



**The ISIL Attack on Sinjar in  
August 2014 and Subsequent  
Acts Committed Against the  
Yazidi Community in Iraq**





**United Nations Investigative Team to Promote Accountability for Crimes Committed by  
ISIL (Da'esh) (UNITAD)**

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Yazidi Community in Iraq**

**PUBLIC REDACTED VERSION**

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*Map of current Republic of Iraq with highlights of Nineveh Region (source: UNITAD)*

## 1 INTRODUCTION

1. On 3 August 2014, the Islamic State of Iraq and the Levant (ISIL), also known as Da'esh, commenced an attack on the Sinjar region in Iraq that would have catastrophic consequences for the lives of thousands of Yazidis for many years to come. From the outset of the operation, ISIL sought to capture as many Yazidis as it could, ultimately killing any men and older boys who refused to convert to Islam. Women, girls and younger boys were killed too, but also enslaved, raped, and sexually enslaved among other forms of abuse. This system of domination over human beings, and the inexorable acts that stemmed from it, was authorized, executed, promoted and celebrated by ISIL. There are reasonable grounds to believe that such widespread and systematic acts, committed in the context of an armed conflict, are constitutive of crimes against humanity and war crimes.
2. ISIL openly acknowledged and sought to justify these acts under its radical and extremist interpretation of Islam. In October 2014, a publication produced by the organisation openly stated that “[t]heir [Yazidis’] continual existence to this day is a matter that Muslims should question as they will be asked about it on Judgment Day [...] kill the mushrikin wherever you find them [...] But if they should repent, establish prayer, and give zakah, let them [go] on their way.”<sup>1</sup> Pursuant to this ideology, ISIL attempted to forcibly convert Yazidis to their interpretation of Islam and killed those who refused. Many thousands more were enslaved and abused, notably women and girls, while children were transferred from their homes and raised within ISIL. There are reasonable grounds to believe that this constituted genocide – openly acknowledged and justified – committed for the purpose of physically and biologically destroying the Yazidis as a religious group.
3. This case assessment is presented in ten sections. **Section 2** sets out the methodology and scope of the investigation. **Section 3** provides a brief overview of the organization that came to be known as ISIL. **Section 4** describes the Yazidis as a religious group. **Section 5** gives an overview of the attack against Sinjar starting in early August 2014. **Sections 6 to 9** describe the facts relating to the different categories of crimes, respectively: mass executions and killings; enslavement, and its attendant abuses; crimes against children; and crimes against cultural heritage and property. **Section 10** sets out the legal requirements for relevant international crimes and provides a legal characterization of these facts within this framework.
4. This document is a public redacted version of a case assessment. Its purpose is to inform the public and civil society about the overall factual and legal findings made by UNITAD at the conclusion of its investigative activities. The redactions are in place to

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<sup>1</sup> Dabiq, Issue 4: The Failed Crusade, October 2014 , page 14.

protect sensitive information, sources, and victims, ensuring their safety and privacy while still providing transparency about the investigation's outcomes.



## 2 METHODOLOGY AND SCOPE

### 2.1 Scope

5. This report presents the factual and legal findings of the attacks committed by ISIL against the Yazidi community of the Sinjar region in Iraq starting August 2014.
6. 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.
7. Further, the findings are based on evidence that UNITAD has collected itself or received from its counterparts, notably: testimonial evidence, including from survivors, eyewitnesses, experts and perpetrators; audio visual evidence; forensic evidence and analysis; documentary evidence; and other open-source information (e.g., news articles, public reports, etc.).
8. Factual assessments regarding the historical and political background rely primarily on collected open-source information. Factual findings regarding crimes and perpetrators rely on a combination of testimonial, audio-visual, forensic and documentary evidence. To the furthest extent possible, findings are corroborated with additional evidence. Where this was not possible, findings are made in the conditional.

### 2.2 Terminology

9. United Nations Security Council Resolution 2379 (2017) uses the term “Islamic State in Iraq and the Levant” (ISIL) and clarifies that the organization is also known as “Da’esh”. For simplification, this report uses the term ISIL while keeping the terms as used in relevant sources in the references (Islamic State in Iraq and the Levant, ISIL, Islamic State in Iraq and Syria, ISIS, Islamic State, IS, Islamic State in Iraq, ISI, Da’esh, etc.).
10. Any individual who is part of ISIL or is identified by witnesses as an ISIL member will be referred to as a “member” or “fighter”, interchangeably, while keeping the original term as used by the relevant source in the references (e.g. militant).
11. Similarly, a uniformed spelling has been adopted for the names of locations, individuals and entities in the body of the assessment, while the spelling as originally transcribed in the materials has been maintained in the references. Notably, Sinjar district is referred to as “Sinjar” in the report while the town of Sinjar, located within the district, is referred to as “Sinjar town” or some variation thereof.

### 3 ISIL IN IRAQ

#### 3.1 Historical evolution: emergence, decline and resurgence

12. 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 US occupation.<sup>2</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-Qaida in Iraq (AQI).<sup>3</sup> Despite the new name, al-Zarqawi departed from Al-Qaida's prioritization of the "far enemy" (Israel and the US) and focused on the "near enemy".<sup>4</sup>
13. After US 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. Abu Omar al-Baghdadi and his associates started to build ISI as a more bureaucratic organization, with a government-like 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 for the later ISIL/IS (Da'esh) organization.<sup>5</sup>
14. Due to significant losses inflicted by Iraqi Security Forces (ISF), Coalition Forces and local militant groups, including those known as "Sahwa,"<sup>6</sup> ISI declined in strength and influence.<sup>7</sup> In April 2010, al-Muhajir and al-Baghdadi were killed from a US-Iraqi joint operation in Tikrit.<sup>8</sup> In May 2010, Ibrahim Awad Ibrahim al-Badri al-Samarrai, a.k.a.

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<sup>2</sup> Stanford University Mapping militants project.

<sup>3</sup> United Nations, Security Council, Sanction Listing Material, Al-Qaida in Iraq

<sup>4</sup> Hassan, Hassan, "The sectarianism of the Islamic State Ideological Roots and Political Context, Carnegie Endowment for International Peace", June 2016, p. 9

<sup>5</sup> Charles Lister, "Profiling the Islamic State", November 2014, p. 10 .

<sup>6</sup> Jessica D. Lewis, "Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign", Middle East Security Report, Institute for the Study of War, 14 September 2013, Part 1, p. 9.

<sup>7</sup> Stanford University Mapping militants project.

<sup>8</sup> Reuters, "Al-Qaida in Iraq confirms death of leaders", 24 April 2010; Myriam Benraad, "Assessing AQI's Resilience After April's Leadership Decapitations", West Point, Combating Terrorism Center, Volume 3, Issue 6, June 2010

Abu Bakr al-Baghdadi, became the new leader of ISI.<sup>9</sup> By 2011, ISI was weakened, isolated and no longer posed an existential threat to the Iraqi state.<sup>10</sup>

15. However, in early 2012, ISI began to re-emerge. This revival was assisted by many factors, including: the withdrawal of US troops in December 2011 from Iraq;<sup>11</sup> the escalation and radicalization of the Syrian conflict; the Sunni political disenfranchisement in Iraq;<sup>12</sup> and the appointment of radicalized military, security and intelligence officers of Saddam Hussein's regime to high-ranking ISI positions.<sup>13</sup>
16. 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>14</sup> The campaign lasted until July 2013 and consisted of a series of major vehicle-borne improvised explosive device (VBIED) attacks against government targets and civilians, as well as eight prison breaks. 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>15</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>16</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>17</sup>

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<sup>9</sup> SITE Intelligence group, "ISI Names New Top Officials", 15 May 2010; Anthony Shadid, "Iraqi insurgent group names new leaders", New York Times, 16 May 2010; 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; M. J. Kirdar, "Al Qaeda in Iraq", June 2011, p. 5.

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

<sup>11</sup> Mapping militants project webpage

<sup>12</sup> Jessica D. Lewis, "Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign", Middle East Security Report, Institute for the Study of War, 14 September 2013, Part 1, pp 8-9.

<sup>13</sup> Kyle Orton, "The Islamic State: Between Al-Qaeda and Saddam Hussein", 22 September 2015; Kyle Orton, "A Response to Criticism: Why the Ex-Saddamists in the Islamic State Matter", 10 August 2015.

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

<sup>15</sup> Jessica D. Lewis, "Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign", Middle East Security Report, Institute for the Study of War, 14 September 2013.

<sup>16</sup> Bennett Clifford and Caleb Weiss, "'Breaking the Walls' Goes Global: The Evolving Threat of Jihadi Prison Assaults and Riots", February 2020, Volume 13, Issue 2, Combatting Terrorism Center, West Point

<sup>17</sup> UN Security Council, "First report of the Secretary-General pursuant to paragraph 6 of resolution 2110 (2013)", 13 November 2013, S/2013/661, paras 26, 54-55; UN Security Council, "Second report of the Secretary-General submitted pursuant to paragraph 6 of resolution 2110 (2013)", 14 March 2014, S/2014/190, para. 6.



17. In parallel, ISI exploited old Iraqi Sunni grievances with what some saw as political and economic marginalization in their own country, to further strengthen its position.<sup>18</sup> In December 2012, following the arrest of the Minister of Finance's security guards and staff members on charges of partaking in terrorist attacks,<sup>19</sup> protests broke out in Fallujah and quickly spread to the provinces of Nineveh, Salah al-Din, Kirkuk and Diyala, as well as to the Sunni neighbourhoods of Baghdad.<sup>20</sup> Tribal leaders, clerics, political party representatives and affiliated organizations, disaffected de-Baathified personnel and former anti-US insurgents joined the protests.<sup>21</sup>
18. The initially peaceful protests took a violent turn in the first months of 2013, when several dozen were killed and over a 100 wounded following the outbreak of violent confrontations between security forces and protestors, some of whom were armed.<sup>22</sup>
19. This incident led to a sharp increase in violent clashes; both sides radicalized, empowering the more extreme elements among demonstrators.<sup>23</sup> Against this background, the mobilization of tribal groups, known under the umbrella term of "(tribal) revolutionaries,<sup>24</sup>" was not an ISI initiative and was composed of separate organizations, not to be conflated with ISI.<sup>25</sup>
20. 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

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<sup>18</sup> International Crisis Group, *Make or Break: Iraq's Sunnis and the State*, Middle East Report No. 144, 14 August 2013, p. 7; International Crisis Group, *Iraq's Secular Opposition: The Rise and Decline of Al-Iraqiya*, Middle East Report N°127, 31 July 2012, p. 2; UN OHCHR, UNAMI, "Report on Human Rights in Iraq 2011", May 2012, p. 12.

<sup>19</sup> Jessica D. Lewis, "Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign", Middle East Security Report, Institute for the Study of War, 14 September 2013, 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.

<sup>20</sup> International Crisis Group, "Make or Break: Iraq's Sunnis and the State", Middle East Report No. 144, 14 August 2013, p. 1.

<sup>21</sup> International Crisis Group, "Make or Break: Iraq's Sunnis and the State", Middle East Report No. 144, 14 August 2013, pp 16-23; United Nations, Security Council, "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>22</sup> Human Rights Watch, "Iraq: Investigate Deadly Army Shooting in Fallujah", 14 February 2013; International Crisis Group, "Make or Break: Iraq's Sunnis and the State", Middle East Report No. 144, 14 August 2013, pp 31-32; Hayder al-Khoei, "Syria, Iraq and the Struggle for Power: Intertwined Futures", Middle East and North Africa Programme, November 2016, p. 9; Jessica D. Lewis, "Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign", Middle East Security Report, Institute for the Study of War, 14 September 2013, Part 1, p. 19; UNAMI, "UN Envoy condemns violence in Hawija, calls for immediate dialogue to prevent further bloodshed", 24 April 2013.

<sup>23</sup> International Crisis Group, "Make or Break: Iraq's Sunnis and the State", Middle East Report No. 144, 14 August 2013, p. 32; See also, "Clashes at Sunni protest sites in Iraq kill dozens", New York Times, 24 April 2013; Bill Chappell, "Iraq's Sunnis Form Tribal Army, As Sectarian Violence Builds", 27 April 2013

<sup>24</sup> Sinan Adnan, "Beyond the Islamic State: Iraq's Sunni Insurgencies", Middle East Security Report 24, October 2014

<sup>25</sup> Jessica D. Lewis, "Al-Qaeda in Iraq Resurgent: The Breaking the Walls Campaign", Middle East Security Report, Institute for the Study of War, 14 September 2013; International Crisis Group, "Exploiting Disorder: al-Qaeda and the Islamic State", 14 March 2016

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 fully share ISI's views on religion or plans for Iraq.<sup>26</sup> 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".

21. As a result of its recruitment among disaffected Sunni protesters, combined with other factors including the successful "Breaking the Walls" campaign, 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>27</sup> the numbers of ISI members had grown significantly.
22. 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>28</sup>
23. Between 30 December 2013 and 4 January 2014, ISIL, together with other armed groups, took control of the cities of Ramadi and Falluja in Anbar province.<sup>29</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, along with infrastructure in Iraq's north-western and north-central governorates.<sup>30</sup>

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<sup>26</sup> Sinan Adnan, "Beyond the Islamic State: Iraq's Sunni Insurgencies", Middle East Security Report 24, October 2014, p. 4; Ned Parker and Suleiman Al-Khalidi, "Special Report: The doubt at the heart of Iraq's Sunni 'revolution'", 4 August 2014

<sup>27</sup> Richard Barrett, "The Islamic State", November 2014, pp. 10-13 and 36-37

<sup>28</sup> Information received from Iraqi judicial authorities; Aaron Y. Zelin, "The War between ISIS and al-Qaeda for Supremacy of the Global Jihadist Movement", June 2014, pp. 3-4 – Note: "Al Sham" can be translated as "the Levant" in English, therefore, abbreviated as ISIL.

<sup>29</sup> United Nations, Security Council, "Second report of the Secretary-General pursuant to resolution 2110 (2013)" 14 March 2014, para. 6; United Nations, Security Council, "Fourth Report of the Secretary-General pursuant to resolution 2233 (2015)", 5 July 2016, para. 16.

<sup>30</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; United Nations, Security Council, Security Council Press Statement on Iraq (SC/11437-IK/673), 11 June 2014; UN Security Council, "First Report of the Secretary-General pursuant to resolution 2169 (2014)" 31 October 2014, paras. 24, 47, 51; UN Security Council, "Second report of the Secretary-General pursuant to resolution 2110 (2013)" 14 March 2014, para. 2; UN Security Council, "Third report of the Secretary-General pursuant to resolution 2110 (2013)" 11 July 2014, paras. 2, 12-14 and 18; UN Security Council, "Third Report of the Secretary-General pursuant to resolution 2169 (2014)", 1 May 2015, para. 20; UN Security

24. On 29 June 2014, ISIL's official spokesperson Abu Mohammed al-Adnani announced the establishment of a "Caliphate," indicating the goal of the organization.<sup>31</sup> At this point, ISIL exerted control over a large territory in Syria and Iraq,<sup>32</sup> with a command structure led by Abu Bakr al-Baghdadi as its Caliph,<sup>33</sup> and supported by two core entities, the Delegated Committee and the Shura Council.<sup>34</sup>

### 3.2 ISIL's structure: an organized and evolving entity

25. ISIL leadership constantly adapted to the evolving context and operational environment,<sup>35</sup> learning from each failure.<sup>36</sup> By mid-2014, ISIL-controlled Iraqi and Syrian territories, previously organized by governorates (muhafadhat), were redrawn

Council, "Fourth Report of the Secretary-General pursuant to resolution 2233 (2015)" 5 July 2016, para. 16; UN Security Council, "Third Report of the Secretary-General pursuant to resolution 2233 (2015)" 27 April 2016, para. 19; Al-Hayat Media Center, "Islamic State Report", Issue No. 3, Shaban 1435, , pp.2-4; Al-Hayat Media Center, "What Comes to You of Good is from Allah", 12 June 2014, .

<sup>31</sup> UN Security Council, "S/2014/815: Letter dated 13 November 2014 from the Chair of the UNSC Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities addressed to the President of the Security Council", 14 November 2014, paras. 12-13 and 15; OHCHR and UNAMI, "Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq: 5 June – 5 July 2014", p. 4; ISIL Video, Abu Bakr al-Baghdadi Speech in July 2014, ISIL Media Archive, (undated) ; Dabiq, Issue 1, July 2014 , p. 6-9

<sup>32</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; United Nations, Security Council, Security Council Press Statement on Iraq (SC/11437-IK/673), 11 June 2014; UN Security Council, "First Report of the Secretary-General pursuant to resolution 2169 (2014)" 31 October 2014, paras. 19-22, 24, 47 and 51; UN Security Council, "Second report of the Secretary-General pursuant to resolution 2110 (2013)" 14 March 2014, para. 2; UN Security Council, "Third report of the Secretary-General pursuant to resolution 2110 (2013)" 11 July 2014, paras. 2, 12-14 and 18; UN Security Council, "Third Report of the Secretary-General pursuant to resolution 2169 (2014)", 1 May 2015, para. 20; UN Security Council, "Fourth Report of the Secretary-General pursuant to resolution 2233 (2015)" 5 July 2016, para. 16; UN Security Council, "Third Report of the Secretary-General pursuant to resolution 2233 (2015)" 27 April 2016, para. 19; UN Security Council, "Second Report of the Secretary-General pursuant to resolution 2169 (2014)", 2 February 2015, paras. 3, 17, 19-22, 46-49, 51; UN Security Council, "Third Report of the Secretary-General pursuant to resolution 2169 (2014)", 1 May 2015, paras. 3, 18, 20-23, 45-49; UN Security Council, "Fourth Report of the Secretary-General pursuant to resolution 2169 (2014)", 13 July 2015, paras. 2, 5, 18-20, 44, 47, 50-51; UN Security Council, "First Report of the Secretary-General pursuant to resolution 2233 (2015)", 26 October 2015), paras. 2-3, 18-22, 41-45; UN Security Council, "Second Report of the Secretary-General pursuant to resolution 2233 (2015)", 26 January 2016, paras. 2, 18, 50, 53-54; UN Security Council, "Third Report of the Secretary-General pursuant to resolution 2233 (2015)" 27 April 2016, paras. 19, 47; UN Security Council, "Fourth Report of the Secretary-General pursuant to resolution 2233 (2015)", 05 July 2016, para. 16.

<sup>33</sup> UN Security Council, "S/2014/815: Letter dated 13 November 2014 from the Chair of the UNSC Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities addressed to the President of the Security Council", 14 November 2014, paras. 12-13, 15; ISIL Video, Abu Bakr al-Baghdadi Speech in July 2014, ISIL Media Archive, (undated) ; ISIL Video, 5 July 2014 – Note: Abu Bakr al-Baghdadi appears in the video and delivers a sermon in Mosul; Dabiq, Issue 1, July 2014 , p.7 ; See also, ISIL's al-Furqan Media, "Structure of the Khilafah", 6 July 2016, min. 00:02:16 .

<sup>34</sup> Information received from Iraqi judicial authorities

<sup>35</sup> Haroro Ingram, et al, "The ISIS Reader: Milestone Texts of the Islamic State Movement", Oxford University Press, 2020.

<sup>36</sup> Brian Fishman, "Dysfunction and Decline: Lessons Learned from Inside Al-Qa'ida in Iraq", Combating Terrorism Center at West Point, Harmony Project, 16 March 2009.



into provinces (wilayats). The provinces (wilayats) were headed by a “wali,” administered through a hierarchy of ministries (dawawin) and defended by a considerable military force.<sup>37</sup> Territorial subdivisions were also remapped: while before (and after) ISIL, governorates were divided into districts (qadha) and sub-districts (nahiya),<sup>38</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 derived from colonial rule.<sup>39</sup> 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.<sup>40</sup>

26. In 2014, the ISIL provincial demarcations consisted of three wilayats in Syria and seven in Iraq.<sup>41</sup> An organizational reform in 2015 established new provinces based on local victories. As a result, in mid-2015, there were around 20 wilayats.<sup>42</sup> On 13 November 2014, Abu Bakr al-Baghdadi announced the creation of five wilayats outside Syria and Iraq in Algeria, Libya, Yemen, Sinai (Egypt) and Saudi Arabia, as well as his intent to establish more wilayats worldwide. ISIL proclaimed 12 wilayats, in total, outside Syria and Iraq between 2014 and 2017.<sup>43</sup>
27. ISIL had recruited thousands of foreigners and locals to fight in its ranks already by 2014.<sup>44</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

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<sup>37</sup> Scott Jasper and Scott Moreland, “ISIS: An Adaptive Hybrid Threat in Transition”, *Small Wars Journal*, 29 Oct. 2016.

<sup>38</sup> Amended Governorates Law No. (159) of 1969 Article (2); Law 21 of 2008 – Note: regarding governorates that are not organized in a region.

<sup>39</sup> ISIL Video, ISIL Spokesperson, 4 July 2014 – Note: ISIL Spokesperson announcing the abolishment of borders between countries and the non-recognition of borders deriving from the Sykes-Picot agreement.

<sup>40</sup> Mohamed Suhail Taqqosh, “The administrative system during the reign of Omar Ibn Al-Khattab”, *Islam Story*, 17 September 2017

<sup>41</sup> Note: This subdivision considers Wilaya-t-al-Furat as part of Iraq, although in reality the territory of this wilaya runs 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>42</sup> 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 – Note: 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).

<sup>43</sup> 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 – Note: Khorasan in Afghanistan, al-Jazair in Algeria, Sinai in Egypt, Burgah, Tarablus/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.

<sup>44</sup> Basit, Abdul, “Foreign Fighters in Iraq and Syria – Why So Many?”, in *Counter Terrorist Trends and Analysis*, October 2014, p. 1; *New York Magazine/Intelligencer*, “Report: ISIS Has Recruited as Many as 30,000 Foreigners in the Past Year”, September 2015.

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>45</sup> In addition to this, the Department of Armaments (Tasni) established a limited manufacturing capacity for arms and ammunitions that also included weaponized commercial drones.<sup>46</sup>

28. 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>47</sup> trapping and tunnelling and the use of improvised explosive devices.<sup>48</sup>
29. Ideologically, ISIL adopted a more radical approach than Al-Qaida and other jihadist groups, not tolerating those it considered to be “infidels” (kafir). 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.<sup>49</sup> ISIL systematically

<sup>45</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. 39, 41; Information received from Iraqi authorities.

<sup>46</sup> Don Ressler, “The Islamic State and Drones: Supply, Scale, and Future Threats”, West Point 2018.

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

<sup>48</sup> Joby Warrick, “How the Pentagon Got Inside ISIS’ Chemical Weapons Operation—and Ended It”, Politico 27 February 2021.

<sup>49</sup> Dabiq, Issue 1, July 2014 – Note: ISIL’s official publication identified its enemies as Iraqi apostate forces (the army, police, intelligence), the Rafidah (Shia markets, temples and militias) and the Kurdish secularists (Barzan and Talabani partisans). It also discussed the two camps the world had divided into – “the camp of Islam and faith, and the camp of kufr (disbelief) and hypocrisy – the camp of the Muslims and the mujahidin everywhere, and the camp of the Jews, the crusaders, their allies, and with them the rest of the nations and religions of kufr, all being led by America and Russia, and being mobilized by the Jews.” Its second issue makes strong pronouncements against people having free choice in selecting their faith or religion, summed up in the following: “So until we return to the correct state of Islamic affairs, it’s upon us all to work together to eradicate the principle of “free choice,” and to not deceive the people in an attempt to seek their pleasure, neither by calling to “free choice” directly, nor by alluding to it indirectly. Rather, we must confront them with the fact that they’ve turned away from the religion, while we hold onto it, grasping its purity, its clarity, its comprehensiveness, without any blemishes due to shirk, misguidance or heresy, and that we’re completely ready to stand in the face of anyone who attempts to divert us from our commitment to making the religion of Allah triumphant over all other religions, and that we will continue to fight the people of deviation and misguidance until we die trying to make the religion triumphant.” “Iraqi Insurgent Faction Approves Baghdadi Initiative”; SITE Intelligence group, “Iraqi insurgent faction approves Baghdadi initiative”, 15 February 2010; SITE Intelligence group, “Al-Fajr Distributes Book Criticizing Association of Muslim Scholars”, 16 October 2009; SITE Intelligence group, “ISI Spokesman Defends Group’s Reputation, Invites to Repent”, 21 May 2013 – Note: ISIL spokesman Abu Muhammad al-Adnani declared in August 2011 the Iraqi government to be illegitimate as it protected Shia and other non-Sunni groups from their implied necessary extermination – he declared in May 2012 that the Iraqi Government was “more tyrannical and liars about Allah in saying that Iraqi blood is impermissible, and they signed agreements about that and gave pledges and made impermissibility of blood dependent upon Iraqi citizenship. They preserved the blood of the Yazidi who worships Satan” and other non-Sunni groups.

targeted the Yazidi community, as well as other ethnic and religious groups, including Shi'a, Christians, Shabakis and Kaka'i, based on its ideology and interpretation of Islam.<sup>50</sup> ISIL's crimes, including its ill-treatment of minorities,<sup>51</sup> appear 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>52</sup> This "license to kill"<sup>53</sup> was recurrently detailed in ISIL's media propaganda.

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<sup>50</sup> UNITAD's Reports providing factual and legal assessments of the crimes committed by ISIL against the Christians, Shi'a Turkmen, Shabak and Kaka'i communities in Iraq.

<sup>51</sup> Dar al Islam 5:7.

<sup>52</sup> OHCHR & UNAMI, "Report on the Protection of Civilians in Armed Conflict in Iraq: 11 September – 10 December 2014", December 2014.

<sup>53</sup> Myrian Benraad, "L'Etat islamique pris aux mots", Armand Colin, May 2017 – Note: see references to Dar al Islam #2:5-10; 3;12; 5:18 (Jan 2015) and Rumiya 2:18 (Oct. 2016).



#### 4 THE YAZIDIS

30. Yazidis firmly believe their faith to be one of the world's oldest religions, with links to ancient Mesopotamia.<sup>54</sup> Some scholars from outside of the Yazidi community have asserted that the religion came into being in the twelfth century, when an isolated pagan community began to follow the teachings of a Sufi mystic known as Sheikh Adi ibn Musafir.<sup>55</sup> It is generally accepted that Yazidism presents characteristics distinct from those of the Abrahamic faiths.<sup>56</sup>
31. With no written book, Yazidism places less emphasis on conforming to specific codified beliefs and more significance on participation in religious rituals, which are usually passed down through the family.<sup>57</sup> Yazidi temples and shrines are central to the practice of these rituals, and thus to Yazidism.<sup>58</sup>
32. Yazidis believe in one God whose power on Earth is delegated to seven angels. The angels are led by the Peacock Angel, Malek Taūs, the intermediary between God and the Yazidis.<sup>59</sup> Malek Taūs is understood to have been an angel who fell to earth and transformed into a peacock. Another key symbol of Yazidism is the serpent. Yazidis believe that this animal helped humanity to survive the Flood when it used its body to seal a leak in Noah's Ark.<sup>60</sup>
33. Their veneration of a fallen angel and a serpent is controversial in the three Abrahamic faiths because both are associated with the story of Lucifer. This has given the Yazidis a reputation in some circles, including ISIL, for being "devil-worshippers".<sup>61</sup> The enduring misreading of the Yazidi faith and the consequent othering of its religious community have led to deeply ingrained prejudices in many societies, including in Iraq, long predating the rise of terrorist groups in Iraq.<sup>62</sup>
34. Yazidis were regularly the subject of targeted attacks throughout recorded history. They first came to Sinjar in the early Ottoman period, fleeing persecution. Sinjar

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<sup>54</sup> Garnik Asatrian and Victoria Arakelova, "The Religion of the Peacock Angel. The Yezidis and Their Spirit World", New York: Routledge, 2014.

<sup>55</sup> Christine Allison, "The Yezidi Oral Tradition in Iraqi Kurdistan", London: Curzon Press, 2001.

<sup>56</sup> See for instance, Mirza Dinnayi, "Yezidi minority and ISIS: the Victims of Trans-Generational Genocide", 2019, pages 7 and 8

<sup>57</sup> Benjamin Isakhan and Sofya Shahab, "The Islamic State's destruction of Yezidi heritage: Responses, resilience and reconstruction after genocide, Journal of Journal of Social Archaeology", 2019, page 9.

<sup>58</sup> Birgül Açıkyıldız, "The Yezidis: The History of a Community, Culture and Religion", London, I.B. Tauris, 2010, page 202.

<sup>59</sup> Garnik Asatrian and Victoria Arakelova, "The Religion of the Peacock Angel. The Yezidis and Their Spirit World", New York: Routledge, 2014.

<sup>60</sup> Açıkyıldız, pages 159 and 160.

<sup>61</sup> Açıkyıldız, pages 1 and 2; Neil MacFarquhar, "\_\_\_", New York Times, 3 January 2003.

<sup>62</sup> See for instance, Mirza Dinnayi, "Yezidi minority and ISIS: the Victims of Trans-Generational Genocide", 2019, pages 10 to 15

mountains offered natural protection, and the Yazidis used its natural fortifications as a base for rebellions against the Ottoman governors of nearby Mosul who wanted them to pay taxes, join the army and convert to Islam.<sup>63</sup> The Yazidis built shrines and temples on Sinjar mountains, including Shara Din,<sup>64</sup> said to date from the thirteenth century. Another wave of Yazidis arrived between 1915 and 1919 from Anatolia, where Yazidis were targeted along with other religious minorities, notably Armenians.<sup>65</sup> By this time Sinjar, with its topography and location on the far reaches of the Ottoman Empire, had become a safe haven for Yazidis and other minorities.

35. Yazidis count up to seventy-four potential genocides in their history, including massacres in Sinjar in 1640, 1715, 1832 and 1890.<sup>66</sup> Prior to the 2014 attack, the most extensive attempts to eradicate them took place during the Ottoman Empire when the governors of Baghdad and Mosul sent forces to kill and capture Yazidis in Sinjar. In 1837, the governor of Diyarbakir, Hafiz Pasha, and his troops surrounded Sinjar mountains, besieging the Yazidis who had fled there. After three months, the Yazidis surrendered. Hafiz Pasha took property, which he alleged to be the property of the Ottoman Empire, and abducted an unknown number of Yazidi women who were then sold on the Mardin slave market, 115 kilometres north-west in present-day Turkey.<sup>67</sup>
36. A person is born into Yazidism through two Yazidi parents. There is no path to conversion into the faith, a fact which underpins the close-knit nature of the community. Within Yazidism, marriages are only permitted between members of the same caste. There are three castes: the *sheikhs*, who are the ruling caste; the *pirs* who form the religious caste; and the *murids*, who can best be described as commoners within the caste system and make up about 90 per cent of the Yazidi population.
37. With conversion to Yazidism theologically impossible, mixed marriages were viewed as an existential threat and posed a more immediate, physical threat when other religious communities wrongly perceived Yazidism as a proselytising faith. Intermarriage, or any form of sexual contact with members of other religious groups, is strictly forbidden and would likely lead to ostracization from the Yazidi community. In the past, there have been cases of honour killings documented, where women from the community sought to have relationships with non-Yazidi men,<sup>68</sup> or where they

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<sup>63</sup> Philip G. Kreyenbroek, "Yezidism – Its Background, Observances and Textual Tradition", Edwin Mellen Press, 1995, page 45.

<sup>64</sup> In Arabic, Sharaf Al-Din.

<sup>65</sup> Cathy Otten, "With Ash on their Faces: Yezidi Women and the Islamic State", London, OR Books, 2014.

<sup>66</sup> For more information on earlier annihilative campaigns against the Sinjari Yazidis, see Birgül Açıkyıldız, "The Yezidis: The History of a Community, Culture and Religion", London, I.B. Tauris, 2010; John S. Guest, "Survival Among the Kurds: A History of the Yezidis", London, Routledge (1993), pages 67 and 136; Nelida Fuccaro, "The Other Kurds: Yazidis in Colonial Iraq", London, I.B Tauris, 1999, page 37.

<sup>67</sup> Guest, "Survival Among the Kurds", page 74; Fuccaro, "Other Kurds", page 52.

<sup>68</sup> Amnesty International, "Iraq: Amnesty International appalled by stoning to death of Yezidi girl and subsequent killings", 27 April 2007; Matthew McGarry, "The Dishonorable Death of Doa", ABC News, 7 May 2007

declined marriages within the community.<sup>69</sup> There is therefore a strict taboo about sexual contact or any perceived sexual contact with non-Yazidis.

38. Indigenous communities of Yazidis are present in Syria, Iraq and Turkey and speak the Kurmanji dialect of Kurdish as their native language. There are also significant numbers of indigenous Yazidis in Armenia and Georgia, where parts of the community sought refuge from earlier campaigns of violence. Many of these communities, apart from the Armenian Yazidis, view themselves as ethnically Kurdish but followers of the Yazidi faith. Where Yazidis hold the view of themselves as an ethnically distinct group, it is often in the context of repression and discrimination against the Yazidi community by surrounding Muslim communities.
39. It is estimated that there are fewer than one million Yazidis worldwide. Although there is a dearth of reliable statistics, one Yazidi activist estimated that in 2013 there were about 550,000 – 600,000 Yazidis in Iraq.<sup>70</sup> Prior to the 3 August 2014 attack by ISIL, they mostly inhabited the area surrounding the Sinjar mountains to the west of Mosul and the Shekhan district to the north-east of Mosul. Smaller communities live in villages and towns in Talkeef district in Bashiqa, along with Zakho and Semel districts in Dohuk governorate.<sup>71</sup>
40. In a 2011 report, the International Organization for Migration (IOM) estimated there were approximately 230,000 Yazidis in Sinjar district.<sup>72</sup> In the aftermath of the August 2014 attack, Kurdish authorities stated that more than 300,000 Yazidis had settled in the Kurdistan Region of Iraq. A majority stayed in camps managed by the Kurdistan Regional Government, while the remainders were scattered in construction sites and unofficial tented settlements.<sup>73</sup> A relatively low number of Yazidis from Sinjar have settled elsewhere. According to a 2015 estimate, some 10,000 remained in tents on the north side of Sinjar mountains under Kurdish control,<sup>74</sup> nearly 15,000 were reportedly in refugee camps in Syria<sup>75</sup> and at least 30,000 were known to have crossed into Turkey.<sup>76</sup>

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<sup>69</sup> Associated Press, “Yazidi man accused of Germany honor killing arrested in Iraq”, 14 October 2018

<sup>70</sup> Khider Domle, “Yazidis: A Deep-Rooted Community in an Unstable Present”, in Saad Salloum, *Minorities in Iraq: Memory, Identity and Challenges*, 2013

<sup>71</sup> Arshad Hamad Mahho, “Yazidis in the Books of British Travelers from the Beginning of the 19<sup>th</sup> Century to the End of World War I”, Mukiryani Establishment for Research and Publishing, Dohuk, 2012.

<sup>72</sup> IOM, “IOM Emergency Needs Assessment: Increased Incidents of Suicide Among Yazidis in Sinjar, Ninewa, July 2011”, 12 October 2011

<sup>73</sup> Kurdistan Regional Government, Press Release, “More than 300 thousand displaced Yezidi Kurds in Kurdistan Region”, 2014; Board of Relief and Humanitarian Affairs, “Report on IDP camps in Duhok”, 2015

<sup>74</sup> EKurd Daily, “One doctor for 10,000 people in Iraq’s Yazidi Mount Sinjar”, 13 January 2015

<sup>75</sup> Maha Sidky and Ariane Rummery, “UNHCR steps up aid as Yazidis stream into Syria from Iraq’s Mount Sinjar”, UNHCR, 14 August 2014

<sup>76</sup> Tulin Daloglu, “How will Turkey react to stream of Kurdish refugees?”, Al Monitor, 22 September 2014.



## 5 ATTACK ON SINJAR

### 5.1 Summary

41. Prior to its attack against Sinjar on 3 August 2014, ISIL was engaged in several major operations, resulting in seizure of territory from the Iraqi Armed Forces in Mosul, Rabia and Tal Afar<sup>77</sup> and from Peshmerga forces in and around Zumar. ISIL progressively established control over certain areas close to Sinjar as well, particularly around Ba'aj and the Blej/Qayrawan sub-district.<sup>78</sup> These rapid territorial gains, among other effective tactics such as the infiltration of certain Sunni communities, resulted in the rapid collapse of government forces followed by the near immediate seizure of their abandoned weapons and materials.
42. From this seized territory, ISIL launched a coordinated attack across Sinjar on 3 August 2014. The attack targeted the Peshmerga forces defending Yazidi towns and villages, as well as Yazidi civilians. After the withdrawal of the Peshmerga forces, ISIL continued to attack Yazidi civilians, killing many of those attempting to flee, especially men and older boys. ISIL captured and enslaved Yazidi women and children, as well as men and older boys who submitted to forced conversions. Furthermore, ISIL continued to target thousands of captured Yazidis for years, as they were held in continuous detention. Captured women and girls were subjected to sexual slavery, younger boys were forcibly conscripted and nearly all were subjected to forced labour. Many of the forcibly converted men and older boys were also eventually executed.

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<sup>77</sup> András Derzsi-Horváth, "Iraq After ISIL: Rabi'a", GPPI, 4 August 2017, – Note: Rabia was exclusively controlled in June 2014 by Iraqi national forces, not being part of the 'disputed areas'. ISIL managed to take over the city a few days after the fall of Mosul. With the arrival of the Peshmerga, ISIL elements withdrew to some villages on the outskirts of Rabi'a until early August 2014. Nawzat Shamedin, "Ninewa clans and the 'Caliphate State': Networks of interests and arms violence that have drawn the map of state building and continuity", Network of Iraqi Reporters for Investigative Journalism 2015, 3 November 2015, – Note: Da'esh continued to tax trucks passing through, a quote for 2014 was US \$300–600 tax on each commercial truck passing through. *See also*, Christine van den Toorn and Ahmed Ali, "Challenges and Opportunities in post-ISIS Territories: The Case of Rabia", IRIS Iraq Report, Institute of Regional and International Studies, 3 August 2015 .

<sup>78</sup> Da'esh Diwan al-Amn, Rollcall for Qayrawan, likely early 2017 (Document received by UNITAD from Tal Kaif Court); ISIL Diwan al-Jund, Rollcall of Qayrawan military unit, likely early 2017 (Document received by UNITAD from Tal Kaif Court); Faleh Abd al-Jabbar, Dawla al-Khilafa, "al-tqaddum ila al-madhi (Da'ish" wa al-mujtama' al-mahalli fi al-Iraq)", , Doha, Qatar (Arab Center for Research & Policy Studies), 2017. – Note: there is no roster spreadsheets dated 2014 which would substantiate control over Qayrawan, Ba'aj. ISIL documents from Qayrawan and Ba'aj start in 2015 with the media publications, rosters are dated 2016 and 2017. The take-over of both Qayrawan and Ba'aj is described in Iraqi sociologist's opus magnum; UNITAD, Confidential testimonial evidence.



defence systems (MANPADS) (SA-7), field and anti-aircraft guns, missiles, rockets, rocket launchers, artillery, aircraft, tanks (including T-55s and T72s) and vehicles.<sup>81</sup>

44. ISIL successfully recruited thousands of locals and foreigners to fight in its ranks starting in early 2014.<sup>82</sup> Newly recruited fighters, combined with progressive seizures of arms, ammunition and equipment in Iraq, allowed ISIL to increasingly form "regular" units for conventional warfare. Members started wearing uniforms, carried arms and were placed on a payroll. ISIL created new uniform designs to give a sense of unity, 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 black cloth.
45. Mosul and Tal Afar were already heavily infiltrated. Local ISIL members in Tal Afar held second-tier leadership positions in organizations like Al Qaida since 2007, demonstrating deep ideological roots.<sup>83</sup>
46. These three factors – firepower, manpower and ideological alignment – heavily favoured ISIL in advance of its offensive against Mosul and Tal Afar, expediting the capture of these two strategic locations.

### 5.2.2 *Capture of Mosul by ISIL in June 2014*

47. On 10 June 2014, ISIL took control of Mosul in coordination with other organizations and tribal groups or armed local citizens with a background in organized crime.<sup>84</sup>
48. Starting on 2 June 2014, ISIL attacked the ISF forces stationed in and around Mosul. On 6 June 2014, most of the ISF stationed in Tanak, Mosul, withdrew from their base. The remaining ISF withdrew following an attack on 9 June 2014 against a key base. ISIL broadcasted a video of the attack, showing the perpetrators. Persistent attacks followed, resulting in the withdrawal of all ISF. Among them were some Yazidis, working with Mosul Emergency Police and the military based in Mosul.<sup>85</sup>
49. By the evening of 9 June 2014 ISIL took over Mosul. Immediately ISIL started to open the prisons and released thousands of prisoners. One of the prisons<sup>86</sup> held 960 ISIL

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<sup>81</sup> The Islamic State in Iraq and the Levant and the Al-Nusrah Front for the People of the Levant: report and recommendations submitted pursuant to resolution 2170 (2014), S/2014/815, 14 November 2014, para. 41.

<sup>82</sup> See for instance, Abdul Basit, "Foreign Fighters in Iraq and Syria – Why So Many?", in Counter Terrorist Trends and Analysis, October 2014, p. 1 ; New York Magazine/Intelligencer, "Report: ISIS Has Recruited as Many as 30,000 Foreigners in the Past Year", September 2015 . See also, Kumar, Chanchal, "Islamic State of Iraq and Syria (ISIS) a Global Threat: International Strategy to Counter the Threat", Journal of Social Sciences and Humanities, July 2015, p. 347 .

<sup>83</sup> Kyle Orton, "The Islamic State's Official Biography of the Caliph's Deputy", 18 December 2016

<sup>84</sup> UNITAD, Confidential testimonial evidence.

<sup>85</sup> Layla and the Nights of Pain, p. 17; UNITAD, Confidential testimonial evidence.

<sup>86</sup> Nineveh anti-terrorism unit prison.

members, all of whom were released at that time. ISIL also took over Badush prison and executed approximately 1,000 Shi'a prisoners, targeting them because they were Shi'a, and released the others except a few Sunni, Christian and Yazidi prisoners.<sup>87</sup>

50. ISIL forces in Mosul remained relatively disjointed, and not all armed organizations that participated in the capture of the city were under the ISIL "Department of Soldierly" (Diwan al-Jund).<sup>88</sup> They were, however, incorporated in the following of months.<sup>89</sup>

### 5.2.3 Capture of Tal Afar by ISIL in June 2014

51. Following the capture of Mosul, ISIL continued its advance west towards Tal Afar, attacking the city from different directions.<sup>90</sup> Tal Afar was already heavily infiltrated by jihadists pre-dating ISIL.<sup>91</sup> Local ISIL members had held second-tier leadership positions in predecessor entities since 2007.<sup>92</sup>
52. By mid-June 2014, ISIL conquered the town of Tal Afar after a three-day battle with the ISF. The ISF retreated towards Sinjar, where they handed over their heavy weapons to the Peshmerga. Brigade members then left with fleeing Shi'a Turkmen civilians through Sinuni, Rabia, Dohuk and Erbil to Diyala governorate, re-entering Iraqi Government-controlled areas in Khanaqin. Some Shi'a from Tal Afar temporarily sought refuge in several schools in Sinjar villages before moving further to the Kurdistan region. Upon capturing Tal Afar, ISIL seized stores of arms and ammunitions and persuaded some members of the Sunni Arab population ranks. Some were then involved in the attack on Sinjar.<sup>93</sup>
53. The control exercised by ISIL over Mosul and Tal Afar began to impact Sinjar. Most roads were blocked, except for one connecting Sinjar and Kurdistan, preventing easy access to food and other goods, which led to the closure of markets. Following the movements of ISIL members, rumours that the Yazidi must convert or be killed began to spread as early as July 2014.

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<sup>87</sup> UNITAD's Report, "Factual and legal assessment of acts committed by ISIL in Iraq during the attack on Badush Prison on 10 June 2014", August 2024.

<sup>88</sup> UNITAD's Report, "ISIL (Da'esh)'s Military Structure", August 2024.

<sup>89</sup> Kumar, Chanchal, "Islamic State of Iraq and Syria (ISIS) a Global Threat: International Strategy to Counter the Threat", *Journal of Social Sciences and Humanities*, July 2015 ; Jessica Lewis, "The Terrorist Army Marching on Baghdad", *Wall Street Journal*, 12 June 2014

<sup>90</sup> UNITAD, Confidential testimonial evidence.

<sup>91</sup> See further Section 5.3.

<sup>92</sup> Kyle Orton, "The Islamic State's Official Biography of the Caliph's Deputy", 18 December 2016 .

