



## **Jubilee Campaign contribution to UN Special Rapporteur on Torture call for input: Identifying, documenting, investigating and prosecuting crimes of sexual torture committed during war and armed conflicts, and rehabilitation for victims and survivors**

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### **Objective**

Jubilee Campaign submits this document as a written contribution to the Special Rapporteur on Torture regarding obstacles to identifying, documenting, investigating and prosecuting sexual torture committed during armed conflict in Ethiopia, Iraq & Syria, Nigeria, and Ukraine. This written contribution examines the evolution of recognizing and prosecuting sexual torture and war crimes, particularly focusing on advancements since the 1990s, including landmark legal frameworks. Despite progress, persistent biases and challenges hinder effective investigation and prosecution, including the perception of sexual crimes as incidental to armed conflict and the complexity of addressing sexual violence in legal contexts. Cultural barriers and stigma faced by survivors, especially in regions with prevailing gender norms, further complicate legal redress. Drawing on surveys, medical records, and qualitative interviews, this written contribution discusses the extent and severity of sexual torture endured by women and girls in the conflict-affected regions of Tigray between November 2020 and 2022, Ukraine since the Russian incursion in February 2022, northern Nigeria due military and militant activity over the past decade, and Iraq and Syria during the Yazidi Genocide of 2014-2017.

### **Definitions**

The United Nations Special Rapporteur classifies the following conduct as sexual torture: “acts or threats [of] forced nudity, verbalized sexual threats, sexualized degrading or humiliating mocking and other verbal or physical treatment, sexual assault by touching inti[mate] parts of the body, digital penetration, forced masturbation, forced insertion of an object into the vagina or anus, oral rape anal rape and vaginal rape, ejaculation or urination onto the victim, sexual slavery, forced pregnancy and enforced sterilization.”

The International Committee of the Red Cross (ICRC) interprets the 1949 Geneva Conventions and their Additional Protocols to provide the definition of armed conflict as follows: “an armed conflict is said to exist when there is an armed confrontation between the armed forces of States (international armed conflict), or between governmental authorities and organised armed groups or between such groups within a State (non-international armed conflict). Other situations of violence, such as internal disturbances and tensions are not considered to be armed conflicts.<sup>1</sup>

### **Background**

The process of identifying sexual torture and war crimes has made tremendous progress, especially through the participation of feminist scholars in proceedings of the 1993 International Criminal Tribunal for the Former Yugoslavia, the 1994 International Criminal Tribunal for Rwanda, and the ratification of the landmark 1998 Rome Statute of the International Criminal Court (ICC). The ICTY and ICTR for the first time formally categorized rape as a crime against humanity which can sometimes constitute an act of genocide; this consensus was formally codified in the 1998 Statute.<sup>2</sup> Previously, sexual violence in armed conflict received negligible censure as rape was widely

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<sup>1</sup> European Parliament, [Armed Conflict: A glossary of terms](#); International Committee of the Red Cross (ICRC), [How is the Term 'Armed Conflict' Defined in International Humanitarian Law?](#), Opinion Paper, March 2008.

<sup>2</sup> Dr. Rosemary Grey, [Prosecuting sexual and gender violence in the International Criminal Court: Historical legacies and new opportunities](#), University of New South Wales, 2015; Ryan M. McIlroy, [“Prosecuting Rape and Other Forms of Sexual Violence as Acts of Torture under § 2340”](#).

regarded as a “natural and inevitable” occurrence in periods and locations of armed conflict, and misunderstand as anomalous and arbitrary crimes perpetrated attributable to the individual perpetrators and not to a wider agenda of conflict actors. Another notable classification - which will be discussed in the following section of country case studies - is the finding in 2008 by the Special Court for Sierra Leone “quasi-international criminal tribunal” that the Rome Statute may in some cases be applicable in the prosecution of forced marriage, “referring to the abduction of women and girls by rebel soldiers for use as ‘bush wives’”.<sup>3</sup>

Notwithstanding the growing recognition of sexual violence/torture as an aspect of armed conflict capable to be subject to penalties, there remain obstacles to investigating and prosecuting such conduct. The ICC is still a comparably new and dynamic body, and persisting biases - such as the perception that sexual crimes in conflict are insignificant relative to other physical crimes, that sexual violence is “incidental” to armed conflicts rather than as a deliberate instrument in armed conflict, and that the complexity of sexual violence in war precludes prosecution - require further work to address and counteract.<sup>4</sup> Additionally, as noted by the Cambridge University Law Society:

“The international criminal law engages sexual and gender-based violence not because it is a crime of violence against women, but because it is an assault on the community. The violation of a woman’s body is therefore ‘secondary to the humiliation of the group’ and relegates women to the role of symbolic embodiments of community’. This construct of sexual and gender-based violence creates a pattern of gender inequality which perpetuates a gender-biased system of prosecution and accountability in the International Criminal Court” which has only seen eight cases of sexual violence in armed conflict reach trial.<sup>5</sup>

One glaringly obvious and widely noted obstacle to investigating and prosecuting sexual torture in armed conflict include the negative social stigma faced by survivors of such violations, especially when the armed conflict occurs in regions of the world where gender norms prevail, women’s and girl’s sexual purity determines their value. Survivors may be reluctant to seek legal redress in fear of being shunned by their families and home communities, and as will be exemplified in this submission many girls and women from faith communities face further stigma due to religions’ emphasis on sexual purity. In cases in which women and girls from minority faith communities may become pregnant by male members of a majority religion and/or are coerced to convert to the majority religion, such rejection from family can be further exacerbated. As such, “cultural barriers to discussing sexual and gender violence crimes are likely to interact with formal [tribunal] rules, creating significant, though not necessarily insurmountable, challenges for the investigation and prosecution of these crimes”.<sup>6</sup>

Scholars and medical practitioners alike have identified the link between trauma and memory retrieval; “the effect of fear, threat or states of intense stress on memory can result in intensified memory recollection, or it can result in fragmented or impaired memories”. While sensory memories can sometimes be easy to prompt, survivors may have difficulties remembering the time and location of the incident, the order of events or length of incident, or distinct identifiable features of the perpetrator. In high-profile legal cases, such as in criminal tribunals, the expectation of the survivor to provide “the most complete and accurate information” is often unmet, and such “normal inconsistencies have been seized upon by defen[s]e lawyers”.<sup>7</sup> As more complete memories may be recalled over time through therapy and counseling, survivors have reported that presenting new information can make them appear as being inconsistent in their testimonies. Harvard University psychologist Jim Hopper argues that sexual violence survivors are held to unattainable standards: “we would never question the credibility of a soldier, based on whether they can remember the exact sequence of those mortars coming in and which one blew off their friend’s leg versus which blew off that guy’s arm. Every day in courtrooms around the country, we attack and question the credibility of victims of sexual assault for having the same kind of memories that soldiers have for their combat experiences”.<sup>8</sup>

## **Ethiopia**

In 2023 in efforts to gather information on the scope and severity of war-related sexual and gender-based violence which occurred during the Tigray War (November 2020 - November 2022), researchers surveyed 5,171 Ethiopian women between the reproductive ages of 15 and 49 years who resided in Tigray during the armed conflict. 52 out of the total 84 districts in Tigray were studied, due to the persisting insecurity in the remaining 32 districts. As such, the collection of comprehensive war-related sexual torture data is limited by security and safety concerns; such a gap

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Supra* note 2.

<sup>5</sup> Natasha Godsiff, [“The Failure of the International Criminal Court to Prosecute Sexual and Gender-Based Violence”](#), Cambridge University Law Society.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> Government of Canada, [The Impact of Trauma on Adult Sexual Assault Victims Part III - How Trauma Affects Memory and Recall](#).

