

**SUBMISSION BY THE GLOBAL JUSTICE CENTER AND THE BAR HUMAN RIGHTS COMMITTEE URGING THE OPENING OF A PRELIMINARY EXAMINATION<sup>1</sup>**

**I. Introduction**

This Submission is presented to the Office of the Prosecutor (OTP or Office) of the International Criminal Court (ICC or Court) by the Global Justice Center and the Bar Human Rights Committee of England and Wales, requesting the opening of a preliminary examination into genocide and other crimes committed against the Yazidis.

The Global Justice Center (GJC) is an international legal human rights organization focused on using international law for strategic change and to achieve sustainable justice, peace and security. Amongst other activities, GJC works globally to develop and implement legal strategies to define, establish and protect human rights and gender equality.

The Bar Human Rights Committee (BHRC) is the international human rights arm of the Bar of England and Wales. BHRC's mission is to protect and promote international human rights through the rule of law, by using the international human rights law expertise of the United Kingdom's most experienced and talented human rights barristers.

This Submission is intended to be read in conjunction with GJC's December 2015 Letter and Annex to the OTP regarding the particularly gendered nature of the so-called Islamic State of Iraq and al-Sham/Greater Syria ("ISIS" aka "ISIL", "Da'esh" or "IS", hereinafter "ISIS")'s crimes against the Yazidis. ISIS's crimes targeting the Yazidis began in July 2014, and their commission accelerated sharply following their attack on the Sinjar region of northern Iraq on August 3, 2014. In April 2015, Prosecutor Bensouda expressed her profound concern over the plight of the Yazidi community. Yet, since then, the Yazidi community continues to suffer and justice mechanisms remain unengaged. Further, as time passes, evidence of the crimes perpetrated against them is deteriorating, and in some cases being contaminated or destroyed; women and children remain in captivity; and local jurisdictions continue to be unwilling or unable to act.

The OTP determined in April 2015 that it had inadequate jurisdictional bases at that time to open a preliminary examination on ISIS and welcomed additional information on the positions occupied by State Party nationals in ISIS. The focus of the present submission responds to this finding and maintains the following:

- The requirements of subject matter, temporal, and personal jurisdiction have been met in this case, specifically with respect to ISIS's foreign fighters;
- the OTP's own policies favor exercising personal jurisdiction; and
- substantial normative justifications support opening a preliminary examination.

Each of the requirements for the initiation of a preliminary examination pursuant to Article 15 are plainly made out. The “information available to the prosecutor provides”, at the very least, “a reasonable basis to believe that... crime[s] within the jurisdiction of the Court ha[ve] been or [are] being committed” (article 53(1)(a)). No “issues of admissibility” under article 17 arise (article 53(1)(b)), and in any event are incapable of constituting a bar to the “commencement of the investigation” (article 15(4)). Lastly, the utmost “gravity of the crime[s] and the interests of the victims” both warrant and merit an investigation (article 53(1)(c)), and there can be no doubt that such an investigation would serve the interests of justice (article 53(1)(c)).

The opening of a preliminary examination would send an unequivocal message to ISIS members and all those who violate international law in the region that they will be held personally accountable for their actions. Such action would also ensure that Yazidis whose rights were violated at the hands of ISIS have the opportunity for justice. Finally, it would show that the Court is, as it was intended to be, a crucial institution in the global fight to end impunity.

For the reasons outlined below, we request that the OTP opens a preliminary examination into crimes committed by ISIS and to do so without delay.

## **II. The ICC has Subject Matter and Temporal Jurisdiction Over ISIS’s Foreign Fighter’s Crimes**

Under Article 5 of the Rome Statute, the ICC has subject matter jurisdiction over genocide, crimes against humanity and war crimes.<sup>2</sup>

ISIS’s foreign fighters have perpetrated each of these crimes in brutal and systematic fashion against the Yazidis of Sinjar, particularly Yazidi women and children. For a detailed description of these crimes, including the specific gendered manner with which ISIS carries out its brutality, please refer to the Global Justice Center’s December 17, 2015 *Letter to the Office of the Prosecutor of the International Criminal Court in Support of Filing OTP-CR-397/15*.<sup>3</sup>

Article 11 of the Rome Statute sets out that the ICC has temporal jurisdiction only after the entry into force of the Statute, or if a state ratified the Statute after its entry into force, then after it comes into force for that particular state.<sup>4</sup>

In each of the States Parties to the Rome Statute who have nationals fighting for ISIS, the Statute has been in force during the international crimes occurring in Sinjar on and since August 3, 2014.<sup>5</sup>

## **III. The ICC has Personal Jurisdiction Over ISIS’s Foreign Fighters**

Article 12 of the Rome Statute makes clear that the Court can exercise jurisdiction over nationals of States Parties to the Statute, even if their criminal conduct occurred on the territory of a non-State Party to the Statute.<sup>6</sup>

Based on the best estimates, this jurisdictional reach applies to no fewer than 15,000 ISIS foreign fighters from at least 34 ICC States Parties.<sup>7</sup>

#### **IV. The OTP's Own Policies Militate in Favor of Exercising Personal Jurisdiction and Opening a Preliminary Examination into Crimes Arising from the Situation at Sinjar**

The OTP has determined that ISIS's military and political personnel are primarily led by Iraqis and Syrians, who are outside the jurisdiction of the Court and therefore frustrate the OTP's prosecutorial goal of holding accountable "those most responsible" for international crimes.<sup>8</sup> Thus, despite the significant presence of ISIS fighters from ICC Member States taking part in ISIS's atrocities at all levels of the hierarchy, the OTP has thus far declined to open a preliminary examination because the "jurisdictional basis for opening a preliminary examination into this situation is too narrow at this stage."<sup>9</sup>

However, this position is itself too restrictive, failing to take account evidence of ISIS's complex hierarchy which includes non-Iraqis and non-Syrians, in particular those outside the military command structure who are directly implicated in sexual and gender-based violence crimes. It also fails to take into account several OTP policies and strategies that endorse preliminary examinations, investigations and even prosecutions in settings precisely fitting ISIS's foreign fighters' crimes. Indeed, the confluence of these policies and strategies actually compel the OTP to open a preliminary examination, which may prove the only plausible route to ensure accountability and end the existing impunity gap.

##### **A. OTP Will Deploy an Upwards-Building Strategy to Build Cases Against Those Most Responsible**

In its few comments on the issue of exercising jurisdiction over foreign fighters who have joined ISIS, the OTP has repeatedly asserted that "the prospects of my Office investigating and prosecuting those most responsible, within the leadership of ISIS, appear limited."<sup>10</sup> This determination seems to be guided, at least in part, by a finding that ISIS's leadership is primarily comprised of nationals from Iraq and Syria. However, this does not reflect the reality of the situation.

While the primary prosecutorial strategy pursued by OTP is to hold accountable those most responsible, the OTP's 2012-2015 Strategic Plan signaled a potential shift away from this strategy. It articulated that, due to the realities and difficulties associated with always pursuing those who are most responsible, the OTP would also consider utilizing an "upwards building" strategy where mid- and high-level perpetrators would be prosecuted with the goal of eventually getting to those most responsible.<sup>11</sup> This same shift was also included in the OTP's most recent Strategic Plan.<sup>12</sup> We urge the OTP to consider using such an approach in the present situation, as ISIS's crimes and infrastructure lend themselves to the use of such a strategy. Evidence clearly indicates that the genocide of the Yazidis was devised at the highest levels of the organization and implicated a range of actors up and down ISIS's military and civilian hierarchy, who all acted in a coordinated and systematized manner.

## **1. The Systematic Nature of the Genocide of the Yazidis Lends Itself to the Use of the OTP's Upwards Building Strategy**

### **a. Systematic nature of the crimes**

The systematic way in which ISIS carried out its genocide against the Yazidis has been clearly and extensively documented.<sup>13</sup> As these reports show, ISIS fighters involved in the genocide in Sinjar all acted in an identical manner<sup>14</sup> with respect to their treatment of the Yazidis. Their actions were largely guided by the sex and age of the victims,<sup>15</sup> in line with ISIS's ideology.<sup>16</sup> For example, women and girls over 9, who were singled out for sexual slavery, were captured, registered, priced, and then abused in nearly identical manner despite being held in a multiplicity of holding sites across ISIS-controlled Syria and Iraq.<sup>17</sup> This treatment extended even as far as to prohibit the mass rape of Yazidi women at these sites, which led the Independent International Commission of Inquiry on the Syrian Arab Republic ("Syria COI) to conclude that:

...this serves to emphasize the rigid system and ideology governing ISIS's handling of Yazidi women and girls as chattel, as well as the control it exerted over the majority of its fighters. The sexual violence, including the sexual slavery, being committed against Yazidi women and girls is tightly controlled by ISIS, occurs in a manner prescribed and authorized, and is respectful only of the property rights of those who "own" the women and girls.<sup>18</sup>

Furthermore, this systemization carries through to the present day, and did not end with the acts that took place in Sinjar in 2014. Over 3000 Yazidi women and children remain in ISIS's captivity.<sup>19</sup> In addition, the sexual enslavement and trade in women continues to bolster ISIS's political economy and serve as a financing strategy to sustain itself.<sup>20</sup> Slave markets are organized by a central committee (the Committee for the Buying and Selling of Slaves) that is composed of individuals outside of ISIS's military command structure.<sup>21</sup> The central committee may delegate some of these duties to a local commander and a local committee when it opens a local slave market.<sup>22</sup> Like the initial attacks in Sinjar, ISIS continues its genocidal treatment of women and girls in a highly systematized and organized manner.

Finally, these acts are clearly linked to ISIS's intent to destroy the Yazidis. ISIS's own publication, *Dabiq*, has clearly stated their views about the Yazidi community:

Their continual existence to this day is a matter that Muslims should question as they well be asked about it on Judgment Day, considering that Allah had...said 'And when the sacred months have passed, then kill the mushkrikin wherever you kind them, and capture them, and besiege them, and sit and wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way.'<sup>23</sup>

ISIS also specifically highlights that their treatment of Yazidis is different from their treatment of what they call "people of the book" (Jews and Christians), in that ISIS refuses Yazidis the option of paying a special tax to avoid being killed or forcibly converted.<sup>24</sup> In ISIS's eyes, and in their own words, Yazidis are "merely property which can be disposed of."<sup>25</sup>

## **b. The link between systemization and upwards building**

The OTP's 2012 Strategic Plan notes that often the Office's investigations involve "complex structures with the most responsible often keeping a distance between themselves and the crimes." While this may be true with respect to ISIS's hierarchy in this particular context with actors present in Iraq (but not all from Iraq) who were most directly responsible for the actual commission of genocidal acts, the clearly systematic way in which the crimes were carried out, together with the evidence of written policy in the form of documents setting out aspects of the rationale and process of sexual enslavement, implicates not only the direct perpetrators, but those at the highest levels.

