

## ISSUE BRIEF

### A Roadmap to Criminal Justice Accountability for SGBV Linked to Terrorism

*Lessons from Nigeria*

ADEJOKE BABINGTON-ASHAYE

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#### KEY FINDINGS

- Sexual and gender-based violence (SGBV) can be a strategic weapon deployed by terrorist groups such as Boko Haram, Islamic State (ISIS), and Al-Shabaab. These acts serve various purposes including instilling fear, controlling populations, incentivizing or rewarding members, or terrorism financing through trafficking for sexual exploitation. In a landmark 2023 case, federal prosecutors in Nigeria prosecuted a Boko Haram member for SGBV under terrorism laws using innovative legal approaches to contextualize sexual violence committed by the group within terrorism frameworks. This case sets a precedent for prosecuting SGBV committed in the context of terrorism as acts of terrorism.
- While technical assistance and capacity-building initiatives are important for advancing accountability for SGBV linked to terrorism, these initiatives are often not integrated into broader counterterrorism training with a wide group of stakeholders. Effective technical assistance and capacity building in the counterterrorism sector should integrate SGBV into a wide range of justice and law enforcement-related training programs, including those for financial investigation units. Focusing exclusively on specialized gender units is insufficient, as intelligence agencies, military investigators, and other frontline actors also require the necessary knowledge and tools to appropriately respond to the strategic use of SGBV by terrorist groups.
- Lessons from the collaborative technical assistance approach in Nigeria demonstrate that effective capacity-building requires, *inter alia*, long-term commitment and inclusive design and implementation tailored to the specific needs identified by beneficiaries.
- Globally, power imbalances in donor-recipient relationships can result in initiatives that are driven by donor priorities and may not always be aligned with the actual needs of the justice sector beneficiaries limiting the relevance and actual effectiveness of such

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programs. Short-term funding cycles can hinder long-term progress and so does the inequitable distribution of donor support.

- **Recommendations:** Donors and implementing organizations should prioritize consistent and sustained technical assistance and capacity-building initiatives that are responsive to the beneficiaries' needs rather than relying on sporadic training sessions and programs that are donor-centric; it is essential for national prosecutors to develop SGBV-specific prosecutorial guidelines within terrorism cases to ensure these crimes are accurately classified, appropriately contextualized, and effectively integrated into broader counterterrorism investigations; funding deficits for technical support to boost national capacity to address SGBV linked to terrorism could be addressed through the establishment of sustainable investment models such as establishing an investment trust dedicated to supporting justice initiatives for SGBV in terrorism contexts. Such mechanisms could be established to provide continuous and nontraditional financial support aligned with the objective of combating all forms of terrorism.

## INTRODUCTION

Since the emergence of the prevalent perpetration of sexual and gender-based violence (SGBV)<sup>1</sup> by terrorist actors as a weapon of warfare, few individuals or groups have faced accountability for their crimes. In a recent report by the United Nations (UN) Security Council's Counter-Terrorism Committee Executive Directorate (CTED), it was acknowledged that “[d]espite global condemnation of these acts of violence and the acknowledgement of the instrumentality of SGBV for terrorist groups, accountability for these acts remains elusive.”<sup>2</sup>

A variety of challenges have precluded consistent efforts toward justice and accountability in this sphere. At the international level, while a robust international legal framework exists,<sup>3</sup> the absence of enforcement and mainstreaming across the counterterrorism agenda contribute to a failure in accountability and the existence of an impunity gap for SGBV linked to terrorism. At the national level, engagement with members of the communities of practice in different jurisdictions reveals the absence of sustained political will, a lack of resources, and a lack of technical capacity for the effective investigation and prosecution of SGBV linked to terrorism. As

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<sup>1</sup> This brief adopts the definition of SGBV contained in the 2023 Report of the UN Security Council Counter-Terrorism Committee's Executive Directorate titled *Towards Meaningful Accountability for Sexual and Gender-Based Violence Linked to Terrorism*: “SGBV is a collective term that comprises two overarching notions. The first is sexual violence, which is a form of gender-based violence. It includes any sexual act, attempt to obtain a sexual act, or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.” United Nations, *Towards Meaningful Accountability for Sexual and Gender-Based Violence Linked to Terrorism*, 6, [https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted\\_report\\_sgbv\\_linked\\_to\\_terrorism\\_final.pdf](https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted_report_sgbv_linked_to_terrorism_final.pdf).

<sup>2</sup> United Nations Security Council Counter-Terrorism Committee Executive Directorate, *Towards Meaningful Accountability for Sexual and Gender-Based Violence Linked to Terrorism* (November 2023), 2, [https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted\\_report\\_sgbv\\_linked\\_to\\_terrorism\\_final.pdf](https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted_report_sgbv_linked_to_terrorism_final.pdf). See also 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, [www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/2021105\\_1373\\_gis.pdf](http://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/2021105_1373_gis.pdf).

<sup>3</sup> For a comprehensive review of the international legal framework see United Nations Security Council Counter-Terrorism Committee Executive Directorate, *Towards Meaningful Accountability for Sexual and Gender-Based Violence Linked to Terrorism* (United Nations Security Council Counter-Terrorism Committee Executive Directorate (CTED), November 2023), [https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted\\_report\\_sgbv\\_linked\\_to\\_terrorism\\_final.pdf](https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted_report_sgbv_linked_to_terrorism_final.pdf).

a result, prosecutors have frequently just charged terrorist actors with membership in a terrorist organization – a relatively straightforward charge that requires minimal evidence and, thereby, minimal investigative capacity.<sup>4</sup> However, there is growing acknowledgment that such charges do not take into account the substantive crimes that have been committed and, as a result, fail to consider the impact on the survivors of these crimes.

In 2023, a landmark case in Nigeria marked a critical step forward. For the first time, a member of the terrorist organization Boko Haram was prosecuted under national counterterrorism legislation for committing SGBV as acts of terrorism. This Issue Brief draws on the author's direct experience working with criminal justice stakeholders in Nigeria as part of specialized technical assistance, mentoring, and support focused on addressing SGBV linked to terrorist activities using a variety of legal frameworks.

By examining this case, the combination of factors that contributed to its success, and the broader lessons it offers, this Issue Brief provides actionable recommendations for policymakers, practitioners, donor agencies, and implementing organizations – both within civil society and the United Nations – in optimizing their efforts to combat SGBV linked to terrorism through technical assistance and capacity-building initiatives. It contends that organizers of these initiatives must tailor their efforts to the local legal and cultural contexts, recognizing that a “one-size fits all” approach is not only detrimental to the success of any program, but also reinforces some of the negative paternalistic connotations associated with international rule of law programs. This Issue Brief also calls for greater collaboration between international and national actors across all sectors and emphasizes the need for integrated approaches that, in addition to building capacity, are aimed at responding to the structural deficiencies that compound capacity challenges.

Generously sponsored by the government of Malta, this Issue Brief fits within the broader context of The Soufan Center's work on justice and accountability, with an emphasis on ending the relative impunity of war crimes and crimes against humanity within the context of terrorism. Moreover, by drawing on the insights and experiences of those directly involved in the Nigerian case, Issue Brief offers a unique perspective on what is possible when the global community prioritizes justice for survivors of SGBV in the context of terrorism.

