

# “We Will Not Stop”: The Yazidis’ Visions of Transitional Justice



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## ABSTRACT

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Exactly seven years after the Islamic State committed genocide against the Yazidi community in north Iraq (3 august 2014), justice has not been achieved for the Yazidis. The transitional justice (TJ) framework of the United Nations aims to address these kinds of gross human rights violations. In recent TJ scholarship, the focus has been on the involvement of the affected community in the TJ strategy and its different mechanisms. Their participation would allow for a TJ process that responds to their interests. This thesis therefore researches the visions of justice of certain Yazidis. More specifically, it analyzes the perceptions of the Yazidis on the current TJ process and mechanisms and examines their wishes for the future TJ process.

To this end, I interviewed 20 Yazidis and four experts who have worked closely with Yazidis in Iraq. I asked the Yazidis questions about the current TJ process and how they would like to see this improved. I found that the Yazidis I interviewed have a broad conception of justice: justice for the genocide should inevitably entail prosecutions of the perpetrators of the genocide, but also focus on their current priorities and needs and include assurances that the genocide will not be committed again. These results suggest that the notion of justice contains punitive and social concerns and future-oriented elements for the Yazidis I interviewed. More research needs to be done, however, as this was an exploratory study.

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## ABBREVIATIONS

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<b>C4JR</b>	Coalition for Just Reparations
<b>CIGE</b>	Commission of Investigation and Gathering Evidence
<b>CRSV</b>	Conflict-Related Sexual Violence
<b>ICC</b>	International Criminal Court
<b>ICMP</b>	International Commission on Missing Persons
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>IDP</b>	Internally Displaced Person
<b>IICI Syria</b>	The Independent International Commission of Inquiry on the Syrian Arab Republic
<b>INGO</b>	International Non-Governmental Organization
<b>IS</b>	Islamic State
<b>KRG</b>	Kurdistan Regional Government
<b>NGO</b>	Non-Governmental Organization
<b>OHCHR</b>	Office of the High Commissioner of Human Rights
<b>PKK</b>	Kurdistan Workers Party
<b>TJ</b>	Transitional Justice
<b>TJM</b>	Transitional Justice Mechanism
<b>TRC</b>	Truth and Reconciliation Commission
<b>UN</b>	United Nations
<b>UNAMI</b>	United Nations Assistance Mission for Iraq
<b>UNGA</b>	United Nations General Assembly
<b>UNHRC</b>	United Nations Human Rights Council
<b>UNITAD</b>	United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant
<b>UNSC</b>	United Nations Security Council
<b>YSL</b>	Yazidi Survivors Law

# MAP OF NORTH IRAQ

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# 1 INTRODUCTION

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On 3 August 2014, fighters from the Islamic State (IS)<sup>1</sup> forcibly converted and transferred, enslaved, tortured, and killed members of the ethnoreligious Yazidi<sup>2</sup> community living in the Sinjar region in northern Iraq.<sup>3</sup> The Iraqi Kurdish forces, the Peshmerga, were the only security force in the area, and withdrew right before the attack without communicating this to the Yazidis, leaving them unprotected.<sup>4</sup> During the attack, IS systematically separated the Yazidis into different groups, which experienced distinct violations according to IS' ideology.<sup>5</sup> They forced the Yazidi men and boys aged 12 and above to convert to Islam or executed them if they refused.<sup>6</sup> IS executed women aged approximately 60 years and above.<sup>7</sup> They sold and held younger women and girls aged nine and above as *sabaya*, or slaves, and committed daily 'brutal' physical and sexual violence against them in captivity.<sup>8</sup> IS furthermore sold women together with their young children, but forcibly removed boys aged seven and above from their mothers to train them as IS-fighters in camps.<sup>9</sup> IS targeted the Yazidis for being *kuffar*, or infidels, and devil-worshippers,<sup>10</sup> after researching how they should treat the community according to its religious interpretation and outlining this in numerous statements and documents.<sup>11</sup> Due to the attack by IS, all of the approximately 400.000 Yazidis living in Sinjar were displaced, captured, or killed.<sup>12</sup> Several international organizations and countries have labelled the atrocities as genocide, crimes against humanity, and war crimes.<sup>13</sup>

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<sup>1</sup> The group used to carry the name of 'Islamic State of Iraq and al-Sham' (ISIS), 'Islamic State of Iraq and the Levant' (ISIL) or Da'esh in Arabic but changed it to 'Islamic State' after declaring the caliphate in June 2014, see Irshaid, *BBC*, 2 December 2015. This research project therefore uses the name IS.

<sup>2</sup> The Kurdish name for the Yazidi community is Êzîdî or Êzîdî. The name Yezidi is also used regularly. This research project uses the name Yazidi.

<sup>3</sup> UNHRC, *Report "They came to destroy" 2016*, paras. 1 and 2.

<sup>4</sup> *Ibid.*, paras. 21 and 24.

<sup>5</sup> *Ibid.*, para. 31.

<sup>6</sup> *Ibid.*, para. 33.

<sup>7</sup> *Ibid.*, para. 48.

<sup>8</sup> *Ibid.*, paras. 54, 55, and 64.

<sup>9</sup> *Ibid.*, paras. 81, and 94.

<sup>10</sup> *Ibid.*, para. 160. Not only the Yazidis in Iraq were targeted by IS: Assyrian Christians, Shia Turkmen, Shia Shabaks, and other minorities were also attacked. Because the other mentioned minority groups were 'people from the book', they were targeted less harsh than the Yazidis. Christians, for example, were given the option of *jizyah* payment, a tax, in order to avoid conversion or death, *Ibid.*, para. 162. IS subjected the Yazidis to the most severe treatment, which is why this thesis focusses on them.

<sup>11</sup> *Ibid.*, para. 155; see 'Unseen Islamic State Pamphlet on Slavery', *IS*, which states for example: "And among the matters that has been legislated in the Shari'a is the captivity of the women of the disbelievers at war and their enslavement."

<sup>12</sup> UNHRC, *Report "They came to destroy" 2016*, para. 175. It is estimated that around 10,000 Yazidis have been killed or kidnapped, LSE Middle East Center, *Demographic Documentation of ISIS'S Attack on Kocho*, p. 6.

<sup>13</sup> The international organizations that recognized the genocide are the Independent International Commission of Inquiry on the Syrian Arab Republic of the UN (IICI Syria) reporting to the UN Human Rights Council (UNHRC), UNHRC, *Report "They came to destroy" 2016*, paras. 165, 168, 172, and 173; the United Nations Investigative

The transitional justice (TJ) framework aims to address these kinds of gross human rights violations while also ensuring a transition to democracy or a new regime.<sup>14</sup> According to the United Nations (UN), TJ refers to all judicial and non-judicial processes and mechanisms to achieve this goal.<sup>15</sup> These may include prosecutions, the right to truth initiatives, reparations, institutional reform, and national consultations.<sup>16</sup> States should promote these elements simultaneously in their TJ approach.<sup>17</sup> Iraq and the international community<sup>18</sup> have put into motion some of these TJ processes to address the genocide committed by IS. The UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant (UNITAD) supports Iraqi efforts to hold IS accountable for its crimes by collecting, preserving, and storing evidence of the crimes committed.<sup>19</sup> Besides, the Iraqi parliament passed the Yazidi Survivors Law on 1 March 2021, which aims to provide reparations to the survivors of the genocide.

The TJ process has so far not been satisfactory for the Yazidi community, however. An estimated 2874 Yazidis are to this day missing,<sup>20</sup> and may still be living in captivity.<sup>21</sup> The Yazidis therefore say that the genocide is ongoing. The missing people may also be buried in one of the mass graves: UNITAD excavated merely 22 out of a suspected 82 mass graves.<sup>22</sup> The prosecution initiatives have also been disappointing. Iraq's criminal code does not include the international crimes of genocide, war crimes, and crimes against humanity, due to which IS fighters have been tried under a broad anti-terrorism law.<sup>23</sup> The trials of IS-fighters in Iraq also lack due process and include torture and the death penalty.<sup>24</sup> Another problem is the great number of Internally Displaced Persons (IDPs) in Iraq as a result of the

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Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant (UNITAD), UNSC, *Sixth Report UNITAD 2021*, paras. 10 and 13; and the European Union (2016), EP Resolution 2529. The countries that recognized the genocide are the United States (2016), United Kingdom (2016), Canada (2016), France (2016), Scotland (2017), Armenia (2018), Iraq (2021), Belgium (2021), and the Netherlands (2021). So far, no (international) criminal proceedings have concluded genocide was indeed committed, due to which I will rely in this thesis on the findings of the IICI Syria and UNITAD that the attack by IS was indeed genocide.

<sup>14</sup> ICTJ, *Factsheet Transitional Justice 2008*, p. 1.

<sup>15</sup> UNSG, *Guidance Note on TJ 2010*, p. 3.

<sup>16</sup> *Ibid.*, pp. 7-10.

<sup>17</sup> UNHR Committee, *Report of the Special Rapporteur on TJ 2015*, p. 4.

<sup>18</sup> 'International community' is differently defined in various contexts. For the purposes of this thesis, I will define international community as a broad group of states and/or international organizations (like the UN). Although this definition implies a common viewpoint of a group of actors, I am aware that there is usually great disparity in opinions of that particular group and other actors.

<sup>19</sup> UNSC, Resolution 2379.

<sup>20</sup> UNSC, *Report Conflict-Related Sexual Violence 2021*, para. 32. The report specifies that 1,574 men and 1,300 women were missing on 30 March 2021.

<sup>21</sup> Murad, *The Guardian*, 24 February 2021.

<sup>22</sup> UNSC, *Sixth Report UNITAD 2021*, para. 128; Editors, *Shafaq News*, 15 February 2021.

<sup>23</sup> UNHRC, *Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions 2018*, paras. 46-49.

<sup>24</sup> *Ibid.*, paras. 47 and 59.

conflict with IS, namely around 199.000 IDPs from Sinjar.<sup>25</sup> The Iraqi government plans to close all IDP camps in 2021, while the Yazidis who are forced to return to the Sinjar region await destroyed homes and infrastructure, a detrimental safety situation, and no job opportunities.<sup>26</sup>

## 1.1 RESEARCH QUESTION AND RELEVANCE

The Yazidis have been very vocal in their attempts to achieve justice for the genocide, especially for the relatively small size of their community. However, the elites in the Iraqi government and the UN have neglected the Yazidi community and its wishes for justice in the decision-making process. Before more TJ mechanisms are implemented without consultation of the Yazidi community, it is vital that the community has been able to voice their wishes and demands. The crucial question regarding the TJ process is how the Yazidi community envisions justice: do they prefer a classic punitive approach and solely want prosecutions of the perpetrators to deal with the past or do their priorities and needs drive them in the direction of a broader conception of justice?

The inclusion of the Yazidis in the TJ process is of great importance for its effectiveness. If the process involves the affected community among other national stakeholders, the transitional justice mechanisms (TJMs) would respond to the different interests of victims and would empower and expand their public role.<sup>27</sup> It is essential to empower survivors<sup>28</sup> of the genocide by seeing them as catalysts of change, rather than classifying them as helpless victims and thus further marginalizing them.<sup>29</sup> This empowerment can be achieved by listening to the perceptions of justice and priorities of the Yazidi community and accepting them, even if they are different than expected.

Therefore, the main research question will be:

*“Which transitional justice mechanisms and processes does the Yazidi community want to address the genocide IS committed against them in Sinjar, Iraq in August 2014?”*

This thesis has social relevance. My research brings new insights into the perceptions of justice of some members of the Yazidi community. Several non-governmental organization (NGO) reports and

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<sup>25</sup> IOM, *Iraq Master List Report 121 2021*, p. 4. According to the report, 15% of all IDPs across the country live in camps.

<sup>26</sup> Nabeel, *AL-Monitor 2021*, 12 January 2021.

<sup>27</sup> US Holocaust Memorial Museum, *Pursuing Justice for Mass Atrocities 2021*, p. 10.

<sup>28</sup> For the purpose of this thesis, I will define ‘survivor’ as any Yazidi victim of acts of (sexual) slavery, enslavement, torture, inhuman or degrading treatment, conflict-related sexual violence, and forcible transfer causing serious bodily or mental harm by IS. With ‘female survivor’ I specifically mean a Yazidi woman who has lived in IS captivity and was subjected to any of the preceding acts during that time period. With ‘child survivor’ I specifically mean a Yazidi child who was forcibly transferred from their family to live in IS captivity and/or to be trained as a fighter in a IS camp.

<sup>29</sup> Akhavan et al., *Human Rights Quarterly 2020*, p. 5.

academic articles already covered this topic, but these works can be considered rather outdated.<sup>30</sup> Perceptions of justice are namely constantly evolving alongside the advancement of the justice process. Moreover, my research goes beyond merely asking what TJMs the Yazidi community wants and assessing the impact of the current mechanisms. It also provides an assessment of the priorities of the Yazidis, which extends to more social instead of legal responses. As most academic articles focus solely on the crimes committed by IS, I furthermore explore the research gap by reflecting on the high level of distrust of the Yazidis towards their government regarding actions during the genocide and its failed attempts of addressing it afterwards. This may explain why the current TJMs are ineffective and what steps need to be taken to improve them. The government should be responsive to the claims of the Yazidis in order to create greater stability and legitimacy.<sup>31</sup>

Moreover, this thesis is academically relevant. Previous studies stress the need to research empirically what TJ accomplishes for the survivors of the genocide and indicate the possibility that the perception of the recipients towards the TJMs determines their success.<sup>32</sup> This research builds on those studies and intends to draw attention to the micro-perspectives, rather than the macro-perspective many policymakers use when they design the TJ strategy. It is worth examining whether empirical evidence can be found that the visions and inclusion of the affected community on the TJ process indeed play an important role for its effectiveness. My thesis therefore aims to research the opinions of the Yazidi community towards the current TJMs, something that has not been done so far.

## 1.2 METHOD, SOURCES, AND ETHICS

In this thesis, I employed a qualitative research method to answer the research question. I used an interpretive epistemology, as I aimed to understand the TJ process and desires to improve it from the perspective of the Yazidis. The TJ framework allows for a micro-level impact assessment. Qualitative data gathering was necessary to this end, as my research question asks what kind of TJMs the Yazidi community wants. Since the TJ framework focuses on the transition process from authoritarianism to democracy, war to peace, or impunity to accountability, my ontological position can be identified as examining 'processes and interactions'. This is reflected in the research question as it clearly asks which TJ processes the Yazidis want. The TJMs furthermore inherently involve interactions with other mechanisms and the context of the country.

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<sup>30</sup> One research was conducted in 2016 by Akhavan et al., *Human Rights Quarterly* 2020; another research was also conducted in 2016, MERI, *The Yazidis. Perceptions of Reconciliation and Conflict 2017*; and in 2017 and 2018, Pham et al., *Journal of Human Rights Practice* 2019. One research was conducted on the perceptions of justice of the broader Iraqi population in 2017, Revkin, *UNU-CPR* 2018; and another in 2019 by Harvard Humanitarian Initiative, *Never Forget 2020*.

<sup>31</sup> Mihr, *International Journal of Conflict and Violence* 2013, p. 302.

<sup>32</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 532.

To gain a thorough insight into the perspectives on the TJ process of some members of the community, I conducted semi-structured interviews lasting between 45 minutes and one and a half hours with 20 Yazidis. I asked open-ended questions to 12 Yazidi men and 8 Yazidi women about their visions of justice. Of those, three participants answered the questions in writing. Half of the participants was active either in volunteering or working for the Yazidi cause and half of the participants were not active for any particular cause. I asked the interviewees about their opinions on the current TJ process and how they would like to see this improved. The questions concerned the five pillars of the TJ framework (justice, truth, reparations, guarantees of non-recurrence and national consultations).

Most interviewees are between 20 and 25 years old, with some older participants as well. The participants included non-displaced and displaced people. Most participants live in Iraq (in and outside IDP camps). Several live abroad because of the diaspora as a result of the genocide, namely in the United States, Germany, the Netherlands, and Armenia. I reached out to adult Yazidi community members on Twitter and afterwards engaged in the snowball method by asking them if they know anyone else interested in being interviewed. I also interviewed 4 experts on the TJ framework in general or Yazidi genocide specifically. I transcribed all interviews, coded them in NVivo and analyzed them.

To gain a broader overview of the TJ perspectives of the Yazidi community, I used two academic articles extensively that examined the visions of justice of their Yazidi participants and included these in my analysis as well.<sup>33</sup> Moreover, I sampled reports and documents from the UN and established academic works of scholars on the TJ framework for the theory part of this thesis. For the Yazidi genocide and the justice process in Iraq specifically, I used reports from several international NGOs (INGOs) and the UN. Besides that, I also sampled non-academic articles, such as newspaper articles or weblogs, to outline more recent developments or present other perspectives.

Starting this project, I had some serious ethical concerns about how to conduct it. I was initially torn about whether or not to conduct interviews with the Yazidi community members, as they may have endured traumatic experiences and I have no background in interviewing potentially traumatized people on emotionally sensitive topics. I discussed the issue with my supervisor, interlocutors, and legal expert on mass atrocities Kjell Anderson and arrived at the decision to nevertheless conduct the interviews. Yazidis namely have agency and can decide for themselves whether they want to participate in the interview.

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<sup>33</sup> Akhavan et al., *Human Rights Quarterly* 2020; Pham et al., *Journal of Human Rights Practice* 2019.

I took the following precautions to ensure no additional harm was done to the interviewees. First of all, I did not seek out victims to interview. I did not approach Yazidis from whom I knew beforehand they suffered specifically in the genocide, in whatever way. I also did not ask questions about personal victimization and experiences to the interviewees, but only inquired about the TJ process and their visions of justice. Moreover, I sent the interviewees a thorough information sheet about the research I conducted, which also mentioned that I am no experienced interviewer and that the questions may be distressing, even though they only concern the justice process. It included the suggestion of having support (friends, family, psychologist) to rely on if necessary. Before doing the interview, I explained this again and indicated they did not have to answer any questions they feel uncomfortable with and informed them they could take a break whenever they want. The information sheet furthermore stated the retention period and use of the data the participants provided. Together with the information sheet, I sent the interviewees a consent form, which they signed before publishing the data in this thesis. The interviewees could refuse or accept the use of their names in the thesis, the recoding of the interview, and the quotation of their information. Lastly, I safely stored the data provided by the participants on my computer. I will delete the recordings and transcripts after finishing my thesis.

