

Report on sexual violence against women and girls committed by ISIL in Iraq



UNITAD

FORWARD

I am honored to present to all readers our report on sexual violence committed by Da'esh/ISIL in Iraq. Enclosed in the pages of this report, we see, yet again, that which UNITAD has been dedicated to legally establish since its first days in Iraq; that ISIL criminality spared no-one.

Through the work of a dedicated thematic unit, my team has put great effort in investigating crimes against some of the most vulnerable groups, deliberately targeted by ISIL with sexual crimes, crimes that disproportionately affected women and girls.

The report presents an overview of our current findings that showcase the nature of some of the gravest international crimes ISIL committed against all Iraqi communities. They describe the gruesome details of the abduction, enslavement, and oppression that ISIL practiced against specific groups in Iraq. The report also provides legal analysis of such crimes, which ISIL perpetrated against women, men, girls, and boys, within the framework of International Criminal Law and International Humanitarian Law. These legal findings, however, pertain to the types of crimes described in the report and do not cover all the international crimes committed against the mentioned communities. Other crimes are still under investigation and are yet to be finalized.

So, what is the importance of the provided legal findings herein?

The findings allow for qualifying crimes committed against women, men, girls, and boys from a range of communities in Iraq as international crimes and thus pave the way for the accountability processes to take place on the basis of international crimes. It is important to note that there is no statute of limitations on international crimes, and as history shows us, criminal proceedings can be launched against perpetrators of such crimes even decades later, and wherever a competent jurisdiction exists. Here, we recognize the Iraq-led process to enact a legal framework that would allow for the prosecution of ISIL perpetrators for these and other international crimes in Iraq. The enactment of this legal framework is a guarantee for the optimum use of the legal findings of the Team.

As important, such legal qualification offers an acknowledgement to the suffering of the victims and survivors, who have been demanding that such crimes be described by their true nature; not random terror but international crimes. These enormously courageous survivors who underwent horrific crimes and yet came forward and spoke up about what they experienced, deserve to be heard and deserve recognition of what they really endured: war crimes, crimes against humanity, and in some cases, genocide.

Not long ago, a Yazidi survivor stood in court in Germany facing an ISIL perpetrator in person. She had the opportunity to narrate her story as a co-plaintiff before seeing criminal proceedings take place against this perpetrator in a court of law through an evidence-based trial.

It is cases like this, where UNITAD played a crucial role in support of prosecutors, that drive our determination forward, so all victims and survivors can see their day in court and find solace when the crimes against them are properly qualified and legally recognized. It is then that the process of healing can progress. It is cases like this that we aspire to see take place in Iraq, the primary recipient of our work.

Towards this end we present our current findings in this report, acknowledging the support of the Iraqi authorities, in particular the Iraqi judiciary, which has been instrumental to our investigations. Further, none of what we do would have been possible without the tremendous bravery and support of the impacted communities. It is through the brave women and men of these communities who have come forward with their testimonies that we are able to make progress in our investigations.

We also present these findings acknowledging, in the process, that investigations still have a way to go, including uncovering more of the stories of all women and men who are still missing and hold additional testimonies of ISIL crimes.

To cover the true breadth of the crimes perpetrated by ISIL is a deed all stakeholders are invited and responsible to carry forward towards accountability and justice that all victims and survivors await.

Christian Ritscher
Special Adviser and Head of UNITAD

EXECUTIVE SUMMARY

The ideology of the Islamic State of Iraq and the Levant (ISIL) adhered to a very specific and strict interpretation of Sunni Islam which simultaneously targeted individuals along religious and gender lines. As such, religion and gender were two key factors in determining the crimes committed against targeted victims, with women and girls being targeted for sexual violence. This report focuses on sexual and gender-based crimes. For the purpose of this report, sexual crimes refer to rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. Gender-based crimes are those committed against persons, whether male or female, because of their sex and/or socially constructed gender roles.¹

This report reflects UNITAD's findings on sexual crimes committed against women and girls only, and at the current stage of investigations. UNITAD continues to collect and analyze information to assess whether the acts committed by ISIL in Iraq may amount to additional core international crimes, including genocide.

Under ISIL's ideological framework, those perceived to be pagans or 'mushrik' such as the Yazidis were to be destroyed. As such, men and older boys were systematically killed while women, girls and children who had not reached puberty were enslaved. This resulted in severe and repeated instances of rape, forced conversion, and other forms of sexual violence such as forced marriage, against women and girls over 9 years old. Boys deemed by ISIL to have reached puberty were conscripted and used in hostilities. Viewed in totality, the crimes committed against members of the Yazidi community amount to genocide, crimes against humanity and war crimes.

Religious groups considered to be 'People of the Book', such as Christians, were given the option to convert to ISIL's interpretation of Islam or pay a tax - *the jizyah* - and enter a covenant of protection. If they refused, men and older boys were killed, and some women and girls were raped and sexually enslaved even though these acts contradicted ISIL's ideology. Viewed in totality, the crimes committed against Christians amount to crimes against humanity and war crimes.

Those considered apostates and 'rejectionists', or '*murtaddin*' and '*rawafid*', such as Shi'a Muslims, were targeted, and forbidden from converting to Sunni Islam or entering a covenant of protection through paying *the jizyah*, regardless of their ethnic backgrounds. As such, men and older boys were killed, boys conscripted and used in hostilities and younger children taken from their families to be indoctrinated and forcibly converted. Shi'a Turkmen girls and, to a lesser extent Shi'a Turkmen boys, were subjected to forced marriages. The crimes committed against Shi'as amount to crimes against humanity and war crimes. Further investigations are currently being conducted aiming at determining whether ISIL policy towards Shi'a Muslims also amounts to the intent of genocide.

Even individuals who conformed to ISIL's strict religious ideology, either because they were Sunnis or had converted to Sunni Islam, were forced to abide by stringent gender-specific rules, which resulted in child and forced marriages and other systemic sexual violence across ISIL occupied territories. The crimes committed against these individuals amount to crimes against humanity and war crimes.

1. ICC, Office of the Prosecutor, [Policy Paper on Sexual and Gender-Based Crimes](#), June 2014 [last accessed 18 May 2023].



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METHODOLOGY

The analysis in this report is based on evidence relating to alleged acts of sexual violence committed by ISIL in Iraq between 2014 and 2017. The sources include:



Witness statements



Documentary evidence stored in UNITAD's holdings



Open-source information.

It is essential to note that this report does address facts beyond its temporal and geographic scope. Indeed, many witnesses were brought to Syria and/or were released in recent years. This evidence is directly linked to the atrocities committed by ISIL in Iraq and is thus included in this report as it is crucial for understanding the full extent of ISIL's crimes and their impact on affected individuals.



INTRODUCTION

1. In line with its Mandate,² the United Nations Investigative Team to Promote Accountability for Crimes Committed by ISIL (UNITAD) created a cross-cutting unit within its Office of Field Investigations (OFI) dedicated to sexual violence and crimes against children. The Gender and Children Unit (GCU) ensures that the investigation and documentation of ISIL's crimes adequately reflect the scope and seriousness of sexual violence perpetrated by ISIL members in the areas under its control during the relevant period, against people of all religions and ethnic backgrounds, in a manner that supports fair and successful prosecutions.

2. The investigations conducted by UNITAD clearly establish that ISIL's ideology relied on a very specific and strict interpretation of Sunni Islam, which resulted in the systematic targeting of all other religious groups. While gender-based violence affected both males and females, ISIL used sexual violence almost exclusively against women and girls, particularly those from religious minorities. Individuals perceived to be associated with the Internal Security Forces (ISF), Iraqi army, judiciary, or any form of civilian authority which ISIL considered to be an enemy were also targeted for political reasons. In such instances, women and girls from families in which a male relative (usually their father or husband) was associated with civilian authorities, sometimes were targeted for sexual violence.

3. ISIL's theological authorities provided a categorization for each religious group which enabled the organization to justify committing severe human rights violations and breaches of international humanitarian law against members of such groups. At the same time, ISIL's policies affected all individuals living in the areas under its control, regardless of their faith, in a clearly gendered way.

4. As their faith is entirely distinct from other religions, the Yazidis were considered by ISIL as pagans or *'mushrik'*. Accusations of 'satanism' and 'devil-worshipping', based on long-standing prejudices against the Yazidis, were used to rationalize the destruction of the Yazidi faith as a duty of all Sunni Muslims. This narrative warranted the systematic killing of Yazidi men and older boys, enslavement of Yazidi women and children, forced conversion to ISIL's interpretation of Sunni Islam and forced integration in ISIL society through the conscription and use of children in hostilities, forced pregnancies and forced marriages. In August 2014, after seizing Mosul and Tal Afar, ISIL led a coordinated attack across the Sinjar region, home to the world's largest Yazidi community, specifically targeting Yazidi civilians living there with the aim of forcibly implementing its ideology upon the group.

5. Shi'a Muslims, regardless of their ethnic background, were considered apostates, *'murtaddin'*, or rejectionists, *'rawafid'*, by ISIL. Rooted in a complex historical and political divide between Shi'as and Sunnis, ISIL's perspective framed the specific targeting of Shi'a Muslims as a battle

for self-preservation by 'true believers' of Islam. Shi'as were considered by ISIL to be following a wrong version of Islam, which made them ineligible to pay the *'jizyah'* and enter into a treaty of protection. As ISIL progressively occupied territory throughout Iraq, its members sought out Shi'a civilians. For instance, ISIL members systematically killed Shi'a men and older boys, as demonstrated by the Badush and Camp Speicher massacres, which occurred on 10 and 12 June 2014 respectively. ISIL also enslaved women and older girls, took younger children from their mothers to be forcibly indoctrinated and converted, conscripted and used boys in hostilities and subjected girls into forced marriages.

6. In contrast, Christians (and in theory Jewish people), were considered 'People of the Book' by ISIL.³ This gave them the option to convert to Sunni Islam or enter into a treaty of protection by paying the *'jizyah'*. However, it appears that as it progressively occupied territory, ISIL put increasing pressure on Christians to convert. ISIL inflicted severe punishments on those who refused to convert including killing men and older boys and sometimes enslaving women and older girls.

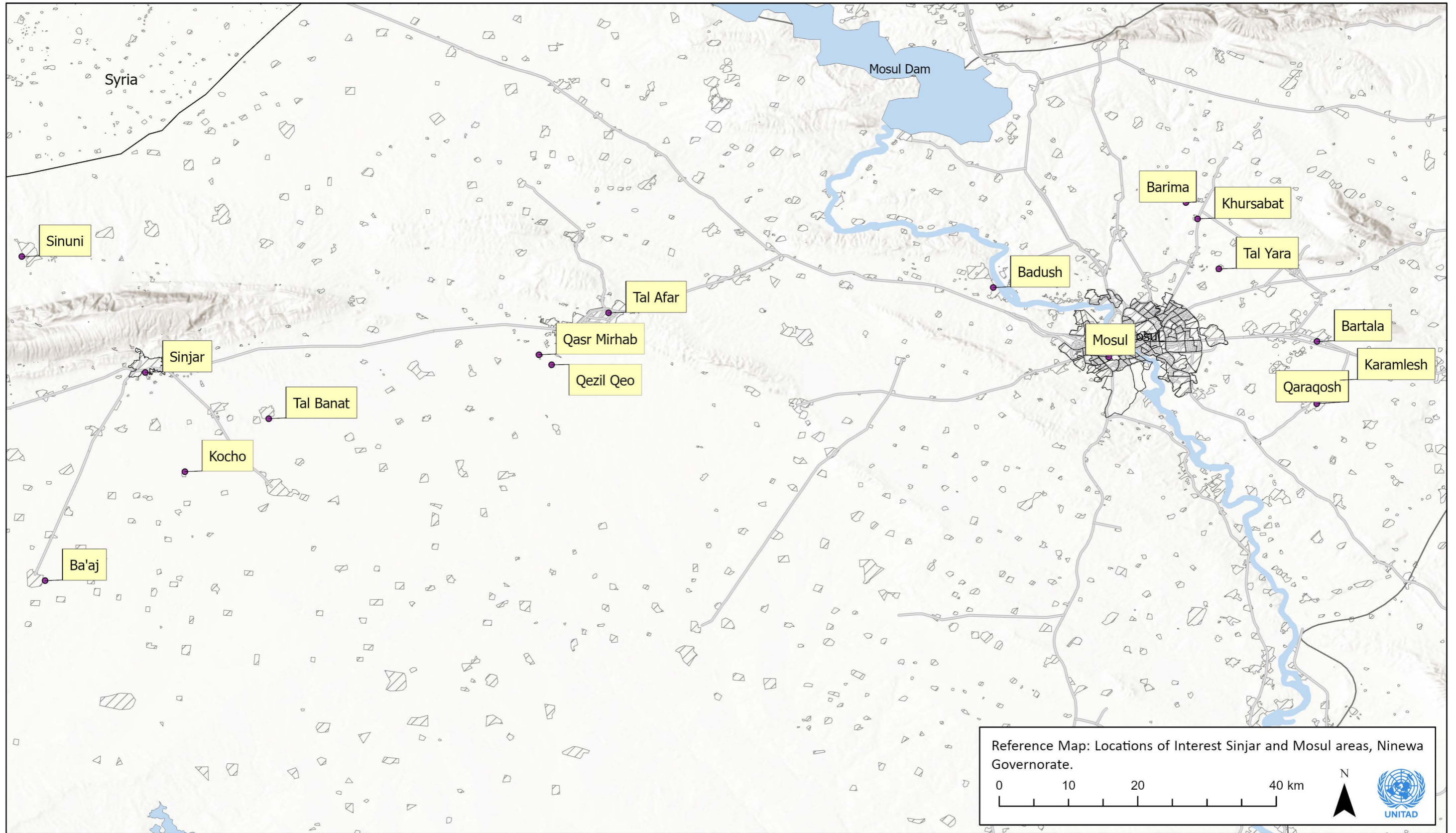
7. In addition to committing specific crimes against members of religious minorities, ISIL imposed very stringent rules on women, men, girls and boys, with the objective of ensuring that all individuals performed gender-specific roles and met the expectations that ISIL had for men and boys on the one hand, and women and girls on the other according to its ideology. To this end, ISIL imposed strict dress codes and limitations on freedom of movement which especially affected women and girls, including Sunnis. In particular, forced and child marriages of girls were rampant and effectively endorsed by ISIL.

8. The evidence points to numerous incidents whereby individual ISIL members misinterpreted or openly violated ISIL's own rules to commit sexual crimes forbidden by the organization's strict ideology. This included the rape of prepubescent girls and forced use of contraceptive and abortive products. Such acts, often committed by combatants for personal gratification, are unfortunately chronic in conflict situations. While they may not have been planned and organized by ISIL as an organization, they were foreseeable outcomes. The information available does not show any attempt by ISIL to uncover or punish these violations of its own rules on sexual violence. As such, it is possible to hold ISIL leaders responsible under command responsibility, as well as the direct perpetrators.

