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Nigeria Training Module on Gender Dimensions of Criminal Justice Responses to Terrorism

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COUNTER-TERRORISM COMMITTEE
EXECUTIVE DIRECTORATE (CTED)





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Nigeria Training Module on Gender Dimensions of Criminal Justice Responses to Terrorism

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This handbook is a technical tool that has been developed for training purposes to support national practitioners to enhance their skills and knowledge on gender dimensions of criminal justice responses to terrorism in Nigeria.

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Preface

Message from the UN Office on Drugs and Crime

UNODC, since 2013, has been implementing a multi-phased programme of technical assistance in partnership with Nigerian stakeholders and the United Nations Counter-Terrorism Committee Executive Directorate (CTED) which supports Nigeria to strengthen its criminal justice responses to terrorism in accordance with the rule of law and human rights. This work has been funded by the European Union.

In recognition of the different ways in which women and men are involved in and impacted by the activities of Boko Haram and its offshoot, the Islamic State in West Africa Province, in 2017, UNODC began working with Nigerian counterparts, the Office of the United Nations High Commissioner for Human Rights and UN Women to strengthen the capacity of the Nigerian criminal justice system to integrate gender perspectives into its measures against terrorism.

This work is based on the conviction that integrating a gender perspective in the investigation, prosecution and adjudication of terrorism cases, as well as in providing assistance to victims of terrorism, will strengthen both the effectiveness of the criminal justice response to terrorism and respect for women's rights.

This Training Module also contributes to broader UN efforts to advance gender equality and women's rights as fundamental to global progress on peace and security, human rights and sustainable development, a cause championed by Secretary-General António Guterres. UNODC's work on this topic forms part of its contribution to realizing Sustainable Development Goals 5 (gender equality and women's empowerment) and 16 (peace, justice and strong institutions).

The Module is intended to serve as a practical tool for training Nigerian criminal justice sector practitioners working on terrorism-related cases on the gender aspects of counter-terrorism, thereby building capacity of the justice sector to implement measures that respect women's rights and gender equality. It provides guidance on doing so in the context of the Nigerian legal framework, as well as international and African regional law and good practice. This Module is also intended to aid criminal justice institutions in Nigeria to further integrate gender aspects of criminal justice processes in terrorism cases into their training curricula.

UNODC is greatly encouraged by the Government of Nigeria's recognition of the core role of women and girls as actors in preventing and countering violent extremism through the *Policy Framework and National Action Plan for Preventing and Countering Violent Extremism*, and its efforts to mainstream gender throughout the criminal justice system more broadly through policy measures, such as the Nigeria Police Force's Gender Policy.

Still, more remains to be done to address the scourge of terrorism in Nigeria, by holding those responsible for committing acts of terrorism and to support access to justice for victims in a gender-sensitive manner. We are pleased to place this *Nigeria Training Module on Gender Dimensions of Criminal Justice Responses to Terrorism* at the disposal of our Nigerian counterparts to support their efforts to do so.

Gender equality and the empowerment of women are fundamental aims which must inform all aspects of UNODC's work in our mandate areas. UNODC's leadership in the area of access to justice for victims of violence against women further reflects our commitment to achieving respect and protection of the rights of victims and their access to effective remedies. As an organization we are directing sustained attention towards achieving these aims through the UNOV/UNODC Strategy for Gender Equality and the Empowerment of Women (2018-2021).

We are deeply thankful to the Nigerian criminal justice, women's rights and counter-terrorism experts, as well as to the Office of the UN High Commissioner for Human Rights, whose contributions were essential in preparing and reviewing this publication.

Oliver Stolpe
Representative
Country Office in Nigeria
UNODC

Message from the Director of Public Prosecutions, Federal Ministry of Justice

The recent scourge of Boko Haram and its offshoot, the Islamic State in West Africa Province (ISWAP) in the North Eastern part of Nigeria has presented new and complex dimensions to effective judicial responses to heinous acts of terrorism, especially, those against women and girls.

Terrorist attacks, violations of international humanitarian law and abuses of human rights by Boko Haram and ISWAP including killings and other violence against civilians, notably women and children, abductions, early and forced marriage, rape, sexual slavery and other sexual and gender-based violence and the use of girls as suicide bombers have all received widespread condemnation at the regional and international levels with calls for the Nigerian Government to investigate, prosecute and bring to trial the perpetrators of such crimes and abuses.

At the same time, the troubling participation of women and girls in terrorist groups in active combat functions and other support functions such as spies, recruiters and carriers of contraband, has challenged traditional assumptions that women can only be victims or at the receiving end. The fact that such associations can be willing and unwilling, further demonstrates the complexities of involvement and the roles of women and girls in terrorist groups which calls for a careful examination of the criminal justice response from a gender lens.

The present training Module is a concerted effort to address these concerns by integrating a gender perspective in the criminal justice responses to terrorism. It acknowledges how men and women are differently involved in and impacted by terrorism and pays close attention to the role of women, both as perpetrators and as victims of terrorism-related offences. It will be used to enhance the capacity of our criminal justice system to effectively investigate, prosecute and adjudicate cases of terrorism and support access to justice for victims in a gender-sensitive manner, including applying witness protection measures that encourage safe and effective participation in criminal justice processes.

It will also strengthen interagency collaboration between judicial systems and first responders (sexual assault referral centres, community leaders, civil society actors) to effectively bring charges specific to crimes of sexual or gender-based violence and hold those responsible for committing acts of terrorism in a gender-sensitive manner.

The Module should be viewed as complementing the strategic efforts of the Federal Government of Nigeria and Federal Ministry of Justice to address issues of discrimination, gender equality and surrounding issues related to the implementation and domestication of progressive federal legislations such as the Violence Against Persons (Prohibition) Act 2015, Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015, Child Rights Act 2003 and the Administration of Criminal Justice Act 2015, both at the federal and state levels. In this regard, the annex to the Module which provides an in-depth analysis of legal frameworks for the prosecution of sexual and gender-based violence by terrorist groups, comes as a welcome development.

The Module is the fruit of the close collaboration and important partnership between Nigeria and UNODC and evidence of the willingness amongst justice sectors practitioners, policymakers and civil society actors to work together.

It is, therefore, my singular honour and privilege to write the foreword to this novel document and exhort members of the criminal justice sector to consult and refer to the legal and policy recommendations targeted at addressing emerging issues arising in criminal justice responses to terrorism and its prevention.

Mohammad U. E.

*Director of Public Prosecutions,
Federal Ministry of Justice*

Message from the Federal Ministry of Women Affairs

The Training Module on Gender Dimensions of Criminal Justice Response to Terrorism provides a tool for training Nigerian justice sector practitioners, law enforcement officers, defence lawyers and gender advocates on the importance of examining gender dimensions of criminal justice responses to terrorism. It also provides practical guidance on investigating gender dimensions of criminal justice response to terrorism in Nigeria. The module covers key aspects of the gender component in criminal justice response to terrorism and links gender dimensions of counter terrorism and the advancement of gender equality, women's rights and women, peace and security agenda among others.

It is pertinent to note that several United Nations instruments have mandated the integration of a gender perspective and women's rights into counter-terrorism processes. They often express concern that acts of gender-based and sexual violence are known to be part of the strategic objectives and ideology of certain groups of violent extremists. The UN Security Council Resolution 2349 of 2017 condemned violent acts of the extremist group Boko-Haram for abuse of human rights which include forced marriage, rape, sexual slavery and other acts of sexual and gender-based violence. Similarly, other documents originating from Nigeria have established the significance of gender dimensions of counter-terrorism. These include the revised National Action Plan on the implementation of UNSCR 1325 (2017–2020), the revised National Counter Terrorism Strategy (NACTEST) 2016, and the Nigerian Policy Framework and a National Action Plan for Preventing and Countering Violent Extremism, 2017.

The Violence Against Persons Prohibition Act (VAPP Act) 2015 is a major legal instrument that provides protection for victims of violence against women in Nigeria.

The United Nations Office on Drugs and Crime (UNODC) is mandated to provide technical assistance to requesting countries, including Nigeria, to address the legal and criminal justice framework of counter-terrorism. The organization has been active in Nigeria, as a partner in the country's effort to address terrorism. Since 2017, the UNODC has worked with Nigerian partners and other UN agencies such as the United Nations Office of the High Commissioner for Human Rights (OHCHR) to strengthen needed capacity in the Nigerian criminal justice system in order to integrate gender into its counter terrorism campaign. This training module is an expression of our common resolve and commitment to consolidate previous efforts to entrench gender dimensions to countering terrorism in Nigeria. This is expected to complement the on-going effort of the Federal Government of Nigeria in counter terrorism activities nationwide.

The Federal Ministry of Women Affairs and Social Development, the focal agency in the implementation of the United Nations Security Council Resolution 1325, fully supports the development of the training module as an important step towards the realization of the targets of the National Action Plan on UNSCR 1325. The Ministry will provide a platform to respond to various gender dimensions of violent extremism.

I therefore, commend the training module without any reservations, for use at workshops and seminars for all law enforcement and gender justice advocates.

Mrs. Ifeoma Nkiruka Anagbogu

Permanent Secretary

Federal Ministry of Women Affairs and Social Development

Background, Aims and Methodology of the Training Modules

The development of this Training Module is made possible by funding of the European Union for the *EU-Nigeria-UNODC-CTED Partnership Project III: Support for Criminal Justice Responses to Terrorism and Violent Extremism*.

Background

In the course of their co-operation since 2012, UNODC and Nigerian authorities determined that the effectiveness of capacity building initiatives on criminal justice responses to counter-terrorism would be significantly enhanced and made more sustainable if customized Nigerian training materials on key aspects of criminal justice responses to terrorism were developed and made available to criminal justice sector practitioners and training institutions in the country.

In May 2019, UNODC published a *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*. The present Training Module is intended to provide training materials tailored to Nigeria's laws and context complementing the UNODC Handbook. Users of the present training tool can therefore refer to the UNODC Handbook for more in-depth analysis of the international legal and policy framework and for additional comparative materials highlighting the experience and interesting practices developed in other countries.

Aims and Methodology of the Training Module

i. Objective and Target Audience

The principal objective of this Training Module is to provide a tool for training Nigerian public prosecutors, judges, investigators, officials in the security, military and police sectors working in the counter-terrorism field or on terrorism-related cases, as well as lawyers in private practice and gender equality and women's rights advocates.

In addition to being a training tool, the Module can serve as a manual for self-study and as a reference book for practitioners to look up Nigerian, as well as regional and international practice on human rights questions arising in the criminal justice response to terrorism.

ii. Methodology

The training method employed by the Training Module is designed to empower adult participants to effectively discharge their professional duties and responsibilities. The methodology adopted has therefore the following four characteristics:

- a) practical (as adult professionals learn by doing)
- b) interactive (in order to capitalize on the collective intelligence and expertise of the group)
- c) participant-centered (as the entire learning experience must focus on the participants' needs and expectations)
- d) based on a problem-solving approach (in order to immerse the participants in a real-life stimulating learning experience).

These are learning methods that encourage and indeed require participants to play an active role and take responsibility for their learning. Participants will be expected to work both as part of a small group, as well as individually, to explore problems through case studies and discussion platforms, and take initiatives that allow them to acquire the practical knowledge and skills that they need in their workplace. The Training Module offers key learning objectives, lecture material, activities and case studies to enhance discussion and knowledge sharing. The Training Module does not aim at providing abstract or theoretical knowledge of legal concepts, but rather to encourage trainers and participants to reflect upon the practical application and implications of the norms and principles discussed, and to think about the policy and ethical underpinnings of legal principles.

The Training Module may represent a useful tool both for the trainer and the participants. The trainers will have to determine the most appropriate moment to distribute the Modules. In some cases, they might want to distribute it at the beginning of the course. In other cases, they might esteem more appropriate to share the Module in its entirety with the training participants only at the end of the training. In this case, trainers should provide copies of assignments and other relevant materials already during the training.

In support to the participant-centred and problem-solving approach underlying the Training Module, a number of training tools are used. To facilitate the use of these tools, they are identified throughout the Training Module by graphic symbols.

These are the symbols used:

Learning objectives 	Contains a brief overview of the key topics on which the respective Chapter intends to impart knowledge.
Focus boxes 	Users are introduced by a series of boxes to topics of specific interest, providing more in-depth information or examples, and allowing a comparative approach to the subject.
Case studies 	Studies of real cases from Nigeria and other jurisdictions are provided to illustrate how legal concepts have been applied in practice by courts and other bodies.
Activities 	These boxes offer ideas for exploring how the various topics covered in the module are handled in practice in Nigeria. Participants are encouraged to apply their skills and share their experience. Some of the activities are discussion points, others are hypothetical case studies which can also be used to practice drafting an application or a motion on a point of law, or as basis for a mock hearing. During workshops, trainers may propose an activity to stimulate an initial discussion among participants, or to encourage application of the legal concepts to a hypothetical practical case. Readers studying independently will also be able to use the activity boxes to focus on the practical application of knowledge acquired.
Self-assessment questions 	Assessment questions included at the end of each Chapter provide a means to test one's knowledge on the topics covered. These questions are primarily intended as a tool for self-assessment by learners using the Modules for self-study. The assessment questions can also be used by trainers as a preliminary tool to identify training needs and the level of competence of participants, as discussion points during a training session, or to test impact at the end of a training session.
Tools 	These tools offer additional materials, including practical guides, manuals, treaties and model laws, databases and other sources, to assist criminal justice practitioners in applying the principles discussed.
Further reading 	This tool offers reference to additional material with a view to broadening the reader's knowledge of the topics discussed.
Reference 	The reference symbol is used to inform users of the location of information covering the same or connected topics in other UNODC publications and resources.

Introduction

This Module examines gender dimensions of criminal justice responses to terrorism in the Nigerian context. It has been developed by UNODC, in cooperation with Nigerian criminal justice officials, on the basis of the conviction that an effective criminal justice response to terrorism must include a gender perspective, adopt an approach based on gender mainstreaming and human rights, and take account of the multifaceted and distinct ways that women and men are involved in, and impacted by, terrorist acts. Adopting such an approach will both strengthen the effectiveness of the criminal justice response to terrorism and respect for women's rights in this context. As such, this Module aims to support Nigerian criminal justice practitioners to enhance the integration of a gender perspective in the investigation, prosecution and adjudication of terrorism cases, in the provision assistance to victims of terrorism, and in detention in relation to terrorism-related offences:

- Chapter 1 will consider the need to mainstream gender in criminal justice responses to terrorism, and canvasses the applicable policy and legal framework.
- Chapter 2 examines gender aspects of selected terrorism offences, and possible criminal justice approaches to situations in which an individual who has been involuntarily associated with a terrorist group is alleged to have committed a terrorism-related offence.
- Gender considerations arising in the investigation and prosecution of terrorism offences and integrating gender expertise into investigations and prosecutions will be considered in Chapter 3.
- Chapter 4 will examine how to apply gender-sensitive approaches in contexts of deprivation of liberty on terrorism-related grounds and in the management of violent extremist offenders.
- Chapter 5 discusses the importance of accountability for sexual and gender-based violence perpetrated by terrorist groups, applicable legal frameworks for accountability, and special considerations for the investigation and prosecution of these crimes.
- Finally, Chapter 6 provides guidance on building capacity for gender-sensitive support and remedies for victims of terrorism.

The intersection of gender, terrorism and counter-terrorism

Gender intersects with terrorism in many ways. The patterns of women's and men's involvement in terrorism, including voluntary and forced association/recruitment, motivations and roles, may differ. Terrorism can also have different impacts on women and men as victims.

The roles that women and men fulfil in supporting or carrying out acts of terrorism may also have a gendered element. Men continue to hold the vast majority of ideological and military leadership positions in terrorist groups and constitute the majority of those engaged in violent operational roles (although women do occupy violent operational positions in some groups). Boko Haram's ideology, for example, casts men in hyper-masculine combat roles, which reinforces gender norms amongst male recruits. The group has also used gender norms as a way to enhance its operational effectiveness, using women as suicide bombers, to smuggle weapons and ammunition, act as spies and messengers, in a subversion of gender stereotypes that cast women as inherently

peaceful and beyond suspicion. In some cases, the roles prescribed to women in terrorist groups are closely tied to religious or ideological doctrines.

Global studies have suggested that women and men can be motivated to support or engage in terrorism by similar factors. These include, for example, a wish to effect social change, as a response to grievances about socio-political conditions or perceived injustices along political, religious or personal lines, to avenge the death of a spouse or relative; a fanatical commitment to ideological or religious beliefs, or to achieve economic benefits.¹ In some cases, however, these considerations do have a gender dimension. Gender-based discrimination and inequality may interact with and exacerbate violations on other grounds, such as race or religion. Other conditions that may lead to women's radicalization include sexual and gender-based violence, lack of economic and educational opportunities, as well as an impaired ability to engage in political forums and exercise their civil and political rights through lawful means.²

As discussed in Chapter 2, both women and men become associated with terrorist groups of their own volition and contribute to the activities of these groups of their own accord, while others become associated with terrorist groups as the result of coercion. Terrorist groups recruit women and men, girls and boys against their will in a variety of ways, including by abducting them; making threats against them, their families or communities; or relying on spouses or other family members to coerce them. In some cases, there may be a gender component – for example, where women are coerced into supporting terror groups by spouses or family members and due to social convention are unable to refuse. Women have also been specifically targeted in abductions by terrorist groups.

Women and men may also be differently impacted by terrorist violence as victims. For example, men constitute the majority of State forces engaged in conflicts with these groups through the counter-terrorism response, and are therefore disproportionately affected by frontline combat. Both women and men are victims of sexual and gender-based violence (SGBV) perpetrated by terrorist groups, however women and girls are disproportionately so impacted by this form of violence. SGBV against women and girls is also used as a specific tactic of terrorism for strategic purposes.

As will be discussed in more detail in Chapter 1, the integration of a gender perspective into national policies, practices and programmes involves examining the needs and experiences of both women and men. This Module, however, principally focuses on the contact of women and girls with the justice system in relation to terrorism in Nigeria. This is because criminal justice systems have commonly not differentiated between the experiences of women and men, and have assumed that they share the same needs and concerns. While such an assumption may initially appear to be gender neutral, in practice, it more often leads to unequal experiences and outcomes, since the institutional design of the criminal justice system often reflects predominantly male priorities, as men typically dominate decision-making at the household, community and political levels.

1 Fink, Barakat and Shetret, "The Roles of Women in Terrorism, Conflict and Violent Extremism", Policy Brief, April 2013, p. 3.

2 Organization for Security and Co-operation in Europe, "Women and Terrorist Radicalization", February 2013, p. 3.

Women as victims

The impact of terrorist activities can be highly gendered. Women are among the victims of generalized acts of terrorist violence, while their health, education and participation in public life are disparately affected by terrorist activities compared to men. In some contexts, women are disproportionately affected by internal displacement as the result of violence caused by terrorist groups – in North East Nigeria, women constitute the majority of those displaced as a result of the conflict with Boko Haram forces.³ Women may also face difficulties accessing justice and seeking remedies for the violations and abuses they have suffered due to inequalities or discrimination in the criminal justice system.

In addition, terrorist groups intentionally target women, encroaching on their human rights and hindering their socio-economic development, including by restricting their freedom of movement and access to education.⁴ Women are also targeted for acts of SGBV, such as rapes, forced marriages, and sexual slavery. As recognised by the United Nations Security Council, acts of SGBV “are known to be part of the strategic objectives and ideology of certain terrorist groups, used as a tactic of terrorism, and an instrument to increase their power through supporting financing, recruitment, and the destruction of communities”⁵. In Nigeria, the infliction of this form of violence on women and girls is highly disproportionate: they constitute 99 per cent of the victims of reported sexual violence across Adamawa, Borno and Yobe States.⁶

The *Regional Strategy for the Stabilization, Recovery and Resilience of the Boko Haram-affected Areas of the Lake Chad Basin*, adopted in 2018 by Cameroon, Chad, Niger and Nigeria, highlights the different ways in which women have been affected by Boko Haram violence:

The Lake Chad crisis has disproportionately affected women and girls. From being at the forefront of the displacement crisis to constituting the majority of victims of sexual exploitation and abuse, to suffering stigmatization from association with different groups, women and girls are faced with different challenges than men and boys. While violence against women and girls is a serious patriarchal and cultural issue, it has been even more pronounced throughout the conflict as women and girls are subjected to sexual abuses and harassment as a weapon of war, enabled by families’ and communities’ denial and rejection. Thousands of women and girls have been abducted, raped or forced into marriage and continue to be used as suicide bombers against their will or as a result of religious conviction and radicalization. While gender-based violence is predominantly caused by Boko Haram on the one hand, they are regrettably victims of abuses and harassment by security providers also. Upon their return into communities, they continue to live in trauma and stigma undermining their social and economic reintegration.

The significant impacts on women’s and girl’s rights resulting from Boko Haram violence, including the use of SGBV as a tactic of terrorism, calls for a robust and gender-sensitive criminal justice response that takes into account women’s specific needs and interests and supports their access to justice.

Women as perpetrators

While women are particularly affected by the crimes of terrorist groups, it is important to avoid the misperception that women can only be victims of terrorist violence, based on gender stereotypes which suggest that women and girls only become associated with terrorist groups involuntarily or as the result of coercion.⁷

3 See, for example, A/64/211, para. 25; S/2016/361, para. 15; and International Crisis Group, *Nigeria: Women and the Boko Haram Insurgency* (2016), page i.

4 Naureen Chowdhury Fink, Sara Zeiger & Rafia Bhulai, *A Men’s World? Exploring the Roles of Women in Countering Terrorism and Violent Extremism*, 2016, p. 7

5 Security Council resolution 2242 (2015), S/RES/2242 (2015), preamble.

6 Report of the Secretary-General on Conflict-Related Sexual Violence, 2019 (S/2019/280), para. 119.

7 GCTF, Good Practices on Women and Countering Violent Extremism, Good Practice 8.

In Nigeria, some women have willingly chosen to support Boko Haram in different ways. Their motives for supporting the group reportedly include the possibility to enhance their security, or to guarantee their well-being or access to Islamic education. Other women have become forcibly associated with the group, including as the result of kidnappings and abductions, and have subsequently become involved in the commission of terrorism offences.

Women have fulfilled a multitude of roles within Boko Haram, including in operational roles in order to carry out armed attacks, particularly as suicide bombers. Of the 434 suicide bombers reportedly deployed by Boko Haram between April 2011 and June 2017, 244 have been positively identified as female. Women have also engaged in non-violent operational roles, including as trainers, recruiters and intelligence operatives. Women have been sought out by Boko Haram to fulfil logistical tasks, such as smuggling munitions, arms and food, and acting as messengers for the organization, because they are perceived to be less conspicuous than male militants.⁸ Further, the terrorist indoctrination of women has been considered as a means to assure the next generation of violent extremists.⁹

Integrating a gender perspective is necessary in order to accurately assess the criminality of these women; make decisions on charging, prosecution or alternatives to prosecution that will advance justice and accountability; and to support the criminal justice system to play its part in the overall effort to prevent and counter terrorism and violent extremism.¹⁰

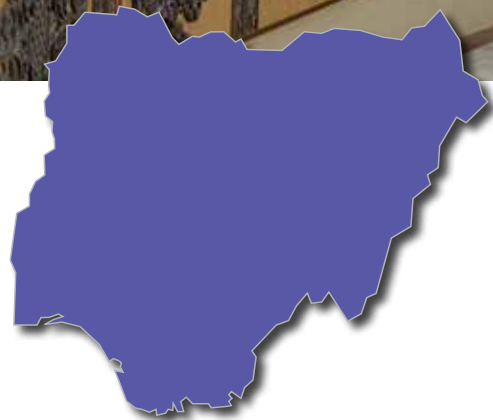
8 International Crisis Group, Nigeria: Women and the Boko Haram Insurgency (2016) 10.

9 OSCE Summary of the Proceedings and Preliminary Findings of the Expert Roundtable on preventing Women Terrorist Radicalization, 2011

10 Naureen Chowdhury Fink, Sara Zeiger & Rafia Bhulai, *A Men's World? Exploring the Roles of Women in Countering Terrorism and Violent Extremism*, 2016, introduction; UNODC, *Gender Mainstreaming in the work of UNODC*, 2013, p. 63; OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach*, p. 39



A side event co-organized by the African Union and European Union on “Women in Power” on the margins of the 31st African Union Summit, held in 2018 in Mauritania.
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Mainstreaming Gender into Counter-Terrorism, Preventing Violent Extremism, and Criminal Justice Responses to Terrorism



Learning objectives

By the end of this Chapter, you will be able to:

- Explain the concept of gender mainstreaming and name related Nigerian policy documents
- Discuss the need to apply a gender mainstreaming approach in efforts to counter terrorism, prevent violent extremism, and in criminal justice responses to terrorism, in line with international and Nigerian policy instruments
- Discuss the relevance of gender mainstreaming to human rights, gender equality, non-discrimination, and protection from sexual and gender-based violence
- Explain the linkages between the Women, Peace and Security agenda and mainstreaming gender into counter-terrorism



1.1 The gender mainstreaming approach



Reference

Key terms, such as 'gender', 'sex', and 'sexual and gender-based violence' are explained in the Glossary to this Module.

Gender mainstreaming defined

Gender mainstreaming is one of the key strategies for promoting gender equality and women's rights and eliminating all forms of discrimination against women on the basis of sex and gender. Gender mainstreaming promotes the human rights of women and the elimination of discrimination against women. It also contributes to ensuring that measures to prevent and counter violent extremism and terrorism are better informed and targeted, ultimately making those measures more effective.



Focus: Gender mainstreaming

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a way to make women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal is to achieve gender equality."¹¹

As reflected in the definition above, integration of a gender perspective into policies, practices and programmes involves examining the needs and experiences of both women and men. A gender-neutral approach (which does not differentiate between the impact of terrorism and counter-terrorism measures on women and men and assumes that they share the same experiences, needs and concerns) can be problematic because it may in fact reflect the assumption that only men's experiences of terrorism and counter-terrorism are relevant. This is due to the fact that since men typically dominate decision-making at the household and community levels, a gender-neutral approach may reflect largely male priorities.

National and international responses to terrorism should consider and be shaped not only by men's, but also by women's experiences as perpetrators of acts of terrorism, as victims of terrorism, and as agents in State and non-State institutions (such as social movements) involved in countering terrorism.¹²

In the context of counter-terrorism there has conventionally been a tendency to equate the term 'gender' with the category of 'women', and there has been little engagement with the category of 'men'. Considering the role of masculinities and male identity in terrorism can be critical in understanding motivations for engaging in violent extremism or terrorism, and how masculinities are employed in recruitment tactics. A leading scholar has observed that:

"... men who cannot meet traditional expectations of masculinity – such as breadwinner, respect and honor, wealth, access to sexual partners of choice – may precisely find that radical or extremist political mobilization offers a compelling substitute for regular masculinity authentication. It is therefore not accidental that terrorist/violent extremist groups manipulate gender stereotypes to recruit men and women, ISIS notably employs hypermasculine images to portray its fighters, as well as promised access to sexual gratification, marriage and guaranteed income as a reward for the glory of fighting. These motifs have proven indisputably alluring to marginalized men whose capacity to access any similar social capital or status in their own communities will be extremely limited."¹³

While recognising the importance of analysing the role of masculinities, this Module predominantly examines how women experience and are impacted by the justice system's response to terrorism. This is to balance the gender-neutral approach, which is premised on the assumption that terrorists, victims of terrorism, and counter-terrorism agents are primarily or exclusively male.

11 UNODC, Gender Equality Strategy for the United Nations Office on Drugs and Crime and the United Nations Office in Vienna (2018-2021).

12 Jayne Huckerby, "Gender, counter-terrorism and international law" in *Research Handbook on International Law and Terrorism*, Ben Saul, ed. (Cheltenham, United Kingdom, Edward Elgar Publishing Limited, 2014), p. 165.

13 Fionnuala Ní Aoláin, "The complexity and challenges of addressing conditions conducive to terrorism", in *Using Human Rights to Counter Terrorism*, Manfred Nowak and Anne Charbord, eds. (Cheltenham, United Kingdom, Edward Elgar Publishing Limited, 2018), p. 190.



Activity 1

Consider the statement, presented above, that:

“considering the role of masculinities and male identity in terrorism can be critical in understanding motivations for engaging in violent extremism or terrorism, and how masculinities are employed in recruitment tactics.”

- i) What does the term ‘masculinities’ mean?
- ii) Thinking specifically of Boko Haram in Nigeria, what role do masculinities play in Boko Haram and particularly in Boko Haram’s recruitment of men?

Gender mainstreaming in the Nigerian policy context

The Nigerian National Gender Policy (2006) aims to promote a gender-sensitive and gender responsive culture in national policymaking through a gender mainstreaming approach. The objectives of the Policy include, inter alia, to:¹⁴

- Establish the framework for gender-responsiveness in all public and private sector policies and programmes
- Promote gender mainstreaming in all policy, programming and organisational cultures in Nigeria
- Incorporate the principles of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and other global and regional frameworks that support gender equality and women empowerment in the country’s legislative processes
- Promote equal opportunity in all areas of political, social, economic life of the country for women, as well as for men.

Additionally, the Policy identifies a number of ‘Guiding Principles’ to shape its implementation through a gender mainstreaming approach:¹⁵

- The need to undertake a gender analysis as part of all policy articulation, implementation, monitoring and evaluation in Nigeria
- The roles of all stakeholders in the mandate for gender equality, including the government, the private sector, civil society organisation, community-based organisation, development partners, women and men as individuals
- The need for a cooperative interaction of women and men
- The integral role of women’s empowerment to achieving gender equality
- The need to draw on existing structures and best practices, and to draw on international experiences.

The Policy Framework states that the successful implementation of the Policy “rests on how operators of the policy are able to follow due process in the use of ‘gender mainstreaming’ as a tool for institutionalising change in gender power/role relations”.¹⁶

14 Federal Ministry of Women Affairs and Social Development, Nigeria Gender Policy: Situation Analysis & Framework, pp. 46-47.

15 Ibid, 47-48.

16 Ibid, 108.



Focus: Gender Mainstreaming as a Tool for Institutionalizing Gender Equality Frameworks

The National Gender Policy Framework identifies the following steps as key in applying a gender mainstreaming approach at an institutional level: ¹⁷

- Using gender mainstreaming as a tool in cross-sectoral development (including, e.g., responses to gender-based violence; peace and conflict management; physical and social services; and human rights protection)
- Undertaking practical steps for gender mainstreaming (including, e.g., situational analysis using gender-disaggregated data; gender sensitive policy design; policy implementation involving diverse stakeholders, women and men; and monitoring and evaluation)
- Effective coordination between relevant agencies (including government entities and development partners, local government actors, communities, men, women and children).

1.2 Mainstreaming gender into counter-terrorism and prevention of violent extremism

Recognition of the need to mainstream gender perspectives in measures to counter terrorism and prevent violent extremism is a relatively recent phenomenon. Such considerations include:

- The roles of women and girls involved in terrorist activities
- The roles of women and women's organisations in preventing violent extremism
- Considering how the needs of male and female victims of terrorism differ
- How masculine gender constructs affect radicalization and the commission of terrorist acts against women
- How women and girls may be particularly affected by the counter-terrorism response.

In the Nigerian context, the central role of women and girls as actors in the prevention and countering of violent extremism is recognized in the Nigerian Policy Framework and National Action Plan for Preventing and Countering Violent Extremism:

As wives, sisters and mothers, policy makers or law enforcement officers, women have a strategic role to play in the treatment, rehabilitation and reintegration of violent extremist offenders. We know that mothers can play an emotive role in reaching out to extremist offenders to change their violent behaviour. Women's roles in homes and communities can pick up early signs of radicalisation in young persons. This insight is also relevant for counter-messaging to break up the cycle of radicalisation. We will tap into this insight in designing effective prevention programmes. In order to achieve safety and livelihood for women and girls, Women organisations have a critical role to play through advocacy and programming.

Component 3, on 'Engaging Communities and Building Resilience', calls attention to the importance to mainstream gender perspectives across all initiatives and mechanisms to prevent or counter violent extremism,

¹⁷ Ibid, 108.

promote women's participation, leadership and empowerment in communities, government agencies and civil society.

On the global level, the 2014 UN Global Counter-Terrorism Strategy Review encouraged Member States, UN entities and international and regional organisations "to consider the participation of women in efforts to prevent and counter terrorism".¹⁸ The most recent Global Counter-Terrorism Strategy Review resolution of June 2018 urges Member States to adopt a gender-sensitive analysis of the drivers of radicalization for women, and the impacts of counter-terrorism strategies on women's human rights and women's organizations.

The importance of mainstreaming gender perspectives in strategies to counter terrorism and violent extremism is also evident in the Secretary-General's Plan of Action to Prevent Violent Extremism. This document calls on Member States to:

- a) Mainstream gender perspectives across efforts to prevent violent extremism;
- b) Invest in gender-sensitive research and data collection on women's roles in violent extremism, including on identifying the drivers that lead women to join violent extremist groups...;
- c) Include women and other underrepresented groups in national law enforcement and security agencies, including as part of counter-terrorism prevention and response frameworks;
- d) Build the capacity of women and their civil society groups to engage in prevention and response efforts related to violent extremism;
- e) Ensure that a portion of all funds dedicated to addressing violent extremism are committed to projects that address women's specific needs or empower women...¹⁹

The Security Council has recognized the need to address the role of women in preventing and countering terrorism, and to ensure their protection on many occasions. In its resolution [2178 \(2014\)](#), the Security Council recognized the need to empower women as a mitigating factor to the spread of violent extremism and radicalization.



