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SETTING AN EXAMPLE: THE INTERNATIONAL CRIMINAL COURT MUST PROSECUTE CHECHNYA, RUSSIA AND THE MEMBERS OF ISIS FOR COMMITTING CRIMES AGAINST HUMANITY AGAINST LGBTQ+ PERSONS¹

I. Introduction:

Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual (hereinafter “LGBTQ+)² people are still persecuted, arrested, tortured, and murdered in 2018 based on their real or perceived gender or sexual orientation.³ Historically, LGBTQ+ people have not received equal treatment in society⁴ and have faced considerable persecution dating years back.⁵ Aside from unequal treatment evident in societal laws, like criminalizing consensual same-sex relations, many countries still allow and even encourage the extermination and heinous converting strategies of LGBTQ+ persons.⁶ Countries and their governments around the world still chemically castrate,

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² Lesbian and Gay are defined as women or men, respectively, being attracted to, falling in love with, or romantically committing to the same-sex. See GLAAD Media Reference Guide - Lesbian / Gay / Bisexual Glossary Of Terms, <https://www.glaad.org/reference/lgbtq>. Bisexual is defined as being attracted to both widely-accepted genders, male and female. See *Id.* Transgender is defined as a person whose personal identity and gender do not correspond with their birth sex, traditionally labeled as transmasculine, transfeminine, or non-binary.

Transmasculine persons are known as persons who were pronounced female at birth and have transitioned to fit their gender identity from female at birth to now, male. Transfeminine persons were pronounced male at birth and have since transitioned to fit their gender identity, now as a woman. *Id.* Queer is defined as what was originally pejorative for gay, but is now being reclaimed by some gay men, lesbians, bisexuals and transgender persons as a self-affirming umbrella term encompassing the Lesbian, Gay, Bisexual, Transgender, and Asexual persons within the community. *Id.* Intersex is defined as a person born with reproductive or sexual anatomy that does not seem to fit the typical, binary definitions of female or male. Asexual is defined as someone without romantic feelings or associations with another person. *Id.* The + symbol references the additional persons encompassing the acronym, which in its totality stands for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and Ally.

³ Rosamond Hutt, *This is the State of LGBTI rights around the world in 2018*, Weforum (June 14, 2018) <https://www.weforum.org/agenda/2018/06/lgbti-rights-around-the-world-in-2018/>

⁴ History.com Editors, *Gay Rights*, HISTORY, A&E Publishers, (August 21, 2018) <https://www.history.com/topics/gay-rights/history-of-gay-rights>.

⁵ Gary W. Harper, Margaret Schneider, *Oppression and Discrimination among Lesbian, Gay, Bisexual, and Transgendered People and Communities: A Challenge for Community Psychology*, 31, 3-4, 243-252 American Journal of Community Psychology (June 2003) <https://link.springer.com/article/10.1023/A:1023906620085#citeas> (discussing the history of oppression and discrimination committed against the LGBTQIA population).

⁶ India Today (July 3, 2018) <https://www.indiatoday.in/education-today/gk-current-affairs/story/uk-to-ban-gay-conversion-therapy-list-of-countries-that-have-banned-1276294-2018-07-03>; See Also Ellen Wulforst, *Despite debunking, conversion therapy still persists around the globe*, Reuters (February 20, 2018) (discussing various Countries’ and States’ acceptance, tolerance, and acquiescence to conversion therapy of LGBTQ+ persons) <https://www.reuters.com/article/global-lgbt-therapy/factbox-despite-debunking-conversion-therapy-persists-around-globe-idUSL2N1Q610R>.

conduct conversion therapy, and treat LGBTQ+ people as if they suffer from a mental illness.⁷ Despite legalization efforts of consensual sexual relations, marriages, and adoptions by queer persons across the world, many countries condone and acquiesce to social tormenting and unequal treatment of such persons.⁸ LGBTQ+ people as a whole are deprived fundamental rights and subjected to various assaults, exorcisms, chemical castrations, and even murder.⁹

Following 2016's Pulse nightclub shooting which was portrayed by media as a pure terrorist attack on the United States rather than an attack on the LGBTQ+ community, in 2017, anti-LGBTQ+ homicides nearly doubled in the United States.¹⁰ The same year, news swept across the world and drew attention to Chechnya, Russia where LGBTQ+ people were, and are still being kidnapped, tortured, exercised, and murdered based on their real or perceived sexual orientation or gender expression.¹¹ ISIS claimed responsibility for the Pulse nightclub shooting and has continued to systematically and violently murder people in the queer community throughout their territory.¹² However, these crimes in the United States do not rise to the level that those in Chechnya, or those that ISIS has committed against LGBTQ+ people because there is no pattern of systematic attacks as there has been in Chechnya or in ISIS territory.¹³ This paper focuses on

⁷ Andrew Rettman, Homosexuality still seen as a disease in parts of EU, EU Observer (19:05 March 16, 2016) <https://euobserver.com/lgbti/132710> (discussing areas around the EU where Homosexuality is still considered a disease or mental illness).

⁸ See Ellen Wulforst, *Despite debunking, conversion therapy still persists around the globe*, Reuters (February 20, 2018).

⁹ Michelle A. Marzullo, Alyn J. Libman, Hate Crimes and Violence Against LGBT People Research Overview, https://assets2.hrc.org/files/assets/resources/Hatecrimesandviolenceagainstlgbtpeople_2009.pdf?_ga=2.5689395.1636691013.1540653987-2060666480.1537916408.

¹⁰ Katerina Ang, *Anti-LGBTQ homicides almost doubled in 2017*, Moneyish (January 23, 2018) <https://moneyish.com/ish/anti-lgbtq-homicides-almost-doubled-in-2017/>.

¹¹ Simon Shuster, TIME, (2018) <http://time.com/chechnya-movsar/>; See Also Kaitlin Martin, *No Justice for Chechnya's Anti-Gay Purge Victims*, Human Rights Watch, (April 5, 2018). <https://www.hrw.org/news/2018/04/05/no-justice-chechnyas-anti-gay-purge-victims>

¹² Ralph Ellis, Ashley Fantz, Faith Karimi, and Elliott C. McLaughlin, *Orlando Shooting: 49 killed, shooter pledged ISIS allegiance*, CNN (11:05 am June 13, 2016) <https://www.cnn.com/2016/06/12/us/orlando-nightclub-shooting/index.html>.

¹³ Haeyoun Park, Iaryna Mykhalysyn, *LGBT People Are More Likely To Be Targets of Hate Crimes Than Any Other Minority Group*, The New York Times (June 16, 2016). <https://www.nytimes.com/interactive/2016/06/16/us/hate-crimes-against-lgbt.html>

Chechnya and ISIS specifically because these two are the most pervasive sweeping across current news reports.¹⁴ Between the two, hundreds of LGBTQ+ persons have been eradicated, or tortured.¹⁵ The events in Chechnya show a widespread and systematic dedication to torturing, exterminating, murdering, and forced sterilization of LGBTQ+ people through kidnapping and isolating them in camps.¹⁶ ISIS has committed itself to eliminating LGBTQ+ people based on their gender expression, or real or perceived sexual orientation.¹⁷

The world has made consistent efforts to focus on prosecuting people and groups responsible for methodically targeting various identity-based groups.¹⁸ Following World War II, an international coalition prosecuted Nazis for the Genocide of Jewish persons in concentration camps at the Nuremberg trials.¹⁹ As time went on, other tribunals were held, like the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993.²⁰ Then, The Rome Statute, established in 1998, created a mechanism for prosecuting human rights offenses such as genocide, war crimes, and crimes against humanity.²¹ In 2003, the International Criminal Court (hereinafter “the Court” or “ICC”) was officially established and began issuing warrants in July of 2005.²² The ICC has served an incredible purpose by creating a permanent place for the world to hold people responsible for the most severe criminal acts, especially for acts targeting identity-based groups of

¹⁴ Kyle Knight, *Gay Men in Chechnya are Being Tortured and Killed*, The Guardian (April 13, 2017) <https://www.theguardian.com/commentisfree/2017/apr/13/gay-men-targeted-chechnya-russia>; *See Also* Saurav Juny Thapa, *Islamic State Continues Barbarous Violence Against LGBT Community*, Human Rights Campaign (July 30, 2015) <https://www.hrc.org/blog/islamic-state-continues-barbarous-violence-against-lgbt-community>.

¹⁵ *Id.*

¹⁶ Kyle Knight, *Gay Men in Chechnya are Being Tortured and Killed*, The Guardian (April 13, 2017). <https://www.theguardian.com/commentisfree/2017/apr/13/gay-men-targeted-chechnya-russia>.

¹⁷ Saurav Juny Thapa, *Islamic State Continues Barbarous Violence Against LGBT Community*, Human Rights Campaign (July 30, 2015).

¹⁸ Harry M. Rhea, *The Evolution of International Criminal Tribunals*, International Journal of Criminology and Sociology, 6, 52-64 (2017) <http://www.lifescienceglobal.com/pms/index.php/ijcs/article/view/4621>.