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



### 5.3 Intensification of ISIL presence and activity in Sinjar

#### 5.3.1 *Southern Sinjar: capture of Ba'aj and Blej/Qayrawan*

54. ISIL began to incrementally gain control over areas along the south of Sinjar in June 2014. ISIL first took over Ba'aj, south of Sinjar, and Blej/Qayrawan, a sub-district of Sinjar. Like in Mosul and Tal Afar, both areas were widely infiltrated beforehand resulting in ISIL establishing control without a battle. When ISIL entered Ba'aj, the ISF dissolved in the surrounding areas with some members withdrawing to Sinjar. ISIL seized military vehicles and arms that were left behind and took charge of the police headquarters close to Umm Jurays, seizing additional arms and ammunitions there.<sup>94</sup>
55. Upon the takeover of Ba'aj and Blej/Qayrawan, ISIL distributed the rules of the Islamic State which were to be applied and commenced developing its organizational structure to oversee those areas,<sup>95</sup> in close coordination with ISIL forces stationed in Tal Afar.
56. Shortly after arrival in Ba'aj, ISIL set up offices, including all the diwans, "as if they were prepared for that six years ago". They used big houses and hung signs to indicate the diwans. The diwans and authorities established included: Wali of Ba'aj, Shari'a judge, Diwan al Amnyia (Department of Security), Diwan al A'skari (Department of Military Affairs), Diwan al Hisba (Department of Islamic Police) and Diwan al Zakat (Department of Alms). A similar structure was also set up in Blej/Qayrawan.<sup>96</sup>
57. By July 2014, the control ISIL exercised over Ba'aj Blej/Qayrawan was apparent. ISIL had a clear structure in place in Ba'aj. Ba'aj school was used by ISIL as a headquarters.<sup>97</sup>
58. ISIL progressively extended its presence in and around the villages of south Sinjar. Fearing ISIL, many residents of farms in the area between Siba Sheikh Khidir, Tal Ezir and Gir Zerik relocated to the villages. ISIL members occupied some of the farms and used them as an outpost to target the nearby village of Gir Zerik.<sup>98</sup>

#### 5.3.2 *Northern Sinjar*

59. Arab villages in the north of Sinjar were similarly infiltrated by ISIL prior to the main attack. Arab tribesmen cleared the way for ISIL members as they arrived in Hardan and Khanasor on 3 August 2014.<sup>99</sup>

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<sup>94</sup> Information received from Iraqi judicial authorities.

<sup>95</sup> UNITAD, Confidential testimonial evidence.

<sup>96</sup> UNITAD, Confidential testimonial evidence.

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

<sup>98</sup> UNITAD, Confidential testimonial evidence.

<sup>99</sup> UNITAD, Confidential testimonial evidence.

### 5.3.3 *Take-over of the Iraq-Syria border*

60. Between 9 and 29 June 2014, ISIL neutralized the border posts between Iraq and Syria and published a celebration video.<sup>100</sup> Local or Sunni Arab men who were Iraqi border services personnel either managed to flee or blend in with the local community. Shi'a and Yazidi border service personnel attempted to escape in a large convoy back to Sinjar, but they were intercepted in an ambush laid in Tal Safwak and either killed or captured.<sup>101</sup> ISIL made a video of the captives, which it placed on social media, displaying an English-speaking ISIL member who comments about the Yazidis worshipping Lucifer.<sup>102</sup>

### 5.3.4 *ISIL military preparations for the Sinjar attack*

61. Having occupied key villages in Sinjar and the Iraq-Syria border, ISIL movements in the area noticeably increased. Convoys were reported transiting between the Syrian border and Ba'aj. From Ba'aj, ISIL convoys proceeded to Blej/Qayrawan, Tal Afar and Mosul.<sup>103</sup>

ISIL convoys to Syria delivered arms and vehicles to the Wali of al Raqqa. This was reportedly used to fully equip and prepare his approximately 200 fighters in Syria for the invasion of Sinjar.<sup>104</sup>

62. Such logistical support from ISIL fighters in Iraq to those in Syria and the increasingly frequent ISIL convoys between Ba'aj, Blej/Qayrawan and Tal Afar are indicators of the degree of coordination during preparation of the attack.
63. The decision to mount an offensive against Sinjar was reportedly taken following a meeting by Abu Bakr al-Baghdadi with four ISIL Shari'a advisors, with the planning assigned to an ISIL member from Tal Afar.<sup>105</sup> The attack was planned in advance, with some ISIL members in Blej/Qayrawan speaking openly about the Sinjar attack freeing Sinjar from the government. In Ba'aj, ISIL held a ceremony on 2 August 2014 parading its weaponry and vehicles.<sup>106</sup>

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<sup>100</sup> ISIL Video, "The end of Sykes-Picot", released in Arabic on 29 June 2014, (available at SITE); UNITAD, Confidential testimonial evidence.

<sup>101</sup> UNITAD, Confidential testimonial evidence.

<sup>102</sup> SITE Intelligence group, "Chilean Fighter Reviews Spoils Taken by Islamic State at Iraq-Syria Border", 29 June 2014, min. 8:50-10:50; SITE Intelligence group, "ISI spokesman defends groups reputation invites to repent", Note: Official ISIL spokesman refers to Yazidi in a May 2012 speech as "Satan worshippers"; UNITAD, Confidential testimonial evidence.

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

<sup>104</sup> Information received from Iraqi judicial authorities

<sup>105</sup> Information received from Iraqi judicial authorities

<sup>106</sup> UNITAD, Confidential testimonial evidence.

64. Yazidis in Sinjar also begun receiving advance warnings that they should leave from their Sunni Arab neighbours, as an ISIL attack was imminent.<sup>107</sup>

### 5.3.5 *Increased hostilities towards civilians in Sinjar*

65. In the weeks prior to the Sinjar attack, several incidents involving ISIL were reported that increased tensions and fears among the Yazidi community. ISIL reportedly kidnapped several Yazidis in 2014. Some were released following the payment of a ransom.<sup>108</sup>

### 5.3.6 *Peshmerga and ad hoc defences in villages*

66. After the capture of Mosul, the ISF withdrew from Sinjar and were replaced by Peshmerga troops.<sup>109</sup> On 16 June 2014, following the takeover of Tal Afar, departing ISF handed over their arms, ammunitions and equipment to the Peshmerga in Sinjar. The deployed Peshmerga covered the main road from Rabia to Sinjar town; the road from Rabia to Kisik; and the road alongside the border berm from Rabia to west of the Sinjar mountains.<sup>110</sup> In the two weeks leading up to the 3 August 2014 attack, ISIL sporadically attacked Peshmerga checkpoints. All major roads from Sinjar to Ba'aj and to Blej/Qayrawan were secured by the Peshmerga.<sup>111</sup>
67. Given the limited presence of Peshmerga forces and growing insecurity, several Yazidi villages mobilized a rudimentary defence capacity for protection.
68. In Hardan, for instance, the local Peshmerga asked former policemen and other villagers to help ensure the security of the village. Local Peshmerga provided them with small arms, and the Mukhtar (head of the village) set up guard shifts of men at a time posted around the village. The shifts increased in frequency a few days prior to 3 August 2014, especially following the Zumar attack on 1 August 2014.<sup>112</sup>
69. Similarly, in Sinjar town and other Yazidi villages, such as Siba Sheikh Khidir and Gir Zerik, the civilians built berms between their areas and Arab villages and mobilized guarding systems with the support of the Peshmerga.<sup>113</sup>
70. In Kocho, the decision was also taken that the villagers who had weapons were to take up their arms and guard the village. A guarding system was introduced where about 200 men with weapons were divided into two groups and each group would take four-

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<sup>107</sup> UNITAD, Confidential testimonial evidence.

<sup>108</sup> UNITAD, Confidential testimonial evidence.

<sup>109</sup> Rudaw, "Wezareta Pêşmerge: Navçeyên ku em bigirin jê venakişin", 12 June 2014 .

<sup>110</sup> Christine van den Toorn and Ahmed Ali, "Challenges and Opportunities in post-ISIL Territories: The Case of Rabia", IRIS Iraq Report, Institute of Regional and International Studies, 3 August 2015 .

<sup>111</sup> Hayri Demir, "The Betrayal of Shingal", Ezidipress, 7 August 2015

<sup>112</sup> UNITAD, Confidential testimonial evidence.

<sup>113</sup> UNITAD, Confidential testimonial evidence.

hour shifts in guarding the village. This system continued until ISIL took over the village on 3 August 2014.<sup>114</sup>

### **5.3.7 Attack on Zumar**

71. The capture of Tal Afar had established a corridor facilitating ISIL's travel between Mosul and Syria by passing through Tal Afar, Blej/Qayrawan and Ba'aj.<sup>115</sup> The more convenient and direct route ran along the road through Sinjar. The presence of Peshmerga in Sinjar town, as well as in the areas north and south of Sinjar mountains, meant that ISIL convoys were forced to take a detour of approximately 60 km along a dirt road. This detour resulted in delays of over one and a half hours in ISIL's travel through Blej/Qayrawan and Ba'aj before reaching either Tal Safwak or Umm Jurays.
72. This marked Sinjar as the next logical step in ISIL's advance. ISIL progressively worked to encircle Sinjar, notably through the takeover of Ba'aj, Blej/Qayrawan and other Arab villages.
73. As part of this plan, on 1 August 2014, ISIL carried out a successful attack against bases of the Iraqi Armed Forces and Peshmerga in Zumar, seizing arms, ammunition and equipment left behind by the fleeing forces. The main road between Sinjar and the Kurdistan region runs through Zumar, making it a critical link. This attack severed the route for Iraqi forces to reach Sinjar and stranded the Peshmerga forces who remained there.

### **5.4 Attack on Sinjar**

74. In the early hours of 3 August 2014, sometime between midnight and 3 a.m., ISIL first attacked Gir Zerik and Siba Sheikh Khidir with heavy weapons.<sup>116</sup> Additional attacks unfolded across Sinjar against Yazidi villages. Some attacks were well-coordinated, such as those in the south of the Sinjar mountains. ISIL quickly cut key lines of communication, along with avenues of escape, and overstretched the manpower and firepower of Peshmerga units, who fled.

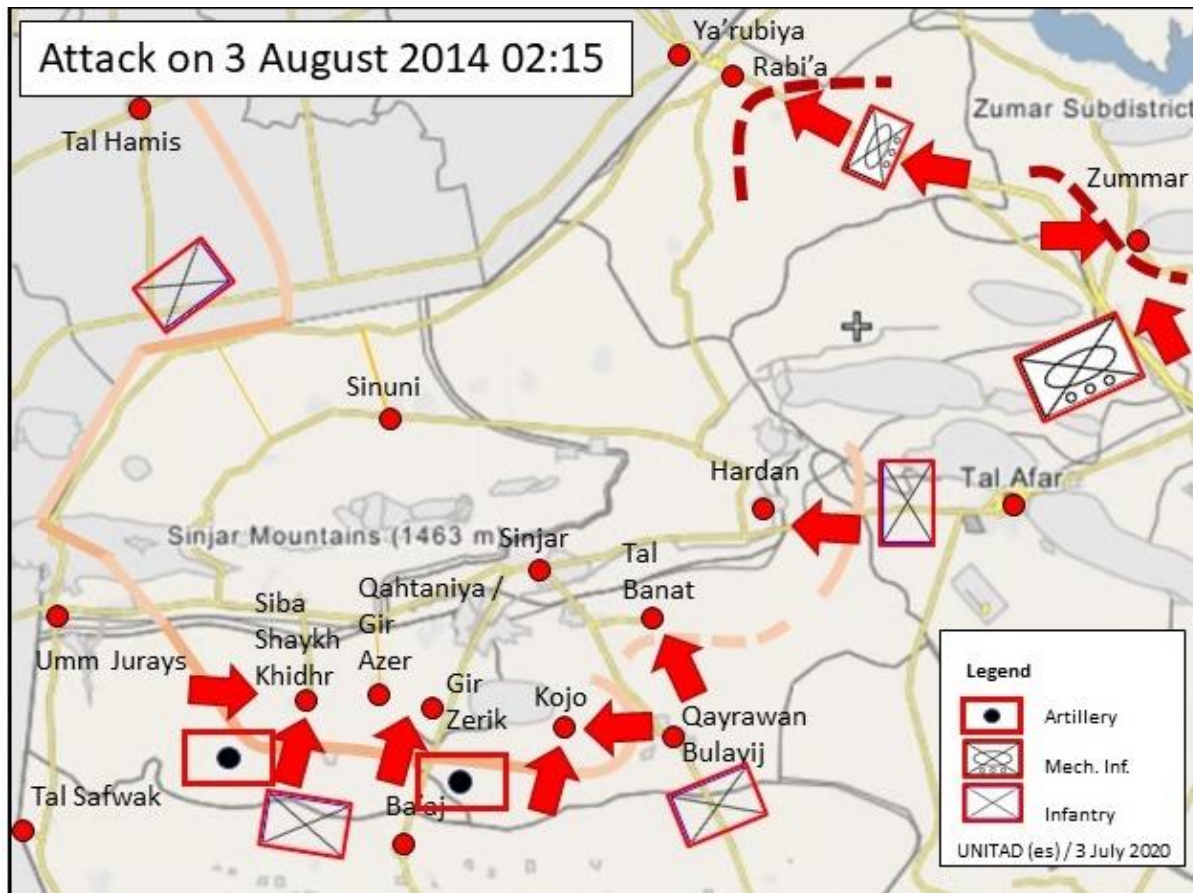
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<sup>114</sup> UNITAD, Confidential testimonial evidence.

<sup>115</sup> UNITAD, Confidential testimonial evidence.

<sup>116</sup> UNITAD, Confidential testimonial evidence.





Map of the attack on Sinjar 3 August 2014: attack on Sinjar at around 02:15 am (Source: UNITAD)

75. ISIL forces, deployed from their strongholds of Ba'aj and Blej/Qayrawan, were joined by some residents from nearby villages. Presumably, the ISIL commanders who attacked Sinjar were supported by Tal Afari ISIL members who were Al-Qaida members prior to the establishment of ISIL.<sup>117</sup>
76. The attacks were conducted with small arms, heavy machine guns and artillery (such as mortars, RPGs with fragmentation heads and recoilless rifles like the SPG-9). ISIL also employed armoured vehicles along the main road, some of which it seized in Mosul, as well as unarmoured pick-up trucks mounted with anti-aircraft guns or heavy machine guns.<sup>118</sup> More broadly, ISIL relied on the deployment of arms, ammunition and equipment, such as vehicles, seized from the ISF and Peshmerga,<sup>119</sup> as well as the rapid re-deployment of vehicles seized from civilians.

<sup>117</sup> UNITAD, Confidential testimonial evidence.

<sup>118</sup> UNITAD, Confidential testimonial evidence.

<sup>119</sup> See for instance, ISIL video, "Battles Against the Peshmerga" – the captured vehicles are on display in several videos published by Da'esh.

77. Sometime between 5 and 6 a.m., ISIL launched an attack targeting Tal Banat and Tal Qasab. At around 7 a.m., the shelling of Sinjar town began.<sup>120</sup> As the fighting continued in these areas, many village residents began to flee towards the Sinjar mountains.
78. The ISIL offensive coincided with the initial withdrawal of Peshmerga forces in many locations, leaving much of Sinjar defenceless prior to the attack. Only small groups in the south-west (Gir Zerik and Siba Sheikh Khidir) and south-east (Kocho and Tal Banat) remained and resisted ISIL during the night and into the early hours of 3 August 2014.<sup>121</sup>
79. Forces responsible for the defence of Kocho fled at around 6:30 a.m., causing civilians to panic and flee. The *ad hoc* defences set up by local villagers who were mobilized to stand guard with the Peshmerga forces collapsed with the withdrawal of these forces.<sup>122</sup>
80. By midday on 3 August 2014, and without much resistance, ISIL controlled Sinjar.<sup>123</sup>

## 5.5 Attack against Yazidi civilians

### 5.5.1 Attack on Sinjar on 3 August 2014

81. Yazidi civilians were deliberately targeted by ISIL from the beginning of the attack. This intensified following the withdrawal Peshmerga forces in the early morning of 3 August 2014 and persisted throughout the days that followed. ISIL fired at those fleeing their villages as they retreated towards the Sinjar mountains,<sup>124</sup> and systematically captured or killed every Yazidi civilian they otherwise encountered.
82. Some succeeded in escaping, mostly those who left through the mountains in the early hours of the attack. Escape became significantly more difficult thereafter.<sup>125</sup>
83. ISIL besieged the Sinjar mountains and cut off all escape routes, leaving the Yazidis there to die due to the lack of food, water and the extreme heat. Several helicopters, often under fire from ISIL, airdropped water and food on the mountains. These provisions were inadequate, and many children and elderly died from lack of food and water.<sup>126</sup> It was only when the People's Defence Units (YPG) and Kurdistan Workers'

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<sup>120</sup> UNITAD, Confidential testimonial evidence.

<sup>121</sup> UNITAD, Confidential testimonial evidence.

<sup>122</sup> UNITAD, Confidential testimonial evidence.

<sup>123</sup> UNITAD, Confidential testimonial evidence.

<sup>124</sup> UNITAD, Confidential testimonial evidence.

<sup>125</sup> UNITAD, Confidential testimonial evidence.

<sup>126</sup> United Nations Commission of Inquiry on the Syrian Arab Republic, Report to the Human Rights Council, "‘They came to destroy’: DA’ESH Crimes Against the Yazidis", 15 June 2016, para. 27 ; Cetorelli et al., "Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey", PLOS, 9 May 2017, ; Sherlock R, Malouf C. *At least 300 people, mostly children, died on Mount Sinjar, say doctors*. The Telegraph (UK), August 2014. ; UNITAD, Confidential testimonial evidence.

- Party (PKK) opened a safe passage on or around 8 August 2014 that those stranded were able to leave the mountains via Syria and return to Iraq through the Kurdistan region.<sup>127</sup>
84. Many other Yazidis attempting to escape were stopped by ISIL, sometimes supported by Arabs from neighbouring villages and members of sleeper cells, who undertook efforts to close escape routes and encircle Yazidi villages.<sup>128</sup>
  85. In some instances, Arab *kreefs*<sup>129</sup> provided material help to fleeing Yazidis, including by rescuing wounded people and driving them to hospitals.<sup>130</sup>
  86. After the initial targeting of Yazidis as they fled, ISIL fighters across Sinjar focused on capturing Yazidi civilians. ISIL then killed Yazidi men and older boys, unless they converted to Islam. If they accepted conversion, ISIL then brought them to various detention sites which also held captured women and children, including younger boys.
  87. ISIL was consistent in the application of this tactic across Sinjar. In Hamadan, most civilians were captured by ISIL while attempting to flee. ISIL put a checkpoint inside the village and placed nails on the road to prevent civilians from leaving. Once stopped, ISIL fighters separated the men and older boys from the women, girls and young boys on the spot. The women, girls and young boys were then detained in a house located nearby before being transported to different detention sites. A similar modus operandi was adopted by ISIL in many other locations across Sinjar.<sup>131</sup>
  88. ISIL members successfully convinced some Yazidis who fled to return to their villages. Among those, some Yazidis took the opportunity to flee and managed to escape captivity.<sup>132</sup>
  89. ISIL did not keep its promises that nobody who returned would be harmed. ISIL subsequently executed most of the civilians who had remained in or returned to Sinjar based on these promises. In several places – such as Qeni, Hamadan, Hardan, Kocho, Solagh, Sinjar town, Khro's farm, Siba Sheikh Khidir and Zilily farm – ISIL executed several hundred captured Yazidi men and older boys, all civilians, immediately after the attack. In other locations – such as Khanasor, Zumani, Kocho and Solagh – ISIL

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<sup>127</sup> United Nations Commission of Inquiry on the Syrian Arab Republic, Report to the Human Rights Council, , 15 June 2016, paras 27 and 28.

<sup>128</sup> UNITAD, Confidential testimonial evidence.

<sup>129</sup> Note: Arab godfathers to Yazidi.

<sup>130</sup> UNITAD, confidential testimonial evidence.

<sup>131</sup> UNITAD, Confidential testimonial evidence.

<sup>132</sup> UNITAD, Confidential testimonial evidence.

later executed captured men and older boys in August 2014. ISIL executed nearly 80 unarmed older women in Solagh on 16 August 2014.<sup>133</sup>

90. According to a researcher affiliated with the University of Dohuk's Centre of Genocide Studies, between 5,000 and 6,000 Yazidis were killed by ISIL in the attack, including at least 1,291 individuals who died in the first days of August 2014.<sup>134</sup> An estimated 35-50,000 Yazidis from all over Sinjar fled to the mountains on 3 August 2014 or shortly thereafter.<sup>135</sup> The estimated number of Yazidis who died from exposure in the Sinjar mountains varies: at least 300 died, according to doctors in Kurdistan interviewed by *The Telegraph*,<sup>136</sup> and 1,700 died, according to a peer-reviewed demographic analysis providing mortality and kidnapping estimates for the Yazidi population in August 2014.<sup>137</sup> According to the same demographic analysis, children represent 93 per cent of those deaths.<sup>138</sup>
91. The evidence of ISIL fighters intentionally directing attacks against Yazidi civilians in Sinjar in the weeks leading up to and on 3 August 2014 is overwhelming. ISIL directly targeted Yazidi civilians across Sinjar and often killed or captured them while they attempted to escape.

### 5.5.2 *Siege and attack on Kocho from 3 to 15 August 2014*

#### 5.5.2.1 *Siege of Kocho from 3 to 15 August 2014*

92. During the attack on 3 August 2014, 200 to 300 civilians in Kocho fled with the Peshmerga,<sup>139</sup> while others fled towards the Sinjar mountains. Those that attempted to flee either escaped successfully; were stopped by ISIL and convinced to return to the village;<sup>140</sup> or were captured or killed by ISIL.<sup>141</sup> Some civilians did not try to escape because they had elderly parents who were unable to flee.<sup>142</sup> ISIL eventually encircled

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<sup>133</sup> See Section 6.

<sup>134</sup> Dawud Murad al-Khatari, *"Jinasid al-Izidiya (The Yazidi genocide)"*, Dohuk April 2019, Tome 6: Ihsa'iyat al-Dhahaya (Statistics of the Victims), .

<sup>135</sup> Office for the Coordination of Humanitarian Assistance (OCHA), "OCHA Flash Update: Iraq Crisis - Significant Displacement from Sinjar, No. 2 | 4 August 2014", 4 August 2014 ; See also, OCHA, "OCHA Flash Update: Iraq Crisis - Significant Displacement from Sinjar, no 1, 3 August 2014", 4 August 2014, – Note: estimates total population of Sinjar in 2014 to be 308,315 ; OCHA, "Iraq IDP Crisis Situation Report No. 7 (9 August – 15 August 2014)", 15 August 2014

<sup>136</sup> Sherlock R, Malouf C. *At least 300 people, mostly children, died on Mount Sinjar, say doctors*. The Telegraph (UK), August 2014.

<sup>137</sup> Cetorelli et al., "Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey", PLOS, 9 May 2017,

<sup>138</sup> Cetorelli et al., "Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey", PLOS, 9 May 2017,

<sup>139</sup> UNITAD, Confidential testimonial evidence.

<sup>140</sup> UNITAD, Confidential testimonial evidence.

<sup>141</sup> UNITAD, Confidential testimonial evidence.

<sup>142</sup> UNITAD, Confidential testimonial evidence.



Kocho that day, making escape impossible. The villagers of neighbouring Yazidi village Al Hatimiyah faced a similar plight.<sup>143</sup>

93. The civilians of Kocho did not resist once ISIL fighters arrived. Villagers who had been guarding the village had their weapons confiscated.<sup>144</sup>
94. Upon their arrival in Kocho, ISIL members opened negotiations with the Mukhtars of Kocho and Al Hatimiyah.<sup>145</sup> During these negotiations, ISIL announced that all weapons would be collected and those who raised white flags on their houses would not be killed. The Mukhtar of Kocho was instructed to inform the Kocho villagers who had escaped to Sinjar mountains to return.<sup>146</sup> In the following days, ISIL members collected weapons from the villagers and had daily meetings with the Mukhtar of Kocho.<sup>147</sup> ISIL pressured the villagers to convert to Islam. Villagers were told that ISIL would not touch Yazidi women, land and belongings if they did convert. ISIL issued a three-day ultimatum to convert on 6 August 2014.
95. On 9 August 2014, when the ultimatum to convert had expired, and while ISIL focused on guarding Kocho, the civilians of Al Hatimiyah managed to escape and reach Sinjar mountains.<sup>148</sup> This angered ISIL, which increased the number of checkpoints and manpower around Kocho, making it nearly impossible for civilians to escape.<sup>149</sup>

#### 5.5.2.2 Attack on Kocho on 15 August 2014

96. On 15 August 2014, following the escape of Al Hatimiyah civilians, ISIL members present in Kocho were ordered to prepare for an attack on the village. Additional ISIL members, including leaders from the area, came to the village and were present during the separation of women and children and executions of men and older boys.<sup>150</sup> That same day, about 422 men and older boys were executed *en masse* at various locations outside the village. This constituted the entire male population of Kocho at the time, except for boys perceived by ISIL as not yet having entered adolescence and 18 men who managed to escape during the executions. None of the civilians from Kocho were engaged in hostilities with ISIL. All weapons had been handed over, leaving the village men and older boys completely defenceless. There were no lawful military objectives in Kocho or in any other Yazidi villages in Sinjar.<sup>151</sup>

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<sup>143</sup> UNITAD, Confidential testimonial evidence.

<sup>144</sup> UNITAD, Confidential testimonial evidence.

<sup>145</sup> UNITAD, Confidential testimonial evidence.

<sup>146</sup> UNITAD, Confidential testimonial evidence.

<sup>147</sup> UNITAD, Confidential testimonial evidence.

<sup>148</sup> UNITAD, Confidential testimonial evidence.

<sup>149</sup> UNITAD, Confidential testimonial evidence.

<sup>150</sup> UNITAD, Confidential testimonial evidence.

<sup>151</sup> See Section 6.

### 5.5.3 *ISIL attacks after 15 August 2014*

97. ISIL members continued with their attacks against Yazidi civilians after 15 August 2014, including Yazidis who remained on the Sinjar mountains. Some managed to escape, while others were killed. On 24 August 2014 a group of ISIL members attacked the Yazidi families present at the Sheikh Mand Temple , killing at least seven men and destroying the temple.<sup>152</sup>
98. Some Yazidi men who managed to escape through the Sinjar mountains on or around 3 August 2014 returned to the mountains to impede further ISIL attacks and help stranded Yazidis escape.

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<sup>152</sup> See Section 6.4; UNITAD, Confidential testimonial evidence.

## 6 EXECUTIONS AND KILLINGS

99. Many civilians were captured or killed by ISIL as they tried to flee. Some civilians made it to the start of mountains but were still caught.<sup>153</sup> Once captured, ISIL separated men from women and children, and executed most of the men. The women and children were then kept in continuous detention and subjected, *inter alia*, to slavery, sexual violence, forced labour and forced conversion.<sup>154</sup>

### 6.1 Killings in Sinjar on and around 3 August 2014

#### 6.1.1 Murder of men and older boys in Siba Sheikh Khidir on 3 August 2014

100. ISIL attacked Siba Sheikh Khidir on 3 August 2014 at around 2:30 a.m. by firing rockets towards the centre of the village.<sup>155</sup> Following some resistance, and being short on ammunition and without reinforcements, the Peshmerga forces and local police withdrew around 5 a.m.

101. ISIL eventually captured a group of approximately 59 civilians, including 52 men and older boys who were trying to escape and took them to the Siba Sheikh Khidir garage, also known as “Saddam Hussein”. An ISIL commander ordered all men and older boys to be killed and the women and children to be taken away. The seven women were taken away and have not been seen or heard from since that time.

102. Footage of this execution was included in a video titled “The Triumphant Victory in Conquering Tal Afar” released by ISIL in 2015.<sup>156</sup> In this video, the captives are lying face down in three different sites and are then shot in the head by ISIL members.<sup>157</sup>

103. Many others in Siba Sheikh Khidir were captured or killed by ISIL, concurrent to the mass killing at the garage,<sup>158</sup> in different locations in and around the village, including at a hill near the village and on the outskirts. Excavations conducted by the Mass Grave Directorate (MGD) of the Martyrs Foundation and the Medico-Legal Directorate (MLD), with the support of UNITAD, at four different sites in Siba Sheikh Khidir from 16 to 24 October 2023 recovered 11 body parts and six complete bodies. Given the duration of the postmortem interval, and the disturbed contexts from which some of the remains were recovered, those remains may have been disturbed since the primary

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<sup>153</sup> See Sections 5 and 6.

<sup>154</sup> See Sections 7, 8 and 9.

<sup>155</sup> ISIL video, ‘Triumphant victory in the conquest of Tal Afar’, ISIL media office of Jazira Province, 2015

<sup>156</sup> ISIL video, “The Triumphant Victory in Conquering Tal Afar”, media office of Jazira Province, 2015

<sup>157</sup> Da’esh video, “The Triumphant Victory in Conquering Tal Afar”, media office of Jazira Province, 2015, minutes 13:46 to 13:54

<sup>158</sup> See Section 6.

event. This is despite two sites having been, at some point, fenced off to protect the human remains.<sup>159</sup>

104. Based on the testimonial evidence collected, corroborated by the video recordings of the event and its aftermath, as well as the forensic evidence gathered, there are reasonable grounds to believe that an undetermined number of men and older boys were executed by ISIL at different locations in Siba Sheikh Khidir on 3 August 2014.

#### **6.1.2 *Murder of civilians in the Kocho area on 3 August 2014***

105. Many residents of Kocho attempted to flee on 3 August 2014. Some were killed by ISIL fighters as they left Kocho, while others were forced to return to the village after having their vehicles, money and gold confiscated.<sup>160</sup> About 20 to 30 families were killed in the *lofat*<sup>161</sup> near the start of the Sinjar mountains.<sup>162</sup>
106. Based on the testimonial evidence collected, there are reasonable grounds to believe that an undetermined number of men and older boys were killed by ISIL in or around Kocho on 3 August 2014.

#### **6.1.3 *Murder of men and older boys in Qeni on 3 August 2014***

107. ISIL also executed Yazidi civilians, notably men and older boys, at locations in Qeni. Having fled from Tal Qasab earlier that day, several families attempted to escape by foot toward the Sinjar mountains, only to be caught alongside other families from Tal Banat and Kocho by ISIL at around 12 p.m. in the Qeni area. One ISIL vehicle came at a house in the vicinity of Qeni, where the families were staying, and left. This was followed soon after by a convoy of approximately 10 vehicles that arrived from different directions and stopped at the same location.<sup>163</sup>
108. There were between 25 and 35 ISIL fighters, led by a man described as short, bearded and estimated to be between 40 to 50 years of age. All but one of the ISIL fighters were armed with BKC's and Kalashnikovs. Soon after ISIL arrived, several civilian men tried to escape. Some were successful, while four were caught by ISIL fighters who then killed one behind a well and beat the three others. Following this, ISIL collected the belongings of the families and separated the men and older boys — between 80 and 100 in total, from about 12 to 70 years of age — from the women, girls and younger boys, bringing them to the garden area. The women, girls and young boys were placed next to a coop. Following a conversation on the phone, an ISIL fighter announced to

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<sup>159</sup> UNITAD's Report, FAAU Internal Analytical Work Product 28, "Excavations at Siba Sheikh Khidir and Khro Farm, Nineweh", 16 to 25 October 2023, pages 8 and 9.

<sup>160</sup> UNITAD, Confidential testimonial evidence.

<sup>161</sup> Note: Switchback road.

<sup>162</sup> UNITAD, Confidential testimonial evidence.

<sup>163</sup> UNITAD, Confidential testimonial evidence.

the men and older boys that they would be taken to Sinuni. They were then asked to form three lines and taken toward the hills. Some ISIL members followed.<sup>164</sup>

109. After walking approximately one kilometre, ISIL and the group of Yazidi men and older boys stopped. ISIL ordered the Yazidis to sit, and the ISIL commander asked some of the ISIL fighters to bring forward the men who failed to escape. When in front of the commander, a Yazidi man asked to spare the younger boys in the group. The boys under 14 years old were asked to come to the ISIL commander, and three boys stood up. The ISIL commander checked their age by looking at their chests and shoulder bones to assess if they were strong enough to hold a weapon. He concluded that the boys were old enough and had them sit back with the group. He then turned to the three men still standing and shot one in the head. The ISIL fighters then yelled “Allah Akbar” and started shooting at the group from behind. Several of the women held in the coop heard the shots. Some ISIL fighters were filming the executions from the front. The fighters then checked if everyone was dead and shot again at some men that were still alive.<sup>165</sup>
110. Some ISIL fighters stayed at the location for a while longer before returning to where the women, girls and younger boys were held. Captives noticed that the ISIL members had blood on their clothes and hands. When the women asked the ISIL members what happened to the men and older boys, the ISIL members answered that they had taken them to Sinuni and laughed. ISIL then gathered the group, prayed, put the group into vehicles and moved them to a school in Tal Afar and Badush prison.<sup>166</sup>
111. Nine men in total survived the mass killing, while approximately 70 men and older boys were killed by ISIL.<sup>167</sup> The excavation work conducted by the MGD and MLD, with the support of UNITAD, in Qeni area from 28 June to 6 July 2022 confirmed the existence of one main execution site<sup>168</sup> and other smaller killing sites, as described by witnesses. Despite the lapse of time between the events and the excavations, as well as potential disturbances from weather and human activity, a total of 49 bodies, one body part, along with personal effects and shell casings were recovered.<sup>169</sup>
112. Based on the testimonial evidence collected, corroborated by the forensic evidence gathered, there are reasonable grounds to believe that ISIL executed approximately 70 men and older boys just outside of Qeni on the afternoon of 3 August 2014.

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<sup>164</sup> UNITAD, Confidential testimonial evidence.

<sup>165</sup> UNITAD, Confidential testimonial evidence.

<sup>166</sup> UNITAD, Confidential testimonial evidence.

<sup>167</sup> UNITAD, Confidential testimonial evidence.

<sup>168</sup> UNITAD’s Report, FAAU Internal Analytical Work Product 28, “Excavations at Qeni”, 28 June-6 July 2022.

<sup>169</sup> UNITAD’s Report, , 28 June-6 July 2022.



#### **6.1.4 Murder of men and older boys in the Solagh area on 3 and 4 August 2014**

113. Multiple massacres of Yazidi civilians took place in the Solagh area on 3 August 2014, with more killed on 4 August 2014. Two mass graves have been identified in the area. ISIL captured Yazidis who remained in Solagh on 3 August 2014, or those who tried to escape to the Sinjar mountains but decided to return. Captured men and older boys were separated from the women and children, after which the former were never heard from again.<sup>170</sup>
114. Some families who left Solagh towards the Sinjar mountains on 3 August 2014 chose to return after receiving a call reassuring them that nothing would happen if they came back. On their way back, they encountered a vehicle with ISIL fighters who provided similar reassurances. The ISIL fighters then accompanied them back to their homes.<sup>171</sup>
115. Later that afternoon, ISIL went through houses, took valuables such as gold and money and gathered people in one of the village houses. ISIL then separated the men and older boys who were above 14 years old from the women, girls and young boys. The group of men and older boys consisted of around 60 individuals from Solagh and other villages. ISIL moved the group of women, girls and young boys into another house. The following day, on 4 August 2014, ISIL brought more civilians. The men and older boys were sent away, while the women, girls and young boys stayed in the same house until the afternoon when vehicles arrived to transport them to another detention site, a school in Tal Afar.<sup>172</sup>
116. Approximately 60 men, including some from Kocho, were killed in the Solagh area on or around 3 August 2014.<sup>173</sup>
117. Based on the testimonial evidence collected, as detailed above, there are reasonable grounds to believe that an undetermined exact number of Yazidi men and older boys were killed by ISIL in Solagh on 3 and 4 August 2014.

#### **6.1.5 Murders of men and older boys in Hamadan on 3 August 2014**

118. ISIL members also carried out executions of men near Hamadan village. This took place less than a kilometre northeast of the village, close to where they were caught.<sup>174</sup>
119. Another group of approximately 20 villagers who tried to escape upon ISIL's arrival on 3 August 2014 was also caught by ISIL fighters just outside of the village. Around 100 men arrived in cars and carried weapons such as DShKs, BKC's, sniper rifles and

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<sup>170</sup> UNITAD, Confidential testimonial evidence.

<sup>171</sup> UNITAD, Confidential testimonial evidence.

<sup>172</sup> UNITAD, Confidential testimonial evidence.

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

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

other rifles. ISIL fighters proceeded to separate the men and boys, as young as 10 years old, from the rest of the group. ISIL fighters seized all the phones. They then blindfolded, handcuffed and took away the men and boys. The women then heard gunshots and have not since seen or heard from their male relatives.<sup>175</sup> The women were next put in a house located in Hamadan for a few hours before being transported to another detention site in Mosul.<sup>176</sup>

120. The excavation work conducted by the MGD and MLD, with the support of UNITAD, from 4 to 19 March 2023 in three different locations in the Hamadan area revealed a main execution site situated in a field 200-300 metres north of Hamadan on the south side of Highway 47. A total of seven bodies and 12 body parts, as well as 47 artefacts were recovered. A single body part was identified in a second site located nearby.<sup>177</sup>
121. Based on the testimonial evidence collected, corroborated by the forensic evidence gathered, there are reasonable grounds to believe that an unknown exact number of men and older boys were executed by ISIL just outside Hamadan on 3 August 2014.

#### **6.1.6 *Murder of men and older boys at Hardan junction on 3 August 2014***

122. Many villagers from Hardan who attempted to flee the afternoon of 3 August 2014 via Hardan junction, past the village of Gir Shabbak, were captured by ISIL. This route, successfully used earlier in the day by civilians escaping Hardan, was later closed off by ISIL members. A group of Yazidis, including a Hardan community leader, planned to flee around 4 p.m. Instead, they heard from families returning from the highway that Hardan junction was blocked, and those who reached Hardan junction were captured or killed by ISIL.<sup>178</sup>
123. At the junction, there were initially two ISIL fighters and one ISIL vehicle with a black flag, which were then joined by several other ISIL cars. ISIL talked to the men, asking them to exit the vehicles.<sup>179</sup> ISIL then threatened to kill the men if they refused to convert. ISIL separated the men and older boys from the women, girls and young boys and ordered the former group to line up along the berm and turn their backs to the road. There were between 50 and 70 men and older boys. The women, girls and young boys were then taken to Umm al Shibabit and to Tal Afar. The women have not since seen their male relatives left behind at Hardan junction that day.<sup>180</sup>
124. The excavation work conducted by the MGD and MLD, with the support of UNITAD, at four different locations by the junction from 23 February to 7 March 2022 confirmed

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<sup>175</sup> UNITAD, Confidential testimonial evidence.

<sup>176</sup> UNITAD, Confidential testimonial evidence.

<sup>177</sup> UNITAD's Report, FAAU Internal Analytical Work Product 28, "Excavations at Hamadan", 4 to 19 March 2023.

<sup>178</sup> UNITAD, Confidential testimonial evidence.

<sup>179</sup> UNITAD, Confidential testimonial evidence.

<sup>180</sup> UNITAD, Confidential testimonial evidence.

the presence of three mass graves located next to each other. A total of 51 complete bodies and seven body parts were recovered. Mounds of overburden located at the mass grave sites are believed to have been created using heavy machinery for the purpose of covering the remains and evidence. Disturbances may have been caused in the period after the liberation of the area in 2015, resulting in the commingled and disarticulated state of some of the remains.<sup>181</sup> The graves are shown on the maps below.

125. Based on the testimonial evidence collected, corroborated by the forensic evidence gathered, there are reasonable grounds to believe that at least 58 men and older boys were executed by ISIL at Hardan Junction on either 3 or 4 August 2014.

#### ***6.1.7 Murder of men and older boys in Sinjar town on 3 August 2014***

126. Many Yazidis from Sinjar town who sought to flee towards the Sinjar mountains on 3 August 2014 were caught and executed by ISIL in Sinjar town that afternoon. Yazidis captured by ISIL were brought to the Sinjar ID registration office, where the men were separated from the women and children and then executed.

127. A group of Yazidis left Sinjar town cramped in a single car and made it to the bottom of the mountains that day, at which point their car stopped. Soon after, they were surrounded by ISIL vehicles, and ISIL members started beating and killing the men. ISIL members transferred the remaining Yazidis to a government office in Sinjar where they were then detained.<sup>182</sup>

128. Based on the testimonial evidence collected, there are reasonable grounds to believe that an undetermined exact number of men and older boys were killed in Sinjar town on 3 August 2014.

#### ***6.1.8 Murder of men in Khro farm on 3 August 2014***

129. From 7 a.m. on 3 August 2014, many families started to flee from their homes in Tal Ezir to Khro farm, situated approximately seven kilometres north of Tal Ezir and two kilometres south of the Sinjar mountains. About 170 Yazidi civilians gathered in a farm.<sup>183</sup>

130. Later that morning, ISIL vehicles passed the farm while shooting a DShK at other Yazidi civilians who were trying to flee to the Sinjar mountains, killing some of them.<sup>184</sup>

131. ISIL members then reached the farm and entered all the rooms of the building. The Yazidis hiding there were gathered in two of those rooms. They were taken outside

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<sup>181</sup> UNITAD's Report, FAAU Internal Analytical Work Product, "Excavations at Hardan Junction", 23 February to 7 March 2022

<sup>182</sup> Layla and the Nights of Pain, pp. 19-20.

<sup>183</sup> UNITAD, Confidential testimonial evidence.

<sup>184</sup> UNITAD, Confidential testimonial evidence.

and forced to hand over their personal belongings, including wallets, IDs, car keys, phones, gold and money.<sup>185</sup>

132. An ISIL member who appeared to be in charge arrived and told the Yazidis that they must all convert to Islam or be killed. After no one agreed to convert, ISIL split the group into three parts: the men; the women and children; and the young women and older girls. The younger boys were separated from the men and put in the women and children's group. ISIL immediately took the young women and older girls away towards Ba'aj. ISIL put the other women and children in the kitchen and closed the door.<sup>186</sup>
133. The men were taken out to the sheep yard and ordered to get on the ground. As one man tried to escape, ISIL members opened fire at him. Other men of the group used the distraction as an opportunity to also flee. Once the ISIL members noticed this, they turned towards the men and shot at them. While some men managed to escape, others were killed inside the sheep yard or in the garden.<sup>187</sup>
134. The remaining women and children heard the shooting from the kitchen. Following ISIL's departure, they went outside and saw bodies of Yazidi men scattered across the farm. Most women and children left immediately to the Sinjar mountains and were then able to reach Kurdistan. The rest of them managed to escape through the mountains few days later.<sup>188</sup>
135. The testimonial evidence detailed above is corroborated by the excavations of five different sites located on or nearby the farm's property conducted by the MGD and MLD, with the support of UNITAD, on 16 October 2023. A forensic analytical report produced by UNITAD establishes that five complete bodies and three body parts were recovered. Four of the complete bodies were recovered below remnants of the farm building.<sup>189</sup>
136. Based on the testimonial evidence collected, corroborated by the forensic evidence gathered, there are reasonable grounds to believe that at least eight men were executed by ISIL at Khro Farm on 3 August 2014.

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<sup>185</sup> UNITAD, Confidential testimonial evidence.

<sup>186</sup> UNITAD, Confidential testimonial evidence.

<sup>187</sup> UNITAD, Confidential testimonial evidence.

<sup>188</sup> UNITAD, Confidential testimonial evidence.

<sup>189</sup> UNITAD's Report, FAAU Internal Analytical Work Product 28, "Excavations at Siba Sheikh Khidir and Khro Farm, Nineweh", 16 October 2023

### 6.1.9 *Murder of men and older boys in Khanasor on or around 6 August 2014*

137. Between Khanasor and Sinuni, on 3 August 2014, ISIL captured some Yazidis fleeing Khanasor and took them to the “joint checkpoint” between Bahrava and Khanasor<sup>190</sup> and then onward to Syria.<sup>191</sup>
138. Other Yazidi families captured by ISIL in Sinuni on 3 August 2014 were brought to Khanasor and kept in a house for several days. There, ISIL separated the women from the men and kept the men with another male group. ISIL members beat and mistreated the men. After four days, ISIL transferred some of the women to Syria. The women have not since seen or heard from their male relatives.<sup>192</sup>
139. On 6 August 2014, numerous ISIL vehicles moved into Khanasor. This was potentially attributable to the replacement of the Shammari Emir, present in and around Khanasor from 3 August 2014, by an Emir from Tal Afar and the ISIL members under his command. The increased ISIL presence resulted in many people fleeing to the mountains. ISIL then indiscriminately shot at them. ISIL members captured four Yazidi men who tried to flee, lined them up and shot at their heads. Some who had not escaped by then were also captured by ISIL members and taken to ISIL’s base at the joint checkpoint. ISIL later executed them at a location between Khanasor and Sinuni.<sup>193</sup>
140. Based on the testimonial evidence collected there are reasonable grounds to believe that at least 67 men and older boys were killed in Khanasor by ISIL on or around 6 August 2014.

### 6.1.10 *Other killings on or around 3 August 2014*

141. UNITAD obtained public information and collected evidence of further killings committed by ISIL members in Sinjar on or shortly after 3 August 2014. This includes:
- On 3 August 2014, killings of families in Al-Qatania and Sinuni when ISIL occupied those villages;<sup>194</sup>
  - On 3 August 2014, beheading of a man and his son near the Sinuni junction;<sup>195</sup>

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<sup>190</sup> Note - The checkpoint was given the name “joint checkpoint” in 2004 when the joint protection force of Iraqi federal security forces, US forces and the Peshmerga was in existence.

<sup>191</sup> UNITAD, Confidential testimonial evidence.

<sup>192</sup> UNITAD, Confidential testimonial evidence.

<sup>193</sup> UNITAD, Confidential testimonial evidence.

