

Towards Meaningful Accountability for Sexual and Gender-Based Violence Linked to Terrorism



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I. INTRODUCTION

Overview of the Study

Terrorism, in all its forms and manifestations, constitutes one of the most serious threats to international peace and security.¹ The United Nations Security Council has affirmed that “acts of terrorism are criminal and unjustifiable, regardless of their motivation,” and “are to be unequivocally condemned, especially when they indiscriminately target or injure civilians”.² Sexual and gender-based violence (SGBV) constitutes one of the means through which terrorist organizations indiscriminately target civilians in both conflict³ and non-conflict settings. Notably, certain groups, such as the affiliates of the Islamic State in Iraq and the Levant (ISIL) (Da’esh), continue to pose a significant threat to international peace and security, affecting numerous States and regions through the use of tactics of terrorism that include rape, sexual slavery, forced marriage, and human trafficking for sexual exploitation and forced labour. These violent strategies and attacks on civilians aim to achieve a range of objectives, including recruiting foreign terrorist fighters (FTFs), forcibly displacing communities for strategic military gain, generating revenue to finance terrorist activities, and intimidating and persecuting targeted communities.⁴ Despite global condemnation of these acts of violence and the acknowledgement of the instrumentality of SGBV for terrorist groups, accountability for these acts remains elusive.⁵

The present study is conducted in line with the mandate of the Counter-Terrorism Committee Executive Directorate (CTED) under resolution 2617 (2021), in which the Security Council reaffirms the essential role of CTED within the United Nations to identify and assess issues, trends, and developments relating to the implementation of resolutions 1373 (2001), 1624 (2005), 2178 (2014), 2396 (2017) and other relevant resolutions, as well as provide assessments and recommendations on issues pertaining to Member States’ obligations to bring terrorists to justice. The analysis is further guided by CTED’s mandate to include in its country assessments information regarding Member States’ efforts to address the issue of trafficking in persons, including its link with sexual

¹ Security Council resolution 1373 (2001), preamble. See also Security Council resolution 1456 (2003).

² Security Council resolution 1456 (2003). Security Council resolution 1456 (2003). The United Nations Global Counterterrorism Strategy further reaffirms that “that any acts of terrorism are criminal and unjustifiable, regardless of their motivation, wherever, whenever and by whomsoever committed”, United Nations General Assembly, The United Nations Global Counter-Terrorism Strategy: eighth review A/RES/77/298, 3 July 2023, preamble.

³ United Nations, Security Council, *Conflict-Related Sexual Violence: Report of the Secretary-General*, S/2022/272 (29 March 2022), para. 12, available at www.undocs.org/S/2022/272.

⁴ Ibid., S/2015/203 (23 March 2015), para. 82, available at www.undocs.org/S/2015/203. See also Ibid., S/2022/272 (29 March 2022), available at www.undocs.org/S/2022/272.

⁵ 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, available at

www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/2021105_1373_gis.pdf.

violence in conflict and post-conflict situations committed for the purpose of supporting terrorism, and as a terrorist tactic.⁶

The objective of this study is to contribute to CTED's work in assisting the Counter-Terrorism Committee in supporting Member States' counter-terrorism efforts by identifying progress made, remaining shortfalls, and priority areas for technical assistance needs, including with respect to ensuring a gender-responsive and human rights compliant approach to countering terrorism.

The study is divided into four parts. The first, introductory part, entails this overview, the methodology and the concepts and definitions utilized throughout to further clarify the scope of the study. Part II provides an analysis of the relevant international counter-terrorism framework, and specific international legal frameworks, notably international humanitarian law, international criminal law, international human rights law, and anti-trafficking frameworks. Part II further explores the interlinkages between these frameworks and provides an analysis of national counter-terrorism and criminal laws which form part of the legal ecosystem available to advance accountability for SGBV linked to terrorism. Part III of the study delves into the challenges, practices, and opportunities in relation to the global effort to promote criminal justice responses to SGBV linked to terrorism. It explores the existing barriers and complexities while also identifying potential avenues for progress. The study concludes in part IV with a set of emerging good practices identified among Member States and other relevant stakeholders, while noting CTED's own commitments to continue its engagement on this topic in accordance with its mandate.

The study has been prepared for informational purposes only. The views or official positions of the Counter-Terrorism Committee (CTC) or any Committee member are not necessarily represented by its content. It is neither an exhaustive nor definitive analysis of the issues raised. Rather, it is offered as an aide to explore different criminal justice avenues for SGBV in terrorist contexts and to raise awareness of the gendered and intersectional nature of terrorist crimes and the need for gender-sensitive approaches to advance accountability for these crimes. The analysis and its conclusions should be seen as complementary to the work of other relevant UN entities.⁷ CTED is grateful to Switzerland for its generous financial contribution, which made the preparation of this study possible.

Methodology

The study benefits from information obtained as part of CTED's dialogue with Member States on behalf of the Counter-Terrorism Committee and also includes relevant data

⁶ Security Council resolutions 2331 (2016), operative para. 16 and 2467 (2019), operative para. 29.

⁷ CTED is a member of UN Action Against Sexual Violence in Conflict, a network of 24 UN entities engaged, in line with their respective mandates, to prevent conflict-related sexual violence, enhance accountability and meet the needs of survivors. See <https://www.un.org/sexualviolenceinconflict/about-us/un-action/>

gathered by CTED through its engagement with United Nations partners; international, regional, and subregional organizations; civil society organizations; and members of the CTED Global Research Network (GRN). The analysis further relies on in-depth interviews conducted between March and June 2023 with 31 experts within the communities of practice possessing diverse areas of expertise, including counter-terrorism, national security, criminal justice, human trafficking, international criminal law, international humanitarian law, international human rights law, and gender. Participants included academics, representatives of civil society organizations, international and regional bodies, and national prosecutors, investigators, and judges. The findings from the stakeholder consultations were augmented by the results of a two-day expert group meeting convened in May 2023 in New York by CTED and the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict.⁸

Scope, Concepts and Definitions

While the report's focus is on exploring ways to strengthen criminal justice responses to SGBV linked to terrorism, the analysis and recommendations are offered with the understanding that such responses are an important but not the only element in securing meaningful accountability for these acts. As outlined in the report, a major challenge is the lack of holistic responses, including survivor-centred approaches, reparations and broader transitional justice processes. Moreover, the emphasis on addressing SGBV linked to terrorism is not intended to prioritize this category of SGBV crimes over others or create a hierarchy of victims. Efforts towards accountability for SGBV linked to terrorism are a part of the overall effort to enhance the criminal justice and accountability landscape and develop a comprehensive approach to SGBV. Such an approach must be firmly grounded in human rights and be gender- and age-sensitive.

As further elaborated on below, the present study concerns acts linked to terrorism in armed conflict and non-conflict situations. It is further recognized that the use of SGBV is not limited to a particular type of terrorism, or specific terrorist groups. As noted by CTED in previous publications, violent extremist and terrorist groups across the ideological spectrum exploit gender inequality and violent notions of masculinity to, inter alia, incite and perpetrate gender-based violence, both on- and offline.⁹

The study also acknowledges that terrorist activities create an environment that can be exploited by other actors such as criminal gangs or organized crime networks to carry out acts of SGBV for their personal gain, even if they do not share the ideologies and objectives of the terrorist groups.¹⁰ Although it is essential to address the behaviour of

⁸ Discussion among participants at the CTED/Team of Experts EGM, 10–11 May 2023.

⁹ Aleksandra Dier and Gretchen Baldwin, "Masculinities and violent extremism", International Peace Institute and Security Council CTED, June 2022 available at www.un.org/securitycouncil/ctc/content/masculinities-and-violent-extremism

¹⁰ For general information on the nexus between transnational organized crime and terrorism see United Nations Interregional Crime and Justice Research Institute, *Policy Toolkit on The Hague Good Practices on the Nexus between Transnational Organized Crime and Terrorism* (2019), available at

such actors as well, this study addresses conduct that would qualify as terrorism within the scope of the international counter-terrorism framework or relevant national legislation. Moreover, the study acknowledges reports of SGBV committed by actors involved in counter-terrorism and recognizes the importance of addressing such abuses, which violate individual human rights and ultimately undermine security.¹¹ This study, however, concentrates on criminal justice responses to SGBV committed by terrorist actors.

Existing misrepresentations of SGBV have important practical implications for the way in which accountability for SGBV linked to terrorism is understood and addressed. The first is the pervasive narrative which presents SGBV as primarily sexual in nature and mainly involving the crime of rape.¹² This narrative fails to acknowledge the diverse range of violence, harms, and consequences associated with SGBV linked to terrorism. Consequently, this narrative of what constitutes SGBV restricts the scope of investigation and prosecution efforts and can limit accountability. Second, some interviewees for this study noted that SGBV is often considered a “women’s issue” and “women’s issues are not seen as a priority in the context of war/terrorism”¹³ because they are not considered as “security” issues in a more narrow and hard-security-focused sense of the word. This type of attitude illustrates how the continued absence of a human security-focused approach in counter-terrorism can directly impinge on accountability efforts.

In addition, while women and girls are disproportionately affected by SGBV, such acts of violence are also committed against men and boys and members of the lesbian, gay, bisexual, transgender, and queer community (LGBTQ+). A narrow understanding of gender as synonymous with women or women’s issues can result in inadequate policy responses and have negative implications for accountability for the totality of SGBV crimes committed by terrorist groups. For example, with respect to human trafficking, anti-trafficking policies and practices have frequently excluded male victims of trafficking (e.g., boy recruits to proscribed groups), especially in terrorist contexts where males are more readily perceived as perpetrators than victims.¹⁴

Inconsistencies in terminology across the relevant communities of practice represent another challenge and can contribute to a lack of clarity on the interlinkages between

https://unicri.it/in_focus/on/policy_toolkit_nexus_crime_terrorism. According to an interlocutor, the political economy of war and terrorism reveals “the ways in which environments affected by terrorism can then be affected by different forms of SGBV and human trafficking ranging from sexual exploitation and abuse by security personnel to human trafficking by groups doing it for profit.” Interview with academic and expert on the women, peace and security agenda, 24 April 2023.

¹¹ The annual reports of the UN Secretary-General on conflict-related sexual violence which document abuses in the context of counter-terrorism operations, and call for the effective investigation and prosecution of crimes of sexual violence in counter-terrorism cases. See, for example, S/2017/249, paras. 9, 12, 56 and 62, and S/2023/413, para. 88.

¹² Discussion among participants, CTED/Team of Experts Expert Group Meeting (EGM), 10–11 May 2023.

¹³ Interview with a civil society representative, 31 March 2023.

¹⁴ Interview with a human trafficking expert, 27 April 2023.

“SGBV”, “conflict-related sexual violence”, “trafficking in persons” and terrorism. The following definitions and explanations of key concepts are used in this report:

a. Sexual and Gender-Based Violence

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.¹⁵ Sexual violence can take multiple forms, including rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, sexual enslavement, forced circumcision, castration, and forced nudity. The second notion is **gender-based violence**, which is an umbrella term for any harmful act directed against individuals or groups of individuals, such as women, men, girls, boys and LGBTQI+ persons, on the basis of their gender. It includes acts and omissions that inflict physical, nonphysical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty, whether occurring in public or in private life. Gender-based violence therefore also entails acts which are not sexual in nature, including certain forms of domestic violence, or the killing of individuals or groups on the basis of their gender (e.g., femicide). It is rooted in gender inequality and the abuse of power. Gender is relational and encompasses social, cultural, and economic power dynamics between and among people of all genders.¹⁶ Gender interacts with, but is distinct from, a person’s sex or gender identity.¹⁷

b. Conflict-related Sexual Violence

SGBV can be conflict-related, and the term conflict-related sexual violence (CRSV) refers to “rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict.”¹⁸ The Security Council’s resolutions on conflict-related sexual violence further

¹⁵ United Nations Office on Drugs and Crime (UNODC), *Handbook of Gender Dimensions of Criminal Justice Responses to Terrorism* (2019), p. 202, available at www.unodc.org/documents/terrorism/Publications/17-08887_HB_Gender_Criminal_Justice_E_ebook.pdf.

¹⁶ Adaptation of the definition by the Committee on the Elimination of Discrimination against Women, general recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, para. 5, CEDAW/C/GC/28, available at www.refworld.org/docid/4d467ea72.html.

¹⁷ World Health Organization, “Gender and health”, available at www.who.int/health-topics/gender.

¹⁸ United Nations, Security Council, Conflict-Related Sexual Violence: Report of the Secretary-General, S/2023/413 (22 June 2023), para. 5, available at www.undocs.org/en/S/2023/413. In this regard, the conflict nexus “may be evident in the profile of the perpetrator, who is often affiliated with a State or non-State armed group, including those designated as terrorist groups by the United Nations; the profile of the victim, who is frequently an actual or perceived member of a persecuted political, ethnic or religious minority, or targeted on the basis of actual or perceived sexual orientation or gender identity; a climate of impunity, which is generally associated with State collapse; cross-border consequences, such as displacement or trafficking; and/or violations of the provisions of a ceasefire agreement.”

elaborate on the different dimensions and impact of these crimes, particularly in situations of armed conflict.¹⁹ The term SGBV is used in this study to encompass all manifestations of this form of violence, regardless of their connection to an armed conflict.

c. Trafficking in Persons

In resolutions 2331 (2016) and 2388 (2017), the Security Council recognizes the linkage between human trafficking, sexual violence in conflict, and terrorism “which can prolong and exacerbate conflict and instability or intensify its impact on civilian populations.” In resolution 2388 (2017), the Council recognized that “acts of trafficking in persons are often associated with other violations of applicable international law and other abuses, including those involving recruitment and use, abduction and sexual violence, including rape, sexual slavery, forced prostitution and forced pregnancy” and called upon “all Member States to hold perpetrators accountable and to assist victims in their recovery and reintegration”.

The Security Council has also affirmed that “victims of trafficking in persons in all its forms, and of sexual violence, committed by terrorist groups should be classified as victims of terrorism with the purpose of rendering them eligible for official support, recognition and redress available to victims of terrorism,” have access to national relief and reparations programmes, and contribute to lifting the sociocultural stigma attached to “this category of crime and facilitate rehabilitation and reintegration efforts”.²⁰

Definition of Trafficking in Persons

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Article 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).

¹⁹ This includes Security Council resolutions 1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2467 (2019), which form part of the women, peace and security agenda.

²⁰ Security Council resolution 2331 (2016), operative para. 10.

Terrorist groups are also known to benefit from human trafficking, including for direct or indirect financial gain.²¹ Acts of SGBV linked to human trafficking by terrorist groups can be perpetrated to meet strategic goals such as the intimidation and decimation of communities, the institutionalization of sexual violence and slavery, and as a driver of recruitment into the terrorist group.²² The commodification and exploitation of persons by terrorist groups through trafficking includes the act of trafficking purported members to join the terrorist group (for instance, through online recruitment by deception of children or of adults where it is by a specified “means”) and the crimes against targeted victims of terrorism which include a trafficking dimension (for example, the sale and exploitation of women and girls by ISIL for exploitation). Indeed, human trafficking linked to terrorist groups entails important gender and age dimensions. Women, men, girls, and boys may be targeted and exploited differently by terrorist groups and for a variety of exploitative purposes recognized in the definition of trafficking, including for the purposes of sexual exploitation, and forced labour.²³ Human trafficking for sexual exploitation denotes the sexual violence element of this gendered crime, which is only one of the varied dimensions of human trafficking by terrorist groups. Depending on the circumstances, SGBV can also be indelibly tied to other exploitative purposes, such as trafficking for the purposes of forced marriage, child recruitment, and forced labour. SGBV may also be evident in the “act” or “means” (e.g. force or abuse of position of vulnerability) of trafficking in persons. The relevance of anti-trafficking frameworks to accountability for SGBV linked to terrorism will be further explored in Part II of the study.

d. SGBV Linked to Terrorism

The expression “SGBV linked to terrorism” adopted in this study aims to reflect the multifaceted and evolving understanding of the different ways in which SGBV can be perpetrated by terrorist groups or individuals, in armed conflict or non-conflict settings, and which may warrant the application of different legal frameworks.

In several resolutions, the Security Council has recognized that SGBV is known to be part of the strategic objectives and ideology of certain terrorist groups and is used as a tactic of terrorism and an instrument to increase their finances and power through recruitment and the destruction of communities.²⁴

²¹ Council resolutions 2195 (2014), 2253 (2015), 2199 (2015) and 2368 (2017).

²² CTED, *Identifying and Exploring the Nexus between Human Trafficking, Terrorism, and Terrorism Financing* (2019), paras. 35–59. On the intersections between trafficking in persons and terrorism, see also Organization for Security and Cooperation in Europe (OSCE) Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings and Terrorism: Where and How They Intersect Analysis and Recommendations for More Effective Policy Responses* (Vienna, 2021); see also United Nations, General Assembly, Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, *A/76/263*, 3 August 2021.

²³ See the text box for the definition of trafficking in persons of the Palermo Protocol, structured upon three defining elements: the “act”, the “means” and the “purpose”. It should be noted that, when the victim is a child, it is not required to prove “means” such as deception, coercion or “grooming”, and the element of consent is always irrelevant.

²⁴ See for example Security Council resolutions 2242 (2015), 2331 (2016), 2388 (2017) and 2467 (2019).

These links between SGBV and terrorism have been documented in successive reports of the Secretary-General on conflict-related sexual violence and can be conceptualised across at least six dimensions.²⁵ The **first** dimension of SGBV linked to terrorism is where violent extremists and terrorist groups systematically commit SGBV in a manner that is integral to their operation. Examples include Al-Shabaab's use of abduction, rape, and forced marriage to subjugate those in areas under its control.²⁶ The deliberate use of SGBV to spread terror is the **second** dimension. The **third** dimension is where SGBV is used to finance and sustain terrorist activity. This dimension may include using SGBV as a form of compensation and reward to fighters as well as ransoming trafficked and abducted women and girls back to their families. With the **fourth** dimension, terrorist groups deliberately use SGBV as a means of persecuting a group based on its political, ethnic, or religious identity. This dimension is now understood also to include persecution on the basis of gender, and which can be illustrated by targeted attacks by ISIL on members of the LGBTQ+ community.²⁷

Terrorist groups have also adopted SGBV as part of a strategy for radicalization, recruitment, and retention of its members, and this constitutes the **fifth** dimension of SGBV linked to terrorism. According to one of the interlocutors, an illustration of this fifth dimension that may easily be overlooked is the use of gendered narratives to indoctrinate and radicalize female students into Boko Haram for use as suicide bombers.²⁸ Information collected for this study also suggests that human trafficking for the purpose of terrorist activities is another example of the fifth dimension.²⁹ The **sixth** dimension of SGBV linked to terrorism is where these crimes are committed pursuant to and/or in furtherance of an ideology. Ideologies held by terrorist groups that entail SGBV include the subjugation of women in society and the control of their bodies and reproductive health to breed a generation of future group members or promote the survival of one ethnic or racial group over another. For example, narratives prevalent among certain movements based on xenophobia, racism and other forms of intolerance, or in the name of religion or belief, emphasize "the survival of the nation," the subjugation of women, and thus the promotion of their roles as mothers and housewives, particularly in low birth rate countries which are seen as threatened by the so-called "great replacement".³⁰

²⁵ United Nations, Special Representative of the Secretary-General on Sexual Violence in Conflict, Zainab Bangura, seventy-first session, 7847th meeting of the Security Council, 20 December, 2016, S/PV.7847, p. 6, available at <https://undocs.org/en/S/PV.7847>.

