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### Human rights situations that require the Council's attention

## “They came to destroy”: ISIS Crimes Against the Yazidis\*

### *Summary*

ISIS has committed the crime of genocide as well as multiple crimes against humanity and war crimes against the Yazidis, thousands of whom are held captive in the Syrian Arab Republic where they are subjected to almost unimaginable horrors.

The present report, which focuses on violations committed in Syria, is based on 45 interviews with survivors, religious leaders, smugglers, activists, lawyers, medical personnel, and journalists. Considerable documentary material was used to corroborate information collected by the Independent International Commission of Inquiry on the Syrian Arab Republic.

ISIS has sought to destroy the Yazidis through killings; sexual slavery, enslavement, torture and inhuman and degrading treatment and forcible transfer causing serious bodily and mental harm; the infliction of conditions of life that bring about a slow death; the imposition of measures to prevent Yazidi children from being born, including forced conversion of adults, the separation of Yazidi men and women, and mental trauma; and the transfer of Yazidi children from their own families and placing them with ISIS fighters, thereby cutting them off from beliefs and practices of their own religious community, and erasing their identity as Yazidis. The public statements and conduct of ISIS and its fighters clearly demonstrate that ISIS intended to destroy the Yazidis of Sinjar, composing the majority of the world's Yazidi population, in whole or in part.

In the present report, the Commission has made wide-ranging recommendations to the United Nations, the Governments of Syria and Iraq, and the wider international community concerning the protection of and care for the Yazidi community of Sinjar. While noting States' obligations under the Genocide Convention, the Commission repeated its call for the Security Council to refer urgently the situation in Syria to the International Criminal Court, or to establish an ad hoc tribunal with relevant geographic and temporal jurisdiction.

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Over 3,200 Yazidi women and children are still held by ISIS. Most are in Syria where Yazidi females continue to be sexually enslaved and Yazidi boys, indoctrinated, trained and used in hostilities. Thousands of Yazidi men and boys are missing.

The genocide of the Yazidis is on-going.

## I. Introduction

1. In the early hours of 3 August 2014, fighters from the terrorist group, the Islamic State of Iraq and Al-Sham (ISIS),<sup>1</sup> flooded out of their bases in Syria and Iraq, and swept across Sinjar. The Sinjar region of northern Iraq is, at its nearest point, less than 15 kilometres from the Syrian border. It is home to the majority of the world's Yazidis,<sup>2</sup> a distinct religious community whose beliefs and practice span thousands of years, and whose adherents ISIS publicly reviles as infidels.

2. Within days of the attack, reports emerged of ISIS committing almost unimaginable atrocities against the Yazidi community: of men being killed or forced to convert; of women and girls, some as young as nine, sold at market and held in sexual slavery by ISIS fighters; and of boys ripped from their families and forced into ISIS training camps. It was quickly apparent that the horrors being visited upon captured Yazidis were occurring systematically across ISIS-controlled territory in Syria and Iraq.

3. In this report, the independent international Commission of Inquiry on the Syrian Arab Republic<sup>3</sup> examines the crimes ISIS is committing against Yazidis, thousands of whom are now held in Syria. While the report analyses a range of international crimes, it specifically seeks to determine whether ISIS has committed the crime of genocide.

4. This report, which focuses on violations occurring in Syria, is based on 45 interviews with survivors, religious leaders, smugglers, activists, lawyers, medical personnel, and journalists. Considerable documentary material was used to corroborate the information collected by the Commission. This includes hundreds of statements, photographs, satellite images, and reports, as well as the factual findings of the OHCHR Fact-Finding Mission on the human rights situation in Iraq.<sup>4</sup> ISIS has not sought to hide or reframe its conduct. Where the Commission was able to determine provenance, materials disseminated by the terrorist group and/or its individual members have also formed part of this analysis.

<sup>1</sup> In its Resolution 2249 (2015), the UN Security Council determined that ISIS “constitutes a global and unprecedented threat to international peace and security”.

<sup>2</sup> In Kurdish, referred to as Êzîdî or Êzîdî.

<sup>3</sup> “The Commission”. The commissioners are Paulo Sérgio Pinheiro (Chairperson), Karen Koning AbuZayd, Vitit Muntarbhorn and Carla Del Ponte.

<sup>4</sup> A/HRC/28/18, Report of the Office of the United Nations High Commission for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, 13 March 2015. (“OHCHR Iraq Report” or “A/HRC/28/18”). The Commission also took note of the Statement by Adama Dieng, Special Adviser of the Secretary-General on the Prevention of Genocide, and Jennifer Welsh, Special Adviser of the Secretary-General on the Responsibility to Protect, on the situation in Iraq, 12 August 2014. Secondary sources of information also included UNOSAT reports, the United States Holocaust Memorial Museum’s report “Our Generation is Gone: The Islamic State’s Targeting of Iraqi Minorities in Ninewa” (“US Holocaust Memorial Museum Report”) and various inputs provided by the Kurdish Regional Government’s Genocide Committee, the Sinjar Local Administration, and notably, documentation provided by Yazda.

## II. Mandate

5. During its investigations of violations committed in Syria, the Commission determined that ISIS has forcibly transferred – and continues to forcibly transfer – thousands of Yazidi women and children into Syria.

6. It is estimated that at least 3,200 Yazidi women and girls remain captives of ISIS, the majority of them held inside ISIS-controlled areas of Syria. It has not been possible to estimate the number of Yazidi boys who have been or are being trained with ISIS forces, though it is clear that many such boys are trained and then forced to fight during ISIS offensives in Syria. Much more limited information is available concerning the fate and whereabouts of captured Yazidi men and older boys who survived the August 2014 ISIS onslaught.

7. In accordance with its mandate, the present report focuses on violations committed against Yazidis in Syria. As the initial attack occurred in northern Iraq, however, it is necessary to set out ISIS conduct in Iraq in order to understand the context in which ISIS forcibly displaced Yazidi civilians into Syria, and the architecture of the system, initially set up by ISIS in Iraq, which allowed these crimes to take place as they did.

8. While the Commission's mandate is limited to violations committed in Syria, its analysis of ISIS conduct demonstrating relevant intent, as well as of information evidencing the criminal liability of ISIS fighters, their military commanders, and their religious and ideological leaders, is not geographically limited.

## III. Applicable Law

9. Article II of the 1948 Convention for the Prevention and Punishment of the Crime of Genocide,<sup>5</sup> to which Syria and Iraq are parties, states that the crime of genocide is committed when a person commits a prohibited act with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. Prohibited acts are (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group. This definition is replicated, without amendment, in Article 6 of the Rome Statute.

10. The crime of genocide requires that the perpetrator have a special intent to destroy, in whole or in part, a protected group. The genocidal acts must be committed against a person because of their membership in a particular group and as an incremental step in the overall objective of destroying the group.<sup>6</sup> This special intent is also distinct from motive. It is not a contradiction, however, that perpetrators who have the special intent to destroy the protected group may also be fuelled by multiple other motives such as capture of territory, economic advantage, sexual gratification, and spreading terror.

11. The jurisprudence of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) has been instrumental in deconstructing the definition of genocide, and is referred throughout the Legal Analysis section below.

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<sup>5</sup> Hereinafter, the Genocide Convention.

<sup>6</sup> Prosecutor v. Rutaganda, ICTR Trial Judgment, 6 Dec. 1999 ("Rutaganda Trial Judgment"), para. 59; Prosecutor v. Jelisić, ICTY Trial Judgment, 14 December 1999 ("Jelisić Trial Judgment"), para. 66.

12. Article IV of the Genocide Convention obliges contracting States to punish not only persons committing genocide, but also those who conspire to commit genocide, directly and publicly incite the commission of genocide, attempt to commit genocide, and/or who are complicit in genocide.<sup>7</sup>

13. It is worthy of note that “genocide” as it exists in the public imagination often departs from the legal definition. The colloquial use of the term “genocide”, steeped in images of the Holocaust and the Rwandan genocide, has tended to signify the organised extermination of masses of civilians, regardless of the specific intention behind the killings. This is not, however, the legal definition of the crime of genocide.<sup>8</sup> Whether a genocide has occurred, by a mass killing or not, hinges upon the existence in the perpetrator’s mind, at the time of the commission of the prohibited act, of a specific intent to destroy, in whole or in part, a protected group by one of the specified methods, alongside the intent to commit the specified act.<sup>9</sup>

14. Crimes against humanity include a wider range of offences. There is no requirement that the perpetrator intend to destroy a prohibited group: it is sufficient that the criminal acts be committed as part of a widespread or systematic attack directed against any civilian population. Underlying criminal acts, as enumerated in Article 7(1) of the Rome Statute, which may constitute a crime against humanity and which are relevant to this paper include murder; extermination; enslavement; imprisonment or other severe deprivation of liberty; torture; rape; other inhumane acts; sexual slavery; and sexual violence.

15. War crimes, committed in the context of a non-international armed conflict, include murder; rape; sexual slavery; sexual violence; cruel treatment; torture; outrages upon personal dignity; using, conscripting and enlisting children; and attacking civilians.

16. The conduct underlying genocide, crimes against humanity, and war crimes as set out above are, in and of themselves, abuses of international human rights, including of the right to life, liberty and security of person; the prohibition against slavery; and the prohibition against torture or cruel, inhuman or degrading treatment or punishment.

## IV. Factual Findings

### A. The Sinjar Region of northern Iraq

*Before ISIS attacked, I was happy. My husband adored me, loved our children. We had a good life. ISIS held me for over a year. I haven’t seen my husband since the day of the attack. I dream of him.*

Woman, held for 18 months, sold twice

17. The Sinjar region is located in northwest Iraq, close to the Iraqi-Syrian border. Hundreds of villages are spread out around the base of Mount Sinjar, with one main town,

<sup>7</sup> See Article III, Genocide Convention.

<sup>8</sup> While this has not historically been the case, theoretically the crime of genocide could be committed without any killings taking place. Only Article 6(a) of the Rome Statute requires the act of killing another person for the actus reus of the crime of genocide to be committed.

<sup>9</sup> In its Commentary on the 1996 Draft Code of Crimes Against the Peace and Security of Mankind, the International Law Commission qualified genocide’s specific intent as “the distinguishing characteristic of this particular crime under international law.”

Sinjar town, huddled at the base of the southeastern side of the mountain.<sup>10</sup> Mount Sinjar, an arid 100-kilometre-long mountain range, forms the region's heart.

18. Prior to the 3 August 2014 attack, the region's population was predominantly Yazidi, with a smaller number of Arabs who followed Sunni Islam. Yazidis and Arabs lived together in some villages and in Sinjar town, with many families enjoying friendly, neighbourly relations spanning generations.

19. The Yazidi faith requires that a child have two Yazidi parents. With conversion to Yazidism theologically impossible, mixed marriages were strongly discouraged. Additionally, the widely-held but wholly incorrect view of the Yazidi faith as a religion of "devil-worshippers" appeared to be a powerful disincentive for members of non-Yazidi communities who wished to marry someone of the Yazidi religious group. Misunderstandings of Yazidism have underpinned cycles of persecution of this community, at least as far back as the Ottoman Empire. There has been widespread discrimination against the Yazidis throughout modern history. The historical persecution of the Yazidis by their neighbours further strengthened the community's proscription against "marrying out" of the faith.

20. While intermarriage between the Yazidis and Arabs of Sinjar was rare, interviewees recalled many friendships and working relationships across the two communities, underlining the nuanced nature of the relationships in Sinjar prior to the attack. In its aftermath, while some individual relationships have survived, the two communities have become deeply estranged.

21. In June 2014, ISIS seized Mosul, rattling the Sinjar region that then lay in between ISIS-controlled areas of Iraq and Syria. In the months prior to the attack on Sinjar, ISIS began to take control of increasingly large areas in Syria and Iraq, culminating in sizeable offensives in August 2014. The Iraqi Kurdish forces, the Peshmerga, maintained bases and checkpoints throughout the Sinjar region and were the only security force in the region on 3 August 2014.

22. On 2 August, the day before the attack, the Yazidis of Sinjar – farmers, teachers, doctors, housewives, and school children – spent their day like any other. Within 24 hours, their lives would become unrecognisable to them. The date of 3 August 2014 would become a dividing line, demarcating when one life ended, and – for those who survived – when another, infinitely more cruel, existence began.

## **B. The 3 August 2014 ISIS Attack**

*When ISIS attacked Sinjar, they came to destroy.*

Yazidi religious authority

23. In the early hours of 3 August 2014, ISIS fighters attacked Sinjar from Mosul and Tel Afar in Iraq, and Al-Shaddadi and the Tel Hamis region (Hasakah) in Syria. The attack was well organised with hundreds of ISIS fighters acting in concert with each other as they seized towns and villages on all sides of Mount Sinjar. Information documented by the Commission strongly suggests that the command centre for the operation was based in Mosul, with an important operational centre in Tel Afar.

24. As they moved into Sinjar, ISIS fighters faced little or no resistance. Many of the Peshmerga reportedly withdrew in the face of the ISIS advance, leaving much of the Sinjar region defenceless. The decision to withdraw was not effectively communicated to

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<sup>10</sup> Annex A (Map).

the local population. No evacuation orders were issued and most villages were initially unaware of the collapse of the security situation.

25. As word spread that the Peshmerga had left their checkpoints, a few ad hoc groups of lightly armed, local Yazidi men mounted a very limited defence of some villages, such as Girzerik and Siba Sheikh Khedir, in an attempt to give their families and neighbours more time to escape. By daybreak, Yazidi families from hundreds of villages across Sinjar were fleeing their homes in fear and panic. They took little with them. Others were advised by Arab neighbours to stay in the villages and raise white flags over their houses.

26. By the time ISIS entered Sinjar, there were few military objectives in the region. ISIS fighters focussed their attention on capturing Yazidis. After controlling the main roads and all strategic junctions, fighters set up checkpoints and sent mobile patrols to search for fleeing Yazidi families. Within hours, Yazidis who had been unable to escape to the nearby city of Duhok found themselves encircled by armed, black-clad ISIS fighters.