9. For the purpose of this report, the impacts on members of each community are described, regardless of whether the crimes committed against them were endorsed by ISIL's ideology and overall strategy.

2. Security Council, Resolution 2379 (2017), 21 September 2017, S/RES/2379 (2017).

3. ISIL considered that Yazidis do not believe in God as worshipped by *Ahl Al-Kitab*, the latter being known as 'People of the Book'.



PATTERNS OF SEXUAL VIOLENCE



1. Sexual violence against Yazidi people

10. Yazidis practice monotheistic religion, adhering to a belief system that is not codified in any holy book but instead relies heavily on rituals passed down generations. ISIL considered them to be *'mushrikin'* and as such not 'People of the Book'. Conversion is not possible, and both parents must be Yazidis for a child to be Yazidi. According to Yazidism, God created the world and delegated its care to seven angels, who are led by the Peacock Angel, Malek Taûs, an angel who fell to earth. The peacock is a key symbol of Yazidism, as is the serpent, which Yazidis believe helped humanity survive the Great Flood by sealing a leak in Noah's Ark.

11. The symbols of the fallen angel and serpent are traditionally seen as evil in 'People of the Book' religions and have been used throughout history to justify discrimination and violence against Yazidis. The persecution suffered by the Yazidi people led them to Mount Sinjar during the early Ottoman period as the place offered natural fortifications. In 2014, Mount Sinjar had the largest Yazidi population in the world, with an estimated 230,000 living in the district in 2011, out of an estimated population of 400,000 to 500,000 Yazidis in Iraq. Yazidi communities also exist in Syria, Turkey, Armenia and Georgia.

12. In August 2014, after seizing areas in Mosul and Tal Afar, ISIL launched a coordinated attack across the Sinjar region, specifically targeting the Yazidi civilian population residing in Sinjar.

1.1 Initial capture and separation of families

13. Most Yazidi families were captured by ISIL on or around 3 August 2014, either directly in their villages or as they attempted to flee their villages in and around Sinjar. Their belongings, especially mobile phones, were immediately confiscated by ISIL members upon captivity. This prevented them from communicating and seeking help.

14. Most men were separated from their relatives immediately or shortly after being captured. In some instances, such as the capture of those at Hardan junction, the men were killed immediately after being separated from their relatives.

15. Women and children were taken to initial holding sites, such as schools in Tal Afar and Ba'aj or various public buildings in Sinjar town where they stayed for a couple of days. In the following weeks, ISIL transferred the captured Yazidis, who were organized in groups (married women and children, young and unmarried women and girls and boys) between various locations in Iraq (Ba'aj, Tal Afar and Mosul) and to Syria. First, the captives were held in large groups. Later, they were divided further whereby married women with children were taken to Raqqa in Syria to be sold, girls over 9 years old and unmarried women were transferred to other locations and taken as sex slaves, *'sabayas'*, by ISIL fighters, and older women were transferred to locations in Tal Afar and Mosul. In exceptional cases, women and girls who had yet to become enslaved were asked to convert to Islam or forcibly converted. At the secondary locations, ISIL members began separating boys over 8 years old from their mothers. These boys were made to take Qur'anic and weapons training lessons.

16. In some instances, female captives were reunited with their male relatives who had been coerced into converting to Islam. These families were held in the villages of Qasr Mirhab, Qezil Qeo, Kocho and Tal Banat, where they lived in houses under the control of ISIL members who guarded the locations and imposed their rules. Sometimes, the family members were forced to work. Later, they were transferred to Mosul and then to al-Khadra neighborhood.

17. On rare occasions, young children ranging from a few months old to around 10 years old were separated from their mothers and brought to another location that operated effectively as an orphanage, where female ISIL members cared for them.

18. Although ISIL released some elderly men and women and persons with disabilities to the Iraqi Kurdish authorities in early 2015, most captured Yazidis were held in strictly gendered-segregated captivity. Pubescent boys and men who had not been killed were taken away and never seen again while younger boys were taken to military trainings.

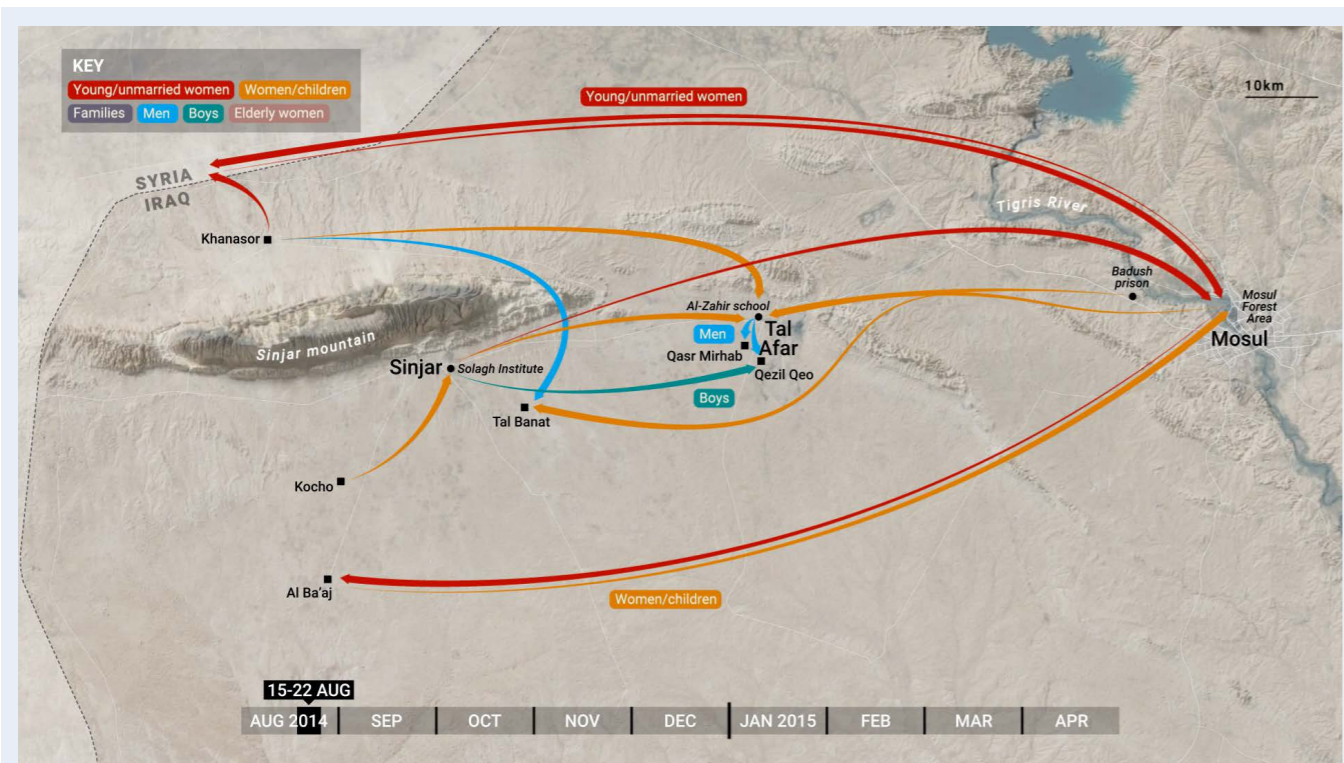
1.2 Sexual violence committed in detention sites

19. Due to the violence associated with their captivity, all detained Yazidis suffered some form of physical violence and humiliating and degrading treatment.

20. In addition, before being 'officially' made *sabayas*, girls and young women held in several of the holding sites suffered acts of sexual violence from ISIL members. Witnesses reported that women and girls kept in these temporary holding locations were sometimes taken and raped by ISIL members. They were also subjected to physical abuse, such as severe beatings.

21. Furthermore, there is evidence that some of the younger girls who had been separated from their mothers were sexually abused by ISIL members at the orphanage where they had been taken.

1.3 Sexual slavery – the sabaya system



22. The planning and organization of a slave trade has been apparent since the early days of ISIL's capture of Yazidis. Very early on, and in some cases as early as 4 August 2014, ISIL members recorded the names of captives, assessed their age and physical maturity, inquired about their marital status, and started taking away unmarried women and girls, especially those deemed beautiful or thought to be virgins. This was already taking place in the primary and secondary holding sites, including the locations where Yazidi women and children had been reunited with their male relatives. In the Galaxy Hall in Mosul, a doctor was brought to conduct virginity checks on the captives and ISIL members took pictures of the women and children. In other locations, captives underwent virginity checks either after being brought to the hospital or at the hands of presumed ISIL female members.

23. ISIL's separation of captives by sex and age, with women and girls set aside to be trafficked for sexual purposes, was systematic and intentional. Young and unmarried virgin girls, as young as 9 years old, were the most sought after which explains why they were amongst those most quickly separated. An ISIL pamphlet published in December 2014, known as the 'Slavery Q&A', stated that ISIL fighters could have sexual intercourse with virgins immediately upon their capture unlike other female captives who needed to be "purged of impurity" first.⁴

Perceived attractiveness was another key criterion used by ISIL members in separating captives and deciding which captive to take for themselves. Women with children were the second most desired category, as they were of child-bearing age and considered still attractive. ISIL members had to ascertain whether their female captives were pregnant before distributing or selling them.

24. Some of the women and girls were directly distributed to ISIL fighters, by means such as through a 'lottery', while others entered a complex slave trade system. For example, some women and girls were taken to a slave market or Court in Mosul, where a Shari'a judge registered them before they were sold to ISIL members. In any case, the *sabayas* were meant for ISIL officials and members only, especially frontline ISIL combatants. One witness reported that non-ISIL members were forbidden from buying *sabayas* at a slave market in Raqqa.

25. The rules surrounding the sale and purchase of *sabayas* were codified by ISIL and set out in documents such as the 'Slavery Q&A' pamphlet.⁵ Captives could be sold, gifted or traded to ISIL members by their owners. There is strong evidence that ISIL set up and organized large and formal slave markets. There is also strong evidence that lower ranking ISIL members ran less formal slave markets in some of the holding sites or traded slaves on a more *ad hoc* basis. Slave markets also took place online, with pictures of captives being shared so that ISIL members could choose which woman or girl to buy. ISIL's Courts of the Department of Justice and Grievances recorded the sale of *sabayas* and issued ownership certificates.⁶ As a result of this organized slave trade system, a captive could be repeatedly sold or given to numerous successive owners. The way *sabayas* were to be treated by their owners was laid out in ISIL documents such as the 'Pamphlet on slavery: the Creator's Maxims on Captivity and Enslavement'⁷ published sometime before 2015 and 'Fatwa No. 64' issued on 29 January 2015.⁸

26. In addition to forced domestic labor, women and girls kept as *sabayas* were subjected to indescribable amounts sexual violence which included repeated and often brutal rapes. Witnesses also reported suffering beatings and psychological abuse from their owners as well as the female relatives of their owners. In some instances, the beatings amount to torture. Young children kept with their mothers would on occasion witness the physical and sexual violence inflicted on their mothers. Many victims suffered traumatic injuries as a result of the repeated rapes and brutal treatment imparted upon them to the extent that some reportedly died from their wounds. Some victims also committed or attempted to commit suicide.

5. Pamphlet entitled 'Su'al wa-Jawab fi al-Sabi wa-Riqab' (Slavery Q&A) (سؤال وجواب في السبي والرقاب), p. 2.

6. Department of Justice and Grievances, 'Proof of ownership', [date unclear].

7. Office of Research and Studies, 'ISIL Pamphlet on slavery: The Creator's maxims on captivity and enslavement'. The existence of this Pamphlet was discovered in 2015, while its issuing date is so far unknown.

8. Office of Research and Fatwas, 'Fatwa Number 64', 29 January 2015.

4. Office of Research and Fatwas, Pamphlet entitled 'Su'al wa-Jawab fi al-Sabi wa-Riqab' (Slavery Q&A) (سؤال وجواب في السبي والرقاب), 3 December 2014, p. 2.

27. In certain cases, individual ISIL members tried to avoid pregnancies and gave their slaves oral or injectable contraceptives. However, some *sabayas* did become pregnant. While some pregnant women and girls spontaneously miscarried, others were subjected to forced abortions. In other instances, women and girls who wanted abortions were denied the option as the ISIL members who owned them wanted to have children. As such, some of the women and girls gave birth to their captor's baby. In these circumstances, sometimes the infant was taken from the mother and put up for adoption by ISIL families.

28. In at least some occasions, young children kept with their enslaved mothers were converted and indoctrinated by, amongst other means, being shown violent propaganda. Some children may later have been taken away and adopted by ISIL families or used as domestic servants. Younger girls who were kept with their mothers or relatives eventually became *sabayas* upon reaching puberty.

1.4 Child and forced marriages⁹

29. Some women and girls were forcibly married. Forced marriages occurred as early as September 2014 and became more frequent after an ISIL publication dated May 2015 advocated for marriage with slave women for those who couldn't afford to marry a 'free' woman.¹⁰ However, the evidence suggest that instances of forced marriage occurred on an individual basis, with slaves being forcibly married to their owners or acquaintances of their owners.

30. In some cases, it appears that ISIL members who proceeded to marry a sex slave could be prompted by a legal ruling requiring them to set their slaves free. Marriage was thus a way for ISIL members to manage and retain control over their now 'freed' captives. Indeed, when the formerly enslaved women became married to their owners or given and forcibly married to other ISIL members, their husbands became responsible for them. The release of the captive was considered in some instances to fulfil the dowry requirement.¹¹ However, in most cases, it remains unclear why ISIL members chose to marry their slaves.

31. Marriage contracts were prepared by ISIL judges,¹² upon the production of a release letter for the enslaved woman or girl, in front of two witnesses. In theory, marriage required the consent of both parties. While in some instances, the female captives provided oral consent, in others the judge proceeded without the captive's consent since the groom was considered to be the bride's legal guardian. Even where the judge sought the opinion of a woman or girl, given their position, the woman or girl could not freely consent to the marriage anyway. Additionally, examples of coercion, threats and violence are numerous.¹³

32. For all practical purposes, the situation of the women and girls remained unchanged after marriage. They continued to be denied freedoms as if they remained slaves and were subjected to physical and sexual violence, in most cases to the same extent as prior to marriage. However, marriage allowed a woman or girl to avoid being repeatedly sold since a married woman or girl usually stayed with their husband until he died. It seems that, upon being widowed, Yazidi women and girls were brought to a guesthouse for women known as a '*madhafa*'¹⁴ (although one witness used the word prison), where they were treated similarly to the wives of ISIL members and pressured into marrying another man. One captive who tried to escape her captor and husband was also kept in a '*madhafa*'.

2. Sexual violence against Christian people

33. Christians have lived in Iraq since the 1st century. Presently, it is estimated that 250,000 Iraqis are Christian, with the majority being Chaldean Catholics and others belonging to the Assyrian Church of the East, Syriac Orthodox Church, Armenian Church and other denominations. These Christians mostly live in Basra, Mosul, Erbil and Kirkuk. Meanwhile, Arab Christians are primarily concentrated in Baghdad, with some Christians living in Sinjar.

