

The Honourable Fatou Bensouda, Chief Prosecutor  
International Criminal Court  
Office of the Prosecutor  
Communications  
Post Office Box 19519  
2500 CM, The Hague  
The Netherlands

December 17, 2015

**Re: *Letter in Support of Filing OTP-CR-397/15***

Dear Prosecutor Bensouda,

The Global Justice Center writes to you in support of the Article 15 submission by Yazda and the Free Yazidi Foundation requesting the opening of a preliminary investigation into genocide and other crimes committed against the Yazidis.<sup>1</sup> Created in 2005, the Global Justice Center is an international legal human rights organization focused on using international law for strategic change and to achieve sustainable justice, peace and security. Amongst other activities, the GJC works globally to develop and implement legal strategies to define, establish and protect human rights and gender equality.

It is imperative that all possible measures are taken to investigate, address and deter the heinous crimes being committed by the so-called Islamic State of Iraq and al-Sham/Greater Syria (“ISIS” aka “ISIL”, “Daesh” or “IS”, hereinafter “ISIS”). There currently exists credible information and evidence to believe that ISIS is committing a wide range of crimes against civilians and minority populations in the areas in which it operates. This includes: genocide against Yazidis;<sup>2</sup> genocide against the Shia Shabak and Shia Turkmen;<sup>3</sup> and crimes against humanity, ethnic cleansing and war crimes against minority populations, including Yazidi, Shabak, Turkmen, Christian, Sabeab-Mandaean and Kaka’i, and civilians under its control.<sup>4</sup> Women and girls have been intentionally and strategically targeted by ISIS on ideological grounds and systematically raped, enslaved, killed and tortured.

In April of this year, you stated that “I remain profoundly concerned by this situation and I want to emphasise our collective duty as a global community to respond to the plight of victims whose rights and dignity have been violated.”<sup>5</sup>

Accordingly, we implore your Office (the Office of the Prosecutor (“OTP”)) to act on this duty by opening a preliminary examination into crimes committed by ISIS that fall under the jurisdiction of the International Criminal Court (“ICC”) and to ensure that any such examination takes into account and integrates the specific gender dynamics of ISIS’s strategies and policies.

The Imperative for the ICC to Open a Preliminary Examination

While there has been global condemnation of ISIS’s crimes, little to no action has been taken to investigate, document and ensure accountability. Such impunity is a driver of conflict in Iraq and has created an enabling environment for the commission of mass atrocity crimes—including against women and girls.<sup>6</sup> A recent report finding that genocide is being perpetrated against the Yazidis noted that “[t]he general lack of and mismanagement of investigations and prosecutions, and lack

of accountability for perpetrators, send a strong signal to those considering taking up arms, whether in support of or against IS, that there are few costs for committing atrocities against minority communities.”<sup>7</sup> Not only does this culture of impunity encourage the commission of such crimes, but evidence indicates that atrocity crimes, including rape and sexual violence, are being used as recruiting tools by ISIS.<sup>8</sup> Consequently, the commission of atrocity crimes with impunity by individuals at all levels of ISIS enables, sustains and strengthens the organization.<sup>9</sup>

As such, the international community, including the ICC, needs to take all possible measures within its powers to take steps towards ending impunity and ensuring accountability. This is particularly important in light of the fact that there is both limited capacity and will to ensure accountability at the domestic level in the areas where ISIS operates.

We note your Office’s April 2015 statement on ISIS finding that the OTP had insufficient jurisdictional bases to open a preliminary examination at that time and welcoming further information on the positions occupied by State Party nationals in ISIS. In September 2015 and in response to this statement, Yazda and the Free Yezidi Foundation (FYF) provided you with detailed information on foreign fighters and their roles within ISIS, sufficient to meet the OTP’s requirements to open a preliminary investigation. (As that submission noted, in order for your office to proceed, the appropriate standard for consideration of an Article 15 submission is that “the alleged crimes are not outside the jurisdiction of the Court.”<sup>10</sup>)

We also note that while your Office’s general prosecutorial strategy is focused on prosecuting those “most responsible”, the OTP’s strategic plan and November 2015 Report on Preliminary Examination Activities states that:

[T]he OTP will expand its general prosecutorial strategy to encompass mid- or high-level perpetrators, or even particularly notorious low-level perpetrators, with a view to building cases up to reach those most responsible for the most serious crimes. The Office may also consider prosecuting lower-level perpetrators where their conduct has been particularly grave and has acquired extensive notoriety.<sup>11</sup>

We urge the OTP to utilize such an expanded strategy in this circumstance and consider the prosecution of foreign fighters at all levels, in light of: your Office’s previous conclusion that “the prospects of my Office investigating and prosecuting those most responsible, within the leadership of ISIS, appear limited”<sup>12</sup>; Yazda and FYF’s Article 15 submission; and the notoriety of ISIS’s crimes. On the established premises that the commission of atrocity crimes with impunity by individuals at all levels of ISIS is key to enabling, sustaining and building the organization, we submit that there is an imperative for the OTP to, at a minimum, open a preliminary examination of foreign fighters in ISIS who are nationals of ICC State Parties.

Moreover, based on the available information, there is no reason to believe that the opening of a preliminary examination by the OTP at this time would in any way contravene the interests of justice. In fact, to the contrary, the opening of a preliminary examination would in fact serve and further the interests of justice and send a signal that atrocity crimes under the jurisdiction of the ICC cannot be committed with impunity.

### Gender-Based Crimes

The Rome Statute imposes a duty on the OTP to “take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children,”<sup>13</sup> which has been reinforced by the OTP’s excellent policy on sexual and gender-based crimes. Specifically,

the policy calls for the integration of a gender perspective into every stage of the prosecutorial process and calls on the Prosecutor to “charge acts of sexual and gender-based crimes as different categories of crimes within the Court’s jurisdiction (war crimes, crimes against humanity, and genocide), in order to properly describe, *inter alia*, the nature, manner of commission, intent, impact, and context.”<sup>14</sup>

We would like to commend your office for its leadership in and commitment to prioritizing gender-based crimes and incorporating a gender perspective into the work of the Court. We welcomed with appreciation your recent statement on the International Day for the Elimination of Violence against Women that you “will spare no effort to bring accountability for such heinous crimes. Where others may want to draw a veil over these crimes I, as Prosecutor, must draw a line under them.”<sup>15</sup> We implore you to put this policy into practice in the present situation.

ISIS strategically and indiscriminately commits crimes within the jurisdiction of this court against civilians: genocide, war crimes and crimes against humanity. An examination of their ideology, strategies and policies indicate that there are strong gender dynamics that guide how these crimes are perpetrated. For example, ISIS’s genocidal strategy against the Yazidis is carried out in different ways against men and women, boys and girls: men and elderly women are killed, boys are recruited, young women and girls are enslaved and subjected to systemic sexual violence (*see* Annex for a more detailed analysis of the gendered way in which genocide is being perpetrated).

Furthermore, ISIS’s goal of an Islamic Caliphate is defined by the elimination of ethnic and religious minorities and the imposition of an ideology based on gender inequality and dominance over the lives of women and children.<sup>16</sup> Additionally, ISIS’s state-building strategy is dependent on the subjugation of women and control over their reproductive capacity as a way to secure the continuity and future of the Caliphate.<sup>17</sup> One clear example of these strategies is ISIS’s treatment of Yazidi women and girls who are systematically captured, murdered, enslaved, forced into marriages, raped, sexually assaulted, tortured, forcibly impregnated, and forcibly converted.<sup>18</sup>

Thus, it is essential that any examination into ISIS’s crimes by this court be grounded in a robust gender perspective and analysis.<sup>19</sup> Our enclosed annex examines publically available information about crimes perpetrated against Yazidi women and girls and sets forth the crimes under the Rome Statute that are implicated by this information. We urge you to utilize this to help guide any investigation by your Office.

Madame Prosecutor, you recently stated that “as Prosecutor of the ICC, I stand ready to play my part, in an independent and impartial manner, in accordance with the legal framework of the Rome statute.” On behalf of the Global Justice Center, I ask you to begin playing this part by opening a preliminary examination and ensuring justice for women and girls subjected to inhumane treatment at the hands of ISIS.

Respectfully submitted,



Janet Benshoof  
President, Global Justice Center

Enclosures:

## 1. Annex: ISIS's Gender-Based Crimes against Yazidi Women and Girls

<sup>1</sup> In the preparation of this letter and enclosed annex on gender-based crimes against Yazidi women and girls, GJC has relied upon a selected number of publicly available reports documenting crimes committed by ISIS.

