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Daesh' Atrocities Against Women and Girls and The Necessary Response

Abstract: Since 2014, Daesh has been perpetrating mass atrocities against the population of Syria and Iraq, and beyond, and especially, crimes targeting religious minorities in Syria and Iraq. These included atrocities specifically targeting women and girls, including, rape, sexual abuse, and sexual slavery, and many more. Nonetheless, Daesh fighters are not being prosecuted for such crimes against women and girls and their (few) prosecutions are being conducted for terror-related offences only. The paper explores the use by Daesh of rape and sexual violence against minority women and girls. It considers some of the evidence of the use of rape and sexual violence in conflict, and most specifically, in the case study regarding the genocide committed by Daesh. It further examines the necessary changes that need to happen to address the issue. This includes an analysis of what legal measures have been taken to date to bring the Daesh perpetrators to justice, and specifically, for their atrocities perpetrated against women and girls.

Keynotes: Daesh, rape, sexual violence, genocide, accountability.

Abstrakt: Od 2014 r. Daesh dopuszcza się masowych okrucieństw wobec ludności Syrii i Iraku i innych państw, a zwłaszcza przestępstw wymierzonych w mniejszości religijne w Syrii i Iraku. Obejmowały one okrucieństwa wymierzone w kobiety i dziewczęta, w tym gwałt, wykorzystywanie seksualne i niewolnictwo seksualne oraz wiele innych. Niemniej jednak bojownicy Państwa Islamskiego nie są ścigani za takie przestępstwa przeciwko kobietom i dziewczętom, a (nieliczne) postępowania karne prowadzone przeciwko im, są wyłącznie za przestępstwa związane z terroryzmem. Artykuł analizuje wykorzystanie przez Państwo Islamskie gwałtu i przemocy seksualnej wobec kobiet i dziewcząt. Tekst rozważa niektóre dowody użycia gwałtu i przemocy seksualnej w konflikcie, a zwłaszcza w studium przypadku ludobójstwa w Państwie Islamskim. Następnie bada niezbędne zmiany, które należy wprowadzić, aby rozwiązać ten problem. Obejmuje to analizę tego, jakie środki prawne podjęto do tej pory, aby postawić sprawców Państwa Islamskiego przed wymiarem sprawiedliwości, zwłaszcza za ich okrucieństwa wobec kobiet i dziewcząt.

Słowa kluczowe: gwałt, ludobójstwo, odpowiedzialność, Państwo Islamskie (Daesh), przemoc seksualna.

1. Introduction

Since 2014, Daesh has been perpetrating mass atrocities against the population of Syria and Iraq, and beyond, and especially committing crimes targeting religious minorities in Syria and Iraq. There is significant evidence to support the recognition of the atrocities perpetrated by Daesh against religious minorities in Syria and Iraq as genocide. Furthermore, the atrocities perpetrated against the population of these countries can be classified as crimes against humanity and war crimes [Ochab 2016].

Indeed, several international and domestic actors have recognised the atrocities perpetrated against religious minorities as genocide as per Article II of the UN Convention on the Prevention and Punishment of the Crime of Genocide (the Convention of Genocide), including the Council of Europe [Council of Europe 2016], European Parliament [European Parliament 2016], the US Congress and the US State Department [Kerry 2016], the UK House of Commons [House of Commons 2016a], the Canadian Parliament and Government [House of Commons 2016b], the Lithuanian, French, Austrian, Australian, Hungarian and Italian parliaments, and most recently, the Dutch Government [Tweede Kamer 2017]. Apart from recognising the atrocities as genocide, they have called for action to stop the perpetrators, to provide the victims with assistance, and to bring the perpetrators to justice, in line with the duties enshrined in the Convention of Genocide.

The atrocities perpetrated by Daesh include murder, mass killings, torture, forced displacement, conscripting and enlisting children, rape, sexual abuse and slavery, and much more [Independent International Commission of Inquiry on the Syrian Arab Republic 2016]. Name a crime, Daesh has been perpetrating it. However, among those atrocities, some crimes require more of our attention as they target not only the vulnerability of the victims due to their status of religious minorities but also other characteristics and turn them into a weapon of war. Indeed, rape and sexual violence have been used by Daesh against religious minority women and girls as a weapon of war and means of religious persecution.

