue at local levels.²³⁹

- **Ensure police, prosecutors, and judges uphold rule of law and human rights.** The courts can play a role in protecting civilians who have been illegally arrested or detained or who have been subject to enforced disappearance by hearing petitions brought by detained persons, their legal counsel, or their families.²⁴⁰ Under the International Covenant on Civil and Political Rights, “[e]veryone who is deprived of his or her liberty has the right to take proceedings before a court, without delay, to challenge the lawfulness of the deprivation of liberty”²⁴¹ and that “[t]he court must order the release of a person who has been unlawfully deprived of his or her liberty.”²⁴² A key question to consider is whether domestic laws and legal practices adequately protect individuals from arbitrary arrest and detention, as well as from other abuses of state power that can arise in the context of mass atrocities, such as torture. Box 3.15 illustrates this challenge with an example from the Holocaust. Criminal investigation and prosecution of mass atrocity crimes are discussed further in other sections.²⁴³

BOX 3.15. EXAMPLE OF UPHOLDING RULE OF LAW

Nazi Germany: Family Court Judge Rejects Legality of Hitler’s Authorization to Kill Persons with Certain Mental Illnesses and Disabilities, 1940

Lothar Kreyssig was born to Protestant parents in Germany in 1898.²⁴⁴ His father was a businessman in the wholesale grain trade. Kreyssig fought in World War I, serving on multiple fronts. After the war he studied law and became a state court judge in Chemnitz in 1928. Unlike most of his colleagues, Kreyssig did not join the Nazi Party after 1933 when Hitler came to power. His activities as a leader in the Confessing Church, which opposed Nazi interference in religious affairs, led the Ministry of Justice to open disciplinary proceedings against him on multiple occasions.

In 1937 Kreyssig requested a transfer to the district court in Brandenburg, where he remained for the rest of his legal career. In early summer 1940, as a guardianship judge, he received reports of the sudden deaths of mentally ill patients from his district. He correctly deduced that there was a secret killing program underway in direct violation of the law. (This program is known as Aktion T-4.)²⁴⁵

Kreyssig reported his suspicions to his superiors. In a July 8, 1940, memo to Reich Minister of Justice Franz Gürtner, Kreyssig wrote, “In the following remarks, I take for granted that my assumption is correct, that is, certain mentally ill patients are being taken from institutions and killed without the knowledge of their relatives, legal guardians, or the guardianship court, without the guarantee of an orderly legal process and without the proper legal foundation.”²⁴⁶

Kreyssig filed a criminal complaint against Philipp Bouhler, an officer in the SS (*Schutzstaffel*, or Protection Squadron, an elite Nazi Party paramilitary organization), whom Kreyssig learned had been responsible for carrying out the killing program. Further, Kreyssig issued an order preventing the transfer of patients from his jurisdiction without his approval.

The Ministry of Justice officials called Kreyssig to Berlin for consultation. They showed him Hitler’s authorization for the secret killing program printed on his personal stationary. It said “Reichsleiter Bouhler and Dr. Brandt, M.D. are charged with the responsibility of enlarging the authority of certain physicians to be designated by name in such a manner that persons who, according to human judgment, are incurable can, upon a most careful diagnosis of their condition of sickness, be accorded a mercy death.”²⁴⁷

Kreyssig rejected the authorization as law, insisting that a law must be public, have provisions against arbitrary action, and provisions for appeal. In November 1940 Kreyssig asked to retire from the bench, citing his oath and his conscience. The Ministry of Justice carried out an investigation into Kreyssig and suspended Kreyssig with pay. Finally, in the summer of 1942 the regime ordered his premature retirement from the bench. Kreyssig spent the rest of the war on his farm in Brandenburg. He and his wife helped a Jewish woman named Gertrud Prochownik, who lived with them under a false identity. Yad Vashem honored Kreyssig and his wife as Righteous Among the Nations in 2016.²⁴⁸

After the war Kreyssig worked to reform the German Evangelical Church. In 1958 he cofounded Action Reconciliation Service for Peace, an organization to counter “racism, discrimination, and social exclusion.”²⁴⁹

- **Apply personal discretion—when possible—to mitigate conditions or save lives.** Criminal justice personnel may see opportunities to apply professional discretion to mitigate conditions during mass atrocities (see Box 3.16). Such scenarios are highly specific with respect to personal and professional risks, circumstances, integrity, and moral injury. Examining and reflecting on past historical examples or the personal experiences of self or colleagues can raise questions about the scope of discretion in different contexts, the moral or practical impact of such efforts, and the range of potential consequences in efforts seeking to limit the impact of harmful policies. Consequences could be as mild as nothing or being perceived as weak by a supervisor or as severe as imprisonment or death. In professional and public settings that place high value on ethical leadership and the responsibility of criminal justice professionals to protect, such efforts could prompt special awards or incentives.

BOX 3.16. EXAMPLES OF POLICE DISCRETION TO IMPROVE TREATMENT OF PRISONERS

Nazi Germany and the Holocaust

In recorded testimony Holocaust survivor Henry Kanner described how a policeman helped save his life when Kanner was a teenage prisoner. The policeman would routinely yell at Kanner to “clean his office” while pointing under his desk, where Kanner would find food and drink that helped him maintain his strength to survive his time in prison.²⁵⁰

Bosnia and Herzegovina (former Yugoslavia)

In the 1990s, during the conflict in the former Yugoslavia, police officers in Bosnia and Herzegovina detained Bosnian Muslims rather than kill them as ordered. They also gave detainees food and water. When their superior officers found out, they ordered the police officers to write reports explaining why they had failed to carry out orders and suspended them for three to four days.²⁵¹

During the Ahmici offensive in Bosnia and Herzegovina, even as Croat civilian police officers had been stripped of their powers, evidence exists of efforts to protect Muslims and Croats, including investigating offenses against Muslims in relation to a particular slaying.²⁵²

Apply Strategies to Deter (Potential) Perpetrators

Beyond direct efforts to protect civilians and targeted groups, criminal justice professionals can use their roles strategically to pressure or incentivize perpetrators or potential perpetrators not to commit mass atrocities. Here are some approaches:

- **Reaffirm professional oaths to uphold the Constitution and rule of law.** In increasingly polarized environments, this action reminds professional colleagues of their responsibilities to respect and enforce the rule of law rather than the orders of one leader or supervisor when those orders may be unlawful or legally questionable. In some cases setting such expectations for professional behavior may help restrain some individuals from rationalizing their acceptance of or participation in mass atrocities in the name of following orders or implementing policy from above. Opportunities to review professional responsibilities and explore the motivations and pressures that could compel professionals to become complicit (economic concerns, fear of punishment for nonparticipation, commitment to destructive ideology, loyalty to colleagues or professional status) can enable professionals to anticipate and manage such pressures ahead of time. Boxes 3.17 and 3.18 below provide examples of how some officials responded to conflicts between demands from senior leadership and their understanding of professional responsibilities.

BOX 3.17. EXAMPLE OF REFUSING LOYALTY TO A LEADER WHO CLAIMS HE IS ABOVE THE LAW**Nazi Germany: Public Prosecutor Refuses to Swear Oath to Hitler, 1934²⁵³**

Martin Gauger, age 29, had a promising career as a prosecutor. He received excellent evaluations from his supervisors who regarded him as competent, motivated, and reliable. Gauger's family was nationalist, conservative, and patriotic; he seemed well on his way to a long, successful career in the administration of justice. When German President Paul von Hindenburg died in August 1934, German chancellor Adolf Hitler seized the chance to gain even more power. Hitler assumed the powers of the presidency while remaining chancellor of Germany. He called a referendum in which he asked voters to confirm this change. Gauger was not enthusiastic.

On August 19, 1934, almost 90 percent of the German people voted “yes” in the plebiscite. Though the process was not free and fair, the outcome validated Hitler's action. The next day all government employees were required by law to swear the following oath: “I swear I will be true and obedient to the Führer of the German Reich and people, Adolf Hitler, observe the law, and conscientiously fulfill the duties of my office, so help me God.”

As a junior prosecutor, Gauger refused. On August 25, 1934, he wrote to the presiding judge of his court, “After careful consideration I find, in good conscience, that I am not able to swear the loyalty oath to the Reich Chancellor and Führer, Adolf Hitler, as required of all officials by Reich law of August 20, 1934.” Five days later, he resigned from his position.

Gauger acted because he recognized the arbitrary nature and the increasing “lawlessness” of the Nazi state. Hitler's official title (Führer and Reich Chancellor), his assumption of the powers of the presidency, and the expansion of state authority under the emergency decree meant that Hitler had authority beyond the legal constraints of the Constitution and the state apparatus. This extralegal line of authority, known as a “Führer Order,” extended through the ranks of the Nazi Party, the SS (*Schutzstaffel*, or Protection Squadron, an elite Nazi Party paramilitary organization), the state bureaucracy, and the armed forces. It allowed for agencies of the party, state, and armed forces to operate outside the law when necessary to achieve the ideological goals of the regime, while maintaining the fiction of adhering to legal norms.

Gauger wrote to his brother, Siegfried, “I could not swear an unlimited oath of loyalty and obedience to a man who is bound neither by the law nor the tradition of justice.”²⁵⁴

BOX 3.18. EXAMPLE OF SWITCHING LOYALTY FROM DEFENDING THE STATE TO PROTECTING THE PEOPLE**Burma: Police and Soldier Defections after the 2021 Military Coup**

As police and security forces enforced the Burmese military's brutal crackdown on public protests that arose after the military's coup in February 2021, hundreds of police and other security forces defected from government service following the coup to join the civil disobedience movement opposing the military and calling for democracy.

Researchers found that motivations for defecting included moral disgust, anger, and shame about the violence directed toward civilians; disapproval of military corruption and the leader's selfishness; and inhumane treatment and abuses of soldiers that existed within the military well before the coup.²⁵⁵

One officer stated: "The main duty of the military is to protect the country but in Myanmar, they kill the people and always try to rule the country. I do not want to be hated by the people. That is why I chose to stand on the people's side. Killing the people is like killing my family members."²⁵⁶

Researchers from the Danish Institute for International Studies estimated that by April 2022, at least 600 police officers defected to join the civil disobedience movement.²⁵⁷ Other police officers have quietly resisted by warning protestors and avoiding participation in violent crackdowns.²⁵⁸ These officers "tend to be from civilian branches of police, rather than the paramilitary units, like the riot and counterterrorism police."²⁵⁹ They have been "exposed to training in democratic models of policing over the past decade, that focuses on servicing the citizens rather than protecting the regime." They also have close relationships with ordinary citizens and tend to support pro-democratic forces. One older police officer posted a video on Facebook, stating: "I could not tolerate anymore what the military did to the people [during protests in February]. What the military has done to the people is opposite what the law that I know says. So, starting from 1 March I decided clearly to join the CDM [Civil Disobedience Movement] and boycott the military until we are free of them."²⁶⁰

Some obstacles to desertion include fear of prosecution, torture, and loss of livelihood and protection for family members.

- **Enforce professional codes of conduct and ethical standards for criminal justice and state professionals regardless of seniority:** Enforcing professional codes can reinforce ethical standards and constitutional principles and dissuade state actors from enabling or perpetrating mass atrocities.
- **Disrupt criminal networks or recruitment strategies that enable armed groups or perpetrators:** This measure can be carried out through coercive tools, including lawful arrests, asset freezes, civil forfeiture, or other sanctions. This measure can also be supported with incentives such as legal guidance or moral suasion or through disarmament, demobilization, and reintegration programs that include economic assistance, vocational training, and psychological support.²⁶¹ Incentives may include providing clear and secure processes for defection or surrender, as described in

Box 3.19.²⁶² Incentive programs can raise difficult questions about amnesty and accountability and should be informed by significant local consultation and deep awareness of the country’s historical context and current conditions.²⁶³

BOX 3.19. EXAMPLES OF DISRUPTING NETWORKS: PROMOTING DEFECTIONS AND SURRENDER FROM NONSTATE GROUPS OR MILITARY

Uganda: “Come Home” Messages Directed to Lord’s Resistance Army Combatants

In the 2010s the US government and international partners supported defection messaging programs targeting members of the rebel Lord’s Resistance Army led by Ugandan Joseph Kony. These low-cost programs broadcast “‘Come Home’ messages over radio channels, via loudspeakers in helicopters, and on leaflets tossed out of planes. Specific combatants were targeted with photos and recordings from family members and recent escapees.”²⁶⁴ Researchers found that these programs were especially effective at promoting defections when they targeted specific commanders, with messages from recent defectors who “convincingly argue that defectors will not face prosecution in Uganda or [T]he Hague.”²⁶⁵ Other important factors for success were ongoing military pressure and offering potential defectors the option to surrender to certain authorities or third parties (in this case US troops over the Ugandan military), who potential defectors may trust more than direct adversaries.²⁶⁶

Ukraine: “I Want to Live” Hotline for Russian Soldiers Who Wish to Surrender

In September 2022 Ukraine’s Ministry of Defense announced its “I Want to Live” hotline, through which Russian soldiers and draftees can surrender and receive “an opportunity to return home without being killed.”²⁶⁷ Russian soldiers can reportedly call the hotline when they reach a frontline area in Ukraine and be treated as if they had surrendered during fighting. They will be held as prisoners of war (POWs), exchanged for Ukrainian POWs, and possibly have the option of staying in Ukraine. Within weeks, the hotline had reportedly been used “thousands of times.”²⁶⁸ To help mitigate possible distrust of the Ukrainian authorities, Ukrainian President Zelenskyy gave an address in Russian during which he assured Russian soldiers they can surrender confidentially and be treated according to international humanitarian law. He stated, “It is better not to take a conscription letter than to die in a foreign land as a war criminal.”²⁶⁹ In December 2022 the Ukrainian military issued an instructional video for Russian soldiers on how to surrender to a drone.²⁷⁰

- **Gather and preserve evidence of suspected mass atrocity crimes.** Gathering evidence of mass atrocities may help deter serious crimes by signaling that perpetrators could face criminal prosecution. In situations of armed conflict, it may nudge parties to adhere more consistently to international humanitarian law. Regarding atrocities committed in northern Ethiopia in 2022, one investigator reported that after posting images of crimes specific to that conflict, group leaders allegedly responsible claimed that they subsequently directed their men to avoid attacks on civilians.²⁷¹

Police, prosecutors, and investigating judges (depending on the legal system) can take statements from witnesses and victims, develop protocols for witness and victim protection, preserve physical evidence, and secure crime scenes including mass graves. They can also coordinate with

national and international organizations dedicated to documentation and evidence collection. In some cases these organizations can recruit volunteers, and overall they can improve professional capacity to gather and store relevant evidence and coordinate across regions.²⁷²

Drawing from specialized expertise is important for understanding the needs and constraints that at-risk countries may face regarding evidence collection and preservation. This includes reviewing that documentation methodologies, linkage evidence, chain of custody practices, and witness interviews meet the high evidentiary standards for criminal trials involving atrocity crimes. The potential need for forensic pathology expertise, pathology laboratories, and secure facilities for evidence storage should be considered. In 2020 the Berkeley Protocol on Digital Open Source Investigations was created through a partnership between the United Nations Office of the High Commission for Human Rights and the Human Rights Center at the University of California, Berkeley, School of Law.²⁷³ The protocol offers a practical guide and set of standards—including ethical principles and legal frameworks—for the use of open source information when investigating atrocity crimes and human rights violations.

Many international organizations can assist in gathering and preserving evidence of mass atrocities, and some can provide training on this topic. Examples include the Institute for International Criminal Investigations, Physicians for Human Rights, the Peruvian Team of Forensic Anthropology, and Bellingcat. Digital tools such as eyeWitness to Atrocities, a phone app for gathering evidence, can also be important resources. In 2018 two high ranking members of the Democratic Front for the Liberation of Rwanda militia in the Democratic Republic of Congo were found guilty of crimes against humanity and war crimes after evidence was submitted through the app.²⁷⁴

BOX 3.20. EXAMPLE OF GATHERING EVIDENCE

Ukraine: Advancements in Evidence Collection

In the context of the 2022 Russian invasion of Ukraine, Ukrainian organizations built on experience documenting crimes amid Russian aggression in 2013 and 2014. They also drew from the expertise of other organizations, such as the Atlantic Council’s Digital Forensic Research Lab,²⁷⁵ which have documented mass atrocities in Syria.²⁷⁶ One expert noted that organizations working in Ukraine are considering linkage evidence significantly earlier than they had in the past, taking into account “chain of command questions, the unit location, direction of firing,”²⁷⁷ and chain of custody issues in handling evidence and other details that are important to successful prosecutions. Though these advancements are the tragic consequence of persistent conflict, the hope is that they will contribute to reducing atrocity risk over the long term.

- **Prosecute alleged perpetrators.** Similar to gathering evidence, prosecution—where possible—may help dissuade or impede perpetrators and potential perpetrators from committing atrocities, though the deterrent effects of prosecution are difficult to measure. Individual prosecutors and judges, or the national prosecution service or judiciary as a whole, can adopt a general strategy to pursue prosecution for mass atrocity crimes, either based on international legal definitions if they have been incorporated into domestic law or under other applicable laws. Mobile courts in the Democratic Republic of Congo have been operating in the midst of ongoing violence and have resulted in convictions.²⁷⁸ In the first years of the Nazi regime, at least one official attempted to

prosecute serious crimes, and while police blocked the investigation, this effort resulted in the dismissal of the alleged perpetrator from his position (see Box 3.21). Prosecution is less likely to provide deterrence in the near term in situations where the criminal justice system does not have control over parts of the country or where rebel groups are more powerful than state institutions. For example, in Darfur, where the Janjaweed overpowered the police, the population considered the police to be ineffective. The population was thus not inclined to bring criminal complaints and feared reprisals.²⁷⁹

BOX 3.21. EXAMPLE OF PROSECUTIONS DURING ATROCITIES

Nazi Germany and the Holocaust: Karl Wintersberger, Chief Prosecutor of the Second State Court in Munich, Investigates Nazi Crimes in Dachau, 1933

Karl Wintersberger was lead prosecutor in the State's Attorney's office of the Second District Court in Munich (Landgericht München II) when the Nazis came to power in Germany in January 1933. In March 1933 the Nazis established the Dachau concentration camp near Munich. Initially it was guarded by policemen, but in April 1933 the Nazi SS (*Schutzstaffel*, or Protection Squadron, an elite Nazi Party paramilitary organization), took over command of Dachau.²⁸⁰ The new SS guards treated prisoners with brutality, killing at least 12 of them extralegally in April and May.²⁸¹ The judicial system was responsible for investigating deaths that occurred in Dachau. In April 1933 the camp reported that several prisoners had been shot while trying to escape. Wintersberger and his subordinate Josef Hartinger investigated the deaths and ordered autopsies. They discovered compelling evidence that the Jewish prisoners had been murdered and that the camp administration had tried to cover it up by staging the murders to look like escape attempts. Later, autopsies and investigations also revealed that two supposed suicides were in fact murders that camp authorities had tried to cover up to avoid prosecution and public disapproval.

Wintersberger filed a complaint against those responsible for the murders, and against the camp leadership as an accessory on June 1, 1933. This included the camp doctor and Hilmar Wäckerle, the SS commandant of the camp.²⁸² However, the investigation went nowhere, thanks to police under Heinrich Himmler's command. In a compromise Wäckerle was dismissed as commandant of Dachau concentration camp and Wintersberger was transferred to head the prosecutor's office in Bamberg.

In 1940 Wintersberger was appointed to a judgeship at the state court in Bamberg. He retired from the bench in 1945 but returned to the court, this time working for the American occupation government. He retired in September 1947.

AFTER ATROCITIES

This section surveys the role of criminal justice professionals after mass atrocities have occurred, such as when armed conflict has subsided or ended.

Risks and challenges facing society in the after stage are often uniquely severe, characterized by “deeply broken social trust and high levels of trauma.”²⁸³ Significant numbers of lives have been lost, and survivors may suffer displacement, challenges in accessing basic services, and significant physical and mental health consequences.²⁸⁴ New leaders may be in power or sharing power.

Conditions similar to the before stage may exist—such as tension and polarization, economic problems, and low trust in state institutions—but the conditions may be much worse and take longer to address.²⁸⁵ The risk that violence could recur is high.²⁸⁶ In cases where state agents were involved in mass atrocities, government institutions may experience internal pressure not to seek accountability.

BOX 3.22. WHAT TOOLS WILL BEST HELP AVOID RECURRENCE?

What Criminal Justice Tools Can Help People Now?

