

Prosecuting the Nexus between Terrorism, Conflict-related Sexual Violence and Trafficking in Human Beings before National Legal Mechanisms

Case Studies of Boko Haram and Al-Shabaab

Anne-Marie de Brouwer,* Eefje de Volder** and Christophe Paulussen***

Abstract

United Nations (UN) Security Council Resolution 2331 (2016) recognizes that 'acts of sexual and gender-based violence, including when associated to trafficking in persons, are known to be part of the strategic objectives and ideology of certain terrorist groups, used as a tactic of terrorism and an instrument to increase their finances and their power through recruitment and the destruction of communities'. In the same resolution, the Council noted that such trafficking, particularly of women and girls, 'remains a critical component of the financial flows to certain terrorist groups' and is 'used by these groups as a driver for recruitment'. Boko Haram and Al-Shabaab are among the main terrorist groups that have used human trafficking (including for sexual exploitation) and conflict-related sexual violence as tactics of terrorism, or 'sexual terrorism'. This article will: (i) explain the nexus between these three crimes; (ii) focus on its different manifestations in the context of these terrorist organizations; and (iii) reflect on the possibilities for national criminal prosecution. To assist in the fight against impunity and increase accountability, this article provides suggestions to facilitate the successful prosecution of sexual terrorism in a more survivor-centric way.

* Anne-Marie de Brouwer works with Impact: Center Against Human Trafficking and Sexual Violence in Conflict. [a.debrouwer@impact-now.org]

** Eefje de Volder works with Impact: Center Against Human Trafficking and Sexual Violence in Conflict. [e.devolder@impact-now.org]

*** Christophe Paulussen is affiliated with the T.M.C. Asser Instituut and the International Centre for Counter-Terrorism – The Hague. [c.paulussen@asser.nl]

1. Introduction

Rape and other forms of sexual violence in conflict have been taking place around the world for ages.¹ Although international and national prosecutions of conflict-related sexual violence (CRSV) have increased since prominent judgments in international criminal law — such as the 1998 *Akayesu* judgment from the International Criminal Tribunal for Rwanda (ICTR) — the number of prosecutions is still shockingly low.² In recent years, the practical manifestations of CRSV have become more complex in the context of terrorism. Violent extremist groups worldwide have used not only CRSV, but also human trafficking or trafficking in human beings (THB) as a tactic of terrorism. The simultaneous and consecutive perpetration of the crimes of CRSV, THB and terrorism creates a multifaceted criminality that needs to be addressed accordingly.

This article will explore the nexus between the aforementioned crimes. First, the article will define the three main concepts — terrorism, CRSV and THB — and their correlation (Section 2). Secondly, it will present two case studies of terrorist groups that have made use of CRSV and THB as a way to commit terrorism: Boko Haram and Al-Shabaab. This section will also respectively address prosecutorial challenges faced at the national level (Section 3).

The choice to look at national prosecutions is a deliberate one. It is the authors' conviction that the future of international criminal law lies in its enforcement at the national level, particularly in light of the International Criminal Court (ICC)'s principle of complementarity.³ And whereas international mechanisms could in theory play a useful complementary role, this is still not a reality for the countries profiled in this contribution. In Nigeria, the ICC's preliminary examination of alleged crimes against humanity and war crimes perpetrated by Boko Haram militants (and Nigerian Security Forces), including sexual and gender-based crimes, has been ongoing since 18 November 2010.⁴ Finally, Somalia is not a State Party to the ICC, which makes international prosecutions difficult, if not impossible.

- 1 A. de Brouwer, S. Ka Hon Chu, E. de Volder and S. Muscati, 'Sexual Violence in Conflicts Around the World', in *And I Live On: The Resilience of Rwandan Genocide Survivors of Sexual Violence* (Wolf Legal Publishers, 2019) 25–32.
- 2 Judgment, *Akayesu* (ICTR-96-4-T), Trial Chamber, 2 September 1998, § 731 (recognition of rape and other forms of sexual violence as genocide and crimes against humanity); A. de Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR* (Intersentia, 2005) ('De Brouwer 2005'); K. Askin, 'Treatment of Sexual Violence in Armed Conflicts: A Historical Perspective and the Way Forward', in A. de Brouwer et al. (eds), *Sexual Violence as an International Crime: Interdisciplinary Approaches* (Intersentia, 2013) 19–55; *Conflict-Related Sexual Violence: Report of the United Nations Secretary-General for 2018/9*, UN Doc. S/2019/280, 29 March 2019, § 8.
- 3 Art. 17 ICCSt., which basically states that the ICC only has jurisdiction over international crimes if national courts lack the willingness or ability to pursue acts that fall within the state's jurisdiction.
- 4 ICC, 'Nigeria', available online at <https://www.icc-cpi.int/nigeria> (visited 17 February 2020). In 2019, the Office of the Prosecutor (OTP) listed Boko Haram's attacks against women and girls

Thirdly, and lastly, this article will end with concluding remarks and practical recommendations on enabling the national prosecution of these crimes in a more survivor-centric way (Section 4).

2. Terrorism, CRSV and THB, and their Nexus

It is challenging to conceptualize terrorism. While there is no lack of national definitions of terrorism, there is no internationally recognized definition. This contribution will therefore use the following model definition suggested by Martin Scheinin, the first UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

Terrorism means an action or attempted action where: 1. The action: (a) Constituted the intentional taking of hostages; or (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and 2. The action is done or attempted with the intention of: (a) Provoking a state of terror in the general public or a segment of it; or (b) Compelling a Government or international organization to do or abstain from doing something; and (3) The action corresponds to: (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or (b) All elements of a serious crime defined by national law.⁵

It should be underlined that this definition does not address the specific context of armed conflicts, even though the relevant law designed to deal with armed conflicts is not silent on terrorism.⁶ Although many of the acts committed by the two terrorist groups under scrutiny in this article can be linked to the armed conflicts in which they are involved,⁷ this article will not focus on those specific international humanitarian law provisions.

The second crime under consideration, CRSV, leads to an opposite challenge: while there is a general international recognition of the different manifestations of sexual violence in conflict and substantial agreement on its

to include a number of sexual and gender-based crimes: ICC, *Report on Preliminary Examination Activities 2019*, 5 December 2019, § 186.

