

AN OVERVIEW OF THE IMPACT OF SEXUAL AND GENDER-BASED VIOLENCE ON MENTAL AND REPRODUCTIVE HEALTH: EXAMINING THE LEGAL FRAMEWORK, WITH A VIEW OF BRINGING PERPETRATORS TO JUSTICE.

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ABSTRACT

In recent times women have been seen by members of terrorist groups as objects used to satisfy their sexual urges, render domestic services, act as spies, recruits, suicide bombers or used in trafficking light arms and ammunitions. Prior to this period most common types of sexual violence were imbedded in harmful cultural practices such as female genital mutilation or early child marriage. Other forms of sexual violence are in forms of gang rape by armed robbers and cultist in the Southern part of Nigeria or members of terrorist groups, in the Northern part of Nigeria. Most times victims do not report such violence against them because of societal norms and stigmatization, hence perpetrators are not brought to justice. The resultant effect is that victims are often traumatized which in turn affect their mental health. Their reproductive health is not equally spared as most victims end up with vesico vagina fistulae (VVF) and in extreme cases die from complications as a result of the violation. The general aim of this paper is to examine the impact of sexual based gender violence on the victims mental and reproductive health, specific emphasis will be on sexual violence committed by terrorist groups in armed conflict while examining the legal framework available to a victim for redress. The paper will conclude with recommendations for restorative justice for victims of SGBV, proffer solutions on how perpetrators can be identified and brought to justice.

Keywords: Sexual based gender violence (SGBV), Female genital mutilation (FGM), mental health, reproductive health.

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Introduction

Sexual and gender based violence (SGBV) has been on the rise worldwide. Women and men, boys and girls are among the victims of acts of terrorism, ranging from hostage taking, human trafficking, suicide bombing, attacks in public places or aeroplane hijacking etc. In South-south Nigeria there has been a remarkable increase amongst family members, neighbours and members of cultist groups.² While in the North-east SGBV offences has been perpetrated by members of terrorist group such as Boko Haram, bandits and headsmen. A lot of women and girls in the Northeast of Nigeria have been kidnapped, some trafficked in exchange for money while the others are forced into marriages to fulfil sexual desires.³ These victims are often gang raped and sometimes pregnancy occur. The resultant effect of a gang rape is that unless a DNA is conducted no one can be sure of who is the actual father of the child. Another form of gender based violence not often talked about is the female genital mutilation which is embedded in cultural practice/belief. A common practice in the Northern part of Nigeria is the giving out of under aged girls in marriage as a means of settlement of debts owed by parents or based on cultural practices. Such girls are sexually violated by men old enough to be their fathers and when pregnancy occurs little or no medical attention is given to these girls.

Having identified some of the factors responsible for sexual and gender-based violence, the paper examines the impact of sexual based gender violence on the victim's mental and reproductive health. In order to achieve this aim the following research questions are asked. What are the existing legal framework for the prosecution of perpetrators of this act? What remedies does the law provide for the compensation and restorative justice for the victims of SGBV? What are the gaps in existing laws and how can the law be amended to be more effective? In an attempt to answer the above questions, the criminal justice system provides that perpetrators of crimes should be arrested, investigated, prosecuted and convicted if there are sufficient evidence to prove the crime committed by them.⁴ The significance of the study is the move away from the punitive system of justice which only seeks to punish the offender to the restorative

².Impact of the Boko Haram insurgency in the Northeast, available at <https://www.conflictandheath.biomedcentral.com>, accessed on 12th June 2020

³ Miller, J. and Mullins, C. Feminist Theories of Girls' Delinquency in *The Delinquent Girl* edited by M. Zahn. Temple University Press, Philadelphia, Public Law Review Vol. 3, 2009, p. 289.

⁴ Geraldine Okafor, Bringing Perpetrators of Sexual and Gender-based Crimes Committed by Terrorist Groups to Justice, being a paper presented at National Association for Women Judges Nigeria in collaboration with UNODC on Gender Dimensions of Criminal Justice Responses to Terrorism, 6th March 2020, Owerri.

system of justice which seeks to provide for the victim of crime. The United Nations General Assembly Declaration of Basic Principles of Justice makes provisions that victims of crime should be adequately provided for. Beyond the criminal justice system is the restorative justice system, which provides for reparations for victims, such as monetary compensation, medical, psychological and social care in a therapeutic manner.

The paper identifies that one of the challenges that hinder victims of SGBV offences from coming forward to seek justice is embedded in culture and stigma. Hence in its conclusion the paper recommends sensitization and reorientation by women based non-governmental agencies in collaboration with the Federal Ministry of Women Affairs. The paper further recommends in addition to the criminal justice system which seeks to punish the offender, restorative and restitutive justice for victims of SGBV, while proffering solutions on how perpetrators can be identified and be made accountable for their offences.

Clarification of concepts

Sexual and gender-based violence (SGBV)

Sexual and gender-based violence (SGBV) such as rapes, forced marriage, sexual slavery are violence perpetrated against a woman without her consent.⁵ These acts can inflict physical, mental or psychological harm against a victim and in some extreme cases cause death. Acts of Sexual and gender-based violence are not against one gender. It can be perpetuated against men, women, girls and boys. It is a violation of a person's right against torture and inhuman treatment. SGBV can be divided into two, namely;

- a. Gender-based violence
- b. Sexual based violence

Gender-based violence is a form of violence perpetuated against a person based on their gender stereotype. For example, acts of physical violence, domestic violence and harmful traditional practices such as Female Genital Mutilation (FGM) or forced marriage.

Sexual based violence encompasses any sexual act, attempt to obtain a sexual act or acts otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim.⁶ Sexual violence takes multiple forms and includes rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion,

⁵ Geraldine Okafor, Bringing Perpetrators of Sexual and Gender-based Crimes Committed by Terrorist Groups to Justice, being a paper presented at National Association for Women Judges Nigeria in collaboration with UNODC on Gender Dimensions of Criminal Justice Responses to Terrorism, 6th March 2020, Owerri.

⁶ *ibid*

forced prostitution, sexual enslavement, forced circumcision, castration and forced nudity.⁷

Sexual and gender-based violence are widespread human rights violation which is often linked to unequal gender relations within communities. Men and boys are also subjected to SGBV in armed conflict situations by terrorist groups, a phenomenon that is hardly reported.⁸SGBV has been systematically used as a strategy to achieve certain goals by terrorist organisations and in most of the cases, this violence in times of conflict continues to be disproportionately perpetrated against women and girls.⁹

The Convention on the Elimination of All forms of Discrimination against Women, recognised gender based violence as a violation of international human rights law.¹⁰ The Beijing Platform for Action identified sexual and gender-based violence, including physical and psychological abuse, trafficking in women and girls, and other forms of abuse and sexual exploitation as placing girls and women at high risk of physical and mental trauma, disease and unwanted pregnancy.¹¹

Female Genital Mutilation (FGM)

It can be defined as “partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.”¹² Female genital mutilation (FGM) is defined by the World Health Organization (WHO)¹³ as “all procedures which involve partial or total removal of the external female genitalia and/or injury to the female genital organs, whether for cultural or any other non-therapeutic reasons.” Akande defines FGM as “the removal of the clitoris sometimes with adjacent parts of the labia majora.”¹⁴ Others define Female genital mutilation as “a destructive operation, during

⁷ Ibid.

⁸ See Gender Dimensions of Criminal Justice Responses to Terrorism in Nigeria, UNODC Workshop, p. 23, 2017.

⁹ Office of the High Commissioner for Human Rights, Sexual and gender-based violence in the context of transitional justice, 2014.

¹⁰ General Recommendation Number 19 of the UN Committee on the Elimination of Discrimination against Women integrates gender-based violence as a form of discrimination.

¹¹ Beijing Declaration and Platform for Action paragraph Adopted at the 16th plenary meeting, on 15 September 1995; for the discussion, see chapter V.

¹²Mandara Mairo Usman, Female genital cutting in Nigeria: View of Nigerian Doctors on the Medicalization Debate (Shell-Duncan and Hernlund, 2000) p. 95.

¹³ World Health Organization, Female Genital Mutilation: An Overview, Geneva, World Health Organization, 1998.

