



Countering Terrorism: The Transformative Potential of Gender Equality Lawmaking and Policy Reform

STUDENT WORKING PAPERS

Penn Law Seminar on International Women's Human Rights taught by
Ranjita de Silva de Alwis, Associate Dean of International Programs

Report presented to UN Women and the Office of the High Commissioner for Human Rights
on May 6, 2016

COUNTERING TERRORISM: THE TRANSFORMATIVE POTENTIAL OF GENDER
EQUALITY LAWMAKING AND POLICY REFORM

EXECUTIVE SUMMARY

The pivotal role of women in countering terrorism is both undervalued and underexplored. Today, terrorism and violent extremism come in diverse forms. In the struggle to address this dynamic and complex issue, the need for a preventive approach is vital, and women, and women's rights, can offer a significant contribution to preventative measures. To this end, the chapters in this report take innovative approaches to the exploration of the transformative nature of integrating a gender dimension into States' legislative and policy frameworks that address terrorism.

The Security Council and General Assembly have recognized that countering terrorism requires more than a military approach, it necessitates respect for human rights.¹ This shift from the traditional focus on reactive measures was reflected in the Secretary-General's *Plan of Action to Prevent Violent Extremism*, which calls for a comprehensive approach that focuses on systematic preventive steps that tackle the underlying factors that contribute to conditions conducive to terrorism, including the need to respect and strengthen human rights.² The UN has not adopted an official definition of terrorism, leaving States to devise their own definitions. As a result, many of these definitions do not include a human rights perspective.

Respecting human rights while countering terrorism requires a two-pronged approach. First, States must ensure that reactive measures do not violate human rights, including women's rights. Second, respecting and promoting human rights in the first instance works as a preventative measure against terrorism and violent extremism. The second prong is the focus of this report.

The role of women in international peace and security efforts was recognized in *Security Council Resolution 1325 (2000)* and reaffirmed in subsequent thematic resolutions.³ Fifteen years later, *Resolution 2242 (2015)* improved upon a number of substantive areas, and called for the integration of a gender analysis on the drivers and impacts of violent extremism.⁴ Acting on Chapter VII authorization, the Security Council encouraged States to address conditions

¹ S.C. Res. 1963, fourth preambular paragraph, (Dec. 20, 2012), *see generally* G.A. Res. 60/288, United Nations Global Counter-Terrorism Strategy, annex Plan of Action, at IV. (Sept. 20, 2006).

² U.N. Secretary General, Plan of Action to Prevent Violent Extremism, U.N. Doc.A/70/674 (Dec. 24, 2015)

³ The Security Council adopted additional resolutions between 2000 and 2015 on Women, Peace and Security agenda, including resolutions 1820 (2008); 1888 (2009); 1889 (2009); 1960 (2010); 2106 (2013); and 2122 (2013).

⁴ Statement by UN Women on the adoption of Security Council resolution 2242 on women, peace and security (October 14, 2015) *available at* <http://www.unwomen.org/en/news/stories/2015/10/ed-statement-unsc-resolution-1325>.

conducive to the spread of extremism, including by empowering women.⁵ In *General Recommendation 30*, the *Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* affirmed the synergy between the *CEDAW* and the Women, Peace and Security agenda contained within the relevant Security Council resolutions.⁶ As such, Member States should recognize that a gender perspective is integral to combating terrorism and the conditions that contribute to it. Unfortunately, States have not fully embraced this approach.

Each chapter of this report analyzes how a gender perspective can work to counter terrorism, and provides recommendations that embrace gender equality, the protection of women's rights and women's empowerment. These recommendations recognize that the participation and leadership of women in this sphere, as well as constitutional and other legislative reforms that guarantee formal and substantive gender equality, can contribute to more sustainable and effective counterterrorism measures, leading to a more peaceful and safe world.

*Students of International Women's Rights
University of Pennsylvania Law School*

Under the supervision of Professor Rangita de Silva de Alwis

⁵ S.C. Res. 2178, ¶16 (Sept. 24, 2014).

⁶ *See generally* Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 30: On women in conflict prevention, conflict and post-conflict situations*, U.N. Doc. CEDAW/C/GC/30 (Oct. 18, 2013).

TABLE OF CONTENTS

COUNTERING XENOPHOBIA AND TERRORISM BY EMPOWERING WOMEN: HOW THE NEW YEARS ATTACKS HIGHLIGHT THE GENDER COMPONENTS IN FIGHTING TERRORISM 1
SUZANNE KNIJNENBURG

ISIS’ USE OF SEXUAL SLAVERY AND FORCED MARRIAGE AS ACTS OF TERROR AND CATALYSTS OF EXTREMISM 16
RUSSELL HOFFMAN

“BELONGING” AS A COUNTERTERRORISM MEASURE: GENDER EQUALITY, RIGHT TO NATIONALITY & THE SYRIAN REFUGEE CRISIS 25
NATASHA ARNPRIESTER

THE NECESSARY ROLE OF WOMEN’S RIGHTS IN THE ELIMINATION OF EL SALVADOR’S GANG VIOLENCE 39
LAUREN CASTILLO

ACID VIOLENCE AND COUNTERING TERRORISM: PREVENTING VIOLENT EXTREMISM BY ENDING A CULTURE OF IMPUNITY 50
POOJA AGARWAL

THE NORTH CAUCASUS: A CASE STUDY ON THE EFFECT OF GENDER INEQUALITY AND GENDER-BASED VIOLENCE ON THE RADICALIZATION OF WOMEN 63
TESSA ROBERTS

EMPOWERING WOMEN THROUGH INFORMAL JUSTICE: BRINGING STABILITY TO COMMUNITIES THROUGH FEMALE ENGAGEMENT WITH INFORMAL JUSTICE SYSTEMS - LESSONS FROM PAPUA NEW GUINEA AND BANGLADESH..... 75
SARAH KUPER

MOROCCO’S MURCHIDAT: LEADERS IN SPIRITUAL SECURITY, MODELS FOR GENDER EQUALITY TRANSFORMATION..... 91
PATRICIA STOTTLEMYER

NIGERIA’S CHALLENGE: WOMEN’S ECONOMIC AGENCY AS A TOOL FOR PREVENTING AND COUNTERING VIOLENT EXTREMISM 108
CHELSEA FISH

COUNTERING XENOPHOBIA AND TERRORISM BY EMPOWERING WOMEN: HOW THE NEW YEARS ATTACKS HIGHLIGHT THE GENDER COMPONENTS IN FIGHTING TERRORISM

Suzanne Knijnenburg

Introduction

Effective counterterrorism is known to be rooted in respect for human rights. As the UN Secretary General acknowledged “when Governments embrace international human rights norms and standards, promote good governance, uphold the rule of law and eliminate corruption, they create an enabling environment for civil society and reduce the appeal of violent extremism.”¹ This report will discuss the importance of including the fight against xenophobia in countering terrorism and argue that gender plays a paramount role in this effort. Xenophobia is neither defined under international law, nor does it have a universally recognized definition. It was, however, in United Nations context described, as “attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.” This report will further use this definition.²

The attacks on women in Cologne, Germany on New Year’s Eve will form the starting point for the argument of this report. These attacks have sparked a renewed wave of xenophobia in Europe.³ Xenophobia within this context is based partly on the assumption that Europe is moving toward Islamization, grounded on beliefs of politicians and observers who claim growing visibility of Muslim traditions in Europe such as mosques, headscarves, burqas, and most importantly for this report, the poor treatment of women. Security fears fueled by terrorist attacks often find their roots in these long held beliefs of an unbridgeable civilization gap between Western and Islamic Worlds.⁴

According to a statement by Alice Edwards during a Thematic Discussion of the

¹ DPA’s Politically Speaking, Uprooting Terrorism: Countering violent extremism through prevention 19 February 2015), <http://www.un.org/wcm/webdav/site/undpa/shared/undpa/pdf/DPA's%20Politically%20Speaking%20on%20Terrorism.pdf>.

² This definition was used in a paper by IOM, OHCHR, and ILO, in consultation with UNHCR, see <http://www.ohchr.org/Documents/Publications/DimensionsRacismen.pdf>

³ Xenophobia does not have a universally recognized definition. It was however described in a paper by IOM, OHCHR, and ILO, in consultation with UNHCR, as “attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.” Proceedings of a Workshop to commemorate the end of the United Nations Third Decade to Combat Racism and Racial Discrimination, *Dimensions of Racism* (2005), <http://www.ohchr.org/Documents/Publications/DimensionsRacismen.pdf>

⁴ Raymond Taras, *Xenophobia and Islamophobia in Europe* 4 (Edinburgh University Press, 1st ed. 2012).

Committee on the Elimination of Racial Discrimination, xenophobia or discrimination against foreignness is among the “greatest threats to the rights of refugees and asylum seekers in Europe and elsewhere.”⁵ Xenophobic beliefs objectify people and undermine the dignity of the victims, particularly in the Muslim communities in Europe.⁶ Such beliefs result in discrimination and marginalization and often result in social inequality in jobs, housing and social services. Persons being suppressed and pushed to the margins of society are at greater risk of being drawn to revenge, making them easy targets for radicalization and recruitment into the ranks of extremist groups and terrorists. This induces a culture of “us” against “them” which appears to be more and more prevalent in countries with large influxes of refugees, asylum seekers and migrants.⁷

An important focus in counter-terrorism preventive measures should be the rejection of xenophobia and Islamophobia. The Cologne attacks highlight two pillars of xenophobia that will be addressed in this report, namely the current trend of portraying women as both instruments to fuel xenophobia, and as victims of an oppressive culture. This report will assess these two pillars and argue that this narrative should be reassessed. Instead of approaching differences with fear, there is merit to a strategy that will empower women and encourage women to be transmitters of culture and norms. This approach will lead to rejection of xenophobia and could have a significant impact on the behavior of migrant men, as will be discussed.

This report will discuss the use of a gender approach to fight xenophobia and prevent extremism. The following issues will be addressed: (i) a case study on the Cologne attacks and reactions in Europe, (ii) the use of women as instruments of xenophobia, (iii) the idea of transforming women’s victimhood to their use as agents of tolerance and advocacy, and (iv) conclusions and recommendations.

1. The Cologne Sexual Assaults

On New Years Eve 2016, hundreds of public sexual assaults were reported in the city of Cologne, and elsewhere in Germany. Victims described the identities of the attackers as men of

⁵ Committee on the Elimination of Racial Discrimination, Thematic Discussion, *Racial Discrimination Against People of African Descent*, Statement by Alice Edwards, UNHCR Division of International Protection 1 (Mar. 7, 2011), <http://www2.ohchr.org/english/bodies/cehd/docs/UNHCR7March2011.pdf>

⁶ Xenophobia is one common form of bias-motivated discrimination which refugees and migrants are exposed to. They may also be exposed to other forms of discrimination such as racial discrimination, racism and related intolerance. These forms of bias can be deeply connected and sometimes difficult to separate. Xenophobia can therefore best be addressed as part of a comprehensive strategy that seeks to address all these forms.

⁷ Kerstin Rosenow-Williams, *Organizing Muslims and Integrating Islam in Germany: New Development in the 21st Century* 131 (Koninklijke Brill NV 2012).

Middle Eastern descent. The attacks represented a new level of organized crime in Western Europe; sexual violence in the form of a collective attack. Media outlets have widely referred to this form of collective assaults by using the Arabic word *taharrush*, which was used to describe the mass sexual assault of women in public in Egypt since 2005.⁸

Anti-immigrant movements, the media and officials across Europe seized the opportunity to use the attacks to further bias against Muslims and to condemn the refugee and migrant influx in Europe. The logic then follows that the influx of migrants endangers Europe's high standards for women's rights. At the same time, this image encourages the idea that European culture is distinct from Middle Eastern and North African cultures and underpins elements of an ideology that supports the notion that Muslim women are victims of their own culture and have to be saved from dangerous Muslim men.⁹

The thought of framing the war on terrorism as a fight for the rights and dignity of women is not new and has been raised previously in statements by Laura Bush and Cherie Blair, for example, and even more importantly by George W. Bush.¹⁰ He argued that the war on terrorism was in part waged to save "Muslim women from what many believe is oppression in their countries. This implies that the U.S. believes Muslim culture is inferior to Western culture because Westerners believe women suffer if they are not like them."¹¹ In the current migration crisis European women are similarly portrayed as being under threat by 'dangerous' Arab men. Even more so, right wing parties across Europe have embraced the connection between sexual violence and the refugees and migrants in Europe, and were the first to express concern for women's rights. For example, Marine Le Pen, leader of the far-right French Front National remarked that the refugee and migrant crisis signals "the beginning of the end of women's rights."¹² Geert Wilders, head of the Dutch right-wing anti-Islam party PVV, published an article

⁸ See *Circles of Hell: Domestic, Public and State Violence Against Women in Egypt*, Amnesty International, January 2015 available at https://www.amnestyusa.org/sites/default/files/mde_120042015.pdf.

⁹ See for example Lila Abu-Lughod, *Do Muslim Women Need Saving?* (Cambridge: Harvard University Press, 2013); Sherene Razack, *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto: University of Toronto Press, 2008); Gargi Bhattacharyya, *Dangerous Brown Men: Exploiting Sex, Violence and Feminism in the 'War on Terror'* (London: Zed Books, 2008).

¹⁰ Text: *Laura Bush on Taliban Oppression of Women*, The Washington Post (Nov. 17, 2001), http://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/laurabushtext_111701.html.

¹¹ Lila Abu-Lughod, *Do Muslim Women Need Saving?* *Anthropological Reflections on Cultural Relativism and Its Others*, 104 *AMERICAN ANTHROPOLOGIST*, 3, 783-790 (2002).

¹² Quoting Simone de Beauvoir, who stated: "Never forget that all it would take is a political, economic, or religious crisis for women's rights to be called into question." Nicholas Vinocur and Sofia Melo, *Marine Le Pen's feminist*

maintaining that group sexual assault finds its origin in Arab countries. He relies on the premise that the fact that the word *Taharrush* comes from Arabic language indicates that the cause and spread of the assaults must be Arabic as well.¹³ Another striking example is the publication of a highly inflammatory front cover of a Polish magazine of a white woman being assaulted by the hands of a dark-skinned man with the headline “The Islamic rape of Europe”.¹⁴

These interpretations of the Cologne attacks highlight how women and women’s rights are used as instruments to further xenophobia, and as a way for society to portray women as victims. The following chapters will discuss the danger in both propositions.

2. Using Women as Instruments for Xenophobia

Although the importance of upholding women’s rights and standards in Europe may never be diminished, there is a great risk in singling out certain gender standards and framing them within a cultural context. Although the statements of the right wing press do not represent the general opinion of the European population, the effect of such expressions must be taken seriously. These stories profile alleged Muslim sexism and the collective sexual violence as a category different from a broader spectrum of women’s rights. The realization of women’s rights must be a global common. Gender inequality cannot be blamed on a culture or religion alone. Other factors such as a background in poverty, authoritarianism, or weak judicial systems and the existence of impunity which cross many different cultures play an important role in this as well.¹⁵ Although women’s rights can be viewed within a cultural context, such rights should not be profiled and used as instruments to describe differences between Arabic and Western societies.¹⁶ By framing the needs to uphold and protect women’s rights only in terms of cultural differences and linking it to actions such as the Cologne sexual assaults, will induce fear of the

front, Politico (Jan. 15, 2016), <http://www.politico.eu/article/marine-le-pen-feminist-front-national-gender-equality-migration-cologne/>.

¹³ Geert Wilders en Machiel de Graaf, *Geef vrouwen het recht zich te verdedigen* (Jan. 13, 2016), <http://nl.gatestoneinstitute.org/7231/geert-wilders-taharrush-verkrachting>

¹⁴ See the Polish right-wing magazine *sWiecei* February 2016 edition. The article referred to the sexual assault of women in Cologne. Harriet Sherwood, *Polish magazine's 'Islamic rape of Europe' cover sparks outrage*, Guardian (Feb. 18, 2016), <http://www.theguardian.com/world/2016/feb/18/polish-magazines-islamic-of-europe-cover-sparks-outrage>.

¹⁵ See ABU-LUGHOD, *supra* note 11.

¹⁶ The promotion of culture is part of the agenda of the Sustainable Development Goals and must always be preserved. This paper however argues that culture should not be profiled and used as a means to compound xenophobia, see G.A. Res. A/RES/70/1, Transforming our world: the 2030 Agenda for Sustainable Development (Oct. 21, 2015).

foreign and as such instrumentalize xenophobia.

2.1 Legal implementation

This leads to the question of how do we deal with cultural “foreignness” which brings this discussion back to the legal framework. States have the primary duty to protect against, and address xenophobia. Because there is no established consensus on what constitutes unlawful xenophobic discrimination, global actors such as the UN and the EU have grappled with addressing the issue.

There are several international treaties that provide obligations and commitments of States to protect refugees, migrants and others from intentional disparate treatment of persons on prohibited grounds, such as xenophobia. These treaties include the *International Covenant on Civil and Political Rights (ICCPR)*, the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, the 1951 Refugee Convention and the Outcome Document of the Durban Review Conference.¹⁷ More specifically related to women’s rights, there is no chapter on xenophobia in the *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*.¹⁸ These treaties make no special reference to xenophobia. Various soft law provisions do specifically tackle xenophobia. For instance, the UN appointed the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance (“Special Rapporteur”). On a more regional level the European Union has certainly worked to address issues of xenophobia and issued recommendations on racial and ethnic profiling in counterterrorism law enforcement which focused mostly on reactive policies, such as the prohibition of racial profiling in law and the

¹⁷ The International Convention on the Elimination of all Forms of Racial Discrimination (“ICERD”) prohibits “direct discrimination”, which is intentional disparate treatment of persons on a prohibited ground such as xenophobic discrimination. This prohibition requires States parties to review domestic policies to align them with anti-discriminatory measures, and to actively work to prohibit and stop racial discrimination, which is an important starting point towards addressing xenophobia; G.A. Res. A/RES/2106 International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195. Other provisions that touch upon xenophobia are for instance, art. 55, United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, art 1 of the Universal Declaration of Human Rights that recognizes ‘equal and inalienable rights of all members of the human family’ and which further prohibits distinctions based on a persons nationality, UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III). For a more comprehensive analysis, see N. Weiß, *Xenophobia*, (Max Planck Encyclopedia of Public International Law, 2008).

¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter *CEDAW*].

monitoring of police activities.¹⁹ Other policies include the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law.²⁰ The aim of this decision is to fight against racism and crime, by means of criminal law.

Although these regulations touch upon the importance of the issues discussed, it is difficult to implement measures that really address the issue at heart because they stand in stark contrast with values that governments want to uphold, namely women's rights and the protections against sexual violence. For States to acknowledge that women's rights standards that are different from their own should not be condemned, could be problematic.

More inclusive regulation on xenophobia could be a starting point to address prejudice against "foreignness" - through the enactment of hate crime laws, strengthening of enforcement and prosecution of offenders. Additionally, States must be prepared to condemn acts of violence such as xenophobic attacks when they occur openly, and be prepared to reduce fear in communities.²¹ *CEDAW* could serve as a powerful tool to fill in the existing gaps in legislation by addressing xenophobia and its disparate impact on women. *CEDAW* already recognizes that women suffer disproportionately from the adverse effects of gender discrimination, but should additionally underscore that for migrant women and refugees, discrimination is often compounded with xenophobia. Through the adoption of a General Recommendation, *CEDAW* can shape the way forward and provide guidance to States parties on inclusive legislation, policy and other appropriate measures to address xenophobia in the context of women's rights.

2.2 The road towards full realization of women's rights is a process

Reduction of fear will start with gaining a broader understanding of the issue. In speaking of women's rights standards, it has to be acknowledged that the road towards full realization of women's rights is indeed a process. This is not a process unique to the Arab world. This is a

¹⁹ European Parliament recommendation to the Council of 24 April 2009 on the problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control (2008/2020(INI)). Under European legislation xenophobia is not expressly mentioned in the human rights legislations, but is dealt with in indirect manner by reference to non-discrimination. Europe did undertake various initiatives to counter xenophobia. The Council of Europe established the European Commission against Racism and Intolerance ("ECRI") which in its general policy recommendation No. 11 noted that racial and ethnic profiling was not an acceptable response to the threats of terrorism, Resolution on the statute of the European Commission against Racism and Intolerance (ECRI) (Council of Europe), Appendix Statute of the European Commission against Racism and Intolerance (ECRI), Art.1

²⁰ Council Directive on combating certain forms and expressions of racism and xenophobia by means of criminal law (Council of the European Union) 2008/913/JHA, [2008] OJ L328/55 ("Framework Decision")

²¹ Human Rights First Report, *Combating Xenophobic Violence: A Framework for Action* (2011), https://www.humanrightsfirst.org/wp-content/uploads/pdf/UNHCR_Blueprint.pdf

process that the international community as a whole is facing and unfortunately different countries are at different stages of this track. A hundred years ago, or even 50 years ago women in the Western world did not enjoy the same rights as they do now. An example that highlights this process is women's suffrage. A hundred years' women did not even have the right to vote in the US. In the Netherlands women were legally able to vote in 1919, in France this was much later - women only received the right to vote in 1944. Other late adopters were Greece in 1952, Switzerland in 1971 and Liechtenstein in 1984.²² The recognition of this history will be an important starting point to deal with differences of women's rights standards. States should exercise precaution in how to approach migrant cultures and standards, and the spread of fear should not part of this agenda. Instead, States must follow a constructive approach. This paper will further argue that in addition to anti-discrimination legislation, a constructive approach starts with changing the perception of the refugee and migrant women as victims.

3. Transforming Women's Victimhood to Agents for Tolerance and Advocacy

3.1 Risk of portraying women as victims

Muslim women are often portrayed as being oppressed by men with the ultimate proof of this thesis being their appearance in veil or burqa. As referenced in chapter 2, the fight against terrorism has by various sources been framed as a fight for the rights and dignity of women.²³ This occurrence is in no way novel. Over the course of history cultures have intervened different cultures under the notion of rescuing victimized women, such as the British intervention in Egypt. Gayatri Chakravorty Spivak cynically described such interventions as "white men saving brown women from brown men."²⁴ The idea of oppressed women by "other men", men in colonized societies, was used in the rhetoric of colonialism to justify the very actions of undermining the colonized cultures.²⁵

There is great risk in portraying women as victims for two main reasons. Generalizations that treat women as being on the receiving end of oppression fail to acknowledge their dignity.

²² Kerstin Teske, European Database: Women in Decision-making - Country Report Greece, <http://www.db-decision.de/CoRe/Greece.htm>.

²³ US Government 2002.

²⁴ GAYATRI CHAKRAVORTY SPIVAK, *Can the Subaltern Speak?*, in COLONIAL DISCOURSE AND POST-COLONIAL THEORY: A READER 93 (Patrick Williams et al. eds., Hertfordshire: Harvester Wheatsheaf, 1994).

²⁵ L. Ahmed, *Discourse of the Veil*, in Women and Gender in Islam: Historical Roots of a Modern Debate 144-168 (Yale University Press 1992).

Depicting women as victims denies them political footing on their path to equality.²⁶ In addition, Muslim women appear to be attacked on much larger scale by xenophobic violence because of their stereotypes of passivity which is often associated with what they wear.²⁷

At the same time, this equally results in the rejection of dignity of the alleged ‘oppressor,’ which can result into denial of basic human rights and marginalization. Such xenophobic attitudes towards Muslim men could drive radicalization. Both propositions go hand in hand, and influence one another. Additionally, history has shown that marginalization of ‘oppressors’ makes men feel emasculated. The way in which they regain their masculinity is to oppress women even more and reinforce the traditional norms of their own culture.²⁸ This report will further argue that in focusing on the position of women, the male counterpart can be influenced. As such, comprehensive analysis of the risks of marginalization of ‘oppressors’ falls outside the scope of this paper. It must nonetheless be noted that xenophobic beliefs held against ‘oppressors’ should be addressed in national legislation through anti-hatred laws as well.

The harmful effect of stereotyping practices has long been recognized, with the most pervasive being the stereotyping of women as mothers and housewives. Taking into consideration the longstanding literature in feminist scholarship, it can be argued that victimhood is also a harmful cultural practice, and should be addressed as such.²⁹ Harmful cultural practices in stereotyping women as victims limits their opportunity to participate in public life, politically or economically.³⁰

Combat stereotypes

There is a need to combat these stereotypes that stand in the way of women’s full equality. Stereotyping women on the basis of victimhood undermines article 5(a) of the *CEDAW*. Traditionally article 5 has been read to combat discriminatory religious and racial practices,

²⁶ Ambassador Anwarul Chowdhury, a former UN undersecretary general and high representative, during discussion at USIP (Jul. 2015), <http://www.usip.org/events/women-and-counteracting-violent-extremism>.

²⁷ Naureen Chowdhury Fink, Sara Zeiger, Rafia Bhulai, *A Man’s World? Exploring the Roles of Women in Countering Terrorism and Violent Extremism*, (Hedayah and The Global Center on Cooperative Security 2016), http://www.globalcenter.org/wp-content/uploads/2016/04/AMansWorld_FULL.pdf. See on xenophobic attacks: See on British attacks <http://indy100.independent.co.uk/article/attacks-on-british-muslims-have-gone-up-300-since-paris--ZyMe0b1MhFx> and on Dutch attacks noting that 90% of the attacks were perpetrated against women: I. Abbaaziz, *Meld Islamofobie*, available at https://www.meldislamofobie.org/wp-content/uploads/2015/11/Meld_Islamofobie_2015_halfjaarlijks_rapport_def.pdf, in France attacks reached an ultimate high of four hundred incidents in 2015 available at <http://www.la-croix.com/France/Bernard-Cazaneuve-Dans-la-Republique-la-notion-cardinale-est-le-respect-2016-01-19-1200732386>.

²⁸ L. AHMED *supra* note 25, at 144-168.

²⁹ ABU-LUGHOD, *supra* note 11; Rezack, *supra* note 11; Bhattacharyya, *supra* note 11.

³⁰ CEDAW Concluding Comments 30 (Re Georgia, 21st session 1999).

such as female genital mutilation, child marriage and female infanticide. Religious teachings and cultural practices have often been abused to bolster assumptions of women's secondary place in society. Similarly, the generic thought that women are victims of an oppressive culture may in many eyes be perceived as 'natural', but in reality it results in a cause for systemic discrimination.³¹ Article 5(a) of *CEDAW* tackles this issue by requiring states to work towards 'the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.' Women's victimhood should be included in the interpretation of Article 5.³² Article 5 allows the flexibility of interpretation of the *CEDAW* in an evolutionary way, and provides that stereotypes and negative patterns may be identified as they emerge.³³

Portraying women as victims denies women's valuable place in society, their roles as agents and roles as peacekeepers. The Committee has explained that States should address norms, prejudices and stereotypes that violate women's rights³⁴ and develop necessary conditions so that women get the opportunity to exercise autonomy and agency and 'develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices'.³⁵ The extent to which States' Parties have an obligation to modify behavior patterns under Article 5 is unclear, but should be further explored.³⁶

Implementation of article 5 of the *CEDAW* could play a paramount role in the rejection of xenophobic messages directed at women's victimhood and could contribute to preventive measures to counter terrorism. In the following discussion, Section 2.1 submits a proposition for practical implementation of the rejection of xenophobia.

3.2 Women as transmitters of tolerance

“Women are essential contributors to the transition from the cult of war to the culture of

³¹ Daniel Moeckli, S. Shah, Sangeeta Sivakumaran, Sandesh Sivakumaran, *International Human Rights Law* 322-331 (D. Harris eds. OUP Oxford 2013).

³² *CEDAW*, Art.5.

³³ Elizabeth Sepper, *Confronting the “sacred and unchangeable”* The obligation to modify cultural patterns under the women's discrimination treaty”, 608 U.P.A.J.INT'LL.585 (2008)

³⁴ *CEDAW* Preamble para 14, art. 2(f), 5, 10c and *General Recommendation 25*, UN Doc A/59/38, annex I [7].

³⁵ *General Recommendation 28*, UN Doc CEDAW/C/GC/28, [22].

³⁶ REPORT OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN TWENTIETH AND TWENTY-FIRST SESSIONS 1999, 2000 (U.N Doc A/54/38/Reb.1, Georgia para. 99) [hereinafter *CEDAW Committee Concluding Comments, Georgia*].

peace.”³⁷ A strong preventive action will start by making sure that women are no longer portrayed as victims of an oppressive culture. As a second step, through empowerment and encouragement, women could become agents for change.³⁸ As such, women could play a crucial role in the rejection of xenophobia as transmitters of tolerance.

The role women can play in preventive strategies was first recognized in *Security Council Resolution 1325 (2000) (UNSCR)*.³⁹ This resolution acknowledged that women’s empowerment and gender equality are critical to peace and security and that women are proven agents of change. It also acknowledged the role women can and should play in the prevention of violent extremism.⁴⁰ More recently, *UNSCR 2242 (2015)* specifically reaffirmed the connection between engaging women in the resolution of political violence and violent extremism.⁴¹

Gender inequality and violent extremism

Resolution 1325 calls upon Member States to implement National Action Plans that include preventive measures. While the study about gender equality, violent conflict, and violent extremism is in its infancy, strong lines have been drawn in various studies between the linkages. For instance, Mary Caprioli conducted a statistical study that proved that when gender equality in a State is strong it is less likely the State will become involved in inter-state or intra-state conflicts.⁴² Studies also show that drivers of peace in States are not necessarily the level of democracy or wealth, but rather the level of physical security women enjoy.⁴³

Little research has been done to build the argument for the causality between gender inequality and violent extremism. Raghavan and Balasubramaniyan did examine the relationship between gender inequality and terrorist groups. The study found that gender inequality provides a breeding environment for terrorist groups and shows how victimization of women in

³⁷ Ambassador Anwarul Chowdhury, *supra* note 26.

³⁸ Fred Strasser, *Women and Violent Extremism: A Growing Threat Demands Concerted Action* (Aug. 3, 2015) <http://www.usip.org/publications/2015/08/03/women-and-violent-extremism-growing-threat-demands-concerted-action>

³⁹ UN Security Council, Security Council resolution 1325 (2000) [on women and peace and security], 31 October 2000, S/RES/1325 (2000), <http://www.refworld.org/docid/3b00f4672e.html>.

⁴⁰ “the important role of women in the prevention and resolution of conflicts and in peace-building, stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution” UNSCR 1325.

⁴¹ UN Security Council, Security Council resolution 2242 (2015) [on women and peace and security], 13 October 2015, S/RES/2242 (2015), <http://www.refworld.org/docid/562097f44.html>.

⁴² Mary Caprioli, Primed for Violence: The role of gender inequality in predicting internal conflict, 161-178 *INTERNATIONAL STUDIES QUARTERLY*, 49 (2005).

⁴³ VALERIE M. HUDSON, BONNIE BALLIF-SPANVILL, MARY CAPRIOLI AND CHAD EMMETT, *SEX AND WORLD PEACE* (New York: Columbia Press, 2012). Part of this study focusses on household formation and stability.

patriarchal societies has been used as a means of exploitation.⁴⁴ Additionally, the (European) Radicalization Awareness Network has highlighted the importance of gender issues as it relates to radicalization and violent extremism. Right wing and religious extremists generally “support a resentful and/or violently hostile attitude towards the other sex, people that are homosexual, or persons that, by their appearance or behavior challenge their rigid gender role order.”⁴⁵ They conclude that measures to prevent extremism should be focused on de-rigidifying gender roles and make “male and female identity concepts and behavior patterns more flexible and less compulsive.”⁴⁶

Potential impact of the role of women as transmitters of norms and culture – Dutch Innovative Research

Although these ideas point towards a clear indication of the influence of gender on extremism, studies fail to show how gender equality and gender norms could contribute to further prevent violent extremism and terrorism.⁴⁷ Interestingly, a recent study of the Dutch government could potentially provide some insights into this existing knowledge gap. The Dutch *Public Prosecution Service in cooperation with the Office of the National Coordinator for Security and Counterterrorism (NCTV)* conducted a field experiment researching the influence young women can have on their direct environment including on (criminal) behavior of local migrant populations, namely young Moroccan men.⁴⁸

The research revealed that reinforcing the self-consciousness of women in local Moroccan communities can significantly influence behavior of Moroccan men. The research provided insights into expectations of boys, and showed that for criminal conduct they derive legitimacy from (imagined) expectations of girls. Young Moroccan men in the Netherlands have

⁴⁴ S. V. Raghavan and V. Balasubramaniyan, *Evolving Role of Women in Terror Groups: Progression or Regression?* 197-211 JOURNAL OF INTERNATIONAL WOMEN’S STUDIES, 15 (2014).

⁴⁵ “support a resentful and/or violently hostile attitude towards the other sex, people that are homosexual, or persons that, by their appearance or behavior challenge their rigid gender role order.” Harald Weilboeck, *Why should deradicalisation and prevention interventions be attentive to gender issues?* (Cultures Interactive, 2014), <http://www.cultures-interactive.de/publikationene-en.html>.

⁴⁶ *Ibid*, See also C. DE JONGE OUDERAAT, *Preventing and Countering Violent Extremism: The Role of Women and Women’s Organizations*, in A MAN’S WORLD? EXPLORING THE ROLES OF WOMEN IN COUNTERING TERRORISM AND VIOLENT EXTREMISM, (Hedayah and The Global Center on Cooperative Security, 2016), http://www.globalcenter.org/wp-content/uploads/2016/04/AMansWorld_FULL.pdf.

⁴⁷ *Ibid*, at 22.

⁴⁸ EINDRAPPORTAGE PROJECT MEIDEN VOOR MEIDEN (2016), report on file with the Dutch Ministry of Justice, available upon request. The Public Prosecution Service started this research project recognizing that traditional measures of punishing criminal behavior of Dutch-Moroccan boys is not sufficient to solve the problem and intended to localize the road to a solution. Against this background the Public Prosecution Service focused its attention on the role gender could play in a more preventive strategy.

certain expectations as it relates to women. They divide their image of women into two categories, the “women for now” and “women for later”. “Women for later” are the women they look up to, empowered, emancipated women - the women they one day hope to marry. “Women for now” are the less accomplished women in their locale communities; often marginalized women. They regard these women as temporary - just to have short term sexual relationships with. It appeared that the young men behave in line with how they assume the “women for now” expect them to behave. Similarly, the women that partake in this particular phase of life believe that they will “get” the men if they adhere to expectations of the boys. Rejection of this pattern of expectations could enable the departure from where a preventive strategy could take shape.⁴⁹ While the research did not provide sound scientific data yet, it did reveal a strategy in which “role models” could be used to strengthen the girls self-esteem and expectations for their futures, which would then lead boys to change their behavior as well.

UNSCR 2178 (2014) emphasized the need for measures to address violent extremism, and encouraged States to engage relevant local communities in such policies, including by empowering women. The Dutch research highlights a valuable example of what states can do not only on a national level, but also at a more local community level. In line with *UNSCR 1325*, and *UNSCR 2242* and follow-on resolutions, States, with the assistance of the UN, must ensure that the empowerment of women at the community level plays a central consideration in policies to prevent terrorism and violent extremism.⁵⁰ The research stresses the importance of implementing preventive practices in national policies, and the importance to allocate funding to further research efforts that explore new ways to localize preventive measures.⁵¹ Measures under these Resolutions must be read in light of article 5 of the *CEDAW* which, as discussed in the previous section, could be interpreted to call for the rejection of the stereotyping of women as

⁴⁹ Ibid.

