



Daesh's Gender-Based Crimes against Yazidi Women and Girls Include Genocide

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

Daesh continues to commit heinous crimes against women and girls, and, to date, has done so with impunity. Victims and witnesses who have fled Daesh control consistently describe being subjected to attacks that aim to terrorize and silence the population. But even in the context of Daesh's blanket persecutions against ethnic minorities, Daesh has singled out the Yazidi religious and ethnic minority, and most notably Yazidi women and children, for particularly brutal treatment.¹

Further, its state-building strategy requires subjugation of women and control over their reproductive capacity to guarantee future generations for the so-called Caliphate. These policies, strategies and practices lead to and provide a perceived justification for Daesh fighters' carrying out the horrendous crimes against Yazidi women and girls detailed below.

A. Capture, Murder, and Transfer

One repeated feature of Daesh's attacks is the systematic capture and transfer of Yazidi women and girls. Upon capture, Daesh typically separates Yazidi women and girls into three groups: (1) married with children; (2) married without children; and (3) young women and girls.² After separation, evidence suggests that Daesh has a

practice of sequestering elderly women—presumably too old to be sold as sex slaves or used for forced physical labor—killing them and burying them in mass graves.³

The groups of younger women are transferred to different locations in Daesh-controlled territory.⁴ The manner in which they are transferred is methodical and deliberate. Dozens of women, even though kidnapped on different days and from different locations, have voiced similar

descriptions of their capture, including the appearance of the bus that transported them, the placement of curtains to block the women inside and the manner in which they were transported and confined for days or even months on end.⁵

Daesh has singled out the Yazidi religious and ethnic minority, and most notably Yazidi women and children, for particularly brutal treatment.

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

B. Slavery

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

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

As part of their enslavement and to prepare women and girl captives for sale, Daesh sets up holding areas with mattresses, food and water for hundreds.¹² “Emirs”

**As many as
3,000
Yazidis are
being held in
slavery.**

(local Daesh commanders) instruct Daesh fighters to inspect Yazidi women and girls, some as young as 11 years old.¹³ Daesh fighters accordingly inspect them to evaluate their beauty, perform full-body searches, force them to undergo examinations by gynecologists to determine whether they are virgins

and force them to smile as Daesh fighters take their photographs.¹⁴ Daesh keeps track of female captives by numbering their captives or recording their names on lists.¹⁵

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

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

C. Forced Marriage

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

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

Daesh fighters seek Yazidi women for marriage—as opposed to other Christian, Jewish or Muslim captives—to purify them.²³ Another victim stated, “The other girls with me [told the Daesh fighter] it’s forbidden to marry a married women . . . He replied, ‘But not if they are Yazidi women.’”²⁴

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

D. Sexual Violence, Rape, and Torture

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

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

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

lived in constant fear that she would be dragged away like so many Yazidi women and girls before her:

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

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

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

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

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

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

*in the room in front of me.*⁴⁴

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

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

E. Forcible Impregnation

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

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

F. Forced Conversions

Women and girls held captive by Daesh are also forced to convert from Yazidism to Islam.⁵³ Daesh views Yazidism as blasphemous and considers those who practice it to be devil-worshippers.⁵⁴ Many girls report similar experiences in their forced conversion, including being brought by the group to a single room with an Daesh religious leader, hearing they are infidels, being forced to repeat the *shadada* [Islamic creed] or read from the Quran, and collectively being told they were converted.⁵⁵

G. Forced Abortions

In addition to forcing Yazidi women and girls to convert to Islam, Daesh forces women and girls pregnant with Yazidi children to have abortions.⁵⁶ Doctors forcibly and invasively examine women to determine whether they are

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

H. Violence against Children

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

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

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

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

Under the Rome Statute, “genocide” means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; or (e) forcibly transferring children of the group to another group.⁶⁹

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

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

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

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

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

Further, Daesh has specifically engineered its treatment of Yazidi women and girls according to their age, marital status and perceived physical desirability. Numerous Yazidi witnesses have provided credible and consistent accounts about separate incidents and attack, evincing a sinister and appalling system of gender-specific abuse. Moreover, Daesh's systematized pattern of abuse is disproportionately carried out against Yazidis. In March 2015, the UN High Commissioner of Human Rights noted that of the approximately 3,000 people still in Daesh captivity, most are Yazidi.⁷⁴

