

Assessing State Accountability Responses to UN Security Council Resolutions on Conflict-Related Sexual Violence in the Context of Terrorism from a Criminal Justice Perspective: Spotlight on Nigeria

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KEY FINDINGS

- ▶ UN Security Council (UNSC) resolutions on conflict-related sexual violence (CRSV) occurring in the context of terrorism have little impact on developing domestic investigative and prosecutorial strategies to address accountability. A significant finding from this study is that, despite the rhetoric on the importance of accountability for CRSV as a tactic of terrorism, countries actively prosecuting acts of international terrorism (e.g., Germany, Iraq, The Netherlands, and Nigeria) have adopted domestic accountability measures based on identified national priorities and the availability of resources, rather than on the basis of UNSC resolutions.
- ▶ The horror of CRSV as a tactic of terrorism, committed for instance by Boko Haram in Nigeria, and the so-called Islamic State (IS)¹ in Iraq and Syria, on its own is insufficient to move the UNSC and, by extension, member states, to fully address the lack of accountability for CRSV. Unlike in terrorism financing, there are no real incentives for states to undertake the requisite action to implement UNSC resolutions calling for the investigation and prosecution of CRSV perpetrated by terrorist groups.
- ▶ More attention should be placed on how notions of masculinity and conflict shape states' counterterrorism priorities and how sexual and gender-based violence (SGBV) occurs on a continuum that extends from peacetime to conflict and post-conflict

1 This includes references to ISIL, ISIS, Daesh, and other associated translations.

situations, which can impact the extent to which accountability for CRSV in the context of terrorism is prioritized.

- **Recommendations:** the UNSC should consider extending to non-parties to conflict the obligation to report on accountability efforts to address CRSV in the context of terrorism; states should establish and/or increase intragovernmental communications on international obligations to address CRSV in the context of terrorism; states should strengthen capacities of criminal justice practitioners to investigate and prosecute CRSV committed by terrorists using all available legislation; states proposing a CRSV treaty should include effective enforcement and reporting mechanisms; states should consider the economic impact of CRSV in the context of terrorism and establish and/or strengthen multilateral bodies to incentivize accountability; civil society organizations should consider that fragmented advocacy approaches that treat gender, sexual violence in conflict, and terrorism in silos ultimately affect accountability for CRSV in the context of terrorism.

Introduction

UNSC Resolution 1373² established the international legal and policy framework to counter terrorism and the threat it posed to international peace and security. The 20th anniversary of this resolution has presented multiple stocktaking opportunities on the effectiveness of Resolution 1373 and the wider counterterrorism framework it generated through subsequent resolutions. In response to the evolving threats of terrorism, the framework has evolved from a primarily securitized response to a broader one that includes addressing the ways sexual violence (see e.g., Resolutions 2242 and 2467), and human trafficking (see Resolution 2331) are used by terrorist groups. Expanding the counterterrorism framework to integrate the Women, Peace, and Security (WPS) Agenda³ is a significant development given the

rampant use of various forms of sexual violence by terrorist groups such as IS, Al-Shabaab, and Boko Haram and its affiliated/splinter groups.⁴ Concerning Boko Haram, the 2014 abduction of 276 schoolgirls in Chibok briefly captured international attention leading to the global *#BringBackOurGirls* campaign. However, hundreds of women and girls had been abducted and enslaved prior to the Chibok attack and hundreds more have been abducted since with impunity.⁵

The Nigerian Government recently took steps to address the accountability gap for sexual violence committed by Boko Haram. In August 2021, using Nigeria's counterterrorism law, federal prosecutors filed charges of rape, forced marriage, and kidnapping as an accessory after the fact against Umar Suleiman, a former Boko Haram militant who is alleged to have taken one of the

2 UN Security Council Resolution 1373, S/RES/1373 (28 September 2001), [undocs.org/S/RES/1373\(2001\)](https://undocs.org/S/RES/1373(2001)).

3 The WPS Agenda emerged at the UN Security Council in 2000 following the adoption of Resolution 1325, which was dedicated to, *inter alia*, ensuring the full, equal, and meaningful participation of women in peacemaking, conflict prevention, and peacebuilding efforts. See UN Women – Headquarters, “Global Norms and Standards: Peace and Security,” <https://www.unwomen.org/en/what-we-do/peace-and-security/global-norms-and-standards>.

4 See e.g., UN Security Council, *Conflict-Related Sexual Violence: Report of the Secretary-General*, S/2022/272 (29 March 2022), undocs.org/en/S/2022/272.

