



SPECIAL FOCUS: REVISITING LEGACIES OF ANFAL AND RECONSIDERING GENOCIDE IN THE MIDDLE EAST TODAY: COLLECTIVE MEMORY, VICTIMHOOD, RESILIENCE AND ENDURING TRAUMA

The Last Genocide against the Yazidi People

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Abstract

When the Islamic State of Iraq and Syria (ISIS) emerged from the ashes of unsolved political, religious, and sectarian conflicts in the Middle East, it became one of the greatest threats to global order in recent years. It invaded and occupied a large swath of territory in Iraq and Syria, leaving a trail of bloodshed in its wake. ISIS fighters carried out a deliberate campaign of annihilation against the religious Yazidi community, which is officially recognized as a protected group under the UN Genocide Convention. ISIS identified them as an “unbeliever community” and proceeded to embark on an eliminationist campaign against the group, including deliberate killing, destruction of the conditions of their life, and the capture and transference of Yazidi children.

Keywords: Yazidi Genocide; ISIS; Genocide; International Criminal Law; Iraq; War Crimes

Genocide for a long time was a crime without a name. The term was first coined in 1944 by Polish-Jewish lawyer Raphael Lemkin, who derived it from two words: the ancient Greek word *genos* (race or tribe) and the Latin *cide* (killing). Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation.¹ Despite the range of acts that meet the definition of the term, it is most commonly used in reference to campaigns involving large-scale massacres.²

¹ Raphael Lemkin, “Axis Rule in Occupied Europe,” [Publications of the Carnegie Endowment for International Peace, Division of International Law, Washington.] (New York: Columbia University Press, 1944).

² Mark Klamburg, “Commentary on the Law of the International Criminal Court,” (TOAEP, 2017).



The twentieth century is deservedly known as the century of genocide, during which the world witnessed at least 65 known genocides.³ It was also the century in which the term of genocide was invented, codified into law, and internationalized, after which many states adopted the international definition of the crime into their domestic canon of law.⁴ The term “genocide” was legally defined for the first time in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide. The Convention classifies genocide as any act committed with intent to destroy in whole or in part a national, ethnical, racial, or religious group, including “(a) killing the members of the group, (b) causing serious bodily or mental harm to members of the group, (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, (d) imposing measures intended to prevent births within the group, and (e) forcibly transferring children of the group to another group.”⁵ The term was also legally defined in article 4(2) of the International Criminal Tribunal for Yugoslavia (ICTY), article 2(2) of the International Criminal Tribunal for Rwanda (ICTR), and article 6 of the Rome Statute.

The ICTR defined the crime of genocide as “first, one of the acts listed under article 4(2) of the Statute was committed; secondly, this act was committed against a specifically targeted national, ethnic, racial or religious group, as such, and thirdly, the act was committed with intent to destroy in whole or in part the targeted group.”⁶ The ICTY similarly defined genocide as “any criminal enterprise seeking to destroy in whole or in part a particular kind of human group, as such, by certain means, those are two elements of the special intent requirement of genocide: firstly the act or acts must target a national, ethnical, racial or religious group, secondly the act or acts must seek to destroy all or part of that group.”⁷

The crime of genocide requires that the victims are members of protected groups, or were mistakenly believed to have been so.⁸ The Genocide Convention does not protect all types of human groups, but rather to four particular groups: national, ethnical, racial, and religious groups.⁹ It protects those groups’ right to exist; “existence” means the group’s physical and biological existence, while “physical” usually refers to the human body or in a wider sense, to all elements of the material world, including the physical conditions that give life to the human members of the group.¹⁰

³ Nicole Hahn Rafter, “The Crime of all Crimes, Towards a Criminology of Genocide,” (New York university press, 2016).

⁴ Bergmso. M, Harlem. M, Hayashi. N, “Importing Core International Crimes into National Law,” (TOAEP, 2010).

⁵ The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the general assembly of the United Nations on 11 Dec 1948, GA/Res/96(I), Article. II.

⁶ ICTR, *Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-I, Trial Chamber, Dec. 13, 2006, para. 316.

⁷ ICTY, *The Prosecutor v. Radislav Krstic*, Case No. IT-98-33-T, Trial Chamber, Aug. 2, 2001, para. 550.

⁸ Human Rights Watch, “Genocide, War Crimes and Crimes Against Humanity; A Digest of the Case Law of the International Criminal Tribunal for Rwanda,” (2010).

⁹ Human Rights Watch, “Genocide, War Crimes and Crimes Against Humanity; A Topical Digest of the Case Law of the International Criminal Tribunal for the Former Yugoslavia,” (2006), 164.

¹⁰ Christian Tamas, Lars Berster, and Björn Schiffbauer, “Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary, comments on article (ii),” (2014), 81.