<sup>2</sup> Human Rights Council, *Report of the Office of the United Nations Commissioner for Human Rights on the Human Rights Situation in Iraq in the Light of the Abuses Committed by the So-called Islamic State in Iraq and the Levant and Associated Groups*, ¶ 17, U.N. Doc. A/HRC/28/18 (Mar. 13, 2015) [hereinafter OHCHR]; U.S. Holocaust Mem'l Museum, "Our Generation is Gone," *The Islamic State's Targeting of Iraqi Minorities in Ninewa* 20-21 (2015), <http://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf>; U.S. Comm'n on Int'l Religious Freedom, *USCIRF Statement on the Designation of Victims of Genocide Persecution, and Crimes Against Humanity in Syria and Iraq* (Dec. 7, 2015), <http://www.uscirf.gov/news-room/press-releases/uscirf-statement-the-designation-victims-genocide-persecution-and-crimes>.

<sup>3</sup> U.S. Holocaust Mem'l Museum, *supra* note 2, at 3; U.S. Comm'n on Int'l Religious Freedom, *supra* note 2.

<sup>4</sup> U.S. Holocaust Mem'l Museum, *supra* note 2, at 18; OHCHR, *supra* note 2, at ¶¶ 16-49.

<sup>5</sup> Int'l Criminal Court, Office of the Prosecutor, *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, marking the International Day for the Elimination of Violence Against Women* (Nov. 25, 2015), [https://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-25-11-2015-IDEVAW'.aspx](https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-25-11-2015-IDEVAW'.aspx).

<sup>6</sup> U.S. Holocaust Mem'l Museum, *supra* note 2, at 28.

<sup>7</sup> *Id.*

<sup>8</sup> Rukmini Callimachi, *ISIS Enshrines a Theology of Rape*, N.Y. TIMES (Aug. 13, 2015), [http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html?\\_r=0](http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html?_r=0); U.S. Holocaust Mem'l Museum, *supra* note 2, at 10.

<sup>9</sup> U.S. Holocaust Mem'l Museum, *supra* note 2, at 10.

<sup>10</sup> Yazda & Free Yazidi Foundation, *ISIL: Nationals of ICC States Parties Committing Genocide and Other Crimes against the Yazidis*, Section IV (Sept. 2015).

<sup>11</sup> Int'l Criminal Court, Office of the Prosecutor, *Strategic Plan: June 2012-2015*, ¶ 22 (Oct. 11, 2013), [https://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/policies%20and%20strategies/Documents/OTP-Strategic-Plan-2012-2015.pdf](https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/policies%20and%20strategies/Documents/OTP-Strategic-Plan-2012-2015.pdf); Int'l Criminal Court, Office of the Prosecutor, *Report on Preliminary Examination Activities 3* (Nov. 12, 2015), <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf>.

<sup>12</sup> Int'l Criminal Court, Office of the Prosecutor, *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Alleged Crimes Committed by ISIS* (Apr. 8, 2015), [https://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx](https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx).

<sup>13</sup> Rome Statute of the International Criminal Court, art. 54(1)(b), July 17, 1998, 2187 U.N.T.S. 3.

<sup>14</sup> Int'l Criminal Court, Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, ¶¶ 1, 8, 25 & 72-73 (June 2014), <http://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

<sup>15</sup> Int'l Criminal Court, Office of the Prosecutor, *supra* note 5.

<sup>16</sup> See Independent International Commission of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, ¶¶ 47-49 (Nov. 14, 2014); Quilliam Found., *Women of the Islamic State: A Manifesto on Women by the Al-Khanssaa Brigade* (Feb. 2015) (translation and analysis by Charlie Winter). See also Mah-Rukh Ali, *ISIS and Propoganda: How ISIS Exploits Women*, REUTERS INST. FOR THE STUDY OF JOURNALISM (2015).

<sup>17</sup> Erin Marie Saltman & Melanie Smith, "Till Martyrdom Do Us Part": *Gender and ISIS Phenomenon*, INST. FOR STRATEGIC DIALOGUE 18 (2015), [http://www.strategicdialogue.org/Till\\_Martyrdom\\_Do\\_Us\\_Part\\_Gender\\_and\\_the\\_ISIS\\_Phenomenon.pdf](http://www.strategicdialogue.org/Till_Martyrdom_Do_Us_Part_Gender_and_the_ISIS_Phenomenon.pdf).

<sup>18</sup> See Annex: ISIS's Gender-Based Crimes against Yazidi Women and Girls

<sup>19</sup> Int'l Criminal Court, Office of the Prosecutor, *supra* note 14, at 3 ("'Gender perspective' requires an understanding of differences in status, power, roles, and needs between males and females, and the impact of gender on people's opportunities and interactions. This will enable the Office to gain a better understanding of the crimes, as well as the experiences of individuals and communities in a particular society"; "'Gender analysis' examines the underlying differences and inequalities between women and men, and girls and boys, and the power relationships and other dynamics which determine and shape gender roles in a society, and give rise to assumptions and stereotypes. In the context of the work of the Office, this involves a consideration of whether, and in what ways, crimes, including sexual and gender-based crimes, are related to gender norms and inequalities.").



## **Annex: ISIS's Gender-Based Crimes against Yazidi Women and Girls**

### I. ISIS Strategically and Intentionally Targets Yazidi Women and Girls for Heinous Crimes on Ideological Grounds

Civilians who live in and near ISIS-controlled territories—including men, women, children, ethnic minorities and religious minorities—live in constant fear of ISIS's brutality. ISIS commits heinous crimes against women and girls, and, to date, has done so with impunity. Victims and witnesses who have fled ISIS control consistently describe being subjected to attacks that aim to terrorize and silence the population. But even in the context of ISIS's blanket persecutions, ISIS has singled out the Yazidi religious and ethnic minority, and most notably Yazidi women and children, for particularly brutal treatment.<sup>1</sup>

ISIS specifically and strategically targets Yazidi women and girls in carrying out an ideology predicated on gender inequality and male dominance over women and children. Further, its state-building strategy requires subjugation of women and control over their reproductive capacity to guarantee future generations for the Caliphate. These policies, strategies and practices lead to and provide a perceived justification for ISIS fighters' carrying out the horrendous crimes against Yazidi women and girls detailed below.

#### A. Capture, Murder, and Transfer

One repeated feature of ISIS's attacks is the systematic capture and transfer of Yazidi women and girls. Upon capture, ISIS typically separates Yazidi women and girls into three groups: (1) married with children; (2) married without children; and (3) young women and girls.<sup>2</sup>

After separation, evidence suggests that ISIS has a practice of sequestering elderly women—presumably too old to be sold as sex slaves or used for forced physical labor—killing them and burying them in mass graves.<sup>3</sup>

The groups of younger women are transferred to different locations in ISIS-controlled territory.<sup>4</sup> The manner in which they are transferred is methodical and deliberate. Dozens of women, even though kidnapped on different days and from different locations, have voiced similar descriptions of their capture, including the appearance of the bus that transported them, the placement of curtains to block the women inside and the manner in which they were transported and confined for days or even months on end.<sup>5</sup>

Some victims have been transferred more than 10 times in a matter of months.<sup>6</sup> These repeated transfers are apparently aimed at reinforcing ISIS's control over the victims by instilling feelings of fear, insecurity and disorientation.<sup>7</sup>

## B. Slavery

ISIS considers the Yazidi women and girls they capture to be spoils of war and systemically forces them into slavery. An article in ISIS's *Dabiq* magazine entitled "The Revival of Slavery Before the Hour" acknowledges it was reviving enslavement practices under Sharia law.<sup>8</sup> Further, in a document entitled, "Question and Answers on Taking and Capturing Slaves" published by ISIS's Research and Fatwa Department, ISIS grants members permission "to buy, sell, or give as a gift female captives and slaves, for they are merely property, which can be disposed of."<sup>9</sup>

Under these practices, one fifth of captured Yazidi women and girls are sent to ISIS leadership as *khums*, a tax on war spoils,<sup>10</sup> and those remaining are divided among ISIS fighters in accordance with Sharia.<sup>11</sup>

As part of their enslavement and to prepare women and girl captives for sale, ISIS sets up holding areas with mattresses, food and water for hundreds.<sup>12</sup> "Emirs" (local ISIS commanders) instruct ISIS fighters to inspect Yazidi women and girls, some as young as 11 years old.<sup>13</sup> ISIS fighters accordingly inspect them to evaluate their beauty, perform full-body searches, force them to undergo examinations by gynecologists to determine whether they are virgins and force them to smile as ISIS fighters take their photographs.<sup>14</sup> ISIS keeps track of female captives by numbering their captives or recording their names on lists.<sup>15</sup>

While some captives are given as gifts, others are sold to local or foreign ISIS fighters.<sup>16</sup> Witnesses privy to price negotiations between vendors and buyers have confirmed this practice.<sup>17</sup> Victims describe ISIS fighters as behaving like "animals," trading in Yazidi women and girls the way people buy and sell cars.<sup>18</sup>