¹⁴ Ibid.

which the female genitals are partly or entirely removed or injured with the goals of inhibiting a woman's sexual feelings."¹⁵

The practice of female genital mutilation/cutting (FGM/C) harms the physical, psychological, reproductive and sexual health of women and it is a violation of women's fundamental human rights. As Steinem¹⁶ puts it, people are mostly concerned about the physical/medical harms without referring to the social and psychological effect of such terrible crime. There is no medical benefit for FGM rather it is done to suppress a woman's sexual urge. When compared with male circumcision, Steinem further contends¹⁷ that victims are likely to have psychiatric disorders, anxiety, somatisation (the production of recurrent and multiple medical symptoms with no discernible organic cause), phobias, low self-esteem, and depression. Nussbaum¹⁸ argues that the key moral and legal issue with FGM is that it is conducted on children using physical force. Obermeyer argues that FGM may be conducive to women's well-being within their communities in the same way that procedures such as breast implants, rhinoplasty and male circumcision may help people in other cultures.¹⁹

Austrian-American feminist Fran Hosken²⁰ who coined the term Female Genital Mutilation²¹ was uncompromising in her criticism, calling FGM a "training ground for male violence" and the women "mentally castrated." She accused women birth attendants who practice FGM of "participating in the destruction of their own kind." She argued that infibulation "teaches male children that the most extreme forms of torture and brutality against women and girls is their absolute right and what is expected of real men."²²

¹⁵ James Stanlie M, Female Genital Mutilation, in Bonnie G. Smith (ed), *The Oxford Encyclopedia of Women in World History*, (Oxford University Press, 2008), pp. 259-262.

¹⁶ Gloria Steinem, "The International Crime of Genital Mutilation," *Ms. Magazine*, March 1980, p. 65, <<http://www.who.int/mediacentre/factsheets/fs241/en/>> accessed on 21 February 2019.

¹⁷ *Ibid.*

¹⁸ Martha Nussbaum, *Judging Other Cultures: The Case of Genital Mutilation*, *Sex and Social Justice*, Oxford University Press, 1999, p. 119.

¹⁹ Obermeyer Carla, *Female Genital Surgeries: The known and the unknown*, *Medical Anthropology Quarterly*, 31(1), 1999, pp. 79–106 (hereafter Obermeyer 1999), p. 82

²⁰ Hosken, Fran. *The Hosken Report: Genital and Sexual Mutilation of Females*, Women's International Network, 1979, cited in Johnsdotter and Essen, 2010, p. 31. 1920–2006) – Hosken founded the Women's International Network in 1975 – began researching FGM in 1971 and in 1979 published *The Hosken Report: Genital and Sexual Mutilation of Females*, coining the term *female genital mutilation*.

²¹ Boyle, Elizabeth Heger. *Female Genital Cutting: Cultural Conflict in the Global Community*, Johns Hopkins University Press, 2002. P. 25

²² Hosken, Fran. *The Hosken Report: Genital and Sexual Mutilation of Females*, Women's International Network, 1979, cited in Johnsdotter and Essen, 2010, p. 31.

Clitorectomy is considered one of the rites of passage for young women into adulthood but basically aimed at rendering women sexually subordinate to men since it is claimed that it reduces sexual pleasure and thereby renders women less vulnerable to promiscuity.²³

Reproductive Health

Reproduction is the process of bringing a young one into life. Therefore reproductive health concerns all the activities before conception through gestation and delivery. It is important for the female body which carries the embryo to be healthy as anything that affects the birth channel can invariably affect the health and life of the carrier that is the female. Reproductive health include sexual health. It refers to a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity in all matters relating to the reproductive system and to its functions and processes.²⁴ While it is difficult to express a comprehensive agreed definition, major components of reproductive and sexual health and rights include reproductive decision making, equality and equity for women and men, and sexual and reproductive security.²⁵ Reproductive security relates to protection from all forms of gender-based violence such as FGM, sexual harassment, marital violence and rape, as well as physical and emotional security.

The Protocol on the Right of Women in Africa²⁶ is one of the key instruments for advancing reproductive and sexual health rights in Nigeria. The existing National Reproductive Health Policy and Strategy of 2001 provides that government shall make mandatory provisions of maternal health services to all women to protect them against disabilities such as Vesico Vaginal Fistula (VVF), FGM and other harmful traditional

Joseph Khan and Fran Hosken, Activist for Women's issues globally, *The Boston Globe*, 12 February 2006.

American feminist Gloria Steinem wrote in similar terms about FGM in "The International Crime of Genital Mutilation" for Ms. Magazine in 1980. See Steinem, Gloria. "The International Crime of Genital Mutilation," Ms. Magazine, March 1980, p. 65, and *Outrageous Acts and Everyday Rebellions*, Henry Holt & Co, 1984 (hereafter Steinem 1984), p. 317.

In 1982 Sudanese physician Asma El Dareer, herself a victim of FGM, published an influential study of FGM in Sudan, *Woman, Why Do You Weep? Circumcision and its Consequences*.

²³ Ibid Gloria Steinem.

²⁴ Mosope Fagbohungebe, Disability and Reproductive Health in Nigeria in the Rights of Persons with Disabilities Epiphany Azinge and Chinyere Ani (ed.) (Nigerian Institute of Advanced Legal Studies), p. 7.

²⁵ Ibid no. 42.

²⁶ In July 2003, the African Union adopted the Protocol, and it came into force in Nigeria on November 25, 2005.

practices.²⁷ The policy in an attempt to protect women from FGM provided for the elimination of harmful traditional practices that affect the health of girls and women.

Domestically, the Constitution²⁸ being the supreme law of the land contains provisions under sections 17 and 33 to 45 that are relevant for the promotion and protection of reproductive health and rights in Nigeria. In addition, section 54 of the Nigerian labour Law, Chapter 21 and Part 5 of the Criminal Code, and sections 18 of the Marriage Act as well as 3 of the Matrimonial Causes Act, contain relevant but controversial provisions relating to reproductive health and rights. Further, there are equally relevant International and State legislation on the prohibition of various forms of discrimination²⁹ and violence against women and the girl-child.³⁰

Theoretical framework

Acts of terrorism can at least on their face be gender neutral. The hijacking of a commercial flight to press political demands, an attack on a tourist resort by an armed commando, or an explosive attack in a crowded market, are examples of gender neutral violence. However within the last twenty years terrorist groups such as Isis, Boko Haram and ISIL/Daesh has engaged in sexual and gender based violence (SGBV) to attain their objectives. The impact of terrorist activities has therefore become highly gendered in recent times.³¹ Terrorist groups carry out violent actions intentionally against women, encroach on their human rights and thus hinder their socio economic development.³²

Women disproportionately undergo internal displacement due to terrorist threat or lose financial stability due to terrorist attacks that cause an environment of fear and insecurity. Besides, women may have difficulties accessing regular courts and seeking remedies for the violations and abuses they suffer. In the Nigerian context in particular,

²⁷ Muhammed Tawfiq Ladan, Review of Existing Reproductive Health Policies and Legislations in Nigeria, A paper presented at a one - day Stakeholders' forum on Reproductive Health in Nigeria. Organized by the Independent Policy group, Abuja. 20th April, 2006.

²⁸ The 1999 Constitution of the Federal Republic of Nigeria 1999.

²⁹ Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

³⁰ Furthermore, the provisions of the National Reproductive Health Policy and Strategy of 2001, the National Policy on HIV/AIDS, 2003, the National Policy Health Policy and Strategy, 1998 and 2004, National Policy on Women, 2000 and 2004, National Policy on the Elimination of Female Genital Mutilation, 1998 and 2002, the National Adolescent Health Policy, 1995, National Policy on Maternal and Child Health, 1994, and the National Policy on Population for Development, Unity, Progress and Self-reliance, 1988 and 2004, constitute the key policy frameworks that seek to achieve quality reproductive and sexual health for all Nigerians.

³¹ See Gender Mainstreaming in the work of UNODC, 2019.

³² Naureen Chowdhury Fink, Sra Zeiger & Rafia Bhulai, A Men's World? Exploring the Roles of Women in Countering Terrorism and Violent Extremism, 2016, p. 7.

since SGBV against women is being used as a tactic by Boko Haram combatants, a proper response by the criminal justice system is required.³³

Violence against women has been classified as a form of discrimination against women. Discrimination against women is prohibited under Nigerian law³⁴ and International Human Rights law.³⁵ The United Nations Security Council have stated that “victims of sexual violence, committed by terrorist groups should be classified as victims of terrorism.”³⁶ International humanitarian law prohibits sexual violence. Sexual and gender based violence offences were not among the offences envisaged by the international conventions and protocols against terrorism until very recently.³⁷

The Rome Statute recognises rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization as crimes against humanity. Sexual and gender based violence offences have however, since the first cases before the International Criminal Tribunal for the Yugoslavia (ICTY) and the International Criminal Court (ICC), been addressed by international criminal justice.³⁸ Rape and enslavement as war crimes and crimes against humanity have been prosecuted in numerous cases before the ICTY and ICTR. The ICC Statute criminalizes sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity.³⁹

It is important to state here that Nigeria is yet to domesticate the offences in the ICC Statute. Nigerian criminal law however, criminalize offences such as rape and trafficking in persons. Victims of crime are entitled to remedies, such as restorative and restitutive justice including perpetrators being prosecuted before the criminal justice system and

³³ Jacob Zenn & Elizabeth Pearson, Women, Gender and the evolving tactics of Boko Haram, 2014, p. 52: International Alert & UNICEF, ‘Bad Blood’: Perceptions of children born of conflict-related sexual violence and women and girls associated with Boko Haram in northeast Nigeria, 2016, p. 6

³⁴ See section 42 of the 1999 Constitution Federal Republic of Nigeria.