### THE ROLE OF SGBV IN TERRORIST STRATEGIES

Nigeria currently holds the position of the eighth most affected country on the 2024 Global Terrorism Index.<sup>5</sup> Although emerging in Northeast Nigeria in 2002, the proscribed terrorist group, Boko Haram, became progressively radicalized and violent following the 2009 killing of its leader,

<sup>4</sup> Adejoke Babington-Ashaye, Tanya Mehra, and Matthew Una Odu, “The Tide Turns: The Prosecution of SGBV Crimes as a Terrorist Offence in Nigeria,” *International Centre for Counter-Terrorism - ICCT*, July 12, 2024, <https://www.icct.nl/publication/tide-turns-prosecution-sgbv-crimes-terrorist-offence-nigeria>.

<sup>5</sup> Institute for Economics & Peace, *Global Terrorism Index 2023: Measuring the Impact of Terrorism*, (March 2023), <https://www.visionofhumanity.org/maps/global-terrorism-index/#.> Since its first publication by the Institute for Economics and Peace in 2012, Nigeria has consistently ranked on the index in the top 10 countries most affected by terrorism: 2011 (8<sup>th</sup> ranking); 2012 (5<sup>th</sup> ranking); 2014 (3<sup>rd</sup> ranking); 2015 (2<sup>nd</sup> ranking); 2016 (2<sup>nd</sup> ranking); 2017 (4<sup>th</sup> ranking); 2018 (4<sup>th</sup> ranking); 2019 (4<sup>th</sup> ranking); 2020 (4<sup>th</sup> ranking); 2021 (5<sup>th</sup> ranking); 2022 (8<sup>th</sup> ranking); 2023 (8<sup>th</sup> ranking).

## A ROADMAP TO CRIMINAL JUSTICE ACCOUNTABILITY FOR SGBV LINKED TO TERRORISM

Mohammed Yusuf, in police custody.<sup>6</sup> Under Abubakar Shekau's leadership, the group intensified its strategies and incorporated sexual violence and abductions in its persistent campaign of killings, looting, and damage of civilian and government properties.<sup>7</sup> The 2014 kidnapping of 276 schoolgirls from Chibok momentarily garnered international attention and initiated the #BringBackOurGirls movement though international attention began to fade within months as global media and political attention shifted to other crises and events. However, prior to the Chibok attack, Boko Haram had systematically abducted and enslaved hundreds of women and girls and continues to do so.<sup>8</sup>

SGBV has long been weaponized by terrorist groups to instill fear, control populations, and further their ideological objectives.<sup>9</sup> As noted by the UN Secretary-General in his 2024 report on conflict-related sexual violence, United Nations-designated terrorist groups have applied "sexual violence as a tactic to incentivize recruitment and gain control over territory and lucrative natural resources."<sup>10</sup> Additionally, multiple Security Council resolutions recognize that SGBV forms an integral component in the *modus operandi* and/or ideology of certain terrorist groups.<sup>11</sup> For instance, in Resolution 2242 (2015), the Security Council expressed deep concern that "acts of sexual and gender-based violence 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[.]"<sup>12</sup> Through Resolution 2331 (2016), which recognized the terrorism-human trafficking-and sexual violence nexus, the Security Council observed that "trafficking in persons, in particular women and girls, remains a critical component of the financial flows to certain terrorist groups; and that, when leading to certain forms of exploitation, is being used by these groups as a driver for recruitment[.]"<sup>13</sup> The Council further recognized in Resolution 2388 (2017) that the connection between trafficking in persons, sexual violence, and terrorism can have a debilitating impact on civilian populations, and prolong and exacerbate conflict.<sup>14</sup>

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<sup>6</sup> Freedom C. Onuoha and Samuel Oyewole, "Anatomy of Boko Haram: The Rise and Decline of a Violent Group in Nigeria." *Al Jazeera Centre for Studies*, April 22, 2018, [https://studies.aljazeera.net/sites/default/files/articles/reports/documents/4f179351e3244e1882a6033e0bf43d89\\_100.pdf](https://studies.aljazeera.net/sites/default/files/articles/reports/documents/4f179351e3244e1882a6033e0bf43d89_100.pdf).

<sup>7</sup> See generally Cecilia 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; UNSC, 'Report of the Secretary General on Conflict-Related Sexual Violence' UN Doc. S/2020/487, 3 June 2020 [CRSV 2020]; UNSC, 'Report of the Secretary General on Conflict-Related Sexual Violence' UN Doc. S/2019/280, 29 March 2019 [CRSV 2019]; UNSC, 'Report of the Secretary General on Conflict-Related Sexual Violence' UN Doc. S/2018/250, 16 April 2018 [CRSV 2018]; UNSC, 'Report of the Secretary General on Conflict Related Sexual Violence' UN Doc. S/2017/249, 15 April 2017 [CRSV 2017].

<sup>8</sup> See e.g., BBC, "Nigeria's Boko Haram Crisis: Dozens of Women Feared Abducted in Gamboru Ngala," March 6, 2024, <https://www.bbc.com/news/world-africa-68490001>.

<sup>9</sup> See United Nations, "Report of the Secretary-General on Conflict-Related Sexual Violence." United Nations, April 4, 2024, para. 9, <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2024/04/report/report-of-the-secretary-general-on-conflict-related-sexual-violence/202404-SG-annual-report-on-CRSV-EN.pdf>.

<sup>10</sup> Ibid.

<sup>11</sup> See for example, reporting on Boko Haram's ideology that the children born to members of the terrorist group will inherit the ideology of the group. John Campbell, "Boko Haram's sex slaves?," *Council on Foreign Relations*, May 7, 2015, [www.cfr.org/blog/boko-harams-sex-slaves](http://www.cfr.org/blog/boko-harams-sex-slaves).

<sup>12</sup> S/RES/2242 (2015). See also, United Nations, Secretary-General, *Seventy-First Session, 7847th Meeting of the Security Council*, 20 December 2016, S/PV.7847, 3, <https://undocs.org/en/S/PV.7847>.

<sup>13</sup> United Nations Security Council, *Resolution 2331 (2016) [on Trafficking in Persons in Armed Conflicts]*. S/RES/2331, December 20, 2016, [https://undocs.org/S/RES/2331\(2016\)](https://undocs.org/S/RES/2331(2016)).

<sup>14</sup> United Nations Security Council, *Resolution 2388 (2017) [on Trafficking in Persons in Armed Conflicts]*. S/RES/2388, November 21, 2017, <https://www.un.org/securitycouncil/content/sres2388-2017>.