27. Those who fled early enough to reach the upper plateau of Mount Sinjar were besieged by ISIS. A humanitarian crisis quickly unfolded as ISIS trapped tens of thousands of Yazidi men, women, and children in temperatures rising above 50 degrees Celsius and prevented them from accessing to water, food or medical care. On 7 August 2014, at the request of the Iraqi Government, US President Barack Obama announced American military action to help the Yazidis trapped on Mount Sinjar.<sup>11</sup> American, Iraqi, British, French, and Australian forces were involved in airdrops of water and other supplies to the besieged Yazidis. ISIS fighters shot at planes airdropping aid, and at helicopters attempting to evacuate the most vulnerable Yazidis.

28. Hundreds of Yazidis – including infants and young children – died on Mount Sinjar before the Syrian Kurdish forces, the YPG, were able to open a corridor from Syria to Mount Sinjar, allowing for those besieged on the mountain to be moved to safety. Together with Yazidi volunteers, they repelled ISIS attacks on the corridor, as it sought to re-establish the siege.

29. On lower ground, ISIS fighters captured thousands of Yazidis in their villages or on the roads as they fled between 3 and 5 August 2014. Almost all villages were emptied within 72 hours of the attack, with the exception of Kocho village which was not emptied until 15 August 2014. The conduct of ISIS fighters, on capturing thousands of Yazidis as they fled, cleaved closely to a set and evidently pre-determined pattern, with only minor deviations.

30. Regardless of where the Yazidi families were captured, ISIS fighters swiftly ordered the separation of males and females, with the exception of boys who had not reached puberty,<sup>12</sup> who were allowed to remain with their mothers. Within an hour, those who survived capture were forcibly transferred to temporary holding sites. ISIS operational commanders communicated these primary transfer locations, located within the Sinjar area and in Hasakah governorate in Syria, to their fighters and checkpoints by walkie-talkies and mobile phones. Secondary transfers were later conducted in an

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<sup>11</sup> The White House, Statement by the President, 7 August 2014. (<https://www.whitehouse.gov/the-press-office/2014/08/07/statement-president>). (“The White House Statement”)

<sup>12</sup> Whether a boy had reached puberty was assessed in various ways by ISIS fighters across Sinjar. The fighters in Kocho village, for example, inspected Yazidi boys to see if they had any underarm hair. Fighters in other locations made snap judgments based on height and weight. In general, boys aged 12 years and above were grouped with the Yazidi men, though this was not uniformly the case.

organized manner, with buses and large vehicles moving captured Yazidis to designated holding sites in Mosul, Tel Afar and Baaj, deeper inside ISIS-controlled territory.

31. In the process of capture and transfer, hundreds of ISIS fighters operating across a vast territory in the Sinjar region systematically separated Yazidis into three distinct groups: men and boys aged approximately 12 and above; women and children; and later, drawn from the pool of male children who had remained with the women, boys aged seven and above. Each group suffered distinct and systematic violations, sanctioned under ISIS's ideological framework.

### **C. ISIS treatment of Yazidi men and boys aged approximately 12 and above**

*After we were captured, ISIS forced us to watch them beheading some of our Yazidi men. They made the men kneel in a line in the street, with their hands tied behind their backs. The ISIS fighters took knives and cut their throats.*

Girl, aged 16 at capture, held for 7 months, sold once

*ISIS ordered everyone from Kocho to go to the school. Men and boys over 10 years were on the ground floor, while women and children were on the upper floor. The fighters took the men and boys away. After ISIS took them, no men from the village ever returned. My husband was with them."*

Woman, held for 15 months, sold five times

32. Following the capture of Yazidi families by ISIS fighters, ISIS swiftly separated men and boys who had reached puberty from women and other children. In villages south of Mount Sinjar, men and older boys were immediately separated upon capture. In the northern villages, Yazidi families were first transferred to main checkpoints and towns, such as Khanasour and Sinouni, before they were separated.

33. Following this separation, ISIS fighters summarily executed men and older boys who refused to convert to Islam. Men from rural Yazidi villages who fled with their personal firearms in their belongings were also executed when the weapons were discovered in their possession. Most of those killed were executed by gunshots to the head; others had their throats cut. ISIS fighters carried out executions of male Yazidis in the streets of towns and villages, at makeshift checkpoints, on roadsides as well as on the lower sections of the roads ascending Mount Sinjar. Other captives, including family members, were often forced to witness the killings.

34. ISIS fighters sometimes executed captured Yazidi men and older boys just out of sight of the women and children. Some of those left behind reported hearing gunfire while others saw fighters returning with bloodstains on their clothing. The Yazidi men were not heard from again. Some ISIS fighters tormented survivors by telling evident untruths, including that ISIS had released the men and boys to go to Mount Sinjar.

35. The bodies of those killed on capture were often left in situ. Yazidis, captured and forcibly transferred to Mosul and Tel Afar in the days following the attack, described being driven along roads, the sides of which were littered with corpses.

36. While most killings were of groups of between two and twenty men and boys, there are two clearly documented cases of larger mass killings: those of the men and boys of Kocho and Qani villages. The OHCHR Iraq Report determined that ISIS executed

hundreds of men in Kocho, and about 80 men in Qani.<sup>13</sup> Interviews conducted by the Commission with Yazidi women and girls, taken from these villages and later transferred into Syria, support these findings.

37. Men and older boys who were forcibly converted to Islam became ISIS captives. Separated from women and children, they were quickly transferred to sites in Tel Afar, Mosul, and Baaj where they were later forced to work, labouring on construction projects, digging trenches, cleaning streets, and looking after cattle. They were also forced to pray, grow their beards and hair, and follow other religious dicta as interpreted and promulgated by the terrorist group. Those who attempted to escape were executed upon capture.

38. By late August or early September 2014, ISIS began to move groups of “converted” Yazidi families to Qasr Maharab and Qasil Qio villages, located just outside Tel Afar. The villages’ original inhabitants, mainly from a Shiite community, had fled months earlier when ISIS gained control of the region. Some Yazidis were held briefly in Kocho village before being moved to the two villages. Those held in Kocho described a strong stench of rotting corpses pervading the village.

39. ISIS recorded videos on their phones of “converted” Yazidi men and boys urging their relatives to convert. These videos were shown to the men’s families at holding sites in Tel Afar and Badoush prison. Families who converted were reunited in Qasr Maharab. Although this was not uniformly the case, women who converted but whose husbands had been killed on capture were moved (with their children, if they had them) to nearby Qasil Qio. Later, ISIS would also forcibly transfer some “converted” families to Al-Khadra neighbourhood in Tel Afar.

40. All Yazidi men and boys were required to go to mosque for prayers. In this respect, ISIS treated the “converted” Yazidi males like Muslims. The forced conversions did not, however, provide Yazidi families with any protection or equal status. Yazidis could not leave the villages and were subjected to regular counts. Anyone who tried to escape was beaten at the first attempt, and executed on the second. ISIS killed several Yazidi men in Qasr Maharab after failed escape attempts, executing them by gunshots to the head. When someone successfully escaped, members of their household were beaten. Every day, ISIS took men and boys over 12 years of age out of the villages and forced them to labour on various projects in nearby cities and towns. Those who initially refused to go were beaten. ISIS fighters regularly searched the villages and seized unmarried women and girls, as well as those who were married but had no children. Despite the feigned conversions, ISIS fighters regularly insulted the Yazidis held in Qasr Maharab, Qasil Qio and Al-Khadra, calling them “*kuffar*”, or infidels.

41. By the spring of 2015, ISIS appeared to have determined that any conversions that the Yazidis had made were false. In April or May 2015, ISIS emptied Qasr Maharab, Qasil Qio, and Al-Khadra, separating the families. While it has been possible to trace the fate of many of the women and children held there, little information is available about the fate and whereabouts of the Yazidi men and older boys after this point.

#### **D. ISIS treatment of Yazidi women and girls aged 9 and above**

*Men would come and select women and girls. Women would lie and say we were older. Girls would say they were younger. We tried to make ourselves less*

<sup>13</sup> A/HRC/28/18, para 19. Similar findings were reached in the US Holocaust Memorial Museum Report, pp. 18-19.

*appealing. We would scratch ourselves and rub dirt on our faces. These things did not work.*

Woman, held for 11 months, sold twice

*We were registered. ISIS took our names, ages, where we came from and whether we were married or not. After that, ISIS fighters would come to select girls to go with them. The youngest girl I saw them take was about 9 years old. One girl told me that “if they try to take you, it is better that you kill yourself”.*

Girl, aged 12 at capture, held for 7 months, sold four times

*We were driven into Raqqah city at night and held in a building there. I was there for three weeks before I was sold. Throughout that time, ISIS fighters were coming to buy women and girls. All of us were Yazidi. I think I was sold about 15 times in all. It is hard to remember all those who bought me.*

Woman, held for 12 months, sold approximately 15 times

42. After separating Yazidi women and children from their male relatives aged 12 and above, ISIS fighters immediately and forcibly transferred them between multiple holding sites. Yazidi women and children who were eventually forcibly transferred into Syria were first held at between four and six sites in Iraq.

43. The first holding site was usually located within the Sinjar region. Captives were, on average, held there for less than 24 hours, before taken against their will to Tel Afar, Mosul or Baaj. For example, women and children from Kocho and Qani villages were held at Solagh Technical Institute (at different times); those captured in and around Sinjar town or in the area of Zalelah were held at the Civil Records Office or in Branch 17, KDP Headquarters inside Sinjar town. Women and children from some villages on the north side of Mount Sinjar, including Khanasour and Sinouni villages, were taken directly to ISIS bases in Al-Houl and the Tel Hamis region in Hasakah, Syria, where they were registered before being forcibly transferred back into Iraq.

44. At the primary holding sites, ISIS fighters sorted the Yazidi women and children into different groups. Fighters separated married females from unmarried females.<sup>14</sup> Only girls aged eight years and under were allowed to remain with their mothers. For the most part boys were not separated from their mothers at this stage.

45. Quickly surmising that the greatest danger lay in being placed in the group of unmarried females, unmarried women and girls pretended their younger siblings or nephews or nieces were their own children. Married women who had no children to provide evidence of the marriage did likewise. In some instances, ISIS did not identify this subterfuge. Some Yazidi women and girls reported that members of Sinjar’s Arab community assisted ISIS by identifying those who were pretending to be married.

46. ISIS sometimes registered captured Yazidi women and girls at the primary holding sites. Fighters recorded the names of the women and girls, their age, the village they came from, whether they were married or not, and if they were married, how many children they had. Some women and girls reported ISIS fighters taking photographs of them,

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<sup>14</sup> In interviews, Yazidi women and men almost always used the term “girls” to mean females who were not married (and therefore presumed to be virgins) regardless of their age. Conversely, the term “woman” was used to denote a married female, again regardless of age. In this paper, the terms used are “married women”, “unmarried women” and “girls”. ‘Girls’ refers to any females below the age of 18. Where specific reference is made to a girl who was married at the time of the attack, this will be stated clearly in the text.

without their headscarves. One girl, aged 18, recalled being ordered to smile and laugh while fighters photographed her. Such registration was usually also repeated at later holding sites in Tel Afar and Mosul, and for the women taken into Syria, again at the main holding site in Raqqah city.

47. The first 12 hours of capture were filled with sharply mounting terror. Many of the women and children had seen or heard their male relatives being killed by the armed ISIS fighters who now surrounded them. At the holding sites, relatives huddled together, trying to hide their adolescent daughters. ISIS fighters forced Yazidi women to give up valuables, including gold, money and mobile telephones. As the fighters did so, women rushed to write and memorize telephone numbers of relatives who, they hoped, might be in a position to assist them later.

48. One mass killing of Yazidi women has been documented and occurred at a primary holding site. In the early hours of 16 August 2014, ISIS executed older women (who were approximately 60 years and older) from Kocho at the Solagh Technical Institute, where the women and children had been forcibly transferred after the men had been killed inside Kocho village. Older women were separated and taken away by ISIS fighters, after which those left behind heard the sound of gunfire. The area has since been retaken and a mass grave holding the remains of older women has reportedly been discovered in the grounds of the Technical Institute.<sup>15</sup>

49. ISIS usually held Yazidi women and girls at primary holding sites for less than a day before loading them on to trucks and buses and forcibly transferring them to the following secondary holding sites: multiple schools in Tel Afar; Badoush prison outside of Mosul city; Galaxy wedding hall in Mosul; and houses in Al-Arabi neighbourhood of Mosul city. Every Yazidi women or child captured by ISIS was held in one, and usually moved between two or three, of these holding sites. Iraqi ISIS fighters from Tel Afar and Mosul, operating under pseudonyms, were in direct command of these sites and also supervised the forcible transfer of Yazidi women and girls from these sites into Syria.

50. Women and children were forcibly displaced from site to site as space became available as a result of ISIS fighters' purchasing and removing women and girls. Some transfers were motivated by security concerns. In August 2014, Yazidi captives were suddenly transferred from Badoush to schools in Tel Afar after a coalition airstrike struck a site close to the prison.

51. Each site held hundreds, sometimes thousands, of Yazidi women and children, and was surrounded by armed ISIS fighters. All were severely overcrowded. Those held at the secondary holding sites described receiving little food or water. Interviewees reported being given food with insects in it and having to drink water out of the toilets. Mothers often gave their share of food to their children. Many, particularly infants and young children, became very sick. No medical care was provided. At Badoush prison, ISIS brought in a female gynaecologist in an effort to identify single females who had falsely declared themselves to be married.