34. Christians were considered by ISIL as 'People of the Book' or '*dhimmi*' which acknowledges the fact that the Bible and Qur'an are closely related. As such, Christians were relatively more protected from ISIL than other religious communities.

9. For the purpose of this document, 'child marriage' is defined as any marriage where at least one of the parties is under 18 and 'forced marriage' as any marriage in which at least one of the parties has not given their full and free consent to the union. A child marriage is necessarily a forced marriage, as one of the parties lacks the ability to consent; but forced marriages encompass more types of unions.

10. 'Slave-girls or prostitutes?', in Dabiq, Issue 9: They Plot and Allah Plots, May 2015, p. 44: "He (*subhanah*) said, inciting His believing servants to marry female slaves (if they cannot afford to marry freewomen) and preferring them to a free mushrikah of noble lineage, (And a believing slave-girl is better than a mushrikah, even though she might please you) [Al-Baqarah:221]"

11. Court of Qayyarah, Wilayat Tigris, Freedom Document (وثيقة عتق), 14 June 2016.

12. See for example: Department of Justice and Grievances, Marriage Certificate (عقد نكاح), 20 June 2016.

13. See for example: Freedom Document (وثيقة عتق).

14. For more information, see para. 89.



2.1 Living conditions of Christians under ISIL

35. ISIL took control of Mosul during the night of 9 to 10 June 2014. On 17 July 2014, it published a document warning Christians they would be killed unless they converted or paid a tax, the 'jizyah', levied on the 'People of the Book', and allowed them to leave before 19 July 2014 if they wanted to do so.¹⁵ This ultimatum was also announced in Mosul and the Nineveh Plains via posters, loudspeakers and Mosques throughout June and early July 2014.¹⁶ One witness stated that Christians understood the declaration to mean they had to relinquish all their property and that Christian women would be enslaved, which is illustrative of the level of panic the warning provoked. On 18 July 2014, one day after ISIL published its document, it began marking houses belonging to Christian residents in Mosul with the Arabic letter ن for 'nasrani' or 'nazarene', terms they used to refer to Christians. After the ultimatum was released, many Christians fled Mosul to places such as the Christian village of Qaraqosh.

36. It appears that once 19 July 2014 passed, it was no longer possible for Christians to choose to pay the 'jizyah'. In time, ISIL's position towards Christians became increasingly intolerant, until a May 2015 statement from Abu Bakr al-Baghdadi declaring that co-existence with non-Muslim People of the Book was against Allah and that all Muslims had a duty to wage war against non-believers.¹⁷

37. Large numbers of Christians fled between late June and early August 2014, before ISIL reached the towns and villages where they lived such as Qaraqosh and Bartella. On 7 August 2014, ISIL took over Qaraqosh, Karamlesh, and Bartella, where only a small number of Christians remained. The Christians who stayed behind became targets for violence and harassment as they were regarded to be as in violation of ISIL's interpretation of Islam and strict rules and/or for their real or perceived affiliation with the ISF or Iraqi forces. ISIL members thus arrested or detained Christians and called them 'nasrani' or 'kuffar'. In this case too, ISIL's acts were deeply gendered: several women and a 14-year-old boy were taken in Bartella and held as captives for several months, during which time the boy was indoctrinated and forcibly converted.

38. Towards the end of August, Christians in Qaraqosh were told to leave on a bus departing for Erbil's Christian neighborhood. As a result, over 50 people gathered near the city's clinic where many ISIL members were also present. They separated the Christian men and women, checked the women's IDs, and in the end 15 to 20 women and elderly men got on the bus. A few women, presumably selected for their perceived attractiveness, were not brought to the bus but taken inside the clinic and then to Mosul. A shepherd's family was also ordered to remain because the ISIL members wanted him to care for his cattle and provide them with meat. The women on the bus were driven to Khazer, from whereupon they were rescued. Around 25 of the men were loaded onto another bus and remain missing to date.

39. In Qaraqosh, a considerable number of Christian men, women and children (with the youngest being 7 years old), were captured and kept separately in two houses near the General Hospital for one to two weeks. Two of the detained men who had been drunk were severely beaten. ISIL members gave both the men and women one day to convert to Islam. While around 15 men converted, it appears that all the women refused. The men who agreed to convert were taken to an ISIL Court in Mosul where they had to recite Islam's creed, 'the shahada',¹⁸ in front of a judge who then provided them with a letter proving their conversion.

40. In addition to these examples, there is ample documentation on ISIL's efforts to convert Christians, dispossess them of their lands and possessions and destroy their religious and cultural heritage. Organizations and witnesses reported similar albeit seemingly isolated incidents such as the abduction in Qaraqosh of a female toddler who was possibly placed for adoption with ISIL members, and of 13-year-old boy who appears to have been forcibly converted.

15. Diwan al-Qada, Statement (بيان), 17 July 2014.

16. Diwan al-Qada, Statement (بيان).

17. Islamic State Media, 'March Forth, Whether Light or Heavy' by Abu Bakr al-Baghdadi, 14 May 2015: "O Muslims! Whoever thinks that it is within his capacity to conciliate with the Jews, Christians, and other disbelievers, and for them to conciliate with him, such that he coexists with them and they coexist with him while he is upon his religion and upon tawhid (monotheism), then he has belied the explicit statement of his Lord... O Muslims! Do not think the war that we are waging is the Islamic State's war alone. Rather, it is the Muslims' war altogether. It is the war of every Muslim in every place, and the Islamic State is merely the spearhead in this war. It is but the war of the people of faith against the people of disbelief, so march forth to your war O Muslims. March forth everywhere, for it is an obligation upon every Muslim who is accountable before Allah.". In contrast, see for example: Islamic State Media, 'So They Kill and Are Killed' by Abu Muhammad al-Adnani, 12 March 2015: "O Jews! O Crusaders! If you want to protect your blood, increase your wealth, and live in safety from our swords, then there are only two choices before you with no third option. Either you submit yourselves to Allah alone, without partner [...] or you pay us the jizyah with willing submission and feel yourselves subdued".

18. The Shahada is the Arabic term for declaration of faith in one God (Allah) and His messenger.

2.2 Sexual violence in detention

41. In detention, both male and female Christians were subjected to physical violence and torture as well as sexual violence in some cases. Several female witnesses described instances of sexual assault upon being searched or detained. In at least some cases, the incidents may have amounted to attempted rape or rape. In one case, the witness specifically mentioned that the senior ISIL member in charge was not aware of the behavior of the perpetrator. There are also other allegations of Christian women being sexually assaulted and raped. For example, it has been reported that women fleeing Mosul were subject to sexual violence at ISIL checkpoints.

2.3 Sexual slavery

42. There is evidence of isolated instances of Christian women being subjected to sexual slavery. It appears that in Qaraqosh, ISIL members selected some Christian women, presumably for their attractiveness, and took them to Mosul to be sold or given to ISIL members including an ISIL *mufti*. ISIL members expressly referred to these women as 'sabayas'.

43. In at least one case, a Christian woman who agreed to convert was released with her children. Two of the other enslaved Christian women were eventually released into the custody of a Muslim male acquaintance. However, some enslaved Christian women were taken to Syria and spent years in captivity where they were sold repeatedly. One witness reported that an ISIL member spoke about similar incidents occurring in Christian villages in Syria.

44. Christian *sabayas* suffered repeated and often brutal rapes and other acts of sexual violence. They were also forcibly converted. At least one tried to commit suicide. Nonetheless, it appears that the enslavement of Christian women was opportunistic rather than in pursuant to ISIL policy.

2.4 Child and forced marriages

45. Although there have been numerous allegations of abductions or attempted abductions of Christian girls by ISIL for marriage and forced marriages of Christian women and girls to ISIL members, no witness has thus far reported such an incident to UNITAD.

46. It appears there were some occasions where Christian children were subjected to child and forced marriages. While in captivity in Qaraqosh, one woman had to prevent an ISIL member from taking her 7-year-old daughter, whom the ISIL member said he wanted to marry to his son. In another case, a Christian boy from Bartella was arrested after ISIL took control of the town and forced to convert to Islam and undergo circumcision. A prominent ISIL member attempted to marry him to a Sunni girl, which he repeatedly rejected despite threats that he would otherwise be made a suicide bomber. There was no punishment for his refusal. However, the boy was held by ISIL for training at a military camp.

47. It was reported that two Christian women who were made *sabayas* had been asked if they would agree to marriage upon being brought to Mosul to officialize their respective conversions before a Shari'a judge. However, the proposals did not proceed any further.

3. Sexual violence against Shi'a Turkmen people

48. The Turkmen are descendants of Turkic tribes that began settling in Iraq in around 500 AC. Presently, the Turkmen ethnic group is the third largest ethnic group in Iraq with a population of approximately 3 million. Turkmen reside primarily in an area they refer to as 'Turkmeneli', a territory stretching from Northwestern to Central Eastern Iraq, covering the Nineveh, Erbil, Kirkuk, Salah al-Din and Diyala Governorates. The largest Turkmen communities live in and around Tal Afar, Kirkuk, Tuz Khurmatu and Khanaqin. Turkmen regard Kirkuk as their historic capital.

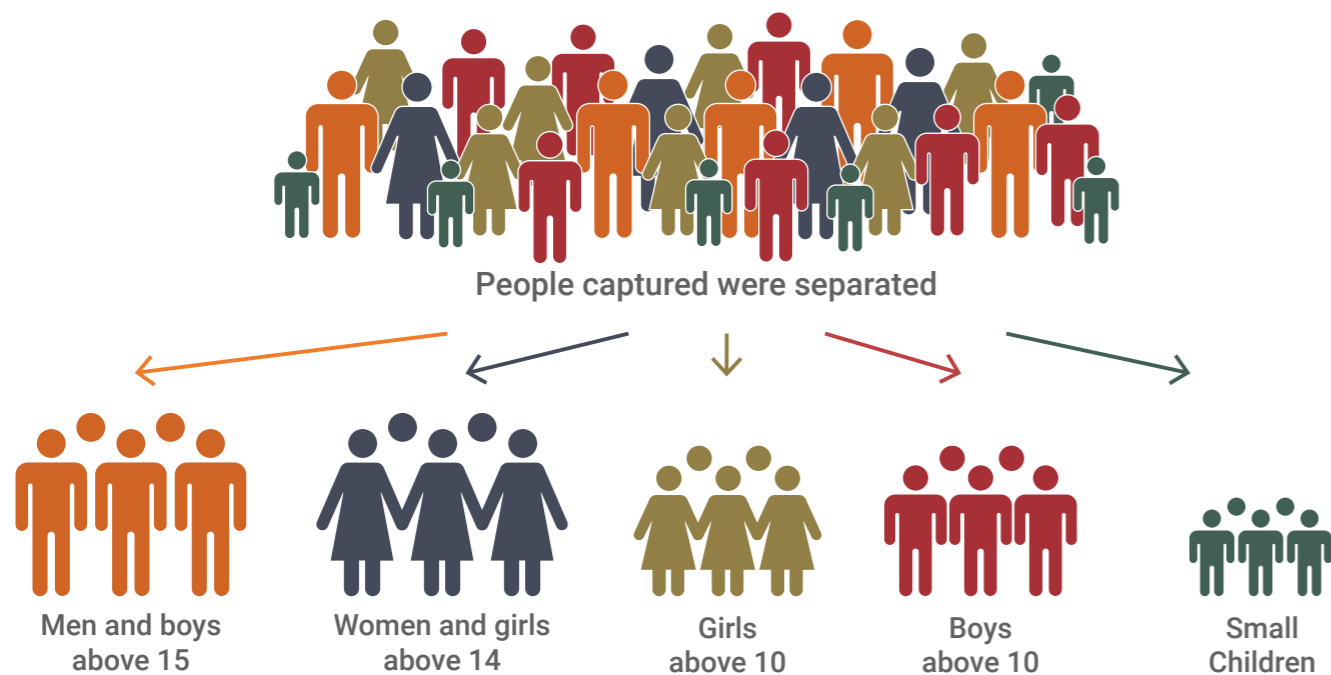
49. Approximately 60% of Iraqi Turkmen are Sunni Muslims, with the remainder practicing Shi'a Islam and a small minority practicing Christianity. However, Turkmen do not divide themselves along religious lines. Irrespective of their religion, Iraqi Turkmen have historically been targeted as an ethnic minority, especially under Saddam Hussein's policy of Arabization and assimilation. The Turkmen language was discouraged from being used and Turkmen were forcibly relocated from their villages to make way for Arab settlers.

3.1 Initial capture and separation of families

50. Similar to Yazidi families, Shi'a Turkmen families from Tal Afar were captured together on or shortly after 3 August 2014, either in their homes or as they fled to Sinjar upon ISIL's advances.

51. Almost all Shi'a Turkmen witnesses interviewed by UNITAD reported having been questioned by ISIL members about where they came from, their tribe or their religion. This suggests that Shi'a Turkmen were targeted based on their religious beliefs. Witnesses described being subjected to insults and contempt from ISIL members. Shi'as were referred to as rejectionists, '*rawafid*' or '*rafedhin*'. A pamphlet published by an ISIL propagandist in 2015 held that "*the disbelief of apostasy is unanimously more severe than the original disbelief: so fighting the apostates is more important to us than fighting the original infidel*",¹⁹ showing that ISIL specifically targeted Shi'as for their faith. The Turkmen were targeted either for being Shi'a or for their real or perceived affiliation to ISF and Iraqi forces. This persecution falls in line with ISIL's ideology as demonstrated by the Badush and Camp Speicher massacres, which took place on 10 and 12 June 2014 respectively.

19. Abu Qudama al-Muhajer, 'This is our creed and the pilgrimage of our approach' (هذه عقيدتنا وهذا منهجنا), 2015.



52. Turkmen men and older boys above around 15 years old captured around Sinjar and Tal Afar were the first to be separated from their families. Women and older girls above around 14 years old were usually separated from smaller children shortly thereafter.

53. It appears that in most instances younger children, regardless of whether they were boys or girls, were brought to an orphanage in the al-Zhoor neighborhood of Mosul at night. During the end of 2016 or early 2017, some of these children, especially babies and toddlers, were adopted by ISIL families.

54. Boys over around 10 years old were separated from the girls and younger children as well as forced to attend religious lessons, receive physical training and watch violent propaganda videos at the orphanage. Subsequently, they were taken to the Abdullah Bin Omar Shari'a Institute in Tal Afar where they underwent more intense physical training and religious as well as Arabic lessons. Shi'a Turkmen boys were ultimately conscripted by ISIL's military structure, first spending time at ISIL training camps and then in combat. Some boys were liberated when ISIL retreated from Tal Afar and Baghooz (Syria). However, others were killed in battle or remain missing to this day.

55. Girls of a similar age were brought to a separate section of the orphanage where they received religious classes, were forced to convert and forced to follow a strict dress code. While the conditions were initially relatively good, ISIL progressively increased its control over the orphanage. For example, ISIL members installed surveillance cameras, locked the orphanage doors, and forbade civilian staff from interacting with the captive girls. These actions point to a heavily gendered approach by ISIL who aimed at preparing the girls to become ISIL members' wives.

