

UNIVERSITÀ DEGLI STUDI DI PADOVA

DEPARTMENT OF POLITICAL SCIENCE,
LAW, AND INTERNATIONAL STUDIES

**Master's degree in
Human Rights and Multi-level Governance**



**Beyond Conventional Justice: Women's Courts as a Path to Justice in
the Yazidi Genocide**

Supervisor: Prof. Amedeo Osti Guerrazzi

Candidate: Dilan Ates

Matriculation No. : 2039420

A.Y. 2024/2025

I dedicate this thesis to the Yazidi community,
in memory of the genocide they suffered and the struggle for justice they have waged.

Acknowledgments

I would like to express my sincere gratitude to my professor, Prof. Amedeo Osti Guerrazzi, for his invaluable guidance and insightful feedback throughout the process of preparing this thesis. I also would like to express my appreciation to all the professors of Department of Political Science, Law and International Studies (SPGI). Their contributions have been invaluable throughout my academic journey. I am deeply grateful for the knowledge and opportunities they have provided.

Finally, I am deeply thankful to my dear family for their unconditional love and encouragement. Their unwavering belief in me and their constant support has been my greatest source of strength and motivation.

Thank you once again for your guidance and support.

Table of Contents

1	Chapter 1 - The Crime of Genocide.....	12
1.1	Origin and definition of genocide	12
1.2	Women Genocide, in customary international law	15
2	Chapter 2 - Origin and Historical Background Yazidis	19
2.1	Identity	19
2.2	Language	20
2.3	Geographical Settlements	20
2.4	Political status: Pre-existing tensions and conflicts.....	22
2.4.1	Ottoman era	23
2.4.2	Saddam era	24
2.4.3	Post-Saddam era	25
2.5	Yazidism and Yazidi Culture	26
2.5.1	Yazidism.....	26
2.5.2	Culture	29
2.5.3	Social rules and taboos.....	30
2.5.4	Caste system	33
3	Chapter 3 - Genocidal Ideology of ISIS and Institutionalisation	35
3.1	Establishing Caliphate.....	37
3.2	The Role of ISIS Members in Genocide	38
3.2.1	Demographic of ISIS fighters.....	39
3.2.2	Foreign militants Joining ISIS	41
3.2.3	Women militants joining ISIS	42
3.3	The Economical Power of ISIS.....	45
3.4	Genocidal Ideology of ISIS and Legitimation of Sexual Violence.....	46
4	Chapter 4 - Overview of the Yazidi Genocide	48
4.1	Capture and Occupation of Sinjar.....	48
4.2	Examining Genocidal Acts and Prohibited Atrocities Committed by ISIS	53
4.2.1	Genocide by deliberately separation of a community to enslave or execute a part of the community	53
4.2.2	Genocide by physical destruction in whole or in part of Yazidi men	54
4.2.3	Genocide by coercive conversions to eradicate Yazidism	55
4.2.4	Genocide by forcible transfer of Yazidi women and children	55

4.2.5	Genocide by recruitment and use of Yazidi children on battlefields	57
4.2.6	Genocide by sexual violence and enslavement against captured Yazidi women and girls.....	58
4.2.7	Genocide by destruction of cultural heritage monuments and holy places of the community	59
5	Chapter 5 - The Yazidi Genocide in the Framework of Women Genocide	62
5.1	Yazidi Women as Genocidal Target	62
5.1.1	The conceptualisation of rape.....	62
5.1.2	The variation of rape.....	63
5.1.3	Rape and sexual violence committed by ISIS as a part of the war strategy	66
5.1.4	War strategy based on the notion of honour	68
5.1.5	Use of sexual violence as a defeat mechanism	69
5.2	Sexual and Gender-Based Crimes Committed Systematically by ISIS.....	70
5.2.1	The institution of slavery and sexual violence	70
5.2.2	The slavery as a financial income	72
5.2.3	Women genocide by forced marriage and captivity	77
5.2.4	Women Genocide by imposing measures aimed at preventing births within the group	78
5.2.5	Women genocide by forced impregnation and births resulting from rape	79
5.2.6	Rape and sexual crimes in regard of root and branch genocide	80
5.3	Trauma and Psychological Effects of Sexual Violence.....	83
5.3.1	Psychological burden of sexual violence	86
5.3.2	Children as silent witnesses	88
5.3.3	Consequences of forced pregnancies	89
5.3.4	Children born as a result of rape	91
5.4	Discrimination and Stigmatisation.....	93
5.4.1	Mothers as primary victims.....	93
5.4.2	Children as secondary victims	94
5.4.3	The legal status of the child born of rape.....	95
5.5	The Social Trauma of the Yazidi Community	97
6	Chapter 6 - International and National Accountability Efforts to Prosecution of the Perpetrators.....	99
6.1	Recognition of the Yazidi Genocide in International Law	99

6.2	International Efforts to Document and Gather Evidence of the Crimes Committed by ISIS	102
6.2.1	Human rights office of the UN assistance mission in Iraq (UNAMI)....	102
6.2.2	The international, impartial and independent mechanism for Syria (IIIM) 103	
6.2.3	UN investigative team to promote accountability for crimes committed by Da'esh/ISIL in Iraq (UNITAD):.....	104
6.2.4	Independent international commission of inquiry on the Syrian Arab Republic (UN CoI Syria)	106
6.2.5	The office of the high commissioner for Human Rights (OHCHR).....	107
6.2.6	Joint initiatives	107
6.2.7	Civil society organisations	108
6.3	Application of the Rome Statute and the International Criminal Court (ICC) 110	
6.4	Jurisprudence of the States on the Prosecution of Perpetrators Through National Laws: Country Studies.....	115
6.4.1	France	116
6.4.2	Germany.....	122
6.4.3	United States of America	135
6.4.4	Turkey.....	137
6.4.5	Iraq.....	142
6.4.6	Syria	150
7	Chapter 7 - Obstacles to access to justice	156
7.1	Impunity	156
7.1.1	Investigation of international crimes through counterterrorism laws	156
7.1.2	The Challenges of collecting evidence and sharing information	157
7.1.3	Obstacle to the prosecution of women perpetrators	158
7.1.4	Europe's reluctance to repatriate ISIS foreign fighters and its implications for justice.....	160
7.1.5	Challenges and consequences of detention of ISIS fighters	161
7.2	Flawless Justice in Iraq and Syria.....	161
7.3	Potential for Future Retaliation	162
7.4	Lack of a Gender-Sensitive Approach	164
7.5	Jurisdictional Obstacles of ICC and Mixed/Hybrid Courts	165
8	Chapter 8 - Alternative Solutions to Justice	168
8.1	Women's Trials and Feminist Perspectives to Justice since 1976	168

8.1.1	The International tribunal on crimes against women (Brussels Tribunal)	169
8.1.2	Women's international tribunal on military sexual slavery of Japan	171
8.1.3	The Women's court in Sarajevo	173
8.2	Women's Court as an Ad-hoc International Court	177
8.2.1	Providing a voice for Yazidi women to address multifaceted violence..	180
8.2.2	The Restorative aspect of women's courts victim-centred perspective ..	182
8.2.3	Empowering justice by prioritising the women's court.....	184
9	Conclusion.....	186
10	Bibliography	188

Abstract

On 3 August 2014, ISIS, which has been classified as a terrorist organisation, attacked the Sinjar region in northwest Iraq, explicitly targeting the Yazidi minority community. 1,268 Yazidis are murdered on the first day of attacks in Sinjar. Shortly after the attack, 3,548 Yazidi women and girls were kidnapped and forced into sexual slavery, enduring sexual, physical, and emotional abuse, and the majority of them are still missing. The Syrian Arab Republic United Nations Commission later recognised these actions as acts of genocide, as ISIS systematically committed those crimes against Yazidis to eradicate them in Sinjar. Despite some efforts by states and international bodies, governments, and UN-led programmes, policies on accountability for ISIS perpetrators have frequently remained weak and inadequate. Thus, these fragmented legal initiatives have not provided survivors with a sense of justice being served. Therefore, this thesis outlines challenges in the judicial process, critically evaluates national and international legal bodies, and highlights the shortcomings of impunity policies and imperfect justice systems. Drawing on feminist perspectives, it advocates for the establishment of a Women's Court as an ad hoc international tribunal to address the persistent demand for justice from the Yazidi community. It is claimed that this alternative court, designed to strengthen the voices of victims and emphasise restorative justice and global accountability for sexual crimes against women, can empower survivors and meet their needs and demands for justice and allow them to return to their lives with dignity.

Keywords: Yazidi Genocide, Women's Courts, Gendering Genocide, ISIS

Acronyms

- (AANES) Kurdish Autonomous Administration of North and East Syria
- (AFAD) Emergency Management Authority
- (AI) Amnesty International
- (AQI) Al-Qaeda in Iraq
- (CIJA) Commission for International Justice and Accountability
- (CVRA) Crime Victims' Rights Act
- (ECHR) European Court of Human Rights
- (FIDH) International Federation for Human Rights
- (FTFs) Foreign Terrorist Fighters
- (FTO) Foreign Terrorist organisation
- (FYF) Free Yazidi Foundation
- (HRW) Human Rights Watch
- (IBAHRI) The International Bar Association's Human Rights Institute
- (ICC) International Criminal Court
- (ICCT) International Centre for Counter-Terrorism
- (ICTR) International Criminal Tribunal for Rwanda
- (ICTs) International Criminal Tribunals
- (ICTY) International Criminal Court of the former Yugoslavia
- (IHL) International Humanitarian Law
- (IHL) International Human Rights Law
- (ISI) Islamic State of Iraq
- (ISIL) Islamic State of Iraq and Lebanon
- (ISIS) Islamic State of Iraq and al-Sham
- (IIIM) Impartial and Independent Mechanism
- (JIT) Joint Investigation Team
- (JRS) Jesuit Refugee Service
- (KINYAT) Yazda Genocide Document Project and Organisation for Documentation
- (KRG) Kurdistan Regional Government
- (KRI) Kurdistan Region of Iraq
- (KR-I) Semi-Autonomous Kurdistan Region of Iraq

(KRG) Kurdish Regional Government
(NCITE) National Counterterrorism Innovation, Technology, and Education Centre
(OHCHR) Office of the High Commissioner for Human Rights
(ÖHD) Association of Lawyers for Freedom
(OTP) Office of the Prosecutor
(PTSD) Post-Traumatic Stress Disorders
(PYD) Democratic Union Party
(SDF) Syrian Democratic Forces
(UN) United Nations
(UNAMI) United Nations Assistance Mission for Iraq
(UNITAD) United Nations Investigative Team to Promote Accountability for Crimes
Committed by Da'esh/ISIL in Iraq
(UNSC) United Nations Security Council
(YJÊ) Êzîdxan Women's Units
(YPG) Kurdish People's Protection Units
(YSN) Yazidi Survivor Network

Introduction

This chapter of the paper provides an introduction section to the background of the genocide, conceptualizing ISIS attacks as genocide primarily against women. Thus, the thesis begins with the study of the legal framework for genocide in international law, focussing in particular on gender-based genocide in common international law. Subsequently, the article provides an overview of the history of the Yazidi people, delving into their identity, culture, and past conflicts with surrounding societies. A brief historical background of the Yazidi community will allow us to highlight the specific gender dimension of the Yazidi genocide and the perspectives of the study.

In the third chapter, the thesis focusses on ISIS members and their responsibilities in sexual violence to perpetrate the genocide against Yazidis, and explains how ISIS members are motivated through the ideology of the Caliphate. The third chapter shows that preventing sexual violence in conflict is not possible without addressing the fundamental structural factors that promote this form of violence. The article also provides a detailed overview of the atrocities committed by ISIS in Sinjar in the fourth chapter, highlighting the gender-based nature of violence and its traumatic impact on Yazidi women and society as a whole.

Chapter five explores in depth the material elements that demonstrate that the Yazidi genocide, which is at the centre of the main focus of the thesis, was a genocide of women. To provide the Yazidi genocide from the perspective of women's genocide, it argues the multiple aspects of the sexual violence committed by ISIS, including its conceptualisation, variations, and strategic use as a weapon of war. The chapter also outlines psychological traumas of Yazidi women suffered from slavery and sexual violence and their children, who testify all the crimes are executed by ISIS members and have come to the world as a result of rape. In addition to them, it draws attention to the discrimination and labelling of Yazidi women. Finally, the chapter deals with the broader social trauma experienced by the Yazidi community as a result of these horrific acts.

After the fall of ISIS, additional information and potential evidence regarding the Yazidi genocide committed by ISIS became more accessible, and while some foreign ISIS

members returned to their home countries, thousands of them were captured and detained in prisons and camps under the authority of the Syrian Democratic Forces in northeast Syria (Rojava). Some states have already prosecuted returned ISIS members and held ISIS perpetrators responsible for crimes against humanity, crimes of genocide and / or terrorist-related offences. Therefore, the sixth and seventh chapters are mainly devoted to illustrating obstacles of international and national legal laws. In particular, the objective of the sixth chapter addresses international and national efforts to prosecute the perpetrators and assesses the jurisprudence of states in holding ISIS members accountable for their acts. Critically evaluating existing legal mechanisms and highlighting structural problems in the prosecution of ISIS perpetrators allows us to highlight the shortcomings of impunity policies, flawed domestic justice systems, and the lack of adequate treatment of these gender-based crimes by domestic courts in the seventh chapter.

The last part of the thesis proposed the establishment of a Women's Court as an ad hoc international court to address the persistent demand for justice from the Yazidi community. This chapter illustrates how a women's court can provide a more holistic understanding of its experiences and empower them as active agents in seeking justice by focussing on the perspectives and stories of survivors.

1 Chapter 1 - The Crime of Genocide

1.1 Origin and definition of genocide

Although Winston Churchill defined the genocide as "the crime without names", the Polish lawyer and scholar Raphael Lemkin first created the term "genocide" in his book *The Axis Rule in Occupied Europe*, in which he detailed the policies and actions of the Axis powers, in particular Nazi Germany. Lemkin coined the term 'genocide' by combining two different words: 'genos,' which signifies race, nation, or tribe in ancient Greek, and 'caedere,' meaning to kill in Latin. According to Lemkin's definition of genocide, it is a series of systematic actions aimed at the destruction of the fundamental foundation of the existence of national groups to eliminate the groups themselves¹.

This strategy aims to destroy the political and social structures of the national groups' culture, language, national emotions, religion and economic means, as well as to destroy the individual security, freedom, well-being, health, dignity, and even the life of the members of these groups. The genocide is directed at the national group as a collective unit and the action concerned is directed not only at individual capacities, but in particular at individuals as members of the national group. Lemkin's definition was limited because it focused on crimes aimed at "national groups" rather than at "groups" in a broader sense. Simultaneously, it was extensive, considering not only physical genocide but also acts intended to destroy the culture and subsistence of the group².

Moreover, Lemkin claims that genocide involves two aspects: first, the elimination of the distinctive features of the ethnic identity of the oppressed group and second, the imposition of the ethnic identity of the oppressor. This imposed measure may be applied to the remaining population of the oppressed group or only to the territory, after the removal of the population and the colonisation of the area by the oppressor's own nationals. The term "denationalization" has historically been used to describe the

¹ Lemkin, R. (1944). *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Washington, DC: Carnegie Endowment for International Peace, pp. 77-79.

² Schabas, W. A. (2009). *Genocide in International Law* (2nd ed.). Cambridge University Press, p. 30. Available at: <https://doi.org/10.1017/cbo9780511575556>.

destruction of national identity. Lemkin believed that the term was not sufficient because the term is usually used by some authors to mean only the loss of citizenship. However, the term does not represent the destruction of biological structures. It does not also mean the imposition of a national pattern by the oppressor³. Therefore, Lemkin's definition of genocide is extremely vital because he emphasised the importance of recognising and criminalising not just the act of killing, but the broader spectrum of actions aimed at the destruction of a group.

Just under a year after the genocide was defined, this neologism was used in the indictment of the International Military Tribunal and within two months it played a crucial role in the drawing and adoption of the United Nations Genocide Convention in 1948. The term "genocide" was subject to a resolution of the United Nations General Assembly. Following the adoption of the 1948 Convention on the Prevention and Punishment of Genocide by the General Assembly, the term "genocide" gained a detailed and accurate technical definition as a crime against the law of the nation.

The Genocide Convention, in Article 2,⁴ defines genocide as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. These acts are ;

- a. Killing members of the group.
- b. Cause serious bodily and/or mental harm to group members.
- c. The deliberate imposition of living conditions that lead to the total or partial physical destruction of the group.
- d. Imposing measures designed to prevent births within the group.
- e. Forcibly transfer of children from the group to another group.

³ Lemkin, R. (1944). *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Washington, DC: Carnegie Endowment for International Peace, pp. 80

⁴ United Nations. (1948). Convention on the Prevention and Punishment of the Crime of Genocide. Retrieved from [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention on the Prevention and Punishment of the Crime of Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)

In general, genocide includes violent crimes against individuals, including murder, and as these crimes have long been considered antisocial and morally outrageous, the overlap with murder and assault crimes in genocide investigations is nothing new in this area. However, genocide has always escaped legal responsibility, as it has almost always been carried out under the leadership and cooperation of the authorities. Historically, perpetrators of genocide are immune to legal consequences, because the law is higher, particularly in their own country, except in rare cases where changes in government are involved. Therefore, in criminal prosecutions, ethnic, and religious minorities are not only morally condemned, but also have legal consequences and liability⁵. Consequently, in the context of genocide as an international legal standard, which no State can deviate from, the prohibition of persecution of ethnic groups runs as a golden thread through the decisive moments in the history of human rights.

The International Court of Justice recognises the prohibition of genocide as a customary legal norm. The Statute of the International Court of Justice recognizes the two non-conventional sources of international law: international customs and general principles. International customs are formed by evidence of general practices accepted as laws, and general principles are those recognized by civilized nations or moral laws. The Court's reference to concepts such as "moral law" and the clear reference to "civilized nations" suggests that it may be more appropriate to consider the prohibition of genocide as a standard derived from general principles of law than as a component of ordinary international law. However, the view is misleading because the general recognition of the principles set out by the International Community since its adoption in 1948 implies that what initially appeared to be "general principles" should now be considered as an integral element of customary law. In 2006, the International Court of Justice firmly declared that the prohibition of genocide was undoubtedly a *jus cogens* in public international law,

⁵ Schabas, W. A. (2009). *Genocide in International Law* (2nd ed.). Cambridge University Press, p. 15. Available at: <https://doi.org/10.1017/cbo9780511575556>.

which was the first time that the court had made such a declaration concerning any legal rule^{6 7}.

1.2 Women Genocide, in customary international law

The link between women and genocide is not only a complex and disturbing aspect of human conflict but also a brutal explanation of the reasons for targeted and affected women during periods of massive violence and persecution. However, the current emphasis on the mass killing aspect of genocide unintentionally makes the gender dimension of genocide less visible⁸. In the investigation of women's relations with genocide, it is clear that the use of sexual violence and other forms of genocide is not an arbitrary and random result. This is an intentional strategy aimed at causing deep and lasting damage both to individual women and to the community as a whole, since women are regarded in genocide contexts as symbolic representations of the continuity and identity of the targeted group due to their fertility. Therefore, perpetrators of genocide often target women's reproductive capacities as a means of achieving their destructive goals. This objective is driven by the desire to control or manipulate the demographic composition of a targeted group, either through forced pregnancies or through the promotion of reproductive policies to change the demographic dynamics of the group. In cases of genocide, which involves the intentional destruction of whole groups based on their identity, women are often particularly vulnerable to various forms of violence, including sexual abuse, forced sterilisation, and other gender-based crimes. The aim of targeting women goes beyond physical damage; it also aims to destroy the social fabric of the targeted community by destroying family and social structures. Therefore, the relationship between women and genocide underscores the fundamental gender-specific aspects of mass atrocities: Women are not only victims of violence but also the main target of genocide.

⁶ International Court of Justice. (2006). Case Concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application. Retrieved from <https://www.icj-cij.org/en/case/126>, para. 64.

⁷ Schabas, W. A. (2009). *Genocide in International Law* (2nd ed.). Cambridge University Press, p. 4. Available at: <https://doi.org/10.1017/cbo9780511575556>.

⁸ Argibay, C. (2003). Sexual slavery and the comfort women of World War II. *Berkeley Journal of International Law*, 21(2), 375-469. <https://doi.org/10.15779/z38vw7d>.

Throughout the twentieth century, acts of rape committed during wartimes and genocide were often perceived as offences against honour rather than recognised as violent crimes. An illustration of this perspective is found in Article 24 of the Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, which prohibits sexual violence with the statement: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”. Despite the explicit prohibition of sexual violence as a wartime crime, the enforcement and prosecution of perpetrators of these offences have been notably scarce. The reassessment of this perception gained momentum in the 1990s through two major events: the ethnic cleansing campaign during the war in former Yugoslavia and the Rwandan genocide. As a result of the widespread and systematic use of sexual violence in both conflicts, feminist scholars and activists launched a campaign calling on the international community to recognise the serious violations of human rights inherent in the use of sexual violence during war. As a result of the campaign, explicit recognition of sexual violence as a serious violation of human rights in the statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY) marked a crucial moment in recognising the occurrence of sexual violence in conflicts. One year later, the United Nations instituted the International Criminal Tribunal for Rwanda (ICTR) and once more explicitly acknowledged the role of sexual violence in genocide⁹.

The need to make the perpetrator responsible and ensure justice for the disproportionately affected women became apparent through the women's struggle, and over time the international community has increasingly recognised the importance of combating gender-based crimes in the context of genocide. Efforts to prosecute people for gender-based genocide have gained momentum. However, rape, which has a long history as ancient as war itself, remains one of the most destructive and darkest sides of humanity in genocides. Rape which is committed against mainly women and girls, as well as men and boys in genocide, exacerbates suffering, chaos, murder, and deaths and destroys human dignity by inflicting gang violence on individuals, groups. Although rape, as a form of sexualised violence, has shattered and plagued human existence for hundreds of

⁹ Meger, S. (2016). Sexual violence as an element of genocide. In Oxford University Press eBooks (pp. 115-137). Available at: <https://doi.org/10.1093/acprof:oso/9780190277666.003.0007>

years, for the first time on 9 December 1948, international law addressed gender-specific aspects of mass atrocities and reinforced the commitment to preventing and punishing such crimes on a global scale. The United Nations enacted its Convention on the Prevention and Punishment of Genocide Crimes on 9 December 1948. The standard document defines genocide as 'acts that are carried out with the intention of completely or partially destroying a national, ethnic, racial, or religious group.'¹⁰. According to the United Nations, “sexual violence under international law” encompasses rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, trafficking, and any other form of sexual violence of comparable gravity, which may, depending on the circumstances, include situations of indecent assault, inappropriate medical examinations, and strip searches¹¹.

A decisive moment in international law also occurred in the case of Jean-Paul Akayesu (1996-1998) brought by the Rwandan International Criminal Tribunal for Rwanda (ICTR) against Jean-Paul Akayesu, who was the Bourgmestre (mayor) of Taba, Rwanda. The International Criminal Tribunal, which has been established by the Security Council acting under Chapter VII of the Charter of the United Nations, found Jean-Paul Akayesu guilty of using the rape for genocidal purposes, committing crimes against humanity, and violations of Article 3 common to the Geneva Conventions and Additional Protocol II thereto. For the first time, the tribunal also convicted mass rapists, including as facilitators of genocide. The International Criminal Tribunal paved the way for a more robust assessment of rape around the world by considering rape as a constitutive act of genocide within the scope of the Crimes against Humanity¹². According to the International Tribunal Trial Chamber, rape is a physical invasion of sexual nature committed against a person under coercive circumstances. Sexual violence, including rape, is considered to be

¹⁰ Rittner, C., & Roth, J. K. (2016). Teaching about rape in war and genocide. In Palgrave Macmillan UK eBooks, p. 15. Available at:<https://doi.org/10.1007/978-1-137-49916-5>

¹¹ United Nations. (2020). Guidance for Mediators on Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements, p. 7. Retrieved from <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/Background-Doc-1-DPA-Guidance-for-Mediators-on-Addressing-Conflict-Related-Sexual-Violence-in-Ceasefire-and-Peace-Agreements.pdf>

¹² International Criminal Tribunal for the former Yugoslavia. (2009). Statute of the International Criminal Tribunal for the former Yugoslavia, p.6. Retrieved from: https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf

any sexual act committed against a person in a coercive environment. This act must be carried out as part of a widespread or systematic attack; on a civilian population; for certain discriminatory categories of reasons, namely: national, ethnic, political, racial, or religious. (106/596-598). After the Akayesu case, the International Criminal Tribunal for the former Yugoslavia also played a historic role in prosecuting sexual violence in wartime in the former Yugoslavia. The Tribunal examined in detail that the definition of rape related to conflict is gender neutral and drew detailed attention to how sexual penetration, coercion, and lack of consent should be understood¹³.

¹³ Rittner, C., & Roth, J. K. (2016). *Teaching about Rape in War and Genocide*. Palgrave Macmillan UK eBooks, p.17. Available at: <https://doi.org/10.1007/978-1-137-49916-5>

2 Chapter 2 - Origin and Historical Background Yazidis

2.1 Identity

Yazidis or Yezidis (Kurdish *ēzdî*) is one of the oldest ethnic communities and adheres to one of the oldest belief systems in Kurdistan, where Kurds are inhabited, encompassing the mountainous areas of the Zagros and the eastern extension of the Taurus in the Middle East. They are a religious subgroup of Kurds, except for a minority descended from the Arab Şeyh'Adî and his Arab followers. The Yazidi population totals around 600,000 individuals, comprising approximately 2% of the Kurdish population¹⁴.

The term 'Yazidi' is a controversial name. Although historically the Yazidi community has been called "Yazidiyya" in Arabic, the 2005 Iraqi Constitution employs the term "Êzidiyya," which carries a slightly different meaning and gained prominence through the efforts of Kurdish parties in the early 1990s. "Êzidiyya," derived from the term "Ezid" or "Izid," which signifies God or the Supreme Being in Kurdish, denotes the Kurds' initial religious orientation predating their conversion to Islam. In addition, devoid of Arab influences or affiliations, it was the Kurdish tribes that established the foundations of Yazidism in the region. They played a pivotal role in its significant development between the 12th and 15th centuries. Subsequently, in the 16th century, the Kurds transitioned back to embracing Sunni Islam (and to a lesser extent, Shia Islam) with the ascendancy of the Safavid dynasty in Persia and the Ottoman dynasty in Anatolia¹⁵.

In research on the ethnic origins of Yazidis, it is seen that the society calls itself differently from time to time and they have historically adopted different identity labels due to changing interactions between different social groups. For example, at different times, the Yazidis identified themselves as Kurds, Turkmen, Arabs, and Assyrians due to the

¹⁴ Yeğen, M. (Ed.). (2014). *Kürt Tarihi* (Sayı: 15, Ekim-Kasım-Aralık 2014). İstanbul: Kürt Tarihi Yayın Kurulu, p.7

¹⁵ International Federation for Human Rights. (2018). Iraq (Report No. 723), pp. 10-11. Retrieved from: <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

cultural diversity of northern Iraq. This adaptation strategy has been used to cope with exclusion and persecution from surrounding communities¹⁶.

2.2 Language

They speak Kurmanji, which is the most commonly used dialect of Kurdish especially in northern Kurdistan¹⁷. The religious texts are also written in Kurmanji.¹⁸ Some of the Yazidis also speak Arabic, in addition to their native language. However, all Yazidis use the Kurdish language in their prayers¹⁹. Historically, the region is known as Iraq (the Arab name for Mesopotamia) where the most important sacred sites of the Yezidis are situated, and was divided into three governorates during the Ottoman era. Baghdad, Basra, and Mosul. These were the heart of the Caliphate Abbasid, which ruled from Baghdad between the ninth and eleventh centuries. Following the destruction of Baghdad in 1258 and the demise of the Abbasid Caliphate, various tribal coalitions involving Kurds, Arabs, and Turkomans engaged in power struggles for control over these territories (A024/282). Subsequently, the Ottomans established dominance in Yezidi districts in the 16th century, and subsequently, the ethnic and religious aspects of Yezidis' social life became integrated into Ottoman administrative affairs²⁰.

2.3 Geographical Settlements

Historically, the Yazidis lived in the Kurdish region of the Middle East. Throughout their history, they have been largely geographically and socially isolated from other Kurdish and indigenous groups, as they settled in compact settlements and fortresses in remote

¹⁶ International Federation for Human Rights. (2018). Iraq (Report No. 723), p. 12. Retrieved from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

¹⁷ Allison, C. (2001). *The Yezidi Oral Tradition in Iraqi Kurdistan*. London: Curzon Press., p. 7. <https://doi.org/10.4324/9780203819913>

¹⁸ Van Zoonen, D., & Wirya, K. (2017). *The Yazidis: Perceptions of Reconciliation and Conflict*. Erbil: Middle East Research Institute, p. 8

¹⁹ Yeğen, M. (Ed.). (2014). *Kürt Tarihi* (Sayı: 15, Ekim-Kasım-Aralık 2014). İstanbul: Kürt Tarihi Yayın Kurulu, pp.7-8

²⁰ Orpak, O. (2021). A Descriptive Effort on the Ottomans-Yezidis' Unjust Relations: A Relationship in the Shade of Violence. *Kurdiname*, (5), p2. Retrieved from <https://www.institutkurde.org/info/yazidis-i-general-1232550791>

mountain areas to protect their society from discrimination and genocide²¹. Their identity and culture originate in the mountains of the countries in which they live and are therefore strongly related to them²². Their temples are spread out in these places.

Although some Yazidis were divided into nomadic tribes, most of the Yazidis lived in rural centres in northern Iraq and Syria, eastern Turkey, the Caucasus (Georgia and Armenia), and western Europe. To give more details, Yazidis have established communities in various Turkish cities such as Mardin, Batman, and Urfa. Furthermore, they live in Aragatson and Armavir villages, Yerevan in Armenia, and the cities of Tbilisi and Telavi in Georgia and the same rural area of Russia. In Syria, Yazidis inhabit areas including Afrin, the Kurd mountain surrounding Cebel Siman, and villages near Qamishli and Haseki in Syria²³. In particular, the highest concentration of Yazidis settled in the Sheikhan region of Iraq, Dohuk, Sinjar, Qamishli, and Amda within the Iraqi Kurdish Autonomous Region.

Although there is a dearth of reliable demography statistics, approximately half a million Yazidis live on these scattered lands²⁴. The largest Yazidi community, of which approximately 400,000 people live, is located in the Sinjar Mountains area, about 150 km west of Mosul in the governorate of Nineveh. The Yazidis are probably around 250,000 (although reliable statistics are difficult to find) and their largest communities are currently found in the regions of Duhok, Mosul, and Sinjar in northern Iraq²⁵. Sinjar stands out as a stronghold of Êzîdî traditions and customs, housing the revered Laleş Temple. Therefore, it was a major pilgrimage centre for the Yazidi community, and a significant majority of the community settled there until the genocide.

²¹ Kaya, Z. (2019) 'Iraq's Yazidis and ISIS. The Causes and Consequences of Sexual Violence in Conflict,' LSE Middle East Centre Report 2019, p.7-10. Retrieved from:<http://eprints.lse.ac.uk/102617/>

²² Allison, C. (2001). *The Yezidi Oral tradition in Iraqi Kurdistan*. Curzon Press, p.12-2. Retrieved from:<https://doi.org/10.4324/9780203819913>

²³ Asatruan Garnik S. and Arakelova Victoria, *The Religion of The Peacock Angel*, 2014 by Peeters, p.10 (Asatryan, G. S., & Arakelova, V. (2014). *The religion of the Peacock Angel: The Yezidis and Their Spirit World*. Routledge.)

²⁴ Kaya, Z. (2019) 'Iraq's Yazidis and ISIS. The Causes and Consequences of Sexual Violence in Conflict,' LSE Middle East Centre Report 2019, p.9. Retrieved from: <http://eprints.lse.ac.uk/102617/>

²⁵ Allison, C. (1998) 'The Evolution of Yezidi Religion. From Spoken Word to Written Scripture,' ISIM Newsletter, Vol. 98, No. 1, Regional Issues, Kurdistan.

Even before the genocide, the Yazidis in Sinjar have also historically been one of Iraq's most vulnerable and impoverished communities. At the end of the 1970s, Iraqi dictator Saddam Hussein launched a brutal campaign of Arabization against Kurds in northern Iraq. He targeted Yazidi people who have a strong bond with their culture. He destroyed traditional Yazidi villages and forced Yazidis to settle in the urban centre, destroying their rural lifestyles²⁶. Following decades of discrimination, marginalisation, and neglect during Saddam Hussein's regime, they have encountered escalating persecution by Sunni extremists for many years. Therefore, the Yazidi community had to move outside of Mesopotamia, mainly to Germany; the problem in northern Iraq prompted many prominent community members to follow them²⁷.

2.4 Political status: Pre-existing tensions and conflicts

Throughout history, the Yazidi community has consistently occupied the social and geographical outskirts of the societies in which they reside, earning the label of the 'periphery of the periphery'²⁸. From the massacre of a Yazidi family in 906 who refused to convert to Islam, by the governor of Mosul of the Ḥamdānid Dynasty (a Muslim Arab dynasty of northern Iraq and Syria (in 905-1004)) to the genocide committed by ISIS against the Yazidi, the Yazidi people were attacked and massacred 74 times in the history²⁹. Therefore, under the heading of political status, the representation of the Yazidi community in the state administration to which they belong will be described in three main parts. These three periods are the Ottoman period, the Saddam period, and the post-Saddam Iraq administration.

²⁶ Asher-Schapiro, A. (2014, August 11). Who are the Yazidis, the ancient, persecuted religious minority struggling to survive in Iraq? *History*. Retrieved from:

<https://www.nationalgeographic.com/history/article/140809-iraq-yazidis-minority-isil-religion-history>

²⁷ Cetorelli, V., Sasson, I., Shabila, N. P., & Burnham, G. (2017). Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey. *PLOS Medicine*, 14(5), e1002297, pp.3-5. Available at: <https://doi.org/10.1371/journal.pmed.1002297>

²⁸ Fuccaro, N. (1999). *The Other Kurds: Yazidis in Colonial Iraq*. London: I.B. Tauris, p.9.

²⁹ Artı Gerçek. (2020, August 2). Tarih boyunca 74 kez katliama uğradılar: Êzîdiler Şengal'de kaçırılan 3 bin kadın ve çocuğu arıyor. Retrieved from <https://artigercek.com/dunya/tarih-boyuncu-74-kez-katliama-ugradilar-ezidiler-sengal-de-kacirilan-3-bin-kadin-133902h>

2.4.1 Ottoman era

During the Ottoman era, the Yazidis were more widely dispersed throughout Kurdistan and shared the land with other religious groups³⁰. The relationships between the Yazidis and the Ottomans were usually marked by tensions, and the tensions often escalated into violent clashes. The relationship between the Yazidis and the Ottomans evolved under different policies during three distinct periods of the state's history; in the classical period, the Ottomans regarded non-Muslim groups as "heretic" in terms of their loyalty to the state; in the Tanzimat (or Reorganisation) era of reform, the State sought to reshape relations between the state and society and establish equal citizenship by eliminating the political distinction between Muslims and non-Muslims; in the Hamidian period, when the regime formally adopted the policy of conversion and conscription against Yazidis. Most of the massacres against the Yazidi community took place during the Ottoman Empire because the Yazidis found themselves marginalised in the Ottoman millet system, leading to serious military attacks on the Yazidi community. Yazidis were considered outsiders within the Ottoman millet system. In many archival documents of the 16th century (Mühimme Defterleri), the idea of "mezheb-i resmiye", which was an official policy of the Ottomans based on the irrecognition of the Yazidis, is encountered³¹. During the 16th century, however, Ottoman policies against the Yazidis and other non-Muslim groups were not based on enmity but rather on the level of obedience to the Sultan. After the 16th century, this approach towards the Yazidis was changed and turned into hostility because they did not comply with public order drawn by Islamic legislation called Sharia. Since the Yazidis were not identified as Muslims, they were obliged to pay the Jizya, the poll tax imposed on non-Muslims during the Ottoman period.

The relationships between Yazidis and Muslims were also usually marked by tensions and often escalated into violent clashes. Therefore, Yazidis actively avoid contact with Muslims whenever possible. However, during the Ottoman era, the reputation of the Yazidi community among Sunni Muslims was further hampered by the fact that the

³⁰ Goston, G. A., & Masters, B. A. (2010). *Encyclopedia of the Ottoman Empire*. Infobase Publishing, p.602

³¹ Orpak, O. (2021). A Descriptive Effort on the Ottomans-Yezidis' Unjust Relations: A Relationship In the Shade of Violence. *Kurdiname*, (5), pp.4-7. Retrieved from: <https://www.institutkurde.org/info/yazidis-i-general-1232550791>

inhabitants of Jabal Sinjar, present-day Iraq, often attacked caravans along the Euphrates River³². Many Yazidis, who were isolated and despised by their neighbours, converted to Islam or Christianity. At the end of the nineteenth century, the Ottoman authorities initiated the imposition of the Hanafi legal school of Sunni Islam on the Yazidis. This imposition involved the construction of schools and mosques in Yazidi villages as part of missionary efforts. The process was marked by violence, the confiscation of religious artefacts, and the forced conversion of community leaders to Islam. Although these measures were eventually annulled, the relations between the Yazidi community and the Ottoman state remained tense, and subsequent persecutions and discrimination reduced their number and led to waves of immigrant flows to the Caucasus³³.

2.4.2 Saddam era

Even after the establishment of the Iraqi state, Yazidis represent the lack of political representation in the Iraqi political system. The government does not recognise and protect the Yazidi community in terms of its indigenous or ethnic status. They remained at the edge of society, especially in rural border areas. The areas in which Yazidis lived in Iraq were also divided with the establishment by the US and the UK of a no-fly zone after the 1991 Gulf War. Although Sinjar remained under Iraqi rule, Sheikhan was divided into the Kurdish-controlled province of Nineveh and the Duhok region, which still exists today. Unfortunately, there is a long-term historical mistrust between the Iraqi government and the Yazidis. Although the Yazidis have been under Kurdish control since 1992, they do not have sufficient political representation in Iraq's political system because of religious differences.

In particular, during the regime of Saddam Hussein, the Yazidis were forced to identify themselves as Arabs; Consequently, they faced violence due to the politicisation of their identity³⁴. Under the leadership of Saddam Hussein, The Ba'ath Party, founded on

³² Van Zoonen, D., & Wirya, K. (2017). *The Yazidis: Perceptions of reconciliation and conflict*. Erbil: Middle East Research Institute, pp.8-9

³³ Goston, G. A., & Masters, B. A. (2010). *Encyclopedia of the Ottoman Empire*. Infobase Publishing, pp-601-603

³⁴ Unrepresented Nations and Peoples Organization. (2013, June 20). *IRAQ: The Situation of Ethnic and Religious Minorities Briefing paper D-IQ Meeting*, European Parliament. Brussels, p.2. Retrieved from: https://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-iq/dv/05unpodiqbriefingnote_/05unpodiqbriefingnote_en.pdf

principles of Arab socialism and nationalism, came to power in Iraq through a coup in 1968. The Ba'ath regime adopted discriminatory and brutal policies to a great extent against the Yazidi community. In 1977, the Yazidis were officially classified as 'Arabs' in censuses, forcing them to abandon their mountain villages and undergo a mandatory relocation to residential complexes (mujamma'at) located around Mount Sinjar, about 150 km west of Mosul, in the Nineveh province. Due to the forcible relocation of the Yazidi community by Saddam Hussein's government during the 1970s, Sinjar City became the largest Yazidi community (approximately 400,000 people) with several collective settlements. Furthermore, the government has strengthened its monitoring and control of the Yazidi community by assigning fertile lands adjacent to Arab tribes. Despite financial constraints in the 1990s, the government distributed land to its major political supporters in the Mosul region. As a result, senior officials of the Iraqi army and security forces, Arab tribal leaders, and numerous educators at the University of Mosul have become landowners in Sinjar. Although these lands were technically classified as State (Miri), the Yazidis considered them to be exclusive property of their own community. Consequently, many Yazidis have resentment toward their Arab neighbours, believing them to be feudal rulers responsible for economically marginalising the Yazidi population in the state of landless peasants³⁵.

2.4.3 Post-Saddam era

After the regime of Saddam Hussein, residents of Sinjar city have been under the protection of the Kurdistan Regional Government (KRG), but not officially within the Kurdistan region. Furthermore, despite its importance, Sinjar has historically been economically disadvantaged by Iraq's standards, lacking adequate healthcare and education infrastructure, and facing water scarcity³⁶.

Following the Yazidi genocide committed by ISIS, this distrust between the Iraqi government and the Yazidi community has become deeper and more complex. Today,

³⁵ International Federation for Human Rights. (2018). Iraq (Report No. 723), p. 11. Retrieved from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

³⁶ Buffon, V., & Allison, C. (2016). The Gendering of Victimhood: Western Media and the Sinjar Genocide. *Kurdish Studies*, 4(2), p.186.

more than 300,000 Yazidis who remain in Iraq still live in camps, thatched houses, and tents in Duhok district³⁷. Unfortunately, the prospects for an immediate return home seem very limited, as their houses have completely collapsed and they have lost confidence in their Arab Iraqi neighbours. Although some Arab families in Iraq and Syria have helped Yazidis escape, what is often remembered and documented are the actions of Arab families that have actively helped ISIS commit their crimes. Furthermore, there is ongoing resentment and anger within the Yazidi community toward the Kurdish regional government, as the Peshmerga withdrew unannounced from Sinjar as ISIS progressed. They accuse the Kurdish government of leaving the Sinjar region without adequate defence and leaving them unprotected³⁸.

2.5 Yazidism and Yazidi Culture

2.5.1 Yazidism

The founder of the Yezidi religion is unknown. The person who first declared his faith is not mentioned in the Yazidi traditions or the chronicles of their neighbours, Christians, and Muslims³⁹. According to one hypothesis supported by many Yezidis, Yazidism is an indigenous religion that has existed for thousands of years and is one of today's oldest religions, whose historical details are lost in the darkness of ancient times. This theory claims that the faith has survived over the centuries because followers of Yazidism would allow one to be nominally converted to newer religions such as Islam or Christianity while preserving their ancient beliefs. The Yazidi community believes in reincarnation. According to Yazidism, the preservation of religious integrity in Yezidism is ensured through the transmigration of souls, a fundamental belief. Occasionally, the spirit of a

³⁷ Al Jazeera. (2023, August 3). Nine years after the Yazidi genocide: What next for survivors? Retrieved from <https://www.aljazeera.com/news/2023/8/3/nine-years-after-the-yazidi-genocide-what-next-for-survivors>

³⁸ UN Human Rights Council, Commission of Inquiry on Syria. (2016). "They came to destroy": ISIS Crimes Against the Yazidis, p. 34. Retrieved from: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf

³⁹ Edmonds, C. J. (2002). A pilgrimage to lalish. Psychology Press. (The primary sources for this chapter have been C. J. Edmonds, A Pilgrimage to Lalish; Thomas Bois, OP, 'Les Yézidis', al-Machriq, vol. 55, 1961, pp. 109–28)

devoted Yezidi is consciously or unconsciously embodied by a holy individual and this spiritual essence is subsequently passed on to another⁴⁰.

Some historical sources on Yazidism also state that Yezidism originated in Kurdistan from the establishment of the 'Adawiyya Order of Sheikh 'Adi ibn Musafir (c. 1073-1162 CE). Although there are some parallels between the Yezidi religion and that of other groups claiming Islamic identity, such as Ahl-e Haqq in Iranian Kurdistan, there is insufficient evidence to prove this assertion and to comprehensively describe this ancient Iranian religion or to delineate the interaction between it and Islamic elements in Yazidism (130). Furthermore, although the Yazidi faith is similar to some aspects of Zoroastrianism, Judaism, Christianity, and Islam⁴¹, the Yazidis assert that their faith precedes them⁴²

The Yezidis adhere to the belief in one God, whom they refer to as Khuda in the Kurdish language, worshipping Khuda as the First Cause and the Prime Mover of the universe. In Yazidism, although God himself created man, the responsibility for the creation and the establishment of plant and animal life on Earth was entrusted to seven angels, with Azaziel (Melek Taus) being the most eminent among them. According to the Yazidi Black Book (Mishefa Resh), one of two holy books of the Yazidis written in Kurdish, God begins the creation of the world by first creating a white pearl. After that, Khuda (God) creates a bird named Anfar and puts the pearl on this bird to stay there for 40,000 years. Khuda then creates the seven angels (heft secrets/seven sacred beings) and appoints Azazil, in other words, Melek Tavus, to rule the world⁴³. It is also believed that the other three angels are considered mysteries. Therefore, the role of these three angels on Earth is not well known. The remaining three angels correspond roughly to the archangels mentioned in Abraham's faiths. The messenger of God to the prophets and true believers

⁴⁰ Guest, J. S. (2012). *Survival among the Kurds*. Routledge, p.101

⁴¹ Asatrian, G. S., & Arakelova, V. (2014). *The Religion of The Peacock Angel: The Yezidis and Their Spirit World*. Peeters, p.20

⁴² Goston, G. A., & Masters, B. A. (2010). *Encyclopedia of the Ottoman Empire*. Infobase Publishing, p.602

⁴³ Yeğen, M. (Ed.). (2014). *Kürt Tarihi* (Sayı: 15, Ekim-Kasım-Aralık 2014). İstanbul: Kürt Tarihi Yayın Kurulu, p.10

is Gabriel (Jibra'il). Israfil stands before God and blows a trumpet to signal Qiyamah. Finally, Ezra'il is regarded as the angel of death.

The faith in Yazidism is similar to that of monotheistic religions. The narrative of the proud Azazel's refusal to bow down in front of Adam and his expulsion from God's sight is an old tradition familiar to Jews, Christians, and Muslims alike. However, the Yezidi religion differs greatly because Yazidism does not identify the fallen angel with the spirit of evil. The Yezidis believe that God has forgiven the act of disobedience, and those who acknowledge the angel's restored supremacy receive his special protection. In Yezidism, the angel Melek Taus repented and cried for 7,000 years due to his expulsion from heaven. Melek Taus was forgiven because he repented and continued to serve God as a mediator between humankind and God⁴⁴.

In Yezidism, the power of choice is a prominent feature. The Yezidis believe that there is only one source of good and evil. People's choices determine where good and evil exist⁴⁵. In addition, they believe that the archangel of the Yazidis, Melek Taus, assists humanity in making decisions between evil and good. Moreover, seven holy beings can be incarnated in human form many times (it is called khas, allowing Yezidis to include holy figures of other religions. Therefore, Yezidis use the title 'Melek Taus/Tawûse Melek', Peacock Angel, and use Peacock representations as a symbol of their faith. The most sacred object they possess is a bronze life-size figure called the Anzal Peacock (ancient) or the Peacock of Mansur⁴⁶. According to the Yazidi holy books, Melek Taus is also the other self of God and is completely integrated with God. Melek Taus is a sign of the creator, but not of the creator himself. Therefore, they pray and praise in front of the depiction of Melek Taus instead of God. On the other hand, Melek Taus is presented as God in *Kitêb-i Cilwê*, the book of revelation of the Yazidis, and is considered the God who is the enlightener of humankind⁴⁷.

⁴⁴ Zoonen Dave van and Wirya Khogir, *The Yazidis: Perceptions of Reconciliation and Conflict*, Middle East Research Institute, 2017 by Erbil, p.9

⁴⁵ Zoonen Dave van and Wirya Khogir, *The Yazidis: Perceptions of Reconciliation and Conflict*, Middle East Research Institute, 2017 by Erbil, p.10

⁴⁶ Guest, J. S. (2012). *Survival among the Kurds*. Routledge, p.105

⁴⁷ Yeğen, M. (Ed.). (2014). *Kürt Tarihi* (Sayı: 15, Ekim-Kasım-Aralık 2014). İstanbul: Kürt Tarihi Yayın Kurulu, pp.9-11

The Yazidi community has been the subject of discrimination and socioeconomic marginalisation throughout history. The main reason for these violent attacks is the wrongful belief that they are unjustly worshipping the devil. The story of Melek Taus has been misinterpreted as Satan (Shaytan/ Devil) by monotheistic religions such as Islam. The rumour that Yazidis worshipped evil has spread throughout other communities. According to Islam, the archangel, in other words, Satan or Iblis, did not admit to bowing down to Adam out of sinful pride, so he was dismissed from the grace of God afterward. The term Azazel is now rare and the Yazidi community avoids using the term Satan. Furthermore, Yazidis traditionally pay attention to pronounce Kurdish or Arabic words that combine due to the association with Shaitan (Shaitan is the Kurdish name of Satan)⁴⁸. Misunderstanding about devil worship has resulted in peacocks being associated with Iblis or Satan in various Middle Eastern traditions⁴⁹. For this reason, Yazidi villages, their holy temples and shrines have been systematically targeted for years. Despite claims that they worship the devil, throughout history, the Yazidis have strongly denied this accusation, saying that they worship the same God as Muslims, Christians, and Jews. In addition to worshipping a God, Yazidis also worship the seven angels of God, the first appearing as a peacock (Melek-i Taus/Melek Taus/Melek Tawus).

2.5.2 Culture

Yazidism is the inheritor of various cultural and religious beliefs in the Middle East. The most prominent of these were ancient Iranian religions, the last representative of which was institutionalised Zoroastrianism of the three main kingdoms of Medes, Achaemenid, and Sassanid. For example, Yazidis regarded the Sun, Moon, Stars, Fire, Water, and Earth as sacred and therefore prohibited the disposal of garbage in nature, extinguished fire with water, and drank water with noise. They pray in the direction of the Sun. They use fire in all kinds of worship and ceremonies. In Yazidism, collective worship and temples are not compulsory. Lalesh (or Lalish) is the most holy temple of the Yazidis. It is believed that

⁴⁸ Guest, J. S. (2012). *Survival among the Kurds*. Routledge, p.105

⁴⁹ Goston, G. A., & Masters, B. A. (2010). *Encyclopedia of the Ottoman Empire*. Infobase Publishing, pp.603-605

Melek Tavus and six other angels who are responsible for determining the fate of the Yazidi people come together in Lalesh during the Cejna Jema'iyee, which is celebrated every year between September 23-30, to determine the fate of the following year. Lalesh is the tomb of Sheikh Adi ibn Musafir, the central figure of the Yazidi faith. The temple is a mountain valley and located in Shekhan, Duhok, Kurdistan, Iraq. On the other hand, the sheikh and pîr shrines, fire altars, natural rocks, and the house of priests can be places of worship⁵⁰. Furthermore, the Yazidis celebrate the festival known as "Çarşema Sor" (On Serê Salê or Red Wednesday) on the first Wednesday after 13 April in the Julian calendar every year and they gather at the Lalish Temple in the Sheikhan district of Iraq's Duhok province. According to Yazidi belief, "Çarşema Sor" marks the day on which God created the world and the creation of life on earth⁵¹. On Çarşema Sor, Yazidis decorate their houses with flowers and visit family graves. Believing that the soul continues to exist after death by passing into other bodies, Yazidis place trays of raisins, dried figs, eggs, and various buns on the gravestones for passersby to eat. In addition to food, the placement of the deceased's favourite items at the graveside is due to the Yazidis belief that the soul will resurrect after leaving the body and migrate to another body⁵².

2.5.3 Social rules and taboos

The Yazidis belief system includes social rules and taboos that have a huge impact on their daily life. For example, they have a strict dress code. In Yazidism, Koçek is the most remarkable of all grades in the Yedizi religion. Most Koçeks are pilgrims who leave their homes to settle in the Lalish countryside and work as wood climbers for the sanctuary. It is believed that there are Koçeks with excited powers who claim to communicate directly with Melek Taus himself. The number of koçeks is currently decreasing. According to legend, by the middle of the 18th century, Koçek informed Baba Sheikh that he had a vision revealing that the indigo colour of the shirts worn by

⁵⁰ Yeğen, M. (Ed.). (2014). *Kürt Tarihi* (Sayı: 15, Ekim-Kasım-Aralık 2014). İstanbul: Kürt Tarihi Yayın Kurulu, pp.9-10

⁵¹ Bianet. (2018). Happy Çarşema sor to yazidis. Retrieved from: Bianet. <https://bianet.org/haber/happy-carsema-sor-to-yazidis-196261>

⁵² Anadolu Din ve İnançları Platformu (2009.). Ezidi İnanıcı ve Özel Günleri İnkılap Yayınevi. Retrieved from: <http://adipanadolu.org/sayfa-detay/ezidi-inanci-ve-ozel-gunleri/300>

Yazidis at that time was considered unlucky and disloyal to Melek Taus. At the same time, orders were issued that all blue clothes should be thrown away, and from now on, only white clothing should be worn. This regulation is still being followed in many communities. Therefore, Yezidis generally do not wear blue clothing. There is also a group of white-robed attendants known as faqriyat, consisting of a small number of widows and girls committed to celibacy. They serve in the Lalish sanctuary under the guidance of an abbess and are responsible for weaving the wicks for the lamps⁵³. Additionally, according to religious dignitaries, white represents purity. Therefore, the older Yezidis wore white dresses to show the purity of their religious path⁵⁴.

Circumcision is an important rite in the Yezidi religion. A peculiar custom known as karif prevails in northern Iraq, whereby a Yezidi boy can be circumcised on the knees of a Moslem man, thus establishing a form of lifelong blood brotherhood between the two. Another relationship, limited to Yezidis, is established in puberty when each murid selects a 'brother/sister of the future' from a family of sheikhs other than the one to which he is related at birth. Furthermore, some Yezidis pick a 'tutor', generally from a non-affiliated family of pirs. Marriage has traditionally been arranged by the parents of the bride and groom; an important element is the negotiation of a satisfactory bride price to be paid by the groom to the bride's family (this payment is required even in cases of elopement). The wedding ceremony is performed by the sheikh and the pir, with the 'brother and sister of the future' present on the groom and bride. It is followed by feasting, dancing, and firing of rifles into the air. '

The Yazidis' emphasis on religious purity and their aversion to combining elements deemed incompatible is evident not only in their caste system, but also in various taboos that impact their daily lives and eating habits. In Yezidis, eating a variety of foods is prohibited. For example, Yazidis do not eat lettuce. There are several different statements about Yazidis not eating lettuce. According to it, the Yazidis do not eat lettuce due to historical events marked by massacres and persecution. According to the statement, the Ottoman Caliphs organised numerous massacres against the Yazidis during the 18th and

⁵³ Guest, J. S. (2012). *Survival among the Kurds*. Routledge, p.119

⁵⁴ Fuccaro, N. (1999). *The Other Kurds: Yazidis in Colonial Iraq*. London: I.B. Tauris, p.7

19th centuries, especially in the lettuce fields in northeastern Iraq. The slaughter of Yazidi communities in these fields has left a lasting aversion to lettuce among the Yazidi people. Another narrative attributes this aversion to a merciless powerful man of the 13th century who ordered the execution of a saint of Yazidi. The enthusiastic crowd threw the body with lettuce heads. Since then, there have been sanctions against salad, especially lettuce⁵⁵. The prohibition on pork consumption also seems to align with Islamic practices. In some regions, prohibitions extend to various animals and vegetables, including fish, cockerel, gazelle, okra, cauliflower, and pumpkin. Furthermore, one of the most remarkable events is that Yazidis refused to serve in the Ottoman army for a long time due to their dietary restrictions. For example, many Yazidi men tried to escape from military services from 1840 to 1870 by resistance, migration, and hiding. Despite all its efforts, the Ottoman Sultan issued an imperial order in 1873 to recruit Yazidis into army service. Yazidis asked the Sultan to be exempted from military service. According to the petition, the Yazidis claimed that they could not eat certain foods consumed by the army.

Excessive interaction with non-Yazidis is also considered a deterioration of purity; historically, Yazidis resisted Ottoman military service to avoid living among Muslims and were prohibited from sharing items such as cups or razors with outsiders⁵⁶. Furthermore, service in the Ottoman army restricted their religious practices because if a Muslim hears a Yazidi prayer, Yazidi is deemed to have committed a crime. Each Yazidi must also visit the shrine of Sheikh Adi once a year. In this petition submitted to the Ottoman sultan, they also mentioned that when a Yazidi died, the sheikh, kawal or pir should be present at the funeral of this man and that if a Yazidi man has not been in touch with his wife for a year, his wife has the right to break up her husband⁵⁷.

⁵⁵ MacFarqzhar N. (2003). *Bashiqa Journal; A Sect Shuns Lettuce and Gives the Devil His Due*. The New York Times. Retrieved from <https://www.nytimes.com/2003/01/03/world/bashiqa-journal-a-sect-shuns-lettuce-and-gives-the-devil-his-due.html>

⁵⁶ Fondation Institut kurde de Paris, (n.d.). *Yazidis i. GENERAL*. Retrieved from <https://www.institutkurde.org/info/yazidis-i-general-1232550791>

⁵⁷ Orpak, O. (2021). *A Descriptive Effort on the Ottomans-Yezidis' Unjust Relations: A Relationship In the Shade of Violence*. *Kurdiname*, (5), Retrieved from <https://www.institutkurde.org/info/yazidis-i-general-1232550791>

2.5.4 Caste system

This indigenous community is known as a closely connected, mysterious, inner looking and self-contained community. The Yazidis have a strict social and cultural unit, solidified by their heterodox religious belief⁵⁸. Their internal social framework is organised around social classes and hierarchies, resulting in a highly tribal and fragmented community⁵⁹. Various tribal divisions exist within their society, determined by factors such as social classes, geographical locations (rural or urban), or political/religious status⁶⁰. The members of the Yazidi caste cannot be changed and the socio-religious structure focuses on the figure of the "Yazidi Mir or Prince Tahseen" and his followers according to the Yazidi belief system⁶¹. The Yazidi Mirs function as religious leaders and spiritual guides for the community. The primary role of the Yazidi Mir is to govern the local system by translating religious authority into forms of economic and political control over society, since the Yazidis believe that the Yazidi Mirs are as consistent on Earth as Melek Taus. The highest religious leaders are Baba Sheykh and Pir. However, the authority of Sheykhs is greater than that of Pir. Each Yazidi should have a Sheykh or Pir⁶². The remaining Yazidis belong to the secular or murid class.