¹⁹ *Id.* At 59-60.

²⁰ *Id.* at 60.

²¹ *Id.* at 59-60.

²² *World Criminal Court Launched*, CNN (March 11, 2003) <http://www.cnn.com/2003/WORLD/europe/03/11/warcrimes.court.reut/>.

people.²³ Particularly, this vindicates minorities who have no true ability to protect themselves from such heinous crimes.²⁴ While most identity based crimes go unpunished or unheard by the ICC, it remains the appropriate and perfect forum to set a precedent standing against the commission of identity based crimes such as those occurring in Chechnya or committed by ISIS.²⁵

A larger looming problem has recently led to the argument that the ICC can, and should, exercise jurisdiction over ISIS and Chechnya.²⁶ The argument calls to prosecute them on the world's stage for their systematic targeting and murdering of people who do not fit typical gender binaries and, or, identify as being attracted to the same-sex.²⁷ These systematic and widespread targeted attacks should be prosecuted as a crime against humanity by the ICC.²⁸ The international community should be concerned about the current murdering, torturing, and extermination of LGBTQ+ people because it is targeting a group based on who they love or are perceived to love.²⁹ Furthermore, the Court should step in because although committees have been formed and investigations have been conducted, there is overwhelming bias to protect the extremist views, religion, and country itself; thus a separate entity such as the ICC should prosecute those responsible to eliminate this bias.³⁰

The international community should be concerned, noting that the Nuremberg trials focused on the genocide of Jewish individuals and neglected to prosecute the Nazis for putting

²³ *Id.*

²⁴ Harry M. Rhea, *The Evolution of International Criminal Tribunals*, International Journal of Criminology and Sociology, 6, 52-64 (2017) <http://www.lifescienceglobal.com/pms/index.php/ijcs/article/view/4621>

²⁵ *Chechnya accused of Gay Genocide in ICC Complaint*, BBC News (May 16, 2017) <https://www.bbc.com/news/world-europe-39937107>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Daniel Reynolds, *Russian Investigation Found No LGBT People, Violence in Chechnya*, Advocate (May 15, 2018) <https://www.advocate.com/world/2018/5/15/russian-investigation-found-no-lgbt-people-violence-chechnya>.

LGBTQ+ people through those same camps.³¹ Nazis marked them independently from the Jewish people in the camps with a pink triangle.³² The definition of Genocide omits sexual orientation as it is not a protected class.³³ Holding those prosecuted at Nuremberg accountable could have prevented the treatment and systematic violence that LGBTQ+ persons are facing today.³⁴

Essentially, the opportunity to prosecute the mass-murder of LGBTQ+ persons was missed despite facing the same fate as the Jewish population based on their sexual orientation.³⁵ Nazis were prosecuted in the Nuremberg trials for committing a crime against humanity based on religion, but the tribunal failed to take any steps to hold them accountable for committing the same crimes against LGBTQ+ persons.³⁶ This failure has led to the acquiescence and continued persecution of LGBTQ+ people today.³⁷ The way that countries and organizations like Chechnya and ISIS treat LGBTQ+ people has been acquiesced to and allowed because historically this inhumane treatment was commonplace.³⁸

Now, the ICC has the opportunity, based on Security council referral and France's party referral to prosecute those responsible in ISIS and Chechnya respectively.³⁹ Specifically, Russia

³¹ History.com Editors, Nuremberg Trials, HISTORY (January 29, 2010) <https://www.history.com/topics/world-war-ii/nuremberg-trials>.

³² See *Nazi Persecution of Homosexuals*, United States Holocaust Memorial Museum, <https://www.ushmm.org/information/exhibitions/online-exhibitions/special-focus/nazi-persecution-of-homosexuals>.

³³ *Id.* See Also The Rome Statute of the International Criminal Court, Part II: Jurisdiction, admissibility, and applicable law. Art. VI., Genocide https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf (defining Genocide as committing requisite acts against national, ethnical, racial, or religious groups).

³⁴ See United States Holocaust Memorial Museum, *Supra.* n. 32.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Haeyoun Park, Iaryna Mykhalyshyn, *LGBT People Are More Likely To Be Targets of Hate Crimes Than Any Other Minority Group*, The New York Times (June 16, 2016) <https://www.nytimes.com/interactive/2016/06/16/us/hate-crimes-against-lgbt.html>

³⁹ Coman Kenny, *Prosecuting Crimes of International Concern: Islamic State at the ICC?*, URTRECHT JOURNAL OF INTERNATIONAL AND EUROPEAN LAW (April 12, 2017); See Also Samuel Osborne, *Chechnya accused of genocide against gay people in complaint to International Criminal Court* (May 17, 2017) <https://www.independent.co.uk/news/world/europe/chechnya-gay-genocide-international-criminal-court-torture-detain-homosexual-russia-region-a7740271.html>.

continues to look the other way while these horrific acts occur and ISIS still reigns over its territory.⁴⁰ So, the ICC serves perfectly in its role as a court of last resort, by choosing to prosecute them on the world's stage for committing a crime against humanity and showing that the world will no longer allow this inhumane treatment to continue.⁴¹ As the rights, opportunities, and freedoms for gender expression and LGBTQ+ people expand across the world, it is evident that it is the ICC's ideal opportunity to step in and prosecute both ISIS and Chechnya for these crimes.⁴²

II. Problem statement:

Chechnya and ISIS have focused on systematically eliminating LGBTQ+ persons from society, qualifying as a crime against humanity, which the ICC can and should exercise jurisdiction over and prosecute accordingly for crimes against humanity.⁴³ The ICC should focus on both groups based on their severe attempts to eliminate LGBTQ+ persons; they can be made an example of on the International Stage to show this identity based hatred will not be tolerated.⁴⁴ This paper focuses on the problems in Chechnya and by ISIS rather than other countries such as Uganda, because of the mass media coverage and the severity of the crimes committed.⁴⁵

III. Method(s) of analysis:

First, this paper will define what it means to be an LGBTQ+ person; the introduction section discusses the development of the ICC and the Rome Statute, as well as attacks committed against LGBTQ+ persons.⁴⁶ Second, the problem statement addresses the heart of the issue, focusing on the ability of the ICC to prosecute both members of ISIS in the Middle East as well as

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *See Supra*, Introduction.

persons responsible in Chechnya for committing crimes against LGBTQ+ persons.⁴⁷ Third, the method(s) section outlines the various methods of analysis, briefly noting that jurisdictional and statute requirements are met so the ICC can properly exercise jurisdiction and prosecute accordingly.⁴⁸ Fourth, the background section outlines how ISIS and Chechnya have historically treated LGBTQ+ persons and obtained power.⁴⁹ Additionally, this section discusses the evolution of Crimes Against Humanity in the Rome Statute.⁵⁰ The fifth section is broken into five parts:⁵¹ Part A and Part B analyze the ICC's ability to exercise jurisdiction over both ISIS and Chechnya respectively;⁵² Parts C and D address how the crimes committed by members of ISIS and Chechens qualify as Crimes Against Humanity under The Rome Statute;⁵³ Part E calls upon the ICC and World's responsibility to prosecute accordingly based on both legal and moral obligations; and Part F combats the argument that crimes against humanity only should be prosecuted as such if their severity matches or exceeds that of the Nuremberg Trials.⁵⁴ Finally, the conclusion calls upon the ICC to prosecute accordingly for these crimes committed against LGBTQ+ individuals.⁵⁵

Whether the Court has Jurisdiction over the substantive crime, the crime against humanity, and whether the Court has the ability to assert jurisdiction over those crimes are this issues at the forefront of bringing these crimes to the ICC for prosecution.⁵⁶ This paper argues that these various offenses against LGBTQ+ people constitute a crime against humanity.⁵⁷ This paper will also analyze the ways and volume in which LGBT persons are being targeted and murdered rise to the

⁴⁷ *See Supra*, Problem Statement.

⁴⁸ *See Infra*, Method(s) of Analysis.

⁴⁹ *See Infra*, Background.

⁵⁰ *Id.*

⁵¹ *See Infra*, Analysis.

⁵² *Id* at Parts A and B.

⁵³ *Id* at Parts C and D.

⁵⁴ *Id* at Part E.

⁵⁵ *Id* at Part F.

⁵⁶ *Id.*

⁵⁷ *Id.*

level of a crime against humanity.⁵⁸ Under Article VII of the Rome Statute, defines “crime against humanity” as a large number of acts ranging from murder, extermination, torture, rape, and the like when committed against a civilian population in a systematic manner.⁵⁹

Additionally, this paper will address whether the ICC can exercise jurisdiction over these various and widespread attacks and how the Court should go about doing so.⁶⁰ Arguably, in both cases the complementarity requirement is met because both of the states are unable or unwilling to prosecute.⁶¹ In Chechnya’s case, the state is likely either unable or absolutely unwilling to investigate and prosecute, and regarding ISIS, their widespread takeover throughout the middle east makes it likely that the state is unable to prosecute and hold ISIS accountable.⁶² This paper will also address the importance of the Court pursuing these cases, most importantly because no one else is willing to stand up and prosecute or even notice these heinous crimes being committed to try and eliminate LGBTQ+ people from society.⁶³ The crimes against LGBTQ+ persons go

⁵⁸ *Id.* See also Ismail Djalilov, Tamara Grigoryeva, *A New Era of Crimes Against Humanity in Eurasia*, Open Democracy (February 27, 2018) <https://www.opendemocracy.net/od-russia/tamara-grigoreva-ismail-djalilov/new-era-of-crimes-against-humanity-in-eurasia>.