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

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

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

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

B. Daesh is Killing Elderly Yazidi Women

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

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

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

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

Following the *Akayesu* decision in the International Criminal Tribunal for Rwanda (ICTR), rape and sexual violence can be construed as serious bodily and mental harm.⁸⁴ In fact, the court in *Akayesu* stated, "Rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the chamber, one of the worst ways to inflict harm on the victim as . . . she suffers both physically and mentally."⁸⁵ The International Court of Justice has also acknowledged that rape and other crimes of sexual violence can constitute a form of genocide, namely by causing serious bodily harm.⁸⁶

In addition to rape, forced impregnation causes "serious mental harm" to members of the group by forcing women to carry and bear the children of their attackers.⁸⁷ For example, victims who are made pregnant by rape in this context may be traumatized and so psychologically scarred by the pregnancy that they are unable to have normal sexual or childbearing experiences with their own people.⁸⁸ Further, forced impregnation can cause serious bodily injury, especially when victims are young, unable to support a healthy pregnancy and unable to receive adequate medical care.⁸⁹

Courts have also interpreted forced displacement as causing

serious mental harm sufficient to constitute genocide.⁹⁰

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

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

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

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

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

This is the case in Yazidi culture. According to Yazidi customs, sexual relations or marriage with members of other faiths are not permitted and are considered shameful to the whole family.⁹⁶ After the first girls and women escaped Daesh captivity, Yazidi spiritual leader

Baba Sheikh called on members of the Yazidi community not to punish or ostracize victims of sexual violence or forced conversion.⁹⁷ However some reports indicate that the stigma remains, with survivors keeping abuses they suffered secret from their families and being concerned about the negative social consequences and future of these women and girls.⁹⁸

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

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

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

Separation of the sexes, rape, forced birth control and obstacles to marriage can each constitute measures intended to prevent births within a group.¹⁰⁰ More specifically, in Yazidi society, where membership of

the group is determined by the identity of *both* parents, prevention of births happens when Yazidi women and girls are separated from their husbands and other Yazidi men. Births are further prevented when women and girls are raped, subsequently stigmatized within their own group

(see above) and forcibly impregnated by Daesh fighters. Finally, births within the Yazidi group are prevented when Yazidi women pregnant with Yazidi children are forced to undergo abortions, eliminating a chance for Yazidi heirs.

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

F. Daesh is Forcibly Transferring Yazidi Children to Another Group

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

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

Whether by physical force, threats or taking advantage of a coercive environment, Daesh fighters routinely and systemically separate Yazidi girls under the age of 18 from Yazidi women and sell or gift them to Daesh leaders or other fighters. Once transferred and in captivity, many of the men in Daesh force these girls to convert to Islam. This system and practice indicates that Daesh is committing genocide by transferring Yazidi girls to Islamic terrorists.

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

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

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

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

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

Under this definition, Daesh’s attacks on Yazidi women

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

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

A. Daesh is Forcibly Transferring Yazidi Women and Girls

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

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

B. Daesh Enslaves Yazidi Women and Girls

The Rome Statute criminalizes “enslavement” as a crime against humanity, and “confinement” as a war crime.¹¹⁵

Whereas enslavement is “the exercise of any or all of the powers attaching to the right of ownership over a person,” confinement has a lower threshold and only requires that a perpetrator “confine or continue to confine one or more persons to a certain location.”¹¹⁶

Enslavement can include forced labor and trafficking, particularly that of women and children,¹¹⁷ and courts look at several factors in determining if the crime is completed, including: “the control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.”¹¹⁸

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

By and through Daesh’s systematized capture, separation, sale and/or gifting of Yazidi women and girls, its practice of enslavement and confinement is widely evident. The group has even publically acknowledged enslaving Yazidi women and girls, viewing them as spoils of war. When Daesh fighters cannot afford or do not want to pay the price for a slave (prices range with some women reporting they were sold for as much as \$2,000¹²¹), they instead marry them by force. Once sold, gifted or married, Yazidi captives are confined to the home and not allowed outside unless accompanied by a close male relative. Those who have escaped Daesh captivity widely report they were sexual abused, raped and forced to witness other captives be abused.¹²²