Marriage is the norm for Yazidis. The rules on marriage protect the caste system. Yazidis are an endogamous community⁶³. The Yazidi belief stipulates that a child has two Yazidi parents. As conversion to theological Yazidism was impossible, mixed marriages were strongly discouraged. In other words, to limit assimilation and apostasy, marriage with other religious groups is therefore prohibited in the diaspora community. Moreover, the historical persecution of the Yazidis by their neighbours further solidified the community's prohibition against marrying outside the faith. The widespread but completely wrong view of the Yazidi faith as a religion of 'Devil worshippers' appears to be a powerful obstacle for members of the non-Yazidi community who want to marry

⁵⁸ Fuccaro, N. (1999). *The Other Kurds: Yazidis in Colonial Iraq*. London: I.B. Tauris.p.9

⁵⁹ Fuccaro, N. (1999). *The Other Kurds: Yazidis in Colonial Iraq*. London: I.B. Tauris.p.18

⁶⁰ Kaya, Z. (2019) 'Iraq's Yazidis and ISIS. The Causes and Consequences of Sexual Violence in Conflict,' LSE Middle East Centre Report 2019, pp.6-10. Retrieved from <http://eprints.lse.ac.uk/102617/>

⁶¹ Allison, C. (2001). *The Yazidi Oral tradition in Iraqi Kurdistan*. Curzon Press, p.30. Available at: <https://doi.org/10.4324/9780203819913>

⁶² Fuccaro, N. (1999). *The Other Kurds: Yazidis in Colonial Iraq*. London: I.B. Tauris pp.19-30

⁶³ Fuccaro, N. (1999). *The Other Kurds: Yazidis in Colonial Iraq*. London: I.B. Tauris p.2-9

someone from the Yazidi religious group⁶⁴. Furthermore, the rigid rules on the marriage partners deepen the Yazidi caste and support the taboos. The status of Sheikh, Pir, and Murid (The Arabic term referring to "committed one") is not inherited by their sons. Members of the Yazidi cast must marry within their caste. For example, Mureed's marriage to Sheikh and Pir class members is forbidden. Sheikh and Pir cannot also marry in marriage⁶⁵. However, there are no limitations on physical contact, social mix, or communal food between same-sex members of different castes⁶⁶.

⁶⁴ Commission of Inquiry, *ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, paras 32-36. See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p 6.

⁶⁵ Zoonen Dave van and Wirya Khogir (2017). *The Yazidis: Perceptions of Reconciliation and Conflict*, Middle East Research Institute, by Erbil, p.8-9

⁶⁶ Allison, C. (2001). *The Yazidi Oral tradition in Iraqi Kurdistan*. Curzon 2001 by Press, p.31-32. Available at: <https://doi.org/10.4324/9780203819913>

3 Chapter 3 - Genocidal Ideology of ISIS and Institutionalisation

The so-called Islamic State of Iraq and Syria (ISIS or IS), also known as the Islamic State of Iraq and the Levant (ISIL), is a Sunni jihadist group. This jihadist group originated in 2004 in Iraq as a fraction of Al Qaeda and later rebranded itself as ISIS. Abu Musab Al-Zarqawi is the founder of ISIS. Several years before the emergence of ISIS, the organisation was founded in 1999 and was formally called Jama'at al-Tawhid wal-Jihad (Jama'at) (A042). After the intervention of Iraq by the United States in 2003, Jama'at began to transform from a modest beginning into a well-known combat jihadist group. Under Zarqawi's leadership, Jama organised many attacks against US forces, and the scope of these attacks made the group famous in the Middle East. This reputation also attracted the attention of the leader of Al-Qaeda, Osama bin Laden. In 2004, Jama'at became Al-Qaeda in Iraq (AQI) following a formal alliance made by Osama bin Laden.

A year after the United States military intervention in Iraq, Al-Qaeda in Iraq, which functions as a Sunni jihadist group, emerged as a significant force in the insurgency and conducted brutal attacks against both the United States (US) forces on the ground that Shiites, the second largest branch of Islam, dominate the Iraqi government. This included frequent suicide bombings, with a focus on security forces and civilians, particularly those of the Shiite community, leading to an escalating cycle of sectarian violence and reprisals. Moreover, feeling marginalised by the perception of neglect by the United States, which toppled a government dominated by Sunni Arabs and Shiites for their domination of politics, certain Sunni factions adopted extremism in an attempt to regain influence. In 2006, Al-Zarqawi was killed in a US airstrike. Despite the death of al-Zarqawi, the group merged with other Islamic insurgents in Iraq and formed the Islamic State of Iraq (ISI)⁶⁷. The group continued to operate under a new name, albeit on a smaller scale⁶⁸.

⁶⁷ Sverdlov, D., (2017). Rape in War: Prosecuting the Islamic State of Iraq and the Levant and Boko Haram for sexual violence against women. In Cornell International Law Journal. Vol. 50, pp. 333–340

⁶⁸ International Federation for Human Rights. (2018). Iraq (Report No. 723), pp. 9. Retrieved from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

Abu Bakr al-Baghdadi became the head of the Islamic State after the death of Abu Musab al-Zarqawi on 16 May 2010⁶⁹. In 2011, ISI's influence increased significantly following the Syrian uprising against Bashar al-Assad. At the beginning of hostilities against Bashar al-Assad, ISI sent militants to Syria, which operated as an almost independent network known as Jabhat al-Nusra li Ahl as-Sham (Al-Nusra). ISI and al-Nusra were independent for two years until al-Baghdadi advocated reunification. However, the proposal was not well received by the new leader of Al-Qaeda after Osama bin Laden, Ayman al-Zawahir.

By 2012, Abu Bakr al-Baghdadi had increasingly strengthened his control and influence by following the manipulative and authoritarian war strategy. Al-Baghdadi strictly aimed to engage ISIS in the revolt against President Bashar al-Assad in Syria, contrary to the advice of Ayman al-Zawahiri. Al-Zawahiri had advised Al-Baghdadi to concentrate on Iraq and let the Syrian conflict be handled by the Al-Nusra Front, a branch of Al-Qaeda. In April 2013, al-Baghdadi announced the merger of Iraqi and Syrian forces into the Islamic State of Iraq and Lebanon (ISIL/ISIS)⁷⁰. The leaders of Al-Nusra and Al-Qaeda opposed the reunification. Therefore, the jihadist group was publicly expelled from Al-Qaida, although the group was inspired by Al-Qaeda, fighters loyal to Baghdadi separated from Al-Nusra and supported ISIS in maintaining its presence in Syria⁷¹. After reunification, ISIS has claimed to be a caliphate and a religious authority over all Muslims since the day it declared its establishment in 2011. With the new autonomy, ISIS immediately launched an expansion campaign to capture about 10 million people and 90,800 square kilometres of Syria and Iraq, including major cities such as Fallujah, Raqqa, and Mosul⁷².

⁶⁹ McCoy, T. (2014, June 11). How ISIS Leader Abu Bakr al-Baghdadi Became the World's Most Powerful Jihadist Leader. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/news/morning-mix/wp/2014/06/11/how-isis-leader-abu-bakr-al-baghdadi-became-the-worlds-most-powerful-jihadi-leader/>

⁷⁰ International Federation for Human Rights. (2018). Iraq (Report No. 723), pp. 9. Retrieved from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

⁷¹ Sverdlov, D. (2018). Rape in War: Prosecuting the Islamic State of Iraq and the Levant and Boko Haram for Sexual Violence Against Women. *Cornell International Law Journal*: Vol. 50 : No. 2 , Article 6, p.3-4. <https://doi.org/10.31228/osf.io/ew2uj>

⁷² Thomas, C., & Martin, A. G. (2024, May 6). The Islamic State: Background, Current Status, and U.S. Policy (Report No. IF10328). Retrieved from <https://crsreports.congress.gov/product/pdf/IF/IF10328>

3.1 Establishing Caliphate

In 2012, ISIS played a fundamental role not only in the conflict in Syria but also in Iraq. ISIS regained its power in Iraq using political instability. In the second half of 2012, protests against the government took place in major Sunni-populated governors such as Anbar, Ninewa, and Salah al-Din. Demonstrators expressed various grievances, including the perceived marginalisation of Sunni Iraqis in the political process, the alleged abuse of the Anti-Terrorism Act (2005 Law 13), and other injustices in the criminal justice system that affected members of their community. The resulting violence involving Iraqi security forces, residents, and armed groups, which escalated in December 2013, opened the door to rapid growth of ISIS. Under the leadership of Abu Bakr Al-Baghdadi, ISIS has publicly declared its expansionist goals, focussing on Iraq as its top priority. Based on the tactics, ideology, and declared intentions of the group, ISIS targeted not only the Iraqi government but also minority communities such as Yazidis and Christians and Shia as a whole, as part of its desire to establish its caliphate in the region. The United Nations has also stated that IS employs a deliberate and organised strategy aimed at suppressing, permanently displacing, or annihilating the communities residing in the areas under its control."⁷³. Unfortunately, using widespread dissatisfaction, ISIS seized control of Fallujah, the second largest city of the Anbar Government, in January 2014. By mid-2014, ISIS had established a dominant position in the governorates of Anbar, Diyala, Ninewa, Sala al-Din and Mosul⁷⁴.

ISIS has gained considerable fighters' support in its struggle against the current Syrian and Iraqi regimes. ISIS marketed itself to the mainstream as a new form of jihad, framed as a war against 'crusaders' and 'individuals', including Shiites, attracting the loyalty of tens of thousands of Muslims and Europeans. Using the power of the media, ISIS has systematically called people to join their ranks. Thousands of Muslims and European countries responded to the call by joining the ranks of ISIS. In June 2014, around 12,000

⁷³ Kikoler, N.(2015). Our Generation is Gone. Bearing Witness: The Voices of Iraq's Yazidi and Christian Survivors, Iraq. United States Holocaust Memorial Museum. p.10. Retrieved from <https://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf>

⁷⁴ Eriksson, J., & Khaleel, A. (2018). Iraq after ISIS: The Challenges of Post-War Recovery. Palgrave Pivot. P.81

foreign fighters from 81 countries participated in the Syrian conflict⁷⁵. The overwhelming majority of ISIS fighters come from the Arab regions of the Middle East and North Africa. The joining of foreign fighters or individuals who join international uprisings motivated by ideological or religious motives is not a new phenomenon. According to the UN, between 10,000 and 30,000 foreign fighters are estimated to have participated in armed conflicts in the Muslim world between 1980 and mid-2010. However, this phenomenon has taken on a new dimension, as the Arab Spring protests have become a full civil war in Syria⁷⁶.

3.2 The Role of ISIS Members in Genocide

The military power of ISIS (Islamic State of Iraq and Syria) has been characterised by a combination of factors. First, ISIS military activities were based on the skills of militants who were formerly officers or technicians in the Iraqi Army disbanded in 2003⁷⁷. These professional officers and technicians have deep grievances against both the United States and the Iraqi government, especially the secular Baathist regime of Saddam Hussein. Therefore, they joined Al Qaeda in Iraq (later ISIS and IS), bringing with them military knowledge and skills. The recruitment of combatants, including those with combat experience, has further strengthened their military capabilities. Secondly, ISIS has been seized with considerable amounts of modern military equipment and weapons, especially after the victory in northern Iraq and the conflicts in Syria. The group's ability to seize and retain territory, declare a self-proclaimed caliphate and demonstrate military successes against opposing forces also contributed to its perceived military power⁷⁸. Thirdly, ISIS has had considerable influence and innovation in technology and the media

⁷⁵ International Federation for Human Rights. (2018). Iraq (Report No. 723), p.9. Retrieved December 12, 2023, from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

⁷⁶ European Parliamentary Research Service. (2016). Foreign Fighters: Trends, Dynamics, and Policy Responses in the EU, p.2. Retrieved from <https://www.europarl.europa.eu/EPRS/EPRS-Briefing-579080-Foreign-fighters-rev-FINAL.pdf>

⁷⁷ Masi, A. (2020, December 22). Inside “The Caliphate Army”: ISIS’s special forces military unit of foreign fighters. International Business Times. <https://www.ibtimes.com/inside-caliphate-army-isiss-special-forces-military-unit-foreign-fighters-1995134>

⁷⁸ Terrill, W. A. (2014). Understanding the Strengths and Vulnerabilities of ISIS. Parameters: The US Army War College Quarterly, p.17-19

and has demonstrated a sophisticated understanding of effective propaganda and the appropriate use of social networks⁷⁹.

The group has carried out a comprehensive global campaign on various platforms using tactics such as intimidation, recruitment, network, justice, and justification. Its anti-Western and pro-jihad messages are spread on social networks through viral videos designed similarly to video games. In addition, ISIS has successfully appealed to sympathisers by presenting itself as an Islamic quasistate with administrative, judicial, and religious dimensions rather than a jihadist terrorist organisation. ISIS is portrayed as a legitimate government that establishes administrative structures and provides public services such as law enforcement, health care, education, and public control⁸⁰. At the same time, the organisation is established as a judicial body, imposing its interpretation of Sharia law and administering what it considers to be justice. Furthermore, the Islamic State has been identified as a religious authority that uses a distorted interpretation of Islam to legitimise its actions and attract believers. As a result, ISIS seeks to create a perception of governance and authority and strengthen its influence on the people it seeks to control.

3.2.1 Demographic of ISIS fighters

In the report titled "The Average ISIS Fighters" authored by Nate Rosenblatt; data reveal several key characteristics of individuals who joined ISIS. According to these data, the typical age of a fighter was approximately 26 or 27 years at the time of entry into Syria. 59% of the fighters were reported to be single, while 23% were married with children, 7% were married without children, and 1% fell under the category of "other," such as having multiple wives or being divorced. In terms of employment, the data indicate that

⁷⁹ Schweitzer, Y., & Einav, O. (2016). *The Islamic State: How Viable is It?*, Institute for National Security Studies, Tel Aviv, p.1-2

⁸⁰ Deslandes-Martineau, M., Charland, P., Lapierre, H. G., Arvisais, O., Chamsine, C., Venkatesh, V., & Guidère, M. (2022). The programming curriculum within ISIS. *PLOS ONE*, 17(4), e0265721. <https://doi.org/10.1371/journal.pone.0265721> ; Vogel, L. (2016). Why are doctors joining ISIS? *Canadian Medical Association Journal*, 188(3), 177–178. <https://doi.org/10.1503/cmaj.109-5217>

19% reported being unemployed or engaged in subsistence-level work (e.g., farmers and shepherds), 30% were students or unskilled labourers, 34% were involved in blue-collar work (e.g., electricians or mechanics), 14% had professional occupations (e.g., pharmacists or managers), and 3% had advanced skills work (e.g., engineers or doctors). Furthermore, the report highlights that 82% of the fighters in the database claimed that they had no previous jihad experience, while 11.5% had previously fought, primarily in Libya, Afghanistan, or with another group in Syria, before joining ISIS. The remaining 6.5% did not provide an answer ⁸¹.

The National Consortium for the Study of Terrorism and Responses to Terrorism (START) also collected data on the profiles of foreign fighters by analysing data on numerous trips made by foreign fighters to the conflict zone. These databases state that travel to foreign conflict zones was mainly carried out by young people. The average age at the time of departure for foreign fighters was 24 years. Since the emergence of ISIS, the phenomenon of foreign fighters travelling from the United States has become more widespread. In 2013, individuals from at least 16 states of the US attempted to join ISIS in Iraq and Syria. Furthermore, an essential element of foreign fighter travel includes facilitators who are members of jihadist groups. Since 2001, individuals who seek to join groups in foreign conflict zones have been continuously seeking the help of facilitators. In 2013, 87% of all people who wanted to join foreign groups received the help of at least one facilitator in preparing and carrying out their travel plans. Those who tried to join ISIS engaged travel facilitators at a rate of 90%⁸². Furthermore, according to a report published in 2023, UN experts indicated that ISIS continues to have control over approximately 5,000 to 7,000 members in its former strongholds in Syria and Iraq.

The fact that ISIS has more foreign fighters than other jihadist organisations has caused concern in the international community. The main reason for these concerns is that they

⁸¹ The Average ISIS Fighter from ALL JIHAD IS LOCAL: What ISIS' Files Tell Us About Its Fighters on JSTOR. (n.d.). [www.jstor.org. https://www.jstor.org/stable/resrep10467.5](https://www.jstor.org/stable/resrep10467.5)

⁸² Jensen, Michael, Patrick James, and Herbert Tinsley. 2016. "Overview: Profiles of Individual Radicalization in the United States-Foreign Fighters (PIRUS-FF)." College Park, MD: START., p.162. https://www.start.umd.edu/sites/default/files/publications/local_attachments/START_PIRUS-FF_InfographicSeries_April2016_0.pdf

raise concerns that traumatised and radical ISIS fighters may return with their combat experience to plot against their home countries. However, the international community's concern about ISIS fighters focused mainly on the male component, despite the existence of female fighters who had taken active actions and duties within ISIS. These female fighters, who were equipped and trained to carry out acts of violence on the territory controlled by ISIS, played a fundamental role in the terrorist production system.

3.2.2 Foreign militants Joining ISIS

A significant proportion of foreign fighters demonstrated greater combat ability, greater discipline and greater motivation. This representation has given ISIS an advantage in confrontations with government forces and other counter-defence. Furthermore, ISIS has a high profile of foreign fighters and is also targeting more extreme foreign groups and individuals who cannot speak Arabic and who do not undergo military training, instead of other jihadist groups. In 2014, about 2,500 fighters came from Western countries, including most of the European Union, the United States, Canada, Australia, Central Asia, New Zealand, Turkey, and the Balkans⁸³. Despite international efforts to control ISIS and disrupt the flow of fighters to Syria, the number of foreign fighters was almost twice that at the end of 2015⁸⁴. According to a December 2015 report, between 27,000 and 31,000 militants from at least 86 countries joined Syrian ISIS and other violent extremist groups in Iraq and Syria. In a 2016 United Nations Secretary-General report, foreign fighters in Iraq and Syria were from North Africa, the Middle East and Central Asia, and significant numbers from Europe and Southeast Asia (A045/160). According to the report published by the International Centre for the Study of Radicalisation (ICSR) in 2018, the total number of foreign fighters of ISIS in Iraq and Syria ranges from 37,497 to 41,490. Of these, foreign women affiliated with ISIS are between 4,162 and 4,761, and foreign minors associated with the group are between 3,704 and 4,640. 730 confirmed cases of children born in Iraq and Syria have also been confirmed in connection with the

⁸³International Federation for Human Rights. (2018). Iraq (Report No. 723), p. 30. Retrieved from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

⁸⁴The Soufan Center. (2014). Foreign Fighters in Syria. Retrieved from <https://thesoufancenter.org/wp-content/uploads/2017/05/TSG-Foreign-Fighters-in-Syria-Final-with-cover-rebrand-031317.pdf>

participation of ISIS⁸⁵. Therefore, this terrorist group, which grew massively with the help of foreign fighters and began to gain control of substantial portions of the Iraqi and Syria territory, quickly gained the attention of the international community.

3.2.3 Women militants joining ISIS

Muslim women are often depicted as victims of the harsh actions of Muslim men and, consequently, their cultural background. Essentially, they are predominantly seen as oppressed and passive figures. Perception is visually reinforced by Islamic clothing, such as the hijab or burqa, which is usually interpreted as a symbol of oppression in the West⁸⁶. These gender stereotypes and the Neo-Orientalist view are also protected to describe members of ISIS by the media. The mass media used the term "jihadi brides" to describe the women who joined ISIS while describing the men who joined the group as "foreign fighters". The classification is inherently discriminatory and problematic in the determination of women's agencies, as this label imposes a simplistic interpretation of the motives of women militants, reducing them to the pursuit of the spouse of a combatant. This perception also obscures the possible political affiliation of female perpetrators because it reduces their actions to the pursuit of marriage. Therefore, Jihadi brides linked a woman's project to the agenda of a man and led to the recognition of women's powers only within the framework of marriage⁸⁷.

The international community and the mass media continue to react with astonishment to the concept of women involved in terrorism. The mass media has often highlighted the age of young women who join ISIS. This emphasis on their youth has contributed to conception of women terrorists mainly as vulnerable, naive and confused individuals. The narrative serves to paint them as "very young and naive, not understanding the conflict or

⁸⁵ Cook, J., & Vale, G., (2018). From Daesh to 'Diaspora': Tracing the Women and Minors of Islamic State, International Centre for the Study of Radicalisation, London, p.41. Retrieved from: <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>

⁸⁶ Hoodfar, H. (2001). The veil in their minds and on our heads: veiling practices and Muslim women. In Palgrave Macmillan US eBooks p 8. Available at: https://doi.org/10.1007/978-1-137-04830-1_22

⁸⁷ Martini, A. (2018). Making women terrorists into "Jihadi brides": an analysis of media narratives on women joining ISIS. *Critical Studies on Terrorism*, 11(3), p. 4-5. <https://doi.org/10.1080/17539153.2018.1448204>

their faith, easily manipulated". The presentation of women as naive and vulnerable subjects effectively eliminates any political commitment that might have prompted their participation in ISIS. Furthermore, the emphasis on their young age has created a terrorist image that was perceived as neither dangerous nor violent. For example, in the Guardian, the news that a female member joined ISIS was published under the title "Schoolgirl Jihadis: The Female Islamists leaving their homes to join the ISIS fighters"⁸⁸. These stories have often led to the perception that those women and girls are actually vulnerable persons and they wait for rescue and protection from ISIS. However, these narratives often ignore the potential violence and intentionality behind their actions. This leads to the deliberate crimes committed by ISIS women being overlooked. This attitude can unfortunately create a climate of impunity for ISIS members.

Contrary to the discriminatory portrayal in the media, which often portrays women as naive and deceived victims, research indicates that Western women joined ISIS for similar reasons as their male counterparts. Their motivations to join ISIS cover a variety of factors, such as concerns related to identity and belonging, feelings of alienation, perceived persecution of Muslims, social and cultural isolation in the Western context, a search for redemption, shared experiences, a desire for adventure, and romance. In addition, a significant factor that pushed the migration of women to ISIS territory was the desire to contribute to the "Califat" project of the establishment of a utopian state⁸⁹. According to ICSR data published in 2018, the number of foreign members of ISIS, including foreign fighters and civilians, is estimated at 41,490. Among them, 4,761 are women⁹⁰.

⁸⁸ Sherwood, H., S. Laville, K. Willsher, B. Knight, M. French, and L. Gambino. (2014). "Schoolgirl Jihadis: The Female Islamists Leaving Home to Join Isis Fighters". Retrieved from: <https://www.theguardian.com/world/2014/sep/29/schoolgirl-jihadis-female-islamists-leaving-home-join-isis-iraq-syria>

⁸⁹ Patel, S., & Westermann, J. (2018). Women and Islamic-State Terrorism: An Assessment of How Gender Perspectives Are Integrated in Countering Violent Extremism Policy and Practices. *Security Challenges*, 14(2), p. 9. Published by the Institute for Regional Security. Retrieved from <https://www.jstor.org/stable/26558022>

⁹⁰ Cook, J., & Vale, G., (2018). From Daesh to 'Diaspora': Tracing the Women and Minors of Islamic State, International Centre for the Study of Radicalisation, London, p.41. Retrieved from: <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>

The support provided by Western women to ISIS, within or outside the caliphate, spanned activities such as recruitment, managing households, financing, and participating in attack planning. Women who performed hijra were assigned specific roles that adhered to the rigid gender binary principles of ISIS. The specific roles given are mainly to ensure the continuity of the organisation and the facilitator of the Yazidi genocide in the background. According to the dominant official doctrine of ISIS, women are regarded as teachers of future generations and creators of individuals. Although women are thought to be excluded from roles associated with war, in 2017, ISIS changed its strategy to support the participation of women in combat roles. Some statements are as follows: "If a woman was raised in her home, she could defend herself with weapons and, if she had a suicide belt with her, she could explode it without the permission of others; if she was attacked by unbelievers in a hospital or public place, she should fight; if she was in a solitary place and ordered by amir, she could use a sniper rifle."⁹¹. Furthermore, in a statement released in October 2018, ISIS called women to the front, stating that "due to the intensity of the clashes, women's participation in jihad has become mandatory" and for the first time, ISIS released a video introducing its female fighters. The video shows women on the front lines alongside male members of the organisation in eastern Syria⁹². After the declaration, many women joining ISIS have organised and attempted various forms of attacks, such as shots, suicide operations, and bombings. In fact, in mid-July 2018, reports indicated that more than 30 women were suspected to have participated in suicide operations in Mosul. However, ISIS has not taken responsibility for any of these attacks⁹³. Additionally, there are numerous statements that many ISIS female perpetrators encouraged ISIS men to rape enslaved Yazidi women and that they tortured and mistreated Yazidi women and girls⁹⁴.

⁹¹ Winter, C. (2015, November 19). In August #IS|ers Circulated This Clarification on Permissibility of Women and Fighting. Twitter. Retrieved from:

<https://twitter.com/charliewinter/status/667326295706050560>

⁹² BBC News Türkçe. (2018). IŞİD ilk kez kadın savaşçılarıyla ilgili bir video yayımladı. BBC News Türkçe. Retrieved from: <https://www.bbc.com/turkce/haberler-dunya-42982550>

⁹³ Winter, C., & Margolin, D. (2017). The Mujahidat Dilemma: Female Combatants and the Islamic State. Combating Terrorism Center (CTC). ETH Zurich. Center for Security Studies. Retrieved from :<https://css.ethz.ch/en/services/digital-library/articles/article.html/8729c886-5ea3-4e79-a32c-05def32de3f5>

⁹⁴ International Federation for Human Rights. (2018). Iraq (Report No. 723), p.31 Retrieved from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

3.3 The Economical Power of ISIS

The United Nations has identified ISIS as the wealthiest terrorist organisation in the world⁹⁵. The group earned considerable income from various sources, including looting, kidnapping, and illegal oil sales. Regarding ransom payments for hostages, the United Nations Assistance Mission for Iraq (UNAMI), which is established by the UN Security Council to assist the Iraqi Government in advancing inclusive political dialogue and national and community-level reconciliation, calculated that the funds contributed by hostage families, particularly from the Yazidi community, ranged from \$35 million to \$45 million in 2014⁹⁶. Furthermore, UNAMI determined that ISIS revenue generated from oil and petroleum products in 2015 fell within the range of \$400 million to \$500 million. Although ISIS focusses primarily on its finances through the oil trade, its main income source is, in fact, taxation. The UN has reported that ISIS levies taxes on economic activities by coercing approximately 8 million people residing in territories under its control. To legitimise this system, they refer to the tax as a "religious tax" or "zakat," which amounts to at least 2.5 percent of the capital earned from businesses, goods, and agricultural products⁹⁷.

Furthermore, it is approximate that roughly a quarter (25%) of archaeological sites in the Syrian Arab Republic have experienced the impact of looting. Antiquities confiscated and smuggled with a "licence" obtained by the ISIS authorities contribute an estimated \$150-200 million annually. Furthermore, with each expansion of the regions under ISIS control, ISIS's resources increased as they seized funds, extorted local businesses, and received support from external donors. Whether ISIS receives regional financial support has long been a matter of debate. There are many unsubstantiated claims about which countries

⁹⁵ United Nations, Department Of Political Affairs, Policy And Mediation Division, Mediation Support Unit, & United Nations Department of Political Affairs. (2012). Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements: Guidance for Mediators. In Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements: Guidance for Mediators.

⁹⁶ United Nations. (2021). Twelfth report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of the United Nations. Retrieved from: <https://digitallibrary.un.org/record/3899398?v=pdf>

⁹⁷ Reuters. NBC News. (2015, November 19). ISIS earned \$500 million selling oil: Treasury official. Retrieved from <https://www.nbcnews.com/storyline/isis-terror/isis-earned-500-million-selling-oil-treasury-official-n478251>

are financing terrorism⁹⁸. The European Parliament asserts that Qatar and Saudi Arabia serve as principal financiers of ISIS. Both the German and the US governments have also accused Qatar and Saudi Arabia of providing financial support and backing to ISIS⁹⁹. Journalist Patrick Cockburn undoubtedly claimed that Saudi Arabia, the Gulf monarchies, and Turkey were the main supporters of ISIS and other Sunni jihadist movements in Iraq and Syria, but it was subject to fierce debate¹⁰⁰.

Therefore, in the middle of 2015, the total monthly income for the Islamic State was approximately \$80 million. In March 2016, the monthly income of the Islamic State had decreased to \$56 million. In 2016, confronted with a financial shortfall in its self-proclaimed caliphate, ISIS implemented measures such as reducing salaries, urging residents of Raqqa, Syria, to settle utility bills using black-market American dollars, and offering the release of detainees for \$500 per person¹⁰¹.

3.4 Genocidal Ideology of ISIS and Legitimation of Sexual Violence

By Islamic law, individuals could be enslaved through two specified methods. The first method involved engaging in the holy war, known as jihad¹⁰². The Qur'an guides incorporating slaves, including those captured in war, into the Muslim community. It allows slaves to marry, whether with other slaves or free individuals (Q. 24.32; 2.221; 4.25 (Q. 24.33)). Unlike free women, female slaves do not have the right to consent or refuse sexual access themselves. Instead, the Qur'an allows men to have sexual access to "what their right hands possess," referring to female captives or slaves (Q. 23.5-6; 70.29-

⁹⁸ UN-Habitat. (2021). Restoration of cultural heritage and urban identity in Syria, p.12-13. Retrieved from https://unhabitat.org/sites/default/files/2022/09/heritage_paper.pdf

⁹⁹ Buonanno, M. L. P. a. C. G. (2014). Parliamentary question - VP/HR - Qatar and Saudi Arabia financing Islamic State of Iraq and Syria (P-007445/2014). European Parliament. European Union. https://www.europarl.europa.eu/doceo/document/P-8-2014-007445_EN.html

¹⁰⁰ Cockburn, P. (2019, November 7). Patrick Cockburn. Isis consolidates. London Review of Books. <https://www.lrb.co.uk/the-paper/v36/n16/patrick-cockburn/isis-consolidates>

¹⁰¹ CBC/Radio Canada. (2016, February 17). No More Free Candy Bars: Isis Faces Budget Crunch, cutting perks and trimming salaries | CBC News. CBCnews. <https://www.cbc.ca/news/world/isis-budget-crunch-1.3450646>

¹⁰² Gordon, M. & Editions Robert Laffont. (1989). Slavery in the Arab world. New Amsterdam Books, p.114

30). The second method was also through birth, where children born to slave parents automatically inherited slave status. Using these two approaches, it became a means of predominantly ensuring that only non-Muslims would be subjected to enslavement because Muslims cannot be enslaved, and this principle is why individuals from the Shi'a, Ahl-e Haqq (Kaka'i) and Shabak (Gorani) groups were generally not taken as slaves by ISIS. The group regarded them as apostates and strictly adhered to Shari'a law (Sura 9: 11). Those of these sects had the choice to repent and convert to the ISIS version of Islam or face execution. Many members managed to escape or practice taqiyya, but some faced death or severe persecution. For example, Shi'a Turkmen women were reported to have been burnt alive, and others remain imprisoned by ISIS. Some Shi'a girls and women were forced into sex slavery, directly contradicting the stated rules of ISIS. Christians who did not escape also faced unfavourable conditions.¹⁰³

According to Sharia law, captured unbelievers in battle typically faced three options: converting to Islam, paying a tax while retaining their religion and property, or choosing to fight to the death. Christians and Jews considered People of the Book, were exempt from potential enslavement, and were referred to as dhimmis. This status, which grants immunity from enslavement, was upheld as long as the accused met their tax obligation. However, if they broke their commitment and attempted to escape to a non-Muslim territory, they forfeited this protection¹⁰⁴. ISIS has given different options to various religious communities: Christians and Sabaeans are required to convert to Islam, pay Jizya taxes to protect themselves, and be expelled or at risk of being murdered. Shia individuals are given the choice of repentance or punishment, including death, as apostates. Yezidi, Kaka'ee, and other faith communities, considered infidels by ISIS, received the ultimatum of converting to Islam or being executed. Furthermore, ISIS recently justified the sexual slavery of Yezidi women and women from communities that it considers believers in its monthly magazine, *Dabiq* vol. 9¹⁰⁵.

¹⁰³Nicolaus, P., & Yuce, S. (2017). Sex-Slavery: One Aspect of the Yezidi Genocide. *Iran and the Caucasus*, 21 (2), 196–229. Available at: DOI: 10.1163/1573384x-20170205

¹⁰⁴Gordon, M. & Editions Robert Laffont. (1989). *Slavery in the Arab world*. New Amsterdam Books, p.25

¹⁰⁵United Nations Assistance Mission for Iraq (UNAMI) & Office of the United Nations High Commissioner for Human Rights (OHCHR). (2015, April 30). Report on the Protection of Civilians in the Armed Conflict in Iraq, p.19-20. Retrieved from

4 Chapter 4 - Overview of the Yazidi Genocide

4.1 Capture and Occupation of Sinjar

On 13 January 2014, ISIS took complete control of Raqqa. For four years, Raqqa in northern Syria has served as the headquarters of the Islamic State of Iraq and al-Sham (ISIS), making Raqqa the centre of one of the most violent and complex proxy wars of the twentieth century. Therefore, ISIS increased its army number as followers and jihadist communities declared their loyalty and support for them, and on 25 January 2014, ISIS declared a caliphate that controls most of Iraq and Syria¹⁰⁶.

On 10 June 2014, ISIS occupied Mosul. With the occupation of Mosul, the northern regions of Iraq were abandoned by the Iraqi military and security forces. These abandoned areas fell under the de facto control of the Peshmerga, the armed forces of the Kurdistan Regional Government (KRG) in the semi-autonomous Kurdistan Region of Iraq (KR-I). However, in the following days of war, the Peshmerga also decided to withdraw from those areas. The escalation of the security vacuum intensified with the capture of Mosul in June 2014 and the withdrawal of Iraqi security forces from the city, contributing to an increase in the power of ISIS in Iraq¹⁰⁷.

On 3 August 2014, ISIS launched an attack on Sinjar from Mosul and Tal Afar in Iraq, as well as from Al-Shaddadi and the Tel Hamis region in Syria. The attack was highly coordinated, with hundreds of ISIS fighters acting synchronously. They occupied the cities and villages surrounding Mount Sinjar¹⁰⁸. To understand the Yazidi genocide, one has to understand why ISIS came to attack Sinjar, one of the two major centres of the Yazidi population in Iraq, in the first place¹⁰⁹. The city of Sinjar is located below the

¹⁰⁶ Eriksson, J., & Khaleel, A. (2018). *Iraq after ISIS: The Challenges of Post-War Recovery*. Palgrave Pivot, p.13

¹⁰⁷ Eriksson, J., & Khaleel, A. (2018). *Iraq after ISIS: The Challenges of Post-War Recovery*. Palgrave Pivot, p.82-83

¹⁰⁸ Commission of Inquiry, *ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, paras 32-36. See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p.6

¹⁰⁹ Nicolaus, P., & Yuce, S. (2017). *Sex-Slavery: one aspect of the Yazidi genocide. Iran and the Caucasus*, 21(2), p.112. Available at: <https://doi.org/10.1163/1573384x-20170205>

southern side of Mount Sinjar and less than 15 kilometres from the Syrian border¹¹⁰. According to some assertions, ISIS would aim to establish a corridor connecting Mosul and Raqqa through the Syrian city of Deir al-Zour, under its control. This strategy focuses on the mainly Turkmen city of Tal Afar and the predominantly Yazidi region of Sinjar, located on the route of the corridor. In fact, on 15 June 2014, ISIS had already seized control of the Turkmen-majority Tal Afar district in the Ninewa governorate¹¹¹. Approximately 200,000 Turkmen people evacuated the area, most heading toward Sinjar. Taking into account the geographical and strategic location of the regions attacked by ISIS, it confirms the allegation that ISIS sought to create a passageway between Mosul and Raqqa through the Syrian city¹¹².

ISIS deliberately targeted the Sinjar region not only to capture this place as a strategic location, but also to destroy the Yazidi identity. The October 2014 edition of Dabiq details how, before the assault on Sinjar, ISIS's Sharia students were assigned the task of examining the status of the Yazidis. The specific inquiry revolved around whether they should be classified as a group of polytheists (mushrikeen) or as individuals who, having consciously renounced Islam, fall into the category of apostates (murtaddeen). The outcome of ISIS's investigation determined that the Yazidi community predates Islam, has never embraced the religion, and should therefore be regarded as a group of polytheists. According to ISIS's findings, the continued existence of the Yazidis is a matter that Muslims will need to address on the day of judgement¹¹³. Therefore, ISIS maintained a presence in Ninewa and, along with allied militias, conducted deliberate assaults on villages and towns in the region for several months leading up to June 2014¹¹⁴. Therefore, the Sinjar attack marked the beginning of a highly systematic and brutal campaign to eliminate the identity of the Yazidis.

¹¹⁰ Commission of Inquiry, ISIS Crimes Against the Yazidis, 15 June 2016, A/HRC/32/CRP.2, paras 32-36. See also, UNAMI, A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL, August 2016, p.8

¹¹¹ World Directory of Minorities and Indigenous Peoples - Iraq : Turkmen. (2017). Refworld. Retrieved May 28, 2024, from <https://www.refworld.org/docid/49749d0732.html>

¹¹² Eriksson, J., & Khaleel, A. (2018). Iraq after ISIS: The Challenges of Post-War Recovery. Palgrave Pivot, p.14

¹¹³ International Federation for Human Rights. (2018). Iraq (Report No. 723), p. 15. Retrieved from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

¹¹⁴ Eriksson, J., & Khaleel, A. (2018). Iraq after ISIS: The Challenges of Post-War Recovery. Palgrave Pivot, p.10

It was predictable that ISIS, which systematically insulted the Yazidi faith and referred to Yazidis as devil worshippers and dirty kuffar, would commit genocide by attacking the Sinjar region. Representatives of the United Nations have also warned Iraqi authorities and other countries of the serious threat of mass atrocities against minorities in Iraq at the beginning of 2014. Unfortunately, Iraqi security forces have not been actively deployed to protect vulnerable minorities or methodically evacuate communities at risk. Furthermore, the Kurdish Peshmerga forces, which were the only security force in the region on 3 August 2014, retreated from their checkpoints without warning local populations before ISIS attacks, leaving the Sinjar region vulnerable to mass atrocities. Some survivors and human rights advocates of Yazidi think that if the Peshmerga had only informed them of their departure, they might have fled earlier and lives could have been saved. This withdrawal resulted in a significant portion of the Sinjar region being left without adequate defence. Consequently, in the early hours of 3 August 2014, ISIS entered the Yazidi collective city of Sinjar City without facing strong defence¹¹⁵. Therefore, ISIS expanded its control over additional territories, encompassing the western areas of the Erbil governorate and the Sinjar district in the Ninewa governorate¹¹⁶.

Despite the withdrawal of Kurdish Peshmerga forces, some Yazidi villages resisted but were defeated within a few hours, leading to a mass exodus of Yazidis from other ethnic and religious minorities. At dawn, Yazidi families from numerous villages throughout Sinjar were evacuating their homes in a state of fear and panic¹¹⁷. Although many managed to escape, some lost their lives during the journey¹¹⁸. On the other hand, the remaining residents stayed in their villages, trusting that the Kurdish Peshmerga in Iraq would ensure their protection or rely on the protection of their Muslim neighbours.

¹¹⁵ Kaya, Z. (2019) 'Iraq's Yazidis and ISIS. The Causes and Consequences of Sexual Violence in Conflict,' LSE Middle East Centre Report 2019, p.10. Retrieved from:<http://eprints.lse.ac.uk/102617/>

¹¹⁶ Eriksson, J., & Khaleel, A. (2018). Iraq after ISIS: The Challenges of Post-War Recovery. Palgrave Pivot, p.12-13-82

¹¹⁷ UN Human Rights Council, Commission of Inquiry on Syria. (2016). "They came to destroy": ISIS Crimes Against the Yazidis, p.7. Retrieved from https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf

¹¹⁸ Eriksson, J., & Khaleel, A. (2018). Iraq after ISIS: The Challenges of Post-War Recovery. Palgrave Pivot, p.16

Contrary to their expectations, the Peshmerga forces withdrew without prior notice. Instead, their neighbours left them to lurch them and have actively helped ISIS commit their crimes¹¹⁹.

The Yezidi villages who had not left their homes in time or did not resist, especially those with mixed populations or near an Arab village, were given ultimatums to surrender and convert within three days. Subsequently, ISIS immediately separated Yazidis, who did not escape and capitulated according to their sex and age¹²⁰. Consequently, ISIS imposed on them a brutal choice between conversion to Islam or facing death. Those unable to escape in time faced apostasy, death, or abduction¹²¹.

The largest known mass killing occurred in the besieged town of Kocho in the city of Sinjar. On 3 August 2014, approximately 400 to 500 of the 1,700 Yezidi residents in the village of Kocho managed to escape to Mount Sinjar. However, the remaining 1200 Yazidi residents of Kocho fell into the hands of ISIS. On the second day, ISIS demanded that inhabitants hand over their weapons to avoid being injured. The following day, the leader of the Kocho Yezidi community received a directive from the leader (emir) of ISIS, stating that residents had only three days to choose between conversion or death. On 15 August 2014, some of the men observed bulldozers moving through the village of Kocho. The remaining inhabitants were instructed to gather at the school. Several of them believed that they were going to be free and were allowed to retreat to Mount Sinjar.

However, when they arrived at the school, their phones, gold, money, and car keys were confiscated. According to the statement of one of the survivors of the massacre in Kocho village, an ISIS fighter told them 'You will see now what will happen to you, you pagans and peacock worshippers', and then the fighters divided the Yazidi men into four groups of 15. According to the report of the Office of the High Commissioner of the United Nations for Human Rights on the human rights situation in Iraq, Yezidi men were

¹¹⁹ Dulz, Irene (2016), "The Displacement of the Yezidis after the Rise of ISIS in Northern Iraq", *Kurdish Studies*, vol. 4, p. 142

¹²⁰ Nicolaus, P., & Yuce, S. (2017). Sex-Slavery: one aspect of the Yezidi genocide. *Iran and the Caucasus*, 21(2), p.196–229. <https://doi.org/10.1163/1573384x-20170205>

¹²¹ Buffon, V. and Allison, C. (2016) 'The Gendering of Victimhood: Western Media and the Sinjar Genocide,' *Kurdish Studies*, p.179

instructed to lie face down on the ground, and ISIS fighters filmed them before being shot multiple times. At least 700 Yazidi men lost their lives, and the remaining women and children were also kidnapped by ISIS¹²². In the Iraq Report of the OHCHR, Kocho witnesses say that ISIS fighters consistently acted on direct orders received over the phone. There is another well-documented case of mass killings by OHCHR: The Qani massacre. On 3 August 2014, Yazidis were arrested and taken to a nearby ditch, where ISIS fighters opened fire on them. A minimum of 80 men were killed in a single incident in the Qani village of Sinjar¹²³.

By the time ISIS entered Sinjar, the Yazidi settlements around the mountain were abandoned and people had fled to Duhok in the Kurdistan region, hoping to save their lives. However, ISIS has already gained control of the main roads and strategic intersections to capture Yazidis. ISIS fighters established checkpoints and deployed mobile patrols to locate the Yazidi families that were trying to flee. Within hours, Yazidis, who could not escape to the nearby city of Duhok, was surrounded by black-clad armed ISIS fighters. Some managed to flee through the escape route, opened by People's Protection Units (Yekîneyên Parastina Gel-YPG) which is an ally of the Kurdistan Workers' Party (Partiya Karkerên Kurdistan-PKK) from Syria's Kurdish-held regions. However, tens of thousands of Yazidis who escaped early enough to reach the upper plateau of Mount Sinjar remained stuck on Mount Sinjar, desperately in need of urgent supplies on 4 August 2014, as ISIS surrounded the mountain¹²⁴. Between 3 and 7 August 2014, a group of 40,000 to 50,000 Yazidis found themselves trapped in scorching temperatures exceeding 50° C without water, food, or shelter. In response to the request of the Iraqi Government, United States air strikes and humanitarian aid drops began on 8 August 2014¹²⁵. The helicopter rescue missions were launched a few days later. Most Yazidis were evacuated between 9 and 13 August, facilitated by the opening of a safe

¹²² Eriksson, J., & Khaleel, A. (2018). *Iraq after ISIS: The Challenges of Post-War Recovery*. Palgrave Pivot, p.16-17

¹²³ Payton, J. (2019). *Honor and the political economy of marriage: Violence Against Women in the Kurdistan Region of Iraq*. Rutgers University Press, p.6

¹²⁴ Buffon, V. and Allison, C. (2016) 'The Gendering of Victimhood: Western Media and the Sinjar Genocide,' *Kurdish Studies*, p. 108-179

¹²⁵ Commission of Inquiry, *ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, paras 32-36. See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p.7-8

corridor by Kurdish forces because the safe corridor allowed them to escape through Syria to the Kurdistan region of Iraq¹²⁶. On the other hand, hundreds of Yazidis died of dehydration and hunger on Mount Sinjar, including those who managed to escape in the village of Yazidi Kocho¹²⁷.

4.2 Examining Genocidal Acts and Prohibited Atrocities Committed by ISIS

4.2.1 Genocide by deliberately separation of a community to enslave or execute a part of the community

Over the following days, ISIS committed human atrocities against the Yazidi community to remove them from their roots. Just a few days after the attack on Sinjar, ISIS captured thousands of Yazidis and immediately ordered their fighters to separate Yazidi men, women, children, and the elderly regardless of the place where their families were captured. In general, men over the age of 12 years were grouped with Yazidi men, but the separation process was carried out arbitrarily. For example, ISIS fighters from various parts of Sinjar used various methods to determine whether a boy had reached puberty. In the village of Kocho, they examined the Yazidi boys for the presence of underarm hair. In other places, ISIS made quick assessments based on height and weight. While some of the elderly and disabled Yazidis who were considered unfit to work were allowed to leave, others were detained, transferred between prisons without apparent cause, or others were executed, similar to the fate of elderly women in Kocho¹²⁸. In Kocho, a mass grave has been found that houses the remains of elderly Yazidi women¹²⁹.

¹²⁶ Cetorelli, V., Sasson, I., Shabila, N. P., & Burnham, G. (2017). Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey. *PLOS Medicine*, p.3. Available at: <https://doi.org/10.1371/journal.pmed.1002297>

¹²⁷ Eriksson, J., & Khaleel, A. (2018). *Iraq after ISIS: The Challenges of Post-War Recovery*. Palgrave Pivot, p.19

¹²⁸ Nicolaus, P., & Yuce, S. (2017). Sex-Slavery: one aspect of the Yezidi genocide. *Iran and the Caucasus*, 21(2), p.3. Available at: <https://doi.org/10.1163/1573384x-20170205>

¹²⁹ Yazda. (2016) Mass Graves of Yazidis Killed by the Islamic State Organization or Local Affiliated on or after August 3, 2014. Yazda Documentation Project. Retrieved February 28, 2024, from: <http://genocidewatch.net/2016/06/09/a-report-from-the-yazda-documentation-project-on-mass-graves-of-yazidis-killed-by-the-islamic-state-organization-or-local-affiliates-on-or-after-august-3-2014>

4.2.2 Genocide by physical destruction in whole or in part of Yazidi men

After the separation, ISIS fighters systematically killed Yazidi men. The captured men from the rural villages of Yazidi who fled with their firearms were executed when these weapons were discovered in their possession. The bodies of those killed during capture were often left in place. Most of the dead were shot in the head or beheaded. ISIS fighters carried out public executions to instil fear among the Yazidi population, and other captives were often forced to witness these killings. The fighters executed these captives on the streets of cities and villages, at temporary checkpoints, on the streets, and in the lower parts of the roads ascending Mount Sinjar. Most of the killings were aimed at groups of men in their 20s and boys. Data published by the UN state that approximately 2,000 to 5,500 Yazidis, mainly consisting of men and elderly women, were killed. (UN OHCHR 2016, 7; UN HRC 2016, 31). The murdered Yazidis were transported by trucks to a previously excavated pit by ISIS, where they were shot or buried alive. According to the report published by UNAMI/OHCHR, 202 mass graves were discovered between 2014 and 2018. The overwhelming majority of victims and mass graves were found in Ninewa Governorate, where intense combats took place. In this published report, 95 mass graves have been found in this region, estimated to contain between 4,000 and 10,500 victims. These mass grave sites are mainly located in Sinjar and near Mosul. The geographical location of these large-scale graves corresponds to the areas inhabited by the Yazidi community in Ninewa and to the areas that fled as ISIS advanced and systematically targeted the Yazidi population. The villages in which massive graves were found included Zummar (northwest of Mosul), Al-Jadaa (a neighbourhood of Mosul), Solagh (east of the city of Sinjar), Hardan (Sinjar), Kocho (Sinjar) and Qene Ruke (south-west of the city of Sinjar). Furthermore, these dates should not be considered exhaustive, as large-scale graves may continue to be discovered¹³⁰.

¹³⁰ United Nations Human Rights, UNAMI, (2018). Unearthing Atrocities: Mass Graves in Territory Formerly Controlled by ISIL, UNAMI. pp.5-8. Retrieved February 10, 2024, from: https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_on_Mass_Graves4Nov2018_EN.pdf

4.2.3 Genocide by coercive conversions to eradicate Yazidism

All captive Yazidis were forced to convert to Islam. The surviving men and the old men who were forcibly converted to Islam became slaves of ISIS. Some men who accepted conversion to escape death were still executed. All captive Yazidi men were obliged to pray, grow beards and hair, and obey other religious instructions, which were interpreted and distributed by the terrorist group. Right after the war, Yazidi boys, aged seven and over, from "converted" families moved to the villages of Qasr Maharab and Qasil Qio with their relatives. Like all the Yazidi men in these villages, they were forced to attend prayers in the local mosques, and if they resisted, they faced physical punishment. According to a UN report published in 2016, a 13-year-old boy who was held in Qasil Qio broke his wrist in a beating by an ISIS commander for playing during prayer time. However, after April 2015, when ISIS evacuated the villages, converted and enslaved Yazidi boys aged seven or over were also forced to separate their families and enlisted in ISIS fighting units, like other Yazidi boys who had not recently reached puberty, while those who resisted were executed immediately. The captives were kept in locked shelters, except for young Yazidi boys, sometimes taken by the fighters to participate in prayers at the local mosque. Yazidi women and girls were also forced to convert to Islam and pray in Arabic every day. All women over the age of 10 years were required to wear abayas in public. However, Yazidi women were often not given abayas to prevent escapes. Even if Yazidi women or girls successfully escaped from the holding sites, they were immediately caught when they appeared in public without the abaya in ISIS-controlled territory. Despite simulated conversions, ISIS fighters regularly insulted the Yazidis in Qasr Maharab, Qasil Qio, and Al-Khadra, labelling them "Kuffar" or believers¹³¹.

4.2.4 Genocide by forcible transfer of Yazidi women and children

The ISIS attack in August 2014 had a devastating impact on the Yazidi religious minority in Sinjar city. About 2.5% of the Yazidi population was killed or kidnapped within a few

¹³¹ Commission of Inquiry, *ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, paras 32-36. See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp.7-18

days after the Sinjar attacks¹³². Two villages (Qahtaniya and Jazeera, which are in the Sinjar Mountains) were destroyed by ISIS¹³³. Within an hour, the survivors were forcibly transferred to temporary holding sites within the Sinjar area and in the Al-Hasakah governorate in Syria. ISIS operational commanders organised these transfer operations in a very planned manner and in a short time. After temporary transfer, buses and large vehicles transported captured Yazidis to designated locations in Mosul, Tel Afar, and Baj, within the territory controlled by ISIS, and organised secondary transfers¹³⁴. At the beginning of the genocide, among the Yazidis, who were separated into men and women, the men and the older boys were taken captive by ISIS. They were quickly transported to Tel Afar, Mosul, and Baaj, where they were forced to carry out various tasks, including construction projects, digging trenches, street cleaning, and livestock management. The remaining Yazidi women and girls were subject to the worst genocidal violence. Furthermore, according to a survey published by PLoS Medicine, 6,800 Yazidis were kidnapped. More than 300,000 Yazidis were seeking refuge in Kurdistan, with more than half residing in camps overseen by the Kurdistan Regional Government. The remaining population was spread among construction sites and informal tented settlements. A comparatively small number of Yazidis have chosen alternative settlements. In 2015, an estimated 10,000 lived in tents on the northern side of Mount Sinjar under Kurdish administration, approximately 15,000 were reported to be in refugee camps in Syria, and at least 30,000 were confirmed to have crossed into Turkey¹³⁵.

¹³² Cetorelli, V., Sasson, I., Shabila, N. P., & Burnham, G. (2017). Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey. *PLOS Medicine*, 14(5), e1002297, p.10. Retrieved February 15, 2024, from: <https://doi.org/10.1371/journal.pmed.1002297>

¹³³ Maisel S. (2008). *Social Change Amidst Terror and Discrimination: Yazidis in the New Iraq*. The Middle East Institute Policy Brief. Retrieved February 14, 2024, from: https://www.files.ethz.ch/isn/90905/No_18_Social_Change_Amidst_Terror.pdf.

¹³⁴ Commission of Inquiry, *ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, paras 32-36. See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p7.

¹³⁵ Cetorelli, V., Sasson, I., Shabila, N. P., & Burnham, G. (2017). Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey. *PLOS Medicine*, 14(5), e1002297, p.3. Retrieved January 23, 2024, from: <https://doi.org/10.1371/journal.pmed.1002297>

4.2.5 Genocide by recruitment and use of Yazidi children on battlefields

ISIS has forcibly transferred "converted" Yazidi children in two ways, depending on their sex. When the girls reached the age of nine, they were taken from their mothers and sold as sexual slaves to ISIS fighters in Syria and Iraq. The boys of the Yazidi were also taken from their mothers when they reached the age of seven and sent to the Islamic training bases in Syria and Iraq, where they were taught to follow Islam as interpreted by Islamic extremists and how to fight as a member of the ISIS forces in battle. The boys were forced into training camps to indoctrinate them and mould them into fervent ISIS fighters¹³⁶. After the kidnapping of thousands of Yazidis by ISIS fighters, children aged 8 to 15 years were separated from their mothers and transferred to various locations in Iraq and the Syrian Arab Republic. The Islamic State forcibly and systematically relocated Yazidi boys to training centres or military camps in Mosul, Tal Afar and Baghdad in Iraq and Raqqah City, Tabqa, Tel Abyad, and Suluk in Syria. Many training centres have been established in former schools, including Mahad Farouq lil Ashbal in Tel Abyad and another school on the outskirts of Raqqah in the Syrian Arab Republic. At these locations. The "converted" Yazidi boys were given Islamic names and only called recruits by their new names as ISIS recruits¹³⁷.

Military training lasted 13 days to 3 weeks and covered aspects such as loading and unloading guns, firing live bullets, and launching small and medium-sized rockets. According to the UN report, these boys were also taught to use AK47s, hand grenades, and rocket propellant grenades. They were grouped with Sunni Arab boys who underwent similar training and were forced to attend military and indoctrination training sessions led by ISIS fighters who acted as instructors. Failure of boys to memorise the Quranic verses or perform poorly in training sessions resulted in physical beatings. Furthermore, these Yazidi boys were forced to watch the beheading videos several times, and their refusal to watch these videos was sufficient to receive severe beatings. In the OHCHR report on Iraq, ISIS fighters told a young Yazidi: "This is your initiation into jihad; you must be

¹³⁶ Nicolaus, P., & Yuce, S. (2017). Sex-Slavery: one aspect of the Yezidi genocide. *Iran and the Caucasus*, 21(2), p-119. Available at: <https://doi.org/10.1163/1573384x-20170205>

¹³⁷ Commission of Inquiry, *ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, paras 32-36. See also, UNAMI, *A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL*, August 2016, p.19

strong because you will do this when you enter jihad for the Islamic State; you are now an Islamic State boy”¹³⁸.

ISIS fighters always openly stated their motives and intentions for taking these Yazidi boys from their families. According to UN women interviewed, ISIS fighters reported that they were taking their sons to instruct them in Islam and train them for combat. A Saudi ISIS fighter even showed Yazidi women a video of young boys undergoing training in an ISIS camp, explicitly stating: "We are training them to kill kuffar like you." Another woman recalled an Iraqi fighter taking a boy from her cell in Badoush prison, informing the distressed mother that "We are taking him so he can go and kill your people in Kobane." Some boys were temporarily returned to the holding sites before being permanently taken away. The son of a Yazidi woman, who returned after a few weeks, mentioned being taken to a school in Tel Afar where he was taught how to pray and fight¹³⁹.

4.2.6 Genocide by sexual violence and enslavement against captured Yazidi women and girls

ISIS used sexual violence and sexual slavery as a targeted terrorism method to facilitate its operations, enhance financial resources, propagate its ideology, and instil fear both within local communities and on a global scale. Therefore, Yazidi women and girls were explicitly targeted by ISIS. Additionally, women and girls kidnapped by ISIS were systematically subjected to sexual violence because ISIS generated revenue from the commodification of Yazidi women and girls. Consequently, most of them were sold on the slave markets. Older Yazidi women were subjected to enslavement, and compelled to carry out domestic labour, while younger women and girls endured sexual enslavement, rape, and coerced marriages. Babies, toddlers, and young children (below the age of eight) were allowed to remain with their enslaved mothers. However, most of the slightly older

¹³⁸ Payton, J. (2019). Honor and the political economy of marriage: Violence Against Women in the Kurdistan Region of Iraq. Rutgers University Press, p.11

¹³⁹ UN Human Rights Council, Commission of Inquiry on Syria. (2016). "They came to destroy": ISIS Crimes Against the Yazidis, p.18-19. Retrieved January 20, 2024, from: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf

female children were separated from their mothers and forced into sexual slavery. Some of them were also presented as "gifts" to ISIS fighters and promoted as potential wives to attract recruits. This strategy successfully enticed numerous foreign fighters who hailed from conservative societies where casual and premarital relationships are frowned upon. Inflicting punishment on those deemed as "disbelievers" served as an additional method to incentivise, mobilise, and retain fighters within the organisation¹⁴⁰. According to the UN to date published, more than 6,000-7,000 women and children were kidnapped in August 2014 (UN OHCHR 2016, 7; UN HRC 2016, 31). The Yazidi Women's Rescue Office of the Kurdish Regional Government records that 6,417 Yazidis were initially abducted. In July 2019, 4,509 of them had been successfully rescued. Unfortunately, there have been cases in which women and children previously detained by ISIS have been recaptured by criminal gangs with the aim of trafficking or selling them to their families¹⁴¹. This exceptionally harsh treatment of women highlights the strongly gendered nature of the violence perpetrated by the group. The Independent International Commission of Inquiry on the Syrian Arab Republic confirmed that these instances of gender-based violence were intentionally employed as systematic instruments to carry out genocide acts, war crimes, and crimes against humanity against the Yazidis¹⁴². The acts of sexist genocide by ISIS against Yazidis will be discussed in more detail in Chapter 5.