³⁵ Although the Nigerian Terrorism Prevention Act 2011 and the Terrorism Prevention (Amendment) Act 2013 do not contain any Sexual and gender base violence related offences but it prescribes punishment for terrorism offenders.

³⁶ See UN Resolution 2331 of 2016.

³⁷ See UN Security Council resolutions dealing with terrorism.

³⁸ Article 1 of the Rome Statute states that the ICC “shall be complementary to national criminal jurisdictions.” To give effect to this principle, the ICC may only exercise jurisdiction where a state is “unwilling or unable” to genuinely carry out the prosecution of an international crime within the Court’s jurisdiction. Rome Statute, Art. 17. For a discussion of the principle of complementarity in relationship to the Democratic Republic of Congo, Uganda, and Kenya, see Open Society Justice Initiative, Putting Complementarity into Practice: Domestic Justice for International Crimes in DRC, Uganda and Kenya (New York Open Society Foundation 2011)

³⁹ Ibid.

were found guilty sentenced accordingly. Under domestic and international legal framework there is the question on what punishment will be most appropriate for a particular offence. Further questions arise as to under what law should an offender be prosecuted in order to obtain adequate sanctions and bring justice to victims of sexual and gender based offences committed by members of terrorist group. But beyond justice there should be provisions for reparations, such as monetary compensation, medical, psychological and social care should be provided for victims.⁴⁰

Examining some cases of Sexual and gender based violence

In the case of *Ochanya Ogbanje*, the deceased was 8 years old when her aunt, wife and mother of the accused persons approached her parents to release their daughter to leave with her husband who was a lecturer with Benue Polytechnic Ugboko so that she can further her education. Sadly both father (Andrew) and son (Victor) had unlawful carnal knowledge of the deceased for 5 years, when she suddenly fell ill to a disease later diagnosed as Vesico-Vaginal fistula (VVF). Doctors confirmed that there had been forced penetration in both her private part and anus. After the death of Ogbanje both father and son were arrested but sadly the case have not made much progress within the last 3 years. In *Ese Oruru's* case the girl was abducted by one Dahiru from Yenagoa in Bayealsa State he took her to his home state, Kano, where he forcibly converted her into Islam.

The minor, who was 14 years old at the time of the incident, was raped, resulting in pregnancy. She was eventually rescued by the police in February 2016 and brought back to Yenagoa in early March, where she gave birth to a baby girl in May of the same year. The abductor Dahiru on March 8, 2016 was arraigned before the Federal High court on a five count charge bordering on criminal abduction, illicit intercourse, sexual exploitation and unlawful carnal knowledge of a minor. He was also accused of abducting Oruru by means of coercion, transported and harboured her in Kano State and thereby committed an offence punishable under section 13(2)(b) of the Trafficking in Persons (prohibition) Enforcement and Administration Act, 2015.

Dahiru also faced the trial for inducing Oruru by the use of deception and coercion to go with him from Yenagoa to Kano State with intent that she be forced or seduced into illicit intercourse and thereby committed an offence punishable under section 15(a) of the Trafficking in Persons (prohibition) Enforcement and Administration Act, 2015. He was further accused of procuring Oruru and subjecting her to sexual exploitation in Kano

⁴⁰ Rome Statute of the International Criminal Court, adopted July 17, 1998, 2187 U.N.T.S. 90, 37 I.L.M. 1002 (entered into force July 1, 2002) ("Rome Statute"). Available at <http://untreaty.un.org/cod/icc/statute/romefra.htm>.

State and thereby committed an offence punishable under section 16(1) of the Trafficking in Persons (prohibition) Enforcement and Administration Act, 2015. Dahiru was accused of having unlawful carnal knowledge of Oruru without her consent and thereby committed an offence contrary to section 357 of the Criminal Code Act and punishable under section 358 of the Criminal Code Act, Cap. C.38 laws of the Federation of Nigeria, 2004.

On May 2020, A Federal High Court sitting in Yenagoa, Bayelsa State capital, the trial judge acquitted the accused on count one but found him guilty on counts two, three, four and five. She, therefore, sentenced Dahiru to 26 years imprisonment, five years in prison for count two and seven years each for counts three, four and five and that the sentence would run consecutively. In the case of five Unilag students charged on a four count charge for defilement of a child, permitting defilement of a child, procuration and sexual assault. The defence counsel argued that the complainant was not a naïve 17 years old giving the history of her social life status.⁴¹

In recent years, security officials have carried out several undercover operations targeting suspected baby trafficking cartels whose operations, the Enugu state government said are aided by some security agencies and unscrupulous state officials. To avoid suspicion in the local community, baby factories are often presented as orphanages. Most operators of such baby factories recruit their victims from internally displaced persons (IDP) camps. While promising such unsuspecting girls of domestic help jobs end up housing them in homes where unknown men use them as sex slaves until they get pregnant. Once delivered of their babies the girls are given little stipends and sent away blindfolded from the home so that they cannot be able to come back to the homes for their babies or report them to the security agencies.

“Baby factory operators hide under the ‘canopy’ of orphanages.” Married people who are unable to have children of their own patronise such homes for adoption. Some of them either do not know or do not care that they are not really orphans. Male children are often sold for between 700,000 naira (about \$2,000) to one million naira (about \$2,700) while female babies are sold for between 500,000 naira (about \$1,350) and 700,000 naira. NAPTIP has arrested and prosecuted a number of people involved in the sale of babies in the southeast in recent years. There are currently around half a dozen cases going through the court system. NAPTIP now works in collaboration with the

⁴¹ Accessed at: <https://www.vanguardngr.com/2019/12/allegedly-gang-raped-unilag-student-wasnt-naive-defendant/>

association of orphanage homes operators in the entire southeast to identify, arrest and prosecute such people.

There is no official data to show how many babies are bought and sold each year in Nigeria, nor the number of girls exploited by human traffickers. The United Nations estimates, however, that “about 750,000 to one million persons are trafficked annually in Nigeria and that over 75 percent of those trafficked are trafficked across the states, 23 percent are trafficked within states, while 2 percent are trafficked outside the country.”

COVID-19 and Gender Violence

COVID-19 seems to be similar to the pandemics in the past since this too has resulted in an increase in cases of gender based violence. According to Bradbury-Jones and Isham,⁴² the lockdown imposed to deal with COVID-19 has granted greater freedom to abusers. Several media reports indicate a surge in cases of domestic violence in various countries.

Nigeria like other countries of the world witnessed an unprecedented account of sexual violence during the Covid 19 lockdown. In Benin the Edo State capital a 22 years old University of Benin undergraduate named Uwavera Omozuwa was gang raped and killed in a church where she used to go to read.

Women and girls are particularly vulnerable, requiring significantly different protection than men and boys. Prevention and protection from gender-based sexual violence need to be addressed from the outset of a crisis. Rape as a tactic of war is particularly egregious violation linked to the social status of women and girls and their vulnerability. Girls who are abducted and given as ‘wives’ to soldiers are forced to serve as sexual slaves. Grave concern for such gross violations was expressed by the UN Secretary-General, who stated that he deplored “the fact that sexual and gender-based violence continues to be used as a weapon of war in African conflicts... [and that] gender-based violence has reached almost epidemic proportions.” He added, “Every effort must be made to halt this odious practice and bring the perpetrators to justice.”⁴³

⁴² Bradbury-Jones C, and Isham L. The pandemic paradox: The consequences of COVID-19 on domestic violence. *J Clin Nurs.* (2020) 29:2047–49. : <https://gbvguidelines.org/wp/wp-content/uploads/2020/03/vawg-helpdesk-284-COVID-19-and-vawg.pdf> (accessed November 26, 2020).

⁴³ United Nations, ‘Africa cannot develop unless women exercise real power says Secretary-General in message to Addis Ababa session’, SG/SM/9408, AFR/991, Press Release, United Nations, New York, 6 July 2004. 20 United Nations, Declaration on the Elimination of Violence against Women, A/RES/48/104, United Nations, New York,

The severity of all forms of gender-based violence has been emphasized by the highest levels of the international community over the past decade. In a 1993 resolution, the UN General Assembly declared that prohibiting gender discrimination includes eliminating gender-based violence and that States must eliminate violence against women.⁴⁴ The Committee on the Elimination of Discrimination against Women enumerated a wide range of obligations for States to combat sexual violence, including ensuring appropriate treatment for victims in the justice system, offering counselling and support services, and providing medical and psychological assistance to victims.⁴⁵ Protection of children from sexual violence is recognized in the Convention on the Rights of the Child, which requires States parties to protect children from all forms of physical or mental violence, injury or abuse, including sexual abuse.⁴⁶

There are numerous reports by governmental, inter-governmental and non-governmental organizations, academic researchers and journalists, regarding sexual and gender based violence perpetrated by members of Boko Haram. The following extract from a 2015 report of the UN High Commissioner for Human Rights on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries provides an overview of the SGBV related violations committed by Boko Haram. Since 2009, Boko Haram has continued to subject women and girls to widespread and severe abuses, including sexual slavery, sexual violence, forced marriages, forced pregnancies and forced conversions. The group justifies such practices by its concept of the role of women and girls in the society. In one video message in which the group claimed responsibility for the abduction of the Chibok girls, Shekau stated that:

God instructed me to sell them, they are his properties and I will carry out his instructions". In another message, he spoke of abducted girls as "spoils of war."⁴⁷

One woman interviewed by OHCHR said she was coerced into marriage when Boko Haram attacked her village, and said that "they came back after killing the men and boys and told me that an Imam in their group would preside over the marriage ceremony".