²⁶ See for example United Nations, *Security Council, Conflict-Related Sexual Violence: Report of the Secretary-General*, S/2022/272 (22 June 2023), para. 15, available at <http://www.undocs.org/S/2023/413>.

²⁷ United Nations, Security Council, *Tenth report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 22 May 2023, S/2023/367, para. 44, available at www.undocs.org/S/2023/367.

²⁸ Interview with expert on sexual violence in the context of armed conflict and forced displacement, 14 June 2023.

²⁹ See Organization for Security and Cooperation in Europe (OSCE) Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings and Terrorism: Where and How They Intersect Analysis and Recommendations for More Effective Policy Responses* (Vienna, 2021), available at www.osce.org/files/f/documents/2/7/491983.pdf.

³⁰ CTED, *CTED Trends Alert*, April 2020, p. 5.

These six dimensions do not reflect a complete image of the motivations behind the commission of SGBV linked to terrorism.³¹ The community of practice is continually deepening its understanding of the crucial role that SGBV can play in the operations and conduct of terrorists and terrorist groups across the ideological spectrum. As terrorism itself evolves, additional links between SGBV and terrorism may emerge or become more apparent.

II. ANALYSIS OF THE RELEVANT LEGAL FRAMEWORKS TO INCREASE ACCOUNTABILITY FOR SGBV LINKED TO TERRORISM

Depending on the context, acts of SGBV linked to terrorism can be addressed under international humanitarian law, international criminal law, international human rights law, anti-trafficking law, and counter-terrorism legislation. In some cases, certain dimensions of SGBV linked to terrorism may be captured by general domestic criminal law addressing the underlying prohibited conduct such as rape, kidnapping, forced marriage, and other forms of SGBV. A deeper understanding of the intricate dynamics and multifaceted nature of SGBV linked to terrorism is a critical step towards comprehensively addressing these crimes through a range of complementary legal frameworks.

This section explores the opportunities offered by different legal frameworks for investigating, prosecuting, and punishing SGBV linked to terrorism. The study acknowledges that some Member States may have access to only some of these frameworks, and that the extent to which they can rely on a particular framework may depend on factors such as the domestication of international legal frameworks, the availability of evidence to support the elements of the crimes covered by a specific framework, and the challenges associated with its implementation, as discussed further below. Some Member States have the ability to bring cumulative charges by utilizing overlapping legal frameworks, allowing them to prosecute a broader range of crimes. Other Member States might be restricted to using a single framework, such as their counter-terrorism legislation, to prosecute substantive crimes like kidnapping or bodily harm. The limitations and opportunities of these different approaches are further discussed below without prescribing the approach to be taken in any particular circumstance.

³¹ See for example, United Nations, Security Council, *Conflict-Related Sexual Violence: Report of the Secretary-General, S/2015/203* (23 March 2015), available at <http://undocs.org/en/S/2015/203>; Nikita Malik, "Trafficking terror: how modern slavery and sexual violence fund terrorism," The Henry Jackson Society, 2017, available at <https://henryjacksonsociety.org/wp-content/uploads/2017/10/HJS-Trafficking-Terror-Report-web.pdf>; and United Nations, Human Rights Council, *They Came to Destroy: ISIS Crimes against the Yazidis, A/HRC/32/CRP.2* (15 June 2016), available at www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session32/list-reports.

International Counter-Terrorism Framework

A comprehensive international counter-terrorism framework exists to mandate, inter alia, the prevention, criminalization, and prosecution of terrorism in its diverse forms. In resolution 1373 (2001), the Security Council decided that all Member States shall ensure that any individual who participates in the financing, planning, preparation or perpetration of terrorist acts, or in supporting terrorist acts, is brought to justice and that terrorist acts are established as serious criminal offences in domestic laws and regulations.³² Said obligations are applicable regardless of whether the group or individual is on designation lists established nationally or by the United Nations.

Despite the absence of a single, all-encompassing definition in international law, the 19 international counter-terrorism conventions and protocols provide definitions of specific terrorist acts.³³ In resolution 1566 (2004), the Security Council recalls that “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population or compelling a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism” are under no circumstance justifiable.³⁴ In addition, a common element within relevant regional instruments³⁵ is that terrorism is or includes the specific intent to use criminal acts for an exhaustive list of objectives, including the intimidation of civilians.

Among the 19 international legal instruments governing terrorism, the International Convention against the Taking of Hostages (1979) encompasses conduct that may be relevant to some forms of SGBV linked to terrorism.³⁶ The International Convention for the Suppression of the Financing of Terrorism is also of direct relevance in addressing

³² Operative para. 1(e).

³³ See www.un.org/sc/ctc/resources/international-legal-instruments/.

³⁴ Operative para. 3. See also Declaration on Measures to Eliminate International Terrorism (1994), in which “[c]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes [...] whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them” are declared as unjustifiable.

³⁵ The Arab Convention on the Suppression of Terrorism (1998); the Convention of the Organization of the Islamic Conference on Combating International Terrorism (1999); the Organization of African Unity Convention on the Prevention and Combating of Terrorism (1999); and the Council of Europe Convention on the Prevention of Terrorism (2005).

³⁶ See Article 1 of the Convention: “Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the “hostage”) in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages (“hostage-taking”) within the meaning of this Convention.”

SGBV linked to terrorism as it prohibits the financing of all acts of terrorism.³⁷ Pursuant to the Convention, it is an offence to provide funding, directly or indirectly, with the intention that the funds be used to carry out a terrorist act. Thus, engaging in forms of SGBV to generate revenue in order to carry out such acts, and the wilful financing of any terrorist activity, including activities of groups that commit SGBV, may fall under the scope of the Convention.

In addition to international and regional counter-terrorism conventions, specific resolutions adopted by the Security Council play a fundamental role in the international counter-terrorism framework with direct implications for national counter-terrorism responses. In resolutions 1373 (2001), 2178 (2014), and 2396 (2017) Member States are required to establish conduct such as the financing, planning, preparation, perpetration, or support of terrorist acts “as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts”.³⁸ The Council has also reaffirmed on multiple occasions that “those responsible for committing or otherwise responsible for terrorist acts, and violations of international humanitarian law or violations or abuses of human rights in this context, must be held accountable”.³⁹

The Security Council has also passed resolutions reinforcing the understanding that SGBV can be committed as an act of terrorism. As previously noted, in different resolutions, including resolution 2242 (2015), the Council has expressed concern that SGBV is known to be part of the strategic objectives and ideology of certain terrorist groups and is used as a tactic of terrorism and an instrument to increase their finances and power through recruitment and the destruction of communities.⁴⁰

The Security Council further urged Member States to, inter alia, conduct the “prompt investigation, prosecution and punishment of perpetrators of sexual and gender-based violence.”⁴¹ In resolution 2331 (2016), the Council set out concrete steps that Member States can take to combat human trafficking linked to terrorism, including developing the expertise of their financial intelligence units to analyse cases in human trafficking that finance terrorism.⁴² In the same resolution, the Council further urged Member States “to ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and penalize in a manner duly reflecting the seriousness of the offence of trafficking in persons committed with the purpose of supporting terrorist organizations or individual terrorists, including through the financing of and recruitment for the commission of terrorist acts.”⁴³ The Council also affirmed that

³⁷ For a detailed review of the Convention and its relevance to SGBV in terrorist contexts see UNODC, Handbook of Gender Dimensions of Criminal Justice Responses to Terrorism (2019), available at http://www.unodc.org/documents/terrorism/Publications/17-08887_HB_Gender_Criminal_Justice_E_ebook.pdf

³⁸ See Security Council resolution 1373 (2001), operative para. 2(e).

³⁹ See Council resolution 2322 (2016), operative para. 2, also Council resolution 2396 (2017), operative para. 19.

⁴⁰ See also for example Council resolution 2467 (2019), operative para. 28.

⁴¹ See Council resolution 2242 (2015), operative para. 14.

⁴² Operative para. 5.

⁴³ Operative para. 7.

victims of trafficking in persons in all its forms, and of sexual violence committed by terrorist groups, should be classified as victims of terrorism with the purpose of, inter alia, rendering them eligible for official support, recognition and redress available to victims to victims of terrorism and have access to national relief and reparations programmes.⁴⁴ In resolution 2482 (2019), the Council called upon States, where appropriate, “to review, amend and implement legislation, including for acts of sexual and gender-based violence, to ensure that all forms of trafficking in persons, including when it is committed in situations of armed conflict or by armed and terrorist groups for the purpose of financing terrorism or to serve any strategic goals of terrorist groups are addressed.”⁴⁵

Countering the financing of terrorism

The obligations derived from resolution 1373 (2001) on terrorism financing are relevant to accountability for SGBV in terrorist contexts given the indications of direct and indirect financial gains derived by terrorist groups from perpetrating SGBV. Building on these obligations, the provisions of resolution 2462 (2019) relating to the countering of the financing of terrorism can further substantively contribute to accountability and prevention efforts.

In 2016, the Secretary-General of the United Nations reported that “the Islamic State in Iraq and the Levant (ISIL), Boko Haram, Al-Shabaab and others are using trafficking and sexual violence as weapons of terror and an important source of revenue”.⁴⁶ In its 2019 report *Identifying and Exploring the Nexus between Human Trafficking, Terrorism, and Terrorism Financing*, CTED observed that the “systematic sale of Yazidi women by ISIL fighters represents the most significant known instance of the use of sexual slavery to generate revenue (i.e., of the “human trafficking/terrorism financing nexus”).⁴⁷ The Financial Action Task Force (FATF) has also noted that there are “indications that human trafficking may be a source of income for terrorist groups, particularly those that control territory”.⁴⁸

Although the indications of direct financial flows to terrorist groups from the commission of SGBV do not suggest a significant source of funding, Member States are encouraged to consider the indirect financial gains to the terrorist group, for instance by the delegation of domestic and other forced labour to enslaved individuals that results in the “free provision of services, thus cutting operational costs and increasing organizational efficiency”.⁴⁹ The deliberate and systematic use of rape, enslavement, and other forms of

⁴⁴ Operative para. 10.

⁴⁵ Operative para. 8.

⁴⁶ United Nations, Secretary-General, seventy-first session, 7847th meeting of the Security Council, 20 December 2016, S/PV.7847, p. 3, available at <https://undocs.org/en/S/PV.7847>.

⁴⁷ (2019) para. 61.

⁴⁸ FATF and Asia-Pacific Group on Money Laundering, *Financial Flows from Human Trafficking*, July 2018, para. 41, available at www.fatf-gafi.org/media/fatf/content/images/Human-Trafficking-2018.pdf.

⁴⁹ OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings and Terrorism: Where and How They Intersect Analysis and*

SGBV as strategies to promote the ideology of the terrorist group and instil fear in communities has also entailed the exploitation of victims for the recruitment of terrorist fighters and deployment in military operations.⁵⁰ Therefore the overarching obligation to bring to justice, extradite or prosecute any person who supports, facilitates, participates, or attempts to participate in the direct or indirect financing of activities conducted by terrorists or terrorist groups necessarily applies in these cases.

Incitement to terrorism

Similarly, the prohibition of incitement to terrorism mandated in resolution 1624 (2005) is equally relevant to the development and implementation of criminal justice responses to SGBV linked to terrorism. In resolution 1624 (2005),⁵¹ the Security Council called upon Member States to “[p]rohibit by law incitement to commit a terrorist act or acts,” and, in resolution 2354 (2017), the Council emphasized the importance of addressing terrorist narratives that pose a threat to international peace and security. These terrorist narratives include ISIL’s justification of sexual slavery,⁵² the use of gender in “Islamist” narratives and recruitment efforts by terrorist groups,⁵³ the dissemination of Boko Haram’s ideology that promotes SGBV, including rape and forced pregnancy,⁵⁴ and the promulgation of ISIL’s ideology on homosexuality justifying attacks on members of, or those perceived to be members of, the LGBTQ+ community.⁵⁵ The extent to which these narratives incite terrorist acts is illustrated by internal ISIL records and information on ideological doctrine, including policy measures on the captivity and treatment of Yazidi females, detailed regulation of intercourse with enslaved Yazidi women and girls, samples of marriage contracts, and regulation of the continuation of sexual slavery.⁵⁶ This documentary evidence could be helpful to demonstrate ISIL’s genocidal intent to eliminate the Yazidis as a religious group as well as its intent to use SGBV as a tactic of terrorism. Individuals who are responsible for promulgating and disseminating such narratives may be responsible for incitement to terrorism where there is evidence of the “subjective element

Recommendations for More Effective Policy Responses (Vienna, 2021), p. 46, available at www.osce.org/files/f/documents/2/7/491983.pdf.

⁵⁰ CTED, *Identifying and Exploring the Nexus between Human Trafficking, Terrorism, and Terrorism Financing* (2019), para. 42.

⁵¹ Operative para. 1(a).

⁵² Salma Abdelaziz, “ISIS states its justification for the enslavement of women,” CNN, 13 October 2014, available at <https://edition.cnn.com/2014/10/12/world/meast/isis-justification-slavery/index.html>.

⁵³ Aleksandra Dier and Gretchen Baldwin, “Masculinities and violent extremism,” International Peace Institute and CTED, June 2022, pp. 3–6.

⁵⁴ 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, 7 May 2015, available at www.cfr.org/blog/boko-harams-sex-slaves.

⁵⁵ United Nations, Security Council, *Tenth report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant*, 22 May 2023, S/2023/367, para. 44, available at <http://undocs.org/S/2023/367>; interview with investigator and gender specialist, United Nations Investigative Mechanism, 29 March 2023.

⁵⁶ European Union Agency for Criminal Justice Cooperation (Eurojust), “The prosecution at national level of sexual and gender-based violence (SGBV) committed by the Islamic State in Iraq and the Levant (ISIL)”, July 2017, p. 9, available at www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2017-07_Prosecution-at-national-level-of-sexual-and-gender-based-violence_EN.pdf.

(intent that a terrorist act be committed as a result) and an objective element (creation of a danger that this will in fact happen)".⁵⁷

It is essential, however, that the suppression of alleged acts of incitement comply with obligations under international law, in particular international human rights law.⁵⁸ In implementing measures under resolution 1624 (2005), Member States are required to comply with the strict legal threshold necessary for applying criminal sanctions to speech,⁵⁹ and care "must be taken to ensure that any restriction on the right to freedom of expression is both necessary and proportional."⁶⁰ In this regard, Member States are encouraged to consider the definition, based on best practices, which was formulated by the former United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.⁶¹

Foreign terrorist fighters

Concerning FTF-related offences,⁶² the Security Council urged Member States to develop and implement, in accordance with domestic and applicable international human rights law and international humanitarian law, appropriate investigative and prosecutorial strategies⁶³ to address, inter alia, the wilful organization or other facilitation, including acts of recruitment by their nationals, of the travel of individuals to another State "for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts".⁶⁴ This may be relevant to the investigation and prosecution of human trafficking in origin and transit States of persons for terrorist purposes, including SGBV.⁶⁵

⁵⁷ United Nations, Security Council, *Global survey of the implementation of Security Council resolution 1624 (2005) by Member States*, S/2021/973, 24 November 2021, para. 10, available at www.un.org/securitycouncil/ctc/sites/www.un.org/securitycouncil.ctc/files/gis_report_s.2021.973.pdf.

⁵⁸ Security Council resolution 1624 (2005), operative para. 4. See also, article 19 of the International Covenant on Civil and Political Rights on the right to freedom of expression; United Nations, Security Council, *Global survey of the implementation of Security Council resolution 1624 (2005) by Member States*, S/2021/973, 24 November 2021, para. 10.

⁵⁹ United Nations, Security Council, *Global survey of the implementation of Security Council resolution 1624 (2005) by Member States*, S/2021/973, 24 November 2021, para. 19.

⁶⁰ UNODC, *Handbook on Criminal Justice Responses to Terrorism*, (2009), p. 39, available at www.unodc.org/documents/terrorism/Handbook_on_Criminal_Justice_Responses_to_Terrorism_en.pdf.

⁶¹ United Nations, General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/16/51, para. 32, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/178/98/PDF/G1017898.pdf>. Proposed definition: incitement is an offence "to intentionally and unlawfully distribute or otherwise make available a message to the public with the intent to incite the commission of a terrorist offence, where such conduct, whether or not expressly advocating terrorist offences, causes a danger that one or more such offences may be committed."

⁶² Security Council resolution 2178 (2014), operative para. 6.

⁶³ Security Council resolution 2396 (2017), operative para. 18.

⁶⁴ Security Council resolution 2178 (2014), operative para. 6(c).

⁶⁵ OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings and Terrorism: Where and How They Intersect Analysis and Recommendations for More Effective Policy Responses* (Vienna, 2021), p. 15, available at www.osce.org/files/f/documents/2/7/491983.pdf.

Kidnapping and hostage-taking

Finally, depending on the context, resolutions that mandate criminal justice responses to terrorist tactics of kidnapping and hostage-taking for any purpose, including to finance their activities or gain political concessions,⁶⁶ are also applicable to accountability for SGBV linked to terrorism where terrorist groups have engaged in kidnappings to meet a broader range of objectives than those contained in the International Convention against the Taking of Hostages (1979). In these resolutions, the Security Council calls for international cooperation during incidents of kidnapping and hostage-taking committed by terrorist groups⁶⁷ and reaffirms the obligation to provide the “greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts”.⁶⁸

Relevance of International Humanitarian Law

An armed group’s designation as a terrorist organization does not render international humanitarian law inapplicable to the group’s conduct during an armed conflict. On the contrary, and as reiterated by the Security Council in multiple resolutions,⁶⁹ parties to an armed conflict are bound by the provisions of international humanitarian law, including the prohibition of attacks against civilians and persons not taking an active part in hostilities.⁷⁰

The applicability of the rules governing non-international armed conflicts, which are the contexts of most relevance for the purposes of this analysis, is determined by the following criteria: (1) the existence of a situation of violence of some degree of intensity; (2) the participation of a non-State actor presenting a certain degree of organization;⁷¹ and (3) the presence of a nexus between the conduct in question and armed conflict.