5 See generally Christiana E. Attah, “Boko Haram and Sexual Terrorism: The Conspiracy of Silence of the Nigerian Anti-Terrorism Laws,” *African Human Rights Law Journal* 16, no. 2 (2016): 385–406; UN Security Council, *Conflict-Related Sexual Violence: Report of the Secretary-General*, S/2019/280 (29 March 2019), undocs.org/en/S/2019/280.

abducted Chibok girls as his wife.⁶ The case against Umar Suleiman is a pioneering test case that comes after years of advocacy, capacity building, and pressure from civil society organizations (CSOs). It is the first known use of counterterrorism legislation to specifically prosecute sexual violence by a terrorist group as an act of terrorism.⁷ It is also the first time a Boko Haram member has been charged with sexual violence in the context of terrorism.

At the same time, advocates of accountability for sexual violence by Boko Haram were left disappointed when, in May 2022, Nigeria's legislature enacted a new Terrorism Prevention and Prohibition Act (TPPA) and disregarded specific recommendations that would have facilitated the future use of the counterterrorism legislation to prosecute more sexual crimes by Boko Haram. The failure to legislate the prohibition of sexual violence in the context of terrorism is a missed opportunity to create a comprehensive legal framework that addresses all acts and tactics of terrorism. It represents several steps back in the long-term quest for accountability for sexual violence by Boko Haram. It also represents a failure to properly understand and implement relevant UNSC resolutions on the nexus of CRSV and terrorism. To date, domestic prosecution of Boko Haram suspects has focused to a large extent on crimes that are relatively straightforward to prove—membership in a terrorist organization, providing material support to a terrorist organization, and participating in terrorist activities.⁸ Although this paper highlights some of Nigeria's accountability efforts, its legal accountability responses to terrorist crimes are not unique. Countries such as France, Germany, and Sweden have prosecuted returning IS foreign terrorist fighters mainly for membership or support to a terrorist organization,⁹ with only a handful of cases in recent times representing sexual or gendered violence by members of the terrorist group.

This policy brief sheds light on the effectiveness, or otherwise, of UNSC resolutions in eliciting effective

domestic accountability for CRSV in the context of terrorism with a focus on Nigeria to illustrate a state's response to calls for accountability for sexual violence by terrorist groups. It is informed by interviews with more than 20 experts and stakeholders in the field of human rights, counterterrorism, CRSV, international criminal law, international humanitarian law, and the United Nations system.¹⁰ They consist of prosecutors within national agencies of a sampling of African and European countries, civil society representatives, United Nations staff, foreign affairs representatives, academics, activists, and industry experts. The key findings from these interviews can assist policymakers and practitioners in better understanding the complex outcomes and effects of counterterrorism measures adopted or promoted by the UNSC concerning CRSV. This paper argues that there is a disconnect between the policies of the UNSC and implementation on the ground and that the underpinning rationale for this disconnect includes the influence of patriarchy and gendered notions of security in determining counterterrorism priorities, and the lack of incentives for states to act.

Analysis

UNSC Resolutions Have a Limited Impact on National Accountability Measures

The first key finding is that UNSC resolutions on CRSV in general, and those specifically addressing CRSV by terrorist groups, have little impact on developing domestic investigative and prosecutorial strategies to address accountability for these crimes. According to interviewees, lack of resources and capacity limitations remain significant, thus affecting the implementation of UNSC resolutions such as those calling for the “prompt investigation, prosecution and punishment of perpetrators of sexual and gender-based violence[.]”¹¹ Prosecutors in Africa and Europe who participated in the research study shared that the challenges of prosecuting CRSV by

6 Copy of the indictment on file with the author.

7 Germany for instance has used international humanitarian law to prosecute CRSV in the context of terrorism. See for example the case of Sarah O. who was convicted of aiding and abetting rape as a crime against humanity. Doughty Street Chambers, *German Court Convicts a Third ISIS Member of Crimes Against Humanity Committed Against Yazidis*, 18 April 2021, <https://www.doughtystreet.co.uk/news/german-court-convicts-third-isis-member-crimes-against-humanity-committed-against-yazidis>.

8 Amnesty International, “Willingly Unable: ICC Preliminary Examination and Nigeria's Failure to Address Impunity for International Crimes” (2018): 5, <https://www.amnesty.org/en/documents/afr44/9481/2018/en/>.

9 Hannah McCarthy, “Is Europe Doing Enough to Prosecute ISIS Fighters for Yazidi Genocide?” Euronews, 10 April 2021, <https://www.euronews.com/my-europe/2021/08/10/is-europe-doing-enough-to-prosecute-isis-fighters-for-yazidi-genocide>.