In the present situation, evidence that genocide against the Yazidis was a policy decision made at the highest levels can clearly be evinced by the statements and policies put forward at the high levels, including though publications on the treatment of the Yazidis in *Dabiq*, the issuance of *fatwas* on the sexual enslavement of Yazidi women and girls by its Research and Fatwa Department, and the organization of slave markets with set price lists. For example, ISIS's centralized Research and Fatwa Department published a document entitled "Questions and Answers on Taking and Capturing Slaves" which gives detailed guidance to slave owners as to what can and cannot be done with female sex slaves.<sup>26</sup>

Furthermore, interviews with victims have made clear that ISIS's policies on sexual violence emanate from the highest levels. One fighter, when asked about his reasons for participating in ISIS's systemic sexual slavery practices replied that "he was only following orders and rules given by the Emirs, who, in turn, received them from Al Baghdadi."<sup>27</sup> Such information has led the Special Representative of the Secretary-General on Sexual Violence in Conflict to conclude that command responsibility exists, as well as the "overall intent and criminal liability of ISIS's military commanders, fighters, religious and ideological leaders, wherever they are located" for such acts of sexual violence.

Furthermore, ISIS is known for its leaders having strict and direct command and control over its fighters in Iraq and Syria.<sup>28</sup> This structure is not dissimilar to that described in the findings of the Pre-Trial Chamber in *Ntaganda* with respect to the Union des Patriotes Congolais/Forces Patriotiques pour la liberation du Congo, namely that it "consisted of an organized and hierarchal apparatus of power and in which orders were executive by an almost automatic compliance."<sup>29</sup> Such a structure lends itself well to an upwards building approach to prosecution, as it can help build the crime and fact base upon which prosecutions on non-direct methods of liability, (such as command responsibility and co-perpetration) can be built. This approach was also one taken by the ICTY. As articulated by Richard Goldstone:

In the former Yugoslavia there was no smoking gun, we had to build the cases with witnesses. Who could the witnesses tell us about? They could tell us about the cases in the camps, the camp commanders. They had no evidence to give us about the orders higher up. So we had to build up the cases from the bottom up.<sup>30</sup>

In our submission, by engaging in investigations and prosecutions of perpetrators at varying levels of the ISIS hierarchy who were involved in planning and carrying out the genocide

against the Yazidi, the OTP would likely be able to build cases upwards in order to reach those most responsible, including with respect to the sexual and gender based crimes. Furthermore, even if the OTP does not itself gain jurisdiction over those most responsible, this upwards building strategy could then assist the venue(s) with jurisdiction over such persons as described in further detail in Section V(A) *infra*.

## **2. Foreign Fighters Form a Significant Part of ISIS's Infrastructure**

The Independent International Commission of Inquiry on the Syrian Arab Republic found that foreign fighters from a large range of countries, including Tunisia, Belgium and Australia, “took active part in the crimes committed against the Yazidi women and girls or were otherwise complicit in them.”<sup>31</sup> The Commission has also found that “despite the recruitment of thousands of Syrians to its ranks, the ISIS leadership structure is still largely dominated by foreign fighters.”<sup>32</sup> It has also been found that between 27,000 and 31,000 foreign fighters have joined ISIS and that “these foreign fighters fill leadership roles within the organization’s hierarchy and seem to be disproportionately responsible for the atrocities and brutality for which IS has become famous.”<sup>33</sup> Finally, evidence indicates that those directly implicated in the buying, brokering and holding of female Yazidi sex slaves are those within ISIS’s civilian hierarchies (rather than military command structure), which is composed of actors from a range of nationalities.<sup>34</sup> Investigating those individuals who fall under the ICC’s jurisdiction, which at the present is limited to foreign fighters, will not only begin a process of accountability for these heinous crimes, but will also build the evidence and crime base in order to prosecute those who are in fact most responsible. The OTP has unique expertise and access in order to build the information base about these actors and hierarchies.

Furthermore, it has been found that the ability to commit mass atrocities with impunity, including sexual violence, has been used as a recruiting tool by ISIS, including foreign fighters.<sup>35</sup> The Special Representative of the Secretary-General on Sexual Violence in Conflict found that ISIS’s “recruitment propaganda includes the promise of access to women for young, single, economically marginalized men who seek status, power and sexual access that is not available in socially conservative contexts.”<sup>36</sup> It is clear that there is a real need to close the impunity gap for these crimes, which are committed by fighters at all levels and nationalities, not only to interrupt ISIS’s ongoing and systemic sexual abuse of women, but also to stymie the recruitment of new fighters to the group.

The OTP has recognized that a shift from a prosecutorial strategy based solely on bringing to justice those most responsible to a balanced approach incorporating an upwards building strategy would not only help close impunity gaps, but assist the OTP to achieve the primary purpose of holding accountable those most responsible. This is an important way in which it could strengthen both the work of the Court and bring forward stronger cases against those who commit crimes that fall under the Court’s jurisdiction.<sup>37</sup> The present case provides a unique opportunity to put this strategy into practice.

### **B. The OTP Will Prosecute Lower-Lever Perpetrators Where their Crimes are “Particularly Grave and Have Acquired Extensive Notoriety”**

Prosecuting any and all ISIS fighters is also directly within the OTP's prosecutorial strategy: OTP's prosecutorial strategy includes prosecuting lower-level perpetrators where their conduct is "particularly grave and acquired extensive notoriety."<sup>38</sup>

### **1. ISIS's Foreign-Fighter's Crimes Are Particularly Grave**

There are three mechanisms by which to evaluate the gravity of ISIS's crimes: (1) a series of qualitative and quantitative factors; (2) the broader context of the Syrian conflict; and (3) the nature of sexual and gender-based violence.

#### ***a. Qualitative and Quantitative Factors show the Particular Gravity of ISIS's Foreign Fighter's Crimes***

OTP Regulation 29, concerning factors the OTP shall consider in determining to move forward with an *investigation*,<sup>39</sup> states that, "in order to assess the gravity of crimes allegedly committed in the situation, the Office shall consider various factors including their scale, nature, manner of commission, and impact."<sup>40</sup>

##### *i. Scale of ISIS's Crimes*

Three relevant considerations inform the scale of crimes in the gravity assessment: the temporal intensity of the commission of the crimes;<sup>41</sup> number of incidents documented;<sup>42</sup> and whether the crimes are widespread in geography.<sup>43</sup>

The temporal intensity of ISIS's crimes against the Yazidis is, at the same time, stark and continuous. Beginning on August 3, 2014 when ISIS attacked the Yazidi region of Sinjar in northwestern Iraq, ISIS's crimes have occurred every day since.<sup>44</sup> As the Independent International Commission of Inquiry in Syria noted, "3 August 2014 would become a dividing line, demarcating when one life ended, and—for those who survived—when another, infinitely more cruel, existence began."<sup>45</sup>

This new existence came with constant and countless atrocities. To date, ISIS has killed thousands of Yazidi men, women above childbearing age, and boys leaving no fewer than 80 mass graves,<sup>46</sup> and sexually enslaved thousands of Yazidi women and girls, 3200 of whom are still in captivity.<sup>47</sup>

These crimes have taken place over a massive yet precise geographical spread. Starting in Sinjar, ISIS's crimes against the Yazidis soon spread to large areas of northwest Iraq and Syria.<sup>48</sup> ISIS has regularly transferred Yazidi women and children to slave markets spanning from Mosul to Syria's governorates of Raqqah, Aleppo, Homs, Hasakah, and Dayr az-Zawr.<sup>49</sup> Even with their recent military defeats, ISIS still controls and is committing crimes over roughly 60,400 square kilometers.<sup>50</sup>

Taking all these factors together, the sudden and continuing crimes combined with the massive geographical distance over which the crimes are occurring firmly establishes the harrowing scale of ISIS's foreign fighters' crimes.

ii. *Manner of Commission of ISIS's Crimes*

When assessing the manner of commission of crimes, the ICC has looked at the brutality with which the alleged crimes were committed.<sup>51</sup> For example, in the past the Pre-Trial Court has considered the following factors: gang rapes and the selection of victims on the grounds of ethnicity.<sup>52</sup>

ISIS has singled out Yazidis, notably its women and children, for particularly brutal treatment. The Yazidis of Sinjar, comprising the majority of the world's Yazidis, were targeted on the basis of their religious identity, as part of an (ongoing) effort to destroy the group. Prior to its siege on Sinjar, ISIS researched and determined how its religious interpretation mandated the treatment of the Yazidis.<sup>53</sup> Thus, all of the crimes ISIS committed in its attack were in strict accordance with the religious mandates issued by its "scholars" concerning how to treat Yazidis.<sup>54</sup>

During its attack on Sinjar, ISIS summarily executed men and older boys in front of or just out of sight of their families and wider community.<sup>55</sup> Survivors reported seeing fighters return with bloodstains on their clothing and the bodies of those killed on capture were often left where they lay.<sup>56</sup> Yazidi women and girls were then captured, registered and sold into slavery, stripped of their autonomy.<sup>57</sup> Attempts to refuse or to prevent other women from being sold are met with violent beatings.<sup>58</sup> Once sold, Yazidi females are the sole property of their owner, who can re-sell, gift, or will them to other ISIS fighters.<sup>59</sup> "You are like a sheep. I have bought you,"<sup>60</sup> said one Syrian fighter to his newly bought slave.

In ISIS captivity, Yazidi women and girls are subjected to brutal sexual violence, suffering multiple—sometimes hundreds—of rapes by their various owners.<sup>61</sup> Women report being handcuffed or having their hands and legs tied to the corners of the beds during rapes.<sup>62</sup> Nothing protects against rape—girls as young as nine were raped, as were pregnant women.<sup>63</sup> In one instance, a Libyan fighter took a 7-year-old girl into a room, telling her mother that he wanted to check whether the 7-year-old "was ready to be married."<sup>64</sup>

Children are often aware of the prolonged and intense violence against their mothers.<sup>65</sup> Many women could hear their children screaming and crying outside the door while their fighter-owners raped them in a locked room.<sup>66</sup>

Escape attempts are met with extreme violence—the killing of their children, gang rape, rape and physical violence.<sup>67</sup> One woman said that "the fighter who had bought her killed several of her children and repeatedly raped her after she had tried to flee."<sup>68</sup>

ISIS also forces Yazidi women and girls to work for their fighter-owners and their families, including being made to cook, clean and wash clothes.<sup>69</sup> All Yazidi captives, including infants, are given limited food and water, denied medical care, and are severely beaten when they fail to obey orders.<sup>70</sup> They are treated as less than human and undeserving of dignity, because ISIS perceives them as "dirty infidels."<sup>71</sup>

The brutality is not inadvertent, it is deliberate. At the time of the Sinjar attack the enslavement of Yazidi women and girls was predetermined and calculated. "After controlling the main



roads and all strategic junctions, fighters set up checkpoints and sent mobile patrols to search for fleeing Yazidis.”<sup>72</sup> This was all done with “organized acts of violence committed in a near-identical manner by fighters across Sinjar and later, across [ISIS]-controlled areas of Syria and Iraq.”<sup>73</sup>

In summary, ISIS’s treatment of Yazidis—murder, capture, enslavement, rape, gang rape, monstrous physical and mental abuse, all occurring ubiquitously across ISIS-controlled territory and at all levels of the organization—unquestionably meets any test of brutality.