The four protected groups (national, ethnical, racial, and religious) are enumerated in Article II of the Genocide Convention. The drafters of the Rome Statute during the Rome Conference rejected proposals aimed at enlarging the scope of the list. For example, linguistic groups were rejected because it was felt that this was redundant, but political, economic, and social groups were quite intentionally excluded, because the drafters did not believe that they should be protected by the terms of the Genocide Convention.¹¹

Ad hoc tribunals and distinguished scholars have explained in further detail the definition of the protected groups. The national group is placed first in the list, as “a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties.”¹² Besides the above definition, three other approaches can be considered in defining a national group: first, it could mean all citizens of a given state; second, it could be equated with existing covenants and rules on the protection of “national minorities,” which would include expatriate groups; and thirdly, it could be extended to embrace any plurality of persons entitled to found a new state by virtue of the right of self-determination.¹³

The second group in the list is “ethnical,” a word that derives from the Greek word “ethnikos,” which had a three-layered meaning in the classical world. Ethnikos was defined firstly as adapted to the genius or customs of a people, secondly as suited to the manners or language of foreigners, and thirdly as heathenish, pagan, or alien to the beliefs of the beholder. The ordinary meaning of “ethnic” continues to largely imply these same three elements, reflecting the entirety of cultural, historical, customary, lingual, and religious individualities, and the whole way of life and mode of thought of a group which sets it apart from its neighbors, although the term “ethnical” clearly canters around cultural and social aspects.¹⁴ The ICTR defined “ethnical group” as “one whose members share a common language and culture; or, a group which distinguishes itself, as such (self-identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others),”¹⁵ or more simply as one whose members share a common language or culture.¹⁶

The third group is racial, which is defined as being “based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors.”¹⁷

The last protected group is religious, which is defined as “groups whose members share a deeply entrenched belief in a metaphysical controlling

¹¹ Otto Triffterer, Kai Ambos, “Rome Statute of the International Criminal Court,” (C.H. Beck, 3rd ed., 2016), 135.

¹² ICTR, *The Prosecutor v. Lean-Pawl Akayesu*, Case No. ICTR-96-4-T, Trial Chamber, Sep. 2, 1998, para. 512.

¹³ Tamas, Berster, and Schiffbauer, “Convention on the Prevention,” 107.

¹⁴ *Ibid.*, 108.

¹⁵ ICTR, *The Prosecutor v. Clement Kayishema and Obed Ruzindana*, Case No. ICTR-95-I-T, Trial Chamber, May 21, 1999, para. 98.

¹⁶ ICTR, *The Prosecutor v. Lean-Pawl Akayesu*, 513.

¹⁷ *Ibid.*, 514.

power, and whose activities are focused on the fulfilment of their beliefs' maxims."¹⁸ The ad hoc tribunals also defined as a religious group any denomination or mode of worship or sharing of common beliefs,¹⁹ or whose members share the same religion, denomination, or mode of worship.²⁰

Yazidi as a Protected Group

To determine whether the crime of genocide has been committed, the target group shall be considered in relation to the categories identified in the Genocide Convention. The Yazidi community is one of the oldest ethnic and religious communities in the Middle East, and is indigenous to the region. The majority of Yazidis live in northwestern Iraq in areas surrounding Shingal Mountain and the Shekhan district; additionally, there are some Yazidi villages and towns in the Duhok Governorate in the Kurdistan Region of Iraq (KRI),²¹ as well as in Syria, Turkey, Armenia, and Georgia. According to their own estimates, the population of the Yazidi community in Iraq is around 560,000, and, although there are no official statistics, they are considered the second largest religious minority after Christianity.²² Etymologically, some argue that Yazidi refers to *Ezidi*, which is derived from the Sumerian root *Êzidî*, which means the ones who are on the right path and have the good and unspoiled spirit.²³ Others argue that Yazidi refers to *Yezi*, meaning God. *Yezdai* means the Creator in the Kurdish language, and *Ezdan* means God in Farsi. Alternatively, Yazidi may refer to "slave of the Creator" in the Yazidi religion.²⁴ According to some Ottoman archives and unofficial documents, Yazidis are described as "descendants of 'Yezid bin Muaviye' who was the second caliph of the Islamic 'Umayyad caliphate."²⁵

The Yazidi religion is structured according to social classes and ranks, similar to the Indian caste-system. At the top there is the *Mir* (Prince) and the *Baba Sheikh* (the spiritual leader), directly below them are forty sheikhs divided into three factions: *Adani*, *Achammsana*, and *Qatani*. There are also forty *Pirs*, who are tasked with regulating the religious affairs of the followers. Ordinary Yazidis are called *Mureed* (followers). The *Mureed* cannot get married to members of the *Sheikh* and *Pir* classes, and *Pirs* and *Shaykhs* cannot intermarry either.²⁶

¹⁸ Tamas, Berster, and Schiffbauer, "Convention on the Prevention," 114.

¹⁹ ICTR, *The Prosecutor v. Clement Kayishema and Obed Ruzindana*, 98.

²⁰ ICTR, *The Prosecutor v. Lean-Pawl Akayesu*, 515.

²¹ Dave van Zoonen, and Khogir Wirya, "The Yazidis, Perceptions of Reconciliation and Conflict," (MERI, 2017), 7.

²² Khider Domle, "Yazidis: A Deep-Rooted Community in an Unstable Present," (Masarat for Cultural and Media Development, 2013), 66.

²³ Yazda, "Destructing the Soul of the Yazidi: Cultural Heritage Destruction During the Islamic State's Genocide Against the Yazidis," (2019), 29.

²⁴ Domle, "Yazidis," 66.

²⁵ Emre Basci, "Yazidis: A Community Scattered in Between Geographies and its Current Immigration Experience," *International Journal of Humanities and Cultural Studies* 3.2 (2016): 341.