52. From the moment that Yazidi women and girls entered the holding sites, ISIS fighters came into the rooms where they were held in order to select women and girls they wished to take with them. Interviewees described feelings of abject terror on hearing footsteps in the corridor outside and keys opening the locks. Women and girls scrambled to the corners of the rooms, mothers hiding their daughters. The selection of any girl was

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<sup>15</sup> Yazda, "Mass Graves of Yazidis Killed by the Islamic State Organization or Local Affiliates On or After August 3, 2014", 28 January 2016, ("Yazda Mass Graves Report") p. 10. This report identified 35 mass graves sites in the Sinjar region.

accompanied by screaming as she was forcibly pulled from the room, with her mother and any other women who tried to keep hold of her being brutally beaten by fighters.

53. Yazidi women and girls began to scratch and bloody themselves in an attempt to make themselves unattractive to potential buyers. Some committed suicide at holding sites in Tel Afar, Mosul and in Raqqah city. At the main holding site in Raqqah city, a Yazidi girl attempted to kill herself by throwing herself from the second floor of the building. Severely injured, ISIS fighters forbade the other Yazidi captives from helping her. Some women and girls killed themselves by cutting their wrists or throats, while others hanged themselves using their headscarves.

54. While individual incidents of rape committed by ISIS fighters at the holding sites in Tel Afar and Mosul were reported, mass rape of Yazidi women and girls did not occur. This was despite the fact that hundreds of women and girls were held captive at the sites, surrounded by dozens of young, armed men. This serves to emphasize the rigid system and ideology governing ISIS's handling of Yazidi women and girls as chattel, as well as the control it exerted over the majority of its fighters. The sexual violence, including the sexual slavery, being committed against Yazidi women and girls is tightly controlled by ISIS, occurs in a manner prescribed and authorised, and is respectful only of the property rights of those who "own" the women and girls.

55. Captured Yazidi women and girls are deemed property of ISIS and are openly termed *sabaya* or slaves. ISIS made eighty percent of the women and girls available to its fighters for individual purchase, the apportioning being drawn directly from religious interpretation. ISIS sells Yazidi women and girls in slave markets, or *souk sabaya*, or as individual purchases to fighters who come to the holding centres. In some instances, an ISIS fighter might buy a group of Yazidi females in order to take them into rural areas without slave markets where he could sell them individually at a higher price. The remaining twenty percent are held as collective property of ISIS and were distributed in groups to military bases throughout Iraq and Syria. In Syria, Yazidi females have been held at bases in Al-Shaddadi and Tel Hamis in Hasakah; Al-Bab and Minbej in Aleppo; Raqqah and Tabqa cities in Raqqah; Tadmur in Homs; and in various locations including Al-Mayadin and Konica gas fields in Dayr Az-Zawr.

56. ISIS has forcibly transferred multiple groups of between 50 and 300 Yazidi women and girls into Syria by bus for sale to its fighters there. The first corroborated account of ISIS taking Yazidi females into Syria indicated that this occurred on 17 August 2014, though it is considered likely that convoys had left earlier than this. They were taken to either or both of two locations in Raqqah city: an underground prison or security base, and/or a group of buildings densely surrounded by trees. The latter is referred to by ISIS fighters as "the farm". Women and girls held there describe it in eerily similar ways: "I was taken to the upper floor of a building in Raqqah city. It was surrounded by trees. We were not allowed outside but when we looked out of the window, it felt like we were in a forest".

57. Some – generally unmarried women and girls – were purchased by ISIS fighters and removed in a matter of days. Some women, often those with more than three children, might remain at the holding sites for up to four months before being sold. Yazidi women and girls were sold to individual fighters directly from the holding sites as well as in slave markets. In the last year, ISIS fighters have started to hold online slave auctions, using the encrypted Telegraph application to circulate photos of captured Yazidi women and girls, with details of their age, marital status, current location and price.

58. In Syria, slave markets were held in “the farm” in Raqqah city, and in buildings in Al-Bab, Al-Shaddadi, Al-Mayadin and Tadmur.<sup>16</sup> A central committee, the Committee for the Buying and Selling of Slaves, organises the Yazidi slave markets. Where the central committee authorizes the opening of a slave market in a particular town, it devolves some of its functions to a local committee and commander. An ISIS document, released online and judged to be authentic, informed fighters were required to pre-register if they wish to attend a slave market in Homs, and explained the procedure for buying: “the bid is to be submitted in the sealed envelope at the time of purchase, and the one who wins the bid is obliged to purchase”.<sup>17</sup>

59. A woman, sold at a slave market at “the farm” in Raqqah city, recounted, “After six days, the fighters moved us to a big white hall that was next to the river. ISIS would buy and sell girls there. There was a raised area we had to stand on. If we refused, the fighters would beat us with wooden sticks. There were maybe 200 Yazidi girls there. The youngest was between seven and nine years old. Most were quite young. They would tell us to take off our headscarves. They wanted to see our hair. Sometimes they would tell us to open our mouths so the men could check our teeth.” Another Yazidi woman was sold at a slave market in a house in Tadmur (Homs). She and other Yazidi women and girls were placed in a small room away from the ISIS fighters. When the fighter in charge of the slave market called her name, fighters entered, took off her headscarf, and escorted her into a larger room of seated ISIS fighters. She was made to “walk through the room like a catwalk”. She continued, “[I]f any of the men chose us he would raise his hand. The seller from ISIS had paper with our name and the price for us on it. They would give it to the man who raised that hand. Then he would take the woman, or women, to his car and he would go.”

60. Some Yazidi women and girls were present at their sale, and were aware of the amounts paid for them, which ranged between USD 200 and USD 1,500, depending on marital status, age, number of children, and beauty. Most were simply informed by their fighter-owner that he had bought or sold her. A Syrian fighter bought a Yazidi woman at a slave auction at “the farm” in Raqqah city in 2015. On placing her in his car, he told her “You are like a sheep. I have bought you.” He sold her seven days later to an Algerian ISIS fighter living in Aleppo governorate.

61. Yazidi females initially purchased in Iraq might also be taken into Syria with their fighter-owners, or else would be sold on from an ISIS fighter in Iraq to a fighter in Syria. Fighters who buy and sell Yazidi women and girls, as well as those who arrange the trading of them, come from all over the world. Those interviewed reported being purchased by men from Iraq, Syria, Saudi Arabia, Turkey, Morocco, Algeria, Tunisia, Libya, Egypt, and Kazakhstan. Interviews conducted by other documentation organisations indicate that fighters from many more countries, including Sudan, Belgium, Uzbekistan, and Australia, took active part in the crimes committed against Yazidi women and girls, or were otherwise complicit in them.

62. Once ISIS sells a Yazidi woman and girl, the purchasing fighter receives complete rights of ownership and can resell, gift, or will his “slave” as he wishes. One Yazidi woman, held with her young children, recounted her purchase by an Algerian ISIS commander in northern Syria and then her being given as a gift to his nephew. Another woman carefully explained that when her fighter-owner died intestate, she reverted to

<sup>16</sup> Al-Shaddadi and Tadmur have since been recaptured. Undoubtedly, many more slave markets exist than are listed here.

<sup>17</sup> Notice on buying sex slaves, Homs province, translated by Aymenn Jawad Al-Tamimi (<http://www.aymennjawad.org/2016/01/archive-of-islamic-state-administrative-documents-1>)

being the collective property of ISIS, with the local Wali charged with organising her resale.

63. In Syria, Yazidi women and girls (and any young children sold with their mothers) are held in a variety of locations, including in the fighter's family home, alone in apartments and houses, and in makeshift shelters nearer to the ISIS frontlines or in gas fields. They are usually kept locked inside. The only exception is young boys who fighters sometimes take with them to pray in the local mosque. Yazidi women and girls are not given abayas<sup>18</sup> which all females over the age of 10 are obliged to wear in public in ISIS-controlled territory. This has proved to be a powerful way of preventing escapes. The few Yazidi women or girls who managed to break out of the locations where they were held were quickly caught once they were on the street without being covered.

64. While held by ISIS fighters, Yazidi women and girls over the age of nine are subjected to brutal sexual violence. Most of those interviewed reported violent daily rapes by their fighter-owners. Some were handcuffed behind their backs during the rapes while others had their hands and legs tied to the corners of the beds. Little, if anything, protects against rape. Girls as young as nine were raped, as were pregnant women. Many women and girls reported being injured as a result of the rapes, suffering bleeding, cuts, and bruising.

65. ISIS fighters threatened Yazidi women and girls, saying that any resistance on their part would be punished by gang rape. One woman, bought by an ISIS fighter from Saudi Arabia and held in a village in Aleppo governorate, stated "[H]e raped me every day that I was with him... He told me that if I did not let him do this thing to me that he would bring four or five men and they would all take turns raping me. I had no choice. I wanted to die". Another woman, held in Minbej (Aleppo), was told by her Syrian fighter-owner that if she resisted, he would throw her off the roof of his house. Some women also reported that the fighter threatened to sell or beat their children.

66. ISIS fighters routinely beat Yazidi women and girls in their possession. One woman, who tried unsuccessfully to escape from a house in Al-Shaddadi (Hasakah) described being beaten by her Iraqi fighter-owner until her "body was black and blue". Another woman was held with her young children in ISIS-controlled areas of Iraq and Syria for 15 months, during which time she was sold five times. She was beaten severely by a Syrian fighter in Raqqah city and later by another fighter in Al-Mayadin (Dayr Az-Zawr). One woman, held by a Saudi fighter in Raqqah city, was severely beaten as she resisted the rapes. She was still suffering from her injuries when interviewed over six months later. Wives and children of ISIS fighters sometimes participate in these beatings. Where Yazidi women and children are injured by rapes or beatings, ISIS fighters do not permit them access to medical care.

67. When women or girls try to escape and are caught and returned to their fighter-owners, the consequences are severe. One woman, held in northern Syria, reported that her fighter-owner killed several of her children after an escape attempt. The fighter continued to hold and rape her for over six months after her children's deaths.

68. Fighters also order and supervise the gang rapes of Yazidi women and girls who try to escape. A woman, unmarried and in her early twenties, was held by ISIS for over a year during which she was sold nine times. Purchased by a fighter in Minbej, she attempted to escape. When she was caught, he dragged her back to the house where he and several other fighters raped and beat her. He sold her to an Algerian fighter based elsewhere in Syria shortly afterwards.

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<sup>18</sup> A loose fitting garment that covers the body and head.

69. Many Yazidi women and girls reported that they were forced to take birth control, in the form of pills and injections, by their fighter-owners. One Yazidi girl, aged 18 and unmarried at the time of capture, was bought by a Libyan fighter and held in an oil field compound in Dayr Az-Zawr. She was raped daily throughout her time with this fighter, and described being forced to take pills every day. Held in ISIS captivity for over a year, she was sold eight times and raped hundreds of times, before being sold back to her family for over 20,000 US dollars.

70. Other women were given no birth control. One woman, bought by a Tunisian fighter and held and raped in Al-Bab for several months, had not been made to take any form of birth control. "It was only luck that I did not get pregnant", she said. Held for a year, she was taken into Syria within weeks of the August 2014 attack on Sinjar and was sold between four different ISIS fighters before she was smuggled out at an unknown cost to her family. Her husband has since divorced her.

71. There was, unsurprisingly, a profound reluctance to discuss pregnancies that resulted from rapes by ISIS fighters. This is particularly so for women and girls who were no longer pregnant, in contexts where abortion is illegal. Nevertheless, those interviewed reported that such pregnancies inevitably occurred. Some Yazidi women gave birth in captivity or upon release but many appear to have given the infants away in circumstances that remain unclear. None of the birth control methods forced upon the Yazidi women and girls protected them from sexually transmitted diseases but interviewees generally refused to acknowledge this possibility.

72. ISIS fighters, and sometimes the wives of ISIS fighters, regularly force Yazidi women and girls to work in their houses. Many of those interviewed recounted being forced to be the domestic servant of the fighter and his family. Sometimes, they were also made to look after his children. When held closer to the frontlines, Yazidi women and girls are forced to cook for their respective fighter-owners and other ISIS fighters housed with or near him. One Yazidi girl, 13 years old, was held for 11 months in ISIS-controlled territory and sold multiple times. Sexually enslaved, she recounted also being forced to cook, clean and wash the clothes of her Syrian fighter-owner and his family at a house in Raqqah city.

73. ISIS fighter-owners often deny captured Yazidi women and children adequate food. Some Yazidi females were starved as punishments for escape attempts or for resisting rapes but most interviewees reported regularly having little food while held in captivity regardless of whether they were being punished or not. Many lost significant amounts of weight while held captive by ISIS. In photographs circulated by fighters in online ISIS slave auctions, some captured Yazidi women and girls appear emaciated.

74. From the moment of capture, through the various holding sites and while being bought and raped by ISIS fighters, Yazidi women and girls were verbally abused by ISIS fighters. Insults were specifically directed at their Yazidi faith, saying that they "worshipped stones" and referring to them as "dirty *kuffar*" and "devil-worshippers".

75. ISIS has overarching rules governing the resale of Yazidi women and girls: for example, they should not be sold between brothers or until they had completed their menstrual cycle (indicating they were not pregnant). It is also forbidden to sell them to non-ISIS members. All of these rules are regularly breached by ISIS fighters.

76. As the *sabaya* are "spoils of war" ISIS does not permit the reselling of Yazidis to non-ISIS members. Such sale is punishable by death. In effect this is meant to prevent Yazidis being sold back to their families. The financial incentives for an individual fighter to break this rule, however, are tremendous. Whereas Yazidi women and children are sold between fighters for between USD 200 and USD 1,500, they are generally sold back to their families for between USD 10,000 and 40,000. Many of the families of the Yazidi

women and girls who were sold back are now heavily in debt and worry not only about making payments, but also about how they will be able to afford to buy back any other relatives that fighter-owners wish to sell in future. Some are still making payments to ISIS fighters, who regularly call to threaten them.

77. Many of the Yazidi women and girls interviewed bore physical wounds and scars of the abuse they suffered. More apparent, however, was the mental trauma all are enduring. Most spoke of thoughts of suicide, of being unable to sleep due to nightmares about ISIS fighters at their door. “I wish I was dead. I wish the ground would open and kill me and my children”, said one woman, held for 17 months. Many reported feeling angry and hopeless. “I don’t sleep, I don’t eat, my body feels very heavy”, said one 17-year old girl who had been held for more than a year.

