



**UNITAD**

## **Factual and legal assessment of acts committed by ISIL (Da'esh) in Iraq during the attack on Badush Central Prison on 10 June 2014**

**Attack on Badush Central Prison: from the fall of Mosul and the killing of thousands of persons by ISIL (Da'esh), to the exhumation and return of the bodies of the victims to their families for a dignified burial.**





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## EXECUTIVE SUMMARY

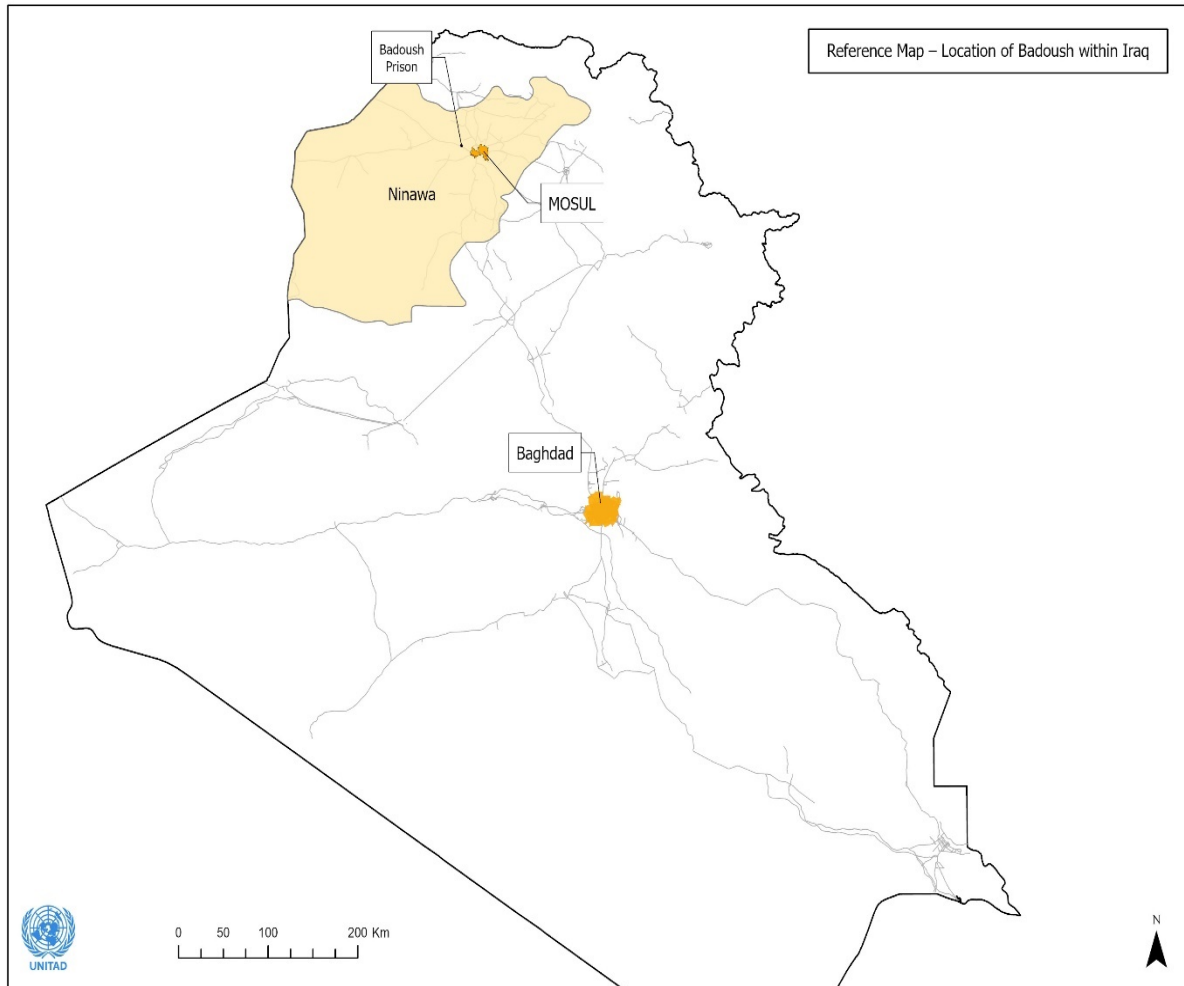
1. On 10 June 2014, ISIL forces attacked the Badush Central Prison near Mosul, where approximately 3,000 prisoners were held. The attack occurred in the early hours of the morning and followed the take-over of Mosul city. Advance notice of ISIL's impending attack on the prison resulted in a state of security chaos, leaving the prison vulnerable for capture. Following the capture, ISIL ultimately separated the prisoners based solely on their religions and, according to available evidence, subsequently executed several hundred Shi'a prisoners at several locations on the same day.
2. The evidence collected by UNITAD demonstrates that, in planning and carrying out the attack on Badush Central Prison and the subsequent crimes against male Badush prisoners – mostly Shi'a – ISIL had called upon local *jihadi* groups for support, including the Ansar al-Sunna group, also known as Ansar al-Islam group. These groups participated in a planning meeting in the morning of 10 June 2014 in Badush village, where they were provided with weapons (assault rifles and machine guns) and vehicles. ISIL also relied on the support of those prisoners released, as well as some of the prison guards, in sharing information about the lay-out of the prison and the composition of the prisoner population, and for the prisoners and some of the guards in directly participating in the prison attack and subsequent acts against the predominantly Shi'a prisoners.
3. During the night of 9 to 10 June 2014, between 50 to 100 ISIL members approached the area surrounding the Badush Central Prison (near the Bawabat el-Sham checkpoint) and commenced fighting with the Iraqi security forces still positioned there. A couple of hours before sunrise, hostilities intensified, and the fighting drew closer to the prison. The prison guards and staff abandoned their posts, despite the orders from their hierarchy to remain.
4. Once the security personnel had left, additional ISIL members and the Ansar al-Sunna group acting under the leadership of ISIL joined the scene. Other ISIL members were already present, having travelled directly from the meeting in Badush village to the prison. Being warned by the absence of prison guards and the noise of heavy fighting nearby the prison, many prisoners were trying to escape. Several prisoners managed to break out of the prison and escape, mostly through the back gate. Whilst some managed to get away, about 60 prisoners were captured by ISIL on the highway. Others were eventually captured by ISIL, up to ten days later, and killed.
5. By the early morning of 10 June 2014, ISIL reached the prison perimeter with no further resistance, entered the prison, took control of the main watch towers and doors, opened the halls of the prison one after another by breaking the door locks and released the prisoners, including female prisoners who were allowed to leave without being asked about their religious affiliation. Male Shi'a prisoners were, however, targeted, and shot at. Some prisoners witnessed scattered killings of Shi'a prisoners by ISIL members – either by shooting, stabbing or beheading – within or in the vicinity of the prison premises. Furthermore, ISIL kept two halls, where Shi'a prisoners were detained, closed. Those prisoners were later taken to a site outside the prison and shot by ISIL members. Other Shi'a prisoners were also taken to different execution sites where they were shot.
6. On 10 June 2014, it is estimated that approximately 1,000 Badush male prisoners – predominantly Shi'a – were executed by ISIL members in at least six locations at different times of the day. For all killings there was the same *modus operandi*, including the separation of Sunni and Shi'a prisoners. As of August 2024, the remains of 632 persons have been excavated from the following locations:



- Hundreds of prisoners were loaded in trucks in front of the prison and brought to the **Badush Valley**, a deserted area located only a few kilometres away from the Badush Central Prison, on the other side of the Tal Afar-Mosul highway.
  - Another group of prisoners were taken in trucks next to the **Badush Cement Factory**, located north-west of Badush village.
  - Other prisoners, who left on their own toward the highway on foot or in vehicles, were captured by ISIL at the **Bawabat el-Sham** checkpoint, located 3-4 kilometres away from the prison, on the highway, and were either killed at this location or taken to Badush Valley and executed there.
  - From Badush Cement Factory and Bawabat el-Sham, several Shi'a prisoners were then taken to **Ayn al-Jahesh**, an ISIL military camp located about 65 kilometres south-west of Mosul, where prisoners were executed.
  - Finally, available information suggests that some other prisoners were executed in several other locations.
7. In conclusion, there are reasonable grounds to believe that the acts committed by ISIL as part of the attack against Badush Central Prison may amount to several international crimes, notably genocide, crimes against humanity and war crimes. In particular, there are reasonable grounds to believe that:
- (i) ISIL maintained a genocidal policy against Shi'as of Iraq, mainly by targeting and killing adult male members of that group and ISIL members participating in the killing operations possessed genocidal intent in relation to some 1,000 adult Shi'a male prisoners executed on and in the days after 10 June 2014;
  - (ii) crimes against humanity were committed through acts of killings and extermination, torture, cruel and inhumane treatment, enforced disappearances (presuming that ISIL can be treated as "political organization" for the purposes of enforced disappearances) and persecution;
  - (iii) war crimes were committed through acts of killings, torture, cruel and inhuman treatment, and outrages upon personal dignity.



## Location of Badush<sup>1</sup> within Iraq



<sup>1</sup> The name of the prison has been spelled multiple ways in both UN and non-UN reports, including “Badush” and “Badoush.”



## 1. PART I – SCOPE AND METHODOLOGY

1. This report presents factual and preliminary legal findings on the attack on the Badush Central Prison near Mosul in the morning of 10 June 2014, following which approximately 1000 predominantly Shi'a male prisoners or more were mentally and physically abused and subsequently killed.
2. The findings in this report are made in accordance with the “reasonable grounds to believe” evidentiary threshold. This standard does not apply to every piecemeal assertion contained in this report. Rather, it only applies to the ultimate findings as to the crimes committed and to the individual criminal responsibility of suspected perpetrators of those crimes.
3. The findings are based on evidence collected by UNITAD and its counterparts until the date of this report, notably: testimonial evidence (including survivor, eyewitness, expert, overview and perpetrator evidence); audio-visual evidence collected mostly from online open sources; forensic evidence and analysis; documentary evidence; and other open-source information. Factual assessments regarding the historical and political background substantially rely on online open-source information. Factual findings regarding crimes and perpetrators rely on a combination of testimonial, audio-visual, forensic and documentary evidence. To the extent possible, such findings rely on corroborated evidence. Where this was unfeasible, findings are made in the conditional (“may have”).
4. The Security Council, in its Resolution 2379 (2017) uses the term “Islamic State in Iraq and the Levant” (ISIL) and clarifies that it is also known as “Da’esh” or “ISIL (Da’esh)” For simplification, this report uses the term “ISIL”. Unless the evidence collected provides a term with a specific meaning (e.g. “gangs” as opposed to “ISIL (Da’esh)” in relation to Mosul’s fall on 10 June 2014) this Report will refer to the entity as “ISIL” while keeping the original term in the reference (ISIL, ISIS, Islamic State, Da’esh ...).

## 2. PART II – HISTORICAL BACKGROUND AND POLITICAL CONTEXT

### 2.1. **ISIL in Iraq, the historic context**

#### 2.1.1. *Emergence and purpose*

5. In 2003, Saddam Hussein’s Ba’athist regime, which had been in power since 1979, was overthrown by coalition forces led by the United States (U.S.). This was followed by a “de-Ba’athification” process by which the newly created Provisional Authority of Iraq dismantled remaining elements of the Ba’ath Party, resulting in the Sunni influence over Iraq’s governmental institutions, including the military, police and administrative structures, being drastically reduced.<sup>2</sup> This process went hand in hand with a growing

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<sup>2</sup> W. Andrew Terrill, Lessons of the Iraqi De-Baathification program for Iraq’s Future and the Arab Revolutions, May 2012, at pp 23-42; International Center for Transitional Justice, A Bitter Legacy: Lessons of De-Baathification in Iraq, March 2013; James P. Pfiffner, US Blunders in Iraq: De-Baathification and Disbanding the Army, Vol. 25,



frustration and anger among the Sunni communities throughout Iraq, which was eventually exploited by jihadi movements including Islamic State in Iraq and the Levant (ISIL), later renamed the Islamic State (IS).<sup>3</sup>

6. ISIL grew out of multiple precursor groups, most importantly the *Jama'at al-Tawhid Wa'l-Jihad* (Community for Monotheism and Holy Struggle) (*Jama'at*), which was founded in Iraq in 2002-2003 by Jordanian national Ahmad Fadil Nazal al-Khalayleh, a.k.a. Abu Mus'ab al-Zarqawi (al-Zarqawi hereafter). *Jama'at* became a major participant in the Iraqi insurgency against the U.S. occupation.<sup>4</sup> On 17 October 2004, after pledging allegiance to Osama bin Laden, al-Zarqawi changed his group's name to '*Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn*' (Al-Qaida Organisation in the Land of the Two Rivers), also known as al-Qaeda in Iraq (AQI).<sup>5</sup> Despite the new name, al-Zarqawi departed from al-Qaeda's prioritization of the "far enemy" (Israel and the U.S.) and focused on the "near enemy".<sup>6</sup> He believed Shi'a Muslims, whom he referred to as "*Rafidites*" (either *Rafidha* or *Rawafidh* in Arabic), should become the main target of the operations launched by an al-Qaeda branch in Iraq.<sup>7</sup> Al-Zarqawi's motivation behind targeting specifically the Shi'a majority population of Iraq was to incite a sectarian war by pitting Sunnis against the Shi'a, and provoke a violent backlash against Sunni communities, which in its turn would galvanize the Sunni communities into an outright confrontation with the Shi'a.<sup>8</sup>
7. Another point of departure with al-Qaeda was that its leadership preferred to remain in hiding,<sup>9</sup> while AQI wanted to be in the open and distinguished itself from other groups by striving to create a state structure, an emirate, in Fallujah in the period of May-November 2004.<sup>10</sup> AQI was also very public in applying very brutal tactics, including video-recording executions of captives through beheadings, and using social media to spread the recorded violence widely and recruit new members. Al-Qaeda did not engage in such tactics, nor did

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No. 1, at pp 76-85, February 2010; Kyle Orton, "Saddam Hussein's Regime Produced the Islamic State", 21 April 2015.

<sup>3</sup> See UN Security Council Resolutions 2170 (2014), 2253 (2015), 2367 (2017), characterizing ISIL as a global terrorist organization. N.B.: to ensure consistency with Security Council resolution 2379 (2017), this report will use the acronym "ISIL" when referring to IS.

<sup>4</sup> Mapping Militant Project, Islamic State.

<sup>5</sup> United Nations Security Council, Sanction Listing: Al-Qaida in Iraq.

<sup>6</sup> Hassan, Hassan, The sectarianism of the Islamic State Ideological Roots and Political Context, Carnegie Endowment for International Peace, June 2016, p. 9.

<sup>7</sup> Has the story of the Rafidites come to you?" (part 1), June 1, 2006. A transcript with timestamps corresponding to the original audio can be found.

<sup>8</sup> "February 2004 Coalition Provisional Authority English translation of terrorist Musab al Zarqawi letter obtained by United States Government in Iraq" Department of State February 2004 [letter was captured in January 2004 with Mustafa Haji Muhammad Khan a.k.a. Hassan Ghul, the AQ courier, called for suicide attacks and car bombings against Shia targets to promote civil war between Sunni and Shia Muslims in Iraq.]

<sup>9</sup> Letter dated 13 April 2011 from the Chair of the Security Council Committee established pursuant to resolution 1267 (1999) concerning AQ and the Taliban and associated individuals and entities addressed to the President of the Security Council containing the Team's eleventh report submitted 11 February 2011 ([S/2011/245](#)).

<sup>10</sup> Truls Hallberg Tønnessen "The group that wanted to be a state: the 'rebel governance' of the Islamic state" in: Islamists and the politics of the Arab uprisings 2018, pages 54-69. [citing experience in Afghanistan and application of state theory in 2004 battle for Fallujah].



it use social media for recruitment or any other purpose.<sup>11</sup> After U.S. forces killed al-Zarqawi in 2006, Abu Hamza al-Muhajir and other AQI associates formed the Islamic State of Iraq (ISI) under the leadership of Hamid Dawud Mohamed Khalil al-Zawi, a.k.a. Abu Omar al-Baghdadi.<sup>12</sup> Abu Omar al-Baghdadi and his associates started to build ISI as a more bureaucratic organization, with a government structure, governorates and entities led by a central command structure established in Mosul, but with implementation powers assigned to local governors. This structure formed the basis of the creation of ISIL.<sup>13</sup>

8. Due to significant losses inflicted by Coalition Forces, Iraqi Security Forces (ISF) and local militant groups, including those known as “Sahwa”,<sup>14</sup> ISI declined in strength and influence.<sup>15</sup> In April 2010, al-Muhajir and al-Baghdadi were killed as a result of a U.S.-Iraqi joint operation in Tikrit.<sup>16</sup> In May 2010, Ibrahim Awad Ibrahim al-Badri al-Samarrai, a.k.a. Abu Bakr al-Baghdadi became the new leader of ISI,<sup>17</sup> By 2011, ISI was weakened and isolated and no longer posed an existential threat to the Iraqi state.<sup>18</sup> However, in early 2012, ISI began to re-emerge.<sup>19</sup> This revival was assisted by many factors, including: the withdrawal of U.S. troops in December 2011 from Iraq,<sup>20</sup> the escalation and radicalization of the Syrian conflict,<sup>21</sup> the Sunni political disenfranchisement in Iraq,<sup>22</sup> and the appointment of radicalized military, security and intelligence officers of Saddam Hussein’s regime to high-ranking ISI positions.<sup>23</sup>

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<sup>11</sup> M.J. Kirdar, Al-Qaeda in Iraq, June 2011, at pp 4-10.

<sup>12</sup> Ahmed S. Hashim, From Al-Qaida affiliate to the rise of the Islamic caliphate: the evolution of the Islamic State of Iraq and Syria (ISIS), RSIS, December 2014.

<sup>13</sup> Charles Lister, Profiling the Islamic State, November 2014, at p. 10.

<sup>14</sup> Institute for the Study of War, Jessica D. Lewis, Middle East Security Report 14, September 2013, Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part 1, p. 9.

<sup>15</sup> Mapping Militant Project, Islamic State.

<sup>16</sup> Myriam Benraad, West Point, Combating Terrorism Center, “Assessing AQI’s Resilience After April’s Leadership Decapitations” Volume 3 Issue 6 (June 2010).

<sup>17</sup> United Nations Security Council Sanctions Committee established pursuant to Resolution 1267 (1999), Narrative Summary of Reasons for Listing “QDi.299 - Ibrahim Awwad Ibrahim Ali al-Badri al-Samarrai” 5 October 2011, amended 3 June 2014 and 3 February 2016; “ISI Names New Top Officials” SITE Intelligence Service 15 May 2010; Anthony Shadid “Iraqi insurgent group names new leaders” New York Times 16 May 2010.

<sup>18</sup> Institute for the Study of War, Jessica D. Lewis, Middle East Security Report 14, September 2013, Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part 1, p. 9.

<sup>19</sup> Institute for the Study of War, Jessica D. Lewis, Middle East Security Report 14, September 2013, Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part 1, p. 10 (N.B.: although the text refers to AQI, the name of the organization changed to Islamic State in Iraq in 2006). Wilson Center, Timeline: The Rise, Spread, and Fall of the Islamic State, 28 October 2019.

<sup>20</sup> Mapping Militant Project, Islamic State.

<sup>21</sup> Institute for the Study of War, Jessica D. Lewis, Middle East Security Report 14, September 2013, Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part 1, pp 8-10.

<sup>22</sup> Institute for the Study of War, Jessica D. Lewis, Middle East Security Report 14, September 2013, Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part 1, pp 8-9.

<sup>23</sup> Kyle Orton, “The Islamic State: Between Al-Qaeda and Saddam Hussein”, 22 September 2015, (retrieved 1 March 2019), Kyle Orton, “A Response to Criticism: Why the Ex-Saddamists in the Islamic State Matter”, 10 August 2015.





### 2.1.2. *Revival, strategy and operations*

9. With the revival of ISI, the attacks on Shi'a civilians or civilian objects, as well as government forces, also revived. January 2012 saw multiple strikes upon Shi'a civilian targets either on holy sites (such as Karbala) or during Shi'a religious holidays.<sup>24</sup> In February 2012, in a speech vilifying Shi'a Islam and the Iraqi government, ISI spokesperson Abu Mohammad al-Adnani announced a campaign against Shi'a and military targets.<sup>25</sup> As a result, attacks against ISF positions increased in the spring of 2012.<sup>26</sup> A massive attack in early June 2012 targeted the Shi'a Endowment Office in Bab al-Muadham in Baghdad and resulted in 215 casualties (26 killed and 190 wounded).<sup>27</sup> In July 2012, Abu Bakr al-Baghdadi announced the launch of the "Breaking the Walls" campaign, aimed at destabilizing the Iraqi government and freeing ISI members from prison.<sup>28</sup> The campaign lasted until July 2013. It consisted of a series of major vehicle-borne improvised explosive device (VBIED) attacks, against government targets and Shi'a civilians, as well as eight prison breaks.<sup>29</sup> These events showcased not only the technical and operational capacity of ISI, but also its organizational growth and leadership capacity. During this time, ISI proved that it could coordinate regular and synchronized VBIED and other attacks in distinct locations by different cells.<sup>30</sup> The eight prison breaks, especially the attacks against the Tikrit prison in September 2012 and the Abu Ghraib prison in July 2013, replenished ISI ranks with hundreds of members, including senior and mid-level, highly skilled operatives.<sup>31</sup> After the successful conclusion of the "Breaking the Walls" campaign in July 2013, the violence reached levels that Iraq had not seen since 2008.<sup>32</sup>

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<sup>24</sup> Institute for the Study of War, Jessica D. Lewis, Middle East Security Report 14, September 2013, Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part 1, p. 10.