### 1.3 LIMITATIONS OF RESEARCH

This thesis is mainly exploratory and thus limited in scope. Due to time constraints, only 20 Yazidis have been interviewed. The results of the research are not generalizable since I use a qualitative research strategy. The wishes of these particular Yazidis for the TJ process can be an indication, but further research is necessary before any conclusions regarding the whole community can be drawn.

The data I collected from the interviews also has some limitations. I conducted the interviews in English,<sup>34</sup> while the Yazidis' mother language is Kurmanji, a Kurdish dialect. Access to higher education and thus English classes has been restricted for the Yazidis in Iraq, also before the IS-attack.<sup>35</sup> Many older Yazidis did not receive proper education. Only highly educated people who speak English and are often young (20 till 30 years old) were therefore able to participate in my research. The effect of this limitation is that research into the views of justice of older or less educated Yazidis may paint a different picture than this thesis.

Moreover, the Yazidis discussed a number of important issues in their interviews, like educational reform and the political struggle between the Iraqi government and Kurdistan Regional Government

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<sup>34</sup> I conducted the interviews with Wahhab Hassoo and Dalal Ghanim in Dutch, which I translated afterwards to English. In the interview with Farhan Ibrahim and Ghazala Jango, Ghazala translated for Farhan from English to Kurmanji and back.

<sup>35</sup> MERI, *The Yazidis. Perceptions of Reconciliation and Conflict* 2017, p. 11.

(KRG), that I was unable to include due to the restricted scope of my thesis on the visions of justice of the Yazidis. I furthermore did not include an outline on the Yazidi culture, history, and genocide for the same reason.

Regarding the TJ framework, I limited my analysis of the scholarly works to the debate on the effectiveness of distributive justice, transformative justice, and the impact of the TJMs on the micro-level. There are many other important theories in the academic field, such as feminist critical scholarship that examines the failure to address crimes of sexual violence against women, which could not be included in the thesis due to space constraints. I furthermore did not discuss reconciliation as a component of the TJ framework. As a Dutch student, I am not in the position to suggest reconciliation of the Yazidis with the other communities living in Iraq, something they arguably may not want.<sup>36</sup>

## 1.4 OUTLINE

The thesis consists of five chapters. After this introductory chapter, the thesis will continue with a literature review on the transitional justice framework. This chapter will cover the development of the framework, its relevant academic debates, and the situation of my research in the debates.

In chapter three, I will discuss the opinions of the interviewed Yazidis and experts on the current TJ process and thereby answer the first sub-question: How do the current transitional justice processes and mechanisms address the genocide committed by IS against the Yazidi community in August 2014 by promoting truth, justice, reparations, and guarantees of non-recurrence in a participatory manner? The answer to this sub-question is relevant for answering my research question: if it is unknown how the interviewed Yazidis feel about the current TJ process, it is impossible to reflect on their wishes to improve that process.

In chapter four, I will describe how the Yazidis envision justice and how they want the genocide to be addressed. By doing so, I will answer the second sub-question: What do justice, truth, reparations, guarantees of non-recurrence, and national consultations mean to the Yazidi community regarding the genocide committed against them by IS in August 2014? This sub-question is critical for answering my research question because it will portray the visions of the interviewed Yazidis on the future TJ processes. Lastly, the conclusion will weave together the answers to the sub-questions in order to make an argument about what the interviewed Yazidis want from the transitional justice process.

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<sup>36</sup> See Pham et al., *Journal of Human Rights Practice* 2019, p. 549, in which the authors state about the lack of intention to reconcile of Yazidi refugee women in Germany with the perpetrators: “The almost uniform unwillingness to forgive is clearly connected in the respondents’ minds to the extent of their suffering; respondents were sometimes indignant at being asked the question and their responses spoke about forgiveness as an unimaginable possibility.”

## 2 THE DEVELOPMENT AND PRACTICE OF TRANSITIONAL JUSTICE

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I will start this literature review by giving a description of the development of the academic field of TJ. I will then discuss the settled academic debate in the TJ field by the proponents of retributive, restorative, and reparative justice on their respective effectiveness. Afterwards, I will review the ongoing debate on the desirability of including distributive justice in the TJ framework, the difficulties of measuring the impact of TJ on the micro-level, and the call for transitional justice to become more transformative.

### 2.1 DEVELOPMENT OF TRANSITIONAL JUSTICE

Transitional justice, in some of its earliest iterations, came into existence centuries ago. Scholar Jon Elster established TJ to occur as far back as in ancient Athens in 411 BC, when retribution, reconciliation and amnesty laws followed a political revolution.<sup>37</sup> While these and other early TJ efforts focused mainly on retribution and were directed at societies as a whole, the Nuremberg Trials after World War II shifted this focus by introducing individual criminal responsibility.<sup>38</sup>

Many authoritarian regimes in Eastern Europe and Latin America collapsed from the mid-1970s onwards. Human rights advocates subsequently called for accountability of the perpetrators of the widespread human rights violations, and transformation of the systems into more just and democratic governments.<sup>39</sup> Scholar Paige Arthur argues that the foundation of TJ academic field and its practical application started after these shifts in regimes, and especially when a group of political scientists convened at the Aspen Conference in 1988 to discuss how to deal with the atrocities of previous regimes.<sup>40</sup> Scholars Ellen Lutz and Katherine Sikkink called the global shift in accountability for human rights violations the ‘justice cascade’.<sup>41</sup> TJ scholars and activists around this time adopted ‘reparations politics’ that compensated past offenses.<sup>42</sup> Arthur argues that this historical context played an important role for the establishment of reforms on a legal-institutional level instead of socio-economic transformations.<sup>43</sup> According to Arthur, the legitimate transitional justice mechanisms thus became

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<sup>37</sup> Elster 2004, p. 3.

<sup>38</sup> Reiter 2021b, p. 31.

<sup>39</sup> Ibid., p. 32; US Holocaust Memorial Museum, *Pursuing Justice for Mass Atrocities 2021*, p. 4.

<sup>40</sup> Arthur, *Human Rights Quarterly* 2009, p. 324. TJ scholar Ruti Teitel claims to have coined the term ‘transitional justice’ in 1991, Teitel, *International Journal of Transitional Justice* 2008, p. 1. The phrase became widely accepted by means of legal scholar Neil Kritz’s publication of ‘Transitional Justice: How Emerging Democracies Reckon with Former Regimes’ in 1995.

<sup>41</sup> Lutz and Sikkink, *Chicago Journal of International Law* 2001, p. 4.

<sup>42</sup> Torpey 2006, p. 7; Waldorf 2021, p. 311.

<sup>43</sup> Arthur, *Human Rights Quarterly* 2009, p. 347.

criminal prosecutions, truth-telling, restitution, and institutional reform rather than measures of distributive justice.<sup>44</sup>

## 2.2 RETRIBUTIVE, RESTORATIVE, AND REPARATIVE JUSTICE

The boundaries of the TJ framework are ever expanding and challenged by scholars in the field. One of the first academic debates in this context revolved around the contributions and deficiencies of retributive, restorative, and reparative justice. This debate is relevant for my thesis, as it explains the formation of certain TJMs and the benefits of the respective justices.

Retributive justice proponents advocated for criminal prosecutions and punishments for the guilty. Prosecutions, they argued, would produce accountability, create fairness, generate a public record of the crimes committed, lead to deterrence of future crimes, and improve or establish the rule of law.<sup>45</sup> Western governments understood the eruptions of mass violence as a threat to global stability and peace. As a result, the *ad hoc* tribunals of Yugoslavia and Rwanda were formed in the 1990s, followed by the International Criminal Court (ICC), which was established in 1998 by the Rome Statute and entered into force in 2002. Subsequent allegations of neo-liberalism and the failure of the tribunals and ICC to attend to local priorities led to the creation of hybrid courts<sup>46</sup> in Sierra Leone, Cambodia, East-Timor, Lebanon, and Kosovo.<sup>47</sup>

Restorative justice proponents, on the other hand, called for the establishment of Truth and Reconciliation Commissions (TRCs). TRCs would, according to them, uncover the full truth about the atrocities, include the victims in formulating the historical narrative, promote the healing process of victims, and require perpetrators and passive bystanders to acknowledge the injury publicly.<sup>48</sup> The South African TRC was one example of the positive stance on restorative justice,<sup>49</sup> which took testimony of 21,000 victims and had the power to grant amnesties to people who confessed and acted out of political motives.<sup>50</sup>

The third paradigm, that of reparative justice, generated lesser attention in scholarly debates, but may be considered to have more direct impact on victims than prosecutions or truth commissions.<sup>51</sup> Scholars of reparative justice contended that the relationships between people need to be repaired,

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<sup>44</sup> Arthur, *Human Rights Quarterly* 2009, p. 326.

<sup>45</sup> Minow 1998, pp. 49 and 50.

<sup>46</sup> Hybrid courts or tribunals are courts that have both national and international elements in terms of composition (local and international judges and prosecutors), jurisdiction (national and international crimes), and establishment (agreement between the UN, for example, and host country), 'Hybrid Courts', *asser.nl*.

<sup>47</sup> Justice and Security Research Programme, *Local Understandings and Experiences of TJ 2013*, p. 20.

<sup>48</sup> Minow 1998, pp. 60, 66-79, and 167 n.34.

<sup>49</sup> Justice and Security Research Programme, *Local Understandings and Experiences of TJ 2013*, p. 23.

<sup>50</sup> Fijalkowski 2021, p. 110.

<sup>51</sup> De Greiff 2006, p. 2.

which is especially needed after periods of gross human rights violations.<sup>52</sup> The creation of the Victim's Trust Fund of the ICC demonstrates the important role that reparations can play for achieving justice.<sup>53</sup>

The debate about these three paradigms was later on settled as scholars in the field agreed that they are all legitimate approaches. The UN Secretary-General confirmed this in his report on the rule of law and TJ in 2004.<sup>54</sup>

### 2.3 DISTRIBUTIVE JUSTICE

More recently the academic debate in the TJ field has revolved around theories of distributive justice. Distributive justice in transitional contexts concerns the issue of how societies should deal with an unjust distribution of goods, resources, and capabilities.<sup>55</sup> This debate about the disregard of socio-economic rights in the TJ strategies is important for my thesis as it is vital to examine the limits of the TJ framework: is it capable of effectuating a more just society?

During several decades of theorizing about TJ, a trend towards the inclusion of distributive justice in TJ was apparent. One of the first scholars in the field, Ruti Teitel, still defined TJ rather restrictively in 2003 as the "conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes".<sup>56</sup> A few years later an expansion to distributive justice could be noted.<sup>57</sup> This change was set in motion by the then UN High Commissioner for Human Rights, Louise Arbour, who called for transitional justice to become more ambitious and transformative by including socio-economic rights violations.<sup>58</sup> Afterwards, many critiques, but also concurrences of (parts of) Teitel's definition followed.

Although critical to Teitel's definition, Naomi Roht-Arriaza adopted a similarly narrow definition of TJ that does not include distributive elements.<sup>59</sup> Roht-Arriaza critiques Teitel's definition for merely focusing on legal aspects and neglecting the role that education and distributive justice could play in transitions.<sup>60</sup> She nevertheless warns against incorporating the aim of making a just and peaceful

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<sup>52</sup> Spelman 2003, p. 236.

<sup>53</sup> 'Reparations and the International Criminal Court', Wierda & de Greiff, p. 1. The voluntary fundraising for the Victim's Trust Fund from States Parties to the ICC and the number of humanitarian challenges in the world pose significant challenges to the existence of the trust fund and enforcement of the judgements of the ICC, see Scheffer, *Just Security*, 3 December 2018.

<sup>54</sup> The report clarified that truth commissions, prosecutions and reparations play an equally important role in TJ, UNSC, *Report on the Rule of Law and TJ 2004*.

<sup>55</sup> Murphy 2017, p. 108.

<sup>56</sup> Teitel, *Harvard Human Rights Journal* 2003, p. 69.

<sup>57</sup> Waldorf 2021, p. 313.

<sup>58</sup> Arbour, *NYU Journal of International Law and Politics* 2006.

<sup>59</sup> Roht-Arriaza 2006, p. 2. She defined TJ as a "set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law".

<sup>60</sup> *Ibid.*, p. 1.

society in the TJ, since this would make transitional justice possibly so broad that it would become meaningless.<sup>61</sup> Socio-economic rights should not be addressed in the TJ process, according to her, and the process should only focus on the past.

Contrary to Roht-Arriaza's stance, Rama Mani asserts that creating peace and creating a just society are indivisible processes.<sup>62</sup> According to her, the dominant political, economic, and social structures favor the elite while neglecting the rest of society for multiple reasons.<sup>63</sup> The elite, first of all, reject redistributive ideas.<sup>64</sup> Furthermore, there are usually not enough resources in the country for a policy of redistribution.<sup>65</sup> Finally, the elite desire to create an economically safe environment for businesses and investors at the cost of the rest of society.<sup>66</sup> Mani thus argues that peacebuilding efforts so far have overlooked distributive justice.<sup>67</sup> The focus has too often been on reforming state institutions, while the real concerns of the survivors of the conflict have been neglected.<sup>68</sup>

Rosemary Nagy critiques the conceptions of TJ by Teitel, Roht-Arriaza, and Mani. She does not agree with Teitel's definition because it excludes gender, social justice, and culture from the analysis and treats liberal democracies as charitable models.<sup>69</sup> Nagy furthermore criticizes Roht-Arriaza's conception for her sole focus on dealing with the past and alternatively asserts that transitional justice should include a future component as well.<sup>70</sup> Regarding Mani's interpretation, Nagy argues that her examination of Western involvement in conflicts should be more extensive and that gender is missing from her analysis.<sup>71</sup> Instead, Nagy argues that a broader approach to TJ that includes structural violence, gender inequality, and foreign involvement in its analysis should be followed.<sup>72</sup> She moves away from the dominant international legalist paradigm and from valuing freedom and liberty over equality.<sup>73</sup>

Like Nagy and Mani, Zinaida Miller also notices a lack of attention to socio-economic, structural, and redistributive factors within transitional justice. With the call for reparations in the spotlight, she claims that other questions such as the economic causes of conflicts are forgotten.<sup>74</sup> As a result, no structural

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<sup>61</sup> Roht-Arriaza 2006, p. 2.

<sup>62</sup> Mani 2002.

<sup>63</sup> *Ibid.*, p. 151.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, p. 127.

<sup>68</sup> *Ibid.*

<sup>69</sup> Nagy, *Third World Quarterly* 2008, p. 277.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*, p. 278.

<sup>73</sup> *Ibid.*

<sup>74</sup> Miller, *International Journal of Transitional Justice* 2008, p. 287.

change can be effectuated and violence could possibly be renewed.<sup>75</sup> Miller furthermore argues that the role of international actors, like powerful states or multinational corporations, is similarly neglected in the analysis, which makes transnational imbalances wrongfully seem irrelevant.<sup>76</sup> Miller's work thus draws attention to including distributive issues and equality of power and wealth in TJ, because leaving them out "allows a myth to be formed that the origins of conflict are political or ethnic rather than economic or resource based."<sup>77</sup>

## 2.4 IMPACT OF THE TRANSITIONAL JUSTICE MECHANISMS

The impact of TJ has been the topic of debate for many years now, as the TJMs require a lot of financial resources and received a great deal of criticism. Measuring the impact raises many difficult questions, such as: What is the aim of TJ? How do you measure the impact of certain TJMs? How do you define success or failure of the TJ across different contexts? I will outline the debate on (the difficulties of) measuring the impact of TJ on a micro-level. This debate is critical for my research: victims of gross human rights violations should feel that justice has been served and that the TJ process was successful.

Many scholars claim that the success of specific TJMs is dependent on the perception of the population towards that mechanism. Scholar Andrew Reiter states that perhaps justice has not been achieved if the prosecutions are unknown to the inhabitants of a country or if they perceive the verdict as too indulgent.<sup>78</sup> He points to a survey that was conducted to measure the perceptions of the Cambodian population on the hybrid tribunal in the country, the Extraordinary Chambers in the Courts of Cambodia. The survey concluded that many Cambodians were unfamiliar with the trials of the tribunal and instead indicated a need for the government to focus on other priorities.<sup>79</sup>

We should consider not only the perceptions of society members in general, but more specifically those of victims of gross human rights violations. According to Geoff Dancy, macro-scale impact evaluations miss out on critical considerations, such as whether victims feel justice has been achieved.<sup>80</sup> The understandings of the priorities and needs of the people affected should be scrutinized before political judgements can be made.<sup>81</sup> Research by David Backer on the victim's perceptions of the TRC in South Africa, for example, shows that although the mechanism may have had positive

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<sup>75</sup> Miller, *International Journal of Transitional Justice* 2008, p. 287.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid., p. 268.

<sup>78</sup> Reiter 2021a, p. 295.

<sup>79</sup> Ibid., referencing to University of California HR Center, *After the First Trial 2011*.

<sup>80</sup> Dancy, *International Journal of Transitional Justice* 2010, p. 376.

