

Response to the call for information from the Coalition for Genocide Response: *Analytical report on a comprehensive approach to promoting, protecting and respecting women's and girls' full enjoyment of human rights in humanitarian situations, including good practices, challenges and lessons learned at the national, regional and international levels (45/29)*

The Coalition for Genocide Response (CGR) is a human rights coalition-building organisation that works towards a comprehensive response to genocide and other international crimes, engaging the UK, regional and international actors. CGR welcomes this opportunity to provide information on the situation of women and girls in humanitarian situations and other cases requiring attention.

❖ The Situation of Yazidi, Christian and Other Religious Minority Women and Girls in Syria and Iraq

In 2014, the terror organisation Daesh unleashed genocidal atrocities against religious minorities: Yazidis, Christians and others. They brought about this genocide by way of murder, enslavement, deportation and forcible transfer of populations, imprisonment, torture, abduction of women and children, exploitation, abuse, rape, sexual violence, forced marriage - unabated. Daesh specifically targeted religious minorities, including Muslim minorities, for destruction in an attempt to annihilate religious pluralism and establish a purely Islamic region. Daesh specifically targeted religious minority women and girls, trafficked them to other parts of the world and subjected them to a litany of atrocities.

Many of the women and girls abducted by Daesh northern Iraq in 2014 are still missing. Little, if any, progress has been made to locate and liberate them. This is especially surprising as Daesh has lost its “caliphate” in Syria and Iraq. Nonetheless, the abducted women and girls are nowhere to be found. Many families have lost hope of seeing them alive.

At the end of August 2019, a news report suggested that the women and girls may be alive, but their suffering continues. According to an Arabic media outlet, some of the abducted Yazidi women and girls are currently in Iran and have been offered for sale.¹ According to their claims, two girls referred to as “Sabaya” and “Jariyat” (*translation: women captives in war and slave-girls*) who were abducted by Daesh fighters, were moved to Syria and now ultimately transferred from Syria to Iran, allegedly by Iranian soldiers. According to the media outlet, the asking price for the release of the two girls is \$40,000. As a result of the concerning news from

¹ https://arabic.sputniknews.com/arab_world

Iran, a British Parliamentarian, Lord Alton of Liverpool, called upon the U.K. government to investigate the situation and engage in a dialogue with the Iranian government to clarify the issue and to ensure the safe return of the Yazidi girls, if they have indeed been trafficked to Iran. Other states should follow suit and engage the Iranian government in seeking the truth about the whereabouts of the Yazidi women and girls. We should be asking for the girls to be reunited with their families.

If the two girls in Iran are abducted Yazidis, it may be plausible to consider that more may be in Iran or other neighbouring countries; transferred when Daesh started to lose its caliphate. Hence, this is also an appeal to all to be vigilant.

States must do more to ensure the safe return of the trafficked women and girls. International organisations need to support and guide states through this process, or indeed, accommodate it. Furthermore, in many parts of the world, the acts constituting human trafficking, and subsequent enslavement and abuse, are not being investigated and prosecuted.

Reports from Iraq suggest that Daesh fighters are only prosecuted for terrorism-related offences.² However, apart from terrorism-related offences, Daesh fighters must be prosecuted for their other crimes including ‘murder, kidnapping... sale into or otherwise forced marriage, trafficking in persons, rape, sexual slavery and other forms of sexual violence, recruitment and use of children’³, forced transfer of population, destruction of cultural heritage and much more. Furthermore, Daesh fighters should be prosecuted for their involvement in international crimes such as genocide, crimes against humanity and war crimes.

The challenges differ between states. For example, in Iraq, there are certain shortfalls with the Iraqi Penal Code that prevent prosecutions for the above-mentioned crimes. For example, the Iraqi Penal Code does not criminalise genocide and other international crimes.⁴ Furthermore, it does not address several crimes perpetrated against women and girls, limiting the number of acts for which Daesh fighters can face criminal prosecution. For example, marital rape is not criminalised in Iraq; moreover, the law does not criminalise domestic violence, and as it is clear from Paragraph 41(1) of the Iraqi Penal Code, the ‘punishment’ of a wife can be justified. The issue became glaring with the rise of Daesh and its use of rape, sexual violence and forced marriage against women and girls.

