

**TOWARDS JUSTICE AND SECURITY: PRINCIPLES AND POLICIES FOR THE YAZIDI IN
2020 AND BEYOND**

**A report prepared for the United States Government at the (Imagined)
Request of the Secretary of State, by the *ad hoc* Transitional Justice Working Group
(TJGW) ¹**

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¹ The Working Group consists of students in GLOBL 284 / PLSC 167, a seminar taught for Yale College in the Spring 2020 Term.

I. INTRODUCTION

The Transitional Justice Working Group (TJGW) has been tasked with devising a multi-dimensional transitional justice strategy for the United States government to implement in response of the Da'esh's crimes against the Yazidi. Using the Elie Wiesel Genocide and Atrocities Prevention Act of 2018, hereby known as the Elie Wiesel Act, as legal framework, the TJGW has created a comprehensive transitional justice strategy focused on restitution, reintegration, and prevention. By considering the past, present, and future of the Yazidi, this report has developed a transitional justice strategy focused on improving the current reality of the Yazidi and developing a better future for the Yazidi and Iraq as a whole.

This introductory section begins with an explanation of transitional justice's definition and significance. It then provides an overview of the historical background of the Yazidi as well as an analysis of their current situation. It concludes with an outline of the considerations made in the report and a summary of the report's sections.

I.A. Understanding Transitional Justice

To understand how the United States can implement transitional justice strategies, it is first important to define transitional justice. The Elie Wiesel Act, states that the United States government needs to develop strategies to “identify, prevent, and respond to the risk of atrocities” in a myriad of ways, including through “strengthening diplomatic response and the effective use of foreign assistance to support appropriate transitional justice measures...”² The Elie Wiesel Act defines transitional justice as the “the range of judicial, nonjudicial, formal, informal, retributive and restorative measures employed by countries transitioning out of an armed conflict or repressive regimes to redress legacies of atrocities

² U.S. Congress, Senate, *Elie Wiesel Genocide and Atrocities Prevention Act of 2018*, Section 3.3(C)

and to promote long-term, sustainable peace.³ This definition clearly highlights two key components of transitional justice: The first being that transitional justice requires multiple venues, from diplomatic responses to foreign assistance, that are beyond only legal remedies to address the multiple problems that arise from and can cause atrocities. The second component highlighted in this definition is that transitional justice is meant to create long-term stability and peace where it is implemented using both short- and long-term time scales.

Although the definition of transitional justice provides some context into how the TJWG should approach creating a transitional justice strategy, past cases where transitional justice has been implemented can serve as a guide on how to best develop this strategy. Despite the fact that the term Transitional Justice was codified into American law in 2019 with the Elie Wiesel Act, its international use began decades before in the 1980's with the democratization processes in Chile and Argentina.⁴ In the 1990's, transitional justice measures were used in the aftermath of the war in Yugoslavia, the end of Apartheid in South Africa, after the genocide in Rwanda, and after the collapse of the Soviet Union⁵, expanding both the concepts reach and application. The UN's 2000 Rome Statue and subsequent UN guidelines on transitional justice have not only solidified transitional justice's role in atrocity prevention and response, but it has also made it the international standard.⁶ These different applications and developments have each provided innovations in the understanding of transitional justice, but certain themes remain a constant through the different applications. First and foremost, transitional justice measures involve both short term and long-term goals. They can also take a long time to show positive or negative results, especially because many transitional justice policies are inter-generational.⁷ They also have shown that they all have the same goal: As Mihr articulates in *An Introduction to Transitional Justice* "the whole process attains to demystify and delegitimize the past, and legitimize and strengthen the future and present political or societal structures or regime."⁸

³ U.S. Congress, Senate, *Elie Wiesel Genocide and Atrocities Prevention Act of 2018*, Section 6.3

⁴ Mihr, "Chapter 1: An Introduction to Transitional Justice," 7.

⁵ Mihr, "Chapter 1: An Introduction to Transitional Justice," 7.

⁶ Mihr, "Chapter 1: An Introduction to Transitional Justice," 8.

⁷ Mihr, "Chapter 1: An Introduction to Transitional Justice," 7.

⁸ Mihr, "Chapter 1: An Introduction to Transitional Justice," 2.

Transitional Justice, as seen through the lessons from different applications, is about short and long term solutions to create better political or societal regimes for future generations.

Even when considering the complexity of transitional justice, transitional justice measures are the best approach for the United States government. One of the major breakthroughs of the Elie Wiesel Act is the understanding that the prevention of atrocities is in the United States' national interest.⁹ As evidenced in the past implementations of transnational justice as well as its definition, transitional justice measures aim to create stability and peace for future generations. Not only does this give the United States an immediate opportunity to foster stability in the present, but it can also pave the road for future allies in the region that have similar democratic and economic values to the United States. Transitional Justice measures with the Yazidi would also allow the United States to become an international leader in the implementation of transitional justice. The United States can be at the forefront of implementation strategies and become the most updated example for the rest of the international community to follow. Ultimately, transitional justice measures would allow the United States to help the Yazidi receive the justice they deserve. Transitional justice would allow the United States to pursue legal, social, and political solutions to help the Yazidi receive a robust justice that considers their past grievances, present concerns, and future hopes.

1.B. Understanding the Yazidi

For centuries, the Yazidis have occupied the mountains of northwestern Iraq and are concentrated in areas north of Mosul, and in the Kurdish-controlled province of Dohuk.¹⁰ Although the Yazidis are religiously and ethnically distinct from Iraq's predominantly Sunni Kurdish population, most of them use the Kurmanji language and some speak Arabic.¹¹ Their land holds deep religious significance, as Yazidi holy places,

⁹ U.S. Congress, Senate, *Elie Wiesel Genocide and Atrocities Prevention Act of 2018*, Section 3.1

¹⁰ Asher-Schapiro, *National Geographic*, Web.

¹¹ The original version of this paper contained the language, "Although the Yazidis are religiously distinct from Iraq's predominantly Sunni Kurdish population, most of them can speak the language and consider themselves ethnically Kurdish", with a reference to the Asher-Schapiro *National Geographic* article. We have decided that this construction is

shrines, and ancestral villages are located in this region.¹² An ancient faith, Yazidism is a rich oral tradition that combines Islamic beliefs with the ancient Persian religion, Zoroastrianism, and the enigmatic Eastern Mediterranean religion, Mithraism.¹³

The Yazidi religion has never found its place into Iraq's sectarian mosaic, leaving the Yazidis feeling isolated and misunderstood.¹⁴ Isolated geographically and accustomed to discrimination, the Yazidis “forged an insular culture and have often been referred to as a ‘closed community.’”¹⁵ They were branded as heretics among Muslims early on, as their blended belief systems and religious syncretism led to an intense disassociation from the other religious groups in the region. While the rigid religious caste system used in Yazidi society and the belief that the soul is reincarnated after death are two foundational elements to the Yazidi religion, it is the accusations of devil worship beginning in the late 16th and early 17th centuries that set off a violent chain of historical events towards the Yazidis.¹⁶ The misinterpretation stems from a central figure in their faith, Tawusî Melek, an angel who defies God and establishes the connection between man and the divine.¹⁷ Tawusî Melek is a force for good in the Yazidi religion, however, to Muslims, Tawusî Melek often can be interpreted as the Quranic rendering of Shaytan, or ‘the devil’. This religious divide is the root of the hatred and mass atrocities carried out against the Yazidi population.¹⁸

Violent religious campaigns escalated in the second half of the 19th century, as the Yazidis were targeted by both Ottoman and local Kurdish leaders.¹⁹ 40,000 Ottoman soldiers attacked Yazidi communities around Mount Sinjar in 1640. More than 3,060 Yazidis were killed during the battle, while 200 Yazidi villages were raided and set to fire.²⁰ As the Islamic State continued to grow and overtake more Yazidi territory, they began

misleading and have deleted to reference to “considering themselves ethnically Kurdish.”
[Noted dated 9 April 2021]

¹² Asher-Schapiro, *National Geographic*, Web.

¹³ Asher-Schapiro, *National Geographic*, Web.

¹⁴ Asher-Schapiro, *National Geographic*, Web.

¹⁵ Asher-Schapiro, “Who Are the Yazidis, the Ancient, Persecuted Religious Minority Struggling to Survive in Iraq?” *National Geographic*, Web.

¹⁶ Asher-Schapiro, *National Geographic*, Web.

¹⁷ Asher-Schapiro, *National Geographic*, Web.

¹⁸ Asher-Schapiro, *National Geographic*, Web.

¹⁹ Asher-Schapiro, *National Geographic*, Web.

²⁰ Çelebi, “The Intimate Life of an Ottoman Statesman: Melek Ahmed Pasha,” 1588–1662.

forcing the Yazidis to convert, face execution, or flee.²¹ Since its formation, persecution has been an agonizing reality for the small religious community, and the unfortunate, intensifying hatred toward the Yazidi people has led us to one of the more horrific atrocities in recent history.

On August 3rd of 2014, ISIS fighters attacked the Yazidi community of Sinjar, in northwest Iraq.²² Immediately, reports came out that men and boys were being executed. Women and girls as young as nine were being kidnapped, sold, sexually enslaved, beaten and forced to work, while Yazidi boys were ripped from their families and forced to participate in ISIS training camps.²³ ISIS “used rape as a weapon of war” and sold Yazidi women into slave markets, proving that they were impartial to who they used their violent and disturbing tactics on. Anyone was fair game. According to CNN, they had gynecologists physically examine the captives, and checked to see if they were “virgins” or if they were pregnant.²⁴ Pregnant women were taken by ISIS gynecologists and forced to get abortions.²⁵ It is believed that roughly 10,000 Yazidis were either killed or kidnapped during this assault, making it clear that ISIS wants to exterminate the Yazidi population.

The attack began when ISIS fighters left their bases in Iraq and Syria and converged on the Sinjar region in northwest Iraq, located near the Iraqi-Syrian border.²⁶ Only a couple months prior to the massacre, ISIS had taken control of Mosul, and within the span of a few weeks, made multiple small-scale attacks on Sinjar.²⁷ This set up the ISIS fighters nicely, as they moved in groups and seized towns and villages on all sides of Mount Sinjar. The Iraqi Kurdish fighting forces withdrew as ISIS advanced, which left the Sinjar region defenseless and the ISIS fighters with very little resistance.²⁸ The best the Yazidis could do was try and

²¹ Asher-Schapiro, *National Geographic*, Web.

²² Cetorelli and Ashraph, “A demographic Documentation on ISIS’s Attack on the Yazidi Village of Kocho, *London School of Economics and Political Science*, 6.

²³ Shubert and Bharati, “ISIS ‘forced pregnant Yazidi women to have abortions,’” *CNN*. Web.

²⁴ Shubert and Bharati, *CNN*, Web.

²⁵ Shubert and Bharati, *CNN*, Web.

²⁶ Cetorelli and Ashraph, “A demographic Documentation on ISIS’s Attack on the Yazidi Village of Kocho, *London School of Economics and Political Science*, 7.

²⁷ Cetorelli and Ashraph, *London School of Economics and Political Science*, 7.

²⁸ Cetorelli and Ashraph, “A demographic Documentation on ISIS’s Attack on the Yazidi Village of Kocho, *London School of Economics and Political Science*, 9.

defend some of the villages with hopes to give their families time to flee. Those who were close to Mount Sinjar in proximity fled up the mountain to higher slopes.²⁹ However, the Yazidis were surrounded and ultimately captured by ISIS. Infants and young children died of dehydration because of the lack of shade or access to water.³⁰ A few days after the attack, the Syrian Kurdish forces opened a travel zone, and with the protection of American and Iraqi airstrikes, rescued a number of survivors. The thousands of Yazidis trapped on lower ground fared no better. Once ISIS controlled the main roads, they constructed checkpoints and sent cars to search for Yazidi families that were on the run.³¹ ISIS moved quickly, and the Yazidis who took too long to run found themselves surrounded by armed ISIS fighters.³² It only took 72 hours for ISIS to empty nearly every Yazidi village.³³

As time went on, the Yazidis who fled into the mountains were facing starvation and dehydration, resulting in a multitude of deaths.³⁴ Yazidis who were not able to flee Sinjar were either captured or murdered on the spot by ISIS militants outside of their own homes. ISIS targeted the abduction of women to sell as sex slaves. ISIS believed that rape was a valuable “weapon of war”, and used the older Yazidi women to sell in the slave market and the young girls were often raped or married off to ISIS soldiers.³⁵ The women who were sold into the slave market were transported to Iraqi villages such as Tal Afar, Si Basha Khidri and Ba’aj.³⁶ The price of each woman was fully dependent on their age, marital status and if they were a virgin or not.³⁷ As Yazidi women were being held in Iraqi villages, Kurdish smugglers managed to free roughly one hundred and thirty women per month.³⁸ This went on for roughly six months but then ISIS militants cracked down and reduced these numbers dramatically.³⁹ As time continued to progress, the Yazidi people started to get help from outside forces. For example, the Kurdish People's Protection Units broke ISIS

²⁹ Cetorelli and Ashraph, *London School of Economics and Political Science*, 9.

³⁰ Cetorelli and Ashraph, *London School of Economics and Political Science*, 9.

³¹ Cetorelli and Ashraph, *London School of Economics and Political Science*, 9.

³² Cetorelli and Ashraph, *London School of Economics and Political Science*, 9.

³³ Cetorelli and Ashraph, *London School of Economics and Political Science*, 9.

³⁴ Wikipedia, “TheYezidi”

³⁵ *ibid*

³⁶ *ibid*

³⁷ *ibid*

³⁸ *ibid*

³⁹ *ibid*

siege in the Sinjar mountains and helped rescue roughly fifty thousand Yazidi people.⁴⁰ Since the attack in August, at least five thousand Yazidi people were brutally murdered by ISIS militants, over seven thousand Yazidi women were held in sexual slavery, and over six thousand Yazidi people were captured.⁴¹ Later, in 2016, the United Nations classified the August 2014 attack on the Yazidi people as genocide.⁴²

In the fall of 2015, the Yazidi people and Kurdish military forces took back control of Sinjar. However, the town is far from stable as the remains of the ISIS attacks are littered throughout.⁴³ Booby traps and landmines are still present in the area making the town a dangerous place to live. Running water is absent throughout the town and all of the hospitals and schools were destroyed during the genocide.⁴⁴ Only one quarter of the original Sinjar inhabitants have tried to return back to Sinjar after the genocide, as there are limited work opportunities due to the mass destruction of the area.⁴⁵

Over three hundred thousand Yazidi people currently live in displacement camps across the northern region of Iraq. Due to Northern Iraq's location, these people are exposed to brutal weather conditions resulting in a lack of food, water, and sanitation supplies.⁴⁶ According to a young Yazidi girl named Layla, her entire family has been displaced: "My family is still missing. Life is very difficult, and our houses are bombed out. We want to trust again, and we want protection."⁴⁷ Suicide rates among the Yazidi population have increased and PTSD, behavior disorders and depression have all seen a dramatic increase as well.⁴⁸ The suicide rate has increased the most among the Yazidi population was between the age group of fifteen and twenty five, suggesting that the youth, in particular seem to have lost hope, which could end up being catastrophic for the progression of the community.

⁴⁰ ibid

⁴¹ ibid

⁴² "Mass Violence and Genocide by the Islamic State/Daesh in Iraq and Syria." University of Minnesota.

⁴³ "Five Years after the Genocide, Yazidis Share Their Forgotten Stories and Demand Justice - Iraq." ReliefWeb.