<sup>81</sup> Ibid.

effects for the whole nation, the victims did not feel satisfied due to the lack of transformation of society and an insufficient reparations program.<sup>82</sup>

There are certain difficulties in measuring the impact and perception of the TJ process. One obstacle is the unrealistically high expectations of the population of the TJMs, which may lead to undermining the legitimacy of those mechanisms. The main function of a court, for instance, is to render justice. However, Researchers Patrick Vinck and Phuong Pham found that people expected “courts to bring about peace, arrest perpetrators, hold those responsible accountable, and provide reparations”.<sup>83</sup> Another difficulty is that the justice perceptions of individuals will most definitely differ as people usually have distinct opinions. In Argentina, for example, the *Madres de la Plaza de Mayo* rejected all reparations from the government for their missing children as this would be accepting their death, while the split-off branch of *Madres de la Plaza de Mayo – Linea Fundadora* did welcome the compensation.<sup>84</sup> The abundance of different opinions will ultimately make measuring the impact of the TJMs a lot harder. According to researchers of the micro-level effects of TJ, if a lot of people involved have a similar positive evaluation, transitional justice can be considered achieved.<sup>85</sup> Is that not the case, TJ has been falling short.<sup>86</sup>

Another difficulty in measuring the success of the TJMs, Reiter argues, is the variety of different meanings of TJ concepts.<sup>87</sup> He gives the example that reconciliation can be understood in many ways in different cultures. The effectiveness of TJ, Reiter contends, can only be properly evaluated if we learn what that term means to local people affected by the violence.<sup>88</sup> Indeed, the tendency in TJ that uses expert knowledge which is “legal, foreign and based on models to be replicated elsewhere” resulted in calls for more local forms of TJ in scholarly works.<sup>89</sup> These works aim to understand the local and individual perspectives of TJ concepts.<sup>90</sup> Antije Krog, for instance, underlined the value of *ubuntu*, which means interconnectedness-towards-wholeness, in the TRC process of South Africa. This concept played an important role in re-defining the concepts of reconciliation, forgiveness, and amnesty locally, as they “had become trapped in unusable religious and aggressive social or legal contexts in many parts of the world”.<sup>91</sup>

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<sup>82</sup> Backer, *Journal of the International Institute* 2005.

<sup>83</sup> Vinck & Pham 2014, p. 126.

<sup>84</sup> Hamber & Wilson, *Journal of Human Rights* 2002, p. 45 n.48.

<sup>85</sup> Dancy, *International Journal of Transitional Justice* 2010, p. 362.

<sup>86</sup> Ibid.

<sup>87</sup> Reiter 2021a, p. 296.

<sup>88</sup> Ibid.

<sup>89</sup> Jones, *Cooperation and Conflict* 2021, p. 165.

<sup>90</sup> Reiter 2021a, p. 296.

<sup>91</sup> Krog, *SA Journal of Philosophy* 2008, p. 364.

## 2.5 TRANSFORMATIVE JUSTICE AND THE HYBRID PEACE

Some scholars claim that the impact and performance of the TJMs have at times been ambiguous or even disappointing. They therefore came up with a form of justice that would transform the post-conflict societies. I will discuss two theories with their own take on transformative justice. These theories are integral to my thesis, as they critique the sole focus on legal concerns in TJ and top-down implementation of TJMs in a non-distributive manner. Afterwards, I will outline the theory of hybrid peace, as that provides relevant insights into the disadvantages of a bottom-up approach.

One of those transformative theories concerns the reparations in post-conflict transitions. Reparations in cases of gross human rights violations sometimes have a limited effect due to financial constraints and other priorities of the state. Rodrigo Yepes dealt with this issue when he presented a dilemma of reparations in transitional contexts in his inaugural address to the UNESCO Chair in 2009. He asked: Should a state with very limited resources use its funds to compensate one middle class victim or build ten houses for low-income families who are not victims but need shelter?<sup>92</sup> To settle this problem, Yepes proposed the idea of ‘transformative reparations’, which entails the middle ground between the two options: reparations for victims in a distributive manner.<sup>93</sup> On the one hand, transformative reparations focus on the past and concern corrective justice, which is the dominant view on reparations, according to Yepes.<sup>94</sup> On the other hand, they pay attention to the present and future and recognize the needs of the population by means of distributive justice.<sup>95</sup>

The call for TJ to become more transformative has also found its place in works from other scholars in the field. Paul Gready and Simon Robins criticize the framework for treating the symptoms rather than the causes of the conflict.<sup>96</sup> They argue that TJ fits with the widely criticized liberal peace paradigm, which prioritizes civil-political rights instead of aiming to diminish structural violence and inequality.<sup>97</sup> According to them, the TJ framework does therefore not respond to the everyday needs of the citizens.<sup>98</sup> Moreover, Gready and Robins contend that TJ has been dominated by elites and donor networks rather than local grassroots movements.<sup>99</sup> As a result, the people who are most affected by the violations have little or no possibility to contribute to the goal of the process or specific TJMs.<sup>100</sup>

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<sup>92</sup> Yepes, *Netherlands Quarterly of Human Rights* 2009, p. 627.

<sup>93</sup> *Ibid.*, p. 637. Yepes gives the example of the Nairobi Declaration on Women’s and Girl’s Right to a Remedy and Reparation, which requests reparations for the sexual violence crimes committed but also aims to address the inequalities that have a negative impact on women’s and girl’s lives, *Ibid.*, p. 640.

<sup>94</sup> *Ibid.*, p. 637.

<sup>95</sup> *Ibid.*

<sup>96</sup> Gready & Robins, *International Journal of TJ* 2014, p. 340.

<sup>97</sup> *Ibid.*, pp. 341 and 342.

<sup>98</sup> *Ibid.*, p. 340.

<sup>99</sup> *Ibid.*, p. 342.

<sup>100</sup> *Ibid.*, p. 343.

Gready and Robins thus argue for transformative justice, which prefers a bottom-up approach to justice over the top-down imposition of TJMs.<sup>101</sup> Transformative justice prioritizes the process rather than preconceived outcomes and entails shifting from legal towards more social concerns.<sup>102</sup>

The transformative justice approach is nevertheless in turn criticized for solely focusing on local grassroots initiatives. Instead, Roger MacGinty argues that a hybrid form of a bottom-up and top-down approach should be used in peacebuilding, the so-called 'hybrid peace'.<sup>103</sup> This theory critiques the liberal peace,<sup>104</sup> values local agency and indigenous norms, but simultaneously scrutinizes the idealization of local peacebuilding.<sup>105</sup> The top-down approach of the liberal peace attracts a lot of criticism by MacGinty, as he calls it an ethnocentric, elitist, rigid, and superficial imposition of so-called peace.<sup>106</sup> The global north namely tries to reproduce their own peace and governance methods, and political and economic elites hold power.<sup>107</sup> The liberal peace also uses overly programmed peace interventions.<sup>108</sup> Lastly, the it merely treats the manifestations rather than the root-causes of the conflict.<sup>109</sup> Besides the liberal peace, traditional and local practices also do not escape scrutiny by MacGinty. For example, he disapproves of the organization of the *Gacaca* courts in Rwanda. These local courts with community leaders as adjudicators were established to try the low-level cases of the 130.000 suspects who were incarcerated after the genocide, while the UN held trials in Tanzania of high-level suspects.<sup>110</sup> Although a seemingly great idea, MacGinty condemns the international donor support for the *Gacaca* courts. This meant the system had to change and the courts lost their authenticity.<sup>111</sup> Moreover, the divergent verdicts of the *Gacaca* courts undermined attempts to establish a unified justice system.<sup>112</sup>

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<sup>101</sup> Gready & Robins, *International Journal of TJ* 2014, p. 340.

<sup>102</sup> *Ibid.*

<sup>103</sup> MacGinty 2011, p. 69.

<sup>104</sup> MacGinty defines liberal peace as: "top-down internationally endorsed forms of peacemaking that are justified rhetorically using universal notions of liberalism", *Ibid.*, p. 47.

<sup>105</sup> *Ibid.*, pp. 68-69.

<sup>106</sup> *Ibid.*, pp. 41 and 42.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*, p. 48.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*, pp. 48 and 49.

### 3 REFLECTIONS OF THE YAZIDIS ON THE CURRENT TRANSITIONAL JUSTICE MECHANISMS

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In this chapter I will look into the current TJ process attempting to address the Yazidi genocide.<sup>113</sup> I will first give an overview of the main components and principles of the TJ framework as defined by the UN: justice, truth-seeking, reparations, guarantees of non-recurrence, and national consultations. Afterwards I will describe the (lack of) implementation of these mechanisms in Iraq and analyze what the Yazidis I interviewed think of it.

#### 3.1 THE UNITED NATION'S TAKE ON TRANSITIONAL JUSTICE

TJ is defined by the UN as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”.<sup>114</sup> According to the UN High Commissioner for Human Rights, TJ consists of four core processes, namely justice, truth-seeking, reparations, and institutional reform (or guarantees of non-recurrence).<sup>115</sup> The justice process with its prosecution initiatives ensures that perpetrators of gross human rights violations are tried according to the right to a fair trial and punished accordingly.<sup>116</sup> With the truth-seeking process, states aim to investigate past human rights violations by means of truth commissions, commissions of inquiry, and other fact-finding mechanisms.<sup>117</sup> In order to find redress for gross human rights violations, reparation programs provide material and symbolic remedies to victims.<sup>118</sup> Lastly, guarantees of non-recurrence make sure that public institutions which maintained the conflict are reformed into institutions that protect human rights, preserve peace, and respect the rule of law through vetting<sup>119</sup> of or training programs for public officials.<sup>120</sup> The UN Secretary-General added the element of national consultations to those four processes to ensure public participation of different men and women.<sup>121</sup> This reveals the needs of the communities affected by the conflict or repressive rule and secures a successful TJ process.<sup>122</sup>

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<sup>113</sup> I will answer the following sub-question: How do the current transitional justice processes and mechanisms address the genocide committed by IS against the Yazidi community in August 2014 by promoting truth, justice, reparations, and guarantees of non-recurrence in a participatory manner?

<sup>114</sup> UNSC, *Report on the Rule of Law and TJ 2004*, para. 8; UNSG, *Guidance Note on TJ 2010*, p. 3.

<sup>115</sup> OHCHR, *Analytical Study on Human Rights and TJ 2009*, para. 3.

<sup>116</sup> *Ibid.*, para. 19.

<sup>117</sup> *Ibid.*, para. 8.

<sup>118</sup> *Ibid.*, para. 28.

<sup>119</sup> The removal of public officials and employees from service who are personally responsible for the gross human rights violations, *Ibid.*, para. 37.

<sup>120</sup> *Ibid.*

<sup>121</sup> UNSG, *Guidance Note on TJ 2010*, p. 9.

<sup>122</sup> *Ibid.*

The UN upholds some important principles of the TJ framework. The UN rejects a one-size-fits-all formula of TJ and instead urges that specific attention should be paid to the unique context of a country.<sup>123</sup> The TJ processes and mechanisms should take a child-sensitive approach, and incorporate women's rights and perspectives.<sup>124</sup> Notably, the UN urges that the victim should hold a central position in the design and implementation of the TJ process.<sup>125</sup> The root-causes of the conflict furthermore need to be taken into account in legitimate and just ways.<sup>126</sup> This should be done by addressing economic, social, and cultural rights.<sup>127</sup> The UN also encourages a comprehensive, or holistic, approach of TJ, ideally one that includes the full range of TJMs.<sup>128</sup> These preceding principles should be considered in the development of the overarching TJ strategy or implementation of specific TJMs.

## 3.2 JUSTICE

*"There is no justice process"*<sup>129</sup>

States bear the primary responsibility to prosecute people who are responsible for committing gross human rights violations and war crimes.<sup>130</sup> The national legislation should be in line with international human rights law and international criminal law.<sup>131</sup> If states are unable or unwilling to conduct effective investigations and prosecutions, international criminal tribunals may take over.<sup>132</sup> I will first discuss the trials of IS-members conducted in Iraq, after which I will outline the prosecutions at an international level.

### 3.2.1 National prosecutions

Based on the foregoing, Iraq has the primary responsibility to prosecute the suspects who were involved in the Yazidi genocide. However, there are many problems with the current prosecution initiatives in the country. First of all, the Iraqi Penal Code does not cover international crimes, due to which the Iraqi courts do not have jurisdiction over genocide, war crimes, and crimes against humanity.<sup>133</sup> The Iraqi government is thus prosecuting IS-members through a vague and broad Federal

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<sup>123</sup> UNSG, *Guidance Note on TJ 2010*, p. 5.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*, p. 6.

<sup>126</sup> *Ibid.*, p. 7; UNSC, *Report on the Rule of Law and TJ 2004*, para. 4.

<sup>127</sup> UNSG, *Guidance Note on TJ 2010*, p. 7.

<sup>128</sup> *Ibid.*, p. 6.

<sup>129</sup> Interview Wahhab Hassoo, 10 April 2021, Amsterdam.

<sup>130</sup> UNSG, *Guidance Note on TJ 2010*, p. 6; OHCHR, *Analytical Study on Human Rights and TJ 2009*, para. 19.

<sup>131</sup> UNSG, *Guidance Note on TJ 2010*, p. 7.

<sup>132</sup> OHCHR, *Analytical Study on Human Rights and TJ 2009*, para. 19.

<sup>133</sup> UNHRC, *Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions 2018*, paras. 48 and 49.

Anti-Terrorism Law.<sup>134</sup> This law includes an extensive list of crimes for which the death penalty is mandatory, ranging from serious crimes such as killings to petty crimes like vandalism.<sup>135</sup> Out of the 41,049 people detained in Iraqi prisons, 22,380 were convicted of terrorism-related charges, according to the Iraqi government.<sup>136</sup>

The Kurdish Regional Government (KRG), the executive body of the Kurdistan autonomous region in the north of Iraq,<sup>137</sup> uses a very broad definition of terrorism in its Kurdish Anti-Terrorism Law as well.<sup>138</sup> In contrast with the Federal Anti-Terrorism Law, the Kurdish one stipulates no mandatory death penalty for terrorism acts.<sup>139</sup> Although the Kurdish Anti-Terrorism law expired in 2016, the KRG continues to apply it to IS crimes committed before this date. The KRG attempted to create the necessary legal framework: it drafted a statute for the establishment of a Special Court with international support and jurisdiction over genocide, war crimes, and crimes against humanity committed by ISIS.<sup>140</sup> This draft law was sent to their parliament on 28 April 2021 for adoption, but the Iraqi Supreme Court ruled on 13 June 2021 that the statute contradicts the Iraqi constitution and is thus invalid.<sup>141</sup>

In addition, the Iraqi Penal Code is flawed regarding sexual and gender-based violence. The rape definition does not only fail to meet international law standards,<sup>142</sup> but the rape also becomes void if

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<sup>134</sup> The Federal Anti-Terrorism Law, for example, defines terrorism in article 1 as: “Every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.”

<sup>135</sup> See for instance, article 2 (2) Federal Anti-Terrorism Law: “Work with violence or threat to deliberately sabotage or wreck, ruin or damage buildings or public property...” and 2 (4) Federal Anti-Terrorism Law: “Use violence or threat to stir up sectarian strife or civil war or sectarian infighting by arming citizens or by encouraging them to arm themselves and by incitement or funding.” Only when someone “covers up any terrorist act or harbors a terrorist”, they get life imprisonment instead of the death penalty, Articles 2 and 4 Federal Anti-Terrorism Law.

<sup>136</sup> Ali, *Rudaw*, 7 January 2021.

<sup>137</sup> See the map of Sinjar in north Iraq on page ix for the location of the Kurdistan autonomous region.

<sup>138</sup> Article 1 Kurdish Anti-Terrorism Law: “A terrorist act is the organized use of violence or the threat of use of violence or the instigation to it or the glorification of it by the perpetrator of a crime ... with the objective of spreading fear, terror, panic and chaos among the people in order to undermine the public order or to expose the well-being of the society and the region or the lives, freedoms, inviolableness or safety of people to danger...”.

<sup>139</sup> In articles 2, 3, and 4, the Kurdish Anti-Terrorism Law gives consecutive sentences for terrorism, namely the death penalty, life imprisonment, and imprisonment for less than 15 years. The KRG established a *de facto* moratorium on the death penalty, UNHRC, *Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions 2018*, para. 59.

<sup>140</sup> ‘Draft Statute of Special Court for ISIS Crimes in KRI’, KRG.

<sup>141</sup> Iraq Supreme Federal Court, 13 June 2021, No. 71/Federal/2021. It concerns contradictions of articles 90, 91, and 95 of the Iraqi Constitution. The constitution prohibits the forming of special courts and the appointment of (non-Iraqi) judges and prosecutors by an entity other than the Higher Juridical Council.

<sup>142</sup> Article 393 section 1 Iraqi Penal Code states: “Any person who has sexual intercourse with a female without her consent or commits buggery with any person without their consent is punishable by a term of

the perpetrator marries the victim.<sup>143</sup> Kjell Anderson, director of the human rights master program at the University of Manitoba, Canada stated: “[M]arital rape is something that’s basically allowed in Iraq. You can see why that’s problematic when you bring in this aspect of forced marriage [of the captured Yazidi women].”<sup>144</sup>

In my interviews, the Yazidis expressed very negative sentiments towards the trials held in Iraq so far. Wahhab Hassoo, a Dutch Yazidi activist and ambassador of the Yazidi Legal Network, said: “There is no justice process now in Iraq”.<sup>145</sup> Many other interviewees expressed similar feelings of discontent. The biggest problem many Yazidis indicated was the fact that IS-suspects are currently being prosecuted for terrorism-related charges instead of participation in the Yazidi genocide. Vian Darwish, a Yazidi woman working for Yazda in Iraq in advocacy and outreach of survivors, stated: “It’s a kind of disaster. I would prefer those IS-fighters not to be punished at all, instead of being punished for being a terrorist”.<sup>146</sup> The Yazidi community wants to have recognition of their sufferings and the genocide. Prosecuting the people based on IS-membership takes that acknowledgement away. It is, according to some Yazidis, a further denial of their rights as Yazidis living in Iraq.

An important aspect of prosecuting suspects is the fact-finding and dissemination of the truth about the crimes that were committed. The Iraqi trials appear to be flawed in this regard as well, however. The UN Assistance Mission for Iraq (UNAMI) observed that the right to a fair trial and due process guarantees of the defendants were neglected in trials of suspects of IS-membership.<sup>147</sup> An abundance of statements was extracted through torture or ill-treatment.<sup>148</sup> Moreover, since the names of the

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imprisonment not exceeding 15 years.” Consent is central to this definition, which becomes a problem in cases of conflict-related sexual violence and with regard to inequality in male/female dynamics. Marital rape is furthermore not prohibited by this article.