⁵⁰ The Secretary General also called for this in his Plan of Action, U.N. Secretary General, Plan of Action to Prevent Violent Extremism, U.N. Doc.A/70/674 (Dec. 24, 2015). The Security Council adopted additional resolutions between 2000 and 2015 on Women, Peace and Security agenda, including resolutions 1820 (2008); 1888 (2009); 1889 (2009); 1960 (2010); 2106 (2013); and 2122 (2013).

⁵¹ So far only 58 UN member States out of a total of 193 have established National Action Plans on UNSCR 1325. Only 33% have earmarked funds for the implementation of these plans. The Secretary General requested that a portion of all funds committed to addressing violent extremism are dedicated to projects that address women’s specific needs or empower women UN Security Council, *Report of the Secretary-General on women and peace and security*, 16 September 2015, S/2015/716.

victims.⁵²

While this example highlights a social experiment, the outcome of this research could lead to certain specific considerations which could form an answer to the main question of this report - the role women can play in the rejection of xenophobia. If proven that behavior of migrant and refugee men could be shaped through expectations of their female counterparts, empowerment of these women will need to play a significant role in transmitting certain norms and standards in European culture. It is important that a robust culture of feminism forms part of the expectations of the women in Muslim communities living in Europe. Instead of viewing women in Muslim communities as victims, States should take active measures to reinforce the self-consciousness of women and work to empower and emancipate these women. Expectations and an understanding for women's rights can be transmitted by using women's agency as a powerful tool.

The empowerment of women as such could serve "as a bulwark against extremism".⁵³ It must be noted that the *Global Study on the implementation of UNSCR 1325* in this context did caution against the use of empowerment of women solely for military counterterrorism strategies. The risk in this is that women's human security then is only framed in the narrow interest of the national security of the country. The empowerment of women should always be part of a much larger agenda and must remain "part of the civilian assistance to development and human rights programs in the country."⁵⁴ A more preventive strategy for countering extremism through local communities and the use of women as transmitters of tolerance appears to be in line with this suggestion.

Recommendations

- **Reject xenophobia and cultural profiling of women's rights standards.** The realization of women's rights must be a global common and should not be framed into cultural differences. Such practice would induce fear and instrumentalize xenophobia. Instead, States have the primary duty to protect against, and address xenophobia and should implement inclusive

⁵² In General Recommendation 30, the CEDAW Committee affirmed the synergy between the Security Council resolutions on Women, Peace and Security and the CEDAW; UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013, CEDAW/C/GC/30, available at: <http://www.refworld.org/docid/5268d2064.html>

⁵³ Radhika Coomaraswamy, *Preventing Conflict, Transforming Justice Securing Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325*, 229 (New York: UN Women, 2015).

⁵⁴ *Ibid.*

regulations to fight xenophobia. The UN should play an active role to encourage States to take such steps.

- **Adopt a *CEDAW* General Recommendation on women and xenophobia.** Migrant and refugee women suffer disproportionately from the adverse effects of gender discrimination, this is compounded with xenophobia. The relation between women and xenophobia should be addressed by *CEDAW*. The Committee could play a key role in setting the framework and providing guidance to States parties on inclusive legislation, policy and other appropriate measures to address xenophobia in the context of women's rights.
- **Avoid spread of xenophobia through media and right wing press.** The reduction of fear for the deterioration of women's rights in Europe by incoming migrant and refugees will start by enabling communities to gain a broader understanding of women's rights standards across the globe. Right wing press arguments must be countered by the understanding that the goal of full realization of women's rights is part of a process that will need to evolve over time. Mainstream gender perspectives. States must encourage tolerance through sympathetic journalism and and balanced reporting.
- **Transform women's victimhood.** Viewing women as victims is harmful and denies their dignity and political footing on their path to equality. The UN should work with Member States to encourage full implementation of Article 5 of the *CEDAW* at the national and regional level to reject xenophobic messages directed at women's victimhood
- **Empower women and enable women to be agents of tolerance and advocacy.** Pursuant to *UNSCR 2178* States must build the capacity of migrant women to engage in efforts to reject xenophobia and increase tolerance. Localize preventive measures at the community level. Programs must be sensitive to local contexts. Adopt a multi-layered and long-term approach engaging families, local communities, states and international actors and built bridges between these levels. An example of such a policy is the discussed Dutch Governments' research which recommends using role models to strengthen young women's self-esteem and change the expectations they have for their futures. As such, women could become agents of tolerance and advocacy.
- **Allocate funds to projects that address the empowerment of women.** Dedicate a portion of all funds to continue studying ways to replicate and initiate studies along the lines of the Dutch Governments' research into ways in which positive role models can create tolerance

and modify behavior in line with the *Secretary General Report Security Council on women and peace and security (S/2015/716)*.

ISIS' USE OF SEXUAL SLAVERY AND FORCED MARRIAGE AS ACTS OF TERROR AND CATALYSTS OF EXTREMISM

Russell Hoffman

Introduction

The Islamic State in Iraq and Syria (ISIS) presents one of the greatest counterterrorism challenges of modern times. Since the June 2014 declaration of its caliphate, ISIS has inspired or orchestrated at least 90 terrorist attacks in 21 countries other than the Syrian Arab Republic and Iraq, killing at least 1390 people.¹ In Iraq and the Syrian Arab Republic, the death toll is much higher – a recent report placed the civilian death toll between January 1, 2014 and October 31, 2015 at almost 19,000 in Iraq alone.² Moreover, in ISIS controlled territory, the organization governs brutally – imposing an extremist interpretation of Sharia that strips the populace of fundamental human rights.

Among ISIS' many inhumane practices are the sexual enslavement of captive women and forced marriages to ISIS fighters. These practices are clear violations of human rights. Forced marriages violate Article 16 of the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW), while sexual slavery violates the *Slavery Conventions*, the *Rome Statute of the International Criminal Court*, and the *Universal Declaration of Human Rights*.

Although ISIS presents an extreme example, it makes clear the link between countering terrorism and the protection of women's rights. Not only are these practices acts of terrorism in and of themselves, they also create fertile ground for extremism. Through the violation of these women's human rights, ISIS is able to offer access to women as an inducement for potential fighters. Thus, ending these practices will both abate specific acts of terrorism and disrupt one of ISIS' powerful recruitment mechanism, hindering the development of violent extremism.

While the need to end these practices is apparent, both from a human rights perspective and a counterterrorism one, the non-state nature of ISIS makes it difficult to recommend specific steps to take to end these practices. Therefore, most of this report's recommendations are aimed at helping women who have escaped ISIS control and preventing more women from becoming

¹ Ray Sanchez, Tim Lister, Mark Bixler, Sean O'Key, Michael Hogenmiller, & Mohammed Tawfeeq *ISIS Goes Global: 90 Attacks In 21 Countries Have Killed Nearly 1,400 People*, CNN (April 13, 2016) available at <http://www.cnn.com/2015/12/17/world/mapping-isis-attacks-around-the-world/>.

² United Nations Assistance Mission for Iraq & Office of the United Nations High Commissioner for Human Rights, *Report on the Protection of Civilians in the Armed Conflict in Iraq: 1 May – 31 October 2015*, available at <http://www.ohchr.org/Documents/Countries/IQ/UNAMIRreport1May31October2015.pdf>.

victims of ISIS. However, it is important to note that ISIS' abuse of women grew out of a legal culture that disregarded the human rights of women. Thus, some recommendations are aimed at reforming the laws of involved countries.

This report argues that ISIS coalesced in a context that was violative of women's human rights and it thrives now through its continued abuse of women. It begins with a discussion of the international legal framework applicable to ISIS' practices of forced marriage and sexual slavery. The report then details the ISIS practices of sexual enslavement and forced marriage, making clear how the practices are both acts of terrorism and practices that foster extremism. The report next examines the laws of Iraq and the Syrian Arab Republic and highlights the link between the laws of the two countries and the development of a culture that fostered ISIS' misogyny. Finally, the report concludes by offering recommendations to the United Nations, Iraq and the Syrian Arab Republic, and civil society.

International Legal Framework

ISIS' practices of sexual enslavement and forced marriage violate human rights as established by international treaties. Sexual slavery is prohibited by the *Slavery Conventions*, the *Rome Statute of the International Criminal Court*, and the *Universal Declaration of Human Rights* while the *CEDAW* prohibits forced marriage.

The *Universal Declaration of Human Rights Article 4* states that "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."³ The *Slavery Convention* defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."⁴ And Article 2 of the *Slavery Convention* provides that

The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps:

- (a) To prevent and suppress the slave trade;
- (b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.⁵

³ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

⁴ Slavery Convention, 25 September 1926, 60 LNTS 253.

⁵ *Id.*

Further, Article 6 of the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* states that

1. The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

Moreover, Article 7 of the Rome Statute of the International Criminal Court states that For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: ... Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity...⁶

Additionally, UNSCR 1325 emphasized the need to prosecute those who commit crimes against humanity, including those related to sexual violence against women and girls.⁷ Further, UNSCR 1820 recognized that rape and other forms of sexual violence can constitute war crimes, crimes against humanity, and constitutive acts of genocide.⁸

Like sexual slavery, forced marriage violates women's human rights as laid out in the CEDAW. Article 16 of CEDAW provides that:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

⁶ Rome Statute of the International Criminal Court, 17 July 1998, 37 ILM 1002 (1998), 2187 UNTS 90.

⁷ S.C. Res. 1325 (31 Oct. 2000).

⁸ S.C. Res. 1820 (19 June 2008).

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. *The betrothal and the marriage of a child shall have no legal effect*, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.⁹

That forced marriage is a violation of human rights was further emphasized in Joint *General Recommendation/General Comment* No. 31 of the *CEDAW* and No. 18 of the CRC on Harmful Practices, which highlighted the problem that “Forced marriages are also increasingly being used by armed groups during conflict or may be a means for a girl to escape post-conflict poverty. Forced marriage may also be defined as a marriage in which one of the parties is not permitted to end or leave it. Forced marriages often result in girls lacking personal and economic autonomy and attempting to flee or commit self-immolation or suicide to avoid or escape the marriage.”¹⁰

ISIS Activity

⁹ Convention on the Elimination of All Forms of Discrimination Against Women, 1249 UNTS 13 (18 December 1979).

¹⁰ Joint *General Recommendation/General Comment* No. 31 of the *CEDAW* and No. 18 of the CRC on Harmful Practices *CEDAW/C/GC/31/CRC/C/GC/18*, 14 November, 2014.

ISIS uses sexual slavery and forced marriage to create a supply of women that it can exploit as fodder for its war machine. These practices are both acts of terrorism and conditions that foster the growth of extremism. Thus, combatting these practices is key to counterterrorism efforts because it ends specific acts of terrorism and disrupts a means by which violent extremism is developed.

ISIS' sexual enslavement of female captives is well documented, particularly the enslavement of Yazidi women.¹¹ Indeed, the organization's Research and Fatwa Department recently released a pamphlet detailing the permissible treatment of sex slaves.¹² The pamphlet includes chilling provisions such as that it is "permissible to have intercourse with the female slave who hasn't reached puberty if she is fit for intercourse"¹³ and that "If she is a virgin, he [her master] can have intercourse with her immediately after taking possession of her. However, is she isn't, her uterus must be purified [first]...."¹⁴ Moreover, there are reports of the organization forcing these women to take birth control.¹⁵

The forcible administration of birth control makes clear how ISIS' use of sex slavery is not only an act of terrorism but also a condition conducive to the development of extremism. ISIS' interpretation of Sharia forbids having sex with a slave who is pregnant.¹⁶ Because ISIS uses the ability to own sex slaves as an inducement to recruit fighters, it is essential that the organization maintain a large pool of women whose bodies can be exploited to gain additional fighters. Thus, forcing sex slaves to take birth control in order to ensure their continued exploitation highlights the dual nature of ISIS' endorsement of sex slavery: it is both an act of terrorism and a condition that fosters the growth of extremism.

In addition to the use of women as sex slaves, ISIS also forces women to marry ISIS fighters.¹⁷ When a woman's husband dies, ISIS leaders may coerce the woman to remarry quickly.¹⁸ However, this violates ISIS own interpretation of Sharia.

¹¹ U.N. Secretary-General, *Conflict-related Sexual Violence*, S/2015/203 (March 23, 2015).

¹² *Islamic State (ISIS) Releases Pamphlet on Female Slaves*, MEMRI (Dec. 4, 2014)

<http://www.memrijttm.org/islamic-state-isis-releases-pamphlet-on-female-slaves.html>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Rukmini Callimachi, *ISIS' System of Rape Relies on Birth Control*, N.Y. TIMES, March 13, 2016 at A1.

¹⁶ *Islamic State (ISIS) Releases Pamphlet on Female Slaves*, *supra* note 12.

¹⁷ UN Secretary-General, *supra* note 11.

¹⁸ *Id.*

ISIS has proclaimed the importance of “ihdād” – the mourning period observed by a widow after her husband has died; in ISIS’s magazine, Dabiq, the organization states that normally ihdād should last for a period of four months and ten days.¹⁹ During ihdād, the woman is proscribed from wearing jewelry, perfume, and colorful clothing.²⁰ Additionally, it is forbidden for a man to directly propose to a woman who is observing ihdād, and it is forbidden for a woman observing ihdād to accept a proposal for marriage.²¹ Because ISIS coerces women to remarry before they have had a chance to complete their ihdād, the organization’s practice violates its interpretation of Sharia.

Like the use of sex slaves, this practice of forced marriage and remarriage allows ISIS to maintain a supply of women to use as enticements for men enlisting as soldiers. And by violating its own rules, ISIS practices make readily apparent the need for the organization to maintain a supply of women to exploit in order to induce more men to join as fighters for the organization. Thus, like sex slavery, ISIS use of forced marriage is both an act of terrorism and a condition conducive to the development of extremism. Because these practices are both acts of terrorism and conditions conducive to the development of extremism, the counterterrorism benefits of disrupting the practices are doubly beneficial.

Historical Framework

It is important to recognize that ISIS did not arise in a legal vacuum. The laws and practices of Iraq and the Syrian Arab Republic, although lacking the brutality of ISIS activities, did not contain adequate protections for women and helped create a culture in which women were devalued. IT is within this type of culture that violent extremism can flourish.

While Iraq’s constitution contains clauses on non-discrimination and equality, the law falls short in other areas, particularly in protecting women from violence.²² For example, Iraq does not have domestic violence legislation.²³ Iraq also does not explicitly criminalize marital rape.²⁴ Further, under Iraqi law, rape perpetrators are able to escape punishment if they marry

¹⁹ *Advice on Ihdād*, 13 DABIQ 24 (Jan/Feb 2016) available at <http://www.clarionproject.org/factsheets-files/Issue-13-the-rafidah.pdf>.

²⁰ *Id.*

²¹ *Id.*

²² World Bank Group. *Women Business and the Law 2016: Getting to Equal*, at 144 (2015).

²³ *Id.* at 145.

²⁴ *Id.*

their victim.²⁵ Because the laws of Iraq did not contain protections for women, these laws contributed to the development of a culture in which women were devalued.

Like the laws of Iraq, Syrian law did not afford women adequate protections despite constitutional clauses providing for equality and non-discrimination.²⁶ The Syrian Arab Republic has no domestic violence legislation.²⁷ Further, Syrian law allows girls to be married at 17, a year younger than is legal for boys.²⁸ Moreover, the laws of the Syrian Arab Republic do not criminalize marital rape; in fact, rape perpetrators are exempt from punishment if they are married to the victim.²⁹ Rape perpetrators can also escape punishment by marrying the victim after raping her.³⁰ This lack of legal protections for women in the Syrian Arab Republic worked to help build a culture in which women were devalued.

While the laws of Iraq and Syria may not be as brutal as those of ISIS, they contributed to a culture in which women were devalued and violence against women could proliferate. And it is within this culture that ISIS coalesced. This link between the devaluation of women in a region's laws and culture and the development of extremist, misogynistic practices has been highlighted by scholars and activists.³¹ Hanin Ghaddar--former Public Policy Scholar, Woodrow Wilson Center; and Managing Editor, NOW News, Lebanon--summarizes the link nicely, noting that while "ISIS' barbaric behavior such as stoning, crucifying, and beheading is not common... their attitude toward women comes from a very common and overall disregard for women as free individuals."³²

Recommendations

- The United Nations should work with Iraq, the Syrian Arab Republic, and other interested countries to bring about a swift end to the ISIS conflict.
- The United Nations should take actions to change people's perspective on ISIS victims who are able to escape. Steps should be taken to fight the stigma associated with rape, forced

²⁵ *Id.*

²⁶ *Id.* at 222.

²⁷ *Id.* at 223.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ See, Isacc Kfir, *Feminist Legal Theory as a Way to Explain the Lack of Progress of Women's Rights in Afghanistan: The Need for a State Strength Approach*, 21 WILLIAM & MARY J. WOMEN AND L. 87 (2014).

³² Haleh Esfandiari, Safia Al Souhail, Kahina Bouagache, Hanin Ghaddar, Zakia Hakki, Yasmine ElSayed Hani, Kendra Heideman, Moushira Khattab, Fatima Sbaity Kassem, Tara Sonenshine, & Robin Wright, *Barbarian's: ISIS' Mortal Threat to Women*, 60 VIEWPOINTS 1, 5 (August 2014) available at https://www.wilsoncenter.org/sites/default/files/barbarians_isis_mortal_threat_women_1.pdf.

marriage, and other forms of sexual violence. The United Nations should encourage nations and NGOs to work towards ending harmful practices such as virginity testing and honor killings.

- The United Nations should encourage the development of a truth commission. A truth commission would provide an opportunity to highlight the abuses suffered by ISIS victims, particularly victims of groups that are often ignored, such as religious minorities. Additionally, it would provide a forum for women affected by this conflict to propose institutional reforms specific to the area and their lived experience.
- The United Nations should take steps to help women who are able to escape ISIS heal from the trauma they have suffered. The United Nations should work to ensure that women receive the medical treatment they need, including therapy. Additionally, the United Nations should encourage that reparations be made to ISIS victims. Reparations may include, but are not limited to, financial compensation or restitution, legal acts, and memorialization.³³
- The United Nations should encourage the inclusion of women at the peacemaking table. Inclusion of women in the peace process has been shown to lead to more stable and secure peace.³⁴
- Iraq and the Syrian Arab Republic should offer services, such as therapy and medical care, to women who are able to escape ISIS.
- Iraq and the Syrian Arab Republic should consider reparations for the victims of ISIS. These reparations could include financial compensation, legislative or administrative action aimed at improving the status of ISIS victims, and memorialization.
- Iraq and the Syrian Arab Republic should pass legislation and undertake public education campaigns to fight the stigma associated with rape, forced marriage, and other forms of sexual violence. Legislation and public education should be focused on issues such as virginity testing and honor killings.
- Iraq and the Syrian Arab Republic should each establish truth commissions within their boundaries. The truth commissions should be focused on collecting the stories of the victims

³³ See U.N. Women, *A Global Study on the Implementation of United Nations Security Council resolution 1325: Preventing Conflict, Transforming Justice, Securing the Peace* (2015) available at <http://wps.unwomen.org/~media/files/un%20women/wps/highlights/unw-global-study-1325-2015.pdf>.

³⁴ See Michelle Machelet, *Women As Agents of Peace and Stability in WOMEN ON THE FRONTLINES OF PEACE AND SECURITY* 95 (2014).

of ISIS and providing a forum for women affected by this conflict to propose institutional and cultural changes.

- Iraq and the Syrian Arab Republic should adopt laws that offer women protection from violence and create mechanisms that allow for the enforcement of these laws. By creating a legal system that protects women and empowers them to seek justice when their rights are violated, the countries will establish a normative framework that will help to prevent violent extremism in the future.³⁵
- During the peace process, Iraq and the Syrian Arab Republic should make sure that women are present at the peacemaking table. Additionally, Iraq and the Syrian Arab Republic should ensure that some of the women present at the peacemaking table are women who were victimized by ISIS. This will ensure that these women's unique perspective is heard.
- Non-governmental organizations should be established to help the escaped victims of ISIS heal. These non-governmental organizations should provide—either directly or through financial support—medical services, including therapy.
- Non-governmental organizations should help collect women's stories for transitional justice purposes. Non-governmental organizations involved in this work should ensure that they use culturally sensitive methods, which take into account the stigma and shame that currently surround rape and sexual violence in the region.
- Non-governmental organizations should undertake public education campaigns to attempt to shift public stigma surrounding rape, forced marriage, and other forms of sexual violence.

³⁵ See Zainah Anwar & Jana S Rumminger, Justice and Equality in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform, 64 Washington and Lee Law Review 1529 (2007).

“BELONGING” AS A COUNTERTERRORISM MEASURE: GENDER EQUALITY, RIGHT TO NATIONALITY & THE SYRIAN REFUGEE CRISIS

Natasha Arnpriester

The right to nationality is an inherent right of all individuals. It is considered an enabling right, in that it is foundational to the exercise of other human rights, and has been described as the “right to have rights.”¹ Nationality is the legal bond between a person and a State and “is critical to ensuring full participation in society.”² Article 9(2) of the *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)* grants women equal rights with men with respect to conferring nationality to one’s child. Unfortunately, 27 States restrict this right for women, and as such gender inequality with regard to nationality is a leading cause of statelessness.³ Many of the States that retain these gender biased nationality laws, are large refugee-producing States, including Syria and Iraq.⁴ Statelessness, the absence of a nationality, places people in a situation of increased susceptibility to basic human rights violations; extreme marginalization, discrimination and social isolation; low socio-economic opportunities; and loss of identity⁵ – all indicators of an individual’s vulnerability to radicalization and exploitation by terrorist organizations.⁶ *Security Council Resolution 2178* recognized that respect for human rights is “complementary and mutually reinforcing with effective counter-terrorism measures” and noted that “failure to comply with these...international obligations...is one of the factors contributing to increased radicalization.”⁷ The *UN Global Counter-Terrorism Strategy* places human rights at the center of combating terrorism, emphasizing that “denial of human rights...in itself, creates conditions that are conducive to terrorism.”⁸ *Security Council Resolution 1963* for the first time recognized that terrorism could not be defeated solely by military force, but also

¹ *Trop v. Dulles*, 356 U.S. 86, 102 (1958); see also *Unity Dow v. Att’y Gen. (Bots. High Ct. 1991)*.

² Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 32*, at ¶51, U.N. Doc. CEDAW/C/GC/32 (Nov. 14, 2014).

³ See UN High Commissioner for Refugees (UNHCR), Background Note on Gender Equality, Nationality Laws and Statelessness 2016, at 1 (2016).

⁴ *Id.* at 3.

⁵ UNHCR, I AM HERE, I BELONG: THE URGENT NEED TO END CHILDHOOD STATELESSNESS (Nov. 3, 2015).

⁶ See G.A. Res. 60/288, United Nations Global Counter-Terrorism Strategy, annex Plan of Action, at I. (Sept. 20, 2006); Outcome document on open meeting with Research Network partners, ¶¶6-7, Counter-Terrorism Committee Executive Directorate (CTED), U.N. Doc. S/AC.40/2016/NOTE.11 (Jan. 22, 2016); Anne Speckhard, *Talking to terrorists: What drives young people to become foreign fighters for ISIS and other terrorist groups and what can be done in response*, United Nations Interregional Crime and Justice Research Institute (UNICRI) (2016).

⁷ S.C. Res. 2178, eighth preambular paragraph (Sept. 24, 2014).

⁸ G.A. Res. 60/288, *supra* note 6.

required human rights to be better protected and strengthened.⁹ The *Secretary-General* has echoed this, and called on States to use preventative measures, noting that in countering terrorism, “the equitable delivery of services, and political participation...are among our most powerful weapons.”¹⁰ *Acting on Chapter VII authorization*, the Security Council encouraged States to address conditions conducive to the spread of extremism, including empowering youth and women, and adopting approaches to counter recruitment through the promotion of social inclusion and cohesion.¹¹ To this end, *Security Council Resolution 2242* calls for a broader *Women, Peace and Security* agenda, including the integration of “gender as a cross-cutting issue” in combatting terrorism.¹² Within the framework of the *2030 Agenda for Sustainable Development (SDG)*, in particular goal 16, target 9, which requires States to “provide legal identity for all,” goal 5, on gender equality and empowerment of women, and goal 10, on reducing inequality within countries, this chapter advances the idea that the interconnection amongst, and fulfillment of, these goals can be used as an effective measure to counter terrorism.

This chapter maps the parallels between conditions conducive to radicalization and terrorist recruitment, and the negative consequences of statelessness. It proposes ensuring the right of nationality by amending gender-biased nationality laws to be gender equal. This would decrease the occurrence of statelessness, thereby undercutting motivating factors that contribute to radicalization and recruitment. This chapter proceeds in five parts: *Part 1* summarizes the law on the right to nationality; *Part 2* details the negative consequences of statelessness; *Part 3* reviews gender biased nationality laws in the Middle East and North Africa (MENA) region and its contribution to statelessness; *Part 4* discusses the impact of this within the context of the current refugee crisis; *Part 5* compares the consequences of statelessness and the conditions conducive to radicalization and recruitment, proposing that amending gender biased nationality can work as an effective counterterrorism measure in the prevention of violent extremism.

Part 1. Right to a Nationality

The right to nationality is explicitly stated in article 15 of the *Universal Declaration of Human Rights (UDHR)* (“everyone has the right to a nationality” and “no one shall be arbitrarily

⁹ S.C. Res. 1963, fourth preambular paragraph, (Dec. 20, 2012).

¹⁰ Press Release, Secretary-General, Human Rights, Participation ‘Among Our Most Powerful Weapons’ against Terrorism, in Remarks to Summit on Violent Extremism, U.N. Press Release SG/SM/16537 (Feb. 19, 2015).

¹¹ S.C. Res. 2178, *supra* note 7, ¶16.

¹² S.C. Res. 2242, ¶11 (Oct. 13, 2015).

deprived of his or her nationality”).¹³ This right has been reaffirmed in articles 16 and 24(3) of the *International Covenant on Civil and Political Rights*, articles 7 and 8 of the *Convention on the Rights of the Child (CRC)*, article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, article 29 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, and article 18(2) of the *Convention on the Rights of Persons with Disabilities*. Article 9 of the *CEDAW* requires State parties to (1) “grant women equal rights with men to acquire, change or retain their nationality” and (2) “grant women equal rights with men with respect to the nationality of their children.”

A person who is stateless “is not considered as a national by any State under the operation of its law.”¹⁴ People are born stateless or become stateless over the course of their lives. For those who acquire nationality at birth, they are either born in a State that grants citizenship through birth on the State’s territory (*jus soli*) or their parent was allowed to transmit their nationality regardless of where the birth took place (*jus sanguinis*). The *1954 Convention Relating to the Status of Stateless Persons* provides concrete obligations for State parties to ensure the avoidance of childhood statelessness, including safeguards for children born on the State’s territory or whose parent is a national of a State party.¹⁵ The *Committee on the Rights of the Child* has made nearly 30 recommendations calling on State parties to “grant nationality to all children born in their territory who would otherwise be stateless”¹⁶ and the UNHCR has made this a goal in its *Global Action Plan to End Statelessness* by 2024.¹⁷

The right to a nationality, however, must be understood in light of the general principles of international human rights law, “critically among these [is] the principle of non-discrimination.”¹⁸ Article 2 of the *UDHR* states that “everyone is entitled to the rights and freedoms set forth in the Declaration, without distinction of any kind, including on the basis of sex.”¹⁹ Therefore, States must ensure that laws that govern the acquisition of nationality are

¹³ Universal Declaration of Human Rights, art. 15, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

¹⁴ Convention Relating to the Status of Stateless Persons, art. 1, Sept. 28, 1954, 360 U.N.T.S. 117.

¹⁵ *Id.* at arts. 1-4.

¹⁶ U.N. Secretary-General, Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless, ¶11, U.N. Doc. A/HRC/31/29 (Dec. 16, 2015) [hereinafter Impact of arbitrary deprivation of nationality].

¹⁷ Action 2: Ensure that no child is born stateless. UNHCR, GLOBAL ACTION PLAN TO END STATELESSNESS 2014-2024 (Nov. 4, 2014).

¹⁸ Impact of the arbitrary deprivation of nationality, supra note 16, ¶7.

¹⁹ Universal Declaration of Human Rights, supra note 13, at arts. 2 and 15.

consistent with their international obligations, including the principal of gender non-discrimination,²⁰ ensuring a child’s right to acquire a nationality, irrespective of the their parent’s gender.²¹ When a child is prevented from acquiring a nationality on such discriminatory grounds, it contravenes international law and “amounts to arbitrary deprivation of nationality.”²²

Part 2. Negative Consequences of Statelessness

UNHCR’s most recent estimates reflect that at least 10 million individuals are stateless worldwide. This figure is indisputably higher, as UNHCR does not include stateless Palestinians or stateless refugees into its calculation of statelessness. The guarantee of one’s human rights is not premised on having a nationality, however in practice those who enjoy the right to nationality have greater access to the enjoyment of other human rights.

According to the Secretary-General, the “most pervasive and negative human rights consequence of the arbitrary deprivation of nationality...is the continuous violation of [the] right to be free from discrimination and the ongoing disregard for [one’s] best interest. Such a situation has, in turn, a negative impact on the enjoyment of all other human rights.”²³ The right to nationality is closely linked to one’s right to an identity.²⁴ The Inter-American Court of Human Rights recognized that not granting children nationality, violated a child’s right to “juridical personality,” “equal protection,” and placed them “in a situation of extreme vulnerability.”²⁵ Statelessness also impedes one’s ability to access healthcare, despite this right being protected in both article 12 of the *International Covenant on Economic, Social and Cultural Rights (CESCR)*, and article 24 of the *CRC*. Discrimination against non-nationals, higher medical costs for non-nationals, the requirement of documentation to be vaccinated or treated in a health facility, all impede a stateless person’s right to health.²⁶ Statelessness also creates a large barrier to access to education.²⁷ This is in contravention of article 28 of the *CRC* and article 13 of the *CESCR*, each of which protects a child’s right to education, and the Committees of both conventions have stated that statelessness should have no bearing on this

²⁰ Impact of the arbitrary deprivation of nationality, *supra* note 16, ¶3.

²¹ Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., at art. 2(1) (1989).

²² Impact of the arbitrary deprivation of nationality, *supra* note 16, ¶8.

²³ *Id.* at ¶30.

²⁴ Protected by the Convention on the Rights of the Child, art 8. *See CRC, supra* note 21 at art. 8.

²⁵ Case of the Yean and Bosico Children v. The Dominican Republic, Inter-Am. Ct. H.R. (Sept. 8, 2005).

²⁶ UNHCR, I AM HERE, I BELONG, *supra* note 5, at 12.

²⁷ *See id.* at 2.

right.²⁸ However, non-national children are routinely denied access to school, required to pay higher fees, making education unaffordable, refused admission to final exams or diplomas, or find themselves ineligible for student loans or scholarships.²⁹ Impediments to education largely contribute to a lack of future job opportunities and socio-economic livelihood, and consequently “poverty becomes an integral part of stateless life.”³⁰ As such, “being stateless interferes with the right to an adequate standard of living” as guaranteed by article 11 of the *CESCR* and article 27 of the *CRC*. Lack of a nationality negatively impacts one’s livelihood prospects, and most stateless children live in poverty.³¹ Statelessness also prevents full participation in political life, depriving those without nationality from voting or standing for public office, and can prevent the ownership of property or free choice of residence.³² Furthermore, social welfare and child protection systems rarely extend to statelessness communities.³³ Attempts to remedy these rights violations are further thwarted, as the “invisibility” of stateless populations cause these violations to go unnoticed.³⁴

Part 3. Gender Equality, Domestic Nationality Laws and Statelessness

The *CEDAW* “requires full protection of women’s equality” in issues related to nationality,³⁵ and operates simultaneously with the laws related to refugees and stateless persons. The provisions within the *CEDAW* reinforce and complement these legal regimes, as explicit gender equality provisions are absent from each.³⁶ As noted, article 9(2) requires State parties to grant women equal rights with men with respect to conferring nationality on their children. However, while the *CEDAW* enjoys near universal ratification, 11 of its 189 parties have placed gender-biased reservations on this article.³⁷ In its *General Comment 32*, the *Committee on the*

²⁸ U.N. Comm. on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, ¶41, U.N. Doc. CRC/GC/2005/6 (September 1, 2005); U.N. Comm. on Econ., Soc. & Cultural Rights, General Comment No. 13: The Right to Education (Art. 13), ¶6(b), U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999).

²⁹ UNHCR, *I AM HERE, I BELONG*, *supra* note 5 at 2.

³⁰ UNHCR & ASYLUM AID, *MAPPING STATELESSNESS IN THE UNITED KINGDOM 25* (2011).

³¹ *See* UNHCR, *UNDER THE RADAR AND UNDER PROTECTED: THE URGENT NEED TO ADDRESS STATELESS CHILDREN'S RIGHTS 9* (2012).

³² UNHCR & ASYLUM AID, *supra* note 30.

³³ *See* UNHCR, *UNDER THE RADAR*, *supra* note 31.

³⁴ *See* Impact of the arbitrary deprivation of nationality, *supra* note 16, ¶¶28, 39; *see also* UNHCR, *UNDER THE RADAR*, *supra* note 31.

³⁵ *CEDAW*, General Recommendation 32, *supra* note 2, at ¶51.

³⁶ *Id.* at ¶¶9-10.

³⁷ Parties with gender-bias reservations on article 9(2) include: Bahamas, Bahrain, Brunei Darussalam, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, and United Arab Emirates *retrieved from* UN

Elimination of Discrimination against Women has challenged the legal effect of these reservations, and stated that they “undermine the object and purpose” of the *CEDAW*, which is supported by the fact that the rights of nationality and non-discrimination are found in many other international human rights instruments.³⁸ As such, the Committee called on States to remove these reservations, as they are impermissible under *CEDAW* article 28(2).³⁹

Restricting a woman’s right to confer her nationality to her child on an equal basis with men, not only contravenes the international prohibition against discrimination, but also places children at risk of statelessness in five ways: if 1) the father is stateless; (2) the laws in the father’s State do not permit his conferral of nationality in some circumstances, including if the child is born abroad, 3) the father is unknown (e.g. as a result of rape) or unmarried to the mother; 4) the father is unable to perform the necessary administrative steps (e.g. death, separated from family due to displacement or conflict), or 5) the father does not take the necessary administrative steps to recognize, or refuses to recognize the child as his own.⁴⁰

The majority of States that employ gender-biased laws are situated in the MENA region,⁴¹ the same area currently affected by mass conflict and terrorism, which is responsible for the current refugee crisis. Syria, which is the most affected by the current conflict, only allows women to confer nationality to their child, if the child is born in Syria and the father does not establish filiation (i.e. recognized legal relationship between a parent and child), however, there is no protection for children born abroad.⁴² This is especially problematic as Syrians make up the largest refugee population in the world, and one in four Syrian refugee households are fatherless, because they have died, are missing, or were separated from their families. Iraq contains similar gender-biased laws that limit a woman’s ability to transfer her Iraqi nationality to her child if the child is born abroad. Iraq will allow a child in this circumstance to apply for nationality within one year of reaching majority, but only if the father is unknown or stateless and the child is

TREATIES COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Apr. 19, 2016).

