



# **Ethnic, Racial, and Religious Conflicts Globally**

*Analysis, Research and Resolution*



ISSN 2373-6615 (Print); ISSN 2373-6631 (Online)

**Building Resilient Communities:  
Child-Focused Accountability Mechanisms for Yazidi Community Post-Genocide (2014)**

Brenda Hershey

*Trauma Recovery Yoga (TRY) Global, Kurdistan Region, Iraq*

Saman Omar

*College of Humanities and Political Sciences, University of Duhok, Kurdistan Region, Iraq*

## **Abstract**

This study focuses on two avenues through which accountability mechanisms can be pursued in the Yazidi community post-genocide era: judicial and non-judicial. Transitional justice is a unique post-crisis opportunity to support the transition of a community and foster a sense of resilience and hope through a strategic, multidimensional support. There is no ‘one size fits all’ approach in these types of processes, and this paper takes into account a variety of essential factors in establishing the groundwork for an effective approach to not only hold Islamic State of Iraq and the Levant (ISIL) members accountable for their crimes against humanity, but to empower Yazidi members, specifically children, to regain a sense of autonomy and safety. In doing so, researchers lay out the international standards of children’s human rights obligations, specifying which are relevant in the Iraqi and Kurdish contexts. Then, by analyzing lessons learned from case studies of similar scenarios in Sierra Leone and Liberia, the study recommends interdisciplinary accountability mechanisms that are centered around encouraging child participation and protection within the Yazidi context. Specific avenues through which children can and should participate are provided. Interviews in Iraqi Kurdistan with seven child survivors of ISIL captivity allowed for firsthand accounts to inform the current gaps in tending to their post-captivity needs, and led to the creation of ISIL militant profiles, linking alleged culprits to specific violations of international law. These testimonials give unique insight into the young Yazidi survivor experience, and when analyzed in the broader religious, community and regional contexts, provide clarity in holistic next steps. Researchers hope to convey a sense of urgency in establishing effective transitional justice mechanisms for the Yazidi community, and call upon specific actors, as well as the international community to harness universal jurisdiction and promote the establishment of a Truth and Reconciliation Commission (TRC) as a non-punitive manner through which to honor Yazidis’ experiences, all while honoring the experience of the child.

**Keywords:** Yazidis, transitional justice, international law, Islamic State of Iraq and the Levant (ISIL), child participation

## Introduction

### Background of the Study

The Yazidi<sup>1</sup> people are an ethno-religious minority, the majority of whom reside in the Sinjar region, a historically disputed area in Northern Iraq. They are members of Yazidism, one of the oldest ethnic and religious communities indigenous to the Middle East and the second largest minority in Iraq, following Christianity. Before ISIL<sup>2</sup> invaded in 2014, the population was over 600,000, the majority of whom lived in Sinjar City and the rest scattered among the surrounding villages (Van Zoonen & Wirya, 2017). Known as the ancient land of the Yazidi people, Sinjar is comprised mostly of small, rural communities dependent upon agricultural produce and, although the majority of the population is Yazidi, the area is also home to Sunni Arabs, Christians, and other smaller minorities.

ISIL demanded global attention in 2014 when it gained control over approximately 34,000 square miles of land in Iraq and Syria, their goal being to create an Islamic state based on extremist interpretation of Islamic political ideology. On August 3, 2014, at the peak of its reign, the terrorist organization launched its genocidal assault in and around the city of Sinjar. Citing the Yazidis' worshipping of a peacock deity called *Tawusi Malek*, whom they proclaimed to be equivalent to Satan in the Qur'an, ISIL justified forced conversions and the systematic slaughtering of the Yazidis.

It is estimated that 5,500 Yazidis were killed in August 2014 alone. As a direct result of the genocide, 6,417 Yazidis were captured and enslaved<sup>3</sup> and 2,745 children became orphans (Venis, 2022). The older people were killed right away, women and girls were enslaved and forced into sexual slavery for ISIL militants in the region, and the boys were indoctrinated, trained, and used as child soldiers. While ISIL is not unique in their recruitment, indoctrination, and exploitation of children as soldiers and sexual slaves, the terrorist organization boasts about its broader emphasis on the systematic recruitment and training of children as the new generation of jihadists; a generation to indoctrinate from the very beginning. According to a report by the UN Secretary General in 2018, the youngest child verified to have been recruited and trained to fight was just four years old and, understandably so, the psychological state of these returnees has suffered immensely.

ISIL's self-proclaimed 'caliphate' reigned in the region for a dark and damaging three years, and the genocide caused large-scale displacement with more than 500,000 Yazidis forced to flee mostly to the Duhok governorate of the Kurdistan Region of Iraq (KRI). Over the last eight years, they have been distributed among 22 camps and out-of-camp settings (Supporting Shingal's<sup>4</sup> Returnees Project, 2020). As well, some of the displaced eventually emigrated abroad, with Germany having the largest Yazidi diaspora worldwide of around 150,000 members (Bathke, 2019). Tired of displacement, Yazidis began migrating back to their homeland in June 2020, spurring a newfound sense of urgency for the prioritization of transitional justice, a period of transition from persecution and displacement to restoration and rebuilding for the Sinjar community.

### Literature Review

---

<sup>1</sup> Yazidi is also known as Yezidi, Ezidi or Eyzidi.

<sup>2</sup> Also known as *ISIS*, *IS* or *Daesh*

<sup>3</sup> 3,547 females and 2,870 males

<sup>4</sup> *Shingal* is Kurdish; *Sinjar* is Arabic.