<sup>143</sup> Article 398 Iraqi Penal Code states: “If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed...”; Van Schaack, *Journal of International Criminal Justice* 2018, p. 126.

<sup>144</sup> Interview Kjell Anderson, 8 April 2021, online.

<sup>145</sup> Interview Wahhab Hassoo, 10 April 2021, Amsterdam.

<sup>146</sup> Interview Vian Darwish, 29 April 2021, online.

<sup>147</sup> The defense lawyers did not have time to prepare as they were most often assigned at the beginning of the trials, the defendants did not have effective legal representations as the lawyers played a passive role, and the Iraqi courts relied on anonymous informants and intelligence reports, UNAMI, *Human Rights in the Administration of Justice in Iraq 2020*, pp. 6-8. This violates the right to equality before courts and tribunals and to a fair trial, as laid down in article 14 and 26 of the International Covenant on Civil and Political Rights (ICCPR).

<sup>148</sup> Out of the 619 terrorism-related hearings observed by UNAMI, 436 relied on a confession of the defendant, of which 366 later on withdrew their confession. In 260 of those cases, the defendants or defense lawyers claimed torture was used in the interrogations, UNAMI, *Human Rights in the Administration of Justice in Iraq 2020*, p. 8.

defendants or the dates of the trials were not published in advance, the hearings were not open to the public and victims were not able to attend or testify.<sup>149</sup>

The Yazidis I interviewed feel like the truth about the genocide is vanishing due to the trials behind closed doors. Murad Ismael, the co-founder of the Yazidi INGO Yazda, said: “These courts are not public, nobody knows what happened in the background. So the Yazidis see that justice has not been served.”<sup>150</sup> UNAMI noted that out of the 317 trials about terrorism they monitored which involved a sentence, 105 defendants were sentenced to death.<sup>151</sup> 19 of those death sentences were not based on any specific act of violence, but merely on ‘membership of a terrorist organization’.<sup>152</sup> The ‘most serious crimes’ threshold necessary to impose the death penalty was therefore not met.<sup>153</sup> A great deal of the convicted IS-members are sentenced to death without testifying about their actions. As a result, the information about the genocide dies with them. Ismael is of the opinion that the truth needs to come out: “You take an IS-member, and you kill him without telling the truth and making it visible is no justice. I prefer him to be alive and tell the truth and for people to know what happened, and then he could face justice afterwards.”<sup>154</sup> Death sentences without testimonies could further complicate the process of finding missing people, as the convicts could potentially provide vital information about the whereabouts of the captives or location of the remains of missing Yazidis.

Moreover, the interviewees conveyed great distrust in the Iraqi legal system and the authorities due to the release of IS-leaders or -supporters from Iraqi prisons. Some Yazidis mentioned corruption<sup>155</sup> and power as the reasons for those people being set free. Ghazi Murad, a 26-years-old Yazidi working for Yazda in Iraq, talked about a powerful Sunni tribe leader who was released from prison: “[E]ven though there were eyewitnesses to or evidence of his crimes, he was just sentenced for five years and then they released him. So I think the Iraqi authorities cannot bring those people who are in power to justice.”<sup>156</sup> However, there may be more to it than corruption and power. According to Leyla Ferman, a German Yazidi research fellow at the Netherlands Institute for War, Holocaust and Genocide Studies, Kurdish authorities in Syria and Iraq do not let IS-suspects go without a reason and without closely watching them.<sup>157</sup> She argues that in those cases of release, the suspects were probably imprisoned

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<sup>149</sup> Ibid., p. 13.

<sup>150</sup> Interview Murad Ismael, 21 March 2021, online.

<sup>151</sup> UNAMI, *Human Rights in the Administration of Justice in Iraq 2020*, p. 12.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Interview Murad Ismael, 21 March 2021, online.

<sup>155</sup> Iraq is ranked no. 160 out of 180 countries on the Corruption Perceptions Index of 2020. Iraq scored 21 points out of 100 (100 being very clean and 0 highly corrupt), Transparency International, *Corruption Perceptions Index 2020*, p. 3. The index concludes on page 18 that the corruption in Iraq deprives its citizens of their basic rights.

<sup>156</sup> Interview Ghazi Murad, 15 April 2021, online.

<sup>157</sup> Interview Leyla Ferman, 24 May 2021, online.

for years without enough strong evidence to convict them. This would violate their right to a fair trial. Ferman thinks it might also be a strategic choice to bring IS-members before a proper, international court, rather than the Iraqi ones.<sup>158</sup>

### 3.2.2 International prosecutions

Only when states are unable or unwilling to conduct investigations and prosecutions themselves, can international criminal tribunals exercise jurisdiction. The International Criminal Court (ICC) has no jurisdiction over the crimes committed by IS in Syria or Iraq *in toto*, because neither countries are States Parties to the Rome Statute of the ICC.<sup>159</sup> The ICC can therefore only adjudicate on crimes committed by citizens of States Parties,<sup>160</sup> by referral of a State Party or the UN Security Council (UNSC) of the situation, or if the Prosecutor of the ICC initiated an investigation.<sup>161</sup> These situations have not yet occurred, however. No *ad hoc* criminal tribunal has been created to adjudicate on the crimes committed by IS and there is no political will to do so. It seems unlikely that Russia and China, as permanent members to the UNSC, will lift their veto of 2014 for a referral to the ICC or creation of an *ad hoc* criminal tribunal.<sup>162</sup>

Based on nationality jurisdiction, third states can prosecute their citizens who traveled to Syria and Iraq to become an IS-member and perhaps committed graver crimes against the Yazidi community. There is an estimate of 41,490 foreign IS-affiliates, of which 7,366 returned to their home countries in 2018.<sup>163</sup> The majority of foreign IS-affiliates is still in Iraq or Syria. The Syrian Democratic Forces in Syria hold between 8,000 and 9,000 prisoners suspected of being IS-members, of which 2,000 come from a third country.<sup>164</sup> The al-Hol camp in Syria contains almost 70,000 IS family members, of which half is Iraqi.<sup>165</sup> The internment of foreign fighters in Iraq and Syria is not a durable solution. Their domestic security services are under great pressure due to the number of individuals that pose a terrorist risk.<sup>166</sup> Investigating and prosecuting foreign fighters imprisoned in Iraq and Syria could relieve some of this pressure and simultaneously bring justice for the Yazidi community.<sup>167</sup> It may nevertheless be exceedingly difficult to gather enough evidence to convict the suspects.

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<sup>158</sup> People namely have the right not to be tried or punished for the same criminal offence twice.

<sup>159</sup> 'The States Parties to the Rome Statute', asp.icc-cpi.int.

<sup>160</sup> 'A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5', Article 12, Section 1 Rome Statute.

<sup>161</sup> Article 13 Rome Statute.

<sup>162</sup> 13 out of the 15 members of the UNSC voted positively, *UN News Center*, 22 May 2014; Van Schaack, *Journal of International Criminal Justice* 2018, p. 121.

<sup>163</sup> International Centre for the Study of Radicalisation, *From Daesh to 'Diaspora' 2018*, pp. 14 and 15.

<sup>164</sup> Jeffrey, *Wilson Center*, 22 December 2020.

<sup>165</sup> *Ibid.*

<sup>166</sup> Counter Extremism Project, *Western Foreign Fighters and the Yazidi Genocide 2021*, p. 50.

<sup>167</sup> *Ibid.*, p. 51.

The policy choices of European states towards repatriating their own citizens differ greatly.<sup>168</sup> Kosovo, for example, repatriated 110 out of their suspected 403 nationals and prosecuted, rehabilitated, or reintegrated them,<sup>169</sup> while the Dutch Supreme Court held that the state is not legally obliged to repatriate children and women who are stuck in the al-Hol camp.<sup>170</sup> Most states simply do not want to repatriate their nationals, and some revoked their citizenship.<sup>171</sup> Several states fear they do not have enough evidence of the crimes committed in the conflict zone to prosecute them, while others have refrained from over-securitizing the issue of returnees.<sup>172</sup> The debate on repatriation in the parliaments of European states distracts from the much-needed conversation on and prosecution of the crimes committed against the Yazidis.<sup>173</sup> In the United Kingdom, around 400 to 450 IS-members have returned, of which only 40 were charged with terrorist or criminal acts and activities in the conflict zone.<sup>174</sup> More importantly, no one in the UK has been charged with genocide or other international crimes against the Yazidi community. The same goes for almost every other country with IS-returnees.

Germany is currently the only country in the world which has convicted two of their citizens for war crimes and crimes against humanity against Yazidi women. The first sentence of four years imprisonment was given by the Higher Regional Court of Hamburg on 22 March 2021 to a German woman named Omaima A. who traveled to Syria in January 2015.<sup>175</sup> She was convicted, amongst other crimes, for complicity in the crime against humanity of slavery of a 13-year-old Yazidi girl who was forced to work for her for several hours in total in her apartment.<sup>176</sup> Another conviction was delivered by the Higher Regional Court of Düsseldorf on 21 April 2021, which sentenced the 35-year-old German woman Nurten J. to four years and three months in prison for a number of crimes, including

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<sup>168</sup> An estimated 1,765 out of the 5,904 Western European IS-affiliates have returned until June 2018 and 784 out of the 7,252 Eastern Europeans, see International Centre for the Study of Radicalisation, *From Daesh to 'Diaspora' 2018*, pp. 14 and 15.

<sup>169</sup> Clingendael, *Policy Brief Repatriating Foreign Fighters 2020*, pp. 2-4. The 110 Kosovars included four men, 32 women, and 74 children. All men were immediately arrested upon return and prosecuted. The women were all investigated, with 20 being indicted for terrorism-related charges. The children were reintegrated and are back in their normal schools.

<sup>170</sup> Hoge Raad Nederland, 26 juni 2020, ECLI:NL:HR:2020:1148. The Dutch government adopted a passive stance towards repatriating their citizens after the order of the Supreme Court. However, after it became clear that the legal basis for prosecution of several women would be gone if the Dutch government would not repatriate them, the government repatriated those women and their children from the al-Hol camp, see Van Es, *De Volkskrant*, 5 June 2021.

<sup>171</sup> Clingendael, *Policy Brief Repatriating Foreign Fighters 2020*, p. 5; Counter Extremism Project, *Western Foreign Fighters and the Yazidi Genocide 2021*, p. 5.

<sup>172</sup> Counter Extremism Project, *Western Foreign Fighters and the Yazidi Genocide 2021*, p. 18. Over-securitizing means transforming a regular political affair into a 'security' concern.

<sup>173</sup> *Ibid.*, p. 48.

<sup>174</sup> *Ibid.*

<sup>175</sup> Oberlandesgericht Hamburg Pressemitteilung Nr. 63/2021, 22 March 2021. Her sentence was three years and six months but was later raised to four years.

<sup>176</sup> *Ibid.*

committing war crimes and aiding and abetting crimes against humanity.<sup>177</sup> Nurten J. used a Yazidi woman, who was a slave of another IS-woman, for slave labor at her house approximately 50 times when the other IS-woman visited her.<sup>178</sup> Besides these two convictions, the Higher Regional Court of Frankfurt has charged Taha Al-J., an Iraqi national, with genocide, crimes against humanity, and war crimes against the Yazidi minority based on universal jurisdiction.<sup>179</sup> He is accused of buying a Yazidi woman and her 5-year-old daughter and holding them as slaves for several months.<sup>180</sup> He allegedly forced the mother to leave the house barefooted for half an hour at a temperature of 50 degrees Celsius and chained her daughter to a window in the open sun due to which she died.<sup>181</sup> There is no verdict yet.

The Yazidis I interviewed were very positive about the Taha Al-J. case since it is the first court case in the world in which a person is charged with genocide against the Yazidi community. Nibras Khudaïda, a Yazidi studying economics and pre-law in the US, believes it may set a precedent for other countries.<sup>182</sup> The recognition of the genocide is extremely important for the Yazidis, and a conviction of an IS-member for the genocide would draw attention of the international community to their case. The interviewees nevertheless seemed to assume Taha Al-J. has already been convicted for genocide or that it will undoubtedly end this way. However, this case presents numerous challenges for the prosecutors, as the sole witness is the mother of the child, no dead body has been found, and genocide is extremely difficult to prove in individual cases.

For a conviction of genocide, the prosecutor will have to prove the perpetrator had the specific intent, or *dolus specialis*, to destroy a national, ethnical, racial, or religious group in whole or in part.<sup>183</sup> The lawyer of the mother of the child in the Taha Al-J. case acknowledged this: “[T]he killing of one person out of a group can constitute genocide, but the special intent to commit genocide, as defined by the jurisprudence, has to meet a very high threshold and is therefore more difficult to prove.”<sup>184</sup> The International Criminal Tribunal for Rwanda (ICTR) emphasized that proving the *dolus specialis* is

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<sup>177</sup> Oberlandesgericht Düsseldorf Pressemitteilung Nr. 10/2021, 21 April 2021.

<sup>178</sup> Ibid.

<sup>179</sup> Oberlandesgericht Frankfurt/Main Pressemitteilung Nr. 30/2020, 24 April 2020. Universal jurisdiction can be invoked by national courts for serious crimes against international law because they harm the international community. It is usually invoked when other bases of jurisdiction are unavailable, such as territorial jurisdiction or nationality jurisdiction. This is the first Yazidi case where universal jurisdiction is invoked.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid. Taha Al-J.’s German wife, Jennifer W., has been charged with murder as a war crime for standing idly by while Taha Al-J. killed the 5-year-old, based on nationality jurisdiction.

<sup>182</sup> Interview Nibras Khudaïda, 11 April 2021, online.

<sup>183</sup> Establishing that someone killed or forcibly displaced a number of people belonging to a group is only the first part, as it must also be shown that the individual wanted to destroy that group, Murray, *Goettingen Journal of International Law* 2011, p. 599.

<sup>184</sup> El-Hitami, *Justiceinfo.net*, 29 October 2020.

extremely challenging in the first genocide conviction ever, in their *Akayesu* judgement: “[T]hat intent is a mental factor which is difficult, even impossible, to determine”.<sup>185</sup> This is the reason why so few low-ranking soldiers and civilians compared to (also a limited number of) high-ranking officials have been convicted of genocide.<sup>186</sup> The ICTR labeled genocide the ‘crime of crimes’,<sup>187</sup> and therefore held in their *Bagilishema* judgment that the burden of proof of genocide cannot be lowered.<sup>188</sup>

The Yazidis focused in their discussions on current international trials solely on the ongoing Taha Al-J. case, thereby neglecting the convictions of Omaima A. and Nurten J. One explanation for this fixation could be that they simply did not know about the convictions. Another explanation could be that they perceive genocide as the ‘crime of crimes’ as well: graver than war crimes or crimes against humanity. Christian Nielsen, a genocide scholar, argues that, although genocide is an important legal and analytical concept, the “myopic obsession” with it does not further international criminal justice.<sup>189</sup> Anything less than a genocide conviction is understood as a failure by advocates of the genocide label, even though crimes against humanity and war crimes are very serious crimes as well.<sup>190</sup> According to Nielsen, there should be no ‘genocide or not’ dichotomy, nor a hierarchy of international crimes.<sup>191</sup> Kjell Anderson, on the other hand, thinks that there is a *de facto* hierarchy in international crimes and having no hierarchy is “almost an ideal”.<sup>192</sup> Whether or not courts convict IS-members for genocide, or crimes against humanity and war crimes could have implications for the achievement of justice according to the Yazidis. Perhaps the Yazidi community might feel there is no justice if there are no convictions for genocide.

Although everyone was positive about the Taha Al-J. case, most interviewees expressed dissatisfaction over the lack of other prosecutions for the Yazidi genocide worldwide. Since more than 40,000 foreigners traveled from 80 countries to Iraq and Syria without their governments stopping them,<sup>193</sup> the participants feel there is a responsibility of those states to prosecute their citizens and sentence them accordingly. Farhan Ibrahim, founder of the Yazidi Youth Bridge Organization in Iraq, stated: “Those countries are taking their citizens, who were with IS or were IS-leaders, to their countries

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<sup>185</sup> ICTR Trial Chamber Judgment, *Akayesu*, para. 523.

<sup>186</sup> Murray, *Goettingen Journal of International Law* 2011, p. 599.

<sup>187</sup> The ICTR concluded the following in the *Kambanda* judgment: “[H]ence the Chamber is of the opinion that genocide constitutes the crime of crimes”, ICTR Trial Chamber Judgment, *Kambanda*, para. 16.

<sup>188</sup> The ICTR held: “The Chamber notes, however, that the use of context to determine the intent of an accused must be counterbalanced with the actual conduct of the Accused. The Chamber is of the opinion that the Accused’s intent should be determined, above all, from his words and deeds, and should be evident from patterns of purposeful action”, ICTR Trial Chamber Judgment, *Bagilishema*, para. 63

<sup>189</sup> Nielsen, *Journal of Genocide Research* 2013, p. 32.

<sup>190</sup> *Ibid.*, p. 30.

<sup>191</sup> *Ibid.*, respectively p. 22 and p. 28.

<sup>192</sup> Interview Kjell Anderson, 8 April 2021, online.

<sup>193</sup> International Centre for the Study of Radicalisation, *From Daesh to ‘Diaspora’ 2018*, pp. 16-19.

without taking them to the court or imprisoning them. The only country that did that is Germany with only one person.”<sup>194</sup> Nibras Khudaida thinks that those states do not want their citizens back and have no idea how to deal with this issue.<sup>195</sup>

### 3.3 TRUTH-SEEKING

*“Even mass graves are not safe”*<sup>196</sup>

Victims, their relatives, and the society have the right to the truth about gross human rights violations. It is an inalienable and autonomous right to know “the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them”.<sup>197</sup> In cases of enforced disappearances, the right to the truth also implies knowing the fate and whereabouts of the victims.<sup>198</sup> There are important tools for getting to know the truth: (inter)national criminal tribunals and proceedings, truth commissions, commissions of inquiry, national human rights institutions, and administrative bodies.<sup>199</sup> Below, an analysis of several truth-seeking initiatives and their results so far will follow.