Activity 2

In resolution [2178 \(2014\)](#), which focused on the threat posed by foreign terrorist fighters, the Security Council recognized the need to empower women as a mitigating factor to the spread of violent extremism and radicalization.

- i) Do you agree that women's empowerment mitigates the spread of violent extremism?
- ii) If yes, in what ways does women's empowerment mitigate the spread of violent extremism?

This recognition is also part of a global policy framework known as the Women, Peace and Security Agenda, which is aimed at promoting gender equality and enhancing the rights, participation, and protection of women in conflict and post-conflict contexts, including with respect to conflict-related sexual and gender-based violence. The first Security Council resolution on women, peace and security was resolution [1325 \(2000\)](#) which, in addition to resolutions [1889 \(2009\)](#) and [2122 \(2013\)](#), addresses broad themes such as the specific experience of women in conflict and their role in peacebuilding, peacekeeping and conflict resolution. Six subsequent resolutions also cover these issues but focus more on conflict-related sexual violence.²⁰

The nexus between the Women, Peace and Security agenda and countering terrorism has been addressed in a number of Security Council resolutions, including resolution [2242 \(2015\)](#), in which the Council recognised the

¹⁸ A/RES/68/276.

¹⁹ A/70/674, para. 53.

²⁰ Those resolutions are resolutions [1820 \(2009\)](#), [1888 \(2009\)](#), [1960 \(2010\)](#), [2106 \(2013\)](#), [2242 \(2015\)](#) and [2467 \(2019\)](#).

differential impact of terrorism and violent extremism on the human rights of women and girls., In resolutions [2331 \(2016\)](#) and [2388 \(2017\)](#), the Council recognized the connection between trafficking in persons, sexual violence, and armed conflict and terrorism.

UN Member States should develop national action plans for the implementation of resolution [1325 \(2000\)](#) in order to localize international commitments under the Women, Peace and Security resolutions.²¹ Where relevant, national actions plans should include means for integrating the Women, Peace and Security Agenda into national counter-terrorism measures.



Focus: National Action Plan for Nigeria for the Implementation of Security Council Resolution 1325

In March 2017, the Federal Ministry of Women Affairs and Social Development published a National Action Plan for the Implementation of UNSCR 1325 and Related Resolutions in Nigeria (NAP). This provides a national policy framework for the realization of UN Security Council resolution 1325 and other resolutions related to the 'Women, Peace and Security' agenda. It revises the earlier NAP from 2013, in accordance with the changing security context and emerging concerns related to terrorism, violent extremism, and the developing humanitarian crisis.

It prescribes the roles of national bodies working with security, foreign policy, development and gender equality relevant to the needs of women before, during and after conflict according to the following five pillars:

- 1) Prevention and disaster preparedness: focuses on the prevention of violations against women and girls, including SGBV, discriminatory practices, and exploitation during conflict and violence
- 2) Participation and representation: aims to secure the full and equal participation of women at all levels of decision-making, including in relation to conflict prevention and peacebuilding
- 3) Protection and prosecution: focuses on ensuring protection against and prosecution of violations of women and girls' rights during conflict
- 4) Crisis management, early recovery and post-conflict reconstruction: seeks to ensure women and girls' specific relief and recovery needs in crisis, recovery and post-conflict situations
- 5) Partnerships coordination and management: aims to increase capacity and resources to coordinate, implement, monitor and report on women, peace, and security plans and programmes

Sub-National Implementation

The NAP provides for Zonal Action Plans for six geo-political zones in Nigeria, in order to tailor policies to meet the specific needs of these regions. States are also expected to develop State Action Plans. Action Plans have been developed in a number of States thus far, including Adamawa, Bayelsa, Delta, Gombe, Kaduna, Kano, Kogi, Plateau, and Rivers, and in two of the States most affected by Boko Haram, Borno and Yobe.

21 Security Council, Presidential statements of 28 October 2004 ([S/PRST/2004/40](#)) and 27 October 2005 ([S/PRST/2005/52](#)).



Focus: Gender mainstreaming in Good Practices on Women and Countering Violent Extremism of the Global Counterterrorism Forum

The Global Counterterrorism Forum (GCTF) has developed a guidance document entitled *Good Practices on Women and Countering Violent Extremism*, which contains good practices and focuses on women and gender aspects in the context of efforts to counter violent extremism. The GCTF acknowledges the failure of past efforts aimed at countering violent extremism to mainstream gender, despite the participation of women and girls in violent extremism and terrorism, as well as their roles in prevention.

Good Practice 1 establishes the need to include women and girls and gender mainstreaming in the design, implementation, monitoring and evaluation of all policies, laws, procedures, programmes and practices related to countering violent extremism.

According to the GCTF, mainstreaming gender in countering violent extremism is based on the understanding that:

- Gender mainstreaming improves the design and implementation of efforts to counter violent extremism and ensures that such efforts account for the different ways that women and girls are involved in violent extremism.
- A comprehensive approach to countering violent extremism should integrate considerations of how violent extremism and counter-terrorism efforts impact women and girls differently than they impact men and boys.
- Efforts to counter violent extremism should take into account the way in which societal gender norms and expectations associated with belonging to a particular gender, shape people's lives in order to deliver more targeted interventions.

The document also underscores that the practical integration of women and girls into all aspects of programming related to countering violent extremism can only occur in the context of broader guarantees of the human rights of women and girls. In particular, such guarantees should include addressing the causes of gender inequality, such as the subordination of women and discrimination on the basis of sex, gender, age and other factors.



Activity 3

In your view, what does it mean to consider the gender dimensions of counter-terrorism and the prevention of violent extremism in Nigeria? Why is it important to do so?



1.3 Mainstreaming gender into criminal justice responses to terrorism

In addition, it is also important to apply a gender mainstreaming approach to the way that the criminal justice system deals with terrorist crime, its perpetrators and victims.

As underscored in UNODC's guidance note on *Gender mainstreaming in the work of UNODC*, "gender mainstreaming is vital to ensuring long-term sustainable criminal justice reform, as it identifies and uses opportunities for improving gender equality in projects and policies that would not have otherwise been

considered gender issues”.²² It is also essential in order to avoid worsening inequalities in criminal justice systems.

Unequal gender power relations and gender stereotypes stemming from biological, socio-cultural and economic differences that assign status and value to the sexes often filter their way into public institutions. Thus, while criminal justice mechanisms are charged with dispensing justice and ensuring accountability through equal protection and application of the law, women and men victims undergo different experiences in these institutions.²³ As a starting point, criminal justice systems have generally been developed by men and based on their experiences. As a result, they often reflect implicit gender stereotypes about how women and men come into contact with the law. Consequently, personnel in criminal justice systems may consciously or unconsciously reinforce the pervasive unequal power relations and stereotypes that characterize wider societal patterns of gender relations, ranging from initial contact with law enforcement, to investigation, pre-trial, trial and post-trial, as well as during imprisonment or deprivation of liberty, as demonstrated in the examples below.



Focus: Gender impacts of criminal justice responses

Assumptions made about the nature of victims and offenders

Gender stereotypes influence thinking that men are perpetrators of violence and women are passive victims. In some instances, rates of victimisation are indeed proven to be linked to gender: women are more likely to be victims of gender-based violence, for example, which is inextricably linked to gender-based inequality. However, this assumption is not universally accurate and often leads to misconceptions and vulnerabilities. Female criminal behaviour has commonly been perceived as less prevalent, or a less serious problem, than male criminal behaviour.²⁴ Terrorist and violent extremist groups exploit these stereotypes for strategic advantage.

Criminalisation of offences.

Criminal law provisions can overtly treat men and women differently or have differential impacts due to structural gender inequalities while being on their face neutral. As an example of the former, consider the criminalization of rape under section 281(1) of the Penal Code, which is limited to men as perpetrators and women as victims. As an example of the latter, consider the criminalization of sexual intercourse outside marriage: experience shows that while such provisions may in principle apply equally to men and women, women are more likely to be prosecuted and punished, for reasons linked to culture, tradition and religion, and because they can become pregnant as a result of sexual intercourse.

Administration of criminal justice.

Harmful gender stereotypes may, overtly or subtly, influence the work of criminal justice personnel, including police, lawyers, and judges. Such bias may manifest itself in sexual violence cases influenced by, for example, beliefs about victim behaviour, or attitudes towards marital violence.²⁵ At the same time, the absence of female law enforcement personnel can discourage female victims from seeking assistance with their case.

Women may also face barriers in accessing justice due to a number of issues that are not gender-specific, but disproportionately affect women. These include a lack of information of their legal rights, illiteracy and lower socio-economic and education status, a lack of autonomy over decision-making and economic resources, and a fear of stigma for seeking redress for certain crimes. Similarly, legal aid may not be available to women and men on an equal basis.

22 UNODC, *Gender Mainstreaming in the work of UNODC*, 2013, 7-8.

23 UNODC, *Gender Mainstreaming in the work of UNODC*, 2013

24 UNODC, *Gender Mainstreaming in the Work of UNODC*, 2013, 70.

25 UNODC, *Handbook on effective prosecution responses to violence against women and girls* (2014), pp. 29-37.



Focus: Gender impacts of criminal justice responses (continued)

For example, women may face barriers to accessing legal aid where eligibility for legal aid is means tested on the basis of total household income rather than individual income, but where women do not have access to household finances.²⁶

Imprisonment and other forms of deprivation of liberty.

Women have a range of particular needs in detention that may not be considered in prison systems that are designed primarily for male prisoners. These relate to health aspects and the care of small children. Women in detention facilities, for example, are more likely to be subject to sexual abuse than male offenders. Women may be disadvantaged in accessing alternatives to police custody or imprisonment by bail conditions requiring cash bonds that women cannot afford because they do not have equal access to household resources. In some contexts, rape victims are subject to detention for their 'protection' or to prevent honour crimes.²⁷

Even where the victims of terrorist acts are of the same sex, they are not a homogeneous group. Depending on the age, status, vulnerability among other factors, women and girls experience suffering and trauma differently. They all deserve equal protection and equality before the law (as discussed further below), which are principles that should inform the design of multi-layered interventions. A criminal justice system that places equal value on women and men is vital as part of transformative approaches to addressing societal gender inequalities.

Thus, there is an urgent need for the criminal justice system:

- to acknowledge that women and men are disparately impacted by terrorism and have different needs for recovering from the consequences of terrorist activities
- to recognize the gendered risk of women to become victims of terrorist acts and, particularly in the Nigerian context, to better address acts of SGBV perpetrated by Boko Haram
- to strengthen women's access to justice, to guarantee their protection and provide them with support and access to remedies²⁸
- to recognize the role of women as agents in terrorist activities and to prosecute the persons responsible, both women and men, in accordance with Nigerian law²⁹
- to adopt a gender mainstreaming approach in countering terrorism recognizing that gender neutral responses of the criminal justice system could exacerbate gender inequalities.

²⁶ See, for example, Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015), para. 37(e).

²⁷ See, for example, A/HRC/4/33/Add.3, paras. 39 and 72.

²⁸ *Report of the United Nations High Commissioner for Human Rights on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries, 2015*, p. 9, 16; *Report of the Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, on the sale of children, child prostitution and child pornography and on contemporary forms of slavery, including its causes and consequences on their joint visit to Nigeria, 2016*, p. 10

²⁹ *Report of the United Nations High Commissioner for Human Rights on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries, 2015*



Focus: Gender mainstreaming in the Nigeria Police Force

In 2012, the Nigeria Police Force adopted a Gender Policy within the framework of the Nigerian Constitution, 1999, as well as broader policy commitments to gender equality and women empowerment.

As noted in the introduction:

Gender mainstreaming is now seen as an integral part of police reform, and a key to operational effectiveness and institutional credibility. For example, increasing the recruitment of female staff, preventing human (woman) rights violations, and collaborating with women's organisations to create an efficient, accountable and participatory police force, which responds to the specific needs of men, women, girls and boys. Ironically, the Nigeria Police Force (NPF) is not only dominated by men, but modelled as a masculine institution.

According to the situation analysis report in the Policy, alarming records of gender abuses have been documented.

The Policy aims to:

- 1) Institutionalize gender mainstreaming framework as a core value in the Nigeria Police Force;
- 2) Infuse into the Police Act/Regulations the principle of CEDAW and other global, regional, and national frameworks that support gender equality and women empowerment;
- 3) Reduce the current gender gap in the Nigeria Police Force, and make the Nigeria Police Force an equal opportunity employer; and
- 4) Build the capacity of the Nigerian Police Force to effectively handle cases of gender-based violence/violence against women.



Activity 4

Identify three ways in which the experiences of men and women within the criminal justice system differ.

Consider, for instance, the possibility of differences between men and women in Nigeria regarding:

- Reporting to the police a crime they are victims of;
- Being heard as witnesses when they are victims of a crime;
- Obtaining bail when charged with a serious offence;
- Access to assistance by legal counsel of their own choice.



1.4 Gender equality as a human rights obligation

The right to equality and non-discrimination, including on the basis of sex and gender, is one of the foundational principles of human rights law, and is essential for the effective protection of human rights and the rule of law. Women and men are entitled to equality and non-discrimination in the application of all human rights.

Nigeria is a party to numerous international and regional human rights instruments enshrining these rights, such as the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, including some specifically focussed on the rights of women and girls, such as:

- The Convention on the Elimination of All Forms of Discrimination against Women, 1979, and its Optional Protocol, 1999
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 (Maputo Protocol).

As a party to international human rights treaties, Nigeria has obligations and duties to respect, to protect and to fulfil human rights. The obligation to 'respect' requires Nigeria to refrain from interfering with the enjoyment of human rights, while the obligation to 'protect' requires that Nigeria protects individuals and groups from human rights abuses. The obligation to 'fulfil' is a positive obligation on Nigeria to take steps to facilitate the enjoyment of basic human rights.

Nigeria has a positive obligation under international law to protect all persons under its jurisdiction against human rights abuses perpetrated by both State and non-State actors.³⁰ This includes an obligation to prevent, investigate and punish human rights violations perpetrated by private persons or entities, including terrorist groups.



Reference

Module I of this training series, on *Counter-terrorism and Human Rights: Incorporation of International Law into Nigerian Law*, provides a general overview of the international and regional human rights framework and the human rights instruments to which Nigeria is a party.

a) The right to equality and non-discrimination

In Nigeria, section 42 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (CFRN) prohibits discrimination based on sex (amongst other grounds) in respect of any law in force in Nigeria, or any executive or administrative action. Pursuant to section 15 CFRN, the prohibition of such discrimination is also a fundamental objective of State policy. The Gender and Equal Opportunities Bill, which is awaiting ratification by the National Assembly, seeks to guarantee the right to equality and prohibition of discrimination on the grounds of sex and gender in many areas of public and private life, and ensure the prohibition of violence against women.

At the regional level, the right to equality and non-discrimination is also enshrined in Article 2 of the African Charter on Human and Peoples' Rights, 1981 (ACHPR), which has been domesticated through the African Charter on Human and People's Rights (Ratification and Enforcement) Act, 2004. Notably, Article 18 of that Act requires the State to "ensure the elimination of every discrimination against women and...ensure the protection of the rights of the woman...as stipulated in international declarations and conventions".

The recognition of women's and men's equality before the law requires the mainstreaming of gender perspectives into laws, protocols and procedures within criminal justice systems. Beyond the formal normative framework, the right to equality and equal protection for women under the law requires the adoption of gender responsive approaches in the practices, attitudes, skills and gender composition of personnel.

For example, the Nigeria Police Force has a Gender Unit, which is responsible for handling cases involving sexual and gender-based violence and the abuse of children, and to encourage reporting of these crimes. The Gender Unit has also been tasked with ensuring the implementation of a robust capacity building plan for officers in gender-related issues, such as inclusion of gender training in the Nigeria Police curriculum at all levels and enhancement of the existing collaboration with other stakeholders in the area of gender equality. Gender desks

30 Human Rights Committee, General Comment No. 31 (CCPR/C/21/Rev.1/Add.13), 26 May 2004, para. 8.

and family support units have also been established in area commands and divisional police stations across the country.³¹ Sexual assault referral lines or centres have also been established in every State.³²



Focus: African Commission on Human and Peoples' Rights *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa*

The *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa* underscore the need for States to integrate a gender perspective in criminal justice responses to terrorism as a human rights issue. They call upon States to “ensure that legislation, procedures, policies and practices are designed to respect and protect the rights and special status and distinct needs of women and children who are victims of terrorism or subject to counterterrorism measures, including but not limited to searches and investigations, all forms of detention, trials, and sentencing”.

As a State party to CEDAW, Nigeria is required to take all appropriate measures to guarantee women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms on a basis of equality with men.³³ Further, Nigeria is obligated to address not only discriminatory laws, but also practices and customs, and discrimination against women by private actors.³⁴



Focus: The Convention on the Elimination of All Forms of Discrimination against Women and the Committee on the Elimination of Discrimination against Women

Assumptions made about the nature of victims and offenders

At the international level, there are two key mechanisms for the protection and advancement of women's human rights and the principles of gender equality and non-discrimination. First, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the core international human rights treaties, and legally binds all States Parties to fulfil, protect and respect women's human rights. It is focused on the human rights of women to equality and non-discrimination.

Under CEDAW, article 2, Nigeria is required to:

- Enforce gender equality through national law and adopt legislation prohibiting discrimination against women, including sanctions.
- Establish the legal protection of the rights of women on an equal basis with men, and to ensure effective protection through national redress mechanisms.
- Refrain from discriminating against women, and to take action to eliminate discrimination against women by any person, organisation or enterprise.
- Abolish existing laws and practices, and repeal national penal provisions, constituting discrimination against women.

Second, the Committee on the Elimination of Discrimination against Women is a body of independent experts of women's rights from around the world that monitors implementation of CEDAW. The Committee fulfils a number of functions in this capacity, including:

31 Federal Ministry of Women Affairs and Social Development, National Guidelines and Referral Standards on Gender Based Violence in Nigeria, p. 13.

32 Ibid, 31.

33 Convention on the Elimination of All Forms of Discrimination against Women, art. 3.

34 Note, also, Article 18 of the ACHPR, which requires the State to “ensure the elimination of every discrimination against women”, and Principle 4 of the ASEAN Human Rights Declaration, which recognises the rights of women as an inalienable part of human rights and fundamental freedoms.



Focus: The Convention on the Elimination of All Forms of Discrimination against Women and the Committee on the Elimination of Discrimination against Women (continued)

The Committee fulfils a number of functions in this capacity, including:

- Considering reports, which are required to be submitted by States parties to CEDAW on implementation of the Convention rights in their countries and issuing concluding observations on these reports
- Receiving communications from individuals or groups submitting claims of violations of rights protected under CEDAW
- Initiating inquiries into situations of grave or systematic violations of women's rights
- Developing general recommendations on specific topics covered by CEDAW

Imprisonment and other forms of deprivation of liberty.

States Parties to CEDAW are required to comply with a series of reporting procedures. This includes submitting national reports at least every four years on the legislative, judicial, administrative or other measures they have taken to implement the Convention.

States are also required to report on specific thematic issues of particular importance, as indicated in the Committee's General Recommendations. For example, 'General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations' requires States parties to report on the legal framework, policies and programmes that they implemented to ensure the human rights of women in conflict prevention, conflict and post-conflict, and to provide information on the implementation of the Security Council agenda on women, peace and security (paras. 83-84).



Activity 5

Identify 10 measures undertaken to implement Nigeria's obligations under CEDAW article 2 in practice.

Gender-based violence against women constitutes discrimination against women within the meaning of CEDAW Article 1, and is a violation of women's human rights,³⁵ and engages all State obligations under Article 2 of the Convention.

b) Right to access justice and remedies

In Nigeria, section 46 of the 1999 Constitution enshrines the right of any person who alleges a violation or likely violation of their fundamental rights, as protected by Chapter IV of the Constitution, to apply for redress to a High Court in the State where the violation occurred.

The CEDAW Committee has affirmed that the right of women to access justice is "essential to the realization of all of the rights protected under the Convention..." and may be impeded by discrimination against women, based on gender stereotypes, stigma, and gender-based violence.³⁶

³⁵ Committee on the Elimination of Discrimination against Women, *General recommendation No. 35 on violence against women*, (2017) para. 1, reaffirming the relevance *General recommendation No. 19 on violence against women*, (1992) [9].

³⁶ Committee on the Elimination of Discrimination against Women, *General recommendation No. 33 on women's access to justice* (2015), paras. 1 and 8.

The Committee further confirmed that under Article 5(a) of the Convention, States parties “have an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes, that prevent women from exercising and claiming their rights and impede their access to effective remedies”.³⁷

Under Article 7 of the ACHPR, individuals have the right to appeal to competent national organs against violations of fundamental rights. In the case of victims of sexual and gender-based violence in particular, the African Commission on Human and Peoples’ Rights has stated that States are required to adopt measures that will address barriers to justice for acts of SGBV.³⁸ Article 8 of the Maputo Protocol also requires States parties to take appropriate measures to ensure women’s effective access to judicial and legal services, and to reform existing discriminatory laws and practices for the protection of women’s rights.

One of the most important elements in securing access to justice and remedies on the basis of equality and non-discrimination is gender balance in law enforcement and judicial agencies. Operationalising these rights and mainstreaming gender in law enforcement activities in terrorism cases also requires the effective representation of women in the law enforcement and judicial systems. Such representation is reflected in recruitment, retention and advancement of women at all levels. This is discussed more in depth in Chapter 3 of this Module.

Gender dimensions of supporting access to justice are considered in Chapter 6.



Activity 6

When victims access the criminal justice system, they encounter law enforcement personnel with similar or different social and cultural practices and beliefs. What are some of the possible reactions of male and female personnel in the police, prosecution, and judiciary to the following categories of Boko Haram victims:

- A male victim of forced conscription into fighting?
- A female victim of forced marriage to a terrorist?
- A girl below 18 years who is forced into sexual slavery to a number of terrorists?
- A widowed victim of forced labour?

In light of the above questions, would the victims face similar or different limitations in claiming their rights before criminal justice systems? Why would this occur? In which areas would it be most evident?

How could the experiences of these individuals be improved in each scenario? Consider if these changes would take place through policies, laws or practices.

³⁷ Ibid, para. 7.

³⁸ African Commission on Human and Peoples’ Rights, *General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)* (2017), paras. 57-61.



Further reading

- The Global Counterterrorism Forum has produced a document on *Good Practices on Women and Countering Violent Extremism*, which contains 22 good practices on women and gender in the context of countering violent extremism (CVE). It addresses how to counter women's and girls' involvement in violent extremism and terrorism, advancing their roles in CVE, and addressing women as victims
- UNODC has produced a guidance note for UNODC Staff on *Gender mainstreaming in the work of UNODC*, which provides an overview of gender mainstreaming in the criminal justice system, including in the context of countering terrorism



1.5 Self-assessment questions

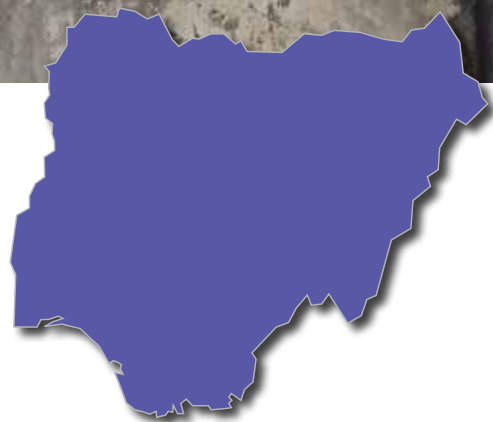


Self-Assessment Questions

- 1) The Nigerian National Gender Policy (2006) aims to promote a gender-sensitive and gender responsive culture in national policymaking through a gender mainstreaming approach.
 - a) What does the term 'gender mainstreaming' mean?
 - b) What three steps are identified in the National Gender Policy Framework to assist Nigerian government agencies to apply a gender mainstreaming approach on an institutional level?
- 2) List the five pillars of the National Action Plan for the Implementation of UNSCR 1325 and Related Resolutions in Nigeria. How do these pillars relate to the protection and promotion of women's rights in the fight against terrorism?
- 3) Name at least three ways in which gender mainstreaming promotes the protection of women's rights in criminal justice and counter-terrorism.
- 4) Based on the Gender Policy of the Nigeria Police Force, list three ways that gender mainstreaming should be applied in police reform.
- 5) Name four obligations Nigeria has undertaken as a state party to CEDAW in order to advance gender equality and eliminate discrimination against women.
- 6) What are Nigeria's core obligations under the 1999 Constitution, CEDAW, and the ACHPR to ensure access to justice and remedies for violations of the rights to gender equality and non-discrimination?



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2

Gender Aspects of Terrorism Offences



Learning objectives

By the end of this Chapter, you will be able to:

- Explain why terrorism offences formulated in a gender-neutral manner may still have a different impact on women and men
- Identify gender dimensions of support and membership offences under the Terrorism (Prevention) Act, 2011 and Terrorism (Prevention) (Amendment) Act, 2013
- Discuss gender dimensions of the use of suicide bombers by Boko Haram
- Explain the relevance of alternatives to prosecution in terrorism cases and related gender dimensions
- Identify grounds for alternatives to prosecution, reduced sentences upon conviction, defences and mitigating circumstances applicable to persons involuntarily involved in the commission of terrorism offences

The obligation to bring perpetrators of acts of terrorism to justice applies equally to the conduct of women and men. Criminal justice actors should avoid perpetuating stereotypes suggesting that women are less culpable for committing terrorism offences or are incapable of acting of their own volition when it comes to violence and terrorism.

The provisions of the Terrorism (Prevention) Act, 2011 (TPA 2011) and the Terrorism (Prevention) (Amendment) Act, 2013 (TPAA 2013) criminalizing acts of terrorism and numerous forms of support to and complicity in acts of terrorism do not distinguish between male and female perpetrators. As criminal laws in Nigeria in general, they are formulated in gender-neutral terms. Killing, hostage-taking and the financing of acts of terrorism, to name just a few examples, are made punishable without distinguishing between the sex of the alleged perpetrators.

At the same time, it is important to recognize that laws that are formulated in gender-neutral terms may have a different impact on men and women. In most countries, counter-terrorism laws written predominantly by men respond to what has conventionally been seen as a primarily male threat. As noted by the UN Special Rapporteur on human rights while countering terrorism, women have been marginal to the conversations in which definitions of security are agreed and generally peripheral to the institutional settings in which security frameworks are implemented as policy and law.³⁹

The present chapter explores the difference in impact that the criminalization of acts of terrorism in the TPA 2011, as amended, may have on women and men by employing the gender mainstreaming approach introduced in Chapter I.

39 [A/72/495](#), para. 29.

2.1 Gender roles in terrorist groups in Nigeria

Boko Haram and its offshoot, the Islamic State in West Africa Province (ISWAP), were founded by men and are male-dominated organizations. Boko Haram commanders are all men, as are nearly all the fighters engaged in attacks against military, police and civilian population in villages and towns – with the important exception of suicide bomber attacks discussed below. Male Boko Haram leaders and ideologues discuss the appropriate role for women in the organization and whether women may participate in violent attacks.⁴⁰

Women and girls are among the victims of general acts of Boko Haram violence and are specifically discriminated against and targeted in acts of sexual and gender-based violence. Women are also involved, however, as perpetrators of violent acts of terrorism, and in providing support in different capacities to Boko Haram. In some cases, women have become associated with the group of their own volition, while in other cases, this is as the result of differing forms of coercion or abduction.

A Mercy Corps report identified a spectrum of involvement of women and girls ranging from those who were intrinsically motivated, circumstantially motivated, pressured, coerced, and abducted.⁴¹ An International Crisis Group Report on 'Women and the Boko Haram Insurgency' states that "there is much ex-captive testimony about insurgents trying to obtain allegiance through a mix of threats, preaching and enticements".⁴² Initially, some women voluntarily joined Boko Haram in order to study the Quran and learn Arabic, while for others, the opportunity for marriage within the group offered an alternative to traditional financial and social obligations.⁴³

As noted in the report, "women can perform roles very different from traditional stereotypes. As the war [between State forces and Boko Haram], women have become recruiters, spies, domestic labour, fighters and forced or willing suicide bombers".⁴⁴

2.1.1 Women in support roles

Women have fulfilled a range of support roles within Boko Haram, including by providing domestic services, such as cooking, cleaning and fulfilling general household duties, and/or sexual services. In some cases, this is due to marriages, which women have entered into voluntarily, while in other cases fathers agreed to the marriage of their daughters to fighters as result of pressure from Boko Haram.⁴⁵ Other reports indicate that some women married Boko Haram members without being aware of their husband's affiliation with the group.

Other support roles are more operational in nature. The UN Counter-Terrorism Executive Directorate has noted that "as a result of increased restrictions on their movement, Boko Haram has sought out women to carry out logistical tasks, such as the smuggling of arms and munitions and the passing of information, the assumption being that they can pass checkpoints and avoid house inspections more easily than their male counterparts". Women have been found smuggling weapons and ammunition and acting as informants for the group.⁴⁶ According to that Global Survey, "economic incentives have seemingly played a role in the recruitment of women...Boko Haram has offered women weapons-carriers between \$30 and \$312 per mission".⁴⁷

A study presenting the findings of interviews with persons formerly associated with Boko Haram supports the understanding that the involvement of women in the activities of the group extends beyond only the domestic

40 Rachel Bryson and Audu Bulama Bukarti, *Boko Haram's Split on Women in Combat*, Tony Blair Institute for Global Change, September 2018.

41 Mercy Corps, *Motivations and Empty Promises: Voices of Former Boko Haram Combatants and Nigerian Youth* (2016) p. 12.

42 International Crisis Group, *Nigeria: Women and the Boko Haram Insurgency* (2016) p. 8.

43 Ibid, p. 5.

44 Ibid, p. 6.

45 Ibid, p. 9.

46 S/2015/975, annex [33].

47 https://www.un.org/sc/ctc/wp-content/uploads/2016/10/Global-Implementation-Survey-1373_EN.pdf

sphere. According to that study, women were working as intelligence operatives, explosives experts, trainers and recruiters.⁴⁸ Three women were arrested in July 2014 for recruiting female members.⁴⁹

Girls have also been used by Boko Haram in support roles as cooks, messengers and lookouts, and as human shields to protect Boko Haram assets during military operations.⁵⁰

2.1.2 Women involved in violent acts

Reports have also indicated that some women and girls have been trained and participated in attacks, including as a result of a shortage of male combatants. Women also reportedly fulfil roles as foot soldiers in Boko Haram,⁵¹ with a number of reports indicating that women have been involved armed attacks.⁵² According to another report, women and girls have been forced to participate in military operations as a result of refusing to convert to Islam, including by carrying ammunition or luring men into ambush.⁵³

Boko Haram has increasingly used female suicide bombers since 2011. Data shows that Boko Haram deployed 469 female suicide bombers in 240 incidents between June 2014 and February 2018, resulting in the deaths of 1,259 people excluding the bombers.⁵⁴ The use of girls in suicide attacks is also notable. Girls accounted for 75 per cent of all child suicide bombers between January 2014 and February 2016. 55 Girls were used in suicide attacks between January and August 2017 alone". According to an International Crisis Group report, "the youngest female bomb-carriers are often victims themselves, with little awareness, duped by relatives and possibly drugged. But the older bombers seem to have volunteers...moved by commitment to jihad and apparently indoctrinated over a long period, including with promise of direct admission to *al-jannah* (paradise)".⁵⁵

Interviews with women and girls formerly associated with Boko Haram suggest that many female suicide bombers are victims of coercion. In some instances, women and girls have been kidnapped and held hostage, with family members killed during their capture, and have been forcibly equipped with suicide belts and bombs and forced towards crowds of people, before seeking assistance from ordinary citizen or authorities.⁵⁶

The following report highlights the "spectrum of agency" of female suicide bombers and the role of gender relations in the trajectories that lead to women becoming suicide bombers:

There is growing evidence of the coercion of females into roles as suicide bombers, from NGO reports from women liberated from Boko Haram camps, to accounts of officials, and media interviews with young women who refused to self detonate. The methods and extent of this coercion vary ... Some stories reveal parents "donating" girls to Boko Haram. Another account of coercion comes from an adult ... She willingly married an insurgent but after his death rejected the advances of another militant and was ordered to blow herself up. She refused. There are other complex accounts like theirs that "defy neat categories" and demonstrate a spectrum of agency. [Others] believe both hypnotism and enforced drug-use also coerce females to bomb. In 2016, a woman abducted in Maiduguri described how she and two other women were injected with

48 Anneli Botha & Mahdi Abdile (2017) *Reality Versus Perception: Toward Understanding Boko Haram in Nigeria*, Studies in Conflict & Terrorism, p. 6.

49 CTED report on resolution 1373 [34].

50 Annual report of the Special Representative of the Secretary-General for Children and Armed Conflict, A/HRC/34/44 (2016), para. 13. and Report of the Secretary-General on children and armed conflict in Nigeria (S/2017/304) 2017, para. 32.

51 Anneli Botha & Mahdi Abdile (2017) *Reality Versus Perception: Toward Understanding Boko Haram in Nigeria*, Studies in Conflict & Terrorism, p. 6.

52 Mia Bloom and Hilary Matfess, *Women as Symbols and Swords in Boko Haram's Terror* (2016) p. 112, International Crisis Group, Nigeria: Women and the Boko Haram Insurgency (2016) 10.