The central focus of this paper is to explore Daesh's use of rape and sexual violence against minority women and girls. Firstly, I consider some of the evidence of the rape and sexual violence inflicted during the conflict, and more specifically in the case study of this paper. Secondly, I examine the changes that need to happen to address the issue. This includes an analysis of what legal measures have been taken to date to bring the Daesh perpetrators to justice, and specifically, for

their atrocities perpetrated against women and girls. Furthermore, I explore what other measures may be necessary to ensure better protection for the victims and survivors of such atrocities in the future. The primary focus of the paper is on Daesh's use of rape and sexual violence against women and girls in Syria and Iraq. Nevertheless, these proposed steps are replicable, and can and should be taken to address crimes against religious minorities (more broadly) committed elsewhere across the globe.

2. Rape and Sexual Violence Against Religious Minority Women and Girls

Rape and sexual violence have been widely practised as a weapon of war throughout armed conflicts all over the world [Allen 1996; Bastick, Grimm, Kunz 2007; Mukanama, Brysiewicz 2008: 379-384; Maedl 2011: 128-147]. Throughout history, rape and sexual violence have been used against local communities to establish control and also as a mechanism of punishing resistance [Amnesty International 2004; Kivlahan 2010]. This mistreatment of women and girls has been conducted on a large scale and systematically. The use of rape and sexual violence is not a military strategy of the past – indeed, such means are widely used today in many conflicts. This practice was replicated by Daesh fighters [Murad 2017; Al Boukhary 2017], who have been accused of committing sex and gender-based violence, including sexual slavery, rape, forced marriage, and forced pregnancies on religious minority women and girls and especially those abducted and enslaved by Daesh [Independent International Commission of Inquiry on the Syrian Arab Republic 2016].

Daesh fighters, after abducting the women and girls would keep them enslaved, abuse them, sell or give them to other fighters as a form of payment [ibid.: 62]. Indeed, stories of the Yazidi and Christian women and girls being sold to Daesh fighters in Syria and Iraq, sexually abused and raped by every “husband” they were forcibly “married” to, have been circulating in the media since 2014. Thanks to Nadia Murad, the UN Goodwill Ambassador for the Dignity of Survivors of Human Trafficking and Nobel Peace Prize laureate, many of these testimonies have seen the light at the United Nations. Nadia has bravely told her story again and again, engaged international actors and individual states, and so encouraged other survivors to speak up and speak out. Nonetheless, it must be recognised that the extent of the rape and sexual violence perpetrated by Daesh is still under-reported. The formal collections of the evidence of the Daesh atrocities in Iraq begun first in 2018, and the collections of evidence from other regions is still fragmented. Furthermore, as the survivors of Daesh genocide have not been included in any (of the very few) trials of Daesh fighters, their testimonies remain unheard.

Considering the stories of atrocities perpetrated by Daesh, it is clear that Daesh has no respect for human lives and human dignity. This is particularly visible in the way Daesh treated religious minority women like the Yazidis and Christians who were treated as property that they could buy, sell and do anything they wanted with. Indeed, a Daesh produced document dated 16 October 2014, lists the prices for the purchase of Yazidi and Christian women and girls. The rates ranged from 75,000 Iraqi Dinars (about \$64) for a thirty- to forty-year-old woman, to 200,000 Iraqi Dinars (about \$170) for a girl between one and nine years old. Overall, the younger the girl or woman was, the higher the price to be paid. For as little as \$64.00-170.00, Yazidi and Christian girls would become the property of Daesh fighters, who would then subject them to abuse on a daily basis. The women and girls would then be sold several times, forcibly married and abused.

Apart from the rape and sexual violence in its traditional meaning, in 2015 it came to light that, to maintain a supply of sex slaves, Daesh had forced enslaved women and girls to take contraceptives, or to undergo abortions if they became pregnant [Shubert, Naik 2015], causing additional severe consequences for their physical and mental health. Abortion, especially when conducted in unsanitary environments and by unqualified personnel, is associated with high mortality rates through fatal complications such as haemorrhaging, infections, sepsis and the perforation of internal organs.

In the case of the Daesh atrocities, rape, sexual abuse and even forced marriage were employed as weapons of war and as methods of religious persecution in the belief that the abused women and girls would be converted to Islam (by force), and ultimately as methods of bringing about the genocidal campaign against the religious minorities. Indeed, the judgment in the International Criminal Tribunal for Rwanda case of *Prosecutor v. Akayesu*, clarifies that rape and sexual violence constitute a genocidal method under Article II of the Convention on Genocide stating that:

In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group ... rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way, that members of a group can be led, through threats of trauma, not to procreate [ICTR 1998:507].