²⁶ Domle, "Yazidis," 67-68.

Yazidism requires that a Yazidi child must have two Yazidi parents – mixed marriages are theologically impossible.²⁷

The Yazidi faith is the belief that *Xuada* (God) created the world, including Lalish (the holiest place according to the Yazidism), in seven days and entrusted it to seven holy angels, including *Tawûsê Melek* (the Peacock Angel), who Yazidis believe to be the head of the angels in the Yazidi religion.²⁸ This association with the Peacock Angel that has led to the Yazidi being misleadingly described as “devil worshippers.”²⁹ Other common misconceptions include the perception that the Yazidi religion contains polytheistic elements and prejudices about the fact that they have an oral tradition rather than a written scripture.³⁰

Throughout history, there have been attempts by both Yazidis and non-Yazidis to link the group to a specific ethnic identity, usually in connection with contemporary political factors. One theory views the Yazidis as descendants of the ancient Assyrians; another theory provides for a totally Islamic origin for the Yazidis; and yet another theory, associated with Kurdish nationalism, claims descent from the Medes for the Kurds.³¹ But Yazidis are a religious minority with many taboos and a strict caste system. They are neither Muslim, Christian, nor Jewish and therefore not “People of the Book.” This has had important implications for their legal status and it still shapes their relationships with their neighbors and national political authorities. Their religion contains elements originating in various major religions, but cannot be defined as purely, or even principally, Christian, Islamic, or Zoroastrian.³²

Material Elements

Killing Members of the Yazidi Community

Killing members of the group means causing the death or, more precisely, diminishing the natural lifespan.³³ According to the Rome Statute, killing a single victim is sufficient to commit the crime of genocide; the term “killed” is interchangeable with the term “caused death,” which means simply that the death of the victim would not have occurred but for the perpetrator’s conduct.³⁴ Since ISIS first attacked Sinjar in early August 2014, evidence has emerged indicating that it has pursued a campaign of killing and targeting

²⁷ UNHCR, “‘They came to destroy’: ISIS Crimes Against the Yazidis (A/HRC/32/CRP.2),” June 15, 2016, para. 19.

²⁸ Yazda, “Destructing the Soul,” 29.

²⁹ Vian Dakhil, Aldo Borda, and Alexander R.J. Murray, “Calling ISIL Atrocities against the Yazidis by Their Rightful Name’: Do They Constitute the Crime of Genocide?” *Human Rights Law Review* 17.2 (2017): 267.

³⁰ Yazda, “Mass Graves of Yazidis Killed by the Islamic State Organization or Local Affiliates,” (2016), 4.

³¹ Dakhil, Borda, and Murray, “Calling ISIL Atrocities,” 267.

³² Christine Allison, “The Yazidi Oral Tradition in Iraqi Kurdistan,” (London: Psychology Press, 2011), 26.

³³ Tamas, Berster, and Schiffbauer, “Convention on the Prevention,” 116.

³⁴ The Elements of Crimes adopted at the 2010 Review Conference of the Rome Statute of the International Criminal Court, Kampala, May 31–June 11 2010, article 6 (a).

minority groups, including the Yazidi.³⁵ ISIS fighters executed at least 2,000 Yazidis and captured another 6,417, whom they imprisoned and subjected to a system of torture and ill-treatment.³⁶ Those Yazidi who managed to survive the initial onslaught reported that as soon as they were intercepted by the ISIS fighters, they were told to convert to Islam or be killed; and those who refused were killed immediately.³⁷

Within the early days of the attack, the United Nations Assistance Mission in Iraq (UNAMI) gathered evidence that proved ISIS deliberately attacked the Yazidi community and killed them. Their reports³⁸ show a systematic approach in which ISIS attacked from different bases to encircle the mountain and capture the Yazidi villages within 72 hours.³⁹ For instance, on August 3, 2014, ISIS chased ten Yazidi families fleeing the al-Qahtaniya area, killing the male members and abducting the females and children. On August 4th, the ISIS fighters killed 60 Yazidi men from Hardan village in Sinjar city and abducted their wives and daughters. On the same day, at least 200 Yazidi were killed in Sinjar city, and 60 to 70 more were killed in the Ramadi area. ISIS also abducted at least 50 women from the Tal-Binat area.⁴⁰ Also on August 4th, approximately 400 males were massacred in the Yazidi village of Kocho, and 67 male members of the Yazidi community were killed in the village of Qani. In both villages, ISIS gathered villagers in a school and then took the males in batches to a nearby farm to execute them by gunfire.⁴¹ The same day, about 80 men were killed in Qani.⁴² On August 6th, more than 50 bodies with visible signs of torture were seen near Dhola village. One hundred were killed in Khana Sor village in the Snono sub-district, and 250-300 were killed – at least ten of them beheaded – in the Hardan area. On August 15th, ISIS gathered all males older than ten years at a local school, took them outside the village by pick-up trucks, and shot them. As many as 400 males were killed that day; dozens of women and children were abducted, and possibly as many as 1,000 were taken away to unknown destinations in Tal Afar. Some people were shot by ISIS while trying to escape, and 14 elderly Yazidi men, some with disabilities, were executed in Sheikh-Mand Shrine.⁴³

ISIS fighters divided the captured Yazidis into groups of men and boys and of women and children. ISIS killed the men and boys who refused to convert to

³⁵ Dakhil, Borda, and Murray, "Calling ISIL Atrocities," 269.