53 Human Rights Watch, *Those Terrible Weeks in their Camp: Boko Haram Violence against Women and Girls in Northeast Nigeria* (2014) p. 2.

54 Elizabeth Pearson, "Wilayat Shahidat: Boko Haram, the Islamic State, and the Question of the Female Suicide Bomber", *Boko Haram Beyond the Headlines: Analyses of Africa's Enduring Insurgency*, Combating Terrorism Centre at West Point, May 2018, 33, <https://ctc.usma.edu/app/uploads/2018/05/Boko-Haram-Beyond-the-Headlines.pdf>, p. 34.

55 International Crisis Group, Nigeria: Women and the Boko Haram Insurgency (2016) 10.

56 Dionne Searcey, Boko Haram strapped suicide bombs to them. Somehow these teenage girls survived, *New York Times*, October 25 2017, <https://www.nytimes.com/interactive/2017/10/25/world/africa/nigeria-boko-haram-suicide-bomb.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>.

a tranquilizer before being strapped with bombs. Eyewitnesses have also reported seeing men accompanying female suicide attackers to ensure they see through their task...Other “failed” female suicide attackers report being paid for their attack, in one case as little as 200 Naira (60 cents).⁵⁷

The Nigerian Policy Framework and National Action Plan for Preventing and Countering Violent Extremism of 2017 reflects on this situation:

“Boko Haram’s use of female suicide bombers is a worrisome development. Through kidnapping, forced marriages and violence, Boko Haram continue to abuse women and girls. We are taking measures to free women and girls in captivity of parents’ or husbands’ authorities in forced marriages and captivity of kidnapping as have been done with some Chibok School Girls. We are also aware that there are instances when women have played the role of perpetrators and recruiters. In all circumstances, we are determined to protect the dignity of women and girls caught up in the web of terror.”



Activity 7

- What does your professional experience tell you about the roles women fulfil in Boko Haram? Does your experience coincide with the statements made in the reports quoted in this section? Where does it differ?
- In your view, how and why do women become associated with Boko Haram? Does this differ from men’s experience?
- What should be the consequences of these differences for the criminal justice response to terrorism in Nigeria?

2.2 Gender Aspects of offences under the Terrorism (Prevention) Act, 2011 and Terrorism (Prevention) (Amendment) Act, 2013

It is important to emphasize that State obligations to bring perpetrators of acts of terrorism to justice applies equally to women and men. Criminal justice actors should avoid perpetuating stereotypes suggesting that women are less culpable for committing these offences or are incapable of acting of their own volition. At the same time, it is important to recognize that women may be differently and disproportionately impacted by the criminalization of certain terrorism-related offences in ways that may not have been envisaged by the legislator.

The commission of acts of terrorism, such as attacks with improvised explosive devices, killing and abduction, are only a part of the overall activity of terrorist groups. These groups, including the factions of Boko Haram active in Nigeria, are structured organizations in which some persons are immediately engaged in the commission of acts of violence, while many others enable them in “support roles”, such as securing money, food, arms and other resources through criminal or legal activities, recruiting new members, obtaining and disseminating vital information, or simply providing companionship and moral support.

The Nigerian legislator has clearly indicated that to defeat terrorist groups and provide justice to victims, it is necessary to bring to justice not only those immediately engaged in carrying out acts of terrorism, but also those who enable terrorist violence in support roles. Particularly the TPAA 2013, introduced numerous additional offences, such as “facilitating”, “supporting”, “harbouring”, “inciting”, to explicitly criminalize the actions of

⁵⁷ Elizabeth Pearson, “Wilayat Shahidat: Boko Haram, the Islamic State, and the Question of the Female Suicide Bomber”, Boko Haram Beyond the Headlines: Analyses of Africa’s Enduring Insurgency, Combating Terrorism Centre at West Point, May 2018, 33, <https://ctc.usma.edu/app/uploads/2018/05/Boko-Haram-Beyond-the-Headlines.pdf>, pp. 43–44.

those who enable the functioning of terrorist groups without being directly involved in acts of violence. This is in line with international legal instruments against terrorism, including Security Council resolutions 1373 (2001), 2178 (2014), and 2396 (2017), and international conventions to which Nigeria is a party, including the 1999 International Convention for the Suppression of the Financing of Terrorism.

The TPAA 2013, makes these offences punishable with very severe sentences, up to the death penalty in section 1(2)(c) of the TPAA 2013 – clearly indicating the gravity of the conduct and the serious criminality of those who enable the activities of terrorist groups without committing themselves violent acts of terrorism.

The offences proscribed by the TPA 2011, as amended are, on their face, gender neutral, as they do not provide any distinction between men and women committing them. However, as the roles of men and women in terrorist organizations in general, and in the case of Boko Haram in particular, differ, this broadening of the scope of terrorism offences has important gender dimensions. Nigerian law criminalizes as serious terrorist offences not only the conduct of those who carry out violent acts of terrorism – nearly exclusively men according to the information summarised above in section 2.1 – but also the many support roles, which involve numerous women.

So far (at the time of writing) there have been very few prosecutions of women for offences under the TPA 2011, as amended, and where there have been convictions, the sentences imposed have been light compared to the sentence range provided in the law. Why have so few cases been brought against women associated with Boko Haram? The reasons probably include the perception that women lacked full agency, that their culpability is minor, and that many of them were coerced into associating with and supporting the terrorist group.

The remainder of this Chapter will examine in more detail gender dimensions of selected offences under the TPA 2011, as amended. It will do so in four steps:

- First, looking at selected support offences (2.2.1);
- Second, considering the issue of suicide bombers (2.2.2);
- Third, questions related to sentencing (2.2.3); and
- Fourth, considering various criminal law principles, which could assist in reflecting gender-specific ways in which women become involved in terrorism offences (2.3).

There is one gender dimension of the criminality of terrorist groups in Nigeria, which the legislator so far appears not to have taken into account: sexual and gender-based violence (SGBV) by terrorist groups, particularly when practiced as a tactic of terrorism. Chapter 5 of this Module will consider possible avenues for accountability for SGBV by terrorist groups in Nigeria.

2.2.1 Selected support offences

In this section, several “support offences” in the TPA 2011, as amended, are reviewed. In considering the gender dimensions of these offences, it is important to ask how men’s and women’s roles in Nigerian society and existing power relations and inequalities between men and women, affect the choices and decisions of persons involved in supporting terrorist groups, harbouring terrorism suspects, concealing information about terrorism, or becoming members of a terrorist group.

Soliciting or rendering support

Section 5 TPAA 2013, which criminalises soliciting and rendering support to terrorist groups for the commission of terrorist acts, provides:

- (1) Any person who knowingly, in any manner, directly or indirectly, solicits or renders support –
 - (a) for the commission of an act of terrorism or
 - (b) to a terrorist group,
 commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than twenty years.
- (2) For the purposes of subsection (1) of this section, “support” includes –
 - (c) receipt or provision of material assistance...
 - (d) receipt or provision of information or moral assistance, including invitation to adhere to a terrorist or terrorist group...

Note that the TPAA 2013 does not define what the terms “material assistance” or “moral assistance” encompass.



Focus: Should choosing to be the wife of a terrorist be considered “support to a terrorist group”?

From 2013 onwards, several European countries saw numerous women and girls travelling to Syria and Iraq to marry fighters of ISIL (Da’esh) or marry fighters through online ceremonies and then travel (or attempt to travel) to join their husbands.

The response of the criminal justice system to the conduct of these women and girls has varied from country to country. In some countries, the courts considered that supporting a fighter of a terrorist group as wife, doing household chores and bearing children, could not be considered an offence, while courts in other countries considered that this was a form of moral support punishable under counter-terrorism legislation. Other countries initially did not investigate and prosecute women returning from Syria and Iraq, but subsequently changed their approach based on an evolving understanding of the role women played in ISIL (Daesh).



Reference

This case-law is discussed in more detail in Chapter 2 of the UNODC *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*.

Harbouring and concealment

Spouses and other family members of terrorism suspects can find themselves in dramatic conflicts between their loyalty to their fugitive relative and the law sanctioning failure to cooperate with the authorities, reinforced by the threat of prosecution and imprisonment. This conflict can have strong gendered implication. This may be the case where the fugitive is (most commonly) a male family member or spouse, and the relative is a woman who may not be fully apprised of the information necessary to assess the wrongfulness of the conduct of the male family member.

In Nigeria, Section 6 TPAA 2013, which criminalises harbouring terrorists or hindering the arrest of a terrorist, provides that:

Any person, who knowingly harbours, conceals or causes to be harboured or concealed...a person whom to his knowledge has –

- (a) committed or about to commit an act of terrorism,
- (b) likely to commit an act of terrorism,
- (c) is a member of a terrorist group,...

commits an offence and is liable on conviction to imprisonment for a term of not less than twenty years.”

Concealment of information about acts of terrorism is criminalized under **section 8**, which provides that:

- (1) Subject to the provisions of subsections (2) and (3) of this section, where a person has information that he knows or believes to be of material assistance in-
 - (a) preventing the commission by any person or an organization of an act of terrorism, or
 - (b) securing the apprehension, prosecution or conviction of another person for an offence under this Act and fails to disclose such information to any law enforcement or security officer as soon as reasonably practicable,commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than ten years.
- (2) It is a defence for a person charged with an offence under subsection (1) of this section to prove that he-...
 - (b) has a reasonable excuse for the non-disclosure or interference.

An exemption exists for legal practitioners, who are not required to disclose such information, belief or suspicion based on information disclosed in privileged circumstances (section 8(3)).

In practice, issues may arise between the operation of this section and the spousal privilege provisions under the Evidence Act, 2011. Section 187 of that Act provides that a husband or wife shall not be compelled to disclose any communication made by his/her spouse during marriage without consent of the person or their representative, except in suits between married persons or where one married person is prosecuted for offences specified in section 182 of the Evidence Act, 2011. Those these exceptions generally pertain to offences against morality and sexual assaults against women.



Case study: The offence of concealment

In the case of *Federal Republic of Nigeria v Maimuna Umar** (221), the defendant was arrested, along with her 2-year old child, after she had escaped from Sambisa forest. She had been taken to the forest by her deceased husband's friend who kept her in a house in Sambisa for 2 months before she managed to escape. She did not report the man to the security officials after she escaped. She was detained on the grounds of concealment and suspected membership of the sect. She was in detention for 4 years and she was eventually convicted and sentenced to 6 years with effect from date of arrest.

* FHC/KAINJI/CR/144/18

Membership in a terrorist group

Under **section 16 TPAA 2013**, which criminalises membership of a terrorist group or proscribed organisation:

- (1) Any person who is a member or professes to be a member of a terrorist group commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than twenty years...
- (2) It is a defence for a person charged with an offence under this section to prove that the entity in respect of which the charge is brought was not a terrorist group at or on the date that he-
 - (a) became a member of that entity;
 - (b) professed to be a member of that entity; or
 - (c) has not taken part in the activities of that entity, after it became a terrorist group...”

Neither the TPA 2011 or the TPAA 2013 define what conduct constitutes “membership” for the purposes of section 16.



Activity 8

Under section 16 TPAA 2013 being a member of a terrorist group is punished by no less than twenty years imprisonment. Discuss the following:

- (a) What would be your criteria for establishing whether a person is a member of Boko Haram for purposes of section 16 TPAA? Is there a procedure or oath to become a member of Boko Haram? How should a prosecutor prove that a suspect is a “member” for purposes of section 16 TPAA?
- (b) Would the criteria differ between men and women, in light of the different roles they tend to play in Boko Haram? Are you aware of women convicted under section 16 TPAA?



Activity 9

In Nigeria, too, women have chosen to follow their husband who was a Boko Haram fighter into the group or to become married to a man they knew was a Boko Haram fighter.

In your view, should the women’s conduct in the following hypothetical cases be considered an offence under the TPA, as amended? If so, what offence(s) should these women be charged with?

- “A”, a young women, married a member of a terrorist group and followed him to the group’s camp, where she carried out domestic chores and raised the children resulting from the marriage. A was motivated by the comparably better economic situation in the terrorist group.
- “B”, a young women, married a member of a terrorist group and followed him to the group’s camp, where she carried out domestic chores and raised the children resulting from the marriage. B was committed to the terrorist group’s ideology and wanted to support the group as wife to a fighter.
- “C” was already married when her husband decided to join the terrorist group. She followed him to the group’s camp, where she carried out domestic chores and raised the children resulting from the marriage.
- “D” is a middle-aged woman. She successfully encouraged several young women from her village to become married to fighters of the terrorist group.

2.2.2 Female suicide bombers

The use of female suicide bombers has been a marked strategy of some terrorist groups since the late 1970s. In more recent years, the incidence of women committing suicide attacks has increased, and suicide attacks are becoming increasingly prevalent within some groups.

Cases involving apprehended (attempted) female suicide bombers must, as all other cases, be considered on their individual merits. Relevant factors to consider may include the circumstances surrounding the suspect’s association with the terrorist group and the group’s known modes of operation. Reports from women and girls who have escaped from Boko Haram establish that the group deploys as suicide bombers women and girls who have been victims of abduction, widows of fighters and women who refuse to be married to fighters. Other reports indicate that women and girls have been drugged and sent on suicide missions. Thus, while it should not be excluded that failed suicide bombers, and particularly female suicide bombers, acted with full agency, from a criminal justice perspective there are substantial grounds to examine very closely their culpability.

In cases involving duress and impaired mental capacity, alternatives to prosecution and mitigating circumstances should be taken into account in making decisions whether to prosecute, or, if prosecuted, in adjudicating these cases (see further, section 2.3 below).



Activity 10

Consider the following hypothetical scenario:

Law enforcement officers have raided a building in the outskirts of Kano, which has been used as a safe house by Boko Haram. Inside the building they found three women, as well as material to build explosive devices, including suicide belts. The investigation indicates that two of the women were intended to be used as suicide bombers, while the third woman was there as a “minder”, to manage the house and guard the suicide bombers.

Law enforcement officers have subsequently arrested T, the husband of the third woman, a middle-ranking Boko Haram member, who appears to have set up and managed the safe house.

The investigation yields the following information on the three women and the girl.

- (1) A is aged 28. She is the wife of T, a mid-ranking operative in the terrorist group. She is the “minder” of the women in the safe house, i.e. she was guarding the other woman and the girl, doing her best to maintain their willingness to act as suicide bombers, and keeping the contact with the outside world. A claims that the terrorist group forced her and her husband into running the safe house by threats against their and their broader family’s lives. The investigators think that she might have valuable information on who supplied the terrorist safe house with the material to build the explosive devices and food, and regarding the network directing and supporting the safe house operations. She would probably be prepared to cooperate with the investigators if she was not charged or offered a substantially reduced sentence. She is also afraid of reprisals against herself and her family if she cooperates with the authorities.
- (2) B is aged 23. She was in the house to be used as a suicide bomber. Her brother was killed in a counter-terrorism operation, although B claims that he had no connection to Boko Haram. B was motivated by promises from T and A to support her brother’s family with monthly payments, in particular to feed the five children, and by a desire to avenge her brother’s death.
- (3) C is aged 19. In 2015 the terrorist group came to her village and forced her family to hand her over to be married to a fighter from the terrorist group. She lived with her “husband” for nearly two years, and has a child born in July 2017. In May 2018, her “husband” was killed in combat. C was moved to the safe house. T and A convinced her that it was best for her to become a “martyr” herself.

Which of the women should be considered a terrorism suspect and be charged with an offence? Which offences? What defences could be made on their behalf?



Reference

Defences and mitigating circumstances that may be available to some of the women in the above scenario are discussed in section 2.3 below.

Interviewing and witness protection: To investigate the case described in the scenario above, gender-sensitive interviewing skills will be key. Moreover, if the authorities in the hypothetical above decide to consider one or several of the women as witnesses instead of charging them, gender-sensitive witness protection measures will be very important. These topics are discussed in Chapter 3 of the present Module.

2.2.3 Sentences

The TPAA 2013, makes the offences considered in the preceding section punishable by not less than ten years of imprisonment in the case of concealment, and not less than twenty years of imprisonment in the case of rendering support, harbouring a suspect and membership.

In addition to these specific support offences, under section 1(2)(c) of the TPAA 2013 the following acts are offences punishable on conviction “to maximum of death sentence”:

- the commission of “an act preparatory to or in furtherance of an act of terrorism”;
- assisting or facilitating the activities of persons or organizations engaged in any act of terrorism;
- the omission of “anything that is reasonably necessary to prevent an act of terrorism”;
- being an accessory to any act of terrorism;
- inciting, promising or inducing any other person to commit an act of terrorism.

To sum up, the provisions criminalizing the support roles that women typically fulfil in Boko Haram, which do not involve direct participation in acts of violence, are punishable by sentences ranging from a minimum of ten years’ imprisonment to the death sentence.



Focus: Comparison with sentences for ancillary offences under UK Terrorism Act

Under the UK’s anti-terrorism legislation, persons found guilty of perpetrating acts of terrorist violence are liable to be punished by sentences comparable in severity to those available under the TPA 2011, as amended (except for the death penalty, which has been abolished in the United Kingdom). The men found guilty of conspiracy to murder in relation to the 21/7 bomb plot in 2005, e.g., were sentenced to life imprisonment with a minimum term of 40 years.

The sentences available for support offences, however, are very different. Under the United Kingdom’s Terrorism Act 2000, for instance, a person found guilty of support for a terrorist organisation is liable on conviction “to imprisonment for a term not exceeding ten years, to a fine or to both” (section 12). Membership in a terrorist organisation is punishable by imprisonment not exceeding ten years (section 11).



Reference

Sanctions for terrorism-related offences, particularly the imposition of the death penalty, raise complex questions under international human rights law binding Nigeria. For an in-depth analysis, see Module 4, *Human Rights and Criminal Justice Responses to Terrorism*, Chapter 6, of the UNODC Counter-Terrorism Legal Training Curriculum.

In practice, in Nigeria the sentences imposed so far in the case of the few women convicted of offences under the TPA 2011, as amended, have not been of the severity provided in the law, as exemplified by the case of Maimuna Umar summarised above.

There are a number of legal grounds in Nigerian and international law justifying the imposition of lesser sentences, such as for instance duress as a mitigating circumstance. Considering what is known about the circumstances under which women become associated with terrorist groups in Nigeria (and many other countries), these mitigating factors may have a strong gender dimension. This topic will be examined in section 2.3 below.

Criminal justice practitioners also need to ask themselves, however, whether there may be gender stereotypes at work resulting in unjustified more lenient treatment of women committing terrorism offences. In a research article published in September 2018, two US researchers argue that (in the United States and in Europe) “terrorism related offenders who are women are less likely to be arrested, less likely to be convicted, and



Activity 11

Assume the following case: S is a 35-year old woman, trading vegetables at the town market. She was recruited by Boko Haram to keep her eyes open regarding movements of police, military and other forces in the town. In exchange for the information she provided to them, Boko Haram paid her a small monthly stipend over a one-year period. S was denounced by a neighbour and has in the meantime made a full confession to the police, who have brought the case file to the Public Prosecutor's Office.

The police suggest that charges be brought under section 5 TPAA 2013 for giving support to a terrorist group.

- (1) What arguments can be made in favour of bringing charges against S, and what arguments can be made against? Consider the “public interest” criterion in the Guidelines for Prosecutors in the Federal Republic of Nigeria.
- (2) What are the options available to the prosecution if they consider that the case is strong in terms of evidence and that it is in the public interest to prosecute S, but that a sentence of twenty years imprisonment (as provided under TPAA 2013 section 5) would be excessive?
- (3) Assume the prosecution has brought charges under TPAA 2013 section 5 for providing support to a terrorist group, and has proved its case beyond reasonable doubt. The judge is convinced that S is guilty as charged, but also that justice and the public interest will not be served by imposing a twenty-year prison sentence. What options does the judge have?

For the Guidelines for Prosecutors in the Federal Republic of Nigeria and mitigating circumstances refer to the next section, 2.3 below.

receive more lenient sentences compared to men” committing comparable offences.⁵⁸ They conclude that “the evidence suggests gender has *unjustly* affected formal responses to individuals involved in crimes motivated by violent extremism”.

2.3 Alternatives to prosecution, availability of lesser sentences upon conviction and mitigating circumstances

2.3.1 Alternatives to prosecution and dismissal of charges

A trend observable at the international level, including as a result of the expanded use of offences targeting preparatory acts and support roles, is that terrorism laws increasingly capture the conduct of – often large numbers of –

- First-time offenders;
- People suffering from diminished mental capacity;
- Radicalized women and juveniles who have not been involved in violence yet;
- Persons involved in the “maintenance” of a terrorist group in roles that are far removed from violent action
- Persons who have become involuntarily associated with terrorist groups or victims of trafficking.

According to the information summarised in section 2.1 above, a large part of the women associated with Boko Haram fall into these categories (first-time offenders, no direct participation in acts of violence). While there are of course also men falling into these categories, the information available on men’s and women’s roles in Boko Haram suggests that women are more likely to fulfil these criteria than men. Therefore, the question how to deal with these terrorist offenders has an important gender dimension.

The presence among the persons suspected of having committed terrorism offences of many first-time offenders, persons who have not been directly involved in violence, victims of trafficking and violence, raises complex questions of criminal justice strategy, such as:

- How should the criminal justice system deal with these categories of “terrorist offenders”?
- Should every case be investigated and, where the evidence suffices, prosecuted?
- What mechanisms are available to give flexibility to the criminal justice system?
- What alternatives to prosecution can accommodate the threat possibly emanating from persons who have been associated to a terrorist group but have not committed acts of violence?

Alternative measures aim to rehabilitate these persons and prepare them for reintegration into their communities in “alternative settings” to the criminal justice system. The Secretary-General, in the 2017 Report on women and peace and security, “welcome[d] efforts by Member States to initiate human rights-based and gender-

58 Audrey Alexander and Rebecca Turkington, “Treatment of terrorists: how does gender affect justice?”, CTC Sentinel, vol. 1, No. 8 (September 2018), p. 24; and Ester Strommen, “Jihadi brides or female foreign fighters? Women in Da’esh – from recruitment to sentencing”, GPS Policy Brief 01/2017 (Oslo, Peace Research Institute, 2017), p. 3. The authors draw from multiple sources, ranging from in-depth case studies to expansive datasets.

sensitive approaches to the rehabilitation and reintegration of returnees and victims, released prisoners *and suspects who qualify for alternatives to prosecution*" (emphasis added).⁵⁹

The Guidelines for Prosecutors in the Federal Republic of Nigeria provide that, in determining whether or not to prosecute a case, the broad question is whether the offence or the circumstances of its commission are of such a nature that a prosecution is required in the public interest, taking into account interests of the community, suspect and the victim.⁶⁰

Factors to consider in assessing where the public interest lies includes the seriousness of the alleged offence, and the existence of aggravating or mitigating factors. Mitigating factors, which "tend to reduce the seriousness of the offence and hence the likelihood of a prosecution being required in the public interest" include where there has been a long delay between the date of the offence and the trial.⁶¹

Other factors to consider in assessing whether the public interest requires a prosecution are stipulated to include, inter alia:

- The availability and efficacy of any alternatives to prosecution
- Whether the consequences of a prosecution or a conviction would be disproportionately harsh or oppressive in the particular circumstances of the offender.⁶²

Part 44 of the Administration of Criminal Justice Act deals with "Probation and Non-Custodial Alternatives". Where a case is brought to prosecution, the ACJA enables the court to dismiss the charge, or conditionally discharge the defendant. Under section 454:

- (1) Where a defendant is charged before a court with an offence punishable by law and the court thinks that the charge is proved but is of opinion that having regard to:
 - (a) the character, antecedents, age, health, or mental condition of the defendant charged,
 - (b) the trivial nature of the offence, or
 - (c) the extenuating circumstances under which the offence was committed,it is inexpedient to inflict a punishment or any order than a nominal punishment or that it is expedient to release the defendant on probation, the court may, without proceeding to conviction, make an order specified in subsection (2) of this section.
- (2) The court may make an order under subsection (1) of this section:
 - (a) dismissing the charge; or
 - (b) discharging the defendant conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding 3 years as may be specified in the order.



Reference

The use of alternatives to detention in terrorism cases is discussed also in Chapter 4.6 of this Module below, which discussed also the "Recommendations on the Effective Use of Appropriate Alternative Measures for Terrorism-Related Offenses" developed by the Global Counterterrorism Forum.

⁵⁹ S/2017/861, para. 47.

⁶⁰ Guidelines for Prosecutors in the Federal Republic of Nigeria, para. 5.

⁶¹ Ibid, para. 8(a)(iv). Note that a decision not to prosecute a complex case on public interest grounds must be brought to the notice of the Attorney General within two days of taking the decision, as per para. 6.

⁶² Guidelines for Prosecutors in the Federal Republic of Nigeria, para. 9(a)(i) and (iv).

2.3.2 Availability of lesser sentences upon conviction and mitigating circumstances

The ACJA, 2015 contains a number of provisions enabling the Court, when deciding on sentencing, to take into account factors, which affect the defendant's culpability.

First, section 311 of the ACJA, 2015 provides that

....

(2) The court shall, in pronouncing sentence, consider the following factors...

- (a) The objectives of sentencing, including the principles of reformation and deterrence;
- (b) The interest of the victim, the convict and the community;
- (c) Appropriateness of non-custodial sentence or treatment in lieu of imprisonment; and
- (d) Previous conviction of the convict.

(3) A court, after conviction, shall take all necessary aggravating and mitigating evidence or information in respect of each convict that may guide it in deciding the nature and extent of sentence to pass on the convict in each particular case, even though the convicts were charged and tried together.

Mitigating factors may be particularly important to enable the court to take into account the nature of some women's involvement in acts of terrorism in Nigeria, as discussed above. This may account for, for example:

- A subordinate role in the commission of the offence
- Impaired capacity, for example, due to the administration of drugs
- Circumstances of duress (see section 2.3.3 below).

In exercising its discretion in sentencing or review of sentence, section 416 of the ACJA, 2015 requires the court to take into account the following factors:

- (a) Each case shall be treated on its own merit
- (b) The objectives of sentencing, including the principles of reformation...

...

(d) A trial court shall not pass the maximum sentence on a first offender

...

(f) Trial court shall conduct an inquiry into the convict's antecedents before sentencing

...

(k) Sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed or is likely to fail.

Pursuant to the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016 the following are mitigating factors that may be taken into account by a Judge in certain cases:

- The absence of a previous conviction in homicide-related offences and offences against public order.⁶³
- Minor participation in the perpetration of an offence in homicide-related offences.⁶⁴
- Impaired capacity in the perpetration of an offence in homicide-related offences.⁶⁵

63 Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016, para. 33(3)(e) and 42(3)(3).

64 Ibid, para. 33(3)(k).

65 Ibid, para. 33(3)(h).

An additional mitigating circumstance that could be considered in relation to trafficking related offences under section 36(3) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015 is where the defendant facilitated the identification of other accused persons or has facilitated the arrest of such persons.

2.3.3 Duress

The defences of duress, compulsion or necessity are not mentioned in the TPAA 2013, but are provided as statutory defences in other criminal statutes. Duress also exists as a common law defence.

The Criminal Code, 1990, section 26 provides that:

Subject to the express provisions of this code relating to acts done upon compulsion or provocation or in self-defence, a person is not criminally responsible for an act done or omission made under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise.

Under the Penal Code (Northern region) Federal Provisions Act 1960, section 57:

Except culpable homicide and offences against the State punishable with death, no act is an offence which is done by a person who is compelled to do it by threats which at the time of doing it reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided that the person doing the act did not, of his own accord or from apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to that compulsion.

Additionally, the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016, permits a Judge to consider mitigating factors in sentencing for certain offences. Acting under duress is included as a mitigating factor for offences against property⁶⁶ and for homicide-related offences.⁶⁷

2.3.4 Non-punishment of victims of trafficking in persons

One consideration that may be relevant for prosecuting authorities where women who have committed terrorist offences are themselves victims of trafficking by terrorist groups is the principle of non-punishment of victims of trafficking in persons. The principle of non-punishment is well established in international standards and guidance,⁶⁸ and is in line with one of the main purposes of the Trafficking in Persons Protocol to the UN Convention against Transnational Organized Crime, which Nigeria has ratified and domesticated. As provided in Article 2(b), one of the main purposes of the Protocol is to “protect and assist the victims of such trafficking, with full respect for their human rights”.

Section 62 of the Trafficking in Persons (Prohibition), Enforcement and Administration Act, 2015 provides that “where the circumstances so justify, trafficked persons shall not be detained or prosecuted for offences relating to being a victim of trafficking, including non-possession of valid travel document, use of a false travel or other document”. This ‘non-punishment clause’ may, in some cases, bar the prosecution of persons who have been forced to participate in or to support terrorist activities if they are recognized as victims of trafficking.

This provision is also in line with Security Council resolution 2331 (2016), discussed above and below, which calls on states to ensure that “victims [of trafficking in persons] are treated as victims of crime and line with domestic legislation not penalized”. As recognized by the Special Rapporteur on trafficking in persons, “criminalisation

⁶⁶ Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016, para. 24(3)(l),

⁶⁷ Ibid, para. 33(3)(b).

⁶⁸ According to the Special Rapporteur on trafficking in persons, “international bodies, including the Open-ended Interim Working Group on Trafficking in Persons, have confirmed non-prosecution of trafficked persons as the relevant international legal standard”. A/HRC/20/18, para. 27.

and/or detention of victims of trafficking is incompatible with a rights-based approach to trafficking because it inevitably compounds the harm already experienced by trafficked persons and denies them the rights to which they are entitled”.⁶⁹



Reference

The principle of non-punishment of victims of trafficking in persons is discussed in more detail in the UNODC *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*, Part 2.C.

The booklet on ‘Legal Frameworks for the Prosecution of Sexual and Gender-Based Violence Perpetrated by Terrorist Groups’, which accompanies this Module, examines the circumstances under which persons associated with terrorist groups against their will can be considered victims of trafficking in persons.



2.4 Self-assessment questions



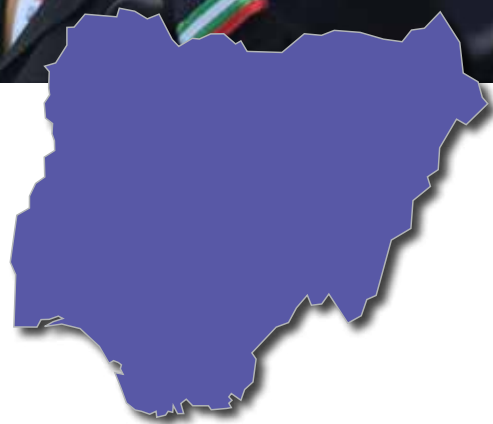
Self-Assessment Questions

- 1) The Nigerian National Gender Policy (2006) aims to promote a gender-sensitive and gender responsive culture in national policymaking through a gender mainstreaming approach.
 - a) What does the term ‘gender mainstreaming’ mean?
 - b) What three steps are identified in the National Gender Policy Framework to assist Nigerian government agencies to apply a gender mainstreaming approach on an institutional level?
- 2) List the five pillars of the National Action Plan for the Implementation of UNSCR 1325 and Related Resolutions in Nigeria. How do these pillars relate to the protection and promotion of women’s rights in the fight against terrorism?
- 3) Name at least three ways in which gender mainstreaming promotes the protection of women’s rights in criminal justice and counter-terrorism.
- 4) Based on the Gender Policy of the Nigeria Police Force, list three ways that gender mainstreaming should be applied in police reform.
- 5) Name four obligations Nigeria has undertaken as a state party to CEDAW in order to advance gender equality and eliminate discrimination against women.
- 6) What are Nigeria’s core obligations under the 1999 Constitution, CEDAW, and the ACHPR to ensure access to justice and remedies for violations of the rights to gender equality and non-discrimination?

⁶⁹ A/HRC/20/18, para. 25.



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3

Gender Dimensions of the Investigation and Prosecution of Terrorism Offences



Learning objectives

By the end of this Chapter, you will be able to:

- Understand the gender impacts of investigatory powers exercised in the course of counter-terrorism investigations, particularly search and seizure powers, and identify good practices in the gender-sensitive application of these powers
- Identify gender-sensitive measures, which can be implemented when interviewing victims, witnesses and suspects involved in terrorism cases
- Identify gender-sensitive measures, which can be implemented when applying victim and witness protection measures

This Chapter will examine gender-related issues that may arise in the course of the investigation and prosecution of terrorism offences. The issues discussed are not unique to terrorism cases, but they are of particular relevance in the counter-terrorism context.

3.1 Gender aspects of search and seizure powers

Searching persons, vehicles and buildings is a key measure to disrupt preparations for acts of terrorism and thereby prevent them, to detect persons involved in the preparation of acts of terrorism, and to seize objects that can provide important leads for investigations and serve as evidence. Cordon and search operations are also tactics adopted by military forces in counter-terrorism operations in areas where these groups operate.

Searches are an interference with the private sphere of the persons concerned that has, in most contexts, a strongly gendered connotation, with potentially different impacts on men and women.

It is also important to be aware that, in many circumstances, the impact of searches goes beyond the persons directly affected. Frequent or systematic searches will have an impact on the entire community, as all persons will adapt their conduct to the possibility or likelihood of being searched. In circumstances where women's movement in the public space, outside their homes, is governed by restrictive social norms, the likelihood of being searched can have a significant effect on women's participation in public life and can limit their ability to earn a living or take care of the household.