⁵⁹ The Rome Statute of The International Criminal Court, Part II: Jurisdiction, admissibility and applicable law. Art. VII, Crimes Against Humanity, https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

⁶⁰ See The Rome Statute of the International Criminal Court, Part II: Jurisdiction, admissibility, and applicable law. Art. V, XII-XX https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf; See Also William & Mary Journal of Women and the Law, ARTICLE: REIMAGINING JUSTICE FOR GENDER-BASED CRIMES AT THE MARGINS: NEW LEGAL STRATEGIES FOR PROSECUTING ISIS CRIMES AGAINST WOMEN AND LGBTIQ PERSONS, LISA DAVIS (January 1, 2018).

⁶¹ Informal expert paper, The Principle of Complementarity in practice, Annex 4, <https://www.icc-cpi.int/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf> (assessing and discussing the complementarity requirement and the requirements to successfully fulfill it under the Rome Statute of the International Criminal Court).

⁶² Kaitlin Martin, *No Justice for Chechnya’s Anti-Gay Purge Victims: One Year Later, Victims Still waiting for Effective Investigation*, Human Rights Watch (April 5, 2018) <https://www.hrw.org/news/2018/04/05/no-justice-chechnyas-anti-gay-purge-victims>; See Also *ISIS Fast Facts*, CNN Library (September 3, 2018) <https://www.cnn.com/2014/08/08/world/isis-fast-facts/index.html>.

⁶³ Kaitlin Martin, *No Justice for Chechnya’s Anti-Gay Purge Victims: One Year Later, Victims Still waiting for Effective Investigation*, Human Rights Watch (April 5, 2018).

unnoticed because the countries and groups responsible, as well as in the surrounding areas, do not view LGBTQ+ people as equal or deserving of the same rights as heterosexual people.⁶⁴

As a court of last resort, the ICC is the only appropriate venue left to pursue and prosecute these crimes against LGBTQ+ individuals being committed because no one else has taken any steps to do so and it is likely that they will not.⁶⁵ An ad hoc tribunal would be insufficient because not only is the ICC best equipped, in a neutral area, to prosecute these crimes, but also modern ad hoc tribunals combine domestic and international personnel, and domestic personnel are likely to feel similar disdain toward LGBTQ+ persons or, be affiliated with the respective parties.⁶⁶ Although ISIS commits various other crimes, these charges should focus on LGBTQ+ persons because it sets an example on the world's stage.⁶⁷ Countries and their people often view LGBTQ+ people as less than heterosexual people; even countries where LGBTQ+ have the same or similar rights as people fulfilling supposed heteronormative cultural norms still see their LGBTQ+ populations violently attacked, beaten, and killed.⁶⁸ Here, there has been systematic and widespread violence for years both by ISIS and in Chechnya and no country, no state, and no officials have stepped in to stop the horrific violence and treatment that LGBTQ+ people are

⁶⁴ Emine Saner, *Gay rights around the world: the best and worst countries for equality*, The Guardian LGBT rights (July 30, 2013) <https://www.theguardian.com/world/2013/jul/30/gay-rights-world-best-worst-countries>; See Also Katie Reilly, *Russia's Anti-gay laws in line with public's views on homosexuality*, FactTank News in the Numbers (August 5, 2013) <http://www.pewresearch.org/fact-tank/2013/08/05/russias-anti-gay-laws-in-line-with-publics-views-on-homosexuality/>.

⁶⁵ See The Rome Statute of the International Criminal Court, Part II: Jurisdiction, admissibility, and applicable law. Art. V, XII-XX https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

⁶⁶ Beth Van Schaack, Ronald C. Slye, *International Criminal Law and Its Enforcement*, 97 (2015 4th Edition)

⁶⁷ *Choosing to Prosecute: Expressive Selection at the International Criminal Court*, deGuzman, Margaret M., *Choosing to Prosecute: Expressive Selection at the International Criminal Court* (March 2, 2012). Michigan Journal of International Law, Forthcoming; Temple University Legal Studies Research Paper No. 2011-16. Available at SSRN: <https://ssrn.com/abstract=1780446>.

⁶⁸ Alyssa Rosenberg, *In three years, LGBT Americans have gone from triumph to backlash*, The Washington Post (January 25, 2018) https://www.washingtonpost.com/news/act-four/wp/2018/01/25/in-three-years-lgbt-americans-have-gone-from-triumph-to-backlash-blame-trump/?noredirect=on&utm_term=.955e86b997c1; See Also Haeyoun Park, Iaryna Mykhyalshyn, *LGBT People Are More Likely To Be Targets of Hate Crimes Than Any Other Minority Group*, The New York Times (June 16, 2016).

facing.⁶⁹ Some countries, like France and Lithuania, have allowed refugees fleeing from Chechnya.⁷⁰ But, neither these countries, nor others, are holding Chechnya or ISIS accountable for the atrocities still being committed based on real or perceived sexual orientation, and that is where the Court can make a positive change for LGBTQ+ persons and humanity as a whole.⁷¹

IV. Background:

ISIS:

The Islamic State of Iraq and Syria (ISIS) rose after the fall of Al-Qaeda, a known extremist, terrorist group in Iraq.⁷² ISIS began slowly acquiring territory by force and even attacked Iraqi prisons in 2012 and 2013 to create an influx of recruits who were freed from the prison.⁷³ The extremist view focused on enforcing gender norms which also meant that LGBTQ+ people were particularly at risk.⁷⁴ Specifically, ISIS condemned homosexuality and spread its ideology of what the gender binary perpetuates at its strictest, polarized sides.⁷⁵ As ISIS gained more territory in 2015, Human Rights Observers estimated in the end of that year, that at least forty gay men were executed; ten of the forty men, only suspected to be gay, were killed on one

⁶⁹ *Human Rights Watch Country Profiles: Sexual Orientation and Gender Identity*, Human Rights Watch (3:00pm June 23, 2017) <https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity>.

⁷⁰ Masha Gessen, Letter From Moscow: *The Gay Men Who Fled Chechnya's Purge: The stories of those who survived detention and torture and are now living undercover in Putin's Russia*, *The New Yorker* (July 3, 2017) <https://www.newyorker.com/magazine/2017/07/03/the-gay-men-who-fled-chechnyas-purge>; *See Also Gay Chechens flee threats, beatings and exorcism*, BBC (April 6, 2018) <https://www.bbc.com/news/world-europe-43658689>

⁷¹ *Human Rights Watch Country Profiles: Sexual Orientation and Gender Identity*, Human Rights Watch (3:00pm June 23, 2017) <https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity>; *See Also* Kaitlin Martin, *No Justice for Chechnya's Anti-Gay Purge Victims: One Year Later, Victims Still waiting for Effective Investigation*, Human Rights Watch (April 5, 2018) <https://www.hrw.org/news/2018/04/05/no-justice-chechnyas-anti-gay-purge-victims>; *See Also ISIS Fast Facts*, CNN Library (September 3, 2018) <https://www.cnn.com/2014/08/08/world/isis-fast-facts/index.html>

⁷² Zack Beauchamp, *ISIS, a history: How the world's worst terror group came to be*, *Vox* (November 19, 2015) <https://www.vox.com/2015/11/19/9760284/isis-history>.

⁷³ *Id.*

⁷⁴ *See* Lisa Davis, *Iraqi Women Confronting ISIL: Protecting Women's Rights in the Context of Conflict*, 22 *SW. J. INT'L L.* 27, 28-29 (2016) (discussing Iraqi women and LGBT rights violations in the context of the ISIL conflict).