³⁸ CEDAW, General Recommendation 32, *supra* note 2, at ¶58. For a discussion on gender matter in public international law see HILARY CHARLESWORTH AND CHRISTINE CHINKIN *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* (2000).

³⁹ *Id.* at ¶63(a).

⁴⁰ *Id.* at ¶61.

⁴¹ For purposes of this chapter, the MENA region includes Brunei Darussalam and Iran (the Islamic Republic).

⁴² LEGISLATIVE DECREE 276, SYRIAN ARAB REPUBLIC (Nov. 24, 1969), art. 3.

residing in Iraq.⁴³ In Iran, Brunei Darussalam, Qatar and Kuwait only the father can confer nationality to his child.⁴⁴

Lebanon and Jordan, which are hosting a majority of the refugees fleeing the conflict, only allow women to confer nationality to their children in limited situations. In Lebanon, women can only confer their nationality to their child if the child is born out of wedlock, and filiation is established by the mother while the child is a minor.⁴⁵ Jordan, Libya, Saudi Arabia and the United Arab Emirates prohibit a mother from transferring nationality to their child if she marries a non-national, unless the father is “unknown, stateless, of unknown nationality or does not establish filiation.”⁴⁶ Bahrain allows women to confer nationality to their children, but only if the father is unknown or stateless.⁴⁷ Oman provides exceptions if the father is unknown or a former Omani national.⁴⁸

At the *1995 Fourth World Conference on Women in Beijing*, 189 States pledged to “revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice.”⁴⁹ Ten years later, the General Assembly established 2005 as the target date for revocation of all gender-discriminatory laws.⁵⁰ Despite these proclamations, these gender-biased nationality laws still exist. With the reaffirmation of gender equality and “legal identity for all” established in the new SDG, hopefully States will uphold their pledges and eliminate these discriminatory laws and practices.

Part 4. The Refugee Crisis, Displacement and Statelessness

The military conflict in the MENA region, and specifically Syria, has triggered the largest humanitarian crisis the world has faced in decades, and is showing no signs of stopping. Latest UNHCR data reveals that nearly 5 million refugees have fled Syria⁵¹ and nearly 8 million

⁴³ IRAQI NATIONALITY LAW OF 2006, art. 4.

⁴⁴ UNHCR, BACKGROUND NOTE ON GENDER EQUALITY, *supra* note 3, at 3-4

⁴⁵ *Id.* at 3.

⁴⁶ *Id.*

⁴⁷ BAHRAINI CITIZENSHIP ACT, 1963 (amended 1981), art 4-5 (Bahrain).

⁴⁸ UNHCR, BACKGROUND NOTE ON GENDER EQUALITY, *supra* note 3, at 4.

⁴⁹ BEIJING PLATFORM OF ACTION, REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN, ¶232(d), U.N. Doc. A/CONF.177/20/Rev.1 (1996). For a discussion of the women’s rights agenda in the UN prior to Beijing *see* Elissavet Stamatopoulou, *Women’s Rights and the United Nations*, in *WOMEN’S RIGHTS, HUMAN RIGHTS* (Julie Peters and Andrea Wolper, eds. 1994).

⁵⁰ G.A. Res. S-23/2, Further Actions and Initiatives to Implement the Beijing Declaration and Platform of Action, U.N. GAOR, 23rd Special Sess., U.N. Doc. A/RES/S-23/3 (Nov. 16, 2000).

⁵¹ UNHCR, *Syria Regional Refugee Response*, <http://data.unhcr.org/syrianrefugees/regional.php> (last updated Apr. 25, 2016).

have been internally displaced.⁵² The coverage of this crisis has focus predominately on the immediate problems facing these individuals, namely dangerous and often deadly boat trips across the Mediterranean, poor camp conditions, and hostile treatment by host authorities. However, little attention has been paid to the hidden danger of statelessness. This crisis exemplifies the interconnection between statelessness and displacement,⁵³ especially aggravated by Syria's gender discriminatory nationality law. Seventy-five percent of the refugee population is women and children⁵⁴ and, due to the inability to acquire Syrian nationality through maternal descent, tens of thousands of children are at risk of statelessness, as most Syrian refugee families are now headed by women due to the conflict. This reality is being exacerbated by *jus sanguinis* and gender-biased nationality laws of surrounding host States, as well as the complicated birth registration frameworks and procedures in place, particularly in Lebanon and Turkey. According to UNHCR, "[u]nregistered children are especially at risk of becoming stateless, as without birth certificates they lack a key means of proving their nationality."⁵⁵

As the situation in Syria worsens, more children are being born abroad without proper documentation, laying the groundwork for a humanitarian crisis that could last for decades to come. The Syrian conflict has produced a mass exodus of refugees to neighboring States, Lebanon and Turkey specifically, each carrying their own hurdles. Lebanon does not permit formal refugee camps, which has created an archipelago of de facto camps spread across the State, making information sharing and gathering, and registration difficult. In May 2015, Lebanon suspended UNHCR from registering Syrian refugees, but the last official figure revealed that there were over 1 million registered refugees, meaning that one in every five people in the country was a Syrian refugee.⁵⁶ In 2014, UNHCR reported that 70% of Syrian children born in Lebanon did not have a birth certificate, a problem "broadly reflected throughout the region."⁵⁷ In these "camps" there is no access to birth control or condoms, resulting in more pregnancies and births, which further magnifies the risk of stateless births, as children are born in

⁵² UNHCR, *2015 UNHCR country operations profile - Syrian Arab Republic*, <http://www.unhcr.org/pages/49e486a76.html> (last updated June 2015).

⁵³ See generally ZAHRA ALBARAZI AND DR. LAURA VAN WAAS, SCOPING PAPER: STATELESSNESS AND DISPLACEMENT, Norwegian Refugee Council and Tilburg University (2015).

⁵⁴ UNHCR, *Stories from Syrian Refugees*, <http://data.unhcr.org/syrianrefugees/syria.php> (last visited Apr. 21, 2016).

⁵⁵ UNHCR, *Born in exile, Syrian children face threat of statelessness*, (Nov. 4, 2014) <http://www.unhcr.org/54589fb16.html>

⁵⁶ UNHCR, *Syria Regional Refugee Response (Lebanon)*, available at <http://data.unhcr.org/syrianrefugees/country.php?id=122> (last updated Feb. 29, 2016).

⁵⁷ UNHCR, *Born in exile*, *supra* note 54.

limbo due to both Syrian and Lebanese gender-biased nationality laws.

Turkey is hosting nearly 3 million registered Syrian refugees.⁵⁸ Refugees International found that as many as 60,000 children born in Turkey to Syrian refugees are at risk of statelessness.⁵⁹ The birth registration process for those born in Turkey is difficult. Syrian parents must obtain a “birth report” from a hospital (for births that do not occur in a hospital, this can be an impossible challenge), that records general information, including the parents’ names, however the father may not be listed on the report if he is not present, or the mother does not have their marriage license or his birth certificate.⁶⁰ Yet, record of the father’s name on the birth report is crucial to demonstrating a right to Syrian nationality under its gender-biased laws. In addition to State-specific hurdles, Syrians refugees are experiencing high levels of sexual violence,⁶¹ and statelessness risks for children conceived through rape is high. Furthermore, none of the neighboring host States implement safeguards for children born on their territory who would otherwise be stateless.⁶²

The influx of refugees into Europe is also compounding the problem of statelessness, as ineffective legal safeguards do not properly protect Syrian newborns in the EU without a father.⁶³ The Council of Europe noted that many of those who were born stateless in Europe “would not be stateless...if all European countries had comprehensive safeguards against childhood statelessness as required by international law,” and that the situation of children born in exile to stateless parents “need to be provided for all the more urgently.”⁶⁴

Part 5. Gender-Equal Nationality Laws as a Counterterrorism Measure

The *UN Global Counter-Terrorism Strategy* and the *Secretary-General’s Plan of Action to Combat Violent Extremism* outlined the conditions conducive to radicalization – that nearly match conditions resulting from statelessness – namely lack of socioeconomic opportunities,

⁵⁸ UNHCR, Syria Regional Refugee Response (Turkey), *available at* <http://data.unhcr.org/syrianrefugees/country.php?id=224> (last updated Apr. 11, 2016).

⁵⁹ SARNATA REYNOLDS AND DARYL GRISGRABER, BIRTH REGISTRATION IN TURKEY: PROTECTING THE FUTURE FOR SYRIAN CHILDREN REFUGEES INT’L 5 (2015).

⁶⁰ Sarnata Reynolds, *A Generation of Syrians Born in Exile Risk a Future of Statelessness*, REFUGEES INT’L (July 15, 2015), <http://www.refugeesinternational.org/blog/2015/7/15/a-generation-of-syrians-born-in-exile-risk-a-future-of-statelessness>.

⁶¹ Marija Obradovic, *Protecting Female Refugees against Sexual and Gender-based Violence in Camps*, U.N. UNIVERSITY (Oct. 23, 2015), <http://ourworld.unu.edu/en/protecting-female-refugees-against-sexual-and-gender-based-violence-in-camps>.

⁶² ALBARAZI & VAN WAAS, *supra* note 53, at 23.

⁶³ Council of Europe, Parliamentary Assembly, Res. 2099, The need to eradicate statelessness of children, ¶4 (Mar. 4, 2016).

⁶⁴ *Id.* at ¶5.

marginalization, discrimination, political exclusion, violations of human rights, prolonged and unresolved conflicts and collective grievances and victimization.⁶⁵ Statelessness has a devastating psychological toll on young people. Due to their status and the conditions that come with it, stateless youth have described themselves as “invisible, alien, living in the shadows, like a street dog, and worthless.”⁶⁶ Due to their lack of nationality, stateless children are unable to develop themselves fully.⁶⁷ The exclusion that results from the denial of nationality can induce a sense of marginalization and social isolation.⁶⁸ The UNHCR has recognized that one’s statelessness, creates situations of vulnerability to exploitation and abuse.⁶⁹ Stateless individuals have been found to be more susceptible to recruitment into armed forces, and those who have also been “forced to flee persecution are particularly vulnerable.”⁷⁰

The current refugee crisis is bringing with it the creation of a large population of potentially stateless people who may be marginalized and discriminated against, lack educational and economic opportunities, are socially isolated and lack a sense of identity and belonging – all red flags in terms of radicalization. The concern is that groups like ISIS will, and have, exploited these vulnerabilities, with the promise of opportunities, acceptance, and a sense of purpose. The Secretary-General has taken note of this, stating that violent extremism can become attractive to those whose “human rights are being violated” and “aspirations are being crushed.”⁷¹

The Security Council’s *Counter-Terrorism Committee Executive Directorate (CTED)* and the *Counter-Terrorism Committee (CTC)* launched a *Global Counter-Terrorism Research Network* in 2015. The Network found that most foreign terrorist fighters (FTFs) are young individuals who “have no formal religious education or training, but are ‘born again’ into radical Islam.”⁷² They are often immigrants, marginalized individuals and those seeking purpose and significance, and the “so-called caliphate is highly attractive to such individuals [as it] provides a

⁶⁵ U.N. General Assembly, Report of the Secretary-General on the Plan of Action to Prevent Violent Extremism, ¶¶24-35, U.N. Doc. A/70/674 (Dec. 24, 2015) [hereinafter Secretary-General’s Plan of Action]; see also G.A. Res. 60/288, *supra* note 6.

⁶⁶ UNHCR, I AM HERE, I BELONG, *supra* note 5 at 15.

⁶⁷ INSTITUTE ON STATELESSNESS AND INCLUSION, DRAFT POLICY PAPER: REALISING THE RIGHT OF EVERY CHILD TO ACQUIRE A NATIONALITY. AN ANALYSIS OF THE WORK OF THE COMMITTEE ON THE RIGHTS OF THE CHILD 1 (2015).

⁶⁸ See e.g. ALBARAZI & VAN WAAS, *supra* note 53, at 12.

⁶⁹ UNHCR, I AM HERE, I BELONG, *supra* note 5 at 1.

⁷⁰ *Impact of the arbitrary deprivation of nationality*, *supra* note 16, ¶40; see also African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 2 on article 6 of the ACERWC: The Right to a Name, Registration at Birth, and to Acquire a Nationality, ¶¶3 and 31, ACERWC/GC/02 (2014).

⁷¹ Secretary-General’s Plan of Action, *supra* note 65 at ¶3.

⁷² Outcome document on open meeting with Research Network partners, ¶¶6-7, Counter-Terrorism Committee Executive Directorate (CTED), U.N. Doc. S/AC.40/2016/NOTE.11 (Jan. 22, 2016).

purpose and a chance to liberate oneself from a world that offers merely a specious freedom of false and meaningless choices.”⁷³ The Network found that “counter narrative” strategies used by governments are largely ineffective as terrorist organizations like ISIS are using methods of empathy and revenge to help these individuals “find a solid identity” and feel a sense of righting wrongs and rectifying grievances they feel were perpetrated against them.⁷⁴ The Network suggested that given the interpersonal nature that draws FTFs to ISIS, counterterrorism measures should focus on “addressing the sense of civil disengagement,” “the need for programmes, which aim to include young [people] who feel alienated, purposeless and hopeless,” “broaden their sense of belonging to the wider culture,” and the “need to develop societies that are inclusive, welcoming and nourishing, and in which at-risk individuals can find a place and identity.”⁷⁵ Other researchers have replicated these findings and made similar suggestions, noting that the primary motivations for becoming a terrorist include “discrimination, marginalization, frustrated aspirations,” “purpose and personal significance,” and need for social support.⁷⁶ Of prime significance is the “need to belong,” which is also the UN slogan for the eradication of stateless campaign: “I belong.” ISIS taps into this by selling a vision of utopia where all Muslims can live together, and belong.⁷⁷

Many stateless persons feel powerlessness due to the limitations placed on them by their host State, increasing susceptibility to militant groups’ narratives of empowerment through violence.⁷⁸ Similar to the tactics of gangs or the mafia who provide security, a sense of belonging and at times social services, terrorist organizations may fill a void that governments ignore. When governments do not provide for and protect the rights of those in their territory, individuals are motivated to seek ways to fulfill these rights. As with groups like Hamas, who provide social, welfare and educational activities; or the Italian mafia in America who funded bread lines and soup kitchens during the Great Depression; organizations like ISIS are providing similar social services, for example, giving money and food to the poor.⁷⁹ These tactics are in

⁷³ *Id.*

⁷⁴ *Id.* at ¶¶9 and 15.

⁷⁵ *Id.* at ¶¶18, 19 and 22.

⁷⁶ Speckhard, Talking to terrorists, *supra* note 6 at 24.

⁷⁷ *See id.*

⁷⁸ *See* BARBARA SUDE, DAVID STEBBINS, AND SARAH WEILANT, LESSENING THE RISK OF REFUGEE RADICALIZATION: LESSONS FOR THE MIDDLE EAST FROM PAST CRISES. RAND CORP. 16 (2015).

⁷⁹ PBS, *Amid brutal attacks, ISIS giving charity to civilians* (July 12, 2015), <http://www.pbs.org/newshour/bb/amid-brutal-isis-attacks-militant-group-also-gives-charity-civilians/>.

large part about winning hearts and minds, and filling a gap for those ignored or forgotten by the State.

The Secretary-General's *Plan of Action to Prevent Violent Extremism* noted that the international community would not be successful against preventing violent extremism if young people are not empowered to make "constructive contributions to the political and economic development of their societies."⁸⁰ Guaranteeing that women can transfer their nationality to their child is crucial to prevent the negative consequences of statelessness and the implications of this status. Children that have a nationality will be more likely to grow up with dignity and develop to their maximum potential, including the development of their own identity, access to the full rights of citizens and a sense of true belonging in society with a desire to contribute to it. Gender-equal nationality laws allow more people to participate and contribute to the State, improves economic development and prosperity, and creates a more inclusive, secure and productive community.

Although nationality laws can be complex, the reforms needed to create gender equal conferral rights can be achieved through simple changes. For example, in 2004, Egypt amended its Constitution by simply adding "*or a mother*" in the clause regulating acquisition of nationality by descent,⁸¹ and removed its reservation on article 9(2) of the *CEDAW*. In 2007, Morocco similar added provisions to permit maternal conferral of nationality.⁸² In 2010, Kenya amended its Constitution as follows: "*A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.*"⁸³ In 2013, Senegal implemented a similarly simple amendment: "*A direct descendant to a Senegalese national is Senegalese.*"⁸⁴

The Special Rapporteur on terrorism and human rights stated that "by promoting and protecting all human rights...Member States...actively prevent terrorism by addressing the conditions conducive to it."⁸⁵ The Security Council also recognized that countering terrorism

⁸⁰ Secretary-General's Plan of Action, *supra* note 65 at ¶9.

⁸¹ See DECREE NO. 12025 OF 2004 (Amendment of Certain Provisions of Law No. 26 of the Year 1975) (Egypt).

⁸² Code de la Nationalité Marocaine (2011) (Morocco), art. 9.

⁸³ CONSTITUTION OF KENYA (2010), art. 14(1) (*retrieved from UN Women Global Gender Equality Constitutional Database*).

⁸⁴ UNHCR, BACKGROUND NOTE ON GENDER EQUALITY, *supra* note 3, at 2.

⁸⁵ U.N. General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ¶29, U.N. Doc. A/66/310 (Aug. 18, 2011).

required more than a military approach, it needs the strengthening of human rights protections,⁸⁶ the empowerment of “youth, families, women,” and the promotion of social inclusion and cohesion.⁸⁷ The global nature of the refugee crisis, requires all States to play their part, which until recently has focused only on reactive measures. States must work together to counter terror through preventative measures that address the root cause of violent extremism. While the order is tall, the task is relatively straightforward in this instance. If all States fulfilled the promises they made over two decades ago in Beijing, to implement gender equal laws, statelessness could be curtailed, thereby limiting the corresponding consequences that create vulnerable circumstances that lead to radicalization and terrorism. While no single counterterrorism measure will avert radicalization, limiting opportunities for individuals, such as those that place limitations on people of stateless status, will add to the risk.

Recommendations

United Nations

- *Undertake research* to determine links between statelessness and radicalization, violent extremism and terrorist recruitment. In this regard, request the Special Rapporteur on terrorism and human rights to investigate connections between statelessness and the conditions conducive to terrorism;
- *Publicize and draw attention to* States that are not compliant with international obligations of non-discrimination; have placed reservations on article 9(2) of CEDAW; or retain laws and practices that, have the intent or effect of, creating situations of statelessness due to gender bias;
- *Include* stateless persons in the total statelessness figures, even if they are also qualify as refugees, in order to reflect the true magnitude of the problem.

Member States

- *Withdraw* all reservations on the Convention on the Elimination of all Forms of Discrimination Against Women, specifically reservations to article 9(2);
- *Amend* nationality laws and policies to ensure that a woman can confer nationality on her child in any circumstance, wherever born and whether in or out of marriage;
- *Repeal or amend* any law or policy that requires a man’s acknowledgement or presence in

⁸⁶ See S.C. Res. 2178, *supra* note 7; S.C. Res. 1963 *supra* note 9.

⁸⁷ S.C. Res. 2178, *supra* note 7, at ¶16; S.C. Res. 2250, ¶16 (Dec. 9, 2015).

order to confer nationality to the mother's child;

- *Enact or amend* legislation that immediately grants nationality to any child born in their territory who would otherwise be stateless;
- *Provide* birth registration for free and in a gender-neutral manner;
- *Implement effective measures to ensure* that women and girls have equal access to identity and proof of nationality documents;
- *Take immediate measures* to assist current stateless populations with the acquisition of nationality, including naturalization in the State which they are currently located;
- *Establish or improve* national statelessness determination procedures to ensure that all persons who are stateless are identified, protected and can naturalize;
- *Immediately register* every birth that takes place in their territory, with special focus on children born to refugees, displaced persons and asylum-seekers;
- *Incorporate* comprehensive safeguards to ensure that any unforeseen gaps in nationality laws or procedures are protected against, in order to effectively prevent statelessness;
- *Implement* supervisory mechanisms to monitor statelessness;
- *Ensure* access to education and social services for stateless individuals, especially women, children and youth;
- *Disseminate information and implement awareness campaigns* in refugee camps and other locations where refugees and internally displaced persons gather regarding the importance of birth registration.

THE NECESSARY ROLE OF WOMEN'S RIGHTS IN THE ELIMINATION OF EL SALVADOR'S GANG VIOLENCE

Lauren Castillo

1. Introduction

The violence in El Salvador has reached unprecedented levels. In 2015, 2 people were murdered every 3 hours,¹ with 80% of all homicides connected to gang violence.² Unsurprisingly, El Salvador today is recognized as the murder capital of the world.³ Women are overwhelmingly its greatest victims.

Since the end of the country's 13-year civil war in 1992, crime and violence has continued to erupt throughout the country, facilitating the assumption of power by numerous gang organizations. Gangs, particularly Barrio 18 and Mara Salvatrucha ("MS-13"), have been able to reach such levels of control in El Salvador because of not only the widespread poverty, lack of educational opportunities and pre-existing violence in the country, but also the wide-scale judicial and political corruption and prejudicial social norms. Although gang violence has been rampant in the country, it was not until August of 2015 that the Supreme Court formally declared the state's violent gangs terrorists.⁴ Despite the laws in place and best efforts to combat the gang's widespread reach, systemic and aggravated violence continues to permeate throughout El Salvador.

As headlines have focused predominantly on the overall murder statistics plaguing the country, the story that has less often been highlighted is the plight of the women of El Salvador and the disproportionate violence they face everyday. El Salvador is facing a critical human rights crisis, and the victims most often affected are women and children. According to the Ministry of Health, through November 2015 of that year, 4,686 women were victims of violence.⁵ And those were just the ones reported. This violence is not only exacted in the streets by gang members and enforcement officials alike, but also within the four walls of their own

¹ Robert Muggah, Op-Ed., *It's official: San Salvador is the murder capital of the world*, L.A. TIMES (March 2, 2016), <http://www.latimes.com/opinion/op-ed/la-oe-0302-muggah-el-salvador-crime-20160302-story.html>.

² Guadalupe Cortés, *Fighting for a life free from fear*, NEW INTERNATIONALIST MAGAZINE (December 3, 2015), <http://newint.org/features/web-exclusive/2015/12/03/el-salvador-womens-rights/>.

³ Salvador Meléndez, *Images from El Salvador, World's New Murder Capital*, INSIGHT CRIME (March 11, 2016), <http://www.insightcrime.org/news-analysis/photos-el-salvador-gang-violence>.

⁴ *El Salvador supreme court designates street gangs as 'terrorists'*, ALJAZEERA AMERICA (August 25, 2015, 10:03 AM), <http://america.aljazeera.com/articles/2015/8/25/el-salvador-labels-street-gangs-terrorists.html>.

⁵ U.S. Department of State, EL SALVADOR 2015 HUMAN RIGHTS REPORT, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dld=253013>.

homes. In one witness report, a pregnant female victim suffered a hemorrhage after officers stopped and forced her to the ground simply because she had been linked to a gang member.⁶ The dilemma women face does not run along gang versus unaffiliated lines, but rather is a universal one that all women face in El Salvador.

This report supports not only reform that advances women's leadership in and outside of the home, but more so stresses the urgent need for actual legal implementation and accountability. It has come to be widely acknowledged in El Salvador that "both gang culture and the endemic ethos of *machismo* . . . help to create a world where women regularly suffer at the hands of the men closest to them."⁷ The culture of violence in El Salvador may have originated from an exaggerated *machista* culture within the home, but it may, and must, be curbed by the voice and acts of women in positions of power, a feat that requires critical input from both men and women alike.

Part I of this analysis will provide an overview of El Salvador's legislative history, noting the international human rights treaties which it has ratified, as well as the country's own Constitution and domestic violence laws. Part II introduces the discussion surrounding the prevalence of violence exacted upon women and girls today in El Salvador. This section provides first-hand testimonies and explanations as to the facilitation and promulgation of violence against women and its relevance to counterterrorism efforts. Finally, Part III provides recommendations for the Committee to adopt in an effort to not only stifle violence against women, but also terrorist efforts in the country.

2. Legislative History

Compliance with International Legal Guidance

Although there are substantial steps to be taken, El Salvador is to be applauded for its effort and commitment to ratify many of the principal international human rights treaties that call for equity amongst all citizens, particularly women and children. These include, but are not limited, to the Convention on the Rights of the Child ("CRC"), the International Covenant on Civil and Political Rights ("ICCPR"), the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), and the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW").

⁶ Cortés, *supra*.

⁷ *Id.*

With respect to minors, El Salvador's constitution espouses numerous rights of the child, such as "the right to live in family and environmental conditions that allow for his integral development" and mandates that parents of children born in or out of wedlock provide "their children protection, assistance, education and security."⁸ In addition, its labor laws and family code likewise call for the protection of children in these areas. Nevertheless, although El Salvador's courts have looked to and cited the CRC, the country's legislation is not yet in compliance. One particular obstacle to compliance is youth violence, especially with respect to participation in and consequent victimization from street gangs. The CRC mandates that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation" and also calls that children be protected "from all forms of sexual exploitation and sexual abuse;"⁹ however, the high level of crime and sexual violence, particularly against young girls, demonstrates that these international provisions are not being met.

In accordance with ICCPR, El Salvador's constitution grants that "every person has the right to life, to physical and moral integrity, to liberty, to security, to work, to property and possession, and to be protected in the conservation and defense of the same."¹⁰ Certain aims of this article are met, however, others have unfortunately been violated. In particular, El Salvador's strict anti-abortion laws create an overwhelming inequality, forcing women and girls to face threats to their well-being while also depriving them of their right to freedom.¹¹ According to Article 26 of the ICCPR, all persons are "entitled without any discrimination to the equal protection of the law", which includes discrimination against sex; the inequitable and excessive penalties women and girls are subjected to when prosecuted for an abortion stands in clear violation of equal justice and protection before the law. These laws, in effect, violate female security and the right to bodily integrity.

Subtle Constitutional digressions facilitate further legislative abuse

As with its ratification of international treaties, El Salvador's Constitution makes valid

⁸ Article 34 and 35 of the Constitution of the Republic of El Salvador in Central America.

⁹ CRC, Articles 19 and 34, (1990) UN Doc. A/RES/44/25.

¹⁰ ICCPR, Article 6, (1966) UN Doc. A/6316; Article 2 of the Constitution of the Republic of El Salvador in Central America.

¹¹ UN HRC, Report on Violations of Women's Human Rights Due to the Complete Criminalization of Abortion, (Oct. 2010).

and laudable steps towards equal protection under the law. Nevertheless, in practice, these efforts are subverted; many of the Articles providing for everyday equality of the sexes are grossly violated on a routine basis. As with much in the country, such disobedience may be traced to the pervasion of a *machista* culture. The language of the Constitution itself voices the inequality that quietly persists. According to the Constitution, “the right to education and to culture is inherent to the human person,” which applies equally to both men and women. However, in describing the anti-discrimination clause for refusing education to any persons, “social, religious, racial [and] political differences” are noted, with “sex” ostensibly missing. Furthermore, although women are entitled to equal pay, large gaps between wages and levels of employment continue to persist. These forms of discrimination appear both overtly and subtly. A recent UN report highlighted that, within employment industries, prevailing disparities between wages were realized, especially in the agricultural and the textile markets (“*maquilas*”).¹² What is not directly listed, however, is that 80% of *maquila* employees are women, highlighting this subversive discrimination. These notes may seem minor, however, given the degree to which El Salvador’s underlying culture of *machismo* has facilitated unprecedented levels of violence, they in fact carry much weight.

Relevant Domestic Violence Laws

We support El Salvador’s implementation of its Domestic Violence Law (“DV Law”) since 1996, which includes verbiage in accordance with many of the international treaties promoting women’s rights. However, to much disappointment, it has been, and continues to be, grossly abused and poorly enforced in practice. Article 1 of the DV Law dictates that the law’s aim is to “prevent, sanction and eliminate domestic violence” and “apply preventative and precautionary measures and the necessary protection to secure the life, integrity and dignity of the victims of domestic violence.”¹³ As defined in Article 3 of the law, domestic violence includes psychological, physical, and sexual violence, even extending the definition of violence to “intimidation, coercion, blackmail, bribery, manipulation, threats or other mechanisms that dismiss or limit free will.”¹⁴ The extent of such protection acknowledges the many faces of violence that women experience and seemingly gives value to each of them. Providentially, it is

¹² UN Office of the High Comm’r on Human Rights, Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador, ¶ 13, UN Doc. E/C.12/SLV/CO/3-5.

¹³ Ley Contra La Violencia Intrafamiliar, [Law Against Domestic Violence], Asamblea Legislativa de El Salvador, 18 de Diciembre de 2013.

¹⁴ *Id.* at art. 3.

in accordance with Article 1 of the Declaration on the Elimination of Violence Against Women (“DEVAW”).¹⁵

The DV Law further notes that upon a victim’s report, police should assume the necessary measures to prevent further abuse of the victim by taking the appropriate steps to find them medical care, safe arrangements and inform them of their rights regarding domestic violence.¹⁶ In like fashion, DEVAW mandates that states should “develop penal, civil, labour and administrative sanctions” and also ensure that “women subjected to violence . . . have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services.”¹⁷ Seemingly El Salvador’s DV law promotes the UN’s direct aims of providing a holistic protection of women subjected to domestic violence. Unfortunately, as will be evidenced, many, if not all, of these mandates are not given due process under the law. Although the rate of violence against women is only continuing to increase in light of gang warfare, fewer women are receiving the protection and justice they are entitled to. In fact, the number of domestic violence cases brought before the court has declined over recent years.¹⁸

3. Perseverance of violence against women today

According to CEDAW, States must “refrain from engaging in any act or practice of discrimination against women and . . . ensure that public authorities and institutions shall act in conformity with this obligation;” as will be shown, there is little question that El Salvador has been in direct violation of this.¹⁹ In 2011, the Special Rapporteur’s report on violence against women in El Salvador reported that the recommendations from the 2004 report were “still applicable and relevant”, which is of special concern; in the 12 years since said former report, “impunity for crimes . . . and the *machista* culture continue to foster a generalized state of violence, subjecting women to a continuum of multiple violent acts.”²⁰ Most alarming is that effective laws regarding gender equality and violence against women have been in place for 20 years. Though the Law Against Domestic Violence clearly defines domestic violence and

¹⁵ DEVAW, Article 1, (1993) UN Doc. A/RES/48/104.

¹⁶ Ley Contra La Violencia Intrafamiliar, art. 10.

¹⁷ DEVAW, Article 4.

¹⁸ UN Office of the High Comm'r on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, ¶ 19, UN Doc. A/HRC/17/26/Add.2.

¹⁹ CEDAW, Article 2, (1979) UN Doc. A/RES/54/4.

²⁰ UN Office of the High Comm'r on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, ¶ 13.

outlines the steps necessary to address and remedy it, it is routinely abused today due to widespread political and judicial corruption and a lack of legitimized female power.

Abuse of women persists despite legislation and reform programs

Over the past year, more than half of all women in El Salvador reported that they have suffered violence to some extent in their lives, a quarter of them reporting that they were victims of sexual violence. Unfortunately, the more power gangs assume, the more heinous the violence against women has become. Violence, particularly sexual violence, against women has been extended from familial relations in the home to public abuse by gangs and security forces. In fact, El Salvador is not only the murder capital of the world, but also the country with the highest rate of femicide.²¹ According to the World Health Organization, “femicide is generally understood to involve intentional murder of women *because they are women*, but broader definitions include any killings of women or girls.”²² The general threats and violence gangs are exacting in El Salvador are what is hitting the front page of the news, however, the more alarming tale is the exponential rate of violence, especially extreme violence, against women in the country. Women are regularly found in clandestine graves murdered, victims of torture, mutilation and decapitation. This is not an abuse of women, but an utter disregard for their status as human beings. As a representative for the Organization of Salvadoran Women for Peace (“ORMUSA”) aptly noted, “We are still not equal [to men]. The profound root of violence against women is inequality. We are considered human beings of less value.”²³

Internal agency corruption constrains human rights efforts

Although laws exist and laudable official and unofficial programs have been instituted for the protection and advancement of women in El Salvador, said efforts are nullified by the rampant corruption within the institutions meant to execute said protection. As noted in El Salvador’s DV law, police are instructed to take the appropriate measures to protect victims of domestic violence, including but not limited to finding them suitable security, providing them with adequate mental and physical care, and detaining the alleged offender. This fails to happen for 2 reasons: (1) corruption within the police and judicial systems and (2) the long-standing cultural acceptance of *machismo* and violence against women. In one year, El Salvador’s Office

²¹Anna-Cat Brigida, *El Salvador's Invisible Victims of Domestic Violence*, BROADLY (Dec. 22, 2015, 6:10 PM) https://broadly.vice.com/en_us/article/el-salvadors-invisible-victims-of-domestic-violence.

²² WORLD HEALTH ORG., *Understanding and addressing violence against women: Femicide*, http://www.who.int/reproductivehealth/topics/violence/vaw_series/en/.

²³ Anna-Cat Brigida, *El Salvador's Invisible Victims of Domestic Violence*

of the Ombudsman for Human Rights (“PDDH”) “received 2,202 complaints of human rights violations, 92 percent of which alleged human rights violations committed by the National Civilian Police and the military.”²⁴ This is by all means a staggering number. When the very agencies that are meant to protect are found to be so perverted, it is difficult for women, or anyone for that matter, to view them as an agency of hope and aid. Furthermore, even when women do seek assistance for domestic violence, “unless [it] results in serious physical injuries, the police, prosecutors, and justices of the peace tend to minimize offenses in the belief that domestic violence is a private matter.”²⁵ Women in El Salvador are already crippled with a near silent voice; without the police force to defend and protect them from further injury, they are left to rely upon themselves or independent agencies that have limited, if any, enforcement power.

Within the courts, the discrimination against women’s rights originates from the corruption of the overall system. In 2015, 106 judges were under review for judicial misconduct. What is most alarming is not that the number of complaints filed has risen over the past couple of years, but that certain judges have actually been under investigation for more than 20 years.²⁶ In the past year alone, 12 judicial officials were arrested for stealing thousands in bribes for absolving murderers, drug traffickers, and extortionists.²⁷ Making matters worse, the lack of cooperation between El Salvador’s police and prosecution has enabled the country to report a criminal conviction rate of below 5%.²⁸ This statistic becomes even more alarming when the convictions are broken down by type of crime and sex. The top-down breakdown of enforcement and the facilitation of impunity sets the precedent for the country’s citizens that criminality is a matter of minor importance.

The crux of the issue rests in that, although women’s claims against domestic and sexual violence often lack enforcement, they are disproportionately penalized; this is especially true in the case of abortions. According to the state’s Constitution, individuals are human beings “from the moment they are conceived.”²⁹ This sweeping statement, paired with a discriminatory

²⁴ U.S. Department of State, EL SALVADOR 2015 HUMAN RIGHTS REPORT.

²⁵ UN Office of the High Comm’r on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, ¶ 59.

