

# UNDERSTANDING THE NEED TO MAINSTREAM GENDER IN CRIMINAL JUSTICE RESPONSE TO TERRORISM AND COUNTER TERRORISM MEASURES IN NIGERIA

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## INTRODUCTION

The world now is a global village hence fighting terrorism is not a nation affair. Terrorism is a global menace because of the ease with which movement of humans, goods and services are conveyed.<sup>i</sup> The advancement in telecommunication also exacerbated the activities of terror outfits. a such countries have to come together to assist one another with the fight against terrorism, this is paramount if the world wants to get rid of terrorism.<sup>ii</sup>

Globally, the devastating effects of terrorism and the mounting human rights issues that come with it have always been a source of concern to the society.<sup>iii</sup> In 2019 Nigeria<sup>iv</sup> was placed as the 3rd most terrorized country in the world mostly because of the insurgent activities by the Islamist group (Boko Haram (BH)). Terrorism itself and the different counter-terrorism responses of the government have human rights implications. The negative impact manifests on both the victims and the perpetrators alike. Experts have made attempts to place human rights abuse at the centre of both the cause and effects of terrorism. Given the fundamental responsibility of every government to ensure the security of lives and property of the citizens, every nation faced with the devastating effects of terrorism has mapped out strategies to deal with this challenge and this is called counter-terrorism strategy.

It is common knowledge that women and men are involved in the activities of terrorist groups and have fallen victim to acts of violence inflicted by these groups.<sup>v</sup> But until recent years, women's roles as actors in terrorism and counter-terrorism responses remained largely unexplored, viewed through stereotypes regarding women's roles in society and in violence,

women are perceived only as victims, or as unwilling associates of the “real” terrorist actors. It has therefore been realized that the challenges of terrorism and counter-terrorism gets more complicated when the victim or perpetrator of terrorism activities is a woman. This throws up a number of human rights issues bothering especially on the principles of equality and non-discrimination.<sup>vi</sup> The key concern is whether women victims and perpetrators of terrorism have equal access to justice with their male counterparts within the context of criminal justice responses to terrorism in Nigeria.

Criminal justice responses to terrorism have conventionally been characterized by gender-neutral approaches, which fail to differentiate between the impacts of criminal justice responses on women and men, and assume that both groups have the same needs, experiences, and concerns. A deeper understanding of this challenge is identified in the differed implications it has for women as against men.<sup>vii</sup> The issue of gender gets into the picture for the obvious reason that women’s and men’s involvement, motivations, roles and means of recruitment into terrorism may differ. This throws up a lot of societal issues around the perception of women, stereotyping and gender-based violence as it has been identified that some women are actually forced/coerced into carrying out terrorist acts.<sup>viii</sup>

In this paper, we are to know that Gender mainstreaming examines the ways in which women and men are involved in, and impacted by the activities of terrorist groups, and criminal justice responses to terrorism. Understanding these gender dimensions is central to developing more human rights-compliant to criminal justice responses to terrorism and to the overall efforts to counter terrorism effectively. Gender mainstreaming is the strategy for achieving equality for women and girls in relation to men and boys.<sup>ix</sup> Gender mainstreaming is vital to ensuring long-term sustainable criminal justice reform, as it identifies and uses opportunities for improving gender equality in projects and policies that would not have otherwise been considered gender issues. It is also essential in order to avoid worsening inequalities in criminal justice systems.

## **GENDER DIMENSION TO TERRORISM AND COUNTER TERRORISM MEASURES IN CRIMINAL JUSTICE RESPONSE TO TERRORISM**

Gender mainstreaming in the context of terrorism can be defined as separating the way men are involved and are affected by involvement in terrorism acts as distinct and different from the role and involvement of women in terrorism offences. In the context of counter-terrorism there has been a tendency to equate the term ‘gender’ with women without including men. However, considering the role of masculinities and male identity in terrorism can be critical in understanding motivations and factors that induce them for engaging in violent extremism or terrorism and how masculinity can be employed for recruitment in such groups.<sup>x</sup>

Gender mainstreaming is therefore the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels.<sup>xi</sup> The ultimate aim being to achieve gender equality. A good government policy on rehabilitation and re integration would therefore recognise the peculiarities of how women associated with terrorism are adversely affected as against their men counterpart.<sup>xii</sup> For instance, the woman upon rescue may have given birth to a child or children while in Boko Haram captivity. What then would become the faith of such child/children if the society accepts only the mother and reject the child or children as the case maybe.