#### 3.3.1 Events of and reasons for the genocide

Several fact-finding missions of the UN documented a lot of information about the genocide. The UN Office of the High Commissioner of Human Rights (OHCHR) released a report in 2015 detailing the attacks of IS against Yazidis and other minorities in Iraq, while also delving into violations perpetrated by other parties in the conflict.<sup>200</sup> This OHCHR report was later used by the Independent International Commission of Inquiry on the Syrian Arab Republic (IICI Syria) for its examination of the crimes of IS against Yazidis.<sup>201</sup> In its report “They came to destroy”, the commission found that IS committed genocide,<sup>202</sup> crimes against humanity, war crimes and gross human rights violations against the Yazidi

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<sup>194</sup> Interview Farhan Ibrahim & Ghazala Jango, 5 April 2021, online.

<sup>195</sup> Interview Nibras Khudaida, 11 April 2021, online.

<sup>196</sup> Interview Nayef Sabri, 21 May 2021, online.

<sup>197</sup> OHCHR, *Study on the Right to Truth 2006*, paras. 55 and 59.

<sup>198</sup> *Ibid.*, para. 59.

<sup>199</sup> *Ibid.*, para. 61.

<sup>200</sup> OHCHR, *Human Rights Situation in Iraq 2015*. The only other crimes the OHCHR investigated were committed by Iraqi security forces on Sunni people, thereby neglecting the withdrawal of Peshmerga from the Sinjar region before IS attacked and the lack of protection for the Yazidis by the Iraqi security forces.

<sup>201</sup> The IICI Syria was established by the Human Rights Council on 22 August 2011 to investigate alleged human rights violations in Syria in its civil war since March 2011, HRC Resolution S-17/1, para. 13. Although its mandate clearly specifies ‘the Syrian Arab Republic’, the Commission decided that IS’ conduct is not geographically limited and found it necessary to investigate the initial attack in northern Iraq in order to grasp the forcible transfer of the Yazidis into Syria, due to which the Commission could look into the atrocities that happened in Iraq, UNHRC, *Report “They came to destroy” 2016*, paras. 5 and 7.

<sup>202</sup> According to the IICI Syria, IS killed, caused serious bodily or mental harm to, deliberately inflicted conditions of life calculated to bring about their physical destruction, imposed measures intended to prevent

community.<sup>203</sup> As the report outlines, IS persecuted the Yazidis for being devil-worshippers and *kuffar* (infidels).<sup>204</sup> The commission furthermore indicated that the Peshmerga, the Iraqi Kurdish forces, withdrew right before the IS attack without communicating this to the Yazidi population.<sup>205</sup> The IICI Syria did not examine whether this withdrawal constitutes complicity in the genocide. The report also paints a grim picture of the devastated Yazidi community in the Sinjar region after the attack - "The 400,000-strong community had all been displaced, captured, or killed"<sup>206</sup> - and their challenges to overcome.

From the dozens of violent attacks the Yazidi people talk about have endured through history,<sup>207</sup> this can be considered the best documented genocide. As Zidan Kheder, a 30-year-old Yazidi man working as a translator in Germany, told me: "Everything in terms of the genocide is clear. [...] I know what the main reason for the genocide was and also about the Iraqi and Kurdish governments: they left the Yazidis and told the Yazidis at the beginning they would protect us."<sup>208</sup> Although the broad contours of the genocide may be clear and well-documented, the specific circumstances of certain events are not known. Victims may not know why a certain IS-member held them captive and relatives may not know how their family member died, or whether they are still alive. Moreover, almost all interviewees expressed resentment with the Peshmerga and Iraqi security forces for leaving the Yazidis vulnerable to the IS-attack, similar to Zidan Kheder, but there has been no formal investigation into (lack of) actions by the governments in 2014. The interviewees also want the truth to be established about the betrayal of their neighbors, Sunni Arab tribes, in 2014. Yazidis claim many Sunni tribe members joined IS, were complicit in the genocide, or did not do enough to protect the Yazidis.<sup>209</sup> No truth commission has been established yet to find out the missing information about the genocide.

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births within the group, and forcibly transferred members of the Yazidi community, UNHRC, *Report "They came to destroy" 2016*, paras. 111, 136, 141, 146, and 149, respectively. All genocidal acts listed in article 2 A-E of the Genocide Convention were thus committed by IS.

<sup>203</sup> Ibid., para. 168, 173, and 174, respectively.

<sup>204</sup> Ibid., para. 160.

<sup>205</sup> Ibid., para. 24. Sinjar is disputed territory claimed by both the KRG and Iraqi government. In 2014, Sinjar was under *de facto* control of the Peshmerga forces. However, the Iraqi government did not send their armed forces to Sinjar for protection when thousands of Yazidis fled to Mount Sinjar on 3 August, nor did it intervene when the Yazidi town of Kocho was under siege by IS for almost two weeks.

<sup>206</sup> Ibid., para. 175.

<sup>207</sup> Dinnayi 2019, p. 10. Yazidis talk about 72 preceding pogroms, 'fermans', or genocides. History books have recorded dozens of military campaigns against them with hundreds or thousands of victims, enslavement, and destruction of property.

<sup>208</sup> Interview Zidan Kheder, 25 April 2021, online.

<sup>209</sup> The Sunni tribes Imteywit, Jahaysh, and Khatoony have often been accused by the Yazidi community of fighting with or helping the IS. The Yazidi community tells, on the other hand, positive stories about members of the Shammar tribe, who helped Yazidis escape from Mount Sinjar in 2014, ECFR, *Policy Brief When Weapons Fall Silent 2018*, p. 6. If some Sunni tribes indeed helped the Yazidis, this could mean that the other tribes had a choice not to cooperate with IS.

### 3.3.2 Missing people

#### 3.3.2.1 *People in captivity*

Seven years after the IS attack, 2880 out of the 6417 kidnapped Yazidis are still missing.<sup>210</sup> In earlier years, many Yazidis escaped from captivity with or without help from the KRG's Ezidi Rescue Office. The KRG provided Yazidis with money to rescue their family members by means of smugglers until they ran out of funding two years ago.<sup>211</sup> Now, family members need to pay for the search themselves, which is usually too expensive to conduct.<sup>212</sup> The KRG's Ezidi Rescue Office is currently the only organization in Iraq or Syria which attempts to find missing Yazidis. The International Commission on Missing Persons (ICMP) does offer support to Iraqi and Kurdish authorities in investigating enforced disappearances in the country.<sup>213</sup> The ICMP also developed a network of family members of missing people across Iraq to share information that could assist in resolving the fate of their loved ones.<sup>214</sup>

The Yazidis I interviewed were all very negative about the lack of actions taken to find the people in captivity. Azzat Alsaleem, a Yazidi human rights activist, called the fact that people are still in captivity "unimaginable: every day is a genocide for them. If they know these [family] members are killed, they know it's finished and they're not going to see them again, they know their fate. But to be kidnapped and live everyday with torture and slave trade, this is too hard to imagine."<sup>215</sup> A lot of interviewees also criticized the absence of a big search right after the genocide happened, arguing that at the beginning it was still relatively well-known where the missing people were. A simple rescue attempt at that time would have been enough. Now, however, they argue it is far more difficult to find the missing people. Not only are they scattered across neighboring countries, which so far have shown no intention of starting a search team, but many Yazidis, who were young at the time of disappearing, may have become influenced by the IS ideology of their captors or may not even remember that they are Yazidi.

#### 3.3.2.2 *Mass graves*

On 14 August 2017, the government of Iraq called for assistance of the international community in holding IS-members accountable for the crimes against humanity<sup>216</sup> they committed in the conflict.<sup>217</sup> One month later, on 21 September 2017, the UNSC adopted a resolution establishing the United

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<sup>210</sup> Johnston, *Rudaw*, 27 May 2021.

<sup>211</sup> Arraf, *New York Times*, 7 February 2021. Around 60 till 70% of the smuggling fees was paid by the KRG, the rest was paid by the families.

<sup>212</sup> The amount of smuggling fees depends on the number of missing people were captured. The amount can rise to tens of thousands of dollars, Feldman, *Pulitzer Center*, 11 June 2015.

<sup>213</sup> 'Iraq', icmp.int.

<sup>214</sup> Ibid.

<sup>215</sup> Interview Azzat Alsaleem, 26 March 2021, online.

<sup>216</sup> The government of Iraq only mentioned crimes against humanity in its letter of 14 August 2017. Iraq recognized the genocide for the first time in the Yazidi Survivors Law, adopted on 1 March 2021.

<sup>217</sup> UNSC, *Letter from Iraq to the UNSC 2017*. Iraq required its sovereignty, jurisdiction, and laws to be respected.

Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant (UNITAD) to investigate alleged war crimes, crimes against humanity, and genocide.<sup>218</sup> To do so, UNITAD was mandated to collect, preserve and store evidence of those crimes for investigations and prosecutions in Iraq or in third countries at their request.<sup>219</sup> According to the KRG's Ezidi Rescue Office, there are 82 mass graves in the Sinjar region, besides dozens of individual graves.<sup>220</sup> UNITAD excavated 22 mass graves so far.<sup>221</sup> In its most recent report of 3 May 2021, UNITAD declared the crimes committed by IS as constituting genocide, war crimes, and crimes against humanity and identified 1,444 potential perpetrators of the attacks against the Yazidi community.<sup>222</sup>

UNITAD's mandate does not come without complications, however. It leaves no room for an investigation into the involvement of governmental forces, such as the Peshmerga or Iraqi security forces that left the Yazidis unprotected.<sup>223</sup> This may be problematic, especially since Yazidis want an official investigation of those military forces.<sup>224</sup> Moreover, UNITAD's mandate only covers crimes committed in Iraq.<sup>225</sup> It is uncertain how prosecutors will deal with the transnational nature of the crimes. According to Kjell Anderson, it might be difficult to capture the full structure of the criminality as the crimes were committed both in Iraq and Syria and to collect data in the latter country if it does not cooperate.<sup>226</sup> Lastly, UNITAD's mandate assigns the collected evidence to be used in criminal proceedings in Iraq.<sup>227</sup> This may create problems with regard to the death penalty and flaws in the Iraqi legal system.<sup>228</sup>

All the Yazidis I spoke to agreed that UNITAD's work is essential for collecting evidence of the genocide. The opinions are diverging, however, on the matter of how UNITAD is doing their work. About half of the interviewees think UNITAD is doing good work in excavating the mass graves. The reason for the positivity might be that the Yazidis see that actions are finally being taken to address the genocide. Throughout every interview, the Yazidis told me that the Iraqi government is big on empty promises, due to which the community feels neglected. UNITAD, on the other hand, may prove that they are

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<sup>218</sup> UNSC resolution 2379.

<sup>219</sup> *Ibid.*, para. 2.

<sup>220</sup> Editors, *Shafaq News*, 15 February 2021.

<sup>221</sup> UNSC, *Sixth Report UNITAD 2021*, para. 128.

<sup>222</sup> *Ibid.*, paras. 10 and 13.

<sup>223</sup> Van Schaack, *Journal of International Criminal Justice 2018*, p. 118.

<sup>224</sup> More on this topic in section 4.2.1.

<sup>225</sup> UNSC Resolution 2379, para. 2.

<sup>226</sup> Interview Kjell Anderson, 8 April 2021, online.

<sup>227</sup> UNSC Resolution 2379, para. 5. The resolution stipulates that UNITAD will respect the sovereignty and jurisdiction of Iraq.

<sup>228</sup> UNITAD is currently working with the Iraqi government on a draft law which includes international crimes, UNSC, *6<sup>th</sup> Report UNITAD 2021*, para. 131.

taken seriously and that an investigation team is working on their case.<sup>229</sup> Several interviewees mentioned the mechanism is the first, important step in the justice process. They said that due to the documentation, there might be a bigger chance of prosecutions and recognition of the genocide in a later stage.

Even though there was some positivity, everyone agrees that the current truth-seeking process is not sufficient, and especially going too slow. From the interviews, three main reasons could be deduced. First, a lot of Yazidis talked about the families of the missing people who are still waiting for news about their beloved ones. Azzat Alsaleem said: “People still have hope. After 7 years. They want to know who is alive and who is in the mass graves.”<sup>230</sup> The second reason is that the Yazidi people want to bury their dead in dignity according to their traditional religious practices. Khalaf Smoqi, a Yazidi man living and working as an engineer in the US, called it “something emotional, or psychological that Yazidis need at this point: to feel respected.”<sup>231</sup> Lastly, the interviewees criticized the slow exhumation process because the evidence is disappearing. It took a lot of time before the exhumations could properly start due to IS occupation until December 2017 and the approval and set up of UNITAD. The mass graves were unprotected until that time. When Kjell Anderson went to Iraq for his research in 2016, he noticed the bad shape of the mass graves, at that time still surrounded by mines: “I’m not an expert on forensics, but the bodies were rising to the surface from erosion”.<sup>232</sup> Many interviewees worry that evidence could potentially be lost if the process takes up more time, as Nayef Sabri, the Yazidi founder of the Sunrise Organization for Civil Society Development in Iraq, said: “Even mass graves are not safe”.<sup>233</sup>

UNITAD is not the only organization working on excavating the mass graves. The KRG established the Commission of Investigation and Gathering Evidence (CIGE) to document the atrocities perpetrated by IS.<sup>234</sup> The CIGE collects testimonies from survivors, victims, and witnesses, excavates mass graves, and undertakes forensic work.<sup>235</sup> However, according to the Dutch NGO Pax for Peace, there might be more behind the efforts of the CIGE: the KRG might try to seize greater control over the Sinjar region, as this is territory disputed between the KRG and Iraqi government. Pax for Peace argued that the CIGE could

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<sup>229</sup> Khalaf Smoqi mentioned this as well: “[T]he more attention the case gets the easier it is, because they see compassion and sympathy from other people, and some other people are trying to help them. Then they don't see themselves alone in this issue. That's also an important thing: to see that the investigation team is working on the issue, and to see that there are some people who are looking for the loved ones that are missing in other countries.”, Interview Khalaf Smoqi, 23 March 2021, online.

<sup>230</sup> Interview Azzat Alsaleem, 26 March 2021, online.

<sup>231</sup> Interview Khalaf Smoqi, 23 March 2021, online.

<sup>232</sup> Interview Kjell Anderson, 8 April 2021, online.

<sup>233</sup> Interview Nayef Sabri, 21 May 2021, online.

<sup>234</sup> UNHRC, *Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions 2018*, para. 50.

<sup>235</sup> OHCHR Statement Special Rapporteur, 24 November 2017.

attempt to gain international attention for the genocide of the Yazidis, because they claim they belong to the Kurdish community.<sup>236</sup> One interviewee, Haidar Ghano, a Yazidi pharmacist who documented missing people in the genocide, raised the same issue regarding CIGE: “And what they were doing is they were trying to show that this genocide happened because these people were Kurds, not Yazidis. Because they are Kurdish Yazidis.”<sup>237</sup> This dispute over power in the Sinjar region between the governments in Erbil (in the Kurdistan region) and Baghdad (in central Iraq) is, according to Azzat Alsaleem, also one of the main reasons UNITAD is lacking efficiency. He thinks that the political conflict is preventing UNITAD and other organizations from working properly in the region.<sup>238</sup>

### 3.4 REPARATIONS

*“They are living in hell”<sup>239</sup>*

The third pillar of the TJ framework according to the UN is that of reparations. According to the UN Secretary-General, reparations are programs that complement tribunals and truth commissions “by providing concrete remedies, promoting reconciliation and restoring victims’ confidence in the State”.<sup>240</sup> Reparations can be material or symbolic. Examples are monetary compensation, medical and psychological support, enjoyment of human rights, return of property or compensation for its loss, building memorials, giving public apologies, and establishing days of commemoration.<sup>241</sup> The right to reparations for victims is laid down in international law.<sup>242</sup> In the following sections, I will discuss the Iraqi reparations program of the Yazidi Survivors Law and the current situation in Sinjar due to the lack of reparations for the whole community.

#### 3.4.1 The Yazidi Survivors Law

On 1 March 2021, the Iraqi government adopted the Yazidi Survivors Law (YSL) aimed at providing reparations for the female Yazidi, Turkmen, Christian, and Shabak survivors of IS captivity, the kidnapped Yazidi children, and all survivors from the mass killings of the four mentioned ethnic groups.<sup>243</sup> The YSL regulates the following individual benefits: female survivors receive a monthly salary and a piece of residential land with a mortgage or free housing unit, while both the female and child survivors obtain special educational and employment opportunities, and medical and psychological support.<sup>244</sup> Community-wise, the YSL establishes that a search for the missing people will be organized

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<sup>236</sup> Pax, *Sinjar after IS 2016*, p. 26.

<sup>237</sup> Interview Haidar Ghano, 29 March 2021, online.

<sup>238</sup> Interview Azzat Alsaleem, 26 March 2021, online.

<sup>239</sup> Ibid.

<sup>240</sup> UNSC, *Report on the Rule of Law and TJ 2004*, para. 54.

<sup>241</sup> UNSG, *Guidance Note on TJ 2010*, pp. 8 & 9.

<sup>242</sup> UNGA, Basic Principles on the Right to a Remedy and Reparations.

<sup>243</sup> Article 2 Yazidi Survivors Law.

<sup>244</sup> Article 8 (1) and (4), article 5 (4) (5) and (6) Yazidi Survivors Law.

and the excavations of the mass graves and prosecutions of IS will be coordinated.<sup>245</sup> Importantly, the law recognizes the crimes against the Yazidis as genocide and crimes against humanity.<sup>246</sup> Furthermore, 3 August will be a national commemoration day of the genocide and statues, monuments, and exhibitions will be made.<sup>247</sup> The law also determines there can be no amnesty for kidnapping or enslaving Yazidis and provides witness and victim security for the trials.<sup>248</sup>

The YSL is called a milestone for transitional justice.<sup>249</sup> There are, however, several criticisms to the law. One of the greatest flaws of the law is the fact that children born of rape by IS-members are unaccounted for by the YSL. The 2015 Iraqi Nationality Law orders any child of a Muslim or unknown father to be registered as Muslim.<sup>250</sup> Children born of rape by IS-fighters thus automatically become Muslim.<sup>251</sup> According to an anonymous expert interviewee, who works as a legal researcher at an international organization in Iraq, argues that children born of rape should be recognized in conflict-related sexual violence (CRSV) situations.<sup>252</sup> She contends that the lack thereof is indeed the main shortcoming of the YSL. Another problem of the YSL is that sexual violence experienced by men and boys is not covered,<sup>253</sup> and other ethnicities than the four mentioned in the law are excluded, such as Kakai, Shia and Sunni Muslims, who were targeted by IS as well.<sup>254</sup> Some interviewees also complained of the long time it took before the YSL was adopted and about the fact that Iraq recognized the genocide later than several other countries.