10 All interviews were conducted on the basis of anonymity and records of the interviews are on file with the author.

11 UN Security Council Resolution 2242, S/RES/2242 (31 October 2015), [undocs.org/S/RES/2242\(2015\)](https://undocs.org/S/RES/2242(2015)).

terrorists include relying on matters beyond their control such as international cooperation (where the crimes did not occur within their jurisdiction) and the availability and evidentiary complications of battlefield evidence,¹² also known as military produced evidence.¹³ Prosecutors do not require battlefield evidence or international cooperation to support straightforward terrorist charges such as membership in a terrorist organization. In the interest of prosecutorial expediency, terrorist crimes that are easiest to prove and do not require significant investigative resources are prioritized. For instance, in Nigeria, confessional statements acknowledging participation in Boko Haram easily formed the basis for membership charges and convictions resulting in a high number of such charges.¹⁴

Furthermore, any assumption that domestic counterterrorism practitioners are aware of UNSC counterterrorism resolutions is questionable. As McKeever observes, “raising domestic awareness of rules arising from Security Council resolutions requires action by [S]tates’ diplomatic representations, relaying developments at the UN level to capitals.”¹⁵ Security Council resolutions are unlike multilateral treaties, which are developed over time and require “the involvement of domestic executive and parliamentary bodies[.]”¹⁶

To one interviewee, there is no “percolating system from the United Nations to the national levels[.] Very few people know about the ‘Women, Peace, and Security’ agenda beyond the portals of the champagne colonies of the United Nations.” Another interviewee, who facilitates networks of prosecutors, investigators, and criminal justice practitioners, stated that although some prosecutors in national war crimes units may be familiar with UNSC resolutions, “why would the

[counterterrorism] prosecutor be aware of UN Security Council resolutions on conflict-related sexual violence or anything like that? That is completely outside of their remit. It is not their core business.”

Accountability for CRSV and terrorism are often addressed in bifurcated ways, siloed from one another in terms of policy and practice.¹⁷ Lack of intragovernmental communications and the absence of habitual intragovernmental coordination have a significant impact on accountability measures on the ground. To this end, institutions such as the Genocide Network work to facilitate collaboration between counterterrorism practitioners and war crimes units. However, more effort is needed at the state level to counter the effect of the compartmentalization of justice and accountability for terrorist crimes.

Language Affects Implementation

Unlike Resolution 1373 (2001), which mandated all states to criminalize terrorist financing, or Resolution 1624 (2005), which called upon all states to “[p]rohibit by law incitement to commit a terrorist act or acts,” UNSC resolutions that address CRSV and terrorism are generally exhortatory with the effect that some states neither prioritize accountability for CRSV in their national counterterrorism agenda nor relay such information to domestic practitioners. For instance, through Resolution 2242 (2015), member states are merely urged to “strengthen access to justice for women in conflict and post-conflict situations, including through the prompt investigation, prosecution and punishment of perpetrators of sexual and gender-based violence[.]”¹⁸ The use of exhortatory rather than mandatory language in these resolutions belies the supposed importance of criminal

12 See United Nations, Security Council Counter-Terrorism Executive Committee Directorate, “Guidelines to Facilitate the Use and Admissibility as Evidence in National Criminal Courts of Information Collected, Handled, Preserved and Shared by the Military to Prosecute Terrorist Offences,” <https://www.un.org/securitycouncil/ctc/news/cted-launches-guidelines-battlefield-evidence>.

13 See United Nations, Position of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism on the Use of “Battlefield” or Military-Produced Evidence in the Context of Investigations or Trials Involving Terrorism Offences, April 2021, https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_Battlefield-evidence-2021.pdf.

14 The reliance on confessional statements has been criticized. See e.g., Human Rights Watch, *Nigeria: Flawed Trials of Boko Haram Suspects*, 17 September 2018, <https://www.hrw.org/news/2018/09/17/nigeria-flawed-trials-boko-haram-suspects>.

15 David McKeever, “Revisiting Security Council Action on Terrorism: New Threats; (A Lot Of) New Law; Same Old Problems?” *Leiden Journal of International Law* 34, no. 2 (2021): 467, <https://doi.org/10.1017/S0922156521000066>.

16 Ibid.

17 The Soufan Center, “Bringing Terrorists to Justice: Prosecuting ISIL War Crimes and Terrorism” (June 2021), <https://thesoufancenter.org/research/bringing-terrorists-to-justice-prosecuting-isil-war-crimes-and-terrorism/>.