³⁶ Human Rights Watch, "Flawed Justice and Accountability for ISIS Crimes in Iraq," (2017).

³⁷ UNAMI, "A Call for Accountability: Yazidi Survivors of Atrocities Committed by ISIL" (2016).

³⁸ UNAMI published four reports on the protection of civilians in armed conflict in Iraq covering the periods from June 5 to July 5, 2014 (released Aug. 18, 2014), July 6, 2014 to Oct. 31, 2015 (released Sep. 26, 2014), Sep. 11 to Dec. 10, 2014 (released Dec. 15, 2014), and May 1 to Oct. 31, 2015 (released on Jan. 5, 2016).

³⁹ UNHRC, "They came to destroy," para. 29.

⁴⁰ UNAMI Report on the Protection of Civilians in Armed Conflict in Iraq (July 6 – Sep. 10, 2014).

⁴¹ UNAMI Report on the Protection of Civilians in Armed Conflict in Iraq (Sep. 11 to Dec. 10, 2014).

⁴² UNHCR, "Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq in the Light of Abuses Committed by the ISIS, (A/HRC/28/18)," March 2015, para. 19.

⁴³ UNAMI Report on the Protection of Civilians in Armed Conflict in Iraq (6 July – 10 Sep 2014).

Islam after being asked three times,⁴⁴ while transporting the remaining Yazidis to designated centers deep within ISIS-controlled territory. Yazidi women were divided into groups of married women with children, married women without children, and unmarried women and girls.⁴⁵ In some cases, the elder women were executed right away.⁴⁶

ISIS carried out numerous mass killings. After retaking areas from ISIS, the Iraqi and Kurdistan Regional Government (KRG) authorities, as well human rights organizations, confirmed the discovery of mass graves containing the bodies of those killed. UNAMI and as well as Yazda, a Yazidi advocacy, aid, and relief organization, published three reports about the investigation into the mass graves. In the Sinjar district of Mosul alone, which is predominately Yazidi, 95 mass graves were found. The smallest of them contained the bodies of eight civilians, while the largest is believed to have contained up to 4,000 corpses.⁴⁷ At one of the mass graves, ISIS fighters took Yazidi women from the village of Kocho who were 60 years and older and executed on the grounds of a school known as the Solagh Technical Institute.⁴⁸ Another five mass graves have been discovered, which the organization Yazda organization codifies as Kocho.1, 2, 3, and 4; they contained 45, 50, 13, and 25 people, respectively.⁴⁹ According to another report from Yazda, by January 28th, 2016, Iraqi and KRG authorities discovered 35 mass graves of the Yazidi people who were killed by ISIS fighters.⁵⁰ According to the latest reports, Yazda identified a further 21 mass graves.⁵¹

The United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD), in coordination with the Mass Graves Directorate and the Ministry of Health of Iraq as well as the KRG, excavated 17 mass graves in and around the village of Kojo in the Sinjar district. The work was conducted in line with international standards, and this work has gathered evidence that may be crucial to future prosecutions in relation to atrocity crimes punishable under the Rome Statute.⁵² The European Parliament estimated that 5,000 Yazidis were killed, and stated that there is clear evidence of mass graves of Yazidi people who were abducted and systematically killed by ISIS,⁵³ constituting evidence of the crime of genocide.⁵⁴

⁴⁴ Amy L. Beam, "The Last Yazidi Genocide," (New York: Andinolfi Books, 2019).

⁴⁵ UNHCR, "Report on the human rights situation in Iraq (A/HRC/28/18)," para. 36.

⁴⁶ UNHRC, "They Came to Destroy," para. 48.

⁴⁷ UNAMI, "Unearthing Atrocities: Mass Graves in Territory Formerly Controlled by ISIL," Nov. 6, 2018.

⁴⁸ UNHRC, "They Came to Destroy," para. 79.

⁴⁹ Yazda, "Documenting Mass Graves."

⁵⁰ Yazda, "Mass Graves of Yazidis."

⁵¹ Yazda, "Documenting Mass Graves."

⁵² UN Security Council, "Third Report of the Special Adviser and Head of the UNITAD," (S/2019/878, Nov. 13, 2019), para. 32 and 33.

⁵³ European Parliament, "Resolution on the Systematic Mass Murder of Religious Minorities by the So-Called 'ISIS/Daesh,'" (2016/2529(RSP), Feb. 4, 2016), para. G.

⁵⁴ *Ibid.*, para. M1 and M2.