- 5 *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, Martin Scheinin, A/HRC/16/51, 22 December 2010, § 28.
- 6 C. Paulussen, 'Testing the Adequacy of the International Legal Framework in Countering Terrorism: The War Paradigm', *ICCT Research Paper*, August 2012, §§ 7–8. For specific provisions, see e.g. Arts 48, 51 and 52 of Additional Protocol I (AP I) and Art. 13 of Additional Protocol II (AP II), Art. 33 of Geneva Convention IV, Art. 51, para 2 AP I and Arts 4, para 2(d) and 13, para 2 AP II.
- 7 RULAC: Geneva Academy, 'Involvement in Armed Conflicts: Nigeria', 4 February 2019, available online at <http://www.rulac.org/browse/countries/nigeria> (visited 17 February 2020) and RULAC: Geneva Academy, 'Involvement in Armed Conflicts: Somalia', 28 August 2017, available online at <http://www.rulac.org/browse/countries/somalia> (visited 17 February 2020).

definitions,⁸ there is a lack of (similar) national definitions of these crimes as prosecuted in the relevant countries. On the international level, the ICC's 1998 Rome Statute provides for an extensive list criminalizing different CRSV crimes, which are in turn interpreted in the ICC's Elements of Crimes and its case law.⁹ In Articles 7 and 8 of the Rome Statute, rape, sexual slavery (which may include trafficking in persons, particularly of women and children), enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity are explicitly outlawed as crimes against humanity and war crimes. Additionally, persecution of any identifiable group or collectivity on the ground of gender and the crime of enslavement are prohibited as a crime against humanity. Although the Rome Statute defines genocide without including specific sexual violence crimes amongst the impugned constitutive acts, the ICC's Elements of Crimes affirmatively recognizes that rape and other forms of sexual violence could be prosecuted under genocide (as 'serious bodily or mental harm'¹⁰). Moreover, sexual and gender-based violence crimes become crimes of international status when certain criteria are fulfilled. For example, genocide requires specific intent to destroy a particular group; crimes against humanity require a widespread or systematic attack against a civilian population; and war crimes require the presence of an armed conflict, international or domestic. CRSV only emerges in these contexts.

Given that it is the ICC's goal, from the perspective of the complementarity principle, to have the crimes prosecuted in the national courts, it is imperative for states parties to the Rome Statute to implement the Court's provisions on CRSV in their national legislation. This enables the advanced ICC legislation on CRSV to have the intended global effect, beyond the Court's immediate jurisdiction. However, since implementing legislation is not mandatory for states parties, let alone non-states parties, few have actually enacted implementing legislation and even fewer have enacted legislation in conformity with the Rome Statute.¹¹ States which are not parties to the Rome Statute also should incorporate serious international crimes in their national legislation as a matter of customary international law, but again such laws are the exception.

The third crime under consideration, THB (including for sexual exploitation), leads to yet another definitional challenge: there is an internationally recognized definition of 'human trafficking' and states are also required to criminalize the crime in national jurisdictions, but crucial elements of the crime,

8 Although there are specific sexual violence crimes prohibited in international criminal law, there is still misunderstanding about what makes an act of violence 'sexual'. See: Women's Initiatives for Gender Justice, Civil Society Declaration on Sexual Violence, available online at <https://4genderjustice.org/wp-content/uploads/2019/09/Civil-Society-Declaration-on-Sexual-Violence.pdf> (visited 17 February 2020).

9 Rome Statute; Elements of Crimes.

10 Art. 6(b)(1), Elements of Crimes.

11 Women's Initiatives for Gender Justice, *Complementarity Project* (2007), available online at <https://4genderjustice.org/home/complementarity-project> (visited 17 February 2020).

including exploitation, are not defined. Article 3 of the Palermo Protocol contains the internationally recognized definition of 'trafficking in persons':¹²

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.

Trafficking therefore consists of three elements: (i) an act; (ii) a means; and (iii) the purpose of exploitation. The acts can be the recruitment, transportation, transfer, harbouring or receipt of a person. The 'means' refers to the various ways to suppress the free will of a person.¹³ The final element, the purpose of exploitation, is one of specific intent (*dolus specialis*). It is not well defined in Article 3, which describes it in the following manner: 'at 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'. The precise definition of these is effectively left to national governments.

The definition of 'trafficking in persons' contained in the Palermo Protocol is meant to provide consistency and consensus around the world on the phenomenon of THB. Moreover, Article 5 of the Palermo Protocol depends on national legislation to criminalize the conduct outlined in Article 3. National legislation does not need to precisely follow the definition of 'trafficking in persons', but it should be broad and flexible enough to capture the situations described in the Protocol. Of all forms of trafficking in persons, trafficking for sexual exploitation continues to be the most detected form of THB to date (59%).¹⁴ While most countries have trafficking-of-persons legislation in place today (which at the very least criminalizes sexual exploitation and forced labour without restrictions regarding the age or gender of the victim), the number of prosecutions and convictions is still relatively low.¹⁵

Due to the vast increase of the systemic use of sexual violence as a tactic of terrorism, THB, CRSV and terrorism have become so interconnected that the boundaries between these different crimes have become blurred. The UN Security Council first recognized the nexus in Resolution 2331 (2016). This Resolution provides that 'acts of sexual and gender-based violence, including when associated to human trafficking, are known to be part of the strategic objectives and ideology of certain terrorist groups, used as a tactic of terrorism

12 *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, was adopted by the General Assembly in 2000 and entered into force on 25 December 2003.

13 N. Siller, "'Modern Slavery': Does International Law Distinguish between Slavery, Enslavement and Trafficking?" 14 *Journal of International Criminal Justice* (2016) 405–427, at 417; A. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010), at 30.

14 UNODC, *Global Report on Trafficking in Persons* (United Nations publication, 2018), at 28 ('*Global Report on Trafficking in Persons 2018*').

15 *Ibid.*, at 8, 23; UNODC, *Global Report on Trafficking in Persons* (United Nations publication, 2009), at 8.

and an instrument to increase their finances and their power through recruitment and the destruction of communities'.¹⁶ The crimes are interconnected as a vicious cycle, as indicated by Kenny and Malik: the commission of one crime results in the commission of others.¹⁷ CRSV can motivate human trafficking, while human trafficking may facilitate CRSV.