As in the before and during stages, a central question relating to criminal justice in the after stage is, *What role can criminal justice institutions and professionals play in helping reduce risk and build resilience so that recurrence of mass atrocities becomes less likely?*

Additionally, which criminal justice tools can help people—many of whom may be displaced and especially vulnerable to organized crime or renewed attacks—now?

Consistent with the US Department of State’s guiding principles on justice sector assistance listed in the introduction of this Guide (see Box I.1),²⁸⁷ program implementers and justice actors are encouraged to take time to reflect on these questions. The unique circumstances of each context should ground strategies for moving forward. Preliminary reflection, background research, and consultation with affected groups can help reveal priorities and conditions that could influence the sequencing and design of approaches in a particular place.²⁸⁸

Generally, the role of criminal justice in the after stage falls under two broad, related areas. The first concerns transitional justice, which involves efforts to redress or reckon with the legacy of mass atrocities through diverse processes that support justice, accountability, and reconciliation. The second area involves building, reforming, and strengthening justice institutions and legal structures so that they have the resilience to avoid recurrence of violence and instability, and promote a more peaceful future.

Particularly since the end of the Cold War, transitional justice processes such as domestic or international criminal trials for perpetrators of mass atrocities have become the most widely recognized forms of redress in the after stage. A 2010 study found that 90 percent of countries that had experienced genocide or politicide (the mass killing of a political group)²⁸⁹ implemented accountability mechanisms.

The efficacy of transitional justice mechanisms with respect to promoting peace and non-recurrence of violence is difficult to measure. These tools *may* have impact—particularly when survivors or the general public perceive them positively, or if they contribute to other reforms. Nonetheless, the need to explore and develop additional tools for prevention before, during, and after mass violence remains urgent. This section accordingly surveys a (non-exhaustive) variety of criminal justice tools concerned with transitional justice and rule of law reform after mass atrocities.

Transitional Justice

According to the US Department of State, “[t]ransitional justice refers to a range of measures—judicial and non-judicial, formal and informal, retributive and restorative—employed by countries transitioning out of armed conflict or repressive regimes to redress legacies of atrocities and to promote long-term, sustainable peace.”²⁹⁰ Through these processes, societies can address difficult questions such as how to

- Confront the past without inspiring revenge
- Decide who should be held responsible for violations
- Restore public trust in institutions that perpetrated or failed to respond to mass atrocities
- Promote reconciliation and trust among divided communities
- Develop and agree on a shared history or collective memory
- Prevent the cycle of violence from repeating
- Compensate those who were harmed

Transitional justice’s emphasis on redress for past crimes addresses the key risk factor of unpunished violence. By seeking to address the needs of victims, repair social trust, and restore confidence in the state,²⁹¹ transitional justice processes also target risk factors such as instability, prior discrimination, and exclusionary ideology.

Transitional justice processes, however, are not a panacea for reconciling divided societies and restoring rule of law. Amid the challenges of polarization, fragile institutions, limited technical capacity, and slow bureaucracies, these processes are vulnerable to political manipulation and can be slow, expensive, and re-traumatizing for victims.²⁹² However, transitional justice processes also have the potential to uncover the truth of events, incapacitate spoilers, offer opportunities for healing, inspire social and institutional change, and promote rule of law. The value and effectiveness of transitional justice processes thus depends in part on how leaders in the justice sector and other stakeholders align the design and implementation of transitional justice processes with local values and needs (including ongoing risk factors). They also depend on whether stakeholders can navigate political complexity to uphold the integrity of transitional justice processes and publicize their operations and outcomes, and how efficiently and impartially processes are carried out.²⁹³

Transitional justice processes take different forms, comprising judicial and nonjudicial mechanisms or tools. They may or may not involve international partners. They include

- Criminal trials (international, domestic, or hybrid, which target individual wrongdoing)²⁹⁴
- Fact-finding or truth-telling bodies
- Reparations (makes amends to victims through restitution, compensation, apologies, or other means)
- Lustration/vetting (removes perpetrators and architects of violence from governance structures)
- Memorialization (recognizes and preserves the memory of past violence and educates future generations)
- Institutional and rule of law reform (helps repair harm by promoting reforms that mitigate conditions that led to violence and prevent recurrence)

Programs that support transitional justice processes might take into account a variety of considerations when selecting and implementing different tools, based on consultation with a wide range of stakeholders. Relevant issues include domestic political dynamics; applicable laws; local preferences and constraints on how peacebuilding should be sequenced (e.g., how to prioritize rebuilding livelihoods, reducing

displacement, demobilizing armed groups, controlling petty or organized crime, seeking justice for mass atrocities); local understandings of what justice requires; and available resources, equipment, and technical capacity to implement transitional justice mechanisms. In different contexts, transitional justice tools could interact with these considerations in diverse ways.

Criminal Prosecutions

This subsection briefly highlights the different structures that support prosecution, including the International Criminal Court, hybrid courts, domestic courts, and courts that apply universal jurisdiction.

International Criminal Court

Prior to the 2002 establishment of the International Criminal Court (ICC) in The Hague, international tribunals had been established in the aftermath of World War II (International Military Tribunal at Nuremberg and International Military Tribunal in the Far East) and in the 1990s after the fall of the Soviet Union (International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda). Even as these bodies were costly and time-consuming, the case law of these ad hoc tribunals made significant contributions to the development of international criminal law.

In July 2002 the ICC was established in The Hague when the multilateral treaty that constitutes the ICC, the Rome Statute, entered into force. In addition to Security Council referral under Chapter VII of the UN Charter (article 13(b)), a State Party to the Rome Statute may refer a situation to the prosecutor for investigation (article 14) or the prosecutor may initiate an investigation on the basis of information on crimes within the ICC's jurisdiction (article 15). States that have ratified the Rome Statute are subject to the ICC's jurisdiction for the crimes of genocide, crimes against humanity, war crimes, and aggression committed either by nationals of the country or on its territory. Under a Security Council referral, the ICC may also prosecute an individual from a state that is not party to the Rome Statute.

The ICC operates according to a principle of “complementarity,” wherein states assume the primary responsibility for prosecuting and trying genocide, crimes against humanity, and war crimes. The ICC will only assume jurisdiction over mass atrocities where the state is “unwilling” or “unable” to investigate or prosecute these crimes (article 17).

A key question regarding the ICC and criminal prosecutions for mass atrocities is whether the focus country is party to the Rome Statute. A state party may face ICC scrutiny regarding whether the state has met its obligations to investigate or prosecute atrocity crimes. This was the case for Kenya following election violence in 2007–2008. Moreover, since the ICC does not have its own police service, state parties have a variety of responsibilities to assist the ICC in enforcing its mandate.²⁹⁵

Program implementers and criminal justice professionals from different regions should be aware of developments over the past decade in how certain states engage with the ICC. Some African leaders have accused the ICC of bias in pursuing cases in Africa. In 2017 the African Union passed a nonbinding resolution encouraging member states to withdraw from the ICC. Burundi became the first state to withdraw in October 2017. However, public perceptions of the ICC in countries (such as Kenya) that have had cases before the ICC seem more supportive of the court's efforts.²⁹⁶ Fewer states in Asia have ratified the Rome Statute, and the Philippines withdrew from the ICC in March 2019 after the prosecutor began a probe into alleged crimes against humanity committed in the context of the government's policies against illegal drugs.

The United States is not a party to the Rome Statute and its relationship with the ICC has varied. US lawyers participated in negotiating the Rome Statute in 1998, and President Bill Clinton signed but did not ratify the

agreement based on concerns that US military personnel serving abroad were not adequately protected from the ICC's jurisdiction. President George W. Bush unsigned the Rome Statute. While the United States engaged with the institution under President Barack Obama, sanctions and visa restrictions were imposed on the chief prosecutor and other ICC personnel under President Donald Trump in response to the prosecutor's investigation into alleged war crimes by the United States in Afghanistan and by Israel in the Palestinian territories. The Biden administration lifted those sanctions and restrictions in April 2021.

Hybrid Courts

Hybrid courts grant international criminal justice professionals legal powers to apply specialized expertise to work as either prosecutors, judges, or defense counsel in another state (see Box 3.23 for examples). In such roles they work side by side with domestic criminal justice actors through specialized courts, chambers, departments, or prosecutorial offices. Hybrid models of justice may be particularly useful in situations where domestic actors are vulnerable to political pressure in their decision making or where judicial and prosecutorial independence is threatened.

BOX 3.23. EXAMPLES OF HYBRID COURTS²⁹⁷

- Special Court for Sierra Leone
- Special Panels of the Dili District Court (Timor-Leste)
- War Crimes Chamber in Bosnia and Herzegovina
- Extraordinary Chambers in the Courts of Cambodia
- Special Criminal Court in Côte d'Ivoire
- Extraordinary African Chambers in Senegal
- Special Criminal Court in Central African Republic

Hybrid Court for South Sudan

In 2018 the United Nations Commission on Human Rights in South Sudan called for the establishment of a hybrid court for South Sudan.²⁹⁸ In January 2021 the government of South Sudan agreed to form a hybrid court. Some citizens have voiced concerns that such a mechanism could increase tensions and undermine local authorities,²⁹⁹ while others see it as an important step toward justice.³⁰⁰ As with all criminal justice tools, some key questions for programs exploring international and hybrid courts in a particular context relate to these mechanisms' influence on security, accessibility to the public, and coherence with local understandings of and approaches to justice. At the time of this Guide's publication in 2023, the Hybrid Court for South Sudan had not yet been formed.³⁰¹

Domestic Courts and Specialized Units with International Support

Criminal justice professionals such as police, prosecutors, and judges are the primary actors in the domestic investigation, prosecution, and trial of mass atrocities. As noted in chapter 1, if domestic law does not criminalize genocide, crimes against humanity, and war crimes, programs can explore how other provisions of domestic law may be used to address these crimes (such as the criminal offenses of murder, kidnapping, torture, assault and grievous bodily harm, and rape), while framing them as having taken place in the context of systematic violence and mass atrocities. Programs can also look at codifying atrocity crimes in domestic legislation while specifying that these crimes already existed under

international law. Enhanced penalties after conviction or complementing trials with other transitional justice tools such as a truth commission can help reflect the gravity of the crimes and their consequences.

National courts can address mass atrocities in different ways. Cases may be investigated exclusively by local police or investigating judges, prosecuted by local prosecutors, and tried before local judges. National courts tried crimes relating to mass atrocities in El Salvador, Peru, Iraq, Mali, Argentina, and in Guatemala before the CICIG (discussed previously on page 42) was established in Guatemala. In post-apartheid South Africa and in Kenya after the election violence in 2007–2008. Varying degrees of international support may be provided to domestic personnel. Cases may be channeled either through the general criminal courts or through newly established courts, panels, or units. In Tunisia, Tunisia, the Tribunal of First Instance heard atrocity crime cases.³⁰²

BOX 3.24. EXAMPLES OF DOMESTIC COURTS

Bosnia and Herzegovina

In Bosnia and Herzegovina (BiH), war crimes are prosecuted through the Organized Crime and General Crime Chamber of the Criminal Division of the State Court of BiH as well as the War Crimes Chamber in the Court of Bosnia and Herzegovina (WCC), which has operated since March 2005.³⁰³ The Office of the Prosecutor of the BiH State Court operates a Department for War Crimes, including five regional prosecution teams and a sixth team devoted to the Srebrenica massacre. In 2017 prosecutors in Sarajevo indicted 14 Bosnian Muslims for war crimes allegedly committed in the town of Konjic. The alleged crimes include “murder of several dozen Serb civilians, both men and women of different age[s], torture, robbery, and persecution of nearly the whole Serb population from the Konjic area.”³⁰⁴ Four Bosnian Serb military officers were also indicted in 2017 for genocide. In 2018 Bosnian state prosecutors doubled the number of individuals charged for crimes over 2017, issued 27 verdicts, and sentenced 43 people to more than 340 years in prison.³⁰⁵ However, some Bosnian war crimes prosecutors have been criticized for not filing indictments in 2018.

Democratic Republic of the Congo: Mobile Courts

In 2008 international and Congolese organizations began to carry out military and civilian rape trials in mobile courts in remote areas of eastern Democratic Republic of Congo, including South Kivu, North Kivu, and Maniema provinces. The mobile courts “operate for a limited period of time,” and involve judges, prosecutors, defense lawyers, and bailiffs. For many residents of the areas who observe these trials, the experience may be the first time they have seen a judge or lawyer.

The mobile courts represent the only practical means by which rape survivors and other victims can obtain justice in DRC’s remote areas, including for crimes against humanity under international law.³⁰⁶ The courts have overseen successful prosecutions for rape as a crime against humanity.³⁰⁷ In December 2018 and January 2019 the mobile court in Bentiou convicted 14 defendants of offenses such as murder, rape, and armed robbery. Some of the defendants received prison sentences of 6 to 12 years.³⁰⁸

Universal Jurisdiction

Universal jurisdiction over atrocity crimes may be relevant for criminal justice and mass atrocity prevention to the extent that the country in focus recognizes or seeks to adopt the principle of universal jurisdiction, or if that state's nationals are under consideration for prosecution in a state whose laws recognize universal jurisdiction.

To prosecute a crime, a country must establish jurisdiction of some sort. The most common form of jurisdiction asserted over criminal matters is territorial jurisdiction; the state has the right to prosecute the case because the crime took place in its territory. Some states also assert personal jurisdiction over their citizens in situations where the citizen commits a crime in another country. Finally, some states assert criminal jurisdiction over individuals who commit crimes against their citizens.

When a state asserts universal jurisdiction over a mass atrocity, it seeks to prosecute a person for these offenses irrespective of where they took place, who committed them, or against whom they were committed. Universal jurisdiction is a ground of jurisdiction that does not require linkages to the sovereignty of the state in the way that territorial and extraterritorial jurisdiction do.

The scope and legal basis of universal jurisdiction is not internationally agreed on, although it is long recognized that universal jurisdiction can be asserted over piracy, slavery, slave trading, and genocide.³⁰⁹ In the last half-century an expanding series of treaties has recognized universal jurisdiction over serious international crimes, such as “grave breaches” of the 1949 Geneva Conventions and the 1977 Geneva Protocol I and over certain acts of international terrorism such as hijacking aircraft and torture.³¹⁰ The most recent treaties, ratified by many states, authorize universal jurisdiction over terrorist bombings and financing of terrorism.³¹¹

Universal jurisdiction is most commonly recognized to varying degrees by Western European states, such as France, Germany, and Spain. Before repealing its law on universal jurisdiction, Belgium tried cases against Rwandan citizens for crimes committed during the Rwandan genocide. In 2022 a German court convicted and sentenced to life imprisonment a Syrian intelligence officer for crimes against humanity in connection with torture and abuse in a Syrian prison. In 2021 an Argentine court approved the justice system's investigation of allegations of war crimes committed by the Burmese military against the Rohingya minority. In 2022 members of China's Uighur Muslim community filed a criminal complaint in Turkey against Chinese officials, alleging that the officials had committed genocide and crimes against humanity against the Uighur community in China. As noted in the “Before Atrocities” section, the 2013–2016 trial of former Chadian leader Hisssein Habré in the Extraordinary African Chambers in Senegal was the first universal jurisdiction case to go to trial in Africa.

Fact-Finding Bodies

Fact-finding bodies seek to gather detailed information and documentation about situations in which mass atrocities or serious human rights violations may be a risk or have taken place. They can take national or international forms and can include government officials, independent experts, or other non-governmental actors. Depending on their mandates, these bodies can help establish a credible record of events which can in turn inform legal processes or other policy responses. Some examples are highlighted below.

United Nations-Led Commissions of Inquiry

The United Nations (UN) authorizes commissions of inquiry, fact-finding missions, and investigations in response to situations of serious violations of international humanitarian law and international human rights law, including mass atrocities.³¹² Over the past few decades, the UN has assessed serious situations

of human rights and humanitarian law violations in the former Yugoslavia, Darfur, Iraq, Timor-Leste, Lebanon, Guinea (see Box 3.25), Côte d'Ivoire, Libya, occupied Palestinian territory, the Syrian Arab Republic, the Democratic People's Republic of Korea, Sri Lanka, and the Central African Republic.³¹³

These nonjudicial bodies are temporary, established either by an intergovernmental body or by the Secretary-General or the High Commissioner for Human Rights. They are typically set up in the absence of or to support domestic efforts to gather facts and evidence with a view to encouraging governments to carry out or cooperate with accountability efforts or for future use in criminal trials.

They investigate allegations of violations of international human rights, international humanitarian law, or international criminal law, and make recommendations based on their factual and legal findings.³¹⁴ They have supported proceedings at the international tribunals for Rwanda and the former Yugoslavia, and the International Criminal Court.³¹⁵ Commissions of inquiry often gather the names of alleged perpetrators, create a confidential list, and hand them over to the Secretary-General or the High Commissioner for Human Rights.³¹⁶ In conducting their investigations, commissions of inquiry will examine the perpetration of mass atrocities committed by state actors, including criminal justice professionals, and nonstate actors.

BOX 3.25. COMMISSION OF INQUIRY LEADS TO PROSECUTION OF SEXUAL VIOLENCE

In Guinea, aligned with a national effort to combat impunity, a team of international experts supported the investigation of crimes of sexual violence perpetrated in Conakry in September 2009.³¹⁷ The government conducted more than 450 hearings, which included the testimony of at least 200 victims and witnesses of sexual violence, and indicted 14 officials.³¹⁸ The team of experts committed to supporting preparation of the trials, which finally commenced against 11 defendants in September 2022. Former president Captain Moussa Dadis Camara, who had seized power in a coup, was among the defendants.³¹⁹

United Nations “Special Procedures”

The Human Rights Council, an intergovernmental body within the UN system, has the power to establish “special procedures,” another series of mechanisms that can help provide redress for mass atrocities. Under these special procedures, independent human rights experts are appointed to advise on human rights from a thematic or country-specific perspective. In some cases working groups are established, and in other situations an individual is appointed as a Special Rapporteur.

The special procedures address several thematic issues that overlap with mass atrocity risk contexts. For example, there is a Working Group on Arbitrary Detention; a Working Group on Enforced or Involuntary Disappearances; a Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; a Special Rapporteur on the Independence of Judges and Lawyers; and a Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Special Rapporteurs are also appointed when serious concerns of human rights violations exist.

Special Rapporteurs or Independent Experts have been appointed to examine human rights and international humanitarian law violations in at-risk countries such as the Central African Republic, the Democratic People's Republic of Korea, Burma, Sudan, Mali, Somalia, and Syria. With support from the Office of the High Commissioner for Human Rights, these special procedures undertake country visits,

act on individual cases and concerns for broader structural issues, send communications to states and others, conduct thematic studies, raise public awareness, and engage in advocacy.³²⁰

Truth Commissions

Truth commissions are distinct from international fact-finding mechanisms. Typically, they “are official, nonjudicial bodies of a limited duration established to determine the facts, causes, and consequences of past human rights violations.” With an emphasis on testimonies from survivors, truth commissions acknowledge the suffering of those most affected. Through their findings and recommendations, they can support prosecutions, reparations programs, and institutional reforms that address past abuses and prevent their recurrence.³²¹

Examples of truth commissions are the South African Truth and Reconciliation Commission; the Guatemala Commission for Historical Clarification;³²² the Commission for Reception, Truth and Reconciliation in East Timor,³²³ which operated from 2002 to 2005; and the Solomon Islands Truth and Reconciliation Commission, which was formed in 2008 to investigate the causes of ethnic violence between 1997 and 2003. Since the 1970s there have been more than 40 truth commissions or commissions of inquiry in countries around the world.³²⁴

Reparations and Apologies

Reparations are a form of restorative justice, also discussed on pages 43–46 of this Guide. They involve making amends or repairing harm to victims of mass atrocities through restitution (which involves returning material property or rights that were lost through harm caused by the crime), compensation, memorials, apologies, or other means. Nonfinancial forms of reparations can include “restoring civil and political rights, erasing unfair criminal convictions, physical rehabilitation, and granting access to land, health care, or education.”³²⁵ Reparations can come about through truth commissions and other processes, such as community dialogues, fact-finding missions, NGO documentation, legislation, civil litigation, and even criminal trials.

BOX 3.26. EXAMPLES OF REPARATIONS

Reparations through Laws or Courts

- **Iraq.** In March 2021 Iraq adopted a law to provide reparations to women and girl survivors of atrocities committed by the Islamic State in Iraq and the Levant (ISIL).³²⁶
- **Guatemala.** In 2016 the *Sepur Zarco* case in Guatemala considered sexual violence against indigenous women during the country’s civil conflict. In addition to convicting former members of the military, the case resulted in reparations, including “monetary compensation, restitution, and rehabilitation. The reparations aimed at strengthening access to health and education in the communities where the litigants belonged, as well as the development of cultural projects for the women of Sepur Zarco and the translation of the judgment into the 24 Mayan languages.”³²⁷
- **ICC.** The Victims’ Trust Fund at the International Criminal Court implements reparations orders issued by the court after a perpetrator has been convicted and sentenced.