International bodies have been cautious in determining whether ISIS has committed the specific crime of genocide.⁵⁵ In August 2014, the Special Adviser of the UN Secretary-General on the Prevention of Genocide and the Special Adviser on the Responsibility to Protect, noted, somewhat tentatively, that “the reports we have received of acts committed by ISIS may amount to the crime of genocide.”⁵⁶ It could be said forthrightly that the acts of ISIS toward members of the Yazidi Community qualify as genocidal acts by killing listed in the Genocide Convention.⁵⁷

Causing Serious Bodily and Mental Harm on the Yazidi People

The expression “serious bodily or mental harm” is not defined in detail in the Genocide Convention, and nor have the ICTR, ICTY, and International Criminal Court (ICC) defined it either. The only explication of the term has come from the ICTR Appeals Chamber. The Appeals Chamber described “the quintessential examples of serious bodily harm” as “torture, rape, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs, serious mental harm includes; more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat,” and specified that “to support a conviction for genocide, the bodily harm or the mental harm inflicted on members of a protected group must be of such a serious nature as to threaten its destruction in whole or in part.”⁵⁸ The International Court of Justice (ICJ) has defined acts causing “serious bodily or mental harm” sufficient to constitute genocide as any conduct including, but not necessarily restricted to, “acts of torture, rape, sexual violence or inhuman or degrading treatment.”⁵⁹ Whether such acts amount to genocide, as opposed to war crimes and crimes against humanity, depends on whether they were committed with specific intent to destroy the protected group in whole or in part.⁶⁰

There is conclusive evidence that ISIS has inflicted serious bodily or mental harm, by way of torture, beatings, and inhuman and degrading treatment, with specific intent to destroy the Yazidi religious group.⁶¹ According to Amnesty

⁵⁵ Committee on Legal Affairs and Human Rights, “Prosecuting and Punishing the Crimes against Humanity or Even Possible Genocide Committed by Daesh,” (No. 14402, 2017).

⁵⁶ Statement by Adama Dieng, Special Adviser of the Secretary-General on the Prevention of Genocide, and Jennife Welsh, Special Adviser of the Secretary-General on the Responsibility to Protect, on the situation in Iraq, Aug. 12 2014.

⁵⁷ Rosa Duarte-Herrera and Clara Iftsits, “Genocide against Yazidis; Austria’s Obligation to Prosecute and Punish Returning ISIS Fighters under International and National Law,” *Vienna Law Review* 1.1 (2017): 9.

⁵⁸ ICTR, *The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-A, Appeals Chamber, (March 12, 2008), para 46.

⁵⁹ The Elements of Crimes, Element (1) of article 6 (b).

⁶⁰ ICJ, “Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Yugoslavia* [Serbia and Montenegro]),” Judgment, Feb. 26, 2007, para. 319.

⁶¹ Committee on Legal Affairs and Human Rights, “Prosecuting and Punishing the Crimes against Humanity.”

International, in August 2014, ISIS fighters abducted thousands of Yazidi men, women, and children who were fleeing the ISIS takeover of the Sinjar region; hundreds of the men were killed and others were forced to convert to Islam under threat of death, and many were subjected to torture and ill-treatment. Some of the Yazidi women and girls who have escaped ISIS captivity, as well as some of those who remained captive, have given harrowing accounts to Amnesty International of the torture and abuses that they suffered.⁶²

The ICTY Trial Chamber found that the women who were separated from male family members suffered serious mental harm, which had a profound psychological impact upon them. Separating the women from their husbands, sons, and other male family members caused them grave concern about their own fate and that of their loved ones, a fear that was entirely justified and real.⁶³ Some Yazidi women and children suffered even greater mental harm as a result of being forced either to bear witness to the murder of their male relatives or to watch them being taken away to an unknown fate. Worse still, ISIS fighters severely beat captured Yazidi women and girls if they resisted rapes, attempted to escape, refused orders to complete tasks for the fighters and their families, or tried to prevent ISIS fighters from removing their children or siblings from their care. Severe trauma and mental anguish were being inflicted on Yazidi mothers as a consequence of ISIS fighters taking their daughters to sell into sexual slavery, and their sons to be indoctrinated and recruited in ISIS forces.⁶⁴

Recent research pointed to an increase in health problems among the Yazidi population. A major household study of displaced Yazidi people found a high prevalence of non-communicable diseases: 19% of those surveyed suffered from hypertension, 13% had musculoskeletal conditions, 10% percent had diabetes, and 6% had cardiovascular diseases. All these diseases were associated with increased stress levels. Of 1,100 Yazidi women who joined the German Special Quota Program, 78% were diagnosed with PTSD, 63% with depression, and 2.7% with an adjustment disorder.⁶⁵

It can only be the affliction of “serious bodily or mental harm” that results in such grave and long-term disadvantages in a person’s ability to lead a healthy and constructive life.⁶⁶ Displaced Yazidi people who were living in refugee camps as a result of the ISIS attacks, too, were suffering from restrictions concerning regular and healthy food. The conditions in camps were unhygienic. The displaced people were provisionally housed in tents or containers, which offered poor protection from the searing heat. They lacked laundry

⁶² Amnesty International, “Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq,” (2014).

⁶³ ICTY, *The Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Trial Chamber, Dec. 12, 2012, para. 756.

⁶⁴ UNHRC, “They Came to Destroy,” para. 129 and 130.

⁶⁵ Pia Jäger, Claudia Rammelt, Notburga Ott, Angela Brand, “Narrative Review: The (Mental) Health Consequences of the Northern Iraq Offensive of ISIS in 2014 for Female Yazidis,” *International Journal of Environmental Research Public Health*, 16.13 (2019): 27.