18 UN Security Council Resolution 2242, S/RES/2242 (31 October 2015), [undocs.org/S/RES/2242\(2015\)](https://undocs.org/S/RES/2242(2015)).

justice responses to CRSV in the context of terrorism. Inasmuch as one could recommend adjustments to the language of such resolutions, the reality is that the UNSC is strategic and deliberate in the language it adopts for its resolutions. It is therefore unlikely to adopt stronger language for the CRSV in the context of terrorism.

Furthermore, key provisions of some resolutions are only applicable to parties to armed conflict. For example, Resolution 2467 (2019) calls upon parties to armed conflict to *inter alia*, establish “related enforcement procedures to ensure accountability” for the breach of orders prohibiting sexual violence. In paragraph 2, the UNSC welcomes efforts of the UN Secretary-General and related UN entities to seek time-bound commitments and implementation plans by “*all parties to conflict* to prevent and address all acts and forms of sexual violence in conflict and post-conflict situations” (emphasis added). Subsequently, through paragraph 3 of Resolution 2467, the UNSC “[e]ncourages national authorities *in this context* to strengthen legislation to foster accountability for sexual violence” (emphasis added). It is observed that the strongest calls for accountability measures in Resolution 2467 are reserved for parties to armed conflict. Although paragraph 14 of Resolution 2467 addresses all member states, the UNSC merely calls upon member states, “*in the context of justice sector reform efforts*, to strengthen legislation and enhance investigation and prosecution of sexual violence in conflict and post-conflict situations consistent with fair trial guarantees under international law” (emphasis added). This is not a universal call to ensure legal accountability for CRSV by terrorist groups through the criminal justice system. States that prosecute returning foreign terrorist fighters and can apply universal jurisdiction for international crimes are not called upon to provide implementation plans, report, or prioritize CRSV in their investigation and prosecution of terrorist crimes. Extending reporting and implementation obligations to such states would provide a comprehensive understanding of the accountability gaps and facilitate the work of

implementing UNSC resolutions on accountability for CRSV in the context of terrorism globally.

Even before Resolution 2467, UNSC Resolution 2331 (2016) provided a comprehensive response to CRSV and human trafficking in the context of terrorism that incorporates both criminal justice and sanction measures. Resolution 2331 addressed the linkages between human trafficking, sexual violence, and terrorism. Through this resolution, the UNSC called upon member states to improve the domestic implementation of international legal obligations to criminalize, prevent, and combat trafficking in persons¹⁹ and to provide access to protection and assistance for all victims of terrorism including victims of sexual violence and trafficking committed by terrorist groups. It called for integrating gender dimensions into the counterterrorism architecture and called upon the UNSC Counter-Terrorism Executive Directorate (CTED) and the Financial Action Task Force (FATF) to investigate potential links between CRSV, human trafficking, and terrorism financing. Through Resolution 2331, the UNSC expressed its “intention to consider targeted sanctions for individuals and entities involved in trafficking in persons in areas affected by armed conflict and in sexual violence in conflict[.]”²⁰

As comprehensive as Resolution 2331 is, the lethargic response to legal accountability for CRSV committed by terrorist groups unfortunately also applies to the implementation of practical provisions such as sanctions. To date, no state has brought forward such a designation. Furthermore, states have thus far failed to flag all the applicable designations even if they could have done so. According to one interviewee, this speaks of a “wider deprioritization” of CRSV in the context of terrorism and, “for all the talk of accountability, it definitely does not get the kind of focus [as] terrorism financing.” As CTED concluded in 2021, there continues to be “near-complete impunity for human trafficking and sexual violence perpetrated in a terrorism context.”²¹

19 Resolution 2331 specifically refers to The United Nations Convention Against Transnational Organized Crime and Its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

20 UN Security Council Resolution 2331, S/RES/2331 (20 December 2016), [undocs.org/S/RES/2331\(2016\)](https://undocs.org/S/RES/2331(2016)).

21 United Nations, Security Council Counter-Terrorism Committee, Global Survey of the Implementation of Security Council Resolution 1373 (2001) and Other Relevant Resolutions by Member States (November 2021), para. 795, https://www.un.org/securitycouncil/ctc/sites/www.un.org/securitycouncil.ctc/files/2021105_1373_gis.pdf.