4.2.7 Genocide by destruction of cultural heritage monuments and holy places of the community

The cultural heritage of the Yazidi community faced severe destruction at the hands of ISIS, particularly during its occupation of territories in Iraq and Syria. In 2014-2015, at

¹⁴⁰ M. Iyer, J. Irani, & E. Veillet-Chowdhury. (2020). Seeking Accountability And Preventing Recurrence: Addressing Conflict-Related Sexual Slavery Through The Women, Peace, And Security Agenda. Global Network of Women Peacebuilders, p.9-12. Retrieved January 24, 2024, from: <https://www.womenpeacesecurity.org/member/gnwp/>

¹⁴¹ Cetorelli, V., Sasson, I., Shabila, N. P., & Burnham, G. (2017). Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey. *PLOS Medicine*, 14(5), e1002297. Available at: <https://doi.org/10.1371/journal.pmed.1002297>

¹⁴² UN Commission of Inquiry on Syria: ISIS is committing genocide against the Yazidis - Syrian Arab Republic. ReliefWeb. Retrieved January 26, 2024, from: <https://reliefweb.int/report/syrian-arab-republic/un-commission-inquiry-syria-isis-committing-genocide-against-yazidis>

least 64% of cultural heritage artefacts were destroyed by ISIS and 10% of this cultural heritage belonged to Yazidis¹⁴³. The number of cultural heritage destruction is significantly high according to the population of Yazidi. The destruction of cultural heritage is directly related to the actual murder of the targeted ethnic and religious communities. In this case, ISIS targeted and systematically destroyed Yazidi monuments, shrines, and sacred sites as part of its campaign to erase the cultural and religious identity of the Yazidi people. This deliberate destruction not only caused irreparable damage to the Yazidi heritage, but also reflected the broader strategy of cultural cleansing employed by ISIS to eliminate various cultural and religious practices in the regions under its control.

The destruction of cultural heritage took two forms: pillaging artefacts from ancient sites for profit and the destruction of modern and ancient sites and monuments for political and religious reasons. The main reason for the destruction of the Yazidi culture is that these objects or monuments contradict the fundamental beliefs of the jihadist group that performs the iconoclastic act. Furthermore, the fight against idolatry was extremely important to ISIS as a way to consider its physical genocide of Yazidis and cultural genocide against monuments in a pious Islamic discourse. The other reason is that ISIS wanted to destroy the past and present to create a new future vision. It should be noted that future destruction is embedded in a well-integrated system that combines religious ideology, political agendas, extreme violence and sophisticated propagandas. The created system amplified worldwide to reach multiple audiences through social networks. The destruction of cultural heritage has also strengthened the visual and emotional impact on the old and young generation of Yazidi. Especially, the images of mass killing and destruction published by ISIS intensified fear¹⁴⁴.

The illegal trade in antiquities was a source of revenue for ISIS. Furthermore, the smuggling of historical artefacts has the same effect as the destruction of antiquities because when historical artefacts are sold on the black market, they are rarely recovered.

¹⁴³ Gil J. Stein. (2022). Performative Destruction: Da'esh (ISIS) Ideology and the War on Heritage in Iraq, *Cultural Heritage under siege: Recent Cases*, p.33-78

¹⁴⁴ Yazda. (2019). *Destroying the Soul of the Yazidis, Cultural Heritage Destruction the Islamic State's Genocide Against the Yazidis*, p.47-78

Unfortunately, there are no considerable statistical data on how many of the historical and cultural properties belonging to the Yazidis were smuggled. The level of artefact smuggling and looting is difficult to report and assess because these thefts occurred in a closed environment occupied by terrorist entities. Furthermore, it is also possible that some stolen goods remaining within Syria and Iraq may have been lost or destroyed in areas where ISIS has been defeated, often with a significant use of air power¹⁴⁵.

¹⁴⁵ Wescott, T. (2020). Destruction or theft: Islamic State, Iraqi antiquities, and organized crime. *Global Initiative Against Transnational Organized Crime*, pp. 34-43

5 Chapter 5 - The Yazidi Genocide in the Framework of Women Genocide

5.1 Yazidi Women as Genocidal Target

Rape, one of the cruelest forms of widespread sexual violence, violates the most personal, intimate, and vulnerable parts of life and spirit. Beyond physical damage, the trauma of rape caused by sexual violence extends to the core of a person's being, which violates his or her sense of self, autonomy, and well-being. No atrocity can be more destructive to human dignity. Therefore, the psychological effects of rape are profound and affect survivors emotionally, mentally and spiritually. Healing from such a deeply personal infringement not only requires physical recovery, but also the often-difficult journey to rebuild the spiritual and emotional aspects of life. However, in the context of genocide, rape transcends the scope of individual suffering. Rape in genocide goes beyond immediate survivors and affects families, communities and future generations. Therefore, rape during genocide was carried out as part of a broad or systematic attack on civilians. Although rape was regulated as a prohibited act by international law many years ago, with the Yazidi Genocide committed in the 20th century, humanity once again has witnessed the brutality and persecution against the Yazidi community and its generation.

5.1.1 The conceptualisation of rape

The interrelationship between rape or gang rape and genocide is quite deep and complex. The dynamics of sexual violence in conflict areas can vary depending on factors such as cultural norms, political structures, and specific objectives of the perpetrator. On the other hand, despite the variation of sexual violence, there is no historical instance of genocide devoid of such atrocities. Systematic gang rape has always been a silent collaborator, an occasional observer, or a facilitator of genocide. Therefore, we cannot overlook the intrinsic connection between the crime of genocide and the occurrence of gang rape. The internal connection has also been interpreted as rape being an integral and unavoidable aspect of genocide. Furthermore, in international law, sexual violence has long been

regarded as a side effect of conflicts¹⁴⁶. Rape is not a byproduct of genocide, but a fundamental element and is used as a deliberate strategic weapon. Therefore, in instances of genocide, rape ceases to be an incidental consequence; rather, it emerges as a calculated and integral component of the perpetrators' tactics. Despite the recognition of rape as a genocidal act, comprehensive discussion and legal and political recognition of the extensive scale and repercussions of rape have been lacking in national courts. Unfortunately, rape is still considered just an 'unfortunate by-product' of genocide in national trials, and victims often find themselves relegated to the status of war spoils and mere facilitators of men seeking pleasure and this approach causes the devaluation of women and trivialises their victimisation¹⁴⁷. Consequently, it is essential to recognize that rape is not a private issue, but an explicit part of war and genocide.

5.1.2 The variation of rape

Rape is a form of sexual violence and is common in conflict situations. However, other forms of sexual violence associated with rape and conflict may be different in form and target. In genocide, armed actors appear to be involved in rape, sterilization, sexual torture, sexual slavery, forced prostitution and pregnancy to a very different extent. Recent literature also highlights significant variations in sexual violence, including differences in form, target and between States, militias and rebel organizations during conflicts¹⁴⁸. For example, some armed organizations target exclusively women and girls, while others target men. In addition, the occurrence of rape can vary in terms of frequency and specificity of the targets. An organisation's use of sexual violence may have a narrow focus, targeting a specific social group, for instance, and can be characterised by either a

¹⁴⁶ Skjelsbaek, I. (2010). The elephant in the room: An overview of how sexual violence came to be seen as a weapon of war. In Report to the Norwegian Ministry of Foreign Affairs. Oslo: Peace Research Institute; Htun, M., & Laurel, W. S. (2012). The civic origins of progressive policy change: Combating violence against women in global perspective, 1975–2005. *American Political Science Review*, p.106.

¹⁴⁷ Aranburu, X. A. (2010). Sexual violence beyond reasonable doubt: Using pattern evidence and analysis for international cases. *Leiden Journal of International Law*, 23, p.614.

¹⁴⁸ Wood, E. J. (2018). Rape as a Practice of War: Toward a Typology of Political Violence. *Politics & Society*, p.4. Available at: <https://doi.org/10.1177/0032329218777337> ; Cohen, D. K., & Nordås, R. (2014). Sexual violence in armed conflict: Introducing the SVAC dataset, 1989–2009. *Journal of Peace Research*, 51(3), 423, 425, Figure 1; on rape specifically, see Wood, E. J. (2006). Variation in sexual violence during war. *Politics & Society*, 34(3).; Cohen, D. K. (2013). Explaining rape during civil war: Cross-national evidence (1980–2009). *American Political Science Review*, 107(3).

high or low frequency, as well as a wide or narrow range of tactics¹⁴⁹. For example, certain armed groups, including state militaries, leftist insurgent organisations, and secessionist organisations, are reported to have low or no involvement in moderate levels of rape¹⁵⁰. Unlike certain rebel organisations that refrain from promoting sexual violence and engaging in rape during the genocide, others, like ISIS, engage in large-scale and organised campaigns of sexual violence. Several theoretical explanations were proposed to clarify these discrepancies¹⁵¹. Some people argue that sexual violence occurs in three forms: opportunity, practice, and strategy.

Opportunistic rape theory claims that sexual violence can be motivated by individual and private motives rather than collective purposes. It suggests that conflict-related sexual violence is spontaneous and stems from individual motivations, the breakdown of the state, and legal systems, or fostering an environment of impunity. According to this approach, during armed conflicts, the desensitisation of combatants to violence, the dehumanisation of victims, anxiety, uncertainty of combat, and the displacement of responsibility onto the enemy and victims contribute to the broadening of violent actions, especially sexual violence. In this case, the perpetrators are neither explicitly commanded nor penalised, but rather tolerated, even though the organisation officially forbids sexual violence because the organisations often fail to establish the necessary institutions or demonstrate the determination to enforce such prohibitions¹⁵². This perspective supports the notion of the feminist scholar Susan Brownmiller. Susan Brownmiller claims that "war gives men an implicit licence to rape," and she emphasises the role of masculinity as an incentive for sexual violence and the conducive conditions that conflict provides for such acts¹⁵³.

¹⁴⁹ Wood, E. J. (2014). Conflict-related sexual violence and the policy implications of recent research. *International Review of the Red Cross*, 96(904), p.471.

¹⁵⁰ Wood, E. J. (2009). Armed groups and sexual violence: When is wartime rape rare? *Politics & Society*, 37(1), p.131-161.; Cohen, D. K., Green, A. H., & Wood, E. J. (n.d.). *Wartime sexual violence*. USIP Special Report. Retrieved January 30, 2024, from: <https://www.usip.org/sites/default/files/resources/SR323.pdf>

¹⁵¹ Termeer, A. (2022, April 3). *The Islamic State's Guidelines on Sexual Slavery: the Case of the Yazidis*. *E-International Relations*, p.1. Retrieved January 29, 2024, from: <https://www.e-ir.info/2022/04/03/the-islamic-states-guidelines-on-sexual-slavery-the-case-of-the-yazidis/>

¹⁵² Wood, E. J. (2014). Conflict-related sexual violence and the policy implications of recent research. *International Review of the Red Cross*, 96 (904), pp.467-469.

¹⁵³ Wood, E. J. (2018). Rape as a Practice of War: Toward a Typology of Political Violence. *Politics & Society*, p.4 . Available at: <https://doi.org/10.1177/0032329218777337>

The second explanation assumes that rape is a practice between strategic and opportunistic. It may occur as a practice due to social incentives rather than purposefully implemented as a policy¹⁵⁴. According to this approach, the notion of rape as a practice is not institutionalised or explicitly ordered, but is tolerated by commanders, possibly due to strong peer pressure or social interactions during war or conflict. This concept introduces a nuanced understanding of violence that goes beyond individual preferences or explicit orders. Upper-level commanders of the organisation may perceive effective prohibition of sexual violence as too costly because if they prohibit sexual violence, undermine respect for superiors in units where rape is normalised or face challenges in maintaining vertical cohesion. The tolerance of rape or sexual slavery by commanders may be viewed as a form of compensation for combatants if the perceived costs of putting an end to the practice are considered too high. The notion supports that discipline in units where rape is normalised may be costly and troublesome, or it may require the dismissal of other effective subordinates who disobey the prohibition, which will be costly. Finally, the concept of "too costly" is socially constructed. In such cases, Individual commanders may tolerate rape, as in cases of rape¹⁵⁵, as long as it is in line with their interests. Maria Eriksson Baaz and Maria Stern examined the general perception of rape of civilians by military personnel in the Democratic Republic of the Congo. According to research, the 200 soldiers interviewed perceive rapes committed by themselves and their colleagues as outcomes stemming from masculine heterosexuality. Soldiers connect their sexual assault to prevailing discourses that suggest that men have sexual "needs" that should be fulfilled. They also support that, in war, male soldiers feel deprived because of poverty, neglect, lack of support, and the overall context of conflict. They claim that they have the 'right' to rape women. Therefore, rape here serves as a performance act that restores their masculinity and heterosexuality¹⁵⁶.

¹⁵⁴ Wood, E. J. (2014). Conflict-related sexual violence and the policy implications of recent research. *International Review of the Red Cross*, 96(904), pp.463-478.

¹⁵⁵ Wood, E. J. (2014). Conflict-related sexual violence and the policy implications of recent research. *International Review of the Red Cross*, 96(904), p.473.

¹⁵⁶ Baaz, M. E., & Stern, M. (2009). Why do soldiers rape? Masculinity, violence, and sexuality in the Armed Forces in the Congo (DRC). *International Studies Quarterly*, 53(2), p.515. Available at: <https://doi.org/10.1111/j.1468-2478.2009.00543.x>

The third explanation for the variations is that rape is a strategy of war. According to this approach, the commanders adopt rape as a form of collective punishment or sexual torture against a particular group to purify ethnically, for example when members of a particular group are publicly raped during their efforts to purify an area. In addition, rape can be used as a means of collective punishment, often associated with orders to terrorize civilians, or as a symbolic gesture that means the determination of the organization. This strategic use of rape serves multiple purposes, including instilling fear, demoralizing communities and imposing dominance over target populations.

Furthermore, rape can also be used against communities of purported insurgent supporters, as well as sexual torture against captured insurgents (and relatives) to extract information but also to punish and terrorise. Therefore, perpetrators often employ sexual violence not merely as a random act, but as a deliberate and calculated tactic to achieve military objectives. Moreover, rape is institutionalised as a form of compensation or reward, where militants are rewarded for civilians to be victimised. In this case, organisations have purposefully adopted and supported rape by forcing victims into sex slaves or wives. Therefore, the case of rape, including gang rape involving multiple perpetrators, is part of a strategy that is never punished, especially in campaigns of explicitly ordered ethnic cleansing, genocide, or torture. The cases of Bosnia, Guatemala, and Rwanda are examples that support this approach¹⁵⁷.

5.1.3 Rape and sexual violence committed by ISIS as a part of the war strategy

The use of rape and sexual slavery is an intentional war strategy by IS to eliminate the Yazidi community. Therefore, it is crucial to deal with the extent and variation of rape or gang rape and its interaction with genocide, especially in the context of the Yazidi genocide. ISIS kidnapped thousands of Yezidi and subjected many to sexual violence, including rape, sexual slavery and forced marriage. These crimes were not only a

¹⁵⁷ Wood, E. J. (2014). Conflict-related sexual violence and the policy implications of recent research. *International Review of the Red Cross*, 96(904), p.472.

manifestation of the group's extreme ideology, but also a means of affirming domination, inducing fear and further supporting the organization's goals in the regions under its control. Therefore, the jihadist group has not made any efforts to hide or denounce the war strategy and its crimes, in particular rape and other forms of sexual violence, although all crimes committed by ISIS against Yazidis were crimes against humanity. On the contrary, ISIS has widely publicised this strategy of brutality, as declared in the Declaration of the Islamic State of June 2014: "In this place is the flag of the Islamic State, the flag of monotheism, rising and flying. Its shade covers the land from Aleppo to Diyala. Under it, the walls of the tawāghīt [the rulers claiming the rights of Allah] were destroyed, their flags fell, and their borders were destroyed. Their soldiers are killed, imprisoned, or defeated."¹⁵⁸. Moreover, it did more than any other jihadist group to promote the horrible details of its members' atrocities against both captured soldiers and civilians. The tragedy of Genocide was widely disseminated through video and statements on various social media platforms, often in several languages. ISIS used its reputation as a cruel and merciless actor to provoke fear among enemies and all who cross its path¹⁵⁹. The Syrian Commission of Inquiry, as mandated by the United Nations, has also determined that ISIS intentionally and strategically publicised its actions towards the Yazidi community¹⁶⁰.

The concept of rape in genocides has a more complex structure because it is intertwined with honour and aims to eliminate the values of the community. In patriarchal societies, honour or *nāmūs* is especially one of the most precious possessions of the community. The conceptualisation of *Namūs* is based on female sexual perception, and honour is generally considered to reside in the body of women. The frameworks of 'honour' and its consequence, shame, work to control, direct, and regulate the sexuality of women and the freedom of movement of male members of a family¹⁶¹. Therefore, the feeling of being

¹⁵⁸ Al-Hayat Media Center (2015) "This is the Promise of Allah." Retrieved November 10, 2015, from: https://ia902505.us.archive.org/28/items/poa_25984/EN.pdf.

¹⁵⁹ Amnesty International. (2014). "Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq", Amnesty International, p. 1-4. Retrieved November 24, 2023, from: <https://www.amnesty.org/en/documents/mde14/021/2014/en/>

¹⁶⁰ International Federation for Human Rights. (2018). Iraq (Report No. 723), p.5. Retrieved November 28, 2023, from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

¹⁶¹ Payton, J. (2019). Honor and the Political Economy of Marriage: Violence against Women in Kurdistan Region of Iraq [Book]. Rutgers University Press, p.3-10

humiliated and dishonoured contributed to an additional layer of trauma and strengthened the feeling of being excluded for the raped Yazidi women and girls.

5.1.4 War strategy based on the notion of honour

Male-dominated states are embodied in male norms, promote gender and sexual relations formation and contribute to sexual stratification and reproductive patterns. Therefore, the concept of honour (*namûs*) is deeply rooted in Yezidi society, such as other communities in Iraq. Although not exclusive to Yezidism, it is closely linked to "religion". It is included in the strict endogamy regulations governing the marriage of Yazidi and the prohibition of extramarital and premarital sex. Therefore, Yezidis, especially women, are expected to avoid any behaviour that may raise questions about their purity or, if married, their faithfulness. Importantly, the Yezidi community does not distinguish between women who are willing or forced to have a sexual relationship outside of the aforementioned honour context, such as through physical or psychological violence, such as rape. The alleged 'loss of honour' hurts the entire family, and the only way to recover is a later marriage (if the woman is not married and both belong to the same endogamous caste) or the punishment of the perpetrators, especially the woman involved. In the Yazidi community, this dynamic led to cases of "honour killing" carried out by close male relatives of women¹⁶². Therefore, the fear of exclusion intensifies the collective trauma among Yazidi women, and the resulting destruction that occurred during and after the genocide not only inflicts physical damage to Yazidis, but also leaves lasting scars on their collective psyche.

Furthermore, sexual violence in conflict is generally a result of the desires of man to campaign for dominance over women in patriarchal societies¹⁶³. Therefore, in patriarchal societies like Iraq, where the distinctions between family, society, and state are indistinct and interconnected within a framework of collective honour, sexual violence can easily exploit 'established gender norms that highlight shame as a tool of social control'.

¹⁶² Nicolaus, P., & Yuce, S. (2017). Sex-Slavery: one aspect of the Yezidi genocide. *Iran and the Caucasus*, 21(2), p.209. Available at: <https://doi.org/10.1163/1573384x-20170205>

¹⁶³ Baaz, M. E., & Stern, M. (2013). Sexual violence as a weapon of war? p.68. Available at: <https://doi.org/10.5040/9781350222557>

Therefore, by perpetrating abuse on individuals, ISIS aimed to undermine and eliminate the Yazidis as a collective. For this reason, rape is treated as an offence against the household and not as a crime of violence against the woman herself. Therefore, the rapist's intention is not only to humiliate, pain and terrorize a single woman, but also to dehumanize a wider community to which she belongs. The act of rape is transformed into an attack on the community and the cultural emphasis on the sexual quality of women is highlighted. The shame caused by the rape humiliates the family of the survivor and all those associated with her. Combatants engaged in war rape often expressly link their acts of sexual violence to this broader social degradation (Human Rights Watch/Africa and Human Rights Watch Women's Rights Project, 1996)¹⁶⁴. In the Yazidi genocide, the mass abduction of women has diminished the Sinjar male to a "wounded man" and made him feel incapable of meeting the societal expectation to safeguard his female relatives as dictated by the "codes of honour."¹⁶⁵ In other words, the sexual violence perpetrated by ISIS made Yazidi men feel that they were unable to fulfil their role as protectors of their families and communities. This psychological damage led to the strengthening of the ISIS ranks and its international cadre and the strategic erasure of the Yazidi community and identity through rape¹⁶⁶.

5.1.5 Use of sexual violence as a defeat mechanism

ISIS used rape as a strategic objective to instil fear and demoralise Kurdish forces and the Yazidi community. This strategy of intimidation and psychological defeat produced the desired results. Many Peshmerga, the military of the Kurdistan Regional Government, and Iraqi Kurdistan, withdrew in the face of the ISIS advance without evacuation orders from the local population and left much of the Sinjar region without defence (140/10). The withdrawal made it easier for ISIS to seize large areas of the country and leave civilian residents of minority communities unprotected and defenceless. Furthermore, when the news that the Peshmerga had left their checkpoints spread, a few ad hoc groups

¹⁶⁴ Baaz, M. E., & Stern, M. (2013). Sexual violence as a weapon of war?, p.64. Available at: <https://doi.org/10.5040/9781350222557>

¹⁶⁵ Buffon, V. and Allison, C. (2016) 'The Gendering of Victimhood: Western Media and the Sinjar Genocide,' *Kurdish Studies*, p.176-196

¹⁶⁶ Vale, G. (2020) 'Liberated, not free: Yazidi women after Islamic State captivity,' *Small Wars & Insurgencies*, 31:3, p. 516. Available at: <https://doi.org/10.1080/09592318.2020.1726572>

of lightly armed Yazidi families from hundreds of villages in Sinjar fled their homes in fear and panic. After ISIS captured the entire region of Sinjar and kidnapped thousands of women and girls, however, the residents of Yazidi and other minorities fled fearing the invasion of ISIS (140/6). According to the report "Our Generation is Gone", published by the United States Holocaust Memorial Museum, one Kurdish official said he tried to protect the target, but was overwhelmed by the strength of the ISIS forces. The inability to address the status of the region undermines the ability to provide sufficient security both as a deterrent and as a preventer, exposing hundreds of thousands of people to serious risks¹⁶⁷. Between September and November 2014, Amnesty International researchers (in northern Iraq) interviewed 42 women and girls fleeing ISIS. According to the testimonies of those who escaped from captivity, "I am indeed a Peshmerga, but my primary responsibility is to safeguard my wife and children. Therefore, my priority was to ensure their safety before the arrival of ISIS in the area. I couldn't risk leaving my family vulnerable to being taken hostage or harmed by ISIS, so we chose to flee," explained a Yazidi member of the Peshmerga forces to Amnesty International. Another Yazidi man said: "The fear of the crimes ISIS could commit against the women and children of my family is much greater than the fear of being killed by ISIS," said another Yazidi man¹⁶⁸.

5.2 Sexual and Gender-Based Crimes Committed Systematically by ISIS

5.2.1 The institution of slavery and sexual violence

The most crucial evidence that ISIS used rape as a war strategy is its institutionalisation of rape. The practice of kidnapping, slavery, and gang rape is firmly established within the organisation, accompanied by specific rules governing their implementation through articles, fatwas published, and references to Quran and Shari'a law. ISIS articles conscientiously invoke Islamic texts and principles to solidify its identity and ideology or

¹⁶⁷ Eriksson, J., & Khaleel, A. (2018). *Iraq after ISIS: The Challenges of Post-War Recovery*. Palgrave Pivot, p.11

¹⁶⁸ Baaz, M. E., & Stern, M. (2009). Why do soldiers rape? Masculinity, violence, and sexuality in the Armed Forces in the Congo (DRC). *International Studies Quarterly*, 53(2), p. 495–518. Available at: <https://doi.org/10.1111/j.1468-2478.2009.00543.x>

morally justify its criminal actions. The articles of this code also refer to the Koran, Hadith (i.e. words of Prophet Mohammed), or Islamic education to motivate sexual violence and solidify its interpretation of the Quran¹⁶⁹. According to the interpretation of Islamic law by ISIS, polytheists and pagans women were considered concubines and the spoils of jihad¹⁷⁰. The articles, for example, aim to clarify how "true Muslims" are allowed to have up to four wives. They also state Islamic principles such as the *Waila* and *Bara*, emphasising the concepts of loyalty and abandonment, and claim that Muslims are obliged to resist those who oppose Allah. It is obvious that the main objective of these articles is to explicitly encourage and justify violent jihad or to advocate the interpretation of the Koran by the Islamic State, but the background of the articles published by ISIS is to build a firm belief that the 'just / righteous' action to be taken was violent¹⁷¹. Therefore, ISIS members and supporters have followed the instructions published with great devotion and enthusiasm and participated in systematic acts of sexual crime against the Yazidi community. In addition, the ISIS online propaganda campaign on the deep web and dark web played a fundamental role in spreading its ideology and justification and institutionalisation of sexual violence because ISIS combined its brutal crime and a unique cyberspace propaganda campaign to create effective states between its target groups that inspired them and guided their activities in the desired direction¹⁷².

During the genocide, ISIS has never attempted to cover up its criminal acts. As a propaganda tool, in publications, opinion leaders and warriors have proudly declared their involvement in subjecting abducted Yazidi women and girls to sexual violence and slavery, justifying these reprehensible and criminal acts based on their interpretation of Islam. ISIS referred many times to the Islamic law which a Muslim had the liberty to acquire as many concubines as his financial means permitted, and it was considered both

¹⁶⁹ Welch, T. (2018). Theology, heroism, justice, and fear: an analysis of ISIS propaganda magazine *Dabiq* and *Rumiyah*. *Dynamics of Asymmetric Conflict*, p. 187. Available at: <https://doi.org/10.1080/17467586.2018.1517943>

¹⁷⁰ Hal, J. (2014, October 12). Islamic State magazine says group enslaves Yazidis. *Daily Mail*. Retrieved January 12, 2024, from: <http://www.dailymail.co.uk/news/article-2790131/Islamic-State-magazine-says-group-enslaved-Yazidis.html>

¹⁷¹ Welch, T. (2018). Theology, heroism, justice, and fear: an analysis of ISIS propaganda magazine *Dabiq* and *Rumiyah*. *Dynamics of Asymmetric Conflict*, p. 186–198. Available at: <https://doi.org/10.1080/17467586.2018.1517943>

¹⁷² Lakomy, M. (2021). *Islamic State's online propaganda: A Comparative Analysis*. Routledge, p.208

legally and morally acceptable for a man to engage in sexual relations with his female slaves, like his relationship with his wives¹⁷³. In the document known as the "Question and Answer", which is believed to have been published by the "Research and Religious Regulations Department" of the Islamic State, ISIS regulated the scope and form of rape by referring to religious sources. According to the document, if the woman is a virgin, her master can have sex with her immediately after her acquisition. However, if she is not a virgin, her uterus must be cleaned prior to any sexual activity. The decisive factor is whether the female slave is pregnant, not whether she is married to another man¹⁷⁴. Therefore, ISIS enlisted their medical professionals, specifically gynecologists, to identify which of the captured women were still virgins¹⁷⁵. The document also regulates sex with prepubescent girls. One of the Fatwas in the document states that it is permissible to have sex with a slave woman who has not reached puberty if she is fit for sex; however, if she is not fit for sex, then it is enough to enjoy her without sex. ' It also stipulates the treatment of sexual slaves. It states that owners should 'show compassion' and 'be kind to their 'female prisoners' and not sell them to people who treat them badly or 'do what Allah has forbidden'. The ISIS pamphlet cynically adds that it is allowed to give a female slave a disciplinary beat, that a slave who flees from the master "is one of the most serious sins", and that "she should be punished in such a way that deter others like her from escaping"¹⁷⁶.

5.2.2 The slavery as a financial income

ISIS, which claims to be an Islamic state, has transformed sexual violence and slavery into sexual capital by integrating the norms of men's dominance and promoting men's dominance. During and after the genocide, the framework of slavery was an integral part of a unique political economy. This system encompassed the regulation of production,

¹⁷³ Gordon, M. & Editions Robert Laffont. (1989). *Slavery in the Arab world*. New Amsterdam Books, p.43

¹⁷⁴ Nicolaus, P., & Yuce, S. (2017). *Sex-Slavery: one aspect of the Yezidi genocide*. Iran and the Caucasus, 21(2), p.206. Available at: <https://doi.org/10.1163/1573384x-20170205>

¹⁷⁵ Shubert, A., & Naik, B. (2015). *ISIS 'forced pregnant Yazidi women to have abortions.'* CNN. Retrieved December 19, 2023, from <https://edition.cnn.com/2015/10/06/middleeast/pregnant-yazidis-forced-abortions-isis/index.html>

¹⁷⁶ Nicolaus, P., & Yuce, S. (2017). *Sex-Slavery: one aspect of the Yezidi genocide*. Iran and the Caucasus, 21(2), p.207. Available at: <https://doi.org/10.1163/1573384x-20170205>

control over reproductive resources, and the distribution of women's labour. The financial income derived from slavery during the Yazidi genocide reveals a dark aspect and economic strategy of the genocide. Some women are also sold to people in Syria, Saudi Arabia, Egypt, Qatar, Tunisia, and other countries, which illustrates the transnational dimensions of this reproaching trade. This severe reality reveals that the genocide in Yazidi is not only a humanitarian tragedy, but also a financial crime that adds another layer of horror to an already devastating situation.

In 2014, more than 6,500 Yazidi women and children were taken captive and forced to be slaves¹⁷⁷. They were separated according to their age, beauty and marital status¹⁷⁸. The main basis for the categorisation of Yazidi women into groups is related to the monetary value of these women. For example, ISIS also established price lists considering the appearance, age, and virginity of victims after their captivity. Some of them fetch up to 1,000 to 12,500 US dollars. The virginity of the slave was one of the most economically valuable elements of sexual capital. The testimony of a 17-year-old teenager revealed details of what she had suffered since her capture by ISIS forces in August 2014. Together with her 10-year-old sister, they were transferred from Sinjar to Raqqa, where they were examined along with dozens of other girls and women to confirm their virginity. She and other virgins were brought into a room and forty men were chosen. She and her 10-year-old sister and two other girls were purchased by a Chechen-born ISIS fighter¹⁷⁹. Zainab Bangura, the Special Representative of the Secretary General of the United Nations on Sexual Violence in Conflict, claims that ISIS forced Yazidi women and girls to undergo surgery to "restore their virginity" to resell again. It is also claimed that regional medical experts verified that before being married to ISIS fighters, victims subjected to sexual

¹⁷⁷ Nadia's Initiative. (2023). Call for input to report on contemporary forms of slavery as affecting persons belonging to ethnic, religious, and linguistic minority communities [Brochure]. Office of the United Nations High Commissioner for Human Rights. Retrieved from <https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/cfis/minorities/Submission-NADIA-Initiative.pdf>

¹⁷⁸ Commission of Inquiry, ISIS Crimes Against the Yazidis, 15 June 2016, A/HRC/32/CRP.2, p.10. See also, UNAMI, A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL, August 2016, pp.

¹⁷⁹ Hayder, L. M., Ab. Halim, A. H., Mohd Awal, N. A., & Hashim, F. Y. (2022). Yazidi Women and their Rape-Born Children: Outcasts of their Community and Iraqi Law. *Baltic Journal of Law & Politics*, 15(7), p.671. Available at: <https://doi.org/10.2478/bjlp-2022-007048>

enslavement underwent a surgical procedure with local anaesthesia, which involved the use of dissolvable stitches to "restore" the hymen¹⁸⁰.

Others were 'gifted' as war spoils to high-ranking ISIS fighters, such as high-ranking Emirs or Walis of certain areas, or mostly foreign ISIS fighters to attract 'new girls'¹⁸¹. All acts of genocide committed by ISIS against humanity were legitimised in advance through a series of religious and legal concepts, including sabaya (spoils of war). According to the Special Representative of the UN Secretary-General on Sexual Violence in Conflict, captured teen girls are trading for only 13 US dollars or sold for as little as a pack of cigarettes. Therefore, ISIS adopted a unique political economy, including control of production, reproductive resources, and the allocation of women's labour¹⁸². This horrible practice serves a dual purpose: not only does it contribute to the financial benefits of those involved in the massacre, but it also attracts recruits by providing incentives to captive women and girls. This perverse economic situation highlighted the disturbing intersection of violence, economics, and recruitment tactics in this dark period.

However, others, especially older and married women with children, were quickly identified as non-virgins and ISIS gave priority to the sexual exploitation of virgin and beautiful women and girls¹⁸³. As a second step, they were held in a poorly ventilated prison for a while, and then transferred to the Sabaya markets from the holding points to be sold with their children. Especially those who had no economic value as slaves, such as the older and less beautiful, were sold to the local Sunni community, where they worked as household or agricultural workers and sexual slaves¹⁸⁴. Furthermore, the

¹⁸⁰ Nicolaus, P., & Yuce, S. (2017). Sex-Slavery: one aspect of the Yezidi genocide. *Iran and the Caucasus*, 21(2), p.200. <https://doi.org/10.1163/1573384x-20170205>

¹⁸¹ Smith, S. (2015). ISIS sells sex slave girls for "as little as a pack of cigarettes" to attract foreign jihadis with "New girls," UN envoy warns. *The Guardian*. Retrieved February 12, 2024, from: <https://www.christianpost.com/news/isis-sells-sex-slave-girls-for-as-little-as-a-pack-of-cigarettes-to-attractforeign-jihadis-with-new-girls-un-envoy-warns-140176/>

¹⁸² Smith, S. (2015). ISIS sells sex slave girls for as little as a pack of cigarettes' to attract foreign jihadis with "new girls", UN envoy warns. *The Guardian* Retrieved February 12, 2024, from: <https://www.christianpost.com/news/isis-sells-sex-slave-girls-for-as-little-as-a-pack-of-cigarettes-to-attractforeign-jihadis-with-new-girls-un-envoy-warns-140176/>

¹⁸³ Vale, G. (2020) 'Liberated, not free: Yazidi women after Islamic State captivity,' *Small Wars & Insurgencies*, 31:3, p.519. Available at: <https://doi.org/10.1080/09592318.2020.1726572>

¹⁸⁴ Nicolaus, P., & Yuce, S. (2017). Sex-Slavery: one aspect of the Yezidi genocide. *Iran and the Caucasus*, 21(2), p.199. Available at: <https://doi.org/10.1163/1573384x-20170205>

commercial process continued regularly until the sale was completed. Considering that a fleet of buses was used for their transport during each trade process, it is also clear that this illegal human trafficking benefited the local economy. Since slave sales are one of ISIS's important sources of income, the sales processes are coordinated in a planned manner. According to the FIDH report, several ISIS "markets" emerged in the applications of Internet and telephone communications, such as telegrams and signals, including the Caliphate Market, the Grand Islamic State Market, the Okaz Souq and the Al-Muwahhideen Market. These markets enabled ISIS fighters to demand purchases or sales from cars to weapons, women and children. In the online marketplace, women were sold as objects of merchandise. ISIS militants describe the specifications of enslaved women, such as how many times they were bought before, talkative, obedient, and sexually pleasant with posting pictures of their captives. Usually, ISIS typically does not indicate a specific asking price in their listing; instead, they specify a starting price from which the bidding process begins¹⁸⁵.

Meanwhile, family members of captives have also desperately bargained with ISIS militants to 'buy back' their sisters, wives, and children through a well-established network of intermediaries and people smugglers. The ransom of children and women costs a few thousand dollars, depending on their age and, in the case of women, their "beauty." Families would have to pay about \$20,000 for young women with high "market value" in the ISIS slave markets. Ameena Saeed Hasan, a civilian activist for the rights of Yazidi women, said ISIS kidnapped more than 6,000 women and children and sold them on slave markets¹⁸⁶. UN Secretary-General Ban Ki-Moon has also expressed concerns that ISIS earned a minimum of \$45 million through the trafficking of women and girls exclusively in 2014¹⁸⁷. In addition, Nuri Osman, the Special Coordinator for Yazidi refugees in the Kurdistan Regional Government (KRG), the KRG assisted by either aiding the escape of victims or, in certain cases, providing a form of ransom. Osman

¹⁸⁵ International Federation for Human Rights. (2018). Iraq (Report No. 723), pp. 23-25. Retrieved February 13, 2024, from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

¹⁸⁶ United Nations. (2016, June 8). Security Council ISIL sanctions committee adds one name to sanctions list, amends two entries. Retrieved from <https://press.un.org/en/2016/sc12647.doc.htm>

¹⁸⁷ Middle East Monitor. (2016). UN: Daesh earned \$45m in ransoms from Yazidis in 2014. Middle East Monitor. Retrieved February 13, 2024, from: <https://www.middleeastmonitor.com/20160603-un-daesh-earned-45m-in-ransoms-from-yazidis-in-2014/>

stated that different amounts were paid, such as \$20,000 for five women in a rescue operation, and the overall sum paid amounted to approximately \$1.5 million¹⁸⁸. Meanwhile, local activists and civil society organisations have initiated various fundraising campaigns to assist families in "redeeming" their captured relatives. For example, Steve Maman, a businessperson from Montreal-Canada, had raised \$200,000 for the ransom of enslaved children and women, leading the Canadian press to promptly label him a "Jewish Schindler"¹⁸⁹."

Realising that kidnapping people from ISIS-controlled areas is much more profitable than other smuggling businesses, human traffickers, and ISIS militants quickly created a wide network. Some ISIS militants also directly reached the families of their captives, intending to release their victims back to them in exchange for sums that sometimes reached tens of thousands of dollars. One of the Yazidi men named Shadi said: 'My sister had been transported to Syria, and the person who claimed ownership reached us via WhatsApp in December 2015. We had a conversation with the militant ISIS who had taken her and he expressed the desire to sell it back to us for \$5000. I agreed with this agreement and kept in touch for three months. In 2016, however, he began to compensate for the price: It went from \$6,000 to \$9000, then \$10000, then \$11500 and finally \$13000. I accepted each increase and treated it like an auction. We asked him to bring my sister to Raqqa so that someone could retrieve her from there. Unfortunately, he never appeared and all communication was lost afterward¹⁹⁰.'" Many families have faced the daunting task of raising significant amounts of money to ensure the release of their loved ones who have been captured by ISIS. Even if families can collect funds for the ransom of their loved ones, they are often faced with ethical dilemmas related to the allocation of limited resources between ransom payments and other urgent needs. For example, they must make decisions, such as determining which family member to release if several are held

¹⁸⁸ Rudaw. (2014, November 5). Official on how Erbil helped bring back 234 captive Yezidis. (2014, November 5).. <https://www.rudaw.net/english/interview/05112014>

¹⁸⁹ CBC Radio. (2015, August 19). Steve Maman: The 'Jewish Schindler' working to rescue young women taken by ISIS as slaves. As It Happens. Retrieved from <https://www.cbc.ca/radio/asithappens/as-it-happens-wednesday-edition-1.3196252/steve-maman-the-jewish-schindler-working-to-rescue-young-women-taken-by-isis-as-slaves-1.3196699>

¹⁹⁰International Federation for Human Rights. (2018). Iraq (Report No. 723), p.27 Retrieved from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

by IS, whether to allocate limited funds to pay a smuggler to reach Europe for the safety of their children, or whether the funds should be used to ransom a sister or aunt¹⁹¹. The economic cost, together with emotional and psychological trauma, underlines the serious challenges facing those trying to find their kidnapped relatives.

In response to these rescue efforts, ISIS executed the captive fugitives and banned the sale of slaves outside their territory, which was likely to be liberated. In addition, they implemented a database containing personal information and photographs of their detainees and shared these data with ISIS checkpoints. This has become an additional hurdle for those seeking to break free from their seemingly insurmountable ordeal¹⁹². Mirza Dinnayi, a Yezidi activist and medical doctor, said that in the past, our girls used to escape and were brought out through smuggling networks, which was not costly as you only had to pay those involved. However, escape is no longer an option. The girls are now seriously psychologically damaged, and many people are convinced that all Yezidis were killed or Islamized. They are subjected to brainwashing and are unable to be liberated. In addition, ISIS has established a special Sharia Court in the past year to register all slaves on behalf of their owners. This means that if a girl manages to escape, any checkpoint would be able to identify and return her to her designated owner”. Dinnayi also stated that an alternative approach involves exchanging captives for fighters, and the PKK has employed this method on two or three occasions, obtaining the release of 30 to 50 girls with each fighter exchanged¹⁹³.

5.2.3 Women genocide by forced marriage and captivity

In Sharia law, it was prohibited for a Muslim to subject a fellow believer to slavery; this practice was reserved exclusively for pagans and nonbelievers. Furthermore, the conversion of a slave to Islam does not change the status of a slave under Islamic

¹⁹¹ Brizić, K., Grond, A., Osztovcics, C., Schmidinger, T., & Six-Hohenbalken, M. (Eds.). (2016). Şingal 2014: Der Angriff des „Islamischen Staates“, der Genozid an den Êzîdî und die Folgen. Wiener Jahrbuch für Kurdische Studien, p.37

¹⁹² Nicolaus, P., & Yuce, S. (2017). Sex-Slavery: one aspect of the Yezidi genocide. *Iran and the Caucasus*, 21(2), p.209. Available at: <https://doi.org/10.1163/1573384x-20170205>

¹⁹³ Neurink, J. (2016, July 8). Too difficult and expensive: Rescuing Yezidi women from ISIS almost impossible. *Rûdaw*. Retrieved February 22, 2024, from: <https://www.rudaw.net/english/interview/07082016>

law. Consequently, Yazidi women and girls were essentially regarded as sexual goods and they had to be presented to their owners, within certain limits. Furthermore, Islamic law regulates the prohibition of marriage. Muslims could not legally marry their slaves without emancipating them. Furthermore, according to Islamic law and customs, the lineage associated with slavery, even if only through the mother, was considered a disdain and considered a source of shame¹⁹⁴. The position of ISIS on marriage to slaves seems to be diverse. Although most of the Yazidi victims, as well as the Yazidi community, describe forced sexual intercourse as 'marriage', with a few exceptions, none of the victims were legally married to ISIS 'owners'. In addition to considering the legal marriage to a slave as a source of humiliation and shame, the legal marriage documentation and the designation as an 'ISIS wife' provided protection and respect to the woman. Due to the complete 'conversion' and legal 'commitment,' a legally married woman was not subjected to being sold but rather was regarded as an essential and equal member of his IS family. Therefore, most of the ISIS fighters did not also marry their slaves to continue their control on them as an 'owner'¹⁹⁵.

5.2.4 Women Genocide by imposing measures aimed at preventing births within the group

According to Islamic law, men are considered legally and morally allowed to have sexual relations with their female slaves, as they are with their women. The descendants resulting from such relationships, provided that the father recognises paternity, usually take the social status of the father. Furthermore, according to Islamic law, slave owners have extensive control over the sexual and reproductive aspects of slaves. The owner had remarkable sexual privileges with female slaves and kept the children born in these associations in his family group for their collective benefit. In other words, the child has the same status as the other children born to his free women in the family. On the other hand, according to Islamic law, the slave mother earns the name Umm Walad (mother of the child) and has a special relationship with her master. As a result, she cannot be sold

¹⁹⁴ Gordon, M. & Editions Robert Laffont. (1989). *Slavery in the Arab world*. New Amsterdam Books, pp.27-64

¹⁹⁵ Vale, G. (2020) 'Liberated, not free: Yazidi women after Islamic State captivity,' *Small Wars & Insurgencies*, 31:3, p.525. Available at: <https://doi.org/10.1080/09592318.2020.1726572>

or rejected by him, and she is freed after his death¹⁹⁶. For exactly this reason, many Yazidi women were forced to have abortions due to their free status in case of pregnancy and the birth of a child belonging to an ISIS member. Forcing abortions under unsanitary conditions seriously endangered the lives of Yazidi women and girls¹⁹⁷. Bushra, one of the victims of the genocide, stated in an interview that one of her friends was about three months pregnant, but despite this, she was taken to another room and two doctors performed an abortion. Then they returned to his friend. She said the abortion caused severe burns and her friend was in such pain that she could not even talk or walk¹⁹⁸. In addition, in most of the statements made by the delegation of the International Federation of Human Rights (FIDH), Yazidi women reported that their abductors had forced them to take contraceptives alongside other forms of contraception¹⁹⁹.

5.2.5 Women genocide by forced impregnation and births resulting from rape

As ISIS began to see the generation of slave babies as a very important tool to maintain its ideology and pass it on to future generations, ISIS adopted the strategy of controlling the reproductive systems of enslaved Yazidi women and girls. This strategy means a constant supply of slave babies which will grow up under the ISIS ideology. In Susan Brownmiller's view, rape within the context of slavery functions as an institutional crime to subjugate a community for economic and psychological advantages. This exploitation targets individuals as both reproducers and laborers²⁰⁰. This war tactic not only perpetuates the cycle of slavery, but also strategically integrates the offspring into the extremist group, shaping them through upbringing among its fighters, and allowing the genetic changes in the next Yazidi generation. Thus, ISIS aimed to exploit Yazidi women

¹⁹⁶ Gordon, M. & Editions Robert Laffont. (1989). *Slavery in the Arab world*. New Amsterdam Books, p.43-79

¹⁹⁷ Nicolaus, P., & Yuce, S. (2017). Sex-Slavery: one aspect of the Yazidi genocide. *Iran and the Caucasus*, 21(2), 196–229. <https://doi.org/10.1163/1573384x-20170205>

¹⁹⁸ Shubert, A., & Naik, B. (2015). ISIS 'forced pregnant Yazidi women to have abortions.' CNN. Retrieved December 19, 2023, from <https://edition.cnn.com/2015/10/06/middleeast/pregnant-yazidis-forced-abortions-isis/index.html>

¹⁹⁹ International Federation for Human Rights. (2018). *Iraq (Report No. 723)*, p. 30. Retrieved from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>

²⁰⁰ Brownmillet Susan, *Against Our Will: Men, Women, and Rape*, 1975 by Ballantine Books, New York, p.155

as incubators for 'true' ISIS members to replace Yazidis with individuals who share the ideology and culture of ISIS.

ISIS used forced impregnation as a weapon of war to erase the Yazidi identity of the women and left those victims with children belonging to their cultural group and descendants. In male-dominated societies, women are regarded as blank plates, which leads to the notion that women do not contribute to the genetic structure of children and that children belong only to their father. Thus, perpetrators, mothers and children perceive their offspring as members of the opposite group, regardless of their mother's identity, even if their children are raised and educated in their mother's ethnic or cultural community because of their patriarchal identity²⁰¹. ISIS claimed full property rights over the child born based on the patriarchal identities ascribed. As a result, ISIS recognised that all children born to Yazidi women in this case were considered descendants only of a Muslim father who was a member of ISIS. This belief comes from the fact that under Sharia law, women cannot pass on their rights regarding their surname, nationality, and nationality to their children. Moreover, the fundamental principle of the Yazidi identity transcends religious and social perspectives and is the conviction that the Yazidi person must be born to parents who agree with the Yazidi faith. According to the Yazidi faith, it is stipulated that women alone cannot transmit their nationality to their children. Furthermore, both individual Yazidi survivors and the entire Yazidi community at large will suffer the trauma of having to endure the legacy of attempts by the Islamic State to destroy their collective existence. Consequently, the strategy of raping Yazidi women and girls and forcing them to give birth to children born out of rape was a broader strategy of collective destruction of the Yazidi community.

5.2.6 Rape and sexual crimes in regard of root and branch genocide

One of the world's leading genocide experts, Adam Jones, introduced the concept of root-and-root genocide. In this framework, the "root" represents the birth mother and the

²⁰¹ Almohammad, A. (2018). ISIS Child Soldiers in Syria: The Structural and Predatory Recruitment, Enlistment, Pre-Training Indoctrination, Training, and Deployment. International Centre for Counter-Terrorism. ICCT. ISSN: 2468-0656, Retrieved May 2, 2024, from: <https://icct.nl/app/uploads/2018/02/ICCT-Almohammad-ISIS-Child-Soldiers-In-Syria-Feb2018.pdf>

"basic" the child. Unlike traditional theories of genocide directed at the entire adult male population, Jones expanded the scope to those who were responsible for the birth of new members of the community. The term refers not only to men, but also to women, who contribute to the continuity of the group, to a comprehensive genocidal impulse. Jones argues that the goal of the root-and-branch genocide goes beyond immediate extermination and seeks to eliminate the emerging generation and anticipate potential resistance in the future. In addition, Jones notes that gender-based genocides often involve more atrocities against women, such as conjugal and slave slavery, thereby providing a comprehensive understanding of the multifaceted nature of such violent acts²⁰².

Men with gender based on gender often lead to a demographic imbalance with a higher proportion of surviving women than men, as seen in cases such as Iraq, Guatemala and Rwanda. When we take into account the deaths of men and women in the massacre in Yazidi, the number of men is much higher than the number of women. Furthermore, the deliberate separation of children and women from their families during the occupation of the Yazidi territories and the indiscriminate execution, execution and burning of Yazidi men underline the calculation of this violence. The genocide of the Yazidi men was planned without any chance of survival. The number of Yazidi men killed reflects clearly the intention to eliminate the male population and prevent the emergence of new generations within the Yazidi community. Furthermore, many survivors of surviving Yazidi women described how their brothers, fathers, and husbands were special targets during the genocide. Their accounts also prove that ISIS aims to physically eliminate the Yazidi male population and the next generation that will be born from Yazidi men. Therefore, data on disproportionate male mortality are so valuable to associate the root-branch genocide and the Yazidi genocide committed by ISIS.

Although gendercide targeting men often caused a demographic imbalance, ISIS also perceived this demographic shift as a threat because they feared that the growing Yazidi female population, if allowed to raise Yazidi children according to Yazidi identity and religion, the new generation might seek revenge in the future. Despite these concerns,

²⁰² Jones, A. (2010). *Genocide: A Comprehensive Introduction*. (2nd ed.). Routledge, London, p.3

ISIS opted to physically preserve Yazidi women and girls rather than outright kill them, primarily due to the perceived value of these women as slaves and concubines. The strategic decision to preserve women was logical for the ideology of ISIS, as ISIS, which radically practises Islamic rules, considers that slavery gives kuffar or nonbelievers the opportunity to convert as a part of Jihad. ISIS also consistently emphasised that they were waging jihad against the kuffar (kafir) and justified the enslavement of these individuals as their rightful and legitimate prerogative. In particular, in the Yazidi religion and tradition, religious conversion is strictly prohibited. If a Yazidi converts to another religion, that person and his/her future generation are never considered Yazidis. Therefore, the conversion of Yazidi women and children to Islam also served to destroy Yazidis as part of the ethnic cleansing policy. Therefore, the survivor of the women was no longer a threat to them. Consequently, ISIS proclaimed that Yazidi women and children should be forced to convert to Sunni Islam or be killed in August 2014²⁰³. After this proclamation, Yazidi children and women were systematically forcibly transferred from their own families to be separated from Yezidism and their cultural roots.

According to Islamic law, Islam considers slavery an opportunity to convert non-Muslims, and the master was often responsible for providing religious instructions to their slaves²⁰⁴. Therefore, ISIS states that Sharia law allows ISIS fighters, as an owner of slavery, to retain control over Yazidi women and girls and exploit their services. During the genocide, ISIS strongly supported the conversion policy and successfully forced almost all Yezidi slaves to convert to Islam. It should be considered that conversion is born of coercion rather than true faith. Therefore, Yazidi women and girls were forced to pray in Arabic every day. Those who did not obey were subjected to severe physical violence or killed. Many survivors of Yezidi women describe the brutal attempts made by their tormentors to force them to become faithful Muslims. ISIS fighters prayed before or after committing sexual violence, claiming that they were saving victims' souls by forced conversion²⁰⁵. 'Every time he came to rape me, he was praying', 15-year-old F.,

²⁰³ Eriksson, J., & Khaleel, A. (2018). *Iraq after ISIS: The Challenges of Post-War Recovery*. Palgrave Pivot, p.20-21

²⁰⁴ Gordon, M. & Editions Robert Laffont. (1989). *Slavery in the Arab world*. New Amsterdam Books, p.28

²⁰⁵ Nicolaus, P., & Yuce, S. (2017). *Sex-Slavery: one aspect of the Yezidi genocide*. *Iran and the Caucasus*, 21(2), p.204. Available at: <https://doi.org/10.1163/1573384x-20170205>

who was captured on the shoulder of Sinjar Mountain and sold to an ISIS fighter, said in an interview with *The New York Times*²⁰⁶. A 12-year-old girl, one of the victims of the genocide, also said in an interview with the *New York Times* that the man (ISIS fighter) would kneel in prayer both before and after raping her, considering the rape as a way to "draw closer to God"²⁰⁷.

ISIS sought to ensure its future stability and eliminate potential bearers of the new Yazidi generation by specifically targeting Yazidi women and children. Therefore, the involvement of child soldiers was an indispensable opportunity to expand the pool of radical recruits and pass on the group's ideology to succeeding generations. Despite the prohibition of recruiting and employing child soldiers under the Rome Statute of the International Criminal Court, kidnapped children have been enlisted and trained according to their abilities. Beyond military training, Yazidi boys aged 7 to 15 years underwent systematic religious and moral indoctrination. This indoctrination served as a critical tool for suppressing Yazidi children, since eradicating the Yazidi generation also laid the groundwork for future potential genocides against Yazidi communities. Consequently, ISIS actively promoted the indoctrination of Yazidi children, using them as suicide bombers in the aftermath of war. The systematic abuse of Yazidi children has caused lasting trauma to many due to direct violence by their instructor and exposure to battlefield brutality²⁰⁸. Due to the limited available information, it is still difficult to estimate the number of boys educating the ISIS ideology and forces.

5.3 Trauma and Psychological Effects of Sexual Violence

The main reason why sexual violence against women is often used systematically during genocide is to inflict trauma on the civilian population and eliminate the targeted group by violating individual members, because war and atrocities in the context of genocide

²⁰⁶ Callimachi, R., (2015). ISIS Enshrines a Theology of Rape. *The New York Times*. Retrieved from <https://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html>

²⁰⁷ Heideman, H. E. a. K., & Heideman, K. (2015). ISIS's brutality toward women and girls—and how to help the victims. *WSJ*. Retrieved April 3, 2024, from: <https://www.wsj.com/articles/BL-WB-57323>

²⁰⁸ Almohammad, A. (2018). ISIS Child Soldiers in Syria: The Structural and Predatory Recruitment, Enlistment, Pre-Training Indoctrination, Training, and Deployment. *International Centre for Counter-Terrorism*. ICCT. ISSN: 2468-0656, p.30-33. Retrieved May 2, 2024, from: <https://icct.nl/app/uploads/2018/02/ICCT-Almohammad-ISIS-Child-Soldiers-In-Syria-Feb2018.pdf>

have adverse impacts on survivors at both individual and collective levels. Especially, experiencing various traumatic events during periods of genocide, such as witnessing extreme violence, disappearance, and loss of family members, sexual violence, humiliation, torture, starvation, denial of basic medical and sanitary needs, imprisonment, rape, and abduction, can have psychological consequences²⁰⁹.

Many researchers conducting studies on survivors of genocide in the Middle East indicate that individuals continue to experience various mental health conditions for years and even decades after genocide campaigns²¹⁰. More than nine years have passed since ISIS invaded Yazidi lands until today; however, the impact of the Yazidi genocide still exists. Many victims lead their broken lives with the deep sorrow of losing their family members and being displaced.

In addition, the trauma of displacement extended beyond physical effects of genocide and affected survivors and Yazidi community at a deeply emotional level, navigating the challenges of adapting to new environments while confronting the trauma of the genocide that have destroyed their lives. For example, more than 360,000 Yazidis residing in internally displaced camps in the Kurdistan region of Iraq (KRI) are facing a difficult life and lack of adequate humanitarian assistance. The severe conditions in temporary refugee shelters and camps exacerbated the suffering and trauma. The living conditions of the Yazidis who lived in tent camps were traumatic. Especially during the scorching summer months, limited electricity and access to clean drinking water were a serious challenge. In addition, the deterioration of the sanitation conditions in the camps has resulted in outbreaks of diseases such as diarrhea, respiratory infections, and skin diseases²¹¹. Moreover, approximately 25,000 Yazidis who arrived in Turkey settled in municipal

²⁰⁹ Ibrahim, H., Ertl, V., Catani, C., Ismail, A. A., & Neuner, F. (2018). Trauma and perceived social rejection among Yazidi women and girls who survived enslavement and genocide. *BMC Medicine*, p.2. Available at: <https://doi.org/10.1186/s12916-018-1140-5>

²¹⁰ Tekin, A., Karadağ, H., Süleymanoğlu, M., Tekin, M., Kayran, Y., Alpak, G., & Şar, V. (2016). Prevalence and gender differences in symptomatology of posttraumatic stress disorder and depression among Iraqi Yazidis displaced into Turkey. *European Journal of Psychotraumatology*, 7(1). Available at: <https://doi.org/10.3402/ejpt.v7.28556>

²¹¹ Khoudeida, L. & Global Yazidi Organisation [Yazda]. (2017). An Uncertain Future For Yazidis : A Report Marking Three Years Of An Ongoing Genocide. <https://www.yazda.org/>. https://irp.cdn-website.com/16670504/files/uploaded/Yazda_Publication_2017-09_Report3YearsOngoingGenocide_28062021_Download_EN_vf.pdf

camps located in Şırnak, Siirt, Batman, Mardin, and Diyarbakır. Following the removal of the region from ISIS, some Yazidis returned, while others migrated to different countries. Ultimately, around 1,500 Yazidis who remained in Diyarbakır were transferred to the camps of the Emergency Management Authority (AFAD) in the Midyat District of Mardin after trustees were appointed to municipalities. In 2015, half of the 31,000 Iraqi refugees who sought asylum in Germany were Yazidis. Subsequently, 37,000 Yazidis migrated to Germany in 2016, and 11,000 in 2017²¹².