⁴⁴ ibid

⁴⁵ ibid

⁴⁶ ibid

⁴⁷ ibid

⁴⁸ ibid

Although the majority of the Yazidi population have settled back in Iraq, western Europe and even the United States have seen an influx of Yazidi emigrants. Second to Iraq, western Europe is home to the largest Yazidi population with most people residing in Germany. Germany is home to roughly two hundred thousand Yazidi people and Sweden has recently seen an inflow of Yazidi people consisting of approximately five thousand.⁴⁹ Small groups of Yazidis are also found placed in both regional countries like Georgia, Armenia, Syria and Turkey, as well as distant ones like the United States and Canada⁵⁰

I.C. Understanding the Report

Given the complexities of the Yazidi's political and social reality as well as intricacies of transitional justice strategies around the globe, it is imperative to understand the considerations taken when developing the transitional justice measures outlined in this report. In *an Introduction to Transitional Justice*, Mihr warns of developing strategies based on winner's justice that clearly delineate victims and perpetrators. Strategies based on winner's justice can create permanent divisions in a society and ultimately disincentivize cooperation and democratization.⁵¹ In practice, this means that it is important to consider all the viewpoints of those involved with Yazidi communities. Although the multifaceted nature of the Yazidi reality makes it even more complicated to incorporate all these viewpoints, this report makes a point of considering parties such as Iraqi nationals and the Kurdistan Worker's Party (PKK) in the development of the transitional justice strategy. This report also makes a point to understand how different cultural considerations can shape and impact the implementation and development of the recommendations stipulated in the report. Ultimately, the different sections of this report prioritize the needs those involved in the Yazidi's political and social reality and gives recommendations to best fit these needs. Although some of these recommendations could be achieved through unilateral actions from the United States, the majority of them will require multilateral cooperation with international and national players.

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ Mihr, "Chapter 1: An Introduction to Transitional Justice," 3-4.

This report is divided into three main sections: Restitution, Reintegration and Prevention. The restitution section delves into the complexities of current UNITAD investigations and considers how domestic, international, and customary justice systems could be used to administer legal justice. The reintegration section explores the environmental, political, and physical boundaries to resettlement and reincorporation as well as particular gender, youth and mental health considerations needed in Yazidi communities. The prevention section investigates ways through which Iraqi society as a whole can achieve sustainable societal and political relations.

II. PURSUING JUSTICE

Section II.A. Prosecution - Support for Investigation

Attacks on Yazidi people date back centuries, with the early twenty-first century recently bringing violent terrorist acts presumed to be at the hands of Al-Qaeda. Despite the long history of oppression these people have faced, this investigation will focus exclusively on the recent violence committed against the Yazidis, specifically that which began with the capture of Mosul by ISIS in June 2014. Investigating these crimes predominantly requires the attainment of physical evidence and testimonials; however, as a large component of the overall process of transitional justice, the investigation will also play an important role in setting the tone for the relationship between the United States, the victims and survivors in Iraq, the local and national Iraqi authorities, and those guilty parties being tried. In order to best support this investigation and be able to move on to the next step of holding trials, the investigative team will need to work efficiently yet carefully, being cognizant of the fact that this evidence includes pieces of people's personal lives and is therefore extremely sensitive material.

Currently, the investigation into the crimes is being headed by the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant (UNITAD). The team was established in 2017 through UNSC res. 2379, and tasked with supporting local efforts to bring justice for Yazidis and hold ISIS accountable for crimes committed.⁵² Through the 2019 res. 2490, the original mandate has been extended in length to September of 2020.⁵³ This gives us just five more months to join their efforts and help achieve these goals by providing more researchers, psychologists, and field workers to collect and analyze new and remaining evidence for the investigation. We must work within this extension, providing new members and new resources to double the size and scope of the 100 person team in order to build upon their efforts and continue on the path toward transitional justice for the marginalized community of Yazidi people.

⁵² "UNITAD Submits Biannual Report to the UN Security Council; Reports Substantial Progress [EN/AR] - Iraq."

⁵³ "Security Council Extends Mandate of Investigative Team Holding ISIL/Da'esh Accountable for Crimes in Iraq, Adopting Resolution 2490 (2019) | Meetings Coverage and Press Releases."

Prioritization of Crimes and Offenders

In supporting and conducting this crime investigation, one of the main pillars of the job will involve determining the specific crimes that need to be tried and the individuals who will be held accountable. As mentioned by human rights groups and other national parties, we recommend creating a prosecution strategy that targets the top individuals responsible for these crimes. While some might argue that we should charge all individuals and groups involved, in order to use time and resources wisely, we believe it is in the best interest of the Yazidi people and our own team to target certain top criminal individuals first, instead of attempting to charge all members of ISIS on the terms of their membership.⁵⁴

During the summer of 2014, ISIS members killed hundreds of already imprisoned Yazidi.⁵⁵ These killings were targeted and also included attempts at killing Yazidi leaders.⁵⁶ Due to the evidence showing its intent, its execution of at least 5,000 Yazidi men at the hands of ISIS, and other crimes which will be discussed below, ISIS was ruled in 2016 to have committed genocide, war crimes, and crimes against humanity toward the Yazidis, by the UN Commission of Inquiry on the Syrian Arab Republic.⁵⁷ The gathering of evidence around these genocidal crimes, specifically the targeted killings, should be prioritized above all else. We also recommend that the focus also cover other prevalent crimes such as the child kidnappings and abductions and the forced sexual slavery of approximately 7,000 women.⁵⁸ Specifically, a special unit should be designated that will deal with crimes involving gender-based violence and sexual violence. While reports from certain studies that up to 85 percent of certain Yazidi groups experienced food and water deprivation, 63 percent witnessed or experienced violent or combat-related events, and over 50 percent faced forced family separation, these crimes and other forced religious conversions must unfortunately take a back seat for the time being, as we focus on the most violent crimes.⁵⁹

⁵⁴ Avenue, York, and t 1.212.290.4700, “Flawed Justice | Accountability for ISIS Crimes in Iraq.”

⁵⁵“ The Yazidis: Perceptions of Reconciliation and Conflict | MERI.”

⁵⁶ Persecution Prevention Project, “Before It’s Too Late - A Report Concerning the Ongoing Genocide and Persecution Endured by the Yazidis in Iraq, and Their Need for Immediate Protection.” June 2019.

⁵⁷ Ibid, 6.

⁵⁸“ The Yazidis: Perceptions of Reconciliation and Conflict | MERI.”

⁵⁹“ Before It’s Too Late - A Report Concerning the Ongoing Genocide and Persecution Endured by the Yazidis in Iraq, and Their Need for Immediate Protection.” 10

In time, all war crimes should be investigated and prosecuted, but for the sake of staying on pace, it is imperative to target the violent crimes of genocide first and foremost, with the largest of the investigative teams focusing on genocidal crimes.

ISIS is the biggest perpetrator of crimes in the region and against the Yazidi, and its leading members who orchestrated and carried out the genocide will be investigated and hopefully tried as such. According to the German penal code, “If the perpetrator has not committed a genocidal act him/herself but has solely contributed to such an act carried out by others, he/she is punishable for incitement as well as aiding and abetting genocide.”⁶⁰ This ruling will help us to prioritize the prosecutions of individuals and the collection of evidence necessary to do so, as it essentially excludes the prosecution of members of ISIS unless they directly carried out or aided the specific genocidal acts being charged. We recognize, however, that crimes were committed on many fronts. For example, local Arab villagers gave ISIS information on Yazidi whereabouts, and should be held accountable for their role in aiding the subsequent crimes committed.⁶¹ UNITAD has already been working on reaching out to national governments who have seen increasing levels of ISIS activity or membership by their citizens.⁶² Thus, searching for parties on all sides who committed human rights abuses is a crucial job of this team and our UNITAD partners in order to ensure accountability. We recommend diplomatic efforts be made in order to demonstrate that these broader investigations are truly in everyone’s best interest to fully restore peace to the country and help it not just rebuild, but become stronger and safer than it was before. Finally, as we now have a more coherent idea of who we are investigating and who we need to find evidence against, it is important to map out the terms of evidence gathering.

Evidence

In this investigation, we believe the focus should be on two types of evidence gathering. The first is the gathering of physical evidence. This will include continuing to find and visit the sites of mass Yazidi graves, visiting the Sinjar mountains, and helping to

⁶⁰ Duarte-Herrera and Iftsits, “Genocide against Yazidis.” 16

⁶¹ “Before It’s Too Late - A Report Concerning the Ongoing Genocide and Persecution Endured by the Yazidis in Iraq, and Their Need for Immediate Protection.” 19

⁶² “Promoting Da’esh Accountability Worldwide | Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD).”

locate dead and missing persons from the genocide. The second type of evidence that needs to be collected, particularly once missing persons have been found, and deceased persons have been located or identified, involves reaching out to living victims and victims' families to gather more testimonial evidence. This is perhaps the most important part of the team's job in this investigation, as the subsequent trials will rely on this verbal witness testimony. This job is also more difficult than acquiring the physical remnants of evidence, and will require trained professionals such as psychologists, to help witnesses and victims testify and prepare to potentially appear in court. This evidence, physical and testimonial, must be digitized in an efficient manner by those who are working, and then organized in a way so as to be transmittable and available to national governments and their courts.

The field work to complete these tasks will require a large number of investigators and researchers, so we suggest doubling the current 100 person team, then dividing personnel into smaller, focused subdivisions that will be dedicated to individual regional areas, different genocidal acts, crimes against humanity, and war crimes. With the 400,000 person community of Yazidis displaced, killed, or captured, with over 50,000 men stuck, dying of starvation and dehydration after the siege of Sinjar mountain in 2014, and with over two million Iraqis internally displaced as of 2018, it is a massive job even when focusing in on only the gravest crimes and prioritizing which ISIS individuals to investigate.⁶³ Moreover, with as many as 3,000 Yazidis still potentially in ISIS custody, the gathering of evidence must be done as soon as possible with the end date of fall 2020.⁶⁴ To complete this field work, we must create well-rounded teams set out to gather evidence from their assigned sites, talk to locals, and obtain the necessary evidence for trials over the next year. One cohesive document should be published and circulated immediately, discussing the prioritization of crimes, the types of evidence needed, and the locations that are known where this evidence may be located. This will ensure that all investigative teams are on the same page and working consistently toward the same goals so these crimes can begin being tried.

⁶³ Duarte-Herrera and Iftsits, "Genozide against Yazidis."

⁶⁴" Before It's Too Late - A Report Concerning the Ongoing Genocide and Persecution Endured by the Yazidis in Iraq, and Their Need for Immediate Protection." 8

In looking ahead, we as the international community, will need to partner with the national and local communities in Iraq. The current UNITAD team has already utilized the Iraqi national government in acquiring much of the existing evidence, as Iraqi people have greater knowledge of the areas and their communities and can lead investigative teams. Thus, all new and enlarged teams will have at least one member who is an Iraqi national. Only once the evidence is fully gathered, crimes are pieced together, and the loss of lives is acknowledged, can we move on and begin to restore and seek justice in courts and through other methods.

Section II.B. The Viability of International Courts

This section examines the viability of prosecuting individuals accused of committing violence against the Yazidi in international courts. While prosecution in international courts could lead to convictions of those responsible for the genocide, logistic difficulties and political caveats prevent it from delivering victim-centric retributive justice for the Yazidis. We recommend that the United States continue cooperating with courts in Iraq and around the world to prosecute leaders who orchestrated the genocide against the Yazidis, in lieu of establishing separate courts or referring the case to the ICC.

Ad-hoc Courts

Some advocates for Yazidi survivors have called for the establishment of an ad-hoc international tribunal to try those accused of genocide against the Yazidis. Such court could be composed of foreign judges, resembling the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Alternatively, it could combine international and domestic laws and personnel, being more similar in structure to the hybrid courts of Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC).⁶⁵ Supporters of this option include Düzen Tekkal, a German-Yazidi filmmaker who runs a charity that helps Yazidi survivors of Islamic State (IS)'s slavery, and German politicians including Markus Grübel,

⁶⁵ Rachel Kerr, "International Criminal Justice," in *An Introduction to Transitional Justice*, ed. Olivera Simic (London, Routledge, 2016), 53.

the German Federal Commissioner for Global Freedom of Religion.⁶⁶

Champions of this approach cite its numerous advantages. As a court staffed by international judges, it would be unaffected by “weaknesses of the justice systems in Iraq.”⁶⁷ If the ad-hoc court were based in Iraq, it would allow international prosecutors to investigate more freely in areas where the crimes were committed, thereby avoiding the perennial problem of western prosecutors being “unable to conduct investigations in conflict zones” remotely.⁶⁸ In addition, judgments from such ad-hoc courts could spur efforts to secure gender-sensitive law reform, an aspect that is lacking in current Iraqi judicial system. For instance, judgments of SCSL raised awareness of forms of gender-based violence in Sierra Leone and promoted a gender-sensitive legal reform.⁶⁹

But setting up an ad-hoc courts presents clear logistical disadvantages. For one, ad-hoc courts are very expensive. Up to 10% of UN’s budget was spent on operating the ICTY and the ICTR, and the SCSL posed a similar cost per defendant.⁷⁰ Moreover, trials in ad-hoc courts take up too much time. For example, the ICTY took over two decades to complete its trials, from 1993 to 2017.⁷¹ Nathan A. Sales, the Coordinator for Counterterrorism at the U.S. Department of State, summarises these difficulties well: “It’s simply not a viable option to take on that kind of financial burden that would drag out over so many years.”⁷² Due to cost and efficiency concerns, we do not advise you to establish ad-hoc courts.

International Criminal Court (ICC)

Other advocates for the Yazidi survivors support referring the accused to the ICC in the Hague for its symbolic function and logistical ease. According to field interviews of Yazidi victims in internally-displaced persons’ camps, many of them prefer prosecution in the ICC over prosecution in Iraqi courts, since they distrust local institutions.⁷³ Moreover,

⁶⁶ Bojan Pancevski, “Yazidi Survivors Are Key to Bringing Islamic State Members to Justice,” *The Wall Street Journal*, January 1, 2020, [wsj.com/articles/yazidi-survivors-are-key-to-bringing-islamic-state-members-to-justice-11577882496](https://www.wsj.com/articles/yazidi-survivors-are-key-to-bringing-islamic-state-members-to-justice-11577882496).

⁶⁷ Pancevski, “Yazidi Survivors.”

⁶⁸ Pancevski, “Yazidi Survivors.”

⁶⁹ Kerr, “International Criminal Justice,” 61.

⁷⁰ Sareta Ashraph, “Gender and Transitional Justice” (Guest lecture on Zoom, GLBL 284: Mass Atrocities in Global Politics class, New Haven, CT, April 14, 2020).

⁷¹ Pancevski, “Yazidi Survivors.”

⁷² Pancevski, “Yazidi Survivors.”