The link between terrorism on the one hand and THB and CRSV on the other is when the latter two are used by terrorist groups to facilitate terrorism. There are several motivations among terrorist groups for such use, as also mentioned in Resolution 2331 (2016), including financing of groups (selling women and children as commodities to generate revenue), recruitment of fighters (women as bait to lure and maintain fighters), ideology (e.g. dehumanizing/alienating the target group) and military strategy (e.g. destruction of target group).¹⁸ It is for this reason that we use in this article the term 'sexual terrorism', i.e. to underline the nexus between the three crimes where CRSV and THB are used to commit terrorism.¹⁹

To better understand the nexus between CRSV and THB specifically, the UN Secretary-General — in his 2017 report on CRSV — stated that CRSV encompasses THB and that CRSV can be either directly or indirectly linked to conflict.²⁰ The Statute of the ICC and its Elements of Crimes give more clarity about where the legal definitions of CRSV and THB overlap; this is in particular the case for the crimes of 'enslavement' (a crime against humanity and a non-specific sexual violence crime) and 'sexual slavery' (both a crime against humanity and a war crime and a specific sexual violence crime) as both these two crimes incorporate human trafficking. According to Article 7(2)(c) of the ICC Statute: "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons . . .'. The Elements of Crimes further explain that the exercise of power attached to the right of ownership includes the 'purchasing, selling, lending or bartering [of] such a person or persons, or by imposing on them a similar deprivation of liberty', and that this conduct includes trafficking in persons, in particular of women and children.²¹ The Elements of Crimes with regard to the crime

16 SC Res. 2331, 20 December 2016, Preamble ('SC Res. 2331').

17 C. Kenny and N. Malik, 'Trafficking Terror and Sexual Violence: Accountability for Human Trafficking and Sexual and Gender-Based Violence by Terrorist Groups under the Rome Statute', 52 *Vanderbilt Journal of Transnational Law* (2019) 43, at 46–47.

18 *Ibid.*, 47–53.

19 Also C.E. Attah, 'Boko Haram and Sexual Terrorism: The Conspiracy of Silence of the Nigerian Antiterrorism Laws', 16 *African Human Rights Law Journal* (2016) 385–406. Note that, depending on the context, in this contribution we will refer to the individual crimes (terrorism, CRSV, THB), sexual and/or gender-based violence generally, or the term 'sexual terrorism'.

20 UN Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence* (S/2017/249), 15 April 2017.

21 A footnote furthermore explains that: 'It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.' (Italics added).

of sexual slavery are similar to enslavement (and thus may also include trafficking in persons), with the addition that an act of a sexual nature needs to have been committed.²² The nexus between CRSV and THB ends in situations that are no longer related to conflict.²³ At the same time, the crime of THB is broader in scope than as a form of CRSV.²⁴

The practical manifestations of the nexus²⁵ between CRSV, THB and terrorism will be further explored in the case studies below.

3. Case Studies: Boko Haram and Al-Shabaab

Having established the connection between the three crimes, two recent manifestations of the nexus warrant further discussion: Boko Haram and Al-Shabaab. In Resolution 2331 (2016), the UN Security Council explicitly condemned THB by these and other terrorist groups for the purpose of sexual slavery, sexual exploitation and forced labour.²⁶ The two terrorist organizations are selected because these are, together with the Taliban (not explicitly mentioned in Resolution 2331) and Islamic State (which has already received considerable attention in literature), '[t]he four terrorist groups responsible for the most deaths in 2017'.²⁷ After profiling these organizations, the article will identify the challenges associated with their prosecution.²⁸

22 Sexual slavery — Elements of Crimes, Art. 7(1)(g)-2: '(1) The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty. (2) The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.' It should be noted that it has been argued that the crime of sexual slavery is somewhat redundant as it would also fit under the crime of enslavement. See, on this latter issue, A. Adams, 'Sexual Slavery: Do we Need this Crime in Addition to Enslavement?' 29 *Criminal Law Forum* (2018) 279–323; P. Viseur Sellers, 'Wartime Female Slavery: Enslavement?' 44 *Cornell International Law Journal* (2011) 115–143.

23 See further: R. Ghafoerkhan, W. Scholte, E. de Volder and A. de Brouwer, 'The Nexus between Conflict-related Sexual Violence and Trafficking for Sexual Exploitation in Times of Conflict', 3 *Journal of Trafficking and Human Exploitation* (2019) 9, at 26–27.

24 See above and the definition of THB in general.

25 *Report of the Secretary-General on Conflict-Related Sexual Violence*, UN Doc. S/2017/249, 15 April 2017, § 2. See also *Report of the Secretary-General on Conflict Related Sexual Violence*, UN Doc. S/2018/250, 16 April 2018, § 2; *Report of the Secretary-General on Conflict Related Sexual Violence*, UN Doc. S/2019/280, 29 March 2019, § 14 ('CRSV 2019'); Counter-Terrorism Committee Executive Directorate (United Nations Security Council, *Identifying and Exploring the Nexus between Human Trafficking, Terrorism, and Terrorism Financing* (2018); UNODC, *Trafficking in Persons in the Context of Armed Conflict* (United Nations Publication, 2018).

26 SC Res. 2331, *supra* note 16, at § 11.

27 Institute for Economics and Peace, *Global Terrorism Index: Measuring the Impact of Terrorism* (2018), available online at <http://visionofhumanity.org/app/uploads/2018/12/Global-Terrorism-Index-2018-1.pdf> (visited 17 February 2020), at 15 ('Institute for Economics and Peace 2018').

28 UNODC, *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism* (United Nations publications, 2019).

A. *Boko Haram*

Emerging in the context of state rebellion, Boko Haram is a terrorist group that has established itself in Nigeria since 2009, going so far as to creating an Islamic caliphate in the north.²⁹ Since 2013, Boko Haram militants have used sexual terrorism against the Nigerian state and its people, especially women and girls, in the north-eastern part of the country.³⁰ Some of these acts of sexual terrorism have attracted global concern and outrage. Notable examples include the abduction of 276 secondary school girls in Chibok in 2014 and the abduction of another 110 secondary school girls in Dapchi in 2018, with the intent of forcing them into marriage and sexual slavery.³¹ However, this is only the tip of the iceberg, as thousands of women and girls have been raped (often by multiple perpetrators, including by young boys taught to rape) and forced into sexual slavery, THB and marriage under Boko Haram over recent years.³² Women and girls have also had to take on other jobs, from doing household chores to engaging in combat, espionage and suicide bombing.³³ In addition, Boko Haram's use of continuous violence coupled with Nigeria's high poverty level has internally displaced thousands of Nigerians, particularly women and children. Some even attempt to cross the border in search for a better life, making these migrants easy targets for traffickers, including trafficking for the purpose of sexual exploitation.³⁴

In its terror campaign against the Nigerian state and its people, Boko Haram has used sexual violence/human trafficking as a deliberate strategy.³⁵ The

29 M. Martinez, P. Meilhan and F. Karimi, 'War on Boko Haram: African, Western Nations Unify in Hunt for Nigerian Girls', CNN, 17 May 2014, available online at <https://www.cnn.com/2014/05/17/world/africa/nigeria-abducted-girls/index.html> (visited 17 February 2020).