This is a crucial consideration to fully understand the nature of the crimes perpetrated against women and girls and their place within the genocidal campaign unleashed against religious minorities.

The true scope of the atrocities perpetrated by Daesh against religious minority women and girls (but also more generally) is yet to be brought to light. This will occur once proof of the atrocities is collected and once the evidence is considered by a tribunal. However, in 2016, the UN provided a small glimpse of what to expect once more proof comes to light including stories of abducted Yazidi women and girls who were:

violently and regularly raped, often by different men, and over a prolonged period of time. They are beaten, sold as chattel, insulted and humiliated. The treatment that they endure in captivity causes them indescribable physical pain and mental suffering, effectively stripping them of their human dignity [Independent International Commission of Inquiry on the Syrian Arab Republic 2016: 172].

The numbers of women and girls abducted and then subjected to rape and sexual violence are assessed to run into the thousands [ibid.: 171]. While many of the abducted women and girls have been liberated, over 3,000 Yazidi women and girls continue to be enslaved over five years after their abductions and their fate is unknown. In early 2019, some reports suggested that a few of the girls were in Iran where they allegedly continue to be enslaved [Sputnik cited in Ochab 2019]. Such claims are yet to be proven.

3. Towards Change: What Needs to Be Done

The crimes perpetrated by Daesh need a comprehensive response that will, among others, stop the atrocities, investigate them and bring the perpetrators to justice, assist the survivors, and introduce measures that would help to prevent any similar atrocities in the future. The following focuses on the necessary steps to ensure justice and better protection for the victims and survivors and steps that can be used to provide a better response to rape and sexual violence in the future. The specific focus on rape and sexual violence is justified by the devastating impact of the crimes committed by Daesh on women and girls. Even if the girls and women survive the attacks and the abuse, there are various challenges that they will face once free from Daesh. They will likely struggle with mental or physical injuries requiring medical assistance, therapy and counselling- assistance that is

often difficult to access in other countries. These abused women and girls may also struggle to reintegrate into society because of the stigma associated with the sexual nature of abuse they have suffered.

3.1. Towards Change: Ensuring Justice for the Victims and Survivors

Considering the severe physical and psychological consequences of rape and sexual violence, and the use of such acts to cause genocide, there is a great need for an adequate legal response that places a particular focus on the Daesh atrocities perpetrated against women and girls.

There are many options regarding how Daesh perpetrators can be brought to justice – just by looking at how previous cases of genocide have been dealt with. For example, in the case of Bosnia and Rwanda, the UN Security Council took a two-stage approach to tackle the situations in the countries. Firstly, the UN Security Council established a commission of experts on genocide to scrutinise the situation and identify whether genocide or other crimes had been perpetrated [UN 1992; UN 1994a]. Secondly, once the commission of experts confirmed that the atrocities did indeed amount to genocide, the UN Security Council established an ad hoc criminal tribunal – the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), respectively [UN 1993; UN 1994b]. However, this option has never been pursued since mostly because such tribunals are extremely expensive, and the International Criminal Court (the ICC) was intended to take the burden of dealing with such situations from the UN Security Council. However, this option should not be rejected off-hand. Indeed, in the case of Iraq, the UN Security Council established a mechanism to collect, preserve and prepare the evidence of Daesh atrocities in Iraq for future proceedings [UN 2017]. According to Resolution 2379, the Investigative Team is to work with Iraqi domestic courts to prosecute Daesh fighters. However, reports suggest that Iraqi courts do not have the capacity to do so¹. The thus established Investigative Team resembles the commission of experts established to engage with the situations in Bosnia and Rwanda, mentioned above. Considering that the UN Security Council has already taken the first step of establishing a mechanism to collect the evidence, the UN Security Council could then proceed to establish an ad-hoc tribunal to prosecute the Daesh fighters (mostly leaders) for their atrocities in Iraq². The jurisdiction of

¹ See: Report by the Physicians for Human Rights.

² The author produced such draft UN Security Council resolution for consideration by states.

such ad-hoc tribunal would have been tailored to replicate the scope of the UN Security Council Resolution 2379, namely, establishing the Investigative Team. Its territorial jurisdiction would be limited to Iraq only and the personal jurisdiction – to Daesh fighters only.