The 2023 CTED report, *Towards Meaningful Accountability for Sexual and Gender-Based Violence Linked to Terrorism*, identifies six dimensions of SGBV linked to terrorism, which provide critical context to understand the perpetration of SGBV by terrorist actors such as Boko Haram.<sup>15</sup> These dimensions include the systematic use of SGBV as part of operational tactics; as a tool for spreading terror; as a means of financing terrorist activities through kidnapping for ransom (KFR); as a means of persecuting a group; an incentive for recruiting and retaining members; and as a manifestation of ideologies that perpetuate the oppression of women within society, and exert control over their bodies and reproductive health to ensure the propagation of future generations of group members.<sup>16</sup>

In the Nigerian context, Boko Haram and its splinter groups that include the Islamic State of West Africa Province (ISWAP) have incorporated various forms of SGBV including targeted abductions of women and girls, forced marriages, rapes, and forced pregnancies within their operations.<sup>17</sup> This institutionalization of SGBV also includes the radicalization of girls as young as nine<sup>18</sup> into Boko Haram to aid its operations as suicide bombers<sup>19</sup> highlighting how a significant part of terrorism lies in its intended and actual psychological impact. According to one report,<sup>20</sup> in 2015, Boko Haram demonstrated an unprecedented use of female suicide bombers deploying more than 90 female suicide bombers.<sup>21</sup> The report concluded that “[n]o terrorist group in history has used as many female suicide bombers as [Boko Haram] has used this year.”<sup>22</sup> In its 2020 report on trafficking in persons, the United States Department of State observed that:<sup>23</sup>

Boko Haram and ISIS-WA continued to forcibly recruit, abduct, and use child soldiers as young as 12 as cooks, spies, messengers, bodyguards, armed combatants, and increasingly as suicide bombers in attacks in Nigeria, Cameroon, and Chad. In 2018, Boko Haram used at least 48 children as human bombers, compared with 158 used in 2017. The groups continue to abduct women and girls in the northern region of Nigeria, some of whom they subject to domestic servitude and forced labor. Boko Haram routinely forces girls to choose between forced marriages to its fighters—for the purpose of sexual slavery—or becoming

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<sup>15</sup> United Nations Security Council Counter-Terrorism Committee Executive Directorate (CTED), *Towards Meaningful Accountability for Sexual and Gender-Based Violence Linked to Terrorism*. (November 2023), 9, [https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted\\_report\\_-sgbv\\_linked\\_to\\_terrorism\\_final.pdf](https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted_report_-sgbv_linked_to_terrorism_final.pdf).

<sup>16</sup> Ibid.

<sup>17</sup> See Babington-Ashaye, Adejoké, Tanya Mehra, and Matthew Una Odu, “The Tide Turns: the Prosecution of SGBV Crimes as a Terrorist Offence in Nigeria, <https://www.icct.nl/publication/tide-turns-prosecution-sgbv-crimes-terrorist-offence-nigeria>; See also [https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted\\_report\\_-sgbv\\_linked\\_to\\_terrorism\\_final.pdf](https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted_report_-sgbv_linked_to_terrorism_final.pdf) (2023); Mia Bloom and Hilary Matfess. “Women as Symbols and Swords in Boko Haram’s Terror.” *PRISM* 6, no. 1 (2016): 104–121, <https://www.inclusivesecurity.org/wp-content/uploads/2016/03/Women-as-Symbols-and-Swords.pdf>.

<sup>18</sup> Martins Hile, “Boko Haram Has Used Most Female Suicide Bombers in History.” *Financial Nigeria*, October 23, 2015, <https://www.financialnigeria.com/boko-haram-has-used-most-female-suicide-bombers-in-history-news-144.html>.

<sup>19</sup> (CTED), *Towards Meaningful Accountability for Sexual and Gender-Based Violence Linked to Terrorism* (November 2023), 9, See also Mia Bloom and Hilary Matfess. “Women as Symbols and Swords in Boko Haram’s Terror.” *PRISM* 6, no. 1 (2016), 106, <https://www.inclusivesecurity.org/wp-content/uploads/2016/03/Women-as-Symbols-and-Swords.pdf>.

<sup>20</sup> Scott Steward, “An Unprecedented Use of Female Suicide Bombers,” *Stratfor*, October 23, 2015, <https://worldview.stratfor.com/article/unprecedented-use-female-suicide-bombers>.

<sup>21</sup> The utilization of female suicide bombers as an operational technique by nonstate actors is not a novel occurrence. However, to contextualize this figure, it is noteworthy that the Tamil Tigers utilized 46 women over a decade, while Boko Haram has engaged over 90 women in just over 18 months. See Mia Bloom and Hilary Matfess. “Women as Symbols and Swords in Boko Haram’s Terror,” 105.

<sup>22</sup> Martins Hile, “Boko Haram Has Used Most Female Suicide Bombers in History.”

<sup>23</sup> U.S. Department of State, *Trafficking in Persons Report: Nigeria*. 2020, <https://www.state.gov/reports/2020-trafficking-in-persons-report/nigeria/>.

suicide bombers. *In some cases, Boko Haram forced child soldiers to marry one another.*

## NIGERIA'S CHALLENGES IN ADDRESSING SGBV LINKED TO TERRORISM

At the outset, it is important to highlight the legal frameworks that are available to criminal justice stakeholders to support the investigation and prosecution of SGBV linked to terrorism. These crimes sit at the intersection of various legal regimes that, depending on the specific context, may constitute core international crimes such as war crimes, crimes against humanity, or genocide, terrorism-related offenses and violations of international and regional treaties (e.g., prohibitions on human trafficking), as well as domestic criminal codes that address the underlying crimes such as rape, kidnapping, forced marriage, and other forms of SGBV.<sup>24</sup> Some countries may be able to use multiple legal frameworks to address a broader range of crimes and present cumulative charges,<sup>25</sup> while others are limited to a single framework due to the absence of other frameworks or evidentiary and practical obstacles.<sup>26</sup>

With respect to Nigeria, the country's legal system does not include any provisions for prosecuting core international crimes under the international criminal law framework as entrenched in the Rome Statute establishing the International Criminal Court. In practicing a dual system, Nigeria's ratification of the Rome Statute on September 27, 2001, would require domestication into national law for the treaty to have full effect in national courts. In the absence of domesticating the Rome Statute, Nigeria's ratification remains essentially symbolic and does not provide the expected benefits of accountability and justice. Prosecutors are thus unable to prosecute Boko Haram for its use of SGBV as part of a widespread or systematic attack on a civilian population using provisions of crimes against humanity under the international criminal law framework, for example.

While there are national laws that govern the underlying criminal conduct, as noted above, such as rape, the federal system in Nigeria divides the responsibility for prosecuting crimes between federal and state jurisdictions.<sup>27</sup> Crimes such as rape and other forms of sexual violence typically fall within the purview of the states within the federation. On their own, the criminal provisions in state criminal laws are unlikely to reflect the gravity revealed by the instrumentalization of SGBV by Boko Haram. Where state prosecutors may wish to prosecute, they may be impeded by evidentiary requirements such as medical corroboration which though not required by law in sexual violence cases remain a matter of practice. Needless to say, such evidence would be unavailable where the crimes occurred several years ago in Boko Haram's enclave, or the victims and survivors of Boko Haram's crimes are unavailable for medical examination.

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<sup>24</sup> See CTED, "Towards Meaningful Accountability for Sexual and Gender-Based Violence Linked to Terrorism." for a detailed analysis of the relevant legal frameworks that are applicable to increase accountability for SGBV linked to terrorism.

<sup>25</sup> Babington-Ashaye, Mehra, and Una Odu, "The Tide Turns."

<sup>26</sup> CTED, "Towards Meaningful Accountability for Sexual and Gender-Based Violence Linked to Terrorism," 10 – 32.

<sup>27</sup> Babington-Ashaye, Mehra, and Una Odu, "The Tide Turns."