² Margaret Coker and Falih Hassan, ‘A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects’, New York Times (17 April 2018). Available at: <https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html>.

³ UN Security Council Resolution 2379 (21 September 2017) UN Doc S/RES/2379.

⁴ See: Iraq: Penal Code [Iraq], No. 111 of 1969, July 1969. Available at: <https://www.refworld.org/docid/452524304.html>.

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Paragraph 41(1) of the Iraqi Penal Code states that ‘(1) The punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom.’ It may be argued that Paragraph 41(1) of the Iraqi Penal Code is a provision that ultimately prevents women and girls ever seeing justice for the violence they suffered at the hands of Daesh if the marriages between the fighters and the abducted and enslaved women and girls are accepted.

The above-mentioned provision was not amended even after Iraq acceded to CEDAW in 1986. During this accession, Iraq made several reservations that significantly weakened the protections demanded by CEDAW, most notably to Articles 2(f) and (g) and 16.⁵ Article 2(f) of CEDAW places an obligation on states ‘to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.’ Article 2(g) requires states ‘to repeal all national penal provisions which constitute discrimination against women.’ As Iraq made a reservation concerning the provisions, Iraq preserved the discriminatory provisions contained within the Iraqi Penal Code (including Paragraph 41(1)). Article 16 of CEDAW places an obligation on states to ‘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.’ By way of making the reservation to Article 16, Iraq preserved the inequality between men and women concerning marriage.

Understandably, in the case of women and girls forcibly married to Daesh fighters, the question is whether these marriages could ever be seen as legal under Iraqi law. Article 9 of Iraq’s Personal Status Law No. 188 of 1959 criminalises forced marriage. Article 9(1) states that ‘No relative or non-relative has the right to force marriage on any person, whether male or female, without their consent. The contract of forced marriage is considered void if the marriage is not yet consummated.’ As the provision suggests, once the marriage is consummated, the forced marriage is not considered to be void. This is despite the fact that in the case of forced marriage, consummating a marriage means rape.

In response to the mass atrocities perpetrated by Daesh in Iraq, the country must ensure that all Daesh fighters are prosecuted for rape and sexual and gender-based violence they perpetrated against women and girls. The crimes should not be shielded with Paragraph 41(1) of the Iraqi Penal Code or any other provisions. The Iraqi government must consider introducing changes to its Penal Code, and especially, must ensure that any provisions of the Iraqi Penal Code are not discriminatory to women. One option would be to repeal Paragraph 41(1) of the Iraqi Penal Code. Furthermore, the provisions on forced marriage must be revised to ensure that they are

⁵ See: <https://indicators.ohchr.org/>.

reflective of the issues pertaining to such an offence. Consummating such a marriage should not deem it lawful.

Lastly, any legal reforms should also include introducing the crime of genocide and other international crimes into the Iraq Penal Code in accordance with international standards (notably the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide) to ensure that rape and sexual and gender-based violence are considered as methods to bring about genocide.⁶

Concerning domestic prosecutions in Iraq, Nadia's Initiative advocates have expressed concerns at reports that 'Daesh members held in Syria have been released and that fighters transferred to Iraq have been sentenced to death following rushed trials that exclude victims and do not comply with international fair-trial standards.'⁷ Indeed, the stories of Daesh fighters being sentenced to death in rushed trials and without the involvement of the victims is not a new allegation.⁸ It is not possible, using such an approach, to ensure justice for the victims who are deprived of their day in court and the right to tell their stories⁹, or against the perpetrators who will not face responsibility for their crimes. Similarly, there are no visible traces of justice for future generations who will bear the weight of the missed opportunity for truth and justice in the Daesh trials.