Common article 3 of the four Geneva Conventions and relevant principles of customary international law are directly applicable to the non-international armed conflicts in which terrorist groups such as ISIL, Al-Shabaab, and Boko Haram are engaged. Common article 3 of the Geneva Conventions contains the minimum guarantees required of parties to a non-international armed conflict and provides non-exhaustive illustrations of prohibited

⁶⁶ See for example, Security Council resolutions 2253 (2015), 2199 (2015) and 2133 (2014).

⁶⁷ Council resolution 2199 (2015).

⁶⁸ Council resolution 2133 (2014), operative para. 5, reaffirming resolution 1373 (2001).

⁶⁹ See for example resolutions 1456 (2003), 1894 (2009), 1998 (2011), 2286 (2016), 2417 (2018), 2462 (2019) and 2573 (2021).

⁷⁰ The interrelationship between international humanitarian law and (international and domestic) counter-terrorism law has been addressed by CTED in a separate study. See CTED, “The interrelationship between counter-terrorism frameworks and international humanitarian law”, January 2022.

⁷¹ CTED, “The interrelationship between counter-terrorism frameworks and international humanitarian law”, January 2022, p. 8; *Prosecutor v. Haradinaj et al., Trial Judgment*, IT-04-84-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 3 April 2008, para. 60, available at www.refworld.org/cases ICTY 48ac3cc82.html.

conduct.⁷² It expressly prohibits murder, extrajudicial killings, torture, mutilation, and cruel, inhumane, and degrading treatment. Although common article 3 makes no express reference to SGBV, the latter's implicit prohibition is contained in the obligation to treat each person humanely without adverse distinction based on their sex "or any other similar criteria".⁷³ It further prohibits violence to life, cruel treatment, torture,⁷⁴ and outrages upon personal dignity, which have been recognized to include rape and other forms of sexual violence.⁷⁵

Depending on the context, Additional Protocol II of 1977 to the Geneva Conventions may also be applicable.⁷⁶ Where applicable, article 4 of Additional Protocol II prohibits the following acts or threats of violence to the life, health, and physical or mental well-being of persons: murder; cruel treatment such as torture; acts of terrorism; "slavery and the slave trade in all their forms"; outrages upon personal dignity, in particular, humiliating and degrading treatment; rape; enforced prostitution; and any form of indecent assault. Rape and other forms of sexual violence are also recognized as prohibited as a matter of customary international law.⁷⁷

Threats or acts of violence against a civilian population the primary purpose of which is to spread terror are a violation of the laws and customs of war pursuant to article 33 of the Fourth Geneva Convention (1949) relative to the Protection of Civilian Persons in Time of

⁷² Prosecutor v. Zdravko Mucic aka "Pavo," Hazim Delic, Esad Landzo aka "Zenga," Zejnil Delalic, Trial Judgement, IT-96-21-T, ICTY, 16 November 1998, para. 532, available at www.refworld.org/cases,ICTY,41482bde4.html.

⁷³ See ICRC, Commentary on Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, para. 737, available at https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-3/commentary/2020?activeTab=undefined#_Toc44265145.

⁷⁴ See for example *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Appeal Judgment*, IT-96-23 & IT-96-23/1-A, ICTY, 12 June 2002, para. 150, available at www.refworld.org/cases,ICTY,3debaafe4.html.

⁷⁵ *Prosecutor v. Plić et al., Trial Judgment*, IT-04-74-T, ICTY, 29 May 2013, paras. 115–116, available at <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/IT-04-74/JUD251R2000462232.pdf>. There is no difference between the notion of "inhuman treatment" committed in an international armed conflict and the notion of "cruel treatment" prohibited under common article 3. See ICRC, *Commentary on Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949, *Commentary of 2020, Article 130 – Grave breaches*, para. 5247, available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-130/commentary/2020?activeTab=undefined>.

⁷⁶ Although common article 3 applies to all non-international armed conflicts, the Additional Protocol applies only to a subcategory of such conflicts which take place between the armed forces of the territorial State and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of the State's territory as to enable them to carry out sustained and concerted military operations and to implement the Protocol. See Art. 1, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

⁷⁷ International Committee of the Red Cross, Customary International Humanitarian Law Database, Rule 93, 'Rape and other forms of sexual violence are prohibited', available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule93

War⁷⁸ and articles 4 and 13(2) of Additional Protocol II.⁷⁹ State practice has also established this rule as a norm of customary international law applicable in armed conflicts regardless of the classification.⁸⁰ There is neither an exhaustive list of the types of acts of violence that may be deployed to instil terror nor is there a limitation on the typology of violence.⁸¹ The actus reus element is satisfied by evidence that the means deployed by the terrorist group were acts or threats of violence, including violence of a sexual nature or violence perpetrated based on gender. The mens rea element is twofold, namely the specific intent to spread terror among a civilian population and the intent to make the civilian population the object of acts or threats of violence.⁸² Factors that may be taken into account in identifying the intent include the “nature, manner, timing and duration” of the acts or threats of violence.⁸³ Evidence of this specific intent mens rea is critical for prosecuting SGBV as the war crime of terror, depending on the context.⁸⁴

As noted above, international humanitarian law also prohibits attacks against civilians even without this specific mens rea requirement. Some examples already applied in national courts in cases related to foreign terrorist fighters of outrages upon personal dignity, which includes various acts that inflict humiliation, indignity, or suffering on civilians.⁸⁵ National courts have also exercised jurisdiction over war crimes in non-terrorist contexts, including prosecutions for torture, murders, enforced disappearances, and sexual violence as war crimes. These international humanitarian law provisions may allow prosecutors in national war crimes units to utilize familiar legal grounds to address attacks against civilians, including SGBV-related crimes, offering a wider range of

⁷⁸ Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), art. 33, available at <https://ihl-databases.icrc.org/en/ihl-treaties/qciv-1949/article-33?activeTab=1949GCs-APs-and-commentaries>.

⁷⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, art. 4, available at <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977?activeTab=1949GCs-APs-and-commentaries>.

⁸⁰ ICRC, Rule 2, Violence Aimed at Spreading Terror among the Civilian Population, available at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule2>.

⁸¹ In that regard, sniper campaigns and the destruction of property have been found to be acts of violence deployed by an armed group to instil terror among a civilian population. See for example *Prosecutor v. Stanilav Galic, Trial Judgment and Opinion*, IT-98-29-T, ICTY, 5 December 2003, paras. 564–594; available at www.refworld.org/cases/ICTY_4147fb1c4.html.

⁸² *Prosecutor v. Dragomir Milosevic, Appeal Judgment*, IT-98-29/1-A, ICTY, 12 November 2009, para. 37 available at www.refworld.org/cases/ICTY_4b41e1942.html.

⁸³ *Prosecutor v. Stanislav Galic, Appeal Judgment*, IT-98-29-A, ICTY, 30 November 2006, para. 104, available at http://www.refworld.org/cases/ICTY_47fd565.html. There is no requirement of actual intimidation of the civilian population.

⁸⁴ See also the Trial Chamber of the Special Court for Sierra Leone (SCSL) in *Prosecutor v Sesay* which found the manner in which the female population was specifically targeted demonstrated a “calculated and concerted pattern” by the perpetrators to use SGBV as a weapon of terror, which “effectively disempowered the civilian population and had a direct effect of instilling fear on entire communities”. *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao (the RUF accused), Trial Judgment*, Case No. SCSL-04-15-T, SCSL, 2 March 2009, para. 1347-1348. available at www.refworld.org/cases/SCSL_49b102762.html.

⁸⁵ See also Eurojust, “Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences”, May 2020, available at www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2020-05_Report-on-cumulative-prosecution-of-FTFs_EN.PDF.

opportunities for pursuing accountability for such crimes. Where the requirements are met, therefore, international humanitarian law can be relied upon by Member States to meet their responsibility to investigate and prosecute SGBV linked to terrorism.

Relevance of International Criminal Law

Under international criminal law, SGBV linked to terrorism can constitute war crimes (as discussed above), crimes against humanity, and genocide, where the evidence supports the legal contextual elements of each category of crimes. For instance, crimes against humanity require that the underlying crimes occur as part of a widespread or systematic attack against a civilian population and with knowledge of the attack, while the contextual element for war crimes requires that the conduct takes place and is associated with an armed conflict. Although not a contextual element, a distinguishing and essential element of the crime of genocide is the genocidal intent to destroy in whole or in part a national, ethnical, racial, or religious group.⁸⁶ Despite the distinct elements of each core international crime, depending on the circumstances of each case, the underlying conduct may concurrently amount to a crime against humanity, a war crime, and an act of genocide.

Rape, sexual slavery, forced prostitution, forced pregnancy, and forced sterilization are constitutive acts of crimes against humanity⁸⁷ and war crimes⁸⁸ under the Rome Statute. The Rome Statute also proscribes as a crime against humanity “any other form of sexual violence of comparable gravity,”⁸⁹ and “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”⁹⁰ Outrages upon personal dignity, in particular humiliating and degrading treatment⁹¹ and any other form of sexual violence as a serious violation of common article 3 of the four Geneva Conventions are war crimes within the body of international humanitarian law and international criminal law.⁹² These residual clauses in the Rome Statute on sexual violence demonstrate that the forms of sexual violence listed are not exhaustive but rather include violence of a sexual nature of comparable gravity.⁹³

⁸⁶ Article 6 of the Rome Statute of the International Criminal Court states “any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group, or (e) Forcibly transferring children of the group to another group.”

⁸⁷ Rome Statute, art. 7(1)(g).

⁸⁸ *Ibid.*, art. 8(2)(b)(xxii).

⁸⁹ *Ibid.*, art. 7(1)(g).

⁹⁰ *Ibid.*, art. 7(1)(k).

⁹¹ *Ibid.*, art. 8(2)(b)(xxi).

⁹² *Ibid.*, art. 8(e)(vi).

⁹³ Patricia Viseur Sellers, “The prosecution of sexual violence in conflict: the importance of human rights as means of interpretation”, n.d., United Nations Office of the High Commissioner, p. 13, available at www2.ohchr.org/english/issues/women/docs/paper_prosecution_of_sexual_violence.pdf.

Examples include sexual mutilation and forced nudity,⁹⁴ a form of sexual violence that, based on the facts, may constitute the war crime of outrages upon personal dignity.⁹⁵ Whether an act is sexual in nature must be determined on a case-by-case basis, depending on the specific facts and circumstances.⁹⁶ Furthermore, sexual violence encompasses a variety of conduct that does not necessarily involve physical contact or penetration of the human body.⁹⁷

Rape and other forms of SGBV have been successfully prosecuted as core international crimes,⁹⁸ and Member States have a responsibility to prosecute persons responsible for such acts.⁹⁹ While some States have ratified the Rome Statute and incorporated its provisions on core international crimes into their domestic laws, it is important to acknowledge that not all Member States have taken this step. The ensuing analysis aims to provide relevant frameworks of reference for the domestic prosecution of core international crimes, particularly as more States explore the prosecution of members of terrorist groups for this category of international crimes. Notably, in 2021, a German court found an ISIL member guilty of genocide in connection with the treatment of Yazidis held hostage, which resulted in the death of a five-year-old girl.¹⁰⁰ Although the charges did not expressly reference the gendered nature of the crime, in dismissing the defendant's appeal in January 2023, the Federal Court of Justice confirmed that "[i]t was precisely the organised enslavement of women and girls, especially in connection with religious re-education, that served to destroy the Yazidis religious minority in order to establish an Islamic caliphate. All in all, the approach was capable of bringing about [...] the (partial) destruction of this group as such."¹⁰¹

⁹⁴ *The Prosecutor v. Jean-Paul Akayesu, Trial Judgment*, ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998, para. 688, available at www.refworld.org/cases/ICTR.40278fbb4.html. The Trial Chamber found that the accused's conduct of ordering the Interahamwe to undress a student and force her to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd, constituted sexual violence.

⁹⁵ Rome Statute, art. 8(2)(b)(xxi). See *Akayesu Judgment*, Case No. ICTR-96-4-T, ICTR, at para. 688.

⁹⁶ *The Prosecutor v. Dominic Ongwen, Trial Judgment*, ICC-02/04-01/15, International Criminal Court, 4 February 2021, para. 2716, available at www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01026.PDF.

⁹⁷ According to the ICTR Trial Chamber in the *Akayesu* case: "Sexual violence is not limited to a physical invasion of the human body and may include acts that do not involve penetration or physical contact. Sexual violence covers both physical and psychological attacks directed at a person's sexual characteristics." *Akayesu, Trial Judgment*, para. 688.

⁹⁸ See for example *The Prosecutor v. Jean-Paul Akayesu, Trial Judgment*, ICTR-96-4-T, ICTR, 2 September 1998, available at www.refworld.org/cases/ICTR.40278fbb4.html; *Prosecutor v. Dusko Tadic aka "Dule", Opinion and Judgment*, IT-94-1-T, ICTY, 7 May 1997, available at www.refworld.org/cases/ICTY.4027812b4.html; *Prosecutor v. Anto Furundzija, Trial Judgment*, IT-95-17/1-T, ICTY, 10 December 1998, available at www.refworld.org/cases/ICTY.40276a8a4.html.

⁹⁹ Security Council resolution 1820 (2008), operative para. 4.

¹⁰⁰ Higher Regional Court, Frankfurt, judgment of 30 November 2021, 5-3 StE 1/20 - 4 - 1/20, available at <https://openjur.de/u/2397259.html>.

¹⁰¹ Doughty Street Chambers, "German Federal Court of Justice Confirms the First-Ever Conviction of an ISIS Member for Genocide", 26 January 2023, available at www.doughtystreet.co.uk/news/german-federal-court-justice-confirms-first-ever-conviction-isis-member-genocide.

Judicial interpretation by international courts and tribunals of provisions concerning crimes against humanity and war crimes has provided further clarity on specific forms of SGBV that have been employed by terrorist groups, which may be of relevance to national criminal justice practitioners. For example, forced pregnancy is recognized as a crime that is separate from rape and unlawful detention even where the latter crimes may have preceded and facilitated the enforced pregnancy. Forced pregnancy entails the loss of a woman's reproductive autonomy¹⁰² and on its own may constitute a crime against humanity and a war crime. Prosecuting forced pregnancy as a subordinate offence to rape may fail to capture the unique aspects of this crime.

Regarding the crime of forced marriage, the International Criminal Court Appeals Chamber recently upheld the findings of the Trial Chamber in the case against Dominic Ongwen, a commander of the non-State armed group the Lord's Resistance Army, concerning the charge of forced marriage as a crime against humanity.¹⁰³ While forced marriage shares certain elements with sexual slavery, such as "non-consensual sex and deprivation of liberty",¹⁰⁴ forced marriage is "not necessarily sexual in nature".¹⁰⁵ Rather, it "entails a 'gendered harm', which is essentially the imposition on the victim of socially constructed gendered expectations and roles attached to 'wife' or 'husband'."¹⁰⁶ Central to the crime of forced marriage is the imposition of a conjugal union upon the victim through physical or psychological force, the threat of force, or taking advantage of a coercive environment.¹⁰⁷ As a form of other inhumane acts, forced marriage is a continuing crime in that both the conduct of entering into, and continuing, the conjugal relationship are criminalized.¹⁰⁸ The clarifications on the crime of forced marriage as a crime against humanity are particularly helpful in addressing the widespread forced marriages adopted as tactics by terrorist groups such as ISIL, Boko Haram, Al-Shabaab, and other ISIL affiliates operating in Mozambique and the Sahel region.

The relevance of international criminal law to SGBV linked to terrorism requires an understanding of intersectionality and the manner in which these crimes are inherently discriminatory and gendered. The intersection of ethnicity and gender is acknowledged in genocidal rape, where the rapes are used as a weapon to eliminate the protected group in whole or in part. In terrorist contexts, SGBV has been used as a weapon to persecute and intimidate a civilian population, as illustrated by the rampant use of rape and other SGBV by ISIL against Yazidi, Turkmen, Christian, and Shabak women and girls. Further illustrations include evidence that Ansar Eddine, a United Nations designated terrorist

¹⁰² *The Prosecutor v. Dominic Ongwen*, Trial Judgment, ICC-02/04-01/15, International Criminal Court, 4 February 2021, para. 2722.

¹⁰³ Forced marriage as a form of other inhumane acts pursuant to article 7(1)(k) of the Rome Statute.

¹⁰⁴ *The Prosecutor of the Special Court v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu* (the AFRC accused), Appeal Judgment, SCSL-2004-16-A, SCSL, 22 February 2008, para. 195, available at www.refworld.org/cases/SCSL_48441e412.html.

¹⁰⁵ *The Prosecutor v. Ongwen, Appeals Judgment*, ICC-02/04-01/15 A, International Criminal Court, 15 December 2022, para. 1024, available at www.icc-cpi.int/court-record/icc-02/04-01/15-2022-red.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*, para. 16.

¹⁰⁸ *Ibid.*, para. 17.

group associated with Al-Qaida in the Islamic Maghreb (AQIM), prohibited women and girls from exercising their rights to education, work, free movement, and assembly specifically because of their gender.¹⁰⁹ In addition to the violations of their fundamental human rights, the restriction of their rights may also amount to persecution as a crime against humanity on the grounds of gender. Thus, evidence of the terrorist group's strategic goals and ideology could be relevant to demonstrate the requisite mens rea for gender-based crimes under international criminal law.

Persecution on the basis of gender

The crime of gender-based persecution is a reflection of such intersectionality, manifesting itself through the reinforcement of entrenched gender inequality. Persecution, “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”,¹¹⁰ is recognized as a crime against humanity. As a crime, persecution “derives its unique character from the requirement of a specific discriminatory intent”,¹¹¹ which invokes international human rights law concerning the prohibition of discriminatory treatment.¹¹² The crime of persecution overlaps with other legal regimes, such as international refugee law, where a well-founded fear of persecution on specified grounds is the basis for asylum.¹¹³ Similarly, the common elements of the crime of terrorism do not expressly require specific discriminatory intent. Nonetheless, the nature of the terrorist attacks could entail discriminatory treatment and intent.

Until recently,¹¹⁴ criminal justice accountability for gender-based persecution was often overlooked.¹¹⁵ When gender is considered, attention is frequently concentrated on crimes of a sexual nature. It is essential to recognize that gender-based persecution may involve

¹⁰⁹ Georgiana Epure, “Writing the jurisprudence on gender-based persecution: Al Hassan on trial at the ICC,” *International Justice Monitor*, 16 July 2020, available at www.ijmonitor.org/2020/07/writing-the-jurisprudence-on-gender-based-persecution-al-hassan-on-trial-at-the-icc/.

¹¹⁰ Rome Statute, art. 7(2)(g).

¹¹¹ *Prosecutor v. Milorad Krnojelac, Trial Judgment*, IT-97-25-T, ICTY, 15 March 2002, para. 435, available at www.refworld.org/cases/ICTY/414806c64.html.