<sup>194</sup> UNITAD, Confidential testimonial evidence.

<sup>195</sup> Dawud Murad al-Khatari, “‘Al-Jinusayd al-Izidiya’ (The Yazidi Genocide)”, Dohuk 2019, Tome 6, p. 387 and 388 - Note: a photograph of the body was taken on 13 August 2014.



- On 3 August 2014, killing of a woman at the Sinuni junction, after capture of her family, during transport to Khanasor;<sup>196</sup>
- On 3 August 2014, killings of several men while they were trying to escape from Tal Ezir towards the Sinjar mountains;<sup>197</sup>
- On or around 3 August 2014, burning alive of an elderly man in Duhola village, north of the Sinjar mountains, after he was unable to flee in advance of ISIL's arrival;<sup>198</sup>
- On 3 August 2014, in Bajsey, execution of men from Tal Banat;
- On 3 August 2014, killing of two individuals, allegedly one Yazidi and one Shi'a Kurd, trying to escape to the north of the mountains, at Umm al Shibabit Checkpoint, by ISIL members coming from Tal Afar;
- On 3 August 2014, killing of Yazidis at Khana Shahwania;
- On 3 August 2014, killing of Yazidis at Qambar Ali cemetery;
- On 3 August 2014, killing of Yazidis at Tal Ezir junction;<sup>199</sup>
- On 4 August 2014, killing of several men and older Yazidi boys in Zilily after they refused to convert to Islam, with reportedly two survivors from this massacre. The women and children were sent to a detention site in Sinjar;
- On or around 5 August 2014, killing of men and older boys in or near Siba Sheikh Kidir after their capture on 3 August 2014 and two-day detention at a police station;<sup>200</sup>
- Two execution locations identified between Tal Ezir and Jidala, with victims from two different families;
- On or around 6 August 2014, two men detained at the Sinjar ID registration office, who refused to convert to Islam, were removed from the rest of the Yazidi group and have not since been heard from, indicating they were most likely killed;<sup>201</sup>
- On or around 6 August 2014, mass killing of a large group of Yazidis at Zumani village in Qazilkand region, buried with a front loader.

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<sup>196</sup> UNITAD, Confidential testimonial evidence.

<sup>197</sup> Note - Family members went at the location of the killing following the liberation and saw their clothes and bones there.

<sup>198</sup> UNITAD, Confidential testimonial evidence.

<sup>199</sup> UNITAD, Confidential testimonial evidence.

<sup>200</sup> UNITAD, Confidential testimonial evidence.

<sup>201</sup> UNITAD, Confidential testimonial evidence.

142. In the aftermath of seizing territory in and around Sinjar, ISIL also systematically killed those whom it identified or perceived as former fighters or collaborators with government authorities when passing through checkpoints.<sup>202</sup> These killings include:

- On the morning of 3 August 2014, killing of three police officers on the side of the main road from Domiz towards Sinjar town;
- On the morning of 3 August 2014, disappearance and assumed killing of a police officer who was taken from his home in Sinjar;
- On 3 August 2014, killing of two individuals at a checkpoint close to Qabusia on the basis that they previously worked with the Asayish, a Peshmerga branch;<sup>203</sup>
- Around 3 August 2014, the execution of injured Asayish fighters seeking treatment at the Sinjar hospital.<sup>204</sup>

## 6.2 Killing of men and older boys in the Kocho area on 15 August 2014

143. On 15 August 2014, evidence available indicates that ISIL executed about 422 men and older boys, who appeared to be age 12 and above, at various locations in and around Kocho. Only 18 of the 422 survived the execution, including two boys. At that time, there were approximately 1,250 civilians remaining inside Kocho.<sup>205</sup>

144. After 12 days under ISIL control, on 15 August 2014 from around 9 to 11 a.m., Kocho villagers saw ISIL members bring two front loaders into the village. This was followed by 100 or more cars loaded with ISIL fighters and weapons, like BCKs and DShKs, which then spread around the village. ISIL then ordered all villagers to gather at the school. Once there, women and children were confined to the upper floor of the two-story building, while the men and older boys, as young as about 12 years old were held on the ground floor.<sup>206</sup>

145. The ISIL commander in charge addressed the men and older boys on the ground floor of the school, again telling them that they would be able to live freely within the Islamic State territory if they converted to Islam. If they refused, they would be taken to the mountains. As none of the men and older boys accepted conversion, the ISIL commander ordered them to get into the pick-up trucks and cars located at the entrance of the school. The men and older boys were driven away in groups and taken to various

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<sup>202</sup> UNITAD, Confidential testimonial evidence.

<sup>203</sup> UNITAD, Confidential testimonial evidence.

<sup>204</sup> UNITAD, Confidential testimonial evidence.

<sup>205</sup> UNITAD, Confidential testimonial evidence.

<sup>206</sup> UNITAD, Confidential testimonial evidence.

- sites in and around Kocho, where they were shot at by ISIL fighters. After two groups of males were taken away, the women upstairs heard gunshots and saw a field on fire from the shooting. Some of the women asked the ISIL guards what was happening, and the guards replied that they were shooting dogs. Children considered too young to be killed were brought back to the school, where they informed the women that ISIL had shot the men.<sup>207</sup>
146. Survivors of these mass executions provide vivid, well-corroborated accounts of the main events that occurred.
147. At approximately 1:30 p.m., ISIL fighters started to take the men out of the school in groups. As part of the first group, ISIL first put elderly people into two or three cars. ISIL then brought other men to the same site, totalling between 40 and 60 men in four or five vehicles. These men were transported about 750 to 850 metres east of the village, towards Biski/Peske, until they reached a well that was used to store water for irrigation.<sup>208</sup>
148. Once the vehicles stopped at the well, an ISIL member made everyone get out. ISIL made the men lie flat on the ground in five rows and started recording them with their phones from behind. ISIL then shot at the men's backs. Some of the survivors were not hit by a bullet, while others were injured but lived.<sup>209</sup>
149. Around 15 minutes after this first massacre, ISIL fighters left, potentially due to a plane flying over the site. The survivors took the opportunity to escape, taking cover under the smoke of the dry grass burning around the execution site.<sup>210</sup>
150. ISIL members returned to the school and took another group consisting of about 25 to 30 men and older boys. Men and older boys killed in this execution site ranged from 13 years to 70 years of age. After this second group of men and older boys was taken away, the women upstairs heard gunshots and saw a field on fire from the area of the shooting. Some of the women asked the ISIL guards what was happening, and the guards replied that they were shooting dogs. Later, children who were brought back to the school, considered too young to be killed, informed the women that ISIL had shot all the men. Only two men survived at the second execution site, located near a water project.<sup>211</sup>
151. After approximately 20 minutes, ISIL members returned to the school to take the third group of men and older boys. Instead of driving towards the Sinjar mountains, ISIL

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<sup>207</sup> UNITAD, Confidential testimonial evidence.

<sup>208</sup> UNITAD, Confidential testimonial evidence.

<sup>209</sup> UNITAD, Confidential testimonial evidence.

<sup>210</sup> UNITAD, Confidential testimonial evidence.

<sup>211</sup> UNITAD, Confidential testimonial evidence.

took them south-east, about 30 to 35 metres from the village and about 300 metres from the school. One ISIL member standing close to the execution site seemed to be videorecording the events on a cell phone.<sup>212</sup>

152. ISIL members told the men to get into a single line before shooting at them. A Yazidi man told ISIL that this was not the previous agreement, under which ISIL would take them to the mountains. An ISIL member instantly shot him in the chest. Following this, three men decided to run away and, although they were shot at, two of them survived. Other ISIL members continued to execute the men from this third group, surrounding them with BKC's, pistols and AK-47s and shooting until the men fell to the ground. This shooting lasted several minutes, then the ISIL members left the area. A few men and boys survived.<sup>213</sup>
153. Some remains of the men who died at this execution site were recovered at this location and identified through DNA testing.<sup>214</sup> Their remains were returned to Kocho on 1 February 2021.<sup>215</sup>
154. At around 3 p.m., a fourth group with about 50 men and boys about 12 years of age and older were loaded onto three pick-up trucks, including a Toyota Hilux, Kia and Deere. This group was driven to a farm in the north-west side of town, approximately 500 metres from Kocho centre.<sup>216</sup>
155. Approximately seven armed ISIL members were at the farm. As the men got out of the trucks, two ISIL members filmed them using a small video camera and a mobile phone. The ISIL members then ordered the men at gunpoint into a huge, dry sand pit 1.5 to 2 metres deep.<sup>217</sup>

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<sup>212</sup> UNITAD, Confidential testimonial evidence.

<sup>213</sup> UNITAD, Confidential testimonial evidence.

<sup>214</sup> UNITAD's Report, FAAU, Internal Analytical Work Product, Data Review of 103 Kocho Casefiles: Preliminary Findings, 5 May 2021.

<sup>215</sup> U.S Department of States, "Return of Yazidi Victims' Remains to Kocho, Sinjar", press statement, 6 February 2021

<sup>216</sup> UNITAD, Confidential testimonial evidence.

<sup>217</sup> UNITAD, Confidential testimonial evidence.

156. Of the 50 victims in this pit, only three survived the execution.<sup>218</sup> The remains of several men killed at this site were recovered at this location and identified through DNA testing.<sup>219</sup> Some remains were also returned to Kocho on 1 February 2021.<sup>220</sup>
157. The last Yazidi man to remain at the school was the Mukhtar. After all other men were taken out of the school, the women were brought from the second floor to the ground floor. ISIL members then left the school with the Mukhtar, and at least one woman heard gunshots.<sup>221</sup>
158. About a month after these events, when Kocho was used to detain Yazidi captives,<sup>222</sup> some boys between 10 and 15 years old were taken by ISIL members to the execution sites west of Kocho village. The boys saw uncovered skulls and human remains and reburied them. Some captives detained in the village also reported that it smelt of dead bodies and that, when it rained, dead bodies became visible from under the soil and that dogs were taking the bones.<sup>223</sup>
159. This testimonial evidence is corroborated by forensic evidence. At least seventeen mass graves in and around Kocho have been excavated by the MGD and the MLD, with the support of UNITAD. While no remains were found in two of the mass graves, identified with the assistance of Kocho survivors, all other mass graves contained remains. The map below shows the seventeen mass graves.
160. A large quantity of personal items including clothes, shoes and water bottles were also found, which are now stored on the second floor of the Kocho school. The recovery of the water bottles corroborates witness testimony that, until the last moment, most Kocho inhabitants held a genuine belief that they would be taken to the Sinjar mountains. Instead, ISIL killed the men and older boys and forcibly moved the women and children from Kocho to other locations.
161. While the identification process is still ongoing, a number of remains from excavated mass graves in Kocho have been identified through DNA testing. Analysis of the casefiles relating to the first 103 identified individuals reveals that the victims were all

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<sup>218</sup> UNITAD, Confidential testimonial evidence.

<sup>219</sup> UNITAD's Report, FAAU, Internal Analytical Work Product, Data Review of 103 Kocho Casefiles: Preliminary Findings, 5 May 2021.

<sup>220</sup> U.S Department of States, "Return of Yazidi Victims' Remains to Kocho, Sinjar", press statement, 6 February 2021 ; UNITAD's Report, FAAU, Internal Analytical Work Product, UN Confidential-- ST/SGB/2007/6, Data Review of 103 Kocho Casefiles: Preliminary Findings, 5 May 2021, Version 1.0, and MGD nomenclature, 2 individuals from IRQ-NIN-SNJ-KOJ-013; 3 individuals from IRQ-NIN-SNJ-KOJ-008; 2 individuals from IRQ-NIN-SNJ-KOJ-010.

<sup>221</sup> UNITAD, Confidential testimonial evidence.

<sup>222</sup> See Section 7.3.7.

<sup>223</sup> UNITAD, Confidential testimonial evidence.



Yazidi men and older boys between 15 and 76 years old who had sustained gunshot wounds.<sup>224</sup>

162. These findings corroborate testimonial evidence of the male survivors that the male population of Kocho, about 12 years of age and older, was divided into groups and killed at different execution sites.
163. Based on the testimonial evidence collected, corroborated by the forensic evidence gathered, there are reasonable grounds to believe that about 422 male residents from Kocho were killed by ISIL members on 15 August 2014 at different execution sites in and around the village.

### **6.3 Killing of older women and boys at Solagh Institute on 16 August 2014**

164. During or immediately after the execution of the men and older boys on 15 August 2014, ISIL took some of the captive girls from the Kocho school to Syria. The remaining 750 to 850 women and children were then transported at 4 p.m. from the school to the Solagh Institute in vehicles that had belonged to Kocho villagers, which took about 40 minutes.<sup>225</sup>
165. Upon arrival at the Institute, ISIL members separated younger women and girls between about 12 and 35 years old and those who did not have children from the rest of the women and children. These girls and young women were told to stay on the ground floor while the rest of the group were sent upstairs. ISIL members brought food for the children to the upper floor.<sup>226</sup>
166. ISIL then came with two buses from Mosul, loaded onto them the girls and young women who remained on the ground floor and drove away late at night.<sup>227</sup>
167. At some point that evening, an ISIL member gave a speech to around 30 boys who had been separated from their mothers, telling them that they would be the “future mujahideen” before letting them return to their mothers. Later that evening, ISIL members brought out the boys and assessed their ages by looking at their body hair. ISIL members took away a group of younger boys in one bus of the same kind used to transport the young women and girls.<sup>228</sup>
168. In the morning of 16 August 2014, ISIL separated a group of about 80 elderly women and mothers from the group of women and children detained at the Solagh Institute.

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<sup>224</sup> UNITAD’s Report, FAAU, Internal Analytical Work Product, Data Review of 103 Kocho Casefiles: Preliminary Findings, 5 May 2021.

<sup>225</sup> UNITAD, Confidential testimonial evidence.

<sup>226</sup> UNITAD, Confidential testimonial evidence.

<sup>227</sup> UNITAD, Confidential testimonial evidence.

<sup>228</sup> UNITAD, Confidential testimonial evidence.

When taking these women, ISIL members pretended that, because of the heat, the elderly women should be brought to a place where the air was cooler. Instead, the women were taken outside the Institute to an area used as a “fish basin” next to the building. A group of between 12 to 20 boys above the age of 12 were also brought to the fish basin, including at least two whose mother was part of the group of older women.<sup>229</sup>

169. Once the group of women and boys was assembled outside, ISIL members started shooting at them. Some boys ran away when the shooting began. Captives inside the Solagh Institute also heard shooting shortly after the women were taken outside. A yellow front loader, seen at the site before and after the killings, appears to have been used to bury the bodies at the site following the execution. Some witnesses heard that 67 to 80 women were executed in front of the Solagh Institute or buried alive<sup>230</sup> during this incident.
170. Later that day, the remaining women and children detained at the Solagh Institute were taken to a school in the Tal Afar area in minibuses.<sup>231</sup>
171. The mass grave was excavated by the MGD and MLD, with the support of UNITAD, from 23 October to 5 November 2020. The MGD and MLD took custody of the human remains and evidence recovered during the excavation. UNITAD forensic archaeological experts, which were present for 50 per cent of the excavation process, produced a report finding that 92 bodies, 19 body parts and 92 artefacts were recovered. The bodies correspond to the victim group demography of predominantly mature adult females with a smaller number of adolescent males.<sup>232</sup>
172. Based on the testimonial evidence collected, corroborated by the forensic evidence gathered, there are reasonable grounds to believe that approximately 80 older women and 12 older boys were executed by ISIL members at the fish basin next to the Solagh Institute on the morning of 16 August 2014.

#### **6.4 Killing of men at Sheikh Mand Temple on 24 August 2014**

173. In the early morning of 24 August 2014, Yazidi civilians who had managed to escape to the Sinjar mountains and hide at the Sheikh Mand Temple<sup>233</sup> were attacked by a group of ISIL members. The ISIL members arrived in 11 cars, opened fire and killed at

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<sup>229</sup> UNITAD, Confidential testimonial evidence.

<sup>230</sup> UNITAD, Confidential testimonial evidence.

<sup>231</sup> UNITAD, Confidential testimonial evidence.

<sup>232</sup> UNITAD’s Report, FAAU Internal Analytical Work Product on Solagh Excavation.

<sup>233</sup> Note - This Temple is located near the village of Jidale approximately 10 km West of Sinjar.

least seven men before destroying the Sheikh Mand Temple and the houses around it.<sup>234</sup>

174. Based on testimonial evidence collected, there are reasonable grounds to believe that at least seven men were executed by ISIL members at Sheikh Mand Temple on 24 August 2014.

#### **6.5 Killing of converted, married men on 26 April 2015 in Tal Afar**

175. Initially, ISIL allowed the Yazidi men who accepted conversion to Islam to live with their families in captivity.<sup>235</sup> ISIL gradually changed this policy and ultimately killed almost all of them, continuing in the months following the conquest of Sinjar.
176. Yazidi men who converted to Islam under duress were initially allowed to live with their families in Kocho, Mosul and Tal Afar, along with the surrounding villages of Qasr Mirhab and Qizil Qeo, and their wives were not sold to ISIL fighters. Their daily lives nonetheless remained challenging. ISIL forced them to pray multiple times a day and subjected them to forced labour. ISIL systematically physically and mentally abused some of the Yazidi men and kept them in conditions that blatantly disregarded their welfare. If the Yazidi men refused to convert, if the sincerity of their conversion was doubted, or if they attempted to escape, they risked being killed by ISIL.<sup>236</sup>
177. On or around 26 April 2015, after a significant number of Yazidis had escaped, the converted men still living with their wives and children in the Tal Afar area were gathered by ISIL at the mosque to meet with the Wali of Mosul. ISIL told the men that they were not trustworthy due to the escapes. ISIL gave the men two options: either they would separate the men from the women and children, or each man would take responsibility over ten families to ensure they would not run away. The men agreed to prevent escapes. However, ISIL nonetheless separated the men from their wives and children the same day.<sup>237</sup> The women and girls were later given or sold to ISIL members in Iraq or Syria, and the boys were taken to training camps.
178. High-ranking ISIL members in charge of the Tal Afar area and present during these events reportedly made the decision to separate the families and kill the men.<sup>238</sup>
179. According to witness accounts, around 470 Yazidi men and older boys were then taken away by vehicles and have not been seen or heard from since that day.<sup>239</sup>

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<sup>234</sup> UNITAD, Confidential testimonial evidence.

<sup>235</sup> See Sections 7.3. and 7.4.3.

<sup>236</sup> UNITAD, Confidential testimonial evidence.

<sup>237</sup> UNITAD, Confidential testimonial evidence.

<sup>238</sup> UNITAD, Confidential testimonial evidence.

<sup>239</sup> UNITAD, Confidential testimonial evidence.

180. Several ISIL members later told different witnesses that the Yazidi men detained in Tal Afar were killed at the Bir Alo Antar sinkhole on or around 26 April 2015. ISIL members also told the witnesses that, after the massacre, ISIL threw a few hand grenades into the sinkhole to bury the bodies with sand and ensure all the men died, as some jumped into the sinkhole before being shot to escape.<sup>240</sup> The MGD and MLD carried out excavations of Bir Alo Antar, with the support of UNITAD, in July 2024, where 162 bodies were recovered, along with 39 body parts.<sup>241</sup> It is anticipated that the medicolegal analysis will identify Yazidis as well as Turkmen among them.
181. ISIL propaganda and news reporting<sup>242</sup> describe hundreds of Yazidi men and women in Tal Afar at the time and that the men who refused to convert were executed, and the woman were enslaved.<sup>243</sup>
182. Based on the testimonial evidence collected, corroborated by ISIL propaganda and news reporting, there are reasonable grounds to believe that an undetermined exact number of men and older boys were separated from their families in Tal Afar and killed by ISIL at Bir Alo Antar on or around 26 April 2015.

## 6.6 Conclusions about executions and killings

183. A list of people who were direct victims of ISIL's Sinjar offensive in August 2014 was compiled by a witness in 2019. In his research, the witness interviewed other direct witnesses and survivors, collected information on mass graves and interacted extensively with the community to develop this list. According to the research, in total, the witness estimated that at least 1,434 individuals are deceased, 1,678 are victims of abduction and 4,101 are survivors.<sup>244</sup>
184. UNITAD estimates that the number of people killed at each site might be higher than listed by the witness. For instance, the number of Yazidi residents killed in Hardan village was significantly higher than six. Similarly, the number of people killed in Siba Sheikh Khidir, Gir Zerik and Solagh appear to be higher than the numbers reproduced in the above table. In addition, the killing of older women at the Solagh Institute is not included in this list. However, the list remains supportive of UNITAD's overall finding that the crimes committed against the Yazidi population in August 2014 were widespread and systematic.

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<sup>240</sup> UNITAD, Confidential testimonial evidence.

<sup>241</sup> These figures represent the confirmed count as of 8 August 2024.

<sup>242</sup> "ISIS rounds up 700 kidnapped Yazidis and transports them to an unknown location north of Mosul", Ahram, 27.04.2015

<sup>243</sup> SITE Intelligence group, "IS video focuses on conquest of Tal Agar acknowledges taking of women and children as slaves in Sinjar"

<sup>244</sup> UNITAD, Confidential testimonial evidence.

185. Further investigation of the mass graves and kill sites in all areas of Sinjar remain important to fully capture the extent of the killings that occurred during the 3 August 2014 attack and the days that followed.
186. A total of 83 execution sites have been identified in Sinjar. The total number of Yazidi civilians killed during the Sinjar offensive is reliably estimated as between 1,434<sup>245</sup> and 3,100, however an exact figure cannot yet be determined.<sup>246</sup> Most of those killings took place on or around 3 August 2014.
187. Some of these execution sites were excavated and bodies recovered. As of July 2024, a total of 242 victims have been identified and returned during eight burial ceremonies that took place across seven locations in Sinjar.<sup>247</sup>
188. Many execution sites have yet to be excavated and require further investigation to fully document the events leading up to the killings.
189. Based on the testimonial and forensic evidence collected, there are reasonable grounds to believe that killings of Yazidi civilians from Sinjar took place at the following locations on 3 August 2014 or in the days that followed:
- Siba Sheikh Khidir – estimated 115-120 victims;
  - *Lofat* area – estimated 60 victims;
  - Qeni – estimated 67 victims;
  - Kocho area – number of victims unknown;
  - Solagh – estimated 60 victims;
  - Hamadan – estimated 100 victims;
  - Hardan – estimated 70 victims;
  - Sinjar – number of victims unknown;
  - Zilily – number of victims unknown;

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<sup>245</sup> UNITAD, Confidential testimonial evidence.

<sup>246</sup> Cetorelli et al., “Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey”, PLOS, 9 May 2017, p. 1

<sup>247</sup> Note: Ceremonies took place in the following places: 2 in Kocho, 1 in Solagh, 1 in Hardan, 1 in Qeni, 1 in Gir Zerik, 1 in Siba Sheikh Khidir and 1 in Tal Ezir; 104 remains were returned on 6 February 2021, 42 on 9 December 2021, 16 on 24 October 2022, 39 on 20 June 2023 and 41 on 22 January 2024.



- Khro Farm – estimated 12-14 victims;
  - Khanasor – at least 67 victims;
  - Zumani – estimated 200 victims.
190. Additionally, evidence shows that there are also reasonable grounds to believe that at least 422 Yazidis were killed around Kocho on 15 August 2014; 92 Yazidis were killed near the Solagh Institute on 16 August 2014; at least seven Yazidis were killed on 24 August 2014 in Sheikh Mand Temple; and an unknown exact number of Yazidi men and older boys were executed on 26 April 2015 in Tal Afar.
191. In conclusion, there are reasonable grounds to believe that on 3, 4, 6, 15, 16 and 24 August 2014, as well as on or around 26 April 2015, ISIL killed several thousand unarmed Yazidi civilians, in particular men and older boys.

## 7 SLAVE TRADE, ENSLAVEMENT, SEXUAL SLAVERY, RAPE AND ANY OTHER RELATED FORMS OF ABUSE

### 7.1 Summary

192. As shown above, Yazidis were captured on or around 3 August 2014 across Sinjar, including in Sinjar town, Solagh, Siba Sheikh Khidir, Tal Ezir, Tal Qasab, Tal Banat, Hardan, Khanasor, Sinuni and while fleeing Kocho. A second group of Yazidis were captured in Kocho on 15 August 2014.<sup>248</sup> Upon capture, ISIL proceeded to separate Yazidis by age and gender. These separations were the beginning of ISIL's establishment of a systematic and organized slave trade and enslavement system of Yazidis.
193. ISIL separated Yazidi men from women and children. Men who refused to convert were immediately killed, and those who converted were transferred to holding sites. Men captured in southern villages were transferred to the Tal Afar Citadel, while men captured in northern villages were taken to Syria. Regardless of where they were captured, men were presented with the ultimatum to convert to Islam or be killed. The men who agreed to convert were then reunited with their families in locations like Qasr Mirhab or Kocho. Some of these men and their families were later transferred to Qizil Qeo. While in captivity, Yazidi men were forced to pray five times a day, go to the mosque and engage in manual labour for ISIL. Even though their husbands converted, some wives were subjected to sexual violence at the hands of ISIL, including rape.
194. After the men were separated, women, boys and girls were taken to initial holding sites where they usually spent one or two days maximum. Some of these sites were in Sinjar, such as Sinjar town, Ba'aj and Siba Sheikh Khidir. From there, they were taken to other holding sites in Ba'aj, Mosul and Tal Afar before being moved to a wider network of sites, including in Qasr Mirhab, Qizil Qeo and various locations in Syria. At these sites, girls and young unmarried women were often separated from women with children and transferred to other holding sites in Iraq, including in Ba'aj and Mosul, and in Raqqa, Syria. Movements between the sites were sometimes prompted by operational concerns, such as airstrikes.
195. In August and September 2014, fighters picked Yazidi women and girls considered attractive by ISIL members from the holding sites. ISIL used additional means to distribute Yazidi girls to fighters through lottery systems and sales, including at slave markets. Once distributed to a fighter, Yazidi women and girls were passed between individual fighters by being sold or gifted. If a fighter died, the women or girls were given to other fighters. Regardless of their age, the women and girls were subjected to

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<sup>248</sup> See Sections 5 and 6.

relentless sexual abuse and forced to undertake domestic work. Some reported that ISIL either forced or attempted to force them to convert their religion.

196. Yazidi boys who had reached puberty were also sold and forced to convert to Islam, taken to religious schools in Mosul and to camps in Syria for military training, followed by deployment to combat zones.
197. Women perceived as older were not reported to be subjected to sexual abuse but were forced to perform domestic and agricultural work for ISIL families, including in the Tal Afar area. Some were released after a series of transfers across Iraq, potentially due to ISIL's assessment of their low value as slaves.

## 7.2 3 August 2014

### 7.2.1 Capture

198. ISIL captured and detained Yazidi civilians on 3 August 2014 as they attempted to flee Sinjar while on their way to the Sinjar mountains as they fled Sinjar town, Solagh, Dugurre, Siba Sheikh Khidir, Tal Ezir, Tal Qasab, Tal Banat, Hardan, Khanasor, Sinuni, Hamadan and Kocho.<sup>249</sup>
199. For those who stayed in their villages until 3 August 2014, escape became extremely difficult, and witnesses report being captured on the road while trying to escape by car or on foot. By using strategic locations, such as road intersections and checkpoints in between villages, ISIL ensured that many Yazidis trying to flee were captured. A small number managed to escape on 3 August 2014, only to be captured shortly thereafter.<sup>250</sup>
200. Upon capture, ISIL fighters frequently told their captives that they would not harm them if they converted to Islam.<sup>251</sup>

### 7.2.2 Separations of men and older boys

201. Men and older boys were separated immediately upon or within hours of capture. In Solagh, Hardan, Qeni, Tal Qasab, Hamadan, Sinjar town and Tal Ezir, they were separated at the point of capture. Occasionally, families were taken from the point of capture to be separated in nearby open areas, such as checkpoints, gas stations or private houses. In other instances, men were taken with the women and children to a building that served as the first holding site and separated there.<sup>252</sup>

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<sup>249</sup> UNITAD, Confidential testimonial evidence.

<sup>250</sup> UNITAD, Confidential testimonial evidence.

<sup>251</sup> UNITAD, Confidential testimonial evidence.

<sup>252</sup> UNITAD, Confidential testimonial evidence.

202. ISIL members would either use the victims' own cars, pick-ups and trucks or ISIL's own vehicles, likely depending on the number of captives to transport.<sup>253</sup>
203. Most men were immediately separated and killed, as detailed above in Section 6.
204. The only exception to men being separated from their families in Iraq upon or shortly after their capture involved Yazidi families from Khanasor, Hardan<sup>254</sup> and those arrested at Sinuni junction. ISIL transported these families to Tal Shayr in Syria, where the men were then separated from the women and children.<sup>255</sup>

### 7.2.3 *Initial detention sites*

205. ISIL took women, children and, as noted above, sometimes men, to initial holding sites on 3 August 2014, the same day they were captured. The initial holding sites were buildings large enough to hold hundreds of people, many of them located in Yazidi towns of origin. The evidence shows that at least 11 buildings were used as initial holding sites:
- Sinjar ID registration office: Yazidis from Sinjar town and its surroundings, and Yazidis captured in the Sinjar mountains<sup>256</sup> or Kocho.
  - Sinjar hospital (yard): Yazidis from Solagh.
  - Sinjar town PDK branch: Yazidis captured in Solagh.
  - Sinjar school: Yazidis from Solagh.
  - School in Ba'aj: Yazidis from Sinjar town.<sup>257</sup>
  - Siba Sheikh Khidir police station: Yazidis from or captured in Siba Sheikh Khidir, and Yazidis from Tal Ezir or Kora Afdo.
  - Schools in Tal Afar: Yazidis from Sinuni, Hardan and Kocho; arrested in Qeni; some Yazidis from Khanasor arrested at Sinuni's checkpoint<sup>258</sup> and Yazidis in Wardiya until 8 August 2014.
  - Khanasor military base: Yazidis from Hardan arrested at Hardan junction and Sinuni junction, and Yazidis from Khanasor arrested between Sinuni and Dugurre.<sup>259</sup>

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<sup>253</sup> UNITAD, Confidential testimonial evidence.

<sup>254</sup> UNITAD, Confidential testimonial evidence.

<sup>255</sup> UNITAD, Confidential testimonial evidence.

<sup>256</sup> UNITAD, Confidential testimonial evidence.

<sup>257</sup> UNITAD, Confidential testimonial evidence.

<sup>258</sup> UNITAD, Confidential testimonial evidence.

<sup>259</sup> UNITAD, Confidential testimonial evidence.

- Shops between Sinjar and Tal Afar: Yazidis from Solagh, Wardiya and Tal Qasab.<sup>260</sup>
- Tal Shayr / Shadadi school in Syria: Yazidis from Khanasor, Hardan<sup>261</sup> and Sinjar town.
- Checkpoints, including Ain Shababit: Yazidis from Hardan arrested at Hardan junction.<sup>262</sup>
- House in Mosul, near Galaxy Hall: Yazidis from Hamadan.<sup>263</sup>

206. Captives usually did not stay for more than one or two days in these sites. In some instances, ISIL forced the captives to record their names. Witnesses describe how girls and women between around 12 and 45 years old that ISIL members perceived as attractive were already separated and taken away by force from several groups. Another witness recalls that ISIL took pictures of girls, women and children,<sup>264</sup> which were likely used to organize the slave sales.

207. ISIL used a similar *modus operandi*, including registration of the captives, separation of the women, men and children, along with distribution of young girls, in other initial detention sites within the first days of captivity. This included Tal Shayr, Syria, where captives, who had been transferred from Iraq, were held. At this location, the women and men were also forced to convert to Islam. On the third day of detention, ISIL gave them an ultimatum to convert or to be killed, and they consequently recited the Shahada.<sup>265</sup>

208. Most of the sites listed above were only used as initial holding sites, i.e. only used for the first day or two of captivity. Exceptions are the schools in Tal Afar and Ba'aj which, as described below, were also used as holding sites for weeks or months. Yazidis from Hamadan also stayed for about a week in the school in Mosul, near Galaxy Hall, and Yazidis from Khanasor, Hardan and Sinuni were held sometimes for several weeks in the school in Tal Shayr, Syria.<sup>266</sup>

### 7.3 August 2014 to April 2015: secondary and tertiary holding sites and slavery routes

209. The evidence shows large numbers of movements of captives in the weeks following 3 August 2014. Between 3 and 31 August 2014, ISIL moved Yazidis between locations in

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<sup>260</sup> UNITAD, Confidential testimonial evidence.

<sup>261</sup> UNITAD, Confidential testimonial evidence.

<sup>262</sup> UNITAD, Confidential testimonial evidence.

<sup>263</sup> UNITAD, Confidential testimonial evidence.

<sup>264</sup> UNITAD, Confidential testimonial evidence.

<sup>265</sup> UNITAD, Confidential testimonial evidence.

<sup>266</sup> UNITAD, Confidential testimonial evidence.



Iraq and made initial transfers to Syria. ISIL mostly moved female captives who were separated into two groups: (1) married women and children and (2) young and unmarried women and girls. Boys in various age groups were also progressively separated from their mothers and siblings.<sup>267</sup>

210. From the first site where ISIL held Yazidis on 3 August 2014, ISIL quickly transferred captives to secondary sites. This transfer either occurred the same day of capture, 3 August 2014, or the following day, 4 August 2014. The secondary holding sites were in three Iraqi towns: Ba'aj, Tal Afar and Mosul area. Some women and girls were also sent to sites in Syria.<sup>268</sup>
211. Captives were still held in large groups, as shown by the means of transportation and buildings used for detention. Witnesses commonly described being transported to secondary sites in buses, as opposed to the pick-up trucks and cars belonging to villagers used to transport Yazidis from the point of capture to the first holding site. Several witnesses stated that the bus drivers were civilians who were driving due to threats from ISIL.<sup>269</sup>
212. Yazidis captured in the same location were split into different initial holding sites. For example, women and girls from Sinjar town were transferred from initial holding sites in Sinjar town, Ba'aj and Tal Afar.<sup>270</sup>
213. As detailed below, ISIL used schools in Ba'aj and Tal Afar to detain captives. In the area of Mosul city, the two main sites were Badush prison and the so-called "Galaxy Hall". ISIL also used a forest area located on the outskirts of the city, where places identified as "Saddam's Palace" and "Qayyarah" were used as detention sites. Badush prison, though often noted as being "in Mosul," was often used for shorter periods of several weeks or less to detain women and children, particularly as a stopping point during transfers to and from the Tal Afar schools.
214. In the Tal Afar area, ISIL used at least two schools to detain and separate women and children. This included the al-Zaheer school and another that was likely located in the Hay al-Khadra neighbourhood in Tal Afar.
215. Two villages near Tal Afar were also central to ISIL's network of detention centres. Qasr Mirhab was generally used for the transfer and separation of women and children, as well as for the reunification of men who converted with their families. Qizil Qeo was generally used to detain unmarried women, as well as women and children whose male relatives did not convert and were subsequently executed. Houses in the

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<sup>267</sup> See Section 8.

<sup>268</sup> See this Section 7.3.

<sup>269</sup> UNITAD, Confidential testimonial evidence.

<sup>270</sup> UNITAD, Confidential testimonial evidence.

Hay al-Khadra neighbourhood in Tal Afar were used to detain families.<sup>271</sup> The Tal Afar Citadel was used to detain men who were initially separated from their families when captured, converted, but were not yet reunited with their families.<sup>272</sup>

### 7.3.1 Ba'aj

216. The captives taken to Ba'aj were Yazidi women and girls from Siba Sheikh Khidir, Sinjar town, Hardan and Khanasor,<sup>273</sup> as well as Yazidi men who were separated from their families when captured or at the first holding site.<sup>274</sup> The group also included elderly women, some from Sinjar town.<sup>275</sup>
217. While some witnesses did not specify the type of building they were held at in Ba'aj, some mentioned being taken to a house and then a school.<sup>276</sup>
218. Once at the school, ISIL commanders went daily to choose girls<sup>277</sup> before undertaking further separations based on age and marital status. As detailed below, this pattern was also observed at the schools in Tal Afar and in Badush prison.<sup>278</sup>
219. In Ba'aj, ISIL conducted further separations of female captives by age: older women were separated and taken to Tal Afar and Mosul; married women with children were taken to Raqqa, where they were sold; and girls around nine years old and above were taken to other sites. Some of the girls were taken to a house in al-Wahda neighbourhood in Mosul, where they were taken as *sabayas* by ISIL fighters. Seven girls were sent to the house of a Sheikh in Mosul,<sup>279</sup> and other girls were taken to Tal Banat and Tal Qasab.
220. In addition to being a secondary holding site, ISIL used Ba'aj as a tertiary holding site for women and girls who, after initial detention when captured, were taken to Mosul and subsequently transferred to Ba'aj. For instance, some girls from Hardan, Kocho and Qeni who were separated after being taken to Badush prison, Tal Afar schools and houses in Mosul were then taken to Ba'aj if not previously selected as *sabayas*. From this group, immediately upon arrival in Ba'aj, many girls and unmarried women were transferred to a farm in Raqqa, Syria, where they were then distributed to ISIL members. Girls and young women from Hamadan who were taken to houses in Mosul and to Galaxy Hall were also brought to Ba'aj.<sup>280</sup>

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<sup>271</sup> UNITAD, Confidential testimonial evidence.

<sup>272</sup> See Section 7.4.3.

<sup>273</sup> UNITAD, Confidential testimonial evidence.

<sup>274</sup> See Section 7.2.2.

<sup>275</sup> UNITAD, Confidential testimonial evidence.

<sup>276</sup> UNITAD, Confidential testimonial evidence.

<sup>277</sup> UNITAD, Confidential testimonial evidence.

<sup>278</sup> See Sections 7.3.2 and 7.3.6.

<sup>279</sup> UNITAD, Confidential testimonial evidence.

<sup>280</sup> UNITAD, Confidential testimonial evidence.

### 7.3.2 *Tal Afar*

221. Captives taken from the first holding sites to Tal Afar were Yazidis from Sinjar town, Dugure, Tal Ezir, Hardan, Khanasor, Solagh, Wardiya, Qeni and Kocho. The men from Sinjar town, Dugure, Tal Ezir, Qeni, Solagh and some from Khanasor that were arrested at Sinuni checkpoint<sup>281</sup> were already separated at the point of capture or shortly afterwards.
222. Witnesses initially transferred to Tal Afar all referred to being held in schools. They consistently mention that these schools were full of Yazidis. Witnesses estimated that up to 75 women and children were held in a room at one of the schools, around 500 women and children were kept in a school where they were registered, and that about 1,000 women and children in total were kept at a school.<sup>282</sup>
223. As early as 4 August 2014, ISIL members started going to the schools in Tal Afar to select “beautiful” girls, as young as about 13 years old. Some of these girls were transferred to Badush prison. Also at this point, ISIL members took boys over the age of eight from their mothers.<sup>283</sup>
224. Still in early August 2014, ISIL moved all women and children from Tal Afar schools to Badush prison.<sup>284</sup>
225. In mid-August, ISIL took women and children back from Badush prison to different schools in Tal Afar, including al-Zaheer school. Elderly women were returned first, followed by boys between about two and 12 years old who were subjected to Quranic and weaponry training at al-Muqdasi school and lastly, girls, women and children.<sup>285</sup>
226. Before being allowed to enter the schools, girls as young as 14 were separated from their families by ISIL members based on their perceived attractiveness. A group of women and girls was then taken from a school in Tal Afar to Mosul and Raqqa.<sup>286</sup>
227. Around the same time, another group of women and girls was taken from a school in Tal Afar to Qizil Qeo from where, in late 2014, they were then taken to Raqqa. Other groups of girls and young women were later taken to houses in Tal Afar, including in Hay al-Khadra neighbourhood, and Mosul.<sup>287</sup>

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<sup>281</sup> UNITAD, Confidential testimonial evidence.

<sup>282</sup> UNITAD, Confidential testimonial evidence.

<sup>283</sup> UNITAD, Confidential testimonial evidence.

<sup>284</sup> UNITAD, Confidential testimonial evidence.

<sup>285</sup> UNITAD, Confidential testimonial evidence.

<sup>286</sup> UNITAD, Confidential testimonial evidence.

<sup>287</sup> UNITAD, Confidential testimonial evidence.

228. At al-Zaheer school, ISIL called out men's names from a list and told their wives and children that they would be reunited, since those men converted to Islam. These women and children were transferred to al-Muqdasi school in Tal Afar and then, a few days later, to Qasr Mirhab where they were reunited with their male relatives. Some of the men spent about 20 days at Tal Afar Citadel, where they were forcibly converted by ISIL. Other women and children were brought from a Tal Afar school to Qasr Mirhab but not reunited with their male relatives. Another group of women and children was brought directly from Tal Afar to be with their male relatives in Tal Banat. Some families, who had been separated in Badush, were also reunited with their young male relatives in Tal Afar schools, prior to being transferred to Qasr Mirhab neighbourhood.<sup>288</sup>
229. ISIL also used transfers between different detention sites to separate unmarried women and girls from their families. ISIL punished any resistance with threats and violence.<sup>289</sup>
230. ISIL also brought men from unidentified villages to be reunited with their families in Qasr Mirhab. Girls and women from Hardan who were separated in Tal Shayr, Syria, and taken to Mosul and Ba'aj, were then taken to Qasr Mirhab and Qizil Qeo<sup>290</sup> if they were not yet selected by ISIL members. Similarly, women not selected by ISIL members, along with women with children who were detained at Galaxy Hall and schools in Tal Afar, were brought to Qasr Mirhab or Qizil Qeo.
231. In Qasr Mirhab, families were registered and asked to pick a house. A witness estimated that there were 3,300 Yazidis in Qasr Mirhab. ISIL delivered food and water, and the Yazidis were asked to set up an improvised medical facility. ISIL members also had Yazidi men build a Mosque. ISIL regularly searched houses to confiscate phones and belongings, while threatening to kill anyone trying to escape and guarding the village with checkpoints. ISIL re-registered families once a week to ensure no one had escaped. ISIL continued to separate and remove girls and women, who were mostly sent to Syria.<sup>291</sup>
232. ISIL transferred Yazidis from Sinjar, Hardan and Khanasor – who were forced to settle in Kocho – to Qizil Qeo, where they stayed for about a month.<sup>292</sup>
233. Many Yazidis attempted to escape from Qizil Qeo. Some successfully escaped, but others failed and were severely punished.<sup>293</sup>

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<sup>288</sup> UNITAD, Confidential testimonial evidence.

<sup>289</sup> UNITAD, Confidential testimonial evidence.

<sup>290</sup> UNITAD, Confidential testimonial evidence.

<sup>291</sup> UNITAD, Confidential testimonial evidence.

<sup>292</sup> UNITAD, Confidential testimonial evidence.

<sup>293</sup> UNITAD, Confidential testimonial evidence.

234. Eventually, some Yazidi boys who were separated from their mothers in Badush prison and Tal Afar schools were taken to Qizil Qeo and Qasr Mirhab following aerial bombardments between Tal Afar and Mosul, where the boys were held before. In Tal Afar Citadel, one of the boys told his mother that the ISIL members told them to convert to Islam and how to pray. The boys who were reunited with their families in Qasr Mirhab and Qizil Qeo continued to be forced into religious and military trainings. They were required to visit the Mosque and pray five times each day and were trained to use weapons. Several boys, aged about 10 to 15 years old, were sent daily to the Shari'a Institute in Tal Afar to follow religious training..<sup>294</sup>
235. In Qizil Qeo and Qasr Mirhab, ISIL would regularly search for and select Yazidi girls, seven years old and above, and women to take away, mostly to Syria. The remaining Yazidi elderly women and children in Qizil Qeo were taken to Qasr Mirhab..<sup>295</sup>
236. The remaining Yazidi families stayed in Qasr Mirhab and Qizil Qeo until 21 December 2014, after which ISIL moved most by trucks to Galaxy Hall in Mosul or to Raqqa. One group of six to seven persons had already been transferred to Hay al-Khadra neighbourhood to take care of cows..<sup>296</sup> Some other families were sent from Qasr Mirhab to Kocho, where they were forced to settle.
237. In late January or February 2015, all of the remaining Yazidi families – totalling more than 1,000 people from Khanasor, Hardan, Sinjar town and Shingal – were transferred from Galaxy Hall surrounding areas and forced to settle in Hay al-Khadra neighbourhood. Similarly to Qasr Mirhab, ISIL prevented and punished attempts to escape. ISIL continued to select specific women and girls, while men were used for field labour and forced to pray..<sup>297</sup>
238. Around 26 April 2015, ISIL registered elderly Yazidi women and men, along with disabled people, among the families detained in Tal Afar and released them to the Kurdistan Regional Government (KRG) authorities..<sup>298</sup>
239. At that point, ISIL separated Yazidi boys aged from about 12 years old and men, tied their hands and took them away in trucks. These men and boys were never seen or heard from again..<sup>299</sup> ISIL separated younger boys, from seven years old, and took them away for mandatory religious or military training..<sup>300</sup>

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<sup>294</sup> UNITAD, Confidential testimonial evidence.

<sup>295</sup> UNITAD, Confidential testimonial evidence.

<sup>296</sup> UNITAD, Confidential testimonial evidence.

<sup>297</sup> UNITAD, Confidential testimonial evidence.

<sup>298</sup> UNITAD, Confidential testimonial evidence.

