

# AN INTERNATIONAL OVERSIGHT: UNVEILING THE DISPROPORTIONATE EFFECT THAT RELIGIOUS PERSECUTION HAS ON WOMEN

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## INTRODUCTION

Myrna Gamal Hanna was twenty-years-old when she was rescued. Like other Christian girls her age, she was kidnapped, married to a Muslim man, raped, and then forced to convert to Islam. After Myrna's father and other family members rescued her, the Egyptian police tortured her family until they agreed to pay thousands of dollars to the people responsible for kidnapping Myrna.<sup>1</sup> Unfortunately, religious persecution is a way of life for people groups all around the world. Like Myrna, women from religious minorities are need for legal protection against gender-based persecution.

Religious persecution comes in many shapes and sizes, and it strategically exploits all individuals to produce the greatest damage to religious communities. Though both men and women experience persecution for their faith, it is essential to understand the differences between men and women's societal statuses and cultural roles that make religious persecution "gender-specific."<sup>2</sup> *Open Doors International* conducted research on gender-based persecution in fifty countries and highlighted the distinguishing characteristics for men and women facing religious persecution.<sup>3</sup> Research shows that men often experience persecution through pressures related to work, the

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<sup>1</sup> Julia Duin, *Coptic Girls Being Abducted*, WASH. POST (Jan. 7, 2010), <https://www.washingtontimes.com/news/2010/jan/07/duin-coptic-girls-being-abducted/>.

<sup>2</sup> HELENE FISHER & ELIZABETH MILLER, OPEN DOORS INT'L, GENDERED PERSECUTION: WORLD WATCH LIST 2018 ANALYSIS AND IMPLICATIONS 2 (2018).

<sup>3</sup> See HELENE FISHER & ELIZABETH MILLER, OPEN DOORS INT'L, GENDER PROFILE OF PERSECUTION: COMPILATION OF WORLD WATCH LIST 2018 DATA 1-19 (2018) [hereinafter WORLD WATCH LIST].

military, and non-sexual violence, whereas women experience pressures related to issues like forced marriage, sexual assault, and abduction.<sup>4</sup> Statistics show that women have twice as many vulnerabilities as men, making it more likely for perpetrators to exploit them.<sup>5</sup>

While the international community does not deny that religious persecution is an issue, it fails to address the specific violations against women targeted because of their religious affinities. There is an overall lack of legal protection and rhetoric surrounding the topic of gender-based persecution because of the deeply rooted complexities stemming from both history and culture. The persecution is difficult to identify because women's vulnerabilities are often exacerbated due to the intersectionality of issues in their everyday lives.<sup>6</sup> It is common for people to assume that "women and girls are targeted for sexual abuse on the basis of their gender, irrespective of their age, ethnicity, or political affiliation."<sup>7</sup> However, the reality is that religion in the Global South is interchangeable, and not wholly removed from culture like many people assume. This means that a woman's faith is often the *cause* of her victimization.

Multiple factors contribute to violence against women, and it is crucial to analyze religion as a separate factor. For example, at face value, an international crisis might appear like it is an ethnic conflict or a conflict about water rights, but if you look more closely, the crisis might actually pertain to religion. When women are denied access to religious freedom, it is most likely true that they are denied other freedoms as well. For many women, "religious freedom also encompasses more than just a right to worship or to practice religious rites; its full enjoyment requires that other rights must also be

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<sup>4</sup> FISHER & MILLER, *supra* note 2, at 2.

<sup>5</sup> *Id.*

<sup>6</sup> Emily Chertoff, *Prosecuting Gender-Based Persecution: The Islamic State at the ICC*, 126 *YALE L.J.* 1050, 1069 (2017).

<sup>7</sup> Jocelyn Campanaro, Note, *Women, War, and International Law: The Historical Treatment of Gender-Based War Crimes*, 89 *GEO. L.J.* 2557, 2557 (2001).

respected.”<sup>8</sup> The purpose of this Note is to explain why legislators must provide explicit legal protection for women from gender-based persecution. This Note first introduces gender-based persecution in its various forms. It then analyzes gender-based persecution through case studies on three specific people groups: the Yazidis, Rohingya Muslims, and Nigerian Christians. The final section of this Note discusses the restrictions for women from religious minorities within domestic structures, culture and society, state structures, and international legal structures.

## I. COMMON FORMS OF GENDER-BASED PERSECUTION

Research has shown that when women from religious minorities are violated, the wrongdoers have intentionally operated to ultimately harm the women’s families and surrounding communities.<sup>9</sup> The most prevalent forms of persecution that women face are forced marriage, sexual violence, and non-sexual violence.<sup>10</sup>

### A. *Forced Marriage*

The International Protocol defines the elements of forced marriage as “[t]he imposition of a forced conjugal association by the perpetrator over the victim by threat or physical force arising from the perpetrator’s words or other conduct.”<sup>11</sup> Men take women away from their families and force them to submit to their physical and emotional control. In most

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<sup>8</sup> U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, INTERNATIONAL STANDARDS FOR CONSTITUTIONAL RELIGIOUS FREEDOMS PROTECTIONS, [https://www.uscirf.gov/sites/default/files/resources/Constitutional%20principles%20statement%20\[2\].pdf](https://www.uscirf.gov/sites/default/files/resources/Constitutional%20principles%20statement%20[2].pdf).

<sup>9</sup> FISHER & MILLER *supra* note 2, at 2.

<sup>10</sup> *See id.*

<sup>11</sup> SARA FERRO RIBEIRO ET AL., UK FOREIGN & COMMONWEALTH OFFICE, INTERNATIONAL PROTOCOL ON RIB THE DOCUMENTATION AND INVESTIGATION OF SEXUAL VIOLENCE IN CONFLICT: BEST PRACTICE ON THE DOCUMENTATION OF SEXUAL VIOLENCE AS CRIME OR VIOLATION OF INTERNATIONAL LAW Annex 1 (2d ed. 2017).

situations, women and girls are very young and are required to work for their husbands, satisfy their sexual desires, and give birth to and care for their children.<sup>12</sup> Moreover, when women are forced to marry men from other religions, they are often forced to convert to a different religion.<sup>13</sup> For example, Islamic extremists employ the tactic of kidnapping young Christian girls, forcing them into marriage, and then requiring them to convert to Islam.<sup>14</sup> In reports about the Islamic State in Iraq's methodology of war, its members perceive unmarried women and girls as threats to their scheme for a complete takeover, so they kidnap them and force them into marriages as a way to control society.<sup>15</sup> Parents of daughters living in fear of the Islamic State in Iraq's regime marry off their daughters to other men that they consider to be safer options, leaving girls with no choice but to be forced into marriages at exceptionally young ages.<sup>16</sup>

Unfortunately, once women are married, they are often stigmatized by their former families and religious communities, which diminishes the hope of rescue and reintegration into society.<sup>17</sup> A common misconception for families is that husbands offer protection for their daughters from harm by other men, and that view furnishes the husbands' power to treat their wives however they please. When women and girls are abducted or coerced into marriages with men, it essentially legalizes the sexual violence and emotional abuse inflicted upon them. Where forced marriage is not illegal, the women and girls are not

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<sup>12</sup> Daniele Selby & Carmen Singer, *Child Marriage: What You Need To Know And How You Can Help End It*, GLOBAL CITIZEN (Aug. 27, 2019), <https://www.globalcitizen.org/en/content/child-marriage-brides-india-niger-syria/>.

<sup>13</sup> LELA GILBERT, OPEN DOORS INT'L, GENDER-BASED VIOLENCE AS AN EXPRESSION OF CHRISTIAN PERSECUTION IN MUSLIM LANDS 5 (2015).

<sup>14</sup> *Id.*

<sup>15</sup> HRC, A/HRC/37/CRP.3, INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE SYRIAN ARAB REPUBLIC, 37th Sess. 18-19 (Mar. 8, 2018).

<sup>16</sup> *Id.*

<sup>17</sup> RIBEIRO, *supra* note 11, at 26.

given a choice to consent to the marriages.<sup>18</sup> When women are forced into marriage, they are forced to conform to new life and renounce their faith as a result.