In 2015, a study on post-traumatic stress disorder was conducted in Iraqi Yazidis living in a refugee camp built by the local municipality in the Cizre district of Turkey, close to the Iraqi border. Research entitled “Prevalence and gender differences in symptomatic PTSD and depression among Iraqi Yazidis displaced in Turkey” provides valuable insights into the mental health dynamics of Yazidi refugees, especially those residing in Turkish refugee camps²¹³. The study showed a significant gender imbalance, with a higher prevalence of post-traumatic stress disorders (PTSD) and major depression among women than among men. In particular, women reported a greater vulnerability to war-related events, including in areas affected by the war, witnessing weapons attacks, handling bodies outside funerals and witnessing physical injuries. In the study, women with depression were more likely to express guilt and worthlessness than men, especially those with dissociative depression. The prevalence of such emotional burdens is related to the nature of traumatic events. In the study, the number of women in the PTSD and depression groups who witnessed or reported the death of their husbands or children are higher than men. While the trauma of killing during war seems to be more common among children and men, women, especially those suffering from PTSD, are more exposed to terrorist attacks and torture due to factors such as the loss of family members or “survivor guilt” due to the loss of others. Based on the clinical interview, prevalence rates of 43% for post-traumatic stress disorder (PTSD) and 40% for major

²¹² Bozarslan, M. (2018, August 4). Türkiye’ye ‘Ezidi Soykırımı’ nı tanıma çağrısı. VOA Türkçe. Retrieved January 20, 2024, from: <https://www.voaturkce.com/a/turkiye-ye-ezidi-soykirimini-tan%C4%B1ma-cagrisi/4513818.html>

²¹³ Tekin, A., Karadağ, H., Süleymanoğlu, M., Tekin, M., Kayran, Y., Alpak, G., & Şar, V. (2016). Prevalence and gender differences in symptomatology of posttraumatic stress disorder and depression among Iraqi Yazidis displaced into Turkey. *European Journal of Psychotraumatology*, p.6. Available at: <https://doi.org/10.3402/ejpt.v7.28556>

depression are identified among Yazidis displaced to Turkey. These findings emphasise the complex interaction between sex, traumatic experiences, and mental health outcomes among Yazidis displaced in Turkish refugee camps²¹⁴.

Moreover, the systematic use of rape caused injuries in both genital and non-genital regions experienced by survivors. One of the cruellest and strategic practices is the slave market and the subjection of women to virginal surgeries. ISIS stripped the Yazidi victims naked and categorised them before trading them in slave bazaars' and shipping them to other provinces. The suffering these women and girls endure is an atrocity beyond humanity. Some Yazidi women underwent surgery for hymen reconstruction procedures before being resold. Zainab Hawa Bangura, a United Nations representative, also revealed that ISIS militants had forced a sexual slave to undergo surgery to restore her virginity each time she was married to 20 fighters²¹⁵. The UN report additionally mentioned that in February ISIS fighters were seeking medical assistance to enhance their sexual performance, subjecting their spouses and slaves to 'harsh, aberrant' sexual acts, as reported by local physicians.

5.3.1 Psychological burden of sexual violence

ISIS has formalised sexual violence, specifically rape and slavery, and the brutalisation of women as a central element of their ideology and operations, employing it as a tactic of terrorism to advance their primary strategic goals. The systematic use of rape and sexual violence has profound implications for the social, psychological, and physical well-being of individuals. Many individuals were subjected to fatal beatings or gunfire after experiencing sexual assault, with some victims pleading with their assailants to end their lives. Hundreds of Yazidi women killed themselves in ISIS captivity as a last

²¹⁴ Tekin, A., Karadağ, H., Süleymanoğlu, M., Tekin, M., Kayran, Y., Alpak, G., & Şar, V. (2016). Prevalence and gender differences in symptomatology of posttraumatic stress disorder and depression among Iraqi Yazidis displaced into Turkey. *European Journal of Psychotraumatology*, p.7. Available at: <https://doi.org/10.3402/ejpt.v7.28556>

²¹⁵ Dore, L. (2015, May 11). A woman was forced to “restore her virginity” 20 times after abuse before marriage to Isis fighters | The Independent. The Independent. Retrieved May 13, 2024, from: <https://www.independent.co.uk/news/world/middle-east/a-woman-was-forced-to-restore-her-virginity-20-times-after-abuse-before-marriage-to-isis-fighters-10238357.html>

resort²¹⁶. The trauma of rape also continued after the liberation of Yazidi women. Yasmin, a 17-year-old Yazidi girl, thought she heard the voices of ISIS fighters in an Iraqi refugee camp where she stayed soon after her rescue and, fearing she would face rape and abuse again, poured gasoline on herself and lit a match²¹⁷.

Yazidi women and girls who escaped from the hands of ISIS fighters bravely exposed the painful torture they suffered during their captivity, including systematic rape and sexual slavery. These survivors desperately need essential health care, counselling, and various support services to help them recover from the traumatic experiences they have faced. Although the Kurdish authorities took their needs seriously, unfortunately, in 2016 some unmarried women and girls were subjected to what Human Rights Watch described as "virginity tests" - a procedure considered abusive and inaccurate²¹⁸. The examination was carried out as part of a post-rape forensic assessment. Rothna Begum, a researcher in the Women's Rights Division of HRW, highlighted the abuse of these tests in a recent dispatch report. Although these tests were conducted to collect evidence for Iraqi courts, they raised concerns about the well-being and dignity of survivors on their journey to recovery. In particular, the World Health Organisation also clearly declared that "virginity tests" lack scientific validity. These tests rely on a widely held but erroneous assumption that all women and girls who are virgins possess intact hymens that bleed during their first sexual encounter. Consequently, these tests are ineffective in accurately determining whether a woman or a girl has experienced sexual assault. In addition, the practice can cause pain and replicate the initial act of sexual violence, intensifying survivors' feelings of disempowerment and leading to revictimisation due to its absence of clinical justification. Another point to consider is that treatments such as the virginalist test also deepen social trauma and lead to stigmatisation among the Yazidi community. Therefore, some of them who were raped or, in other words, could not 'prove' their virginity had

²¹⁶ Shubert, A., & Naik, B. (2015). Hundreds' of Yazidi women killing themselves in ISIS captivity. CNN. Retrieved November 5, 2023, from <https://edition.cnn.com/2015/10/05/middleeast/yazidi-women-suicide-in-isis-captivity/index.html>

²¹⁷ NDTV.com. (2016.). Fearing Rape Again By ISIS, She Burnt Herself To Become 'Undesirable'. [online] Retrieved May 28, 2024, from: <https://www.ndtv.com/world-news/fearing-rape-again-by-isis-men-she-burnt-herself-to-become-undesirable-1449535>

²¹⁸ United Nations (2018). 'Virginity testing': a human rights violation, with no scientific basis - UN. [online] UN News. Available at: <https://news.un.org/en/story/2018/10/1023401>.

undergone surgery to 'restore' their virginity due to fears that they would be rejected by future husbands²¹⁹. Fortunately, the Kurdish authority has stopped asking Yazidi survivors to undergo "virginity tests". Instead, the Dohuk Department of Health has implemented a new report on sexual violence examination, in line with UN recommendations and in accordance with principles and best practices in human rights²²⁰. In wars and genocides, many survivors of sexual violence are vulnerable to sexually transmitted infections (STIs) in general and HIV in particular. Regardless of the exact prevalence of HIV/AIDS, the risk of transmission is a legitimate concern in any case of unprotected sexual activity. This risk is heightened in the context of wartime rape, in which band rape is widespread and the violent nature of such acts often leads to vaginal tears and fractures, further increasing the risk of HIV transmission²²¹. However, there is no adequate study on HIV transmission among enslaved Yazidi women and girls. Additionally, in the patriarchal context, societal norms that place the burden of shame on the victim rather than the perpetrator contribute to a culture of silence surrounding sexual assault. Therefore, patriarchal society-raped women often hesitate to talk about sexual health, including the risk of HIV because they feel a sense of shame. Fear of rejection, isolation, or endangerment will further compel survivors to keep silent about their experiences, including concerns related to HIV.

5.3.2 Children as silent witnesses

ISIS has also systematically used sexual violence as a weapon against Yazidi children. Girls were victims of mass rape, sexual slavery, torture, forced imprisonment, and infanticide. The impact on the mental health of female survivors includes post-traumatic stress disorders, depression and other serious physical and mental health effects. In addition, there are Yazidi children who have indirectly encountered sexual violence by

²¹⁹ Dearden, L. (2015, April 27). Yazidi sex slaves undergoing surgery to “restore virginity” after being raped by Isis militants | The Independent. The Independent. <https://www.independent.co.uk/news/world/middle-east/yazidi-sex-slaves-undergoing-surgery-to-restore-virginity-after-being-raped-by-isis-militants-10207352.html>

²²⁰ Human Rights Watch. (2016). Dispatches: ‘Virginity Testing’ to End for Yazidi Rape Survivors. [online] Available at: <https://www.hrw.org/news/2016/01/27/dispatches-virginity-testing-end-yezidi-rape-survivors>.

²²¹ Klot J, DeLargy P. (2007). Sexual violence and HIV/AIDS transmission. *Forced Migration Review* ;27: pp.23-24.

watching the rape of their mothers and/or other family members. There is no accurate date showing the numerical count of children exposed to second-hand sexual violence through family trauma. This is especially plausible, since numerous assaults occurred within the holding sites during captivity, a period when children were likely present. In 2021, Save the Children in Iraq began a research project aimed at examining the consequences of the 2014 genocide on young children and understanding how it has shaped their childhood experiences in the eight years that followed. Save the Children conducted interviews with 33 caregivers (comprising 17 women and 16 men) and engaged with 117 children (including 58 girls and 59 boys). These children commonly expressed feelings of fear related to ISIS and other armed groups, as well as destruction of their homes, bombings, kidnappings, forced recruitment into the military, loss of family members, separation from their families and neighbours, lack of safe water and insufficient access to adequate food. Children's fears are widespread, affecting all aspects of their childhood experiences²²². It is also important to note that children may also be affected by the impact of genocide on the mental health of their caregivers and adults in their environment. Children are keen observers, and they tend to absorb the trauma experienced by their parents, often described as “reserves for parents' trauma”. The effects of intergenerational trauma can last decades, not only forming the experiences of children's childhoods, but also affecting their ability to adapt and contribute to their communities. This affects how they will care for their children in the future.

5.3.3 Consequences of forced pregnancies

Yazidi women and girls experienced systematic and direct abuse and atrocities, leading to a traumatic experience of the conception and birth of children who were raped by their rapists. In addition, pregnancy, labour and birth can pose a serious threat to the health of women.

Women are exposed to various risks during pregnancy and birth. Girls are at risk during pregnancy because their bodies are not developed enough to cope with the challenges of labor and birth, as well as women with serious pelvic injuries caused by rape (Harvard

²²² Vogel, L. (2016). Why are doctors joining ISIS? Canadian Medical Association Journal, p.3 Available at: <https://doi.org/10.1503/cmaj.109-5217>

Humanitarian Initiative, 2010). Additionally, these children often lack adequate maternal care and women can resort to unsuccessful attempts to end pregnancy²²³. In the aftermath of the 1994 Rwandan genocide, while certain women lost their lives during the process of giving birth, numerous others endured non-fatal complications. A significant number of women experienced discharge from involuntary urine or stool due to the formation of fistulas. Fistulas were a widely acknowledged complication arising from prolonged or obstructed labour²²⁴.

On the other hand, the child who was conceived by rape was often carried by a mother who experienced physical and psychological trauma and likely suffered permanent serious stress. This increased stress causes high levels of cortisol, which is associated with the risk of post-traumatic stress disorders (PTSD) and effects in the uterus. The severity of symptoms of maternal PTSD is associated with the child's levels of cortisol, regardless of the period of pregnancy in which the trauma occurred. Trauma caused by the mother can result in the mother's rejection, resulting in the child's malnutrition and resistance to medical treatment. Furthermore, research shows lasting effects on the physical, emotional, and cognitive development of children from chronic maternal anxiety, depression, and stress during pregnancy and postpartum²²⁵.

ISIS systematically forced Yazidi women to abort as a means of subjecting them to slavery. Therefore, the health of Yazidi women has been seriously compromised, especially with abortions performed in unhealthy conditions. The health risks associated with unsafe abortion include mainly incomplete abortion (inability to completely remove pregnancy tissue from the uterus), excessive bleeding (haemorrhage), infection, perforation of the uterus (resulting from perforation of the uterus by a sharp object), and

²²³ Van Ee, E., & Kleber, R. J. (2013). Growing Up Under a Shadow: Key issues in Research on and treatment of Children born of Rape. *Child Abuse Review*, 22(6), p.389. Available at: <https://doi.org/10.1002/car.2270>

²²⁴ Now, the world is without me: An investigation of sexual violence in Eastern Democratic Republic of Congo - Democratic Republic of the Congo. (2010, April 8). ReliefWeb, p.41-42. Retrieved May 20, 2024, from: at: <https://reliefweb.int/report/democratic-republic-congo/now-world-without-me-investigation-sexual-violence-eastern>

²²⁵ Van Ee, E., & Kleber, R. J. (2013). Growing Up Under a Shadow: Key issues in Research on and treatment of Children born of Rape. *Child Abuse Review*, 22(6), p. 390. Available at : <https://doi.org/10.1002/car.2270>

damage to the genital ducts and internal organs by the introduction of hazardous objects into the vagina or anus, and the inability to become pregnant again²²⁶. This cruel practice not only threatens the physical well-being of the women and girls involved, but also causes lasting emotional and psychological trauma. The forced abortion is part of a wider campaign of genocide and atrocities aimed at destroying and suppressing the Yazidi community. This highlighted the exploitation of women's reproductive health and the genocidal tactics used by ISIS. However, during the first months following the kidnapping of Yugoslav women in August 2014, those who fled during pregnancy and arrived in Kurdistan, Iraq, were able to obtain abortion. Although abortion is generally illegal in Iraq, including in KRI, government policy has allowed medical committees to examine and approve abortion requests, particularly for women raped by ISIS. Some women in later pregnancy have been sheltered by NGOs or actors of the Kurdish Regional Government (KRG), who have later placed their children under government care after birth. These children were placed in orphan homes, allowing foster care or temporary care and allowing women to recover custody as they wish. The Law on the Welfare of Children 76 of 1983, which applies to Iraq and the KRI, allows foster care but not adoption.

5.3.4 Children born as a result of rape

Many captured women and girls had been born in the years following the war and had given birth to children born of war. Furthermore, Yazidi women and children continue to be identified among ISIS members in Kurdish-run detention camps²²⁷. Some hide their Yazidi identity out of fear, while others worry about the forced abandonment of their children. For these women, social expectations and traditions prolong displacement and insecurity post-ISIS. In addition, survivors of Yazidi have faced challenges in obtaining (replacement) civil documentation, creating hurdles in establishing the nationality of their newborns. The enduring impact of ISIS, particularly for those who successfully escaped

²²⁶ ReliefWeb. (2016). UN Commission of Inquiry on Syria: ISIS is committing genocide against the Yazidis [EN/AR/KU] - Syrian Arab Republic. [online] Available at: <https://reliefweb.int/report/syrian-arab-republic/un-commission-inquiry-syria-isis-committing-genocide-against-yazidis>.

²²⁷ Abdul Rashid al-Saleh. (2019). Outcasts in the homes of their mothers, <https://arij.net/daily>; أريج, A. | (n.d.). [إعلاميون من أجل صحافة استقصائية عربية (أريج)]. [online] Arij | أريج. Available at: <https://arij.net/daily>. [Accessed 28 May 2024].

captivity, adds a new dimension to the ongoing documentation crisis among displaced individuals in Iraq. The lack of a civil document and inadequate care in the orphanage can also lead to a high risk of physical and sexual abuse, violence, trafficking, exploitation, servitude, and death²²⁸.

Yazidi women who give birth as a result of rape faced the agonising decision of expulsion from the Yazidi society with their children or returning alone. It is crucial to recognise the diversity in women's attitudes and experiences. For some women who were raped, their child is likely to perceive it as a 'live and painful reminder of rape and their trauma'. Therefore, raising these children can be considered an ongoing trauma for them. For example, one of the female survivors of the Yazidi genocide, who abandoned her two infants, states bluntly that she could have chosen to bring them with her, but she decided to leave them behind. She also said that they are not my children, and the Yazidi children live without parental care, and if there is no concern for our children, we will not show concern for theirs. Another survival revealed that family pressure led her to leave her two sons under the care of the Peshmerga. She has no contact with them, stating: "I should forget them and not care about them. She added 'At first, when I was liberated, I wanted to know what happened to my children, but over time I learnt to live without them'²²⁹. In the report "Children Born of the ISIS War" published by the SEED Foundation, it claims that women who were quite young when they were captured and experienced childbirth for the first time due to rape in captivity are more dedicated to establishing a connection with the child. In contrast, the report also states that women who already had other children at the time of their enslavement are more inclined to leave their child born of war to reunite with their other children, although they often express a desire to have kept both children²³⁰.

²²⁸ SEED Foundation - Kurdistan. (2020). Children Born of the ISIS War. [online]. SEED Foundation, p.4 <https://www.seedkurdistan.org>

²²⁹ Vale, G. (2020) 'Liberated, not free: Yazidi women after Islamic State captivity,' *Small Wars & Insurgencies*, 31:3, p.529. Available at: <https://doi.org/10.1080/09592318.2020.1726572>

²³⁰ SEED Foundation - Kurdistan. (2020). Children Born of the ISIS War. [online]. SEED Foundation, p.7. Retrieved May 15, 2024, from: <https://www.seedkurdistan.org>

5.4 Discrimination and Stigmatisation

5.4.1 Mothers as primary victims

Over time, the deliberate use of shame and the perceived erosion of honour have been strategically used to prevent the repatriation and reintegration of those captured by ISIS. After the release of Yazidi women and girls, the already traumatic experiences of these women were exacerbated by the social, community and family rejection of their children. Unfortunately, there remains still a high suicide rate among survivors. In the aftermath of genocidal rape, numerous Yazidi survivors tragically resort to suicide. This perceived loss of honour (*namûs* in Kurdish) initially resulted in the rejection of many liberated women and girls by their families. A 2017 study on liberated Yazidis revealed that 44.6 percent of survivors felt extremely marginalised by community members²³¹. Thus, the majority gave up their children under enormous pressure from their families and communities, and a significant number regretted it later. After their liberation, they suffer intense emotional distress due to abuse of the past and the suffering associated with the separation of their children. Some women share stories of abandoning their children to their perpetrators after they have fled due to the rejection of their families after they have returned. For example, in a remarkable case that attracted attention, a Yazidi woman accompanied her children born before the war to her father in the Kurdish region of Iraq (KRI) and then decided to return to Mosul with her child living in a shelter there²³². This experience can cause frustration with the Yazidi family and create obstacles to their recovery. Furthermore, victims of forced separation from their children may be exposed to the traumatic effects of their lives and to risks to their mental health, affecting women, their families and the wider community.

One of the most painful consequences is that the slave women of Yazidi continue to be captives of ISIS in order to avoid being separated from their children. Some Yazidi women are expected to keep custody of their children, but are now reportedly choosing to stay with their captors or remain in Syrian displacement camps rather than returning

²³¹ Vale, G. (2020) 'Liberated, not free: Yazidi women after Islamic State captivity,' *Small Wars & Insurgencies*, 31:3, p.529. Available at: <https://doi.org/10.1080/09592318.2020.1726572>

²³² SEED Foundation - Kurdistan. (2020). *Children Born of the ISIS War*. [online]. SEED Foundation, p.6. Retrieved May 13, 2024, from: <https://www.seedkurdistan.org>

and reuniting with their families. In reports, women, despite the opportunity to leave their captors during the liberation efforts, choose to remain to avoid being separated from their children. According to a report released in 2020 by the SEED Foundation, women in Iraq (Hamam Al-Alil and Garmawa) and Syria (Al Hol) in ISIS families camps decided not to disclose their identity to the authorities for various reasons²³³.

5.4.2 Children as secondary victims

Rape is generally considered a crime against the mother and the birth of a child from such a crime cannot be considered a crime against the child. However, children born after rape are indirectly affected by the victimization of their mothers. It is essential to recognise these children as secondary victims, emphasising the potential for mother's post-traumatic disturbances to manifest themselves as vicarious traumas²³⁴. The influence of mother symptoms, ambivalence and sensitivity plays an important role in determining the effects of rape on children.

Children born as a result of rape are generally at risk of neglect, stigmatisation, exclusion, or abandonment. They may also encounter the problem of poor parent-child relationships or abuse because parental sensitivity and responsibility are crucial conditions for the development of safe attachment bonds. The sensitivity of a mother to the child is reflected in warm touch and emotional connection. It is precisely this capacity that could be hindered by symptoms of post-traumatic stress²³⁵.

The effectiveness of mass rape and forced imprisonment as weapons of war is not based on the identity attributed by the perpetrators to the descendants of these acts, but on the perception of these children by the affected communities. As victims of genocide and war crimes, these children face threats of neglect, abuse, poor parenting, discrimination, or

²³³ SEED Foundation - Kurdistan. (2020). Children Born of the ISIS War. [online]. SEED Foundation, p.4. Retrieved May 13, 2024, from: <https://www.seedkurdistan.org>

²³⁴ Van Ee, E., & Kleber, R. J. (2013). Growing Up Under a Shadow: Key issues in Research on and treatment of Children born of Rape. *Child Abuse Review*, 22(6), p.392. Available at: <https://doi.org/10.1002/car.2270>

²³⁵ Van Ee, E., & Kleber, R. J. (2013). Growing Up Under a Shadow: Key issues in Research on and treatment of Children born of Rape. *Child Abuse Review*, 22(6),p. 383. Available at: <https://doi.org/10.1002/car.2270>

stigmatisation. In the post-genocide, the child grows up with a potentially vulnerable and dysfunctional mother, causing the child to be affected by society's harsh judgments because although the child does not grow up with their rapist father, the child is generally associated with their rapist father. Furthermore, due to patriarchal identity, the community often assumes the role of oppressor and sees children as a source of shame and humiliation. Therefore, these children inevitably grow up recognising their distinctiveness: marked by stigma and potentially more susceptible. Eventually, they will start to question their absent father, leading to inquiries about their own identity. In many cases, their future will be intertwined with challenging revelations about the tragic circumstances surrounding their birth²³⁶. Stigmatisation of children also contributes to stigmatisation of the mother. Mother and child will continue to be suppressed throughout their lives by the prevailing beliefs in their cultural community.

5.4.3 The legal status of the child born of rape

According to Iraqi citizenship legislation, if a child is born to an Iraqi mother in Iraq, he or she is considered to be an Iraqi citizen regardless of his or her father's nationality, but those born outside Iraq face challenges to obtain Iraqi citizenship²³⁷.

Children born in Iraq to Iraqi mothers and unknown fathers are considered Iraqi citizens, while those born outside Iraq face challenges in obtaining Iraqi citizenship. Therefore, women with male relatives classified as "missing/undetermined" (majhoul al-nasb in Arabic) face considerable bureaucratic challenges in obtaining or replacing civil documentation due to the prevailing influence of the (largely male) head of the household in the Iraqi legal and administrative system²³⁸. For example, children of kidnapped Yazidi

²³⁶ McGee, T. (2020), 'Born of ISIS Genocide: Risk of Statelessness and Stigmatised Nationality Acquisition for Children of Yazidi Survivors,' Rowaq Arabi, p.84

²³⁷ Refworld. Law No. (46) of 1963 - Iraqi Nationality. Retrieved May 28, 2024, from: <https://www.refworld.org/legal/legislation/natlegbod/1963/en/17880>.

²³⁸ McGee, T. (2020), 'Born of ISIS Genocide: Risk of Statelessness and Stigmatised Nationality Acquisition for Children of Yazidi Survivors,' Rowaq Arabi, p.88

girls may not obtain Iraqi citizenship if they are born outside Iraq. These children are required to reside in Iraq until the age of 18 years and submit a written request to the Minister of Interior for a decision. In Iraqi Nationality Law; Newborns are defined as Muslims in their nationality no matter what their mother's religions are. Therefore, this legal identification ignores Yazidi people since it does not acknowledge their religion. As a consequence of this ignorance, Yazidi people are not willing to register their children for citizenship in Iraq, which has resulted in legal sanctions such as obtaining identification documents and constitutional rights. The Ministry's failure to recognize these children is contrary to Article 3 of Iraqi Nationality Law No. 26 of 2006²³⁹. As a result, Iraqi nationality laws exacerbate the difficulties of registration for children born to Yazidi survivors during ISIS control and create a complex intersection of sex-based discrimination and religious discrimination. These children are facing a precarious situation, in which they are at risk of being without status if their registration problems are not resolved. Murad Sheikh Kalou, leader of the Yazidi community, also highlighted the problems and uncertain futures of many children born to raped Yazidi women with unknown parents. He noted that some of these children were taken care of by their mothers, while others experienced ambiguity when they were transferred between camps and orphanages without a clear destiny²⁴⁰.

The intersection of legal obstacles, religious principles, and the perspectives of conservative communities have also collectively produced several difficulties in terms of the basic human rights of the children involved. Due to problems obtaining citizenship documents mentioned above, the Yazidi children survivors are currently facing two problems. The first involves the risk of statelessness, while the second involves the potential acquisition of dangerously stigmatised Iraqi citizenship. The inability to recognise these children or recognise them as Muslims will cause severe trauma to both the child and the mother in the future. To explain in more detail, children who are raised by their Yazidi mothers and extended Yazidi families, often residing exclusively in

²³⁹ Abdul Rashid al-Saleh (14 April 2019), outcasts in the homes of their mothers, p.676-677. Retrieved May 28, 2024, from: <https://arij.net/daily>.

²⁴⁰ Yazidi crowd .(2018). A leader of the Yazidi Mobilization Forces reveals hundreds of unaccounted for children of Yazidi rapists. Retrieved May 28, 2024, from: <https://hathalyoum.net/articles/1587090>. (إعلاميون من أجل صحافة استقصائية عربية (أريج). | (n.d.).

Yezidi-populated refugee camps or unfinished buildings, as Muslims based on a predetermined legal criterion, can intensify the stigma of these children. Furthermore, assigning the same religious identity to the child as the perpetrators of the community increases the risk of family rejection, discrimination, and possible damage to the child and/or mother in the traumatised community of Yezidi, thus increasing its vulnerability. Humanitarian efforts to advocate civil documentation in such situations are therefore responsible for ensuring that they "do not harm"²⁴¹.

5.5 The Social Trauma of the Yazidi Community

Social trauma experienced by the Yazidi community goes far beyond the unexplained physical and psychological violence experienced by individual survivors. Struggling with the long-standing trauma of ISIS's coordinated efforts to eradicate their collective existence, the entire Yazidi community and its religious leaders have waged a collective struggle for survival. For example, in a groundbreaking departure from tradition, Yazidi spiritual leader Baba Sheikh, in a televised speech in late August 2014, announced that former ISIS sabāyā would be welcomed back as full-fledged and 'pure' members of Yazidi society. This proclamation was reinforced by a religious edict on 6 February 2015, prohibiting hostility toward the victims and emphasising that any animosity would impede the community's recovery. Furthermore, Baba Sheikh initiated two new Lalish rituals in 2014 with regard to all Yazidis captured by ISIS. These are a cleansing ceremony and a vigil to bring those victims back to their society. Although this compassionate approach of Baba Sheikh and the Supreme Spiritual Council has facilitated the reintegration and recovery of many women, some still struggle with persistent stigma²⁴².

In coping with the aftermath of the genocide, the silence surrounding the issue of children born to ISIS became a deliberate strategy for individual Yazidi survivors and the

²⁴¹ McGee, T. (2020), 'Born of ISIS Genocide: Risk of Statelessness and Stigmatised Nationality Acquisition for Children of Yezidi Survivors,' *Rowaq Arabi*, p.88

²⁴² Vale, G. (2020) 'Liberated, not free: Yazidi women after Islamic State captivity,' *Small Wars & Insurgencies*, 31:3, p. 527. Available at: <https://doi.org/10.1080/09592318.2020.1726572>

community in general. Even this silence is partly an effective solution, it is an essential contraction to the Yazidi identity. The fundamental belief in the identity of the Yazidi is that a Yazidi must be born to two parents of the Yazidi. This principle arises from the community's distinct religious heritage, shaped by a history of persecution and attempts at forced conversions. The Yazidi faith is built on the top of self-protection and self-preservation, therefore, it is characterised by strict endogamous practices and closed relationships.

Baba Sheikh has broken the silence with a speech to accept those babies born during the enslavement of ISIS as part of their community. According to Baba Sheikh, these babies are considered Muslims under Iraqi law, which follows patrilineal descent, prohibiting women from transmitting their national and religious identity to their offspring. Culturally, these children serve as a painful reminder of genocide. The polemic positions and judgments of the Supreme Yazidi Spiritual Council on the status of these infants. On 24 April 2019, a second edict was issued stating that the Council recognises all survivors and recognises that their experiences were beyond their control. The vague language led to interpretations that included infants conceived by rape. This decision sparked public outrage in the strictly endogamous and isolated Yazidi society. Within three days, the Council reversed its decision, clarifying that the acceptance of survivors and their children did not extend to those born as a result of rape. This reversal was caused by concerns that accepting children born of ISIS fighters would challenge the religious principles of Yazidism related to blood succession and purity, prohibiting conversion and marriage outside the community. The inclusion of infants with IS-Yazidi was deemed unacceptable. After the final decision of the Council, Nadia Murad, a Yazidi survivor and Nobel laureate, reacted to the ruling in a video statement, expressing that the ultimate decision rests with survivors and their families, emphasising that no one else has the right to make decisions on their behalf²⁴³.

²⁴³ Allinson, T. (2019). Yazidi children of IS rape stuck in limbo. Deutsche Welle. Retrieved May 13, 2024, from: <https://www.dw.com/en/yazidi-women-see-acceptance-for-children-born-of-is-rape/a-48540849>

6 Chapter 6 - International and National Accountability Efforts to Prosecution of the Perpetrators

6.1 Recognition of the Yazidi Genocide in International Law

There is convincing evidence that ISIS has committed genocidal acts against the Yazidis, including mass and individual killings, as well as serious physical and psychological damage through methods such as torture, beatings, and degrading treatments, including rape, sexual slavery, and abuse. In addition, there is clear evidence that ISIS Yazidis has subjected Yazidis to forced labour, including military service, and to teaching terrorism, even training children to commit suicide attacks, which have caused serious physical and mental harm. They deliberately imposed living conditions to physically destroy the Yazidi community, in part through sieges, unsanitary living conditions, lack of nutrition, and refusal to receive medical care. ISIS also enforced measures to prevent Yazidi births by separating men and women and transferring children by force to convert and indoctrinate, all with the intention of completely or partially destroying the Yazidi group.

ISIS has explicitly declared its intention to commit genocide against Yazidis through doctrines and policies, labelling them "pagans who worship devils" whose women and children will be enslaved. The systematic nature of the atrocities committed against the Yazidis perfectly corresponds to these declarations. ISIS' deliberate destruction of the Yazidi places of worship further underscores his intent to commit genocidal acts, as well as his occupation of Yazidi homes and property, in order to disperse and weaken the cohesion of the community with the ultimate aim of its destruction.

On 18 June 2016, The United Nations Independent International Commission of Inquiry on the Syrian Arab Republic, known as the 'Inquiry on Syria,' recognised the actions of ISIS against the Yazidis as genocide. The UN Commission of Inquiry on the Syrian Arab Republic published the Commission's report, "They Came to Destroy: ISIS Crimes Against the Yazidis" and confirmed that ISIS's treatment of Yazidis constitutes both

crimes against humanity and war crimes. Paulo Pinheiro, the Chair of the Commission, said that 'Genocide has occurred and is ongoing,' highlighting the horrific atrocities inflicted by ISIS on every Yazidi individual captured²⁴⁴. Furthermore, in 2016, the United Nations, the European Union and the Council of Europe recognised these atrocities and crimes committed by ISIS as genocide. In 2017, the Parliamentary Assembly of the Council of Europe reaffirmed Resolution 2091 (2016) regarding foreign fighters in Syria and Iraq. It reiterated its position that individuals associated with groups like ISIS have committed acts of genocide and other grave crimes that are subject to punishment under international law. The Parliamentary Assembly urged states to operate on the assumption that ISIS engages in genocide and called on member and observer states to fulfil their obligations outlined in the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948 Genocide Convention) by implementing all necessary measures to prevent genocide²⁴⁵.

Several national parliaments, including those of Council of Europe member countries such as Germany (19 January 2023), Austria, France (6 December 2016), Lithuania, the United Kingdom (1 August 2023), and Armenia. On 16 January 2018, Armenia's parliament passed a resolution recognising the 2014 Yazidis genocide perpetrated by ISIS in Iraq and urged an international investigation into these atrocities²⁴⁶. Thus, Armenia's parliament was the first to recognise the Yazidi Genocide. Moreover, Australia, Canada, Scotland, and the United States of America have already acknowledged that the atrocities committed by IS against the Yazidis amount to genocide. Furthermore, the European

²⁴⁴ ReliefWeb. (2016). UN Commission of Inquiry on Syria: ISIS is committing genocide against the Yazidis [EN/AR/KU] - Syrian Arab Republic. [online] Available at: <https://reliefweb.int/report/syrian-arab-republic/un-commission-inquiry-syria-isis-committing-genocide-against-yazidis>.

²⁴⁵ Assembly debate on 12 October 2017 (34th Sitting) (see Doc. 14402, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pieter Omtzigt; and Doc. 14418, opinion of the Committee on Political Affairs and Democracy, rapporteur: Ms Thorhildur Sunna Ævarsdóttir). Text adopted by the Assembly on 12 October 2017 (34th Sitting).

²⁴⁶ Embassy of Armenia in the Kingdom of the Netherlands. (2022). Armenia attaches a high importance to the decision of Luxembourg's Parliament recognizing the Yezidi genocide. Retrieved May 17, 2024, from: <https://netherlands.mfa.am/en/news/2022/11/18/Armenia%20attaches%20a%20high%20importance%20to%20the%20decision%20of%20Luxembourg's%20Parliament%20recognizing%20the%20Yezidi%20genocide/10859>

Parliament, as well as the governments of the United States and Canada, and Pope Francis, have also condemned these actions²⁴⁷.

Numerous international nongovernmental organisations have welcomed the formal recognition of the atrocities by the states against Yazidis as genocide and have called for recognition in other countries as well as to investigate and prosecute ISIS fighters. For example, Dr. Ewelina Ochab, the Programme Lawyer for The Human Rights Institute of the International Bar Association (IBAHRI) and leader of the UK's campaign for the recognition of atrocities as genocide, emphasised that the recognition of atrocities is a significant milestone that many survivors have long waited. However, mere recognition is insufficient. There will be concrete measures to be taken, including efforts to ensure justice and responsibility for genocide, support for communities affected by ensuring security and security in Iraq, facilitate the return to Sinjar where possible, and help in resettlement, among other measures. The interests and desires of community members must be the focus of these efforts. In the United Kingdom, it is necessary to monitor the failure of the investigation and prosecution of foreign fighters who returned to the country. Of more than 400 returning persons, only 32 were convicted, and only for crimes related to terrorism. This inadequate response sends a worrying message that participation in genocide abroad may not be punished. A handful of convictions for terrorism are completely unacceptable²⁴⁸. Furthermore, the Jesuit Refugee Service (JRS) called for international support to compensate for the missing Yazidi people and support for reconstruction, inclusion, and sustainability in Sinjar²⁴⁹.

Genocide is the worst crime of humanity and a violation of international law, and any effort to conceal or deny its existence should be considered to be a serious violation of

²⁴⁷ Assembly debate on 12 October 2017 (34th Sitting) (see Doc. 14402, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pieter Omtzigt; and Doc. 14418, opinion of the Committee on Political Affairs and Democracy, rapporteur: Ms Thorhildur Sunna Ævarsdóttir). Text adopted by the Assembly on 12 October 2017 (34th Sitting).

²⁴⁸ International Bar Association. (2023). *IBAHRI welcomes the UK Government's recognition of the Yazidi genocide*. [online] Retrieved May 18, 2024, from: <https://www.ibanet.org/IBAHRI-welcomes-the-UK-Governments-recognition-of-the-Yazidi-genocide>

²⁴⁹ ReliefWeb. (2019). *Five years after the genocide, Yazidis share their forgotten stories and demand justice - Iraq*. [online] Retrieved May 18, 2024, from: <https://reliefweb.int/report/iraq/five-years-after-genocide-yazidis-share-their-forgotten-stories-and-demand-justice>.

human rights and to undermine people's right to history, memory, dignity, and pursuit of moral justice. The Yazidi community still suffers from the tragedy of genocide. Many Yazidis are still missing, and the location and fate of many remain unknown. In addition, they are still collectively deprived of the right to justice. Most of the perpetrators live freely among the public. Therefore, recognition of the existence of the Yazidi genocide is a crucial step towards preventing its recurrence. Even if not all perpetrators are prosecuted, the knowledge of the historical facts of genocide that have harmed societies around the world must be passed on to future generations to prevent those who deny the occurrence of such crimes from strengthening themselves through collective neglect. In addition, recognition of the right of a person to their identities and cultural heritage inherently includes recognising their right to exist. This notion should be integrated into the broader framework of human rights and the rights of people. Therefore, acknowledging the presence of genocide is a fundamental requirement to prevent its occurrence.

6.2 International Efforts to Document and Gather Evidence of the Crimes Committed by ISIS

6.2.1 Human rights office of the UN assistance mission in Iraq (UNAMI)

In 2013, the Investigation Team was established by Resolution 1500 of the Security Council of the United Nations, revised under Resolution, at the request of the Iraqi Government. The investigative team is charged with capacity building, strengthening the judicial and legal systems, advancing political dialogue, and fostering national and community-level reconciliation²⁵⁰. UNAMI also aims to promote a comprehensive examination of the methods of trial and sentences by the judicial authorities to strengthen the criminal justice protocols in accordance with the Iraqi Constitution and the international legal obligations of the State²⁵¹. UNAMI has collected and documented

²⁵⁰ UNAMI. (2003). Department of Political and Peacebuilding Affairs.
<https://dppa.un.org/en/mission/unami>

²⁵¹ Human Rights in the Administration of Justice in Iraq The report covers the period of 1 May 2018 through 31 October 2019 :
https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf

evidence and testimonies of serious abuses and violations of international human rights and humanitarian law that have been committed against members of the Yazidi community in areas under the control of ISIL. In 2016, UNAMI issued a report, and in this report, UNAMI states that prohibited acts are a consistent pattern of similar behaviour, carried out with the aim of destroying the Yazidi community as a whole²⁵².

6.2.2 The international, impartial and independent mechanism for Syria (IIIM)

On 21 December 2016, the United Nations General Assembly adopted Resolution 71/248. The resolution establishes an International, Impartial, and Independent Mechanism (IIIM) to ensure reliable and complete responsibility and help to investigate and bring to justice those who have committed the most serious violations of international law in the Syrian Arab Republic since March 2011²⁵³. However, the mechanism was created without the consent or participation of the Syrian government and local civil society organisations, which attracted criticism from the latter. In addition, the resolution requires the IIIM to prepare files in order to facilitate and expedite fair and independent criminal proceedings in domestic, regional, and international courts that comply with international human rights law and standards, including the right to a fair trial. By considering the state of the Syrian judiciary and documented human rights violations, IIIM can be limited to supporting Syria to investigate cases and bring justice to victims. Besides that, the Syrian Government is also openly opposed to any support coming from IIIM²⁵⁴.

²⁵² UNAMI. (2016). A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL, p. 12.

²⁵³ UN General Assembly, Resolution 71/248, 11 January 2017, A/RES/71/248, available at <https://iiim.un.org/who-we-are/mandate/> (accessed 23 March 2024).

²⁵⁴ Syria Justice Accountability Centre. (2017) *A memorandum to the Secretary General of the United Nations regarding the new United Nations mechanism for investigation and prosecution*. Retrieved May 19, 2024, from: <https://syriaaccountability.org/updates/2017/01/19/a-memorandum-to-the-secretarygeneral-of-the-united-nations-regarding-the-new-united-nations-mechanism-for-investigation-andprosecution/> (accessed 23 March 2024) ; Yazidi Justice Committee, Accountability Unit, Women for Justice, IBA Human Rights Institute, Bar Human Rights Committee of England and Wales, & Geoffrey Nice Foundation. (2022). *State Responsibility And The Genocide Of The Yazidis* (A. Abraham, T. Eatwell, & A. Zammit Borda, Eds.), p.123

6.2.3 UN investigative team to promote accountability for crimes committed by Da'esh/ISIL in Iraq (UNITAD):

In 2017, at the request of the Iraqi government, the Security Council of the United Nations unanimously called for the establishment of a Special Investigative Team of the United Nations to promote accountability for crimes against ISIL/ISIS. As it began its operations in Iraq in October 2018, the team began its mandate to support local accountability initiatives by collecting evidence of ISIS crimes in Iraq in line with global benchmarks. UNITAD operates impartially, independently and credibly according to Resolution 2379 (2017) of the United Nations Security Council and the terms of reference.

The investigations carried out by UNITAD are aimed at ensuring responsibility for the crimes committed by senior ISIS members, on the basis of objective, evidence-based investigations and analyses, and through impartial, fair, and equitable criminal proceedings. To achieve this objective, the Investigative Team systematically collects, archives, and preserves evidence of the actions of ISIS, which can constitute war crimes, crimes against humanity, or genocide. This effort is carried out in full compliance with the highest standards and ensures its widest applicability in national courts. In addition, it complements the ongoing investigations carried out by Iraqi authorities or by authorities in third countries at their request.

UNITAD has developed the Evidence Lifecycle Management System (ELMS) to ensure the integrity of its investigations and the effectiveness of evidence in legal proceedings. In addition, ELMS manages evidence in a comprehensive way from collection to storage, adhering to international standards. It monitors all phases of the investigation, including forensics and analysis. More than 200 mass graves associated with ISIS crimes were identified. UNITAD supports the Iraqi authorities in providing forensic equipment and training and aiding victim identification through DNA analysis. In addition, they use advanced technologies such as facial recognition in their investigations. It is very important because more than 200 mass graves associated with ISIS crimes have recently

been identified. The DNA profiles derived from bone samples are combined with the profiles derived from blood samples from individuals with missing family members²⁵⁵.

UNITAD is currently investigating, reviewing and analysing a wide range of data storage devices, including laptops, external hard drives, mobile phones, satellite phones, drones, and others, containing millions of different types of file, most of which are encrypted. On the other hand, millions of call data records obtained require detailed analysis. However, almost half of the processed data consists of images and video files, causing additional complexity in terms of access, analysis, and storage. Most documentary evidence is in Arabic or Kurdish, and many electronic and legal discovery products on the market do not adequately support this. Furthermore, electronic devices are often damaged and nonfunctional, which adds to the difficulty of accessing data and often requires advanced extraction techniques. Paper documents, which are acquired in an unstructured way, are often also physically damaged. Furthermore, ISIS's use of the public Internet for incitement and recruitment requires the collection of open-source information and legal investigations of websites, on-line videos, and social media feeds. ISIS's encrypted messaging platforms (such as Telegram and WhatsApp) for communications and information sharing make the collection of evidence more complex²⁵⁶. Unfortunately, the final mandate of UNITAD will expire on 17 September 2024. Christian Ritscher, Special Advisor and Head of UNITAD highlighted the importance of the UNITAD role in providing evidence and information to third-party nations and warned that this sudden end of the Team could negatively impact victims and survivors of genocide crime²⁵⁷.

²⁵⁵ S/RES/2379 (2017) | United Nations Security Council, p.7-18. Available at: <https://www.un.org/securitycouncil/content/sres2379-2017>

²⁵⁶ S/RES/2379 (2017) | United Nations Security Council, p.5. Available at: <https://www.un.org/securitycouncil/content/sres2379-2017>

²⁵⁷ United Nation (2023). *Sudden End to Team Investigating Da'esh Crimes in Iraq Could Impact Ongoing Inquiries, Justice for Victims, Special Adviser Warns Security Council | Meetings Coverage and Press Releases*. [online] Retrieved May 17, 2024, from: <https://press.un.org/en/2023/sc15514.doc.htm>

6.2.4 Independent international commission of inquiry on the Syrian Arab Republic (UN CoI Syria)

The Independent International Commission of Inquiry into the Syrian Arab Republic (UN CoI Syria) was established by the Human Rights Council under Resolution S-17/1, on 22 August 2011. The purpose of the UN CoI Syria has been to investigate all violations of international human rights law reported in the Syrian Arab Republic since March 2011. Furthermore, the Commission is responsible for discovering the facts and circumstances of potential offences and crimes committed and, where appropriate, identifying those responsible to ensure accountability for perpetrators of offences, which may constitute crimes against humanity²⁵⁸. The Commission primarily gathered and analysed a variety of evidence including photographs, video recordings (including footage distributed by ISIS), satellite imagery, forensic and medical record to support its findings and on first-hand testimony. In addition, reports from governmental and non-governmental sources, academic analyses, and United Nations reports were also used in their investigations.

On 15 June 2016, the United Nations Commission for Inquiry on the Syria Arab Republic published a report 'They Came to Destroy': ISIS Crimes against Yazidis (A/HRC/32/CRP.2)". The Commission of inquiry found that all these crimes, including torture and other forms of inhuman treatment, restriction on freedom, imprisonment and physical abuse, sexual slavery, rape, sexual violence, imprisonment, torture, and other forms of inhuman treatment of Yazidi women and girls, were crimes against humanity. The Commission also determined that these acts were systematically committed against the Yazidis due to their religious affiliation, which also constitutes a form of persecution. The report is extremely important because it determines the specific intentions of ISIS against the Yazidi community and indicates that "ISIS's public statements and actions and those of its members clearly show that it intends to eradicate the Yazids in Sinjar, who represent the majority of the world's Yazidis, in part or in whole "²⁵⁹. On 3 August 2017, the Commission of Inquiry also reaffirmed that "genocide continues despite the obligation

²⁵⁸ OHCHR. (22 August 2011). Independent International Commission of Inquiry on the Syrian Arab Republic. Retrieved May 19, 2024, from: <https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/co-i-mandate>

²⁵⁹ Commission of Inquiry, ISIS Crimes Against the Yazidis, 15 June 2016, A/HRC/32/CRP.2, paras 32-36. See also, UNAMI, A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL, August 2016, pp.

of the States Parties to the 1948 Convention on the Prevention and Punishment of Genocide to prevent and punish such acts, without remitting and largely without attention"²⁶⁰.

6.2.5 The office of the high commissioner for Human Rights (OHCHR)

In the 2015 UN Human Rights Council Report, the OHCHR thoroughly evaluated all available data, including testimony of witnesses and victims, as well as documents from the Iraqi Government, member states and relevant UN and nongovernmental organisations. The High Commissioner concluded that ISIL may have committed genocide and crimes against humanity against the Yazidi community through killings, serious bodily and mental harm, torture, severe deprivation of physical liberty, forced displacement of the population. Other alleged crimes against humanity include hostage-taking, rape, and slavery, and other forms of sexual violence, which were systematically committed as part of a broader organisational policy of ISIS. Other acts, such as the recruitment or use of children under 15 years of age, and the directing of attacks on religious buildings or historical monuments, were considered war crimes²⁶¹.

OHCHR also followed reports of violations of international human rights and humanitarian law to confirm their accuracy and discover additional details through investigations conducted in Chamchamal, Dohuk, Erbil, Kalar, Sulaymaniyah, and Zakho, as well as within camps for internally displaced persons located in those regions.²⁶²

6.2.6 Joint initiatives

Collaboration between national authorities, regional and international organisations, and civil society, with the support of Genocide Network, Eurojust, and Europol, enhances

²⁶⁰ Commission of Inquiry, Commission of Inquiry on Syria Calls for Justice on the Occasion of the Third Anniversary of ISIL's Attack on the Yazidis, Statement, 2 August 2017.

²⁶¹ OHCHR (2015) Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups, A/HRC/28/18, pp. 77-78

²⁶² A. Abraham, T. Eatwell, & A. Zammit Borda, Eds. (2022). Yazidi Justice Committee, Accountability Unit, Women for Justice, IBA Human Rights Institute, Bar Human Rights Committee of England and Wales, & Geoffrey Nice Foundation, p.278

opportunities to share operational information, legal insights, knowledge, and best practices²⁶³. For example, in Sweden and France, the judiciary has established a Joint Investigation Team (JIT) to assist in the investigation of key international crimes committed by foreign terrorists against the Yazidis in Syria and Iraq. Eurojust has contributed to the establishment of this JIT, which will facilitate the ongoing coordination of investigations and the rapid exchange of information and evidence. In addition, the authorities involved in the JIT cooperates with the UNITAD under its mandate. These joint efforts will also prevent the repetition of interviews with victims who have been affected in serious circumstances²⁶⁴.

6.2.7 Civil society organisations

In the aftermath of genocide, non-governmental organisations such as the Commission for International Justice and Accountability (CIJA), the International Federation for Human Rights (FIDH), Human Rights Watch (HRW), Amnesty International (AI), and the Syrian Observatory for Human Rights have often collected and recorded evidence of sexual slavery and violence related to conflict perpetrated by ISIS to prosecute and punish perpetrators. NGOs have access to victims that are not accessible to public authorities or international bodies. This access allows them to gather direct testimony, document the atrocities, and provide support to survivors. For example, the Free Yazidi Foundation (FYF) Justice Project, together with other civil society organisations, collects and records evidence of sexual slavery and violence committed by the Islamic State in conflict. Their objective is to prosecute ISIS fighters before international courts for these crimes. In the FYF Justice Project, they aim to identify the perpetrators through information provided by survivors of Yazidi and sources other than Yazidi. The project team, including international and national lawyers, collects case files of ISIS fighters to combat the impunity of crimes such as sexual slavery and other forms of sexual and gender-based

²⁶³ Genocide Network Secretariat. (2020). Cumulative Prosecution Of Foreign Terrorist Fighters For Core International Crimes And Terrorism-Related Offences. In *The Genocide Network* [Report]. Eurojust, p.25. Available at: <https://doi.org/10.2812/340844>

²⁶⁴ Eurojust. (2023). Support to joint investigation team of Sweden and France targeting crimes against Yezidi victims in Syria and Iraq. [online] Available at: [https://www.eurojust.europa.eu/news/support-joint-investigation-team-sweden-and-france-targeting-crimes-against-yezidi-victims.](https://www.eurojust.europa.eu/news/support-joint-investigation-team-sweden-and-france-targeting-crimes-against-yezidi-victims;); Eurojust. (n.d.). Joint investigation teams. European Union Agency for Criminal Justice Cooperation. [online] Available at: <https://www.eurojust.europa.eu/judicial-cooperation/instruments/joint-investigation-teams>.

violence related to conflicts. Similarly, initiatives such as the Yazda Genocide Document Project and the Organisation for Documentation (KINYAT), which is a local partner organisation of the International Federation for Human Rights (FIDH), actively collect statements from witnesses and survivors of Yazidi to collect evidence for accountability efforts and advocacy for transitional justice since 2014. Furthermore, due to the lack of sufficient reparations and reliable relief and recovery services, civil society organisations have mobilised. It is obvious that civil society organisations empower Yazidi survivors to lead in the fight for justice, accountability, sustainable peace, and gender equality. For example, the Yazidi Survivor Network (YSN), which consists of 17 survivors of sexual slavery, provides training in a variety of areas including transitional justice, reparation, criminal justice, truth and reconciliation, and institutional reform. The network has strengthened the resilience of Yazidi survivors, who are now informed of their rights to justice, protection, and remedies under international law. Active participation and leadership of Yazidi survivors is the key to solving sexual slavery in conflict-related ISIS and ensuring a survivor-focused approach to reparations, justice, prevention, protection, and relief and recovery programmes and policies²⁶⁵.

Furthermore, survivors who become asylum seekers in Europe can provide valuable testimonies and evidence. National prosecutors and law enforcement agencies can work together efficiently to collect dispersed information. It is essential to strengthen cooperation and information sharing among counterterrorism units, immigration services, and international crime units. In addition to them, Europol can play a vital role with its analytical capabilities in the field of terrorism and international crimes to support national initiatives by providing cross-border collaboration²⁶⁶.

²⁶⁵ M. Iyer, J. Irani, & E. Veillet-Chowdhury. (2020). Seeking Accountability And Preventing Recurrence: Addressing Conflict-Related Sexual Slavery Through The Women, Peace, And Security Agenda. *Global Network of Women Peacebuilders*, pp.20-21. Retrieved January 24, 2024, from: <https://www.womenpeacesecurity.org/member/gnwp/>

²⁶⁶ Genocide Network Secretariat. (2020). Cumulative Prosecution Of Foreign Terrorist Fighters For Core International Crimes And Terrorism-Related Offences. In *The Genocide Network [Report]*. Eurojust, p.25. Available at: <https://doi.org/10.2812/340844>

6.3 Application of the Rome Statute and the International Criminal Court (ICC)

On 17 July 1998, the international community came together to adopt the Rome Statute of the International Criminal Court (“the Rome Statute”), which established the International Criminal Court (“the ICC” or “the Court”). The Rome Statute generally sets out crimes that fall under the jurisdiction of the ICC, outlines procedural guidelines, and establishes mechanisms for states to collaborate with the ICC. According to the Rome Statute, the International Criminal Court is a permanent and autonomous international tribunal created to investigate, prosecute, and adjudicate individuals who are accused of perpetrating the most serious offences that deeply concern the global community. Following the entry into force of the Rome Statute on 1 July 2002, this marked a historic moment. For the first time in human history, states collectively accepted the jurisdiction of the Permanent International Criminal Court to try those who committed the most serious crimes committed on their territory or by their nationals²⁶⁷. According to Article 5 of the Rome Statute, the ICC does not have complete criminal jurisdiction. The jurisdiction of the ICC extends only to the most serious and grave crimes affecting the international community. The Court has jurisdiction over the following crimes: Genocide, Crimes against humanity; War crimes; aggression crimes. Additionally, the jurisdiction of the ICC is temporally restricted to events occurring after the Rome Statute came into effect on July 1, 2002, or after the statute becomes effective for a state upon its subsequent accession.

Article 6 of the Rome Statute defines genocide as a specific act committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. These acts include the killing of members of the group, the infliction of grievous physical or mental

²⁶⁷ International Criminal Court (2020). Understanding the International Criminal Court. [online] International Criminal Court. Retrieved May 20, 2024, from: <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>.

harm, the deliberate adoption of living conditions that cause physical destruction, measures to prevent births, or the forcible transfer of children²⁶⁸.

Therefore, genocide involves the following.

- The killing of individuals for their affiliation with a particular group requires the perpetrator's intention to destroy the group, either completely or in part (Article 6 of the Rome Statute).

According to Article 6 of the Rome Statute, ISIS has committed brutal acts of violence against the Yazidi community, including murders, forced disappearances and the transfer of children from the group, physical destruction, torture and / or the imposing of measures intended to prevent birth within the group.

EU member states have ratified the Rome Statute of the International Criminal Court, and the majority have adopted the necessary implementation legislation to prosecute war crimes, crimes against humanity, and genocide. Therefore, in the prosecution of ISIS fighters who fled to European countries, universal jurisdiction could be invoked for Syrian and Iraqi nationals or ISIS members from other nationalities. Furthermore, in the prosecution of returning ISIS fighters who are citizens of the European Union, the State may prefer to apply the principle of nationality rather than universal jurisdiction²⁶⁹.

Currently, there is no international judicial mechanism capable of prosecuting ISIS. However, it should be emphasised according to the Rome Statute that the initial and primary responsibility for investigating and prosecuting those responsible for mass crimes lies with the national authorities.

i. Jurisdiction *ratione materiae* of the ICC: As stipulated in Article 5 of the Rome Statute, crimes falling within the jurisdiction of the International Criminal Court include

²⁶⁸ International Criminal Court. (2021). Rome Statute of the International Criminal Court. In *Rome Statute of the International Criminal Court* [Book]. Retrieved May 19, 2024, from: <https://www.icc-cpi.int/sites/default/files/Publications/Rome-Statute.pdf>

²⁶⁹ Genocide Network Secretariat. (2020). Cumulative Prosecution Of Foreign Terrorist Fighters For Core International Crimes And Terrorism-Related Offences. In *The Genocide Network* [Report]. Eurojust, p.16. Available at: <https://doi.org/10.2812/340844>

the crime of genocide and crimes against humanity. Therefore, investigating the crimes committed by ISIS against the Yazidi community and prosecuting ISIS members falls under the jurisdiction of the ICC *ratione materiae*²⁷⁰. Furthermore, it exercises complementary jurisdiction, in which the ICC's jurisdiction is secondary to the domestic courts of the State²⁷¹. In addition, the ICC structure was designed to address deficiencies observed in national courts. When ISIS members face prosecutions under domestic legal systems, courts often focus on accusing them of terrorism offences, while ignoring the potential international crimes described in the Rome Statute. However, international reports and victims' testimony clearly indicate that ISIS members have committed a genocide against the Yazidi community. Therefore, criminal prosecutions as international crimes are more robust legal grounds and less susceptible to domestic or political discretion than terrorism charges²⁷².

ii. Territorial jurisdiction of the ICC: Under article 12 of the Statute, the Court's jurisdiction extends to crimes committed within the territory of a state party to the Statute (territorial jurisdiction) or by individuals who are citizens of the State party at the time of the offence. The Rome Statute specifies that the ICC prosecutor may start investigations independently based on information concerning crimes within the jurisdiction of the Court, with the permission of the preTrial Chamber or on referral of a state. The conditions for territorial or personal jurisdiction described above are not necessary when the United Nations Security Council (UNSC) refers the situation to the Court of Justice. It is important to note that the ICC functions in a complementary capacity to supplement the State's obligation to prosecute or extradite persons (*aut dedere aut judicare*). Therefore, the Court will intervene only in cases where states that have jurisdiction over the crimes concerned have failed or are unable to prosecute them²⁷³.