⁶⁶ ICTY, *The Prosecutor v. Radislav Krstic*, Case No. IT-98-33-T, Trial Chamber, Aug. 2, 2001, para 513.

facilities, basic medical services, and an adequate food supply due to the remote location of the camps. Diarrheal diseases were widespread, and their educational, social, cultural, and religious needs went mostly unmet.⁶⁷

Rape and sexual violence constitute genocide if committed with specific intent to destroy a particular group. It is also one of the most damaging ways of inflicting serious bodily and mental harm on members of the group. After the Rwandan genocide, the ICTR Chamber had held that the acts of rape and sexual violence against Tutsi women were committed solely because they were Tutsi. As they were humiliated, mutilated, and raped several times, often in public or by more than one assailant, these acts resulted in the physical and psychological destruction of Tutsi women, their families, and their communities. Sexual violence was an integral weapon in this process of destruction, as the perpetrators specifically targeted Tutsi women as a horrific means of destroying the Tutsi group as a whole.⁶⁸ The ICC has defined rape as force, threat of force, coercion, or taking advantage of a coercive environment that undermined the victim's ability to give voluntary and genuine consent.⁶⁹

Sexual violence was employed by ISIS as a tool of genocide against the Yazidi community. ISIS fighters raped Yazidi women pursuant to a plan of self-perpetuation aimed at transmitting their ideology to a new generation who could be raised in their own image. In this way, women's bodies were used as "biological weapons" to alter the demography of the region.⁷⁰ The available evidence also indicates that ISIS targeted Yazidi women not just because they were women but specifically because they were both Yazidi and women.⁷¹ There is overwhelming evidence of such rapes occurring from survivors themselves, who display both physical and psychological wounds; ISIS fighters even raped Yazidi girls as young as nine.⁷² This conduct was extreme because it was deeply institutionalized and mimicked the slave trade of previous centuries, which was done openly and treated victims as chattel. Most importantly, it was done proudly and explicitly.⁷³

There is an abundance of written evidence that ISIS not only tolerated, but also actively encouraged and sanctioned the rape, torture, and enslavement of Yazidi women captives. Indeed, the ISIS bureaucracy issued multiple fatwas dealing with the treatment of women slaves. A manual on women captives issued at the end of 2014 answered a number of questions about relations between ISIS members and women slaves. It stated that "sex with a woman slave [is permitted], but if the slave is not a virgin, ensure that she is not pregnant." The manual also regulated various rules, among other things, the

⁶⁷ Jäger, Rammelt, and Brand, "Narrative Review," 29.

⁶⁸ ICTR, *The Prosecutor v. Akayesu*, para. 731-32.

⁶⁹ ICC, "Rules of Procedure and Evidence," rule 70.

⁷⁰ UN Security Council, "Report of the Secretary-General on Conflict-Related Sexual Violence (S/2016/361)," April 20, 2016, para 14.

⁷¹ Emily Chertoff, "Prosecuting Gender-Based Persecution: The Islamic State at the ICC," *Yale Law Journal* 126.4 (2017): 1067.

⁷² UNHRC, "They Came to Destroy," para 114.

⁷³ Samar El-Masri, "Prosecuting ISIS for the Sexual Slavery of the Yazidi Women and Girls," *The International Journal of Human Rights* 22.8 (2018): 1052.

appropriate forms of “disciplinary beatings.”⁷⁴ Girls and unmarried women who escaped from ISIS captivity recounted to investigators the process by which they were raped and sexually enslaved. ISIS members numbered them or recorded their names on lists and inspected them to evaluate their beauty; while some were given as “gifts,” others were sold to local or foreign ISIS fighters. Some victims were privy to price negotiations between “vendors” and “buyers,” whereby girls would then be prepared for rape.⁷⁵

UNAMI received reports that between 450 and 500 women and children were raped and sexually assaulted by ISIS fighters, with 150 unmarried girls and women, predominantly from the Yazidi community, reportedly transported to Syria, either to be given to ISIS fighters as a reward or to be sold into sex slavery. Also, UNAMI conducted an interview with an adolescent Yazidi girl who had been abducted by ISIS when they attacked her village. She stated that ISIS took hundreds of women; the girl stated that she was raped several times by several ISIS fighters before she was sold in a market.⁷⁶ Amnesty International, in its report *Escape From Hell, Torture and Sexual Slavery in Islamic State Captivity in Iraq*, interviewed 42 Yazidi women who had been abducted by ISIS and then escaped. They recounted their life under ISIS control, stating that ISIS had abducted many Yazidi girls and women and then raped them, adding that some managed to escape, while others remained in captivity or were killed.⁷⁷

Deliberately Inflicting Acts of Physical Destruction on the Yazidi Community

Among the acts that constitute genocide is “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.” According to the ICTR, this includes methods of destruction that do not immediately lead to death but rather to circumstances that cause a slow death, such as the denial of proper housing, clothing, hygiene and medical care, the imposition of excessive work, physical exertion, or starvation, and withholding sufficient living accommodation for a reasonable period.⁷⁸ The ICTR further defined the term “conditions of life calculated to bring about physical destruction” to include deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.⁷⁹

ISIS attacked Sinjar city,⁸⁰ which led to 96 percent of the population fleeing.⁸¹ On August 5th, the United Nations International Children’s Fund

⁷⁴ Chertoff, “Prosecuting Gender-Based Persecution,” 1061-62.

