



fidh



IRAQ

**Sexual and gender-based crimes
against the Yazidi Community:
the role of ISIL foreign fighters**

A black and white photograph showing the reflection of an Iraqi Yazidi woman in a mirror. She is wearing a dark, patterned headscarf and a dark dress. Her hands are clasped in front of her. In the background, other people are visible, some holding cameras. The setting appears to be a temple or a designated ritual space.

Cover photo: A picture taken on October 6, 2014 shows in a mirror the reflection of an Iraqi Yazidi woman as she visits Lalish Temple during the»Feast of the Assembly» in the mountain village of Lalish near Dohuk, 430 km (260 miles) northwest of Baghdad. The congregation, which lasts for seven days, includes three old rituals: the visit, the blessing and the baptism. The main ritual is the sacrifice in which an ox is slaughtered amid religions hymns. © SAFIN HAMED / AFP

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INTRODUCTION

The rise of extremism in Iraq and Syria that led to the creation of the so-called Islamic State of Iraq and the Levant ("ISIL")¹ devastated local civilian populations. After renaming itself the Islamic State ("IS") and establishing a caliphate under their chief, Abu Bakr Al-Baghdadi, the group used terror to govern regions under their control. This territorial expansion from Syria to Iraq came after the group was strengthened by growing numbers of fighters coming from across Russia, the Middle East and North Africa, Europe and the USA,² as well as by its increasing control over North-Syrian territories.³

On 10 June 2014, ISIL conquered Mosul, the second largest- Sunni-city in Iraq and capital of the Nineveh province.



With a population of two million, the Nineveh province to the north-west of Iraq became a testing ground for ISIL's ambitions for statehood. Fiscal, administrative and legal systems were altered to reflect ISIL's interpretation of Islamic law. As ISIL gained ground, entire Shi'ite communities and any opposing Sunnis were decimated. Ethnic and religious minorities, such as Christians, Yazidis, and Shabaks, whose rights to practise their own religion are protected by the Iraqi Constitution, fell victim to ISIL's campaign to "purify" its territory by eliminating non-Islamic influences. Shiites were summarily executed. Christians' homes were marked and they were forced to pay *jizya*,⁴ in order to continue practising their own religion. Shortly after its occupation of Mosul, ISIL started targeting the Yazidis, labelling them as "infidels" and "non-believers".

On 3 August 2014, ISIL fighters attacked Sinjar District, forcing tens of thousands of Yazidis to

1. Also known as the Islamic State of Iraq and Syria (ISIS), Islamic State (IS) and by its Arabic language, acronym Daesh.

2. Based on statistics published by US-based think tank The Soufan Center in October 2017: https://blogs-images.forbes.com/niallmcCarthy/files/2017/10/20171025_ISIS_FO.jpg.

3. Hassan Hassan, Carnegie Endowment for International Peace, *More Than ISIS, Iraq's Sunni Insurgency*, 17 June 2014.

4. A tax imposed on so-called "people of the book", an Islamic term referring primarily to Jews, Christians and secondarily to Sabian Mandaeans and Majus.

flee for their lives. Somewhere between 35-50,000 men, women and children sought refuge on the mountain, while 130,000 fled to towns such as Duhok or Erbil in the north of Iraqi Kurdistan.

The Sinjar attack marked the start of a brutal campaign to erase the Yazidi identity, including through forced conversions to Islam, the abduction of women and children subsequently sold and exchanged into slavery, and sending young boys to ISIL indoctrination and military training recruitment camps. **At the core of ISIL's strategy behind the Sinjar attack: the taking of Yazidi women and their children as *sabaya* (prisoners of war).**

According to an ISIL pamphlet on slavery, the capture and enslavement of Yazidi women and children carried several “benefits”, including gratifying its own fighters, humiliating a group of infidels – in this case, the Yazidis – who were the enemy of ISIL, spreading *tawhid* (Islamic monotheism) and reviving the prophetic practices of *Al-sabi* (the capture and enslavement of women of the non-believers), as well as bringing “mercy” on men who could not find a partner in marriage.⁵

ISIL has devoted considerable effort to publicising how it seized and brutalised the predominantly Yazidi territory, by widely disseminating materials, including video footage and written propaganda, through the group’s media channels or individually through its members. As a result, the nature and extent of the crimes committed against the Yazidis are well-known. The United Nations-mandated Commission of Inquiry on Syria (COI), has concluded that ISIL’s conduct vis-a-vis the Yazidi community was deliberately and strategically publicised in this way, and that crimes that amount to crimes against humanity, war crimes, genocide, and other violations of international human rights have been committed against the Yazidis by ISIL.⁶

As for the extent of deaths and kidnappings of Yazidis from Sinjar at the hands of ISIL, according to figures released by the Kurdish authorities in December 2017, of the **6,417** Yazidis taken captive by ISIL, **3,207** have been released, meaning that **approximately half of those captured remain missing.**⁷

In a report issued in August 2016, the United Nations (UN) cites estimates ranging **between 2,000 and 5,500 Yazidis killed and more than 6,000 kidnapped**, without verifying these figures.⁸

Research based on household surveys provided the first population-based estimates of the number and demographic profile of Yazidis killed and kidnapped by ISIL.⁹ According to the findings, an estimated 3,100 Yazidis were killed, of whom 1,400 were executed, and 1,700 died on Mount Sinjar during the August 2014 siege, and 6,800 Yazidis are estimated to have been kidnapped. Further, at the time of the survey, **4,300 Yazidis were said to have escaped captivity**, while an estimated 2,500 were still missing. The research also found that ISIL executions were indiscriminate, and that nearly all those who died on Mount Sinjar from lack of food or water, or from injuries sustained during the ISIL siege, were children. Kidnapping were also indiscriminate, with children much less likely to escape captivity than adults.

Of the Yazidis that have managed to escape captivity since August 2014, the majority are women and children. Their accounts paint a horrifying picture of their time in captivity and also shed light on the role of ISIL’s foreign fighters in their trafficking and enslavement, as well as in the perpetration of sexual and gender based crimes against them.

5. Aymenn Jawad Al Tamimi, *Unseen Islamic State Pamphlet on Slavery*, 29 December 2015: <http://www.aymennjawad.org/2015/12/unseen-islamic-state-pamphlet-on-slavery>.

6. UN Human Rights Council, *They came to destroy: ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016 (COI Report).

7. Europe 1, *Irak: la moitié des Yazidis enlevés par l'EI toujours détenus ou disparus*, 3 December 2017: <http://www.europe1.fr/international/irak-la-moitié-des-yazidis-enlevés-par-lei-toujours-detenus-ou-disparus-3510113>.

8. UNAMI/OHCHR, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, 15 August 2016.

9. The research, carried out by PLOS medicine and published in May 2017, was based on surveys conducted between 4 November and 25 December 2015 that collected data from a random sample of displaced Yazidi households from Sinjar living in camps in the Kurdistan region of Iraq. The results are available online at: <https://doi.org/10.1371/journal.pmed.1002297>.

Objectives of this report

Victims' groups, non-governmental organisations, and governments have been systematically calling for accountability for grave crimes perpetrated across Syria and Iraq by ISIL and other armed groups against civilians, including minority groups such as the Yazidis.

Through 2017, ISIL suffered increasing territorial losses including its strongholds and administrative centers in Iraq and Syria such as Mosul in July 2017, Tal Afar in August 2017 and Raqqa in October 2017. On December 9, 2017, Iraqi Prime Minister Haider Al-Abadi declared victory over the Islamic State after months of fighting.¹⁰ Consequently, the group's militants retreated to the Iraqi-Syrian desert border or went into hiding. In addition to the territorial losses, ISIL lost many of its fighters, including foreign fighters, whom had been either killed in battlefields or captured and detained in prisons in Iraq managed by either the central or Kurdish authorities or indeed in northern Syria, captured and held by Kurdish-led forces.

The Iraqi authorities have prosecuted, tried and sentenced a number of ISIL suspects, including foreign fighters, on terrorism charges. As at April 2018, more than 300 people (including 100 foreign women) had been sentenced to death by Iraqi courts for ISIL membership, and hundreds of others to life imprisonment.¹¹ Some captured foreign fighters have been extradited to their country of origin.¹² Others, wanting to avoid either of these fates, fled and returned to their country of citizenship or residence.¹³ In October 2017, the Soufan Center estimated that at least 5,600 citizens or residents from 33 countries had returned home from Iraq and Syria, in whichever way.¹⁴ The returning members continue to present security threats and embody the constant fear of an attack, which has been ranked first among global concerns.¹⁵

Various avenues for justice at the national and international levels have been and continue to be called for and explored, including triggering (thus far, unsuccessfully) the jurisdiction of the International Criminal Court (ICC),¹⁶ and establishing a UN mandated evidence gathering mechanism, which the UN Security Council asked the UN Secretary-General to establish in a resolution adopted on 21 September 2017.¹⁷ The terms of reference for this mechanism, called the Investigative Team, were approved in February 2018. At the end of May 2018, United Kingdom (UK) barrister Karim Asad Khan was appointed by the UN Secretary General as the Special Adviser and Head of the Investigative Team.¹⁸

While an accountability agenda that seeks to investigate and prosecute those most responsible for these crimes must be underscored, the involvement of ISIL's foreign fighters as concerns the Yazidi community is a specific issue that calls for a multi-layered and victim-based approach to accountability. Increasingly, States have been using counter-terrorism legislation to hold their nationals accountable for involvement in terrorist groups, particularly ISIL. It is of utmost importance that such countries thoroughly investigate the involvement of their nationals not only in terrorism offences, but also in the perpetration of crimes against humanity and genocide, including sexual violence, and seek to ensure a victim-based approach to accountability, restoring some faith of

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10. New York Times, *Iraq Prime Minister Declares Victory Over ISIS*, 9 December 2017: <https://www.nytimes.com/2017/12/09/world/middleeast/iraq-isis-haider-al-abadi.html>.
 11. Al Jazeera, *Iraqi PM orders immediate execution of 'all convicted terrorists'*, 28 June 2018: <https://www.aljazeera.com/news/2018/06/iraqi-pm-orders-execution-convicted-terrorists-180628185501947.html>
 12. See for example: The Guardian, *Australian Isis fighter Neil Prakash to be extradited from Turkey within months*, 12 May 2017: <https://www.theguardian.com/world/2017/may/12/australian-isis-fighter-neil-prakash-to-be-extradited-from-turkey-within-months>.
 13. *Supra*, note 2.
 14. The Soufan Center, *Beyond the Caliphate: Foreign Fighters and the Threat of Returnees*, October 2017: <http://thesoufancenter.org/research/beyond-caliphate/>.
 15. Pew Research Center, *Globally, People Point to ISIS and Climate Change as Leading Security Threats*, 1 August 2017.
 16. To date, three public communications have been submitted by civil society organisations to the ICC: a communication submitted by Yazda and Free Yazidi Foundation in September 2015; a communication submitted by The Global Justice Center and Bar Human Rights Committee of England and Wales in July 2017; and a communication submitted by Columbia University Law School, MÁDRE, and OWFI in November 2017.
 17. UN Security Council Resolution, S/RES/2379 (2017), 21 September 2017.
 18. UN Press Release, 31 May 2018: <https://www.un.org/press/en/2018/sga1806.doc.htm>.

affected communities in justice. By pursuing international crimes charges, judicial authorities are faced with the need to investigate the crimes perpetrated against the civilian population during the occupation of cities and villages and thus play a central role in helping to deliver justice for victims.

Against this background and in light of the scale and gravity of the crimes perpetrated against the Yazidi population and the extensive amount of evidence available (both documentary and witness/victim testimony), this report uses a **victim-based approach to recount the nature and extent of violations committed**, in particular as regards **systematic enslavement and sexual violence amounting to genocide and crimes against humanity**, and the **role of foreign ISIL fighters in the commission of such crimes**.

FIDH has collected or reviewed testimonies detailing systematic enslavement of women and children, as well as widespread and severe psychological and physical violence, including beating, torture and inhuman or degrading treatment, starvation and denial of basic medical and sanitary needs, forcible transfers and systematic recourse to sexual violence, endured or witnessed by Yazidi women and children at the hands of their ISIL captors, often over a period of several years of captivity.

The report examines the way in which the perpetration of such crimes was legitimised and institutionalised within ISIL and possible reasons for these policies and practices through a **study of ISIL texts and other publications** that set out the justification and framework for taking Yazidi women and children as slaves and carrying out sexual and gender based violence (SGBV) and other crimes against them.

Information collected by FIDH on the specific **role played by foreign ISIL foreign fighters** in implementing this ideology is also analysed. Foreign ISIL fighters – including citizens and residents of EU countries and other States Parties to the ICC Statute – are among those responsible for SGBV amounting to genocide and crimes against humanity as well as other crimes committed against the Yazidi population.

Finally, the report considers **accountability efforts for ISIL crimes in Iraq to date** by different national, regional and international actors and aims to set out **holistic recommendations to improve or enhance such efforts** in Iraq as well as in foreign fighters' countries of origin. Recommendations are also addressed to various UN agencies and entities, regional organisations including the European Union, and the International Criminal Court.

Methodology

The report is based on the findings of two missions conducted by FIDH to the Kurdistan region of Iraq in February and August 2017, in close partnership with FIDH's local partner organisation, the Kinyat Organization for Documentation (Kinyat Organization),¹⁹ and in particular on 16 testimonies of victims enslaved by foreign ISIL fighters. The February 2017 mission was led by a delegation of three experts: Ms. Loulouwa Al Rachid (researcher and expert on Iraq), Ms. Amal Nassar (expert on the documentation of conflict related sexual and gender-based violence), and Mr. Amir Suliman (from FIDH's member organisation in Sudan, the African Center for Justice and Peace Studies, and expert on documenting international crimes). A follow-up mission was conducted by Ms. Amal Nassar in August 2017.

The FIDH delegation was mandated to investigate the involvement of ISIL's foreign fighters in the commission of crimes against humanity and genocide against the Yazidi population through the collection and assessment of testimonies from Yazidi survivors (mainly women), witnesses, activists, community leaders, and government representatives. The FIDH delegation worked closely with the Kinyat Organization, an organisation founded by a human rights defender based in Duhok in Iraqi Kurdistan that has been documenting crimes committed against the Yazidi community in Iraq since 2014 by collecting thousands of testimonies from survivors, members of the families of

19. Formerly known as the *Barkhodan Center*.

young women and children detained by ISIL, and gathering strong evidence of the perpetration of genocide and various crimes against humanity against Yazidis.

The findings presented in this report derive from direct testimonies collected by members of the FIDH delegation from victims formerly held by one or more ISIL foreign fighters, who have since either escaped or been “sold back” to their families, as well as victim testimonies collected by the Kinyat Organization and reviewed by the FIDH delegation. Also reflected in this report are testimonies from relatives who tried or are still trying to “buy back” their family members held captive - primarily women and children (girls as well as boys, sometimes very young); “mediators”, who intervene in the buy-back process by receiving sale offers directly or indirectly online and information obtained from the interviews conducted with other key stakeholders; representatives from the Kurdish government and parliament; Yazidi religious leadership; service providers inside and outside displacement camps; and Yazidi activists with whom the FIDH delegation met. Given the sensitivity of the subject matter of this report and to ensure the security and anonymity of those interviewed by the FIDH delegation, victim and witness testimony is presented herein through the use of pseudonyms.

CONTEXT

The rise and fall of Islamic State in Iraq

Since 2003 and the fall of former Iraqi president Saddam Hussein, the Iraqi political scene has been dominated by Shia Muslims and Kurds, with the former group controlling the federal government, and the latter exercising semi-autonomous regional governance, leaving the Sunni Arab population in Iraq feeling marginalised and excluded from the political process.

As of 2004, one year after the United States (US) military intervention in Iraq began, Al-Qaeda emerged in Iraq led by Abu Musaab al-Zarqawi – a Jordanian militant already leading insurgent movements in Iraq – after pledging his allegiance to Osama Bin Laden. Feeling marginalised by the US for toppling a government in which positions of power were mostly held by Sunni Arabs, as well as by Shiites for dominating the political scene, certain Sunni groups turned to extremism in an effort to regain some control. Al-Qaeda in Iraq, acting as a Sunni militant group, became a major force in the insurgency and carried out brutal attacks against US forces as well as the Shiite-dominated Iraqi government.²⁰ Suicide bombings, particularly targeting security forces and civilians – especially Shiites – were repeatedly carried out, provoking a cycle of sectarian violence and retribution.²¹ Despite the death of al-Zarqawi in 2006 and the weakening of Al-Qaeda in Iraq by US supported Sunni tribe leaders known as Al-Sahwa (i.e. the awakening), the group continued to operate, albeit at a lower scale, under a new name: The Islamic State in Iraq.

In 2010, Abu Bakr al-Baghdadi, an Iraqi national and a mysterious figure who is believed to have been formerly held at Camp Bucca, a US detention facility in southern Iraq where many Al-Qaeda commanders were detained, succeeded al-Zarqawi and became the leader of The Islamic State in Iraq,²² and started rebuilding the group's capabilities. By 2013, the group had gained back its capacity, with dozens of violent attacks carried out in Iraq.

As he gained increasing control and power, al-Baghdadi sought increasingly to involve his group in the revolution against President Bashar al-Assad in neighbouring Syria. In doing so, he defied the leader of the Al-Qaeda network, Ayman al-Zawahiri, who had urged al-Baghdadi to focus on Iraq and leave the Syria conflict to Al-Qaeda's affiliate, the Al-Nusra Front.²³ In April 2013, al-Baghdadi announced the merger of his forces in Iraq and Syria and the creation of "The Islamic State in Iraq and the Levant" (ISIL). The leaders of Al-Nusra and Al-Qaeda rejected the move,²⁴ but fighters loyal to Baghdadi split from Al-Nusra and helped ISIL remain active in Syria.