### *B. Violence*

Perpetrators of gender-based persecution prey upon women from religious minorities and subject them to horrific forms of violence. Throughout history and around the world, women have been victims of both sexual and non-sexual violence because of their faith. Perpetrators use various forms of violence with the purpose of diminishing religious resilience in particular faith communities.<sup>19</sup> When the violence is so extreme, it can turn into a weapon for genocide. An element of genocide is “[t]he intent to destroy, in whole or in part . . . a religious group. . . .”<sup>20</sup> When attempting to destroy an entire religious group, wrongdoers strategically take advantage of the vulnerabilities of women and girls as a way to expedite the process. For example, former Secretary of State John Kerry declared that the violence ISIS inflicted upon religious minorities in Syria constituted genocide.<sup>21</sup> He described how ISIS violated women and girls by “selling them at auction, raping them at will, and destroying the communities in which they had lived for countless generations.”<sup>22</sup> Secretary Kerry reasoned that intervention was necessary because the brutality against women was directed solely on the basis of faith.<sup>23</sup>

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<sup>18</sup> WORLD HEALTH ORG., WORLD REPORT ON VIOLENCE AND HEALTH 156 (Etienne G. Krug et al. eds., 2002).

<sup>19</sup> FISHER & MILLER, *supra* note 2, at 7.

<sup>20</sup> Convention on the Prevention and Punishment of the Crime of Genocide, art. 2, Dec. 9, 1948.

<sup>21</sup> John Kerry, U.S. Sec. of State, Remarks on Daesh and Genocide (Mar. 17, 2016).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

## 1. Sexual Violence

Rape is the most widespread form of sexual violence against women from religious minorities.<sup>24</sup> Although their motives may differ, men use this method of violence to ultimately establish power over women and girls. Some men use rape with the intention of tarnishing a female's religious purity, and others use rape as a ploy to force her into marriage.<sup>25</sup> It is also a dangerous weapon which inhibits women from procreating with men within their own religious communities, eradicating the possibility of increasing their particular religious populace.<sup>26</sup> To make matters worse, it is common for police officers, government officials, and military actors to corruptly engage in this rampant form of violence.<sup>27</sup> In fear of such animosity, women do not feel safe reporting rape because it is likely that the officers will claim the women are making false accusations, take them into custody, and rape them.<sup>28</sup>

When women are discriminated against, they are not given equal access to everyday necessities, which heightens their chances of being abducted and forced into sex slavery.<sup>29</sup> "Traffickers have been known to target women and girls from religious minorities and force them into religious conversions and subsequent marriages, in which they may be subjected to . . . sexual servitude."<sup>30</sup> Another horrible form of sexual violence is female genital mutilation (FGM). Like the other forms of violence, perpetrators aspire to control a woman's entire life, so they preeminently use FGM to claim authority over her sexuality.<sup>31</sup> Likewise, when a religious group that

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<sup>24</sup> FISHER & MILLER, *supra* note 2, at 7.

<sup>25</sup> GILBERT, *supra* note 13, at 5-6, 12.

<sup>26</sup> Prosecutor v. Akayesu, ICTR-96-4-T, 508 (1998).

<sup>27</sup> See GILBERT, *supra* note 13, at 4, 8.

<sup>28</sup> U.S. Dept. of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: IRAN, 59 (2011).

<sup>29</sup> FISHER & MILLER, *supra* note 2, at 6.

<sup>30</sup> U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT 20 (2016) [hereinafter TIP REPORT].

<sup>31</sup> HRC, A/HRC/29/20, GOOD PRACTICES AND MAJOR CHALLENGES IN PREVENTING AND ELIMINATING FEMALE GENITAL MUTILATION, 39th Sess. 3 (Mar. 27, 2015).

holds majority power views FGM as a requirement and an indication of “a girl’s readiness for marriage,” the women and girls that are forced into marriage, raped, or sold into slavery, will likely suffer FGM.<sup>32</sup>

## 2. Non-Sexual Violence

Violence against women and girls includes more than just sexual offenses. Non-sexual violence includes serious offenses like “honor” killings, domestic violence, and house arrest.<sup>33</sup> Women from religious minorities face violent discrimination because of the lack of governmental protection.<sup>34</sup> At least 5,000 women are killed every year because of “honor” based crimes.<sup>35</sup> “Honour crimes involve taking or harming the life of an individual as a response to behavior perceived as unacceptable by the perpetrators.”<sup>36</sup> One of the most common examples of honor killings happens when women intend to marry men from other religions.<sup>37</sup> When women depart from their families’ and communities’ religious norms, the head patriarchs take violent action to cleanse the families and communities of the “shame” that the women’s actions bring.<sup>38</sup> Often times, women are either killed or forced to commit suicide.<sup>39</sup> For example, when a woman from a Muslim family wishes to marry a Christian man, her family might feel culturally and religiously obligated to kill her because of a traditional societal mindset.<sup>40</sup> Many family members and community members justify the violence by

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<sup>32</sup> *Id.*

<sup>33</sup> HUMAN RIGHTS WATCH, WORLD REPORT 2018: EVENTS OF 2017 412 (2018).

<sup>34</sup> *Id.* at 411.

<sup>35</sup> Honor Based Violence Awareness Network, *Statistics and Data*, INT’L RESOURCE CEN. (Nov. 10, 2018), <http://hbv-awareness.com/statistics-data/>.

<sup>36</sup> WAFAA ABDELHADI, TILBURG U., HONOUR CRIMES AND VIOLENCE AGAINST WOMEN: PREVENTING AND PUNISHING HONOUR CRIMES 5 (2016).

<sup>37</sup> *Id.* at 16.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 5.

<sup>40</sup> See *Pakistan murder shows Christians not immune from “honor killing” custom*, CATH. NEWS AGENCY (June 16, 2016), <https://www.catholicnewsagency.com/news/pakistan-murder-shows-christians-not-immune-from-honor-killing-custom-69271>.

reasoning that they are acting according to the Quran or other religious traditions, which require women to submit to patriarchal orders.<sup>41</sup>

Sadly, most honor killings are either hidden or labeled as accidents.<sup>42</sup> When women endeavor to bring the violence to light, countries with high levels of religious persecution neglect protecting them under existing laws, because they give perpetrators inequitable punishments, grant them complete immunity, or condone the harm as necessary actions to “purify” the communities.<sup>43</sup> Governmental protection from violence has proven insufficient in more ways than one. Some countries interpret Sharia law to require that women have male guardians accompany them when leaving the home,<sup>44</sup> and some order women to follow strict dress standards.<sup>45</sup> When women from religious minorities fail to obey Sharia law, they face severe punishment by government and military officials.<sup>46</sup> Understanding the common forms of gender-based persecution is an imperative prerequisite to evaluating how women from specific religious groups are persecuted.

## II. CASE STUDIES

It is clear that when a woman from a religious minority group is discriminated against, every facet of her life is affected. By and large, persecution implicates her legal, cultural, and domestic structures.<sup>47</sup> Even though wrongdoers who harm women act to completely damage their religious

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<sup>41</sup> ABDELHADI, *supra* note 36, at 34-35.

<sup>42</sup> Pillay urges Government action after “honour” killing of pregnant woman in pakistan, OHCHR (May 28, 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14650&>.

<sup>43</sup> ABDELHADI, *supra* note 36, at 15-16.

<sup>44</sup> U.S. DEPT. OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT, LIBYA 1, 5 (2017).

<sup>45</sup> U.S. Dept. of State, *supra* note 44, at 1; Rumkini Callimachi, *For Women Under ISIS, a Tyranny of Dress Code and Punishment*, N.Y. TIMES, (Dec. 12, 2016), <https://www.nytimes.com/2016/12/12/world/middleeast/islamic-state-mosul-women-dress-code-morality.html>.

<sup>46</sup> *Id.*

<sup>47</sup> See generally FISHER & MILLER, *supra* note 2.



communities as a whole, the specific approaches they use to persecute are not “one size fits all.” The following case studies will expound upon the personal experiences of women around the world.

### A. Yazidis in Iraq

In 2014, Abu Bakr al-Baghdadi led the extremist group, ISIS, to the northern territory of Iraq.<sup>48</sup> Baghdadi is a self-declared Caliphate, which means the members of ISIS believe he has the power to enforce the law, expand Islam, and control the government.<sup>49</sup> Under his leadership, ISIS interprets Sharia and Islamic law extreme and brutal ways.<sup>50</sup> ISIS uses Sharia law to disregard the lives of those who do not agree with the Islamic faith, by declaring them “apostates” and killing them in the name of Allah.<sup>51</sup> Characterizing the Yazidis in Northern Iraq as a “pagan minority,” ISIS thus seeks to destroy the entire Yazidi population because of their religious views.<sup>52</sup> In an effort to wipe out the people group, ISIS employs strategic methods of violence, consisting of crimes like torture and murder. They relentlessly seek to annihilate the minority religion by kidnapping Yazidi children and “cutting them off from beliefs and practices of their own religious community.”<sup>53</sup> Furthermore, ISIS exercises its vile power and hunger for domination by specifically targeting Yazidi women, by treating them as “spoils of war.”<sup>54</sup>

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<sup>48</sup> MAH-RUKH ALI, UNIVERSITY OF OXFORD: REUTERS INST. FOR THE STUDY OF JOURNALISM, *ISIS AND PROPAGANDA: HOW ISIS EXPLOITS WOMEN* 6 (2015).