<sup>25</sup> Abu Mohammad al-Adnani, al-Furqan Media, 'Iraq is Iraq oh Sunnis' (2 Rabi' al-Thani 1433, 24 February 2012), pp. 20-25. See [transcript](#) by jihadist outlet Nukhbat al- 'Ilam al-Jihadi. See also SITE Intelligence Group, '[ISI Spokesman Calls for Support, Incites Against Shi'ites](#)' (24 February 2012)

<sup>26</sup> Institute for the Study of War, Jessica D. Lewis, Middle East Security Report 14, September 2013, Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part 1, p. 10.

<sup>27</sup> CBC News, "Deadly blast at Iraq gov't offices in Baghdad", 4 June 2012, available online at: Karee, Raheem, "Bomb hits Shi'ite site in Baghdad, 26 killed", Reuters, June 4, 2012.

<sup>28</sup> Mapping Militant Project, Islamic State. Bennett Clifford, Caleb Weiss, "Breaking the Walls" Goes Global: The Evolving Threat of Jihadi Prison Assaults and Riots", Combatting Terrorism Center at West Point, CTC Sentinel, February 2020, Volume 13, Issue 2; Institute for the Study of War, Jessica D. Lewis, Middle East Security Report 14, September 2013, Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part 1, p. 10.

<sup>29</sup> Institute for the Study of War, Jessica D. Lewis, Middle East Security Report 14, September 2013, Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part 1, p. 7.

<sup>30</sup> Institute for the Study of War, Jessica D. Lewis, Middle East Security Report 14, September 2013, Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign, Part 1, pp 13-18.

<sup>31</sup> Bennett Clifford, Caleb Weiss, "Breaking the Walls" Goes Global: The Evolving Threat of Jihadi Prison Assaults and Riots", Combatting Terrorism Center at West Point, CTC Sentinel, February 2020, Volume 13, Issue 2.

<sup>32</sup> UN Security Council, First report of the Secretary-General pursuant to paragraph 6 of resolution 2110 (2013), 13 November 2013, UN Doc. [S/2013/661](#), paras 26, 54-55; Second report of the Secretary-General submitted pursuant to paragraph 6 of resolution 2110 (2013), 14 March 2014, [S/2014/190](#), para. 6.



### 2.1.3. *Exploitation of Sunni protests*

10. Iraqi Sunni grievances against what they saw as political and economic marginalization in their own country began long before, with the de-Ba'athification policies of the Coalition Provisional Authority.<sup>33</sup> The de-Ba'athification law was abrogated in January 2008 and replaced by the Justice and Accountability Law, which, however, raised similar concerns of disenfranchisement for the Sunni community.<sup>34</sup> In the second half of 2011, ahead of the scheduled withdrawal of U.S. forces, the government stepped up its campaign against suspected ex-Ba'athists, especially in Baghdad and the Salah al-Din governorate.<sup>35</sup> In October 2011, in a matter of hours, hundreds of people were arrested, and many by special forces, during the night, on charges of attempting to overthrow the government and/or terrorist activities.<sup>36</sup>
11. The situation took a turn for the worse in December 2012, when security forces stormed the residence of finance minister Rafea al-Issawi, a Sunni, arresting several of his security guards and staff members on charges of partaking in terrorist attacks.<sup>37</sup> As a result, protests broke out in Fallujah, the hometown of al-Issawi, and in Ramadi, the capital of Anbar province. Within days, the protests spread to the provinces of Nineveh, Salah al-Din, Kirkuk and Diyala, as well as to the Sunni neighborhoods of Baghdad.<sup>38</sup> The protesters put forward a list of thirteen demands, which reflected their concern that the government was not acting in line with their interests and discriminated against the employees of the former regime and especially against Sunnis.<sup>39</sup>
12. Tribal leaders, clerics, political party representatives and affiliated organizations, disaffected de-Ba'athified personnel and former anti-U.S. insurgents joined the protests.<sup>40</sup> Tribal leaders and clerics in Nineveh and Anbar initiated so-called Friday sit-ins and "unified Friday

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<sup>33</sup> International Crisis Group, *Make or Break: Iraq's Sunnis and the State*, Middle East Report No. 144, 14 August 2013, p. 7.

<sup>34</sup> UNITAD, Confidential testimonial evidence.

<sup>35</sup> International Crisis Group, *Iraq's Secular Opposition: The Rise and Decline of Al-Iraqiya*, Middle East Report N°127, 31 July 2012, p. 2.

<sup>36</sup> UN OHCHR, UNAMI, *Report on Human Rights in Iraq 2011* (May 2012), p. 12.

<sup>37</sup> Institute for the Study of War, Jessica D. Lewis, *Middle East Security Report 14*, September 2013, *Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign*, Part 1, p. 11; International Crisis Group, *Make or Break: Iraq's Sunnis and the State*, Middle East Report No. 144, 14 August 2013, pp 1-2; UNITAD, Confidential testimonial evidence.

<sup>38</sup> International Crisis Group, *Make or Break: Iraq's Sunnis and the State*, Middle East Report No. 144, 14 August 2013, p. 1.

<sup>39</sup> UNITAD, Confidential testimonial evidence. See also Stephen Wicken, Institute for the Study of War, 'Iraq's Sunnis in Crisis', *Middle East Security Report 2* (May 2013), p. 25.

<sup>40</sup> International Crisis Group, *Make or Break: Iraq's Sunnis and the State*, Middle East Report No. 144, 14 August 2013, pp 16-23.





prayers”, which became an opportunity for protesters to voice their grievances and demands.<sup>41</sup> These sit-ins and prayers spread to other provinces as well.<sup>42</sup>

13. The initially peaceful protests took a violent turn in the first months of 2013. In April 2013, an Iraqi soldier was killed by armed protesters at a checkpoint near the protest camp of Hawija in Kirkuk. The camp housed hundreds of protesters as well as members of the neo-Ba’athist armed group *Jaysh Rijal al-Tariqa al-Naqshabandi* (JRTN).<sup>43</sup> When the protesters refused to hand over the suspects, government troops raided the camp, and killed several dozen protesters and insurgents, and wounded over 100 others.<sup>44</sup>
14. This incident led to a sharp increase of violent clashes; both sides radicalized, empowering the more extreme elements among demonstrators.<sup>45</sup> Sunni tribesmen mobilized in Anbar province and elsewhere for what they called a holy war in self-defence.<sup>46</sup> The mobilization of tribal groups, known under the umbrella term of “(tribal) revolutionaries”, was not an ISI initiative. The JRTN, tribal military councils and other insurgent opposition groups active at the time were separate organizations, not to be conflated with ISI. Moreover, many Sunnis, including those protesting against the government, rejected the resort to violence and remained firmly opposed to groups such as ISI or JRTN.<sup>47</sup>
15. However, the mobilization of “(tribal) revolutionaries” presented a golden opportunity for ISI. First, ISI was able to infiltrate some of these groups by exploiting the rifts between tribal chiefs and younger or more secular protest leaders as well as the general sense of exclusion of many marginalized individuals. Second, because ISI was better equipped militarily than other armed factions and had more experienced commanders, opposition groups tolerated or cooperated with ISI, even though they did not share ISI’s views on religion or plans for Iraq. Third, the complex quagmire of active armed opposition groups made it even more difficult to attribute attacks against governmental or Shi’a targets to ISI or others, and public opinion often conflated “tribal revolutionaries” with ISI or other groups. In fact, ISI itself claimed to embody “the rebels of Arabic tribes”.<sup>48</sup>

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<sup>41</sup> International Crisis Group, *Make or Break: Iraq’s Sunnis and the State*, Middle East Report No. 144, 14 August 2013, pp 16-18.

<sup>42</sup> First report of the Secretary-General pursuant to paragraph 6 of resolution 2110 (2013), 13 November 2013, UN Doc. [S/2013/661](#), para. 9.

<sup>43</sup> International Crisis Group, *Make or Break: Iraq’s Sunnis and the State*, Middle East Report No. 144, 14 August 2013, pp 31-32.

<sup>44</sup> Institute for the Study of War, Jessica D. Lewis, *Middle East Security Report 14*, September 2013, *Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign*, Part 1, p. 19. The then Special Representative of the Secretary-General for Iraq, Mr. Martin Kobler, condemned the violence in Hawija.

<sup>45</sup> International Crisis Group, *Make or Break: Iraq’s Sunnis and the State*, Middle East Report No. 144, 14 August 2013, p. 32.

<sup>46</sup> Tim Arango, “Dozens Killed in Battles Across Iraq as Sunnis Escalate Protests Against Government”, April 23, 2013, *The New York Times*; Bill Chappell, “Iraq’s Sunnis Form Tribal Army, As Sectarian Violence Builds”, April 27, 2013, NPR.

<sup>47</sup> Institute for the Study of War, Jessica D. Lewis, *Middle East Security Report 14*, September 2013, *Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign*, Part 1, p. 8.

<sup>48</sup> UNITAD, Confidential testimonial evidence.

16. As a result of its successful recruitment among disaffected Sunni protesters, combined with other factors including the successful “Breaking the Walls” campaign, as described above, the use of social media to recruit members from other countries, and ISI’s active and increasingly dominant role in Syria under the leadership of Abu Bakr al-Baghdadi,<sup>49</sup> the numbers of ISI members had grown significantly. In April 2013, Abu Bakr al-Baghdadi changed the name of the group to the Islamic State of Iraq and the Levant (ISIL) to reflect ISI’s extension into Syria.<sup>50</sup>
17. Between 30 December 2013 and 4 January 2014, ISIL, together with other armed groups, took control of the cities of Ramadi and Fallujah, in Anbar province.<sup>51</sup> From March 2014 onwards, the security situation deteriorated further with ISIL expanding the territory of its attacks. In June 2014, the security situation dramatically worsened with ISIL taking control of key cities, including Samarra, Mosul and Tikrit, and infrastructure in Iraq’s north-western and north-central governorates.<sup>52</sup>

#### 2.1.4. ISIL, an evolving entity

18. ISIL leadership constantly adapted to the evolving context and operational environment,<sup>53</sup> learning from each failure.<sup>54</sup> By mid-2014, ISIL exerted control over a large territory in Syria and Iraq,<sup>55</sup> divided into provinces (*wilayats*) and administered through a hierarchy of ministries (*dawawin*) and defended by a considerable military force.<sup>56</sup> Iraqi and Syrian territories organised by the respective States into ‘governorates’ (*muhafadhat*) were redrawn

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<sup>49</sup> Richard Barrett, *The Islamic State*, November 2014, at pp 10-13, 36-37.

<sup>50</sup> Aaron Y. Zelin, “The War between ISIS and al-Qaeda for Supremacy of the Global Jihadist Movement” (06/2014), pp.3-4. Comment: “Al Sham” can be translated as “the Levant” in English, therefore, abbreviated as ISIL.

<sup>51</sup> UN Security Council, Second report of the Secretary-General pursuant to resolution 2110 (2013) (14/03/2014), para. 6; UN Security Council, Fourth Report of the Secretary-General pursuant to resolution 2233 (2015) (05/07/2016), para. 16.

<sup>52</sup> OHCHR and UNAMI, Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq: 5 June – 5 July 2014, p. 3-4; UN Security Council, Security Council Press Statement on Iraq (SC/11437-IK/673) (11/06/2014); UN Security Council, First Report of the Secretary-General pursuant to resolution 2169 (2014) (31/10/2014), paras. 24, 47, 51; UN Security Council, Second report of the Secretary-General pursuant to resolution 2110 (2013) (14/03/2014), para. 2; UN Security Council, Third report of the Secretary-General pursuant to resolution 2110 (2013) (11/07/2014), paras. 2, 12-14, 18; UN Security Council, Third Report of the Secretary-General pursuant to resolution 2169 (2014) (01/05/2015), para. 20; UN Security Council, Fourth Report of the Secretary-General pursuant to resolution 2233 (2015) (05/07/2016), para. 16; UN Security Council, Third Report of the Secretary-General pursuant to resolution 2233 (2015) (27/04/2016), para. 19, Al-Hayat Media Center, “Islamic State Report”, Issue No. 3 (Shaban 1435), pp.2-4, Al-Hayat, “What Comes to You of Good is from Allah” (12/06/2014).

<sup>53</sup> Haroro Ingram, et al, *The ISIS Reader: Milestone Texts of the Islamic State Movement*, Oxford University Press, 2020.

<sup>54</sup> See Brian Fishman, *Dysfunction and Decline: Lessons Learned from Inside Al Qaeda in Iraq*, Combating Terrorism Center at West Point, Harmony Project, 16 March 2009, retrieved on 10 February 2020.

<sup>55</sup> According to different sources, it was estimated up to 40% of Iraq and 30% of Syria at its height. It reportedly was at its peak the size of Britain: see, for example, ISIS Is Regaining Strength in Iraq and Syria, *New York Times*, 19 August 2019.

<sup>56</sup> Scott Jasper and Scott Moreland *ISIS: An Adaptive Hybrid Threat in Transition*, Small Wars Journal, 29 Oct. 2016.



into *wilayats*, headed by a '*wali*'. Territorial subdivisions were also remapped: while before (and after) ISIL, governorates were divided into districts (*qadha*) and sub-districts (*nahiya*),<sup>57</sup> ISIL divided *wilayats* into sectors (*qate*). ISIL's deliberate attempt to reconfigure borders was the result of its declared intention not to recognize state borders deriving from colonial ruling.<sup>58</sup> Indeed, ISIL defined the borders of *wilayats* based on different criteria, such as the structures and institutions of the First Islamic Period, geographic conformations or national/ethnic/tribal considerations, redrawing the territory to suit local alliances.

19. In 2014, the ISIL provincial demarcations were as follows: three *wilayats* in Syria and seven in Iraq.<sup>59</sup> An organizational reform in 2015 established new provinces based on local victories. As a result, in mid-2015, there were around twenty *wilayats*.<sup>60</sup> On 13 November 2014, Abu Bakr al-Baghdadi himself announced the creation of five *wilayats* outside Syria and Iraq, precisely in Algeria, Libya, Yemen, Sinai (Egypt) and Saudi Arabia, as well as his intent to establish more *wilayats* worldwide. Finally, 12 *wilayats* outside Syria and Iraq were proclaimed between 2014-2017.<sup>61</sup>
20. ISIL had recruited thousands of foreigners as well as locals to fight in its ranks already in 2014.<sup>62</sup> It also benefitted from an arsenal of conventional weapons: light and heavy weapons, assault rifles, machine guns, field and anti-aircraft guns, rockets and rocket launchers, artillery, missiles, aircraft, tanks, armoured vehicles and pick-up trucks with mounted machine guns. These weapons were mainly seized from Iraqi and Syrian forces or taken from other groups beginning with January 2014 in Anbar and Salah al-Din provinces, and in June 2014 following the takeover of Mosul, Kirkuk and Diyala.<sup>63</sup> In addition to this, the

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<sup>57</sup> Amended Governorates Law No. (159) of 1969 Article (2); Law 21 of 2008 regarding governorates that are not organized in a region.

<sup>58</sup> Video recording of ISIL Spokesperson Abu Muhammad Al-Adnani announcing the abolishment of borders between countries and the non-recognition of borders deriving from the Sykes-Picot agreement, Issued on July 04, 2014.

<sup>59</sup> This subdivision considers *Wilaya-t-al-Furat* as part of Iraq, although in reality the territory of this wilaya run across the border of the two countries, comprising territory from both Iraq and Syria, as a result of a deliberate choice not to recognize state borders deriving from colonial rule.

<sup>60</sup> Twelve in Iraq (Anbar, Baghdad, Diyala, Euphrates/Furat, Fallujah, Kirkuk, Jnoub, Ninewa, Salah al-Din, Shamal Baghdad, al-Jazeera, and Tigris/Diglah) and eight in Syria (al-Barakha/Hasakah, Damascus, Euphrates/Furat, Halab/Aleppo, Homs, al-Khair/Dayr az Zawr, Raqqa, and Hamah). Luis Tomé *The «Islamic State»: trajectory and reach a year after its self-proclamation as a «Caliphate»*. Janus.net e-journal of International Relations, Vol. 6, May-Oct 2015. Other sources mentioned from 15 up to 24 wilayats.

<sup>61</sup> *Khorasan* in Afghanistan, *al-Jazair* in Algeria, *Sinai* in Egypt, *Burgah*, *Tarabulus/Tripoli* and *al-Fizan* in Libya, *al-Haramayn* in Saudi Arabia, *al-Yaman*, *Sanaa*, *Lahij* and *Shabwa* in Yemen and *Gharba Ifriqiyah (ISWAP)* in Nigeria. Ibid. p. 7.

<sup>62</sup> See e.g. Basit, Abdul, *Foreign Fighters in Iraq and Syria – Why So Many?*, in Counter Terrorist Trends and Analysis, October 2014, p. 1 and New York Magazine/Intelligencer, *Report: ISIS Has Recruited as Many as 30,000 Foreigners in the Past Year*, September 2015.

<sup>63</sup> Amnesty International, *Taking stock: The Arming of Islamic State*, December 2015, p. 19–20; UN Analytical Support and Sanctions Monitoring Team, *The Islamic State in Iraq and the Levant and the Al-Nusra Front for the People of the Levant: report and recommendations submitted pursuant to resolution 2170 (2014), S/2014/815*, 14 November 2014, paras.

Department of Armaments (*tasni'*) established a limited manufacturing capacity for arms and ammunition that also included weaponized commercial drones.<sup>64</sup>

21. Through the distribution of the equipment, ISIL started to form units for conventional warfare, whose members were placed on payrolls and started wearing uniforms. As ISIL refused to use existing uniform cuts, new designs were applied, including the “Kandahari Uniform” – consisting of a knee-length shirt and relatively wide trousers, frequently cut out of seized Battle Dress Uniform (BDU) cloth or from black cloth to give a sense of uniformity. By early July 2014, forces in Mosul were still disjointed, and not all armed actors were brought under ISIL’s “Ministry of the Army” (*Diwan al-Jund*) but continued separately for the next two-three months.<sup>65</sup>
22. Its tactics comprised numerous methods: harassment of security forces; campaign of deception methods; kidnapping; targeted murders; control and destruction of critical infrastructures; jailbreaks of prisons;<sup>66</sup> trapping and tunnelling and the use of improvised explosive devices.<sup>67</sup>
23. Ideologically, ISIL adopted a more radical view than al Qaeda and other jihadist groups, not tolerating those considered to be “infidels” (*kufar*). ISIL advocated for the creation, by force, of a religious state applying an absolutist form of Sunni Islam, in which there was no place for other religious practices or beliefs. ISIL intensified the sectarian conflict against the Shi’a majority in Iraq, which had started with al-Zarqawi, as described above. Also, other ethnic and religious groups, including Christians, Yazidis, Shabakis and Kaka’i, were targeted whether by mass killings, expulsion or other crimes.<sup>68</sup>
24. ISIL’s crimes, including its ill-treatment of minorities, appeared to be part of a systematic policy that was aimed at the permanent destruction, suppression, or expulsion of these other communities from the areas under its control.<sup>69</sup> This “license to kill”<sup>70</sup> was recurrently detailed in ISIL’s media propaganda.

#### 2.1.5. Take-over of Mosul and Badush

25. The attack on Badush Central Prison and subsequent release of some (mainly Sunni) prisoners, and the killings of other (mainly Shi’a) prisoners, which are the central crime

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<sup>64</sup> Don Rassler, *The Islamic State and Drones: Supply, Scale, and Future Threats*, West Point 2018.

<sup>65</sup> *Ibid.*

<sup>66</sup> Al-Baghdadi himself launched the so-called Operation “Breaking walls” after 2012.

<sup>67</sup> Da’esh produced and used also chemical weapons. See Joby Warrick, *How the Pentagon Got Inside ISIS’ Chemical Weapons Operation—and Ended It*, Politico 27 February 2021 [outlines capture by United States Forces of Sulayman al-Afari, head of procurement for Da’esh’s chemical weapons programme and discusses various biological and chemical weapon developments].

<sup>68</sup> Pronouncements made in the first issue of *Dabiq*, ISIL’s official, ISIL, Department of Media, The City Covenant, 12 July.

<sup>69</sup> OHCHR & UNAMI, *Report on the Protection of Civilians in Armed Conflict in Iraq: 11 September – 10 December 2014*, December 2014.

<sup>70</sup> See Myrian Benraad *L’Etat islamique pris aux mots*, Armand Colin May 2017) and her references to Dar al Islam #2:5-10; 3;12; 5:18 (Jan 2015) and Rumiya 2:18 (Oct. 2016).



assessed in this Report, immediately followed the attack on, and subsequent take-over of, Mosul.

26. The physical attack on Mosul started on 2 June by attacking army checkpoints in areas around Mosul. As early as 2004, Mosul started facing insurgent activities from pre-ISIL jihadist groups, who attempted to take control over the city in November 2004 and garnered a certain level of support from the local population there.<sup>71</sup> This is an important reason why ISIL managed to take over Mosul after a few days of fighting only, notwithstanding that the Iraqi security forces that were protecting Mosul were fully equipped and counted many more members than ISIL. Another important reason for the relatively speedy take-over of Mosul is that, as ISIL progressively gained territory, the security system collapsed along the way, ISIL managed to take over their armoury, ammunition and armoured trucks. Many ISIL supporters from the areas ISIL controlled, joined ISIL in its furtherance of its attack on Mosul. In addition, many different groups, including al-Qaeda, the Kurdish Ansar al-Islam, the Arab groups Jaysh al-Islam, Ansar al-Sunna, Jama'a Rijal al-Naqshbandiya, tribal levies or armed local citizens with a background in organized crime, and foreign fighters had already joined ISIL in its attack on Mosul.<sup>72</sup> By 10 June, Iraqi policemen and soldiers stationed in Mosul were said to have fled their posts, and ISIL took over Mosul. As fighting intensified in Mosul, ISIL started to open the prisons and released hundreds of prisoners.<sup>73</sup> The next day, on 10 June 2014, ISIL turned to Badush Central Prison, which had a much more mixed prisoner population, composed of both perceived supporters and enemies, as will be addressed below.