The only legislative framework available to capture and contextualize the SGBV crimes committed by Boko Haram is Nigeria's Terrorism Prevention Act (as amended) (TPA), which falls under federal jurisdiction and within the responsibilities of the federal prosecutors of the Ministry of Justice. Under Section 1(2) of the Terrorism Prevention Act (2013), an act of terrorism includes acts such as "an attack upon a person's life which may cause serious bodily harm or death" performed intentionally to achieve a series of goals including the intimidation of a population or the compulsion of a government to perform or abstain from performing any act. Although the TPA, like the terrorism legislation of most countries, does not expressly mention sexual violence offences, this provision can apply to acts of sexual violence, such as rape, which are known to cause severe bodily harm or death, supporting the interpretation that such acts can constitute terrorism when committed with these intentions and impacts.<sup>28</sup>

However, in initial charges against members of Boko Haram, federal prosecutors primarily focused on more straightforward terrorism-related charges, such as membership in terrorist organizations or providing material support, which did not take into account substantive crimes that overlapped with core international crimes due to the gravity of the crimes. These charges required fewer resources and avoided the need for investigative capacity to collect additional evidence to prove SGBV crimes committed in the context of terrorism. The capacity-building and technical assistance efforts, discussed below, engendered a greater openness to exploring innovative and unconventional legal approaches to bridge the impunity gap for SGBV linked to terrorism perpetrated by Boko Haram.

### ENABLING FACTORS CONTRIBUTING TO A SHIFT

A mix of factors contributed to the push toward accountability for SGBV linked to terrorism, of which technical assistance and capacity-building initiatives had a role to play. A pivotal factor was the prevailing international pressure mounted by the scrutiny of the International Criminal Court's Office of the Prosecutor ("OTP") which launched a preliminary examination into the situation in Nigeria in 2010.<sup>29</sup> A preliminary examination entails an assessment of all communications and information brought to the attention of the OTP to assess whether a situation meets the legal criteria established by the Rome Statute ("Statute") to warrant investigation by the Office.<sup>30</sup> While not a formal investigation, the purpose of the preliminary examination is to enable the OTP to collect all pertinent information necessary for making a well-informed decision regarding the legitimate grounds for initiating an investigation.<sup>31</sup> A preliminary examination may be initiated based on the following criteria: (a) information provided by individuals, groups, States, or intergovernmental or non-governmental organizations; (b) a referral from a State Party or the United Nations Security Council; or (c) a declaration submitted

<sup>28</sup> See Adejoké Babington-Ashaye, "Prioritizing Accountability for Sexual Terrorism on the Global Peace and Security Agenda: An Assessment of the Way Forward from National Prosecutions of Sexual Terrorism by Boko Haram to Security Council Decisiveness," *Journal of Human Trafficking, Enslavement and Conflict-Related Sexual Violence* 1, no. 2 (November 30, 2020): 199–227, <https://doi.org/10.7590/266644720X16061196655052>.

<sup>29</sup> International Criminal Court, *Situations Under Preliminary Examination*, <https://www.icc-cpi.int/situations-preliminary-examinations>.

<sup>30</sup> Ibid.

<sup>31</sup> See International Criminal Court, Office of the Prosecutor, *Policy Paper on Preliminary Examinations* (November 2013), [https://www.icc-cpi.int/sites/default/files/2023-11/OTP-Policy\\_Paper\\_Preliminary\\_Examinations\\_2013-ENG.pdf](https://www.icc-cpi.int/sites/default/files/2023-11/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf).

by a State accepting the Court's jurisdiction under article 12(3) of the Statute.<sup>32</sup> A component of the examination is an assessment of whether, in line with the principle of complementarity, genuine national proceedings are underway or have been taken by the State.

Following the initiation of the OTP's preliminary examination, a Bill to domesticate the Rome Statute titled the "Crimes against Humanity, Genocide and Related Offences Bill" was introduced in 2012 into the Nigerian Senate and it successfully passed the first reading. It was renamed a "Bill for an act to provide for the enforcement and punishment of crimes against humanity, war crimes, genocide, and related offences and to give effect to certain provisions of the Rome Statute of the International Criminal Court in Nigeria 2013" for a second reading but has since stalled.<sup>33</sup> To date, despite promises that the initiative will be reactivated,<sup>34</sup> there appears to be no political will to move domestication forward.

In December 2020, after almost 10 years, the OTP concluded its preliminary examination, finding that there was a reasonable basis to believe that crimes within the jurisdiction of the Court had been committed and were ongoing in Nigeria.<sup>35</sup> The OTP observed that members of Boko Haram and its affiliated groups committed numerous war crimes and crimes against humanity, including rape, sexual slavery, forced pregnancy, and forced marriage. Information reviewed by the OTP indicated that these acts were carried out as part of Boko Haram's organizational policy and were aimed at a widespread or systematic attack on civilian populations identified as "unbelievers" or perceived supporters of the Nigerian government.<sup>36</sup> In announcing the completion of the preliminary examination into the situation in Nigeria, the then Chief Prosecutor, Fatou Bensouda, stated in reference to the criminal proceedings in Nigeria:<sup>37</sup>

I have given ample time for these proceedings to progress, bearing in mind the overarching requirements of partnership and vigilance that must guide our approach to complementarity. However, our assessment is that none of these proceedings relate, even indirectly, to the forms of conduct or categories of persons that would likely form the focus of my investigations. And while this does not foreclose the possibility for the authorities to conduct relevant and genuine proceedings, it does mean that, as things stand, the requirements under the Statute are met for my Office to proceed.

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<sup>32</sup> Ibid. Article 12(3) of the Rome Statute: "If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9." International Criminal Court, *Rome Statute of the International Criminal Court*, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

<sup>33</sup> Florence Nkechinyere Chukwu, "Is There an 'Organizational Policy' Within the Meaning of Article 7(2)(a) of the Rome Statute Behind Boko Haram's Atrocities Committed Across Nigeria?" Master's thesis, Swedish Defence University, 2023, <https://www.diva-portal.org/smash/get/diva2:1778591/FULLTEXT01.pdf>.

<sup>34</sup> Friday Olokor, "FG Restates Commitment to Rome Statute Domestication," *Punch*, December 6, 2022, <https://punchng.com/fg-restates-commitment-to-rome-statute-domestication/>.

<sup>35</sup> International Criminal Court, Office of the Prosecutor, *Report on Preliminary Examination Activities 2020*, December 14, 2020, 64 – 67, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>.

<sup>36</sup> Ibid, para. 254.

<sup>37</sup> International Criminal Court, "Statement of the Prosecutor, Fatou Bensouda, on the Conclusion of the Preliminary Examination of the Situation in Nigeria", December 11, 2020, <https://www.icc-cpi.int/news/statement-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-nigeria>.

The OTP's launch of the preliminary examination in 2010 and its 2020 conclusion that there was a reasonable basis for investigating Nigeria had four major effects that fostered an environment encouraging the Nigerian government to take action in investigating and prosecuting the substantive crimes committed by Boko Haram in general and SGBV linked to terrorism in particular. First, the scrutiny by the OTP placed Nigeria under international observation, highlighting the need for Nigeria to address Boko Haram's SGBV crimes domestically to avoid potential ICC intervention and to demonstrate its ability to handle such cases without international involvement. In so doing, Nigeria was keen to demonstrate that it is Nigeria's primary responsibility to address international crimes committed within its jurisdiction. Second, the increased international focus on Nigeria's handling of potential core international crimes cases attracted technical assistance and capacity-building resources some of which have been effective for the reasons indicated below. These resources were geared towards supporting Nigeria in enhancing its legal and procedural framework to address core international crimes. For example, in December 2016, a civil society organization, The Wayamo Foundation (Wayamo) commenced a program aimed at strengthening justice and accountability to enhance domestic capacity to investigate and prosecute core international crimes and transnational organized crimes. The OTP participated in positive complementarity facilitated by the Wayamo Foundation by attending capacity building sessions with the Ministry of Justice and providing clarity on what was required regarding the preliminary examinations. Third, given the potential reputational implications of the ICC's involvement on Nigeria's diplomatic relations and international standing, the pressure to demonstrate commitment to human rights and the rule of law and respond to an international body such as the ICC likely contributed to Nigeria's receptiveness to receiving support to assess how to address the types of crimes under the ICC's scrutiny. Finally, Nigeria faced the risk that, without genuine national action, the OTP might launch a formal investigation which would carry the implication of lack of confidence in Nigeria's justice system.