<sup>49</sup> *The Oxford Dictionary of Islam*, OXFORD ISLAMIC STUD. ONLINE, <http://www.oxfordislamicstudies.com/article/opr/t125/e400> (last visited Nov. 10, 2018).

<sup>50</sup> ALI, *supra* note 48, at 4.

<sup>51</sup> *Id.* at 4.

<sup>52</sup> UN COMMISSION OF INQUIRY ON SYRIA: *ISIS IS COMMITTING GENOCIDE AGAINST THE YAZIDIS*, OFFICE OF THE HIGH COMM’R (June 16, 2016), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20113>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

When describing the horror they faced at the hands of ISIS, Yazidi women who were lucky enough to escape listed detailed accounts of sexual violence, forced marriage, and forced conversion.<sup>55</sup> Out of all of the Yazidis, young girls are sought after and persecuted the most.<sup>56</sup> Some women and girls are solely raped and abused within their communities, but it is more common for ISIS to abduct and enslave them as well.<sup>57</sup> ISIS has captured over 6,400 Yazidi women, and there are approximately 3,200 still being held as sexual slaves today.<sup>58</sup> The reality for the Yazidis held in sexual slavery is grim because they are forced into marriages with members of ISIS, and forced to choose between converting to Islam or death.<sup>59</sup>

Members of ISIS unabashedly committed acts of genocide against the Yazidis through the persecution of the Yazidi women. The imposition of systematically eliminating the people group based on their religion was exemplified through ISIS's control of Yazidi pregnancies.<sup>60</sup> Yazidi women revealed that those who were pregnant before they were captured, were forced to abort their babies during captivity.<sup>61</sup> Furthermore, the women held in slavery were given Muslim names as a way to expand ISIS's reign.<sup>62</sup> ISIS justifies the genocide of the Yazidis by turning to Sharia law and claiming

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<sup>55</sup> VALERIA CETORELLI, ISAAC SASSON, NAZAR SHABILA & GILBERT BURNHAM, PLOS MEDICINE, MORTALITY AND KIDNAPPING ESTIMATES FOR THE YAZIDI POPULATION IN THE AREA OF MOUNT SINJAR, IRAQ, IN AUGUST 2014: A RETROSPECTIVE HOUSEHOLD SURVEY 2 (2017).

<sup>56</sup> *Id.*

<sup>57</sup> Chertoff, *supra* note 6, at 1060.

<sup>58</sup> U.S. COMM'N ON INT'L RELIGIOUS FREEDOM CIRF, ANNUAL REPORT 176 (2018).

<sup>59</sup> HUMA HAIDER, U. OF BIRMINGHAM, UK GOV. DEP. FOR INT'L DEV., THE PERSECUTION OF CHRISTIANS IN THE MIDDLE EAST 12 (2017).

<sup>60</sup> HRC, *supra* note 15, at 23.

<sup>61</sup> Atika Shubert & Bharati Naik, *ISIS 'Forced Pregnant Yazidi Women to Have Abortions'*, CNN, (Oct. 6, 2015), <https://www.cnn.com/2015/10/06/middleeast/pregnant-yazidis-forced-abortions-isis/index.html>.

<sup>62</sup> HRC, *supra* note 15, at 19.

that Islam permits the violence against the slaves who are not Muslim.<sup>63</sup>

The government of Iraq has failed to take action to protect Yazidi women from “religiously-related violence.”<sup>64</sup> The Constitution of Iraq declares that the country’s official religion is Islam, meaning that its legislation is derived from Islam.<sup>65</sup> It further states that no law can contradict the “established provisions of Islam.”<sup>66</sup> Because Islam is the established religion of Iraq, Muslims often get impunity under the law for crimes against people from minority religions.<sup>67</sup> To make matters worse, certain religious groups are recognized under “personal status laws” that appoint legal representatives to their handle legal issues, but Yazidis are not recognized under these laws.<sup>68</sup> This means that when Yazidi women are victims of crimes like sexual violence or property grabbing, they do not win their cases because the way tribal justice systems work against them.<sup>69</sup> Similarly, Yazidi women are forced to convert to Islam and register their children as Muslims in order to obtain official identity cards that provide access to basic government services.<sup>70</sup>

### *B. Rohingya Muslims in Myanmar*

Secretary-General of the United Nations (UN), António Guterres, has described the Rohingya Muslims as “one of the most discriminated against and vulnerable communities on

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<sup>63</sup> *Iraq: ISIS Escapees Describe Systematic Rape*, HUMAN RIGHTS WATCH (Apr. 14, 2015), <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape> [hereinafter *ISIS Escapees*].

<sup>64</sup> Leonard A. Leo, Chairman, USCIRF, Testimony before the House Committee on Foreign Affairs, *International Religious Freedom: Strengthening its Promotion in U.S. Foreign Policy* 3 (June 3, 2011).

<sup>65</sup> U.S. Dept. of State, *INTERNATIONAL RELIGIOUS FREEDOM REPORT, IRAQ*, 1 (2017).

<sup>66</sup> *Id.*

<sup>67</sup> See *WORLD WATCH LIST*, *supra* note 3, at 2-4.

<sup>68</sup> U.S. Dept. of State *supra* note 65, at 6.

<sup>69</sup> *WORLD WATCH LIST*, *supra* note 3, at 3-4.

<sup>70</sup> U.S. Dept. of State, *supra* note 65.

earth.”<sup>71</sup> The Rohingya Muslims in Myanmar have been persecuted for their religion for about seven decades because they refuse to conform to Buddhism, the majority religion in the country.<sup>72</sup> The restriction on religious freedom is implemented through discriminatory laws and policies by the government and perpetuated by military personnel.<sup>73</sup> The Rohingya undergo a wide-range of persecution tactics, consisting of arbitrary arrests, torture, and killings.<sup>74</sup> While the international community views the crisis as “ethnic cleansing,” it is evident from State-imposed restrictions on religion, that the discrimination emanates from the fact that the Rohingya are predominantly Muslim.<sup>75</sup>

Evidence shows that Rohingya women are more vulnerable to bigotry because of their gender and minority religious statuses in society.<sup>76</sup> The women live in constant fear of extreme violence at the hands of Myanmar’s government officials.<sup>77</sup> Women are afflicted with additional forms of persecution because Myanmar’s majority group collectively persecutes Rohingya men, women, and children, with routine torture and mutilation.<sup>78</sup> Rohingya women and girls experience additional persecution from the so-called “security forces” in Myanmar when the men systematically sexually violate them as a weapon of discrimination.<sup>79</sup>

While the prominent persecutors act on behalf of the Myanmar government, lay citizens are also known to

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<sup>71</sup> Hannah Beech, *When a Baby Is an Everyday Reminder of Rohingya Horror*, N.Y. TIMES (July 7, 2018), <https://www.nytimes.com/2018/07/07/world/asia/myanmar-rohingya-rape-refugees-childbirth.html>.

<sup>72</sup> U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, *supra* note 58, at 16-17.

<sup>73</sup> *Id.* at 18.

<sup>74</sup> U.S. Dept. of State, INTERNATIONAL RELIGIOUS FREEDOM REPORT, BURMA, 1 (2017) [hereinafter BURMA].

<sup>75</sup> See U.S. COMM’N ON RELIGIOUS FREEDOM, *supra* note 58, at 16.

<sup>76</sup> A. K. M. Ahsan Ullah, *Rohingya Crisis in Myanmar: Seeking Justice for the “Stateless,”* 32(3) J. OF CONTEMP. CRIM. JUST. 285, 290–91 (2016).

<sup>77</sup> *Id.* at 293.

<sup>78</sup> Serajul Quadir, *U.N. Official Says Will Raise Sexual Violence Against Rohingya with ICC*, REUTERS (Nov. 12, 2017), <https://www.reuters.com/article/us-bangladesh-myanmar/u-n-official-says-will-raise-sexual-violence-against-rohingya-with-icc-idUSKBN1DC0N7>.