30 CRSV 2019, *supra* note 25, at §§ 13, 118. The authors have not been able to find sources in which men or boys were sexually violated by Boko Haram or female members of Boko Haram were held to be the perpetrators of sexual terrorism.

31 CRSV 2019, *supra* note 25, at § 119; 'Those Terrible Weeks in their Camps: Boko Haram Violence against Women and Girls in North-East Nigeria', Human Rights Watch, 27 October 2014, available online at <https://www.hrw.org/report/2014/10/27/those-terrible-weeks-their-camp/boko-haram-violence-against-women-and-girls> (visited 17 February 2020).

32 K. Dutta, 'Boko Haram has Abducted, Raped and Enslaved 2,000 Women in Reign of Terror', Independent, 14 April 2015, available online at <https://www.independent.co.uk/news/world/africa/boko-haram-has-abducted-raped-and-enslaved-2000-women-in-reign-of-terror-10174152.html> (visited 22 September 2019); 'Our Job is to Shoot, Slaughter and Kill': Boko Haram's Reign of Terror in North East Nigeria', Amnesty International, 14 April 2015, available online at <https://www.amnesty.org/en/documents/afr44/1360/2015/en/> (visited 17 February 2020); P. Obaji, 'Boko Haram's Rescued Sex Slaves Tell their Horror Stories', Daily Beast, 5 June 2015, available online at <https://www.thedailybeast.com/boko-harams-rescued-sex-slaves-tell-their-horror-stories> (visited 17 February 2020); P. Obaji, 'Boko Haram Teaching Child Soldiers to Rape', Daily Beast, 27 December 2016, available online at <https://www.thedailybeast.com/boko-haram-teaching-child-soldiers-to-rape> (visited 17 February 2020).

33 U. Ahmad Umar, 'Listening to the Stories of Boko Haram's Wives', openDemocracy, 17 July 2019, available online at <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/listening-to-the-stories-of-boko-harams-wives/> (visited 17 February 2020).

34 CRSV 2019, *supra* note 25, at §§ 17, 55.

35 N. Lord-Mallam and A. Sunday, 'Terrorism and Conflict-Related Sexual Violence in Africa: Northeastern Nigeria in Focus', 6(1) *Covenant University Journal of Politics & International*

tactical sexual violence/human trafficking humiliates the Nigerian state and ‘destroys the social fabric of society, where a high premium is placed on the chastity of its women, [and] has [sic] a devastating impact on the victims – physically as well as psychologically.’³⁶ Women and girls have been ‘targeted for abduction and sexual abuse ... as part of [Boko Haram’s] financial calculus and self-perpetuation.’³⁷ Furthermore, ‘radicalization and violent extremism have contributed to the entrenchment of discriminatory gender norms that limit women’s roles and their enjoyment of basic rights.’³⁸ Boko Haram forces captured girls and women to recite Koranic verses and to convert to Islam.³⁹ Selling girls in the slave market and to ‘marry’ them is justified by the Koran according to Boko Haram.⁴⁰ The majority of the rescued women or escapees were found pregnant, which has been held by many (including Zainab Bangura, former Special Representative of the Secretary-General of the United Nations on Sexual Violence in Conflict⁴¹) to be part of a deliberate, well-organized plan by Boko Haram to expand its ideology and insurgency.⁴² The nexus between terrorism, THB and CRSV can thus clearly be seen based on the examples of how Boko Haram commits sexual terrorism given above.

As far as prosecution is concerned, Nigeria does not have legislation that addresses sexual terrorism specifically. Arguably, the best option for prosecuting members of Boko Haram for sexual terrorism — doing justice to the reality of the crime — is the more recent Terrorism (Prevention) Act 2011 (as amended in 2013). The Act prohibits all terrorist acts, including the financing of terrorism, with penalties ranging from ten years to life imprisonment.⁴³ Terrorism in the Act is broadly defined and includes an ‘attack upon a person’s life which may cause serious bodily harm or death’ or an act that ‘seriously intimidates a population’ which might implicitly import acts of CRSV/THB into the definition. However, the Act does not explicitly criminalize acts of CRSV/THB. This omission has been purportedly exploited by Boko Haram, which has — as explained — unleashed a campaign of sexual terror against women in

Affairs (2018), 76–88; Attah, *supra* note 20; N. Malik, ‘Trafficking Terror: How Modern Slavery and Sexual Violence Fund Terrorism’, *The Henry Jackson Society*, 2017, 31–33.

36 Attah, *supra* note 19, at 388.

37 CRSV 2019, *supra* note 25, at § 13.

38 *Ibid.*, at § 14.

39 Attah, *supra* note 19, at 395.

40 *Ibid.*; A. Abubakar and J. Levs, “‘I will sell them’”, Boko Haram Leaders says of Kidnapped Nigerian Girls’, CNN, 6 May 2014, available online at <https://www.cnn.com/2014/05/05/world/africa/nigeria-abducted-girls/index.html> (visited 17 February 2020).

41 ‘Condemning Use of Sexual Violence, UN Envoy Warns Boko Haram Aims to Destroy Family Structures’, United Nations News Centre, 27 May 2015, available online at <https://news.un.org/en/story/2015/05/499942-condemning-use-sexual-violence-un-envoy-warns-boko-haram-aims-destroy-family> (visited 17 February 2020).

42 A. Nossiter, ‘Boko Haram Militants Raped Hundreds of Female Captives in Nigeria’, *The New York Times*, 18 May 2015, available online at <https://www.nytimes.com/2015/05/19/world/africa/boko-haram-militants-raped-hundreds-of-female-captives-in-nigeria.html> (visited 17 February 2020); United Nations News Centre *supra* note 42; Attah, *supra* note 19.

43 Section 1(1) and (2) of the Terrorism (Prevention) (Amendment) Act of 2013.

north-east Nigeria.⁴⁴ As held by one commentator, ‘by not making any reference to the use of rape as a terror tactic, the Act appears either to have glossed over the possibility of rape being used by terrorists, or [it has] chosen to ignore it in line with the culture of silence surrounding rape in Nigeria.’⁴⁵ Finally, it should be mentioned that the Anti-Torture Act 2017, which was signed into law on 20 December 2017, expands the lists of acts of torture under Nigerian law, including with respect to sexual and gender-based crimes,⁴⁶ but this is still no explicit recognition of the crime of sexual terrorism.