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

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

1. Daesh Rapes Yazidi Women and Girls

Under the Rome Statute, rape (a crime against humanity and war crime) occurs when a perpetrator invades the body of a person by force, threat of force or coercion.¹²³ Particularly relevant in the context of Daesh’s capture

of Yazidis, international courts have determined that “coercion may be inherent in certain circumstances, such as armed conflict.”¹²⁴

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

2. Daesh Forcibly Impregnates Yazidi Women and Girls

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

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

3. Daesh Subjects Yazidi Women and Girls to Enforced Prostitution

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

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

4. Daesh Commits Other Crimes of Comparable Gravity Against Yazidi Women and Girls

Acts which do not meet the elements of the Rome Statute’s specifically enumerated sexual crimes may still

be found to constitute a war crime or a crime against humanity if the act is “sexual violence of comparable gravity”¹³² to crimes like rape, forced pregnancy and forced sterilization.¹³³ International courts have indicated that such forms include forced marriage and forced abortion¹³⁴—two practices Daesh routinely carries out against Yazidi women and girls.¹³⁵

As for the former, Daesh’s system of capture-and-marriage of Yazidi girls and women is central to Daesh’s strategy

Daesh’s system of capture-and-marriage of Yazidi girls and women is central to their strategy to subjugate, convert and destroy the Yazidi group.

to subjugate, convert and destroy the Yazidi group. Furthermore, in light of the fact that within Yazidi culture marriage with other faiths is considered to be shameful, this practice can have long-term consequences for victims. The latter, forced abortion, is carried out with the intent

to deprive future Yazidis from being born. Adding to the gravity of this crime is the brutality with which it is carried out, including through invasive medical examinations and ruthless abortions of Yazidi women found to be pregnant.¹³⁶ Accordingly, these crimes should be included in any investigation of Daesh’s gender-based crimes.

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

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

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

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

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

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

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

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

Endnotes:

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

2 OHCHR, *supra* note 1, at ¶ 36.

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

4 OHCHR, *supra* note 1, at ¶ 36.

5 Rukmini Callimachi, *ISIS Enshrines a Theology of Rape*, N.Y. TIMES (Aug. 13, 2015), http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html?_r=0.

6 OHCHR, *supra* note 1, at ¶ 36.

7 *Id.*

8 *The Revival of Slavery Before the Hour*, 4 DABIQ MAGAZINE 14-17.

9 Middle E. Media Res. Inst., *Islamic State (ISIS) Releases Pamphlet on Female Slaves* (Dec. 4, 2014), <http://www.memrijttm.org/islamic-state-isis-releases-pamphlet-on-female-slaves.html>; Human Rights Watch, *Iraq: ISIS Escapees Describe Systematic Rape* (Apr. 14, 2015), <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>.

10 *The Revival of Slavery Before the Hour*, *supra* note 8, at 15.

11 *Id.*

12 Callimachi, *supra* note 5.

13 OHCHR, *supra* note 1, at ¶ 37.

14 *Id.*; Atika Shubert & Bharati Naik, *ISIS Forced Pregnant Yazidi Women to Have Abortions*, CNN (Oct. 6, 2015, 9:38 AM), <http://www.cnn.com/2015/10/06/middleeast/>

[pregnant-yazidis-forced-abortions-isis](http://www.cnn.com/2015/10/06/middleeast/pregnant-yazidis-forced-abortions-isis).

15 OHCHR, *supra* note 1, at ¶ 37; Shubert & Naik, *supra* note 14.

16 OHCHR, *supra* note 1, at ¶ 37.

17 *Id.*

18 Seivan M. Salim, *The Yazidi Women Who Escaped ISIS*, THE DAILY BEAST (2015), <http://www.thedailybeast.com/longforms/2015/isis/portraits-of-the-yazidi-women-who-escaped-isis.html>.

19 OHCHR, *supra* note 1, at ¶ 36, fn. 6; Human Rights Watch, *supra* note 9.

20 OHCHR, *supra* note 1, at ¶ 37.

21 Salim, *supra* note 18; Amnesty Int'l, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq* 5 (Dec. 2014), http://www.amnesty.org.uk/sites/default/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_-_english_2.pdf.