## Transitional Justice

Transitional justice mechanisms are society's attempts to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice and achieve reconciliation (Report of the Secretary-General, 2004). These processes fall into one of four categories: criminal prosecutions, truth-seeking or fact-finding, reparations for human rights violations and reformation of law and institutions. As is highlighted in processes of the past, judicial and non-judicial mechanisms should be seen as complimentary rather than alternatives to one another. There is a range of options from which to choose depending on the community's needs, including criminal trials, truth commissions, national days of memory, restitution/reparations, reformation of national law, public apologies, and monuments to memory or peace. They are ultimately designed to build a bridge from the present to the future; from war to peace; from human rights violations to human rights protection and security.

There is no 'one size fits all' approach to transitional justice. Rather, different processes should be chosen based on each society's unique political, cultural, and socioeconomic environment. Because each situation is vastly different, youth should be engaged in a manner and capacity that is contextually appropriate. By analyzing lessons learned from other case studies and analyzing aspects of the Yazidi experience, we can better understand how to effectively engage Yazidi youth.

## The United Nations Convention on the Rights of the Child (UNCRC)

The crimes committed by ISIL also violate an exclusive area of international law: children's human rights. While the ratifying of the UNCRC in 1989 was a monumental victory for children and children's rights advocates, along with the preceding Declaration of the Rights of the Child<sup>5</sup> in 1924, the implementation of these documents has proven incredibly challenging.

The UNCRC is currently signed and ratified by 196 States including Iraq, its general principles being non-discrimination, the best interests of the child, a child's right to life, survival and development, and their right to be heard. The document lays out obligations of the State, and among these obligations includes the responsibility to ensure its citizens abide by the agreed upon standards. In this case, that means States with ISIL members should feel pressure to hold their citizens accountable to the binding agreements of the UNCRC.

The UNCRC "specifically provides that children have the right to participate in decisions affecting their lives and to redress for harm committed against them" by obligating State parties to promote the "physical and psychological recovery and social reintegration of a child victim...in an environment which fosters the health, self-respect and dignity of the child" (Parmar et al., 2010, p. 40). These policies have underpinned past transitional justice processes renowned for their emphasis on holistic child participation and are regularly cited in upholding the rights of children around the world.

## Child Participation in Transitional Justice

In the last twenty years, child participation has been increasingly promoted in transitional justice processes and is now widely understood as an *essential* element to its success. Children are typically the majority of the affected population and often persecuted to a larger degree, which is especially true for Yazidi children who bore the brunt of ISIL's crimes. Because their

---

<sup>5</sup> Otherwise known as the Geneva Declaration

experiences and voices are an integral part of the national perspective and collective memory, the history of the conflict and its aftermath cannot be properly memorialized without their input.

Children's roles are twofold: They hold perspectives as witnesses and victims and sometimes even perpetrators; therefore, it is important that their experiences are communicated and acknowledged. As well, children are family members and citizens of their communities, which means they are key stakeholders in accountability and reconciliation processes. As rights-bearing members of society, they will inevitably inherit the results of the transition and should be seen as critical actors. "With guidance and support, children can help to inform and energize efforts toward reconciliation and recovery" (Parmar et al., 2010, p. 15).

### **Non-Judicial Mechanisms: Truth and Reconciliation Commission (TRC)**

Yazda, a local organization whose sole purpose is to further the Yazidi cause, is conducting an ongoing documentation of the genocide in an effort to preserve and honor people's experiences as well as gather evidence through interviews with survivors and witnesses to facilitate legal accountability. Additionally, the organization is documenting mass grave sites, informing displaced Yazidis about legal services and connecting them with attorneys, and advocating on behalf of the community for the establishment of transitional justice strategies.

A prominent mechanism which could build upon Yazda's initiatives comes in the form of a Truth and Reconciliation Commission (TRC), which aims to "...discover, clarify, and formally acknowledge past abuses, to respond to specific needs of victims; to contribute to justice and accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past" (Through a New Lens, n.d.). Meant to be complimentary to criminal justice proceedings, TRCs are a non-judicial and non-punitive approach to hold perpetrators accountable and acknowledge survivors' experiences. Such a mechanism could potentially give Yazidis a platform to share their experiences, contribute to the collective memory of the genocide, and promote a participatory legal framework.

The traumas endured by the Yazidi community were multi-layered, and so must be their approach to reconciliation. On an individual level, in addition to the general population's grave losses, child survivors are left to come to terms with their experiences, and women subjected to sexual abuse and slavery are forced to reconcile with themselves as well as the community, despite initiatives of acceptance by Yazidi leaders. Moreover, heavy distrust between Yazidis and their Sunni Muslim neighbors looms after their cooperation with ISIL and subsequent betrayal. For the purpose of this study, the child-focused TRCs conducted in Sierra Leone and Liberia were analyzed to reflect on lessons learned and gain a deeper understanding of what a TRC may look like in the Yazidi context.

### **Case Studies: Sierra Leone and Liberia**

A brutal conflict plagued Sierra Leone from 1991 to 2002, the extreme abuse and misuse of children being a prominent factor. Common atrocities included rape, amputation, and the systematic recruitment and training of child soldiers. The series of civil wars in Liberia from 1986-2003 were similarly characterized. Both cases share this large scale, systematic abuse of children and use of child soldiers with the Yazidi genocide and its aftermath. Because children were prime targets during these conflicts, and because of the major impact on their lives, their families, and their futures, their participation in the TRCs was considered essential, and prioritization of their perspectives was weaved into the framework of the process.