²⁷⁰ "Rome Statute of the International Criminal Court" (hereinafter the "Rome Statute"), adopted on the 17 July 1998, *United Nations Treaty Series*, vol. 2178 (3), art. 5, Available at: https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025774&clang=_en

²⁷¹ Beth Van Schaack & Ronald C. Style, (2007). *International Criminal Law And Its Enforcement: Cases And Materials*, p.65

²⁷² Orozbekova, C. (2021, April 24). *Establishing an Ad Hoc Tribunal to Bring ISIS Fighters into Justice: Prospects, Limits and National Alternatives*. Bulan Institute, p.8. Retrieved May 19, 2024, from: <https://bulaninstitute.org/582-2/>

²⁷³ Orozbekova, C. (2021, April 24). *Establishing an Ad Hoc Tribunal to Bring ISIS Fighters into Justice: Prospects, Limits and National Alternatives*. Bulan Institute, p.7. <https://bulaninstitute.org/582-2/>; The

Since Iraq and Syria are not parties to the Rome Statute, the founding treaty of the ICC, and other crimes under international law. Therefore, the Court has no territorial jurisdiction to initiate its own investigations and punish ISIS fighters for their crimes in Iraq and Syria. On the other hand, The International Criminal Court can exercise personal jurisdiction over members of ISIS who are citizens of countries that have signed the Rome Statute, even where territorial jurisdiction is absent. It is estimated that between 17,000 and 19,000 foreigners are fighting for ISIS, many of whom come from countries that have signed the Rome Statute such as Tunisia, Jordan, France, the United Kingdom, Germany, Belgium, the Netherlands, and Australia. Some of these individuals may have participated in the perpetration of crimes against humanity and war crimes, and some even publicly criticised their actions on social media platforms. However, in this circumstance, the International Criminal Court has limited authority to prosecute ISIS members in accordance with the Rome Statute, as stated by Fatou Bensouda, the ICC Chief Prosecutor, in 2015. Some foreign fighters of ISIS could potentially fall under the jurisdiction of the Court, but the Court is limited to the most serious crimes²⁷⁴. In assessing the gravity of crimes, factors such as the scale of the crimes, severity of the crimes, the systematic nature of crimes, and the impact on victims are considered in assessing the Court's intervention. Furthermore, when considering the ICC trials, the Office of the Prosecutor (OTP) focused on prosecuting only high-ranking officials who bear the highest responsibility for crimes under the jurisdiction of the Court, and the OTP carefully considered whether the actor was the general ordering the brutality of the foot soldier carrying out the orders²⁷⁵.

In an interview with the Guardian in Geneva, Carla Del Ponte, former Chief Prosecutor of the International Criminal Court for the Former Yugoslavia (ICTY) and Chairman of

obligation to extradite or prosecute (aut dedere aut judicare)", *International Law Commission*, 2014, 2-3, https://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf

²⁷⁴ Bensouda, F. (2015). "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS", *International Criminal Court*, Retrieved May 18, 2024, from: <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1>

²⁷⁵ SaCouto, S., & Cleary, K. (2007). The Gravity Threshold of the International Criminal Court. *American University International Law Review*, 23(5), p. 810. Retrieved from <https://core.ac.uk/download/pdf/235401602.pdf>

the Committee, expressed her concerns that the International Criminal Court would prosecute only a small number of perpetrators. Therefore, She suggested an ad hoc tribunal in Syria based on the experience of the ICTY. Furthermore, since many of the senior positions within ISIS are held by Iraqi or Syrian citizens, they cannot be in line with the court's mandate to prosecute the "most responsible" for atrocities. Although it is important to prosecute lesser or indirect perpetrators, it is unlikely that the Court will intervene solely on this basis²⁷⁶. In fact, Fatou Bensouda also stated that ISIS is mainly led by Iraqi and Syrian individuals. As a result, the Office of the Prosecutor of ICC is investigating and prosecuting the people responsible for the leadership of ISIS seems limited²⁷⁷. Thus, the ICC Prosecutor has chosen not to initiate an investigation into potential offences committed by individuals from countries that are parties to the Rome Statute of the ICC. Consequently, there is currently no international legal mechanism equipped to prosecute crimes attributed to ISIS. Thus, the Parliamentary Assembly of the Council of Europe points out that, according to the Rome Statute, the primary responsibility for investigating and prosecuting crimes falls on national authorities, particularly those in the states where the crimes occurred²⁷⁸.

Iraq (date of admission: 14.12.1945) and Syria (date of admission: 14.10.1945) are part of the United Nations. Therefore, the Security Council is empowered to refer the situation to the International Criminal Court for investigations and legal proceedings according to Article 13 of the Rome Statute. This authority would operate in parallel with existing legal systems and it would be necessary to demonstrate that the Iraqi and Syrian courts did not have the capacity or willingness to investigate crimes independently²⁷⁹. Demonstrating that a state is not in a position or unwilling to prosecute a war criminal is a high burden that may require the evidence that efforts have been made to protect the

²⁷⁶ Borger, J. (2015). *Call For Special Tribunal To Investigate War Crimes and Mass Atrocities in Syria*, The Guardian. Retrieved May 20, 2024, from: <http://www.theguardian.com/world/2015/mar/17/call-for-special-tribunal-to-investigate-war-crimes-and-mass-atrocities-in-syria>.

²⁷⁷ See: Fatou Bensouda, Statement of the Prosecutor

²⁷⁸ Assembly debate on 12 October 2017 (34th Sitting) (see Doc. 14402, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pieter Omtzigt; and Doc. 14418, opinion of the Committee on Political Affairs and Democracy, rapporteur: Ms Thorhildur Sunna Ævarsdóttir). Text adopted by the Assembly on 12 October 2017 (34th Sitting).

²⁷⁹ Orozbekova, C. (2021). *Establishing an Ad Hoc Tribunal to Bring ISIS Fighters into Justice: Prospects, Limits and National Alternatives*. Bulan Institute, p.9. Retrieved May 19, 2024, from: <https://bulaninstitute.org/582-2/>

individual, significant and justified delays have occurred in the legal process, or that the proceedings lacked impartiality²⁸⁰. Moreover, it is also unlikely that the UNSC refers the situation to the Court. The complex and international nature of the Syrian conflict is expected to result in the veto of one or more UNSC member states to protect their national interests or alliances in the region. Indeed, at the 7180th meeting of the United Nations on 22 May 2014, Russia and China rejected the resolution of the Security Council to refer the deteriorating situation in Syria to the International Criminal Court for investigation, due to a double veto. This failure was the fourth time Russia and China used their veto powers to prevent a resolution of the Security Council condemning violence in Syria and calling on the Assad regime to seek a peaceful solution²⁸¹. Since such a referral would empower the ICC to investigate crimes committed by different parties involved in the conflict, some States may have been concerned about the issue of participation of their own responsibility²⁸².

6.4 Jurisprudence of the States on the Prosecution of Perpetrators Through National Laws: Country Studies

EU member states have ratified the Rome Statute of the International Criminal Court, and the majority has enacted the necessary legislation to prosecute war crimes, crimes against humanity, and genocide. In the case of returning foreign terrorists, states can choose to use the principle of nationality rather than universal jurisdiction. However, universal jurisdiction could be applicable to Iraqi and Syrian nationals and ISIS members of other nationalities who have fled the conflict and are present on the territory of the member states. In addition, national laws in some EU countries allow prosecution of an act as both a terrorist crime and a fundamental international crime, offence provided that all relevant

²⁸⁰ Solis A. (2015). Only [___] Can Judge: Analyzing Which Courts Have Jurisdiction Over Isis. (2015). Southern Illinois University Law Journal, Vol. 40, p.78.

²⁸¹ *Draft resolution S/2014/348*, United Nations Security Council, 22 May 2014, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_348.pdf

²⁸² International Law — The Responsibility to Protect — Draft Security Council Resolution Referring Syrian Conflict to the International Criminal Court Vetoed by Russia and China (13 in Favor, 2 Against). — U.N. SCOR, 69th Sess., 7180th mtg. at 4, U.N. Doc. S/PV.7180 (May 22, 2014)

facts of the offence are not comprehensively considered in accordance with a single legislation²⁸³.

The following paragraphs will present the cases of concluded court decisions or ongoing proceedings within national courts, demonstrating the prosecution of foreign ISIS fighters for both core international crimes and terrorism-related offences simultaneously. In addition, the following sections will demonstrate the attitudes of the EU states against the repatriation of the foreign ISIS members in Syria and Iraq, especially women.

6.4.1 France

French citizens are the largest group of foreign fighters in ISIS which is followed by people from Germany and the United Kingdom²⁸⁴. 1,490 French citizens have joined ISIS in the last decade. Furthermore, hundreds of minors were transported or born to ISIS territories. Many more attempted to cross into Syria and Iraq to join ISIS, but were captured either within France or at borders like Turkey-Syria. Some ISIS members participated in recruiting, organising, and helping in the execution of these journeys, both successful and unsuccessful. Therefore, there are approximately 1,950 people in France who are affiliated with ISIS²⁸⁵. After the decline of ISIS territory from 2017 onwards and its defeat in 2019, some of the foreign affiliates of ISIS returned to France voluntarily or were deported from Turkey or killed abroad. However, the remaining suspects, or former ISIS members, were detained in camps administered by the Syrian Democratic Forces (SDF) (Al-Roj and Al-Hol) and detention facilities in the Al-Hasakah region in northeast Syria.

²⁸³ Genocide Network Secretariat. (2020). Cumulative Prosecution Of Foreign Terrorist Fighters For Core International Crimes And Terrorism-Related Offences. In *The Genocide Network [Report]*. Eurojust, p.16. Available at: <https://doi.org/10.2812/340844>

²⁸⁴ Dupond-Moretti, É. (2022, October 5). Déclaration de M. Éric Dupond-Moretti, garde des sceaux, ministre de la justice, sur les djihadistes français partis en Syrie. Sénat. Retrieved from <https://www.vie-publique.fr/discours/286713-eric-dupond-moretti-05102022-djihadistes-francais>; Cook, J., & Vale, G. (2019, July). From Daesh to 'Diaspora' II: The Challenges Posed by Women and Minors After the Fall of the Caliphate. *CTC Sentinel*, p. 36. Retrieved from <https://ctc.usma.edu/wp-content/uploads/2019/07/CTC-SENTINEL-062019.pdf>

²⁸⁵ Koller, S. & Counter Extremism Project (CEP). (2023). Prosecution of Returnees from Syria and Iraq in France: Insights and Recommendations for Policymakers and Security Agencies. Counter Extremism Project (CEP), p.6

The French government has adopted a case-by-case policy on the repatriation of French ISIS affiliates in Syria. Only 35 French minors, orphans, unaccompanied minors, or humanitarian cases, were brought back to France without their parents from 2019 to January 2021. In a statement released on 15 March 2019, the Ministry of European and Foreign Affairs (referred to as "the Foreign Ministry") announced that France had brought back several minors, all under the age of five and orphaned, from the camps located in northeastern Syria. However, France has been under strong national and international pressure, particularly since the death of a French diabetic ISIS woman in the camp in Syria, despite repeated warnings, left her 6-year-old daughter in December 2021. On 14 September 2022, the European Court of Human Rights (ECHR) issued a verdict (H.F. and others v. France), opening a new perspective on the debate on the obligation to repatriate. According to the case of H.F. and others v France, the French (grand)parents of three children, detained with their mothers who are a member of ISIS in Al-Hol and Roj camps, have lodged a legal complaint at Europe's highest court over the France's refusal to bring them to France. On 23 April 2021, the Council of State dismissed numerous requests to compel the government to repatriate its citizens, citing the issue as one of French diplomacy and thus beyond its jurisdiction²⁸⁶. Despite multiple attempts between October 2018 and May 2019, the applicants' efforts to secure the repatriation of their relatives were unsuccessful.

On 14 September 2022, the European Court of Human Rights (ECHR) issued a verdict, opening a new perspective on the debate on the obligation to repatriate. In the case of H.F. and others v France, the Grand Chamber of the Court ruled that France violated article 3§2 of Protocol No. 4 to the ECHR and deprived its citizens of the "right to enter" and return to France. The court's decision in H.F. and others v France states that states parties are not compelled to repatriate their citizens. French nationals detained in camps in northeastern Syria cannot assert a general entitlement to repatriation based solely on the right to enter national territory (paragraph 259). However, Article 3(2) of Protocol 4

²⁸⁶ France 24. (2019). *France taken to court for refusing to repatriate the children of jihadists*. [online] Available at: <https://www.france24.com/en/20190507-france-taken-court-over-repatriating-children-jihadists>.

might necessitate (less extensive) positive duties on the state if governmental inactivity leads to de facto exile (paragraph 260). The Court's examination progresses through two stages. Initially, it establishes the existence of exceptional circumstances, specifically extraterritorial factors that contribute to a risk to the life and physical well-being of the applicants' family members, particularly the children (paragraphs 264-271). Subsequently, it finds that the French authorities' assessment of the repatriation requests made by the applicants on behalf of their relatives lacked adequate safeguards against arbitrariness, resulting in a breach of Article 3(2) of Protocol 4 (paragraphs 272-284). Thus, this provision only imposes a procedural requirement (ensuring appropriate safeguards against arbitrariness) with respect to repatriation from Syrian camps. In summary, French ISIS members and their children, detained in camps in Syria, cannot enjoy a general right to repatriation²⁸⁷.

As other governments intensified their repatriation efforts in 2022, France became increasingly alone among its European colleagues. Several factors, including the presidential and legislative elections held in spring 2022 and the evolution of opinion among French government officials, played a role in policy changes. Since July 2022, French officials have launched several missions to repatriate 109 children and 47 women from northeast Syria, which ended at the end of January 2023²⁸⁸

The increase in the number of French ISIS affiliates caused a 'massification' of cases, leading to a dramatic increase in the number of terrorism-related court proceedings, the number increasing from 26 in 2013 to 415 in early 2017. In May 2018, 1,620 individuals were investigated to reveal their links to terrorist networks in Syria and Iraq²⁸⁹. France has prosecuted 305 returning ISIS fighters for their relationships with terrorist organisations. Among them, 192 returnees have been sentenced, 156 men and 36 women

²⁸⁷ Grand Chamber. (2022). CASE OF H.F. AND OTHERS v. FRANCE. In JUDGMENT. _ Echr. (n.d.-b). HUDOC - European Court of Human Rights. Retrieved May 17, 2024, from: [https://hudoc.echr.coe.int/#{%22itemid%22:\[%22003-7431242-10174513%22\]}](https://hudoc.echr.coe.int/#{%22itemid%22:[%22003-7431242-10174513%22]})

²⁸⁸ Koller, S. & Counter Extremism Project (CEP). (2023). Prosecution of Returnees from Syria and Iraq in France: Insights and Recommendations for Policymakers and Security Agencies [Policy Paper]. Counter Extremism Project (CEP), p.7

²⁸⁹ Centre d'analyse du terrorisme. (2020). *La justice pénale face au djihadisme – Le traitement judiciaire des filières syro-irakiennes (2014-2017)*. CAT. [online] Available at: <https://www.cat-int.org/index.php/2018/05/25/la-justice-penale-face-au-djihadisme-le-traitement-judiciaire-des-filieres-syro-irakiennes-2014-2017> [Accessed 28 May 2024].

found guilty. Specifically, 146 individuals were convicted by the Assize Court, while 46 were convicted by the correctional tribunal (TC) at the Paris Judicial Court and the Juvenile Court (TPE). Twelve cases have been dismissed without being brought on charges. Two cases resulted in acquittals, leading to the individuals' release, and in one instance the individual passed away. In November 2022, seven cases were under review by the Court of Appeal. Between January and March 2023, three more women were convicted²⁹⁰.

The main charge used in the prosecution of crimes related to terrorism, including cases involving foreign terrorist fighters and return cases, is "association de malfaiteurs en relation avec une entreprise terroriste or AMT ", which is laid down in Article 421-2-1 of the French Criminal Code²⁹¹. Article 421-2-1 of the French Criminal Code penalises the participation in a group formed for the purposes of preparation of terrorist acts. It is not necessary for an individual to directly contribute materially to the commission of the terrorist act and for the planned terrorist activity to be implemented; in fact²⁹². Therefore, two fundamental elements must be found in order to obtain a conviction under the AMT. The active participation of an individual in a terrorist group and being aware of the terrorist group's objectives. French criminal policy has undergone major changes in recent years. By these changes, the French criminal justice system has begun to differentiate participation and leadership roles in a terrorist group from each other. This differentiation allowed the AMT to be prosecuted as a crime, with a prison sentence (up to 30 years and

²⁹⁰ Koller, S. & Counter Extremism Project (CEP). (2023). Prosecution of Returnees from Syria and Iraq in France: Insights and Recommendations for Policymakers and Security Agencies. Counter Extremism Project (CEP), p.13

²⁹¹ Article 421-2-1 of the French Criminal Code defines "the participation in a group formed or in an agreement established for the preparation, characterized by one or more material facts, of one of the acts of terrorism referred to in the preceding articles" as a terrorism offence. Acts of terrorism are defined in Article 421-1 and include attacks on life and physical integrity; the hijacking of planes and other modes of transport; theft, extortions, destructions and degradations; membership in or support of dissolved armed groups and movements; offences in relation to armaments, explosives and nuclear materials; dealing in stolen goods related to these offences; and some aspects of money laundering and financing. These acts become "terrorist" if they occur with the additional qualification of "aiming to seriously trouble public order [ordre public] by intimidation or terror".

²⁹² Weill, S. (2018). "French foreign fighters: The engagement of administrative and criminal justice in France," International Review of the Red Cross, 100 (1-2-3), p.223, Retrieved May 21, 2024, from: https://international-review.icrc.org/sites/default/files/reviews-pdf/2019-10/100_9.pdf

life imprisonment for ATM leaders)²⁹³. The participation in a terrorist organisation was therefore regarded as a goal of committing harmful acts against individuals, which led to more severe penalties, especially after terrorist attacks.

Moreover, an important development in France in recent years has been the establishment of the National Anti-Terrorism Prosecution Office (PNAT) through legislation enacted on March 23, 23, 2019. PNAT is currently responsible for prosecuting terrorist offences according to Article 706-16 of the Criminal Procedure Code and for cases relating to crimes against humanity and war crimes. By this organisation, it aims to centralise and standardise investigations of French people, especially those who were on travel (possible) to conflict zones in Syria²⁹⁴.

6.4.1.1 Case studies

6.4.1.1.1 The case of Sabri Essid and Nabil Greseque

There were two investigations for French citizens involved in genocide and crimes against the Yazidi community. Sabri Essid and Nabil Greseque, who travelled to Syria to join ISIS in 2014, are alleged to be involved in the ISIS attacks on Sinjar. Investigations are extremely important because the National Anti-Terrorism Prosecution Office (PNAT) has for the first time been charged with investigating judges to investigate the suspicions of crimes against humanity committed by French jihadists.

The PNAT's unit of 'crimes against humanity' launched a judicial investigation into 'crimes against humanity' and demanded indictment for acts committed by suspects between 2014 and 2016²⁹⁵. In 2018 and 2019, the International Federation for Human Rights (FIDH) acted as legal representatives for Yazidi survivors. Thanks to FIDH, these

²⁹³ Khoudeida, L. & Global Yazidi Organisation [Yazda]. (2017, September). An Uncertain Future For Yazidis : A Report Marking Three Years Of An Ongoing Genocide, p.10. <https://www.yazda.org/>. https://irp.cdn-website.com/16670504/files/uploaded/Yazda_Publication_2017-09_Report3YearsOngoingGenocide_28062021_Download_EN_vf.pdf

²⁹⁴ Council of Europe Committee on Experts on Counter Terrorism (CDCT). (2021). "France", Profiles on Counter-Terrorist Capacity. Retrieved May 19, 2024, from: <https://rm.coe.int/profile-france-2021-cdct-/1680a44e0c>.

²⁹⁵ Novello, G. (2019). Sabri Essid, un djihadiste français présumé mort, visé par une enquête pour crimes contre l'humanité, une première. Retrieved May 19, 2024, from: www.20minutes.fr. <https://www.20minutes.fr/justice/2637243-20191026-sabri-essid-djihadiste-francais-presume-mort-vise-enquete-crimes-contre-humanite-premiere>

survivors provided their testimonies to investigators, exposing the participation of French nationals in the atrocities they endured²⁹⁶. The French National Anti-Terrorist Prosecution Office launched a case on 25 October 2019, accusing Sabri Essid of crimes against humanity and genocide. Two female Yazidi witnesses identified Essid and accused him of buying, detaining, and sexually assaulting them in Syria. The prosecution claims that Essid's statements about the Yazidis, his involvement in ISIS's propaganda targeting the Yazidi community, and his position in the ISIS hierarchy suggest an intention to commit genocide.

In February 2020, an international arrest warrant was issued for Essid for genocide and crimes against humanity. On 10 July 2020, a judicial investigation was launched against Nabil Greseque for genocide and crimes against humanity committed in Syria against the Yazidis between 2015 and 2016²⁹⁷. In 2021, two Yazidi survivors, who were alleged to be targeted by Essid, indicated their desire to join legal proceedings as civil plaintiffs. The Yazidi victims admitted as civil parties in both cases were heard by the investigative judges²⁹⁸. The trial marks a significant and unexpected advance, as the designation of crimes against humanity allows for the collection of additional witnesses from the victims. In addition, it enables the expansion and intensification of investigations to reach higher levels of the chain of command.

As the case is currently under investigation, the suspects have not been officially charged. The current location of the suspects is unknown. The investigation focusses on allegations of genocide that involve serious damage to the physical and mental well-being of Yazidi victims. It also includes crimes against humanity, including slavery, illegal detention, torture, rape, persecution, and other brutal acts against civilian victims, which violate the fundamental principles of international law.

²⁹⁶ Trial International (2022). Universal Jurisdiction Annual Review 2022. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In *Universal Jurisdiction*, p.31

²⁹⁷ Mohamad HASSAN (Director). (2020). Irak : Deux Officiers Des Gardes-Frontières Irakiens Tués Par Un Drone Turc. De Paris Kurde N:425 Aout 2020 Institut Bulletin De Liaison Et D'Information.

²⁹⁸ Trial International (2023). Universal Jurisdiction Annual Review 2023. Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS, p.48

6.4.2 Germany

Since 2011, more than 1,150 people have left Germany to Syria and Iraq to join terrorist organisations. German women were estimated to make up at least 25% of German travellers²⁹⁹. Although some women who joined ISIS returned voluntarily to their homeland, some were expelled from Turkey to Germany, lost their lives in ISIS territories, or some of whom were still missing. Following the military defeat of ISIS in 2019, the remaining suspects or former ISIS members, including German men, women and children, were detained. Those currently housed in prisons or in the Al Howl camp and the Al Roj camp under the Kurdish Autonomous Administration of North and East Syria (AANES or Rojava)³⁰⁰.

In response to humanitarian concerns and court decisions, the German government brought some German minors and their detained German women to Germany. These women were sent back to Germany because of their role as mothers of these minors. Therefore, Germany is recognised as one of the few European countries that repatriates adult women from northeast Syria³⁰¹. Most of the female returnees were charged with membership or support of a terrorist organisation (§129a,b StGB). According to German prosecutors, simply staying in ISIS territory is not enough to be charged with membership in a terrorist organisation under 129§ a,b StGB. They demand additional evidence to justify charging individuals with membership in a terrorist organisation. For example, German prosecutors accept that seemingly legal actions, such as marrying an ISIS fighter and running a household on ISIS territory, constitute the basis for membership in ISIS under 129a,b StGB. Furthermore, these female returnees were also charged with violations of the War Weapons Control Acts (§22 KrWaffKontrG), crimes against

²⁹⁹ Ziolkowski, B., & Kunze, A. (2019, November). Deutsche muhajirat: Radikalisierungshintergründe und -verläufe von Mädchen und Frauen aus Baden-Württemberg. State Office for the Protection of the Constitution Baden-Württemberg. Retrieved April 2, 2024, from: http://docs.dpaq.de/15682-deutsche_muhajirat_radikalisierungshintergr_nde_von_m_dchen_und_frauen_aus_bw.pdf

³⁰⁰ Koller, S. & Counter Extremism Project (CEP). (2022). Prosecution of German Women Returning from Syria and Iraq: Insights and Recommendations for Policymakers and Security Agencies. In CEP Policy Paper. Counter Extremism Project (CEP), p.6. Retrieved April 2, 2024, from: <https://www.welt.de/regionales/hamburg/article240150047/Hamburg-34-jaehrige-IS-Rueckkehrerin-muss-fuenfeinhalb-Jahre-in-Haft.html>

³⁰¹ Welle, D. (2020, May 24). Over 100 “Islamic State” fighters return to Germany. dw.com. Retrieved April 2, 2024, from: <https://www.dw.com/en/over-100-islamic-state-fighters-return-to-germany/a-53549985>

humanity (§7 VStGB), abduction of minors (§235 StGB), war crimes against persons (§8 VStGB), war crimes against property (§9 VStGB), deprivation of liberty (§ 239 StGB), aiding and abetting genocide (§6 VStGB), aiding and abetting murder (§211 StGB), and/or involuntary manslaughter (§222 StGB)³⁰².

The German Federal Public Prosecutor Office continued to collect testimony and received various forms of evidence, such as documents, photos, and videos, in 2018. In addition to those investigations, there were also individual investigations that helped to issue subsequent convictions and new arrest warrants³⁰³. Furthermore, the German prosecutorial authorities initiated a second structural investigation focused on crimes that occurred in Syria in August 2014. The objective was to gather evidence related to international crimes perpetrated by the Islamic State terrorist organisation (IS) and other nonstate armed groups operating in Syria and Iraq. Up to now, this structural investigation has targeted 30 specific individuals involved in the crimes that led to indictments and subsequent legal proceedings on multiple occasions. In December 2016, the German Supreme Court issued an arrest warrant for a senior ISIS commander for being responsible for genocide and war crimes, including the abduction and sexual enslavement of Yazidi women in Syria and Iraq. The following case studies will provide a detailed explanation of these developments.

6.4.2.1 Case studies

6.4.2.1.1 The case of Taha A.-J. and Jennifer W.

Taha A. J. was charged with genocide and crimes against humanity by committing several offences such as murdering, human trafficking, and membership in a terrorist group. He was sentenced to life in prison. Moreover, his wife, Jennifer W. was charged with membership in a terrorist organisation and participating in war crimes. Jennifer W. also

³⁰² Koller, S. & Counter Extremism Project (CEP). (2022). Prosecution of German Women Returning from Syria and Iraq: Insights and Recommendations for Policymakers and Security Agencies. In CEP Policy Paper. Counter Extremism Project (CEP), pp.9-11. Retrieved May 19, 2024, from: <https://www.welt.de/regionales/hamburg/article240150047/Hamburg-34-jaehrige-IS-Rueckkehrerin-muss-fuenfeinhalb-Jahre-in-Haft.html>

³⁰³ Trial International (2019). Universal Jurisdiction Annual Review 2019. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In Universal Jurisdiction, p.44

received a sentence of 10 years in prison. Convictions are a milestone, being the first instances of convictions for war crimes and crimes against humanity against members of the Yazidi community.

Taha A. J. joined ISIS in Iraq in March 2013. Jennifer W. left Germany in August 2014 and joined ISIS in Iraq. Between June and September 2015, Jennifer W. participated in daily "moral patrols" in Fallujah and Mosul, occupied by ISIS, to monitor the behaviour and clothing of women to ensure compliance with ISIS rules. During these patrols, she carried various lethal weapons with her and was paid by ISIS for his activities.

Taha A. J. and Jennifer W. lived together in Fallujah. In the summer of 2015, Taha A. J. purchased an enslaved Yazidi woman and her five-year-old daughter, who were among a group of Yazidis captured in an attack on the Sindjar region. Taha A. J. took them to their home in Fallujah, Syria. He and his wife Jennifer W. kept them as slaves and made them subject to cruel living conditions. Taha A. J. also prohibited them from practising their religion, forced them to convert to Islam, and severely abused them. Taha A. J. chained the 5-year-old Yazidi girl with a cable outside the windows bars and left her in extreme heat (up to 51 degrees Celsius) as a punishment for wetting the bed and as a measure to 'discipline' the girl³⁰⁴. The 'punishment' led to the girl being dead. However, Jennifer W. did not take any action to prevent the child's death. Therefore, she was accused of witnessing her husband's actions.

On 9 April 2019, the trial of Jennifer W. began at the Munich Higher Regional Court. The defendant was originally charged on 13 December 2018 only for membership in a terrorist organisation, but the court later added the charge of killing the 5-year-old Yazidi girl as a war crime after identifying the victims. Furthermore, the German Federal Court of Justice has issued an arrest warrant against Taha A.J. on 18 April 2019. He was arrested in Greece in May 2019 and transferred to Germany on 9 October 2019. His trial began on 24 April 2020 at the Frankfurt High Regional Court. He was charged with genocide,

³⁰⁴ User, G. (2023, January 31). German Federal Court of Justice confirms the First-Ever conviction of an ISIS member for genocide, Nadia's Initiative. Retrieved April 21, 2024, from: <https://www.nadiasinitiative.org/news/german-federal-court-of-justice-confirms-the-first-ever-conviction-of-an-isis-member-for-genocide>

crimes against humanity, war crimes against individuals, human trafficking and exploitation of labour, and the murder of a five-year-old Yazidi girl.

On 25 October 2021, the Higher Regional Court of Munich ruled that Jennifer W. was a member of a foreign terrorist organisation that assisted and encouraged the murder attempts, as well as attempted war crimes and crimes against humanity. She received a 10-year prison sentence. The federal prosecutor appealed the verdict, seeking a life sentence. In addition, on 30 November 2021, the Higher Regional Court of Frankfurt am Main found Taha A. J. guilty of genocide, crimes against humanity that cause deaths, war crimes, help and aid in war crimes, and causing bodily harm that leads to death. He was sentenced to life in prison. Moreover, he was ordered to pay €50,000 as nonpecuniary damage to the mother of the dead Yazidi child. Taha A. J. appealed his conviction³⁰⁵.

In March 2023, the German Federal Court of Justice overturned the decision against Jennifer W. following the appeal by the Federal Prosecutor, and the defendant's appeal was rejected. Germany's highest court found that the lower court made a mistake in classifying aid and assistance to slavery as a "less serious" crime against humanity, leading to a reduction in the sentence. The Federal Court sent the case back to the Munich High Regional Court to decide the sentence³⁰⁶.

6.4.2.1.2 The case of Nurten J.

Nurten J., a German national, was accused of crimes against humanity, war crimes, and membership in a terrorist organisation. Nurten J. went to Syria with her three-year-old daughter in February 2015 to join ISIS. She married a senior member of ISIS and lived in Syria in apartments that had been seized by ISIS. According to the testimony of the

³⁰⁵ Trial International (2022). Universal Jurisdiction Annual Review 2022. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In Universal Jurisdiction, p.59

³⁰⁶ Jacobsen, B. (2023). German ISIS member sentenced to an extended prison term for crimes against humanity against Yazidis following appeal decision, Nadia's Initiative. Retrieved April 21, 2024, from: <https://www.nadiasinitiative.org/news/german-isis-member-sentenced-to-an-extended-prison-term>

Yazidi victim, Nurten J. forced enslaved Yazidi women to clean her house approximately 50 times³⁰⁷.

On 2 November 2020, the Federal Public Prosecutor charged Nurten J. with crimes including enslavement as a crime against humanity, war crimes, affiliation with a foreign terrorist organisation, and failure in parental responsibility. In addition, on 21 April 2021, the Higher Regional Court of Düsseldorf found Nurten J. guilty of belonging to a foreign terrorist group, committing war crimes against property, aiding, and abetting a crime against humanity through enslavement and unlawful imprisonment, violating the Military Weapons Control Act, and neglecting parental duties. She received a prison sentence of four years and three months³⁰⁸.

6.4.2.1.3 The case of Jalda A.

Jalda A., a German and Afghan national, was convicted of international crimes committed in Syria, including the enslavement of Yazidi women. The allegations against her include involvement in crimes against humanity, including acts of cruelty, enslavement, and severe deprivation of liberty. She was also accused of aiding and abetting genocide, as well as aiding and abetting crimes against humanity, including rape and causing significant psychological harm. Furthermore, she faced charges of aiding and abetting war crimes, such as rape, cruel, and inhumane treatment, and causing severe bodily harm. An investigation was initiated against her for allegedly being affiliated with a foreign terrorist organisation.

According to the judgment, Jalda A. went to Syria in April 2014, after her brother joined Islamic State (ISIS) in February 2014. On arrival, she married an ISIS fighter and together they lived in various ISIS-occupied buildings after the previous inhabitants fled or were

³⁰⁷ Doughty street chambers (2021). *ISIS member convicted of crimes against humanity for aiding and abetting enslavement of a Yazidi woman* | Doughty Street Chambers. [online] Retrieved April 22, 2024, from: <https://www.doughtystreet.co.uk/news/isis-member-convicted-crimes-against-humanity-aiding-and-abetting-enslavement-yazidi-woman>

³⁰⁸ Trial International (2022). *Universal Jurisdiction Annual Review 2022*. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In *Universal Jurisdiction*, p.61

expelled. They often participated in public 'punishment actions' of ISIS, including stonings. Following the birth of their son in February 2015, Jalda A. lived in an ISIS-owned apartment in Raqqa with her first husband, who died in April 2015. Subsequently, she lived as a "second wife" with another ISIS member before marrying a third man from September to October 2017, with whom she lived in several ISIS facilities in Mayadin, Syria³⁰⁹.

A 26-year-old Yazidi woman, called "M", was part of her household. The Yazidi women were enslaved by ISIS when their village was captured in August 2014. According to the court findings, Jalda A. has supported the physical and sexual abuse of M by her husband by monitoring her and preventing her escape. Jalda A. forced the Yazidi woman to work and abused her several times over a period of about three weeks.

Following the capture of Jalda A. by Kurdish forces (YPG) at the end of 2017, Jalda A. was placed with her son at the Roj camp near Al-Hasakah in Syria. In July 2018, she gave birth to her second son. In October 2021, she and her children were transferred to Germany, where she was arrested in April 2022. On 27 July 2022, the Hamburg High Regional Court convicted Jalda A. of various crimes, including persecution, slavery, and severe deprivation of freedom, aiding and abetting genocide, and crimes against humanity such as rape and serious psychological damage, and participation in a foreign terrorist organisation. She was sentenced to five and a half years of imprisonment³¹⁰. Thus, Jalda A. is the first female returnee to be convicted in the first instance for aiding and abetting genocide against the Yazidi community.

³⁰⁹ User, G. (2022, December 12). German ISIS returnee on trial for crimes against humanity and aiding and abetting genocide over abuse of an enslaved Yazidi woman in Syria — Nadia's initiative. Nadia's Initiative. <https://www.nadiasinitiative.org/news/german-isis-returnee-on-trial-for-crimes-against-humanity-and-aiding-and-abetting-genocide-over-abuse-of-an-enslaved-yazidi-woman-in-syria>

³¹⁰ Trial International (2023). Universal Jurisdiction Annual Review 2023. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In Universal Jurisdiction, p.63

6.4.2.1.4 The case of Leonora M.

Leonora M, a German national, was charged with aiding and abetting crimes against humanity, including the enslavement of Yazidi women and her two children, membership in a foreign terrorist organisation, and violations of the War Weapons Control Act.

According to the indictment, Leonora M. left Germany in March 2015 and joined ISIS when she was only 18 years old. She married a member of ISIS and lived with him in Raqqa from fall 2015 to June 2017³¹¹. During this period, she temporarily owned a semiautomatic gun and controlled an assault rifle regulated by the War Weapons Control Act. Leonora M. supported her husband's ISIS activities through her household management, and she also had roles within ISIS itself, including three months after her arrival at the hospital controlled by the group and subsequent investigations into the wives of ISIS fighters for their intelligence services. Furthermore, the husband of Leonora M. kept a 33-year-old Yazidi woman as a sexual slave. Her husband later sold these Yazidi women with her two children for financial income in June 2015. According to the accusation, they were held captive in their apartment in Raqqa. According to the prosecutor, Leonora M. took care of the injured Yazidi woman at the behest of her husband and prepared her for sale. It is also stated that the enslaved Yazidi woman was later sold for a profit. Moreover, Leonora M. allegedly tried to persuade the woman of Yazidi to abandon her religious beliefs and accept the interpretation of ISIS's Islam.

On 20 December 2020, Leonora M. returned to Germany and was arrested based on an arrest warrant issued by a federal Supreme Court investigative judge on 20 May 2020. On 8 January 2021, she was released for provisional release from pre-trial detention. On 7 July 2021, the Federal Prosecutor's Office officially accused Leonora M. of aiding in the alleged trafficking of human beings belonging to foreign terrorist organisations and infringing the War Weapons Control Act. The Higher Regional Court of Naumburg found Leonora M. guilty of belonging to a foreign terrorist group and breaching the War

³¹¹ Euronews. (2023). Studie warnt vor Gefahr durch ehemalige IS-Kämpfer - in der Türkei. [online] Retrieved April 22, 2024, from: <https://de.euronews.com/2023/03/02/welche-gefahr-geht-von-ehemaligen-is-kampfern-aus>

Weapons Control Act on 18 May 2022. However, the court cleared her of helping in crimes since there was no evidence to support the claim that the defendant had committed human trafficking by caring for a Yazidi woman. She was sentenced to two years in prison under juvenile law, which was then suspended for probation and three years in prison. The Federal Public Prosecutor and the defendant have appealed the acquittal decision³¹².

6.4.2.1.5 The case of Romiena S.

Romiena S, a German citizen, was charged with aiding and abetting crimes against humanity, including child abduction, violation of the duty of care and upbringing, and membership in a foreign terrorist organisation. At the end of the trial, she was found guilty and sentenced to three years and three months in prison.

Romiena S. travelled to Syria in 2014 together with a 16-year-old girl she had persuaded to join her to join ISIS. Romiena S. also took her four-year-old child without the permission of her father. In Syria, she allegedly married several members of ISIS together. She raised her daughter and two sons, who were born in Syria, according to the extremist teachings of ISIS. She took her six-year-old daughter to witness a woman being beaten and exposed her to a video of execution. She also shared her support for the ISIS attacks in Nice on 14 July 2016 and Würzburg on 18 July 2016 through Twitter messages. Finally, she is accused of using the work of a Yazidi woman enslaved by ISIS in the home of a slave trader for several days and keeping watch on the Yazidi women enslaved³¹³.

Romiena S. and her children were placed in two camps run by Kurdish forces after their capture at the beginning of 2019. On 7 October 2021, the suspect returned to Germany and was arrested at the Frankfurt airport. On 1 June 2022, the Higher Regional Court of Celle found her guilty of membership in a foreign terrorist organisation, supporting and supporting crimes against humanity, serious child abduction, and violation of duty of care

³¹² Trial International (2023). Universal Jurisdiction Annual Review 2023. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In Universal Jurisdiction, p.65

³¹³ Agencies, T.N.A.S. & (2022). German woman allegedly took 6yo daughter to watch IS stoning. [online] <https://www.newarab.com/>. Retrieved April 21, 2024, from: <https://www.newarab.com/news/german-woman-allegedly-took-6yo-daughter-watch-stoning>

and education. She was sentenced to three years and three months of imprisonment. The court considered his admission to crimes, his separation from ISIS, and his lack of a hard-line stance as mitigated factors in his conviction³¹⁴.

6.4.2.1.6 The case of Sarah O.

Sarah O, who holds dual German and Algerian citizenship, was accused of crimes against humanity, including aiding and abetting rape as a crime against humanity, membership in a foreign terrorist organisation, and deprivation of liberty.

In November 2013, Sarah O. went to Syria at the age of 15 to join ISIS. In January 2014, she married Ismail S., a German-Turkish national. Sarah O. assisted her husband in the activities of ISIS by managing her home and caring for her three daughters. She temporarily accommodated new ISIS members and encouraged others to join ISIS in Syria. Following the ideology of ISIS, Sarah O. and her husband enslaved five Yazidi women and two underage Yazidi girls, some of whom were ‘resold’ to other members of ISIS. A 14-year-old Yazidi girl was shot and killed during a cross-country trip approved by defendant Sarah O. Three of the five women participated in the proceedings as joint plaintiffs. According to the testimonies of the victims, Ismail S., who is still wanted by the German authorities, violently forced at least two of the three joint plaintiffs to have sexual intercourse with him. The accused approved of this act, believing it was necessary according to ISIS regulations, and actively supported her husband in carrying out it against vulnerable women. She prepared these Yazidi women for rape and forced them to do slave labour³¹⁵

Following the testimonies of victims involved in the trial, the chamber augmented the original accusations against Sarah O., encompassing crimes against humanity alongside

³¹⁴ Trial International (2023). *Universal Jurisdiction Annual Review 2023*. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In *Universal Jurisdiction*, p.69

³¹⁵ Doughty Street Chambers (2021). *German court convicts a third ISIS member of crimes against humanity committed against Yazidis*. *Doughty Street Chambers*. [online] Retrieved April 12, 2024, from: <https://www.doughtystreet.co.uk/news/german-court-convicts-third-isis-member-crimes-against-humanity-committed-against-yazidis>.

allegations of physical and sexual assault. Moreover, prompted by submissions from the victims' legal representatives, the Chamber broadened the charges to encompass religious and gender-based persecution as crimes against humanity.

On 21 September 2018, Sarah O. was arrested in Turkey, following an arrest warrant issued by the investigative judge of the Federal Court of Justice on 24 September 2015. The defendant was deported to Germany after being held in Turkey for seven months. On the other hand, her husband, Smail S., has not been found despite the international arrest warrant issued by the German authorities. It is claimed to live in Turkey³¹⁶.

On 16 June 2021, the Higher Regional Court of Düsseldorf convicted Sarah O. of membership in a foreign terrorist group and charged her with crimes against humanity through slavery that resulted in the death of the victim, persecution as a crime against humanity, aid and encouragement to rape as a crime against humanity, and unlawful depriving someone of their freedom for more than a week, resulting in their death and bodily harm. She was sentenced to six years and six months of imprisonment under juvenile law. In addition, her husband's German parents were sentenced to four years and six months and three years in prison for various offences, including supporting terrorist organisations abroad³¹⁷. The conviction marks a significant cornerstone, being the first cases of gender-based violence legal judgment against members of the Yazidi community.

6.4.2.1.7 The case of Omaima A.

Omaima A., a dual German and Tunisian citizen, was accused of aiding and abetting crimes against humanity and membership in a terrorist organisation. Omaima A. travelled from Turkey to Syria in January 2015 with her three underage children to join ISIS. On

³¹⁶ Doughty Street Chambers (2021). German court convicts a third ISIS member of crimes against humanity committed against Yazidis. Doughty Street Chambers. [online] Retrieved April 12, 2024, from: <https://www.doughtystreet.co.uk/news/german-court-convicts-third-isis-member-crimes-against-humanity-committed-against-yazidis>.

³¹⁷ Trial International (2022). Universal Jurisdiction Annual Review 2022. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In Universal Jurisdiction, p.60

22 July 2021, Omailma A. was convicted of aiding and abetting crimes against humanity for her role in the enslavement of two Yazidi women. These women were kidnapped during the 2014 massacre of Yazidis by ISIS in the Sinjar region of Iraq. One of the victims, a 30-year-old Yazidi woman, attended the trial at the Hamburg Higher State Court as a coplaintiff.

The new evidence provided by the coplaintiff who testified in the first trial led to a second trial against Omailma A. This evidence was not included in the initial charge. The two plaintiffs were held captive by Sarah O, an associate of Omailma A., who has recently been convicted of crimes against humanity. Sarah O. would bring those enslaved Yazidi women when she visited Omailma A. and other ISIS members. The plaintiffs stated that a 13-year-old Yazidi girl was forced to clean Omailma A.'s house. Although initially denying knowledge of the defendant or that she was in Syria during the alleged crimes in her first trial, Omailma A. pleaded guilty to this second trial. In October 2020, Omailma A was found guilty by the Hamburg court of her involvement in the enslavement of a Yazidi teenage girl and received a 3.5-year prison term³¹⁸. In addition, the Hanseatic Higher Regional Court in Hamburg convicted Omailma A. of belonging to a foreign terrorist group, assisting in a crime against humanity by facilitating enslavement, neglecting her duty of care or upbringing, illegal detention, and violating the Military Weapons Control Act. She was sentenced to a three-year and six-month prison sentence. Omailma A. subsequently appealed the decision. However, on 9 March 2021, the Federal Court of Justice rejected the appeal, and in the same month, the Hamburg Prosecutor General issued another indictment against Omailma A., accusing her of conspiracy to evict slavery in 2016, a case that had not previously been decided. On 22 July 2021, the Hanseatic Supreme Regional Court in Hamburg convicted her of helping and assisting in a crime against humanity by slavery and deprivation of liberty. She was sentenced to four years in prison, including the sentence of 2 October 2020³¹⁹.

³¹⁸ Bild. (2021, July 22). Sie war mit Ex-Rapper „Deso Dogg“ verheiratet: Haftstrafe für ISIS-Witwe Omailma A. wegen Sklaverei | Regional. bild.de. <https://www.bild.de/regional/hamburg/hamburg-aktuell/prozess-gegen-versklavung-isis-witwe-zu-mehrjaehriger-haftstrafe-verurteilt-77156132.bild.html>

³¹⁹ Trial International (2022). Universal Jurisdiction Annual Review 2022. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In Universal Jurisdiction, p.59

6.4.2.1.8 The case of Nadine K.

Nadine K, a German national, are charged with Genocide and crimes against humanity, including the enslavement of Yazidi women, deprivation of liberty, religious and gender-based persecution, torture, rape, and severe mental harm. She is also charged with war crimes of torture, rape, forcible transfer of a population, crimes against property, membership in a foreign terrorist organisation, and violations of the War Weapons Control Act.

According to the judgment, Nadine K. left Germany in December 2014 to join ISIS, with her husband. Since spring 2015, the suspect and her husband were reported to have lived in Mosul with their wife and raised their child according to the ideology of ISIS. Nadine K. and her husband, who worked as a doctor for ISIS, allegedly store weapons and explosives at their home in Mosul. Additionally, the couple was also accused of establishing a reception centre for single ISIS women, which was financially supported and approved by ISIS. At the centre, Nadine K. and her husband allegedly also provided shelter and assistance to women, helping them in matters of marriage and divorce under Sharia law³²⁰.

According to the allegation, the couple allegedly detained a -21-year-old Yazidi woman and subjected her to sexual assault and physical abuse from 2016 to 2019. Nadine K. also allegedly ensured that the woman could not escape, forcing her into unpaid domestic work and childcare duties. The enslaved Yazidi woman was also raped and forced to convert to Islam. In autumn 2016, Nadine K. moved with her family and the slave Yazidi woman to Syria, where they lived until early March 2019 on the territory controlled by ISIS³²¹.

³²⁰ Doughty Street Chambers. (2023). German court delivers third genocide verdict against ISIS member for the enslavement and abuse of Yazidi woman in Syria and Iraq | Doughty Street Chambers. [online] Available at: <https://www.doughtystreet.co.uk/news/german-court-delivers-third-genocide-verdict-against-isis-member-enslavement-and-abuse-yazidi>.

³²¹ Trial International (2023). Universal Jurisdiction Annual Review 2023. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In Universal Jurisdiction, p.65

In March 2019, Nadine K. was arrested by Kurdish forces (YPG) in Syria. After her return to Germany, she was arrested on 31 March 2022 and remained in detention since then. On 16 September 2022, the Federal Public Prosecutor officially accused Nadine K. of various crimes, including genocide, crimes against humanity such as slavery, serious deprivation of freedom, religious and sex persecution, torture, rape, and serious mental harm, war crimes including torture, rape, forced displacement of the population, and property crimes, membership in a foreign terrorist organisation, and violations of the War Weapons Control Act. The criminal proceedings began in January 2023 at the High Regional Court of Koblenz³²². On 21 June 2023 the Koblenz Higher Regional Court found Nadine K. guilty of using weapons of war, crimes against humanity, human trafficking, aiding and abetting genocide and sexual violence³²³. Thus, the German court gave its third genocide verdict against an ISIS member due to the enslavement and abuse of Yazidi women in Syria and Iraq.

6.4.2.1.9 The case of Twana H. S. and Asia R. A:

On 3 April 2024, German police arrested Twana H. S. and Asia R. A., Iraqi citizens, alleged to be members of Islamic State, under suspicion of genocide and crimes against humanity for enslaving two Yazidi girls between 2015 and 2017 in Iraq and Syria. The prosecutor of the case said that the Yazidi girls were physically abused, repeatedly raped, and banned from practising their religion. In a statement, the prosecutor said that the couple handed the girls over to other IS members before leaving Syria in November 2017. The investigation is ongoing³²⁴.

³²² Trial International (2023). Universal Jurisdiction Annual Review 2023. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In *Universal Jurisdiction*, p.66

³²³ Bisset, V. (2023, June 21). German ISIS member gets 9 years after helping husband enslave woman he raped. *Washington Post*. <https://www.washingtonpost.com/world/2023/06/21/germany-isis-woman-yazidi-sentence/>

³²⁴ SWI, Swissinfo.ch (2024, April 10). German police arrest Iraqi couple suspected of genocide for enslaving Yazidi girls. Retrieved April 22, 2024, from: <https://www.swissinfo.ch/eng/german-police-arrest-iraqi-couple-suspected-of-genocide-for-enslaving-yazidi-girls/75477952>

6.4.3 United States of America

Between 2013 and 2019, approximately 300 Americans travelled to join ISIS in Syria and Iraq. Most of these people travelled alone to the region, but some of them also brought their families. When the self-proclaimed Islamic State caliphate collapsed, many were killed, some fled elsewhere, and some were captured by Kurdish forces. Men and some teenagers were mainly imprisoned, while women and minors were often transferred to detention camps.

Before the final collapse of the caliphate in 2019, some US citizens who joined ISIS left and returned voluntarily to the United States. They returned to the United States through different routes, sometimes outside formal processes. In the United States, there are at least 11 known cases of this type, including nine adult men and two adult women. According to the 11 individual cases, three of them were charged with providing false statements to the US Immigration and Border Authority without any terrorism charges. Two of the 11 individuals who voluntarily returned faced terrorist charges, and their judgments and sentences were publicly disclosed. One of them was charged in March 2016 and pleaded guilty in October 2018 to material support of a foreign terrorist organisation (FTO) and false statements to US authorities. In June 2017, another person was charged with providing and attempting to provide material support to terrorists and a foreign terrorist organisation and pleaded guilty. However, none of the minor children has been prosecuted³²⁵.

According to a report of the International Centre for Counter-Terrorism (ICCT) and the National Counterterrorism Innovation, Technology, and Education Centre (NCITE), the individuals accused of terrorism offences were found guilty of conspiracy to provide, attempting to provide, aiding and abetting to provide, or directly providing material support to a designated terrorist organisation. However, there have been no cases in which foreign terrorists (FTFs) were convicted in the United States for core international crimes.

³²⁵ Mehra, T., Herbach, M., Margolin, D., Doctor, A. C., & ICCT/NCITE. (2023). Trends in the return and prosecution of ISIS foreign terrorist fighters in the United States. In ICCT/NCITE Report, p.2-3. Retrieved April 21, 2024, from: <https://www.icct.nl/sites/default/files/2023-08/NCITE%20final%20with%20alt%20cover.pdf>

In 2022, the War Crimes Act was amended to allow individuals to be convicted of war crimes regardless of whether the perpetrators or victims are US citizens or whether the crime was committed abroad³²⁶.

6.4.3.1 Case studies

6.4.3.1.1 The case of Nisreen Assad Ibrahim Bahar

Nisreen Assad Ibrahim Bahar, also known as Umm Sayyaf, is an Iraqi citizen and was a wife of Abu Sayyaf. Umm Sayyaf was a senior leader within ISIS. Umm Sayyaf and her husband enslaved Yazidi girls and American aid worker Kayla Mueller at their home in Al-Shaddadi, Syria. However, the U.S. Government filed a criminal complaint against the defendant solely for knowingly and intentionally conspiring to provide material support to a terrorist organisation despite the sexual enslavement and other abuse denounced by the victims³²⁷.

In May 2015, the US Special Operations Forces raided a house and rescued a Yazidi girl victim. In the operation, while Umm Sayyaf was captured alive, her husband (Abu Sayyaf) was killed. Umm Sayyaf was subsequently transferred by US forces to the custody of the Kurdistan Regional Government in Iraq. Umm Sayyaf and Abu Sayyaf held the Yazidi girls in captivity at their residence in Al-Shaddadi, Syria. During their time as captives, these girls, along with other Yazidis and an American humanitarian worker named Kayla Mueller, suffered torture, sexual assault, physical abuse, and starvation. Umm Sayyaf regularly organised and facilitated the rape of girls by ISIS militants, including her husband and Abu Bakr al-Baghdadi, the leader of ISIS. Kayla's death was reported and one of the enslaved 15-year-old Yazidi girls disappeared and was never seen again³²⁸.

³²⁶ Mehra, T., Herbach, M., Margolin, D., Doctor, A. C., & ICCT/NCITE. (2023). Trends in the return and prosecution of ISIS foreign terrorist fighters in the United States. In ICCT/NCITE Report, p.13. Retrieved April 21, 2024, from: <https://www.icct.nl/sites/default/files/2023-08/NCITE%20final%20with%20alt%20cover.pdf>

³²⁷ Trial International (2022). Universal Jurisdiction Annual Review 2022. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In Universal Jurisdiction, p.94

³²⁸ CJA (2021). Survivors of Yazidi genocide seek justice in U.S. court for crimes committed by ISIL member Nisreen Assad Ibrahim Bahar (aka 'Umm Sayyaf'). CJA. [online] Retrieved April 21, 2024, from: <https://cja.org/survivors-of-yazidi-genocide-seek-justice-in-u-s-court-for-crimes-committed-by-isil-member-nisreen-assad-ibrahim-bahar-aka-umm-sayyaf/>.

On 9 February 2016, US prosecutors filed a criminal complaint against Umm Sayyaf in the Eastern District of Virginia, charging her under 18 U.S.C. §2339(b) for conspiring to support a terrorist organisation. However, the defendant was not charged with sexual violence, enslavement, torture, or genocide for her actions against women and girls she held captive. At the same time, the Kurdistan Regional Government (KRG) initiated legal proceedings against Umm Sayyaf in Erbil, but the trial was closed to victims and the media. According to the court decision, Umm Sayyaf was convicted of an offence related to the membership of ISIS in the spring of 2016, but specifics regarding her trial and sentencing in Iraq remain unclear³²⁹.

In 2021, the survivors of Yazidi filed a motion in the US Federal Court asking for recognition of their rights under the Crime Victims' Rights Act (CVRA). Specifically, they requested to be recognised as 'victims' under CVRA and to receive information on legal proceedings against Umm Sayyaf in Iraq, including charges, convictions, sentences, detention, and any attempts by the United States government to extradite or transfer Umm Sayyaf to face charges in the United States. Although the U.S. government and the federal court recognised Yazidis' right to CVRA rights, including updates on the transfer of Umm Sayyaf, the court rejected their request for further information on the Iraqi process³³⁰.

6.4.4 Turkey

Since 2013, Turkey has been an important source of recruits for ISIS and a central point for the smuggling of weapons, supplies and individuals across the Turkish-Syrian border. Many foreigners have used Turkey as a transit site to join ISIS. Even after the defeat of

³²⁹ Clooney, A., & Ahmad, Z. (2021, May 12). An ISIS torturer was complicit in genocide. The U.S. is making it hard to bring her to justice. *Washington Post*. Retrieved April 21, 2024, from: <https://www.washingtonpost.com/opinions/2021/05/11/amal-clooney-zainab-ahmad-isis-torturer-war-crimes/>; Trial International (2022). *Universal Jurisdiction Annual Review 2022*. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In *Universal Jurisdiction*, p.94

³³⁰ Trial International (2022). *Universal Jurisdiction Annual Review 2022*. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In *Universal Jurisdiction*, p.94

ISIS, many ISIS members often crossed the Turkish border illegally despite border security³³¹. In addition, a large number of Turkish citizens had crossed Turkey's borders into Syria and Iraq to fight in the ranks of ISIS and returned to Turkey with their families after the defeat of ISIS, either legally or illegally. In the face of this influx of refugees returning to or passing through Turkey, Turkey has struggled to secure its borders and prevent ISIS fighters from crossing. Furthermore, the return of foreign and Turkish citizens who were further radicalised by fighting in the ranks of ISIS has posed a serious threat to public security in Turkey. Approximately 300 Turkish citizens lost their lives in attacks related to ISIS within Turkey between 2014 and 2017. Following ISIS attacks on Turkish territory in 2016, Turkish authorities intensified their measures to monitor and combat ISIS fighters. Although the number of prosecutions against ISIS fighters has increased, the number of cases filed still represents only a small part of the estimated population of returnees³³².

Iraq's Yazidi lawmaker Vian Dakhil said that of the more than 500,000 Yazidis in Iraq, approximately 25,000 Yazidi girls have been taken by IS militants between August and October 2014³³³. Then, years after the genocide, according to the current date of the Yazda Initiative, 2,760 Yazidi women and girls are still missing³³⁴. Many experts coordinating efforts to rescue Yazidis in Iraq and Syria claim that several hundreds of Yazidi women and children may have been taken to Turkey with ISIS militants and that these missing persons are still being held in Turkey³³⁵. According to Iraqi Yazidi activist Ali Al-Khansouri, Yazidi children were trafficked to Turkey after the defeat of ISIS,

³³¹ ICG, Calibrating the Response: Turkey's ISIS Returnees, Europe & Central Asia Report No. 258, 29 June 2020, p.1, available at <https://www.crisisgroup.org/europe-central-asia/westerneuropemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 21 February 2024)

³³² ICG, Calibrating the Response: Turkey's ISIS Returnees, Europe & Central Asia Report No. 258, 29 June 2020, p. 13, available at <https://www.crisisgroup.org/europe-central-asia/westerneuropemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 21 February 2024)

³³³ Jalalzai, F. Johnson, L. (2014) Iraq's Sole Yazidi Lawmaker Says 25,000 Girls Abducted By IS To Be Raped, Sold, Radio Free Europe, Radio Liberty, 9 October 2014 at <http://www.rferl.org/content/iraq-yazidivian-dakhilpolitkovskaya-award-islamic-state/26627843.html>.