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<sup>71</sup> Kilian Redde, "In the Shade of the Khilafa': The Rise of Jihadism in Mosul", SciencePo Kuwait, Spring 2018, pp. 7-11.

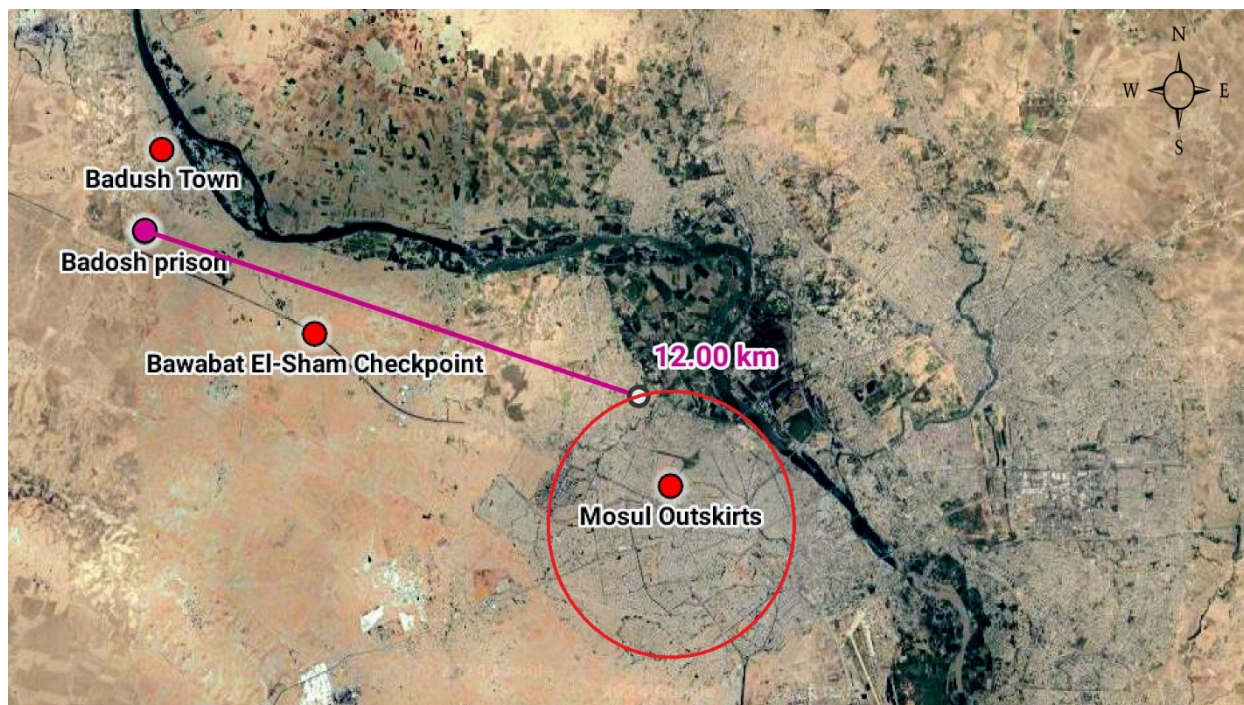
<sup>72</sup> US Department of State, "Designations of Foreign Terrorist Fighters", 29 September 2015.

<sup>73</sup> Bill Roggio, ISIS takes control of Mosul, Iraq's second largest city, The Long War Journal, 10 June 2014.



### 3. Badush Central Prison

#### 3.1. Layout and Management of Badush Central Prison<sup>74</sup>



27. Badush Central Prison was located south-west of Badush town, approximately twelve kilometres from Mosul's western outskirts,<sup>75</sup> and close to the main highway connecting Mosul to Tal Afar and Syria. From the main entrance gate, it was possible to see the main highway, along which the Bawabat el-Sham checkpoint was located at the time, about four kilometres east of Badush Central Prison. Beyond the highway, parallel to it, was an old asphalt road and a parallel railroad track that ran through the desert.
28. Badush Central Prison was the second largest prison in the country after Abu Ghraib. Slightly V-shaped, the prison grounds were surrounded by six-meter-high walls and watch towers. The surface area of the prison and its grounds was over one square kilometre wide, within which different blocks were located, detached from each other and from the main entrance building. The prison had two access gates: the main entrance, on the eastern side, from which a small road led to the highway; and a back gate, at the other end of the prison, facing north-east.
29. Badush Central Prison included two main buildings. The first, located on the left of the main entrance, was for the Light Sentences Ward, and it also contained the Minors Ward and the Rehabilitation Ward. The second large building, located further away towards the back gate,

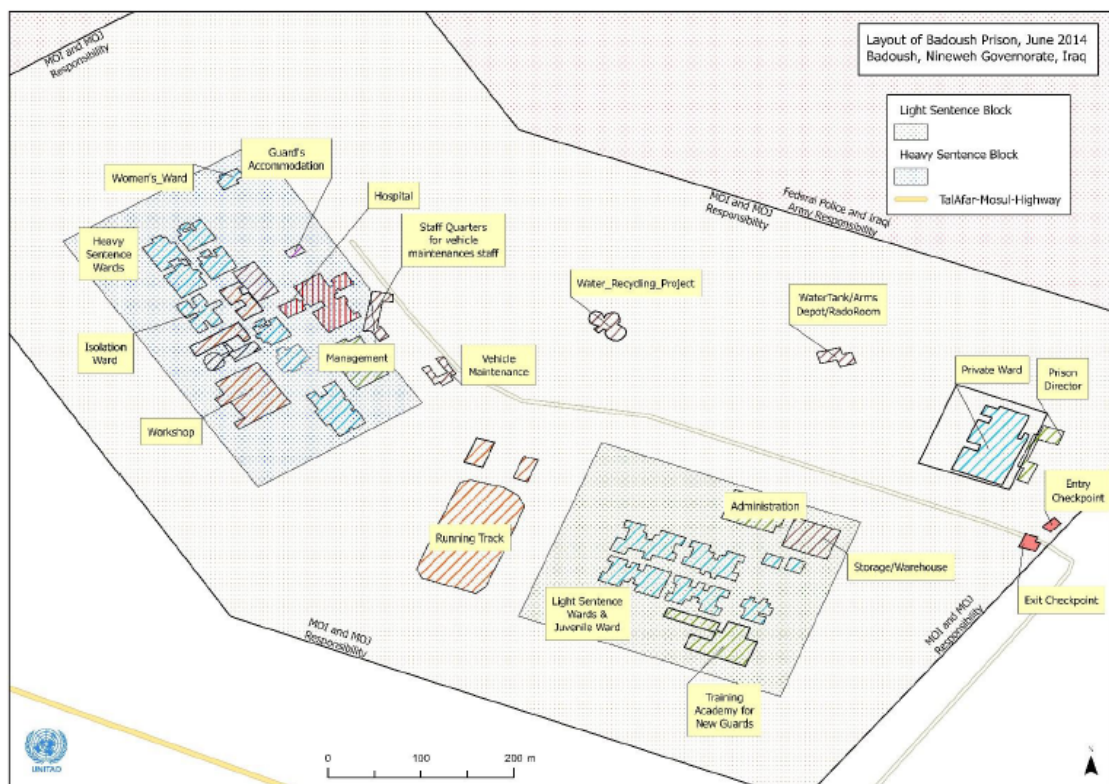
<sup>74</sup> Area map created by UNITAD following investigation.

<sup>75</sup> Human Rights Watch, Iraq: ISIS Executed Hundreds of Prison Inmates, 30 October 2014.

also to the left coming from the main gate, was for the Heavy Sentences ward; next to it were also the Female Ward, the Private Ward and the Medical Clinic.

30. The Light Sentences Ward had about five to seven sections, each of which was divided into several halls, with each hall containing up to 100 prisoners. The Heavy Sentences Ward had seven sections with 10 cells each, and each cell accommodated about 10 to 15 prisoners. However, section 7 was the exception as it had no cells in it, but rather only 7 or 9 halls and each hall contained 25 to 70 prisoners. Badush Central Prison also had an isolation ward for temporary confinement of prisoners who engaged in disruptive behaviour, with the confinement periods reaching up to 3 months.<sup>76</sup>

31. Site plan of Badush Central Prison:



32. A new prison director was appointed shortly before the attack on 10 June 2014. This change in the management of the prison occurred after an attempted attack by a “terrorist group” and the smuggling of weapons inside the prison in February 2014. It also led to the replacement of some prison officials, who later on joined ISIL.

33. Badush Central Prison had a three-layer security protection system: 1) the army, 2) the police and 3) the guards. There were around 1000 employees, this number included management, guards and civilian personnel, all of whom came from different religious and ethnic backgrounds, including Arabs, Kurds, Shi’a and Sunni Muslims, Christians, Yazidis, and other minorities. About 350 guards employed by the Department of Correctional Services of the Ministry of Justice (MOJ) were responsible for the inner prison areas. They wore beige

<sup>76</sup> UNITAD, Confidential testimonial evidence.



uniforms and worked in shifts. The security of the broader area inside the main wall was secured by the Federal and local Police under the command of the Ministry of Interior (MOI). They wore black uniforms and were armed. The local police oversaw the protection of prisoners. The Federal police were responsible for the protection and support of Badush Central Prison. There was also a police station inside the prison. The Iraqi Army was under the Ministry of Defence (MOD) and was responsible for security outside of the prison perimeter.

34. The prison was equipped with a CCTV system consisting of many cameras installed across the prison. However, there are conflicting reports as to whether the cameras were connected to the internet. Two witnesses stated that the cameras were fully internal and not connected to the internet, while one witness mentioned that recordings were regularly shared with the MOJ to review, and there is a possibility that the cameras were connected to Baghdad by internet.
35. Most of the prisoners in Badush either possessed or had access to cell phones, which allowed them to be in touch with their families and other people outside of the prison on a regular basis.
36. There may have been a security unit inside the prison premises that belonged to the office of the then Prime Minister.<sup>77</sup>

### 3.2. Prisoners

37. Badush Central Prison held around 3,000 prisoners in 2014, with between 1,100 and 1,500 detainees in the Light Sentences Ward and 1500 in the Heavy Sentences Ward. In addition, between 100 and 350 minors were held in the Juvenile section within the Light Sentences Ward and between 50 to 100 women were held in the female section, which was located in the Heavy Sentences Ward. The detainees in Badush Central Prison had been sentenced for various types of criminal offences, and they had been divided between the two main wards (Light and Heavy Sentences Wards) according predominantly to the length of their sentence and their age and gender.
38. The prisoners came from different communities, ethnicities, and religious backgrounds, including Sunnis, Shi'a, Christians, Yazidis, Shabak and Kakayi. The Shi'a made up more than half of the prisoners. Overall, witnesses consider that Sunnis constituted the majority in the Light Sentences Ward while Shi'a were the majority in the Heavy Sentences Ward. Some of the prisoners were members of paramilitary groups, such as the Shi'a Militia Jaysh el-Mahdi.
39. In principle, prisoners were not classified based on religious sects inside the prison. However, sometimes, prisoners might be transferred to a specific ward based on factors other than the length of the sentence such as religion, group affiliation or to accommodate special requests.

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<sup>77</sup>UNITAD, Confidential testimonial evidence.





40. Shi'a prisoners were referred to by term "*Rafidiye*" by some Sunni prisoners and were discriminated against based on their religion.
41. The prisoners could move once a day, for an hour, between the different halls of their section but could not move outside of their section, except if they were assigned a duty which required them to do so.
42. Prisoners normally had to wear either a uniform, orange, yellow or brown in colour, depending on their sentence. However, civilian clothes were tolerated within their own section.

### **3.3. Presence and influence of radical Islamic groups in Badush Central Prison**

43. Some halls, both in the Light and Heavy Sentences Wards, contained extremists, members of Al-Qaeda and other jihadist movements, many of whom later joined ISIL. Based on testimonial evidence, the extremists occupied distinct halls separate from other inmates, and were led by individuals referred to as Emirs.
44. The Islamic Army wielded significant power and important influence within Badush Central Prison, to the point that they controlled entire areas, recruited new members among the detainees and requested protection fees from guards. The extremists also received special treatment from the guards.

## **4. Attack on the prison**

### **4.1. Prior attacks on Badush Central Prison**

45. According to testimonial evidence, prior to the 10 June 2014 attack, several attempts to take control of Badush Central Prison were carried out between 2012 and 2014, by "group of terrorists", allegedly for the purpose of liberating leaders and members of Islamic groups such as the Islamic Army. On 5 February 2014, an attack and an escape attempt were carried out in the prison. They were coordinated between ISIL affiliated elements both outside and inside the prison, including some staff members and prisoners who started a riot and attempted to escape.
46. In preparation for this attack, weapons had previously been smuggled to some extremist Sunni prisoners in the Heavy Sentences Ward. The attack was planned between prisoners and external actors and coordinated to simultaneously stage a riot inside the prison and an attack from outside the prison.
47. In conducting the assault, the group of extremist Sunni prisoners also received support from the Ansar al-Sunna group, a *Jihadi* group from the Badush area. This group was led by



Ibrahim Sa'ad Ibrahim Ahmad Al-Juhayshi, who was also involved in the 10 June 2014 attack on Badush Central Prison.<sup>78</sup>

48. During the February 2014 attack, several prisoners managed to get out into the prison yards, but they were shot at by the correctional officers in the towers. This resulted in the death and injury of several prisoners who were in the yards, and the death of one guard.
49. The February 2014 attack eventually failed, allegedly due to the malfunctioning of the construction vehicle used by the attackers to clear the road. After an exchange of fire between the assailants and the security forces inside the prison and the help of the military reinforcement from outside, the security forces managed to repel the attack and control the situation.
50. Subsequently, several of the responsible Sunni prisoners were transferred to isolation cells for about two to three months and the security measures were reinforced inside the prison, including restricting the movement of the prisoners and increasing the number of the locks and the guard patrols. About 400 to 500 Shi'a prisoners may have been transferred to Badush Central Prison after this incident, and the Director of the prison was replaced. The situation inside the prison remained relatively normal until the take-over of the Badush Central Prison.

#### **4.2. Situation inside the prison few days prior to the 10 June attack**

51. From 6 June 2014 onwards, the staff of the prison and the prisoners became increasingly aware of the situation in Mosul, including the fall of Mosul into ISIL hands on 9 June 2014, due for example to their contact with relatives and others outside the prison. On 9 June, the situation inside the prison changed. The day before the attack, guards abandoned their post.

#### **4.3. Planning and preparation of 10 June attack**

##### **4.3.1. *Participation of other jihadist groups under ISIL banners***

52. Until this point, it is not clear which ISIL members were responsible for the attack on Badush Central Prison. In planning and conducting the Badush Central Prison attack and subsequent massacres, one of the ISIL leaders (Emirs) in Badush, Mahmud Abd al-Muhsin Khalil Sultan Al-Juhayshi, aka Abu Sulayman, called upon local jihadi groups for support, including the Ansar al-Sunna group, also known as Ansar al-Islam group.<sup>79</sup>
53. In the morning of 10 June 2014, members of Ansar al-Sunna gathered at the house of Abu Sulayman, within Badush village.<sup>80</sup> Abu Sulayman instructed them to join the Badush

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<sup>78</sup> UNITAD, Confidential testimonial evidence. *See also*, In the Grip of the Law, Episode "What happened in Badush Prison after the events of June 2014", dated 13 February, min 15:20

<sup>79</sup> UNITAD, Confidential testimonial evidence. Based on what was circulated in the news Abu Sulayman was killed in 2015 during one of the coalition airstrikes.

<sup>80</sup> UNITAD, Confidential testimonial evidence.

Central Prison attack under the ISIL banner in order to release prisoners affiliated with ISIL and other groups, such as the Islamic Army and to keep the Shi'a prisoners from Sadrist Movement in detention. Of note, the Sadrist Movement is a Shi'a political group that came into being in the 1990s, under the leadership of Ayatollah Mohammed Sadeq Al-Sader.

54. The Ansar al-Sunna members who gathered at the house of Abu Sulayman were handed assault rifles and machine guns and vehicles to assist them in carrying out the attack on the Badush Central Prison. Following the assault on Badush Central Prison, those members pledged allegiance to ISIL.

#### 4.3.2. Participation of insiders from Badush Central Prison

55. ISIL also relied on the support from inmates and guards to carry out the attack on 10 June 2014.
56. Evidence indicates the involvement of some prison officials in the attack on Badush Central Prison. According to this, both the guards and security personnel had left the prison by 6 a.m. on June 10, 2014 and abandoned their posts.

#### 4.4. **Attack on Badush Central Prison by ISIL on 10 June 2014**

57. During the night of 9 to 10 June 2014, between 50 to 100 ISIL members approached the area surrounding the Badush Central Prison (near the Bawabet el-Sham checkpoint) and commenced fighting with the Iraqi Forces.
58. A couple of hours before sunrise, hostilities intensified and the fighting drew closer to the prison. The prison guards and staff abandoned their posts, despite the orders from their hierarchy to remain.
59. The Iraqi Forces remained in their positions outside the perimeter of Badush Central Prison and fought ISIL until the early morning.
60. Once the security personnel had left, additional ISIL members and the Ansar al-Sunna group acting under the leadership of ISIL joined the scene.
61. Other ISIL members were already present, having travelled from Abu Sulayman's house in Badush village using pick-up vehicles.

#### 4.5. **Escape of prisoners from inside the prison**

62. In the early morning of 10 June 2014, warned by the absence of guards and the noise of fighting nearby the prison, many prisoners, located in the Light Sentences, Heavy Sentences and Juvenile Wards, started breaking the doors and opening their cells, using the metal bars of their beds. It took them several hours to break the doors and escape from their wards. Some prisoners initially had difficulty in escaping because the door to their section was secured by multiple locks and despite their repeated attempts, they were unable to open it.



But eventually, they managed to open the door with the help of fellow inmates who came from outside with specialized tools.

63. Several prisoners managed to break out of the prison and escape, many of whom did so through the back gate. ISIL captured about 60 prisoners on the highway as they tried to escape. Approximately 50 or 70 prisoners, however, managed to evade capture. This group hid in the surroundings of the prison before they reached Badush village where they received assistance from local villagers and fishermen who provided them food, water, clothes and helped them escape. However, some prisoners were eventually captured by ISIL members, while escaping.

#### **4.6. Break-in of Badush Central Prison by ISIL**

64. By the early morning of 10 June 2014, ISIL reached the prison perimeter with no further resistance, as all the security forces had left. Majority of ISIL members were masked and armed with weapons. Some ISIL members were wearing Afghani uniforms, while others were wearing traditional Iraqi clothes. Some prisoners, reportedly mainly juveniles and prisoners from the Heavy Sentences Ward, joined ISIL and some helped the attackers orientate in the prison and open the cells. Some prison guards joined the attackers and were also involved in directing ISIL in the prison.
65. ISIL members entered the prison and took control of the main watch towers and doors. Once inside and in control of the prison and the immediate surrounding area, ISIL opened the halls of the prison one after another by breaking the door locks and released the prisoners. They released all the women inmates, without any inquiry regarding their religious affiliation. Then, ISIL loaded the released female inmates into a bus and transported them to Mosul where they were released.<sup>81</sup>
66. When opening the cells, ISIL ordered the male prisoners to leave the prison. Some prisoners witnessed scattered killings of Shi'a prisoners by ISIL members – either by shooting, stabbing or beheading – within the prison premises. A Shi'a prisoner told his relatives on the phone that ISIL threatened and intimidated them with their weapons, forced them to kneel down and fired next to them while laughing.
67. Eventually, most of the halls were opened - either by ISIL or the prisoners - and the prisoners headed to the main gate. While leaving the prison, Shi'a prisoners belonging to the Light Sentences Ward were shot at by ISIL when they reached the prison's main gate. However, ISIL kept closed two halls where the Shi'a prisoners were detained.

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<sup>81</sup> UNITAD, Confidential testimonial evidence.



#### 4.7. Situation at the main gate

68. From the main gate, some prisoners moved along the prison's perimeter walls instead of going towards the highway and managed to escape through Badush village, where they received help from the villagers.
69. Some ISIL members positioned at the prison's main gate were seeking out some prisoners by calling out their names from a list they possessed. The majority of those sought were Shi'a; however, some were also reported to be Sunni. At least three Shi'a hall observers were arrested and taken to a different place. At least four Shi'a prisoners were taken by ISIL behind an earthen berm 200 meters away from the prison towards Mosul, and executed there. Another five prisoners, four Sunni and one Shi'a, were also handcuffed and killed. The bodies of at least six or seven dead prisoners were seen on the highway near the prison. Armed men dragged at least two Shi'a prisoners away and shot them in the head from behind. On exiting the prison, most prisoners were directed to walk towards the highway where masked and armed ISIL members gathered them. Between 1,000 and 2,000 prisoners wearing uniforms or civilian clothes were ordered to assemble on the highway.<sup>82</sup>
70. At the main gate, there were several gunmen most of whom were masked. Some were wearing Afghani style clothes and some were wearing local outfits. ISIL members present on the highway were carrying different types of guns and had ISIL flags and vehicles with their insignia on them. In addition to the civilian pickups, they also used seized police and military vehicles whilst some other broken or abandoned Iraqi military and police vehicles were stationed on the road. They came from different directions, and had different accents, both Iraqi and foreign.
71. There were at least 50 to 60 ISIL members at the main gate, but more ISIL members arrived later. Some Sunni prisoners and guards had also joined the ISIL members and were handed weapons. One Shi'a prisoner may have also joined ISIL. On the highway, the militants had a commander who was giving them orders and he appeared to be their *Emir*. The other fighters addressed him as "Hajji." He wore a black Afghani style clothes, a kaki vest with magazines of bullets in it and carried a machine gun.
72. When the prisoners reached the highway, ISIL members surrounded them from both sides and told them to sit and wait on the ground. They reassured the prisoners that they would ensure them a safe trip home and asked them to wait where they were.
73. ISIL did not allow the prisoners to leave the place. Some prisoners decided not to stay and started to stop and board civilian vehicles that were passing by on the highway. ISIL members tried to stop them by shooting at them. Some managed to escape, by car or on foot, while others were later stopped by ISIL at the Bawabat el-Sham checkpoint. Some prisoners left the scene with their families.<sup>83</sup>

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<sup>82</sup> UNITAD, Confidential testimonial evidence.. See also, Human Rights Watch, Iraq: ISIS Executed Hundreds of Prison Inmates, 30 October 2014.