The Sierra Leone TRC laid the groundwork for child participation in truth commissions and transitional justice processes more generally. It... “was the first to call for a focus on children and to specify the need for procedures to protect the rights of children involved... both acknowledging and involving children in the process for the first time” (Parmar et al., 2010, p. 164). One of the main activities involved gathering statements from children in closed, thematic hearings while paying special attention to gender-based violence. The findings were then compiled and used to produce and distribute child-friendly versions of the Commission report among community members. The intention was to not only make the findings accessible and understandable for the affected child population, but for them to serve “as a measure to prevent recurrence of what happened” (Parmar et al., 2010, p. 176).

The TRC of Liberia established similar frameworks and activities but is known to have expanded upon these efforts while catering them to the Liberian context. Its objectives were to establish the causes and effects of the Liberian conflicts on the population; promote national peace, security, reconciliation and unity; investigate violations of human rights through criminal prosecutions and reparations; and compile findings and distribute them among the population. Activities included awareness-raising workshops, statement-taking, and children’s hearings.

The memorandums of understanding (MOUs) of the TRC were underpinned by the UNCRC and the African Charter on the Rights and Welfare of the Child (ACRWC), as was the case in Sierra Leone. With cooperation from the UNICEF country office and the child protection network (CPN)<sup>6</sup>, Liberia established a concrete focus on children from the beginning. Brought from the dedication and cooperation of UNICEF, the CPN and TRC decision makers was the CPN-TRC Task Force, which established a thorough children’s rights framework and enforced it throughout the process. The child protection agencies (CPAs) were consulted regularly, commissioners drawing from their expertise to guide all activities.

Experts facilitating the TRC processes went to great lengths to ensure child protection. Social workers were a key aspect of the process’s success, assisting children in statement-taking and ensuring practices were trauma-informed, aligned with the protection framework, and maintained participant animosity. Statement-takers underwent a variety of trainings to adequately conduct child-sensitive interviews and workshops. Facilitators conducted vulnerability assessments and used a safety checklist prior to the approximately 300 interviews conducted in each country.

The establishment of both TRCs was officially called for by the respective government in larger peace agreements, the one in Sierra Leone simultaneously establishing a Special Court through which to prosecute perpetrators. Child participation and protection was intentionally weaved into the judicial framework, and participants from the TRC were carefully selected to testify in court, if they wished to do so. Whereas adult hearings were open to the public, children testified behind screens in closed sessions in order to protect their identity. The work of the TRC and Special Court both overlapped and complimented each other, posing many benefits as well as lessons learned.

In Liberia, however, the TRC was the main transitional justice mechanism, neglecting a strong judicial means of accountability. Consequently, even though the TRC is renowned for its emphasis on child participation, Liberians felt generally unsatisfied with the lack of retributive measures, with perpetrators living openly among the community (Parmar et al., 2010). This lesson speaks directly to the significance of an interdisciplinary approach.

---

<sup>6</sup> Made up of child protection agencies throughout the country

## The Judicial Approach: Existing Legal Framework

Unlike humanitarian law, international criminal law is predominantly centered around obligations of the individuals rather than the State, and individual criminal responsibility has been of central importance in holding ISIL members accountable in a manner proportionate to their crimes. The 1947 Nuremberg judgement affirmed the capacity of individuals to commit crimes and distinguished between the responsibility of States and individuals. Quoted from the groundbreaking justice trial, “Crimes against international law are committed by men, not by abstract entities, and only punishing individuals who commit such crimes, can the provisions of international law be enforced” (Krzan, 2016, pp. 81-88).

There are three core international crimes specific to children: “the war crime of conscripting or enlisting children or using them to participate actively in hostilities; the crime of genocide for transferring children from one group to another; and the war crime of attacking schools and other buildings dedicated to education” (Parmar et al., 2010, p. 84). Child participation in judicial processes is a relatively recent development, considered a highly sensitive yet essential aspect in the pursuit of post-conflict justice. As it continues to evolve, case studies demonstrate how participation without proper protection for the participants can be more harmful than helpful, which was true in the very first trial of the ICC in 2009 when a former child soldier withdrew his statement and was discredited, likely due to lack of preparation and protection.

## The Genocide Convention

The UN Convention to Prevent and Prosecute Crimes of Genocide<sup>7</sup> is the foundational document that codified the crime of genocide for the very first time in 1948. Post-World War II, it was the international community’s commitment to ‘never again,’ and obligates parties to prevent and punish genocidal campaigns. Among the signatory parties are 152 countries including Iraq, Syria and all of Europe and America. As such, these state parties hold an obligation to prosecute individuals on grounds of genocide in a competent tribunal of the State (Convention on the Prevention, 1948).

The attacks on Yazidis in 2014 consisted of all three fundamental elements of genocide as laid out in the Genocide Convention: ethnical and religious group, specific intent, to destroy in whole or in part, and physical destruction. Experts declared that Yazidis were attacked for simply *being* rather than *doing* or provoking, and The Office of the High Commissioner for Human Rights further concluded that the atrocities committed by ISIL qualified as genocide (Convention on the Prevention, 1948).