Reparations Requested by Affected Communities

- **Syria.** In February 2021 five Syrian-led victims’ associations released a “Truth and Justice Charter” outlining transitional justice tools and strategies that reflect victims’ perspectives and priorities.³²⁸ Among these are a means to deliver the remains of loved ones and secure the right to give them a grave.³²⁹
- **Guinea.** In 2012 the American Bar Association Rule of Law Initiative supported civil society consultation with a community in Guinea that had suffered under repression for 30 years. As a form of reparation, the community suggested building a road that would connect the community to the main city and be dedicated to the memory of the victims. In this way the community felt that their suffering would be recognized and also provide a solution that would support them in the future.³³⁰

Apologies are another form of reparation and can occur at the individual or state level. Individual apologies between perpetrators and victims may come about in a variety of circumstances, including through truth commissions, trials, or traditional or customary reconciliation processes. State-issued apologies are delivered by government officials and represent “collective apologies,” meaning they are either offered on behalf of or to specific communities.³³¹ Ideally, “a national apology asserts changed values, condemns past behavior, and commits to different, better actions in the future. Moreover, it can bring about a reconciliation between those harmed and the nation that caused the harm.”³³²

BOX 3.27. EXAMPLES OF APOLOGIES

In Courts and Reconciliation Processes

- **Rwanda.** In Rwanda, customary justice processes were adapted to cope with the extensive number of atrocity crimes that took place during the Rwandan genocide in 1994. Through the so-called “gacaca” courts, accused criminals acknowledged their guilt in exchange for victims’ forgiveness and lighter sentences, with mixed results.³³³
- **Uganda.** In the course of a brutal conflict in northern Uganda during the 1990s and 2000s, traditional chiefs adapted reconciliation rituals through which perpetrators acknowledged harm, paid compensation, and drank bitter herbs together with the affected community to help achieve reconciliation.³³⁴

State Apologies or Acknowledgements of Past Harm

- **Germany.** In 1970 German Chancellor Willy Brandt knelt at the memorial for the dead of the Warsaw Ghetto Uprising.
- **United States/Rwanda.** On a 1998 visit to Rwanda, US President Bill Clinton apologized for America’s failure to do more to stop the Rwandan genocide.
- **United States.** In 2017 Louis Dekmar became the first police chief in the American south to publicly apologize for law enforcement’s role in the history of lynchings. As he stood in a local church with civil society groups behind him, he apologized for his department’s inaction in the 1940 lynching of a young African American man.³³⁵
- **Bangladesh.** In 2008 the High Court of Bangladesh recognized the citizenship of a linguistic minority, the Urdu-speaking community. In its decision, the court acknowledged past harms by

the state when it cited the government’s protracted failure to end the community’s statelessness.³³⁶

Reparations can be “important to victims because they are often seen as the most direct and meaningful way of receiving justice. Yet, they are often the last-implemented and least-funded measure of transitional justice.”³³⁷ In addition, reparations can also lead to frustration, such as when they do not reach all victims or when they “compete for state resources with programs against poverty, unemployment, and lack of access to resources, like land.”³³⁸ In the Syrian context, some victims have criticized reparative processes as “not enough justice” or as a means to protect state impunity.³³⁹ These drawbacks reflect again how the effectiveness, or *perceived* effectiveness, of justice and accountability efforts is to some extent subjective and contextual.

Lustration or Vetting

Lustration³⁴⁰ is a transitional justice tool that removes from public office individuals implicated in human rights or international humanitarian law violations or abuses. The intent is to restore confidence in these institutions.³⁴¹ Lustration is implemented through vetting, which involves screening personnel in accordance with the lustration policy’s requirements.³⁴² Lustration and vetting involve administrative accountability and do not result in criminal liability, imprisonment, or fines.³⁴³

Challenges with lustration in practice can include issues of fairness and legality, such as dismissing people for practices that were not illegal at the time that they were carried out, and loss of bureaucratic or technical expertise in a context in which such expertise is rare and needed.³⁴⁴ The political dynamics associated with lustration are also difficult to balance. Although the continued presence of suspected perpetrators in official positions can hinder peacebuilding,³⁴⁵ resentment or politicization that could follow dismissal can also threaten stability. In Ethiopia the government’s removal of members of the past regime from influential positions is one grievance underlying conflict in the north that broke out in 2021.³⁴⁶ Similarly, scholars cite the de-Baathification process in Iraq as a contributing factor to renewed conflict in that country.³⁴⁷

BOX 3.28. EXAMPLES OF LUSTRATION AND VETTING

In some cases, such as in post-Soviet European states, lustration can extend to persons “associated” with a prior regime, but who were not necessarily directly implicated in the commission of crimes. Various forms of lustration and vetting have occurred in many contexts, including denazification programs after World War II; de-Baathification of Saddam Hussein’s regime after the 2003 US invasion of Iraq; and the removal of police officers implicated in human rights abuses between 1992 and 1995, a policy carried out by the United Nations Mission in Bosnia and Herzegovina.³⁴⁸

Protection of Witnesses and Justice Actors in Mass Atrocities Cases

Witnesses who testify in mass atrocities cases and their families may need to be protected for their own safety or to avoid witness intimidation before, during, or after a trial. Providing for physical protection of witnesses may require amendments to police law and administrative and operational procedures, as well as adequate funding for housing, food, and related costs. A police force may opt to establish a specially trained witness protection unit. For example, after the passage of the Witnesses and Victims Protection Act (2015) in Sri Lanka, a police division has been established to safeguard the rights of those reporting violent crimes.³⁴⁹

Before a trial, witnesses may receive temporary physical protection, whereby the police—usually through a specially trained witness protection unit—provide security for witnesses and their families. It may include providing safe housing under police protection. This type of protection continues until the trial is concluded and a final verdict has been delivered.

During a trial, there are numerous procedural tools that can be used to protect witnesses. The judge may order these protective measures. In addition, the prosecutor or the victim's or witness's lawyer may petition the court for one or more of these measures. They include

- Expunging from the public record any names, addresses, workplaces, profession, or any other data or information that could be used to identify a witness
- A prohibition on counsel for the accused revealing the identity of the witness or disclosing any materials or information that may reveal the identity of a witness
- The nondisclosure of any records that identify the witness, until such time as the judge decides otherwise or until a reasonable time before the trial, whichever occurs first
- The assignment of a pseudonym to a witness, where the full name of the witness is revealed to the defense within a reasonable period prior to trial
- Efforts to conceal the features or physical description of the witness giving testimony, including testifying (1) behind an opaque shield, (2) through image- or voice-altering devices, (3) through contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, or (4) through a videotaped examination of the witness prior to the hearing but only where counsel for the accused is present and can examine the witness
- The temporary removal of the accused from the courtroom if a witness refuses to give testimony in the presence of the accused or if the circumstances indicate that the witness will not speak the truth in the presence of the accused—in this case, counsel for the accused may remain in the courtroom and may question the witness

After the trial or other process, a witness and family members may need continued protection, depending on the level of threat to their safety. Witness protection programs ensure the long-term safety of a witness. Witnesses and their families may be granted a visa to live in another country and may be given new identities, jobs, and other assistance to build a life elsewhere.

Criminal justice actors, such as judges, prosecutors, and defense counsel involved in trials involving mass atrocities, may also need police protection if they are subject to intimidation, threats, or attacks.

Institutional and Rule of Law Reform

In addition to transitional justice, institutional and rule of law reform is a second, related area through which criminal justice actors can support mass atrocity prevention after atrocities. As noted, transitional justice emphasizes redress for past crimes. Institutional reform similarly addresses the key risk factor of

impunity. Strengthening state institutions' capacity and commitment to sustain rule of law—a condition that enables predictability, restrains abuse of power, and offers mechanisms to resolve conflict peacefully—is also central to avoiding instability, exclusionary ideologies, and discrimination that can lead to mass atrocities.

Depending on the context, institutional or rule of law reform can fall under the umbrella of transitional justice or take place separately. Institutional reform can address past mass atrocity or fragile-state conditions such as organized crime and armed groups,³⁵⁰ corruption, or statelessness arising from mass displacement or policies of discrimination.³⁵¹ As in the before stage, institutional reform fundamentally seeks (1) to build positive, trusting relationships between the state and civilians and (2) to counter dynamics that marginalize vulnerable groups.³⁵²

Prevention and rule of law measures identified in the before and during stages could also be relevant to the after stage. Regardless of stage, the key is to determine which areas seem most closely related to reducing risk and supporting prevention in each specific context. The case of post–World War II Germany in Box 3.29 illustrates a range of reforms through which a state might attempt to redress past harms perpetrated against targeted groups and civilians at large, as well as establish safeguards against recurrence.

BOX 3.29. INSTITUTIONAL AND LEGAL REFORM AFTER THE HOLOCAUST

Institutional and legal reforms were an important part of rebuilding German society after the Holocaust. However, reforms were complicated by the wartime destruction and the postwar geopolitical situation. In 1945 the Allied powers defeated the Nazis in World War II and the four major powers (Great Britain, France, the Soviet Union, and the United States) occupied and governed Germany. The Allied powers compelled the Germans to repeal Nazi laws. In 1949 Germany became two separate countries on opposite sides of the Cold War. The Federal Republic of Germany (West Germany) was aligned with the United States, and the German Democratic Republic (East Germany), was a Communist state allied to the former Soviet Union. The two countries unified in 1990.

West Germany underwent significant democratic and legal reform while criminal prosecutions of suspected war criminals took place in international and domestic courts. The West German Constitution of 1949, or Basic Law, set up a federal parliamentary democracy designed to avoid the instability of the Weimar Republic's democratic structure and the authoritarianism of the Nazi regime. The Basic Law enshrines fundamental rights, including rights to life, to nondiscrimination and equality before the law, to freedom of religion and expression, to seek asylum, and to not be deprived of citizenship.

Germany also enacted laws to repair harm from the Holocaust and deter conditions that can lead to mass atrocities. Article 116 of the Basic Law restores citizenship to former citizens who were deprived of citizenship on discriminatory grounds during the Nazi period and to their descendants. Since the early 1950s Germany has made reparation payments under a web of agreements and domestic laws to victims of Nazi persecution, which have evolved to total over one billion euros annually.³⁵³ The German Criminal Code criminalizes Holocaust denial and “incitement to hatred” against national, racial, or religious groups. The General Equal Treatment Act of 2006 prohibits

discrimination on the basis of race, gender, religion, age, disability, or sexual orientation in areas of employment, education, and commerce.

In practice, some of these reforms and their implementation have met with controversies and challenges. Efforts to remove Nazis from government, for example, were chaotic and inconsistent. In the criminal justice system, many jurists had joined the Nazi Party or implemented Nazi policies, and Allied powers and new German governments arguably could not run postwar legal systems without these jurists' expertise. Moreover, the changing geopolitical dynamics of the Cold War and the urgent need to rebuild strained the moral imperative of denazification. With respect to restoring citizenship, administrative processes have been burdensome for some, with about 40 percent of applications rejected in 2017 and 2018.³⁵⁴ While taking into account these and other challenges, Germany's postwar reforms and political practices are noteworthy in seeking to shape an order based on fundamental rights, nondiscrimination, democratic values, and rule of law that is more resilient than past systems against atrocity risk.

4. Leadership Skills in Mass Atrocity Prevention

KEY POINTS

Key leadership skills for criminal justice professionals focused on mass atrocity prevention include ethical leadership, self-reflection, change management, and action planning. Through developing these skills, criminal justice professionals can align their professional culture more closely with mass atrocity prevention. Together, these skills help professionals develop a proactive mindset to prevent mass violence amid uncertainty and recognize their own capacities to influence change. As a result, criminal justice professionals can more purposefully strengthen their role in prevention.

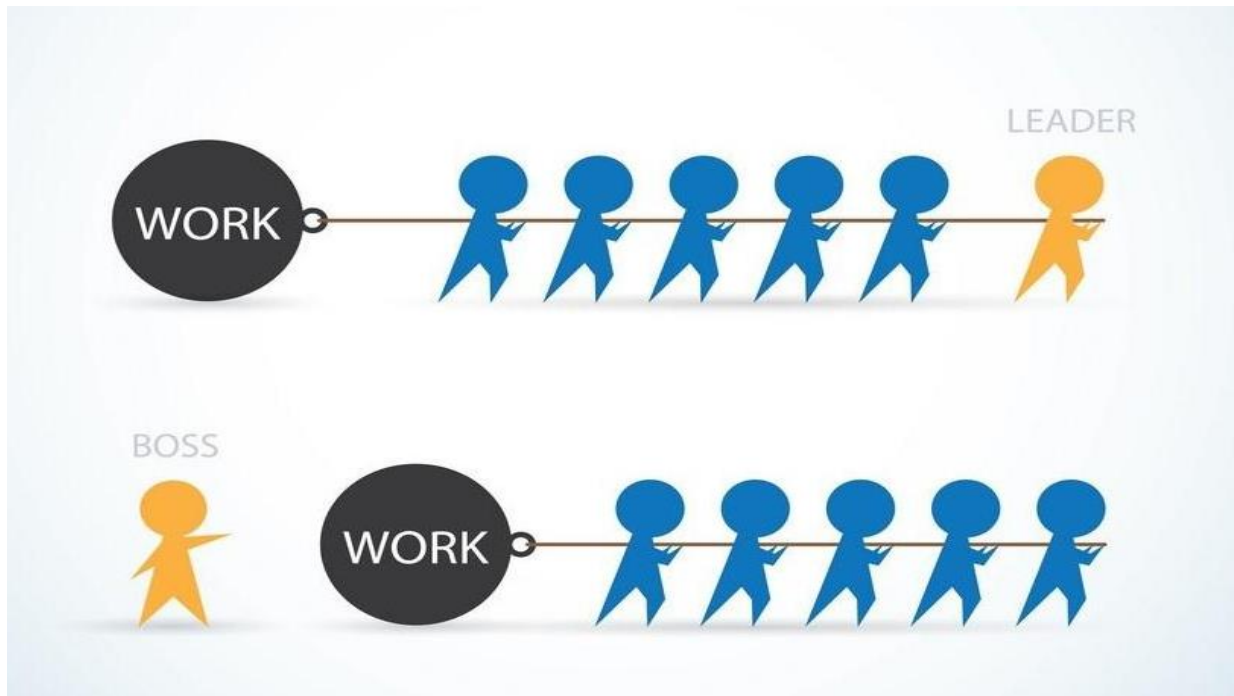
Moving beyond prevention tools, this chapter identifies key leadership skills that can support criminal justice professionals who seek to align their professional culture more closely with mass atrocity prevention. These skills include ethical leadership, self-reflection, change management, and action planning. Ethical leadership is foundational, and self-reflection promotes ethical leadership and informs the initiation and management of change. Through change management, leaders move from developing themselves to influencing their environment. These skills enable leaders to pursue action planning effectively. Together, these skills help professionals foster a proactive mindset to prevent mass violence amid uncertainty and recognize their own capacities to influence change. As a result, criminal justice professionals can more consciously and sustainably strengthen their role in prevention.

The following sections describe each leadership skill and suggest ways in which programs can incorporate them.

ETHICAL LEADERSHIP

Leadership involves influencing and motivating others to follow direction and accomplish a goal.³⁵⁵ In mass atrocity prevention, it also requires a capacity to model ethical and adaptive leadership.

In leading change with regard to culture or practice, professionals need to take into account how and to what extent they can influence people and bureaucracies based on their personal qualities and position within the criminal justice system and government as a whole. Personal influence relates to the influence an individual can exert based on personal attributes, including knowledge, skills, networks, and likeability. Positional influence concerns the influence a person can have based on his or her professional role or rank within a system. Through a combination of personal and positional influence, a successful leader creates a vision and sets a direction. He or she motivates and empowers people to align their efforts toward realizing that vision.



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Ethical leadership is consistent with an overarching atrocity prevention vision to uphold rule of law, including rights to life and equality, and in turn build public trust and state legitimacy. Ethical leadership involves upholding professional standards and values among colleagues and regarding the public, independent of other pressures and incentives. This also involves ensuring that professional consequences for violations are swiftly enforced. Principles of ethical leadership include respect for others, serving others, showing justice, being honest, and building community.

Since mass atrocity prevention may involve addressing difficult challenges, adaptive leadership skills are also important. Adaptive leadership relates to anticipating different scenarios based on warning signs or trends, listening to and synthesizing diverse viewpoints (rather than removing moderates or critics, which echoes one of the warning signs of mass atrocities), weathering pressures and setbacks, empowering others with support and resources to achieve shared goals, and adjusting strategies as dynamics evolve. Adaptive leadership concerns preparing people to deal with challenges and change and supporting them through that process. Adaptive leaders maintain a high-level view, have a forward-thinking and proactive mindset, manage distress, and maintain focus on objectives.

Applications

Promoting these leadership qualities can take different forms. For example, for more than two decades, the United States Holocaust Memorial Museum has facilitated programs for professionals that examine the history of the Holocaust with opportunities to discuss and examine related leadership implications. In these programs, professionals develop an appreciation for the role good leadership can play in mass atrocity prevention.

Options for exercises in professional development and training programs follow:

- Through small group sessions or open discussion, participants might explore what leadership means to the profession, what a successful leader looks like in their organization, and what leadership means in support of atrocity prevention, perhaps by looking at a particular case study or historical example. Participants might examine whether or how these conceptions of leadership might conflict or overlap.
- While developing recommendations for prevention and action planning, participants might consider whether they or certain colleagues are especially suited to implementation and why.
- Participants might reflect on their own leadership styles, thinking perhaps of cases or situations in which they faced or could face unique pressures, and develop plans or programs for prevention that play to their strengths.
- Participants might consider whether or how they can cultivate a leadership environment in which they can offer and accept feedback from others, including from subordinates, in the interest of cultivating the best ideas and an ethos grounded in transparency and adaptability.

Beyond professional development and training programs, these discussions could still take place in the course of other criminal justice programs. For instance, programs focused on developing protocols or checklists for enforcing professional codes of conduct could include discussion or role-playing exercises about how professionals would deal with an unethical or difficult situation that could arise.

SELF-REFLECTION

A second leadership skill that programs can cultivate in criminal justice professionals is self-reflection, which involves relating new knowledge and perspectives to one's professional role and personal experience. Self-reflection can emerge through a pedagogical approach in professional development and training programs that

- Promotes subject matter literacy, disequilibrium, and relevance
- Engages participants via storytelling and through drawing on their personal experience and professional expertise
- Channels the power of place and survivor voices

The first component—subject matter literacy, disequilibrium, and relevance—provides professionals with a foundation of knowledge that includes essential frameworks and vocabulary, such as definitions of mass atrocities, historical examples, atrocity prevention norms, risk analysis and assessment, and how these topics relate to criminal justice. This content—through its newness, gravity, or possible connection to professionals' experience—generates disequilibrium and may cause discomfort but is calibrated to raise questions and open professionals to engaging further. Relevance requires professionals to consider how the content applies in their work and how they can use the knowledge and skills to help prevent mass atrocities.

The second pedagogical component emphasizes interactive elements—such as free and open discussion, group work, role playing, or mixing of participants—that build relationships and draw on professionals' expertise. These approaches help professionals scaffold and integrate new knowledge and skills into their professional identities and strengthen networks. Sharing anecdotes and storytelling—either by facilitators, participants, or guest speakers—also supports these outcomes. Together, these elements encourage the alignment of professionals' values and expertise with atrocity prevention and promote a shared normative

commitment to that goal. Strengthening community and values around prevention can help sustain professionals through the setbacks and complexities of program implementation.

The third component—power of place and survivor voices—deepens professional values that support prevention. Incorporating the power of place and survivor voices provides professionals and stakeholders with an immediate connection with a place or person directly affected by mass atrocities. Examples include visiting a memorial to victims or another significant place associated with past atrocities; or meeting survivors or listening to their testimonies, either in person when appropriate or through video or audio recordings. Including the power of place and survivor voices humanizes the impact of mass atrocity events. It can counter desensitization while honoring victims and acknowledging the truth, even when difficult.