⁷³ Payam Akhavan, Sareta Ashraph, Barzan Barzani, and David Matyas, “What Justice for the Yazidi Genocide?: Voices from Below,” *Human Rights Quarterly* 42, no. 1 (2020): 46, doi:10.1353/hrq.2020.0000.

since IS assailants come from different countries, it would be easier to prosecute them under the ICC than to pinpoint a single national jurisdiction.⁷⁴ In addition, prosecuting them in the ICC would serve a symbolic function of condemning their crimes in front of the world, in line with the underlying principle of the ICC “that such heinous crimes shock the conscious of the world.”⁷⁵ Supporters of this option include Nadia Murad, the winner of the 2018 Nobel Peace Prize.⁷⁶

Referring the case to the ICC, however, entails administrative and political challenges. First of all, ICC trials are very expensive and inefficient. In the past 20 years, the ICC convicted only 3 people for war crimes and crimes against humanity after spending \$1.5 billion.⁷⁷ Furthermore, the ICC cannot prosecute anyone in anywhere for international crimes at will.⁷⁸ Under the principles of preponderance of national courts and complementarity, the ICC can only exercise its jurisdiction if national courts cannot or are not willing to try the accused in question.⁷⁹ This would be difficult in the Yazidi case, since Iraqi courts have not explicitly recused themselves from prosecuting the perpetrators. Most importantly, it is unlikely that the ICC can gain jurisdiction over the case at this time due to political caveats. According to the Rome Statute, the founding document of the ICC, the ICC can gain jurisdiction over a situation or an individual in four cases: 1) if a crime in question occurred in the territory of a State Party to the Statute;⁸⁰ 2) if the accused is a national of a State Party;⁸¹ 3) the United Nations Security Council refers it to the ICC;⁸² 4) a state retrospectively accepts ICC jurisdiction.⁸³ None of the ways fit the Yazidi case, since: 1) neither Syria nor Iraq are parties to the Rome Statute;⁸⁴ 2) the ICC prosecutor decided not to indict nationals from State Parties, since those most responsible are nationals of Syria

⁷⁴ Akhavan, Ashraph, Barzani, and Matyas, “What Justice for the Yazidi Genocide?” 40.

⁷⁵ Akhavan, Ashraph, Barzani, and Matyas, “What Justice for the Yazidi Genocide?” 40.

⁷⁶ Akhavan, Ashraph, Barzani, and Matyas, “What Justice for the Yazidi Genocide?” 40.

⁷⁷ Akhavan, Ashraph, Barzani, and Matyas, “What Justice for the Yazidi Genocide?” 44.

⁷⁸ Kerr, “International Criminal Justice,” 50.

⁷⁹ Kerr, “International Criminal Justice,” 51.

⁸⁰ Akhavan, Ashraph, Barzani, and Matyas, “What Justice for the Yazidi Genocide?” 41.

⁸¹ Akhavan, Ashraph, Barzani, and Matyas, “What Justice for the Yazidi Genocide?” 41.

⁸² Kerr, “International Criminal Justice,” 51.

⁸³ Kerr, “International Criminal Justice,” 51.

⁸⁴ Akhavan, Ashraph, Barzani, and Matyas, “What Justice for the Yazidi Genocide?” 41.

and Iraq;⁸⁵ 3) Russia and China oppose ICC inquiry into Syria and vetoed a similar Security Council resolution in 2014;⁸⁶ 4) Iraqi acceptance of ICC jurisdiction could lead to ICC prosecution of U.S. citizens, which threatens U.S. sovereignty and contradicts our checks-and-balances system.⁸⁷ We thus do not recommend that the perpetrators of the Yazidi genocide be referred to the ICC.

Third State Courts

As prosecuting perpetrators of violence against the Yazidis in international courts is unfeasible, courts in third states have taken initiative to prosecute them. There are two ways national courts can pursue prosecution. The first is direct jurisdiction: the accused is tried in a national court if “the accused is a national of that country, resides in that country, or commits crimes against the country.”⁸⁸ Under this principle, Germany, Sweden, and Finland have prosecuted and tried individuals for committing war crimes during the Syrian Civil War and the Iraqi Civil War.⁸⁹ This approach, however, is not appropriate for the Yazidi case, because individuals are more likely to be prosecuted for having violated domestic provisions rather than having committed crimes abroad.

The second is universal jurisdiction, which lets national courts in third states to try foreign-born defendants for international crimes committed abroad.⁹⁰ For instance, in Germany, the 2002 Code of Crimes Against International Law (CCAIL) incorporates the principles of the Rome Statute into the German criminal code and gives German courts universal jurisdiction over crimes of genocide, crimes against humanity, and war crimes.⁹¹ In February 2020, German prosecutors indicted Taha Al-J., a former Iraqi IS member, for

⁸⁵ Samar El-Masri, “Prosecuting ISIS for the Sexual Slavery of the Yazidi Women and Girls,” *The International Journal of Human Rights* 22, no. 8 (2018): 1059, doi:10.1080/13642987.2018.1495195.

⁸⁶ United Nations, Human Rights Council, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2 (June 15, 2016): 36, [ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A_HRC_32_CRP.2_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A_HRC_32_CRP.2_en.pdf).

⁸⁷ El-Masri, “Prosecuting ISIS,” 1059.

⁸⁸ El-Masri, “Prosecuting ISIS,” 1057.

⁸⁹ El-Masri, “Prosecuting ISIS,” 1057-8.

⁹⁰ Christopher F. Schuetze, “German Trial Accuses Iraqi of Genocide in Killing Yazidi Girl,” *The New York Times*, April 25, 2020, [nyti.ms/3eRCS2g](https://www.nytimes.com/2020/04/25/world/europe/germany-isis-trial-yazidi.html).

⁹¹ § 1 VStGB (Germany).

buying a 5 year old Yazidi girl and her mother in 2015, whom he enslaved and tortured.⁹² He later chained the girl “at a window in open sun,” causing her death; the indictment charges that Al-J. intended “to exterminate the religious minority of the Yazidi” and thus charges him with genocide and crimes against humanity.⁹³ Al-J. faces trial in Frankfurt for the next few months. This shows that it is possible to try individuals accused of genocide against Yazidis in third states under universal jurisdiction.

But prosecuting the accused under universal jurisdiction involves logistical and legal challenges. European and U.S. authorities have struggled to prosecute members of IS due to the difficulty in collecting evidence in Iraq and Syria; consequently, many perpetrators have received lighter sentences.⁹⁴ This also leads to issues in identifying the defendants and linking them to specific crimes.⁹⁵ Cooperation has been sluggish between national prosecutors and UNITAD, charged with collecting evidence for crimes committed by IS, as UNITAD has not had enough time to build strong cases.⁹⁶ In addition, universal jurisdiction could infringe on national sovereignty; the United States would not let foreign judges try American citizens. We thus caution against limitless application of universal jurisdiction.

Recommendations

It is difficult to rely on international courts to prosecute those accused of crimes against the Yazidis. Establishing an ad-hoc court or referring them to the ICC is appropriate due to logistical and political challenges. Prosecution by third state courts is also elusive, hindered by legal caveats and low level of cooperation between national prosecutors and UNITAD.

In light of these limitations, we recommend that prosecutions should continue for high-level individuals who are responsible for orchestrating and leading the violence against the Yazidis in national courts of Iraq and third states. The United States should push for greater international cooperation on gathering evidence and providing it to national

⁹² Oberlandesgericht Frankfurt am Main, “Higher Regional Court Frankfurt/Main: Beginning of the Main Trial Against Taha Al-J,” Press release (April 24, 2020): 2, ordentliche-gerichtsbarkeit.hessen.de/sites/ordentliche-gerichtsbarkeit.hessen.de/files/PI%2053ste1204120%20%28beginning%20main%20trial%20Taha%20Al%20J.%29_0.pdf.

⁹³ Oberlandesgericht Frankfurt am Main, “Higher Regional Court Frankfurt/Main,” 2.

⁹⁴ Pancevski, “Yazidi Survivors.”

⁹⁵ Akhavan, Ashraph, Barzani, and Matyas, “What Justice for the Yazidi Genocide?” 40.

⁹⁶ Ashraph, “Gender and Transitional Justice.”

courts. But the United States should remain vigilant of the possible overuse of universal jurisdiction by third state courts and ensure that it does not violate U.S. national sovereignty.

Section II.C. Viability of Iraqi Courts

Next we explore the possibility for justice for the Yazidi people within the Iraqi court system, pursuant to UNITAD's mandate to focus on evidence collection to support domestic court cases.⁹⁷ According to Van Schaack, the Iraqi government effectively has a veto over most third State prosecutions, meaning it is important to fully explore the prospects for justice within domestic courts. As of 2018, the Iraqi government had detained more than 19,000 suspected Daesh members and, between 2013 and 2018, convicted at least 8,861 people, approximately 3000 of whom were sentenced to death.⁹⁸ This section will first explain the judicial structure and extant federal law in Iraq, and then provide recommendations for the State Department to support the drafting of a national prosecution strategy.

The heterogeneous nature of Iraqi courts will prove to be a significant hurdle in achieving justice for the Yazidi people. Notably, there are two court systems within the country: the judiciary of the Iraqi government as well as that of the Kurdistan Regional Government (KRG). The KRG, which has jurisdiction over the governorates of Dohuk, Erbil, and Sulaimaniya, is thought to be holding the bulk of suspected Daesh fighters.⁹⁹ Both systems have distinct criminal courts, as well as counterterrorism courts that prosecute cases under their counterterrorism legislation.¹⁰⁰ Importantly, neither court system has legislation to prosecute crimes of genocide, war crimes or crimes against humanity, so under the status quo, the prosecution must be for specific crimes that contravene the legal codes of the respective jurisdictions.¹⁰¹ While Human Rights Watch was told in interviews with court officials that "the two systems are operating in parallel," there is no national

⁹⁷ UNSC Res 2379, Terms of Reference, 26.

⁹⁸ Redlich Revkin, "After the Islamic State," 4.

⁹⁹ Van Schaack, "The Iraq investigative team," 121.

¹⁰⁰ Human Rights Watch, "Flawed Justice," 1.

¹⁰¹ OHCHR, "Human Rights," 6.

strategy or coordination.¹⁰² Both the KRG and Iraqi government are primarily relying on their respective counterterrorism courts to prosecute alleged Daesh and other extremist fighters, but the two systems are not identical.

The KRG renewed their Anti-Terrorism Law (No. 3 of 2006) on July 1, 2018, which “stipulates the death penalty for anyone who committed an act of terror; joined, founded, coordinated, or cooperated with a terrorist organization; or incited, planned, financed, or assisted in a terror act.”¹⁰³ It has more flexibility, however, than the federal law as it differentiates crimes that require life, or less than life, sentences for lesser crimes such as destroying a building or kidnapping.¹⁰⁴ Due process is severely restricted for those convicted in counterterrorism courts, but the KRG Anti-Terror Law explicitly states that the accused should be treated fairly and have the right to a lawyer (Article 13).¹⁰⁵ Kurdish counterterrorism courts also claim jurisdiction over terrorism crimes that took place outside KRG territory because they consider terrorism a crime “against all Iraqi citizens.”¹⁰⁶ In practice, this means the KRG rarely transfers suspects to the Iraqi government, even though constitutionally they should be doing so.¹⁰⁷ This issue is of particular importance to the prosecution of crimes against the Yazidi at Mount Sinjar, as the region falls within disputed territory, where both governments claim to have jurisdiction.

For the prosecution of counterterrorism crimes in Iraqi courts, the government relies on the 2005 Counter-Terrorism Law. This law is prosecuted in separate courts from those trying crimes committed under the 1971 Criminal Procedure Code and the 1969 Penal Code. The Counter-Terrorism Law is strict in its wording — its six articles give judges two sentencing options: life imprisonment or the death penalty.¹⁰⁸ A judge interviewed by Mara Redlich Revkin admitted that Iraqi counterterrorism courts can be “sometimes as

¹⁰² Human Rights Watch, “Flawed Justice,” 22.

¹⁰³ *Ibid*, 37.

¹⁰⁴ OHCHR, “Human Rights,” 4.

¹⁰⁵ *Ibid*, 5.

¹⁰⁶ Human Rights Watch, “Flawed Justice,” 38.

¹⁰⁷ Redlich Revkin, “After the Islamic State,” 18.

¹⁰⁸ Megally, “Heavy-handed Counterterrorism Approach.”

harsh as Daesh.”¹⁰⁹ In contrast to the KRG counterterrorism law, the federal equivalent does not guarantee any fair trial rights to the accused, and defendants are often poorly represented in court. For example, in 2019, the UNAMI observed a trial in Baghdad where the defendant was not granted a lawyer until hours before the trial. This lawyer had not reviewed the court files or ever met the defendant, and thus remained silent throughout the trial and the accused was subsequently sentenced to death.¹¹⁰ This is particularly concerning when considering the number of those sentenced purely for the crime of membership in Daesh.

Concerns over the prosecuting of doctors, chefs, and other civilians due to their ties to Daesh led to the passage of an amnesty law to pardon low-level participants. The General Amnesty Law adopted by the Iraqi government in 2016, in theory, allowed for low-level fighters to be given amnesty if they demonstrate they were forced into Daesh.¹¹¹ It also opened a door to amnesty for those convicted of crimes that did not result in death or permanent disability (Article 4). However, due to backlash over perceived loopholes in the initial legislation, it was amended in 2017 to preclude anyone convicted of any terrorism crime from receiving amnesty and expanded the scope of ineligible convictions to include kidnapping, drug trafficking, and counterfeiting currency.¹¹² Proponents of amnesty laws would also note that even the unamended law provided little assistance to those seeking amnesty as many judges simply ignored it. In 2016, released numbers indicate that 190 of 612 amnesty requests were granted (a 69% rejection rate) while in 2017, 298 of 2185 were granted (a 86% rejection rate).¹¹³ Some judges are permitting amnesty for those who believed in Daesh ideology without aiding in any crimes, but even such rulings are inconsistent at best. Compounding the inconsistency is the fact that the KRG does not have a pathway for amnesty or pardons in their court system.¹¹⁴

¹⁰⁹ Redlich Revkin, “After the Islamic State,” 18. Reports by the UN, Human Rights Watch and Amnesty International contain similar stories about the courts infringing on due process.

¹¹⁰ OHCHR, “Human Rights,” 7.

¹¹¹ Redlich Revkin, “After the Islamic State,” 21.

¹¹² Redlich Revkin, “After the Islamic State,” 21.

¹¹³ *Ibid.*

¹¹⁴ Human Rights Watch, “Flawed Justice,” 4.

Finally, given that many of the crimes committed against the Yazidi were gendered, and as such, it is incumbent to explore the specific challenges faced by women in the Iraqi justice systems. Rape and sexual slavery, as it stands, are not encoded in the federal counterterrorism law, meaning they cannot be included as part of cases in the counterterrorism courts. As of 2017, the Human Rights Watch had not heard of a single rape trial under the Criminal Code for Daesh fighters, even in cases where the accused admitted to rape during their trial.¹¹⁵ However, in KRG counterterrorism courts, judges have sentenced Daesh members for crimes of rape and sexual enslavement, although such trials are rare.¹¹⁶

Compounding the general lack of prosecution for rape and sexual enslavement crimes are the broader societal and legal barriers facing women seeking justice in Iraq. It is mostly understood that rape charges in Iraq must be dropped if the accused marries the victim.¹¹⁷ Additionally, under the Iraqi Penal Code, men are allowed to “punish” their wives (Article 41) and slavery charges require a monetary transaction, so the process of “gifting” women by Daesh does fit under the law.¹¹⁸ Finally, given the shame culturally associated with sexual violence, many women choose not to participate in investigation or trials to avoid further ostracization by their communities. Under current laws, women who faced gender-based violence at the hands of Daesh do not have the support from the legal system to seek justice for the crimes committed against them.

As described above, both the KRG and Iraqi courts focus on casting a wide net: trying all associated with Daesh, irrespective of the severity of their transgressions. Justice is applied inconsistently and is often at the discretion of specific judges. While the KRG does more than its federal counterparts to ensure due process, both systems have their flaws. Especially important when considering justice for the Yazidi people, neither system adequately facilitates trials for crimes of gender-based violence. Approximately 33 percent

¹¹⁵ *Ibid.*, 30.

¹¹⁶ *Ibid.*, 39.