### iii. *Impact of ISIS’s Crimes*

In considering “gravity” through an assessment of the negative impact of crimes committed, the Pre-Trial Chamber has found that this can include the following factors: psychological trauma, social stigma, and unwanted pregnancies resulting from sexual violence, as well as displacement and the separation of families.<sup>74</sup>

Yazidi women and girls suffer indescribable physical and mental trauma. In captivity they are utterly stripped of human dignity and autonomy, having no choice over where they are taken, to whom they are sold, how they are treated, whether to engage in sexual activity, and what happens to any children they have.<sup>75</sup>

Those who have escaped describe being kept in a constant state of horror during their captivity. When ISIS fighters approached, women and girls would scramble to the corners of rooms, scratch and bloody themselves in attempts to appear unattractive, and mothers would hide their daughters.<sup>76</sup>

Many Yazidi captives committed suicide instead of continuing to undergo ISIS’s atrocities. Desperate to end their suffering by any means available, Yazidi women and girls tried to kill themselves by cutting their wrists and necks, hanging themselves by their headscarves, ingesting whatever poison they could find, or electrocuting themselves in bathtubs.<sup>77</sup> “One Yazidi girl attempted to kill herself by throwing herself from the second floor of the building. Severely injured, ISIS fighters forbade the other Yazidi captives from helping her.”<sup>78</sup>

After the first escapees made it to safety, Yazidi spiritual leader Baba Sheikh called on members of the Yazidi community not to punish or ostracize victims of sexual violence or forced conversion.<sup>79</sup> However some reports indicate that the stigma remains, with survivors keeping abuses they suffered secret from their families out of concern for the negative social consequences.<sup>80</sup> Escapees also show clear signs that they have not been able to recover from their captivity, and many will likely bear psychological scars for the rest of their lives.<sup>81</sup> The effects of the trauma experienced by these victims is profound, in some cases life threatening,<sup>82</sup> and often inhibits their ability to pursue or maintain interpersonal relationships—particularly with men.<sup>83</sup>

It is not only the individual women and girls facing the consequences of ISIS’s crimes. The Yazidi community of Sinjar has been devastated by the ISIS attack—the 400,000-strong community has largely been displaced, captured, or killed.<sup>84</sup> Yazidi families struggle to cope with “the trauma experienced by those who were brought back or smuggled out, and by the

profound distress of not knowing the fate or whereabouts of relatives still in [ISIS]-controlled territory. Many are in profound debt having sold all valuables, including land, and having borrowed money to buy back relatives offered for sale by ISIS fighters.”<sup>85</sup>

By any measure, the impact of ISIS’s foreign fighters’ crimes on Yazidi women and girls—via physical and mental trauma, fear, stigma, and the loss of their communities—has been utterly devastating.

This devastation and its impact must also be considered with the wider view of the region and the world. ISIS’s genocide is not only ongoing, but it may also be successful. In the words of Murad Ismael, a Yazidi activist, “Yazidis have lost their homeland and they are in the process of losing their identity . . . [This] is a genocide that can be achieved totally.”<sup>86</sup> In no uncertain terms, the impact of ISIS’s genocide may prove to be the complete destruction of the adherents to one of the world’s oldest religions.

#### iv. *Nature of ISIS’s Crimes*

The nature of crimes committed by ISIS is directly related to furthering its genocidal intent. The crimes are barbaric and necessarily myopic: ISIS intends to destroy the Yazidi of Sinjar. Indeed, ISIS fighters focused their attack on the Yazidis, because they were Yazidis.<sup>87</sup>

As discussed above in Section A, ISIS employs organizational measures to ensure that the conduct of its fighters is aligned with the group’s ideology concerning the destruction of the existence of Yazidis.<sup>88</sup> “This included the coordination of the near-identical treatment of Yazidis by fighters across Sinjar, the transferring of thousands of Yazidi captives to clearly designated primary and then secondary holding sites, and the complex system of registering and selling Yazidi women and children into sexual slavery.”<sup>89</sup> Furthermore, this conduct transcended all levels of organization, regardless of nationality—Yazidi women and girls reported being purchased by men from Iraq, Syria, Saudi Arabia, Turkey, Morocco, Algeria, Tunisia, Libya, Egypt, Kazakhstan, Sudan, Belgium, Uzbekistan and Australia.<sup>90</sup> The identical treatment and precise organization of these holding sites evince the immensely detailed level of forward planning by ISIS for their crimes against the Yazidis.

Finally, central to the nature ISIS’s enslavement of Yazidis is the objectification and commodification of women and girls. By reducing the status of females to mere property, ISIS is removing their personhood and treating women and girls as something less than human.

In other words, the nature of ISIS’s foreign fighters’ crimes is systematic, inhuman and genocidal.

#### **b. *The Broader Context of the Syrian and Iraqi Conflicts Shows the Particular Gravity of ISIS’s Crimes***

In addition to qualitative and quantitative factors, the crimes occurring outside the ICC’s specific jurisdiction also weigh on the gravity analysis. The Pre-Trial Court has stated, “the Court has the authority to consider all necessary information, including as concerns extra-jurisdictional facts for the purpose of establishing crimes within its competence as well as their

gravity.”<sup>91</sup> Thus, the brutal atrocities committed by the group’s Syrian and Iraqi members augment the gravity of the crimes committed by ISIS’s corpus of foreign fighters against the Yazidis.

This broader look avails an unequivocal picture of mass atrocities as part of a deliberate military, economic and political strategy.<sup>92</sup> ISIS carries out large-scale abuses through systematic attacks and restrictions on basic rights “intended to reinforce the group’s absolute monopoly on political and social life to enforce compliance and conformity among communities under [its] control.”<sup>93</sup>

As a matter of practice, ISIS has targeted civilians with suicide bombings, used civilians as human shields and has indiscriminately shelled villages.<sup>94</sup> Men, women and children are detained, tortured, executed and forced to witness public displays of punishment.<sup>95</sup> Witnesses describe being taken by force to witness executions with the bodies of the deceased placed on crosses in public view to serve as warnings to local residents.<sup>96</sup> Countless reports detail stories of women being stoned in front of their families, boys being executed when accused of sodomy, and men being lashed or having limbs amputated for infractions of the group’s regulations.<sup>97</sup>

In carrying out this barbarity, ISIS has universally instrumentalized and abused women and children. Women and girls over the age of nine are forcibly married, forced to convert religions and subject to brutal sexual violence.<sup>98</sup> ISIS regulations dictate what a woman and girls must wear, with whom she may socialize, the conditions under which she may be in public and where she may work.<sup>99</sup> Brigades roam ISIS territory to violently enforce this subordinate role. Boys are indoctrinated by the group’s rigid school curriculum and shuttled into “cub camps” where they are taught to use weapons and trained as suicide bombers.<sup>100</sup> Children have been killed by landmines and forced into all sides of ISIS’s executions: as the executed, witness, and executioner.<sup>101</sup>

ISIS has also systematically attacked medical personnel and locations, destroyed and ransacked religious and cultural sites, and continued to pose a profound and global terrorist threat.<sup>102</sup>

In conducting its war and its “government,” ISIS consistently and unashamedly commits, with unthinkable depravity, crimes prohibited by the Rome Statute. ISIS’s presence in the region and in the world is nothing if not grave.

***c. The Nature of Sexual and Gender-Based Violence show the Particular Gravity of ISIS’s Foreign Fighters’ Crimes***

Finally, by the OTP’s own admission, gender-based crimes—exactly the type of crimes that have been continuous and ubiquitous in ISIS’s atrocities—are some of the most grave under the Rome Statute. “The Office recognizes that sexual and gender-based crimes are amongst the gravest under the Statute. In assessing the gravity of alleged sexual and gender-based crimes, the Office will take into account the multi-faceted character and the resulting suffering, harm, and impact of such acts.”<sup>103</sup>

As described in this brief and detailed in the Global Justice Center’s submission dated December 17 2015, sexual and gender-based violence has been central to ISIS’s treatment of the Yazidis and transcends all levels of the organization, committed by all of its members. Additionally, addressed above (“Impact of ISIS’s Crimes,” *supra*) are the varied and wide-ranging effects of ISIS’s sexual violence on Yazidi women and girls.

ISIS’s sexual and gender-based violence stands alone as abhorrent and criminal, but it also fits within ISIS’s broader genocidal campaign. ISIS’s genocide goes far beyond killing Yazidis and through its use of sexual and gender-based violence also inflicts serious physical and mental harm; restricts births; imposes conditions to destroy; and transfers Yazidi children from their group to ISIS.

Put simply, (1) the OTP’s prosecutorial strategy includes trying low-level perpetrators where their crimes are particularly grave; (2) the OTP’s gender policy makes clear that sexual and gender-based violence are particularly grave; (3) ISIS is committing systematic and brutal sexual and gender-based violence. Accordingly then, in line with the OTP’s own strategy and policy, the gravity born of ISIS sexual violence is sufficient to warrant an investigation, let alone a preliminary examination.

## **2. ISIS’s Crimes Have Acquired Extensive Notoriety**

There is no legal definition, rule or rubric to evaluate the meaning of “extensive notoriety” as used as a trigger for the OTP’s exercise of personal jurisdiction. Instead, “notorious” is defined generically as, “generally known and talked of; especially widely and unfavorably known.”<sup>104</sup> The crimes committed by ISIS’s foreign fighters against the Yazidis of Sinjar have clearly reached this threshold.