## The International Criminal Court (ICC)

Just after the start of the Yazidi genocide in August 2014, the ICC began receiving and subsequently reviewing disturbing allegations of crimes being committed by ISIL in Iraq and Syria. Though the alleged crimes undoubtedly threatened the peace, security and stability of the region and beyond, in an act of transparency, the ICC publicly noted its limited jurisdiction in this case. This was essentially because... “Syria and Iraq are not Parties to the Rome Statute, the founding treaty of the ICC, which means the Court has no territorial jurisdiction over crimes committed on their soil” (Bensouda, 2015). Another avenue through which the ICC could have potentially intervened was by referral of the UN General Assembly, but a proposed resolution in

---

<sup>7</sup> Otherwise known as the Genocide Convention



2014 meant to give the ICC territorial jurisdiction in Syria was vetoed by two member States: Russia and China (Bensouda, 2015).

While Article 5 of the Rome Statute notes the international crimes within the jurisdiction of the Court as genocide, crimes against humanity, war crimes and crimes of aggression, Articles 6 and 7 elaborate on what actually constitutes genocide and crimes against humanity (Rome Statute, 1998). Nearly 40,000 foreign fighters from around 80 countries voluntarily joined the terrorist organization, many of whom relocated to Iraq and Syria. According to these articles, foreign fighters directly linked to violations of Articles 6 and 7 are under personal jurisdiction of their home country as well as the ICC; however, the ICC operates according to a complementary protocol, stepping in only if the home country is unable and unwilling to take action. In August 2017, the Iraqi government called upon the international community for assistance in identifying and prosecuting ISIL militants (Farrall, 2019).

### **United Nations Investigative Team to Promote Accountability for Crimes Committed by Daesh/ISIL (UNITAD)**

Following the Iraqi government's request, the United Nations Security Council requested that the Secretary-General "...establish an investigative team to support Iraqi domestic efforts to hold (ISIL) accountable for crimes it committed in the country by collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity, and genocide" (Iraq (UNITAD), 2020). UNITAD was officially established in September 2017, the team's focus on three areas of investigation: the crimes committed in Mosul, the mass killing of unarmed Iraqi air force cadets from Tikrit Air Academy/Camp Speicher, and the genocide of the Yazidi community in the Sinjar region.

UNITAD's appointed Special Advisor, Karim Asad Ahmad Khan, has commended the Iraqi government for their cooperation and support, but there is an inevitable gray area in navigating their partnership. UNITAD is mandated to help build evidence against alleged ISIL perpetrators and hand this evidence over to the Iraqi government, who should prosecute accordingly. However, as required by Resolution 2379, UNITAD must abide by "UN best practices," which prevents them from sharing evidence for criminal proceedings where capital punishment may be imposed. As it may be, the death penalty is imbedded within the Iraqi legal system, limiting their working relationship.

Despite this limitation, Khan reported in November 2019 that his team had identified over 160 perpetrators and would continue building cases to present to appropriate courts. The investigative team has also assisted in uncovering at least 79 mass graves, and more recently sought cooperation from Iraqi phone providers who gave investigators access of cell phone records (UNITAD Identifies Over 160 ISIS, 2019). The data retrieved fit the timeframe and geographic location of the Yazidi massacre, aiding significantly in building ISIL profiles. Even with this national effort and international support, however, progress is lagging, and the international community is being called on yet again to step up and step in.

### **Universal Jurisdiction**

In 2021, German courts were the first to conduct a thorough investigation specifically addressing the crimes of genocide and crimes against humanity by an ISIL member. The country had Iraqi national Taha Al J. extradited from Greece on charges of trafficking human beings for the purpose of labor exploitation and cruelly killing a person while a member of ISIL. The

country is able to exercise jurisdiction under the Code of Crimes Against International Law (CCAIL) which is their implementation of the principle of complementarity under the Rome Statute into German criminal law. Established in 2002, this formalization of universal jurisdiction enables German prosecutors to try individuals of any nationality for genocide, crimes against humanity and war crimes (Kather & Schwarz, 2020).

According to Amnesty International, 163 of 193 UN Member States “can exercise universal jurisdiction over one or more crimes under international law, either as such crimes or as ordinary crimes under national law” (Universal Jurisdiction, n.d.). Exercising universal jurisdiction means that states need no link to the alleged criminal in order to prosecute them. This is based on the principle that such serious violations of international law like genocide, crimes against humanity and war crimes threaten the international community and international order itself, giving individual States authority to act. Universal jurisdiction is typically invoked when more traditional means of accountability are unavailable. With Germany as an example, countries can act by incorporating universal jurisdiction into domestic legal frameworks, empowering them to act on behalf of the global community’s best interests when traditional mechanisms fail to do so.

Since then, in July 2022, a second conviction has taken place, as the Higher Regional Court of Hamburg convicted German ISIL member Jalda A. of abetting genocide as well as crimes against humanity for enslaving a young Yazidi woman. While this is in progress, only two convictions in eight years are not enough.

## **Statement of the Problem**

### **A Sense of Urgency**

Despite demands for accountability on behalf of the Yazidi community, the results have fallen short of expectations thus far, and advocacy on behalf of Yazidi children, even less so. Two significant avenues through which to pursue transitional justice to address accountability need attention: retribution of ISIL members through judicial means, and non-judicial approaches that highlight reconciliation and honor survivors’ experiences.

Beginning in June 2020, six years after the genocide, an unprecedented number of displaced Yazidis began migrating back to the Sinjar region despite security concerns and a severe lack of basic services. Ahmed Khudida, the Joint Director of Yazda, stated at the start of the migration, “People are waiting for a rebuilding plan for Sinjar, justice and reconciliation but nothing has happened now and there is no plan for that. Many have grown tired of waiting” (Rullan, 2020). This ongoing event has brought a sense of urgency to the forefront of all transitional justice efforts.