3.2 Sexual violence committed in detention

56. It appears that at least some of the men and older boys were tortured in detention following their capture and separation from relatives. There is limited direct evidence regarding the treatment of women and older girls by ISIL during captivity but one witness reported that ISIL members would assess the age of women and girls by sight and take them to an 'investigation room' for interrogation where it is possible, and even likely, that some violence (be it psychological, physical and/or sexual) occurred.

57. Although no witness has reported acts of sexual violence against children held in the orphanage thus far, witnesses reported that the boys at the orphanage in Mosul suffered physical abuse at the orphanage, Abdullah bin Omar Institute, and training camps.

3.3 Sexual slavery

58. Presently, it remains unclear what happened to the women and older girls after they were separated from the younger children. It is likely that these individuals were enslaved or forcibly married to ISIL members. One witness held she met a Shi'a woman who had been sexually abused and whose name had been changed by ISIL. One child survivor reported he recognized his mother on a picture taken in a camp in Syria. Another missing woman was reported to be residing in an unidentified refugee camp. Neither have returned. Most of these captured women and girls remain missing to date.

59. It is also unclear whether the younger girls were subjected to sexual slavery. One witness reported that Shi'a girls who refused to convert in the orphanage would be killed or taken as a *sabaya*. However, it cannot be ascertained whether this was a threat or actually occurred in some cases.

3.4 Child and forced marriages

60. ISIL members in charge of the orphanage in Mosul set up an arrangement for the systematic forced marriage of Shi'a Turkmen girls to ISIL fighters. One witness stated that after the Sunni girls were sent back to their families at the end of 2015, ISIL judges went to the orphanage to question Turkmen girls above 12 years old and even asked them to remove their *niqab*. Afterwards, the girls were given an ID, which likely indicated plans were in place for them to be forcibly married in the future. In some cases, ISIL members selected girls and showed their pictures to ISIL fighters seeking marriage. One witness stated this selection was made upon request of the Court. In other cases, ISIL women would visit the orphanage to select girls for marriage with their male relatives. Once a decision had been made, the girls would be taken to a Shari'a Court to seek permission from a judge for proceeding with the intended marriage.

61. Girls were selected based on their age and appearance. Younger girls, even those who had not reached puberty, were preferred because they were considered to be more pliable. One

witness reported that the youngest girl to be married was around 9 years old. The girls were not informed that they had been engaged for marriage prior to the wedding. Similarly, no one sought their consent for marriage.

62. ISIL encouraged its members, including Shi'a boys who had been forcibly converted and conscripted, to become married. Consequently, while it appears to have occurred in a less systematic manner than the forced child marriages of Shi'a Turkmen girls, it is possible that some Shi'a Turkmen boys entered into child marriages, including with Shi'a girls. At the same time, such marriages may have been discouraged with an exception being made for boys who excelled in their training. ISIL members in charge of the Mosul orphanage presented one boy with pictures of about 25 Shi'a Turkmen girls, aged 12 years old to 20 years old, to choose for marriage. The boy chose the 13-year-old sister of a boy he knew from the orphanage.

63. In at least one instance, the girl was aware of her intended marriage and sought consent from her father. However, it seems that in most instances, girls had no say in whether they wished to be married or the identity of their intended husband. It is assumed that marriage with a Shi'a Turkmen boy may have been preferable to marriage with an ISIL fighter. It is important to note that these child and/or forced marriages resulted in sexual violence on both parties, regardless of whether they were male or female. For instance, one witness reported that a boy she knew was forced by ISIL members to consummate his marriage and engage in sexual intercourse with his underage wife.

64. After being married off, the girls would move in with their husbands or husbands' families. The information and evidence collected indicate they were subjected to rape by their husbands regularly throughout their captivity. The rapes suffered were often accompanied by physical violence and threats (sometimes with firearms).

65. Whether Shi'a Turkmen girls who had been forcibly married were expected to carry children seems to have depended on individual circumstances. Some were allowed to use contraceptives despite ISIL's strict policy against birth control,²⁰ and some ISIL fighters used condoms to avoid pregnancies. In other cases, pregnancies seem to have been expected or desired by the ISIL member and/or his relatives. One witness reported that since she had not reached puberty by the time of her marriage, she was given an injection to start her menstrual cycle.

20. 'I praise you among all nations' (فاني مكثر بكم الأمم), in al-Naba' (النبا), Issue 52, 27 October 2016, p. 15: "The policy of birth control is an epidemic that has entered the Islamic nation from its enemies in order to fewer the Muslims."; 'I will outnumber the other nations through you', in Rumiya Issue 5, January 2017, p. 35: "as for the policy of birth control, it is a disease that was injected into our fertile ummah by the enemy in order to decrease the Muslim population and weaken its strength".

4. Sexual violence against Kaka'i people

66. Kaka'is are followers of the Yarsan religion, a monotheist and syncretic religion founded in the 14th century in Western Iran, where followers are called Yarsani or Ahl-e Haqq. Combining elements of Islam and Zoroastrianism, their religious literature is written in Manchu, a form of Gorani. However, most Kaka'is speak Kurdish. An estimated 110,000 to 200,000 Kaka'is live in Iraq, primarily around Kirkuk and Daquq, between Mosul and Erbil and in Sulaymaniyah.

67. As ISIL took control of areas where Kaka'i villages were situated, many Kaka'is were displaced from their towns and villages in the Nineveh Plains. One witness reported that two Kaka'i men who did not flee Qaraqosh before it was overtook by ISIL were arrested and tortured, before fleeing upon release. In this regard, the evidence held by UNITAD is too limited to draw conclusions on the type or extent of sexual violence suffered by Kaka'is.

5. Sexual violence against Shi'a Shabak people

68. Shabaks are a small Muslim sect residing in the Nineveh plains around Mosul. They use a Gorani dialect, referred to as Shabaki or Manchu, which is also used by Kaka'is. Most Shabaks are multilingual, with Turkmen, Kurdish, and Arabic dialects widely spoken amongst the community. An estimated 350,000 to 400,000 Shabaks live in Iraq, with the majority being adherents of the Shi'a faith.

5.1 Initial capture and separation of families

69. A few months before ISIL occupied Mosul in June 2014, some Shi'a Shabak families appear to have received threatening letters or had their houses marked by individuals who were presumably ISIL members. With the knowledge that ISIL targeted Shi'as, many Shi'a Shabaks feared for their safety and fled the city and surrounding villages for Kurdistan before ISIL's arrival. Shabak-populated villages or areas, such as Khursabat, Barima and Tal Yara, were occupied by ISIL in early August 2014, alongside the rest of the region. Some Shabak families fled shortly after this period, for example to Mosul. As their houses stood empty, incidents of looting were reported as were theft of valuables they left behind. At least some of these vacant houses were occupied and/or used by ISIL members.



70. It appears that Shabaks were targeted by ISIL for their religious beliefs if they were Shi'a or for their affiliation with the ISF or Iraqi forces. In the period ISIL occupied the territory inhabited by Shabaks, it destroyed Shi'a religious sites and graveyards. Shi'a Shabak female witnesses reported that ISIL members referred to them as 'rawafid' or 'rafithi' during speeches in Mosques as well as on other occasions. There is limited evidence that Sunni Shabaks fled from ISIL's advances or that members of this group felt targeted due to their ethnicity.

71. Some Shi'a Shabak families were captured by ISIL in Mosul and surrounding villages. Some of those captured remain missing to date. Men were separated and held in different locations than the women and children. Male Shi'a Shabaks who were arrested or captured and subsequently detained, either because they were associated with the ISF or because they were Shi'a, were tortured. Some were sentenced to death. There is hearsay evidence that, in at least one village, ISIL members separated the Shi'a Shabak men from the Sunni Shabak men, and to date, the former remain missing. They are presumed to have been killed.

72. It appears that Shabak boys, regardless of their sect, were taken from their mothers by ISIL, trained and used in hostilities. These boys suffered physical and psychological abuse, perhaps to an extent amounting to torture, at the hands of ISIL members at the military training camps.

5.2 Sexual violence committed in detention and captivity

73. Shi'a Shabaks who were captured or arrested and then detained by ISIL were at an increased risk of sexual violence. Although evidence is limited in this regard, witnesses have stated that Shabak women and girls, except elderly women, suffered sexual and physical violence from ISIL members. According to hearsay evidence, in 2016, at two different locations, several Shi'a Shabak and Turkmen women and children were imprisoned, tortured and sexually abused by ISIL members.

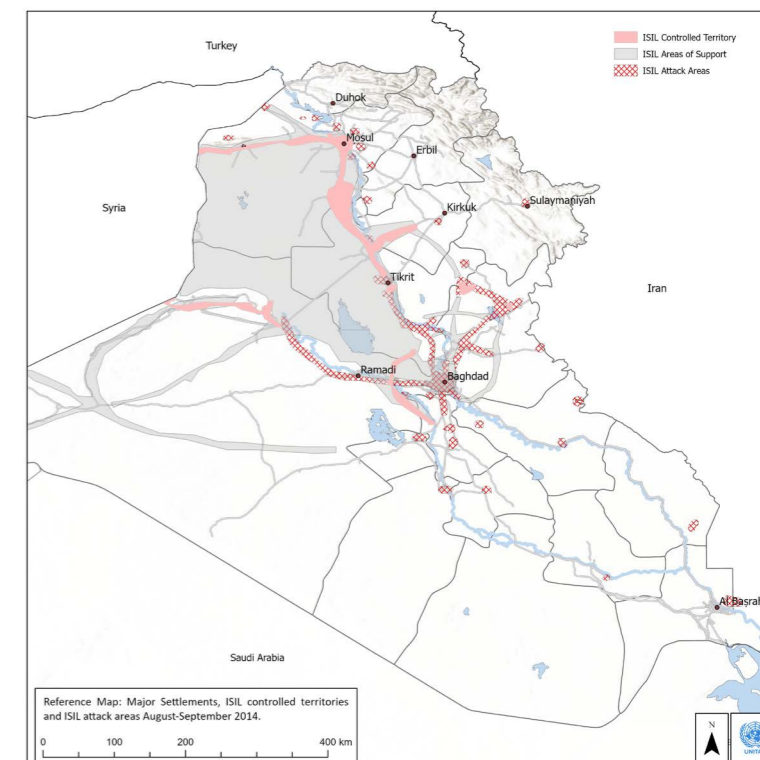
6. Sexual violence against Sunni people

74. Sunni Muslims represent the second largest religious group in Iraq, following Shi'a Muslims. Most Sunnis in Iraq are Arabs, but they may belong to any of the various ethnicities present in Iraq. Although technically a minority in the country, Sunni Islam became the *de facto* predominant religion in territories under ISIL control.

75. Similar to other minorities, Sunnis were targeted by ISIL if they were perceived to be enemies. For example, Sunnis affiliated with the ISF or Iraqi forces were targeted by ISIL.

6.1 Gendered impact of life under ISIL

76. After overtaking Mosul, ISIL adopted its 'Constitution' called 'Wathiqat al-Madinah' (The Medina Charter). Article 14 addressed the place of women in society and called on them to stay home and wear religiously appropriate clothing in public.²¹ The concept of '*pardah*', which means 'curtain', or the seclusion of women, is central to this principle. Women were expected to respect '*pardah*' by staying home or in places separate from men as much as possible, as well as by wearing a niqab and gloves in public (literally taking the 'curtain' with them).²² In addition to this strict dress code, the segregation of males from females was also regulated. Women were barred from going out in public without a male relative, a '*mahram*',²³ and men were required to grow their beards, wear long *dishdashas* and forbidden from smoking. Punishment for lapses were harsh²⁴ and included beatings and lashings regardless of whether the victim was male or female.



21. Diwan of Central Media, The Medina Charter or City Charter (12 وثيقة المدينة), June 2014. Also see Abu Rumman, Mohammad, & Abu Hanieh, Hassan, 'Infatuated with Martyrdom: Female Jihadism from al-Qaeda to the 'Islamic State'', FES (2017), p. 121.

22. 'Women of the Islamic State: a manifesto on women by the Al-Khanssaa Brigade', Translation by the Quilliam Foundation, February 2015, p. 22 and p. 25 [last accessed 26 April 2023].

23. 'The Fitrah of Mankind and the Near-Extinction of the Western Woman', in Dabiq, Issue 15: Break the Cross, July 2016, p. 23.

24. 'General rules on the Muslim woman's leaving the house to go to the market' (ضوابط خروج المسلمة الى السوق), in al-Naba' (النبا), Issue 26, April 2016, p. 14; 'L'Etat islamique applique le jugement d'Allah : La lapidation de celui qui commet l'adultère', in Dar al-Islam No. 4, Le combat contre les apostats, 1 June 2015, p. 12.

77. On 23 January 2015, the al-Khansa Women's Media Unit of ISIL issued a document titled 'Women in the Islamic State: a Message and Report' which described the role of women. The document underlined ISIL's expectations regarding the behavior of women and girls, concluding with *"fear God and fulfil your duties to the state, be careful not to do any harm to it, knowingly or unknowingly. Bring up the sons of the Caliphate to know true tawheed. Bring up its daughters such that they know chastity and decency."*²⁵ In October 2016, ISIL's newspaper al-Naba warned Muslim women against delaying marriage.²⁶ In December 2016, one of ISIL's most prominent female religious jurist and propagandist, Iman al-Bugha, addressed women in a Facebook post in which she underlined the importance of early marriage in this new society.²⁷

78. The heavy emphasis on marriage and expectations of chastity and virtue created an environment in which the social status of women and girls and restrictions on their personal freedoms were intrinsically connected to their marital status. In order to protect their honor and that of their male relatives, single girls and women were strictly segregated from their male counterparts, until their wedding day, at which point they could assume the role of wives and eventually mothers of large families. They were expected to raise their sons to be fighters and daughters to marry fighters.²⁸ Transgressions such as adultery were met with severe punishment, including death.

79. This heavily gendered regulation on all aspects of life meant that boys were expected and sometimes forced to train and fight alongside ISIL fighters.

80. Furthermore, attempts to flee the Caliphate, that is ISIL controlled areas, were also considered to go against ISIL's interpretation of Islam. This was met with punishment, especially when committed by Sunnis from ethnic minorities. For example, in separate incidents during 2016, some Sunni or Sunni-passing Shabak families were arrested after attempting to escape from the Caliphate's territory to Kurdistan. They were called 'rawafid', 'kufar' and 'murtadeen' despite being or perceived to be Sunni. Adults were beaten. As well, the men and older boys were separated from the women and children. Most of the women and children were held in houses or public buildings managed by female ISIL members who meted out physical punishments such as lashings. One man was killed in front of his relatives. At least some of the men and boys were tortured with severe beatings, lashings and burnings while two girls aged 9 and 10 years old respectively were questioned about their religion and beaten.