Prosecutions by Nigerian authorities of several thousands of Boko Haram members for terrorism on the basis of the Terrorism (Prevention) Act have nevertheless taken place in recent years, with different degrees of success,⁴⁷ but none of these cases involved defendants charged with CRSV/THB as terrorism, thus sexual terrorism.⁴⁸ Nigeria’s prosecution strategy typically investigates and prosecutes — largely lower-level — members of terrorist groups merely for membership or affiliation with such groups.⁴⁹ In one case, that of Haruna Yahaya, a sentence of 30 years imprisonment was enforced for, *inter alia*, his participation in the planning and abduction of over 200 Chibok school girls in 2014.⁵⁰ In a second case, that of Banzana Yusuf, a sentence of 20 years imprisonment was imposed for the planning and kidnapping of the schoolgirls.⁵¹ As the Terrorism Act does not explicitly criminalize sexual terrorism, but prohibits kidnapping as an act of terrorism, Yusuf was only held responsible for the latter. It should be noted that these two cases were part of cases conducted in rounds of mass trials before special courts of the Federal High Court in Kainji, Niger State, outside the most well-known standard judicial response framework of Nigeria.⁵² Furthermore, such cases — in which sexual terrorism forms part of the underlying evidence but is not charged as such — are still the exception rather than the rule in Nigeria.

Despite the absence of specific Nigerian legislation criminalizing sexual terrorism, the rape provisions in the Penal Code (applicable to north Nigeria) or

44 Attah, *supra* note 19, at 405.

45 *Ibid.*, at 385.

46 ICC, ‘Report on Preliminary Examination Activities 2018’, 5 December 2018, § 234.

47 For example, fair trial concerns and arbitrary arrests have been noted by several sources, such as ‘Willingly Unable: ICC Preliminary Examination and Nigeria’s Failure to Address Impunity for International Crimes’, Amnesty International, 10 December 2018, available online at <https://www.amnesty.org/en/documents/afr44/9481/2018/en/> (visited 17 February 2020).

48 CRSV 2019, *supra* note 25, at §120.

49 *Ibid.*, § 126; ICC, ‘Report on Preliminary Examination Activities 2018’, 5 December 2018, §§ 236–240.

50 ICC, ‘Report on Preliminary Examination Activities 2018’, 5 December 2018, § 239; ‘Chibok Girls Kidnapper Haruna Yahaya Jailed in Nigeria’, BBC, 13 February 2018, available online at <https://www.bbc.com/news/world-africa-43045103> (visited 17 February 2020); ‘Nigeria’s Boko Haram Crisis: Court Frees 475 Suspects’, BBC, 19 February 2018, available online at <https://www.bbc.com/news/world-africa-43111860> (visited 17 February 2020).

51 ‘Chibok Girls Kidnapper gets 20 Years for School Attack that Shocked the World’, Theirworld 13 July 2018, available online at <https://theirworld.org/news/chibok-school-girls-kidnapper-jailed-for-20-years-boko-haram> (visited 17 February 2020).

52 E.g. ICC, *Report on Preliminary Examination Activities 2018*, 5 December 2018, § 239.

Criminal Code (applicable to south Nigeria) could present avenues for prosecuting members of Boko Haram for sexual terrorism. Admittedly, the domestic provisions (and subsequent practices of the courts) are defined more narrowly than under international law. They do not recognize marital rape and consider only females to be legitimate victims of rape, with sentences ranging from 14 years (Penal Code) to life imprisonment (Criminal Code).⁵³ Furthermore, a de facto practice of corroboration exists, making it more difficult for victims to support their claim.⁵⁴ Despite the existence of these criminal provisions, the reality is that Boko Haram terrorists have not faced criminal proceedings based on domestic criminal codes prohibiting rape.

Another method of tackling sexual terrorism by Boko Haram is to prosecute its members under Nigeria's 'Trafficking in Persons Law Enforcement and Administration Act (amended in 2015)', which criminalizes forced labour and sexual exploitation with a minimum penalty of five years imprisonment and a fine (and can be increased to a minimum of seven years in case of a child victim).⁵⁵ However, prosecutions of THB in Nigeria have generally been minimal; let alone prosecutions of THB for sexual exploitation by Boko Haram — these were nihil.⁵⁶

Finally, in 2012, a draft bill was prepared to enable the prosecution of international crimes found in the ICC's Rome Statute, incorporating the different forms of CRSV as crimes against humanity and war crimes verbatim, but the bill has still not been passed in Nigeria.⁵⁷

As can be concluded from the above, sexual terrorism continues to be a very effective weapon of terrorists, also because it remains unpunished.⁵⁸ Barriers for prosecution include the lack of understanding about sexual terrorism by government officials (and their possible complicity), the lack of a clear prohibition of sexual terrorism and victim friendly procedural rules to protect victims in the proceedings, the general lack of confidence by victims in state institutions (including courts), the occurrence of gender-based violence as more or less a normality in everyday life constraining women's autonomy and opportunities, including not seeking help or going to court, the fear of reporting

53 See section 357 of the Criminal Code (southern Nigeria) and section 282 of the Penal Code (northern Nigeria). For further information, see A. Imosemi and A. Nzeribe, 'Rape as a Tool of Terrorism: Exploring the Situation in Northeastern Nigeria and Scrutinizing the Legal Frameworks', 2 *International Journal of Law* (2016) 10–21.

54 Imosemi and Nzeribe, *supra* note 53, at 14.

55 '2018, Trafficking in Persons Report – Nigeria', United States Department of State, 28 June 2018, available online at <https://www.refworld.org/docid/5b3e0ab6a.html> (visited 17 February 2020) ('US Department of State, *Trafficking in Persons Report – Nigeria*').

56 US Department of State, *Trafficking in Persons Report – Nigeria*, *supra* note 53. Reasons for the low enforcement of Nigeria's anti-trafficking law include insufficient resources, insufficient familiarity of judges with the law, and corruption within the judiciary.

57 Nigeria, 'Crimes Against Humanity, War Crimes, Genocide and Related Offences Bill, 2012'. For the current status of the Bill, see <https://www.pgaction.org/ilhr/rome-statute/africa/nigeria.html> (visited 17 February 2020). On how to prosecute sexual terrorism at the ICC, see e.g. Kenny and Malik, *supra* note 17.