<sup>83</sup> UNITAD, Confidential testimonial evidence.

74. After having gathered most of the prisoners on the highway, ISIL members may have proceeded with a first separation between the Shi'a and Sunni prisoners.
75. After about one hour, at around 11.30 am or 12 pm, ISIL members stopped several large trucks passing on the highway and, under the supervision of Hajji, ordered the prisoners to get on them, telling them that they would be taken to Mosul so that they could then reach their homes. Several hundred prisoners were put in the trucks and buses – up to 1,500 in total. Once all the prisoners were loaded, ISIL ordered the drivers to depart. One ISIL member speaking with an Afghani or Pakistani dialect was filming the scene. The prisoners were then transported to various locations, as outlined below, where eventually, the non-Sunni prisoners, the vast majority of whom were Shi'a, were executed.
76. Throughout the assault on the prison, several prisoners stayed in touch with their families and shared the unfolding events with them. Most of them lost contact when they were put on the trucks or buses, after which time they were never heard from again.

## 5. Execution Sites

77. Based on the available evidence, open-source materials and lists of missing Badush prisoners, it is estimated that approximately 1,000 Badush male prisoners – predominantly Shi'a – or more were executed by ISIL members. This occurred using the same modus operandi in at least six locations at different times of the day on 10 June 2014. The remains of 632 persons have so far been excavated from those locations.
78. Hundreds of prisoners were loaded in trucks in front of the prison and brought to the **Badush Valley**, a deserted area located only a few kilometres away from the Badush Central Prison, on the other side of the Tal Afar-Mosul highway.
79. Another group of prisoners were taken in trucks next to the **Badush Cement Factory**, located north-west of Badush village.<sup>84</sup>
80. Other prisoners, who left on their own toward the highway on foot or in vehicles, were captured by ISIL at the **Bawabat el-Sham** checkpoint, located 3-4 kilometres away from the prison, on the highway, and were either killed at this location or taken to Badush Valley and executed there.
81. From Badush Cement Factory and Bawabat el-Sham, several Shi'a prisoners were then taken to **Ayn al-Jahesh**, an ISIL military camp located 40 kilometres south-west of Mosul, where prisoners were executed.<sup>85</sup>
82. Finally, available information suggests that some other prisoners were executed in several other locations, as described below.<sup>86</sup>

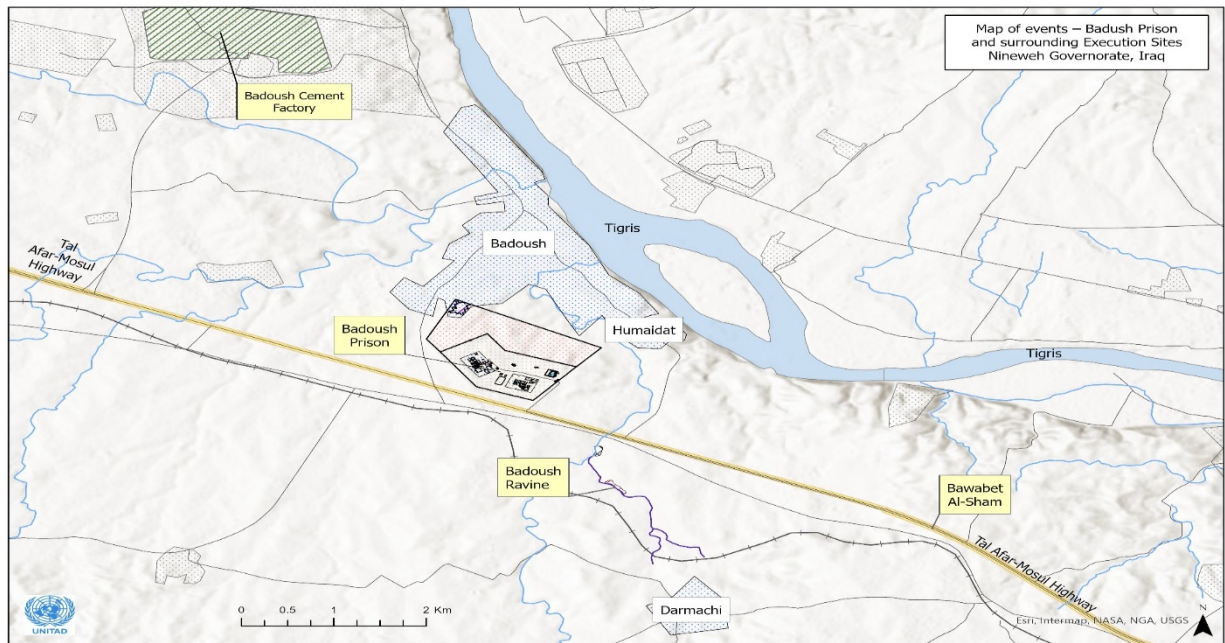
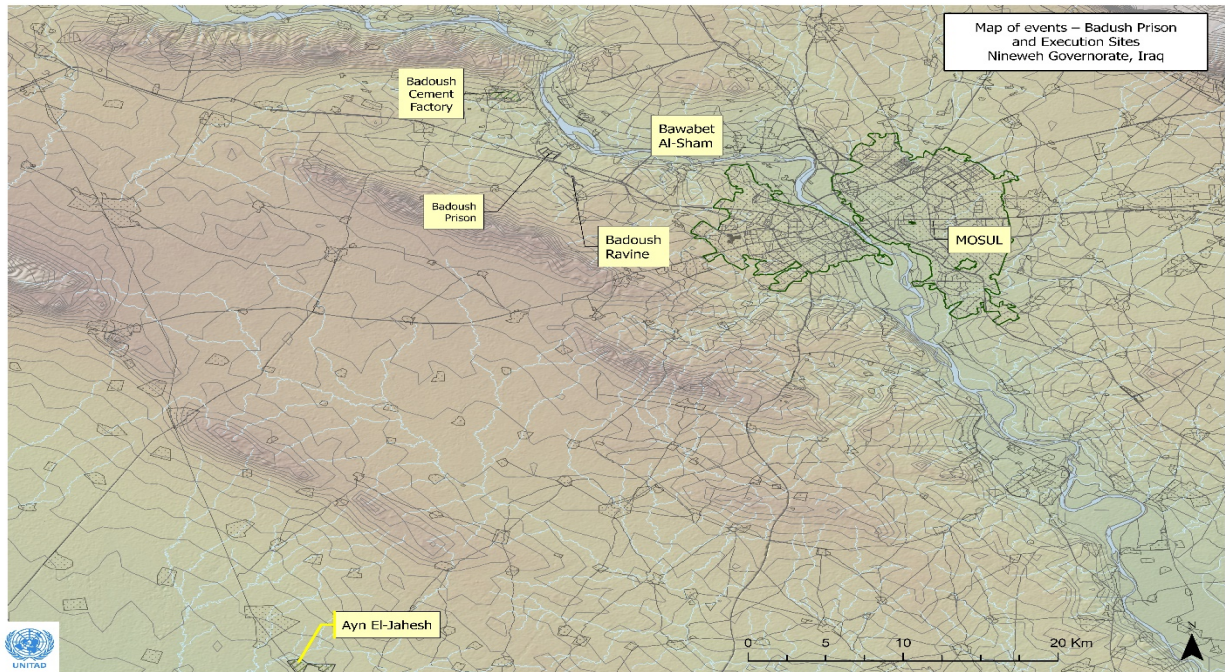
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<sup>84</sup> See section 5.2 below.

<sup>85</sup> See section 5.4 below.

<sup>86</sup> See section 5.5 below.





## 5.1. Badush Valley Execution Site

83. Collected material and testimonial evidence confirm the mass killing of hundreds of Shi'a prisoners in Badush Valley on 10 June 2014.<sup>87</sup>
84. As detailed below, numerous witnesses, all of whom are former prisoners from the Shi'a and Sunni communities, stated that they were brought in trucks into the desert near a ravine in Badush Valley, where Shi'a prisoners were separated from the Sunni prisoners. The Shi'a

<sup>87</sup> See section 5.1.1.

men were then lined up in front of a long ditch and shot by ISIL. Following the execution, ISIL members went into the ravine and shot those who were still alive, before setting the bodies on fire.<sup>88</sup>

85. Reports from international and non-governmental organizations corroborate this sequencing of events and the location.<sup>89</sup> However, some witnesses struggle to give an accurate description of the exact locations they were brought to, as the executions took place in deserted areas that they were not familiar with, bearing in mind that most of the Shi'a prisoners came from other regions.<sup>90</sup> Additional statements collected during investigations also indicate that hundreds of prisoners were killed in Badush Valley. Most of those statements do not provide details on the circumstances of the execution; however, they confirm that Shi'a prisoners were executed as a group in Badush Valley.
86. The excavation process in Badush Valley and UNITAD's forensic report confirm the presence of a large number of corpses with bullet wounds and burn marks in the Badush Valley ravine. The number of years that have passed since the execution, coupled with the effects of precipitation and other meteorological events, as well as the attempts from villagers to bury the bodies, impacted the physiognomy of the area and the location of the bodies.
87. Multiple witnesses confirm the general narrative of the 10 June 2014 mass execution incident. However, some details of their accounts differ slightly from one another, such as the descriptions of the ISIL members in charge. In addition to that, as demonstrated in the section below, some of the events were not corroborated by other sources.

#### 5.1.1. *The mass execution at Badush Valley*

88. On 10 June 2014, a group of prisoners were taken to the Badush Valley. The circumstances surrounding their transportation vary slightly from one witness to another. The majority of witnesses confirmed that on that date, several trucks loaded with prisoners, together with vehicles carrying ISIL members, left the Badush Central Prison, travelled on the highway towards Mosul and before reaching the Bawabet al-Sham checkpoint, took a right turn onto a dirt road, where they continued driving in the desert until they stopped, at around 11.00 am, in a deserted area with a large ditch.
89. According to the testimony of a survivor witness, these prisoners were taken on foot to the execution site at Badush Valley.
90. Testimony from other survivor witnesses described a different course of events. According to them, certain prisoners walked on the main highway and when they reached Bawabat al-Sham checkpoint, ISIL fighters started loading them onto two trailers which were

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<sup>88</sup> See section 5.1.1.

<sup>89</sup> Human Rights Watch, Iraq: ISIS Executed Hundreds of Prison Inmates, 30 October 2014. [OHCHR, Iraqi civilians suffering "horrific" widespread and systematic persecution – Pillay, Press Release, 25 August 2014.](#)

<sup>90</sup> Human Rights Watch, Iraq: ISIS Executed Hundreds of Prison Inmates, 30 October 2014.

accompanied by several Kia pick-up trucks. When the prisoners tried to leave, the ISIL militants shot at them. They were around 500 to 1000 prisoners.

91. One survivor recounted that upon reaching the Badush Valley execution site, he saw other prisoners already present at the scene.
92. Once the truck stopped, the prisoners were asked to get out and sit on the ground. At this stage of the narrative, some witnesses supplied additional elements that are neither corroborated nor contradicted by other sources. One source stated that ISIL members dealt with the prisoners in a non-aggressive manner and told them that they were waiting for instructions from a person they referred to as Hajji, While, according to another source, an ISIL militant read out names of people who had worked or cooperated with the prison authorities and guards from a paper; however, no one presented himself.<sup>91</sup>
93. Juveniles and Sunni prisoners were then asked to separate from the Shi'a, and numerous Shi'a pretended to be Sunnis and moved with them. Some of these Shi'a inmates, however, moved back to the Shi'a group, either because they had been identified as Shi'a by other Sunni inmates, or because they were frightened after threats to kill them differently (e.g. slaughtering) if they do not reveal their true religious sect, or because they were told that the reason of the separation was to give weapons to Sunnis who will later be asked to join ISIL, and not to kill the Shi'a.
94. At this point, several witnesses provided accounts of multiple instances of violence that occurred at the site. Accordingly, when ISIL members asked Sunnis to isolate themselves from other detainees, a Turkmen prisoner was killed after revealing that he was Turkmen.
95. One prisoner begged ISIL not to kill him, explaining that he had nothing to do with the events in Iraq. He also stated that he had children waiting for his return, but despite his pleas, the gunmen shot him in the hand.
96. An ISIL member took five prisoners to the edge of the valley and executed them with a bullet to the back of the head. A prisoner was shot and killed when ISIL found out that he was Shi'a from a photo on his phone of Imam Ali. ISIL found a phone with the prisoner and asked him why he did not hand it over. After unlocking the phone and seeing a picture of Imam Ali, they asked him if he was Shi'a. They then told him that he was an apostate infidel and one of the gunmen shot him.
97. With the exception of the ones who joined ISIL, Sunni inmates and juveniles were then loaded into the trucks and left the place together with the Shi'a who were still pretending to be Sunnis.
98. ISIL collected the belongings of the inmates. However, it is unclear whether this occurred before or after the separation of Sunnis and Shi'a and whether only Shi'a inmates were targeted.

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<sup>91</sup> UNITAD, Confidential testimonial evidence.



99. Before the execution of the Shi'a prisoners, ISIL members insulted them, using derogatory terms such as "*Rafidi* (rejecters) and *kufar* (disbelievers)". ISIL members announced that ISIL had declared them apostates and that they must be executed as "*Rafideen* and supporters of the *Safawiya* government", adding that those who kill the Shi'a will go to *Janna* (paradise). The Shi'a prisoners were then lined up in front of a long ditch. They were asked to count themselves - they were approximately between 500 and 600 inmates.<sup>92</sup>
100. A prisoner was shot in the head by the *Emir* after stating that he was not a *Rafidi*. The prisoner also said that he was with the Ba'ath Party during Saddam Hussein's period. The *Emir* then asked him whether he was Shi'a or not. Upon the prisoner's affirmative response, the *Emir* shot him in the head and said: "I came to slaughter the Shi'a, even if they were in the wombs of their mothers."<sup>93</sup>
101. ISIL members waited for orders, which they later received by phone, and following which Hajji commanded the militants to execute the prisoners. The militants then shot the Shi'a inmates as a group. Just before the mass execution of the Shi'a inmates, one militant is said to have read the ISIL decision to kill the Shi'a out loud.<sup>94</sup>
102. Following the execution, ISIL members went into the ravine and shot those who were still alive. Subsequently, ISIL set the bodies on fire to eliminate any potential survivors. As the fire reached the prisoners, some of the surviving prisoners remained in the ravine until ISIL departed, those who moved, were shot by ISIL members.
103. Several witnesses confirmed that ISIL filmed the execution. However, UNITAD was unable to collect or locate any video footage pertaining to this incident.
104. According to one witness interview, a prisoner filmed this incident with his cell phone. UNITAD was unable to locate this prisoner or the phone.

#### 5.1.2. ISIL members present at the scene

105. There were between 30 and 100 armed ISIL members present during the 10 June 2014 event. Some of the ISIL members had their face covered but most of them did not. They seemed to be coming from different backgrounds: there were some Kurds, Iraqis, Arabs, and some foreigners. They were wearing different kind of clothes including the Kandahari outfit and were speaking in different dialects and languages.
106. At least two Badush ex-prisoners, previously released from the Heavy Sentences Ward, may have been amongst the ISIL militant present on the scene. They were giving orders to the other ISIL members.
107. While some members appeared to have joined ISIL in Badush Valley, many members appeared to be the ones who were on the highway and who had participated in the attack

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<sup>92</sup> UNITAD, Confidential testimonial evidence.

<sup>93</sup> UNITAD, Confidential testimonial evidence.

<sup>94</sup> UNITAD, Confidential testimonial evidence.





on Badush Central Prison. In the valley there were also many vehicles, mainly pickups that seemed to have been seized from the Iraqi police and military.

5.1.3. *Additional Evidence of mass execution at Badush Valley*

*3.1.1.1. Case Reporting*

108. Based on the available evidence, a group of prisoners who belonged to the Sadrist Movement were kept locked up in their halls following the takeover of the prison.<sup>95</sup> ISIL Emir Abu Sulayman is identified as the ISIL Commander who led the attack on these prisoners, with the assistance of the Ansar al-Sunna group. There were around 400 Shi'a prisoners locked up and when ISIL finally opened the halls to release them, the prisoners were told that they would be taken home.

109. Instead, armed ISIL members walked the prisoners approximately one kilometre away from the prison, arriving near the railway track and the garbage dump of the prison. Testimonial evidence corroborated by the results of forensic analysis indicate that this site, while part of the broader Badush Valley area, is a separate execution site, separate from the one referred to above.

110. Once on site, the prisoners were ordered to sit on the ground. Abu Sulayman made a phone call and then stated that he had received approval to execute the whole group of prisoners. The 20 to 25 ISIL armed members present then placed the prisoners in a line and Abu Sulayman gave the order to open fire on the prisoners.<sup>96</sup> The ISIL members then sought to ensure all were killed, by shooting those they believed to still be alive.<sup>97</sup>

111. Abu Sulayman further ordered that the bodies not be buried but rather be left in the open for several days, as he didn't believe they deserved a burial. Following the massacre, local villagers complained to Abu Sulayman about the smell of the decomposing bodies. At that point, he ordered that the bodies be buried in the same location with the use of bulldozers.<sup>98</sup> Investigations conducted by UNITAD confirmed the presence of corpses in this area.

*3.1.1.2. Statements referring to "Akab Valley"*

112. Several prisoners reported that a few hundred prisoners were also taken by ISIL to Akab Valley, located near an industrial area and the local Ibn Sina Hospital. There, Shi'a prisoners were separated from the Sunni ones, with approximately 500 of them being executed. The bodies were then burnt. Of these 500 Shi'a prisoners, between 25 and 30 survived – several of them were injured but managed to escape. Based on available information, including the

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<sup>95</sup> See section 4.3.1.

<sup>96</sup> UNITAD, Confidential testimonial evidence. *See also*, In the Grip of the Law, Episode "What happened in Badush Prison after the events of June 2014", dated 13 February 2021 – 24:00 to 26:00 min .

<sup>97</sup> UNITAD, Confidential testimonial evidence.

<sup>98</sup> In the Grip of the Law, Episode "What happened in Badush Prison after the events of June 2014", dated 13 February



description of the site and its distance from the Badush Central Prison, there is strong indication that Akab Valley is the same area described above as Badush Valley.

#### 5.1.4. *Human remains found in the Badush Valley*

113. Several days after the mass execution at Badush Valley, local villagers found many unburied bodies in several locations. The dead bodies had civilian clothes and prison uniforms on and some of them had been burnt. In some locations, the dead bodies had their hands tied behind their backs with plastic cables and ropes.
114. One of the villagers affirmed to have buried several bodies. He, with other villagers, using hand shovels, buried a pile of 17 to 23 bodies located near the road and the entrance of the Badush Valley. He later asked a man with a bulldozer to bury the burnt bodies located in a big slope next to a stone factory road. The man started and buried half of them but then stopped as he was afraid of ISIL retaliation.
115. Excavation work carried out by the Iraqi authorities with the cooperation of UNITAD in the Badush Valley confirms the presence of partly buried human remains with evidence of gunshot wounds at this location. The key findings of the report establish that a significant number of human remains have been recovered in the Badush Valley – a total of 132 complete bodies, 252 body parts and 67 pieces of associated evidence, including burnt remnants of clothing and ballistics, in an area which is 140 x 40m wide. The scene shows disturbances caused by at least two machines no earlier than 14<sup>th</sup> June 2014 and no later than 26<sup>th</sup> June 2014.

#### 5.2. **Badush Cement Factory execution site**

116. Some prisoners loaded in three trucks at Badush Central Prison, all of whom were Shi'a prisoners, were taken by a group of 40 to 50 ISIL members to a place close to Badush Cement Factory. They drove towards Bawabat el-Sham checkpoint, turned left on the dirt road before reaching it, drove back towards the prison, passed it, reached the Cement Factory and continued for about one to one and a half kilometres.
117. The prisoners were asked to get off the vehicles and to sit on the ground. ISIL members told the prisoners to wait for their Emir – a person they referred to as Hajji. ISIL reassured the prisoners, telling them not to be afraid and that they were all Iraqis, regardless of their religion.
118. After some time, Hajji arrived in a Hummer vehicle accompanied by two other Hummers. He wore Afghani style black colour clothes, military vest full of ammunition, a shemagh scarf over his head and carried an rifle.
119. Hajji came close to the prisoners and addressed them, reassuring them again that they had nothing to fear. He then asked the Sunni to separate from Shi'a as the latter came from further away, hence would need special transportation to get home. Most of the Shi'a came to one side; some, remained with the Sunnis. Hajji asked the Sunni group if any Shi'a were hidden

among them and threatened to kill any Shi'a he would find in the group. Some Shi'a who had joined the Sunni group then moved back with the Shi'a. There may also have been some Yazidi prisoners who were put with the Shi'a prisoners. There was no count made of the prisoners gathered, but there may have been between 350 and 510 predominantly Shi'a prisoners. They were asked to sit on the ground in a row, facing the ISIL members.