### **The Non-Judicial Approach**

Yazda has been providing Yazidis in the region with a variety of services including an ongoing documentation of the genocide, their main challenges being:

Lack of appropriate, internationally standardized, and protective-to-victims legal and cultural documentation efforts; lack of an effective local or international accountability mechanism; lack of coordination between the documentation players – national, international, and civil society; lack of expertise in legal case filing and advocacy work; poor

archiving of current documentation programs within Yazda and other organizations. (Documentation Project, 2020)

Missing from current initiatives is a TRC, the non-judicial accountability and reconciliation mechanism, which has proven a powerful transitional justice tool in past cases. TRCs can lay the groundwork for community and child participation, protection protocols, educational and institutional reform, and expand means through which accountability can be pursued.

### **The Judicial Framework**

Moreover, it took about *seven* years for a trial centered around crimes of genocide and crimes against humanity to take place. The thousands of trials that have taken place in Iraq and the Kurdistan Region of Iraq (KRI) have been pursued under a blanket anti-terrorism law which neglects to acknowledge and prosecute them proportionately to the severity of their crimes. Instead, under these laws, anyone suspected of *affiliation* with the terrorist group is typically sentenced to life in prison or death. This means that doctors forced to work in ISIL-run hospitals or cooks forced to prepare food for militants are often being prosecuted and sentenced to the same degree as the ISIL trainers and leaders.

Through first-hand interviews and investigations, Human Rights Watch (HRW) reported that Iraqi and Kurdistan Regional Government (KRG) authorities lack a national strategy in prosecuting ISIL militants and prioritizing cases based on the severity of crimes (Flawed Justice, 2017). Utilizing the antiterrorism laws rather than charging individuals with specific offenses under the criminal code is typically a much easier, swifter process because local prosecutors simply need to prove membership or affiliation to the terrorist group, rather than providing evidence of a specific crime. Reportedly, with the support of UNITAD, the Iraqi government is in the process of establishing a tribunal to hold members of ISIL accountable for their war crimes, but the timeframe has yet to be announced. This mishandling of ISIL cases has led to controversy and disapproval by victims of ISIL and the international community alike.

Furthermore, national governments have made little to no effort to incorporate victim and witness participatory methods by disallowing victims to attend trials, appear as witnesses, share their testimonies, or submit questions to suspects. So far, child participation in ISIL-related judicial processes has been non-existent, as is any type of protection framework for child witnesses and survivors.

### **Reformation of Law & Child Participation**

The “Yazidi Female Survivors’ Law” was considered groundbreaking in 2019, acknowledging for the first time the suffering of Yazidi women who were enslaved by ISIL. However, it was widely considered insufficient in addressing the aftermath of the ISIL conflict for a few significant reasons. One reason is because it only acknowledges the sexual abuse against *Yazidi* women and girls, when in reality, Shi’i Turkmen, Christians, Shabak and even Sunni women were also subjected to sexual and gender-based crimes under international criminal law. In fact, there is no recognition by the Iraqi government of the mass human rights violations committed against any of these other minorities. This shortfall of the bill has led to intra-community tensions and, inevitably, further division. Moreover, the bill excludes any genocidal acts other than sexual violence against women, meaning the genocidal crimes committed against men, women and children that don’t fall into this specific category remain

unacknowledged. By exclusively stating “the crimes committed against female survivors shall be considered genocide crimes,” the genocide in whole is not officially recognized (Bor, 2019).

Although the prioritization of child participation is coming to the forefront globally, this concept contradicts the cultural norm in the larger Middle Eastern region, in Iraqi culture, and more specifically within the Yazidi community. In both judicial and non-judicial efforts by the Kurdistan Regional Government (KRG) and Iraqi government thus far, the participation of child victims and survivors has been nearly non-existent. Shifting the trajectory of such efforts to a more holistic approach will be challenging, as it requires a mindset shift in addition to reformation of current systems. Historically, however, making the shift has proven to enhance children’s capacity as active citizens and help develop a sense of ownership for themselves and their communities.

### **Aim of the Study**

The aim of this study is to bring attention to and elaborate upon the dire need for accountability mechanisms for the Yazidi community. Emphasizing an interdisciplinary and inter-sectoral approach, the study focuses on establishing and implementing a truth and reconciliation commission (TRC), which addresses accountability non-judicially and non-punitively, and is meant to be complimentary to judicial approaches. Moreover, harnessing universal jurisdiction is highlighted as the weapon held by international State actors, their ability to do so dependent on how they’ve incorporated it into their domestic legal framework. Through examination of case studies, this study offers recommendations centered around the Yazidi context and emphasizes a child-focused framework.

### **Research Question**

How can national and international parties effectively harness non-judicial mechanisms and international law to promote reconciliation and ensure accountability of ISIL members on behalf of Yazidis in a manner that promotes child participation?

### **Significance of the Study**

The study addresses avenues through which Yazidis can pursue reconciliation and demand accountability for the crimes committed against them in the 2014 genocide. Drawing from interviews with child survivors of ISIL, participants elaborated upon their experiences, revealing perpetrator names and other identifying information. Contents of the interviews will be provided as evidentiary support to appropriate entities, including UNITAD, Yazidi Legal Network (YLN), and Yazda in the ongoing effort to identify and prosecute ISIL members as well as document the genocide. This report reframes the role of Yazidi children in the transitional justice process and recommends tangible ways in which they can participate in reconciliation and accountability mechanisms.