<sup>8</sup> Sammy Caiola, [“Trauma and memory issues make it hard for sexual assault survivors to report. Here are solutions”](#), 30 June 2021.

may be more pronounced when the uninvestigated regions are the location of the most severe abuses. Furthermore, the survey covers only the first eight months of the conflict, until 28 June 2021. Regardless, this study offers crucial insights and duly illustrates the prevalence of sexual torture which took place during the Tigray conflict. 9.7% (500) of surveyed women reported being subjected to sexual violence, of which 82% (411) identified rape as the abuse they suffered. Among the 411 women who reported being raped, 271 (66%) experienced abuse once, 62 (15%) endured it twice, and 78 (19%) were subjected to it three times or more. On average, women of reproductive age were assaulted by three soldiers, with a maximum of nine perpetrators. A significant number of raped women, 247, reported being gang-raped.<sup>9</sup>

The researchers additionally found that 90% of female respondents who have been subjected to sexual violence were not able to access physical or mental health care, which is especially concerning due to the health problems - sexually transmitted infections, vesicovaginal fistulae, defensive injuries, lacerations/abrasions, etc. Prior to the Ethiopian and Eritrean troops' incursion into the Tigray territory, regional health clinics were operating well and boasted more than 90% accessibility to civilians; within the span of six months, by May 2021 only 17.5% of health facilities were operating functionally.

Following the conclusion of the Tigray War in November 2022, more studies were conducted to ascertain the extent of war-related sexual violence. Physicians for Human Rights and anonymous researchers The Organization for Justice and Accountability in the Horn of Africa collaborated to review 305 medical records from health facilities in Tigray between November 2020 and June 2023. 99% of records included reports of "conflict-related sexual violence" inflicted predominantly on women and girls as young as eight years old and as old as 70; only one medical record did not report a sexual violation. 76% (233 records) of incidents involved rape committed by multiple perpetrators, and "it is noteworthy that there were 10 records in which patients reported experiencing captivity during the occurrence of multiple perpetrator rape, consistent with enslavement and sexual slavery".<sup>10</sup> The majority of perpetrators (96%) were members of militaries and militant groups, largely identified as Tigray People's Liberation Front (TPLF) and Eritrean Defence Forces (EDF) on account of their speaking accents. Physical and mental aftereffects of conflict-related sexual violence in Tigray include post-traumatic stress disorder (13%), unplanned pregnancy (8%), sexually transmitted infections such as HIV, and reproductive organ injuries and conditions (11%) such as urinary and/or fecal incontinence, uterine bleeding and/or prolapse, chronic pelvic pain, and fistulae. Many patients did not seek medical care until months after incidents of war-related sexual violence, possibly due to stigma, security concerns, and negligible accessibility and affordability of care; Médecins sans Frontières noted that nearly all of the 106 reviewed health centers in Tigray had been looted and either partially or significantly damaged.<sup>11</sup>

Human Rights Watch (HRW) from June to November 2021 interviewed health service providers and civil society organizations, learning through this correspondence that many instances of rape against Tigrayan women and girls was accompanied by other criminal actions including killings, physical beatings, death threats, and use of ethnic and gender slurs. In some cases, survivors were raped in front of their young children, male relatives, and other family members, all with the intention to "degrade and dehumanize" victims. HRW's research continued the efforts of Amnesty International who had immediately prior conducted primary resource investigation between March and June 2021. Both organizations noted the overwhelming targeting specifically of pregnant women and women/girls of childbearing age for sexual torture; survivors reported their assailants inserting foreign objects (i.e., sticks, batons, metal shrapnel, gravel, plastic, nails) into their genitals and reproductive organs.<sup>12</sup> Early in the conflict, Tigrayan mother of three Akberet (pseudonym) evacuated her town of Humera following its annexation by Amhara ethnic forces who had entered the Tigray War to fight alongside Ethiopian federal troops. While attempting to flee, Akberet was abducted by four militants and separated from her six-month-old infant, her two young sons, and her 14-year-old brother. The assailants subsequently took turns raping her and concluded their horrific assault by inserting a heated metal rod into her genitals, burning her uterus and rendering her infertile; they had targeted her reproductive organs because "A Tigrayan womb should never give birth".<sup>13</sup> Some perpetrators expressed their intentions to deliberately

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<sup>9</sup> Girmatsion Fisseha, Tesfay Gebregzabher Gebrehiwot, Mengistu Welday Gebremichael, Shishay Wahdey, Gebrekiros Gebremichael Meles, Kebede Embaye Gezae, Awol Yemane Legesse, Akeza Awealom Asgedom, Mache Tsadik, Abraha Woldemichael, Aregawi Gebreyesus, Haftom Temesgen Abebe, Yibrah Alemayehu Haile, Selome Gezahegn, Maru Aregawi, Kiros T Berhane, Hagos Godefay, & Afework Mulugeta, [War-related sexual and gender-based violence in Tigray, Northern Ethiopia: a community-based study](#), *BMJ Global Health*, 2023, doi:10.1136/bmjgh-2022-010270.

<sup>10</sup> Physicians for Human Rights and The Organization for Justice and Accountability in the Horn of Africa, [Broken Promises: Conflict-Related Sexual Violence Before and After the Cessation of Hostilities Agreement in Tigray, Ethiopia](#), August 2023.

<sup>11</sup> *Ibid.*

<sup>12</sup> Amnesty International, ["I Don't Know if They Realized I Was a Person": Rape and Other Sexual Violence in the Conflict in Tigray, Ethiopia](#), 2021, AFR 25/4569/2021.

<sup>13</sup> Lucy Kassa, ["A Tigrayan womb should never give birth": Rape in Tigray](#), *Al Jazeera*, 21 April 2021.

infect their victims with HIV<sup>14</sup> and “cleanse their [Tigrayan] bloodline”.<sup>15</sup> A qualitative study conducted by researchers by the Tigray Institute of Policy Studies (TIPS) raised the story of one Tigrayan woman who was recovering postpartum and was attacked by Eritrean militants, one of whom angrily raped her, “inserting his fist into her vagina and saying they were going to make the Tigrayan uterus quit giving birth. Researchers of this study made the following conclusion:

“The strategic rape theory that underscores the use and weaponization of rape as [a] tool of war and part of strategic decision making in war is the best fit theoretical caveat that explains the nature of Tigray rape. However, this theory falls short of explaining the excess violence and brutality, the dramatization and ritualization of rape and overkilling which cannot be explained achieving strategic objectives of war by weaponization of rape. The excesses had no tangible war objective to attain other than deep down hatred and the desire to exterminate the people of Tigray by killing, raping, separating families, destroying their cherished social and cultural values and institutions, and at last by hampering reproduction through the deliberate and forced sterilization of women by torturing the womb of Tigray. [...] The actions, objectives, and declared intents as evidenced...perfectly fit the definition and elements of crimes of genocide as provided in the convention on the prevention and punishment fo crimes of genocide and [the] ICC’s guidelines on elements of atrocity crimes. Therefore, it is apt to call the rape of Tigray in its proper name: genocidal rape”.<sup>16</sup>