<sup>299</sup> UNITAD, Confidential testimonial evidence.

<sup>300</sup> UNITAD, Confidential testimonial evidence.



240. ISIL transferred Yazidi women and girls to a school in Tal Afar, where they were separated into several groups and sent to different locations in Iraq and Syria to be sold or gifted to ISIL fighters. Young Yazidi children, from babies to about 10 years old, were reportedly separated from the adults at the school. The children were then distributed to several different schools,<sup>301</sup> where they were cared for by ISIL women in an orphanage-like setting.<sup>302</sup>
241. Hay al-Khadra neighbourhood stopped being used as a detention site after April or May 2015. The site was heavily targeted by bombardments, as were most of the large holding sites used for large numbers of Yazidi families.<sup>303</sup>

### 7.3.3 Mosul – Badush prison

242. Yazidi captives from Solagh, Tal Qasab, Qeni and Kocho were taken to Badush prison on 3 and 4 August 2014. Large numbers of Yazidi women and children from Solagh were then transferred by bus to Badush on 4 and 5 August 2014. Yazidis from Hardan, Qeni, Solagh, Sinjar town, Tal Ezir, Kocho and Khanasor were also transferred to Badush after a short stay at a school in Tal Afar.<sup>304</sup>
243. In Badush, captives could access the prison yard but not leave the prison facilities. Guards would bring food and water, but the amount of food provided was not sufficient and the overall living conditions were poor. ISIL kept bringing more people, with one witness's estimate suggesting at least 1,500 people were kept in just one of the multiple halls.<sup>305</sup>
244. Upon arrival in Badush, ISIL members separated older Yazidi women from younger women and girls. Witnesses defined older women as those around 50 or 60 years old and above, but the ISIL members seemed to rely on observing who wore traditional clothes to identify women as elderly. These women were taken to the mosque to be taught how to pray before being taken back to Tal Afar.<sup>306</sup>
245. Yazidi boys between two and 12 years old were separated from their mothers. Evidence suggests that some were taken back to al-Muqdasi school in Tal Afar to be trained on the Quran and weapons, while another group was taken to Mosul and subjected to forced indoctrination.<sup>307</sup>

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<sup>301</sup> UNITAD, Confidential testimonial evidence.

<sup>302</sup> UNITAD, Confidential testimonial evidence.

<sup>303</sup> See also for instance, Section 7.3.3.

<sup>304</sup> UNITAD, Confidential testimonial evidence.

<sup>305</sup> UNITAD, Confidential testimonial evidence.

<sup>306</sup> UNITAD, Confidential testimonial evidence.

<sup>307</sup> UNITAD, Confidential testimonial evidence.

246. There are also reports that ISIL members took Yazidi girls and young women between about 15 to 20 years old at night and raped them in an adjoining room. Some were taken and not brought back. ISIL also started to separate married from unmarried women. They brought in a nurse to forcibly check the virginity of the women who claimed that they were married. This separation process of was interrupted by an airstrike, which then triggered ISIL's transfer of the captives out of Badush.<sup>308</sup>
247. Around 10 or 15 August 2014, Badush was hit by airstrikes, and ISIL took the captives by bus to schools in Tal Afar. Like in Ba'aj and Tal Afar, ISIL members took away "beautiful girls" of around 10 to 30 years old at the time of the transfer.<sup>309</sup>
248. Badush was not used as a holding site after that period.

#### *7.3.4 Mosul - Galaxy Hall and its surroundings*

249. ISIL used Galaxy Hall to detain Yazidi women and girls immediately after they were transported from the first holding site. Some captives arrived at Galaxy Hall as early as the evening of 3 August 2014.<sup>310</sup>
250. Containing several different halls, this site was used to detain many Yazidi women and girls from across Sinjar from 3 August 2014 onward. It is estimated that ISIL detained around 1,000 women and girls at Galaxy Hall between early and mid-August 2014.<sup>311</sup>
251. Galaxy Hall continued to be used in mid-August 2014 as a detention and transit site, where ISIL held Yazidi women and girls before being gifted or sold. Witnesses described how ISIL members registered and photographed the women and children before taking away some of them. After about a week, groups of women and girls started to be separated and taken away to be given to ISIL members. One group of Yazidi women and girls was taken to a five-story house in Mosul. The women and girls stayed there for several days. At this location, some girls were raped by ISIL members, and the captives were then further separated and distributed to ISIL leaders in Iraq and Syria. After nine days in Galaxy Hall, another Yazidi group of girls was transferred to a house in the Ziraha neighbourhood in Mosul to be distributed to ISIL members. A third group of Yazidi girls and young women was taken away after 12 to 15 days to be distributed to one of ISIL's battalions.<sup>312</sup>

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<sup>308</sup> UNITAD, Confidential testimonial evidence.

<sup>309</sup> UNITAD, Confidential testimonial evidence.

<sup>310</sup> UNITAD, Confidential testimonial evidence.

<sup>311</sup> UNITAD, Confidential testimonial evidence.

<sup>312</sup> UNITAD, Confidential testimonial evidence.

252. ISIL used Galaxy Hall and its surrounding buildings as a tertiary detention and transit site as early as mid-August 2014 until January or February 2015, when Yazidi families were taken there from Qasr Mirhab and Qizil Qeo.<sup>313</sup>
253. ISIL registered captives' names, particularly the names of elderly women and men, along with disabled people who were eventually released in Hawija. However, another group of elderly women previously taken from Galaxy Hall has never been seen again.<sup>314</sup>
254. ISIL further separated and took away women between 18 and 30 years old who did not have children. ISIL members gathered these women and arranged a formal process to investigate the women's claims of marriage. Questioning was led by an ISIL Shari'a judge who would order the women to be taken away if he doubted their answers.<sup>315</sup>
255. At Galaxy Hall, ISIL forced all Yazidis to pray, read the Quran and abide by ISIL interpretation of Islam. Men had to follow strict religious practices. They were required to attend a mosque, housed in a stadium, five times every day. Women were required to pray, read the Quran and fast, but they were not required to attend the mosque.<sup>316</sup>
256. In late January or February 2015, most Yazidis detained at Galaxy Hall, totalling more than 1,000 people, particularly reunited families, were transferred to Hay al-Khadra neighbourhood and forced to settle there.<sup>317</sup>

### 7.3.5 Mosul – Saddam's Palace and individual houses

257. Young Yazidi girls were taken to the forested area of Mosul, specifically a place called "Saddam's Palace" by witnesses, as well as private houses in Mosul. Some girls from Hardan, who were initially detained in Syria, were sent to Saddam's Palace,<sup>318</sup> where they would then be distributed to ISIL members in Mosul, Tal Afar or Syria.

### 7.3.6 Mosul area – Qayyarah military base

258. A group of Yazidi families from Khanasor and Hardan captured at Hardan's and Sinuni's junctions, who were initially detained at Tal Shayr school in Syria, were later taken to Qayyarah, at a military base occupied by ISIL. Some separated from their families during this transfer and sent to Saddam's Palace in Mosul.<sup>319</sup>

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<sup>313</sup> UNITAD, Confidential testimonial evidence.

<sup>314</sup> UNITAD, Confidential testimonial evidence.

<sup>315</sup> UNITAD, Confidential testimonial evidence.

<sup>316</sup> UNITAD, Confidential testimonial evidence.

<sup>317</sup> UNITAD, Confidential testimonial evidence.

<sup>318</sup> UNITAD, Confidential testimonial evidence.

<sup>319</sup> UNITAD, Confidential testimonial evidence.

259. The people transferred to Qayyarah stayed there for about a month, after which they were reunited with their families and transferred to Kocho for a few months.<sup>320</sup>

### 7.3.7 Kocho

260. As outlined above, Yazidis from Khanasor and Hardan, who were arrested at Hardan junction and Sinuni junction, and then separated in Tal Shayr in Syria, were eventually forced to settle in Kocho where families were reunited. This includes the above-mentioned group of families transferred to Qayyarah. Similarly, Yazidi families from Sinjar who were reunited in Tal Banat were also forced to settle in Kocho.<sup>321</sup>

261. The living situation in Kocho was precarious. ISIL placed Yazidi captives in houses in the village, provided very little amounts of food which sometimes resulted in health difficulties and forced them to read the Quran and pray.<sup>322</sup>

262. Upon arrival, ISIL registered the families and, after a few days, photographed them. Soon after, girls and unmarried women were separated and raped by ISIL members.<sup>323</sup>

263. Around December 2014, ISIL took some families to Qizil Qeo and Qasr Mirhab along with Yazidis from other villages. ISIL took other Yazidis, who were captured near Hardan and Khanasor, to Galaxy Hall.<sup>324</sup>

264. Other Yazidis were detained in Kocho for several months. Eventually, some Yazidi families were transferred to locations including Qizil Qio and Mosul. At that time, ISIL members further separated the girls from their families and brought them in buses to a farm near Raqqa. From there, the girls were then selected by ISIL members.<sup>325</sup>

## 7.4 Treatment of Yazidi captives

265. At every stage of the Yazidis' captivity, ISIL members separated Yazidi detainees by sex and age. The first separations occurred at the point of capture, where men were either executed<sup>326</sup> or detained if they accepted a conversion to Islam under duress. As outlined above, female captives were then moved to temporary detention sites where separations by age began.<sup>327</sup> ISIL also started selecting women and girls to be taken away as sexual slaves at these detention sites. The witness accounts demonstrate the systematic and organized nature of ISIL's separation policy, as detailed below.

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<sup>320</sup> UNITAD, Confidential testimonial evidence.

<sup>321</sup> UNITAD, Confidential testimonial evidence.

<sup>322</sup> UNITAD, Confidential testimonial evidence.

<sup>323</sup> UNITAD, Confidential testimonial evidence.

<sup>324</sup> UNITAD, Confidential testimonial evidence.

<sup>325</sup> UNITAD, Confidential testimonial evidence.

<sup>326</sup> See below Section and Section 6.

<sup>327</sup> See Sections 7.2. and 7.3.

### 7.4.1 *Women and girls who reached puberty*

#### 7.4.1.1 *Further separations by age and marital status*

266. Separations of Yazidis by sex and age continued throughout captivity. ISIL separated female captives by age and other factors, including marital status (ISIL equated unmarried with being a virgin).<sup>328</sup> As the latter were separated, they were moved to tertiary holdings sites and eventually distributed.
267. Between September 2014 and March 2015, ISIL moved large numbers of Yazidi captives, which included two groups of females: (1) young and unmarried women and girls, and (2) young women with children. In August and September 2014, young and unmarried women, as well as some with children, were taken from Mosul, including from Galaxy Hall, Saddam's Palace and other houses. ISIL sent them to Tal Afar and Syria or directly sold them to ISIL members. From October to December 2014, ISIL took young and unmarried women, as well as some pregnant women or women with children, from Qasr Mirhab to Qizil Qeo and Syria.<sup>329</sup>
268. Several Yazidi women and girls recalled being registered by ISIL early in their captivity, before they were distributed to individual ISIL members. While in some instances their names appear to have been taken primarily for registration purposes, other women and girls had their names taken as part of the distribution process. Several witnesses explained that in their different detention sites in Iraq, the girls' names were put into lotteries with names randomly selected. Yazidi witnesses described being distributed through a lottery system in Syria. In one instance, ISIL transferred a group of Yazidi women and approximately 150 children to Raqqa, where they were told to register their names in a notebook and reassured that they would be reunited with their male relatives. After 40 days, however, ISIL put all women and children on buses and distributed them across Syrian cities, where there were sold to ISIL fighters.<sup>330</sup>
269. In implementing its system of sexual slavery, ISIL officials made it clear that sexual slaves were to be given to ISIL officials and members, specifically front-line combatants.<sup>331</sup> In some cases, it was made explicit that only ISIL fighters were allowed to buy or be gifted Yazidi women or girls, including at a slave market in Raqqa.<sup>332</sup> All of the available evidence shows that young unmarried girls and women were the prioritized targets for sexual abuse by ISIL. This is confirmed by an ISIL pamphlet, published in December 2014, which stated that ISIL fighters could have sexual

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<sup>328</sup> UNITAD, Confidential testimonial evidence.

<sup>329</sup> UNITAD, Confidential testimonial evidence.

<sup>330</sup> UNITAD, Confidential testimonial evidence.

<sup>331</sup> Information received from Iraqi authorities.

<sup>332</sup> UNITAD, Confidential testimonial evidence.

intercourse with virgins immediately upon capture, unlike other female captives who first needed to be “cleansed of impurity”.<sup>333</sup> Not only were unmarried girls and young women one of the main groups of captives ISIL moved within Iraq and from Iraq to Syria, but ISIL members also quickly took steps to identify and separate this group from married women. ISIL conducted “medical” virginity checks on women and girls in Mosul and Tal Afar to “check if they were women or if they were still girls”.<sup>334</sup>

270. Among young girls, ISIL assessed physical maturity in different ways. As detailed below,<sup>335</sup> ISIL subjected young girls to the same treatment, including sexual enslavement, as teenage girls, young women and women with children.
271. Once separated from older women and pre-pubescent girls, one of the criteria used by ISIL for selecting and distributing girls who had reach puberty was perceived attractiveness. Numerous witnesses refer to ISIL members selecting “pretty” or “beautiful” girls,<sup>336</sup> based on the colour of their eyes, their skin colour, their “body shape” or the length of their hair. Women and girls attempted to avoid ISIL members’ selection by making themselves unattractive and dirty by covering their faces with ash, or by pretending to be mentally ill. ISIL’s emphasis on “attractiveness” is also supported by witness testimonies that women and girls were often asked to take showers, shave and change their clothes before being brought to slave markets, distributed or being raped for the first time. Women and girls kept in the farm near Raqqa were forced to fully undress and turn around for the Sheikh in charge of distributing them. Women and girls were also photographed by ISIL members who wanted to sell them.<sup>337</sup> In October 2015, the Wali of Nineveh issued an official instruction regulating the conduct of slave owners and prohibiting taking photos of *sabayas* and sharing such pictures among themselves.<sup>338</sup>
272. Women with children were the second most prioritized category by ISIL, as they were still of child-bearing age and therefore still considered “attractive”. ISIL first distributed women who only had one or two children. ISIL typically did not immediately pick pregnant women and only distributed them after giving birth. Pregnant women would sometimes suffer miscarriages because of the difficult living conditions in the holding sites.<sup>339</sup>

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<sup>333</sup> Information Received from Iraqi Judicial Authorities

<sup>334</sup> UNITAD, Confidential testimonial evidence.

<sup>335</sup> See below Sections 7.4.1., 8.2. and 8.3.3.

<sup>336</sup> UNITAD, Confidential testimonial evidence.

<sup>337</sup> UNITAD, Confidential testimonial evidence.

<sup>338</sup> Information received from Iraqi authorities.

<sup>339</sup> UNITAD, Confidential testimonial evidence.



#### 7.4.1.2 Organized sale and distribution of female captives

273. Witnesses provided evidence of large, formal slave markets, such as a large farm near Raqqa. The detention sites in Mosul, such as Galaxy Hall, and in Tal Afar, such as the schools and large houses in Qizil Qeo, also served as large, less formal venues for ISIL commanders and members to select *sabayas*. Other less formal versions of markets were run elsewhere, likely by lower-ranking ISIL members, such as in Wardiya where on one occasion 15 women were subjected to a “lottery” to determine their allocated fighter. Some ISIL members were also trading Yazidi women and girls in their houses or bases. Witnesses frequently recounted how several women and girls would be selected by an ISIL member, who would then distribute and separate them further.<sup>340</sup>
274. ISIL members would most often come to a house, a room or a hall where the women and girls would seek to hide from them in corners, with witnesses comparing the situation to a market where animals were sold.<sup>341</sup> In some instances, women and girls were taken or distributed in an *ad hoc* manner. ISIL members also held slave markets online, as pictures of women were often distributed among ISIL fighters to choose which one to buy.
275. A *sabaya* could be sold, given or traded by her slave owner. This was specifically permitted by the ISIL pamphlet published on 3 December 2014<sup>342</sup> and is in line with testimonial evidence collected by UNITAD. Witnesses who overheard or were told the price paid by their captors noted different figures, ranging from \$500 to \$1,000 for a woman or girl; \$600 for a woman with three children; and at times \$5,500, \$8,600 or \$12,000 for a single captive. Some captives were also purchased in Iraqi Dinars or Syrian Pounds. Many witnesses also reported having been gifted to their slave owners.<sup>343</sup>
276. Once taken as a *sabaya*, the woman or girl could be repeatedly sold, traded or gifted to successive owners. Witnesses describe how they were traded for a car or for another *sabaya*.<sup>344</sup> *Sabayas* were frequently gifted to ISIL fighters.
277. The subsequent sales of Yazidi captives between ISIL members were also documented, with courts of ISIL’s Department of Justice and Grievances issuing “property sale contracts” and “proofs of ownership”, in which the term “*sabaya*” was sometimes explicitly used.<sup>345</sup>

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<sup>340</sup> UNITAD, Confidential testimonial evidence.

<sup>341</sup> UNITAD, Confidential testimonial evidence.

<sup>342</sup> Office of Research and Fatwas, Pamphlet known as the ‘Slavery Q&A’ 3), (سؤال وجواب في السبي ورقاب, (December 2014 (Document received by UNITAD from Iraqi Judicial Authorities)

<sup>343</sup> UNITAD, Confidential testimonial evidence.

<sup>344</sup> UNITAD, Confidential testimonial evidence.

<sup>345</sup> ISIL Mosul Department of Justice and Grievances, ‘Proof of ownership’ (16 حجة ملكية), August 2016.

### 7.4.1.3 Sexual slavery

#### 7.4.1.3.1 Sexual slavery as the central objective of enslavement

278. Subjugation of Yazidi women and girls into sexual slavery was the central objective of the enslavement by ISIL. This is evident from the process of selection of women and girls starting from their first day of captivity; women and girls being the objects of many of the movements of captives between holding sites; and the focus of ISIL documents, including *fatwas*, on the enslavement of women and girls. As detailed below, several of these documents referred specifically to the “right” to have sexual intercourse with enslaved women and girls, referencing Yazidis in particular.
279. Upon capture, younger Yazidi women and girls quickly sensed the likelihood of sexual abuse. In attempts to avoid it, some put on the white clothes and white scarves traditionally associated with older women. As referenced above, they also tried to look unattractive by covering their faces with ash, messing up their hair and by pretending to be mentally unwell or handicapped. Some girls committed or attempted to commit suicide shortly after being captured to avoid sexual abuse.<sup>346</sup>

#### 7.4.1.3.2 Ideology and codification of sexual slavery

280. Between October 2014 and May 2015, ISIL published several documents on enslavement that focused on the treatment of female slaves, regulating rape, punishments and forced marriages. Several of these documents refer specifically to the treatment of Yazidis, including the first document published in October 2014. The period during which these documents were published coincides with ISIL’s continuous transfers of female captives, suggesting that ISIL issued these documents to further implement its ideology.
281. UNITAD has not found any ISIL documents on enslavement pre-dating the Sinjar attack of 3 August 2014. There are, however, strong indications that a pre-existing policy on enslavement did exist within ISIL, suggested by the consistency with which Yazidi captives were separated by sex and age immediately upon capture in towns across Sinjar.
282. The existence of an established policy on enslavement within ISIL is also supported by information published by ISIL in October 2014. In Issue 4 of *Dabiq*, an article titled “The revival of slavery before the hour” stated that “prior to the taking of Sinjar, Shari’a students in the IS were tasked to research the Yazidis to determine if they should be treated as an originally mushrik group or one that originated as Muslims and then apostatized”. It went on to argue that Yazidi women could be enslaved and describes the distribution of women and children to ISIL fighters who participated

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<sup>346</sup> UNITAD, Confidential testimonial evidence.

in the Sinjar operation, with a fifth of the women and children to be transferred to the ISIL authority. This refers to the concept of “khums,” or the religious obligation of any Muslim to pay one-fifth of their acquired wealth from certain sources toward specified causes. The article further argued that desertion of slavery led to increase in adultery, as men who could not afford to marry a free woman had no option but to resort to sin.<sup>347</sup>

283. Two months later, on 3 December 2014, ISIL’s Office of Research and Fatwas published a pamphlet titled “Questions and Answers on Taking Captives and Slaves,” commonly referred to as the “Slavery Q&A”. This pamphlet sets out rules regarding female slaves and their treatment, for example stating that “intercourse” with a captive was allowed. It also clarified that a captive could be sold, purchased or as a gifted, as they were considered “merely money” and could thus be traded.<sup>348</sup> Another version of the “Slavery Q&A” pamphlet further stated that “sexual intercourse” with a minor female slave who has not reached puberty was allowed, under the condition that she was “fit for sexual intercourse,” without the term “fit” being further defined. In cases where the minor was not “fit for sexual intercourse,” the pamphlet indicated that it was sufficient to “enjoy” her without intercourse.<sup>349</sup> It also set out physical punishment of female captives as a form of “discipline,” with certain limits.<sup>350</sup>
284. On 29 January 2015, ISIL’s Office of Research and Studies published Fatwa Number 64 imposing limitations on ISIL’s scope of permission to have non-consensual sexual intercourse with a female captive, including by forbidding anal sex or sexual intercourse after release of the captive, during her menstrual cycle, or if the captive was jointly owned.<sup>351</sup>
285. In May 2015, Issue 9 of Dabiq featured an article titled “Slave-girls or prostitutes,” allegedly written by a woman identified as Umm Sumayya al-Muhajirah, which defended the “[Islamic] State’s capture of the Yazidi women” and denounced those who deny it. The author further advocated for the practice of forced marriages with slave women, especially for the ISIL fighters who could not afford to marry a free woman. The author specifically and vehemently defended the practice of rape in

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<sup>347</sup> ‘The revival of slavery before the hour’, in Dabiq, Issue 4: The Failed Crusade, October 2014.

<sup>348</sup> Office of Research and Fatwas, Pamphlet known as the ‘Slavery Q&A’ (سؤال وجواب في السبي ورقاب), 3 December 2014 (Document received by UNITAD from Iraqi judicial authorities).

<sup>349</sup> Office of Research and Fatwas, ‘Slavery Q&A’ (سؤال وجواب في السبي ورقاب) [other version], date unknown .

<sup>350</sup> Office of Research and Fatwas, Pamphlet known as the ‘Slavery Q&A’ (سؤال وجواب في السبي ورقاب), 3 December 2014 (Document received by UNITAD from Iraqi judicial authorities).

<sup>351</sup> Office of Research and Fatwas, ‘Fatwa Number 64’ (29 رقم الفتوى ٦٤), January 2015, page 317 (specimen 22R).

the taking and enslaving of women, comparing it to the perceived lack of morals in the West.<sup>352</sup>

286. Sometime in 2015,<sup>353</sup> ISIL's Office of Research and Studies published a pamphlet titled "The Creator's Maxims on Captivity and Enslavement," providing further justification and regulation of the practice of enslavement. The pamphlet emphasized the role of enslavement as a means of spreading ISIL's interpretation of Islam and considered sexual slavery to be the "lowering and humiliation" of the disbelievers. This pamphlet also presented the rape of *sabayas* as a duty of the captor to fulfil her basic needs, including "the need of the one made captive and enslaved for social relations and sexual intercourse".<sup>354</sup>
287. The management of the slave trade was partly handled by ISIL's Department of the Spoils of War, and slaves appear to be considered the property of ISIL until they were sold, traded or gifted. As such, slaves were returned as property to the Department of the Spoils of War when their captor died or was arrested by ISIL.

#### 7.4.1.3.3 Practice of sexual slavery

288. Women and girls held in sexual slavery consistently describe the same treatment in captivity. While sexual violence was central, they also report beatings and verbal abuse. Several witnesses recalled their captors mentioning that such treatment was allowed by ISIL's rules.<sup>355</sup>
289. The first incidents of rape took place on the day of capture of shortly thereafter, before the women and girls were distributed or sold to individual fighters. ISIL perpetrated the rapes mostly against teenage girls and young women, which is consistent with ISIL's ideology regarding virgins and individual ISIL members' preference for those they perceived to be attractive.<sup>356</sup>
290. Once the women and girls became *sabayas*, ISIL members subjected them to brutal and frequent rapes, as permitted by various ISIL publications on slavery discussed above. Some witnesses reported bleeding and pain. The longer the women and girls stayed in captivity, the more often they were sold and gifted. Many were sold between ISIL members multiple times and regularly subjected to rape and other sexual abuse<sup>357</sup>

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<sup>352</sup> 'Slave-girls or prostitutes?', Dabiq, Issue 9: They Plot and Allah Plots, May 2015.

<sup>353</sup> Aymenn al-Tamimi, "Unseen Islamic State Pamphlet on Slavery", 29 December 2015 – Note: the exact date of the document is unknown; its existence was discovered in 2015 by a Syrian source, and later by U.S. Special Forces.

<sup>354</sup> Office of Research and Studies, "The Creator's maxims on captivity and enslavement", (من حكم الخلاق في السبي (والاسترقاق), date unknown (Document received by UNITAD from Iraqi judicial authorities).

<sup>355</sup> UNITAD, Confidential testimonial evidence.

<sup>356</sup> UNITAD, Confidential testimonial evidence.

<sup>357</sup> UNITAD, Confidential testimonial evidence.

291. Many victims, especially prepubescent girls, suffered severe physical injuries resulting from ISIL members' rapes inflicted upon them.<sup>358</sup>
292. With some exceptions, most ISIL members largely followed ISIL's regulations on sexual intercourse as part of their sexual practice, as any behaviour outside of this was considered "haram". Women and girls often became pregnant from these rapes, and their trauma was compounded by the fact that some were too young or had insufficient knowledge of reproductive health to understand the symptoms and consequences of pregnancy.<sup>359</sup>
293. On some occasions, women and girls were forcibly administered contraceptives and abortions.<sup>360</sup>
294. When ISIL members did want to have a child from their captive, they would forbid abortions.<sup>361</sup>
295. In addition to sexual and reproductive violence, Yazidi women and girls also suffered physical abuse, starting at the first holding sites. ISIL members beat women and girls after asking questions about the Yazidi men who had been separated or after resisting being taken away, knowing that they would be raped.<sup>362</sup> The beatings are in line with ISIL's "Slavery Q&A" which permitted physical punishment of female captives as a form of "discipline".<sup>363</sup>
296. As Yazidi women and girls were distributed and sold, the beatings continued. Numerous witnesses echoed the experience of being beaten on a regular basis by their captors and their families, including for resisting rape. ISIL members also beat their captives for having hair slightly uncovered, refusing to pray, or not being satisfied with the way the captives performed housework.<sup>364</sup>
297. ISIL members also severely punished Yazidi captives' escape attempts. In addition to beatings, punishments could also include rapes, deprivation of food or being sold to another ISIL fighter.<sup>365</sup>
298. The physical abuse sometimes amounted to the infliction of severe pain or suffering. Physical and verbal abuse also came from Yazidi captors' wives or relatives. Captors'

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<sup>358</sup> UNITAD, Confidential testimonial evidence.

<sup>359</sup> UNITAD, Confidential testimonial evidence.

<sup>360</sup> UNITAD, Confidential testimonial evidence.

<sup>361</sup> UNITAD, Confidential testimonial evidence.

<sup>362</sup> UNITAD, Confidential testimonial evidence.

<sup>363</sup> Office of Research and Fatwas, Pamphlet known as the 'Slavery Q&A' 3), سوال وجواب في السبي ورقاب (December 2014 (Document received by UNITAD from Iraqi judicial authorities).

<sup>364</sup> UNITAD, Confidential testimonial evidence.

<sup>365</sup> UNITAD, Confidential testimonial evidence.

relatives, including their wives, often knew of, tolerated and even encouraged and participated in the sexual abuse of Yazidi captives.<sup>366</sup>

299. ISIL members' sexual, psychological and physical violence was so intense that some young Yazidi girls committed or attempted to commit suicide. Evidence collected shows the significant extent of trauma and psychological suffering of Yazidi girls and women.<sup>367</sup>

#### 7.4.1.4 Forced marriages

300. As described above, ISIL's ideology also included subjecting Yazidi women and girls to forced marriages. Issue 4 of Dabiq, for example, justified slavery as a means for men unable to afford marrying a "free" woman to avoid sin, suggesting that marrying freed Yazidi women could also be an alternative to sin and more affordable.<sup>368</sup> Issue 9 of Dabiq further encourages ISIL fighters to marry "female slaves" when they cannot afford to marry "free" women.<sup>369</sup> Two additional ISIL documents recovered by UNITAD also corroborate that the forced marriages of Yazidis were undertaken by some ISIL members as a less expensive marriage option. The documents declare Yazidi slaves freed on the condition that they marry their captors, with their freedom fulfilling the dowry requirement.<sup>370</sup>
301. Between the dates of the Dabiq Issue 4 and Issue 9 publications, in February 2015 Yazidi religious leader Baba Sheikh issued an edict ruling that those rescued from ISIL "remained pure Yazidis,"<sup>371</sup> allowing Yazidi women to return to their communities. By the following month, it was estimated that nearly a 1,000 Yazidis escaped ISIL captivity.<sup>372</sup> Issue 9 of Dabiq, published in May 2015, is thought to have promoted the forced marriage of enslaved women and girls to reduce the likelihood of escape, particularly if they were pregnant or had children.
302. However, available evidence suggests that forced marriages occurred in an individualized and *ad hoc* manner. ISIL members appeared to marry Yazidi women or girls for personal reasons, unconnected to ISIL's propaganda. However, in some instances, marriage was motivated by ISIL regulations. <sup>373</sup>

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<sup>366</sup> UNITAD, Confidential testimonial evidence.

<sup>367</sup> UNITAD, Confidential testimonial evidence.

<sup>368</sup> 'The revival of slavery before the hour', in Dabiq, Issue 4: The Failed Crusade, October 2014, page 17.

<sup>369</sup> 'Slave-girls or prostitutes?', in Dabiq, Issue 9: They Plot and Allah Plots, May 2015, page 44.

<sup>370</sup> Wilayat Tigris, Qayyarah Court, 'Freedom document' 14, وثيقة عتق, June 2016 (Document received by UNITAD from Iraqi judicial authorities); Wilayat al-Jazeera, Islamic Court, 'Slave emancipation certificate', شهادة عتق رقبة, 18 August 2016.

<sup>371</sup> Reuters, "Yazidi leader seeks protection for community after genocide", 8 December 2016

<sup>372</sup> UNHCR, "Yazidi women welcomed back to the faith", 15 June 2015

<sup>373</sup> UNITAD, Confidential testimonial evidence.



303. Forced marriages involved ceremonies that took place in a court and followed the same process as marriages which did not involve a captive, except that captors had to produce a “release letter” for their captive brides. An ISIL judge would officiate the ceremony, with two witnesses present, and produce a marriage contract with the name of all parties.<sup>374</sup>
304. While the judge was required to seek the consent of both the groom and bride under ISIL’s applicable rules, witnesses reported that this was not done or only done as a formality. Witnesses have also reported numerous examples of threats, coercion and violence.<sup>375</sup> Although procedurally “freed,” Yazidi women and girls were still in effect captives and unable to consent freely to their union.
305. The treatment of Yazidi women and girls did not change substantially once married to ISIL members in relation to sexual, physical and psychological violence. They also had to continue bearing most, if not all, of the domestic work.<sup>376</sup>
306. Much like other women married to ISIL members, captives who were forcibly married appear to have been taken to *madafas* when their husbands died, were arrested or had gone to battle.<sup>377</sup> *Madafas*, part of ISIL’s administration, were houses hosting women who had no male relative or husband who could take responsibility over them.<sup>378</sup> Women in *madafas* would usually be forcibly remarried.<sup>379</sup>
307. Women in the *madafas* would be registered to allow the administration to keep track of the number and identity of the women present. The women’s lives were organized around housework and religion.<sup>380</sup>
308. Sales of women and girls, including those leading to marriages, were also documented by ISIL. ISIL’s Courts of the Department of Justice and Grievances issued “property

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<sup>374</sup> UNITAD, Confidential testimonial evidence.

<sup>375</sup> UNITAD, Confidential testimonial evidence.

<sup>376</sup> UNITAD, Confidential testimonial evidence.

<sup>377</sup> UNITAD, Confidential testimonial evidence.

<sup>378</sup> See UNITAD’s Report, “Analysis on women under the Islamic State”; UNITAD, Confidential testimonial evidence.

<sup>379</sup> See UNITAD’s Report, Role of ISIL women in the enslavement of Yazidi women and girls, October 2023; UNITAD’s Report, “Sexual violence against women and girls committed by ISIL in Iraq”, published 3 December 2023, paras. 83 to 89; UNITAD’s Report, “Analysis on women under the Islamic State”.

<sup>380</sup> UNITAD, Confidential testimonial evidence.

sale contract,”<sup>381</sup> “proof of ownership”<sup>382</sup> and “release letter”<sup>383</sup> documents. In most instances, the change of ownership seemed to be concluded by less formal ways.<sup>384</sup>

#### 7.4.1.5 Domestic servitude

309. Yazidi women and girls held in sexual slavery were made to perform domestic chores like cooking, cleaning and taking care of their captors’ children, under threat of being beaten or sold to a different captor. Yazidi women and girls experienced domestic servitude at many locations, including ISIL headquarters. Many Yazidi women and girls were forced to perform domestic work throughout their period of captivity. ISIL members’ dual use of women and girls as sexual and domestic slaves is evident from numerous witness statements.<sup>385</sup>

#### 7.4.1.6 Forced conversion and indoctrination

310. Yazidi women and girls were generally forced to convert to Islam and were indoctrinated. However, while men were to immediately convert or risk being killed,<sup>386</sup> and ISIL extensively converted and indoctrinated boys,<sup>387</sup> it did not appear to have been systematic for women and girls.

311. ISIL members did require Yazidi women and girls early on in their captivity to repeat the *shahada* under threat of being beaten, separated and transferred to other places or killed if they refused. ISIL members also forced women or girls to convert and listen to the Quran. A small group of girls was forced to convert in Ba’aj and taught the Quran before they were distributed to ISIL fighters, while women and girls held in Hay al-Khadra neighbourhood were made to pray with ISIL fighters. Witnesses recalled that women and children were forced to listen to Quranic verses played on loudspeaker or read the Quran, and that they were promised a reunion with their male relatives if they accepted conversion. Any attempt to cover their ears was severely punished. Enslaved Yazidi women and girls were often subjected to less formal religious indoctrination by their individual captors. For example, their captors would force them to read the Quran, pray, fast and adopt ISIL’s dress code. Captors would often threaten to sell their captives because they were refusing to pray. Arranging visits with captives’ families in other cities was used as leverage by captors to have captives learning the Quran. In other instances, fake promises that captives would not be raped and would be able to

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<sup>381</sup> Wilayat Tigris, ‘Property sale contract’, 29 May 2016, (Document received by UNITAD from Iraqi judicial authorities).

<sup>382</sup> ISIL Department of Justice and Grievances, ‘Proof of ownership’; UNITAD, Confidential testimonial evidence.

<sup>383</sup> Release letter, ‘Freedom document’, Sharia court, 18 August 2016.

<sup>384</sup> UNITAD, Confidential testimonial evidence.

<sup>385</sup> UNITAD, Confidential testimonial evidence.

<sup>386</sup> See Sections 6. and 7.4.3.

<sup>387</sup> See section 8.3.3.

see their family in captivity were made by captors to convince young Yazidi girls to convert prior to being sold further.<sup>388</sup>

312. Witnesses also recount indoctrination attempts by their captors. Overall, girls experienced more frequently indoctrination<sup>389</sup> than women. Yazidi captives were forced to speak only Arabic among themselves and were given Arab names. Other adult captives received religious names in captivity. Several witnesses also recalled being made to do things forbidden by the Yazidi faith in captivity, such as eating lettuce.<sup>390</sup>

#### 7.4.2 *Boys who reached puberty*

313. Boys considered by ISIL to have reached puberty but not adulthood were separated from their mothers and siblings from mid-August 2014.<sup>391</sup> ISIL members required boys to learn the Quran, religion and jurisprudence. Most boys were taken to military training camps in Syria, where they received weapons training, sometimes followed by deployment to combat zones. They often performed forced labour, including cooking for ISIL members. The treatment of the Yazidi boys recruited by ISIL is elaborated in the section on violence committed against children.<sup>392</sup>

#### 7.4.3 *Men*

314. Upon capture, ISIL members immediately separated Yazidi men and older boys from women and children. Men were presented with an ultimatum to convert to Islam or be killed. This section focuses on men who were forcibly converted, most of whom were ultimately killed.<sup>393</sup>
315. Men captured in Sinjar's southern villages who agreed to convert under duress were transferred to the Tal Afar Citadel, and men captured in Sinjar's northern villages were taken to Syria. ISIL members filmed the conversion process at the Tal Afar Citadel as part of an ISIL propaganda video. After agreeing to convert under duress, the men were reunited with their families in locations like Qasr Mirhab.<sup>394</sup> Some of these men and their families were later transferred to Qizil Qeo. While in captivity, Yazidi men were forced to pray five times a day and engage in manual labour for ISIL.<sup>395</sup>

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<sup>388</sup> UNITAD, Confidential testimonial evidence.

<sup>389</sup> See Section 8.2.6.

<sup>390</sup> UNITAD, Confidential testimonial evidence.

<sup>391</sup> UNITAD, Confidential testimonial evidence.

<sup>392</sup> See Section 8.3.

<sup>393</sup> See Section 6.

<sup>394</sup> UNITAD, Confidential testimonial evidence.

<sup>395</sup> See Sections 7.3.2 and 7.3.7.

316. The Tal Afar Citadel was also used to detain men who ISIL initially separated at the points of capture in Sinjar. Once at the Citadel, they were forced to convert and waited to be reunited with their relatives.<sup>396</sup>

317. ISIL also used farmlands around the Tal Afar airport to detain families, including older family members, and subject men and boys aged 15 to 30 years to forced labour.<sup>397</sup>

#### 7.4.3.1 Forced conversion

318. ISIL members threatened Yazidi men with death if they did not convert, and those who did not convert were executed soon after capture or never seen again.<sup>398</sup>

319. ISIL managed the detention of men who were willing to convert or had converted – and therefore initially spared execution – by first detaining them separately from the women and children, and then reuniting them with their families in the Tal Afar area.<sup>399</sup>

320. Witness testimony consistently shows that men who converted under duress were then forced by ISIL members to attend the mosque and pray five times a day. In Qasr Mirhab, ISIL members required the men to build a mosque and selected some Yazidi men to teach women how to pray. Similarly, ISIL members required male captives taken to Tal Banat to pray five times a day. The same prayer rules applied to boys of about 12 to 16 years old and male captives in Hay al-Khadra neighbourhood and Kocho, where ISIL took over a house in the village and turned it into a mosque.<sup>400</sup>

321. Only one group of Yazidis captured in Iraq was immediately taken to Syria, though after nine to 12 days they were returned to Iraq. Yazidi families fleeing Hardan and Khanasor were taken to a school in Syria near al-Hasaka, called “Tal Shayr” or “Shadadia,” where the men were separated and issued an ultimatum to convert or be killed. The men decided they would convert on the condition that ISIL did not take their women and families away. This was conveyed to the ISIL members in charge, who then made the men plead the *shahada* and learn how to perform the ablution and prayers. The men were also required to pray five times a day.<sup>401</sup>

322. Men and boys above 10 years old were subsequently transferred to Tal Banat, sometimes after a short stay at a school in Ba’aj. In each location, they were forced to pray five times a day. The men were also visited by ISIL mullahs who preached and

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<sup>396</sup> UNITAD, Confidential testimonial evidence.

<sup>397</sup> UNITAD, Confidential testimonial evidence.

<sup>398</sup> See Section 6.

<sup>399</sup> UNITAD, Confidential testimonial evidence.

<sup>400</sup> UNITAD, Confidential testimonial evidence.

<sup>401</sup> UNITAD, Confidential testimonial evidence.

read the Quran to them. In Kocho, a witness stated that ISIL members were giving khutbahs “to change the ideology” of the Yazidi men.<sup>402</sup>

#### 7.4.3.2 *Forced labour*

323. Men who converted under duress were forced to undertake all sorts of manual labour. ISIL members required them to raise sheep, cows and other poultry and forced them to clean the streets and other agricultural work.<sup>403</sup>
324. As detailed above, on some occasions men who converted under duress were allowed to rejoin their families. ISIL members held some of these families in Qasr Mirhab, where both men and women performed forced labour.<sup>404</sup>

#### 7.4.4 *Elderly women*

325. After the separation of men, Yazidis were further separated into three groups: young unmarried women, young women with children and elderly women. As discussed above, the first two groups were distributed to ISIL leaders and fighters as sex slaves.<sup>405</sup>
326. Unlike young women and girls, there is little evidence available that ISIL sexually abused older women and forced them into servitude. Their age made them less “attractive” to ISIL members and therefore not desirable as sexual slaves.<sup>406</sup> ISIL members’ perception of their lack of value is also illustrated by the killing of older women in Solagh on 16 August 2014.<sup>407</sup>
327. There is evidence, as described below, that ISIL detained elderly women for several months in multiple locations and attempted to forcibly convert them. There is also evidence that elderly women suffered physical and psychological violence and performed forced labour.

##### 7.4.4.1 *Forced conversion*

328. Evidence shows that ISIL members often separated elderly Yazidi women from young Yazidi women and children, seeing them as more difficult to forcibly convert and likely to prevent others from converting.<sup>408</sup>
329. ISIL members nonetheless forced Yazidi elderly women to convert to Islam and continuously required them to pray. As early as August 2014 in Ba’aj, used as a first holding site, ISIL members forced Yazidi elderly women to repeat the *shahada* several

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<sup>402</sup> UNITAD, Confidential testimonial evidence.

<sup>403</sup> UNITAD, Confidential testimonial evidence.

<sup>404</sup> See Sections 7.3.2. and 7.4.3.1.

<sup>405</sup> See Sections 7.3. and 7.4.1.

<sup>406</sup> UNITAD, Confidential testimonial evidence.

<sup>407</sup> See Section 6.3.

<sup>408</sup> UNITAD, Confidential testimonial evidence.

times a day. As ISIL assumed elderly women did not know how to read, they forced the children to teach the elderly women how to pray. Elderly Yazidi women, along with other Yazidi women, were forced to pray several times a day, separately from men, at any location. Elderly Yazidi women who refused to pray were also subjected to beatings.<sup>409</sup>

#### 7.4.4.2 *Physical and psychological violence*

330. ISIL members subjected elderly Yazidi women to physical violence despite their advanced age and vulnerabilities, which often led to their deaths.
331. At Galaxy Hall in Mosul, ISIL separated a group of seven to eight elderly Yazidi women after finding “barats”<sup>410</sup> on them and accusing them of practicing Yazidi rituals and not having converted to Islam. These elderly Yazidi women were never seen again.<sup>411</sup>
332. Elderly Yazidi women were subjected to beating as much as younger women.<sup>412</sup>
333. Physical violence was often coupled with humiliation and derogatory comments against the Yazidi religion.<sup>413</sup>
334. Elderly women were also subjected to psychological violence, particularly in respect to their Yazidi religion. For instance, ISIL members specifically went to elderly Yazidi women and forced them to listen to ISIL anthems through loudspeakers while saying the taboo word for Yazidis in their ears.<sup>414</sup>

#### 7.4.4.3 *Forced labour*

335. ISIL appears to have taken most elderly Yazidi women to Tal Afar and its surrounding areas, including the Hay al-Khadra neighbourhood, to perform forced agricultural and domestic labour. Several witnesses, about 50 years old at the time, described how they were made to take care of sheep or cows while in captivity. On rare occasions, some women between 40 and 45 years old were used by ISIL members as housekeepers and required to cook, clean the house and wash their clothes.<sup>415</sup>

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<sup>409</sup> UNITAD, Confidential testimonial evidence.

<sup>410</sup> Yazidi sacred round object made of holy soil from Lalish, symbolizing Earth’s blessings.

<sup>411</sup> UNITAD, Confidential testimonial evidence.

<sup>412</sup> UNITAD, Confidential testimonial evidence.

<sup>413</sup> UNITAD, Confidential testimonial evidence.

<sup>414</sup> UNITAD, Confidential testimonial evidence.

<sup>415</sup> UNITAD, Confidential testimonial evidence.



336. Yazidi men and women who were selected to take care of animals did not have a choice, as ISIL members threatened to kill them and have their girls taken away should they refuse.<sup>416</sup>
337. They were not paid for the work they performed. Evidence suggests that ISIL saw little value in making elderly women domestic slaves. Some were regularly moved between multiple sites for no apparent purpose,<sup>417</sup> and, eventually, some were released.<sup>418</sup>

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<sup>416</sup> UNITAD, Confidential testimonial evidence.

<sup>417</sup> UNITAD, Confidential testimonial evidence.

<sup>418</sup> See Section 7.3.2.