3.1.1 Constitutional rights

The right to respect for privacy of individuals, their homes and family lives is the right that foremost comes to mind when we consider the impact of search and seizure powers in the course of investigations.

It is protected in section 37 CFRN, which states that

“The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.”

Where religious premises are searched, such as churches, monasteries or mosques, or when persons are ordered to remove clothing that is required by religious norms, this can constitute an interference with freedom of religion.

It is important to note that the right to privacy (and the right to freedom of religion) are among the constitutional rights that can be limited under section 45(1) CFRN by legislation that is “reasonably justifiable in a democratic society...in the interest of defence, public safety, public order, public morality or public health”. Indeed, legislation that provides for the investigatory powers of law enforcement is a typical circumstance in which public safety and order make limitations to the right to privacy of persons and their homes necessary.

Where search powers are used in an intrusive and even aggressive way, this may raise issues of respect for the dignity of the human person and of the prohibition of inhuman and degrading treatment. Section 34 (1) CFRN provides:

“Every individual is entitled to respect for the dignity of his person, and accordingly -
(a) no person shall be subject to torture or to inhuman or degrading treatment;”

The prohibition of inhuman and degrading treatment in section 34 CFRN is a right that cannot be limited, and that cannot be derogated from, even for the purposes of counter-terrorism.



Reference

Module II of the UNODC-NIALS Nigeria Training Modules on Human Rights and Criminal Justice Responses to Terrorism examines more extensively the requirements for lawful limitation of human rights in the context of investigation measures under Nigerian and international law.

The absolute nature of the prohibition of torture, inhuman and degrading treatment is discussed in Module IV of the UNODC-NIALS Nigeria Training Modules on Human Rights and Criminal Justice Responses to Terrorism.

3.1.2 Personal searches

With regard to body searches, section 9(3) ACJA provides:

“Where it is necessary to search a suspect, the search shall be made decently and by a person of the same sex unless the urgency of the situation or the interest of due administration of justice makes it impracticable for the search to be carried out by a person of the same sex.”

This rule is reiterated in the TPAA 2013 section 25(3), which requires that during a warrantless search carried out due to a verifiable urgency – such as a life being threatened - “a woman shall only be searched by a woman”.

The rules concerning searches give the relevant authorities a margin of discretion to implement these measures in a way that appropriately balances the requirement of public security and counter-terrorism with those of the right to privacy and other rights, particularly women’s rights: searches must be necessary and proportionate, and must be made “decently”.

To properly exercise this discretion, it is of great importance that the persons carrying out the searches receive clear instructions and are well-trained in the application of the instructions they receive. This is accordingly a responsibility of the commanders of the forces carrying out searches.

Key considerations that should be considered while carrying out searches include:

- **Respect:** all stops and searches must be carried out with courtesy, consideration and **respect for the person concerned**. Every reasonable effort must be made to minimize embarrassment that a person being searched may experience.
- **Location:** can the location of the search have a differentiated impact according to gender? Depending on the context it can, particularly if taking place in public spaces where women may not be welcomed or public spaces traditionally occupied by men; seeing women stopped and searched in those locations may have a stigma effect on them and may marginalize them even further.
- **Religious attire:** when ordering an individual to remove any religious attire, religious and gender sensitivity requires that State agents ensure that this is done out of public view and in the presence of agents of the same sex as the person being searched.
- **Body searches:** in all cases body cavity searches must be conducted only in very limited and specific circumstances when absolutely necessary and as a means of last resort to achieve the security objective. They must be performed only by trained health personnel of the same sex as the person being searched.
- **Gender of the searching officers:** it is the responsibility of superiors planning stop and search operations to ensure that a sufficient number of female officers are available to search women.

Particular challenges may arise when military forces are asked to contribute to maintaining public security and are therefore involved in the searching of persons. It will be the responsibility of civilian decision makers and military superiors to ensure that, if military forces are to search civilians, the military personnel have received adequate training and clear instructions.

A further challenge may arise in circumstances where stop and search are carried out by government-aligned militias.



Activity 12

Assume that following a suicide bombing attack in an urban area the authorities decide to establish stop and search measures at markets and in strategic places in the urban area to disrupt future attempted attacks and the smuggling of weapons and explosives.

What elements should a set of standard operating procedures for the officers involved in the stop and search operation include to ensure that it is gender sensitive?

3.1.3 Searches of houses and places

Many of the considerations discussed above regarding the searching of persons apply also to the searching of private homes, other premises, and vehicles.

The ACJA, 2015 contains a number of provisions taking into account gender aspects of criminal investigations, including the practice of “purda” in parts of Nigeria, which involves the seclusion of women from public observation by means of concealing clothing and by the use of high-walled enclosures, screens, and curtains within the home.

ACJA section 12(3) provides, with regard to the search of a place entered by a suspect sought to be arrested:

“(3) Where the suspect to be arrested enters a house or place in the actual occupancy of another person ***being a woman who by custom or religious practice does not appear in public***, the person making the arrest shall:

- (a) before entering the house or place, give notice to the woman that she is at liberty to withdraw; and
- (b) afford her every reasonable opportunity and facility for withdrawing, and may then enter the house or place, but the notice shall not be necessary where the person making the arrest is a woman.”
(emphasis added)

To respect these provisions, without sacrificing the exigencies of public security, law enforcement officers in command will have to carefully plan search operations. Ensuring that female officers are available for searches of persons and homes may be an essential element in planning a successful and lawful search.



Tools

- CTITF, Working Group on protecting human rights while countering terrorism, Basic Human Rights Reference Guide, The Stopping and Searching of Persons, March 2014
- London Metropolitan Police, “Stop and search of people of different gender to the searching officer”

3.2 Interviewing female victims, witnesses and suspects

Integrating a gender perspective into the interviewing of victims, witnesses and suspects is important in order to, first, increase the likelihood that women cooperate with the law enforcement and justice authorities in the investigation and prosecution of terrorism offences, and second, to protect women who are victims or witnesses of acts of terrorism from re-traumatization by contact with the justice system, to prevent stigmatization by their family or community or retaliation.

Interviewers must be aware of factors that may prevent victims and witnesses from coming forward or from cooperating with authorities. Most of the following factors are relevant to both women and men, but – under the socio-economic circumstances of Nigeria – may particularly apply to women:

- Illiteracy
- Limited understanding of legal procedures
- Socio-cultural norms that may prevent female victims and witnesses from coming voluntarily to police stations or other places where witness statements are normally taken
- A feeling of powerlessness and lack of trust in the ability to obtain justice
- Fear of violence from the authorities or from initial perpetrators or community or the very people who are supposed to help them; and
- Under-representation of women in criminal justice, legal, and counter-terrorism professions.

There are a number of measures that law enforcement and justice authorities can adopt to overcome or at least mitigate these challenges:

- Raise women's awareness, through public education programmes, of their equal rights to access justice and equal duties to collaborate in the investigation of offences;
- Raise awareness of measures to protect women against negative repercussions of collaborating with the authorities;
- Consider the use of local language for these awareness raising measures;
- Consider whether it is possible to conduct interviews in locations other than the police station, where the victim, witness or suspect will feel safer and more at ease;
- Partner with community leaders, religious and traditional authorities and women in leadership positions in the community.

3.2.1 Interviewing female witnesses

- Witnesses are likely to be more confident and helpful if they are assured of their safety prior to interviews or testimony. Failure to adequately protect witnesses, or assure them of protection prior to, during, and after interviewing may adversely affect the quality and quantity of evidence gathered from witnesses, particularly female witnesses who may have greater fear of social stigma and reprisal.
- Investigators should inform witnesses in plain language of the existing mechanisms to protect them, including possible mechanisms to ensure confidentiality of their statements. They must not, however, make promises of protection that cannot be maintained.
- In the case of Boko Haram victims, female witnesses may require a greater level of physical and emotional safety before feeling ready to cooperate fully. In the case of witnesses who are also victims, investigators should be aware that the presence of a psychologist or other mental health professional can be conducive to healthy and effective questioning.
- Investigators must also ensure that they supplement all witness/victim testimony with physical documentation of injuries or trauma. Every statement should be recorded by default.

Additionally, the recruitment, training, and retention of female law officers and counter-terror practitioners is an essential element to support interviewing of female witnesses.

3.2.2 Interviewing female suspects

- Avoid gender stereotypes: there is often a stereotype that women become involved with terrorist groups because they have been coerced, or for more emotional and less logical reasons than men. Many women are in fact often driven by the same factors as men.
- With female suspects linked to Boko Haram, it may be difficult to separate involvement with the organization into categories of 'forced,' and 'voluntary' assistance or support for the organization.
- In spite of the stereotype that women become associated with terrorist groups against their will, female suspects are often more likely to face social stigma arising from their links to the organization, running the risk of isolating and alienating themselves and their children.

- It is possible that women suspected of involvement with Boko Haram may have been indoctrinated over a long period of time, as well as possibly being abused physically and sexually, making it more difficult and/or dangerous for them to cooperate with terror investigations.
- The presence of female officers and practitioners is encouraged – both to create an environment in which female suspects feel safer and to reduce the risk of sexual violence.



Activity 13

Law enforcement has apprehended a 19 year-old young woman would-be suicide bomber. The woman was kidnapped when she was 15 years old by Boko Haram insurgents. Now that she has been apprehended by legal authorities:

- Who should conduct the interview of the female suspect, and who else should be present during this interview?
- Should the female suspect be held in general detention in a prison or jail? What are the risks of holding her in such detention?
- What issues arise from her status as an accomplice to Boko Haram, and how should the interview deal with this complication?
- What is the best way for the interviewer to ensure full cooperation from the female suspect prior to, during, and after the interview?



Tools

The UNODC *Handbook on effective prosecution responses to violence against women and girls* provides advice on interviewing female victims, protecting and supporting them throughout the criminal justice process and preparing them for trial.

3.3 Establishing gender-sensitive witness and victim protection measures

Victims and witnesses are cornerstones of successful justice and accountability processes for terrorism offences. Given the nature of these offences, it is important that victims and witnesses who interact with the justice process on these crimes have confidence that their safety and security will be assured, and that they will receive support and protection from intimidation and harm that perpetrators, or their supporters or others may seek to cause in order to intimidate, discourage them from testifying or silence them.

States have the responsibility to ensure that protective measures are in place for victims and witnesses who engage with justice processes. Support and protection measures should take fully into account the individual situation and needs of the witnesses. This includes gender and other variabilities such as age and disability, as well as the nature of the crime.

Victim and witness protection measures should aim to substantially reduce the threat/intimidation, even while acknowledging that they cannot guarantee their complete elimination.



Focus: Vulnerable witness

According to the OHCHR *Tool on Witness and Victim Protection*, vulnerable witnesses are witnesses and victims who are at increased risk to be psychologically harmed by testifying and/or who may face psychological or physical difficulties in testifying. Vulnerability can be determined by various parameters such as age, disability, personality, the nature of the crime a victim suffered from, previous experiences, coping skills and other psychosocial factors. These factors influence witnesses' capacity to give an accurate statement, deal with the stress of testifying, be confronted with the accused or cope with cross-examination.⁷⁰



Activity 14

Both men and women can be vulnerable witnesses. Thinking of the situation of North-East Nigeria and the conflict with Boko Haram, list at least five factors of vulnerability that are specific to female witnesses, or that are more likely to be present in the case of female witnesses.



Activity 15

Discuss the following hypothetical scenario:

A is a young man of twenty years who was abducted by Boko Haram at the age of sixteen and became a Boko Haram fighter. He has been captured by the military and is now willing to collaborate with the justice system and testify against his former commander in Boko Haram.

B is a young woman of twenty years who was abducted by Boko Haram at the age of sixteen. She was given as wife to a mid-level Boko Haram commander and stayed with him for four years. She has managed to escape from the group together with her two children, aged three and one, and is now willing to collaborate with the justice system and testify against her "husband".

As senior investigator, you consider that both A and B could be very valuable witnesses. Because they would be important witnesses, you would have the possibility not only to apply for measures protecting their identity, such as the use of a pseudonym and having them testify behind a screen at trial, but also to relocate them to a safehouse for a year.

Discuss whether these measures will be equally effective in protecting A and B, and what specific challenges may arise for each of them with regard to witness protection.

3.3.1 Gender sensitive witness and victim protection mechanisms

Almost all witnesses and victims suffer from some degree of stress during or after their involvement in investigations and prosecutions of terrorism cases. The stress is mostly caused by the formal nature and particular demands of the proceedings, unfamiliar to most witnesses and victims, and by the gravity of the process. More importantly, the majority of witnesses and victims testify about events that had a significantly negative and

⁷⁰ International Criminal Court: "Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses" (ICC-01/05-01/08-974-Anx2). The use of a broad definition of vulnerability avoids stigmatisation of specific groups and acknowledges the fact that any witness may be vulnerable. At the same time, it ensures that groups of victims with an increased risk of vulnerability, such as victims of gender-based violence or child witnesses, receive the appropriate attention and support to which they are entitled.

often traumatic impact on their lives, their communities and societies, through which they may have lost loved ones, were injured or lost their place in the community. Others were eyewitnesses to horrific events. All these witnesses require some form of support and assistance to be able to testify truthfully. For some, it is sufficient to provide information on how the process works. Other witnesses, especially women and children, may be in need of extensive assistance and support throughout their involvement in the justice process due to their increased vulnerability.

The grave crimes against women by terrorist groups mean that there needs to be specialised interventions to assist women to go through the very difficult task of testifying about their ordeal. Further, since female witnesses are more likely to both be victims of terror and be subject to reprisals or stigma for any association with terrorist organizations such as Boko Haram, protection of these vulnerable witnesses is particularly important. Protection of these witnesses must include not only physical safety but also access to psychological help, providing more holistic protection.

At the same time, women who have been associated with Boko Haram may feel unable to cooperate with investigations for fear of reprisal from Boko Haram and the social stigma of being associated with the organization. Where witnesses feel that they are unable to be properly protected, they should not be punished for refusal to testify. Short term security gains should not be made at the expense of the rights of female witnesses.

In order to successfully engage women victims, in particular victims of sexual violence, in the justice processes, it is critically important that their particular needs and rights are properly reflected in national legal frameworks. A number of international instruments have been developed on the protection of witnesses in judicial processes.

Governments, including the government of Nigeria, are required to address protection of vulnerable witnesses through legislation pertaining to victim assistance, focusing on psychosocial and general support measures and the use of procedural protective measures to facilitate testimony and to minimise the risk of re-traumatisation.

3.3.2 Witness protection during the investigation and pre-trial stages



Tools: Guidelines for the Protection of Vulnerable witness

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by ECOSOC in 2005, offer a general framework with a focus on an interdisciplinary approach towards protection of children in justice mechanisms.

The UNODC *Toolkit to Combat Trafficking in Persons* includes information and guidance on the support and protection of victims of trafficking, including victims of gender-based violence.

Effective protection of witnesses will in many cases require measures to be taken from the start of the investigation, when a witness first enters into contact with the investigators, and throughout the pre-trial process. Witnesses may also require protection following their testimony at trial.

This requires a legal framework, adequate resources and trained witness protection professionals. Such a comprehensive framework for witness protection appears to be lacking in Nigeria.

3.3.3 Witness protection at trial

The TPAA 2013 has introduced in section 34(1) a legal basis for the court to “take such measures as it deems fit to keep the identity and address of the witness or person secret” in order to protect witnesses at risk, where “it is satisfied that the life of the person or witness is in danger”.



Activity 16

- Does the ACJA 2015 contain provisions for witness protection measures that could fill some of the gaps in the witness protection framework of the TPAA 2013?
- Does the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003, as amended in 2015, make provision for witness protection measures?
- Does the Violence Against Person's (Prohibition) Act, 2015 (VAP(P) Act, 2015) make provision for measures to protect victims of SGBV when they act as witnesses?
- Are there any provisions in Nigerian legislation focused on the needs and rights of women acting as witnesses? What provisions would be most urgently needed in your opinion?

The measures which the court may take under this section "may include the-

- (a) holding of the proceeding at a place to be decided by the court;
- (b) avoidance of the mention of the real name and address of the witness or person in its orders, judgments or records of the case, which are accessible to the public; or
- (c) issuing of a direction for ensuring that the identity and address of the witness or person are not disclosed;
- (d) undertaking the proceeding in camera in order to protect the identity and location of witnesses and other persons."

Under section 34(3), the "court may also decide, in the public interest and national security that

- (a) all or any of the proceedings pending before the court shall not be published in any manner; and
- (b) that such proceedings shall be adjourned and the accused persons detained pending when the Attorney-General is able to guarantee the safety of the witnesses and other persons involved in the matter."

Finally, the "court may, on an application by or on behalf of the relevant law enforcement or security agency, in the interest of public safety or order, exclude from proceedings for any offence under this Act any person other than the parties and their legal representatives."

Section 34 of the TPAA 2013 suggests that the protective measures it envisages all limit public disclosure of the identity of the witness. There does not appear to be provision made explicitly for keeping the identity of a witness secret vis-à-vis the accused. Section 34(4) explicitly states that any person "other than the parties



Activity 17

The court can order the measures detailed in sections 34 where "it is satisfied that the life of the person or witness is in danger". Could the court equally order such measures where there is no threat to the life of the witness, but there is a risk that the witness may suffer serious psychological damage if she has to testify without protective measures?

Consider the following hypothetical scenario:

W1 is a woman who was abducted by Boko Haram and exploited for sexual and domestic services for two years. She is now to testify in the trial of some of the Boko Haram members involved in her exploitation. Could the court order protective measures under section 34 TPAA 2013 on the ground that making the identity of the witness public may endanger her reintegration into the community?

and their legal representatives” can be excluded from the proceedings. However, currently in some terrorism trials in Nigeria section 34 is interpreted to allow the court to keep the identity of the witnesses secret from the defendants and their counsel.

The Guidelines for Prosecutors in the Federal Republic of Nigeria, which are applicable to those prosecuting a federal offence and any prosecution at a Federal Court or Court at the Federal Capital Territory, provide that in addition to factors affecting the seriousness of an offence, other matters which may arise when considering whether the public interest requires a prosecution includes, *inter alia*, whether a prosecution could put at risk confidential informants or matters of national security. The Guidelines further require prosecutors to consider the interests and safety of victims and witnesses before, during and after trial, and to ask for special measure if this would improve the quality of a witness’s evidence, noting that “particular attention must be paid to vulnerable witnesses like women, children, the aged and the disabled”.⁷¹

Keeping witness identities secret from the defendant (so-called “anonymous witnesses”) is a measure that will in many cases have a considerable adverse impact on the ability of the defendant to challenge the evidence against him and therefore on the right to a fair trial. It must therefore remain an exceptional measure.

The ACJA 2015 provides extensively for witness protection and permits evidence in camera for certain types of offences such as rape and other sexual offences.⁷² Pursuant to section 232 the court can receive evidence by video link; permit the witness to be screened or masked; and take any other measure that the court considers appropriate to protect the identity of the crime victims or witnesses.⁷³ Offences listed that require special protection of victims and witnesses include: sexual offences, terrorism offences, trafficking in persons and related offences, as well as any other offence in respect of which an Act of the National Assembly permits the use of such protective measures or as the judge may consider appropriate in the circumstances.⁷⁴ Of note is also special protection accorded child witnesses.⁷⁵

Section 47 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015, further provides for witness protection measures in cases concerning trafficking in persons. Similar to the TPAA 2013, under section 47(2), the court may, “where it is satisfied that the life of the witness or any other person is in danger...take such measures as it deems necessary and expedient to keep the identity and address of the witness secret”. It further replicates the measures contained in section 34(1)(a)-(c) above, and in certain cases, empowers the court to direct against publication of the proceedings, and exclude persons other than the parties and their legal representatives from the proceedings (section 47(4)-(5)).

3.3.4 Fundamental principles for the psychological protection of victims and witnesses



Reference

Witness protection measures are discussed from the perspective of defence rights in Module 2 of the *UNODC-NIALS Nigeria Training Modules on Human Rights and Criminal Justice Responses to Terrorism*, section 5.2.

Aside from the need for a strong legal framework, and resources and institutions to put it into practice, there are a number of important principles that should be followed in order to assure psychological protection of victims and witnesses – many of them of particular relevance when dealing with female witnesses:

⁷¹ Guidelines for Prosecutors in the Federal Republic of Nigeria, para. 17.

⁷² See s. 232 (4) (a).

⁷³ See s. 232 (3) (a)- (d).

⁷⁴ See s. 232 (4) subparagraphs (a)- (e).

⁷⁵ By s. 260 the court can exclude certain persons while taking the evidence of a child or young person for protection of interest of a child testifying in a court. The age 18 is the upper limit used for this special class of child witnesses.

- *Focusing on “no-harm” and increasing control and empowerment.* All measures taken to protect and support witnesses and victims should contribute to the implementation of a no-harm principle. Witnesses should not suffer any psychological or physical harm, traumatization or suffering as a consequence of their involvement in the justice process. Cooperation with the witness, including support and protection, should not be started if the required follow up cannot be provided.
- *Early determination of vulnerability and follow up throughout involvement.* An early determination of the level of vulnerability and the capacities of the witness is critical in order to provide adequate support and protection throughout their involvement with the justice process.
- *Confidentiality and informed consent.* Confidentiality is among the first and most critical tools for witness protection. Aside from its importance to minimize the physical risk to witnesses, it is also a key condition to ensure psychological protection of vulnerable witnesses.
- *Staffing requirements and training.* All staff dealing with vulnerable witnesses need to have sufficient understanding of how to deal with them. Investigators need to receive training on interviewing techniques, especially of victims of sexual and other forms of gender-based violence and child witnesses. Staff dealing with support and protection of vulnerable witnesses need to understand the concept of vulnerability and should be trained to be sensitive for and respond to these witnesses’ needs, recognize their capacities and contain common challenges that may arise while handling the witnesses.
- *Protection measures at pre-investigation phase.* A baseline assessment needs to include extensive information about specific vulnerabilities of potential witnesses. This is particularly the case with conflict-related sexual violence, it is important to assess the impact the crimes had on these groups of victims, in particular the social impact. For example, after mass abductions, rapes, forced marriages and forced pregnancies, victims of sexual violence victims may face social rejection and stigma.



Activity 18

Designing Witness Protection Measures in Nigeria

Hawa is a 20-year-old woman who was abducted by Boko Haram three years ago and forced to marry a fighter, who abused her physically and sexually. Hawa managed to escape from her “husband” when the group of Boko Haram was moving from Bama to Gwoza. She reported to the Nigerian military and helped the military intelligence by providing information on the movement of the groups.

Hawa would be willing to cooperate also with the justice system. She is however afraid of reprisals from Boko Haram and their sympathizers.

- In small groups, discuss the protection measures required to enable Hawa to participate in the justice process as victim and as witness. Discuss legal provisions, institutional arrangements and resources required.
- Considering how best to provide for her physical and psychological well-being, what principles should be taken into consideration?
- How does Hawa’s history as the forced wife of a Boko Haram member affect her status as a witness and the kind of protection she may need?



Activity 19

A counter-terrorism unit investigating a recent attack by Boko Haram on a village has identified a young woman living in the town who is an eye witness to the attack and who states that she recognized several of the attackers as former residents of the town. She says she wants to assist the investigators, but fears that if she does cooperate with law enforcement, she and her family will be targeted by Boko Haram. Several of her friends have already been killed or seriously hurt by Boko Haram insurgents.

- The woman is not a victim of sexual or gender-based violence. Do you think that there are nonetheless gender aspects to her protection needs as a potential witness?
- Does this woman qualify as a vulnerable witness and why?
- How can investigators apply the principles when formulating effective witness protection for this particular witness?
- What should investigators do if this witness refuses to testify in a trial against alleged Boko Haram members?

3.4 Self-assessment questions

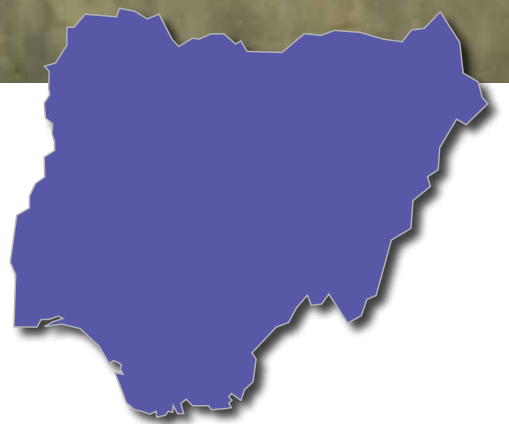


Self-Assessment Questions

- 1) Name five elements of international law and good practice regarding gender sensitive searches of persons and residential premises.
- 2) Name three Nigerian law provisions regulating search and seizure powers which contain a gender element.
- 3) What gender-sensitive measures can be taken when interviewing female victims, witnesses and suspects in terrorism cases? List and explain at least three.
- 4) List at least three factors of gender-related vulnerability of witnesses in terrorism cases at court in the Nigerian context. What gender-sensitive measures can be taken to protect them?
- 5) Discuss the relevance and the limitations of TPAA 2013 section 34(1) to the protection of a female victim of sexual exploitation by Boko Haram.



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4

Gender Dimensions of Imprisonment and Other Forms of Deprivation of Liberty



Learning objectives

By the end of this Chapter, you will be able to:

- Explain how alleged female terrorism offenders may be differently impacted by imprisonment and other forms of deprivation of liberty than male offenders
- Recognise the need and international standards and good practices for gender-sensitive prison management, and their integration in Nigeria's Prisons Regulations
- Explain the need for gender sensitive prison-based disengagement, rehabilitation and social reintegration measures for violent extremist prisoners
- Discuss gender aspects of Nigeria's obligations to prevent and address torture, inhuman and degrading treatment in contexts of imprisonment, including rape in detention as a form of torture, and identify gender-specific measures to prevent ill-treatment
- Discuss the prohibition of arbitrary detention of close family members of terrorism suspects, including its gender dimensions
- Explain gender aspects of alternatives to imprisonment in terrorism cases and the scope for such measures in Nigerian law
- Apply gender-sensitive safeguards for deprivation of liberty outside the criminal justice system

Deprivation of liberty in different forms constitutes a central element of States' criminal justice response to terrorism. Imprisonment of those convicted of offences is amongst the most commonly-applied sanctions. In addition, individuals are mostly in custody following arrest, before and during trial. In other cases, they are deprived of their liberty outside of the criminal justice systems in military or 'administrative' detention.

Nigerian constitutional law, criminal procedure law and anti-terrorism law govern the grounds and safeguards for deprivation of liberty and subject these processes to procedural safeguards to limit the risks of arbitrariness and mistreatment. International and regional human rights law also contain relevant provisions.



Reference

The grounds and safeguards for deprivation of liberty are addressed in detail in Module III of the UNODC-NIALS Training Modules on Human Rights and Criminal Justice Responses to Terrorism on the *Detention of Terrorism Suspects*.

The basic principles include:

- **Legality of deprivation of liberty** – there must be a valid legal basis justifying deprivation of liberty and setting forth the procedure to be followed

- **Non-arbitrary detention** – detention must pursue a proper purpose, be necessary to pursue that aim and be reasonable in the circumstances, and must not be carried out in bad faith
- **Respect for the right to challenge the lawfulness of detention** – reflecting the writ of habeas corpus
- **Protection against torture and inhuman and degrading treatment** – States must adopt measures to prevent torture and inhuman and degrading treatment in custody and to hold those responsible accountable in case of violations

While all those detained or imprisoned face vulnerabilities, there is increasing recognition of the need to address the gender-specific needs and vulnerabilities of persons deprived of their liberty. This Part addresses these gender-based vulnerabilities and provides good practice, on the basis of international and regional standards, for gender-sensitive deprivation of liberty within and beyond the criminal justice system, including:

- Gender-sensitive prison management and conditions of imprisonment, including for violent extremist prisoners
- Disengagement, rehabilitation and social reintegration measures for violent extremist prisoners
- Prevention of torture and inhuman and degrading treatment
- Detention of family members in place of terrorism suspects
- Non-custodial measures in terrorism cases
- Detention related to terrorism outside the criminal justice system



Focus: Scope of the terms ‘deprivation of liberty’, ‘imprisonment’ and ‘violent extremist prisoner (VEP)’

Section 35(1) CFRN, as amended, and corresponding provisions of international human rights treaties, use the term “deprivation of liberty” (“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law ...”). As Section 35(1) CFRN makes clear, it applies not only to arrest, detention and imprisonment in the criminal justice context, but also to deprivation of liberty on grounds related to welfare of children, public health, mental health and immigration, amongst others.

The terms “imprisonment” and “prisoner” are used in this Part to encompass situations in which persons are in pre-trial detention; detained throughout the course of a trial; and imprisoned as the result of a conviction and sentence. Note that in Nigeria, section 19 of the Prisons Act states that “prisoner” “means any person lawfully committed to custody”. The term “detainee” is used when the legal status of a prisoner, who has not yet been convicted and sentenced, needs to be underlined.

UNODC uses the term “violent extremist prisoner” to refer to “someone who promotes, supports, facilitates or commits acts of violence to achieve ideological, religious, political goals or social change.”⁷⁶ In some cases, a violent extremist prisoner may not be in prison for an offence (or alleged offence) related to terrorism, but nonetheless has been assessed as being a violent extremist according to the definition set out above.

⁷⁶ UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons (2016), p. 142.

4.1 Applicable legal frameworks

Measures for police custody or imprisonment of violent extremist prisoners (persons alleged as, accused of, or recognised as having committed violent extremist offences – VEPs) must be implemented in line with these international and regional standards and norms, as applicable. There are a number of relevant sources of Nigerian law, which contain many, but not all, important principles reflected at the regional and international level.

In Nigeria, section 35(1) of the CFRN enshrines the fundamental principle that “no person shall be deprived of such liberty save...in accordance with a procedure permitted by law”, and provides for six grounds on which persons may be deprived of their liberty. CFRN section 34, enshrining the right to respect for every person’s dignity and the prohibition of torture, inhuman or degrading treatment, is equally important.

Other relevant laws include the Prisons Act and the accompanying Prisons Regulations, the ACJA, 2015, and the Anti-Torture Act, 2015.

International and regional human rights treaties (including article 9 of the ICCPR and article 6 of the ACHPR), as well as customary international law, oblige all States not to resort to unlawful or arbitrary deprivation of liberty, and prescribe procedural rights and safeguards to prevent unlawful and arbitrary arrest or detention. The international conventions and protocols against terrorism, as well as resolutions of the Security Council and the General Assembly, underscore that these rights also apply to persons deprived of their liberty in relation to terrorism.

The international human rights treaty provisions are supplemented by a substantial body of international standards, including:

- The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by General Assembly resolution 70/175, 2015 (updating the Standard Minimum Rules for the Treatment of Prisoners, 1955)
- The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Body of Principles), adopted by General Assembly resolution 43/173, 1988
- United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the “Bangkok Rules”), adopted by General Assembly resolution 65/229, 2010. The Bangkok Rules recognise the need to respond to the particular needs of women prisoners and to implement gender-sensitive management of women’s prisons.

At the African regional level, the following standards also apply:

- Plan of Action for the Kampala Declaration on Prison Conditions in Africa, 1996
- Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa, 2015
- Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (The Luanda Guidelines), 2014
- Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003
- Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa, 2002
- Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol), 2003

In addition, where a situation of violence reaches the threshold of ‘armed conflict’ in international law, international humanitarian law becomes applicable in conjunction with international human rights law to govern certain situations of detention of persons suspected of being engaged in terrorist activities. Relevant rules are contained in Common Article 3 to the 1949 Geneva Conventions, Additional Protocol II, and customary international humanitarian law.



Reference

See Part 4 of the UNODC *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism* for a comprehensive overview of the international standards on gender-sensitive prison management.



4.2 Gender-sensitive prison management and conditions of detention

4.2.1 The need for gender-sensitive prison management and conditions of detention

Men constitute the large majority of the prison population. In Nigeria, as at 8 July 2019, women constituted only approximately 2% (1,501 persons) of the total prison population in Nigeria (74, 195 persons).⁷⁷ Prison systems are therefore primarily designed for men. This is reflected in prison design, security procedures, healthcare facilities, training and rehabilitation opportunities, and the arrangements for family contact.



Focus: Vulnerability of women prisoners in Africa

The Special Rapporteur on Prisons and Conditions of Detention in Africa, appointed by the African Commission on Human and Peoples’ Rights, has remarked that women are particularly vulnerable in contexts of imprisonment as the result of discrimination in society generally, in the criminal justice system, and in imprisonment specifically:

“There are several critical problems faced by women in prison – most are unmet in the prison environment. Women in prison have experienced victimization, unstable family life, school and work failure, and substance abuse and mental health problems...

Vocational and recreational programs are more often than not inadequate. Prisons often lack appropriate supplies to accommodate menstruating women...

While some prison systems provide separate facilities for the incarceration of women, in most countries, women are imprisoned in the same facilities as men. Even in cases where women are incarcerated separately, these facilities experience violence and abuse akin to that found in male facilities. Moreover, women prisoners are particularly vulnerable to sexual abuse by prison guards whether in female or mixed prisons...”⁷⁸

⁷⁷ Nigeria Prisons Service, Summary of Inmate Population By Convict and Awaiting Trial Persons as at 8th July 2019, accessed 19 July 2019.

⁷⁸ Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, Presented by Hon. Commissioner Med S.K. Kaggwa at the 52nd Ordinary Session of the African Commission on Human and Peoples’ Rights, p. 12.