<sup>79</sup> FRANCISCA VIGAUD-WALSH, REFUGEES INT’L, STILL AT RISK: RESTRICTIONS ENDANGER ROHINGYA WOMEN AND GIRLS IN BANGLADESH 4 (2018).

participate in violence against Rohingya women as well.<sup>80</sup> Knowing that the Rohingya are defenseless, villagers get away with looting Rohingya homes in conjunction with sexually assaulting the women. Nevertheless, State actors are more culpable for the organized pattern of violent rape against Rohingya women and girls.<sup>81</sup> The United Nations has declared that the government in Myanmar is using rape as an “act of genocide.”<sup>82</sup> Reports describe how some victims had not yet reached the age of ten years old, and at least half of the rape victims have consequently sought to terminate their pregnancies out of shame.<sup>83</sup> There are further reports of Buddhist men looting and burning Rohingya villages, whilst deliberately raping the women attempting to flee.<sup>84</sup> Often, as a result, the women themselves are set on fire by the men.<sup>85</sup>

Typical strategies employed by Myanmar officials include forced nudity and humiliation of Rohingya women,<sup>86</sup> and more hostile strategies include violent gang-rape of the women and girls by soldiers.<sup>87</sup> When *Human Rights Watch* interviewed rape victims, an overwhelming majority of them reported being raped by at least three, and up to eight soldiers.<sup>88</sup> Women are particularly preyed upon when they are gathered together in mosques and schools, which explains the reports of girls as young as ten years old being gang-raped

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<sup>80</sup> HUMAN RIGHTS WATCH, “*All of My Body Was Pain*,” *Sexual Violence against Rohingya Women and Girls in Burma* (Nov. 16, 2017), <https://www.hrw.org/report/2017/11/16/all-my-body-was-pain/sexual-violence-against-rohingya-women-and-girls-burma>.

<sup>81</sup> *UN Envoy Urges Greater Support for Rohingya Victims of Sexual Violence*, UN NEWS SERV. (Nov. 16, 2017), <https://reliefweb.int/report/bangladesh/un-envoy-urges-greater-support-rohingya-victims-sexual-violence> [hereinafter *UN Envoy*].

<sup>82</sup> Quadir, *supra* note 78.

<sup>83</sup> Beech *supra* note 71.

<sup>84</sup> See HUMAN RIGHTS WATCH, *supra* note 80.

<sup>85</sup> VIGAUD-WALSH *supra* note 79, at 4.

<sup>86</sup> UN ENVOY, *supra* note 81.

<sup>87</sup> *Id.*

<sup>88</sup> HUMAN RIGHTS WATCH, *supra* note 17 at 21.

by the militia.<sup>89</sup> The men typically take the victims into military captivity and force them into sexual slavery.<sup>90</sup>

In the eyes of the Buddhist extremists in Myanmar, the plan to eradicate Muslims from Myanmar has been a success because the Rohingya are now attempting to escape the country and its violent oppression.<sup>91</sup> The use of gender-based violence as a “calculated tool of terror aimed at the extermination and removal of the Rohingya . . .” was the catalyst for the mass-displacement the religious group.<sup>92</sup> Unfortunately, when women leave their home villages, their vulnerabilities are at an all-time high due to the risk of being abducted and sold into human trafficking.<sup>93</sup> Whether Rohingya women are traveling or settled in refugee camps in countries like Bangladesh, Thailand, or Malaysia, they are in jeopardy sexual exploitation.<sup>94</sup> The persecution permeates all aspects of the women’s lives, leaving them less resilient against engaging in survival sex by selling their bodies as sexual commodities in order to make money to survive.<sup>95</sup> On top of the outward pressures, some Rohingya women feel religious shame when they give birth to their rapists’ children, so they sell their babies to human traffickers to hide the evidence.<sup>96</sup>

The large-scale persecution in Myanmar is of international concern because of the blatant government-directed human rights abuses.<sup>97</sup> Military personnel are getting away with using gang-rape as a form of torturing women for practicing Islam,<sup>98</sup> because “sexual violence is

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<sup>89</sup> *Id.*

<sup>90</sup> *UN Envoy supra* note 81.

<sup>91</sup> *BURMA supra* note 74.

<sup>92</sup> *Quadir, supra* note 78.

<sup>93</sup> UN MIGRATION AGENCY, IOM BANGLADESH: ROHINGYA REFUGEE CRISIS RESPONSE SITUATION OVERVIEW OF HUMAN TRAFFICKING 1 (2018).

<sup>94</sup> *Ullah, supra* note 76, at 293.

<sup>95</sup> *VIGAUD-WALSH, supra* note 79, at 16.

<sup>96</sup> *Beech, supra* note 71.

<sup>97</sup> USCIRF, *SUSPENDED IN TIME: THE ONGOING PERSECUTION OF ROHINGYA MUSLIMS IN BURMA* 11 (2016) [hereinafter *SUSPENDED IN TIME*].

<sup>98</sup> OHCHR, *INTERVIEWS WITH ROHINGYAS FLEEING FROM MYANMAR SINCE 9 OCTOBER 2016*, 21 (2017).

allegedly being commanded, orchestrated and perpetrated by the Armed Forces of Myanmar.”<sup>99</sup> In fact, the military released a report that exonerated officers accused of rape.<sup>100</sup> They get away with this impunity because Myanmar’s legal system has laws in place that restrict freedom of religion and equal access to citizenship, employment, and property.<sup>101</sup>

One of the most pressing legal issues is that Myanmar does not recognize Rohingya Muslims as citizens.<sup>102</sup> The 1982 Citizenship Law explicitly excludes the Rohingya from protection under the law.<sup>103</sup> The fact that Rohingya women are not given legal protection leaves them with no hope of justice for their abuse. This form of religious persecution is so extreme because it forces women to convert from Islam in order to escape the abuse.<sup>104</sup> For example, one woman stated that “if she converted to Buddhism today, she could gain citizenship ‘tomorrow.’”<sup>105</sup> Myanmar also has broad laws that target Rohingya women by restricting their choices for marriage, healthcare, and conversion rights.<sup>106</sup> More specifically, Rohingya women are prohibited from having more than two children, and they are forbidden from marrying Buddhist men.<sup>107</sup>

### C. Christians in Nigeria

The country of Nigeria contains a religious rivalry that divides the Muslims in the north from the Christians in the

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<sup>99</sup> *UN Envoy, supra* note 81.

<sup>100</sup> Daniele Selby, *Rape Against Rohingya Women Is So Widespread That Groups Can't Even Measure It Accurately*, GLOB. CITIZEN (Nov. 16, 2017), <https://www.globalcitizen.org/fr/content/myanmar-bangladesh-rohingya-sexual-violence-un-hrw/>.

<sup>101</sup> BURMA, *supra* note 74, at 11.

<sup>102</sup> SUSPENDED IN TIME, *supra* note 97, at 4.

<sup>103</sup> *Id.*

<sup>104</sup> USCIRF, BURMA: RELIGIOUS FREEDOM AND RELATED HUMAN RIGHTS VIOLATIONS ARE HINDERING BROADER REFORMS 4 (2014).

<sup>105</sup> *Id.*

<sup>106</sup> Ullah, *supra* note 76, at 291.

<sup>107</sup> *Id.* at 293.

south.<sup>108</sup> The conflict gives rise to the far-reaching discrimination against indigenous Christians by radical Muslims, who deny Christians equal rights in sixteen out of the nineteen northern states in Nigeria.<sup>109</sup> One radical Islamic group in Nigeria, Boko Haram, holds an ideology that is based on a complete rejection of everything that is “un-Islamic.”<sup>110</sup> Members of Boko Haram believe they are directed by Allah to act violently towards Christians.<sup>111</sup> Boko Haram openly aspires for everyone in Nigeria to either convert to Islam or be completely exterminated.<sup>112</sup> Islamic insurgents carry out their goal by terrorizing Christians until they convert or flee from their ancestral land.<sup>113</sup> Christians in areas of Nigeria that refuse to follow extreme Sharia law are denied fundamental rights and protections, albeit they are legally protected under the Nigerian Constitution.<sup>114</sup> Boko Haram attacks Christians, dismantles their churches, and carries out mass abductions of the women and girls.<sup>115</sup>

Boko Haram and other radical Islamic groups use their theology as a basis for viewing women as second-class citizens.<sup>116</sup> Therefore, Christian women suffer extensive persecution, which detrimentally affects the Christian community in Nigeria as a whole.<sup>117</sup> Christian women are specifically discriminated against through violations like

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<sup>108</sup> *Nigeria Report*, VOICE OF THE MARTYRS CAN., <https://www.vomcanada.com/nigeria.htm> (last visited Nov. 17, 2018).