ISIS openly practices systematic sexual violence, including through an open system of sexual slavery, and is undertaking a concerted attempt to wipe out Yazidism, one of the world’s oldest and continually practiced religions. The severity and barbarity of crimes is used in ISIS’s marketing and recruiting efforts, leading to tens of thousands of foreigners to join its ranks from no less than 60 countries.<sup>105</sup> These fighters are committing genocide—the “crime of crimes”—against the Yazidis of Sinjar,<sup>106</sup> going so far as to publish an article describing the details and alleged justifications for its brutality.<sup>107</sup> The group has been condemned and sanctioned by seven UN Security Council Resolutions.<sup>108</sup> Finally, fear of ISIS, or Islamophobia arising from an improper conflation of Islam and ISIS’s ideology, has influenced isolationist and racist politics in Western Europe and the United States.<sup>109</sup>

### **C. The OTP’s Gender Policy Prioritizes Precisely the Crimes ISIS Foreign Fighters are Committing Against Yazidi Women and Girls**

At its core, the OTP’s June 2014 Policy Paper on Sexual and Gender-Based Crimes commits to integration of gender perspectives and analysis into all of the OTP’s work.<sup>110</sup> Practically speaking, this means the OTP will pay particular attention to the commission of sexual and gender violence crimes and “b[e] innovative in the investigation and prosecution of these crimes, provid[e] training for staff, adop[t] a victim-responsive approach in its work, and pa[y]

special attention to staff interaction with victims and witnesses, and their families and communities.”<sup>111</sup>

This Policy would be appropriately implemented by investigating and prosecuting ISIS for its crimes against Yazidi women and girls. ISIS continues to execute its crimes with impunity – Yazidis are captured, murdered, beaten, transferred, enslaved (including sexual slavery), forcibly married, raped, forcibly impregnated, tortured, forced to abort pregnancies and forced to convert religions.<sup>112</sup> These crimes are ongoing—thousands of Yazidi women and girls remain in captivity and face daily torments.<sup>113</sup>

An examination of the group’s ideology, strategies and policies indicate that there are strong gender dynamics guiding how these crimes, including the crime of genocide, are perpetrated. For example, ISIS’s genocidal strategy against the Yazidis is carried out in different ways against men and women, boys and girls: men and women of non-childbearing age are killed, boys are recruited, and young women and girls are enslaved and subjected to systematic sexual violence. ISIS specifically and strategically targets Yazidi women and girls in carrying out an ideology predicated on gender inequality and male dominance over women and children. These policies, strategies and practices lead to and provide a perceived justification for ISIS fighters carrying out their horrendous sexual and gender-based crimes.

#### **V. Considerable Normative Justifications Favor the OTP Exercising Personal Jurisdiction and Opening a Preliminary Examination into ISIS’s Foreign Fighters’ Crimes**

In addition to falling within the OTP’s own prosecutorial strategies, there are considerable normative justifications for the ICC to exercise personal jurisdiction over ISIS’s foreign fighters. Namely: (A) OTP investigations and prosecutions can inform and strengthen national accountability efforts; (B) complementarity cannot be met because States whose nationals are fighting for ISIS are practically unable to prosecute; (C) OTP action has considerable deterrent value; (D) OTP action can help end discrimination against women in the enforcement of international law; and (E) resource constraints that traditionally limit the OTP are less of an issue in the context of ISIS and crimes against Yazidis.

#### **A. International Practice Can and Does Inform and Benefit Domestic Prosecution of International Crimes**

It is clear the ICC is intended to be a court of last resort.<sup>114</sup> However, the total lack of domestic prosecutions of any ISIS member in Iraq or Syria continues to contribute to a growing “culture of impunity”<sup>115</sup> for the group’s “most serious crimes.”<sup>116</sup> Meanwhile, as more time passes, critical evidence is being lost, including and notably at unprotected mass grave sites.<sup>117</sup> The OTP has noted its concerns regarding this “time gap” and underscored the importance of preserving evidence to “increase the chance of having efficient and effective investigations and prosecutions.”<sup>118</sup>

The leadership and expertise of an international court such as the ICC is specifically required to initiate and guide accountability efforts. By utilizing its proficiency and authority in

international law, the ICC can begin to develop evidentiary foundations now for use in subsequent domestic prosecutions.

### **1. Case Study: Bosnia and Herzegovina, Benefits Arising from International Court Laying Groundwork for Accountability in Domestic Jurisdictions**

The International Criminal Tribunal for Yugoslavia (ICTY) and the Court of Bosnia and Herzegovina (C BiH) and its War Crimes Chamber (WCC) provide an example of the benefits that can arise from an international and domestic court working in tandem to achieve the common goal of accountability.

#### ***a. Jurisprudence***

The ICTY profoundly influenced the C BiH and the WCC, especially after the initiation of the ICTY's completion strategy and the transfer of cases.<sup>119</sup> The ICTY's jurisprudence was relied on in order to reach a consistent understanding of rules and principles.<sup>120</sup> The WCC continually turned to the ICTY for instruction regarding the interpretation of various legal concepts.<sup>121</sup> Furthermore, the ICTY's analysis of substantive law was also a source of guidance for the local court.<sup>122</sup> By helping to clarify various standards of international law, including elements of crimes, the ICTY and its decisions proved to be a significant legal authority.<sup>123</sup>

With respect to ISIS's crimes, the OTP has an opportunity to direct the development of international law, a role that no other court or body has the ability to take on at this moment in time. This would include, notably, the gendered dimensions of genocide – an aspect of jurisprudence which is significant but which has received little attention (outside of academia) since the *Akayesu*<sup>124</sup> case in the International Criminal Tribunal for Rwanda. For instance, there are specific novel aspects of ISIS's crimes centering around sexual enslavement as a genocidal act that a court has yet to explore.<sup>125</sup>

#### ***b. Procedure***

The ICTY's influence on the domestic court extends to procedural principles.<sup>126</sup> The WCC has depended on the ICTY for determinations on admitting evidence,<sup>127</sup> transferring files,<sup>128</sup> and deciding terms of sentences.<sup>129</sup> Numerous benefits arise from an international tribunal sharing information with a domestic court. Namely, “courts can avoid time-consuming and costly examination of hundreds of witnesses who have already testified in judicial proceedings about the same events; ... avoid the evidentiary obstacles which ‘witness fatigue’ presents; and benefit from the investigative expertise and resources”<sup>130</sup> of the international court.

By taking the lead in prosecuting cases against ISIS, the OTP can create an informative and valuable set of practices to then be implemented in other jurisdictions.

#### ***c. Knowledge Transfer***

In addition to sharing jurisprudential and procedural guidance, the ICTY also offered support to local prosecutors through trainings and workshops.<sup>131</sup> Former ICTY employees even went to work at the state court,<sup>132</sup> fostering consistency between the two institutions.

The OTP, with its expertise in international law, can similarly provide guidance to regional lawyers on these complex issues. The OTP has a unique opportunity to implement its policy objective to “contribute to advancing a culture of best practice in relation to the investigation and prosecution of sexual and gender-based crimes.”<sup>133</sup> With respect to handling sensitive issues of sexual and gender-based crimes, the OTP’s knowledge can be instructive for other courts.

#### **d. *Public Perception***

In the case of the ICTY, it was critically important to establish the court’s authority, as well as legitimacy, over domestic jurisdictions.<sup>134</sup> In particular, “the ongoing armed conflict and the deep-rooted animosity among the various ethnic and religious groups made domestic courts unlikely to be willing or able to conduct fair trials.”<sup>135</sup> Public events also helped to highlight the new court, such as the inauguration of the WCC, which the ICTY President, ICTY Prosecutor, C BiH President, C BiH Chief Prosecutor, and C BiH Minister of Justice all attended.<sup>136</sup>

Continuous fighting in Iraq and Syria presents an especially difficult challenge for local prosecutions of ISIS fighters. With its extensive experience, profile, and access to resources, the ICC is in a unique position to take the type of action that is currently impractical for other states. Likewise, the ICC’s opening of a preliminary examination has the potential to bolster the Court’s legitimacy and global public perception.

#### **e. *Paving Path for Later Prosecution of Higher-Level Perpetrators***

International criminal court prosecutions of low-level offenders can be essential towards setting the stage for later cases against more responsible perpetrators. At the ICTY, the testimony of Drazen Erdemovic, a lower level soldier who pleaded guilty to killing men and boys at Srebrenica, was crucially important in the subsequent trial of Radislav Krstic, the first case “to establish that the crimes at Srebrenica constituted genocide.”<sup>137</sup> If the soldier had “not previously been indicted, tried and convicted by the Tribunal, his testimony would not have been heard.”<sup>138</sup> This case highlights the value in refraining from setting a limit on the perpetrator’s level of rank when determining prosecutions.<sup>139</sup> Additionally, even though in this instance both trials were held at the ICTY, initially building the foundation for a case at the international level offers the potential to use the evidence and testimony in a subsequent domestic court with jurisdiction.

In light of the new threats to global security presented by ISIS’s ongoing crimes, it is clear accountability will need to take place in a variety of forums and at multiple levels, whether it be a hybrid tribunal, a regional court, or universal jurisdiction. The example of Bosnia and Herzegovina presents a study of the benefits that can arise from an international tribunal and domestic court working together to attain accountability for crimes. Similarly, the OTP can play a key leadership role in helping to set global standards and aid coordination for other jurisdictions seeking to bring ISIS to justice.

## **B. States Parties Whose Nationals Committed Crimes Against Yazidis Unable to Carry Out Criminal Proceedings Against ISIS's Foreign Fighters**

Under Article 17(3) of the Rome Statute, a case or situation is inadmissible where States are “unable” to “obtain the accused or the necessary evidence to otherwise carry out its proceedings.”<sup>140</sup> In order to effectively close impunity gaps and ensure accountability of core crimes, “*any* unavailability of a State’s judicial system suffices provided that such unavailability renders the State unable to obtain the accused or the necessary evidence and testimony, or otherwise unable to carry out the proceedings.”<sup>141</sup> This reading is supported in the French and Spanish language versions of the Statute, as well as with the drafting history of Article 17(3).<sup>142</sup>

In its April 2015 Statement detailing the OTP’s rationale for refusing to open a preliminary examination into ISIS crimes, the Office emphasized that “the primary responsibility for the investigation and prosecution of perpetrators of mass crimes rests, in the first instance, with the national authorities.”<sup>143</sup> However, and in no small measure, States Parties whose nationals have committed crimes with ISIS in Iraq and Syria are “unable” to prosecute international crimes against those fighters because of difficulties relating to distance, as well as evidence and witness gathering.

