**Comments on the Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration from the Coalition of Genocide Response and the Arise Foundation**

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. The Arise Foundation (Arise) is an organisation working to combat human trafficking and modern slavery, with a focus on prevention work in source countries.

CGR and Arise welcome the Draft General Recommendation on trafficking in women and girls in the context of global migration as an important and crucial contribution to the issue. However, GCR and Arise believe that the Draft General Recommendation, to be comprehensive, needs to reflect some of the contemporary issues that continue to be left unaddressed elsewhere. Hence, CGR and Arise recommend to include a clear reference to the issue of the trafficking of religious minority women and girls. The below justifies the approach, and makes recommendations.

***The Case of Daesh***

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]](#footnote-2) 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 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]](#footnote-3) 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]](#footnote-4), 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]](#footnote-5) 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.

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]](#footnote-6) 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 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]](#footnote-7)

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]](#footnote-8) 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]](#footnote-9) 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 stories[[9]](#footnote-10), 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]](#footnote-11) 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 Case of Boko Haram***

Boko Haram is a Salafi-jihadi Muslim group which emerged in 2003. Boko Haram's crimes are widespread geographically and vary greatly in magnitude. Boko Haram is based in north-eastern Nigeria but is also active in Niger, Chad, and Cameroon. The attacks are not random and are directed against anyone who opposes Boko Haram's ideologies or supports western values. Boko Haram specifically targets Christians as ‘non-believers’.

Attacking women and girls is a signature tactic of Boko Haram; it subjects women and girls to physical and mental abuse, rape and sexual violence, forced labour and many more. The impact of these crimes is devastating. Even if the women and girls survive the abuse and are free, there are various challenges that they will then face. The abused women and girls may struggle to reintegrate into society because of the stigma associated with the nature of abuse suffered. Women and girls may struggle with mental or physical injuries requiring medical assistance and counselling that is often not available in the region.

Among the abducted girls, Leah Sharibu, a 15-year-old Nigerian girl, was one of the 110 schoolgirls abducted by Boko Haram members from their school in Dapchi, Nigeria.[[11]](#footnote-12) Despite the fact that all of the girls have now been released, Boko Haram refused to let Leah go. According to one of the other girls, Leah declined to renounce her Christian faith.[[12]](#footnote-13) This is the reason Boko Haram continues to enslave her. The fact that Boko Haram continues to enslave Leah, despite having freed all other girls, suggests that they may not let her go her until she renounces her faith.

***The Case of Christian and Hindu Women and Girls in Pakistan***

Child marriage is also something that affects religious minority girls disproportionally. According to the Movement for Solidarity and Peace (MSP), a human rights organization working within the country, around 1,000 Christian and Hindu girls (and women) are kidnapped each year. These girls and women are usually between the ages of 12 and 25. They are forced to convert and marry Muslim men. Despite these shocking statistics, the true number of victims may be even higher as many cases remain unreported, often due to the girls’ families limited financial means.

In one of the cases, it is alleged that Huma Younus, a Christian girl, was abducted from her parents’ home in Karachi on October 10, 2019[[13]](#footnote-14), by a man named Abdul Jabbar of Dera Ghazi Khan, Punjab Province.[[14]](#footnote-15) Younus, born on May 22, 2005, was 14 years of age at the time of the alleged abduction. A text message was allegedly sent to Younus’ parents stating that she had converted to Islam and had married Jabbar “of her free will.”

As reported in the media, on February 3, 2020, the High Court of Sindh in Karachi, Pakistan, “dismissed a petition to have the marriage and forced conversion of a Catholic girl overturned”, stating that a girl is ready to marry after she has had her first period.[[15]](#footnote-16)

There are more similar cases of minority girls being abducted, forcibly converted and married. These cases show that Pakistan is still far behind ensuring that its laws and practice are in accordance with international standards. Indeed, the case of Huma Younus is a litany of criminal conduct including abduction, enslavement, forced conversion, forced marriage, child marriage, rape and sexual abuse, forced servitude, forced labour, and much more. The crimes demonstrate elements of contemporary forms of slavery (modern-day slavery). While Pakistan) fails to address these issues, it will remain an unsafe place for women and girls, where they remain unequal under the law. Pakistan is instead a place where perpetrators of violence against women and girls will flourish in impunity and where the judiciary ignores valid and binding law.

***The Challenges Faced by Minority Groups***

The above-mentioned issues that deal with the specific targeting of minority women and girls for trafficking, enslavement and abuse, and the issue of the failed attempts at justice, are further exacerbated by the fact that the affected communities do not have regular access to assistance.

Instances of trafficking and exploitation of women and girls are exacerbated by minority religious community’s limited access to justice and social protections in some states. For example, in India many minority religious communities who do not enjoy strong rights protections are unequally represented within women and children trafficked for sexual or labour exploitation. The Recommendation needs to ensure that states fulfil their obligations to give all individuals, including vulnerable women and girls, equal access to rights. This is especially key in areas where internal migration means that minority communities are segmented and thus at higher risk of exploitation.