¹¹² See for example Universal Declaration of Human Rights, art. 2; International Covenant on Civil and Political Rights, art. 26; African Charter on Human and Peoples' Rights, art. 2; European Convention on Human Rights, art. 14; American Convention on Human Rights, art. 1; Convention on the Elimination of All Forms of Discrimination against Women, art. 2; and International Convention on the Elimination of All Forms of Racial Discrimination, art. 2.

¹¹³ Convention relating to the Status of Refugees (1951), available at www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees.

¹¹⁴ See for example International, Impartial and Independent Mechanism (IIIM), *Gender Strategy and Implementation Plan (Abridged Version)*, 30 September 2022, available at <https://iiim.un.org/wp-content/uploads/2022/10/Gender-Strategy-Implementation-AbridgedEnglish.pdf>; International Criminal Court, Office of the Prosecutor, *Policy on the Crime of Gender Persecution*, 7 December 2022, available at www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf.

¹¹⁵ Michelle Jarvis, “Gender persecution: why labels matter,” *Just Security*, 31 May 2023, available at www.justsecurity.org/86754/gender-persecution-why-labels-matter/.

the commission of crimes that are not sexual¹¹⁶ and are perceived to be gender-neutral, such as murder or the destruction of aspects of cultural heritage.¹¹⁷ It is crucial to avoid making biased assumptions about the specific crimes that may underlie gender persecution.¹¹⁸ Unconscious biases about what gender persecution looks like may result in missing the role of gender in the design and commission of the crimes.¹¹⁹ A holistic approach is encouraged, which includes assessing the individual crimes contextually. For instance, “looking at a rape in isolation may lead to missing relevant facts demonstrating its commission as a form of torture, persecution or as an act of genocide”.¹²⁰ The recent efforts towards prosecution of gender-based persecution at the International Criminal Court¹²¹ and at the national level in Germany¹²² in a case against a former ISIL member for religious and gender persecution provide the groundwork for future prosecutions of this intersecting crime. Gender persecution charges can aid in capturing a broader spectrum of criminality than other charges and can help to close impunity gaps.¹²³ Understanding how gender-based persecution intersects with other forms of discrimination “not only helps to unearth the discriminatory intent that can drive such crimes or entire conflicts, it can also shed light on victims who are vulnerable because of multiple and intersecting forms of discrimination.”¹²⁴

Relevance of International Human Rights Law

Under international human rights law, States bear the primary responsibility to respect and ensure the human rights of all persons within their territory and subject to their jurisdiction.¹²⁵ Unlike international humanitarian law, a context-specific legal framework,

¹¹⁶ IIIM, *Gender Strategy and Implementation Plan (Abridged Version)*, 30 September 2022, p. 9; and International Criminal Court, Office of the Prosecutor, *Policy on the Crime of Gender Persecution*, 7 December 2022.

¹¹⁷ According to the International Criminal Court Office of the Prosecutor’s Policy on Cultural Heritage, “certain types or aspects of cultural heritage may be targeted specifically because they hold a special value to a specific group, such as a particular sex, gender or age group. This would be in accordance with CEDAW (the UN Convention on the Elimination of All Forms of Discrimination against Women), which guarantees non-discrimination in all aspects of cultural life.” International Criminal Court, Office of the Prosecutor, *Policy on Cultural Heritage*, June 2021, para. 29, available at www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf.

¹¹⁸ International Criminal Court, Office of the Prosecutor, *Policy on the Crime of Gender Persecution*, p. 7.

¹¹⁹ Interview with international humanitarian and criminal law expert with a focus on the Syrian Arab Republic and Iraq, 11 April 2023.

¹²⁰ IIIM, *Gender Strategy and Implementation Plan (Abridged Version)*, p. 5.

¹²¹ *The Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/21, International Criminal Court, 9 December 2021, available at www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_11432.PDF.

¹²² Nadia’s Initiative, *ISIS Member on Trial in Germany for Aiding and Abetting Genocide of Yazidis*, 17 January 2023, www.nadiasinitiative.org/news/isis-member-on-trial-in-germany-for-aiding-and-abetting-genocide-of-yazidis.

¹²³ International Criminal Court, Office of the Prosecutor, *Policy on the Crime of Gender Persecution*, 7 December 2022, p. 5, available at www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf.

¹²⁴ *Ibid.*

¹²⁵ See for example Security Council resolution 2467 (2019). Jurisdiction of States can be extraterritorial in circumstances in which the State exercises jurisdiction abroad through power or effective control. On

international human rights law is applicable at all times, including in contexts of armed conflict.¹²⁶ States obligations, in this regard, include inter alia exercising due diligence to prevent, investigate, and punish abuses (such as SGBV) by non-State actors, including proscribed groups, as well as ensuring adequate reparation and redress to victims.¹²⁷

Provisions relevant to the protection from SGBV are contained in a range of international and regional instruments for the protection of human rights.¹²⁸ There are several rights which may be implicated by SGBV linked to terrorism. Depending on the circumstances, these can include, but are not limited to: the right to life; freedom from discrimination (e.g., on the basis of sex and other proscribed grounds such as race and religion) and the guarantee of gender equality; the protection of physical integrity; the protection against arbitrary or unlawful interference with privacy, family and home; the right to health, and other economic, social and cultural rights (e.g. the right to education)¹²⁹; freedom of movement; the rights of protected categories of persons, including the rights of children to special protection¹³⁰; the right not to be subject to torture or to cruel, inhuman or

the extraterritorial application of international human rights law, the Human Rights Committee, the European Court of Human Rights (ECtHR), and the Inter-American Court of Human Rights (IACtHR) have determined the extraterritorial application of the respective human rights instruments. See General Comment No. 31 of the Human Rights Committee, which observes that a State Party's duty to ensure rights to all persons within its territory includes "anyone within the power or effective control of the State Party, even if not situated in the territory of the State Party (...) This Principle applies to those within the power or effective control of the forces of the State Party acting outside its territory". United Nations, Human Rights Committee, General Comment No. 31, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (CCPR/C/21/Rev.1/Add.13, para. 10).

¹²⁶ The principle of *lex specialis* accords IHL priority in cases of conflict in the co-application of the two legal regimes. Regional and international human rights treaties provide for derogation from certain human rights obligations in times of public emergency threatening the life of the nation, including on terrorism-related grounds, in accordance with a specific regime of safeguards. Such derogations must be exceptional and temporary in nature, strictly necessary and proportionate to the threat, and not violate a number of non-derogable rights such as the right to life or the prohibition against torture. See for example International Covenant on Civil and Political Rights, art. 4, and European Convention on Human Rights, art. 15.

¹²⁷ United Nations, Human Rights Committee, General Comment No. 31, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (CCPR/C/21/Rev.1/Add.13, para. 8). See also *Velasquez Rodriguez v Honduras*, Inter-American Court of Human Rights (Ser. C) No. 4, paras. 172 and 173, available at: http://hrlibrary.umn.edu/iachr/b_11_12d.htm

¹²⁸ See for example Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000); Council of Europe Convention on Action against Trafficking in Human Beings (2005); African Union Convention on Preventing and Combating Corruption (2003); Convention on the Elimination of All Forms of Discrimination against Women (1979); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003); and Declaration on the Elimination of Violence against Women and Violence against Children in the Association of Southeast Asian Nations (2013).

¹²⁹ See also United Nations, General Assembly, *Negative Effects of Terrorism on the Enjoyment of Human Rights*, 9 August 2021, A/HRC/48/66, available at <https://reliefweb.int/report/world/negative-effects-terrorism-enjoyment-human-rights-report-human-rights-council-advisory>.

¹³⁰ See the Convention on the Rights of the Child (1989) and its Optional Protocols (2000/2012). Sexual violence against children during conflict is also one of the six grave violations identified and condemned by the UN Security Council. See Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *The Six Grave Violations Against Children During Armed Conflict: The Legal*

degrading treatment or punishment; the prohibition on trafficking in persons; and the right to remedy for victims, including reparations. Finally, protecting the accused’s right to a fair trial also impacts the rights of victims to the extent that the denial of the right to a fair trial may result in the denial of the victim’s right to justice and truth.

A human rights-based approach to accountability for SGBV linked to terrorism takes into account the scope and interconnectedness of the rights impinged upon while placing attention equally on the development of measures for prevention, protection, and prosecution.¹³¹ It further acknowledges that these forms of violence occur on a spectrum that extends from peacetime to conflict and post-conflict situations.

SGBV “manifests itself on a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, [and] transcends national boundaries”.¹³² The Security Council has acknowledged the differential impact of terrorism and violent extremism on the human rights of women and girls.¹³³ In resolution 2467 (2019), the Security Council recognized this “continuum of interrelated and recurring forms of violence against women and girls”¹³⁴ and noted that sexual violence in conflict “exacerbates the frequency and brutality of other forms of gender-based violence”.¹³⁵ States bear national ownership of and responsibility for addressing the root causes of sexual violence in armed conflict and post-conflict situations.¹³⁶ In some circumstances, the commission of SGBV linked to terrorism is driven or enabled by pre-existing societal gender inequalities, and the experiences of the victims of such crimes relate to the more general experiences of women and girls in these societies.

In settings where cultural practices and harmful gender norms discourage victims from reporting the crimes and human rights violations they have suffered,¹³⁷ law enforcement and justice practitioners who uncritically endorse or accept these practices may overlook the significance of these offences and the harm they cause to both individuals and communities.¹³⁸ Even where evidence demonstrates that SGBV linked to terrorism was committed, a narrow interpretation of what constitutes a terrorist crime, and/or regarding SGBV as a “women’s issue” which does not merit prioritization, means SGBV and

Foundation, Working Paper No. 1, November 2013, available at: https://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf

¹³¹ Office of the United Nations High Commissioner for Human Rights, *International Instruments Concerning Trafficking in Persons*, August 2014, p. 2, available at www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/OnePagers/IntInstrumentsconcerningTraffickingpersons_Aug2014.pdf.

¹³² Committee on the Elimination of Discrimination Against Women, general recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, 26 July 2017, CEDAW/C/GC/35, para. 6, available at <https://digitallibrary.un.org/record/1305057?ln=en>.

¹³³ Security Council resolution 2242 (2015).

¹³⁴ Security Council resolution 2467 (2019).

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ CTED, *Identifying and Exploring the Nexus between Human Trafficking, Terrorism, and Terrorism Financing* (2019), pp. 9–10.

¹³⁸ Interview with civil society representative, 31 March 2023.

trafficking crimes may often go unprosecuted.¹³⁹ This, in turn, may result in a missed opportunity by Member States to investigate and prosecute terrorist groups for the full range of crimes committed and to comply with their obligations to bring perpetrators of terrorism, as well as of SGBV, to justice.

Relevance of Anti-Trafficking Frameworks

As previously noted, there has been consistent recognition, including by the Security Council, of the different connections between trafficking in persons and terrorism, including by mapping the trafficking-terrorism nexus specifically¹⁴⁰, condemning the use of sexual violence as a tactic of terrorism¹⁴¹; and acknowledging that SGBV is part of terrorists' use of trafficking in persons.

Under international anti-trafficking frameworks and relevant international human rights treaties, States are required to prevent trafficking, to investigate and prosecute perpetrators, to identify trafficked persons, to assist and protect victims including through the application of the non-punishment principle, and to ensure remedies for trafficked persons.¹⁴² This is also the case when the perpetrators are linked to terrorism.¹⁴³ International human rights law also contains special protections for child trafficking victims, including through the emphasis on the primacy of best interests of the child considerations.¹⁴⁴

Under international law, States have a “positive obligation to take protective operational measures of identification, protection and effective investigation”¹⁴⁵, an obligation under

¹³⁹ National prosecutor participating in the CTED/Team of Experts EGM, 10–11 May 2023. In the human trafficking context, an interviewee stated: “The forms of exploitation are open ended, but people have been slow to make connections between human trafficking and terrorism [...] this is an issue even within [United Nations] teams working on this intersection.” Interview with United Nations specialist in trafficking in persons and the smuggling of migrants, 12 March 2023.

¹⁴⁰ See for example Security Council resolutions 2388(2017) and 2331 (2016).

¹⁴¹ Security Council resolution 2331(2016).

¹⁴² As noted by the former Special Rapporteur on Trafficking in Persons, allowing the broad application of the principle of non-punishment, particularly in relation to serious offences, does not entail “blanket immunity” but rather sets the standard of enquiry into the circumstances in which the offence was committed. Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children, *The Importance of implementing the non-punishment provision: the obligation to protect victims*, Geneva (30 July 2020), para. 41.

<https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Non-Punishment-Paper.pdf>

¹⁴³ See United Nations, General Assembly, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, A/76/263*, 3 August 2021, paras. 17-20, 36-39; Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings and Terrorism: Where and How They Intersect Analysis and Recommendations for More Effective Policy Responses*, Vienna, 2021, paras. 32-51, 53.

¹⁴⁴ See Convention on the Rights of the Child, Art. 3(1) (“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”).

¹⁴⁵ United Nations General Assembly, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children Siobhán Mullally, *Implementation of the Non-punishment Principle*, A/HRC/47/34, May 17, 2021, para. 49

the United Nations Trafficking in Persons Protocol and human rights law to criminalize trafficking in persons¹⁴⁶, and “effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.”¹⁴⁷ In the context of SGBV linked to terrorism, this entails applying the internationally-accepted definition of trafficking in persons to assess whether an individual is trafficked and if SGBV is part of the trafficking.¹⁴⁸ For adult trafficking victims, this definition requires States to assess three elements—whether a person has been subject to an act (such as recruitment, transportation, or transfer) by certain “means” for the “purpose of exploitation.” For a child, only the act with an intent to exploit is required, as children cannot consent to their own exploitation. The exploitative purpose requirement of the definition of the Trafficking in Persons Protocol may encompass different dimensions of activities of terrorist groups, such as trafficking for forced labour, sexual exploitation, terrorist or other criminal activities, the use of children as combatants, and/or forced marriage.¹⁴⁹

Depending on the context, international humanitarian law, international criminal law, international human rights law, anti-trafficking law, and international refugee law may all be of relevance in addressing SGBV as trafficking in persons committed by terrorist groups.¹⁵⁰ For example, relevant interactions between international anti-trafficking and human rights law and international criminal law underpin the war crime of sexual slavery as well as the crimes against humanity of enslavement and sexual slavery.¹⁵¹ Overlaps between international humanitarian law and human rights law in other areas—such as prohibitions on enforced disappearances, recruitment or participation of children in hostilities, slavery and the slave trade in all its forms, and rape and other forms of sexual violence, as well as provisions specifically to protect children, women, and refugees and internally displaced persons - can also be used to identify and protect trafficked persons, and to prevent and punish trafficking that involves SGBV that is linked to proscribed groups.¹⁵²

¹⁴⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), art. 5; See also Office of the United Nations High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary* (2010) p.185 (Principle 12), 247-8 (Guideline 4), available at

¹⁴⁷ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary* (2010) p.193 (Principle 13)

¹⁴⁸ Whether the anti-trafficking framework can be applied will depend on if and how the State has incorporated the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

¹⁴⁹ CTED, *Identifying and Exploring the Nexus between Human Trafficking, Terrorism, and Terrorism Financing* (2019), paras. 35–59. See also UNODC *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System* (2017); UNODC, *Countering Trafficking in Persons in Conflict Situations* (2018).

¹⁵⁰ See also United Nations, General Assembly, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, Strengthening accountability for trafficking in persons in conflict situations. A/78/172*, 13 July 2023.

¹⁵¹ *Ibid.*, paras. 18-22.

¹⁵² *Ibid.*, paras. 28-32.

Interlinkages between Relevant Legal Frameworks

As stated at the outset of this section, the international counter-terrorism framework should be viewed *in tandem* with other applicable international law regimes, notably international humanitarian law, international criminal law, international human rights law, and where applicable, international refugee law and the anti-human trafficking framework. The interlinkages between these legal frameworks and the international counter-terrorism framework are evident in their shared application to terrorist contexts.

This also includes underlying acts which are proscribed by respective regimes. For example, SGBV linked to terrorism may implicate torture¹⁵³, which is a human rights violation,¹⁵⁴ is prohibited under international humanitarian law,¹⁵⁵ and can be a constitutive crime of war crimes and crimes against humanity.¹⁵⁶ Acts of torture causing serious bodily or mental harm may also amount to genocide where the other prerequisites for establishing the crime of genocide are met.¹⁵⁷

With respect to the collection and preservation of evidence of core international crimes, terrorist acts, and violations of international humanitarian law, the Security Council has underscored the importance of collecting and preserving evidence related to all acts of trafficking, particularly the sale of or trade in persons, and other violations and abuses committed by terrorist or armed groups for the purpose of sexual slavery, sexual exploitation, and forced labour.¹⁵⁸ In resolution 2388 (2017), the Security Council further highlights the interlinkages between obligations to address terrorism and prosecute those responsible for international humanitarian law violations noting that, in the context of armed conflict, trafficking in persons may constitute war crimes. The Council further recalled “the need for States to adopt appropriate measures within their national legal systems for those crimes for which they are required under international law to exercise their responsibility to investigate and prosecute”.¹⁵⁹

By analysing the interface between the international counter-terrorism framework and relevant standards in international human rights law, international humanitarian law, and, where applicable, international criminal law, this section has sought to highlight the way in which these frameworks may collectively support criminal justice responses to SGBV

¹⁵³ With respect to torture, the intentional infliction of severe physical or mental pain or suffering by the perpetrator constitutes the material element in the definition of torture found under international human rights law, international humanitarian law, and international criminal law.

¹⁵⁴ Article 5 of the Universal Declaration of Human Rights (1948). Article 3 of the European Convention on Human Rights (1950) and article 7 of the International Covenant on Civil and Political Rights (1966) contain the same prohibition on the use of torture

¹⁵⁵ See e.g., Lieber Code, article 16; IMT Charter (Nuremberg), article 6(b); Geneva Conventions (1949), common Article 3.

¹⁵⁶ Rome Statute, article 7(2)(e); ICC Elements of Crimes, article 7(1)(f)(1) and 8(2)(c)(i)-4(1).

¹⁵⁷ ICC Elements of Crimes, article 6(b).

¹⁵⁸ Security Council resolution 2388 (2017), operative para. 10.

¹⁵⁹ Council resolution 2388 (2017).

linked to terrorism.¹⁶⁰ The following section explores how Member States can apply national counter-terrorism legislation and general domestic criminal laws as additional complementary legal frameworks towards accountability for SGBV linked to terrorism.