National and international responses to terrorism should consider therefore not only the masculine gender only but also the feminine gender. In particular women’s experiences both as perpetrators of acts of terrorism, as victims, and as agents in State and non-State institutions.<sup>xiii</sup>

### **WHAT DOES THE TERM MASCULINITY IMPLY?**

The term masculinity could mean strong, brave, courageous and ability to meet up with certain societal obligations.<sup>xiv</sup> In Nigeria there are certain expectations placed on the male child. For instance, the society expects him at a certain age to pick up a wife, marry her, by paying her bride price, cater for her financial needs and those of the family, bear children who will continue the family lineage. He is equally expected to be strong to defend and protect his family

against enemy attack as well as provide for their feeding, clothing shelter and general welfare. As Aolain puts it....

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

## **WHAT ROLE DOES MASCULINITY PLAY IN BOKO HARAM RECRUITMENT OF MEN?**

One of the contentions of the Boko Haram terrorist group in Nigeria is that the Nigerian State have failed in its responsibilities to provide job and security for its citizens. For this reason, some of their recruitment incentives is promise of finance for men who have no jobs and cannot fend for themselves. They generate fund when they kidnap people and in return demand ransom for their release. They equally promise their recruit access to free women for marriage, such women they get through abduction and kidnapping. Men who are heavily built, bold, fearless and courageous are usually attractive for recruitment by the Boko Haram terrorist group.

## **WHAT ROLE DOES FEMINISM PLAY IN BOKO HARAM RECRUITMENT OF WOMEN?**

Just like masculinity plays a role in the recruitment of men into violent extreme groups in the same way feminism plays a role.<sup>xvi</sup> Women are seen as tender, as such not capable of committing heinous crimes. For instance, at a stop and search bus stop or point, men in the vehicle are most likely to be declared suspects by their look and subjected to search whereas a

woman would be presumed innocent. It is for this reason that women are recruited in violent groups in order to give information by acting as spy's, help in the smuggling of heavy weapons such as guns since they are not like to be searched. Generally, they are equally recruited to play domestic roles of housekeeping and cooking.

Several reports focus on women as victims of terrorism. However, there is evidence that women have also been perpetrators of acts of terrorism, whether willingly or not. The report of International Crisis Group on Nigeria: Women and the Boko Haram Insurgency<sup>xvii</sup> highlights this complex phenomenon that encompasses a broad range of situations. Boko Haram leaders [such as its founder Mohammed Yusuf] took advantage of the gaps created by patriarchy, entrenched discrimination against women and girls and the grinding socio-economic hardship in the North East to attract women.<sup>xviii</sup>

## **TERRORISM (PREVENTION AND PROHIBITION) ACT, 2022 (TPPA) AS IT RELATES TO WOMEN AND CHILDREN**

The Terrorism (Prevention and Prohibition) Act 2022 (TPPA) has a number of positive aspects. First, it consolidates terrorism legislation into a single law. Prior to the enactment of the TPAA, the law was spread across the Terrorism Prevention Act 2011 (TPA) and the Terrorism Prevention (Amendment) Act 2013 (TPAA) which had led to much uncertainty, confusion, difficulty and ambiguity in understanding and applying the law. Furthermore, the objectives of the TPPA<sup>xix</sup> are lofty, far-reaching and very admirable, despite the glaring omission of any express commitment towards safeguarding human rights. It is also encouraging that Nigeria has sought to expand the legislative framework to include provisions relating to: the proliferation of weapons of mass destruction; introducing mechanisms relating to financial measures pursuant to the counter-proliferation resolutions.<sup>xx</sup> Attempting to promote improved compliance, implementation and enforcement of the regional and international counter-terrorism conventions; and the establishment of a mechanism to provide compensation to victims of terrorism.<sup>xxi</sup>