Furthermore, as in the case of Iraq, the domestic courts may not be equipped to prosecute Daesh fighters for their atrocities.¹⁰ If this is the case, steps need to be taken to ensure that Iraqi courts can fulfil their duties. If this is either impossible or unlikely, international tribunals should assist.

The UN must work to:

- **Rescue enslaved women and girls;**
- **Combat impunity for the crimes against women and girls, including by:**

⁶ *Prosecutor v Akayesu*, Caso No. ICTR-96-4-T (Judgment, September 2, 1998) 496. See also: Sherrie L. Russell-Brown, 'Rape as an Act of Genocide' (2003) 21 Berkeley Journal of International Law 350; Reid-Cunningham, Allison Ruby, 'Rape as a Weapon of Genocide' (2008) 3 Genocide Studies and Prevention: An International Journal.

⁷ See: Nadia's Initiative, Press Release.

⁸ See for example: Margaret Coker and Falih Hassan, 'A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects', New York Times (17 April 2018). Available at: <https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html>.

⁹ Eric Stover, *The Witness. War Crimes and the Promise of Justice in The Hague* (University of Pennsylvania Press: Philadelphia, 2007).

¹⁰ Physicians for Human Rights, Building Forensic Capacity to Document, Collect, Identify, Analyse, and Preserve Evidence of War Crimes and Crimes against Humanity in Northern Iraq, Capacity Assessment Report (July 2017).

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- **Investigate all such crimes;**
- **Ensure that Daesh fighters are prosecuted in the domestic courts for their involvement in genocide, but also other crimes, including rape and sexual abuse;**
- **Ensure that atrocities are prosecuted by international tribunals as a follow-up step from the UN Security Council Resolution 2379.**
- **Provide assistance to the Iraqi judiciary with training and capacity building assistance that may be needed to equip them to prosecute the crimes of rape, sexual violence, but also genocide (and rape and sexual violence as genocidal methods);**
- **Provide survivors with adequate assistance, including by:**
 - **Exploring domestic and international avenues to provide comprehensive assistance, including medical and psychological assistance, financial assistance, assistance to rebuild their lives;**
 - **Working with the Global Survivors Fund on exploring how to repurpose frozen assets towards reparations for victims of Daesh atrocities.**

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❖ **The Situation of Women and Girls in Northern Nigeria**

Boko Haram and Fulani militia are committing atrocity crimes in Nigeria. Boko Haram has largely targeted Christians and moderate Muslims in Northern Nigeria. Boko Haram has been abducting women and girls and forcing Christian women and girls to convert and marry. Among the abducted women and girls, Leah Sharibu, a 16-year-old Nigerian girl, one of the 110 schoolgirls abducted by Boko Haram members from their school in Dapchi in February 2018, continues to be enslaved even though all of the other girls have now been released. According to one of the other girls, Leah declined to renounce her Christian faith and this is the very reason Boko Haram continues to enslave her.

Boko Haram's use of sexual violence against girls and women first gained international attention when on April 14, 2014, the terrorist group abducted 276 girls, mostly between 16 and 18 years of age, from a secondary school in Chibok in Borno State, Nigeria. The ensuing social media campaign #BringBackOurGirls gained the attention of worldwide media and was supported by several celebrities, but was largely unsuccessful in motivating any operation to secure their release. Nonetheless, it has to be emphasized that the Boko Haram atrocities have affected much greater numbers than those kidnapped at Chibok. The terror group has been targeting schools because of the belief that schools teach Western values. Boko Haram conducts attacks in predominately Muslim states and the majority of abducted girls are Muslim. However, Christian girls have also been targeted by Boko Haram. Christian girls abducted by Boko Haram are forced to convert to Islam (and/or marry their abductors). Leah Sharibu is one of them.