### EARLY EFFORTS TO BRIDGE THE GAP

From 2016 to 2023, the author contributed to capacity-building and technical assistance programs for federal investigators and prosecutors in Nigeria, organized by the Wayamo Foundation under a project titled "Strengthening Justice and Accountability in Nigeria Through Capacity Building for Civil and Military Prosecutors in the Investigation and Prosecution of International and Transnational Crimes."<sup>38</sup> The project was based on the belief that domestic authorities are best positioned to pursue justice for crimes affecting their communities, allowing victims and survivors to witness accountability domestically. Collaborators in the project included the Nigerian Ministry of Justice, notably the specialized unit of prosecutors handling terrorism cases – the Complex Case Group (CCG); investigators, members of the Nigeria Security Forces (NSF), judges, journalists, and other stakeholders. During this time, there were other initiatives engaging the same or cross sections of the groups mentioned above. Some of these initiatives focused on increasing the capacity to prosecute SGBV within the framework of counterterrorism, such as the *Nigeria Training Module on Gender Dimensions of Criminal Justice Responses to*

<sup>38</sup> Wayamo Foundation, "Strengthening Justice and Accountability in Nigeria Through Capacity Building," <https://www.wayamo.com/archives/our-projects/strengthening-justice-and-accountability-in-nigeria-through-capacity-building/>.

*Terrorism (2019)*<sup>39</sup> prepared by the United Nations Office on Drugs and Crime (UNODC). Others were designed to improve the justice sector more generally, such as UNODC's technical assistance support on the terrorism trials conducted in Kainji in North central Nigeria. From November 2022 to January 2023, Wayamo, UNODC, and the UN Team of Experts collaborated to deliver training workshops focused on addressing SGBV and, in particular, crimes against children.

One key outcome of these initiatives was the increased understanding that SGBV is not merely an incidental crime, but an integral tactic employed by terrorist groups like Boko Haram. Federal prosecutors involved in the 2023 case against Suleiman Garba Mohammed applied this understanding to frame acts of forced marriage, rape, and sexual slavery as acts of terrorism under the TPA. Training sessions also emphasized the importance of aligning prosecutorial strategies with international best practices drawing from the jurisprudence of international criminal tribunals on SGBV as a tactic of terrorism and war, and practical sessions highlighted how SGBV can be prosecuted as an act of terrorism by demonstrating its systematic use to instill fear and destabilize communities. Moreover, capacity-building efforts addressed the need for robust alternative evidence-gathering strategies and joint sessions with the prosecutors and investigators to facilitate collaborative strategizing to enhance the quality of evidence collection.

A feature that worked well in this context was Wayamo's four-pillar model, which emphasizes effective and context-sensitive capacity building for criminal justice stakeholders.<sup>40</sup> Furthermore, Wayamo prioritized local buy-in by working closely with partners on the ground ensuring that each component of the project responded to expressed needs. As a small and lean civil society organization, Wayamo's agility lent itself more readily to the implementation of programs that were more focused and centered on the emerging needs of the stakeholders participating in the project.

In addition to technical assistance, mentoring, and capacity building over almost 7 years, in 2021, Wayamo, in partnership with the CCG, initiated the development of an electronic case-file database designed to store terrorism case files and related judgments. Beyond functioning as a filing system, the database aims to assist the CCG in building more intricate cases, potentially addressing international crimes under ICC jurisdiction.<sup>41</sup>

Efforts to address the impunity gap for SGBV linked to terrorism began to gain traction between 2016 and 2018 in Nigeria. The 2018 mass trials of Boko Haram suspects provided a testing ground for these efforts. While early cases, such as those involving the abduction of the Chibok girls, focused primarily on the act of kidnapping and membership in a terrorist organization, they laid the groundwork for more nuanced approaches to integrating SGBV charges into counterterrorism prosecutions.<sup>42</sup>

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<sup>39</sup> Ulrich Garms, Lara Wilkinson, and Hadiza Abba, *Nigeria Training Module on Gender Dimensions of Criminal Justice Responses to Terrorism*, United Nations Office on Drugs and Crime (August 2019), [https://www.unodc.org/pdf/terrorism/Web\\_stories/UNODC\\_Nigeria\\_Gender\\_Training\\_Module.pdf](https://www.unodc.org/pdf/terrorism/Web_stories/UNODC_Nigeria_Gender_Training_Module.pdf).

<sup>40</sup> Wayamo Foundation, *2021 Annual Report*, 57, <https://www.wayamo.com/wp-content/uploads/2022/03/2021-Wayamo-Annual-Report.pdf>.

<sup>41</sup> *Ibid*, 17.

<sup>42</sup> Babington-Ashaye, Mehra, and Una Odu, "The Tide Turns."

In 2021, federal prosecutors redrafted charges against Umar Suleiman, a member of Boko Haram. The redrafted charges focused on evidence that the accused was an accessory to the kidnapping of a Chibok girl whom he forcibly married. Rather than solely focus on the kidnapping and membership in a terrorist organization charges, the prosecutors included charges reflective of the SGBV elements namely forced marriage, rape, and enslavement given that the evidence revealed that he had taken one of the girls he knew was kidnapped as his wife. Although this case is still pending before the Federal High Court in Abuja, it marked a shift in the approach and a willingness to innovatively use the TPA to address SGBV committed in the context of terrorism. Even though the Umar Suleiman case was the first time terrorism charges were filed inclusive of SGBV crimes, it was not the first time that case files contained information indicative of SGBV linked to terrorism. For example, in 2018, as part of the mass trials conducted in Kainji, Haruna Yahaya received a 30-year sentence for participating in and planning the mass kidnappings of girls from Chibok. In a separate case, Banzana Yusuf was sentenced to 20 years for his involvement in planning and executing the abductions. Additionally, Boko Haram commander Abba Umar was sentenced to 60 years for various terrorist acts, including attempted bombing and munitions possession. A review of the cases revealed indications of SGBV that warranted further investigations and a basis for exploring additional charges. For instance, Umar's confessional statement about his "wives" after he joined the group in the Sambisa Forest raises questions about possible forced marriage, enslavement, and sexual violence. Similarly, Yahaya referenced engaging in a "love affair" with an abducted Chibok girl. Regardless of how the perpetrator characterized his relationship with the abducted girl, the statement should have been viewed as a basis for further investigation of possible sexual crimes committed by Yahaya.

#### *Breakthrough: Federal Republic of Nigeria v. Suleiman Garba Mohammed*

The 2023 prosecution and conviction of Suleiman Garba Mohammed marked a pivotal moment in Nigeria's journey toward accountability for SGBV linked to terrorism and demonstrated an innovative application of the TPA to address SGBV committed in the context of terrorism.