⁴⁴ December 1993.

⁴⁵ United Nations, Committee on the Elimination of Discrimination against Women, Violence against Women, General Recommendation no. 19, UN document CEDAW/C/1992/L.1/Add.15, United Nations, New York, 1992.

⁴⁶ The Convention on the Rights of the Child, article 19 (1).

⁴⁷ Brock Joe, "Nigeria sect leader defends killings in video". Reuters Africa. Thomson Reuters, accessed 2021-01-24. Jacinto, Leela (2021-01-13). "The Boko Haram terror chief who came back from the dead "Shekau Resurfaces, Accuses New Boko Haram Leader al-Barnawi of Attempted Coup". <http://af.reuters.com>

OHCHR received reports of younger girls being married off to fighters and older women forced to work as cooks and cleaners.⁴⁸

Victims of sexual violence become social pariahs. Upon rescue or return from captivity they are rejected by their husbands, families and communities, and face impoverishment and humiliation. One of such women interviewed was forced to relocate to Bama, where she sold avocados and struggled to support herself and her six children after she was rejected by her husband and community. Another woman who had been raped by several combatants became pregnant and was forced to flee to Goma, where she lived in the ruins of destroyed houses and eked out a living by transporting heavy loads.⁴⁹

Psychosocial counsellors in northeast Nigeria confirm widespread sexual violence against women and girls held by Boko Haram. One counsellor reported that a girl who managed to escape narrated how Boko Haram fighters would sexually abuse her, telling her 'you are the kind of girls we like.' Another interviewee told OHCHR that she witnessed the rape of girls as young as 15.⁵⁰ OHCHR documented cases of rape following forced marriages to Boko Haram members, during an attack on Bama, Borno state, Nigeria, in September 2014. In that case about 150 women at Dalori camp, which opened in April 2015 and hosts IDPs from Bama, had given birth after they escaped from captivity. OHCHR received information that a Nigerian refugee woman in Niger was abducted in Damasak, Borno state, on 28 November 2014, and raped by 40 men. A 14-year-old girl told OHCHR she was raped when Boko Haram attacked Damasak, in November 2014, and that, after killing the men and boys; they took the women and children to a house, and selected some 40 girls to marry their fighters. She was forcefully married and raped three times before escaping, during a "wedding ceremony", with three other girls."⁵¹

Sexual violence by Government officials

It is necessary to add that there are also reports indicating that "Government officials and other authorities in Nigeria have raped and sexually exploited women and girls displaced by the Boko Haram conflict. The government is not doing enough to protect displaced women and girls and to sanction the abusers, who include camp leaders,

⁴⁸ "Secret trials of thousands of Boko Haram suspects to start in Nigeria". The Guardian, accessed on <http://www.theguardian.com>.

⁴⁹ Ibid.

⁵⁰ "Nigeria – reports of forced conversion and marriage of Christians by Boko Haram | Africa - News and Analysis". Accessed on <http://www.africajournalismtheworld.com>.

⁵¹ Nigeria: Women and Boko Haram insurgency, available at <https://www.crisisgroup.org> accessed on 12th June 2020.

vigilante group members, policemen, and soldiers.”⁵² A young mother related her experience in Bama territory in June 2011 to Human Rights Watch:

I left my house in the evening to buy food for my children. A soldier attacked me and pushed me off the road. He threw me into the bushes. My baby, who was one month and one week old, was on my back. He threw the baby off my back and put a gun to my chest...When I reached to save my baby, he took off my clothes and raped me. I told my husband what happened. I had just had a baby and I needed help. I was treated at a clinic. It turns out that I got a sexually transmitted infection, and now my husband has it too.⁵³

SGBV against men and boys

In 2013, the United Nations held a UN Workshop on Conflict-Related Sexual Violence against Men & Boys.⁵⁴ The workshop report states that situations in which men and boys have been subjected to sexual violence has been reported in more than 25 countries since 2000 from Latin and Central America, through Africa, the Middle East and Asia. Moreover, the report mentions that conflict-related sexual violence against men and boys is frequently premeditated, planned, and systematic, thus proving the use of sexual-violence as a weapon of war.

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

I have also previously highlighted the specific concern of sexual violence perpetrated against men and boys. Such incidents were again reported in 2013 but it remains difficult to determine their scale and scope and to respond accordingly. Challenges in this area include deep stigma, the failure of national legislation in many instances to recognize sexual violence against men and boys as a crime, the inadequacy of services specifically for male victims and the lack of access to legal services.⁵⁵

The 2016 Report of the Secretary-General on conflict-related sexual violence notes that the fear of stigmatisation prevents the vast majority of survivors of conflict-related

⁵² Human Rights Watch, *Nigeria: Officials Abusing Displaced Women, Girls*, 31 October 2016, <https://www.hrw.org/news/2016/10/31/nigeria-officials-abusing-displaced-women-girls> .

⁵³ Ibid.

⁵⁴ UN Workshop on Conflict-Related Sexual Violence against Men & Boys, 25-26 July 2013: Report & Recommendations.

⁵⁵ S/2014/181 at para. 7.

sexual violence from coming forward.⁵⁶ “The threat or use of sexual violence is often used as a form of torture against men and boys, many of whom remain silent for fear of social ostracism due to accusation of homosexuality in contexts in which it is taboo or even criminalized as it remains in many countries.”⁵⁷

SGBV is a violation of human rights

The Constitution prohibits slavery, servitude, forced or compulsory labour, inhuman and degrading treatment.⁵⁸ It equally prohibits discrimination, including on grounds of sex that is gender.⁵⁹ The Constitution further prohibits the unlawful deprivation of one’s personal liberty.⁶⁰ An aggrieved person is entitled to seek redress for alleged contravention of his/her fundamental rights by applying to High Court of State which shall have jurisdiction to hear applications on fundamental human rights issues.⁶¹

Under international law, Sexual and Gender Based Violence (SGBV) is recognised as a violation of the rights of women. SGBV comes in many forms, including the mental, physical and psychological.⁶² These various forms are all forbidden under various treaties including the International Covenant on Civil and Political Rights, the Convention against Torture, the Convention on the Elimination of all forms of Discrimination⁶³ against women and the Declaration on the Elimination of Violence against Women.

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (the Maputo Protocol) calls for an end to violence against women. The Maputo Protocol requires State party to implement measures to combat all forms of violence against women. By providing education, legal sanctions, budgetary allocations, provisions for administrative, social and economic measures. In furtherance of the foregoing, States are to establish mechanisms and accessible services for effective information dissemination, rehabilitation and reparation for victims of violence against women. The Protocol further provides for the protection of vulnerable groups such as returnees, displaced persons, elderly and disabled persons.

⁵⁶ S/2016/361/Rev.1 at 3 para. 7.

⁵⁷ S/2016/361/Rev.1 at 4 para. 8.

⁵⁸ Section 34 Constitution of the Federal Republic of Nigeria 1999.

⁵⁹ Section 42 Constitution of the Federal Republic of Nigeria 1999.

⁶⁰ Section 35 Constitution of the Federal Republic of Nigeria 1999.

⁶¹ Section 46 Constitution of the Federal Republic of Nigeria 1999.

⁶² Dobash, R.P., Dobash, R.E. Cavanagh K and Lewis, R. 1998. *Separate and Intersecting Realities: A Comparison of Men’s and Women’s Accounts of Violence against Women*’ 4, p. 391.

⁶³ Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

International law recognises the role of non-state perpetrators of SGBV offences, especially those committed by members of a terrorist group. The commander of the group can be held liable for SGBV offence even though he was not the one who committed the offence directly but he approved the commission of the offence or he sat back and watched the commission of the offence. Article 4 (c) of the Declaration on the Elimination of Violence against Women obligates States to exercise due diligence to prevent, investigate and in accordance with national legislation punish acts of violence against women.

Rape:

The relevant provision under the Penal Code in Section. 282(1) provides that ...