Applications

- International Law Enforcement Academy (ILEA) Budapest Remote Course for Nigerian Police: Syrian Activist Shares Past Experience in Detention:** In 2021 Nigerian police officers participated in a five-day virtual pilot course, “Lessons in Leadership: Criminal Justice Approaches for Preventing Mass Atrocity.” In one session, a Syrian activist (now based in the United States) joined the participants to share his experience as a teenager detained in a Syrian prison. The activist—who had substantial experience speaking publicly to diverse audiences about the war in Syria—described torture he suffered and witnessed, and the ways in which this experience intersected with the criminal justice system and its professionals. The activist described the impact of his detention on his health and life. During this session, police participants expressed empathy and appreciation for the activist’s contribution to their own understanding of the complex role of criminal justice in the context of mass atrocities. Through highlighting a different country and historical context, this session brought course participants in close contact with a survivor’s perspective on state abuse and enabled them to consider difficult questions regarding detainees’ treatment and state accountability. In course evaluation surveys, participants cited the activist’s testimony as one of the most impactful sessions.
- ILEA Budapest Course in Budapest, Hungary: Criminal Justice Professionals Participated in Walking Tours Involving Holocaust Sites and Memorials:** In 2022 ILEA Budapest hosted a five-day in-person pilot of the “Lessons in Leadership: Criminal Justice Approaches for Preventing Mass Atrocity” course. Course participants included police, prosecutors, and judges from Burundi, Democratic Republic of Congo, and Republic of Congo. To complement learning about the Holocaust as a key case study in the course, participants went on interactive walking tours of sites significant to the history of the Holocaust in Budapest. The experience included visiting the section of the city where authorities during that period had concentrated most of the city’s Jewish population. Participants also visited the Shoes on the Danube Bank, a memorial along the Danube River erected by private sponsors to commemorate the murder of thousands of Jews by a Nazi-backed Hungarian nationalist paramilitary group. Upon first arrival, course participants were asked to consider the location as if it were a crime scene and were presented with photos of bones recovered in the 2000s during the renovation of a nearby bridge, as well as testimony from survivors. This stop raised questions about collecting evidence when investigating a mass crime and the impact of recovering evidence long after events took place. In emphasizing a sense of place, the walking tours created an environment that allowed participants to draw connections to their own experiences and understandings.



Participants in the “Lessons in Leadership” course review a map to discern inhumane conditions in the old Jewish quarter of the city after the Nazi occupation of Budapest in 1944. They also learn how the Neolog Dohany Street Synagogue behind them became the site of a mass grave. ILEA Budapest course, May 2022. *Courtesy of Katherine Southwick.*



Participants in the “Lessons in Leadership” course consider the location as a crime scene while listening to survivor testimony and reflecting on the memorial itself. ILEA Budapest course, May 2022. *Courtesy of Katherine Southwick.*

CHANGE MANAGEMENT

Leadership skills are essential to managing the changes that may be necessary when implementing mass atrocity prevention approaches in criminal justice settings. These approaches may involve guiding colleagues to apply new skills or policies. They may challenge certain interests, mindsets, and norms that have maintained the status quo. As noted by the World Bank, “[r]ule of law reforms tend to alter the positions and interests of all those involved in conflict.”³⁵⁶

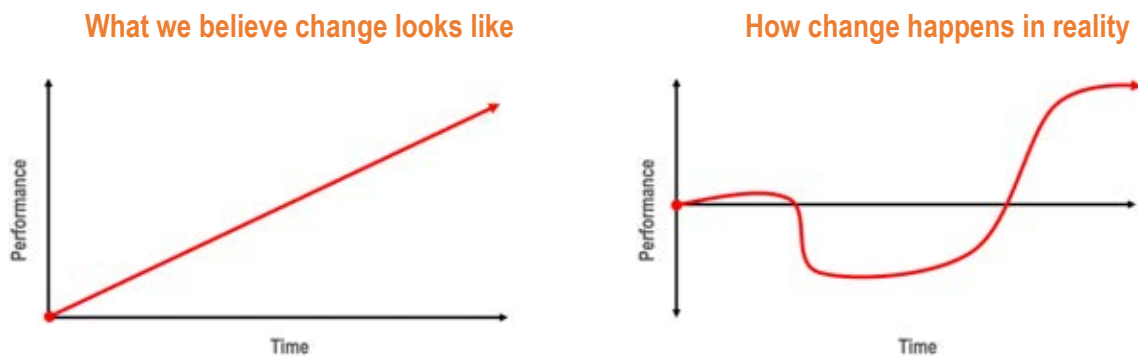
Change may be particularly difficult in criminal justice systems because they are rules-based and not necessarily flexible. Although justice professionals place high value on legal knowledge and skills, they do not often receive training in leading and managing change. However, applying concepts from change

management, which refers to the processes, tools, and techniques to manage the human side of change³⁵⁷, can help program implementers and criminal justice professionals identify and effectively concentrate their efforts on the most crucial changes to support prevention before, during, or after mass atrocities. Key change management concepts, or tools, follow.

Change management refers to the processes, tools, and techniques to manage the human side of change.

Broadly, change management involves adjusting one's perspective on and approach to change in a few ways³⁵⁸:

- **Adjust perspective by noting that change is often not linear and can be chaotic:** Rarely is change a steady upward path toward progress. Instead, it often involves setbacks and chaos. Program implementers and professionals can manage their own and others' expectations by reframing challenges and setbacks as part of a normal process. This can reduce frustrations and the risk of prematurely abandoning the process.



Based on the Virginia Satir Change Model

- **Adjust approach to develop a full understanding of the problems to address:** Thoroughly diagnosing a problem requires recognizing that no one stakeholder knows or can convey the whole reality of the system. It also requires looking below the surface of the immediate problem or isolated events to identify trends and patterns (the history of the system), structures (policies, procedures, perceptions, and the purpose of the organization), and mental models (values, beliefs, and culture). Mental models are the beliefs that keep the system in place, and are often the most challenging to address. Analyzing the power dynamics and state of trust between different parts of the system, as well as resistance to change from within the system, is also useful.

- **Adjust perspective by identifying the type of change being pursued:** A technical change relates to changing things, such as laws or institutions whereas an adaptive change concerns people and their behavior, beliefs, values, or habits. Adaptive change is key to implementing and sustaining change, and requires change at a deep level.
- **Adjust approach to shrink the change and act within one’s sphere of influence:** After analyzing the problem, a key point is to recognize that fixing the whole system at once is not necessary. To do so would be difficult and may be counterproductive. Moreover, some big problems may not need big solutions. A practical approach is to shrink the change by acting locally within one’s sphere of influence to address the problem. The sphere of influence involves considering one’s location, skills, resources, and connections. Basic questions to ask include
 - Where do I have influence?
 - What relationships across the system can help?
 - Is now the right time to act? This is a question of “ripeness” or whether there is a window of opportunity to act.
 - Where can small actions have the most impact?
- **Adjust approach to find high leverage points for change:** Building on the idea of small actions and shrinking the change, program implementers and criminal justice professionals can look for high leverage points in the criminal justice system where small actions can lead to big results. Some people may locate high leverage points intuitively whereas other leverage points may emerge through consultation with diverse stakeholders. Identifying high leverage points may focus on resilience, or bright spots where things are already working, which can be expanded or replicated. Small wins build momentum and create a more sustainable foundation than sweeping quick fixes. Moreover, symbolic actions that signal change can further amplify these actions.
- **Adjust approach to supporting people through the process of change:** Pursuing change is a collective effort, and its success depends in part on how people become invested in change and are supported through the process. Such support can be based on
 - *Building relationships and trust:* Expect mistrust and build relationships through dialogue, sharing information, and coordinating with others.
 - *Creating change networks:* At first, a small coalition of like-minded people may initiate the change and grow their networks over time.
 - *Sharing new information:* New information is needed to bring change to the system and spark innovation. It can help create a shared understanding of problems and possible approaches, as one cannot assume that all departments and agencies have the same information. Seeking information from diverse sources is important, but information overload should be avoided.
 - *Encouraging wide participation from diverse perspectives:* People need to personally engage with new changes and ideas before they can accept them. Engaging more people makes change more likely to occur.
 - *Addressing resistance to change:* Each type of resistance needs its own strategy. Some resist change because of vested interests in the status quo. Others resist change because they lack clarity or are confused about the change. Some resist because they feel excluded or unheard, while others may resist because, due to past trauma, they find it difficult to engage with the particular problem or change.

- *Being aware of political realities:* Navigating political dynamics involves finding allies and making alliances, staying connected with the opposition, engaging the voices of those who disagree, selling pieces of an idea at first, and waiting for “ripeness,” or a time when people will be most receptive to an idea.

Applications

Programs can incorporate change management concepts to help guide identification, selection, and implementation of tools involving the criminal justice system and mass atrocity prevention. Through analysis of mass atrocity risks or institutional challenges within the criminal justice system in a particular country, program implementers and criminal justice professionals can develop understanding of the structures (laws and policies, or lack thereof) and mental models (beliefs and values) that feed the risks and challenges. This analysis can complement the situation analysis that forms part of risk assessment and action planning to support prevention.

Reforming or influencing these structures and mental models within the justice sector to promote adaptive change (or change in behavior) may then become the focus of the program. However, guidance to shrink the change and consider one’s sphere of influence with respect to the larger system may help narrow the scope and sharpen the program’s focus. Wide consultation with varied stakeholders may reveal small actions with high leverage that could constitute the key components of the program or position the program to secure small wins that help reduce resistance to implementing larger or more complex reforms. With respect to implementation, broad consultation could also reveal potential obstacles or resistance to change. Program implementers and criminal justice professionals could then consider how to cultivate the leadership qualities necessary to lead change and the steps that can be taken to support stakeholders through the process of change. Box 4.1 provides examples of how officials applied change management concepts in the justice sector.

Questions relating to change management are incorporated into the sample Action Planning Worksheet in appendix B. The educational materials for the “Lessons in Leadership: Criminal Justice Approaches to Preventing Mass Atrocities” course also include a course module on change management in the context of mass atrocity prevention.

BOX 4.1. EXAMPLES OF CHANGE MANAGEMENT IN PRACTICE

Nigeria: Working within the Sphere of Influence

Through an initiative to reduce herder-farmer violence in rural Nigeria in 2022, a senior law enforcement official met with traditional leaders from both communities who were committed to negotiating an end to hostilities. However, the law enforcement official was unable to secure necessary political buy-in and support for the traditional leaders' negotiations from other senior leaders responsible for promoting security in the affected area. Aware that he could not influence entrenched interests at higher levels, the law enforcement official shifted his approach to conducting outreach and atrocity prevention education among youth, women, vigilante groups, and police to help nurture local networks and prevention skills to support change, including future attempts to negotiate an end to violence.³⁵⁹

Mongolia: Small Change for High Leverage in Witness Protection

A program to strengthen prosecution of domestic violence in Mongolia faced a challenge in that victims and witnesses were afraid to give evidence and testify in court for fear of reprisals from defendants. In one case a witness was murdered on her way from the courthouse after giving evidence. Attorneys proposed that witnesses be permitted to leave the court through a back entrance and several minutes ahead of the accused. This small, low-cost change in court procedure had high leverage, as it improved security for witnesses and led to more witness participation in domestic violence cases.³⁶⁰

ACTION PLANNING

Grounded in ethical leadership, self-reflection, and change management, the fourth skill of action planning is at the core of prevention and reflects the content of this Guide: evaluating one's local environment for atrocity risk, understanding how the justice sector could enable or prevent mass atrocities, and taking steps to reduce risk and build resilience or stop mass atrocities and protect populations.

Action planning is a process through which program implementers and criminal justice professionals

- Evaluate risk factors, warning signs, and sources of resilience in a given context. This context analysis includes understanding core grievances and drivers of conflict, as well as mitigating factors and opportunities for decreasing conflict.
- Identify key actors, such as potential perpetrators, targeted or vulnerable groups, and influential third parties, as well as their motivations and means for exercising influence.
- Develop recommendations to include in a plan of action. Recommendations may focus on a particular institution, agency, or individual, taking into account that entity's position, mandate, constraints, and potential for influence.

Though action planning frameworks may vary and adapt to different programs, these are the core elements. For more detail, program implementers can refer to the US government's conflict and atrocity risk assessment frameworks.³⁶¹ Appendix B offers an "Action Planning Worksheet."

BOX 4.2. KEY ACTORS IN CONFLICT PREVENTION AND ATROCITY PREVENTION

US government assessment frameworks underscore that conflict prevention and atrocity prevention overlap but are also distinct. Mass atrocities often occur in armed conflict, but not always, as they can happen in a disputed election, state repression, communal violence, or as postwar retribution. The focus of conflict prevention is to dissuade armed groups from fighting each other, while the focus of mass atrocity prevention is civilian protection. This involves dissuading or blocking perpetrators from harming civilians, either during armed conflict or in the absence of armed conflict. Understanding mass atrocities therefore requires “additional attention to certain key actors, affected populations, and dynamics that could drive large-scale and deliberate attacks on civilians.”³⁶²

In conducting an assessment of key actors for action planning in mass atrocity prevention, program implementers and criminal justice professionals may draw from the following list of questions:

WHO? Who are the leaders with political influence, moral authority, charisma, money, and weapons?

- *Potential Perpetrators:* Which, if any, key actors currently have or might plausibly develop the motive, means, and opportunity to carry out large-scale, deliberate attacks on civilians?
- Are these actors senior leaders (e.g., political leaders, security or intelligence officials, justice sector leaders), mid-level officials (e.g., operations coordinators), or low-level perpetrators (e.g., soldiers, police officers, paramilitary group members, civilians)?
- *Targeted Groups:* Which, if any, groups of civilians are currently being targeted or might plausibly be targeted for deliberate attack?
- *Influential Third Parties:* Which other actors are enabling atrocities and which ones are playing peacebuilding roles?

WHERE? Are the leaders inside or outside the state and do they lead or have networks in business, religious organizations, government (police, judiciary, military), media, and academic institutions?

WHAT AND HOW? What are the actors’ motivations and means for exerting influence, such as leadership capacity, moral authority, charisma, money, access to resources and weapons, and networks?

Conflict and atrocity risk assessments position professionals to make recommendations for prevention tailored to a specific context. Recommendations may connect existing government or nongovernmental programs or activities to the prioritized list of drivers and mitigating factors, or they may adjust or create programs according to the gaps or opportunities identified.

When converted to an action plan, recommendations should be specific and realistic, with clear steps leading to intended outcomes that further the goal of prevention. Action plans that spell out objectives, outcomes, and component steps provide a framework for implementation. In turn, action plans become the basis for monitoring and evaluating how component steps help reduce risk or build resilience.

To build action planning skills, criminal justice professionals require a foundation of knowledge in what mass atrocities are; what the risk factors, warning signs, and triggers are; and how to match criminal justice tools to reducing risk and building resilience, topics reflected in this Guide. Leadership skills in ethical leadership, self-reflection, and change management enable professionals to implement plans effectively and more sustainably as they foster crucial mindsets to identify, act on, and manage needed

changes. They help leaders adjust their understanding of themselves as capable of influencing change; of which changes in their sphere of influence are high leverage and achievable; and that setbacks and uncertainty are normal parts of change, not failures. Their professional commitment to mass atrocity prevention deepens. For practical applications, users of this Guide may wish to refer to the sample Action Planning Worksheet in appendix B. The worksheet incorporates elements from the US government frameworks and these leadership skills.

5. Conclusion

This *Guide to Criminal Justice and Preventing Mass Atrocities* (Guide) seeks to orient program implementers and criminal justice professionals as they strengthen the justice sector's crucial role in mass atrocity prevention. The Guide defines mass atrocities, reviews risk factors and sources of resilience, and describes how a range of criminal justice tools can help reduce risk and support resilience before, during, and after mass atrocities.

The Guide underscores the importance of certain leadership skills in initiating and sustaining approaches that support prevention. These skills include foresightedness in analyzing risk and developing a well-honed plan of action, ethical and adaptive leadership, a capacity to manage change through inevitable setbacks, and self-reflection to cultivate commitment to public service and one's own capacity to advance the goal to prevent mass atrocities. The Guide highlights these key intersections between criminal justice and mass atrocity prevention so that program implementers and criminal justice professionals can more effectively integrate an atrocity prevention lens into local environments.

The tools offered illustrate the essential role that the justice sector can play in protecting civilians and promoting the conditions that avoid risk and enable a peaceful, thriving society. A common thread throughout involves upholding the rule of law and human rights, in particular the safety and equality of vulnerable groups. Each local context will shape how different combinations of tools reduce risk and promote resilience at this intersection between rule of law and mass atrocity prevention. Because of the central importance of local conditions to risk and response, this Guide aims to support officers from the United States Department of State's Bureau of International Narcotics and Law Enforcement Affairs and others working cooperatively to strengthen domestic initiatives in early prevention, where such approaches have the most powerful potential to avert the worst outcomes.

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APPENDIX A: CRIMINAL JUSTICE TOOLS FOR MASS ATROCITY PREVENTION¹

Common Objective: Criminal justice prevention tools promote positive, protective relationships with the public. These relationships are based on upholding rule of law and human rights, and preventing violence and abuse of state power, particularly against vulnerable and marginalized groups.

Questions:

- Which tools are you already using? Are they effective?
- Which of these tools could be most useful to you in reducing atrocity risk?
- Are there other examples or tools you would add to or change in the **blue** Criminal Justice Tools column?

¹ This table and select prevention tools are discussed in chapter 3 of the *Guide to Criminal Justice and Preventing Mass Atrocities*. The table's structure is adapted from Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (United States Holocaust Memorial Museum, 2016), 135–38. Contents reflect a compilation of tools and recommendations from different sources, such as United Nations, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention* (2014); Report of the UN Secretary-General, *Implementing the Responsibility to Protect*, A/63/677 (Jan. 12, 2009), paras. 14, 17, 21, 24–25; Report of the UN Secretary-General, *Responsibility to Protect: State Responsibility and Prevention*, A/67/929-S/2013/399 (July 9, 2013), paras. 30–55; Jacob Blaustein Institute for the Advancement of Human Rights, *Manual on Human Rights and the Prevention of Genocide* (2015), 7–8; United States Holocaust Memorial Museum, “[Lessons Learned in Preventing and Responding to Mass Atrocities](#)” (2022); United States Holocaust Memorial Museum, “[Tools for Atrocity Prevention](#)” (2022).

Document #1: Criminal Justice Tools for Mass Atrocity Prevention

RISK FACTORS (see lists on page 101)	PREVENTION MEASURE	TOOLS	CRIMINAL JUSTICE TOOLS	INTENDED EFFECT
<p>Instability: Armed conflict or political turmoil</p> <p>Weak or abusive governance structures</p>	<p>Prevent conflict</p> <ul style="list-style-type: none"> Peacefully resolve disputes Ensure fairness and equal rights Promote economic opportunities and livelihoods 	<ul style="list-style-type: none"> Conduct early warning analysis Hold spaces to foster dialogue Share power among rival groups Ensure nonviolent means to compete for power Reduce poverty or strengthen economic equity Promote inclusive growth and sustainable livelihoods Increase legitimacy of state institutions (see next page) 	<ul style="list-style-type: none"> Integrate training and education for judges, lawyers, and police in mass atrocity prevention (understanding mass atrocities, early warning analysis and risk assessment, prevention tools) Strengthen capacity in early warning analysis by dedicating resources and staff and establishing cross-agency coordination. Implement community dialogues and policing, especially in vulnerable communities Pursue deradicalization strategies inside and outside justice sector Train law enforcement in de-escalation strategies Increase access to justice for vulnerable communities (e.g., minorities, economically disadvantaged, women, children, disabled) Plan ahead for emergencies Coordinate and share information with state agencies responsible for addressing root causes relating to economy, social services, youth, women, or group rights 	<p>Reduce the risk of violent conflict</p>

RISK FACTORS (see lists on page 101)	PREVENTION MEASURE	TOOLS	CRIMINAL JUSTICE TOOLS	INTENDED EFFECT
<p>Instability: Armed conflict or political turmoil</p> <p>Weak or abusive governance structures</p>	<p>Promote rule of law</p> <ul style="list-style-type: none"> • Increase legitimacy of state institutions 	<ul style="list-style-type: none"> • Hold leaders accountable and end impunity • Promote equality and equal access to law • Clamp down on corruption 	<ul style="list-style-type: none"> • Prosecute officials who break the law and commit serious crimes (mass atrocities, public corruption, human rights violations) • Promote rule of law reform tied to atrocity risks: <ul style="list-style-type: none"> ○ Strengthen professional ethics in the justice sector (training, enforcement of consequences for police misconduct or judicial corruption) ○ Increase efficiency and reduce judicial delay ○ Improve access to justice for vulnerable communities (e.g. translation, legal awareness outreach, lower costs, paralegal services) ○ Uphold nondiscrimination and equality in administration of justice ○ Uphold public integrity and combat public corruption 	<p>Increase public confidence in functioning of government, thereby decreasing distrust that leads to instability</p>

RISK FACTORS (see lists on page 101)	PREVENTION MEASURE	TOOLS	CRIMINAL JUSTICE TOOLS	INTENDED EFFECT
<p>Instability: Armed conflict or political turmoil</p> <p>Weak or abusive governance structures</p>	<p>Promote rule of law</p> <ul style="list-style-type: none"> Enhance legal framework and oversight mechanisms for human rights and mass atrocity prevention² 	<ul style="list-style-type: none"> Support early warning mechanisms Empower national human rights commissions Ensure Universal Declaration of Human Rights concepts are reflected in domestic constitution and other legal frameworks Establish ombudsman for atrocity prevention Ratify international human rights treaties Ratify the Rome Statute of the International Criminal Court (ICC) Cooperate with ICC and other international and regional legal bodies Cooperate with United Nations fact-finding missions and special procedures 	<ul style="list-style-type: none"> Review existing legal framework to identify components relevant for mass atrocity prevention as well as legislative gaps Identify and engage with domestic institutions that support criminal justice oversight, such as ombudsman or human rights commission Build ties with international institutions that can help strengthen criminal justice oversight, human rights protection, and other international legal standards, such as United Nations agencies; international or regional courts, tribunals, or claims commissions; and international organizations that support justice sector reform 	<p>Strengthen legal, political, and normative mechanisms to promote human rights protections and institutionalize mass atrocity prevention</p>
	<p>Deepen democracy and restrain abuse of power</p>	<ul style="list-style-type: none"> Ensure fair, peaceful multiparty elections Institutionalize rights to expression and association Promote independent, strong civil society Safeguard independent media Preserve judicial independence Clamp down on corruption 	<ul style="list-style-type: none"> Strengthen police capacity to protect civilians and safeguard civil rights during public protests Build constructive relationship with the press Avoid intimidation or harassment of journalists and human rights defenders Open channels of communication with civil society organizations Strengthen independence of judiciary 	<p>Create mechanisms that weaken the authoritarian power of the state and that restrain escalation of atrocities</p>

² United Nations General Assembly, *Report of the Secretary-General, Implementing the Responsibility to Protect*, UN Doc. A/63/677 (2009), para. 17.