Application and Relevance of National Counter-terrorism Legislation to Increase Accountability for SGBV Linked to Terrorism

At the national level, States have implemented the legislative obligation imposed in resolution 1373 (2001) in different ways, using widely varying approaches to the criminalization of “terrorist acts” and related offences. Most national counter-terrorism legislation and criminal codes do not include an express reference to SGBV linked to terrorism. Tunisia and the Gambia are two notable exceptions. Article 29 of Tunisia’s Organic Law No. 2015-26 of 7 August 2015 as amended in 2019 proscribes any assault of a sexual nature on a person of either sex and the intentional commission of the crime of rape as part of a terrorist offence.¹⁶¹ Section 2 of the Gambia’s Anti-Terrorism Act defines a terrorist act as involving or causing “attacks on the physical integrity of a person, including rape”.¹⁶² Spain is an example where the definition of a terrorist offence provided for in article 573(1) of the criminal code includes offences against “sexual freedom”, which can include acts of SGBV when committed with one of the specific purposes outlined therein.¹⁶³ However, it is worth noting that, while not explicitly referencing them as such, many domestic counter-terrorism laws already include provisions that would allow for investigating and prosecuting certain acts of SGBV linked to terrorism. In some national contexts, this can be essential in allowing victims to access certain support mechanisms and reparation programmes that may otherwise be unavailable to them. This section provides a demonstration of the potential approach to address such cases.

First, most national legislation refers to terrorist acts as involving or causing an attack against a person’s life or bodily injury. Rape, forced abortion, forced pregnancy, forced

¹⁶⁰ See also Global Counterterrorism Forum Criminal Justice and Rule of Law Working Group, *Memorandum on Criminal Justice Approaches to the Linkages between Terrorism and Core International Crimes, Sexual and Gender-based Violence Crimes, Human Trafficking, Migrant Smuggling, Slavery, and Crimes against Children*, (2021) para. 23, available at [https://www.thegctf.org/Portals/1/Documents/Links/Meetings/2021/19CC11MM/CJROL%20Memorandum/CJ-ROL_Memo-ENG.pdf?ver=BqP5OK_Txt0tY8JFGamBzw%3d%3dCJ-ROL_Memo-ENG.pdf%20\(thegctf.org\)](https://www.thegctf.org/Portals/1/Documents/Links/Meetings/2021/19CC11MM/CJROL%20Memorandum/CJ-ROL_Memo-ENG.pdf?ver=BqP5OK_Txt0tY8JFGamBzw%3d%3dCJ-ROL_Memo-ENG.pdf%20(thegctf.org)) In the Memorandum, States are recommended to assess how international humanitarian law and counter-terrorism legislation can be applied appropriately to ensure effective prosecution of alleged terrorists who have committed crimes, including those that may amount to core international crimes, in order to hold them accountable for the full ranges of crimes committed.

¹⁶¹ Tunisia, Organic Law No. 2015-26 of 7 August 2015, on countering terrorism and money-laundering, available at <https://legislation-securite.tn/law/44992>.

¹⁶² The Gambia, Anti-Terrorism Act 2002 (as amended by the Anti-Terrorism Amendment Act, 2008) available at www.vertic.org/media/National%20Legislation/Gambia/GM_Anti-Terrorism_Act.pdf.

¹⁶³ Spain, Organic Law 2/2015 of 30 March, modifying the Criminal Code available at https://sherloc.unodc.org/cld/uploads/res/document/esp/ley-organica-2-2015--de-30-de-marzo.html/Spain_Law_2-2015_amendment_penal_code_terrorism_2015_es.pdf

sterilization, and sexual slavery are examples of SGBV of a physical nature that entail an attack on the physical integrity of a person or an attack against a person's life involving bodily harm or the risk of death. Many existing provisions, however, only address physical harm, which creates challenges in relying on counter-terrorism legislation to pursue accountability for non-physical types of SGBV.¹⁶⁴

Second, counter-terrorism provisions include kidnapping, which can address some of the abductions and forced displacements perpetrated by terrorist groups. Kidnapping may be a component of human trafficking as it may serve as an initial step in the trafficking process; however, kidnapping and human trafficking are distinct crimes, and a charge of kidnapping would not encompass the totality of exploitation and harm committed by human trafficking.

However, while certain acts of SGBV may fall under these provisions of counter-terrorism legislation, the specific mens rea element of the crime of terrorism must also be met. As noted above, this generally requires that the underlying acts are committed with terrorist intent. Most national legislation includes the requirement that the act was committed with the intent of terrorizing a civilian population or compelling a government or international organization to take or refrain from certain conduct. Some States only require that the act was committed with the intent to advance a political, religious, or ideological cause. Others combine the two elements requiring that the underlying act is committed with the intent to, inter alia, intimidate a civilian population or compel a government and, for, inter alia, an ideological objective.

For example, some States have defined terrorist activity as an act or omission committed in whole or in part for a political, religious, or ideological purpose and with the intention of intimidating the public or compelling a person, a government, or a domestic or an international organization to do or to refrain from doing any act. The activity must also intentionally cause death or serious bodily harm by the use of violence or endanger a person's life. In determining the type of evidence to support a charge of SGBV as an act of terrorism, criminal justice practitioners working with counter-terrorism legislation such as the above may be guided by evidence of the intentional use of SGBV to attack and subjugate communities, an ideology built on controlling women's sexuality and reproduction,¹⁶⁵ the targeting of a specific or opposing ethnic, religious, or political group

¹⁶⁴ Nonphysical forms of SGBV linked to terrorism may include persecution based on religion, such as forced religious conversions or discriminatory conditions of habitation on the basis of gender. These non-physical forms of violence can have significant psychological, emotional, and societal implications for the victims and the affected communities, furthering the terrorist intent or ideology.

¹⁶⁵ Security Council resolution 2331 (2016); United Nations, Security Council, Conflict-Related Sexual Violence: Report of the Secretary-General, S/2020/487 (3 June 2020), para. 15, available at <https://undocs.org/en/s/2020/487>.

for acts of SGBV,¹⁶⁶ or internal structures that support the implementation of SGBV policies.¹⁶⁷

It is important to contextualize the evidence in the same way as discussed in relation to core international crimes and assess the broader significance of the act. Terrorist groups such as ISIL, Boko Haram, and Al-Shabaab are known to have deliberately adopted SGBV as a tactic of terrorism in conformity with their strategic objectives and ideology.¹⁶⁸ Trends and patterns in the commission of SGBV with terrorist intent include ISIL's adoption of sexual slavery to propagate the hypermasculinity of the group and solidify its so-called caliphate.¹⁶⁹ Sexual violence was justified¹⁷⁰ through its ideology that women "non-believers" were spoils of war and their bodies could be "expropriated sexually and biologically"¹⁷¹ as sexual and breeding stock. By trafficking, enslaving, and forcefully impregnating the victims, ISIL attempted to breed a new crop of future fighters to further its ideology while intentionally intimidating civilians. The narratives propagated by movements and groups motivated by xenophobia, racism and other forms of intolerance, or in the name of religion or belief, often draw on violent notions of masculinity and incite to violence, including rape, against certain women, such as feminists or women who espouse non-conservative political views.¹⁷²

Evidence of the intention to use SGBV to intimidate a civilian population can also be derived from the method and pattern of the terrorist group's conduct. The jurisprudence of the SCSL can help to demonstrate the type of evidence needed to satisfy the requirements of the intent of the crime of terrorism as a war crime and terrorism as a crime under national counter-terrorism legislation. Concerning the evidence of the specific intent to terrorize the civilian population, the SCSL Trial Chamber held that it may only rely on "evidence which demonstrates a pattern of similar attacks, the context of the act, or is otherwise indicative of the purpose relative to any acts of violence

¹⁶⁶ United Nations, Security Council, Conflict-Related Sexual Violence: Report of the Secretary-General, S/2017/249 (15 April 2017), para. 8, available at <https://undocs.org/en/s/2017/249>.

¹⁶⁷ See for example *ibid.*, Sixth report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant, S/2021/419, (3 May 2021), para. 35, available at undocs.org/en/s/2021/419.

¹⁶⁸ See for example Security Council resolutions 2242 (2015) and 2331 (2016). See also United Nations, Security Council, Conflict-Related Sexual Violence: Report of the Secretary-General, S/2022/272 (29 March 2022), paras. 10–16, available at <https://undocs.org/en/s/2022/272>.

¹⁶⁹ Ariel I. Ahram, "Sexual violence and the making of ISIS," *Survival*, Vol. 57, No. 3, 4 May 2015, p. 67, available at <https://doi.org/10.1080/00396338.2015.1047251>.

¹⁷⁰ Greg Botelho, "ISIS: enslaving, having sex with 'unbelieving' women, girls is OK," CNN, 13 December 2014, available at www.cnn.com/2014/12/12/world/meast/isis-justification-female-slaves/index.html.

¹⁷¹ Ariel I. Ahram, "Sexual violence, competitive state building, and Islamic State in Iraq and Syria," *Journal of Intervention and Statebuilding*, Vol. 13, No. 2, 15 March 2019, p. 187, available at <https://doi.org/10.1080/17502977.2018.1541577>.

¹⁷² CTED, Trends Alert, April 2020; Aleksandra Dier and Gretchen Baldwin, "Masculinities and violent extremism", International Peace Institute and CTED, June 2022.

committed”.¹⁷³ However, the possible existence of alternative motives for acts of violence “does not in and of itself disprove that the primary purpose was to spread terror among the civilian population.”¹⁷⁴ Where additional evidence exists, such as targeting religious or ethnic minorities, charges of persecution as a crime against humanity could be founded based on evidence of SGBV against the group.¹⁷⁵ Evidence of the discriminatory mens rea component in persecution as a crime against humanity could also be evidence of terrorist intent. For example, documentary evidence exists of ISIL’s intent to discriminate against the Yazidi community and other religious minorities by targeting them for criminal acts, including sexual slavery and forced marriage.¹⁷⁶

Relevance of National Legal Provisions to Address SGBV Linked to Terrorism

National criminal codes could be employed to address the underlying crimes of SGBV linked to terrorism without relying on counter-terrorism laws or international legal frameworks. To illustrate, a national prosecutor noted that “with Al-Shabaab, there are cases of trafficking from Uganda to the Middle East, and in some of the cases, the girls died there. The cases are not prosecuted as trafficking linked to terrorism because there is no particular law that makes the connection. Kidnapping could be used; however, we need more training to raise awareness on the connection of these different crimes.”¹⁷⁷

In such an instance, charges of abduction and kidnapping could be brought to address the prohibited conduct. The fact that the crimes occurred within terrorist contexts could be noted as an aggravating factor if applicable within the criminal law procedures of the State. Doing so may contribute to the recognition of the gravity of the criminal act without reclassifying it as a different crime and ensure that the sentence is more commensurate to the gravity of the crime. This approach would enable the prosecution of substantive crimes without requiring the establishment of the elements of core international crimes, nor the additional specific intent requirement of terrorist offences.

The evidence required to establish an aggravating circumstance could potentially be applied to either a core international crime or a terrorism-related offence. This approach further underscores the value of exploring the application of overlapping legal frameworks, capitalizing on the resources available to the State in question, to advance more comprehensive accountability efforts.

¹⁷³ The Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (the AFRC Accused), SCSL-04-16-T, SCSL, 20 June 2007, para. 1439, available at www.refworld.org/cases,SCSL,467fba742.html.

¹⁷⁴ Ibid., para. 1443.

¹⁷⁵ See Prosecutor v. Milomir Stakic, Trial Judgment, IT-97-24-T, ICTY, 31 July 2003, para. 818, available at www.refworld.org/cases,ICTY,41483ab14.html.

¹⁷⁶ Eurojust, The Prosecution at National Level of Sexual and Gender-Based Violence (SGBV) Committed by the Islamic State in Iraq and the Levant (ISIL), 1 July 2017, p. 15, available at www.eurojust.europa.eu/publication/prosecution-national-level-sexual-and-gender-based-violence-sgbv-committed-islamic.

¹⁷⁷ Interview with a national senior prosecutor, Office of the Director of Public Prosecutions, 4 April 2023.

III. CHALLENGES, EMERGING GOOD PRACTICES, AND OPPORTUNITIES FOR ACCOUNTABILITY FOR SGBV LINKED TO TERRORISM

Part III of the study provides an overview of some of the challenges affecting accountability for SGBV linked to terrorism and identifies emerging good practices that CTED has documented through its engagement with Member States and other stakeholders. The examples and trends presented here are not exhaustive and are based on the information available during the study's time frame. Member States are encouraged to share with CTED any additional good practices as well as information on the unique challenges they face in advancing accountability for SGBV linked to terrorism.

Challenges Affecting Accountability for SGBV Linked to Terrorism

The study's findings point to several key challenges that impact accountability for SGBV linked to terrorism. Notably, there are significant gaps in national expertise on the various legal frameworks that are relevant and applicable to SGBV linked to terrorism. In addition, many Member States face difficulties fulfilling their obligations to investigate and prosecute SGBV owing to limited institutional capacity and financial resources. Finally, the prevailing emphasis on criminal justice has led to a slow recognition and implementation of alternative measures that could contribute to accountability for SGBV linked to terrorism. The findings are discussed further in the following subsections: (a) challenges within the criminal justice system; (b) international cooperation; (c) victims' access to justice; and (d) gender.

a. Challenges within the Criminal Justice System

Siloed approaches to accountability

Within the criminal justice system in some affected States, a lack of collaboration among practitioners has led, in general, to fragmented approaches to accountability for acts of terrorism that leave SGBV linked to terrorism out of focus. The complexity of the issue stems from the difficulty some face in identifying when specific legal frameworks are triggered.¹⁷⁸ Counter-terrorism units embedded within intelligence agencies often operate within particular security frameworks. Their expertise and resources are primarily directed towards addressing imminent threats rather than developing comprehensive case files that include various criminal activities such as SGBV.¹⁷⁹ Where they exist, war crimes units may lack expertise in investigating sexual and gender-based crimes. One

¹⁷⁸ Interview with United Nations crime and justice expert, 13 April 2023: "One of the biggest challenges is actually the communication between all the different [national] agencies in terms of general cooperation and coordination."

¹⁷⁹ Discussion among participants at the CTED/Team of Experts EGM, 10–11 May 2023.

participant in the study noted that, in their jurisdiction, while they may borrow investigators from the police force who have experience investigating SGBV, these investigators may not have the requisite expertise in core international crimes.¹⁸⁰

The detrimental impact of a siloed approach to accountability is considerable. According to a participant in the study, the differential approaches to a set of facts adopted because of different expertise can be problematic.¹⁸¹ To illustrate, she provided the example of a multidisciplinary working group meeting where the fact pattern in a trafficking case scenario elicited a securitized response from counter-terrorism practitioners who identified the lack of a passport as indicia of terrorist activity. In contrast, a victim and human rights-centred approach was adopted by practitioners with a human trafficking and human rights background who noted that the same evidence may be indicative of human trafficking. The consequential action, such as arresting the individual or providing victim-centred support, depended on which lens was adopted to analyse the information received.

Several interlocutors emphasized that the treatment of SGBV, human trafficking, and terrorism in a siloed manner is not limited to national criminal justice systems but also extends to the United Nations, donor agencies, and civil society.¹⁸² There is a need for greater intra- and cross-agency/institutional alignment. Technical assistance to Member States on accountability for SGBV linked to terrorism would greatly benefit from a unified approach to messaging, strategy, support, and strong coordination among international actors.¹⁸³

Narrow investigative and prosecutorial strategies

The study found that in certain countries, there was a prevailing emphasis on investigation and prosecutorial strategies that seem to approach accountability for terrorism by concentrating on more straightforward-to-prove terrorism-related offences, such as membership in a terrorist group. In addition, some prosecutors and investigators do not consider former members of a terrorist group as potential witnesses with inside knowledge of the group's operations that may be beneficial for the prosecution of SGBV linked to terrorism. Concerning ISIL, one participant made the following observation: "Part of the problem is that ISIL is so denigrated that there has not been a proper conversation either internally or with survivor communities about the importance of insiders to help understand how ISIL worked."¹⁸⁴ Intelligence agencies conduct interviews with former members of the group to gather crucial information, but such information traditionally

¹⁸⁰ Participant at the CTED/Team of Experts EGM, 10–11 May 2023.

¹⁸¹ Interview with human trafficking expert, 27 April 2023.

¹⁸² Interview with United Nations specialist in trafficking in persons and the smuggling of migrants, 12 March 2023.

¹⁸³ Interviews with United Nations gender and transitional justice expert, policy analyst, and rule of law and transitional justice specialist, 3 April 2023.

¹⁸⁴ Interview with international humanitarian and criminal law expert with a focus on the Syrian Arab Republic and Iraq, 11 April 2023.

remains outside the realm of criminal justice accountability processes.¹⁸⁵ Without a comprehensive investigation into how terrorist groups like ISIL operate and instrumentalize SGBV for their strategic objectives, investigative progress at the national level beyond low-level members is inhibited. Engaging with low-level perpetrators of terrorist acts and offering incentives, where possible, such as reduced sentences, akin to successful approaches utilized in international criminal tribunals, was noted as a possible way to address this obstacle.¹⁸⁶

Prosecutors consulted for the study raised concerns about the pressure to bring cases against members of terrorist entities quickly and the lack of the opportunity for early intervention to support and develop in-depth investigative strategies that include SGBV linked to terrorism. In some jurisdictions, particularly those with ongoing conflicts, prosecutors often have to work with the evidence provided to them, leaving limited room for collaborative teamwork and analysis of the evidence to assess whether there are SGBV dimensions that could be litigated.

Formulating investigative and prosecutorial strategies which identify SGBV as a priority element for case selection is also key. These strategies should consider how various legal frameworks, individually or in combination, can help to bridge the impunity gap for SGBV linked to terrorism in compliance with Member States' obligations to bring terrorists to justice. Investigating SGBV linked to terrorism should be approached similarly to other types of investigations. This should entail gathering evidence similar to that used in other terrorism cases, such as documentary evidence, survivor testimonies, telephone data retrieval, and financial transaction records linked to the activities of these groups.

Failure to prioritize SGBV linked to terrorism could result in investigators overlooking essential evidence that could support such cases. Experts in investigating SGBV linked to terrorism recommend identifying and investigating all perpetrators, including high-level individuals. This approach ensures a thorough and effective investigation of SGBV, holding all those responsible accountable for their actions.¹⁸⁷

¹⁸⁵ According to a national counter-terrorism and intelligence officer, within his jurisdiction, "the intelligence services gather information that is relevant to these cases but cannot appear during the trial for their own safety. They pass on the information to someone who wasn't involved. As a result, there is a gap between converting intelligence into evidence. There's a specific legal provision that protects one of the intelligence organizations in my country from being compelled to testify." Interview with a national counter-terrorism and intelligence officer, 6 April 2023.

¹⁸⁶ See generally, Gabrielė Chlevickaitė, Barbora Holá, and Catrien Bijleveld, "Suspicious minds? Empirical analysis of insider witness assessments at the ICTY, ICTR and ICC," *European Journal of Criminology*, Vol. 20, No. 1, 1 January 2023, pp. 185–207, available at <https://doi.org/10.1177/1477370821997343>.