⁷⁵ *Id.* *See Also* Ayaan Hirsi Ali, *Islam's Jihad Against Homosexuals*, Harvard Kennedy School: Belfer Center (June 13, 2016) <https://www.belfercenter.org/publication/islams-jihad-against-homosexuals>.

day.⁷⁶ The instances remain largely undocumented for fear of ISIS retaliation, but ISIS' stance and punishment on LGBTQ+ persons and those who do not present in alignment with the proper gender binary has been clearly established.⁷⁷

In early 2016, ISIS had clearly established its views on homosexuality, deeming it a capital crime punishable by death.⁷⁸ ISIS courts continued to declare gay sex punishable by throwing the accused off of buildings and then stoning them to death if they survived.⁷⁹ Although most of these crimes go undocumented or reported, there have been documented instances of ISIS throwing gay men from buildings in alignment with their beliefs and prescribed punishments.⁸⁰ Other instances have been reported of men wearing clothes predominantly worn in western culture as "faggots" and beating them.⁸¹ In America, many murders and even the attack on the Pulse nightclub in

⁷⁶ Ashley Cowburn, *ISIS has killed at least 25 men in Syria suspected of being gay*, group claims, Independent (January 5, 2016) <https://www.independent.co.uk/news/world/middle-east/isis-has-killed-at-least-25-men-in-syria-suspected-of-being-gay-group-claims-a6797636.html>; Iraq: ISIS Execution Location Site Located, Human Rights Watch, <https://www.hrw.org/news/2014/06/26/iraq-isis-execution-site-located>

⁷⁷ Ishaan Tharoor, *The Islamic State's Shocking War on Gay*, The Washington Post (June 13, 2016) https://www.washingtonpost.com/news/worldviews/wp/2016/06/13/the-islamic-states-shocking-war-on-homosexuals/?utm_term=.0910a3b1c76a; See Also *ISIS's Persecution of Gay People: Executive Summary*, Counterextremism <https://www.counterextremism.com/content/isis-persecution-gay-people>

⁷⁸ *ISIS's Persecution of Gay People: Executive Summary*, Counterextremism <https://www.counterextremism.com/content/isis-persecution-gay-people>

⁷⁹ *ISIS's Persecution of Gay People: Executive Summary*, Counterextremism <https://www.counterextremism.com/content/isis-persecution-gay-people>

⁸⁰ Tom Foreman, *The gunman, ISIS and a war on sexual minorities*, CNN (June 13, 2016), <http://www.cnn.com/2016/06/13/world/isis-persecution-lgbt/index.html> [<http://perma.cc/BX5Z-9GLZ>]; See Also Benjamin Gilbert, *Gruesome Photos Allegedly Show Islamic State Throwing Gay Men Off a Tall Building*, VICE NEWS (Jan. 17, 2015), <https://news.vice.com/article/gruesome-photos-allegedly-show-islamic-state-throwing-gay-men-off-a-tall-building> [<http://perma.cc/L9N5-8CMP>]; Ishaan Tharoor, *The Islamic State's shocking war on gays*, WASH. POST (June 13, 2016), https://www.washingtonpost.com/news/worldviews/wp/2016/06/13/the-islamic-states-shocking-war-on-homosexuals/?utm_term=.35dece9c48d1 [<http://perma.cc/F4QF-MCQ4>].

⁸¹ ARTICLE: REIMAGINING JUSTICE FOR GENDER-BASED CRIMES AT THE MARGINS: NEW LEGAL STRATEGIES FOR PROSECUTING ISIS CRIMES AGAINST WOMEN AND LGBTIQ PERSONS, 24 Wm. & Mary J. of Women & L. 513, 515

Orlando, Florida⁸² were claimed to be on behalf of the Islamic State.⁸³ The widespread fear has caused LGBTQ+ people to seek refuge in other countries like the United States.⁸⁴

Chechnya, Russia:

In 2014 the first stories were released alleging that a group of men were rounding up gay people, entrapping, and torturing them on camera.⁸⁵ Then, in 2017 news reports were released sharing that in Chechnya, police officers were also rounding up gay men and killing them.⁸⁶ At this time, many gay men began fleeing from Chechnya for safety.⁸⁷ Reported torturing has been defined as including electrocution, solitary-confinement cells, beatings, dunking in vats of cold water, and starvation.⁸⁸ Notably, the attacks on men were being reported because they had the ability and freedom to leave the country that the women are not afforded in the Country.⁸⁹

Lesbians on the other hand, were facing more danger in Chechnya but were not free to leave the country because of the heavy male dominance in the culture.⁹⁰ As of March 2017, there has still been no formal investigation conducted despite a committee being formed and strong international responses pouring out in the wake of the initial news releases on the events targeting LGBTQ+ individuals.⁹¹ One girl who spoke anonymously in an interview shared that her family

⁸² Corinne Segal, and Michael D. Regan, *After Pulse Shooting, Orlando's faith and LGBTQ+ groups opened Dialogue*, PBS Thirteen (June 11, 2017) <https://www.pbs.org/newshour/nation/pulse-shooting-orlando-faith-lgbtq-groups>.

⁸³ Thomas Moriarty, *Terror Suspect who praised ISIS heads to trial in killing of Brendan Tevlin*, NJ Advance Media for NJ.com (February 27, 2018)

https://www.nj.com/essex/index.ssf/2018/02/trial_looms_for_brendan_tevlin_killing_suspect.html.

⁸⁴ ISIS's Persecution of Gay People: Executive Summary, Counter Extremism Project

<https://www.counterextremism.com/content/isis-persecution-gay-people>.

⁸⁵ Masha Gessen, *The Year LGBT Persecution Defied Belief*, *The New Yorker* (December 29, 2017)

<https://www.newyorker.com/culture/2017-in-review/the-year-russian-lgbt-persecution-defied-belief>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Masha Gessen, Letter From Moscow: *The Gay Men Who Fled Chechnya's Purge: The stories of those who survived detention and torture and are now living undercover in Putin's Russia*, *The New Yorker* (July 3, 2017) <https://www.newyorker.com/magazine/2017/07/03/the-gay-men-who-fled-chechnyas-purge>; *See Also Gay Chechens flee threats, beatings and exorcism*, BBC (April 6, 2018) <https://www.bbc.com/news/world-europe-43658689>.

threatened to kill her, lock her up forever, or required her to undergo an exorcism.⁹² The leader of Chechnya actually denies the existence of LGBTQ+ individuals in the republic.⁹³ The fact that the leader denies the existence of LGBTQ+ people in the Republic creates an uneasy tension, showing that the Republic is clearly quite homophobic and unsafe for LGBTQ+ people.⁹⁴ The leader stated that there are absolutely no LGBTQ+ people in the republic because they “know they are not welcome here” (in the Republic of Chechnya).⁹⁵ Around this same time some individuals set up a secret center in Moscow, Russia helping 106 LGBTQ+ individuals to safety.⁹⁶ Reportedly, just as the group was about to leave, more refugees seeking an escape to somewhere safe came through asking for more support from the Organization to help them flee the country.⁹⁷

Chechnya’s leader, Ramzan Kadyrov, has denied the existence of any homosexuals in the country, and after completing an investigation has said that no such incidents were confirmed.⁹⁸ Yet, on top of the group that helped LGBTQ+ Chechens seek refuge from the country, Igor Kochetkov, the head of the Russian LGBT network, has shared that he and the organization have helped 114 individuals escape from Chechnya who reported discrimination based on sexual orientation.⁹⁹ Various countries like France, Belgium, and Canada have shared that they have

⁹² Gay Chechens flee threats, beatings and exorcism, BBC News (April 6, 2018).

⁹³ *Id.*

⁹⁴ Masha Gessen, Letter From Moscow: *The Gay Men Who Fled Chechnya’s Purge: The stories of those who survived detention and torture and are now living undercover in Putin’s Russia*, *The New Yorker* (July 3, 2017) <https://www.newyorker.com/magazine/2017/07/03/the-gay-men-who-fled-chechnyas-purge>; *See Also Gay Chechens flee threats, beatings and exorcism*, BBC (April 6, 2018).

⁹⁵ Adam Taylor, *Ramzan Kadyrov Says There Are No Gay Men in Chechnya—and if there are any, they should move to Canada*, *The Washington Post WorldViews* (July 15, 2017); *See Also Tanya Lokshina, Chechen Leader Denies Anti-Purge in Putin Meeting*, Human Rights Watch (April 20, 2017) <https://www.hrw.org/news/2017/04/20/chechen-leader-denies-anti-gay-purge-putin-meeting>.

⁹⁶ Tom Balmforth, *Homosexuals Appeal For Help Fleeing Chechnya Amid Allegations of Antigay Campaign*, *RadioFreeEuropeRadioLiberty* (April 5, 2017) <https://www.rferl.org/a/russia-chechnya-persecution-homosexuals-antigay-campaign-appeal-for-help/28412569.html>

⁹⁷ Masha Gessen, *The Year LGBT Persecution Defied Belief*, *The New Yorker* (December 29, 2017).

⁹⁸ Sebastian Mann, *Chechnya ‘Gay Purge’: Russia Claims it Can’t Find any Evidence of LGBT People or Violence*, *Pink News* (12:25pm May 15, 2018) <https://www.pinknews.co.uk/2018/05/15/russia-chechnya-gay-purge-cant-find/>.