((1) "*A man is said to commit rape when, save in the case referred to in subsection (2), has sexual intercourse with a woman in any of the following circumstances-*

(a) against her will;

(b) without her consent;

(c) with her consent, when her consent has been obtained by putting her in fear of death or hurt

(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married;

(e) with or without her consent, when she is under fourteen years of age or of unsound mind."

One of the ingredients that the court will have to establish in order to sustain a conviction of rape under Section 282 of the Penal Code is that the woman was not the wife of the accused. The elements of the offence of rape under the Penal Code are further established in case law in *Ezigbo v the State*.⁶⁴ The offence of rape under Section 283 of the Penal Code is punishable with imprisonment for a term which may extend to fourteen years and a fine.

⁶⁴ (2012) LPELR-S 35/2010.

Rape under the Violence against Persons Prohibition Act (VAPP) 2015

The offence of rape is also provided for in the newly enacted Violence against Women Person's (Prohibition) Act 2015 (VAPP); under section 1 of VAPP 2015 which provides thus;

“(1) A person commits the offence of rape if:

(a) he or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else;

(b) the other person does not consent to the penetration; or

(c) the consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false or fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.”

The VAPP Act deals with rape more comprehensively than existing criminal laws, which limit rape to penal penetration of a female vagina. Broadening the definition and expanding the scope of rape to protect males and to include anal and oral penetration with any part of the body or thing. It contains provisions to protect the identity of raped victims, grant protection orders and compensation for victims of sexual violence.⁶⁵

Sexual abuse of children under the Child Rights Act (CRA)

Under section 32 of the CRA a person who sexually abuses or sexually exploits a child commits an offence and is liable on conviction to imprisonment for a term of fourteen years.

SGBV offences by terrorist groups under Nigerian law (TPA and TP (A) A

The Terrorism Prevention Act, 2011, and the Terrorism Prevention Amendment Act, 2013, make no mention of SGBV offences. There are however provisions in the Act, were such acts which causes serious bodily harm or death are prohibited.⁶⁶

SGBV offences under the Penal Code (Northern States) and Federal laws

There are several laws in Nigeria proscribing SGBV-related offences such as rape, sexual assault, forced/unlawful domestic servitude, abduction and human trafficking. In Northern Nigeria, including the North Eastern States where Boko Haram has been most active, the Penal Code of 1960 is the most prominent statute creating, defining and

⁶⁵ See sections 28 and 30 of VAPP Act.

⁶⁶ Section 2 (c) (i) and (ii) TPA 2011.

prescribing punishment. Some States in the North have however repealed the Penal Code and in its place enacted the Administration of criminal justice Law.

Jurisdiction:

Offences under the Penal Code are tried in State High Court or Magistrate Court. While offences provided for in the VAP Act and the Administration of criminal justice Act are triable in the Federal High Court. It is therefore the duty of the prosecutor to determine under which law an offender should be prosecuted and the determining factor is usually which of the laws provides for stiffer punishment?

Jurisdiction to try offences under the CRA lies with the Family Court at the High Court in each State.⁶⁷

SGBV Offences as War Crimes and Crimes against Humanity

Under certain circumstances, acts of violence committed by terrorist groups may constitute a war crime or a crime against humanity.

The Rome Statute of the International Criminal Court (ICC) criminalizes acts of SGBV both as war crimes and as crimes against humanity:

- a. The Rome Statute, provides that “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” constitute a crime against humanity “when committed as part of a widespread or systematic attack directed against any civilian population”.⁶⁸
- b. Under the Rome Statute, war crimes include,⁶⁹
 - i. in the case of an international armed conflict, “committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - ii. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, . . . , enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions”;
 - iii. in the case of an armed conflict not of an international character, “committing outrages upon personal dignity, in particular humiliating and degrading treatment.”

⁶⁷ Sections 151 and 152 CRA.

⁶⁸ Article 7 of the Rome Statute.

⁶⁹ Article 8 of Rome Statute.

Supporting Victims of Terrorism within the Criminal Justice Framework

Historically, criminal justice systems has been largely focused on the apprehension, prosecution and punishment of perpetrators of crime, while the role of victims of crime have often been limited to that of witnesses or forgotten altogether. The United Nations General Assembly in 1985 made Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This declaration contains 21 recommended measures aimed at securing access to justice and fair treatment, and ensures restitution, compensation and social assistance for victims. The declaration represented a landmark change of approach towards more victim-centred criminal justice responses. The Declaration provided the basis for the subsequent development and implementation of international standards and norms concerning fair treatment of victims of crime within legal and criminal justice systems, in accordance with the rule of law, human rights and fundamental freedoms.

The United Nations Global Counter-Terrorism Strategy⁷⁰ specifically refers to and recognizes the rights and role of victims of terrorism as a key component in effective counter-terrorism. It provides that States resolve to consider putting in place national systems of assistance that would promote the needs of victims of terrorism and their families and facilitate the normalization of their lives. The Strategy further encourages States to request the relevant United Nations entities to help them to develop such national systems.

African Union action for the protection of victims of terrorism

Article 3 (1) (c) of the 2004 African Union (AU) Protocol on the Prevention and Combating of Terrorism commits States Parties to *inter alia* identify, detect, confiscate and freeze or seize any funds and other assets used or allocated for the purpose of committing a terrorist act, and to establish a mechanism to use such funds to compensate victims or their families. This provision is similar to Article 8 (3) of the International Convention for the Suppression of the Financing of Terrorism, which also calls States Parties to consider establishing mechanisms whereby funds derived from the forfeitures referred to in that article are utilised to compensate victims of offences referred to in Article 2 of the Convention, and their families. Domestically in Nigeria our Economic and Financial Crimes Commission Act make similar provisions.⁷¹

⁷⁰ See (paragraph 8 of Pillar I).

⁷¹ Section 15 EFCC Act. 2004.

On 27-28 October 2014, the AU Commission organised a Symposium on Victims of Terrorist Acts in Algiers, the first of its kind in Africa.⁷² The Symposium agreed on the establishment of a Network of African Association of Victims of Terrorist Acts as a common platform for advocacy, joint action and the exchange of experiences.

Direct and Indirect Victims

The 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines victims as

persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal operative within Member States, including those laws proscribing criminal abuse of power.

The Basic Principles add that “the term ‘victim’ also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.” This second category of victims are often referred to as *indirect victims*.

In his report on the development of framework principles for securing the human rights of victims of terrorism, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism identifies four categories of victims of terrorism: direct victims, secondary victims, indirect victims, potential victims.⁷³

The UN handbook on good practices for the support of victims of terrorism provides the following:

- i. The need for a victim-centred approach to the investigation and prosecution of acts of terrorism;
- ii. Access to justice, legal advice, representation and participation;
- iii. Information, personal privacy and dealing with the media;

⁷² The Symposium was first step at the level of the AU Commission towards promoting an adequate response to the needs of victims and strengthening the role of the civil society in counter-terrorism, in line with the United Nations Global Counter-Terrorism Strategy, as well as relevant AU instruments and frameworks.

⁷³ See A/HRC/20/14 at para. 16.

iv. Restitution, reparation and financial compensation.⁷⁴

Gender Justice for Direct and Indirect Women Victims of Armed Conflicts

The Basic Principles note that victimization arising from gross human rights or humanitarian law violations affect not only individuals but also groups of persons who are targeted collectively. The impact of SGBV during armed conflict can have devastating and intergenerational effects. In Cambodia, forced marriages that occurred during the period of Democratic Kampuchea affected the direct victims 35 years later and continues to affect generations of children of those unions.⁷⁵ Thus it is conceivable that long after cessation of hostilities or return to peace, victims continue to suffer.

Women and children are usually disproportionately affected in armed conflicts as direct and indirect victims.⁷⁶ As mothers, daughters and spouses of direct victims, women and girls are affected, and also suffer directly the impact of armed conflict. While there is no cut and direct formulae for determining the degrees of victimisation, the International Criminal Court in awarding collective and individual reparations described the harms suffered by the two categories.

While Determining victimization – the Lubanga case⁷⁷

The Appeals Chambers considered that ‘if there is a sufficient causal link between the harm suffered by members of that community and the crimes of which Mr Lubanga was found guilty, it is appropriate to award collective reparations to that community, understood as a group of victims.’ The standard used by the Court to establish persons entitled to reparations was, how proximate was the victim to cause of harm/crime?