To date, as many as 3,000 Yazidis are still held in slavery, though the number is likely to be much higher based on information from local officials, service providers and community activists.<sup>19</sup>

## C. Forced Marriage

In some instances, emirs instruct ISIS fighters to choose girls for marriage or ISIS fighters forcibly marry Yazidi captives to avoid having to buy them.<sup>20</sup> Victims recall being brought to houses, sometimes by the hundreds, and group-by-group being taken for forced marriage and slavery.<sup>21</sup> One 16-year-old victim recalled:

I was taken to Mosul and kept there all the time . . . We were about 150 girls and five women. A man called Salwan took me from there to an abandoned house. He also took my cousin, who is 13-years-old; we resisted but they beat us. He took me as his wife by force. I told him I did not want to and tried to resist but he beat me. My nose was bleeding, I could not do anything to stop him.<sup>22</sup>

ISIS fighters seek Yazidi women for marriage—as opposed to other Christian, Jewish or Muslim captives—to purify them.<sup>23</sup> Another victim stated, "The other girls with me [told the ISIS fighter] it's forbidden to marry a married women . . . He replied, 'But not if they are

Yazidi women.”<sup>24</sup>

Once married, Yazidi women and girls are removed from public life and placed entirely under the control of their new male relatives.<sup>25</sup> Women and girls over the age of 10 may not appear publically without being entirely covered and may not travel without a male relative.<sup>26</sup> It is impossible for women whose husbands have died or are otherwise gone to leave their homes for any reason without risking punishment.<sup>27</sup>

#### D. Sexual Violence, Rape, and Torture

While in captivity, Yazidi women and girls are often subjected to sexual violence. A local doctor treating females in Dohuk told Human Rights Watch that of the 105 women and girls she examined, 70 appeared to have been raped in ISIS captivity and several consequently attempted suicide.<sup>28</sup> ISIS leaders “elevate and celebrate each sexual assault as spiritually beneficial, even virtuous.”<sup>29</sup>

Some victims report being raped multiple times by multiple ISIS fighters.<sup>30</sup> One 16-year-old victim said a European foreign terrorist fighter raped her for a month and then gave her to an Algerian for another month.<sup>31</sup> Another victim stated that her captor showed her a document published by ISIS that stated if 10 different ISIS fighters rape a captured woman, she will become Muslim.<sup>32</sup>

Often times these rapes are carried out with other forms of brutality and torture. Victims report being raped as many as six times per night, beaten, handcuffed, fastened to a bed, given electric shocks and denied food.<sup>33</sup> One victim recounted that an emir wrote the names of 14 girls on small pieces of paper which were picked out of a pile at random by two ISIS fighters.<sup>34</sup> The emir had the two men call out the names on the pieces of paper and the 15- and 18- year-old girls whose names were called were taken by the fighters into another room.<sup>35</sup> The victim who witnessed this episode said the emir laughed when he heard the girls screaming in the other room.<sup>36</sup> After roughly 20 minutes, the girls were both brought back into the room with the witness, who said they were in shock, had blood on their trousers, and told her they had been raped.<sup>37</sup> Another woman who managed to escape ISIS reported that she lived in constant fear that she would be dragged away like so many Yazidi women and girls before her:

From 9:30 in the morning, men would come to buy girls to rape them. I saw it in front of my eyes ISIS soldiers pulling hair, beating girls, and slamming the heads of anyone who resisted. They were like animals . . . Once they took the girls out, they would rape them and bring them back to exchange them for new girls. The girls’ ages ranged from 8 to 30 years . . . .<sup>38</sup>

ISIS targets girls of all ages for sexual violence. In an officially issued question and answer document, ISIS states, “It is permissible to have intercourse with the female slave who hasn’t reached puberty if she is fit for intercourse; however if she is not fit for intercourse, then it is enough to enjoy her without intercourse.”<sup>39</sup> Many victims are 14 or 15 years old, with others as young as nine and six years old.<sup>40</sup>

Notwithstanding that ISIS officially states that a slave's "uterus must be purified" before a fighter may rape her,<sup>41</sup> pregnant women are not spared from rape and sexual violence. One woman reported:

They were very cruel with us: in spite of the fact that I was pregnant they hit me and raped me over again. If I didn't accept to have sex with the men of the family, they would force me . . . I stayed [at one house] for one month and a half. I moved again, to another city, where my baby was born. I was raped there too, despite the fact that I had just given birth.<sup>42</sup>

Many of the victims who have escaped and were subjected to or witnessed sexual violence while in ISIS captivity show signs of trauma. One victim said she "can't sleep at night because I remember how they were raping me. I want to do something to forget about my psychological problems. I want to leave Iraq until things get better, I don't want to be captured again."<sup>43</sup> Another victim tried to commit suicide when her Libyan captors forced her to take a bath, which she knew was typically a prelude to rape:

I went into the bathroom, turned on the water, stood on a chair to take the wire connecting the light to electrocute myself but there was no electricity. After they realized what I was doing, they beat me with a long piece of wood and with their fists . . . They took me out of the bathroom, brought in [my friend] and raped her in the room in front of me.<sup>44</sup>

Even Yazidi women and girls who said they had not been raped say they endured constant stress and anxiety when witnessing the suffering of other women, fearing they would be next.<sup>45</sup> One of these victims stated:

Men came several times to take away some of the girls. Those who resisted were beaten and pulled away by the hair. Some were beaten with electrical cables. I was not afraid of the beating, but could not bear the thought that they could attack my honour. We were constantly told that we would be forced to marry or sold to some men.<sup>46</sup>

#### E. Forcible Impregnation

ISIS fighters forcibly and intentionally impregnate Yazidi women and girls.<sup>47</sup> ISIS fighters told a group of about 60 Yazidi female captives, "Forget about your relatives, from now on you will marry us, bear our children, God will convert you to Islam and you will pray."<sup>48</sup> A Yazidi teenager recounted how she was sold into slavery as a virgin, raped daily by ISIS fighters and consequently became pregnant.<sup>49</sup>

ISIS fighters view lineage as being passed on by the father and a child cannot be Yazidi without two Yazidi parents.<sup>50</sup> In fact, *Dabiq* makes explicit that "the child of the master has the status of the master."<sup>51</sup> Thus, by separating Yazidi women from Yazidi men and forcibly impregnating women, ISIS fighters prevent another generation of Yazidis from being born.<sup>52</sup>

#### F. Forced Conversions

Women and girls held captive by ISIS are also forced to convert from Yazidism to Islam.<sup>53</sup> ISIS views Yazidism as blasphemous and considers those who practice it to be devil-

worshippers.<sup>54</sup> Many girls report similar experiences in their forced conversion, including being brought by the group to a single room with an ISIS religious leader, hearing they are infidels, being forced to repeat the *shahada* [Islamic creed] or read from the Quran, and collectively being told they were converted.<sup>55</sup>

#### G. Forced Abortions

In addition to forcing Yazidi women and girls to convert to Islam, ISIS forces women and girls pregnant with Yazidi children to have abortions.<sup>56</sup> Doctors forcibly and invasively examine women to determine whether they are pregnant, and women found to be pregnant are forced to have abortions.<sup>57</sup> Witnesses reported that a doctor conducted abortions on two women in a school in Ba'aj, Ninewa, who were two and three months pregnant respectively. Prior to the abortion, one witness reportedly heard an ISIS fighter stating: “we do not want more Yezidis to be born.”<sup>58</sup> Both women received an injection and were made to take pills.<sup>59</sup> A week after the abortion, both women were sold.<sup>60</sup> A 19-year-old pregnant woman told the UN’s Office of High Commissioner of Human Rights that she had been repeatedly raped by a “doctor” for two and a half months.<sup>61</sup> According to the woman, the doctor sat on her stomach, aiming to kill her unborn child, saying, “This baby should die because it is an infidel; I can make a Muslim baby.”<sup>62</sup>

#### H. Violence against Children

Throughout all of these practices, ISIS has instrumentalized and abused children on a massive scale.<sup>63</sup> ISIS has a rigid practice of capturing Yazidis in groups, separating children—typically between the ages of eight and 15—from their mothers and transferring them to different locations in Iraq and Syria, whereupon they are sold into slavery, forcible marriage and/or forced to convert to Islam.<sup>64</sup> Girls who have managed to escape report being held in rooms by the hundreds, isolated from their families, converted to Islam in groups and then forcibly sold or married.<sup>65</sup> One 13-year-old recounted how she was held captive in a house in Mosul with girls ages 10 to 15:

When they came to select the girls, they would pull them away. The girls would cry and faint, they would have to take them by force. They made us convert to Islam and we all had to say the *shahada* [Islamic creed]. They said, ‘You Yazidis are *kufar* [infidels]. You must repeat these words after the leader.’ They gathered up all in one place and made us repeat after him. After we said the *shahada*, he said you have now been converted to our religion and our religion is the correct one.<sup>66</sup>

Girls report being registered by name then sold or given four or five at a time to ISIS fighters.<sup>67</sup> ISIS has publically acknowledged this practice, stating in its online English magazine, “Unlike Jews or Christians, there [is] no room for *jizyah* [non-Muslim resident] payment . . . it is permissible to buy, sell, or give as a gift female captives and slaves, for they are merely property which can be disposed of.”<sup>68</sup>

II. There is Strong Evidence that ISIS is Committing Genocide Against the Yazidis By Carrying Out Specifically Designed Gender Crimes

Under the Rome Statute, “genocide” means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (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; or (e) forcibly transferring children of the group to another group.<sup>69</sup>

Evidence credibly suggests that ISIS is committing genocide by carrying out each of these acts, and doing so down sharp gender lines, specifically targeting girls and women for certain crimes in carrying out genocide. Any investigation by this Court of crimes committed by ISIS must both consider whether genocide is being committed and the role that gender plays in the ways in which the genocide is being carried out.