In situations such as those the cases of Christian and Hindu bride trafficking in Pakistan, referenced above, these minority communities are targeted specifically because of their religious identity; so-called faith-targeted human trafficking. Due to many countries stance on not collecting religious data of communities’ vulnerabilities of certain communities are not being correctly identified, limiting the impact of interventions to protect the most vulnerable women and girls. The Recommendation needs to take into account those who are targeted on religious grounds as well as ethnic, social and political. Data collected by states and other actors on trafficking and exploitation of women and girls should take into account the religious community of the victims where this is appropriate, and tailor interventions accordingly.

***Role of Faith Communities***

The power of faith-communities, and other local communities, as actors against trafficking should not be underestimated. Religious communities are often in a unique situation to identify at-risk women and girls, support those who have been victims and prevent more suffering. States and international institutions need to be encouraged to establish mechanisms to cooperate more effectively with these actors, and find methods to capitalise on their position within many of the most vulnerable groups of women and girls. Use of local networks, especially within diaspora situations where female migrants might be especially vulnerable, should be prioritised when considering methods not just for protection, but also prevention and recognition of victims. There also should be a recognition of the power of religious communities to draw diverse resources to be able to support victims more effectively. Use of these local networks would also facilitate funding and resources reaching groups embedded in communities that will be able to assist more quickly and for a cheaper cost per intervention.

**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 such crimes 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 trafficking and exploitation committed by international non-state actors is effectively prosecuted across jurisdictions.
* International organisation and states need to cooperate with civil society and provide them with assistance to enable them to implement their anti-trafficking strategies.
* International organisations and states must work with faith-based organisations and faith leaders to identify the challenges faced by their communities and be able to address them.
* States and international organisations need to recognise the power of frontline networks and religious networks in protecting vulnerable women and girls before, during and after migration, as well effectively mobilising their resources to best protect the vulnerable.
* States must collect data on the religious break-down of trafficking victims where women and girls are potentially targeted for faith-targeted human trafficking.

**CGR** https://genocideresponse.org/ **Arise** https://www.arisefdn.org/

1. https://arabic.sputniknews.com/arab\_world [↑](#footnote-ref-2)
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. [↑](#footnote-ref-3)
3. UN Security Council Resolution 2379 (21 September 2017) UN Doc S/RES/2379. [↑](#footnote-ref-4)
4. See: Iraq: Penal Code [Iraq], No. 111 of 1969, July 1969. Available at: https://www.refworld.org/docid/452524304.html. [↑](#footnote-ref-5)
5. See: https://indicators.ohchr.org/. [↑](#footnote-ref-6)
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, Alllison Ruby, ‘Rape as a Weapon of Genocide’ (2008) 3 Genocide Studies and Prevention: An International Journal. [↑](#footnote-ref-7)
7. See: Nadia’s Imitative, Press Release. [↑](#footnote-ref-8)
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. [↑](#footnote-ref-9)
9. Eric Stover, *The Witness. War Crimes and the Promise of Justice in The Hague* (University of Pennsylvania Press: Philadelphia, 2007). [↑](#footnote-ref-10)
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). [↑](#footnote-ref-11)
11. # Stephanie Busari and Bukola Adebayo, ‘More than 100 girls missing after raid on Nigerian school’ CNN (26 February 2018). Available at: https://edition.cnn.com/2018/02/25/africa/nigeria-boko-haram-father/index.html.

    [↑](#footnote-ref-12)
12. # Bukola Adebayo, ‘Parents anxious for release of only Dapchi schoolgirl still held by Boko Haram’ CNN (27 March 2018). Available: https://edition.cnn.com/2018/03/27/africa/nigerian-parents-schoolgirl-release/index.html.

    [↑](#footnote-ref-13)
13. Morning Star Pakistan Correspondent, ‘Court in Pakistan Validates Forced Conversion, Marriage of Christian Girl to Muslim’ Morning Star News (12 February 2020). Available: <https://www.christianheadlines.com/blog/court-in-pakistan-validates-forced-conversion-marriage-of-christian-girl-to-muslim.ht>ml. [↑](#footnote-ref-14)
14. # Shafique Khokhar, ‘A 14-year-old Christian girl is kidnapped and converted in Karachi. Her parents appeal to the Court of Justice’ Asia News (12 March 2019). Available at: http://asianews.it/news-en/A-14-year-old-Christian-girl-is-kidnapped-and-converted-in-Karachi.-Her-parents-appeal-to-the-Court-of-Justice-48714.html.

    [↑](#footnote-ref-15)
15. # Morning Star Pakistan Correspondent, ‘Court in Pakistan Validates Forced Conversion, Marriage of Christian Girl to Muslim’ Morning Star News (12 February 2020). Available: <https://www.christianheadlines.com/blog/court-in-pakistan-validates-forced-conversion-marriage-of-christian-girl-to-muslim.ht>ml.

    [↑](#footnote-ref-16)