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<sup>245</sup> Article 5 (7) (8) and (9) Yazidi Survivors Law. The general directorate for the Female Yazidi Survivors' Affairs created by the YSL will do so.

<sup>246</sup> Article 9 (1) Yazidi Survivors Law.

<sup>247</sup> Article 10 Yazidi Survivors Law.

<sup>248</sup> Article 11 Yazidi Survivors Law.

<sup>249</sup> UN OSRSG on Sexual Violence in Conflict Press Release, 5 March 2021. The UN Special Representative of the Secretary-General on Sexual Violence in Conflict called it a milestone because of the provisions on a monthly salary, land, education, and quota for employment in the public sector and the inclusion of survivors of CRSV in the reparations.

<sup>250</sup> IOM Iraq, *Yazidi Survivors in Germany and Iraq's Reparations Programme 2021*, p. 11; Amnesty International, *Legacy of Terror 2020*, p. 7.

<sup>251</sup> Although outside the scope of this thesis, it is worthy to note that the Yazidi community is struggling with the acceptance of children born out of rape by IS-members. Yazidism does not allow converting into the religion: both parents need to be Yazidi for the child to become Yazidi as well. The Yazidi religious authorities announced that children born out of rape are not welcomed back into their society, Alison, *Deutsche Welle*, 30 April 2019. This makes the return of freed female survivors to their community a lot more difficult.

<sup>252</sup> Interview anonymous expert, 10 June 2021, online. The expert wishes to stay anonymous due to bureaucratic barriers which would have required her to request an official (and time-consuming) permission for the statements made in this interview at her current workplace.

<sup>253</sup> Male experiences are frequently neglected in scholarly works and practice on CRSV, as a 'gender perspective' is usually equated with that of women, according to Phillip Schulz. Although the focus on women in conflict is highly needed, male vulnerabilities and men as victims should not be overlooked, Schulz 2021, pp. 6-8.

<sup>254</sup> Gavrilovic, *C4J*, 26 March 2021.

Generally, most interviewees see the adoption of the YSL as a critical step forward, presumably because it is the first attempt to take care of the survivors.<sup>255</sup> Before this law was adopted, nothing was done for them. The Yazidis I interviewed are glad some of the current needs of the survivors may be (partly) fulfilled by the YSL. Khalaf Smoqi certainly approves of the psychological support it provides: “[T]he survivors, how can they work if they have all these sufferings and psychological issues? So that law was really good, by supporting Yazidi survivors and providing them with money, ways to help them reintegrate into society, and providing psychological resources.”<sup>256</sup>

There is also positivity about the symbolic value of the YSL. According to Olivia Wells, director of Programs and Partnerships of Nadia’s Initiative (an INGO led by the Nobel Peace Prize Laureate and Yazidi activist Nadia Murad), the YSL is important to the Yazidi community for two reasons. It acknowledges the trauma and violence female survivors have gone through and recognizes that the atrocities committed against the Yazidi community constitute genocide.<sup>257</sup> Murad Ismael thinks it is especially important that the law was passed to reduce the genocide denial among non-Yazidis in Iraq. He said some Sunni activists attempted to lessen the gravity of the genocide and only wanted to acknowledge the female enslavement element, which is “why we ended up with a Survivors Law and not with a genocide recognition law.”<sup>258</sup> Researcher Leyla Ferman hopes that due to this law, Iraqis see that the Yazidi community is a special group in Iraq that suffered more than others and thus deserve support.<sup>259</sup>

Most interviewees expressed a lot of distrust towards the implementation of the YSL.<sup>260</sup> As Haidar Ghano mentioned, there are many good laws in Iraq, but they are not implemented regularly: “I think Iraq is suffering from applying the law in general. So far, what is written in [the Yazidi Survivors L]aw is good for the survivors, but it should be followed up carefully and seriously.” After the first step of adopting the law, the interviewees want additional actions. Nishtiman Awsman, a Yazidi woman working for Nadia’s Initiative and studying civil engineering in Iraq, is cautious towards the results of the law, saying that the recognition of the genocide is not enough if they are not going to prosecute people for it.<sup>261</sup>

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<sup>255</sup> Also, most Yazidis I spoke to were not experienced in (international) law and therefore may have had less substantial criticism to the text of the law.

<sup>256</sup> Interview Khalaf Smoqi, 23 March 2021, online.

<sup>257</sup> Interview Olivia Wells, 30 March 2021, online.

<sup>258</sup> Interview Murad Ismael, 21 March 2021, online.

<sup>259</sup> Interview Leyla Ferman, 24 May 2021, online.

<sup>260</sup> Although the bylaws were announced to be released on the 15<sup>th</sup> of June, they have, to my knowledge, not been released yet.

<sup>261</sup> Interview Nishtiman Awsman, 9 April 2021, online.

### 3.4.2 Current situation in Sinjar

Reparations for the Yazidi community as a whole have so far been insufficient. Up to 200,000 Yazidis were still displaced in 2021 as a result of the genocide, living in harsh conditions in IDP camps, or on Mount Sinjar, while only those who were able to left the country.<sup>262</sup> According to an IOM report from 2021, Iraqi IDPs name five main reasons for their inability to return home.<sup>263</sup> First of all, the Ninewa governorate (the province in which Sinjar is located) sustained the more damage than other governorates in the conflict.<sup>264</sup> IS destroyed 80% of the infrastructure and 70% of the houses in the Sinjar region, of which most is still not rebuilt.<sup>265</sup> Second, in the Ninewa governorate, there are no job opportunities and this problem is ranked, in comparison to other governorates, as highly severe.<sup>266</sup> Third, the Ninewa governorate also lacks water and government services.<sup>267</sup> Fourth, there are social cohesion challenges in the area, such as the perceived affiliation of certain IDPs with IS, blocked returns home due to a lack of documentation,<sup>268</sup> fear of revenge and discrimination, and tensions because of ethno-religious, tribal and political dynamics.<sup>269</sup> Finally, there are no sufficient security actors in the Sinjar region and there is a fear of the re-emerging of IS and presence of landmines.<sup>270</sup>

Besides these problems, many Yazidis in IDP camps struggle with severe psychological problems.<sup>271</sup> Several interviewees talked about the high suicide rate in the camps and the urgent need to get the Yazidis out of there. Azzat Alsaleem said: “Day after another we are losing Yazidis in IDP camps and refugee camps in the Kurdish region and they are living, to be honest, without dignity. They are living in hell, but they can't return.”<sup>272</sup> Iraq has not taken enough actions to improve the detrimental situation of displaced Yazidis and instead only worsened it by closing several IDP camps and planning

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<sup>262</sup> Okoth-Obbo, *IOM & UNDP*, 3 August 2020.

<sup>263</sup> IOM Iraq, *Protracted Displacement in Iraq 2021*, pp. 23-40.

<sup>264</sup> *Ibid.*, p. 24.

<sup>265</sup> Okoth-Obbo, *IOM & UNDP*, 3 August 2020.

<sup>266</sup> IOM Iraq, *Protracted Displacement in Iraq 2021*, p. 28.

<sup>267</sup> *Ibid.*, p. 29.

<sup>268</sup> Most Yazidis lost their documentation in or after the genocide. Sinjar is formally territory of the Iraqi government, due to which passports have to be requested in Baghdad. It costs a lot of money and time for the Yazidis staying in IDP camps in Kurdistan to travel to Baghdad.

<sup>269</sup> IOM Iraq, *Protracted Displacement in Iraq 2021*, pp. 31-37.

<sup>270</sup> *Ibid.*, pp. 37- 40.

<sup>271</sup> According to one study, there is a 19% higher chance of distress symptoms among displaced Yazidis in IDP camps than those displaced outside the camps, Pham et al., *BMC Public Health 2021*. Another study found that 34% of 814 adult Yazidis in an IDP camp have PTSD, Taha et al., *BMC Psychiatry 2021*. A study solely among 416 Yazidi women in an IDP camp (of which 65 survived enslavement and CRSV) shows that 80% has PTSD, Ibrahim et al., *BMC Medicine 2018*. See also Free Yazidi Foundation Statement, 27 January 2021.

<sup>272</sup> Interview Azzat Alsaleem, 26 March 2021, online.

to close all others this year.<sup>273</sup> Several countries have stepped in to provide refuge for Yazidi survivors.<sup>274</sup>

There are currently multiple projects of non-profit organizations in the Sinjar region that attempt to rebuild the area and ensure integration of the IDPs. Nadia's Initiative is working to improve water, sanitation and hygiene services, healthcare, education, livelihoods, and culture in the Sinjar region.<sup>275</sup> Olivia Wells talked about the female empowerment projects Nadia's Initiative has been doing in Sinjar that simultaneously work as a form of therapy for the women. Survivors told her that having their own businesses or farms restores their agency, prides them, and empowers them to provide for themselves and their families.<sup>276</sup> Yazda is likewise doing a lot of work in the area, ranging from accommodating a safe return for IDPs and providing mobile medical services in Sinjar, to supplying emergency funding, medical, and psychosocial assistance to survivors.<sup>277</sup> Khalaf Smoqi is rather positive about the work Yazda is doing in Sinjar: "[T]he Yazda team in Iraq is working with USAID and IOM which are providing small businesses to people. And it looks like it's working. It's great because it's a sustainable source of income. Some open barber shops, some open other product shops, so they can live off it. That needs to be expanded, because right now it is just a small project."<sup>278</sup>

Many Yazidis I interviewed emphasized that the issues of rebuilding Sinjar, the lack of services, and the safety situation are areas that necessitate further actions. They talked about the houses that are destroyed and complain about the fact that (close to) nothing has changed in seven years. Zidan Kheder said: "My family wanted to go back to Sinjar, to our house, but it's completely destroyed. How can they go back? They cannot live there: there is no electricity, there is no water, there is nothing."<sup>279</sup> Some interviewees live in IDP camps themselves and cannot go back home or abroad. Others live in a house in the city but need to leave if the owners return one day.

The destruction of Sinjar and the lack of services there are not the only reasons people cannot return from the IDP camps. A very big issue is the safety and security of the Sinjar region. Sardar Qaidi, a Yazidi student living in Armenia, said when he talked about NGOs helping his family members in Sinjar: "They are taking care of the environment. But no actions are taken to make sure that we are safe."<sup>280</sup> The

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<sup>273</sup> Nabeel, *AL-Monitor* 2021, 12 January 2021.

<sup>274</sup> Canada issued visas for more than 1,400 (primarily) women and girls captured by IS, Government of Canada News Release, 30 March 2021. The German federal state of Baden-Württemberg took in 1,100 female and child survivors as part of a medical and psychosocial support program, IOM Iraq, *Yazidi Survivors in Germany and Iraq's Reparations Programme* 2021, p. 5.

<sup>275</sup> Nadia's Initiative, *Projects Overview 2021*; Interview Olivia Wells, 30 March 2021, online.

<sup>276</sup> Interview Olivia Wells, 30 March 2021, online.

<sup>277</sup> 'Our Projects', Yazda.org.

<sup>278</sup> Interview Khalaf Smoqi, 23 March 2021, online.

<sup>279</sup> Interview Zidan Kheder, 25 April 2021, online.

<sup>280</sup> Interview Sardar Qaidi, 10 April 2021, online.

majority of interviewees talked about the ideology of IS that is still around. There are sleeping cells of IS and there may be another spike of activity in the coming years, or other groups with similar ideologies may rise in power, they argued. Other interviewees discussed the current conflict in the area, with the terrorist group the Kurdistan Workers Party (PKK) from Turkey, which Turkey itself is fighting in a proxy war in Sinjar, the Iranian-backed Popular Mobilization Units, Iraqi forces, and militias. Khalaf Smoqi said that “the situation is much more complex right now than when IS came. Because when IS came, it was only one enemy: it was IS. But right now, [...] there are different groups.”<sup>281</sup>

### 3.5 GUARANTEES OF NON-RECURRENCE

*“Just written words on a paper”<sup>282</sup>*

Guarantees of non-recurrence form the fourth pillar of the TJ framework, which aims to prevent further atrocities from being perpetrated in the future. Governments that maintained the conflict must be transformed into stable institutions that protect human rights, preserve peace, and respect the rule of law.<sup>283</sup> Steps to remove corruption and abuse from institutions include vetting of and human rights training programs for public officials,<sup>284</sup> reforming the security sector, strengthening the independence of the judiciary, and reforming laws that contribute or allow for gross human rights violations.<sup>285</sup> In this section, I will discuss the Sinjar agreement that failed to reform the institutions in the area and the obstacles to establishing other guarantees of non-recurrence in Iraq.

#### 3.5.1 The Sinjar Agreement

On 9 October 2020, the federal government of Iraq and the KRG signed, with support of UNAMI, a security and stability agreement called the Agreement on the Restoration of Stability and Normalization of the Situation in the District of Sinjar (‘the Sinjar Agreement’). This agreement attempts to reconcile the powers in Baghdad and Erbil which are struggling over control in the Sinjar territory. The agreement has three axes on which changes are made: the administrative, security, and reconstruction axes. Regarding administration, a new, independent mayor will be chosen in Sinjar.<sup>286</sup> Concerning security, all armed groups in the area will be deported, 2,500 local security forces will be appointed in Sinjar, and the PKK will have to withdraw from the area.<sup>287</sup> The responsibility of the

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<sup>281</sup> Interview Khalaf Smoqi, 23 March 2021, online.

<sup>282</sup> Interview Farhan & Gazala Shvan, 5 April 2021, online.

<sup>283</sup> OHCHR, *Analytical Study on Human Rights and TJ 2009*, para. 37.

<sup>284</sup> *Ibid.*

<sup>285</sup> UNGA, Basic Principles on the Right to Remedy and Reparations, para. 23.

<sup>286</sup> Article 1 Sinjar Agreement. There are currently two local governments and mayors: one is appointed by authorities and located in Sinjar, the other is elected by the provisional council and is administered from Duhok in exile, Marouf, *Atlantic Council*, 1 April 2021.

<sup>287</sup> Articles 4, 5, and 7 Sinjar Agreement.

security lies with the federal government in Baghdad.<sup>288</sup> In terms of reconstruction, a joint committee from the Iraqi and Kurdish governments will be formed which will reconstruct Sinjar in coordination with the Ninewa province.<sup>289</sup> The Sinjar Agreement, and especially the articles on the security axis, can be considered important guarantees of non-recurrence.

Although the Sinjar Agreement sounds promising, the Yazidis do not perceive it that way. Farhan Ibrahim described it as “just written words on a paper”.<sup>290</sup> The agreement has namely not been implemented and it is not certain if this will change. Moreover, the Yazidi community was not involved in the agreement’s development process of the agreement, nor in the signing of it, even though it concerns their home region. This created a feeling of further disillusionment among Yazidis.<sup>291</sup> After its adoption, Farhan Ibrahim debated with the Iraqi prime minister Mustafa Al-Kadhimi and UNAMI president Jeanine Hennis-Plasschaert over the Sinjar Agreement and felt that, as a group, the Yazidis were neglected by them.<sup>292</sup>

### 3.5.2 Current obstacles

The Yazidis I interviewed were very skeptical towards establishing other guarantees of non-recurrence because of two obstacles in Iraqi governance. The first problem with the Iraqi governance that almost every interviewee discussed is the lack of implementation. There are laws in place that aim to improve the lives of the Iraqi citizens, but no tangible actions are taken. The second big challenge in Iraq is its corruption. According to a Judicial Reform Index, the judiciary in Iraq faces major safety and security issues and is subjected to external pressure from religious and political leaders.<sup>293</sup> The interviewees indicate similar problems. Some interviewees stated that powerful, rich people can bribe their way out of jail or maintain high positions in the government or judiciary. A 30-year-old Yazidi living in the US, Faris Khalaf, mentioned that judges are threatened with death at times, leading to impunity for IS-fighters.<sup>294</sup> The Iraqi and Kurdish governments are currently neglecting to remove corruption and abuse from their institutions. They could do so by means of vetting of corrupt judges or the leaders of the Peshmerga and Iraqi security forces that did not protect the Yazidi community. They could also introduce training programs in human rights law for lower military officers.

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<sup>288</sup> Article 3 Sinjar Agreement.

<sup>289</sup> Article 9 Sinjar Agreement.

<sup>290</sup> Interview Farhan & Gazala Shvan, 5 April 2021, online.

<sup>291</sup> Marouf, *Atlantic Council*, 1 April 2021.

<sup>292</sup> Farhan Ibrahim said about Hennis-Plasschaert: “She was also not focusing on the Yazidis in the area but she was focusing on the Arabs rights in the area and she was calling for the authorities to make a plan for them to return to their homes in Sinjar but she never specified that the Yazidi should be protected in Sinjar.”, Interview Farhan Ibrahim & Ghazala Jango, 5 April 2021, online.

<sup>293</sup> American Bar Association, *Judicial Reform Index for Iraq 2006*, p. 10. No current overviews of the corruption in the Iraqi courts could be found, hence the Judicial Reform Index from 2006.

<sup>294</sup> Interview Faris Khalaf, 14 April 2021, online.

Due to the lack of implementation and corruption in Iraq, Yazidis severely distrust the Iraqi authorities. The interviewees also brought up the fact they were abandoned by the Peshmerga and unprotected by Iraqi security forces in 2014 as the reason they lost trust in the government. The interviewees indicated that they have no reason to believe the Iraqi government changed anything since the genocide. The (army) leaders who made the decisions to withdraw their forces were not fired and can continue their work regularly.