While conditions of imprisonment may not outwardly discriminate against women prisoners, failing to take into account women's particular needs in a system designed principally for male prisoners results in imprisonment having a discriminatory impact on women.

This requires that affirmative action is taken by prison administrators to ensure that women prisoners have equal access to all services and rights that male prisoners enjoy, as well as being accorded additional rights and given access to other services and facilities, which respond to their gender-specific needs.

The Plan of Action for the Kampala Declaration on Prison Conditions in Africa, paragraph 5(d), calls upon States to adopt "urgent and concrete measures...[to] improve conditions for vulnerable groups in prisons and other places of detention; such as...women, mothers and babies... Procedures that take into account their special needs and adequate treatment during their arrest, trial and detention, must be applied to these groups." ⁷⁹

4.2.2 Admission and registration

Women prisoners can feel particularly vulnerable upon admission to prison, due to the trauma of separation from children and families, past victimisation, or low educational and economic status. All prisoners should be provided with facilities to contact relatives, access to legal advice, and information about prison rules and regulations.

Women with children should be allowed to make arrangements for the care of those children, and records should be kept of the details of the children of a woman admitted to prison.⁸⁰ Note that a child of a female prisoner may be permitted to reside in the prison with its mother if the child is breastfeeding and less than eighteen months old.⁸¹

4.2.3 Separation and classification of prisoners

Separating prisoners

Appropriately separating women prisoners according to their gender, legal status, and age is integral to respecting the rights of women prisoners and minimising the risk of their exposure to violence, sexual abuse and torture. Male and female prisoners should be kept in separate institutions so far as possible, and where a facility houses both men and women, women should be allocated to specific, separate premises.⁸²

Prison authorities should integrate gender perspectives into decisions on whether to separate, disperse or integrate VEPs from the general prison population. Where there is a small number of female VEPs, special consideration must be given over the question of separation in order to avoid creating a situation of de facto isolation.⁸³

Classification of prisoners and risk assessment

Effective and gender-sensitive risks and needs assessments are central to ensuring that VEPs are appropriately classified and categorised, and take into account the gender-specific needs of women. Where a gender assessment is not carried out, women may be placed in higher security settings than appropriate to the level of risk they represent. Gender-sensitive risk assessments should avoid stereotypes regarding women associated

⁷⁹ See also *UNODC, Training Curriculum on Women and Imprisonment* (2015) p. 12.

⁸⁰ Bangkok Rules, Rule 2(2). See section 4.4 below on alternatives to deprivation of liberty.

⁸¹ Regulation 2 of the Prisons Regulations.

⁸² Prisons Regulations, regulation 15, Nelson Mandela Rules, Rule 11(a), and Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa, guideline 36.

⁸³ Under the Nelson Mandela Rules, Rule 37, any form of involuntary separation from the general prison population, such as isolation or segregation, including for the maintenance of order and security, should be subject to authorisation by law or by the regulation of the competent administrative authority.

with terrorist groups (for example, stereotypes that such women lack agency and do not pose a significant risk), but take into account:⁸⁴

- The generally lower risk that women pose to others, and the effects of high-security measures and increased levels of isolation on women
- Women's backgrounds and caretaking responsibilities
- Opportunities for gender-sensitive rehabilitative programmes.

Allocation of prisoners to prisons

Women prisoners should be placed in prisons close to their homes or places of social rehabilitation, taking into account their caretaking responsibilities, their preference, and the availability of appropriate programmes and services.⁸⁵ Where VEPs are allocated to high security facilities, allocation to prisons close to their homes may be particularly challenging. In these cases, measures to ensure contact with the outside world become particularly important, as discussed above.

4.2.4 Healthcare and hygiene

The right to of all prisoners to health is a fundamental right, and prison health policies should aim towards the protection of their physical and mental health and wellbeing.⁸⁶ This may require specific interventions to ensure that women's specific needs are met. Women prisoners should be confidentially screened on admission to determine physical and mental healthcare needs, including for HIV, and for sexual abuse and violence.⁸⁷ Facilities and materials should be made available to meet women's specific hygiene needs, including sanitary towels free of charge,⁸⁸ which is particularly relevant given that that the Prisons Regulations require prisoners to observe personal hygiene.⁸⁹

An important safeguard in preventing abuse is the availability of female medical practitioners, or, at least, the presence of female staff members during health visits.⁹⁰

Basic training should be provided to staff working in women's prisons on issues relating to women's health, and children's development; HIV prevention, treatment, care and support; and the detection of mental health care needs, self-harm and suicide risks.⁹¹

4.2.5 Pregnant women and mothers with children in prison

All efforts should be made to ensure that pregnant women and women with children are not imprisoned unless absolutely necessary, taking into account the gravity of the offence, the risk posed by the offender and the best interests of the child.⁹² Pregnant women who are imprisoned should be held in special accommodation, and should be entitled to access healthcare and childcare facilities.⁹³

84 Bangkok Rules, Rules 40 and 41.

85 Bangkok Rules, Rule 4.

86 See ICCPR, art. 12, CEDAW, art. 12, and Body of Principles, Principle 9.

87 Bangkok Rules, rules 6 to 8.

88 Bangkok Rules, rule 5.

89 Prison Regulations, Regulation 31.

90 Bangkok Rules, rule 10.

91 Bangkok Rules, Rules 33-35.

92 UNODC, Handbook on Women and Imprisonment (2nd ed), 2014, p. 119. Bangkok Rules, Rule 64; also see African Charter on the Rights and Welfare of the Child, Art. 30; and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Art. 24(b).

93 Nelson Mandela Rules, Rule 28 and Bangkok Rules, Rule 42 and 48.

Mothers with children in prison should be provided with the maximum possible opportunities to spend time with their children, and provisions should be made for internal/external childcare facilities and child-specific healthcare services. Children are not to be treated as prisoners.⁹⁴

4.2.6 Contact with outside world/visits

All prisoners are entitled to receive visitors in the presence of a prison officer, to communicate via letters at the discretion of the superintendent, and to send and receive letters and parcels.⁹⁵

The limited number of female prisons can result in women being imprisoned far from their homes and therefore disadvantaged in maintaining family links. In these cases, assisting with transportation of family members, extending the length of visits, granting prison leave, and facilitating increased phone privileges are good practices in enabling women to maintain family links. Women prisoners' contact with their families and children should be encouraged and facilitated by all reasonable means, and steps should be taken to counter-balance disadvantages faced by women detained in facilities far from their homes.⁹⁶

4.2.7 Access to legal counsel

The right of access to legal counsel is integral to the principle of equality of arms and the right to a fair trial. The right of access to a lawyer from the initial stage of custody is a **fundamental safeguard against ill-treatment** and is key in ensuring fundamental fairness and public trust in the criminal justice process.

Upon arrest, a suspect must be informed of their rights to: remain silent until after consultation with a legal practitioner; to consult a legal practitioner before endorsing or writing a statement following arrest; and to free legal representation by the Legal Aid Council of Nigeria, where applicable.⁹⁷ Further, any person arrested and detained for an offence under the TPAA 2013, must be afforded access to their legal counsel and informed of their right.⁹⁸

Women prisoners' contact with legal representatives should be encouraged and facilitated by all reasonable means. Prison authorities have a crucial role to play in reducing female prisoners' vulnerability in the criminal justice system by providing them with information about their legal rights, by enabling their access to lawyers or paralegal services, providing facilities for meetings with lawyers, and, if required, interpretation services.⁹⁹ This applies both in pre-trial detention, and once women have been convicted.

4.2.8 Personnel and training

The recruitment, retention and promotion of women in prison administrations are important means of ensuring gender-sensitive prison management and preventing ill-treatment of female prisoners. Specific efforts may be required to ensure the placement of female staff where VEPs are held in separate facilities or are dispersed within high-risk prisons.

Female staff members should have equal opportunities for training and development that would enable them to work with VEPs and deliver gender-sensitive interventions. This includes training on recognising signs of radicalization to violence, anti-conditioning or manipulation training, assessment of intelligence and other information about VEPs, and where offered by the prison, the delivery of disengagement programmes.¹⁰⁰

94 Nelson Mandela Rules, Rule 29, and Bangkok Rules, Rules 49-52.

95 Prisons Regulations, regulations 42 and 44.

96 Bangkok Rules, Rule 26.

97 ACJA, section 6(2).

98 TPAA 2013, section 28.

99 UNODC, Handbook on Women and Imprisonment (2nd ed), 2014, p. 71.

100 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons (2016), p. 30.

Female religious leaders, teachers and community elders can play important roles in facilitating reintegration into mainstream society and by providing counselling, and education and training opportunities for women VEPs.¹⁰¹

4.3 Prison-based disengagement, rehabilitation and social reintegration measures for violent extremist prisoners

Prison-based interventions to assist VEPs to disengage from violent extremism, as well as rehabilitation and social reintegration measures to prepare prisoners for their re-entry into the community, are key elements in a strategy related to preventing and countering violent extremism. Effective disengagement, rehabilitation and reintegration interventions should be targeted to address the specific needs of each VEP, the nature of the violent extremist group involved, and the environment into which the former VEP will be released.

Because the large majority of VEP have been men, and because male VEP are generally considered to pose a greater threat to society, developing disengagement, rehabilitation and reintegration interventions that address women's needs is often disregarded.

These interventions should, however, reflect gender-specific needs and experiences of VEPs in a number of ways:

- *Intake, assessment and classification systems.* An effective intake, assessment and classification system for new inmates is highly relevant for female VEPs. Where a VEP has been assessed as low risk, which is more common for female VEPs, disengagement and rehabilitation programmes can be designed with increased engagement with external partners and fellow inmates,
- *Availability of training opportunities.* Vocational training opportunities should take into account a diverse range of interests and skills of VEPs, and not only those tailored to the majority male VEP population. This is integral in enabling former VEPs to restore their livelihoods, particularly for female-headed households or for women who may have been rejected by their families.
- *Considering gender-related challenges in reintegration measures.* Specific challenges exist with reintegrating women convicted of violent extremist offences, which differ from those facing men. This is due to, for example, the stigma surrounding the association of women with the terrorist group, an assumption that women have been subject to sexual violence, and potential retaliation from the community.¹⁰²



Focus: GCTF Good Practices on Women and Countering Violent Extremism

The need to “develop gender-sensitive disengagement, rehabilitation, and reintegration programs that address the specific needs of women and girls on a path to terrorist radicalization or involved in violent extremism” is underscored in Good Practice 10 of the GCTF *Good Practices on Women and Countering Violent Extremism*.

This recommendation is based on the understanding that:

- Women and girls within violent extremist and terrorist groups have different motivations, roles, and experiences to one another, and to men;

¹⁰¹ Ibid, p. 28.

¹⁰² UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons (2016), p. 137.



Focus: GCTF Good Practices on Women and Countering Violent Extremism (continued)

- The factors leading to the association of women and girls with terrorist groups, the levels of agency with which this association takes place, and their functions within these groups also differ, as discussed in Part 2 of this Module;
- VEPs may have suffered forms of violence by terrorist groups, including SGBV; and
- To be effective, disengagement, rehabilitation, and reintegration programs should be gender-sensitive and address these varying experiences, as well as the specific obstacles and challenges women and girls may face.¹⁰³

Mainstreaming gender into the management of VEP should not, however, be limited to considering the needs of female prisoners. Authorities could also consider:

- Programmes for male violent extremist offenders addressing elements of masculinity, male identity, male bonding and male status that are implicated in radicalization, extremism and engagement in political violence.
- The impact of the imprisonment of male terrorism suspects and convicts on their wives and families; the specific vulnerability of VEP's wives as a result of gender roles, including the imprisoned husband's role as the family's breadwinner, including vulnerability to recruitment and exploitation by the terrorist groups.



Reference

Examples from France, Indonesia and Kenya of gender sensitive measures regarding VEP management can be found in the *UNODC Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*, Part 4.

4.4 Preventing torture, inhuman and degrading treatment of people deprived of their liberty

While contexts of imprisonment and deprivation of liberty expose all individuals to a higher risk of mistreatment and abuse, gender plays a key factor in vulnerability to torture in these contexts. Women are at a particular risk of torture and ill-treatment when deprived of liberty, “both within criminal justice systems and other, non-penal settings”.¹⁰⁴

4.4.1 Nigeria's obligations to prevent and address torture in contexts of imprisonment and other forms of deprivation of liberty

The absolute prohibition on torture and inhuman or degrading treatment is well established in Nigerian law, as it is in all major international and regional human rights systems. Section 34(1) CFRN enshrines the right of each person to respect for the dignity of his person, and to freedom from torture or to inhuman or

¹⁰³ GCTF, *Good Practices on Women and Countering Violent Extremism*, p. 6.

¹⁰⁴ A/HRC/31/57, para. 13. The Security Council has recently reiterated that “sexual violence in armed conflict and post-conflict situations disproportionately affects woman and girls”, while recognizing “that men and boys are also targets of sexual violence in conflict and post-conflict settings, including in the context of detention settings and those associated with armed groups” (S/RES/2467 (2019), OP 32).

degrading treatment. This is an absolute prohibition, which cannot be limited or derogated from even in times of proclaimed state of emergency.¹⁰⁵

With respect to suspects in the criminal justice system, the ACJA, 2015, section 8(1) guarantees the right of all suspects to be accorded humane treatment and not to be subjected to any form of torture, cruel, inhuman or degrading treatment.

The Anti-Torture Act, 2017 provides important protections against torture for those in detention, including in relation to terrorism-related offences. Section 1 requires the Nigerian Government to:

- (a) ensure that the rights of all persons, including suspects, detainees and prisoners are respected at all times and that no person placed under investigation or held in custody of any person in authority shall be subjected to physical harm, force, violence, threat or intimidation or any act that impairs his free will; and
- (b) fully adhere to the principles and standards on the absolute condemnation and prohibition of torture set by the Constitution of the Federal Republic of Nigeria and various international instruments to which Nigeria State party.

Definition of torture

Section 2(1) of the Anti-Torture Act defines the scope of its application to acts of pain or suffering, physical or mental, intentionally inflicted on a person to obtain information or a confession; to inflict punishment for an act; or to intimidate or coerce the victim for any reason based on discrimination of any kind.

Sexual violence is among the gravest forms of violence to which persons deprived of their liberty are subject. The Anti-Torture Act, 2017 specifically prohibits rape and other forms of sexual abuse as forms of torture in section 2(2). Rape and other forms of gender-based violence are used as a form of torture against both male and female terrorism suspects.¹⁰⁶



Case study: Custodial rape as a form of torture

The European Court of Human Rights has held, in connection with a case concerning custodial rape of a female terrorism suspect, that

rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of the victim...the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture.¹⁰⁷

Circumstances in which prisoners or persons otherwise deprived of liberty do not receive sufficient food or cannot cover other basic necessities also raise the question whether any genuine consent to sexual acts is possible. This includes circumstances in which a prisoner “consents” to sexual acts with a prison official in exchange for basic necessities or favours.

¹⁰⁵ CFRN section 45 and Anti-Torture Act (2017) section 3(1).

¹⁰⁶ A/64/211, para. 44.

¹⁰⁷ ECtHR, *Aydin v. Turkey*, Case no. 57/1996/676/866, 25 September 1997, paras. 83-86.



Focus: Consent under coercive circumstances

Under general criminal law, the prosecution will generally have to prove lack of consent as an element of sexual violence crimes. International criminal practice, however, has drawn attention to the question of whether in detention settings, particularly in conflict zones, genuine consent to sexual intercourse is possible.

In a case related to alleged rape and sexual enslavement of women in de facto military headquarters and detention centres during the armed conflict in former Yugoslavia, the United Nations International Criminal Tribunal for the former Yugoslavia held that

“such detentions amount to circumstances that were so coercive as to negate any possibility of consent”.¹⁰⁸

The International Criminal Tribunal for Rwanda has held more broadly that

“Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence...”¹⁰⁹



Activity 20

Consider the following hypothetical scenario:

W is imprisoned awaiting completion of an investigation and trial on terrorism charges. Due to the large number of arrests of persons associated with a local terrorist group and the limited capacity of the criminal justice system, the prison holds two times the number of prisoners it was built for. In spite of the valiant efforts of the prison administration, prisoners are provided with insufficient food, while other basic services, such as health care, are in practice unattainable for many prisoners.

- 1) G works as a prison warden. He proposes to W that she will receive extra portions of food if in exchange of have sexual intercourse with him. W agrees.
 - a) Has G committed a sexual violence-related offence under the Penal Code, or the VAP(P) Act, 2015?
 - b) Does G’s conduct amount to torture under the Anti-Torture Act, 2017?
 - c) Does G’s conduct violate any other applicable criminal law?
- 2) Assume the same scenario as in question 1. Instead of G, the proposal of extra food in exchange for sex is made by L, who works for a non-governmental organization that is contracted by the prison administration to provide services to the prisoners. Does L’s conduct violate the above-mentioned laws?
- 3) Assume that, in addition to looking after herself, W also needs to feed her baby detained with her. Would this change your legal assessment to the above questions?
- 4) C is the director of the prison. It subsequently emerges that an official of the ministry of women’s affairs and an NGO representative had reported to him that sexual exploitation against food was taking place in the prison, and that C had not acted on those reports. Has C committed an offence? (Read the next section on criminal responsibility for acts of torture before addressing this question).
- 5) Apart from the criminal law questions, would the facts described above constitute a violation of W’s human rights as protected by the CFRN and international law binding Nigeria? If so, which human rights have been violated?

¹⁰⁸ Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, 2002, para. 129-133.

¹⁰⁹ Prosecutor v. Jean-Paul Akayesu (1998), para. 688.

Criminal responsibility for acts of torture

Under section 7 of the Anti-Torture Act, 2017, responsibility for torture is extended to:

- A person who participates in or is present during the infliction of torture
- A superior military police or law enforcement officer or senior government official who orders the torture. Further, an order from a superior officer or public official is not a justification for torture
- An immediate commanding officer of the unit concerned of the security or law enforcement agency, who is liable as an accessory to the crime for any act or omission or negligence on his/her part that may have led to the commission of torture

Torture and ill-treatment may arise in contexts of police custody or imprisonment not only directly from the conduct of police or prison staff, but also from other inmates. Inter-prisoner violence can amount to torture or ill-treatment for which the authorities are responsible if Nigeria fails to act with due diligence to prevent it.¹¹⁰

Conduct amounting to torture and outrages upon personal dignity against persons in custody is also prohibited by international humanitarian law and can amount to war crimes and crimes against humanity. Regarding persons held in military custody on terrorism-related grounds, sexual violence by members of the Nigerian Armed Forces is criminalised under Nigerian law in the Armed Forces Act, 2004, section 77. Under international humanitarian law, such conduct can constitute a war crime.

In resolution 2467 (2019), the UN Security Council reiterates “the need for civilian and military leaders, to demonstrate commitment and political will to prevent sexual violence and enforce accountability”. It also “stresses the need for the exclusion of sexual violence crimes from amnesty and immunity provisions in the context of conflict resolution processes”¹¹¹.

Refer to Section 2 of the Booklet accompanying this Module for a discussion of the elements of these crimes.



Case study: Command responsibility – Sepur Zarco judgment¹¹²

In 2016, a Guatemalan tribunal convicted two senior military leaders, on the basis of command responsibility, of crimes against humanity (including rape, and sexual and domestic enslavement) that were committed by soldiers under their command during Guatemala’s 36-year civil war.¹¹³ The Tribunal found a former commander of a military base, and a military commissioner in charge of the area in which the base was located, criminally responsible for the acts of soldiers who perpetrated sexual violence on the basis of support, awareness and failure to prevent the offences.

In rejecting the defendants’ claims of ignorance, the Tribunal found that the frequency of the acts over a period of time made such behaviour impossible to ignore by those responsible for the base. The Tribunal further held that in any case, the defendants would also be responsible for those acts due to their negligence and failure to exercise necessary control over their subordinates. This judgment was upheld on appeal.

¹¹⁰ A/HRC/13/39/Add.3, para. 28.

¹¹¹ S/RES/2467 (2019), OP 30.

¹¹² *Estelmer Francisco Reyes Girón, Heriberto Valdez Asig*, Case C-01076-2012-00021, 26 February 2016 (Guatemala)

¹¹³ Guatemala has incorporated crimes against humanity as a domestic offence in its Penal Code.



Reference

Questions of the criminal law applicable to sexual violence in a terrorism and counter-terrorism context are discussed in more detail in Part 5 of this Module.

4.4.2 Security, disciplinary and healthcare measures

Standards discussed above in section 4.2 related to separation and supervision are especially important to preventing cruel and inhuman treatment in prison settings and have marked gender dimensions.

As female prisoners face higher risks of violence and ill-treatment when they are held in facilities with male inmates, separating prisoners appropriately in accordance with the principles discussed in section 4.2.3 is a key safeguard against abuse.

Abuse of female prisoners, including through more explicit physical forms of assault or more subtle abuses such as threats to deny access to their entitlements in exchange for sexual favours, is higher where women are supervised by male personnel.¹¹⁴ As such, women prisoners should be supervised only by women staff under a female warden,¹¹⁵ including during transportation.

Personal searches, including invasive body and strip searches, present a risk of ill-treatment for all prisoners, but can have a disproportionately traumatising effect on women when conducted by men. Searches of prisoners on admission must only be searched by persons of their own sex, separate from all other prisoners.¹¹⁶

Regarding healthcare, as discussed in section 4.2.4, many prison health facilities are not designed to meet women's physical and psychological healthcare needs. The absence of gender-specific health care in detention can amount to ill-treatment or, when imposed intentionally and for a prohibited purpose, to torture. States' failure to ensure adequate hygiene and sanitation and to provide appropriate facilities and materials can also amount to ill-treatment or to torture.¹¹⁷

4.4.3 Personnel and training

Staff policies and regulations should be in place to protect women prisoners from abuse and gender-based physical, verbal and sexual harassment.¹¹⁸ Management staff should be trained on sensitivity and prohibition of discrimination and sexual harassment.

4.4.4 Complaints and oversight

An effective and independent complaints and oversight mechanism for all places where persons are deprived of their liberty is a key requirement to respect and fulfil the non-derogable obligation to prevent torture and inhuman and degrading treatment. As such, no exceptions should be made to this requirement on grounds of national security where persons held are suspected, accused or convicted of terrorism related offences.¹¹⁹

Nigerian law enshrines the right of persons who allege that they have been subject to torture to complain to and have their case promptly and impartially examined by a competent authority,¹²⁰ and requires competent

¹¹⁴ A/HRC/31/57, para. 20.

¹¹⁵ Nelson Mandela Rules, Rule 81.

¹¹⁶ Prisons Regulations, Regulation 3.

¹¹⁷ A/HRC/31/57, para. 26.

¹¹⁸ Bangkok Rules, Rules 31-32.

¹¹⁹ CTITF, *Basic Human Rights Reference Guide: Detention in the Context of Countering Terrorism* (2014) paras. 45-50.

¹²⁰ Anti-Torture Act (2017) section 4(1), and Prisons Regulations, Regulation 47.

authorities to ensure that the complainant is protected against retaliation for the complaint.¹²¹ Due to the acute stigma surrounding sexual violence and the resulting reluctance of some victims to make a complaint about sexual violence, complaint mechanisms must ensure confidentiality, and staff should be trained to receive complaints in a victim-centred and gender-sensitive manner.

International regulations require prisoners to be able to make complaints to the inspector of prisons (during inspections), and to central prison administrations, judicial or other competent authorities, legal advisers, and families.¹²² Allegations of torture must be dealt with immediately by an independent national authority,¹²³ and should be dealt with promptly and in a confidential manner, to reduce the risk of retaliation.

Prison inspectors should be empowered to receive complaints, to monitor complaints of violence in custody, including SGBV. Investigation mechanisms should include women members, and forensic doctors and inspectors trained in detecting torture and ill-treatment.¹²⁴



Activity 21

Assume that, following allegations of rape and sexual exploitation of female prisoners associated with a terrorist group at a high-security prison, you have been tasked to write a policy paper and standard operating procedures (SOP) for the prison for a gender-sensitive complaints and oversight mechanism, to ensure prevention and accountability for sexual violence in custody.

Write down, in bullet form, what would be the main points of the policy paper, and what the SOP should address.

Discuss which authority in Nigeria would have the responsibility and mandate to order the development of these documents and to adopt them.

4.5 Detention of close family members of suspects

The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has observed that “women (and children) not suspected of terrorism-related offences are unlawfully detained and ill-treated to either gain information about male family members or to compel male terrorism suspects to provide information or confessions”.¹²⁵ The arbitrary arrest and detention of close family members of terrorism suspects to exert pressure on the suspect does not exclusively involve the arrest of women to exert pressure on male family members. However, gender stereotypes often play a role in this context, as evident in the case study below.

121 Anti-Torture Act (2017) section 4(2).

122 Nelson Mandela Rules, Rule 56.

123 Nelson Mandela Rules, Rule 57.

124 Bangkok Rules, Rule 25(3).

125 A/64/211, para. 31.



Case study: Detention of Family Members in Lieu of Terrorism Suspects

Case of A.M.¹²⁶

A.M., who was pregnant, was travelling with her two children, aged ten and seven years, in Borno State, at a time in which the terrorist group Boko Haram was very active. She was stopped at a military checkpoint for what appeared to be a routine check. The soldiers asked her about the purpose of her travel and she informed them that she was moving to join her husband. The soldiers used A.M.'s mobile phone to place a call to her husband. They told him that unless he came to the checkpoint to pick his wife and children up, he would be deemed a member of Boko Haram. A.M.'s husband did not go to the checkpoint or make further contact.

A.M. and her children were taken to army barracks in neighbouring Adamawa State on suspicion that she was married to a member of Boko Haram. The army subsequently moved A.M. to Abuja for interrogation, where she and the children were held for two months, and back to the barracks in Adamawa State for continued detention, during which time she gave birth to her third child. She was then transferred to the custody of the prisons service where she was held for approximately two years. However, the prisons service refused to accept her older children, who were taken to a children's home.

The International Federation of Women Lawyers (FIDA) Nigeria, Adamawa Chapter, filed an application to the Federal High Court on behalf of A.M. and her children for the enforcement of their fundamental rights. The Federal High Court granted the declarations sought, ordered the release of A.M. and her youngest child from prison and of the two older children from the children's home, and awarded the applicants compensation for the unlawful detention.

As the UN Human Rights Committee has stated, detaining family members of an alleged criminal who are not themselves accused of any wrongdoing is an "egregious example[e] of arbitrary detention".¹²⁷

In Nigeria, the detention of family members in lieu of the suspect is explicitly prohibited under the ACJA, 2015, section 7, which provides that "a person shall not be arrested in place of a suspect". The African Charter on Human and People's Rights, article 7(2), enshrines the principle that punishment is personal and "can be imposed only on the offender".

4.6 Gender-sensitive alternative measures at different stages of the criminal justice system

4.6.1 The scope for alternative measures in terrorism cases

Conventionally, little consideration has been given to the use of alternative measures in place of pre-trial detention and custodial sentences for those accused or convicted of terrorism offences. This is in part due to the threat posed by terrorism to societies, long sentences of imprisonment imposed for terrorism offences on conviction, and the perception of the risk factors surrounding terrorist offenders. However, there is growing recognition of the need to consider alternative measures for imprisonment in appropriate cases.

¹²⁶ Adama Mustapha & 3 ors v Nigerian Army and Nigerian Prisons Service & 2 Ors, FHC/YL/CS/22/2016.

¹²⁷ Human Rights Committee, General Comment No. 35 on Article 9, UN Doc. CCPR/C/GC/35, para. 16.



Focus: GCTF Recommendations on the Effective Use of Appropriate Alternative Measures for Terrorism-Related Offenses

The GCTF Recommendations on the Effective Use of Appropriate Alternative Measures for Terrorism-Related Offenses provide guidance on a range of measures for alternatives to imprisonment for individuals charged with, or convicted of, terrorism-related offences.

It notes that “there may be a need to consider these types of measures in appropriate cases because of the broadening of some governments’ counterterrorism strategies to include efforts to prevent and counter violent extremism.”¹²⁸ Alternatives should be considered, in particular, in light of:

- laws enabling the arrest of individuals at the earliest possible stage before they can travel, commit, or otherwise directly support an act of violence, through the expanded use of inchoate offences and offences criminalizing preparatory acts (as explored in Part 2 above);
- “an increased presence of first-time offenders among those radicalized to violence”; and
- “the concern about individuals becoming radicalized, or radicalizing others, to violence while in detention centers or prisons.”¹²⁹

The Recommendations on Alternative Measures recognise that “more emphasis should be placed on ensuring that vulnerable individuals are not victimised by imprisonment if viable alternatives are available and appropriate”.¹³⁰

Alternatives to imprisonment may be particularly appropriate for certain categories of offenders including “juveniles, first-time offenders, and people suffering from diminished mental capacity.”¹³¹ Alternative measures may be particularly appropriate in the case of female terrorism suspects or convicts, to the extent that women suspected or convicted of terrorism offences are often more than men first time, low-risk offenders who acted in non-violent support roles.

Potential criteria to be taken into account in assessing alternative measures for those charged with or convicted of having committed terrorism-related offences, as suggested in the GCTF Recommendations on Alternative Measures,¹³² include:

- The severity of the offence charged;
- The level of radicalization to violence and commitment to violent extremism;
- The offender’s receptiveness to intervention and treatment; and
- The likelihood of the person re-offending.

4.6.2 The scope for alternative measures under Nigerian law and good practices for gender-sensitive alternatives measures

The ACJA, 2015 provides for a number of alternative measures to a custodial sentence applicable at the pre-trial stage, during trial, and following conviction. The Bangkok Rules state that it is necessary to consider

¹²⁸ GCTF, Recommendations on the Effective Use of Appropriate Alternative Measures for Terrorism-Related Offenses, p. 2.

¹²⁹ Ibid,

¹³⁰ Ibid, Recommendation 8.

¹³¹ Ibid.

¹³² Ibid, Recommendation 6.

implementing gender-sensitive measures applicable to women offenders, taking into account any history of victimization and their caretaking responsibilities.¹³³

(a) Diversion from prosecution

The Guidelines for Prosecutors in the Federal Republic of Nigeria provide that, in determining whether or not to prosecute a case, the broad question is whether the offence or the circumstances of its commission are of such a nature that a prosecution is required in the public interest, taking into account interests of the community, suspect and the victim.¹³⁴ This is discussed in more detail in Part 2 of the present Module (section 2.3.1).

(b) Release on bail

Section 162 of the ACJA, 2015 applies where a defendant is charged with an offence exceeding three years imprisonment, which is the case of all offences under the TPA 2011, as amended. In this case, the defendant “shall, on application to the court, be released on bail” except in any of the specified circumstances, including:

- (a) where there is reasonable ground to believe that the defendant will, where released on bail, commit another offence;
- (b) attempt to evade his trial;
- (c) attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case;
- (d) attempt to conceal or destroy evidence;
- (e) prejudice the proper investigation of the offence; or
- (f) undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system.

Considerations regarding women’s roles in terrorist groups and their involvement to a lesser extent in the commission of acts of violence may in some cases favour women in obtaining bail. On the other hand, women may be disadvantaged by certain aspects of the bail system, including:

- Disadvantages in accessing legal counsel and legal aid to make the case for bail;
- The effects of mechanisms for determining fines and bail sums, which may not reflect the economic disadvantage and lack of financial autonomy that many women face;
- Bail conditions that may disadvantage women, such as those that require regular reporting to authorities. This may be the case for women who require a male chaperone, who cannot afford transport to the police station, or because reporting would jeopardise caretaking responsibilities.

(c) Alternatives at the trial, sentencing, and post-trial stages

Nigerian legal framework

Under ACJA, 2015 section 311(2), courts are required to consider a number of factors in deciding upon sentencing of a convicted person, including the “appropriateness of non-custodial sentence or treatment in lieu of imprisonment”.

Probation

One alternative measure envisaged under the ACJA, 2015 is conditional release on probation. Section 454 provides that:

- (1) Where a defendant is charged before a court with an offence punishable by law and the court thinks that the charge is proved but is of opinion that having regard to:

¹³³ Bangkok Rules, Rule 57.

¹³⁴ Guidelines for Prosecutors in the Federal Republic of Nigeria, para. 5.

(a) the character, antecedents, age, health, or mental condition of the defendant charged,
(b) the trivial nature of the offence, or
(c) the extenuating circumstances under which the offence was committed,
it is inexpedient to inflict a punishment or any order than a nominal punishment or that it is expedient to release the defendant on probation, the court may, without proceeding to conviction, make an order specified in subsection (2) of this section.

(2) The court may make an order under subsection (1) of this section:

- (a) dismissing the charge; or
- (b) discharging the defendant conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding 3 years as may be specified in the order.

Sections 454 and 455 also enable the payment of compensation and damages by the defendant, and arrangements for supervision under probation.

Suspended sentences

Section 460 allows for the Court to order suspension of a sentence where it sees reason, and to impose community service orders. Note that suspended sentence and community service orders are not applicable where the offence for which the individual was convicted involved “the use of arms, offensive weapon, sexual offences or for an offence which the punishment exceeds imprisonment for a term of 3 years”. This will generally exclude the application of suspended sentences in terrorism cases.

Parole

The Courts are empowered to direct the release of a prisoner before completion of their sentence on parole where they are of good behaviour, and for prisoners who have been sentenced to imprisonment for a term of at least 15 years or life, where they have served at least one-third of the prison term.