These difficulties are particularly present as it relates to crimes of sexual and gender-based violence. Specifically, even in the jurisdictions in which sexual and gender-based crimes occur domestic prosecutions routinely are stymied by: (1) under or non-reporting of sexual violence owing to social, cultural, or religious factors; (2) stigma for victims of sexual and gender-based violence crimes; (3) limited local capacity to carry out investigations of sexual and gender-based violence crimes and associated lack of available evidence; and (4) the lack of forensic evidence because of the passage of time or distance and inadequate services at the local level.<sup>144</sup> It is difficult enough to try sexual and gender-based violence cases in the jurisdictions in which the crimes occurred—adding the additional barriers of distance, language, access, and expertise makes prosecution in the context of foreign fighters nearly impossible.

Thus, these challenges, coupled with other factors, have led national jurisdictions on the whole to prosecute ISIS fighters for terrorism crimes. This focus on terrorism, for expedient and practical purposes is leaving an impunity gap for genocide, crimes against humanity, and war crimes.

Because States Parties to the Rome Statute whose fighters committed international crimes with ISIS are unable to fulfill their prosecutorial obligations under the complementarity requirement of the Statute, this means *the ICC is the only jurisdiction that can*.

## **C. OTP Action has Deterrent Value**

Due to its global impact, action by the OTP has the possibility to slow the tide of ISIS recruitment and help prevent future perpetrators by sending an unwavering message that crimes of genocide will not go unpunished.

The OTP has expressed an interest in improving preliminary examinations with an eye towards preventing and deterring crime.<sup>145</sup> Proposed ideas include “perform[ing] an early warning



function by systematically and proactively collecting open source information on alleged crimes that could fall within the jurisdiction of the Court”, and “react[ing] promptly to upsurges or serious risks of violence by reinforcing early interaction with States, international, regional organisations and non-governmental organisations.”<sup>146</sup> The OTP has also noted the capacity for its activities, ranging from “the announcement of an investigation” to “mere monitoring”, to deter a wide range of potential perpetrators.<sup>147</sup> These notions reinforce the argument that action by the OTP of any kind, not only those amounting to full prosecutions or convictions, has the potential for positive international influence and should be encouraged.

ISIS’s crimes are *ongoing*—and the ability to commit sexual violence and participate in its sexual trade has continually been used as a method of recruitment. As set out above in Section A, “The offer of wives and sex slaves has been a strategic “pull” factor for the recruitment of men and boys...to join [ISIS’s] ranks. [ISIS’s] recruitment propaganda includes the promise of access to women for young, single, economically marginalized men who seek status, power and sexual access that is not available in socially conservative contexts. [ISIS’s] narrative includes the notion that it is the prerogative of their fighters to claim and capture women and girls as the “spoils of war.”<sup>148</sup> With this recruitment continuing, deterrence is paramount—and the ICC has the ability to play a powerful role in this. This is not a situation where deterrence is a *post facto* phenomenon, the OTP can have a very real effect on these ongoing crimes.

ISIS’s notoriety and brutality have been widely known for over a decade, long before the attack on Sinjar in 2014. By acting now and interrupting ISIS’s narrative of committing crimes with impunity, the OTP can deter potential members from joining the group’s ranks. Such a public display of criminal accountability would go a long way in helping to show perpetrators that they are not beyond the reach of the Court.

The OTP’s deterrent impact reaches globally—its preventative “effect is not limited to the situation under investigation but extends to different countries around the world.”<sup>149</sup> Increasingly, there are worldwide attacks on groups that are protected under the Genocide Convention. Prosecutions of ISIS for its attacks on the Yazidis may not only have a deterrence effect on actors in different parts of the world, but may also assist in improving our understanding and ability to recognize early warning signs of potential genocides globally, so that in the future the international community can act earlier to truly prevent genocide before it begins.

#### **D. OTP Action Can Help End Discrimination Against Women in the Enforcement of International Law**

The majority of the living Yazidi victims of ISIS today are women and girls. However, they have been largely left out of the conversation on accountability and reconciliation. This is not a new phenomenon, as women have historically been left out of international criminal justice.

This historic exclusion can be attributed to a range of factors—not least of which are patriarchal views deeply embedded in centuries of international law, policy and practice. These views have led to scenarios where women have not had a full seat at the access-to-justice table, and rape and sexual violence are second tier justice priorities. This is changing, but it remains the case that women and the advocates against sexual and gender-based violence are still very

much fighting for recognition. The OTP's gender policy is one commendable and powerful step in the right direction, and its progress was evident in the successful prosecution of sexual and gender-based crimes in the *Bemba* case. However, gender justice at the ICC has been a significant challenge. There is no better way to continue the momentum set by *Bemba* than by actually enforcing the OTP's gender policy by opening a preliminary examination into some of the most heinous gender crimes in recent memory.

Bringing the genocide of the Yazidis within the international criminal tribunal framework ensures that the voices of Yazidi women and girls, who are the majority of living victims of ISIS crimes, are heard and amplified to an international audience. They are the face of the genocide, but their pleas for justice have thus far gone unheard. Furthermore, the prominence of the stories of Yazidi women and girls in the public narrative around the genocide can be contrasted with ongoing discussions in the diplomatic and political sphere—including discussions concerning accountability and reconciliation—from which Yazidi women and girls have largely been excluded. The ICC has laudably made clear that accountability for crimes against women would be a priority—the present case is a major opportunity to put that policy into practice.

#### **E. Traditional Resource Constraints Facing the OTP Would Not Inhibit a Preliminary Examination into the Situation Arising From the Attack on Sinjar**

Resource limitations, understandably, have been a major constraint and concern for the OTP concerning opening preliminary examinations, investigations and cases.<sup>150</sup> However, several mechanisms have already been created to help ensure accountability for crimes committed by ISIS and in the Syrian war. These mechanisms and bodies can considerably lighten the OTP's burden should it choose to open a preliminary examination.

Principal among these is the *International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011* (IIIM). Included in the IIM's mandate are to:

- (1) collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses; and
- (2) prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.<sup>151</sup>

In fact, the IIIM's purpose is to “provide assistance” in developing criminal files to facilitate prosecution and to promote judicial cooperation.<sup>152</sup>

Similarly, the Independent International Commission of Inquiry on the Syrian Arab Republic has accumulated considerable evidence and has amassed a database concerning ISIS's crimes, particularly the crime of genocide.<sup>153</sup>

Finally, the Commission for International Justice and Accountability has been investigating ISIS genocide of Yazidis and smuggling documents and evidence out of Syria since the beginning of the conflict.<sup>154</sup>

The problem in investigating and prosecuting crimes against the Yazidis, including the crime of genocide, is *not* evidential. Indeed, national prosecutions into ISIS's crimes would be hobbled by narrowness—limited to investigations into the minute details of a single national's participation in ISIS's atrocities. Should the OTP choose to duly exercise the ICC's personal jurisdiction over ISIS's foreign fighters, it would have at its disposal considerable external resources and expertise to ensure the full and proper justice that these abhorrent crimes demand.

## **VI. Conclusion**

In summary, GJC and BHRC include the following important points in this Submission:

1. The ICC has subject matter and temporal jurisdiction over the crimes of ISIS's foreign fighters;
2. The ICC has personal jurisdiction over ISIS's foreign fighters, who form a significant part of ISIS's infrastructure, and the OTP's own policies point strongly towards opening a preliminary examination on this basis;
3. The OTP can and should utilize an upwards building strategy to build up to cases against those most responsible, especially given the systematic nature of the crimes against the Yazidi community;
4. The OTP's gender policy prioritizes precisely the crimes ISIS foreign fighters are committing against Yazidi women and girls;
5. The particularly grave and extensively notorious actions (assessed both on a qualitative and quantitative basis) of lower level perpetrators, including the nature of the sexual and gender-based crimes, justifies opening an preliminary examination;
6. The broader context of the Syrian and Iraqi conflicts also shows the particular gravity of the crimes committed by ISIS;
7. The OTP's gender policies prioritizes precisely the crimes ISIS foreign fighters are committing against Yazidi women and girls; and
8. There are considerable normative justifications which favor the opening of a preliminary examination into the crimes of ISIS foreign fighters, including:
  - International practice informs and benefits domestic prosecution of international crimes;

- State Parties are unable to conduct criminal proceedings against ISIS's foreign fighters;
- OTP action has deterrent value as the crimes described are ongoing;
- OTP action can help end discrimination against women in the enforcement of international law; and
- traditional resource constraints facing the OTP would not inhibit a preliminary examination.

The reality of the situation is that the gravest of crimes have been and continue to be perpetrated against the Yazidi community and in particular against women and girls, many of whom remain in abject conditions of sexual slavery and captivity. Such crimes have been and continue to be committed with impunity, and in short, justice can no longer be delayed. It never was, and certainly no longer is, a reasonable option to do nothing. Given the political realities and procedural challenges, the OTP is essential to at least *begin* the process of ending the existing impunity gap. For the reasons argued in this Submission, we urge the OTP to open a preliminary examination as soon as possible.

<sup>1</sup> This submission was drafted by Akila Radhakrishnan, Elena Sarver and Grant Shubin from the Global Justice Center and Kirsty Brimelow QC, Joanne Cecil, Stephen Cragg QC and Grainne Mellon from the Bar Human Rights Committee of England and Wales.

<sup>2</sup> Rome Statute of the International Criminal Court art. 5, Jul. 17, 1998, UN Doc. A/CONF.183/9.

<sup>3</sup> Global Justice Center, *Letter in Support of Filing of OTP-CR-397/15 to the Office of the Prosecutor of the International Criminal Court* (Dec. 17, 2015), <http://bit.ly/2ovrXjM>.

<sup>4</sup> Rome Statute of the International Criminal Court art. 11, Jul. 17, 1998, UN Doc. A/CONF.183/9.

<sup>5</sup> *States Parties – Chronological List*, ASSEMBLY OF STATES PARTIES TO THE INTERNATIONAL CRIMINAL COURT [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/Pages/states%20parties%20\\_%20chronological%20list.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/states%20parties%20_%20chronological%20list.aspx) (last visited Mar. 28, 2017).

<sup>6</sup> Rome Statute of the International Criminal Court art. 12, Jul. 17, 1998, UN Doc. A/CONF.183/9.

<sup>7</sup> See The Soufan Group, *Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq* (Dec. 2015), [http://soufangroup.com/wp-content/uploads/2015/12/TSG\\_ForeignFightersUpdate3.pdf](http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf); *Foreign Fighters in Iraq & Syria: Where Do They Come From?*, RADIOFREE EUROPE, <https://www.rferl.org/a/foreign-fighters-syria-iraq-is-isis-isil-infographic/26584940.html> (last visited Jul. 7, 2017); Peter R. Neumann, *Foreign Fighter Total in Syria/Iraq Now Exceeds 20,000; Surpasses Afghanistan Conflict in the 1980s*, Int'l Ctr. for the Study of Radicalisation and Political Violence (Jan. 26, 2015), <http://icsr.info/2015/01/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/>.