A. ISIS Intends to Destroy the Yazidi Religious and Ethnic Minority as a Group, in Whole or in Part

The first step in establishing whether genocide is occurring is to identify the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group. This specific genocidal intent can be inferred from a number of factors, including the acts committed, the general context in which the acts took place, and statements by alleged perpetrators.<sup>70</sup>

ISIS has committed horrific acts of abuse against Yazidi women and girls. They have been systemically captured, killed, separated from their families, forcibly transferred and displaced, sold and gifted (and resold and re-gifted), raped, tortured, held in slavery and sexual slavery, forcibly married and forcibly converted.<sup>71</sup> They have been specifically targeted for these abuses based on the fact that they are female and Yazidi.<sup>72</sup> The abhorrence of these acts, their destructive nature and the scale in which they are inflicted on Yazidi women and girls make clear ISIS’s manifest pattern of intentionally destroying Yazidis as a group.

The context of these abuses only further makes this point clear. The crimes against Yazidi women are carried out on the basis of their religious identity, which ISIS considers to be pagan and deviant.<sup>73</sup> Additionally, it must not be overlooked that several crimes are being perpetrated against these victims at any given time.

Further, ISIS has specifically engineered its treatment of Yazidi women and girls according to their age, marital status and perceived physical desirability. Numerous Yazidi witnesses have provided credible and consistent accounts about separate incidents and attack, evincing a sinister and appalling system of gender-specific abuse.

Moreover, ISIS’s systematized pattern of abuse is disproportionately carried out against Yazidis. In March 2015, the UN High Commissioner of Human Rights noted that of the approximately 3,000 people still in ISIS captivity, most are Yazidi.<sup>74</sup>

Finally, ISIS’s intent to destroy Yazidis by attacking women and girls is evident from their own admissions. ISIS publications explicitly question why the Yazidi population still exists and has not yet been killed or converted to Sunni Islam:

Their [Yazidi] continual existence to this day is a matter that Muslims should question as they will be asked about it on Judgment Day, considering that Allah had . . . said ‘And when the sacred months have passed, then kill the mushkrikin wherever you kind them, and capture them, and besiege them, and sit and wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way.’<sup>75</sup>

ISIS specifically highlights that their treatment of Yazidis is different than their treatment of what they call “people of the book” (Jews and Christians), in that ISIS refuses Yazidis the option of paying a special tax to avoid being killed or forcibly converted.<sup>76</sup> In ISIS’s eyes, and in their own words, Yazidis are “merely property which can be disposed of.”<sup>77</sup>

ISIS’s denial of the right to exist or intent to destroy in whole or in part the Yazidis as a religious minority has been recognized by the UN’s High Commissioner of Human Rights,<sup>78</sup> the Independent International Commission of Inquiry on the Syrian Arab Republic,<sup>79</sup> the United States Holocaust Memorial Museum,<sup>80</sup> and the United States Commission on International Religious Freedom.<sup>81</sup>

#### B. ISIS is Killing Elderly Yazidi Women

In addition to the chapeau element of intent to destroy, genocide can be committed by the killing of one or more persons belonging to a particular group.<sup>82</sup>

As detailed above, ISIS has a practice of capturing Yazidi women and girls and subjecting them to unimaginable horrors, including sexual slavery and forced pregnancy. However, elderly Yazidi women are perceived to be unfit for sexual slavery because they are unable to bear children and new generations of jihadis, and as such they are instead simply killed. At least one mass grave of Yazidi mothers and grandmothers found after the liberation of Sinjar indicate that ISIS may be committing genocide by killing elderly Yazidi women.

#### C. ISIS is Causing Serious Bodily and Mental Harm to their Female Captives

In addition to the chapeau element of intent to destroy, causing serious bodily or mental harm to one or more persons belonging to a particular group constitutes genocide.<sup>83</sup>

Following the *Akayesu* decision in the International Criminal Tribunal for Rwanda (ICTR), rape and sexual violence can be construed as serious bodily and mental harm.<sup>84</sup> In fact, the court in *Akayesu* stated, “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 to inflict harm on the victim as . . . she suffers both physically and mentally.”<sup>85</sup> The International Court of Justice has also acknowledged that rape and other crimes of sexual violence can constitute a form of genocide, namely by causing serious bodily harm.<sup>86</sup>

In addition to rape, forced impregnation causes “serious mental harm” to members of the group by forcing women to carry and bear the children of their attackers.<sup>87</sup> For example, victims who are made pregnant by rape in this context may be traumatized and so psychologically scarred by the pregnancy that they are unable to have normal sexual or childbearing experiences with their own people.<sup>88</sup> Further, forced impregnation can cause

serious bodily injury, especially when victims are young, unable to support a healthy pregnancy and unable to receive adequate medical care.<sup>89</sup>

Courts have also interpreted forced displacement as causing serious mental harm sufficient to constitute genocide.<sup>90</sup>

ISIS practices systemic methods of capture, forced displacement, rape and sexual slavery, forced impregnation, torture, forced marriage, forced conversion and other practices against Yazidi women and girls that may cause serious bodily or mental suffering. Furthermore, countless reports by UN entities, independent commissions, non-governmental agencies and corroborated testimonies of victims that have fled demonstrate the massive displacement cause by ISIS. Taken together, these factors provide evidence to reasonably confirm that ISIS is committing genocide against the Yazidis by inflicting serious bodily and mental harm on Yazidi women and girls.

D. *ISIS is Deliberately Inflicting on Yazidi Women and Girls Conditions of Life Intended to Bring About the Physical Destruction of Yazidis*

The deliberate infliction of conditions of life calculated to bring about physical destruction, when combined with the chapeau element of intent to destroy, constitutes genocide.<sup>91</sup>

The ICTR in *Akayesu* found that such conditions “include methods that do not immediately kill members of a group, but which, ultimately, seek their physical destruction.”<sup>92</sup> These may include deliberate deprivation of resources essential to survival or systemic expulsion from homes.<sup>93</sup>

Further, the ICTR has found that rape can constitute a condition of life calculated to bring about the physical destruction of a group.<sup>94</sup> Policies of rape and sexual slavery such as ISIS’s are particularly damaging in cultures where a woman is not considered marriageable if she has been raped or has carried a child by another man because the religion emphasizes virginity and chastity before marriage.<sup>95</sup>

This is the case in Yazidi culture. According to Yazidi customs, sexual relations or marriage with members of other faiths are not permitted and are considered shameful to the whole family.<sup>96</sup> After the first girls and women escaped ISIS captivity, Yazidi spiritual leader Baba Sheikh called on members of the Yazidi community not to punish or ostracize victims of sexual violence or forced conversion.<sup>97</sup> However some reports indicate that the stigma remains, with survivors keeping abuses they suffered secret from their families and being concerned about the negative social consequences and future of these women and girls.<sup>98</sup>

Accordingly, ISIS’s systemic rape, sexual slavery and forced marriage of Yazidi women and girls may constitute genocide by deliberately inflicting conditions of life intended to bring about the destruction of Yazidis.

E. *ISIS is Imposing Measures Intended to Prevent Births Within the Yazidi People*

Genocide can also be perpetrated through the imposition of measures intended to the prevent births of persons belonging to a particular group, when committed with the chapeau element of intent to destroy.<sup>99</sup>

Separation of the sexes, rape, forced birth control and obstacles to marriage can each constitute measures intended to prevent births within a group.<sup>100</sup> More specifically, in Yazidi society, where membership of the group is determined by the identity of *both* parents, prevention of births happens when Yazidi women and girls are separated from their husbands and other Yazidi men. Births are further prevented when women and girls are raped, subsequently stigmatized within their own group (see above) and forcibly impregnated by ISIS fighters. Finally, births within the Yazidi group are prevented when Yazidi women pregnant with Yazidi children are forced to undergo abortions, eliminating a chance for Yazidi heirs.