¹¹⁷ State Department, “Custom Reports Excerpts: Iraq.”

¹¹⁸ Global Justice Center, “Iraq’s Criminal Laws,” 4-6.

Yazidi women interviewed by Akjavan et al. listed the weakness of the Iraqi and Kurdish institutions as the primary obstacle for achieving justice.¹¹⁹

With all of this in mind, the State Department should lead an effort to bolster the justice systems in Iraq, with three key recommendations:

1. The United States should work with Iraq, the KRG, and international partners, to develop a national strategy for the prosecution of crimes committed by Daesh and other extremist groups. This strategy should seek to build more consistency into the justice systems and set standards for due process for the accused. This system should prioritize prosecuting severe crimes, rather than instituting sweeping penalties irrespective of the crime. It should also address what should be done with foreign fighters.
2. The international community should support the Iraqi parliament and the KRG to consider a more robust amnesty system so civilians pulled into the conflict have a mechanism to apply to avoid the harsh sentences of the counterterrorism courts. Specifically, this system should ensure that doctors are not prosecuted for treating Daesh fighters, as is required by their Hippocratic Oath.
3. The United States should support the Iraqi government and the KRG to develop a strategy and legislation to prosecute gender-based violence, such as rape and sexual enslavement, committed by extremist groups. This strategy should close the marriage loophole and bring gender-based violence under the jurisdiction of counterterrorism courts.

Section II. D: Traditional Forms of Transitional Justice

In this section, we hope to examine the possibility of integrating traditional tribal justice systems into the overall system of prosecution of the crimes against the Yazidi in Iraq. This section begins with a description of the tribal justice system in Iraq. It then discusses three major issues which a traditional justice system could help to address: the need to bolster Iraq's official justice system; the need to match punishments for more minor crimes; and the need for greater reconciliation between the Yazidi population at-

¹¹⁹ Akhavan et al., "What Justice," 27.

large and its neighbors. Finally, the section concludes by recommending that the United States only support the implementation of a tribal system of justice into the overall prosecution of the crimes against the Yazidi if the system can be properly vetted to ensure equity in outcome and respect for human rights.

Tribal Justice Systems in Iraq

Alongside the official judicial system of Iraq, most Iraqis also live under a traditional and unofficial system of justice at the tribal level. The majority of Arab Iraqis, whether Sunni or Shia, associate with one of many dozens of tribes scattered throughout Iraq.¹²⁰ These tribes have a very long history of leaders serving as mediators or administering judicial systems alongside, or at times in lieu of, the official justice systems in place in Iraq. Tribal leaders often serve as mediators between parties in disputes; in order to avoid revenge killings by the families of victims of crimes, leaders establish an agreed-upon *diya*, generally translated as “blood money,” that the families of the perpetrator must pay, traditionally as an alternative to acts of revenge by the victim’s family.¹²¹ Notably, these tribal justice systems are far from *ad hoc* mediations. Rather, they are highly formalized, often with a codified constitution and a hierarchical scale which provides different ministers of justice depending on the severity of the crime.¹²² Indeed, this system even has precedent for developing fact-finding councils in cases in which there are few witnesses.¹²³ The tribal system of justice in Iraq, while unofficial, possesses many of the aspects that one would expect from an official court of justice, and therefore has potential as a means of prosecuting more minor offenders against the Yazidi.

Even so, the tribal system of justice is not without its faults. One major issue is that reparations are frequently demanded not only from the perpetrator, but the perpetrator’s family or entire tribe. Collective punishments not only go against established norms of international justice,¹²⁴ and could foment longer-term resentment towards the Yazidi community. There is also the issue of patriarchy within the tribal justice system;

¹²⁰ Hassan, “Iraq: Tribal Structure, Social, and Political Activities”, 1.

¹²¹ Carroll, “Tribal Law and Reconciliation in the New Iraq”, 12-13.

¹²² *Ibid.*, 13.

¹²³ *Ibid.*, 14-15.

¹²⁴ “Rule 103: Collective Punishments.”

women, although often victims in crimes for which *diya* is levied, have little agency in the process of mediation. In addition, the *diya* given to the families of female victims are traditionally lower than that given to the families of male victims.¹²⁵ Finally, there is the ever-present issue of corruption which has the potential to impede the due process at the community level. These issues should give the international community pause, as prosecutors should not be encouraged to support systems which perpetuate breaches in international human rights law. However, as previous sections have pointed out, such issues also exist at the national level in Iraq, and therefore the international community must be careful to balance the need for individual justice for victims with the possibility of supporting systems that violate international norms.

Despite these disadvantages, however, integrating such systems with the overall prosecutorial process has potential to provide justice for victims of crimes whose perpetrators may be ignored by official courts, should the proper oversight be implemented. It is true that the Yazidis have not historically been party to this justice system, having frequently been excluded from societal systems in which Muslim Iraqis participate. However, there is precedent for the development of joint committees when crimes in question took place between different sects, as was frequently the case in conflict-stricken Baghdad of 2006-2008.¹²⁶ In addition, in a series of interviews with Iraqi Yazidis published in late 2017, many Yazidis expressed a desire for cooperation with Arab tribes on the question of justice for Yazidis.¹²⁷ Therefore, it is not unreasonable to assume that, with proper support, the integration of traditional justice into the overall process of transitional justice for the Yazidis could aid in the societal reconciliation of all groups involved.

Benefits of Integration of Traditional Justice

The integration of tribal justice into the prosecution of the crimes against the Yazidi would help the prosecution confront three principal issues.

First, the use of traditional forms of justice would allow the overtaxed Iraqi justice system to focus on more major crimes against the Yazidi. While ideally every perpetrator of

¹²⁵ Pascoe, "Is Diya a Form of Clemency?", 156-7.

¹²⁶ Carroll, "Tribal Law and Reconciliation in the New Iraq," 24.

¹²⁷ Van Zoonen and Wirya, "The Yazidis: Perceptions of Reconciliation and Conflict," 16.

crimes against the Yazidi would be recognized and brought to justice, the overworked justice systems of Iraq render this infeasible; indeed, the push for prosecution of ISIS-affiliated individuals has already pushed the Iraqi prison and criminal justice system to its limits.¹²⁸ While UNITAD and international justice systems can assist in the investigation and prosecution of high-level crimes, lowering the workload of the Iraqi courts, these institutions have limited budgets and mandates, and their nature as foreign institutions may impede their credibility and harm their ability to find facts and prosecute defendants. Meanwhile, Iraq's tribal justice system, due to its decentralized nature, is able to focus on crimes of a lesser nature, such as the selling of goods or services to ISIS fighters; tribal courts have been known to provide *diya* for offenses as minor as car accidents or property disputes.¹²⁹ In a system that is already overworked while focusing on more major offenses, the integration of tribal justice may provide justice for victims of more minor crimes.

Second, the use of tribal court systems could create more lenient outcomes that still provide both justice for victims and reconciliation for community members. In the current national court system in Iraq, the death penalty is frequently used for even minor offenses related to the support of ISIS, as Iraq's counter-terrorism laws permit the death penalty for any person who "commits, incites, plans, finances or assists in acts of terrorism".¹³⁰ While justice for the Yazidi people means bringing perpetrators to justice, the broad and indiscriminate use of the death penalty also certainly violates the norms of international justice. Therefore, the *diya* system of providing financial recompense to victims or victims' families can serve as a manner of fitting a punishment to the crime. Following mass atrocities in which thousands may have played a part, such processes are certainly necessary to provide justice that fits within the norms of international human rights law.

Finally, implementing a tribal justice system could provide an avenue for community-wide reconciliation through cooperation. As mentioned before, a survey of Yazidi community members showed widespread support for the participation of Arab tribes in the prosecution of crimes. Their participation would serve as an indicator to the

¹²⁸ Mironova, "The Overloaded Prisons of Iraq."

¹²⁹ Bobseine, "Tribal Justice in a Fragile Iraq." <https://tcf.org/content/report/tribal-justice-fragile-iraq/>

¹³⁰ Coker and Hassan, "A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects." <https://www.nytimes.com/2018/04/17/world/middleeast/iraq-isis-trials.html>.

Yazidi community that there is a distinction between those who have committed crimes against them and the common Iraqi citizen. In a region in which crimes and discrimination against the Yazidis span centuries, one cannot expect overnight reconciliation; however, the willing prosecution of crimes against the Yazidis by the tribes of the perpetrators would certainly be a major step in building mutual trust between these two communities.

Recommendations:

While there are many benefits to integrating tribal justice into the prosecution strategy in Iraq, we recommend that the United States only advocate for such action if it is possible to do so with appropriate oversight to ensure that the norms of human rights are properly defended. Tribal courts could provide fast and widespread justice on more minor cases than national or international justice systems, but they are also mired with human rights issues. If the system were to be implemented as part of the prosecution of crimes against the Yazidi, it would have to be heavily altered and regulated to ensure that female victims receive justice and autonomy in decision-making, and to ensure that the punishments administered are not collective against entire communities. Ultimately, therefore, we suggest that the United States hold off on endorsing the implementation of tribal justice into the overall scheme of prosecution until it is certain that it will be done in an equitable and just manner.

III. Resettlement and Return: Conditions Required to Promote the Safe Return of the Yazidi Population to Their Homes

Section III.A. Security

We now turn to three interlinked issues that address the prospect of restoring life as it once was to Iraq's Yazidi community: return, resettlement, and restitution. The genocide against the Yazidi is ongoing. ISIS forces have not been completely eliminated from the area and continue to carry out attacks on civilians. The Iraqi government is not providing the protection that Yazidis need to feel safe enough to return to their lands. The government and military need to be persuaded to protect Yazidi civilians, even though military action against ISIS insurgents or collaboration with Yazidi militia groups. Problems of accessibility, landmine contamination, armed conflict, and rescuing remaining captives remain important and difficult to address.

Creating and maintaining security for Yazidis in Sinjar and beyond is not only a matter of clearing the way for reconciliation and prevention processes. Security means ensuring that the ISIS threat is fully removed from the area and its remnants, both physical and ideological, are neutralized as much as possible. The physical security of Yazidi territory and Yazidi people are integral as they begin to rebuild their lives in northern Iraq. Without the necessary measures for returning the Yazidi people to their communities and creating a reliably safe environment, the road to resettlement, gender-specific reintegration, health services, and installing prevention methods becomes even more difficult to navigate.

In August 2014, Yazidis fleeing Sinjar to escape ISIS insurgents and their attacks hid in the mountains for protection, attempting to evade bombing and foot-soldier attacks. Even after a US-led campaign that helped thousands of the Yazidi refugees escape into Iraq's Kurdistan area, thousands remain stranded in the mountains without steady supplies of food or water.¹³¹ ISIS's desire to starve both civilians and local militia fighters alike has led to the cutting off of all accessible supply routes.¹³² Currently, air routes remain the only

¹³¹ Su, "No Escape from Sinjar Mountain."

¹³² Persecution Prevention Project, "Before It's Too Late," 8.

means of escape for those still in the Sinjar Mountains.¹³³ However, helicoptering thousands of the remaining Yazidis from the mountains does not appear to be a viable solution. The relative loss of interest in the Yazidi plight in the international community has limited the amount of resources available for supplying those left in the mountains with food, water, and, most importantly, a way out. Those who have been rescued stress the need for at least one accessible road for the transport of humanitarian aid and a way for civilians to escape. A concerted effort needs to be made to wrest control of roads “mountains, regardless of ISIS’s ability to reach them. The lack of access to food, water, and medical assistance and ISIS’s deliberate attempts to strand refugees constitutes another act of genocide. Additionally, displaced Yazidis who have escaped to or been placed in IDP camps are facing instability. The camps are overwhelmed, having not been prepared for such an influx of people. Basic resources and services needed to reestablish a stable life are not always granted and “the inhabitants are extremely vulnerable to economic shortfalls or natural events such as flooding.”¹³⁴ Steps toward Yazidi security must include the liberation of those stranded in Sinjar Mountain and provision of necessary resources for inhabitants of IDP camps.

The continued ISIS presence does not stop in Sinjar Mountain. ISIS’s capacity to target and attack Yazidi civilians has been decreased since 2014, but not been completely eliminated. There are ominous signs of ISIS regaining strength in the region over the past year.¹³⁵ The group’s loss of territory has led to the creation and strengthening of underground insurgent groups, consisting of a “network of tunnels and safe houses among and beyond the multiple communities supportive of its activities.”¹³⁶ Following the loss of massive swaths of Syrian territory, ISIS reactivated cells in Ninewa, Salahaddin, Anbar, Kirkuk, and Diyala and is reportedly operating 27 terrorist cells as of December 2018.¹³⁷ ISIS’s ability to continue to recruit fighters worsens the problem and poses a serious

¹³³ Su, “No Escape from Sinjar Mountain.”

¹³⁴ Persecution Prevention Project, “Before It’s Too Late,” 30.

¹³⁵ E.g. ‘Geurlin, Ora, “Isis in Iraq: Militants ‘getting stronger again” 23 December 2019, BBC News Online. (<https://www.bbc.com/news/world-middle-east-50850325>)

¹³⁶ Persecution Prevention Project, “Before It’s Too Late,” 7.

¹³⁷ Persecution Prevention Project, “Before It’s Too Late,” 8.

security risk for Yazidis who wish to return to established Yazidi areas in Iraq. When considering the instability of the Yazidi community and the relatively unprotected border between Syria and Iraq, Yazidis are at risk for both attacks and ISIS recruitment. The mountainous terrain of northern Iraq provides cover for ISIS insurgents and complicates efforts to track them.¹³⁸ Regardless, it is necessary to continue to track and locate terrorist cells, tunnels, and safehouses. The demobilization of the foundations of ISIS operations in Iraq and a major reduction in their presence and capabilities are central to Yazidi physical security.

Even with a reduction in ISIS activity in the area, instruments of genocide remain in the area and continue to prevent safe resettlement. In Sinjar, and Iraq in general, ISIS has placed and left millions of landmines and unexploded ordnances to aid their genocidal efforts. North Sinjar, which was under ISIS control for a few months, is heavily mined. The displaced population has not been able to return for fear of encountering landmines and many cite landmine contamination as a primary reason for their inability to return.¹³⁹ South Sinjar has yet to be assessed, but years of ISIS occupation indicate that the area may be even more heavily contaminated and, therefore, unfit for safe resettlement.¹⁴⁰ While some headway has been made on decontaminating North Sinjar, security forces have neglected efforts to decontaminate South Sinjar as of June 2019. Decontamination efforts must be undertaken in Iraq, not just in Sinjar. Iraq has been declared the most heavily mined country in the world ¹⁴¹ and the safety of civilians cannot be ensured when millions of landmines threaten to explode at any time. The Mines Advisory Group predicts that the extent of contamination in Iraq cannot ever be completely cleared by its efforts.¹⁴² However, that is not an excuse to abandon decontamination efforts. Contamination levels in South Sinjar must be assessed, even if only portions are accessible. Even a partial decontamination of Iraq, especially Sinjar, can open much-needed territory for the safe resettlement of Yazidis who wish to return.

¹³⁸ Persecution Prevention Project, "Before It's Too Late," 8.

¹³⁹ Persecution Prevention Project, "Before It's Too Late," 9.

¹⁴⁰ Abouzeid, "When the weapons fall silent."

¹⁴¹ Abouzeid, "When the weapons fall silent."

¹⁴² Abouzeid, "When the weapons fall silent."