<sup>109</sup> ATTA BARKINDO, BENJAMIN TYAVKASE GUDAKU, & CAROLINE KATGURUM WESLEY, OPEN DOORS INT’L, OUR BODIES, THEIR BATTLEGROUND: BOKO HARAM AND GENDER-BASED VIOLENCE AGAINST CHRISTIAN WOMEN AND CHILDREN IN NORTH-EASTERN NIGERIA SINCE 1999, 17 (2013).

<sup>110</sup> *Id.* at 16.

<sup>111</sup> HUMAN RIGHTS WATCH, “THOSE TERRIBLE WEEKS IN THEIR CAMP”: BOKO HARAM VIOLENCE AGAINST WOMEN AND GIRLS IN NORTHEAST NIGERIA 12 (2014) [hereinafter NORTHEAST NIGERIA].

<sup>112</sup> *Nigeria Report*, *supra* note 108.

<sup>113</sup> BARKINDO ET AL., *supra* note 109, at 23.

<sup>114</sup> CSW, NIGERIA: FREEDOM OF RELIGION OR BELIEF 2 (2018).

<sup>115</sup> See U.S. DEPT. OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT, NIGERIA 1 (2017) [hereinafter NIGERIA].

<sup>116</sup> BARKINDO ET AL., *supra* note 109, at 16.

<sup>117</sup> WORLD WATCH LIST, *supra* note 3, at 8.



abduction, forced marriage, and rape.<sup>118</sup> Businesses owned by Christian women in Northern Nigeria are getting destroyed, and in more violent cases, the women are being murdered.<sup>119</sup> Although some reports portray the violence against women and girls as random acts, the majority of cases prove to be intentional targets against Christians.<sup>120</sup> One Christian girl, in particular, recalled how Boko Haram entered her school, separated the Muslim girls from the Christian girls, and proceeded only to abduct and rape the Christians.<sup>121</sup>

Abduction is a widespread form of gender-based persecution in Nigeria that is utilized by both Boko Haram and another violent group known as the Fulani Muslim herdsman.<sup>122</sup> Over 2,000 Christian women and girls have been abducted since 2014,<sup>123</sup> and then raped, tortured, and/or murdered as a result.<sup>124</sup> Abductions entail forced labor, including forcing women to act as “pawns” in military conflict situations that typically have fatal outcomes.<sup>125</sup> Once the women are abducted, they are typically forced to convert to Islam or face death upon refusal.<sup>126</sup>

In February 2018, Leah Sharibu was abducted from her school and remains the only girl still in captivity today because she has refused to renounce her Christian faith.<sup>127</sup> It is also common for Boko Haram members to continue detaining victims because they have forced them into “marriage.”<sup>128</sup> Treating Christian women as sexual slaves, perpetrators claim them as wives, forbid them from receiving

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<sup>118</sup> See NIGERIA, *supra* note 115, at 9.

<sup>119</sup> BARKINDO ET AL., *supra* note 109, at 22.

<sup>120</sup> NORTHEAST NIGERIA, *supra* note 111, at 25.

<sup>121</sup> BARKINDO ET AL., *supra* note 109, at 25.

<sup>122</sup> WORLD WATCH LIST, *supra* note 3, at 7-8.

<sup>123</sup> Nkechi G. Onah, Benjamin C. Diara & Favour C. Uroko, *Ethno-Religious Conflicts in Nigeria: Implications on Women*, 8 MEDITERRANEAN J. OF SOC. SCI. 61, 64 (2017).

<sup>124</sup> Agnes Osita-Njoku & Princewill Chikere, *Consequences of Boko Haram Terrorism on Women in Northern Nigeria*, 1 Applied Res. J. 101, 104 (2015).

<sup>125</sup> *Id.*

<sup>126</sup> NORTHEAST NIGERIA, *supra* note 111, at 27-28.

<sup>127</sup> CSW, *supra* note 114.

<sup>128</sup> NORTHEAST NIGERIA, *supra* note 111, at 30.

Western education, and require them to submit to their domination.<sup>129</sup> Because their new “brides” live under Islamic law, many of them endure FGM.<sup>130</sup> Similarly, some Nigerian Muslims use rape as a means to force young Christians girls into marriage with Muslim men.<sup>131</sup> Like other conflict situations, rape is used as a coercive tactic to harm a large number of Christians, so when girls show an unwillingness to marry the Muslim men, they are violently raped anyways.<sup>132</sup> Muslim men utilize rape as a method to “cleanse” Christian women and to force them to produce Islamic children.<sup>133</sup>

As previously mentioned, the Nigerian Constitution provides protections for religious minorities, but the protections are not consistently enforced in the twelve states that concurrently institute Islam as the “state religion,” and neglect the Constitution’s secular laws in order to follow Sharia law instead.<sup>134</sup> The Nigerian government has failed to intervene and remains complicit in the discrimination against Christian women.<sup>135</sup> With Sharia law instituted as “the law of the land” in some states, Muslims are exonerated by the government for their violent acts because they are “combatting blasphemy.”<sup>136</sup>

Although the Nigerian government has enacted a National Action Plan (NAP) to prevent and prosecute sexual violence,<sup>137</sup> there have been zero prosecutions of government officials for their crimes against Christian women.<sup>138</sup> Gender-based persecution is not properly investigated, and it is not addressed in court because of the impunity given to the

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<sup>129</sup> NORTHEAST NIGERIA, *supra* note 111, at 20.

<sup>130</sup> BARKINDO ET AL., *supra* note 109, at 17.

<sup>131</sup> BARKINDO ET AL., *supra* note 109, at 18.

<sup>132</sup> BARKINDO ET AL., *supra* note 109, at 23.

<sup>133</sup> Osita-Njoku, *supra* note 124, at 104.

<sup>134</sup> CSW, *supra* note 114.

<sup>135</sup> See *Nigeria Report*, *supra* note 108.

<sup>136</sup> *National Action Plan: Nigeria*, PeaceWomen.org, <http://peacewomen.org/nap-nigeria> (last visited Mar. 9, 2020).

<sup>137</sup> NORTHEAST NIGERIA, *supra* note 111, at 53.

<sup>138</sup> *Id.* at 47.

perpetrators from corrupt government officials.<sup>139</sup> In fact, some court cases follow Sharia law, which validates denying Christians rightful access to schooling and church property.<sup>140</sup> Some states' laws permit gender-based persecution in Nigeria through the legalization of under-age marriage,<sup>141</sup> and others require religious identification for hospital registration which legalizes denying Christian women access to maternal health-care.<sup>142</sup> Finally, reports describe how Christian parents are denied access to proper law enforcement even when they can locate their daughters; government officials will often declare that their daughters are in the legal custody of Muslim men.<sup>143</sup>

### III. CURRENT RESTRICTIONS ON RELIGIOUS MINORITIES

These case studies exemplify the pressures placed on women from particular people groups. The interconnectedness of issues in women's lives tend to complicate the enforcement of protection, which is why it is important to address the layers of issues showing how female religious minorities are persecuted. By understanding that a woman's life is like a tapestry woven together with domestic relationships, cultural norms, and societal standards, it is easier to then analyze the state and international legal issues that are woven in as well. The following section discusses restrictions on women who are persecuted for their faith within their domestic structures, cultural and societal structures, state structures, and international structures.

#### *A. Restrictions Within Domestic Structures*

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<sup>139</sup> Leo, *supra* note 64.

<sup>140</sup> NIGERIA, *supra* note 115, at 5.

<sup>141</sup> WORLD WATCH LIST, *supra* note 3, at 7-8.

<sup>142</sup> BARKINDO ET AL., *supra* note 109, at 22.

<sup>143</sup> CSW, *supra* note 114.

To understand the insecurities for women undergoing religious persecution, one must inquire into their physical and emotional interactions within their own homes.<sup>144</sup> In many societies, familial systems are formed from interpretations of religious canons.<sup>145</sup> When women live in societies dominated by religious influence, it is common for them to fear oppression from both outside and inside the home.<sup>146</sup> People who treat women as unequal beings often rationalize their subordination through the patriarchal roles interpreted from religious doctrine.<sup>147</sup> Female status developed from religious backgrounds systematically excludes women from power, and can ultimately restrict their freedom by confining them within the home.<sup>148</sup> The gender roles that permeate cultures around the world are further twisted by religious views as a means of ordering women to remain chaste and obey the commands of men.<sup>149</sup> When women are confined to the home, their potential voices within the community are silenced.<sup>150</sup> The general non-existence of agency for women in patriarchal societies stems from how they are valued at home. Without proper protection within the home, women are more vulnerable to abuse outside the home.