Collecting information on conflict-related sexual torture and violence during the Tigray War has been difficult, especially considering that many medical facilities have been damaged and their patient files misplaced or inaccessible. Physicians for Human Rights and The Organization for Justice and Accountability in the Horn of Africa additionally observed in their research that “here have also been reports of health care workers not recording cases of sexual violence for fear of being targeted by the government for documenting cases”.<sup>17</sup> Humanitarian aid workers informed Human Rights Watch that survivors have been threatened with retaliation and reprisals by perpetrators if they choose to report abuses or identify their attackers; clinicians themselves have similarly been intimidated by militants while treating patients and gathering incident details.<sup>18</sup> Dr. Fasika Amdeslasie, based in the Tigrayan city of Mekelle at Ayder Hospital explained that it is often unsafe for survivors to travel by foot to health facilities for treatment, as in some cases women will be accosted and raped once again in the streets. Dr. Amdeslasie also notes that in many cases, “rape victims would not come to the hospital to report their cases unless they undergo health complications.”<sup>19</sup>

Furthermore, following the signing of the Cessation of Hostilities Agreement (CoHA) between the Ethiopian government and TPLF authorities, the UN Human Rights Council-established International Commission of Human Rights Experts on Ethiopia (ICHREE) and the African Commission on Human and Peoples’ Rights-established Commission of Inquiry (COI), both of whose objective is to conduct investigations into claims of human rights and humanitarian law violations, have reported being pressured by the Ethiopian government to cease their fact-finding operations. Government-imposed telecommunication restrictions including the shutting down of internet service means that, according to Dr. Ewelina Ochab of the Coalition for Genocide Response (CGR), “most of the data on the atrocities has not been preserved correctly and would be deemed inadmissible in court”.<sup>20</sup> The government, in the interest of reestablishing normalized relationships with other countries, has motives to prevent the disclosure of the ICHREE and COI’s findings exposing the severity of human rights violations committed against civilians in Tigray by Ethiopian forces, Eritrean troops, and Tigrayan rebels. These concerted efforts to conceal information inherently transgress the mission of the CoHA to develop a “comprehensive national transnational justice policy aimed at accountability, ascertaining the truth, redress for victims, reconciliation, and healing”.<sup>21</sup>

Meanwhile, though Prime Minister Abiy Ahmed publicly acknowledged the use of rape as a weapon in the war and announced the commencement of a national human rights commission investigation into conflict-related sexual

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<sup>14</sup> Lucy Kassa & Anna Pujol-Mazzini, [“We’re here to make you HIV positive’: Hundreds of women rush to Tigray hospitals as soldiers use rape as weapon of war”](#), *Telegraph*, 27 March 2021.

<sup>15</sup> Bethlehem Feleke, Eliza Mackintosh, Gianluca Mezzofiore, Katie Polglase, Nima Elbagir, Barbara Arvanitidis, and Alex Platt, [“Practically this has been a genocide”](#), *CNN World*, 22 March 2021.

<sup>16</sup> Mengistu Welday Gebremichael, Birhane Gebremariam, Mengistu Mitiku, Znabu Hadush, Bisrat Tesfay, Alemseged Gerezgiher, & Muauz Gidey Alemu, [Rape survivors’ experience in Tigray: a qualitative study](#), *BioMed Central (BMC) Women’s Health*, 2023, doi:10.1186/s12905-023-02502-0.

<sup>17</sup> *Supra* note 10.

<sup>18</sup> Human Rights Watch, [‘I Always Remember that Day’: Access to Services for Survivors of Gender-Based Violence in Ethiopia’s Tigray Region](#), 9 November 2021.

<sup>19</sup> Lucy Kassa, [“The Sexually Violated Women of Tigray Demand Justice”](#), *New Lines Magazine*, 18 July 2023.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Supra* note 10.

atrocities, he claimed that “there had been a campaign of ‘propaganda’ and ‘exaggeration’”.<sup>22</sup> This absurd accusation disregards clear evidence, including graphic video footage which circulated in March 2021 depicting a young woman at a Tigray hospital having nails, stones, and plastic from her genitals by a surgeon after she had been held captive as a sex slave and gang raped by 23 Eritrean soldiers over the course of 11 days.<sup>23</sup>

Some survivors who had faced sexual torture and violence during the first months of the war have only recently come forward with their testimonies. In the predominantly Christian region of Tigray, the stigma against victims of sexual crimes is tenfold. Women’s Bureau counselors have reported that “although church leadership preache[s] tolerance, religious leaders in some rural areas said women had been raped because God did not love them, and that some residents reviled the women and their children as rapists’ leftovers”. This shameful rhetoric discourages Tigrayan women from reporting abuses,, especially survivors who have become pregnant from rape and are trying to keep their pregnancies secret from their families who may reject them and their children.<sup>24</sup> Conversely - and fortunately - some faith-based organizations and charities operated by religious associations have seen it as their duty to assist these shunned survivors, offering them food, shelter, counseling, and vocational training.

## Iraq & Syria

When militants of the Islamic State of Iraq and the Levant (ISIL) [also: Islamic State of Iraq and Syria (ISIS)] forcibly invaded northern Iraq and Syria in June 2014 and announced the establishment of a caliphate, troops embarked on a campaign to either convert Yazidi civilians to Islam or execute them en masse. Yazidis (also: Yezidis) are a Kurdish-speaking ethno-religious group who practice a “monotheistic religion with elements of Zoroastrianism, Mithraism, Mathadaism, and other elements of the area’s oral traditions”, as well as Christianity.<sup>25</sup> Coinciding with these mass killings, ISIL forces abducted an estimated 5,270 Yazidi girls and women, of whom approximately 2,700 remain in militant captivity nearly a decade later.<sup>26</sup>

“ISIL has been successful in its mass enslavement of Yazidi women in part because of the institutions it has set up to facilitate the enslavement, including legal institutions. ISIL needed its courts to make rulings and provide justifications for resurrecting the practice and facilitat[ing] the complex questions of owning and trading slaves. First, the courts used [an] ancient Islamic [...] law that allows fighters to enslave people who had been defeated in a legal jihad and taken as ‘spoils of war’. Spoils of war, the judges clarified, did not refer to all captured people, but rather just those who could be classified as ‘Mushrikin’ [pagans], in contrast to ‘People of the Book’. ISIL courts then ruled that Yazidis are ‘Mushrikin’ [...] and that the women could be enslaved”.<sup>27</sup>

Testimonies of Yazidi women who were captured by ISIS fighters illustrated that although persecution of the group was “indiscriminate with regard to ethnicity and religion”, experiences varied depending on female victims’ ages, marital statuses, perceptions of beauty, and perceptions of “sexual purity”.<sup>28</sup> In some cases, women who immediately converted to Islam upon their captors’ demands in order to save their lives and preserve the lives of the family were permitted to reside in their homes and were provided daily necessities by the militants. Scholars note, however, that these womens’ relative independence compared to other seized Yazidis “was contingent on their new identity as ‘Muslim converts’” as well as their compliance with ISIS’ instructions to wear Islamic dress and fast for Ramadan.<sup>29</sup> Indeed, Yazidi women who resisted forced religious conversion were enslaved, with older women being relegated to domestic servitude such as cooking, cleaning, and childcare, and younger women being sold at varying prices according to their virginity. Some victims were prepubescent girls as young as nine, although the majority were teenagers. Notwithstanding their ages, however, enslaved girls and women alike were repeatedly raped, often along with the perpetrators’ use of contraceptives to prevent their pregnancy and therefore maintain their marketability, trade value, and continued use as sexual objects. According to IS regulations, women who became pregnant by militants were unable to be sold and were to be emancipated upon their ‘husbands’ death, often in combat; therefore, contraceptives were used as a tool of perpetuity to prolong the enslavement of Yazidi women and girl victims.<sup>30</sup>

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<sup>22</sup> *Supra* note 13.

<sup>23</sup> *Supra* note 19.

<sup>24</sup> Katharine Houreld, [“Raped during Ethiopia’s war, survivors now rejected by their families”](#), *Washington Post*, 26 November 2023.