78. Women and girls who were rescued or sold back are consumed by thoughts of their missing husbands, fathers and brothers, and by the distress of not knowing the locations and fate of young sons taken for training and/or daughters who were sold into sexual slavery and remain in the hands of ISIS. One Yazidi woman, in her early twenties and married with children, has over twenty members of her family missing, including most of her close male relatives. She described overcoming thoughts of suicide by the need to care for her young children and her hope that her husband, father, and brothers are alive and waiting to be rescued. One woman, whose daughters had been taken from her at a holding site and sold and whose whereabouts were still unknown at the time of interview, said she could not take her youngest daughter to the school in the IDP camp because the sight of seeing children at play was too much for her to bear.

79. The Yazidi community has largely embraced the women and girls who have returned from ISIS captivity, following clear statements by their religious leaders that survivors remain Yazidi and are to be accepted. Whereas previously they may have been ostracised, this religious-backed embrace of female survivors has provided a space in which those who were unmarried at the time of capture can still marry within the faith, and in which those who are married are more likely to be accepted and supported by their husbands and extended families.

80. Nevertheless, Yazidi women and girls, heavily traumatised, face additional challenges to their recovery. Many, particularly those from the more rural parts of Sinjar, have limited education, and married and had children early. Their communication with the world beyond their extended families was through their husbands or male relatives. With so many Yazidi men killed or missing, these women’s ability to survive and thrive is limited by their lack of personal and financial independence, an issue that must be addressed. Further, discussions around accountability and reconciliation, as well as what is best for the Yazidi community of Sinjar, must take the views and experiences of these women and girls more clearly into account.

## **E. ISIS treatment of young children held with their mothers**

*I said, “What did you do to them?” He beat me and said, “They are kuffar children. It is good they are dead. Why are you crying for them?”*

Woman, held for 16 months, sold three times

*When he would force me into a room with him, I could hear my children screaming and crying outside the door. Once he became very angry. He beat and threatened to kill them. He forced two of them to stand outside barefoot in the snow until he finished with me.”*

Woman, held for 11 months, sold 7 times

81. ISIS and its fighters sell Yazidi women with young children as a package. Hundreds of Yazidi children continue to be transferred around ISIS-controlled areas of Iraq and Syria as their mothers are sold and re-sold.

82. Once a Yazidi girl reaches the age of nine, ISIS takes the girl from her mother and sells her as a slave. When a Yazidi boy reaches seven years of age, he too is taken from his mother and sent to an ISIS training camp and from there on to battle. Younger siblings witness these separations, which are almost always accompanied by ISIS fighters beating their mother as she tries to keep hold of her older children.

83. ISIS fighters often target younger Yazidi children as a means of punishing their mothers. In one case, an ISIS fighter killed several children after their mother failed in her escape attempt. He beat her for crying over the death of “*kuffar* children” before raping her. In 2015, a Libyan ISIS fighter bought a Yazidi woman and her young children, the oldest of whom was a 7-year-old girl, and held them in a house in Dayr Az-Zayr governorate. After loaning the mother to be raped by another ISIS fighter for one night, the Libyan fighter took the 7-year-old girl into a room, locking it behind him. He told her mother, who was screaming at the door, that he wanted to check whether the 7-year-old “was ready to be married”.

84. Children held with their mothers are often aware of their mothers’ being the victims of prolonged and intense violence. The extent of their understanding of the sexual nature of the violence depends on the age of the children, and whether rapes occurred in their presence. Many of the women interviewed described hearing their children screaming and crying outside the door while the fighter raped them in a locked room. One woman, held for a year with her children, described her older sons being taken away by ISIS for training. Her youngest son was not taken but he was with her when ISIS took his older brothers away. She stated, “[H]e was one who would scream the loudest when [her Tunisian fighter-owner] locked the children in a room” and took her to another room to rape her.

85. ISIS fighters often beat Yazidi children for making too much noise or for clinging to their mothers. A Turkish ISIS fighter, who had bought a Yazidi woman and her children and was holding them in his family home in Al-Bab, beat the woman’s 7-year-old daughter because she was crying because she was hungry. In some cases, the wives and children of the ISIS fighter would also beat Yazidi children.

86. At the holding sites and while being traded with their mothers between fighters, children suffered the same poor living conditions including lack of food and water, and, during winter, sleeping in unheated rooms.

87. ISIS fighters, and where Yazidi women and children were held in their family homes their wives and children, routinely told the Yazidi children that they and their mothers were “*kuffar*” and that they were unclean. Some ISIS fighters, holding Yazidi women and children inside Syria, forced the children to say the name of the devil aloud, an impermissible act in the Yazidi religion.

88. Yazidi women interviewed described their children, now living in IDP camps, as being unable to sleep and prone to bed-wetting. One mother described her son as flying into “terrible rages”, attacking her and his father. Children, especially boys, have become highly protective of their mothers, particularly if unfamiliar men are present. In two instances, the children of the Yazidi women refused to be separated from their mother for the duration of the interview and became so distressed by the presence of unknown (female) interviewers, that the decision was made, following a discussion with the women, not to go ahead with the interviews.

89. The violations specifically suffered by Yazidi children who were held and sold with their mothers are not often recognised. Consequently there is limited psychosocial support available that is directly targeted at the needs of these children. Many Yazidi families, themselves direct victims of ISIS violations, are struggling to understand and to cope with the behaviour of their severely traumatised children.

## F. ISIS treatment of Yazidi boys, aged seven and above

*They told us we had to become good Muslims and fight for Islam. They showed us videos of beheadings, killing and ISIS battles. [My instructor] said “You have to kill kuffars even if they are your fathers and brothers, because they belong to the wrong religion and they don’t worship God”.*

Boy, aged 12 at capture, trained in Syria

*The ISIS fighters told us, “Children are young; they are like animals. We can change them. But you are adults. We will not be able to change your mind”. They said this to us at the hall in Mosul.*

Girl, aged 17 at capture, held for 17 months, sold 8 times

90. ISIS allows Yazidi boys who have not yet reached puberty to remain for a time with their mothers and any siblings. After the August 2014 attack, most boys were moved with their mothers from point of capture to holding sites in Mosul and Tel Afar. Within two weeks of the arrival of Yazidi women and children at the schools in Tel Afar, at Galaxy hall in Mosul city, and at Badoush prison outside of Mosul city, ISIS fighters began to forcibly remove boys aged seven and above from their remaining families. The exception appears to be the younger boys of Kocho village who were taken from their mothers at the primary holding site of Solagh Technical Institute in Sinjar on 16 August 2014, a day after ISIS emptied their village.

91. Boys belonging to families who had “converted” moved with their relatives to Qasr Maharab and Qasil Qio villages. Like all Yazidi males in these villages, they were forced to attend prayers at the local mosques and were beaten if they refused. One boy, aged 13 at the time he was held in Qasil Qio, had his wrist fractured during a beating by an ISIS commander when he was found playing during prayer time. “Converted” Yazidi boys were not taken for training until April or May 2015 when ISIS emptied the villages and separated the families.

92. When Yazidi boys reach the age of seven, they are removed from their mothers’ care, regardless of their location at the time. In this way, boys over the age of seven were removed from “the farm” in Raqqah city and from locations across Syria, where they had been held in captivity with the mothers and other siblings.

93. Any mothers and siblings who try to keep hold of the boys are severely beaten by fighters. ISIS fighters make no attempt to mask why the boys are being taken away. Women interviewed recounted ISIS fighters telling them that they were taking their sons to teach them to be Muslims and to train them to fight. A Saudi ISIS fighter showed some Yazidi women a video of young boys being trained in an ISIS camp, saying “we are training them to kill *kuffar* like you”. Another woman recounted an Iraqi fighter taking one of the boys from her cell in Badoush prison and telling his distraught mother, “We are taking him so he can go and kill your people in Kobane”. Some boys were returned to the holding sites for short periods before they were taken permanently. The son of one Yazidi woman, who had been returned to her after a few weeks, said he had been taken to a school in Tel Afar and taught how to pray and fight.

94. The separation of Yazidi boys aged seven years and above was systematic. After taking them from their mothers, ISIS forcibly transferred the boys to training centres or military camps in Mosul, Tel Afar, and Baaj in Iraq, and in Raqqah city, Tabqa, Tel Abyad, and Suluk in Syria. Many training centres, such as Mahad Farouq lil Ashbal in Tel Abyad, are set up in former schools. There the boys are registered and given Islamic names. From then on, the boys are only called by their new names, and are treated as ISIS recruits.

95. The Yazidi boys are forced to attend indoctrination and military training sessions led by ISIS fighters acting as instructors. Yazidi boys are mixed with Sunni Arab boys who are also being trained. Those interviewed were housed together in groups of between 10 and 12, in shared rooms. The boys' daily programme consists of sessions in Quranic recitation as well as military exercises, including being taught to use AK47s, hand grenades, and Rocket Propelled Grenades. The boys are forced to watch ISIS-made propaganda videos of armed battles, beheadings, and suicide missions. ISIS instructors also hold sessions for the boys on "Jihad" and the importance of participating in ISIS's war against "the unbelievers". If the boys fail to memorize Quranic verses or perform poorly in training sessions, they are beaten.

96. At the training centres or camps, there is no reference to the Yazidi boys' birth religion. Their past is deemed erased and all contact with their family and community is effectively cut off. Instead, a new identity is forcibly imposed. The objective of the training centres and the indoctrination programme is thus two-fold. On a general level it aims at increasing recruitment, and all children are treated as potential or future recruits regardless of their background. But on a specific level, targeting the Yazidi boys uniquely, it aims at destroying their religious identity as Yazidis and recasting them as followers of Islam as interpreted by ISIS. In this way, Yazidi boys are transferred out of their own community, and through indoctrination and violence, into ISIS.

97. Hundreds of Yazidi boys are systematically subjected to the above-described pattern of violent separation from families, forcible transfer, indoctrination, and recruitment in military training camps. After completing the training, Yazidi boys are distributed according to the needs of the terrorist group. Some have become fighters on the battlefield while others are deployed to guard ISIS bases or to perform other duties as their commanders require.

## **G. ISIS Destruction of Yazidi temples and shrines**

98. As ISIS fighters assumed control of the Sinjar region in early August 2014, they began to destroy Yazidi temples and shrines. The shrines of Sheikh Mand in Jiddala village, Sheikh Hassan in Gabara, Malak Fakhraddin in Sikeeniya, and Mahma Rasha located in Solagh were all destroyed in the period following the attack.

99. After forcibly transferring captured Yazidis out of the Sinjar region, ISIS fighters marked their houses with symbols, distinguishing those houses from the houses of Arab villagers. Afterwards, many of the houses belonging to the Yazidis were looted, and some were destroyed or severely damaged by ISIS fighters.<sup>19</sup>

<sup>19</sup> See UNOSAT Live Map, Complex Emergency Iraq, CE20140613IRQ Damage Assessment (<https://unosat.maps.arcgis.com/apps/webappviewer/index.html?id=3356c7f1659a4282a08fa188208036d7>); UNOSAT, Damage Assessment of Sinjar, Sinjar District, Nineveh Province, Northern Iraq, 7 August 2014

## V. Legal Analysis

### A. Genocide

#### (i) Are the Yazidis a “protected group”?

100. Article II of the Genocide Convention, replicated in Article 6 of Rome Statute, states that a protected group must be a national, ethnic, racial, or religious group, as such. The term “as such” “has been interpreted to mean that the prohibited act must be committed against a person based on that person’s membership in a specific group and specifically because the person belonged to this group, such that the real victim is not merely the person but the group itself”.<sup>20</sup>

101. The Yazidis are often referred to as an ethno-religious group.<sup>21</sup> Both ethnic and religious groups are protected groups within the meaning of Article II of the Genocide Convention, with ethnic groups defined as groups “whose members share a common language or culture”<sup>22</sup> and religious groups as groups “whose members share the same religion, denomination or mode of worship”.<sup>23</sup>

102. The question of whether the Yazidis are a separate ethnic group is a matter of discussion within the community itself. Indigenous communities of Yazidis are present in Syria, Iraq, Armenia, and Turkey and have as their native tongue, Kurdish. Many of these communities, with the exception of the Armenian Yazidis, view themselves as ethnically Kurdish but followers of the Yazidi religion. Where Yazidis hold the view of themselves as an ethnically distinct group, this appears in the context of repression and discrimination against the Yazidi community by surrounding Muslim communities.

103. Little, if any, debate surrounds the Yazidis’ identity as a distinct religious group. An indigenous religion that has existed for thousands of years, the Yazidi faith has absorbed some aspects of later faiths – including Zoroastrianism, Judaism, Christianity, and Islam – while maintaining its own traditions. Without exception, diverse members of the Yazidi community interviewed were of the view that the Yazidis constitute a separate religious denomination, with distinct modes of worship.

104. Jurisprudence from the ICTR and ICTY indicates that the belief of those perpetrating crimes may also be taken into account for the purpose of determining membership of a protected group.<sup>24</sup> ISIS has continually referenced the Yazidis’ religious beliefs as the basis for its attack on and subsequent abuse of them. ISIS fighters commonly refer to the Yazidis as infidels and “dirty *kuffar*”. ISIS does not regard Yazidism as an immutable identity and has forced conversions, suggesting that it views Yazidis as belonging to a religious community. ISIS’s later decision not to recognize

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([http://reliefweb.int/sites/reliefweb.int/files/resources/UNOSAT\\_A3\\_Landscape\\_Sinjar\\_Damage\\_Assessment\\_v1.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/UNOSAT_A3_Landscape_Sinjar_Damage_Assessment_v1.pdf))

<sup>20</sup> Prosecutor v. Muhimana, ICTR Trial Judgment, 28 April 2005, (“Muhimana Trial Judgment”) para. 500; Prosecutor v. Kajelijeli, ICTR Trial Judgment, 1 December 2003, (“Kajelijeli Trial Judgment”) para. 813.