25. 'Women of the Islamic State: a manifesto on women by the Al-Khanssaa Brigade', p. 41.

26. 'I praise you among all nations' (فاني مكثر بكم اللامة): "We should warn the Muslim sisters that the postponement of marriage until a late age is a guile of disbelievers who seek to deflect Muslim women from their true duty and the fact that they are created to unite God Almighty by worship without either. and then to serve religion as pleases God, including marriage, child-bearing and child rearing. [...] Marrying girls in what is known as 'early age' is a crime punishable by juggernaut law in some countries falsely claiming to be Islamic. In real Islam, there is no Halal except what God Almighty has brought, and no Haram except what is forbidden by God Almighty." Reiterated in 'I will outnumber the other nations through you', p. 35: "Likewise, we will not miss this opportunity to warn every Muslim sister of another evil policy of Islam's enemies, which is to delay marriage until a later age. [...] If only the Muslimah knew the benefits of marrying early, along with the intention to increase the population and produce righteous children".

27. 'Infatuated with Martyrdom: Female Jihadism from al-Qaeda to the 'Islamic State'', p. 302.

28. 'A jihad without fighting', in Dabiq, Issue 11: From the battle of al-Ahزاب to the war of coalitions, August 2015, p. 41: "the absence of jihad and war upon the Muslim woman – except in defense against someone attacking her – does not overturn her role in building the Ummah, producing men, and sending them out to the fierceness of battle."; 'I will outnumber the other nations through you', p. 35: "Once the Muslim sister knows this, she will cast anything contrary to it aside, devote herself to increasing the Ummah in lions and preparing them, making a den for them out of her house, wherein she nourishes them with tawhid and wala and bara"; 'The woman is a shepherd in her husband's home and responsible for her flock', in Rumiyah Issue 9: 'The Ruling of the Belligerent Christians', May 2017, p. 18-21.

6.2 Sexual violence in detention

81. Punishments for breaking the rules set out by ISIL were violent and often dispensed in a strictly gendered manner. They included beatings, lashings, and other forms of physical abuse and torture, which could also include forms of sexual violence. For example, a young Sunni Shabak man whom ISIL suspected to have been a bodyguard for the leader of a Kurdish political party was arrested and severely tortured and then sentenced to lashing. While imposing the punishment, the ISIL member specifically targeted the victim's genitals.

82. Women who accused of crimes such as adultery or fleeing the Caliphate could be imprisoned for months where they may be subjected to sexual violence. Several Sunni Shabak women reported having been sexually assaulted and raped by ISIL members during their detention after attempting to flee ISIL controlled territory. In one case, an ISIL member tried to take the woman's 12-year-old daughter, but she refused and told him to take her instead. In another case, the victim was informed by her rapist that he would treat her as a 'sabaya'. Several Shi'a Shabak women whom ISIL thought to be Sunni were subjected to the same fate upon being arrested as they fled Mosul.

6.3 Child and forced marriage

83. Although child and forced marriages took place in both Iraq and Syria prior to ISIL's rise,²⁹ ISIL facilitated these practices. ISIL effectively made child and forced marriages a policy by setting the minimum age for marriage at 9 years old³⁰ and by imposing a strictly gendered ideology confining women and girls to a position of dependence and obedience towards their male relatives. Under ISIL, women had to obey their husbands (which implied physical punishment on his part if she disobeyed),³¹ care for children and educate them in line with ISIL's ideology.

84. While it is well documented that Sunni girls were subjected to child and forced marriage, evidence collected by UNITAD in this regard is limited. Several witnesses mentioned that the wives of ISIL members were minors, including girls as young as 12 years old. One witness reported rumors that ISIL members were going to private residences in Mosul to find girls for marriage. Daughters of foreign ISIL members were not protected from this practice. On the contrary, they were at an increased risk given the strong ideological ties of their adult relatives to the organization and the fact that transnational marriages brought the potential for future international collaboration among extremists.

**Minimum age
for marriage at
9 years old**

29. Revkin Mara Redlich, and Wood Elisabeth Jean, 'The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices', Journal of Global Security Studies (2020), p. 9: doi: 10.1093/jogss/ogaa038.

30. 'Women of the Islamic State: a manifesto on women by the Al-Khanssaa Brigade'.

31. 'A woman's obedience to her husband is an obligatory act of worship' (طاعة المرأة لزوجها عبادة واجبة), in al-Naba' (النبا), Issue 30, 10 May 2016, p. 14.

85. ISIL courts issued marriage contracts for these unions following a defined procedure,³² thus demonstrating its endorsement of the practice.³³ Based on the evidence available to UNITAD, a significant number of the marriage contracts issued by ISIL are related to the marriage of minors. Similar information can be found on open sources. One marriage contract for a 13-year-old girl in Mosul shows the signature and fingerprints of the girl as well as her guardian, suggesting that the consent of girls and their fathers (or other male guardians) were required.³⁴

86. In addition to the fact that the girls were minors and unable to consent to such unions, it is probable that some parents consenting to the marriage of their daughters to ISIL members were doing so under some form of coercion. For example, the union may have been a means to ensure the safety, access to services and livelihood opportunities for the girl's family.

87. While it is not currently possible to draw conclusions on whether Sunni boys were systematically forced into child marriages, at least one testimony provided that minor sons of ISIL members were also married off and may have been encouraged, if not coerced, into committing sexual violence against their wives. Further investigation is required to assess whether this was an isolated incident. Similarly, additional findings are necessary to obtain a better understanding of the situation faced by the sons and daughters of ISIL fighters.

88. Although official ISIL texts indicate that ISIL did not authorize forced marriage and implicitly prohibited it by making the formal consent of both parties a legal requirement, Sunni women were also subjected to forced marriages.³⁵ The same may have been the case for foreign females who joined ISIL as adults. While the consent of both parties is required for a marriage to take place, the consent of the bride could be obtained through a male proxy/guardian. In addition, ISIL's ideological and legal framework created an oppressive and coercive environment for Sunni women and girls, who could not freely decide whether to marry or not. Given the roles of women living under ISIL's rule, life for unmarried women could be very difficult because they were unable to go out without a husband or a 'mahram'.³⁶ Unmarried women and widows, and all of their children, were required to live in a women's house known as a 'maqqa' or a 'madhafa', where residents were supervised and had limited freedom of movement. Many single women and widows had to marry or remarry an ISIL member as quickly as possible to avoid ending up in a 'maqqa', putting in question whether their consent to marriage was genuine. Official publications encouraged widows of ISIL fighters to remarry, even if they preferred not to out of loyalty to their former husbands because "a woman is always in need of a husband who will look after her and tend to her affairs".³⁷

89. Sunni women living in ISIL controlled areas faced intense social and economic pressure to marry ISIL fighters for the same reasons as Sunni girls. For example, marriage with an ISIL fighter was a way to gain protection or access to services.³⁸ Occasionally, this pressure and coercion included physical force.³⁹ Although UNITAD has yet to collect direct evidence in this respect, civil society organizations have reported several such incidents.

32. 'The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices', p. 12-13.

33. See for example Tal Afar Shari'a Court, Marriage certificate (6 عقد نكاح), May 2017, in relation to the marriage of a 12-year-old girl.

34. Marriage Certificate (عقد نكاح); Specimen 40U, 'Marriage Contract', on Aymenn Jawad al-Tamimi, Archive of Islamic State Administrative Documents (cont.- IV), 25 August 2017 [last accessed 22 May 2023].

35. 'The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices', p. 13.

36. See para. 75.

37. 'The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices', p. 13.

38. 'The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices', p. 13.

39. 'The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices', p. 13.





1. Genocide

1.1 Dolus specialis

90. The crime of genocide is set apart by its requirement that the perpetrator holds a specific intent, or *dolus specialis*, to destroy a protected group, as such, in whole or in part.⁴⁰ Protected groups are defined by positive characteristics of a national, ethnic, racial or religious nature.⁴¹ While the victims must be targeted because of their membership in a national, ethnic, racial or religious group,⁴² the perpetrator can have several motives.⁴³ It is sufficient to demonstrate intent to exterminate at least a substantial part⁴⁴ of the group in question, whether qualitatively or quantitatively.⁴⁵

40. Article 6 of the Rome Statute; Article 4(2) of the Updated ICTY Statute; Article 2(2) of the ICTR Statute; and Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.

41. ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, 26 February 2007, ICJ Reports 2007 (hereafter, *Bosnia Herzegovina v. Serbia and Montenegro*, Judgment), para. 192; ICTY, Appeals Chamber, *The Prosecutor v. Milomir Stakić* (Case No. IT-97-24-A), Judgment, 22 March 2006 (hereafter: *Stakić*, Appeals) Judgment, para. 20; ICTY, Trial Chamber II, *The Prosecutor v. Zdravko Tolimir* (Case No. IT-05-88-2-T), Judgment, 12 December 2012 (hereafter: *Tolimir*, Judgment), para. 735; ICTY, Trial Chamber, *The Prosecutor v. Radovan Karadžić* (Case No. IT-95-5/18-T), Public Redacted Version of Judgment, 24 March 2016 (hereafter: *Karadžić*, Judgment), para. 541; ICTY, Trial Chamber I, *The Prosecutor v. Ratko Mladić* (Case No. IT-09-92-T), Judgment, 22 November 2017 (hereafter: *Mladić*, Judgment), para. 3436; ICC, Pre-Trial Chamber I, *The Prosecutor v. Omar Hassan Ahmad al-Bashir*, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad al-Bashir, 4 March 2009 (ICC-02/05-01/09-3), para. 135.

42. *Akayesu*, Judgment, para. 521; *Bagilishema*, Judgment, para. 61; ICTY, Trial Chamber I, Section A, *The Prosecutor v. Vidoje Blagojević and Dragan Jokić* (Case No. IT-02-60-T), Judgment, 17 January 2005, para. 669; ICTY, Trial Chamber I, *The Prosecutor v. Momčilo Krajišnik* (Case No. IT-00-39-T), Judgment, 27 September 2006 (hereafter: *Krajišnik*, Judgment), para. 856.

43. ICTR, Appeals Chamber, *The Prosecutor v. Eliézer Niyitegeka* (Case No. IT-96-14-A), Judgment, 9 July 2004, para. 53.

44. *Bosnia Herzegovina v. Serbia and Montenegro*, Judgment, para. 198; ICTY, Appeals Chamber, *The Prosecutor v. Radislav Krstić* (Case No. IT-98-33-A), Judgment, 19 April 2004 (hereafter: *Krstić*, Appeals Judgment), para. 8; ICTY, Appeals Chamber, *The Prosecutor v. Vujadin Popović et al.* (Case No. IT-05-88-A), Judgment, 30 January 2015 (hereafter: *Popović et al.*, Appeals Judgment), para. 419; *Karadžić*, Judgment, para. 555; *Mladić*, Judgment, para. 3437; ICTR, Trial Chamber II, *The Prosecutor v. Clément Kayishema and Obed Ruzindana* (Case No. ICTR-95-1-T), Judgment, 21 May 1999, para. 96; ICTR, Trial Chamber III, *The Prosecutor v. Ildéphonse Nizeyimana* (Case No. ICTR-2000-55C-T), Judgment and Sentence, 19 June 2012, para. 1491.

45. ICTY, Trial Chamber, *The Prosecutor v. Goran Jelisić* (Case No. IT-95-10-T), Judgment, 14 December 1999 (hereafter: *Jelisić*, Judgment), para. 82; *Krstić*, Appeals Judgment, para. 12; *Popović et al.*, Appeals Judgment, para. 419.

91. Each of the communities noted above can be considered a protected group, primarily on religious grounds. A religious group is characterized by the fact that its members share⁴⁶ or are perceived⁴⁷ to share common religious beliefs and practices. In this regard, Yazidis, Christians, Shi'as, and Sunnis were clearly perceived as distinct religious groups by ISIL.

92. The intent to destroy in whole or in part is proven with certainty with respect to Yazidis. ISIL's own theological authorities determined that Yazidis, whose faith is entirely distinct from other religions,⁴⁸ were pagans, 'mushrik',⁴⁹ as opposed to others who were considered apostates, 'rafidis'. As Yazidis were regarded as never having accepted Islam, ISIL's propaganda referred to Yazidis and their religion as 'satanism'⁵⁰ and 'devil-worship'.⁵¹ In October 2014, ISIL published in Dabiq an article titled 'The Revival of Slavery before the Hour' stating: "Their continual existence to this day is a matter that Muslims should question as they will be asked about it on Judgment Day",⁵² making clear it considered the destruction of the Yazidi faith and people the duty of all Sunni Muslims.

93. Under ISIL's logic, 'mushrikin', such as the Yazidis, could be enslaved or killed.⁵³ Individual perpetrators openly referred to their Yazidi victims' religion as a motive for their actions. The fact that Yazidis were specifically targeted for their religious beliefs is demonstrated by the fact that captured Yazidis were nearly systematically given an ultimatum to convert to ISIL's interpretation of Islam or be killed, as well as the fact that ISIL attempted to kill or capture as many Yazidis as possible. Even though estimates indicate that ISIL killed or enslaved 2.5% of the Yazidis of Sinjar, the fact that many managed to escape or avoid further victimization by converting to Islam does not undermine or diminish ISIL's intent and attempts to target as many Yazidis as possible.

94. ISIL's genocidal intent was expressed in a strongly gendered manner. While ISIL generally killed Yazidi men and elderly people, Yazidi women and children were separated from the men. Both the killing of adult men and enslavement of women and girls were designed to impair or erase the ability of the Yazidi community to bring forth a new generation. As both parents must be Yazidi for a child to be Yazidi, the killing of half of the group, being the adult males,

46. ECCC, Trial Chamber, *The Prosecutor v. Samphân Khieu and Chea Nuon*, Case 002/02 Judgment, 16 November 2018 (002/19-09-2007-ECCC/TC) (hereafter: *Case 002/02*, Judgment), para. 3204.

47. *Jelisić*, Judgment, para. 70; *Bagilishema*, Judgment, para. 65; ICTR, Trial Chamber III, *The Prosecutor v. Laurent Semanza* (Case No. ICTR-97-20-T), Judgment and Sentence, 15 May 2003, para. 317; *Case 002/02*, Judgment, para. 795.

48. Kizilhan, Jan Ilhan, 'The Yazidi – Religion, Culture and Trauma', in *Advances in Anthropology* Vol. 7 No. 4, November 2017, doi: 10.4236/aa.2017.74019.

49. 'The revival of slavery before the hour', in Dabiq, Issue 4: The Failed Crusade, October 2014, p. 14: "it was determined that this group [the Yazidis] is one that existed since the pre-Islamic jahiliyyah, but became 'islamized' by the surrounding Muslim population, language, and culture, although they never accepted Islam nor proclaimed to have adopted it. [...] Accordingly, the Islamic State dealt with this group as the majority of fuqaha' have indicated how mushrikin should be dealt with."