RISK FACTORS (see lists on page 101)	PREVENTION MEASURE	TOOLS	CRIMINAL JUSTICE TOOLS	INTENDED EFFECT
<p>Instability: Armed conflict or political turmoil</p> <p>Weak or abusive governance structures</p>	<p>Increase legitimacy of elections</p>	<ul style="list-style-type: none"> Strengthen fair, transparent election management bodies Promote dialogue between competing political parties Ensure fair competition for all political parties 	<ul style="list-style-type: none"> Support judicial decisions regarding election outcomes, so long as those decisions are impartial and independent 	<p>Reduce the likelihood that an election will lead to violence</p>
	<p>Security sector reform</p>	<ul style="list-style-type: none"> Preserve civilian control over the military Train police on human rights, rules of engagement, appropriate use of force Train military on rules of engagements, laws of armed conflict (including necessity, distinction, and proportionality) Support disarmament, demobilization, and reintegration of former combatants 	<ul style="list-style-type: none"> Train police on human rights, rules of engagement, and appropriate use of force Train police on de-escalation strategies Enforce police codes of ethics and conduct Establish transparent disciplinary procedures for police misconduct 	<p>Encourage security officials to treat civilians with respect and protect their rights</p>
<p>Prior violence</p>	<p>Promote rule of law</p> <ul style="list-style-type: none"> End impunity and ensure justice for past victims 	<ul style="list-style-type: none"> Promote accountability for officials and other senior leaders who commit human rights violations Implement locally appropriate transitional justice processes for past mass atrocities Create memorials or establish traditions to remember victims of past violence Carry out legal and institutional reforms that signal commitment not to repeat past violence or injustice 	<ul style="list-style-type: none"> Enhance capacity in investigating and prosecuting bias-motivated violence (evidence collection and preservation, witness protection) Build capacity in prosecuting sexual and gender-based violence Support and participate in restorative justice programs Initiate a broader review of how to improve accountability across the criminal justice system 	<p>Signal to officials and society that human rights violations and mass atrocities are neither acceptable nor condoned by the state</p>

RISK FACTORS (see lists on page 101)	PREVENTION MEASURE	TOOLS	CRIMINAL JUSTICE TOOLS	INTENDED EFFECT
<p>Prior discrimination against a particular group</p> <p>Transformative or exclusionary ideology</p>	<p>Reduce discrimination and promote equality</p>	<ul style="list-style-type: none"> Enforce constitutional protection against discrimination Protect human rights of vulnerable groups Ensure fair working conditions and secure economic and livelihood opportunities Provide equal access to education 	<ul style="list-style-type: none"> Enhance training on application of nondiscrimination laws and constitutional principles Promote and safeguard vulnerable groups access to justice and government services Track bias incidents Track, investigate, and prosecute bias-motivated crimes and violence Encourage diversity in hiring and promotion among police and justice system personnel so that the justice sector reflects the populations it serves 	<p>Reduce prejudice, stereotypes, and exclusion, and foster the attitudes that could restrain escalation</p>
	<p>Promote pluralism, inclusion, and tolerance</p>	<ul style="list-style-type: none"> Measures to combat incitement to discrimination or violence based on racial or religious hatred Promotion of pluralism and tolerance in presidential speeches Promotion of pluralism and tolerance in political party statements Interfaith dialogues Reconciliation programs Intercultural celebrations or public holidays recognizing diverse religious or cultural traditions 	<ul style="list-style-type: none"> Strengthen awareness of dangerous speech (e.g., through networks with civil society) Develop strategies to counter hate propaganda and combat or prosecute incitement to discrimination or violence (consistent with applicable laws and human rights, such as freedom of expression) Promote pluralism and tolerance in justice sector mission statements, public speeches, multicultural celebrations Provide justice sector training in unconscious or implicit bias Conduct public outreach by all parts of the justice sector to diverse neighborhoods and communities Support and participate in restorative justice programs 	<p>Create an alternative framework of political legitimacy besides exclusionary nationalism</p>

Criminal Justice Tools Chart: How Warning Signs and Triggers Can Correspond to Risk Factors

Instability: Armed Conflict or Political Turmoil

- Adverse regime change
- Acts of terrorism
- High-level assassinations
- Political tension arising from severe political repression
- Growth of armed opposition groups or radical movements
- Imposition of emergency laws that curtail fundamental rights
- Mobilization of the security apparatus against protected groups or individuals
- Stockpiling of weapons
- Sudden economic changes or downturns

Weak or Abusive Governance Structures

- Insufficient protections in national legal framework
- Justice sector lacking sufficient resources, representation, and training
- Lack of judicial independence
- High levels of corruption
- Removal of moderates from public service
- Limited training on human rights, humanitarian law
- Limited oversight over security sector's compliance with international humanitarian law
- Restrictions on civil society
- Restrictions on media
- Restrictions on humanitarian services
- Increased acts of violence against women and children, including sexual violence as a tool of terror
- Imposing life-threatening conditions on or forcibly displacing or transferring protected groups to camps, ghettos, or other assigned locations

Prior Violence

- Past mass atrocities (genocide, crimes against humanity)
- Record of serious human rights violations

Prior Discrimination against a Particular Group

- Marking of people or their property based on group identity
- Mobilization of security apparatus against protected groups
- Discriminatory legislation or policies (including denationalization or de facto statelessness) that limit protected group's access to equal rights or political representation
- Imposing life-threatening conditions on or forcibly displacing or transferring protected groups to camps, ghettos, or other assigned locations

Transformative or Exclusionary Ideology

- Apocalyptic public rhetoric
- Increase in inflammatory rhetoric, incitement of violence, or hate speech against protected groups
- Increased tension and polarization

Document #2: Prevention Tools in Before, During, and After Stages. While these tools are generally suited to the prevailing conditions of each stage, they could be applicable in other stages depending on context and in light of how stages can overlap. This table also appears in chapter 3 of the *Guide to Criminal Justice and Preventing Mass Atrocities*.

BEFORE	DURING	AFTER
<ul style="list-style-type: none"> Integrate mass atrocity prevention training and education Build community relationships Conduct early warning analysis Track dangerous speech and hate incidents Respond sensitively to hate crimes and bias-motivated violence Prosecute past violence Support restorative justice Safely manage public protests Plan ahead for emergencies Promote rule of law with a focus on reducing atrocity risk (consider legal framework for prevention; access to justice; professional ethics; anti-corruption; and human rights, including nondiscrimination and economic and livelihood issues) 	<p>Protect civilians and targeted groups</p> <ul style="list-style-type: none"> Deploy emergency plans (developed <i>before</i>, for quick response and adaptability in fluid environment) Conduct public consultations and community outreach (to understand threats and protection needs, gather intelligence on perpetrators, or deescalate tensions) Deploy police to protect targeted communities, especially women and children Ensure courts uphold fair trial rights and avoid arbitrary arrest and detention, torture, and enforced disappearances Where possible, apply personal discretion to mitigate risk and save a life <p>Apply criminal justice strategy that applies pressure or incentives to deter (potential) perpetrators</p> <ul style="list-style-type: none"> Reaffirm and enforce professional oath to uphold Constitution, rule of law, and codes of conduct Investigate and prosecute suspected atrocity crimes Lawfully apprehend suspected perpetrators Disrupt criminal networks that enable armed groups or mass atrocities (e.g., money laundering; trafficking in drugs, arms, precious gems, persons; and illegal natural resource extraction) Establish appropriate communication and information sharing with other security agencies, media, and nongovernmental organizations Seek cooperation with international organizations and fact-finding missions 	<p>Develop transitional justice approach, which may include</p> <ul style="list-style-type: none"> Criminal trials (domestic, hybrid, international) International non-prosecutorial legal bodies (International Court of Justice, international claims commissions, United Nations human rights committees and special procedures) Fact-finding or truth-telling mechanisms Restorative justice Reparations Lustration/vetting Memorialization Rule of law reform <p>Draw from tools used in the before and during stages to help establish security and reduce ongoing or renewed risks</p>

APPENDIX B: ACTION PLANNING WORKSHEET

This worksheet is a tool to develop a plan of action for integrating atrocity prevention into criminal justice work. The draft plan can involve small or large actions, and it can focus on one or more than one action.

The process of thinking about how to prevent atrocities in practice tracks basic components of an Atrocity Risk Assessment.¹ This structure provides a tested framework through which professionals can sharpen understanding of their domestic context, clarify the role they or their respective agencies can play in preventing or mitigating mass atrocities, and develop clear recommendations for action. Assessment components include:

- **Situation Analysis**
 - Consideration of risk factors, warning signs, potential triggers or windows of opportunity, resilience (conditions or events that decrease, mitigate, or counteract risk), core grievances
- **Key Actors**
 - Which actors increase/decrease risk?
 - Who are potential perpetrators, targeted groups, and influential third parties?
 - Motives and means?
- **Agency / Individual Role**
 - Organizational role in prevention/mitigation
 - Laws, policies, personnel, practices, and mindsets that influence the organization's ability to prevent or respond to risks
 - Individual role within the organization
- **Recommendations to include in a Plan of Action**
 - Recommendations are specific, achievable, realistic
 - Recommendations set out a goal, outcomes required to achieve the goal, steps to achieve each outcome (who does what, resources required)

¹ This “Action Planning Worksheet” and accompanying handouts on change management appear in the “Lessons in Leadership” educational materials available at: <https://www.ushmm.org/criminaljusticetools>. The components highlighted here are drawn from the United States Government Interagency Conflict Assessment Framework (2008) and USAID and US Department of State, Atrocity Assessment Framework (2015). The Atrocity Assessment Framework was prepared by the US Department of State’s Bureau of Conflict and Stabilization Operations and USAID’s Center of Excellence on Democracy, Human Rights, and Governance. Updated version of the US Atrocity Risk Assessment Framework (2022). See also USAID, Conflict Assessment Framework, Version 2.0 (June 2012).

The session will cover these components via questions in this Action Planning Worksheet. By the end of the session, participants will have developed a draft Action Plan containing observations, comments, and reflections under each of these components and grounded in course content.

Through developing a draft action plan, participants will have considered how course content relates to their own context, sharpened skills in Atrocity Risk Assessment, and identified specific actions they may wish to further develop and implement with their colleagues.

1. Situation Analysis and Key Actors

Situation Analysis

Diagnose the Problem: Name one risk factor, warning sign, or potential trigger you would like to focus on in your local context. Why does it seem especially important to address this specific element?

If no action is taken, how might things get worse? Describe what one or more of these worst-case scenarios might look like.

Key Actors

Who increases risk? Who are potential perpetrators? What are their motives and means?

Who are potential targeted groups? What resources are available to help them reduce risk or improve protection?

Who decreases or *could* decrease risk?

2. Agency / Individual Role

Shrink the change: Where do you have influence? Over who or what do you have influence (thinking about high leverage points)?

Ensure key stakeholders are invested and supported: What would you need from your department or from the public in order to take action to address this risk factor/warning sign/trigger you identified?

What sources of resistance can you expect and how could you respond to this resistance?

3. Recommendations

Over the course of this action planning session, you have conducted a mass atrocity risk assessment. You have analyzed your situation, key actors, and your own role in prevention. Based on your assessment, what plan or recommendations have you generated to reduce mass atrocity risk?

How do you anticipate this plan will help prevent mass atrocities? Does it address risk or resilience before, during, or after mass atrocities?

Can you identify 2–3 steps to implement this plan and its recommendations?

What leadership qualities are important to implementing this recommendation?

The Iceberg Model

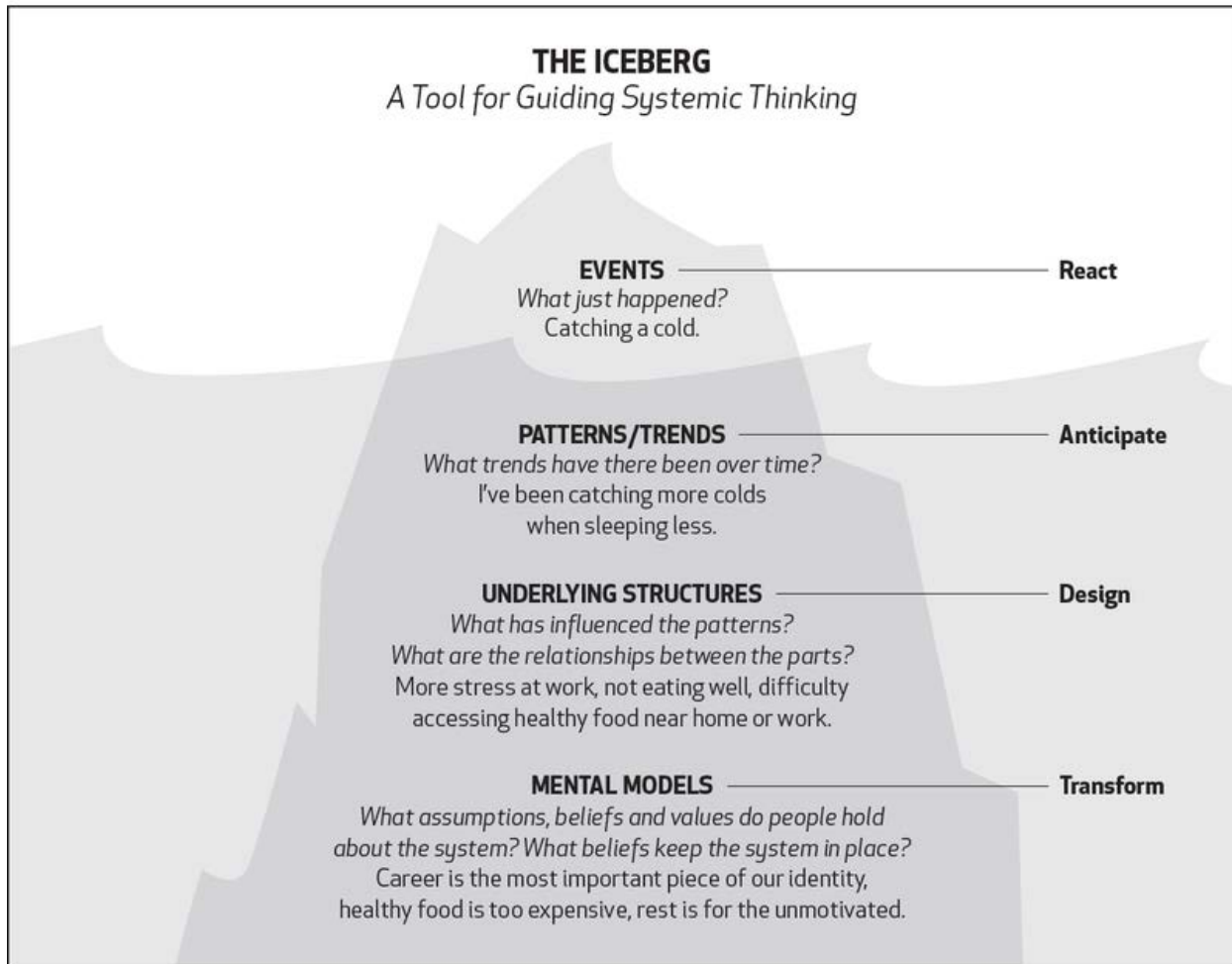


Image courtesy of Ecochallenge.org. Used with permission. ecochallenge.org/iceberg-model/

Supporting Change

<p>BUILD RELATIONSHIPS AND TRUST</p> <p>CONNECT AND CREATE CHANGE NETWORKS</p>	<ul style="list-style-type: none"> • Facilitate dialogue with active listening, safe spaces for engagement • Connect and reach out, socially and professionally • Establish coordination mechanisms among departments or agencies • Consider starting with a small coalition of like-minded people, then invest in broadening the network • Diversity in the network improves the chances for sustaining change
<p>SHARE NEW INFORMATION THROUGH NETWORKS</p>	<ul style="list-style-type: none"> • Shared information creates shared understanding (don't assume all agencies have the same information) • Seek information from all places and people but beware of overload
<p>ENCOURAGE WIDE, DIVERSE PARTICIPATION</p>	<ul style="list-style-type: none"> • The more people we engage, the more likely change will occur • People may need to personally engage with new changes and ideas before they can accept them
<p>ADDRESS RESISTANCE TO CHANGE AND SETBACKS</p>	<ul style="list-style-type: none"> • Match strategy to type of resistance or setback: <ul style="list-style-type: none"> ○ preference for or benefits of status quo ○ lack of clarity or confusion about the change ○ feeling excluded or not consulted ○ traumatization • Translate change into behavior and habit formation, provide positive reinforcement
<p>BE AWARE OF POLITICAL REALITIES</p>	<ul style="list-style-type: none"> • Find allies and make alliances • Stay connected to the opposition, even though it is hard • Engage the voices of those who disagree with you • Sell pieces of your ideas first (small wins, gradual buy-in) • Wait for "ripeness," a time when people might be most receptive to your idea

Steps for Managing Change

- Adjust perspective (expect some chaos/uncertainty)
- Diagnose the problem or situation (risk/resilience assessment, Iceberg Model)
- Shrink the change: Know your sphere of influence
- Identify "high leverage" points (small acts, big impact)
- Identify the type of change you seek (technical or adaptive or both)
- Support people to adopt the change (see Supporting Change chart above)
- Consult diverse stakeholders (at appropriate points)

ENDNOTES

¹ Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (United States Holocaust Memorial Museum, 2016), 31, <https://www.ushmm.org/genocide-prevention/reports-and-resources/fundamentals-of-genocide-and-mass-atrocity-prevention>. This book can be downloaded for free in French and English.

² Straus, *Fundamentals*, 56, 76; see also United States Department of State, Bureau of Conflict and Stabilization Operations, *U.S. Atrocity Risk Assessment Framework*, December 21, 2022, https://www.state.gov/u-s-atrocity-risk-assessment-framework/#_ftn1. Chapter 2 of this Guide surveys risk factors, warning signs, triggers, and sources of resilience.

³ See Stephen McLoughlin, *The Structural Prevention of Mass Atrocities: Understanding Risk and Resilience* (Abingdon and New York: Routledge, 2014), 60–69.