⁹⁹ *Id.*

accepted LGBTQ+ Chechens seeking asylum in their countries.¹⁰⁰ The number of individuals who have escaped coupled with the collected statements seem to show that there in fact, is something going on that the investigation had not uncovered.¹⁰¹

If numerous LGBTQ+ people are seeking refuge and fleeing the Chechnya, there are clearly LGBTQ+ people in the Republic, and clearly those people feel fear for their lives or safety and feel they need the help of an organization to escape.¹⁰² That urgency coupled with the leader's denial of LGBTQ+ people in the country raise a red flag regarding the supposed investigation that surely seems biased to acquiesce to the societal and religious norms enforced therein.¹⁰³

As of April 2018, Russian authorities have failed to take action in response to the Chechnya attacks.¹⁰⁴ The attacks have been exposed for over a year and the only group that has offered any type of support is the Russian Human Rights Community.¹⁰⁵ Kochetkov, the founder and council member of the LGBT Network, said that his organization has collected and published various victims' testimonies, but the Russian Authorities have not decided to conduct an investigation or launch a prosecution.¹⁰⁶ The various testimonies and the combination of those seeking refuge should call for an investigation, according to Kochetkov and Russian Police Criminal Procedure.¹⁰⁷

¹⁰⁰ See Also *Gay Chechens flee threats, beatings and exorcism*, BBC NEWS (April 6, 2018).

¹⁰¹ *Id.*

¹⁰² *Id.* See Also Tom Balmforth, *Homosexuals Appeal For Help Fleeing Chechnya Amid Allegations of Antigay Campaign*, RadioFreeEuropeRadioLiberty (April 5, 2017) <https://www.rferl.org/a/russia-chechnya-persecution-homosexuals-antigay-campaign-appeal-for-help/28412569.html>.

¹⁰³ *Id.* See Also Masha Gessen, *Letter From Moscow: The Gay Men Who Fled Chechnya's Purge: The stories of those who survived detention and torture and are now living undercover in Putin's Russia*, The New Yorker (July 3, 2017) <https://www.newyorker.com/magazine/2017/07/03/the-gay-men-who-fled-chechnyas-purge>; See Also *Gay Chechens flee threats, beatings and exorcism*, BBC (April 6, 2018).

¹⁰⁴ North Caucasus, *Russian Gay-Rights Group Says It Helped 114 People Flee Chechnya*, RadioFreeEuropeRadioLiberty (April 3, 2018) <https://www.rferl.org/a/chechnya-gay-rights-group-helped-114-people-escape/29142430.html>.

¹⁰⁵ *Russia: One year after 'Gay Purge' in Chechnya, Still no Justice for Victims*, Amnesty International (April 4, 2018) <https://www.amnesty.org/en/latest/news/2018/04/russia-one-year-after-gay-purge-in-chechnya-still-no-justice-for-victims/>.

¹⁰⁶ *Id.*

¹⁰⁷ IBJ Criminal Defense, Russia <http://defensewiki.ibj.org/index.php/Russia>.

Despite international organizations, like Amnesty International, urging the Country to take action, no such actions have been taken.¹⁰⁸ It seems likely that no local authorities will open a true investigation to these documented horrors.¹⁰⁹ Therefore, the ICC should assert jurisdiction and prosecute for those crimes committed against LGBTQ+ persons in Chechnya, Russia.¹¹⁰

Crimes against Humanity

This type of crime, or specifically the term “Crimes against Humanity” originated surrounding the context of slavery and the slave trade in the early nineteenth century.¹¹¹ Formally, the term made its appearance internationally in 1915 by the Allied forces, France, Great Britain, and Russia.¹¹² In one of its first decisions, the Allied forces condemned the mass killing of the Armenian people in the Ottoman Empire, declaring it rose to the level of a crime against Humanity.¹¹³ Then, thirty years later, Crimes against Humanity were prosecuted for the first time following World War II in the Nuremberg trials.¹¹⁴ Following Nuremberg, the ICTY revived the Nuremberg trial definition when prosecuting for crimes against humanity, including the nexus to an armed conflict.¹¹⁵ In 1993, the International Criminal Tribunal for Rwanda (ICTR) prosecuted for crimes against humanity and dropped the armed conflict nexus requirement due to the internal conflict.¹¹⁶ This definition utilized at the ICTR influenced The Rome Statute utilized today.¹¹⁷

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Russia: One year after ‘Gay Purge’ in Chechnya, Still no Justice for Victims*, Amnesty International (April 4, 2018).

¹¹¹ United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity, Background
<http://www.un.org/en/genocideprevention/crimes-against-humanity.html>.

¹¹² *Id.*

¹¹³ United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity: Definition/Background
<http://www.un.org/en/genocideprevention/crimes-against-humanity.html>.

¹¹⁴ *Id.*

¹¹⁵ *International Crimes Database*, Crimes Against Humanity
<http://www.internationalcrimesdatabase.org/Crimes/CrimesAgainstHumanity>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

Following these early stages, the definition of the crime has evolved through the ICC, domestic laws, and other International Tribunals established thereafter.¹¹⁸ There is also work being done to establish a treaty specifically dealing with codifying Crimes against Humanity just like War Crimes and Genocide have been.¹¹⁹ Currently, the 1998 Rome Statute, which established the ICC, serves as the most recent and internationally agreed upon document outlining the specific and extensive list of acts qualifying as a Crime against Humanity.¹²⁰

Additionally, the act committed does not require specific intent; rather it requires that there is simply intent to commit any of the crimes committed within the statute (1(A-K)).¹²¹ This coupled with the group or person committing the act, acting with knowledge of the attack against that civilian population and recognizing that their action is part of that specific attack fulfill the statutory definition of Crimes against Humanity.¹²² Because the intent requirement for liability is simply, “knowledge of the attack,” holding those in ISIS and Chechnya accountable for the atrocities committed against LGBTQ+ persons is possible, unlike attempting to expand or adjust the definition of Genocide to fit appropriately.¹²³

Article Seven, Section 1 of the Rome Statute articulates that Crimes against Humanity need not be linked to an armed conflict and thus can occur during times of Peace.¹²⁴ Additionally, Crimes against Humanity need not target a specific group like Genocide requires.¹²⁵ Although

¹¹⁸ United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity: Definition/Background <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* See Also The Rome Statute of the International Criminal Court, Part II: Jurisdiction, admissibility, and applicable law. Art. V, XII-XX https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

¹²⁴ United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>.

¹²⁵ *Id.*

here, a specific group is being targeted, Genocide fails to include sexual orientation as a protected class.¹²⁶ Any civilian population being targeted, regardless of affiliation or identity, is eligible for prosecution under Article Seven of the Rome Statute as a Crime against Humanity. Genocide is an ill-fit for the current atrocities in Chechnya and committed by ISIS because LGBTQ+ people are not a protected or targeted class under the Genocide statute.¹²⁷ Genocide only includes committing an act to destroy in whole or in part, a national, ethnical, racial, or religious group, therefore explicitly omitting crimes committed with the intention to eliminate persons based on sexual orientation and gender identity.¹²⁸

Expanding the definition to include LGBTQ+ persons in the Genocide definition is unlikely based on the current stage that the countries that make up the International Community view LGBTQ+ persons.¹²⁹ Nuremberg addressed ethnic cleansing of the Jewish population as qualifying as a Crime against Humanity, while similarly Prosecutor v. Kupreskic, et al. addressed the ethnic cleansing campaign by Croatia.¹³⁰ Countries that are considered at the forefront of the LGBTQ+ race for equality still have antiquated laws, treatment, and discrimination of LGBTQ+ persons rampant in their laws and societal norms. Therefore, because Crimes against Humanity are prosecuted under a large umbrella, and unlike genocide, does not require a particularly listed

¹²⁶ *Id.* See Also *Id* at Art. VI. Genocide.

¹²⁷ United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity
<http://www.un.org/en/genocideprevention/crimes-against-humanity.html>.

¹²⁸ United Nations Office on Genocide Prevention And The Responsibility To Protect: Art. VI: Genocide, The Rome Statute https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹²⁹ Rosamond Hutt, *This is the State of LGBTI rights around the world in 2018*, Weforum (June 14, 2018)
<https://www.weforum.org/agenda/2018/06/lgbti-rights-around-the-world-in-2018/>.

See India Today (July 3, 2018) <https://www.indiatoday.in/education-today/gk-current-affairs/story/uk-to-ban-gay-conversion-therapy-list-of-countries-that-have-banned-1276294-2018-07-03>; See Also Ellen Wulfforst, *Despite debunking, conversion therapy still persists around the globe*, Reuters (February 20, 2018) (discussing various Countries' and States' acceptance, tolerance, and acquiescence to conversion therapy of LGBTQ+ persons)
<https://www.reuters.com/article/global-lgbt-therapy/factbox-despite-debunking-conversion-therapy-persists-around-globe-idUSL2N1Q610R>.

¹³⁰ See Also Shaack, Slye, *International Criminal Law and Its Enforcement*, IV. Crimes Against Humanity, 436 (2015 3rd edition).

group within the statute, but simply requires a specific group, like the Jewish persons in Nuremberg, being directly attacked, Crimes against humanity are the most appropriate charge.¹³¹

Article seven of The Rome Statute of the ICC defines Crimes against Humanity as follows:

1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - a. Murder;
 - b. Extermination;
 - c. Enslavement;
 - d. Deportation or forcible transfer of population;
 - e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - f. Torture;
 - g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - i. Enforced disappearance of persons;
 - j. The crime of apartheid;
 - k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
 - a. ‘Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack

Noting the statute *infra*. the mens rea required in international criminal law is often broken down into two different components.¹³² The first mental state is simply the intent as it relates to the particular offense committed.¹³³ Second, is the elements that apply to all of the constitutive

¹³¹ *Id.*

¹³² United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity
<http://www.un.org/en/genocideprevention/crimes-against-humanity.html>.