As such, ISIS may be committing genocide against Yazidis by imposing measures on Yazidi women and girls intended to prevent births within the group.

F. *ISIS is Forcibly Transferring Yazidi Children to Another Group*

In addition to the chapeau element of intent to destroy, forcibly transferring children (persons under 18-years-old) from their racial, national, ethnical or religious group to another group, constitutes genocide.<sup>101</sup>

The term ‘forcibly’ is not restricted to physical force, but also includes threats of force or coercion, such as by fear of violence, duress, detention, psychological oppression, abuse of power or a coercive environment.<sup>102</sup>

Whether by physical force, threats or taking advantage of a coercive environment, ISIS fighters routinely and systemically separate Yazidi girls under the age of 18 from Yazidi women and sell or gift them to ISIS leaders or other fighters. Once transferred and in captivity, many of the men in ISIS force these girls to convert to Islam.

This system and practice indicates that ISIS is committing genocide by transferring Yazidi girls to Islamic terrorists.

III. *There is Evidence that ISIS is Committing Crimes Against Humanity and War Crimes Against Yazidi Women and Girls*

In addition to carrying out attacks against Yazidi women and girls with the genocidal intent to destroy their group, ISIS’s gender-based atrocities constitute war crimes and crimes against humanity.

Under the Rome Statute, crimes against humanity occur when certain acts are “committed as part of a widespread or systematic attack” that is “directed against any civilian population.”<sup>103</sup>

ISIS’s crimes against Yazidi women and girls meet these criteria: they are committed as part of a widespread and systematic attack against Yazidi women and girls across Iraq and Syria.<sup>104</sup> Specifically, Yazidi women and girls are systematically captured, separated, deported and enslaved, with their subsequent treatment based on their age and marital status.<sup>105</sup> Resulting from this well-established system are thousands of Yazidi women and girls in ISIS captivity, facing repeated forcible transfer, enslavement, sexual violence, torture, persecution as well as other international crimes.<sup>106</sup>

The Rome Statute defines war crimes as acts that occur in “the context of and [are] associated with an international armed conflict.”<sup>107</sup>

Under this definition, ISIS’s attacks on Yazidi women and girls constitute war crimes. They are carried out in the context of an international armed conflict between ISIS in Iraq and Syria, the Syrian Government, opposition groups within Syria, as well as a growing coalition of states attacking ISIS from the air (the US, UK, France and Russia).<sup>108</sup> Additionally, the ISIS fighters carrying out heinous crimes against Yazidi women and girls are and claim to be just that: fighters. Their presence in Iraq and Syria is predicted in the context of conflict and on the hopes of creating a broader war between Islam and the west.<sup>109</sup> In other words, these fighters are aware of the fact that they are, and indeed desire to be, committing their atrocities against Yazidi women and girls in the context of an international armed conflict.

These foundational elements (“chapeau” elements) of crimes against humanity and war crimes are present in each of the crimes listed below.

A. *ISIS is Forcibly Transferring Yazidi Women and Girls*

The deportation or forcible transfer of a population is a crime against humanity and war crime under the Rome Statute.<sup>110</sup> For the crime to be completed, the perpetrator must have deported or forcibly displaced one or more persons from a place in which they are lawfully present by coercive acts.<sup>111</sup> What are considered “forcible acts” includes both physical force as well as threats of force or coercion.<sup>112</sup>

As detailed above, ISIS practices a routine and efficient system of capture and forced transfer of Yazidi women and girls. After they are captured from their homes and villages, the women and girls are divided according to age, marital status and other characteristics and are repeatedly transferred around ISIS-controlled areas in Iraq and Syria. Some victims report being transferred up to 10 different times while in ISIS captivity.<sup>113</sup> Furthermore, ISIS’s attacks have led to the widespread displacement of civilians from their homes, villages and regions. For example, in August 2014 alone, ISIS deported several thousand Yazidis from Nineveh province in Iraq.<sup>114</sup>

B. *ISIS Enslaves Yazidi Women and Girls*

The Rome Statute criminalizes “enslavement” as a crime against humanity, and “confinement” as a war crime.<sup>115</sup> Whereas enslavement is “the exercise of any or all of the powers attaching to the right of ownership over a person,” confinement has a lower threshold and only requires that a perpetrator “confine or continue to confine one or more persons to a certain location.”<sup>116</sup>

Enslavement can include forced labor and trafficking, particularly that of women and children,<sup>117</sup> and courts look at several factors in determining if the crime is completed, including: “the 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, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.”<sup>118</sup>

Enslavement is also interpreted to include sexual slavery when the act of ownership is “of a sexual nature.”<sup>119</sup> Such acts include detention in rape camps, forced marriage and “other practices involving the treatment of women as chattel.”<sup>120</sup>

By and through ISIS’s systematized capture, separation, sale and/or gifting of Yazidi women and girls, its practice of enslavement and confinement is widely evident. The group has even publically acknowledged enslaving Yazidi women and girls, viewing them as spoils of war. When ISIS fighters cannot afford or do not want to pay the price for a slave (prices range with some women reporting they were sold for as much as \$2,000<sup>121</sup>), they instead marry them by force. Once sold, gifted or married, Yazidi captives are confined to the home and not allowed outside unless accompanied by a close male relative. Those who have escaped ISIS captivity widely report they were sexual abused, raped and forced to witness other captives be abused.<sup>122</sup>

### C. ISIS Subjects Yazidi Women and Girls to Sexual and Gender-Based Violence

The sexual and gender-based violence orchestrated by ISIS fighters against Yazidi women and girls constitutes the crimes of rape, forced pregnancy, forced marriage, forced prostitution and forced abortion under the Rome Statute.

#### 1. *ISIS Rapes Yazidi Women and Girls*

Under the Rome Statute, rape (a crime against humanity and war crime) occurs when a perpetrator invades the body of a person by force, threat of force or coercion.<sup>123</sup> Particularly relevant in the context of ISIS’s capture of Yazidis, international courts have determined that “coercion may be inherent in certain circumstances, such as armed conflict.”<sup>124</sup>

Almost ubiquitously, Yazidi women and girls that have escaped ISIS captivity report either being raped or forced to witness others being raped and report living in constant fear of sexual violence at the hands of ISIS fighters. These rapes occur individually, in groups, against adults and against young children.<sup>125</sup> They are carried out as part of the spiritual journey of ISIS fighters, are encouraged by ISIS leaders and are performed in efforts to turn Yazidi victims into Muslims.<sup>126</sup>

#### 2. *ISIS Forcibly Impregnates Yazidi Women and Girls*

The Rome Statute outlaws forced pregnancy as a crime against humanity and war crime.<sup>127</sup> “Forced pregnancy” is “the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.”<sup>128</sup>

Capture, confinement, rape and forcible impregnation are central to ISIS’s efforts to destroy the Yazidi religious community. Survivors of this system of sexual slavery repeatedly report ISIS fighters’ statements that they want to impregnate Yazidi women and girls not only to eliminate the option of having a Yazidi child, but also to create a new generation of Islamic terrorists and further the Caliphate.<sup>129</sup>

### 3. *ISIS Subjects Yazidi Women and Girls to Enforced Prostitution*

Enforced prostitution is a crime against humanity and a war crime under the Rome Statute.<sup>130</sup> To commit enforced prostitution, a perpetrator must have “caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion” and must have received or expected a pecuniary or other advantage.<sup>131</sup>

As addressed throughout this document, ISIS practices a highly systematized and calculated system of slavery and sexual slavery in which ISIS fighters sell and re-sell, gift and re-gift, and otherwise barter for ownership and sexual exploitation of Yazidi women and girls.

### 4. *ISIS Commits Other Crimes of Comparable Gravity Against Yazidi Women and Girls*

Acts which do not meet the elements of the Rome Statute’s specifically enumerated sexual crimes may still be found to constitute a war crime or a crime against humanity if the act is “sexual violence of comparable gravity”<sup>132</sup> to crimes like rape, forced pregnancy and forced sterilization.<sup>133</sup> International courts have indicated that such forms include forced marriage and forced abortion<sup>134</sup>—two practices ISIS routinely carries out against Yazidi women and girls.<sup>135</sup>

As for the former, ISIS’s system of capture-and-marriage of Yazidi girls and women is central to ISIS’s strategy to subjugate, convert and destroy the Yazidi group. Furthermore, in light of the fact that within Yazidi culture marriage with other faiths is considered to be shameful, this practice can have long-term consequences for victims. The latter, forced abortion, is carried out with the intent to deprive future Yazidis from being born. Adding to the gravity of this crime is the brutality with which it is carried out, including through invasive medical examinations and ruthless abortions of Yazidi women found to be pregnant.<sup>136</sup> Accordingly, these crimes should be included in any investigation of ISIS’s gender-based crimes.