<sup>25</sup> David Sverdlow, [“Rape in War: Prosecuting the Islamic State of Iraq and the Levant and Boko Haram for Sexual Violence against Women”](#), Cornell International Law Journal, 2017.

<sup>26</sup> United Nations Security Council, [“ISIL/Da’esh Committed Genocide of Yazidi, War Crimes against Unarmed Cadets, Military Personnel In Iraq, Investigative Team Head Tells Security Council”](#) [Press Release], 10 May 2021. ; Nadia’s Initiative, [The Genocide](#). ; Free Yezidi Foundation, [My Life My Future: 2022 Annual Report](#), 2023.

<sup>27</sup> *Supra* note 25.

<sup>28</sup> Gina Vale, [Liberated, not free: Yazidi women after Islamic State captivity](#), *Small Wars & Insurgencies*, 2020, doi:10.1080/09592318.2020.1726572.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Supra* note 28.

Inversely and occasionally, “rape, in some circumstances, can be used as a birth prevention tactic. Since the Yazidis are a closed ethno-religious group, marrying and procreating only within their own community, rape and impregnation by non-Yazidi ISIS militants can be seen as preventing the birth of fully Yazidi offspring”.<sup>31</sup> Furthermore, aggravated rape may result in physical conditions such as sterility and/or infertility, or could inflict mental trauma which may prevent survivors from engaging in future consensual sexual activity with the purpose of reproduction.

Survivors have shared experiences such as being confined to halls and other large venues with tens of other Yazidi women and girls at the disposal of ISIS fighters who would rape and physically assault them, “pulling hair, beating girls, and slamming the heads of anyone who resisted”.<sup>32</sup> One girl reported being ‘owned’ by seven militants, four of whom would pass her around and sexually abuse her. Now 22-year-old Eman Abdullah shared that when she was just 13, ISIL militants abducted her and stuffed her in the trunk of their vehicle next to the corpse of a beheaded man, transferred her to a warehouse holding 500 other Yazidi women and girls, and selected her via a raffle game to be restrained to a bed and raped. Eman was subsequently forcibly married to three separate ISIS fighters, the last of whom coerced her to follow Islam; she memorized and recited 100 pages of the Quran.<sup>33</sup>

The Islamist group even employed doctors and other medical professionals, some of whom would perform non-consensual abortions on Yazidi women who were “pregnant with ‘infidel’ children”; one woman recalled having her abdomen sat on by an ISIS doctor in order to kill her fetus.<sup>34</sup> A 2017 survey study of displaced Yazidi women in the Kurdistan region of Iraq revealed that, of the 54 who had been abducted by ISIS troops, 50 (≈ 93%) had experienced a mean of ≈ 5 acts of physical and sexual violence in captivity, the most common of which being sex slavery (≈ 52%) which was often accompanied by coercive conversions to Islam.<sup>35</sup>

“Through forced conversion, rape, and even marriage its (ISIS) fighters and members seek to bring about the physical and spiritual excommunication of Yazidi women from their community. In the long term, shame and perceived loss of honour serve to prevent the return and reintegration of captives, thereby cementing their new identity as Muslim wives and *sabiyya* [young girls]”.<sup>36</sup>

Research also concluded that - unsurprisingly - Yazidi women who had been abducted by ISIS soldiers displayed significantly higher levels of psychopathology, notably PTSD and depressive disorders.<sup>37</sup> Offering further credence to the implications of rape on mental health, another group of scholars surveyed 190 formerly-interned Yazidi women in Dohuk, Iraq in 2015 prior to their resettlement, finding that ≈ 98% and ≈ 88% suffered from PTSD and depression, respectively. Women and girls who were captive by militants for a longer period of time were unsurprisingly more predisposed to suffer from comorbid (simultaneously present) PTSD and depression; “a longer period of captivity can go hand in hand with severe alienation, hopelessness, and loss of control”. Survivors who had been sold into sex slavery were doubly vulnerable to both disorders in comparison with those who had not been sold. Moreover, each time a woman or girl was exposed to a single potentially traumatic event (PTE), the probability of developing comorbid PTSD and depression was doubled.<sup>38</sup> In 2017, ten clinical psychologists interviewed previously enslaved Yazidi women and girls and learned that in addition to mental disorders, they exhibited high rates of “perceived social rejection”, including fear of not being able to marry (≈ 32%), ‘extreme’ exclusion from the community (≈ 45%), anxiety about what others would think about their experiences (≈ 50%), and avoidance of people and social activities due to “fear of being rejected or stigmatized”.<sup>39</sup>

Some interned Yazidi woman and girls - especially those who were held hostage for more longer than one year and suffered from rape and other sexual violence- lost hope of their eventual freedom and attempted suicide by ingesting poison, self-inflicting gun wounds, and even asphyxiating themselves with their headscarves. It is therefore plausible that PTSD, depression, generalized anxiety, and reduced hope are mutually exacerbating and can explain the relatively

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<sup>31</sup> Zeyad Jaffal, [Rape as Genocide Crime in International Criminal Law - The Case of Yazidi Women in Iraq](#), International Journal of Criminal Justice Sciences (IJCJS), 2020, doi:10.5281/zenodo.3841256.

<sup>32</sup> *Ibid.*

<sup>33</sup> Alessandra Bajec, [“Yazidi women survivors of ISIL crimes yet to find justice”](#), *Al Jazeera*, 14 June 2022.

<sup>34</sup> *Supra note 31.*

<sup>35</sup> *Supra note 31.*

<sup>36</sup> *Supra note 28.*

<sup>37</sup> Katharina Goessmann, Hawkar Ibrahim, & Frank Neuner, [Association of War-Related and Gender-Based Violence With Mental States of Yazidi Women](#), Journal of the American Medical Association, 2020, doi:10.1001/jamanetworkopen.2020.13418.

<sup>38</sup> Jan Ilhan Kizilhan, Nadine Friedl, Johanna Neumann, & Leonie Traub, [Potential trauma events and psychological consequences for Yazidi women after ISIS captivity](#), BioMed Central (BMC) Psychiatry, 2020, doi:10.1186/s12888-020-02671-4.

<sup>39</sup> Hawkar Ibrahim, Verena Ertl, Claudia Catani, Azad Ali Ismail, & Frank Neuner, [Trauma and perceived social rejection among Yazidi women and girls who survived enslavement and genocide](#), BioMed Central (BMC) Medicine, 2018, doi:10.1186/s12916-018-1140-5.

low resilience rates among Yazidi survivors in comparison to war-related trauma survivors in other countries and continents.<sup>40</sup>

Pursuant to the 2021 Yazidi Female Survivors Law, financial restitution, physical and psychological health care, educational and employment opportunities, and housing assistance are guaranteed to Yazidis. Numerous scholars and Yazidi women and girls indicated that, notwithstanding the obvious positive effect the law would have on their rehabilitation, “the most crucial compensation to health the wounds if women survivors if ISIS [is] to prosecute” perpetrators of sexual violence”. The legislation’s largest failure is that it has no connections or other transitional justice mechanisms, meaning that while proof of atrocities against Yazidi women may be used to quantify victims’ due recompense, this critical evidence would not be preserved and submitted to international tribunals and would therefore not achieve necessary criminal accountability and institutional reform.<sup>41</sup> Another deficiency of the 2021 bill is its omission of children who were born due to the rape of Yazidi women by ISIS militants. According to the preexisting National Identity Card Law, all infants are required to take the name of their fathers. This creates difficulties for Yazidi mothers who have been subjected to rape by multiple individuals and are unable to identify the fathers of their children with certainty. Municipal government offices continue to require these Yazidi mothers to legally register their children as Muslim based on the fathers’ faith identity, despite the fathers’ atrocities as ISIS militants - and conditions of rape involved in the pregnancies - and their subsequent absence in the childrens’ lives. In April 2023, 13 global non-governmental organizations<sup>42</sup> publicly condemned the Iraqi government’s recent implementation of a new pre-requisite that Yazidi survivors must file criminal complaints in order to receive reparations. Such a mandatory requirement will surely present obstacles to Yazidis who wish to receive compensation, as an influx of criminal complaints could “risk overloading judicial mechanisms” and indefinitely delaying the distribution of reparations to survivors. Additionally, many Yazidi survivors are reluctant to publicly share the sexual atrocities inflicted upon them due to social stigma and the frightening possibility of re-traumatization, and under these new evidentiary requirements such individuals would be discouraged from seeking reparations by publicly filing complaints.<sup>43</sup> Indeed, when researchers sought out to survey Yazidi survivors in 2017, 22 women rejected invitations to participate, noting that they “don’t want to talk about this experience”.<sup>44</sup>