²⁶ U.S. Department of State, EL SALVADOR 2015 HUMAN RIGHTS REPORT.

²⁷ Mimi Yagoub, *El Salvador Judges Accused of Stealing Seized Cash*, INSIGHT CRIME (Nov. 26, 2015), <http://www.insightcrime.org/news-briefs/el-salvador-judges-accused-of-stealing-seized-cash>.

²⁸ Clare Ribando Seelke, CONG. RESEARCH SERV., R43616, EL SALVADOR: BACKGROUND AND U.S. RELATIONS (Feb. 4 2016).

²⁹ Article 245 of the Constitution of the Republic of El Salvador in Central America.

machista culture, has enabled strict enforcement of draconian anti-abortion laws. Even in exceptional circumstances such as violent rape by gang members and miscarriages, women are charged with homicide, resulting up to 40 years of imprisonment. Whereas crimes of violence against women go unattended, convictions for abortion are overwhelmingly granted. In the case of Isabel Cristina Quintanilla, the court sentenced her to 30 years imprisonment for aggravated homicide, although the evidentiary burden in her case was not met.³⁰ Adding gravity to the condemnation of abortions in El Salvador is the fact that one third of the pregnancies recognized are of girls between the ages of 10 to 19.³¹ This not only has implications on the opportunity for and level of education girls end up receiving in the future, but also, tragically, suicide rates. According to one report, “three out of eight maternal deaths in El Salvador are the result of suicide among pregnant girls under 19.”³² Driving the suicide rates is the stigma associated not only with abortions but also familial rape, which is often the culprit. Because of such draconian abortion laws and discriminatory criminalization, young girls are often faced with the terrorizing decision of facing public shame, criminal sentence, or suicide.

The stifled female voice in enforcement agencies

Ultimately, one of the core causes underlying the misguided enforcement efforts is the lack of female representation in positions of power. As of 2013, El Salvador has instituted a gender quota, requiring that 30 percent of municipal, legislative and city council elections be women. For the most part, female representation in these areas today hovers between 20 and 30 percent.³³ This is certainly a vast improvement from the previous status quo and was a hard fought gain on the part of Salvadoran women and the United Nations Development Programme.³⁴ Nevertheless, although women have been seemingly given a voice with which to advocate and protect, the pervasiveness of the entrenched *machista* culture has muffled any voice they may have gained. Not only do women in these positions continue to face discrimination and

³⁰ UN Office of the High Comm'r on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences.

³¹ Anastasia Moloney, *Rape, abortion ban drives pregnant teens to suicide in El Salvador*, REUTERS (Nov. 12, 2014, 11:30 AM), <http://www.reuters.com/article/us-el-salvador-suicide-teens-idUSKCN0IW1YI20141112>.

³² *Id.*

³³ U.S. Department of State, EL SALVADOR 2015 HUMAN RIGHTS REPORT.

³⁴ UN DP, *Women gain ground in El Salvador's politics*, <http://www.latinamerica.undp.org/content/rblac/en/home/ourwork/democratic-governance/successstories/women-gain-ground-in-el-salvadors-politics.html>. Since 2008, “the United Nations Development Programme (UNDP) has initiated training programmes that seek to bolster the capacities of women, while fostering a legal framework that promotes equality through the empowerment of women as political candidates”.

sexual harassment, but they are also afforded diminished opportunities. As illustration, following her 2009 Presidential appointment as Police Inspector General, Zaira Navas, whose responsibility was to oversee the dismissal of corrupt PNC officials, soon faced with resistance, death threats, and investigations against her own person.³⁵ In 2012 she resigned and was replaced by Carlos Linares Ascencio, a man, who, even in spite of continued criticism, did not face as drastic resistance as Navas.³⁶

The persistent victimization and abuse of women's rights promulgates the acceptance and promotion of terrorist violence within El Salvador.

In El Salvador, violence against women has become a predicted occurrence. In addition to having damaging effects on women, the violent crime exacted has broader implications for the safety and development of the country itself. In essence, violence against women begets more violence. When violence is exacted in the intimacy of a home, victims and witnesses have a greater propensity to exhibit like behavior later in life.³⁷ One Salvadoran woman recounted how her son, who witnessed and suffered years of physical and psychological abuse by her husband “is reportedly replicating his violent behaviour towards women.”³⁸ In a behavioral analysis of violent crime, the United States Federal Bureau of Investigation reported that “predisposition to serial killing, much like other violent offenses, is biological, social, and psychological in nature, and it is not limited to any specific characteristic or trait.”³⁹ Fundamentally, murderers and terrorists are not born, but made.

Violence is not only promulgated by acts within the home but also by a lack of judicial protection and enforcement. As the United Nations has previously suggested, “due to loopholes in criminal legislation, poor enforcement of criminal laws and regulations . . . diminishing and discriminatory attitudes among relevant professionals and lack of sufficient and sustainable

³⁵ El Salvador Country Profile, The International Sector Security Advisory Team (Jan. 13, 2015), <http://issat.dcaf.ch/Learn/Resource-Library/Country-Profiles/El-Salvador-Country-Profile>.

³⁶ *Id.*

³⁷ U.S. Dep't of Justice, *Serial Murder: Multi-Disciplinary Perspectives for Investigators*. <https://www.fbi.gov/stats-services/publications/serial-murder/serial-murder-july-2008-pdf>. Showing that “neglect and abuse in childhood have been shown to contribute to an increased risk of future violence”.

³⁸ UN Office of the High Comm'r on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences.

³⁹ U.S. Dep't of Justice, *Serial Murder*.

dedicated resources . . . the justice chain is still failing women victims of violence.”⁴⁰ Crime and violence are deterred by “a criminal’s perception of the certainty of being caught,” not by the impunity that has come to persist for crimes in El Salvador.⁴¹ Moreover, counterterrorism efforts are further amplified by the burden women face in overcoming sexist *machista* attitudes in the workplace. Within the police force, female officers today continue to report sexual discrimination and abuse by their own male counterparts.⁴² A 30% quota may exist for women in political elections, however, if their voices are not respected or heard, then the impact of the quota is null and void. In order to effectuate progress and influence their male counterparts, women in elected political and judicial positions must counter the prevailing *machista* ideology of male power and gendered dominance over women. It is difficult to visualize opportunities for the elimination of violence in a country where impunity for minor to heinous crimes is facilitated by a lack of judicial oversight, and where men continue to demean women through a culture of *machismo*.⁴³

In the face of violence, hope for the advancement of women still exists

Nevertheless, there is hope. In 2011, the Law of Equality, Fairness, and the Elimination of Discrimination Against Women was approved by the General Assembly. The law, which called for an improved judicial review for women’s rights, is especially important because it was promulgated by internal Salvadoran women’s movements.⁴⁴ The plan was organized and patiently executed. Women sought power from and built coalitions with other women both within El Salvador and internationally. “We made a map of power. We sought out alliances with women from all walks of life. We asked for national and international support and we sought to make sure the demands of women from all sectors would be included in the law.”⁴⁵ Notably, the group adopted negotiation and marketing tactics that they noticed their male counterparts

⁴⁰ UN ODC, *Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women* (2014). https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf.

⁴¹ U.S. Dep’t of Justice, *Five Things About Deterrence* (July 2014), <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>.

⁴² Cortés, *supra*.

⁴³ *A lethal culture: Drugs and machismo are a dangerous mix*, THE ECONOMIST (Dec. 13, 2014), <http://www.economist.com/news/americas/21636052-drugs-and-machismo-are-dangerous-mix-lethal-culture>. Demonstrating that “machismo helps entrench violence and worsens its effects” and is founded from infancy and an individual’s developmental surroundings.

⁴⁴ UN Women, *A Salvadoran Law to Achieve Equality Between Men and Women*, (Dec. 2, 2011), <http://www.unwomen.org/en/news/stories/2011/12/a-salvadoran-law-to-achieve-equality-between-men-and-women#sthash.HAyW809P.dpuf>

⁴⁵ *Id.*

practicing and used it to their own advantage.⁴⁶ Although several of the law's mandates are still not met (such as equal pay for equal labor), the mere fact that women were able to unite across borders, status and class to promulgate a law aiming at proving equal opportunities between men and women in a time of gang warfare, is monumental and promising.

Recommendations

In order to more effectively combat the widespread terrorism and violence against women, the government of El Salvador is encouraged to:

- *Establish* mandatory police or judicial reviews for each claim of violence against women reported. Reported data should be monitored and reviewed quarterly to ensure the proper implementation of laws.
- *Institute* gender-sensitive training focusing on women's human rights issues in youth education programs, executive political offices and enforcement agencies.
- *Amend* the State Constitution and Penal Code to provide for the elimination of the absolute prohibition and criminalization of abortion.
- *Implement* marketing programs communicating the inhumane and depraved nature of gang and gender-based violence. Such programs should be tailored for applicable audiences such as youth populations and citizens of rural or marginalized communities.

⁴⁶ Id.

ACID VIOLENCE AND COUNTERING TERRORISM: PREVENTING VIOLENT EXTREMISM BY ENDING A CULTURE OF IMPUNITY

Pooja Agarwal

Introduction

The United Nations General Assembly has acknowledged that gender equality and empowerment of women is a critical force for sustainable peace and for preventing violent extremism, which can be conducive to terrorism.¹ In areas and cultures where violence against women is committed with impunity, gender inequality persists and grows.² Acid violence, one of the most heinous forms of gender violence perpetrated in the world today, goes largely unpunished in many parts of the world, but most prominently in South Asian countries such as India, Pakistan and Bangladesh.³ It is also a prevalent form of violence against women in South East Asian countries such as Cambodia.⁴ Shining a light on and putting an end to acid violence through strict adherence to laws and international conventions is a critical step toward establishing gender equality, and in turn, ending the culture of impunity where extremism thrives.

In this paper, I argue that using legal reforms to end acid violence and impunity for the perpetrators of these monstrous crimes will bolster gender equality, which can counter violent extremism in the communities where such crimes persist and bolster counterterrorism efforts.⁵ Part I will provide background information and statistics on acid crimes, Part II will establish acid crimes as a form of gender violence, Part III will establish the connection between acid violence and terrorism, and Part IV will provide an analysis of the international guiding principles that support action to prevent acid crimes. Finally, Part V will provide recommendations to countries where acid crimes are a prevalent and unchecked form of violence against women.

¹ G.A., Plan of Action to Prevent Violent Extremism. *Report of the Secretary General*, ¶ 53, U.N. Doc. A/70/674 (Dec. 24, 2015); United Nations Millennium Declaration, Goal 5, G.A. Res. 55/2, U.N. Doc. A/55/L.2 (Sep. 18, 2000); S.C. Res. 508, ¶ 15, U.N. Doc. S/RES/2178 (Sep. 24, 2014).

² *Ending Impunity for Violence Against Women and Girls*, U.N. Backgrounder (2007), available at <http://www.un.org/events/women/iwd/2007/pdf/background.pdf>

³ *Combating Acid Violence In Bangladesh, India, And Cambodia*, Cornell Law School's Avon Global Center for Women and Justice, et al. , p.4 (2011) [hereinafter *Avon Report*].

⁴ *Id.*

⁵ Note on methodology: The research conducted for this report is primarily desk research on background materials on acid violence, existing laws in South Asia, and an analysis of international laws and United Nations resolutions and statements, news stories and NGO findings related to acid violence.

Part I. Background & Statistics

Acid violence refers to intentional criminal acts where the attacker pours or throws acid (usually sulfuric or nitric acid) on a victim, often on the face.⁶ Victims of acid attacks are permanently disfigured, suffer from lifelong health problems, and sometimes die from their wounds.⁷ Victims often suffer from blindness, hearing loss, and severe chronic pain. Often described as a form of torture, some say acid crimes leave victims as “living corpses,” living a life tormented by chronic pain, serious health problems, post-traumatic stress disorder, and feeling shame for their disfigured appearance.⁸ Acid violence survivors face marginalization from society after the attack because of their appearance and sometimes an assumption that the victim did something to deserve the attack.⁹ The vast majority of victims of acid violence are women.¹⁰ The motives behind these types of attacks are rooted in gender discrimination and inequality. Victims of acid violence are often attacked by a man or his family members due to marital disputes or rejection of marital or sexual proposals.¹¹ Acid crimes are particularly prevalent in Asian countries where the types of corrosive acid used are easily available, cheap, and the sales of which are unregulated and where the rights of women are greatly devalued.¹² Acid crimes are also difficult to prove because they are often dismissed as “kitchen fire” accidents, because the burns from acid can be indistinguishable from burns from fire.¹³ One report stated that in Pakistan, 98% of acid crime cases were left undecided due to legal loopholes or lack of evidence.¹⁴

While acid crimes are reported throughout the world, they are particularly prevalent in India, Pakistan and Bangladesh.¹⁵ This is likely due to the easy availability of acid and the lack of prosecution of the perpetrators. Official statistics on acid crimes do not exist in

⁶ See Acid Survivors Trust International, <http://www.acidviolence.org/>

⁷ *Id.*

⁸ *Pakistani Women's Lives Destroyed By Acid Attacks*, BBC News, Apr. 19, 2012, <http://www.bbc.com/news/world-asia-17676542>

⁹ *Id.*

¹⁰ Acid Survivors Trust International, *supra* note 6.

¹¹ U.N. Women, *Acid Attacks*, <http://www.endvawnow.org/en/articles/607-acid-attacks.html>

¹² Scott Carney, *Acid Attack in India Prompts Protest*, NAT'L PUB. RADIO (NPR), Aug. 22, 2007, <http://www.npr.org/templates/story/story.php?storyId=13760338>

¹³ Tim Sullivan, “In prospering India, dowry crimes take toll on daughters-in-law,” AP WORLDSTREAM, 22 July 2004.

¹⁴ Ikram Junaidi, *Majority of Acid Attack Cases Remain Undecided*, DAWN NEWS, Oct. 18, 2015, <http://www.dawn.com/news/1213913>

¹⁵ Tom de Castella, *How Many Acid Attacks Are There?*, BBC News Magazine, Aug. 9, 2013, <http://www.bbc.com/news/magazine-23631395>

the South Asian countries analyzed in this paper, but some studies by advocacy organizations have shown that these types of crimes are frequent and increasing.¹⁶ Based on what was reported to the media, there were 3,000 attacks in Bangladesh between 1999 and 2011, and 153 between 2002 and 2010 in India.¹⁷ Between 150 and 400 cases of acid attacks are reported in Pakistan every year.¹⁸ However, there are likely far more acid attacks that are “massively underreported,” never reaching the media or authorities at all, making the real number much higher.¹⁹

Part II. Acid Crimes as Gender Violence

Acid violence is one of the most horrific practices of gender-based violence and a form of domestic terror that reflects and perpetuates the inequality of women in India, Pakistan and Bangladesh. In the words of Salma Ali, a legal expert in the field of violence against women in Bangladesh, acid attacks are “one of the extreme forms of repression and violation of women's rights.”²⁰ Studies show that the victims of acid crimes are largely women and girls under 30 years old and have lower socio-economic status.²¹ In Bangladesh, studies suggest that 67% to 90% of the acid burn victims are female.²² A study from India shows that at least 72% of reported victims are female.²³ In many cases where a male is a victim, it is because of their proximity to an intended female target.²⁴ Because acid attacks usually involve the throwing of acid, bystanders, family members, or anyone in the proximity of the intended victim can also easily be injured.²⁵ Although it is also appalling when men and boys are attacked with acid, acid violence is gender-based violence because it impacts women disproportionately.²⁶

The perpetrators are also largely reported to be men, with studies showing men to be responsible for 80 – 88% of the attacks.²⁷ Even when acid crimes are committed by women, the act is rooted in gender inequality.²⁸ In cultures where women are often socially and economically

¹⁶ *Avon Report*, *supra* note 3, at 8.

¹⁷ Acid Survivors Foundation (ASF), Statistics, <http://www.acidsurvivors.org/statistics>

¹⁸ <http://www.dawn.com/news/1213913>

¹⁹ <http://www.bbc.com/news/magazine-23631395>

²⁰ E-mail from Salma Ali, Executive Director, Bangladesh National Woman Lawyers Association (BNWLA), (Apr. 28, 2016, 06:20:00 EST) (on file with author).

²¹ Sullivan, *supra* note 12.

²² Acid Survivors Foundation, Bangladesh, *Annual Report 20014* at 17 (2014), http://www.acidsurvivors.org/images/frontImages/Annual_Report-2014.pdf

²³ *Avon Report*, *supra* note 3, at 16.

²⁴ *Avon Report*, *supra* note 3, at 13.

²⁵ *Id.*

²⁶ *Avon Report*, *supra* note 3, at 2.

²⁷ *Avon Report*, *supra* note 3, at 14.

²⁸ *Avon Report*, *supra* note 3, at 3.

insecure without a male provider, women may attack their husband's or partner's wife or mistress to end such a relationship and thereby securing their own social and economic position.²⁹ Even when personal motives like jealousy or revenge are behind an attack, the perpetrator's security in knowing that any real legal ramifications are unlikely perpetuates the practice.³⁰

Acid attacks occur where there is significant gender discrimination. Bangladesh, India, and Pakistan rank very low on the Global Gender Gap Index, which measures national economic, educational, health and political equality between men and women.³¹ In 2015, Bangladesh, India, and Pakistan ranked 64th, 108th, and 144th, respectively, out of 145 countries included in the Global Gender Gap Index.³²

Perpetrators of acid crimes often intend to destroy what society considers to be the most valued attribute of a woman—her physical appearance.³³ Also, given that many of these attacks are aimed at the face of a young woman to permanently disfigure her appearance, it demonstrates a belief that a woman's value is in her beauty, and that taking that away as revenge is possibly “a fate worse than death.”³⁴ Some perpetrators also have admitted the intent to burden an entire family by attacking the female family member because the disfigured victim will be unmarriageable and would require to be supported by her family for the rest of her life.³⁵ Furthermore, the “entire family becomes traumatized and affected economically, socially and psychologically.”³⁶

Common motives behind these crimes, often related to romantic or sexual rejection of a man, point to gender inequality and discrimination.³⁷ These motives demonstrate the belief that women are possessions and that if they do not fulfill a man's desire, they have no value and deserve some form of punishment. It reflects the belief that women are property that should be controlled, particularly if the attackers have decided to marry or become romantically involved

²⁹ *Id.*

³⁰ *Id.*

³¹ See World Econ. Forum, *The Global Gender Gap Report 2015* (2015), <http://reports.weforum.org/global-gender-gap-report-2015/>

³² World Econ. Forum, *The Global Gender Gap Index Results in 2015*, <http://reports.weforum.org/global-gender-gap-report-2015/the-global-gender-gap-index-results-in-2015/>

³³ *Avon Report*, supra note 3, at 3.

³⁴ Ashfaq Yusufzai, *Acid Survivors Say Theirs is a Fate Worse Than Death*, Inter Press Service, June 28, 2013, <http://www.globalissues.org/news/2013/06/28/16938.>;

³⁵ *Avon Report*, supra note 3, at 15.; Ali supra note 19.

³⁶ Ali, supra note 19.

³⁷ *Id.*

with them. One report found that sexual harassment or assault in response to a woman or girl refusing a man's advances or demanding that violence stop often precede an acid attack.³⁸

Acid attacks are not only rooted in gender inequality in communities where they go unpunished, but bolster and perpetuate such inequality. Victims of acid crimes often don't finish education, become a burden on a family's finances due to health problems and inability to work, and are removed from society because of shame and not wanting to show their faces in public.³⁹

The fear of an acid attack can have the same effect on all women, or families with young women, in a community.⁴⁰ Such attacks may make all women fearful of violating social norms that keep them in their inferior positions. Acid crimes have the effect of demonstrating to an entire community that women must not defy their prescribed gender roles. Because of fear of being attacked, a woman or girl may forgo education, she or her family may send her into a child marriage to avoid her having suitors, or she may choose to stay hidden and unnoticed so that she doesn't attract any attention by men, silencing her voice⁴¹. In essence, the fear of an acid attack in regions where they are prevalent and perpetrators are not punished creates economic and physical insecurity for all women and their families in these communities.⁴²

Part III. Acid Crimes and Terrorism

While there is no universally accepted definition of terrorism, acid crimes fall squarely within the scope of the recommended definition by the UN's High Level Panel on Threats, Challenges and Change: "any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act".⁴³

Acid violence is a form of terrorism and violent extremism in and of itself and worthy of

³⁸ Law Commission of India, Report Submitted To The Hon'ble Supreme Court of India for its Consideration in the Pending Proceedings Filed By One Laxmi in W.P (Crl.) No. 129 Of 2006 on "The Inclusion of Acid Attacks ss Special Offenses in the Indian Penal Code and a Law for Compensation for Victims of Crime" 10 (2009) (No. 226), <http://lawcommissionofindia.nic.in/reports/report226.pdf>

³⁹ Harsimran Gill, *Indian Acid Attack Victims Share Their Stories*, Al-Jazeera, Mar. 10, 2016, <http://www.aljazeera.com/indepth/features/2016/03/indian-acid-attack-victims-share-stories-160309074926141.html>

⁴⁰ Ali, *supra* note 19

⁴¹ *Id.*; *Avon Report*, *supra* note 3, at 33.

⁴² Ali, *supra* note 19.

⁴³ U.N. Action to Counter Terrorism, High Level Panel, <http://www.un.org/en/terrorism/highlevelpanel.shtml>

global attention on that basis alone. Acid crimes are actions that are intended to cause serious bodily harm to civilians, and succeed in intimidating women, girls and their families. And while acid crimes on their own are a form of extremism and domestic terror, the environments of impunity in which they occur are connected to the global growth of violent extremism and terrorism.

Furthermore, gender inequality and violence against women are inherent markers of terrorism. In 2009, Secretary Clinton discussed this connection between national security and women's issues, using acid violence as an example:

If you look at where we are fighting terrorism, there is a connection to groups that are making a stand against modernity, and that is most evident in their treatment of women. What does preventing little girls from going to school in Afghanistan by throwing acid on them have to do with waging a struggle against oppression externally? It's a projection of the insecurity and the disorientation that a lot of these terrorists and their sympathizers feel about a fast-changing world, where they turn on television sets and see programs with women behaving in ways they can't even imagine. The idea that young women in their own societies would pursue an independent future is deeply threatening to their cultural values.⁴⁴

Acid attacks, one of the most egregious forms of gender-based violence today, are not only a marker of violent extremism when they occur with impunity, but may also be considered a harbinger of terrorism. It is no stretch to presume that those perpetrators who are committing violent extremism in the form of acid attacks may move beyond attacks on individual women by whom they feel wronged and onto larger targets. While in many cases the motive for acid crimes is personal, the culture in which acid attacks are seen as a just "punishment" for actions by women against a man are rooted deeply in religious fundamentalism and a culture of gender inequality.⁴⁵ Recent acid attacks against women for leaving their homes without a male companion in the Baluchistan province of Pakistan have been connected to a "a result of rising religious extremism" in the region.⁴⁶ Researchers believe that acid crimes are connected to a

⁴⁴ Center for Human Rights and Global Justice, *A Decade Lost: Locating Gender in U.S. Counter-Terrorism* (New York: NYU School of Law, 2011), at 19, <http://chrgj.org/wp-content/uploads/2012/07/locatinggender.pdf>

⁴⁵ See Ameena Ilahi, *Acid Crimes: A Growing Crisis in Pakistan*, *The Asia Foundation* (Oct. 1, 2014), available at <http://asiafoundation.org/2014/10/01/acid-crimes-a-growing-crisis-in-pakistan/> (where the article links widespread domestic violence and gender inequality with tribal traditions and religious extremism, though more research is required to establish a direct link between religion and acid crimes).

*Article I.*⁴⁶ Unbreen Fatima, *Acid Attacks: A Tool to Threaten Women*, DW.com (Aug. 20, 2014), available at <http://blogs.dw.com/womentalkonline/2014/08/20/acid-attacks-a-tool-to-threaten-women/>; see also Yousaf Ajab Baloch, *Growing extremism and acid attacks in Balochistan*, *The Balochistan Point* (Aug. 8, 2014), available at <http://thebalochistanpoint.com/growing-extremism-and-acid-attacks-in-balochistan-2/>

“psychology of feudalism, institutionalization of patriarchy, and religious distortion arising from growing fundamentalism” and a “general indifference to issues concerning vulnerable groups” such as women and girls.⁴⁷ Some would say that these same psychologies are connected to violent extremism and terrorism. This theory is further bolstered by the documented use of acid by the Pakistani Taliban, a known terrorist organization, against girls who were seeking an education.⁴⁸

Under this analysis, the necessity to end acid violence has never been clearer. The connection between the men who perpetrate these crimes against women and the men who participate in violent extremism and join terror groups is compelling. The urgent need to curb acid violence goes beyond preventing terror for women in the regions where they occur, but has far-reaching global ramifications when looked upon as a marker for violent extremism and harbinger of terrorism. With this framework, working toward gender equality by ending acid crimes could in turn contribute to countering violent extremism and terrorism.

Part IV. International Guiding Principles for the Prevention of Acid Crimes

Acid violence is a form of gender discrimination and violence against women under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁴⁹ Thus, governments such as India, Pakistan and Bangladesh that have ratified the CEDAW have an obligation to exercise due diligence to prevent and adequately address the prevalence of acid violence in their countries.⁵⁰ Furthermore, based on United Nations Resolutions and Plans of Action, addressing acid crimes, given it is one of the most horrific forms of violence against women that exists in the world today, is an essential component in the fight against violent extremism and terrorism.⁵¹

CEDAW

Gender-based violence, which is violence that targets a woman because of her status as a woman, or that impacts women disproportionately, is a form of gender discrimination prohibited

⁴⁷ Ilahi, *supra* note 45.

⁴⁸ Shaan Khan, Pakistani Taliban target female students with acid attack, CNN (Nov. 3, 2012), available at <http://www.cnn.com/2012/11/03/world/asia/pakistan-acid-attack/>

⁴⁹ Convention on the Elimination of All Forms of Discrimination Against Women, adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46 at 193, U.N. Doc. A/34/46 (1979) [hereinafter CEDAW]. *See also* Rebecca Adams, *Violence Against Women and International Law: The Fundamental Right to State Protection from Domestic Violence*, 20 N.Y. Int'l L. Rev. 57 (2007).

⁵⁰ *Id.*

⁵¹ U.N. Plan of Action to Prevent Violent Extremism, *supra* note 1.

by the CEDAW.⁵² Acid crimes are the types of violence against women that reflect and perpetuate gender discrimination and inequality in communities where they exist with impunity.⁵³ Because Bangladesh, India, and Pakistan have all ratified the CEDAW, they must “act with due diligence to prevent violations of rights,” investigate and punish acts of violence, and for provide compensation to victims.⁵⁴

The CEDAW Committee stated that “traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision.”⁵⁵ They went on to say that such practices “may justify gender-based violence as a form of protection or control of women.”⁵⁶ Furthermore, the CEDAW Committee said that “the effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.”⁵⁷

Given that the CEDAW Committee specifically calls out acid attacks as a form of violence prohibited by the CEDAW, Bangladesh, Pakistan and India, and other member countries in which acid crimes occur with impunity are legally required to take action. In line with CEDAW requirements, States must create and enact laws that specifically address violence against women rather than refer to the universal criminal laws that currently exist in those countries. Government policies should also address the underlying causes of such gender-based violence, such as gender inequality and discrimination. These States’ due diligence obligations to prevent acid attacks in particular requires a holistic approach, including regulating the sale and use of acid along with enacting and enforcing criminal laws to adequately punish the perpetrators of these horrific crimes.⁵⁸

United Nations Resolution 1325

Addressing acid violence is also required under Resolution 1325 of the UN Security

⁵² Comm. on the Elimination of Discrimination Against Women (CEDAW Committee), General Recommendation No. 19 – Violence Against Women, ¶ 7, 11th Sess., U.N. Doc. A/47/38 (Jan. 29, 1992).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

Council.⁵⁹ Acknowledging acid crimes and its connection to extremism and terrorism falls under the resolution’s recognition of the “urgent need to mainstream a gender perspective into peacekeeping operations.”⁶⁰ Should a woman’s perspective be included in peacekeeping operations, gender-based violence such as acid crimes would surely be brought to the attention of decision makers, as such crimes often effect the daily life of women in communities where extremism thrives.

Addressing acid crimes also falls in line with the resolution’s call to “take special measures to protect women and girls from gender-based violence,” and a “willingness to ensure that Security Council mission take into account gender considerations and the rights of women.”⁶¹ Acid crimes are clearly a form of gender-based violence, and taking measures to put an end to such crimes would be one manner in which such missions can take into account the rights of women.

United Nations Plan of Action to Prevent Violent Extremism

Furthermore, the UN General Assembly’s Plan of Action to Prevent Violent Extremism makes clear that preventing gender-based crimes such as acid violence could prevent “radicalization, recruitment and mobilization of individuals into terrorist groups.”⁶² The plan emphasizes the prevention of violence against women as gender-based violence is “widespread” in regions where terrorist groups succeed in recruiting members.⁶³ Violent extremism thrives in regions with poor governance, gender inequality and marginalization. Acid crimes are a result of and perpetuate gender inequality, marginalize women, and continue to occur because of poor governance. The Plan also states that Goal 5 of the Sustainable Development Goals, achieving gender equality and empowering all women and girls, is a manner in which to address the drivers of violent extremism.⁶⁴

Finally, the Plan states that women’s empowerment is a critical force for sustainable peace.⁶⁵ It states that it is “no coincidence” that regions with more gender equality are less vulnerable to violent extremism.⁶⁶ Thus, protecting and empowering women should be a

⁵⁹ S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² U.N. Plan of Action to Prevent Violent Extremism, *supra* note 1.

⁶³ *Id.*

⁶⁴ United Nations Millennium Declaration, *supra* note 1.

⁶⁵ U.N. Plan of Action to Prevent Violent Extremism, *supra* note 1

⁶⁶ *Id.*

“central consideration” for counter-terrorism strategies.⁶⁷ As discussed earlier, acid crimes create and perpetuate gender inequality where it goes unchecked, and it would thus follow that curbing acid violence and the culture of impunity in which it occurs could make such regions less vulnerable to violent extremism.

Part V. Recommendations

With respect to gender-based violence and governmental duties to end it, the former United Nations Special Rapporteur on Violence Against Women stated that States must act with due diligence to prevent violence against women, including those committed by private citizens and non-state actors.⁶⁸ According to the Special Rapporteur, such due diligence obligation includes the duty to prevent, investigate, punish, and provide assistance to victims of gender-based violence.⁶⁹

In line with the findings of the Special Rapporteur, in order to end acid violence, governments must address its underlying causes; namely, gender inequality and discrimination, the easy availability and unregulated sales of acid, and the impunity enjoyed by perpetrators of acid attacks. In exercising due diligence to prevent acid crimes, governments should enact criminal laws that specifically address acid violence, effectively regulate the use, sale, and handling of the acids used in these crimes, effectively enforce the laws passed to address acid violence and, finally, provide victim redress, including compensation for healthcare costs.⁷⁰

The duty to enforce laws and punish perpetrators of acid violence is a critical component of the State’s obligation to act with due diligence to protect women and remove the culture of impunity that surrounds gender violence in these regions. This can be achieved by creating specialized units that are trained in and that focus on acid crimes, implementing witness and victim protection programs, and ensuring that law enforcement staff and procedures adjust to and accommodate the specific issues related to acid violence.⁷¹

With respect to regulating the availability of acid, governments should require the

⁶⁷ *Id.*

⁶⁸ O.H.C.H.R., Special Rapporteur on violence against women, its causes and consequences, <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>

⁶⁹ *Id.*

⁷⁰ *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*, G.A. Res. 60/147, Part. II.3.b, U.N. GAOR, 60th Sess., 64th plen. mtg., U.N. Doc. A/RES/60/147 (Dec. 16, 2005) [hereinafter *Basic Principles and Guidelines*]; See also Rangita de Silva de Alwis, *Domestic Violence Lawmaking in Asia: Some Innovative Trends in Feminist Lawmaking*, 29 UCLA Pac. Basin L. J. 176 (2012).

⁷¹ *Id.*

licensing of commercial users of acid, require businesses to have procedures in place to prevent the theft of acid by employees, and regulate the storage and sale of acid, including warning labels that describe the dangerous nature of the contents and criminal sanctions for misuse.⁷² Furthermore, making private corporations that deal in the sale and use of acid responsible for the procedures they use around importation, storage and sales of acid could also prevent acid from getting into the wrong hands.

It is also a duty for governments to address acid crimes by providing redress for victims.⁷³ Not only would this be a matter of States taking responsibility for victims of crime, but it would also signal to society that even if you victimize a woman with acid, such victim's life is not permanently destroyed, nor have you removed her from society. Such redress can take the form of financial compensation and rehabilitation.⁷⁴ Compensation would need to include monetary damages proportional to the gravity of the injuries, including payment for all healthcare costs, which can be substantial.⁷⁵ Rehabilitation would need to include physical and psychological therapy to help a victim recover from the trauma, as well as social and legal services for the victim and her family.⁷⁶

While Bangladesh also has a ways to go before really combatting acid violence, there is some evidence that their Acid Crime Control Act, which regulates the prosecutions of acid crimes, and their Acid Control Act, which regulates the sale and use of acid, has been successful in reducing the number of acid crimes, possibly by 15-20% per year since the enactment of the laws.⁷⁷ In 2013 in India, there was an addition to the penal code that specifically addresses acid crimes and mandates a minimum 10 year imprisonment for someone found guilty of committing such a crime.⁷⁸ However, there were over 300 reported acid attacks in 2014 – a 300% rise from 2013.⁷⁹ While this could also indicate a better reporting system rather than an actual 300%

⁷² Avon Report, *supra* note 3, at 24.

⁷³ The Special Rapporteur on Violence Against Women, its Causes and Consequences, Yakin Ertürk, Report on The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, ¶ 20, delivered to the Economic and Social Council Commission on Human Rights, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006)

⁷⁴ Basic Principles and Guidelines, *supra* note 61.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Hooma Shah, *Brutality By Acid: Utilizing Bangladesh As a Model to Fight Acid Violence in Pakistan*, 26 Wis. Int'l L.J. 1172, 1191 (2009).

⁷⁸ Indian Penal Code, Section 326 A.

⁷⁹ Utkarsh Anand, *309 Acid Attack Cases in '14, 300% Rise in 3 Yrs*, The Indian Express, Apr. 10, 2015, <http://indianexpress.com/article/india/india-others/309-acid-attack-cases-in-14-300-rise-in-3-yrs/>

uptick in attacks, it also shows that the new law does not go far enough.⁸⁰ Pakistan passed the Acid Control and Acid Crime Prevention Act in 2011 to specifically address acid crimes, but since then have seen an increase in acid crimes of over 37% a year, which local advocates believe shows the ineffectiveness of its Acid Crimes law, largely linked to almost non-existent prosecution of the attackers.⁸¹

Using Bangladesh's legal framework as a model, as well as implementing some of the strategies its government used to ensure the law's success, is a good starting point for India and Pakistan, where the number of acid crimes are on the rise. Some of those strategies involve allowing and welcoming NGO's into the country to ensure the law's success.⁸² NGO's can help provide the holistic approach required with acid violence, which has large legal and social implications in the communities where it occurs. NGO's are able to provide governments with feedback based on their observations of the effectiveness of the laws in place, and find solutions to all facets of acid violence, including medical training for physicians to deal with acid injuries, training law enforcement on how to handle reports and gather evidence in the event of such attacks, and provide social services to acid crime victims themselves.