The fact that women are mistreated in their domestic lives encourages an environment of unequal treatment elsewhere.<sup>151</sup> Women's liberties are restricted at home in more ways than one. A hidden but pervasive effect of misogynistic familial roles is the problem of domestic

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<sup>144</sup> Matthew J. Walton, Melyn McKay, & Daw Khim Mar Mar Kyi, *Women and Myanmar's "Religious Protection Laws,"* 13 INST. FOR GLOB. ENGAGEMENT 36 (2015).

<sup>145</sup> Frances Raday, *Culture, Religion, and Gender*, 1 Int'l J. of Const. L. 663, 667 (2003).

<sup>146</sup> Walton et al., *supra* note 144.

<sup>147</sup> Raday, *supra* note 145, at 669.

<sup>148</sup> NAZILA GHANEA, USCIRF, WOMEN AND RELIGIOUS FREEDOM: SYNERGIES AND OPPORTUNITIES 7 (2017).

<sup>149</sup> HALEY STEPP, BAYLOR U., THE IMPACT OF PATRIARCHAL INTERPRETATIONS OF RELIGION ON THE CREATION OF OPPRESSIVE CULTURES OF FEMALE PURITY AND THE CONTRIBUTION TO RAPE CULTURE 3 (2016).

<sup>150</sup> Walton et al., *supra* note 144.

<sup>151</sup> See President Jimmy Carter, Speech to the Parliament of the World's Religions (Dec. 2, 2009).

violence. Some men believe they are free to beat women because they interpret their respective religious texts to mean that women are inferior beings.<sup>152</sup> Fathers, husbands, and extended male family members genuinely expect full obedience from women and use violence to “discipline” them.<sup>153</sup> Because women have generationally placed their livelihood and security in male family members, they resort to blaming themselves and feel as though they deserve the beatings for mistakes as small as burning dinner.<sup>154</sup> Fathers contribute to an overall culture of female domination by selling their daughters through the dowry system, selling them as child brides,<sup>155</sup> and by reinforcing the idea that female virginity is a good that can be negotiated.<sup>156</sup> Husbands often control all of the finances, enabling them to deny their wives from their rightful possessions and inheritances.<sup>157</sup>

Traditional domestic norms contribute to gender-based persecution on a larger scale. If women are universally viewed as objects, it is no surprise that they are more prone to persecution. In cases where these women are sexually assaulted, their husbands and family members customarily abandon them because of the “shame” it brings to the family name.<sup>158</sup> Some victims’ family members take a more violent approach to protect their honor through honor killings.<sup>159</sup> This conduct “supports the notion that women are the property of the men in her family.”<sup>160</sup> When a woman is excluded from communal roles in her domestic life, her family essentially promotes the acceptance of her unequal treatment within society.

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<sup>152</sup> *Id.*

<sup>153</sup> Raday, *supra* note 145, at 670.

<sup>154</sup> UNFPA, RELIGION, WOMEN’S HEALTH AND RIGHTS: POINTS OF CONTENTION AND PATHS OF OPPORTUNITIES 69 (2016).

<sup>155</sup> Raday, *supra* note 145, at 670.

<sup>156</sup> STEPP, *supra* note 149, at 7.

<sup>157</sup> See STEPP, *supra* note 149, at 7.

<sup>158</sup> RIBEIRO, *supra* note 11, at 20, 26.

<sup>159</sup> UNFPA, *supra* note 154, at 65, 74.

<sup>160</sup> UNFPA, *supra* note 154, at 65, 74.

### *A. Restrictions within Culture and Society*

In the global south, religion is infused in culture and society, and it can control the institutionalized political and economic powers.<sup>161</sup> The aforementioned status of women in traditional religious realms amplifies their vulnerabilities to religious persecution in everyday society. Women from religious minorities are deprived of rights presumed to be provided within societal structures. In cultures where men hold the religious belief that women are innately inferior, those cultural mindsets influence society and restrict women's freedoms as a result.<sup>162</sup> In this context, women are forced to adhere to social controls because it is culturally accepted that men are not obligated to respect their bodily integrity.<sup>163</sup> If women stray from cultural norms, such as following dress codes, people in society believe they deserve the resulting harm.<sup>164</sup> For example, in religions that require women to wear veils, some government authorities facilitate "compulsory veiling" within the communities.<sup>165</sup> Every year, tens of thousands of women are arrested and detained for failing to comply with religious forms of dress.<sup>166</sup> Religious majority groups enforce the standards and even punish women who do not share the same religious beliefs.<sup>167</sup>

Societies that authorize male dominance over women are therefore responsible for denying women from religious minorities "fair and equal access to education, health care, employment, and influence within their own communities."<sup>168</sup>

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<sup>161</sup> Raday, *supra* note 145, at 667-68.

<sup>162</sup> Walton et al., *supra* note 144.

<sup>163</sup> STEPP, *supra* note 149, at 51.

<sup>164</sup> STEPP, *supra* note 149, at 51.

<sup>165</sup> IRAN: COMPULSORY VEILING IS ABUSIVE, DISCRIMINATORY AND HUMILIATING; END THE PERSECUTION OF WOMEN FOR PEACEFULLY PROTESTING AGAINST IT (Amnesty Int'l 2018), <https://www.amnesty.org/en/documents/mde13/7783/2018/en/>.

<sup>166</sup> *Id.*

<sup>167</sup> *See id.*

<sup>168</sup> Carter, *supra* note 151.

Women and girls are denied equal access to education when actors from majority religious groups impose segregation within the schools or completely prevent them from attending school at all.<sup>169</sup> When women and girls have opportunities to learn, their knowledge can be used as a tool to access justice on local and international levels. Aware of the threat that education cultivates, perpetrators of religious persecution intentionally restrict religious minority groups by suppressing the empowerment of women and girls through education. Because illiteracy is a “barrier to awareness of rights,” religious majority groups inhibit women and girls’ rights by restricting their access to education.<sup>170</sup> Even when they are technically permitted to attend school, many females are discouraged anyway because of the harassment and violent attacks that ensue while they are en route.<sup>171</sup>

Another restriction minority populations are generally plagued with is unequal access to healthcare.<sup>172</sup> Combining this fact with a culture’s propensity to completely control women’s sexual and reproductive lives, explains why women from religious minority groups are particularly discriminated against when they have health issues.<sup>173</sup> There are reports of societies denying minority religious women proper health services and access to medical records.<sup>174</sup> These women are also precluded from reproductive health information and preventative tools for HIV/AIDS.<sup>175</sup> Cases of more overt persecution include coerced or forced sterilization as well as physical abuse by medical workers.<sup>176</sup> If women from

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<sup>169</sup> See UNGEI, *eDiscussion on Challenges Facing Minority Girls in Education*, UNGEI (Oct. 2009), [http://www.ungei.org/listserve/files/eDisc08\\_9October09\\_consolidated.pdf](http://www.ungei.org/listserve/files/eDisc08_9October09_consolidated.pdf).

<sup>170</sup> UNICEF, *BREAKING THE SILENCE ON VIOLENCE AGAINST INDIGENOUS GIRLS, ADOLESCENTS AND YOUNG WOMEN: A CALL TO ACTION BASED ON AN OVERVIEW OF EXISTING EVIDENCE FROM AFRICA, ASIA PACIFIC AND LATIN AMERICA* 21 (2013).

<sup>171</sup> See UNGEI, *supra* note 169.

<sup>172</sup> FXB, *CTR. FOR HEALTH AND HUM. RTS., HARV. SCHOOL OF PUB. HEALTH, HEALTH AND HUMAN RIGHTS RESOURCE GUIDE* 76 (5th ed. 2013) [hereinafter *RESOURCE GUIDE*].

<sup>173</sup> OHCHR, *THE RIGHT TO HEALTH: FACT SHEET* 31, 12 (2008).

<sup>174</sup> *RESOURCE GUIDE*, *supra* note 172, at 16.

<sup>175</sup> UNICEF, *supra* note 170, at 3, 21.

<sup>176</sup> *RESOURCE GUIDE*, *supra* note 172, at 46.

religious minority groups enter medical centers for unrelated procedures, they are still at risk of being sterilized without consent.<sup>177</sup> This form of religious persecution leads to higher rates of disease, mortality, and population loss for the specific people groups.