Similarly, the atrocities perpetrated by the Fulani militia show clear signs of targeting Christians, including the destruction of churches, the seizure of land and properties belonging to Christian farmers. Reports have also emerged of the Fulani militia kidnapping 'Christian schoolgirls to marry them to Muslim men.' In its 2015 report, Open Doors lists detailed examples of such targeted attacks. The report rebuts the argument that the clashes were caused by environmental degradation and result from migration. The report presents a more comprehensive picture incorporating some elements of religious persecution. Indeed, the conflict is extremely complex. However, the religious element of the atrocities cannot be swept under the carpet.

On 11 December 2020, the Prosecutor of the ICC announced the conclusion of the preliminary examination of the situation in Nigeria. The preliminary examination was opened on 18 November 2010, following several communications received by the Office of the Prosecutor (the OTP) which suggested that mass atrocities had occurred, involving Boko Haram militants based in Nigeria. In her statement of 11 December 2020, the Prosecutor confirmed that, the OTP 'has concluded that there is a reasonable basis to believe that members of Boko Haram and its splinter groups have committed the following acts constituting crimes against humanity

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and war crimes: murder; rape, sexual slavery, including forced pregnancy and forced marriage; enslavement; torture; cruel treatment; outrages upon personal dignity; taking of hostages; intentionally directing attacks against the civilian population or against individual civilians not taking direct part in hostilities; intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance; intentionally directing attacks against buildings dedicated to education and to places of worship and similar institutions; conscripting and enlisting children under the age of fifteen years into armed groups and using them to participate actively in hostilities; persecution on gender and religious grounds; and other inhumane acts.’

The Prosecutor further announced that the OTP found a reasonable basis to believe that members of the Nigerian Security Forces (NSF) have committed crimes against humanity and war crimes, including ‘murder, rape, torture, and cruel treatment; enforced disappearance; forcible transfer of population; outrages upon personal dignity; intentionally directing attacks against the civilian population as such and against individual civilians not taking direct part in hostilities; unlawful imprisonment; conscripting and enlisting children under the age of fifteen years into armed forces and using them to participate actively in hostilities; persecution on gender and political grounds; and other inhumane acts.’

The next step will be to request authorisation from the Judges of the Pre-Trial Chamber of the Court to open investigations. However, as the ICC is chronically underfunded with zero net growth, while at the same time, becoming overwhelmed by cases, this may affect the expediency of handling the next stage in the case. However, in addition, to the ICC investigations, it is crucial that the situation is being monitored.

The UN must work to:

- **Conduct its own assessment of the targeting of religious minority women and girls in Nigeria;**
- **Explore the option to establish a UN Commission of Inquiry for Nigeria that would monitor the situation and identify comprehensive responses;**
- **Provide capacity-building assistance to the judiciary in Nigeria to prosecute the atrocities against women and girls.**

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❖ **The Situation of the Rohingya Women in Myanmar**

The Rohingya Muslims have suffered horrific persecution in Burma/Myanmar, at the hands of the Burmese government (or on their authorisation) and hundreds of thousands of them were forced to flee for their lives to neighbouring Bangladesh.

In early 2017, the OHCHR Mission to Bangladesh, having conducted interviews with the forcibly displaced Rohingya Muslims, reported that the Burmese government, one way or another, subjected the Rohingya Muslims in Burma/Myanmar to:

Extrajudicial executions or other killings, including by random shooting; enforced disappearance and arbitrary detention; rape, including gang rape, and other forms of sexual violence; physical assault including beatings; torture, cruel, inhuman or degrading treatment or punishment; looting and occupation of property; destruction of property; and ethnic and religious discrimination and persecution.

As a result of the atrocities, over 700,000 Rohingya Muslims were forced to flee to Bangladesh. These atrocities are crimes against humanity. The crimes may also meet the threshold of genocide. The UN High Commissioner for Human Rights, for example, described the atrocities committed against the Rohingya Muslims in Burma as ‘a textbook example of ethnic cleansing,’ and the UN Special Envoy for human rights in Myanmar identified the ‘hallmarks of a genocide’ within the horrendous crimes suffered by the Rohingya Muslims.

The Burmese military has used rape and sexual violence against women and girls on a mass scale. The Burmese military resorted to large-scale gang rape in at least ten village tracts, with up to 40 women and girls being raped together, in front of their families and local communities.