<sup>21</sup> For example, UNHCR’s Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-seekers”

<sup>22</sup> Prosecutor v. Akayesu, ICTR Trial Judgment, 2 September 1998 (“Akayesu Trial Judgement”), para. 513.

<sup>23</sup> Akayesu Trial Judgement, para. 515.

<sup>24</sup> Prosecutor v. Stakić, ICTY Appeals Judgment, 31 July 2003, para. 25; Prosecutor v. Gacumbitsi, ICTR Trial Judgment, 17 June 2004 (“Gacumbitsi Trial Judgment”), para. 255; Prosecutor v. Musema, ICTR Trial Judgment, 27 January 2000 (“Musema Trial Judgment”) para. 161.

conversions of Yazidi adults was motivated by the realization that the conversions were feigned. Nevertheless, ISIS continues to promote the indoctrination of younger Yazidi boys, in a concerted effort to cause the boys to reject Yazidism and embrace ISIS's ideology.

105. The Commission has, on the basis of objective and subjective definitions, determined that the Yazidis are a protected religious group within the meaning of Article II of the Genocide Convention.

**(ii) Has ISIS committed one or more of the prohibited acts against members of the Yazidi group?**

*(a) Killing members of the group*

106. ISIS, including fighters who came from bases inside Syria, intentionally killed hundreds of Yazidis as part of its attack on Sinjar. This includes Yazidis executed on capture, as well as the deaths which resulted from ISIS's besieging of Yazidis trapped on the mountain.<sup>25</sup> ISIS subsequently killed Yazidis held captive in Iraq and Syria.

107. In August 2014, ISIS fighters summarily executed hundreds of Yazidi men and adolescent boys when the victims refused to convert to Islam or were captured with weapons in their possession. Mass killings occurred in Kocho and Qani villages. ISIS fighters also killed an unknown number of older Yazidi women from Kocho village while they were held in Solagh Technical Institute in the early hours of 16 August 2014.

108. That these killings occurred is based on accounts of multiple eyewitnesses. It has also been inferred from the accounts of captured Yazidi women and children who heard gunfire, saw fighters covered with blood immediately after the Yazidi males were led away, and from the fact that none of the Yazidi men and boys have been heard from since August 2014. Additionally the Commission has noted credible documentation from Yazda, concerning its investigation of over thirty mass graves sites in the Sinjar region.<sup>26</sup> Most of these graves reportedly contain the remains of men and adolescent boys.

109. While most of the killing of Yazidis occurred in Iraq, ISIS fighters who had purchased Yazidi women and children in Syria also committed intentional killings. As detailed above, an ISIS fighter in Aleppo killed several children after a failed escape attempt by their mother, after which he beat her for crying over the deaths of "kuffar children".

110. Yazidi women and girls, held in Syria and Iraq, killed themselves before they could be sold to ISIS fighters. Several killed themselves at the "farm" in Raqqah city, where Yazidis females were gathered, registered, and sold. ICTY jurisprudence holds that the suicide of a person may amount to killing where the accused's acts or omissions "induced the victim to take actions which resulted in his death, and that his suicide was either intended, or was an action of a type which a reasonable person could have foreseen as a consequence".<sup>27</sup>

111. ISIS has committed the prohibited act of killing members of a protected religious group, the Yazidis.

*(b) Causing serious bodily or mental harm to members of the group*

<sup>25</sup> See Akayesu Trial Judgment, para. 589 for the material elements of the act of killing.

<sup>26</sup> Yazda Mass Graves Report, pp. 7-20

<sup>27</sup> Prosecutor v. Krnojelac, ICTY Trial Judgment, 15 March 2002, para. 329.

112. Conduct resulting in serious bodily or mental harm “may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment”.<sup>28</sup> ICTR and ICTY jurisprudence has repeatedly held that such harm can mean torture, and inhuman and degrading treatment.<sup>29</sup> The physical or mental harm does not need to be permanent or irreparable.<sup>30</sup>

*Rape and sexual violence, including sexual slavery*

113. The ICTR case of *Akayesu* first found that rape and sexual violence constitute serious harm on both a physical and mental level – and consequently, if carried out with specific intent to destroy, in whole or in part, a protected group, constitute genocide. The findings of the Trial Chamber in the *Akayesu* case, heralded as “the most important decision rendered thus far in the history of women’s jurisprudence”,<sup>31</sup> are instructive:

Rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm... The rapes resulted in the physical and psychological destruction of the Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.<sup>32</sup>

114. ISIS fighters systematically rape Yazidi women and girls as young as nine. There is overwhelming evidence of such rapes occurring from survivors themselves, who display both physical and psychological wounds.

115. The serious physical and mental harm that ISIS perpetrates against captured Yazidi women and girls extends beyond rape itself. From the perspective of the victims, perpetrators, and those involved in documenting violations, captured Yazidi women and girls are subjected to entrenched sexual violence, in that they are sexually enslaved by ISIS and by its fighters.

116. Sexual slavery, as a crime against humanity, is defined by Article 7(1)(g) of the Rome Statute. Its relevant material elements are that (i) [t]he perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty;<sup>33</sup> and (ii) [t]he perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

<sup>28</sup> Footnote 3 of Article 6(b) of the Rome Statute.

<sup>29</sup> *Akayesu* Trial Judgment, para. 504; *Prosecutor v. Krstić*, ICTY Trial Judgment, 2 August 2001, (“*Krstić* Trial Judgment”) para. 513; see also *Prosecutor v. Karadžić et al.*, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 11 July 1996, para. 93.

<sup>30</sup> *Akayesu* Trial Judgment, para. 502.

<sup>31</sup> Kelly Askin, *Women’s Issues in International Criminal Law: Recent Developments and the Potential Contribution of the ICC*, in *International Crimes, Peace and Human Rights: the Role of the International Criminal Court* 47, 52 (Dinah Shelton ed., 2000).

<sup>32</sup> *Akayesu* Trial Judgment, para. 731. Later similar findings that rape and sexual violence were acts of genocide were made by in *Prosecutor v. Stakić*, Trial Judgment, 31 July 2003 (“*Stakić* Trial Judgment”) para. 516; *Rutaganda* Trial Judgment, para. 51, *Musema* Trial Judgment, para. 156, *Gacumbitsi* Trial Judgment, paras. 291-292; and *Muhimana* Trial Judgment, para. 502.

<sup>33</sup> Footnote 18 attached to this material element reads, “It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the

117. In 2014, the ICC’s *Katanga* Trial Chamber Judgment held that “[p]owers attaching to right of ownership must be construed as the use, enjoyment, and disposal of a person who is regarded as property, by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy”.<sup>34</sup>

118. Once captured by ISIS, Yazidi women and girls are deemed to be the property of the terrorist group, and later the individual fighters who purchase them. In the days and weeks following the August 2014 attack, ISIS detained and registered Yazidi women and girls in sites in Syria and Iraq. The registration process was designed to determine their monetary value, thereby dehumanising them. Shortly thereafter, the terrorist group began to embark on organised sales of Yazidi women and girls. These sales are conducted with individual fighters coming to holding sites, at slave markets where groups of ISIS men inspect and select women and girls, and in online auctions. Attempts to refuse to be sold or to prevent other women from being sold are met with violent beatings.

119. Once sold, the Yazidi females are the sole property of their fighter-owner, who can re-sell, gift, or will them to other ISIS fighters. ISIS fighters threaten to kill women and girls who resist rape. Resistance is also routinely met with beatings and threats against any children the Yazidi woman has with her. ISIS fighters block escape attempts by refusing to provide Yazidi women and girls with clothing that would allow them to move unnoticed in the streets. Escape attempts have been met with extreme violence including the killing of the women’s children, gang rape, rape, and beatings. Yazidi women and girls are also forced to work for the ISIS fighters and their families, including being made to cook, clean and wash clothes. Throughout their captivity, captured Yazidi women and children are treated as less than human and undeserving of respect and dignity, due to their status as “dirty infidels”.

120. Captured Yazidi women and girls immediately recognise the hopelessness of their situation, which is to say the complete deprivation of their liberty. Those interviewed stressed that once they were captured, they had no choice over where they were taken, what happened to any children they had, to whom they were sold and resold, and how they were treated. An as yet unknown number of women and girls, in the face of what was likely to be prolonged and brutal violence, ended or attempted to end their own lives.

121. Captured women and girls – including girls as young as nine – have no ability to decide the conditions in which they engage in sexual activity.<sup>35</sup> Locked into houses and

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conduct described in this element includes trafficking in persons, in particular women and children”.

<sup>34</sup> Prosecutor v. Katanga, ICC Trial Judgment, 7 March 2014 (“Katanga Trial Judgment”), para. 975. In para. 977, the Chamber took into account the following factors, which it did not regard as exhaustive, “detention or captivity and their respective duration; restrictions on freedom to come and go or on any freedom of choice or movement; and, more generally, any measure taken to prevent or deter any attempt at escape. The use of threats, force or other forms of physical or mental coercion, the exaction of forced labour, the exertion of psychological pressure, the victim’s vulnerability and the socioeconomic conditions in which the power is exerted may also be taken into account.” Those factors were held to be objective elements of the crime, though the Trial Chamber stated that it would consider, in its analysis of the first constituent element of the crime, the subjective nature of the deprivation of liberty, “that is, the person’s perception of his or her situation as well as his or her reasonable fear”. The Trial Chamber further stated that the second element of the crime concerns “the victim’s ability to decide the conditions in which he or she engages in sexual activity”

<sup>35</sup> For a discussion on child slavery, including sexual slavery, see Cécile Aptel, *Child Slaves and Child Brides, Journal of International Criminal Justice* (2016), pp. 1-21

apartments by their ISIS fighter-owners, Yazidi women and girls are often handcuffed and tied to the beds and raped. Many are subjected to physical and psychological violence, including beatings and/or threats against themselves and their children.

122. ISIS's sexual enslavement of Yazidi women and girls is an act of sexual violence, first recognised in *Akayesu* and later followed in a myriad of ICTY and ICTR Judgments as constituting serious bodily and mental harm within the meaning of Article II of the Genocide Convention. Further it is evident from the facts as described above that serious physical and mental harm has been, and is being, sustained by Yazidi women and girls as a result of their sexual enslavement by ISIS.

123. The sexual violence being committed by ISIS against Yazidi women and girls, and the serious physical and mental harm it engenders, is a clear "step in the process of destruction of the ... group – destruction of the spirit, of the will to live, and of life itself".<sup>36</sup>

124. Yazidi women and girls are not, however, simply vessels through which ISIS seeks to achieve the destruction of the Yazidi religious group. Rape and sexual violence, when committed against women and girls as part of a genocide, is a crime against a wider protected group, but it is equally a crime committed against a female, as an individual, on the basis of her sex.<sup>37</sup> The view of females as objects, not specific to ISIS, when backed by radical religious interpretation, and territorial control affording dominance over women and girls, finds a horrific, though logical, extreme in the terrorist group's conduct. It is the common thread that links ISIS's forcing Sunni women and girls to remove themselves from the male gaze, either by having them remain indoors or covering themselves entirely when in public, while simultaneously and overtly encouraging its fighters to hold, use, and trade Yazidi women and girls as sex slaves. In treating the trauma arising from their sexual enslavement, care must be paid to the fact that Yazidi women and girls have been doubly victimized, on the basis of their religion and their sex.

#### *Enslavement*

125. ISIS and its fighters continue to enslave Yazidi women and girls, a crime distinct to that of sexual slavery. The definition of enslavement, as a crime against humanity, is set out in Article 7(1)(c) of the Rome Statute. It requires the perpetrator to have "exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty."<sup>38</sup> Indicia of enslavement include, "control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration,

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<sup>36</sup> *Akayesu* Trial Judgment, para. 732. See also Catharine A. McKinnon, *Rape, Genocide, and Women's Human Rights*, 17 *Harvard Women's Law Journal* 5, pp.11-12 (1994), which reads, in part, "It is a rape to drive a wedge through a community, to shatter a society, to destroy a people. It is rape as genocide."

<sup>37</sup> See Beth Van Schaak, *Engendering Genocide: The Akayesu Case Before the International Criminal Tribunal for Rwanda*, Santa Clara University School of Law, Legal Studies Research Paper Series, July 2008; Sherrie L. Russell-Brown, *Rape as an Act of Genocide*, *Berkeley Journal of International Law*, Volume 21, Issue 2, 2003.

<sup>38</sup> Footnote 11 attached to this material element reads, "It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children."

assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour”.<sup>39</sup>

126. ISIS fighter-owners force Yazidi women and girls to cook, clean, and wash clothes for them, and sometimes for their families. Where Yazidi women and girls are held captive in the fighters’ houses, they are sometimes forced to care for the fighters’ children and to assist his wife with any tasks, as he or she wishes. Yazidi men and boys over the age of puberty were similarly made to labour on ISIS projects in Tel Afar and Mosul. These tasks included construction and cleaning work, digging trenches, and looking after cattle.

127. ISIS and its fighters exercise powers of ownership over Yazidi women and girls, buying and selling them at will, in circumstances where the women and girls are treated as chattel, bereft of autonomy. As already described, they are subjected to physical and psychological controls, including measures to prevent escape, and are victims of violent abuse. Yazidi women and girls were, and are, being trafficked between Iraq and Syria. Yazidi men and women, girls and boys were forced to work for ISIS fighters, albeit in differing environments depending on their sex. Any Yazidi, male or female, who refused to undertake tasks as ISIS ordered, was beaten severely.

128. ISIS and its fighters continue to enslave Yazidis, causing them serious bodily and mental harm as a result. The acts underpinning their enslavement are incremental steps in the destruction of the individual, and ultimately the group.