#### D. *ISIS Tortures, Willfully Causes Suffering, and Commits Outrages on the Personal Dignity of Yazidi Women and Girls*

Torture is a crime against humanity and war crime under the Rome Statute, occurring when a perpetrator inflicts “severe physical or mental pain or suffering.”<sup>137</sup> The crime against humanity of torture requires that the victim be “in the custody or under the control” of the perpetrator,<sup>138</sup> while the war crime requires that the perpetrator act “for any reason based on discrimination of any kind.”<sup>139</sup> In addition to torture, “willfully causing suffering” and “outrages upon personal dignity” constitute war crimes under the Rome Statute.<sup>140</sup>

International courts and human rights bodies have repeatedly found that rape and sexual violence cause severe physical and mental pain and suffering and can constitute torture, willfully causing suffering and outrages to personal dignity.<sup>141</sup> Courts have further acknowledged that rape can be used for purposes of, amongst other things, degradation, humiliation and discrimination.<sup>142</sup>

ISIS's rapes, forced pregnancies, forced abortions, forced marriages, forced conversions, beatings and threats cause unthinkable physical and mental pain, suffering and humiliation of Yazidi women and girls. In addition to living through the horror of the initial trauma, victims that have escaped ISIS captivity report continued emotional distress and fear of stigmatization by their family and community.<sup>143</sup> Many victims also report attempts to commit suicide in efforts to avoid any number of atrocities committed while under the control of and in the custody of ISIS fighters.<sup>144</sup>

E. *ISIS Persecutes Yazidi Women on Girls on the Basis of their Gender*

The “intentional and severe deprivation of fundamental rights contrary to international law,”<sup>145</sup> is the crime against humanity of persecution under the Rome Statute.<sup>146</sup> Perpetrators must have targeted victims “by reason of the identity of the group or collectivity”<sup>147</sup> and must have been based on a specifically enumerated ground—one of which is gender.<sup>148</sup>

Fundamental rights include those laid out in Universal Declaration on Human Rights of 1948 and other international human rights instruments.<sup>149</sup> Included in these rights are the rights to be free from slavery, torture and sexual violence.<sup>150</sup> In fact, international courts have convicted perpetrators for persecution based on acts of sexual violence, including Todorović, Kvočka, Prcać, Kos, Radić, Žigić, Sikirica, Simić, Plavšić, Stakić, Nikolić, Brđanin, Nahimana, Barayagwiza and Ngeze.<sup>151</sup>

Thousands of Yazidi women and girls have been captured, killed, separated, forcibly transferred, sold and gifted into slavery and sexual slavery, raped, forcibly married and converted, forcibly impregnated, had abortions against their will, tortured and otherwise subjected to deplorable treatment specifically designed for them because of their gender. The International Independent Commission of Inquiry on the Syrian Arab Republic has found that their crimes “demonstrate discriminatory treatment on the basis of gender.”<sup>152</sup>

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<sup>1</sup> Independent International Commission of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, ¶ 53-55 (Nov. 14, 2014) [hereinafter Syria COI, *Rule of Terror*]. See also Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, U.N. Doc. A/HRC/30/48 (Aug. 13, 2015) [hereinafter Syria COI, A/HRC/30/48]; Human Rights Council, *Report of the Office of the United Nations Commissioner for Human Rights on the Human Rights Situation in Iraq in the Light of the Abuses Committed by the So-called Islamic State in Iraq and the Levant and Associated Groups*, U.N. Doc. A/HRC/28/18 (Mar. 13, 2015) [hereinafter OHCHR]; Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, U.N. Doc. A/HRC/28/69 (Feb. 5, 2015) [hereinafter Syria COI, A/HRC/28/69].

<sup>2</sup> OHCHR, *supra* note 1, at ¶ 36.

<sup>3</sup> Lucy Westcott, *More Yazidi Mass Graves Discovered Near Sinjar by Iraqi Officials*, NEWSWEEK (Nov. 30, 2015, 12:09 PM), <http://www.newsweek.com/more-yazidi-mass-graves-discovered-near-sinjar-iraqi-officials-399446>; Reuters, *Iraq: Yazidi Mass Grave Discovered in Sinjar*, THE GUARDIAN (Nov. 15, 2015), <http://www.theguardian.com/world/2015/nov/15/iraq-yazidi-mass-grave-sinjar-kocho>; Sophia Barbarani, *Mass Graves ‘of Yazidi Women’ Found Near Sinjar*, THE TELEGRAPH UK (Nov. 16, 2015, 8:22 AM), <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/11997164/Mass-graves-of-Yazidi-women-found-near-Sinjar.html>.

<sup>4</sup> OHCHR, *supra* note 1, at ¶ 36.

- <sup>5</sup> Rukmini Callimachi, *ISIS Enshrines a Theology of Rape*, N.Y. TIMES (Aug. 13, 2015), [http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html?\\_r=0](http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html?_r=0).
- <sup>6</sup> OHCHR, *supra* note 1, at ¶ 36.
- <sup>7</sup> *Id.*
- <sup>8</sup> *The Revival of Slavery Before the Hour*, 4 DABIQ MAGAZINE 14-17.
- <sup>9</sup> Middle E. Media Res. Inst., *Islamic State (ISIS) Releases Pamphlet on Female Slaves* (Dec. 4, 2014), <http://www.memrijttm.org/islamic-state-isis-releases-pamphlet-on-female-slaves.html>; Human Rights Watch, *Iraq: ISIS Escapees Describe Systematic Rape* (Apr. 14, 2015), <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>.
- <sup>10</sup> *The Revival of Slavery Before the Hour*, *supra* note 8, at 15.
- <sup>11</sup> *Id.*
- <sup>12</sup> Callimachi, *supra* note 5.
- <sup>13</sup> OHCHR, *supra* note 1, at ¶ 37.
- <sup>14</sup> *Id.*; Atika Shubert & Bharati Naik, *ISIS Forced Pregnant Yazidi Women to Have Abortions*, CNN (Oct. 6, 2015, 9:38 AM), <http://www.cnn.com/2015/10/06/middleeast/pregnant-yazidis-forced-abortions-isis>.
- <sup>15</sup> OHCHR, *supra* note 1, at ¶ 37; Shubert & Naik, *supra* note 14.
- <sup>16</sup> OHCHR, *supra* note 1, at ¶ 37.
- <sup>17</sup> *Id.*
- <sup>18</sup> Seivan M. Salim, *The Yazidi Women Who Escaped ISIS*, THE DAILY BEAST (2015), <http://www.thedailybeast.com/longforms/2015/isis/portraits-of-the-yazidi-women-who-escaped-isis.html>.
- <sup>19</sup> OHCHR, *supra* note 1, at ¶ 36, fn. 6; Human Rights Watch, *supra* note 9.
- <sup>20</sup> OHCHR, *supra* note 1, at ¶ 37.
- <sup>21</sup> Salim, *supra* note 18; Amnesty Int'l, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq* 5 (Dec. 2014), [http://www.amnesty.org.uk/sites/default/files/escape\\_from\\_hell\\_-\\_torture\\_and\\_sexual\\_slavery\\_in\\_islamic\\_state\\_captivity\\_in\\_iraq\\_-\\_english\\_2.pdf](http://www.amnesty.org.uk/sites/default/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_-_english_2.pdf).
- <sup>22</sup> Amnesty Int'l, *supra* note 21, at 5.
- <sup>23</sup> Salim, *supra* note 18. *See also* Syria COI, *Rule of Terror*, *supra* note 1, at ¶¶ 55 & 57.
- <sup>24</sup> Human Rights Watch, *supra* note 9.
- <sup>25</sup> Syria COI, A/HRC/30/48, *supra* note 1, at ¶ 60.
- <sup>26</sup> *Id.*
- <sup>27</sup> *Id.*
- <sup>28</sup> Human Rights Watch, *supra* note 9.
- <sup>29</sup> Callimachi, *supra* note 5.
- <sup>30</sup> Human Rights Watch, *supra* note 9.
- <sup>31</sup> *Id.*
- <sup>32</sup> Shubert & Naik, *supra* note 14; Nick Gutteridge, *ISIS Tells Fighters to Gang Rape Women Saying Sex with Multiple Jihadis Makes them Muslim*, EXPRESS UK (Oct. 9, 2015, 8:16 AM), <http://www.express.co.uk/news/world/610940/Islamic-State-ISIS-terrorists-gang-rape-women-Yazidi-convert-Islam-al-Baghdadi>.
- <sup>33</sup> Human Rights Watch, *supra* note 9; Salim, *supra* note 18; Amnesty Int'l, *supra* note 21, at 6.
- <sup>34</sup> OHCHR, *supra* note 1, at ¶ 38.
- <sup>35</sup> *Id.*
- <sup>36</sup> *Id.*
- <sup>37</sup> *Id.*
- <sup>38</sup> Human Rights Watch, *supra* note 9.
- <sup>39</sup> Middle E. Media Res. Inst., *supra* note 9.
- <sup>40</sup> Amnesty Int'l, *Iraq: Yazidi Women and Girls Face Horrowing Sexual Violence* (Dec. 23, 2014), <https://www.amnesty.org/en/latest/news/2014/12/iraq-yezidi-women-and-girls-face-harrowing-sexual-violence>; OHCHR, *supra* note 1, at ¶ 40.
- <sup>41</sup> Middle E. Media Res. Inst., *supra* note 9.
- <sup>42</sup> Salim, *supra* note 18.
- <sup>43</sup> Human Rights Watch, *supra* note 9.
- <sup>44</sup> *Id.*
- <sup>45</sup> *Id.*
- <sup>46</sup> Amnesty Int'l, *supra* note 21, at 6.
- <sup>47</sup> *See* Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 57.