<sup>8</sup> Office of the Prosecutor of the Int'l Criminal Court, *Strategic Plan 2016-2018*, ¶ 35 (Nov. 16, 2015).

<sup>9</sup> Statement of the Prosecutor of the Int'l Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS (Apr. 8, 2015), <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1>.

<sup>10</sup> Statement of the Prosecutor of the Int'l Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS (Apr. 8, 2015), <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1>.

<sup>11</sup> Office of the Prosecutor of the Int'l Criminal Court, *Strategic Plan June 2012-2015*, ¶ 4(a) (Oct. 11, 2013).

<sup>12</sup> Office of the Prosecutor of the Int'l Criminal Court, *Strategic Plan 2016-2018*, ¶ 35 (Nov. 16, 2015).

<sup>13</sup> See Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016); The U.S. Holocaust Mem'l Museum Simon Skjodt Center for the Prevention of Genocide, *"Our Generation is Gone": The Islamic State's Targeting of Iraqi Minorities in Ninewa* (2015); Office of the U.N. High Comm'r for Human Rights & U.N. Assistance Mission for Iraq, Human Rights Office, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL* (Aug. 2016), [http://www.ohchr.org/Documents/Countries/IQ/UNAMIRreport12Aug2016\\_en.pdf](http://www.ohchr.org/Documents/Countries/IQ/UNAMIRreport12Aug2016_en.pdf); U.N. Secretary-General, Letter dated Dec. 20, 2016 from the Secretary-General addressed to the President of the Security Council, *Annex: Special Report of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Submission to the Security Council Committee pursuant to its resolutions 1267 (1999), 1989 (2011) and 2253 (2015)*

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concerning ISIL (Da'esh), *Al Qaida and associated individuals, groups, undertakings and entities*, U.N. Doc. S/2016/1090 (Dec. 21, 2016).

<sup>14</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": *ISIS Crimes against the Yazidi*, ¶ 156, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>15</sup> See e.g. Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": *ISIS Crimes against the Yazidi*, ¶ 32-97, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016) (documenting ISIS's treatment of the Yazidi in 4 categories: (1) men and boys aged 12 and over; (2) women and girls aged 9 and above; (3) young children held with their mothers; and (4) boys aged seven and over).

<sup>16</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": *ISIS Crimes against the Yazidi*, ¶ 31, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>17</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": *ISIS Crimes against the Yazidi*, ¶ 42-80, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>18</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": *ISIS Crimes against the Yazidi*, ¶ 54, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>19</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": *ISIS Crimes against the Yazidi*, ¶ 205, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>20</sup> U.N. Secretary-General, Letter dated Dec. 20, 2016 from the Secretary-General addressed to the President of the Security Council, *Annex: Special Report of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Submission to the Security Council Committee pursuant to its resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al Qaida and associated individuals, groups, undertakings and entities*, 7, U.N. Doc. S/2016/1090 (Dec. 21, 2016).

<sup>21</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": *ISIS Crimes against the Yazidi*, ¶ 58, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>22</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": *ISIS Crimes against the Yazidi*, ¶ 58, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>23</sup> *The Revival of Slavery Before the Hour*, 4 DABIQ MAGAZINE, Sept.–Oct. 2014, at 14.

<sup>24</sup> *The Revival of Slavery Before the Hour*, 4 DABIQ MAGAZINE, Sept.–Oct. 2014, at 14, 15.

<sup>25</sup> Y. Yehoshua, R. Green & A. Argon, *Sex Slavery in the Islamic State Practices, Social Media Discourse, and Justifications Jabhat Al-Husra: ISIS is Taking Our Women as Sex Slaves Too*, MIDDLE E. MEDIA RES. INST. (Aug. 17, 2015), [http://www.memrijttm.org/content/view\\_print/report/8708](http://www.memrijttm.org/content/view_print/report/8708).

<sup>26</sup> Middle E. Media Res. Inst., *Islamic State (ISIS) Releases Pamphlet on Female Slaves* (Dec. 4, 2014), <http://www.memrijttm.org/islamic-state-isis-releases-pamphlet-on-female-slaves.html>.

<sup>27</sup> U.N. Secretary-General, Letter dated Dec. 20, 2016 from the Secretary-General addressed to the President of the Security Council, *Annex: Special Report of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Submission to the Security Council Committee pursuant to its resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al Qaida and associated individuals, groups, undertakings and entities*, 5, U.N. Doc. S/2016/1090 (Dec. 21, 2016).

<sup>28</sup> Wilson Center, *Al Qaeda v. ISIS: Leaders & Structure* (Sept. 28, 2015), <https://www.wilsoncenter.org/article/al-qaeda-v-isis-leaders-structure>.

<sup>29</sup> *Prosecutor v. Sylvestre Mudacumura, Case No. ICC-01/04-02/06*, Pre-Trial Chamber II, Decision on the Prosecutor's Application under Article 58, ¶ 73 (July 13, 2012).

<sup>30</sup> Frederiek De Vlaming, *The Yugoslavia Tribunal and the Selection of Defendants*, at 94, AMST. LAW FORUM (Spring 2012) (citing Richard Goldstone in the documentary "Against All Odds," Sense Agency, 2003).

<sup>31</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": *ISIS Crimes against the Yazidi*, ¶ 61, U.N. Doc. A/HRC/32/CRP.2 (June 15, 2016).

<sup>32</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, ¶ 13, U.N. Doc. A/HRC/27/CRP.3 (Nov. 19, 2014).

<sup>33</sup> Center for American Progress, *The Flow of Foreign Fighters to the Islamic State: Assessing the Challenge and the Response* (2016), <https://cdn.americanprogress.org/wp-content/uploads/2016/03/17132821/ForeignFighters-report.pdf>.

<sup>34</sup> Interview with the former Chief Analyst for the Independent International Commission of Inquiry on the Commission of Inquiry on the Syrian Arab Republic, Sareta Ashraph, May 26, 2017.

<sup>35</sup> U.N. Secretary-General, Letter dated Dec. 20, 2016 from the Secretary-General addressed to the President of the Security Council, *Annex: Special Report of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Submission to the Security Council Committee pursuant to its resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al Qaida and associated individuals, groups, undertakings and entities*, 7, U.N. Doc. S/2016/1090 (Dec. 21, 2016); Rukmini Callimachi, *ISIS Enshrines a Theology of Rape*, N.Y. TIMES, Aug. 13, 2015,

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[http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html?\\_r=0](http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html?_r=0); The U.S. Holocaust Memorial Museum Simon Skjodt Center for the Prevention of Genocide, “Our Generation is Gone”: *The Islamic State’s Targeting of Iraqi Minorities in Ninewa*, at 10 (2015).

<sup>36</sup> U.N. Secretary-General, Letter dated Dec. 20, 2016 from the Secretary-General addressed to the President of the Security Council, *Annex: Special Report of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Submission to the Security Council Committee pursuant to its resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da’esh), Al Qaida and associated individuals, groups, undertakings and entities*, 7, U.N. Doc. S/2016/1090 (Dec. 21, 2016).

<sup>37</sup> Aeyal Gross, *ICC Prosecutor: Low-ranking Israeli Soldiers, as Well as Palestinians, Could Be Prosecuted for War Crimes*, HAARETZ (May 1, 2015), <http://www.haaretz.com/israel-news/.premium-1.654516>.

<sup>38</sup> Office of the Prosecutor of the Int’l Criminal Court, *Strategic Plan 2016-2018*, ¶ 38 (Nov. 16, 2015); Office of the Prosecutor of the Int’l Criminal Court, *Strategic Plan June 2012-2015*, ¶¶ 4, 22 (Oct. 11, 2013); Office of the Prosecutor of the Int’l Criminal Court, *Policy Paper on Preliminary Examinations*, ¶ 106 (Nov. 2013).

<sup>39</sup> Note: “investigations” are the result of “preliminary examinations” and therefore require a higher standard than do “preliminary examinations.” Thus, in making the case here that the burden is met to justify an *investigation*, so too is the burden met to justify a *preliminary examination*.

<sup>40</sup> ICC, *Regulations of the Office of the Prosecutor*, Doc. ICC-BD/05-01-09, Regulation 29 (Apr. 29, 2009).

<sup>41</sup> *Situation in the Republic of Kenya*, Case No. ICC-01/09-19-Corr., PTC II, ICC, Decision Pursuant to Art. 15 of the Rome Statute on the Authorization of an Investigation into the Situation of the Republic of Kenya, ¶ 62 (Mar. 31, 2010).

<sup>42</sup> *Situation in the Republic of Kenya*, Case No. ICC-01/09-19-Corr., PTC II, ICC, Decision Pursuant to Art. 15 of the Rome Statute on the Authorization of an Investigation into the Situation of the Republic of Kenya, ¶¶ 190-191 (Mar. 31, 2010).

<sup>43</sup> *Situation in the Republic of Kenya*, Case No. ICC-01/09-19-Corr., PTC II, ICC, Decision Pursuant to Art. 15 of the Rome Statute on the Authorization of an Investigation into the Situation of the Republic of Kenya, ¶¶ 190-191 (Mar. 31, 2010); *Situation in Georgia*, Case No. ICC-01/15, PTC I, Decision on the Prosecutor’s request for authorization of an investigation, ¶¶ 54-55 (Jan. 27, 2016).

<sup>44</sup> Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They came to destroy”: *ISIS Crimes against the Yazidi*, ¶¶ 1, 22, 205, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>45</sup> Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They came to destroy”: *ISIS Crimes against the Yazidi*, ¶ 22, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>46</sup> Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They came to destroy”: *ISIS Crimes against the Yazidi*, ¶ 36, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>47</sup> Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They came to destroy”: *ISIS Crimes against the Yazidi*, ¶¶ 6, 36, 56, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016); Yazda, *Mass Graves of Yazidis Killed by the Islamic State Organization or Local Affiliates on or After August 3, 2014* 7-20 (Jan. 28, 2016); Amnesty Int’l, *Annual Report 2016/2017: The State of the World’s Human Rights*, at 197 (2017), <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>.

<sup>48</sup> Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They came to destroy”: *ISIS Crimes against the Yazidi*, ¶¶ 6, 7, 17, 127, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>49</sup> Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, ¶ 110, U.N. Doc. A/HRC/33/55 (Aug. 11, 2016).

<sup>50</sup> BBC, *Islamic State and the Crisis in Iraq and Syria in Maps* (Jan. 20, 2017), <http://www.bbc.com/news/world-middle-east-27838034>.