Harm suffered by direct victims include:

1. Physical injury or trauma

⁷⁴ See The UNODC handbook *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework*. Available at http://www.unodc.org/documents/terrorism/Publications/Good%20practices%20on%20victims/good_practices_victims

⁷⁵ Australian Human Rights Centre and the Asian International Justice Initiative, *Report on Transformative Reparations for Sexual and Gender-Based Violence at the Extraordinary Chambers in the Court of Cambodia* (Oxford University Press 2016)

⁷⁶ United Nations Security Council *Report of the Secretary-General on the protection of civilians in armed conflict S/2015/453, 18 June 2015*

⁷⁷ **The Prosecutor v. Thomas Lubanga Dyilo**

2. Psychological trauma and the development of psychological disorders, for example suicidal tendencies, depression, and dissociative behaviour;
3. Interruption and loss of schooling;
4. Separation from families;
5. Exposure to an environment of violence and fear;
6. Difficulties socialising within families and communities;
7. Difficulties in controlling aggressive impulses;
8. Non-development of “civilian life skills” disadvantaging the victim, particularly as regards employment.⁷⁸

Harm suffered by indirect victims

1. Psychological suffering experienced by the sudden loss of a family member;
2. Material deprivation accompanying the loss of the family members’ contributions;
3. Loss, injury or damage suffered by the intervening person from attempting to prevent the child further harm as a result of a relevant crime;
4. Psychological and/or material sufferings due to aggressiveness by former child soldiers relocated to their families and communities.⁷⁹

Another Sexual and Gender-Based Violence successfully prosecuted as an act of terrorism was the case of Sesay⁸⁰ who was a “senior officer” and Commander in the RUF (Revolutionary United Front) in the Junta as well as in the RFU/AFRC (Armed Forces Revolutionary Council). He led a campaign of armed attacks throughout the territory of Sierra Leone, according to the bill of indictment. The principal targets of these attacks were civilians and humanitarian assistance personnel as well as United Nations peacekeepers. These attacks were carried out primarily to terrorize the civilian population, but were also used to punish the population for failing to provide sufficient support to the RUF/AFRC alliance.

⁷⁸ Daniel Del Gobbo and Vathsala Illesighe, Restorative Justice for Survivors of Sexual Violence, <http://www.justice.gc.com> accessed 12 June 2020.

⁷⁹ Ibid.

⁸⁰ The Special Court for Sierra Leone.

The Chamber finds that the nature and manner in which the female population was a target of the sexual violence portrays a calculated and concerted pattern on the part of the perpetrators to use sexual violence as a weapon of terror.”⁸¹

The Chamber is satisfied that the manner in which the rebels ravaged through villages targeting the female population effectively disempowered the civilian population and had a direct effect of instilling fear on entire communities.”⁸²

The Chamber finds that sexual violence was intentionally employed by the perpetrators to alienate victims and render apart communities, thus inflicting physical and psychological injury on the civilian population as a whole.”⁸³ The Chamber finds that these effects of sexual violence were so common that it is apparent they were calculated consequences of the perpetrators’ acts.”⁸⁴

The physical and psychological pain and fear inflicted on the women not only abused, debased and isolated the individual victim, but deliberately destroyed the existing family nucleus, thus undermining the cultural values and relationships which held the societies together.”⁸⁵

Stigma Faced by Female Victims

Upon return to their communities or settlement in refugee camps, women and girls face the stigma of association with Boko Haram and therefore, discrimination and marginalisation⁸⁶. Communities see these women and girls as radicalized and fear they came back to recruit, indoctrinate, and spread the ideology of Boko Haram. For communities, the line between victims and perpetrators might be blurred. Female victims are nicknamed “Boko Haram wives” and their children are considered “hyenas among dogs” and from a “bad blood”. A popular belief is that “the child of a snake will always be a snake”⁸⁷. Discrimination varies between communities and is depending on

⁸¹ Sesay, SCSL Trial Judgment, para. 1347

⁸² Sesay, SCSL Trial Judgment, para. 1348

⁸³ Ibid.

⁸⁴ Ibid

⁸⁵ Adejoké Babington-Ashaye, Bringing Perpetrators of Sexual and Gender-based Crimes Committed by Terrorist Groups to Justice, being a paper presented at National Association for Women Judges Nigeria in collaboration with UNODC on Gender Dimensions of Criminal Justice Responses to Terrorism, 25th November, 2019, Abuja.

⁸⁶ Nigeria: Women and the Boko Haram Insurgency, International Crisis Group, 2016, p. 15 and A/HRC/32/32/Add.2.

⁸⁷ A/HRC/32/32/Add.2.

whether it is believed that women stayed willingly within Boko Haram or not. Nevertheless, the “consequences of exclusion from mainstream society are significant for both the individual’s social, political and economic prospects and north-eastern society’s cohesion and stability”⁸⁸. This marginalisation should be addressed by the restorative justice system, which should ensure the reintegration of these women and children and avoid their radicalisation. Rehabilitation of individuals and their communities is a holistic process that entails addressing immediate and long-term social, economic, educational and political rights. Issues such as health, psychosocial and educational needs must be at the core of all disarmament, demobilization, reintegration and rehabilitation programmes, with a specific focus on women and girls who have been affected.

The 2015 OHCHR report on human rights violations by Boko Haram⁸⁹ similarly stresses that: Due to stigma, cultural and religious norms, and deeply entrenched gender stereotypes, most victims have been reluctant to speak about sexual violence they have endured. Many are unwilling to return to their communities, fearing that they will bring dishonour to their families and be rejected by their communities. According to interviewees, women and girls who were abducted by Boko Haram generally face worse stigmatization than men and boys. Pregnant women and women who gave birth whilst in captivity or shortly after rescue, are particularly stigmatized, together with their children. The UN urges States to take into account the special needs of women and girls during resettlement for rehabilitation and reintegration.⁹⁰

Barriers to justice for the women victims of SGBV

Most victims of SGBV offences are usually poor and uninformed and as such lack the financial capacity to challenge their matter before the court. Another challenge is the victim’s unwillingness / inability to report due to injuries suffered, depression, fear of stigma or retaliation, lack of confidence in the police. Other factors include trauma, insecurity, displacement and lack of witnesses or medical examination to corroborate their evidence.

On the part of the family or community, there is usually the challenge of stigmatization when a victim of rape is known hence there is usually the pressure to settle the case

⁸⁸ Nigeria: Women and the Boko Haram Insurgency, International Crisis Group, 2016, p 15.

⁸⁹ Para. 43.

⁹⁰ UN Security Council Resolution 1325.

out of court.⁹¹ Equally often times the victim of rape is usually blamed for being at the wrong place or dressing inappropriately hence was the one who induced the perpetrator to rape her. For this reason there is often lack of support from investigators.

For the institutions of justice, starting with the police which is the first port of call, often times the victim either reports to the police after essential ingredients to prove the offence of rape has been tampered with. For instance the victim may have been given a bath or taken to a nearby chemist for a first aid before bringing the matter before the police. Even when that is not the case because of corruption which has eaten deep into the Nigerian police force they would usually require some form of bribe from a victim before she can be taken to the hospital for proper medical examination. What is more is that were such act of violence occurs in a remote village without a police station distance to a town with the nearest police station becomes a barrier.⁹² On the part of government there is the lack of political will to fund the justice sector hence most states of the federation do not have facilities for forensic evidence. Witnesses are afraid to testify in court because there are no adequate support for witness protection hence they are afraid of disclosing their identity to the perpetrator or members of their gang.

Summarizing the problems with the justice system in Northern Uganda⁹³ a representative of ACCORD said, 'the legal fraternity is not responsive to the needs and the constraints of the woman. Since men dominate many of the institutions, there are no institutions that are willing and have the capacity to help women. The police are not very cooperative and the women are not empowered to hold the institutions accountable. Until recently, Pader (a town in Northern Uganda) did not even have a Magistrate's Court. Distances to the court are too long. Women have to go a long distance to access medical person for evidence of violence.

Success stories of Sexual violation acts that have been adjudicated upon and justice given the victim

AGF v Ayan Olubumi in this case, the defendant posted the nude pictures of his former girlfriend after the relationship went sour on the Facebook. Justice Taiwo of the Federal High Court, Ekiti Division while convicting the Defendant held that the prosecution had proved its case against the Defendant beyond reasonable doubt sentenced the

⁹¹ Wemmers, Restorative justice for victims of crime: a victim oriented approach to restorative justice International Review of Victimology, 2002, p. 9.

⁹² Nigeria: Women and the Boko Haram Insurgency, accessed on <http://www.crisisgroup.org>

⁹³ FIDA Uganda 'In the multiple systems of justice in Uganda, whither Justice for Women?' 2011

defendant to two (2) years imprisonment with a compulsory fine of five hundred thousand naira (N500,000).

In the case of *Mrs. Folarin Oreko Maiya v The Incorporated Trustees of Clinton Health Access Initiative Nigeria & Ors* the employee produced documentary evidence supporting her claim that her appointment with her employers was terminated due to her pregnancy. CHAIN denied the allegation that it had dismissed the worker because she was pregnant but did not submit any evidence to the Court explaining an alternate basis for its decision to dismiss the worker. Following the inability of the defendant to adduce any contrary evidence on the reason for the termination of the claimant's employment, the Court accepted that the complainant's pregnancy was the reason for her dismissal. The Court held that by dismissing the worker because she was pregnant, CHAIN had breached her rights to protection from discrimination and inhuman, malicious, oppressive and degrading treatment under the Constitution and African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.