## **Limitations of the Study**

This study was conducted in 2020, six years after the start of the genocide.<sup>8</sup> As well, the aforementioned participants are but a tiny percentage of child survivors. The qualitative data collected is self-reported, which means it is limited by the fact that it cannot be independently verified. In other words, we had to take children's testimonials at face value. This self-reported data could potentially take different forms of bias including:

1. Selective memory: (not) remembering experiences or events that occurred at some point in the past;
2. Telescoping: recalling events that occurred at one time as if they occurred at another;
3. Attribution: the act of attributing positive events and outcomes to one's own agency but attributing negative events and outcomes to external focus; and
4. Exaggeration: the act of representing outcomes or embellishing events as more significant than is actually suggested from other data.

Interviews with child survivors were initially conducted in the Kurdish language, and later translated to English. During translation, it is possible that specific meanings or expressions were affected by the interpretation of researchers.

## **Methodology**

The study is based on a combination of primary and secondary sources. Drawing from existing literature and case studies, the study expands upon current understandings of the issues at hand by contributing insight gained from primary research. The interviews were conducted collecting qualitative data which is descriptive and regards phenomenon that can be observed but not measured.

## **The Results**

### **Child Survivor Interviews<sup>9</sup>**

Seven Yazidi child survivors<sup>10</sup> of ISIL were interviewed for this study voluntarily and with informed consent by them and a parent or guardian. The structure of the interview entailed children recalling their experiences with ISIL, all but one of them being held captive. All seven participants were from different households, aged between 6-14 at the time of attack in 2014, and currently living in the Duhok governorate of the Kurdistan Region of Iraq (KRI).

Regardless of gender or age, each child was forcibly transferred to ISIL territory in either Iraq or Syria. The children were forced to convert to Islam and attend Islamic school where they underwent an intensive indoctrination, which is elaborated upon in detail throughout the interviews. The majority of the participants describe being jailed in different facilities for weeks or months at a time. Tragically, each of the participants lost family members, most of them having lost one or both parents as well as multiple siblings and other immediate relatives – the fate of many remaining unknown.

---

<sup>8</sup> August 2014

<sup>9</sup> The full interview transcriptions, as well as the complete chart containing information on alleged ISIL members is not available to the public but will instead be provided to entities including UNITAD to be used as evidentiary support. If made public, it cannot be considered evidence in a court of law.

<sup>10</sup> Three girls, four boys

Of these participants, three were at least 10 years old in 2014, a deciding factor that meant separation from their parents upon capture. They were then forced to convert to Islam and either sold as sex slaves or indoctrinated to become fighters, depending on their gender. For the three participants who were under 10 years old, they were able to remain with at least one parent or family member after their initial capture.

While the children each had their own unique experiences, there were notable themes in the crimes committed against them and, as mentioned, their gender determined the nature of those crimes. Two female participants described their experiences as sex slaves; forced to “be housewives” for ISIL members and their families, taking beatings and being raped repeatedly by multiple men. They were sold from militant to militant and often forced into marriage. The participants were ages 10 and 11 at the time of capture, and both had their virginity taken by an ISIL militant.

The males faced a different fate. They were systematically forced to attend Islamic school where they “learned to be Muslims” and most of them were later taken to Syria to undergo military training and forced to be ISIL fighters. Two of the participants, ages 11 and 14 when captured, describe their experience as ISIL fighters and their journeys enduring extremism that eventually led them back home.

From the seven interviews, a total of forty-four alleged ISIL members were identified, including information about their nationality, approximate age, crimes committed and other details that could aid in identification. Each ISIL affiliate has been linked to specific violations of international law and researchers have created profiles based upon this information.

The UNCRC articles that have been violated by ISIL, according to the child survivors’ testimonials, are listed here not only for readers but for the children themselves, reinforcing their right to information. As stated, each member state has an obligation to respect, fulfill and protect the UNCRC, which means holding their citizens accountable for such violations.

**Table 1:**

*UNCRC Articles Violated by ISIL Members, Per Primary Interviews with Child Survivors*

Article 4	Implementation of the Convention (obligations of the States)
Article 6	Life, Survival & Development
Article 7	Birth Registration, Name, Nationality & Care
Article 8	Protection & Preservation of Identity
Article 9	Separation from Parents
Article 10	Family Reunification
Article 11	Abduction and Non-Return of Children
Article 12	Respect for the Views of the Child
Article 13	Freedom of Expression
Article 14	Freedom of Thought, Belief & Religion
Article 15	Freedom of Association

Article 16	Right to Privacy
Article 17	Access to Information from the Media
Article 19	Protection from Violence, Abuse & Neglect
Article 27	Adequate Standard of Living
Article 28	Right to Education
Article 29	Goals to Education
Article 30	Children from Minority or Indigenous Groups
Article 31	Leisure, Play & Culture
Article 32	Child Labor
Article 34	Sexual Exploitation
Article 35	Abduction, Sale & Trafficking
Article 36	Other Forms of Exploitation
Article 37	Inhumane Treatment & Detention
Article 38	War and Armed Conflicts

Furthermore, upon children’s escape or rescue from ISIL captivity and relocation to the Kurdistan Region of Iraq (KRI), the state has failed to uphold the following articles to the universal standard of children’s human rights as defined by the UNCRC:

**Table 2:**  
*UNCRC Articles Neglected by Kurdistan and Iraqi Governments*

Article 39	Recovery from Trauma & Integration
Article 40	Juvenile Justice

## Discussion

### The Judicial Approach

The benefits of having conducted these interviews is twofold. First, the data collected about ISIL members will be provided as evidentiary support to entities like UNITAD, the Yazidi Legal Network (YLN) and others in an effort to identify, detain and prosecute alleged perpetrators. They will also contribute to Yazda’s current efforts to document the genocide and are a starting point in statement-taking for a TRC. Secondly, children were given an opportunity to express themselves in a safe environment, exercising their right to participate and be heard in a process that will surely impact their lives.