¹³³ Beth Van Schaack, Ronald C. Slye, International Criminal Law and Its Enforcement, 441 (2015 4th Edition).

offenses, as listed *infra.*, the knowledge of the attack.¹³⁴ Additionally, the crimes must be committed in a systematic manner, and on a large scale to fulfill The Rome Statute's requirements for Crimes against humanity.¹³⁵

V. Analysis:

A. The ICC Has Jurisdiction To Prosecute Responsible Members Of ISIS For the Extremist Crimes and Treatment of LGBTQ+ Persons, Including Persons Who Do Not Exhibit the Typical Presentation On The Gender Binary

Despite ISIS being a formed group, and not a country who is a party to The Rome Statute, the Court can still exercise Jurisdiction over ISIS via Prosecutor referral, Security Council referral, or Complementarity Requirement.¹³⁶ Furthermore, the ICC cannot prosecute groups or States, but can prosecute the members of ISIS at the forefront of committing the murders and heinous acts against LGBTQ+ people.¹³⁷ As no formal complaint has been filed against ISIS at the ICC, there are various avenues accessible to seek reparations for these crimes at the Court.¹³⁸

First, a party to The Rome Statute, such as France has done in Chechnya's case, could call for an investigation and file a formal complaint for the Office of the Prosecutor's review.¹³⁹ However, State party referral is not feasible for referring ISIS because large ISIS territories like

¹³⁴ *Id.*

¹³⁵ United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity.

¹³⁶ Understanding the International Criminal Court, *International Criminal Court, Section IV. How does the ICC Operate*, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>; *See Also* The States to the Rome Statute, International Criminal Court, https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx.

¹³⁷ Understanding the International Criminal Court, *International Criminal Court, Section IV. How does the ICC Operate*.

¹³⁸ *North Caucasus: Gay-Rights Activists File ICC Genocide Complaint Over Alleged Chechnya Abuses*, RadioFreeEurope RadioLiberty (May 16, 2017) <https://www.rferl.org/a/russia-chechnya-gay-rights-groups-file-complaint-icc/28491724.html>; *See Also* *Chechnya Accused of 'Gay Genocide' in ICC Complaint*, BBC News (May 16, 2017) <https://www.bbc.com/news/world-europe-39937107>. *But see* Rosamond Hutt, *This is the State of LGBTI rights around the world in 2018*, Weforum (June 14, 2018).

¹³⁹ *See Supra.*; *See Also* Understanding the International Criminal Court, *International Criminal Court, Section IV. How does the ICC Operate*, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>.

Iraq, Iran, and Syria are not parties to the Rome Statute.¹⁴⁰ States that are parties to The Rome Statute are likely unable to file a complaint because they lack the nexus of the crime being committed on their territory.¹⁴¹ Even if no party to the statute files a complaint with the ICC regarding the crimes committed by ISIS such as throwing gay men off of buildings, and stoning persons based on their sexual orientation and perceived gender identity, any of the countries within ISIS territory can also bring forth a complaint for investigation by the Office of the Prosecutor since the crimes are being committed on their land, in their countries.¹⁴² While Muslim opinions on LGBTQ+ individuals are increasingly more accepting in the United States there's no indication of government, affiliated organizations, or individuals living in middle eastern countries promoting acceptance of these individuals.¹⁴³ However, this route is also improbable, because of longstanding denial of LGBTQ+ rights and non-acceptance of both LGBTQ+ people and people obscuring gender norms and binaries as the Muslim faith and citizens of those territories observe.¹⁴⁴

Additionally, the crime charged must be within the purview of the ICC's jurisdiction as Crimes Against Humanity are under Article VII of The Rome Statute.¹⁴⁵ The ICC also has jurisdiction over ISIS through the particular crime committed under The Rome Statute, crimes

¹⁴⁰ *How the ICC Works*, Start of Jurisdiction, American Bar Association <https://how-the-icc-works.aba-icc.org/>.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Andrew Buncombe, New York, *US Muslims are more accepting of homosexuality than White Evangelicals, Attitudes have been shifting in the last decade*, Independent (August 2, 2017). <https://www.independent.co.uk/news/world/americas/us-politics/us-muslims-homosexuality-white-evangelicals-lgbt-rights-transgender-islam-liberal-a7873276.html>.

¹⁴⁴ *Id.*

¹⁴⁵ United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity. <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>; See also Rosamond Hutt, *This is the State of LGBTI rights around the world in 2018*, Weforum (June 14, 2018). See India Today (July 3, 2018) <https://www.indiatoday.in/education-today/gk-current-affairs/story/uk-to-ban-gay-conversion-therapy-list-of-countries-that-have-banned-1276294-2018-07-03>; See Also Ellen Wulforst, *Despite debunking, conversion therapy still persists around the globe*, Reuters (February 20, 2018).

against humanity.¹⁴⁶ Here, the ICC can assert jurisdiction over ISIS through the specific charge being brought, namely the Crimes against Humanity, among the other general requirements, should the Security Council refer these crimes to the ICC.¹⁴⁷

Specifically, the Office of the Prosecutor may open and carry out an investigation either through referral by a party to The Rome Statute, a non-party to The Statute who has crimes committed within its territory or by one of its nationals, or simply through Prosecutor initiative following receipt of information about the crimes of a state party or non-party who grants permission to the ICC.¹⁴⁸ Should a party or concerned, effected non-party be realized, the ICC then has jurisdiction to prosecute ISIS when coupled with the crimes against humanity being the crime to appropriately charge ISIS with under The Rome Statute.¹⁴⁹ Here, it is unlikely filing will occur based on both ISIS' views, surrounding countries views, and overall non-acceptance or indifference toward LGBTQ+ persons and their rights or lack thereof.¹⁵⁰ However, failure to successfully give rise to the ICC's jurisdiction over ISIS's actions against LGBTQ+ individuals gives rise to one other permissible route which give the ICC concrete jurisdiction over the members of ISIS who have committed these heinous crimes.¹⁵¹

¹⁴⁶ Understanding the International Criminal Court, *International Criminal Court, Section IV. How does the ICC Operate*, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>; *See Supra*; *See Also* The Rome Statute of the International Criminal Court, Part II: Jurisdiction, admissibility, and applicable law. Art. V, XII-XX https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

¹⁴⁷ *See Supra*.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *See* India Today (July 3, 2018); *See Also* Ellen Wulforst, *Despite debunking, conversion therapy still persists around the globe*, Reuters (February 20, 2018) (discussing various Countries' and States' acceptance, tolerance, and acquiescence to conversion therapy of LGBTQ+ persons). <https://www.reuters.com/article/global-lgbt-therapy/factbox-despite-debunking-conversion-therapy-persists-around-globe-idUSL2N1Q610R>. *See Also* The Associated Press, *Islam and Homosexuality: What Does the Koran Say? Here's a look at what ISIS*, Islamic scholars and others in the region say about homosexuality, Haaretz (May 17, 2018) <https://www.haaretz.com/middle-east-news/islam-and-homosexuality-what-does-the-koran-say-1.5395747>.

¹⁵¹ Understanding the International Criminal Court, *International Criminal Court, Section IV. How does the ICC Operate*, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>; *See Supra*; *See Also* The Rome Statute of the International Criminal Court, Part II: Jurisdiction, admissibility, and applicable law. Art. V, XII-XX https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

Should a party to The Rome Statute, a non-party, or the Office of the Prosecutor at the ICC fail to give rise to the ICC's jurisdiction over prosecuting ISIS for its treatment of LGBTQ+ persons and those presenting outside of the gender binary, the complementarity requirement can still provide an appropriate means for establishing jurisdiction at the ICC.¹⁵² Specifically, if a party or state is unwilling or unable to prosecute the ICC may step in and prosecute the persons responsible for committing those aforementioned crimes as long as jurisdiction exists.¹⁵³ Here, ISIS is operating as a terrorist organization swiftly taking territory, but has no proper state to prosecute members of ISIS and hold them accountable for their heinous actions against LGBTQ+ individuals.¹⁵⁴ The states controlled by ISIS are not parties to The Rome Statute and are unable to refer the case, and are unable to prosecute because they are controlled by ISIS and do not have the separate capacity to overcome ISIS to prosecute these crimes.¹⁵⁵ Additionally, much writing has been done showing that ISIS meets the organizational requirement in order for the ICC to prosecute accordingly for their various crimes.¹⁵⁶ ISIS may be prosecuted for genocide, crimes against humanity, and other various crimes committed by the organization, but prosecuting for the crimes against LGBTQ+ individuals sets a precedent for LGBTQ+

¹⁵² What is Complementarity? National Courts, the ICC, and the Struggle Against Impunity, <https://www.ictj.org/sites/default/files/subsites/complementarity-icc/>.