Conflict in Sinjar and other areas of Iraq rage on, driven both by remaining ISIS forces and local militias. As discussed, underground ISIS cells maintain the capacity to recruit and carry out attacks. Yazidi women and children remain at risk for abduction and men, especially young boys, are at risk of forced recruitment.¹⁴³ Various militias also operate in the area, exercising control over Iraqi territory, one of which being the Kurdistan Workers' Party (PKK). Animosity between the PKK and the Turkish government have led to Turkish forces frequently launching airstrikes into areas of Iraq occupied by the militia group. The airstrikes have injured and killed Iraqi civilians unaffiliated with the PKK and the Iraqi government has made no effort to protect Yazidi civilians in the line of fire or compensate them for their property losses. Neither Turkish nor Iraqi government forces have been able to agree on a ceasefire although stopping the attacks on Yazidi territory "is a prerequisite if Yazidis are to return."¹⁴⁴

The presence of militia groups in Sinjar and other Yazidi territories presents another difficult. It is unlikely that the PKK and other militia groups can be ousted from the area, or even if Yazidi civilians want that to happen. The most important issue to tackle is the added danger and insecurity that armed militia group operations bring to the area. A ceasefire is needed to secure the safety of the Yazidi population living in the area and create a safer environment for displaced Yazidis to realistically return to. However, the problem is not as simple as negotiating and enforcing a ceasefire. The security crisis, like many others, is propagated through various complex means, including "the threat of external intervention or terrorism; security instability caused by changes in authority, or through territorial and political disputes between armed groups; humanitarian crises; and social instability caused by exclusion or tensions based on identity issues."¹⁴⁵

The Yazidi people's security concerns encompass all the aforementioned issues, but they put special emphasis on the return of captives and their own capacity to protect themselves from possible future ISIS attacks. The Directorate of Yazidi Affairs within the Kurdistan Region Ministry of Endowment and Religious Affairs concluded "that some 3,117

¹⁴³ Persecution Prevention Project, "Before It's Too Late," 7.

¹⁴⁴ Persecution Prevention Project, "Before It's Too Late," 10.

¹⁴⁵ "Framework of Analysis for Atrocity Crimes," 10.

Yazidis were believed to remain in ISIL captivity”¹⁴⁶ and families continue to receive threats and requests for ransom payments.¹⁴⁷ The threat of ISIS is ongoing, but Yazidi communities still prioritize the return of current captives.¹⁴⁸ Operations going forward must focus on finding the remaining ISIS captives and rescuing them. However, rescue missions are complicated by the lack of stability and security in the regions that Yazidi captives are meant to return to.

Additionally, the Yazidi community doubts the possibility of a reconciliation process without personal feelings of safety. With the continued presence of ISIS insurgents and other armed militia groups, Yazidis have expressed the desire to carry arms for defense.¹⁴⁹ The Iraqi army’s Nineweh Operations command announced “that the Iraq army intends to provide weapons to citizens in villages around Mosul as a form of defense against ISIS resurgence”.¹⁵⁰ In lieu of arming civilians, many are in favor of “armed Yazidi groups such as the PKK-affiliated and supported Shingal Resistance Units (YBS), and the Syrian Democratic Union Party (PYD) military wing Peoples’ Protection Units (YPG).”¹⁵¹ The desire for protection and autonomy in the process of resettlement strongly influences the desires of the Yazidi community but their requests raise a fair amount of questions. It is important to afford the Yazidi community with the autonomy it deserves, but both the Iraqi army and armed militia forces must be careful when considering arming civilians. The rise of militia group power may contribute to unwanted warlordism and even an increase in armed conflict in the area. Yazidi boys and men especially are vulnerable to recruitment by militia groups because of the rampant instability in the area.¹⁵² The political and territorial disputes between the many militia groups in the area could spiral out of control and lead to more bloodshed and further threaten the security of Sinjar and surrounding areas. Any effort to secure Sinjar and other Yazidi territories must attempt to give the community authority over itself without inciting more violence and agitating existing animosities.

¹⁴⁶ Persecution Prevention Project, “Before It’s Too Late,” 7.

¹⁴⁷ Human Rights Council, “They Came to Destroy: ISIS Crimes against the Yazidis,” 2.

¹⁴⁸ Van Zoonen, et al., “Perceptions of Reconciliation and Conflict,” 17.

¹⁴⁹ Van Zoonen, et al., “Perceptions of Reconciliation and Conflict,” 17.

¹⁵⁰ Persecution Prevention Project, “Before It’s Too Late,” 8.

¹⁵¹ Van Zoonen, et al., “Perceptions of Reconciliation and Conflict,” 17.

¹⁵² Persecution Prevention Project, “Before It’s Too Late,” 8.

III.B. Return and Resettlement

Currently there are an estimated 500,000 refugees as a direct result of the violence that took place in Northern Iraq led by IS, which specifically targeted the Yazidi people, although other Iraqi citizens have also been displaced from their homes¹⁵³. Many now live in refugee camps, and unfinished buildings across Kurdistan in Northern Iraq. It is further estimated that 30,000 – 50,000 Yazidis fled to camps in the Sinjar Mountains following an ISIL offensive¹⁵⁴. About 6800 Yazidi people are estimated to have been kidnapped by IS, and approximately half of those abducted remain missing, and are predominantly women¹⁵⁵. Displaced Yazidi have also sought refuge in other countries. The largest communities are in Turkey, Syria, Germany, Russia, Armenia, and France. There are a few smaller communities in Denmark, the Netherlands, Austria, the UK, and North America.¹⁵⁶

In terms of the ‘Resettlement’ of the Yazidi people, there appears to be four critical issues.

- First, internally displaced citizens who are currently living in camps or disused buildings far from their local land, should be provided access to return to their homes
- Contemporaneous with this is the need to rebuild homes and villages, and lawful redistribution of land.
- Thirdly, there is an impetus for the repatriation of Yazidi populations from international communities. This needs to be addressed in terms of whether the Yazidi people should be returned to their native country, or whether they should be allowed to stay in the countries they have resettled in.
- Fourthly, the widespread refugee crisis has led to vast numbers of missing persons. This requires proper documentation of all potential alive missing persons and

¹⁵³ UNHCR, “COI Note on the Situation of Yazidi IDPs in the Kurdistan Region of Iraq”

¹⁵⁴ BBC News, “UN Security Council condemns attacks by Iraqi jihadists”

¹⁵⁵ Burnham, Cetorelli, Sasson, Shabila, “Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey”

¹⁵⁶ Dambach, “Who are the Yazidis?”

deceased. The families of those missing persons should be correctly informed of all the procedural steps involved, and any subsequent information that comes forward.

Internally Displaced Persons

Within Iraq itself, there are large numbers of internally displaced persons, or 'IDPs', who are in the midst of a humanitarian aid crisis. Approximately 50,000 IDPs took refuge in the Sinjar mountains. In order to begin to evacuate these large numbers of refugees, airstrikes were conducted by the US, PKK, and YPG on the mountainside, to allow the safe evacuation of the refugees across the mountainous terrain. This resulted in approximately 35,000 of the 50,000 Yazidis being successfully evacuated into Syria via trucks and tractors¹⁵⁷.

Despite this, there are estimates that 5000-10,000 remain trapped on the mountain, many in limestone caves. Unfortunately, the US recently cancelled its rescue mission, despite the need for civilian evacuation¹⁵⁸.

In terms of humanitarian aid which has been provided on the mountain, and in refugee camps, Iraq, the US, the UK, and Australia dropped aid supplies from helicopters into the camps. This was a result of the UN declaration of a 'Level 3 Emergency', representing the highest level of humanitarian crisis.¹⁵⁹

UN agencies have subsequently worked to try and provide aid and relief to the numerous IDPs. UN agency UNCHR has provided shelter and relief items to those in camps and on the mountain such as mattresses, blankets, emergency relief kits etc.¹⁶⁰, and WFP is providing meals for over 100,000 per day. Furthermore, UNFPA is providing female hygiene supplies and supporting pregnant women. In terms of medical aid, WHO is providing emergency relief and mobile clinics. UNICEF has also been working alongside these agencies to deliver humanitarian aid to 73,000 persons. Furthermore, the International Organization for Migration is providing transport, and help evacuating IDPs to safer areas.

¹⁵⁷ Shelton, "If it wasn't for the Kurdish fighters, we would have died up there"

¹⁵⁸ Shelton, "If it wasn't for the Kurdish fighters, we would have died up there"

¹⁵⁹ UN News, "UN declares Iraq 'Level 3 Emergency' to trigger more resources, speed up aid delivery"

¹⁶⁰ UNIRAQ, "UN Declares a 'Level 3 Emergency' for Iraq to Ensure More Effective Humanitarian Response"

NGO 'Defend International' has been attempting to raise awareness about the tragedy of the Yazidis and coordinating efforts to rescue Yazidi women and girls captured by ISIS gunmen. This has resulted in about 250 Yazidi girls being rescued and reunited with their families. Nearly 300 Yazidis were released in January 2015¹⁶¹.

In terms of resettlement, and gradual returns to normality, the first Arabic school in the city of Sinjar reopened on the 7 February, and already has 350 students¹⁶².

Policy recommendation

The US should re-enact their rescue mission, providing transport and evacuation routes for the 10,000 Yazidi still trapped on Sinjar Mountain as a priority. From there, work should be done to transport the IDPs back from camps to their homes and communities.

Rebuilding Homes and Redistribution of Land.

Some 6,000 homes are thought to have been destroyed or burned down in the district of Sinjar¹⁶³. Most displaced Yazidis are living today in IDP camps scattered on the outskirts of cities and towns of Kurdistan. There is a lack of records and legal evidence related to the ownership of housing, land, and property, which urgently needs addressing. A UN report recommends regranteeing occupancy rights to those displaced, repossession of state-owned land and transfer of property to municipal authorities, compensation process put in place – to be overseen by IPCC (Iraq Property Claims Commission) – and titling land to applicants.¹⁶⁴ Furthermore, Nadia Murad, Yazidi activist and survivor, has called for 'investment in sustainable development initiatives in the Yazidi Homeland' and that 'funds are needed for rebuilding homes and public facilities¹⁶⁵.

Despite many recommendations, little has been done so far in the way of achieving redistribution and rebuilding of homes. In fact, a recent report by the UN Development

¹⁶¹ Defend International, "Save the Yazidis: The World has to Act Now"

¹⁶² Palmer, Fidler. "Yazidi refugees return to Sinjar in Iraq – a photo essay"

¹⁶³ UN Habitat, "Emerging Land Tenure Issues Among Displaced Yazidis From Sinjar, Iraq"

¹⁶⁴ UN Habitat, "Emerging Land Tenure Issues Among Displaced Yazidis From Sinjar, Iraq"

¹⁶⁵ Ochab, "Nadia Murad Explains the Blueprint to Help Religious Communities in Iraq"

Program's Funding Facility for Stabilization wrote that "90% of projects are underfunded"¹⁶⁶.

Policy Recommendation:

Strengthen the local infrastructure in terms of laws regarding property rights and buildings, and properly redistribute the land. This involves peace talks amongst the Iraqi government, and an emphasis on rebuilding the economy and local governments. There also is a need for investment in longer-term sustainable development initiatives in Yazidi communities, including rebuilding homes, public buildings, roads, and various other infrastructure in order to facilitate the safe return and integration of IDPs.

Internationally Displaced Persons

As mentioned above, many neighboring countries, countries in Europe, and even the US have provided refuge for the Yazidi population. However, there remain a number of questions over the future of these refugees, and over the safe transportation either towards a new country, or on the return journey to Iraq.

In terms of creating a safe passage for the evacuation of Yazidi refugees, this proved difficult due to the mountainous terrain. The refugees who were evacuated from the Sinjar mountain were rescued by Kurdish forces and given shelter in Dohuk¹⁶⁷ following the US airstrikes. The PKK (Kurdish) also provided aid and camps to 3000, and supplies were dropped on the mountainside as part of a multinational humanitarian aid mission. Furthermore, Turkey sheltered refugees in Silopi, using AFAD to set up camp for 6000¹⁶⁸. Yazidi refugees have fled to other countries, but largely without formal transportation aid, and often these journeys can be very dangerous. They are vulnerable to exploitation due to the urgency of their situation and can find themselves using dangerous transport modes such as overcrowded boats.

The UNHCR has been working to protect refugees and returnees, aiding with registration, legal and psychosocial support, prevention and response to SGBV and sexual

¹⁶⁶ Murad, "My people were massacred five years ago. The genocide continues"

¹⁶⁷ Siddique, "20,000 Iraqis besieged by Isis escape from mountain after US air strikes"

¹⁶⁸ Baysal, "Yazidis in Turkey are still awaiting their fate"

exploitation and abuse (SEA), child protection, reunification of separated families etc.¹⁶⁹ It must be acknowledged that there are also difficulties in applying and receiving an Iraqi passport in order to even reenter the country.

Policy Recommendation

Discussions are required with countries who are hosting refugees, and their longer-term plan. Are the refugees going to be allowed to stay there if they wish, or will they be repatriated back to Iraq? This could be overseen by the UN, or in a case-by-case basis with the Iraqi government. However, amidst these talks is a requirement for proper representation of the Yazidi communities in each country, and their preferences should be carefully considered and taken into account.

Missing Persons

In a resolution on missing persons in 2002, the UN Commission on Human Rights reaffirmed that each party to an armed conflict “shall search for the persons who have been reported missing by an adverse party”¹⁷⁰. Work has been done by the International Commission on Missing Persons to assist the Iraqi government in exhumation of mass graves, DNA identification of missing persons, providing support to family of missing persons, and helping to create strategies and institutions to search for missing persons. This commission was signed in December 2014 by the Netherlands, Sweden, Belgium, Luxembourg, and the UK. So far, they have also trained at least 500 Iraqis to help hasten DNA extraction and matching remains with surviving relatives¹⁷¹. The Kurdistan Regional Government (KRG) office has also been working alongside to help return missing Yazidis.

Furthermore, British NGO ‘Road to Peace’ has attempted to get testing done in camps in Iraq, but the Iraqi government would not give their permission. Sally Becker, founder of ‘Road to Peace’ shared pictures of IDPs online and on social media, and as a result some family members have been able to recognize them and contact her about them¹⁷².

¹⁶⁹ UNHCR, “The Crisis in Iraq

¹⁷⁰ IHL Database, “Accounting for Missing Persons”

¹⁷¹ Porter, “The long search for Iraq’s missing”

¹⁷² Neurink, “Yazidis demand Iraq actively search for their missing persons”

Mass grave sites are crucial pieces of evidence to help with missing persons, as it can eliminate searches for alive persons, and provide some closure to families. UNAMI has been working extensively on excavation projects, and details more than 200 mass grave sites exist across Iraq¹⁷³. UNITAD began to exhume mass grave sites in March 2019¹⁷⁴.

However, forensics teams are struggling to find enough survivors to do DNA matches with exhumed bodies, as they would usually take blood samples from three “first-degree” relatives¹⁷⁵, but with so many displaced persons spread across the country, and internationally, this is an extremely difficult job.

Policy recommendation

As a priority, the remaining 3000+ Yazidi who were abducted need to be located and returned to their families if still alive, or if deceased need to be properly documented and the families informed. Databases need to be compiled of the affected Yazidi people, persons accounted for as IDPs in camps, international refugees, missing persons presumed dead, missing persons presumed alive, or deceased Yazidi persons.