Conclusion

“Missiles may kill terrorists. But good governance kills terrorism.” - UN Secretary General Ban Ki-moon⁸³

Given the above statement, when strategizing around counter-terrorism efforts, legal reforms to end atrocious forms of gender violence like acid crimes must be made part of the discussion. Acid crimes are one of the most horrific crimes perpetrated against women today, leaving thousands of victims as “living corpses”, which some say is a fate worse than death.⁸⁴ Using legal reforms to end acid violence in Bangladesh, Pakistan and India, where such crimes persist and are committed in a culture of impunity for the perpetrators, is critical in the fight for

⁸⁰ *Id.*

⁸¹ Anusree Garg, *Anti-Acid Violence Legislation in Pakistan not Mitigating Growing Occurrence of Acid Attacks on Women*, Human Rights Brief, Apr. 10, 2013, <http://hrbrief.org/2013/04/anti-acid-violence-legislation-in-pakistan-not-mitigating-growing-occurrence-of-acid-attacks-on-women/>

⁸² Shah, *supra* note 66, at 1195.

⁸³ Statement by UN Secretary General Ban Ki-moon, as quoted in *Uprooting Terrorism: Countering Violent Extremism Through Prevention*, <http://www.un.org/wcm/webdav/site/undpa/shared/undpa/pdf/DPA's%20Politically%20Speaking%20on%20Terrorism.pdf>

⁸⁴ Yusufzai, *supra* note 34.

gender equality.⁸⁵ In all three countries, acid attack survivors often face discrimination and marginalization in society, and are targeted as victims in the first place because of a culture that devalues women and their right to agency over their lives.

Because acid violence is a form of discrimination prohibited by international law, governments must act with due diligence to combat it. Through legal reforms that criminalize acid violence both on paper and in practice, the intimidation of women and girls in South Asia could be reduced. Such intimidation keeps them from seeking education, independence, or speaking their minds, making choices, and being present, visible members of society.

Furthermore, given that the United Nations has widely acknowledged the connection between gender inequality and violent extremism, combatting acid violence can aid efforts to prevent violent extremism and aid counter terrorism. By shining a light on acid crimes and ending the culture of impunity where they persist through holistic policy and legal reform, Pakistan, Bangladesh and India will not only be making strides toward promoting gender equality and women's rights, but could also aid counter-terrorism efforts and curb violent extremism, which thrives in environments where gender violence goes unchecked.

⁸⁵ *Pakistani Women's Lives Destroyed*, *supra* note 8.

THE NORTH CAUCASUS: A CASE STUDY ON THE EFFECT OF GENDER INEQUALITY AND GENDER-BASED VIOLENCE ON THE RADICALIZATION OF WOMEN

Tessa Roberts

I. Introduction

With the increasing threat of ISIS and the recent rise of violent extremism, counterterrorism is undeniably a top priority for all countries around the world. In a recent address to the U.N. Security Council, Secretary General Ban Ki Moon stated, “We know that violent extremism flourishes when groups are marginalized, political space shrinks, human rights are abused, and people lack prospect and meaning in their life.”¹ This statement reflects recognition from the international community that counterterrorism methods must extend beyond their traditional focus of intelligence gathering and military action. Along this vein, the U.N. Security Council has unanimously adopted Resolution 2242, which calls for the integration of a gender perspective on counterterrorism measures by member states and the U.N.² The Resolution recognizes that the empowerment of women is a crucial factor in the prevention of terrorism and violent extremism.³

The North Caucasus region of the Russian Federation has struggled with gender equality, gender based violence, and the rise of violent extremism since the collapse of the Soviet Union in 1991. The latest CEDAW committee report on Russia has noted with deep concern that, “the two military operations and the high level of violence in the [Chechnya] over the past 15 years have had a serious impact on traditions and social norms,” and violence against women has become more acute.⁴ Russia is concurrently struggling with a rise in violent extremism. As of September 2015, it is estimated that over 2,400 people from the Russian Federation have joined ISIS – the majority being from the North Caucasus region.⁵ Using the North Caucasus region as

¹ Press Release, Secretary-General, Addressing Security Council Open Debate, Highlights Threat Posed by Foreign Terrorist Fighters Returning Home, to Third Countries, U.N. Press Release SG/SM/17667-SC/12321 (Apr. 14, 2016).

² Press Release, Security Council, Security Council Unanimously Adopts Resolution 2242 to Improve Implementation of Landmark Text on Women, Peace, Security Agenda, U.N. Press Release SC/12076 (Oct. 13, 2015).

³ S.C. Res. 2242, U.N. Doc. S/RES/2242 (Oct. 13, 2015).

⁴ Comm. on the Elimination of Discrimination Against Women, Rep. on its 46th Sess., Jul. 12-30, 2010, ¶24, U.N. Doc. CEDAW/C/USR/CO/7 (Aug. 16, 2010).

⁵ Dina Gusovsky, *Russian Fighters Are Joining ISIS in Record Numbers*, CNBC (Dec. 9, 2015), <http://www.cnbc.com/2015/12/09/russian-fighters-are-joining-isis-in-record-numbers.html>.

a case study, this paper examines the potential effect of gender inequality and gender-based violence on the radicalization of women and makes recommendations for the promotion of gender equality as well as for a counterterrorism policy that incorporates a gendered perspective.

II. A History of Gender Based Violence in the North Caucasus Region and Its Effect on Radicalization of Women

The North Caucasus region has seen an unprecedented number of female participants in terrorist attacks⁶ over the past twenty years. While specific factors behind an individual's decision to participate in violent extremism are multi-faceted and complex, gender inequality and gender based violence are factors generally conducive to radicalization.⁷ An examination of the region's history of sexual violence and oppression of women can provide an explanation of possible motivations behind the violent extremism exhibited by women in region as well as provide helpful insight for the prevention of further radicalization.

During the Chechen Wars, women suffered widespread sexual violence at the hands of Russian soldiers.⁸ Official statistics for the frequency of sexual violence are difficult to produce since most sexual crimes in the area are unreported. However, human rights organizations have collected interviews and surveys that suggest sexual violence occurred on a regular basis. According to one witness interviewed by Human Rights Watch, women and girls went to great lengths to hide from Russian soldiers.⁹ She describes how she and her neighbors dug a pit in their backyard to hide their adolescent daughters.

We put a pipe [for air] in the pit, covered it with earth, and the five girls were staying in that pit. The soldiers used to come by and say, "Where are the young girls, we need three girls for each soldier." So we kept the girls in the pit.¹⁰

Several accounts describe soldiers, sometimes drunk, breaking into homes and raping women at gunpoint.¹¹ Sexual violence was reportedly common during "sweep operations," where Russian soldiers, ostensibly searching for rebel fighters, would search every home in a

⁶ Joshua Keating, *What Motivates Russia's 'Black Widows'?*, SLATE (Dec. 13, 2013), http://www.slate.com/blogs/the_world_/2013/12/30/why_are_so_many_of_russia_s_suicide_bombers_women.html.

⁷ *Good Practices on Women and Countering Violent Extremism*, GLOBAL COUNTERTERRORISM FORUM (Sept. 27, 2015), at 3, www.theGCTF.org

⁸ Valentina Rousseva, *Rape and Sexual Assault in Chechnya*, 3.1 CULTURE, SOCIETY & PRACTICE 64 (2004).

⁹ Press Release, Human Rights Watch, *Rape Allegations Surface in Chechnya* (Jan. 20, 2000) available at <https://www.hrw.org/legacy/press/2000/01/chech0120.htm>.

¹⁰ *Id.*

¹¹ *Id.*

village.¹² During these raids, women were reportedly dragged from their homes, beaten, molested, raped, and sometimes murdered.¹³ Human Rights Watch reported the case of Kheda Kungaeva, an eighteen-year old girl who was taken from her home to a military camp where she was beaten, raped, and eventually strangled to death.¹⁴

Russian checkpoints throughout Chechnya have also been associated with sexual violence. Human Rights Watch reports the story of Alisa Riskhanova who was detained because she did not look like her passport picture. Russian soldiers reportedly told her “you will never have children again”, and proceeded to gang rape her.¹⁵ Similar abuses happened in detention centers, where Amnesty International reported that men, women and children were often raped or sexually abused.¹⁶ Some accounts describe gang rapes of young girls in jail cells.¹⁷

This sexual violence that has occurred for better part of two decades has gone largely unpunished by the Russian government. While the European Court of Human Rights has filed over 150 cases against Russia for human rights abuses during these conflicts, the Russian government has prosecuted only one military official.¹⁸ The lack of prosecution stems partly from the problem that many sexual crimes are never reported. Women are afraid to report a rape for fear of repercussions from her family and law enforcement. In a region that follows traditional, patriarchal values, a woman could be divorced, or worse killed by her husband if he learns of the sexual assault. One Chechen woman explained why a woman would not report a rape:

They would be better off shooting themselves. If anyone laid a hand on them they'd be written off for good here in Chechnya. It's kind of law. A sullied daughter is worse than a dead one to her father. It's a terrible disgrace. She'll never get married and no one will say a kind word to her, even though it's not her own fault she was dishonored.¹⁹

¹² Maura Reynolds, *Abuse Seen in 'Sweeps' of Chechens*, LA TIMES (Jul. 2, 2001), <http://articles.latimes.com/2001/jul/07/news/mn-19542>.

¹³ Press Release, Human Rights Watch, *Rape Allegations Surface in Chechnya* (Jan. 20, 2000) available at <https://www.hrw.org/legacy/press/2000/01/chech0120.htm>.

¹⁴ *Russian Federation: Serious Violations of Women's Human Rights in Chechnya*, HUMAN RIGHTS WATCH (Jan. 2002), https://www.hrw.org/legacy/backgrounder/eca/chechnya_women.htm.

¹⁵ *Id.*

¹⁶ Russian Federation: Briefing to the Committee on the Elimination of Discrimination Against Women, 46th Session, AMNESTY INT'L (Jul. 2010), available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AI_RussianFederation46.pdf.

¹⁷ *Id.*

¹⁸ *Id.* at 6.

¹⁹ Special Rapporteur on Violence Against Women, *Integration of the Human Rights of Women and a Gender Perspective: Violence Against Women*, Econ. & Soc. Council, ¶ 58, U.N. Doc. E/CN.4/2006/61/Add.2 (Jan. 26, 2006).

In this way, women face double-victimization and do not report the crime. Furthermore, in the rare instance a woman does report the crime, law enforcement and the courts typically believe a soldier's word over that of a Chechen woman's.²⁰ Most often there is no investigation of the crime.²¹ Former President-Yeltsin's human rights ombudsman said he doubts, "any serious investigation [of rape] is being undertaken [by the military] . . . I know very well how the Russian military conducts such investigations. I saw it in the first Chechen War and in Dagestan."²²

The prevalence of sexual violence combined with economic devastation and the high death rate of adult men in the region left Chechen women in an isolated and desperate state – conditions fertile for extremist ideologies to take hold. Interestingly, the phenomenon of suicide bombing did not occur in Russia until the second Chechen War, which saw the razing of the capital, forced disappearances, and widespread rape.²³ Chechen women have been involved in 81% of all suicide attacks attributed to Chechen rebels.²⁴ Between 2002 and 2004, 43% of Chechen suicide bombers were women.²⁵ Other terrorist attacks by Chechen women include the 2002 Dubrovka Theater hostage crisis; violence during the two-week period dubbed "the summer of terror"; a Moscow subway bombing; explosion of two Russian airplanes; and a hostage taking at an elementary school.²⁶

A study of female suicide bombers revealed that each of the twenty-seven women studied had experienced "deep personal traumatization, and evidence of post-traumatic stress disorder and dissociative phenomena as a result of direct personal traumatization were present in the entire sample."²⁷ The study's authors conclude: "This level of traumatization was very likely one of the deepest leading motivational factors that drew the Chechen bombers into embracing terrorism ideologies, and ultimately, terrorist acts."²⁸ The results of the study support this conclusion – a majority (73%) of the women only sought a connection to Wahhabist groups

²⁰ Valentina Rousseva, *Rape and Sexual Assault in Chechnya*, 3.1 CULTURE, SOCIETY & PRAXIS 64 (2004).

²¹ Kelly Askin & Martina Vandenberg, *Chechnya: Another Battleground for the Perpetration of Gender Based Crimes*, 3 HUMAN RIGHTS REVIEW (Apr. 2001) 140, 140-142.

²² *Id.*

²³ Anne Speckhard & Khapta Akhmedova, *Black Widows: Chechen Female Suicide Terrorists*, in FEMALE SUICIDE BOMBERS: DYING FOR EQUALITY? 63, 63-80 (2006).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

after the traumatic event and in direct relation to it.²⁹ This data suggests that it was “only when the women endured many traumas and the effects of war obstructed many of life’s options that had been open to them previously, that they moved in dress and ideology into fundamentalist roles that did not even exist prior to the war, while at the same moment taking on the perhaps more emancipated roles of warriors.” The theory that traumatized women may seek extremist causes as a way to empower themselves underscores the importance of gender equality in deterring extremist behavior. If gender equality is strong in the region, women may be less motivated to join religious extremist agendas.

III. The Rise of Radical Islam, Gender Inequality, and Gender Based Violence

Unfortunately, gender equality continues to deteriorate in the North Caucasus region. Following the Chechen Wars, the rising popularity of “traditional” Islam in the North Caucasus region has brought with it a rise in gender-based violence. The 2010 CEDAW Committee was particularly concerned with the “increasing rate of violence against women and killings of women [in Chechnya] . . . as well as harmful traditional practices, such as honour killings and bride-kidnapping.”³⁰ The 2010 report also notes that such cases of violence are rarely documented, prosecuted, or punished.³¹

The rise in gender-based violence is correlated to the deteriorating status of gender equality in the region. In the last decade, governments in the North Caucasus have been promulgating and enforcing gender-specific rules aimed at restoring “traditional” Islamic values.³² Although many of these rules violate the gender equality provision in the federal constitution as well as Articles 2,3,5,7,10, and 11 of the CEDAW,³³ to which Russia is a party, the federal government has yet to intervene.

In 2007, current Chechen President Ramzan Kadyrov launched a “Virtue Campaign,” placing special emphasis on modesty laws for women.³⁴ The Chechen ombudsman for human

²⁹ Id.

³⁰ Comm. on the Elimination of Discrimination Against Women, Rep. on its 46th Sess., Jul. 12-30, 2010, ¶24, U.N. Doc. CEDAW/C/USR/CO/7 (Aug. 16, 2010).

³¹ Id.

³² Tanya Lokshina, *Virtue Campaign on Women in Chechnya Under Ramzan Kadyrov*, HUMAN RIGHTS WATCH (Oct. 29, 2012), <https://www.hrw.org/news/2012/10/29/virtue-campaign-women-chechnya-under-ramzan-kadyrov>.

³³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html>.

³⁴ Tanya Lokshina, *Virtue Campaign on Women in Chechnya Under Ramzan Kadyrov*, HUMAN RIGHTS WATCH (Oct. 29, 2012), <https://www.hrw.org/news/2012/10/29/virtue-campaign-women-chechnya-under-ramzan-kadyrov>.

rights has justified the need for this campaign by explaining, “some women have forgotten how to behave.”³⁵ As part of this campaign, all women in the public sector and all female students are required to wear headscarves and “modest” clothing.³⁶ If women fail to comply with these modesty laws they face attacks from both state and non-state actors. In 2010, in the center of Chechnya’s capital, law enforcement as well as private citizens shot paintballs at the heads of women who not wearing a headscarf.³⁷ At least one woman was hospitalized as a result of the paintball attack.³⁸ In conjunction with the attacks, pamphlets were distributed reading:

Dear Sisters!

We want to remind you that, in accordance with the rules and customs of Islam, every Chechen woman is **OBLIGED TO WEAR A HEADSCARF.**

Are you not disgusted when you hear the indecent “compliments” and proposals that are addressed to you because you have dressed so provocatively and have not covered your head? **THINK ABOUT IT!!!**

Today we have sprayed you with paint, but this is only a WARNING!!! DON’T COMPEL US TO RESORT TO MORE PERSUASIVE MEASURES!!!³⁹

President Kadyrov openly endorsed this attack, announcing on television that he would “give an award” to the men responsible, and that the women deserved to be attacked.⁴⁰ A few months later, during the start of Ramadan, there were reports of men in the streets who pulled on women’s clothing, touching any bare skin and verbally harassing them.⁴¹ This same month, Human Rights Watch reported that law enforcement servicemen were seen dragging a young girl towards a public trashcan, screaming that she was a slut and that she belonged in a garbage dump.⁴² A private citizen managed to drive away the men by screaming.⁴³

Between 2008 and 2012, Human Rights Watch received increasing frequent reports of honor killings.⁴⁴ These killings occur when a woman is murdered because her relatives (usually male) believe she has dishonored the family in some way. In November 2008, seven women

³⁵ Russian Federation: Briefing to the Committee on the Elimination of Discrimination Against Women, 46th Session, AMNESTY INT’L (Jul. 2010), available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AI_RussianFederation46.pdf.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Tanya Lokshina, *Virtue Campaign on Women in Chechnya Under Ramzan Kadyrov*, HUMAN RIGHTS WATCH (Oct. 29, 2012), <https://www.hrw.org/news/2012/10/29/virtue-campaign-women-chechnya-under-ramzan-kadyrov>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

were found murdered on the side of the road throughout different districts in Chechnya.⁴⁵ President Kadyrov commented that this was the tradition in Chechnya when a woman is suspected of “running around.”⁴⁶ He explained, “I’m simply talking about [our] customs. Ask anyone, even the youngest boy, “What are you gonna do if your sister starts running around?” Anyone will tell you, “I’ll kill her!”⁴⁷

Human rights activists have reported that in most cases brought to their attention the women were killed at the mere suggestion that they had engaged in “improper” behavior. Women were reportedly killed after being photographed holding a man’s hand and after receiving texts and phone calls from men.⁴⁸ In one case, a woman’s cousin hired two men to kill her after he saw a photograph in which she was wearing a tight dress.

Although bride kidnapping is officially illegal in Chechnya, women’s rights groups report that the practice continues largely unpunished and that girls as young as 12 are being kidnapped and raped by their “husbands.” Amnesty International has said that “nowadays, in contrast to 10 or 20 years ago, women and their families are often afraid of resisting the kidnapping or reporting it to the police or prosecutor’s office if the man has a close connection with the authorities or is himself a member of the law enforcement bodies.”⁴⁹

While human rights are to be recognized as ends in themselves, it is important to note that Russia’s human rights failings leave the area and the population vulnerable to extremist ideologies. As discussed above, gender inequality, sexual and gender-based violence, marginalization, and lack of opportunities may make women more susceptible to the appeal of terrorism.⁵⁰ The North Caucasus’ discriminatory policies under their “virtue campaign” leave women marginalized and disempowered. Furthermore, the high rate of sexual violence that occurs combined with the lack of resources or support for victims has likely produced a large population of women that are traumatized – a psychological condition that lends itself to the

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Russian Federation: Briefing to the Committee on the Elimination of Discrimination Against Women, 46th Session, AMNESTY INT’L (Jul. 2010), available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AI_RussianFederation46.pdf.

⁵⁰ *Good Practices on Women and Countering Violent Extremism*, GLOBAL COUNTERTERRORISM FORUM (Sept. 27, 2015), at 3, www.theGCTF.org

adoption of extremist ideologies.⁵¹

IV. Recommendations

The strength of gender equality is an integral component in preventing the rise of violent extremism and terrorism.⁵² With the rapidly deteriorating status of women's rights in the North Caucasus and the growing concern of extremism in the region, it is imperative that Russia take immediate action to promote gender equality and protect women from gender based violence. The following are this paper's recommendations to the Russian Federation:

1. Constitutional and Legislative Reform

- **Pass a gender-equality law that conforms to the requirements of Article 2 of CEDAW.**

The Russian federal constitution contains many human rights provisions, however these provisions are either too vague to adequately support gender equality, or have been disregarded in practice. Article 19⁵³ of the Constitution guarantees equality between men and women, however Russian courts have ruled that Article 19 is a “general principle of law that does not create a cause of action under which individuals can protect their right to be free from discrimination.”⁵⁴ If women have no cause of action under Article 19, then as a gender equality provision it is essentially useless. In its latest report, the CEDAW Committee called on the State to develop a gender equality law that satisfies the State's obligation under Article 2 of CEDAW.⁵⁵ The Committee recommended that the law address de jure equality of men and women, the use of temporary special measures to overcome effects of structural and historical discrimination and accelerate the achievement of de facto equality of men and women; the provision of a basis for the establishment of national and decentralized institutional mechanism for gender equality within government structures; a mandate of government agencies at all levels to apply gender mainstreaming to all their policy areas and processes; and a mandate for the adoption of comprehensive periodic national action plans

⁵¹ Anne Speckhard & Khapta Akhmedova, *Black Widows: Chechen Female Suicide Terrorists*, in FEMALE SUICIDE BOMBERS: DYING FOR EQUALITY? 63, 63-80 (2006).

⁵² Press Release, Security Council, Security Council Unanimously Adopts Resolution 2242 to Improve Implementation of Landmark Text on Women, Peace, Security Agenda, U.N. Press Release SC/12076 (Oct. 13, 2015).

⁵³ The Constitution of the Russian Federation, *available at* http://www.constituteproject.org/constitution/Russia_2014.

⁵⁴ *CEDAW Assessment Tool Report for The Russian Federation*, AMERICAN BAR ASSOCIATION (Feb. 2006), <http://apps.americanbar.org/rol/publications/russia-cedaw-eng.pdf>.

⁵⁵ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html>.

for gender equality.⁵⁶

- **Pass specific legislation that defines discrimination and prohibits gender-based discrimination in education and employment.** Discrimination is not defined in Russia's constitution, or in any other legislation. This is necessary for its prevention. Furthermore, Russia lacks legislation prohibiting gender-based discrimination in education and employment. Women earn just 64% of the average male income and are excluded from hundreds of lucrative jobs that are considered to be "unsafe."⁵⁷ In addition to disadvantaging women economically, the exclusion of women from these jobs reinforces harmful gender stereotypes that a woman's job is to be the caretaker and must be protected by her husband. Restrictions on these jobs must be eliminated and special measures should be implemented to encourage women to apply for open positions.
- **Pass civil and criminal domestic violence laws.** Russia lacks civil and criminal domestic violence laws. Currently, domestic violence incidents are addressed under general criminal provisions.⁵⁸ A specific domestic violence law is needed to ensure that perpetrators are adequately punished. The inclusion of a domestic violence criminal law would be an announcement that the Russian government takes domestic violence seriously, helping to decrease the social stigma around the crime. Civil domestic violence laws are also needed that support to domestic violence victims by imposing restraining orders, emergency protection orders, and other measures to remove the abuser from the home or provide shelter for the abused.
- **Pass legislation specifically addressing bride kidnapping.** Russia needs specific laws making illegal the practice of bride kidnapping. As of now, bride kidnapping is technically illegal but is addressed under Article 126 of the Russian criminal code, which deals with abduction.⁵⁹ However, this statute is useless when it is combined with a note to Article 126, which exonerates a man from criminal liability if he voluntarily releases his victim, and Article 134, which exonerates a man for rape statutory rape of a girl under 16 if he marries

⁵⁶ Comm. on the Elimination of Discrimination Against Women, Rep. on its 46th Sess., Jul. 12-30, 2010, ¶13, U.N. Doc. CEDAW/C/USR/CO/7 (Aug. 16, 2010).

⁵⁷ Comm. on the Elimination of Discrimination Against Women, Rep. on its 46th Sess., Jul. 12-30, 2010, ¶36, U.N. Doc. CEDAW/C/USR/CO/7 (Aug. 16, 2010).

⁵⁸ Comm. on the Elimination of Discrimination Against Women, Rep. on its 46th Sess., Jul. 12-30, 2010, U.N. Doc. CEDAW/C/USR/CO/7 (Aug. 16, 2010).

⁵⁹ Id.

the victim or is less than four years older than her.⁶⁰ This provision encourages forced marriage as a way for the perpetrator of rape to escape criminal liability. This legislation must be repealed if young women are to be protected against rape and abduction. Legislation must be passed that defines the practice of bride kidnapping as a specific offense carrying a serious criminal penalty. Furthermore, to protect victims of bride kidnapping, civil legislation is needed to increase social services and provide access to legal services. These services need to include relocation services for women who face violence as retaliation or whose families will not accept them back into the home after they have been kidnapped.

- **Pass legislation specifically addressing honor killings.** Russia needs to pass specific laws making illegal the practice of honor killing. As of now, honor killings are prosecuted under the general criminal statute for murder.⁶¹ As with bride-kidnapping, a distinct criminal offense for honor killing is necessary to acknowledge the seriousness of the crime and to demonstrate Russia's commitment to ending sexual violence against women.
- **Pass special measures to fund medical treatment for victims of sexual violence, particularly psychiatric care.**
- **Pass special measures for to include more women in positions of power and influence.** The CEDAW Committee's most recent report noted that the number of women in federal legislative bodies is insignificant and that women only constitute a small percentage of high-potential administrative personnel.⁶² To remedy this problem, Russia should pass a temporary special measure instituting a quota system for its legislative and administrative positions. This temporary measure would help to eliminate barriers to these political positions caused by the persistent gender stereotypes that currently exist in the Russian Federation.
- **Institute a national mechanism to ensure gender equality nation wide.** The latest CEDAW report emphasizes that a specialized body with the authority and resources to function as a national gender equality mechanism is necessary to ensure all government agencies are making gender equality a priority.⁶³

2. Hold Both State Actors and Non-State Actors Accountable for Violations of Anti-

⁶⁰ Id.

⁶¹ Id.

⁶² *Id.*, at ¶ 30.

⁶³ Comm. on the Elimination of Discrimination Against Women, Rep. on its 46th Sess., Jul. 12-30, 2010, U.N. Doc. CEDAW/C/USR/CO/7 (Aug. 16, 2010).

Discrimination Laws and for Crimes Against Women.

Constitutional and legislative reform will not be effective if they are not being enforced. Currently, particularly in the North Caucasus, unwillingness exists among law enforcement to arrest and prosecute alleged perpetrators of sexual violence. This must change if Russia is to be successful at creating gender equality.

- **Create a national sexual violence task force that partners with NGO's to conduct an in-depth study of sexual violence in the North Caucasus.** While anecdotal evidence suggests that the rate of sexual violence is increasing, statistical and geographical data is necessary to determine which areas are most prone to sexual violence and therefore which areas need the most resources.
- **Once statistical data on gender-based crimes is available, impose annual goals for the reduction in crime rates.** Amend federal funding legislation to make the receipt of federal funds contingent upon a republic's success in reducing the rate of gender-based crimes.
- **Provide federal funding for the training of law enforcement officials in best practices for handling crimes of sexual violence.**
- **Create an anonymous hotline that victims or witnesses of sexual violence can call to report these crimes and to report law enforcement misconduct, to be monitored by both the national sexual violence task force and NGO's.** While this hotline could not be used to prosecute a crime, it would be helpful to raise federal awareness of local law enforcement's treatment of sexual violence. Require that any allegation of law enforcement misconduct be investigated by the national sexual violence taskforce.
- **Create a civilian task force to review sexual violence related complaints against military personnel.**
- **Increase the number of women in law enforcement and the military by providing federal funding to precincts and military branches that correlates to the number of women they hire.**
- **Include a women's rights observer in any counter-terrorism mission conducted in the North Caucasus.** This observer should report to a civilian body with authority to discipline military personnel.

3. Provide Support for NGO's Working in Russia.

The 2010 CEDAW report noted concern for reports of harassment, violent attacks and murders of female journalists and human rights defenders in the State party – particularly those working in the North Caucasus. The report recommended that Russia take “immediate and effective steps to ensure protection of journalists and human rights defenders monitoring and reporting violations of women’s rights from intimidation and from any unfavourable circumstances they might suffer as a result of their professional activities.”⁶⁴ These steps should include:

- **Provide federal funding for a special protective detail to accompany journalists and human rights defenders if state or non-state actors have threatened them.**
 - **Prioritize the investigation and prosecution of individuals accused of intimidating, harassing, or physically assaulting human rights workers and journalists.**
- 4. Launch a publicity initiative to spread awareness of protections afforded to women under the Russian constitution and CEDAW.*

⁶⁴ Comm. on the Elimination of Discrimination Against Women, Rep. on its 46th Sess., Jul. 12-30, 2010, U.N. Doc. CEDAW/C/USR/CO/7 (Aug. 16, 2010).

EMPOWERING WOMEN THROUGH INFORMAL JUSTICE: BRINGING STABILITY TO COMMUNITIES THROUGH FEMALE ENGAGEMENT WITH INFORMAL JUSTICE SYSTEMS - LESSONS FROM PAPUA NEW GUINEA AND BANGLADESH

Sarah Kuper

“When a society is governed by the rule of law, with an accessible and just legal system, women can thrive, contribute to the system and improve it for future generations”
Ban Ki Moon¹

In recent years, it has been recognized that “hard” counterterrorism measures alone cannot address terrorism.² As a consequence, policymakers have fostered an approach that focuses on achieving change from the bottom-up, rather than the traditional security-centric response. The focus of counter-terrorism efforts has begun to turn to those communities and actors most directly affected by, or engaged with, the causes of extremism. At the same time, the United Nations has also recognized the importance of working at the intersection of gender and counterterrorism. Within the United Nations, the roles of women in peace and conflict resolution have been underscored through numerous treaties and mechanisms. Security Council Resolution 1325 emphasizes:³

the important role of women and resolution of conflicts and in peace-building and [stresses] the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.

Similarly, the Security Council expressed, in Resolution 2122, its goal to “increase its attention to women, peace and security issues in all relevant thematic areas.”⁴ As is the case of their impact on peace and stability, women can play a critical role in counter-terrorism. Women’s leadership and participation in communities enhances those communities’ resistance to violent extremism, such that: “[r]esilient communities cannot be built and sustained without the active participation of women.”⁵ As such, women have a pivotal role to play in influencing at-risk members of a community. However, in order to be able to do so women must be

¹ UN Women, 2011-12 Progress of the World’s Women: In Pursuit of Justice (2011).

² Naureen Chowdry Fink and Rafia Barakat, Center on Global Counterterrorism Cooperation – Strengthening Community Resilience against Violence and Extremism, November 2013; Further in 2006 the United Nations Global Counter Terrorism Strategy urged member states to adopt approaches aimed at reducing the spread of terrorism.

³ Res. 1325, U.N. Security Council, Oct. 31, 2000.

⁴ Res. 2122, U.N. Security Council, Oct. 18, 2013.

⁵ Center for Human Rights and Global at NYU, Women and Preventing Violent Extremism: The U.S. and U.K. Experiences (2013).

empowered to speak up and to obtain justice for themselves. As long as women remain marginalized, their ability to speak up is stifled. Empowering women, in culturally and country-specific ways, to gain access to justice in order to be able to secure gender equality enables them to be valuable players in the counter-violent extremism paradigm.⁶

Legal empowerment has come to be favored as one of the key approaches to improving access to justice for disadvantaged groups, including women.⁷ This Paper examines informal justice systems as a tool for empowering women and creating gender equality, thereby increasing stability and the influential role that women can play in their communities. The Paper discusses how encouraging female engagement with informal justice systems, enables a greater respect of and protection for women's rights, which in turn increases the involvement of women in community decision-making and the ability for their voices to speak out against radicalization. It highlights the crucial role that legal empowerment strategies can play in changing and challenging oppressive gender relations that are justified under the name of culture. Evidence suggests that legal empowerment approaches to enhance women's access to justice may work well in informal legal settings.⁸ Where women are provided with a forum to discuss and re-interpret cultural or legal rules, the system may be open to positive transformation, particularly when it is both men and women who are advocating for reinterpretation of such rules. Further, when women are informed of their rights and encouraged to discuss or challenge informal laws and practices, they can put pressure on customary justice systems and achieve better protection for basic rights. In turn, this can reduce power imbalance.⁹ Interventions aiming to ensure women's access to justice forums therefore can play a key role in changing norms, rules and behaviors in rural community life.

⁶ The CEDAW provides for equality in civil, political, economic, social and cultural rights, recognizing that the utility of civil and political rights is reduced for women if account is not taken of the economic, social and cultural environment in which they operate; KRISTA LONDON COUTURE, FOREIGN POLICY AT BROOKINGS, A GENDERED APPROACH TO COUNTERING VIOLENT EXTREMISM (2014) available at <http://www.brookings.edu/~media/research/files/papers/2014/07/30-gender-conflict-prevention-counter-violent-extremism-couture/women-cve-formatted-72914-couture-final2.pdf>.

⁷ While legal empowerment has been a strategy of NGOs for decades, it has received increased attention and has been embraced by the UN Secretary General in the report 'Legal Empowerment of the poor and the eradication of poverty,' in 2009 .

⁸ A study by the International Development Law Organization indicated that legal empowerment strategies can slowly pay long term dividends, by allowing women to claim power from those who rule in their name, rather than leaving reforms to the whims of the state and community-decision makers, whose interests often lie in preserving the status quo. The study's authors stated that "[t]he key message of the study is that by empowering women to claim their rights, women are better equipped to bring about change in their community.

⁹ International Development Law Organisation, Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment, 2013.

Women's empowerment through the enhancement of gender equality needs to be seen as an important aspect of counter-terrorism policy because it provides traditionally marginalized women with the agency to create positive change within their communities. Violence and extremism pose significant threats to women's rights. These threats are exacerbated where women are unable to live free from violence, or do not receive access to economic and political opportunities. Crucial to the recognition of all of these rights is the ability to gain access to justice. Given that the majority of women in regions with high gender inequality participate in the justice system through informal systems, transforming those systems can be a tool to empower those women.¹⁰ This paper analyses recent initiatives in Papua New Guinea and Bangladesh which have endeavored to create greater access to justice for women through informal justice mechanisms in order to achieve gender equality, and discusses what lessons the international community can use to enhance counter-terrorism measures.

Informal Justice Systems

In many countries, informal justice systems form a key part of women's and communities' experience of justice.¹¹ Often described as 'traditional' or 'customary', informal justice systems are diverse and may differ sharply in normative rules, processes and genesis.¹² Studies show that informal justice mechanisms are the predominant legal recourse for the majority of citizens in post-conflict countries.¹³ Evidence also indicates that globally, informal justice systems are becoming more entrenched and complex.¹⁴ For most women in post-conflict regions these are often the only accessible sites of justice, both in terms of geographic location and in relation to the language and manner in which court proceedings are conducted.¹⁵ Furthermore, studies have shown that many individuals and communities have a preference to

¹⁰ Informal justice institutions comprise a wide range of forums with varying degrees of formality and relationship to the State. They include, at one end of the continuum, community-based justice structures with no relationship to the State. At the formalized end of the continuum are quasi-State bodies that are mandated to apply customary or traditional justice norms. According to the United Kingdom's Department for International Development (DFID), "[i]n many developing countries, traditional or customary legal systems account for 80% of total cases." DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, DFID POLICY STATEMENT ON SAFETY, SECURITY AND ACCESSIBLE Justice 7, 2000 (available at <http://www.dfid.gov.uk/Pubs/files/policy-safety.pdf>.)