50. 'In the words of the enemy', in Dabiq, Issue 3: A Call to Hijrah, September 2014, p. 35: "his brothers in Yazidi Satanism", 'Hundreds of Yazidis Convert to Islam', by Wilayat Ninewa, on SITE Intelligence group [last accessed 15 May 2023]: "their sanctifying and worshipping the accursed Satan, claiming that he is an agent of Allah over the world".

51. 'The revival of slavery before the hour': "The Yazidis present-day creed – as it has changed over history – entails the worship of Iblis"; 'Hundreds of Yazidis Convert to Islam'.

52. Dabiq, "The Revival of Slavery Before the Hour", Issue 4, 2014.

53. Dabiq, "The Revival of Slavery Before the Hour", Issue 4, 2014. "then kill the mushrikin wherever you find them, and capture them, and besiege them".

and infliction of severe and sustained sexual violence resulting in severe trauma and stigma on the other half, being the women and girls, naturally decreases the likelihood of survivors bearing Yazidi children.⁵⁴ ISIL's ideology also considered enslavement as a way to bring Yazidi women, girls and children (whether Yazidi or born in captivity) within its interpretation of Islam.⁵⁵ For example, ISIL has forced a number of such individuals to speak Arabic and/or change their names. This has been compounded by the fact that, in 2014, Yazidi religious rules did not allow Yazidi women who had intercourse with non-Yazidis to be accepted back in their communities.⁵⁶ ISIL's policy of systematized sexual violence against Yazidi women and girls fit the organization's ideology and was designed with the specific intent of destroying in whole or in part the Yazidi people.⁵⁷

95. ISIL's position and intent towards Shi'as, whom it considered apostates is unclear as of the date of this report. One ISIL propagandist pamphlet published in 2015 suggest a more severe approach was meted to people of the Shi'a faith by holding: *"And the disbelief of apostasy is unanimously more severe than the original disbelief: so fighting the apostates is more important to us than fighting the original infidel"*.⁵⁸ In Qaraqosh, several witnesses reported that ISIL members explicitly said they were looking for Shi'as, arresting them and killing at least two men. In contrast, 'People of the Book' such as Christians could pay the 'jizyah'⁵⁹ and, in some cases, entertained cordial relations with ISIL members. In the rare instances where Christian women were enslaved, it seems they held a different status from other captives, at least initially. Further investigation is required to be conducted in determining whether ISIL policy towards Shi'a Muslims could amount to genocidal intent.

96. Thus far, there is little evidence to show that ethnic groups were targeted with genocidal intent, which is demonstrated by the ethnic and racial diversity of ISIL's own members, as well as the difference in the treatment inflicted upon Turkmen and Shabak people depending on whether they were Shi'a or Sunni.⁶⁰

1.2 Serious bodily or mental harm⁶¹

97. The underlying crime of causing serious bodily or mental harm⁶² 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"*.⁶³ 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"*.⁶⁴

98. However, the harm need not entail *"permanent impairment"*.⁶⁵ The prevailing views appears to be that the acts must also *"be such as to contribute to the physical or biological destruction of the group, in whole or in part"*⁶⁶ and *"result in a grave and long-term disadvantage to a person's ability to lead a normal and constructive life"*.⁶⁷ Sexual violence and its destructive effects on the mental and physical wellbeing of the victims are thus prohibited.⁶⁸

99. The acts of extreme sexual violence inflicted by ISIL upon Yazidi women and girls have been extensively documented. Those kept as 'sabayas'⁶⁹ were subjected to immense sexual violence, including repeated and often brutal rapes which sometimes resulted in traumatic injuries. They were also often expected to undertake grueling domestic work and subjected to physical violence which in some instances amounted to acts of torture. Yazidi women and girls also suffered severe psychological abuse including witnessing their mothers or relatives being subjected to sexual and physical violence. Viewed in totality, there is ample evidence to show that Yazidis who were forced to become 'sabayas' suffered both severe bodily and mental harm. This is supported by the fact that some Yazidi 'sabayas' committed or attempted to commit suicide during their captivity.



54. ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*), Judgment, 3 February 2015, ICJ Reports 2015 (hereafter, *Croatia v. Serbia*, Judgment), para. 166; Krstić, Appeals Judgment, para. 29.

55. 'The revival of slavery before the hour': *"You bring them with chains around their necks, until they enter Islam"*; 'Slave-girls or prostitutes?': *"Yet He (subhanah) made their liberation from the lands of kufr a way for their salvation and guidance towards the straight path. [...] Once she bears witness that there is no god but Allah and begins performing what has been prescribed for her of rights, then we say, 'Come and be welcomed.' As for her heart, then we defer it to Allah (ta'ala)."*

56. This rule was changed in February 2015: Reuters, [Yazidi leader seeks protection for community after genocide](#), 8 December 2016 [last accessed 22 May 2023].

57. See para. 94-96.

58. 'This is our creed and the pilgrimage of our approach' (هذه عقيدتنا وهذا منهجنا).

59. 'The revival of slavery before the hour': *"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"*; 'Why We Hate You & Why We Fight You', in Dabiq, Issue 15: Break the Cross, July 2016, p. 31: *"we have been commanded to fight the disbelievers until they submit to the authority of Islam, either by becoming Muslims, or by paying jizyah – for those afforded this option – and living in humiliation under the rule of Muslims"*; Diwan al-Qada, (بيان) Statement ,17 July 2014; 'So They Kill and Are Killed' by Abu Muhammad al-Adnani.

60. See para. 50 and 70-71.

61. While it acknowledges that any underlying crime, such as killing, can be committed in a gendered manner, this report only explores strictly sexual and gender-based crimes.

62. Article 6(b) of the Rome Statute; Article 4(2)(a) of the Updated ICTY Statute; Article 2(2)(a) of the ICTR Statute; and Article 2(a) of the Convention on the Prevention and Punishment of the Crime of Genocide.

63. ICTY, Trial Chamber II, *The Prosecutor v. Radoslav Brđanin* (Case No. IT-99-36-T), Judgment, 1 September 2004 (hereafter: *Brđanin*, Judgment), para. 690.

64. Karadžić, Judgment, para. 2580-2581; ICTR, Appeals Chamber, *The Prosecutor v. Athanase Seromba* (Case No. ICTR-2001-66-A), Judgment, 12 March 2008 (hereafter: *Seromba*, Appeals Judgment), para. 46.

65. ICTY, Appeals Chamber, *The Prosecutor v. Zdravko Tolimir* (Case No. IT-05-88/2-A), Judgment, 8 April 2015 (hereafter: *Tolimir*, Appeals Judgment), para. 204; ICTR, Trial Chamber II, *The Prosecutor v. Tharcisse Muvunyi* (Case No. ICTR-2000-55A-T), Judgment and Sentence, 12 September 2006, para. 487.

66. *Croatia v. Serbia*, Judgment, para. 157; *Tolimir*, Appeals Judgment, para. 203; *Krajišnik*, Judgment, para. 862; *Seromba*, Appeals Judgment, para 46.

67. *Tolimir*, Appeals Judgment, para. 215; *Krstić*, Judgment, para. 513; *Karadžić*, Judgment, para. 543.

68. *Bosnia Herzegovina v. Serbia and Montenegro*, Judgment, para. 300; *Croatia v. Serbia*, Judgment, para. 158; *Seromba*, Appeals Judgment, para 46;

Akayesu, Judgment, para. 706 and 731; ICC, Pre-Trial Chamber I, *The Prosecutor v. Omar Hassan Ahmad al-Bashir*, Second Decision on the Prosecution's Application for a Warrant of Arrest, 12 July 2010 (ICC-02/05-01/09-94), para. 25-26.

69. See para. 23-28.

100. Some Yazidi women and girls were forcibly married to ISIL members, who often would be the man who was keeping them as a 'sabaya'. The testimonies collected by UNITAD indicate that while consent of both parties was legally required for a marriage contract under ISIL's judicial system, in most cases women and girls either did not consent or consented to marriage under coercion. In any case, even after being forcibly married, most victims continued suffering the same level and types of violence, including sexual violence, as prior to marriage.

101. Although it is clear that individual ISIL members selected their victims based on perceived attractiveness and other subjective criterion, the available evidence shows that ISIL specifically targeted Yazidi women and girls most likely to be able to be brought into ISIL's interpretation of Islam and/or who would find it difficult or impossible to return to their community should they be released. This is supported by the fact that ISIL preferred young girls and women, especially virgins. In line with this, women with children were the second most desired category. Considered alongside the forced religious conversion and indoctrination of all Yazidi captives, it is clear that ISIL intended to erase the Yazidi identity and contributed to the physical destruction of the group by preventing them from returning to their community.

1.3 Imposition of measures intended to prevent births within the group

102. The underlying crime of imposing measures intended to prevent births within the group⁷⁰ covers any measures taken with the objective of preventing births within the group, whether they succeed or not, such as "sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages".⁷¹ Instances of 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"⁷² can also be considered as intention to prevent future births within the group. Any form of sexual violence or enslavement, or measures committed with the intent of preventing, diminishing or destroying the capacity of women or men to procreate within the group, fall within this underlying crime.⁷³

103. As described above, many Yazidi women and girls were subjected to sexual violence and separated into groups based on their real or perceived age and reproductive abilities. Although not all ISIL members who owned a 'sabaya' attempted to impregnate their slaves, some wanted to have children with their Yazidi captives. In any case, ISIL's public position on the matter was clear in that children born of rape in captivity would be Sunni as they were to follow their father's religion and raised within ISIL.⁷⁴

70. Article 6(d) of the Rome Statute; Article 4(2)(d) of the Updated ICTY Statute; Article 2(2)(d) of the ICTR Statute; and Article 2(d) of the Convention on the Prevention and Punishment of the Crime of Genocide.

71. *Akayesu*, Judgement, para. 507; *Tolimir*, Judgement, para. 743.

72. *Akayesu*, Judgement, para. 507.

73. *Croatia v. Serbia*, Judgement, para. 166; *Akayesu*, Judgement, para 508.

74. 'The revival of slavery before the hour': "It has been stated that the conquests of the lands of kufr multiply as well as enslavement, and thereby concubines increase in numbers, until the slave women give birth to their masters, this is because the child of the master has the status of the master".

104. Some Yazidi women and girls gave birth to children in captivity. In at least some cases, their children were taken and given for adoption to ISIL families. Those who had had children due to rape were not able to return to their community with their children, as the latter are not considered Yazidis. Many children were thus abandoned by their mothers while some women chose to leave the Yazidi community for the sake of their children.

2. Crimes against humanity

2.1 Contextual elements

105. Crimes against humanity are defined in the Rome Statute as acts "committed as part of a widespread or systematic attack against a civilian population".⁷⁵ Such an attack against a civilian population implies the commission of several acts. The attack must also be either widespread (of a large-scale nature with a high number of victims) or systematic (part of a pattern of crimes).⁷⁶ Although the ICTY has interpreted crimes against humanity as not requiring the existence of a plan or policy,⁷⁷ the Rome Statute does require crimes against humanity to be committed "pursuant to or in furtherance of a State or organizational policy to commit [...] an attack [against a civilian population]".⁷⁸

106. ISIL's highly hierarchical functioning is well established and its commission of acts that would amount to different types of underlying crimes against humanity well documented. ISIL's ideology and policies affected the whole civilian population in the areas under its control. At the same time, ISIL particularly targeted religious and/or ethnic minorities. As the ICC found in the case of the acts committed by Ansar Dine/AQMI in Mali, "the implementation of a religious ideology presented as Sharia affected all areas of the public and private lives" (informal translation)⁷⁹ of civilians. ISIL's attack on civilians was both widespread and systematic.

107. In addition, to satisfy the *mens rea* requirements, the perpetrator must be aware of the widespread or systematic attack and understand their actions to fit this pattern.⁸⁰ There is no requirement that the perpetrator adheres to the criminal design of the organization or State or intends to participate in the attack: "the perpetrator's motive is hence irrelevant [...], it suffices to establish, in view of the context, knowledge of the particular fact that his or her act formed part of the attack".⁸¹

75. Article 7(1) of the Rome Statute.

76. ICC, Trial Chamber II, *The Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014 (ICC-01/04-01/07-3436-tENG) (hereafter: *Katanga*, Judgment), para. 1123.

77. *Kunarac*, Appeals Judgment, para. 98.

78. Article 7(2)(a) of the Rome Statute.

79. ICC, Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (Version publique expurgée), 13 November 2019 (ICC-01/12-01/18-461-Corr-Red) (hereafter: *Al Hassan*, Confirmation of charges), para. 179.

80. *Tadić*, Appeals Judgment, para. 248; *Kunarac*, Appeals Judgment, para. 102; Elements of the crimes, pp. 4-8.

81. *Katanga*, Judgment, para. 1125.

108. Although fulfillment of the *mens rea* requirement is specific to each individual perpetrator, they would only need to have been aware that their actions were taking place in the context of ISIL's multiple attacks against the civilian population, and in particular against members of religious and/or ethnic groups as well as individuals who failed to follow ISIL's strict rules, contributing to the imposition of ISIL's ideology and rules.

2.2 Rape

109. In addition to the contextual elements common to all crimes against humanity, the crime of rape is defined as the "invasion" of the body of a person by force, threat of force, coercion or by taking advantage of a coercive environment.⁸² The term invasion is meant to be gender-neutral and covers the penetration of either the victim or the perpetrator, with any part of the body or any object.⁸³ Males can also be victims of rape.⁸⁴

110. UNITAD holds solid evidence demonstrating the use of rape by ISIL members against women and girls as young as 9 years old. Individual perpetrators often disregarded the strict rules set out by ISIL on matters such as the prohibition of certain sex acts, use of contraception and abortion and waiting for girls to hit puberty, in order to satisfy their own desires or personal preferences. There is also limited evidence that some victims may have been under the influence of drugs.

111. Rape occurred while the women and *girls*, regardless of their ethnicity or religion, were in captivity (including prior to their official enslavement), detention or held under other forms of custody such as in situations whereby girls were taken from their families and put in an orphanage.

112. Rape and other forms of sexual violence were recurrent for enslaved women and *girls*.⁸⁵ The sexual violence inflicted on these victims was often brutal and caused in most instances traumatic injuries.

113. Women and girls, including Sunnis, were also subjected to rape and sexual violence through forced marriages.⁸⁶ This includes children brought to Iraq and Syria from abroad by their parents upon joining ISIL.⁸⁷ Under ISIL's rule, girls as young as 9 years old could be, and were effectively, married off and raped by their husbands, as long as their menstrual cycles had begun by that time.⁸⁸ In this context, some Christian, Shi'a Turkmen, and Sunni boys were also victims of sexual violence, as they were forcibly married to young girls and often coerced to consummate their marriage.

82. Article 7(1)(g) of the Rome Statute; Article 5(g) of the ICTY Statute; Article 3(g) of the ICTR Statute.

83. Elements of the crimes, p. 8.

84. ICC, Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, 21 March 2016 (ICC-01/05-01/08-3343), para. 100.

85. See para. 27, 43 and 58.

86. See para. 32, 63-64 and 84-91.

87. See para. 85.

88. 'Women of the Islamic State: a manifesto on women by the Al-Khanssaa Brigade'.