Federal prosecutors charged Garba Mohammed with acts of forced marriage, forced pregnancy, rape, and sexual slavery under the TPA, highlighting their linkages to Boko Haram's broader terrorist activities. Evidence, including his confessional statement and statements of witnesses, showed that Suleiman Garba Mohammed forcibly married and impregnated two abducted young women during Boko Haram's operations in the Lake Chad region.<sup>43</sup>

This case demonstrated an innovative application of the TPA for multiple reasons. First, as noted above, the TPA does not include express references to sexual violence or other gender-based crimes. For crimes such as forced pregnancy and rape, the federal prosecutors characterized the physical element of the crimes as an attack on a person within the meaning of the TPA. Second, owing to the institutionalization of forced marriage and enslavement in Boko Haram's operations, forcefully marrying the abductees and enslaving them, including as sexual slaves,

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<sup>43</sup> Ibid.

were all acts committed in furtherance of terrorism. Third, Garba Mohammed's crimes were not committed in isolation; they were to be considered as acts of terrorism because of the context in which they occurred and the group's objectives.<sup>44</sup> Finally, in the charges, the prosecutors highlighted the coercive environment of Boko Haram's enclaves to vitiate any questions about consent or requests for medical corroboration of sexual assault. This strategic approach not only secured a conviction but also set a precedent for future cases, which was part of the goal of the strategic litigation and mentoring sessions with members of the CCG.

The judge acknowledged the correlation between SGBV and terrorism in this case and, in delivering the judgment, emphasized the extensive repercussions of Garba Mohammed's crimes on the victims and society at large. His remorse could not mitigate the gravity of the case.<sup>45</sup> Garba Mohammed was sentenced to 345 years in prison. Significantly, each SGBV-related conviction received a 40-year sentence, surpassing any national sentence for sexual offences under the criminal codes and surpassing the sentences for other terrorism charges.<sup>46</sup>

### KEY LESSONS ON EFFECTIVE CAPACITY-BUILDING FOR JUSTICE AND ACCOUNTABILITY PROGRAMS FOR SGBV LINKED TO TERRORISM

The insights noted below are offered as points of reflection around key issues facing similar initiatives in the field of the rule of law, justice, and accountability generally, and more specifically in the context of the rule of law and accountability for crimes committed in the context of terrorism, including SGBV. They are informed by the author's observations and insights gained through engagement with stakeholders who provide, implement, and receive technical assistance.

#### *The Importance of Tailored Programs*

This first observation pertains to the design and implementation of capacity-building and technical assistance initiatives. A primary shortcoming in some international capacity-building efforts is the tendency to use a "one-size-fits-all" training model. Several programs, designed for global application, do not sufficiently consider the diverse cultural and legal contexts of their participants. This issue often leads to programs that are not only irrelevant to that specific context but may also be counterproductive. A top-down approach is often centered around international experts providing expertise and guidance to local counterparts, an assumption of universal applicability of their curricula, and a disregard or minimization of the unique backgrounds and needs of participants from different regions.

Adopting such a "cookie-cutter" approach to capacity-building and technical assistance initiatives is a surefire way to ensure its failure to achieve substantive outcomes for the target audience. As

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

obvious as this statement may seem, it remains an abiding practice in the rule of law and international development space, a practice that is changing, albeit at a slow pace. In addition, outcomes and success are frequently measured by the number of participants trained or the number of sessions held. This numbers-centric approach to defining success means that there is often no actual assessment of the impact and whether there were any lasting changes.

Power asymmetries are deeply embedded in donor-recipient relationships within capacity-building and technical assistance, particularly in rule of law programs and, notably, in the areas of counterterrorism, justice, and accountability. These asymmetries impact who ultimately shapes program agendas, how funds are allocated, and what priorities are pursued. According to Fukuda-Parr, Lopes, and Malik, the co-editors of *Capacity for Development: New Solutions to Old Problem*,<sup>47</sup> technical cooperation has mistakenly been framed as an equal partnership, yet in practice, the shift of control from recipients to donors is almost inevitable. As they observe, "[t]he shift of control and power from the intended beneficiaries of development interventions to the providers of aid has naturally resulted from the fact that the financing of development interventions comes inevitably from the supplier and not the receiver."<sup>48</sup> This concentration of power in the hands of donors can result, if care is not taken, in sidelining local perspectives on the type of support that is important and needed in the domestic context resulting in programs that may be more reflective of donor-driven priorities than those of the intended beneficiaries.

In this context, two concepts are worthy of note. The first is cognitive justice which is an ethical principle that asserts the diversity of knowledge and equality of all knowers.<sup>49</sup> This concept is offered as a way to design capacity-building interventions that challenge Global North-centric and "homogenising understandings of knowledge production."<sup>50</sup> The second concept is localization, which, adopting the definition by Mormina and Istratii, refers to "the process of recognising, respecting, and strengthening the leadership by local actors and their capacity to determine their own knowledge needs in order to better address their self-defined development priorities."<sup>51</sup>

Finally, the importance of national ownership and facilitating equitable platforms for knowledge sharing cannot be overstated. Empowering local stakeholders to take ownership of training outcomes is crucial for sustainable impact. For instance, engagement with stakeholders revealed that national counterparts, such as those in Iraq and Ukraine, play a critical role in tailoring and adapting training to fit local legal systems. The collaborative approach in Nigeria ensured that the training was not only tailored to the needs of national counterparts but also directly shaped by their input. Furthermore, establishing platforms where successful methodologies are shared with

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<sup>47</sup> Sakiko Fukuda-Parr, Carlos Lopes, and Khalid Malik, eds., *Capacity for Development: New Solutions to Old Problems* (Sterling, Va: Earthscan Publications, 2002), 11.

<sup>48</sup> Ibid.

<sup>49</sup> Shiv Visvanathan, "The Search for Cognitive Justice," *The ACU Review*, April 26, 2021, <https://www.acu.ac.uk/the-acu-review/the-search-for-cognitive-justice/>. See also, Maru Mormina and Romina Istratii, "'Capacity for What? Capacity for Whom?' A Decolonial Deconstruction of Research Capacity Development Practices in the Global South and a Proposal for a Value-Centred Approach," *Wellcome Open Research* 6 (May 26, 2021): 129, <https://wellcomeopenresearch.org/articles/6-129>.

<sup>50</sup> Maru Mormina and Romina Istratii, "'Capacity for What? Capacity for Whom?' A Decolonial Deconstruction of Research Capacity Development Practices in the Global South and a Proposal for a Value-Centred Approach," *Wellcome Open Research* 6 (May 26, 2021): 129, <https://wellcomeopenresearch.org/articles/6-129>.

<sup>51</sup> Ibid.

other jurisdictions can also enhance program outcomes. This peer-to-peer approach to technical assistance allows practitioners to learn from one another and consider ways to adapt strategies to their unique contexts.

### *The Importance of a Long-Term Commitment*

According to the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, within the counterterrorism space, there is a “pattern of ‘one -off’ and ‘train and equip’ interventions, which are rarely integrated into a holistic approach to justice, security, governance, and development at the national level, leaving underlying structures and injustices untouched and festering.”<sup>52</sup> A key insight from the Nigeria project is that, to be successful, a sustained approach to technical assistance is required in a consistent and reliable manner. As noted above, Wayamo’s interventions commenced in 2016, and through an inclusive process of consultation with local counterparts, the trainings and practical technical assistance were adjusted, reformulated, and redesigned to ensure they were realistic and met the technical and practical needs of the participants.