*Torture and inhuman and degrading treatment*

129. At the point of capture, Yazidi women and children suffered serious mental harm as a result of being separated from their male relatives and being forced either to bear witness to their murders or to watch them being taken away to an unknown fate.<sup>40</sup>

130. ISIS fighters severely beat captured Yazidi women and girls if they resist rapes, attempt to escape, refuse orders to carry tasks for the fighters and their families, or try to prevent ISIS fighters from removing their children or siblings from their care. Severe mental anguish is being caused to Yazidi mothers as a consequence of ISIS fighters taking their daughters to sell into sexual slavery, and their sons to be indoctrinated and recruited in ISIS forces. For many Yazidi women, who still do not know where their children are and what conditions they are living under, the mental trauma is all-consuming. The sexual and physical violence, together with the severe mental trauma, which Yazidi women and girls over the age of nine experience at the hands of ISIS rises to the level of torture, causing them serious physical and psychological harm.

131. Yazidi women and girls are treated like chattel. This includes being registered and having their monetary assessed while at the holding sites. The registration process sometimes included being photographed without their headscarves and being made to smile for the camera. Some of those interviewed were forced to appear before ISIS fighters without their headscarves, while the men made their selection. Throughout their time in captivity, Yazidi women and girls are treated as being undeserving of human dignity and are continually told that they are “unclean”, and “worship stones”. By this

<sup>39</sup> Prosecutor v. Kunarac, ICTY Trial Judgment, 22 February 2001, para. 542. This was confirmed in the Prosecutor v. Kunarac, ICTY Appeals Judgment, 12 June 2002, para. 119, and was later followed in Prosecutor v. Kaing (alias Duch), ECCC Trial Judgment, 26 July 2010, para. 342; and the 2012 Taylor Trial Judgment, para. 447. Please note the ICTY Statute, unlike the ICC Statute, did not contain the separate crime of sexual slavery.

<sup>40</sup> Prosecutor v. Tolimir, ICTY Trial Judgment, 12 December 2012, para. 756; Prosecutor v. Karadžić, ICTY Trial Judgment, 24 March 2016, (“Karadžić Trial Judgment”) para. 6049.

conduct, ISIS subjects Yazidi women and girls that it holds captive to inhuman and degrading treatment.

132. ISIS's beating and mistreatment of Yazidi children held with their mothers; the holding of them in conditions where they are aware of the sexual violence being perpetrated against the mothers and where they are exposed to older siblings being taken away to be trained as fighters or sold as sex slaves; the threats to kill, beat and sell Yazidi children; and the continued denigration of the children and their mothers as "dirty infidels" amount to torture and inhuman and degrading treatment, acts which constitute seriously bodily and mental harm.

133. ISIS also causes serious physical and psychological harm to Yazidi boys over seven years of age. This harm comes about through the violent separation of Yazidi boys from their families, forced conversions and subsequent indoctrination, recruitment, military training – which includes beatings, training on suicide bombing, and watching violent war propaganda – and ISIS's use of the boys to actively participate in hostilities. Through this abuse, ISIS intends to destroy the boys' identity as Yazidis.

*Forcible transfer*

134. ISIS forcibly transferred Yazidi men, women and children from the point of capture to various primary and then to secondary holding sites in Syria and Iraq. ISIS, and after purchase its fighters, forcibly transferred Yazidi women and children among multiple locations as they are sold and re-sold.

135. Such forcible transfers, which in the case of captured Yazidi women and girls occurred and continues to occur frequently as they are sold between ISIS and its fighters, as well as between fighters, cause Yazidi women and girls serious mental harm so as to constitute a prohibited act under Article II of the Genocide Convention and Article 6 of the Rome Statute.<sup>41</sup>

136. Based on the conduct described above, it is determined that ISIS has committed, and is continuing to commit, the prohibited act of causing serious bodily or mental harm to the Yazidis, a protected religious group.

*(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*

137. This act of genocide refers to methods of destruction by which ISIS "does not immediately kill the members of the group, but which, ultimately, seeks their physical destruction".<sup>42</sup> "The term "conditions of life" may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes."<sup>43</sup> This appears to draw from the accepted jurisprudence of the ICTR and ICTY.<sup>44</sup>

138. ISIS encircled and besieged Yazidis who had successfully fled to the upper slopes of Mount Sinjar on 3 August 2014. The terrorist group deliberately cut those on the mountain off from food, water, and medical care. Yazidis struggled to survive in temperatures that rose above 50 degrees Celsius. ISIS fighters also attacked planes seeking to aid drop water and food supplies, and helicopters which attempted to rescue those in need to medical attention or who were otherwise particularly vulnerable.

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41 Prosecutor v. Tolimir, ICTY Appeals Judgment, 8 April 2015, para. 209; Karadžić Trial Judgment, para. 545;

<sup>42</sup> Akayesu Trial Judgment, para. 505.

<sup>43</sup> Footnote 4, Article 6(c) of the Rome Statute.

<sup>44</sup> See, for example, Akayesu Trial Judgment, para. 506; Rutaganda Trial Judgment, para. 52; Musema Trial Judgment, para. 157; Stakić Trial Judgment, para. 517.

139. In the *Kayishema* case before the ICTR, the Trial Chamber determined that rape was also a method of destruction which does not “lead immediately to the death of members of the group”.<sup>45</sup> In 2015, the International Court of Justice indicated that rape could fall within Article II(c) of the Genocide Convention but noted, in the particular case before the Court, “it has not been shown that these occurrences [of rape] were on such a scale to have amounted also to inflicting conditions of life on the group that were capable of bringing about its physical destruction in whole or in part”.<sup>46</sup>

140. Yazidi women and girls, captured by ISIS and registered and sold in Syria and Iraq, are subjected to organised sexual violence on a massive scale occurring in the context of their sexual enslavement. Women and girls suffer multiple – sometimes hundreds – of rapes by their various fighter-owners. Further, captured Yazidi women and children – including infants – held by ISIS are also being given limited food and water, do not receive medical care, and are severely beaten if they failed to obey orders. ISIS and its fighters deliberately impose these conditions in a calculated awareness that such conditions, particularly when inflicted continuously over a long period of time, would cause the deaths of Yazidi women and children.

141. The Commission has determined ISIS has committed, and is committing, the prohibited act of deliberately inflicting on captured Yazidis conditions of life calculated to bring about their physical destruction, in whole or in part.

*(d) Imposing measures intended to prevent births within the group*

142. Measures intended to prevent births within the group include rape; sexual mutilation; the practice of sterilisation; forced birth control; separation of the sexes; prohibition of marriages; impregnation of a woman to deprive group identity; and mental trauma resulting in a reluctance to procreate.<sup>47</sup>

143. The first act of ISIS on capturing Yazidis in August 2014 was to separate men from women. Further, hundreds of Yazidi men were killed on capture. Yazidi women, once under the control of ISIS, are held separately from their husbands and from other Yazidi men. The only exception to this has been the reuniting of “converted” Yazidi men and their wives in Qasr Maharab. As detailed above, ISIS emptied Qasr Maharab in April or May 2015 and permanently separated the Yazidi men and women at that time.

144. Under Yazidi religious tradition, both parents must be Yazidi for the child to be of the Yazidi faith. It is not possible to convert to Yazidism. ISIS statements, as set out in detail below, indicate that ISIS would not countenance the existence of Yazidis, living as Yazidis, within its territory. By the act of separating Yazidi men and women, by killing hundreds of Yazidi men, and by forcing conversions to Islam, ISIS has imposed measures intended to prevent births within the group.

145. Rape can be a measure to prevent births “when the person raped subsequently refuses to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate”.<sup>48</sup> An expert in trauma psychology involved in the treatment of hundreds of Yazidi women and girls who were held by ISIS stated that “[the Yazidi females being treated] do not trust those around them, particularly men. There is a real anxiety around any contact with men. This in turn has resulted in sexual dysfunction,

<sup>45</sup> Prosecutor v. Kayishema et al., ICTR Trial Judgment, 21 May 1999 (“Kayishema Trial Judgment”) para. 116.

<sup>46</sup> Republic of Croatia v. Republic of Serbia, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, ICJ Judgment, 3 February 2015, paras. 362-364.

<sup>47</sup> Akayesu Trial Judgment, paras. 507-8. See also Rutaganda Trial Judgment, para. 53.

<sup>48</sup> Akayesu Trial Judgment, para. 508.

which is to say, a disinterest in sexual relationships, in any contact with men.... For the younger girls, where rape was their first experience of sex, and where the traumatic sexual violence was extended over a long time at the hands of multiple men, you would expect difficulty in future sexual relationships and anxiety around sex.” The interviewee stated that the Yazidi women and girls under treatment did not want to marry, or to contemplate relationships with men now or in the future. This was compounded by a sense that they had lost their honour. In this way, the rapes being perpetrated by the ISIS fighters on Yazidi women and girls themselves constitute a measure to prevent births within the group.

146. The Commission has determined that ISIS has committed, and is committing, the prohibited act of imposing measures intended to prevent births within the Yazidi community.

*(e) Forcibly transferring children of the group to another group*

147. ISIS forcibly transfers Yazidi children in two ways, depending on their sex. Girls, on reaching the age of nine, are taken from their mothers and sold as sex slaves to ISIS fighters in Syria and Iraq. Yazidi boys, once they reach the age of seven, are also taken from their mothers and sent to ISIS training bases in Syria and Iraq where they are instructed on how to follow Islam as interpreted by ISIS, and on how to fight. Later, trained “converted” Yazidi boys fight in battles as part of ISIS forces.

148. In this way, ISIS transfers Yazidi children to the custody of fighters, albeit in radically different ways. These transfers, achieved through physical force at the time the children are taken from their mothers, remove the children from their community and the practice of their faith. In this way, ISIS intentionally seeks to destroy Yazidi children’s concept of themselves as Yazidi, erasing their attachment to the Yazidi religion. Whereas Yazidi girls are prevented from practising their religion, Yazidi boys are fully indoctrinated into ISIS ideology.

149. The Commission has determined that ISIS has committed, and is committing, the prohibited act of forcibly transferring Yazidi children to another group.

**(iii) Did ISIS commit the prohibited acts with the intent to destroy, in whole or in part, the Yazidis?**

150. For a finding of genocide, it must be shown that ISIS committed one or more of the prohibited acts listed in Article II of the Genocide Convention, and replicated in Article 6 of the Rome Statute, with the intent that its acts result in the destruction, in whole or in part, of the Yazidis. Pivotal to this intent is the reason why the Yazidis were targeted. The ICTR *Rutaganda* Trial Judgment deconstructs this special intent,

For any of the acts charged to constitute genocide, the said acts must have been committed against one or more persons because such person or persons were members of a specific group, and specifically, because of their membership in this group. Thus, the victim is singled out not by reason of his individual identity, but rather on account of his being a member of a national, ethnical, racial or religious group.<sup>49</sup>

151. Historically, the special intent to destroy has often been inferred from conduct, including statements. ISIS explicitly holds its abuse of the Yazidis to be mandated by its religious interpretation and its public statements have provided an invaluable resource directly demonstrative of its intent.

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<sup>49</sup> Rutaganda Trial Judgment, para. 60.

152. Genocidal intent can also be inferred from the perpetrator's "deeds and utterances considered together, as well as from the general context of the perpetration of other culpable acts systematically directed against the same group".<sup>50</sup> Relevant conduct includes the physical targeting of the group or their property, the use of derogatory language towards members of the targeted group, and the methodical way of planning.<sup>51</sup> The scale of atrocities committed, their general nature, and the fact of deliberately and systematically targeting victims on account of their membership in a particular group, while excluding members of other groups, were other factors from which the Commission was able to infer genocidal intent.<sup>52</sup>

153. ISIS, in an article entitled "The Revival of Slavery Before the Hour" published in its English language magazine Dabiq, indicated that, prior to the attack on Sinjar being launched, it had sought to determine how the Yazidis should be treated under ISIS's ideology.<sup>53</sup> In the same article, ISIS declares, "Upon conquering the region of Sinjar... the Islamic State faced a population of Yazidis, a pagan minority existent for ages in the regions of Iraq and Sham [Syria]. Their continual existence to this day is a matter that Muslims should question as they will be asked about it on Judgment Day..."

154. Having decided that the Yazidis were a *mushrik* group, judged not to believe in God as worshipped by *Ahl Al-Kitab*, or the People of the Book, ISIS stated that it

dealt with this group as the majority of *fuqaha* [religious scholars] have indicated how *mushrikin* should be dealt with. Unlike the Jews and the Christians, there was no room for the *jizyah* payment [a tax to be paid to avoid conversion or death]. Also their women could be enslaved unlike the female apostates who the majority of the *fuqaha* say cannot be enslaved and can only be given an ultimatum to repent or face the sword. After capture, the Yazidi women and children were then divided according to the *Shariah* [religious law] amongst the fighters of the Islamic State who participated in the Sinjar operations, after one fifth of the slaves were transferred to the Islamic State's authority to be divided as *khums* [spoils of war].... The enslaved Yazidi families are now sold by the Islamic State soldiers as the *mushrikin* were sold by the Companions.<sup>54</sup>

155. ISIS's plan to attack Sinjar was presaged by research into how its religious interpretation mandated the treatment of the Yazidis they would find there. This interpretation determined the behaviour of its fighters during the attack on Sinjar and in its and their subsequent abuse of Yazidi men, women and children. ISIS's killing of the men and boys who did not convert, its sexual enslavement and enslavement of Yazidi women and girls, and its forced abduction, indoctrination and recruitment of Yazidi boys to be used in hostilities, de facto converting them, adhered seamlessly to the religious mandates set out by its "scholars" concerning how to treat Yazidi captives. The objectives for the capture and enslavement of Yazidis have been set out in various ISIS statements and documents.<sup>55</sup>

<sup>50</sup> Gacumbitsi Trial Judgment, para. 252.

<sup>51</sup> Kayishema Trial Judgment, para. 93.

<sup>52</sup> Akayesu Trial Judgment, para. 523; Kajelijeli Trial Judgment, paras. 804-805.