22 Amnesty Int'l, *supra* note 21, at 5.

23 Salim, *supra* note 18. See also Syria COI, *Rule of*, *supra* note 1, at ¶¶ 55 & 57.

24 Human Rights Watch, *supra* note 9.

25 Syria COI, A/HRC/30/48, *supra* note 1, at ¶ 60.

26 *Id.*

27 *Id.*

28 Human Rights Watch, *supra* note 9.

29 Callimachi, *supra* note 5.

30 Human Rights Watch, *supra* note 9.

31 *Id.*

32 Shubert & Naik, *supra* note 14; Nick Gutteridge, *ISIS Tells Fighters to Gang Rape Women Saying Sex with Multiple Jihadis Makes them Muslim*, EXPRESS UK (Oct. 9, 2015, 8:16 AM), <http://www.express.co.uk/news/world/610940/Islamic-State-ISIS-terrorists-gang-rape-women-Yazidi-convert-Islam-al-Baghdadi>.

33 Human Rights Watch, *supra* note 9; Salim, *supra* note 18; Amnesty Int'l, *supra* note 21, at 6.

34 OHCHR, *supra* note 1, at ¶ 38.

35 *Id.*

36 *Id.*

37 *Id.*

38 Human Rights Watch, *supra* note 9.

39 Middle E. Media Res. Inst., *supra* note 9.

40 Amnesty Int'l, *Iraq: Yazidi Women and Girls Face Harrowing Sexual Violence* (Dec. 23, 2014), <https://www.amnesty.org/en/latest/news/2014/12/iraq-yezidi-women-and-girls-face-harrowing-sexual-violence>; OHCHR, *supra* note 1, at ¶ 40.