58 Attah, *supra* note 19, at 388.

sexual terrorism due to security concerns as well as family, community and societal stigma.⁵⁹

B. Al-Shabaab

Al-Shabaab ('the Youth') is the largest militant organization in Somalia. Formerly serving as the military wing of the Islamic Courts Union (ICU), it separated and emerged as an independent entity in December 2006. While objectives among fractions differ, Al-Shabaab maintains a unified goal of realizing an Islamic State (not only in Somalia but also arguably in Djibouti, Kenya and Ethiopia) based on a strict interpretation of Sharia law.⁶⁰

In 2017, Somalia was listed sixth among the countries most affected by terrorism and Al-Shabaab as one of the four deadliest terrorist organizations.⁶¹ Al-Shabaab conducts attacks not only in Somalia, but also in neighbouring countries, particularly in Kenya and to a lesser extent in Ethiopia and Uganda.⁶² The continued instability in Somalia magnifies the social and economic vulnerabilities of the people. The erosion of law, the breakdown of state structures, persistent gender inequalities and the lack of protection by state authorities make civilians more vulnerable to many forms of exploitation and violence.⁶³ Although there have been some documented cases of sexual violence against boys, women and girls continue to be by far the most targeted victims.⁶⁴ Internally displaced women and girls from marginalized groups are particularly at higher risk.⁶⁵

Al-Shabaab is responsible for a wide range of violence against girls and women, including abduction, sexual abuse, rape, gang rape, exploitation, forced marriage, corporal punishment and killing.⁶⁶ Women and girls are also forced to perform domestic duties at the military camps, including cooking, cleaning and washing.⁶⁷ Corporal punishment and killing of women and girls is done by way of *hudood*, a physical punishment for those who have violated Sharia law. *Hudood* includes public beatings, whippings, stoning and

59 E.g. A.O. Awosusi and C.F. Ogundana, 'Culture of Silence and Wave of Sexual Violence in Nigeria', 1 *American Association for Science and Technology Journal of Education* (2015) 31, at 34; CRSV 2019, *supra* note 25, § 118; World Bank Group, 'Gender Based Violence: An Analysis of the Implications for the Nigeria for Women Project' (2019).

60 J. Masters and M.A. Sergie, 'Al-Shabab', Council on Foreign Relations, 13 March 2015; A.M. Ali, *The Al-Shabaab Al Mujahidiin: A Profile of the First Somali Terrorist Organization* (Das Institut für Strategie- Politik- Sicherheits- und Wirtschaftsberatung, 2008).

61 Institute for Economics and Peace 2018, *supra* note 28, at 15–16, 24.

62 For a list of attacks see: CISAC, 'Mapping Militants Project', https://cisac.fsi.stanford.edu/map/pingmilitants/profiles/al-shabaab#highlight_text_13373 (visited 17 February 2020).

63 Global Report on Trafficking in Persons 2018, *supra* note 14, at 5; CRSV 2019, *supra* note 25, at § 72.

64 CRSV 2019, *supra* note 25, at § 74.

65 *Ibid.*, at § 73.

66 SIHA, *Women in the Horn Still Bending Their Heads: Immunity and Institutionalization of Violence Against Women in Sudan, Somalia, and Eritrea*, 2012.

67 Human Rights Watch, *Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia*, February 2012, at 3, 27 [HRW Child Recruitment].

beheading.⁶⁸ In neighbouring Kenya, women are promised high-paying work elsewhere (purportedly under the care of elderly couples, recruitment agents or other women) and are then kidnapped. They are kept as sex slaves in hostels or camps or forced to marry Al-Shabaab militants.⁶⁹

Al-Shabaab uses THB and CRSV as a tactic to terrorize both civilians and the state, not only in Somalia but also in neighbouring countries. The sexual terrorism forces those affected 'into compliance, displaces them from or into strategic areas, enforces cohesion among fighters and even generates revenue through trafficking.'⁷⁰ It further assists in breeding the next generation of Al-Shabaab members.⁷¹ Kenyan women in border places are particularly targeted because they enable infiltration into Kenya.

As far as national prosecution is concerned, Somalia does not have legislation that specifically addresses terrorism, let alone sexual terrorism. While an anti-terrorism bill is allegedly under consideration, there is no terrorism legislation effective as of yet. Also, the Somali Penal Code does not address terrorism specifically.⁷² Many Al-Shabaab fighters and commanders have been charged and convicted by military courts under Article 221 of the Penal Code ('Armed Insurrection against the Powers of the State').⁷³ These cases did not include sexual violence charges. Since the early drafts of the anti-terrorism bill are not public, it remains to be seen whether the bill will prohibit acts of sexual violence as tactics of terrorism. Given that the bill is under consideration, there is still opportunity to ensure the recognition and inclusion of acts of sexual terrorism.

Although sexual terrorism is not explicitly prohibited under Somali national law, several acts are separately, but not completely, criminalized. Currently, the 1962 Somali Penal Code classifies rape as an 'offence against modesty' and 'sexual honor', rather than as a violation of a person's bodily integrity, criminalizing 'carnal intercourse' and 'acts of lust committed with violence'.⁷⁴

68 HRW Child Recruitment, *supra* note 67; Human Rights Watch, *Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government and AMISOM in Somalia*, 19 April 2010; Sahar Abdi, 'Somali Women say Islamists Becoming More Draconian', *Reuters*, 15 January 2011; F. Omar, 'Somalia's al Shabaab Stones to Death Woman Accused of having Multiple Husbands', *Reuters*, 9 May 2018, available online at <https://www.reuters.com/article/us-somalia-violence/somalias-al-shabaab-stones-to-death-woman-accused-of-having-multiple-husbands-idUSKBN11A1Z1> (visited 17 February 2020).

69 'The Sex Slaves of Al Shabaab', *BBC*, 6 February 2019.

70 R.B. Vogelstein and J. Bigio, 'Women and Terrorism: Hidden Threats, Forgotten Partners', *COFR*, 21 May 2019.

71 C. Attwood, 'The Sex Slaves of Al-Shabab', *BBC*, 25 May 2017.

72 Only A. Parrin has discussed some of the status and content of the draft anti-terrorism law as of 2016 in 'Creating a Legal Framework for Terrorism Defectors and Detainees in Somalia', 55 *Colombia Journal of Transitional Law* (2016) 228, at 253–254.

73 Human Rights Watch, *The Courts of 'Absolute Power': Fair Trial Violations by Somalia's Military Court*, 22 May 2014, available online at <https://reliefweb.int/sites/reliefweb.int/files/resources/somalia0514.pdf> (visited 17 February 2020), at 21; Art. 221 Somali Penal Code.