## 8 VIOLENCE AGAINST CHILDREN, INCLUDING CONSCRIPTION AND USE

338. Children, defined as those below the age of 18, were among the most numerous victims of ISIL during its sustained assault on the Yazidis of Sinjar. A peer-reviewed demographic analysis of mortality and kidnapping estimates concluded that, for the Yazidi population located near the Sinjar mountains in August 2014, “all Yazidis were targeted regardless of age and sex, but children were disproportionately affected.”<sup>419</sup> The disproportionate impact of ISIL crimes on children was also examined in a 2019 demographic analysis of the August 2014 attack on Kocho. This analysis determined that of a population of 1,200 people at the time of ISIL’s attack on 3 August 2014, 301 of them (or 26 per cent) were under 10 years old and 558 of them (or 48 per cent) were under 20 years old, comprising a large majority of Kocho’s inhabitants.<sup>420</sup> The analysis further concluded “with a significant degree of certainty, that nearly the entire population was either killed or kidnapped” although “the violations suffered varied depending on the gender and age of the victims”.<sup>421</sup>
339. As described below, the information and evidence collected by UNITAD strongly indicates that ISIL targeted the Yazidis as a group and that the nature of the violations were dependent on the sex and age of ISIL’s victims. The experience of Yazidi children was not monolithic, and the harms perpetrated by ISIL against them also varied depending on the victims’ stage of childhood and ISIL’s view of the vulnerability and capacity of boys and girls of various ages.

### 8.1 Boys perceived as pubescent by ISIL

#### 8.1.1 Execution upon or shortly after capture

340. As described above, upon capture, ISIL separated men and pubescent boys from women, girls and young boys.<sup>422</sup> While the available information as to how ISIL members determined the age of boys before separating from their mothers and younger siblings remains limited, several witnesses mentioned ISIL members looking for body hair and checking their shoulders and chests to assess the age of the boys.<sup>423</sup>

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<sup>419</sup> Cetorelli et al., “Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey”, PLOS, 9 May 2017,

<sup>420</sup> Cetorelli et al., ‘A demographic documentation of ISIS’s attack on the Yazidi village of Kocho’, LSE Middle East Centre reports, LSE Middle East Centre, London, UK, June 2019, page 16.

<sup>421</sup> Cetorelli et al., ‘A demographic documentation of ISIS’s attack on the Yazidi village of Kocho’, LSE Middle East Centre reports, LSE Middle East Centre, London, UK, June 2019, pages 16 and 17.

<sup>422</sup> See Sections 6 and 7.

<sup>423</sup> UNITAD, Confidential testimonial evidence.

341. In villages and towns across Sinjar, testimonial and forensic evidence showed that boys perceived by ISIL as pubescent were executed, alongside adult male relatives, shortly after capture.<sup>424</sup>

### 8.1.2 *Conscription and use in hostilities*

342. Captured boys perceived as pubescent by ISIL who were not immediately killed along with their adult male relatives initially remained with the women and girls, but as described below, the boys were eventually separated at different stages in their captivity.<sup>425</sup> Pubescent boys, along with pre-pubescent boys who aged in ISIL captivity,<sup>426</sup> were conscripted, trained and used as child soldiers by ISIL, in accordance with its ideology.<sup>427</sup>

#### 8.1.2.1 *ISIL policy*

343. The conscription, enlistment and use of child soldiers by ISIL were openly encouraged by ISIL authorities and were central to its ideology. In Issue 8 of Dabiq, published in March 2015, an article titled “The Lions of the Tomorrow” describes the need to train boys as soldiers who would become the future generation continuing the fighting against “Crusaders”.<sup>428</sup> It also contains examples of how boys, used as child soldiers, killed people that were considered spies by ISIL.<sup>429</sup> This is illustrated by two pictures of boys holding weapons – one of whom stands with a gun above the body of a man wearing an orange jumpsuit with a wound to his head.<sup>430</sup>

344. Growing and strengthening the Caliphate was one of the key goals of ISIL, and so birthing children and raising them to fulfil their strictly gender-specific roles within the Caliphate’s society was an important duty of all members of ISIL, both males and females. For example, another Dabiq article titled “A Jihad without Fighting” published in August 2015, described women of the Caliphate as “producer[s] of men” and “teacher[s] of generations”.<sup>431</sup> This article insists that boys should first gain “knowledge” before being trained to become “cubs”.<sup>432</sup> Both issues of Dabiq directly

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<sup>424</sup> See Section 6., and especially, 6.1.3., 6.1.5, 6.1.6., 6.1.8., 6.2. and 6.3.

<sup>425</sup> UNITAD, Confidential testimonial evidence.

<sup>426</sup> See Section 8.3.2.

<sup>427</sup> See Section 8.3.2.

<sup>428</sup> ‘The Lions of Tomorrow’, Dabiq, Issue 8: Shari’ah Alone Will Rule Africa, March 2015, pages 20-21.

<sup>429</sup> ‘The Lions of Tomorrow’, Dabiq, Issue 8: Shari’ah Alone Will Rule Africa, March 2015, pages 20-21.

<sup>430</sup> ‘The Lions of Tomorrow’, Dabiq, Issue 8: Shari’ah Alone Will Rule Africa, March 2015.

<sup>431</sup> ‘A jihad without fighting’, Dabiq, Issue 11: From the battle of *al-Azhab* to the war of coalitions, August 2015 (Document received by UNITAD from Tal Kaif Court), pages 40 to 45.

<sup>432</sup> ‘A jihad without fighting’, Dabiq, Issue 11: From the battle of *al-Azhab* to the war of coalitions, August 2015 (Document received by UNITAD from Tal Keyf Court).

refer to the existence of the Shari'a institutions and training camps in the Islamic State.<sup>433</sup> Girls were to be raised to become wives and mothers of fighters.<sup>434</sup>

345. Furthermore, a guidebook for ISIL women entitled "A Sister's Role in Jihad" instructed mothers on how to raise fighters and emphasized the importance of starting this process with the young, including as young as babies, stating that "[n]o child is ever too young to be started off on jihad training".<sup>435</sup> It encourages mothers to tell their children bedtime stories about martyrs and jihadi heroes, show their sons videos on ISIL's interpretation of Islam and military training videos and make them undergo physical training.<sup>436</sup>
346. This duty to raise the male children of the Caliphate did not fall solely on mothers. In its Arabic-language magazine, *Rumiyah*, ISIL highlighted the role of a "mujahid father" in getting the cubs accustomed to weapons and equipment, including rifles, tactical vests, bullets, grenades and explosive belts.<sup>437</sup>
347. While ISIL's ideology on the enlistment, conscription and use of children in hostilities is clearly addressed to its own members and sympathizers, and thus primarily targets Sunni children, child soldiers were also from religious or ethnic minorities, including the Yazidi religious group, as described below.

#### 8.1.2.2 *Conscription*

348. Yazidi boys were conscripted after ISIL separated them from their relatives. They were first captured along with other Yazidis across Sinjar, and, in most cases, men and older boys (over or around 14 –years old) were then quickly separated from the rest of the Yazidi captives.<sup>438</sup>
349. Boys aged seven to about 14, who were transferred through the same network of detention facilities as other captured and enslaved Yazidi civilians from Sinjar, were ultimately separated from their female relatives<sup>439</sup>
350. Some boys were later reunited with their relatives and kept for weeks or months in the villages of Qasr Mirhab and Qizil Qeo and the Hay al-Khadra neighbourhood in Tal

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<sup>433</sup> 'A jihad without fighting', *Dabiq*, Issue 11: From the battle of al-Azhab to the war of coalitions, August 2015 (Document received by UNITAD from Iraqi judicial authorities); 'The Lions of Tomorrow', *Dabiq*, Issue 8: Shari'ah Alone Will Rule Africa, March 2015 .

<sup>434</sup> , Translation by the Quilliam Foundation, February 2015, page 41

<sup>435</sup> Sister Al., 'A Sister's Role in Jihad', date unknown

<sup>436</sup> Sister Al., 'A Sister's Role in Jihad', date unknown

<sup>437</sup> *Rumiyah*, Issue 9 'The Ruling of the Belligerent Christians', May 2017, 'The woman is a shepherd in her husband's home and responsible for her flock', pages 18 to 21

<sup>438</sup> UNITAD, Confidential testimonial evidence.

<sup>439</sup> UNITAD, Confidential testimonial evidence.

Afar, where ISIL was detaining Yazidi families whose men were forcibly converted.<sup>440</sup> ISIL ultimately removed the men and older boys, and then the women, after some families escaped.<sup>441</sup> It appears that some remaining children stayed for several months, being cared for by women presumably affiliated with ISIL. Others stayed in houses in Hay al-Khadra neighbourhood in Tal Afar, with the older children looking after the others. Boys and girls were ultimately separated. Some other Yazidi children, both boys and girls, were taken to an orphanage in the al-Zhoor neighbourhood of Mosul. Boys over 10 years old were placed in a specific section, indoctrinated and conscripted from there.

### 8.1.2.3 Training

#### 8.1.2.3.1 Religious indoctrination and weapons training

351. Whether boys attended ISIL religious or military training, or both, seems to have been dependent on factors including age, perceived abilities and level of Shari'a knowledge.
352. Regarding ISIL's policy on the use of children, an ISIL Press Officer stated: "Those under 15 go to a Shari'a camp to learn about their creed and religion. Those over 16, they can attend the military camp." He further added that children under 13 do not participate in training camps but are "still being put to work as spies, being paid \$100 per month to inform on family, friends and neighbours".<sup>442</sup> Evidence collected by UNITAD seems to contradict that such a policy was being implemented.
353. Both before and after Yazidi boys were separated from their relatives, ISIL started giving them religious and Arabic lessons, taking them to training camps in Mosul or an Institute in Tal Afar.<sup>443</sup>
354. Boys would spend extended periods of time in these camps. While some of the more well-known camps, such as the Institute in Tal Afar, were formally institutionalized, others seem to have been improvised. In most camps, boys aged around eight to 18 had to follow a strict daily regimen which included religious lessons, praying and reading, along with weapons training.<sup>444</sup>
355. Boys in the training camps were subjected to psychological violence. For instance, they were forced to watch violent videos of battles and executions to further desensitize them.<sup>445</sup>

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<sup>440</sup> UNITAD, Confidential testimonial evidence.

<sup>441</sup> See Sections 6.6. and 7.3.2.

<sup>442</sup> ISIL Video, VICE News, 'Grooming children for Jihad', 8 August 2014

<sup>443</sup> UNITAD, Confidential testimonial evidence.

<sup>444</sup> UNITAD, Confidential testimonial evidence.

<sup>445</sup> UNITAD, Confidential testimonial evidence.

356. ISIL ultimately transferred Yazidi boys to other military camps to further their training on the basis of age and/or abilities.<sup>446</sup>

#### *8.1.2.3.2 Military training in Syria*

357. Yazidi boys, around 10 to 15 years old, who first were taken to training camps were then sent to military camps in different locations in Syria. Some other Yazidi boys seemed to have lived with ISIL members while following military training on a daily basis.<sup>447</sup>

358. The training in the military camps was focused on weaponry, although the boys still had to follow religious lessons, undergo intense physical exercise and watch violent propaganda. ISIL also filmed some boys in the camps for propaganda purposes.<sup>448</sup>

359. Such trainings indoctrinated the boys, who were then often unable to think differently after ISIL captivity or following return to their families.<sup>449</sup>

#### *8.1.2.4 Use in hostilities*

360. Information available to UNITAD on the use of Yazidi children and young boys in hostilities is limited. It appears that older boys were used by ISIL as foot soldiers or to guard facilities and checkpoints.<sup>450</sup>

361. However, ISIL members used Yazidi boys, regardless of their age or level of abilities, for bombings. ISIL gave Yazidi boys an explosive belt and told them to detonate it in different scenarios. Some Yazidi boys were used by ISIL to conduct suicide bombing operations.

## **8.2 Girls perceived as pubescent by ISIL**

### *8.2.1 Criteria for assessing physical maturity*

362. As discussed previously,<sup>451</sup> girls that ISIL assessed to have reached physical maturity were subjected to the same treatment, including sexual slavery, as women. UNITAD has first-hand accounts of girls aged between six and 17 years old at the time of capture who were sexually enslaved by ISIL fighters, either immediately or after a few years.

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<sup>446</sup> UNITAD, Confidential testimonial evidence.

<sup>447</sup> UNITAD, Confidential testimonial evidence.

<sup>448</sup> UNITAD, Confidential testimonial evidence.

<sup>449</sup> UNITAD, Confidential testimonial evidence.

<sup>450</sup> UNITAD, Confidential testimonial evidence.

<sup>451</sup> See Section 7.4.1.



363. ISIL members separated Yazidi girls as young as about nine years old from other captives.<sup>452</sup> Given the importance attributed by ISIL to virginity,<sup>453</sup> it is likely that ISIL sexually abused young girls because ISIL presumed them to be virgins.
364. In addition, prepubescent girls who were initially separated from their mothers or kept alongside them in captivity<sup>454</sup> would usually “age out” and be taken as slaves themselves.<sup>455</sup>
365. While age was a key criterion used by ISIL for assessing physical maturity, it was not the only one. Individual ISIL members also resorted to indicators of growth and physical development. They checked the bodies of girls, for example, to see if they had developed breasts and made some children remove their clothes for assessments. ISIL would then separate the older girls from their mothers.<sup>456</sup>

### 8.2.2 *Sexual slavery*

366. As described more extensively above, Yazidi girls considered pubescent by ISIL were subjected to the same treatment as adult women. They were thus distributed to ISIL members as early as the days following the 3 August 2014 attack on Sinjar. ISIL members took girls from the larger groups of women and detained them in holding sites. Many of the girls physically resisted and were subjected to violence from ISIL in response. Some were distributed via a “lottery” or gifted.<sup>457</sup>
367. Yazidi girls were then sold or traded among individual ISIL members. On some occasions, the girls were aware of the financial transactions involved.<sup>458</sup> The sales or trades between ISIL members took many different forms, as detailed further in Section 7.4.1.2.
368. Many Yazidi girls reported having been sold to multiple ISIL members.<sup>459</sup>
369. Their ISIL owners would almost invariably rape captive Yazidi girls, sometimes resulting in severe injuries. The girls would also be subjected to physical violence by their captors and sometimes their captors’ relatives. They were also subjected to severe psychological violence, including mock executions.<sup>460</sup>

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<sup>452</sup> UNITAD, Confidential testimonial evidence.

<sup>453</sup> See Section 7.4.

<sup>454</sup> See Section 8.3.

<sup>455</sup> UNITAD, Confidential testimonial evidence.

<sup>456</sup> UNITAD, Confidential testimonial evidence.

<sup>457</sup> UNITAD, Confidential testimonial evidence.

<sup>458</sup> UNITAD, Confidential testimonial evidence.

<sup>459</sup> UNITAD, Confidential testimonial evidence.

<sup>460</sup> UNITAD, Confidential testimonial evidence.

370. Much like their adult relatives, Yazidi girls were deprived of their reproductive rights and bodily autonomy. Several Yazidi witnesses reported being subjected to forced contraception and abortions by their captors.<sup>461</sup>

### 8.2.3 *Forced marriages*

371. Like Yazidi adult women,<sup>462</sup> some girls were forced to marry their captors, sometimes early in their captivity or once distributed to other ISIL members.<sup>463</sup>

372. These forced marriages took place irrespective of the point of captivity or state of ISIL.<sup>464</sup>

373. Although the way Yazidi girls were treated did not necessarily change after they were forcibly married, marriage did mean they could not be sold on. However, even if they had been forcibly married, Yazidi girls whose “husband” died or divorced them were not free. They were usually forcibly re-married, which is similar to the treatment of non-captive widows when their relatives were not close-by to assume responsibility for them.<sup>465</sup>

### 8.2.4 *Domestic servitude*

374. During their entirety of their captivity, pubescent girls were also forced to perform housework for the families of their ISIL captors<sup>466</sup> and were punished if it was not done properly.<sup>467</sup>

### 8.2.5 *Forced conversion and indoctrination*

375. While ISIL did not make as great an effort to indoctrinate and convert girls as they did with boys,<sup>468</sup> Yazidi girls did report some attempts at forced conversion and indoctrination into ISIL’s ideology. In some instances, Yazidi girls were forced to convert to Islam alongside their relatives before being separated.<sup>469</sup> This often profoundly impacted the girls’ relationships with their faith after their captivity, once released from ISIL control.<sup>470</sup>

376. The most sustained efforts to convert and indoctrinate Yazidi girls occurred in a domestic setting, much like the experiences of their adult female relatives, when they

<sup>461</sup> UNITAD, Confidential testimonial evidence.

<sup>462</sup> See Section 7.4.1.4.

<sup>463</sup> UNITAD, Confidential testimonial evidence.

<sup>464</sup> UNITAD, Confidential testimonial evidence.

<sup>465</sup> See UNITAD’s Report, “Analysis on women under the Islamic State”.

<sup>466</sup> UNITAD, Confidential testimonial evidence.

<sup>467</sup> UNITAD, Confidential testimonial evidence.

<sup>468</sup> See Section 8.1.2.3.1.

<sup>469</sup> See Sections 7.3. and 7.4.1.6.

<sup>470</sup> UNITAD, Confidential testimonial evidence.

were enslaved by ISIL members. Yazidi girls consistently reported that they were forced by their captors to learn the Quran and pray.<sup>471</sup>

377. Measures taken by ISIL to erase their Yazidi identity were not limited to forced conversion and indoctrination. ISIL also renamed pubescent girls with "Islamic" names, such as Aisha or Mariam.<sup>472</sup>
378. ISIL used additional measures to eradicate the Yazidi culture and beliefs. Young Yazidi captives recall being forbidden to speak their language and forced to speak only in Arabic. Some Yazidis who were children at the time of their capture did not remember how to speak Kurdish upon their release.<sup>473</sup>
379. In some instances, ISIL members even asked their captives to consider them family and call them "mum" and "dad".<sup>474</sup>

### 8.3 Pre-pubescent children

#### 8.3.1 *Living conditions during the August 2014 attack: deaths during besiege of the Sinjar mountains*

380. As detailed above,<sup>475</sup> as ISIL advanced into Sinjar, an estimated 35,000 to 50,000 Yazidis fled to the upper slopes of the Sinjar mountains.<sup>476</sup> At the time, UNICEF estimated that up to 25,000 children were "stranded in mountains surrounding Sinjar and in dire need of humanitarian aid including drinking water and sanitation services".<sup>477</sup> Media and researchers have consistently reported that a significant number of children died on the Sinjar mountains while besieged by ISIL.<sup>478</sup>

#### 8.3.2 *Children kept in captivity with their female relatives*

381. Young children, usually under the age of 10, mostly stayed with their mothers or other female relatives after ISIL members separated the men and pubescent boys. ISIL subsequently transferred the young children with their mothers and siblings to overcrowded holding sites that had limited sanitation facilities. Women and children

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<sup>471</sup> UNITAD, Confidential testimonial evidence.

<sup>472</sup> UNITAD, Confidential testimonial evidence.

<sup>473</sup> UNITAD, Confidential testimonial evidence.

<sup>474</sup> UNITAD, Confidential testimonial evidence.

<sup>475</sup> See Section 5.5.1.

<sup>476</sup> Office for the Coordination of Humanitarian Assistance (OCHA), 'OCHA Flash Update: Iraq Crisis – Significant Displacement from Sinjar, No. 2 | 4 August 2014', 4 August 2014, para. 2

<sup>477</sup> UNICEF, 'Statement on child deaths in Iraq; attributable to Marzio Babilie, UNICEF Representative', 5 August 2014; UNITAD, Confidential testimonial evidence.

<sup>478</sup> The Telegraph, 'At least 300 people, mostly children, died on Mount Sinjar, say doctors', 14 August 2014; Cetorelli et al., "Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey", PLOS, 9 May 2017.

would stay together for varying lengths of time in different locations,<sup>479</sup> in line with ISIL's propaganda forbidding the separation of mothers and their children who had not reached puberty.<sup>480</sup>

382. Some of the children were also reunited with their male relatives and kept for weeks or months in the villages of Qasr Mirhab and Qizil Qeo, or the Hay al-Khadra neighbourhood in Tal Afar, where ISIL detained Yazidi families whose men were forcibly converted.<sup>481</sup>
383. To a large extent, Yazidi children born in captivity, because their mothers were pregnant at the time of capture<sup>482</sup> or became pregnant from sexual abuse,<sup>483</sup> also remained with their mothers.

#### 8.3.2.1 *Physical and psychological violence*

384. Young Yazidi children kept with their enslaved relatives were witnesses to the high levels of physical, sexual and psychological violence Yazidi captives were subjected to by ISIL. The children would usually be present during the humiliating and degrading process by which Yazidi women were picked and distributed to ISIL fighters.<sup>484</sup>
385. Once bought by an ISIL member, Yazidi children continued to witness how their relatives were subjected to degrading treatment and violence.<sup>485</sup>
386. In addition, Yazidi children were used by ISIL to inflict psychological pain on their mothers and to force them to comply with demands, including sexual intercourse, or as a means of punishing them. ISIL captors would, for instance, separate Yazidi mothers from their children for different lengths of time as punishment.<sup>486</sup>
387. ISIL members would also inflict physical abuse on the children, such as beatings or forcing them to remain outside during extreme weather conditions.<sup>487</sup>
388. ISIL members' physical abuse towards children also included the deprivation of food and water, along with more broadly creating inhumane living conditions. Yazidi

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<sup>479</sup> UNITAD, Confidential testimonial evidence.

<sup>480</sup> Office of Research and Fatwas, Pamphlet known as the 'Slavery Q&A' (سؤال وجواب في السبي ورقاب), 3 December 2014 (Document received by UNITAD from Tal Keyf Court).

<sup>481</sup> See Sections 7.3.2. and 7.4.3.

<sup>482</sup> UNITAD, Confidential testimonial evidence.

<sup>483</sup> See Sections 7.4.1.3. and 8.2.2.

<sup>484</sup> UNITAD, Confidential testimonial evidence.

<sup>485</sup> UNITAD, Confidential testimonial evidence.

<sup>486</sup> UNITAD, Confidential testimonial evidence.

<sup>487</sup> UNITAD, Confidential testimonial evidence.

witnesses reported that children suffered from many infections due to the lack of food and water as well as poor hygiene conditions.<sup>488</sup>

389. Yazidi children also developed severe psychological issues while in captivity due to their experience of capture and other traumatic events they witnessed and endured.<sup>489</sup>

#### 8.3.2.2 *Indoctrination*

390. Yazidi children held in captivity by ISIL members alongside their female relatives were also subjected to indoctrination and efforts to convert them to Islam. Boys and girls were told to speak in Arabic, read the Quran, wear “appropriate” clothing and forced to pray five times a day.<sup>490</sup>
391. The impact of forced conversion and indoctrination was particularly severe on the younger Yazidi children, who only had a faint memory of their original religion and culture. As a result, some children would later refer to their families as infidels and be reluctant to meet them. In some instances, ISIL members would change the name of Yazidi children to “Islamic” names, such as Roqaiya, Mariam, Abu Abdulrahman or Hamza. If a Yazidi baby was born in ISIL captivity, ISIL would name the baby with an “Islamic” name.<sup>491</sup>

### 8.3.3 *Children kept in captivity without their relatives*

#### 8.3.3.1 *Children kept in “orphanages”*

392. After the Yazidi families kept in the villages of Qasr Mirhab and Qizil Qeo, along with the Hay al-Khadra neighbourhood in Tal Afar, were ultimately separated, some Yazidi children stayed in schools in Tal Afar for several months under the watch of women presumably affiliated with ISIL.<sup>492</sup> Information indicates that other Yazidi children stayed in houses in the Hay al-Khadra neighbourhood, with the older children looking after the younger ones. Ultimately, boys and girls were separated.
393. Some Yazidi boys and girls were taken to an orphanage in the al-Zhoor neighbourhood in Mosul,<sup>493</sup> where most of the Shi’a Turkmen children captured in and around Tal Afar were held. Boys over 10, girls over 10, and children under 10 were kept in three distinct

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<sup>488</sup> UNITAD, Confidential testimonial evidence.

<sup>489</sup> UNITAD, Confidential testimonial evidence.

<sup>490</sup> UNITAD, Confidential testimonial evidence.

<sup>491</sup> UNITAD, Confidential testimonial evidence.

<sup>492</sup> UNITAD, Confidential testimonial evidence.

<sup>493</sup> UNITAD, Confidential testimonial evidence.

sections.<sup>494</sup> Most Yazidi children seem to have been held in the “nursery” section, meaning they were very young.<sup>495</sup>

394. Yazidi children kept in such places would ultimately be adopted, enslaved or conscripted, depending on their age and sex.<sup>496</sup> Yazidi girls would be taken from the orphanage in Mosul to be married,<sup>497</sup> however, due to the young age of the witnesses at the time, it is unclear whether “marriage” might refer to sexual slavery.

#### 8.3.3.2 *Sexual violence*

395. In these types of “orphanages,” ISIL members appear to have sexually abused some Yazidi girls, although it is difficult to fully assess whether this was widespread conduct. <sup>498</sup> Much like girls who were kept with their female relatives, prepubescent girls who were separated would eventually be perceived by ISIL as being old enough to be subjected to sexual slavery.<sup>499</sup>

#### 8.3.3.3 *Adoption by ISIL families*

396. ISIL members and ISIL families adopted some Yazidi children who stayed in “orphanages” or were initially in captivity with their mothers.<sup>500</sup> Adopted children were not protected from physical and psychological abuse and would often be beaten by ISIL members, although one witness reported that this treatment did not differ from two ISIL members’ treatment of their biological children.<sup>501</sup>
397. Adoptions were particularly traumatizing for young children and involved a high level of indoctrination by ISIL members.<sup>502</sup>

#### 8.3.3.4 *Enslavement*

398. Some young children were enslaved by ISIL members on their own, separately from their female relatives, although this approach does not appear to have been systematic or organized.<sup>503</sup>

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<sup>494</sup> See, UNITAD’s Report, “Analysis on the sexual and gender-based crimes and crimes against or affecting children committed against the Shi’a Turkmen community by ISIL”, May 2024.

<sup>495</sup> UNITAD, Confidential testimonial evidence.

<sup>496</sup> See Sections 8.1.2., 8.2.2., 8.3.3.2. 8.3.3.3. and 8.3.3.4.

<sup>497</sup> UNITAD, Confidential testimonial evidence.

<sup>498</sup> UNITAD, Confidential testimonial evidence.

<sup>499</sup> See Sections 7.4.1.3. and 8.2.2.

<sup>500</sup> UNITAD, Confidential testimonial evidence.

<sup>501</sup> UNITAD, Confidential testimonial evidence.

<sup>502</sup> UNITAD, Confidential testimonial evidence.

<sup>503</sup> UNITAD, Confidential testimonial evidence.



399. More often, girls who were initially enslaved alongside their female relatives could be bought separately at a later stage.<sup>504</sup>
400. Yazidi boys sent to military training were sometimes given to ISIL families, as well, while it is unclear whether they were “adopted” or bought to be used as servants.<sup>505</sup>

#### 8.3.3.5 *Indoctrination*

401. Although available information and evidence remains limited, it appears that ISIL members provided new clothes, hijabs and scarves (for girls), along with dishdashas (for boys) to Yazidi children kept in captivity without their relatives. Usually, ISIL members would cut the girls’ hair short “like boys,” seemingly for hygienic reasons.<sup>506</sup>
402. ISIL members gave religious lessons to Yazidi children and forced them to pray several times a day,<sup>507</sup> accompanied with physical violence as punishment for the children’s mistakes or failure to learn.
403. In addition, Yazidi boys would receive physical fitness training<sup>508</sup> before being sent to a specific Institute for conscription.<sup>509</sup>

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<sup>504</sup> UNITAD, Confidential testimonial evidence.

<sup>505</sup> UNITAD, Confidential testimonial evidence.

<sup>506</sup> UNITAD, Confidential testimonial evidence.

<sup>507</sup> UNITAD, Confidential testimonial evidence.

<sup>508</sup> UNITAD, Confidential testimonial evidence.

<sup>509</sup> See Section 8.1.2.

## 9 DESTRUCTION AND DAMAGE OF RELIGIOUS AND CULTURAL SITES AND PILLAGING AND PLUNDERING OF PRIVATE PROPERTY

### 9.1 Destruction and damage to cultural property

404. During and after the August 2014 attacks, ISIL destroyed and damaged numerous Yazidi religious and cultural sites. According to different organizations, at least 68 Yazidi religious sites, including temples, statues, tombstones, graves and shrines, were destroyed by ISIL in Iraq.<sup>510</sup>
405. As summarized below, UNITAD gathered preliminary evidence of the alleged destruction by ISIL of at least 12 Yazidi temples or shrines in Sinjar between 3 August 2014 and 12 July 2015. A more comprehensive assessment of UNITAD's findings is subject of a separate report.<sup>511</sup>
406. On or around 3 August 2014, ISIL destroyed at least three temples or shrines located on the south-centre side of the Sinjar mountains: Ismaeel Bek Shrine (a.k.a. Eze Shrine), Sheikh Mahmade Behteny Temple (a.k.a. Rambusi Temple) and Sayyida Zainab Shrine.<sup>512</sup>
407. On or around 15 August 2014, at least two shrines located in Sinjar were reportedly destroyed by ISIL: Sheikh Abdul Qader<sup>513</sup> and Sheikh Hassan<sup>514</sup> Shrines. During the same period, at least 16 temples or shrines were destroyed by ISIL in Bashiqa-Bahzani region.<sup>515</sup>
408. On or around 24 August 2014, at least one temple located in Jedaly village at the foot of the Sinjar mountains was destroyed by ISIL: Sheikh Mand Temple.<sup>516</sup>

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<sup>510</sup> RASHID, "Destroying the Soul of the Yazidis: Cultural Heritage Destruction during the Islamic State's Genocide against the Yazidis", 2 August 2019, pp. 5, 20, 53 ; See also, RASHID, "The Intentional Destruction of Cultural Heritage in Iraq as a Violation of Human Rights: Submission for the United Nations Special Rapporteur in the field of cultural rights" ; UNESCO, "Religious Heritage in Selected Iraqi Governorates" (2019), pp. 260 – 287; UN-Habitat, "City Profile Of Mosul, Iraq: Multi-sector assessment of a city under siege" (10/206), p. 78

<sup>511</sup> See, for a complete analysis, UNITAD's Report, "Destruction of cultural heritage by ISIL in Iraq", August 2024.

<sup>512</sup> RASHID, "Destroying the Soul of the Yazidis: Cultural Heritage Destruction during the Islamic State's Genocide against the Yazidis", 2 August 2019, pp. 76-78

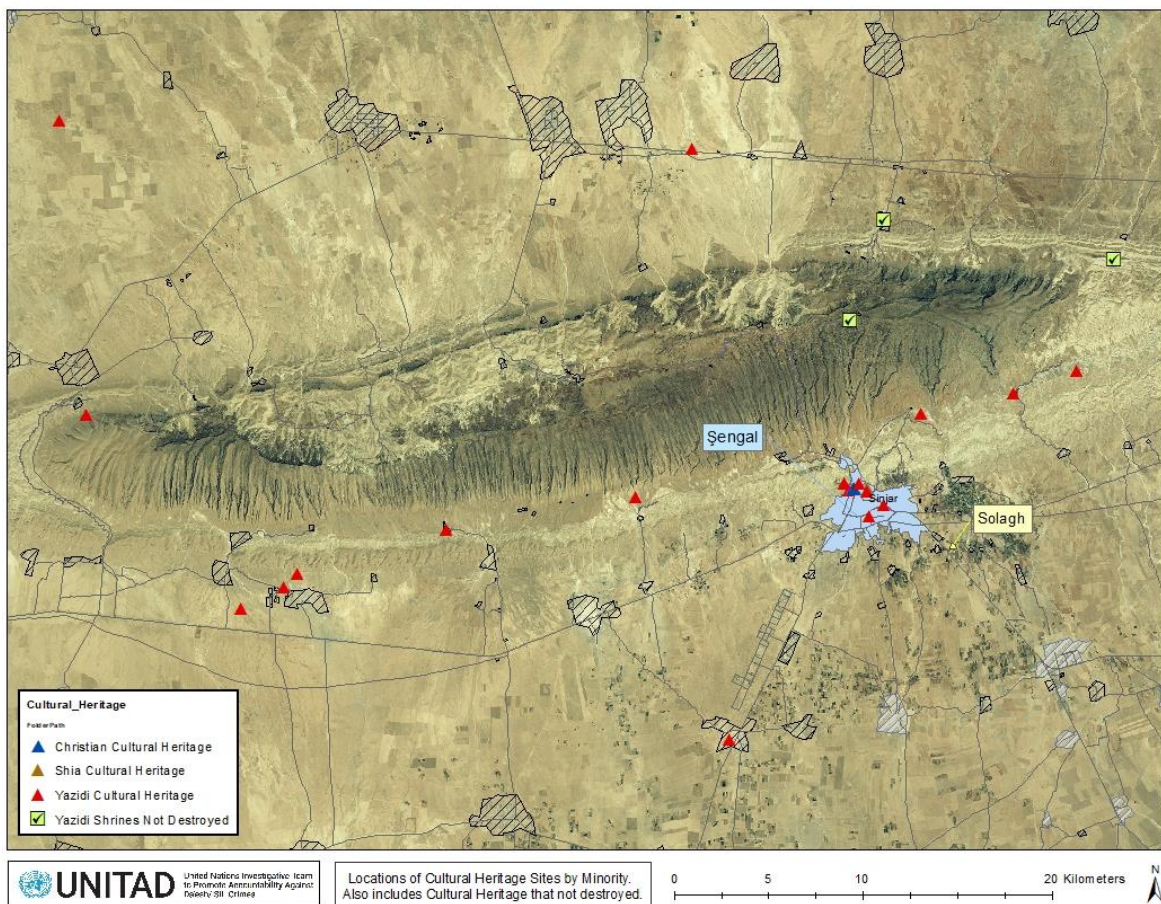
<sup>513</sup> RASHID, "Destroying the Soul of the Yazidis: Cultural Heritage Destruction during the Islamic State's Genocide against the Yazidis", 2 August 2019, pp. 92 and 93

<sup>514</sup> RASHID, "Destroying the Soul of the Yazidis: Cultural Heritage Destruction during the Islamic State's Genocide against the Yazidis", 2 August 2019, pp. 86 and 87

<sup>515</sup> See, UNITAD's Report, "Destruction of cultural heritage by ISIL in Iraq", August 2024.

<sup>516</sup> RASHID, "Destroying the Soul of the Yazidis: Cultural Heritage Destruction during the Islamic State's Genocide against the Yazidis", 2 August 2019, pp. 69 to 71

409. Between or around 14 and 16 October 2014, at least two shrines located close together in the south-east side of the Sinjar mountains in Solagh village were destroyed by ISIL: Amadin and Mahma Rashan Shrines.
410. On or around 23 and 24 October 2014, another three shrines closely located in the south-west side of the Sinjar mountains were destroyed by ISIL: Malek Fakhraddin, Sheikh Abdul Qader and Sheikh Abdul Aziz Shrines.
411. On 12 July 2015, Sheikh Hassan Temple (or Sheikh Hassan Shrine), located in Gabara, was destroyed by ISIL.<sup>517</sup>



*Map of cultural heritage sites destroyed by ISIL (source: UNITAD)*

<sup>517</sup> RASHID, "Destroying the Soul of the Yazidis: Cultural Heritage Destruction during the Islamic State's Genocide against the Yazidis", 2 August 2019 ; ISIL video "Yuqaddim Sinjar Maqbara al-Kuffar (Sinjar has been transformed into the graveyard of the unbelievers)", Jazira Province Media Office, 15 September 2015.

## 9.2 Pillaging and plundering of private property

412. ISIL had a system in place to unlawfully acquire or appropriate, and record or account for, the personal property of Yazidis. Such personal property included money, jewellery, mobile phones, vehicles along with cattle and agricultural produce.
413. Prior to the attack on Sinjar, ISIL carried out several kidnappings of Yazidi farmers in Sinjar from whom they confiscated personal property.<sup>518</sup>
414. During the attack on Sinjar, ISIL members systematically confiscated weapons belonging to Yazidis, as well as any personal property in their possession while trying to flee.<sup>519</sup> Immediately upon capture, ISIL members confiscated Yazidi families' valuables, including their mobile phones, money, gold and other jewellery.<sup>520</sup> Monetary value aside, ISIL prioritized the confiscation of mobile phones to prevent Yazidis from seeking help during captivity. This is further supported by the publication in October 2015 of an ISIL document prohibiting *sabayas* to use a phone, the internet or any other means of communication.<sup>521</sup>
415. ISIL also actively plundered the houses of Yazidis who fled.<sup>522</sup>
416. ISIL members continued to raid houses in the Yazidi villages that they overtook following the attack. Yazidi captives were constantly inspected for personal items by ISIL members.<sup>523</sup>
417. Arabs living in Ba'aj during its occupation corroborate survivor testimonies regarding the plundering of their personal belongings and attest to the existence of an organized system of collecting, distributing and accounting for such spoils. This has been further corroborated by internal ISIL documents and propaganda.<sup>524</sup>
418. ISIL system to collect and record the properties taken from the Yazidis is further demonstrated by, inter alia, the following internal accounting documents:
- A ledger showing money taken from Yazidis being sent to the ISIL Bayt al-Mal (Treasury Department);<sup>525</sup>

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<sup>518</sup> See Section 5.3.5.

<sup>519</sup> See Sections 6., 7.2. and 7.3.

<sup>520</sup> UNITAD, Confidential testimonial evidence.

<sup>521</sup> Wilayat Nineveh, 'Supervising General Committee' (اللجنة العامة المشرفة), "Preventing use of phone and internet" (منع استخدام الهاتف والنت), 18 October 2015 (Document received by UNITAD from Iraqi judicial authorities).

<sup>522</sup> UNITAD, Confidential testimonial evidence.

<sup>523</sup> See Section 7.

<sup>524</sup> UNITAD, Confidential testimonial evidence.

<sup>525</sup> Ledger sent to ISIL Ministry of Finance (Document received by UNITAD from Iraqi judicial authorities).

- A proposal to the Emir of the Islamic Police in Nineveh Province on what to do with cars, including cars whose owners are from northern Iraq, Yazidis or apostates;<sup>526</sup>
  - A circular from Zakat Department of Mosul Division to Bayt al-Mal with details of incoming funds, in which two lines items for 83,668,750 dinars and 1,703,000 dinars of confiscated funds are noted to be Yazidi grain money.<sup>527</sup> Three pieces of gold are also mentioned in the circular; however, the source of the gold is not provided.
419. ISIL has also released propaganda images of its distribution of *zakat*, with numerous photographs purporting to illustrate the distribution of personal items like air conditioners, water tanks, food, livestock and electrical appliances in Blej/Qayrawan.<sup>528</sup> In light of the evidence showing ISIL's practice of confiscating items from Yazidi households and distributing zakat to its supporters in Ba'aj, it is possible that the items featured in these photographs are also confiscated goods, possibly from areas located in proximity from Blej/Qayrawan.

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<sup>526</sup> Proposal to the Emir of the Islamic Police in Nineveh Province (Document received by UNITAD from Iraqi judicial authorities).

<sup>527</sup> Circular from Zakat Department of Mosul Division to Bayt al Mal (Document received by UNITAD from Iraqi judicial authorities).

<sup>528</sup> See for instance, ISIL propaganda images of distribution of zakat.



## 10 LEGAL ASSESSMENT

### 10.1 Introduction

420. This section discusses the legal characterization of the acts and events described in Sections 5 through 9.
421. 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 and hybrid courts that apply customary international law,<sup>529</sup> which for the purposes of this report includes the International Criminal Tribunal for the former Yugoslavia (ICTR), International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL). Where necessary, reference will be made to the Rome Statute of the International Criminal Court (ICC) to highlight any significant differences in the applicable law and to support related investigations in domestic jurisdictions that have incorporated the Rome Statute into their legislation.
422. The current brief contemplates cumulative charges for the same conduct, which is a well-established principle at both the UN-affiliated international criminal tribunals and the ICC. Cumulative convictions are permitted under the law of these courts where “each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other”.<sup>530</sup>
423. The legal requirements for the analysed crimes and modes of liability are set out below. These requirements are further elaborated only where the legal analysis so requires.
424. As mentioned in Section 2.1., preliminary legal findings are made according to the “reasonable grounds to believe” evidentiary standard.
425. **Section 10.2** addresses the legal requirements (contextual elements) applicable to war crimes and crimes against humanity, while **Section 10.3** sets out the requirements of the specific crimes (underlying crimes) that qualify as crimes against humanity and war crimes. Some of the crimes, such as murder, have the same or very similar elements whether as a crime against humanity or a war crime. Other crimes are uniquely defined as a war crime or as a crime against humanity. Those that have overlapping elements are discussed together, whereas those that are unique are addressed separately. Based on the facts found in Sections 5 through 9, numerous war crimes and crimes against

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<sup>529</sup> This refers to the jurisprudence of the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the Kosovo Specialist Chambers (KSC).

<sup>530</sup> *Delalić* AJ, para. 412.



humanity were committed by ISIL during and resulting from its attack on Sinjar in August 2014.

426. Genocide, a separate crime not subject to the pre-conditions applicable for war crimes or crimes against humanity, is discussed in **Section 10.4**. The facts found in Sections 3 through 8, as discussed in **Section 10.4.5**, correspond to the material elements of genocide. Those acts, as addressed in **Section 10.4.4** were committed with the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such” – namely the Yazidis as a religious group. Based on the available evidence, there are reasonable grounds to believe that ISIL committed genocide against the Yazidis as a group, as well as war crimes and crimes against humanity in the course of its attack on Sinjar, as set out in further detail below.

## 10.2 Contextual elements of war crimes and crimes against humanity

### 10.2.1 Contextual elements of war crimes

427. 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.
428. 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 (“Common Article 3”), which is 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.<sup>531</sup>
429. As detailed in UNITAD’s report on the nature of the armed conflict in Iraq, such requirements were fulfilled in Iraq from no later than 4 January 2014.<sup>532</sup>

### 10.2.2 Contextual elements of crimes against humanity

430. Under customary international law, the contextual requirements for crimes against humanity consist of: (i) a widespread or systematic attack directed against any civilian

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<sup>531</sup> UNITAD’s Report “Non-International Armed Conflict in Iraq and Da’esh/ISIL as an Organised Non-State Actor”, June 2024.

<sup>532</sup> See further, UNITAD’s Report “Non-International Armed Conflict in Iraq and Da’esh/ISIL as an Organised Non-State Actor”, September 2024.

population; (ii) a nexus between the underlying act and the attack; and (iii) knowledge of the attack.<sup>533</sup>

431. 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 Yazidis, Shi'a Muslims, Christians, Kaka'i, Turkmen, Shabak and Sunni Muslims whom it perceived as non-compliant with its interpretation of Islam.<sup>534</sup> Across the first six months of 2014, UNAMI reported that "a minimum 5,576 civilians were killed and 11,666 were wounded throughout Iraq".<sup>535</sup> Various forms of improvised explosive devices (IEDs) and VBIEDs claimed the greatest number of casualties: "IED devices killed 1,828 civilians and wounded at least 5,677. VBIED attacks claimed the lives of 669 civilians and wounded 2,288. Suicide bombers killed 393 civilians and wounded 1,066".<sup>536</sup>
432. The attack on Sinjar that commenced on 3 August 2014 was, as such, part of the widespread or systematic attack directed against a civilian population. As of this date, and in the years that followed, ISIL fighters consistently committed numerous crimes against the Yazidis, including murder, rape, sexual violence, torture, imprisonment, sexual slavery, enforced prostitution, forced pregnancy, other inhumane acts, persecution, deportation and forcible transfer.<sup>537</sup> Furthermore, ISIL leaders declared Yazidis "kuffar" and "devil worshippers," openly calling for their persecution and execution.<sup>538</sup>
433. The contextual elements for the commission of crimes against humanity – a widespread or systematic attack directed against any civilian population – are satisfied in respect of the crimes committed against the Yazidi population from August 2014 onwards.

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<sup>533</sup> UNITAD's Report, "Contextual elements of crimes against humanity committed by ISIL in Iraq", August 2024.

<sup>534</sup> See UNITAD's Reports, Factual and legal assessments of acts committed by ISIL (Da'esh) in Iraq against Christians, Shia, Kaka'I, Turkmen, Shabak and Sunni communities.

<sup>535</sup> UNAMI Human Rights Office, "Report on Human Rights in Iraq: January-June, 2014", August 2014, page 1

<sup>536</sup> UNAMI Human Rights Office, "Report on Human Rights in Iraq: January-June, 2014", August 2014, page 2

<sup>537</sup> See Sections 5, 6, 7 and 8.

<sup>538</sup> Dabiq, Issue 4: The Failed Crusade, October 2014, p. 14 ("The Yazidis present-day creed – as it has changed over history – entails the worship of Iblīs who they consider to be a fallen but forgiven angel amongst the angels who were ordered to prostrate to Ādam! [...] What arrogant kufr can be greater than this? [...] Their creed is so deviant from the truth that even cross-worshipping Christians for ages considered them devil worshippers and Satanists, as is recorded in accounts of Westerners and Orientalists who encountered them or studied them. It is ultimately ironic that Obama sites these devil worshippers as the main cause for his intervention in Iraq and Shām, as he sides with the peshmerga [...]); UNITAD, Confidential testimonial evidence.

### 10.3 Individual crimes against humanity and war crimes

#### 10.3.1 Murder (as a crime against humanity and war crime)

434. Murder is both a crime against humanity<sup>539</sup> and a war crime,<sup>540</sup> which have the same elements.<sup>541</sup> Murder is the killing or causing death<sup>542</sup> 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.<sup>543</sup> Death can be proven by producing the victim's body or by circumstantial evidence, provided that this is the only reasonable inference available.<sup>544</sup>
435. Evidence regarding the crime of murder as a crime against humanity and a war crime is detailed in Section 6.