The Impact of the Sexual Violence Continuum and Masculinist Norms on Accountability Efforts

The Impact of the Sexual Violence Continuum on Accountability Efforts

SGBV occurs on a spectrum that extends from peacetime to conflict and post-conflict situations. The existence of a continuum explains why it is problematic to associate SGBV only with periods of political destabilization and terrorism. Rather, such violence occurs in a climate of impunity and “manifests itself on a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology-mediated settings and, in the contemporary globalized world, it transcends national boundaries[.]”²² In Resolution 2467 (2019) the UNSC recognized that, “sexual violence in conflict occurs on a continuum of interrelated and recurring forms of violence against women and girls” and also “exacerbates the frequency and brutality of other forms of gender-based violence[.]”²³

Interviewees offered the continuum of sexual violence as an explanation for both the occurrence of sexual violence in armed conflict and the lack of significant accountability measures implementing relevant UNSC resolutions. According to one expert, SGBV is “part of our grand culture,” and we are part of “societies, whether they are national, international, or regional, that have allowed for certain levels of sexual violence to be so normalized that they are not even seen as being violative of the person or the group[.]” Another interviewee observed that sexual violence is “a microcosm of intersectional violence in a given context.” According to this expert, analysis of the drivers of SGBV in conflict cannot ignore the structures and systems of oppression that are at play in a given context, including those where terrorist groups have exploited them to achieve their strategic objectives.

The continuum of violence is attributable to the failure to concretely acknowledge and address the structural conditions such as asymmetric power dynamics or legal

and policy frameworks that perpetuate gender inequality and cause accountability gaps for SGBV during peacetime and the structural and intersectional drivers of violence that manifest during armed conflict and terrorism. Considering the above, it is unrealistic to expect that CRSV by terrorist groups, because of its horrific nature, would garner more accountability than peacetime SGBV. Furthermore, the normalization of CRSV as an expected occurrence during war contributes to the lack of urgency for accountability. Advocates and policymakers must therefore consider the broader context of SGBV in developing implementation policies on CRSV in the context of terrorism.

To this end, the treatment of CRSV and terrorism in silos by the UNSC, UN entities, and relevant CSOs can be harmful to developing a comprehensive approach to address CRSV in the context of terrorism. Although the UNSC has called for the integration of previously separate agenda items (i.e., Women, Peace, and Security; and Countering Terrorism and Violent Extremism), actions by certain members of the UNSC undercut these efforts. For instance, China strongly objected to including a Security Council working group on sexual violence in conflict in UNSC Resolution 2467 (2019) which, in China’s view, may have turned the UNSC’s focus to issues of accountability.²⁴ UNSC Resolution 2444 (2018) passed without abstention, yet Russia expressed “regret” at including a provision specifying SGBV as a separate criterion for sanctions against parties to the conflict in Somalia such as Al-Shabaab.²⁵ Both Russia and China have argued that matters of SGBV, even occurring in conflict, are not part of the UNSC’s direct remit and are better discussed in the Human Rights Council and the Commission on the Status of Women. Such positions have crippled the extent to which the UNSC can address these issues in the context of accountability for terrorism-related crimes in a concrete manner by resisting increased funding for the WPS Agenda.

Some CSOs have also excluded themselves from important dialogues on counterterrorism and CRSV because of the perception that the terrorism paradigm

22 General Recommendation 35, Committee on the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW).

23 UN Security Council Resolution 2467, S/RES/2467 (23 April 2019), preambular paragraph 13, [undocs.org/S/RES/2467\(2019\)](https://undocs.org/S/RES/2467(2019)).

24 Rosemary Foot, *China, the UN, and Human Protection* (Oxford: Oxford University Press, 2020): 119–20, <https://doi.org/10.1093/oso/9780198843733.003.0004>.

25 U.N. SCOR, 73rd Sess., 8398th mtg., U.N. Doc. S/PV.8398 (14 November 2018), <https://undocs.org/en/S/PV.8398>. Al-Shabaab has notably not yet been designated as a terrorist group although it is recognized as such by several states.

offers no justice for victims of sexual violence.²⁶ Reasons expressed include the concern that the terrorism paradigm carries with it the stigma of human rights abuses and violations of international humanitarian law (IHL) committed by states engaged in counterterrorism. According to the International Commission of the Red Cross (ICRC), “counter-terrorism measures, in particular those adopted by the Security Council in the last twenty years, have posed challenges to impartial humanitarian action in times of armed conflict, and have thereby posed challenges to international humanitarian law itself.”²⁷ Although these concerns are valid, the lack of a uniform approach to accountability for CRSV in the context of terrorism that considers the benefit of using multiple legal regimes is a missed opportunity to enhance counterterrorism legislation.