ISIL's fight against the Syrian and Iraqi regimes stoked huge support. This new form of jihad, a war against "crusaders" and "infidels", including the Shia, attracted tens of thousands of people from Muslim countries and Europe, who answered the call to join the ranks of ISIL. **In June 2014**, an estimated **12,000 foreign fighters from 81 countries** were present in Syria.²⁵ By the end of 2015, the number of foreign fighters had nearly doubled, despite international efforts to contain ISIL and stem the flow of militants travelling to Syria. According to figures published **in December 2015, between 27,000 and 31,000 militants in Syria and Iraq joined ISIL and other violent extremist groups from at least 86 countries**.²⁶ A 2016 report by the UN Secretary-General confirmed that ISIL's foreign fighters in Iraq and Syria came from North Africa, the Middle East and Central Asia, with a significant number originating from Europe and South-East Asia.²⁷

20. Encyclopaedia Britannica, entry on *Al-Qaeda in Iraq*: <https://www.britannica.com/topic/al-Qaeda-in-Iraq>.

21. *Ibid.*

22. BBC News, *Profile: Abu Bakr al-Baghdadi*, 15 May 2015: <http://www.bbc.com/news/world-middle-east-27801676> (last accessed April 2, 2018).

23. Al Jazeera, *Qaeda chief annuls Syrian-Iraqi jihad merger*, 9 June 2013 <https://www.aljazeera.com/news/middleeast/2013/06/2013699425657882.html>:

24. See Stanford University, *Mapping Militant Organizations, The Islamic State*, notes 67 and 68.

25. The Soufan Group, *Foreign Fighters in Syria*, June 2014.

26. The Soufan Group, *Foreign Fighters: an Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq*, December 2015.

27. Report of the UN Secretary General to the Security Council, S/2016/501, 31 May 2016.

ISIL's territorial gains began in early 2014, when the group took control over Fallujah, defeating the Iraqi army for the first time.²⁸ A few months later, in June 2014, ISIL captured Mosul, Iraq's second largest city.²⁹ Two months later, ISIL carried out a highly organised attack sweeping across the Sinjar region, committing unimaginable atrocities against the Yazidi community.³⁰ With each territorial gain, ISIL's assets grew through the seizing of funds, extortion of local businesses, funding from external donors, and oil revenues which alone were estimated to bring in between \$1-2 million per day.³¹

The extreme violence displayed by ISIL and the growing threat of terrorist attacks around the world led to the establishment in September 2014 of a Global Coalition to fight ISIL, consisting of 77 partners including states and institutions.³² In the same month, the US, under the Obama administration, started its military intervention and led the Global Coalition in launching airstrikes against the group, first in Iraq and then in Syria.

On the ground, efforts by Iraqi governmental troops, supported by a myriad of armed groups composed mainly of Shiite fighters, reconquered the cities and towns taken by ISIL one-by-one. On 10 July 2017, Iraqi Prime Minister Haidar al-Abadi officially announced victory in Mosul, the city that had been a sanctuary for ISIL and the capital of the self-declared caliphate for three years. On 9 December 2017, Prime Minister Al-Abadi declared victory over the Islamic State after months of fighting to regain control over one-third of the country.

Although the conflict has been officially declared over, the humanitarian crisis in Iraq has entered a new phase. The harsh reality of the enormous toll of four years of intensive, virtually non-stop combat became clear. Hundreds of thousands of people have been displaced. Rebuilding destroyed cities will take at last ten years, according to the World Bank. The UN Office for the Coordination of Humanitarian Affairs (OCHA) has indicated that nearly **1.9 million Iraqis are food insecure; 7.3 million require health care; 5.2 million need protection support; 5.4 million require access to water and sanitation assistance and 4.1 million people are in need of shelter**.³³

Additionally, sectarian related violence and volatility persist, particularly in areas where ISIL retains local support. There has also been violent retaliation against people associated, or suspected to have been associated, with ISIL.

Who are the Yazidis

The Yazidis are a minority ethnic and religious group and follow one of the oldest religions in the Middle East that – especially prior to the tragedy inflicted upon them by IS – was very isolated and shrouded in mystery. The name "Yazidi" itself is controversial. While historically they have been called "Yazidiyya" (Yazidis) in Arabic, the 2005 Iraqi Constitution uses the name "Êzidiyya", which has a slightly different meaning and was mainstreamed by Kurdish parties as of the early 1990s. This difference, though slight, is significant because it refers to two contradictory versions of the historical and ethnic origins of the group.

Some have tied the name "Yazidiyya" to Yazid ibn Mu'awiyya (642-683), the caliph of the Umayyad caliphate known for having fought against Shiism, in particular by arranging to kill Imam Husayn at Karbala. After the imam's death, Yazid ibn Mu'awiyya was venerated; a few centuries later, his followers retreated to northern Iraq and developed, under the scion of Sufi mysticism, Sheikh 'Adī ibn Musāfir al-Umawī (who died around 1161), who was a descendant of the Umayyad family, a

28. New York Times, *ISIS Keeps Up Pressure Near Baghdad as Iraqi Troops Hesitate*, 17 October 2014: <https://www.nytimes.com/2014/10/18/world/middleeast/isis-keeps-up-pressure-near-baghdad-as-iraqi-troops-stumble.html>.

29. The Guardian, *Isis insurgents seize control of Iraqi city of Mosul*, 10 June 2014: <https://www.theguardian.com/world/2014/jun/10/iraq-sunni-insurgents-islamic-militants-seize-control-mosul>.

30. COI Report, *supra* note 6, paras. 1-2.

31. New York Times, *How Isis works*, last updated 16 September 2014: <https://www.nytimes.com/interactive/2014/09/16/world/middleeast/how-isis-works.html>.

32. For a list of the 77 members of the Global Coalition, see: <http://theglobalcoalition.org/en/partners/>.

33. UN OCHA, *2018 Iraq Humanitarian Response Plan*, February 2018, page 5.

new religious system with a particular organisation of society based on a hierarchy of castes. According to this narrative, Yazidism fits into a prestigious Arab-Islamic genealogy.

The alternative name "Êzidiyya", which derives from the word "Ezid"/"Izid" and means God or Supreme Being in Kurdish, refers to the Kurds' first religion, before they turned towards Islam, and emphasizes the influence of old religions in Mesopotamia and, hence, the Indo-Iranian world. Devoid of Arab influence or connections, on this reading, it is the Kurdish tribes who laid the foundations for Yazidism in the region and are responsible for its remarkable development between the 12th and the 15th centuries, before the Kurds returned to embracing Sunni Islam (and, to a lesser extent, Shia Islam) in the 16th century with the rise of the Safavid dynasty in Persia and the Ottoman dynasty in Anatolia.

This heterodox faith is the product of an ethnic and religious mosaic that is characteristic of northern Iraq. The Yazidi faith is passed on orally, with only a few sacred texts. The Yazidi cosmology gravitates around a single God that is surrounded by seven angels. The most important of these angels, *Malak Tawûs* (the Peacock Angel), was chosen by God to govern the world. The Yazidi religion constitutes a barrier that has kept the Yazidis secluded from other groups present in the region for a long period of time. The Yazidis were branded as "devil worshipers" by both Muslims and Christians because of the Peacock Angel, who is said to be Satan, redeemed, and worshiped in the form of a peacock. The Yazidis therefore have been subjected to genocide campaigns and invasions by other religions when they targeted the Yazidi areas.

While the violence committed against the Yazidi community by members of the Islamic State since 2014 is of incomparable scope and magnitude, the phenomenon of Yazidi persecution is not new. Under the Ottoman Empire, Yazidis were subjected to several persecution campaigns, with Istanbul mobilising Arab and Kurdish tribes against them and facilitating the settlement of these tribes on Yazidi farmlands. The Iraqi state, formed in the early 1920s, applied the anti-Yazidi settlement policy as well as military repression to decrease the community's autonomy and isolationism, including by refusing to accept the Yazidis' refusal to adhere to military conscription. The 1958 revolution that abolished the Iraqi monarchy did not change the policies applied vis-à-vis the Yazidis.

The Ba'athist regime pushed these policies extremely far. From 1977 onwards, the Yazidis were registered as "Arabs" in demographic surveys, and were forced to leave their villages in the mountains and be compulsorily regrouped in residential complexes (*mujamma'at*) located around Mount Sinjar. The government maximised its surveillance and control of the Yazidi community by allocating neighbouring arable lands to Arab tribes. In the 1990s, despite limited financial resources, the government distributed further lands to their core political supporters from the Mosul region. As a result, senior officers from the Iraqi army and security forces, Arab tribal leaders, and many teachers at the University of Mosul became the owners of land in Sinjar. While these lands officially belonged to the State (*miri*), the Yazidis considered them to be the exclusive property of their own community. Many Yazidis therefore regarded their Arab neighbours bitterly, seeing them as feudal lords responsible for economically downgrading the Yazidi people into landless peasants.

The fall of Saddam Hussein in 2003 shifted the balance of power in Iraq in favour of the Kurds. Arab villagers, whose presence in Sinjar and elsewhere in Nineveh province was likely the result of demographic engineering by the former regime, were forced to leave. The Yazidis took advantage of this shift. The Yazidis who were co-opted by the Kurdish leaders were given high-ranking positions in the region within the Kurdish administration, as local politics moved away from Ba'athism.

In expanding its territorial control over northern Iraq, ISIL played skilfully on these changes to the identity and socio-economic hierarchies of the region, encouraging rivalries among the local population over control of land and access to water in order to obtain more support from the Arab population.

Geographical settlements: a disputed minority area

With a total estimated population of 640,000, at the time of the ISIL attack approximately 400,000 Yazidis were living in and around Sinjar.³⁴ Two-thirds of them were based in the Sinjar district (*Shingal* in Kurdish), which is separated in the middle by Mount Sinjar located to the west of Mosul on the Syrian border and an area where the Yazidis historically took refuge to escape persecution.

To the North of the Mountain, Yazidis lived in 6 complexes (*mojammasat*) referred to interchangeably by their Kurdish and Arabic names given by the Ba'athists in the 1970s: Khansour/Al-Ta'mim, Dukuri/Al-Hittin, Dahula/Al-Qadisiya, Borak/Yarmouk, Kohbal/Al-Andalus, Zorafa/Al-Orouba, and in the sub-district (Nahiya) of Al-Soun, also known as the Northern sub-district. To the South of the mountain, Yazidis lived in four complexes: Tal Qassab/Al-Ba'th, Tal Banat/Al-Walid, Karzak/Al-Adnaniyah, Siba Shikhadri/Al-Jazira, and in the Tal Azir/Al-Qahtaniyya sub-district. Yazidis also lived in Sinjar city, along with other groups including but not limited to other Arabs and the Muslim Kurds. Finally, Yazidis also live in a series of small villages (smaller than the complexes) including Kocho and Solagh, Hardan, Hatimiyyah and Rambuzi, among others.

The remaining one-third of Yazidis live in the Shaykhan district, which is the headquarters of the Yazidi Emirate and the community's spiritual centre where their sole sacred Lalish Temple is situated. Shaykhan is a transition area between the mountains of southern Kurdistan and the Nineveh plains and, since the Ottoman era, has been administered by the State of Mosul. Unlike the poor Yazidi tribal farming community of Sinjar, which is far from urban centres, the Shaykhan Yazidi have been more exposed to assimilation efforts by the Iraqi government (as regards access to education and public services, for example) and to contact with other groups, especially Christians. As a result, most of the Yazidi political, economic and intellectual elite comes from Shaykhan.

A small number of Yazidis live in Bachiqa, a suburb of Mosul, and in several towns and villages in the Nineveh plains attached to the districts of Tilkiyaf (al-Qosh and Fayda) and al-Hamdaniya. This wide territorial distribution explains the separate political and socio-economic histories and the very strong local attachment that the Yazidis have to their enclaves in northern Iraq. It also explains why, when ISIL fighters were moving in, the Yazidis in the mountainous areas, who have always been on the fringes of history, were left to fend for themselves while the Kurdish Regional Government ("KRG") mobilised swiftly to protect the Yazidis in the plains. Most of the Shaykhan district was thus protected against ISIL. The Kurdish authorities have paid special attention to this district since 2003, including through major investments to renovate public infrastructure and several oil fields.

Ethnic continuity or unique religious characteristics?

Because of the cultural diversity in northern Iraq and the evolving dynamics between different social groups, the Yazidis throughout history have lived with different frames of reference for their identity, referring to themselves in turn as Kurds, Turkmen, Arabs and Assyrians in order to survive persecution and exclusion by those around them.

Since 2003, the Yazidis have had to engage Kurdish leaders who, despite claiming to protect Yazidi interests, have seriously aggravated the issue of Yazidi identity. Does this minority group belong to the Kurdish nation, of which it would be a religious sub-group or, on the contrary, is it an independent ethnic group? Racially and linguistically, history identifies Yazidis as Kurds, yet the Kurds are connected to Sunni Islam, which explains why the Kurdish national movement laid no claims initially to the regions inhabited by the Yazidis. Kurdish leaders started emphasizing the "kurdicity" of the Yazidis when Iraqi Kurdistan gained de facto autonomy in 1991 and even more so since 2003, giving greater weight to linguistic criteria than to religion. The Yazidi royal family and clerical authority support the Kurdish Regional Government (KRG) and claim allegiance to the Kurdish nation, but most of the Yazidi people feel that their religion is irreconcilably different from the orthodox Islam followed by most Kurds.

Underlying the identity problem is the problem of the real future of the Yazidi-inhabited regions that both the Iraqi central government and the KRG lay claim to. In so doing, the authorities are adding to the division and confusion of this vulnerable minority group. Both Sinjar and Shaykhan are part of

34. According to figures from the UN and Kurdish authorities. Note that population estimates for the total Yazidi population vary.

the territories being “claimed” by both Arabs and Kurds. Their fate – whether they will be attached to Baghdad or to the KRG – should, according to Article 140 of the 2005 Iraqi Constitution, be decided by referendum. Since 2003, the Yazidi territories have been under the *de facto* control of Kurdish Peshmerga fighters, the majority of whom are affiliated to the Kurdish Democratic Party (KDP).³⁵ The strategic position on the Syrian border, potential agriculture and energy resources, and the geopolitical interests of neighbouring countries, especially Turkey and Iran, combine to make Sinjar and other Yazidi territories an explosive question. The eruption of ISIL across these areas severely exacerbated these tensions. Even following the group’s defeat, the Sinjar Yazidi minority has been placed at the centre of regional politics and indeed conflicts in which all stakeholders have shown a tendency to exploit the Yazidi tragedy.

The attack on Sinjar

ISIL’s campaign to “purify” the territory it claimed across northern Iraq and Syria by eliminating non-Islamic influences carried a devastating price for the Yazidi population, who were labelled as “infidels” by the group.

In early August 2014, ISIL launched its attack on Sinjar from Mosul and Tel Afar in Iraq, and Al-Shaddadi and the Tel Hamis region (Hasakah) in Syria. According to the UN-mandated Commission of Inquiry on Syria (COI), the attack on Sinjar city and surrounding villages was organised and orchestrated in a manner that seized control of the area from all directions and targeted the area’s main roads and escape routes.³⁶

Fleeing for their lives, somewhere between 35 to 50,000 members of the Yazidi community (many of them women and children) took refuge in nine locations on Mount Sinjar.³⁷ In addition, approximately 130,000 Yazidis fled to the towns of Duhok or Erbil in Iraqi Kurdistan, in northern Iraq.³⁸

Those who made it to the mountain were soon faced with a deadly reality. Mount Sinjar, a 100-Kilometer-long arid mountain, was destined for humanitarian disaster, with thousands of civilians stranded without water, food, shade, or medical supplies. Reports of Yazidis eating leaves to survive surfaced,³⁹ while hundreds died of thirst in temperatures sometimes exceeding 50 degrees Celsius.⁴⁰ In the first week of August 2014, local authorities reported that at least 500 Yazidis had been killed and that many more had received direct threats, either from advancing ISIL fighters or from members of nearby Sunni communities allied with them.⁴¹

The Sinjar attack marked the start of a highly systematised and brutal campaign to erase the Yazidi identity. Men were forced to choose between conversion to Islam or death. Girls, women and their children were abducted and held captive, before being bartered, sold and exchanged into slavery. Boys as young as seven were sent to recruitment camps in Syria, where they were indoctrinated with ISIL ideology and forced to undergo military training. At the core of ISIL’s strategy lies the taking of Yazidi women and their children as **sabaya (prisoners of war)**, which paved the way for systematic enslavement and sexual violence on a horrifying scale.

35. The KDP is a secular Kurdish party and founding member of the Kurdish National Council. See further, Encyclopaedia Britannica entries on the KDP: <https://www.britannica.com/topic/Kurdish-Democratic-Party>.

36. COI Report, *supra* note 6, para. 23.

37. UN OCHA, *Flash Update: Iraq Crisis – Significant Displacement from Sinjar*, No. 2, 4 August 2014: <https://reliefweb.int/report/iraq/ocha-flash-update-iraq-crisis-significant-displacement-sinjar-no-2-4-august-2014>.

38. The Guardian, *40,000 Iraqis stranded on mountain as Isis jihadis threaten death*, 7 August 2014: <https://www.theguardian.com/world/2014/aug/07/40000-iraqis-stranded-mountain-isis-death-threat>.

39. Rudaw, *People Eating Leaves to Survive on Shingal Mountain, Where Three More Die*, 7 August 2014: <http://www.rudaw.net/english/middleeast/iraq/070820143>.

40. COI Report, *supra* note 6, para. 27.

41. *Supra*, note 38.

I. SYSTEMATIC ENSLAVEMENT OF AND SEXUAL VIOLENCE AGAINST YAZIDI WOMEN AND GIRLS

1. ISIL ideology & institutionalisation

Following the attack on Sinjar, ISIL developed an ideology on the Yazidis and revealed it to the world. Various written guidelines, booklets and newsletters boasting about, and seeking to religiously ground and legitimise the captivity and enslavement of women, girls and children, as well as the execution of Yazidi men, were released. In parallel, online media channels celebrated the conversion of hundreds of Yazidis to Islam and shared footage of "receptions" welcoming the arrival of buses carrying the newly-converted Muslims into ISIL held territories.⁴²



Hundreds of Yazidis arriving in buses to ISIL controlled bases after being forced to convert to Islam.⁴³

42. Source: YouTube, 21 August 2014 (https://www.youtube.com/watch?v=l_kriGisGV8).

43. *Ibid.*



An ISIL member interviewing Yazidis after converting to Islam about how they feel, and what would they like to say to other Yazidis including those stranded on Mount Sinjar.⁴⁴

These publications and broadcasts were intended to be public and have a wide reach and were therefore posted on several online websites. Yazidi activists, journalists and other NGOs including the Kinyat Organization, managed to obtain copies of some of the texts, which are presented and analysed in this report.