¹¹ Wojkowska, Ewa 2006: *How Informal Justice Systems can contribute*, Oslo: United Nations Development Programme, Oslo Governance Centre.

¹² International Development Law Organisation, *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment*, 2013pg 14

¹³ See *supra* note 10.

¹⁴ See BZ Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global* (2008) 30(1) Sydney Law Review 374, 399.

¹⁵ Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325 (2015).

bring matters before informal justice systems even when formal systems are available, due to economic concerns, familiarity, trust, and the perception that informal justice systems better reflect local values.¹⁶ Because of this widespread influence, informal justice systems have the ability to provide an avenue for the delivery of justice and the protection of women's rights, particularly where they enjoy community legitimacy and support where formal justice systems do not.

Informal justice systems frequently deal with issues that have a direct impact on the interests of women and children, such as issues of custody, dissolution of marriage, inheritance and questions of real and personal property. All of these issues are pertinent to the stability of communities. Traditional justice processes are, however, frequently gender-biased as a result of perceived transgression of norms that relate to social conduct, including deeply held notions regarding gender and social norms and supernatural beliefs.¹⁷ Consequently, the prevailing cultural or traditional norms may serve to reinforce inequalities.¹⁸ Despite these realities, it is important that states and international organizations recognize the syncretic and adaptable approach which customary law and informal justice systems offer, in order to assist justice systems to change in ways that reflect changing values in society.¹⁹ 'Tradition' and 'custom' can evolve to meet new challenges and needs.²⁰ In other words, culture should not just be viewed as a violator of human rights, but also a protector of them. Strategies should focus on ensuring informal justice systems are pushed in this direction. As has been recognized by the UN "[a]ctive and constructive engagement with these institutions may in fact transform them into gender-sensitive and rights-respecting bodies, that woman view as accessible, relevant and participatory avenues for seeking access to justice."²¹

Informal justice mechanisms also can play an important role in transitional justice. In many countries emerging from conflict, existing informal justice mechanisms represent the only form of justice available for women and can therefore be a valuable tool in the aftermath of conflict.²² However, given that the processes and decisions of these mechanisms may

¹⁶ Danish Institute for Human Rights (2012) *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement*. UNDP, UNICEF and UN Women, 8.

¹⁷ *Id.* At 100.

¹⁸ UN Women, *A window of Opportunity: Making Transitional Justice Work for Women*, October 2012.

¹⁹ Danish Institute for Human Rights, *supra* note 16, 99.

²⁰ UN Women, *supra* note 18.

²¹ Danish Institute for Human Rights, *supra* note 16 at 99.

²² Global study, *supra* note 15.

discriminate against women, it is critical that their role in facilitating access to justice for women is carefully considered. Transitional justice mechanisms, given their important role in laying the foundation for gender equality, represent a unique opportunity for State parties to lay the groundwork for the achievement of substantive gender equality by addressing pre-existing and entrenched sex and gender-based discrimination, which have impeded women's enjoyment of their rights under the CEDAW, and to ensure that women can play meaningful roles in the community.

International Human Rights and Informal Justice Systems

Providing accessible justice is a state obligation under international human rights standards, but this obligation does not require that all justice be provided through formal justice systems. The obligation to respect, protect and fulfill human rights, including through provision of justice and legal remedies, extends equally to informal systems.²³ The Human Rights Council has noted that states should ensure that “traditional, historical, religious or cultural attitudes are not used to justify violations of women's rights to equality before the law and to equal employment of all Covenant rights.”²⁴ States ratifying the CEDAW also assume a positive obligation to promote social change wherever discrimination is found. Whilst some countries have implemented the concept of non-discrimination against women into their constitutions,²⁵ practical application of this concept can be extremely difficult where the law and the state have limited reach. The extent to which such legislation has helped to improve the situation of women in many of these countries remains in doubt.²⁶ The domestication of the CEDAW and other international human rights instruments into the grass roots application of the law, particularly in informal justice systems, is therefore critical.

Importance of Female Participation in Informal Justice Systems

Patterns of discrimination against women are often a reflection of low levels of

²³ Even if there is no clear state recognition of IJS or other delegation of state functions to informal justice systems such as traditional chiefs the state remains obliged under Article 2 of CEDAW to extend protection.

²⁴ Human Rights Committee, General Comment 28, Equality of Rights between men and women (article 3), U.N. Doc CCPR/C/21/Rev.1/Add.10(2000).

²⁵ For example, in the Republic of South Africa the constitution permits certain powers to be held by traditional leaders, but these must be exercised in line with constitutional principles, including gender equality; In Rwanda, government policy stipulates that one third of the Gacaca tribunals must be female.

²⁶ An-Na-im has warned of putting too much emphasis on law when it comes to human rights, especially in contexts where states are weak, see ‘The Legal Protection of Human Rights in Africa: How to Do More with Less.’ An interesting analysis of the obstacles to the realization of women's inheritance rights in Malawi is Chiwez, A.L, 2005, 15: 1 83-89; Danish Institute for Human Rights, *supra* note 16 at 105.

participation of women as adjudicators in informal justice systems. Given the reality of women's vulnerability to gender-based violence and lack of economic freedom, issues of social pressure and access to justice are very significant. The participation of women as adjudicators or justice officials is crucial to ensuring that women can bring sensitive matters to the attention of justice providers. The participation of women as judges or mediators can be a major factor in assisting women to overcome their reluctance to present stories of rape, sexual violence or sexual harassment. Studies have confirmed that measures to encourage gender equality in the selection of adjudicators are critical and will strongly influence women's preferences and access to justice.²⁷

Provisions of the CEDAW and regional declarations and protocols obligate states to ensure representation of women in bodies exercising public authority.²⁸ The numerical presence of women in dispute resolution forums can be ensured relatively simply through changes in procedural rules in formal or quasi-formal justice institutions,²⁹ and affirmative action measures, as have been done with the Village Courts in Bangladesh and Papua New Guinea (amongst other countries), where quotas for female representation have been set.³⁰

Case studies

The cases studies of Bangladesh and Papua New Guinea, discussed below represent innovative legal empowerment approaches undertaken at the local level to improve women's access to justice through informal justice systems in countries at risk of radicalization. South Asia and Melanesia have experienced significant challenges of violent extremism.³¹ Islamist groups in Bangladesh have fostered violence and extremism,³² and concerns have been raised in

²⁷ Danish Institute for Human Rights, *supra* note 16 at 105.

²⁸ CEDAW article 9.2.

²⁹ OVERSEAS DEVELOPMENT INSTITUTE, WOMEN AND POWER – MEDIATING COMMUNITY JUSTICE IN RURAL BANGLADESH, February 2016, 27. For example In some countries, the state has exercised some leverage over the selection of traditional leaders. In South Africa, legislation requires that 40 percent of the membership of traditional councils must be democratically elected and 33.3 per cent be female. It is possible, at least in theory, to introduce measures of this kind in informal justice systems. Some countries operate local justice systems on the basis of local democratic elections. Even where the result appears to be mere numerical presence, women in these positions are still challenging the status quo.

³⁰ These are discussed in greater detail below.

³¹ WORLD BANK, WORD DEVELOPMENT REPORT (2011) available at http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf.

³² GEOFFREY MACDONALD, UNITED STATES INSTITUTE OF PEACE, PREVENTING VIOLENT EXTREMISM THROUGH INCLUSIVE POLITICS IN BANGLADESH (2016) available at <http://www.usip.org/publications/2016/01/14/preventing-violent-extremism-through-inclusive-politics-in-bangladesh>.

Papua New Guinea about vulnerability to terrorism.³³ In addition, both regions face a host of women's rights and development challenges, including poverty, inequality, gender-based violence, and political instability.³⁴ These conditions combined with high incidence of violence can create an enabling environment for radicalization. Nevertheless, as the case studies of Bangladesh and Papua New Guinea show, institutional and legal change with assistance from NGOs, despite proceeding at an incremental rate, is helping to create opportunities for women to achieve justice, gain agency, and in turn create more stable communities. The pathways by which women can participate in community justice and the extent to which they can exercise influence over proceedings has been seen as crucial to improving gender equality in these examples. The ability to gain access to informal justice mechanisms has also resulted in increased involvement in decision-making at a community level and the ability to encourage reinterpretation of gender discrimination in culturally appropriate ways. Specific initiatives from both countries are discussed below.

Bangladesh

Bangladesh has a population of 162 million people, of which approximately 75 percent live in rural areas.³⁵ It is a country previously known for its strongly secular and syncretic culture that over time has emerged as a breeding ground for violent extremism.³⁶ Bangladesh has identified poverty as one of its main sources of radicalization to violence and terrorism, declaring that a lack of economic opportunity has the potential to provide a ripe breeding ground for recruitment into madrassas and possibly violent extremist activity.³⁷ Research has shown that poverty is further amplified when women are marginalized and disempowered.³⁸ Experts and government officials have consequently identified female empowerment as a measurement of effective countering violent extremism programming in Bangladesh. According to the

³³ Radio New Zealand, Concern about terrorism vulnerability in New Guinea (25 January 2016) <http://www.radionz.co.nz/international/programmes/datelinepacific/audio/201786697/concern-about-terrorism-vulnerability-in-new-guinea>.

³⁴ Human Rights Watch, *World Report 2015: Papua New Guinea* (March 1, 2016) <https://www.hrw.org/world-report/2015/country-chapters/papua-new-guinea>; International Labour Organisation, *A quiet revolution: Women in Bangladesh*, 29 January 2014 http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_234670/lang--en/index.htm

³⁵ UNITED NATIONS, *WORLD URBANIZATION PROSPECTS*, (2014). Available at <http://esa.un.org/unpd/wup/Publications/Files/WUP2014-Highlights.pdf>

³⁶ MacDonald, *supra* note 32.

³⁷ Couture, *supra* note 6.

³⁸ International Center for Research on Women and Acumen, *Women and Social Enterprises: How Gender Integration Can Boost Entrepreneurial Solutions to Poverty* (2015) available at <http://www.icrw.org/sites/default/files/publications/Acumen%20Report.pdf>.

Bangladeshi Bureau of Statistics, “women constitute half of the population [in Bangladesh], therefore without the participation of women in all spheres of life, the comprehensive sustainable social and economic development could not be achieved.”³⁹ By aligning with and working towards the UN Millennium Development Goals, Bangladesh has prioritized improving quality of life for women in the hope that such action will contribute to increased security and result in the reduction of terrorism incidents and rate of radicalization.⁴⁰

Article 28 (2) of the constitution provides that women shall have equal rights with men in all spheres of the state and of public life. This however has been considered “at best an aspiration rather than a right that can be claimed or enforced in practice in Bangladesh at present.”⁴¹ Historically, amending the law has been insufficient to bring cultural change as regards gender equality in Bangladesh. Legislation prohibiting dowry for example,⁴² has been largely ineffective, because it militates against the ‘powerful patriarchal system.’⁴³ Focusing on issues such as patrilineal inheritance systems, dowry, child marriage and female seclusion requires challenging deeply held societal values and threatening existing economic and political structures.⁴⁴ Enhancing female involvement at the community justice level can begin to open up these societal norms to new perceptions.

Studies have shown that in Bangladesh the formal justice system is extremely foreign to many people’s lives – consequently the majority of people both desire and choose to resolve their disputes through informal justice processes as opposed to approaching the police or district courts.⁴⁵ Bangladesh features widespread use of a community-based, non-state dispute resolution technique, Shalish, in three broad forms: as traditionally administered by village leaders and other influential persons, including religious figures; as modified through national legislation and accordingly administered by a local government body, the Union Parishad,⁴⁶ and as modified

³⁹ ASSIGNMENT POINT, WOMEN ADMINISTRATION IN BANGLADESH (2016) available at <http://www.assignmentpoint.com/arts/modern-civilization/women-administration-bangladesh.html>.

⁴⁰ Danish Institute for Human Rights, *supra* note 16 at 21.

⁴¹ *Id.*

⁴² Dowry Prohibition Act 1980.

⁴³ Huda S, (2006) ‘Dowry In Bangladesh: Compromising Women’s Rights.’ *South Asia Research* 26(3): 249-268.

⁴⁴ Overseas Development Institute, *supra* note 29 at 23.

⁴⁵ Danish Institute for Human Rights, *supra* note 16 at 203.

⁴⁶ Despite its official status, the government form of shalish is still examined in this paper because of its non-state origins.

and overseen by NGOs in many parts of the country.⁴⁷ In rural Bangladesh, women have historically been excluded from participating in traditional justice, rarely even attending their own hearings, with women taking little to no part in traditional practices of local justice (shalish).⁴⁸ The provision of justice in rural Bangladesh has therefore largely reflected patriarchal divisions of political, social and economic roles.

Decisions of shalish can reflect conservative interpretations of Islamic law, which often works to ‘sanctify male dominance’.⁴⁹ While Islamic law is not necessarily rigid, it is clear there is often space between the rights guaranteed in the Bangladeshi Constitution and subsequent laws and the practices of community justice. Religious leaders play a major role in preserving or shifting social norms in Bangladeshi village life. Religious edicts (fatwas), for example, continue to be enforced by such leaders in many areas, despite laws to the contrary.⁵⁰ As such, informal justice systems are an important avenue to work alongside these leaders.

Female participation in Informal Justice Systems in Bangladesh

In recent years the state, non-governmental organizations and women leaders have been working towards changing this situation for the better. NGOs have drawn on traditional ideas to develop their own community dispute forums, which create space for women’s voices. Over the years, the government of Bangladesh has enacted a number of progressive gender laws and policies after long-standing advocacy by women’s organizations.⁵¹ A woman’s capacity to participate in politics is a constitutionally entrenched and fundamental right in Bangladesh, repeatedly affirmed in several pieces of legislation, the most recent being the Local Government Act, 2009.⁵² In 1997, reforms of local government included quotas for women’s participation via direct elections, embedding their numerical (if not substantive) participation in the Union Parishad and thereby community politics. A 2013 amendment to the Village Court Act, mandated that at least one woman be present during all cases involving women and minors. Procedural rules within the village courts mean these are often drawn from these same elected

⁴⁷ Stephen Golub, Non-state Justice Systems in Bangladesh and the Philippines: Paper prepared for the United Kingdom Department for International Development, Boalt Hall School of Law. University of California at Berkeley, January 2003.

⁴⁸ Overseas Development Institute, *supra* note 29 at 10.

⁴⁹ P.K. Panday, *Women’s Political Participation in Bangladesh: Institutional Reforms, Actors and Outcomes*. (2013 New Delhi: Springer).

⁵⁰ Overseas Development Institute, *supra* note 29 at 24.

⁵¹ Overseas Development Institute, *supra* note 29 at 18.

⁵² Afroza Begum, *Women’s Participation in Union Parishads: A Quest for a Compassionate Legal Approach in Bangladesh from an International Perspective*, September 2012.

female politicians, deepening their community participation.⁵³

In addition the quota required for Union Parishad members has created a group of female community leaders who have a level of authority by virtue of their office that women have not had previously. The practice of inviting Union Parishad members to participate in village shalish has meant that some village shalish have now for the first time started including female panelists, at least in family matters or matters involving females. Research found that as this practice spreads, so does the “expectation amongst female members of the community that female participation should be the norm.”⁵⁴ It has been said that the presence of female shalishkars “allows women to voice their concerns and claims more confidently and directly than they would be able to otherwise.”⁵⁵ Empowering women through access to these informal justice systems, increases their personal capabilities to engage in public life, as opportunities emerge from regularly engaging with other women in similar circumstances. This gives them greater power and impetus to speak out on social issues.⁵⁶

A recent study by the Overseas Development Institute in Bangladesh has found that “while many barriers remain to women accessing and having influence in justice forums, their growing numerical presence in this sphere is an important step in the right direction.”⁵⁷ The changing nature of traditional shalish has been recognized as largely due to the efforts of NGOs since very few resources have been allocated by the government to justice service delivery below the District Court level.⁵⁸

Papua New Guinea

Papua New Guinea has recently emerged from a long-lasting conflict. It remains, however, a territory at continued risk of conflict and extremism.⁵⁹ Strategies that seek to encourage stability in this region should therefore be prioritized. Throughout Papua New Guinea and in the autonomous region of Bougainville, community-based justice, in varying forms,

⁵³ Overseas Development Institute, *supra* note 29 at 8.

⁵⁴ Danish Institute for Human Rights, *supra* note 16 at 214-215.

⁵⁵ Overseas Development Institute, *supra* note 29 at 17.

⁵⁶ Overseas Development Institute, *supra* note 29 at 24.

⁵⁷ Overseas Development Institute, *supra* note 29 at 10.

⁵⁸ Danish Institute for Human Rights, *supra* note 16 at 208.

⁵⁹ Recently concern has been raised on both sides of the land border between Indonesia and Papua New Guinea about the region’s vulnerability to terrorism. The porous and remote 760km border is seen as a potential access point for terrorists to enter Oceania from Asia. Church leaders are also concerned about religious extremism which exists in small pockets of West Papua.

continues to be the means by which the large majority of disputes are addressed and resolved.⁶⁰ In local communities, disputes are mediated by application of traditional customary norms to the facts of the case.⁶¹ In Papua New Guinea custom is not fixed, but changes over time. Custom is rarely if ever written down, but is passed on in the community from one generation to the next. Papua New Guinea is a remarkably diverse country with over 600 distinct cultural and language groups, and consequently huge diversity in the variety of informal justice systems across the country.⁶²

Papua New Guinea has ratified many international human rights treaties, including the ICCPR, the ICESCR, the CEDAW and the UNCROC. The Papua New Guinea Constitution contains an extensive Bill of Rights, and a guarantee in Article 57 that a person whose right or freedoms have been or are at risk of being infringed, make seek legal redress. In addition, the nation's Constitution also provides that customary practices may not be applied if they result in injustice. Conversely, there have been attempts to integrate customary law into the formal justice system.⁶³ The remoteness of many communities and poor rural infrastructure has, however, hindered effective implementation of these national and international agreements which are often considered to have little practical effect. Nevertheless, there have been numerous initiatives in Papua New Guinea to enhance justice at the local level through alternative community-based justice and mediation mechanisms and to implement gender equality training into these mechanisms, as discussed below.

Community training to enhance access to gender equality through informal justice

In Papua New Guinea, NGOs have been working with communities to encourage greater involvement of women in informal justice systems, to ensure that their rights are projected and that they have a voice in communities. By way of example, in 2007 a program called the Women and Children's Access to Community Justice (Child Protection) Program, initiated by the Village Court Secretariat, began a pilot phase with funding and technical expertise provided

⁶⁰ International Development Law Organisation, *supra* note 9.

⁶¹ *Id.*

⁶² *Id.*

⁶³ An interesting example of integration of customary law into the formal justice system is the Criminal Law (Compensation) Act 1991 of Papua New Guinea, which allows survivors of crimes, including sexual violence and domestic violence, to claim compensation from the perpetrator. Claiming compensation for wrongdoing is a common feature of customary law in Papua New Guinea, and the enactment of legislation on compensation was intended to reduce the occurrence of "payback" crimes.

by the United Nations Children’s Fund (UNICEF).⁶⁴ Training tailored to community and women leaders, village court officials and youth representatives addressed human rights, the right to non-discrimination, the unacceptability of violence against women, CEDAW commitments and other constitutionally guaranteed rights.⁶⁵ Research found this to be a positive example where informal justice providers became familiar with international and constitutional child rights standards, and were placed in a network where they could seek external assistance or refer particular cases.⁶⁶ A UNICEF spokesperson reported that an external evaluation of the program conducted in 2010 indicated that progress for women in accessing justice through the village courts has resulted in “a significant increase in community members’ awareness of children and women’s rights, particularly compared to districts where the program is not implemented.”⁶⁷

According to Dora Kegemo, provincial technical advisor for the Women and Children’s Access to Community Justice Program, “[t]he program was a cultural breakthrough ... [w]e are improving the knowledge and skills of the people, (increasing) women’s participation, their freedom of expression and right to make decisions.” Bride price is one customary practice that the program is seeking to address. The Program aims to increase numbers of female village court magistrates, the reporting of domestic violence and the community understanding that violence against women and children is unacceptable.⁶⁸ The recent appointment of female magistrates to the village courts through the Village Court Act 2013 has also given women more confidence to speak up in the court room.⁶⁹ Consequently, women’s voices are growing louder in the public domain, with these magistrates acting as role models for other women to stand up for their rights.⁷⁰ As a result men are beginning to accept the courts’ decisions, have started to speak more positively about women, and are telling others to respect women’s decisions.” According to UNICEF, “[a] significant contribution of the programme to address gender inequality is the support (for) and empowerment of women to use their voice as both leaders and

⁶⁴The pilot program was conducted in the Eastern Highlands, Simbu, Milne Bay, East Sepik and Western Highlands provinces of Papua New Guinea.

⁶⁵ Catherine Wilson, *Women and Children Look to Community Justice*, INTERPRESS SERVICE NEWS AGENCY, May 8, 2012.

⁶⁶ Danish Institute for Human Rights, *supra* note 16 at 16.

⁶⁷ Wilson, *supra* note 65.

⁶⁸ *Id.*

⁶⁹ Danish Institute for Human Rights, *supra* note 16 at 296.

⁷⁰ *Id.*

as rights holders.’’⁷¹

A similar project, the Brukim Bush Project, an initiative of the Village Courts Secretariat assisted by the Provincial Government on Manus Island and funded by the Australian Government, also worked to try to increase women’s voice in decision-making and to enhance community life in Papua New Guinea.⁷² The project was aligned to Papua New Guinea’s commitments under the CEDAW⁷³ and developed the underlying law by giving communities an opportunity to use customary law methods of decision-making together with local laws to make changes to customs which were not working well for their communities. It was found, among other things, that “the consultations on declaration of custom enabled women’s voices to be heard and women’s issues to be raised.”⁷⁴ The emerging conclusion of this project was that this kind of process showed “great promise as an effective way to engage whole communities, in particular women, in their own governance, using a combination of law and custom in a completely original and relatively low cost approach to law and justice service delivery at village level.”⁷⁵

These two studies, although not necessarily representative of Village Courts and informal justice systems throughout Papua New Guinea, demonstrate the great potential that facilitating women’s rights and access to justice training, which target informal justice mechanisms as well as the appointment of female magistrates, can have to promote change in village practices. This in turn can, in a comparatively short period of time, positively influence attitudes and decision-making in other justice forums at the village level and increase the volume of women’s voices in their communities.⁷⁶

⁷¹ Wilson, *supra* note 65; Danish Institute for Human Rights, *supra* note 16 at 296 – “When deciding what compensation the wife is entitled to, the Court will take into account the number of years of the marriage, how many children there are, and the amount of bride’s price that was paid by the husband’s family - The issue of women’s rights to property in the event of breakdown of the marriage is a topic that has been addressed by a UNICEF-sponsored human rights training programme delivered to village courts in some districts of the Eastern Highlands Province in Papua New Guinea. Village Court magistrates reported that “since they have received training they now take greater account of women’s economic position and of her contribution to the marriage, rather than deciding cases merely by reference to bride price.”

⁷² The project was part of an Australian funded Law and Justice Partnership with PNG – the project was first piloted in 2009 -2010.

⁷³ As discussed above these include measures to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women: CEDAW, Op Cit, Article 2(f).

⁷⁴Genevieve Howse, Paper delivered to the Constitution and Law Reform Commission conference on underlying Law (2013): The Role of Custom in Developing the Underlying Law -The Brukim Bush project in Manus Province as a case study.

⁷⁵ *Id.*

⁷⁶ Danish Institute for Human Rights, *supra* note 16 at 296.

Lessons

Initiatives in both of these regions have helped provide women with a voice to speak up about gender inequality. Violent extremism is most effectively countered through increased education, better critical thinking, and enhanced opportunities.⁷⁷ These empowerment scenarios and positive outcomes can also manifest in the impact a woman has within her family and community. In the words of former Secretary to the United Nations Kofi Annan, “[t]here is no development strategy more beneficial to society as a whole—women and men alike—than the one which involves women as central players.” Women, when empowered and given access to enforce their legal rights, can be critical resources for teaching their children and communities to practice tolerance. Governments need to, at a central level, be active in promoting positive engagement with informal justice systems through the relevant ministries and agencies which work with those system. In this way, governments must seek to positively influence existing practices in informal justice systems through raising awareness, engaging with justice providers, increasing training and so on. A passive approach to the recognition of gender equality in informal justice systems is not sufficient if countries like Bangladesh and Papua New Guinea are to meet their international obligations and to ensure that key constitutional and legal principles are respected regarding the rights of women. Addressing gender in these informal justice systems has for the first time made the system more accessible for women. Legal empowerment approaches in informal justice sectors are likely to be more sustainable when they are both locally owned and coupled with top-down reforms, which ensure domestic laws and regulations are in line with international legal standards on gender equality (as Bangladesh and Papua New Guinea have tried to). The fluidity and dynamism of informal justice systems can open up opportunities for modernization and progressive reforms around women’s rights, and advantage should be taken of this.⁷⁸

Where women are provided with a forum to discuss and reinterpret cultural or legal rules, the system may be open to positive transformation, particularly when it is both women and men who are advocating for a reinterpretation of such rules. Legal empowerment approaches may be particularly successful in informal justice settings because the customary authority of male leaders is generally connected to their ability to reflect the values and interest of the

⁷⁷ Couture, *supra* note 6.

⁷⁸ E Harper, ‘Engaging with Customary Justice Systems’ in J Ubink (ed), *Customary Justice, Perspectives on Legal Empowerment* IDLO (2011) 29, 35.

community.⁷⁹ As a result, bottom-up legal empowerment approaches targeting women can pressure community leaders to reform discriminatory practices. When women are informed of their rights and are encouraged to discuss or challenge informal laws and practices, they can put pressure on customary justice systems to better protect them and create more stability in communities.⁸⁰

As these case studies show, there are a number of good initiatives underway by governments, the communities and NGOS, to promote women's access to justice and to support community-based justice initiatives. This kind of support needs to be provided, so that women can be empowered to play vital roles in counter-terrorism.

Recommendations

The information presented in this report highlights the need to promote gender equality through women's empowerment in informal justice mechanisms in order to address the root causes of the mistreatment of women (such as lack of accountability), transform harmful social norms (such as bride price), build stability in communities and thereby counter the rise of extremism. The following recommendations outline ways in which International Organizations, States, donors and NGOs can support the transformation of informal justice mechanisms:

- Support programs that serve to empower women, including community-based initiatives that work to build linkages and networks among women's groups and religious leaders and initiatives that enable women to take leadership roles within their communities and enable them to be effective preventers of violence and extremism.
- Train adjudicators, increasing the number of women in decisions-making posts, empowering women's groups to monitor and engage with customary leaders.
- Encourage governments to prioritize the principles of gender-equality in the design and implementation of counter-terrorism measures, including addressing instances where gender equality intersects with access to justice.
- Promote legislation which (a) recognizes that where there are conflicts between customary and/or religious laws and the formal justice system and provides that such conflicts should be resolved with respect for the human rights of the survivor and in accordance with gender

⁷⁹ T Mennen, Putting Theory into practice – Improving Customary Justice: paper presented at the United States Institute of Peace, George Washington University 17-18 November 2009, 140.

⁸⁰ J Ubink and B van Rooij. 'Towards Customary Legal Empowerment', in J Ubink (ed), Customary Justice, Perspectives on Legal Empowerment IDLO (2011) 7, 14 – 15 (writing in relation to legal empowerment interventions more generally).

equality standards; and (b) the processing of a case under customary and/or religious law does not preclude it from being brought before the formal justice system.

- Promote programming for informal justice systems which continues to prioritize awareness-raising and training for court officials on gender equality, women's participation to be heard in matters affecting their interests.

MOROCCO'S MURCHIDAT: LEADERS IN SPIRITUAL SECURITY, MODELS FOR GENDER EQUALITY TRANSFORMATION

Patricia Stottlemyer

Introduction

The story of the struggle for women's equality in Moroccan cannot be told without examining the monarchy's counterterrorism initiatives. In May 2003, bombs rattled Casablanca, killing 43 people in a series of terrorist attacks.¹ While countries around the world responded to a surge of violent extremism with democracy-chilling legislation like the Patriot Act² in the United States, Morocco's King Mohammed VI saw a unique opportunity to save his country from the impending wave of regional upheaval. He found his solution in a surprising place: gender equality reform.

Five months after the Casablanca bombings, carried out by radicalized youth from the slum of Sidi Moumen³, King Mohammed VI addressed parliament to announce a draft of reforms to the Moudawana, or family law code.⁴ Women's civil society groups had been agitating for reforms to the Moudawana for years, especially its provisions on divorce laws, child marriage, and inheritance.⁵ The monarchy had been trying to strike a balance between the desires of traditional Islamist political parties and the calls of women's rights activists. But the Casablanca bombings illuminated the path forward for the King: he would have to reiterate his constitutional position as the Commander of the Faithful, and steer Morocco's national Islam in the direction of moderation, away from extremism. The bombings had driven public sentiment toward anti-fundamentalism, and the King responded by addressing both gender equality and counterterrorism concerns.⁶

Exhibiting a measurable degree of prescience and political savvy, King Mohammed saw an opportunity to brand himself as both a modernist reformer and the Commander of the Faithful. In addition to recognizing the need for the advancement of gender equality through

¹Abdeslam Maghraoui, *Morocco's Reforms after the Casablanca Bombings*, SADA (August 26, 2008), <http://carnegieendowment.org/sada/?fa=21592>.

²U.S.A. Patriot Act (2001).

³S. Ecki, *Building Terrorism Resistant Communities: Together Against Terrorism* 62 (2009).

⁴See Leila Hanafi, *Moudawana and Women's Rights In Morocco: Balancing National and International Law*, ILSA J. INT'L & COMPARATIVE L.; FATIMA HARRAK, *THE HISTORY AND SIGNIFICANCE OF THE NEW MOROCCAN FAMILY CODE* 6 (2009).

⁵Id.

⁶See Souad Eddouada & Renata Pepicelli, *Morocco: Towards an Islamic State Feminism*, CRITIQUE INTERNATIONALE 46 (2010).

reforms in the Moudawana, including changing the legal age of marriage from 15 to 18, the government also sought to employ women as Islamic spiritual guides, or *murchidat*.⁷ The utilization of women in roles of religious leaders who advised their communities on questions of the intersection of daily life and religion was indeed an innovative counterterrorism strategy. Although women had been involved in similar roles previously, the institutionalization of this program as well as its specific counterterrorism goals made it unique.

In order to combat the cacophony of decentralized voices telling Moroccans what Islam requires, the King sought to foster a single state-version of moderate Islam. The state-sanctioned version of Moroccan Islam is specifically designed to displace the decentralization that can give voice to extremist messages.⁸ Schools of thought more tailored to radicalization, like Wahabbism, would be combatted by the monarchy's systematic, centralized, and institutionalized dissemination of moderate, Moroccan Islam. The key tool in effecting this environment of increased security from extremism was state control. This concept of "spiritual security,"⁹ a "soft" approach to counterterrorism, relied on *murchidat* to protect their coreligionists from cooptation by extremists who bring about social destruction. The *murchidat* are at the front lines of the fight for Moroccan Islam.

Morocco seems advanced in its recognition of the ties between socioeconomic indicators and terrorism. By employing women as messengers of moderate Islam, who at the same time transform gender roles and perform social services, the Moroccan government sought to reclaim the gaps extremists were filling: those of religious and general education, an especially important task given the country's struggles with illiteracy, combined with the importance of religion in Moroccan identity and culture.¹⁰ Through the *murchidat* program, women have become the guardians of spiritual security in Morocco at both the local and national level, and in turn have been powerful opponents of extremist trends.

In 2006, the Ministry of Islamic Affairs graduated its first class of fifty *murchidat*.¹¹ The anchor of Morocco's counterterrorism initiative through the *murchidat* program lies in the constitutional provision that enshrines the King's role as the Commander of the Faithful. This

⁷ Id.

⁸ Id.

⁹ Samantha Harrison, *Women provide "spiritual security" in Morocco*, THOMSON REUTERS FOUNDATION NEWS (Dec. 12, 2013 1:03 GMT), <http://news.trust.org/item/20131212010325-jkva6>.

¹⁰ Id.

¹¹ Fatima Saqidi, *Morocco*, FREEDOM HOUSE (2010), https://freedomhouse.org/sites/default/files/inline_images/Morocco.pdf

means that the King is the spiritual leader of the nation, and thus he created this program to carry out his fundamental religious duties: “defending religion, protecting life, guarding against harmful ideologies, preserving property, and defending honor and dignity.”¹² Morocco’s constitutional provisions elucidate the importance of religion in the state apparatus. As Ahmed Toufiq, Minister of Habous and Islamic Affairs, told the United Nations Security Council Committee on Counterterrorism (CTC) in 2014, the King’s religious duties include guaranteeing the rights stipulated in the constitution.¹³ In theory, at least, the Moroccan system reflects its Sufi roots: it sees the interconnectedness of social progress, economic prowess, politics, and religion. Toufiq recognized that “improving living conditions” goes hand-in-hand with security and justice.¹⁴

In order to eradicate extremist ideology, Toufiq told the CTC, Morocco needs “a qualified religious authority whose role is to issue fatwas¹⁵ and to interpret texts.”¹⁶ This authority comprises the national authority, now called the High Council for Religious Affairs, and its local councils. The laws governing this structure, Toufiq explains,

stipulate the role of the religious scholars in a number of domains, such as implementing the fundamentals of religion, especially in mosques, the intellectual enhancement of the caretakers of religion and of the general public, which would definitely curb negative phenomena such as terrorism. Their role in providing guidance and in directing people’s behavior also includes [...] human rights in general.

- Ahmed Toufiq, *The Kingdom of Morocco’s Experience to Counter Terrorism*, Address Before the United Nations Security Council Counter-Terrorism Committee (Sept. 30, 2014).

Morocco’s approach has been for the state, namely the monarchy by way of this dissemination process, to dictate the variety of Islam that Moroccans will follow. Religious leaders, including murchidat, would be the guardians of this Islam, which would serve as a bulwark against extremist ideologies and religious illiteracies which converge to facilitate terrorism. Toufiq explained that the more consolidated religious authority becomes, the more easily the public can distinguish between a legitimate religious decree and “the improvised

¹² Ahmed Toufiq, *The Kingdom of Morocco’s Experience to Counter Terrorism*, Address Before the United Nations Security Council Counter-Terrorism Committee (Sept. 30, 2014), available at <http://www.un.org/en/sc/ctc/docs/2014/Minister%20Ahmed%20Toufiq.pdf>.

¹³ Id.

¹⁴ Id.

¹⁵ The Islamic Supreme Council of America defines “fatwa” as “an Islamic legal pronouncement, issued by an expert in religious law (mufti), pertaining to a specific issue, usually at the request of an individual or judge to resolve an issue where Islamic jurisprudence (fiqh), is unclear.”

<http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/44-what-is-a-fatwa.html>

¹⁶ Toufiq.

statements of various forums, regardless of whether their authors are moderate or extremists.”¹⁷ The underlying logic here is spiritual security: that a proliferation of authorities with contradicting opinions on the dictates of Islam creates spiritual insecurity, by opening the door to inaccurate interpretations.