In October 2020, Physicians for Human Rights (PHR), a non-governmental organisation, published a report documenting widespread sexual violence allegedly committed by the armed forces in Myanmar, the Tatmadaw, during the atrocities perpetrated against the Rohingya Muslims in August 2017. The new report, “Sexual Violence, Trauma, and Neglect: Observations of Health Care Providers Treating Rohingya Survivors in Refugee Camps in Bangladesh”, is based on interviews with 26 medical professionals who provided medical care to the Rohingyas in the refugee camps in Bangladesh, between August 2017 and August 2020. The Rohingya Muslim refugees testified to the use of sexual and gender-based violence and its physical and psychological toll.

The report concludes that ‘sexual violence against the Rohingya in Myanmar was widespread and followed common patterns, according to accounts by these [medical professionals]. These [medical professionals’] narratives help corroborate and attest to patterns of perpetration of sexual violence by members of the military and those in uniform, consistent with many other

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reports.’ It identifies that gang rape, sexual humiliation and other attacks on personal dignity, and sexual violence accompanied by other violent acts were typical experiences recalled by their patients. The medical professionals identified that ‘behavioural and mental health status of their patients suggests that this sexual violence and other violations had a deep and long-lasting impact on these survivors, with high levels of trauma demonstrated years after the event.’

The report further identifies barriers to the provision of medical care to the Rohingya Muslim refugees in Bangladesh. Of course, medical care is essential to address the consequences of sexual and gender-based violence. Criticisms include a ‘lack of screening protocols for physical and psychological consequences of sexual violence, limited availability of mental health care services, provider workload, patient privacy concerns, and stigma.’

The evidence presented by PHR sends a very clear message, that the victims of the sexual violence at the hands of the Tatmadaw require a broad range of assistance, assistance that is not easily available in Bangladesh and so they continue to deal with the burden of the crimes.

PHR makes several recommendations for several actors, including the Government of Myanmar and the international community as a whole. For example, PHR recommends that the Government of Myanmar ‘initiate prompt, independent, and impartial criminal investigations into all allegations of grave human rights violations, including the use of sexual violence as a tactic of war, by the Tatmadaw’, ‘urgently undertake legislative reforms that guarantee human rights protections to all ethnic groups, including the Rohingya, in line with obligations under international law’, and ‘guarantee the safe, dignified, and voluntary repatriation of Rohingya refugees by ensuring robust, codified protections of their human rights, including guarantees of citizenship, restoration of homes and land, and official commitments to prevent any repetition of these crimes.’

These ambitious recommendations for the Government of Myanmar are unlikely to be accepted, especially as the Government does not acknowledge that the atrocities took place and blames the events on militia. PHR has identified several recommendations for the international community to implement, including, to ‘pursue all available means to ensure that all perpetrators of grave violations of human rights, including sexual violence, against the Rohingya are held to account’, ‘support the development of a comprehensive international criminal justice process with the necessary financial, technical, legal, and political resources required, ensuring a survivor centered approach’, ‘ensure Myanmar’s compliance with the provisional measures issued by the International Court of Justice to take all measures within its power to protect the Rohingya from genocide, as well as to prevent the perpetration of any further atrocity crimes.’

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PHR further recommends that the international community ‘recognize that forced witnessing of sexual crimes and sexual humiliation are forms of inhumane acts intentionally causing great suffering, or serious injury to body or to mental or physical health and should be prosecuted as such.’ This is an important recommendation to ensure that all victims of this systematic sexual violence, whether direct or indirect, can see justice being done.

In April 2018, the Chief Prosecutor of the ICC, Ms Fatou Bensouda, sought a ruling from the President of the Pre-Trial Division on the question of the ICC’s jurisdiction in the case: ‘whether the Court may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh.’ The Pre-trial Chamber recognised the jurisdiction.