2.3 Torture

114. In addition to the contextual elements common to all crimes against humanity, the crime of torture is defined as the infliction of severe physical or mental pain or suffering on one or more persons in the custody of the perpetrator.⁸⁹

115. While the Rome Statute does not include a specific purpose in its definition of the crime against humanity of torture,⁹⁰ this does not reflect customary international law,⁹¹ under which the perpetrator must also intend to attain a certain result or purpose, such as obtaining information or a confession, or punishing, intimidating, coercing the victim or a third person or on another ground based on any type of discrimination.⁹² On the contrary, the ICTY has specifically held that this specific purpose, which stems from the definition set out by the Convention against Torture,⁹³ "may be considered to reflect customary international law".⁹⁴

116. There is extensive evidence that individuals who were captured or arrested, regardless of their religious beliefs or ethnicity, were subjected to severe physical and mental pain which could amount to torture, while they were in the custody of ISIL members (whether in detention or early captivity), while they were held as slaves or while they were under other types of custody (such as situations where Shi'a Turkmen children were held in an ISIL orphanage or training facilities). Considering the overall context of the conflict, it is safe to conclude that torture was widespread, although many victims have disappeared or died subsequently.

117. In many instances, torture against women and girls from all communities encompassed a large sexual component, including rape. The severity of the suffering inflicted is demonstrated by the injuries caused by the repeated rapes and brutal treatment enslaved women and girls suffered. As a result of her first rape, one girl was left unconscious for eight hours and woke up with a broken arm and hemorrhaging so severe she had to use a wheelchair for a week. Some of the women and girls who suffered such torture committed or attempted to commit suicide.

118. Considering the strictly gendered rules and stringent restrictions on the freedoms of Sunni women and *girls*⁹⁵, they could also be considered to be "in the custody" of their husbands, as their rights were strictly curtailed, and their husbands considered their guardian, '*mahram*'. This exercise of power over their female spouses would have been even more acute where the wife was much younger than her husband and where the marriage had not been consensual. In these cases, women and girls who were forcibly married to ISIL members were also subjected to physical, psychological and sexual violence that could amount to torture.

89. Article 7(1)(f) of the Rome Statute; Article 5(f) of the ICTY Statute; Article 3(f) of the ICTR Statute.

90. Elements of the crimes, p. 7.

91. ICTY, Trial Chamber, *The Prosecutor v. Kunarac et al.* (Cases No. IT-96-23-T & IT-96-23/1-T), Judgment, 22 February 2001, para. 485.

92. *Kunarac*, Appeals Judgment, para. 142.

93. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Article 1(1).

94. ICTY, Appeals Chamber, *The Prosecutor v. Anto Furundžija* (Case No. IT-95-17/1-A), Judgment, 21 July 2000, para. 111.

95. See para. 76-78.

119. The torture inflicted on enslaved women and girls was carried out both with a discriminatory intent based on the victim's religion and enslaved status as well as, sometimes, for the purposes of punishment. This is clearly demonstrated by ISIL's 'Pamphlet on slavery: the Creator's Maxims on Captivity and Enslavement,' which was issued in or before 2015 and emphasizes the importance of humiliation in the treatment of 'sabayas'.⁹⁶ In the case of Christians, Sunnis and individuals perceived as Sunnis caught attempting to flee the Caliphate, rape was clearly inflicted for the purpose of punishing the victims and their relatives for their attempted escape.

2.4 Sexual slavery

120. In addition to the contextual elements common to all crimes against humanity, the crime of enslavement⁹⁷ is defined as the exercise of all the powers attaching to the right of ownership over one or more persons, or the imposition of a similar deprivation of liberty.⁹⁸ Sexual slavery is closely related and relies on the exercise of all the powers attached to the right of ownership over one or more persons, or the imposition of a similar deprivation of liberty, during which the perpetrator caused the enslaved persons to engage in acts of a sexual nature.⁹⁹

121. This exercise of power can express itself in a number of ways including through the "purchasing, selling, lending or bartering" of human beings.¹⁰⁰ Further indicia of enslavement include the (i) control or restrictions of a person's movement and, more generally, measures taken to prevent or deter their escape; (ii) control of the 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 labor or subjecting the person to servile status; and (x) the person's vulnerability and the socio-economic conditions in which the power is exerted.¹⁰¹ The ICC has found that the enslaved person must be placed "in a situation of dependence which entails his or her deprivation of any form of autonomy".¹⁰²

122. The enslavement of Yazidi women and children and the sexual slavery inflicted on the women and girls more specifically, are well established by the available evidence. The facts show that women and children were captured, organized into groups, transferred to various locations and then kept in captivity with limited or no liberty of movement. Even those who had been coerced into converting to Islam were held in the villages of Qasr Mirhab, Qezil Qeo, Kocho and Tal Banat but remained under the control of ISIL members and not free in their movements.

96. 'ISIL Pamphlet on slavery: The Creator's maxims on captivity and enslavement'.

97. The crime of enslavement is indeed closely related to that of sexual slavery and sexual acts can be indicative of enslavement and "sexual slavery can lead to a conviction for enslavement": SCSL, Trial Chamber II, *The Prosecutor v. Brima et al.* (Case No. SCSL-04-16-T), Judgment, 20 June 2007, para. 739.

Likewise, sexual slavery is regarded at the ICC as a particular form of enslavement: ICC, Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Trial Judgment, 4 February 2001 (ICC-02/04-01/15-1762-Red) (hereafter: *Ongwen*, Judgment), para. 2715.

98. Article 7(1)(c) of the Rome Statute; Article 5(c) of the ICTY Statute; Article 3(c) of the ICTR Statute.

99. Article 7(1)(g) of the Rome Statute.

100. Elements of the crimes, p. 6.

101. *Kunarac*, Appeals Judgment, para. 119; *Katanga*, Judgment, para. 976; *Ongwen*, Judgment, para. 2712.

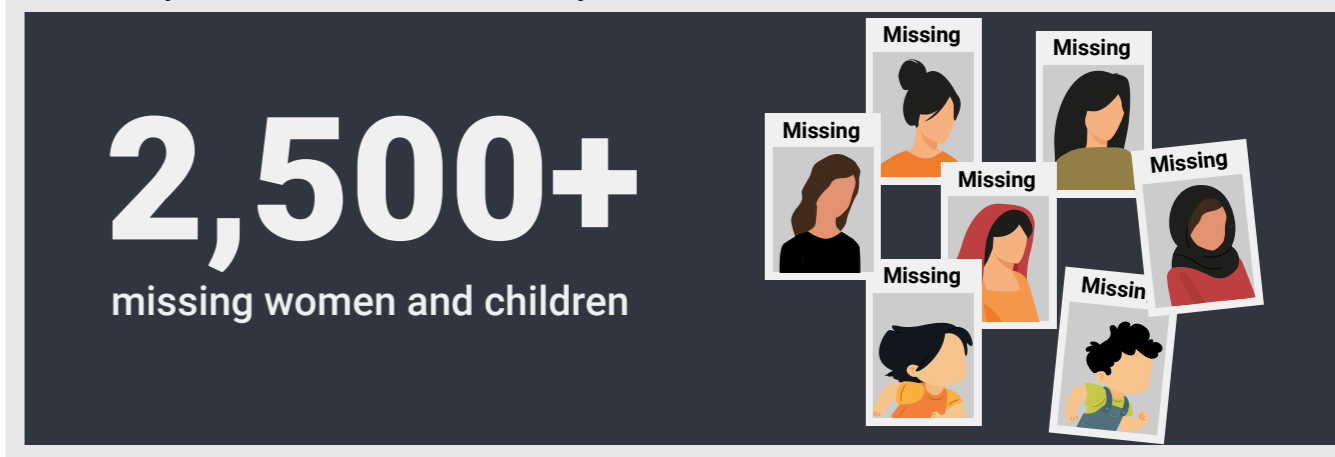
102. *Katanga*, Judgment, para. 975.

123. The exercise of an ownership relationship with the victims is also clearly established. For instance, women and children were placed for sale or exchanged like goods. Some of the women and girls were directly distributed to ISIL fighters, put through a lottery system or taken to slave markets. Subsequently, they could be repeatedly sold, gifted or traded to other ISIL members. Similar to any other sale and purchase agreement, the ISIL Courts of the Department of Justice and Grievances recorded the sales of *sabayas* and issued certificates of ownership.¹⁰³

124. While enslaved, victims were subjected to severe psychological, mental and sexual abuse. *Sabayas* were systematically raped, often brutally, by their captors. Most were beaten and subjected to psychological abuse. The control of the victims' sexuality went beyond the rapes they suffered and extended to their reproductive autonomy. For example, some of the women and girls were made to take contraception or subjected to forced abortions while others were made to carry children fathered by their captors. In any case, the power over their bodies belonged to their captors, whether or not the latter followed ISIL's ideology towards fathering children of 'sabayas'. Some of the children born out of rape were taken from their mothers, without regard for what they wanted, to be raised by ISIL families. Victims were also subjected to forced labor.

125. As stated above, ISIL claimed and boasted about its organized and systematic sexual slavery system with regards to Yazidi women. Between October 2014 and May 2015, ISIL published a number of documents on enslavement, all of which focused on the treatment of female slaves.¹⁰⁴ The period during which these documents were published coincides with the continuing movements of female captives, suggesting that ISIL was issuing documents in parallel with the actual implementation of its ideology. The management of its slave trade was partly handled by the Spoils of War Department of ISIL administration, as slaves were considered to be property of the Islamic State until they were sold, given away or gifted. They were also returned as property to the Spoils of War Department when their captor had died or was arrested by ISIL. This strict organization of the sexual slavery market strongly suggests that ISIL leadership placed significant importance on acquiring and holding sex slaves.

126. Over 2,500 Yazidi women and children captured by ISIL remain missing to this day.¹⁰⁵ Some may have died while others may still be enslaved.



103. 'Proof of ownership'.

104. See para 25.

105. United Nations, 'Nadia's Initiative and IOM Iraq Break Ground on Cemetery and Memorial for Yazidi Genocide Victims', 13 February 2023 [last accessed 8 August 2023].

2.5 Persecution

127. In addition to the contextual elements common to all crimes against humanity, the crime of persecution is defined as the severe deprivation of one or more persons of their fundamental rights contrary to international law. The victims must be part of a group or collectivity targeted because of their political, racial, national, religious identity.¹⁰⁶

128. The Rome Statute recognizes the additional grounds of ethnic, cultural, or gender identity or any other ground universally recognized.¹⁰⁷ In this regard, gender is to be understood as “*the social construction of gender, and the accompanying roles, behaviors, activities, and attributes assigned to women and men, and to girls and boys.*”¹⁰⁸ Persecution on the ground of gender identity can exist where “*a man and a woman, who belong to the same group, are targeted in different ways or by different types of violence based on their gender (for example by killing the men and raping the women)*” (informal translation).¹⁰⁹ Gender persecution can thus be used to strictly enforce pre-existing social constructs.¹¹⁰ Any person can be targeted as all individuals have real or perceived gender identities.¹¹¹ Several grounds of persecution may coexist and be interconnected in one given context,¹¹² as with the Yazidis where gender and religion intersected.

129. Under the Rome Statute, persecution is committed in connection with other underlying crimes against humanity.¹¹³ Gender persecution occurs where any of the crimes defined by the Rome Statute is committed with discriminatory intent.¹¹⁴ The fundamental rights of which the victims are deprived refer to those protected by international human rights instruments including the right to life, the right to physical and mental inviolability, and the right to personal freedom,¹¹⁵ although the violations of said rights can take numerous forms including economic or legal acts.¹¹⁶

130. Yazidis were systematically deprived of many of their fundamental rights, including the right to physical integrity (which includes the prohibition of slavery), the right to individual liberty (which includes the freedom of movement, religious freedom and the prohibition of forced marriage) and the right to property. Many men and older boys were also deprived of their right to life. The Christian, Turkmen and Shabak Shi’a peoples were also repeatedly subjected to violations of their rights, such as the right to physical integrity, individual liberty (which includes

freedom of movement, religious freedom, and the prohibition of forced marriage), and the right to property. In all cases, the persecutory acts manifested in a clearly gendered manner, with men and older boys who are traditionally regarded as heads of the households and potential fighters being killed or tortured, and women and children being subjected to sexual violence and forced marriages.

131. More broadly, women and girls, regardless of their ethnicity or religion, were deprived of their fundamental rights not only through the sexual slavery trade,¹¹⁷ but also via child and forced marriages¹¹⁸ and other forms of sexual and gender-based violence. While other grounds of persecution were also present, the available evidence demonstrates that ISIL implemented a policy of persecution based on gender identity, which primarily impacted women and girls of all religious and ethnic backgrounds.

132. Indeed, women and girls saw their fundamental rights curtailed and violated on the basis of their sex and gender identity, which is in line with ISIL’s ideology and legislation. Although Sunni women’s fundamental rights were more protected than those women from religious and ethnic minorities,¹¹⁹ all women and girls were subjected to a gendered ideology confining them to a position of dependence and obedience upon their male relatives, guardians or captors. All aspects of life were strictly regulated, and punishments were harsh.¹²⁰

133. The ‘*sabaya*’ system itself is a gendered consequence of ISIL’s persecution of religious minorities. Women and girls who followed the Sunni faith or another ‘People of the Book’ religion were free and could not be enslaved. Thus, Yazidi women and children could be reunited with their male relatives, when the latter agreed to convert to Sunni Islam. Although the families remained under the control of ISIL, these women and girls were not immediately treated as ‘*sabayas*’. When they could not be reunited with a Sunni male relative, women and girls were on occasion asked to convert to Islam, forcibly converted or enslaved (with the objective of bringing them into Islam at a later time).¹²¹ In contrast, men and older boys who did not convert to ISIL’s interpretation of Islam were not enslaved but killed. This illustrates the gendered dimension of ISIL’s crimes. The crimes that victims were targeted for were partly decided by whether the victim was male or female, with men being targeted for killings, such as the case of Yazidis and Shi’a men in Camp Speicher and Badush prison, and women and girls targeted for sexual violence.

134. Slavery was also heavily regulated by ISIL. There were rules on matters such as when captors could start having sexual intercourse with their slaves (which depended on the age of the *sabaya*)¹²² to what type of violence could be used against them¹²³, as previously described.¹²⁴

106. Article 7(1)(h) of the Rome Statute; Article 5(h) of the ICTY Statute; Article 3(h) of the ICTR Statute.

107. Article 7(1)(h) of the Rome Statute.

108. ICC, Office of the Prosecutor, [Policy Paper on Sexual and Gender-Based Crimes](#), June 2014, para. 15 [last accessed 18 May 2023]; ICC, Office of the Prosecutor, [Policy on the Crime of Gender Persecution](#), 7 December 2022, para. 42 [last accessed 18 May 2023].

109. *Al Hassan*, Confirmation of charges, para. 667. Please note that the original and only available version of the document refers in French to ‘persécution pour motifs sexistes’, and not gender *per se*.