³³⁴ www.yazda.org. (n.d.). Yazda - Yazidi Global Organisation. [online] Available at: <https://www.yazda.org/yazidi-genocide>.

³³⁵ J. Arraf. (2018). This Man Has Freed Hundreds of Yazidis Captured By ISIS. Thousands Remain Missing, NPR. Retrieved March 15, 2024, from: <https://www.npr.org/sections/parallels/2018/01/18/578313469/this-man-has-freed-hundreds-of-yazidis-captured-by-isis-thousands-remain-missing>

where they are still being held in the homes of ISIS members in Turkish cities, including Gaziantep, Urfa, and Ankara³³⁶. In the last eight years, there have been reports that ISIS members who fled to Turkey have negotiated with the families of kidnapped Yazidi women and girls for thousands of dollars; after years of captivity, torture, and sexual slavery, the families had to agree to pay thousands of dollars in exchange for the release of their relatives³³⁷. Similarly, in the news headlines dated 7 April 2022 and 22 June 2023, it is reported that these Yazidi women named Rojda and Dilan, who have been held by different ISIS members in Ankara, Turkey. They were rescued separately thanks to their relatives who paid eight thousand dollars to the ISIS militant³³⁸. There are also allegations that young Syrian and Iraqi girls and children are being sold to much older but wealthy men in Turkey and other countries in the Gulf region. The British newspaper The Times reported that refugee girls and children fleeing the conflict in Syria and seeking refuge in Turkey are being sold as second wives for sums ranging from 5,000 to 6,000 Turkish Liras³³⁹. Unfortunately, the fate of the Yazidi women and children missing allegedly abducted in Turkey remains unclear.

6.4.4.1 *The Turkish Legislation*

Turkey ratified the 1948 Genocide Convention on 31 July 1950. As a member state, Turkey is obliged to take measures against persons involved in genocide or other acts referred to in Article III of the Genocide Convention. Furthermore, Turkey has fulfilled its obligations under the United Nations Convention on Genocide by incorporating

³³⁶ S. N. Al-Deen, ISIS Opens Slave Markets to Sell Yazidi Girls in Turkey, Sputnik Arabic, 20 November 2017, available at https://arabic.sputniknews.com/arab_world/201711201027660493-

³³⁷ Yazidi Justice Committee, Accountability Unit, Women for Justice, IBA Human Rights Institute, Bar Human Rights Committee of England and Wales, & Geoffrey Nice Foundation. (2022). State Responsibility And The Genocide Of The Yazidis (A. Abraham, T. Eatwell, & A. Zammit Borda, Eds.), p.170-171

³³⁸ Gerçek, A. (2023, June 21). IŞİD'in esir aldığı Ezidi kadın Ankara Gölbaşı'nda kurtarıldı. *Artı Gerçek*. <https://artigercek.com/guncel/21-yasindaki-ezidi-kadin-ankara-golbasinda-kurtarildi-254950h>; Yaşam, Y. (2022, April 18). Êzidi Rojda'yı ailesi kurtardı, failer ne olacak? *Yeni Yaşam Gazetesi | Yeni Yaşam*. <https://yeniyaşamgazetesi5.com/ezidi-rojdayi-ailesi-kurtardi-failer-ne-olacak/>; Duvar, G. (2022, April 7). Ankara'da esir tutulan Ezidi bir kadın daha IŞİD'den kurtarıldı. *Gazete Duvar*. <https://www.gazeteduvar.com.tr/ankarada-esir-tutulan-ezidi-bir-kadin-daha-isidden-kurtarildi-haber-1559592>

³³⁹ Yazidi Justice Committee, Accountability Unit, Women for Justice, IBA Human Rights Institute, Bar Human Rights Committee of England and Wales, & Geoffrey Nice Foundation. (2022). State Responsibility And The Genocide Of The Yazidis (A. Abraham, T. Eatwell, & A. Zammit Borda, Eds.), p.170

genocide as a crime into the Turkish Penal Code (TPC), which entered into force on 1 June 2005. Article 76 of the TPC outlines the criminalisation of genocide in accordance with the definition referred to in Article II of the Convention on Genocide³⁴⁰. According to the Turkish Penal Code (TPC), the jurisdiction for genocide crimes is universal. This means that the crime of genocide can be prosecuted regardless of whether it took place in Turkey or abroad. In addition, the nationality of the victim is inconsequential, which means that the perpetrator of this crime can be prosecuted whether he/she is a Turkish citizen or noncitizens³⁴¹. Therefore, Turkey is under an obligation to punish the perpetrators of the Yazidi genocide. Despite extensive criminal justice and police crackdown on ISIS fighters, no ISIS members have been prosecuted in Turkish courts for genocide and crimes against humanity against the Yazidi community. In criminal proceedings, the Turkish authorities had generally prosecuted or punished ISIS fighters for alleged crimes, such as membership in a terrorist organisation and human trafficking, rather than crime against humanity³⁴².

According to Article 7 of the Turkish Anti-Terror Law (Act No:3713), a member of a terrorist organisation who goes on trial is generally sentenced to five to ten years of imprisonment for membership in a terrorist organisation. However, in practice, many ISIS fighters serve only three or four years behind bars³⁴³. Additionally, the penalty of the accused may be reduced by one year or two if the judge considers that the accused has shown regret or other mitigation factors are present during the trial process. Detainees might also qualify for early release due to good behaviour after three quarters of their sentence has been completed. Therefore, many of the returnees received lighter sentences,

³⁴⁰ Turkey acceded to the Convention on Genocide on July 31, 1950. Convention on the Prevention and Punishment of the Crime of Genocide, 1948, 78 UNTS 277 (entered into force 12 January 1951), status as of 26 October 2020, available at https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtmsg_no=iv-1&chapter=4&clang=_en (accessed 26 October 2020).

³⁴¹ TPC Article 13(1)(a) (application of the offenses in a foreign country, whether or not committed by a Turkish citizen or non-citizen)

³⁴² Yazidi Justice Committee, Accountability Unit, Women for Justice, IBA Human Rights Institute, Bar Human Rights Committee of England and Wales, & Geoffrey Nice Foundation. (2022). *State Responsibility And The Genocide Of The Yazidis* (A. Abraham, T. Eatwell, & A. Zammit Borda, Eds.), p.206

³⁴³ ICG, *Calibrating the Response: Turkey's ISIS Returnees, Europe & Central Asia Report No. 258*, 29 June 2020, p.18, available at <https://www.crisisgroup.org/europe-central-asia/westerneuropemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 21 February 2024)

such as 1 to 6 months in prison or a fine for crossing illegal borders, 1 to 5 years for possession of illegal weapons, or 1 to 8 years for possession of hazardous substances or for helping and inducing terrorist groups³⁴⁴. Furthermore, overcrowded courts and challenges to evidence collection hinder the prosecutions of ISIS suspects and allow militants who escape the judicial system to carry out attacks later. For example, between 2014 and 2015, ISIS operatives released by the courts while waiting for trial, instead of being tried during detention, joined ISIS in Syria and assumed important roles for the group in Turkey³⁴⁵.

6.4.4.2 Case studies

6.4.4.2.1 The case of Sabah Ali Huseyin Oruc

Sabah Ali Huseyin Oruc., an Iraqi citizen, was accused of membership in a terrorist organisation. In February 2021, the suspect was arrested as part of an investigation conducted by the Ankara Republic Prosecutor's Office while he was involved in attempting to sell a kidnapped Yazidi girl on the dark Web. However, after four months, the ISIS member was released under judicial control measures. The public trial started against Sabah Ali Huseyin Oruc for 'membership of an armed terrorist organisation.' He was sentenced to 6 years and 3 months in prison for being a member of a foreign terrorist organisation on 10 May 2022. His sentence is pending appeal.

On the complaint of the Association of Lawyers for Freedom (ÖHD), the Chief Public Prosecutor Office of the Republic of Turkey in Ankara opened a new prosecution of the suspect Sabah Ali Huseyin Oruc for the alleged crime of human trafficking (Article 80 of the Turkish Penal Code). According to the testimony of Sabah Ali Huseyin Oruc, his brother, Sabar Ali Hüseyin Oruç, purchased a 1.5-year-old Yazidi girl from members of ISIS, in exchange for 500 dollars in 2014. After his brother died in an airstrike, the suspect came to Turkey illegally with the kidnapped Yazidi girl and the wife of his

³⁴⁴ ICG (2020) Calibrating the Response: Turkey's ISIS Returnees, Europe & Central Asia Report No. 258, pp i-ii., available at <https://www.crisisgroup.org/europe-central-asia/westerneuropemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 20 February 2024).

³⁴⁵ Bianet. (2017, December 9). Bir IŞİD'çi Neden Türkiye'de Yargılanmak İster? Bianet. Retrieved March 27, 2024, from https://bianet.org/yazi/bir-isis-ci-neden-turkiye-de-yargilanmak-ister-192246#google_vignette

deceased brother, Saibe Adnan Halid Mula³⁴⁶. Within the scope of the investigation, Saibe Adnan Halid Mula confirmed the statement of the suspect in her testimony taken only as a witness. Although Saibe Adnan Halid Mula witnessed her husband's actions, she is not accused of aiding and abetting crimes against humanity, including child abduction, violation of the duty of care and upbringing, or membership in a foreign terrorist organisation³⁴⁷. Thus, in 6 April 2023, the indictment bill was accepted by the Ankara 15th heavy penal court, and the trial still continues only against the defendant Sabah Ali Huseyin Oruc under file number 2023/108. Requests from non-governmental organisations to participate in the trial were rejected on the grounds that they did not have 'victim status'.

The case of Sabah Ali Huseyin Oruc is one of the first cases in which a court has charged an ISIS member with human trafficking other than being a member of the organisation. Some investigations and prosecutions have failed for crimes related to the trafficking of Yazidi women as slaves in Gaziantep. However, despite the legal framework, these acts of perpetrators were not prosecuted as genocide, but rather as terrorism-related offences, as in this case.

6.4.5 Iraq

Iraq has not ratified the Rome Statute of the International Criminal Court. Furthermore, Iraq's law does not specifically classify international crimes such as genocide, war crimes, or crimes against humanity. Therefore, Iraqi courts lack jurisdiction over these crimes committed within the country's borders³⁴⁸. In addition, Iraq ratified the Convention on

³⁴⁶ Rudaw.net. (2023). Ankara Valiliği: Kaçırılan Ezidi kız çocuğu IŞİD'li aileden alındı, kaçırılan kişi tutuklandı. Rûdaw. Retrieved April 5, 2024, from:

<https://www.rudaw.net/turkish/middleeast/turkey/27102023>; Cumhuriyet (2023). *Kaçırıp satmak istemişlerdi: Ezidi kızı IŞİD'li 'aile'ye verdiler*. [online]. Retrieved February 13, 2024, from <https://www.cumhuriyet.com.tr/turkiye/kacirip-satmak-istemislerdi-ezidi-kizi-isisli-aileye-verdiler-2134564>

³⁴⁷ Independent Türkçe. (20221). *Ankara'da Ezidi kız çocuğunu internetten satışı çıkaran IŞİD'liler serbest bırakıldı*. [online] Retrieved April 5, 2024, from: <https://www.indyturk.com/node/396066/haber/ankarada-ezidi-k%C4%B1z-%C3%A7ocu%C4%9Funu-internetten-sat%C4%B1%C5%9Fa-%C3%A7%C4%B1karan-i%C5%9Fi%CC%87dliler-serbest>

³⁴⁸ United Nations Assistance Mission for Iraq, Office of the United Nations High Commissioner for Human Rights, Hennis-Plasschaert, J., & Bachelet, M. (2020). Human Rights in the Administration of

Genocide on 20 January 1959 and agreed to comply with its provisions, including Article V. Subsequently, Iraq introduced the Statute of the Special Iraqi Tribunal in 2003, with the aim of granting the Special Iraqi Tribunal for Humanitarian Crimes the right to prosecute Iraqi nationals for international crimes, including genocide, committed between 17 July 1968 and 1 May 2003. Although the statute explicitly addresses the crime of genocide, its jurisdiction does not extend to acts committed against the Yazidis, as it is limited to crimes committed before 1 May 2003³⁴⁹.

The Iraqi and Kurdish authorities have captured and arrested thousands of ISIS militants. Most of them have been prosecuted in Iraq. Most of them are Iraqi citizens, but Iraq has also tried foreign fighters such as Tarek Jadaoun (Abu Hamza al-Beljiki), a Belgian national sentenced to death as an Islamic State fighter on 22 May 2018³⁵⁰. Furthermore, on 25 February 2019, the Iraqi president Barham Salih announced that Iraq would prosecute 13 French ISIS fighters handed over by Rojava SDF forces³⁵¹. Since crimes under international law such as war crimes and crimes against humanity are not specifically addressed in the Iraqi criminal code, trials of individuals accused of affiliating with ISIS have been conducted under Law No. 13 on counter-terrorism (2005) in Iraq. Therefore, serious offences such as mass killings and genocide have not yet been thoroughly investigated³⁵².

Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL. Baghdad, Iraq, p.6. https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAdministrationJustice_Iraq_28January2020.pdf

³⁴⁹ Yazidi Justice Committee, Accountability Unit, Women for Justice, IBA Human Rights Institute, Bar Human Rights Committee of England and Wales, & Geoffrey Nice Foundation. (2022). State Responsibility And The Genocide Of The Yazidis (A. Abraham, T. Eatwell, & A. Zammit Borda, Eds.), p.149

³⁵⁰ Van Ostaeyen, P. (2019). State of Terror: The history and influence of the Belgian ISIS contingent. In European Counter Terrorism Centre (ECTC) Advisory Network, 3rd conference of the European Counter Terrorism Centre (ECTC) Advisory Network. (p.10); Iraq sentences Belgian to death as Islamic State fighter. (2018, May 22). Reuters. <https://www.reuters.com/article/us-mideast-crisis-iraq-court/iraq-sentences-belgian-to-death-as-islamic-state-fighter-idUSKCN1IN148/>

³⁵¹ Financial Times. (2019). Iraq to prosecute 13 French Isis fighters captured in Syria. [online] Available at: <https://www.ft.com/content/7254c20a-3920-11e9-b72b-2c7f526ca5d0>

³⁵² Ceasefire. (2019, March 22). ISIS fighters and their families facing justice: Eight options and four principles. The Ceasefire Centre for Civilian Rights, p.9. <https://www.ceasefire.org/isis-fighters-and-their-families-facing-justice-eight-options-and-four-principles/>

The Federal Government of Iraq and the Regional Government of Kurdistan adopted antiterrorism laws in 2005 and 2006, respectively. Although they are separate pieces of legislation with different content, they share a broad definition of “terrorism”. Both laws cover a range of acts as terrorist offences, including acts that use violence to instil fear, threaten national unity, or damage public property. The Kurdistan Regional Government's Anti-Terrorism Law explicitly criminalises "membership" in a terrorist organisation in Article 3(7), a provision that does not exist in the Federal Anti-Terrorism Law. However, the two laws differ significantly in terms of guidelines for the prosecution of terrorist crimes. The Kurdish regional government's antiterrorism law provides for consecutive sentences for various acts of terrorism, including the death penalty, life imprisonment, or imprisonment for less than 15 years. In contrast, the Federal Anti-Terrorism Act imposes the death penalty as a mandatory punishment for persons who commit any of the terrorist acts listed above. In addition, those who incite, plan, finance, or help terrorists are punished with the same penalties as the principal perpetrator of the act of terror³⁵³.

Although the prosecutions of ISIS suspects have been carried out under expansive counterterrorism laws, this legal system is heavily based on confessions, often obtained by torture. The UN observed more than 600 trial hearings involving ISIS suspects in 2018 and 2019. During these trials, the UN found that judges relied significantly on confessions, even though there were frequent accusations of torture. According to the report “Everyone Must Confess” published by Human Rights Watch in 2019, Human Rights Watch interviewed 29 children detained as suspected of being ISIS in Erbil, northern Iraq, and many children interviewed reported being tortured by interrogators to obtain confessions. Methods included physical beating with plastic pipes, rods, or electric cables, subjecting them to electric shocks, or using painful stress positions. The report also includes testimonies from children who allegedly confessed under duress to stop

³⁵³ United Nations Assistance Mission for Iraq, Office of the United Nations High Commissioner for Human Rights, Hennis-Plasschaert, J., & Bachelet, M. (2020). Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL. Baghdad, Iraq, p.9. https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf

torture, although they had little or nothing to do with ISIS³⁵⁴. The findings in this report are closely aligned with those presented in the United Nations report.

According to the United Nations, courts have shown a minimum distinction between those responsible for violent offences and those who were forced to join ISIS or for their own survival. Many individuals, regardless of their role within ISIS, were mainly accused of belonging to the organisation, an offence that could lead to death sentences³⁵⁵. Therefore, thousands of suspects have undergone quick proceedings lasting only a few minutes, resulting in a reported conviction rate exceeding 98%. According to a Human Rights Watch report published in December 2017, of about 7,374 people charged under Iraq's anti-terrorism law since 2014, 92 have been sentenced to death and subsequently executed³⁵⁶. Despite the establishment of an Iraqi Special Tribunal post-Saddam Hussein, its jurisdiction is limited to the former Ba'ath government era (1968-2003), with minimal support for its extension due to political concerns. On the other hand, in the context of a non-international armed conflict, Article 3 common to the four Geneva Conventions of 1949 explicitly forbids the imposition of sentences and execution without prior judgement by a duly constituted court. In addition, Common Article 3 of the Geneva Conventions also prohibits any violence against the lives and persons of civilians and incapacitated individuals, specifically including murder. Executions carried out in violation of this prohibition can constitute a violation of international law, potentially constituting a war crime³⁵⁷. Concerns about the lack of equitable legal procedures, widespread torture, and the increase in the application of the death penalty in Iraq raise doubts about the justice provided to perpetrators and victims.

³⁵⁴ Human Rights Watch. (2019). "Everyone Must Confess" Abuses against Children Suspected of ISIS Affiliation in Iraq. https://www.hrw.org/sites/default/files/report_pdf/iraq0319_web_1.pdf

³⁵⁵ United Nations Assistance Mission for Iraq & Office of the United Nations High Commissioner for Human Rights. (2020). *Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL*. https://reliefweb.int/sites/reliefweb.int/files/resources/Iraq_-_ISIL_trials_under_the_anti-terrorism_laws_and_the_implications_for_justice_28012020.pdf

³⁵⁶ Human Rights Watch. (2017). Iraq: Flawed Prosecution of ISIS Suspects | Human Rights Watch. [online] Available at: <https://www.hrw.org/news/2017/12/05/iraq-flawed-prosecution-isis-suspects> [Accessed 28 May 2024].

³⁵⁷ Ceasefire. (2019, March 22). ISIS fighters and their families facing justice: Eight options and four principles. The Ceasefire Centre for Civilian Rights, p.3 <https://www.ceasefire.org/isis-fighters-and-their-families-facing-justice-eight-options-and-four-principles/>

One of the fundamental elements of the principle of fair trial is the principle of individual criminal responsibility, which means that individuals can only be held criminally accountable and punished for acts for which they possess some personal culpability. These actions must be clearly defined by law (referred to as the principle of legality). Moreover, according to the presumption of innocence, everyone is presumed innocent until proven guilty, and the burden of proving that a particular crime has been committed lies with the prosecution authorities. According to the UNAMI report, which monitored 794 criminal court hearings in Iraq, the findings raise serious concerns about the lack of adherence to basic fair trials standards in terrorism-related trials. The first of these claims is the broad definition of 'terrorism', which is not compatible with the principles of legality, predictability and precision. The second flaw is that it practically shifts the burden of proof. It is alleged that during the hearings observed by UNAMI, the role of prosecutors is a passive role. It is stated that the prosecutors make recommendations regarding the findings of the case rather than gathering adequate proof³⁵⁸. Furthermore, UNAMI claims that judges usually refused to provide an assessment of the evidence submitted during the hearing process. It reinforces the concern about the defendant's inability to challenge evidence and the inadequateness of their defence.

ISIS was not properly charged with these crimes despite its documented acts of rape, sexual slavery, and forced marriage against women and girls from Yazidi. Even if ISIS members admitted to sexual slavery against Yazidis, prosecutors could not file rape charges, leading to up to 15 years' imprisonment. Instead, Iraqi judges have consistently prosecuted ISIS suspects mainly for their association with the group, without taking into account the specific crimes committed. Especially, no ISIS members have been convicted of international crimes such as war crimes, crimes against humanity, or genocide, despite evidence suggesting that ISIS committed genocide against the Yazidis³⁵⁹. Consequently,

³⁵⁸ Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL United Nations Assistance Mission for Iraq Office of the. (2019), pp.14-15 Available at: https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAdministrationJustice_Iraq_28January2020.pdf.

³⁵⁹ Human Rights Watch (2021). Iraq: Events of 2021. [online] Human Rights Watch, pp. 10-15. Available at: <https://www.hrw.org/world-report/2022/country-chapters/iraq>.

Iraq has not implemented the necessary domestic criminal laws to fulfil its obligations to prosecute genocide, thus violating its duties to enact legislation required to enforce the Convention domestically and to punish genocide. Therefore, UNITAD is working with the Iraqi government to potentially introduce legislation that would allow the prosecution of ISIS acts such as war crimes, crimes against humanity, and genocide within Iraq. In October 2020, the Iraqi Council of Representatives officially began reviewing drought legislation³⁶⁰.

6.4.5.1 Case studies

6.4.5.1.1 The case of Mohammed Rashid Sahab

Mohammed Rashid Sahab, an Iraqi citizen, was accused of membership in a terrorist organisation. He is also accused of enslaving a Yazidi woman. In 2020, He was convicted of being a member of ISIS along with charges of raping and kidnapping Yazidi women. As a result of his conviction, the Iraqi court sentenced the ISIS militant to death³⁶¹.

Ashwaq Haji Hamid Talo, a Yazidi woman in her 20s, testified before the court about her suffering as a captive of ISIS, particularly as a victim of the defendant. When the Yazidi girl was only 14 years old, she was abducted by ISIS fighters in 2014 from the Sinjar mountain region in northern Iraq. She and her sisters were given as gifts or sold to other ISIS fighters³⁶².

The case represents a significant deviation from other convictions against ISIS militants in Iraq because this case highlights the victim's Yazid identity and an explicit rape offence. Usually, Iraq's prosecutions against ISIS militants were seen as broad and quick. Most of them are subject to general terrorism charges rather than specific criminal

³⁶⁰ Yazidi Justice Committee, Accountability Unit, Women for Justice, IBA Human Rights Institute, Bar Human Rights Committee of England and Wales, & Geoffrey Nice Foundation. (2022). *State Responsibility And The Genocide Of The Yazidis* (A. Abraham, T. Eatwell, & A. Zammit Borda, Eds.), p.147

³⁶¹ International Bar Association. (2023). *Justice And Accountability For The Atrocities Of Daesh - Progress Made And The Way Forward*. In International Bar Association, p.21.

³⁶² Us, J. C. | U. P. S. O. L. (2020, March 5). Iraq court sentences ISIS rapist to death. JURIST - News. <https://www.jurist.org/news/2020/03/iraq-court-sentences-isis-rapist-to-death/#:~:text=The%20defendant%2C%20Mohammed%20Rashid%20Sahab,does%20not%20recognize%20marital%20rape.>

charges. Furthermore, in Iraqi culture, rape is strongly stigmatised and many victims of the Islamic State continue to reluctance to testify publicly against such accusations because they fear a potential danger. It may encourage other victims to seek justice through legal means by empowering Hamid to confront his attacker and testify.

6.4.5.1.2 The Yazidi survivors' law

After two years of discussion, the Iraqi parliament approved the Yazidi Women's Survivors' Law on 1 March 2021 which is known as Act No. 8 of 2021. The law constitutes a comprehensive framework for survivors of sexual violence and other atrocities committed by ISIS. In the beginning, the law only considered Yazidi women and girls. However, subsequent revisions of it expanded to include survivors from other communities as well. The law aims to address the lasting effects of these crimes through individual and collective measures³⁶³. The law also considers monthly financial support, housing, education assistance, access to medical care, and other essential aids.

The Yazidi Survivors' Law is a good start to initiate material and spiritual reparations to victims of sexual violence. Historically, sexual violence in conflicts has often been overlooked in post-conflict compensation and seen simply as a by-product of war. With the adoption of this law, Iraq joins an increasing number of organisations that address the specific damage caused by conflict-related sexual violence, thus contributing to a growing field of practice aimed at recognising and correcting such atrocities³⁶⁴. On the other hand, Iraqi legal experts have criticised the law, arguing that it carries numerous legal shortcomings and gaps and does not adequately address the challenges faced by Yazidi women survivors after the end of the ISIS conflict³⁶⁵. Firstly, the law provides for only the direct victims of crimes and ignores indirect victims such as widows and orphans. The law does not include provisions on the situation of children born as a result of rape. In Iraq's current procedures, women whose children have been raped by ISIS fighters must

³⁶³ Human Rights Watch (2021). Iraq: Events of 2021. [online] Human Rights Watch, p.1. Available at: <https://www.hrw.org/world-report/2022/country-chapters/iraq>.

³⁶⁴ Martini, A. (2018). Making women terrorists into “Jihadi brides”: an analysis of media narratives on women joining ISIS. *Critical Studies on Terrorism*, 11(3), p.458–477. Available at: <https://doi.org/10.1080/17539153.2018.1448204>

³⁶⁵ Hamadamin, R. O., Abdullah, N. A., & Nor, M. Z. M. (2022). The Applied State Of Violation Of Women's Rights In Armed Conflicts: Yazidi Women During The Isis War In Iraq. *Journal of Liberty and International Affairs*, 8(3), p.285. Available at: <https://doi.org/10.47305/jlia2283272h>

be registered as Muslims, otherwise their children will remain undocumented and will not have access to education and essential services. Even if the earlier versions of the law tried to address this issue, these provisions were subscrated from the final version due to the lack of consensus. As a result, significant challenges remain unresolved for the community. In addition to that, confidentiality or protection of survivors' privacy could not be protected by law to encourage survivors to move forward³⁶⁶. First, the adoption of the law is significant progress, but its effectiveness depends on the appropriate implementation and complementary measures. There is no mention of training staff for dealing with such delicate cases and adhering to the principle "not to harm". Similarly, there are no provisions to provide a safe environment or a secure house while claiming compensation, despite previous cases in which non-governmental organisations have faced legal consequences for providing such assistance³⁶⁷. One of the shortcomings of the Iraqi reparation law for female Yazidi survivors is its lack of connection to other transitional justice mechanisms. The reparation programmes should be integrated with efforts for criminal justice, institutional reform, and the search for truth. The Iraqi government must ensure justice within and outside the country, which is an important compensation for women who have suffered violence from the Yazidis. There should be initiatives to establish a national court to prosecute ISIS prisoners³⁶⁸. Finally, it is important to highlight that reparations programmes alone are not sufficient to facilitate survivors' recovery from the conflict. Reparations should be seen as one component of a broader transitional justice framework that determines the responsibilities to investigate and prosecute those perpetrators.

³⁶⁶ Ceasefire Centre for Civilian Rights & Institute for International Law and Human Rights. (2021). *The Yazidi Survivors' Law: A step towards reparations for the ISIS conflict*, p.3-4

³⁶⁷ Human Rights Watch (2021). *Iraq: Events of 2021*. [online] Human Rights Watch. Available at: <https://www.hrw.org/world-report/2022/country-chapters/iraq>.

³⁶⁸ Hamadamin, R. O., Abdullah, N. A., & Nor, M. Z. M. (2022). *The Applied State Of Violation Of Women's Rights In Armed Conflicts: Yazidi Women During The Isis War In Iraq*. *Journal of Liberty and International Affairs*, 8(3), p. 285. Available at: <https://doi.org/10.47305/jlia2283272h>

6.4.6 Syria

6.4.6.1 *The Assad regime*

The domestic courts of Syria could be feasible to prosecute ISIS suspected of participating in genocide or other serious international crimes because the atrocities were committed in Syrian territories occupied by ISIS forces. However, the Assad regime is accused of human rights violations, war crimes, and crimes against humanity. In particular, it is said to have executed approximately 11,000 detainees in just three detention centres while maintaining control of at least 52 such centres. By 2022, the Syrian civil war caused approximately 306,887 deaths since the armed conflict began in the country³⁶⁹. Political instability and ongoing conflict, combined with evidence of mass executions of detainees, undermine any argument that Syria is capable of conducting trials of ISIS in order to meet the standards expected by the international community³⁷⁰.

6.4.6.2 *The Kurdish-led Syrian Democratic Forces*

As of January 2023, 42,000 foreign ISIS nationals along with 23,000 Syrians were detained by the Syrian Democratic Forces (SDF). Nearly 37,000 foreigners have been detained in the al-Hol and al-Roj camps, which mainly house the wives, relatives, and children of the suspects of ISIS members. Around 27,000 of these detainees are from neighbouring Iraq, while almost 10,000 come from approximately 60 other countries³⁷¹.

In the trial practice of SDF, Rojava's legal framework is based on the Rojava Constitution and Syrian civil law. The Rojava Constitution is consistent with international human rights principles and stipulates that its legislation should not conflict with international human rights standards. Therefore, the SDF has taken measures to address the

³⁶⁹ Graeme Wood, What ISIS Really Wants, THE ATLANTIC, March 2015, <http://www.theatlantic.com/features/archive/2015/02/what-isis-really-wants/384980> (demonstrating the territory ISIS controls in Iraq and Syria by the graphical representation); OHRCH. (2023, May 11). *Behind the data: Recording civilian casualties in Syria*. OHCHR. Retrieved February 8, 2024, from <https://www.ohchr.org/en/stories/2023/05/behind-data-recording-civilian-casualties-syria>

³⁷⁰ Only [] Can Judge: Analyzing Which Courts Have Jurisdiction Over Isis. (2015b). In Southern Illinois University Law Journal, Vol. 40, p 83.

³⁷¹ Becker, J. (2023c, January 27). Revictimizing the victims: Children unlawfully detained in northeast Syria. *Human Rights Watch*. <https://www.hrw.org/news/2023/01/27/revictimizing-victims-children-unlawfully-detained-northeast-syria>

discrepancies between Syrian law and international human rights standards. These measures include the abolition of the death penalty, the priority given to rehabilitation of prisoners, and the establishment of women's councils within the judicial framework to combat discrimination against women³⁷².

The core of the judicial system is the Peace and Consensus Committee, which functions as a quasi-judicial council. These committees replace the Syrian government courts and resolve civil and criminal cases within Rojava. After the liberation of Rojava from ISIS, the SDF established regional justice councils to implement a more comprehensive and organised legal system³⁷³. The autonomous administration led by the Democratic Union Party (PYD) in northern Syria has also established a local antiterrorist court known as the People's Defence Court. In theory, a trial before the People's Defence Court has two stages. First, the court records the statements of the defendant and identifies the acts of offence. Subsequently, if the accused is convicted, a decision corresponding to the committed act will be made. If ISIS fighters do not admit their crimes, the Court is based on witness statements and tangible evidence. The defendants retain the right to appeal against their verdict³⁷⁴. To date, the Court has prosecuted only Syrian and Iraqi nationals since 2014³⁷⁵. As of April 2019, media reports indicated that while 700 Syrian and Iraqi ISIS fighters had already been tried, another 6,000 awaited trial³⁷⁶. However, so far, the courts have not tried any foreign fighters detained by the SDF³⁷⁷.

In 2020, the SDF has expressed its intention to conduct foreign fighter trials. However, in accordance with current International Humanitarian Law (IHL), the SDF does not have

³⁷² Janssens, P. C. (2023). Trial of foreign fighters by the Syrian Democratic Forces, a desired and legal solution? Leuven Centre for Global Governance Studies, p.18

³⁷³ Janssens, P. C. (2023). Trial of foreign fighters by the Syrian Democratic Forces, a desired and legal solution? Leuven Centre for Global Governance Studies, p.18-20

³⁷⁴ ANF (2019) 'Trial of ISIS jihadists begins in Northeast Syria' ANF News. Qamishlo. Retrieved April 21, 2024, from: <https://anfenglish.com/rojava-syria/trial-of-isis-jihadists-begins-in-northeast-syria-38020>, accessed 10 July 2020.

³⁷⁵ Human Rights Watch. (2018). Ensure Fair Trials of Syria ISIS Suspects. Retrieved March 21, 2024, from: <https://www.hrw.org/news/2018/02/13/ensure-fair-trials-syria-isis-suspects>

³⁷⁶ Arraf, J. (2019, May 29). "Revenge is for the Weak": Kurdish courts in northeastern Syria take on ISIS cases. NPR. <https://www.npr.org/2019/05/29/727511632/revenge-is-for-the-weak-kurdish-courts-in-northeastern-syria-take-on-isis-cases>

³⁷⁷ Europe 1, 13 April 2018: <http://www.europe1.fr/international/syrie-les-kurdes-menacent-de-relacherles-djihadistes-francais-de-daech-3625727>.

explicit authority to carry out such trials³⁷⁸. Therefore, official representatives of the SDF and the autonomous administration in northeastern Syria have declared that while the administration can prosecute Syrian nationals, they lack the legal framework to prosecute foreign fighters. They have urged the respective countries of these foreign fighters to repatriate them³⁷⁹. In addition, the Kurdish authorities have urged the governments of the armed forces of these foreign fighters to take responsibility for them, emphasising that the arrest of the captured foreign fighters exerts pressure on available resources. For example, the leader of the Kurdish Court, Abdalbasset Ausso, expressed his disappointment in the lack of responsibility of the states on this issue, saying in an interview with Europe 1, 'We are waiting for the instructions of their government.' He highlighted the urgency of the situation in the camps and referred to the limited space and significant costs associated with the detention of these detainees. Ausso pointed out the dilemma of trying foreign fighters, as some might receive relatively short sentences, which led to questions about their subsequent release. He highlighted the responsibility of their respective countries and pointed out that Russia had repatriated most of its prisoners, including former combatants³⁸⁰. The US government has also asked the United Kingdom and other coalition members fighting ISIS to help manage the increasing number of foreign fighters detained by the SDF. Kathryn Wheelbarger, the principal deputy assistant defence secretary for international security affairs, said: "We are working with the coalition on the issue of foreign combatant detainees and generally expect these detainees to be returned to their country of origin to resolve the situation."³⁸¹

The People's Defence Court operates under a counterterrorism law enacted locally in 2014 and refuses to implement the death penalty. In 2017, Human Rights Watch visited these local counterterrorism courts and re-examined them in January 2018. According to the

³⁷⁸ Janssens, P. C. (2023). Trial of foreign fighters by the Syrian Democratic Forces, a desired and legal solution? Leuven Centre for Global Governance Studies, p.10.

³⁷⁹ Ceasefire. (2019, March 22). ISIS fighters and their families facing justice: Eight options and four principles. The Ceasefire Centre for Civilian Rights, p.4. <https://www.ceasefire.org/isis-fighters-and-their-families-facing-justice-eight-options-and-four-principles/>

³⁸⁰ Europe 1. (2018) Syrie : les Kurdes ne veulent plus garder les djihadistes français de Daech. Retrieved March 12, 2024, from: <http://www.europe1.fr/international/syrie-les-kurdes-menacent-de-relacherles-djihadistes-francais-de-daech-3625727>.

³⁸¹ Human Rights Watch. (2018). Ensure Fair Trials of Syria ISIS Suspects, 13 February 2018:<https://www.hrw.org/news/2018/02/13/ensure-fair-trials-syria-isis-suspects>

visit of Human Rights Watch, criminal prosecutions have been carried out in Syrian Kurdistan (Rojava) poses several challenges. The main concerns include the exclusion of defence lawyers and the absence of a structured appeal mechanism. Critics in the local community have pointed out that these courts are not fully independent of the local authorities and suffer from a shortage of qualified prosecutors and judges. Some judges did not have formal training in law or judicial matters, but local authorities claimed to have attended a four-month training course³⁸². In addition, there are serious reservations about due process and detention conditions, as well as doubts about the impartiality and competence of judges.

Additionally, since the region is not recognised as a sovereign state, its institutions do not have official status. This indicates that the Syrian government retains the option of claiming invalidity of these trials, releasing the SDF's guilt, and possibly seeking legal action against the SDF. However, the Syrian Government's ability to take such measures is limited by internal law³⁸³. Therefore, this situation raises doubts about the legitimacy of any legal proceedings and court rulings that it takes. SDF forces, although supported by the US and the international coalition against ISIS, may face the risk of losing that support in the future. Moreover, they lack a formal relationship with the Syrian government and are threatened by Turkey, which has already occupied the northern province of Afrin. Since 2016, Turkey has carried out three military interventions in northern Syria with the aim of reducing the influence of Kurds along its borders³⁸⁴. Furthermore, given the continued instability in Syria, especially after the Turkish military offensive of January 2018, there is no guarantee of lasting stability in the region. This poses the risk that ISIL prisoners may be able to escape or be released³⁸⁵. After the third incursion of the Turkish Armed Forces in 2019, local officials reported that about

³⁸² Human Rights Watch. (2018). Ensure Fair Trials of Syria ISIS Suspects, 13 February 2018: <https://www.hrw.org/news/2018/02/13/ensure-fair-trials-syria-isis-suspects>

³⁸³ Janssens, P. C. (2023). Trial of foreign fighters by the Syrian Democratic Forces, a desired and legal solution? Leuven Centre for Global Governance Studies, p.11

³⁸⁴ Zayadin, H. (2024). "Everything is by the Power of the Weapon." In Human Rights Watch. <https://www.hrw.org/report/2024/02/29/everything-power-weapon/abuses-and-impunity-turkish-occupied-northern-syria>

³⁸⁵ Ceasefire. (2019, March 22). ISIS fighters and their families facing justice: Eight options and four principles. The Ceasefire Centre for Civilian Rights, p.4. <https://www.ceasefire.org/isis-fighters-and-their-families-facing-justice-eight-options-and-four-principles/>

hundreds of individuals suspected of having links with the Islamic State had fled from the Ayn Issa camp in northeastern Syria (known as Serekaniye/ Serê Kaniyê). Jelial Ayaf, co-chair of the Ayn Issa camp, informed the local media that 859 people had successfully fled the section of the camp designated for foreign nationals. Although some of those who escaped were recaptured, many people managed to escape³⁸⁶. The Syrian Observatory for Human Rights, based in the United Kingdom, estimates that about 100 individuals have succeeded in escaping and has published photographs showing men, women wearing black niqabs, and young children crossing yellow scrubland³⁸⁷. Additionally, on 20 November 2022, Turkish military forces reconducted air strikes against Kurdish troops who oversee the Al-Hol camps in northern Syria. According to Human Rights Watch, the attacks specifically targeted Kurdish forces outside the camp³⁸⁸. Furthermore, on 7 February 2023, following a series of earthquakes in north-eastern Syria and neighbouring Turkey, about 20 ISIS members fled from a Rajo prison in Syria. A prison official informed that after the earthquakes occurred, disturbances occurred within the prison, resulting in a rebellion by the prisoners who then took control of parts of the facility. Approximately 20 prisoners, allegedly ISIS militants, are believed to have fled during the unrest³⁸⁹.

Furthermore, many people detained in camps face various difficulties such as restricted access to water, insufficient sanitation facilities, and a healthcare system constrained by strict security measures. The security conditions are also constantly worsening. Over the past two years, four children, including three young girls, were killed in the camp with absolute impunity³⁹⁰. In November 2022, General Michael "Erik" Kurilla, commander of

³⁸⁶ Turak, N. (2019, October 14). Hundreds of ISIS prisoners are escaping from camps in northern Syria amid Turkish offensive. CNBC. <https://www.cnbc.com/2019/10/14/isis-prisoners-are-escaping-from-camps-in-syria-amid-turkish-offensive.html>

³⁸⁷ McKernan, B. (2021, August 31). At least 750 Isis affiliates escape Syria camp after Turkish shelling. The Guardian. <https://www.theguardian.com/world/2019/oct/13/kurds-say-785-isis-affiliates-have-escaped-camp-after-turkish-shelling>

³⁸⁸ Welle, D. (2022, November 20). Turkey air strikes hit northern Syria, Iraq. *dw.com*. <https://www.dw.com/en/turkey-air-strikes-hit-northern-syria-iraq/a-63822349>

³⁸⁹ Rachman, J. (2023, February 7). Twenty members of ISIS escape Syria's 'Black Prison' after earthquake devastates area. The Independent. <https://www.independent.co.uk/news/world/middle-east/isis-prison-earthquake-syria-turkey-b2277451.html>

³⁹⁰ OHCHR. (n.d.-a). *Children in Northeast Syria must be urgently repatriated: UN experts*. <https://www.ohchr.org/en/statements/2023/03/children-northeast-syria-must-be-urgently-repatriated-un-experts>

U.S. Central Command, visited Al-Hol and al-Roj Camp and he stated that the camps had become a breeding ground for ISIS terrorists³⁹¹. US Secretary of State Antony Blinken warned that the fight against ISIS was still ongoing and urged countries to return their citizens on 8 June 2023. Blinken highlighted that repatriation was essential to reduce the population in the camps and mitigate the risk of their return to militant activities³⁹². Imran Riza, the UN resident coordinator in Syria, pointed out that the situation in the Al-Hol camp is becoming increasingly unsafe and that the children living there are facing a dark future³⁹³.

³⁹¹ U.S. Central Command. (2022). *CENTCOM commander statement following recent Al Hol visit*. Retrieved April 13, 2024, from: <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/3224134/centcom-commander-statement-following-recent-al-hol-visit/>

³⁹² *Rûdaw* (2023). Blinken warns fight against ISIS is 'not yet done.'. Retrieved March 6, 2024, from <https://www.rudaw.net/english/middleeast/08062023>

³⁹³ SOHR (2023). *Al-Hawl Camp | Asayish arrests four ISIS women for escape attempt*. Retrieved April 5, 2024, from https://www.syriahr.com/en/286868/?doing_wp_cron=1714042356.1733570098876953125000

7 Chapter 7 - Obstacles to access to justice

7.1 Impunity

7.1.1 Investigation of international crimes through counterterrorism laws

Several criminal courts in different countries have found members of ISIS guilty only of crimes related to terrorism, but so far there have been relatively few prosecutions for members of ISIS for international crimes.) The prosecution of suspects of ISIS for violations of the laws on anti-terrorism rather than specific international crimes committed under the Criminal Act is usually easier as a testimony, especially for crimes committed during the chaos of war. However, this approach makes it more difficult to give priority to genocide crimes, punish them, and establish a comprehensive judicial record of all crimes committed by the Islamic State against the Yazidi community. Furthermore, the participation of victims in trials can play a fundamental role in the prosecution of perpetrators, but the authorities did not attempt to involve victims in trials, even as witnesses. Furthermore, in the case of members of the ISIS family who might not be charged for any specific offence except as a member or member of a proscribed group or organisation, the scenario becomes more complex. For example, Swiss and Finnish laws do not consider membership in a terrorist organisation to be a criminal offence³⁹⁴. Therefore, ISIS fighters have not been prosecuted under terrorism legislation, but rather for core international crimes. The lack of terrorism legislation can cause legal or factual complexity when elements related to terrorism are not present or proved in the trial³⁹⁵.

³⁹⁴ Regeringen och Regeringskansliet. (2023, May 31). The Swedish criminal Code. Regeringskansliet. Retrieved April 16, 2024, from: <https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/>

³⁹⁵ Ceasefire. (2019, March 22). ISIS fighters and their families facing justice: Eight options and four principles. The Ceasefire Centre for Civilian Rights, p.6. Retrieved April 16, 2024, from: <https://www.ceasefire.org/isis-fighters-and-their-families-facing-justice-eight-options-and-four-principles/>

7.1.2 The Challenges of collecting evidence and sharing information

Collecting reliable and sufficient digital and military evidence poses a challenge in prosecuting ISIS returnees. The use of these forms of evidence requires the management of highly sensitive data, including biometric information³⁹⁶, and states must implement appropriate safeguards to ensure the privacy rights of the people involved. Furthermore, it requires the establishment of independent and effective monitoring mechanisms, as well as appropriate protocols for the access and sharing of these data between relevant national and international bodies.

Evidence and information evidence are usually obtained from social media evidence, cell phones, laptops, and external hard drives, so it is obvious that millions of call data records, thousands of laptops, mobile and satellite phones, drones, external hard drives, and other data storage devices comprising millions of heterogeneous file types should be analysed. Almost half of the data processed consist of video and image files, presenting further challenges in terms of access, analysis, and storage. Furthermore, many legal and electronic discovery products on the market are unable to adequately analyse data in Arabic and Kurdish documents. The difficulty is that much of the evidence is extracted from the battlefield. Electronic devices were often damaged and inoperable. It complicates data access and often requires sophisticated methods of data extraction. Paper documents were often physically compromised. ISIS has generally used the public-facing Web to recruit and incite, which required the collection of open-source information and legal examination of websites, online videos, and social media streams. In addition, ISIS's use of encrypted messaging platforms, such as tgrams and tgrams, to share communication and information poses additional obstacles to the collection of evidence³⁹⁷. These challenges make it difficult to collect evidence of their activities and to hold the perpetrators responsible for their actions.

Additionally, gender-specific obstacles persist in obtaining adequate evidence, especially online. Many women from ISIS have played a crucial role as online propagandists and

³⁹⁶ Madrid Guiding Principles (S/2015/939), Guiding Principle 9; UNODC, CTED and IAP, Practical Guide for Requesting Electronic Evidenced Across Borders.

³⁹⁷ CTED. (2017). Analytical Brief on the Prosecution of Women Returnees from the Islamic State in Iraq and the Levant, p.5

recruiters through telegram, Facebook, and on-line platforms. Some of them have fought as soldiers on the battlefield, contrary to the general belief that ISIS female members have non-combatant positions³⁹⁸. However, due to the strict gender norms of ISIS, women's participation in ISIS activities is less visible and documented online. Therefore, it is difficult to gather sufficient evidence of their specific roles in criminal activities. The gender-specific obstacle protects the privilege and impunity of ISIS members, signaling to other perpetrators of ISIS that their atrocities will not be punished.

7.1.3 Obstacle to the prosecution of women perpetrators

Women who voluntarily returned before ISIS established the Caliphate have not been systematically investigated or prosecuted. When the authorities began to systematically prosecute female returnees in 2015, the criminal courts initially struggled to determine the exact roles of women during their stay in Syria and Iraq or to determine their specific activities in which they participated. Many of the women in ISIS were believed to be limited to household tasks.³⁹⁹ Therefore, the domestic judiciary adopted a more forgiving attitude towards women associated with ISIS, largely because of the prevalent belief that they simply obey men's orders and have limited powers. For example, at the end of 2019, approximately 50 women, both Turkish nationals and foreigners, were imprisoned for crimes related to ISIS. Most of these detainees were then released and pending trials, while only a few were ultimately convicted and sentenced⁴⁰⁰. In only a few extraordinarily high-profile cases, wives of ISIS members involved in attacks in Turkey were accused of crimes such as 'membership', 'knowingly and willingly aiding an armed terrorist organisation,' or 'failure to report crime.' For example, it was ruled that no punishment would be given in the case of the wife of Ilhami Bali (he is alleged to be the "emir" of ISIS in Turkey), along with six other ISIS women. Furthermore, Ulkar M., Azerbaijani

³⁹⁸ On ISIL's 'segregated online ecosystem' see Meili Criezis, 'Online Deceptions: Renegotiating Gender Boundaries on ISIS Telegram', *Perspectives on Terrorism*, February 2020, Vol. 14, No. 1 (February 2020), pp. 67-73.

³⁹⁹ ICCT, Hecker, M., & Koller, S. (2024). *Female jihadis facing justice: Comparing approaches in Europe* (T. Mehra, T. Renard, & M. Herbach, Eds.). ICCT Press, p.45. Available at: <https://doi.org/10.19165/FTXZ9791>

⁴⁰⁰ ICG. (2020). *Calibrating the Response: Turkey's ISIS Returnees*, Europe & Central Asia Report No. 258, p. 19, Retrieved April 11, 2024, from: <https://www.crisisgroup.org/europe-central-asia/westerneuropemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 21 February 2024)

citizen, is the wife of Mustafa Dokumac, who once held the responsibility for the organisation in Turkey. Although Ulkar M. was listed as a "suicide bomber" by the security, she was released after 1 month and 20 days following her surrender in the trial held on October 9, 2021, without receiving any sentence⁴⁰¹.

François Molins, General Prosecutor of the Paris Court of Cassation, indicated a shift in the judicial perception regarding the role of women in jihadis. He publicly said that “*At first, we had too much suspicion about the role of women in jihadis, we thought that women simply followed their husbands and did only household tasks in Syria. Now, they are systematically arrested and put in custody when they return.*”⁴⁰² According to data published by ICCT, court decisions in Belgian, French, German, and Dutch show that the first women who travelled to Syria and Iraq were not prosecuted. However, in the following period, many women involved in jihadi terrorism were convicted of membership in a terrorist organisation. In investigations into membership of a terrorist organisation, prosecutors have often relied on strong investigative powers when pursuing allegations related to membership in these organisations⁴⁰³. However, this generally preferred narrow prosecutorial approach tends to ignore how the underlying conduct can be considered core international offences or serious domestic offences. Furthermore, the prosecutions conducted exclusively for Member offences do not include the full range of activities carried out by ISIS women members in Syria or Iraq. This approach prevents female perpetrators from being prosecuted for all crimes they commit. On the other hand, the cumulative prosecution of terrorist offences and core international or domestic offences can lead to a more accurate picture of their guilt and longer sentences.

⁴⁰¹ Uludağ, A. (2022). Canlı bomba listesindeki IŞİD’li kadına tahliye. dw.com. Retrieved April 5, 2024, from: <https://www.dw.com/tr/canli-bomba-listesindeki-i-c5%9Fi%CC%87dli-kad%C4%B1na-ceza-%C3%A7%C4%B1kmad%C4%B1/a-60644684>

⁴⁰² Stéphane Carpentier (2022) Interview with François Molins, RTL, Retrieved April 5, 2024, from: <https://www.rtl.fr/actu/justice-faitsdivers/invite-rtl-justice-l-obtention-de-moyens-supplementaires-ne-suffit-pas-selon-francois-molins7900171099>.

⁴⁰³ ICCT, Hecker, M., & Koller, S. (2024). Female jihadis facing justice: Comparing approaches in Europe (T. Mehra, T. Renard, & M. Herbach, Eds.). ICCT Press, p.146. Available at: <https://doi.org/10.19165/FTXZ9791>

7.1.4 Europe's reluctance to repatriate ISIS foreign fighters and its implications for justice

According to the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention), Council of Europe member states are generally obliged to prevent and punish acts of genocide, which includes complicity in genocide. Therefore, in the midst and aftermath of the genocide, victims, individuals, and non-governmental organisations often call for the prosecution and punishment of the perpetrators. Therefore, numerous criminal courts, especially Germany, have initiated prosecutions against ISIS perpetrators, particularly foreign fighters of ISIS who have returned to their home countries. For example, in 2021, a German court convicted an Iraqi ISIS member of genocide, crimes against humanity, and war crimes. This is the first case in which a court has recognised a genocidal act committed against a Yazidi victim. Generally, EU governments appear ready and capable of aiding and enabling the investigation and prosecution of ISIS members, particularly foreign ISIS fighters, who are suspected of committing genocide, crimes against humanity, and/or war crimes.

On the other hand, about 30% of the estimated 4,000 to 5 000 foreign fighters from Europe have already returned to their home countries; others are still detained in the detention camps or prisons in Syria and Iraq⁴⁰⁴. European states hesitate to repatriate their citizens affiliated with ISIS to prosecute them. Reluctance and hesitation are based on fears that returnees will commit atrocities in Europe, radicalise others, widespread opposition among the public to the repatriation of ISIS members, and challenges in gathering sufficient evidence to prosecute them for crimes committed in Iraq and Syria. Therefore, when we compare the number of foreign fighters joining ISIS with the number of perpetrators prosecuted, we can say that this political stance of European states reinforces the climate the impunity. Furthermore, international justice serves as a last resort avenue for when national channels of justice have been exhausted, rather than being a permanent replacement for a functional national judiciary. Therefore, western countries

⁴⁰⁴ Ceasefire. (2019, March 22). ISIS fighters and their families facing justice: Eight options and four principles. The Ceasefire Centre for Civilian Rights, p.5. Retrieved May 1, 2024, from: <https://www.ceasefire.org/isis-fighters-and-their-families-facing-justice-eight-options-and-four-principles/>

should assume responsibility for prosecuting their citizens who join ISIS in their own legal systems.

7.1.5 Challenges and consequences of detention of ISIS fighters

ISIS finally lost its remaining territory in Iraq at the end of 2017 and in Syria at the beginning of 2019. When the last of the ISIS territory in Syria was retaken, tens of thousands of ISIS fighters and their families were captured and detained in prisons and camps under the control of the Syrian Democratic Forces in northeastern Syria (Rojava). The question of how to deal with these detainees has become more urgent since the Turkish military offensive in the areas previously controlled by the SDF in October 2019 because the ongoing political tension between Turkey and the SDF increases concerns that ISIS fighters may escape from detention camps in northeastern Syria. The SDF has also strengthened its warnings and expressed concern about its limited resources for the indefinite detention of these prisoners, especially in light of ongoing attacks and earthquake, and several people have been reported to have fled the SDF camps and prisons. Escapees from these camps reinforce a culture of impunity, where other ISIS affiliates believe that they can commit crimes without facing consequences. Camp escapes may encourage other ISIS members to engage in similar behaviour and lead to recurrence of prison breakouts. In addition, it can pose a continued threat to security and stability, both locally and internationally. The possibility of radicalisation of ISIS in camps and prisoners may seek to rejoin ISIS or other extremist groups, perpetuating violence and instability. Thus, the number of ISIS fighters can increase due to the climate of impunity.

7.2 Flawless Justice in Iraq and Syria

Thousands of ISIS perpetrators are still detained with their family members in camps and prisons in Iraq or in northern and eastern Syria under the authority of the SDF. Considering that the crimes were committed within the territories of Iraq and Syria and that most of the perpetrators are detained in these regions, it seems reasonable for Iraqi and Syrian domestic courts to prosecute ISIS suspects. However, although several efforts

have been made to hold ISIS responsible for its crimes, they are flawed or have shortcomings. Therefore, the idea of bringing the perpetrators of ISIS to local courts in Syria and Iraq does not appear to be a coherent solution. The international community is also sceptical of Iraq or Syria's ability to conduct fair and effective trials because the autonomous administrative courts in Syria try only Syrian ISIS detainees. Furthermore, unless Iraq adopts laws in line with its obligations under the Convention on Genocide and the Convention of International Law, it will continue to violate its duty to prosecute genocide, as well as its distinct but interconnected obligation to enact laws to implement the Convention. The current situation shows that Iraqi courts can only prosecute suspected ISIS fighters under anti-terror laws. It means that perpetrators of genocide are often convicted based on membership in ISIS rather than actual acts, and victims have limited opportunities to participate in or receive adequate information about legal proceedings. In addition, the rapid trials in Iraq also provide a limited opportunity to gather additional information and evidence about the whereabouts of remains. Furthermore, individuals detained in Iraq are unlikely to have fair trials according to international human rights standards and are at risk of being sentenced to death. Thus, the member states of the Council of Europe should reevaluate their position that national ISIS fighters should be prosecuted primarily in the countries in which the crimes were committed because prosecution in Iraq and Syria is currently not an appropriate solution to a human rights standard.

7.3 Potential for Future Retaliation

Many children were brought to Syria by parents who wanted to join ISIS or live in a 'caliphate'. Others were born in Syria or Iraq, in areas controlled by ISIS, or in camps where families suspected of being connected with ISIS were detained. According to Human Rights Watch, 23,000 foreign children from dozens of countries are unlawfully held in these camps, deprived of basic children's rights, including citizenship, health care, education, and freedom from arbitrary detention and ill-treatment. In other words, these children are stuck in an indefinite limbo. They literally suffer from poor living conditions that can be equivalent to torture and face increasing risks of being victims of violence and sexual abuse. The conditions of camps have deprived them of fundamental basic rights

as children, including the rights to a nationality, health, education, arbitrary detention, and freedom from mistreatment, and. According to the Kurdish Red Crescent, at least 371 children died in Al-Hol in 2019, the largest of the two camps. Many from them died of preventable diseases or hypothermia. Furthermore, children drowned in sewage pits⁴⁰⁵, died in tent fires⁴⁰⁶, and have been fatally struck by water trucks⁴⁰⁷. Although nearly 80% of the children in camps are under the age of 12, too young to play an active role in ISIS, many governments refuse to repatriate these children due to the fear of public reaction and raised concerns about national security.

They are also vulnerable to further radicalisation and the ideology of ISIS recruitment. The ideology of ISIS that motivated individuals to commit crimes against humanity is permanent and will not disappear on its own. When we consider the constant danger posed by ISIS fighters and their ideology, the prolonged stay of children in those camps with foreign fighters suspected of participating in genocide and other serious international crimes would pose a serious threat to the best interest of the child and society. Many UN counterterrorism and security experts also warn that abandoning these children in prisons, detention camps, and prisons poses a greater threat to national security than repatriation⁴⁰⁸. These children can become radical young people of the future and ultimately return to their communities. These children will have difficulty integrating when they return to their home countries, further complicating reconciliation and justice efforts. In addition, the presence of people in society who are sympathetic to the ideology of ISIS can cause conflict and hinder collective accountability and rehabilitation efforts.