### 3.6 NATIONAL CONSULTATIONS

*“No one does anything. It is so frustrating.”<sup>295</sup>*

National consultations is an essential last pillar of TJ as they display the wishes of the conflict-affected communities.<sup>296</sup> Different voices of men and women should be heard.<sup>297</sup> By means of consultations, states can develop a context-specific TJ strategy and the affected community may end up feeling empowered.<sup>298</sup> Participation can take place in the overarching TJ strategy or in individual mechanisms.<sup>299</sup> I will first discuss the participation of the Yazidis in the general strategy and afterwards in separate mechanisms.

#### 3.6.1 Participation in the general strategy

For the size of the Yazidi community,<sup>300</sup> their advocacy skills are rather strong. Before 2014, most of the world had not heard about the Yazidi community. After the genocide, a lot of Yazidis started speaking up about the atrocities they have endured. Nadia Murad, the Yazidi Nobel Peace Prize Laureate, took a prominent role in the advocacy, but also many others frequently speak at conferences, webinars, lectures, interviews, and so on. As some pointed out, I would not have written this thesis if they were not successful in this aspect. Several governments have recognized the Yazidi genocide, which all interviewees agree is an important step, but not much more has been achieved.

Although the Yazidi community has been given a platform, the microphone was not passed to them: Iraq and the international community have not consulted them about their wishes for the overarching TJ strategy. That is something all interviewees agree upon. Many Yazidi activists also explained that no one listens. If anyone, these people would have the biggest chance of being heard. Wahhab Hassoo went to the Dutch parliament multiple times to talk about the needs of the Yazidi community but

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<sup>295</sup> Interview Dalal Ghanim, 24 May 2021, online.

<sup>296</sup> OHCHR, *Analytical Study on Human Rights and TJ 2009*, para. 43.

<sup>297</sup> UNSG, *Guidance Note on TJ 2010*, p. 9.

<sup>298</sup> OHCHR, *Analytical Study on Human Rights and TJ 2009*, para. 43.

<sup>299</sup> *Ibid.*

<sup>300</sup> Before 2014, it was estimated that between 500,000 and 700,000 Yazidis lived in Iraq. Currently, an estimated 300,000 Yazidis live in Iraq. The numbers have decreased because of the genocide and diaspora.

stated that no actions were taken to genuinely improve the situation of the Yazidis.<sup>301</sup> Several interviewees mentioned that some people listen but do not really hear them. Again and again, empty promises are made. Dalal Ghanim, an ambassador for the Yazidi Legal Network in the Netherlands, expressed this sentiment strongly: “It is just so tiring to continue having to tell everyone what happened and say we need help. No one does anything. It is so frustrating. But we continue our fight for justice, for our rights. We will not stop and continue until the day we die.”<sup>302</sup>

One of the reasons that no one is listening could be that the political leaders do not know whom to listen to. Leyla Ferman said that minorities need to be unified in order to become a voice at the regional level, let alone the national and international level.<sup>303</sup> She argued that, although their wishes and demands may be very closely related, they are not voiced from a strong, united body.<sup>304</sup> Nayef Sabri also said that the Iraqi and Kurdish governments are not meeting with the Yazidi people, since they do not know whom to meet.<sup>305</sup> The Yazidis namely have only one seat out of 329 in the Iraqi parliament.<sup>306</sup>

Not only negative opinions about public participation were voiced in my interviews, however. Farhan Ibrahim pointed to the increase of organizations that were founded to fight for justice and improve the advocacy of the Yazidis.<sup>307</sup> Murad Ismael prides his whole community for fighting for recognition of the genocide.<sup>308</sup> Nishtiman Awsman noticed that some people do listen to the Yazidi community and are indeed interested in helping them, hence the big number of international organizations, countries and people coming to Sinjar to assist in the justice process and rebuilding of the city.<sup>309</sup>

### 3.6.2 Participation in prosecution initiatives

As discussed in section 3.2.1, the hearings of the trials in Iraq have not been (sufficiently) open to the public and victims and witnesses have not been given the option to testify. The victim participation in the German court cases is dealt with more effectively. In the Taha Al-J. case, the mother of the 5-year-old girl can testify against the suspect, which brought her much comfort, according to her counsel:

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<sup>301</sup> Interview Wahhab Hassoo, 10 April 2021, Amsterdam. The Dutch government recognized the Yazidi genocide after Hassoo’s interview, on 6 July 2021. Perhaps they listened after all. However, no tangible actions after the recognition have been taken by the Dutch government yet and it is unclear whether this will change.

<sup>302</sup> Interview Dalal Ghanim, 24 May 2021, online.

<sup>303</sup> Interview Leyla Ferman, 24 May 2021, online.

<sup>304</sup> Ibid.

<sup>305</sup> Interview Nayef Sabri, 21 May 2021, online.

<sup>306</sup> The one Yazidi seat is occupied by the Yazidi Movement for Reform and Progress. There are two other Yazidis in the Iraqi parliament, but they are part of two Kurdish political parties. The Iraqi Federal Supreme Court ruled that the Yazidis, like other minorities, have the right to one seat per 100,000 minority members in Iraq. This would mean that the Yazidi community should have five seats in parliament, depending on their actual number of Yazidis living in Iraq, Editors, *Rudaw*, 10 January 2018.

<sup>307</sup> Interview Farhan Ibrahim & Ghazala Jango, 5 April 2021, online.

<sup>308</sup> Interview Murad Ismael, 21 March 2021, online.

<sup>309</sup> Interview Nishtiman Awsman, 9 April 2021, online.

“The arrest of Mr. A.-J. and the prospect of a trial against him in Germany is a great relief to [the mother]. Since her liberation she never believed she would one day face him in a court of justice”.<sup>310</sup> Testifying in court may be cathartic to the victim and establishes valuable information about the events that happened.

### 3.6.3 Participation in truth-seeking

Regarding participation in the truth-seeking process, family members have been able to provide DNA samples and information about the people presumed to be alive and possible locations of mass graves to CIGE, which established a database of the missing people. The ICMP furthermore held a seminar in December 2019 with Iraqi and Kurdish government authorities in which they listened to participating Yazidi families about their wishes for and concerns about the process of finding the missing people.<sup>311</sup>

### 3.6.4 Participation in reparations

The first draft of the YSL, proposed on 28 March 2019, was created without consultation of the affected communities: a law for the survivors of the genocide without any input from those survivors. In response to this flawed draft,<sup>312</sup> an alliance of 30 Iraqi NGOs, called the Coalition for Just Reparations (C4JR),<sup>313</sup> was formed that advocated for an improvement of the bill and aimed to revitalize the public debate on reparations.<sup>314</sup> The C4JR created their own draft law, which includes CRSV-acts and a much broader definition of survivors.<sup>315</sup> The draft law does not discriminate between gender and ethnic groups regarding its eligibility. This was not followed by the Iraqi government, however. The reparations recommended by the coalition were also much more extensive than those adopted in the final version of the law. Due to the input of the coalition, the YSL was nevertheless improved significantly.

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<sup>310</sup> Editors, *Doughty Street Chambers*, 15 October 2019.

<sup>311</sup> ICMP Press Release, 3 December 2019.

<sup>312</sup> The first draft of the law was heavily criticized for having a too narrow focus on kidnapping, as it solely mentioned ‘abduction’ and excluded sexual slavery, rape, and other conflict-related sexual violence (CRSV) acts. Also, the draft only applied to Yazidi women thereby ignoring other ethnic groups and men which endured CRSV-acts, IOM Iraq, *Yazidi Survivors in Germany and Iraq’s Reparations Programme 2021*, p. 10.

<sup>313</sup> The C4JR is comprised of civil society organizations from several minorities (of which five organizations specifically focus on the Yazidi community), human rights associations, and many women organizations.

<sup>314</sup> Gavrilovic, *C4JR*, 26 March 2021.

<sup>315</sup> ‘Law on Reparations for Survivors of CRSV Committed by ISIS’, c4jr.org. The C4JR draft law defines ‘survivor’ in article 1 as “anyone who individually suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts of CRSV committed during the ISIS conflict in Iraq.” In comparison, the Yazidi Survivors Law defines a ‘female survivor’ in article 1 (1) as “[e]very woman or a girl that faced sex abuse crimes like kidnapping, sex enslavement, selling her in the slave market, separating her from her parents, forcing her to change her religion, forced marriage, pregnancy and forced abortion or harming her physically or mentally by Da’esh since August 3, 2014, and freed after that date.”

### 3.6.5 Participation in guarantees of non-recurrence

The Sinjar Agreement left the locals out of the deliberation process. Talking about the agreement, Azzat Alsaleem commented: “[T]he UN called it historical. It was kind of a joke, we found. Because this agreement was about Yazidis, but there were no Yazidis [consulted about] this agreement”.<sup>316</sup> After its adoption on 9 October 2020, a group of Yazidi elites, leaders, and institutions released a statement on 22 October 2020 welcoming and simultaneously criticizing the Sinjar agreement.<sup>317</sup> The group criticized the fact that no Yazidis were consulted and emphasized the agreement should be implemented, albeit with some changes.<sup>318</sup> The first critique is that the people of Sinjar should approve of its new mayor.<sup>319</sup> Yazidis belonging to armed units should also be given the chance of integrating into the Iraqi security forces.<sup>320</sup> The group furthermore wants the number of 2,500 police forces in the area to increase to 9,000 to attain sufficient protection.<sup>321</sup> Lastly, the Sinjar region should be transformed from a district to a governorate, and an economic plan should be included to rebuild Sinjar.<sup>322</sup> The proposed alterations would bring improvements to the agreement, but it seems as if the Iraqi and Kurdish governments did not include them. The prime minister of the KRG, Masrour Barzani, stated on 10 February 2021 the following on Twitter: “The Sinjar Agreement has not been implemented in accordance with the terms.”<sup>323</sup> Barzani talked about the agreed terms, rather than an updated or improved Sinjar agreement.

## 3.7 CONCLUSION

In this chapter I have demonstrated that, according to the Yazidis I interviewed, the current TJMs do not address the genocide in a sufficient manner. Regarding justice, the trials in Iraq are flawed and based on a terrorism-focused law. Only Germany delivered two convictions for crimes against humanity against Yazidi women and is currently prosecuting one person for genocide. Concerning truth, UNITAD is doing essential work and can be considered an important step. However, the truth-seeking process is going too slow according to the interviewees, as there are still 2,800 Yazidis missing. About the reparations process, the Yazidis I interviewed were all positive about the YSL but were cautious towards the implementation. Besides, much more support is needed for psychological help, rebuilding the Sinjar region, and providing safety and security. With regard to the guarantees of non-

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<sup>316</sup> Interview Azzat Alsaleem, 26 March 2021, online.

<sup>317</sup> Statement Yazidi Elites, Leaders, and Institutions on Sinjar Agreement, 22 October 2020. The group is comprised of 15 elites and leaders, the political party the Yazidi Democratic Party, and 10 institutions and civil society organizations.

<sup>318</sup> *Ibid.*

<sup>319</sup> *Ibid.*

<sup>320</sup> *Ibid.*

<sup>321</sup> *Ibid.*

<sup>322</sup> *Ibid.*

<sup>323</sup> Editors, *Daily Sabah*, 10 February 2021.

recurrence, the interviewees expressed a lot of distrust in the government due to corruption and lack of implementation of the laws and the Sinjar Agreement, which regulates some institutional reforms. Lastly, the national consultations with the Yazidi community were not (properly) conducted, which leads to much distrust of the government and an ineffective TJ process.

## 4 WISHES OF THE YAZIDIS FOR THE TRANSITIONAL JUSTICE PROCESS

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In this chapter, I will analyze the wishes of the Yazidis I interviewed for the TJ process in general and TJMs specifically.<sup>324</sup> This analysis will be combined with results from complementary studies. I will begin this chapter with a broad overview of what justice for the genocide means to the Yazidis. Afterwards, I will discuss the wishes of the Yazidis for the TJ pillars separately (justice, truth, reparations, guarantees of non-recurrence, and national consultations) and describe how they want the TJMs to be improved or what additional steps they want to be taken. I will also discuss several limitations to their wishes at the end of each subsection, which may be relevant for the advocacy of their fight for justice.

### 4.1 WHAT IS JUSTICE FOR THE YAZIDI GENOCIDE?

When talking about ‘justice’ for a crime, one mostly thinks of the process surrounding trials, convictions, and punishments. Justice, however, can encompass more than this punitive path. The academic debates discussed in chapter two showcase this. Some scholars argue for a broader, distributive conception of TJ that includes socio-economic rights and addresses the root-causes, structural violence, and gender inequality.<sup>325</sup>

When applied to the Yazidi community, justice indeed include punitive concerns. To the question ‘What does justice for the Yazidi genocide mean to you?’, almost everyone explicitly expressed the wish for punitive justice with prosecutions of the people who were involved in the genocide. This concerned 17 of the 20 Yazidis I interviewed. Three experts I interviewed, Kjell Anderson, Leyla Ferman, and Olivia Wells, confirmed that the Yazidi community’s main aim is to have justice in the punitive sense.<sup>326</sup>

However, according to my findings, justice for the Yazidi genocide does not solely involve prosecutions. Of those 20 Yazidi interviewees, 18 also discussed broader elements to justice than its punitive form. This ranged from finding the missing people and rebuilding Sinjar to having their rights respected in Iraq and ensuring no future genocides are committed. My anonymous expert interviewee confirmed that for the Yazidi community, attaining justice includes more elements than merely the punitive

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<sup>324</sup> I will answer the following sub-question: What do justice, truth, reparations, guarantees of non-recurrence, and national consultations mean to the Yazidi community regarding the genocide committed against them by IS in August 2014?

<sup>325</sup> See Mani 2002; Nagy, *Third World Quarterly* 2008; and Miller, *International Journal of Transitional Justice* 2008.

<sup>326</sup> Interview Kjell Anderson, 8 April 2021, online; Interview Leyla Ferman, 24 May 2021, online; Interview Olivia Wells, 30 March 2021, online.

path.<sup>327</sup> These findings correspond to other research as well. Akhavan and others found that justice to their respondents (1,000 primarily Yazidi IDPs in camps) in 2016 meant international protection against further harm, followed by fair trials of the perpetrators.<sup>328</sup> After protection and punishment came international recognition of the crimes, truth-telling, and revenge and compensation.<sup>329</sup> Another research into the Yazidi perceptions of justice was conducted by Pham and others, who interviewed 117 Yazidi refugees resettled in Germany. They concluded that most of their respondents defined justice as having their rights respected and being treated equally.<sup>330</sup>

It thus seems that justice for the Yazidi community is broader than what legal systems and criminal procedures can offer. In the following sections, I will discuss how the Yazidis want each specific TJ pillar to address the genocide.

## 4.2 JUSTICE

*“Justice is the only way for Yazidis to live a peaceful life”<sup>331</sup>*

From my interviews, I found that the Yazidis strongly want prosecutions of the people responsible for the genocide. Everyone at least mentioned the lack of proper prosecutions and expressed a definite need for these to improve, while some interviewees emphasized this throughout the whole interview. I deducted a few reasons for the wish for prosecutions from the interviews.

The Yazidis are very determined trials are the way forward because of several intertwined reasons. The Yazidis want to have trials in order for the truth about the genocide to be established in the court room. Azzat Alsaleem, a Yazidi human rights activist, for example, stressed the need for trials to this end: “We know what happened. But the world, everyone must know what happened.”<sup>332</sup> In line with this, the Yazidis want legal recognition of the genocide as this will have more meaning than a political recognition. A conviction is automatically accompanied by a sentence, whereas, in their view, a political recognition is rarely followed up by tangible actions. Moreover, the Yazidis want trials to be held in order for them to have a safe and peaceful life. Many Yazidis pointed to the fact that Sunni Muslim neighbors, with which some went to school or were friends, betrayed them and supported IS in 2014. Vian Darwish, a Yazidi woman working for Yazda in Iraq, affirmed the necessity for trials to create peace: “[I]f you ask anyone from the survivors: What do you want? What do you need? Immediately they will say that they want justice. Justice is the only way for Yazidis to live a peaceful

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<sup>327</sup> Interview anonymous expert, 10 June 2021, online.

<sup>328</sup> Akhavan, *Human Rights Quarterly* 2020, p. 16.

<sup>329</sup> Ibid.

<sup>330</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 541.

<sup>331</sup> Interview Vian Darwish, 29 April 2021, online.

<sup>332</sup> Interview Azzat Alsaleem, 26 March 2021, online.

life in the future with other people from other communities.”<sup>333</sup> They ask themselves, how could the Yazidi community live together with those traitors and supporters of IS without them being prosecuted?

In essence, these foregoing reasons are all motivated by one thing: deterrence. The Yazidis want prosecutions to publish the truth, to legally recognize the genocide, and to create safety because they hope this would prevent future atrocities from happening. The Yazidi community talks about having experienced many violent attacks through history and are afraid that the cycle of conflicts and violence will continue. If the perpetrators are not convicted, Haidar Ghano, a Yazidi pharmacist living in Sinjar, argues “[Genocides] would be easier to happen in the future, because other people would easily do the same ... [prosecutions] will be a lesson for others to not do such things in the future.”<sup>334</sup>

Olivia Wells agrees that trials for genocide and crimes against humanity are essential to fight “impunity - the knowledge that if you do this, you will be held accountable for your crimes. [Trials] act as an accountability mechanism, but as a deterrent mechanism as well.”<sup>335</sup> Wells touches upon the other function of prosecutions that makes them desirable, perhaps for an even bigger reason. The Yazidis want trials to ensure that those who participated in the genocide receive appropriate punishment for their acts. The Yazidi community has lived through the worst imaginable atrocities and 2,800 missing people may still daily endure horrific acts. The pain of the Yazidi community is soul-crushing and all-consuming. They want justice as a form of retribution.

The wish for prosecutions is thus significant for the Yazidi community. How they exactly would like to see justice being served is the topic of the following sections.