However, it is crucial to emphasise that the case of Syria provides more challenges and any attempts to address the situation at the UN Security Council have been blocked by vetoes from Russia. To address this stagnation, in December 2016, several states tabled a resolution at the UN General Assembly to set up 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 [UN 2016]. The resolution was successfully adopted despite vocal objections from Syria and Russia. The mechanism for Syria is to collect and preserve the evidence of the atrocities committed in Syria since 2011 and prepare it for any future prosecutions. This means not only the atrocities perpetrated by Daesh but all atrocities perpetrated within the territory of Syria. While this was a positive development, it is crucial to emphasise that the UN General Assembly can only do this much. Indeed, the UN General Assembly does not have the power to establish an ad-hoc tribunal to prosecute the perpetrators once the evidence is collected. The only body with this power is the UN Security Council which has been blocked again and again by Russian vetoes preventing any response to the situation in Syria.

Another option would be for the ICC to investigate and prosecute the perpetrators. The ICC is (currently) the only permanent international court with the mandate to investigate and prosecute genocide, crimes against humanity, war crimes, and even the crime of aggression. However, as the ICC is a treaty-bound court, states like Syria and Iraq, which are not a party to the treaty, are not bound by it. Hence, the ICC does not have the territorial jurisdiction to consider the situation in Syria and Iraq. Under the Rome Statute, there are other options for how the ICC could gain the needed jurisdiction. For example, Syria or Iraq could become members to the ICC, self-refer the situations within their territories and accept the jurisdiction of the ICC retrospectively.³ This is very unlikely to happen, as once done, the ICC would have the territorial jurisdiction over the countries and therefore the power to look into any atrocities perpetrated there and this would not be limited to considering the Daesh crimes only.

³ This approach was taken by Palestine. See: <https://www.icc-cpi.int/palestine/>

Furthermore, the UN Security Council could refer the situation in Syria or Iraq to the ICC. Over the years, the UN Security Council has successfully referred the situations in Darfur and Libya to the ICC. This step, concerning the situation in Syria only, was attempted in May 2014 [UN 2014a]. However, the draft resolution was vetoed by two permanent members of the UN Security Council – Russia and China [UN 2014b]. Even though the situation in Syria deteriorated over the subsequent months – with Daesh establishing a so-called caliphate in many regions – such a referral resolution has not been re-tabled. No such UN Security Council referral has been attempted in relation to the situation in Iraq.

The ICC Prosecutor could also exercise her jurisdiction and investigate and prosecute the Daesh fighters who are citizens of member states to the Rome Statute, for example, the British, Belgian, German, and French Daesh fighters who were involved and complicit in genocide and other crimes in Syria and Iraq. Indeed, at the end of 2015, the number of European foreign fighters was estimated at 5,000, with over 3,700 from just four countries: the UK, Germany, Belgium, and France [Soufan Group 2017: 9]. Nonetheless, triggering such personal jurisdiction is not easy and has proven thus far impossible.

The above-mentioned models on investigation and prosecution are examples of possible international mechanisms that may be adopted in the case of bringing Daesh fighters to justice. However, the model to be adopted may be more regional in character – for example, akin the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea⁴.

While there are numerous options on how to respond to the Daesh atrocities, it is important to remember that the survivors must be put first. So far, they have not been involved in the process and have been excluded from the limited number of trials that have been conducted in Iraq. As the trials of Daesh fighters in Iraq commenced, two main problems emerged. Firstly, the Daesh fighters are investigated and prosecuted for terror-related offences only. Genocide, crimes against humanity and war crimes are not considered. This is not surprising, as these crimes are not recognised by the Iraqi penal code. However, surprisingly, the Daesh fighters are not prosecuted for rape and sexual violence. This raises an important question as to whether the Daesh fighters, who were arguably married

⁴ For more information see: <https://www.eccc.gov.kh/en/introduction-eccc>.

to the women and girls, could be prosecuted for rape and sexual violence. Notably, the Iraqi Penal Code gives impunity for husbands who abuse their wives. Indeed, Paragraph 41(1) of the Iraqi Penal Code states that:

There is no crime if the act is committed while exercising a legal right.

The following are considered to be an exercise of a legal right:

(1) The punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom.

Following these provisions, it may be argued that the Daesh fighters who forcibly married Yazidi women and girls (if such marriages can be recognised in accordance with the law) and abused them will likely face no criminal sanction for those crimes as they can, legally, enjoy impunity. If such an argument stands, Paragraph 41(1) of the Iraqi Penal Code is a provision that would ultimately prevent women and girls from ever seeing justice done for the violence they suffered at the hands of Daesh. This ought to be unacceptable.