The children's testimonials affirm what the global community has widely recognized; that ISIL militants committed a wide range of atrocities against the Yazidi community including genocide, crimes against humanity and war crimes, as laid out in Articles 6 and 7 of the Rome Statute. Over all, every single allegation as described in this report by the UN Secretary General was confirmed in the experiences of study participants: "ISIL has sought to erase the Yazidis through killings; sexual slavery, enslavement, torture and inhuman and degrading treatment and forcible transfer causing serious bodily and mental harm; the infliction of conditions of life that bring about a slow death; the imposition of measures to prevent Yazidi children from being born, including forced conversion of adults, the separation of Yazidi men and women, and mental trauma; and the transfer of Yazidi children from their own families and placing them with ISIL fighters, thereby cutting them off from beliefs and practices of their own religious community" (UN Human Rights Panel, 2016).

### **The Non-Judicial Approach**

It was explained to participants that the purpose of the research was to build ISIL profiles based on information obtained and to provide it as evidentiary support to appropriate entities in hopes of detaining ISIL members. It was also explained that participants' identities would remain anonymous. Generally, knowing their experience could potentially contribute to holding perpetrators accountable for their crimes, children were willing and somewhat eager to participate. If the statements were collected in a structured manner, on a larger scale and then compiled into a child-friendly report like in Sierra Leone and Liberia, participants could potentially see the impact of their contribution which would likely encourage their capacity to be active citizens, as they rebuild their lives and their community.

### **Conclusion**

In order for accountability mechanisms to move the post-conflict Yazidi community forward, it needs to be pursued through both judicial and non-judicial measures. Although this research incorporated only seven Yazidi children's experiences, the content of their testimonials confirmed the widespread allegations that ISIL committed genocide, crimes against humanity and war crimes. Information from the interviews led to the creation of ISIL profiles which will further the Yazidi cause for accountability. Moreover, it will contribute to the ongoing documentation of the genocide and support the demand for a call to action in establishing a TRC for the Yazidi community.

Expanding upon case studies of past TRCs, researchers are optimistic that a similar process for Yazidis is not only possible, but necessary, and child participation and protection will be a key element in its effectiveness. A popular Chinese proverb says: "The best time to plant a tree was 20 years ago. The second-best time is *now*." For Yazidis, this would read: "The best time to pursue justice and demand accountability was 6 years ago. The second-best time is *now*."



---

## **Recommendations**

### **To the Iraqi & Kurdish authorities:**

- Reform the Iraqi reparation bill for Yazidi female survivors to fully acknowledge the Yazidi genocide and, furthermore, acknowledge the crimes against humanity committed against other minorities in the region.
- Establish a special tribunal to prosecute ISIL members proportionately to their crimes, rather than utilizing the blanket anti-terrorism law.
- Suspend the death penalty in order to strengthen cooperation with UNITAD and utilize the evidence and resources UNITAD offers.
- Allow and encourage witness/survivor participation by allowing them to testify and establishing a framework for protection.
- Reestablish your commitment to upholding Articles 39 and 40 of the UNCRC: recovery from trauma & integration and juvenile justice.
- Officially call for a TRC for the Yazidi community, which is typically part of a larger peace agreement, like the recent Sinjar Agreement.<sup>11</sup>
- Integrate the TRC's findings and recommendations into the fabric of Iraqi and Kurdish governance. This may be improving access to and quality of education, enhancing livelihood opportunities and support, or supporting conflict resolution and reconciliation at individual and community levels.

### **To UNITAD:**

- Use the ISIL profiles provided in this study to assist in your pursuit of accountability for ISIL members in Iraq.
- Support national governments in establishing and expediting a special tribunal to prosecute ISIL members proportionately to the crimes committed.

### **To the ICC:**

- Use the ISIL profiles provided in this study to assist in your pursuit of accountability of ISIL members by means of personal jurisdiction.
- Forward ISIL profiles to relevant third-party States regarding foreign fighters under their jurisdiction.

### **To third-party States authorities:**

- If not already done, incorporate the Rome Statute into your domestic legal framework in a manner that supports the urgent pursuit of ISIL members for violations of international law.
- Support efforts to establish a TRC for Yazidis, whether that be in coordination with governmental authorities, organizations and/or third parties.

---

<sup>11</sup> The Sinjar Agreement was signed jointly by Iraqi and Kurdish authorities in October 2020.

### To Yazda:

- Use child survivors' testimonials to build upon your documentation of the Yazidi genocide and continue encouraging child participation and protection throughout the process.