- <sup>48</sup> Human Rights Watch, *supra* note 9.
- <sup>49</sup> Sara Malm & Jay Akbar, “*The Virgins Were Taken To A Room With 40 Men. They Lined Us Up And Pointed Who They Wanted*”: *Yazidi Girl, 17, Made Pregnant By ISIS Fighter Reveals Her Nine-Month Ordeal As A Jihadi Sex Slave*, DAILY MAIL (May 29, 2015, 2:26 AM), <http://www.dailymail.co.uk/news/article-3099560/The-virgins-taken-room-40-men-lined-pointed-wanted-Yazidi-girl-17-pregnant-ISIS-fighter-reveals-nine-month-ordeal-jihadi-sex-slave.html#ixzz3s38p2ONh..>
- <sup>50</sup> Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 55.
- <sup>51</sup> *The Revival of Slavery Before the Hour*, *supra* note 8, at 16.
- <sup>52</sup> Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 55.
- <sup>53</sup> OHCHR, *supra* note 1, at ¶ 20.
- <sup>54</sup> Syria COI, A/HRC/30/48, *supra* note 1, at ¶ 60.
- <sup>55</sup> Human Rights Watch, *supra* note 9; Salim, *supra* note 18.
- <sup>56</sup> Shubert & Naik, *supra* note 14.
- <sup>57</sup> *Id.*
- <sup>58</sup> OHCHR, *supra* note 1, at ¶ 41.
- <sup>59</sup> *Id.*
- <sup>60</sup> *Id.*
- <sup>61</sup> *Id.* at ¶ 39.
- <sup>62</sup> *Id.*
- <sup>63</sup> Syria COI, A/HRC/28/69, *supra* note 1, at ¶ 70.
- <sup>64</sup> OHCHR, *supra* note 1, at ¶¶ 35, 38, 45 & 76; Syria COI, A/HRC/30/48, *supra* note 1, at ¶¶ 115-117; Human Rights Watch, *supra* note 9; Amnesty Int’l, *supra* note 21, at 5.
- <sup>65</sup> Syria COI, A/HRC/28/69, *supra* note 1, at ¶ 188; Syria COI, A/HRC/30/48, *supra* note 1, at ¶¶ 114-117; Human Rights Watch, *supra* note 9; Amnesty Int’l, *Escape from Hell*, *supra* note 21; Salim, *supra* note 18.
- <sup>66</sup> Human Rights Watch, *supra* note 9.
- <sup>67</sup> *See* Salim, *supra* note 18.
- <sup>68</sup> Y. Yehoshua, R. Green & A. Argon, *Sex Slavery in the Islamic State Practices, Social Media Discourse, and Justifications Jabhat Al-Husra: ISIS is Taking Our Women as Sex Slaves Too*, MIDDLE E. MEDIA RES. INST. (Aug. 17, 2015), [http://www.memrijttm.org/content/view\\_print/report/8708](http://www.memrijttm.org/content/view_print/report/8708).
- <sup>69</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3, art. 6 [hereinafter Rome Statute].
- <sup>70</sup> Prosecutor v. Jelusic, Case No. IT-95-10-A, Judgment, ¶ 47 (Int’l Crim. Trib. For the Former Yugoslavia, July 5, 2001); Prosecutor v. Krstic, Case No. IT-98-33-A, ¶ 41 (Int’l Crim. Trib. For the Former Yugoslavia, Apr. 19, 2004). *See also* U.S. Holocaust Mem’l Museum, “*Our Generation is Gone*,” *The Islamic State’s Targeting of Iraqi Minorities in Ninewa* 20-21 (2015), <http://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf>.
- <sup>71</sup> *See* Amnesty Int’l, *supra* note 21; Syria COI, A/HRC/28/69, *supra* note 1; Syria COI, A/HRC/30/48, *supra* note 1; OHCHR, *supra* note 1; Syria COI, *Rule of Terror*, *supra* note 1; Human Rights Watch, *supra* note 9.
- <sup>72</sup> Syria COI, A/HRC/30/48, *supra* note 1, at ¶ 115.
- <sup>73</sup> *Id.*; Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 37.
- <sup>74</sup> OHCHR, *supra* note 1, at ¶ 20.
- <sup>75</sup> *The Revival of Slavery Before the Hour*, *supra* note 8, at 14.
- <sup>76</sup> *Id.* at 15.
- <sup>77</sup> Yehoshua, Green & Argon, *supra* note 68.
- <sup>78</sup> OHCHR, *supra* note 1, at ¶ 17.
- <sup>79</sup> Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 57.
- <sup>80</sup> U.S. Holocaust Memorial Museum, *supra* note 70, at 20-21.
- <sup>81</sup> U.S. Comm’n on Int’l Religious Freedom, *USCIRF Statement on the Designation of Victims of Genocide Persecution, and Crimes Against Humanity in Syria and Iraq* (Dec. 7, 2015), <http://www.uscirf.gov/news-room/press-releases/uscirf-statement-the-designation-victims-genocide-persecution-and-crimes>.
- <sup>82</sup> International Criminal Court, Elements of Crimes, art. 6(a), 2011 [hereinafter Elements].
- <sup>83</sup> Elements, *supra* note 82, at art. 6(b).
- <sup>84</sup> Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Int’l Crim. Trib. for Rwanda, Sept. 2, 1998); Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Judgment (Int’l Crim. Trib. for Rwanda, June 17, 2004); Prosecutor v. Muhimana, Case No. ICTR- 95-1B-T, Judgment ¶ 494, 502 & 513 (Int’l Crim. Trib. for Rwanda, April 28, 2005).
- <sup>85</sup> *Akayesu*, Case No. ICTR-96-4-T, at ¶ 731.