The *murchidat* training program is administered by the Ministry of Habous and Islamic Affairs, through its Supreme Religious Council, and it graduates fifty *murchidat* per year after a rigorous vetting and education process.¹⁸ *Murchidat* must have a bachelor’s degree and must be able to recite half the Quran by heart. They must also pass exams assessing their knowledge of the Islamic sciences. Men who go through the program to become imams must memorize the entire Quran. During the yearlong program, they receive education from both religious and academic scholars in sociology, public speaking, law, history, and economics.¹⁹

These women serve as spiritual guides in their communities, leading structured and informal discussion circles and education sessions in their mosques as well as in visits to hospitals, prisons, orphanages, and schools.²⁰ In this way, women are the instruments of institutionalizing religious education so as to consolidate messaging in avoidance of extremism. But they are also entering leadership roles that bridge the public-private divide, and they are becoming missionaries for educating the public, providing social services beyond the doctrine of religion. As employees of the Ministry of Habous and Islamic Affairs, they are civil servants. They also hold literacy classes, and all classes are held in Darija, or Moroccan colloquial Arabic, making it accessible to average Moroccans rather than to only those with formal education.²¹ One group, however, is left out by this model: Amazigh women who do not speak Darija.²² As

¹⁷ *Id.*

¹⁸ Krista London Couture, *A Gendered Approach to Countering Violent Extremism: Lessons Learned from Women in Peacebuilding and Conflict Prevention Applied Successfully in Bangladesh and Morocco*, Brookings Institution (2014), *available at* <http://www.brookings.edu/~media/Research/Files/Papers/2014/07/30-gender-conflict-prevention-countering-violent-extremism-couture/Women-CVE-Formatted-72914-Couture-FINAL2.pdf?la=en>.

¹⁹ *Id.*

²⁰ Meriem El Hatami, *Restructuring Female Religious Authority: State-Sponsored Women Religious Guides and Scholars in Contemporary Morocco*, 20 *MEDITERRANEAN STUDIES* 227 (2012).

²¹ Meriem El Haitami, *Restructuring Female Religious Authority: State-Sponsored Women Religious Guides (Murshidat) and Scholars ('Alimat) in Contemporary Morocco*, 20 *MEDITERRANEAN STUDIES* 227, 230 (2012). Moroccan class divisions often track differences in language education. The educated classes speak French and Modern Standard Arabic, in addition to Darija or colloquial Moroccan Arabic. Less-educated Moroccans are likely to understand all three languages, but often use Darija most frequently.

²² Amazigh are indigenous peoples of Morocco. The 2011 Constitution made the Amazigh language, which comprises several dialects, an official language of Morocco, but the Amazigh continue to be marginalized in Moroccan society. If they are not able to understand the language of the *murchidat*, they will have difficulty accessing the services they provide, and thus these mostly rural populations will not benefit to the same extent.

Moroccan scholar Meriem El Haitami notes, these murshidat-led sessions often become group “counseling sessions where women discuss their social and psychological needs [which] positions the role of the mosque within a wider social scope.” El Haitami continues,

The role of the murshidat is to convey the moderate values of Islam by instructing and counseling women in religious practices and social life. Members of the murshidat’s audiences are, for the most part, mothers who have questions about marital issues and parenting, young women who seek counseling about different aspects of religion, and elderly women who seek social interaction through regular attendance in their classes.

- Meriem El Hatami, supra note 20.

In addition to the gender equality and counterterrorism goals served by the murshidat program, it also serves broader social needs in a culturally relevant context.

PART I: The Framework of Women and Counterterrorism

Morocco’s murshidat program destabilizes the conventional wisdom on women and counterterrorism. First, it does not fall into the trap of essentializing women, but rather leaves space for a multitude of experiences. Second, it does not fall cleanly into the two categories proffered by counterterrorism scholars: counter-radicalization programs and de-radicalization programs. Finally, Morocco’s program is a hybrid: it neither subjugates women’s rights to the counterterrorism agenda, nor does it sacrifice counterterrorism goals for women’s rights.

Many of the counterterrorism programs that have sought to engage women have been criticized for essentializing women’s experiences, and thus playing on and perpetuating gender stereotypes, in one of two ways: they assume that women are inherently more peaceful than men and therefore can bring their natural skills to the security sphere; or they seek to capitalize on the stereotypical role of the mother who can do the work of counter-radicalization programs in the private sphere, namely within her home. According to Katherine E. Brown, both of these approaches remove women’s agency, by relying on “a series of gendered logics that are detrimental to realizing women’s agency and rights. Women are presented as subjects, not agents, and their ways of knowing and being are ignored.”²³ Morocco’s murshidat program does not succumb to these tropes. Rather, it employs a culturally specific approach to counterterrorism, which utilizes the embedded social complexities to form a more sustainable and effective program. For instance, the use of the mosque, prisons, hospitals, and schools as the fora for murshidat counseling takes these women counselors out of the home and places them in a position to re-shape women’s roles in public spaces. This is especially transformative in a

²³ Katherine E. Brown, *Gender and Counter-Radicalization*, in *GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM* 36, 51 (Margaret L. Satterthwaite & Jayne C. Huckerby eds., 2013).

nation with patriarchal roots that manifest in religious and public institutions. Rather than conceiving of women’s agency as inherently linked to her role as a mother or wife, the *murchidat* program publicly elevates women to the position of scholars, learned guides, and leaders of their communities—without rejecting the maternal role that some women may choose to embody. The underlying assumption is not that women are more peaceful or that they will serve counterterrorism objectives through their roles as mothers and wives, but that they are more likely to give an accurate, nuanced view of Islamic teachings—an agency that can have transformative effects in terms of gender equality.

Furthermore, they tailor their programming to the needs of the particular community in which they are stationed, rather than presenting a uniform national program on how to better fulfill the role of mother or wife according to Moroccan Islam. Indeed, some women who seek the advice of the *murchidat* may nonetheless come with precisely these questions. However, it is this grassroots-meets-institutions approach that makes the *murchidat* program so transformative. The *murchidat* program does not rely on maternalistic logic, but rather allows for that maternalistic logic to inform the needs of some Moroccan women, and not of others. Thus it avoids essentializing women’s experiences. This approach illustrates the broader initiative for legal and cultural reform within the Moroccan context: the government will enact legislative reform at the urging of the people, and the people will interact with the government in implementing change. The symbiosis between government and people exemplified by the *murchidat* program suggests that it is a powerful example for gender-oriented counterterrorism efforts beyond Morocco.

A conventional wisdom has emerged from scholarship on counterterrorism, which separates counterterrorism initiatives into two categories: de-radicalization and counter-radicalization. De-radicalization programs are ex-post facto interventions, often described as “hard” approaches that target individuals.²⁴ In contrast, counter-radicalizations are categorized as “soft,” and “tend to prioritize capacity building of communities to engage in generalized social regulation in attempts to minimize risk to the state.”²⁵ Counter-radicalization methods include “amplifying moderate local voices, adopting education and civil development programs, and

²⁴ *Id.* at 36.

²⁵ *Id.*

attempting to address actual or presumed grievances.”²⁶ Rabasa et al. have argued that the divide between de-radicalization and counter-radicalization programs is geographical: that Europe has taken a broader approach, employing counter-radicalization techniques, while “those in the Middle East and South Asia” have opted for the narrower view.²⁷ This scholarship is reductionist, and does not leave room for a hybrid approach like Morocco’s *murchidat* program. Furthermore, it essentializes Morocco as part of a region with a more “narrow” approach, implying a more narrow understanding of the problem. Indeed, Morocco’s program is closer to the counter-radicalization approach in terms of its amplifying moderate voices through the *murchidat*. However, it does not seek to mobilize the community in order to insulate the state. Rather, it is administered by the state, in cooperation with the community. Moreover, its explicit aim is to correct Moroccans’ misconceptions about Islamic teachings, and to proffer what the state sees as a more legitimate and truthful interpretation. Thus, the initiative, like de-radicalization programs, also seeks to reach individuals after they have been exposed to radical ideologies. Lastly, the program serves social needs by offering counseling to rural women, prisoners, orphans, and the ill.²⁸ Morocco’s *murchidat* program is therefore compelling in its transcendence of these frameworks.

Praise for Morocco’s Counterterrorism Success

Morocco’s counterterrorism initiatives, including the *murchidat* program, have been lauded on the global stage. Morocco has suffered less than one terrorist attack per year since 2003, and has experienced no terrorist attacks since 2012.²⁹ A 2014 report by the U.S. Department of State praised Morocco’s “comprehensive counterterrorism strategy that includes vigilant security measures, regional and international cooperation, and counter-radicalization policies” that have “effectively mitigated the risk of terrorism.”³⁰ Morocco has also utilized legislative reform and judicial reform to achieve its counterterrorism goals.³¹ In addition to improving socioeconomic indicators as a tactic for preventing terrorism, Morocco’s tight control over religious messaging has been a bulwark against radicalization. The *murchidat* program combines gender equality goals with counterterrorism initiatives, with positive implications for

²⁶ Id. at 38.

²⁷ Angel Rabasa et al., RAND Corporation, *Deradicalizing Islamist Extremists* (2010).

²⁸ El Haitami, *supra* note 21, at 230.

²⁹ Couture, *supra* note 18, at 5.

³⁰ U.S. DEPT. OF STATE, COUNTRY REPORTS ON TERRORISM 2014, *available at* <http://www.state.gov/j/ct/rls/crt/2014/239407.htm>.

³¹ Id.

both.

Part II. The Transformative Impact of the Murchidat on Gender Equality

An Analysis Using International Instruments, Lawmaking, and Intersectional Change

The murchidat program holds implications not only for spiritual security and counterterrorism, but also for the state of gender equality in Morocco. To assess the program's impact on gender equality, this analysis will use the Convention on the Elimination of All Forms of Discrimination Against Women³² (CEDAW) as a yardstick for measuring Morocco's compliance with international women's rights norms, as they specifically pertain to the impact of the murchidat program. It will also assess Morocco's success in achieving the Millennium Development Goals³³ (MDGs), meeting the dictates of United Nations Security Council Resolutions 1325³⁴ and 2242,³⁵ and in satisfying the requirements of the Arab Charter on Human Rights. Morocco ratified the CEDAW in 1993, and lifted all prior reservations in 2008. The murchidat program signals some progress for Morocco in meeting these international and regional benchmarks, and it also highlights the areas where improvement is needed. Furthermore, this analysis will examine the relevant changes in Moroccan law, including the addition of Article 19 to the national constitution. Lastly, this paper analyzes the lesser measured indicators of transformation around gender equality, including the bridging of the public-private divide. Morocco's efforts in counterterrorism have simultaneously served gender equality goals, and the nation's approach to reform has employed a context-specific framework, making its transformative effects more sustainable.

Institutionally and symbolically, women's roles as scholars have been accorded great significance through the murchidat program.³⁶ The murchidat are given places on the Supreme Religious Council as well as in local religious councils which are composed of both men and women religious scholars who issue legal interpretations. Thus they are placed in positions of public significance. As civil servants, murchidat are assuming public office, which serves the goals of CEDAW Article 7(b), which charges the state with ensuring women's equality in participation "in the formulation of government policy and the implementation thereof and to

³² Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979.

³³ Millennium Development Goals, Initiative of the United Nations.

³⁴ Res. 1325, U.N. Security Council, Oct. 31, 2000.

³⁵ Res. 2242, U.N. Security Council, Oct. 13, 2015.

³⁶ El Haitami, *supra* note 21, at 229.

hold public office and perform all public functions at all levels of government.”³⁷ Holding these public offices is especially meaningful in the Moroccan context: because of the tight linkages between the government apparatus and Islam, women’s agency as *murchidat* denotes their progress in both the secular and religious realm.

The *murchidat* program serves several gender equality goals, which in turn have broader social benefits. These social benefits, especially when coupled with state dissemination of moderate Islam via the *murchidat*, can help to address some of the sociopolitical factors that lead to radicalization. First, the *murchidat* receive comprehensive education, with the express charge of disseminating their knowledge to others at the community level. This effort may help Morocco to overcome the perennial divides that thwart gender equality and broader development goals, including the urban-rural divide, the socioeconomic divide, and the educational and generational divides. It is no coincidence that the 2003 Casablanca bombers were from a slum that suffers from high unemployment and low education. The *murchidat* are not only given extensive training in religious law and interpretation, but are also given transferrable life skills like public speaking, and an opportunity to learn how to be thought leaders on councils within civil society. These state efforts at ensuring greater access to education for some women may be seen as consistent with the spirit of CEDAW Article 10’s mandate to “eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.”³⁸ *Murchidat* have said that they tailor their lessons and programming to the needs of their communities. The fact that *murchidat* are deployed to rural communities, as well, shows that the Moroccan government may be attempting to comply with CEDAW Article 14, which recognizes the particular problems faced by rural women.³⁹ Furthermore, *murchidat* place an emphasis on “reaching women and youth, as well as promoting a social dimension to their religious mission,”⁴⁰ again bridging generational gaps and the public-private divide. Not only are the *murchidat* providing services for their communities, but they are also spreading a moderate version of the most popular belief system in the country—a two-pronged approach that reflects the government’s understanding of the complexity of the factors that produce terrorism.

These *murchidat* can serve as inspirations to the women who attend their sessions. Their

³⁷ CEDAW, *supra* note 33.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

models provide an opportunity for women throughout Morocco to see other women in leadership positions, receiving respect for their knowledge and abilities. In addition to leading by example, the *murchidat* elevate the role of Moroccan women by demonstrating that they serve important social functions, counseling and mentoring others, and receiving institutionalized endorsements from the government of their abilities to serve as bulwarks against Islamist extremism and terrorism. Thus, the *murchidat* are given valuable roles in civil society and in the security sphere, in addition to within religious circles and community settings.

This may be a step toward implementing CEDAW Article 5,⁴¹ by eliminating the cultural stereotype that women are not to be leaders in the public sphere. The Moroccan state is utilizing legislative and policy measures to gradually move society toward an embrace of women's equality, with civil society constantly pushing the state, as well. Indeed, it will likely take generations for cultural stereotypes to transform, but the *murchidat* program is an important step in the right direction. CEDAW Article 5 charges the implementing sovereign with eliminating cultural stereotypes that reinforce unequal gender roles. While some worry that the fact that the *murchidat* comply with the Ministry of Habous and Islamic Affairs' messaging means that they will inevitably reinforce the separation of roles for men and women which is part of the Maliki rite, I take issue with two aspects of this criticism. First, the Ministry and King Muhammad VI have expressed the importance of the Sufi tradition within this *murchidat* project and the broader counterterrorism strategy. The Sufi tradition is much more amenable to lessons of one-ness rather than differentiation. The Ministry's guidance is decidedly open-ended, and amounts to reaffirming the King's role as Commander of the Faithful, as well as adherence to the Maliki school of Islam. This leaves room for interpretation that may transform traditional gender roles. Furthermore, any concern that *murchidat* are telling women to stay in the home is, firstly, unsubstantiated in evidence, and secondly, is likely to be counterbalanced by the transformative effect of placing women in roles as community leaders and scholars. Thus, on balance, the *murchidat* program moves Morocco toward achieving the spirit of Article 5, but it may also be a way in which the Moroccan government can pay homage to CEDAW's dictates while at the same time maintaining what it sees as Moroccan social norms. Indeed, introducing the *murchidat* program was a step toward achieving Article 5's requirements. From a counterterrorism standpoint, it is likely that a culturally-specific, incremental approach to human rights and

⁴¹ Id.

moderate Islam will less often alienate those who feel the state does not comprehend their realities.

There is a question as to whether the installation of women in roles as religious guides is purely symbolic or practically transformative. According to El Haitami, the roles women are given on religious councils are not purely symbolic; they are “assigned significant responsibility.”⁴² Souad Eddouada, a Moroccan professor and scholar on what she calls Morocco’s “Islamic state feminism”—of which the *murchidat* initiative is one manifestation—argues that women have been given a “role in the religious sphere so as to promote Islamic arguments for gender equality.”⁴³ Not only can women promote Islamic arguments that favor gender equality, but they can also use Islam to guide youth or other disaffected Moroccans away from violence or alienation in their daily lives. But Eddouada is careful to note that the monarchy’s *murchidat* program does not guarantee full equality of access to holy spaces for men and women. Indeed, a fatwa was issued in 2005 to clarify what some imams had been fretting over: women cannot lead prayer in the mosque. Thus, this *murchidat* initiative would not guarantee substantive equality in this sphere, but would rather strike a balance between increased women’s rights and the dictates of Maliki jurisprudence.⁴⁴ This “distinction, exclusion, or restriction made on the basis of sex”⁴⁵ contravenes Article 1 of the CEDAW. The prohibition against *murshidat* or any woman leading prayer also contravenes CEDAW Article 11, which requires equal opportunity for employment, in addition to Article 7(b).⁴⁶

Another concern arises from the fact that the standards for men to enter the Ministry of Habous and Islamic Affairs’ training program are different from the standards for women applicants, which may contravene CEDAW Article 10. Even if the standards for women are lower than those for men—women need only memorize half the Quran as opposed to men’s requirement for memorizing the entire Quran—this constitutes state-sanctioned discrimination on the basis of sex, which violates Article 2 of the CEDAW.⁴⁷

Furthermore, the program graduates 50 female leaders and 150 male leaders annually,⁴⁸

⁴² Id.

⁴³ Eddouada, *supra* note 6.

⁴⁴ Karima Dirèche, *Les Murchidât au Maroc. Entre islam d’État et islam au féminine*, 128 *FÉMINISMES ISLAMIQUES* (2010).

⁴⁵ CEDAW, *supra* note 33.

⁴⁶ Id.

⁴⁷ CEDAW, *supra* note 33.

⁴⁸ Mary Zeiss Stange et al., eds., *The Multimedia Encyclopedia of Women in Today's World* 662 (2011).

showing an employment preference for males in contravention of Article 11. The fact that men can be prayer leaders but women cannot means that women cannot access this particular career, but are relegated to *murchidat* duties. This differentiation also violates CEDAW Article 5, by failing to battle the stereotypes that conceive of a woman's abilities as inherently inferior to those of her male counterparts. These shortcomings in meeting CEDAW's goals may hold significance for counterterrorism efforts: the more platforms these women are given, the more they will be able to spread this moderate version of Islam within their communities.

Some have criticized the *murchidat* initiative as a purely cosmetic fix: one that presents a modernist Morocco on the international stage, but which may simply be mobilizing women to serve as mouthpieces of government-sanctioned social and religious positions. Some fear that these *murchidat*, for example, may not be serving what Western observers conceive of as feminist goals, for instance, by reinforcing the notion that a woman's sphere is domestic. Much of the press surrounding the *murchidat* program has claimed that attendees' questions are most commonly related to how they can be more pious wives and mothers and how they may fulfill their domestic duties in compliance with Islam. Indeed, the *murchidat* may not always address women's issues in a 'feminist' manner. But what is seen as 'feminist' from a Western point of view would surely be less sustainable than a culturally and context-specific version of women's religious agency. The fact that women have become a battleground for influence between conservative forces, the monarchy, and women's rights activists attests to their unparalleled power in effecting change throughout Moroccan society. Indeed, women's role as tools of public education and counterterrorism could be seen as problematic. Some scholars have worried about the specter of these *murchidat* being co-opted by Islamist political parties, and becoming spokespeople for regressive interpretations of women's rights in Islam. For example, a conservative Islamic newspaper *Attajdid* published interviews with women theologians, clearly suggesting the direction it would like the *murchidat*'s teachings to go. The publication emphasized that *murchidats* were helping women to better exercise their roles in the home and to be more pious. They also highlighted quotes from *murchidat* emphasizing the importance of recognizing their own limitations in giving religious guidance.⁴⁹ The overarching message to anyone thinking *murchidat* may be the opening to cultural transformation toward gender equality

⁴⁹ Souad Eddouada, *Morocco's "murchidates" and contradictions*, RESET DOC (2009), available at <http://www.resetdoc.org/story/00000001323>.

was: don't get ahead of yourselves.

Murchidat's roles in serving as local, decentralized educators in their communities hold the potential to effect sustainable cultural transformation, and of course to achieve counterterrorism goals. These murchidat, as mediators between the on-the-ground needs of women throughout Morocco—not just in urban areas with educated populations, but in rural, poor towns where literacy and access to services are low—and the teachings of Islam as sanctioned by the government, are powerful agents of change. Their participation on the national Supreme Council and the local religious councils positions them to be the bridge between the needs of various local communities and the policies of the state, which allows the state to be more responsive to local needs around the socioeconomic factors that can facilitate extremism.

Another potential concern surrounding the murchidat program is that its method of disseminating and controlling a state-sponsored version of Islam may restrict religious expression, leading to a society that is arguably less pluralistic in the religious realm. However, Morocco's adherence to its historical Sufi influence suggests that there is more fluidity in the state-sponsored version of Islam than one might think. Of course, the control of religious messaging by a federal authority may sound antithetical to an open society. But one of the great achievements of the murchidat initiative is that it is culturally specific and is crafted to operate in its unique context. Morocco has been lauded by the United Nations and the United States Department of State as a regional model for success in moderation of religious views and counterterrorism.

The third of the MDG's is to promote gender equality and empower women. Morocco has created a unique partnership between the state and communities to work toward this goal through the murchidat program. By empowering women as religious scholars and community leaders, Morocco has begun to change societal attitudes, while serving counterterrorism and development aims, including increasing the literacy rate. Women's literacy increased by 4.3 percent between 2000 and 2010,⁵⁰ demonstrating that human rights goals, including women's empowerment, and counterterrorism need not be in tension with one another.

Morocco has signed but not ratified the Arab Charter on Human Rights, whose Article 3 guarantees protection from discrimination on the basis of sex. It also makes Islamic Sharia the

⁵⁰ Brookings

explicit outer bounds of equality initiatives.⁵¹ Within this context, Morocco's efforts to use Islamic jurisprudence to achieve gender equality goals through the *murchidat* program is a powerful regional example. The *murchidat* program, through its involvement of women in interpreting Islamic texts, may be able to push these outer bounds, making room for transformative change in gender equality within an Islamic context. Furthermore, the fact that Morocco lifted its CEDAW reservations two years after the Ministry of Habous and Islamic Affairs graduated its first class of *murchidat* suggests the initiative may have already had some tangible transformative effect.

United Nations Security Resolution 2242 calls on governments to increase women's engagement at all levels of decision-making. The *murchidat* program is an increase in women's engagement, but women's exclusion from leading prayer and from higher positions of power in government are areas ripe for improvement in accordance with 2242. Morocco has achieved significant success in achieving the dictates of 2242(5)(b): "to integrate women, peace and security concerns across all country-specific situations on the Security Council's agenda, taking into account the specific context of each country."⁵² Morocco has utilized its history of the King being Commander of the Faithful, as well as its cultural context in which the mosque is a community center, to craft a gender-conscious engagement in counterterrorism that fits its unique needs. Morocco can improve, however, by following the guidance in 2242(14),⁵³ as part of its counterterrorism and gender equality initiatives. This provision calls for equality in access to justice, especially as it pertains to gender-based violence. Despite the Moudawana's success in changing the legal age of marriage from 15 to 18, there have been widespread reports of judges granting permission for girls under 18 to marry.⁵⁴ Furthermore, Morocco had until recently a law that allowed rapists to marry their victims.⁵⁵ There is a possibility that the cultural transformation stemming from the *murchidat* program and civil society advocacy, over time, can help to achieve women's equal access to justice. The Global Study on Security Council Resolution 1325 praised the *murchidat* program as an example of an initiative on women, peace, and security that is "more likely to have resonance in the community without instrumentalizing and securitizing

⁵¹ Arab Charter on Human Rights, May 22, 2004.

⁵² Res. 2242(5)(b).

⁵³ Res. 2242(14).

⁵⁴ Morocco repeals 'rape marriage law,' Al Jazeera, Jan. 23, 2014, available at <http://www.aljazeera.com/news/africa/2014/01/morocco-repeals-rape-marriage-law-2014123254643455.html>.

⁵⁵ Id.

women's rights.”⁵⁶ Indeed, the *murchidat* program builds capacity among communities by working within the institutions that already exist, while gradually pushing toward transformation.

While the truly transformative potential of the *murshidat* initiative, in terms of its social, gender, political, and religious effects, will need decades before it becomes apparent, Morocco's dedication to elevating women to leadership roles in spiritual and national security sends a message to Moroccan society. The employment of women as *murchidat* has created several new dynamics which have the potential to transform culture and society in Morocco. El Haitami writes that the role of the *murchidat* had a tangible effect on the reform of the *Moudawana* in 2004.⁵⁷ In this way, the engagement of women as leaders in a counterterrorism initiative had a practical effect on national legislation. The trajectory of women's rights over the past several decades in Morocco suggests that the *murchidat* initiative was part of a larger wave: one that led to reform of the *Moudawana*, the lifting of Morocco's reservations to CEDAW, and the implementation of Article 19 in the Moroccan constitution, a gender equality provision. Article 19 provides:

The man and the woman enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in this Title and in the other provisions of the Constitution, as well as in the international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the Constitution, of the constants and of the laws of the Kingdom. The State works for the realization of parity between men and women. An Authority for parity and the struggle against all forms of discrimination is created, to this effect.
- MOROCCO'S CONSTITUTION, 2011.

This provision enshrined in the nation's constitution, for the first time, gender equality. However, Article 19's promises have not been fully implemented. The *murchidat* program's distinctions on the basis of sex—that women cannot lead prayer, and that fewer women are given access to these roles than men—contravene Article 19 of the 2011 Moroccan Constitution's call for equality. However, Article 19 is a powerful tool for societal transformation, and civil society will surely continue pushing for the full realization of Article 19's promise. There is still work that needs to be done, especially with regard to domestic violence and access to justice, as well as with discrimination against women in the economic sphere, and Article 19 can serve as a tool for advocacy and social change. This provision can be seen as a triumph on the path toward gender equality. This path was carved by women's rights activists who led the monarchy toward

⁵⁶ Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325 (2015).

⁵⁷ El Haitami, *supra* note 20.

the *murchidat* initiative, toward the Moudawana reform, and toward legal and cultural transformation. Activists can call on Article 19 to hold the government accountable in reforming discriminatory laws and policies. This legal venue for cultural dialogue can also serve counterterrorism goals by providing a forum for the people, who may otherwise become disaffected. Through top-down government initiatives, Morocco has already begun to experience cultural transformation, as evidenced by the protests surrounding the 2011 constitutional referendum, as well as through the implementation of national law reforms.

The *murchidat* initiative in Morocco bridges the quintessential divides bemoaned by scholars, the divides that make the implementation of universal gender equality so difficult across different social contexts: the public-private divide, the religious-secular divide, the universal-relativist divide. The *murchidat* program shows that reform in the public sector, i.e. legislative reform proffered by the federal government, can reach private life—all with the buy-in of many Moroccan women. Of course, there are parts of Moroccan society that push back against these reforms as counter to their views of the true Islam, or the true Moroccan culture. But the King, as Commander of the Faithful, is uniquely situated within the Moroccan system of government to transform the nation's brand of religion, both away from extremism and toward gender equality. This initiative puts to rest the argument that gender equality as envisioned in international instruments like the CEDAW are simply Western interventions not suitable to certain contexts. It has shown that Islam and the placement of women in leadership roles are not incompatible, that international human rights norms need not be seen as Western interventions. This is a healthy start, but the monarchy must follow through on what it has intimated: that gender equality can be uniquely Moroccan. Women have claimed space in the previously male-dominated sphere of religious authority, and from this platform, they are able to reshape the message of gender equality in Morocco. Some preachers have used their platforms to teach that men and women are equal, drawing on the Hadith that states that “women are counterparts of men.”⁵⁸ *Murchidat* have shown that Islam can be used as a tool not only of peace and anti-extremism, but also of gender equality. It is not Islam, but the domination of religious interpretation by males, that has dogged gender equality. Similarly, it is not Islam, but the misappropriation of its texts for political goals, that has led to extremism and terrorism. The gradual path of reform around women's rights and counterterrorism in Morocco has masterfully

⁵⁸ El Haitami, *supra* note 20.

utilized cultural context, recognizing that change must come both from the grassroots and from the top down.

Recommendations

- The Government of Morocco should work toward full implementation of Article 19 of its constitution to achieve full gender equality in law and in practice, with a recognition that gender equality can help to make counterterrorism initiatives more sustainable. The government should intensify efforts to reach marginalized Moroccans, especially Amazigh women, rural women, and youth.
- Cultural transformation regarding gender stereotypes must continue, and context-specific programs like the murchidat initiative are a powerful model for achieving transformative change. The Government of Morocco should continue partnering with civil society and international actors to achieving gender equality in literacy, access to justice, employment, education, and public office.
- The Government of Morocco should work to reach full compliance with CEDAW, especially Articles 2, 5, 10, and 11.
- International actors should draw inspiration from the example of the murchidat program, as proof that international human rights norms and cultural relativity are not incompatible. Rather, a proactive state is required to implement human rights norms in a context-specific manner.

NIGERIA’S CHALLENGE: WOMEN’S ECONOMIC AGENCY AS A TOOL FOR PREVENTING AND COUNTERING VIOLENT EXTREMISM

Chelsea Fish

I. Introduction—Context and Character of Violent Extremism in West Africa

Unparalleled levels of conflict, crisis, and displacement have accompanied the rapid and profound social and economic transformation that has taken place in many countries across the globe. Among these, the sub-region of West Africa provides a concrete example of these general trends. Although it has registered extraordinary development gains over the past decades—with economic growth of over 7 percent in 2014 and 2015,¹ for example—increasing regional inequality, strains on institutional capacity, and government corruption have catalyzed a surge in radicalization and violent extremism over the past decade. From the escalating violence of Nigeria’s Boko Haram, which in 2015 was responsible for more fatalities than any other militant group, including the Islamic State,² to the increased activities of Al-Qaeda in the Islamic Maghreb (“AQIM”) across Mali, Mauritania, Niger, and Burkina Faso, the surge of religious extremism throughout West Africa has led to the characterization of the region as a critical frontline in the “global war” against extremism.³ Moreover, as the rise of maritime piracy in the region’s costal states has threatened economic development in the Gulf of Guinea, the international community has becoming increasingly concerned about spillover effects from domestic extremist organizations exacerbating instability throughout the region.

While similar drivers of conflict, violent extremism, and radicalization are reflected throughout the countries in the sub-region, drivers also vary based on countries’ individual historical, political, and socio-economic contexts. In the case of Nigeria, drivers are deeply rooted in persistent and systemic structural issues such as regional and gender inequality, poverty, economic deprivation, unemployment, and corruption, as well as perceptions of injustice and marginalization during a time of rapid social and economic change that has placed the country’s institutions under tremendous strain. Violent extremism in Nigeria takes place in a legal and regulatory environment that is complicated by legal pluralism, notably between

¹ Alexandre Marc, Neelam Verjee, & Stephen Mogaka, World Bank Group, *The Challenge of Stability and Security in West Africa I* (2015).

² Dionne Searcey and Marc Santora, *Boko Haram Ranked Ahead of ISIS for Deadliest Terror Group*, NY TIMES (Nov. 18, 2015), http://www.nytimes.com/2015/11/19/world/africa/boko-haram-ranked-ahead-of-isis-for-deadliest-terror-group.html?_r=0.

³ MARC ET AL., *supra* note 1, at 41.

national and customary and Sharia law, and which demonstrates considerable gaps between the de jure and de facto, particularly in relation to gender discrimination and the enforcement of the social and economic rights guaranteed in the Nigerian constitution, as well as the enforcement of national laws supporting women's economic agency and international conventions to which Nigeria is party, such as the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW")⁴ and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR").⁵

Buttressed by United Nations Security Council Resolution (UNSR) 1325,⁶ which recognized the critical contribution of gender equality and women's empowerment in international peace and security, this paper contributes to the growing consensus among international and national actors that "...women represent an extremely underutilized resource in the struggle against violent extremism."⁷ As part of the larger toolkit of strategies for preventing and countering violent extremism, this paper contextualizes the erosion women's economic rights and agency as a facilitating condition for radicalization and violent extremism. It argues that strengthening women's economic position—including labor, land, property and inheritance rights and access to and control over capital and other resources—can have a deterrent effect on radicalization and contribute positively to promoting conditions conducive to long-term peace and stability.

This paper focuses on violent extremism Nigeria and has three purposes:

- To identify the drivers of fragility, radicalization, and violent extremism in Nigeria, especially as they relate to women and Boko Haram in the northeast;
- To examine the state of women's economic rights and agency in Nigeria, with particular focus on legal regimes regulating access to and control over resources; and
- To identify possible legal, policy, and programmatic responses at both the national and international level.

In doing so, it supports a 2015 Security Council Report on conflict-related sexual

⁴ Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 13 U.N.T.S. 1249. [hereinafter CEDAW].

⁵ International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 16, 1996, 3 U.N.T.S. 993 [hereinafter ICESCR].

⁶ S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

⁷ U.S. Dept. State, *Counterterrorism Strategy on Women and Counterterrorism*, cited in KRISTA LONDON COUTURE, A GENDERED APPROACH TO COUNTERING VIOLENT EXTREMISM, BROOKINGS POLICY PAPER 10 (2014). Of course, women's equality in all aspects, and particularly in women's equal participation in the economy, which is frequently overshadowed by focus on gender-based and sexual violence, is a goal that has value in its own right, outside of its value as a tool for preventing violent extremism.

violence, which observes that the disempowerment of women that attends the rise of violent extremism is systemic, rather than isolated and incidental, and that violent extremism takes place “against a backdrop of structural, gender-based discrimination,” which this paper argues is observable in the erosion women’s economic agency.⁸

II. Empowering Women to Prevent and Counter Radicalization

a. *Radicalization—What Is It and Where Do Women Fit In?*

While there is no universally agreed upon definition of radicalization, this paper utilizes the definition of radicalization proposed by the United States Institute of Peace (“USIP”) in a study on the drivers of radicalization among young people in Nigeria. The USIP study defines radicalization as “the process by which an individual or group transitions for passive reception of revolutionary, militant, or extremist views, ideas, and beliefs to active pursuit of these ideals, especially through supporting, promoting, or adopting violence to realize such intentions.”⁹ The process of radicalization, whether at the individual or group level, is generally affected by a multitude of individual factors interacting with each other, which makes it difficult to derive insights from the study of a single predictive factor. As such, understanding and addressing radicalization must be context specific, multidimensional, and sensitive to the shifting dynamics that affect potential drivers.¹⁰ Fink et al. emphasize the need for a multidimensional and multi-stakeholder approach to preventing radicalization. They argue, “[a]s the international community shifts from a reactive to a more preventative approach regarding terrorism and violent extremism, the need for a more comprehensive, multi-stakeholder approach to addressing this challenge has become apparent.”¹¹

The same multifaceted approach should be taken with regard to identifying the drivers of radicalization and violent extremism. A 2009 USAID study on the drivers of violent extremism cautioned against taking a reductionist view of the underlying structural, i.e., social and economic, conditions driving violent extremism. In the case of poverty as a driver, for example,

⁸ U.N. S.C. Rep. of the Secretary General., Mar. 23, 2015, U.N. Doc. S/2015/203 (2015).