74 Arts 398, 399 Somali Penal Code.

Furthermore, the Penal Code only prohibits rape involving the opposite sex and continues to punish same-sex intercourse.⁷⁵

The Penal Code furthermore includes several human trafficking related provisions. The facilitation of prostitution and the exploitation of proceeds as well as forcing someone into prostitution as well as the exploitation of the proceeds are prohibited.⁷⁶ Another relevant provision in the context of sexual terrorism by Al-Shabaab is the criminalization of abduction for the purposes of lust or marriage under Article 401 Penal Code. Furthermore, under the section ‘crimes against human personality’, several slavery related provisions are included. It is prohibited to reduce a person to slavery, to deal, trade, sell or purchase slaves or persons in a condition similar to slavery and the enforced subjection of a person.⁷⁷ The 2012 Provisional Constitution of the Federal Republic of Somalia prohibits slavery, servitude and forced labour (Article 14), as well as bans the use of children in armed conflict (Article 29(6)). Until the Sexual Offences Bill is enacted, the aforementioned provisions offer the best avenues for prosecuting sexual terrorism by members of Al-Shabaab.

Coined as ‘the most comprehensive bill on sexual crimes seen anywhere’,⁷⁸ the Sexual Offences Bill considers rape as a crime against bodily integrity rather than against morality.⁷⁹ It includes a range of sexual violence crimes (e.g. sexual exploitation, sexual slavery, sex trafficking, forced marriage, sexual abduction, kidnapping for sex or sexual slavery purposes and sexual slavery of an adult person) that capture the acts of sexual terrorism inflicted by Al-Shabaab. It also ensures protective rights for survivors, including medical care, privacy in court and in-court security measures.⁸⁰ While the adoption of this Bill would be an important step towards ending impunity for exploitation and sexual violence in Somalia, the work would not quite be done since the Bill does not explicitly recognize sexual terrorism (e.g. THB and CRSV as an instrument of terrorism).

75 Human Rights Watch, *World Report 2019*, 2019, at 522. See Art. 398-9 Somali Penal Code. 76 Arts 407, 408 Somali Penal Code.

77 See e.g. Arts 455, 457 and 458 Somali Penal Code.

78 Legal Action Worldwide, ‘Sexual Offences Bill’, available online at <http://www.legalactionworldwide.org/somalia-2/sexual-offences-bill/>. A condensed version of the bill can be found here: <http://www.legalactionworldwide.org/wp-content/uploads/2014/11/Condensed-Sexual-Offences-Bill.pdf> (visited 17 February 2020).

79 The commitment to strengthen the legal framework on sexual violence, to reform the Penal Code on Rape and to ensure access to services of victims of sexual violence has been laid down in the Joint Communique between Somalia and the United Nations on the Prevention of Sexual Violence, 7 May 2013, available online at https://www.un.org/sexualviolenceinconflict/wp-content/uploads/joint-communique/joint-communique-of-the-republic-of-somalia-and-the-united-nations-on-the-prevention-of-sexual-violence/Somalia_Joint_Communique_SVC_May_2013.pdf (visited 17 February 2020). The Sexual Offences Bill has partly been the result of this commitment. The United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict has, among others, contributed to the drafting of this legislation.

80 Legal Action Worldwide, *supra* note 78; Z. Gillard, ‘By Balancing Sharia Law and the New Sexual Offences Bill, Somalia is Legislating for the 21st Century’, London School of Economics and Political Science, 14 June 2018, available online at <https://blogs.lse.ac.uk/wps/2018/06/14/by-balancing-sharia-law-and-the-new-sexual-offences-bill-somalia-is-legislating-for-the-21st-century/> (visited 17 February 2020).

Although Somalia is not a state party to the ICC's Rome Statute, national implementation of the international crimes of crimes against humanity and war crimes containing different forms of CRSV (including THB) is also instrumental in the national prosecution of sexual terrorism.

Despite the Somali Penal Code criminalizing some acts that could be used to prosecute members of Al-Shabaab for sexual terrorism, these avenues have not yet been utilized. An important barrier to the national prosecution of sexual terrorism is the general impunity in relation to sexual and gender-based violence in Somalia. Prevailing cultural, societal and gender norms have resulted in these acts being epidemic in the whole of Somali society, making Al-Shabaab in some respects not any different from other clan structures. While rape is commonplace throughout Somalia, evidence shows that women who complain about rape (not even in the context of conflict/terrorism) end up being prosecuted for adultery under Article 246 Penal Code.⁸¹ This provision criminalizes intercourse outside marriage without making an exception for rape. Other women have been prosecuted for 'insult' when reporting rape or other forms of sexual violence.⁸² Out of fear of humiliation (being accused of lying, victim blaming) and abuse, women fail to report their cases to the police. The cultural acceptance of acts of sexual violence makes it all the harder to ensure that sexual terrorism inflicted by Al-Shabaab does not remain unpunished.⁸³ This makes sexual terrorism a very effective weapon of terrorists, similar to Boko Haram discussed in the above. The Sexual Offences Bill consists of victim rights that intent to breakthrough barriers to report and prosecute, but to realize those in practice the enactment of the Bill needs to go hand in hand with a public sensitizing campaign. Another obstacle to prosecution is the fear to report sexual terrorism due to security concerns as well as stigma. Some women fear to come forward, as they risk being mistakenly identified as an Al-Shabaab sympathizer. Other barriers to the national prosecution of sexual terrorism in Somalia include 'mistrust of the criminal justice system, gender biases of police officers, lack of financial resources and the victim's lack of knowledge of their rights'.⁸⁴

4. Conclusions

This article has analysed the nexus between terrorism, CRSV and THB and the different ways in which these crimes can be prosecuted nationally, with a particular focus on Boko Haram (Nigeria) and Al-Shabaab (Somalia). While it has been demonstrated that these two terrorist organizations have been

81 Nuhanovic Foundation, '1962 Somali Penal Code'.

82 Gillard, *supra* note 80.

83 But there have been some efforts to improve it in parts of the country, see online at <https://www.voanews.com/africa/five-men-sentenced-death-somalia-rape-case> (visited 17 February 2020).

84 CRSV 2019, *supra* note 25, at § 75.

massively involved in what could be deemed sexual terrorism, state responses are meager and sometimes counterproductive.