¹⁸⁷ This investigative and prosecutorial approach aligns with resolution 2651 (2022), in which the Security Council recognized the significance of holding ISIL members accountable, including regional or mid-level commanders responsible for ordering and committing crimes, and recognized the value of this approach in contributing to countering terrorism and violent extremism, including stemming financing and the flow of international recruits. See preamble.

Evidentiary challenges

A number of evidentiary challenges may arise with the prosecution of SGBV linked to terrorism, particularly with respect to prosecuting crimes that did not take place within the forum State.¹⁸⁸ Another significant challenge may be the existence of domestic evidentiary standards and practices that may impede justice and accountability. For instance, certain jurisdictions may require evidence of physical resistance, injury or force to demonstrate lack of consent or coercion for certain crimes such as rape, though the jurisprudence of international courts and tribunals demonstrates that consent is automatically vitiated where the crimes occur in the context of a coercive environment.¹⁸⁹ Lack of consent does not require force, and force is not an element of the crime of rape under international criminal law. A narrow focus on “force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force.”¹⁹⁰ Furthermore, even though corroborative evidence of sexual violence is not required in international courts and tribunals,¹⁹¹ some national prosecutors may face challenges in applying this standard in domestic courts.

Finally, there appear to be biases and presumptions among criminal justice practitioners regarding the applicable evidentiary standards for SGBV, notably that higher evidentiary requirements for gravity and systematicity are required for SGBV to be considered international crimes. These biases permeate both international¹⁹² and national jurisdictions.¹⁹³ These presumptions negatively impact the ability to conduct

¹⁸⁸ On this issue, see also CTED, “Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences”, 2019, available at

www.un.org/securitycouncil/ctc/sites/www.un.org/securitycouncil.ctc/files/battlefield_evidence_final.pdf.

¹⁸⁹ See for example, *Kunarac, Appeal Judgment*, para. 129. A participant in the CTED/Team of Experts EGM noted that in his jurisdiction, prosecutors would be required to provide medical evidence in support of a rape charge, even where the crime occurred in the context of terrorism or conflict. According to a national prosecutor, in her jurisdiction, it is expected to have a medical examination report in an SGBV case: “Classification of the injury is important and medical evidence can be helpful in classifying the injury.” Interview with a national senior prosecutor, Office of the Director of Public Prosecutions, 4 April 2023. In the Democratic Republic of the Congo, the Mukwege Foundation now assists in providing medical certificates to support the prosecution of conflict-related sexual violence that would otherwise fail because of the requirement of medical corroboration. See Dr. Denis Mukwege Foundation, *Handbook: Holistic Care for Survivors of Sexual Violence in Conflict* (2019), p. 20, available at <https://mukwegefoundation.org/>.

¹⁹⁰ *Kunarac, Appeal Judgment*, para. 129.

¹⁹¹ See for example, International Criminal Court, Rules of Procedure and Evidence, rule 63(4).

¹⁹² *Arimatsu et al., Amici Curiae Observations on Duress and the Standards Applicable to Assessing Evidence of Sexual Violence before the International Criminal Court in The Prosecutor v. Dominic Ongwen*, 22 December 2021, No. ICC-02/04-01/15 A A2, available at www.icc-cpi.int/CourtRecords/CR2021_11902.PDF.

¹⁹³ Interview with United Nations specialist in trafficking in persons and the smuggling of migrants, 12 March 2023; interview with rule of law and counter-terrorism expert, 14 April 2023. According to the rule of law and counter-terrorism expert, the requirement to eradicate bias in decision-making around the investigation and prosecution of SGBV may require more transparency regarding case selection and prosecutorial strategies.

comprehensive investigations of SGBV linked to terrorism and present unnecessary evidentiary hurdles. Basic principles of evidence concerning the admissibility, credibility, and reliability of evidence are equally applicable to evidence of SGBV¹⁹⁴ and should govern the investigation, prosecution, and adjudication of SGBV linked to terrorism. Evidence of SGBV should not be subjected to differential evidentiary requirements. Instead, the evidentiary standards should be reviewed contextually and through a gender lens to ensure the non-application of discriminatory presumptions,¹⁹⁵ such as that SGBV is less serious than other international crimes and consequently has less probative value in establishing international crimes.¹⁹⁶

Difficulty of prosecuting perpetrators outside the State's jurisdiction and ensuring victims' participation and engagement throughout the criminal justice process

Some prosecutors shared the challenges of conducting investigations without witnesses willing to participate in the process and without the perpetrators within their jurisdiction.¹⁹⁷ Although some Member States allow trials in absentia, many require the presence of the perpetrator on their territory for investigations and subsequent prosecutions. Members of civil society organizations providing support to survivor networks expressed frustration that, as a result of the lack of victim-centred institutional capacity and support, victims were unwilling to participate in investigations, especially victims of human trafficking, for fear of being deported or prosecuted themselves as they feared that their status as victims would not be recognized and they might instead be viewed as members of the terrorist organization.

Treating victims of SGBV linked to terrorism as a monolith

Engagement and outreach to victims is crucial to understand and address their diverse experiences, needs and views with respect to accountability. In certain cases, victims have expressed satisfaction with charges that result in sentences for the perpetrators, but which may not reflect the SGBV crimes committed against them as they may not wish to be formally involved in the legal proceedings.¹⁹⁸ For others, charges that reflect the crimes they endured are preferred, as the legal proceedings also provide a record of what they experienced as victims of terrorism. Prosecutors have noted the value of engaging,

¹⁹⁴ See generally, I. Maxine Marcus, *Positive (and Practical) Complementarity: Practical Tools for Peer Prosecutors and Investigators Bringing Atrocity Crimes Cases in National Jurisdictions*, Adejoké Babington-Ashaye, Aimee Comrie, and Akingbolahan Adeniran, eds., *International Criminal Investigations: Law and Practice* (The Hague, Netherlands: Eleven International Publishing, 2018), pp. 297–337.

¹⁹⁵ *Arimatsu et al., Amici Curiae Observations on Duress and the Standards Applicable to Assessing Evidence of Sexual Violence before the International Criminal Court in The Prosecutor v. Dominic Ongwen*, 22 December 2021, No. ICC-02/04-01/15 A A2, para. 24, available at www.icc-cpi.int/CourtRecords/CR2021_11902.PDF.

¹⁹⁶ *Ibid.*

¹⁹⁷ Discussion among participants at the CTED/Team of Experts EGM, 10–11 May 2023.

¹⁹⁸ Discussion among participants of the CTED/Team of Experts, EGM 10–11 May 2023.

where possible, with victims connected to the case, as an important step towards incorporating fair labelling in developing charges for SGBV linked to terrorism.¹⁹⁹

Need for effective training, technical assistance, and capacity-building across the criminal justice system

There is a need to enhance capacity and technical knowledge at all levels, including judges and members of the court system. However, participants noted the proliferation of training programmes provided by various entities, including within the United Nations, which may be driven by supply rather than demand and may prioritize donor interests over the actual needs of the training recipients.²⁰⁰ The participants also questioned the effectiveness of training activities and knowledge-sharing without simultaneously developing the practical capacity to implement the acquired knowledge. In some jurisdictions, criminal justice practitioners face practical obstacles and lack the necessary resources to advance accountability for SGBV linked to terrorism. To ensure that technical assistance and capacity-building programmes contribute effectively to accountability efforts, it is crucial to assess and ensure that they align with the specific needs and gaps within the recipient jurisdiction.²⁰¹

b. International Cooperation

International cooperation is crucial in ensuring accountability for SGBV linked to terrorism. United Nations investigative mechanisms such as the International, Independent and Impartial Mechanism on Syria (IIIM) and the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) have played a significant role in collecting substantial evidence on crimes committed by ISIL, while adhering to international humanitarian and criminal law frameworks. They have responded to requests for assistance from Western European States prosecuting returning FTFs. However, it is important to note that the majority of requests for assistance and evidence-sharing from national units thus far do not

¹⁹⁹ *The Prosecutor v. Dominic Ongwen, Trial Judgment*, ICC-02/04-01/15, International Criminal Court, 4 February 2021, para. 2722. “This also implicates the principle of fair labelling, and how the proper characterisation of the evil committed, that is to say, calling the crime by its true name, is part of the justice sought by the victims. It is not enough to punish it merely as a combination of other crimes (e.g., rape and unlawful detention), or subsumed under the generic ‘any other form of sexual violence’.”

²⁰⁰ According to the Special Rapporteur on Human Rights and Counter-Terrorism, there is a “dearth of ethically appropriate and scientifically rigorous monitoring and evaluation of capacity-building and technical assistance in the counter-terrorism arena, including by United Nations entities.” United Nations, General Assembly, *Advancing human rights through the mainstreaming of human rights in counter-terrorism capacity-building and technical assistance at the national, regional and global levels, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/76/261, 3 August 2021.

²⁰¹ See for example, the United Nations Office on Drugs and Crime (UNODC)/Wayamo digital evidence project in Nigeria, which entails the provision of a digital evidence management tool to the Joint Investigation Centre in Maiduguri and the Complex Case Group in the Department of Public Prosecutions of the Federal Ministry of Justice, Nigeria: <http://www.unodc.org/nigeria/en/unodc-and-partners-support-workshops-to-prosecute-war-crimes-and-sexual-violence-in-conflict.html>.

specifically address SGBV or explore the potential involvement of the perpetrator within their jurisdiction in committing SGBV offences.²⁰² This highlights the imperative for a more inclusive and comprehensive approach to integrating SGBV considerations into the overall justice process to maximize the type of assistance mechanisms such as the IIIM and UNITAD can offer Member States.

The IIIM's mandate to only support requests for evidence related to core international crimes has prompted more States to explore such crimes alongside their terrorist cases.²⁰³ Meanwhile, UNITAD is restricted in sharing evidence with Iraq due to, inter alia, the existence of the death penalty as a possible punishment for terrorist offences and lack of codification of core international crimes within its domestic legal framework. Consequently, UNITAD faces challenges in fully assisting accountability efforts in Iraq, which is the primary intended recipient of its support.²⁰⁴

An additional challenge affecting international cooperation in the investigation of terrorist crimes, which has an impact on SGBV linked to terrorism, is the need to foster trust among relevant counterparts. While formal communication channels exist, bridging the trust gap is necessary as some prosecutors are careful about the information they share with counterparts in the requested State about pending cases to avoid compromising the investigation or endangering the lives of witnesses and their families.²⁰⁵

Furthermore, in certain regions, international cooperation and mutual legal assistance in terrorist cases, including SGBV linked to terrorism, could be affected by the absence of legislation criminalizing the conduct under investigation in both requesting and requested States. Participants in the study raised some of the challenges they face, which could result in protracted consultations or denials of mutual legal assistance requests.²⁰⁶ The principle of dual or double criminality is typically applied concerning extradition requests. However, in some States, double criminality is required for search and seizure

²⁰² Discussion among participants at the CTED/Team of Experts EGM, 10–11 May 2023; interview with investigator and gender specialist, United Nations, 29 March 2023.

²⁰³ Sofia Koller, "CEP policy paper prosecution of returnees from Syria and Iraq in France: insights and recommendations for policymakers and security agencies," *Counter Extremism Project*, March 2023, pp. 17–18, available at www.counterextremism.com/sites/default/files/2023-03/CEP%20Policy%20Paper_Prosecution%20of%20Returnees%20from%20Syria%20and%20Iraq%20in%20France_March%202023.pdf; discussion among participants at the CTED/Team of Experts EGM, 10–11 May 2023.

²⁰⁴ Security Council Report, *Iraq (UNITAD), June 2023 Monthly Forecast : Security Council Report*, 31 May 2023, available at www.securitycouncilreport.org/monthly-forecast/2023-06/iraq-unitad-5.php.

²⁰⁵ Interview with national war crimes prosecutor, 28 April 2023.

²⁰⁶ Discussion among participants at the CTED/TOE EGM, 10–11 May 2023. In this regard, the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes (also known as the "MLA Convention"), adopted in May 2023, can provide a framework to facilitate inter-State cooperation on matters related to the investigation and prosecution of international crimes, including with respect to mutual legal assistance and extradition.

processes²⁰⁷ and the exercise of universal jurisdiction over the crimes.²⁰⁸ It should be noted that the test for dual criminality is based on the substance of the underlying conduct and whether the conduct that triggered the legal proceedings is considered criminal in both States.²⁰⁹ It is independent of whether the conduct is labelled or criminalized in the same manner in both countries.²¹⁰

c. Victims' Access to Justice

In many countries addressing the conduct of terrorist groups through the criminal justice process, including through specialized courts and tribunals dealing with counter-terrorism, victims do not have the right to participation. In some jurisdictions that permit victim participation, their participation is nonetheless limited, and the experiences of victims may be omitted from the proceedings.²¹¹ Barriers to access to justice include community pressure and stigma. A lack of support services, understanding, and a victim-centred approach within the criminal justice system compound the challenges to accessing justice. As a result, victims are reluctant to come forward, contributing to a paucity of evidence.

Victims' access to justice is further hampered in some jurisdictions by "marry-your-rapist" laws that permit perpetrators to evade prosecution or conviction by marrying the victims of their crime. Proponents of these laws assert that these marriages shield the victim from the stigma of sexual violence. However, rather than transferring the stigma of

*"Stigma is one of the biggest, if not **the** biggest inhibitor of accountability. People are afraid to report, to seek treatment, and justice in the wake of sexual violence. They fear how they will be seen by their family, their spouse, the community, and how they will be treated by the system."*

- Practitioner providing community-based training to combat stigma in the Syrian Arab Republic.

²⁰⁷ Council of Europe, *Mutual Legal Assistance Manual* (2013), p. 18, available at <https://rm.coe.int/mutual-legal-assistance-manual-eng/1680782927>.

²⁰⁸ Eurojust, *20 Years On: Main Developments in the Fight Against Impunity for Core International Crimes in the EU*, May 2022, p. 8, available at www.eurojust.europa.eu/sites/default/files/assets/developments-in-the-fight-against-impunity-for-core-international-crimes-in-the-eu.pdf.

²⁰⁹ UNODC, *Manual on Mutual Legal Assistance and Extradition*, (2012), para. 158, available at www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf.

²¹⁰ See for example the following conventions: United Nations Convention against Transnational Organized Crime, art. 16(1); United Nations Convention against Corruption, art. 43(2). See also UNODC *Manual on Mutual Legal Assistance and Extradition*, para. 103.

²¹¹ United Nations Assistance Mission for Iraq, "Human rights in the administration of justice in Iraq: trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL." (Geneva: United Nations, 28 January 2020), available at www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf.

the crime to the perpetrator, the result is a State-sanctioned continuation of the violence perpetrated with additional and ongoing harm to the survivor.

In addition, prosecuting victims of SGBV linked to terrorism as perpetrators is another area which affects access to justice. The limited or inconsistent application of the principle of non-punishment of victims of human trafficking linked to terrorism may result in prosecutions or administrative decisions such as deprivation of citizenship that may be violative of the victim's human rights and the States' obligation to protect. The prosecutions of individuals, including female ISIL members, who have facilitated or supported the commission of SGBV linked to terrorism are laudable as it ensures accountability across the board.²¹² Nevertheless, when the primary perpetrator of the crime remains at large, victims are denied access to justice. One source shared the account of a Yazidi survivor who acknowledged the importance of prosecuting the wife of an ISIL fighter for her involvement but stressed that she was not the one who inflicted the beatings and rapes.²¹³ The practical challenge Member States engaged in the prosecution of FTFs face arises from the fact that many male ISIL members have either been killed or are untraceable. Meanwhile, known individuals in detention centres and camps are not repatriated.

Finally, the adoption of de jure or de facto amnesties can further hinder victims' rights and access to justice in terrorist contexts. According to the United Nations Human Rights Committee in general comment No. 20 on article 7 of the International Covenant on Civil and Political Rights, "amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible."²¹⁴ Furthermore, in resolution 2467 (2019), the Security Council stressed "the need for the exclusion of sexual violence crimes from amnesty and immunity provisions", particularly in the context of conflict resolution processes. In situations where terrorist offenders, including FTFs, are re-integrated without ensuring accountability for their actions, and without engagement of the affected communities, victims may be compelled to live with perpetrators without any acknowledgement or sense of justice for the SGBV they endured.²¹⁵ The lack of consideration for the impact on affected communities is compounded by the absence of clear criteria for granting amnesty. As a result, communities remain unaware of the gravity of the crimes the accused persons may have committed.²¹⁶

²¹² Interview with a researcher on the prevention of violent extremism and counter-terrorism in Europe and the Middle East, 8 May 2023.

²¹³ Participant at the CTED/Team of Experts EGM, 10–11 May 2023. Also, interview with researcher on the prevention of Islamist extremism and counter-terrorism in Europe and the Middle East, 8 May 2023.

²¹⁴ 10 March 1992, para. 15, available at www.refworld.org/docid/453883fb0.html.

²¹⁵ Interview with civil society representative, 31 March 2023.

²¹⁶ Ibid.

d. Gender

This study has underscored the gendered nature of terrorist crimes and illustrated that acts of SGBV linked to terrorism are not isolated occurrences but rather are interconnected within an existing continuum of sexual violence and gender inequality that are prevalent in society, as recognized in resolution 2467 (2019).²¹⁷ Engaging with gender as a cross-cutting theme in accountability measures allows for a more nuanced understanding of SGBV linked to terrorism and contributes to developing effective strategies to address terrorism in all its forms and manifestations.

However, substantial gaps persist at the national level in meaningfully integrating gender in criminal justice responses to terrorism, with a detrimental effect on accountability. What is lacking is gender responsiveness which involves the ability to conduct gender analysis, recognize gender-based discriminatory conduct, the capacity to interrogate one's own gender biases and the expertise to develop gender-sensitive policies and practices.²¹⁸ A gender-responsive criminal justice system is one which “works to identify and address gender biases that have permeated the system, to prevent gender-based crimes, to protect and assist victims/survivors and witnesses, and to encourage women’s active participation at all levels of the criminal justice system.”²¹⁹

Yet, gender stereotypes pervade the counter-terrorism space, and gendered notions of what constitutes an act of terrorism continue to prevail. One such notion is that SGBV linked to terrorism does not have a direct impact on security,²²⁰ despite Security Council resolutions and the body of evidence to the contrary. For those who hold this belief, discussions on gender and gender-based violence are perceived as a hindrance to the wider security agenda because, in their view, these issues are distinct from, and not integral to, the global effort to address terrorism.²²¹ In this view, conversations and initiatives on gender are “tolerated” insofar as they do not challenge prioritized security objectives.²²²

²¹⁷ In resolution 2467 (2019) the Security Council recognized that, “sexual violence in conflict occurs on a continuum of interrelated and recurring forms of violence against women and girls”.