Gender-based considerations and good practices

According to the Bangkok Rules, in considering alternative measures to imprisonment at the trial and sentencing stages, judicial authorities should take into account the rehabilitative needs of the offender, the protection of society and the interests of the victim.

- When sentencing women offenders, courts should consider mitigating factors such as the “lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and typical background” (Rule 61)
- Gender-specific options for sentencing alternatives should take into account the history of victimization of many women offenders and their caretaking responsibilities (Rule 57)
- Non-custodial sentences for pregnant women and women with dependent children should be preferred where possible and appropriate. Custodial offences for women in these positions should only be considered in the case of violent offences or where the woman represents a continuing danger, taking into account the best interests of the child. (Rule 64)
- Decisions regarding early conditional release (parole) shall favourably take into account women prisoners’ caretaking responsibilities, as well as their specific social reintegration needs (Rule 63)



Activity 22

Compare the grounds for bail, probation and other alternative measures under:

- the ACJA, 2015,
- the Bangkok Rules
- the *GCTF Recommendations on the Effective Use of Appropriate Alternative Measures for Terrorism-Related Offenses*.

Discuss:

- Common elements and differences between the grounds for using alternatives to imprisonment.
- How could considerations regarding differences between men's and women's roles in terrorist groups, the risk they pose to society, their family caretaking duties, etc, affect the application of these criteria for the use of alternative measures?

4.7 'Protective' custody

So-called 'protective' custody or detention refers to the practice of detaining a person whose safety is perceived to be at risk. In some countries, it is used to protect women suspected of being victims of trafficking or sexual violence from further harm.

Such 'protective' detention can amount to unlawful deprivation of liberty and violate the prohibition on arbitrary detention. This will certainly be the case where detention purportedly for the purpose of "protection" is in fact imposed to elicit information from the detainee.

Human rights treaty bodies have called upon States to cease the practice of protective custody for women at risk of violence. Further, prolonged detention for the purposes of 'protection' can in some circumstances constitute inhuman treatment.¹³⁵ The Committee against Torture has urged States to "transfer all women currently held in 'protective custody' to other safe and rehabilitative shelters".¹³⁶

While temporary forms of custody may be justified on an exceptional basis where no appropriate alternative exists, non-custodial forms of protection must be developed to avoid resorting to this practice.¹³⁷ Therefore:

- Forms of custody to 'protect' a woman should only be used when necessary and expressly requested by the woman concerned, should be temporary, and should not be imposed against her will. Such measures should also be supervised by judicial and other competent authorities, and women detained should have access to legal counsel in the process of making such decisions.
- The principle whereby any deprivation of liberty requires a legal basis (CFRN section 35(1)), lest it constitute a human rights violation, applies also to 'protective custody'.
- Where, in exceptional circumstances, detention facilities are used to protect women at risk of violence, such women should not be treated as prisoners and should be free to leave the detention facility when they wish.¹³⁸

¹³⁵ A/HRC/7/3, para. 42, and A/HRC/4/33/Add.3, para. 39.

¹³⁶ A/65/44, p. 106.

¹³⁷ UNODC, *Handbook on the Management of High-Risk Prisoners*, 2016, p. 111.

¹³⁸ *Ibid*, p. 112.

- Women held in custody for such reasons should be transferred, as soon as possible and where necessary, to more appropriate facilities, such as shelters, safe houses, and other community services.¹³⁹

4.8 Deprivation of freedom of persons associated with terrorist groups outside the criminal justice system

4.8.1 Administrative detention and de facto deprivation of liberty

Administrative detention has been defined as “detention of individuals by State authorities outside the criminal law context, for example for reasons of security, including terrorism, [and] as a form of preventive detention”.¹⁴⁰

Section 35(1) CFRN allows certain forms of detention outside the criminal justice system, including for the education or welfare of a child; for immigration purposes; and for persons suffering from infections/contagious diseases, persons of unsound mind, persons addicted to drugs or alcohol, or vagrants.

As section 35(1) states that “no person shall be deprived of such liberty save in the following cases”, the above grounds for administrative detention have to be considered to be exhaustive. In the counter-terrorism context, this is particularly important as any form of administrative detention that does not fall under these grounds would appear to be in violation of the Constitution (unless it is justified by a valid derogation).

It is also possible that persons associated with a terrorist group may be, in the absence of a judicial or administrative decision, de facto deprived of their liberty. While there may be no formal recognition that they are in detention, they are in fact not free to leave the place where they are held, e.g. for purposes of ‘screening’.

Screening

Deprivation of liberty may take place where persons suspected of being associated with a terrorist group are held for prolonged periods of time by military or other security authorities outside the criminal justice system for security purposes. This occurs where, for example, military authorities “screen” people apprehended in the course of counter-terrorism operations in order to determine whether they can be released back into the community on the ground that they present a low risk.

Any assessment or screening procedure must be implemented in a gender-sensitive and human rights compliant manner, both with respect to the conditions in which those subject to these procedures are detained, and in requiring a legal basis for detention where freedom of movement is restricted.

Deradicalization or rehabilitation programmes

Deprivation of liberty also occurs where persons formerly associated with a terrorist group are held by the authorities for the purposes of being subjected to de-radicalization or rehabilitation programmes, without being charged with a criminal offence, or after charges have been dismissed, or after serving a sentence. Irrespective of the way the authorities designate such programmes, this practice will amount to deprivation of liberty where participation in such programmes is compulsory, and participants are not free to leave. Deprivation of liberty will also occur where participation is initially voluntary, but participants are subsequently prevented from leaving. Women and girls, who are more often considered to present a lower risk, and who may not be criminally responsible for their association with the group, can be particularly affected by this practice.

¹³⁹ Ibid.

¹⁴⁰ UN Working Group on Arbitrary Detention, A/HRC/13/30, para. 77.

Camps for Internally Displaced Persons

Generally speaking, persons in IDP camps are free to leave and therefore not deprived of their freedom. However, in some cases, women and children in these camps face severe restrictions on their freedom of movement by camp authorities on the basis of their family members' purported involvement in the activities of terrorist groups, while themselves having not been accused of such involvement, and face confiscation of identity documents, or required approval in order to travel outside of the camp. While it is important to distinguish between deprivation of freedom of movement and deprivation of liberty, the boundary is not always clear, and deprivation of freedom of movement may be so severe as to amount to a de-facto administrative deprivation of liberty.

4.8.2 Detention in the context of armed conflicts

Where persons associated with a non-State armed group (including those designated as terrorist groups) are detained in the context of an armed conflict, the law of armed conflict, international humanitarian law (IHL), becomes applicable. IHL rules regarding deprivation of liberty complement the rules of international human rights law. In non-international armed conflicts and as regards deprivation of liberty, international humanitarian law affords women and men the same protection – be they civilians or fighters – but also requires that the specific protection, health and assistance needs of women affected by armed conflict must be respected.



Reference

For a discussion of the classification of a non-international armed conflict, and domestication in Nigeria of the international treaties referenced in this section, refer to Module I on *Counter-terrorism and Human Rights: Incorporation of International Law into Nigerian Law*.

While international humanitarian law is understood to provide an inherent power to detain individuals during armed conflicts, the treaty rules of international humanitarian law applicable to non-international armed conflicts do not define grounds and procedures for internment (administrative detention). Such grounds and procedures need to be defined elsewhere, normally in national law. International humanitarian law provides important rules about the conditions of detention and treatment of detainees.

Common article 3 to the 1949 Geneva Conventions provides protections for persons not participating or no longer participating in hostilities, including as the result of detention. This applies to any form of detention related to the armed conflict and requires humane treatment without any adverse distinction. Examples of prohibited behaviour are violence to life and person, cruel treatment and torture, and outrages upon personal dignity.

Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) also contains protections for persons detained in the context of non-international armed conflicts (see arts. 4–6). Its protections cover both persons being detained in connection with criminal proceedings, and those detained for security reasons outside criminal prosecution (internment); however, the deprivation of liberty must be for reasons related to the armed conflict.¹⁴¹

Customary international *humanitarian law applicable in non-international armed conflicts supplements the treaty provisions in common article 3 and Protocol II. Regarding the protection of family life, women and children, customary international humanitarian law requires the following:*

¹⁴¹ Y. Sandoz, C. Swinarski, B. Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, para. 4568.

- *The family life of detained persons must be respected as far as possible. This requires, to the degree possible, the maintenance of family unity, contact between family members and the provision of information on the whereabouts of family members.*¹⁴²
- Except when men and women of the same family are accommodated together, women shall be held in quarters that are separate from those of men and under the immediate supervision of women.¹⁴³
- The specific protection, health and assistance needs of women affected by armed conflict must be respected.¹⁴⁴ This applies also in contexts of detention.



Further reading

- UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons (2016)
- UNODC, Training Curriculum on Women and Imprisonment (2015)
- Global Counterterrorism Forum (GCTF), Recommendations on the Effective Use of Appropriate Alternative Measures for Terrorism-Related Offenses

4.9 Self-Assessment Questions



Self-Assessment Questions

- 1) List at least five UN and African Union instruments relating to detention and imprisonment?
- 2) What are the “Bangkok Rules”?
- 3) Discuss three grounds of vulnerability of female prisoners.
- 4) List three gendered aspects of Nigerian and international rules for the allocation, separation and classification of prisoners.
- 5) How can disengagement, rehabilitation and social reintegration measures for violent extremist prisoners reflect gender-specific needs and experiences?
- 6) What gender-specific risks do women who are deprived of their liberty face with regards to torture? What key safeguards should be introduced to mitigate these risks?
- 7) Does Nigerian law permit alternative measures in terrorism cases? List three ways in which gender can influence the application of grounds for granting alternative measures.
- 8) What does customary international humanitarian law say about the joint accommodation or separation of men and women in detention? Does it differ from the rules applicable in a criminal justice context?

¹⁴² ICRC, Study on customary international humanitarian law, Rule 105. Also see rules 125-126.

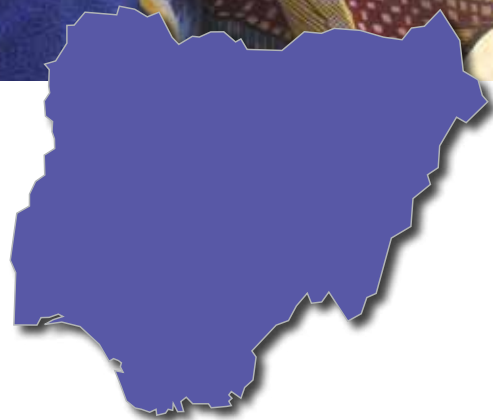
¹⁴³ Ibid., rule 119; and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 5, paras. 2 (a) and (d).

¹⁴⁴ ICRC, Study on customary international humanitarian law, Rule 134.



Kidnapped and held captive by Boko Haram militants, this victim was forced to marry a fighter or face public execution. Since escaping from Boko Haram, she now resorts to survival sex to support herself and her young child.

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5

Accountability for Sexual and Gender-Based Violence Perpetrated by Terrorist Groups



Learning objectives

By the end of this Chapter, you will be able to:

- Describe what acts constitute sexual and gender-based violence (SGBV)
- Discuss the use of SGBV as a tactic of terrorism
- Describe Nigeria's international law obligations to ensure accountability for SGBV crimes committed by terrorist groups
- Describe the specific challenges facing the investigation and prosecution of SGBV committed by terrorist groups
- Understand key principles for effective investigations of SGBV in terrorism cases, including the relevance of different forms of evidence, expertise in the investigation of sexual crimes, and effective coordination between investigators and prosecutors
- Identify key partners in the investigation and prosecution of SGBV cases in the medical and psychosocial fields



Reference

This Module is accompanied by a booklet on 'Legal Frameworks for the Prosecution of Sexual and Gender-Based Violence Perpetrated by Terrorist Groups', which examines avenues for prosecuting sexual and gender-based crimes as terrorism offences, as violations of the domestic general criminal law, and as trafficking offences under Nigerian law. It also explores circumstances in which SGBV may constitute an international crime.

5.1 Sexual and gender-based violence perpetrated by terrorist groups

Acts of terrorism can – at least on their face – be gender neutral. The hijacking of a commercial flight to press political demands, an attack on a tourist resort by an armed commando, or an explosive attack in a crowded market, are examples of (apparently) gender-neutral attacks. Terrorist groups such as ISIL (Da'esh) and Boko Haram have, however, in the last decade, engaged systematically in SGBV as a strategy to attain their objectives. Women and girls have been targeted as victims of trafficking in persons, and for SGBV offences

including sexual slavery, forced and child marriage, rape, and forced labour.¹⁴⁵ Men and boys are also subjected to SGBV in armed conflict situations and by terrorist groups, which is an under-reported phenomenon.



Focus: Sexual and gender-based violence

Sexual and gender-based violence refers to any harmful act that is perpetrated against one person's will and that is based on socially ascribed (gender) differences between males and females. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, whether occurring in public or in private life. Sexual and gender-based violence entails widespread human rights violations, and is often linked to unequal gender relations within communities and abuses of power. Acts of sexual and gender-based violence may be inflicted upon women, men, girls and boys.

It comprises the following two notions:¹⁴⁶

- **Sexual violence**, which encompasses any sexual act, attempt to obtain a sexual act...or acts otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. Sexual violence takes multiple forms and includes rape, sexual abuse, sexual slavery, forced pregnancy, forced sterilization, forced abortion, forced prostitution, forced circumcision, castration and forced nudity, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys; and
- **Gender-based violence**, which is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender. Other forms can include acts of physical violence, domestic violence, forced marriage and harmful traditional practices. Accordingly, while sexual violence is a form of gender-based violence, gender-based violence is a broader category of crime and may be perpetrated through non-sexual acts (including for example, physical violence).

In resolution 2467 (2019) the UN Security Council states that "sexual violence in conflict occurs on a continuum of interrelated and recurring forms of violence against women and girls, and recogniz[es] that conflict also exacerbates the frequency and brutality of other forms of gender-based violence."

The use of SGBV as a weapon of war has been acknowledged for some time by the international community and in the UN Security Council. Resolutions 1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2467 (2019), for example, recognise the use of SGBV as a method of warfare or as part of widespread attacks against civilians during armed conflict, and its role in protracting such conflict and undermining international peace and security. The use of SGBV for these purposes continues to be observed in conflicts, including the strategic targeting of people along ethnic, religious and political lines that reflect elements of the broader conflict.

Recognition of the use of SGBV as a tactic in acts of terrorism has also been increasingly recognised in the Security Council resolutions addressing terrorism in recent years. In resolution 2331 (2016), the Council recognised "the connection between trafficking in persons, sexual violence and terrorism", and acknowledged sexual violence as a tactic of terrorism, used in recruitment, resourcing and radicalization by terrorist groups. It further stated that "victims of trafficking in persons in all its forms, and of sexual violence, committed by terrorist groups should be classified as victims of terrorism".

¹⁴⁵ For the purpose of this Module, the term "victim" is used without prejudice to other terms which may be preferable in specific contexts, such as "survivor".

¹⁴⁶ OHCHR, *Sexual and gender-based violence in the context of transitional justice* (2014), http://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagere/Sexual_and_gender-based_violence.pdf, and S/2017/249, para. 2

The continuing incidence of sexual violence as a tactic of terrorism was underscored by the Secretary-General in his 2017 Report on Conflict-Related Sexual Violence. In that report, the use of SGBV for the purposes of “incentivizing recruitment, terrorizing populations into compliance, displacing civilians from strategic areas, eliciting operational intelligence and forcing conversions through marriage” was observed. Further, these tactics serve an ideological purpose in suppressing women’s rights, and exercising control over “their sexuality and reproduction”. The report also noted the use of SGBV by terrorist groups for pecuniary gain, through sex trafficking and enforced prostitution.



Focus: SGBV perpetrated against men and boys

In 2013, the United Nations held a UN Workshop on Conflict-Related Sexual Violence against Men & Boys.¹⁴⁷ The workshop report states that situations in which men and boys have been subjected to sexual violence have been reported in more than 25 countries since 2000 from Latin and Central America, through Africa, the Middle East and Asia. Moreover, the report mentions that conflict-related sexual violence against men and boys is frequently premeditated, planned, and systematic, thus proving the use of sexual-violence as a weapon of war.

In a 2014 Report, the UN Secretary-General states:

“I have also previously highlighted the specific concern of sexual violence perpetrated against men and boys. Such incidents were again reported in 2013 but it remains difficult to determine their scale and scope and to respond accordingly. Challenges in this area include deep stigma, the failure of national legislation in many instances to recognize sexual violence against men and boys as a crime, the inadequacy of services specifically for male victims and the lack of access to legal services.”¹⁴⁸

The 2016 Report of the Secretary-General on conflict-related sexual violence notes that the fear of stigmatisation prevents the vast majority of survivors of conflict-related sexual violence to come forward.¹⁴⁹ “The threat or use of sexual violence is often used as a form of torture against men and boys, many of whom remain silent for fear of social ostracism due to accusation of homosexuality in contexts in which it is taboo or even criminalized as it remains in 78 countries.”¹⁵⁰



5.2 Sexual and gender-based violence committed in the context of the conflict in North-East Nigeria

There are numerous reports by governmental, inter-governmental and non-governmental organizations, academic researchers and journalists, regarding SGBV perpetrated by members of Boko Haram.

The following extract from a 2015 report of the UN High Commissioner for Human Rights on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries provides an overview of the SGBV related violations committed by Boko Haram:

“38. Since 2009, Boko Haram subjected women and girls to widespread and severe abuses, including sexual slavery, sexual violence, forced marriages, forced pregnancies and forced conversions. The group justifies such practices by its conception of the role of women and girls in society. In one video message in which the group claimed responsibility for the abduction of the

147 UN Workshop on Conflict-Related Sexual Violence against Men & Boys, 25-26 July 2013: Report & Recommendations.

148 S/2014/181 at para. 7.

149 S/2016/361/Rev.1 at 3 para. 7.

150 S/2016/361/Rev.1 at 4 para. 8.

Chibok girls, Shekau stated that “God instructed me to sell them, they are his properties and I will carry out his instructions”. In another message, he spoke of abducted girls as “spoils of war”.

39. One woman interviewed by OHCHR said she was coerced into marriage when Boko Haram attacked her village, and said that “they came back after killing the men and boys and told me that an Imam in their group would preside over the marriage ceremony”. OHCHR received reports of younger girls being married off to fighters and older women forced to work as cooks and cleaners.

40. Discussions with psychosocial counsellors in northeast Nigeria confirmed widespread sexual violence against women and girls held by Boko Haram. One counsellor reported that a girl who managed to escape narrated how Boko Haram fighters would sexually abuse her, telling her ‘you are the kind of girls we like’. Another interviewee told OHCHR that she witnessed the rape of girls as young as 15.

41. OHCHR documented cases of rape following forced marriages to Boko Haram members, during an attack on Bama, Borno state, Nigeria, in September 2014. Some 150 women at Dalori camp, which opened in April 2015 and hosts IDPs from Bama, had given birth after they escaped from captivity. OHCHR received information that a Nigerian refugee woman in Niger was abducted in Damasak, Borno state, on 28 November 2014, and raped by 40 men. A 14-year-old girl told OHCHR she was raped when Boko Haram attacked Damasak, in November 2014, and that, after killing the men and boys; they took the women and children to a house, and selected some 40 girls to marry their fighters. She was forcefully married and raped three times before escaping, during a “wedding”, with three other girls.”

These findings were reflected in Security Council resolution 2349 (2017), which condemned

violations of international humanitarian law and abuses of human rights by Boko Haram and ISIL in the [Lake Chad Basin] Region, including those involving killings and other violence against civilians, notably women and children, abductions, pillaging, child, early and forced marriage, rape, sexual slavery and other sexual and gender-based violence, and recruitment and use of children, including increasingly the use of girls as suicide bombers...and calls for those responsible for these acts to be held accountable, and brought to justice...

The UN Secretary-General’s 2017 report on conflict-related sexual violence found that “[d]espite military gains made against Boko Haram, women and girls remain exposed to the risk of sexual violence and other crimes, including being used as suicide bombers...[Reports from the girls abducted from Chibok] corroborate information received about forced marriage, forced pregnancy and sexual slavery by Boko Haram”. In 2015, the first Security Council presidential statement on trafficking in persons acknowledged that terrorist groups including Boko Haram engage in human trafficking, “for the purpose of sexual slavery, sexual exploitation, and forced labor which may contribute to the funding and sustenance of such groups”.¹⁵¹ Resolution 2388 (2017) further condemned trafficking offences and abuses committed by, Boko Haram, amongst other groups, for the purpose of sexual slavery, sexual exploitation, and forced labor.¹⁵²

A report from the UN Security Council Committee Counter-Terrorism Executive Directorate (CTED) suggests that Boko Haram has engaged in the trading of slaves: “In the aftermath of the April 2014 abduction of female students in Chibok, Nigeria, Abubakar Shekau stated that Boko Haram intended to sell the kidnapped women and girls to its combatants as slaves or brides. According to reports, some were sold for \$12.”¹⁵³

151 S/PRST/2015/215, preamble.

152 S/RES/2388 (2017), para. 10.

153 CTED, *Identifying and Exploring the Nexus Between Human Trafficking, Terrorism, and Terrorism Financing*, 2019, para. 72.



Focus: *Regional Strategy for the Stabilization, Recovery and Resilience of the Boko Haram-affected Areas of the Lake Chad Basin*

Strategic Objective 37 of the 2018 Regional Stabilization Strategy, which is on ‘Protecting Women and Girls’, emphasises the need to:

Ensure effective protection measures that empower women and girls as beneficiaries and can effectively engage in the stabilization and peacebuilding process as well as prevention and response to violence extremism. Protect women and girls from all forms of violence, exploitation and abuse.

The use of sexual and gender-based violence is deeply entrenched in gendered norms and stereotypes. As identified in the *National Guidelines and Referral Standards on Gender Based Violence in Nigeria*, “in spite of a fairly robust law and policy regime on gender-based violence in Nigeria, it is important to note that such acts are deeply rooted in cultural as well as social norms and the belief systems which emerge from them”. Its use is also linked to the conception of gendered roles held by terrorist groups and their strategic objectives, and should not be viewed in isolation, but rather in the broader context of gender inequality, and its political, social and economic dimensions.

The *National Guidelines and Referral Standards* also explain the gender-specific consequences of acts of SGBV perpetrated during the conflict with Boko Haram in North-East Nigeria:¹⁵⁴

Direct Actions	Example of Gender-Specific Consequences
Kidnapping	Reduced access to education generally and even worse for girls who already had minimal participation in the region
Forced marriages	Negative impacts on reproductive, psychosocial and general health, economic and social rights of women and girls
Rape and sexual harassment	Increased vulnerability to sexually transmitted diseases, unsafe abortions and reproductive health challenges



Activity 23

- As discussed in Chapter 2, Boko Haram has been using women and girls as suicide bombers. Should the use of female suicide bombers be considered a form of gender-based violence against these women and girls?
- According to the 2015 report of the UN High Commissioner for Human Rights on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries, “[b]oys were mainly abducted for indoctrination into Boko Haram’s teachings, and to join its fighting force, while women and girls were abducted for sexual exploitation, forced marriages, labour and religious conversions to Islam.”¹⁵⁵ In 2019, the United Nations reported that “women and girls account for 99 per cent of the victims of reported incidents of sexual violence across Adamawa, Borno and Yobe States.”¹⁵⁶

What are the reasons for the scarcity/absence of reports regarding sexual violence against men and boys in the context of the Boko Haram crisis? Is the phenomenon inexistent (or very marginal), or are incidents not reported?

¹⁵⁴ *National Guidelines and Referral Standards on Gender Based Violence in Nigeria*, p. 14.

¹⁵⁵ A/HRC/30/67, para. 29.

¹⁵⁶ *Report of the Secretary-General on Conflict Related Sexual Violence*, S/2019/280, para. 119.

Sexual violence by government officials

There are also reports indicating that Government officials and other authorities in [Nigeria](#) have raped and sexually exploited women and girls detained as Boko Haram suspects or displaced by the conflict with Boko Haram. According to a United Nations report, in 2016 there were 43 cases of sexual violence allegedly perpetrated by “security guard, army officers, camp officials, members of the Civilian Joint Task Force and vigilantes. In December 2016, nine officers were reportedly arrested and are currently [at the time of the report in 2017] standing trial”. The 2019 report notes that in the January-December 2018 reporting period, another five girls were raped by military officers, with one survivor being killed upon the perpetrators learning that she had filed a complaint.¹⁵⁷

Nigeria is responsible under international human rights law to promptly, effectively, independently, impartially and thoroughly investigate, prosecute and punish sexual violence crimes – irrespective of whether they are committed by personnel affiliated with the security forces or by terrorist groups and other non-state actors. International criminal law equally requires the investigation and prosecution of sexual violence in conflict.

The present Part 5 of the Module focusses on accountability for SGBV crimes committed by terrorist groups. However, the provisions criminalizing SGBV in domestic criminal laws and in international criminal law are mostly equally applicable to state agents. In Part IV above, some aspects of accountability for SGBV by government officials are examined in the context of preventing torture and inhuman and degrading treatment in detention.

5.3 Nigeria’s obligations to ensure accountability for sexual and gender-based violence perpetrated by terrorist groups

International law requires Nigeria to ensure that individuals belonging to terrorist groups who commit sexual and gender-based violence offences are held criminally responsible. These crimes should not be seen as merely ancillary or incidental to terrorism offences. The UN Secretary-General’s 2017 Report on women and peace and security calls upon national justice systems to investigate and prosecute such crimes. It adds that:

in the prosecution of members of terrorist and violent extremist groups, consideration must be given to the gender-related nature of crimes and indeed the full body of international criminal law, including crimes against humanity and genocide, and not be limited to only the terrorist crimes themselves.¹⁵⁸

Victims of crime are also entitled to remedies. Remedies include bringing perpetrators to justice, but also encompass various forms of reparations, such as compensation, and medical, psychological and social care. When SGBV is perpetrated in armed conflict, the victims’ right to access reparations faces particular challenges. Part 6 of this Module discusses support to victims of SGBV by terrorist groups.

5.3.1 The obligation to ensure accountability for SGBV under international and regional human rights law

As a state party to CEDAW, Nigeria has assumed obligations to address gender-based violence against women, which is a form of discrimination against women.¹⁵⁹ This involves two important aspects:

¹⁵⁷ Report of the Secretary-General on Conflict-Related Sexual Violence, 2019 (S/2019/280), para. 119.

¹⁵⁸ S/2017/861, para. 61.

¹⁵⁹ Committee on the Elimination of Discrimination against Women, *General recommendation No. 35 on violence against women*, (2017) para. 1, reaffirming the relevance *General recommendation No. 19 on violence against women*, (1992) [9].

- (1) Nigeria is responsible for acts constituting gender-based violence against women **committed by its organs and agents**.¹⁶⁰ State responsibility extends to acts carried out by government officials, members of the security services, persons or groups of persons acting on the instructions or under the control of the state, for example, security agents contracted by the state to conduct security or military operations.
- (2) Nigeria also has an **obligation of due diligence** to prevent sexual and gender-based violence against women **committed by non-state actors**.¹⁶¹ This is part of the broader obligation to protect the rights to life, liberty and security, including from threats posed by terrorists.¹⁶²



Focus: The Maputo Protocol

Nigeria also has obligations as a state party to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 (the Maputo Protocol).

Article 3 of the Maputo Protocol requires States to implement "appropriate measures to prohibit any exploitation or degradation of women", and to "ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence". The Maputo Protocol further requires Nigeria to protect the dignity of women and girls, and their freedom from exploitation, degradation and violence. In fulfilling these obligations, Nigeria has a duty to find appropriate remedies for the violation of fundamental freedoms and rights of women and girls as determined by competent judicial, administrative and legislative bodies.



Tools

The Guidelines on Combating Sexual Violence and its Consequences in Africa, adopted by the African Commission on Human and Peoples' Rights, provide guidance to Member States of the African Union in implementing their commitments and obligations to combat sexual violence and its consequences.

5.3.2 The obligation to ensure accountability for sexual violence under international humanitarian law and international criminal law

Nigeria has international obligations to prohibit sexual violence under international humanitarian law (IHL). In non-international armed conflicts, Additional Protocol II to the Geneva Conventions prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault" for "all persons who do not take a direct part or who have ceased to take part in hostilities". Common Article 3 of the Geneva Conventions, which applies to "armed conflict not of an international character", prohibits "violence to life and person", as well as "outrages upon personal dignity, in particular humiliating and degrading treatment". Rape and other forms of sexual violence are further prohibited under Customary IHL in both international and non-international armed conflicts.¹⁶³

Acts of violence to life and person, cruel treatment and torture, and outrages upon personal dignity (Common Article 3), as well as sexual violence, in particular, rape, sexual slavery, enforced prostitution, enforced sterilization

¹⁶⁰ Committee on the Elimination of Discrimination against Women, *General recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women* (2010) para. 11.

¹⁶¹ Ibid, para. 13.

¹⁶² OHCHR, *Fact Sheet No. 32 on Human Rights, Terrorism and Counter-terrorism*, p. 8.

¹⁶³ ICRC Customary Law Study, Rule 93.

and enforced pregnancy (customary IHL), all can constitute war crimes.¹⁶⁴ Under customary IHL, States must investigate war crimes allegedly committed in the course of non-international armed conflicts by their nationals or armed forces, on their territory, or over which they have jurisdiction and, if appropriate, prosecute the suspects.¹⁶⁵

As a State party to the Rome Statute of the International Criminal Court, Nigeria has assumed an international legal obligation to bring to justice those responsible for conduct amounting to a crime under the ICC Statute. This includes acts of sexual and gender-based violence amounting to war crimes or crimes against humanity.



Focus: UN Security Council on importance of “rigorous prosecution” of sexual violence crimes

In resolution 2467 (2019), the UN Security Council recognizes that “national ownership and responsibility in addressing the root causes of sexual violence in armed conflict and post-conflict situations”.

The UN Security Council also states

- “that the consistent and rigorous prosecution of sexual violence crimes is central to deterrence and prevention,”
- “as is challenging the perceptions that sexual violence in armed conflict is a cultural phenomenon or an inevitable consequence of war or a lesser crime.”

5.4 Frameworks of accountability for sexual and gender-based crimes perpetrated by terrorist groups under Nigerian law

There are a range of domestic legal frameworks in Nigeria enabling the prosecution of individuals associated with terrorist groups who perpetrate sexual and gender-based crimes, through which Nigeria can meet its obligations discussed in section 5.3 above to hold perpetrators of these crimes accountable.

- (1) **Counter-terrorism legislation.** The Terrorism (Prevention) Act, 2011, and the Terrorism (Prevention) (Amendment) Act, 2013, do not specifically include SGBV offences. However, it may be possible for acts of SGBV perpetrated by members of terrorist groups to be charged as attacks causing serious bodily harm, or as hostage taking, thus amounting to terrorist offences, where the constituent elements of these offences and evidentiary requirements are met.
- (2) Other federal laws enacted by the National Assembly to domesticate international instruments include offences that are relevant to the prosecution of SGBV, including the **Trafficking in Persons (Prohibition) Enforcement and Administration Act**, 2015 (NAPTIP Act, 2015), the **Violence Against Persons (Prohibition) Act**, 2015 (VAP(P) Act, 2015) and the **Child Rights Act**, 2003 (CRA, 2003).
- (3) **General domestic criminal law.** General domestic criminal statutes remain relevant in the prosecution of cases involving SGBV where the evidentiary threshold to prove a terrorism-related offence is not met. The relevant domestic criminal law in Northern Nigeria, including the North East States where Boko Haram has been most active, is the Penal Code (Northern Region) Federal Provisions Act 1960, whilst the applicable law in the Southern States in Nigeria is the Criminal Code Act Cap. 38.

¹⁶⁴ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume 1, Rules* (2009) rule 156.

¹⁶⁵ *Ibid.*, rule 158.

In considering the prosecution of sexual and gender-based crimes under these criminal statutes, it is important to consider the relevant jurisdiction and applicability of these laws, and implications in terms of attribution of responsibility to parties to an offence, victim protection measures, and remedies for victims.



Reference

These issues are examined in depth in the Booklet accompanying this Training Module, “Legal Frameworks for the Prosecution of Sexual and Gender-Based Violence Perpetrated by Terrorist Groups”.



5.5 Enhancing investigations and prosecutions of sexual and gender-based crimes committed by terrorist groups in Nigeria

5.5.1 Key approaches to investigating and prosecuting cases involving SGBV in conflict

A major factor in the non- or under-reporting of SGBV crimes is the stigma surrounding these crimes due to social, religious or cultural reasons at the family and community level, and at the level of national authorities. Insecurity and fear of retaliation also impedes reporting of SGBV by victims and witnesses. The UN Secretary-General’s 2017 report on conflict-related sexual violence states that “it is estimated that almost half of all survivors [of SGBV] decline to report sexual violence because of a lack of trust in formal and informal justice systems, a prevailing culture of impunity, fear of stigma and person risk”. The 2016 report of the Secretary-General on the same issue highlighted the prevalence of the issue in the context of the conflict in Nigeria, noting that “owing to stigma and religious norms, most victims of sexual violence are reluctant to speak out and unwilling to return to their communities for fear they will be rejected as a source of “dishonour””.¹⁶⁶



Focus: Challenges to investigating and prosecuting sexual and gender-based violence

The National Human Rights Commission’s *North East Nigeria Human Rights Assessment Report (2015 – June 2017)*, compiling the findings of the National Human Rights Commission (NHRC) and UNDP’s assessment missions in North-East Nigeria, highlights numerous issues that arose in the course of their assessments. These may equally contribute to non-reporting of cases of sexual violence and impede effective investigations and prosecutions. They include:

- *Fear of the stigma associated with being a victim of SGBV.* The report notes that “gender-based violence, especially as it relates to sexual offences, is enmeshed in a culture of silence and stigmatisation of the victims. The victims did not usually speak out for fear of being isolated and stigmatised.”¹⁶⁷ The report references that the Nigerian “culture of silence”, which is amplified in conservative contexts such as in the northern parts of the country, is a contributing factor. The report references that the Nigerian “culture of silence”, which is amplified in conservative contexts such as in the northern parts of the country, is a contributing factor.