For instance, in paragraph 8 of Resolution 2331, the UNSC recognized that acts of trafficking in persons and CRSV could be part of the strategic objective and ideology of terrorist groups. The Security Council encouraged “all relevant actors at the national, regional and international level to ensure that such considerations are taken into account, in accordance with their obligations under international law and national laws[.]” A uniformed advocacy approach by civil society organizations would, for instance, tackle gaps in counterterrorism legislation that fail to recognize all the manifestations and dimensions of terrorism, including trafficking and sexual violence. It would prioritize states’ classification of victims of trafficking and sexual violence committed by terrorist groups as victims of terrorism as required by Resolution 2331, enabling such victims to receive “official support, recognition, and redress available to victims of terrorism[.]” By incorporating trafficking and sexual violence in the counterterrorism framework, victims of these crimes should all have access to national relief,

recovery, and reparations programs. Ultimately, a uniform advocacy approach would advocate for implementing UNSC resolutions in a manner that recognizes victims’ experiences and incorporates the resolutions’ references to support for victims of trafficking and sexual violence committed by terrorist groups.

The Impact of Masculinist Norms on Accountability Efforts

Interviewees addressed the extent to which the masculinization of the counterterrorism framework (in the form of law enforcement and military measures) and patriarchal norms that exist in international law and relations impact the implementation of UNSC resolutions on CRSV and terrorism. Pervasive gender stereotypes and assumptions, often favoring notions of security and the salvation narrative associated with masculinity, can be found in the language of the initial UNSC resolutions on CRSV and terrorism, where the focus was on the protection of women and girls, often depicted primarily as victims.²⁸ Moves to include gender dimensions in the counterterrorism agenda came late. When gender was finally included, it was used as a synonym for women and only explicitly mentioned in the context of prevention or “soft” security without acknowledging the gendered dimensions of “hard” security measures. Where women are acknowledged as having roles in the commission and prevention of terrorism, Resolution 2242 (2015) unfortunately essentializes them as “either wicked purveyors of extremist violence or virtuous saviours of sons, husbands, and communities[.]”²⁹

UNSC resolutions on CRSV and terrorism often include references to IHL to support entreaties for protecting women and girls in conflict. However, IHL is rooted in the honor paradigm, which contains “stereotypical concepts

26 See e.g., Lauren Aarons, “The Risks of Relying on Counterterrorism Laws to Reduce Wartime Sexual Violence,” *Just Security*, 7 December 2020, <https://www.justsecurity.org/73651/the-risks-of-relying-on-counterterrorism-laws-to-reduce-wartime-sexual-violence/>.

27 Chris Harland, “Counter-Terrorism and IHL: Challenges to Caring for Wounded and Sick on Battlefield,” *ICRC*, 24 January 2022, <https://www.icrc.org/en/document/counter-terrorism-and-ihl-challenges-caring-wounded-and-sick-battlefield>.

28 See Naureen Chowdhury Fink and Alison Davidian, “Complementarity and Convergence? Women, Peace, and Security and Counterterrorism,” in *Oxford Handbook of Gender and Conflict*, Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji, eds. Vol. 1 (Oxford University Press, 2017), <https://doi.org/10.1093/oxfordhb/9780199300983.013.13>.

29 Fionnuala Ní Aoláin, “The ‘War on Terror’ and Extremism: Assessing the Relevance of the Women, Peace and Security Agenda,” *International Affairs* 92, no. 2 (March 2016): 282, <https://doi.org/10.1111/1468-2346.12552>.

of femininity.”³⁰ These concepts continue to shape the discourse on women and terrorism, and have been co-opted by groups like Boko Haram. Boko Haram’s use of abductions, forced marriages, and sexual enslavement has served several tactical purposes including the humiliation of male members of the affected communities for their inability to “protect” their women and girls. At the same time, women have been weaponized as suicide bombers for operational needs. Boko Haram’s deliberate exploitation of women’s bodies as battlegrounds and instruments of terrorism conforms to patriarchal notions denying women agency and autonomy over their bodies.³¹ It is therefore important to understand the masculinization of terrorism and the counterterrorism normative framework given that “[t]he way the male point of view frames an experience is the way it is framed by state policy.”³² When the relevant stakeholders (e.g., governments, civil society, and multilateral organizations) take these dynamics into account, governments could shape new policies that reframe harmful narratives and engender accountability for CRSV that occurs in the context of terrorism. Success in this respect requires more diversity within the government so that policy and practice on national security related issues are shaped by nuanced perspectives.