#### 10.3.2 Extermination (as a crime against humanity)

436. The *actus reus* of the crime of extermination is "killing on a large scale".<sup>545</sup> 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,<sup>546</sup> but there is no specific numerical threshold of victims required to qualify as extermination.<sup>547</sup> 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 individual victims.<sup>548</sup>
437. A massacre is not the only form of extermination. The crime may also be committed by "the creation of conditions of life that lead to the mass killing of others, through his act(s) or omission(s); having intended the killing, or being reckless, or grossly negligent as to whether the killing would result".<sup>549</sup> In respect of this form of extermination, the Rome Statute replaces the concept "leading to the mass killing of others" with the concept "calculated to bring about the destruction of part of a population".<sup>550</sup> These

<sup>539</sup> ICTY Statute, Art. 5(a); ICTR Statute, Art. 3(a); ICC Statute, Art. 7(1)(a).

<sup>540</sup> Common Article 3, Geneva Conventions, ; ICTR Statute, Art. 4(a) ; ICC Statute, Art. 8(2)(c)(i)

<sup>541</sup> *Popović et al.* TJ, para. 787; *Brdjanin* TJ, para. 380.

<sup>542</sup> The contribution must be at least "substantial": *Brdjanin* TJ, para. 382; *Delalić et al.* TJ, para. 424.

<sup>543</sup> *Kvočka et al.* AJ, para. 261; *Kordić & Čerkez* AJ, para. 36; *Delalić et al.* AJ, para. 422; *Tolimir* TJ, paras.713-716.

<sup>544</sup> *Kvočka et al.* AJ, para. 260.

<sup>545</sup> *Lukić & Lukić* AJ, para. 536; *Stakić* AJ, para. 259; *Ntakirutimana* AJ, para. 536.

<sup>546</sup> *Ntakirutimana* AJ, para. 521. It is not an element of the crime of extermination that a precise identification of "certain named or described persons" be established. It is sufficient that the Prosecution satisfy the Trial Chamber that mass killings occurred. In this case that element was satisfied by the Trial Chamber's findings that hundreds of people were killed at the Mugonero Complex and that thousands of people were killed in Bisesero.

<sup>547</sup> *Ntakirutimana* AJ, para. 516.

<sup>548</sup> *Lukić & Lukić* AJ, para. 538

<sup>549</sup> *Kayishema & Ruzindana* TJ, para. 144.

<sup>550</sup> ICC Statute, Art. 7(2)(b).

two formulations differ in important respects. Acts that are directed toward at least a “part” of the population, and that lead to their death, will constitute extermination, even if the victims are not immediately killed.

438. Evidence regarding the crime of extermination as a crime against humanity is detailed in Section 6.

**10.3.3 Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity (as crimes against humanity and war crimes)**

439. Rape, though not an expressly enumerated prohibited act under Common Article 3, is now well-recognized as a war crime under that provision.<sup>551</sup> Rape is also well-established as a crime against humanity.<sup>552</sup> The Rome Statute includes additional forms of sexual violence as both war crimes and crimes against humanity, all of which fall within the requirement of humane treatment and the prohibitions on “outrages upon personal dignity,” “cruel treatment” and “torture” of Common Article 3. Many of these specific crimes have also been recognized in diverse sources of customary international law,<sup>553</sup> which may be considered declaratory of existing customary international law. The only possible exception concerns the crime of “forced pregnancy,” which has no clear lineage in customary international law prior to its adoption as part of the Rome Statute.<sup>554</sup>
440. The definition of rape in the ICC Elements of Crimes, which in this respect may be taken as expressive of customary international law, is that: “1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. 2. The invasion was committed by force, or by threat of force or coercion,<sup>555</sup> such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”<sup>556</sup>

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<sup>551</sup> *Kunarac et al.* TJ, para. 408.

<sup>552</sup> ICTR Statute, Art. 3(g); ICTY Statute, Art. 5(g).

<sup>553</sup> *Prlić* TJ, v.1, para. 116; GC IV, Art. 27(2) (prohibiting “enforced prostitution”); *Kunarac et al.* TJ, para. 742 (convicting the accused for enslavement in the context of sexual enslavement”); SCSL Statute, Art. Article 2 of the SCSL Statute, art. 2 (g) (conferring jurisdiction over “rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence). See Triffterer (3<sup>rd</sup> ed.), pp. 212-217, 490–503.

<sup>554</sup> See Triffterer (3<sup>rd</sup> ed.), pp. 498-499.

<sup>555</sup> *Ntaganda* TJ, para. 935. *Bemba* TJ, para. 104.

<sup>556</sup> ICC Elements of Crimes, Articles 7(1)(g), 8(2)(e)(xxii), 8(2)(b)(xxii); *Ntaganda* TJ, para. 935. *Bemba* TJ, para. 104.

441. Coercive circumstances can be evidenced by a show of physical force<sup>557</sup> or inferred from an armed conflict or military presence of hostile forces among the civilian population.<sup>558</sup> Other, additional factors might create a coercive environment, including the number of people involved in the commission of the crime, or whether the crime is committed during or immediately following a combat situation, or committed together with other crimes.<sup>559</sup>
442. Sexual slavery<sup>560</sup> requires the perpetrator to have “exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty” and “caused such person or persons to engage in one or more acts of a sexual nature”.<sup>561</sup> The *Ntaganda* Trial Chamber, echoing the view of the *Kunarac* Appeal Chamber in respect of enslavement in general, has indicated that ownership does not necessarily require a commercial transaction, but is a factual assessment based on a variety of factors such as “control of the victim’s movement, the nature of the physical environment, psychological control, measures taken to prevent or deter escape, use of force or threats of use of force or other forms of physical or mental coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality, forced labour, and the victim’s vulnerability.”<sup>562</sup> Ownership could be inferred, for example, even when a person “was not physically confined but were otherwise unable to leave as they would have nowhere else to go and fear for their lives”.<sup>563</sup>
443. Enforced prostitution is “caus[ing] one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent,” from which the “the perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature”.<sup>564</sup>
444. Forced pregnancy is “confin[ing] one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law”.<sup>565</sup>

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<sup>557</sup> *Akayesu* TJ, para. 688. *Ntaganda* TJ, para 935.

<sup>558</sup> *Ntaganda* TJ, para. 935.

<sup>559</sup> *AFRC* TJ, paras. 694 to 695. *Bemba* TJ, paras. 103 to 104. *Ntaganda* TJ, para. 935.

<sup>560</sup> SCSL Statute, Art. 2(g).

<sup>561</sup> ICC Elements of Crimes, Art. 7(1)(g)-2, p. 8; Art. 8(2)(e)(vi)-2, p. 37.

<sup>562</sup> *Ntaganda* TJ, para. 952.

<sup>563</sup> *Ntaganda* TJ, para. 952.

<sup>564</sup> ICC Elements of Crimes, Art. 7(1)(g)-3, p. 9; Art. 8(2)(e)(vi)-3, p. 37.

<sup>565</sup> ICC Elements of Crimes, Art. 7(1)(g)-4; Art. 8(2)(e)(vi)-, p. 38.

445. Enforced sterilization is “depriv[ing] one or more persons of biological reproductive capacity” which is not “justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent”.<sup>566</sup>
446. “Any other form of sexual violence” is an “act of a sexual nature against one or more persons or caus[ing] such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent,” which is of “comparable gravity to that of a serious violation of article 3 common to the four Geneva Conventions”.<sup>567</sup>
447. Evidence regarding rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity as crimes against humanity and war crimes is detailed in Sections 7 and 8.

#### 10.3.4 *Enslavement (as a crime against humanity)*

448. Enslavement is a well-established crime against humanity under customary international law.<sup>568</sup> The Rome Statute definition of enslavement is “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”<sup>569</sup> The ICC Elements of Crimes gives examples of the “exercise of power” as “purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty”.<sup>570</sup> The ICTY has identified various indicia of enslavement, including (i) control or restrictions of someone’s movement and, more generally, measures taken to prevent or deter escape; (ii) control of physical environment; (iii) psychological control or pressure; (iv) force, threat of force or coercion; (v) duration of the exercise of powers attaching to the right of ownership; (vi) assertion of exclusivity; (vii) subjection to cruel treatment and abuse; (viii) control of sexuality; (ix) forced labour or subjecting the person to servile status; and (x) the person’s vulnerability and the socio-economic conditions in which the power is exerted.<sup>571</sup> Enslavement has been found in the case of Muslim women and girls in

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<sup>566</sup> ICC Elements of Crimes, Art. 7(1)(g)-5, p. 9; Art. 8(2)(e)-5, p. 38.

<sup>567</sup> ICC Elements of Crimes, Art. 7(1)(g)-6, p.10; Art. 8(2)(e)-6, p. 38.

<sup>568</sup> UN, Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (“London Agreement”), 8 August 1945, Art 6 of the Nuremberg Charter; UNSC, ‘Statute of the International Criminal Tribunal for the Former Yugoslavia’ (as amended on 17 May 2002), 25 May 1993, Article 5(c); UNSC, ‘Statute of the International Criminal Tribunal for Rwanda’ (as last amended on 13 October 2006), 8 November 1994, Article 3(c); UNSC, ‘Statute of the Special Court for Sierra Leone’, 16 January 2002, Article 2(c); Art 7(c) of the Rome Statute.

<sup>569</sup> Rome Statute, Art. 7(2)(c).

<sup>570</sup> ICC Elements of Crimes, Art. 7(1)(c), p. 4.

<sup>571</sup> *Kunarac et al.* AJ, para. 119. *Taylor* TJ, para. 447; *Sesay* TJ, para. 199; *Duch* TJ, para. 342; *Katanga* TJ, para. 976. *Ongwen* TJ, para. 2712.



Bosnia and Herzegovina who were detained and raped, as well as “rented out” and sold to soldiers for the purpose of being raped;<sup>572</sup> and in respect of civilians who were kidnapped in Sierra Leone and forced to mine diamonds.<sup>573</sup> To note, neither a commercial transaction<sup>574</sup> nor mistreatment is required.<sup>575</sup> “Distribution” of abducted women and girls among soldiers of an armed group has been discussed as relevant to both the determination of enslavement and sexual slavery.<sup>576</sup>

449. Enslavement is closely related to sexual enslavement (addressed in the Section 10.3.3). Sexual acts can be indicative of enslavement,<sup>577</sup> and “sexual slavery can lead to a conviction for enslavement”.<sup>578</sup>
450. Evidence regarding the crime of enslavement as a crime against humanity is detailed in Sections 7 and 8.

### ***10.3.5 Torture (as a crime against humanity and war crime), mutilation and cruel treatment (as a war crime)***

451. Torture is the infliction 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.<sup>579</sup> This infliction may occur by way of an act or omission,<sup>580</sup> and must be intentional.<sup>581</sup>
452. While the Rome Statute has removed the “purpose” requirement (but only in respect of the crime as a crime against humanity, not as a war crime),<sup>582</sup> this does not unequivocally reflect customary international law. The ICTY has expressly held that the “purpose” requirement – which is part of the Convention Against Torture – “may be considered to reflect customary international law”.<sup>583</sup>

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<sup>572</sup> *Kunarac et al.* TJ, paras. 746–782, 716–745.

<sup>573</sup> *Taylor* TJ, paras. 528–665; *Sesay* TJ, paras. 62–64, 343–344, 604 and 635.

<sup>574</sup> *Ntaganda* TJ, para. 952; *Katanga* TJ, para. 976.

<sup>575</sup> *Duch* TJ, para. 344; *Kunarac et al.* AJ, para. 123.

<sup>576</sup> *Ongwen* TJ, paras. 2143 – 2182.

<sup>577</sup> *Kunarac et al.* TJ, para. 542: “[...] Further indications of enslavement include exploitation; the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship; sex; prostitution; and human trafficking. [...]”

<sup>578</sup> *Brima* AJ, para. 739. [NOTE: The Trial Chamber however considered the acts of sexual slavery under the outrages of personal dignity. *Brima et al.* Appeal Judgement, para. 739: “[...] Count 13 alleges the crime of enslavement by abductions and forced labour, not sexual slavery. Although sexual slavery can lead to a conviction for enslavement, the Trial Chamber has considered the crime of sexual slavery under Count 9 (Outrages upon Personal Dignity).”]; See also, ICC, *Ongwen* TJ, para. 2715.

<sup>579</sup> *Kunarac et al.* AJ, paras. 142-148; *Kunarac et al.* TJ, para. 497; *Case 001* (ECCC) TJ, paras. 354-356.

<sup>580</sup> *Kunarac, et al.* TJ, para. 497(i).

<sup>581</sup> *Kunarac, et al.* TJ, para. 497(ii).

<sup>582</sup> ICC Elements of Crimes, Art. 8(2)(c)(i)-4

<sup>583</sup> *Karadžić* TJ, para. 505, citing *Brđanin* AJ, para. 246; *Kunarac et al.* AJ, para. 146; *Furundžija* AJ, para. 111.

453. Cruel treatment, as a war crime, is causing serious or severe physical or mental pain, suffering or injury.<sup>584</sup> The facts and evidence establishing the enslavement, sexual slavery and rape charges would also support the charge of torture and cruel treatment. Cumulative charging of rape and torture is permissible.<sup>585</sup>
454. The crime of mutilation is causing “mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage”.<sup>586</sup>
455. Evidence regarding the crime of torture as a crime against humanity and war crime; and of cruel treatment and mutilation and as a war crime is detailed in Sections 7 and 8.

**10.3.6 *Imprisonment or other severe deprivation of physical liberty (as a crime against humanity) and enforced disappearance of persons (as a crime against humanity)***

456. Imprisonment as a crime against humanity is a well-established customary international law crime<sup>587</sup> that consists of the intentional deprivation of a person’s liberty that is arbitrary, i.e. without any legal basis.<sup>588</sup> The elements of the offence are: (i) an individual is deprived of his or her liberty; (ii) the deprivation is carried out arbitrarily, that is, there is no legal basis for it; (iii) the perpetrator acted with the intent to deprive the individual arbitrarily of his or her liberty.<sup>589</sup>
457. “Enforced disappearance” has been recognized as a form of “other inhumane acts”<sup>590</sup> and as a means of persecution.<sup>591</sup> It has also been recognized as a crime against humanity by various legal instruments,<sup>592</sup> defined as a crime committed by persons

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<sup>584</sup> *Ntagerura et al.* TJ, para. 765; *Delalić et al.* AJ, para.424; ICC Elements of Crimes, Art. 8(2)(c)(i)-3.

<sup>585</sup> *Kunarac et al.* AJ, para. 195.

<sup>586</sup> ICC Elements of the Crimes, Art. 8(2)(c)(i)-2.

<sup>587</sup> ICTY Statute, Art. 5(e); ICTR Statute, Art. 3(e).

<sup>588</sup> *Karadžić* TJ, para.519.

<sup>589</sup> *Gotovina* TJ, para. 1815; *Krnojelac* TJ, para. 115; *Simić* TJ, paras 64-65; *Krajišnik* TJ, para. 752.

<sup>590</sup> *Kupreškić* TJ, para. 566.

<sup>591</sup> *Gotovina* TJ, para. 1838.

<sup>592</sup> The crime of enforced disappearance as a crime against humanity has been recognised in various legal instruments, such as Organisation of American States, Annual Report of the Inter-American Commission on Human Rights, AG/RES.666 (XIII-01/83), 18 November 1983, para. 4; Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, adopted on 18 December 1992 (“1992 Declaration”), fourth preambular paragraph; Inter-American Convention on Forced Disappearance of Persons, 9 June 1994, OAS Treaty Series No. 68, p. 33 (“1994 Inter-American Convention”), sixth preambular paragraph; International Law Commission, Draft Code of Crimes Against the Peace of Mankind, Yearbook ILC, 1996, vol. II (Part Two), p. 50; Article 7(1)(i) of the Rome Statute, 17 July 1998, UNTS, vol. 2187 (“Rome Statute”), p. 3; Article 5.1(i) and 5.2(h) of Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction Over Serious Criminal Offences, UNTAET/REG/2000/15, 6 June 2000; Report of the Intersessional Open-Ended Working Group to

acting with the authorization, support or acquiescence of a State or a political organization<sup>593</sup> 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. As such, the deprivation of liberty covers any form of deprivation of liberty of a person against his or her will in any place.<sup>594</sup> Further, 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.<sup>595</sup> In that sense, 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

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Elaborate a Draft Legally Binding Normative Instrument for the Protection of All Persons from Enforced Disappearance, E/CN.4/2005/66, 10 March 2005 ("2005 ISWG Report"), para. 12; International Convention for the Protection of All Persons from Enforced Disappearance, UNTS, vol. 2716, p. 3 ("2006 Convention on Enforced Disappearance"), fifth preambular paragraph and Article 5; Draft Articles on Prevention and Punishment of Crimes Against Humanity ("CAH Draft Articles"), Article 2(1)(i), contained in Report of the International Law Commission (2019), A/74/10, pp. 10-140; Law 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015, Article 13(1)(i).

<sup>593</sup> KSC, *Thaçi et al.* Confirmation Decision, paras 72-77. For the purposes of establishing criminal responsibility for the crime against humanity of enforced disappearance, the perpetrators may act in the context of the State or a political organisation; This has been acknowledged in ECCC, , para. 448; , para. 754; *See also*, Kosovo Specialist Chambers, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06, 26 October 2020 ; Article 3 of the 2006 Convention on Enforced Disappearance (Article 3 of the Convention requires States to take appropriate measures to investigate instances of enforced disappearances committed by persons or groups of persons acting without the authorization, support or acquiescence of the State); Council of Europe, Parliamentary Assembly, Resolution 1463 (2005), 3 October 2005, para. 10.1.1 (calling for a broad definition of enforced disappearance that includes acts "committed by non-state actors, such as paramilitary groups, death squads, rebel fighters or organised criminal groups"); *See further*, Article 7(2)(i) of the Rome Statute and related Elements of Crimes; Article 2(2)(i) of the CAH Draft Articles.

<sup>594</sup> KSC, *Thaçi et al.* Confirmation Decision, paras 72-77; ICC, , para. 118; Third Preambular Paragraph of the 1992 Declaration ; Article II of the 1994 Inter-American Convention ; Article 7(2)(i) of the Rome Statute , together with related Elements of Crimes (paragraph 1) and fns 25 and 26; Article 2(2)(i) of the CAH Draft Articles; Article 2 of the 2006 Convention on Enforced Disappearance ; Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/7/2, 10 January 2008 , p. 11, para. 7 (part of the General Comment); 2010 WGEID Report Addendum, paras 22-24.

<sup>595</sup> Article 17(1) of the 1992 Declaration; Article III-1 of the 1994 Inter-American Convention; Article 8(1)(b) of the 2006 Convention on Enforced Disappearance; Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2001/68, 18 December 2000, paras 25-32; 2010 WGEID Report, p. 11, para. 1 (part of the General Comment); 2010 WGEID Report Addendum, para. 33; ICC, , para. 121; Human Rights Committee, *Quinteros* Decision, para. 14; ECtHR, *Case of El-Masri v. Former Republic of Macedonia*, 39630/09, , 13 December 2012, para. 240; *Case of Varnava and Others v. Turkey*, 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, , 18 September 2009, para. 148; IACtHR, , paras 155, 181; , para. 65; *Case of Goiburú et al. v. Peru*, , 22 September 2006, para. 81; , paras 34-35, 106-107; , paras 95, 112.

regarding the fate or whereabouts of the person concerned and be aware that such refusal was preceded or accompanied by that deprivation of liberty.<sup>596</sup>

458. Evidence regarding the crime of imprisonment or other severe deprivation of physical liberty as a crime against humanity and enforced disappearance of persons – presuming that ISIL is treated as a political organization – as a crime against humanity is detailed in Sections 6, 7 and 8.

### ***10.3.7 Acts or threats of violence the primary purpose of which is to spread terror (as a war crime)***

459. The ICTY has identified “acts or threats of violence the primary purpose of which is to spread terror among the civilian population” as a war crime under customary international law. This finding was based on prohibitions set out in Additional Protocols I and II of the Geneva Conventions and a widespread international and domestic practice criminalizing such acts.<sup>597</sup>

460. The elements of the offence are: (i) acts or threats of violence directed against the civilian population or individual civilians not taking direct part in hostilities that causes grave consequences for the civilian population; (ii) the offender wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts of violence; (iii) the primary purpose of these acts was spreading terror among the civilian population.<sup>598</sup>

461. The ICTY Appeals Chamber notably clarified that “serious injury to body or health” is not required for the commission of the offence, but that the consequences must at least be “grave”.<sup>599</sup> For example, “extensive trauma and psychological damage” might be considered a sufficiently grave consequence to satisfy the first element of the crime.<sup>600</sup>

462. Evidence regarding the crime of acts or threats of violence the primary purpose of which is to spread terror as a war crime is detailed in Sections 5, 6, 7 and 8.

### ***10.3.8 Other inhumane acts (as a crime against humanity)***

463. “Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health,” is a well-established crime

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<sup>596</sup> KSC, *Thaçi et al.* Confirmation Decision, paras 72-77. Paragraph 3 of the Elements of Crimes of Article 7(1)(i) of the Rome Statute.

<sup>597</sup> *Galić* AJ, paras. 87-98.

<sup>598</sup> *Milošević* AJ, paras. 31-34 (clarifying that physical harm need not have been caused, but that at least some form of serious harm reaching the gravity threshold for recognition as a war crime was required). See also *Galić* AJ, para. 104; *Galić* TJ, para. 133.

<sup>599</sup> *Milošević* AJ, para. 33.

<sup>600</sup> *Galić* AJ, para. 102; *Milošević* AJ, para. 33

against humanity in customary international law,<sup>601</sup> consisting of intentionally causing serious mental or physical suffering, or injury or constituting a serious attack on human dignity.<sup>602</sup> The conduct does not need to be otherwise expressly criminalized under international law.<sup>603</sup>

464. To amount to other inhumane acts, the acts or omissions must be of a nature and gravity similar to other enumerated crimes against humanity.<sup>604</sup> This requires a case-specific analysis of the impact of the conduct on the victims and a determination whether the conduct is comparable to the enumerated crimes against humanity.<sup>605</sup> Such assessment may take into consideration the nature of the act or omission, the context in which it occurred and the personal circumstances of the victim.<sup>606</sup> There is no requirement that the suffering have long-term effects on the victim, although this may be relevant to the determination of the seriousness of the act or omission in question.<sup>607</sup>
465. **Forced marriage as an other inhumane act.** The SCSL Appeals Chamber found acts of forced marriage to be of a gravity similar to several enumerated crimes against humanity including enslavement, imprisonment, torture, rape, sexual slavery and sexual violence.<sup>608</sup> The elements of the crime were defined by the Chamber as “a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as conjugal partner resulting in severe suffering, or physical or psychological injury.”<sup>609</sup> The SCSL Appeals Chamber further elaborated that “unlike sexual slavery, forced marriage implies a relationship of exclusivity between the ‘husband’ and ‘wife’, which could lead to disciplinary consequences for breach of this exclusive arrangement. These distinctions imply that forced marriage is not predominantly a sexual crime”.<sup>610</sup>

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<sup>601</sup> IMT Charter, Art. 6(c); IMTFE Charter, Art. 5(c); Control Council Law No. 10, Art. II(1)(c); ICTY Statute, Art. 5(i); ICTR Statute, Art. 3(i); UNSC, ‘Statute of the Special Court for Sierra Leone’, 16 January 2002, Article 2(i); Rome Statute, Art 7(k).

<sup>602</sup> *Milošević* AJ, para. 108. *Case 002/01* (ECCC) AJ, para. 580; *Case 002/01* (ECCC) TJ, para. 437. *Case 001* (ECCC) TJ, para. 368. *Ongwen* TJ, para. 2743

<sup>603</sup> *Case 002/01* (ECCC) AJ, para. 584; *Case 002/01* (ECCC) TJ, para. 436.

<sup>604</sup> *Bagosora* Decision on Motion for Judgment of Acquittal, para. 34; *Case 002/01* (ECCC) AJ, para. 586; *Case 002/01* (ECCC) TJ, para. 438; *Case 001* (ECCC) TJ, para. 367.

<sup>605</sup> *Case 002/01* (ECCC) AJ, para. 586. See also, *Case 002/01* (ECCC) TJ, para. 438; *Case 001* (ECCC) TJ, para. 369.

<sup>606</sup> *Case 002/01* (ECCC) TJ, para. 438; *Case 001* (ECCC) TJ, para. 369.

<sup>607</sup> *Case 002/01* (ECCC) TJ, para. 439; *Case 001* (ECCC) TJ, para. 369.

<sup>608</sup> *Brima* AJ, para. 182-186, 200.

<sup>609</sup> *Brima* AJ, paras. 195-196.

<sup>610</sup> *Sesay* AJ, paras. 735-736. The SCSL Appeals Chamber found that this included taking advantage of coercive circumstances to cause a person to serve as a conjugal partner and that a violent, hostile and coercive environment would vitiate any consent to the marriage. See *Sesay* AJ para. 736.

466. This finding is reinforced by the Universal Declaration of Human Rights, adopted by the UN General Assembly, which states that “[m]arriage shall be entered into only with the free and full consent of the intending spouses”.<sup>611</sup>
467. The central element and underlying act of forced marriage is the imposition of this status on the victim, regardless of the will of the victim. This includes, for instance, the imposition of duties that are associated with marriage – including exclusivity of the (forced) conjugal union imposed on the victim – as well as the consequent social stigma.<sup>612</sup> The ICC has held that a forced marriage, beyond its illegality, may have serious religious, social and ethical consequences that may have a serious impact on the victim’s physical and psychological well-being. The victim may see themselves as being bonded or united to another person despite the lack of consent.<sup>613</sup>
468. The ICC has also held that sexual slavery/enslavement and rape exist independently from forced marriage. The Trial Chamber recognized that the conduct underlying forced marriage – as well as the impact it has on victims – are not fully captured by other crimes. While the crime of sexual enslavement penalizes the perpetrator’s restriction or control of the victim’s sexual autonomy, the “other inhumane act” of forced marriage penalizes the perpetrator’s imposition of “conjugal association” with the victim. Forced marriage thus does not necessarily require the exercise of ownership over a person, which is an essential element for the crime of enslavement. Similarly, the crime of rape does not penalize the imposition of the “marital status” on the victim. Victims suffer trauma and stigma beyond that caused by being a rape victim, alone, when marriage is used to legitimize a status that often involves serial rape.<sup>614</sup>
469. **Forced religious conversion as an other inhumane act.** The act of compelling somebody to convert his or her own religious belief to another religion is considered an inhumane act, treated as a crime against humanity. The International Criminal Tribunal for Bangladesh, governed by the International Crimes (Tribunal) Act of 1973,<sup>615</sup> found that conversion of Hindus to Islam including, inter alia, compelling someone go to the mosque and to say prayers was an inhumane act under the chapeaux of crimes against humanity.<sup>616</sup>
470. **Sexual violence as an other inhumane act.** The ICTR has held that “[s]exual violence falls within the scope of “other inhumane acts,” citing the example of a perpetrator who

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<sup>611</sup> Article 16(2), UDHR.

<sup>612</sup> *Ongwen* TJ, para. 2748. *AFRC* AJ, para. 195. See also *Al Hassan* Confirmation Decision, para. 182.

<sup>613</sup> *Ongwen* TJ, para. 2748.

<sup>614</sup> *Ongwen* TJ, para. 2750. See also *Al Hassan* Confirmation Decision, para. 555.

<sup>615</sup> The International Crimes (Tribunals) Act, 1973 (Act No. Xix Of 1973), 20 July 1973

<sup>616</sup> Chief Prosecutor v. *Delowar Hossain Sayeedi*, Case No. 01 of 2011, Judgment, pages 214 to 223



ordered members of a militia “to undress a student and force her to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd”.<sup>617</sup>

471. **Beatings as an other inhumane act.** The ICTY has found that “[b]eatings constitute cruel or inhumane treatment if (i) the beatings caused serious mental or physical suffering or injury or constituted a serious attack on human dignity, and (ii) the beatings were performed deliberately”.<sup>618</sup>
472. **Psychological abuse as an other inhumane act.** The ICTY Appeals Chamber held that psychological abuse, including harassment and humiliation may constitute persecution if the abuse reaches the same level of gravity as the other crimes against humanity enumerated in the ICTY Statute and the general requirements of persecution are met. Subjecting victims to constant humiliation and degradation may amount to psychological abuse as an underlying act of persecution.<sup>619</sup>
473. **Mistreatment in detention as an other inhumane act.** The ICTR has found that confining a large number of people on exposed ground without access to water for a period of at least five days has been recognized, even in the absence of any deaths, to constitute an inhumane act.<sup>620</sup>
474. Evidence regarding the commission of other inhumane acts constituting of crimes against humanity is detailed in Sections 7 and 8.

### 10.3.9 *Persecution (as a crime against humanity)*

475. The Statutes of the international criminal tribunals prohibit “persecutions on political, racial, and religious grounds,”<sup>621</sup> which has long been an established crime under customary international law.<sup>622</sup> Persecution is an act or omission which “[...] discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law”.<sup>623</sup> The act must be carried out deliberately and with the “specific intent to discriminate on political, racial or religious grounds”.<sup>624</sup>

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<sup>617</sup> *Akayesu* TJ, para. 688. *Milutinović* TJ, para. 190.

<sup>618</sup> *Karadžić* TJ, para.

<sup>619</sup> *Blaškić* AJ, paras. 154-55.

<sup>620</sup> *Bagilishema* TJ, para. 489-494.

<sup>621</sup> ICTY Statute, Art. 5(h); ICTR Statute, Art. 3(h). See IMT Charter, Art. 6(c); IMTFE Charter, Art. 5(c); Control Council Law No. 10 (1945), Art. 5(c).

<sup>622</sup> See *Tadić* TJ, paras. 699-710.

<sup>623</sup> *Bagosora* TJ, para. 2208, referring to *Nahimana et al.* AJ, para. 985, quoting *Krnojelac* AJ, para. 185;; *Simić et al.* AJ, para. 177;

<sup>624</sup> *Kvočka et al.* AJ, para. 460; *Case 01 (ECCC)* TJ, para. 379; See also, ICC Statute, Art. 7(1)(h). Note: the ICC Statute has extended these grounds to “national,” “ethnic,” “cultural,” “gender,” or “other grounds that are universally recognized as impermissible under international law”.

476. It is not necessary that the discriminatory underlying acts of persecution amount to crimes in international law.<sup>625</sup> However, the alleged acts must be “of the same gravity as the enumerated crimes [against humanity]”.<sup>626</sup> The gravity threshold has been met, on the facts, in cases alleging persecution through:

- harassment, humiliation and psychological abuse;<sup>627</sup>
- inhumane or cruel treatment causing serious bodily and mental harm (including beatings as well as physical and psychological abuse);<sup>628</sup>
- terrorizing civilians;<sup>629</sup>
- disappearances;<sup>630</sup>
- detention in inhumane conditions;<sup>631</sup>
- forced labour;<sup>632</sup>
- destruction of homes,<sup>633</sup>
- destruction and plunder/pillage of property;<sup>634</sup>
- appropriation of money;<sup>635</sup>
- destruction of institutions dedicated to religion, charity, education, the arts and sciences, historical monuments and works of art or science;<sup>636</sup>

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<sup>625</sup> *Nahimana et al.* AJ, para. 985; *Brđanin* AJ, para. 296; *Kvočka et al.*, para. 323. Contrary, ICC Elements, Art. 7(1)(h)(4).

<sup>626</sup> *Kvočka et al.* AJ, para. 321; *Stanišić & Župljanin* AJ, para. 1075; *Popović et al.* AJ, para. 737, 761.

<sup>627</sup> *Kvočka et al.* AJ, para. 325 ; *Karadžić* TJ, para. 325 and 510.

<sup>628</sup> *Kordić & Čerkez* AJ, para. 106; *Blaškić* AJ, para. 143; *Blagojević & Jokić* TJ, para. 587; *Krajišnik* TJ, para. 746; *Karadžić* TJ, para. 504 , para. 510

<sup>629</sup> *Popović et al.* TJ, paras. 979-981.

<sup>630</sup> *Gotovina et al.* TJ, para. 1837-1839.

<sup>631</sup> *Popović et al* TJ, para. 993 ; *Blaškić* AJ, para. 155; *Stanišić & Župljanin* TJ, paras. 76, 476, 683, 1105, 1176, 1234.

<sup>632</sup> *Karadžić* TJ, v.2 para. 2535; *Naletilić & Martinović* TJ, para. 269 - The Chamber went on to find that cleaning premises and repairing vehicles did not constitute an underlying war crime and, therefore, also did not constitute persecution. Compulsion of prisoners to work at or near the frontline, however, was deemed a war crime and persecution).

<sup>633</sup> *Kordić & Čerkez* TJ, para. 205.

<sup>634</sup> *Krajišnik* TJ, para. 768; *Krajišnik* TJ, paras 773-779 (discussing destruction of property); *Blaškić* AJ, para. 135; *Kordić & Čerkez* AJ, para. 672, 673, 676 ; *Stanišić & Župljanin* TJ, para; *Popović et al.* TJ, para. 1000 (rejecting claim of persecution through destruction of personal belongings).

<sup>635</sup> *Stanišić & Župljanin* TJ, para. 225; *Stanišić & Župljanin* AJ, para. 1077.

<sup>636</sup> *Krajišnik* TJ, para. 782; *Milutinović* TJ, para. 205. The scale of destruction or damage, and the importance of the property, is important for establishing that the acts reach the gravity threshold. *See Milutinović* TJ, para. 207.

- any other act that “constitute[s] a denial of or infringement upon a fundamental right laid down in international customary law”.<sup>637</sup> Given the violation of the right to freedom of religion and the right to enter into marriage freely, there can be no doubt that forced religious conversion and forced marriage also constitute persecution when carried out with the discriminatory special intent.

477. Persecution can, and often is, charged as having been committed through the commission of another crime against humanity or war crime.<sup>638</sup> It is permissible to enter cumulative convictions for persecution, alongside the underlying war crime or crime against humanity, due to the distinct elements of each – mainly the additional specific discriminatory intent required for persecution.<sup>639</sup> Similarly, the crime of persecution and genocide can be charged cumulatively.<sup>640</sup>

#### 10.3.9.1 *Persecution based on gender grounds (as a Crime Against Humanity)*

478. The ICTY has held that “there are no definitive grounds in customary international on which persecution must be based and a variety of different grounds have been listed in international instruments”.<sup>641</sup> The limitation of such grounds to “race, religion and politics” found in the ICTY and ICTR Statutes should not, therefore, be taken as a statement of customary international law.<sup>642</sup> Gender has also been recognized as a basis

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<sup>637</sup> *Blaškić* AJ, para. 139; *Karadžić* TJ, para. 500.

<sup>638</sup> *Stanišić & Župljanin* AJ, para. 6; *Karadžić* TJ, para. 496.

<sup>639</sup> *Nahimana et al.* AJ, para. 1026. *Kordić and Čerkez* AJ, paras. 1040-1043. *Stakić* AJ, paras. 364, 367.

<sup>640</sup> *Nahimana et al.* AJ, para. 1032.

<sup>641</sup> *Tadić* TJ, para. 711, 712.

<sup>642</sup> *Nyiramasuhuko* AJ, para. 2136.

for group identification and targeting at the ICTR,<sup>643</sup> in the Rome Statute,<sup>644</sup> and in international crimes legislation in France, Finland, Germany, Malta and South Africa.<sup>645</sup>

479. As set out in Sections 6, 7 and 8, ISIL committed the underlying crimes against humanity set out in this report: (a) murder; (b) extermination; (c) forcible transfer and deportation; (d) enslavement and the related crimes of sexual slavery and the slave trade; (e) rape; and (f) torture in a discriminatory and persecutory manner against the Yazidis, on the intersecting grounds of religion and gender. For ISIL, religion was the key factor that defined the Yazidis as a group to target, while gender and age determined the specific crimes to which it subjected them.
480. Consequently, Yazidi women and pubescent girls were considered the property of ISIL fighters who raped them and subjected them to other forms of sexual violence, such as forced gynaecological examinations and forced contraception, as well as beating, torture, forced marriage and forced labour.<sup>646</sup> ISIL published numerous documents approving and encouraging enslavement, sexual slavery and other forms of sexual and gender-based violence against Yazidi women and girls.<sup>647</sup>
481. Further, as set out in Section 6, starting from 3 August 2014, ISIL systematically executed Yazidi men and older boys over 12 years old who refused to convert to Islam, in contrast to Yazidi women, girls and younger boys who were also forcefully converted but not executed for refusing to do so. On 16 August 2014 in Solagh, as ISIL was separating the women and children in Kocho, ISIL also executed 80 women above 40 years old, as well as some adolescent boys.<sup>648</sup>

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<sup>643</sup> In *Akayesu*, for example, the ICTR Trial Chamber drew a clear link to the physical and psychological targeting of women within “their families and their communities” as “contributing to their destruction and to the destruction of the Tutsi group as a whole.” - *Akayesu* TJ, para. 731 (targeting Tutsi women for sexual violence was an act of genocide against the Tutsi group as a whole). In *Nahimana et al.*, the portrayal of Tutsi women as “femmes fatales . . . seductive agents of the enemy” in local media was considered an act of “targeted . . . persecution” because it “made the sexual attack and killing of Tutsi women a foreseeable consequence of the role attributed to them” —demonstrating that even without the express legal basis to consider gender as a basis of persecution, gender roles within society have been considered in the persecution context - *Nahimana et al.*, para. 1079.

<sup>644</sup> See Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18, 13 November 2019, paras. 688-702. (charging persecution on the basis of gender through the imposing on women a strict dress code, prohibiting them from speaking in public with any men other than their husbands or brothers, restricting their freedom of movement, and segregating them from boys in schools) - Note: Persecution is defined in the Rome Statute as being against “any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law.”

<sup>645</sup> French Criminal Code Article 212-1 para.8; Finland Criminal Code of Finland (39/1889, as amended), under Chapter 11, Sections 3-4, adopted on 11 April 2008; German Code of Crimes against International Law of 26 June 2002, Section 7; Malte Criminal Code article 54-C-3; South Africa Criminal Code Annex 1 Part 2-3 etc.

<sup>646</sup> See Section 7.

<sup>647</sup> See Section 7.4.1.3.

<sup>648</sup> See Section 6.3.

482. Additionally, both Yazidi boys and girls were progressively separated from their families based on their gender and age. While young Yazidi boys under nine years old would stay with their mothers, Yazidi boys between nine and 13 years old would be taken to religious and military training. Yazidi boys older than 13 were often killed. Within days of being captured, Yazidi girls aged nine and above were separated from their mothers and siblings, taken to other holding sites and distributed as *sabayas* to ISIL members.<sup>649</sup>
483. Detailed evidence regarding the crime of persecution based on religious grounds as a crime against humanity is developed in various sections, including in Section 9.4. on Genocide. The facts set out in Sections 6, 7 and 8 also demonstrate the differential treatment of men, women, girls and boys based on their gender in accordance with ISIL's ideology.

#### ***10.3.10 Deportation and forcible transfer (as crimes against humanity)***

484. Forcible transfer and deportation are defined as (i) the forced displacement of persons by expulsion or other forms of coercion (ii) from an area in which they are lawfully present (iii) without grounds permitted under international law.<sup>650</sup> Deportation requires the additional element that the displacement occurs "across a de jure border between two states or, in certain circumstances, a de facto border". Forcible transfer has long been recognized as an "other inhumane act" under customary international law,<sup>651</sup> and has now been recognized as an enumerated crime against humanity,<sup>652</sup> appropriately grouped with deportation.<sup>653</sup>
485. The key element common to both deportation and forcible transfer is that the displacement is "carried out by expulsion or other forms of coercion" creating an "absence of genuine choice in their displacement".<sup>654</sup> Additionally, "forcible" is not restricted to physical force and may include threat of force, fear of violence, duress,

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<sup>649</sup> See Section 8.

<sup>650</sup> *Krajišnik* AJ, para. 304; *Milutinović et al.* TJ, para. 164; *Popović et al.* TJ, para. 891.

<sup>651</sup> *Krajišnik* AJ, para. 331 ; *Krstić* TJ, para. 52 ; *Stakić* AJ, para. 317; *Popović et al.* TJ, para. 889.

<sup>652</sup> Note: Under the Statute of the International Criminal Court, "ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand," also constitutes a war crime in non-international armed conflicts; See, ICC, Article 8(2)(e)(viii); See also, ICRC, Customary International Humanitarian Law, Rule 129 – "B. Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.""

<sup>653</sup> See, *Popović et al.* TJ, paras. 887 and 891.

<sup>654</sup> *Popović et al.* TJ, para. 896.

detention, psychological oppression or abuse of power against the victim.<sup>655</sup> To note, the *mens rea* does not require the intent to transfer permanently.<sup>656</sup>

486. Deportation and forcible transfer were committed on a massive scale through the Sinjar attack commencing on 3 August 2014. Through a host of criminal coercive acts discussed in Sections 6, 7 and 8, huge numbers of Yazidi civilians fled from their places of lawful residence to safety in other parts of Kurdistan or Syria. Many remain displaced to this day.
487. The crime against humanity of forcible transfer was committed against thousands of Yazidis who were detained in their villages and taken to Tal Afar, Mosul and other locations in Iraq. Furthermore, deportation was committed against Yazidi men, women and children who were transported by ISIL from Iraq to Syria, therefore crossing an international border. In both cases, these individuals also had no choice and were forced to make this journey.
488. Evidence regarding the crimes of deportation and forcible transfer as crimes against humanity is detailed in Sections 6, 7 and 8.

### **10.3.11 Outrages upon personal dignity (as a war crime)**

489. Common Article 3 prohibits “outrages upon personal dignity,” which is now well-established as a crime under customary international law.<sup>657</sup> The *actus reus* of the crime has been defined in the international criminal tribunals 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”.<sup>658</sup>
490. The specific acts that satisfy this requirement have been left open in the jurisprudence. Acts that have been recognized to date include rape; sexual violence; enforced prostitution; indecent assault; using human shields;<sup>659</sup> forcing detainees to defecate in their clothing;<sup>660</sup> used of an electrical device to inflict pain,<sup>661</sup> forced incest;<sup>662</sup> burying corpses in latrine pits; leaving infants without care after killing their guardians; and removing foetuses from the womb.<sup>663</sup> The ICTY has held that abuse and degradation

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<sup>655</sup> *Krnjelac* TJ, para. 233; *Krnjelac* AJ, para. 475; *Krstić* TJ, paras. 149, 293; *Stanišić & Simatović* TJ, paras. 404, 508, 526-527, 997-998, 1011, 1017-1018, 1031-1032, 1047-1048, 1081-1082, 1094-1095.

<sup>656</sup> *Stakić* AJ, para. 317.

<sup>657</sup> ICTR Statute, Art. 4(e); SCSL Statute, Art. 3(e); *Kunarac et al.* TJ, para. 408.

<sup>658</sup> *Kunarac et al.* TJ, para. 514. See also *Taylor* TJ, para. 431; See also ICC Elements of Crimes, Art. 8(2)(b)(xxi), p. 27.

<sup>659</sup> *Aleksovski*, TJ, para. 229; *Kordić and Čerkez*, TJ, para. 256.

<sup>660</sup> *Kvočka et. al* TJ, para. 173.

<sup>661</sup> *Delalić et al.* TJ, paras. 1052-1059.

<sup>662</sup> *Delalić et al.* TJ, paras. 1052-1059.

<sup>663</sup> *Bagosora et al.* Decision on Motion for Judgment of Acquittal, para. 40.



carried out in conjunction with rape were identified separately as amounting to “outrages upon personal dignity and sexual integrity”.<sup>664</sup> An SCSL Trial Chamber held that abducting “women and girls as ‘bush wives’, a conjugal form of sexual slavery, is humiliating and degrading to its victims” and falls within the prohibition of “outrages upon personal dignity.”<sup>665</sup>

491. The prevailing view in the jurisprudence of the international criminal tribunals is that, in addition to the *mens rea* that the act be performed intentionally, the perpetrator must also be at least aware that his acts or omissions *could* – not necessarily *would* – cause serious humiliation, degradation or otherwise be a serious attack on human dignity.<sup>666</sup>
492. Evidence regarding the crime of outrages upon personal dignity as a war crime is detailed in Sections 7 and 8.

### ***10.3.12 Intentionally directing attacks against the civilian population as such, or against individual civilians not taking part in hostilities (as a war crime)***

493. The general prohibition against attacking civilians in armed conflict is well-established in customary international law and has been described as “the bedrock of modern international humanitarian law”.<sup>667</sup> Civilians must never be the object of attack,<sup>668</sup> although they may lose that protection if and for as long as they participate in hostilities.<sup>669</sup> The ICTY has recognized that this prohibition is criminal in nature and consists of the following elements: “1. Acts of violence directed against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population. 2. The offender wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts of violence.”<sup>670</sup> This definition has been codified in the Rome Statute.<sup>671</sup>
494. As a matter of customary international law, “acts of violence” means some form of combat action.<sup>672</sup> Killings that occur after the end of combat action (which is not the same as the existence of a state of armed conflict), accordingly, do not fall within the scope of the crime. There is also some doubt as to whether, as a matter of customary international law, injury, death or some other result must be inflicted on the civilian

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<sup>664</sup> *Furundžija* TJ, paras. 272,274.