A long-term commitment can often be difficult bearing in mind donor funding cycles. Donors and implementing organizations may have short funding cycles (typically six months to a year) that limit the scope and depth of training programs. Expectations may also not match reality. Given that the investigation and prosecution of such systematic crimes are typically longer pushing to deliver immediate results may come at the expense of the interest of justice. Short funding cycles and unrealistic expectations, such as measuring the success of a one-year program by the number of prosecutions, are not reflective of the time-intensive nature of legal processes generally and more specifically with systematic crimes such as core international crimes and terrorism.

Without sustained engagement, knowledge gaps can emerge and in light of staff turnover, there can be a loss of institutional knowledge. For example, within the CCG there was staff turnover, which meant that the Umar Suleiman case was passed on to different lawyers. Without sustained engagement where several lawyers of the unit received the training there would have been a knowledge gap impacting the next steps in the case.

### *Addressing Capacity-Building Gaps Through Strategic Resource Allocation*

An essential step toward improving global accountability for SGBV in terrorism-related contexts is to map the prevalence of such crimes over the past decade and target capacity-building efforts and technical assistance accordingly. In an ideal world, resources would be allocated to countries where SGBV linked to terrorism is prevalent but under-prosecuted. However, a recurring theme in international capacity-building is the disconnect between donor priorities and the genuine needs of recipient countries, as funding is often connected to the political interests of donor

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<sup>52</sup> United Nations General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Fionnuala Ni Aolán, “Advancing Human Rights through the Mainstreaming of Human Rights in Counter-Terrorism Capacity-Building and Technical Assistance at the National, Regional and Global Levels,” A/76/261, August 3, 2021, 2, <https://documents.un.org/doc/undoc/gen/n21/214/17/pdf/n2121417.pdf>.

states and may not be targeted where it is needed the most. This discrepancy is particularly visible in conflicts with low visibility on the international stage, such as the Democratic Republic of Congo (DRC) and Sudan. By contrast, in high-profile conflict zones like Ukraine, resources are abundant, enabling more targeted and effective training.

To address these imbalances, it is essential to advocate for equitable support across regions based on need rather than visibility. This approach ensures that all affected regions receive adequate support, irrespective of their political prominence.

### ***The Importance of Mainstreaming SGBV Linked to Terrorism in Technical Capacity-Building Across All Programs Offered to Stakeholders***

This insight pertains to the design of technical assistance and capacity-building across the counterterrorism space to mainstream SGBV across a range of justice-related training programs, including in financial investigation units, rather than isolating them in specialized workshops or for a select group. This is connected to the importance of delinking SGBV from the perception that it concerns “women’s issues” or the broader women, peace, and security agenda. While women and girls are disproportionately impacted and targeted in the perpetration of SGBV, when used as a strategic tool in the agenda of the terrorist organization, it becomes imperative that the response – especially in counterterrorism accountability measures – is mainstreamed to ensure a holistic approach to accountability.

Research demonstrates that within the counterterrorism sphere, counterterrorism responses are still viewed from a masculinist lens<sup>53</sup> that oftentimes - despite the political acknowledgement and evidence to the contrary - does not see SGBV as a form and manifestation of terrorism. This portends a challenge to accountability as it then affects the prioritization on the international agenda which in turn affects prioritization at the national level and where resources are sent. Limiting technical assistance to specialized gender units would not achieve the desired effect if intelligence agencies, military investigators, and other actors at the forefront of the conflict are not equally equipped with the requisite knowledge and tools to investigate and collect intelligence on a broad range of terrorist activities, including SGBV as part of their regular work.

In the Nigerian example, as the training evolved and incorporated other justice sector actors, an SGBV component was included in practically every session including sessions for the Nigerian Security Forces (NSF). It became evident that mainstreaming SGBV across the range of justice-related training programs, rather than isolating this theme in specialized workshops, can normalize these topics and encourage practitioners to address them proactively contributing to

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<sup>53</sup> This means that these responses are often shaped by traditional, male-centered perspectives, assumptions, and priorities that can manifest in different ways including a focus on militarization, marginalization of soft power approaches such as community engagement, and overlooking the gendered dimensions of terrorism and counterterrorism. See Adejoké Babington-Ashaye, “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,” *Policy Brief*, Securing the Future Initiative, December 2022, [https://sfi-ct.org/wp-content/uploads/2022/12/SFI\\_Babington-Ashaye.pdf](https://sfi-ct.org/wp-content/uploads/2022/12/SFI_Babington-Ashaye.pdf).

a culture where justice and accountability for SGBV linked to terrorism is a natural and not exceptional rule of law response to terrorist activities.

### ***The Importance of Monitoring, Evaluation, and Accountability in Program Delivery***

A final insight is that the consistent monitoring and evaluation (M&E) of capacity-building programs is often not embedded in the development of such initiatives nor uniformly required by donors. However, M&E frameworks are essential for understanding whether training content is being applied effectively and whether the technical assistance offered is achieving the desired impact. Without these assessments, it becomes challenging to gauge long-term success or to adapt programs in response to evolving challenges.

## **COLLABORATIVE TECHNICAL PARTNERSHIP FOR ACCOUNTABILITY FOR SGBV IN MASS ATROCITIES: INSIGHTS FROM THE BABY PENDO CASE IN KENYA**

While not in the counterterrorism accountability space, another example of a collaborative approach to supporting national stakeholders in the prosecution of SGBV as an international crime can be found in the work of Partners in Justice International (PJI), an international human rights legal organization partnering to bring justice to victims of grave crimes, wherever they live.<sup>54</sup> Since 2019, PJI has worked in collaboration with the Office of the UN High Commissioner for Human Rights and UN Women, as an implementing partner supporting the Kenyan Office of the Director of Public Prosecutions (ODPP) and the Independent Policing Oversight Authority (IPOA) in prosecuting the first crimes against humanity trial in Kenya's national courts that addresses a range of crimes including SGBV. In 2019, the ODPP specifically requested PJI's assistance in investigating and preparing a prosecution case involving potential crimes against humanity committed by law enforcement officers during the 2017 General Elections.<sup>55</sup> The Kenya National Commission on Human Rights reported 94 deaths, 201 cases of sexual violence, and more than 300 injuries during this period, with the majority attributed to security forces.<sup>56</sup> Among these incidents was the murder of a six month old baby, Samantha Pendo,<sup>57</sup> and the case became known as the "Baby Pendo" case.

PJI's approach to technical partnership with the Kenyan prosecutors and investigators incorporated extensive training and accompaniment as the case was developed.<sup>58</sup> For example, instead of one-time training the PJI approach involved sustained and active engagements such

<sup>54</sup> Partners in Justice International, "Vision, Mission, History," <https://partnersinjustice.org/who-we-are/vision-mission-history/>.

<sup>55</sup> Partners in Justice International, Press Statement: Baby Pendo Case, October 2022, <https://partnersinjustice.org/wp-content/uploads/2022/10/Press-statement-Baby-Pendo.pdf>. See also, JusticeInfo.net, "What Can Kenya's First Case for Crimes Against Humanity Achieve?" November 14, 2022, <https://www.justiceinfo.net/en/108764-kenya-first-case-crimes-against-humanity.html>.