III.C Specific Needs as Yazidi’s Return

In 2018 a mental health survey conducted by Medecins Sans Frontieres (MSF) found that 100% of the respondents, within the Yazidi community, have at least one family member suffering from moderate to severe mental illness¹⁷⁶. Additionally, there is a particularly high rate of suicide in the Sinjar district, with Sinuni General Hospital reporting 24 attempts between April and August 2019¹⁷⁷. Evidently, there is a large-scale mental health crisis playing out throughout this region. Largely, this crisis is a product of the genocide, as well as forced migration against the Yazidi community starting in August 2014. Furthermore, persecution against the Yazidi has unfortunately been a consistent practice historically, with one article estimating that there have been 74 genocides in total

¹⁷³ UN OHCHR, “ISIL’s legacy of terror: at least 200 mass graves in Iraq, says UN report”

¹⁷⁴ UNAMI, “Government of Iraq, UNITAD conclude first Sinjar mass grave exhumation in Kojo village”

¹⁷⁵ Porter, “The long search for Iraq’s missing”

¹⁷⁶ “Iraq: Yazidi Survivors of Violence Are Facing a Mental Health Crisis.”

¹⁷⁷ Ibid.

against the Yazidi in the past 800 years¹⁷⁸. Thus, the mental health issues throughout the Yazidi community often fall into the category of transgenerational traumatization. Moreover, “The medical and mental health issues arising from the combination of subjective, collective, and cultural traumatization, as well as the subsequent migrant and refugee crisis, are therefore extraordinary and require novel and wise concepts of integrated medical care”¹⁷⁹.

In sum, the Yazidi population has been immensely traumatized and continues to face threats, as well as general hardships today, which greatly contribute to this crisis. This trauma has molded into anxiety, depression PTSD, as well as a host of physical symptoms including headaches, children wetting the bed consistently¹⁸⁰, and conversion disorder, which is when patients experience blindness, paralysis, or other potential symptoms that cannot be explained by a medical examination¹⁸¹. All in all, it is without question that following repeated trauma there is a mental health crisis throughout the Yazidi community in Iraq that needs to be addressed for reintegration to be at all possible.

To address this issue, one recommendation is to partner with local and global NGO’s to provide more mental health support in person. This suggestion is twofold in the sense that there is a need to enlist psychologists to work directly within refugee camps in order to address people’s needs, as well as to encourage psychological education, which can train new volunteers, or guide college students towards career in psychosocial work. One example of this includes German funding of a trauma institute at the University of Doho in Iraq, to train psychological counselors that can help the Yazidi people¹⁸². This is a positive step considering that it can lead to an increase in long term mental health support within the region, as well as the fact that research has shown psychological counseling is more effective when it is conducted in native language, or with other members of the community,

¹⁷⁸ Kreyenbroek, Ji, Kizilhan, A. Cavellius, R. Salman, A. Sharon, I. Levav, et al. “Individual, Collective, and Transgenerational Traumatization in the Yazidi.”

¹⁷⁹ Kreyenbroek, Ji, Kizilhan, A. Cavellius, R. Salman, A. Sharon, I. Levav, et al. “Individual, Collective, and Transgenerational Traumatization in the Yazidi.”

¹⁸⁰ Ibid.

¹⁸¹ “Iraq: Yazidi Survivors of Violence Are Facing a Mental Health Crisis.”

¹⁸² “Psychological Center Offers Hope to Yazidi Women” Youtube Video

as opposed to foreign humanitarian workers¹⁸³. Moving forward, one step the U.S. could take to positively aid mental health would be to sponsor similar initiatives and programs.

However, there is still a need for increased counseling in the short term and this is where it will be largely beneficial to work with NGO's, as well as to use tools provided by the United Nations. Humanity Crew is one organization that pushes for mental healthcare precedents within refugee camps around Europe, so they could be a potential organization to help work in the camps in Iraq, or they could act as a potential resource to guide the creation of programs. Largely, their missions focus on individual and group counseling, as well as setting up educational and recreational activities for children that are designed to help them overcome severe trauma¹⁸⁴. Another important resource to consult is the Mental Health Gap Action Programme for Humanitarian Intervention Guide (mhGAP-HIG). This document was formed with respect to the fact that armed conflicts and displacement result in severe mental health diagnoses that can slow the process of returning to daily life, and it is a tool aimed to support general health facilities within conflict areas to address these conditions in non-specialized health settings¹⁸⁵. Moving forward towards reintegration it is critical that organizations work together to address mental health issues, as well as utilize trusted tools, such as the mhGAP-HIG, to guide these practices.

Research regarding mental health in conflict and post-conflict settings has shown that part of the observed trauma is a product of continued daily stressors, rather than direct experience of violence¹⁸⁶. This has heavy implications for mental health treatment in post-conflict settings because it reveals a partial need to shift tactics. This research proposes that by investigating, identifying and then reducing daily stressors, that the population faces, it is possible to reduce the amount of mental trauma that victims experience, and therefore further energy can be devoted to providing individualized

¹⁸³ "What We Do." Humanity Crew.

¹⁸⁴ Ibid.

¹⁸⁵ World Health Organization and United Nations High Commissioner for Refugees. mhGAP Humanitarian Intervention Guide (mhGAP-HIG): Clinical management of mental, neurological and substance use conditions in humanitarian emergencies.

¹⁸⁶ Kenneth E. Miller, Andrew Rasmussen, War exposure, daily stressors, and mental health in conflict and post-conflict settings: Bridging the divide between trauma-focused and psychosocial frameworks,

treatment to those still experiencing severe mental illness¹⁸⁷. Overall, daily stressors are defined as lack of housing, extreme poverty, food insecurity, or social isolation, which are all pertinent threats to the Yazidi population, that need to be addressed regarding reintegration. Thus, this research estimates that as some of these issues are addressed, mental health throughout the community should be improved, which offers a glimmer of hope considering that plans for reintegration address the elimination, or at least the reduction, of many noted daily stressors¹⁸⁸.

Additionally, some research has shown that for fully socialized adults are not responding well to traditional expositional therapy, which leads to high rates of drop out¹⁸⁹. Whereas, group therapy and narrative building has been shown to collectively strengthen and build resiliency, which in turn can improve mental health, and is a very cost-efficient practice, considering less counselors are needed¹⁹⁰. Evidently, there are many factors and practices to be taken into consideration when addressing conflict and post-conflict mental healthcare.

A final suggestion addresses a method adopted within refugee camps in Myanmar for the Rohingya community, which has faced remarkably similar patterns and styles of persecution. Additionally, like the Yazidi, it is not culturally customary to seek out mental health treatment, thus to address this issue organizations worked to integrate mental healthcare into primary care facilities. The idea was that people would be more likely to seek out mental healthcare in a primary care setting, because there is less of a stigma, as well as the fact that it was easier to organize and facilitate treatment in these settings¹⁹¹. Furthermore, this integration was done with consultation to the mhGAP-HIG, which was previously mentioned in this paper. Therefore, it could be beneficial to follow a similar

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Kreyenbroek, Ji, Kizilhan, A. Cavellius, R. Salman, A. Sharon, I. Levav, et al. "Individual, Collective, and Transgenerational Traumatization in the Yazidi."

¹⁹⁰ Kreyenbroek, Ji, Kizilhan, A. Cavellius, R. Salman, A. Sharon, I. Levav, et al. "Individual, Collective, and Transgenerational Traumatization in the Yazidi."

¹⁹¹ Tarannum S, Elshazly M, Harlass S, Ventevogel P. Integrating mental health into primary health care in Rohingya refugee settings in Bangladesh: experiences of UNHCR. Intervention.

protocol, consulting with this tool, to create a foundational practice of mental health treatment, within primary and general care facilities in Iraq.

All in all, when addressing the need for reintegration of such a vulnerable population, it is paramount that mental health illnesses are incorporated into the framework. Considering the case of the Yazidi, and their particular vulnerability due to the presence of transgenerational trauma, it is ideal that plans for reintegration highlight methods to address mental health and trauma in both the short term and the long term. Thus, this paper has highlighted research revealing some of the most effective methods for administering mental healthcare within a conflict and post-conflict setting. Overall, the backbone of these practices is to build trust, and to work towards structuring programs and institutions that meet cultural and practical needs, because that is when they will prove most effective. The trauma that results from being a victim of such heinous crimes is undoubtedly insurmountable, so evidently the task of addressing mental health needs will be challenging. However, there is a vast amount of research, as well as several helpful tools, which offer a glimmer of hope towards successful reintegration.

III.C.ii: Short Term Issues for Yazidi Women and Girls

Within the already vulnerable Yazidi population, Yazidi women face additional gendered difficulties upon reintegration. The lingering stigma of sexual assault and the children that stemmed from these traumatic experiences, in addition to a shortage of rehabilitation services, ultimately hinder the Yazidi women's capabilities to return to a normal life.

Religious purity, a central aspect of the Yazidi religion, aggravates initial hostilities towards welcoming back Yazidi women who suffered from sexual assault. Within their religious mythology, Yazidis believe they descended singularly from Adam and consequently must maintain that unique separation between themselves and other communities. Evidently, marriage and/or sexual interactions with a member of an outside community is strictly forbidden as it would actively stain that treasured mark of purity. Therefore, rather than welcoming Yazidi women after their release from ISIS captivity, Yazidi communities often reject and further ostracize these women due to the loss of their virginity, despite it stemming from sexual assault.

Women are constantly reminded of this traumatic reality, as seen by the highly encouraged incorporation of a virginity test within the procedural medical examination given by Iraq's Investigation and Evidence Collection Commission upon return.¹⁹² This facet of purity in women's perception within their religious community makes them particularly vulnerable to the violent methods of ISIS that ultimately shatter the central pillar of woman's perceived purity, integrity, and faith. However, some action has been taken to mend these conflicting religious beliefs with the reality facing the Yazidi women. Baba Sheikh, a spiritual leader, published a doctrinal amendment encouraging the acceptance of freed female captives.¹⁹³ Part of this acceptance is publicly exemplified by a religious "rebaptism" ceremony for returning women that officially allows their return into their community. However, the century old social attitude towards the accepted sexual condition of women, despite their innocence in these extreme situations, adds an incredibly harsh facet of rejection that challenges reintegration.

Following the precedent set by Baba Sheikh, further measures encouraging social acceptance of women should be taken. Through community building events, led by religious leaders holding a powerful tool of legitimacy, women should be encouraged to participate in religious festivals and ceremonies. As means of integration without neglecting the importance of Yazidi faith, rebaptism ceremonies should continue and become a widespread option for all women aiming to reclaim their place within their community. A desired goal would be to create community understanding that rape and sexual assault is exempt from the strict emphasis of sexual purity expected of Yazidi women and consequently forgivable. In addition, virginity tests should no longer be administered by Iraq's Investigation and Evidence Collection Commission, due to their unscientific, unreliable, and ultimately degrading nature. The elimination of this procedure will diminish opportunities for judgement while preventing further emotional distress for women during this invasive test. Finally, mediation between the community, families of those affected, and the affected women should include female leadership in addition to

¹⁹² Nassar, Sualy, *Iraq- Sexual and gender-based crimes against the Yazidi Community: the role of ISIL foreign fighters*, 28.

¹⁹³ Kaushal, "Reintegrating Yazidi women and girls back into the community."

religious authority. This will ensure some balance in ideas and experiences to protect the women involved.

Prior to returning to their corresponding communities, women must battle for the rights over their children fathered by ISIS soldiers due to the patrilineal nature of Iraqi law. Under current Iraqi jurisprudence, all children's legal paperwork including their designated religion must be registered based on the identity of the father. As a result, children of Yazidi women must legally be raised Muslim and are under the responsibility of their fathers, ISIS soldiers.^{194,195} In addition, any filed paperwork for children (including registration) requires a male relative's signature.¹⁹⁶ This lack of autonomy over their children creates a dilemma for Yazidi women attempting to return home, as they must choose between remaining with their children close to their aggressors or leaving them all behind. In addition, if women are able to return with their children, they must confront social rejection in their communities. Due to their fathers, these children are often seen as physical representations of the ISIS fighters that perpetrated violence across the community. They are perceived as current and future threats due to their Muslim identity as many fear they will also eventually attempt to indoctrinate or forcibly convert other Yazidis to Islam. Their lack of full Yazidi heritage is also deeply stigmatized due to the emphasis on the religious purity of the Yazidi bloodline. Consequently, these challenges conditionalize the return of women into their communities and further isolates them. These sentiments were made strikingly clear when the Yazidi Supreme Spiritual Council quickly retracted a statement of acceptance of women and all children, later detailing that this would not be applicable to those children fathered by Islamic State members.¹⁹⁷ These social and legal obstacles actively obstruct women's attempts to return to their communities without sacrificing their loved ones.

While changes to legal frameworks often require long term solutions, the situation of the Yazidi women and their children demands immediate action. Iraqi law should shift paternal jurisdiction over children to mothers. The ISIS soldiers' parental rights, by not

¹⁹⁴ Elgibali, "Reintegration After Rape: The Story of Yazidi Women Freed from the Islamic State."

¹⁹⁵ Westcott, "Iraq's Yazidi survivors fight to start over."

¹⁹⁶ Bureau of Democracy, Human Rights, and Labor. *2018 Country Reports on Human Rights Practices: Iraq*, 54.

¹⁹⁷ Otten, "A Broken Homecoming."

actively supporting their children or being present in their lives, should be relinquished. This gives the Yazidi women the necessary authority to return home and legally respond for their children without the grave cost they are paying now. In terms of social attitudes upon return, further mediation should be considered, particularly in educational settings. Schools and educators should be extensively trained to understand the plight of these children, actively set an example of equal treatment for them among their peers and pupils and facilitate their integration into the educational system. These measures will aim to diminish greater inequality between these children and other Yazidi students. In addition, women should receive educational guidance to understand their rights as full custody parents in order to ensure these are upheld and protected.

Current rehabilitation services are sparse and largely incapable of fulfilling the demand that returning Yazidi women necessitate. It is not shocking to observe that over 80% of women previously held captive suffer from PTSD, self-harm, and other severe mental health issues.¹⁹⁸ Yazidi women must balance these debilitating issues with further disadvantages upon their return. They are often in need of stable housing due to rejection by family members or simply a lack of family to return to. As unmarried women, they must grapple with financial insecurity aggravated by limits on their education and social capabilities that are established by the patriarchal structure of the society they live in.

To this point, the Iraqi government and NGOs have primarily attempted to address this disparity through compensation and makeshift shelters. In March of 2019, the Yazidi Female Survivors Law was submitted to Parliament. The law demanded compensation for female survivors held captive by ISIS through access to a monthly salary, piece of land, healthcare, and education monitored by a new government agency, the General Directorate for the Affairs of Female Survivors.¹⁹⁹

More than a year later, however, this law has failed to reach approval and implementation. This running failure to successfully address the predicament of Yazidi women is also seen in the unreliable shelters in place for victims of sexual violence. NGO-run shelters must be approved by the Ministry of Labor and Social Affairs, who often shuts

¹⁹⁸ Dinnayi, “Isis may be gone but we are handing them a victory over the Yazidi people they tried to destroy.”

¹⁹⁹ Ahmado, “Yazidis Push for Reparation Bill in Iraqi Parliament.”

these establishments down due to community backlash and perception that they are brothels. The shelters run by this same ministry total 16 “family protection units” that place greater emphasis on family reconciliation than victim protection and autonomy.²⁰⁰ They not only lack the capacity to hold the large number of Yazidi victims but also are predominantly male-dominated, causing women’s accounts and pleas for assistance to often be dismissed. This disproportionality also instills a fear of approach to shelters among victims who believe their private testimonies will be made public among community members and their own families. In all, these failing rehabilitation services, further aggravated by the previously mentioned social stigmatization and overall uncertainty regarding the future, makes Yazidi women highly vulnerable without means of protection or adequate resolutions.