<sup>51</sup> *Situation in the Republic of Kenya*, Case No. ICC-01/09-19-Corr., PTC II, ICC, Decision Pursuant to Art. 15 of the Rome Statute on the Authorization of an Investigation into the Situation of the Republic of Kenya, ¶¶ 192-193 (Mar. 31, 2010).

<sup>52</sup> *Situation in the Republic of Kenya*, Case No. ICC-01/09-19-Corr., PTC II, ICC, Decision Pursuant to Art. 15 of the Rome Statute on the Authorization of an Investigation into the Situation of the Republic of Kenya, ¶¶ 192-193 (Mar. 31, 2010).

<sup>53</sup> Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They came to destroy”: *ISIS Crimes against the Yazidi*, ¶ 155, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>54</sup> Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They came to destroy”: *ISIS Crimes against the Yazidi*, ¶ 155, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

<sup>55</sup> Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, “They came to destroy”: *ISIS Crimes against the Yazidi*, ¶ 34, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

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- <sup>56</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶¶ 34–35, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>57</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 127, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>58</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 118, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>59</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 120, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>60</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 60, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>61</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 140, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>62</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 64, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>63</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 64, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>64</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 83, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>65</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 84, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>66</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 84, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>67</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 119, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>68</sup> Amnesty Int'l, Annual Report 2016/2017: The State of the World's Human Rights, at 352-53 (2017), <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>.
- <sup>69</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 119, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>70</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 140, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>71</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 119, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>72</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 26, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>73</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 167, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>74</sup> *Situation in the Republic of Kenya*, Case No. ICC-01/09-19-Corr., PTC II, ICC, Decision Pursuant to Art. 15 of the Rome Statute on the Authorization of an Investigation into the Situation of the Republic of Kenya, ¶¶ 194-196 (Mar. 31, 2010).
- <sup>75</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 120, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>76</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶¶ 52-53, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>77</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 53, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016); Human Rights Watch, Iraq: ISIS Escapees Describe Systematic Rape (Apr. 14, 2015), <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>.
- <sup>78</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 53, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>79</sup> Amnesty Int'l, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq*, at 13 (2014), [https://www.amnesty.org.uk/files/escape\\_from\\_hell\\_-\\_torture\\_and\\_sexual\\_slavery\\_in\\_islamic\\_state\\_captivity\\_in\\_iraq\\_-\\_english\\_2.pdf](https://www.amnesty.org.uk/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_-_english_2.pdf).
- <sup>80</sup> Amnesty Int'l, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq*, at 13 (2014), [https://www.amnesty.org.uk/files/escape\\_from\\_hell\\_-\\_torture\\_and\\_sexual\\_slavery\\_in\\_islamic\\_state\\_captivity\\_in\\_iraq\\_-\\_english\\_2.pdf](https://www.amnesty.org.uk/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_-_english_2.pdf).
- <sup>81</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, ¶ 172, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).

- <sup>82</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes against the Yazidi, ¶¶ 177-178, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>83</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes against the Yazidi, ¶ 145, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>84</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes against the Yazidi, ¶ 175, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>85</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes against the Yazidi, ¶ 179, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>86</sup> Harvard Humanitarian Initiative – Advanced Training Program on Humanitarian Action, Podcast: *Pursuing Accountability in Syria*, 57:00, <http://atha.se/podcasts/pursuing-accountability-syria>.
- <sup>87</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes against the Yazidi, ¶¶ 104, 159, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>88</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes against the Yazidi, ¶ 155, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>89</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes against the Yazidi, ¶ 156, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>90</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes against the Yazidi, ¶ 61, U.N. Doc. A/HRC/32/CRP.2 (Jun. 15, 2016).
- <sup>91</sup> *Situation on Registered Vessels of Comoros, Greece and Cambodia*, Decision on the request of the Union of Comoros to review the Prosecutor's decision not to open an investigation, ICC-01/13, PTC I, ¶ 17 (July 16, 2015).
- <sup>92</sup> The U.S. Holocaust Mem'l Museum Simon Skjodt Center for the Prevention of Genocide, "Our Generation is Gone": *The Islamic State's Targeting of Iraqi Minorities in Ninewa*, at 3 (2015).
- <sup>93</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, ¶ 30, U.N. Doc. A/HRC/27/CRP.3 (Nov. 19, 2014).
- <sup>94</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Findings 10 Jul. 2015 – 10 Jan. 2016*, ¶ 79, U.N. Doc. A/HRC/31/68 (Feb. 11, 2016); Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Human Rights Abuses and International Humanitarian Law Violations in the Syrian Arab Republic, 21 July 2016 – 28 February 2017*, ¶ 82, U.N. Doc. A/HRC/34/CRP.3 (Mar. 10, 2017); Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Findings 10 Jan. 2015 – 10 Jul. 2016*, ¶ 120, U.N. Doc. A/HRC/30/48 (Aug. 13, 2015).
- <sup>95</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Findings 10 Jan. 2016 – 20 Jul. 2016*, ¶ 103, U.N. Doc. A/HRC/33/55 (Aug. 11, 2016); Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016 – 28 February 2017*, ¶ 77, U.N. Doc. A/HRC/34/CRP.3 (Mar. 10, 2017).
- <sup>96</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, ¶ 34, A/HRC/27/CRP.3 (Nov. 19, 2014); Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Findings 10 Jan. 2016 – 20 Jul. 2016*, ¶ 103, U.N. Doc. A/HRC/33/55 (Aug. 11, 2016).
- <sup>97</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016 – 28 February 2017*, ¶¶ 78-79, U.N. Doc. A/HRC/34/CRP.3 (Mar. 10, 2017); Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Findings 10 Jan. 2016 – 20 Jul. 2016*, ¶ 103, U.N. Doc. A/HRC/33/55 (Aug. 11, 2016). *See also* Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria* (Nov. 14, 2014).
- <sup>98</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, ¶¶ 47-57, A/HRC/27/CRP.3 (Nov. 19, 2014).
- <sup>99</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, ¶¶ 48-50, 52, A/HRC/27/CRP.3 (Nov. 19, 2014).
- <sup>100</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, ¶ 62 A/HRC/27/CRP.3 (Nov. 19, 2014); Indep. Int'l Comm'n of Inquiry of the Syria Arab Republic, *Trends and Patterns of Human Rights Violations Mar. 2011 – Mar. 2015*, ¶ 70, U.N. Doc. A/HRC/28/69 (Feb. 5, 2015).
- <sup>101</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Findings 10 Jan. 2015 – 10 Jul. 2015*, ¶ 69, U.N. Doc. A/HRC/30/48 (Aug. 13, 2015).
- <sup>102</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *10 Jul. 2015 – 10 Jan. 2016*, ¶ 62, U.N. Doc. A/HRC/31/68 (Feb. 11, 2016); Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, ¶¶ 25, 31 (Nov. 19, 2014); U.N. Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in light of the abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups*, ¶ 47, U.N. Doc. A/HRC/28/18 (Mar. 13, 2015); S.C. Res. 2170, U.N. Doc. S/RES/2170 (Aug. 15, 2014); S.C. Res. 2195, U.N. Doc. S/RES/2195 (Dec. 19, 2014); S.C. Res. 2199, U.N. Doc. S/RES/2199 (Feb. 12, 2015); S.C. Res. 2249, U.N. Doc. S/RES/2249 (Nov. 20,



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2015); S.C. Res. 2253, U.N. Doc. S/RES/2253 (Dec. 17, 2015); S.C. Res. 2322, U.N. Doc. S/RES/2322 (Dec. 12, 2016). S.C. Res. 2347, U.N. Doc. S/RES/2347 (Mar. 24, 2017).

<sup>103</sup> Office of the Prosecutor of the Int'l Criminal Court, *Policy Paper on Sexual and Gender-Based Crimes*, ¶¶ 45, 46 (Jun. 2014).

<sup>104</sup> *Notorious*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/notorious> (last visited April 5, 2017).

<sup>105</sup> See The Soufan Group, *Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq* (Dec. 2015), [http://soufangroup.com/wp-content/uploads/2015/12/TSG\\_ForeignFightersUpdate3.pdf](http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf); *Foreign Fighters in Iraq & Syria: Where Do They Come From?*, RADIOFREE EUROPE, <http://bit.ly/2fEw2BW> (last visited Jul. 7, 2017); Peter R. Neumann, *Foreign Fighter Total in Syria/Iraq Now Exceeds 20,000; Surpasses Afghanistan Conflict in the 1980s*, Int'l Ctr. for the Study of Radicalisation and Political Violence (Jan. 26, 2015), <http://icsr.info/2015/01/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/>.

<sup>106</sup> U.N. Human Rights Council, *Report of the Office of the United Nations Commissioner for Human Rights on the Human Rights Situation in Iraq in the Light of the Abuses Committed by the So-called Islamic State in Iraq and the Levant and Associated Groups*, ¶ 17, U.N. Doc. A/HRC/28/18 (Mar. 13, 2015); Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, ¶ 57, (Nov. 19, 2014); The U.S. Holocaust Mem'l Museum Simon Skjodt Center for the Prevention of Genocide, "Our Generation is Gone": *The Islamic State's Targeting of Iraqi Minorities in Ninewa*, at 20-21 (2015).

<sup>107</sup> *The Revival of Slavery Before the Hour*, 4 DABIQ MAGAZINE at 14-17.

<sup>108</sup> S.C. Res. 2170, U.N. Doc. S/RES/2170 (Aug. 15, 2014); S.C. Res. 2195, U.N. Doc. S/RES/2195 (Dec. 19, 2014); S.C. Res. 2199, U.N. Doc. S/RES/2199 (Feb. 12, 2015); S.C. Res. 2249, U.N. Doc. S/RES/2249 (Nov. 20, 2015); S.C. Res. 2253, U.N. Doc. S/RES/2253 (Dec. 17, 2015); S.C. Res. 2322, U.N. Doc. S/RES/2322 (Dec. 12, 2016). S.C. Res. 2347, U.N. Doc. S/RES/2347 (Mar. 24, 2017).

<sup>109</sup> J. Johnson & D. Weigel, *Donald Trump Calls for a "Total Ban" on Muslims Entering United States*, WASH. POST, Dec. 8, 2015; D. Hill, *Brexit Britain Will Depend on 'Foreign' London and its Muslim Mayor in 2017*, THE GUARDIAN, Dec. 28, 2016; R. Iyegar, *French Far-Right Politician Will Go on Trial for Comparing Muslims to Nazis*, TIME MAGAZINE, Sept. 22, 2015; J. Mulhall, *It's Not Just Trump's US. Anti-Muslim Hate Threatens Europe Too*, THE GUARDIAN, Feb. 2, 2017.