Reviving the practice of Al-Sabi⁴⁵

Rumours of a revival of **Al-Sabi** (**capture and enslavement of women of the non-believers**) sparked by videos released online by ISIL members, in which they are seen cheerfully discussing buying and selling Yazidi women from slave markets and their desired specifications,⁴⁶ were confirmed in the October 2014 edition of Dabiq, ISIL's official online propaganda magazine. The said edition includes a 4-page article entitled "Reviving slavery before the Hour" which was considered⁴⁷ to be the first "official" confirmation within ISIL that the rumours of the revival of Al-Sabi were true.

Mushrikeen vs. murtaddeen?

The October 2014 edition of Dabiq explains how, prior to the attack on Sinjar, ISIL's Sharia students were tasked with studying the matter of the Yazidis, and specifically whether they should be treated as a group of polytheists (*mushrikeen*) or as a group of Muslims who have consciously abandoned Islam (*murtaddeen*). The outcome of ISIL's research concluded that the Yazidi community traces back to before Islam, that they have never accepted Islam and therefore should be treated as a group of polytheists, and that the continual existence of the Yazidis is a question that Muslims will have to answer on the day of judgement. As opposed to Christians and Jews, the "People of the

44. *bid.*

45. Regarding terminology, note that a captured woman would be called "sabiyya" while a boy would be called "sabi". A group of captured women are called "sabaya" and a mixed or all boy groups would be called "saby".

46. See, for example, YouTube videos posted on 2 November 2014 and 6 July 2016: https://www.youtube.com/watch?v=-pUgW_YhEyg (ISIL militants announcing that today is the sabaya market day) and <https://www.youtube.com/watch?v=Y0B1LW-eyxA> (ISIL militants having tea and discussing what they have done to their sabaya).

47. France 24 (in Arabic), *The Islamic State recognises the captivity of women in Iraq for the first time*, 13 October 2014: <http://f24.my/1p5YWVx>.

Book", Yazidis are not allowed to pay the *Jizya* tax to continue practicing their religion in safety. In addition, unlike those who abandoned Islam, whom - according to ISIL - will be made to choose between returning to Islam or execution, Yazidi women and children can be captured as *sabaya* and *sabi* and be enslaved as spoils of war.

Once this analysis has been set out, the edition goes on to boast that after Yazidi women and children were captured at Sinjar, they were distributed to ISIL militants who had participated in the attack, after transferring a fifth of the women and children to the authority of the Islamic State.

Al-sabi: the legitimisation and institutionalisation of captivity and enslavement

Also in October 2014, ISIL's *Diwan Al-Iftaa wa Al-Buhuth* (Fatwa Issuing and Research Department) issued a more solid and extensive text in the form of a booklet entitled "From Creator's Rulings on Capturing Prisoners and Enslavement", that aims to ground in Islamic law the various rules and basic justifications for the practice of slavery, with a focus on sexual slavery. The booklet, which was obtained and reviewed by several media outlets⁴⁸ and activists, explains that:

"For the disbelievers who have no pact of the *dhimmi*⁴⁹, ceasefire or security between them and the Muslims, the principle regarding them is that their blood and property are free for pillage if they do not convert to Islam or pay the *jizya* and enter under the rule of *Shari'a*. In this regard their women and offspring may be taken captive and it is not allowed to murder the women in principle if they provided no assistance in the war against the Muslims."⁵⁰

The booklet further emphasizes the following rules to *Al-sabi*:

- since the reason for enslavement can only be disbelief, the capture and enslavement of Muslim women and men is forbidden;
- likewise, the captivity of "women of the disbelievers" if the disbelievers in question are not waging war against Muslims (i.e. if they have a pact of *dhimmi* or a protection pact) is not allowed;
- the capture and enslavement of "women of the disbelievers" as *sabaya* is only permitted through *jihad*; and
- *Sabaya* cannot be enslaved before the ruling of the Imam (i.e. the caliph) upon them,⁵¹ and the Imam may rule to free and not enslave them.

More written texts continued to be released, including a document released in summer 2015 by ISIL's *Maktab Al-Buhuth Wal Dirasat* (Office of Research and Studies) that defines *Al-sabi* as the taking of women and children of the enemies by Muslims, while *Al-Asr* is defined as the imprisonment of the enemy's men, elaborating: "the spoils of war are divided into sections: prisoners, *sabi*, land, and money". Further, the text explains that while *Al-sabi* might be confused with and interpreted as enslavement, enslavement is a phase that only comes after the occurrence of *Al-sabi*.

48. See, for example, Reuters, *Exclusive: Seized documents reveal Islamic State's Department of 'War Spoils'*, 29 December 2015: <http://www.reuters.com/article/us-usa-islamic-state-documents-group-exc/exclusive-seized-documents-reveal-islamic-states-department-of-war-spoils-idUSKBN0UB0AW20151229>.

49. This is a historical term referring to non-Muslim citizens of an Islamic state. The word literally means "protected person."

50. *Supra*, note 5.

51. The caliph may rule to be benevolent towards them or ransom them. Sexually approaching or enjoying a captive taken as *sabaya* is forbidden until the Imam rules that they can be enslaved.

أولاً، تعريفه السببي لغة واصطلاحاً:

السُّبْيٌ لغة: الأسر، يُقال: سَبَىَ الْعَدُوُّ وَغَيْرُهُ سَبِّيَّاً وَسَبَّاهُ؛ إِذَا أَسْرَهُ، فَهُوَ سَبِّيٌّ
عَلَى وَزْنِ قَعْدٍ لِلذِّكْرِ. وَالآتُونَ سَبِّيٌّ وَسَبِّيَّةٌ وَسَبِّيَّةٌ، وَالسُّنْنَةُ سَبَّابَاتٍ، وَالْعَوْلَامُ سَبِّيٌّ
وَسَبِّيَّةٌ. [نظر: لسان العرب، المصباح المنير، الفتاوى المسحيّة].

وأما السبّي اصطلاحاً: فالتفهاء في الغالب يخوضون (السبّي) بين أحد
المسلمون من نساء وأطفال أهل الحرب، والأسر) بين أحد من رجاتهم.

فيقولون مثلاً: "العيبة تشمل على أقسام: أسرى، وسبّي، وأرضين،
وأموال، فاما الأسرى فهم الرجال المقاتلون من الكفار إذا ظفر المسلمون بهم
أحياء، وأما السبّي فهم النساء والأطفال...". [إهـ [نظر: الأحكام السلطانية، الباب السادس
من ١٣١، والأحكام السلطانية، الباب بـ ١٤١].

An extract from the 2015 text, a copy of which was obtained and reviewed by the FIDH delegation.

As for the religious foundations of Al-sabi, the 2015 text provides that the practice is permissible according to the book (the Qur'an) and the sunnah (teachings of the prophet), and is in line with the consensus reached by Muslim scholars. The only contestants of Al-Sabi, claims the text, are modernists.

The same text also calls for the good treatment of sabaya before moving to address various debates over the following issues:

- against whom can al-sabi be carried out: women of the book only or all of the *mushrikeen* (polytheists)
- can women be approached (sexually) before they convert to Islam; and
- can married sabaya be approached even when their husbands are captured with them.

Lastly, the 2015 text lays down the following rules:

- approaching a pregnant sabiya is only permitted after she gives birth; and
- approaching a non-pregnant sabiya is only permitted after she has her period once.

Questions of approaching a virgin, a woman who cannot get pregnant, or a girl who had her first period while in possession of an owner who did not approach her, remain the subject of debate.

However, as demonstrated below and in the course of this report, ISIL's ideology on this topic is not limited to abstract texts issued periodically. The FIDH delegation learned first hand how the capture and enslavement of women has been institutionalised and organised in ISIL's various departments.

Al-sabi: from ideology to practice

ISIL's ideology towards the Yazidi community is by no means limited to a series of abstract texts issued every now and then. Evidence shows that the capturing and enslaving of women has been institutionalized and organized in ISIL's various departments. Salem, a Yazidi man who had lived with ISIL for 2 years in various bases, prisons and holding points in Tel Afar District, explained the process of buying a Yazidi woman or child in that city from ISIL in the following way:

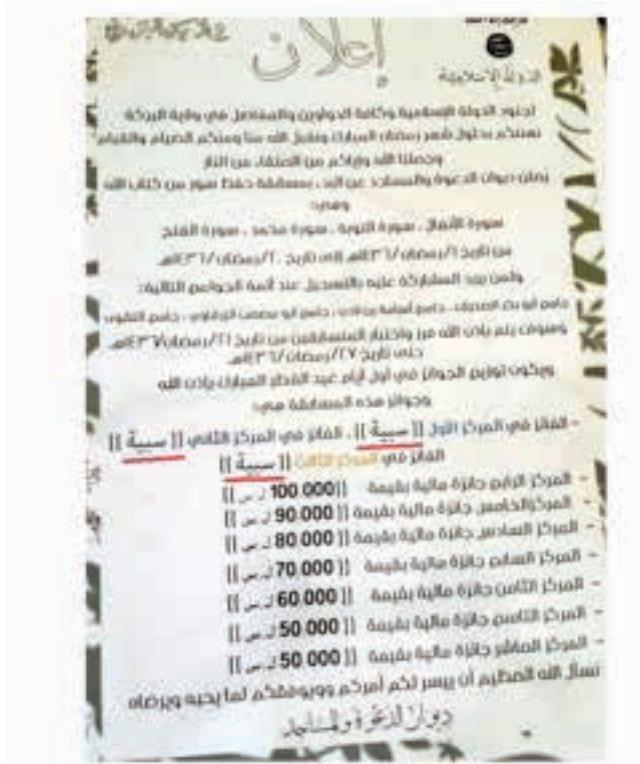
"First, the interested ISIL militant must go to the Sharia Court to obtain a written approval for the right to buy a woman or a child. Second, the militant heads to the office of prisoners where he chooses the woman or child from available pictures. Third, the militant goes to the economy office (bayt al-mal, i.e. house of money) where the price would be paid, which is set as \$1500 for a woman and \$500 for a child. Last, the militant heads to the sabaya prison where children and women offered for sale are held and takes the woman or child he bought."

Some Yazidi returnees brought back some of ISIL's official documentation, including a certificate confirming the liberation of a woman (*atq al-raqaba*) that the FIDH delegation obtained.



The document reads: "the immigrant Libyan brother who is preparing for a suicidal operation has liberated XX starting XX where she becomes free and owns herself and all the rights and obligations of free Muslim women as stipulated by the Islamic Sharia." The document is stamped with an "Islamic State- Office of the Judiciary and Ombudsman, Wilayat Al-Jazira, Tel Afar Court's judge" stamp and is signed by a judge referred to as "Abu Yasser".

Other documents reviewed by FIDH include a publication issued by the *Diwan Al-Da'wa wal Masajed* (Office of Proselytism and Mosques) in Wilayat (the state of) Al-Barakah, in Al-Hasakah, Syria, announcing a competition to memorize specified sections from The Qur'an. The announcement instructs interested participants to register in one of three specified mosques and lists the prizes to be awarded. The top three competitors each stood to win a *Sabiyya*, while those coming in 4th to 10th place would receive monetary prizes.



FIDH's review of ISIL media and publications, and testimonies collected by the FIDH delegation clearly demonstrate that the capture and enslavement of Yazidi women and children was carefully planned, institutionalised and highly organised within ISIL.

The FIDH delegation found that the entire Yazidi community was held captive and restricted from movement since the first days of the Sinjar attack. Women were taken into slavery in various phases: some captured when trying to flee to or from Sinjar; others selected from different holding points; and others still taken after converting to Islam and living for months with their husbands or families under ISIL control. If not gifted to a high-ranking *Wali* or *Emir*, or chosen by an ISIL militant who had likely participated in the Sinjar attack, women – together with their children – were sold in slave markets. From thereon they would be repeatedly sold, often through online applications such as Telegram, either for money or through exchanges in kind.

From the testimonies, FIDH learned that foreign fighters played a significant role in the sale and enslavement of Yazidi women and children, including sales of Yazidi captives back to their families.

2. Yazidis held captive

When Sinjar was attacked, hundreds of Yazidi women, girls and children were taken captive and enslaved by ISIL militants. To date, details as to how, when and where women and girls were separated from their families and taken into ISIL captivity and slavery have emerged in connection with the attack itself. That is to say, it was understood that following incidents where men were executed, women were immediately considered to be *sabaya*. However, after reviewing the various testimonies collected by the FIDH delegation, it became clear that while women and girls were indeed captured and held from the very beginning in August 2014, their actual enslavement occurred in phases.

When segregating the Yazidi population, ISIL would not only divide men and women, but also separate married women from unmarried women and girls, as well as mothers from married women without children. Many young, unmarried and childless women and girls were taken as *sabaya* by ISIL militants in the first few days of captivity, either while trying to flee or after being selected from certain holding points. Over time, more women and girls were selected and separated from their families from these holding points, including girls as young as 7 years old. In April/May 2015, the

wives and children of men who had previously agreed to convert to Islam were forcibly taken away after months of living under ISIL rule, and the great majority of them were sent to Syria. Their husbands disappeared, and are still missing to this day.

This section explores these different scenarios.

Women and girls captured while trying to flee

The panic and chaos that engulfed the first hours and days of the Sinjar attack are well reflected in the testimonies of Yazidis who survived or escaped ISIL captivity. As unknown vehicles approached the areas surrounding Mount Sinjar, Yazidis started to receive and make warning calls informing each other of the imminent threat of an ISIL attack. As the group seized control over the first few villages, the warning became even stronger, with Yazidis urging inhabitants of nearby villages to flee. The message was to run toward Mount Sinjar and, failing that, to Sinjar City. Families found themselves faced with an impossible choice, often having to make sacrifices given the limited number of cars in relation to the size of most families.

"My children were not captured when my husband and I were, as we squeezed them in our neighbor's car and asked that they take them along to Mount Sinjar. We had no car, so my husband and I had to walk to the mountain, but we were stopped by ISIL before safely arriving. My husband was immediately executed, right in front of me with 15 other men, while I was taken captive with other women." -- Salma, a 26-year-old Yazidi returnee.

As inhabitants of Yazidi villages to the north and south of Mount Sinjar started moving towards Kurdistan's territories or to the Sinjar mountain - the road leading up to the mountain and referred to locally as the *lofat* (tilted road) - soon became too crowded. Many of the testimonies collected by the FIDH delegation recounted how family members had called to inform their relatives that they had been caught by ISIL en route to the mountain, and subsequently made to return to the villages or other holding points. Some families gathered in places such as 'Mazar Sharafiddin', a religious shrine close to Mount Sinjar, before attempting to flee through Syria.

"When Sinjar was first attacked, my family went to the shrine of Sharafiddin close to the Mountain. There, an Arab man known to the families came and said that he can rescue and take them to safety in Syria. The families went with him, and on the way, were caught at an ISIL checkpoint close to Rabi'a area by the Syrian border. The men were separated from the women and are to date missing. My mother and two sisters were taken among other women to Tal Afar. From there, my 14-year-old sister was gifted to an ISIL fighter. My mother and other sister were then taken to Ksar Al-Mihrab, where months later my mother was released to Kurdistan among a group of old women, and my other sister was taken to Syria." --Shadi, a Yazidi man recounting his exchanges with captured family members.

Other members of the Yazidi community were captured more violently when ISIL started using mortar shells to prevent them from fleeing. Khader was intending to transfer his entire extended family from Siba Shikhadri compound (Al Jazeera Compound) to the mountain on 3 August 2014. For a big family with one car, several round trips were needed to bring everyone to safety. However, after the first trip, ISIL had blocked all roads to the village and he could not return to bring the rest of his family. He explained to the FIDH delegation:

"On that day I couldn't reach any family members by phone any longer, I think ISIL tampered with the telecommunication network in the village. A month later, I received information that my cousin's wife is in a hospital in Mosul with her 6-year-old son who was injured in a mortar attack. I managed to call her through intermediaries and she told me that she was captured while trying to flee and ISIL fired a mortar that injured her son. She said that she begged them to take her son to the hospital, as he was going to die. They only took her and her son to the hospital after separating the women from the men, and taking her 15-year-old daughter with a group of young girls."

In the heat of August 2014, the Yazidis who had escaped realised that taking refuge on the mountain would be no easy feat. Testimonies collected by the FIDH delegation recount how some families

heading to the mountain decided to return to their homes, to better prepare by taking water and food. Other families returned even after arriving at Mount Sinjar, considering the dire situation that faced them there and thinking that everything would be fine if they returned home.

"We went to the Mountain on the 3rd of August and we spent a night and a full day there. But then, people started telling us that there's nothing going on, so we decided to return to our village. On our way back, ISIL caught us, among many other families."—Sarah., 34-year old returnee who was captured and enslaved with her four daughters.

Selecting women and girls from various holding points

ISIL established a series of holding points in Sinjar city, such as a Court, school, mosque and Kurdistan Democratic Party offices, as well as in villages and cities surrounding or close to Mount Sinjar, including various areas in Tel Afar, particularly Qazel Qio village, Kasr Al-Mihrab, Al-Khadra neighbourhood at Tel Afar, various locations in Mosul such as Badoush prison and Mosul forests, and in Yazidi villages such as Solagh and Kocho, among other locations.

Members of the Yazidi community who remained in, or were captured and returned to, these villages were restrained from movement and remained under the control of ISIL militants. To spread fear in the first few days following the Sinjar offensive, ISIL organised assemblies in specified facilities in these villages, where only the men would be addressed. Women and men were segregated, and ISIL leaders would address the local mayor or leader, or use a mediator such as Yazidis who have converted to Islam a long time ago, to communicate their orders.

Testimonies collected by the FIDH delegation revealed that, during this phase, the captured Yazidis recognised individuals from nearby villages assisting with or participating in ISIL's activities, and that, with few exceptions, ISIL's members were Iraqis. In these meetings, Yazidi men were ordered to collect all mobile phones, gold and money and surrender these items to ISIL. Yazidis were also asked to hand over any weapons they owned.