The Need to Incentivize Accountability

Another significant finding is that repeated calls in UNSC resolutions to address impunity for CRSV in general or specifically in the context of terrorism are insufficient, on their own, to drive state action. The impact of CRSV on victims and society at large is well documented in countless reports.³³ In 2016, Nadia Murad, Nobel Peace Prize Laureate and survivor of sexual violence by IS addressed the UN General Assembly stating: “If

beheading, sexual enslavement, child rape, if all those acts will not force you to act, what will?”³⁴ At her first open debate at the UNSC in 2018, the Special Representative of the Secretary-General on Sexual Violence in Conflict, Pramila Patten, warned that “we are at an inflection point in this agenda and must urgently consolidate progress by ensuring accountability or risk a reversal resulting in wartime rape being once again normalized due to the frequency and impunity with which it is committed.”³⁵

Interviewees compared CRSV with terrorism financing and observed that, following UNSC Resolution 1373, states have taken steps to criminalize various forms of terrorism financing. The enhanced legal and policy ecosystem around terrorism financing was facilitated by both the reporting requirement on UN member states and the economic impact of non-compliance that states face if placed on the grey list of the FATF—a global money laundering and terrorist financing watchdog. To one interviewee, the FATF has “teeth.” In other words, the economic impact of non-compliance provides a different kind of pressure on states. Unfortunately, the international and regional mechanisms associated with CRSV do not have the same capacity, resources, and enforcement leverage to mobilize international sanctions in the event of failure to, *inter alia*, create the legislative framework to address CRSV in the context of terrorism. This is evident in the absence of resources,³⁶ lack of reporting or mandatory language, and consequently, penalties, in UNSC resolutions.

Multilateral incentives affect implementation domestically. For example, in Nigeria, enactment of the new counterterrorism legislation was incentivized by the importance of complying with the Anti-Money

30 United Nations, Economic and Social Council, 54th Session, “Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences,” Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission Resolution 1997/44, E/CN.4/1998/54 (26 January 1998), https://digitallibrary.un.org/record/251111/files/E_CN.4_1998_54_Add.1-EN.pdf.

31 See Chukwuma Al Okoli, “Gender and Terror: Boko Haram and the Abuse of Women in Nigeria,” *Georgetown Journal of International Affairs* (5 April 2022), <https://gjia.georgetown.edu/2022/04/05/gender-and-terror-boko-haram-and-the-abuse-of-women-in-nigeria>.

32 Catharine MacKinnon, *Towards a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), 167.

33 See e.g., United Nations, Security Council, *Women Peace and Security: Report of the Secretary-General*, S/2021/827 (27 September 2021), <https://undocs.org/en/S/2021/827>.

34 UN Women (@UN_Women). “If beheading, sexual enslavement, child rape, if all those acts will not force you to act, what will?” - @NadiaMuradBasee.” Twitter, 19 September 2016. https://twitter.com/un_women/status/777870634735046656.

35 Remarks of the Special Representative of the Secretary-General on Sexual Violence in Conflict, U.N. SCOR, 73rd Sess., 8398th mtg., U.N. Doc. S/PV.8398 (14 November 2018), <https://undocs.org/en/S/PV.8398>.

36 For instance, the UN Action Network Against Sexual Violence in Conflict is funded entirely from voluntary, extra-budgetary contributions by donors to the Conflict-Related Sexual Violence Multi-Partner Trust Fund (CRSV-MPTF). See <https://www.un.org/sexualviolenceinconflict/about-us/un-action/>.

Laundering/Combatting the Financing of Terrorism (AML/CFT) framework, and rectifying deficiencies identified by mutual evaluation assessment by the Inter-Governmental Action Group Against Money Laundering in West Africa on compliance with the FATF's global standards.³⁷ Prolonged deficiencies in complying with FATF global standards could result in significant economic losses to a country's gross domestic product (GDP).³⁸ It could be argued that Nigeria's first CRSV case by Boko Haram was also incentivized, albeit not by economic measures but by other factors including the pressure of the International Criminal Court's (ICC) preliminary inquiry into the situation in Nigeria. The pressure of the ICC's preliminary inquiry and the availability of funded capacity-building training programs organized by UN Office on Drugs and Crime (UNODC) and the Wayamo Foundation facilitated the initiative to levy sexual violence charges using Nigeria's counterterrorism law. However, it should be clear that the government of Nigeria has not yet adopted an approach toward increased accountability for CRSV by terrorist groups. Credit for the initiative to levy sexual violence as terrorism charges in the Umar Suleiman case lies with the members of the Complex Case Group (CCG) of the Federal Ministry of Justice, who received the aforementioned training and are dedicated to addressing CRSV.

In November 2021, the United Kingdom announced that it will work with various stakeholders to develop an international convention condemning, as a "red line," the use of sexual violence as a weapon of war akin to other prohibited weapons such as chemical weapons and landmines.³⁹ In an overall governmental policy shift

toward accountability for CRSV by terrorist groups joint statement, the governments of Australia, Canada, Hungary, Indonesia, Latvia, Liberia, Lithuania, New Zealand, and the UK expressed their determination to "strengthen the international response" and "build a new consensus"⁴⁰ to address the accountability gaps for CRSV. However, for such a convention to be effective, it must include the requisite reporting and enforcement mechanisms. It must also improve upon the existing normative framework that perpetuates stereotypes of the impact of terrorism and conflict on women and girls. Finally, the convention would only apply to its signatories and without universal ratification may have a negligible impact on the desired accountability. There is therefore a need for multilateral pressure on states to comply with existing obligations derived from UNSC resolutions.