⁴ United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs, *INL Guide to Justice Sector Assistance*, November 2013, 2, <https://www.state.gov/wp-content/uploads/2019/03/222048.pdf>. Widely accepted human rights and professional standards limit the power and authority of government, including police. These standards are reflected in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment; and accreditation programs carried out by government agencies and nongovernmental organizations. According to the International Criminal Investigative Training Assistance Program (ICITAP) of the United States Department of Justice, the goal of sustainable institutional law enforcement development is to “enable law enforcement organizations to improve their capacity and efficiency of operations, their ability to effectively serve citizens, their respect for human rights and human dignity, and their professional standards, and then to sustain these improvements once ICITAP assistance ends.” United States Department of Justice, International Criminal Investigative Training Assistance Program, Curriculum Development and Training Unit, *Promoting Sustainable Institutional Law Enforcement Development*, 2018, x, <https://www.justice.gov/criminal-icitap/file/1037131/download>.

⁵ Chapter 1 of this Guide discusses the role of criminal justice professionals as perpetrators during the Holocaust and other past examples of mass atrocities. Chapter 2 explores how criminal justice institutions might become implicated in certain risk factors for mass atrocities.

⁶ United States Agency for International Development (USAID), *Field Guide: Helping Prevent Mass Atrocities*, 2015, 5, https://2017-2020.usaid.gov/sites/default/files/documents/1866/Field_Guide_Mass_Atrocities.pdf. Nonstate actors can include violent extremist or rebel groups, or influential individuals such as religious leaders, businesspersons, or heads of media. Straus, *Fundamentals*, 91–94.

⁷ Ervin Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* (Cambridge: Cambridge University Press, 1989); James Waller, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing*, 2nd ed. (Oxford: Oxford University Press, 2007), 20.

⁸ Straus, *Fundamentals*, 97 (discussing Staub, *The Roots of Evil*); Waller, *Becoming Evil*, 21–22 (proposing a model of social and cultural constructions relating to group identification and professional socialization, among other factors, that condition processes that lead to perpetration).

⁹ USAID, *Field Guide*, iv (offering a “strategic approach to addressing mass atrocities” that depicts interconnections between prevention, response, and support for recovery before, during, and after mass atrocities, respectively).

¹⁰ US Department of State, *INL Guide to Justice Sector Assistance*, 1, 5–7, <https://2009-2017.state.gov/documents/organization/222048.pdf>.

¹¹ Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (United States Holocaust Memorial Museum, 2016), 31, <https://www.ushmm.org/genocide-prevention/reports-and-resources/fundamentals-of-genocide-and-mass-atrocity-prevention>. In a publication of the United States Army Peacekeeping and Stability Operations Institute, *Mass Atrocity Prevention and Response Options (MAPRO): A Policy Planning Handbook*, mass atrocities are defined as “widespread and often systematic acts of violence against civilians or other noncombatants including killing; causing serious bodily or mental harm; or deliberately inflicting conditions of life that cause serious bodily or mental harm.” United States Army, Peacekeeping and Stability Operations Institute, *Mass Atrocity Prevention and Response Options (MAPRO): A Policy Planning Handbook* (Carlisle, Pennsylvania: US Army Peacekeeping and Stability Operations Institute: March 2012), 10, <https://www.ushmm.org/m/pdfs/MAPRO-091117.pdf>.

Under the Elie Wiesel Genocide and Atrocities Prevention Act of 2018, “the term ‘atrocities’ means war crimes, crimes against humanity, and genocide.” Elie Wiesel Genocide and Atrocities Prevention Act of 2018, Pub. L. No. 115-441, 132 Stat. 5586 (2019), § 5(c)(2).

Signed by US President Barack Obama in 2016, Executive Order 13729, *A Comprehensive Approach to Atrocity Prevention and Response*, provides that “the term ‘mass atrocities’ or ‘atrocities,’ neither of which is defined under international law, refers to large scale and deliberate attacks on civilians, and includes acts falling within the definition ‘genocide’ as defined in international law and under U.S. domestic statute.” Exec. Order No. 13729, 3 C.F.R. 1729 (2017), § 2.

This Guide and the related “Lessons in Leadership: Criminal Justice Approaches for Preventing Mass Atrocities” educational materials (available at: <https://www.ushmm.org/criminaljusticetools>) use the Straus definition. Chapter 1 in Straus covers some of the definitional questions associated with defining “mass atrocities” and related terms. Straus, *Fundamentals*, 29–42.

¹² The goal of mass atrocity prevention is widely supported. More than 150 states, including the United States, are party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, under which the norm to prevent and punish genocide has become part of customary international law, binding on all states. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951); “Genocide Convention,” United Nations, Office on Genocide Prevention and the Responsibility to Protect, accessed January 31, 2023, <https://www.un.org/en/genocideprevention/genocide-convention.shtml>. In 2005 United Nations member states unanimously endorsed the Responsibility to Protect (R2P). UN General Assembly, Resolution 60/1, 2005 World Summit Outcome, A/RES/60/1, 139–140 (Oct. 24, 2005), https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf. The principle of R2P rests on three equal pillars: (1) that all states have a responsibility to protect their populations from genocide, crimes against humanity, war crimes, and ethnic cleansing; (2) that the international community should encourage and help states meet this responsibility through diplomacy, assistance, and capacity-building; and (3) that if a state is “manifestly failing” to protect its populations, the international community should be prepared to take collective action “in a timely and decisive manner” and in accordance with the UN Charter. UN General Assembly, Report of the Secretary-General, Implementing the Responsibility to Protect, A/63/677, 11 (Jan. 12, 2009), <https://digitallibrary.un.org/record/647126?ln=en>.

¹³ Dangerous speech is discussed in chapter 3 of this Guide. As defined by the Dangerous Speech Project, dangerous speech is “any form of expression (speech, text, or images) that can increase the risk that its audience will condone or commit violence against members of another group.” Dangerous Speech Project, *Dangerous Speech: A Practical Guide*, updated March 22, 2021, 5, <https://dangerousspeech.org/wp-content/uploads/2020/08/Dangerous-Speech-A-Practical-Guide.pdf>.

Dangerous speech can include instances of hate speech. While definitions vary under domestic laws, hate speech is generally understood as speech that promotes hatred based on certain group identities such as race, ethnicity, or religion. Dangerous speech also refers to expressions against groups that may not be legally protected from discrimination or hate speech laws, such as groups with certain professional or socioeconomic identities. These groups could include journalists, election workers, political opponents, the wealthy or other “elites,” sexual minorities, the homeless, or disabled people.

As discussed more in chapter 3 of this Guide, the essential feature of dangerous speech is that a certain speech act or expression interacts with its context in ways that increase the risk of violence. Dangerous Speech Project, *Dangerous Speech*, 6. The dangerousness of the speech then raises the question of what preventive tools might be available in light of applicable laws and human rights standards, including the protection of freedom of expression.

¹⁴ See, for example, Carnegie Commission on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report* (Washington, DC: Carnegie Commission on Preventing Deadly Conflict, 1997), digitized October 22, 2008, <https://www.carnegie.org/publications/preventing-deadly-conflict-final-report/>; Genocide Prevention Task Force, cochaired by Madeleine K. Albright and William S. Cohen, *Preventing Genocide: A Blueprint for U.S. Policymakers* (United States Holocaust Memorial Museum, American Academy of Diplomacy, and Endowment of the United States Institute of Peace, 2008), <https://www.ushmm.org/m/pdfs/20081124-genocide-prevention-report.pdf>; “Genocide: ‘Never Again’ Has Become ‘Time and Again,’” United Nations Office of the High Commissioner for Human Rights, September 18, 2018, <https://www.ohchr.org/en/stories/2018/09/genocide-never-again-has-become-time-and-again>.

¹⁵ “Figures at a Glance,” United Nations Refugee Agency USA, accessed January 31, 2023, <https://www.unhcr.org/en-us/figures-at-a-glance.html>; “Global Trends,” United Nations Refugee Agency USA, accessed January 31, 2023, <https://www.unhcr.org/globaltrends>. According to the Institute for Economics and Peace, “There are now 17 countries where at least five per cent of the population are either refugees or internally displaced.” Institute for Economics and Peace, *Global Peace Index 2022: Measuring Peace in a Complex World* (Sydney, Australia: Institute for Economics and Peace, June 2022), 4, <https://www.visionofhumanity.org/wp-content/uploads/2022/06/GPI-2022-web.pdf>.

¹⁶ The 2022 Global Peace Index published by the Institute for Economics and Peace showed that the domain of ongoing conflict deteriorated by 9.3 percent between 2008 and 2022. While the number of conflict deaths has declined since 2017, when conflict in Syria began to diminish, the number of conflicts and their intensity have increased. Institute for Economics and Peace, *Global Peace Index 2022*, 31.

¹⁷ Institute for Economics and Peace, *Global Peace Index 2022*, 4, 32–34. According to the report, “full democracies recorded the sharpest deterioration in violent demonstrations with the score deteriorating by 73 per cent in the decade to 2022. Despite this, the score for full democracies remains better than for any other type of government. On average, full democracies tend to record less violent demonstrations than any other type of regime.” Institute for Economics and Peace, *Global Peace Index 2022*, 4.

¹⁸ According to UNHCR, “If ongoing conflicts remain unresolved and the risks of new ones erupting are not reined in, one aspect that will define the twenty-first century will be the continuously growing numbers of people forced to flee and the increasingly dire options available to them.” “Global Trends,” United Nations Refugee Agency USA, accessed January 31, 2023, <https://www.unhcr.org/en-us/globaltrends.html>. See also United States Department of State, Bureau of Conflict and Stabilization Operations, *U.S. Strategy to Anticipate, Prevent, and Respond to Atrocities*, (2022), 3, <https://www.state.gov/atrocities-prevention/> (citing consequences of mass

atrocities and quoting President Biden as stating that “preventing future genocides remains both our moral duty and a matter of national and global importance” and citing consequences of mass atrocities).

¹⁹ Elie Wiesel Act, § 3(2) (see n. 11). Elie Wiesel was a writer, activist, professor, Nobel Laureate, and child survivor of the Holocaust. He played a key role in the establishment of the United States Holocaust Memorial Museum in 1993. Additionally, in a 2016 executive order setting out the government’s atrocity prevention approach, US President Barack Obama affirmed that “preventing mass atrocities and genocide is a core national security interest and a core moral responsibility.” Exec. Order No. 13729, § 1 (see n. 11).

²⁰ US Department of State, *U.S. Strategy*, 4.

²¹ US Department of State, *U.S. Strategy*, 9–10.

²² Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (United States Holocaust Memorial Museum, 2016), 134, <https://www.ushmm.org/genocide-prevention/reports-and-resources/fundamentals-of-genocide-and-mass-atrocity-prevention>. See also UN Security Council, Report of the Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, 4 (Aug. 23, 2004), <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/PCS%20S%202004%20616.pdf> (“Of course, in matters of justice and rule of law, an ounce of prevention is worth significantly more than a pound of cure.”); US Army Peacekeeping and Stability Operations Institute, *MAPRO Policy Planning Handbook*, 1 (“The longer it takes to act, the greater the risk that mass atrocities will occur and more people will die.”); Carnegie Commission, *Preventing Deadly Conflict*, xlvii (“The costs of prevention, however, are miniscule when compared with the costs of deadly conflict and of the rebuilding and psychological healing in its aftermath.”).

²³ Opened in 1993, the United States Holocaust Memorial Museum is a federally chartered, nonpartisan institution created by the US Congress to serve as America’s national memorial to the victims of the Holocaust and as an educational institution dedicated to the history and lessons of the Holocaust. The Museum has three areas of expertise: Holocaust remembrance, Holocaust scholarship and education, and genocide prevention. Since the 1990s the Museum has provided educational programs for professionals, including law enforcement and government officials, members of the judiciary, and military officers. Its Simon-Skjodt Center for the Prevention of Genocide uses a multipronged program of research, policy engagement, training and education, outreach, and coalition building to focus on disrupting mass violence at every stage.

²⁴ INL has supported foreign assistance programs in close to 80 countries. US Department of State, *INL Guide to Justice Sector Assistance*, 2.

²⁵ The *INL Guide to Justice Sector Assistance* identifies a wide range of partners for INL programs, including those mentioned previously and other US partner agencies and institutions. US Department of State, *INL Guide to Justice Sector Assistance*, 1, 14–18.

²⁶ See chapter 3 for more information about the “Lessons in Leadership” educational materials. Both this Guide and the “Lessons in Leadership” educational materials were developed through the International Criminal Justice Leadership (ICJL) Project by the United States Holocaust Memorial Museum in support of INL goals. Research regarding the intersections between criminal justice systems and preventing mass atrocities (summarized in this Guide) informed the creation of the educational materials available at: <https://www.ushmm.org/criminaljusticetools>.

²⁷ United States Department of State, Bureau of International Narcotics and Law Enforcement, *INL Guide to Gender in the Criminal Justice System* (2016), <https://2009-2017.state.gov/documents/organization/222034.pdf>; United States Department of State, Bureau of International Narcotics and Law Enforcement, *INL Guide to Corrections Assistance* (n.d.), accessed February 7, 2023, https://www.state.gov/wp-content/uploads/2022/09/INL-Corrections-Guide-508-compliant-version_.pdf.

²⁸ See, for example, Straus, *Fundamentals* (see n. 1); Sarah McIntosh, *Pursuing Justice for Mass Atrocities: A Handbook for Victims* (United States Holocaust Memorial Museum, 2021), <https://www.ushmm.org/genocide-prevention/reports-and-resources/pursuing-justice-for-mass-atrocities>; United States Holocaust Memorial Museum, *Lessons Learned in Preventing and Responding to Mass Atrocities* (United States Holocaust Memorial Museum, July 2022), <https://www.ushmm.org/genocide-prevention/simon-skjodt-center/work/lessons-learned>.

²⁹ US Department of State, *INL Guide to Justice Sector Assistance*, 2–3.

³⁰ US Department of State, *U.S. Strategy*, 4.

³¹ See, for example, Stephen McLoughlin, *The Structural Prevention of Mass Atrocities: Understanding Risk and Resilience* (Oxfordshire and New York: Routledge, 2014), 23 (“It is rare in the literature on structural prevention to consider the role of local or national actors. I do not mean to suggest that international actors do not make valuable and often crucial contributions in terms of structural prevention. Rather, my point is that the role of such actors is discussed without considering what local and national actors might already be doing to mitigate the risk of violence. Consequently, the role international actors play in prevention is not discussed in terms of how they may facilitate processes that already work.”).

³² Hrach Gregorian, Lara Olson, and Brian Woodward, “Understanding Peacebuilding Coordination and Impact Using a Complex Adaptive Systems Method,” *Journal of Peacebuilding and Development* 15, no. 1 (October 3, 2019): 91–110, <https://doi.org/10.1177/1542316619871924>; Cedric de Coning, “Adaptive Peacebuilding,” *International Affairs* 94, no. 2 (March 2018): 301–17, <https://doi.org/10.1093/ia/iix251>.

- ³³ Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (United States Holocaust Memorial Museum, 2016), 31, <https://www.ushmm.org/genocide-prevention/reports-and-resources/fundamentals-of-genocide-and-mass-atrocity-prevention>.
- ³⁴ Straus, *Fundamentals*, 31. Straus highlights how approaches to defining mass atrocities vary. See note 11 for examples of how the term is defined in other sources, including the 2018 Elie Wiesel Act; the 2016 Executive Order 13729, *A Comprehensive Approach to Atrocity Prevention and Response*; and the 2012 US Army Peacekeeping and Stability Operations Institute, *Mass Atrocity Prevention and Response Options (MAPRO): A Policy Planning Handbook*.
- ³⁵ United Nations General Assembly, Human Rights Council, Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, A/HRC/25/63 (Feb. 7, 2014), <https://www.ohchr.org/en/hr-bodies/hrc/co-idprk/reportofthe-commissionof-inquiry-dprk>; "Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea," United Nations Human Rights Council, accessed February 1, 2023, <https://www.ohchr.org/en/hr-bodies/hrc/co-idprk/commission-inquiryon-h-rin-dprk>.
- ³⁶ United Nations, Office of the High Commissioner for Human Rights, *OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China*, August 31, 2022, <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>; United States Holocaust Memorial Museum, Simon-Skjoldt Center for the Prevention of Genocide, "To Make Us Slowly Disappear": *The Chinese Government's Assault on the Uyghurs*, November 2021, https://www.ushmm.org/m/pdfs/November_2021_Uyghur_Report.pdf.
- ³⁷ Jeffrey Ostler, *Surviving Genocide: Native Nations and the United States from the American Revolution to Bleeding Kansas* (New Haven: Yale University Press, 2019); Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846–1873* (New Haven: Yale University Press, 2016); "Trail of Tears: A Journey of Injustice," National Park Service, accessed February 1, 2023, <https://www.nps.gov/trte/index.htm>.
- ³⁸ Marcus Boomen, "Guilty by Association: The Issue of Gender Violence and the Targeted Killing of Men of Fighting Age in Times of Conflict," in *Guns and Roses: Comparative Civil-Military Relations in the Changing Security Environment*, eds. Steven Ratuva, Radomir Compel, and Sergio Aguilar (Singapore: Palgrave Macmillan, 2019), 343–64.
- ³⁹ United States Holocaust Memorial Museum, "The Role of the Criminal Justice System in Perpetrating Mass Atrocities," chapter 6 in *International Criminal Justice Leadership Project Stock-Taking Report* (unpublished manuscript, September 18, 2022), Microsoft Word file. This chapter reviews examples of mass atrocities enabled or perpetrated by police, prosecutors, and judges in the Holocaust, the former Yugoslavia, Guatemala, Democratic Republic of Congo, Argentina, and Sri Lanka.
- ⁴⁰ United States Holocaust Memorial Museum, "The Role of the German Police," Holocaust Encyclopedia, last edited September 25, 2020, <https://encyclopedia.ushmm.org/content/en/article/the-role-of-the-police>; United States Holocaust Memorial Museum, "Mobile Killing Squads," Holocaust Encyclopedia, accessed February 1, 2023, <https://encyclopedia.ushmm.org/content/en/article/mobile-killing-squads>; United States Holocaust Memorial Museum, "Mass Shootings of Jews during the Holocaust," Holocaust Encyclopedia, last edited August 31, 2021, <https://encyclopedia.ushmm.org/content/en/article/mass-shootings-of-jews-during-the-holocaust>.
- ⁴¹ United States Holocaust Memorial Museum, "The Nazification of the German Police, 1933–1939," Holocaust Encyclopedia, last edited October 8, 2020, <https://encyclopedia.ushmm.org/content/en/article/german-police-in-the-nazi-state>.
- ⁴² United States Holocaust Memorial Museum, "Reichstag Fire Decree," Holocaust Encyclopedia, accessed February 1, 2023, <https://encyclopedia.ushmm.org/content/en/article/reichstag-fire-decree>. For more on how the Nazi regime eroded legal constraints on state agencies see Box 3.17 in chapter 3 featuring Martin Gauger, a German prosecutor who in 1934 refused to swear a loyalty oath to Adolf Hitler.
- ⁴³ These warning signs are reviewed in the Museum's 38-minute film "Path to Nazi Genocide," part of which is featured in the "Lessons in Leadership: Criminal Justice Approaches to Preventing Mass Atrocities" educational materials that complement this Guide available at: <https://www.ushmm.org/criminaljusticetools>. United States Holocaust Memorial Museum, "Path to Nazi Genocide," video, accessed January 22, 2023, <https://www.ushmm.org/learn/holocaust/path-to-nazi-genocide/the-path-to-nazi-genocide/full-film>. See also United States Holocaust Memorial Museum, "Law, Justice, and the Holocaust," Holocaust Encyclopedia, accessed January 30, 2023, <https://encyclopedia.ushmm.org/content/en/article/law-justice-and-the-holocaust>; "Nazification of the German Police," Holocaust Encyclopedia.
- ⁴⁴ United States Holocaust Memorial Museum, "Arrests without Warrant or Judicial Review," Holocaust Encyclopedia, accessed January 30, 2023, <https://encyclopedia.ushmm.org/content/en/article/arrests-without-warrant-or-judicial-review>. With the power to take people into "protective custody," the Secret Police (Gestapo) could detain political opponents indefinitely without trial. Under a similar principle of "preventive arrest," the Criminal Police (Kripo) arrested people suspected of criminal activity and sent them directly to concentration camps, with no access to a lawyer and no rights to seek judicial review or appeal. "Arrests without Warrant or Judicial Review," Holocaust Encyclopedia.
- ⁴⁵ United States Holocaust Memorial Museum, "Nuremberg Race Laws," Holocaust Encyclopedia, last edited September 11, 2019, <https://encyclopedia.ushmm.org/content/en/article/nuremberg-laws>.
- ⁴⁶ "Law, Justice, and the Holocaust," Holocaust Encyclopedia.
- ⁴⁷ "Law, Justice, and the Holocaust," Holocaust Encyclopedia.