"We were about 1000 people that were captured by ISIL and taken to the former building of the Kurdistan Democratic Party in Sinjar city. They confiscated everything: our ID cards, gold, and mobile phones. They separated the men from us. They brought 20 big buses and took all the women and children to a school in Tal Afar and from there to Badoush prison in Mosul. We stayed in that prison for less than a month. It was very crowded, dirty and without clean water. They used to hit the women there to take away their teenage daughters from them. In that prison, they took away my daughter, she was less than 14 years old." Sarah, a 34-year-old returnee.

In Kocho (Kojo) village, Yazidis asked ISIL militants for more time to decide whether to convert to Islam. According to testimonies collected from survivors, Kocho's mayor is said to have responded to ISIL that he could not force his people, who had been embracing the Yazidi faith for thousands of years, to convert. A few days later, mass executions of the village's men, adolescent boys and elderly men and women were carried out, while younger women were taken into captivity.⁵²

"From Kocho school, I saw how they took away my husband, in a small Kia truck. They took us (the women and children) to a building in Solagh, which was used for keeping unmarried women and girls but ISIL grouped married women with them later. They asked the old women and the mothers to go to the 2nd floor of the school and said they will give us food there. When we returned to the ground floor, we couldn't find the young girls any longer.". Sharihan, 21-year-old returnee.

52. Amnesty International, *Testimonies from Kocho: The village ISIS tried to wipe off the map*, 18 August 2014: <https://www.amnesty.org/en/latest/news/2014/08/testimonies-from-kocho-the-village-isis-tried-to-wipe-off-the-map/>.

Separating families in April-May 2015

From testimonies collected by FIDH, it appeared that Qazel Qio village, which once used to be populated by Shiites who fled from ISIL, was primarily used to hold women with their children when their husbands had been killed, missing or were away from Sinjar when the attack occurred. Houses owned by Shiites who fled Kasr Al- Mihrab were used to keep the families of men who had converted to Islam. Converting was a method of survival under captivity. Merely claiming to have converted was not sufficient, as ISIL demanded that both groups intermarry (i.e. ISIL men marry Yazidi women) and that Yazidi men join ISIL front lines as proof of loyalty to the group.

One Yazidi man that FIDH met with, who lived among ISIL militants for over 2 years after being forced to convert to Islam, described how his Shiite neighbors were immediately executed upon capture, without being given the option to convert to Sunnism. He explained how the Yazidi men who converted swiftly arranged husband figures for the unmarried female members of the family to protect their women against marrying ISIL members. In some cases, such marriages were doubted by ISIL members and unmarried girls and women were taken away from their families to prevent the risk of further pretence. Some unmarried women "borrowed" children from relatives in order to appear as mothers and avoid being taken away.

"I had been married for 5 months and pregnant in my first month when ISIL captured us trying to flee. I was taken with my husband's sister to Ghabat Al-Mosul (Mosul's forests) for about 2 weeks where our names and marital status were registered. Then an ISIL leader came and asked who was married, I said that I was, and gave the name of my husband. I was reunited with my husband for 3 months in Kasr Al Mihrab and in Al-Khadra neighbourhood for 5-7 months, where I gave birth. My husband saw our child only for 25 days after which we were separated. He is still missing." Lamia, 23-year-old returnee.

Moving captured Yazidis between a series of holding points was a constant activity, often influenced by conflict dynamics in the area. In these locations, men were made to work in different jobs, from farming to sheep herding. It also appeared that many of the decisions as to how to divide captured Yazidis after the first 6-8 months of captivity were made in Tal Afar. Some of the testimonies collected by the FIDH delegation provided details on the release of a group of elderly women from Tal Afar to the Pashmerga controlled areas.

Except for those who managed to escape or were later sold back to their families, from the moment of their captivity, communications between captured women and girls and their families were lost. Without mobile phones or internet connection, and not knowing the phone numbers of their family members, captured women and girls had no means to reach their family. In some cases, relatives would hear of their female family members' whereabouts from other returnees who, at some point, were either bought by the same ISIL fighter(s) or were allowed to visit each other. In other cases, smugglers would contact Yazidi families with news that their female family members were supposedly in Raqqa or Mosul, and inform them that they were to be 'sold' for a certain amount of money. In fewer cases, girls would manage to use their captor's phone to call their families and let them know that they are still alive.

3. Yazidis sold and enslaved

Exercising ownership over Yazidi women and children came about in various ways, including market and online sales, gifts and exchanges. Young girls and women who were singled out just after the Sinjar attack were either gifted directly to high level ISIL fighters, such as high-ranking *Emirs* or *Walis* of certain areas, or taken to a house where ISIL fighters (often foreign fighters) would come to choose from among them. Some Yazidi girls and women were taken to Syria and others remained in ISIL Iraqi strongholds. A few months after the Sinjar attack, when ISIL segregated women from men in villages where they had been living as newly-converted Muslims, women were similarly taken with their children to holding points where men could choose from, as well as to *sabaya* markets.

"I was taken to Wilayat (the state of) Tadmor, Syria, among a group of Yazidi women and girls. The entire group was taken to the sabaya markets except five, I was one of them. They did not take us to the market because we were young, they wanted to keep us for the Emirs. A Syrian Emir took me for a week, and then sold me to someone else." Lamia, 23-year-old returnee.

Onward sales tended to take place through online or phone applications, and various accounts of exchanges "in kind" were also given.

The Sabaya markets

The FIDH delegation interviewed two women who were taken to *sabaya* markets to be sold with their children. In both cases, it appears that the women were bought with their children by foreign ISIL fighters.

"Before taking us (the women) to Syria, they took away all the beautiful and very young women and girls. They took the rest of us, the older and less beautiful ones, to an underground prison in Raqqa, Syria. We were about 500 women in a poorly ventilated prison, we felt like we would die. After 10 days, they divided us into sub-groups of 25 women and took us to a house in Deir Ez-Zour where our names were registered. We stayed in that house for about 25 days, after which they took us to a market that looked like a military camp or a deserted airport. There were groups of ISIL militants who came to buy us. They made us uncover our faces and walk in a straight line then stand still for the men to look at us. The men could look at us, but touching or talking was not permitted by the man running the market. He was not Iraqi nor Syrian, he was probably a Tunisian. We stayed there from the morning until noon, until we were sold. I was bought with my daughter and another Yazidi woman by a Tunisian fighter."-- Randa, 28-year-old returnee.

If a woman was not sold in the market the first time, she could be taken there again until she was sold.

"I was sold for the first time in an underground sabaya market in Tadmor (Syria). I was taken there twice as the first time no one bought me. The second time, I was bought with my children by a Saudi man. The market was a big hall with a passage in the middle and chairs on both sides. We had to walk the passage with our children while uncovering our heads."-- Ashti., 26-year-old returnee.

It remains unclear whether slave markets continued to exist after the first few months of captivity of Yazidi women and children. From testimonies, it can be assumed that such markets were primarily used to sell the Yazidi women for the first time, while onward sales were facilitated independently by their captors.

Sales online and through phone applications

A series of ISIL "markets" appeared online and on phone conversation applications such as Telegram and Signal, with names like "Caliphate's Market", "The Great Mall of the Islamic State", "Souk Okaz" and "al-Muwahhideen market". These markets allowed ISIL fighters to request to buy or sell anything from cars to weapons, as well as women and children.

Yazidi captives were sold at prices sometimes reaching tens of thousands of US dollars.



A redacted screenshot from an ISIL online sales group called "The New Caliphate Market", which at the relevant time, consisted of 164 members. The screenshot shows a group member looking to buy a *gholam* – a term used to refer to enslaved boys, particularly the Yazidis – for a "good price" or in exchange for a car.



A redacted screenshot from another ISIL online sales group called "The Great Mall of the Islamic State" which, at the relevant time, consisted of 754 members. The screenshot shows a group member offering a "virgin *sabiyya*" for sale with the following specifications: 12-year-old, pubic hair started to grow (inferred through the common use of the term 'she has grown'), excellent, beautiful, for a special price.



A redacted screenshot from a third group called "The Public Market" with 176 members where a group member is offering his gun for sale (listing all its specifications and condition) and listing the possibility of exchanging it with a *sabiyya*.

As these extracts reveal, when an ISIL member posts about the woman or children they want to sell, they describe the "specifications" such as: age, virginity status, and how many times has the woman or girl been bought before. Additional behavioural descriptions such as: "sexually pleasant", "talkative", "obedient", and the Arabic speaking level would be added. Postings sometimes included pictures but, often, these were shared privately with the interested buyer. The FIDH delegation learned that ISIL captors would force their captives to pose with revealing clothing and nightwear, to further tempt potential buyers. In most cases, ISIL members would not specify an asking price on their posting, but rather, a starting price from which bidding would start.

Yazidi boys that were separated from their families were also gifted or sold to ISIL fighters. While most of them appear to have been taken to indoctrination and recruitment camps, testimonies and extracts from online conversations collected by the Kinyat Organization and reviewed by the FIDH delegation show that boys had been kept by ISIL members and forced to carry out household chores, such as making tea and coffee. The online sale of boys was also observed. In one online marketplace, the following request was made by an interested buyer:



A group member in the online selling group of 'The Great Mall of the Islamic State' writes: "A boy slave (gholam) wanted, for an injured brother. Urgently needed."

Other ISIL fighters selling Yazidi boys would specify their skills:



A screenshot from a Telegram selling group where a member posts: "a boy slave for sale. Knows how to make coffee, how to clean., (...), Listens and obeys greatly. The bidding reached \$ 2500."

Sexual and gender-based violence committed against Yazidi boys remains largely undocumented and was outside the scope of the FIDH missions. Yet, sale postings with descriptions that include "beautiful" or "lean" suggest that sexual crimes may also have been committed against them.

Exchanges in kind

Women, girls and boys were not always sold for money. At times, their ISIL captors also exchanged them with other women or girls or with a range of different things from cars and weapons to everyday items such as shoes.



In one online marketplace (The Great Mall of the Islamic State), a man carrying the ISIL flag in his profile picture wrote: "*my brothers, I am not joking nor being sarcastic, (...) if anyone wants to swap a sabiyya with an Adidas shoes, message me privately.*" A minute later, a person responds: "*what shoe size?*"



Another person responded: "*If anyone wants to swap a sabiyya with shoes, I will give him two pairs of Adidas.. with socks too.*"

Offers to exchange Yazidi captives in kind were confirmed in testimonies documented by the FIDH delegation:

"I was not always sold for money. Sometimes I was given for free. Once, I was swapped with a gun."—Hawin., 27-year-old returnee.

"The Palestinian sold me to the Chinese for 600 dollars and a lion cub." Viyan., 27-year old Yazidi woman.

Selling Yazidi women and children back to families

Family members have been able to “buy-back” women and children held by ISIL through online markets, relying on a well-established network of intermediaries and people smugglers who, in turn, are also duly paid.

The Kinyat Organization and the FIDH delegation observed that ISIL members would sometimes establish direct communication with their captive’s families with a view to returning their victims back to them in consideration of amounts sometimes reaching tens of thousands of dollars. Captors would send pictures of the women or children and allow a phone call where the amount required for the buy-back would be specified. As the FIDH delegation learned, during such phone calls, women and girls were only allowed to talk to their families in Arabic, instead of their native Kurdish so that their captors could maintain control of the negotiations:

"After my sister S. was taken to Syria she reached us through WhatsApp in December 2015 and we spoke to the ISIL militant who took her. He wanted to sell her back to us for \$5000. I agreed, and we remained in touch for three months. In 2016, he started increasing the price: it became \$6000, then \$9000, then \$10000, then \$11500 then \$13000. I agreed to all of this, as if it was an auction. We asked him to bring her to Raqqa so that someone could pick her up from there. He did not come, and all communications were lost." Shadi, a Yazidi recounting his communications with his sister’s captor.

Other families received pictures and, sometimes, videos of the women and children of their family carrying ISIL flags and dressed in what their families describe as “Islamic” clothing, i.e. covered heads and sometimes faces for women, and typically Afghan “Kandahari” style clothing for boys, which is a long one-coloured shirt reaching below the knees worn on top of loose pants, all while displaying hand gestures showing allegiance to the group. In such cases, these materials were not shared for the purposes of selling captives back, but merely for the purpose of provocation and taunting.

The FIDH delegation learned that the Kurdish authorities formally support such rescue operations, including by providing families at a later stage with financial reimbursement of the “buy-back” fees. In some cases, it took up to 12 months for the family to be reimbursed. According to a Kurdish government official interviewed by the FIDH delegation in February 2017, an “office for saving the abductees” set up by the Kurdish authorities in October 2014⁵³ had coordinated and assisted with (at the time of the interview) the rescue of 2,900 people, including 1,000 children. In parallel, local activists and civil society groups have launched several fundraising initiatives in order to help families “buy back” captured relatives.

53. See further, Part III of the report, section on national accountability efforts.

4. Escaping ISIL: the reality facing returnees

Although ISIL has been defeated in the region, according to the Kurdish authorities more than 3000 members of the Yazidi community, half of those captured, remain missing.⁵⁴ Yet, those who manage to escape and return face a series of challenges that prolong and in some cases increase their victimisation.

Despite the fact that ISIL is no longer an immediate threat, current dynamics – including considerable tensions between different political and military groups active in the region – effectively prevent a return to normality for the Yazidi community. Further, while Sinjar and many of the surrounding villages were liberated from ISIL as early as 2015,⁵⁵ a limited number of Yazidis have returned to rebuild their homes, living instead in approximately 20 displacement camps within the Duhok governorate.

Women, children and, in fewer cases, men, do not realise the full extent of their trauma and victimisation until they rejoin their families, or rather, what is left of them. The FIDH delegation heard how, upon escaping ISIL or being sold back to family members, women rejoined their families only to realise that most of their close relatives had either been killed or are still missing. These women end up having to live with extended family members and, sometimes, very distant relatives, all the while waiting to hear news of their children, spouses, or parents. Returning children face some of the greatest challenges. They may return to find they have no parents to receive them and struggle to receive adequate care and support.

In addition, most of the returnees experience further trauma upon realizing the living conditions in displacement camps in which they have to stay, often in crowded settings with little privacy. According to one Duhok official interviewed by the FIDH delegation, 240,000 Yazidis (i.e. half of the Yazidi community) were living in such camps as at February 2017. This official also admitted freely that humanitarian aid, including medical and psycho-social support, was disorganised, insufficient to respond to the needs of the Yazidi community and in some cases unavailable on a long-term basis. Legal complexities, such as the loss of identification cards and undocumented marriages, form another struggle that Yazidis must deal with.⁵⁶ A large proportion of ISIL's Yazidi victims are in the process of applying for asylum in countries with dedicated resettlement programmes for Yazidi survivors such as Germany, Australia and Canada.

Returnees generally report to the Investigation and Evidence Collection Commission – a Duhok based body formed by the Kurdistan Regional Government in August 2014, mandated to investigate and gather evidence of crimes committed against Yazidis – where their testimony is collected over the course of a few days, depending on each case. For women, their file includes their testimony, in addition to a medical examination that includes a virginity test. The FIDH delegation was not able to ascertain whether a procedural psychological assessment is conducted prior to carrying out these investigations.

While the FIDH delegation learned from the doctor in charge that the virginity test is not obligatory, it was suggested that returning women are encouraged to take the test in their own interest. The World Health Organisation states that health workers should never use virginity examinations since

54. *Supra*, note 7.

55. BBC News, *Battle for Sinjar: IS-held town in Iraq 'liberated'*, 13 November 2015: <http://www.bbc.com/news/34806556>.

56. Al-Monitor, *One Year Later, Struggle Continues for Yazidis*, 05 August 2015: <https://www.al-monitor.com/pulse/originals/2015/08/iraq-yazidi-refugees-displacement-social-security-poverty.html>.

they are unscientific, unreliable, invasive and degrading.⁵⁷ International courts⁵⁸ have also described virginity tests as being discriminatory, of no scientific value, and in violation of the protection from torture or cruel, inhuman or degrading treatment.

As Yazidi women began to return to their communities after escaping ISIL captivity, the Yazidi religious leadership issued a statement calling on the Yazidi population to accept these women back into the community and clarifying that the crimes, including SGBV, they had been subjected to should not be used to stigmatise and reject them. All Yazidi returnees, including men, are re-baptised upon their return in Lalish, a spiritual place for all followers of the Yazidi religion.

57. World Health Organisation, Health care for women subjected to intimate partner violence or sexual violence, A Clinical Handbook, 2014: http://apps.who.int/iris/bitstream/handle/10665/136101/WHO_RHR_14.26_eng.pdf.

58. See for example, European Court of Human Rights, *Aydin v. Turkey*, 57/1996/676/866, 25 September (1997). See also the African Commission on Human and People's Rights (ACHPR) Guidelines on combating sexual violence and its consequences, 2017. The Guidelines recommend that "*For offences involving sexual violence, States must provide for a reversal of the burden of proof such that the victims are not obliged to provide any evidence other than their own statement. This means that, depending on the circumstances, the statement of the victim can be sufficient proof of an act of sexual violence in the absence of any other corroborating evidence (witness statements, documents, medical reports, photos, etc.).*"

II. THE ROLE OF ISIL FOREIGN FIGHTERS

In testimonies collected by the FIDH delegation, women claimed to have been gifted to or bought by ISIL fighters of **Saudi, Libyan, Tunisian, Lebanese, Jordanian, Palestinian, Yemeni, French, German, American, and Chinese** origin.