41 Middle E. Media Res. Inst., *supra* note 9.

42 Salim, *supra* note 18.

43 Human Rights Watch, *supra* note 9.

44 *Id.*

45 *Id.*

46 Amnesty Int'l, *supra* note 21, at 6.

47 See Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 57.

48 Human Rights Watch, *supra* note 9.

49 Sara Malm & Jay Akbar, *"The Virgins Were Taken*

- To A Room With 40 Men. They Lined Us Up And Pointed Who They Wanted”: Yazidi Girl, 17, Made Pregnant By ISIS Fighter Reveals Her Nine-Month Ordeal As A Jihadi Sex Slave, DAILY MAIL (May 29, 2015, 2:26 AM), <http://www.dailymail.co.uk/news/article-3099560/The-virgins-taken-room-40-men-lined-pointed-wanted-Yazidi-girl-17-pregnant-ISIS-fighter-reveals-nine-month-ordeal-jihadi-sex-slave.html#ixzz3s38p2ONh..>
- 50 Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 55.
- 51 *The Revival of Slavery Before the Hour*, *supra* note 8, at 16.
- 52 Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 55.
- 53 OHCHR, *supra* note 1, at ¶ 20.
- 54 Syria COI, A/HRC/30/48, *supra* note 1, at ¶ 60.
- 55 Human Rights Watch, *supra* note 9; Salim, *supra* note 18.
- 56 Shubert & Naik, *supra* note 14.
- 57 *Id.*
- 58 OHCHR, *supra* note 1, at ¶ 41.
- 59 *Id.*
- 60 *Id.*
- 61 *Id.* at ¶ 39.
- 62 *Id.*
- 63 Syria COI, A/HRC/28/69, *supra* note 1, at ¶ 70.
- 64 OHCHR, *supra* note 1, at ¶¶ 35, 38, 45 & 76; Syria COI, A/HRC/30/48, *supra* note 1, at ¶¶ 115-117; Human Rights Watch, *supra* note 9; Amnesty Int’l, *supra* note 21, at 5.
- 65 Syria COI, A/HRC/28/69, *supra* note 1, at ¶ 188; Syria COI, A/HRC/30/48, *supra* note 1, at ¶¶ 114-117; Human Rights Watch, *supra* note 9; Amnesty Int’l, *Escape from Hell*, *supra* note 21; Salim, *supra* note 18.
- 66 Human Rights Watch, *supra* note 9.
- 67 *See* Salim, *supra* note 18.
- 68 Y. Yehoshua, R. Green & A. Argon, *Sex Slavery in the Islamic State Practices, Social Media Discourse, and Justifications Jabhat Al-Husra: ISIS is Taking Our Women as Sex Slaves Too*, MIDDLE E. MEDIA RES. INST. (Aug. 17, 2015), http://www.memrijtm.org/content/view_print/report/8708.
- 69 Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3, art. 6 [hereinafter Rome Statute].
- 70 Prosecutor v. Jelusic, Case No. IT-95-10-A, Judgment, ¶ 47 (Int’l Crim. Trib. For the Former Yugoslavia, July 5, 2001); Prosecutor v. Krstic, Case No. IT-98-33-A, ¶ 41 (Int’l Crim. Trib. For the Former Yugoslavia, Apr. 19, 2004). *See also* U.S. Holocaust Mem’l Museum, “Our Generation is Gone,” *The Islamic State’s Targeting of Iraqi Minorities in Ninewa* 20-21 (2015), <http://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf>.
- 71 *See* Amnesty Int’l, *supra* note 21; Syria COI, A/HRC/28/69, *supra* note 1; Syria COI, A/HRC/30/48, *supra* note 1; OHCHR, *supra* note 1; Syria COI, *Rule of Terror*, *supra* note 1; Human Rights Watch, *supra* note 9.
- 72 Syria COI, A/HRC/30/48, *supra* note 1, at ¶ 115.
- 73 *Id.*; Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 37.
- 74 OHCHR, *supra* note 1, at ¶ 20.
- 75 *The Revival of Slavery Before the Hour*, *supra* note 8, at 14.
- 76 *Id.* at 15.
- 77 Yehoshua, Green & Argon, *supra* note 68.
- 78 OHCHR, *supra* note 1, at ¶ 17.
- 79 Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 57.
- 80 U.S. Holocaust Memorial Museum, *supra* note 70, at 20-21.
- 81 U.S. Comm’n on Int’l Religious Freedom, *USCIRF Statement on the Designation of Victims of Genocide Persecution, and Crimes Against Humanity in Syria and Iraq* (Dec. 7, 2015), <http://www.uscirf.gov/news-room/press-releases/uscirf-statement-the-designation-victims-genocide-persecution-and-crimes>.
- 82 International Criminal Court, Elements of Crimes, art. 6(a), 2011 [hereinafter Elements].
- 83 Elements, *supra* note 82, at art. 6(b).
- 84 Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Int’l Crim. Trib. for Rwanda, Sept. 2, 1998); Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Judgment (Int’l Crim. Trib. for Rwanda, June 17, 2004); Prosecutor v. Muhimana, Case No. ICTR- 95-1B-T, Judgment ¶ 494, 502 & 513 (Int’l Crim. Trib. for Rwanda, April 28, 2005).
- 85 *Akayesu*, Case No. ICTR-96-4-T, at ¶ 731.
- 86 *Bosnia & Herzegovina v. Serbia & Montenegro*, Preliminary Objections, ¶ 319, 2007 I.C.J. 1 (Feb. 26).
- 87 Siobhan K. Fisher, *Occupation of the Womb: Forced Impregnation as Genocide*, 46 DUKE L.J. 91, 122 (1996).
- 88 *Id.*
- 89 *Id.*, at 123.
- 90 Prosecutor v. Blagojević & Jokić, Case No. IT-02-60-T, Judgment ¶ 650 (Int’l Crim. Trib. for the Former Yugoslavia, Jan. 17, 2005).
- 91 Elements, *supra* note 82, at art. 6(c).
- 92 *Akayesu*, Case No. ICTR-96-4-T, at ¶ 505.
- 93 Elements, *supra* note 82, at art. 6(c)-4, fn. 4.
- 94 Prosecutor v. Kayishema & Ruzindana, Case No. ICTR-95-1-T, Judgment ¶ 116 (Int’l Crim. Trib. for Rwanda, May 21, 1999).
- 95 Fisher, *supra* note 87, at 123.
- 96 Amnesty Int’l, *supra* note 21, at 13.
- 97 *Id.*
- 98 *Id.*
- 99 Elements, *supra* note 82, at art. 6(d).
- 100 *Akayesu*, Case No. ICTR-96-4-T, at ¶ 507 & 508; Diane Lupig, *Investigation and Prosecution of Sexual and Gender-Based Crimes Before the International Criminal Court*, 17(2) J. of Gen., Soc. Pol. & the Law 433, 452 fn. 120 (2009); Fisher, *supra* note 87, at 93.
- 101 Elements, *supra* note 82, at art. 6(e).