<sup>53</sup> Dabiq, "The Revival of Slavery Before the Hour", Issue 4, 2014, pp. 14-16 ("Dabiq article"). At p. 14: "Prior to the taking of Sinjar, Shari'ah students in the Islamic State were tasked to research the Yazidi group to see if they should be treated as an originally mushrik group or one that originated as Muslims and then apostatized..."

<sup>54</sup> Ibid., p.15.

<sup>55</sup> For example, see "Unseen Islamic State Pamphlet on Slavery", translated by Aymenn Jawad Al-Tamimi. (<http://www.aymennjawad.org/2015/12/unseen-islamic-state-pamphlet-on-slavery>)

156. Further, a massive organizational effort was put into aligning conduct of the ISIS fighters with the terrorist group's ideological stance concerning the existence of Yazidis. This included the coordination of the near-identical treatment of Yazidis by fighters across Sinjar, the transferring of thousands of Yazidi captives to clearly designated primary and then secondary holding sites, and the complex system of registering and selling Yazidi women and children.

157. During and after the 3 August attack, ISIS also destroyed Yazidi shrines and temples in Sinjar. Some homes were also looted after being marked as belonging to Yazidis. As held by the ICTY Appeals Chamber in the *Krstić* case, "[t]he destruction of cultural property may serve evidentially to confirm an intent, to be gathered from other circumstances, to destroy the group, as such".<sup>56</sup> This dictum was endorsed by the International Court of Justice in the 2007 case of *Bosnia and Herzegovina v. Serbia and Montenegro*.<sup>57</sup>

158. Motives, such as the desire for territorial control of the Sinjar region or the sexual gratification that resulted from the sexual enslavement of Yazidi women and girls, do not preclude ISIS fighters from having the specific intent to commit genocide.<sup>58</sup>

159. Indeed, from the moment of first contact with the population of Sinjar, ISIS fighters focussed their attack on the Yazidis, because they were Yazidis. Yazidi men and older boys were forced to convert or die, in either case leading to their destruction as Yazidis. Mothers, trying to prevent ISIS from taking their sons to be trained, were told that ISIS would make their sons Muslims. One boy, taken for training, was told by his ISIS commander, "even if you see your father, if he is still Yazidi, you must kill him".

160. The notion of ISIS-interpreted Islam as a purifying force is present throughout all ISIS fighters' interactions with the Yazidis. From schools in Tel Afar to houses in Raqqah city, fighters repeatedly told captured Yazidi women and girls, held as slaves, that they were "dirty Yazidis" and "*kuffar*". The Dabiq article continues in this vein: "Their creed is so deviant from the truth that even cross-worshipping Christians for ages considered them devil-worshippers and Satanists".<sup>59</sup>

161. Those captured and held by ISIS indicated that only Yazidis were present at the various holding sites in Iraq and Syria, and that it was only Yazidi women and girls who are being sold at slave markets. Those bought in groups by their fighter-owners or held on ISIS military bases as sex slaves for its fighters stated they were only ever held with other Yazidi females, including girls aged nine and above.

162. No other religious group present in ISIS-controlled areas of Syria and Iraq has been subjected to the destruction that the Yazidis have suffered. Arab villagers who did not flee Sinjar in advance of the ISIS attack were allowed to remain in their homes, and were not captured, killed, or enslaved. While the Christian communities still living in

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<sup>56</sup> Prosecutor v. Krstić, ICTY Appeals Judgment, 19 April 2014, paras. 25-26. This confirmed para. 580 of the Krstić Trial Judgment, which read, "Where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of intent to physically destroy the group. In this case, the Trial Chamber will thus take into account as evidence of intent to destroy the group, the deliberate destruction of mosques and houses belonging to members of the group".

<sup>57</sup> *Bosnia and Herzegovina v. Serbia and Montenegro*, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, ICJ Judgment, 26 February 2006, ("Bosnia v. Serbia Judgment"), para. 344.

<sup>58</sup> Prosecutor v. Jelisić, ICTY Appeals Judgment, 5 July 2001, para. 49.

<sup>59</sup> *Ibid.*, p.14.

ISIS-controlled territory live difficult and often precarious existences, are viewed with suspicion, and are vulnerable to attack if ISIS perceive they are seeking protection from non-aligned forces, their right to exist as Christians within any Islamic state existing at any point in time, is recognised as long as they pay the *jizya* tax. Under ISIS's radical interpretation of Islam, however, it is impermissible for Yazidis to live as Yazidis inside its so-called caliphate because they are not People of the Book.

163. The public statements and conduct of ISIS strongly indicate that ISIS intended to destroy the Yazidis of Sinjar, composing the majority of the world's Yazidi population, in whole or in part.<sup>60</sup>

164. There are reasonable grounds to believe that ISIS committed prohibited acts, as set out in Article II of the Genocide Convention and Article 6 of the Rome Statute, against individual Yazidis as a consequence of his or her belonging to the Yazidi group, and as an incremental step in the overall objective of destroying the group.<sup>61</sup>

165. The Commission has determined that ISIS has committed, and is committing, the prohibited acts with the intent to destroy, in whole or in part, the Yazidis of Sinjar, and has, therefore, committed the crime of genocide.

## B. Crimes Against Humanity

166. ISIS's August 2014 attack on Sinjar and its subsequent abuse of captured Yazidis, including the sexual and physical violence directed against Yazidi women and children transferred into Syria, constitute a direct attack on the Yazidis, a civilian population who was the primary target of the attack.

167. The ISIS attack was widespread, encompassing hundreds of villages across the Sinjar region, and Mount Sinjar itself. The attack was also systematic, with organised acts of violence committed in a near-identical manner by fighters across Sinjar and later, across ISIS-controlled areas of Syria and Iraq. The attacks on the Yazidis, which continue until the present day, are committed pursuant to an explicit ideological policy of the terrorist group, whose radical religious interpretation does not permit the existence of Yazidism within the territory it controls. The fighters' abuse of the Yazidis closely follows and is supported by ISIS's stated organizational policy.

168. In its killing of Yazidi men, women and children, ISIS has committed the crime against humanity of murder and extermination. In its sexual enslavement, enslavement, and beating of Yazidi women and girls, ISIS has committed the crimes against humanity of sexual slavery, rape, sexual violence, enslavement, torture, other inhumane acts, and severe deprivation of liberty. By forcing Yazidi men and boys to labour on ISIS projects and by beating them for refusing to so labour, ISIS has committed the crimes against humanity of enslavement, torture, and other inhumane acts. These crimes were committed against the Yazidis on discriminatory grounds based on their religion, and as such they also amount to the crime against humanity of persecution.<sup>62</sup>

<sup>60</sup> Kayishema Trial Judgment, para. 96; Krstić Trial Judgment, para. 590.

<sup>61</sup> Jelisić Trial Judgment, para. 66.

<sup>62</sup> Prosecutor v Tadić ICTY Trial Judgment, 7 May 1997, paras. 704-710; Prosecutor v Kupreskić, ICTY Trial Judgment, 14 January 2000, para. 594.

## C. War Crimes

169. The Yazidis, a civilian population that was not taking part in hostilities, were the primary object of the August 2014 ISIS attack on Sinjar. They were attacked merely because ISIS considered them to be infidels. By directing an attack against the Yazidis, ISIS committed the war crime of attacking a civilian population.

170. Upon seizing Sinjar, ISIS proceeded to separate men and older boys from their families, and then to summarily execute those who refused to convert, often within sight of their relatives. Yazidis men, women, and children were also killed by ISIS during their captivity in Iraq and Syria. These killings constitute the war crime of murder.

171. ISIS's abuse of Yazidi women and girls forcibly transferred into Syria – including the brutal sexual violence that the victims endure – take place in the context of an armed conflict and as such amount to war crimes. In addition to the individual rapes, the victims were – and more than 3,200 continue to be – deprived of their liberty and sold repeatedly for the purpose of being sexually abused. ISIS members exercise rights of ownership over the women and girls that they use to subject the women and girls to sexual violence. By doing so, ISIS members have committed – and are committing – the war crimes of rape, sexual violence, and sexual slavery.

172. Yazidi women and girls are violently and regularly raped, often by different men, and over a prolonged period of time. They are beaten, sold as chattel, insulted and humiliated. The treatment that they endure in captivity causes them indescribable physical pain and mental suffering, effectively stripping them of their human dignity. Women and girls who managed to escape show clear signs that they have not been able to recover from the suffering they were subjected to in captivity, and many are likely to bear psychological scars for the rest of their lives. By deliberately inflicting severe pain and suffering on the women and girls they held in captivity, all of whom were civilians, ISIS committed the war crimes of torture, cruel treatment, and outrages upon personal liberty.

173. In respect of its abuse of Yazidi boys between the ages of seven and 15, ISIS has committed the war crime of using, conscripting and enlisting children.<sup>63</sup> ISIS pursued a clear policy of separating the boys from their mothers, training them and then using them in armed hostilities in Syria.

## D. Human Rights Abuses

174. In addition to the crimes of genocide, crimes against humanity, and war crimes, the underlying acts committed against the Yazidis constitute, in and of themselves, serious violations of international human rights law. Those acts include violations of the right to life, liberty and security of the person; the prohibition against torture and other cruel and inhumane acts; the freedom of religion or belief; and the prohibition against slavery. The forced displacement and sale of women and girls further amounts to human trafficking. The fact that the fate of thousands of men and boys remains unknown constitutes the crime of enforced disappearance.

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<sup>63</sup> Under the 2002 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, non-state armed groups, such as ISIS, are precluded the recruitment and use of children under the age of eighteen. Syria ratified the Optional Protocol in 2003.

## VI. Impact on the Yazidi Community

175. The Yazidi community of Sinjar has been devastated by the ISIS attack. In its aftermath, no free Yazidis remained in the Sinjar region. The 400,000-strong community had all been displaced, captured, or killed.

176. Slow progress is being made in re-capturing Sinjar and clearing villages of improvised explosive devices intentionally left behind by ISIS. While Yazidis are gradually, and fearfully, returning to the retaken areas of Sinjar north of the mountain, the majority of the region's Yazidis live difficult and impoverished existences in IDP camps scattered throughout the Duhok region of northern Iraq.

177. Female survivors of sexual slavery have been shattered, with many experiencing suicidal thoughts, and intense feelings of rage interspersed with periods of deep depression and listlessness. Many women and girls have not engaged with psychosocial support, which is present but limited. With regard to the youngest female victims of sexual slavery, some the families have had tremendous difficulty acknowledging the crimes committed against them. Borne out of their own trauma and distress, this has also limited the girls' willingness to access trauma therapy, if available.

178. Yazidi children, held with their mothers, are similarly traumatised but many have not, to date, received specialised therapy. Yazidi boys who were taken for indoctrination and training by ISIS suffer outbursts of rage, and are traumatised by prolonged exposure to violence, either directly at the hands of their instructors or in combat, or by witnessing it on the battlefield or in training videos.

179. Families, whether captured or not, are struggling to deal with the trauma experienced by those who were bought back or smuggled out, and by the profound distress of not knowing the fate or whereabouts of relatives still in ISIS-controlled territory. Many are in profound debt having sold all valuables, including land, and having borrowed money to buy back relatives offered for sale by ISIS fighters.

180. With hundreds of Yazidi men missing or dead, Yazidi women face a precarious existence in a society that has not encouraged their independence, or given many of them the tools to live autonomously. Yazidi women need financial support and skills training if they are to be able to support themselves and their children. This will ensure that any future marriages entered into are a choice, rather than a necessity.

181. Many Yazidis have chosen to go abroad, either because they seek medical treatment not available to them in Iraq or because they believe they can no longer live safely in the Middle East. Many cannot take legal routes out of Iraq as all their identification documents were left behind when they fled or were destroyed by ISIS. Getting new passports, identity cards, and birth certificates is a complex, bureaucracy-layered process in Iraq. Often, the fees involved are beyond the reach of most of the now-displaced Yazidis. Additionally, where documents require a male relative's signature, families are often, understandably, unwilling to make a necessary declaration that a missing father or husband is deceased.

182. Over 1000 Yazidi women and children are receiving medical treatment, including trauma therapy, under the auspices of a programme run by the Federal Republic of Germany.

183. Many more, including female survivors of sexual slavery, are now in Europe, having placed themselves in the hands of smugglers and made dangerous journeys by land, and increasingly by boat. Following the 20 March 2016 agreement between the European Union and Turkey, over 1,500 Yazidis remain in camps in Greece, awaiting the opportunity to apply for asylum. It is unclear how well Yazidi victims of genocide, sexual

violence, and torture have been identified in the screenings for vulnerable groups. That Yazidis are Kurdish-speakers has made communication with organisations running the camps and with psychologists on staff, difficult and sometimes impossible. In one camp visited in Greece, a Kurdish-speaking camp staff member was present only one day per week.

184. In Iraq, there has been a complete breakdown of trust between the Yazidi community and their neighbours. While some Arab families in Iraq and in Syria helped Yazidis to escape, what is remembered and often recounted are the acts of Arab families who actively assisted ISIS in the commission of their crimes. There have, as yet, been no real attempts to bring about reconciliation, the success of which is not assured.

185. There is a significant anger within the Yazidi community directed towards the Kurdish Regional Government, flowing from the unannounced withdrawal of the Peshmerga from Sinjar as ISIS advanced. This anger has been fed by military and political wrangling between local and regional actors in Iraq and the Kurdistan region, over control of the recaptured areas of Sinjar. Some of those interviewed believed that this wrangling has delayed the securing of Sinjar, and its reconstruction. It is critical that Peshmerga forces allow humanitarian organisations access to the Sinjar region, as well as ensuring that food, fuel, medicine, and other items reach Yazidi families who have returned, or who are returning, to Sinjar.

186. There is also a sense of profound disappointment with the international community. While there is support for organizations doing humanitarian work in IDP camps and, abroad, refugee camps, it is perceived that, at best, there is a paralysis, and, at worst, a reluctance regarding the taking of any action to rescue Yazidis still held by ISIS. This is compounded by reports of Yazidi captives being killed in airstrikes on ISIS bases and other military targets.