In November 2019, The Gambia initiated proceedings against Myanmar at the ICJ. The application filed by The Gambia alleged that the Government of Myanmar has been involved in atrocities against the Rohingya Muslims, including ‘killing, causing serious bodily and mental harm, inflicting conditions that are calculated to bring about physical destruction, imposing measures to prevent births, and forcible transfers, are genocidal in character because they are intended to destroy the Rohingya group in whole or in part’ in violation of the Genocide Convention.

On 23 January 2020, the International Court of Justice (the ICJ), the principal judicial organ of the United Nations, ordered Myanmar several provisional measures to protect the Rohingya Muslim minority in the country.

The UN must work to:

- **Support The Gambia’s case before the ICJ by providing all relevant information that it may hold;**
- **Support the ICC in its investigations of the case of Bangladesh/Myanmar by providing all relevant information that it may hold;**
- **Monitor the issue of rape and sexual violence against women and girls and identify the needed responses towards accountability, including, by adding the issue to the considerations of the ICJ and ICC.**

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❖ **The Situation of Tigrayan Women**

The recent atrocities in Tigray have all hallmarks of genocide. Recent reports suggest specific targeting of ethnic and religious groups.

Report after report has raised the issue of rape and sexual violence being used against women in Tigray. There is mounting evidence of the specific targeting of Tigrayan women, as an ethnic minority, to prevent them from reproducing in the future. As Lucy Kassa reported, one Tigrayan woman was told by her rapists that: ‘Our problem is with your womb. Your womb gives birth to Woyane [derogative term used to refer to the TPLF]. A Tigrayan womb should never give birth.’ She further reported that ‘Hundreds of women have reported horrific accounts of rape and gang rape since the start of the conflict in Tigray nearly six months ago. Medics have reported removing nails, rocks and pieces of plastic from inside the bodies of rape victims.’

At the end of January 2021, UN Special Representative of the Secretary General on Sexual Violence in Conflict, Pramila Patten, reported on serious allegations of sexual violence in the Tigray region of Ethiopia, including a high number of alleged rapes in the capital, Mekelle. As Patten states: ‘There are disturbing reports of individuals allegedly forced to rape members of their own family, under threats of imminent violence. Some women have also reportedly been forced by military elements to have sex in exchange for basic commodities, while medical centers have indicated an increase in the demand for emergency contraception and testing for sexually transmitted infections (STIs) which is often an indicator of sexual violence in conflict. In addition, there are increasing reports of sexual violence against women and girls in a number of refugee camps.’

These allegations require urgent investigation and accountability. Patten called upon the parties involved in Tigray region hostilities to commit to a zero-tolerance policy for crimes of sexual violence. She further called on the Government of Ethiopia to exercise its due diligence obligations to ‘protect all civilians from sexual and other violence, regardless of their ethnic origin and those displaced by conflict, and to promptly allow for an independent inquiry into all allegations of sexual and other forms of violence, to establish the facts and hold perpetrators accountable, provide redress to victims, and prevent further grave violations.’

Furthermore, all those affected by the atrocities require urgent medical and other assistance. This is particularly challenging due to the lack of access to the region. ‘Immediate medical and psychosocial assistance must be accompanied by protection measures, to ensure that those who have been forced from their homes due to violence are not placed at further risk of sexual violence within the camps. This includes the more than 5,000 Eritrean refugees in and around the area of Shire living in dire conditions, many of them reportedly sleeping in an open field

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with no water or food, as well as the more than 59,000 Ethiopians who have fled the country into neighbouring Sudan.’

The UN must work to:

- **Conduct its own assessment of the atrocities in Tigray, including of the serious risk of genocide, specifically looking into the situation of ethnic and religious groups, and the use of rape and sexual violence against women and girls as a genocidal method;**
- **Ensure a comprehensive mechanism to collect and preserve the evidence of the atrocities including monitor the issue of rape and sexual violence against women and girls;**
- **Provide all survivors with comprehensive assistance.**

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❖ **The Situation of Uyghur Women in Xinjiang**

Over the recent years, several news outlets reported on the dire situation of the Uyghur Muslims in China who were being detained in camps for ‘re-education purposes.’ This was followed by in-depth research suggesting that these minority communities are subjected to violence and abuse, modern-day slavery and women are subjected to forced sterilisation. The Chinese government continues to deny these allegations. Despite some international focus, the alleged atrocities did not stop, and did not stop at mass incarceration, forced labour, forced sterilisations and forced abortions. Reports of rape and sexual violence followed.