¹⁵³ *Id.* See Also Shaack, Slye, *International Criminal Law and Its Enforcement*, II. Jurisdiction, The Lotus Principle, 66 (2015 3rd edition).

¹⁵⁴ See India Today (July 3, 2018) <https://www.indiatoday.in/education-today/gk-current-affairs/story/uk-to-ban-gay-conversion-therapy-list-of-countries-that-have-banned-1276294-2018-07-03>; See Also Ellen Wulfhorst, *Despite debunking, conversion therapy still persists around the globe*, Reuters (February 20, 2018). See Also The Associated Press, *Islam and Homosexuality: What Does the Koran Say? Here's a look at what ISIS*, Islamic scholars and others in the region say about homosexuality, Haaretz (May 17, 2018) <https://www.haaretz.com/middle-east-news/islam-and-homosexuality-what-does-the-koran-say-1.5395747>.

¹⁵⁵ *Id.*

¹⁵⁶ See *Can ISIS Be Prosecuted in The International Criminal Court for Crimes Against Humanity*, FIU <https://law.fiu.edu/can-isis-be-prosecuted-in-the-international-criminal-court-for-crimes-against-humanity/>; See also <https://www.cnn.com/2017/10/11/middleeast/isis-yazidi-war-crimes-tribunal-investigation/index.html>.

individuals so they will know they are not fighting alone.¹⁵⁷ The Complementarity requirement allows the ICC to prosecute these individuals at the proper forum especially considering the widespread manner in which ISIS has launched attacks attempting to exterminate and harm LGBTQ+ individuals.¹⁵⁸ Thus, the ICC has ample ability to exercise jurisdiction and serve appropriately as a court of last resort over the members of ISIS responsible for such horrendous treatment of LGBTQ+ individuals and those presenting outside of the gender binary because the states controlled by ISIS are unable to prosecute due to ISIS control over their territory and are unwilling to prosecute due to fear of ISIS and similar feelings toward LGBTQ+ persons.¹⁵⁹

B. The ICC Has Jurisdiction To Prosecute Chechens Responsible for Committing Violent Acts Against LGBTQ+ Persons

There are various ways for the ICC to properly assert jurisdiction over those responsible in Chechnya, Russia even though Russia is not a party to The Rome Statute.¹⁶⁰ Russia signed the founding statute for the ICC but withdrew its signature from the statute in mid-2017.¹⁶¹ This withdrawal however, does not limit the ICC's ability to investigate the complaint and prosecute those responsible in Chechnya.¹⁶²

First, noting the requirement *infra*, a party to The Rome Statute can file a formal complaint and prompt investigation by the Office of the Prosecutor.¹⁶³ The ICC can easily assert jurisdiction

¹⁵⁷ *Id.* See also <https://www.independent.co.uk/news/world/middle-east/queer-insurrection-isis-lgbt-unit-gay-islamic-state-fight-forces-coalition-syria-middle-east-a7858651.html> (queer army in the middle east is the only group stepping in to help LGBTQ+ individuals in the middle east).

¹⁵⁸ What is Complementarity? National Courts, the ICC, and the Struggle Against Impunity, <https://www.ictj.org/sites/default/files/subsites/complementarity-icc/>.

¹⁵⁹ *Id.*

¹⁶⁰ *The States Parties to the Rome Statute*, International Criminal Court https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx.

¹⁶¹ *Id.*

¹⁶² What is Complementarity? National Courts, the ICC, and the Struggle Against Impunity, <https://www.ictj.org/sites/default/files/subsites/complementarity-icc/>.

¹⁶³ *North Caucasus: Gay-Rights Activists File ICC Genocide Complaint Over Alleged Chechnya Abuses*, RadioFreeEurope RadioLiberty (May 16, 2017) <https://www.rferl.org/a/russia-chechnya-gay-rights-groups-file-complaint-icc/28491724.html>; See Also *Chechnya Accused of 'Gay Genocide' in ICC Complaint*, BBC News (May 16, 2017) <https://www.bbc.com/news/world-europe-39937107>.

over the persons affiliated with the crimes in Chechnya against LGBTQ+ individuals because France, a party to The Rome Statute filed a complaint with the ICC on May 16, 2017.¹⁶⁴ Three French groups have asserted the necessity for a formal investigation into the events committed against LGBTQ+ people in Chechnya, noting that the internal investigation which is unreliable.¹⁶⁵ The complaint highlights a reported instance of a seventeen year old gay man who was allegedly thrown to his death from a ninth floor window by his uncle.¹⁶⁶ Once again, the crime alleged being a crime against humanity coupled with the complaint filed by France, a party to The Rome Statute, gives the ICC proper jurisdiction to prosecute for the Chechens attack on LGBTQ+ persons.¹⁶⁷ Therefore, the ICC should exercise jurisdiction over those responsible in Chechnya for kidnapping, torturing, and exterminating LGBTQ+ persons.¹⁶⁸

C. The Atrocities Committed Against LGBTQ+ People by ISIS Fulfill Section VII of The Rome Statute, Qualifying as a Crime Against Humanity

The basic principles that ISIS follows regarding extermination of LGBTQ+ individuals and the documented occurrences of LGBTQ+ persons being thrown off of buildings, tortured, and murdered rise to the level of a crime against humanity and should be tried as such.¹⁶⁹ Members of ISIS view LGBTQ+ individuals as individuals deserving of murder.¹⁷⁰ Additionally, news documentation shows crowds jeering over queer men thrown from buildings because of the practice that LGBTQ+ individuals deserve death.¹⁷¹ These documented instances show a

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Chechnya Accused of 'Gay Genocide' in ICC Complaint*, BBC News (May 16, 2017) <https://www.bbc.com/news/world-europe-39937107>.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Saurav Juny Thapa, *Islamic State Continues Barbarous Violence Against LGBT Community*, Human Rights Campaign (July 30, 2015) <https://www.hrc.org/blog/islamic-state-continues-barbarous-violence-against-lgbt-community>.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

willingness to systematically exterminate LGBTQ+ persons and therefore rise to the level of a Crime against Humanity and should be prosecuted accordingly at the ICC.¹⁷² This sentiment combined with the actions documented and reported throughout the world, have shown that ISIS is committed to systematically removing LGBTQ+ individuals from their territory, and even on American soil, also satisfying the requisite widespread manner.¹⁷³

D. The Atrocities Committed Against LGBTQ+ People in Chechnya, Russia Fulfill Section VII of The Rome Statute, Qualifying as a Crime Against Humanity

The requirements of Article VII requires a widespread and systematic attack directed against any civilian population.¹⁷⁴ The attack, may include any of the actions listed in (a)-(k) of the statute.¹⁷⁵ Here, civilian LGBTQ+ persons have been rounded up in Chechnya and subjected to severe torture, imprisonment, and even murder.¹⁷⁶ Documentation has shown that Chechens are accomplishing these extermination processes by abducting LGBTQ+ Chechens and moving them into modern day concentration camps which fulfills section (e), qualifying as imprisonment or forcible detainment.¹⁷⁷ This also demonstrates the widespread manner in which Chechens are being kidnapped, tortured, and disposed of based on their real or perceived sexual orientation or gender identity.¹⁷⁸ Additionally, electro-shock therapy has been reported, thus qualifying under

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity
<http://www.un.org/en/genocideprevention/crimes-against-humanity.html>.

¹⁷⁵ *Id.*

¹⁷⁶ Shannon Molloy, *At Least 100 Gay Men Have Been Rounded Thrown In Concentration Camps in Chechnya*, News.com.AU <https://www.news.com.au/world/europe/at-least-100-gay-men-have-been-rounded-up-and-thrown-in-concentration-camps-in-chechnya/news-story/89553c2517a227ff20c57bef35cd78b3>.

¹⁷⁷ Nataliya Vasilyeva, Alexander Rolsyakov, *Gay Chechens report days of beatings and electro-shock torture at hands of Russian government-backed thugs*, Independent Co UK (May 2, 2017) <https://www.independent.co.uk/news/world/europe/gay-chechens-beating-electro-shock-torture-detain-camps-chechnya-russia-thugs-homophobia-human-a7713391.html>; *See Also* Shannon Molloy, *At Least 100 Gay Men Have Been Rounded Thrown In Concentration Camps in Chechnya*, News.com.AU <https://www.news.com.au/world/europe/at-least-100-gay-men-have-been-rounded-up-and-thrown-in-concentration-camps-in-chechnya/news-story/89553c2517a227ff20c57bef35cd78b3>.