²¹⁸ See for example, IIIM, *Gender Strategy and Implementation Plan (Abridged Version)*, 30 September 2022, p. 15, available at <https://iiim.un.org/wp-content/uploads/2022/10/Gender-Strategy-Implementation-AbridgedEnglish.pdf>; María Acale Sánchez, Ivana Marković, and Susanne Strand, “Gender competent criminal law,” in *Gender-Competent Legal Education*, Dragica Vujadinović, Mareike Fröhlich, and Thomas Giegerich, eds., Springer Textbooks in Law (Cham: Springer International Publishing, 2023), pp. 429–465, available at https://doi.org/10.1007/978-3-031-14360-1_13.

²¹⁹ UNODC, *Cross Cutting Issues: Gender in the Criminal Justice System Assessment Tool* (2010), p. 1, available at www.unodc.org/documents/justice-and-prison-reform/crimeprevention/E-book.pdf.

²²⁰ 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,” *Security the Future Initiative*, Vol. 5 December 2022, available at https://sfi-ct.org/wp-content/uploads/2022/12/SFI_Babington-Ashaye.pdf.

²²¹ Interviews with United Nations gender and transitional justice expert, policy analyst, and rule of law and transitional justice specialist, 3 April 2023; interview with academic and specialist in terrorism and conflict, 28 April 2023.

²²² Interview with academic and specialist in terrorism and conflict, 28 April 2023.

Information gathered for the study also revealed that in some countries, certain criminal justice practitioners still hold the belief that SGBV is a normal occurrence or inevitable side effect of armed conflict. The normalization of SGBV, especially in conflict contexts, as an expected occurrence contributes to a reduced sense of urgency in addressing the issue of accountability for SGBV linked to terrorism. These gendered notions are most prevalent among counter-terrorism actors and institutions that adopt a militarized approach and are themselves shaped by masculine norms.²²³ A human rights based and gender-sensitive approach recognizes the detrimental impact of such perceptions and narratives on human security, justice and accountability. Recognizing SGBV as a tactic of terrorism requires that these harms be addressed with the same sense of priority and urgency as other serious terrorism offences.

A gender-responsive criminal justice approach also requires the availability of gender-sensitive support and services for victims and witnesses that empower them to participate in the criminal justice process. Information gathered for the study suggests that there is a general need for more awareness, expertise, and resources, including in Member States where the gendered nature of terrorism and the need for gender-responsive approaches to criminal justice for terrorist acts are well acknowledged. Increasing the expertise and capacity of the relevant stakeholders would assist in dispelling the misconception that accountability for SGBV linked to terrorism is too difficult and time-consuming and that victims are unwilling to participate in the criminal justice process.

Finally, a comprehensive gender analysis allows for the consideration of intersectional identities and harms suffered by victims of terrorism. For example, as described by one interlocutor, ISIL adopted a hypermasculine ideology with male leaders and fighters comprising the majority of their ranks. When ISIL established its so-called caliphate, they targeted and massacred men in a manner that took into account the gender, age, and religion of the men. ISIL's attack on Badush prison is illustrative of this phenomenon, where those who were killed were male and Shia.²²⁴ ISIL further capitalized on pre-existing homophobia to establish and institutionalize its persecution of gay men.²²⁵ The killings of men who were thrown from buildings and stoned to death on the pretext of being gay require examination through a gender-competent lens that recognizes these acts as gender-based crimes. Where SGBV, human trafficking, and terrorism intersect, recognition of the gendered harms could "ensure that victims of sexual violence associated with human trafficking perpetrated by terrorist groups are recognized as legitimate victims of conflict and/or terrorism and that measures to address their situation are considered to be an integral part of counter-terrorism strategies."²²⁶ An

²²³ Aleksandra Dier and Gretchen Baldwin, "Masculinities and violent extremism", International Peace Institute and CTED, June 2022, p. 8.

²²⁴ Interview with investigator and gender specialist, United Nations, 29 March 2023.

²²⁵ Counter Extremism Project, "ISIS's persecution of gay people", May 2017, www.counterextremism.com/sites/default/files/ISIS%20Persecution%20of%20Gay%20People_052317.pdf.

²²⁶ CTED, *Identifying and Exploring the Nexus between Human Trafficking, Terrorism, and Terrorism Financing*, p. 51.

intersectional approach would aid the understanding of multifaceted criminal conduct and the appropriate legal regimes for accountability and inform remedies for victims.

Advancing meaningful accountability beyond criminal justice measures

Although this study primarily focuses on criminal justice responses to SGBV linked to terrorism, it is important to underscore the value of an integrated approach to accountability.

a. Transitional Justice Processes and Mechanisms

The general absence of other essential transitional justice measures, such as reparations, for survivors of SGBV linked to terrorism may significantly impact efforts to ensure meaningful accountability. Transitional justice processes and mechanisms are typically implemented in situations where the number of victims and perpetrators exceeds the justice system's capacity and may be especially relevant in terrorist contexts affected by protracted conflict.²²⁷ The field of transitional justice

overall may offer relevant insights and lessons for the development of context-sensitive accountability processes centred on the needs and rights of victims and of measures addressing underlying conditions that drive the commission of these violations, or are conducive to the spread of terrorism.

The four core elements of transitional justice, namely criminal justice, truth-seeking, reparations, and guarantees of non-recurrence, when implemented as part of an integrated and coordinated approach, can contribute towards more comprehensive accountability for SGBV linked to terrorism. Victims and affected communities should be recognized as partners, stakeholders, and agents of change in determining accountability responses to their unique experiences and be consulted in the development of relevant transitional justice measures and initiatives.²²⁸

Transitional Justice

The United Nations defines transitional justice as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past conflict, repression, violations and abuses, in order to ensure accountability, serve justice and achieve reconciliation”. (S/2004/616)

Transitional justice consists of both judicial and non-judicial processes and mechanisms, ranging across its four pillars: criminal justice, truth-seeking, reparations, and guarantees of non-repetition.

²²⁷ Interview with United Nations transitional justice adviser, 5 April 2023; on the transitional justice process in Colombia and its contribution to justice and accountability, see Ted Piccone, “Peace with justice, the Colombian experience with transitional justice”, *The Brookings Institute*, July 2019, available at www.brookings.edu/wp-content/uploads/2019/06/fp_20190708_colombia.pdf; Andrés Bermúdez Liévano, “How Colombia’s JEP earns the respect of sceptical victims”, *JusticeInfo.Net*, Vol. 12, January 2023, available at www.justiceinfo.net/en/111069-how-colombia-jep-earns-respect-sceptical-victims.html; Mary de la Libertad Díaz Marquez, “OPINION: Why Colombia is a pioneer in restorative justice,” *Justice Rapid Response*, 10 June 2021, available at www.justicerapidresponse.org/opinion-why-colombia-is-a-pioneer-in-restorative-justice/.

²²⁸ Interview with United Nations transitional justice adviser, 5 April 2023.

b. Reparations for Victims of SGBV Linked to Terrorism

As previously noted, the Security Council has repeatedly reaffirmed that victims of trafficking in persons in all its forms, and of sexual violence committed by terrorist groups, should be classified as victims of terrorism with the purpose of, inter alia, rendering them eligible for official support, recognition and redress available to victims of terrorism and have access to national relief and reparations programmes, contribute to lifting stigma, and facilitate rehabilitation and reintegration efforts.²²⁹ The Council further emphasized that survivors “should benefit from relief and recovery programmes, including health care, psychosocial care, safe shelter livelihood support and legal aid and that services should include provision for women with children born as a result of wartime rape, as well as men and boys who may have been victims of sexual violence in conflict, including when it is associated with trafficking in persons in armed conflict”.²³⁰ Member States are encouraged to adopt a “survivor-centered approach in preventing and responding to sexual violence in conflict and post-conflict situations, ensuring that prevention and response are non-discriminatory and specific.”²³¹ The United Nations Global Counter-Terrorism Strategy further encourages Member States to provide victims of terrorism, and particularly women and children and victims of SGBV committed by terrorists, with the proper support and assistance, “while taking into account, inter alia, when appropriate, considerations regarding recognition, acknowledgement, remembrance dignity, respect, reparation, accountability, justice and truth”.²³²

State practice demonstrates increasing recognition of victims of SGBV in reparations schemes, including beyond terrorist contexts.²³³ With respect to terrorist contexts, a notable example is the establishment of a reparation framework for survivors of ISIL crimes in Iraq. In March 2021, the Iraqi parliament passed the Yazidi Female Survivors Law (Law No. 8 of 2021), to provide, inter alia, for financial compensation, rehabilitation and care aimed at supporting the integration of female survivors of Da’esh/ISIL crimes back into society and “prevent the recurrence of the violations that took place against them”.²³⁴ The law applies to Yazidi, Turkmen, Christian, and Shaback women and girls who were kidnapped by ISIL, Yazidi children survivors who were abducted before the age

²²⁹ Security Council resolution 2331 (2016), operative para. 10. See also resolution 2467 (2019), operative para. 28.

²³⁰ Ibid.

²³¹ Council resolution 2467 (2019), operative para. 16.

²³² United Nations General Assembly, *The United Nations Global Counter-Terrorism Strategy: eighth review A/RES/77/298*, 3 July 2023, preamble and para. 117. In relevant resolutions, the Security Council has also repeatedly underscored the importance of ensuring the implementation of the GCTS in a balanced manner. See for example 2617 (2021), preamble.

²³³ In 2014, Kosovo amended its law on reparations for victims of war to include reference to victims of sexual violence. Colombia’s Unit for Comprehensive Reparation and Care of Victims is one of the largest reparations schemes globally, with approximately \$29 billion for more than 7.6 million victims.

²³⁴ Coalition for Just Reparations, “Yazidi [Female] Survivors’ Law”, accessed 16 June 2023, available at <https://c4jr.org/wp-content/uploads/2022/01/Yazidi-Female-Survivors-Law-March-24-2021.pdf>.

of 18, and Yazidi, Turkmen and Shaback survivors of “mass killings and mass elimination carried out by ISIS in their areas”.²³⁵

Key provisions include the acknowledgement that crimes committed by ISIL against these minority groups constitute genocide and crimes against humanity, formal recognition of various forms of SGBV committed by ISIL, and a set of individual and collective, material and symbolic reparation measures.²³⁶ Despite these laudable achievements, also driven by the efforts of civil society organizations, the law does not recognize all categories of victims, including men, boys, and members of the LGBTQ+ community who were also victims of SGBV by ISIL.

The implementation of the reparations programme also raises concerns, particularly with respect to the imposition of an eligibility standard requiring survivors to submit a criminal complaint, in contravention to international standards relating to administrative reparations programmes which call for flexible evidentiary standards to avoid the potential re-traumatization of victims and placing undue burden on victims.²³⁷

Consistent with the United Nations Secretary-General's recommendations on reparations for conflict-related sexual violence, it is essential that these schemes aim for transformative outcomes throughout their design, implementation, and impact.²³⁸ Active participation of affected communities and civil society organizations is crucial to ensure that the process is victim-centred, minimizing burdens for claimants and reducing potential risks. Adequate funding is also vital, either through dedicated budget allocation within national budgets or through donor support, to ensure the sustainability of the reparations programme. Effective

Key Elements of Victim-Centred Reparations Schemes for Victims of Sexual and Gender-Based Violence

This is a non-exhaustive list of core elements to be considered for inclusion in the design of a reparations scheme:

An Administrative Scheme unconnected to a criminal process. Participation in the reparations scheme should not impede upon the victim's agency to file a criminal complaint or participate in ongoing processes.

A Comprehensive Scheme that addresses, inter alia, psychosocial support, medical assistance and rehabilitation, monetary compensation and restitution of land or property where applicable.

Clear Provisions on Eligibility that are not onerous and do not require additional documentation or evidence comparable to the standards of a criminal process.

Right of Appeal to a Separate Body, the victim should be allowed to appeal the administrative decisions to a separate body.

Non-discriminatory, recognition of all victims of SGBV regardless of gender or sexual orientation.

²³⁵ Ibid., art. 2.

²³⁶ Ibid., arts. 1, 6–8. These include individual reparations such as the provision of a monthly salary not less than the minimum pension and a plot of land with a real estate loan or a free housing unit, and communal reparations in the form of memorialization initiatives, such as monuments and exhibits.

²³⁷ “Statement on the implementation of the Yazidi survivors Law – Iraq | ReliefWeb”, 14 April 2023, available at <https://reliefweb.int/report/iraq/statement-implementation-yazidi-survivors-law>.

administration of the scheme can be achieved by providing comprehensive training to staff on victim-centred and trauma-informed approaches, as well as forming a multidisciplinary team with diverse expertise to address the complex needs of those affected.²³⁹

Finally, while victims of SGBV linked to terrorism who sought refuge in other countries may receive humanitarian assistance and support, humanitarian assistance is not reparations, and the victims are generally ineligible to participate in host country reparations schemes. Efforts should be made to recognize victims in their country of citizenship without any requirement that they return to seek or submit their claim, particularly when they may face bureaucratic, logistical, and financial barriers or further risk of harm and stigmatization upon their return.

c. Sanctions

Though not a form of criminal justice accountability, sanctions can nonetheless be an important tool to ensure that there are “no safe havens for perpetrators and to curtail the financial revenues” of SGBV and human trafficking linked to terrorism²⁴⁰ and thus to prevent the continuation of the commission of these crimes.²⁴¹ Resolution 2331 (2016) is the first resolution to address SGBV and human trafficking linked to terrorism by incorporating both criminal justice and sanctions measures. In that resolution (and subsequently in resolution 2610 (2021)),²⁴² the Security Council noted that any person or entity who transfers funds to ISIL directly or indirectly in connection with, inter alia, rape and sexual violence, would be eligible for listing by the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities and expressed its “intention to consider targeted sanctions for individuals and entities involved in trafficking in persons in areas affected by armed conflict and in sexual violence in conflict”.²⁴³ Designating individuals or entities for United Nations sanctions due to their involvement in SGBV linked to terrorism could serve as a tool to discourage and penalize those engaged in activities that undermine international peace and security.²⁴⁴

²⁴⁰ United Nations, Security Council, *Conflict-Related Sexual Violence: Report of the Secretary-General*, S/2022/272 (29 March 2022), para. 75(b), available at www.un.org/sexualviolenceinconflict/wp-content/uploads/2022/04/2022-UN-SG-annual-report-on-CRSV-English.pdf.

²⁴¹ Ruwanthika Gunaratne, “Gender-based violence and sanctions: a potential UN Security Council framework,” *Just Security*, 16 April 2019, available at www.justsecurity.org/63653/gender-based-violence-and-sanctions-a-potential-un-security-council-framework/; Sophie Huvé, “The use of UN sanctions to address conflict-related sexual violence”, *The Georgetown Institute for Women, Peace and Security*, 2018, available at <https://giwps.georgetown.edu/wp-content/uploads/2018/03/Use-of-UN-Sanctions-to-Address-Conflict-related-Sexual-Violence.pdf>; United Nations, *Extending Mandate for ISIL (Da’esh) Sanctions Framework*, Security Council Unanimously Adopts Resolution 2610 (2021), 17 December 2021, available at www.un.org/press/en/2021/sc14741.doc.htm.

²⁴² Preamble, operative para. 15.

²⁴³ Security Council resolution 2331 (2016), preamble, operative para. 12.

²⁴⁴ Interview with gender and counter-terrorism expert, 2 May 2023.

At the national level, in June 2023, the United States designated two ISIL leaders as Specially Designated Global Terrorists for their involvement in the commission of SGBV against Yazidi women and girls, which involved abduction and sexual slavery.²⁴⁵ This marks the first known sanctions designation against a member of a terrorist group for SGBV and is an encouraging step.

Emerging Good Practices and Opportunities

The above challenges notwithstanding, there are also examples of promising practices being developed, which offer potential lessons learned and pathways to advancing accountability. Examples include international cooperation, structural investigations, inter-agency cooperation and civil society participation.

a. International Cooperation

With respect to international cooperation, a number of initiatives have emerged that are of relevance to the investigation and prosecution of SGBV in terrorist contexts. Through mutual legal assistance arrangements, Canadian investigative and prosecution teams are actively cooperating with German authorities to facilitate knowledge-sharing and establish victim-centred approaches at the onset of their investigations into ISIL crimes against the Yazidi community.²⁴⁶ Furthermore, in 2022, the European Union Agency for Criminal Justice Cooperation (Eurojust) played a vital role in facilitating the creation of a joint investigation team (JIT) consisting of the judicial authorities of Sweden and France.²⁴⁷ The primary objective of this JIT is to support legal proceedings concerning core international crimes committed by FTFs against the Yazidi community in the Syrian Arab Republic and Iraq. The formation of this JIT fosters ongoing coordination of the investigations and enhances the exchange of evidence among the participating parties.²⁴⁸ This collaborative venture is significant as it limits having to conduct repeated interviews with the same victims, thereby reducing the risk of re-traumatization and preventing potential inconsistencies in their testimonies.

Another relevant practice to promote international cooperation with potential significance for accountability for SGBV linked to terrorism is the Liaison Magistrate Initiative established by UNODC in 2018. This Initiative facilitates the deployment of

²⁴⁵ United States, Department of State, *Designating and Promoting Accountability for Conflict-Related Sexual Violence*, 20 June 2023, available at www.state.gov/designating-and-promoting-accountability-for-conflict-related-sexual-violence/.

²⁴⁶ Participant discussion at CTED/Team of Experts EGM, 10–11 May 2023.

²⁴⁷ Eurojust, *Support to Joint Investigation Team of Sweden and France Targeting Crimes against Yazidi Victims in Syria and Iraq*, 7 January 2022, available at www.eurojust.europa.eu/news/support-joint-investigation-team-sweden-and-france-targeting-crimes-against-yezidi-victims; interview with a researcher on the prevention of Islamist extremism and counter-terrorism in Europe and the Middle East, 8 May 2023.

²⁴⁸ Eurojust, *Support to Joint Investigation Team of Sweden and France Targeting Crimes against Yazidi Victims in Syria and Iraq*, 7 January 2022.

Nigerian liaisons to Italy and Spain to strengthen international judicial collaboration and mutual legal assistance between the countries of origin and the destination countries in cases related to human trafficking and other relevant crimes.²⁴⁹ The benefits of this Initiative include a streamlined communication channel between jurisdictions, improved understanding of the different legal, institutional, and procedural frameworks, and fostering trust and cooperation between criminal justice practitioners from the participating countries.²⁵⁰

b. Structural Investigations

Structural investigations have also been an instrumental tool in advancing accountability efforts for crimes committed by terrorist groups. First commenced in Germany and then adopted in other European countries, including Sweden and France, structural investigations are a means to collect evidence about the entity in question, particularly where “potential perpetrators have not yet been definitively identified”.²⁵¹ Where permitted under national law, the benefits of such investigations include the ability to collect and preserve evidence earlier in the process to gain a comprehensive understanding of the functioning of the terrorist group without the pressure to commence a case against a specific perpetrator.

c. Inter-agency Collaboration

Given the persistence of silos, which was identified as a key challenge in this study, emerging examples of collaboration between national agencies and specialized units are encouraging and have the potential to foster more comprehensive investigations and prosecutions of terrorist acts as core international crimes. For example, the Dutch war crimes and counter-terrorism units are working collaboratively to file joint charges for terrorism-related offences and core international crimes. Although these efforts have not yet resulted in SGBV charges, the collaborative approach and joint discussion over prosecutorial strategy have resulted in the first charges in the Netherlands for the crime against humanity of enslavement committed by a member of ISIL against the Yazidi community as well as membership in a terrorist organization as a terrorism-related offence.²⁵² Similarly, the merging of different specialized units, such as in France, which

²⁴⁹ UNODC, *UNODC’s Liaison Magistrate Initiative Helps Nigeria and Italy to Achieve Major Success in the Fight against Human Trafficking*, available at www.unodc.org/nigeria/en/unodcs-liaison-magistrate-initiative-helps-nigeria-and-italy-to-achieve-major-success-in-the-fight-against-human-trafficking.html.