<sup>665</sup> *Taylor* TJ, para. 432.

<sup>666</sup> *Kunarac et al.* TJ, para. 512.

<sup>667</sup> *Kupreškić* TJ, para.521.

<sup>668</sup> *Galić* TJ, paras. 45-46 (describing the well-established customary international law foundations of this prohibitions).

<sup>669</sup> *Kupreškić* TJ, para. 523; *Galić* TJ, para. 48.

<sup>670</sup> *Galić* TJ, paras. 13 to 40 and 56; *Galić* AJ, paras 126-140 (affirming Trial Chamber definition).

<sup>671</sup> Rome Statute, Art. 8(2)(e)(i); ICC Elements of Crimes, Art. 8(2)(e)(i), p. 24.

<sup>672</sup> See Triffterer (3<sup>rd</sup> ed), p. 355; Prlić TJ, para. 184; *Kordić & Čerkez* AJ, para. 47; *Perisic* TJ, para. 91; *Ntaganda* TJ, para. 1136

target. This appears to be the prevailing view at the ICTY,<sup>673</sup> although it may be subject to ongoing debate.<sup>674</sup>

495. Evidence regarding the commission of the crime of intentionally directing attacks against the civilian population as such, or against individual civilians not taking part in hostilities as a war crime is detailed in Section 5.

**10.3.13 Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (as a war crime)**

496. There is clear authority in favour of the view that the criminal prohibition of conscription, enlistment or use in hostilities of children under the age of 15 was, by 2014, recognized under customary international law.<sup>675</sup> The SCSL Statute, adopted with the approval of the Security Council in 2000, included under Article 4 (“Other serious violations of international humanitarian law”) the crime of “[c]onscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities”.<sup>676</sup> In 2008, the SCSL Appeals Chamber held that this was “a crime under customary international law entailing individual criminal responsibility”.<sup>677</sup>
497. Enlistment has been defined as “to enrol on the list of a military body,”<sup>678</sup> and conscription as being “to enlist compulsorily”.<sup>679</sup> The “plain and ordinary meaning” of this provision is that it prohibits “incorporation of a boy or a girl under the age of 15 into an armed group, whether coercively (conscription) or voluntarily (enlistment)”.<sup>680</sup> Whereas the precise moment of enlistment of a person “may be less clear in case of armed groups” than in the case of “national armed forces in which enlistment occurs on the basis of pre-existing domestic laws,” a period of compulsory training can be treated as a sufficient indicator that enlistment has taken place, as opposed to mere preparation for enlistment.<sup>681</sup> The *actus reus* of the crimes consists of “any conduct

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<sup>673</sup> *Kordić & Čerkez* AJ, para. 67; *Blaškić* TJ, para. 180; *Kordić & Čerkez* TJ, para. 328; *Galić* TJ, para. 43.

<sup>674</sup> *Galić* AJ, para. 128.; See also, ICC, *Ntaganda* AJ, para. 1164

<sup>675</sup> SCSL Statute, Art. 4(c); Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, UN Doc. S/2000/915 (4 October 2000), paras 12, 17; Triffterer (3<sup>rd</sup> ed), p. 523. Article 4(3) of APII provides, in respect of non-international armed conflicts, that “Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.” AP II, Art. 4(3)(c). Iraq is not a State Party to Additional Protocol II. The view of the United States as expressed at the Rome Conference, however, was that this obligation “had not been criminalized under customary international law.” Triffterer, 3<sup>rd</sup> ed., p. 521

<sup>676</sup> SCSL Statute, Art. 4(c).

<sup>677</sup> *Fofana* AJ, para. 139.

<sup>678</sup> *Ntaganda* TJ, para. 1107; *Lubanga* TJ, para. 608.

<sup>679</sup> *Lubanga* TJ, para. 608; *Ntaganda* TJ, para. 1106.

<sup>680</sup> *Lubanga* TJ, paras. 607-608.

<sup>681</sup> *Ntaganda* TJ, para. 1124.

accepting the child as part of the militia”.<sup>682</sup> This conduct must also be carried out with “knowledge on the part of the accused that the child is under the age of 15 years”.<sup>683</sup>

498. The activity of “using” a child to “participate actively in hostilities” is a separate offence.<sup>684</sup> The expression “to participate actively in hostilities” imports a “wide interpretation to the activities and roles that are covered by the offences of using children under the age 15 actively to participate in hostilities”.<sup>685</sup> Activities that fall within the scope of this prohibition include “gathering information, transmitting orders, transporting ammunition and foodstuff, or acts of sabotage”.<sup>686</sup>
499. Evidence regarding conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities as a war crime is detailed in Section 8.

***10.3.14 Destruction of, or wilful damage done to, institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science (as a war crime)***

500. Seizure, destruction or damage inflicted to cultural heritage is a well-established crime under international customary law and is codified as a crime under the ICTY Statute, the Iraqi High Tribunal (IHT) Statute and the Rome Statute.<sup>687</sup> Despite different wording in the Statutes, the crime is committed if there is an attack, generally in the form of seizure, destruction or damage,<sup>688</sup> of cultural or historic property<sup>689</sup> without a military justification.<sup>690</sup> Furthermore, the acts must be carried out with the intent to damage or destroy the property.<sup>691</sup>

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<sup>682</sup> Taylor TJ, para. 442. Brima TJ, paras. 734-735. Fofana TJ, paras. 140, 144. Sesay TJ, para. 184. Lubanga TJ, para. 607.

<sup>683</sup> Elements of Crimes, Article 8(e)(vii). Katanga and Chui Confirmation Decision, para. 252. Ntaganda Confirmation Decision, para. 143. Fofana AJ, para. 141.

<sup>684</sup> Lubanga TJ, para. 609.

<sup>685</sup> Ntaganda TJ, para. 1108.

<sup>686</sup> Lubanga AJ, para. 334; Ntaganda TJ, para. 1108.

<sup>687</sup> ICTY Statute, Article 3(d); Rome Statute, Article 8(2)(e)(iv); Hague Regulations, Art. 56; HT Statute Article 13(b).

<sup>688</sup> ICTY Statute, Art. 3(d), “seizure, destruction or wilful damage”; ICC Rome Statute, Art. 8(2)(e)(iv) and IHT Statute; Art. 13(4)(b), “attacks”.

<sup>689</sup> ICTY Statute, Art. 3(d) “institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science”; Kordić & Čerkez AJ, para. 91 “cultural or spiritual heritage [...] associated with the history and culture of a people”, referring to ICRC Commentary on the Additional Protocols, p. 646; ICC Rome Statute, Art. 8(2)(e)(iv) and IHT Statute, Art. 13(4)(b) “buildings that are dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected”.

<sup>690</sup> Karadžić AJ, para. 488; Brđanin AJ, para. 337.

<sup>691</sup> Strugar AJ, para. 277 and references cited therein.

501. The crime has been defined as an act that: (i) has caused damage or destruction to property which constitutes the protected object; (ii) the damaged or destroyed object was not used for military purposes at the time when the acts of hostility directed against these objects took place; and (iii) the act was carried out with the intent to damage or destroy the property in question.<sup>692</sup> Although the origins of these prohibitions imply that the damage or destruction must take place in the course of hostilities,<sup>693</sup> there is a disagreement with that view.<sup>694</sup>

502. In determining whether “cultural property” includes educational buildings, the ICTY Appeals Chamber set out a definition, referring to Article 1 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, which states:

“For the purposes of the present Convention, the term ‘cultural property’ shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a).”<sup>695</sup>

503. Evidence of the crime of destruction of, or wilful damage done to, institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works art and science as a war crime is detailed in Section 9.

### ***10.3.15 Plunder and pillage (as war crimes)***

504. “Plunder,” a crime over which jurisdiction was granted in the Nuremberg Charter, which governs the jurisdiction of the International Military Tribunal (IMT), and the ICTY Statute, refers to “all forms of unlawful appropriation of property in armed

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<sup>692</sup> *Strugar* TJ, para. 312; *Hadžihasanović & Kubura* TJ, para. 58.

<sup>693</sup> *Strugar* TJ, para. 312; *Prlić* TJ, para. 173, citing Art. 53 of API that “any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples”.

<sup>694</sup> See for instance, *Hadžihasanović & Kubura* TJ, para. 62; See also *Ntaganda* TJ, para. 1142. *Ntaganda* AJ, para. 1164-1168

<sup>695</sup> The Hague Convention for the Protection of Cultural Property, Art. 1; ICTY, *Kordić & Čerkez*, AJ, para. 91.

conflict for which individual criminal responsibility attaches under international criminal law, including those acts traditionally described as ‘pillage’<sup>696</sup>. This includes stealing for private gain, or “the organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory”<sup>697</sup>. However, plunder only occurs where it “involves grave consequences for the victim”<sup>698</sup>. This is a case-by-case assessment that may involve consideration of monetary value, but the degree of gravity “could be assumed in circumstances where appropriations take place *vis-à-vis* a large number of people, even though there are no grave consequences for each individual”<sup>699</sup>. This gravity threshold corresponds to the definition in Article 147 of Geneva Convention IV of the “grave breach” of “extensive destruction and appropriation of property”<sup>700</sup>. The notion of “destruction” may be encompassed by “plunder,” read in light of the same prohibition as it applies in international armed conflicts.<sup>701</sup>

505. Pillage has now been defined as essentially synonymous with plunder.<sup>702</sup> Article 33 of Geneva Convention IV also prohibits pillage, which is also listed as a crime within the jurisdiction of the ICTR.<sup>703</sup> The Rome Statute also asserts jurisdiction over “[p]illaging a town or place, even when taken by assault,” but the ICC Elements of Crimes adds the condition that it must be “appropriat[ed] it for personal use”<sup>704</sup>. This last requirement, however, does not seem to have any firm basis in customary international law. Further, there is no express element of extensiveness in the ICC definition of pillage which, in contrast, has been recognized by the ICTY to be the case in respect of customary international law.<sup>705</sup>
506. Evidence of the crime of plunder and pillage as war crimes is further detailed in Section 9.

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<sup>696</sup> *Kordić & Čerkez* AJ, para. 79.

<sup>697</sup> *Delalić et al.* TJ, para. 590; *Hadžihasanović & Kubura* TJ, para. 52.

<sup>698</sup> *Tadić*, Decision on Jurisdiction 2 October 1995, para. 94; *Kordić & Čerkez* AJ, para. 82. See separate opinion of Judge Afande, *Stanišić & Župljanin* AJ, para. 46).

<sup>699</sup> *Kordić & Čerkez* AJ, para. 83.

<sup>700</sup> Geneva Conventions IV, Art. 147.

<sup>701</sup> ICTY Statute, Art. 2(d).

<sup>702</sup> *Delalić* TJ, para. 591; ICRC, Customary International Humanitarian Law Database, Rule 52 (“Pillage (or plunder) is defined in Black’s Law Dictionary as ‘the forcible taking of private property by an invading or conquering army from the enemy’s subjects.’”).

<sup>703</sup> ICTR Statute, Art. 4(f).

<sup>704</sup> ICC Elements of Crimes, Art. 8(2)(e)(v).

<sup>705</sup> *Kordić and Cerkez*, TJ, para. 335.

### 10.3.16 Slave trade (as a potential war crime and crime against humanity)

507. Prohibition of the slave trade, identified by the ICRC as a norm of customary international law,<sup>706</sup> includes “[...] all acts involved in the capture, acquisition or disposal of a person with intent to reduce him [or her] to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him [or her]; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves”.<sup>707</sup> The slave trade is a precursor of enslavement/sexual slavery, but each crime is distinguishable by having different elements and, as such, can be pursued separately.<sup>708</sup>
508. The Nuremberg Charter lists explicitly in Article 6(b) a deportation to slave labour as a separate war crime.<sup>709</sup> The IMT Judgment does not elaborate on the distinction between a war crime of “deportation to slave labour” (Art.6(b) of the Nuremberg Charter) and “deportation” and “enslavement” as crimes against humanity (Art. 6(c) of the Nuremberg Charter). Instead, the Tribunal established responsibility of several defendants for administration of and participation in slave labour programme/policy.<sup>710</sup>
509. The Statutes of ICTY and ICTR do not explicitly enumerate the prohibition of the slave trade as a separate crime. However, the prosecution of a crime of slave trade would be

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<sup>706</sup> Customary IHL - Rule 94. Slavery and Slave Trade (icrc.org) – Note: Prohibition of slave trade is codified in Art. 1(2) of the Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253 1926 (‘1926 Slavery Convention’). Article 4(2)(f) of Additional Protocol II to the Geneva Conventions – “Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever: [...] (f) slavery and the slave trade in all their forms.” Article 4 of the Universal Declaration of Human Rights – “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” Article 8 of the International Covenant on Civil and Political Rights – “1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.”

<sup>707</sup> Art. 1(2) of the 1926 Slavery Convention.

<sup>708</sup> 1926 Slavery Convention – Note: Especially Art. 1., which provides a clear distinction between slave trade and slavery; *See also*, Patricia Viseur Sellers, Jocelyn Getgen Kestenbaum, “Missing in Action: The International Crime of the Slave Trade”, 29 June 2020

<sup>709</sup> UN, Charter of the International Military Tribunal, Annexed to the London Agreement, 8 August 1945, Art. 6(b) – It provides that the Tribunal “[...] shall have the power to try and punish persons who [...] committed any of the following crimes: The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: (a) Crimes against Peace [...]: (b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, [...] **deportation to slave labor** [...]: (c) Crimes against Humanity: namely, murder, extermination, **enslavement**, deportation and other inhumane acts committed against any civilian population [...].” *See also*, IMT Indictment, Count Three – War crimes (B) Deportation for slave labor and for other purposes of the civilian populations of and in occupied territories; Allied Control Council Law No 10 of 1945, Art 2(b) (c), that also codified deportation to slave labour, deportation and enslavement as separate crimes.

<sup>710</sup> IMT Judgment (The Trial of German Major War Criminals, Proceedings of the International Military Tribunal), 1 October 1946, pp. 460-463. Administration of slave labour programme, including deportation to slave labour is referred to in relation to the convictions of the several defendants. *See for example* *Goering* (IMT Judgment, pp 486-487); *Frank* (IMT Judgment pp 497-499); *Kaltenbrunner* (IMT Judgment, pp 494-495).



arguably possible under Articles 3 and 4 of the ICTY and ICTR Statute, respectively, which allows for prosecution of unenumerated violations of the laws and customs of war.<sup>711</sup> A draft version of the Rome Statute also included “slavery and the slave trade in all their forms” as a war crime in non-international armed conflict.<sup>712</sup> The subsequent preparatory materials and the final wording of the Rome Statute do not include reference to slave trade, however this omission was highly criticized.<sup>713</sup>

510. The *mens rea* element of the slave trade as a separate crime is the intent to reduce a person into slavery or to transfer an enslaved person to another enslavement situation. The slave trade, unlike enslavement, does not require the exercise of any of the powers attaching to the rights of ownership over persons.<sup>714</sup> The *actus reus* of the slave trade includes various acts that would reduce a person into slavery or result in further enslavement.<sup>715</sup>
511. Evidence of the slave trade as a potential war crime and crime against humanity is further detailed in Sections 7 and 8.

## 10.4 Genocide

### 10.4.1 Introduction

512. Based on the available evidence, there are reasonable grounds to believe that ISIL committed genocide against the Yazidi religious group starting no later than 3 August 2014. The crimes committed against the Yazidis of Sinjar, described in Sections 5 to 9, were committed with the intent to destroy them physically and biologically. Four features of those crimes are compelling manifestations of that intent: (1) ISIL openly proclaimed, and then rigorously applied, a policy that all Yazidi men must convert, or die and have their families enslaved; (2) ISIL targeted the entire Yazidi population of Sinjar, as demonstrated by its attempts to stop civilians from fleeing, its targeting of

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<sup>711</sup> *Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94- 1, ACH, 2 Oct. 1995, para. 94 ; *See also*, Patricia Viseur Sellers, Jocelyn Getgen Kestenbaum, “Missing in Action: The International Crime of the Slave Trade”, 29 June 2020, page 15

<sup>712</sup> United Nations, United Nations Conference of the Plenipotentiaries on the Establishment of an International Criminal Court, Report of the Preparatory Committee on the Establishment of an International Criminal Court, Addendum, 14 April 1998

<sup>713</sup> Rogier Bartels, “Time to fix the Rome Statute and add the crime of starvation in non-international armed conflicts! – EJIL: Talk!”, 3 December 2019, ( ) – Note: Bartels criticized omission to include starvation as a war crime in non-international armed conflict. He pointed that starvation suffered the same fate as proposed war crime of “slavery and slave trade in all their forms”. He suggested that the non-inclusion may have been an oversight and it was a non-intentional omission. Rogier Bartels, “Time to Fix the Rome Statute and add the crime of starvation in non-international armed conflicts!”; *See also*, Switzerland: proposal of amendment – Note: It is critical to note that the Rome Statute was amended on 6 December 2019 to include the crime of starvation as a war crime in non-international armed conflict.

<sup>714</sup> P. Viseur Sellers, ‘Wartime Female Slavery: Enslavement?’, 44 Cornell International Law Journal (CILJ) (2011) 115, page 123.

<sup>715</sup> 1926 Slavery Convention, Art. 1(2).

civilians who did try to flee, and its encirclement and siege of the Sinjar mountains; (3) ISIL's separation of captured Yazidi males and females of child-bearing age through its system of enslavement, as well as through the execution of captured men and older boys; and (4) ISIL enslaved and sexually abused Yazidi women and girls to an extent demonstrative of an intent to destroy their capacity to procreate within the Yazidi community.

513. Furthermore, many of the crimes described in Sections 5 to 9, when committed with the requisite intent, constitute the material elements of genocide. Those crimes include killing and causing serious bodily and mental harm. In addition, as more fully discussed below, ISIL inflicted conditions of life calculated to physically destroy the Yazidis of Sinjar; imposed measures to prevent births; and forcibly transferred children of the group to another group.
514. ISIL's failure to achieve the actual or full destruction of the Yazidis of Sinjar as a group does not mean that genocide was not committed. The scale of those whom it succeeded in targeting for physical and biological destruction – the Yazidis of Sinjar – clearly satisfies the requirement that the targeted part of the group is substantial. The acts were not carried out over a short period against an isolated number of individuals, nor were they a deviation from the policy of the organization. On the contrary, ISIL pursued Yazidis wherever it could; codified and applied its policy in a highly systematic manner, repeatedly justifying it in public on religious grounds; and its members inflicted its genocidal crimes over a period of years.<sup>716</sup>
515. Given the primary importance of establishing *mens rea* in the crime of genocide, and the fact that many of the crimes discussed in the preceding sections satisfy the definition of the *actus reus* of genocide, this chapter is organized as follows: (1) applicable law; (2) evidence that the Yazidis are a protected group; (3) evidence of the presence of genocidal *mens rea*; and (4) evidence of the various forms of genocidal acts committed.

#### 10.4.2 *Applicable law*

##### 10.4.2.1 *Actus reus of genocide*

516. Genocide is the commission of a defined set of acts “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.<sup>717</sup>

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<sup>716</sup> A/HRC/27/60, Report of the independent international commission of inquiry on the Syrian Arab Republic, 13 August 2014, para. 56– Note: describing a May 2014 ISIL attack on the Yazidi village of Al-Talaliyah, in an effort to attack the Yazidi community in Hasakah governorate in northeastern Syria (by the time of attack, the Yazidi inhabitants had fled, and the village was occupied by Sunni Arabs who had been displaced from Safira by Syrian government bombardments)

<sup>717</sup> Genocide Convention, Art. II; ICTY Statute, Art. 4; ICTR Statute, Art. 2; ICC Statute, Art. 6.

517. The acts by which genocide can be committed are: (i) killing members of the group; (ii) causing serious bodily or mental harm to members of the group; (iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (iv) imposing measures intended to prevent births within the group; and (v) forcibly transferring children of the group to another group. However, none of these acts – also known as the “material elements” – are genocide unless committed with genocidal intent.
518. **“Killing members of the group”** is identical to the crime of murder.<sup>718</sup> While the *actus reus* contains no numerical threshold, the scale of the killings can be an important indicator of the necessary special intent.<sup>719</sup>
519. **“Serious bodily or mental harm”** includes “acts of torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or serious injury”.<sup>720</sup> Despite some initial debate within the jurisprudence,<sup>721</sup> the ICTY has determined that, depending on the circumstances of a given case, forcible transfer may cause serious mental harm so as to constitute a prohibited act under Article II of the Genocide Convention.<sup>722</sup>
520. Serious mental harm, in particular, refers to “more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat”.<sup>723</sup> However, the harm need not entail “permanent impairment”.<sup>724</sup> The prevailing approach of previous case law is that the acts must also “contribute to the physical or biological destruction of the group, in whole or in part”.<sup>725</sup>
521. Prisoners held in deplorable conditions and taken for execution, including those who survived, can suffer serious mental harm prior to the executions.<sup>726</sup> Within the *Srebrenica* cases before the ICTY, each of the Bosnian Muslim men targeted for killing were subjected to two of three genocidal acts: “the pre-anguish of death; death itself;

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<sup>718</sup> *Brdjanin* TJ, paras. 381, 689; *Croatia v. Serbia*, para. 156.

<sup>719</sup> *Karadžić* TJ, para. 542.

<sup>720</sup> *Brdjanin* TJ, para. 690.

<sup>721</sup> See *Krstić* TJ, para. 595 – Note: in one of the earliest of the *Srebrenica* cases, the Trial Chamber in *Krstić* determined that the forcible transfer, mainly of women and children, from *Srebrenica* constituted credible evidence of the perpetrators’ specific intent to commit genocide against the executed males and against those males who survived executions, but was not an act of genocide in and of itself. This determined was upheld on appeal, see, *Krstić* Appeals Judgment, para. 33.

<sup>722</sup> *Popović* TJ, para. 846; *Tolimir* AJ, para. 209; *Karadžić* TJ, para. 545.

<sup>723</sup> *Seromba* AJ, para. 46, *Karadžić* TJ, para. 2580-81

<sup>724</sup> *Tolimir* AJ, para.204.

<sup>725</sup> *Croatia v. Serbia*, para. 157; *Tolimir* AJ, para. 202 ; *Seromba* AJ, para. 46; *Krajišnik* TJ, para. 862.

<sup>726</sup> *Tolimir* AJ, paras. 206-207; *Tolimir* TJ, para. 754-755.

and for the males who survived, the anguish of a botched execution”.<sup>727</sup> The mental anguish of the women and girls whose fathers, husbands, sons and other male relatives were taken away and executed was ultimately recognized as serious mental harm by the ICTY in the *Karadžić* Trial Judgment.<sup>728</sup>

522. **“Inflicting conditions of life calculated to bring about its physical destruction”** in whole or in part “capture[s] those methods of destruction that do not immediately kill the members of the group, but which, ultimately, seek their physical destruction”.<sup>729</sup> Measures designed to bring about death slowly, whether they succeed or not, can satisfy this definition.<sup>730</sup> This “typically relate[s] to the deliberate withholding or taking away of the basic necessities of life over an extended period of time,”<sup>731</sup> and has been recognized as including “deprivation of food, medical care, shelter or clothing, as well as lack of hygiene, systematic expulsion from homes, or exhaustion as a result of excessive work or physical exertion”.<sup>732</sup> The International Court of Justice (ICJ) in *Croatia v. Serbia* indicated that rape could fall within Article II(c) of the Genocide Convention but noted, in the particular case before the Court, “it has not been shown that these occurrences [of rape] were on such a scale to have amounted also to inflicting conditions of life on the group that were capable of bringing about its physical destruction in whole or in part”.<sup>733</sup>
523. The word “calculated” excludes any requirement of success. All that is required is that the measures be applied with the aim of bringing about the group’s physical destruction. For example, a “siege” deployed to cut off the necessities of life of a civilian

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<sup>727</sup> Patricia Viseur Sellers, The Fifth Annual Katherine B. Fite Lecture, Genocide Gendered: The Srebrenica Cases, Proceedings of the Ninth International Humanitarian Law Dialogs, 30 August – 1 September 2015.

<sup>728</sup> *Karadžić* TJ, para. 5664.

<sup>729</sup> *Tolimir* AJ, para 228. ICJ, *Croatia v. Serbia*, para. 161.

<sup>730</sup> *Tolimir* AJ, para. 233 ; *Karadžić* TJ, para. 2586.

<sup>731</sup> *Tolimir* AJ, para. 234. The Guatemalan Commission for Historical Clarification, in concluding that genocide had been committed by the Guatemalan army against the Mayan people, relied upon evidence of the army’s razing of villages, destruction of property including farmland, and the burning of harvests – all of which left the Mayan community bereft of food sources. The Commission opined that this conduct constituted the infliction of conditions of life “that could bring about, and in several cases did bring about, its physical destruction in whole or in part.” See, Commission for Historical Clarification, *Guatemala: Memory of Silence*, paras. 116-118. This conclusion was cited with approval by Judge A.A. Cançado-Trinidad in the case of *Plan de Sanchez Massacre v. Guatemala* before the Inter-American Court of Human Rights: *Plan de Sanchez Massacre v. Guatemala*, Judgment of 29 April 2004 (Merits), Separate Opinion of by Judge A.A. Cançado-Trinidad, para. 5.

<sup>732</sup> ICJ, *Croatia v. Serbia*, para. 161; *Tolimir* AJ, para. 226; *Brdjanin* TJ, para. 691; *Stakić* TJ, para. 517-518. See ICC Elements of Crimes, p. 114 ; See also *Prosecutor v. Al-Bashir* (ICC), *Second Decision on the Prosecution’s Application for a Warrant of Arrest*, 12 July 2010, paras. 32-40, in which the Pre-Trial Chamber held that “the acts of contamination of the wells and water pumps and the forcible transfer of hundreds of thousands of civilians belonging primarily to the Fur, Masalit and Zaghawa groups coupled with the resettlement in those villages and lands they had left by members of other tribes allied with the Government of Sudan.... were committed in furtherance of the genocidal policy, and that the conditions of life inflicted on the Fur, Masalit and Zaghawa groups were calculated to bring about the physical destruction of a part of those ethnic groups.”

<sup>733</sup> ICJ, *Bosnia v. Serbia*, paras. 362-364.

population in a locality, combined with systematic targeting of the civilian population in a way that was demonstrative of an intent to physically destroy them, could constitute an *actus reus*.<sup>734</sup>

524. **“Imposing measures intended to prevent births within the group”** does not require that the measures succeed. The measures need only be “intended” to achieve that aim. This could manifestly include “sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages,”<sup>735</sup> but also rape when “a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother’s group”.<sup>736</sup> In *Akayesu*, an ICTR Trial Chamber noted that “rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate”.<sup>737</sup> Indeed, any form of sexual violence or enslavement, or other measures committed with the intent of preventing, diminishing or destroying the capacity of female or male to procreate within the group, fall within this *actus reus*.<sup>738</sup>
525. **“Forcibly transferring children from their own group to another”** constitutes biological destruction by preventing the existence of future generations of children of the group. The gravamen of this form of genocide is not, as such, the elimination of the child’s affiliation with the group, but obstructing “the group’s capacity to renew itself” through subsequent generations.<sup>739</sup> The ICJ has suggested that forced pregnancy which leads to women being forced to give birth to children who are to be brought up as members of a group other than their own could satisfy the requirements of this *actus reus*.<sup>740</sup>

#### 10.4.2.2 *Mens rea* of genocide

526. The material elements are considered genocide when performed with two levels of *mens rea*: (i) intentionally (direct intent); and (ii) with the additional intent to “destroy, in whole or in part, a national, ethnical, racial or religious group as such” (special intent,

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<sup>734</sup> ICJ, *Bosnia v. Serbia*, para. 328 (finding that the siege, sniping and shelling of Sarajevo did not qualify as this form of *actus reus* because it did not demonstrate an intent to physically destroy the Bosnian population, as opposed to terrorizing them into fleeing).

<sup>735</sup> *Akayesu* TJ, para. 507.

<sup>736</sup> *Akayesu* TJ, para. 507.

<sup>737</sup> *Akayesu* TJ, para. 508.

<sup>738</sup> ICJ, *Croatia v. Serbia*, para. 166 ; *Akayesu* TJ, para. 508.

<sup>739</sup> ICJ, *Croatia v. Serbia*, Judgment, 3 February 2015, para. 136 (‘As regards the forcible transfer of children of the group to another group within the meaning of Article II (e), this can also entail the intent to destroy the group physically, in whole or in part, since it can have consequences for the group’s capacity to renew itself, and hence to ensure its long-term survival.’)

<sup>740</sup> ICJ, *Bosnia v. Serbia*, para. 367.

or “*dolus specialis*”).<sup>741</sup> Performing the acts with mere discriminatory intent is not sufficient to satisfy the genocidal *mens rea*.<sup>742</sup>

527. “Destroy” means destruction intended in the “physical” or “biological” sense.<sup>743</sup> Intending to destroy a group’s national, linguistic, religious, cultural or other identity,<sup>744</sup> so as to bring about its “dissolution,”<sup>745</sup> does not qualify.<sup>746</sup> This limitation on the word “destroy” has been applied consistently at the ICJ<sup>747</sup> and international criminal tribunals.<sup>748</sup> It is also manifest in the drafting history of the Genocide Convention, from which a separate provision criminalizing “Cultural Genocide” was removed after significant debate.<sup>749</sup> Accordingly, genocidal *mens rea* requires more than the commission of the defined acts with ethnic hatred: the specific intent must be to destroy at least a substantial part of the group physically, or to destroy it biologically.
528. The intent need not, however, be to destroy immediately,<sup>750</sup> nor need the intent be achieved at all.
529. An intent to destroy a group over time, including by impairing its ability to procreate (i.e. to destroy it “biologically”), can satisfy the special intent for genocide. A campaign of sterilization against a group would be strongly indicative of the necessary *mens rea*,<sup>751</sup> as would other acts revealing an attempt to affect the capacity of the group to procreate.<sup>752</sup>

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<sup>741</sup> *Stakić* TJ, para. 520.

<sup>742</sup> ICJ, *Bosnia v. Serbia*, paras. 186-187.

<sup>743</sup> ICJ, *Croatia v. Serbia*, para. 136 (genocide encompasses only acts “carried out with the intent of achieving the physical or biological destruction of the group, in whole or in part”); *Popović et al.* TJ, para.866; *Krstić* TJ, para. 580; *Tolimir* AJ, para. 225; *Semanza* TJ, para. 315.

<sup>744</sup> Report of the ILC, 48<sup>th</sup> Session, Yearbook of the ILC 1996, v. II, Part two, pp. 45-46, para. 12 ; *See also, Bosnia v. Serbia*, para. 344; *Krstić* TJ, para.580 ; *Popović* TJ, para. 822 ; *Karadžić* TJ, para. 553.

<sup>745</sup> *Tolimir* TJ, para. 741 ; *Tolimir* AJ, para. 225.

<sup>746</sup> ICJ, *Croatia v. Serbia*, para. 136 (underline added); *Popović et al.* TJ, para. 822.

<sup>747</sup> *Croatia v. Serbia*, para.136, *Bosnia v. Serbia*, para.190.

<sup>748</sup> Case 002/02 Judgment, para. 800; *Krstić* AJ, para.25; *Semanza* TJ, para.315.

<sup>749</sup> Report of the Ad Hoc Committee on Genocide, 5 April to 10 May 1948, United Nations, Proceedings of the Economic and Social Council, Seventh Session, Supplement No. 6, UN Doc. E/794; and United Nations, Official Documents of the General Assembly, Part I, Third Session, Sixth Committee, Minutes of the Eighty-Third Meeting, UN doc. A/C.6/SR.83, pp. 193-207; Report of the ILC, 48<sup>th</sup> Session, Yearbook of the ILC 1996, v. II, Part two, pp. 45-46, para. 12.

<sup>750</sup> *Tolimir* AJ, para. 233 (“it has not been established [...] that such a policy of removal [...] was aimed at causing the physical destruction, i.e., the slow death, of these populations.”)

<sup>751</sup> *Akayesu* TJ, para. 507; N. Robinson, *The Genocide Convention: A Commentary*, p. 64.

<sup>752</sup> *Akayesu* TJ, para 507 ; *Croatia v. Serbia*, para. 166 (explaining that rape and other acts of sexual violence could satisfy the fourth genocidal *actus reus* of “imposing measures intended to prevent births within the group if “the circumstances of the commission of those acts, and their consequences, are such that the capacity of members of the group to procreate is affected”; this reasoning should apply *mutatis mutandis* to establishing intent to biologically destroy).



530. Some acts can reflect an intent to destroy physically and biologically. The mass execution of Bosnian Muslim men from Srebrenica was indicative of a such a dual intent. The killings not only contributed directly to the physical destruction of the targeted group, but also had “severe procreative implications for the Srebrenica Muslim community, potentially consigning the community to extinction”.<sup>753</sup> The intent manifest in these actions, accordingly, was to destroy both “physically” and “biologically”.<sup>754</sup>
531. The intent must be to destroy at least a “substantial” part of the group.<sup>755</sup> The “numeric size of the part of the group targeted, evaluated in absolute terms and relative to the overall group size, ‘is the necessary and important starting point’ in assessing whether the part targeted is substantial enough – but is ‘not in all cases the ending point of the inquiry’”<sup>756</sup> The “substantiality” requirement also involves a qualitative assessment of “and control and limitations on the possible extent of their reach”.<sup>757</sup> This last consideration reflects that “‘it is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe’. The area of the perpetrator’s activity and control are to be considered.” The criterion of opportunity needs thus to be weighed against the condition of substantiality.<sup>758</sup>
532. A variety of disparate facts can be taken into consideration in evaluating whether the acts are performed with genocidal intent,<sup>759</sup> including the size of the group targeted; the scale of the destruction actually achieved;<sup>760</sup> the indiscriminate killing of fighters and civilians together, including those incapable of ever engaging in combat;<sup>761</sup> the existence of a policy<sup>762</sup> or “general plan”<sup>763</sup> to destroy the group;<sup>764</sup> the systematic and repeated nature of the material acts;<sup>765</sup> the perpetration of “other culpable acts

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<sup>753</sup> *Krstić* AJ, para. 28. *Popović et al.* TJ, para. 866.

<sup>754</sup> *Popović et al.* TJ, para. 866; *Croatia v. Serbia*, para.157.

<sup>755</sup> *Bosnia v. Serbia*, para. 198 ; *Croatia v. Serbia*, para. 142; *See also*, ILC Commentary on the Draft Code of Crimes against the Peace and Security of Mankind (1996), para 8.

<sup>756</sup> *Popović et al.* TJ, para. 832.

<sup>757</sup> *Popović et al.* TJ, para. 832; *Croatia v. Serbia*, para. 142; *Krstić* AJ, para. 12.

<sup>758</sup> *Bosnia v. Serbia*, para. 199.

<sup>759</sup> *Jelisić* AJ, para. 47.

<sup>760</sup> ICJ, *Croatia v. Serbia*, Judgment, 3 February 2015, para. 139 (‘it is difficult to establish such intent on the basis of isolated acts [...] in the absence of direct proof there must be evidence of acts on a scale that establishes an intent not only to target certain individuals because of their members of a particular group, but also to destroy the group itself in whole or in part’); *Popović et al.* AJ, para. 503; *Krstić* AJ, para. 37; *Prosecutor v. Kayishema & Ruzindana* TJ, para. 94; *Brdjanin* TJ, para. 697.

<sup>761</sup> *Krstić* AJ, para. 26.

<sup>762</sup> ICJ, *Croatia v. Serbia*, Judgment, 3 February 2015, para. 143.

<sup>763</sup> ICJ, *Bosnia v. Serbia*, Judgment, 26 February 2007, para. 373; *Karadžić* AJ, para. 80 (‘plan or policy’); *Jelisić* AJ, para. 48 (‘plan or policy’).

<sup>764</sup> *Al-Bashir* Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, para. 165 (noting that the plan must related to destruction of the group, not to ‘deny and conceal the alleged commission of crimes’ for which ‘there can be a variety of other plausible reasons for its adoption.’)

<sup>765</sup> *Jelisić* AJ, para. 47; *Sikirica et al.* Judgment on Defence Motions to Acquit, paras. 46, 52-53.

systematically directed“ against the group, including non-lethal acts of discrimination and targeting of group symbols and cultural sites;<sup>766</sup> statements, such as the use of derogatory terms that dehumanize the group;<sup>767</sup> and open-ended considerations such as the “general context”.<sup>768</sup>

533. Although forcible transfer does not, as such, demonstrate an intent to destroy biologically or physically,<sup>769</sup> the way it is carried out may indicate such an intent.<sup>770</sup>

#### 10.4.3 *The Yazidis are a religious group, and were targeted as such*

534. A religious group has been identified as “one whose members share the same religion, denomination or mode of worship”.<sup>771</sup> Beliefs and practices have been considered relevant in determining the existence of a distinct religious group, as it may objectively exist<sup>772</sup> or may be subjectively perceived<sup>773</sup> by the members of the group itself or the perpetrators who target them.

535. The Yazidi religion is well-recognized by scholars as a distinct faith, reflected in a concrete set of beliefs, practices and doctrine.<sup>774</sup> These beliefs relate to the nature of divinity, good and evil, and are distinct from other religions to which it is related, including Islam, Christianity or Zoroastrianism. God is called “Xweda” (Khuda). Seven archangels, chief of whom is Tausi Melek, the Peacock Angel, oversee the world and protect the Yazidi people.<sup>775</sup> Worship occurs at shrines and in temples, including the temple of Lalish in northern Iraq which must be visited at least once in a lifetime.<sup>776</sup>

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<sup>766</sup> *Kalimanzira* TJ, para. 731; *Karadžić* AJ, para. 80; *Jelisić* AJ, para. 47; *Gacumbitsi* AJ, paras. 40-41; ICTY, *Krstić* TJ, para. 580 (‘where there is physical and biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group’); ICJ, *Bosnia v. Serbia*, Judgment, 26 February 2007, para. 344.

<sup>767</sup> *Al-Bashir* Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, paras. 170-176; *Popović et al.* AJ, para. 470.

<sup>768</sup> *Karadžić* AJ, para. 80 Croatia advanced seventeen factors in its case against Serbia before the ICJ, and the common list of the OTP of the ICC and ICTY seems to have nine separate factors. ICJ, *Croatia v. Serbia*, Judgment, 3 February 2015, para. 408; ICC, *The Situation in Darfur, The Sudan*, ICC-02/05-157-AnxA, The Prosecutor, Public Redacted Version of the Prosecutor’s Application Under Article 58, 14 July 2008, paras. 366-400; *Popović et al.* AJ, para. 503.

<sup>769</sup> ICJ, *Bosnia v. Serbia*, para. 190 ; ICJ, *Croatia v. Serbia*, para. 480.

<sup>770</sup> *Tolimir* AJ, para. 209.

<sup>771</sup> *Akayesu* TJ, para. 515.

<sup>772</sup> *Case 002/01 (ECCC)* TJ, para. 3204

<sup>773</sup> *Bagilishema* TJ, para. 65 ; *Case 002/01 (ECCC)* TJ, para. 795; *Semanza* TJ, para.312; *Jelisić* TJ, para. 70; *Rutaganda* TJ, para. 55. *Stakić*, AJ, para. 25.

<sup>774</sup> Khalil Jindy, “An approach to know the fact about the Yezidi religion” (in Arabic) (Sweden, Rabun publishing, 1996), pp. 54-65; George Habib, “The Yazidi are remains of an ancient religion” (Baghdad: Dar Al-Rashid, 1979); Wolfram Reiss, “Uber religion und Glaubensrichtung der Jeziden”, Conference der 74. Ferman, Wien 21 March 2017; Alex Cuadros, “Songs from Sinjar”, *Lapham’s Quarterly* ; *See also, Section 4.*

<sup>775</sup> Kizilhan, J. I., “The Yazidi—Religion, Culture and Trauma. *Advances in Anthropology*”, 2017, pages 333 to 339 ; , pages 8 and 9.

<sup>776</sup> Kizilhan, J. I., “The Yazidi—Religion, Culture and Trauma. *Advances in Anthropology*”, 2017, page 334

Religious authorities preside over services, including marriage; issue religious rulings and doctrine; and play a vital role in community life.<sup>777</sup> Various practices surrounding the consumption of food, including that an animal must be facing Lalish when slaughtered for religious celebrations, are obligatory.<sup>778</sup> The Yazidi religion prohibits eating lettuce and cabbage and, like Muslims, pork.<sup>779</sup> A fast must be observed on three designated days in December as a sign of gratitude to God for the creation of the earth.<sup>780</sup>

536. As discussed in Section 4, a person is born into Yazidism through two Yazidi parents. There is no path to conversion into the faith, a fact which underpins the close-knit nature of the community.<sup>781</sup> Within Yazidism, marriages are only permitted between members of the same caste. There are three castes: the *sheikhs* who are the ruling caste; the *pirs* who form the religious caste; and the *murids*, who make up about 90 per cent of the Yazidi population and can best be described as commoners within the caste system.<sup>782</sup>
537. Intermarriage – or any form of sexual contact – with members of other religious groups is strictly forbidden and would lead to ostracization from the Yazidi community.<sup>783</sup> In the past, there have been documented cases of honour killings, where women from the community sought to have relationships with non-Yazidi men<sup>784</sup> or declined marriages within the community.<sup>785</sup>
538. ISIL identified the Yazidis as a religious group and targeted them on that basis. Prior to June 2014, ISIL’s own theological authorities studied whether Yazidis should be treated as “apostates” (“rafidi”), i.e. Muslims who had deviated from the true faith, or as “mushrik,”<sup>786</sup> a word that can be roughly translated as “pagan” or “polytheist”<sup>787</sup>. ISIL “determined” that the Yazidis were the latter on the basis that they “existed since the pre-Islamic jahiliyyah, but became “islamized” by the surrounding Muslim population, language and culture, although they never accepted Islam nor claim to

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<sup>777</sup> See section 4.

<sup>778</sup> See section 4.

<sup>779</sup> See section 4; See also, Bashiqa Journal, “A Sect Shuns Lettuce and Gives the Devil His Due”, The New York Times, 3 January 2003

<sup>780</sup> Kizilhan, J. I., “The Yazidi—Religion, Culture and Trauma. Advances in Anthropology”, 2017, page 334

<sup>781</sup> UNITAD, Confidential testimonial evidence.

<sup>782</sup> Khider Domle, “Yazidis: A Deep-Rooted Community in an Unstable Present”, in Saad Salloum, Minorities in Iraq: Memory, Identity and Challenges, 2013 ; Kizilhan, J. I., “The Yazidi—Religion, Culture and Trauma. Advances in Anthropology”, 2017, page 335

<sup>783</sup> UNITAD, Confidential testimonial evidence.

<sup>784</sup> Amnesty International, “Iraq: Amnesty International appalled by stoning to death of Yazidi girl and subsequent killings”, 27 April 2007 ; Matthew McGarry, “The Dishonorable Death of Doa”, ABC News, 7 May 2007

<sup>785</sup> Associated Press, “Yazidi man accused of Germany honor killing arrested in Iraq”, 14 October 2018 ( )

<sup>786</sup> Dabiq, Issue 4: The Failed Crusade, October 2014 , p.14.

<sup>787</sup> Charlie Winter, Expert Report for UNITAD: Analysis of Video “And Kill Them Wherever You Overtake Them” (8 March 2021), para. 68.

- have adopted it.<sup>788</sup> Propaganda produced or disseminated on official ISIL sites before, during and after August 2014 characterized the Yazidi religion as “strange”<sup>789</sup> or “Satanism”.<sup>790</sup>
539. Yazidis were targeted on religious grounds. Fighters frequently disparaged Yazidis in ways that echoed ISIL propaganda.<sup>791</sup> The religious targeting inherent in ISIL’s conduct is further confirmed by its frequent attempts to persuade Yazidis to convert to Islam, failing which they would be executed.<sup>792</sup> Enslavement of women was likewise justified on religious grounds. A lengthy article titled “The Revival of Slavery Before the Hour” published in Dabiq provided a religious justification for the widespread and systematic enslavement of Yazidi women and children that took place at the time.<sup>793</sup>
540. Additionally, the geographic pattern of ISIL’s attack starting in early August 2014 corresponded to predominantly Yazidi areas. By June 2014, ISIL had seized areas of Sinjar with predominantly Arab and Islamic populations, thus encircling areas that were predominantly Yazidis.<sup>794</sup> The attack on those areas began in early August 2014, starting with Gir Zerik and Shiba Sheikh Khidir, and proceeded successively through all other predominantly Yazidi or mixed villages around the base of the Sinjar mountains.<sup>795</sup>
541. Accordingly, the Yazidis are a “religious group,” and they were targeted as such by ISIL starting no later than the commencement of the attack on Sinjar on or around 3 August 2014.

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<sup>788</sup> Dabiq, Issue 4: The Failed Crusade, October 2014 , p.15.