⁹ FREEDOM C. ONUOHA, UNITED STATES INSTITUTE OF PEACE, WHY DO YOUTH JOIN BOKO HARAM, SPECIAL REPORT 348, 2 (2014), available at http://www.usip.org/sites/default/files/SR348-Why_do_Youth_Join_Boko_Haram.pdf.

¹⁰ Couture, *supra* note 7.

¹¹ Naureen Fink et al., Center on Global Counterterrorism Cooperation, The Roles of Women in Terrorism, Conflict, and Violent Extremism: Lessons for the United Nations and Other International Actors, 2013, <http://www.globalcenter.org/publications/the-roles-of-women-in-terrorism-conflict-and-violent-extremism-lessons-for-the-united-nations-and-international-actors/>.

oversimplifications of causal connections, such as the statement “poverty breeds terrorism,” risk obscuring the manner in which poverty and economic deprivation actually do come into play, which may be indirect and in combination with other variables and which will be country and context specific. As such, a more nuanced understanding, such as recent empirical research that points to relative deprivation and frustrated expectations, rather than merely pervasive poverty at the macro or country level, may take into account the ways in which poverty, especially in the context of rapid social change, may render weak or inoperative social institutions and leave them vulnerable to individual stressors.¹² Such empirical research should also consider way in which underlying structural conditions, such as poverty, relative deprivation, and unemployment, provide extremists with a narrative or framework over which to overly and promote radical ideology.

In the case of women, such reductionist views raise the risk of allowing deeply rooted and pervasive gender-based stereotypes to distort or ignore female specific experiences of poverty and deprivation. This has manifested in oversimplified characterizations of women as occupying only the roles of victims or preventers of violent extremism. A more accurate, and more complex, picture, recognizes that women play a variety of roles in radicalization, including roles as victim, as actors for prevention, and as perpetrators.¹³ While the recognition that women are often disproportionately affected by conflict and violent extremism, as well as the powerful role women may play in preventing radicalization within the family or community, it is critical to employ a fine grained analysis to explain why and how women are effective in preventing extremism and whether and how the reasons women are vulnerable to radicalization differ from those of men.

b. Women’s Economic Agency—A Key Tool for Preventing Radicalization

The World Bank’s 2012 World Development Report (“WDR 2012”) points out the role women’s agency plays in explaining variation in gender outcomes. Agency may be understood as an individual’s ability to use her endowments, such as physical assets, health, or education, to make choices and take advantage of economic opportunities, and to transform those choices into

¹² GUILAIN DENOEU USAID, GUIDE TO THE DRIVERS OF VIOLENT EXTREMISM (2009), *available at* http://pdf.usaid.gov/pdf_docs/Pnadt978.pdf.

¹³ Chantal de Jonge Oudraat, Preventing and Countering Violent Extremism (CVE): The Role of Women and Women’s Organizations, in *A MAN’S WORLD* 18–35 (Fink et al., eds. 2016)

desired outcomes.¹⁴ Exercising economic agency depends not only on the ability to make choices, but also to experience the broad range of choices that can be made.¹⁵ The WDR 2012 explores the ways in which agency is exercised within the constraints of plural legal frameworks, formal and informal institutions, and markets, and how they influence women’s ability to access economic opportunity in multiple ways. The outcomes of women’s ability to exercise agency are also termed “expressions of agency,” and include:

- *Access to and control over resources*—measured by women’s ability to earn and control income and to own, use, and dispose of material assets;
- *Freedom from the risk of violence*—measured by the prevalence of domestic violence and other forms of sexual, physical, or emotional violence.
- *Freedom of movement*—measured by women’s freedom to decide their movements and their ability to move outside their homes; and
- *Decision-making over family formation*—measured by women’s and girls’ ability to decide when and whom to marry, when and how many children to have, and when to leave a marriage; and
- *Ability to have a voice in society and influence policy*—measured by participation and representation in formal politics and engagement in collective action and associations.¹⁶

Increasing women’s ability to exercise agency, particularly economic agency, has multiple effects with respect to radicalization and the prevention of violent extremism. The “agency framework” provides a powerful explanatory nexus with respect to women acting to prevent violent extremism within the home, family, or community, such as in programs executed by civil society organizations. It is also useful insofar as it closely tracks human rights paradigms that focus on social and economic rights. Improving women’s ability to exercise agency may also generate social and economic gains that contribute to economic growth and social stability across the board. The substantial literature on the manner in which women’s economic participation and ability to exercise economic agency is discussed below.

¹⁴ World Bank, Gender Equality and Development, World Development Report 2012 18 (2012) [hereinafter WDR 2012].

¹⁵ This is rooted in Amartya Sen’s conception of “capabilities,” which was used in the first Human Development Report in 1990. European Bank for Reconstruction and Development, *Enhancing Women’s Voice, Agency, and Participation in the Economy: Studies in Egypt, Jordan, Morocco, Tunisia, and Turkey* (2015) [hereinafter EBRD].

¹⁶ WDR 2012, *supra* note 14. *See also Id.*

c. Gender Equality, Economic Stability, and Violent Extremism—Linkages

The links between gender inequality and economic stability have been on the receiving end of attention by practitioners, policy makers, and academics.¹⁷ There is a substantial empirical literature articulating the links between gender variables and economic variables, such as GDP per capita, global competitiveness, and economic growth rates, as well as linkages between female status and education and health outcomes, child mortality, and effective service delivery. Many such studies have demonstrated that a legal and regulatory environment supportive of women’s land and property rights contributes to greater economic growth.¹⁸ Deere and Leon, for example, have pointed out how the CEDAW played a major role in catalyzing a number of Latin American countries to reform inheritance laws allowing for equal inheritance for males and females, which subsequently expanded women’s ownership of land.¹⁹ The expansion of women’s land entitlements through awards of sole or joint title has multiple benefits, including the increase of women’s business activity and increased access to credit.²⁰

The study of women and development has also expanded to bring political variables into its orbit—many of these have demonstrated linkages between burgeoning female political participation and increased attention paid and resources channeled to initiatives to improve transparency in business and government and to expand and improve social welfare programs.²¹ Other studies have pointed out the inverse relationship between indices of corruption and indices of women’s social and economic rights,²² while others have focused on identifying the constraints that lead to gendered patterns in labor market outcomes and barriers to women’s labor market mobility and transition to formal sector employment. Simply put, the recognition that gender equality can promote economic growth has become a core driver of policies and programs at both the international and national levels, and academic studies have become increasingly sophisticated in their treatment of the linkages between gender variables and economic variables.

¹⁷ See Naila Kabeer, WOMEN’S ECONOMIC EMPOWERMENT AND INCLUSIVE GROWTH: LABOUR MARKETS AND ENTERPRISE DEVELOPMENT, SIG WORKING PAPER 2012/1 (2012) (“There is ample evidence that gender equality can promote economic growth. The converse proposition, that economic growth promotes gender equality is less strong. Some of the fastest growing developing countries show the least signs of progress on basic gender equality outcomes, such as those set forth in the CEDAW.”)

¹⁸ See, e.g., WBD 2012, *supra* note 14.

¹⁹ Diana C. Deere and M. Leon, Empowering women. Land and property rights in Latin America (2001).

²⁰ Kabeer, *supra* note 17.

²¹ Valerie M. Hudson, Bonnie Ballif-Spanvill, Mary Caprioli, & Chad F. Emmett, Sex and World Peace (2014).

²² *Id.* at 99.

Another substantial body of literature has addressed the relationship of women's economic empowerment in the context of peacebuilding and stability in post conflict countries. As has been articulated by Melane Verveer, promoting women's economic equality and agency in the post-conflict context significantly improves the chances that the peace is sustainable and longer lasting. This is because social controls on women are frequently loosened during conflict, allowing them to take on more expansive economic roles than they did pre-conflict. Capitalizing on women's expanded economic participation during conflict situations by formalizing laws and policies supporting these gains thus contributes to economic stability that supports longer lasting peace.²³ U.N. Women has recognized the importance of supporting women's full participation in the economy in post-conflict situations as a means of promoting stability and longer-lasting peace. As Phumzile Mlambo-Ngcuka, Under Secretary-General and Executive General, U.N. Women noted in 2013, "[t]here is now a broad understanding of the importance of women's economic empowerment in post-conflict settings. But peacebuilding and recovery funding still largely ignores women's economic role, and under-invests in their livelihoods."²⁴ The call for increased attention to women's economic security post conflict has been echoed by a number of international agencies. A 2013 report supported by a number of U.N. agencies, for example, stressed that women's economic participation and access to land and other natural resources has been under-studied and under-funded in favor of funds directed to gender based violence and sexual violence.²⁵

In addition to evidence suggesting that women's economic agency and equality can play a positive role in sustaining peace and preventing further conflict in the post-conflict context, there is also evidence, from countries such as Morocco and Bangladesh, among others, that promoting economic equality for women as part of an agenda to prevent radicalization and violent extremism (outside of the post-conflict or peacebuilding context) can generate tangible gains. Bangladesh, for example, has integrated a number of poverty reduction and empowerment programs targeted specifically at women into its counter terrorism strategy, including micro-credit programs, increased formal sector employment in manufacturing, and education. The emphasis on social and economic empowerment for women has been linked to larger

²³ Melane Verveer, *Unleashing Women's Economic Potential to Build Social Stability and Prevent Conflict*, in *WOMEN ON THE FRONTLINES OF PEACE AND SECURITY* 77–86 (eds. 2015).

²⁴ *UN reaffirms importance of women's empowerment for global peace, security*, U.N. NEWS CENTRE (Oct. 28, 2014), <http://www.un.org/apps/news/story.asp?NewsID=49186#.VyJWaqMrLak>.

²⁵ United Nations, *Women and Natural Resources: Unlocking the Peacebuilding Potential* 7 (2013).

international platforms, such as the then current Millennium Development Goals (“MDGs”). The gains from these programs have been significant; since their implementation in 2005, Bangladesh has not experienced any significant ideologically motivated terrorist attacks.²⁶

III. The Case of Boko Haram in Northern Nigeria

The case of Boko Haram in Nigeria underscores two main conclusions. First, the assumption that women have a position of power within the household, even if they are largely lacking status and social, economic, and political power outside the private sphere, is faulty. The Nigerian case illustrates that women’s influence within the domestic or private sphere tends to be overstated and is correlated to women’s influence and status in the public sphere; instead, it suggests that women who lack agency within the domestic or private sphere will be unable to exercise influence to prevent radicalization of children and other family members, and may be more vulnerable to radicalization themselves. This has marked implications for crafting laws and policies to prevent radicalization, especially in cases where programs suggest that women can act on the frontlines to prevent radicalization within the home and community without addressing underlying structural issues that would enable women to play this role effectively. Simply put, women cannot effectively act to prevent radicalization without the support of the social and economic architecture that gives them the agency—the ability in other words—to exercise influence and to participate fully in all spheres of society.

Second, while some of the drivers of radicalization that affect women largely map onto those of men, women’s lack of social and economic protections renders them particularly susceptible to radicalization. This suggests that laws, policies, and programs that prevent female radicalization should emphasize areas such as inheritance, land and property rights (including the division of marital property in cases of divorce or separation), labor, and access to credit. Moreover evidence that suggests that gender equality generates economic growth and stability, more must be done to increase gender equality for women by enacting and reforming laws and policies where they are insufficient.

This section provides a brief overview of the nature and context of state fragility, violent conflict, and extremism throughout Nigeria before moving on to outline the drivers of conflict in northern Nigeria with respect to the case of Boko Haram. Finally, it analyzes drivers of radicalization with respect to women’s economic agency and control over and access to land and

²⁶ Couture, *supra* note 7, at 20.

other resources.

a. *The Nature and Context of State Fragility and Violent Extremism in Nigeria*

Since 2010, there has been a rise in violence and conflict throughout West Africa, including throughout several regions of Nigeria. This uptick in violence and conflict has come at a time when Nigeria, like West Africa as a whole, has sustained an impressive real GDP growth, averaging around 7 percent per year for over a decade.²⁷ Some of the development gains that Nigeria has experienced since it transitioned from military to civilian rule in 1999 have heightened tensions and instability throughout the country, which in a number of regions have escalated into conflict that exists in varying forms in different parts of the country. The oil-rich Niger Delta region has experienced a local insurgency by a wide range of ethnic militias who attempted to undermine the oil industry through theft and disruption of the supply chain in order to undermine the oil industry. This conflict has evolved into maritime piracy and smuggling, affecting the security of countries on the Gulf of Guinea like Togo and Benin and enabling the spread of piracy beyond Nigeria.²⁸ This conflict was partially through a 2009 amnesty between rebel groups and the government; however, observers have characterized the amnesty as being little more than a temporary ceasefire, as kidnapping, crude oil theft, and piracy persist throughout the region.²⁹ The Middle Belt region has experienced both ethno-religious conflict and conflict between pastoralists and farmers over land and other natural resources.³⁰ In the Northern region of Nigeria, conflict has taken the form of religious and ethno-religious violence, which has expanded significantly since the escalation of attacks in 2009 by Boko Haram.

While violent conflict occurred primarily in the central, southwestern, and northwestern states during the period of 1998 through 2008, violent conflict since 2009 has been concentrated in the northeastern region of Nigeria, which has reached unprecedented levels due to the Boko Haram insurgency.³¹ Conflict has recently been intrastate and carried out by non-state actors, with violence emerging on ethnic, religious, and cultural lines. Of these, ethno-religious conflict

²⁷ AfDB, *Nigeria Economic Outlook* (2016), available at <http://www.afdb.org/en/countries/west-africa/nigeria/nigeria-economic-outlook/>. Note, however, that recent sharp declines in commodities prices, particularly for oil, has affected Nigeria's GDP growth for 2015/2016, which, according to the AfDB, hovers around 5 percent.

²⁸ Chris Newsom, *Conflict in the Niger Delta: More than a Local Affair*, USIP Special Report 271 (2011).

²⁹ *Id.* at 1–3.

³⁰ MARC ET AL., *supra* note 1.

³¹ NIGERIAN SOCIAL VIOLENCE PROJECT, *DATA DISPLAYS 1* (2014), available at http://www.connectsaisafrica.org/wp-content/uploads/2014/10/Social-Violence-Data-Summary_For-Website-Q42014-1.pdf.

has been particularly prevalent. For example, Nigeria has the largest number violent events involving Muslim-identified militias in Africa, with a total of 127 between 1998 and 2013; of these Muslim-identified militias, Boko Haram has attracted attention for both the scale and savagery of its attacks, of which 50 percent are directed at civilians, with an average fatality per event rate (5.6), which, according to ACLED, exceeds that of Al-Shabaab in the Horn and East Africa.³² In 2014 alone, Boko Haram was held responsible for 6,664 deaths, more than any other terrorist group in the world, including the Islamic State.³³

The rapid development of Nigeria's extractives industry and the accompanying economic growth have incited social tensions that are often articulated on ethno-religious lines. Social tensions are frequently exacerbated by regional inequalities, high levels of state corruption, and diverging views on the appropriate regional allocation of the country's natural resource revenues. On the whole, as rapid growth has deepened inequalities and exacerbated social tension, both state and customary institutional structures have also become strained. As pointed out in a 2015 World Bank study of West Africa, institutional structures have been unable to keep pace with changing societal needs and expectations, as reflected in the increasing and changing role of women in the economy, demands for greater participation in political institutions, and calls for a more equitable distribution of revenues derived from Nigeria's natural resource wealth.³⁴

b. The Case of Boko Haram – Drivers of Conflict in Northern Nigeria

The Salafist militant group Boko Haram emerged in 2002 under the charismatic leader Mohammad Yusuf. With the goal of excising "corrupt, false Muslims" from Nigerian politics and establishing an Islamic state ruled by Sharia law throughout northern Nigeria, it initially carried out limited attacks by targeting the police and security forces. However, it escalated the scale and scope of its attacks in 2009 after a crackdown by state security forces and the execution of Yusuf. It expanded both its methods and targets, employing suicide bombers, improvised explosive devices, targeted assassinations, and kidnappings and targeting government installations, security forces, police stations and patrols, and even international targets such as the U.N. building in Abuja.³⁵ It garnered a tremendous amount of international attention in May

³² John Carpenter, *Nigeria's Challenge*, ATLANTIC (June 24, 2011), <http://www.theatlantic.com/international/archive/2011/06/nigeriaschallenge/240961/1/>. John Campbell was ambassador to Nigeria from 2007 to 2011.

³³ Searcey and Santora, *supra* note 2.

³⁴ MARC ET AL., *supra* note 1.

³⁵ ONUOHA, *supra* note 9.

of 2014, when it kidnapped 270 girls from their secondary school in Chibok with the aim of using them to broker a prisoner exchange. From May of 2015, when President Muhammadu Buhari took office, to the end of the year, Boko Haram militants inflicted over a thousand fatalities.³⁶ In 2011, John Campbell, former U.S. ambassador to Nigeria, aptly described Boko Haram's expansion when he wrote, "Boko Haram, once an obscure, radical Islamic cult in the North, is evolving into an insurrection with support among the impoverished and alienated Northern population."³⁷ This quote encapsulates many of the drivers of radicalization among individuals in northern Nigeria. These drivers, while diverse and influenced by individual factors, include: (1) poverty, unemployment, lack of infrastructure and basic services; (2) widespread illiteracy; (3) regional inequality (relative deprivation); (4) government corruption and resulting injustice; and (5) the resonance of Boko Haram's ideology, both in terms of its religious message and in relation to other socio-economic factors.³⁸

While none of these drivers listed above may directly cause radicalization, the deprivation, alienation, and marginalization that arise from poverty, unemployment, and illiteracy may contribute to the vulnerability of individuals to manipulation by extremist ideology. Even though they may not directly cause radicalization, a 2013 study commissioned by USPI and carried out by the CLEEN Foundation draws from arrest records to demonstrate that "the real armies of terrorists' foot soldiers" comprise "disadvantaged, stranded populations." Corruption also contributes to poverty by depriving communities of resources, infrastructure, and economic opportunity, while also engendering a sense of injustice and alienation that is conducive to radicalization. A 2015 study by Mercy Corps across in Colombia, Afghanistan, and Somalia supports the CLEEN study's conclusion; it stressed that perceptions of injustice rooted in a weak, violent, and corrupt states, rather than poverty and unemployment that drive

³⁶ Alexis Okeowo, *The Women Fighting Boko Haram*, NEW YORKER (Dec. 22, 2015), <http://www.newyorker.com/news/news-desk/the-women-fighting-boko-haram>.

³⁷ James J.F. Forest, *Confronting the Terrorism of Boko Haram in Nigeria*, JSOU Report 12-5, 61 (2012)

³⁸ These factors are drawn from a 2013 study commissioned by the United States Institute for Peace (USIP) and carried out by the CLEEN Foundation in Nigeria in six states in northern Nigeria identified a number of drivers of radicalization among young men in Nigeria, who play a significant role in Boko Haram as foot soldiers. The drivers listed by the CLEEN study include both underlying structural factors, including unemployment and poverty and widespread illiteracy due to a lack of education, as well as other social and political factors such as excesses of the government security forces; lack of knowledge about religious teachings, and the Nigerian government's widespread corruption. The factors in the CLEEN study largely track a 2013 Afrobarometer report on Security and Extremism in northern Nigeria, which listed the following drivers of radicalization in Nigeria: poverty, unemployment or lack of opportunities, religious beliefs, lack of education, sense of injustice or mistreatment of their community by the government, ineffectiveness of the government, and coercion/being forced to join.

political violence.³⁹ Of course, socioeconomic deprivation and poverty is particularly acute in northern Nigeria, and contributes to the sense of relative deprivation and injustice. For example, the National Population Commission reported that states in northern Nigeria have much lower literacy rates than in other parts of the country, and that 72 percent of children around the ages of 6-16 never attended schools in Borno, the state where Boko Haram was founded.⁴⁰

The resonance of Boko Haram's ideology merits particular attention. The appeal stems from its capitalization on a pervasive sense of unease in Muslim communities in northern Nigeria about the corruption of Islamic society by political and socioeconomic change, as well as increasing secularization. However, Boko Haram's ideology also resonates for reasons beyond religion. Socioeconomic deprivation, particularly relative to other parts of the country, which are viewed as benefitting from the government's corruption and injustice, creates an atmosphere in which the organization's extremist ideology thrives. As Ngwodo has described, Boko Haram "is a symptom of decades of failed government and elite delinquency finally ripening into social chaos."⁴¹ Ambassador John Campbell has also highlighted the linkages between the appeal of Boko Haram's ideology and underlying structural conditions of poverty and deprivation in Nigeria, noting that it "draws on a longstanding local tradition of Islamic radical reform that emphasizes the pursuit of justice for the poor through the imposition of Sharia. Adherents generally have distain for Nigeria's secular leadership and the country's traditional Muslim elites, whom they see as having been co-opted by the government."⁴²

i. Women as Agents for Preventing Radicalization

In Nigeria and in fragile and conflict-affected states across the globe, the role of women in preventing and countering violent extremism has begun to focus on how women's role in the domestic and family sphere, particularly as mothers, can be leveraged to prevent radicalization, particularly of children and youth.⁴³ These programs frequently look to the family structure as the frontline for preventing radicalization. The guiding assumption of these programs is that educating women about the indicators of radicalization empowers women to act. As summarized

³⁹ Mercy Corp, Youth Consequences Report, 2015

⁴⁰ Boko Haram Monograph, p. 91 (see fn 220).

⁴¹ Boko Haram Monograph, p 76

⁴² Boko Haram Monograph.

⁴³ In Nigeria, women also act in a preventative capacity in government sanctioned vigilante organizations such as the Civilian Joint Task Force ("C.J.T.F."), which acts to apprehend Boko Haram fighters and turn them over to the Army. Out of the 10 thousand plus members of the C.J.F.T., there are fewer than 50 female members. Alexis Okeowo, *The Women Fighting Boko Haram*, NEW YORKER (Dec. 22, 2015).

by Elaine Hargrove of Sisters Against Violent Extremism (SAVE), “[Women’s] voices, experiences, and ideas have been utterly neglected to date [in approaches for ending violent extremism], but their close proximity to potentially vulnerable youth through their roles as the main caretaker in most societies provides them with a unique point of view that can lead to vital insights about how to steer youth away from violence.”⁴⁴

These ideas have been employed in Nigeria by Women Without Borders, which introduced the pilot project called “Mother’s School” in five conflict-affected communities in the Middle Belt region.⁴⁵ The program trained 147 women to act as “the first line of security for their homes, families, and communities.” Women attending the training reported that they felt empowered as major stakeholders in the crisis of violent extremism and subsequently felt that their involvement in finding a solution was important.⁴⁶

However, evidence suggests that the efficacy of women in preventing radicalization by virtue of their position within the domestic sphere may be compromised by the relatively low position women hold in Nigerian society, particularly in areas like northern Nigeria that are affected by high levels of poverty, illiteracy, and unemployment. Many of the policies and programs that focus on the role of women as a first line of defense against radicalization in the domestic sphere are fundamentally misguided, as they are based on faulty assumptions about the power and agency of women in many societies. Chantal de Jonge Oudraat has argued, “The idea that in many cultures women may not be very visible in the public sphere, but wield significant power and influence in the private sphere and hence can counter violent extremism early on is widespread. Yet...interviews with women in Africa and Asia reveal that most women are invisible and have no voice.”⁴⁷

These findings call into question the efficacy of programs that focus on the role of women in the domestic sphere without taking into account whether women wield any real power and have voice in the domestic sphere or in the community at large. In Nigeria, where a 2013

⁴⁴ Couture, *supra* note 7, at 23. See also Edit Schlaffer and Ulrich Kropiunigg, *A New Security Architecture: Mothers Included!, in A Man’s World?* 30–75 (eds. Fink et al., 2016).

⁴⁵ Esther Ibanga, *U.N. Open Briefing Statement*, <http://www.un.org/en/sc/ctc/docs/2015/Open%20Briefing%20Statement%20by%20Pastor%20Esther%20Ibanga.pdf>

⁴⁶ Id.

⁴⁷ Chantal de Jonge Oudraat, *Preventing and Countering Violent Extremism (CVE): the Role of Women and Women’s Organizations, in A MANS WORLD?* 13 (Fink et al., eds. 2016) See also RADHIKA COOMARASWAMY, PREVENTING CONFLICT, TRANSFORMING JUSTICE SECURING PEACE: A GLOBAL STUDY ON THE IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325, UN Women (2015).

CLEEN study that mapped the activities of civil society organizations and human rights defenders found that most of these organizations were providing health services, while only three engaged in political and social advocacy on issues of women's empowerment. In the vast majority of cases in which they do not engage in economic or political advocacy, a more compelling alternative would be to engaging in concrete reform efforts to enhance, in a tangible way, the social and economic agency of women.

Evidence gathered by the World Bank in the WDR 2012 about women's economic agency indicates why efforts to enhance women's access to and control over assets is critical to efforts to prevent and counter violent extremism. The report found that while economic growth may facilitate conditions for women to exercise agency, such as through improved household income, infrastructure, and access to services, these gains are only realized when women are able to earn their own incomes. The ability of women to earn their own incomes and accumulate autonomous assets has the effect of increasing their status and bargaining power within the household setting. Moreover, even in cases where legal regimes support the autonomous accumulation of and control over assets by women, a plurality of overlapping legal systems and limited enforcement. Furthermore, expanding women's employment opportunities, especially formal employment, can also promote women's economic agency by expanding women's networks and increasing their mobility. This provides women with greater access to information and support.⁴⁸

ii. Preventing Radicalization—Women as Participants in Violent Extremism

Gender inequality and the lack of economic and political agency may act as major drivers of violent extremism, including in the radicalization of women and their expanding role in extremist organizations. In a survey of extremist organizations in 13 countries, S.V. Raghavan and V. Balasubramaniyan have reported that a high level of gender inequality is an enabling condition for religious, secular, and left wing violent extremist groups, who are able to exploit women's subordinate condition and lack of agency and autonomy.⁴⁹ They also observe that women are more likely to act as suicide bombers in societies where women have low social status, in some cases because their low social status insulates them from suspicion.⁵⁰

⁴⁸ WDR 2012, *supra* note 14, at 155.

⁴⁹ S. V. Raghavan and V. Balasubramaniyan, *Evolving Role of Women in Terror Groups: Progression or Regression?*, J. INT'L WOMEN'S ST., 197, 211 (2014).

⁵⁰ *Id.*

Women's participation in violent extremism in Nigeria has evolved over the past five years from more passive and ancillary roles to more active roles, including acting as couriers for money and supplies between cells in the organization, acting as recruiters for new members and mobilizing grassroots support within their families or communities, as well as taking on active roles on the frontlines, such as fighting, carrying weapons, and, starting in 2014, acting as suicide bombers.⁵¹ Boko Haram use of suicide bombers in 2014 began shortly after the abduction of the 274 schoolgirls from Chibok. The trend has accelerated throughout 2015, with girls young as 7 through 10 years being reported to have acted as suicide bombers.⁵² In these cases, the girls' young age suggests that an element of coercion is likely, including through familial pressure.

An 2015 Afrobarometer survey of 2,400 individuals in 33 out of 36 states in Nigeria found that the responses of female survey participants closely tracked those of men, including poverty; unemployment or lack of opportunities; religious beliefs or ideology; lack of education; a sense of mistreatment of their community by the government; government ineffectiveness; and coercion.⁵³ The results, however, may be of limited value in determining the drivers of radicalization for women in the northeast, as they do not include Borno, Yobe, and Adamawa, which have a high level of extremist violence, displacement, and deprivation. Other reports record numerous structural drivers of extremism that have a disproportionate effect, or push, on women, including reduced social and economic agency, which renders women economically and socially dependent on male figures and undermines their ability to contribute to stabilization and peacebuilding through economic contributions and political participation, as well as by acting to prevent radicalization in the domestic sphere and in the community at large.⁵⁴ These reports also flag drivers that specifically relate to women, including the erosion of women's rights, lack of formal institutional or legal protections, lack of social security rendering women vulnerable to recruitment, and vulnerability due to a lack of economic power, education, and information.⁵⁵ Finally, anecdotal evidence from informal interviews with community based organizations in

⁵¹ 'Kemi Okenyodo, The Role of Women in Preventing, Mitigating and Responding to Violence and Violent Extremism in Nigeria, in *A MANS WORLD?* (Fink et al., eds. 2016).

⁵² Elizabeth Pearson, *How Boko Haram Uses Female Suicide Bombers to Terrorize Nigeria*, HUFFINGTON POST, Feb. 28, 2015, http://www.huffingtonpost.com/2015/02/28/boko-haram-female-suicide-bombers_n_6763386.html.

⁵³ Kemi Okenyodo, Nengak Daniel Gondyi, & Peter Lewis, *Security and armed extremism in Nigeria: Setting a new agenda*, AFROBAROMETER DISPATCH NO.29', http://afrobarometer.org/sites/default/files/publications/Dispatches/ab_r6_dispatchno29.pdf.

⁵⁴ See WDS 2012, *supra* note 14.

⁵⁵ Okenyodo, *supra* note 51, at 104.

Borno, Plateau, and Kaduna states suggest that women may also be driven to radicalization because they derive a sense of relevance and importance in society from the association with Boko Haram.⁵⁶

This suggests that laws, policies, and programs focused on preventing female radicalization should emphasize areas such as inheritance, land and property rights (including the division of marital property in cases of divorce or separation), labor, and access to credit. Moreover, as promoting gender equality generates economic growth and contributes to long-term peace and stability, more must be done to increase gender equality for women by enacting and reforming laws and policies where they are insufficient, as described in more detail below.

iii. Legal Framework—Women’s Economic Agency in Land and Property Ownership

Legal regimes supporting Nigerian women’s economic agency are beset with a number of challenges, particularly with regard to legal pluralism and discriminatory laws limiting women’s access to and control over resources such as land and property. These resources are critical for countries that wish to reap the benefits such as the reduction of radicalization and violent extremism, as well as the increased economic prosperity and stability, that accompany increases in women’s ability to acquire autonomous assets.

The 1999 Nigerian Constitution contains an anti-discrimination provision that prohibits gender or sex-based discrimination, and further provides that all persons have the right to acquire and hold property.⁵⁷ In the case of spouses, land may be registered in the name of either a wife or husband individually, with the option of joint registration. Marriage, divorce, and inheritance are regulated by a series of national statutes that provide formal protection for surviving spouses; however, these statutes apply only to registered, rather than common law, marriages. Because the majority of Nigerians have common law, rather than registered, marriages, these statutes regulating marriage and inheritance fail to provide adequate protection, especially with regard to women. Muslim women involved in polygamous relationships are also disproportionately affected by these laws.

Despite the formal protections provided to women, a number of challenges exist with

⁵⁶Okenyodo, *supra* note 51, at 106. This evidence is further supported by an Afrobarometer survey, in which showed that 44% of the respondents (22% male and 22% female) believed that people support Boko Haram in order to gain personal power or relevance. *Id.*

⁵⁷ 1999 Constitution of the Republic of Nigeria, Arts. 42–3.

respect to protecting women's access to and control over land and personal or marital property. Legal pluralism is particularly challenging, as customary laws and traditional norms that operate throughout Nigeria tend to place women at a disadvantage and render them reliant on relationships with male family members for access to land and property. While national laws formally invalidate customary laws that are discriminatory, in practice discriminatory customary laws remain the dominant legal framework.^{58 59} In many Yoruba groups, for example, the rights of use and occupation of land pass to sons, rather than daughters, whose use rights expire upon marriage.⁶⁰

Moreover, the 1978 Land Use Act, which nationalized all land in Nigeria and formally replaced customary systems of land tenure in favor of individual rights and ownership, has resulted in women losing customary access and use rights, particularly in rural settings. In urban settings, where informal settlements are prevalent, customary and Sharia law continues to govern land rights. The failure of the Land Use Act to support equitable access to land suggests that alternative reforms must be made to provide women with formal title to land, which is often a prerequisite for use as collateral to secure loans and credit to invest in small business enterprises or to in other productive assets.

Women's ability to acquire and control land and property is also limited by the practice of Sharia law, which is prevalent in Muslim communities throughout Nigeria. In the northern states, inheritance practices are discriminatory. Daughters inherit half of what is given to sons; moreover, in practice, daughters will often relinquish their limited share of the land so as to preserve family unity and to limit the decrease in land value that occurs through intergenerational partition. As such, with limited ability to work in the formal sector and limited access to autonomous ownership of land, many Nigerian women are rendered economically and socially vulnerable and remain dependent on their relationship to male family members for economic security.

IV. Conclusions and Recommendations

Women play a potent role in countering violent extremism and preventing radicalization. While a substantial evidence base has begun accumulating that suggests that women's economic

⁵⁸ Evidence Act, Sec. 14(3), Cap E, Laws of the Federal Republic of Nigeria (2004) (invalidates discriminatory customary laws).

⁵⁹ Marriage Act, Cap M6, Laws of the Federal Republic of Nigeria (2004) (grants equal status in marriage)

⁶⁰ DENOEU, *supra* note 12.

empowerment and agency can play a significant role in contributing to creating stability and long-lasting peace, further efforts are needed to insure that the legal and regulatory environment fully promotes women's participation in the economy. Moreover, the systemic erosion of women's economic rights and agency that accompanies radicalization and violent extremism can and should be used as early warning signs by governments, civil society organizations, and international actors to target regions and countries for funding to support preventative strategies to counter violent extremism and radicalization.

Recommendations to the United Nations and Multilateral Organizations

- Engage Nigeria to constructively fulfill its legally binding obligations as a party to the CEDAW since 1983 and the Optional Protocol since 2004, without reservations, particularly in areas that would strengthen women's economic and social rights.
- Enhance the primacy of the Sustainable Economic Development Goals that promote women's agency and social, political, and economic empowerment.
- Facilitate further dialogue and collaboration among Member States with respect to legal reform and policies that enhance the economic security of women, and encourage further empirical research on the linkages between women's economic rights and agency and violent extremism.
- Work with Member States to encourage further funding, not just discussion, of programs that support women's economic agency. The authority and legitimacy of the United Nations enables it to lay the foundations for effective policies to support women's economic development, but change will not occur without an increase in funding support.

Recommendations to the Government of Nigeria

- Increase the capacity of state institutions to promote effective implementation of law and enhance accountability for failure to effectively enforce laws protecting women's economic rights. This should involve a multitude of stakeholders, including traditional leaders, women's organizations, and other civil society organizations.
- Channel funding to development programs that are specifically earmarked for women's economic development, and incorporate these programs into counterterrorism strategies.
- Provide funding to support programs that enhance the status of women within the home; women cannot contribute efforts to counter violent extremism when they lack the economic and social agency that provides them with a negotiating position within the home.

- Enact and enforce laws that enhance the ability of women to earn their own incomes and to accumulate autonomous assets—The accumulation of autonomous assets is critical if women are to exercise economic agency and act as drivers of social stability. Laws related to asset ownership, equitable inheritance, land and property rights are key to enabling women to make decisions about the deployment of assets. The accumulation of autonomous assets enables women to obtain a stronger bargaining position within the family, household, social group, and community, which is critical if women are to play a role in mitigating and preventing radicalization of children and youth within a family and community.