¹⁶⁶ S/2016/361, para. 86.

¹⁶⁷ National Human Rights Commission’s *North East Nigeria Human Rights Assessment Report (2015 – June 2017)*, p. 31.



Focus: Challenges to investigating and prosecuting sexual and gender-based violence (continued)

The report noted the issue of under-reporting of SGBV cases in Borno state as a result of the conflict with Boko Haram due to a “culture of silence, stigmatisation and fear. Survivors of publicised sexual offences may not get married whilst some survivors and their families are so poor that they lack the money to pursue the matter either at the Police or in the Courts”.¹⁶⁸

- *Lack of women in key positions in national agencies.* The report noted the lack of women in key agencies responding to internally displaced populations, which could be a contributing factor to non-reporting of SGBV.
- *Lack of gender-sensitive training.* Several of the national agencies that the NHRC and UNDP met with highlighted the need for general human rights training, as well as specific gender-sensitivity training for their staff. The report identified the need for more training in order for gender to be effectively mainstreamed into the programmes of key agencies dealing with Boko Haram victims.
- *Lack of medico-legal evidence.* Another major challenge is the issue of medical reports to prosecute cases of sexual violations. In an environment that has no medical facilities with a dearth of qualified medical personnel, the evidence to successfully prosecute a rape or defilement case may be hard to come by if the accused person denies the charges.
- *Lack of information storing, recording and digitisation.* Digital and hard copies of information gathered and statistics are not readily available at national agencies.

To reduce the risk of stigma, or exclusion from family and community networks, and to ensure the physical safety of the victims, it is necessary to employ human rights-based and victim-centred approaches to sexual and gender-based violence investigations and prosecutions.

Adopting a **human rights-based approach** recognizes sexual and gender-based violence as a manifestation of gender inequality and discrimination against women. It also reflects the obligation of States to exercise due diligence in preventing, protecting against and prosecuting all forms of violence against women in a criminal justice system, and treating victims with dignity and respect throughout the criminal justice process.¹⁶⁹

Criminal justice responses to sexual and gender-based violence should also be guided by a **victim-centred approach**, which incorporates the core objectives of “do no harm”, victim well-being, empowerment and safety. The criminal justice system should seek to restore the sense of control, autonomy, self-respect and personal privacy that are eroded by acts of SGBV.¹⁷⁰ A victim-centred approach also benefits operational effectiveness, given that victims and witnesses are also more likely to cooperate if they feel secure and that their needs are being effectively addressed.

A victim-centred approach should be guided by the general principles of:

- Respect for the rights of the victim, including access to justice and legal advice (considered in chapter VI), right to information and privacy
- Voluntary and informed consent at all stages of an investigation
- Confidentiality, including about the identity of the victim and nature of the investigation

¹⁶⁸ Ibid, pp. 33-34.

¹⁶⁹ UNODC, *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women*, p. 34.

¹⁷⁰ UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, p. 25.

- Ensuring the physical safety and welfare of the victim, including through the provision of medical assistance to meet immediate health-care needs by first responders
- Non-discrimination, by treating all victims of sexual and gender-based violence on an equal basis



Activity 24

Consider the situation of women who live in a camp for internally displaced persons (IDPs) following armed violence by a terrorist group. Reports indicate that sexual and gender-based violence by members of the terrorist group was widespread, but no incidents are reported to the authorities and no complaints filed.

- What, in your view, are the reasons for non-reporting to authorities by victims of sexual and gender-based violence?
- What measures could be put in place to encourage victims to report sexual and gender-based crimes to criminal justice authorities?



Reference

In addition to the present part of the Module, refer to:

- Chapter 3 for information on gender-sensitive interviewing and witness protection measures
- Chapter 6 for information on gender-sensitive measures to support victims of terrorism

5.5.2 Adopt a multidisciplinary, coordinated and gender-sensitive approach

Coherence, coordination and consistency in approaches between investigative and prosecutorial authorities are imperative for the effective prosecution of crimes involving SGBV, particularly when terrorist groups are involved in their commission. Investigators should ensure that offences involving SGBV are considered at each stage of the investigative process, in order to ensure that they are not perceived as merely incidental to other terrorism offences that are more commonly charged. This demands close coordination between investigative strategies and charging decisions in order to clarify an integrated, common approach to the offences being pursued, and the evidence required to support the charges. The forms of evidence relevant to SGBV and other offences committed by members of the terrorist group may differ substantially, which will in turn influence the investigative approaches adopted.

A coordinated and cooperative approach is also important in identifying and investigating the links between different types of crime. For example, in the case of trafficking, coordination with those agencies with expertise in this area is critical for trafficking cases. Early identification of trafficking is central to fulfilling State obligations to provide adequate protection and assistance to victims of trafficking.

Ensuring a victim-centred approach to investigations also requires effective cooperation and information-sharing not only among authorities involved in the investigation and prosecution of terrorist crimes and crimes involving sexual and gender-based violence, but also with:

- Entities providing healthcare, psychosocial and legal support
- SGBV referral centres
- Humanitarian actors, if these are amongst the first responders
- Government agencies, which fulfil a coordination role, such as the Federal Ministry of Women Affairs and Social Development.

Victims who come into contact with practitioners may have varying needs, including for medical and psychological care, protection, and legal advice. Referring victims to different service providers while taking into account the core principles of confidentiality and respecting their wishes is an integral component of responses to SGBV.¹⁷¹ Practitioners should try to identify options for referring victims for assistance and support and put into place referral procedures.

The types of assistance that may be available to victims includes:¹⁷²

- Medical assistance through hospitals, health centres and clinics that are appropriately equipped to treat sexual violence victims for injuries and wounds, emergency contraception, treatment or preventive treatment for sexually transmitted infections, psychiatric services
- Psychosocial assistance through counselling services, victims support groups or other organisations offering direct counselling, reintegration and livelihood assistance
- Legal clinics and programmes providing confidential legal advice, information on victim's rights, and legal representation
- Protection assistance through organisations that offer shelters, relocation assistance, or witness protection programmes



Focus: Multi-sectoral referral guidelines for SGBV cases

The Federal Ministry of Women Affairs and Social Development, in cooperation with UN Women, UNFPA and Nigeria Stability and Reconciliation Programme, has developed the National Guidelines and Referral Standards on Gender-Based Violence in Nigeria. This document is intended to provide a "road map for the provision of high-quality and comprehensive support systems and services to GBV survivors", and was drafted in light of the conflict in North-East Nigeria. It contains multi-sectoral referral guidelines for cases involving gender-based violence in Nigeria, including recommended practices and responsibilities of those in contact with victims, such as healthcare providers; the police; non-governmental or community-based organizations; individuals; and witnesses.

Pursuant to these Guidelines, when a victim visits or is referred to the police, police officers are required to:

- Direct survivor to the child protection officers or gender desk officers within the specialized unit at the station
- Ensure that the specialized unit refers the survivor to an appropriate healthcare facility
- Ensure that the survivor's account is documented by the specialized unit
- Follow up on and document updates on survivor status. Follow up could be through telephone calls to survivors and to service providers to which the survivor has been referred

171 UK Foreign and Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practices on the Documentation of Sexual Violence as a Crime or Violation of International Law*, 2nd Edition, p. 98.

172 Ibid, p. 99.

5.5.3 Develop expertise and build capacity in the investigation and prosecution of SGBV crimes

A major challenge in investigating the use of sexual and gender-based violence as a tactic of terrorism is that members of counter-terrorism investigation teams may not have received specialized training in investigating offences involving SGBV, nor possess legal expertise regarding SGBV offences. Personnel may thus not be sensitized to issues specific to these offences.

Effective investigations and prosecutions of offences involving sexual and gender-based violence require specialized expertise in interviewing and protecting victims and witnesses (as discussed in Chapter 3 of this Module) and in handling different forms of evidence and ensuring that such evidence is not overlooked in wider counter-terrorism investigations (discussed further below).

Measures to address these challenges include:

- **Providing training.** Personnel involved in the investigation and prosecution of offences involving SGBV by terrorist groups should be appropriately trained to effectively investigate and prosecute these crimes, and to respond to the specific vulnerabilities and needs of victims of SGBV.
- **Creating specialised units to deal with SGBV-related crimes.** Owing to the specific nature of both crimes involving sexual and gender-based violence and terrorist crimes, creating specialized police and prosecutorial units, and encouraging judicial actors to develop special expertise in the adjudication of these crimes may lead to:
 - Increased confidence of victims in reporting such crime
 - Improved service delivery, and reduced revictimization
 - A coordinated approach to ensuring accountability¹⁷³
- **Coordinating between different service providers.** Coordination across the criminal justice, health and social service sectors to ensure that victims have timely access to essential services, while protecting the privacy of victims. This includes victim advocacy and support services, material and financial aid, safe accommodation, and physical and mental health services



Focus: Priorities for judiciary and law enforcement officers concerning SGBV cases

In order to ensure that the needs of victims of SGBV are met and that effective investigations and prosecutions take place, the *National Guidelines and Referral Standards on Gender-Based Violence in Nigeria* identify the following priority areas of action for the judiciary and law enforcement officers:

- Undergo specialized training on the handling and management of SGBV cases
- Establish and implement guidelines and procedures for appropriate care and referral systems for victims of abuse by law enforcement agents.
- Reinforce adherence to standard ethical values and codes of conduct by governing authorities and institutions
- Enforce existing laws and policies on SGBV

¹⁷³ United Nations Police Gender Toolkit, module 3, lesson 5, p. 11.

5.5.4 Strategic and comprehensive evidence collection

While testimonial evidence is an integral form of evidence for the prosecution of sexual and gender-based crimes, adopting a strategy encompassing collection of different types of evidence – some of which may not normally be employed in investigations of other criminal offences – strengthens prosecution cases, and improves the likelihood of convictions. The following Table shows forms of evidence that may be relevant.

Documentary evidence	<ul style="list-style-type: none"> ❑ Material recording information in a written or documentary format ❑ Can include official evidence (e.g., military reports, medical certificates, prisoner lists, identity and registration documents), and unofficial evidence (e.g., psychological reports, reports of international organizations, newspaper articles and evidence-based surveys) ❑ Can be highly useful in assisting to establish the pattern, frequency and intensity of reported sexual violence, the identity of perpetrators and superiors, and the existence of a plan or strategy and modes of liability
Digital evidence	<ul style="list-style-type: none"> ❑ Any probative information or data that are stored on, received or transmitted by an electronic device. ❑ Relevant types of digital evidence for proving guilt in crimes involving sexual and gender-based violence may include electronic health records, photos and videos, location data, emails, text messages and metadata. ❑ Digital evidence may assist in establishing the perpetrators' intent, location, and relationship with other suspects, patterns of movement of the alleged perpetrator, and corroboration of witness testimony. ❑ There are risks in handling digital evidence, which often requires forensic digital experts to ensure proper collection, storage and interpretation.
Physical evidence	<ul style="list-style-type: none"> ❑ Any physical objects or matter that can provide relevant information to help establish that sexual and gender-based violence took place, or provide a link between a crime and its victim or between a crime and its perpetrator. ❑ Relevant physical evidence for investigations of sexual and gender-based violence may include physical material (such as clothing), weapons, biological or forensic material, physical injuries, impressions, sites of violations and documents for analysis. ❑ <i>Transfer and associative evidence</i> may provide information about contact between the victim and the suspect, the victim and the crime scene, and the suspect and the crime scene, as well as the nature of the contact. <i>Identification evidence</i> can provide data about the source of a piece of evidence, including the physical injuries sustained. ❑ Where there are indications that drugs may have been used to facilitate sexual violence, evidence of exposure to drugs should be collected from the victim and crime scene as soon as possible.

Source: Adapted from United Kingdom, Foreign and Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law*, 2nd ed. (London, 2017).

Failure to apply an interdisciplinary approach to evidence collection may result in missed opportunities to collect evidence owing to the use of an inappropriate methodology, failure to identify relevant elements of the crime for which evidence is required, mistakes that result in charges being dropped, or failure to charge crimes for which there is evidence.

While it is important to consider the relevance of a wide range of evidence for the prosecution of crimes involving SGBV, a number of challenges may arise in its collection.

- There may be limited or no evidence to collect owing to the time elapsed between commission of the offence and the investigation, or because of evidence deterioration or tampering.
- There may be significant difficulties in accessing forensic examinations owing to the scarcity of medical facilities capable of collecting such evidence, or the complexity of the system for ordering such examinations. Where delays occur, forensic evidence is likely to be compromised.

- Forensic evidence relevant to SGBV offences committed by terrorist groups may be overlooked or contaminated in the scheme of the broader terrorism investigation. This risk is magnified where there is limited expertise in crimes involving SGBV within investigating teams, or limited coordination between agencies with expertise.

Service providers interacting with victims, such as healthcare and mental health professionals, may also require training in the collection of criminal evidence for cases involving sexual and gender-based crimes.

Linkage evidence

When undertaking evidence collection, it is important to consider not only the role of the direct, physical perpetrator alleged to have carried out the act of SGBV, but also evidence concerning hierarchies, chains of command or levels of oversight that may assist in establishing the responsibility of those who ordered or directed those acts. This evidence is critical in establishing criminal responsibility for those higher-level leaders responsible for ordering, tolerating and/or failing to prevent SGBV committed by their subordinates. Investigative teams have to be aware of the need to identify and secure such evidence. This could include information indicating a chain of command or hierarchy, reporting procedures or communications within a group, or evidence of the suspect's ability to issue orders and orders being relied upon.



Reference

The attribution of responsibility for SGBV crimes to the parties to an offence, including leaders and commanders, is discussed in section 1.7 of the Booklet accompanying this Module on *Legal Frameworks for the Prosecution of Sexual and Gender-Based Violence Perpetrated by Terrorist Groups*.



Activity 25

Consider the following scenario. In the course of an attack on a village, a terrorist group abduct several women, including W. The group's senior commander C subsequently "assigns" W as "wife" to one of the fighters, the unmarried young man F. Over a period of one year, F (who considers W his wife), forces W to live with him, to have sex with him and to cook, clean and wash for him.

- In what ways could C be held responsible for offences committed under the TPA 2011, as amended ?
- What other criminal laws applicable in Nigeria could be used to prosecute C?
- What evidence would be required for the prosecution of C?



Tools

UNODC has produced numerous publications on the topic of investigating and prosecuting sexual and gender-based violence:

- *Handbook on Effective Prosecution Responses to Violence against Women and Girls*
- *Handbook on Effective Police Responses to Violence against Women*
- The joint UNODC, World Health Organization and United Nations Action against Sexual Violence in Conflict, *Toolkit on Strengthening the Medico-Legal Response to Sexual Violence*
- For more information on the investigation of drug-facilitated sexual crimes, see *Forensic Analysis of Drugs Facilitating Sexual Assault and Other Criminal Acts*
- The joint UNODC, World Health Organization, United Nations Development Programme, UN-Women and United Nations Population Fund publication entitled *Essential Services Package for Women and Girls Subject to Violence* provides guidance on improving multisectoral services for all women and girls who have experienced sexual and gender-based violence

Other resources:

- By resolution 65/228 of 31 March 2011, the General Assembly adopted the updated UN Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice
- UK Foreign and Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict* provides specific guidance and training tools for the investigation of sexual and gender-based violence
- International Criminal Court, Office of the Prosecutor, "Policy paper on sexual and gender-based crimes"
- International Criminal Tribunal for Rwanda, *Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions*
- UN-Women, *Handbook for Legislation on Violence against Women*
- United Nations Police, *United Nations Police Gender Toolkit: Standardized Best Practices on Gender Mainstreaming in Peacekeeping* (2015), module 3, lesson 4.

5.6 Self-assessment questions



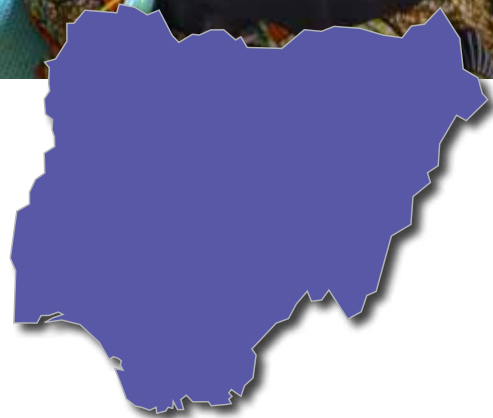
Self-Assessment Questions

- 1) Explain the difference between sexual violence and gender-based violence.
- 2) What do the United Nations documents concerning SGBV as a tactic of terrorist groups in general, and specifically regarding SGBV committed by Boko Haram, establish?
- 3) List at least three international law provisions obliging Nigeria to hold members of terrorist groups accountable for acts of SGBV.
- 4) List at least four Nigerian (federal or state level) laws under which SGBV offences committed by terrorist groups could be prosecuted.
- 5) Explain what a human rights-based and a victim-centred approach to accountability for SGBV offences entail.
- 6) List three key challenges to gathering evidence of SGBV offences committed by terrorist groups.
- 7) Why is a multi-disciplinary approach to SGBV offences essential to successful investigation and prosecution? List at least three parts of government whose cooperation criminal justice sector actors may need to secure to successfully investigate and prosecute SGBV offences.
- 8) What forms of evidence, in addition to testimonial evidence, may be relevant in investigating SGBV offences linked to terrorist activities? What challenges arise in the collection and use of these forms of evidence?



Women benefitting from psychosocial support activities at a camp for internally displaced persons in Borno State, Nigeria.

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6

Access to Justice, Reparations and Support for Victims



Learning objectives

- Discuss Nigerian and international policy instruments and laws stressing the importance of ensuring access to justice, reparations and support for victims of terrorism
- Describe gender-related barriers to accessing justice for victims of terrorism and measures to promote access to justice for women
- Discuss gender aspects of legal aid, including of Nigeria's National Legal Aid Strategy 2017-2022
- Describe challenges facing women and girl victims of sexual violence by Boko Haram in North-East Nigeria
- Name key principles of gender-sensitive transitional justice following conflict involving a terrorist group
- Discuss the relevance of the Violence Against Persons (Prohibition) Act, 2015, and the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015, to support, assistance and reparations for victims of terrorism
- Describe the importance of administrative schemes to support victims of terrorism and conflict-related sexual violence
- Identify key measures to integrate a gender perspective in reparations programmes and other support to victims of terrorism
- Discuss good practices that have emerged from experience with reparations for conflict-related sexual violence and that are relevant to reparations for victims of SGBV by terrorist groups

6.1 Introduction

Recognizing the suffering of victims of terrorist acts and their right to seek remedies is an integral part of a comprehensive strategy for combating terrorism.

The United Nations Global Counter-Terrorism Strategy recognises support to victims of terrorism as a key component in effective counter-terrorism measures. The 2018 Global Counter-Terrorism Strategy Review resolution reflects this perspective. In that resolution, the General Assembly:

13. Deeply deplores the suffering caused by terrorism to the victims of terrorism in all its forms and manifestations and to their families, expresses its profound solidarity with them, and encourages Member States to provide them with proper support and assistance while taking into account, inter alia, when appropriate, considerations regarding remembrance, dignity, respect, justice and truth, in accordance with international law;

14. Acknowledges the importance of building the resilience of victims and their families as an integral part of a counter-terrorism strategy, and encourages Member States to include this aspect in their national counter-terrorism strategies, including by providing victims and their families with proper support and assistance immediately after an attack and in the long term and sharing on a voluntary basis best practices and lessons learned related to the protection of victims of terrorism, including regarding the provision of legal, medical, psychosocial or financial support.¹⁷⁴

The Nigerian Policy Framework and National Action Plan for Preventing and Countering Violent Extremism recognizes that “[a]ppropriate regards for ... the rights of victims shall inform required approach” – and explicitly links this to prioritizing human rights generally in the context of preventing and responding to violent extremism.

With specific regard to victims of sexual violence in conflict, including those of sexual violence by terrorist groups, the UN Security Council

“Encourages Member States to adopt a **survivor-centered approach** in preventing and responding to sexual violence in conflict and post-conflict situations, ensuring that prevention and response ... respect the rights and prioritize needs of survivors, including groups that are particularly vulnerable or may be specifically targeted, and notably in the context of their health, education, and participation”¹⁷⁵. (emphasis added)

Who is a victim?

The 1985 United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, which extends to situations where people are victimised as the result of criminal offences committed by terrorist groups, includes in the term “victims”:

- “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power” (para. 1).
- “where appropriate, the immediate family or dependants of the direct victim, as well as persons who have suffered harm in intervening to assist victims in distress or to prevent victimization” (para. 2). This category of victims is often referred to as *indirect victims*.

The 1985 Declaration stresses that all persons falling within the above categories are entitled to be considered victims “regardless of whether the perpetrator is identified, apprehended, prosecuted” (para. 2.). This is particularly important in the case of victims of terrorism, where access to reparations and support may be seriously undermined if it is made dependent on the identification, apprehension and successful prosecution of perpetrators.

In Nigeria, the Violence Against Persons (Prohibition) Act, 2015, defines “victim” in line with the 1985 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

The 2007 Nairobi Declaration on the Right of Women and Girls to a Remedy and Reparation adds that, in order to effectively incorporate the perspectives of victims in reparations processes, “the notion of ‘victim’ must be broadly defined within the context of women’s and girls’ experiences and their right to reparation” (para. 4).

¹⁷⁴ General Assembly resolution 72/284, adopted on 26 June 2018.

¹⁷⁵ Security Council resolution 2467, operative paragraph 16.



Activity 26

Do the harms suffered by male and female – direct and indirect – victims of terrorism in Nigeria differ?

Consider all the typologies of harm mentioned in the definition of victims in the VAPP Act and the 1985 United Nations Declaration: “physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights”.



Activity 27

- (a) Are there any provisions concerning victims of terrorism in the TPA 2011, as amended?
- (b) Are there any provisions on the rights of and support to victims of crime in other Nigerian laws that may be relevant to the context of victims of terrorism?

6.2 Gender dimensions of access to justice for victims of terrorism

This section reviews gender dimensions of access to justice for victims of terrorism in three steps. First, considerations regarding access to justice for victims of terrorism (6.2.1). Second, international standards and good practices regarding gender dimensions of access to justice in general (6.2.2). Third, specific considerations regarding access to justice for victims of sexual and gender-based violence (6.2.3).

6.2.1 Access to justice for victims of terrorism

In the past, victims of crime, including terrorism, have too often been the forgotten parties in the criminal justice system. Moreover, acts of terrorism have several features that can stand in the way of effective participation of victims and access to justice for victims: the number of victims may be very large; the often indiscriminate nature of terrorist violence, which does not target the victims as individuals; authorities often perceive the state and government institutions to be the “real” target of acts of terrorism, neglecting the suffering caused to individual human beings; the complexity and secrecy of criminal investigations in terrorism cases, as well as their long duration, which make it very difficult for victims to follow any progress in the proceedings.

In recent years, however, there has been greater recognition of the rights and roles that victims have within the criminal justice framework.¹⁷⁶ A range of good practices can assist to ensure access to justice for victims of terrorist crime in spite of the challenges listed above:

- Informing victims of their role in the criminal justice process, the nature and timing of proceedings, and the extent of required cooperation;
- Ensuring the availability of legal aid mechanisms to facilitate legal representation;

¹⁷⁶ UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* (2015), p. iii.

- Allowing for the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant procedures of the national criminal justice system;
- Informing victims of their rights in seeking redress through available judicial or administrative mechanisms;
- Protecting victims from potential intimidation and retaliation, and protecting their privacy (considered in Chapter 3 of this Module);
- Avoiding unnecessary delay in the disposition of cases and the execution of orders granting awards to victims.

This global development towards greater attention towards the rights of victims of crime in general, and of victims of terrorism in particular, is reflected in three key pieces of Federal legislation in Nigeria. In the words of Prof. Joy Ngozi Ezeilo:

“Nigeria’s criminal justice system like many elsewhere focuses on punishment and retribution for offenders with little consideration for actual redress for crime victims that may be regarded as adequate or effective remedy for personal harms suffered. In fact, the criminal justice is skewed to protect the public and save them from criminals whilst neglecting the victim and their victimization that should ordinarily occupy center stage.

Although, the criminal justice administration has changed rapidly in other climes with new focus on human rights and victims centered approaches, the change has been slow in Nigeria until the recent revolution engendered by three recent legislative acts of the National Assembly in 2015 namely: Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015, Administration of Criminal Justice Act, 2015 and the Violence Against Persons Prohibition Act, 2015.

These legislations have now formed the fulcrum towards an effective remedy for crime victims in administration of criminal justice that is in consonance with international good practices and also in conformity with Nigeria’s international obligations to protect and remedy violations of human rights, including by non-state actors. Of course, it is not yet time for euphoria as attention shifts towards implementation of these laws.”¹⁷⁷



Focus: Remedies and Support for Victims under the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015¹⁷⁸

The Trafficking in Persons (Prohibition) Enforcement and Administration Act, passed by the National Assembly in 2015, contains ample provisions regarding support and remedies for victims of trafficking. Section 61 enshrines the victim’s right not to be discriminated against on usual prohibited grounds including sex, age or by having worked in the sex industry (s. 61(a)). A trafficked person is guaranteed access to adequate health and other social services during the period of temporary residence in Nigeria (s. 61(b)). Section 61 (g) provides for the protection of identity of a victim of trafficking. Also, a trafficked person and his/her family are protected from intimidation, threats, and reprisals from traffickers and their associates including reprisals from person in position of authority (s. 61(j)).

¹⁷⁷ *Towards an Effective Remedy for Crime Victims in the Administration of Criminal Justice in Nigeria* by Joy Ngozi Ezeilo, Ph.D.; OON; Research Professor, NIALS.

¹⁷⁸ Adapted from *Towards an Effective Remedy for Crime Victims in the Administration of Criminal Justice in Nigeria* by Joy Ngozi Ezeilo, Ph.D.; OON; Research Professor, NIALS.



Focus: Remedies and Support for Victims under the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 (Continued)

Section 63 covers the rights of a victim to information, including on relevant court and administrative proceedings;¹⁷⁹ assistance to enable the victim's views and concerns to be presented and considered at appropriate stages of criminal proceedings against the traffickers;¹⁸⁰ and counselling and information as regards victim's legal rights in a language that the victim can understand.¹⁸¹

The Counselling and Rehabilitation Department of NAPTIP (the National Agency for the Prohibition of Trafficking in Persons) is further charged with counselling, after-care rehabilitation, social re-integration and education of trafficked persons including supporting, advising and facilitating access to legal aid services by victims (s. 12(4)(a)-(c)).

The Act also guarantees victims the right to institute civil action (s. 65(3)) and to be entitled to compensation (s. 65(1)), restitution and recovery for economic, physical and psychological damages to be met from the assets, if any, of the convicted trafficker forfeited and paid to the Victims of Trafficking Trust Fund (s. 67). The Trust Fund shall be utilized to pay compensation, restitution and damages to trafficked persons; and to fund victim support services for trafficked persons.

Access to justice for victims of terrorism through the justice system needs to be complemented by other support measures, including offering victims the necessary material, medical, psychological and social assistance through governmental, voluntary and community-based means.

These forms of support complementing justice proceedings are considered in section 6.4 below.



Tools

- UNODC has produced two publications on supporting victims of terrorism: *The Criminal Justice Response to Support Victims of Acts of Terrorism* (2011) and *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* (2015).
- Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on framework principles for securing the human rights of victims of terrorism (A/HRC/20/14)
- The UN Office of Counter-Terrorism provides an online "Victims of Terrorism Support Portal" to facilitate access to resources for victims, their families and communities – be it psychosocial support, understanding how to access national criminal justice systems or rehabilitation opportunities offered by Member States.

6.2.2 Gender dimensions of access to justice

Gender-related barriers to accessing justice

Both women and men who are victims of terrorism, or of crime more in general, can face barriers in accessing justice due to institutional, legal, social and economic factors, such as a lack of awareness of legal rights,

¹⁷⁹ S. 63 (a).

¹⁸⁰ S. 63 (b).

¹⁸¹ S. 63 (c).

socioeconomic disadvantage or illiteracy. In many contexts, however, these barriers primarily or disproportionately affect women. Contributing factors can include:

- laws and judicial procedures that discriminate against women, or a legal framework that fails to adequately protect women's rights;
- gender stereotyping or discrimination by criminal justice practitioners;
- stigma and social exclusion facing victims of certain types of offences;
- gender-specific barriers to education and access to information, including awareness of rights;
- women's lack of autonomy over decision-making and economic resources.

Measures to promote access to justice for women

Mirroring these gender-specific challenges to access to justice, are key measures to empower enable women to claim their rights:

- enshrining respect and protection of these rights in national legislation. In the field of counter-terrorism, this may include amending laws to ensure that sexual and gender-based violence by terrorist groups is adequately investigated and punished, that victims can be protected, and that victims of SGBV by terrorist groups are recognized as victims of terrorism;
- training justice system professionals, including members of law enforcement, judges and lawyers, to handle cases in a gender-sensitive manner. This includes training on gender dimensions of investigations, discussed in Chapter 3 of this Module;
- ensuring women are well represented in justice institutions – including those dealing with terrorism cases;
- ensuring that women have access to information on their rights as victims (and how to access those rights), their role in the criminal justice process and the remedies they can seek.

Practical measures to promote women's access to information and remedies may include:

- Developing outreach activities that are targeted at women, and which provide information about judicial mechanisms, remedies and support units
- Considering the creation of women-specific assistance services, in consultation with relevant women's organizations
- Providing information in formats that are easy to understand and in relevant community languages, taking into account ethnic and social diversity
- Creating one-stop centres that are accessible to women living in poverty and/or in rural and remote areas and which include a range of legal and social services, in order to reduce the number of steps that a woman has to take to gain access to justice, can be particularly useful.

In the following, two sets of measures that are particularly important to promote access to justice are considered in more detail, the availability of accessible judicial mechanisms and the availability of legal aid.

Availability of courts and other legal bodies in rural areas and economic accessibility

Women are often more seriously affected by the non-availability of judicial and quasi-judicial institutions, particularly in rural and remote locations. This lack of access may be attributable to gendered socioeconomic inequalities – including the inability to travel long distances to attend court hearings due to family responsibilities or the cost of transport. The specialization of investigation, prosecution, courts and legal representation in terrorism cases can further exacerbate difficulties in accessing these institutions.

It may be necessary to develop creative approaches to justice delivery, including mobile courts, mobile legal aid clinics and remote help desks, as well as the use of information and communication technology to improve access to justice for women living in remote or rural areas. One-stop centres that offer a range of services, including access to police investigators, legal assistance, medical and psychological care, are also beneficial to improving availability and accessibility.



Focus: Mobile court sessions in Maiduguri

The Office of the United Nations High Commissioner for Refugees has facilitated mobile court sessions in Maiduguri where court structures were destroyed or absent due to the conflict. This enhances the accessibility of legal services for the displaced population, including victims of SGBV.¹⁸²

Measures to address economic barriers include reducing the costs associated with court filing for women with low incomes,¹⁸³ providing free or low-charge interpretation, and ensuring effective access to legal assistance and representation. Legal assistance and representation is particularly important to helping women to overcome the structural and cultural barriers they face in accessing justice in many contexts.

Legal aid

The availability of free or low-cost legal aid, advice and representation is critical in ensuring that victims and witnesses can obtain legal advice and fully participate in the criminal justice process. It is the core means through which some of the economic barriers to justice for women can be removed.

In Nigeria, section 46(4) of the Constitution dictates that the National Assembly shall make provisions “for the rendering of financial assistance to any indigent citizen of Nigeria where his right under [Chapter 4 of the Constitution, enshrining fundamental rights] has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim”.

Legal aid services are provided through the formal legal aid scheme operated by the Legal Aid Council of Nigeria (LACON), the judicial legal aid scheme through which the courts appoint counsel for indigent accused persons standing trial for capital offences,¹⁸⁴ through non-government organisations, and through pro bono programmes of organisations such as the Nigerian Bar Association. Community legal services are also available, which provide general information about the law, legal system, and the availability of legal services.

Under section 8 of the Legal Aid Act, 2011, the Legal Aid Council of Nigeria is empowered to grant legal aid and advice in three main areas: the Criminal Defence Service; Advice and Assistance in Civil Matters, and Community Legal Services. Persons able to access legal aid therefore include, subject to merit and means tests:

- persons subject to criminal proceedings listed in the Act

182 UNHCR, *Report on Sexual and Gender Based Violence Response – Borno, Awawama and Yobe States, January-June 2018*.

183 CEDAW, General recommendation No. 33 (2015) on women’s access to justice, para. 17 (a).

184 Criminal Procedure Act, 2004, s. 352.

- persons involved in civil litigation, where the interests of justice require it, in order to secure, defend, enforce, protect or otherwise exercise any right, obligation, duty, privilege interest or service to which that person is ordinarily entitled under the Nigerian legal system
- persons seeking individual legal advice and assistance through Community Legal Services

Under section 17 of the Legal Aid Act, 2011, the Legal Aid Council may also partner with or engage the services of non-government organisations and law clinics listed on their register.