¹⁷⁸ *Id.*

the statute in sections (g) or (k).¹⁷⁹ LGBTQ+ persons are being specifically targeted and eradicated from Chechen society, as Chechen leader remarked “we don’t have any gays [in the republic].”¹⁸⁰ Russia may try to block the investigations into these crimes because they are no longer a party to the Rome Statute and want to avoid prosecution.¹⁸¹ However, because of state referral by France, and the ability for Security council referral coupled with complementarity means that Russia will be unsuccessful in blocking an investigation.¹⁸² Under complementarity, Russia has shown it is unwilling to properly and fully investigate these crimes in a true, unbiased manner, and under the requirement, the ICC can successfully open an investigation to prosecute accordingly.¹⁸³ These actions and their magnitude, noting that over one hundred people have reportedly fled or been detained in concentration camps, rise to the level of a crime against Humanity.¹⁸⁴

E. There is both a legal and moral responsibility to prosecute members of ISIS and those Responsible in Chechnya for These Crimes Committed Against LGBTQ+ Individuals

Legally, because there has been no one standing up on behalf of marginalized groups, specifically the LGBTQ+ community, the ICC has a responsibility to assert jurisdiction over those responsible members of ISIS and in Chechnya.¹⁸⁵ Due to the lack of equality, treatment, and laws protecting LGBTQ+ persons the ICC has a responsibility to set the stage and put LGBTQ+ people

¹⁷⁹ *Id.* See Also United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>.

¹⁸⁰ Simon Shuster, “*They Tell Me a Demon Lives Inside Me*” *A Young Man Targeted in Chechnya For Being Gay Discovers Europe Offers No Safe Haven From His Tormentors*, Time <http://time.com/chechnya-movsar/>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.* See Also United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>.

¹⁸⁵ Shannon Molloy, *At Least 100 Gay Men Have Been Rounded Thrown In Concentration Camps in Chechnya*, News.com.AU <https://www.news.com.au/world/europe/at-least-100-gay-men-have-been-rounded-up-and-thrown-in-concentration-camps-in-chechnya/news-story/89553c2517a227ff20c57bef35cd78b3>.

at the forefront and show that the world will not idly stand by and allow these crimes against humanity to continue.¹⁸⁶

The legal responsibility coincides with the moral responsibility to prosecute in that failure to prosecute shows that the world is willing to acquiesce to such heinous treatment and even extermination of LGBTQ+ individuals.¹⁸⁷ Further, failure to prosecute shows that LGBTQ+ persons, while already marginalized, are not worthy of equal protections and treatments that straight and cis-gender people receive regardless of being part of any other marginalized group. Most importantly, it shows that all others in the world, receive protection based on heteronormative notions, being straight, and being cis-gender.¹⁸⁸ Therefore, there is both a legal and moral responsibility for the ICC to prosecute members of ISIS and persons in Chechnya, Russia, to show that the world will not allow the extermination and unequal treatment of LGBTQ+ persons.¹⁸⁹

Ultimately, the theory of expressive prosecution regarding ICC selection ties in with the legal and moral responsibility to prosecute for these crimes against LGBTQ+ individuals.¹⁹⁰ The theory commands that the ICC should select crimes and defendants for prosecution according to their ability to maximize expressive impact.¹⁹¹ Here, the ICC has the ability to show that transgender persons and Queer persons will receive the same treatment and protections that cis-gender and heterosexual people receive.¹⁹² LGBTQ+ individuals are marginalized in society

¹⁸⁶ *Chechnya Accused of 'Gay Genocide' in ICC Complaint*, BBC News (May 16, 2017)

¹⁸⁷ *Id.* See Also Understanding the International Criminal Court, *International Criminal Court, Section IV. How does the ICC Operate*, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>

¹⁸⁸ See United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VI: Genocide <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>

¹⁸⁹ *Id.*

¹⁹⁰ *Choosing to Prosecute: Expressive Selection at the International Criminal Court*, deGuzman, Margaret M., *Choosing to Prosecute: Expressive Selection at the International Criminal Court* (March 2, 2012). Michigan Journal of International Law, Forthcoming; Temple University Legal Studies Research Paper No. 2011-16. Available at SSRN: <https://ssrn.com/abstract=1780446>.

¹⁹¹ *Id.*

¹⁹² *Id.*

similarly to that of Jewish persons in Nuremberg trials.¹⁹³ In Nuremberg, the ICC chose to make an example of the Nazi's due to their inferior treatment of Jewish persons rather than focusing on the gypsies, mentally ill, and LGBTQ+ individuals.¹⁹⁴ Now, due to the magnitude of these crimes, the LGBTQ+ people could benefit the same from an expressive theory of prosecution now, making an example of members of ISIS and Chechens responsible as the Nuremberg trials focused on proving the atrocities against Jewish persons were unacceptable.¹⁹⁵

- F. There is no need to compare atrocities to decide whether a crimes should be heard and prosecuted as a crime against Humanity; Each heinous crime appropriately fitting the definition should be brought to the ICC

The Tokyo war tribunal failed to recognize the severity of the crimes committed against minority populations in Japan, Korea, Manchuria, China, The Philippines, and other Asian regions because it compared the actions to those of the Nazi's in the Nuremberg trials.¹⁹⁶ With The Rome Statute setting the floor under Article VII, for the most serious crimes committed that may constitute a crime against Humanity should be prosecuted accordingly.¹⁹⁷ The ICC as well as the international community has the ability to take a stand and utilize these prosecutions to prove a point—namely that the world will not idly sit by and these places try to exterminate and torture LGBTQ+ individuals.¹⁹⁸ Prosecuting members of ISIS and Chechens responsible for these crimes serves an incredible purpose by showing that the world will step to protect LGBTQ+ individuals

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Shaack, Slye, *International Criminal Law and Its Enforcement*, IV., 427 (2015 3rd edition).

¹⁹⁷ United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>; See Also United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>

¹⁹⁸ See *deGuzman, Margaret. See Also, Shannon Molloy, At Least 100 Gay Men Have Been Rounded Thrown In Concentration Camps in Chechnya*, News.com.AU <https://www.news.com.au/world/europe/at-least-100-gay-men-have-been-rounded-up-and-thrown-in-concentration-camps-in-chechnya/news-story/89553c2517a227ff20c57bef35cd78b3>.

who are otherwise treated as lesser, thus setting an example for other areas in the world that still harm and fail to protect LGBTQ+ individuals, like Uganda for example.¹⁹⁹

Defendants have rights at the ICC and bringing appropriate trials for Crimes against Humanity allows Defendants to prove their innocence on the world's stage, but also shows that the world will not scale justice by comparing past atrocities.²⁰⁰ Lumping these atrocities together from Nuremberg, to Tokyo, to Chechnya, and ISIS is appropriate because mass extermination, torture, kidnapping, and murder all took place satisfying the definition of a crime against humanity, just as we would expect someone to be charged with murder for using a knife instead of a gun.²⁰¹ The minimum requirement should not be comparison, but should focus on fulfilling the requisite acts to be charged with the crime against humanity.²⁰² Additionally, this reasoning would posit that we, as a society, are willing to acquiesce to, and forego charging people with crimes just because the magnitude does not reach that of the Nuremberg trials.²⁰³ We should focus on finding persons criminally responsible for inhumane treatment of others and particularized groups of others rather than playing a comparison game, because we should be taking steps to never revisit the magnitude of extermination that occurred in Nazi's concentration camps.²⁰⁴

VI. Conclusion:

This paper sought to discuss the heinous crimes and history of LGBTQ+ people as committed by ISIS and people in Chechnya, Russia.²⁰⁵ After setting the stage by defining and analyzing the

¹⁹⁹ *Id. See Also*, Human Rights Watch, Uganda LGBT Issues, <https://www.hrw.org/world-report/2018/country-chapters/uganda>.

²⁰⁰ *International Criminal Court*, Defence <https://www.icc-cpi.int/about/defence>.

²⁰¹ United Nations Office On Genocide Prevention And The Responsibility To Protect; Rome Statute of the International Criminal Court Article VII: Crimes Against Humanity <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>; *See Also* 18 U.S.C. <https://www.law.cornell.edu/uscode/text/18/1111>.

²⁰² *See Infra*.

²⁰³ Shaack, Slye, *International Criminal Law and Its Enforcement*, Pt. III Substantive International Criminal Law 427 (2015 3rd edition).

²⁰⁴ *Id.* At 426.

²⁰⁵ *See Supra. at I.*

hardships and marginalized treatment of LGBTQ+ individuals, jurisdiction was properly established for the International Criminal Court to prosecute Chechnya and ISIS.²⁰⁶ The ICC is able to exercise jurisdiction over ISIS through referral or the complementarity requirement, and the ICC can exercise jurisdiction over Chechnya through referral, evidenced by the formal complaint filed by France.²⁰⁷ Finally, the ICC should exercise jurisdiction over both ISIS and Chechnya, Russia by prosecuting those responsible for committing a Crime against Humanity for their extermination, murder, kidnapping, and castration of LGBTQ+ persons.²⁰⁸

²⁰⁶ *Id.*

²⁰⁷ *See Supra at pgs. 17-23.*

²⁰⁸ *See Supra.*