Women’s shelters, run by Yazidi women and NGO allies, should be constructed with financial help from the international community. First, their permanence should no longer be dictated by the Ministry of Labor and Social Affairs but rather an independent committee focused solely on women’s rights (similar to the one proposed by the Yazidi Female Survivor’s Law). Concomitantly, the shelters should create an environment of trust, empathy, and compassion through female leadership. On a functional scale, the shelters should provide immediate counseling, mental health services, temporary housing, financial support, clothing/basic necessities, and education that will equip women with the necessary tools to become independent and active members of their community. In particular, educational courses on the economy, technology, Arabic, English, and women’s rights should help facilitate the acquisition of future employment by helping redefine the roles women can play while simultaneously restoring their own self-worth and confidence. These shelters, while a short-term solution, will lay a foundation of female leadership and a victim-centric approach for future mental health and reintegration infrastructures.

Finally, Yazidi women’s rights to share their experiences in a dignified and healthy way is consistently violated by various outside responses. For example, journalistic sensationalism that uses the brutal depictions of rape to catch the attention of various

²⁰⁰ Bureau of Democracy, Human Rights, and Labor. *2018 Country Reports on Human Rights Practices: Iraq*, 48-49.

audiences completely disregards the women's choice to control their own narrative.²⁰¹ As a result, this lays a precedent within the rest of the community to disrespect these rights in an insensitive and potentially harmful way, that violates women's dignity and autonomy while jeopardizing their mental health. There are currently no offices or committees at the federal or local levels that address these violations, or any beyond the initial crimes committed by ISIS, for women to reach if necessary.

To ensure women's autonomy over their stories, an institution for accountability should be established. Rather than neglect women by only listening to their experiences with ISIS soldiers, this committee or court would encompass abuses after this traumatic event. By institutionalizing the protection of women's dignity in this way, women will have a legitimate outlet to report abuses and insensitive actions taken against them by the public and journalists. This final solution will serve as a method of accountability to protect Yazidi women as they navigate the complicated landscape of reintegration at home.

²⁰¹ Foster, Minwalla, "Voices of Yazidi women: Perceptions of journalistic practices in the reporting on ISIS sexual violence."

IV. Towards Long-term Peace and Reintegration

IV.A Gender Issues in the Long Term

In the short term, immediate measures must be taken to address wartime trauma and the difficulty of reintegrating female survivors into a post-war society. Firstly, access to medical services and counselling resources must be prioritised for survivors of sexual violence. After restoring the physical and psychological health of women, their reunion with surviving family members should be prioritised. Their right to custody of children born during wartime must be protected by Iraqi law. To encourage the reunification of family and spouses, community leaders must lead the charge to destigmatize sexual violence. Women who do not have surviving family members or who are rejected by their spouses and family should temporarily seek safe haven at women shelters. These shelters should ideally be operated by Yazidi women and NGOs to ensure that the women feel safe in their new lodging. Lastly, all survivors must be protected from predatory media corporations by an institution for accountability. These recommendations encapsulate the ideal short-term all-governmental response to the reintegration of Yazidi women.

In the long-term, comprehensive policies are needed to ensure complete reintegration. The long-term objective would be to ensure that Yazidi women can live a dignified life with financial independence and personal autonomy. This can be achieved through economic empowerment, societal support, and victim-centred transitional justice. The following recommendations are proposed to achieve total reintegration over a 10-year timeline:

The government can invest in the existing humanitarian aid infrastructure by funding humanitarian organisations and hiring local social workers to strengthen local capacity. Currently, NGOs are contributing significantly to post-conflict recovery by operating women's social centres and shelters which provide temporary support and accommodation to Yazidi women and their dependents. However, lack of donor funding due to donor fatigue has undermined ongoing efforts to support Yazidi women. The UNHCR office in Kurdistan, Iraq, reported that the capacity of IGOs and local authorities are

severely overstretched.²⁰² The government can aid ground efforts by ensuring that these organisations are fully staffed and funded. In the interim 3-year timeline, the government can work towards rapidly building up the capacity of these centres by assigning a greater number of social workers, counsellors, and medical professionals to serve at these underfunded shelters. With more personnel and sustained funding, these centres would be able to ensure that one-on-one therapy sessions and adequate care are available at all hours of operation. These operations should provide women with legal, medical, and financial assistance or guide them on how they can gain access to the resources. In addition, the centres should regularly hold awareness sessions to help the women understand the range of resources available to them so they can access them.

Beyond meeting their basic needs, women's social centres should provide vocational training to guide the women towards self-sufficiency. Young girls should continue to receive an education. The women and young mothers should be taught professional skills in trades such as tailoring and hairdressing. It is especially essential for single mothers or women who may face communal or familial rejection to be empowered to become financially independent. Graduates of vocational training programs can engage in income-generating activities on their own, facilitating their reintegration into society. Furthermore, this would help to ease the process of resettlement for women who are seeking refuge in other countries where female labour participation is high. Most importantly, research shows that a significant number of children born of wartime rape were abandoned because their mothers were unable to raise them without societal or familial support.²⁰³ Greater financial independence among Yazidi women is likely to reduce the rate of child abandonment as mothers are better positioned to care for their children.

As more women attain a sustainable livelihood, this will also ease the strain on overburdened women's shelters. In the next 5 years, there should be a gradual transition of staff and funding from shelters to women's social centres. At the end of the 10-year timeline, the objective is to gradually phase out temporary women shelters as Yazidi

²⁰² Mohammadi, "Help for Yazidi survivors of sexual violence", 409.

²⁰³ Lee, "Children born of war in the twentieth century", 157.

women fully reintegrate into society. Women's social centres will continue to operate to assist vulnerable female demographics, such as welfare support to single mothers, and support post-conflict recovery efforts such as reconnecting lost family members.

Secondly, the government should call for the end of forced separations of Yazidi mothers and their children. A gendered victim-centred transitional justice approach must consider the wishes of Yazidi women. It is estimated that there are up to 200-260 women who are currently stuck in Syrian camps under terrible conditions as they are unable to return to their family with their children.²⁰⁴ These women live in limbo as they are dependent on social organisations for security, shelter and care. While women's social centres can provide them with the vocational skills to live as independent single mothers, Yazidi women should ideally be re-assimilated into the community and family. Yet, research on the attitudes of Sinjari Yazidis in Iraq have found that although the community would universally accept Yazidi women who were forced into sexual slavery and deemed her marriageable to Yazidi men, only half of the community would accept Yazidi women who returned to the community with ISIS-fathered children.²⁰⁵ This demonstrates a clear division within the Yazidi community on the issue of the full reintegration and rights of Yazidi mothers with ISIS-fathered children. Yazidi women cannot experience meaningful and inclusive reintegration if their children do not receive the same welcome.²⁰⁶ It is unacceptable for Yazidi women to have to choose between forced separation from their children or their family.²⁰⁷ After surviving years of sexual violence, Yazidi women should be protected from the additional trauma of forced separations.

Rape and sexual violence were strategically used by ISIS to break the ties of the Yazidi community from the very core family unit.²⁰⁸ According to Layla Abi-Falah, author of *Reintegration of Female Rape Survivors*,

²⁰⁴ Westcott, "Iraq's Yazidi Survivors Fight to Start Over."

²⁰⁵ Greaser, "Attitudes of Sinjari Yezidis in Iraq," 28.

²⁰⁶ Neenan, "Closing the protection gap for children born of war," 20.

²⁰⁷ Ibrahim, "Free Yezidi Foundation Statement," 1, 3.

²⁰⁸ Melchoir, "The Rape of the Yazidis," 21.

“The systematic use of rape is a tactic of modern-armed conflict meant to terrorise and destroy a population, break up families, destroy communities, and, in some instances, change the ethnic make-up of the next generation... Familial and communal rejection is the ultimate goal of mass wartime rape.” (428-429)

This has proven to be true. In April 2019, Yazidi spiritual leader Baba Sheikh was forced by fierce backlash to retract an earlier decree that children of survivors should be welcomed. The Yazidi Higher Spiritual Council clarified that only children born to two Yazidi parents will be accepted by the community. Evidently, forced acceptance may also divide a dispirited community during a highly vulnerable post-conflict period, further harming the cohesion of the community both in the present and future. On the other hand, forced separations can lead to generational trauma for mothers and their children.²⁰⁹ The reversal in decision-making clearly demonstrates that Yazidi mothers were ultimately not prioritised in their considerations.²¹⁰ This goes against the victim-centered approach that leaders are advised to take. To address the full reintegration of Yazidi mothers into their community, the government needs to display great sensitivity to community sentiments while prioritising the individual decisions made by Yazidi mothers.²¹¹ It is imperative that the government do not rush either side to a decision when the community is not ready for it. The issue of reintegrating mothers and their wartime children requires a long-term plan.

In the immediate 3-year timeline, urgent action must be immediately taken to standardize adoption procedures to eliminate the harm of forced separations. Separated mothers must be able to relocate their children should they want to. During the adoption process, stringent fact-checking procedures should be undertaken to ensure the mothers' consent. While standardisation of adoption procedures should be codified under the law, the government should also ensure that they are enforced in practice. Specifically, Yazidi mothers must register their children at adoption centres or orphanages instead of

²⁰⁹ Neenan, “Closing the protection gap for children born of war,” 9; Rohwerder “Reintegration of children born of wartime rape,” 4.

²¹⁰ Ibrahim, “Free Yazidi Foundation Statement,” 1-2.

²¹¹ Neenan, “Closing the protection gap for children born of war,” 3.

abandoning them to verify that they consent to giving them up for adoption. The aim is to effectively reduce child abandonment rates.

In the next step of the reintegration process, facilities should be specifically constructed to house Yazidi mothers and their children. There should be at least one facility in each Yazidi community in Kurdistan that offers lodging only to Yazidi mothers with ISIS-fathered children. The facilities should be secure to protect its residents. Research has shown that the two women shelters in Yazidi communities in Nineveh reject Yazidi mothers with ISIS-fathered children.²¹² The residents of a government women shelter in Dohuk reportedly discriminate against ISIS-fathered children and their mothers. The creation of facilities will make a huge difference in securing the long-term health and wellbeing of Yazidi mothers and their children. It is also recommended that these facilities have the capacity to provide community group counselling sessions for the mothers and children, respectively. Experience from Rwanda shows that psychological support for mothers to navigate their feelings of belonging, identity and stigma greatly facilitates their healing process during reintegration.²¹³ It is highly beneficial for Yazidi mothers to receive targeted professional support in exploring their nuanced, complicated feelings towards their ISIS-fathered children.

Upon the completion of construction on these facilities, the government should make suitable arrangements to relocate Yazidi survivors and children who are enduring precariously in Syrian refugee camps and women shelters. Within 5 years, the number of Yazidi women and children stuck in camps should be reduced dramatically as the relocation process gains momentum.

In the long run, the government should actively support trusted local actors in gradually shifting community sentiments towards universal acceptance of Yazidi women survivors and their dependents. Among the many respected stakeholders, Yazidi spiritual leaders and Yazidi female survivor-turned-activists should take on the mantle of leading de-stigmatization efforts and changing cultural beliefs. Historically, the Yazidi community

²¹² Greaser, "Attitudes of Sinjari Yezidis in Iraq," 46.

²¹³ Woolner, "Mothering Children Born of Genocidal Rape in Rwanda," 715.

has always been an isolated, closed-off community within which spiritual leaders traditionally exert great influence. Research on the attitudes of the Yazidi community has suggested that attitudinal unity relies heavily on cultural and religious beliefs.²¹⁴ Since spiritual leadership has a monopoly on community beliefs, the government should form close partnerships with Yazidi spiritual leaders to rally their support on universally and fully reintegrating Yazidi women and their children. Baba Sheikh, a Yazidi spiritual leader has broken traditions twice in 2014 and 2015 by welcoming Yazidi women who had endured forced Islamization and rape instead of upholding the traditional practice of excommunication. This precedent gives hope that the respected leaders can make another historic decision in welcoming Yazidi survivors and their children and manage its backlash from the community.

Other scholars have similarly advised that de-stigmatisation efforts should draw on the legitimacy of local leaders and activists.²¹⁵ While the male-dominated spiritual council traditionally holds great sway in the Yazidi community, female survivor-turned-activists are also leading post-conflict recovery efforts and rebuilding civil society. Among them, Yazidi survivor and Nobel laureate Nadia Murad represents a powerful voice within the community. Nadia Murad and other Yazidi women activists can lend their voice to the de-stigmatisation campaign that promotes acceptance and inclusion of Yazidi survivors and their ISIS-fathered children. At the end of the 10-year timeline, there is hope that local leaders can significantly shift cultural attitudes towards full reintegration of all Yazidi survivors and their dependents.

IV.B. Towards the Political Integration of the Yazidi

While the social measures mentioned in the previous section would hopefully create a nonsectarian national identity that would alleviate the need for other protection measures, Iraq remains severely divided and those divisions will inevitably last for years to come. In the meantime, the U.S. should seek to implement and advocate for different

²¹⁴ Greaser, "Attitudes of Sinjari Yezidis in Iraq," 39.

²¹⁵ Rohwerder "Reintegration of children born of wartime rape," 3.

institutional policies that will ensure that the horrific genocide the Yazidi community endured is never repeated.

A consequence of the ongoing tensions between Baghdad and Erbil, systemic underdevelopment has long plagued areas such as Sinjar and Bashiqa, whose administrative status remains contested. Neither side is willing to commit to improving the societal, economic, and security situation of the Yazidis, as neither side can be confident that they will hold on to these territories in the future. While oil and gas reserves in these territories are modest²¹⁶, desire for assuming control over the disputed districts continues. This may be due to the possibility of undiscovered wealthy reserves but is also likely a consequence of fear on both sides. Calls for Kurdish independence have long threatened Iraqi sovereignty and expansion of Iraqi controls threatens the semi-autonomous governance the Kurds have obtained after much struggle.

The Iraqi government has attempted to solve this issue internally; Article 140 of the Iraqi Constitution calls for a census and referendum in Kirkuk and other disputed territories to resolve the boundary issue. This article, however, has not yet been implemented despite its December 2007 deadline.²¹⁷ The United Nations has previously attempted to offer alternatives to Article 140, including making the Kirkuk province autonomous. However, Massoud Barzani, previous President of the semi-autonomous region has repeatedly expressed that Kurdistan will not “accept that the United Nations or anyone else present us with alternatives to Article 140.”²¹⁸ The Kurdish leadership, with its strong local political and security presence, most likely believes that the results of the census and referendum will favor Kurdish integration. The truth of this belief may also be what is preventing the Iraqi government from moving forward with its implementation. Nevertheless, The U.S. should strongly advocate implementation of this Article, as without a resolution to this boundary issue, contested Yazidi territories, as well as those of other minority groups will remain in a dangerous purgatory. Without a definite authority in the

²¹⁶ Kaválek, “Competing Interests.”

²¹⁷ Goran, “Article 140 of Constitution.”

²¹⁸ Dagher, “New Kurdish Leader.”

region that is responsible for their safety and security, alongside their political and economic well-being, these territories will remain an international issue.

Once this territorial issue is resolved, the U.S. should also focus on increasing Yazidi representation and engagement in both Kurdish and Iraqi politics. Both the National Endowment for Democracy and the U.S. State Department have historically provided funding for capacity-building programs in other Middle Eastern countries through the Middle East Partnership Initiative's Regional Assistance Program 2 (RAP 2), which trains civil society to engage in local political processes but does not yet include Iraq.²¹⁹ Both offices should expand funding and direct personnel to Iraq, where it can provide the Yazidi community, as well as other religious minorities, with the tools necessary to successfully advocate for their interests.