Paralegals can play an important role within legal aid services. Paralegals can be the first point of contact for people in need of legal aid. They can play a valuable role in screening initial legal complaints and referring victims to appropriate services.



Focus: Gender Aspects of Nigeria's National Legal Aid Strategy 2017-2022

The National Legal Aid Strategy 2017-2022 includes a number of measures aimed at strengthening the implementation of women's right to access legal aid, including:

- Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice.
- Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused persons and victims.
- Providing legal aid, advice and court support to all legal/alternative dispute resolution proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimisation, as well as other services, which may include the translation of legal documents.

These aspects of Nigeria's Legal Aid Strategy reflect the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and the CEDAW Committee in its General Recommendation No. 33 on women's access to justice. They emphasise the importance of gender-sensitive administration of legal aid, including by:

- Providing legal aid on the basis of non-discrimination, regardless of, inter alia, age, race, colour, gender, language, religion or belief.
- Informing women of their entitlements to legal aid, including through information and awareness-raising programmes.
- Introduce a gender perspective into policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice.
- Training staff and ensuring gender representation in legal aid systems in order to meet the rights and needs of women. Where possible, female lawyers should be available to represent female defendants, accused and victims.
- Ensure that female victims of violence can access legal aid, advice, court support and other services, to ensure access to justice and to avoid secondary victimization.



Focus: Checklist to determine access to justice needs of women victims

- Do women know their fundamental rights that may have been violated and what remedies are available?
- Do women have the capacity and freedom to report SGBV offences?
- Do women have the capacity to access justice institutions, taking into account time, costs, distance and knowledge?
- Is information about on-going justice initiatives disseminated in a way that women can easily understand?
- Do the laws and procedures within justice systems reflect the gender dimensions of crimes affecting women?
- Do women victims have roles and responsibilities that affect their participation in the justice processes?
- Do women have access to legal representation and legal aid?
- Are there skilled female personnel in the investigative and medical institutions to interact with the victims?
- Are there safety and security measures available for women?



Activity 28

List: What barriers do women face in accessing legal aid in Nigeria? Consider specifically women in the regions of Nigeria most affected by terrorism.

You can use the check-list above to do this activity.



Focus: Recommendations of the UN Special Rapporteurs on access to justice and remedies in Nigeria

In January 2016, three UN independent human rights experts, the Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, on the sale of children, child pornography and child prostitution, and on contemporary forms of slavery, including its causes and consequences, carried out a joint visit to Nigeria. Their report contains a comprehensive set of recommendations to the Government and other actors to ensure the protection and promotion of the rights of women and children affected by the Boko Haram conflict. With regard to women's access to just and effective justice and remedies, the Special Rapporteurs recommend the Government of Nigeria:

- to sensitize criminal justice system officials to the vulnerabilities and risks faced by woman and girls;
- to build capacities of criminal justice officers and law enforcement agents to investigate the crimes committed by Boko Haram and abuses of human rights in particular violence faced by women and girls;
- to establish a "child-friendly reporting and complaint mechanisms";



Focus: Recommendations of the UN Special Rapporteurs on access to justice and remedies in Nigeria (continued)

- to ensure “legal counsel for those women who wish to seek redress through the justice system”;
- to “set up witness and victim protection services for all women and children affected by violence”.¹⁸⁵

6.2.3 Access to justice for victims of sexual and gender-based violence

Victims of sexual and gender-based violence face additional barriers in accessing justice, which will require a targeted response. Victims of SGBV may face particular obstacles that often lead to the decision not to seek legal assistance, including:¹⁸⁶

- Lack of awareness of the availability or means of accessing services for legal assistance
- Community pressure on female victims to use informal or traditional justice systems that often fail to promote equal treatment and dignity for women and girls
- Fear that court proceedings may lead to stigmatization from the community
- Stigma against victims of sexual violence and gender stereotypes in the criminal justice system
- “exclusion or discrediting of victims’ testimony by law enforcement officials and within judicial and other proceedings”¹⁸⁷
- Insufficient evidence to support court proceeding – for example, not having received documented medical treatment
- Restrictive limitation periods for filing claims.

¹⁸⁵ A/HRC/32/32/Add.2, p 22-23.

¹⁸⁶ UNHCR Protection Sector Working Group, Access to Justice Best Practices in North East Nigeria, August 2018.

¹⁸⁷ S/RES/2467 (2019), OP 14.



Focus: Challenges facing women and girl victims of Boko Haram in North-East Nigeria

The Nigerian Institute of Advanced Legal Studies and the Nigerian Stability and Reconciliation Programme carried out a study in 2017 in the North Eastern States of Yobe and Borno to evaluate perceptions and views of victims and communities on peace, reconciliation and stability in the region. The study found that:

Women and girls who have been subjected to physical and sexual violence often have little or no access to health, legal or psychosocial support. Those who have been displaced can find themselves in overcrowded camps with little or no privacy. Women and girls living in camps are at higher risk of experiencing sexual and gender based violence, both within the camps themselves and outside of the camps as they travel to collect water and firewood. Many victims have been exiled from their communities due to the stigma of being associated with JAS [Boko Haram]; this is particularly true for women and girls who have become pregnant...¹⁸⁸

The report concludes that “justice i.e. holding perpetrators accountable under the criminal law was considered an important condition for sustainable peace and the mitigation of the trauma of many victims of the insurgency”.

Additionally, “compensation, in terms of providing livelihoods or restoration of property, was also cited as effective means of enhancing healing and the rehabilitation of victims”.¹⁸⁹



Tools

- UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 33 on women’s access to justice
- UN Women, UNDP, OHCHR and UNODC: *A Practitioner’s Toolkit on Women’s Access to Justice Programming*
- UNODC, *Model Law on Legal Aid in Criminal Justice Systems with Commentaries*. See, in particular, model Article 5 on non-discrimination in legal aid systems
- UNODC, *Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*

6.3 Transitional and traditional justice mechanisms

In addition, or as an alternative, to pursuing accountability for offences committed by terrorist groups through criminal justice proceedings, informal and non-judicial mechanisms may provide an important, socially-legitimate means to provide accountability for such crimes. They may also offer more accessibility, particularly for victims who may never have the opportunity to access the formal justice system in conflict-affected or fragile contexts. These mechanisms could also provide a means to bolster reform for women’s rights, greater leadership opportunities and assist in addressing underlying discrimination that perpetuates SGBV.

6.3.1 Transitional justice

Given the often overlapping realities of terrorism and conflict, it is helpful to consider the mechanisms adopted in transitional justice contexts following conflict or widespread human rights violations. Many gender-specific best

¹⁸⁸ The Nigerian Institute of Advanced Legal Studies and the Nigerian Stability and Reconciliation Programme, *Dealing with the Past: Justice, Reconciliation and Healing in the North East of Nigeria*, 2017, p. 26.

¹⁸⁹ Ibid, p. 53.

practices and lessons learned across transitional justice mechanisms apply equally to gender-based challenges experienced by victims of terrorism.



Focus: Defining transitional justice

Transitional justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.¹⁹⁰ It includes judicial and non-judicial processes, including one or a combination of:

- Prosecution initiatives (considered in Part 5)
- Reparations programmes
- Truth-seeking mechanisms
- Institutional reform
- Comprehensive national consultations with those whose rights have been violated.¹⁹¹

As opposed to criminal trials, which generally aim to deliver accountability at an individual level, truth commissions aim to provide victims with an opportunity share their experiences, identify the causes and consequences of rights violations and “create an accurate record of a society's past...in order to prevent recurrence.”¹⁹²

Truth commissions can also play an important role in enabling victims' access to remedies. A truth commission or other truth-seeking mechanism may be given authority and funds to administer a programme of interim reparations, including urgent interim reparations. An important part of a truth commission's mandate is to issue a comprehensive set of recommendations for reparations which may then be distributed through an administrative reparations mechanism.

Where a gender perspective is effectively integrated, truth commissions may be well placed in breaking down stigma attached to victims of such violence and to provide accountability for wide-scale SGBV, including as a tactic of conflict and terrorism.



Focus: National Action Plan for the Implementation of UNSCR 1325 and Related Resolutions in Nigeria (2017 -2020)

The National Action Plan for the Implementation of UNSCR 1325 and Related Resolutions in Nigeria (2017 – 2020) envisages the establishment of special courts and truth commissions for the prosecution of cases of SGBV.

Key principles of gender-sensitive transitional justice

Transitional justice mechanisms must respect and reinforce women's rights, be based on principles of inclusivity and consultation with victims and take steps to mitigate the barriers to justice identified in section 6.2, some of which remain prevalent outside the judicial context.

The design of these mechanisms should take into account the following:

¹⁹⁰ United Nations, Guidance Note of the Secretary-General: Reparations for Conflict-related Sexual Violence (2014), p. 3.

¹⁹¹ Ibid, and A/HRC/27/21, para. 6.

¹⁹² Fionnuala Ni Aolain, Dina Francesca Haynes, and Naomi Cahn, *On the Frontlines: Gender, War, and the Post-Conflict Process* (2011), p. 178.

- **A rights-based approach** should guide international norms and standards and reinforce the right to justice, the right to truth, the right to reparations, and guarantees of non-recurrence of violations.¹⁹³
- **A mandate to address SGBV** should, if these crimes are to be considered by the mechanism, be specifically identified during its establishment. This may be complemented by specialised gender units providing victim and witness support.¹⁹⁴
- **National consultations** on the priorities, design and implementation of mechanisms are a critical element of a human rights-based approach to transitional justice to ensure that processes do not solely reflect the experiences and priorities of men.
- **A victim-centred approach should be adopted**, including through the availability of support services and protection.
- **Physical and economic barriers for participation should be removed**, taking into account factors such as language, location, and costs of participation.
- **Representation of women who are committed to addressing the gendered dimensions of conflict as leaders and staff** is vital to maintaining a proactive focus on gender-based and sexual violence. Some commissions have used quotas to ensure the representation of women as commissioners, at expert levels and as staff.
- **Staff facilitating consultations and adjudicators should be trained on gender sensitivity**, and on working with victims of gender-based and sexual violence. Truth commissions in Ghana, Liberia and Sierra Leone included gender training for staff on subjects including international norms on SGBV, gender-sensitive interviewing practices, collecting gender disaggregated data, and mainstreaming gender in report writing.¹⁹⁵



Focus: Sexual Violence in conflict and Transitional Justice

UN Security Council Resolution 2467 (2019) on sexual violence in conflict

- *"Encourages Member States to ensure the opportunity for the full and meaningful participation of survivors of [SGBV] at all stages of transitional justice processes, including in decision-making roles";*
- *"recognizes that women's leadership and participation will increase the likelihood that transitional justice outcomes will constitute effective redress as defined by victims"*¹⁹⁶; and
- *"stresses the need for the exclusion of sexual violence crimes from amnesty and immunity provisions in the context of conflict resolution processes"*¹⁹⁷.

¹⁹³ United Nations, Guidance Note of the Secretary-General: Reparations for Conflict-related Sexual Violence (2014), p. 3-4.

¹⁹⁴ A/HRC/27/21, para. 21.

¹⁹⁵ A/HRC/27/21, para. 25.

¹⁹⁶ S/RES/2467 (2019), OP 16d.

¹⁹⁷ S/RES/2467 (2019), OP 30.



Activity 29

As recalled above, the National Action Plan for the Implementation of UNSCR 1325 and Related Resolutions in Nigeria (2017-2020) mentioned “the establishment of special courts and truth commissions for the prosecution of cases of SGBV” as a measure to be adopted.

- (a) Do you agree that truth commissions could be a suitable mechanism to provide justice to victims of SGBV by terrorist groups?
- (b) What would be the benefits and limitations of a truth commission from the perspective of victims of SGBV by Boko Haram?
- (c) What key considerations should be taken into account in the design of such a truth commission?

6.3.2 Traditional and customary processes

Traditional or customary processes can play a key role in securing justice, particularly where the formal justice system has been weakened by conflict. In some communities, informal or traditional justice systems are the prevailing means of dispensing justice, and traditional and religious leaders are amongst the most trusted members of the community to resolve conflicts. “Customary justice mechanisms tend to be more accessible than formal courts, providing a means of filling the gap in judicial services to resolve minor disputes, enjoying community legitimacy and having the potential to provide culturally appropriate remedies.”¹⁹⁸

There is, however, a risk that customary justice processes may be dominated by men who apply an interpretation of customary law that ends up reinforcing gender inequalities. The Office of the United Nations High Commissioner for Human Rights warns in this regard that

Previous patterns of gender discrimination of such mechanisms make resolving gender-based and sexual violence cases through [customary justice processes] extremely problematic. Efforts should be made to transform customary justice systems in gender-sensitive ways, and to ensure their compatibility with international human rights standards, while not allowing this to substitute for formal justice sector reform. For instance, in Uganda, the local council courts are now required to ensure that a minimum of one third of their judges are women. In South Africa, the Law Reform Commission has made recommendations for harmonization of customary law with that country’s Constitution.¹⁹⁹

Thus, the use of informal and non-judicial mechanisms to address cases of SGBV can lead to further violations of women’s rights and a culture of impunity where such mechanisms are informed by patriarchal values, are not designed in a gender-sensitive manner, or where women are not included as facilitators in these mechanisms.²⁰⁰ This increases the risk of secondary victimization in SGBV cases since it removes such cases from judicial scrutiny, and may reduce offender accountability. It can also compound victims’ sense of disempowerment if their views are not considered in deciding the reparation or remedy.

It is necessary for government actors to identify and work with existing traditional justice systems in communities affected by terrorist activity. A key priority is training and sensitizing those working within these systems on the rights of victims of terrorism and SGBV, and on gender mainstreaming in the dispensation of traditional justice.²⁰¹ Sensitizing traditional authorities on referral pathways for medical, psycho-social and legal assistance is also important given that traditional mechanisms may be the first point of contact for SGBV victims reporting these crimes.

¹⁹⁸ A/HRC/27/21, para. 36.

¹⁹⁹ A/HRC/27/21, para. 36.

²⁰⁰ See UNODC, UN Women, UNDP, OHCHR, A Practitioner’s Toolkit on Women’s Access to Justice Programming, p. 232-234.

²⁰¹ UNHCR Protection Sector Working Group, Access to Justice Best Practices in North East Nigeria, August 2018.



Activity 30

Discuss:

- Should customary or traditional processes of the communities affected by terrorism in Nigeria have a role to play in dispensing justice to victims of terrorism?
- Could such processes be suitable to provide justice with regard to sexual and gender-based violence by terrorist groups?
- If so, what measures could be adopted to increase their gender-sensitivity and respect for victims of SGBV?

6.4 Support, assistance and reparations for victims of terrorism

As mentioned at the outset of this Chapter, the 2018 Global Counter-Terrorism Strategy Review resolution makes clear that victims of terrorism need support that goes beyond bringing the perpetrators of acts of terrorism to justice and securing victims access to justice. Member States are encouraged to provide “victims and their families with proper support and assistance immediately after an attack and in the long term ... including regarding the provision of legal, medical, psychosocial or financial support.”²⁰²

Regarding sexual and gender-based violence, the CEDAW Committee has recognised that States are specifically required to provide reparations to victims, which includes different measures “such as monetary compensation and the provision of legal, social and health services including sexual, reproductive and mental health for a complete recovery, and satisfaction and guarantees of non-repetition”.²⁰³

The need to provide reparations and official support to victims has been similarly recognised in numerous Security Council resolutions under the Women, Peace and Security Agenda. Resolution 2331 (2016) specifically calls on States to recognise victims of sexual violence and trafficking in persons perpetrated by terrorist groups as victims of terrorism, and to provide official support, redress, national relief and reparations programmes, and rehabilitation and reintegration efforts.

In Nigeria, the Violence Against Persons (Prohibition) Act, 2015, states in section 38(1) the full breadth of the rights of victims:

“(1) In addition to the rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, or any other international human rights instrument to which Nigeria is a party, every victim of violence, as defined in section 1 of the Act, is entitled to the following rights:

- (a) to receive the necessary material, comprehensive medical, psychological, social and legal assistance through governmental agencies and/or non-governmental agencies providing such assistance.
- (b) to be informed of the availability of legal, health and social services and other relevant assistance and be readily afforded access to them.
- (c) to rehabilitation and re-integration programmes of the State to enable victims to acquire, where applicable and necessary, pre-requisite skills in any vocation of the victim’s choice and also in necessary formal education or access to micro credit facilities.”

²⁰² A/RES/72/284, OP 14.

²⁰³ Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, para. 46.

This provision also highlights that non-governmental organizations can play a key role in providing the assistance that is required to fulfil victims' rights.



Focus: Rights of victims of trafficking in persons

Persons compelled to join a terrorist group against their will may qualify as victims of trafficking in persons under Nigerian and international law. Victims of trafficking in persons are entitled to specific rights in judicial proceedings, reparations and assistance. The NAPTIP Act, 2015, in sections 61-66 provides for access to justice, reparations and assistance measures for victims of trafficking, in addition to the non-punishment clause discussed in Chapter 2 of this Module.

Section 61 provides for general protection measures, including protection against discrimination, access to healthcare and other social services, minimization of intrusions into the victim's personal history during investigation stage, and protection of the victim's identity.

Section 63 provides for a number of measures with respect to assistance measures during trials:

A victim of trafficking in person shall be provided with:

- (a) information on relevant Court and administrative proceedings;
- (b) assistance to enable the victim's views and concerns to be presented and considered at appropriate stages of criminal proceedings against the traffickers; and
- (c) counselling and information as regards victim's legal rights in a language that the victim can understand.

Finally, section 65 provides that a trafficked person is entitled to compensation, restitution and recovery for economic, physical and psychological damages, which shall be assessed and paid out of forfeited assets of the convicted trafficker.

6.4.1 Judicial compensation orders and administrative reparations schemes

Judicial compensation orders

Victims may obtain reparations through judicial mechanisms, including by bringing individual civil claims against perpetrators, or through seeking compensation in criminal proceedings.

The Administration of Criminal Justice Act, 2015, in Section 314(1) empowers the court to award a victim commensurate compensation by the defendant, any other person, or the state. Courts can grant compensation within the scope of their civil or criminal jurisdiction.

ACJA Section 319 empowers the court to order payment by the defendant, during proceedings or in passing judgment, as compensation to any person injured by the offence, where "substantial compensation is in the opinion of the court recoverable by civil suit" and for the payment of medical costs incurred for treatment of the victim injured by the defendant.

Where the perpetrators responsible for inflicting harm have not been identified or apprehended, or where they are not solvent, it is the responsibility of States to provide remedies for harm suffered by victims of acts of terrorism on their territory. As the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stated, the duty to protect the rights of victims of

terrorism rests primarily with States and includes the duty to provide “pecuniary compensation, including for moral damages sustained; rehabilitation; provision of health care and psychosocial and legal assistance”²⁰⁴.

Administrative schemes

The *Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence* (2014) defines an administrative reparations programme as

an out-of-court process used by States to provide reparation to massive numbers of victims of gross violations of international human rights law and/or serious violations of international humanitarian law. In such programmes, States identify the violations and the victims to be redressed and provide them with reparation through an established procedure. Reparation can also be ordered by national or international courts against a State or against the perpetrator of the crime, as applicable.

Reparations and other forms of support may be offered through administrative schemes, such as national compensation funds. Administrative schemes are particularly relevant for victims of terrorism, in light of the large numbers of victims and large-scale damage often caused by terrorist acts, the fact that the perpetrators may be unidentifiable or deceased, and in many cases lack the necessary means to meet obligations for court-ordered remedies.

The Nigeria Foundation for the Support of Victims of Terrorism (also known as the Victims Support Fund), an initiative of the Federal Government, is tasked with assessing and administering support to and raising awareness of the victims of the conflict with Boko Haram. It aims to respond to the immediate needs of victims of terrorism by providing a range of support services for victims ranging from psychosocial, educational support for terror-affected and displaced children, support for hospitals to provide free treatment to victims, and facilitation of foster programming for children affected by terrorism.



Focus: Gender mainstreaming in administrative reparations and support schemes in Nigeria

In 2015, the Victims Support Fund identified female victims of terrorism as a priority group for support. The beneficiaries of the initial round of support included women in Borno, Adamawa and Yobe States who lost their husbands as a result of Boko Haram. The interventions, which included cash support for small business development, aimed to improve quality of life of these women and their families through livelihood and entrepreneurial programmes. Women were also provided with training in income-generating activities such as hula (cap) making, vegetable oil production and tailoring.²⁰⁵

The Trafficking in Persons (Prohibition), Enforcement and Administration Act 2015 establishes a Victims of Trafficking Trust Fund, which is used both to pay compensation, restitution and damages to trafficked persons, and to fund victim services for trafficked persons.

²⁰⁴ A/66/310, paras. 20-24.

²⁰⁵ <http://victimssupportfundng.org/vsf-women-economic-empowerment-the-journey-so-far/>



Focus: African Union action for the protection of victims of terrorism

Article 3(1)(c) of the 2004 African Union (AU) Protocol on the Prevention and Combating of Terrorism commits States Parties to inter alia identify, detect, confiscate and freeze or seize any funds and other assets used or allocated for the purpose of committing a terrorist act, and to establish a mechanism to use such funds to compensate victims or their families. This provision is similar to Article 8(3) of the International Convention for the Suppression of the Financing of Terrorism, which also calls States Parties to consider establishing mechanisms whereby funds derived from the forfeitures referred to in that article are utilised to compensate victims of offences referred to in Article 2 of the Convention, and their families.

On 27-28 October 2014, the AU Commission organised a Symposium on Victims of Terrorist Acts in Algiers. The Symposium highlighted the human cost of terrorism, and placed emphasis on the need for States Parties to further elaborate response mechanisms, taking into consideration the immediate, medium and long term needs of victims, their psychological well-being and the needs of different groups, such as women and children. The Symposium was first step at the level of the AU Commission towards promoting an adequate response to the needs of victims and strengthening the role of the civil society in counter-terrorism.

6.4.2 Gender-sensitive support, assistance and reparations for victims of terrorism

The provision of assistance and support to victims of terrorism is often affected by multiple challenges: conflict and insecurity limiting access to victims; authorities' and civil society organizations' lack of resources and lack of awareness regarding the needs of victims of acts of terrorism; victims' lack of information on available support and assistance; or negligence on the side of authorities and lack of effective advocacy on behalf of the victims of terrorism. Women, particularly in rural and remote locations, are often more seriously affected by these challenges affecting support and assistance to victims. As discussed above with regard to access to justice, this may be attributable to gendered socioeconomic inequalities, including the inability to travel long distances to obtain assistance due to family responsibilities or the cost of transport.



Reference

This section is adapted from the UNODC *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*. Refer to Part 6 of the *Handbook* for more detail.

Reparations programmes and other measures to support victims of terrorism need to integrate a gender perspective. The following considerations can assist in the design and administration of programmes to promote equal access for men and women.

- All programmes should be based on the principles of equality and non-discrimination, including on the basis of sex, ethnicity, social class, and economic standing (amongst others).
- The design, implementation and monitoring of the reparations process should be a victim- and gender-inclusive process. This requires meaningful engagement with a wide range of stakeholders to gain full understanding of the needs of all victims.

- Women's participation should be actively sought. This may require outreach initiatives, especially where women's participation in public life is limited.
- Gender considerations should inform the types of harms falling within the scope of the programme, taking into account direct victims, indirect victims and vulnerable dependents. A gender analysis of the effects of the harm suffered and its differential impacts on women, men, boys and girls, as well as any explicitly gendered harms should also be conducted.²⁰⁶
- Programmes should account for and mitigate the barriers to equal participation, including physical, social, cultural, and economic barriers to participation, especially for socio-economically disadvantaged women and those in rural areas. Specific outreach initiatives to circulate information about the availability of and eligibility for programmes, may be required, taking into account literacy and language considerations.
- Staff involved in the administration of programmes should be trained to engage with victims in a gender-sensitive way and to understand different types of harm to avoid revictimization.
- The form of reparations should not reinforce gender-based legal, social or economic barriers. For example, women may face barriers in accessing reparations or support in contexts where they have limited autonomy over financial resources.

6.4.3 Support, assistance and reparations for victims of sexual and gender-based violence

In addition to the general principles of gender-sensitive support, assistance and reparations programmes, there are additional considerations with respect to victims of SGBV by terrorist groups. These good practices have largely emerged from previous experience with reparations for conflict-related sexual violence. They apply to female and male victims of SGBV, who both suffer from the physical and psychological, social and economic effects of victimization.

- Programmes must fully recognise SGBV-related harms, in identification of the types of harm eligible, in the definition of the persons eligible to benefit from the programme, and in the forms of reparations and support made available.
 - Concerning the **forms of harm** eligible for reparations, recognition of victimization should include, amongst others, the effects of forced marriage, rape, forced pregnancies, forced abortions and sterilization.
 - With regards to the **scope of beneficiaries**, processes should adopt an inclusive approach towards identifying beneficiaries. An example of good practice is to define the entitlements of children born out of rape.
- Programmes should adopt a flexible approach to the categorisation of harms. Without prejudice to the importance of recognising SGBV-specific harms, it is also necessary to enable victims, if they wish, to present their claims under other forms of harm, due to the stigma associated with SGBV in some contexts.
- Urgent interim support measures are particularly important for victims of SGBV, given the nature of the physical and psychological trauma they have sustained. Urgent measures should include access to health services, including sexual, reproductive, and psycho-social services, medication, and housing for those who have been marginalized by their families.
- Programmes must respect victim privacy and confidentiality. This approach is integral at all stages of the process to protect victims of SGBV, to encourage their participation, and to avoid stigma.

²⁰⁶ UN Women and UNDP, *Reparations, Development and Gender: Report of the Kampala Workshop 1-2 December 2010*, p. 16.

- Programmes need to take into account the different and specific needs of women who become pregnant as a result of sexual violence in armed conflict, and of the children born as a result of sexual violence in armed conflict²⁰⁷;
- Programmes should not be unduly time restricted. Time limits for the registration process should take account of the fact that victims of SGBV may require more time to come forward, including due to trauma.²⁰⁸
- Evidentiary rules should, where possible, reflect the specific nature of SGBV. Without prejudice to the rights of suspects, specific evidentiary rules in judicial and administrative proceedings may need to be adopted for cases involving SGBV.²⁰⁹ Victims may encounter significant challenges in meeting stringent evidentiary requirements, including where acts of SGBV are committed in armed conflict or in territory controlled by a terrorist group, or due to the time passed and the destruction of evidence.
- Programmes should endeavour to have a transformative impact on the pre-existing structural inequalities and discrimination that caused or contributed to the commission of acts of SGBV.
- States should consider allocating specific funds for victims of SGBV. This may be done through funds aimed solely at this category of victims where large-scale SGBV has occurred, or by allocating funds within existing programmes, while avoiding stigmatizing or re-victimizing victims.²¹⁰



Focus: Importance of Supporting Women-Led Organizations

Security Council resolution 2467 (2019) on conflict-related sexual violence highlights

“the importance of supporting, and promoting civil society, especially local, grassroots, women-led organizations, and religious and community leaders, girls- and youth-led organizations, for all prevention and response efforts”.

It further encourages UN Member States

“to support capacity building for women-led and survivor-led organizations and build the capacity of civil society groups to enhance informal community-level protection mechanisms against sexual violence in conflict and post-conflict situations, to increase their support of women’s active and meaningful engagement in peace processes to strengthen gender equality, women’s empowerment and protection as a means of conflict prevention”.²¹¹

²⁰⁷ S/RES/2467 (2019), OP 18.

²⁰⁸ Council of Europe, Non-Criminal Remedies for Crime Victims (2009), p. 27.

²⁰⁹ Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence (2014), p. 13.

²¹⁰ A/HRC/27/21, para. 47.

²¹¹ S/RES/2467 (2019), OPs 19 and 20.



Activity 31

In the central region of a country called Ntalo, before the armed conflict between a terrorist group and the government broke out two years ago, marriages arranged by the families without consent of the women were common. While Ntalo had ratified CEDAW and the Maputo Protocol, the domestic legal framework was ambiguous regarding this issue, prevention of these marriages was inadequate and there was no accountability for forced marriages.

During the conflict, many women and girls were abducted by the terrorist group and compelled to become the wives of male members of the group.

What forms of reparations and support would best benefit the victims and the communities in the central region? How could a reparations or support programme bring about transformative change to the situation of the women in the central region?



Tools

- *Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence*, pp. 15-20.
- International Commission of Jurists, *Women's Access to Justice for Gender-Based Violence: A Practitioner's Guide* (2016)
- United Nations, *Operational Guide to the Integrated Disarmament, Demobilisation and Reintegration Standards* (2014), Module 5.10: Women, Gender, and DDR
- UNODC, *Toolkit to Combat Trafficking in Persons* (2008), Tool 8, provides comprehensive guidance and good practice on the delivery of victim assistance
- International Organisation for Migration, *Handbook on Direct Assistance for Victims of Trafficking* (2007)
- ICAN and UNDP, *Invisible Women, Gendered Dimensions of Return, Rehabilitation and Reintegration from Violent Extremism* (2019)

6.5 Self-assessment questions



Self-Assessment Questions

- 1) List at least three features of a victim- (or survivor-) centred approach to victims of terrorism and of sexual violence in conflict.
- 2) Discuss international and Nigerian policy instruments and laws that reflect the shift towards greater recognition of the rights and roles that victims have within the criminal justice framework.
- 3) List at least three gender-related barriers to accessing justice for victims of terrorism and describe measures to overcome them and promote access to justice for women
- 4) Name at least three measures that promote gender-sensitive administration of legal aid
- 5) List at least three challenges faced specifically by victims of sexual and gender-based violence by Boko Haram
- 6) Name five principles of gender-sensitive transitional justice
- 7) List at least three measures to support victims of crime introduced by the Administration of Criminal Justice Act, 2015, the Violence Against Persons (Prohibition) Act, 2015, and the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015, and discuss their gender dimension
- 8) Why are administrative schemes so important to support victims of terrorism and conflict-related sexual violence
- 9) List five measures to integrate a gender perspective in reparations programmes and other measures to support victims of terrorism need
- 10) Name three good practices that have emerged from experience with reparations for conflict-related sexual violence and that are particularly relevant to reparations for victims of SGBV perpetrated by Boko Haram

Glossary ²¹²

Gender. ‘Gender’ refers to the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context, as are other important criteria for socio-cultural analysis including class, race, poverty level, ethnic group, sexual orientation, and age.

Gender mainstreaming. Gender mainstreaming is the chosen approach of the United Nations system and international community toward realizing progress on women’s and girl’s rights, as a sub-set of the human rights to which the United Nations is dedicated. It is not a goal or objective on its own; it is a strategy for achieving equality for women and girls in relation to men and boys.

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a way to make women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

Gender-based discrimination against women. This refers to any distinction, exclusion or restriction, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms, even where discrimination was not intended. Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure.

Gender-sensitive approach. A gender-sensitive approach uses a gender perspective to understand differences in status, power, roles and needs between males and females, and the impact of gender on people’s opportunities and interactions.

Gender stereotype. A gender stereotype is a generalized view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, women and men.

212 The definitions below are based on those contained in Economic and Social Council agreed conclusions 1997/2, general recommendations of the Committee on the Elimination of Discrimination against Women, publications and resources of the Office of the United Nations High Commissioner for Human Rights, the Gender Equality Strategy for the United Nations Office on Drugs and Crime and the United Nations Office in Vienna (2018-2021), and Reports of the Secretary-General on Conflict-Related Sexual Violence.

Wrongful gender stereotyping. This is the practice of ascribing to an individual woman or man specific attributes, characteristics or roles by reason only of her or his membership in the social group of women or men, which results in a violation or violations of human rights and fundamental freedoms. The harm is caused by the application of a stereotypical belief to an individual (e.g., through a State enforcing a gender stereotype into a law) in such a way as to negatively affect the recognition, exercise or enjoyment of their rights and freedoms.

Sex (biological sex). The physical and biological characteristics that distinguish males and females.

Sexual and gender-based violence. This refers to any harmful act that is perpetrated against one person's will and that is based on socially ascribed (gender) differences between males and females. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, whether occurring in public or in private life. Sexual and gender-based violence entails widespread human rights violations, and is often linked to unequal gender relations within communities and abuses of power. Acts of sexual and gender-based violence may be inflicted upon women, men, girls and boys.

It comprises the following two notions:

- **Sexual violence**, which encompasses any sexual act, attempt to obtain a sexual act or acts otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. Sexual violence takes multiple forms and includes rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, sexual enslavement, forced circumcision, castration and forced nudity.
- **Gender-based violence**, which is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender. Other forms can include acts of physical violence, domestic violence and harmful traditional practices. Accordingly, while sexual violence is a form of gender-based violence, gender-based violence is a broader category of crime and may be perpetrated through non-sexual acts (including for example, physical violence).

Conflict-related sexual violence. This term refers to incidents or patterns of sexual violence, that is rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity against women, men or children. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g., political strife). They also have a direct or indirect nexus with the conflict or political strife itself, that is, a temporal, geographical and/or causal link. In addition to the international character of the suspected crimes (which can, depending on the circumstances, constitute war crimes, crimes against humanity, acts of genocide or other gross violations of human rights), the link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/State collapse, cross-border dimensions and/or the fact that they violate the terms of a ceasefire agreement.



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