- <sup>86</sup> *Bosnia & Herzegovina v. Serbia & Montenegro*, Preliminary Objections, ¶ 319, 2007 I.C.J. 1 (Feb. 26).
- <sup>87</sup> Siobhan K. Fisher, *Occupation of the Womb: Forced Impregnation as Genocide*, 46 DUKE L.J. 91, 122 (1996).
- <sup>88</sup> *Id.*
- <sup>89</sup> *Id.*, at 123.
- <sup>90</sup> Prosecutor v. Blagojević & Jokić, Case No. IT-02-60-T, Judgment ¶ 650 (Int'l Crim. Trib. for the Former Yugoslavia, Jan. 17, 2005).
- <sup>91</sup> Elements, *supra* note 82, at art. 6(c).
- <sup>92</sup> *Akayesu*, Case No. ICTR-96-4-T, at ¶ 505.
- <sup>93</sup> Elements, *supra* note 82, at art. 6(c)-4, fn. 4.
- <sup>94</sup> Prosecutor v. Kayishema & Ruzindana, Case No. ICTR-95-1-T, Judgment ¶ 116 (Int'l Crim. Trib. for Rwanda, May 21, 1999).
- <sup>95</sup> Fisher, *supra* note 87, at 123.
- <sup>96</sup> Amnesty Int'l, *supra* note 21, at 13.
- <sup>97</sup> *Id.*
- <sup>98</sup> *Id.*
- <sup>99</sup> Elements, *supra* note 82, at art. 6(d).
- <sup>100</sup> *Akayesu*, Case No. ICTR-96-4-T, at ¶ 507 & 508; Diane Lupig, *Investigation and Prosecution of Sexual and Gender-Based Crimes Before the International Criminal Court*, 17(2) J. of Gen., Soc. Pol. & the Law 433, 452 fn. 120 (2009); Fisher, *supra* note 87, at 93.
- <sup>101</sup> Elements, *supra* note 82, at art. 6(e).
- <sup>102</sup> *Id.* at art. 6(e), fn. 5.
- <sup>103</sup> Rome Statute, *supra* note 69, at art. 7(1).
- <sup>104</sup> OHCHR, *supra* note 1, at ¶ 41; Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 47-57.
- <sup>105</sup> OHCHR, *supra* note 1, at ¶ 36.
- <sup>106</sup> *Id.* at ¶¶ 20 & 35.
- <sup>107</sup> See Elements, *supra* note 82, at art. 8(2).
- <sup>108</sup> See Syria COI, A/HRC/28/69, *supra* note 1; Mathew Weaver & Julian Borger, *Syria Airstrikes: Everything You Need to Know*, THE GUARDIAN (Dec. 1, 2015), <http://www.theguardian.com/politics/2015/dec/01/syria-airstrikes-everything-you-need-to-know>.
- <sup>109</sup> See Graeme Wood, *What ISIS Really Wants*, THE ATLANTIC (Mar. 2015), <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980>.
- <sup>110</sup> Rome Statute, *supra* note 69, at arts. 7(1)(d) & 8(2)(a)(vii).
- <sup>111</sup> Elements, *supra* note 82, at arts. 7(1)(d) & 8(2)(a)(vii)-1.
- <sup>112</sup> *Id.* at art. 7(1)(d), fn. 12.
- <sup>113</sup> OHCHR, *supra* note 1, at ¶ 36.
- <sup>114</sup> Human Rights Watch, *supra* note 9.
- <sup>115</sup> Rome Statute, *supra* note 69, at arts. 7(1)(c) & 8(2)(a)(vii).
- <sup>116</sup> *Id.* at art. 8(2)(a)(vii)-2.
- <sup>117</sup> Elements, *supra* note 82, at art. 7(1)(c), fn. 11.
- <sup>118</sup> Prosecutor v. Kunarac, Kovač & Vuković, Case Nos. IT-96-23-T & IT-96-23/1-T, Judgment ¶ 543 (Int'l Crim. Trib. for the Former Yugoslavia, Feb. 22, 2001) (internal citations omitted).
- <sup>119</sup> *Kunarac, Kovač & Vuković*, Case Nos. IT-96-23-T & IT-96-23/1-T, at ¶¶ 541 & 573-74. Under the Rome Statute, “sexual slavery” constitutes a crime against humanity as well as a war crime. Rome Statute, *supra* note 69, at arts. 7(1)(g) & 8(2)(b)(xxii). See also Elements, *supra* note 82, at arts. 7(1)(g)-2 & 8(2)(b)(xxii)-2.
- <sup>120</sup> Gay J. McDougall (Special Rapporteur on the Issue of Systematic Rape and Sexual Slavery Practices in Armed Conflict), *Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict*, ¶ 8, U.N. Doc. E/CN.4/Sub.2/1998/13 (June 22, 1998).
- <sup>121</sup> Human Rights Watch, *supra* note 9.
- <sup>122</sup> *Id.*
- <sup>123</sup> Elements, *supra* note 82, at arts. 7(1)(g)-1 & 8(2)(b)(xxi).
- <sup>124</sup> *Akayesu*, Case No. ICTR-96-4-T, at ¶ 688.
- <sup>125</sup> Amnesty Int'l, *supra* note 40; Yazda & Free Yezidi Foundation, *ISIL: Nationals of ICC States Parties Committing Genocide and Other Crimes against the Yazidis* 11 (Sept. 2015).
- <sup>126</sup> Callimachi, *supra* note 5; Shubert & Naik, *supra* note 14; Human Rights Watch, *supra* note 9.
- <sup>127</sup> Rome Statute, *supra* note 69, at arts. 7(1)(g) & 8(2)(b)(xxii).
- <sup>128</sup> Rome Statute, *supra* note 69, at art. 7(2)(f).

- <sup>129</sup> OHCHR, *supra* note 1, at ¶¶ 39 & 41.; Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 55; Human Rights Watch, *supra* note 9; Salim, *supra* note 18.
- <sup>130</sup> Rome Statute, *supra* note 69, at arts. 7(1)(g) & 8(2)(b)(xxii).
- <sup>131</sup> Elements, *supra* note 82, at arts. 7(1)(g)-3 & 8(2)(b)(xxii)-3.
- <sup>132</sup> Rome Statute, *supra* note 69, at arts. 7(1)(g) & 8(2)(b)(xxii).
- <sup>133</sup> Elements, *supra* note 82, at art. 7(1)(g)-6 & 8(2)(b)(xxii)-6 (internal citations omitted).
- <sup>134</sup> Prosecutor v. Kvočka et al., Case No. IT-98-30/1-T, Judgment, fn. 343 (Int'l Crim. Trib. for the Former Yugoslavia, Nov. 2, 2001). *See also* Akayesu, Case No. ICTR-96-4-T, at ¶ 697; Prosecutor v. Tadić, Case No. IT-94-1-T, Opinion and Judgment ¶ 730 (Int'l Crim. Trib. for the Former Yugoslavia, May 7, 1997); Prosecutor v. Niyitegeka, Case No. ICTR-96-14-T, Judgment and Sentence ¶¶ 459-67 (Int'l Crim. Trib. for Rwanda, May 16, 2003). Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Judgment ¶ 186 (Int'l Crim. Trib. for the Former Yugoslavia, Dec. 10, 1998).
- <sup>135</sup> Human Rights Watch, *supra* note 9; Shubert & Naik, *supra* note 14.
- <sup>136</sup> Shubert & Naik, *supra* note 14.
- <sup>137</sup> Rome Statute, *supra* note 69, at arts. 7(1)(f), 7(2)(e), 8(2)(a)(ii) & 8(2)(a)(ii)-1.
- <sup>138</sup> *Id.* at art. 7(2)(e).
- <sup>139</sup> Elements, *supra* note 82, at art. 8(2)(a)(ii)-1.
- <sup>140</sup> Rome Statute, *supra* note 69, at arts. 8(2)(a)(iii) & 8(2)(b)(xxi).
- <sup>141</sup> Kunarac, Kovač & Vuković, Case Nos. IT-96-23 & IT-96-23/1-A, at ¶ 150; Prosecutor v. Delalić & Delić, Case No. IT-96-21-T, Judgment ¶¶ 493, 495 & 511 (Int'l Crim. Trib. for the Former Yugoslavia, Nov. 16, 1998); Akayesu, Case No. ICTR-96-4-T, at ¶ 731; Fisher, *supra* note 87, at 122; Anne-Marie L.M. de Brouwer, SUPRANATIONAL CRIMINAL PROSECUTION OF SEXUAL VIOLENCE: THE ICC AND THE PRACTICE OF THE ICTY AND THE ICTR 189 & 196 (2005).
- <sup>142</sup> Akayesu, Case No. ICTR-96-4-T, at ¶ 597.
- <sup>143</sup> Human Rights Watch, *supra* note 9; Amnesty Int'l, *supra* note 40.
- <sup>144</sup> Syria COI, A/HRC/30/48, *supra* note 1, at ¶ 116; Amnesty Int'l, *supra* note 21, at 8; Human Rights Watch, *supra* note 9; Shubert & Naik, *supra* note 14.
- <sup>145</sup> Elements, *supra* note 82, at art. 7(2)(g).
- <sup>146</sup> Rome Statute, *supra* note 69, at art. 7(1)(h).
- <sup>147</sup> Elements, *supra* note 82, at art. 7(2)(g).
- <sup>148</sup> *Id.* at art. 7(1)(h).
- <sup>149</sup> Prosecutor v. Kupreškić et al., Case No. IT-95-16-T, Judgment ¶ 621 (Int'l Crim. Trib. for the Former Yugoslavia, Jan. 14, 2000).
- <sup>150</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), arts. 4 & 5, U.N. Doc. A/810 (1948); Prosecutor v. Blaškić, Case No. IT-95-14-T, Judgment ¶ 220 (Int'l Crim. Trib. for the Former Yugoslavia, Mar. 3, 2000); Kupreškić et al., Case No. IT-95-16-T, at ¶ 615.
- <sup>151</sup> de Brouwer, *supra* note 141, at 158; Prosecutor v. Todorović, Case No. IT-95-9/1-S, Sentencing Judgment ¶ 12 (Int'l Crim. Trib. for the Former Yugoslavia July 31, 2001).
- <sup>152</sup> Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 50.