⁷⁵ UNHCR, “Report on the Human Rights Situation in Iraq (A/HRC/28/18),” para. 37.

⁷⁶ UNAMI, “Report on the Protection of Civilians in Armed Conflict in Iraq,” July 6 – Sep. 10, 2014.

⁷⁷ Amnesty International, “Escape from Hell.”

⁷⁸ ICTR, *The Prosecutor v. Clement Kayishema*, para. 115 and 116.

⁷⁹ The Elements of Crimes, Element (4) of article 6 (c).

⁸⁰ Sinjar is the main city of the Yazidi community, with an estimated population of 300,000.

⁸¹ Peter Nicolaus, “Sex-Slavery: One Aspect of the Yazidi Genocide,” *Iran and the Caucasus* 21 (2017).

(UNICEF) reported that families who had fled to Sinjar Mountain, including up to 25,000 children, were in immediate need of assistance, due to lack of drinking water and sanitation services. It also reported that around 40 Yazidi children had died as a consequence of hunger, thirst, and dehydration.⁸² The Iraqi air force delivered food and relief through a humanitarian airdrop operation over the mountains.⁸³ The UNHCR reported that an estimated 20,000 to 30,000 people remained trapped on Sinjar Mountain without food, water, or shelter.⁸⁴ ISIS fighters kept Yazidi women and children in inhumane living conditions, providing insects for food and forcing them to drink from toilets.⁸⁵

Imposing Measures to Prevent Births and Forcibly Transferring Yazidi Children

The final two acts enumerated in Article II of the Genocide Convention are linked in the sense that they aim to destroy the future of a group through measures to prevent births or the forcible transfer of children away from the group. The first is a “biological” form of genocide, covering measures directed against the capacity of group members to procreate. These measures can be divided into two categories: methods devised to destroy the reproductive capacity of a group by physical means, and the setting up of insurmountable psychological obstacles to having children.⁸⁶ In patriarchal societies, where membership of a group is determined by the identity of the father, during rape, a woman of the protected group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother’s group, which could be grounds for genocide.⁸⁷ Imposing measures to prevent births within the group can be also achieved through mental effects. For instance, rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.⁸⁸ Apart from the fact that the offspring of such circumstances is considered as belonging to the father, these children cannot even become members of the Yazidi community according to the Yazidi religion, as members of the group require two Yazidi parents, and it is not possible to convert to the Yazidi religion.⁸⁹

The UNHCR reported that abortions were performed on captured pregnant women. One woman recounted that a member of ISIS sat on her stomach to kill her unborn child, saying: “this baby should die because it is an infidel.” Another witness said that prior to an abortion performed on two pregnant women, an ISIS fighter stated “we do not want more Yazidis to be

⁸² UNICEF Statement, Aug. 5, 2014, https://www.unicef.org/media/media_74676.html.

⁸³ UNAMI, “Report on the Protection of Civilians in Armed Conflict in Iraq,” (July 6 – Sep. 10, 2014).

⁸⁴ UNHCR Statement, Aug. 12, 2014, <https://www.unhcr.org/print/53e9fe2d9.html>.

⁸⁵ Jenni Porkka, “Terrorism and Genocide; The Islamic State and the Case of Yazidis” (Master thesis, Uppsala University, 2017).

⁸⁶ Tamas, Berster, and Schiffbauer, “Convention on the Prevention,” 126.

⁸⁷ ICTR, *The Prosecutor v. Lean-Pawl Akayesu*, para. 508.

⁸⁸ Triffterer and Ambo, “Rome Statute of the International Criminal Court,” 140.

⁸⁹ Duarte-Herrera and Ifsits, “Genocide against Yazidis,” 11.

born.”⁹⁰ The sexual violence against the Yazidi women and girls resulted in many women not wanting to marry, or to contemplate relationships with men in the future. This was compounded by the sense that they lost their honor. This lasting psychological damage is another way in which the rapes constituted a measure to prevent births within the group.⁹¹

Lastly, ISIS also committed genocide via “forcibly transferring children of the group to another group,” as defined in the UN Convention. On April 26th, 2014, the ISIS leader Abu Bakr al-Baghdadi issued a fatwa in which he ordered the separation of Yazidi children from their mothers, with children as young as two years old to be transferred to the Madrassa Jihadia “indoctrination school,” and those over ten years old to be sent to the Jihadia Institute in Tall-Afar. The fatwa also decreed that the women were to be transferred throughout ISIS-held Iraq and Syria, and presented to so-called “emirs” for sexual exploitation.⁹²

Specific Intent

In addition to the material elements described above, the crime of genocide requires that the perpetrators have acted with specific intent to destroy a protected group. General intent relates to the acts listed in the offense and specific intent relates to the knowledge by the perpetrators that their actions target one of the protected groups.⁹³ Investigators or prosecutors typically look first to evidence that genocidal crimes were committed and then analyze whether or not the person responsible acted with genocidal intention.⁹⁴ Proving genocidal intent with direct evidence can be extremely difficult if the accused does not confess, but judges can rely upon circumstantial evidence, including the gravity of the offense, the existence of a plan or a policy to exterminate a protected group, the fact that only members of a particular group were attacked, and meaningful accessory actions, such as the destruction of cultural property belonging to the protected groups.⁹⁵

The term “intent” in Article II of the Genocide Convention was defined by the ICJ to require evidence of acts on a scale that establishes an intent not only to target certain individuals because of their membership to a particular group, but also to destroy the group itself in whole or in substantial part.⁹⁶ The ICTR has held that a “wide-scale attack against the targeted group” is sufficient circumstantial evidence to prove intent, and determined that genocidal intent does not require the actual destruction of a substantial part of the group.