It remains uncertain whether institutionalising the enslavement, and specifically the sexual enslavement, of Yazidi women was intended as a method for gratifying ISIL's foreign fighters. While various ISIL publications⁵⁹ indicate that the principal motivation for enslaving Yazidi women lay in increasing the number of ISIL fighters (as these women would bear children born under the group's rule and would grow up to spread and fight for its message), in the majority of testimonies collected by the FIDH delegation, women mentioned that their captors forced them to take contraceptive pills in addition to using other contraceptives. As such, reproducing the "next generation" of ISIL fighters does not seem to have been the primary motivation. Furthermore, the edition of Dabiq issued in October 2014 following the Sinjar attack was first released in English, causing speculation that the topic of and interest in the practice of *Al-sabi* was geared toward attracting foreign fighters.⁶⁰

Comparing testimonies collected from Yazidi women to those collected from Yazidi men, it appears as if the latter very rarely crossed paths with ISIL foreign fighters. One Yazidi man interviewed by the FIDH delegation, who lived for over two years among ISIL fighters including in various bases and prisons principally in Iraq, stated that the only occasion on which he saw foreign fighters was when he was brought before *Diwan Al-Hisba* (morality courts), which he claimed were mostly headed by Saudi nationals. As such, it appears that enslaving women was a privilege reserved for certain fighters, in particular those of a high rank or of foreign nationality. For instance, several of the female returnees interviewed by the FIDH delegation recalled that their captors often ensured they were not seen by lower-ranking militants, including when they were kept in locations close to an ISIL base:

"The militants in the base below us did not know about us until S. (another Yazidi woman) got ill and he (their captor) refused to come (...) I sent my daughter to the base to ask: is there sugar? Is there food? They brought us food and left it at the door." -- Rojin., 38-year-old Yazidi returnee.

Identifying the nationality of ISIL's Yazidi captors

Yazidi women from Sinjar generally do not speak Arabic,⁶¹ but tend to have some basic comprehension levels of the language. Upon their return, the FIDH delegation observed that some would shy away from using the Arabic dialect they had picked up in captivity, saying that they speak Saudi or Libyan Arabic. Other women would use what they had learned, mentioning that their captors (and, by extension, they themselves) had acquired the Syrian dialect since they had been living there. Others could not understand their captors and sought help from their captors' wives or other family, who would translate for them if their captor did not speak sufficient Arabic.

"Of course, I speak Arabic, I lived with ISIL for 3 years."—Sharihan, a 21- year-old Yazidi returnee.

The process of identifying where their captors and subsequent owners came from was assisted by mutual vocabulary between Kurdish and Arabic. The use of nicknames or "war names" that include a fighter's country of origin, such as *Al-Almani* (the German), *Al-Libi* (the Libyan) or *Al-Tunisi* (the Tunisian), made it possible for the women to understand where their captor may have come from, as nationalities in Kurdish are the same or similar to Arabic. Several of the women interviewed by the FIDH delegation described how, even when the nationality of the person was not reflected in

59. Some of these publications are referenced above. See Part I, section on ISIL's institutionalisation and ideology.

60. *Supra*, note 47.

61. There are 2 villages where Yazidis – with very few exceptions – only speak Arabic: Ba'shiqa and Bahzani.

the nickname, they were told that they were being or had been sold to an ISIL fighter of a certain nationality:

"They told me that a Tunisian brother bought me."—Randa, a Yazidi returnee.

"I woke up to two men having a discussion. When I went to see what was happening, they told me: the Libyan cannot afford to keep you, and the French wants to buy you."—Rojin, 38-year-old Yazidi returnee.

In the accounts collected by the FIDH delegation, some women explained that while certain ISIL fighters understood to be dual-nationals used their Arabic nationality in their nickname, they were nevertheless able to identify their captor's "other" nationality. In some cases, the women were shown pictures or told stories of the fighters' wives and children who had remained in their country of origin, often in Europe. Some of the women interviewed by the FIDH delegation also mentioned that their captors spoke a "strange", foreign-sounding language with their ISIL friends and associates. Other women had seen their captors' passports or pictures taken in their country of origin.

"He told me that I shouldn't want to return to my family because they are infidels, he too left his family in France because they are infidels. He showed me pictures of his children in France, they looked very much like him." — Katrin, 30-year-old Yazidi returnee

In the testimonies collected by the FIDH delegation, women claim that they were gifted to or bought by ISIL fighters who are understood to have come from Saudi Arabia, Libya, Tunisia, Lebanon, Jordan, Palestine, Yemen, France, Germany, China and the USA. Nevertheless, the systematic enslavement of women was not a practice exclusive to foreign fighters; women and girls were also sold and bought by Iraqis and Syrians holding high ranks within ISIL. For instance, the FIDH delegation learned from a testimony of a family member of girls taken captive that they were enslaved by an Iraqi doctor well-known to the Yazidis for enslaving more than 15 Yazidi women and girls, who ran Al-Haweija hospital for ISIL in Iraq's Al-Haweija area and was informally known as ISIL's Health Minister. Yazidi women and girls were normally gifted to *Emirs* or *Walids*, and were bought by those who could afford to pay their price and cover their living expenses.

"The French took me and S. (another Yazidi woman) to the house of a Saudi Emir. The Saudi Emir had two assistants, the French was one and the other was a Syrian man. He left us there for two weeks and then came one night to tell me that the Syrian assistant bought me, and S. was bought by the Emir. S. and I started to cry." — Rojin, 38-year-old Yazidi returnee.

Identifying the roles of ISIL's foreign fighters

In various testimonies collected by FIDH, returnees articulated that identifying the role of their foreign captors has indeed been possible. Similar to identifying the nationality of their captors, some women identified the role of their captors through their nickname:

"I stayed for one year in XX with a person called the Jordanian amputator"— Gaia, 22-year-old Yazidi returnee.

Other women were able to identify the role of their captor through directly watching them work in that capacity.

"He {French national} helped the Emir sell me because he was his assistant." Rojin, 38-year-old Yazidi returnee.

"His wife told him to rape me, but he refused. He told her that his speciality is training children, and that the Sabaya are just a business for him. He took me to stay close to the base where children were trained, where I saw my two sons being trained everyday through the window. I used to see him {French captor} give orders to other ISIL militants on how to train children." Walida, 30 -year-old Yazidi returnee.

Other women were sometimes held in ISIL's bases and found out from there the role of their captor:

"He held me inside a base where he works, he was responsible for the weapons. There were piles of weapons where I was staying." Randa, 27-year-old returnee.

Communities of foreign fighters within ISIL

Some of the women interviewed by the FIDH delegation explained how their foreign captors clustered in smaller communities based on their nationality. As a result, the buying and selling of Yazidi women and girls often happened within each of these communities.

"Almost all the men who took me were Libyan. More than 10 men. I was given to a Libyan 'Emir' for free. This man took me to an ISIL base where I was kept in a room, and raped by many members there. I could not even sleep there, they would come whenever they want and rape me. They were all Libyans in this base, they are most savage of all." -- Hawin, 27-year-old Yazidi returnee.

Similarly, the FIDH delegation learned that Saudi nationals often lived in different apartments within the same building and that the same Yazidi woman would often move and be sold from one apartment to another.

"The Saudi man held me in an apartment in Deir Ezzour, close to an ISIL police base (Al-Hisbeh). Three months later, he sold me to another Saudi living in the building across. The latter sold me to another Saudi living in the 2nd floor of the same building. After that, I was sold to yet another Saudi living in the same building." -- Nazdar, 28-year-old Yazidi returnee.

It appeared that women who were bought by men alleged to be French, German or Tunisian often lived with their wives and children. These women told the FIDH delegation that they had seen the men's friends and associates visiting them in their houses, and that these visitors would normally be from the same nationality group.

"I was bought by a French man who brought me to live with his mother and two sisters in Raqqa. I knew he was French from the daughter of their neighbour, who was also French and told me they all were. His sister was also married to a French man in Deir Ezzour." -- Katrin, 30-year-old returnee.

"I was bought by a German who used to sell weapons and lived with him in Raqqa. His wife had recently died, and he had two children. His German/Turkish friends used to visit him, including one that held an 11-year-old Yazidi girl for servitude. He used to translate ISIL videos depicting the Sabaya to German. He spoke Arabic, but did not understand it very well." --Rojin., 38-year-old Yazidi returnee.

Servitude and sexual slavery at the hands of foreign fighters

Testimonies collected or reviewed by FIDH recounted horrific details of the psychological and physical violence, including sexual violence, that women and girls suffered or witnessed at the hands of their foreign captors. Beating and torture were constant, as were starvation and the denial of basic medical and sanitary needs. Sexual violence was also constantly inflicted.

"The Saudi Sheikh bought me and another Yazidi girl called A. and we stayed for a night in a hotel. On that night he hit both of us. He hit A. for religious reasons, and he hit me with a cord saying, 'I asked you three times to wear make-up'. -- Rojin, 38-year-old Yazidi returnee.

Mothers were often threatened that harm would come to their children if they did not submit to their captor's sexual demands.

"He used to tie me to the bed and rape me while my children were in the next room. My children heard me scream and I heard them cry. He told me if I don't let him rape me, he will rape my 10-year-old daughter." --Sarah, 33-year-old returnee speaking of her Libyan captor.

Several women reported in their testimonies that their children were severely beaten or starved, and others spoke of their attempts to please captors who bought their children a minimum level of essentials such as diapers and milk formulas, so as to remain with them rather than being sold on to others.

"He {Saudi captor} locked me in and told me to never stand by the window. He used to come to see me every 10 days where he would bring some food and leave again. I could not breastfeed my daughter, and he refused to buy her milk formulas or diapers. He hated my daughter and used to beat her. Three months later he sold me to another Saudi, who was good to my daughter and used to play with her. He also liberated her so that they wouldn't take her away from me after he would sell me." Randa, 28-year-old Yazidi returnee.

Other mothers had to live with captors that would rape them and one of their children at the same time.

"He kept me for seven months. One day, he asked me to go with him to the bedroom, but I refused, so he locked me with my children in a room, but took my little daughter to another room where he raped her. (...) He used to rape us both, and kept us in two different rooms of the house. She was 10 years old at the time. I used to cry and scream at him: 'isn't it forbidden in your religion to rape a mother and daughter at the same time?'. I used to beg him and tell him that I would please all his demands if he does not approach my daughter, but he refused, and kept raping her. When he did it, I wouldn't hear a sound from her, as if she dies and loses conscious. He sold me with my other children, but he kept her." -- Nadia, a Yazidi returnee, speaking of her Yemeni captor.

Some women told the FIDH delegation that they were also made to clean the houses of ISIL members and in some cases, clean ISIL offices or bases. If their captors had wives, the women had to serve these wives, especially while the latter were pregnant or ill. Similarly, if their captors had children, women were made to look after them.

"He bought me when I was pregnant, so he was not allowed to rape me. Because of that, I was sold for a cheap price and made to clean his house, and do the laundry. He sold me 25 days later." --Nazdar, 28-year-old returnee, speaking of her Saudi captor.

The FIDH delegation learned from the women interviewed that married foreign fighters would often tell their wives that they had bought a Yazidi woman to help with household chores, and would rape Yazidi captives in secret.

"His wife did not speak any Arabic, she did not understand the Yazidi matter at all. She kept asking me why I was there, but he told me not to say anything. She wanted me to leave. A few days later, he took me away from his family's house to another house. He raped me there three times while handcuffing and gagging me." --Salma, 26-year-old returnee speaking of her French captor.

Several of the testimonies collected by the FIDH delegation mentioned that some of ISIL's foreign members were engaged in the buying and selling of Yazidi women and children to make a profit. Selling women back to their families was a "profitable business", and the FIDH delegation learned that several foreign fighters were involved in such enterprises. Nevertheless, even if the primary motive were to make money, those running such "businesses" would not refrain from raping Yazidis in their custody during the process of transferring them from captivity to freedom. One of the women interviewed by the FIDH delegation also explained how others involved in the buy-back process, such as drivers and smugglers, often threatened not to return women to their families unless they were allowed to rape them. Desperate, women submitted to their demands.

"I stayed with A. A., who sold me back to my family, for around a week. Three days after my arrival, M. (another Yazidi woman) was also brought to his house so that he would sell us back to Kurdistan together. A. A. made one of his friends take M. outside of the house so that he could rape me, and he did. M. told me that A. A. raped her too." –Mona, 22-year-old returnee speaking of her supposed Tunisian-French captor.

III. THE NEED FOR ACCOUNTABILITY

1. Qualification of crimes

ISIL has committed various crimes of sexual and gender-based violence (SGBV) and other acts amounting to crimes under international law against women and children of the Yazidi community. FIDH's documentation work as presented in this report makes clear that foreign fighters, including citizens and residents of European Union (EU) countries and other States Parties to the Statute of the International Criminal Court (ICC Statute) as well as States who have ratified other relevant international treaties and conventions, have been involved in the perpetration of such crimes. These States therefore have the ability – and, indeed, the obligation – to prosecute alleged perpetrators under domestic legislation. While several States have prosecuted their nationals or residents on counter-terrorism charges, focusing on their membership or engagement with ISIL, in view of the horrifying scale and systematic nature of SGBV committed by ISIL against the Yazidis, perpetrators should also be pursued for the commission of international crimes, in particular genocide and crimes against humanity.

Since precise rules for the investigation and prosecution of those crimes under international law will differ from one State to another, the analysis that follows uses the ICC Statute as a reference to demonstrate that crimes of SGBV committed by ISIL against the Yazidis amount to genocide and crimes against humanity.

Sexual and gender based violence amounting to genocide

The ICC Statute, codifying the definition of genocide, well recognised in international customary law since the adoption of the UN Convention on the prevention and punishment of the crime of genocide in 1948, defines genocide as the commission of any of five specified acts in a context of a manifest pattern and "*with intent to destroy, in whole or in part, a national, ethnical, racial or religious group*"⁶². The said acts include: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group⁶³. While all five mentioned acts have been committed, documented and subsequently qualified as genocide as part of the crimes committed against the Yazidi population⁶⁴ this section will particularly focus on SGBV crimes and their qualification under four of the five mentioned acts as genocide.

i. The Yazidis are an ethno-religious group

It has been demonstrated in the context section of this report that Yazidis are viewed and regard themselves as both a distinct ethnic and religious group. Yazidis do not speak an exclusive language, but rather, the majority of its members speak Kurdish in common with Kurds and other groups living in the Kurdistan region. Nevertheless, their own tribal customs and ties to the specific geographical area of Sinjar and the Duhok-Nineveh region, on which they have lived for centuries and which is home to some of their holiest Yazidi shrines, mean they can be regarded as part of an ethnic group according to international case law⁶⁵.

62. Rome Statute of the International Criminal Court, Article 6.

63. *Ibid.*

64. COI Report, *supra* note 6.

65. See for example: ICTR, *Prosecutor v. Akayesu* (ICTR-96-4-T), Judgment, 2 September 1998, para. 513: "*an ethnic group is generally defined as a group whose members share a common language or culture*". The international jurisprudence further tends to incorporate a more subjective interpretation of the definition of the group, focusing on the perception of the group by authors of the crimes: ICTR, *Prosecutor v. Kayishema & Ruzindana* (ICTR-95-1-T), 21 May 1999, para 98; *Prosecutor v. Jelisić*, (IT-95-10-T), 14 December 1999, paras. 69–70: "*It is more appropriate to evaluate the status of a national, ethnical or racial group from the point of view of those persons who wish to single that group out from the rest of the community (...) It is the stigmatisation of a group as a distinct national, ethnical or racial unit by the community which allows it to be determined whether a targeted population constitutes a national, ethnical or racial group in the eyes of the alleged perpetrators*".

In addition to customs and ancestral heritage, Yazidis share religious practices that distinguish them from other communities in the regions where they live. Of relevance, as explained in earlier sections, is the inability of Yazidis to marry or convert into other religions. Being part of this religious group, as reflected in the context section of this report, has subjected its members to stigma, misinterpretation, and earlier genocidal or annihilation attempts.⁶⁶ Similarly, Yazidis' religious identity has been presented as the basis for ISIL's attack against the group and the crimes being committed against them since then, including forced religious conversions, mass executions, the enslavement – including sexual enslavement – of women and girls and the indoctrination of Yazidi children.⁶⁷

As such, Yazidis are an ethnic-religious group that consists of members "alike by virtue of their common ancestry, real or fictitious, and who are so regarded by others",⁶⁸ and has been targeted as such by ISIL.

ii. ISIL intended to destroy the Yazidis

A committed act can only amount to genocide if committed with intent (*mens rea*) to destroy a group, in whole or in part, according to Article 6 of the ICC Statute. As such, it is necessary to prove that the crimes committed against the Yazidis were committed as the result of a special genocidal intent. While proving an intention may not be an easy task, international jurisprudence has held that genocidal intent can be inferred in various ways including the general context in which the crimes were committed, and the group's statements and policy leading to their commission.

a. Intent inferred from the general context

International jurisprudence provides that genocidal intent can be inferred from the general context, as in the facts and circumstances of a given case, such as the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts,⁶⁹ and their nature, location, plan or system, and manner of exclusion.⁷⁰ In the context of SGBV committed against the Yazidis, it has been noted that such violence was systematic, in line with an ISIL's plan and policy, and perpetrated with the goal of capturing as many Yazidis as possible by targeting all Yazidi residential complexes and villages surrounding Mount Sinjar, Sinjar city, and all roads and escape routes.

b. Specific intent in statements and policy

Part I of the report demonstrated that ISIL clearly justified targeting the Yazidis in its public statements and policies as the only way to treat a group of so-called "infidels". The perpetration of various forms of SGBV against Yazidi women apparently occurred with the intent of forcing these women away from their Yazidi identity – and particularly away from Yazidi men – forcing them to convert away from the Yazidi religion, and potentially using them for bearing the next generation of ISIL children. As described in the said section, ISIL's conduct was carried out after a careful examination of the origins of the Yazidi religion, the treatment that they should receive under Islamic law, and the conclusion that the continual existence of the Yazidis is a question that Muslims will have to answer on the day of judgement. Such statements and policies have been used in other cases to prove the requisite intent for genocide in international jurisprudence.⁷¹

66. National Geographic, *Who Are the Yazidis, the Ancient, Persecuted Religious Minority Struggling to Survive in Iraq?*, 11 August 2014: <https://news.nationalgeographic.com/news/2014/08/140809-iraq-yazidis-minority-isil-religion-history/>.

67. COI Report, *supra* note 6.

68. Shibutani and Kwan, *Ethnic Stratification: A Comparative Approach*, Contributions by Robert H. Billigmeier. New York: The Macmillan Company, 1965, at 42.