110. Policy on the Crime of Gender Persecution, para. 25.

111. Policy on the Crime of Gender Persecution, para. 45.

112. *Al Hassan*, Confirmation of charges, para. 707. The Chamber also underlined that there might have been a racial or ethnic component to the persecution: “*the violence against women might have also been motivated by the colour of their skin, with darker-skinned women being more affected than others; likewise, darker-skinned men were, according to some witnesses, more persecuted than light-skin ones*” (information translation) (para. 702).

113. Elements of the crimes, p. 10; Policy on the Crime of Gender Persecution, para. 57-58.

114. Policy on the Crime of Gender Persecution, para. 39 and 49.

115. *Blaškić*, Judgment, para. 220.

116. ICTY, Trial Chamber, *The Prosecutor v. Duško Tadić* (Case No. IT-94-1-T), Opinion and Judgment, 7 May 1997 (hereafter: *Tadić*, Judgment), para. 710

117. See para. 23-28, 43-44 and 58-59.

118. See para. 29-33, 45-46, 60-65 and 84-91.

119. ‘The Islamic State’s Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices’, p. 13.

120. ‘General rules on the Muslim woman’s leaving the house to go to the market’ (ضوابط خروج المسلمة الى السوق); ‘L’Etat islamique applique le jugement d’Allâh: La lapidation de celui qui commet l’adultère’.

121. ‘The revival of slavery before the hour’. See also para. 96.

122. Pamphlet entitled ‘Su’al wa-Jawab fi al-Sabi wa-Riqab’ (Slavery Q&A) (سؤال وجواب في السبي ورقاب), p. 2.

123. ‘ISIL Pamphlet on slavery’ The Creator’s maxims on captivity and enslavement’, Office of Research and Studies. The existence of this Pamphlet was discovered in 2015, while its issuing date is so far unknown.

124. See para. 128-129.

Sabayas were considered property and thus managed by the Spoils of War Department, to which they would be returned if their captor died or was arrested by ISIL. They could however be 'freed' and forcibly married to ISIL members, entering thus another form of subjugation to a male guardian. Indeed, in May 2015, an article in Dabiq encouraged fighters who could not afford to marry a free woman to marry slaves.¹²⁵

135. Child and forced marriages were not only tolerated¹²⁶ but actively encouraged and perceived as desirable,¹²⁷ regardless of the inherent violations of human rights. ISIL set the minimum age for girls to get married at nine years old,¹²⁸ *de facto* legalizing child marriage. Furthermore, although the consent of both parties was in theory required, the bride's consent could be obtained through her guardian or male proxy, thereby also legalizing forced marriages. Beyond this framework, the oppressive and coercive environment created by ISIL meant that, even when they were not enslaved or in any form of captivity, women and girls were nonetheless deprived of their freedom.¹²⁹ For example, under ISIL's rule, women and girls were barred from going out without a male guardian.¹³⁰ Single or widowed women were made to live in a '*maqqa*' and were allowed to leave only once a week. Furthermore, official ISIL publications strongly emphasized the need for women to marry or remarry.¹³¹

136. Although women and girls were the primary victims of gendered persecution, men and boys could also be subjected to sexual violence as part of ISIL's sexist ideology. For example, some boys were subjected to child marriage, and through such marriage to sexual violence. In addition, although evidence is limited, it seems that men and boys, including Sunnis, could suffer sexual abuse or physical abuse targeting their genitals, as punishment which targeted their masculinity and perceived role in society.

2.6 Other inhumane acts

137. In addition to the contextual elements common to all crimes against humanity, the crime of other inhumane acts is defined as the infliction of great suffering or serious injury to body or mental or physical health, by means of an inhumane act of a similar character to other underlying crimes against humanity.¹³² Inhumane acts can be defined as "*serious violations of international customary law and the basic rights pertaining to human beings, drawn from the norms of international human rights law*".¹³³ The determination as to whether an act is severe enough to fall under this category must be made based on the circumstances of the individual

125. 'Slave-girls or prostitutes?': "He (subhanah) said, inciting His believing servants to marry female slaves (if they cannot afford to marry freewomen) and preferring them to a free mushrikah of noble lineage, {And a believing slave-girl is better than a mushrikah, even though she might please you} [Al-Baqarah:221]".

126. Child and forced marriages were already widespread in both Iraq and Syria prior, but ISIL's policy facilitated it: see 'The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices'.

127. 'Infatuated with Martyrdom: Female Jihadism from al-Qaeda to the 'Islamic State'', p. 302.

128. 'Women of the Islamic State: a manifesto on women by the Al-Khansaa Brigade'.

129. See para. 76-80.

130. 'The Fitrah of Mankind and the Near-Extinction of the Western Woman'.

131. 'The Islamic State's Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices', p. 13.

132. Article 7(1)(k) of the Rome Statute; Article 5(i) of the ICTY Statute; Article 3(i) of the ICTR Statute.

133. ICC, Pre-Trial Chamber I, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the confirmation of charges, 30 September 2008 (ICC-01/04-01/07-717), para. 448.

case.¹³⁴ The conduct need not be otherwise expressly criminalized under international law.¹³⁵

138. Acts of sexual violence, beatings or psychological abuse that do not amount to torture, rape or sexual slavery may still be considered inhumane acts for the purpose of demonstrating the existence of a crime against humanity of other inhumane acts.¹³⁶

139. Forced marriage has been considered to fall under the prohibition of 'other inhumane acts'. It is defined 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*".¹³⁷ A violent and coercive environment, especially if the victim is in captivity, indicates lack of consent to the marriage,¹³⁸ although the absence of consent is not considered an element of forced marriage.¹³⁹ Jurisprudence has held that forced marriage is of a similar gravity to other types of crimes against humanity.¹⁴⁰

140. Forced marriage implies an exclusive relation between the victim and perpetrator and other elements specific to a conjugal relation, such as the duty to bear children or undertake domestic chores.¹⁴¹ In this respect, forced marriage is distinct from sexual slavery, rape or other types of sexual violence. While forced marriage does have a sexual component, it is not predominantly a sexual crime¹⁴² and its specificity lies in the social, religious or ethical consequences the conjugal bond may have for the victims.¹⁴³ The victim may feel bonded to the perpetrator despite their lack of consent at the time of the union.¹⁴⁴ Although forced marriage as an international crime has thus far mostly involved male perpetrators and female victims, both males and females can be victims of this crime.¹⁴⁵

141. As described extensively above, there is strong evidence that women and girls were subjected to forced marriage under ISIL's rule. While the circumstances in which these marriages occurred varied significantly depending on the ethnicity or religion of the victim, as well as their status within ISIL's society, it appears that child and forced marriage was not only widespread throughout the territory controlled by ISIL, but also actively encouraged by the organization's ideology and propaganda arm.¹⁴⁶

134. ICTY, Appeals Chamber, *The Prosecutor v. Kordić & Čerkez* (Case No. IT-95-14/2-A), Judgement, 17 December 2004, para. 117.

135. ECCC, Supreme Court, *The Prosecutor v. Samphân Khieu and Chea Nuon*, Appeal Judgement in Case 002/01, 23 November 2016 (002/19-09-2007-ECCC/SC), para. 584.

136. *Akayesu*, Judgement, para. 688; ICTY, Trial Chamber, *The Prosecutor v. Milan Milutinović et al.* (Case No. IT-05-87-T), Judgement, 26 February 2009, para. 190-191.

137. SCSL, Appeals Chamber, *The Prosecutor v. Brima et al.* (case No. SCSL-04-16-T), Judgement, 22 February 2008 (hereafter: *Brima*, Appeals Judgement), para. 195-196; *Al Hassan*, Confirmation of charges, para. 559.

138. SCSL, Appeals Chamber, *The Prosecutor v. Sesay et al.* (case No. SCSL-04-15-T-A), Judgement, 26 October 2009 (hereafter: *Sesay*, Appeals Judgement), para. 736.

139. *Sesay*, Appeals Judgement, para. 734.

140. *Brima*, Appeals Judgement, para. 200; *Ongwen*, Judgment, para. 2748; ICC, Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, Judgment on the appeal of Mr. Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled 'Trial Judgment', 15 December 2022 (ICC-02/04-01/15-2022-Red), para. 1028 (hereafter: *Ongwen*, Appeals Judgment); ECCC, Supreme Court Chamber, *The Prosecutor v. Samphân Khieu*, Appeal Judgement, 23 December 2022 (002/19-09-2007-ECCC/SC) (hereafter: Case 002/02, Appeal Judgment), para. 1185.

141. *Ongwen*, Judgment, para. 2748. Case 002/02, Appeal Judgment, para. 1182.

142. *Brima*, Appeals Judgement, para. 195.

143. *Al Hassan*, Confirmation of charges, para. 553-555; *Ongwen*, Judgment, para. 2748; *Ongwen*, Appeals Judgment, para. 1023-1024; SCSL, Trial Chamber I, *The Prosecutor v. Sesay et al.* (case No. SCSL-04-15-T), Judgement, 2 March 2009, para. 1296.

144. *Ongwen*, Judgment, para. 2748.

145. Case 002/02, Appeal Judgment, para. 1183-1185 and 1212-1213. 145. 'The revival of slavery before the hour'; 'Slave-girls or prostitutes?'

146. 'The revival of slavery before the hour'; 'Slave-girls or prostitutes?'

142. Regardless of the religion of origin of the victims, ISIL used marriage to expand its demographic base, spread its own understanding of Islam, while reducing the population of the communities it targeted. This includes Yazidi, Shi'a and Christian women and girls, but also local Sunni women and girls and wives and daughters of men arrested or executed for cooperating with the Iraqi forces or failing to respect ISIL's rules. Even with regards to previously enslaved victims, forced marriage is a distinct crime, as it implies a conjugal relation between the victims and the perpetrators and the societal structure they wish to impose. For example, ISIL further encouraged marriages with slaves after Yazidi leader Baba Sheikh allowed women to return to their community in February 2015¹⁴⁷ and thousands of captives fled. This demonstrates ISIL's desire to prevent further loss of slaves and create an additional link tethering the victim to her captor.

143. This also explains why some boys appear to have also been forcibly married, as a way to further strengthen their attachment to ISIL and to create 'ideal' ISIL families.

3. War crimes

3.1 Contextual elements

144. War crimes are acts prohibited by international humanitarian law and must take place in the context of and be associated with an armed conflict.

145. An armed conflict is categorized as 'international' when a State uses armed force against another State, or where some of the participants in an armed conflict act on behalf of a State against the armed forces of another State.¹⁴⁸ A conflict can also be characterized as a non-international armed conflict, when non-state actors play a significant role as they engage in hostilities against government forces or other armed groups. In such cases, two criteria are assessed: the level of armed violence and the existence of a non-state armed group displaying a certain level of organization.

146. In the instance of ISIL's actions in Iraq during the relevant time-period, these criteria are met due to the significant level of violence¹⁴⁹ and the ability of ISIL to carry out attacks against government forces and to organize themselves into a Caliphate.¹⁵⁰ As a non-state armed group involved in armed conflict against a coalition of forces, the situation falls under the category of a non-international armed conflict, further establishing the context in which the crimes were committed.

147. In non-international armed conflicts, war crimes can only be committed against protected persons who are not actively participating in hostilities. The persons falling under this category are defined by the Geneva Conventions, specifically under Common Article 3.¹⁵¹ The article includes those placed hors de combat ("out of action") by sickness, wounds, detention, or any other cause, shall be treated humanely.

148. To satisfy the *mens rea* requirements, the perpetrator must be aware of the circumstances from which the existence of an armed conflict can be deduced.¹⁵² Although the fulfillment of *mens rea* requirement is specific to each individual perpetrator, it seems that they would only need to have been aware that their actions were taking place in the context of the conflict opposing ISIL to the Iraqi forces and their allies.

3.2 Rape

149. Rape, whether classified as a war crime or a crime against humanity, shares common defining elements. As previously stated in this report, for an act to be considered rape, it must involve non-consensual sexual acts committed through force, threat of force, or coercion. The evidence presented in this report points to a compelling case of extensive rape perpetrated by ISIL. Hence, the acts of rape perpetrated by ISIL qualify as war crimes, given their occurrence within the context of armed conflict, as previously discussed in this report.

3.3 Torture

150. Torture has common defining elements, whether classified as a war crime or a crime against humanity.¹⁵³ As highlighted earlier in this report, for an act to be considered torture, it must involve the intentional infliction of severe pain or suffering. This report presents compelling evidence of extensive torture committed by ISIL.¹⁵⁴ Therefore, the acts of torture committed by ISIL meet the criteria for consideration as war crimes, as they occurred within the context of an armed conflict.

3.4 Sexual slavery

151. Similarly, sexual slavery as a war crime shares common elements with crimes against humanity.¹⁵⁵ As detailed in this report, sexual slavery involves the subjugation of individuals to forced sexual servitude, which has been proven based on the evidence gathered by UNITAD. Thus, sexual slavery constitutes a war crime as it was committed in the context of an armed conflict.

147. Reuters, [Yazidi leader seeks protection for community after genocide](#), 8 December 2016 [last accessed 22 May 2023].

148. *Tadić*, Appeals Judgment, para. 120.

149. First report of the Secretary-General pursuant to paragraph 6 of resolution 2110 (2013), UN doc S/2013/661, 13 November 2013, §26.

150. Cameron Glenn, Mattisan Rowan, John Caves and Garrett Nada, 'Timeline: The Rise, Spread, and Fall of the Islamic State', Wilson Center, 28 October 2019.

151. Geneva Conventions, Common Article 3, 1949.

152. Elements of the crimes, p. 13.

153. See para. 111-112.

154. See para. 113-116.

155. See para. 121-122.

PART III.

OBSERVATIONS AND CONCLUSION



152. Although many aspects of ISIL's sexual and gender-based crimes have been unearthed, much work remains to be done in investigating and documenting the full scope of crimes committed, whether or not they fell within ISIL's stated policy. In particular, sexual crimes against the Christian, Shi'a Turkmen, Kaka'i and Sunni communities require additional investigation. In this respect, UNITAD remains committed to its mandate through continuing to collect, analyze, and further assess evidence on the crimes committed by ISIL in Iraq.

153. Investigations into sexual-based violence are inherently challenging, as they must navigate obstacles such as the severe trauma witnesses and survivors live with as well as societal norms and prejudices. This may lead to the under-documentation of some communities or types of victimization.

154. UNITAD's efforts to investigate and document sexual violence have greatly benefited from its cooperation with both formal and informal representatives from all communities. These collaborations have been and continue to be essential to UNITAD's work and the pursuit of justice for the victims of crimes committed by ISIL.

155. UNITAD thus calls on representatives of the Christian, Turkmen, Kaka'i and Shabak communities to strengthen their collaboration with its investigative units, which may strengthen investigations into the sexual crimes committed by ISIL against these religious and ethnic minorities. More broadly, UNITAD welcomes any information and cooperation from survivors and witnesses, regardless of their ethnic or religious background.