⁴⁰⁵ Doctors Without Borders - USA. (2022). *Between two fires: Danger and desperation in Syria's Al-Hol camp*. [online] Retrieved April 20, 2024, <https://www.doctorswithoutborders.org/latest/between-two-fires-danger-and-desperation-syrias-al-hol-camp>

⁴⁰⁶ Save the Children International. (2022, March 23). *Speed up repatriations or foreign children could be stuck in North East Syria camps for up to 30 years, warns Save the Children*. Retrieved April 20, 2024, from: <https://www.savethechildren.net/news/speed-repatriations-or-foreign-children-could-be-stuck-north-east-syria-camps-30-years-warns>

⁴⁰⁷ Rudaw.net. (2024). *Al-Hol's 27,00 Children in unbearable conditions: charities*. *Rûdaw* Retrieved May 7, 2024, from <https://www.rudaw.net/english/middleeast/syria/03122021>

⁴⁰⁸ Becker, J. (2023). *Revictimizing the victims: Children unlawfully detained in northeast Syria*. Human Rights Watch. Retrieved April 20, 2024, from: <https://www.hrw.org/news/2023/01/27/revictimizing-victims-children-unlawfully-detained-northeast-syria>

Consequently, the injustice experienced by these children can trigger a sense of anger and victimisation, which may lead to future retaliation or violence. If children grow up in environments where their rights are systematically violated and justice is denied, they can cultivate the desire for revenge or retaliation and perpetuate cycles of violence and conflict. Therefore, collective punishment for these children for parents' crimes is not justified. The most sustainable solution is for the government to repatriate these children or help them move to third countries. Moreover, under article 8 of the European Convention on Human Rights, as provided in paragraph 2 of article 8, it is necessary to limit your right to family life for national security and other legitimate reasons if necessary. Therefore, the separation of children from their families can also be considered a temporary measure in the best interests of children.

7.4 Lack of a Gender-Sensitive Approach

Yazidi survivors of conflict-based sexual slavery face significant obstacles to achieving justice. These include discriminatory laws to protect perpetrators of sexual violence, inconsistent legal strategies for prosecution, lack of gender-based and sexual violence crimes in national terrorism trials, and fears of potential consequences. Collectively, these factors undermine the ability of Yazidi survivors to seek justice and hold perpetrators responsible for their actions. For example, many laws in Iraq, with discriminatory provisions, restrict the rights of women and prevent survivors of sexual violence in conflicts, such as sexual slavery, from seeking justice. Unfortunately, the rape and other sex-based violence experienced by victims of conflict-related sexual slavery is not adequately addressed in Iraq's law. Therefore, the majority of ISIS fighters currently being prosecuted for crimes committed under Iraq's Anti-Terrorism Law No. 13 (2005) are not sufficient to hold perpetrators responsible for crimes related to conflict-induced sexual slavery due to the lack of a specific and gender-sensitive approach⁴⁰⁹.

⁴⁰⁹ M. Iyer, J. Irani, & E. Veillet-Chowdhury. (2020). Seeking Accountability And Preventing Recurrence: Addressing Conflict-Related Sexual Slavery Through The Women, Peace, And Security Agenda. Global Network of Women Peacebuilders, p.11. Retrieved January 24, 2024, from: <https://www.womenpeacesecurity.org/member/gnwp/>

Countries, particularly Turkey, Syria, and Iraq, do not have a coherent and consistent gender-sensitive approach to investigating and prosecuting ISIS perpetrators and punishing genocide crimes against Yazidis. Therefore, Yazidi survivors of conflict-related sexual slavery, as well as the wider Yazidi community, are generally excluded from ongoing antiterrorism trials and associated judicial mechanisms, both on national and international levels. Therefore, most survivors do not know about these trials against the perpetrators of ISIS and therefore cannot seek justice for their crimes of sexual slavery related to the conflict.

Consequently, without a gender-sensitive approach, national courts cannot fully grasp the complex dynamics of sexual violence, particularly the experiences of Yazidi women and girls. This may lead to a lack of empathy and understanding between survivors and their testimony. Furthermore, the absence of a women's perspective can perpetuate the blame and stigmatisation of victims of sexual violence. This can discourage survivors from seeking justice and perpetuate the impunity of perpetrators.

7.5 Jurisdictional Obstacles of ICC and Mixed/Hybrid Courts

The most effective approach would be to prosecute the perpetrators of ISIS before an international court, considering the scope of crimes committed worldwide, including genocide, and the fact that ISIS fighters come from more than 100 countries. However, Syria and Iraq are not parties to the International Criminal Court. Furthermore, the difficulties in applying the CPI system to the case of ISIS fighters are also closely linked to political and security concerns. In 2015, the Prosecutor of the ICC also declined to initiate a preliminary examination of alleged crimes committed by nationals of States parties to the Rome Statute of the ICC. Due to the jurisdictional obstacle of the ICC and the fact that there is no current international judicial mechanism equipped to prosecute the perpetrators of ISIS for the crime of genocide against the Yazidi community, the international community sought international remedies to establish a mechanism for the trial of foreign fighters on Iraqi soil⁴¹⁰. According to Assembly Resolution 2190 (2017),

⁴¹⁰ Kerres, M. (2019). Minister Blok wil IS-strijders in Irak berechten. *NRC*. Retrieved May 2, 2024, from: <https://www.nrc.nl/nieuws/2019/09/25/nederland-isers-in-irak-berechten-a3974688>

a proposal was made for a hybrid court within Iraq's national courts, which was supported by international experts⁴¹¹. European nations also met twice in 2019 to discuss a proposal presented by Sweden, supported by the Netherlands, to establish an international or hybrid tribunal to hold ISIS accountable⁴¹².

In time, hybrid or mixed courts have become an integral component of a broader transitional justice framework, as they have achieved a certain degree of efficiency to deal with crimes related to a specific territory or conflict. Hybrid or mixed courts consist of 'international judicial officials' and 'domestic judicial officials in the countries where the crimes occurred'. The combination of international and domestic law may be reasonable both in terms of respecting cultural and regional features and in terms of utilising the expertise and neutrality of international judges. Although the idea of establishing such a court to prosecute crimes committed by members of ISIS is often considered relevant and necessary, its practical implementation is a stumbling block. The capacity of the established hybrid court to achieve justice can be compromised due to deficiencies in the Iraqi judiciary. Many organisations and independent experts have systematically documented these shortcomings, highlighting the serious abuses faced by accused persons suspected of belonging to ISIS, including allegations of forced confession, extensive reliance on counterterrorism laws implicating death penalties, violations of human rights and IHL fundamental principles, and prosecution of children⁴¹³.

Moreover, when we examine the proposals for an international tribunal by European countries, it is seen that the jurisdiction of the potential court focusses solely on the prosecution of foreign individuals associated with ISIS⁴¹⁴. However, many important

⁴¹¹ PACE (2023) Addressing the issue of Daesh foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe Resolution 2475. Available at: <https://pace.coe.int/en/files/31550/html>.

⁴¹² France's Le Drian to go to Iraq to discuss trials for jihadists from Syria. (2019, October 16). *Reuters*. Retrieved January 8, 2024, from <https://www.reuters.com/article/idUSKBN1WV0YS/>

⁴¹³ United Nations Assistance Mission for Iraq & Office of the United Nations High Commissioner for Human Rights. (2020b). *Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL*. https://reliefweb.int/sites/reliefweb.int/files/resources/Iraq_-_ISIL_trials_under_the_anti-terrorism_laws_and_the_implications_for_justice_28012020.pdf

⁴¹⁴ Kerres, M. (201). Minister Blok wil IS-strijders in Irak berechten. *NRC*. Retrieved May 1, 2024, from: <https://www.nrc.nl/nieuws/2019/09/25/nederland-isers-in-irak-berechten-a3974688>

issues remain unresolved, including whether Iraqi citizens' perpetrators will be prosecuted according to Iraqi or international law. In such a scenario, Iraqi citizens would face the death penalty with fewer safeguards in the Iraqi justice system. Furthermore, Iraqi perpetrators could be transferred from Syria and other countries to Iraq. It would violate their international obligations to transfer detainees to countries where torture or the death penalty could be committed. For victims, who suffered at the hands of Iraqi and Syrian perpetrators, they would not have the opportunity to participate in court hearings as victims⁴¹⁵.

As a result, there are clearly three major concerns universally. One of the first problems is which law should be applied when domestic law intersects with international law. Second, the legal validity of the acquittal verdict for the perpetrators prior to the establishment of the courts. Finally, agreements on the establishment of courts had to address specific challenges related to the nature of crimes, such as the absence of a strictly defined genocide in both cases or the approach to prosecution of crimes committed by children forced to join hostile groups. Other issues are related to political interference, unequal allocation of resources to prosecution and defence, and selective prosecutions. In these circumstances, the establishment of an ad hoc court based on Iraqi domestic law and legal frameworks is not appropriate, as substantive shortcomings within the Iraqi judicial system cannot be adequately solved by incorporating international judges and staff. Furthermore, failure to establish such an international tribunal would leave victims' needs unmet, jeopardise the prospects of reconciliation in Iraq and Syria, and potentially exacerbate the existing distrust in international justice mechanisms.

⁴¹⁵ PAX. (2020). *ISIS-only tribunal: selective, politicised justice will do more harm than good*. [online] Retrieved April 11, 2024, from: <https://paxforpeace.nl/publications/isis-only-tribunal-selective-politicised-justice-will-do-more-harm-than-good/#:~:text=To%20do%20justice%20to%20ISIS>

8 Chapter 8 - Alternative Solutions to Justice

8.1 Women's Trials and Feminist Perspectives to Justice since 1976

The route of women's courts is closely similar to that of people's courts found in many countries around the world. The most important example of such a court is the Bertrand Russell Tribunal, also known as the People's Courts. In 1966, Bertrand Russell and Jean-Paul Sartre founded the People's Court in response to the U.S. military intervention in Vietnam⁴¹⁶. Their nature is similar to that of the Council, rather than the traditional courts, which include activists and experts. At a time when international justice mechanisms and institutions had not yet been established in the international area, such courts emerged as the inadequacy of criminal prosecutions in true justice. However, a people's tribunal lacks the authority to enforce punishments or mandate reparations, yet it can offer recommendations supported by the significance of its legal conclusions and its moral influence. Therefore, people's courts were not established as an alternative to the formal judicial system. On the contrary, the goal was to create a supplementary and complementary system at a certain level. The ability of a People's Court to exercise moral authority derives solely from the state's continuing sovereignty over the formal institutions of international law⁴¹⁷. The purpose of the People's Court is therefore to investigate events that occurred in a particular historical context based on the testimony of the victims or their direct relatives on serious rights violations. Thus, the practice of this Court has initiated discussions on who is responsible for ensuring justice⁴¹⁸, because the type of Court was established at the request of persons who do not trust the justice of the Government, but who still define crime and criminal acts with reference to intergovernmental and supranational laws and treaties in force in the institutional arena⁴¹⁹.

⁴¹⁶ "Vietnam War Crimes Tribunal," Vietnam War Crimes Tribunal, accessed January 22, 2024, <http://raetowest.org/vietnam-war-crimes/russell-vietnam-war-crimes-tribunal-1967.html#v1!-russ>.

⁴¹⁷ Chinkin, Christine M. (2021). "Women's International Tribunal on Japanese Military Sexual Slavery." *American Journal of International Law* 95, no. 2, p. 339.

⁴¹⁸ Robert Cryer (2005) *Prosecuting International Crimes*, Cambridge University Press, Cambridge, p. 035

⁴¹⁹ De Vido, S. (2017). *Women's Tribunals to Counter Impunity and Forgetfulness: Why are They Relevant for International Law?* *DEP*, p.35.

Unlike the people's courts, women's courts are not specially designed to deal with times of war and conflict. Its main objective is to highlight the injustices faced by women in judicial procedures, to raise public awareness of the problem, and to encourage the development of alternative methods for future implementation. Therefore, courts have organised around specific issues within the unique contexts of their respective nations. Women's courts, like people's courts, emerged as a criticism of the inability of criminal investigations to investigate violence against women. because the international community's response to violence against women has often been inadequate, both in terms of holding private actors accountable and addressing state responsibilities. Therefore, courts respond to the marginalisation of women in dispute settlement mechanisms at the international level. Furthermore, women's courts represent a 'feminist approach to justice' that empowers women to shape and interpret historical narratives and seek to identify the root causes of violence. The perspective of women's courts is to actively challenge the persistent discrimination that underpins gender-based violence and to improve women's voices and their demands for justice in the process⁴²⁰.

8.1.1 The International tribunal on crimes against women (Brussels Tribunal)

In 1976, the first Women's Tribunal, known as the International Tribunal on Crimes against Women, was established in Brussels. According to the historical process of the court, the Danish women's liberation movement, the Red Stockings, has organised a workshop on 'International Feminist Strategy' to discuss potential actions for the UN-declared International Women's Year in August 1976. Workshop participants generally believed that true eradication of sex roles required radical restructuring, rather than the integration of women into their patriarchal structures to eradicate sex roles. These participants also expressed their distrust of governments that voted for the International Women's Year, highlighting that these governments maintain laws that contain extralegal sexist practices and sanction crimes against women. Consequently, the Women's

⁴²⁰ De Vido, S. (2017). Women's Tribunals to Counter Impunity and Forgetfulness: Why are They Relevant for International Law? *DEP*, 147-151.

Tribunal was recommended during the workshop as a critical reaction to the International Women's Year declared by the UN⁴²¹.

To further elaborate on the concepts of women's court, other global gatherings were held in Frankfurt for the International Feminist Conference from November 15 to 17 of 1974 and Brussels from March 4 to 8 of 1976 for the International Tribunal on Crimes against Women. The International Tribunal on Crimes against Women emphasised the seriousness of various crimes against women and notably addressed offences occurring within families, marking the first instance in history. This anticipation of a debate would become a high priority on the international stage in the 1990s. This initial instance did not adhere to the traditional court format; there was no panel of judges. Instead, the women declared themselves their own judges. Furthermore, the Court did not attribute responsibility under international law to any specific state, nor did it apply international legal principles or produce a final decision with recommendations. Its objective was not to act as a judicial body, but to criticise the laws of states that are discriminatory towards women⁴²². As a result, in the Brussels Tribunal, women "completely rejected the patriarchal definitions of crime," claiming that all forms of oppression by women are crimes.

Following the International Tribunal on Crimes against Women, similar initiatives have emerged to carry out trials without punishment and address various forms of challenges and discrimination facing women. In 1992, the Asian Women's Human Rights Council and El Taller International, in cooperation with local women's organisations, established a common platform that initiated the organisation of world women's courts. Since 1992, more than 40 courts have been established in Asia, the Middle East, Southeast Europe, Africa⁴²³, Latin America, and the United States⁴²⁴. Basically, women who were victims

⁴²¹ Diane E.H. Russell - Nicole Van De Ven (1976) Crimes against Women: Proceedings of the International Tribunal, Les Femmes, Millbrae, p. 151.

⁴²² Sara De Vido. (2017) "Women's Tribunals to Counter Impunity and Forgetfulness: Why are They Relevant for International Law," *Deportate, Esuli, Profughe*, no. 33, p. 153.

⁴²³ Kaya, Ö., & Göral, Ö. S. (2011). Seeking Peace Transforming The Law: The Case Of Women's Courts. In Irazca Geray & Liz Amado (Trans.), *Hakikat Adalet Hafiza Merkezi*. Hakikat Adalet Hafiza Merkezi, p.67. <https://www.Hafiza-Merkezi.Org>

⁴²⁴ For information on the world courts organized in the USA, see: *World Courts of Women on Poverty in the US*. (n.d.). World Courts of Women on Poverty in the US. <https://worldcourtsofwomen.wordpress.com/>

of abuse participated in these courts as witnesses and reported specific events, circumstances, and the context of violence.

8.1.2 Women's international tribunal on military sexual slavery of Japan

A remarkable case of women's courts established to investigate women's wartime suffering is the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery in 2000. The Women's Tribunal is a striking example of the evolving role of civil society as an international actor. During the Second World War, especially in the second half of 1937, Japanese armed forces devastated Chinese villages and committed sexual violence against women apparently as a scorched-earth policy. Numerous horrific sexual offences were committed, such as during the conflicts with the Chinese Red Army in the provinces of Shanxi and Hebei⁴²⁵. Following the capture of Nanking, the then capital of the Republic of China, it is estimated that between 50,000 and 200,000 women have been kidnapped and forced into sexual slavery for the soldiers in the Japanese army and the Navy. According to statistical data collected by the defence counsel in the Tokyo trial, many Japanese soldiers were prosecuted for rape by court martials and a significant number of rape incidents were reported. Despite many disciplinary measures and repeated prosecutions, the Japanese military justice system was ineffective in dealing with the widespread mass of rape. These crimes were not considered until 1990, when various women's nongovernmental organisations (NGOs) across Asia asked the Japanese Parliament to investigate the phenomenon. The Japanese government denied its participation, claiming that the recruitment was organised by private parties. In 2000, the International Tribunal for Women's War Crimes (Tokyo Tribunal) was established in Tokyo, Japan, as a response to decades of silence of the Japanese government and international law with respect to sexual violence committed against women during armed conflicts⁴²⁶.

⁴²⁵ Yuma Totani, *Legal Responses to World War II Sexual Violence: The Japanese Experience*, in *Sexual Violence in Conflict Zones*, ed. Elizabeth Heineman, Philadelphia University Press, Philadelphia 2011, p.218

⁴²⁶ Yuma Totani, *Legal Responses to World War II Sexual Violence: The Japanese Experience*, in *Sexual Violence in Conflict Zones*, ed. Elizabeth Heineman, Philadelphia University Press, Philadelphia 2011, p. 219

During the three days, the Tribunal listened to the statements of the prosecutor accompanied by oral and documentary evidence. More than 75 survivors of comfort stations attended, many of whom gave testimony. Furthermore, the prosecutor conducted interviews with many other survivors and submitted affidavits as evidence to the court. These testimonies show a picture of the recruitment of women through force, coercion, kidnapping, and deception. The Tribunal also received evidence of the physical and psychological impact of these atrocities on women's survivors, as well as the inadequate response of the Japanese government to prove that there is a causal link between the suffering experienced by these women during Japanese military operations and their lifelong suffering⁴²⁷.

The case was officially presented as a plaintiff (the Prosecutor and the Peoples of the Asia-Pacific Region) v. respondent (the Peoples of the Asia-Pacific Region v. Emperor Hirohito et al. and the Government of Japan). In addition to the general principles of international law, the tribunal used various international conventions, including the 1930 International Labour Organisation Convention on Forced Labour, the 1926 Slavery Convention, and the 1907 Hague Convention. In its final decision, called the "Judgement", the Tribunal declared that it operated "as if it were a continuation of the International Military Tribunal for the Far East", established shortly after the Second World War. The Tribunal concluded that Japan was responsible for breaches of international law, including the laws of war and the Conventions against forced labour and slavery. In addition, Emperor Hirohito was convicted of rape and sexual slavery as crimes against humanity and rape as a crime against humanity. Thus, the Tribunal examines both the individual and the state's responsibility simultaneously, highlighting an important contrast with international courts⁴²⁸.

Unfortunately, the judgment had no legal implications. However, what they exercise is moral authority⁴²⁹ because the court gave voice to victims suffering from various forms

⁴²⁷ Chinkin, Christine M. (2001). "Women's International Tribunal on Japanese Military Sexual Slavery." *American Journal of International Law* 95, no. 2, p.337

⁴²⁸ *iccwomen.org*. (2019). Transcript from Proceedings of Official Release of Tokyo Tribunal 2000 *Judgment*. [online] Retrieved April 21, 2024, from: <http://www.iccwomen.org/wigjdraft1/Archives/oldWCGJ/tokyo/summary.html>

⁴²⁹ Chinkin, C. (2001). Women's International Tribunal on Japanese Military Sexual Slavery. *American Journal of International Law*, 95(2), 335–341. <https://doi.org/10.2307/2661399>

of violence and promoted a common moral condemnation of gender-based crimes through public hearings⁴³⁰. Furthermore, the Tribunal stated in its recommendations that the Japanese government should issue a 'full and honest' apology, compensate victims and survivors, and establish a mechanism to thoroughly investigate the military sexual slavery system. Furthermore, the judgment proposed the establishment of a Truth and Reconciliation Commission tasked with documenting gender-based crimes committed during war, transition and occupation periods⁴³¹. According to Christine Chinkin, a feminist lawyer and expert at the tribunal, the trial before the Women's Tribunal has shown that if the state fails to fulfil its obligations to ensure justice, civil society can and should intervene⁴³². The bravery of survivors, their struggle for justice, and their unity have sparked a global movement to prevent such crimes from being ignored or reemerged. The fact that crimes against women are now prosecuted by newly established international criminal courts is the result of their efforts and is the basis for ending the impunity of violence against women.

8.1.3 The Women's court in Sarajevo

A decade after the death of Josip Broz Tito in 1980, who was appointed President for Life in 1974, the Socialist Federal Republic of Yugoslavia dissolved in a period of intense and violent conflicts. In the early 1990s, tensions arose as Yugoslav constituent republics began their own multiparty elections. In 1991, when Slovenia and Croatia declared their independence, political tensions intensified, prompting a process of dissolution led by the conflict. With the declaration of independence in 1992, the situation deteriorated, and conflicts between Bosnian Muslims, Serbs, and Croats grew⁴³³. Throughout the civil conflict, sexual violence has emerged as an important weapon used in Serbian genocidal efforts against Bosnian Muslims. It has been an important instrument in the campaign for

⁴³⁰ Jill Steans, 'Negotiating the Politics of Difference in the Project of Feminist Solidarity,' *Review of International Studies* 33(4) (2007): p.730.

⁴³¹ The Women's International War Crimes Tribunal, *The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, Judgment on the Common Indictment and the Application for Restitution and Reparation* (Delivered: The Hague, December 4, 2001), accessed March 13, 2024, http://vawwrrac.org/judgement_e01.pdf.

⁴³² Chinkin C. (2021) *Women's International Tribunal, op. cit., p. 339*

⁴³³ Çelikkan, M. (Ed.). (2014). *Hakikat Komisyonları [Truth Commissions]*. İstanbul: Anadolu Kültür Yayınları. (pp. 115-116).

ethnic cleansing, particularly in Bosnia and Herzegovina. As evidenced by a European fact finding mission investigating genocide, more than 20,000 Muslim women and girls were raped during the war in Bosnia and Herzegovina⁴³⁴. Following the Dayton Peace Agreement in December 1995, Bosnia and Herzegovina was divided between Muslims-Croats and Serbs. From 1998 to 2000, an escalated conflict involving Serbian police, Yugoslav military units, and the Kosovo Liberation Army led to a NATO intervention in 1999. The conflict between the Albanian guerrillas and the new Serbian government was resolved through dialogue in 2000. Furthermore, conflicts between Macedonia and Albania in the early 2000s were resolved through international mediation. This period witnessed numerous ethnic massacres, genocide, war crimes, and crimes against humanity, resulting in around 130,000 deaths, mass incarcerations, rapes, and forced migrations⁴³⁵.

In 1993 (just two years before the Dayton Peace Agreement), the United Nations Security Council established the International Criminal Court of the former Yugoslavia (ICTY), whose mandate was to prosecute persons accused of war crimes committed during civil conflict. ICYT has investigated many cases of sexual violence and rape and has accepted testimony from victims of sexual abuse who wish to testify, including those suffering from posttraumatic stress disorder⁴³⁶. At the end of the trials, some of the highest ranking officials responsible for these crimes were tried at the International Criminal Tribunal for the former Yugoslavia, and some proceedings have continued within national courts. The trials carried out by the ICTY were a milestone in the recognition and characterisation of rape and other types of sexual violence as violations of international law⁴³⁷. In the trials, the ICTY also described sexual violence as a strategy used in 'ethnic cleansing', indicating that some camps were specifically targeted for rape to ensure the birth of Serbian children

⁴³⁴ Meger, S. (2016). Sexual violence as an element of genocide. In *Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict*. Oxford University Press, p.11.
<https://doi.org/10.1093/acprof:oso/9780190277666.003.0007>

⁴³⁵ Çelikkan, M. (Ed.). (2014). *Hakikat Komisyonları [Truth Commissions]*. İstanbul: Anadolu Kültür Yayınları. pp. 115-116).

⁴³⁶ International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, 10 December 1998, Prosecutor v. Furundžija, case no. IT-95-17/1-T, para. 109. For a detailed analysis of cases of violence against women analysed by the Tribunal, Nicola Henry War and Rape. Law, Memory and Justice, Routledge, London 2011.

⁴³⁷ Meger, S. (2016). Sexual violence as an element of genocide. In *Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict*. Oxford University Press, pp.1-29.
<https://doi.org/10.1093/acprof:oso/9780190277666.003.0007>

(see the trials of Karadžić and Mladić- IT-95-5-I). Despite the efforts of the ICTY to define and prosecute sexual violence as a crime under international law, the coherence with which such charges are included in the ICTY's indictments remained questionable. For example, in the case of Prosecutor v. Luki, accused Milan Luki and Sredoje Luki, were accused of war crimes and crimes against humanity. Despite evidence suggesting their involvement in sexual violence, the initial indictment omitted such accusations, which could accelerate the case. The subsequent attempts of the new prosecutor Serge Brammertz to add rape, torture, and enslavement related to the operation of a rape camp were rejected by the ICTY in order to avoid delays in the trial. This selective approach suggests that the dominant belief in international criminal law that sexual violence crimes are not always considered serious enough to justify a separate prosecution⁴³⁸.

Despite various international bodies examining the conflict in the former Yugoslavia and addressing both individual criminal responsibility and state responsibility, women from almost all countries in the former Yugoslavia launched an initiative to organise the Women's Court at the end of 2010. Thus, the first women's court on European soil was held in Sarajevo from 7 to 10 May 2015, organised by women from different regions of former Yugoslavia. One of the reasons for this is that women's participation is limited in international forums that discuss the future of former Yugoslavia, such as the Dayton Peace Agreement. Bosnia and Herzegovina women did not participate in the negotiation of the Dayton Accords. Although sexual abuse was based both on gender and ethnicity, the Dayton Accords did not require the authorities representing various organisations in Bosnia and Herzegovina to address the abuses of women or provide adequate compensation. Furthermore, the agreement did not allocate a role to women in reconstruction efforts after the conflict⁴³⁹.

Second, the International Criminal Tribunal for the Former Yugoslavia has investigated numerous cases of sexual violence and rape. However, not all women had the opportunity

⁴³⁸De Londras, F. (2009). Prosecuting sexual violence in the ad hoc International Criminal Tribunals for Rwanda and the former Yugoslavia. *Social Science Research Network*. P.13. <https://doi.org/10.2139/ssrn.1393298>

⁴³⁹ Christine Chinkin, Hilary Charlesworth, *The Boundaries of International Law*, Manchester University Press, Manchester 2000, ISBN 0-7190-3739-5, 414 pp., *Leiden Journal of International Law*, 14(4), 935–939. <https://doi.org/10.1017/s0922156501210449>

to seek justice or compensation for abuse suffered during and after the conflict. In addition, before the establishment of the Women's Court, women who participated in various meetings and events in the former Yugoslavia stressed that the Hague Tribunal was the primary institution addressing war crimes in the former Yugoslavia. However, survivors have lost confidence in both national and international judicial institutions after the recent judgments of the Hague Tribunal, which granted amnesty to the state responsible for the organisation of crimes, Serbia. Furthermore, the loss of credibility in the legal system was reflected in the release of war crimes suspects awaiting trial before the Serbian Special Court for War Crimes, the drastic reduction in trials, and the reliance of prosecutors on the rulings of the Hague Court⁴⁴⁰.

The principal objective of the Court was to highlight the cross-contextual continuity of violence against women during times of peace and war and to promote the experiences of individual women and integrate them into collective memory. Consequently, the proceedings were organised around five central themes: warfare against civilian populations (involving ethnic, militaristic, and gender-based violence); women's bodies as battlegrounds (addressing sexual violence in conflict zones); women's acts of resistance and militaristic violence; persecution of marginalised groups during both wartime and peacetime (ethnic violence); and covert forms of conflict (including social-economic violence and women's resistance). survivors played a crucial role in determining these themes⁴⁴¹. Consequently, the Women's Court in Sarajevo represented a wide range of themes, making the Court a key "enabling space" where women with different experiences of violence and injustice could share their stories and express what had previously been unheard. Furthermore, the Court allowed women to tell these stories in their own words, as individuals, without interruptions and questions, and to focus on what was most important to them personally⁴⁴².

⁴⁴⁰ Krasniqi, V. (2016, June 1). Women's Court for the Former Yugoslavia: Seeking Justice, Truth, and Active Remembering. p. 23. Retrieved from http://www.zenskisud.org/en/pdf/Vjollca_Krasniqi_eng.pdf; http://www.zenskisud.org/en/pdf/Vjollca_Krasniqi_eng.pdf; [http://www.zenskisud.org/en/pdf/Karima_Bennoune_\(Interview\)_eng.pdf](http://www.zenskisud.org/en/pdf/Karima_Bennoune_(Interview)_eng.pdf)

⁴⁴¹ De Vido, S. (2017). Women's Tribunals to Counter Impunity and Forgetfulness: Why are They Relevant for International Law? *DEP*, pp.160-162.

⁴⁴² Clark, J. N. (2015). Transitional Justice as Recognition: An Analysis of the Women's Court in Sarajevo. *International Journal of Transitional Justice*, p.12. Available at: doi:10.1093/ijtj/ijv027

During three days of testimony, it became clear that the witnesses had suffered tremendous losses and pain, but their efforts for justice, active remembrance, and resistance to the culture of impunity prevailed. In their testimony before the Women's Court, the women's witnesses reiterated the importance of continuing the struggle for justice and peace. Therefore, the Women's Court in Sarajevo served as an intervention for justice, truth and the eradication of war and its impact on women's lives and communities. Furthermore, it contributed to the recognition of women's resilience and promoted a diversity of views on the impact of sex on war violence ⁴⁴³.

As a result, women in Sarajevo understood that they had no authority to force the government to initiate new proceedings to get compensation for abuses suffered during and after the conflict in the former Yugoslavia. However, their testimony in women's courts will be shared and preserved as part of the collective memory of many abused women. Additionally, documents collected by civil society courts, including testimony, video and written documents, could be used by other 'official' national or international courts, such as investigation committees and international criminal courts, to support future legal actions and proceedings.

8.2 Women's Court as an Ad-hoc International Court

It is urgently necessary to establish an ad hoc international court to deal with the prosecution of ISIS fighters, due to challenges in the ICC system and in national courts in prosecuting ISIS fighters and concerns about camps administered by the SDF. There is growing support for the creation of an ad hoc tribunal. For example, Mikael Damberg, Sweden's Minister of Interior, shared his vision of the establishment of an international ad hoc court based in Iraq, with scope and capacity comparable to those established in former Yugoslavia (ICTY) and Rwanda (ICTR)⁴⁴⁴

⁴⁴³ Krasniqi, V. (2016). "Women's Court for the Former Yugoslavia: Seeking Justice, Truth, and Active Remembering", Retrieved May 12, 2024, from: http://www.zenskisud.org/en/pdf/Vjollca_Krasniqi_eng.pdf;
[http://www.zenskisud.org/en/pdf/Karima_Bennoune_\(Interview\)_eng.pdf](http://www.zenskisud.org/en/pdf/Karima_Bennoune_(Interview)_eng.pdf)

⁴⁴⁴ Warell, H (2019) "Sweden Proposes International Tribunal to Try Isis Fighters", *Financial Times*. Retrieved May 12, 2024, from: <https://www.ft.com/content/9086250e-7802-11e9-bbad-7c18c0ea0201>

ICTY and ICTR have had a profound influence on the contribution of international criminal law and the evaluation of national and international jurisprudence. Therefore, as an alternative solution, the United Nations Security Council (UNSC) can establish an ad hoc international criminal court, which would be modelled on the ICTY and ICTR, specifically responsible for prosecuting crimes committed by members of ISIS. Although the legacy of the ICTY and ICTR is characterised by significant consequences, these courts also include shortfalls in the work they produced. Therefore, past experiences should guide the UN in their important task of establishing a court specifically for the prosecution of ISIS fighters. However, the establishment of an ad hoc tribunal for the prosecution of ISIS perpetrators, similar in scope and capacity to the tribunals of the former Yugoslavia and Rwanda, may not be sufficient and satisfy Yazidi survivors of conflict-related sexual slavery because the Yazidi genocide differs from other examples of genocide due to its unique character as a gendering genocide. To address the individual needs and experiences of these victims, it is necessary to establish a Women's Court as an international ad hoc court to prosecute the perpetrators of the Yazidi genocide.

Establishing a women's court exclusively for ISIS members can raise a question about their personal jurisdiction because the possibility of restricting the personal jurisdiction of women's courts means narrowing the 'persona razione' of an ad hoc tribunal for members of a particular collective entity. In other words, the "ISIS Tribunal" would mean that the Women's Court could prosecute only members of ISIS, excluding other perpetrators of crimes committed in the Syrian conflict and state responsibility. Thus, establishing a women's court to prosecute members of ISIS will undoubtedly face significant objections with accusations of partiality and justice of the winner, as in the case of the Nürnberg and Tokyo Tribunals. However, the question of whether it is feasible to restrict the jurisdiction of an international criminal court to a specific armed group has not been extensively discussed in international and national jurisprudence. Consequently, there is no specific international rule that prohibits the creation of a criminal tribunal for members of a specific armed group⁴⁴⁵.

⁴⁴⁵ Behring, R. (2020). One-eyed prosecution?: On the possibility to restrict the personal jurisdiction of an international ad hoc-tribunal for ISIS-fighters. *Völkerrechtsblog*. [online] Available at:

Initially, many countries adopted a policy of reluctance to prosecute women who joined ISIS. However, over time, countries have recognised the different and key roles that women play in ISIS. Thus, countries began investigating and prosecuting returning women. However, there is no standardised progress toward implementing more gender-sensitive investigative and prosecutorial approaches. In the prosecution of ISIS female members, on one side of the spectrum, countries are refusing to prosecute women, assuming collectively that they were all victims. On the opposite side of the spectrum are nations that have imposed the death penalty on women associated only with ISIS members⁴⁴⁶. On the other hand, a women's court can also ensure that all aspects of their guilt are addressed, by reviewing the entire scope of activities and crimes committed by women in ISIS, such as recruitment, violence, and support for terrorist acts. Therefore, by providing a specialised and gender-sensitive approach to prosecution, the women's court could facilitate a more comprehensive investigation of the actions of female criminals, which would go beyond mere membership in a terrorist organisation.

Although 10 years have passed since the Yazidi genocide, the demands of genocide survivors for justice have not been fulfilled. However, they, especially Yazidi women, still insist on asking for justice, truth, reparation, and cultivating memory by speaking their stories and showing evidence of the genocide. I would like to point out that justice means not only punishing the ISIS perpetrators, but also initiating a process of actual reparation of victims and helping them lead as normal a life as possible. Therefore, the women's court can be the most suitable alternative solution to meet women's demands for justice because the women's court can prioritise the needs and rights of Yazidi women, providing support services, and facilitating their participation in legal proceedings. By centering the experiences of survivors, the court can ensure that justice is not only served but also felt by those who have been affected by violence.

<https://voelkerrechtsblog.org/de/one-eyed-prosecution/>

⁴⁴⁶ CTED. (2017). *Analytical Brief on the Prosecution of Women Returnees from the Islamic State in Iraq and the Levant*. United Nation Security Council. p.7

8.2.1 Providing a voice for Yazidi women to address multifaceted violence

When we consider the testimony of women who expressed their feelings of insecurity, uncleanness, humiliation, and insult before the ICTY and the ICTR courts, it was clear that the perpetration of a crime is not only about facts and legal details, but also about the intangible emotions and feelings of victims. Therefore, the criminal trial should consider these questions: How did the crime affect the victim's emotions? How did it affect your perception of yourself and your attitudes towards others? However, the criminal trial process, which focusses primarily on the identification of concrete facts, offers limited opportunities for victims to express these responses. Therefore, women victims of genocide and sexual violence need to talk about the emotional affective legacy of the crimes committed against them to reveal the destructiveness of the atrocities. Unfortunately, survivors are often forced to report their history and experiences in a way that assists the Court in determining the guilt or innocence of the offender, rather than in a way that responds to their own emotional needs. As Katherine Franke, James L. Dohr Professor of Law at Columbia University, has stated, the translation of human suffering into the language of law and rights will always satisfy the interests of legal authorities rather than victims who are called to narrate their pain⁴⁴⁷.

As the main authority for prosecuting and elaborating punitive judgments, the criminal courts serve as a platform in which victims of rights violations, witnesses, and suspects identified through necessary investigations present their personal testimony. The courts should determine "true" events based on the legal regime and these individual statements and testimony. Therefore, the courtroom becomes an arena in which contradictory memories and testimony collide and the dominant contest becomes the judicially approved truth. Thus, through its legal jurisdiction, courts establish an area where contradictory memories confront each other, resulting in the validation of one memory and the truth, while falsifying or even discrediting the other⁴⁴⁸. In this case, speaking out about rape and other forms of sexual violence in public and before the courts can pose a

⁴⁴⁷ Clark, J. N. (2015). *Transitional Justice as Recognition: An Analysis of the Women's Court in Sarajevo*. *International Journal of Transitional Justice*, p.5. Available at: doi:10.1093/ijtj/ijv027

⁴⁴⁸ De Vido, S. (2017). *Women's Tribunals to Counter Impunity and Forgetfulness: Why are They Relevant for International Law?* DEP, p.35.

significant challenge for Yazidi women. The legal process itself, with its formal procedures and cross-examinations, can exacerbate the vulnerability of Yazidi women and their trauma and distress. In addition, more than a decade has passed since the genocide, and this period may have a negative impact on the reliability and credibility of witness testimonies and the quality of the evidence they provide. Furthermore, many Yazidi survivors, particularly women, suffer from symptoms of mental stress, depression, suicidal ideation, and general anxiety. Therefore, when Yazidi women tell their experiences, trauma can evoke intense emotions in them, which can affect their ability to remember the entire event and cause memory gaps. Furthermore, trauma significantly increases the likelihood of inconsistent statements from witnesses to trauma, as memories may alter on retelling, with some details disappearing over time or while repeated memories may produce new unreal details.

Yazidi survivors of sexual slavery during conflicts face substantial barriers to accessing justice, including a lack of awareness of reporting channels and their right to pursue legal recourse. However, the main obstacle they face is fear of backlash⁴⁴⁹. The women's court could give Yazidi women a voice to speak about the various layers of violence against them, providing a platform in which victims can tell their stories in a supportive and empathetic environment, away from such usual, cool, cognitive and formal justice. These court settings may also reveal "the frequency and depths of harm to their experience" and the relationship between harm and crime. Furthermore, the Women's Court can reduce the negative impact of discussing such traumatic experiences by providing a space free of prejudice and stigma for women to speak openly without being judged. For example, the Sarajevo Women's Court recognised neglected affective complaints of violence and crime and allowed women to discuss not only their experiences but also emotional and cognitive impacts to reduce the women's 'felt experience of injustice'. Therefore, women who have had to choose between family members to save their other members, or who abandoned their child born to an ISIS member while fleeing captivity, or who converted

⁴⁴⁹ M. Iyer, J. Irani, & E. Veillet-Chowdhury. (2020). Seeking Accountability And Preventing Recurrence: Addressing Conflict-Related Sexual Slavery Through The Women, Peace, And Security Agenda. Global Network of Women Peacebuilders, p.10-22. Retrieved January 24, 2024, from: <https://www.womenpeacesecurity.org/member/gnwp/>

to Islam to escape torture and ill-treatment, should be able to express their feelings without guilt, stigmatisation, or prejudice.

Furthermore, the court's recognition of the unique challenges faced by Yazidi women in the legal process can improve the quality and credibility of evidence by ensuring that their voices are heard and their testimony is taken seriously. For example, a Bosniak woman who was raped during the Bosnian war told the Women's Court that being a witness and retelling her story in various regional workshops helped prepare her for subsequently testifying in the Bijeljina Circuit Court, BiH, against one of her perpetrators⁴⁵⁰. In general, the Women's Court can play a crucial role in empowering Yazidi women to reclaim their narratives and seek justice for the atrocities they have endured.

8.2.2 The Restorative aspect of women's courts victim-centred perspective

Most women subjected to sexual violence and genocide continue to view themselves as powerless, alone, and abandoned through their lives. Unfortunately, women's experiences with the criminal justice process also strengthen their trauma and the sense of victimhood. These women can express their feelings and stories in court only as victims and witnesses, often making them feel ignored by the legal institutions through which they seek justice. Moreover, emphasising women only as victims of sexual violence in trials may contribute to depersonalising their specific stories, removing their personal aspects and essentialising them as victims, and reducing them simply as statistical data. This is a criticism often voiced by feminists about the International Criminal Courts. However, these people are not only victims of rape. In contrast, they are women who have survived rape and are trying to move forward despite many challenges. However, victims and witnesses are primarily responsible for describing the crimes committed against them rather than stating their own resilience and strength due to the restrictive frontier of the criminal trial process of national courts. Therefore, the criminal courts gave them little

⁴⁵⁰ Chinkin, C. (2001). Women's International Tribunal on Japanese Military Sexual Slavery. *American Journal of International Law*, 95(2), p.12. Available at: <https://doi.org/10.2307/2661399>

space to recognise their own resilience and strength⁴⁵¹. Basically, criminal justice procedures tend to perpetuate 'the war meta-narrative,' and this approach imposes a sexist stereotype that silences and ignores women's diverse experiences of women, reducing them to a sworn role as 'women as victims.'

According to Frank Haldemann, contrary to criminal justice, the key aspect of justice as recognition is its essentially victim-centred nature. It includes recognising victims with the compassion and respect they deserve for their suffering and identity. This focus on victims goes beyond simply acknowledging the damage they have suffered. Haldemann points out that the consequences of criminal acts include both tangible and intangible aspects. He argues that committing a crime leads to a symbolic devaluation and the commission of a crime involves not only harm but also fundamental disregard and a lack of concern for the victim. To correct this "misrecognition", which is characterised by a specific attitude of treating others as inferior or overlooking their significance, it is necessary to recognise the perspectives and realities of victims' experiences⁴⁵². Consequently, addressing the legacy of the past inevitably requires a broader and more comprehensive approach.

A women's court might change the perception and process of criminal justice, which is quintessentially perpetrator-focused. This may highlight the personal genocidal stories of Yazidi women rather than simply stating their common identity as 'woman and victim' because 'victims' include a wide variety of individuals with different experiences, and it is too simplistic to focus only on the actions taken against them. Additionally, the court's emphasis on empowering women as active agents in their own narratives may help to restore their sense of agency and dignity, countering feelings of vulnerability and distress because they are active participants with their own goals and ambitions. Therefore, a Women's Court can show that they are not just victims, but also survivors and agents of change who remain committed to seeking truth and justice. For 10 years, Yazidi women

⁴⁵¹ Clark, J. N. (2015). Transitional Justice as Recognition: An Analysis of the Women's Court in Sarajevo. *International Journal of Transitional Justice*, *ijv027*-. Available at: doi:10.1093/ijtj/ijv027

⁴⁵² Haldemann, F. (2008). Another kind of justice: transitional justice as recognition. *Cornell International Law Journal*, *41*(3), p.679-693. Retrieved May 11, 2024, from: https://chrgj.org/wp-content/uploads/2012/07/Haldemann_131107.pdf

have been remarkably brave in sharing their experiences of sexual violence, in responding to these atrocities, and in demanding their justice despite the silence of international bodies. For example, Nadia Murad, a survivor and Nobel Peace Prize winner, has been campaigning and advocating for years that the perpetrators of ISIS be held responsible. Despite the social taboo on sexual violence within the Yazidi community, male community leaders and members, including survivors' brothers, fathers, and husbands, openly address sexual violence and show solidarity with each other⁴⁵³. Furthermore, some survivors of Yazidi women were armed and formed Êzîdxan Women's Units (YJÊ) to protect their community and prevent consolidation of ISIS positions. As a result, the Court of Women can allow those who had been raped to show that, despite their painful history, they still have a future and aspirations for that future.

8.2.3 Empowering justice by prioritising the women's court

According to Martha C. Nussbaum, oppressive and brutal discrimination based on race is universally condemned, while oppressive and brutal discrimination based on sex is often ignored or legitimate as a cultural difference⁴⁵⁴. These words of Nussbaum explain the concept of the hierarchy of brutality in a very simple language. The concept of the "Hierarchy of Atrocities" argues that international criminal courts adopt a selective approach to sexual violence charges while prioritising war crimes other than sexual violence. This concept also reveals how certain crimes are given priority over others within the framework of international law⁴⁵⁵. Compared to other war crimes, sexual violence is often considered less serious or less harmful, leading to fewer cases that include allegations of sexual violence in these courts.

⁴⁵³ Kaya, Z. (2019) 'Iraq's Yazidis and ISIS. The Causes and Consequences of Sexual Violence in Conflict,' LSE Middle East Centre Report 2019, pp.14-15. Retrieved May 21, 2024, from: <http://eprints.lse.ac.uk/102617/>

⁴⁵⁴ Nussbaum, M. C. (2007). *Frontiers of justice*. Belknap Press, Cambridge 2006, p. 260. Available at: <https://doi.org/10.2307/j.ctv1c7zftw>

⁴⁵⁵ Meger, S. (2016). Sexual violence as an element of genocide. In *Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict*. P.18. Oxford University Press. Available at: <https://doi.org/10.1093/acprof:oso/9780190277666.003.0007>

Usually, perpetrators are only charged with sexual violence when they are associated with the most egregious genocide offence. Therefore, the international community pursues accusations of sexual violence only in connection with more atrocious crimes. On the contrary, crimes affecting or involving women, such as sexual violence, are given less priority in international law than crimes affecting men. However, Yazidi survivors of conflict-related sexual slavery, along with members of the Yazidi community as a whole, demand justice and accountability for the crime of conflict-related sexual slavery and other forms of sexual violence, although they remain disappointed by the continued delays in international and domestic justice. Thus, establishing an international women's court can send a powerful symbol of solidarity with survivors of gender-based violence worldwide and send a message that crimes against women will not be tolerated and that perpetrators will be held accountable to the highest standards of justice. It may demonstrate a commitment to gender equality and human rights on a global scale.

9 Conclusion

Information and publicly available data collected by UNITAD and IIM, specialised NGOs, and the allegation presented in this thesis strongly support the claim that the Yazidi genocide is a clear sample of gendered genocide. The atrocities committed against Yazidi women and girls, from their enslavement and rape to the implementation of measures to prevent births within the group, clearly show that ISIS systematically and deliberately targets Yazidi women and girls. In addition, the gender-based nature of the Yazidi genocide cannot be ignored or underestimated when we consider the painful history of slavery, rape, and forced marriages to the lasting trauma and stigmatisation of the survivors. However, the lack of an adequate approach to these gender crimes in domestic courts and the lack of significant justice in national courts show that alternatives are urgently needed despite the widespread recognition of these crimes.

These genocidal acts and prohibited atrocities committed by ISIS are clearly in line with the legal definitions of fundamental international crimes (humanitarian crimes, war crimes, genocide). Therefore, the article first examined the possibility of prosecuting ISIS fighters for crimes such as war crimes, crimes against humanity, or genocide within the ICC framework. Since the Court of Justice's jurisdiction and mandate are limited and Iraq and Syria are not parties to the Rome Statute, and many political and security factors prevent their willingness to accept the Court's jurisdiction, the ICC's option is unlikely for now. Therefore, the paper addressed the discussions that suggest the creation of an ad hoc criminal tribunal. Based on lessons from previous ad hoc courts, the possibility of the creation of an international or hybrid/mixed court for the prosecution of ISIS fighters was examined. Considering competence, transparency, equity, independence, and funding, the establishment of a mixed or hybrid court will face considerable challenges. Furthermore, the creation of an international ad hoc court based on institutions such as the International Court of Justice and the International Criminal Court may not be a suitable solution to the persecution of ISIS fighters due to the gender-based nature of the Yazidi massacre. Therefore, the establishment of a completely new international ad hoc court, such as a women's court, would provide an alternative approach to conventional justice to recognise

the gender-based nature of crimes, accurately identify these crimes and safeguard the rights of the Yazidi victims to truth, justice, and compensation.

Women's courts can be an important mechanism to hold perpetrators accountable because the courts may ensure that victims' voices are heard and confirmed by focussing on the experiences of survivors and addressing gender-based violence. Therefore, the women's court can provide a promising way to address the unique complexity of sexual violence and to ensure that survivors' voices are heard and verified. Furthermore, through the focus on the experience of women and the priority given to their needs in the pursuit of justice, these courts provide an essential platform for the prosecution of perpetrators of ISIS and the promotion of healing and reconciliation within affected communities.

The international community should take into account the Yazidis' demands for justice. Therefore, the community should support the establishment and exercise of women's courts to address the widespread impunity of gender-based violence in conflict situations, because women's courts can lay the foundations for the prevention of future crimes of gender genocide and the construction of a more just and inclusive world for all through collective efforts to hold perpetrators responsible and protect the rights and dignity of survivors.

10Bibliography

- [1] [3] Lemkin, R. (1944). *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Washington, DC: Carnegie Endowment for International Peace.
- [2] [5] [7] Schabas, W. A. (2009). *Genocide in International Law* (2nd ed.). Cambridge University Press. Available at: <https://doi.org/10.1017/cbo9780511575556>.
- [4] United Nations. (1948). *Convention on the Prevention and Punishment of the Crime of Genocide*. Retrieved from [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention on the Prevention and Punishment of the Crime of Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)
- [6] International Court of Justice. (2006). *Case Concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application*. Retrieved from <https://www.icj-cij.org/en/case/126>.
- [8] Argibay, C. (2003). *Sexual slavery and the comfort women of World War II*. *Berkeley Journal of International Law*, 21(2), <https://doi.org/10.15779/z38vw7d>.
- [9] Meger, S. (2016). *Sexual violence as an element of genocide*. In Oxford University Press eBooks. Available at: <https://doi.org/10.1093/acprof:oso/9780190277666.003.0007>
- [10] [13] Rittner, C., & Roth, J. K. (2016). *Teaching about rape in war and genocide*. In Palgrave Macmillan UK eBooks. Available at: <https://doi.org/10.1007/978-1-137-49916-5>
- [11] United Nations. (2020). *Guidance for Mediators on Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements*. Retrieved from <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/Background-Doc-1-DPA-Guidance-for-Mediators-on-Addressing-Conflict-Related-Sexual-Violence-in-Ceasefire-and-Peace-Agreements.pdf>
- [12] International Criminal Tribunal for the former Yugoslavia. (2009). *Statute of the International Criminal Tribunal for the former Yugoslavia*. Retrieved from: https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf
- [14] [19] [43] [47][50] Yeğen, M. (Ed.). (2014). *Kürt Tarihi* (Sayı: 15, Ekim-Kasım-Aralık 2014). İstanbul: Kürt Tarihi Yayın Kurulu.
- [15] [16] [35] [68] [70] [75] [83] [94] [113] [160] [185] [190] [199] International Federation for Human Rights. (2018). *Iraq* (Report No. 723). Retrieved from <https://www.fidh.org/IMG/pdf/irak723angweb.pdf>
- [17] [22] [61] [66] Allison, C. (2001). *The Yezidi Oral Tradition in Iraqi Kurdistan*. London: Curzon Press., p. 7. <https://doi.org/10.4324/9780203819913>
- [18] [32] Van Zoonen, D., & Wirya, K. (2017). *The Yazidis: Perceptions of Reconciliation and Conflict*. Erbil: Middle East Research Institute.
- [20] [31] [57] Orpak, O. (2021). *A Descriptive Effort on the Ottomans-Yezidis' Unjust Relations: A Relationship in the Shade of Violence*. *Kurdiname*, (5). Retrieved from <https://www.institutkurde.org/info/yazidis-i-general-1232550791>
- [21] [24] [60] [115] [453] Kaya, Z. (2019) 'Iraq's Yazidis and ISIS. The Causes and Consequences of Sexual Violence in Conflict,' LSE Middle East Centre Report 2019. Retrieved from: <http://eprints.lse.ac.uk/102617/>

- [23] [41] Asatruan Garnik S. and Arakelova Victoria, *The Religion of The Peacock Angel*, 2014 by Peeters. (Asatrian, G. S., & Arakelova, V. (2014). *The religion of the Peacock Angel: The Yazidis and Their Spirit World*. Routledge.)
- [25] Allison, C. (1998) 'The Evolution of Yazidi Religion. From Spoken Word to Written Scripture,' ISIM Newsletter, Vol. 98, No. 1, Regional Issues, Kurdistan
- [26] Asher-Schapiro, A. (2014, August 11). Who are the Yazidis, the ancient, persecuted religious minority struggling to survive in Iraq? History. Retrieved from: <https://www.nationalgeographic.com/history/article/140809-iraq-yazidis-minority-isil-religion-history>
- [27] [126] [132] [135] [141] Cetorelli, V., Sasson, I., Shabila, N. P., & Burnham, G. (2017). Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey. *PLOS Medicine*, 14(5), e1002297, Available at: <https://doi.org/10.1371/journal.pmed.1002297>
- [28] [54] [58] [59] [62] [63] Fuccaro, N. (1999). *The Other Kurds: Yazidis in Colonial Iraq*. London: I.B. Tauris.
- [29] Tarih boyunca 74 kez katliama uğradılar: Êzidîler Şengal'de kaçırılan 3 bin kadın ve çocuğu arıyor. (2020, August 2). Artı Gerçek. <https://artigercek.com/dunya/tarih-boyuncu-74-kez-katliama-ugradilar-ezidiler-sengal-de-kacirilan-3-bin-kadin-133902h>
- [30] [33] [42] [49] Goston, G. A., & Masters, B. A. (2010). *Encyclopedia of the Ottoman Empire*. Infobase Publishing
- [36] Buffon, V., & Allison, C. (2016). The Gendering of Victimhood: Western Media and the Sinjar Genocide. *Kurdish Studies*, 4(2), p.186.
- [37] Al Jazeera. (2023, August 3). Nine years after the Yazidi genocide: What next for survivors? Retrieved from <https://www.aljazeera.com/news/2023/8/3/nine-years-after-the-yazidi-genocide-what-next-for-survivors>
- [38] [117] [139] UN Human Rights Council, Commission of Inquiry on Syria. (2016). "They came to destroy": ISIS Crimes Against the Yazidis, p. 34. Retrieved from: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf
- [39] Edmonds, C. J. (2002). *A pilgrimage to lalish*. Psychology Press. (The primary sources for this chapter have been C. J. Edmonds, *A Pilgrimage to Lalish*; Thomas Bois, OP, 'Les Yézidis', *al-Machriq*, vol. 55, 1961.
- [40] [46] [48] [53] Guest, J. S. (2012). *Survival among the Kurds*. Routledge.
- [44] [45] [65] Zoonen Dave van and Wirya Khogir, *The Yazidis: Perceptions of Reconciliation and Conflict*, Middle East Research Institute, 2017 by Erbil.
- [51] Bianet. (2018). Happy Çarşema sor to yazidis. Retrieved from: Bianet. <https://bianet.org/haber/happy-carsema-sor-to-yazidis-196261>
- [52] Anadolu Din ve İnançları Platformu (2009.). *Ezidi İnanç ve Özel Günleri* İnkılap Yayınevi. Retrieved from: <http://adipanadolu.org/sayfa-detay/ezidi-inanci-ve-ozel-gunleri/300>
- [55] MacFarqzhar N. (2003). *Bashiqa Journal; A Sect Shuns Lettuce and Gives the Devil His Due*. The New York Times. Retrieved from <https://www.nytimes.com/2003/01/03/world/bashiqa-journal-a-sect-shuns-lettuce-and-gives-the-devil-his-due.html>

- [56] Fondation Institut kurde de Paris, (n.d.). Yazidis i. GENERAL. Retrieved from <https://www.institutkurde.org/info/yazidis-i-general-1232550791>
- [64] [108] [110] [125] [131] [134] [137] [178] [259] Commission of Inquiry, ISIS Crimes Against the Yazidis, 15 June 2016, A/HRC/32/CRP.2, paras 32-36. See also, UNAMI, A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL, August 2016
- [67] [71] Sverdlov, D. (2018). Rape in War: Prosecuting the Islamic State of Iraq and the Levant and Boko Haram for Sexual Violence Against Women. *Cornell International Law Journal*: Vol. 50: No. 2, Article 6, <https://doi.org/10.31228/osf.io/ew2uj>
- [69] McCoy, T. (2014, June 11). How ISIS Leader Abu Bakr al-Baghdadi Became the World's Most Powerful Jihadist Leader. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/news/morning-mix/wp/2014/06/11/how-isis-leader-abu-bakr-al-baghdadi-became-the-worlds-most-powerful-jihadi-leader/>
- [72] Thomas, C., & Martin, A. G. (2024, May 6). The Islamic State: Background, Current Status, and U.S. Policy (Report No. IF10328). Retrieved from <https://crsreports.congress.gov/product/pdf/IF/IF10328>
- [73] Kikoler, N.(2015). Our Generation is Gone. Bearing Witness: The Voices of Iraq's Yazidi and Christian Survivors, raq. United States Holocaust Memorial Museum. p.10. Retrieved from <https://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf>
- [74] [106] [107] [112] [114] [116] [118] [122] [127] [167] [203] Eriksson, J., & Khaleel, A. (2018). *Iraq after ISIS: The Challenges of Post-War Recovery*. Palgrave Pivot.
- [76] European Parliamentary Research Service. (2016). *Foreign Fighters: Trends, Dynamics, and Policy Responses in the EU*, p.2. Retrieved from <https://www.europarl.europa.eu/EPRS/EPRS-Briefing-579080-Foreign-fighters-rev-FINAL.pdf>
- [77] Masi, A. (2020, December 22). Inside "The Caliphate Army": ISIS's special forces military unit of foreign fighters. *International Business Times*. <https://www.ibtimes.com/inside-caliphate-army-isis-special-forces-military-unit-foreign-fighters-1995134>
- [78] Terrill, W. A. (2014). *Understanding the Strengths and Vulnerabilities of ISIS*. Parameters: The US Army War College Quarterly.
- [79] Schweitzer, Y., & Einav, O. (2016). *The Islamic State: How Viable is It?*, Institute for National Security Studies, Tel Aviv.
- [80] Deslandes-Martineau, M., Charland, P., Lapierre, H. G., Arvisais, O., Chamsine, C., Venkatesh, V., & Guidère, M. (2022). The programming curriculum within ISIS. *PLOS ONE*, 17(4), e0265721. <https://doi.org/10.1371/journal.pone.0265721>
- [81] The Average ISIS Fighter from ALL JIHAD IS LOCAL: What ISIS' Files Tell Us About Its Fighters on JSTOR. (n.d.). www.jstor.org. <https://www.jstor.org/stable/resrep10467.5>
- [82] Jensen, Michael, Patrick James, and Herbert Tinsley. 2016. "Overview: Profiles of Individual Radicalization in the United States-Foreign Fighters (PIRUS-FF)." College Park, MD: START., https://www.start.umd.edu/sites/default/files/publications/local_attachments/START_PIRUS-FF_InfographicSeries_April2016_0.pdf
- [84] The Soufan Center. (2014). *Foreign Fighters in Syria*. Retrieved from <https://thesoufancenter.org/wp-content/uploads/2017/05/TSG-Foreign-Fighters-in-Syria-Final-with-cover-rebrand-031317.pdf>
- [85] [90] Cook, J., & Vale, G., (2018). From Daesh to 'Diaspora': Tracing the Women and Minors of Islamic State, *International Centre for the Study of Radicalisation*, London, p.41. Retrieved from:

<https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>

[86] Hoodfar, H. (2001). The veil in their minds and on our heads: veiling practices and Muslim women. In Palgrave Macmillan US eBooks p 8. Available at: https://doi.org/10.1007/978-1-137-04830-1_22

[87] [364] Martini, A. (2018). Making women terrorists into “Jihadi brides”: an analysis of media narratives on women joining ISIS. *Critical Studies on Terrorism*, 11(3), p. 4-5. <https://doi.org/10.1080/17539153.2018.1448204>

[88] Sherwood, H., S. Laville, K. Willsher, B. Knight, M. French, and L. Gambino. (2014). “Schoolgirl Jihadis: The Female Islamists Leaving Home to Join Isis Fighters”. Retrieved from: <https://www.theguardian.com/world/2014/sep/29/schoolgirl-jihadis-female-islamists-leaving-home-join-isis-iraq-syria>

[89] Patel, S., & Westermann, J. (2018). Women and Islamic-State Terrorism: An Assessment of How Gender Perspectives Are Integrated in Countering Violent Extremism Policy and Practices. *Security Challenges*, 14(2), p. 9. Published by the Institute for Regional Security. Retrieved from <https://www.jstor.org/stable/26558022>

[91] Winter, C. (2015, November 19). In August #IS|ers Circulated This Clarification on Permissibility of Women and Fighting. Twitter. Retrieved from: <https://twitter.com/charliewinter/status/667326295706050560>

[92] BBC News Türkçe. (2018). IŞİD ilk kez kadın savaşçılarıyla ilgili bir video yayımladı. BBC News Türkçe. Retrieved from: <https://www.bbc.com/turkce/haberler-dunya-42982550>

[93] Winter, C., & Margolin, D. (2017). The Mujahidat Dilemma: Female Combatants and the Islamic State. Combating Terrorism Center (CTC). ETH Zurich. Center for Security Studies. Retrieved from: <https://css.ethz.ch/en/services/digital-library/articles/article.html/8729c886-5ea3-4e79-a32c-05def32de3f5>

[95] United Nations, Department Of Political Affairs, Policy And Mediation Division, Mediation Support Unit, & United Nations Department of Political Affairs. (2012). Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements: Guidance for Mediators. In Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements: Guidance for Mediators.