In the case of *Dorothy Njemanze & 3 Ors V Federal Republic of Nigeria*,⁹⁴ at different occasions, Dorothy Njemanze and three other women were abducted, assaulted sexually, physically and verbally, and unlawfully detained by Nigerian law enforcement officers. They were arrested and accused of being prostitutes on the grounds that they had been found on the streets at night. The four women, led by Njemanze, a Nollywood actress, filed a case at the West African Regional Court which centered on the violent, cruel, inhuman, degrading and discriminatory treatment the women suffered at the hands of law enforcement agents in Abuja, Nigeria.

Many countries in Africa have criminal law targeting sex workers, often accompanied by administrative law in many cases municipal bylaws against vagrancy that facilitate arbitrary arrests of women at night. Suspected sex workers (in many cases women) are rounded up by law enforcers and charged with non-criminal offenses such as loitering, vagrancy, congregating for the purposes of prostitution, public indecency, or disorderly behaviour. This ruling, is significant as it successfully mounts a challenge to vagrancy laws.

The *Njemanze* case bears some similarities to the Kenyan High Court case of *Lucy Nyambura & Another v. Town Clerk, Municipal Council of Mombasa & 2 Others*⁹⁵ in

⁹⁴ **Suit No.: ECW/CCJ/APP/17/14 (ECOWAS Court, Abuja, Nigeria), Decision of October 12, 2017.**

⁹⁵ *Lucy Nyambura & Another v. Town Clerk, Municipal Council of Mombasa & 2 Others* [2011] eKLR, Petition No. 286 of 2009 Kenya, High Court. [Decision online. Case summary and analysis for Legal Grounds III](#)

this case the petitioners in the Kenyan case were also arrested and charged with the offence of “loitering in a public place for immoral purposes,” simply because they were found on the streets at night. The charges essentially criminalize any woman who ventures outdoors after dark. However, in the Kenyan case, the High Court failed to find the action of law enforcement officers as discriminatory and a violation of the petitioners’ rights.

By contrast, the ECOWAS Court found the arrest of the four petitioners to be unlawful and violated their rights to dignity and liberty, and their right to be free from cruel, inhuman or degrading treatment. The Court affirmed the provisions of the United Nations’ Convention on Elimination All Forms of Discrimination against Women (CEDAW), when it found that the action of the Nigerian law enforcement officers constituted gender-based discrimination. The Court determined from the submissions showing that the operation was systematically directed against only the female gender an indication and evidence of discrimination. According to the Court, it takes two persons to engage in prostitution activity. There is no law that suggest[s] that when women are seen on the streets at midnight or anytime thereafter, they are necessarily idle persons or prostitutes. “If it were so, it ought to apply to all persons irrespective of sex.” In this quote, a blow to the discriminatory application of prostitution against the female gender alone is vagrancy law.

The Court found the arrest a violation of the Plaintiffs’ right to liberty or free movement which is a fundamental human right. The Court denounced the gender stereotyping of women found on the street at night as prostitutes and declared that such verbal abuses violated the right of these women to dignity. This denunciation unfortunately perpetuates the stigma that has traditionally been directed against sex workers. In this context, the Court did not issue a direct order regarding existing laws prohibiting prostitution. In finding that the Defendant failed to provide sufficient evidence linking the Plaintiffs with prostitution, the Court exposes the difficulty of collecting evidence for the crime of prostitution. This suggests an opportunity to challenge the law on prostitution in fact the law violates the right to privacy. Given the intimate nature of sex, privacy is a major issue in criminalizing sex work. Collecting evidence to support sex-work-related charges often involves bedroom snooping and interfering with the privacy of the sex workers and their clients.

A significant milestone that sets the ECOWAS ruling apart is the pronouncement of a violation of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol), is indeed a first in an International Court.

The Court found that there were multiple violations of article 2 calling on States to combat all forms of discrimination against women, article 3 provides for the right to dignity and to the recognition and protection of women human and legal rights. There was further violation of article 4 on the Rights to Life, integrity and security of the person, article 5(d) on protection of women from being subjected to violence, abuse and intolerance. The denial of access to justice and equal protection before the law and access to remedy was a violation of articles 8 and 25 respectively.

In the case of *ICPC v. Richard Akindele* The Independent Corrupt Practices and Other Related Offences Commission (ICPC), secured a seven year jail term against Professor Richard I. Akindele, a former lecturer at the Obafemi Awolowo University (OAU), Ile-Ife, Osun State, for demanding sex in exchange for marks from Miss Monica Osagie, a female post graduate student. Justice Maureen A. Onyetenu of Federal High Court, sitting in Osogbo, Osun State delivered judgement against Professor Akindele after she had been convinced that he committed the offence. The court found him guilty and he was sentenced to two years each on three count charge and one year on the last count.

Case Study on Reparations for Girls Forced Into Marriage in Northern Uganda

In a country called Ntalo, before armed conflict by terrorists broke out, forced marriages were common in the central region whereby communities arranged marriages without the consent of the women. The regulatory framework was ambiguous around this issue and not adequately addressing the problem from a preventive or accountability approach. Many young women were abducted and forcefully married off by terrorists, these girls were later rescued. The issues that arose following the rescue of these girls where, what forms of reparations would best benefit the victims and the communities in the central region? How can these reparations bring about transformative change to the situation of the women in that region?⁹⁶

Merely providing financial and material compensation does not automatically eliminate gender inequality, which victims may continue to suffer, after their reintegration. For example, in a communities where making decisions on financial, educational or legal matters is male dominated, women may be constrained from benefitting from reparations.⁹⁷ Transformative reparations, whether financial, regulatory, material or

⁹⁶ Laura Nyirinkindi; Reparations, Rehabilitation and Reintegration of victims of SGBV: International Standards and the case of Northern Uganda, being a paper presented at UNODC workshop on Gender Dimensions of Criminal Justice response to Terrorism, 18 November 2018, Abuja.

⁹⁷ Susan Julich, Sexual Violence and Substantive Equality: Can Restorative Justice Heal the Wounds, <http://www.linkspringer.com>, accessed on 31 August, 2021.

programmatic, can help to address structural issues that perpetuate SGBV.⁹⁸ The meaningful participation of victims in the design, implementation and monitoring of reparations programmes is key to creating appropriate remedies. A comprehensive consultative process in which all victims including those from remote areas participate is important. It signals an official acknowledgement of the differentiated experiences of victims and is important in restoring their dignity.

Forms of reparations granted to SGBV victims include:

- i. Psychosocial support,
- ii. settlements for the displaced,
- iii. legal aid,
- iv. prioritized and specialized medical care,
- v. financial compensation,
- vi. public apology,
- vii. special programmes focusing on women minorities and vulnerable groups,
- viii. education,
- ix. training and free scholarships for school going victims,
- x. learning centres,
- xi. support towards entrepreneurial activities such as skills building or micro credit schemes,
- xii. memorial sites or monuments,
- xiii. therapeutic talk shows,
- xiv. nullifying gender discriminatory laws,
- xv. enacting strong anti SGBV laws,
- xvi. building new schools and hospitals to replace those destroyed in the course of conflict.

Several UN Security Council Resolutions have called for full and equal participation, involvement and representation of women in post conflict settings in decision-making processes involving peace building initiatives and programmes.⁹⁹

Reparations, Rehabilitation and Reintegration of Women Victims of Sexual Gender Based Violence in armed conflict

International law has developed a legal and policy framework regarding victims of sexual violence in armed conflict, including their rights and good practices regarding their rehabilitation and reintegration. This legal and policy framework is more advanced and

⁹⁸ Mary P. Koss and Mary Achilles, Restorative Justice, Responses to Sexual Assault, <http://www.linkspringer.com>, accessed on 10 April 2020.

⁹⁹ See the following UN Security Council Resolutions 1325, 1820, 1888, 1889, 1960, 2016 and 2122.

can rely on richer practice than the international law and policy regarding victims of terrorism. Moreover, it is very much focussed on the gender dimensions of the situation of these victims.

SGBV occurs in times of peace and armed conflicts including terrorist related conflict.¹⁰⁰ Both instances bear similarities in many elements of crimes of SGBV. However, armed conflict related SGBV occurs on a mass and scale that presents profound and considerable challenges of a multidimensional nature to state, individuals and communities. This requires holistic measures of a legal, security, public health and socio-economic nature.

Reparations transcend the traditional criminal justice response of punitive justice and individual criminal liability to address issues of restorative justice for individual and collective victims.¹⁰¹ The Basic Principles of Justice for Victims of Crime and Abuse of Power call for full and effective reparations in the form of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These reparations may be obtained through judicial, administrative or other measures, from the perpetrators state or through development cooperation with other actors. The Basic Principles apply to persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights.