120. Hajji's behaviour then changed towards the Shi'a. He told the other ISIL members that they would kill the Shi'a whom he called "*Rawafid*". His members yelled "Allahu Akbar" and shouted that ISIL will remain. Some prisoners started to plead for their life and Hajji ordered his men to open fire. An ISIL member was videotaping the event.
121. The Sunni group was loaded into trucks, and they started to leave as ISIL started shooting with machine guns at the group of predominantly Shi'a prisoners.
122. ISIL members may have then burnt the bodies. Some Shi'a prisoners who hid under dead bodies, managed to escape the mass execution. An estimated 350 to 500 Shi'a prisoners were executed at that location.

### 5.3. Bawabat el-Sham Execution Site

123. The Sunni prisoners – among whom many Shi'a were still hiding –who were loaded back into trucks from the Badush Valley execution sites were taken to the Bawabat el-Sham checkpoint. Other prisoners who left the prison but who were not loaded into trucks, continued on foot along the highway to reach the Bawabat el-Sham checkpoint. Later in the day, ISIL captured a number of prisoners who had managed to reach a nearby village and were hiding there, and also transported them to this checkpoint.
124. An ISIL group was stationed at this checkpoint. They had been joined by several Badush prisoners.
125. The ISIL members present prevented all the prisoners from passing beyond this checkpoint. Within an hour, many prisoners were gathered at Bawabat el-Sham and ISIL started to separate the Sunni from the Shi'a prisoners.<sup>99</sup> An ISIL member dressed in Afghani uniform who spoke Arabic organised the separation of the prisoners according to their religion. He was supported by the Badush prisoners who had just joined ISIL.
126. The Sunni prisoners, except for those who were previously members of the army and police, were interrogated and then were allowed to go. The remaining prisoners were then executed. There were around 250 of them at this time.
127. When one prisoner was asked if he was a police officer by one of the ex-prisoners who had joined ISIL, he got scared and attempted to run away. Taking advantage of the situation,

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<sup>99</sup>UNITAD, Confidential testimonial evidence. *See also*, In the Grip of the Law, Episode "What happened in Badush Prison after the events of June 2014.



several other prisoners also tried to escape. ISIL members shot at them, and several were killed.<sup>100</sup>

128. The remaining prisoners were then loaded into trailers accompanied by pick-up trucks. The trucks left towards Mosul, with prisoners being taken to either the Badush Valley or possibly other locations.

#### 5.4. Badush prisoners Ayn el-Jahesh Execution Site

129. The Ayn el-Jahesh site was an ISIL military camp. The camp was about 2,000 to 3,000 square meters, square-shaped and surrounded by an earthen berm. It was a desert area located near stone quarries and there was a headquarters of an oil company called “the strategic line” located 15-20 km towards *Eghzayil* village.

130. Prisoners arrived at Ayn el-Jahesh from different locations (Bawabat el-Sham, Badush Valley and Badush Cement Factory). At this site, hundreds of ISIL members were present with heavy equipment, vehicles and black and white ISIL flags. In the beginning, ISIL treated the prisoners in a good way. They were fed and kept in an area close to the Ayn el-Jahesh old cemetery. Prisoners could move inside the camp but couldn’t leave and their mobile phones were confiscated.

131. Three witness interviews confirm that a mass execution took place at this site, with slightly different accounts. One witness mentioned an Emir called “Hajji” by the other ISIL members arrived. Hajji asked the prisoners to identify among themselves every man who they personally knew to be a Sunni. About 35 to 40 prisoners were not identified as Sunni prisoners by others and therefore Hajji considered them de facto Shi’a. According to another witness, the militants asked the Sunni prisoners they knew to identify the Sunnis in the group. Then the militants killed the prisoners who were known to be Shi’a. The Sunnis were then transported to Mosul. When prisoners were divided in the camp, eight individuals were not identified as Sunnis. After five days, these individuals were transported to the main road, released, and given fifty thousand Iraqi dinars. ISIL did not communicate any reason why these individuals were released or given money. A third witness describes how on the second day, after eating breakfast, the militants asked the prisoners who participated in the first escape attempt at the beginning of 2014 and were placed in solitary confinement to stand aside. About forty to fifty prisoners stood aside. Those prisoners then identified the Sunnis they knew among the prisoners.

132. Approximately 85 to 100 prisoners were identified as Shi’a and executed by ISIL. The rest of the prisoners were released a couple of days later. On the day of the execution, ISIL took the Shi’a prisoners in batches of six. They loaded them into black military Ford pickups and drove them to a stone quarry area, 10 minutes away from the camp. Several ISIL members were already present on the scene. At least one prisoner could hear screaming and shootings that may have been coming from the previous prisoners’ batch execution.

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<sup>100</sup> Al Aan TV video – Exclusive news | What secrets does the Badush cemetery keep?





133. ISIL lined up the batch of prisoners on the cliff of the stone quarry and ordered them to kneel. ISIL started shooting the prisoners in the head from behind, then they stopped and started shooting at them randomly with a machine gun. They then shot the survivors who fell into the hole using their pistols. From this group, only two prisoners were still alive, one severely wounded, who may have died at the scene.

## 5.5. Other Reported Execution Sites

134. Several testimonies suggest that Badush prisoners from the Shi'a community were executed in other locations, besides the ones described above. Additional information is needed to be able to confirm that executions took place in those locations.

### 5.5.1. *Between the main gate of Badush Central Prison and Bawabat el-Sham checkpoint*

135. Scattered bodies could be seen close to the Badush Central Prison main gate and along the road towards Bawabat el-Sham checkpoint. A prisoner witnessed the killing of five prisoners at the main gate of the prison.<sup>101</sup> Following the events described in this report, the prison was completely destroyed by explosives and none of the original structures remained, except for some remains of the basements. The area was completely cleaned, thereby limiting the potential evidentiary material that could be recovered from further investigations on site.

### 5.5.2. *Khafsa Sinkhole*

136. Residents from villages near Khafsa may have witnessed ISIL members bringing people to the sinkhole in four trucks on 10 June 2014. The people were blindfolded and with their hands tied. ISIL unloaded them, lined them up on the edge of the hole and then opened fire so that the bodies fell in. ISIL also executed a smaller number of people a short distance away and threw their bodies into the hole. One of the residents stated that ISIL members later told him that those executed were Badush prisoners.<sup>102</sup> Corroboration would be required to draw any firm conclusions about this alleged massacre.

## 6. Abduction of Shi'a prisoners several days following their escape

137. Several prisoners either escaped or were released on 10 June 2014. Their family members were in touch with them for several days, and some witnessed their abductions by ISIL through overhearing it on phone calls, before completely losing touch with them.

138. Four of the prisoners were released by ISIL despite being Shi'a and reached one of the village on 12 June 2014, with the help of a local tribal leader, who hosted them for eight days and treated them well. Five days later, they went to the Mosque and told the Sheikh about

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<sup>101</sup> UNITAD, Confidential testimonial evidence.. See also, Human Rights Watch, Iraq: ISIS Executed Hundreds of Prison Inmates, 30 October 2014.

<sup>102</sup> Human Rights Watch, Iraq: ISIS Dumped Hundreds in Mass Grave, 22 March 2017. Available at: Iraq: ISIS Dumped Hundreds in Mass Grave | Human Rights Watch (hrw.org)

the events at Badush Central Prison on 10 June 2014. That same evening, ISIL members came for dinner and slept at local tribal leader's house. The next day, one of the Badush prisoners called his family to arrange his travel back home but the local tribal leader prevented him from doing so, saying that it was too dangerous for them to leave at this time. Instead, he proposed to obtain fake identification documents. On 20 June 2014, calls were made to prepare the new identification documents and a car arranged to pick them up at 1p.m. In the morning, one of the Badush prisoners went to the barber shop to cut his hair for the photo for the new ID. Whilst there, ISIL members entered the barber shop and took him. Following that, they came to the local tribal leader's house and took the other Badush prisoners.

139. Thereafter, the wife and son of one of the prisoners tried to call him several times. On a few occasions, ISIL members answered. Immediately after their abduction, a man speaking with an Iraqi dialect picked up the call and told the son that his father would be on trial in front of a Sharia Court and would be executed if he was found guilty or detained if he was not found guilty. The son tried to call back several times and after a few attempts, another man who did not speak with an Iraqi dialect but spoke bad Arabic provided the same answer. The next day, his wife called the prisoner's number and a man who spoke a foreign Arabic dialect answered. He said that her husband was a prisoner of war and that since the Prime Minister won't release the Sunni prisoners from the prisons in Nasiriya, they would execute all Shi'a. The following day, during another call, the wife spoke with a man with a Bedouin accent who told her that her husband was with ISIL now and that she should not call this number again. Since then, the families of those prisoners have not received any further news about their relatives.
140. Another prisoner managed to survive the Badush Valley mass execution after a bullet struck his left forearm and shattered the bone. Two fellow prisoners helped the injured prisoners leave the valley, where the gunmen had set fire to dry herbs to burn anyone still alive. As night fell, the survivors separated themselves into small groups. One group, consisting of four prisoners, was intercepted, on their way to Bartella, by a civilian pick-up bearing black flags and seven armed men. After the four prisoners identified themselves as prisoners, they were taken to the Hammam al-Alil's Municipal Council building where they were detained with others who were accused of various crimes, including three other Badush prisoners. Black flags of the Islamic State were placed in the building. During detention, the witness was beaten and burned with a heated spoon in his right leg and knee. Then, he and his fellow Badush prisoners were brought before the Islamic State's Sharia judge, in the same building. The Judge asked them whether they were Shi'a or Sunni. One of the three Shi'a prisoners from the Light Sentence Ward was executed. Eventually, the remaining survivors were released after convincing ISIL that they were Sunni.
141. Eleven Badush prisoners, who had survived the Badush Valley execution, decided to head toward the railway tracks. The group then split into smaller groups. Two of the men continued to traverse through valleys for two days, until they arrived at a village called al-Jad'a. They then took a taxi with the intention of reaching Baiji. However, when they arrived at the Hammam al-Alil checkpoint, ISIL asked the driver about them. The driver told them

that they were "*Rawafidh*", so ISIL arrested them. They were put in a room at the same checkpoint, where about 17-20 other individuals were detained and blindfolded. Among them were about five or six prisoners. Five or six militants entered the room carrying swords, daggers, and electric sticks, and began to brutally beat them. During the beating, they asked about their religious sect. One of the two Badush prisoners said that he was "a Muslim, just like them".<sup>103</sup> ISIL pulled him aside and asked him to recite the *Adhan* (the Islamic call to prayer), to perform the *Wudu'* (the Islamic ablution ritual) and to pray, which he did according to the Sunni way. After that, they tied him up and returned him to the room. ISIL also took the other Badush Central Prisoner to another room and asked him to do the same. After about fifteen minutes, a Silverado pick-up truck arrived. They loaded 15 detainees into the trucks and departed towards Qayyarah to be executed. The aforementioned Badush prisoner, who had recited the *Adhan* the Sunni way, and three remaining detainees were loaded into two cars and released.

### **PART III – PRELIMINARY LEGAL FINDINGS**

142. The substantive law applied in the subsequent analysis is international criminal law recognized as being part of customary international law. Prominence is therefore given to the jurisprudence of international criminal tribunals that apply customary international law.<sup>104</sup> Where necessary, reference will be made to the Rome Statute of the International Criminal Court to highlight any significant differences in the applicable law.

143. All legal requirements for the analyzed crimes and modes of liability are set out below. These requirements are further elaborated only where the legal analysis so requires. Preliminary legal findings are made according to the "reasonable grounds to believe" evidentiary standard (see paragraph 1).

## **7. Genocide**

### **7.1. Applicable law**

144. Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Convention) defines the crime as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, 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; (e) forcibly transferring children of the group to another group." This definition has been considered to form part of customary international law and to constitute *jus cogens*.

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<sup>103</sup> UNITAD, Confidential testimonial evidence.

<sup>104</sup> ICTR, ICTY and KSC.



145. This report focuses on the elements of genocide in the form of killing members of a protected group. Accordingly, the elements of this crime are: (a) the protected nature of a group; (b) the killing of members of that group; and (c) the perpetrators' intent to destroy, in whole or in part, the protected group, as such.

7.1.1. The protected nature of the group

146. The list in Article II is exhaustive: only national, ethnic, racial or religious groups are protected under the Convention. Such groups must be a collection of people with a particular group identity. The protected group must be defined positively and have distinguishing characteristics. A negatively defined group does not meet the definition. The determination of the composition of the group is necessarily made on a case-by-case basis.

7.1.2. Killing members of a group

147. The requirements for "killing" in Article II of the Convention are equivalent to the specific requirements of the underlying act of murder as a war crime or as a crime against humanity. Accordingly, murder is committed through an act or omission resulting in the death of a person. It is not necessary to produce the body of the deceased person as proof of death; it suffices to rely on circumstantial evidence, taking into account, for example: (i) incidents of mistreatment directed against the victim; (ii) patterns of mistreatment and disappearances of other victims; (iii) coincident or near-coincident time of death of other victims; (iv) the circumstances in which the victim was last seen; and (v) the length of time which has elapsed since the person disappeared. The perpetrator must have killed the person intentionally or must have intentionally caused serious bodily harm, which the perpetrator should reasonably have known might lead to death.

148. Murder as an act of genocide requires proof of a result, in the sense that members of the group were killed. However, a numeric assessment of the number of people killed is not required for the *actus reus* of genocide to be established.

7.1.3. Genocidal intent

*Intent to "destroy" a protected group "as such"*

149. The *mens rea* required for genocide is a specific intent to destroy, in whole or in part, a protected group, as such. The term "destroy" is limited to the physical or biological destruction of the group. Other acts which do not fall under the definition of prohibited acts may however be considered as evidence of the specific intent of a perpetrator to destroy the group.

150. The words "as such" underscore that something more than discriminatory intent is required for genocide; there must be intent to destroy, in whole or in part, the protected group "as a separate and distinct entity", because of its particular group identity. The ultimate victim of the crime of genocide is the protected group. The sparing of an inconsequential number of members for personal motives does not deny the existence of an intent to destroy the group.



151. Display of intent through public speeches or in meetings may support an inference as to the requisite specific intent. Absent direct evidence, the intent to destroy may be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the weapons used, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts, including the use of derogatory language. In assessing specific intent, consideration ought to be given to all of the evidence, taken together.
152. While the existence of a genocidal plan or policy is not required under customary international law, it can be an important factor in inferring genocidal intent. When the acts and conduct of a perpetrator are carried out in accordance with an existing plan or policy to commit genocide, they become evidence relevant to the perpetrator's knowledge of the plan; such knowledge constitutes further evidence supporting an inference of intent.

*“in whole or in part”*

153. Where only part of a protected group is targeted, that part must constitute a substantial part of that group such that it is significant enough to have an impact on the group as a whole. In determining substantiality, considerations may include: the absolute and relative numerical size of the targeted part, the prominence of the part of the group within the larger whole, the area of the perpetrators' activity and control, and the possible extent of their reach. The applicability of these factors and their relative weight will vary depending on the circumstances of a particular case.
154. The intent requirement of genocide is not limited to instances where the perpetrator seeks to destroy only civilians. Provided the part intended to be destroyed is substantial, and provided that the perpetrator intends to destroy that part as such, there is nothing in the definition of genocide prohibiting, for example, a conviction where the perpetrator killed detained military personnel belonging to a protected group because of their membership in that group. Likewise, the existence of personal motives must be distinguished from intent and does not preclude a finding of genocidal intent.

## 7.2. Legal analysis

### 7.2.1. *The Twelver Shi'as of Iraq as a protected group*

155. The Shi'as represent one of the two major branches of the Islamic religion. The Shi'a branch differentiates itself from the Sunni branch in that they believe that the leadership of the Muslim community after Prophet Mohammad belonged to Ali ibn Abi Talib, Muhammad's cousin and son-in-law, and his successors. The word “Shi'ite” itself, means “supporter/follower”, in the Arabic language. The Shi'ite faith is divided into different sects, including the Twelver Imamis, the Ismailis, and the Zaydis, among others.<sup>105</sup>

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<sup>105</sup> Al Bayan, Creed and Sharia Issue No. 373, *‘فرق الشيعة’*.

156. The Twelver Imamis (Twelver Shi'as) constitute the majority of Shi'a in the world today. The overwhelming majority of those who identify as Shi'a in Iraq are Twelver Shi'as.<sup>106</sup> The term "Twelver" refers to the belief in the twelve imams of the Muslim community, the last of whom – Mohammad al-Mahdi – is in a state of occultation, destined to return as the "Mahdi". Twelver Shi'a religious beliefs and practices differentiate them from Sunnis and from other, smaller Islamic branches. In particular, Twelver Shi'as also have their own interpretation of Islamic history and theology as well as their own holy days of remembrance and holy sites.<sup>107</sup>
157. Shi'a Twelvers identify themselves as Shi'as. In particular, when asked, many Badush prisoners identified themselves as Shi'a. Families of the prisoners identified them as Shi'a. ISIL members also identified the prisoners as such.<sup>108</sup>
158. Based on the above, Twelver Shi'as of Iraq qualify as a protected religious group under Article II of the Convention.

#### 7.2.2. Killing members of the group

159. In the hours and days following ISIL's 10 June takeover of Badush Central Prison, armed ISIL members killed at least 1000 Badush Shi'a prisoners. The killings occurred at sites inside and in the vicinity of the prison (such as Badush Valley, Badush Cement Factory, Bawabat el-Sham, Ayn al-Jahesh).<sup>109</sup> In particular: several prisoners who had left their cells were killed while still inside the prison; allegedly other Shi'a prisoners inside the Light Sentences Ward were burnt to death; prisoners who attempted to escape from the main gate were killed while trying to get into vehicles that were driving along the main road; prisoners were killed while attempting to escape by jumping off the trucks while being transported to the execution sites, both from the main gate and from Bawabat el-Sham checkpoint; Shi'a prisoners were shot to death while attempting to escape from Bawabat el-Sham checkpoint; mass execution of hundreds of Shi'a prisoners in Badush Valley; mass execution of hundreds of prisoners belonging to the Sadrist Movement close to the prison's garbage dump; mass execution of several hundred, predominantly Shi'a, prisoners next to the Badush cement factory; and the execution of thirty-five to forty Shi'a prisoners in Ayn el-Jahesh. Moreover, an excavation process in Badush Valley confirmed the presence of 193 complete corpses and 302 body parts with bullet wounds and burn marks in the Badush Valley ravine.

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<sup>106</sup> Expert Report for UNITAD by Aymenn Jawaf Al-Tamimi, ISIL ideology towards Shi'a in Iraq, 2014-2017, *with specific reference to the 12-14 June 2014 killings at the Presidential Palace Complex (PPC) in Tikrit'* (April 2024), para. 11, fn 9.

<sup>107</sup> Martin, Richard C. (2004). "Encyclopedia of Islam and the Muslim World: A-L". Encyclopaedia of Islam and the Muslim world; vol.1. MacMillan. ISBN 0-02-865604-0; Momen, Moojan (1985). An Introduction to Shi'i Islam: The History and Doctrines of Twelve. Yale University Press. ISBN 0-300-03531-4; Sachedina, Abdulaziz Abdulhussein (1988). The Just Ruler (al-sultān Al-'ādil) in Shī'ite Islam: The Comprehensive Authority of the Jurist in Imamite Jurisprudence. Oxford University Press US. ISBN 0-19-511915-0; Tabataba'i, Sayyid Mohammad Hosayn (1977). Shi'ite Islam. Seyyed Hossein Nasr (translator). SUNY press. ISBN 978-0-87395-390-0.

<sup>108</sup> See above, section 5.

<sup>109</sup> See above, section 5.



160. Based on the above, it can be inferred that members of the protected group were killed and the *actus reus* of the crime is met.

### 7.2.3. Genocidal intent

161. The genocidal intent of ISIL can be inferred from the following factors: (a) the existence of a genocidal ISIL policy against the Twelver Shi'as of Iraq; (b) the knowledge of that policy and displays of intent by ISIL to fulfill that policy with the killing operation; (c) the characteristics of the killing operation, such as its scale and nature, and the systematic and organized manner in which it was carried out.

#### 7.2.3.1. Existence of a genocidal ISIL policy against the Shi'as

162. To ascertain whether ISIL had a genocidal policy against Shi'as, consideration will be given to: (i) speeches and statements of ISIL leadership; (ii) official ISIL jurisprudential publications; (iii) official ISIL media products; and (iv) relevant ISIL-claimed attacks. For each of these categories, both the time before and after the Badush massacre will be taken into account, as statements and acts post-dating the crimes may still shed light on how those crimes were viewed in the context of a genocidal policy, if any.

#### Speeches and statements of ISIL leadership

163. As early as 2004-2006, ISIL's precursor, AQI under al-Zarqawi shifted the focus from the "far enemy" to the "near enemy", namely the Shi'as.<sup>110</sup> In a letter written to Osama bin Laden in February 2004, al-Zarqawi described the Shi'a as "the insurmountable obstacle, the lurking snake, the crafty and malicious scorpion, the spying enemy, and the penetrating venom".<sup>111</sup> In his view, the Shi'as "are the enemy. Beware of them. Fight them. By God, they lie." Al-Zarqawi justified his views based on religion and politics. On the religious front, he declared that "Shi'ism is a religion that has nothing in common with Islam" and engaged in a seething condemnation of Shi'a beliefs and practices. On the political side, he proclaimed the Shi'as as a "a sect of treachery and betrayal throughout history and throughout the ages", who are cunning and vengeful, and who have liquidated many Sunnis. In the face of all these, al-Zarqawi concluded that the Shi'as were the "real danger that we face" and that the "only solution is for us to strike the religious, military, and other cadres among the Shi'a with blow after blow until they bend to the Sunnis".<sup>112</sup>

164. In 2005, Ayman al-Zawahiri, the deputy head of al-Qaeda at the time, wrote a letter to al-Zarqawi which indicated that the core of al-Qaeda did not agree with al-Zarqawi's new approach.<sup>113</sup> Zawahiri made it clear that he too considered the Shi'a to be a danger to Islam,

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<sup>110</sup> See above, para. 6.