- ⁴⁸ Andy Aitchison, “Police and Persecution in the Bosnian Krajina: Democratisation, Deprofessionalisation and Militarisation,” *Criminal Justice Issues* 14, no. 5–6 (2018): 1–19, <http://dx.doi.org/10.2139/ssrn.3157571>; Prosecutor v. Goran Jelisić, Case No. IT-95-10, Summary of Trial Chamber Judgment, 138 (Dec. 14, 1999), http://www.icty.org/x/cases/jelisc/tjug/en/991214_summary_en.pdf; Commission for Historical Clarification, *Memory of Silence: The Guatemalan Truth Commission Report*, ed. Daniel Rothenberg (New York: Palgrave Macmillan, 2012), 26, 33; Emi Maclean and Sophie Beaudoin, “Guatemalan Police Official Found Guilty of Homicide and Crimes Against Humanity,” *International Justice Monitor*, January 20, 2015, <https://www.ijmonitor.org/2015/01/guatemalan-police-official-found-guilty-of-homicide-and-crimes-against-humanity/>; Suliman Baldo and Peter Bouckaert, Human Rights Watch, *War Crimes in Kisangani: The Response of Rwandan-Backed Rebels to the May 2002 Mutiny*, August 2002, <https://www.hrw.org/report/2002/08/20/war-crimes-kisangani/response-rwandan-backed-rebels-may-2002-mutiny>; United Nations, Office of the High Commissioner for Human Rights, *Democratic Republic of Congo, 1993–2003: Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of Congo between March 1993 and June 2003*, August 2010, 155, 161, https://www.ohchr.org/sites/default/files/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf; Tessa Khan and Jim Wormington, “Mobile Courts in the DRC: Lessons from Development for International Criminal Justice,” Oxford Transitional Justice Research Working Paper Series, July 19, 2012, 17, https://www.academia.edu/6645181/MOBILE_COURTS_IN_THE_DRC_LESSONS_FROM_DEVELOPMENT_FOR_INTERNATIONAL_CRIMINAL_JUSTICE.
- ⁴⁹ “Law, Justice, and the Holocaust,” Holocaust Encyclopedia; *Memory of Silence: The Guatemalan Truth Commission Report*, 18–19, 28, 36.
- ⁵⁰ See chapter 3 for examples of how criminal justice officials during the Holocaust and in other situations took steps to prevent mass atrocities and protect civilians. See also the “Lessons in Leadership: Criminal Justice Approaches for Preventing Mass Atrocities” educational materials (available at: <https://www.ushmm.org/criminaljusticetools>), specifically Module 3, Case Study: Criminal Justice Professionals and the Holocaust, which includes a discussion of how, in November 1933, German police officer Wilhelm Krützfeld stopped the destruction of a synagogue during nationwide attacks on Jewish communities. These attacks became known as *Kristallnacht* or the “Night of Broken Glass.”
- ⁵¹ For example, these terms are listed under the Responsibility to Protect, a principle unanimously endorsed by United Nations member states in 2005, and under which states recognize their collective responsibility to protect populations from mass atrocities, as well as to prevent such crimes “through appropriate and necessary means.” 2005 World Summit Outcome, A/RES/60/1, 138 (see n. 12).
- ⁵² Convention on the Prevention and Punishment of the Crime of Genocide, art. II, Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951).
- ⁵³ Vivienne O’Connor and Colette Rausch, eds., *Model Codes for Post-Conflict Criminal Justice: Volume 1* (Washington, DC: Endowment of the United States Institute of Peace Press, 2007), 198, <http://www.corteidh.or.cr/tablas/r32562.pdf>.
- ⁵⁴ International Commission of Jurists, *Questions and Answers on the Crime of Genocide: Legal Briefing Note*, August 2018, 25–33, <https://www.icj.org/wp-content/uploads/2018/08/Universal-Genocide-Q-A-FINAL-Advocacy-analysis-brief-2018-ENG.pdf>.
- ⁵⁵ Rome Statute of the International Criminal Court, art. 7(1), July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).
- ⁵⁶ Rome Statute, art. 7(1)(a)–(k).
- ⁵⁷ To access full text of these treaties, see “The Geneva Conventions and Their Commentaries,” International Committee of the Red Cross, accessed February 3, 2023, <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>.
- ⁵⁸ Rome Statute, art. 8. See also American Red Cross, Summary of the Geneva Conventions of 1949 and Their Additional Protocols (April 2011), https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf.
- ⁵⁹ “Ethnic Cleansing,” International Committee of the Red Cross, accessed February 2, 2023, <https://casebook.icrc.org/glossary/ethnic-cleansing>. The definition originated in UN Security Council, Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, 130 (May 27, 1994), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/200/60/pdf/N9420060.pdf?OpenElement>.
- ⁶⁰ Report of the Commission of Experts, 130, 150; “Ethnic Cleansing,” United Nations, Office on Genocide Prevention and the Responsibility to Protect, accessed February 2, 2023, <https://www.un.org/en/genocideprevention/ethnic-cleansing.shtml>.
- ⁶¹ Rome Statute, art. 25.
- ⁶² Rome Statute, art. 28(b)(iii). See also International Committee of the Red Cross Database, “Rule 153. Command Responsibility for Failure to Prevent, Repress or Report War Crimes,” International Humanitarian Law Databases, accessed February 2, 2023, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule153.
- ⁶³ Rome Statute, art. 25(3)(d).

⁶⁴ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 2007 I.C.J. Reports, p. 43, 161 (Feb. 26). See also United Nations Office of Genocide Prevention and the Responsibility to Protect website, “When to Refer to a Situation as ‘Genocide,’” Guidance Note 1, 2, accessed February 2, 2023, <https://www.un.org/en/genocideprevention/documents/publications-and-resources/GuidanceNote-When%20to%20refer%20to%20a%20situation%20as%20genocide.pdf>.

⁶⁵ Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (United States Holocaust Memorial Museum, 2016), 56, <https://www.ushmm.org/genocide-prevention/reports-and-resources/fundamentals-of-genocide-and-mass-atrocity-prevention>.

⁶⁶ Straus, *Fundamentals*, 53–54.

⁶⁷ The Museum’s related “Lessons in Leadership: Criminal Justice Approaches for Preventing Mass Atrocities” educational materials contain an exercise in Module 2, Prevention: Identifying Risk Factors, Warning Signs, and Triggers, through which criminal justice professionals connect their work with risk factors. The module is available through <https://www.ushmm.org/criminaljusticetools>.

⁶⁸ Straus, *Fundamentals*, 54 (“explaining genocide and mass atrocities is an imperfect science and an emerging field”).

⁶⁹ Adama Dieng and Jennifer Welsh, “Assessing the Risk of Atrocity Crimes,” *Genocide Studies and Prevention: An International Journal* 9, no. 3 (2016): 10–11, <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1392&context=gsp>; Ellen E. Stensrud, “Mass Atrocity Prevention: An Overview of Risk Assessment and Early Warning: Policy Brief 1/2019” (HL-Senteret: The Norwegian Center for Holocaust and Minority Studies, 2019), 2, https://www.hlsenteret.no/english/about/medarbeidere/forskning/ellen-emilie-stensrud/hl_rapport_2019_ra_ew_prod_2_web.pdf; Straus, *Fundamentals*, 54.

⁷⁰ See, for example, United Nations, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention*, 2014, <https://www.ohchr.org/sites/default/files/2021-11/Genocide-Framework-of-Analysis-English.pdf>; United States Department of State, Bureau of Conflict Operations and Stabilization, *U.S. Atrocity Risk Assessment Framework*, December 21, 2022, <https://www.state.gov/u-s-atrocity-risk-assessment-framework/>; USAID, *Field Guide: Helping Prevent Mass Atrocities* (see n. 6); Jacob Blaustein Institute for the Advancement of Human Rights, *Manual on Human Rights and the Prevention of Genocide*, in cooperation with the Special Adviser to the United Nations Secretary-General on the Prevention of Genocide (New York: Jacob Blaustein Institute for the Advancement of Human Rights, 2015), <https://www.jbi-humanrights.org/JBI%20Manual%20on%20Human%20Rights%20and%20Prevention%20of%20Genocide.pdf>.

⁷¹ This Guide draws from scholarly literature on mass atrocity prevention and publications by governments, intergovernmental organizations, and nongovernmental organizations to develop a framework for understanding risk, resilience, and prevention measures. The “Lessons in Leadership: Criminal Justice Approaches for Preventing Mass Atrocities” educational materials are based on this research and are available at: <https://www.ushmm.org/criminaljusticetools>.

⁷² Straus, *Fundamentals*, 53.

⁷³ Straus, *Fundamentals*, 53.

⁷⁴ Straus, *Fundamentals*, 53–54.

⁷⁵ Straus, *Fundamentals*, 54.

⁷⁶ Straus, *Fundamentals*, 73 (comparing mass atrocity to a forest fire). Module 2, “Prevention: Identifying Early Warning Signs, Risks, and Triggers” in “Lessons in Leadership: Criminal Justice Approaches for Preventing Mass Atrocities” educational materials (available at: <https://www.ushmm.org/criminaljusticetools>) illustrates Straus’s risk factor framework by adapting his fire analogy, depicting dry wood (macro-level risk factors), a jug of oil (warning signs), and a match (triggers).

⁷⁷ Straus, *Fundamentals*, 54. Straus also points out that “existing research focuses on genocide and related forms of large-scale killing of civilians, such as ‘politicide’ (the destruction of political and economic groups) and mass killing. Less research exists on the determinants of crimes against humanity, war crimes, and ethnic cleansing.” Straus, *Fundamentals*, 55. A similar table appears in Straus, *Fundamentals*, 56.

⁷⁸ Straus, *Fundamentals*, 56.

⁷⁹ Straus, *Fundamentals*, 58–59.

⁸⁰ Straus, *Fundamentals*, 60.

⁸¹ Straus, *Fundamentals*, 63–64.

⁸² Straus, *Fundamentals*, 64–65.

⁸³ Straus, *Fundamentals*, 65–66.

⁸⁴ Jay Ulfelder and Benjamin Valentino, “Assessing Risks of State-Sponsored Mass Killing” (Washington, DC: Political Instability Task Force, 2008), 19, <http://dx.doi.org/10.2139/ssrn.1703426>.

⁸⁵ Straus, *Fundamentals*, 67.

⁸⁶ Ulfelder and Valentino, “Assessing Risks,” 15.

⁸⁷ McLoughlin identifies low economic interdependence, inequality of opportunities, and economic decline or stagnation as the main indicators of economic weakness as a risk factor. McLoughlin, *Structural Prevention*, 57–59. By contrast, trade openness, equality of economic opportunity, and sustained growth are key indicators of economic strength in this framework. McLoughlin, *Structural Prevention*, 68–69.

⁸⁸ A similar table appears in Straus, *Fundamentals*, 76.

⁸⁹ This list integrates content from Straus and the *United Nations Framework Analysis for Atrocity Crimes*. Scott Straus, *Fundamentals*, 83; *United Nations Framework of Analysis for Atrocity Crimes*, 17.

⁹⁰ Straus, *Fundamentals*, 83.

⁹¹ Straus, *Fundamentals*, 91–95.

⁹² Straus, *Fundamentals*, 97 (citing Ervin Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* [Cambridge: Cambridge University Press, 1989]).

⁹³ Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland*, rev. ed. (New York: Harper Perennial, 2017), 216. See also James Waller, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing*, 2nd ed. (Oxford: Oxford University Press, 2007).

⁹⁴ Straus, *Fundamentals*, 96–109.

⁹⁵ Dangerous Speech Project, *Dangerous Speech: A Practical Guide*, 5.

⁹⁶ This table is from McLoughlin, *Structural Prevention*, 63.

⁹⁷ *United Nations Framework of Analysis for Atrocity Crimes*, 15.

⁹⁸ Interagency Conflict Assessment Framework, United States Agency for International Development, Conflict Assessment Framework, Version 2.0, June 2012, 22, https://pdf.usaid.gov/pdf_docs/PNADY740.pdf.

⁹⁹ USAID and United States Department of State, Atrocity Assessment Framework, Supplemental Guidance to State/USAID Conflict Assessment Frameworks, 2015, 5, <https://2009-2017.state.gov/documents/organization/241399.pdf>. The Atrocity Assessment Framework was prepared by the US Department of State’s Bureau of Conflict and Stabilization Operations and USAID’s Center of Excellence on Democracy, Human Rights and Governance. See also the US Department of State, *U.S. Atrocity Risk Assessment Framework*, 2022 (see n. 70).

¹⁰⁰ The educational materials, “Lessons in Leadership: Criminal Justice Approaches for Preventing Mass Atrocities,” include an exercise in Module 2 (“Prevention: Identifying Early Warning Signs, Risks, and Triggers”) through which criminal justice professionals connect their work with risk factors. The module is available through <https://www.ushmm.org/criminaljusticetools>.

¹⁰¹ Accordingly, the tools in the detailed table in appendix A are not grouped under these temporal headings.

¹⁰² United States Holocaust Memorial Museum, Simon-Skjodt Center for the Prevention of Genocide, “Lessons Learned in Preventing and Responding to Mass Atrocities,” accessed February 3, 2023, <https://www.ushmm.org/genocide-prevention/simon-skjodt-center/work/lessons-learned>.

¹⁰³ United States Holocaust Memorial Museum, Simon-Skjodt Center, “Lessons Learned in Preventing and Responding to Mass Atrocities: Executive Summary,” accessed February 3, 2023, <https://www.ushmm.org/genocide-prevention/simon-skjodt-center/work/lessons-learned/summary>.

¹⁰⁴ Although comprehensive studies are limited, several resources highlight tools that are relevant to the justice sector. See, for example, Sarah McIntosh, *Pursuing Justice for Mass Atrocities: A Handbook for Victims* (Washington, DC: United States Holocaust Memorial Museum, March 2021), <https://www.ushmm.org/genocide-prevention/reports-and-resources/pursuing-justice-for-mass-atrocities>; Freedom House, American Bar Association Rule of Law Initiative, Internews, and Global Rights, *Preventing Atrocities: Five Key Primers* (Washington, DC: United States Agency for International Development, 2014), <https://freedomhouse.org/sites/default/files/Preventing%20Atrocities%20Five%20Key%20Primers.pdf>; Rachel Hilary Brown, *Defusing Hate: A Strategic Communication Guide to Counteract Dangerous Speech* (Washington, DC: United States Holocaust Memorial Museum, 2016), <https://www.ushmm.org/genocide-prevention/reports-and-resources/defusing-hate-a-guide-to-counteract-dangerous-speech#:~:text=Genocide%20and%20mass%20atrocities%20are,instrument%20of%20group%20targeted%20violence>; USAID, *Field Guide: Helping Prevent Mass Atrocities* (see n. 4).

¹⁰⁵ This list synthesizes material from the United Nations, Jacob Blaustein Institute, Straus, and other sources. See, for example, UN General Assembly, Report of the Secretary-General, Implementing the Responsibility to Protect, A/63/677, 14, 17, 21, 24–25, (Jan. 12, 2009), <https://digitallibrary.un.org/record/647126?ln=en>; UN General Assembly, Report of the Secretary-General, Responsibility to Protect: State Responsibility and Prevention, A/67/929-S/2013/399, 30–75 (July 9, 2013), <https://digitallibrary.un.org/record/754122?ln=en>; Jacob Blaustein Institute for the Advancement of Human Rights, *Manual on Human Rights and the Prevention of Genocide*, in cooperation with the Special Adviser to the United Nations Secretary-General on the Prevention of Genocide (New York: Jacob Blaustein Institute for the Advancement of Human Rights, 2015), <https://www.jbi-humanrights.org/JBI%20Manual%20on%20Human%20Rights%20and%20Prevention%20of%20Genocide.pdf>; Scott Straus,

Fundamentals of Genocide and Mass Atrocity Prevention (United States Holocaust Memorial Museum, 2016), 135–38, <https://www.ushmm.org/genocide-prevention/reports-and-resources/fundamentals-of-genocide-and-mass-atrocity-prevention>.

¹⁰⁶ Adapted from Straus, *Fundamentals*, 136.

¹⁰⁷ Accordingly, the tools in the detailed table in appendix A are not grouped under these temporal headings.

¹⁰⁸ According to Conley-Zilkic,

Mass atrocities end in ways that are always compromised and incomplete. There is no redemption in the wake of such extensive and brutal violence. Our definition of endings focuses on a limited factor: significant declines in violence organized to target civilians on a widespread and systematic scale. We recognize that this is not the same as ending the suffering and vulnerability of victims, achieving justice, or, in many cases, a conclusion of all violence.

Bridget Conley-Zilkic, ed., *How Mass Atrocities End: Studies from Guatemala, Burundi, Indonesia, the Sudans, Bosnia-Herzegovina, and Iraq* (Cambridge: Cambridge University Press: 2016), 2.

¹⁰⁹ Discussed in more detail on pages 36–39, dangerous speech is “any form of expression (speech, text, or images) that can increase the risk that its audience will condone or commit violence against members of another group.” *Dangerous Speech: A Practical Guide*, 5.

¹¹⁰ David A. Kolb, *Experiential Learning: Experience as the Source of Learning and Development*, 2nd ed. (New Jersey: Pearson Education, Inc., 2015); Karen Tusting and David Barton, *Models of Adult Learning: A Literature Review* (London: National Research and Development Center for Adult Literacy and Numeracy, 2003), 26–31 (discussing reflective, experiential, and transformational learning models).

¹¹¹ The course was developed as a component of the International Criminal Justice Leadership (ICJL) Project implemented by the United States Holocaust Memorial Museum from 2019 to 2023 in support of the US Department of State’s Bureau of International Narcotics and Law Enforcement Affairs (INL) mass atrocity prevention goals. This Guide is also a component of the ICJL Project.

¹¹² United States Holocaust Memorial Museum, “Lessons in Leadership: Criminal Justice Approaches to Preventing Atrocities” educational materials, “Introduction to “Lessons in Leadership: Criminal Justice Approaches for Preventing Mass Atrocities” Facilitator Guides,” <https://www.ushmm.org/criminaljusticetools>.

¹¹³ Almost seven months after completing the course and absent additional inputs from the Museum, except for the provision of some materials shared soon after the course, participants continued to see the course as a point of reference. For example, they reported that the course helped them identify warning signs that could lead to atrocities and train their subordinates in avoiding actions that could lead to atrocities. Participants also shared how, drawing from their experience in the course, they had mediated and de-escalated disputes that likely would have led to violence and revised protocols for interacting with the public during protests. According to one officer, “The training gave me confidence to address this topic.” Carlisle Levine, BLE Solutions, *International Criminal Justice Leadership (ICJL) Project Pilot Workshop: Nigeria - Sustainability Interview Analysis*, 4 (unpublished report, April 20, 2022).

¹¹⁴ United States Holocaust Memorial Museum, International Criminal Justice Leadership Project, Leaders in Atrocity Prevention Final Report (unpublished report, April 2023).

¹¹⁵ “Programs,” Auschwitz Institute for the Prevention of Genocide and Mass Atrocities, accessed February 3, 2023, <https://www.auschwitzinstitute.org/what-we-do/>. See note 104 for references to other organizations that have produced educational materials relevant to criminal justice professionals.

¹¹⁶ “Memorial and Museum, Auschwitz-Birkenau, Former German Nazi Concentration and Extermination Camp,” Auschwitz-Birkenau State Museum, webpage, accessed February 6, 2023, <https://www.auschwitz.org/en/>.

¹¹⁷ “United Nations Office on Genocide Prevention and the Responsibility to Protect,” webpage, accessed February 6, 2023, <https://www.un.org/en/genocideprevention/>.

¹¹⁸ “Programs: Lemkin Seminar, Global Edition,” Auschwitz Institute for the Prevention of Genocide and Mass Atrocities, accessed February 3, 2023, <https://www.auschwitzinstitute.org/what-we-do/global-programs/>.

¹¹⁹ “Community Partnerships,” International Association of Chiefs of Police, Discover Policing website, accessed February 3, 2023, <https://www.discoverpolicing.org/explore-the-field/what-is-community-policing/>.

¹²⁰ See, for example, Richard W. Myers, Bernard H. Levin, and Joseph A. Schafer, *Neighborhood-Driven Policing Revisited* (Arlington, Virginia: National Police Foundation, August 2021) 11–13, https://www.policinginstitute.org/wp-content/uploads/2021/08/Neighborhood-Driven-Policing_final-2.pdf.