Reparations and the Rehabilitation of Sexual Gender Based Violence Victims

Victims of SGBV in armed conflict are not homogeneous neither do they face the same effects or consequences of SGBV in armed conflict. The various identities women bear such as age, race, ethnicity, religion and culture may increase their risks and vulnerability to SGBV and affect their recovery from related harms.¹⁰²

Reports revealed that militants mostly killed men (civilian and military), but generally abducted women¹⁰³. In a video, Shekau told followers to kill men but “spare the old, women, the lunatic, and the repentant”. In some local contexts, its actions have ethnic underpinnings. That it first abducted women in mainly Christian communities and

¹⁰⁰ Bletzer K, and Koss M, From parallel to intersecting narratives in cases of sexual assault.

Qualitative Health Research, 22(3), 291-303, accessed on <http://www.researchgate.net/publication>.

¹⁰¹ Van Womer, Restorative Justice as Social Justice for Victims of Sexual Violence, <http://www.justice.gc.ca> accessed on 18, June 2020.

¹⁰² Wemmers, J. and Cyr, K. What Fairness Means To Crime Victims: A Social Psychological Perspective On Victim-Offender Mediation. *Applied Psychology in Criminal Justice*, 2(2), 2006, 121.

¹⁰³ International Crisis Group, *Nigeria: Women and the Boko Haram Insurgency, 2016*.

pressured them to convert. This suggests it sought to spread its version of Islam as well as punish local adversaries. There are early reports of gang rape of Christian women, while Muslims were spared. As in the nineteenth century wars in the Lake Chad area, Boko Haram used women and girls as rewards to fighters.¹⁰⁴ Reports have it that Boko Haram occasionally released older women from captivity, for instance when food stocks were low or the war moved on, but held on to younger women as they placed higher values on them. Boko Haram seems to have distinguished between slaves and wives based on religion, protecting the latter more from abuse.

The rehabilitation and reintegration of SGBV victims into their families and communities carries challenges, particularly where the victims require medical and psychosocial support as well as educational and economic livelihoods sustenance.¹⁰⁵ Victims face the risk of stigmatisation and marginalisation and resulting exclusion. These diverse needs require a range of redress mechanisms to be available for women through various forms of reparations.¹⁰⁶

Under the ICC Statute, as interpreted by the Trial and Appeals Chamber in the case of *Thomas Lubanga Dyilo*, it is the convicted offender who is obliged to make reparations to the victims. In Nigeria under the ACJA the court after conviction has a discretion to order a convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted, or to the victim's estate where the victim is no more.¹⁰⁷ Where the convicted offender is impecunious, or the authorities have been unable to seize any funds belonging to him, the ICC Trust Fund for Victims may decide to supplement the funds available for reparations. It is however suggested that were the convict is unable to raise the sum for the reparation of his victim that he be subjected to forced labour for a certain number of years wherein a certain percentage of his income within the said period is saved and paid to his victim as reparation.

In the case of the *Prosecutor v Thomas Lubanga Dyilo*¹⁰⁸, the ICC Trial and Appeal chambers observed that reparations oblige those responsible for serious crimes to repair the harm they caused to the victims and enable the Chamber to ensure that offenders account for their acts. Under the schemes for the benefit of victims of

¹⁰⁴ M. T Ladan, Impact of Boko Haram Insurgency in the Northeast, <http://www.Conflictandhealth.biomedcentral.com>, accessed on 18th June, 2020.

¹⁰⁵ Theo Gavrielides, A chance for a change: Addressing gender-based violence among youth through restorative justice, <http://www.researchgate.net/publication>.

¹⁰⁶ <http://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>

¹⁰⁷ Section 321 Administration of Criminal Justice Act, 2015.

¹⁰⁸ No. ICC-01/04-01/06 A A 2 A 3, 3 March 2015

terrorism of many States, the government will provide reparations to victims of terrorism.

“Every victim is entitled to receive the necessary materials, comprehensive medical, psychological, social and legal assistance through governmental agencies and/or non-governmental agencies providing such assistance.”¹⁰⁹ Victims are entitled to be informed of the availability of legal, health and social services and other relevant assistance and be readily afforded access to them. The VAPP further provides that: “Victims are entitled to rehabilitation and re-integration programme of the State to enable victims to acquire, where applicable and necessary, pre-requisite skills in any vocation of the victim's choice and also necessary formal education or access to micro credit facilities.”¹¹⁰

Recommendations of the UN Special Rapporteurs on Access to Justice and Remedies

In January 2016, the UN Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, on the sale of children, child pornography and child prostitution, and on contemporary forms of slavery, including its causes and consequences, carried out a joint visit to Nigeria. Their report contains a comprehensive set of recommendations to the Government and other actors to strengthen their efforts to ensure the full protection and promotion of the rights of women and children affected by the Boko Haram insurgency. With regard to women's access to justice, and effective remedies, the Special Rapporteurs recommend the Government of Nigeria:

- a. to sensitize criminal justice system officials to the vulnerabilities and risks faced by woman and girls;
- b. to build capacities of criminal justice officers and law enforcement agents to investigate the crimes committed by Boko Haram and abuses of human rights, in particular violence faced by women and girls;
- c. to establish a “child-friendly reporting and complaint mechanisms”;

¹⁰⁹ Clare McGlynn and Nicole Westmarland, *Kaleidoscope Justice: Sexual Violence and Victims Survivor's Perceptions of Justice*, Social and Legal Studies, 2019, Vol. 28(2), p. 184.

¹¹⁰ See Section 38 of the Violence Against Persons (Prohibition) Act.

- d. to ensure “legal counsel for those women who wish to seek redress through the justice system”;
- e. to “set up witness and victim protection services for all women and children affected by violence”¹¹¹.

The UN Security Council¹¹² calls on States to extend the benefits provided to victims of terrorism to victims of sexual violence committed by terrorist groups: Victims of trafficking in persons in all its forms, and of sexual violence, committed by terrorist groups should be classified as victims of terrorism. This is for the purpose of rendering them eligible for official support, recognition and redress available to victims of terrorism. They should be given access to national relief and reparations programmes, contribute to lifting the sociocultural stigma attached to this category of crime and facilitate rehabilitation and reintegration efforts.¹¹³ Furthermore emphasizes should include that survivors should benefit from relief and recovery programmes, including health care, psychosocial care, safe shelter livelihood support and legal aid. This services should include provision for women with children born as a result of wartime rape.”¹¹⁴

Conclusion

The basic aim examined by this paper was the impact of SGBV on women’s reproductive health and mental health. It is the findings of this research that women’s sexual and mental health, are grossly affected as evidence has shown that long after the occurrence of the act, victims still go through trauma. Therefore the criminal justice system while making provisions for the punishment of the offender must equally provide adequate measures for the mental and psychological wellbeing of victims through restorative justice mechanism. The reproductive health of women caught up in armed conflict are equally adversely effected when they end up with diseases such as VVF or end up with unwanted pregnancy. Experience has shown that such children born under these circumstances are rejected as bad blood while their mothers are treated with disdain and ostracised from the community.

It is the finding of this paper that there are adequate international legal framework provided for the investigation, prosecution and provision of reparation for victims of

¹¹¹ A/HRC/32/32/Add.2, p 22-23.

¹¹² See Resolution 2331 (2016).

¹¹³ Van Womer, Restorative Justice as Social Justice for Victims of Sexual Violence, <http://www.justice.gc.ca> accessed on 18, June 2020.

¹¹⁴ Koss M, Restorative Justice for Victims of Sexual Violence, Justice and Violence against Women edited by J Ptacek. 2010., New York: Oxford University Press, p. 37.

SGBV. Domestically Nigeria in recent times has enacted some legislations such as the Violence against Person's Act (VAP), the Administration of Criminal Justice Act amongst others. This is aimed at providing stiffer punishment for the perpetrators of SGBV and for compensation and restorative justice for victims. The challenge however preventing victims from accessing these remedies are embedded in cultural practices, stigmatization and ignorance of the available remedies. The UN¹¹⁵ advocates for the rights of victims to equal and effective access to justice and effective remedies including reparations. Women must be facilitated to access justice and redress mechanisms as rights holders by training them to know the legal rights and remedies available to them. This can be done by the various women non-governmental organizations in collaboration with the Ministry of Women Affairs as government alone cannot possibly be able to reach out to every nook and cranny of the country. The UN urges states to ensure that women and girls have equal protection under the law and equal access to justice. This requires sensitization of victims to know their rights, accessible justice and medical mechanisms, and gender responsive personnel and procedures.

When investigating and prosecuting sexual and gender based crimes committed by terrorist groups, investigative and prosecutorial teams should adopt human rights-based and victim-centred approach. Use multi-disciplinary, coordinated and gender-sensitive approach; and focus on offender accountability while bearing in mind restorative justice and compensation for victims in line with international best practices.

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¹¹⁵ UN Security Council Resolution 1820.

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