[96] United Nations. (2021). Twelfth report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of the United Nations. Retrieved from: <https://digitallibrary.un.org/record/3899398?v=pdf>

[97] Reuters. NBC News. (2015, November 19). ISIS earned \$500 million selling oil: Treasury official. Retrieved from <https://www.nbcnews.com/storyline/isis-terror/isis-earned-500-million-selling-oil-treasury-official-n478251>

[98] UN-Habitat. (2021). Restoration of cultural heritage and urban identity in Syria, p.12-13. Retrieved from https://unhabitat.org/sites/default/files/2022/09/heritage_paper.pdf.

[99] Buonanno, M. L. P. a. C. G. (2014). Parliamentary question - VP/HR - Qatar and Saudi Arabia financing Islamic State of Iraq and Syria (P-007445/2014). European Parliament. European Union. https://www.europarl.europa.eu/doceo/document/P-8-2014-007445_EN.html

[100] Cockburn, P. (2019, November 7). Patrick Cockburn. Isis consolidates. *London Review of Books*. <https://www.lrb.co.uk/the-paper/v36/n16/patrick-cockburn/isis-consolidates>

[101] CBC/Radio Canada. (2016, February 17). No More Free Candy Bars: Isis Faces Budget Crunch, cutting perks and trimming salaries | CBC News. CBCnews. <https://www.cbc.ca/news/world/isis-budget-crunch-1.3450646>

- [102] [104] [173] [194] [196] [204] Gordon, M. & Editions Robert Laffont. (1989). Slavery in the Arab world. New Amsterdam Books.
- [103] [109] [120] [128] [136] [162] [174] [176] [180] [184] [192] [197] [205] Nicolaus, P., & Yuce, S. (2017). Sex-Slavery: One Aspect of the Yazidi Genocide. *Iran and the Caucasus*, 21 (2), 196–229. Available at: DOI: 10.1163/1573384x-20170205
- [105] United Nations Assistance Mission for Iraq (UNAMI) & Office of the United Nations High Commissioner for Human Rights (OHCHR). (2015, April 30). Report on the Protection of Civilians in the Armed Conflict in Iraq, p.19-20. Retrieved from: https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_OHCHR_4th_POCHR_11Dec2014-30April2015.pdf
- [111] World Directory of Minorities and Indigenous Peoples - Iraq: Turkmen. (2017). Refworld. Retrieved May 28, 2024, from <https://www.refworld.org/docid/49749d0732.html>
- [119] Dulz, Irene (2016), “The Displacement of the Yazidis after the Rise of ISIS in Northern Iraq”, *Kurdish Studies*, vol. 4.
- [121] [124] [165] Buffon, V. and Allison, C. (2016) ‘The Gendering of Victimhood: Western Media and the Sinjar Genocide,’ *Kurdish Studies*.
- [123] [138] [161] Payton, J. (2019). Honor and the political economy of marriage: Violence Against Women in the Kurdistan Region of Iraq. Rutgers University Press.
- [129] Yazda. (2016) Mass Graves of Yazidis Killed by the Islamic State Organization or Local Affiliated on or after August 3, 2014. Yazda Documentation Project. Retrieved February 28, 2024, from: <http://genocidewatch.net/2016/06/09/a-report-from-the-yazda-documentation-project-on-mass-graves-of-yazidis-killed-by-the-islamic-state-organization-or-local-affiliates-on-or-after-august-3-2014>
- [130] United Nations Human Rights, UNAMI, (2018). Unearthing Atrocities: Mass Graves in Territory Formerly Controlled by ISIL, UNAMI. pp.5-8. Retrieved February 10, 2024, from: https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_on_Mass_Graves4Nov2018_EN.pdf
- [133] Maisel S. (2008). Social Change Amidst Terror and Discrimination: Yazidis in the New Iraq. The Middle East Institute Policy Brief. Retrieved February 14, 2024, from: https://www.files.ethz.ch/isn/90905/No_18_Social_Change_Amidst_Terror.pdf.
- [142] [226] [244] UN Commission of Inquiry on Syria: ISIS is committing genocide against the Yazidis - Syrian Arab Republic. ReliefWeb. Retrieved January 26, 2024, from: <https://reliefweb.int/report/syrian-arab-republic/un-commission-inquiry-syria-isis-committing-genocide-against-yazidis>
- [140] [265] [409] [449] M. Iyer, J. Irani, & E. Veillet-Chowdhury. (2020). Seeking Accountability And Preventing Recurrence: Addressing Conflict-Related Sexual Slavery Through The Women, Peace, And Security Agenda. *Global Network of Women Peacebuilders*, p.9-12. Retrieved January 24, 2024, from: <https://www.womenpeacesecurity.org/member/gnwp/>
- [143] Gil J. Stein. (2022). Performative Destruction: Da’esh (ISIS) Ideology and the War on Heritage in Iraq, *Cultural Heritage under siege: Recent Cases*, p.33-78.
- [144] Yazda. (2019). Destroying the Soul of the Yazidis, *Cultural Heritage Destruction the Islamic State’s Genocide Against the Yazidis*, p.47-78.
- [145] Wescott, T. (2020). Destruction or theft: Islamic State, Iraqi antiquities, and organized crime. *Global Initiative Against Transnational Organized Crime*, pp. 34-43.

- [146] Skjelsbaek, I. (2010). The elephant in the room: An overview of how sexual violence came to be seen as a weapon of war. In Report to the Norwegian Ministry of Foreign Affairs. Oslo: Peace Research Institute;
- Htun, M., & Laurel, W. S. (2012). The civic origins of progressive policy change: Combating violence against women in global perspective, 1975–2005. *American Political Science Review*, p.106.
- [147] Aranburu, X. A. (2010). Sexual violence beyond reasonable doubt: Using pattern evidence and analysis for international cases. *Leiden Journal of International Law*, 23, p.614.
- [148] [153] Wood, E. J. (2018). Rape as a Practice of War: Toward a Typology of Political Violence. *Politics & Society*, p.4. Available at: <https://doi.org/10.1177/0032329218777337>
- [149] [152] [154] [155] [157] Wood, E. J. (2014). Conflict-related sexual violence and the policy implications of recent research. *International Review of the Red Cross*, 96(904).
- [150] Wood, E. J. (2009). Armed groups and sexual violence: When is wartime rape rare? *Politics & Society*, 37(1), p.131-161.; Cohen, D. K., Green, A. H., & Wood, E. J. (n.d.). Wartime sexual violence. USIP Special Report. Retrieved January 30, 2024, from: <https://www.usip.org/sites/default/files/resources/SR323.pdf>.
- [151] Termeer, A. (2022, April 3). The Islamic State’s Guidelines on Sexual Slavery: the Case of the Yazidis. *E-International Relations*, p.1. Retrieved January 29, 2024, from: <https://www.e-ir.info/2022/04/03/the-islamic-states-guidelines-on-sexual-slavery-the-case-of-the-yazidis/>
- [156] [168] Baaz, M. E., & Stern, M. (2009). Why do soldiers rape? Masculinity, violence, and sexuality in the Armed Forces in the Congo (DRC). *International Studies Quarterly*, 53(2), Available at: <https://doi.org/10.1111/j.1468-2478.2009.00543.x>
- [158] Al-Hayat Media Center (2015) “This is the Promise of Allah.” Retrieved November 10, 2015, from: https://ia902505.us.archive.org/28/items/poa_25984/EN.pdf
- [159] Amnesty International. (2014). “Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq”, Amnesty International, p. 1-4. Retrieved November 24, 2023, from: <https://www.amnesty.org/en/documents/mde14/021/2014/en/>
- [163] [164] Baaz, M. E., & Stern, M. (2013). Sexual violence as a weapon of war? p.68. Available at: <https://doi.org/10.5040/9781350222557>
- [166] [183] [195] [229] [231] [242] Vale, G. (2020) ‘Liberated, not free: Yazidi women after Islamic State captivity,’ *Small Wars & Insurgencies*, 31:3, p. 516. Available at: <https://doi.org/10.1080/09592318.2020.1726572>
- [169] [171] Welch, T. (2018). Theology, heroism, justice, and fear: an analysis of ISIS propaganda magazine Dabiq and Rumiya. *Dynamics of Asymmetric Conflict*, p. 187. Available at: <https://doi.org/10.1080/17467586.2018.1517943>
- [170] Hal, J. (2014, October 12). Islamic State magazine says group enslaves Yazidis. *Daily Mail*. Retrieved January 12, 2024, from: <http://www.dailymail.co.uk/news/article-2790131/Islamic-State-magazine-says-group-enslaved-Yazidis.html>
- [172] Lakomy, M. (2021). *Islamic State’s online propaganda: A Comparative Analysis*. Routledge, p.208
- [175] [198] Shubert, A., & Naik, B. (2015). ISIS ‘forced pregnant Yazidi women to have abortions.’ *CNN*. Retrieved December 19, 2023, from <https://edition.cnn.com/2015/10/06/middleeast/pregnant-yazidis-forced-abortions-isis/index.html>
- [177] Nadia’s Initiative. (2023). Call for input to report on contemporary forms of slavery as affecting persons belonging to ethnic, religious, and linguistic minority communities [Brochure]. Office of the United

Nations High Commissioner for Human Rights. Retrieved from <https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/cfis/minorities/Submission-NADIA-Initiative.pdf>

[179] Hayder, L. M., Ab. Halim, A. H., Mohd Awal, N. A., & Hashim, F. Y. (2022). Yazidi Women and their Rape-Born Children: Outcasts of their Community and Iraqi Law. *Baltic Journal of Law & Politics*, 15(7), p.671. Available at: <https://doi.org/10.2478/bjlp-2022-007048>

[181] [182] Smith, S. (2015). ISIS sells sex slave girls for “as little as a pack of cigarettes” to attract foreign jihadis with “New girls,” UN envoy warns. *The Guardian*. Retrieved February 12, 2024, from: <https://www.christianpost.com/news/isis-sells-sex-slave-girls-for-as-little-as-a-pack-of-cigarettes-to-attractforeign-jihadis-with-new-girls-un-envoy-warns-140176/>

[186] United Nations. (2016, June 8). Security Council ISIL sanctions committee adds one name to sanctions list, amends two entries. Retrieved from <https://press.un.org/en/2016/sc12647.doc.htm>

[187] Middle East Monitor. (2016). UN: Daesh earned \$45m in ransoms from Yazidis in 2014. *Middle East Monitor*. Retrieved February 13, 2024, from: <https://www.middleeastmonitor.com/20160603-un-daesh-earned-45m-in-ransoms-from-yazidis-in-2014/>

[188] Rudaw. (2014, November 5). Official on how Erbil helped bring back 234 captive Yezidis. (2014, November 5). <https://www.rudaw.net/english/interview/05112014>

[189] CBC Radio. (2015, August 19). Steve Maman: The 'Jewish Schindler' working to rescue young women taken by ISIS as slaves. *As It Happens*. Retrieved from <https://www.cbc.ca/radio/asithappens/as-it-happens-wednesday-edition-1.3196252/steve-maman-the-jewish-schindler-working-to-rescue-young-women-taken-by-isis-as-slaves-1.3196699>

[191] Brizić, K., Grond, A., Osztovcics, C., Schmidinger, T., & Six-Hohenbalken, M. (Eds.). (2016). *Şingal 2014: Der Angriff des „Islamischen Staates“, der Genozid an den Êzidî und die Folgen*. *Wiener Jahrbuch für Kurdische Studien*, p.37

[193] Neurink, J. (2016, July 8). Too difficult and expensive: Rescuing Yezidi women from ISIS almost impossible. *Rûdaw*. Retrieved February 22, 2024, from: <https://www.rudaw.net/english/interview/07082016>

[200] Brownmillet Susan, *Against Our Will: Men, Women, and Rape*, 1975 by Ballantine Books, New York, p.155.

[201] [208] Almohammad, A. (2018). *ISIS Child Soldiers in Syria: The Structural and Predatory Recruitment, Enlistment, Pre-Training Indoctrination, Training, and Deployment*. International Centre for Counter-Terrorism. ICCT. ISSN: 2468-0656, Retrieved May 2, 2024, from: <https://icct.nl/app/uploads/2018/02/ICCT-Almohammad-ISIS-Child-Soldiers-In-Syria-Feb2018.pdf>

[202] Jones, A. (2010). *Genocide: A Comprehensive Introduction*. (2nd ed.). Routledge, London, p.3

[206] Callimachi, R., (2015). ISIS Enshrines a Theology of Rape. *The New York Times*. Retrieved from <https://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html>

[207] Heideman, H. E. a. K., & Heideman, K. (2015). ISIS’s brutality toward women and girls—and how to help the victims. *WSJ*. Retrieved April 3, 2024, from: <https://www.wsj.com/articles/BL-WB-57323>

[209] Ibrahim, H., Ertl, V., Catani, C., Ismail, A. A., & Neuner, F. (2018). Trauma and perceived social rejection among Yazidi women and girls who survived enslavement and genocide. *BMC Medicine*, p.2. Available at: <https://doi.org/10.1186/s12916-018-1140-5>

- [210] [213] [214] Tekin, A., Karadağ, H., Süleymanoğlu, M., Tekin, M., Kayran, Y., Alpak, G., & Şar, V. (2016). Prevalence and gender differences in symptomatology of posttraumatic stress disorder and depression among Iraqi Yazidis displaced into Turkey. *European Journal of Psychotraumatology*, p.6. Available at: <https://doi.org/10.3402/ejpt.v7.28556>
- [211] [293] Khoudeida, L. & Global Yazidi Organisation [Yazda]. (2017). An Uncertain Future For Yazidis: A Report Marking Three Years Of An Ongoing Genocide. <https://www.yazda.org/>. https://irp.cdn-website.com/16670504/files/uploaded/Yazda_Publication_2017-09_Report3YearsOngoingGenocide_28062021_Download_EN_vf.pdf
- [212] Bozarslan, M. (2018, August 4). Türkiye'ye 'Ezidi Soykırımı'nı tanıma çağrısı. VOA Türkçe. Retrieved January 20, 2024, from: <https://www.voaturkce.com/a/turkiye-ye-ezidi-soykirimini-tan%C4%B1ma-cagrisi/4513818.html>
- [215] Dore, L. (2015, May 11). A woman was forced to “restore her virginity” 20 times after abuse before marriage to Isis fighters | The Independent. The Independent. Retrieved May 13, 2024, from: <https://www.independent.co.uk/news/world/middle-east/a-woman-was-forced-to-restore-her-virginity-20-times-after-abuse-before-marriage-to-isis-fighters-10238357.html>
- [216] Shubert, A., & Naik, B. (2015). Hundreds' of Yazidi women killing themselves in ISIS captivity. CNN. Retrieved November 5, 2023, from <https://edition.cnn.com/2015/10/05/middleeast/yazidi-women-suicide-in-isis-captivity/index.html>
- [217] NDTV.com. (2016.). Fearing Rape Again By ISIS, She Burnt Herself To Become 'Undesirable'. [online] Retrieved May 28, 2024, from: <https://www.ndtv.com/world-news/fearing-rape-again-by-isis-men-she-burnt-herself-to-become-undesirable-1449535>
- [218] United Nations (2018). 'Virginity testing': a human rights violation, with no scientific basis - UN. [online] UN News. Available at: <https://news.un.org/en/story/2018/10/1023401>.
- [219] Dearden, L. (2015, April 27). Yazidi sex slaves undergoing surgery to “restore virginity” after being raped by Isis militants | The Independent. The Independent. <https://www.independent.co.uk/news/world/middle-east/yazidi-sex-slaves-undergoing-surgery-to-restore-virginity-after-being-raped-by-isis-militants-10207352.html>
- [220] Human Rights Watch. (2016). Dispatches: 'Virginity Testing' to End for Yezidi Rape Survivors. [online] Available at: <https://www.hrw.org/news/2016/01/27/dispatches-virginity-testing-end-yezidi-rape-survivors>.
- [221] Klot J, DeLargy P. (2007). Sexual violence and HIV/AIDS transmission. *Forced Migration Review* ;27: pp.23-24.
- [222] Vogel, L. (2016). Why are doctors joining ISIS? *Canadian Medical Association Journal*, p.3 Available at: <https://doi.org/10.1503/cmaj.109-5217>
- [223] [225] [234] [235] Van Ee, E., & Kleber, R. J. (2013). Growing Up Under a Shadow: Key issues in Research on and treatment of Children born of Rape. *Child Abuse Review*, 22(6), p.389. Available at: <https://doi.org/10.1002/car.2270>
- [224] Now, the world is without me: An investigation of sexual violence in Eastern Democratic Republic of Congo - Democratic Republic of the Congo. (2010, April 8). ReliefWeb, p.41-42. Retrieved May 20, 2024, from: at: <https://reliefweb.int/report/democratic-republic-congo/now-world-without-me-investigation-sexual-violence-eastern>
- [227] Abdul Rashid al-Saleh. (2019). Outcasts in the homes of their mothers, <https://arij.net/daily> ; أريج, A. | (n.d.). [إعلاميون من أجل صحافة استقصائية عربية (أريج)]. [online] Arij | أريج. Available at: <https://arij.net/daily>.

- [228] [230] [232] [233] SEED Foundation - Kurdistan. (2020). Children Born of the ISIS War. [online]. SEED Foundation, p.4 <https://www.seedkurdistan.org>
- [236] [238] [241] McGee, T. (2020), 'Born of ISIS Genocide: Risk of Statelessness and Stigmatised Nationality Acquisition for Children of Yezidi Survivors,' Rowaq Arabi, p.84
- [237] Refworld. Law No. (46) of 1963 - Iraqi Nationality. Retrieved May 28, 2024, from: <https://www.refworld.org/legal/legislation/natlegbod/1963/en/17880>.
- [239] Abdul Rashid al-Saleh (14 April 2019), outcasts in the homes of their mothers, p.676-677. Retrieved May 28, 2024, from: <https://arij.net/daily>.
- [240] Yezidi crowd. (2018). A leader of the Yezidi Mobilization Forces reveals hundreds of unaccounted for children of Yezidi rapists. Retrieved May 28, 2024, from: <https://hathalyoum.net/articles/1587090>. (إعلاميون من أجل صحافة استقصائية عربية (أريج). (n.d.). | أريج, A. |)
- [243] Allinson, T. (2019). Yazidi children of IS rape stuck in limbo. Deutsche Welle. Retrieved May 13, 2024, from: <https://www.dw.com/en/yazidi-women-seek-acceptance-for-children-born-of-is-rape/a-48540849>
- [245] [247] [278] Assembly debate on 12 October 2017 (34th Sitting) (see Doc. 14402, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pieter Omtzigt; and Doc. 14418, opinion of the Committee on Political Affairs and Democracy, rapporteur: Ms Thorhildur Sunna Ævarsdóttir). Text adopted by the Assembly on 12 October 2017.
- [246] Embassy of Armenia in the Kingdom of the Netherlands. (2022). Armenia attaches a high importance to the decision of Luxembourg's Parliament recognizing the Yezidi genocide. Retrieved May 17, 2024, from: <https://netherlands.mfa.am/en/news/2022/11/18/Armenia%20attaches%20a%20high%20importance%20to%20the%20decision%20of%20Luxembourg's%20Parliament%20recognizing%20the%20Yezidi%20genocide/10859>
- [248] International Bar Association. (2023). IBAHRI welcomes the UK Government's recognition of the Yazidi genocide. [online] Retrieved May 18, 2024, from: <https://www.ibanet.org/IBAHRI-welcomes-the-UK-Governments-recognition-of-the-Yazidi-genocide>
- [249] ReliefWeb. (2019). Five years after the genocide, Yazidis share their forgotten stories and demand justice - Iraq. [online] Retrieved May 18, 2024, from: <https://reliefweb.int/report/iraq/five-years-after-genocide-yazidis-share-their-forgotten-stories-and-demand-justice>.
- [250] UNAMI. (2003). Department of Political and Peacebuilding Affairs. <https://dppa.un.org/en/mission/unami>
- [251] Human Rights in the Administration of Justice in Iraq The report covers the period of 1 May 2018 through 31 October 2019 : https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf
- [252] UNAMI. (2016). A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL, p. 12.
- [253] UN General Assembly, Resolution 71/248, 11 January 2017, A/RES/71/248, available at <https://iiim.un.org/who-we-are/mandate>
- [254] Syria Justice Accountability Centre. (2017) A memorandum to the Secretary General of the United Nations regarding the new United Nations mechanism for investigation and prosecution. Retrieved May 19, 2024, from: <https://syriaaccountability.org/updates/2017/01/19/a-memorandum-to-the>

[secretarygeneral-of-the-united-nations-regarding-the-new-united-nations-mechanism-for-investigation-andprosecution/](#)

[255] [256] S/RES/2379 (2017) | United Nations Security Council, p.7-18. Available at: <https://www.un.org/securitycouncil/content/sres2379-2017>

[257] United Nation (2023). Sudden End to Team Investigating Da'esh Crimes in Iraq Could Impact Ongoing Inquiries, Justice for Victims, Special Adviser Warns Security Council | Meetings Coverage and Press Releases. [online] Retrieved May 17, 2024, from: <https://press.un.org/en/2023/sc15514.doc.htm>

[258] OHCHR. (22 August 2011). Independent International Commission of Inquiry on the Syrian Arab Republic. Retrieved May 19, 2024, from: <https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/co-i-mandate>

[260] Commission of Inquiry, Commission of Inquiry on Syria Calls for Justice on the Occasion of the Third Anniversary of ISIL's Attack on the Yazidis, Statement, 2 August 2017.

[261] OHCHR (2015) Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups, A/HRC/28/18.

[262] [337] [339] [342] [349] [360] A. Abraham, T. Eatwell, & A. Zammit Borda, Eds. (2022). Yazidi Justice Committee, Accountability Unit, Women for Justice, IBA Human Rights Institute, Bar Human Rights Committee of England and Wales, & Geoffrey Nice Foundation.

[263] [266] [269] [283] Genocide Network Secretariat. (2020). Cumulative Prosecution Of Foreign Terrorist Fighters For Core International Crimes And Terrorism-Related Offences. In The Genocide Network [Report]. Eurojust, Available at: <https://doi.org/10.2812/340844>

[264] Eurojust. (2023). Support to joint investigation team of Sweden and France targeting crimes against Yezidi victims in Syria and Iraq. [online] Available at: <https://www.eurojust.europa.eu/news/support-joint-investigation-team-sweden-and-france-targeting-crimes-against-yezidi-victims.;> Eurojust. (n.d.). Joint investigation teams. European Union Agency for Criminal Justice Cooperation. [online] Available at: <https://www.eurojust.europa.eu/judicial-cooperation/instruments/joint-investigation-teams>.

[267] International Criminal Court (2020). Understanding the International Criminal Court. [online] International Criminal Court. Retrieved May 20, 2024, from: <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>.

[268] International Criminal Court. (2021). Rome Statute of the International Criminal Court. In Rome Statute of the International Criminal Court [Book]. Retrieved May 19, 2024, from: <https://www.icc-cpi.int/sites/default/files/Publications/Rome-Statute.pdf>

[270] "Rome Statute of the International Criminal Court" (hereinafter the "Rome Statute"), adopted on the 17 July 1998, United Nations Treaty Series, vol. 2178 (3), art. 5, Available at: https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025774&clang=_en

[271] Beth Van Schaack & Ronald C. Style, (2007). International Criminal Law And Its Enforcement: Cases And Materials, p.65

[272] [273] [279] Orozbekova, C. (2021, April 24). Establishing an Ad Hoc Tribunal to Bring ISIS Fighters into Justice: Prospects, Limits and National Alternatives. Bulan Institute, Retrieved May 19, 2024, from: <https://bulaninstitute.org/582-2/>

[274] Bensouda, F. (2015). "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS", International Criminal Court, Retrieved May 18, 2024, from: <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1>

- [275] SaCouto, S., & Cleary, K. (2007). The Gravity Threshold of the International Criminal Court. *American University International Law Review*, 23(5), p. 810. Retrieved from <https://core.ac.uk/download/pdf/235401602.pdf>
- [276] Borger, J. (2015). Call For Special Tribunal To Investigate War Crimes and Mass Atrocities in Syria, *The Guardian*. Retrieved May 20, 2024, from: <http://www.theguardian.com/world/2015/mar/17/call-for-special-tribunal-to-investigate-war-crimes-and-mass-atrocities-in-syria>.
- [280] [370] Solis A. (2015). Only [___] Can Judge: Analyzing Which Courts Have Jurisdiction Over Isis. (2015). *Southern Illinois University Law Journal*, Vol. 40
- [281] Draft resolution S/2014/348, United Nations Security Council, 22 May 2014, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_348.pdf
- [282] International Law — The Responsibility to Protect — Draft Security Council Resolution Referring Syrian Conflict to the International Criminal Court Vetoed by Russia and China (13 in Favor, 2 Against). — U.N. SCOR, 69th Sess., 7180th mtg. at 4, U.N. Doc. S/PV.7180 (May 22, 2014)
- [284] Dupond-Moretti, É. (2022, October 5). Déclaration de M. Éric Dupond-Moretti, garde des sceaux, ministre de la justice, sur les djihadistes français partis en Syrie. Sénat. Retrieved from <https://www.vie-publique.fr/discours/286713-eric-dupond-moretti-05102022-djihadistes-francais>; Cook, J., & Vale, G. (2019, July). From Daesh to 'Diaspora' II: The Challenges Posed by Women and Minors After the Fall of the Caliphate. *CTC Sentinel*, p. 36. Retrieved from <https://ctc.usma.edu/wp-content/uploads/2019/07/CTC-SENTINEL-062019.pdf>
- [285] [288] [290] Koller, S. & Counter Extremism Project (CEP). (2023). Prosecution of Returnees from Syria and Iraq in France: Insights and Recommendations for Policymakers and Security Agencies. Counter Extremism Project (CEP).
- [286] France 24. (2019). France taken to court for refusing to repatriate the children of jihadists. [online] Available at: <https://www.france24.com/en/20190507-france-taken-court-over-repatriating-children-jihadists>.
- [287] Grand Chamber. (2022). CASE OF H.F. AND OTHERS v. FRANCE. In JUDGMENT. Echr. (n.d.-b). HUDOC - European Court of Human Rights. Retrieved May 17, 2024, from: <https://hudoc.echr.coe.int/#%7B%22itemid%22:%5B%22003-7431242-10174513%22%7D%7D>
- [289] Centre d'analyse du terrorisme. (2020). La justice pénale face au djihadisme – Le traitement judiciaire des filières syro-irakiennes (2014-2017). CAT. [online] Available at: <https://www.cat-int.org/index.php/2018/05/25/la-justice-penale-face-au-djihadisme-le-traitement-judiciaire-des-filieres-syro-irakiennes-2014-2017> [Accessed 28 May 2024].
- [292] Weill, S. (2018). “French foreign fighters: The engagement of administrative and criminal justice in France,” *International Review of the Red Cross*, 100 (1-2-3), p.223, Retrieved May 21, 2024, from: https://international-review.icrc.org/sites/default/files/reviews-pdf/2019-10/100_9.pdf
- [294] Council of Europe Committee on Experts on Counter Terrorism (CDCT). (2021). “France”, Profiles on Counter-Terrorist Capacity. Retrieved May 19, 2024, from: <https://rm.coe.int/profile-france-2021-cdct-/1680a44e0c>.
- [295] Novello, G. (2019). Sabri Essid, un djihadiste français présumé mort, visé par une enquête pour crimes contre l'humanité, une première. Retrieved May 19, 2024, from: www.20minutes.fr/justice/2637243-20191026-sabri-essid-djihadiste-francais-presume-mort-vise-enquete-crimes-contre-humanite-premiere

[297] Mohamad HASSAN (Director). (2020). Irak : Deux Officiers Des Gardes-Frontières Irakiens Tués Par Un Drone Turc. De Paris Kurde N:425 Aout 2020 Institut Bulletin De Liaison Et D'Information.

[298] [310] [312] [314] [321] [322] Trial International (2023). Universal Jurisdiction Annual Review 2023. Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS, p.48

[299] Ziolkowski, B., & Kunze, A. (2019, November). Deutsche muhajirat: Radikalisierungshintergründe und -verläufe von Mädchen und Frauen aus Baden-Württemberg. State Office for the Protection of the Constitution Baden-Württemberg. Retrieved April 2, 2024, from: http://docs.dpaq.de/15682-deutsche_muhajirat_radikalisierungshintergr_nde_von_m_dchen_und_frauen_aus_bw.pdf

[296] [305] [308] [317] [319] [327] [329] [330] Trial International (2022). Universal Jurisdiction Annual Review 2022. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. Universal Jurisdiction Annual Review 2023.

[300] [302] Koller, S. & Counter Extremism Project (CEP). (2022). Prosecution of German Women Returning from Syria and Iraq: Insights and Recommendations for Policymakers and Security Agencies. In CEP Policy Paper. Counter Extremism Project (CEP), p.6. Retrieved April 2, 2024, from: <https://www.welt.de/regionales/hamburg/article240150047/Hamburg-34-jaehrige-IS-Rueckkehrerin-muss-fuenfeinhalb-Jahre-in-Haft.html>

[301] Welle, D. (2020, May 24). Over 100 “Islamic State” fighters return to Germany. dw.com. Retrieved April 2, 2024, from: <https://www.dw.com/en/over-100-islamic-state-fighters-return-to-germany/a-53549985>

[303] Trial International (2019). Universal Jurisdiction Annual Review 2019. UKAID, Oak Foundation, Taiwan Foundation for Democracy, Civitas Maxima, Center for Justice and Accountability, European Center for Constitutional and Human Rights, International Federation for Human Rights, & REDRESS. In Universal Jurisdiction, p.44

[304] User, G. (2023, January 31). German Federal Court of Justice confirms the First-Ever conviction of an ISIS member for genocide, Nadia's Initiative. Retrieved April 21, 2024, from: <https://www.nadiasinitiative.org/news/german-federal-court-of-justice-confirms-the-first-ever-conviction-of-an-isis-member-for-genocide>

[306] Jacobsen, B. (2023). German ISIS member sentenced to an extended prison term for crimes against humanity against Yazidis following appeal decision, Nadia's Initiative. Retrieved April 21, 2024, from: <https://www.nadiasinitiative.org/news/german-isis-member-sentenced-to-an-extended-prison-term>

[307] Doughty street chambers (2021). ISIS member convicted of crimes against humanity for aiding and abetting enslavement of a Yazidi woman | Doughty Street Chambers. [online] Retrieved April 22, 2024, from: <https://www.doughtystreet.co.uk/news/isis-member-convicted-crimes-against-humanity-aiding-and-abetting-enslavement-yazidi-woman>

[309] User, G. (2022, December 12). German ISIS returnee on trial for crimes against humanity and aiding and abetting genocide over abuse of an enslaved Yazidi woman in Syria — Nadia's initiative. Nadia's Initiative. <https://www.nadiasinitiative.org/news/german-isis-returnee-on-trial-for-crimes-against-humanity-and-aiding-and-abetting-genocide-over-abuse-of-an-enslaved-yazidi-woman-in-syria>

[311] Euronews. (2023). Studie warnt vor Gefahr durch ehemalige IS-Kämpfer - in der Türkei. [online] Retrieved April 22, 2024, from: <https://de.euronews.com/2023/03/02/welche-gefahr-geht-von-ehemaligen-is-kampfern-aus>

- [313] Agencies, T.N.A.S. & (2022). German woman allegedly took 6yo daughter to watch IS stoning. [online] <https://www.newarab.com/>. Retrieved April 21, 2024, from: <https://www.newarab.com/news/german-woman-allegedly-took-6yo-daughter-watch-stoning>
- [315] [316] Doughty Street Chambers (2021). German court convicts a third ISIS member of crimes against humanity committed against Yazidis. Doughty Street Chambers. [online] Retrieved April 12, 2024, from: <https://www.doughtystreet.co.uk/news/german-court-convicts-third-isis-member-crimes-against-humanity-committed-against-yazidis>.
- [318] Bild. (2021, July 22). Sie war mit Ex-Rapper „Deso Dogg“ verheiratet: Haftstrafe für ISIS-Witwe Omaila A. wegen Sklaverei | Regional. bild.de. <https://www.bild.de/regional/hamburg/hamburg-aktuell/prozess-gegen-versklavung-isis-witwe-zu-mehrjaehriger-haftstrafe-verurteilt-77156132.bild.html>
- [320] Doughty Street Chambers. (2023). German court delivers third genocide verdict against ISIS member for the enslavement and abuse of Yazidi woman in Syria and Iraq | Doughty Street Chambers. [online] Available at: <https://www.doughtystreet.co.uk/news/german-court-delivers-third-genocide-verdict-against-isis-member-enslavement-and-abuse-yazidi>.
- [323] Bisset, V. (2023, June 21). German ISIS member gets 9 years after helping husband enslave woman he raped. Washington Post. <https://www.washingtonpost.com/world/2023/06/21/germany-isis-woman-yazidi-sentence/>
- [324] SWI, Swissinfo.ch (2024, April 10). German police arrest Iraqi couple suspected of genocide for enslaving Yazidi girls. Retrieved April 22, 2024, from: <https://www.swissinfo.ch/eng/german-police-arrest-iraqi-couple-suspected-of-genocide-for-enslaving-yazidi-girls/75477952>
- [325] [326] Mehra, T., Herbach, M., Margolin, D., Doctor, A. C., & ICCT/NCITE. (2023). Trends in the return and prosecution of ISIS foreign terrorist fighters in the United States. In ICCT/NCITE Report, p.2-3. Retrieved April 21, 2024, from: <https://www.icct.nl/sites/default/files/2023-08/NCITE%20final%20with%20alt%20cover.pdf>
- [328] CJA (2021). Survivors of Yazidi genocide seek justice in U.S. court for crimes committed by ISIL member Nisreen Assad Ibrahim Bahar (aka ‘Umm Sayyaf’). CJA. [online] Retrieved April 21, 2024, from: <https://cja.org/survivors-of-yazidi-genocide-seek-justice-in-u-s-court-for-crimes-committed-by-isil-member-nisreen-assad-ibrahim-bahar-aka-umm-sayyaf/>.
- [329] Clooney, A., & Ahmad, Z. (2021, May 12). An ISIS torturer was complicit in genocide. The U.S. is making it hard to bring her to justice. Washington Post. Retrieved April 21, 2024, from: <https://www.washingtonpost.com/opinions/2021/05/11/amal-clooney-zainab-ahmad-isis-torturer-war-crimes/>
- [331] [332] [343] [344] [400] ICG, Calibrating the Response: Turkey’s ISIS Returnees, Europe & Central Asia Report No. 258, 29 June 2020, p.1, available at <https://www.crisisgroup.org/europe-central-asia/westerneuropemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 21 February 2024)
- [333] Jalalzai, F. Johnson, L. (2014) Iraq's Sole Yazidi Lawmaker Says 25,000 Girls Abducted By IS To Be Raped, Sold, Radio Free Europe, Radio Liberty, 9 October 2014 at <http://www.rferl.org/content/iraq-yazidivian-dakhilpolitkovskaya-award-islamic-state/26627843.html>.
- [334] www.yazda.org. (n.d.). Yazda - Yazidi Global Organisation. [online] Available at: <https://www.yazda.org/yazidi-genocide>.
- [335] J. Arraf. (2018). This Man Has Freed Hundreds of Yazidis Captured By ISIS. Thousands Remain Missing, NPR. Retrieved March 15, 2024, from: <https://www.npr.org/sections/parallels/2018/01/18/578313469/this-man-has-freed-hundreds-of-yazidis-captured-by-isis-thousands-remain-missing>
- [336] S. N. Al-Deen, ISIS Opens Slave Markets to Sell Yazidi Girls in Turkey, Sputnik Arabic, 20 November 2017, available at https://arabic.sputniknews.com/arab_world/201711201027660493-

[338] Gerçek, A. (2023, June 21). IŞİD'in esir aldığı Ezidi kadın Ankara Gölbaşı'nda kurtarıldı. Artı Gerçek. <https://artigercek.com/guncel/21-yasindaki-ezidi-kadin-ankara-golbasinda-kurtarildi-254950h> ; Yaşam, Y. (2022, April 18). Êzidi Rojda'yı ailesi kurtardı, failler ne olacak? Yeni Yaşam Gazetesi | Yeni Yaşam. <https://yeniyasamgazetesi5.com/ezidi-rojdayi-ailesi-kurtardi-failler-ne-olacak/>; Duvar, G. (2022, April 7). Ankara'da esir tutulan Ezidi bir kadın daha IŞİD'den kurtarıldı. Gazete Duvar. <https://www.gazeteduvar.com.tr/ankarada-esir-tutulan-ezidi-bir-kadin-daha-isidden-kurtarildi-haber-1559592>

[340] Turkey acceded to the Convention on Genocide on July 31, 1950. Convention on the Prevention and Punishment of the Crime of Genocide, 1948, 78 UNTS 277 (entered into force 12 January 1951), status as of 26 October 2020, available at https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtmsg_no=iv-1&chapter=4&clang=en

[341] TPC Article 13(1)(a) (application of the offenses in a foreign country, whether or not committed by a Turkish citizen or non-citizen)

[345] Bianet. (2017, December 9). Bir IŞİD'çi Neden Türkiye'de Yargılanmak İster? Bianet. Retrieved March 27, 2024, from https://bianet.org/yazi/bir-isid-ci-neden-turkiye-de-yargilanmak-ister-192246#google_vignette

[346] Rudaw.net. (2023). Ankara Valiliği: Kaçırılan Ezidi kız çocuğu IŞİD'li aileden alındı, kaçırılan kişi tutuklandı. Rûdaw. Retrieved April 5, 2024, from: <https://www.rudaw.net/turkish/middleeast/turkey/27102023>; Cumhuriyet (2023). Kaçırıp satmak istemişlerdi: Ezidi kızı IŞİD'li 'aile'ye verdiler. [online]. Retrieved February 13, 2024, from <https://www.cumhuriyet.com.tr/turkiye/kacirip-satmak-istemislerdi-ezidi-kizi-isidli-aileye-verdiler-2134564>

[347] Independent Türkçe. (2021). Ankara'da Ezidi kız çocuğunu internetten satışa çıkaran IŞİD'liler serbest bırakıldı. [online] Retrieved April 5, 2024, from: <https://www.indyturk.com/node/396066/haber/ankarada-ezidi-k%C4%B1z-%C3%A7ocu%C4%9Funu-internetten-sat%C4%B1%C5%9Fa-%C3%A7%C4%B1karan-i%C5%9Fi%CC%87dliler-serbest>

[348] [353] United Nations Assistance Mission for Iraq, Office of the United Nations High Commissioner for Human Rights, Hennis-Plasschaert, J., & Bachelet, M. (2020). Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL. Baghdad, Iraq, p.6. https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf

[350] Van Ostaeyen, P. (2019). State of Terror: The history and influence of the Belgian ISIS contingent. In European Counter Terrorism Centre (ECTC) Advisory Network, 3rd conference of the European Counter Terrorism Centre (ECTC) Advisory Network. (p.10); Iraq sentences Belgian to death as Islamic State fighter. (2018, May 22). Reuters. <https://www.reuters.com/article/us-mideast-crisis-iraq-court/iraq-sentences-belgian-to-death-as-islamic-state-fighter-idUSKCN1IN148/>

[351] Financial Times. (2019). Iraq to prosecute 13 French Isis fighters captured in Syria. [online] Available at: <https://www.ft.com/content/7254c20a-3920-11e9-b72b-2c7f526ca5d0>

[352] [357] [379] [385] [395] [404] Ceasefire. (2019, March 22). ISIS fighters and their families facing justice: Eight options and four principles. The Ceasefire Centre for Civilian Rights, p.9. <https://www.ceasefire.org/isis-fighters-and-their-families-facing-justice-eight-options-and-four-principles/>

[354] Human Rights Watch. (2019). "Everyone Must Confess" Abuses against Children Suspected of ISIS Affiliation in Iraq. https://www.hrw.org/sites/default/files/report_pdf/iraq0319_web_1.pdf

[355] [413] United Nations Assistance Mission for Iraq & Office of the United Nations High Commissioner for Human Rights. (2020). Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL.

[https://reliefweb.int/sites/reliefweb.int/files/resources/Iraq - ISIL trials under the anti-terrorism laws and the implications for justice 28012020.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Iraq_-_ISIL_trials_under_the_anti-terrorism_laws_and_the_implications_for_justice_28012020.pdf)

[356] Human Rights Watch. (2017). Iraq: Flawed Prosecution of ISIS Suspects | Human Rights Watch. [online] Available at: <https://www.hrw.org/news/2017/12/05/iraq-flawed-prosecution-isis-suspects> [Accessed 28 May 2024].

[358] Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL United Nations Assistance Mission for Iraq Office of the. (2019), pp.14-15 Available at: https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAdministrationJustice_Iraq_28January2020.pdf.

[359] [363] [367] Human Rights Watch (2021). Iraq: Events of 2021. [online] Human Rights Watch, pp. 10-15. Available at: <https://www.hrw.org/world-report/2022/country-chapters/iraq>.

[361] International Bar Association. (2023). Justice And Accountability For The Atrocities Of Daesh - Progress Made And The Way Forward. In International Bar Association.

[362] Us, J. C. |. U. P. S. O. L. (2020, March 5). Iraq court sentences ISIS rapist to death. JURIST - News. <https://www.jurist.org/news/2020/03/iraq-court-sentences-isis-rapist-to->

[365] [368] Hamadamin, R. O., Abdullah, N. A., & Nor, M. Z. M. (2022). The Applied State Of Violation Of Women's Rights In Armed Conflicts: Yazidi Women During The Isis War In Iraq. Journal of Liberty and International Affairs, 8(3), p.285. Available at: <https://doi.org/10.47305/jlia2283272h>

[366] Ceasefire Centre for Civilian Rights & Institute for International Law and Human Rights. (2021). The Yazidi Survivors' Law: A step towards reparations for the ISIS conflict.

[369] Graeme Wood, What ISIS Really Wants, THE ATLANTIC, March 2015, <http://www.theatlantic.com/features/archive/2015/02/what-isis-really-wants/384980> (demonstrating the territory ISIS controls in Iraq and Syria by the graphical representation); OHRCH. (2023, May 11). Behind the data: Recording civilian casualties in Syria. OHCHR. Retrieved February 8, 2024, from <https://www.ohchr.org/en/stories/2023/05/behind-data-recording-civilian-casualties-syria>

[371] [408] Becker, J. (2023c, January 27). Revictimizing the victims: Children unlawfully detained in northeast Syria. Human Rights Watch. <https://www.hrw.org/news/2023/01/27/revictimizing-victims-children-unlawfully-detained-northeast-syria>

[372] [373] [378] [383] Janssens, P. C. (2023). Trial of foreign fighters by the Syrian Democratic Forces, a desired and legal solution? Leuven Centre for Global Governance Studies.

[374] ANF (2019) 'Trial of ISIS jihadists begins in Northeast Syria' ANF News. Qamishlo. Retrieved April 21, 2024, from: <https://anfenglish.com/rojawa-syria/trial-of-isis-jihadists-begins-in-northeast-syria-38020>, accessed 10 July 2020.

[375] Human Rights Watch. (2018). Ensure Fair Trials of Syria ISIS Suspects. Retrieved March 21, 2024, from: <https://www.hrw.org/news/2018/02/13/ensure-fair-trials-syria-isis-suspects>

[376] Arraf, J. (2019, May 29). "Revenge is for the Weak": Kurdish courts in northeastern Syria take on ISIS cases. NPR. <https://www.npr.org/2019/05/29/727511632/revenge-is-for-the-weak-kurdish-courts-in-northeastern-syria-take-on-isis-cases>

[377] [380] Europe 1, 13 April 2018: <http://www.europe1.fr/international/syrie-les-kurdes-menacent-de-relacher-les-djihadistes-francais-de-daech-3625727>

[381] [382] Human Rights Watch. (2018). Ensure Fair Trials of Syria ISIS Suspects, 13 February 2018: <https://www.hrw.org/news/2018/02/13/ensure-fair-trials-syria-isis-suspects>

- [384] Zayadin, H. (2024). "Everything is by the Power of the Weapon." In Human Rights Watch. <https://www.hrw.org/report/2024/02/29/everything-power-weapon/abuses-and-impunity-turkish-occupied-northern-syria>
- [386] Turak, N. (2019, October 14). Hundreds of ISIS prisoners are escaping from camps in northern Syria amid Turkish offensive. CNBC. <https://www.cnn.com/2019/10/14/isis-prisoners-are-escaping-from-camps-in-syria-amid-turkish-offensive.html>
- [387] McKernan, B. (2021, August 31). At least 750 Isis affiliates escape Syria camp after Turkish shelling. The Guardian. <https://www.theguardian.com/world/2019/oct/13/kurds-say-785-isis-affiliates-have-escaped-camp-after-turkish-shelling>
- [388] Welle, D. (2022, November 20). Turkey air strikes hit northern Syria, Iraq. dw.com. <https://www.dw.com/en/turkey-air-strikes-hit-northern-syria-iraq/a-63822349>
- [389] Rachman, J. (2023, February 7). Twenty members of ISIS escape Syria's 'Black Prison' after earthquake devastates area. The Independent. <https://www.independent.co.uk/news/world/middle-east/isis-prison-earthquake-syria-turkey-b2277451.html>
- [390] OHCHR. (n.d.-a). Children in Northeast Syria must be urgently repatriated: UN experts. <https://www.ohchr.org/en/statements/2023/03/children-northeast-syria-must-be-urgently-repatriated-un-experts>
- [391] U.S. Central Command. (2022). CENTCOM commander statement following recent Al Hol visit. Retrieved April 13, 2024, from: <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/3224134/centcom-commander-statement-following-recent-al-hol-visit/>
- [392] Rûdaw (2023). Blinken warns fight against ISIS is 'not yet done.'. Retrieved March 6, 2024, from <https://www.rudaw.net/english/middleeast/08062023>
- [393] SOHR (2023). Al-Hawl Camp | Asayish arrests four ISIS women for escape attempt. Retrieved April 5, 2024, from https://www.syria-hr.com/en/286868/?doing_wp_cron=1714042356.1733570098876953125000
- [394] Regeringen och Regeringskansliet. (2023, May 31). The Swedish criminal Code. Regeringskansliet. Retrieved April 16, 2024, from: <https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/>
- [396] Madrid Guiding Principles (S/2015/939), Guiding Principle 9; UNODC, CTED and IAP, Practical Guide for Requesting Electronic Evidenced Across Borders.
- [397] [446] CTED. (2017). Analytical Brief on the Prosecution of Women Returnees from the Islamic State in Iraq and the Levant.
- [398] On ISIL's 'segregated online ecosystem' see Meili Criezis, 'Online Deceptions: Renegotiating Gender Boundaries on ISIS Telegram', Perspectives on Terrorism, February 2020, Vol. 14, No. 1 (February 2020)
- [399] [403] ICCT, Hecker, M., & Koller, S. (2024). Female jihadis facing justice: Comparing approaches in Europe (T. Mehra, T. Renard, & M. Herbach, Eds.). ICCT Press, p.45. Available at: <https://doi.org/10.19165/FTXZ9791>
- [401] Uludağ, A. (2022). Canlı bomba listesindeki IŞİD'li kadına tahliye. dw.com. Retrieved April 5, 2024, from: <https://www.dw.com/tr/canli-bomba-listesindeki-isisli-kadina-tahliye/a-60644684>
- [402] Stéphane Carpentier (2022) Interview with François Molins, RTL, Retrieved April 5, 2024, from: <https://www.rtl.fr/actu/justice-faits-divers/invite-rtl-justice-l-obtention-de-moyens-supplementaires-ne-suffit-pas-selon-francois-molins7900171099>.

- [405] Doctors Without Borders - USA. (2022). Between two fires: Danger and desperation in Syria's Al-Hol camp. [online] Retrieved April 20, 2024, <https://www.doctorswithoutborders.org/latest/between-two-fires-danger-and-desperation-syrias-al-hol-camp>
- [406] Save the Children International. (2022, March 23). Speed up repatriations or foreign children could be stuck in North East Syria camps for up to 30 years, warns Save the Children. Retrieved April 20, 2024, from: <https://www.savethechildren.net/news/speed-repatriations-or-foreign-children-could-be-stuck-north-east-syria-camps-30-years-warns>
- [407] Rudaw.net. (2024). Al-Hol's 27,00 Children in unbearable conditions: charities. Rûdaw Retrieved May 7, 2024, from <https://www.rudaw.net/english/middleeast/syria/03122021>
- [410] [414] Kerres, M. (2019). Minister Blok wil IS-strijders in Irak berechten. NRC. Retrieved May 2, 2024, from: <https://www.nrc.nl/nieuws/2019/09/25/nederland-isers-in-irak-berechten-a3974688>
- [411] PACE (2023) Addressing the issue of Daesh foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe Resolution 2475. Available at: <https://pace.coe.int/en/files/31550/html>.
- [412] France's Le Drian to go to Iraq to discuss trials for jihadists from Syria. (2019, October 16). Reuters. Retrieved January 8, 2024, from <https://www.reuters.com/article/idUSKBN1WV0YS/>
- [415] PAX. (2020). ISIS-only tribunal: selective, politicised justice will do more harm than good. [online] Retrieved April 11, 2024, from: <https://paxforpeace.nl/publications/isis-only-tribunal-selective-politicised-justice-will-do-more-harm-than-good/#:~:text=To%20do%20justice%20to%20ISIS>
- [416] "Vietnam War Crimes Tribunal," Vietnam War Crimes Tribunal, accessed January 22, 2024, <http://raetowest.org/vietnam-war-crimes/russell-vietnam-war-crimes-tribunal-1967.html#v1!-russ>.
- [417] [427] [429] [432] [450]] Chinkin, C. (2001). Women's International Tribunal on Japanese Military Sexual Slavery. *American Journal of International Law*, 95(2), 335–341. <https://doi.org/10.2307/2661399>.
- [418] Robert Cryer (2005) *Prosecuting International Crimes*, Cambridge University Press, Cambridge, p. 035
- [419] [420] [422] [441] [448] De Vido, S. (2017). *Women's Tribunals to Counter Impunity and Forgetfulness: Why are They Relevant for International Law?*
- [421] Diane E.H. Russell - Nicole Van De Ven (1976) *Crimes against Women: Proceedings of the International Tribunal, Les Femmes*, Millbrae, p. 151.
- [423] Kaya, Ö., & Göral, Ö. S. (2011). Seeking Peace Transforming The Law: The Case Of Women's Courts. In Irazca Geray & Liz Amado (Trans.), *Hakikat Adalet Hafiza Merkezi. Hakikat Adalet Hafiza Merkezi*, p.67. <https://Www.Hafiza-Merkezi.Org>
- [424] For information on the world courts organized in the USA, see: *World Courts of Women on Poverty in the US*. (n.d.). *World Courts of Women on Poverty in the US*. <https://worldcourtsofwomen.wordpress.com/>
- [425] [426] Yuma Totani, *Legal Responses to World War II Sexual Violence: The Japanese Experience, in Sexual Violence in Conflict Zones*, ed. Elizabeth Heineman, Philadelphia University Press, Philadelphia 2011.
- [428] *Iccwomen.org*. (2019). Transcript from Proceedings of Official Release of Tokyo Tribunal 2000 Judgment. [online] Retrieved April 21, 2024, from: <http://www.iccwomen.org/wigdraft1/Archives/oldWCGJ/tokyo/summary.html>

[430] Jill Steans, 'Negotiating the Politics of Difference in the Project of Feminist Solidarity,' *Review of International Studies* 33(4) (2007): p.730.

[431] The Women's International War Crimes Tribunal, The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, Judgment on the Common Indictment and the Application for Restitution and Reparation (Delivered: The Hague, December 4, 2001), accessed March 13, 2024, http://vawwrrac.org/judgement_e01.pdf.

[433] [435] Çelikkan, M. (Ed.). (2014). *Hakikat Komisyonları [Truth Commissions]*. İstanbul: Anadolu Kültür Yayınları.

[434] [437] [455] Meger, S. (2016). Sexual violence as an element of genocide. In *Rape Loot Pillage: The Political Economy of Sexual Violence in Armed Conflict*. Oxford University Press, <https://doi.org/10.1093/acprof:oso/9780190277666.003.0007>

[436] International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, 10 December 1998, Prosecutor v. Furundžija, case no. IT-95-17/1-T, para. 109. For a detailed analysis of cases of violence against women analysed by the Tribunal, Nicola Henry *War and Rape. Law, Memory and Justice*, Routledge, London 2011.

[438] De Londras, F. (2009). Prosecuting sexual violence in the ad hoc International Criminal Tribunals for Rwanda and the former Yugoslavia. *Social Science Research Network*. P.13. <https://doi.org/10.2139/ssrn.1393298>

[439] Christine Chinkin, Hilary Charlesworth, *The Boundaries of International Law*, Manchester University Press, Manchester 2000, ISBN 0-7190-3739-5, 414 pp., *Leiden Journal of International Law*, 14(4), 935–939. <https://doi.org/10.1017/s0922156501210449>

[440] [443] Krasniqi, V. (2016, June 1). Women's Court for the Former Yugoslavia: Seeking Justice, Truth, and Active Remembering. Retrieved from http://www.zenskisud.org/en/pdf/Vjollca_Krasniqi_eng.pdf [http://www.zenskisud.org/en/pdf/Karima_Bennoune_\(Interview\)_eng.pdf](http://www.zenskisud.org/en/pdf/Karima_Bennoune_(Interview)_eng.pdf)

[442] [447] [451] Clark, J. N. (2015). Transitional Justice as Recognition: An Analysis of the Women's Court in Sarajevo. *International Journal of Transitional Justice*, p.12. Available at: doi:10.1093/ijtj/ijv027

[444] Warell, H (2019) "Sweden Proposes International Tribunal to Try Isis Fighters", *Financial Times*. Retrieved May 12, 2024, from: <https://www.ft.com/content/9086250e-7802-11e9-bbad-7c18c0ea0201>

[445] Behring, R. (2020). One-eyed prosecution?: On the possibility to restrict the personal jurisdiction of an international ad hoc-tribunal for ISIS-fighters. *Völkerrechtsblog*. [online] Available at:

[452] Haldemann, F. (2008). Another kind of justice: transitional justice as recognition. *Cornell International Law Journal*, 41(3), p.679-693. Retrieved May 11, 2024, from: https://chrgj.org/wp-content/uploads/2012/07/Haldemann_131107.pdf

[454] Nussbaum, M. C. (2007). *Frontiers of justice*. Belknap Press, Cambridge 2006, p. 260. Available at: <https://doi.org/10.2307/j.ctv1c7zftw>