Other forms of persecution within societal boundaries are seen in the economic sector where employers mistreat women that do not belong to the religious majority group by refusing to pay them for their work, and by targeting them with physical abuse.<sup>178</sup> Marginalized women are also restricted access to infrastructure,<sup>179</sup> and often have no choice but to live in inadequate homes with poor security and unsafe drinking water.<sup>180</sup> Finally, because those who use religion as a basis for committing crimes typically live in societies that hold honor in high regard, survivors of sexual violence are stigmatized and treated as outcasts in the community.<sup>181</sup> “[N]on-virgin” women are given little protection in societies like this because most men do not want to accept the dishonor and impurity into their home.<sup>182</sup>

### *B. Restrictions within State Structures*

In countries where women are persecuted the most, religious nationalism primarily dictates the law of the land and its level of enforcement. The religious factors affecting domestic life and culture are also virtual roadblocks on the path to equal justice and rule of law.<sup>183</sup> Women from religious minority groups are not only controlled by men within their families and their surrounding culture, but they are also controlled by their respective country’s government officials. It is more difficult for these women to receive legal justice for

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<sup>177</sup> RESOURCE GUIDE, *supra* note 172, at 156, 482.

<sup>178</sup> UNICEF, *supra* note 170, at 6.

<sup>179</sup> RIBEIRO, *supra* note 11, at 24.

<sup>180</sup> RESOURCE GUIDE, *supra* note 172, at 482.

<sup>181</sup> RIBEIRO, *supra* note 11, at 25–26.

<sup>182</sup> STEPP, *supra* note 149, at 11.

<sup>183</sup> INST. ON RELIGION & PUB. POL’Y, RELIGIOUS FREEDOM IN AFGHANISTAN 2 (2013).



persecution because the violations are either legal or hidden. Some of the particular legal inequality is created by legislators who use harmful and oppressive religious views to form the power under national legislation that impedes the rights of others. The law is often corrupted when countries declare national religions. In Iraq for example, the State's religion is Islam, and the court systems implement the religion within their jurisdictions.<sup>184</sup> The majority regime in Sudan also imposes Islam as the State religion where it applies Sharia law in the legal system.<sup>185</sup> In this context, a woman's testimony may only be given half as much weight as a man's, leaving her with a useless defense in the court of law.<sup>186</sup> Some countries' legal systems apply harmful religious beliefs when determining the gravity of crimes, and excuse people within religious majority groups from valid accusations. Some framers of laws that permit child marriage and rape follow Sharia law and interpretations of the Quran, and reason that "the Prophet" married a six-year-old girl, and when she reached puberty he rightfully consummated the marriage.<sup>187</sup>

### 1. Legal Implications

Nations with legal systems that institute anti-blasphemy laws are guilty of being the most dangerous for women who are not a part of the majority religion.<sup>188</sup> Around one-fourth of the countries in the world have anti-blasphemy laws, where legal punishments can lead to death.<sup>189</sup> Blasphemy laws

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<sup>184</sup> USCIRF, *THE RELIGION-STATE RELATIONSHIP AND THE RIGHT TO FREEDOM OF RELIGION OR BELIEF: A COMPARATIVE TEXTUAL ANALYSIS OF THE CONSTITUTIONS OF MAJORITY MUSLIM COUNTRIES AND OTHER OIC MEMBERS* 8 (2012).

<sup>185</sup> SULIMAN BALDO, *ENOUGH PROJECT, RADICAL INTOLERANCE: SUDAN'S RELIGIOUS OPPRESSION AND EMBRACE OF EXTREMIST GROUPS* 12 (2017).

<sup>186</sup> GILBERT, *supra* note 13, at 6.

<sup>187</sup> UNFPA, *supra* note 154, at 63.

<sup>188</sup> TIP REPORT, *supra* note 30, at 21.

<sup>189</sup> Angelina E. Theodorou, *Which Countries Still Outlaw Apostasy and Blasphemy?* PEW RES. CTR. (July 29, 2016), <http://www.pewresearch.org/fact-tank/2016/07/29/which-countries-still-outlaw-apostasy-and-blasphemy/>.

often disincentivize women to bring forward claims against their perpetrators belonging to the majority religion.<sup>190</sup> Even in countries that do not explicitly declare State religions, their constitutions commonly include provisions that inadvertently restrict minority rights. Nepal's Constitution prohibits "disturbing the religion of others," and punishes those who convert others from one religion to another.<sup>191</sup> Sudan excommunicates religious minority groups for committing "religious intolerance" if they refuse to follow the national religion.<sup>192</sup> In similar fashion, Indonesia only acknowledges six specific religions and punishes people who identify with religions that are not nationally recognized.<sup>193</sup>

While women are disproportionately affected under the general discriminatory religious laws, they are also specifically targeted because of their inequality under personal status laws.<sup>194</sup> Some countries enforce laws that ban women from traveling without male guardians and punish those who violate the bans.<sup>195</sup> Other States require women to obtain permission from men to legally obtain business licenses and ownership of property, which is nearly impossible for minority religious women.<sup>196</sup> A number of Muslim countries have dangerous laws requiring rape victims from religious minority groups to provide Muslim male witnesses of their assaults in order to be heard in court.<sup>197</sup> Because this biased standard is incredibly difficult to satisfy, the women are consequently punished if they fail to meet the unfair burden of proof.<sup>198</sup> Other laws, like an Afghanistan bill

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<sup>190</sup> TIP REPORT, *supra* note 30, at 21.

<sup>191</sup> U.S. Dept. of State, HUMAN RIGHTS REPORT, NEPAL, 12 (2015).

<sup>192</sup> BALDO, *supra* note 185, at 12.

<sup>193</sup> HUMAN RIGHTS WATCH, IN RELIGION'S NAME: ABUSES AGAINST RELIGIOUS MINORITIES IN INDONESIA 29 (2013).

<sup>194</sup> FISHER & MILLER, *supra* note 2, at 2.

<sup>195</sup> FISHER & MILLER, *supra* note 2, at 7.

<sup>196</sup> FREEDOM HOUSE, FREEDOM IN THE WORLD 2018: DEMOCRACY IN CRISIS, SAUDI ARABIA (2018).

<sup>197</sup> GILBERT, *supra* note 13, at 5.

<sup>198</sup> GILBERT, *supra* note 13, at 8.

that is rooted in Sharia law, allow tribal courts the discretion to permit honor killings of women and girls.<sup>199</sup>

A prominent example of the use of oppressive blasphemy laws was exposed in *Asia Bibi v. The State*, where a Pakistani Christian woman was sentenced to death for violating a blasphemy law when she “offered water to a Muslim co-worker who believed Asia had made the water ceremonially unclean by drinking from the same cup.”<sup>200</sup> Asia was acquitted of the crime because of judicial contradictions, but other women are not so fortuitous.<sup>201</sup> A analogous story rises from Sudan, where a Christian woman’s relative reported her for “adultery” because she married a Christian man when her father was Muslim.<sup>202</sup> She was charged with apostasy, and when she refused to renounce her faith, she was charged with one hundred lashes and the death sentence.<sup>203</sup> Fortunately, the Sudanese court released her after an international outcry.<sup>204</sup>

## 2. Governmental Implications

In countries where women fail to follow religious statutes or refuse to convert to the majority religion, they are deprived of basic governmental protections.<sup>205</sup> Government officials tend to take radical measures to physically punish and oppress women.<sup>206</sup> States act in disobedience of international legal standards when they complacently allow “culture” to run its course by standing idly by without addressing the

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<sup>199</sup> Jean MacKenzie, *Afghan Women Trapped in Tribal Court System*, THE GROUNDTRUTH PROJECT (Mar. 7, 2012), <https://thegroundtruthproject.org/afghan-women-trapped-in-tribal-court-system>.

<sup>200</sup> Memphis Barker, *Asia Bibi: Pakistan Court Overturns Blasphemy Death Sentence*, THE GUARDIAN (Oct. 31, 2018), <https://www.theguardian.com/world/2018/oct/31/asia-bibi-verdict-pakistan-court-overturns-blasphemy-death-sentence>.

<sup>201</sup> *See id.*

<sup>202</sup> *Meriam Ibrahim Freed from Death Row in Sudan*, AMNESTY INT’L UK (Jan. 12, 2018, 7:31 AM), <https://www.amnesty.org.uk/meriam-ibrahim-freed-death-row-sudan-apostasy-pregnant-mother>.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> TIP REPORT, *supra* note 30, at 21.