Although the Iraqi Ministry of Migration and Displacement established a program to provide financial relief disbursements to Yazidi female survivors - of whom 899 reported receiving monetary grants - discontinued budgetary allocations has undermined the efficacy of the initiative.<sup>45</sup> More recently, when Iraq announced in February 2024 a new plan to assist the return of displaced Yazidis to their original communities by rebuilding homes and reserving job opportunities, concerns were raised that the June 30th deadline to close IDP camps in Kurdistan offers little time to return the more than 1 million Yazidis living in these settlements.<sup>46</sup>

In the summer of 2023, UN Special Adviser on the Prevention of Genocide, Alice Wairimu Nderitu, penned an article commemorating the 9th anniversary of the start of the Yazidi Genocide, and exposing the lack of will and reluctant collaboration of the Iraqi government, who has declined to domesticate international humanitarian law and criminal law in its own domestic penal provisions. In Nderitu’s meetings with displaced Yazidi communities, she learned that they “continue to face structural discrimination, hate speech, and weak legal framework to address these issues”. She did welcome the German Federal Court of Justice’s conviction in 2021 of ISIS member Taha A.J. for genocide against Yazidis, noting that it sets a precedent for future prosecutions.<sup>47</sup> However, the fact that this was the “first-ever conviction of an ISIS member for genocide anywhere in the world”, and that it was delivered a whole seven years after the Yazidi genocide, indicates the failure of international courts to charge terrorist groups which have been wreaking havoc in various countries for decades unabated. It also does not spark hope for the prosecution of sexual torture in armed conflict, the charges of which often go overlooked in criminal tribunals or have been dropped on the unacceptable grounds that their genocidal intent - and the complicity of higher-up state and non-state officials - is ‘more difficult to substantiate’.<sup>48</sup>

<sup>40</sup> Perjan Hashim Taha, Thomas P. Nguyen, & Shameran Slewa-Younan, *Resilience and Hope Among Yazidi Women Released from ISIS Enslavement*, Journal of Nervous and Mental Disease, 2021, doi:10.1097/NMD.0000000000001400.

<sup>41</sup> Roza Omer Hamadamin, Nor Anita Abdullah, & Mohd Zakhiri Md. Nor, *The Applied State of Violation of Women’s Rights in Armed Conflicts: Yazidi Women During the ISIS War in Iraq*, Journal of Liberty and International Affairs, 2022, doi:10.47305/JLIA2283272h.

<sup>42</sup> Amnesty International; Ceasefire Centre for Civilian Rights; The Center for Victims of Torture (CVT); Coalition for Just Reparations; Fédération International pour les droits de Humains (FIDH); Global Centre for the Responsibility to Protect (GCR2P); Global Survivors Fund (GSF); Human Rights Watch; International Commission of Jurists (ICJ); International Rehabilitation Council for Torture Victims (IRCT); Mukwege Foundation; Nadia’s Initiative; REDRESS; Elizabeth Bohart, Strategic Adviser and Board Member, Nadia’s Initiative; Dr. Norbert Wüthler, Co-Chair of the Board of the Global Survivors Fund.

<sup>43</sup> Human Rights Watch, *Joint Statement on the Implementation of the Yazidi Survivors Law*, 14 April 2023.

<sup>44</sup> *Supra note 39*.

<sup>45</sup> United Nations, *Conflict-Related Sexual Violence: Report of the United Nations Secretary-General*, 3 June 2020.

<sup>46</sup> Steven Ganot, *Iraq Launches Incentive Program to Aid Displaced Families’ Return Home*, *The Media Line*, 28 February 2024.

<sup>47</sup> Alice Wairimu Nderitu, *The Pursuit of Justice as the Commemoration of the Yazidi Genocide is held on 3 August 2023*, *Medium*, 1 August 2023.

<sup>48</sup> *Supra note 2*.

The Commission for Investigation and Gathering Evidence of the Kurdistan Regional Government, tasked with gathering testimonies and preserving details of ISIL atrocities against Yazidis, recorded at least 1,000 cases of “conflict-related sexual violence”. However, the UN Secretary-General António Guterres explains that such a number vastly undervalues the true extent of sexual torture, as endless more go unreported by Yazidi women and girls who fear reprisals by perpetrators, as ISIS continues to be active in the region and the displacement camps where survivors reside face “ongoing security concerns” and “heightened risk”.<sup>49</sup> Other reasons for the reluctance to report cases of sexual torture and seek legal redress include: lack of faith in the Iraq and Kurdish institutions who appear to “not listen to our suffering”; lack of knowledge of the ICC’s judicial process and potential favorable outcomes for survivors; not wanting to open old wounds and preferring to “get on with their lives”; requiring post-atrocity financial assistance, which is not addressed in the ICC’s “punitive model of justice”; and wanting to avoid high-level cases which often mischaracterize survivors of sexual violence as ‘helpless victims’ rather than ‘determined to do anything for survival’.<sup>50</sup>

“From pretending to convert [to Islam], to claiming that they were married [to ISIL militants], to feigning madness, to escaping from captivity, female Yazidi captives took numerous actions to survive. By emphasizing resistance strategies in their accounts, respondents demonstrated a desire for an approach to justice that could accommodate their agency and not merely convey their victimhood. Such nuances are typically lost in retributive justice, where emphasis on the accused tends to limit the victim’s experience to the narrow confines of legal procedure. Restorative justice, by contrast, is more accommodating of the complex position and agency of survivors and has the potential to better address the multi-faceted experience of often less visible members of the community, including women, children, and the elderly.”<sup>51</sup>

## Nigeria

The Islamist militant group Boko Haram has been a major criminal organization operating within Nigeria and in adjacent nations in the Lake Chad Basin – Cameroon, Chad, Niger, Nigeria – since 2009.<sup>52</sup> The group is most widely recognized for its mass abductions of schoolchildren; in 2014, Boko Haram kidnapped 276 girls from the Chibok Government Secondary School for Girls. In 2016 and 2017, Nigerian government authorities negotiated with Boko Haram leaders to secure the release of 103 students, however many remain in captivity; these ‘forgotten’ victims, who were young, devout Christian girls at the time of their abduction, have grown into adults, wives, and mothers under coercion. And even though international media awareness campaigns - such as the #BringBackOurGirls hashtag - garnered widespread condemnation of the mass kidnapping and included the participation and solidarity of globally renowned celebrities - “the Chibok girls faded from the headlines”.<sup>53</sup>