In February 2021, lawyers from Essex Court Chambers, including Alison Macdonald QC, published a legal opinion about the nature of the alleged atrocities against the Uyghurs in Xinjiang finding credible evidence of crimes against humanity and the crime of genocide. A legal opinion is the professional judgment of an independent expert. It does not have legal standing. However, it can be used as a basis for legal action.

The legal opinion indicates that there is evidence that the crime of genocide is currently being committed against the Uyghurs in Xinjiang. Uyghurs, as an ethnic group, fall within the purview of the protected groups for the purposes of the definition of genocide (as in Article II of the UN Convention on the Prevention and Punishment of the Crime of Genocide and Article 6 of the Rome Statute to the ICC). According to the legal opinion, that ‘it is at least arguable on the available evidence that there is an intent to destroy, in whole or in part, the Uyghur population of Xinjiang as such.’ The evidence suggests that the actus reus requirements for the following specific crimes of genocide are fulfilled: ‘causing serious bodily or mental harm to Uyghurs in detention, including acts of torture and forced sterilizations; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.’

The legal opinion further states that there is sufficient evidence to find the existence of a widespread and systematic attack on Uyghurs in Xinjiang within the meaning of Art. 7 of the Rome Statute and the actus reus of ‘enslavement, by the use of forced labour by former and current inmates of detention facilities; imprisonment or other severe deprivation of physical liberty, constituted by widescale deprivations of liberty of members of the Uyghur population held in detention facilities without charge or trial; torture in detention facilities, including the use of “tiger chairs” and sexual violence; rape in detention facilities; enforced sterilization of Uyghur women, as part of efforts to reduce the Uyghur population; persecution, ranging from the deprivation of liberty to sexual violence and enslavement, directed against persons on the basis that they are members of the Uyghur population and/or Muslim; enforced disappearance of members of the Uyghur population.’

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Among these atrocities are horrific crimes against women, including forced sterilisations and forced abortions, rape and sexual violence. According to a new report by the BBC, ‘Women in China's “re-education” camps for Uyghurs have been systematically raped, sexually abused, and tortured.’ Among the testimonies obtained by the BBC, Tursunay Ziawudun, who fled Xinjiang to the US, stated that ‘women were removed from the cells “every night” and raped by one or more masked Chinese men.’ She added that she was tortured and gang-raped three times in the camp. There are more stories like that. Indeed, Qelbinur Sedik, an Uzbek woman from Xinjiang who was teaching Chinese in the camp, recalled one Uyghur woman saying that ‘The rape has become a culture. It is gang rape and the Chinese police not only rape them but also electrocute them. They are subject to horrific torture.’ Another teacher, Sayragul Sauytbay, said that guards ‘picked the girls and young women they wanted and took them away.’

Another woman, Gulzira Auelkhan, testified that the very job she was forced to do was to ‘remove their clothes (...) and handcuff them so they cannot move. Then I would leave the women in the room and a man would enter - some Chinese man from outside or policeman. I sat silently next to the door, and when the man left the room I took the woman for a shower.’ She added that these men ‘would pay money to have their pick of the prettiest young inmates.’

Torture and physical abuse were also common. Ziawudun, a 42-year-old Uyghur woman testified how she was subjected to abuse: ‘They had an electric stick, I didn't know what it was, and it was pushed inside my genital tract, torturing me with an electric shock.’

Despite these severe allegations that point towards international crimes, as genocide or crimes against humanity, the international community has done little to ensure that the alleged atrocities are investigated and those responsible brought to justice. International bodies, such as the United Nations, have been greatly silent, with a few meaningless statements that do not follow with decisive actions to change the fate of the targeted communities.