The TPPA is ambitious and complex in the sense that it seeks to establish a multitude of new systems, procedures, structures and committees to try to strengthen the fight against terrorism

and the financing of terrorism. For example, the TPPA provides for the establishment of the National Counter-Terrorism Centre (which in turn is tasked with establishing various teams and structures including the Joint Terrorism and Analysis Branch), the Nigeria Sanctions Committee, and the Victims Trust Fund implemented through the Special Victims Trust Fund Committee. The TPPA sets out the overarching framework, but the practical operationalisation of the law will require the development of a huge body of regulations,<sup>xxii</sup> as well as extensive capacity building, collaborative development and coordination, and education and awareness raising. This will be a difficult yet essential task, and one on which the whole success of the practical implementation of the law will depend. This will in turn pose significant challenges to the judiciary as individuals and institutions try to navigate the stormy waters of the nascent procedures, structures and systems.

The National Counter-Terrorism Strategy of Nigeria recognizes the link between the protection of human rights and the effectiveness of counter-terrorism measures, stressing that “the Government believes that respect for international law and human rights must be an integral part of its efforts to counter terrorism.” Respecting human rights is the right thing to do.<sup>xxiii</sup> It is right to treat all people with basic human dignity and respect, without discrimination: it is morally right at the individual level, and it is a mark of professionalism and integrity in law enforcement and criminal justice systems. Further, the violation of human rights will directly lead to the alienation of communities that feel anger and mistrust towards the state, a rise in violent extremism, and an increase in the level of the terrorist threats in the country. The level of the terrorist threat in Nigeria emphasizes the importance of the role of the judiciary in promoting and upholding compliance with human rights. From a human rights perspective, the TPPA is disappointing in that it appears to represent a missed opportunity to embed human rights at the core of the terrorism prevention legislation in Nigeria. Furthermore, the major human rights failings of the Terrorism Prevention Act 2011 as amended by the Terrorism Prevention (Amendment) Act 2013 have not been addressed and, to a large extent, have simply been transposed into the new legislation. There are also glaring failings/omissions of the legislation as it relates to women and child rights.

One glaring omission from the definition of acts of terrorism and the terrorist offences set out in the TPPA is the failure to criminalise sexual and gender based violence (SGBV) offences committed in the terrorist context. It would have been appropriate for the TPPA to criminalise

rape<sup>xxiv</sup> as in the case of the Violence Against Person's Act. Especially for cases of sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity committed by terrorist groups. The consequent lack of accountability for SGBV offences committed by terrorist groups is very worrisome, as it fails to take account adequately of victim's rights and it is in violation of Nigeria's international human rights obligations.<sup>xxv</sup>

The TPPA (as per the previous law) is silent as to its applicability to children. The Child Rights Act 2003 which has been passed into law in some States, such as Adamawa, Delta, Kaduna, Benue amongst others. It is wide-ranging in its scope and seeks to put in place a framework for dealing with children which complies with Nigeria's child rights obligations. The ambiguity as to the applicability of the law relating to children suspected of being associated with terrorist groups appears to have directly led to some children being placed outside the protective framework of the Child Rights Act, and into an ambiguous limbo in which their rights may not have been adequately safeguarded. International human rights law, most notably in the UN Convention on the Rights of the Child, extends special protection to persons aged below 18 years, and accords a presumption of minority in case of doubt on age.<sup>xxvi</sup> The recruitment and use of children to participate in conflict, by armed groups, is prohibited in core international treaties ratified by Nigeria, and it is criminalized as a war crime under the Statute of the International Criminal Court.<sup>xxvii</sup> In order to ensure that the rights of children are protected the TPPA should arguably have included language to expressly criminalize the recruitment and use of children by terrorist organizations, and to enshrine the presumption of minority. Many of the children recruited and used in conflict by armed groups, moreover, have been abducted, trafficked, forced into marriage and/or raped by these groups. As victims of violations of their basic human rights, it is the position of the international community<sup>xxviii</sup> that such children should be treated primarily as victims and assisted accordingly. It would appear to have been prudent for the TPPA to have clarified the legislative framework, procedures and safeguards applicable to such children.