Secondly, the Daesh fighters are tried and sentenced to death in rushed trials and without the involvement of the victims. It is not possible, using such an approach, to ensure justice for the victims who are deprived of their day in court and the right to tell their stories, or against the perpetrators who will not face responsibility for their crimes. Similarly, there are no visible traces of justice for future generations who will bear the weight of the missed opportunity for truth and justice during the Daesh trials. These shortfalls need to be addressed as a matter of urgency.

3.2. Towards Change: Providing a Better Response to Rape and Sexual Violence

Rape and sexual violence remain under-reported and under-discussed crimes, something which needs to change both within and outside situations of conflict. It must be emphasised that our perception of rape and sexual violence in conflict has changed over time. Rape and sexual violence used to be perceived as inevitable by-products of war, the spoils of an invading army. However, the international community now recognises that rape and sexual violence is more than that. Indeed, such atrocities are now considered to be “a military tactic, serving as a combat tool to humiliate and demoralize individuals, to tear apart families, and to devastate communities” [UN 2007]. This shift in recognition is significant, especially as it has allowed for the prosecution of sexual violence in conflict, including as a method to cause genocidal atrocities.

In light of this new approach, the UN Security Council unanimously passed Resolution 1820 on the use of sexual violence in war, indicating that “rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide” [UN 2008]. Subsequently, in 2009, UN Security Council Resolution 1888 established the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict. The Office works towards ending impunity for sexual violence in conflict, protecting and empowering the survivors and developing strategies to combat sexual violence in conflict.

The subsequent years have seen many other important developments. Among others, another significant development was the establishment of the Global Survivors Fund⁵, as launched by Nobel Peace Prize laureates Denis Mukwege and Nadia Murad in October 2019. The new initiative is a mechanism that will provide survivors of conflict-related sexual violence with reparations and other forms of redress, especially where the perpetrators or states are unable or unwilling to do so. The Global Survivors Fund received an endorsement from the UN Secretary-General in his statement to the Security Council on conflict-related sexual violence in April 2019 and language referencing for the Global Survivors Fund was included in Security Council Resolution 2467.

Lastly, it is crucial to ensure that everyone is engaged in the steps addressed at combating rape and sexual violence in conflict, including religious leaders. The responses from religious institutions to the Daesh atrocities has triggered diverse responses. While the atrocities have been generally condemned, some of the responses do not give much hope as for the targeted religious minority women and girls. Indeed, while the abducted and abused Yazidi women and girls were ultimately welcomed back by their religious leaders, they faced the excruciating dilemma of having to leave their children born of rape behind (as the children were not accepted back) [Loveluck, Salim 2019].

To ensure a more pro-active response from religious institutions, the UK has been working on a declaration for faith and belief leaders to address the issue of rape and sexual violence in conflict. The “Declaration of Humanity by Leaders of Faith and Leaders of Belief” aims to recognise the innate human dignity value of all persons and use it to enforce the protections for everyone. The declaration

⁵ See more: <https://www.globalsurvivorsfund.org/>.

condemns “all acts of conflict-related sexual violence towards any person, at any time, and in any circumstance, and will encourage those under our care and others in the community to do the same”. Only time will show whether the declaration will become universally adopted and implemented.

4. Conclusion

The exact scope of the mass atrocities perpetrated by Daesh is yet to be investigated. Among all the crimes committed by Daesh, rape and sexual violence against minority women and girls requires special attention and cannot be treated as insignificant. While all atrocities perpetrated by Daesh must be adequately investigated and prosecuted, special attention should be given to the atrocities perpetrated against women and girls. The response to such crimes must take into account that rape and sexual violence in conflict have short and long-term consequences on the survivors.

The prosecutions of the Daesh atrocities must include prosecutions for rape and sexual violence (including as a method of genocide) to ensure that the perpetrators are brought to justice but also to ensure that a clear message is sent – that rape and sexual violence in conflict will not be tolerated. Considering the systematic and widespread use of rape and sexual violence against women and girls in conflict, including as a method to cause genocide, the atrocities cannot be left unanswered. Impunity cannot be tolerated.

Furthermore, it is crucial to enable and encourage survivors to speak up about their experience and so bring about change. It is also essential to raise awareness of the issue and work towards an action plan to prevent rape and sexual violence in conflict scenarios that could be implemented around the world. Victims and survivors must be put first and be fully involved in shaping any policies or strategies that will define their lives.

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