The threat of terrorism is constantly evolving. The UNSC, the established counterterrorism framework, states, and CSOs must evolve with it. As the representative of France acknowledged during the UNSC's debate on Resolution 2331 (2016), "[h]uman trafficking and sexual violence committed in situations of conflict are too often considered as separate from the threats to international peace and security that are reviewed by the Security Council."⁴¹ The recognition that trafficking and CRSV can be tactics of terrorism, and that victims of these crimes are also victims of terrorism is a welcome step toward accountability, legal or otherwise, for victims of CRSV committed by terrorist groups. Yet, the rhetoric on its own is insufficient to move implementation. All stakeholders must do more to concretize the implementation of relevant UNSC resolutions such as Resolution 2331.

37 Sahara Reporters, "Nigerian Government Signs Terrorism, Money Laundering Bills into Law," 19 May 2022, <https://saharareporters.com/2022/05/19/nigerian-government-signs-terrorism-money-laundering-bills-law>.

38 As a result of being on the FATF grey list, Pakistan is estimated to have incurred losses to its GDP worth \$38 billion. See "Pakistan Hit with \$38 Billion Loss Due to FATF Grey List," *The Economic Times*, 28 June 2021, <https://economictimes.indiatimes.com/news/international/world-news/pakistan-hit-with-38bn-loss-due-to-fatf-grey-list/articleshow/83867954.cms?from=mdr>.

39 United Kingdom Foreign, Commonwealth & Development Office, "Foreign Secretary Launches Campaign to Tackle Sexual Violence in Conflict Around the World," Press Release, 16 November 2021, <https://www.gov.uk/government/news/foreign-secretary-launches-campaign-to-tackle-sexual-violence-in-conflict-around-the-world>.

40 Ibid.

41 U.N. SCOR, 71st Sess., 7847th mtg., U.N. Doc. S/PV.7847 (20 December 2016), <https://undocs.org/en/S/PV.7847>.

Recommendations

1. The UNSC should ensure that subsequent resolutions on the nexus of CRSV and terrorism emphasize stronger integration of the Women, Peace, and Security; counterterrorism; and conflict resolution agendas. Subsequent resolutions should incorporate practical recommendations for implementing prior UNSC resolutions on CRSV and terrorism such as Resolution 2331 (2016).
2. The UNSC should consider extending to non-parties to conflict monitoring and reporting obligations on accountability efforts regarding CRSV in the context of terrorism. Several states that prosecute foreign terrorist fighters are not parties to the armed conflicts and, as a result, key provisions on legal accountability in Resolution 2467 do not apply to them. Extending the monitoring of accountability measures such as criminal justice reforms and investigations would enable a comprehensive understanding of the accountability gaps and facilitate the work of implementing UNSC resolutions on accountability for CRSV in the context of terrorism globally.
3. States should consider establishing and/or strengthening intragovernmental communication channels to ensure that the international obligations to address CRSV in the context of terrorism are communicated and prioritized among all stakeholders. States should ensure that CRSV experts are embedded in counterterrorism structures in government and security sectors to aid in developing policies and practices that are shaped by nuanced perspectives. *In tandem*, states should consider increasing resource allocations to engender the effective investigation and prosecution of CRSV in the context of terrorism.
4. The Nigerian Government should consider increasing its efforts to ensure legal accountability for CRSV committed by Boko Haram. Such efforts would be bolstered by policies and practices within the Ministry of Justice that prioritize and facilitate the investigation and prosecution of sexual violence perpetrated by Boko Haram militants using domestic counterterrorism legislation. The 2017 Policy Framework and National Action for Preventing and Countering Violent Extremism should be updated to include policies and practices supportive of increased accountability for CRSV in the context of terrorism and violent extremism.
5. The United Kingdom and other states proposing a CRSV treaty should consider incorporating monitoring and enforcement mechanisms to increase the treaty's effectiveness in combating the impunity around CRSV in general and specifically in the context of terrorism.
6. CSOs and related UN entities should consider the impact of bifurcated advocacy approaches to accountability for CRSV in the context of terrorism and encourage the use of all available legislative frameworks in domestic prosecutions to address the accountability gaps.

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