187. The on-going attack by ISIS on the Yazidis is viewed by the community not as a stand-alone event, but part of a long history of historical oppression and violence against them, and has compounded what one psychologist described as intergenerational trauma. There is little trust in the international community's willingness to protect the Yazidis' existence inside their homeland. While most Yazidis said they wanted ISIS brought to justice for their crimes, few believed that international criminal justice was possible, citing centuries of impunity in relation to attacks on their community.

## VII. Obligations and Accountability

### A. Genocide Convention

188. Under the Genocide Convention, contracting parties are under an obligation not only not to commit genocide themselves, but also to prevent genocide committed by others. In 2007, the International Court of Justice in its *Bosnia v. Serbia Judgment*, confirmed that obligation, stating

Responsibility is... incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide.<sup>64</sup>

189. Factors which are considered in assessing whether a State has discharged its obligations under the Genocide Convention include whether the State has the capacity to

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<sup>64</sup> Ibid, para. 430.

influence effectively the action of persons likely to commit, or already committing, genocide. The International Court of Justice found that this will depend on, among other things, “the geographical distance of the State concerned from the scene of events, and on the strength of political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events.”<sup>65</sup> A State’s obligation to prevent and the corresponding duty to act “arise at the instant that the State learns of, or should normally have learnt of, the existence of a serious risk that genocide will be committed”.<sup>66</sup>

190. In a statement from the White House on 7 August 2014, US President Barack Obama stated that “at the request of the Iraqi government -- we’ve begun operations to help save Iraqi civilians stranded on the mountain”, noting they were acting “to prevent a potential act of genocide”.<sup>67</sup> American, Iraqi, British, French, and Australian forces were involved in airdrops of supplies to the besieged Yazidis. American airstrikes also facilitated the YPG’s opening of a corridor through which trapped Yazidis could escape.

191. Since that time, as an extension of the non-international armed conflict in Iraq, a coalition of States have attacked ISIS in Iraq and in Syria.<sup>68</sup> In late September 2015, Russia, Iraq, Iran and Syria set up a ‘joint information center’ in Baghdad to coordinate anti-ISIS operations. The Syrian Government continues to bombard ISIS inside Syria. On 30 September 2015, Russia began airstrikes in support of the Syrian government, some of which were directed towards ISIS targets.

192. With the exception of US President Obama’s statement, which related solely to military action on Mount Sinjar, no State operating in Iraq or Syria has indicated that its actions are guided by the need to prevent the commission of genocide by ISIS.

193. Where there is evidence of States having any political or other links to ISIS, this too must be scrutinised to see if those States have violated their obligations under the Genocide Convention.

194. In order to determine whether States have violated their obligations under the Genocide Convention, further investigation is required as to whether States – and notably Syria and Iraq, being the territories in which ISIS is committing genocide – are taking all measures to prevent genocide which are within their power. Of particular concern is an examination of the circumstances of the withdrawal of the Peshmerga from the Sinjar region as the ISIS attack commenced. Further, there is as yet no information available concerning any steps being taken by the Governments of Syria and Iraq to free Yazidi women and children being held by ISIS on their territory.

195. Article I of the Genocide Convention imposes an obligation to punish the crime of genocide. To date, there appear to have been no concrete steps taken by any State to

<sup>65</sup> Ibid.

<sup>66</sup> Ibid., para. 431.

<sup>67</sup> The White House Statement. In it, President Obama stated, “the United States cannot and should not intervene every time there’s a crisis in the world. So let me be clear about why we must act, and act now. When we face a situation like we do on that mountain - with innocent people facing the prospect of violence on a horrific scale, when we have a mandate to help - in this case, a request from the Iraqi government - and when we have the unique capabilities to help avert a massacre, then I believe the United States of America cannot turn a blind eye. We can act, carefully and responsibly, to prevent a potential act of genocide. That’s what we’re doing on that mountain.”

<sup>68</sup> States forming part of this coalition operating in Iraq and Syria include the United States, the United Kingdom, Australia, Belgium, Denmark, Morocco, France, the Netherlands, Jordan. Operating only in Syria are Bahrain, Qatar, Saudi Arabia, the United Arab Emirates, and Turkey. In February 2016, Canada withdrew from bombing missions, but its operation of surveillance aircraft and air-to-air jet refuellers continued.

investigate or prosecute ISIS fighters, religious leaders or supporters for committing genocide, conspiring to commit genocide, directly and publicly inciting others to commit genocide, attempting to commit genocide, or being complicit in genocide.

## **B. International and National Justice Mechanisms**

196. The International Criminal Court (ICC) is, at present, the only international criminal tribunal that could have jurisdiction over ISIS crimes against the Yazidis. Neither Syria nor Iraq are parties to the Rome Statute.

197. Consequently, for the ICC to be seized of the matter requires a referral of the situations in Syria and/or Iraq by the UN Security Council, the members of which are all contracting parties to the Genocide Convention. On 22 May 2014, a draft Resolution that that would have referred the situation in Syria to the ICC failed after the Governments of Russia and China exercised their veto. There have been no subsequent attempts to refer.

198. Equally, there have been no attempts to establish an *ad hoc* tribunal, the jurisdiction of which might encompass ISIS crimes against the Yazidis.

199. The path to accountability for ISIS crimes against the Yazidis, or indeed any crimes committed in Syria, within international criminal justice mechanisms remains blocked.

200. Currently national prosecutions provide the only path for accountability for victims of crimes committed in Syria. It is integral, therefore, that States enact domestic laws against genocide, crimes against humanity and war crimes.

## **VIII. Conclusions**

201. **ISIS has committed, and continues to commit, the crime of genocide, as well as multiple crimes against humanity and war crimes, against the Yazidis.**

202. **The genocide committed against the Yazidis has not primarily been accomplished through killings, though mass killings of men and women have occurred. Rather ISIS seeks to destroy the Yazidis in multiple ways, as envisaged by the drafters of the 1948 Genocide Convention. ISIS has sought, and continues to seek, to destroy the Yazidis through killings; sexual slavery, enslavement, torture and inhuman and degrading treatment, and forcible transfer causing serious bodily and mental harm; the infliction of conditions of life that bring about a slow death; the imposition of measures to prevent Yazidi children from being born, including forced conversion of adults, the separation of Yazidi men and women, and mental trauma; and the transfer of Yazidi children from their own families and placing them with ISIS fighters, thereby cutting them off from beliefs and practices of their own religious community, and erasing their identity as Yazidis. The public statements and conduct of ISIS and its fighters clearly demonstrate that ISIS intended to destroy the Yazidis of Sinjar, in whole or in part.**

203. **Like all genocides, it is born of the warped thinking that the world, as the perpetrators understand it, would be better without a particular group of people in it and that by doing the work of destroying what they consider impure, the perpetrators are creating a more perfect society.**

204. **ISIS commits the crime of genocide against individual Yazidis, as an incremental step in their overall objective of destroying this religious community. This is the genocide accomplished through the destruction of a nine-year-old girl in a**

slave market, surrounded by men waving their bids; of a woman and children locked in a room, beaten and starved; of a little boy trained to kill his father. It is a genocide perpetrated by male fighters so ideologically enslaved that they believe that by committing some of the most horrific crimes imaginable, they are bettering the society in which they live.

205. Over 3,200 women and children are still held by ISIS. Most are held in Syria where Yazidi women and girls continue to be sexually enslaved and otherwise abused, and Yazidi boys, indoctrinated and trained. Thousands of Yazidi men and boys are missing. ISIS's trade in women and girls and its recruitment and use of boys have never ceased. The genocide of the Yazidis is on-going.

## **IX. Recommendations**

206. On the basis of its findings, the Commission makes the recommendations below.

207. The Commission recommends that the Security Council:

(a) As a matter of urgency, and in line with each State's individual obligations under the Genocide Convention, refer the situation to justice, possibly to the International Criminal Court or an ad hoc tribunal, bearing in mind that, in the context of the Syrian Arab Republic and the Republic of Iraq, only the Security Council is competent to refer the situation;

(b) Consider engaging its Chapter VII powers, given the acknowledged threat ISIS imposes to international peace and security;

(c) Include regular briefings by the Commission of Inquiry as part of the formal agenda of the Security Council, including a further update on the commission of crimes by ISIS against the Yazidis; and

(c) Support the recommendations of the Commission of Inquiry.

208. The Commission recommends to the Government of the Syrian Arab Republic:

(a) Use all means available to ensure Yazidis held captive by ISIS in Syria are safely rescued during military operations;

(b) Put in place a protocol for the care and treatment of Yazidis rescued as areas in Syria are seized from ISIS;

(c) Take all steps to protect the pre-existing Syrian Yazidi community from attack;

(d) Ensure provisions of Genocide Convention are replicated in national legislation, as per its obligations under Article V;

(e) Investigate and prosecute ISIS members involve in crimes, perpetrated in Syria, against the Yazidis; and

(f) Ratify the Rome Statute.

209. The Commissions recommends to the Government of Iraq and the Kurdish Regional Government:

(a) Immediately take steps to preserve and document mass graves sites in order to preserve evidence of ISIS crimes;

(b) Establish a forum, based in the Duhok region, which advances reconciliation between the Yazidi community and Arab and Kurdish Muslims. Such a forum may include the establishment of an internationally-advised Truth Commission which would simultaneously seek to establish a historical record, provide survivors with a catharsis and opportunity for healing by telling their stories, and which would expose and delegitimize ISIS crimes in the region through broadcast and dissemination of the testimony;

(c) Undertake a public and transparent investigation into the circumstances surrounding the withdrawal of the Peshmerga forces from the Sinjar region in early August 2014, and ensure the Yazidi community is involved and kept regularly apprised the work of the investigation;

(d) Establish a clearer, accelerated process for issuing of identification documents for Yazidi community displaced from Sinjar, at no or at a heavily subsidized cost. This includes amending regulations governing issuance of identification documents to women and children with missing male relatives so that the families are not required to declare their missing male relatives to be deceased;

(e) Work effectively with the local population of Sinjar, including those currently displaced, to design a security framework that effectively addresses their concerns; and

(f) Ratify the Rome Statute.

210. The Commission recommends that parties fighting against ISIS in Syria and Iraq:

(a) Strongly consider rescue plans targeted at Yazidi captives;

(b) Ensure coordination between local and international armed forces where military operations target ISIS controlled regions where Yazidi captives are held;

(c) Use all means available to ensure Yazidis held captive by ISIS in Syria are rescued during on-going military operations; and

(d) Put in place a protocol for the care and treatment of Yazidis rescued as areas are seized from ISIS.

211. The Commission recommends to the Office of the Special Adviser of the Secretary-General on the Prevention of Genocide:

(a) Remain seized of the matter and to raise awareness of the causes and dynamics of ISIS's genocide of the Yazidis;

(b) Continue to alert relevant actors of the ongoing genocide; and

(c) Advocate and mobilize for appropriate action.

212. The Commission recommends to the international community:

(a) Recognize ISIS's commission of the crime of genocide against the Yazidis of Sinjar;

(b) For those States that are contracting Parties to the Genocide Convention, engage with Article 8 of the Convention, and call upon the competent organs of the United Nations, including the Security Council, to take such action under the Charter of the United Nations to prevent and suppress acts of genocide;

(c) Provide expertise, on request, to assist in the preservation and documentation of mass grave sites;

(d) Provide further funding for psychosocial support programmes, with increased emphasis on trauma therapy for children, noting that Yazidi children suffered different violations depending on their sex;

(e) Provide funding and expertise to support the training of psychologists and social workers in Iraq and Syria;

(f) Provide funding for the reconstruction as Sinjar and expertise to allow the more efficient clearing of improvised explosive devices;

(g) Accelerate the asylum applications of Yazidi victims of genocide; and

(h) Ensure provisions of Genocide Convention are enacted in national legislation, as contracting States are obliged to do under Article V of the Genocide Convention.

212. The Commission recommends to organizations involved in the care of Yazidi internally displaced persons:

(a) Fund and recruit additional psychosocial support for Yazidi survivors, with increased emphasis on trauma therapy for children, noting that Yazidi children suffered different violations depending on their sex; and

(b) Build and provide on skills training programmes aimed at allowing Yazidi women greater financial and social independence;

213. The Commission recommends that States and organizations involved in the care of Yazidi refugees and asylum-seekers:

(a) Ensure that Yazidi victims of genocide, including but not limited to sexual violence, are identified and treated as a vulnerable group for the purposes of housing, psychosocial support, and with regard to the asylum process;

(b) Hire appropriate Kurmanji Kurdish speakers, preferably those able to speak the Shengali dialect;

(c) Promote awareness among staff and contractors of the situation of the Yazidis, including the most recent crimes committed against them;

(d) Take steps to root out discrimination against Yazidis in refugee camps and in hosting communities where Yazidis are placed, including ensuring that historical misunderstandings of the Yazidi faith which often underpin such discrimination are addressed; and

(e) Set up a clearly understood reporting system for harassment and crimes committed against the Yazidis in the camps.

214. The Commission recommends that Yazidi religious authorities:

(a) Continue to promote and advocate for the acceptance of Yazidi survivors of ISIS crimes by the wider Yazidi community; and

(b) Engage directly with Yazidis, particularly Yazidi women and children who were held by ISIS, living in IDP camps in northern Iraq and in refugee camps abroad.

215. The Commission recommends that the General Assembly:

(a) Include a briefing by the Commission of Inquiry as part of its formal agenda, including a further update on the commission of crimes by ISIS against the Yazidis;

216. The Commission recommends that the Human Rights Council:

- (a) **Request an assessment of current needs and priorities of the Yazidi community, with particular attention to be paid to the views of Yazidi women; and**
- (b) **Require further updates on the situation of groups and communities targeted by ISIS, notably the Yazidis.**

Annex

Map of the northern regions of the Syrian Arab Republic and the Republic of Iraq