69. ICTR, *Prosecutor v. Kayishema* (ICTR-95-1), Judgement, 21 May 1999, para. 93.

70. ICTR, *Prosecutor v. Akayesu*, *supra* note 65, paras. 523-524.

71. ICTR, *Ndindabahizi* (ICTR-01-71), Trial Chamber, 15 July 2004, para. 454: "*The requisite intent may be proven by overt statements of the perpetrator*". See also ICTR, *Karera* (ICTR-01-74), Trial Chamber, 7 December 2007, para. 534.

iii. In whole or in part

If a substantial part of a group has been targeted and destroyed, this element can be satisfied. To prove that a group has been destroyed in whole or in part does not require an actual extermination of the group in its entirety,⁷² but rather the demonstration that acts committed against the targeted group carried an impact on the whole group.⁷³ In the Sinjar attack, all of the Yazidi villages and compounds were targeted, and 2.5% of the overall Yazidi population have been killed or are missing. Almost all of Sinjar's Yazidis are displaced and live in displacement camps of host communities, away from their ancestral land. Many have left or are leaving the country altogether to seek asylum abroad. The Yazidis consider the attack as a threat to their existence and their ties to their land, as confidence to once again live safely in Sinjar may never be restored.

SGBV committed against Yazidi women and girls has been an integral part of ISIL's plan to destroy the Yazidi community. This is in line with international jurisprudence. For instance, in the first international judgment on this issue, it was held that "*rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.*"⁷⁴

iv. Manifest pattern

The explicit requirement for a "manifest pattern" as a contextual element for genocide in the ICC Statute requires that each of the perpetrated criminal acts (*actus rei*) align with a manifest plan or pattern. This requirement does not mean that an individual must have taken part in developing the plan, but rather that he/she was aware of such plan or its surrounding circumstances and its ultimate objective. It can be argued that moving women and children from Sinjar into captivity and slavery in ISIL strongholds in Syria and Iraq indicate a manifest pattern. The International Criminal Tribunal for Rwanda (ICTR) concluded in *Akeyasu*⁷⁵ and *Kayisheman*⁷⁶ that the systematic and widespread commission of criminal acts, similar to those committed against the Yazidis, suggest the existence of a plan or a policy.

ISIL committed sexual and gender based crimes under the prohibited acts of genocide

Testimonies collected by the FIDH delegation and the information presented in this report provide sufficient grounds to believe that ISIL committed, in a manifest pattern, prohibited acts as set out in Article 6 of the ICC Statute, against individual Yazidis because of his or her belonging to the Yazidi group, and with the intention of destroying the group in whole or in part. The documented SGBV crimes fall primarily under four of the five prohibited acts of genocide:

- I. Genocide by causing serious bodily or mental harm to members of the group:** ISIL's sexual and gender based violence committed against Yazidi women and girls, as demonstrated in the findings of this report, include rape, sexual violence and slavery, torture, inhuman or degrading treatments, and forcible transfer. These crimes, have been found by international tribunals, to cause serious mental or bodily harm and were explicitly linked to genocide for the first time by the ICTR in *Prosecutor v. Akayesu*. The Trial Chamber in the said case found that "*rape and sexual violence [...] [are] one of the worst ways of inflict[ing] harm on a victim as he or she suffers both bodily and mental harm.*"⁷⁷ Since then, the same approach has been used by other international courts, including the ICC, where the Pre-trial Chamber in the Al Bashir case found that acts of rape, which were committed against targeted ethnic groups in a manifest pattern, fulfill "*the material element of the crime of genocide by causing*

72. ICTR, *Akayesu*, Trial Chamber, *supra* note 65, para. 497.

73. ICTY, *Prosecutor v. Krstic* (IT-98-33), Appeal judgement, 10 April 2004, para. 8.

74. ICTR *Akayesu*, Trial Chamber, *supra* note 65, para. 731.

75. *Ibid.*

76. *Ibid.*, para. 45

77. *Ibid.*, para. 731.

serious bodily or mental harm, as provided for in article 6(b) of the Statute, [...]."78

- II. Genocide by deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part:** the findings of this report demonstrate that in addition to the countless acts of rape, sexual slavery and torture that were committed against Yazidi women and girls, the lack of adequate life conditions, such as basic food, sanitary and medical needs, were prevalent. In international jurisprudence, conditions of life calculated to bring about a group's physical destruction in whole or in part are methods that do not necessarily kill the members of a group immediately, but ultimately do so. This includes "*subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement*".⁷⁹ Additionally, rape has been found to be part of these conditions, namely in *Prosecutor v. Kayishema et al* where the ICTR Trial Chamber found that such life conditions include "*rape, the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period, provided the above would lead to the destruction of the group in whole or in part*".⁸⁰
- III. Genocide by imposing measures intended to prevent births within the group:** the findings of this report make clear that ISIL's policy behind separating Yazidi women from their communities (while in the meantime executing the men of the group and indoctrinating the children) was based on the group's intention to strip women of their Yazidi identity and make them sex slaves, wives or servants of ISIL militants, or potential mothers of Muslim children. International jurisprudence, particularly the ICTR *Prosecutor v. Akayesu* judgment, confirms that the "*separation of the sexes and prohibition of marriages*"⁸¹ are among others measures of preventing births within a group. It has also been mentioned that Yazidis form a closed ethno-religious group that does not allow converting into Yazidism and allows procreating only through marriages within the Yazidi community. By executing men and abducting and enslaving women, girls and children, ISIL's direct and indirect measures could have and were intended⁸² to affect birth within the Yazidi group. Additionally, the trial chamber in *Prosecutor v. Akayesu* emphasises that these measures are not exclusive to physical measures but extend to mental measures as well. It explains that "*rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate*".⁸³ It can be argued that the severe trauma suffered by minor girls and unmarried women will have an impact on their ability to marry or procreate upon their return. Further, FIDH found in the mission that in general, women in the Yazidi community who lost their husbands do not remarry while their fate was still unknown. As such, the SGBV crimes committed against Yazidi women and girls result in the prevention of births within the Yazidi group and could continue to do so.
- IV. Genocide by forcibly transferring children of the group to another group:** in the context of SGBV crimes committed against Yazidi women and girls, it has been documented in this report that Yazidi girls, as young as seven years old, have been forcibly removed and taken into sexual slavery. Additionally, mothers taken into sexual slavery have recounted that their children, boys and girls, have been temporarily or permanently removed from their custody either to indoctrination camps or for slavery, including sexual slavery. Some women expressed concern over how, after returning from captivity, their children did not speak the Kurdish language any longer. Other mothers expressed how their children, particularly boys who went through indoctrination, rejected them and referred to them as '*devil worshipers*' who will go to hell. Scholars have explained that although not mentioned in the Genocide Convention nor in the ICC Statute, "*the genocide act of transferring children only makes sense*

78. *Prosecutor v. Omar Hassann Ahmad Al Bashir*, Pre-Trial Chamber 1, Second Decision on the prosecution's Application for a Warrant of Arrest, 12 July 2010, para. 30.

79. ICTR, *Akayesu*, *supra* note 65 para. 505.

80. ICTR, *Kayishema*, *supra* note 65, para. 116.

81. ICTR, *Akayesu*, *supra* note 65 Judgment, para. 507.

82. Schabas, *Genocide in International Law: The Crimes of All Crimes*, 2009, page 198.

83. ICTR, *Akayesu*, *supra* note 65, Judgment, para. 508.

*with relatively young children*⁸⁴ as opposed to older children whose cultural identity won't be as affected when moved to another group. This goes in line with ISIL's conduct in which it executed all boys with visible body hair and captured only women and girls for enslavement, and younger boys for indoctrination. Among the most known cases of genocide by transferring children is Australia's "*lost generations*" case in which the government and church agencies forcedly removed children away from their aboriginal and Torres Strait Islander families to introduce them into "European society and culture". In the 1997 report of the national inquiry into the separation of Aboriginal and Torres Strait Islander Children from Their Families, it was found that : "*When a child was forcibly removed that child's entire community lost, often permanently, its chance to perpetuate itself in that child. The Inquiry has concluded that this was a primary objective of forcible removals and is the reason they amount to genocide.*"⁸⁵

To conclude, it is evident that all elements of genocide in the context of the SGBV against Yazidi women and girls are met, and that foreign fighters perpetrating the said crimes should be prosecuted and held accountable on that basis.

Sexual and gender based violence amounting to crimes against humanity

The ICC Statute defines crimes against humanity as the commission of a set of specified acts "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".⁸⁶ As such, to prove that the SGBV crimes against Yazidi women and girls amount to crimes against humanity, three contextual elements need to be proved: the existence of an attack against a civilian population pursuant to a state or organisational policy; the characterisation of the said attack, as in asserting whether it was widespread or systematic; and establishing the *nexus* between the widespread and systematic attack and the SGBV crimes, in addition to establishing the knowledge of that *nexus* by the perpetrators of SGBV crimes.

(a) Contextual elements:

i. Sexual and gender-based crimes committed as part of an attack

The ICC Statute defines an attack as "*a course of conduct involving the multiple commission of acts [...] against any civilian population, pursuant to or in furtherance of a state of organizational policy to commit such attack*".⁸⁷ As such, for the SGBV crimes committed against Yazidi women and girls to amount to crimes against humanity, these crimes need to have taken place within a multiple commission of acts referred to in Article 7(1) of the ICC Statute and directed against a civilian population pursuant to a state or organisational policy.

International jurisprudence clarifies that an attack is not necessarily part of an armed conflict⁸⁸ nor limited to the use of armed force, rather, it may encompass any mistreatment of the civilian population.⁸⁹ As such, an attack is interpreted as a series of actions directed against a civilian population as opposed to an isolated act.⁹⁰

The definition of who is a "civilian population" has also been clarified by international jurisprudence to be the opposite of "*members of armed forces and other legitimate combatants*".⁹¹ It is important to

84. Schabas, *supra* note 82 page 203.

85. Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bring Them Home*, 1997: https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf.

86. ICC Statute, Article 7(1).

87. *Ibid.*, Article 7(2)(a).

88. ICTY, *Prosecutor v. Krnojelac* (IT-97-25-T), Judgement, 15 March 2002, para. 54.

89. ICTY, *Prosecutor v. Perišić* (IT-04-81-T), Judgement, 6 September 2011, para. 82.

90. ICC, *Prosecutor v. Katanga*, Trial Chamber II Judgement, 7 March 2014, para. 1101.

91. ICC, *Bemba*, Pre-Trial Chamber II, Decision on the confirmation of charges, 15 June 2009, para.78.

note that the civilian population needs to be the intended – and not incidental – target of attack,⁹² and that the presence of non-civilians within the group does not affect the status of the group as a civilian group when it is primarily composed of civilians.⁹³ Finally, the attack needs to have been carried out pursuant or in furtherance of a state or organisational policy that encourages or promotes such an attack against a civilian population. While the term “policy” is not defined by the ICC Statute nor its Elements of Crimes,⁹⁴ it has been found by international jurisprudence to refer to “*the fact that a State or organisation intends to carry out an attack against a civilian population, whether through action or deliberate failure to take action*”.⁹⁵ The proof of the existence of such State or organisational plan, however, has been normally inferred from “*the repeated actions occurring according to a same sequence, or the existence of preparations of collective mobilisation orchestrated and coordinated by that State or organisation*”, considering that the dissemination of a pre-established plan to encourage an attack against a civilian population is rare, but not wholly excluded.⁹⁶

Against these required elements, it has been demonstrated in the present report that a series of simultaneous and consecutive actions were directed against the Yazidi population, including the SGBV crimes, and that together they have formed the overall attack against the Yazidi population. It has been established that Yazidis in Sinjar are a civilian population that has been the primary and intended target of ISIL’s attack. Finally, the report highlights ISIL’s policy which manifested in its written publications and online content, making it clear that the attack on Sinjar’s civilian population followed a pre-meditated plan and a policy that has been disseminated to the group’s members. The preparations of collective mobilisation, such as moving the population between different holding points, the separation of men and women, and the organisation of slave markets serve as an additional proof of the existence of an organisational policy.

ii. Sexual and gender-based crimes were widespread and systematic

For acts of violence, including SGBV presented in this report, to be considered systematic or widespread, it must be proved that they were not spontaneous or isolated. In the ICC Katanga judgement, a widespread attack was found to mean the “*large scale nature of the attack and to the number of targeted persons*”, whereas a systematic attack was found to refer to “*the organized nature of the acts of violence and the improbability of their random occurrence*”.⁹⁷

The Context section of this report describes how ISIL’s attack targeted civilians from all of Sinjar’s Yazidi residential complexes, sub-districts, as well as Sinjar city, mountain and various villages, resulting in mortality and kidnappings from nearly all of the targeted areas. Most of Sinjar’s Yazidi population is displaced consequently. As such, it can be argued that the attack and subsequent SGBV were widespread. This logic was applied by Ruto, Kosgey and Sang’s Pre-Trial Chamber which found that: “*On the basis of the material provided to the Chamber, there are substantial grounds to believe that the attack perpetrated was widespread. Viewed as a whole, the evidence shows that the attack was massive, frequent, carried out collectively with considerable seriousness and directed against a large number of civilian victims*”.⁹⁸ “*This is demonstrated by the geographical scope of the attack*”.⁹⁹

It was also demonstrated that the attack was organised and orchestrated with ISIL groups targeting the Yazidi areas from different directions, controlling vital routes, and moving the captured population toward joint holding points. Additionally, following the attack, ISIL has provided sufficient proof through its videos, statements and publications that the attack and subsequent crimes were committed in accordance with a premeditated group policy. Therefore, it can be argued that the attack and subsequent crimes were systematic.

The SGBV committed against Yazidi women and girls share patterns of SGBV that have been

92. *Ibid.*, paras. 76 and 97-98.

93. ICTY, *Prosecutor v. Jelisić* (IT-95-10), Trial Judgement, 14 December 1999, para. 54.

94. ICC Elements of Crimes, available at: <https://www.icc-cpi.int/resource-library/Documents/ElementsOfCrimesEng.pdf>

95. ICC, *Katanga*, *supra* note 90, para. 1108.

96. *Ibid.*, para. 1109.

97. *Ibid.*, para. 1123.

98. ICC, *Prosecutor v. Ruto, Koshey and Sang*, Decision on the confirmation of charges, 23 January 2012, para. 176.

99. *Ibid.*, para. 177.

considered by international courts to have occurred in a widespread or systematic context and found to amount to crimes against humanity. For instance, the International Criminal Tribunal for the former Yugoslavia (ICTY) found in the *Karadzic* case that the elements of forced displacement of a vast number of civilians, forced detention in holding sites, rape and other forms of sexual violence in detention sites, among others, to be indicative of an organisational policy that qualifies the acts as crimes against humanity.¹⁰⁰

iii. Nexus and knowledge

It is essential to prove that SGBV presented in this report were part of the widespread and systematic attack, and that the perpetrators knew that these acts formed part of the attack. In considering whether SGBV formed part of the various components of the attack, the report demonstrates that acts of SGBV were at the core of the overall attack against the Yazidi population. This has been evident in the group's publicised policies and other publications, and in how SGBV was launched in parallel with ISIL's attack against the Yazidi geographical area. This report presents some of the publications dedicated to instructing ISIL militants on the treatment of the enslaved women, girls and children. Considering the large scale, organisation and publicisation of the attack against the Yazidi population, ISIL militants committing SGBV crimes against Yazidi women and girls would necessarily have been aware that their conduct was part of ISIL's widespread and systematic attack on the Yazidi population. International jurisprudence confirms that the perpetrators' awareness that their conduct is part of an attack may be inferred from circumstantial evidence,¹⁰¹ even if perpetrators were not fully aware of "*all characteristics of the attack or the precise details of the plan or policy of the State or organization*".¹⁰²

(b) Documented sexual and gender based crimes as crimes against humanity

As detailed above, there is no doubt that multiple forms of sexual and gender based crimes have and continue to be committed against Yazidi women and girls.

This report, based primarily on 16 testimonies of victims enslaved by foreign fighters, establishes that SGBV were committed by foreign fighters including enslavement (see sections 2 to 4 of the findings), forcible transfer (see sections 2 and 3 of this report), severe deprivation of physical liberty (see sections 1 to 3), torture (see primarily sections 3 and 4 of the findings), rape and sexual slavery (see primarily sections 2 and 3 of the findings), and persecution on ethnic, religious and gender grounds (sections 1 to 4 of the findings).

The UN Commission of Inquiry on Syria has found¹⁰³ that the sexual enslavement, enslavement and beating of Yazidi women and girls constitute the crimes against humanity of sexual slavery, rape, sexual violence, enslavement, torture, other inhumane acts, and severe deprivation of liberty, which were part of a pattern of crimes committed against Yazidis on discriminatory grounds based on their religion, and as such also amount to the crime against humanity of persecution.¹⁰⁴

As such, it is evident that all elements of crimes against humanity in the context of the SGBV against Yazidi women and girls are met, and that foreign fighters perpetrating the said crimes should be prosecuted and held accountable on that basis.

100. ICTY, *Prosecutor v. Karadzic* (IT-95-5/18-T), Trial Judgment, 24 March 2016, paras. 2614 to 2624.

101. ICC, *Prosecutor v. Katanga and Ngudjolo*, Decision on the confirmation of charges, 30 September 2008, para. 402.

102. ICC Elements of Crimes, note 94, Article 7, para. 2.

103. COI Report, *supra* note 6, para. 168.

104. ICTY, *Prosecutor v Tadić* (IT-94-1), Trial Judgment, 7 May 1997, paras. 704-710; ICTY, *Prosecutor v Kupreskic* (IT-95-16), Trial Judgment, 14 January 2000, para. 594.

2. National and international accountability efforts

Certain steps towards accountability for the horrors perpetrated by ISIL against the Yazidi community have been taken at both the national and international levels. This section seeks to analyse these steps with a view to formulating recommendations to the relevant authorities in order to help advance the accountability agenda and help achieve justice for all ISIL victims.

As a general rule, accountability efforts targeting ISIL to date have been primarily conducted within the framework of counter-terrorism laws and policies, an approach that has already been highlighted as being insufficient as regards ensuring a central role for victims and restoring the faith of affected communities through justice.

Iraq and Syria

- Iraq: the applicable legal framework

At present, Iraqi law does not provide for the prosecution of international crimes such as those perpetrated by ISIL against the Yazidi population. While international crimes are referred to in Law No. 10 (2005),¹⁰⁵ this law has limited temporal scope (1968-2003) and therefore cannot be used to prosecute ISIL members for genocide, crimes against humanity, torture or war crimes committed in Iraq since 2013 and especially following the Sinjar attack in August 2014.