<sup>111</sup> Letter written from al-Zarqawi to Osama bin Laden, February 2004.

<sup>112</sup> Letter written from al-Zarqawi to Osama bin Laden, February 2004.

<sup>113</sup> The message of Shaykh Dr. Ayman al-Zawahiri to Shaykh Abu Mus'ab al-Zarqawi in summer 2005," edition by Lujnat al-Fikr, September 2014.

but he stopped short of an explicit pronouncement that the Shi'a were apostates, and clearly he did not share the belief that it was a priority to target them at the time.<sup>114</sup>

165. This, however, did not stop al-Zarqawi from further developing AQI's anti-Shi'a ideology. In 2006, he issued a series of lectures entitled: "Has the story of the *rafidha* come to you?"<sup>115</sup> In his lecture, al-Zarqawi made clear that *rafidha*<sup>116</sup> referred to the Twelver Shi'a, accusing them for having "replaced [God's religion] with what is lower than the mixture of malice and falsehoods of the Persians [i.e. Zoroastrians], the deceptions of the Jews and the errors of the Christians, so that it can accord with all the members of the other religions who are hostile to the people of Islam." Al-Zarqawi further accused the Shi'as of wanting to "destroy Islam and spread *fitna* [strife] and division among the Muslims, and destroy the Islamic State through waging war on [the Sunnis]". In summary, al-Zarqawi's view was that the Shi'a constituted a sect guilty of idolatry against God, who have apostatised from Islam by virtue of claiming affiliation with it and espousing views that constitute disbelief. In other words, the Shi'a were at the same time *rafidha* (rejectors), *mushrikun* (idolaters), *murtaddin* (apostates) and *kuffar* (disbelievers).<sup>117</sup>
166. The successors of AQI - ISI, ISIL and IS - continued to refer to Shi'as as *rafidha* or *rawafidh*, in the same way that al-Zarqawi used those terms; these organizations also adopted and further developed al-Zarqawi's views. In particular, in- 2011, Abu Omar al-Baghdadi, the leader of ISI at the time, noted that, according to the organization, the *rafidha* are *murtaddin*, or apostates who "must either enter into Islam or face the sword."<sup>118</sup>
167. During Abu Bakr al-Baghdadi's leadership, majority of ISI and later ISIL official statements were made by his spokesman. While the clarification that "the opinion of the Islamic State is that of its Imam, those whom he delegated, and its official spokesman"<sup>119</sup> came only in 2017, it is reasonable to assume that the statements made by the official ISI and later ISIL spokesperson between 2011 and 2017 were also representing opinion of the organization and its leader Abu Bakr al-Baghdadi.
168. In August 2011, in his first speech as ISI spokesman, Abu Mohammad al-Adnani addressed the Sunnis of Iraq and criticized them for giving credence to leaders who declared that there was no difference between Sunnis and Shi'as. Al-Adnani then went on to emphasize the difference between "you" (the Sunnis) and the *rawafidh*, condemning, like al-Zarqawi, Shi'a beliefs and practices.<sup>120</sup>

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<sup>114</sup> Expert Report for UNITAD by Aymenn Jawad Al-Tamimi, ISIL ideology towards Shi'a in Iraq, 2014-2017 (April 2024), paras. 34-37.

<sup>115</sup> "Has the story of the Rafidites come to you?" (part 1), June 1, 2006.

<sup>116</sup> The term "Rafidites" is derived from the Arabic root r-f-d, which has connotations of rejection. Expert Report for UNITAD by Aymenn Jawad Al-Tamimi, ISIL ideology towards Shi'a in Iraq, 2014-2017, citing Ibn Taymiyya, *Manhaj al-Sunna al-Nabawiya*, v. 1, p. 35 (online edition provided by Islam Kotob).

<sup>117</sup> Expert Report for UNITAD by Aymenn Jawad Al-Tamimi, ISIL ideology towards Shi'a in Iraq, 2014-2017 (April 2024), paras. 34-37.

<sup>118</sup> Dabiq Magazine, Issue no. 6, Rabi al-Awal 1436 (23 December 2014 – 21 January 2015), p. 31, fn.1.

<sup>119</sup> ISIL's Rumiyyah Magazine, Issue no. 10, Ramdan 1438 (27 May 2017 - 25 June 2017), p. 13.

<sup>120</sup> "Indeed the Islamic State remains," al-Furqan Media, August 2011, see 33:20-35:00.



169. In his second speech, in February 2012, in which he announced a campaign against Shi'a and military targets,<sup>121</sup> al-Adnani noted that "whoever wants to investigate the schemes, conspiracies and hostility of the *rafidha* against the Muslims" should consult al-Zarqawi's 2006 lectures.<sup>122</sup> In the same speech, al-Adnani declared:

"So, Iraq, Iraq, O people of the Sunnah. Stop the black crawling that is coming towards you. Cut off the head of the *rafidhi* snake, the tail of which is amongst you. Know that the coming stage is a stage of real confrontation and war against the despicable *rawafidh*, whether you like it or not, and that the war of the Sunnis with the *rawafidh* is not a sectarian war, like people are braying about. A sect is part of something, and the *rafidha* don't have anything to do with Islam; they have their own religion, and we have our own. The war of the Sunnis with the *rawafidh* is a religious war, a holy war of faith, a war of faith and unbelief, a war of idolatry and monotheism. There is no way out of it and there is no swerving from it. The *rawafidh* know this well."<sup>123</sup>

170. Parts of the above quote were featured in ISIL's video 1, depicting the killing operation of men who had departed Tikrit Air Academy (also known as Camp Speicher), published on/about 11 July 2015, while showing images of Shi'a captives being executed.<sup>124</sup>

171. In another speech published in January 2013, al-Adnani, after reiterating the religious and political accusations against the Shi'a, advised Sunnis of Iraq as follows:

"Then, you will have two options, no third; Either you kneel to the *rawafidh* and being traitors, that will be out of the question or carry up weapons so you will hold the higher. If you don't take care and hold your weapons, you will taste miseries by the *rawafidh*, who still deceive you."<sup>125</sup>

172. In June 2013, in another speech, al-Adnani again urged all Iraqi Sunnis to join ISIL in its fighting against the *rawafidh*. Among others, he said:

"Be patient because the *rawafidh* wouldn't and will not leave you but only one of the two options; either carrying your weapons to get back your rights and save your dignity, or to obey and forcibly subject to them with humiliation, then you have to know there is no way the back down. [...] Be sure that there will be no peace, coexistence, or safety between you and the *rawafidh*."<sup>126</sup>

173. In another speech published in July 2013, al-Adnani began by quoting a Quranic verse: "Fight them, Allah will punish them with your hands and degrade them. He will grant you victory over them and heal the chests of a believing nation"<sup>127</sup> He then mentioned ISIL's

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<sup>121</sup> See para.

<sup>122</sup> "Iraq is Iraq oh Sunnis," al-Furqan Media, February 2012. For a reliable transcript done by the jihadist outlet Nukhbat al-'Ilam al-Jihadi. For the relevant remarks, see p. 4

<sup>123</sup> "Iraq is Iraq oh Sunnis," al-Furqan Media, February 2012. For a reliable transcript done by the jihadist outlet Nukhbat al-'Ilam al-Jihadi. For the relevant remarks, see p. 7-8.

<sup>124</sup> Video 1, ISIL (Da'esh) al-Hayat Media Center, "واقتلوهم حيث تفقتوهم" ("And kill them wherever you overtake them") (July 2015), minutes 09:29 – 10:00.

<sup>125</sup> Abu-Mohammad Al-Adnani, a Speech: "Seven Facts.", al-Furqan Media, (SP-259420\_E-0000124\_00704887), p. 4.

<sup>126</sup> Abu-Mohammad Al-Adnani, a Speech: "Kill Them They are Polytheists." 6 Sha'ban of Hijri year 1434, p. 74-75.

<sup>127</sup> Surah At-Tawbah-14, Verse 14.



preceding victories against Shi'as in Iraq and Syria. He then addresses ISIL members, as follows:

"You, the lions of Islamic State in Iraq and Levant: be patient, be steady. It has penetrated the lines of the *rawafidh*, filled their hearts with terror, and soon God will grant you their defeat by God's will. So hit them by suicidal belts and cars, shock them by sticky bombs and improvised [explosive] devices, take them down by silenced pistols and snipers, terrify them with breakings."<sup>128</sup>

174. In April 2014, al-Adnani published another speech in which he described the Shi'a as "idolatrous *rafidha*", reiterated the impossibility of Sunni-Shi'a coexistence and cautioned the Sunnis of Iraq as follows:

"The battle has come abundantly clear today, between truth and falsehood, between disbelief and faith, between idolatry and monotheism, a battle between all the *rawafidh* and all the Sunnis...The time has come for you oh Sunnis in Iraq to know the truth: that there is no co-existence or peace with the *rawafidh*...The time has come for you to realise, that the idolatrous *rafidha*...are worse than the Jews and Crusaders."<sup>129</sup>

175. On 12 June 2014, immediately after the massacre against the Badush Shi'a prisoners took place, al-Adnani published another speech, in which he quoted a Quranic verse - Al-Anfaal verse 12 -, and stated the verse was proof that Allah alone defeated the *rawafidh* and has therefore allowed ISIL to overtake them.<sup>130</sup>

176. While Abu Bakr al-Baghdadi himself made no declarations before July 2014, his communications thereafter echoed the views of his predecessors and reflected the speeches of his spokesperson, al-Adnani.<sup>131</sup> ISI and later ISIL leadership has espoused the same views ever since, describing Shi'a as "apostate *rawafidh*",<sup>132</sup> "idolatrous *rawafidh*",<sup>133</sup> and "*rafidhi* catastrophes".<sup>134</sup>

#### Official ISIL jurisprudential publications

177. The same views were also presented in 2014-2015, in ISIL's Office of Research and Studies' publication "The ruling of the *Shari'a* on the Shi'a Sects" (Study), the flagship piece on ISIL's religious stance on the Shi'a. The Office of Research and Studies was part of ISIL's central

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<sup>128</sup> Abu-Mohammad Al-Adnani, Speech: "They Will not Affect You but by Mischief.", p. 1.

<sup>129</sup> "And indeed He will enable for them their religion that He has been pleased for them to have," al-Furqan Media, April 2014. By this point, the group had become the Islamic State in Iraq and the Levant.

<sup>130</sup> Abu Mohammad al-Adnani, "What Comes to You of Good Is From Allah", 12 June 2014, p. 134.

<sup>131</sup> Abu-Bakr al-Baghdadi, a Speech: "And Announce unto the Believers the Good Tidings."; Abu-Bakr al-Baghdadi, a Speech: "But Allah Refuses Except to Complete His Light."; Abu-Bakr al-Baghdadi, a Speech: "It is Remaining in Iraq and the Levant."; Abu-Bakr al-Baghdadi, a Speech: "Allah Knows, and You do not Know.".

<sup>132</sup> Abu Mohammad al-Adnani, "So they kill and are killed," al-Furqan Media, March 2015, p. 86.

<sup>133</sup> "So lie in wait, indeed we are lying in wait with you," al-Furqan Media, December 2015. For the relevant timestamp, see 10:20-10:40.

<sup>134</sup> "The Rafidite catastrophes," al-Naba' issue 295, July 2021, p. 3.

administrative structure and was in charge of religious questions and *fatwas*.<sup>135</sup> The references in this publication to al-Zarqawi's 2006 lectures and Abu Omar al-Baghdadi's above-mentioned description of the Shi'a,<sup>136</sup> show that the study compiled and presented views that were already known or established by ISIL leadership prior to 2014.

178. The Study clarified ISIL's stance and ideology on the Shi'a faith, by declaring that the Shi'as are apostates and not disbelievers.<sup>137</sup> Adopting this view was crucial in ISIL's war against the Shi'a, and it did not come without consequences. An apostate is someone who was a Muslim but then abandoned the Islamic belief, while a disbeliever is someone who never declared Islam or was considered a Muslim in the first place. In ISIL's jurisprudence and understanding of Islamic *Shari'a*, disbelievers can be killed if they are fighters, but if they are peaceful, they can be released for paying a sum of money (*jizya*) and left to practice their religion freely, which, at least in theory, would have been the rule mostly applicable for Jews and Christians, considering them as original disbelievers.<sup>138</sup> Apostates, on the other hand, must be either killed or submit to the true Islam (Sunni faith).<sup>139</sup> Hence, considering the Shi'as as apostates, entitled ISIL members to kill them whether they were fighters or just peaceful.<sup>140</sup> The option of being spared by declaring conversion to the true Islam, existed for the Shi'as only if it was done before ISIL gained power over them. In other words, once a Shi'a was in the hands of ISIL, the only option was to kill them.<sup>141</sup>
179. It is not clear whether these views included Shi'a women and children. While the above statements and publications refer to Shi'as in general, ISIL jurisprudence is not clear on the fate of Shi'a women and children. The practice towards Shi'a women and children was inconsistent. Some Shi'a women were killed, others were enslaved, while yet others were forced to convert to Sunni Islam or simply let go. Children were also forced to convert to Sunni Islam and the boys trained in the use of weapons.<sup>142</sup>

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<sup>135</sup> Expert Report for UNITAD by Aymenn Jawad Al-Tamimi, ISIL (Da'esh) ideology towards Shi'a in Iraq, 2014-2017 (April 2024), paras. 17, 28, 31, 47.

<sup>136</sup> "ISIL Research and Studies Office – The Islamic State. "Sharia Judgement in Shia Sects: Al-Rafida, Al-Nusayriyyah, Isma'ilism, and Al-Druze (Hukm al-Sharia fe Tawa'if al-Shia: Al-Rafida, Al-Nusayriyyah, Al-Ismailiah, Al-Druze)". First edition.p. 25.

<sup>137</sup> Ibid.

<sup>138</sup> See: Research and Studies Office – The Islamic State. "Sharia Judgement in Shia Sects: *Al-Rafida, Al-Nusayriyyah, Isma'ilism, and Al-Druze (Hukm al-Sharia fe Tawa'if al-Shia: Al-Rafida, Al-Nusayriyyah, Al-Ismailiah, Al-Druze)*", First edition, p. 27. It is, however, noteworthy that there were no Jewish families remaining in ISIL (Da'esh)'s occupied territory; and the Christians fled and none of them paid *jizya*. See further UNITAD, Factual and legal assessment of acts committed by ISIL (Da'esh) in Iraq against Christians that may amount to war crimes, crimes against humanity and genocide.

<sup>139</sup> See: Research and Studies Office – The Islamic State. "Sharia Judgement in Shia Sects: *Al-Rafida, Al-Nusayriyyah, Isma'ilism, and Al-Druze (Hukm al-Sharia fe Tawa'if al-Shia: Al-Rafida, Al-Nusayriyyah, Al-Ismailiah, Al-Druze)*", First edition, p. 27.

<sup>140</sup> Ibid.

<sup>141</sup> Expert Report for UNITAD by Aymenn Jawad Al-Tamimi, ISIL ideology towards Shi'a in Iraq, 2014-2017 (April 2024), paras. 44-45.

<sup>142</sup> Expert Report for UNITAD by Aymenn Jawad Al-Tamimi, ISIL ideology towards Shi'a in Iraq, 2014-2017 (April 2024), paras. 46-47.



### Official ISIL media publications

180. ISIL's al-Hayat Media Center published several magazines, such as Dabiq, Dar al-Islam and Rumiya. These publications focused extensively on Shi'as: references to Shi'as and *rafidha* or *rawafidh* were made in eleven of fifteen Dabiq magazines,<sup>143</sup> and twelve of thirteen Rumiya publications.<sup>144</sup>
181. In the thirteenth edition of Dabiq, published in 2016, Shi'as are again described as a heretical apostate group driven by a pathological need to corrupt and destroy Islam. In one passage, the magazine declares: "The *rafidha* are *mushrik* apostates who must be killed wherever they are to be found, until no *rafidhi* walks on the face of earth".<sup>145</sup>
182. It is also worth noting that Video 1,<sup>146</sup> depicting the Camp Speicher killing operation of Shi'a, and published by ISIL on or about 11 July 2015, featured some of the above-quoted statements and bulged with references to *rafidha/rawafidh* and apostates, thereby echoing the same stance as the sources mentioned above.

### Relevant ISIL-claimed attacks

183. Throughout the period analysed above (2004 to 2016), AQI/ISI/ISIL attacks against Shi'a targets continued. The views espoused by al-Zarqawi at the time were reflected in a shift of AQI in targeting Shi'a civilians and holy sites.<sup>147</sup> After a lull in 2010-2011 due to the weakening of the organization, attacks against Shi'a targets increased from 2012 onwards, concomitant with al-Adnani's announcement of an anti-Shi'a and anti-government campaign.<sup>148</sup> The group's largest scale attacks occurred from 2014 onwards, targeting Shi'a civilian and military targets, as well as governmental targets.<sup>149</sup> For instance, very shortly after – between 12 and at least 14 June 2014 – the massacre against personnel of Tikrit Air Academy (Camp Speicher) took place; about 1,700 Shi'a captives were killed at Tikrit's

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<sup>143</sup> Dabiq Magazine, Al-Hayat Media Center, numbers 1, 3, 4, 5, 8, 9, 10, 11, 12, 13 and 14.

<sup>144</sup> Rumiya Publications, numbers 1 to 13 (except number 11).

<sup>145</sup> Dabiq Magazine, Al-Hayat Media Centre, number 13, p. 45.

<sup>146</sup> Video 1, ISIL al-Hayat Media Center, "واقتلوهم حيث تفقتوهم" ("And kill them wherever you overtake them")

<sup>147</sup> Jonathan Masters & Zachary Laub, PBS News Hour, "What is al-Qaeda in Iraq? A CFR background briefing", 1 November 2013, available at: [https://www.pbs.org/newshour/world/world-july-dec13-aqi\\_11-01](https://www.pbs.org/newshour/world/world-july-dec13-aqi_11-01); Hayder al-Khoei, Chatham House, The Royal Institute of International Affairs, 'Syria, Iraq and the Struggle for Power: Intertwined Futures', Middle East and North Africa Programme, Research Paper (November 2016), p. 11, available at: <https://www.chathamhouse.org/sites/default/files/publications/research/2016-11-24-syria-iraq-struggle-for-power-intertwined-futures-al-khoei.pdf>

<sup>148</sup> UNITAD, 'Camp Speicher: Pattern of Mass Killing and Genocidal Intent', June 2024. See also, Hayder al-Khoei, Chatham House, The Royal Institute of International Affairs, 'Syria, Iraq and the Struggle for Power: Intertwined Futures', Middle East and North Africa Programme, Research Paper (November 2016), p. 3; Ghazwan Hassan, Reuters, 'Scores killed in Iraq bloodshed ahead of Shi'ite holy day', 17 December 2013; Jessica D. Lewis, Institute for the Study of War, 'Al-Qaeda in Iraq Resurgent: The Breaking The Walls Campaign, Part 1', Middle East Security Report 14 (September 2013), pp 9-10.

<sup>149</sup> UNITAD, 'Camp Speicher: Pattern of Mass Killing and Genocidal Intent', June 2024. See also 'Iraq 2014 International Religious Freedom Report', US Department of State, pp 11-12; Graeme Baker, Al Jazeera, 'ISIL: Rising power in Iraq and Syria', 11 June 2014.





Presidential Palace Complex.<sup>150</sup> In the weeks following the Badush massacre, while ISIL continued to gain territory, Shi'as, including Shi'a Turkmen, were also targeted in Amerli, Tuz Khurmatu, Tal Afar and other locations.

184. Attacks against targets in general and the Shi'a in particular, were indiscriminate. Shi'a men who fell in the hands of ISIL were killed.<sup>151</sup> However, Shi'a women and children who fell into the hands of ISIL were not always killed. Some Shi'a women were allegedly burnt, others were enslaved, yet others were let go. Shi'a children were often forcibly converted to Sunni Islam, and the boys trained in the use of weapons.

### Conclusion

185. Based on the above, there are reasonable grounds to believe that from 2014-2017, ISIL maintained a consistent and uniform genocidal policy against Shi'as in Iraq, as a group, mainly by targeting and killing adult male members of that group.

186. The genocidal policy was built on the following reasoning: Twelver Shi'as were a group of faith rejectors (*rafidha* or *rawafidh*) and apostates, who were constantly scheming and conspiring to overpower and kill the Sunnis, and to destroy Islam and spread conflict and division among the Muslims. A clear differentiation had to be made between them and true Islam. There was no option of peace and co-existence in the face of such a danger. The only solution was a holy war between faith and unbelief, in which ISIL was to cut off the head of the *rafidhi* snake, slice their throats, strike them on the neck, hit them by suicidal belts, cars, silenced pistols and snipers, until no *rawafidh* walked on the face of the earth. With this reasoning, the term "*rafidhi*" in ISIL parlance was loaded with genocidal meaning.