The scope of definition of terrorism under the TPPA (as with the previous law) is extremely wide. As a result, many people who never took up arms who perhaps have had a very limited or tangential interaction with terrorists, may well find that their actions and situations place them within the scope of terrorist offences, even though, in reality, they may have had no choice

due to the force, compulsion or duress exerted upon them, their level of culpability may be negligible and they may effectively be victims of terrorism. From a human rights perspective, this is worrying. It classifies huge swathes of people as terrorists and places them under the umbrella of the human rights restrictions contained in the TPPA. Furthermore, the issue is compounded by the fact that many of the terrorist offences carry heavy minimum sentences – for example, membership,<sup>xxix</sup> support to terrorists,<sup>xxx</sup> attending a terrorist meeting and harbouring<sup>xxxii</sup> terrorists all involve minimum sentences of 20 years' imprisonment and, in addition, duress, coercion and intimidation will not constitute a defence to most of the offences set out in the TPPA. Persons with limited culpability, whose actions nevertheless amount to terrorist offences, may as a result be faced with terms of imprisonment which are wholly excessive.

The imposition of minimum sentences is problematic as there will often be circumstances in which the appropriate sentence is less than the minimum, and the Courts should have the flexibility to take the totality of circumstances impacting on the alleged offence into account.<sup>xxxiii</sup> This was evident under the previous law where the wives (sometimes through forced marriages/kidnappings) of suspected terrorists become liable for hefty sentences for supporting, harbouring or failing to report terrorist activity, simply as a result of their marital status.<sup>xxxiii</sup> In such cases both the law and the imposition of hefty sentences is disproportionate to the magnitude of the offence and thus represents a significant human rights violation. It may well have been more appropriate if all sentencing guidelines set out in the TPPA had been expressed in terms of maximum rather than minimum sentences, thus allowing judges to appropriately exercise their discretion in line with the aggravating and mitigating factors in the case.

## **THE IMPACT OF TERRORISM AND COUNTER TERRORISM RESPONSE ON WOMEN'S RIGHTS**

In Nigeria, as across the world, women and men, girls and boys are amongst the victims of indiscriminate acts of terrorism, such as explosives attacks in public places or large-scale hostage taking.<sup>xxxiv</sup> However, women's rights are disparately affected by terrorism in specific ways compared to men. Terrorist groups exercise power over territory and restrict women's



freedom of movement, access to education and healthcare, participation in public life, and their socioeconomic development due to ideological norms dictating women's roles in society. Women disproportionately experience internal displacement as a result of terrorist threats. Terrorist groups systematically subject women and girls to severe abuses, such as sexual violence, slavery, and forced marriages, pregnancies, and conversions.<sup>xxxv</sup> Women and girls have also been abducted for these purposes, as well as to fulfil operational roles in the terrorist group's activities through forced labour or as suicide bombers. There are different dimensions to the abuse of the rights of women in the course of counter-terrorism responses. Women suffer as suspects of terrorism and also suffer as a result of relationships with terrorist suspects. Women's rights have been abused in the course of counter-terrorism responses.