### Key Aspects in Establishing a TRC for Yazidis:

- Iraqi and Kurdish CPAs, the country UNICEF offices and relevant third-parties like Yazda must convene, strategize, and develop a CPA-TRC Task Force. If not officially called for by governmental authorities, these parties must take it upon themselves to initiate and foster the project, emphasizing community participation.
- Build upon Yazda's ongoing documentation of the genocide and utilize this key partnership throughout the TRC process.
- Establish a framework to ensure confidentiality and child protection and avoid re-traumatization of child participants, prioritizing gender-based, sexual crimes.
- Establish the TRC within the Yazidi context, seeking foreign guidance and partnerships while emphasizing local participation, ownership, and decision-making in order to maintain local credibility and ensure cultural sensitivity in all aspects of the TRC.
- Conduct awareness-raising workshops, statement-taking (minimum 300 statements), regional and institutional children's hearings, and conversations to ease tension among other ethnic and religious groups in the area. Educate community on child participation, as Yazidi kids will depend on support from family and community members.
- Facilitate ongoing children's rights and trauma-informed trainings for statement-takers and workshop facilitators, relying upon CPAs and their expertise for guidance.
- Take statements from adults and children, adapting the adult statement form for children and abiding by a set of child-sensitive guiding principles and interview strategies.
- Work with children based on their age at the time of the conflict, rather than current age.
- Compile the findings of the TRC into a child-friendly commission report and distribute widely among Yazidi population.
- Carefully select child participants of the TRC<sup>12</sup> to testify in a closed session, which can be used in further building ISIL profiles. Given the failure to include children in judicial processes thus far, this could be an entry point to give child survivors a platform to be heard and contribute to the process in a safe, protected environment.

### References

- Aptel, C., & Ladisch, V. (2011). *Through a new lens: A child-sensitive approach to transitional justice*. International Center for Transitional Justice.  
<https://www.ictj.org/publication/through-new-lens-child-sensitive-approach-transitional-justice>
- Barzani Charity Foundation. (2020). Supporting Shingal's Returnees Project. <https://bcf.krd/>
- Bathke, B. (2019, July 31). *Yazidi refugees in Germany suffer severely from 2014 genocide*,

---

<sup>12</sup> Selection depends on various factors including the child's age and capacity to testify, as well as the nature of crimes committed against them. Ideally, chosen participants' experiences will proportionately reflect crimes committed collectively, and won't solely reflect commissioners' biases on prioritization of crimes like child soldiers and sexual slavery.

- study says. InfoMigrants. <https://www.infomigrants.net/en/post/18508/yazidi-refugees-in-germany-suffer-severely-from-2014-genocide-study-says>
- Bensouda, F. (2015, April 8). *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS*. International Criminal Court. <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-alleged-crimes-committed-isis>
- Bor, G. (2019, April 26). *Iraq's reparation bill for Yazidi female survivors: More progress needed*. LSE. <https://blogs.lse.ac.uk/mec/2019/04/26/iraqs-reparation-bill-for-yazidi-female-survivors-more-progress-needed/>
- Farrall, L. (2019). *The fall of the ISIS 'caliphate'*. Parliament of Australia. [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook46p/ISISCalphate](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/ISISCalphate)
- Human Rights Watch. (2017, December 5). *Flawed justice: Accountability for ISIS crimes in Iraq*. <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq>
- International Criminal Court. (1998). *Rome Statute of the International Criminal Court*. <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>
- International Justice Resource Center. (n.d.). *Universal jurisdiction*. <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/>
- Kather, A. L., & Schwarz, A. (2020, April 23). *First Yazidi genocide trial commences in Germany*. Just Security. <https://www.justsecurity.org/69833/first-yazidi-genocide-trial-commences-in-germany/>
- Krzan, B. (2016). International Criminal Court facing the peace vs. justice dilemma. *International Comparative Jurisprudence*, 2(2), 81-88. <https://doi.org/10.1016/j.icj.2017.01.001>
- Kurdistan 24. (2019, November 27). *UNITAD identifies over 160 ISIS suspects who will face justice for Yezidi crimes*. <https://www.kurdistan24.net/en/news/886f24a7-bb70-4b80-b3b3-db5870aa1baf>
- Parmar, S., Roseman, M. J., Siegrist, S., & Sowa, T. (2010). *Children and transitional justice: Truth-telling, accountability and reconciliation*. Human Rights Program at Harvard Law School. <https://www.unicef-irc.org/publications/587-children-and-transitional-justice-truth-telling-accountability-and-reconciliation.html>
- Rullan, M. (2020). *Yazidis returning to Sinjar despite fresh conflict and COVID-19*. Agencia EFE. <https://www.efe.com/efe/english/destacada/yazidis-returning-to-sinjar-despite-fresh-conflict-and-covid-19/50000261-4284663>
- Security Council Report. (2020, May 29). *June 2020 monthly forecast: Iraq (UNITAD)*. <https://www.securitycouncilreport.org/monthly-forecast/2020-06/iraq-unitad.php>
- United Nations. (1948). *Convention on the prevention and punishment of the crime of genocide*. <https://www.un.org/en/genocideprevention/genocide.shtml>
- United Nations. (2004). *The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General (S/2004/616)*. <https://digitallibrary.un.org/record/527647?ln=en>
- United Nations. (2016, June 16). *UN human rights panel concludes ISIL is committing genocide against Yazidis*. <https://news.un.org/en/story/2016/06/532312>
- Van Zoonen, D., & Wirya, K. (2017). *The Yazidis: Perceptions of reconciliation and conflict*.

Middle East Research Institute. <http://www.meri-k.org/publication/the-yazidis-perceptions-of-reconciliation-and-conflict/>  
Venis, J. (2022, September 27). *Justice for the Yazidis*. International Bar Association. <https://www.ibanet.org/Justice-for-the-Yazidis>  
Yazda. (2020). *Documentation project*. <https://www.yazda.org/publications>