The atrocities against the Uyghurs have been recognized as genocide (and crimes against humanity) by the US State Department, and the parliaments of Canada, the Netherlands, Lithuania, and the UK House of Commons.

Evidence Collection and Preservation

Currently, there is no UN mechanism with the mandate to collect and preserve the evidence of the atrocities perpetrated against Uyghurs and other ethnic minorities in Xinjiang. While some evidence is being collected by researchers and NGOs, it is doubtful whether the evidence will be collected and stored in a way that would enable it being used in future proceedings. Reports also suggest that some of the existing databases are being attacked by hackers in an attempt to destroy the evidence.

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There are several mechanisms through which the UN can act, including at the levels of the UN Security Council, General Assembly, and the Human Rights Council. In the cases of Bosnia and Rwanda, the UN Security Council established commissions of experts to consider the available evidence, collect further information, and prepare an opinion to confirm the nature of the atrocities. Once the commission of experts confirms that the atrocities amounted to genocide, the UN Security Council passed resolutions establishing ad hoc tribunals to prosecute the perpetrators. For instance, in 2017, in response to the Daesh atrocities, the UN Security Council passed a resolution establishing the Investigative Team tasked with collecting, preserving, and storing evidence of Daesh atrocities in Iraq. Among others, the Investigative Team identified 1,444 suspected perpetrators responsible for the attacks against the Yazidis, including 14 members deemed most responsible for the atrocities classified as war crimes, crimes against humanity and even genocide. Furthermore, the Investigative Team has received requests for assistance in domestic proceedings from 14 states.

However, where such an action was not possible through the UN Security Council, other UN organs have stepped up. For example, as the UN Security Council was infamously blocked on every meaningful action on the situation in Syria, predominately because of Russian vetoes, in 2016 the UN General Assembly established the International, Impartial and Independent Mechanism ('IIIM') for Syria, to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011. The resolution establishing IIIM was strongly opposed by Syria. However, it was adopted by a recorded vote of 105 in favour and 15 against, with 52 abstentions. Since its creation, IIIM has collected a significant amount of evidence, and has been collaborating with 12 jurisdictions to enable domestic prosecutions based on the principle of universal jurisdiction.

Lastly, similar investigative and evidence gathering mechanisms have been established by the UN Human Rights Council, most notably the Independent Investigative Mechanism for Myanmar (IIMM) in 2018 and, more recently, a mechanism for Sri Lanka in 2021.

As such, the UN organs reflect a significant legacy in establishing mechanisms to collect and preserve the evidence of atrocities. While States have been calling for unfettered access to Xinjiang, and China has been delaying it, it is crucial to recognise that a mechanism for evidence collection does not depend on access to the region. Indeed, as it is clear from the examples of IIIM and IIMM, while these bodies have not been granted access to the region, they have been doing this work remotely, and ensuring that a step towards justice is being taken.

A UN mechanism to collect and preserve evidence of the atrocities against the Uyghurs is the next crucial step and one that cannot be postponed. Without securing this evidence now, the prospects of justice in the future are zero.

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The UN must work to:

- **establish a mechanism for monitoring and evidence collection, modelled on the IIM and IIMM;**
- **ensure cooperation with the ICC or any other courts and provide them with all relevant information.**

Additional Recommendations:

- International organisations must work closely with States, assist and guide them through the process of recovering women and girls from their traffickers or abductors.
- States must investigate all crimes perpetrated against women and girls, including, abductions, forced conversions, forced marriages, rape and sexual abuse, forced sterilisations and forced abortions, and take all necessary steps to prosecute the perpetrators and ensure justice for the victims and survivors. Where states fail to do so, the international community must work to fill the justice gap.
- States and the international system must create mechanisms to ensure that all such acts are effectively prosecuted across jurisdictions.

Dr Ewelina U. Ochab, co-founder of the Coalition for Genocide Response

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