The Terrorism Prevention Amendment Act<sup>xxxvi</sup> provides for certain offences and punishment. For instance the Act criminalises as offence, soliciting or rendering support to members of a terrorist group,<sup>xxxvii</sup> and harbouring any member of a terrorist group.<sup>xxxviii</sup> A person is deemed to have committed an offence of concealment if the person knows or suspects a person to be a member of a terrorist group but makes no effort to report such a person to the relevant security authority.<sup>xxxix</sup> A person who voluntarily joins the members of any terrorist group is deemed to be a member of such terrorist group and equally commits an offence punishable under the Act.<sup>xl</sup>

Furthermore, acts of terrorism could take the form of sexual violence on women and children. Sexual violence connotes violent act against a person's sexuality without the persons consent.<sup>xli</sup> It could be in the form of cultural practices such as early marriage, female genital mutilation and extreme violation such as rape.<sup>xlii</sup> Most times victims do not report such violence against them because of societal norms and stigmatization, hence perpetrators are not brought to justice. In some cases, the perpetrators of such violence are not known or identifiable by the victims especially when it is a case of a gang rape or one committed by members of a terrorist group.<sup>xliii</sup> Women who have been radicalized and voluntarily joined terrorist groups have also been subjected to sexual violence, including rape, sexual slavery, and forced marriages to fighters, to provide 'rewards' to fighters. Upon return to their communities, women who have been subjected to SGBV face further harm due to stigma associated with this crime and lack of available support services.<sup>xliv</sup> Those whose children or husbands are suspected of being involved with terrorist groups face suspicion, harassment and stigma from their communities and families.<sup>xlv</sup> Women whose husbands join or are forcibly recruited by terrorist groups

experience economic deprivation through the loss of the family breadwinner. In societies with strong patriarchal norms, it can be a significant social and cultural challenge for women to adopt this breadwinning role. These economic impacts are often themselves drivers of radicalisation for women.

## WHEN WOMEN ARE SUSPECTS

Women involved in terrorism could be subjected to different treatment and processed outside the dictates of the law.<sup>xlvi</sup> Counter-terrorism strategies are operated in the context of a criminal justice system in which policies, practices and regulations have not been crafted in a gender-sensitive manner as such in the course of counter-terrorism operations and investigations, female suspects are subjected to discriminatory investigative practices, such as profiling based on their religious dress, stops and searches, including invasive body searches by police.<sup>xlvii</sup> This can disproportionately impact women's freedom of movement and right to privacy. Women are also at risk of secondary victimisation where personnel are not equipped to apply gender-sensitive interviewing practices, or fail to adequately mitigate risks for witnesses.<sup>xlviii</sup> Women victims and alleged perpetrators face challenges arising from absence of female law enforcement personnel who they can easily approach for assistance in their cases. Sexual violence inflicted in the course of counter-terrorism operations by State actors as well as against female terrorism suspects while in custody, de-facto administrative detention, and in de-radicalization camps, is rampant, and violates their right to dignity and the prohibition on torture in the Maputo Protocol and the ACHPR Charter on Human and Peoples' Rights respectively. In some cases, legal aid is not accessible to both men and women on equal basis.

Women who have been involved in terrorism face differential treatments occasioned by assumptions made about the nature of victims and offenders, the stereotyping that comes in form of the thinking that men are perpetrators of violence while women are only passive victims exposes women to certain vulnerabilities amounting to infringement of their rights.<sup>xliv</sup> Smart terrorist groups exploit these stereotypes for strategic advantage by making use of women whose criminal behaviour is considered less prevalent in the eye of the public.<sup>1</sup> In some cases, government actors have been known to provide assistance to women who are fleeing attacks in exchange for sexual favours.

The second dimension to the abuse of the rights of women arises when counter-terrorism measures erode women's rights even when women are not themselves suspects. The prolonged detention without trial of male family members undermines a range of economic, social and cultural rights, and the right to family life of the women. Women have also been arrested and detained in order to gain information about male family members, or to compel male terrorism suspects to provide information or confessions.<sup>li</sup>

## **EQUAL ACCESS TO JUSTICE**

It is important to examine how women's rights are impacted by terrorism and counter-terrorism measures, and explore how to craft effective responses to these impacts. For this reason, it is important to ensure that mechanisms are developed for women to access justice no matter on which side they are, whether they are victims or perpetrators.<sup>lii</sup> Women most often lack information on their legal rights, for instance their rights to access to justice are limited by illiteracy and lower socio-economic and education status, a lack of autonomy over decision-making and economic resources. Women are discouraged from seeking redress for certain crimes as a result of fear of stigma. In some cases, legal aid is not accessible to both men and women on equal basis.