<sup>789</sup> Official ISIL spokesman, Speech, May 2012 – Note: refers to Yazidi as “Satan worshippers”; *See also*, SITE Intelligence group, “Chilean Fighter Reviews Spoils Taken by Islamic State at Iraq-Syria Border”, 29 June 2014 , min. 8:50-10:50 ; Dabiq, Issue 4: The Failed Crusade, October 2014 , page 1; ISIL video, “Hundreds of Yazidis convert to Islam”

<sup>790</sup> Dabiq, Issue 3: A Call to Hijrah, page 35 ; Dabiq, Issue 4: The Failed Crusade, October 2014 , page 14 ; “Iraqi Insurgent Faction Approves Baghdadi Initiative” SITE 15 February 2010; ISIL video, “Hundreds of Yazidis convert to Islam”

<sup>791</sup> UNITAD, Confidential testimonial evidence.

<sup>792</sup> UNITAD, Confidential testimonial evidence.

<sup>793</sup> Dabiq, Issue 4: The Failed Crusade, October 2014 , article “The Revival of Slavery Before the Hour”, page 14 (“Before Shaytān reveals his doubts to the weak-minded and weak hearted, one should remember that enslaving the families of the kuffār and taking their women as concubines is a firmly established aspect of the Shari’ah that if one were to deny or mock, he would be denying or mocking the verses of the Qur’ān and the narrations of the Prophet (sallallāhu ‘alayhi wa sallam), and thereby apostatizing from Islam.”); *See also*, Section 7.4.1. and especially, 7.4.1.3.2.

<sup>794</sup> UNITAD, Confidential testimonial evidence.

<sup>795</sup> *See* Section 5.4. and 5.5.

#### 10.4.4 *Mens rea*

##### 10.4.4.1 *Introduction*

542. Four aspects of ISIL's attack on Sinjar in August 2014 demonstrate an intent to destroy at least a substantial part of the Yazidi as a religious group: (1) ISIL openly proclaimed, and then rigorously applied, a policy that all Yazidi men must convert, or die and have their families enslaved; (2) ISIL tried to impose this policy on as many Yazidis as it could, as demonstrated by its attempts to prevent civilians from fleeing, killing those who did try to flee and encircling and besieging the Sinjar mountains for the purpose of killing or capturing those who sought refuge there; (3) ISIL separated captured Yazidi males and females of child-bearing age through its system of enslavement, as well as through the execution of captured men and older boys; and (4) ISIL captured, separated and enslaved Yazidi women and girls, and also sexually abused and tortured most of them, to such an extent as to be indicative of an intent to destroy their capacity to procreate, within the Yazidi community.
543. As previously discussed, proof of genocidal *mens rea* does not require it to be demonstrated that the perpetrator targeted all members of a group in "every corner of the globe".<sup>796</sup> Although the substantiality requirement remains "essential," it can be assessed with reference to "the opportunity available to the alleged perpetrator".<sup>797</sup> The systematic nature of the perpetrator's conduct within the available opportunity can be particularly revealing of intent: "[T]he killing of all members of the part of a group located within a small geographic area, although resulting in a lesser number of victims, would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small geographic area."<sup>798</sup>
544. The evidence shows that ISIL attempted to apply its "convert or die" policy against all the Yazidi men falling into its hands, and its enslavement policy against the Yazidi women and children. To do so, ISIL sought to maximize the number of Yazidis it captured during its attack on Sinjar. These are decisive indicators of the *mens rea* to destroy the Yazidis, in whole or in part.

##### 10.4.4.2 *ISIL's policy of convert or die, or be enslaved, was openly acknowledged and rigorously implemented*

545. Starting on 3 August 2014 across villages, ISIL gave the Yazidi men and older boys of Sinjar an ultimatum: convert to Islam, or else be killed and have your families enslaved.<sup>799</sup>

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<sup>796</sup> ICJ, *Bosnia v. Serbia*, para. 199.

<sup>797</sup> ICJ, *Bosnia v. Serbia*, para. 199; Krstić AJ, para. 13.

<sup>798</sup> Krstić TJ, para. 590.

<sup>799</sup> See Section 6.

546. On or around 3 August 2014, in places such as Sida Srheikh Khidir,<sup>800</sup> Solagh,<sup>801</sup> Hardan,<sup>802</sup> Khro Farm,<sup>803</sup> Zilily and Sinjar town,<sup>804</sup> men and older boys were given “the ultimatum of either converting to Islam or be killed”. Those who agreed to convert were taken to different locations where they were further threatened to convert or be killed. Once forcibly converted, they had to perform Muslim prayers and read the Quran.<sup>805</sup>
547. On 6 August 2014, in Kocho and Al Hatimiyah, ISIL issued an ultimatum to the mukhtars of the villages that the men and older boys must convert to Islam in three days or be executed. Upon failure to convert, and following the escape of villagers from Al Hatimiyah, ISIL killed more than 400 men in Kocho on 15 August 2014.<sup>806</sup>
548. Those who were given the choice to convert and agreed were taken with their families to different locations, including Tal Afar, Kocho and Mosul.<sup>807</sup> Scores of these “converts” appear on an ISIL propaganda video, made public on 20 August 2014.<sup>808</sup> The “converts” are seen disembarking from a bus and then sitting in a courtyard listening attentively to a speaker giving a sermon ending with the words:
- “You are now under judgment of the disbelievers. We ask of you the two testimonials of faith. You will say the testimony of that there is no god but Allah, and the testimony that Muhammad is the Messenger of Allah, and afterwards you will be Muslims, brothers to us, have duties to do, and have your rights. Now you will repeat after me: ‘I testify that there is no god but Allah, and that Muhammad is His slave and His Messenger’”.<sup>809</sup>
549. The listeners then repeat the speaker’s oath, and some raise their fingers while doing so as a mark of their oath-taking. ISIL’s interviews with some of the converts purport to portray them as grateful for their conversion.<sup>810</sup> Even though the video makes no express reference to the “convert or die” policy, witness accounts referred to the event and the threats of being killed if they refused to convert.<sup>811</sup>

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<sup>800</sup> See Section 6.1.1.

<sup>801</sup> See Section 6.1.4.

<sup>802</sup> See Section 6.1.6.

<sup>803</sup> See Section 6.1.8.

<sup>804</sup> See Section 6.1.10.

<sup>805</sup> See Section 7.4.3.1.

<sup>806</sup> See also, Sections 5.5.2., 5.5.3. and 6.2.

<sup>807</sup> See Section 7.4.3.

<sup>808</sup> Da’esh video, “Hundreds of Yazidis convert to Islam”, min 6:07-7:45

<sup>809</sup> SITE Intelligence Group, IS Video Focuses on Alleged Conversion to Islam by Yazidis in Ninawa, transcript.

<sup>810</sup> Da’esh video, “Hundreds of Yazidis convert to Islam”, min 7:45-8:50

<sup>811</sup> See Section 7.4.3.



550. Following this video in October 2014, ISIL openly acknowledged and justified its policy of enslaving Yazidi women and girls and, indirectly, the killing of Yazidi men. According to an article titled “The Revival of Slavery Before the Hour” in ISIL’s English-language online magazine Dabiq, “[p]rior to the taking of Sinjar, Shari’a students in the Islamic State were tasked to research the Yazidis to determine if they should be treated as an originally mushrik group or one that originated as Muslims and then apostatized due to many of the related Islamic rulings that would apply to the group, its individuals and their families”.<sup>812</sup> Dabiq reported ISIL’s decision that the Yazidis should be treated as “mushrikin” and that:

“Unlike the Jews and Christians, there was no room for jizyah payment. Also, their women could be enslaved unlike female apostates who the majority of the fuqaha’ say cannot be enslaved [...] After capture, the Yazidi women and children were then divided according to the Shariah amongst the fighters of the Islamic State who participated in the Sinjar operations [...].”<sup>813</sup>

551. This Dabiq article explicitly called for the killing of Yazidi men and older boys who did not convert:

“Upon conquering the region of Sinjar in Wilāyat Nīnawā, the Islamic State faced a population of Yazidis, a pagan minority existent for ages in regions of Iraq and Shām. Their continual existence to this day is a matter that Muslims should question as they will be asked about it on Judgment Day, considering that Allah had revealed Ayat as-Sayf (the verse of the sword) over 1400 years ago. He ta’ala said, “And when the sacred months have passed, then kill the mushrikin wherever you find them, and capture them, and besiege them, and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way. Indeed, Allah is Forgiving and Merciful.”<sup>814</sup>

552. On the day of the Sinjar attack, on 3 August 2014, ISIL fighters were informed of this policy. An ISIL commander issued what was described as an “oral fatwa” to his fighters that Yazidi men, not being “people of the book,” could be killed and their women treated as haram. This policy was widely known among the general population at the time of the attack. The enslavement of women and girls was openly justified in the mosques in villages under ISIL’s control.<sup>815</sup>

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<sup>812</sup> Dabiq, Issue 4: The Failed Crusade, October 2014 , article “The Revival of Slavery Before the Hour”, page 14.

<sup>813</sup> Dabiq, Issue 4: The Failed Crusade, October 2014 , page 15.

<sup>814</sup> Dabiq, Issue 4: The Failed Crusade, October 2014 , page 14.

<sup>815</sup> UNITAD, Confidential testimonial evidence.

553. This policy was part of a broader campaign of dehumanizing language used by ISIL and its predecessors against the Yazidi people and religion, as reflected in the following examples:
554. An ISI spokesman denounced the Iraqi government in 2011 for having preserved the blood of the Yazidi “who worships Satan”;<sup>816</sup>
555. An alleged ISIL fighter reported online in 2013 that “annihilating the Yazidis” was among the causes attracting him to join ISIL;<sup>817</sup>
556. In an execution video publicized by ISIL in June 2014, an ISIL fighter made a speech in front of a group of prisoners taken during ISIL’s operations against border posts along the Iraqi-Syrian border: “[S]ome of them are Shi'a, some of them apostates, some of them Yazidi. For those who don't know what Yazidi is, they are those who worship the devil, they worship Ibliss, Satan. [...] You see here, prisoners. This is just some of the hundreds of prisoners we have. Most of them Shi'a and Yazidi. Those people who raised their hands right now are Yazidi people. They worship Lucifer. They say he got thrown out of Paradise, and they worship him. Those people used to patrol the border between Iraq and al-Sham. These are the people who used to fight and capture the martyrdom-seekers and make sure that no martyrdom-seeker gets into Iraq. Praise be to Allah, every time we send a martyrdom-seeker they got through”;<sup>818</sup>
557. Issue 3 of Dabiq, while referring to the territorial gains during ISIL’s June 2014 offensive, stated: “The first conquest was that of the northwestern regions of Wilāyat Nīnawā (Sinjār, Zimmār, Rabī’ah, and Wānah). These areas were mostly occupied by the Peshmerga, who fled upon hearing of the Islamic State’s approach. Some of these regions were inhabited by the devil worshipping Yazīdiyyah. Alhamdulillah, hundreds of them turned to Allah, declared their Islam, and repented from their kufr. As for those who insisted upon their shirk, then they fled with the Peshmergan apostates”;<sup>819</sup>
558. One of the images from an article in Issue 3 of Dabiq, referring to the “devil-worshipping Yazidi,” is seen on a video of still images released by ISIL on 6 August 2014. The video contains at least three photographs appearing to show executions of

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<sup>816</sup> “ISI Spokesman Defends Group’s Reputation, Invites to Repent”, SITE, 21 May 2013 – Note: It accuses the Iraqi government to keep Yazidis alive – “They preserved the blood of the Yazidi who worships Satan.”

<sup>817</sup> SITE Intelligence group, “Alleged ISIL Fighter Explains Why He Joined Group, Rallies for Support”, 15 August 2013

<sup>818</sup> SITE, “Chilean Fighter Reviews Spoils Taken by Islamic State at Iraq-Syria Border”, 29 June 2014, min. 8:50-10:50 – the building filled with the prisoners is then destroyed by remote detonation at min. 11:30-12:05.

<sup>819</sup> Dabiq, Issue 3: A Call to Hijrah, p. 18.

civilians, each with the caption “Kill them wherever you find them”. One of these photos appears to show 13 recently executed civilians lying dead on the ground;<sup>820</sup>

559. The “conversion video” of 20 August 2014, described above, commences with an introduction explaining that the “Yazidis are a sect from the original disbelievers [...] The Yazidi religion is a pagan religion [...] The beliefs and rituals practiced by members of the Yazidi sect are strange! Among them is their sanctifying and worshipping the accursed Satan, claiming that he is an agent of Allah over the world, and the shepherd of the Yazidis in the land. [...] The Yazidis are prohibited to spit on the ground and defecate in the bathroom, since it is an insult to Satan”;<sup>821</sup>
560. A December 2014 video published by an ISIL media outlet describes the Yazidi community as “kuffar” and devil-worshippers;<sup>822</sup>
561. In the same month, ISIL broadcast a video of a suicide bombing of a Yazidi shrine in North Sinjar, with fighters heard stating that for the “legions of disbelief” and “enemies of Allah” their “destiny in Sinjar is the pyre and the graveyard”.<sup>823</sup>
562. The application of the “convert or die” policy continued well beyond the period of ISIL’s military advance in August 2014. Yazidi men and older boys captured during that attack who converted were subsequently executed, as detailed above.<sup>824</sup>
563. These killings reflect the persistent and rigorous application of ISIL’s intent to physically destroy any Yazidis who failed to convert to their satisfaction.

#### *10.4.4.3 ISIL attempted to capture and kill as many Yazidis as it could*

564. ISIL was not satisfied with the expulsion of Yazidis<sup>825</sup> and, as detailed further above,<sup>826</sup> actively: (i) tried to prevent Yazidi civilians from fleeing by encircling villages, setting up roadblocks and giving false assurances; (ii) shot at and killed civilians as they fled;

<sup>820</sup> SITE “IS Claims Suicide Bombing by German Fighter Among Attacks in Ninawa” 6 August 2014 – Note: The SITE article gives a link to the slide show of photos ; the video entitled futuhat al-dawla al-islamiya fir shamal wa gharb wilaya Ninawa shows a total of 46 pictures collated into a slide show. In particular pictures at min. 0:58 (civilians lying in a ditch / sandy bank after being shot dead – captioned fa-itha laqitum al-din kafu fa dharab al-raqa), min. 1:06 (male civilian shot dead in shade of wall – captioned wa qatilu al-mushrikin kafa kama yuqatilunkum kafa) 1:11 (over a dozen males lying on gravel in construction site – labelled wa uqtuluhum hayth tathaqaftumuhum) 1:16 (five males lying in a harvested wheat field – captioned wa uqtuluhum hayth tathaqaftumuhum) 1:28 (two dead civilian males on a roadside – captioned al-taraqat taghas bi jayf al-malishiyat)

<sup>821</sup> Da’esh video, “Hundreds of Yazidis convert to Islam”, min 00:01-01:55

<sup>822</sup> Da’esh video, “Hundreds of Yazidis convert to Islam”

<sup>823</sup> SITE Intelligence group, “IS Video Shows Suicide Bombing and Raid in Sinjar, Beheading of Three Peshmerga Elements”, 30 December 2014

<sup>824</sup> See Sections 6.6 and 7.4.3.

<sup>825</sup> ICJ, *Croatia v. Serbia*, paras. 435 and 437

<sup>826</sup> See Sections 5.5. and 6.

and (iii) encircled the civilians who fled to the Sinjar mountains for the purpose of capturing or killing them.

565. Many Yazidis were encircled by ISIL inside their villages and, as such, were prevented from leaving. Others were targeted as they fled and were stopped on the road at checkpoints or junctions, where they were often captured or killed. Others managed to reach the mountains but were then stopped by ISIL who convinced them to return to their villages, captured or killed them. This *modus operandi* was used across Sinjar starting on 3 August 2014, rendering any escape extremely difficult.<sup>827</sup> All of these actions indicate an intent by ISIL to maximize the number of individuals upon whom it could inflict death or enslavement in the absence of conversion.
566. The attack on Kocho and subsequent executions of hundreds of men, older boys and elderly women on 15 and 16 August 2014 followed a similar objective. ISIL members surrounded the village to prevent the escape of villagers, which was reinforced following the escape of families from the neighbouring village. ISIL then executed *en masse* the men, older boys and elderly women.<sup>828</sup>
567. ISIL's intention to subject as many Yazidis as it could to its policy of forced conversion or death and enslavement was also reflected in its attempt to encircle the Sinjar mountains, where many Yazidis had fled. As developed in Section 5.5.1, many Yazidis, and particularly vulnerable people, faced death in the mountains, due to injuries, dehydration and hunger.<sup>829</sup> On 20 August 2014, while the siege was ongoing, an ISIL commander, presented as having "participated in the operation to conquer Sinjar," says on a video:

"We had called the Yazidis to convert to Islam before conquering Sinjar, and before conquering Tal Afar, in return for safety and protection, and to provide them with all they need as much as we could. But they refused and they fought us. This is what you have seen with your own eyes. They are in the mountains. [...] We advise the Yazidis, and we hope from them, to come down from the mountains and to convert to Islam, first, for them to save themselves from the Hellfire in the hereafter, and second, if they remain in the mountains they will die from hunger and thirst."<sup>830</sup>

568. Although ISIL was aware of these conditions – as reflected in the video of the commander speaking – it maintained its siege of the Sinjar mountains, encircling as

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<sup>827</sup> See Sections 5.5. and 6.

<sup>828</sup> See Sections 5.5.2., 6.2. and 6.3.

<sup>829</sup> See Section 5.5.1.

<sup>830</sup> Da'esh video, "Hundreds of Yazidis convert to Islam", min 2:25

much of the base as it could. ISIL threatened to invade the mountains and targeted the refugees with mortar fire.<sup>831</sup>

10.4.4.4 *The systematic and prolonged enslavement and severe abuse of Yazidi women and girls demonstrates the intent to biologically and physically destroy the Yazidis of Sinjar*

569. The nature and fact of ISIL's enslavement of Yazidi women and girls demonstrates an intent to damage or destroy the capacity of Yazidi women and girls to procreate within the Yazidi community. ISIL systematically and deliberately separated, enslaved, raped, sexually enslaved, inflicted severe bodily and mental harm, starved and killed Yazidi women and girls over whom it exercised control. Following the separations from men and older boys, the sexual abuse and mistreatment were so severe that the foreseeable consequence – consistent with the policy of “convert or die” – was to prevent or impair the capacity of these women to reproduce within their community and thus prevent the existence of future generations of Yazidis. The scale and severity of the mistreatment, which was officially authorized and facilitated through ISIL's *sabaya* system, was so severe that in some instances it led to death, thus also evidencing an intent to physically destroy.
570. From the start, ISIL separated Yazidi women and girls *en masse* from their families, communities and husbands, then subjected them to slavery without regard to their existing family and conjugal relationships.<sup>832</sup> Even Yazidi married couples who converted to Islam, initially allowed to live together as a family, were eventually separated. After separation, the women and girls were taken to other destinations in Iraq or Syria and subjected to sexual slavery and other crimes.<sup>833</sup> These separations were often carried out in terrifying circumstances. ISIL knew or should have known that these acts would damage, often irreparably, family bonds and relationships and cause lasting psychological harm that would contribute to the biological destruction of the Yazidi population.
571. Second, ISIL openly justified its enslavement of Yazidi women and girls as part of its overall objective of eradicating the Yazidis. Hence, in Issue 4 of Dabiq, ISIL referred to a theological maxim – “the slave girl gives birth to her master”<sup>834</sup> – implying that any future generation of children to which the slaves give birth will not be Yazidis and, consequently, will not be accepted as part of the community.<sup>835</sup> In Issue 9 of Dabiq, a theological justification was offered for taking women who had previously been in conjugal family relationships with Yazidi men, situating it as part of the wider project

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<sup>831</sup> ISIL video “Sinjar, the mass grave of infidels”, released by Wilayat Al-Jazira.

<sup>832</sup> See Sections 6., 7.2.2., 7.4.1 and 8.2.

<sup>833</sup> See Sections 7.3.2. and 7.4.1; For instance, UNITAD, Confidential testimonial evidence.

<sup>834</sup> Dabiq, Issue 4: The Failed Crusade, October 2014, pages 15 and 16.

<sup>835</sup> See on that matter, SEED Foundation Report, “Children born of the ISIS war”, January 2020

of wiping out the Yazidis.<sup>836</sup> Forced marriage was further encouraged as a noble act for the benefit of the Yazidi women and girls.<sup>837</sup> With these justifications, it is unsurprising that the separation of Yazidi men and women, often with no regard for any existing marital bond, was systematic.<sup>838</sup>

572. Third, ISIL particularly valued Yazidi women and girls of child-bearing age as sexual slaves, demonstrating its targeting of procreative capacity.<sup>839</sup> Only women and girls ISIL perceived to be of child-bearing age were systematically subjected to rape and sexual slavery,<sup>840</sup> whereas older women were enslaved primarily for domestic labour.<sup>841</sup> Age and virginity were sometimes determined through physical or “medical” examination.<sup>842</sup> Women and girls, as young as nine years old, that had not already had children, appear to have been particularly targeted for rape.<sup>843</sup>
573. Fourth, ISIL captors tried to indoctrinate Yazidi women and girls to such an extent that they would never return to live and procreate with Yazidi men in their community. Some even lost the capacity to speak the Yazidi language.<sup>844</sup> This indoctrination was particularly applied to young girls, who had very limited capacity to resist or choose. This indoctrination extended – as formally justified in Issue 9 of Dabiq – to the practice of forced marriage. ISIL members could not have failed to appreciate that forced marriage, frequently combined with the most extreme forms of physical and sexual abuse, would create social, physical and psychosocial obstacles to these women ever again being able to choose to have families within the Yazidi community.<sup>845</sup>
574. Fifth, the consequences for anyone who tried to escape but failed were very severe. Yazidi women who tried and failed were subsequently physically abused and threatened with death, extreme physical pain or separation from their children.<sup>846</sup> Those who tried to rescue captives were killed if caught,<sup>847</sup> and ISIL actively worked on dismantling smuggling networks.<sup>848</sup> ISIL’s policy, notwithstanding some individual releases of Yazidi women after payment of a ransom by relatives, was to permanently enslave them.

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<sup>836</sup> Dabiq, Issue 9: They Plot and Allah Plots, May 2015 , pages 44 to 49, “Slave-girls or prostitutes?” by Umm Sumayyah Al-Muhajirah.

<sup>837</sup> Dabiq, Issue 9: They Plot and Allah Plots, May 2015 , ‘Slave-girls or Prostitutes?’, p. 44.

<sup>838</sup> See Section 7.2.2.

<sup>839</sup> See Sections 7.4.1.1., 7.4.1.2., 7.4.1.3., 8.2.1. and 8.2.2.

<sup>840</sup> See Sections 7.4.1.3. and 8.2.2.

<sup>841</sup> See Section 7.4.4.

<sup>842</sup> See Sections 7.4.1.1. and 8.2.1.

<sup>843</sup> See Sections 7.4.1.1., 7.4.1.3. and 8.2.2.

<sup>844</sup> See Sections 7.4.1.6., 8.2.6., 8.3.2.2. and 8.3.3.5

<sup>845</sup> See Sections 7.4.1.4. and 8.2.3

<sup>846</sup> See Sections 7.4.1.3. and 8.2.2

<sup>847</sup> See for example, UNITAD, Confidential testimonial evidence.

<sup>848</sup> UNITAD, Confidential testimonial evidence.



575. Sixth, ISIL's sexual abuse and sexual enslavement was so severe as to reflect a disregard for the capacity of such girls and women to ever procreate within their community in the future.<sup>849</sup> As described in Sections 7 and 8,<sup>850</sup> unimaginably inhumane treatment was inflicted against Yazidi women and girls, in many cases over periods of years. Many suffered serial rapes, gang rapes, beatings, starvation and having to witness the abuse of loved ones, including family members. Girls as young as nine were subjected to rape. Suicide attempts or attempts to escape, leading to life-threatening beatings, were common. Those who survived faced, and often continue to face, severe physical, psychological or societal obstacles to re-establishing a stable relationship within the Yazidi community and exercising the choice to have Yazidi children. These actions and their inevitable consequences demonstrate an intent to biologically destroy the Yazidi of Sinjar by preventing Yazidi women and girls from giving birth to children within their religious group.
576. Seventh, pregnancies, an inevitable result of systematic rape, have created further obstacles to the return of Yazidi women and girls, along with their ability to exercise their choice to procreate within their community. In addition to the short-term appropriation of procreation capacity arising from pregnancy, ISIL also knew that such children would not be accepted as and considered Yazidi. ISIL could not have failed to appreciate that rape and forced marriages would lead to pregnancies that could permanently alienate such women from the Yazidi community and, accordingly, contribute to its biological destruction.<sup>851</sup>
577. Eighth, as detailed throughout Sections 6, 7, and 8, the treatment of women and girls was often so poor as to constitute a threat to their physical survival. This occurred during ISIL's enslavement of women and girls, notwithstanding any rules promulgated by ISIL for the purported welfare of such slaves. In some cases, women died or were killed in captivity.<sup>852</sup>

*10.4.4.5 Attempts to eradicate the Yazidi identity of children reflect the intent to biologically destroy*

578. As discussed in Section 8, children were systematically and forcibly transferred from their Yazidi families, forcibly converted to Islam and frequently trained for military service. As with the Yazidi women, these children were subjected to measures demonstrating an intent that they should never procreate within the Yazidi community. These acts are a further reflection of an intent to biologically destroy.

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<sup>849</sup> *Croatia v. Serbia*, para. 165; *Krstić* AJ, para. 29.

<sup>850</sup> See in particular, Sections 7.3., 7.4.1, 8.2. and 8.3.

<sup>851</sup> See Section 7.4.1.3.; For instance, UNITAD, Confidential testimonial evidence.]

<sup>852</sup> See for instance, Section 6.3.

10.4.4.6 ISIL's openly stated policies, its attempts to target as many Yazidis as it could, and the scale of the killing and enslavement of Yazidi men, women and children, demonstrate an intent to physically and biologically destroy at least a substantial part of the Yazidi group

579. As mentioned above in Section 6.7., the total number of Yazidis killed during ISIL's Sinjar attack remains unconfirmed but is estimated to be between 1,434 and 3,100.<sup>853</sup> The total number of Yazidis kidnapped by ISIL is estimated to be around 6,800.<sup>854</sup> In 2019, about one-third were believed to be still captive or were still missing.<sup>855</sup> As of 2022, the fate of 2,693 Yazidis was still unknown.<sup>856</sup> The total number of individuals subjected to physical or biological destruction was therefore almost 10,000 Yazidis.<sup>857</sup>

580. The reference point for establishing genocidal intent, however, is not the number of individuals victimized, but the scale of the group targeted.<sup>858</sup> ISIL's pronouncements and actions show that it targeted a group much larger than those they managed to capture. ISIL's conduct and official pronouncements demonstrate that they sought to capture all Yazidis of Sinjar and further kill or enslave them. ISIL forcibly displaced them; targeted them as they fled; tried to capture as many of them as possible; besieged the Sinjar mountains; and openly expressed a desire to capture all Yazidis who sought refuge there.<sup>859</sup> While many of the targeted group managed to escape death,<sup>860</sup> there is little evidence that ISIL voluntarily released its Yazidi captives, except for the cases of Yazidis being ransomed which were incidents done contrary to its policy.<sup>861</sup>

581. The foregoing narrative further demonstrates that ISIL seized every opportunity to inflict physical and biological destruction on the targeted group.<sup>862</sup> ISIL openly acknowledged that it sought to eliminate the Yazidis as a religious group – through physical and biological destruction, if need be – and offered a theological justification for these actions.<sup>863</sup>

582. The fact that the Yazidis could have avoided physical destruction by converting does not change the nature of ISIL's intent, as ISIL resorted to mass killings and mass

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<sup>853</sup> See Section 6.7.

<sup>854</sup> Cetorelli et al., "Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey", PLOS, 9 May 2017, p. 9

<sup>855</sup> UNITAD, Confidential testimonial evidence.

<sup>856</sup> See

<sup>857</sup> Cetorelli et al., "Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey", PLOS, 9 May 2017, p. 1,

<sup>858</sup> Krstić AJ, para. 12.

<sup>859</sup> ISIL video, "Hundreds of Yazidis convert to Islam", min 2:25

<sup>860</sup> Krstić AJ, para. 12.

<sup>861</sup> Krstić AJ, paras. 15; Popović et al. TJ, para. 832.

<sup>862</sup> ICJ, *Croatia v. Serbia*, para. 437.

<sup>863</sup> Dabiq, Issue 4: The Failed Crusade, October 2014, page 15.

enslavement to achieve its objective. ISIL was not only willing to resort to those measures, but did so on a massive scale, reflecting its genocidal intent.

583. Consequently, ISIL seized its opportunity<sup>864</sup> to physically and biologically destroy the Yazidis as a religious group as systematically and fully as it could, and as much as needed to achieve its objectives.

#### *10.4.4.7 Conclusion regarding genocidal intent*

584. The numerous and systematic acts of killing and enslavement, along with psychological and physical abuse toward the Yazidis, combined with systematic separations of members of the endogamous community by gender and age demonstrate an intent to achieve their physical and biological destruction. The Yazidis of Sinjar are, in turn, a sufficiently substantial part of the whole to demonstrate genocidal intent, especially when viewed in conjunction with ISIL's openly stated policies and vigorous attempts to inflict those policies on as many Yazidi individuals as possible. ISIL's failure to achieve its final solution for the Yazidi "problem" does not preclude an inference of genocide. On the contrary, ISIL's systematic murder, rape, transfer of children, enslavement and other forms of extreme and widespread abuse provide reasonable grounds to conclude that their actions were carried out with genocidal intent.

### ***10.4.5 The Material elements of genocide were committed against a protected group***

#### *10.4.5.1 Introduction*

585. The following categories of acts were committed by ISIL against the Yazidi population:

- Mass executions of Yazidi civilians, in particular in or around the following locations: Siba Sheikh Khidir, Kocho, Qeni, Solagh, Hamadan, Hardan's junction, Sinjar town, Khro Farm, Khanasor, Zumani, Zilily, Sheikh Mand Temple and Tal Afar;
- Killing of fleeing Yazidi civilians;
- Besieging of the Sinjar mountains to kill or capture Yazidis who fled there;
- Long-term enslavement and severe abuse of Yazidi women and girls, causing serious bodily or mental harm and even death;
- Transferring children from the Yazidi group to another group; and
- Long-term captivity and subsequent execution of Yazidi men and boys who forcibly renounced their religion and converted to Islam.

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<sup>864</sup> *Krstić* AJ, para. 13 ; *Bosnia v. Serbia*, para. 199.

586. Each of these categories of acts, some inflicted on a massive scale over months to years, correspond to one or more of the five material elements of genocide: killing; causing serious bodily or mental harm; inflicting conditions of life intended to bring about the group's destruction; imposing measures intended to prevent births within the group; and forcibly transferring children from their own group to another. As discussed below, the enslavement and abuse of women and girls amounts to all five of the forms of genocidal *actus reus* committed against different female members of the Yazidi group.

#### 10.4.5.2 Mass executions<sup>865</sup>

587. **An undetermined number of Yazidi men and older boys at Siba Sheikh Khidir on 3 August 2014.**<sup>866</sup> ISIL attacked Siba Sheikh Khidir in the early hours of 3 August 2014 and captured a group of Yazidis at the Siba Skeikh Khidir garage. The men were killed after hesitating to agree to convert, while the women and girls were taken away. Many other residents of Siba Sheikh Khidir were captured or killed around the same time as this mass killing at the garage occurred, while they were trying to flee.

588. **At least 58 Yazidi men and older boys at Hardan junction on 3 August 2014.**<sup>867</sup> Many Yazidi residents of Hardan village were captured by ISIL at Hardan junction as they tried to flee on the afternoon of 3 August 2014. The men and older boys captured at the junction were separated from the women and remaining children, and the men and older boys have not been heard from since.

589. **Approximately 70 Yazidi men and older boys in Qeni on 3 August 2014.**<sup>868</sup> Evidence demonstrates that a mass execution took place in the outskirts of Qeni, with approximately 70 men and older boys executed by ISIL at this location on 3 August 2014 afternoon.

590. **An undetermined number of Yazidi men and older boys in Sinjar town on 3 August 2014.**<sup>869</sup> A substantial number of Yazidi men and older boys were detained by ISIL at the Sinjar ID registration office and ultimately killed by ISIL after refusing to convert and being separated from their families.

591. **At least eight Yazidi men and older boys at Khro Farm on 3 August 2014.**<sup>870</sup> On the morning of 3 August 2014, after separating them from their families, ISIL executed at least eight men at the Khro farm after they declined to convert to Islam.

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<sup>865</sup> See Section 6.

<sup>866</sup> See Section 6.1.1

<sup>867</sup> See Section 6.1.6.

<sup>868</sup> See Section 6.1.3.

<sup>869</sup> See Section 6.1.7.

<sup>870</sup> See Section 6.1.8.

592. **An undetermined number of Yazidi men and older boys in Hamadan on 3 August 2014.**<sup>871</sup> ISIL members carried out executions of men where they were caught outside Hamadan village after separating them from the women and children.
593. **An undetermined number of Yazidis near Kocho on 3 August 2014.**<sup>872</sup> Killing of at least 20 to 30 families by ISIL as they fled Kocho towards the Sinjar mountains on or around 3 August 2014.
594. **An undetermined number of Yazidi men and older boys in Solagh on 3 and 4 August 2014.**<sup>873</sup> Several dozens of Yazidi men and older boys were captured by ISIL in Solagh on 3 and 4 August 2014. They refused ISIL's ultimatum to convert and were executed.
595. **At least 67 Yazidi men and older boys in and around Khanasor on or around 6 August 2014.**<sup>874</sup> ISIL captured some Yazidis fleeing Khanasor on 3 August 2014 between Khanasor and Sinuni and took them to the "joint checkpoint" between Bahrava and Khanasor. The men and older boys were then separated from the women and children and killed after a few days of detention.
596. **Hundreds of other Yazidis across Sinjar on or shortly after 3 August 2014.**<sup>875</sup> Several hundreds of Yazidis, mostly men and older boys, were killed by ISIL in many other locations across Sinjar, including at Zilily, Zumani and Sinuni junction.
597. **422 Yazidi men and boys at Kocho school on 15 August 2014.**<sup>876</sup> Some 422 Yazidi men and boys were executed by ISIL in the vicinity of Kocho school on 15 August 2014. By the time of the execution, the men and boys were under ISIL control for about 12 days. This large-scale, premeditated and well-organized massacre was an act of killing that targeted the Yazidis as religious group.
598. **80 Yazidi women at Solagh Institute on 16 August 2014.**<sup>877</sup> About 80 older Yazidi women were massacred at the Solagh Institute on 16 August 2014. These older women were part of a group of some 850 women and children bused by ISIL fighters from Kocho school – several kilometres away – the day before. They were separated from the rest upon arrival at the Solagh Institute, taken outside to an area called the fish basin and mowed down with gunfire.

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<sup>871</sup> See Section 6.1.5.

<sup>872</sup> See Section 6.1.2.

<sup>873</sup> See Section 6.1.4.

<sup>874</sup> See Section 6.1.9.

<sup>875</sup> See Sections 6.1.10. and 6.5.

<sup>876</sup> See Section 6.2.

<sup>877</sup> See Section 6.3.

599. **An undetermined number of Yazidi men and older boys in Sheikh Mand Temple on 24 August 2014.**<sup>878</sup> Several Yazidi men and older boys were killed in Sheikh Mand Temple as they hid there with their families after escaping the attack on 3 August 2014.
600. These murders constitute killing as a material element of genocide.

#### 10.4.5.3 Killings of fleeing Yazidis

601. ISIL systematically targeted Yazidi civilians as they fled.<sup>879</sup> These fleeing civilians, who often travelled as families, could not have been mistaken for civilians who were directly participating in hostilities. These killings, which place across the entire front of ISIL's advance, are murder and qualify as the first form of genocidal act.
602. The many civilians shot and killed in the area of Siba Sheikh Khidir is a notable example.<sup>880</sup>

#### 10.4.5.4 Besieging of the Sinjar mountains, inflicting conditions to kill Yazidis who fled there

603. ISIL's siege of thousands of Yazidi civilians, the majority of whom were reportedly children, on the Sinjar mountains inflicted conditions calculated to bring about their death.
604. When ISIL launched its 3 August 2014 attack on Yazidi villages, thousands of Yazidi men, women and children fled to the Sinjar mountains. The escapees, who included many vulnerable and injured people, lacked food and water which led to many deaths by starvation or thirst in the days that followed the attack.<sup>881</sup>
605. ISIL encircled the mountains in an effort to enforce its "convert or die" ultimatum; shot at Yazidi villagers as they fled; and shot at helicopters seeking to bring aid. ISIL knew about the conditions that it was inflicting and the likely consequences: one ISIL commander speaking during the siege openly declared that "if they remain in the mountains they will die from hunger and thirst".<sup>882</sup>

#### 10.4.5.5 Severe abuse, including sexual abuse, of women and girls in long-term enslavement

606. ISIL's patterns of enslavement and sexual abuse of Yazidi women and girls deemed by ISIL to be of child-bearing age was inflicted in such a severe manner that it amounts to all five forms of the *actus reus* of genocide committed against different female members of the Yazidi group: killing; causing serious bodily or mental harm; inflicting conditions of life intended to bring about the group's destruction; imposing measures

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<sup>878</sup> See Section 6.4.

<sup>879</sup> See Sections 5.5. and 6.

<sup>880</sup> See Sections 5.5. and 6.1.1.

<sup>881</sup> See Section 5.5.1.

<sup>882</sup> ISIL video, "Hundreds of Yazidis convert to Islam", min 2:25



intended to prevent births within the group; and forcibly transferring children from their own group to another.

607. Furthermore, the scale of these acts was widespread and, as discussed in the previous section, strongly indicative of the *mens rea* to physically and biologically destroy the Yazidi group.
608. Women and girls were killed, either suddenly or over time, in the context of ISIL-sponsored enslavement; systematically detained and psychologically or physically harmed in an irreversible and severe manner; separated from their spouses, families and community; held in captivity, often for prolonged periods,<sup>883</sup> as slaves in deplorable conditions; severely beaten, starved and mistreated; systematically raped and sexually enslaved; subjected to mistreatment so severe that it had a permanent impact on their ability to reintegrate into the Yazidi community; and transferred into servitude of owners far from their homes, sometimes permanently.<sup>884</sup>
609. Rapes<sup>885</sup> were systematic and committed with extreme physical violence for many Yazidi captives, including children as young as nine years old, who were given as gifts and forcibly married by ISIL members.<sup>886</sup> Those who tried to flee but failed were subsequently subjected to severe physical abuse and psychological violence.<sup>887</sup> Pregnancy arising from rape caused further bodily and mental harm, along with alienation from the Yazidi community.<sup>888</sup>
610. These acts caused serious and often long-term bodily and mental harm to individual victims in a myriad of ways. The severity of the mental harm that victims suffered, and continue to suffer, is underscored by the incidence of suicide attempts during and after these experiences.<sup>889</sup>

#### 10.4.5.6 *Transferring Yazidi children from the group to another group*

611. Children, sometimes young enough to be kept in a “nursery,” were separated from their Yazidi families into various forms of ISIL custody. The separations inflicted grievous emotional harm on parents and children alike.<sup>890</sup>

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<sup>883</sup> See for example, UNITAD, Confidential testimonial evidence.

<sup>884</sup> See Sections 7.4.1. and 8.2.

<sup>885</sup> See Sections 7.4.1.3. and 8.2.2.

<sup>886</sup> See Sections 7.4.1.1. to 7.4.1.4. and 8.2.

<sup>887</sup> For instance, UNITAD, Confidential testimonial evidence.

<sup>888</sup> See Section 7.4.1.3.

<sup>889</sup> See for instance, UNITAD, Confidential testimonial evidence.

<sup>890</sup> See Sections 8.1., 8.2. and 8.3.3.

612. Young boys were given religious training and, when older but still under the age of 15, were militarily trained and incorporated into the “cubs of the caliphate”.<sup>891</sup>
613. Girls were placed in an “orphanage” or within ISIL families until grown and then were sold to ISIL members. Some were as young as 9 years old when they were taken by ISIL members.<sup>892</sup>
614. The transfer of boys and girls was intended to be indefinite. Some are still in captivity to this day, while others have been rescued or managed to escape after years of captivity. They were systematically indoctrinated with ISIL’s ideology and forcibly converted to Islam.<sup>893</sup> Those old enough to recall their origins were told that their parents’ religion was evil and must be renounced. Yazidi children in ISIL custody were consistently taught and required to speak Arabic; some barely spoke their mother tongue when they returned to their own community. These children, whether boys or girls, were separated from their family members and fully integrated into ISIL’s ideology.
615. These acts constitute transferring children of one group to another group, corresponding to the fifth *actus reus* category of the crime of genocide.

*10.4.5.7 Long-term captivity and execution of Yazidi men and older boys forcibly converted to Islam*

616. Killings of those who were forcibly converted continued in the months following the attack of Sinjar. Yazidi men and older boys who had purportedly converted to Islam were taken captive and brought to Tal Afar, Mosul and elsewhere to perform forced labour. Some were systematically tortured, physically and mentally abused, and kept in conditions reflecting a reckless disregard for their welfare. If they further refused to convert, tried to escape or if the sincerity of their conversion was doubted, they would be killed. Ultimately, all the men and older boys who had converted were killed by ISIL.<sup>894</sup>
617. One of such examples occurred in April 2015, when a group of purported Yazidi converts were executed. Testimonial evidence is corroborated by ISIL propaganda, as well as a contemporaneous report that, within the hundreds of Yazidi men and women in Tal Afar at the time, the men who refused to convert were executed and the women enslaved.<sup>895</sup>

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<sup>891</sup> See Section 8.1.2.

<sup>892</sup> See Section 8.2. and 8.3.3.

<sup>893</sup> See Sections 8.1.2., 8.2.6., 8.3.2. and 8.3.3.5.

<sup>894</sup> See Sections 6.6. and 7.4.3.

<sup>895</sup> See Section 6.6.; See also, ISIL video, ‘Triumphant victory in the conquest of Tal Afar’, Da’esh media office of Jazira Province, 2015

#### 10.4.5.8 Conclusion regarding the material elements of genocide

618. The systematic killings, enslavements, rapes, transfers of children and other forms of extreme and widespread psychological and physical abuse committed by ISIL against the Yazidis constitute the material elements of genocide. Such crimes fall into the five categories of acts constitutive of genocide: (i) killing members of the group; (ii) causing serious bodily or mental harm to members of the group; (iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (iv) imposing measures intended to prevent births within the group; and (v) forcibly transferring children of the group to another group.

#### 10.4.6 Incitement to commit genocide

619. A person who (i) directly, (ii) publicly and (iii) with the requisite genocidal intent incites others to commit genocide may be held responsible for such acts even if they do not lead to the commission of genocide.<sup>896</sup> The crime is completed as soon as the discourse in question is uttered.<sup>897</sup>

620. “Public” incitement can be done through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audiovisual communication.<sup>898</sup> The number of persons and the medium through which the message is conveyed may be relevant in assessing whether the attendance was selected or limited, thereby determining whether or not the recipient of the message was the general public.<sup>899</sup> “Direct” has been interpreted as requiring “a direct appeal to commit” a genocidal act, which is more than an ambiguous or vague suggestion.<sup>900</sup> Whether a particular statement is sufficiently clear is a question of fact, to be examined in the “particular context” in which it was spoken, which may include “the culture and nuances of the language”.<sup>901</sup> The *mens rea* for incitement is the “intent to directly prompt or provoke another to commit genocide”.<sup>902</sup>

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<sup>896</sup> ICTR, *Prosecutor v. Kalimanzira*, ICTR-05-88-A, Appeals Chamber, Judgment, 20 October 2010, para. 155 (The Appeals Chamber recalls that a person may be found guilty of direct and public incitement to commit genocide [...] if he or she [...] had the intent to directly and publicly incite others to commit genocide.); ICTR, *Nyiramasuhuko et al.* Appeal Judgment, para. 3338; *Nahimana et al.* Appeal Judgment, para. 677.

<sup>897</sup> ICTR, *Nahimana et al.* Appeal Judgment, para. 723.

<sup>898</sup> ICTR, *Akayesu* Trial Judgment, para. 559.

<sup>899</sup> ICTR, *Nzabonimana* Appeal Judgment, paras. 231, 384.

<sup>900</sup> *Nyiramasuhuko et al.* TJ, para. 5986.

<sup>901</sup> *Nyiramasuhuko et al.* TJ, para. 5987.

<sup>902</sup> *Nahimana et al.* TJ, paras. 1011-1015; *Bagosora 98bis Decision*, para. 22.

621. The article “The Revival of Slavery Before the Hour,” discussed earlier, constitutes, for instance, an incitement to commit genocide. This article was published against the backdrop of many thousands of Yazidi women being openly enslaved by ISIL.<sup>903</sup> Its publication in English and on the internet ensured that it would reach a large audience. It explicitly justified and encouraged ISIL’s system of enslavement and treatment of the Yazidis, prompting its audience to act accordingly and, as such, to commit genocide. Hence, the publishers of this magazine committed incitement to commit genocide. Those involved are believed to include all members of ISIL’s Diwan al-I’lam al Markazi (Central Media Department) and all ISIL leaders under whose authority it was published.

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<sup>903</sup> Dabiq, Issue 4: The Failed Crusade, October 2014 , article “The Revival of Slavery Before the Hour”.

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