187. The fact that Shi'a women and children were not necessarily killed does not refute the above logic and does not mean that only the religion of Shi'as was targeted. With the Shi'a men killed, the women forcibly converted, enslaved or killed, the children forcibly converted, and the boys being used in battle, executions or suicide operations, the overall aim was to cease the existence of the group as such. To achieve this goal, ISIL leadership mainly targeted and killed adult Shi'a males in Iraq. By killing Shi'a men, Shi'a women were also prevented from giving birth within their own group, which is yet another component of the genocide against the Shi'a. The genocidal policy against the Shi'a was clearly articulated by the time the Badush massacre took place.

#### 7.2.3.2. *Knowledge and application of the genocidal policy by ISIL*

188. Having shown that ISIL maintained a genocidal policy against Shi'as and that such a policy was clearly articulated at the time of the Badush massacre, it must be ascertained whether

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<sup>150</sup> UNITAD, 'Camp Speicher: Pattern of Mass Killing and Genocidal Intent', June 2024

<sup>151</sup> UNITAD, 'Camp Speicher: Pattern of Mass Killing and Genocidal Intent', June 2024; *See also* ['Iraq 2014 International Religious Freedom Report'](#), US Department of State, pp 11-12; Graeme Baker, Al Jazeera, ["ISIL: Rising power in Iraq and Syria"](#), 11 June 2014.

the ISIL members directly or indirectly involved in the massacre had knowledge of this policy and intended to implement it by killing the Badush Shi'a prisoners.

189. The intent of ISIL members who were involved in the Badush massacre can be inferred based on their conduct at the scene. Some used pejorative words, describing the Shi'a prisoners, as well as their relatives, as *Rafidi* (rejecters), *Kuffar* (non-believers), and apostates.<sup>152</sup> Many stood in the presence of and heard those who made the above statements, and then took part in the execution of the Shi'a prisoners. While more information is needed to ascertain whether each individual ISIL member who played a role in the Badush massacre shared the genocidal intent, there is sufficient evidence to infer that most likely all the ISIL members were aware of ISIL's genocidal policy towards Shi'a in Iraq and many of those who executed Badush Shi'a prisoners shared the intent to destroy that group, by targeting and killing Shi'a adult males.

190. It is also clear that the Badush Shi'a prisoners were killed solely on the basis of being Shi'a. This is evidenced by the consistent process, applied at each stage of the operation, to separate Sunnis and Shi'as, the derogatory language used against the Shi'a prisoners, their relatives and the Shi'a religion itself.<sup>153</sup>

#### 7.2.3.3. *Characteristics of the operation*

191. In a matter of maximum a few days, about 1,000 Shi'a prisoners who were incarcerated in the Badush Central Prison were executed either in Badush Central Prison itself or one of the four nearby killing sites, as described above. The preparatory actions and the subsequent executions followed a consistent pattern, whereby prisoners were grouped together and were moved in highly coercive circumstances to the killing sites. There, Shi'as were separated from Sunnis, with ISIL members sometimes taking additional steps to identify members of the Shi'a community who, recognizing the clear and grave danger they were in, sought to pass themselves off as Sunnis. ISIL members then lined up the Shi'as and executed them. Following the initial executions, ISIL members walked among the bodies and shot at close range anyone thought to be still alive. At the Badush Valley and Cement Factory sites, they set fire to the bodies.<sup>154</sup>

192. These circumstances show a staggering scale of the operation and a grim determination to ensure that every Badush Shi'a prisoner would be killed.

193. Ominous in the nature of the operation is the resolute manner in which ISIL members inquired at each stage of the operation whether the Badush prisoners were Sunni or Shi'a.

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<sup>152</sup> Video 1, ISIL al-Hayat Media Center, "واقتلوهم حيث نقتلهم", minutes 10:00-10:29.

<sup>153</sup> See above, section 5.

<sup>154</sup> See above, sections 5.1. and 5.2.



#### 7.2.3.4. Conclusion

194. Based on the above, it can be inferred that the ISIL members involved in the execution of the Badush Shi'a prisoners possessed the intent to destroy the Shi'a of Iraq, by targeting and killing adult Shi'a males.

#### 7.2.4. Substantiality of the part of the group targeted

195. Having found that ISIL members involved in the Badush executions possessed the intent to destroy the Shi'a of Iraq, by targeting and killing adult Shi'a males, it must be ascertained whether (i) those killed represent indeed the targeted part of the group (adult Shi'a males); and (ii) whether the targeted part is a substantial component of the protected group (Shi'a of Iraq).

196. *Number of killed v. targeted.* Usually, the size and significance of the targeted part of the group is inferred from the number of persons killed. This is due, in part, to the fact that genocide cases do not normally present direct evidence of an intent to destroy a particular (part of a) protected group.

197. While the number actually executed in and around Badush Central Prison represents a small percentage of the adult Shi'a males of Iraq, the intention to target all of them is clear from several factors. First, if the number of those Shi'a killed in the Badush area is compared with the number of adult Shi'a males residing or located for other reasons in the territory controlled by ISIL at the time, it becomes clear that the intention was to eliminate every Shi'a adult male ISIL encountered. Shi'a families knew this and most fled before ISIL's arrival to avoid a new wave of targeted killings of Shi'as. Those who stayed were pursued and killed. For instance, very shortly thereafter – between 12 and at least 14 June 2014 - the Speicher massacre took place; about 1,700 Shi'a captives were killed at Tikrit's Presidential Palace Complex.<sup>155</sup> In the weeks following the Badush massacre, while ISIL continued to gain territory, Shi'as, including Shi'a Turkmen, were also targeted in Amerli, Tuz Khurmatu, Tal Afar and other locations. These instances have been separately analyzed (i.e. Camp Speicher), although some analysis has not yet been completed as of this report. However, the violence committed by ISIL should be viewed together for a better understanding of ISIL's targeting of Shi'a adult males. Second, the fact that the actual killings were limited to the areas where ISIL was in control or was active, cannot be imputed to ISIL. There are reasonable grounds to believe that if ISIL had the opportunity to advance further into Iraqi territory, it is likely that they would have killed adult Shi'a males everywhere, as this was their intended target in destroying the Shi'a of Iraq.

198. *Whether the targeted part is a substantial component of the group.* Shi'a adult males are undoubtedly a substantial component of the Shi'as of Iraq. The killing of all or a sizeable number of the male members of a group is a sufficient basis to infer the intent to destroy the entire group. The killing of all Shi'a adult males would have had a devastating impact on the

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<sup>155</sup> UNITAD, 'Camp Speicher: Pattern of Mass Killing and Genocidal Intent', June 2014



Shi'as of Iraq as a group, most importantly because it would have prevented Shi'a women from giving birth within the group. Such an impact would have been evident to, and intended by, ISIL's genocidal policy.

### 7.3. Conclusion

199. In conclusion, there are reasonable grounds to believe that ISIL's genocidal policy aimed at the killing of all adult Shi'a males in Iraq, which would have had a devastating impact on the Shi'as of Iraq as a group.

200. There are also reasonable grounds to believe that the ISIL members involved in the Badush massacre possessed genocidal intent in relation to some 1000 adult Shi'a male Badush prisoners executed in the surroundings of Badush Central Prison on 10 June 2014 or shortly thereafter.

201. In order to reach a finding that there are reasonable grounds to believe that the killing operation in the Badush area may amount to genocide, other instances of ISIL killings of adult Shi'a males, within the territory controlled by ISIL, must be corroborated and examined together. Such a holistic analysis is needed to establish that those killed indeed represented a substantial part of the Twelver Shi'as of Iraq.

## 8. Crimes Against Humanity

### 8.1. Applicable law

202. Crimes against humanity are a specific set of acts prohibited under international criminal law (underlying crimes) that are committed as part of a widespread or systematic attack directed against a civilian population (contextual requirements).

#### 8.1.1. Contextual requirements

203. Under customary international law, the contextual requirements for crimes against humanity consist of: (i) a widespread or systematic attack directed against any civilian population; (ii) a nexus between the underlying act and the attack; and (iii) knowledge of the attack.

#### 8.1.2. Specific requirements for underlying crimes

##### 8.1.2.1. *Murder and Extermination*

204. Murder is the killing or causing the death of another person without lawful justification or excuse, with the intent to cause death, or to cause serious bodily harm which the accused should reasonably have known might lead to death. Death need not be proven by producing the victim's body, but can also be established by circumstantial evidence, provided that this is the only reasonable inference available.





205. The crime of extermination requires “killing on a large scale...[and] involves any act, omission or combination thereof which contributes directly or indirectly to the killing of a large number of individuals.”

206. The feature of “extermination” that distinguishes it from multiple counts of murder is that it involves a “mass killing”. A mass killing can take the form of a massacre, but there is no specific numerical threshold of victims to qualify as extermination. Whether killings are sufficiently “large-scale” to qualify as extermination is a “case-by-case” assessment that may take into consideration: the time and place of the killings; the selection of the victims and the manner in which they were targeted; and whether the killings were aimed at the collective group rather than victims in their individual capacity. It is not required, for the crime of extermination to be committed, that the victims share national, ethnical, racial or religious characteristics.

#### 8.1.2.2. *Torture*

207. The crime of torture as a crime against humanity is committed through an act or omission inflicting severe pain or suffering, whether physical or mental, upon another person. Whether an act or omission qualifies as torture must be determined on a case-by-case basis. The consequences of the act or omission need not be permanent or visible on the victim. There is no requirement that the perpetrator acted in a public capacity or as person of authority.

208. The perpetrator must have inflicted the pain or suffering intentionally and in pursuance of such purpose as obtaining information or a confession, or punishing, intimidating, coercing or discriminating against, on any ground, the victim or a third person. It is sufficient that one of the prohibited purposes forms part of the motivation behind the conduct; it need not be the “predominant or sole purpose” behind the infliction of severe pain or suffering.

209. The ICC Statute has removed the “purpose” requirement (only in respect of the crime as a crime against humanity, not as a war crime); however, this innovation cannot be said to unequivocally reflect customary international law. The ICTY has held that the “purpose” requirement – which is part of the Convention Against Torture – “may be considered to reflect customary international law.”

#### 8.1.2.3. *Other inhumane acts*

210. The crime of other inhumane acts is committed through an act or omission of similar gravity to other crimes against humanity, resulting in serious mental or physical suffering or injury, or constituting a serious attack on human dignity. The severity of the conduct must be assessed on a case-by-case basis with due regard for the individual circumstances of the case, including the nature of the act or omission, the context in which it occurred and the personal circumstances of, and the impact on the victims. There is no requirement that the suffering have long-term effects, or that the consequences are visible on the victim, although this may



be relevant to the determination of the seriousness of the act or omission in question. The conduct need not be otherwise expressly criminalised under international law.

211. The act or omission must have been committed intentionally or with the knowledge that this act or omission was likely to cause such pain or suffering or to constitute a serious attack upon human dignity.

#### 8.1.2.4. *Enforced disappearance*

212. The crime of enforced disappearance as a crime against humanity, is committed by persons acting with the authorisation, support or acquiescence of a State or a political organisation, through an act or omission resulting in the deprivation of a person's liberty, followed by the refusal to acknowledge such deprivation or to disclose information regarding the fate or whereabouts of such person.

213. The deprivation of liberty covers any form of deprivation of liberty of a person against his or her will in any place. The refusal to acknowledge or give information encompasses outright denial, the giving of false information about, or concealment of the fate or whereabouts of the victim. As a result of the enforced disappearance, the victim is not protected by the law, and as a result, the victim no longer has access to judicial assistance and legal procedures, thus placing him or her in a situation of complete defencelessness. The definition of enforced disappearance under customary international law does not establish a minimum period for the victim's removal from the protection of the law.

214. The crime of enforced disappearance is considered a continuous crime as long as the perpetrators continue to conceal the fate and whereabouts of the person or persons who have disappeared, and these facts remain unclarified.

215. The perpetrator must have: (i) intentionally deprived a person of his or her liberty and be aware that the deprivation of liberty would be followed by a refusal to acknowledge such deprivation of liberty or to give information on the fate or whereabouts of the victim; or (ii) intentionally refused to disclose information regarding the fate or whereabouts of the person concerned and be aware that such refusal was preceded or accompanied by that deprivation of liberty. However, under customary international law as applicable at the relevant time, there is no need to demonstrate or even presume the special intention of the perpetrator to remove the victim from the protection of the law.

#### 8.1.2.5. *Persecution*

216. The crime of persecution as a crime against humanity is committed through a specifically pleaded act or omission that discriminates in fact and which denies or infringes upon a fundamental human right laid down in international customary or treaty law. The crime of persecution consists of one single act or omission or a series thereof that are: (i) prohibited under international law, such as arbitrary detention/imprisonment, cruel treatment, torture, pillaging or murder; or (ii) while not explicitly mentioned therein, they reach the same level of gravity as the aforementioned crimes, whether considered in isolation or in conjunction

with other underlying acts. Such acts include harassment, humiliation, psychological abuse or other restrictive and discriminatory measures. The persecutory act or omission must amount to a severe deprivation of a person's fundamental rights, that is, a gross and blatant denial of those rights. The persecutory act(s) and/or omission(s) must discriminate in fact, which means that they must actually result in discriminatory consequences. The persecutory act(s) and/or omission(s) are considered discriminatory when the victims are targeted because of their perceived membership to a group, as defined by the perpetrator on a political, racial, ethnic or religious basis. While persecutory acts and/or omissions often form part of a discriminatory policy or pattern, the existence of such a policy is not a requirement for proving persecution.

217. The perpetrator must have carried out each persecutory act or omission deliberately and with the specific intent to discriminate on one of the listed grounds, specifically political, racial, ethnic or religious. The ICC Statute has expanded the notion of persecution extending these grounds to "national," "ethnic", "cultural", "gender", or "other grounds that are universally recognized as impermissible under international law". The full enumeration of these grounds in the ICC Statute does not, however, reflect customary international law.

## 8.2. Legal analysis

### 8.2.1. Widespread or systematic attack against a civilian population

218. UNITAD has already found that there are reasonable grounds to believe that ISIL members conducted a systematic and widespread attack directed against the civilian population in Iraq, from on or about 9 June 2014 until at least December 2017 involving the commission of multiple criminal acts against a large number of victims. In particular, during this period, ISIL directed a widespread and systematic attack against the civilian population in north-west of Iraq, namely in Nineveh, Salah al-Din, Anbar, and Kirkuk governorates. ISIL particularly targeted Shi'a Muslims, Yazidis, Christians, Kaka'i and Sunni Muslims whom it perceived as traitors for being members of the Iraqi security forces, or non-compliant with its interpretation of Islam.

219. The capture, ill-treatment and execution of the Badush Shi'a prisoners can be considered as part of the attack against Iraq's civilian population, specifically the Shi'a population of Iraq, as the prisoners were unarmed, wore civilian clothing and took no active part in the hostilities.

### 8.2.2. Underlying Crimes

#### 8.2.2.1. *Murder and Extermination*

220. The testimonial, documentary and forensic evidence collected by UNITAD indicates that, in the hours and days following ISIL's 10 June takeover of the Badush Central Prison, armed ISIL members killed approximately a thousand men or more, who had been incarcerated in the prison. Those who were killed were either found by ISIL in their cells as the prison



management fled the escape ISIL, or had broken out and were caught as they tried to escape. Killings occurred at sites inside and in the vicinity of the prison. Four main killing sites, besides Badush Central Prison itself, have been identified (Badush Valley, Badush Cement Factory, Bawabat el-Sham, Ayn al-Jahesh).

221. The preparatory actions and the executions followed a consistent pattern, whereby prisoners were grouped together and were moved in highly coercive circumstances to the killing sites. ISIL then lined up the prisoners identified or perceived as Shi'a and executed them. Following the initial executions, ISIL members walked among the bodies and shot at close range anyone thought to still be alive. At the Badush Valley and Cement Factory sites, they set fire to the bodies.
222. The intent of ISIL members involved in the Badush operation to kill the - predominantly Shi'a - prisoners emerges from the deliberate manner in which they mistreated them during their detention, marched them to the execution sites and shot them at close range without exception.
223. Based on the above, it can be inferred that, on 10 June 2014 and in the following days, murder and extermination as crimes against humanity were committed against approximately 1000 prisoners or more inside and in the vicinity of Badush Central Prison.

#### 8.2.2.2. *Torture and Other Inhumane Acts*

224. On 10 June 2014 and in the following days, ISIL members committed several abuses against the male prisoners, particularly in the lead up to the mass executions, inflicting severe physical pain and suffering.
225. After taking control of the prison, ISIL members broke open the cells and pointed weapons at the prisoners, forcing some to kneel. ISIL members laughed while firing bullets on the ground among the prisoners.<sup>156</sup> While most of the cells were opened, ISIL did not break open the cells holding Shi'a prisoners belonging to the Sadrist Movement.<sup>157</sup> These prisoners remained locked in, as the sounds of gunshots echoed along the prison corridors and as other prisoners were taken out of the prison by ISIL.
226. Outside of the main gate of the prison, on the highway, armed ISIL members surrounded the prisoners and forcibly loaded hundreds of them onto trucks. Those charged with guarding the prisoners shot at those who attempted to escape.<sup>158</sup> Once the trucks left, transporting the prisoners who knew nothing about where they were being taken, some of them attempted to jump off the trucks and run away, and were shot and killed by ISIL members.
227. At the execution sites of Badush Valley, Badush Cement Factory, and Ayn el-Jahesh, a consistent pattern in the conduct of the ISIL members was documented. First, the prisoners

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<sup>156</sup> See above, paras. 66 and 225.

<sup>157</sup> See above, para. 5.

<sup>158</sup> See above, para. 73.



were offloaded from the trucks and were then ordered to split into two groups based on whether they were Sunni or Shi'a.<sup>159</sup> Survivor accounts refer to large numbers of Shi'a prisoners who, recognising the danger that they were in, sought protection by joining the Sunni group. ISIL members, alive to this possibility, threatened Shi'as who sought to hide themselves among the Sunnis. Eventually, ISIL ordered some of the Sunnis to identify the Shi'as in their group. ISIL members also carried out individual checks on the prisoners, interrogating them on the way they prayed and on their places of origin, to establish whether they were Sunni or Shi'a.

228. Shi'a prisoners were subjected to numerous abuses during and after the separation process. Survivors of the massacre in the Badush Valley described armed ISIL members telling the Shi'a men that they were apostates and were to be executed. ISIL members used derogatory terms –such as *Rafidi*, *Kuffar* – to insult the Shi'as, also insulting their wives and sisters. Prisoners were forced to hand over their belongings, such as mobile phones, cash, watches and jewelry, including wedding rings. ISIL also refused to give them water.
229. ISIL then ordered the Shi'a men to line up and walk towards the edge of a ravine where they were to be killed. They were ordered to count themselves, calling out their number. Survivors of the Badush Valley execution site reported hearing over five hundred men call out their number, with one survivor recalling that the men numbered above six hundred.
230. ISIL opened fire at the line of Shi'a men, with those shot falling into the ravine below. Some survivors hid underneath and among the dead bodies, including the bodies of their friends, with blood flowing over them, pretending they were dead in order to survive. After the execution, ISIL members descended into the ravine to search for survivors among the bodies. If they believed someone to still be alive, they shot them at close range. In the Badush Valley and then the Cement Factory, they then set the bodies on fire. Survivors of these execution sites were burned by the flames, with some of them suffering serious long-term impairment.
231. These acts encompassed practices designed to also cause severe mental pain and suffering. In particular, Shi'a prisoners belonging to the Sadrist Movement were purposely kept shut in their cells, with the inmates having most likely been acutely aware of ISIL's discriminatory intent against them and being forced to languish while awaiting their fate, possibly fearing execution. ISIL purposely inflicted severe mental pain and suffering upon prisoners when they surrounded them, forcibly loaded hundreds of them onto trucks, and shot at those who attempted to escape. Forcing prisoners to line up, count themselves by calling out their number and walk towards the area where they were going to be executed, all while knowing that execution awaited them, are other acts that can reasonably be found to have inflicted severe mental pain and suffering amounting to torture and inhumane treatment. The same can be said with regard to the Sunni prisoners who did not voluntarily join ISIL members or approve of their conduct, given that they were forced to witness these facts and, on some

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<sup>159</sup> See above, sections 5.1., 5.2., and 5.4.

occasions, also to assist ISIL members, for instance when they were ordered to identify the Shi'a hiding among them.

232. Other acts causing severe mental pain and suffering to the prisoners include witnessing the killing of a Christian prisoner who was shot dead in front of all those present at that location; being driven to thirst in the desert and denied water; being forced to hand over their belongings, including objects of significant emotional value such as wedding rings; being heavily insulted, sworn at and hearing insults to religion and relatives. The choice of insulting the Shi'a religion, as well as prisoners' wives and sisters specifically, is indicative of ISIL members' intent to punish the Shi'a and discriminate against them by purposely degrading what is felt to be sacred and worthy of respect according to cultural, societal and religious beliefs.
233. This severe suffering was inflicted intentionally. Moreover, this infliction was done with the specific intent to discriminate against the Badush Shi'a prisoners, on grounds of their being Shi'as. This is apparent from the deliberate and systematic manner in which the prisoners were physically and mentally assaulted, as well as the derogatory language used against them (e.g. *rafidha*, apostates).<sup>160</sup>
234. Based on the above, it can be inferred that, on 10 June 2014 and in the following days, other inhumane acts and torture as crimes against humanity were committed against hundreds of predominantly Shi'a prisoners inside and around Badush Central Prison, as well as in various killing sites in the surrounding areas.