<sup>110</sup> Office of the Prosecutor of the Int'l Criminal Court, *Policy Paper on Sexual and Gender-Based Crimes*, ¶ 5 (Jun. 2014).

<sup>111</sup> Office of the Prosecutor of the Int'l Criminal Court, *Policy Paper on Sexual and Gender-Based Crimes*, ¶ 2 (Jun. 2014).

<sup>112</sup> See Global Justice Center, *Letter in Support of Filing of OTP-CR-397/15 to the Office of the Prosecutor of the International Criminal Court Calling for a Preliminary Examination of ISIS's Crimes Against the Yazidis of Sinjar* (Dec. 17, 2015), <http://bit.ly/2ovrXjM>.

<sup>113</sup> Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, "They came to destroy": *ISIS Crimes against the Yazidi*, U.N. Doc. A/HRC/32/CRP.2 (June 15, 2016).

<sup>114</sup> Office of the Prosecutor of the Int'l Criminal Court, *Strategic Plan 2016-2018*, ¶ 37 (Nov. 16, 2015).

<sup>115</sup> United Nations Peacekeeping, *Rule of Law*, <http://www.un.org/en/peacekeeping/issues/ruleoflaw.shtml> (last visited July 7, 2017).

<sup>116</sup> Rome Statute of the International Criminal Court art. 5, Jul. 17, 1998, UN Doc. A/CONF.183/9.

<sup>117</sup> Human Rights Watch, *Iraq: Protect Mass Graves*, (Jan. 30, 2016), <https://www.hrw.org/news/2016/01/30/iraq-protect-mass-graves>.

<sup>118</sup> Office of the Prosecutor of the Int'l Criminal Court, *Strategic Plan 2016-2018*, ¶ 24 (Nov. 16, 2015).

<sup>119</sup> See Yaël Ronen, *The Impact of the ICTY on Atrocity-Related Prosecutions in the Courts of Bosnia and Herzegovina*, 3 PENN. ST. J.L. & INT'L AFF. 113, 127, 135 (2014).

<sup>120</sup> Yaël Ronen, *Bosnia and Herzegovina: The Interaction between the ICTY and Domestic Courts in Adjudicating International Crimes*, at 42, DOMAC Project (2011).

<sup>121</sup> These notions included: "widespread' and/or 'systematic' attack, the elements of genocide, the elements of 'persecution', civilians, protected persons, the discriminatory element in crimes against humanity, imprisonment as a crimes against humanity, the nexus between the defendant's act and the armed conflict as an element in war crimes, intentional infliction of severe physical or mental pain, inhumane acts, as well as the character of armed conflict, elements of ethnic cleansing, and of various violation of the laws or customs of war, including of rape and sexual abuse." Yaël Ronen, *Bosnia and Herzegovina: The Interaction between the ICTY and Domestic Courts in Adjudicating International Crimes*, at 43-44, DOMAC Project (2011).

- <sup>122</sup> Examples of substantive law relied on: “factors determining whether an act was related to a conflict, definition of the term “civilian” to determine the status of victims, customary status of punishment of crimes against humanity and individual responsibility for their commission, determination of the elements of a crime against humanity, persecution and torture, definition of the term “other inhumane acts,” elements of the actus reus and mens rea of rape, interpretation of forms of individual criminal responsibility, and interpretation of the elements of command responsibility”. International Center for Transitional Justice and Bogdan Ivanišević, *The War Crimes Chamber in Bosnia & Herzegovina: From Hybrid to Domestic Court*, at 25 (2008), <https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Domestic-Court-2008-English.pdf>.
- <sup>123</sup> William W. Burke-White, *The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia & Herzegovina*, 46 COLUM. J. TRANSNAT'L L. 279, 343 (2008); Philip Caine, *The International Criminal Tribunal for the former Yugoslavia: Planners and Instigators or Foot Soldiers?*, 11 INT'L J. POLICE SCI. & MGMT. 345, 355 (2009).
- <sup>124</sup> Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998).
- <sup>125</sup> See Global Justice Center, *Letter in Support of Filing of OTP-CR-397/15 to the Office of the Prosecutor of the International Criminal Court Calling for a Preliminary Examination of ISIS's Crimes Against the Yazidis of Sinjar* (Dec. 17, 2015), <http://bit.ly/2ovrXjM>.
- <sup>126</sup> Yaël Ronen, *Bosnia and Herzegovina: The Interaction between the ICTY and Domestic Courts in Adjudicating International Crimes*, at 44, DOMAC Project (2011).
- <sup>127</sup> Yaël Ronen, *Bosnia and Herzegovina: The Interaction between the ICTY and Domestic Courts in Adjudicating International Crimes*, at 44, DOMAC Project (2011).
- <sup>128</sup> William W. Burke-White, *The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia & Herzegovina*, 46 COLUM. J. TRANSNAT'L L. 279, 344 (2008), [http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1177&context=faculty\\_scholarship](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1177&context=faculty_scholarship).
- <sup>129</sup> Yaël Ronen, *Bosnia and Herzegovina: The Interaction between the ICTY and Domestic Courts in Adjudicating International Crimes*, at 56, DOMAC Project (2011).
- <sup>130</sup> Yaël Ronen, *Bosnia and Herzegovina: The Interaction between the ICTY and Domestic Courts in Adjudicating International Crimes*, at 71, DOMAC Project (2011).
- <sup>131</sup> United Nations International Criminal Tribunal for the former Yugoslavia, *Working with the Region*, <http://www.icty.org/en/sid/96> (last visited July 7, 2017).
- <sup>132</sup> Yaël Ronen, *The Impact of the ICTY on Atrocity-Related Prosecutions in the Courts of Bosnia and Herzegovina*, 3 PENN. ST. J.L. & INT'L AFF. 113, 131 (2014).
- <sup>133</sup> Office of the Prosecutor of the Int'l Criminal Court, *Policy Paper on Sexual and Gender-Based Crimes*, ¶ 6 (Jun. 2014).
- <sup>134</sup> See Yaël Ronen, *Bosnia and Herzegovina: The Interaction between the ICTY and Domestic Courts in Adjudicating International Crimes*, at 24-25, DOMAC Project (2011); William W. Burke-White, *The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia & Herzegovina*, 46 COLUM. J. TRANSNAT'L L. 279, 342 (2008).
- <sup>135</sup> Yaël Ronen, *Bosnia and Herzegovina: The Interaction between the ICTY and Domestic Courts in Adjudicating International Crimes*, at 24-25, DOMAC Project (2011).
- <sup>136</sup> William W. Burke-White, *The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia & Herzegovina*, 46 COLUM. J. TRANSNAT'L L. 279, 342 (2008).
- <sup>137</sup> Jacob N. Foster, *A Situational Approach to Prosecutorial Strategy at the International Criminal Court*, 47 GEO. J. INT'L L. 439, 483 (2016).
- <sup>138</sup> Philip Caine, *The International Criminal Tribunal for the Former Yugoslavia: Planners and Instigators or Foot Soldiers?*, 11 INT'L J. POLICE SCI. & MGMT. 345, 354 (2009).
- <sup>139</sup> See Philip Caine, *The International Criminal Tribunal for the Former Yugoslavia: Planners and Instigators or Foot Soldiers?*, 11 INT'L J. POLICE SCI. & MGMT. 345, 352 (2009).
- <sup>140</sup> Rome Statute of the International Criminal Court art. 17(3), Jul. 17, 1998, U.N. Doc. A/CONF.183/9.
- <sup>141</sup> JANN K. KLEFFNER, COMPLEMENTARITY IN THE ROME STATUTE AND NATIONAL CRIMINAL JURISDICTIONS 153-4 (2008).
- <sup>142</sup> JANN K. KLEFFNER, COMPLEMENTARITY IN THE ROME STATUTE AND NATIONAL CRIMINAL JURISDICTIONS 153 (2008).
- <sup>143</sup> Statement of the Prosecutor of the Int'l Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS (Apr. 8, 2015), <https://www.icc-cpi.int/legalAidConsultations?name=otp-stat-08-04-2015-1>.

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<sup>144</sup> Office of the Prosecutor of the Int'l Criminal Court, *Policy Paper on Sexual and Gender-Based Crimes*, ¶ 50 (Jun. 2014).

<sup>145</sup> Office of the Prosecutor of the Int'l Criminal Court, *Strategic Plan 2016-2018*, ¶ 55 (Nov. 16, 2015).

<sup>146</sup> Office of the Prosecutor of the Int'l Criminal Court, *Strategic Plan 2016-2018*, ¶ 55 (Nov. 16, 2015).

<sup>147</sup> Office of the Prosecutor of the Int'l Crim. Court, *Strategic Plan 2016-2018*, ¶ 54 (Nov. 16, 2015); Office of the Prosecutor of the Int'l Criminal Court, *Report on Prosecutorial Strategy* 6 (Sept. 14, 2006).

<sup>148</sup> U.N. Secretary-General, Letter dated Dec. 20, 2016 from the Secretary-General addressed to the President of the Security Council, *Annex: Special Report of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Submission to the Security Council Committee pursuant to its resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al Qaida and associated individuals, groups, undertakings and entities*, U.N. Doc. S/2016/1090 (Dec. 21, 2016).

<sup>149</sup> Office of the Prosecutor of the Int'l Criminal Court, *Report on Prosecutorial Strategy* 6 (Sept. 14, 2006); Jo, Hyeran and Simmons, Beth A., *Can the International Criminal Court Deter Atrocity?* (December 18, 2014), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2552820](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2552820).

<sup>150</sup> Office of the Prosecutor of the Int'l Criminal Court, *Strategic Plan 2016-2018*, ¶¶ 3, 5, 28, 38, 45, 67, 68, 73 (Nov. 16, 2015).

<sup>151</sup> G.A. Res. 71/248, ¶ 4, U.N. Doc. A/RES/71/248 (Dec. 21, 2016).

<sup>152</sup> U.N. Secretary-General, *Implementation of the resolution establishing the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011: Rep. of the Secretary-General*, ¶¶ 3, 31, UN Doc. A/71/755, (Jan. 19, 2017); U.N. Secretary General, *Annex: Terms of reference of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011*, ¶ 4, UN Doc. A/71/755, (Jan. 19, 2017).

<sup>153</sup> See Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *"They came to destroy": ISIS Crimes against the Yazidi*, U.N. Doc. A/HRC/32/CRP.2 (June 15, 2016).

<sup>154</sup> Ben Taub, *Does Anyone in Syria Fear International Law?*, THE NEW YORKER, Aug. 31, 2016,

<http://www.newyorker.com/news/news-desk/does-anyone-in-syria-fear-international-law>.