Instead, Iraqi criminal law's response to ISIL crimes, including those perpetrated against the Yazidi population, has systematically been found in its counter-terrorism laws, specifically Law No. 13 (2005).¹⁰⁶ This law has been criticised for being overly broad in scope and ambiguous in its definition of terrorism and terrorist activities, and not respectful of the right to a fair trial with the result that it violates Iraq's international obligations in particular under the International Covenant on Civil and Political Rights (ICCPR), as well as the Arab Charter on Human Rights, to ensure that its criminal laws are precise and free from ambiguity and also do not overly restrict rights to freedom of expression, association and assembly.¹⁰⁷

Further, the law imposes the death penalty for any act of "terrorism" or "crimes against state security" (as defined in the law)¹⁰⁸ regardless of the scope and severity of the act in question, which may or may not result in lethal or extremely grave consequences. The imposition of the death penalty in this way – without regard to the severity or the degree of participation of the perpetrator – contravenes Iraq's obligations to protect the right to life and prohibit the arbitrary deprivation of life under the ICCPR and the Arab Charter. FIDH is firmly opposed to the use of the death penalty for all crimes and in all circumstances. It is ineffective as a form of punishment and has been abolished in a majority of countries. Documentation work conducted by FIDH has shown that the death penalty amounts to inhuman treatment and torture, is commonly applied at the end of an unfair trial, and that its application is very often discriminatory.

Looking beyond terrorism, the Iraqi Penal Code does not punish SGBV as international crimes. Under Iraqi law, provisions relevant to sexual violence are not gender neutral, ambiguous in

105. An English translation is available at: <http://gjpi.org/wp-content/uploads/2009/02/iraqstatuteengtrans.pdf>.

106. An English translation is available at: <http://gjpi.org/wp-content/.../anti-terrorism-law-iraqi-no-13-2005.doc>. Note that the Kurdish Parliament adopted a similar law in 2006, renewable every two years. As at April 2018, this law had not been renewed since 2014, when the Kurdish Parliament was suspended.

107. See, for example, American Bar Association Center for Human Rights, *Compliance of Iraq's Anti-Terrorism Law (2005) with international human rights standards, Memorandum to the Iraq National Commission on Human Rights*, June 2014: https://www.americanbar.org/content/dam/aba/administrative/human_rights/jd_anti_terrorism_law_iraq.authcheckdam.pdf.

108. Law No. 13 (2005), Articles 2 and 3.

definitions, and reflect social attitudes and values in relation to gender norms.¹⁰⁹ These provisions are therefore inconsistent with applicable international law standards. While it would be possible in principle for the Iraqi authorities to prosecute ISIL suspects under other ordinary criminal law charges, such as murder, assault or kidnapping, this would be generally unrepresentative of the pattern of crimes perpetrated by ISIL against the Yazidis (particularly as regards genocide and sexual violence constitutive of crimes against humanity) and for that reason is unsatisfactory, as well as unlikely to meet the expectations of victims.

- Steps taken by the Kurdish authorities

Shortly after the attack on Sinjar, on 20 August 2014, the Kurdish regional authorities established a Duhok-based committee (the Committee) attached to the office of Prime Minister to investigate, document and collect evidence of genocide, crimes against humanity, and war crimes committed by ISIL members against inhabitants of Kurdish territories outside the administration of the Kurdistan Regional Government, which include the Yazidi community. As mentioned above, the Kurdish authorities have formally supported the rescue operations organised by victims' families, with the help of a network of smugglers and intermediaries, including by providing families with financial reimbursement of the "buy-back" fees.

The Committee is overseen by a judge and investigations are conducted by investigative judges. The Committee is supervised by the High Committee for Recognition of Genocide against Yazidi Kurds and other Ethnic and Religious Nationalities (the High Committee), which consists of a team of experts including judges, ministers and international law experts, headed by the Minister of Anfal and Martyrs, with functions such as advocacy and lobbying for national and international accountability mechanisms.

In a February 2017 meeting with the Committee, the FIDH delegation learned that since its inception, the Committee had gathered over 2000 testimonies and files from different sources, primarily from Yazidi victims and witnesses who have arrived in the KRG region since the Sinjar attack. Information gathered is sorted out into categories including: information on survivors of mass killings and executions; information on abducted women; testimonies from rescued women or those who have escaped; testimonies from the population of Sinjar's villages; testimonies from those who remained in Sinjar; information extracted from ISIL publications; and evidence collected from mass graves by the Ministry of Martyrs' specialised teams. The FIDH delegation further observed that, when conducting its investigations, the Committee has no authority to interrogate perpetrators of Iraqi or foreign nationality regardless of whether they are being held in KRG or federal prisons.

At the time of the first FIDH mission in February 2017, meetings with the Committee and the High Committee showed that the efforts by the Kurdish authorities had solely been of an investigative nature and for evidence gathering, with no prosecution mechanism for the crimes documented. Among the reasons for the absence of prosecution efforts, in particular those committed against the Yazidi community, is the fact that the prosecution of international crimes is not, currently, provided for under Iraqi law.

Capital sentences are issued in Iraqi Kurdistan, with reports of over 250 convicts waiting on death row. However, a *de facto* moratorium (suspension) on the use of the death penalty is understood to have been in place since 2008, though exceptions are made for terrorism convictions.¹¹⁰

- Steps taken by the Iraqi authorities

Prior to ISIL's defeat, rather than prioritise holding ISIL perpetrators to account, the Iraqi authorities seemed to favour an approach of granting financial compensation to Yazidi victims of ISIL.

109. Iraqi Penal Code, No. 111 of 1969, July 1969. An English translation is available at: <http://www.refworld.org/docid/452524304.html>. See, in particular, Article 393(1) on Rape, Article 396(1) on Sexual Assault, Article 400 on Immodest Act Without Consent, and Article 383(1) on Endangering a Child (including through sexual violence).

110. Rudaw, *Capital punishment in Kurdistan: Over 250 convicts on death row*, 14 March 2017: <http://www.rudaw.net/english/kurdistan/140320174>.

However, it has been minimal and has not included all victims. By formally categorising survivors and their families as "victims of terrorism", Yazidi (and any other) victims of ISIL are entitled to claim compensation from the Iraqi Ministry of Social Affairs. Further, in 2016, the Iraqi Parliament declared the Sinjar region a "disaster zone", meaning that the area is eligible for funds designated for the reconstruction of regions destroyed by ISIL.

These policies remove the distinction between Yazidi victims and other victims of ISIL, meaning that the specific and systematic nature of the violations suffered by the Yazidis is neither adequately recognised nor addressed. This approach also generates an increased risk that victims may take justice into their own hands, committing further crimes in the process.

The number of criminal proceedings has increased since ISIL's defeat in Iraq.

According to a December 2017 Human Rights Watch report, approximately 7,000 people who have faced charges under Iraq's counter-terrorism law since 2014, 92 have been sentenced to death and executed.¹¹¹ Media reports have indicated that foreign fighters are among ISIL members receiving the death penalty for their membership in a terrorist group.¹¹² In June 2018, Iraqi Prime Minister Haider al-Abadi reportedly ordered the "*immediate execution*" of all convicted terrorists on death row in Iraq. According to a judicial source quoted in the media, as at April 2018 more than 300 people (including 100 foreign women) had been sentenced to death by Iraqi courts for ISIL membership, and hundreds of others to life imprisonment.¹¹³

Reports released in the media and documentation by human rights groups indicate that ISIL suspects and convicts are detained in inhumane conditions¹¹⁴ and that proceedings targeting them are far from satisfactory in terms of the right to a fair trial and due process guarantees. The December 2017 Human Rights Watch report revealed a "*haphazard approach and rampant due process violations*" by the Iraqi authorities when dealing with the prosecution of ISIL suspects, that are in turn "*likely to deny justice to the victims of the worst abuses*".¹¹⁵

- Proposed reforms to Iraq's criminal law

In order to move forward with necessary forms, a taskforce on justice and accountability in Iraq consisting of chairpersons and members of the Iraqi Judicial Association in Baghdad and the Investigator's Association for the Rule of Law in the Kurdistan Region was formed in April 2016. The taskforce is led and supported by the Human Rights Office of the UN Assistance Mission in Iraq (UNAMI). The taskforce meets regularly to discuss legal and procedural reforms mainly in relation to crimes committed by ISIL¹¹⁶ and has held discussions on a draft law to provide jurisdiction for Iraqi courts over international crimes committed in Iraq, including war crimes, crimes against humanity, and genocide, supported by international experts on criminal law and the Human Rights Office of UNAMI. The Investigative Team established by the UN Security Council (see below) has a capacity-building mandate and is also expected to contribute to these legal reforms. The legislative process as well as the effective implementation of any new law, while necessary, will take time, leaving victims without satisfactory access to justice in their home country in the interim.

111. Human Rights Watch, *Iraq: Flawed Prosecution of ISIS Suspects Undermines Prospects for Justice*, 5 December 2017: <https://www.hrw.org/news/2017/12/05/iraq-flawed-prosecution-isis-suspects>.

112. A Russian national is understood to have been the first foreign fighter to receive a death sentence (see The Telegraph, *Iraq sentences Russian ISIL fighter to death by hanging in first ruling of its kind on foreign jihadis*, 13 September 2017: <https://www.telegraph.co.uk/news/2017/09/13/iraq-sentences-russian-isil-fighter-death-hanging-first-ruling/>). The Iraqi courts have also sentenced a German woman who traveled to Syria with her two daughters to death (see DW News, *Iraq to hang German woman for belonging to 'Islamic State'*, 21 January 2018: <http://www.dw.com/en/iraq-to-hang-german-woman-for-belonging-to-islamic-state/a-42243260>) as well as at least two French women (see further, *infra*).

113. Al Jazeera, *Iraqi PM orders immediate execution of 'all convicted terrorists'*, 28 June 2018: <https://www.aljazeera.com/news/2018/06/iraqi-pm-orders-execution-convicted-terrorists-180628185501947.html>

114. The Independent, *Shocking photos emerge of suspected Isis fighters held like battery chickens in overcrowded prison*, available at: <http://www.independent.co.uk/news/world/middle-east/isis-fighters-prison-photos-crowded-chicken-factory-images-iraq-mosul-a7849686.html>

115. Human Rights Watch, *supra* note 111.

116. UNAMI Herald, March-April 2017, para. 54: http://uniraq.org/FlipNewsletter/UNAMI_Herald_March_April_2017_web.pdf.

- Justice processes following the capture of ISIL fighters by Kurdish forces in northern Syria

Thousands of ISIL fighters and their families have been captured by the Kurdish-led Syrian Democratic Forces (SDF) in Syrian Kurdistan (a region known as Rojava), following the defeat of ISIL and the destruction of the caliphate.

According to media reports, while (as of April 2018) 700 Syrian ISIL fighters had already been tried, none of the hundreds of foreign fighters detained by the SDF had yet appeared before a judge.¹¹⁷ The Kurdish authorities have called on the governments of foreign fighters' home countries to take responsibility for them, adding that maintaining the captured foreign fighters in detention is a drain on resources.

In any event, criminal prosecutions conducted in Syrian Kurdistan pose a series of problems. Firstly, the region is not a recognised State, and thus its institutions have no formal status, raising questions over the validity of any legal proceedings that it engages in, and any judgments issued by its courts. Given the volatility of the situation in Syria, in particular following the military offensive launched by Turkey in January 2018, there is also no assurance that the current configuration will endure, generating a risk that ISIL captives could escape or be released.

Serious concerns over due process and conditions in detention also persist, as well as questions over the independence and expertise of judges.¹¹⁸ A media report issued in January 2018 on proceedings before the counter-terrorism court in Qamishli, northern Syria, shows how ISIL suspects had systematically been denied access to a lawyer, without any right to appeal their convictions which can lead to prison sentences of between one and 20 years.¹¹⁹ As a result, FIDH does not believe that credible justice for ISIL perpetrators in northern Syria is a real possibility.¹²⁰

International Criminal Court

Since the Sinjar attack, the Office of the Prosecutor (OTP) of the International Criminal Court has received several communications¹²¹ from civil society organisations, including Yazidi organisations, based on Article 15 of the ICC Statute. Although Iraq is not a State Party to the ICC Statute (despite calls from both the UN and the EU for Iraq to accede to it), these communications alleged that the ICC has jurisdiction, as State Party nationals (i.e. foreign ISIL fighters) were involved at a high level in the perpetration of genocide and crimes against humanity against the Yazidi population. Civil society groups, which in some cases were supported by the KRG, therefore urged the OTP of the ICC to open a preliminary examination to investigate these crimes. In October 2014, the OTP also met with a delegation led by the Kurdish Minister of Martyrs that asked for the Court's intervention in prosecuting ISIL members responsible for the crimes committed against the Yazidis.¹²²

In response to the various requests by national and international civil society organisations and the KRG government, ICC Prosecutor Ms. Fatou Bensouda issued a statement on 8 April 2015 in which she announced: "*the prospects of my Office investigating and prosecuting those most responsible, within the leadership of ISIL, appear limited.*"¹²³ Justifying this decision, Ms. Bensouda said that

117. As at April 2018. See Europe 1, 13 April 2018: <http://www.europe1.fr/international/syrie-les-kurdes-menacent-de-relacher-les-djihadistes-francais-de-daech-3625727>.

118. Human Rights Watch, *Ensure Fair Trials of Syria ISIS Suspects*, 13 February 2018: <https://www.hrw.org/news/2018/02/13/ensure-fair-trials-syria-isis-suspects>.

119. France Info, 23 January 2018: https://www.francetvinfo.fr/france/jihadistes-francais/video-pas-d-avocat-pas-d-appel-une-audience-dans-un-bureau-comment-la-cour-antiterroriste-kurde-juge-les-jihadistes_2574880.html.

120. Ligue des droits de l'homme, France, 8 January 2018: <https://www.ldh-france.org/les-ressortissants-francais-arretes-en-syrie-en-irak-doivent-etre-juges-en-france/>.

121. *Supra*, note 16.

122. Kurdistan Regional Government, *KRG seeks recognition of ISIS crimes as acts of genocide*, 8 November 2014: <http://cabinet.gov.krd/a/d.aspx?s=040000&l=12&a=52479> (last accessed December 1, 2017).

123. Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS, 8 April 2015.

the jurisdictional basis for opening a preliminary examination at that stage was too narrow. This was the case since information made available to her office suggested that ISIL's political and military leadership was composed primarily of Syrian and Iraqi nationals, both of which are non-Party States to the ICC Statute. Finally, the ICC Prosecutor welcomed further submissions on the positions occupied by State Party nationals within the ISIL organisational hierarchy.

The OTP's position was most recently challenged in a further communication submitted in July 2017.¹²⁴ This communication argued that the Court's position in declining to open a preliminary examination into the situation of Iraq, despite having subject matter, temporal and personal jurisdiction, is overly restrictive and does not consider ISIL's complex hierarchy including those directly implicated in sexual and gender-based crimes, and those outside its military command structure. It was also argued that such a position is contradictory to various OTP policies, which shift towards an "upward building" prosecutorial strategy that includes investigating and prosecuting mid and high-level perpetrators in order to identify and subsequently pursue those most responsible.

United Nations

Lobbying for a UN mandated accountability mechanism has been ongoing since ISIL began claiming territory in northern Iraq and especially since the Sinjar attack. Despite numerous requests to the Security Council to authorise an investigation into crimes committed in Iraq, it was only in September 2017 that a resolution establishing an "Investigative Team" to "*support domestic efforts to hold ISIL (Da'esh) accountable by collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by the terrorist group ISIL*" was finally adopted.¹²⁵

Despite condemning "**all** violations of international humanitarian law, violations and abuses of international human rights law, and acts of terrorism" (emphasis added), the mandate given to the Investigative Team in Resolution 2379 is limited to holding ISIL perpetrators accountable. This is an important and decisive step towards justice and accountability, but does not go far enough. While ensuring accountability for ISIL violations, including crimes against humanity and genocide perpetrated against the Yazidi community as detailed in this report, is clearly essential, the Security Council's selective approach has led rights groups to label Resolution 2379 as a "*missed opportunity for comprehensive justice*".¹²⁶

The terms of reference for the Investigative Team were submitted to the Security Council on 9 February 2018, following an extension to the deadline (submission was initially due to take place within 60 days of the adoption of Resolution 2379 i.e. in November 2017).¹²⁷ It is understood that the delay in submitting the terms of reference was due to political factors, including concerns over the capacity of the Iraqi judicial system and the central government's insistence on applying the death penalty in ISIL trials. A few days later, on 13 February 2018, the Security Council approved the terms of reference as submitted by the Secretary-General.

The mandate conferred on the Investigative Team in the terms of reference is identical to that set out in Resolution 2379. The Investigative Team will work to support investigations and prosecutions of ISIL suspects by the Iraqi authorities, as well as (on request) by authorities in third countries. Alternative uses of evidence collected by the Investigative Team are to be determined in agreement with the Iraq government on a "case by case basis". Regrettably, looking into potential violations committed by other actors during the conflict, such as central and regional government forces as well as Popular Mobilization Forces (historically, Shia military units that were later mainstreamed

124. Submission by the Global Justice Center and the Bar Human Rights Committee urging the opening of a preliminary examination, July 2017: <http://globaljusticecenter.net/documents/Final.Yazidi%20Submission.07.07.2017.pdf>

125. UN Security Council Resolution 2379 (2017), S/RES2379, 21 September 2017.

126. Human Rights Watch, 21 September 2017: <https://www.hrw.org/news/2017/09/21/iraq-missed-opportunity-comprehensive-justice>.

127. Letter from the Secretary-General to the President of the Security Council, S/2018/118, 9 February 2018.

into central government forces) – including torture, extra-judicial killings, and destruction of civilian property – appears to be outside the Investigative Team's mandate.