- 102 *Id.* at art. 6(e), fn. 5.
- 103 Rome Statute, *supra* note 69, at art. 7(1).
- 104 OHCHR, *supra* note 1, at ¶ 41; Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 47-57.
- 105 OHCHR, *supra* note 1, at ¶ 36.
- 106 *Id.* at ¶¶ 20 & 35.
- 107 *See* Elements, *supra* note 82, at art. 8(2).
- 108 *See* Syria COI, A/HRC/28/69, *supra* note 1; Mathew Weaver & Julian Borger, *Syria Airstrikes: Everything You Need to Know*, THE GUARDIAN (Dec. 1, 2015), <http://www.theguardian.com/politics/2015/dec/01/syria-airstrikes-everything-you-need-to-know>.
- 109 *See* Graeme Wood, *What ISIS Really Wants*, THE ATLANTIC (Mar. 2015), <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980>.
- 110 Rome Statute, *supra* note 69, at arts. 7(1)(d) & 8(2)(a)(vii).
- 111 Elements, *supra* note 82, at arts. 7(1)(d) & 8(2)(a)(vii)-1.
- 112 *Id.* at art. 7(1)(d), fn. 12.
- 113 OHCHR, *supra* note 1, at ¶ 36.
- 114 Human Rights Watch, *supra* note 9.
- 115 Rome Statute, *supra* note 69, at arts. 7(1)(c) & 8(2)(a)(vii).
- 116 *Id.* at art. 8(2)(a)(vii)-2.
- 117 Elements, *supra* note 82, at art. 7(1)(c), fn. 11.
- 118 Prosecutor v. Kunarac, Kovač & Vuković, Case Nos. IT-96-23-T & IT-96-23/1-T, Judgment ¶ 543 (Int'l Crim. Trib. for the Former Yugoslavia, Feb. 22, 2001) (internal citations omitted).
- 119 *Kunarac, Kovač & Vuković*, Case Nos. IT-96-23-T & IT-96-23/1-T, at ¶¶ 541 & 573-74. Under the Rome Statute, “sexual slavery” constitutes a crime against humanity as well as a war crime. Rome Statute, *supra* note 69, at arts. 7(1)(g) & 8(2)(b)(xxii). *See also* Elements, *supra* note 82, at arts. 7(1)(g)-2 & 8(2)(b)(xxii)-2.
- 120 Gay J. McDougall (Special Rapporteur on the Issue of Systematic Rape and Sexual Slavery Practices in Armed Conflict), *Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict*, ¶ 8, U.N. Doc. E/CN.4/Sub.2/1998/13 (June 22, 1998).
- 121 Human Rights Watch, *supra* note 9.
- 122 *Id.*
- 123 Elements, *supra* note 82, at arts. 7(1)(g)-1 & 8(2)(b)(xxi).
- 124 *Akayesu*, Case No. ICTR-96-4-T, at ¶ 688.
- 125 Amnesty Int'l, *supra* note 40; Yazda & Free Yezidi Foundation, *ISIL: Nationals of ICC States Parties Committing Genocide and Other Crimes against the Yazidis* 11 (Sept. 2015).
- 126 Callimachi, *supra* note 5; Shubert & Naik, *supra* note 14; Human Rights Watch, *supra* note 9.
- 127 Rome Statute, *supra* note 69, at arts. 7(1)(g) & 8(2)(b)(xxii).
- 128 Rome Statute, *supra* note 69, at art. 7(2)(f).
- 129 OHCHR, *supra* note 1, at ¶¶ 39 & 41.; Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 55; Human Rights Watch, *supra* note 9; Salim, *supra* note 18.
- 130 Rome Statute, *supra* note 69, at arts. 7(1)(g) & 8(2)(b)(xxii).