Many survivors that have been released in the years since have told of the slavery and servitude they were forced to endure throughout their captivity: domestic servitude – in the form of cooking, fetching water, and washing clothes for the militants<sup>54</sup>, forced marriage to Boko Haram fighters, and even forced sexual slavery and impregnation<sup>55</sup> are harsh realities for the Chibok girls. In August 2021, over 1,000 Boko Haram militants surrendered to the Nigerian government and military, and they brought with them two of the female hostages they had kidnapped over the years and harbored in captivity; Ruth Pogu and Hassan Adamu were accompanied by militants they had likely been forced to marry and the children they had as a result of these fraudulent marriages and sexual servitude.<sup>56</sup> Faced with horrifying threats of violence should they refuse marriages and sexual conduct, many of the abducted girls and young women comply with their captors demands and begin to view sex as a form of currency with which to pay for food, water, and other daily necessities; the few that refuse sexual advances and other forms of servitude and marriage face rape and physical beatings.<sup>57</sup> As a result, many of the girls and women who are eventually released or rescued from Boko Haram/ISWAP captivity have at some point during their confinement been pregnant and developed sexually transmitted infections such as HIV/AIDS, Gonorrhea, and Hepatitis as a result of their sexual abuse.<sup>58</sup>

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<sup>49</sup> *Supra note 45.*

<sup>50</sup> Payam Akhavan, Sareta Ashraph, Barzan Barzani, & David Matyas, [What Justice for the Yazidi Genocide? Voices from Below](#), Human Rights Quarterly, 2020, doi:10.1353/hrq.2020.0000.

<sup>51</sup> *Ibid.*

<sup>52</sup> Tomás Husted, [“Boko Haram and the Islamic State’s West Africa Province”](#), Congressional Research Service, 26 March 2021.

<sup>53</sup> Adaobi Tricia Nwaubani, [“We Left the Girls Too Long in That Place”](#), *The Atlantic*, 12 April 2024.

<sup>54</sup> Chris Stein & Dionne Searcey, [“21 Chibok Schoolgirls, Reuniting With Parents, Tell of Boko Haram Slavery”](#), *New York Times*, 16 October 2016.

<sup>55</sup> Lin Taylor, [“From Boko Haram to Islamic State, sex slavery and trafficking fund extremism”](#), *Reuters*, 9 October 2017.

<sup>56</sup> Joe Parkinson & Drew Hinshaw, [“1,000 Boko Haram Militants Surrender, Two Chibok Girls Walk Free”](#), *Wall Street Journal*, 13 August 2021.

<sup>57</sup> Sam Olukoya, [“Women and Girls ‘Preyed on as the Spoils of War’”](#), *Inter Press Service News Agency*, 25 April 2019.

<sup>58</sup> Funmilayo Idowu Agbaje, [The objectified female body and the Boko Haram insurgency in northeast Nigeria: Insights from IDP camps in Abuja](#), *African Security Review*, 2020, doi:10.1080/10246029.2020.1776348.



The 2014 school kidnapping preceded a wider invasion of southern Borno State by Boko Haram militants, specifically the localities of Chibok and Gwoza, home to the minority Kibaku ethnic group whose community members practice a variety of faiths, largely Christianity, Islam, and local faith traditions. To gather information on the persecution faced by the women and girls of Borno State under militant control, researchers conducted comprehensive interviews in 2021.<sup>59</sup> One Chibok schoolgirl - who had reached the age of 24 at the time of the qualitative study - explained that a day in Boko Haram captivity as a Christian or non-Muslim “may be worse than 100 days” in hell. She testified that survivors hold just as much disdain for the militants’ wives, some of whom facilitated their rape of the Chibok girls, restraining the victims and emboldening the perpetrators. Another Chibok former student remembered facing persistent demands to marry a militant, being strung up to a tree and beaten and raped, all while a group of Muslim boys restrained her and laughed at her during the vicious assault. Other women and girls in Borno recalled being ‘gifted’ as sex slaves to “amirs” (militant commanders), with those who resisted being punished with physical assault and the withholding of food. A young pregnant mother of two children shared that a Muslim man had sexually propositioned her, and upon her rejection, he violently raped her, saying that her “child will be born in the caliphate and will be raised as [the] next generation of fighters”.<sup>60</sup> Unlike some militants’ wives who are directly complicit in the sexual violence perpetrated against abducted women and girls, the wife of this militant helped the woman to escape. Other pregnant captives were punished for insubordination in the form of violence-induced miscarriages, including one woman whose miscarriage and subsequent death from being stomped on her head and stomach disgusted a foreign Boko Haram militant who, in response, withdrew from the militant group and “opposed the leader” as the atrocity against the woman was inhumane and “un-Islamic”.<sup>61</sup> In reviewing these horrific case studies and speaking with survivors, the researchers argued the following:

“Boko Haram fighters systematically rape and abuse non-Muslim women and girls as young as 10 years. Moreover, there is hard evidence of such rapes occurring from participants, who display both bodily and psychological suffering. The consequences of physical and mental wounds that BH committed against captured non-Muslim female victims surpassed rape itself. [...] Besides rape, forced impregnation causes ‘serious psychological wounds’ to members of a group by forcing women and girls to become pregnant and bear children for their assailants. [...] These elements constitute evidence that BH has committed genocide against non-Muslim minority ethnic groups by causing serious physical and mental suffering on non-Muslim women and girls”.<sup>62</sup>

The second most infamous mass school abductions occurred in February 2018, when Boko Haram offshoot faction Islamic State West Africa Province (ISWAP) ambushed Government Girls Science and Technical School in Dapchi, Yobe State, kidnapping 109 schoolgirls between the ages of 11 and 19 years.<sup>63</sup> Approximately one month after the attack, in mid-March 2018, militants released all hostages, with the exception of five girls who had perished while attempting to escape their captors, and one lone Christian girl who remains the only Dapchi girl still in ISWAP captivity. In the weeks and months immediately following the Dapchi abduction, Leah Sharibu refused to renounce Christianity and convert to Islam per her captors’ demands; ISWAP militants responded by publicly announcing that they would be keeping her as a “slave for life”.<sup>64</sup> Over the past six years, Leah was forced to marry a militant commander and has given birth to at least two children conceived of rape. Reports that she has been forced to remarry another militant after becoming widowed by her first husband’s death, and claims that she has birthed a third child, remain unconfirmed.<sup>65</sup>

Journalist Adaobi Tricia Nwaubani in April 2024 wrote an article commemorating the tenth anniversary of the Chibok kidnapping and shared about her conversations with the parents of a smaller subsection of Chibok girls: those who have escaped Boko Haram captivity but who choose [though such a ‘choice’ is likely made under duress] to remain Muslims and even stand by their husbands, the very militants who abducted them, forcibly converted them to Islam, married them against their will, and impregnated them through rape. These women had resigned themselves to accept their lives in captivity; the longer they were retained in Boko Haram custody, the more distant their past lives became and their hopes to return home grew increasingly unattainable. Additionally, these girls and women were presented with incentives to acquiesce to militant demands of marriage and childbirth; “those who complied were granted privileges such as access to more and better food, and even possession of slaves”, many of whom were their

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<sup>59</sup> Samaila Ziradzo & Robert T. Netangaheni, [The traumatic consequences of Boko Haram slavery among the ethnic minorities of southern Borno, Borno State, Nigeria](#), African Journal of Primary Health Care & Family Medicine, 2022, doi:10.4102/phcfm.v14i1.3638.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Supra note 59.*

<sup>62</sup> *Supra note 59.*

<sup>63</sup> Reuters, [“Nigerian army and police disagree over security in mass abduction town”](#), 26 February 2018.

<sup>64</sup> Open Doors Canada, [“Leah Sharibu turns 20 while in captivity”](#), 12 May 2023.