The terms of reference state that evidence collected by the Investigative Team is to be used in "fair and independent criminal proceedings" and to be shared "in accordance with United Nations policies and best practice and relevant international law, including international human rights law, rules and standards". As set out above, the conduct of proceedings involving ISIL suspects to date as well as detention conditions in Iraq (and, to the extent relevant, northern Syria) fall well short of these benchmarks. The Investigative Team should not support criminal proceedings that systematically fail to ensure respect for due process rights, including the right to a defence and to an appeal.

Further, the terms of reference do not rule out support from the Investigative Team to proceedings in which the application of the death penalty is a possibility. This is extremely problematic and a serious blow to the credibility of this new mechanism. The Investigative Team should not have any role in supporting prosecutions where the death penalty may be applied.

In recognition of potential capacity and expertise gaps in the Iraqi judicial system, both Resolution 2379 and the Investigative Team's terms of reference mention the provision by States and regional or intergovernmental organisations of "appropriate legal assistance and capacity building" measures.

FIDH is aware that certain European countries have already undertaken bilateral capacity-building exercises. At EU level, the Council of the European Union adopted a new strategy on Iraq in January 2018 that seeks to ensure the promotion of an effective and independent justice system, as well as accountability.¹²⁸ While the importance of accountability for "crimes committed by **all** the parties, ensuring due process" (emphasis added) as well as that "grievances of all victims need to be addressed equally" are both recognised in the EU strategy, the operational provision on EU support follows Resolution 2379 and the Investigative Team's terms of reference in focusing exclusively on violations by ISIL. In addition, despite expressly stating the EU's opposition to the death penalty and calling on both the Iraqi and Kurdish authorities to establish a moratorium on the use of capital punishment with a view to abolishing it, the Council conclusions do not expressly exclude EU support to legal proceedings in which the death penalty may be applied. This is an unacceptable contradiction within the EU strategy. Finally, the issue of "Foreign Terrorist Fighters", especially returnees, is raised in the strategy as one of "special interest".¹²⁹ The EU emphasises the need for cooperation and information sharing in this regard, without specifying what measures should be taken in respect of foreign fighters in Iraq and Syria, or on their return.

Foreign ISIL fighters' countries of origin

As explained in the introduction to this report, both the Iraqi and KRG authorities as well as third States (particularly across Europe) have tended to exclusively use counter-terrorism frameworks to hold their nationals accountable for seeking to join and for fighting with groups such as ISIL. The deficiencies of such an approach and of failing to investigate the involvement of such persons in the perpetration of other crimes, such as crimes against humanity and genocide, as regards the participation of victims and restoring faith of affected communities in justice processes were also put forward. The majority of foreign ISIL fighters' countries of origin have the possibility to move beyond an exclusively counter-terrorism lens, by prosecuting their nationals for international crimes. Such an approach to accountability would be considerably more consistent with the expectations and needs of victims, and would also allow for the reality of the crimes committed to be acknowledged.

A global debate has been raging on what to do with ISIL fighters captured following the defeat of the caliphate and detained by the central or regional authorities in Iraq, or by Kurdish-led Syrian Democratic Forces in northern Syria.

128. EU Council Conclusions on Iraq, 22 January 2018: <http://www.consilium.europa.eu//media/32406/st05285en18.pdf>

129. *Ibid.*

As regards captured foreign fighters and their families, authorities in their countries of origin have thus far refused to intervene to repatriate and subsequently prosecute them at home. Authorities in France, which has the highest number of ISIL fighters in Europe and the fifth highest number globally,¹³⁰ have insisted that captured fighters should face justice “wherever they are”.¹³¹ During the battle for Raqqa, one government minister even went as far as to say that the best solution would be for foreign fighters to die in the fighting.¹³²

Of the estimated 688 French adults accompanied by 500 children still thought to be in former ISIL territory, approximately 100 French nationals (including several women and around 32 children) are understood to have been arrested and detained in northern Syria and around 5 French nationals are thought to be held in Iraq.¹³³ Concerning French fighters’ wives and children, in a television interview given in November 2017, French President Emmanuel Macron made clear that the issue of their return or repatriation would be determined on a case by case basis and that certain among them would be tried along with their relatives in the country where they were captured.¹³⁴

Since the defeat of ISIL, the French authorities have made it clear that Iraq, as a recognised State with rule of law, is a justified forum for judging French ISIL suspects. A French government spokesperson confirmed in early 2018 that Kurdish groups in northern Syria are able to ensure a fair trial, and that suspects can also be tried there.¹³⁵ This position is understood to arise from fears that repatriated foreign fighters will try to manipulate criminal proceedings for propaganda purposes and that once in jail, prison populations will be radicalised.¹³⁶

However, the violations of the right to a fair trial and due process rights call this position into serious doubt, as does the application of the death penalty in Iraq. For instance, the sentencing of a 29 year old French woman, Djamilia Boutoutaou, to life imprisonment for ISIL membership by the Baghdad criminal court in April 2018, following a trial widely denounced for being unfair,¹³⁷ further highlights the need for the French authorities – together with all foreign fighters’ countries of origin – to take a stronger stance to ensure that their nationals are tried in conformity with international fair trial standards. A second French woman, 27 year old Mélina Boughebir and mother of four children, was sentenced to life imprisonment by the same court in June 2018.¹³⁸ Following her conviction, the French foreign ministry took note of the judgment and announced that France would continue to “respect the sovereignty of the Iraqi courts and the independent conduct of legal proceedings” in Iraq.¹³⁹

French government statements to the effect that they will “intervene” if French nationals are sentenced to death do not alleviate these doubts, especially since the nature or scope of such interventions remains to be specified.

As the Kurdish controlled region in Syria is not a State recognised by the international community, the diplomatic position vis-à-vis extradition is more complex, and must be resolved via negotiation. Lawyers representing French families of ISIL fighters detained by Kurdish groups in northern Syria

130. Based on statistics published in October 2017, *supra* note 2.

131. Voice Of America, *France Insists French Jihadists Should Face Justice Wherever They Are*, 16 February 2018: <https://www.voanews.com/a/france-insists-french-jihadists-should-face-justice-/4257463.html>

132. Statement given on 15 October 2017 by French Defence Minister, Florence Parly, available via 20 Minutes: <https://www.20minutes.fr/politique/2151363-20171015-video-si-djihadistes-tues-raqqa-tant-mieux-estime-ministre-florence-parly>.

133. According to figures published in media reports. See, La Croix, 3 December 2017: <https://www.la-croix.com/France/faire-djihadistes-francais-Syrie-Irak-2017-12-03-1200896678>; and Médiapart, 16 February 2018: <https://www.mediapart.fr/journal/france/160218/prisonniers-en-irak-ou-en-syrie-les-francais-de-letat-islamique-piegent-le-gouvernement>.

134. France 2, 9 November 2017: https://www.francetvinfo.fr/faits-divers/terrorisme/antiterrorisme/emmanuel-macron-predit-la-fin-de-daech-dans-les-prochains-mois_2459786.html.

135. Médiapart, 17 February 2017: <https://www.mediapart.fr/journal/france/160218/prisonniers-en-irak-ou-en-syrie-les-francais-de-letat-islamique-piegent-le-gouvernement>.

136. Voice Of America, *supra* note 131.

137. Libération, 17 April 2018: http://www.liberation.fr/planete/2018/04/17/une-jihadiste-francaise-condamnee-a-la-perpetuite-en-irak_1644016.

138. Huffington Post, 3 June 2018: https://www.huffingtonpost.fr/2018/06/03/melina-boughedir-condamnee-en-irak-a-la-perpetuite-pour-appartenance-a-letat-islamique_a_23449529/.

139. *Ibid.*

have refuted the French government's position (including by filing a legal complaint that targets France for arbitrary detention and abuse of power), claiming that there are no sovereign institutions or an operational justice system in place in the region, and that their clients are being detained in unacceptable conditions.¹⁴⁰

A relatively large number of German (915) and British (850) nationals are also understood to have been part of ISIL's ranks.¹⁴¹

Following a request from the German authorities for the repatriation of women and children held by the Iraqi authorities, with a view to de-radicalising and rehabilitating them back into society, it is understood that over 100 children were returned to the country in November 2017. On 21 January 2018, a criminal court in Baghdad sentenced a German woman to death (by hanging) for her role as a member of ISIL.¹⁴² This is understood to be the first death sentence to have been passed on a European woman in Iraq. The German authorities, reported to have visited German citizens held in Iraqi prisons, have stated that they will intervene to ensure that death sentences issued against their nationals are converted to prison sentences.¹⁴³

The capture of two British nationals believed to be part of a four-person group of British ISIL fighters known as "The Beatles" in February 2018 has sparked hot debate on how to deal with captured foreign fighters. The USA has called on European authorities including the UK and France to accept responsibility for their nationals in Iraq and Syria, but after intense discussions in Rome, Italy, in February 2018, the countries were no closer to an overall consensus on the issue.¹⁴⁴

Alexandra Kotey and El Shafee el-Sheikh along with two other men, Mohammed Emwazi (killed in a US airstrike in Syria in 2015) and Aine Davis (serving a prison sentence in Turkey on terrorism charges) became notorious for their role in torturing and executing Western hostages, including American journalist James Foley. Former hostages of the group as well as families of victims have called on the authorities to ensure the pair are prosecuted and judged in trials that they can attend and participate in to obtain "real justice" and to avoid perpetuating hatred.¹⁴⁵

The British authorities have thus far refused to repatriate and prosecute the two men, with the Defence Secretary asserting that they should "never be allowed to return to the UK", after previously stating that all British ISIL fighters "should be hunted down and killed".¹⁴⁶ It is understood that both men have already been stripped of their British nationality.

140. *La Croix*, *supra* note 133.

141. Based on statistics published in October 2017, *supra* note 2.

142. *Le Monde*, 21 January 2018: http://www.lemonde.fr/moyen-orient-irak/article/2018/01/21/irak-un-tribunal-condamne-a-mort-une-allemande-pour-appartenance-au-groupe-etat-islamique_5244809_1667109.html.

143. *Le Monde*, 8 February 2018: http://www.lemonde.fr/proche-orient/article/2018/02/08/les-pays-europeens-ne-tiennent-pas-au-retour-de-leurs-ressortissants_5253642_3218.html.

144. *Voice Of America*, *supra* note 133.

145. *Independent*, *Former Isis hostage of 'The Beatles' doesn't want them to have 'satisfaction' of death penalty*, 9 February 2018: <http://www.independent.co.uk/news/uk/crime/isis-beatles-jihadi-john-death-penalty-alexander-kotey-shafee-elsheikh-hostage-islamic-state-capture-a8202666.html>; and *Sky News*, *James Foley's mother asks for IS 'Beatles' not to be sent to Guantanamo*, 10 February 2018: <https://news.sky.com/story/james-foleys-mother-demands-is-beatles-are-not-sent-to-guantanamo-11243612>.

146. *Associated Press*, *UK defense chief: Don't let 2 British ISIS suspects return*, 11 February 2018: <http://kval.com/news/nation-world/uk-defense-chief-dont-let-2-british-is-suspects-return>; and *The Guardian*, *British ISIS fighters should be hunted down and killed*, 7 December 2017: <https://www.theguardian.com/politics/2017/dec/07/british-isis-fighters-should-be-hunted-down-and-killed-says-defence-secretary-gavin-williamson>.

CONCLUSION

Since August 2014 and over a period of several years, ISIL systematically and on a horrifying scale committed SGBV amounting to genocide and crimes against humanity, as well as other acts amounting to crimes under international law, against the Yazidi population. These crimes have had a devastating impact on the community. The rights of Yazidi victims of sexual and gender-based violence, returnees and displaced members of the community to truth, justice and reparation must be recognised, and their needs as a community addressed.

Responding effectively to the rights and needs of the Yazidi population is particularly challenging in light of the fact that there is no political consensus on the status of their community post-ISIL. As the victim of a political conflict at both national and regional level, the community forms more than ever a "disputed minority", prevented from having a say on the question of affiliation to Baghdad or to Kurdistan, let alone on the potential for self-governance within what have traditionally been Yazidi areas.

Testimonies collected by the FIDH delegation demonstrate that foreign ISIL fighters, particularly those of higher ranks and including citizens and residents of EU countries and other States Parties to the ICC Statute, were responsible for putting ISIL's ideology towards the Yazidis into practice. Foreign fighters played a significant role in the perpetration of these crimes as well as in the sale and exchange of Yazidi women and children, including sales of Yazidi captives back to their families.

Persistent impunity for the crimes perpetrated against members of the Yazidi community, including the crimes of sexual and gender based violence qualified of crimes of genocide and crimes against humanity aggravated by their atrocity, must be addressed by the international community, regional organisations, national authorities in foreign fighters' countries of origin, and by both the central Iraqi and Kurdish authorities. The focus should be on ensuring effective criminal investigations and prosecutions, where the rights of Yazidi victims to truth, justice and reparation can be fully addressed. As history has shown, this is the only way to ensure effective guarantees of non-repetition for the gravest crimes.

RECOMMENDATIONS

To the Iraqi authorities

- Accept the jurisdiction of the International Criminal Court with respect to crimes perpetrated in Iraq in particular since the destabilisation of the region in 2011 and ratify the Statute of the International Criminal Court;
- Enact in national legislation the crimes of genocide, crimes against humanity and war crimes as defined in the Statute;
- Establish a moratorium with a view to abolish the death penalty;
- Ensure that all investigations, prosecutions and trials targeting ISIL members before national courts comply with international standards of fair trial guarantees, due process, and rights of the defence;
- Ensure that all legal proceedings concerning crimes perpetrated by ISIL against the Yazidi community allow full victim participation, including through the establishment of a victims and witnesses protection programme;
- Provide specialised and sustainable services, including medical and psychosocial support, tailored to the particular needs of victims of grave crimes including SGBV;
- Assure the earliest return of displaced persons and refugees in a voluntary, safe and dignified manner.

To the Kurdish regional authorities

- Develop victim and witness support and protection programmes (with specialised support to victims of SGBV and children) destined to the Yazidi affected community;
- Ensure that all investigations, prosecutions and trials targeting ISIL members before national courts comply with international standards of fair trial guarantees, due process, rights of the defence; etc..
- Ensure that all legal proceedings concerning crimes perpetrated by ISIL against the Yazidi community allow full victim participation, including through the establishment of a victim and witness protection programme;
- Assure the earliest return of displaced persons and refugees;
- Establish a moratorium with a view to abolish the death penalty.

To the United Nations Assistance Mission in Iraq

- Continue to provide active support to the Iraqi national authorities, and especially to the Task Force on Justice and Accountability, in order to ensure the effectiveness of fair trial guarantees, due process rights and the death penalty moratorium, facilitate the drafting and adoption process of a law to provide jurisdiction for Iraqi courts over international crimes committed in Iraq, including genocide, crimes against humanity and war crimes.

To the UN Refugee Agency (UNHCR)

- Continue to facilitate the resettlement programmes for Yazidi victims and their families towards third States.

To the Investigative Team

- Devise robust processes to systematically ensure that evidence collected is used in fair and independent proceedings in accordance with United Nations policies and best practices and relevant international law, including international human rights law, rules and standards and refrain from sharing evidence used in proceedings that fall short of such standards;
- Ensure that the Team have specialised personnel, including gender advisors, all of whom are

specifically trained in techniques for interviewing victims and gathering evidence related to acts of sexual violence as well as in methods for supporting victims and witnesses of such acts;

- Refrain from contributing to any legal proceedings where the application of the death penalty is a possibility;
- Liaise closely with the United Nations Assistance Mission in Iraq, States and regional or intergovernmental organisations regarding the provision of legal assistance and capacity-building measures and the drafting and adoption of a law to provide jurisdiction for Iraqi courts over international crimes;
- Ensure that victims have a role in the process, while ensuring their protection and security.

To the Office of the Prosecutor of the International Criminal Court

- Open a preliminary examination into the situation of the Yazidi in Iraq based on potential nationality from States Parties of perpetrators.

To third State authorities

- Consider to expressly exclude any cooperation from EU member states with Iraqi courts in proceedings where the death penalty may be applied;
- Recognize as unsatisfactory to prosecute ISIL members solely for terrorism crimes as it denies victims justice and fails to reflect the full criminality of the acts perpetrated;
- Prosecute members of ISIL returning to their home countries for international crimes;
- Ask for extradition of all nationals and prosecute them at home on the basis of international crimes charges, or ensure they are prosecuted and tried in countries where they have a fair trial / due process can be guaranteed;
- Ensure full participation of victims in legal proceedings opened and guarantee security and protection of victims and witnesses;
- Protect and provide consular protection to their nationals to ensure their human rights are fully respected and protected and ensure that children are returned home and appropriately rehabilitated;
- Ensure domestic laws adequately provide for universal jurisdiction over international crimes and that such laws are implemented in practice.

In addition to the above recommendations to third States, the following recommendations **to the European Union and its Member States** may include:

- Ensure that the EU strategy on Iraq adopted by Council Resolution of 22 January 2018 is fully implemented and consider to expressly exclude any cooperation from EU Member States with Iraqi courts in proceedings where the death penalty may be applied;
- Develop relevant mechanism(s) to ensure that EU and Member State cooperation and support provided to investigations and prosecutions in Iraq respect due process guarantees and complies with applicable international standards, including right to a fair trial, and with EU commitments on abolition of the death penalty and report on these points;
- Support Iraq to adopt appropriate international crimes legislation as a matter of priority;
- Promptly appoint a European Union Special Representative (EUSR) for International Humanitarian Law and International Justice;
- Implement and report on the implementation of Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes having regard to the Yazidi situation;
- Organise a hearing and exchange of views at the European Parliament to follow-up on Council Conclusions on Iraq dated 22 January 2018 and European Parliament resolutions dated 4 February 2016 (on the systematic mass murder of religious minorities by the so-called 'ISIS/

Daesh') and 4 July 2017 (on addressing human rights violations in the context of war crimes, and crimes against humanity, including genocide);

- Convey a joint COJUR-COHOM meeting to discuss the issue further, inviting civil society, the ICC Office of the Prosecutor and other relevant experts;
- Enhance EU financial support to civil society organisations documenting cases, enhancing victim and witness protection, integrating a gender-based approach and fighting against impunity.



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Establishing the facts - Investigative and trial observation missions

Supporting civil society - Training and exchange

Mobilising the international community - Advocacy before intergovernmental bodies

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**FIDH is an international
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