- 131 Elements, *supra* note 82, at arts. 7(1)(g)-3 & 8(2)(b)(xxii)-3.
- 132 Rome Statute, *supra* note 69, at arts. 7(1)(g) & 8(2)(b)(xxii).
- 133 Elements, *supra* note 82, at art. 7(1)(g)-6 & 8(2)(b)(xxii)-6 (internal citations omitted).
- 134 Prosecutor v. Kvočka et al., Case No. IT-98-30/1-T, Judgment, fn. 343 (Int'l Crim. Trib. for the Former Yugoslavia, Nov. 2, 2001). *See also* *Akayesu*, Case No. ICTR-96-4-T, at ¶ 697; Prosecutor v. Tadić, Case No. IT-94-1-T, Opinion and Judgment ¶ 730 (Int'l Crim. Trib. for the Former Yugoslavia, May 7, 1997); Prosecutor v. Niyitegeka, Case No. ICTR-96-14-T, Judgment and Sentence ¶¶ 459-67 (Int'l Crim. Trib. for Rwanda, May 16, 2003). Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Judgment ¶ 186 (Int'l Crim. Trib. for the Former Yugoslavia, Dec. 10, 1998).
- 135 Human Rights Watch, *supra* note 9; Shubert & Naik, *supra* note 14.
- 136 Shubert & Naik, *supra* note 14.
- 137 Rome Statute, *supra* note 69, at arts. 7(1)(f), 7(2)(e), 8(2)(a)(ii) & 8(2)(a)(ii)-1.
- 138 *Id.* at art. 7(2)(e).
- 139 Elements, *supra* note 82, at art. 8(2)(a)(ii)-1.
- 140 Rome Statute, *supra* note 69, at arts. 8(2)(a)(iii) & 8(2)(b)(xxi).
- 141 *Kunarac, Kovač & Vuković*, Case Nos. IT-96-23 & IT-96-23/1-A, at ¶ 150; Prosecutor v. Delalić & Delić, Case No. IT-96-21-T, Judgment ¶¶ 493, 495 & 511 (Int'l Crim. Trib. for the Former Yugoslavia, Nov. 16, 1998); *Akayesu*, Case No. ICTR-96-4-T, at ¶ 731; Fisher, *supra* note 87, at 122; Anne-Marie L.M. de Brouwer, SUPRANATIONAL CRIMINAL PROSECUTION OF SEXUAL VIOLENCE: THE ICC AND THE PRACTICE OF THE ICTY AND THE ICTR 189 & 196 (2005).
- 142 *Akayesu*, Case No. ICTR-96-4-T, at ¶ 597.
- 143 Human Rights Watch, *supra* note 9; Amnesty Int'l, *supra* note 40.
- 144 Syria COI, A/HRC/30/48, *supra* note 1, at ¶ 116; Amnesty Int'l, *supra* note 21, at 8; Human Rights Watch, *supra* note 9; Shubert & Naik, *supra* note 14.
- 145 Elements, *supra* note 82, at art. 7(2)(g).
- 146 Rome Statute, *supra* note 69, at art. 7(1)(h).
- 147 Elements, *supra* note 82, at art. 7(2)(g).
- 148 *Id.* at art. 7(1)(h).
- 149 Prosecutor v. Kupreškić et al., Case No. IT-95-16-T, Judgment ¶ 621 (Int'l Crim. Trib. for the Former Yugoslavia, Jan. 14, 2000).
- 150 Universal Declaration of Human Rights, G.A. Res. 217A (III), arts. 4 & 5, U.N. Doc. A/810 (1948); Prosecutor v. Blaškić, Case No. IT-95-14-T, Judgment ¶ 220 (Int'l Crim. Trib. for the Former Yugoslavia, Mar. 3, 2000); *Kupreškić et al.*, Case No. IT-95-16-T, at ¶ 615.
- 151 de Brouwer, *supra* note 141, at 158; Prosecutor v. Todorović, Case No. IT-95-9/1-S, Sentencing Judgment ¶ 12 (Int'l Crim. Trib. for the Former Yugoslavia July 31, 2001).
- 152 Syria COI, *Rule of Terror*, *supra* note 1, at ¶ 50.