#### 8.2.2.3. *Enforced Disappearance*

235. During and following the takeover of Badush Central Prison, ISIL abducted hundreds of men, many of whom were transported to identified killing sites and held under the control of ISIL members for several hours before being executed. As mentioned in previous sections, although some family members initially managed to reach their relatives by phone before their execution or who otherwise became aware of the events at the prison, communication eventually stopped and they were left in the dark as to the fate and whereabouts of their loved ones.
236. Additionally, some prisoners managed to escape but were then captured by ISIL ten days later. Their family members attempted to reach them by phone several times during the following two days at least. ISIL members answered the calls instead, telling them not to call again and leaving them with no further news about their loved ones.<sup>161</sup>
237. Based on the above, and presuming that ISIL can be treated as a "political organization" for the purposes of enforced disappearances, it could be inferred that, on 10 June 2014 and in the following days, ISIL members committed the crime against humanity of enforced disappearance against predominantly Shi'a prisoners who were held under their control

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<sup>160</sup> See above, section 7.2.3.

<sup>161</sup> See above, section 6.

following the takeover of Badush Central Prison and transported to different killing sites before being executed. ISIL members equally could have committed the crime against humanity of enforced disappearance against the Shi'a prisoners who they abducted ten days after the attack on the Badush Central Prison. ISIL members did not provide any information regarding the fate and whereabouts of any of those abducted Badush Shi'a prisoners, including to their relatives.

#### 8.2.2.4. Persecution

238. Through the crimes of other inhumane acts, torture, murder, extermination and enforced disappearance, ISIL members denied, in a gross and blatant manner, the fundamental rights of Badush prisoners mistreated, transported, executed and missing at various killing sites in the Badush area, resulting in discriminatory consequences.

239. Shi'a prisoners were subjected to severe deprivations of their fundamental rights, most notably the right to life and security of person. In particular, from the very start, after having taken control of the prison, ISIL specifically targeted the prisoners belonging to the Shi'a community.<sup>162</sup> It was known that the majority of prisoners in the Heavy Sentences Ward were Shi'a.<sup>163</sup> ISIL members also transported hundreds of prisoners to different killing sites, where they ordered the Shi'as to separate from the Sunnis.<sup>164</sup> ISIL members threatened Shi'a prisoners who had hidden among the Sunnis, going to great lengths to figure out who was Shi'a and who was Sunni, for instance by interrogating them on the way they prayed and on their places of origin. At least in one instance, ISIL members handed over weapons to the Sunnis and ordered them to identify and point out the Shi'as. The Shi'a prisoners were then executed as a group, while the Sunni prisoners were transported away and set free.<sup>165</sup>

240. As mentioned throughout the brief, before the executions, ISIL members heavily insulted the Shi'a prisoners, their relatives including wives and sisters and the Shi'a religion itself, using expressions such as *Rafidi* and *Kuffar* (rejecters, non-believers). Another militant read a prepared script about ISIL's decision to kill the Shi'a as being justified by the fact that the Shi'a in Iraq had killed many Sunni people and that those who kill the Shi'a will go to Janna (paradise).<sup>166</sup> In different locations, ISIL members announced that ISIL had declared them apostates and decided to execute them. In the Badush Valley, an ISIL commander announced that the Islamic State under the rule of Emir of Al-Mu'meneen (the believers) Abu-Bakr Al-Baghdadi had ruled that the Shi'a prisoners are sentenced to death as *Rafideen* and supporters of the *Safawiya* government.<sup>167</sup> Shi'a prisoners were also subjected to intimidation and/or harassment while they were taken to their execution sites. In particular, Shi'a prisoners were

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<sup>162</sup> See above, section 4.

<sup>163</sup> See above, section 3.2.

<sup>164</sup> See above, section 5.

<sup>165</sup> See above, sections 5.1.1., 5.2., 5.3., 5.4., and 6.

<sup>166</sup> See above, para. 99.

<sup>167</sup> See above, para. 99.

humiliated, yelled at, and threatened before being executed.<sup>168</sup> Considering their nature, context and timing, these acts reach the same level of gravity as the crimes listed above and constitute a blatant and gross denial of the right to dignity.<sup>169</sup>

241. After the executions, ISIL members purposely left the bodies in the open, on some occasions after setting them on fire, thereby denying Shi'a prisoners a proper burial as required by their religion.

242. The aforementioned acts targeted and affected Badush prisoners who were Shi'a and resulted therefore in actual discriminatory consequences against them.

243. The intent of ISIL members involved in the Badush operation to persecute Shi'a prisoners on grounds of being Shi'a emerges from the deliberate manner in which they used derogatory language against them, mistreated them before their execution, marched them to the execution sites and shot at them at close range without exception. While it is clear that ISIL discriminated against the Shi'a on religious grounds, it should also be noted that according to the group's ideology, and in the context of the sectarian-based setting in Iraq during the Caliphate period, the religious dimension and the political one often overlapped. Indeed, ISIL generally perceived the Shi'a as being affiliated with the Iraqi Shi'a-led government, as confirmed by some of ISIL members' utterances against Shi'a prisoners just before executing them in and around Badush Central Prison, for instance accusing them of subservience to then-Iraqi Prime Minister Nuri al-Maliki. Therefore, it can be inferred that ISIL's persecution of Shi'a Muslims in Iraq was fueled in part by political dynamics and the group's resentment towards the Shi'a-majority government.

244. However, there is insufficient information indicating that Yazidi prisoners were systematically separated out from other prisoners and targeted as such, as was the case for the Shi'a. Despite the presence of prisoners from other religious groups, such as Christians and Yazidis, the evidence collected by UNITAD does not support the inference that another group in addition to the Shi'a was the object of persecution during the events in and around Badush Central Prison.

245. Based on the above, it can be inferred that, on 10 June 2014 and in the following days, persecution as a crime against humanity was committed against the Shi'a prisoners incarcerated in Badush Central Prison.

### 8.2.3. Nexus with the attack and knowledge of the attack

246. Regarding the nexus between the above discussed acts and the attack against the civilian population, it is apparent that ISIL members involved in the Badush operation targeted the Shi'a prisoners because they fell within the scope of the targeted civilian population, i.e. those segments that ISIL perceived as non-compliant with its radical and extremist interpretation of Islam. Regarding the knowledge of ISIL members involved in the Badush

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<sup>168</sup> See above, section 5.

<sup>169</sup> The right to dignity is protected by Article 1 of the UDHR and Article 10(1) of the ICCPR.





operation of the attack against the civilian population, it can be reasonably assumed that the ISIL campaign against Shi'a members of the Iraqi population was already well-known at that time to ISIL members generally.

### 8.3. Conclusion

247. In conclusion, there are reasonable grounds to believe that murder, extermination, torture and other inhumane acts as crimes against humanity were committed against at least a thousand Badush prisoners in the Badush Central Prison itself or in its vicinity, on 10 June 2014 or shortly thereafter. Specifically, against the Shi'a prisoners, ISIL members also committed persecution and may have committed enforced disappearances as crimes against humanity at the same locations and dates.

## 9. War Crimes

248. War crimes are a specific set of violations of the laws and customs of war (underlying crimes) that are committed during an armed conflict of international or non-international character (contextual requirements).

### 9.1. Applicable law

#### 9.1.1. Contextual requirements

249. The contextual requirements for war crimes committed in the context of an armed conflict not of an international character consist of: (i) the existence of an armed conflict of certain intensity in the territory of a state between organs of authority and organized armed groups or between such groups; (ii) a nexus between the underlying offence and the armed conflict; and (iii) knowledge of the existence of the armed conflict.

250. All crimes must be committed against protected persons. Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, are protected under Common Article 3 of the 1949 Geneva Conventions, which are recognized as being part of customary international law. The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.

#### 9.1.2. Specific requirements for underlying acts

##### 9.1.2.1. *Murder*

251. The war crime of murder has been defined in the same manner as the crime against humanity of murder, except for the contextual elements and the protected status of the victim.



9.1.2.2. *Torture, cruel and inhumane treatment*

252. Torture has been defined as the intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, to attain a certain result or purpose, such as obtaining information or a confession, or punishing, intimidating, or coercing the victim or a third person, or discriminating, on any ground, against the victim or a third person. The “purpose” requirement – which is part of the Convention Against Torture – “may be considered to reflect customary international law.” ICTY jurisprudence on prohibited purposes for the offence of torture, notably intimidation and discrimination, is particularly relevant to the case at hand.

253. Cruel and inhumane treatment as a war crime has been defined as an intentional act or omission causing serious mental or physical suffering or injury or constituting a serious attack on human dignity. The seriousness of the harm or injury must be assessed on a case-by-case basis, taking into account such factors as the severity of the alleged conduct, the context in which it occurred, its duration and/or repetition, its physical and mental effects on the victim, and the personal circumstances of the victim. The suffering inflicted by the act upon the victim does not need to be lasting, so long as it is real and serious. The perpetrator must have acted intentionally or with the knowledge that the serious mental or physical suffering or injury, or the serious attack on human dignity, was a probable consequence of the act or omission.

254. The central element distinguishing cruel and inhumane treatment from torture is that the treatment is not required to be inflicted for a specific purpose. Acts that might not meet the requirements for torture because of the purpose requirement, could still qualify as cruel and inhumane treatment.

255. ICTY jurisprudence has established that being subjected to or witnessing attempted killings and preparatory acts ahead of an execution inflict severe pain or suffering causing serious mental harm to victims.

9.1.2.3. *Outrages upon personal dignity*

256. Outrages upon personal dignity as a war crime has been defined as an act or an omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity. The specific acts that satisfy this requirement have not been exhaustively defined, but the severity of the humiliation, degradation or other violation must be of such a degree as to be generally recognized as an outrage upon personal dignity. For this crime, the victim need not personally be aware of the existence of the humiliation or degradation or other violation. The cultural background of the victim may also be taken into account when assessing whether an act can be qualified as an outrage upon personal dignity. Moreover, “person” in respect of this crime can include a dead person; in particular, mutilating or dismembering a dead body or preventing the dignified burial of a body by other means may amount to outrages upon dignity.



257. The *mens rea* of the crime requires that the accused knew that his act or omission could cause serious humiliation, degradation or otherwise be a serious attack on human dignity. The accused must only have knowledge of the 'possible consequence of the charged act or omission'.

## 9.2. Legal analysis

### 9.2.1. Contextual requirements

258. UNITAD has already found that there are reasonable grounds to believe that, between 30 December 2013 and at least 9 December 2017, a non-international armed conflict existed between ISIL and the Iraqi government.<sup>170</sup> Furthermore, as members of a civilian prisoner population, the victims were protected persons under Common Article 3 of the Geneva Conventions.

### 9.2.2. Underlying crimes

259. Through the acts and conduct amounting to the crimes of murder, extermination, torture and other inhumane acts, as crimes against humanity, ISIL members involved in the Badush operation also committed the war crimes of murder or wilful killing, torture and cruel and inhumane treatment (sections 8.2.2 and 9.1.2).

260. Intent to commit these crimes can be inferred from the deliberate manner in which the ISIL members involved in the Badush operation engaged in the relevant acts and conduct.

#### 9.2.2.1. *Murder*

261. As discussed above, according to accounts collected from survivors and eyewitnesses and corroborated by information yielded from a forensic analysis of satellite imagery and from the mass grave excavations, mass killings of Badush prisoners occurred at sites inside and in the vicinity of the prison. To date, four main killing sites, besides the Badush Central Prison itself, have been identified (Badush Valley, Badush Cement Factory, Bawabat el-Sham, Ayn al-Jahesh).

262. There are reasonable grounds to believe that the killing of approximately a thousand men (and boys) or more incarcerated in Badush Central Prison at the time of the ISIL attack on 10 June 2014, by ISIL members amounts to the war crime of murder. In particular, this applies to the following: killing of several prisoners who had left their cells and were still inside the prison; burning to death of Shi'a prisoners inside the Light Sentences Ward; killing of prisoners who attempted to escape from the main gate by stopping and getting on vehicles that were driving along the main road; killing prisoners who attempted to escape jumping off the trucks while being transported to the execution sites both from the main gate and from Bawabat el-Sham checkpoint; shooting to death Shi'a prisoners who attempted to escape from Bawabat el-Sham checkpoint; mass execution of Shi'a prisoners in Badush

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<sup>170</sup> UNITAD Report, Non-International Armed Conflict in Iraq and Da'esh/ISIL as an Organized Non-State Actor.

Valley; the execution of a Christian prisoner at Badush Valley; mass execution of prisoners belonging to the Sadrist Movement close to the prison's garbage dump; mass execution of prisoners, predominantly Shi'a, but also Yazidi, next to the Badush Cement Factory; and the execution of 35 to 40 Shi'a prisoners in Ayn el-Jahesh.<sup>171</sup>

#### 9.2.2.2. *Torture or Cruel and Inhumane Treatment*

263. On 10 June 2014 and in the following days, through the acts described in paragraphs 224233, ISIL members inflicted severe physical and mental pain or suffering on the Badush Shi'a prisoners.

264. This severe suffering was inflicted intentionally. Moreover, this infliction was done with the specific intent to discriminate the Badush Shi'a prisoners, on grounds of being Shi'as. This is apparent from the deliberate way the prisoners were physically and mentally assaulted, as well as the derogatory language used against them (e.g. *rafidha*, apostates).

265. Based on the above, it can be inferred that, on 10 June 2014 and in the following days, torture or cruel and inhumane treatment as war crimes were committed against hundreds of predominantly Shi'a prisoners inside and around Badush Central Prison, as well as in various killing sites in the surrounding areas.

#### 9.2.2.3. *Outrage upon Personal Dignity*

266. Following the execution of hundreds of men at Badush Valley, ISIL left their bodies unburied, at the mercy of extremely hot temperatures and wild animals without affording them a proper burial.<sup>172</sup> The bodies were left unburied for several days. At first, when local residents found the corpses, they didn't bury them because they feared retaliation from ISIL members. Only following the complaints of other residents who were disturbed by the smell of decomposing bodies, ISIL local commander Abu Sulayman gave them permission to bury them.

267. There is no religion or culture in Iraq which permits bodies of the dead to lie exposed and indeed the religious rites surrounding the interment of bodies are strictly followed. Within the Shi'a community, the relevant Islamic practice is followed, which requires that the corpse be washed several times, dressed in a simple shroud and then quickly buried by tradition on the day of death.

268. Based on the above, it can be inferred that ISIL members committed the war crime of outrages upon personal dignity against men who were executed at Badush Valley, the majority of whom were Shi'a, and whose bodies were intentionally left to decompose in the open, thereby denying them of an honourable burial as required by their religious beliefs.

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<sup>171</sup> See above, section 5.

<sup>172</sup> See above, section 5.1.





### 9.3. Conclusion

269. In conclusion, there are reasonable grounds to believe that cruel and inhumane treatment, torture, outrages upon personal dignity and murder as war crimes were committed against the Badush Shi'a prisoners on 10 June 2014 or shortly thereafter.

## 10. Modes of liability

270. Several modes of liability may be relevant in relation to the crimes described above, such as individual and joint commission, aiding and abetting and superior responsibility, as described below.

### 10.1. Commission

271. The Statutes of the UN-created or -affiliated international criminal tribunals and courts impose "individual responsibility" on any person who "planned, instigated, ordered, aided and abetted, or committed" the crimes over which they have jurisdiction.

272. The commission of a crime requires proof that the accused "physically or directly perpetrated a crime or caused a culpable omission in violation of criminal law." This perpetration can be performed "physically or otherwise directly, alone or jointly with others, in the material elements of the crime." The *mens rea* is that the accused acted with intent to commit the crime, or possessed an awareness of the substantial likelihood that the crime would occur as a consequence of his conduct.

273. Commission includes a form called "joint criminal enterprise" (JCE), which encompasses three variants or categories (basic, systemic, and extended). For the purpose of this report, only the basic form will be addressed. Accordingly, under the first variant (JCE I), all participants act pursuant to a common purpose that "amount[s] to or involve[s] the commission of a crime" under customary international law. The minimum *actus reus* is making a "significant contribution" to the crimes within the common purpose.

274. So-called "co-perpetration", which has been accepted as part of ICC jurisprudence applying different statutory language than that found in the UN-mandated tribunals, has been expressly rejected by the ICTY as not forming any part of customary international law.

### 10.2. Aiding and abetting

275. Aiding and abetting is a well-established form of liability under customary international law that requires an accused to provide assistance that had at least "a substantial effect" on the commission of a crime, while intending, knowing or being aware of the substantial likelihood that his acts and conduct would so assist the crime.



### 10.3. Ordering

276. Ordering arises where a person in a position of authority instructs a person under his or her authority to commit an offence, intending to bring about the commission of the offence or being aware that it would be committed in the execution of the order.

### 10.4. Planning

277. Planning involves one or more persons designing the criminal conduct, with the awareness of the substantial likelihood that a crime will be committed in the execution of that plan, where this design was a factor substantially contributing to the criminal conduct.

### 10.5. Superior Responsibility

278. Superior responsibility is a well-established form of liability under customary international law that applies to both military commanders as well as civilian superiors and inculcates superiors in relation to crimes committed by their subordinates based on their failure to prevent or punish the crimes.

279. Superior responsibility firstly requires an existence of a superior-subordinate relationship, formal or informal, that is reflected in the effective control. Indicative criteria for the determination of effective control include among others also the power to issue orders, capacity to ensure compliance and authority to send forces to locations where hostilities take place and withdraw them at any moment.

280. Secondly, it must be proven that the superior knew or had reason to know that the subordinates were about to or had committed the crime. This requirement is satisfied when it is established that: (i) the commander had actual knowledge, established through either direct or circumstantial evidence, that his subordinates were committing or about to commit crimes or (ii) he had in his possession such information which would put him on notice of the risk of such offences, in that it indicated or alerted him to the need for additional investigations in order to determine whether such crimes had been or were about to be committed by his subordinates. A superior may be responsible if they deliberately fail to find out about the acts of their subordinates, but not for merely being negligent in that regard.

281. Thirdly, the superior must fail to take necessary and reasonable measures to prevent or punish the crime or punish the subordinates. The duties to prevent and to punish are distinct and failure to do either, in combination with the first two requirements, leads to liability under superior responsibility.

## 11. Perpetrators

282. A primary suspect of the incident refers to an individual who has been directly mentioned as a perpetrator of the Badush mass executions, while a secondary suspect is someone who



was not mentioned as directly involved but was an active ISIL member in Badush area at the time of incident.

283. Testimonial evidence confirms that a large number of ISIL members participated in the event in and around Badush Central Prison on 10 June 2014 and in the following days. Some witnesses mention up to about 100 ISIL members<sup>173</sup> who spoke different foreign languages as well as other Arabic dialects being present at the different locations, including the Badush Central Prison and the four main killing sites as referred to above. According to witness accounts, they adopted similar behaviour and used similar equipment during the attack on the prison and the subsequent mass killings of predominantly Shi'a prisoners. They used vehicles with ISIL logos or/and black flags on them. They drove pick-up trucks. Most of them were wearing the Afghani Kandahari styled clothes, while others were wearing everyday clothes, some of them with the typical Iraqi long dishdashas. They made numerous phone calls at the different execution sites and used derogatory terms as highlighted above (see section 5) when addressing the Shi'a prisoners. Moreover, most participants in the attack on the Badush Central Prison carried and used light weapons such as Kalashnikovs, BKC and GC guns, and pistols. There was also an anti-aircraft gun on one of the pick-up cars that was present at the mass execution site at Badush Valley.<sup>174</sup>

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<sup>173</sup> UNITAD, Confidential testimonial evidence.

<sup>174</sup> UNITAD, Confidential testimonial evidence.



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11. *Prosecutor v. Ngirabatware*, ICTR-99-54, Appeals Chamber, Judgement (“*Ngirabatware* Appeal Judgment”), 19 September 2005
12. *Prosecutor v. Kajelijeli*, ICTR-98-44A, Trial Chamber, Judgment and Sentence (“*Kajelijeli* Trial Judgment”), 2 February 2012
13. *Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, Trial Chamber, Judgement and Sentence (“*Ntagerura* Trial Judgment”), 25 February 2004
14. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Trial Chamber, Judgement and Sentence (“*Bagosora et al.* Trial Judgment”), 18 December 2008
15. *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber, Judgement, 21 May 1999,
16. *Nyitegeka* Trial Judgment, para. 450



17. *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Appeals Chamber, Judgement (“*Ntakirutimana Appeal Judgment*”), 13 December 2004.

(c) **Extraordinary Chambers in the Courts of Cambodia**

1. *Co-Prosecutors v. Kaing Guek Eav*, 001/18-07-2007/ECCC/TC, Trial Chamber, Judgement (“*Duch Trial Judgment*”), 26 July 2010
2. *Co-Prosecutors v. Kaing Guek Eav*, 001/18-07-2007-ECCC/SC, Supreme Court Chamber, Appeal Judgment (“*Duch Appeal Judgment*”), 3 February 2012
3. *Co-Prosecutors v. Nuon Chea and Khieu Samphan*, 002/19-09-2007/ECCC/TC, Trial Chamber, Case 002/02 Judgment (“*Case 002/02 Trial Judgment*”), 16 November 2018

(d) **International Criminal Court**

1. Elements of Crimes, ICC-PIOS-LT-03-002/15\_Eng. Article 6(a)-(e).
2. *Situation in the Republic of Burundi*, ICC-01/17-9-Red, Pre-Trial Chamber, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, ICC-01/17-9-US-Exp. 25 October 2017” (“*Burundi Decision 25 October 2017*”), 9 November 2017
3. *Prosecutor v. Al Hassan*, ICC-01/12-01/18-461-Corr-Red, Pre-Trial Chamber I, Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“*Al Hassan Decision on Confirmation of Charges*”), 13 November 2019

(e) **Kosovo Specialist Chambers**

1. *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06, Pre-Trial Judge, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (“*Thaçi et al. Confirmation Decision*”), 26 October 2020
2. *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06, Pre-Trial Judge, Public Redacted Version of the First Decision on Victims’ Participation (“*Thaçi et al. First Decision on Victim Participation*”), 21 April 2021.