<sup>206</sup> *See ISIS Escapees*, *supra* note 63.

persecution, and also when they directly enable and promote the persecution. Excluding these women from governmental positions strips them of proper advocacy and representation within the State systems.<sup>207</sup> Without fear of opposition to their discriminatory acts, government officials encourage law enforcement actors to engage in the mistreatment of women from religious minority groups through the enforcement of unjust laws and propaganda.<sup>208</sup> In turn, State officials negatively influence society with their hateful speech about women.<sup>209</sup>

Government systems are responsible for fostering environments of impunity for men that persecute women because of their religions. It is common for courts to convict perpetrators of gender-based persecution, and in the same day clandestinely release them back into society.<sup>210</sup> As a result, the victims who originally brought the men to court are later subjected to fear and violence by the same men who should be in custody.<sup>211</sup> Even when State actors are not personally responsible for the persecution, the government turns a blind eye and allows lay people to take “justice” into their own hands. For example, if a woman under Sharia law converts to Christianity, her family members and neighbors are legally allowed to prevent her from leaving the home.<sup>212</sup> State officials essentially reward those who execute majority religious ideals through violent actions.<sup>213</sup>

### *C. Restrictions within International Legal Structures*

Like the conflict in Nigeria with members of Boko Haram, some violence is too much for national government systems to

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<sup>207</sup> FREEDOM HOUSE *supra* note 195.

<sup>208</sup> See *ISIS Escapees*, *supra* note 63.

<sup>209</sup> RIBEIRO, *supra* note 11, at 24.

<sup>210</sup> Gilbert, *supra* note 13, at 6.

<sup>211</sup> Gilbert, *supra* note 13, at 6.

<sup>212</sup> FISHER & MILLER, *supra* note 2, at 7.

<sup>213</sup> BALDO, *supra* note 185, at 14.

control when the persecution is driven by non-state actors.<sup>214</sup> Issues like those involving terrorist organizations, demand international action. Likewise, in countries where the government empowers or allows persecutory crimes against women, international action is also needed.

### 1. International Criminal Law

The International Criminal Court (ICC) has jurisdiction to prosecute war crimes, crimes against humanity, genocide, and crimes of aggression.<sup>215</sup> The international statutes in the ICC make it clear that every human should be guaranteed freedom of religion and gender equality.<sup>216</sup> One statute in particular that provides protection from persecution is the Rome Statute. The Rome Statute was the first international law that addressed the issue of gender-based violence as well as persecution.<sup>217</sup> Article 7 provides protection for “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender.”<sup>218</sup> However, the ICC only has the jurisdiction to use the Rome Statute to prosecute gender-based crimes against humanity.<sup>219</sup>

Crimes against humanity are prosecuted in the ICC when they are committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>220</sup> Crimes against humanity include acts of “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of

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<sup>214</sup> Phumzile Mlambo Ngcuka, UN Under Sec’y Gen. and Exec. Dir. of UN Women, Opening Remarks at the Plenary Sess. of the Five Days of Violence Prevention Conf. at Johannesburg, S. Afr., Two Sides of the Same Coin: Gender Inequality and Violence Against Women (Oct. 2, 2017).

<sup>215</sup> ICC, POLICY PAPER ON SEXUAL AND GENDER-BASED CRIMES 5 (2014) [hereinafter ICC POLICY PAPER].

<sup>216</sup> Raday, *supra* note 145, at 676–77.

<sup>217</sup> RIBEIRO, *supra* note 11, at 48.

<sup>218</sup> Rome Statute of the International Criminal Court art. 7, 1 July 2002, A/CONF.183/9.

<sup>219</sup> *Id.* at 3.

<sup>220</sup> *Id.*

sexual violence of comparable gravity.”<sup>221</sup> This means that the ICC can prosecute individual perpetrators of persecution when the crime fits within the specific definition of crimes against humanity.

The ICC’s international body of law protects women on the basis of religion separately from protecting them on the basis of gender. The statutes explain that gender-based crimes may be motivated by religion, but there are no laws explicitly protecting women from religious persecution.<sup>222</sup> Although the ICC criminalizes acts of genocide on the basis of religion, it does not address the fact that individual women are targeted as a result of their religion and gender.<sup>223</sup> Even though mass atrocities against women are criminalized, international law fails to discuss gender-based persecution on a smaller scale. The ICC does not provide protection for women who are forced into marriage, forced to follow dress codes, or suppressed as second-class citizens within religious communities.<sup>224</sup> The ICC prosecutes large-scale crimes, so it has yet to implement protections for particular local religious issues. Unfortunately, “there has never been a successful international trial for gender-based persecution.”<sup>225</sup> Perhaps the reason for the oversight is that the provisions enforcing protections for women do not explicitly mention religion.<sup>226</sup>

## 2. International Human Rights Protections

International human rights law requires that nations be held accountable for human rights violations. Broad international legislation protecting individuals from gender discrimination within their respective countries is found in the United Nations treaty bodies, and holds authoritative

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<sup>221</sup> *Id.*

<sup>222</sup> ICC POLICY PAPER, *supra* note, 215 at 13.

<sup>223</sup> RIBEIRO, *supra* note 11, at 48.

<sup>224</sup> GHANEA, *supra* note 148, at 9.

<sup>225</sup> Chertoff, *supra* note 6, at 1053.

<sup>226</sup> GHANEA, *supra* note 148, at 1.

value in international human rights litigation.<sup>227</sup> Broadly speaking, the UN General Assembly declares that all states must denounce violence against women.<sup>228</sup> In its General Comment 28, the UN Human Rights Council writes, “States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law....”<sup>229</sup> Another central legal protection for women is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>230</sup> Article 5 of CEDAW orders all parties to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority of either of the sexes or on stereotyped roles for men and women.”<sup>231</sup>

Regarding religious persecution, most nations look to the UN's International Covenant on Civil and Political Rights (ICCPR) to protect individuals' religious liberties. In Article 18, the ICCPR states, “No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.”<sup>232</sup> This means that individuals in all nations must be able to freely change religions without the threat of coercion or violence. Therefore, if a country fails to provide this protection, they will be held responsible.

The protections within United Nations' documents, similar to binding international law, fail to provide specific protections for women fleeing from gender-based persecution. General Comment 28 is arguably the closest protection for this specific category of women, but it leaves room for

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<sup>227</sup> RIBEIRO, *supra* note 11, at 35.

<sup>228</sup> G.A. 48/104, Declaration on the Elimination of Violence against Women (Dec. 20, 1993).

<sup>229</sup> HRC, General Comment No. 28: The Equality of Rights Between Men and Women, CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

<sup>230</sup> GHANEA, *supra* note 148, at 2.

<sup>231</sup> CEDAW, General Recommendation on Women's Access to Justice CEDAW/C/GC/33 (July 23, 2015).

<sup>232</sup> International Covenant on Civil & Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

continued persecution if the perpetrators can justify the violations for other reasons. New legislation must explicitly protect women from violations based on their affiliations with a particular people group. Similarly, while the CEDAW protections expansively cover issues faced by women, it never mentions the word “religion.”<sup>233</sup> Some scholars interpret the language and context of CEDAW to reason that the phrase “‘cultural practices’ . . . subsumes the religious norms of societies.”<sup>234</sup> However, other UN Conventions use the words “religion” and “culture” in separate contexts, which is why there must be specific language in regards to the protection of women. Lastly, although the ICCPR protects victims of religious persecution, it fails to address protection for women in particular.<sup>235</sup>

## CONCLUSION

The issue of gender-based persecution likely receives minimal international recognition because of its inherent complexity. The complexity develops from the multitude of issues that weave together like pieces of thread into a tapestry that comprises gender-based persecution. Because every aspect of a woman’s life is interconnected, when one thread is broken, the problem is worsened. This Note discussed the vulnerabilities found in women’s lives and argued that religious persecution and gender-equality must be addressed through a bottom-up approach.

Women from religious minorities can be better protected domestically through local-based advocacy. By joining together with local citizens from various religions and demographics, women will gain a larger platform to be heard. Faith leaders from local churches can also help by guiding victims through the process of reintegration into their

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<sup>233</sup> CEDAW, *supra* note 231.

<sup>234</sup> Raday, *supra* note 145, at 678.

<sup>235</sup> International Covenant on Civil & Political Rights, *supra* note 232.



original church communities. On the State level, proper law enforcement can change the culture of discrimination to one that grows to respect women and their religions. State government officials must foster transparent justice systems, and end impunity under the law by enforcing international human rights standards like CEDAW and the ICCPR. Women will begin to feel comfortable bringing their cases to light when State officials hold perpetrators accountable for gender-based persecution. International legislators must look at the issue on a closer level, and address the “gender-specific nature” of religious persecution.<sup>236</sup> While there are international laws, like the Rome Statute, already addressing the issues in separate contexts, women need new binding international laws to specifically protect them from gender-based persecution.

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<sup>236</sup> Widney Brown & Laura Grenfell, *The International Crime of Gender-Based Persecution and the Taliban*, 4 MELB. J. INT'L L. 347, 357 (2003).