¹²¹ Myers et al., *Neighborhood-Driven Policing Revisited*, 13. A US Department of Justice report documented a program in California that sought to reduce recidivism among jail inmates through an intensive program for high-risk inmates that emphasized therapeutic counseling, skills training, reentry planning, and other practical support. Juliana Pearson, Tammy Felix, Samantha Rhinerson, and Denise Rodriguez, *Lessons to Advance Community Policing: More Case Studies from the Field* (Washington, DC: Office of Community Policing Services, 2021), 5–6, <https://cops.usdoj.gov/RIC/Publications/cops-w0939-pub.pdf>.

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- ¹²³ Vivienne O’Connor, *A Guide to Change and Change Management for Rule of Law Practitioners. International Network to Promote the Rule of Law* (International Network to Promote the Rule of Law, 2015), 29, <http://dx.doi.org/10.2139/ssrn.2665670>.
- ¹²⁴ O’Connor, *A Guide to Change*, 29.
- ¹²⁵ O’Connor, *A Guide to Change*, 29.
- ¹²⁶ Cowell-Myers and Gallaher, “Police Reforms Helped Bring Peace.”
- ¹²⁷ Colette Rausch, “The Justice and Security Dialogue Project: Building the Resilience of Non-State Actors to Atrocity Crimes,” *AJIL Unbound* 113 (2019): 273, <https://doi.org/10.1017/aju.2019.48>.
- ¹²⁸ Nigel Quinney, *Justice and Security Dialogue in Nepal: A New Approach to Sustainable Dialogue*, Building Peace No. 1 (Washington, DC: United States Institute of Peace, June 2011), 30, https://www.usip.org/sites/default/files/resources/Building_Peace_Nepal.pdf.
- ¹²⁹ Quinney, *Justice and Security Dialogue in Nepal*, 30.
- ¹³⁰ United States Holocaust Memorial Museum, International Criminal Justice Leadership Project, Leaders in Atrocity Prevention Final Report (unpublished report, April 2023).
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- ¹⁴⁰ In recent years, significant concerns have arisen regarding the role of social media in amplifying risk factors and warning signs relating to exclusionary ideology, increased tension and polarization, public rhetoric, labeling enemies, and other factors. Federica D’Alessandra and Ross James Gildea, *Technological Change and the UN Framework of Analysis for Atrocity Crimes*, Stimson Center Issue Brief, July 25, 2022, <https://www.stimson.org/2022/technological-change-and-the-un-framework-of-analysis-for-atrocity-crimes/>; Kristina Hook and Ernesto Verdeja, *Social Media Misinformation and the Prevention of Political Instability and Mass Atrocities*, Stimson Center Issue Brief, July 7, 2022, <https://www.stimson.org/2022/social-media-misinformation-and-the-prevention-of-political-instability-and-mass-atrocities/>. The UN Secretary-General has cited the responsibilities of technology and social media companies in atrocity prevention, while questions regarding how social media should be regulated in this context are complex and unsettled. UN General Assembly and Security Council, Report of the Secretary-General, *Advancing Atrocity Prevention: Work of the Office on Genocide Prevention and the Responsibility to Protect*, UN Doc. A/75/863-S/2021/424, 47 (May 3, 2021), <https://digitallibrary.un.org/record/3925845?ln=en>.
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¹⁴⁶ *Dangerous Speech: A Practical Guide*, 10.

¹⁴⁷ According to the Dangerous Speech Project, “Broad or vague definitions of hate speech and related crimes can jeopardize freedom of speech, since vagueness allows for subjective application. Indeed, laws against hate speech or hateful speech are often misused to punish and silence journalists, dissenters, and minorities.” *Dangerous Speech: A Practical Guide*, 8.

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- ²⁰¹ The two videos referenced here illustrate the contrast in how the state has managed protests in the context of Northern Ireland, from Bloody Sunday in 1972 and a protest in Belfast, Northern Ireland in 2010. Among other differences, the British military responded in 1972 and the Police Service of Northern Ireland successfully contained a protest that turned violent in 2010. “Bloody Sunday 1972: The Day’s Events Explained,” *OnDemand News*, uploaded March 19, 2019, <https://www.youtube.com/watch?v=CquBS2hnLNI>; “Belfast riot - Ardoyne Road July 12th 2010,” *www.celticvideocom*, uploaded July 13, 2010, <https://www.youtube.com/watch?v=IbnQdK8IskE>.
- ²⁰² The concept of rule of law has been developed and contested over millennia. Some thinkers take a minimal approach, asserting that rule of law is a situation in which law rules, irrespective of what the laws say. Other definitions assert that rule of law encompasses varying elements relating to human rights, equality, restraints on government power, or that it has certain procedural characteristics. For an overview of different rule of law definitions, see Brian Tamanaha, “A Concise Guide to the Rule of Law,” St. John’s University School of Law, Legal Studies Working Paper Series, Paper #07-0082, September 2007, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1012051. The UN definition follows that latter approach and includes several elements. As stated in one report by the Secretary-General,

The rule of law ... refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

United Nations Security Council, Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict States, UN Doc. S/2004/616, 6 (Aug. 23, 2004), <https://www.unhcr.org/en-us/protection/ruleoflaw/4506bc494/rule-law-transitional-justice-conflict-post-conflict-societies-report-secretary.html>. This Guide follows a similarly substantive approach, consistent with democratic governance and international institutions, and because it resonates with mass atrocity prevention measures to restrain abuse of state power, promote nondiscrimination and equality, uphold human rights, and strengthen the legitimacy of state institutions through anti-corruption and ethical conduct.

²⁰³ In a 2013 report to the UN General Assembly and Security Council, the Secretary-General stated:

An effective security sector reform process can contribute to mitigating the risk of atrocity crimes by controlling the means to commit atrocity crimes and deterring instances of misconduct or abuse. A legitimate security sector is characterized by transparent, accountable and democratic civilian oversight, including on budgetary matters; the inclusion of staff from diverse population groups at all levels; the promotion of professionalism among uniformed personnel; the creation of programmes to improve relations with local communities; vetting of officers for participation in atrocity crimes and removal of identified perpetrators; the provision of training on international humanitarian and human rights law and on the collection of evidence of atrocity crimes; the establishment of operating procedures for the use of force and firearms that are compliant with international standards; and the adoption of international humanitarian and human rights standards in national military statutes along with the creation of internal disciplinary and other accountability mechanisms to address violations committed by security forces personnel. Security sector reform is most likely to contribute to reducing the risk of atrocity crimes when initiated by a legitimate government with democratic institutions or within the framework of a comprehensive democratic reform plan. In many countries, including Austria, Estonia and Slovenia, civilian oversight of the armed forces encourages accountability.

United Nations General Assembly and Security Council, Responsibility to Protect: State Responsibility and Prevention, Report of the Secretary-General, UN Doc. A/67/929-S/2013/399, 44 (July 9, 2013).

²⁰⁴ See, for example, Georgetown Law School, Center for Innovations in Community Safety, “Active Bystandership for Law Enforcement (ABLE) Project,” accessed February 7, 2023, <https://www.law.georgetown.edu/cics/able/>.

²⁰⁵ United Nations General Assembly and Security Council, Report of the Secretary-General, Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect, UN Doc. A/68/947-S/2014/449 44, 49 (July 11, 2014), <https://digitallibrary.un.org/record/775455?ln=en>.

²⁰⁶ United Nations General Assembly Resolution Adopted by the General Assembly on 24 September 2012, 67/1 Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, A/RES/67/1, 25 (Nov. 30, 2012), <https://digitallibrary.un.org/record/734369?ln=en>.

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²¹² Gregory L. Naarden, “Non-Prosecutorial Sanctions for Grave Violations of International Humanitarian Law: Wartime Conduct of Bosnian Police Officials,” *American Journal of International Law* 97, No. 2 (2003): 342–52.

²¹³ World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (World Bank: Washington, DC, 2018), 169–70, <https://www.pathwaysforpeace.org/> (citing Toska, S., “Sustaining Peace: Making Development Work for the Prevention of Violent Conflicts Cases: Egypt, Tunisia, Morocco, and Jordan,” Case Study for the United Nations-World Bank Flagship Study, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (World Bank: Washington, DC, 2018).

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Although the situation in Northern Ireland has never reached the risk level for a mass killing involving at least 1,000 persons (as defined by the United States Holocaust Memorial Museum’s Early Warning Project), Northern Ireland’s chronic identity conflict is a well-

established topic in conflict studies and transitional justice. See, for example, James Waller, *A Troubled Sleep: Risk and Resilience in Contemporary Northern Ireland* (2021). This example from Northern Ireland is cited here to illustrate a tactic to limit violence and civil unrest stemming from public protests in a politically and religiously divided society.

²³⁰ Peter Morrison and Jill Lawless, “Police Struggle to Contain Clashes in Northern Ireland,” Associated Press, reprinted in *Arkansas Democrat Gazette* (April 9, 2021), <https://www.arkansasonline.com/news/2021/apr/09/police-struggle-to-contain-clashes-in-n-ireland/>.

²³¹ In September 1932 Wilhelm Krützfeld received a letter of congratulations from the police president on 25 years of police service. A copy of this letter is printed in Heinz Knobloch, *Der beherzte Reviervorsteher: Ungewöhnliche Zivilcourage am Hackeschen Markt* (Berlin: Jaron Verlag, 2003), 88.

²³² His rank at the time was Revier-Oberleutnant der Schutzpolizei, which does not have an easy rank translation. It is between lieutenant and captain.

²³³ Eoin Bourke, “Wilhelm Krützfeld and Other ‘Good’ Constables in Police Station 16 in Hackescher Markt, Berlin,” in *Representing the “Good German” in Literature and Culture after 1945: Altruism and Moral Ambiguity*, eds. Pól Ó Dochartaigh and Christiane Schönfeld (Rochester, New York: Camden House, 2013), 66–84.

²³⁴ Knobloch, *Der beherzte Reviervorsteher*, 98 and Bourke, “Wilhelm Krützfeld,” 75–76.

²³⁵ On his retirement, see Knobloch, *Der beherzte Reviervorsteher*, 102–3.

²³⁶ Heinz Knoblauch, “Gedenktafel für beherzten Reviervorsteher,” May 8, 1995, <https://www.nd-aktuell.de/artikel/547477.gedenktafel-fuer-beherzten-reviervorsteher.html>.

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²⁴⁰ *International Convention on the Protection of All Persons from Enforced Disappearances* (2010), art. 17(2)(f) (specifying that relatives or “any persons with a legitimate interest” may bring proceedings before a court).

²⁴¹ International Covenant on Civil and Political Rights, art. 9(4).

²⁴² International Covenant on Civil and Political Rights, art. 9(4). The Latin term *habeas corpus* refers to recourse for a person to contest their detention.

²⁴³ For more on criminal investigation and prosecution before, during, and after mass atrocities see pages 41–43, 63–65, 68–71, and 76.

²⁴⁴ This biographical information is based primarily on Lothar Gruchmann, “Ein unbequemer Amtsrichter im Dritten Reich. Aus den Personalakten des Dr. Lothar Kreyßig,” *Vierteljahrshefte für Zeitgeschichte* 32 (July 1984): 463–88.

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- ²⁸⁴ For example, according to one 2019–2020 study of mental health among Rohingya refugees in Bangladesh, close to 70 percent of respondents in a household survey of 1,184 individuals reported post-traumatic stress symptoms. Ahmed Hossain, Redwan Bin Abdul Baten, Zeeba Zahra Sultana, Taifur Rahman, Mirza Asif Adnan, Moynul Hossain, Taifur Aziz Khan, and Muzakkir Kamar Uddin, “Predisplacement Abuse and Postdisplacement Factors Associated with Mental Health Symptoms After Forced Migration among Rohingya Refugees in Bangladesh,” *JAMA Network Open* 4, no. 3 (March 16, 2021): 1, <https://doi.org/10.1001/jamanetworkopen.2021.1801>.
- ²⁸⁵ See, for example, Conley-Zilkic, *How Mass Atrocities End*, 2 (see n. 108).
- ²⁸⁶ According to one study, 30 to 40 percent of countries see civil war recur within ten years. Straus, *Fundamentals*, 188 (citing Paul Collier, Anke Hoeffler, and Mans Soederbom, “Post-Conflict Risks,” *Journal of Peace Research* 4 (2008): 461–78; and for caution on these figures, Astri Suhrke and Ingrid Samset, “What’s in a Figure? Estimating Recurrence of Civil War,” *International Peacekeeping* 14, no. 2 (2007): 195–203).
- ²⁸⁷ US Department of State, *INL Guide to Justice Sector Assistance*, 2–3.
- ²⁸⁸ In an op-ed, Rohingya youth leaders in Kutupalong refugee camp in Bangladesh express some of the expectations and frustrations of persons affected by violence with justice processes, as well as their understanding of justice in light of what they have witnessed and experienced. As they write,
- For us, justice means going home as soon as possible. It means being given rights and citizenship in Myanmar. It means security, and the ability to call ourselves “Rohingya.” If the ICJ is going to take five or 10 years, then we ask the international community:
- What are you going to do about the abuses and injustices that are happening today?
- What action will you take to help us go home?

How can we be expected to wait for five or 10 years without education or livelihoods? ...

We want to go home, we want to go to school, we want to work, and we want to be safe. That is what justice means to us.

Shohid Zahidullah and Abdullah Zubair, “We, the Rohingya, Can’t Wait for Justice from Faraway Courts,” *Frontier Myanmar* (May 28, 2020), <https://www.frontiermyanmar.net/en/we-the-rohingya-cant-wait-for-justice-from-faraway-courts/>.

²⁸⁹ Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: United States Institute of Peace, 2010). On “politicide,” see Barbara Harff and Ted R. Gurr, “Victims of the State: Genocides, Politicides and Group Repression since 1945,” *International Review of Victimology* 1, no. 1 (September 1989): 24, <https://doi.org/10.1177/026975808900100103>.

²⁹⁰ United States Department of State Transitional Justice Initiative, “Transitional Justice Overview,” <https://2009-2017.state.gov/documents/organization/257771.pdf>.

²⁹¹ US Department of State, “What Is Transitional Justice?”

²⁹² Straus, *Fundamentals*, 207.

²⁹³ The US Department of State identifies a few guiding principles for transitional justice, specifically that transitional justice measures form part of a comprehensive transitional justice strategy that addresses truth, criminal justice, reparation, and guarantees of nonrecurrence; that they are transparent, independent, and impartial; consultative and participatory; gender integrated; context-specific; engaged with civil society; doing no harm; and “managing expectations through outreach.” US Department of State, “What Is Transitional Justice?”

²⁹⁴ While not commonly cited as a mechanism for transitional justice, cases brought before the International Court of Justice can play a role in redressing legacies of atrocities. For instance, cases brought to the ICJ under the 1948 Genocide Convention can help establish a comprehensive record of facts and, as in the case of *Gambia v. Myanmar*, may constitute the only way (at the time) by which victims may be able to hold officials accountable, particularly if those officials remain in power. Orders from these cases can require states to carry out criminal prosecutions of suspected crimes and initiate reforms that seek to remedy and avoid repeating past injustices. Similarly, the ICJ can play a role in motivating regional prosecutions, as it did in the case of *Belgium v. Senegal*, which led to the trial and conviction of former President Habré of Chad.

²⁹⁵ Through a system of cooperation set up under Part IX of the Rome Statute, states assist in

- Arresting and surrendering suspects to the ICC
- Identifying and ascertaining the whereabouts of persons or the location of items
- Taking evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court
- Questioning any person being investigated or prosecuted
- Facilitating the voluntary appearance of persons as witnesses or experts before the Court
- Examining places or sites, including the exhumation and examination of grave sites
- Executing searches and seizures
- Providing records and documents, including official records and documents
- Protecting victims and witnesses and preserving evidence
- Identifying, tracing, freezing, or seizing proceeds, property, and assets and instrumentalities of crimes for the purpose of eventual forfeiture
- Providing other lawful assistance to facilitate the investigation and prosecution of crimes within the Court’s jurisdiction, and
- Temporarily transferring a person in custody for purposes of identification or for obtaining testimony or other assistance

Rome Statute of the International Criminal Court, Part IX, July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).

²⁹⁶ Tessa Alleblas, Eamon Aloyo, Geoff Dancy, and Yvonne Dutton, “Is the International Criminal Court Biased against Africans? Kenyan Victims Don’t Think So.” *Washington Post*, March 6, 2017, <https://www.washingtonpost.com/news/monkey-cage/wp/2017/03/06/is-the-international-criminal-court-biased-against-africans-kenyan-victims-dont-think-so/>.

²⁹⁷ “The Hybrids,” Hybrid Justice, accessed March 15, 2023, <https://hybridjustice.com/hybrid-and-internationalised-mechanisms/>.

²⁹⁸ United Nations Human Rights Council, Report of the Commission on Human Rights in South Sudan, UN Doc. A/HRC/40/69, 115 (Mar. 12, 2019); Owiso Owiso, “The Proposed Hybrid Court of South Sudan,” *Accord*, October 19, 2018, <https://www.accord.org.za/ajcr-issues/the-proposed-hybrid-court-for-south-sudan/>.

²⁹⁹ Abraham Diing Akoi, “The Hybrid Court in South Sudan Could Be a Recipe for Further Conflict,” London School of Economics Center for Public Authority and International Development Blog, July 1, 2021, <https://blogs.lse.ac.uk/africaatlse/2021/07/01/hybrid->

[court-south-sudan-recipe-for-further-conflict-law-ethnic-violence/](#) (“My respondents confirmed a common fear among many South Sudanese: conventional wisdom views transitional justice mechanisms as ineffective in a country where the government presides over a broken system awash with arms, divided along ethnic lines and lacking legitimacy... [T]he international community needs a better understanding of South Sudanese society’s ideas of justice through nuanced research among ordinary people.”).

³⁰⁰ Nyagoah Tut Pur, Human Rights Watch, “A Glimmer of Hope for South Sudan’s Victims,” January 31, 2021, <https://www.hrw.org/news/2021/01/31/glimmer-hope-south-sudans-victims>.

³⁰¹ Amnesty International Press Release, “South Sudan: African Union Must Set Precedent for African-Led Justice by Establishing Court for South Sudan,” November 23, 2022, <https://www.amnesty.org/en/latest/news/2022/11/south-sudan-african-union-must-set-precedent-for-african-led-justice-by-establishing-court-for-south-sudan/>.

³⁰² Olfa Belhassine, “Tunisia: Will Hope for Transitional Justice Come from Kef?” *JusticeInfo.net*, Fondation Hirondelle, January 24, 2023, <https://www.justiceinfo.net/en/111549-tunisia-hope-transitional-justice-kef.html>.

³⁰³ Human Rights Watch, “Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina,” February 7, 2006, <https://www.hrw.org/report/2006/02/07/looking-justice/war-crimes-chamber-bosnia-and-herzegovina>.

³⁰⁴ Daria Sito-Sucic, “Sarajevo Prosecutor Indicts 14 Bosnian Muslims over War Crimes against Serbs,” Reuters, December 28, 2017, <https://www.reuters.com/article/us-bosnia-warcrimes/sarajevo-prosecutor-indicts-14-bosnian-muslims-over-war-crimes-against-serbs-idUSKBN1EM1BD>.

³⁰⁵ Marija Tausan, “Some Bosnian Prosecutors File No War Indictments in 2018,” *Balkan Transitional Justice*, December 28, 2018, <https://balkaninsight.com/2018/12/28/some-bosnian-prosecutors-file-no-war-indictments-in-2018-12-28-2018-1/>.

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³⁰⁸ United Nations Office of the High Commissioner for Human Rights, *Conflict-Related Sexual Violence in Northern Unity, September-December 2018*, 67, February 15, 2019, https://www.ohchr.org/sites/default/files/Documents/Countries/SS/UNMISS_OHCHR_report_CRSV_northern_Unity_SouthSudan.pdf.

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³¹¹ Cassel, “Universal Criminal Jurisdiction.”

³¹² United Nations Human Rights Council, “International Commissions of Inquiry, Commissions on Human Rights, Fact-Finding Missions, and Other Investigations,” accessed February 5, 2023, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/COIs.aspx>.

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³¹⁴ High Commissioner for Human Rights, “Commissions of Inquiry,” 7.

³¹⁵ High Commissioner for Human Rights, “Commissions of Inquiry,” 7.

³¹⁶ High Commissioner for Human Rights, “Commissions of Inquiry,” 14.

³¹⁷ United Nations, Report of the Secretary-General, Conflict-Related Sexual Violence, UN Doc. S/2019/280, 24 (Mar. 29, 2019), <https://digitallibrary.un.org/record/3799661?ln=en>.

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