## **GENDER IN THE NIGERIAN POLICY FRAMEWORK AND NATIONAL ACTION PLAN FOR PREVENTING AND COUNTERING VIOLENT EXTREMISM**

The women, peace and security agenda is a policy framework aimed at promoting gender equality and enhancing the rights, participation and protection of women in conflict and post-conflict context.<sup>liii</sup> The core notion underlying this agenda is that conflict affects women and girls differently from men and boys, and that comprehensive, effective engagement with women in conflict prevention and resolution is integral to long-term peace and security. Educate a woman and you educate a nation. An educated woman would be well informed to make better informed decisions for herself. In the same vain even if she is not educated but is

empowered with some form of skills acquisition money to meet her basic need and that of her children would not be in lack therefore she would be less likely to be lured into violent extreme groups.<sup>liv</sup>

The four pillars of engagement being participation, prevention, protection and relief and recovery, which includes peacebuilding and prosecution. The Nigerian National Gender Policy aims to promote a gender sensitive and gender responsive culture by recognising the need for cooperative interaction of women and men. The policy recognises the integral role of women's empowerment as a means of achieving gender equality. On the global level, the 2014 UN Global Counter-Terrorism Strategy Review encouraged Member States, UN entities and international and regional organisations "to consider the participation of women in efforts to prevent and counter terrorism."<sup>lv</sup> The Security Council recognized the need to empower women as a mitigating factor to the spread of violent extremism and radicalization.

The Council recognised the experience of women in conflict and their role in peacekeeping, peacebuilding and conflict resolution. As wives, sisters and mothers, policy makers or law enforcement officers, women have strategic role to play in the treatment, rehabilitation and reintegration of violent extremist offenders. We know that mothers can play an emotive role in reaching out to extremist offenders to change their violent behaviour. Women's roles in homes and communities can pick up early signs of radicalisation in young persons.<sup>lvi</sup> This insight is also relevant for counter-messaging to break up the cycle of radicalisation. It is for this important role of women that the UN Security Council has directed that a portion of all funds dedicated to addressing violent extremism are committed to projects that address women's specific needs or empower women. Train a woman and you train a nation, a woman who is empowered will go extra mile to ensure her children are educated and are not miscreants in the society.

## CONCLUSION

The rights of women are abused as a result of both terrorism and counter-terrorism activities. The abuse of the rights of women has foundation in cultural, religious and social beliefs and stereotypes which support negative differential treatment of women from men. Women are

entitled to the right of equality and non-discrimination and conscious efforts should be made and strategies developed to ensure that that women have access to justice within the context of terrorism and counter-terrorism operations.

A criminal justice system that places equal value on women and men is vital as part of transformative approaches to addressing societal gender inequalities. Thus, there is urgent need for the criminal justice system:

- a. To acknowledge that women and men are disparately impacted by terrorism and have different needs from recovering from the consequences of terrorist activities...
- b. To strengthen women by empowering them and guaranteeing them access to justice, to guarantee their protection and support to access remedies.
- c. To recognize the role of women as agents of peace, security and transformative change in the society.
- d. To adopt a mainstreaming approach in preventing and countering terrorism.

Seeking accountability for sexual and gender-based violence perpetrated by terrorist groups, as well as avenues for redress for victims, and access to confidential victim support services.

Supporting women's participation in policy- and law-making bodies, as well as law enforcement and security mechanisms with a counter-terrorism mandate. This is an important step in combating gender-blindness and integrating gender perspectives. Ensuring that counter-terrorism efforts are more gender responsive, through training and awareness-raising for both male and female national officials.

## ENDNOTES

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