<sup>65</sup> Timothy, [“Leah Sharibu turns 20 but remains in captivity - all because she bravely raised her hand to say she’s a Christian”](#), Open Doors UK, 12 May 2023. ; Timothy, [“Six years after being kidnapped, Leah Sharibu’s friends share how she’s encouraged them”](#), Open Doors UK, 19 February 2024.

own Chibok classmates and fellow prisoners. Nwaubani spoke with a group of seven Chibok girls - including one named Jinkai - who exited the forest camps with their militant husbands and children, moving into a sharehouse in Maiduguri with the financial backing of the Nigerian government and unwitting taxpayer money. Jinkai - to her parents' dismay - refused to return home - and instead is living with her husband, a Boko Haram militant named Usman, with whom she has had multiple children. Jinkai agitatedly responded to Nwaubani's questions about her faith and her family relationship, asserting that she is happy being a Muslim and that her relationship with her parents - who report she has disengaged with them and rebuffed efforts to reconnect - was nobody's business but her own. Nwaubani's further attempts to communicate with Jinkai went unreciprocated, and the other Chibok girls who lived with the couple "hesitated and appeared fearful" when explaining that to deliver Nwaubani's messages to Jinkai they would need to get through her husband Usman first. Nwaubani's correspondence with other freed Chibok women similarly appears unconvincing and warrants further questions about whether these girls remain at the will of their captors-turned-husbands.<sup>66</sup>

In December 2022, Reuters published an exposé uncovering the atrocities and sexual torture inflicted upon Nigerian women and girls by Nigerian military forces during their campaign to eradicate Islamist insurgency.<sup>67</sup> Women who were relieved to have been liberated from Boko Haram captivity were disheartened to be transferred to army barracks where they were confined to unsanitary living conditions. One woman named Fati who had spent a year under the control of jihadists in a Lake Chad village in Borno State, "felt the happiest I had ever had in my life" to be rescued from her unwanted marriage to an insurgent and an unending spate of physical and sexual abuse. In their newfound 'freedom', however, Fati and endless other women were forcibly injected with drugs that induced miscarriages; many of these would-be-mothers, though not all of them, expressed that they intended to keep their children and raise them despite the conditions of sexual assault which resulted in their unplanned pregnancies, and that Nigerian soldiers aborted their unborn children without their consent.

"Central to the abortion programme is a notion widely held within the military and among some civilians in the northeast: that the children of insurgents are predestined, by the blood in their veins, to one day take up arms against the Nigerian government and society. Four soldiers and one guard said they were told by superiors that the programme was needed to destroy insurgent fighters before they could be born."<sup>68</sup>

The pregnant women, who were originally confused by the aggression with which military forces coerced them to ingest suspicious pills and forcibly injected them with unidentifiable drugs - occasionally using physical assault and death threats against women who resisted - came to the realization that they were subjected to abortions when they began to bleed profusely and suffered indescribable pain. In all, based on interviews with survivors, perpetrators, and witnesses of these horrors, and patient registers, Reuters estimates that the Nigerian military has "systematically" and clandestinely terminated the pregnancies of no fewer than 10,000 women and girls, some as young as 12 years of age. In more than a few cases, the unregulated combination of varying doses of misoprostol (labor induction drug), mifepristone (hormone blocker), and oxytocin (contraction stimulant), and the speed at which they are forcibly administered to the victims proved fatal. Additionally, some victims developed infections, excessive bleeding, and injuries due to the use of non-sterile and non-surgical instruments upon the womb. One of the youngest victims was a 14-year-old pregnant girl named Hafast who suffered for an hour after her forced abortion, bleeding to death while calling out for her mother.<sup>69</sup>

Although the Rome Statute of the ICC only formally considers two forms of sexual violence - forced pregnancy and forced sterilization - as crimes against humanity, judicial and legislative scholars across the world have reached general consensus that forced abortions can constitute torture or inhumane treatment, as they involve the "infliction of severe or mental pain or suffering on the victim". Not exclusive to the situation of armed conflict in Nigeria, women and girls in wars everywhere have shared similar torturous details from their forced abortions, and some criminal courts have established a precedent in prosecuting such conduct as torture. The UN Human Rights Committee, Committee on the Elimination of Discrimination against Women, and Special Rapporteur on violence against women have each identified that forced pregnancy terminations may meet the threshold of violations of the prohibition of torture; the Special Rapporteur specifically noted that "forced abortions [...] constitute violations of a woman's physical integrity and security of person. In cases, where, for instance, government officials utilize physical force and/or detain women in order to force them to undergo these procedures, these practices may amount to torture and cruel, inhuman and degrading treatment".<sup>70</sup> Specifically in the case of Nigeria, Just Security concluded that forced

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<sup>66</sup> *Supra* note 53.

<sup>67</sup> Paul Carsten, Reade Levinson, David Lewis, & Libby George, "[The Abortion Assault](#)", *Reuters*, 7 December 2022.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Supra* note 67.

<sup>70</sup> Ciara Laverty & Dienneke de Vos, "[Forced Abortion as an International Crime: Recent Reports from Northern Nigeria](#)", *Just Security*, 23 December 2022.

abortion “could therefore be charged as the crime against humanity of torture” as “part of a widespread or systematic attack against a civilian population”.<sup>71</sup>

It is also worth noting that, during the beginning of the collaborative anti-insurgency program of the Nigerian military and Civilian Joint Task Force (CJTF) - a citizen membership militia - women and girls were subjected to rape and other forms of sexual violence by these state actors and state-aligned actor. Amnesty International, between 2016 and 2018, interviewed internally displaced persons (IDPs), predominantly women, who had fled their communities in Borno State due to Boko Haram terrorism and Nigerian soldiers’ increasing ferocity. Many shared similar experiences that “when the military conducted [anti-terrorist] operations in their villages [...] local residents “had suffered brutally under Boko Haram, and were hoping to be rescued - only to find themselves attacked by the military”.<sup>72</sup> IDP women and girls reported that soldiers and CJTF forces would only provide the starving women with food if they make “payments” in the form of sex; when ‘offers’ of food supplies would not entice the women, troops would resort to force and rape them. Married and/or pregnant women were not spared, and soldiers and CJTF troops propositioned their victims to become their ‘girlfriends’ or ‘wives’, “which involved being available for sex on a regular basis”.<sup>73</sup>

## **Ukraine**

Ukrainian women have increasingly spoken out about the largely overlooked violations committed upon them by Russian forces following the February 2022 incursion. Many survivors, including Daria, have used pseudonyms as Ukrainian law protects them from nonconsensual identity disclosure. Working as a seamstress in Velyka, Russian forces abducted her and subjected her to repeated rape and sexual torture, disregarding her pleas for mercy on account of her pregnancy at the time of the atrocity; medical records have confirmed that Daria’s extensive injuries caused her to miscarry and necessitated a surgery. She spent two weeks in captivity, during which she and numerous other Ukrainian civilians - including children, elderly, and men and boys - were physically assaulted, raped with objects, and forcibly administered stimulant drugs. Daria recalls being called derogatory insults based on her nationality and gender. Daria recalls being forced to watch and listen to her fellow Ukrainian citizens being subjected to similarly horrendous atrocities: “I hear all their voices, all the screams. I even forget sometimes that I was raped”.<sup>74</sup> Such remarks illustrate the extent to which mental torture can cause equally lasting and salient trauma to that which is caused by physical harm. During a temporary ceasefire in March 2022, one of Daria’s captors released her uncharacteristically, and she believes that he was remorseful that she and another girl were the victims who suffered most. She is currently being assisted by United Nations Population Fund (UNFPA) personnel and psychologists.