²⁵⁰ Annalisa Pauciullo and Chervine Oftadeh, “Rethinking judicial cooperation between Africa and Europe: the Nigerian case,” *The European Criminal Law Associations’ Forum*, Issue 3 (2019), pp. 194–198, available at https://eucrim.eu/media/issue/pdf/eucrim_issue_2019-03.pdf#page=44.

²⁵¹ European Center for Constitutional and Human Rights, *Term: Structural Investigation*, available at www.ecchr.eu/en/glossary/structural-investigation/#:~:text=The%20investigation%20focuses%20on%20structures.and%20groupings%20of%20potential%20perpetrators.

²⁵² “Dutch to Prosecute Woman for Islamic State Membership, Yazidi Enslavement,” Reuters, 10 February 2023, available at www.reuters.com/world/europe/dutch-prosecute-woman-islamic-state-

in 2019 incorporated its international crimes unit under the umbrella of the National Anti-Terrorism Prosecutor’s Office (*Parquet National Anti-Terroriste*, or PNAT), is also an important development which can facilitate the sharing of relevant expertise towards more comprehensive accountability efforts.²⁵³

It is also noteworthy that, in some jurisdictions, judges are becoming more sensitized to the interlinkages between human trafficking and terrorism. In a Norwegian case, a young woman faced prosecution for joining ISIL in the Syrian Arab Republic.²⁵⁴ After her husband’s death, she was forced into another marriage and could not leave as she desired. While acknowledging her voluntary involvement with ISIL, which constituted a terrorism-related offence in Norway, the court also recognized the shift in her circumstances from voluntary to involuntary. The judge concluded that her situation turned into human trafficking, with her being coerced to stay in the Syrian Arab Republic. Despite being convicted of a terrorist crime, the judge applied the non-punishment principle as a mitigating factor,²⁵⁵ demonstrating a willingness to consider the victim’s circumstances and apply anti-human trafficking laws to the terrorist context.

d. Role of Civil Society Organizations

Concerning reparations, civil society initiatives, like the Global Survivors Fund (GSF), play a crucial role in assisting victims of CRSV, including SGBV linked to terrorism, with interim reparative measures when States are unable to fulfil their responsibilities to provide reparations to victims of terrorism. While States remain duty bearers, such initiatives aid in envisioning and implementing effective reparative programmes, and the GSF offers technical assistance to States to develop their own reparations programmes.²⁵⁶ GSF adopts a survivor-centric approach, collaborating with survivors and partners to conceptualize, design, implement, monitor, and evaluate programmes that uphold their right to reparation.²⁵⁷

Finally, advancements in accountability for SGBV linked to terrorism can be attained through a collaborative approach with civil society and affected communities. In Mali, six human rights and women’s rights defence organizations – Women in Law and Development in Africa (WILDAF/Mali), the Malian Association for Human Rights (AMDH), the International Federation for Human Rights (FIDH), the Association of Malian Women Jurists (AJM), the Cri de Cœur Collective, and DEME SO – established an informal coalition in 2014 to file complaints on behalf of victims for various forms of SGBV

membership-yazidi-enslavement-2023-02-10/; while the charges do not specifically refer to the gendered nature of the crimes, available information suggests gender dimensions may be addressed during the trial.

²⁵³ Government of France, “Le parquet national anti-terroriste est créé”, 1 July 2019, available at www.gouvernement.fr/le-parquet-national-anti-terroriste-est-cree.

²⁵⁴ Interviews with intergovernmental organization representatives: counter-terrorism expert and human trafficking expert, 31 March 2023.

²⁵⁵ Ibid.

²⁵⁶ Global Survivors Fund, *Annual Report 2022*, available at www.globalsurvivorsfund.org.

²⁵⁷ See www.globalsurvivorsfund.org/.

committed against women and girls in northern Mali by terrorist groups.²⁵⁸ In November 2014, the coalition filed a complaint with the Court of First Instance (*Tribunal de Grande Instance* (TGI)) of Commune III of Bamako on behalf of 80 women for war crimes and crimes against humanity for rape and other forms of sexual violence. As a result, the Malian courts were compelled to commence the first judicial proceeding for SGBV.²⁵⁹ In March 2015, a complaint was filed following investigations in Timbuktu and the Timbuktu region on behalf of 33 victims of international crimes, including sexual crimes, against 15 alleged perpetrators. Both complaints were accompanied by the victims' claim to obtain the status of a civil party in the cases.

In 2017, the Specialized Judicial Unit (*Pôle Judiciaire Spécialisé*) became operational to adjudicate terrorism-related cases, and the coalition filed complaints with it as well. In total, 79 hearings were held at the TGI of Commune III in the Bamako district, the TGI of Gao, and the Specialized Judicial Unit.²⁶⁰ These hearings were made possible as a result of the logistical and financial support provided by civil society and international organizations. Civil society organizations also provided psychosocial support to the victims.²⁶¹ In partnership with the human rights division of the United Nations Multidimensional Integrated Stabilization Mission in Mali, AMDH, and WILDAF/Mali organized a week-long training course in July 2017 for judges and lawyers on the prosecution of sexual violence.²⁶² However, there have been no significant developments in the judicial processes following the hearings. Amid the security and other logistical challenges affecting the efficient dispensation of justice, civil society organizations have expressed concern that the failure to enforce arrest warrants or committal orders or provide sufficient resources to the Malian judicial system demonstrates the lack of political will to address the SGBV cases promptly and equitably.²⁶³

IV. CONCLUSION AND NEXT STEPS

The study, which aims to advance accountability for SGBV linked to terrorism, examined the interlinkages between the international counter-terrorism framework and relevant international legal frameworks. It demonstrated how these frameworks could contribute to reducing the impunity gap for SGBV linked to terrorism to meet Member States' obligations to bring to justice anyone who has committed a terrorist act. In addition, the study delved into the legal and practical challenges that Member States are facing and highlighted some emerging good practices pertaining to prosecution

²⁵⁸ FIDH/AMDH, *Mali Choosing Justice in the Face of Crisis*, December 2017, p. 28, available at www.fidh.org/IMG/pdf/20171208_rapportmali_justice_en.pdf.

²⁵⁹ *Ibid.*, p. 29.

²⁶⁰ Team of Experts on the Rule of Law and Sexual Violence in Conflict, *Réponse Judiciaire aux Crimes de Violence Sexuelles Liées au Conflits au Mali en 2012–2013*, Workshop Report, 9–10 June 2020, p. 6. (on file).

²⁶¹ *Ibid.*, p. 10.

²⁶² FIDH/AMDH, *Mali Choosing Justice in the Face of Crisis*, p. 30.

²⁶³ *Ibid.*, 29.

strategies, international cooperation, and civil society participation. The study's analysis and findings provide a nuanced understanding of SGBV linked to terrorism and the criminal justice measures that can be implemented to foster accountability. By acknowledging the gendered nature of terrorist crimes and the exploitation of SGBV as a tactic by terrorist groups, the study emphasizes the need for gender-sensitive counter-terrorism strategies that address the underlying structural inequalities that terrorist groups exploit, as well as the structural inequalities and gendered notions of terrorism within the counter-terrorism and criminal justice system.

To continue to support the Counter-Terrorism Committee in advancing the implementation of relevant Security Council resolutions in accordance with applicable international law, including international humanitarian law and international human rights law, and to assist Member States in their efforts to increase accountability for SGBV linked to terrorism, CTED, in line with its mandate and under the guidance of the Committee, will:

Assessments

- Continue to raise awareness in its dialogue with Member States on behalf of the Counter-Terrorism Committee about the interlinkages between SGBV, human trafficking, and terrorism to foster the implementation of relevant Security Council resolutions to advance accountability for SGBV linked to terrorism
- Continue its ongoing review and, if appropriate, propose to the Counter-Terrorism Committee to consider refining its assessment tools to more comprehensively address the interlinkages between SGBV, human trafficking and terrorism
- Continue to strengthen its partnership with United Nations entities with relevant expertise, such as the Team of Experts on the Rule of Law and Sexual Violence in Conflict, including by inviting them to participate in country assessment visits to high-risk States to leverage the Team's expertise in supporting national authorities in pursuing accountability for perpetrators of SGBV linked to terrorism

Trends and analysis

- Continue, in line with its existing mandate to identify and analyse emerging issues, trends, and developments relating to the implementation of the relevant Council resolutions, to collaborate with relevant stakeholders, including the research community through its GRN, to collect relevant information regarding Member States' efforts on this issue
- Continue to identify emerging good practices relating to Member States' efforts to advance criminal justice responses and survivor-centred approaches to SGBV linked to terrorism

Engagement with civil society organizations

- Continue, in line with its existing mandate, to engage with civil society organizations and consult with women and women’s organizations to inform its work on the issue, including with respect to the provision of survivor-centred and trauma-informed support and addressing stigma within communities

Facilitation of technical assistance

- Continue to facilitate the delivery of technical assistance to strengthen the capacity and expertise within Member States to conduct investigations and prosecutions of SGBV linked to terrorism
- Ensure follow-up with Member States regarding the implementation of recommendations to strengthen criminal justice responses to SGBV linked to terrorism which require technical assistance and capacity development support
- Continue its close collaboration with relevant United Nations entities, including UNOCT and UNODC, to address priority areas for technical assistance and support the mainstreaming of recommendations in relevant projects through the United Nations Global Counter-Terrorism Coordination Compact
- As a member of United Nations Action against Sexual Violence in Conflict, continue to engage and share information with other members of the network to support collective United Nations efforts to address conflict-related sexual violence, including in terrorist contexts.

Through its engagement with Member States and relevant stakeholders on behalf of the Counter-Terrorism Committee, and the analysis and exchanges undertaken in the context of this study, CTED has identified the following promising practices adopted by different Member States with a view to advancing more comprehensive accountability for SGBV linked to terrorism:

Legal frameworks

- Adopting and/or amending legislation to ensure that SGBV is defined in line with international standards, including with respect to the elements of crime and use of gender-neutral definitions. For example, force is not an element of rape under international law and establishing the existence of a coercive circumstance can prove the absence of consent
- Reviewing criminal procedural and evidentiary rules and practices to avoid placing undue burden on victims and remove procedural impediments to justice, in line with international standards. Examples of such procedural and evidentiary impediments include restrictive limitation periods for filing claims, corroboration requirements discriminating against victims as witnesses and complainants and a lack of facilities for closed hearings, as well as the requirement of medical corroboration

- Reviewing and amending legislation or policies that contain restrictive interpretations of the double criminality principle, which may have an impact on the exercise of jurisdictions, extradition of suspects, and other international cooperation and assistance in legal proceedings for terrorist cases, including those concerning SGBV linked to terrorism
- Adopting or amending existing legislation to enable the exercise of universal jurisdiction for core crimes under international law

Investigation and prosecution

- Developing investigative and prosecutorial strategies, based on available legal frameworks, including counter-terrorism legislation, which can support the identification of broader patterns of criminality and chains of command
- Establishing legal and regulatory frameworks to enable the sharing of information domestically and internationally to facilitate the investigation and prosecution of individuals responsible for SGBV linked to terrorism
- Establishing multidisciplinary investigative units, participating in inter-State joint investigative teams, and enhancing intragovernmental cooperation between relevant units to strengthen evidence collection efforts and investigative strategies, and limit the potential re-traumatization of victims
- Conducting structural investigations, which also incorporate investigations of SGBV linked to terrorism, to enable the collection of evidence across a broad crime base
- Conducting proactive and systematic parallel financial investigations to identify and disrupt cases where financial gains from SGBV may be used to finance terrorism
- Including human trafficking as a potential risk of terrorism financing within national risk assessment
- Bringing cumulative charges for terrorism-related offences and core international crimes to address the full criminal responsibility of perpetrators and the harm caused to victims
- Incorporating training and awareness-raising activities for relevant criminal justice practitioners on the linkages between SGBV, human trafficking, and terrorism and the applicability of relevant legal frameworks, including international humanitarian law, international criminal law, and international human rights law
- Providing training and capacity-building for members of financial intelligence units on SGBV, as a means of direct and indirect financing of terrorist activity, to facilitate the development of investigative strategies aimed at stemming financing of terrorist activity
- Investing more financial and human resources to enable the investigation and prosecution of these crimes

Gender-responsive and victim-centred approaches

- Integrating gender-responsive and survivor-centred approaches in the development of investigative and prosecutorial strategies, which include (1) engaging with victims of SGBV to inform a deeper understanding of the gendered nature of the crimes and support the determination of possible charges; (2) reviewing legal and policy frameworks for existing gender stereotypes and bias; and (3) integrating a contextual understanding of SGBV throughout the investigation, prosecution, and adjudication of terrorist crimes
- Developing gender training programmes for national criminal justice practitioners, including with respect to incorporating gender analysis in their work
- Recognizing victims of SGBV and human trafficking by terrorist groups as victims of terrorism and thus rendering them eligible for relevant support, assistance, reparations, rehabilitation, and reintegration programmes
- Enabling the participation of victims, affected communities and civil society, including women's organizations, in conceptualizing, designing, monitoring and evaluating transitional justice processes and mechanisms, including reparations programmes.

ANNEX

Available Guidance

The following is intended as a non-exhaustive list of existing guidance and policy documents that can provide relevant frameworks of reference to inform accountability efforts for SGBV linked to terrorism.

United Nations Guidance

- Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence*, June 2021
www.un.org/sexualviolenceinconflict/wp-content/uploads/2021/06/report/autodraft/OSRSG-SVC-Model-Legislative-Provisions-ENG.pdf
- United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant and the Human Rights in Trauma Mental Health Programme at Stanford University, *Trauma-Informed Investigations Field Guide*, 2021
www.unitad.un.org/sites/www.unitad.un.org/files/general/2104429-trauma-informed_investigations_field_guide_web_0.pdf
- United Nations, *Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence*, 2014 <https://digitallibrary.un.org/record/814902>
- General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (resolution 60/147), 16 December 2005
www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx
- International, Impartial and Independent Mechanism, *Gender Strategy and Implementation Plan (Abridged Version)*, (September 2022)
<https://iiim.un.org/wp-content/uploads/2022/10/Gender-Strategy-Implementation-AbridgedEnglish.pdf>
- Office of the High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2022 edition)
www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf
- Security Council Guiding Principles on Foreign Terrorist Fighters: the 2015 Madrid Guiding Principles and 2018 Addendum (S/2015/939 and S/2018/117)
www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/security-council-guiding-principles-on-foreign-terrorist-fighters.pdf
- CTED, United Nations Office on Drugs and Crime (UNODC), United Nations Counter-Terrorism Centre and United Nations Global Counter-Terrorism Coordination Compact, *Guidelines to Facilitate the Use and Admissibility as*

- Evidence in National Criminal Courts of Information Collected, Handled, Preserved and Shared by the Military to Prosecute Terrorist Offences* (2019)
- United Nations Office of Counter Terrorism, the Inter-Parliamentary Union and UNODC, *Model legislative provisions to support the needs and protect the rights of victims of terrorism* (2022)
https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/20204_model_legislative_provisions.pdf
 - UNODC, *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism* (May 2019) www.unodc.org/documents/terrorism/Publications/17-08887_HB_Gender_Criminal_Justice_E_ebook.pdf
 - UNODC, *Nigeria Training Module on Gender Dimensions of Criminal Justice Responses to Terrorism* (August 2019)
www.unodc.org/pdf/terrorism/Web_stories/UNODC_Nigeria_Gender_Training_Module.pdf
 - World Health Organization, *Mental health and psychosocial support for conflict-related sexual violence: principles and interventions* (2012)
https://apps.who.int/iris/bitstream/handle/10665/75179/WHO_RHR_HRP_12.18_eng.pdf;jsessionid=AD2599B0B13D8EA81F5FF6EE691B8FAF?sequence=1

Other relevant guidance

- Institute for International Criminal Investigations, *The Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence ("The Murad Code")*, (April 2022) www.muradcode.com/
- Global Counterterrorism Forum, Criminal Justice and Rule of Law Working Group, *Memorandum on Criminal Justice Approaches to the Linkages between Terrorism and Core International Crimes, Sexual and Gender-based Violence Crimes, Human Trafficking, Migrant Smuggling, Slavery, and Crimes against Children*, (September 2021)
www.thegctf.org/Portals/1/Documents/Links/Meetings/2021/19CC11MM/CJR_OL%20Memorandum/CJ-ROL_Memo-ENG.pdf?ver=BqP5OK_Txt0tY8JFGamBzw%3d%3d
- International Committee of the Red Cross, *Checklist: Domestic Implementation of International Humanitarian Law Prohibiting Sexual Violence* (2020)
www.icrc.org/en/document/checklist-domestic-implementation-international-humanitarian-law-prohibiting-sexual
- *The Hague Principles on Sexual Violence* (which include *The Civil Society Declaration on Sexual Violence*, *International Criminal Law Guidelines on Sexual Violence*, and *Key Principles for Policy Makers on Sexual Violence*), (2019)
<https://4genderjustice.org/ftp-files/publications/The-Hague-Principles-on-Sexual-Violence.pdf>
- Sara Ferro Ribeiro and Danaé van der Straten Ponthoz on behalf of the United Kingdom of Great Britain and Northern Ireland Foreign and Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual*

Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law, 2nd ed. (March 2017)

www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict/International_Protocol_2017_2nd_Edition.pdf

- Institute for International Criminal Investigations, *Guidelines for Investigating Conflict-Related Sexual and Gender-Based Violence against Men and Boys* (The Hague, 2016) https://iici.global/0.5.1/wp-content/uploads/2017/03/160229_IICI_InvestigationGuidelines_ConflictRelatedSGBVagainstMenBoys.pdf
- International Criminal Court, Office of the Prosecutor, *Policy on the Crime of Gender Persecution*, 7 December 2022 www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf.
- International Criminal Court, Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, June 2014 www.icc-cpi.int/sites/default/files/Policy_Paper_on_Sexual_and_Gender-Based_Crimes-20_June_2014-ENG.pdf