⁹⁰ UNHCR, “Report on the Human Rights Situation in Iraq (A/HRC/28/18),” para. 39-41.

⁹¹ UNHCR, “‘They Came to Destroy,’” para. 147.

⁹² UN Security Council, “Report on Conflict-Related Sexual Violence (S/2016/361),” para. 40.

⁹³ Kai Ambos, “What Does ‘Intent To Destroy’ in Genocide Mean?” *International Review of the Red Cross* 91.876 (2009): 841.

⁹⁴ Carsten Stahn, “A Critical Introduction to International Criminal Law” (Cambridge: Cambridge University Press, 2019).

⁹⁵ Helmut Satzger, “International and European Criminal Law,” (Munich: C.H. Beck, 2012).

⁹⁶ ICJ, “Application of the Convention on Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*),” judgment, Feb 3, 2015, para. 138, 139 and 142.

Instead, even a single instance of one of the prohibited acts in the ICTR statute is sufficient, provided that the accused genuinely intends by that act to destroy at least a substantial part of the group.⁹⁷ The ICTY adopted the same approach to determining “genocidal intent”: the destruction of the group may constitute evidence of both the requisite intent and of the crime of genocide itself.⁹⁸

The behavior of ISIS fighters toward the Yazidi community manifested a truly genocidal intent. The atrocities against them were inspired by religious ideology. Numerous reports establish that ISIS fighters threatened to kill Yazidis if they did not convert to Islam. In a 2014 report, which was based on over 300 interviews with victims and eyewitnesses, the Independent International Commission of Inquiry on the Syrian Arab Republic (IICIS) concluded that ISIS’s attacks on the Yazidi community as well as their public statements over social media expressed a denial of the Yazidis’ right to exist.⁹⁹ In its 2016 report, IICIS concluded that the ISIS fighters focused their attack on the Yazidis purely because of their identity as Yazidis. For instance, a Yazidi boy was taken and told by an ISIS commander, “even if you see your father, if he is still Yazidi, you must kill him.” The ISIS fighters called the Yazidi people “dirty Yazidi.”¹⁰⁰ In its 2015 report, the UNHCR stated that the pattern of attacks against the Yazidis proved the intent of ISIS to destroy them as a group, whose identity is based on its religious beliefs.¹⁰¹

On May 29th, 2014, ISIS fighters entered local villages and began to execute the inhabitants, including women and young children, believing them to be Yazidis. According to survivors, the villagers were desperate to show that they were in fact Muslims. The ISIS fighters asked the victims to recite verses of the Quran. A group of fighters who did not understand Arabic killed 15 villagers, until an Iraqi fighter intervened to preventing further killings and explain to the others that the residents were Sunni Arabs.¹⁰²

Genocidal intention was clear. ISIS boasted about subjecting abducted Yazidi women and girls to sexual violence and slavery, seeking to legitimize these abhorrent and criminal practices according to their interpretation of Islam. After being captured, the Yazidi women were then divided according to the shari’a among the fighters,¹⁰³ and then distributed as a part of ISIS salary for its fighters.¹⁰⁴ Based on evidence collected by many sources, the Yazidis suffered serious bodily or mental harm as a result of deliberate actions of

⁹⁷ ICTR, *The Prosecutor v. Jean MPAMBARA*, Case No. ICTR-01-65-T, Trial Chamber, Sep. 11, 2006, para. 8.

⁹⁸ ICTY, *The Prosecutor v. Padoslav Brdanin*, Case No. IT-99-36-T, Trial Chamber, Sep. 1, 2004, para. 697.

⁹⁹ IICIS, “Rule of Terror: Living under ISIS in Syria (A/HRC/27/CRP.3),” Nov. 19, 2014, para. 37.

¹⁰⁰ UNHRC, “They Came to Destroy,” Para. 159, 160.

¹⁰¹ UNHCR, “Report on the Human Rights Situation in Iraq, (A/HRC/28/18),” para. 17.

¹⁰² Human Rights Council, “Report of the IICIS, (A/HRC/27/60),” Aug. 13, 2014, para. 56.

¹⁰³ Amnesty International, “Escape from Hell.”

¹⁰⁴ Josie Ensor, “I got four Yazidi virgins as part of my ISIS salary and had sex with a different one every night,” *Daily Telegraph*, July 31, 2017, <http://www.telegraph.co.uk/news/2017/07/31/quivering-isil-suspects-face-investigations-court-mosulatrocities/>.

ISIS that manifested an intent to destroy the Yazidi religious community. Yazidis were considered as infidels.¹⁰⁵ Under any of the various sources of international law, the militant group's conduct toward the them amounts to genocide.¹⁰⁶

¹⁰⁵ Human Rights Council, "Report of the IICIS, (A/HRC/27/60)."

¹⁰⁶ UNHCR, "Report on the Human Rights Situation in Iraq (A/HRC/28/18)," para 17.

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