Meanwhile, Ukrainian and international actors are attempting to collect evidence of sexual torture, though they face many obstacles. The destruction of civilian infrastructure has disturbed, displaced, and even eradicated evidence; survivors have been reluctant to provide testimonies and some have shown up for interviews wearing face coverings, a testament to the negative stigma surrounding sexual torture.<sup>75</sup> Survivors are even sometimes unaware that what they suffered constitutes an act of sexual torture, and the Ukrainian government is collaborating with UNFPA on an awareness campaign to encourage victims of lesser-known and less-understood forms of sexual torture in armed conflict to speak up. Such conduct includes “the threat of rape, the witnessing of sexual violence against others, being stripped naked, a gun being pointed at reproductive organs and any act with a sexual undercurrent”. UNFPA psychologist Alona Sychova explains further how gaps in social cognizance of war crimes perpetuates impunity for perpetrators: “people might not consider what happened to them sexual violence until they have had help processing what happened”.<sup>76</sup> Furthermore, prosecution is occasionally a false hope, as many perpetrators have been killed - and will continue to perish - during the conflict which continues to rage on.

The Ukrainian government is currently compiling documentation, police reports, and medical records to form a robust case which they intend to present to the ICC that the Kremlin has directed its forces to inflict sexual torture in a “systematic” and “deliberate” manner.<sup>77</sup> Certain factors, however, have stifled the hopes of justice and reparations. As has been discussed in this written submission, in addition to the difficulties preserving evidence and soliciting testimonies and survivor impact statements, high level state actors and entities - in this case the Kremlin - often evade punishment due to the elusively high burden of proof that such entities have directly sanctioned or indirectly permitted sexual torture committed by military forces.

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<sup>71</sup> *Ibid.*

<sup>72</sup> Amnesty International, [“They Betrayed Us”: Women who Survived Boko Haram Raped, Starved and Detained in Nigeria](#), 24 May 2018, AFR 44/8415/2018.

<sup>73</sup> *Ibid.*

<sup>74</sup> Sarah Lawrynuik, [“Ukrainian survivors of sexual violence, torture say country will have to share burden of their trauma”](#), CBC News, 10 March 2024.

<sup>75</sup> *Ibid.*

<sup>76</sup> Liz Cookman, [“I just want justice’: Ukrainians struggle with hidden war crime of sexual violence”](#), *The Guardian*, 26 September 2023.

<sup>77</sup> *Supra* note 74.

Moreover, negligible justice has been meted out for the sexual torture inflicted by Russia-backed separatists who in 2015 annexed Crimea and occupied portions of the Donetsk and Luhansk regions. Held captive for two years in Donetsk between 2015 and 2017, Ukrainian woman Natalya was repeatedly raped, though some details are fuzzy; “I don’t even remember their faces. I remember one: He was bearded, unshaven, and smelled terribly”. Another survivor, Valentina, was abducted by Russia-supported separatists in 2017, and following her release during a prisoner exchange she explained that “Rape for them is just a method of torture”. In late 2020, both Natalya and Valentina lamented that their vicious captors have not been punished for their atrocities, for a multitude of reasons. When presented with reports, Ukrainian authorities rarely take up cases as they are ‘difficult to prove’, and survivors who have attempted to seek justice report that “they [Ukrainian government actors] even discourage them; they tell them that such investigations are futile”.<sup>78</sup> Two survivors, Halyna and Maryna, in 2021 compiled the statements of a large group of sexual violence and torture victims committed by Russian troops and presented it to Ukrainian authorities only to be rejected without explanation.<sup>79</sup>

Even more limiting to the pursuit of accountability for Russian troops’ and Russia-backed troops’ use of sexual torture against Ukrainian civilians is the fact that Ukraine has not acceded to the Rome Statute and thus has not joined the ICC. Ukrainian deputy head of the parliamentary subcommittee on gender equality and nondiscrimination, Nelly Yakovleva, and government ombudsman for gender policy, Kateryna Levchenko, agree that Ukraine’s failure to ratify the Rome Statute creates “inconsistency” between domestic legislation and international criminal and humanitarian law which defines sexual torture and prescribes penalties for such criminal conduct.<sup>80</sup> Some predominantly female police units have been established who visit liberated areas of Ukraine, collect information from survivors of sexual torture, and try to offer assistance; however, “the country’s criminal code does not outline conflict-based sexual violence, which is separate from other forms of sexual violence and abuse under international law. That means survivors do not receive the same legal status as victims of other types of war crimes, such as unlawful detention, property loss or [non-sexual] torture.”<sup>81</sup>

### **Recommendations**

We urge the Special Rapporteur to make the following recommendations to the countries analyzed within the written contribution, and to all UN Member States wherein sexual torture and sexual violence are strategically used as a tool in armed conflict, either by state actors (militaries, paramilitary forces) or non-state actors (militants, terrorist organizations):

- Ensure that domestic legal framework adequately criminalizes sexual violence as a war crime, crime against humanity, or act of genocide. Ratify relevant international treaties such as the Rome Statute of the International Criminal Court (ICC), the Geneva Conventions, and their Additional Protocols;
- Develop mechanisms for collecting and preserving evidence of sexual violence, including testimonies, medical records, forensic evidence, and documentation of crime scenes. Protect the confidentiality and security of survivors and witnesses;
- Provide specialized training to judges, prosecutors, and lawyers on the legal definition of sexual violence, relevant international humanitarian law, and best practices for handling cases of sexual violence in conflict settings. Sensitize them to the unique needs and vulnerabilities of survivors;
- Create specialized units within law enforcement agencies, judicial bodies, and tribunals dedicated to investigating and prosecuting sexual violence crimes. These units should be staffed by trained professionals with expertise in, but not limited to, the following areas: gender-based violence; sexual torture; humanitarian principles and legislation; physiological and physical trauma-informed approaches; forensic science; minority rights and protections; etc.;
- Take measures to combat impunity for perpetrators of sexual violence in armed conflict, including by making public condemnations of such atrocities; making public commitments to prioritizing survivors’ safety, rehabilitation, and preferred forms of justice; prosecuting individuals responsible for command responsibility; and cooperating with international tribunals or hybrid courts when domestic mechanisms are insufficient;

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<sup>78</sup> Tetiana Iarmoshchuk & Tony Wesolowsky, [“For Victims of Sexual Violence in Ukraine’s Donbas, Justice Seems Distant”](#), *Radio Free Europe Radio Free Liberty*, 8 December 2020.

<sup>79</sup> *Supra* note 76.

<sup>80</sup> *Supra* note 78.

<sup>81</sup> *Supra* note 76.

- Establish comprehensive support services for survivors of sexual violence, including medical care, psychosocial support, legal aid, and reintegration programs. Ensure that survivors have access to justice without fear of re-victimization, retaliation, and stigma;
- Engage with civil society organizations, human rights defenders, and survivors themselves to raise awareness about sexual violence in armed conflict and advocate for institutional and legal reforms to address these crimes;
- Collaborate with civil society organizations, human rights defenders, and survivors themselves to educate society on human rights, pathways to domestic and international legal recourse for crimes against humanity, and the importance and accessibility of physical and psychological healthcare post-violation;
- Address underlying factors that contribute to sexual violence in conflict, including gender inequality, militarization, impunity, and lack of access to justice. Implement gender-sensitive peacebuilding and conflict resolution initiatives that empower women and promote their participation in decision-making processes;
- Development sustainable mechanisms to monitor and evaluate the effectiveness of efforts to prosecute sexual violence in conflict, including tracking case outcomes, measuring survivor satisfaction with the justice process, and assessing the impact on preventing future crimes.