Although international mechanisms could play a useful complementary role in prosecuting sexual terrorism (particularly when malfunctioning state structures prevent national prosecution), it is our conviction that the future of addressing sexual terrorism is and should be at the national level. Prosecuting sexual terrorism at the national level has certain benefits over international prosecutions: e.g. for victims/survivors and their perception of the state/rule of law, in terms of seeing justice to be done in the place where the crimes were committed (accessibility for victims/survivors to the procedures), and publicly recognizing the crime for what it is: sexual terrorism. Also, more cases can be prosecuted at the national level than through international mechanisms because of the severity threshold and the limited capacity at the international level. In order to address the many barriers (as highlighted in Section 3 above) before effective national investigations and prosecutions, we present the following recommendations for effective state responses:

1. Prosecute the nexus of THB, CRSV and terrorism as a crime in its own right under terrorism legislation, i.e. sexual terrorism

CRSV/THB as terrorism is underexplored. Such acts could be classified as existing acts of terrorism. For example, in several national terrorism legislation, such as in Nigeria, ‘bodily harm’ is recognized as a terrorist act and could include forms of CRSV/THB. Nevertheless, it is important to amend the different terrorism legislation to *explicitly* categorize CRSV/THB as a form of terrorism, i.e. as the crime of sexual terrorism, including in the case studies under review for this article (i.e. Boko Haram and Al-Shabaab).⁸⁵ This will ensure these crimes are not under-investigated and instead are appropriately prosecuted.

Ultimately, it is about the human dignity violated by such atrocities. Only full accountability for the *actual* crimes committed, rather than for vague charges such as armed insurrection or membership of/affiliation with a terrorist organization, will do justice to the victims/survivors and be a first, cautious step towards reconciliation and lasting peace. Victims/survivors are entitled to have the crimes committed against them recognized. At the same time, legislators must ensure that any expansion of terrorism definitions are in line with the model definition as suggested by Martin Scheinin presented earlier in this article, including compliance with international law.

2. Improve other domestic legislation that prohibits (conflict-related) sexual violence/THB

Although other domestic legislation that prohibits (conflict-related) sexual violence and THB may be less applicable for the prosecution of sexual terrorism, these laws can nonetheless provide an opportunity for the prosecution of

⁸⁵ Also: Attah, *supra* note 19.

sexual terrorism in case terrorism legislation is not in place or inadequate. Such prohibitions need, however, to be amended in order to be in line with a substantive survivor-centric approach as found in international standards (e.g. ICC Statute, Palermo Protocol), such as prohibiting sexual violence within marriage and focusing on coercive circumstances rather than lack of consent.⁸⁶

In order to prosecute Boko Haram for sexual terrorism under domestic legislation, the Government of Nigeria needs, for instance, to significantly amend its penal/criminal codes and adopt its bill on serious international crimes. In relation to the prosecution of Al-Shabaab, the new Sexual Offences Bill remedies many of the deficiencies of the Penal Code. As the Bill is not yet enacted, there is still opportunity to include sexual terrorism as a specific offence.

3. Implement survivor-centric evidentiary and procedural rules

Effective prohibitions against sexual terrorism are insufficient without amendments to procedural and evidentiary rules. Rules of procedure and evidence should be guided by a survivor-centric approach, such as strong protection and special measures (protecting the victim/survivor's dignity, health, life as well as from secondary traumatization) and the removal of requirements for corroboration in cases of sexual terrorism. Again, guidance can be found in international rules of procedure and evidence, such as the Rules of Procedure and Evidence of the ICC.⁸⁷ Amendments to the national Nigerian procedural and evidentiary rules are direly needed as explained in section 3 above. In Somalia, some of the rules will be enhanced once the Sexual Offences Bill is enacted.⁸⁸

4. Train investigating and prosecuting authorities on successful prosecutions of sexual terrorism

Investigating and prosecuting authorities, including in Nigeria and Somalia, are often unaware of the elements of the different crimes and how these can be identified, let alone as a stand-alone crime of sexual terrorism. Such awareness and identification is crucial as a first step towards investigation and prosecution of sexual terrorism. Authorities therefore need to be trained to recognize the different forms of criminality and their interconnectivity and must

⁸⁶ De Brouwer 2005, *supra* note 2.

⁸⁷ E.g. A. Comrie, 'At the Crossroads: Evidential Challenges in the Investigation and Prosecution of Trafficking in Persons for Sexual Exploitation and Sexual Violence in Situations of Conflict', 3 *Journal of Trafficking and Exploitation* (2019) 121–146.

⁸⁸ This includes, *inter alia*, the right to confidentiality and privacy for both survivors and witnesses in Court such as closed court sessions and anonymizing identifying information. Another procedural improvement is that the admissible evidence is further specified in the interest of the survivor. For example, the sexual history of a survivor is inadmissible as evidence and the failure to produce forensic evidence of sexual violence/act is not a bar to prosecution. See further Part (5) 'Investigations' of the Bill.

understand that victims/survivors of these crimes are frequently also victims of other crimes (like forced labour, torture).

Moreover, states must encourage interdepartmental cooperation between counter-terrorism specialists, officers fighting THB and (conflict-related) sexual violence experts.

5. *Implement a robust response towards human trafficking networks*

It has been clarified that THB can constitute a sizeable, though not a primary source, of revenue for terrorist organizations.⁸⁹ A robust response towards transnational human trafficking networks may lead to a weakening of the terrorist organization, indirectly reducing the impact of sexual terrorism.⁹⁰ Such a response might lead to the prosecution of perpetrators of THB for aiding and abetting terrorism.⁹¹ In the case of Al-Shabaab and Boko Haram these types of prosecutions might hit them where it hurts most, on the financial basis of their organization.

6. *Support victims/survivors*

The victims/survivors of sexual terrorism, including the women who bore children from sexual terrorism and therefore also these children, need to be identified and supported rather than stigmatized. Effective reparation would include medical and psychosocial services, livelihood support, the creation of safe spaces and awareness of the crimes and its impact on victims/survivors and society, including tackling gender-based violence more generally.⁹² To encourage victims to testify in court, which will lead to a more successful investigation and prosecution of sexual terrorism, the messaging should emphasize that the victim is not to blame. In co-operation with Nigerian organizations, the UN has supported thousands of victims/survivors of sexual terrorism committed by Boko Haram, even though many more need assistance and/or reparation.⁹³ In relation to Al-Shabaab, the Sexual Offence Bill will, once enacted, provide for reparation and/or assistance for victims/survivors, including the right to free medical care (e.g. psychological care) and the right to assistance (e.g. housing and livelihood support).⁹⁴

89 J. Huckerby, 'When Human Trafficking and Terrorism Connect: Dangers and Dilemmas', *Just Security*, 22 February 2019, available online at <https://www.justsecurity.org/62658/human-trafficking-terrorism-connect-dangers-dilemmas/> (visited 17 February 2020).

90 A.I. Ahrām, 'Sexual Violence and the Making of ISIS', 57 *Survival* (2015) 57, at 70.

91 Malik, *supra* note 35, at § vi.

92 CRSV 2019, *supra* note 25, at § 121.

93 *Ibid.*

94 Legal Action Worldwide, *supra* note 78.