<sup>56</sup> Office of the High Commissioner for Human Rights (OHCHR), Kenya: Türk Welcomes Charges for Crimes Against Humanity in 2017 Post-Election Violence, October 24, 2022, <https://www.ohchr.org/en/press-releases/2022/10/kenya-turk-welcomes-charges-crimes-against-humanity-2017-post-election>.

<sup>57</sup> Ibid.

<sup>58</sup> Partners in Justice International, *The Baby Pendo Case*, <https://partnersinjustice.org/resources/stories/baby-pendo/>; Interview with PJI Founding Co-Directors, I. Maxine Marcus and L. Kathleen Roberts, November 19, 2024.

as working with the ODPP on important aspects of the case (e.g., reviewing witness statements, identifying gaps, and discussing strategies). This ensured the prosecutors received hands-on support as they built their case. PJI's approach is grounded in the principle of being a trusted peer for those navigating uncharted territory, such as the first lawyer or investigator bringing a groundbreaking case in their country. Thus, rather than a top-down approach where solutions are dictated, this peer-to-peer dynamic builds trust and openness and mirrors the collaborative relationship of colleagues working side by side sharing challenges and strategies.

PJI also assisted in building strong partnerships with civil society organizations including those providing victims with legal representation, facilitating their effective engagement with the ODPP in building the case. These partnerships allowed the prosecutors to benefit from the expertise and knowledge of the civil society organizations and victim representatives and also ensured a victim-centered approach to case building process.

On 28 October 2022, the ODPP filed charges that included murder, torture, rape, and other forms of sexual violence as crimes against humanity under the Kenyan 2008 International Crimes Act which enables domestic accountability for international crimes.<sup>59</sup> Almost two years later, in a landmark ruling in July 2024, the Kenyan High Court determined that twelve accused police officers must face charges in the “Baby Pendo” case dismissing the accuseds’ challenge to the court’s jurisdiction.<sup>60</sup> Although the case is still pending, there are noteworthy markers of success. It is the first case addressing sexual violence connected to post-election violence in Kenya. It is also the first set of charges of crimes against humanity before a Kenyan court, and the first case that invokes command responsibility as a mode of liability for sexual violence and other serious crimes. Finally, regardless of the outcome of the case, it is important to recognize that a core group of prosecutors, investigators, and legal representatives for victims are now equipped and prepared to handle cases of sexual violence using the international criminal law framework in Kenya. This significant achievement was made possible through support and technical partnership that respected the ownership and autonomy of Kenyan justice actors in driving and shaping the case.

## CONCLUSION

Nigeria’s efforts to prosecute SGBV by Boko Haram as a terrorist offence mark a substantial advancement in combatting impunity. By using the TPA to address these crimes, federal prosecutors have demonstrated and applied innovative legal strategies to overcome the varied legal challenges they faced. The Nigerian experience also reveals key components that have contributed to the success of its justice and accountability capacity-building programs. Successful initiatives in these areas depend on thorough needs assessments, careful participant selection, quality resource persons, well-designed curricula, and sustained mentorship. Tailoring programs

<sup>59</sup> Republic of Kenya, *International Crimes Act*, No. 16, December 2008, <https://new.kenyalaw.org/akn/ke/act/2008/16/eng@2023-12-11>.

<sup>60</sup> Bruhan Makong, “High Court Issues Arrest Warrant for Senior Police Officer Linked to Baby Pendo’s Death.” *Capital FM Kenya*, October 4, 2024, <https://www.capitalfm.co.ke/news/2024/10/high-court-issues-arrest-warrant-for-senior-police-officer-linked-to-baby-pendos-death/>; Citizen Digital, “Police Officers Linked to Death of Baby Pendo to Be Charged with Murder, Rape, and Torture,” October 28, 2022, <https://www.citizen.digital/news/police-officers-linked-to-death-of-baby-pendo-to-be-charged-with-murder-rape-and-torture-n308304>.

to local contexts, fostering teamwork, cultivating political support, and ensuring practical resources are vital for achieving meaningful and lasting impact.

Lessons from the technical assistance and capacity-building initiatives engaging the relevant Nigerian stakeholders highlight that to be effective, these initiatives must go beyond merely delivering content and checking boxes. They must be collaborative, centered on the needs of the recipients, sustained over an adequate period of time, and promote cognitive justice.

Finally, it should be noted that while Nigeria's successful prosecution of SGBV committed by Boko Haram within the framework of its terrorism legislation represents a significant milestone, isolated successes should not be mistaken for comprehensive progress in accountability for SGBV linked to terrorism. Singular cases, though notable, do not signal broad and systemic change globally. Instead, these achievements should serve as valuable learning opportunities, guiding efforts to replicate and scale successful strategies in varied contexts. This Issue Brief aims not only to celebrate a moment of progress in the fight to ensure accountability for SGBV linked to terrorism but also to inspire further action globally. The case against Garba Mohammed demonstrates that accountability is achievable with the right combination of legal tools, technical assistance, and multilateral support and attention. It serves as a call for the international community to build on this foundation and ensure that justice for survivors of SGBV linked to terrorism becomes the rule, not the exception.

### **Recommendations:**

- **Donors and implementing organizations should prioritize consistent, support-focused support over sporadic training sessions to encourage sustainable capacity-building outcomes.** Regular and personalized mentoring built on trust and informed by local needs has the capacity to enhance long-term impact. Trust can be built through the inclusive design of interventions that focus on the needs identified by the beneficiaries themselves, are context-specific and culturally sensitive, emphasize capacity transfer, and prioritize partnership and empowerment. Achieving this requires sustained, long-term engagement supported by regular and transparent communication channels.
- **Donors and implementing organizations should avoid overtraining and non-best practices by focusing on relevant, high-quality training that are culturally sensitive, tailored to local needs, and avoids a one-size-fits-all approach.**
- **Donors and implementing organizations should prioritize cognitive justice by fostering cross-learning environments that avoid a one-directional, Global North-to-South approach.** Instead, capacity-building efforts should create equitable platforms for mutual knowledge exchange, enabling practitioners from diverse jurisdictions to share investigative and litigation strategies and learn from each other's experiences. Building a global community of practice, where local expertise and innovative methods are equally

valued and shared, will ensure that technical assistance reflects diverse perspectives and strengthens international collaboration.

- **In light of the challenges posed by limited and short-term funding for technical assistance for effective SGBV investigations and prosecutions, alternative and sustainable investment models could be explored.** Creating an investment trust dedicated to supporting justice initiatives related to SGBV in terrorism contexts would allow for continuous, substantial funding. Drawing on models such as the Children's Investment Fund Foundation and the UN Trust Fund for Human Security, such a trust could leverage private investment expertise and generate ongoing financial returns that are invested in projects in low-visibility countries most in need of the support to build capacity towards greater accountability for SGBV linked to terrorism.
- **National prosecutors could consider developing SGBV-specific prosecutorial guidelines as part of terrorism cases, ensuring these crimes are recognized, appropriately classified, and mainstreamed across investigations.** These protocols could highlight the importance of context, emphasize the link between terrorism and SGBV, and guide prosecutors in addressing any evidentiary challenges.

*Adejoké Babington-Ashaye is a Senior Research Fellow at The Soufan Center, focusing on legal and criminal justice responses to terrorism, including in Africa, and with a focus on accountability for sexual and gender-based violence.*



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## Project Resources, Publications, and Events

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