This training will be of little use, though, if the community faces immense difficulties in elections. In the Kurdish Parliament, the number of reserved seats for non-Kurdish minority communities is 11 out of 111, reserved for Christians, Turkmen, and Armenians. Yazidis, however, are not granted any reserved seats. To participate politically, Yazidis need to affiliate themselves with one of the major Kurdish political parties. These political parties, however, care little about the specific needs of the Yazidi so affiliation carries little benefit. Similarly, in Baghdad, Yazidis are only entitled to one seat in the ICouncil of Representatives of Iraqi (Iraqi Parliament) as they are considered part of the Kurdish entity rather than a distinct minority. In 2018, Parliament speaker Salim Jubouri rejected a draft proposal based on the decision of the Federal Court to give reserved seats to Yazidis in relation to their population.²²⁰ which would have created a more fair and equitable representation. However, in 2008, the Iraqi Parliament approved minority reserved seats on six provincial councils across the country. Under this plan, Yazidis were offered one seat on the Nineveh council.²²¹ While not necessarily proportionate to their population either, it does show that the implementation of quotas is a possibility in Iraq. The United States

²¹⁹ Kadah, "Regional Assistance Program 2."

²²⁰ Khalaf, "Losses in Iraqi elections."

²²¹ Susman, "Quotas on Minorities."

should continue to advocate for such quotas that increase minority representation in both the Council of Representatives of Iraq and Iraqi Kurdistan Parliament (IKP) Parliament.

Before advocating for such quotas, it is important to note and consider that quota systems to ensure representation have exacerbated sectarian tensions in other Middle Eastern countries. However, there is strong research showing that it can work to ease them as well, especially when the political process is largely controlled by two large parties. When political negotiations involve smaller groups, leaders are incentivized to appeal to those beyond their own sectarian group. This promotes policies that will benefit the larger Iraqi national community, as well as provides leverage to minority groups looking to advocate for policies that provide them with protection and support. Minority groups such as the Yazidi can also serve as a buffer between larger groups. Iraqi Christians and Yazidis have recently served “as neutral voices in Iraqi political disputes and frequently present an intermediate perspective to balance tensions between opposing sides and to resolve conflict.”²²² In a country whose politics are overwhelmingly defined by sectarian identity, greater minority representation is especially important.

While the U.S. should refrain from the interventionist nation-building that has led to many of the modern issues plaguing Iraq, the recommendations cited above hope to allow the U.S. to engage more positively. This positive engagement will work to find the balance between the promotion of a nonsectarian national identity and the preservation and protection of the Yazidi identity that will allow for long lasting peace in Iraq.

IV.C. Towards Social Integration of the Yazidi

Transitional justice for Yazidis must encompass their sustainable protection and prevention of atrocity crimes through mitigating sources of insecurity in Iraq. Ethno-sectarian divides greatly contribute to the continuous violence, political instability, and economic decline. Therefore, initiatives directed towards peacebuilding and nation building must entail ethnic and religious reconciliation and the strengthening of the Iraqi identity. This is a multifaceted approach that demands various reforms directed towards

²²² Henne, “Economic Integration.”

dismantling Iraq's ethno-religious institutions. Ethno-religious reconciliation through social integration is paramount. We recommend supporting negotiations between relevant actors, promoting initiatives that create a dominant Iraqi identity, and advocating for multi-ethnic schools to build sustainable multi-ethnic social capital.

Iraq has a long history of ethnic conflict. In fact, Arab and Kurd nationalists attempted to engulf minority identities to enhance their claims on Iraq²²³. Still, the social fabric that tied Iraqis together dissolved following the Iraq war. The US erroneously believed that three ethno-religious groups – Kurds, Sunni Arabs, and Shia Arab– dominated Iraq; therefore, it “viewed the establishment of a system of government that reflected the relative proportions of these three communities as the critical ingredient for establishing lasting democracy and stability in Iraq”²²⁴. Subsequently, the Coalition Provisional Authority (CPA) codified the ethno-sectarian divides into Iraq's constitution. For example, membership in the Iraqi Governing Council was divided along ethno-sectarian lines. Multi-ethnic city councils in cities such as Kirkuk were futile due to persistent disagreement²²⁵. Indeed, the political institutionalizing of ethnic-sectarian divides “[ingrained] and [legitimized] particularistic identities, creating notions of ‘exclusiveness’ that inevitably would exacerbate dislocations among the country's various communities”²²⁶. These political fragilities, especially without sufficient attempts at social integration, validated and cemented social intolerances.

Furthermore, the federal system that the coalition drafted into Iraq's constitution, reinforced ethnic prejudice, especially in the disputed territories. Due to the ethno-religious demographic distribution in Iraq, federalism divided Iraq partially along ethno-religious lines. Because each of the three main groups formed a majority or plurality in a state, they each consolidated federal power over regions in Iraq. This marginalized minority groups such as Assyrians, Turkmans, and Yazidis as well as the non-majority in the state. Groups such as Sunni Arabs and some Shia Arabs opposed federalism due to concerns that it would violate their rights and access to resources. Hence, the enforcement

²²³ Ali, “The Identity Controversy,” 2.

²²⁴ Alkadiri, “Oil,” 1316

²²⁵ Dawisha, “The Prospects for Democracy,” 727.

²²⁶ Dawisha, “The Prospects for Democracy,” 728.

of federalism exacerbated abuses and notions of victimhood²²⁷. Moreover, the majority power occupied the federal government and civil society, which were affiliated with the larger ethnonationalist parties²²⁸. Subsequently, minority groups remained underrepresented in the federal and central governments. Moreover, disagreements concerning the degree of centralization and the organization of fiscal and political powers within the federal system propagated distrust²²⁹. Oil revenues represent approximately 93% of Iraq's fiscal budget and 65% of GDP; therefore, disagreements concerning who controls oil revenues exacerbated intolerance²³⁰. That is because those who control oil-wealthy regions such as Mosul and Kirkuk capture much of Iraq's wealth in a decentralized federal system. The coalition's imposition of a fragile democracy and its appointment of Nouri Al-Maliki as prime minister reinforced sectarian conflict. Al-Maliki and the Dawa Party consolidated Shia power through polarizing ethnic groups and dominating Iraq's political system²³¹ while bolstering Iran's intervention in Iraq²³². These factors worsened marginalized and radicalized various groups, leading to intergroup hostilities at grassroots and national levels²³³. With persistent violence, distrust, and a lack of confidence in the central government and outgroups, ethno-religious identities became the basis of political, social, and economic organization.

The political conditions in Iraq will not stabilize until the ethno-religious divides are abandoned. The long-term prevention of atrocity crimes should include "[transforming] hostile relationships into more positive and constructive ones"²³⁴. A political system that breaks down ethno-sectarian institutions while mitigating fears that a single group would consolidate power is necessary²³⁵. Nonetheless, for such a political system to succeed, grievances must be addressed on a social level. Social integration would help reduce ethno-sectarian hostilities and develop the tolerance and trust needed to support a favorable

²²⁷ Blagojevic, "Peacebuilding," 556.

²²⁸ Wimmer, "Democracy," 123.

²²⁹ Alkadiri, "Oil," 1317.

²³⁰ Al-Qarawee, *Iraq's Sectarian Crisis*, 14.

²³¹ Al-Qarawee, *Iraq's Sectarian Crisis*, 3.

²³² Al-Qarawee, *Iraq's Sectarian Crisis*, 8.

²³³ Rydgren and Sofi, "Interethnic Relations," 26.

²³⁴ Blagojevic, "Peacebuilding," 556.

²³⁵ Dawisha, "The Prospects for Democracy," 728.

political system²³⁶. Moreover, ethno-sectarian reconciliation would divert focus away from the individual good towards the common good. This initiative must begin at grassroots levels; “by promoting interethnic loyalties at the micro level and by making the information asymmetry between ingroup and outgroup less acute”, one could develop multi-ethnic social capital and decrease stereotypes and misconceptions. Stereotypes allow elite groups to monopolize power and mobilize support through reinforcing prejudice, and thus increase instabilities²³⁷. Although a long-term process, social integration is imperative to lasting peace. Accordingly, we propose three strategies.

First, negotiations between relevant groups at grassroots and city levels are crucial to acknowledging group grievances, reconsolidating ethno-religious groups, and arriving at agreements. Although all groups, to a certain extent, face similar security, economic, educational, health, and livelihood concerns, attention is often directed towards ethno-sectarian group gains. This detraction from populist policy initiatives, helps increase corruption, weakens governments, and maintains fragile institutions. Therefore, negotiations, especially those directed towards addressing common problems, are imperative to putting aside group differences and reducing ethno-sectarian competition. Such discussions, also, stimulate social integration; interactions between community leaders, civil societies, NGOs, and activists, whether religious or not, help reduce stereotypes and develop a multi-ethnic community. Also, discussions could empower minority groups that are often underrepresented. This is especially important considering that ethno-sectarian identities govern civil societies, and thus either Arab or Kurdish interests dominate²³⁸. Negotiations, hence, could help reduce competition between ethno-religious groups, increase participation among minority groups, and bolster multi-ethnic and populist interests. We suggest working with local focal points to identify relevant local organizations and individuals who aim to promote ethno-religious reconciliation and social integration. Subsequently, we recommend providing assistance to such groups to organize discussions among relevant parties that include community leaders and actors, NGOs, and

²³⁶ Blagojevic, “Peacebuilding,” 555.

²³⁷ Rydgren and Sofi, “Interethnic Relations,” 26.

²³⁸ Rydgren and Sofi, “Interethnic Relations,” 27.

civil societies. Negotiations should aim to unify communities and generate inclusive social, political, and economic infrastructures at the grassroot and city levels.

Second, we propose supporting initiatives that foster a shared Iraqi memory and identity. Because ethno-sectarian community memories supersede a national Iraqi memory, communities are inclined to form ingroup loyalties²³⁹. Tribal and clan structures further enhance ethnic-based group loyalties²⁴⁰. Still, ethno-religious intolerance can be resolved if inclusion and national unity replace ethno-sectarian group interests, making a single national identity more important than ethno-religious identities²⁴¹. It is important to note, such attempts do not warrant the erasure or disregard of group identities. The aim is to strengthen the Iraqi identity, making it the dominant identity. Accordingly, we suggest encouraging talks, community events, and initiatives that work towards sharing the histories and grievances of each group to generate an understanding of the “other”. This is especially important considering that all groups have, to different degrees, suffered at the hands of the other. In Kirkuk, for example, the Kurds suffered from mass atrocities at the hands of the Arab Baathist regime. Nonetheless, following the Iraq war, the Kurds grossly mistreated Arabs, whether they were Baath sympathizers or not²⁴². A deeper comprehension of the experiences of the “other” would increase people’s willingness to form ties with one another, and thus reinforce the Iraqi identity. Moreover, promoting understanding and tolerance through presenting informed narratives could encourage community members, at the grassroot and national levels, to emphasize an Iraqi narrative, memory, and identity.

Third, the development of social capital through group integrations is important. Some cities in Iraq, such as Kirkuk, face the problem of residential segregation. This separated various institutions such as mosques, marketplaces, gathering sports, and schools. Accordingly, “ethnic homogeneity, and not heterogeneity, tends to penetrate deeply into the substructures of the city, which is a major obstacle to interethnic brokerage

²³⁹ Al-Qarawee, *Iraq’s Sectarian Crisis*, 4.

²⁴⁰ Hassan, *Iraq*, 5.

²⁴¹ Blagojevic, “Peacebuilding,” 557.

²⁴² Rydgren and Sofi, “Interethnic Relations,” 29.

and the creation of interethnic social capital”²⁴³. Although we recognize the impediment that residential segregation causes, we do not recommend external intervention in mitigating it. That is because this a problem that developed in some cities throughout generations and in others as a consequence of Saddam Hussein’s ethnic-based cleansing and population transfer²⁴⁴. Therefore, addressing this issue, especially externally, may generate conflict. Nevertheless, we recommend focusing on individual institutions that have become segregated, especially schools. It is paramount that schools are not divided by ethno-religious identities; such segregation would legitimize and institutionalize ethno-sectarian hostilities among children. This is especially problematic considering that Saddam Hussein’s attempt to erase non-Arab identities promoted ethnic-based schools and cultural centers. Therefore, we recommend supporting a national dual-language education of Arabic and Kurdish that provides religious classes based on chosen faiths. Recognizing that this may marginalize some groups, we propose allowing ethnic minorities to learn their own language along with the national language. This would enhance interethnic communication by decreasing language barriers. Because it signals a desire to reconsolidate, it could mobilize movements towards social and institutional integration. Moreover, such an initiative encourages multi-ethnic communities to form, especially among children who could grow up in tolerant and inclusive multi-ethnic environments. Proximate and constant interaction is essential because “when two or more ethnic groups share space without sharing social networks, ethnic conflicts are more likely...tolerance will increase in situations in which ethnic catnets are firmly and relatively enduringly integrated”²⁴⁵. Therefore, encouraging social integration, especially among minors, is crucial to building sustainable and inclusive multi-ethnic social networks.

Ethno-sectarian reconciliation through social integration is critical to transitional justice for Yazidis. Social integration aims to build sustainable networks that foster unity and inclusivity and thus decrease the ethno-sectarian competition that breeds instability and conflict. Therefore, promoting multi-ethnic negotiations, strengthening the Iraq

²⁴³ Rydgren and Sofi, “Interethnic Relations,” 38.

²⁴⁴ Rydgren and Sofi, “Interethnic Relations,” 28.

²⁴⁵ Rydgren and Sofi, “Interethnic Relations,” 33.

identity, and ensuring that institutions such as schools are not segregated are essential to creating the social networks that deter focus from competing ethnonationalist interests and promote peace.

IV. CONCLUSION

Throughout this paper, we have made several recommendations. Rather than summarize each here, we ask simply that the United States Department of State – as well as other organs of the United States government as well as the broader the international community – appreciate that the situation for the Yazidi in 2020, six years after the genocidal ISIS attack on their community, remains one of crisis. Outsiders must approach the crisis with urgency, as well as humility. The resources needed to address the plight of the Yazidi are not, on a global scale, astronomical. What is required, however, is not only finance and material, but attention, expertise, and experience. The Department can help muster and coordinate each of these as it considers how to carry out the recommendations that this report has offered with respect to justice, security, resettlement, and long-term community support. All must come from a place of humility, however. The international community must be humble enough not only to recognize that its miscalculations and failures led to the persecution of the Yazidi over the past six years (along with a great deal else), but also to know that the road to recovery requires a long journey without instant solutions. It is a journey that the Yazidi and their neighbors must take themselves, albeit with the constant support of international partners motivated by visions of justice and accountability, as well as by a secure and prosperous future. These principles, accompanying the recommendations offered throughout this report, are necessary to effect the changes needed to serve a community that has endured an attack on its very existence within the past decade.

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NOTE ON AUTHORSHIP:

The “Transitional Justice Working Group” is a made-up concept, used to organize a group project for students in the Spring 2020 Yale University Seminar “Mass Atrocities in Global Politics.” The work that these students did, however, is quite real. We hope that the reader of this report will take their insights and recommendations seriously.

The TJWG consisted of the following students:

Haya alAggad
Samantha Castro
Min Byung Chae
Robbie DeMontis
Lucy Edmunds
Canaan Harris
Annabelle Ho
Isabelle Lee
Jane Miller
Ruby Park
Kate Pundyk
Linette Rivera-Rodríguez
Luke Stevens
Raisha Waller
Namra Zulfiqar

As instructor for the class, David J. Simon provided guidance and editorial assistance for the final report.