#### 4.2.1 Perpetrators

The Yazidis I interviewed want to hold several groups of people accountable for the genocide. First, I found that the Yazidis want to hold all IS-members accountable. This includes IS-leaders and low-ranking members, IS-women, and foreign fighters. These findings correspond with the results of Pham and others, since their respondents equally indicated they see no difference in accountability based on the IS-member’s role or rank.<sup>336</sup> This means that, according to the Yazidis, everyone who participated in the genocide or who supported crimes against their community should be held accountable, not only the people who actually killed and raped people or gave the orders to do so. Leyla Ferman, an expert currently based at NIOD Institute for War, Holocaust and Genocide Studies,

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<sup>333</sup> Interview Vian Darwish, 29 April 2021, online.

<sup>334</sup> Interview Haidar Ghano, 29 March 2021, online.

<sup>335</sup> Interview Olivia Wells, 30 March 2021, online.

<sup>336</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 542.

analyzed that this is probably because all IS-members formed part of the system of IS.<sup>337</sup> That system could not work without every member, also people working as a guard or cook. Every (foreign) IS-member contributed in their own, significant way.

About foreign IS-women, several Yazidis noted that they traveled to Syria and Iraq to support IS and (sometimes) their husbands in the conflict and should not be free of punishment.<sup>338</sup> Two Yazidi activists living in the Netherlands, Dalal Ghanim and Wahhab Hassoo, firmly criticize the Dutch media in their interviews for portraying these women as helpless victims, rather than agents who deliberately chose to join IS.<sup>339</sup> The Dutch government does not escape scrutiny either, as Wahhab Hassoo emphasized it should repatriate the IS-women to sentence them accordingly.<sup>340</sup>

Many interviewees also want to hold the people who supported IS accountable, mainly talking about their Sunni neighbors. Ronny Saeed, a 21-year-old Yazidi woman studying Law and International Studies in Iraq, argued that although the rationale of the IS-supporters is unknown, they nevertheless supported them.<sup>341</sup> She believes that those people should be held accountable for their actions. Besides, several interviewees pointed to countries like Iraq, Syria, Turkey, Qatar, or Saudi Arabia in which even fundraisers were held for IS and discussed the accountability of their political leaders. Murad Ismael, the co-founder of the INGO Yazda, opined that certain Sunni countries in the region “felt that the Shia’s were taking over Iraq and Syria and they tried to use IS to take these two countries back”.<sup>342</sup> He argued that such a big number of IS-fighters came together in the short time period of a few years because of financial or material support from those Sunni countries. Those countries thus contributed to the genocide as well according to Ismael.

The Yazidis I interviewed furthermore want prosecutions for the Peshmerga leaders, because of their sudden withdrawal on 3 August 2014. Weeks before, the Yazidis living in the Sinjar region were not allowed to leave the area by the Peshmerga, several interviewees told me. Dalal Ghanim talked about her stepsister who did manage to leave two weeks before the attack: “[W]hen she left, the Peshmerga told her: ‘Why are you leaving us? We are here to protect you.’ The only reason she was able to pass the checkpoints was by saying she had a medical emergency. People were not allowed to flee. They

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<sup>337</sup> Interview Leyla Ferman, 24 May 2021, online.

<sup>338</sup> The testimonies of sexual slavery survivors about the involvement of IS-women are somewhat contradictory. Many talked about the harsh treatment the wives of IS-members subjected the Yazidi women to, at times harder than their husband’s. There is also a (scarce) number of stories about help from IS-women in escaping from captivity or in other ways.

<sup>339</sup> Interview Wahhab Hassoo, 10 April 2021, Amsterdam; Dalal Ghanim said: “The women, especially in the Netherlands, have this image that they were passive and forced to cooperate. They should also be put on trials.”, Interview Dalal Ghanim, 24 May 2021, online.

<sup>340</sup> Interview Wahhab Hassoo, 10 April 2021, Amsterdam.

<sup>341</sup> Interview Ronny Saeed, 3 June 2021, online.

<sup>342</sup> Interview Murad Ismael, 21 March 2021, online.

were not allowed to have arms. The Peshmerga took the weapons. On 3 August 2014, the Peshmerga left around 2 AM and IS came at 4 AM. No one was warned so no one even knew the [Peshmerga] left.”<sup>343</sup> Most interviewees wish for the Peshmerga leaders to be brought before court, rather than the people executing their orders.<sup>344</sup> Aliya Jamel, a 22-year-old Yazidi woman who works as a manager assistant at a psychotherapy clinic in Iraq, thinks the commander of the Peshmerga who was responsible for the security in Sinjar, Sarbast Bapiri, should be held responsible for leaving the Yazidis as “prey in the hands of IS”.<sup>345</sup>

Besides the Peshmerga, many interviewees also blame the Iraqi authorities for the genocide and require holding them accountable as well. Iraq has the primary responsibility to protect its citizens but failed immeasurably in 2014. Several interviewees are angry with the Iraqi security forces that did not protect the Yazidi community and instead left their weapons behind, which IS collected. Khalaf Smoqi, a Yazidi engineer living in the US, also considers the Iraqi government to be responsible for the fall of Kocho.<sup>346</sup> This town in south Sinjar was under siege by IS for almost two weeks and the Iraqi government did not respond to the cries for help by their citizens. All 1,200 Yazidi inhabitants were killed, taken as slaves, or sent to IS camps.

Only one Yazidi, Aliya Jamel, specifically condemned the international community for not preventing the genocide.<sup>347</sup> The fact that merely one interviewee reflected on the role of the international community in the genocide could perhaps be explained because the others are unaware of the existing responsibility of states to protect populations from atrocities.<sup>348</sup>

#### 4.2.2 Location and judges

The former head of UNITAD and recently appointed prosecutor at the ICC, Karim Khan, announced with the release of the 6<sup>th</sup> report on the progress of UNITAD that he hopes trials can start in Iraq next year.<sup>349</sup> Although it seems that the location of the trials has already been chosen, it is nevertheless relevant to portray the reflections of the Yazidi community towards this choice. Perhaps their opinions could lead to improvements in the prosecutions.

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<sup>343</sup> Interview Dalal Ghanim, 24 May 2021, online.

<sup>344</sup> It is impossible in an international law setting to prosecute military leaders for a failure to prevent war crimes being committed by the other party. Only if the military commanders themselves or their subordinates commit a war crime, or the military commander fails to prevent war crimes committed by their subordinate, can they be held accountable, see articles 86 and 87 Protocol I to the Geneva Conventions. The withdrawal of the Peshmerga is (presumably) not a war crime itself.

<sup>345</sup> Interview Aliya Jamel, 1 June 2021, e-mail.

<sup>346</sup> Interview Khalaf Smoqi, 23 March 2021, online.

<sup>347</sup> Interview Aliya Jamel, 1 June 2021, e-mail.

<sup>348</sup> See UNGA, 2005 World Summit Outcome, paras. 138 and 139.

<sup>349</sup> UNSC Press Release SC/14514, 10 May 2021.

The Yazidis I interviewed were almost exclusively negative towards holding trials in Iraq. Although many interviewees brought forward different reasons, most could be described as distrust towards the Iraqi authorities. The Yazidis called the Iraqi legal system flawed, unreliable, or corrupt and therefore wish for international trials. Only Ronny Saeed mentioned it would be good to have trials in Iraq since the crimes were committed there.<sup>350</sup> However, she also thinks they are difficult to implement properly due to the level of corruption in Iraq.

Most interviewees were vague about what ‘international trials’ entailed, although some explicitly indicated the need for an international tribunal or the ICC to adjudicate on individual genocide cases. Farhan Ibrahim and Ghazala Jango, a married Yazidi couple of 25 years old, urged for an international tribunal because the Iraqi legal system is not transparent. They referenced to justice mechanisms implemented in other countries: “We want exactly what happened in areas like Rwanda and Yugoslavia, when they recognized their genocide, and the Jews in Germany. They were all given their rights and no more genocides can happen to them.”<sup>351</sup> Several interviewees also stated that an international tribunal is necessary to prosecute all IS-members in the same manner. Wahhab Hassoo said this is important, because: “[o]therwise, there will be an IS-fighter in the Netherlands who would get 5 years of prison sentence, while another IS-fighter in Germany is acquitted for the same acts, just because there are different laws and procedures in different countries.”<sup>352</sup>

Three Yazidis interestingly proposed a combination of national and international trials. Zidan Kheder, a 30-year-old Yazidi who works as a translator in Germany, and Azzat Alsaleem both argued that an international tribunal takes up too much time to establish and finally adjudicate on the matter.<sup>353</sup> As a result, important evidence and testimonies from survivors and witnesses can be lost. According to them, national trials should be held first to save this evidence, after which international courts can conduct trustworthy trials. While unlikely and potentially problematic,<sup>354</sup> this option proposed by the two Yazidis shows that an international tribunal presents problems as well. In addition, Nishtiman Awsman, a 23-year-old Yazidi woman studying civil engineering in Iraq, contended that trials in Iraq

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<sup>350</sup> Interview Ronny Saeed, 3 June 2021, online.

<sup>351</sup> Interview Farhan Ibrahim & Ghazala Jango, 5 April 2021, online.

<sup>352</sup> Interview Wahhab Hassoo, 10 April 2021, Amsterdam.

<sup>353</sup> Interview Zidan Kheder, 25 April 2021, online; Interview Azzat Alsaleem, 26 March 2021, online.

<sup>354</sup> It is unclear whether they meant that the same people should be tried nationally first and internationally afterwards, or rather prosecuting lower IS-members nationally and IS-leaders internationally. The former case is legally impossible, as people have the right to not be tried or punished twice in criminal proceedings for the same offence. The latter idea could potentially offer opportunities since it would solve problems of both national and international proceedings. However, an international or court tribunal is still unlikely to be established for IS crimes.

should be held for complicit government officials and trials at the ICC for foreign fighters.<sup>355</sup> She also emphasized the responsibility of third countries to prosecute their citizens who joined IS.

Two other Yazidis specifically talked about their wish for the formation of a hybrid court, which has national and international elements. Murad Ismael spoke strongly against the ICC for being a “dysfunctional institute” and instead prefers a local court with international help and a big capacity to try around a thousand IS fighters every three months: “It needs to be fast and cheap. And it needs to be of good quality and transparent. That’s why I prefer something local”.<sup>356</sup> He is in favor of a hybrid court with international support since the crimes happened in Iraq, the evidence is in Iraq, and it creates the possibility of starting a dialogue in Iraq. Vian Darwish is also positive towards a hybrid court, but only if Iraq and the KRG would include international crimes in its legal code.<sup>357</sup>

The interviewees thus wish for international trials, whether in courts of third countries or at an international tribunal or the ICC, because the Iraqi trials are (currently) not transparent, nor reliable. This finding is contradictory to results of other research, however. Pham and others found that few of their respondents preferred international trials or courts over trials in Iraq.<sup>358</sup> Research on the views of justice and peace of the general Iraqi population after the IS-conflict shows similar results. Harvard Humanitarian Initiative namely conducted a survey among 5,213 Iraqis (including Muslims, Yazidis, Christians, and other ethnicities) and found that most of the respondents want to have trials for IS-affiliates in Iraq.<sup>359</sup> Olivia Wells, who works closely with Yazidis for Nadia’s Initiative, referenced this report in her interview and explained Yazidis want to see justice served locally because these cases are personal for them.<sup>360</sup> The discrepancy in findings could be explained by the fact that many of my interviewees are activists or live abroad and maybe have more knowledge of and exposure to international law and proceedings than Yazidis in Iraq.

Regarding judges who should adjudicate on genocide cases, several interviewees added some relevant insights. Faris Khalaf, a Yazidi pharmacy technician living in the US, raised the point that Iraq does not allow Yazidis to become judges, but only Muslims.<sup>361</sup> The Higher Juridical Council in Iraq is tasked to appoint judges and prosecutors,<sup>362</sup> and it indeed seems that they have not appointed judges who fully

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<sup>355</sup> Interview Nishtiman Awsman, 9 April 2021, online.

<sup>356</sup> Interview Murad Ismael, 21 March 2021, online.

<sup>357</sup> Interview Vian Darwish, 29 April 2021, online. At the time of the interview with Vian, the Iraqi Supreme Court did not yet rule on the matter of KRG’s draft law. See section 3.2.1.

<sup>358</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 542.

<sup>359</sup> Harvard Humanitarian Initiative, *Never Forget 2020*, p. 37.

<sup>360</sup> Interview Olivia Wells, 30 March 2021, online.

<sup>361</sup> Interview Faris Khalaf, 14 April 2021, online.

<sup>362</sup> Articles 90 and 91 Iraqi Constitution.

represent all ethnic and religious groups in the country.<sup>363</sup> Haidar Ghano thinks the Yazidis are discriminated in the appointment of judges: “[I]f the Constitution is based on the Islamic laws, they cannot accept someone who is considered an infidel to judge them, as they’re Muslims.”<sup>364</sup> Ghazala Jango argued that local judges will not be an option as those people may still be living in IDP camps.<sup>365</sup> Both Ghazi Murad, who volunteers as a translator for the Ezidi24 news website, and Ronny Saeed maintained that there should be mix of international and national judges.<sup>366</sup> Murad hereby specified that those nationals should be Yazidis. These propositions for international or national judges are contradictory with the common manner of settling disputes in the traditional religious society of the Yazidis. Local chieftains, elders, and sheiks usually took up that role.<sup>367</sup> Perhaps this contradiction can be explained by the prevalence of international trials in the discourse on justice for the Yazidis,<sup>368</sup> or because the interviewees want more attention to their case than local dispute settlements can give them.

#### 4.2.3 Sentences

What sentence the perpetrators of the genocide get is ultimately up to the presiding judge to decide, of course, and is grounded in the existing legal framework. However, it is beneficial to analyze some opinions of members of the Yazidi community about the desired sentences for people guilty of genocide. This could provide insights about when justice is achieved for the Yazidis.

Only several Yazidis I interviewed reflected on the sentence for the perpetrators, of which half wishes for the convicts to receive the death penalty. Some emphasized that there should be a fair trial first, without specifying what that entails.<sup>369</sup> For others, the death sentence perhaps feels like retaliation: “[T]he death sentence should be a memorable lesson to the terrorist group: only hanging them in public will serve as real justice to the victims of the genocide”.<sup>370</sup> Pham and others concluded that their Yazidi respondents see punishment as a vital element to protecting their rights, which is consistent with the predominant ‘an eye for an eye’ mentality in Iraq.<sup>371</sup>

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<sup>363</sup> American Bar Association, *Judicial Reform Index for Iraq 2006*, p. 3. No current overviews of the ethnic composition of the Iraqi courts could be found, hence the Judicial Reform Index from 2006. The Judicial Reform Index explains that the unequal representation of ethnic groups in the judiciary in 2006 was caused by decades of Ba’ath domination (of Sunni Arabs) of the courts.

<sup>364</sup> Interview Haidar Ghano, 29 March 2021, online.

<sup>365</sup> Interview Farhan Ibrahim & Ghazala Jango, 5 April 2021, online.

<sup>366</sup> Interview Ronny Saeed, 3 June 2021, online; Interview Ghazi Murad, 15 April 2021, online.

<sup>367</sup> Akhavan, *Human Rights Quarterly* 2020, p. 41.

<sup>368</sup> *Ibid.*, p. 39.

<sup>369</sup> Akhavan and others concluded that the concept of a fair trial is “somewhat alien” to most Yazidis they interviewed, *Ibid.*, p. 41.

<sup>370</sup> Interview Aliya Jamel, 1 June 2021, e-mail.

<sup>371</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 548.

Several Yazidis expressed the wish that the perpetrators should get sentenced according to their actions in the genocide. Dalal Ghanim explained that this should mean a life sentence for the IS-leaders. Pham and others found that, according to the Yazidis they interviewed, IS-leaders deserve a more severe punishment for giving the orders to low-ranking IS-members.<sup>372</sup> However, Ghazi Murad talked about the horrific acts low-ranking IS-members performed by following those orders and found only the death penalty or life sentence appropriate for them.<sup>373</sup> For the Yazidi community, it may feel as if there is no other option than a life sentence or the death penalty. Ronny Saeed said: “Imagine if they say that IS-members will be put in jail for six years. But what happens after six years? They can come back and do even worse actions.”<sup>374</sup> They may hope that convictions with high sentences, would create safety in their region.

#### 4.2.4 Feasibility of the justice wishes

Similar to other post-conflict situations, several of the Yazidis I interviewed have some misinformed views of what the justice process can bring, even though their wishes to address the genocide are very understandable. I will outline some limitations to their wishes below.

The Yazidis seem to overestimate certain goals and effects of trials. The main goal of prosecutions is to deliver justice, while the Yazidis hope they also act as a deterrent and bring peace. Academics Jennifer Trahan and Iva Vukušić researched the success of the International Criminal Tribunal for the former Yugoslavia (ICTY) and concluded that these “societal-wide transformative goals” should not be expected of tribunals.<sup>375</sup> Holding trials (at an international tribunal) for the Yazidi genocide does not necessarily mean that everyone will know about it or join the community in their fight for justice. There is unfortunately no guarantee that trials would bring protection for the Yazidis or that the genocide will not be committed again.

The wish for prosecutions at the ICC or an international tribunal might not be feasible. There is currently no political will to establish an *ad hoc* tribunal for IS-crimes and Iraq is no member to the ICC. Also, even if cases would be referred to the ICC, their limited capacity would likely deliver disappointing results for the Yazidi community. Only a handful high-ranking IS-members would be prosecuted, and the Yazidis would not feel justice is achieved in that case. Moreover, most foreign fighters will only be prosecuted in their home countries (if there is enough evidence). The principle of complementarity

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<sup>372</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 542.

<sup>373</sup> Interview Ghazi Murad, 15 April 2021, online.

<sup>374</sup> Interview Ronny Saeed, 3 June 2021, online.

<sup>375</sup> Trahan & Vukušić 2020, pp. 472-475. The authors concluded about combatting denial that, although the trials at the ICTY established a historical narrative due to the great number of testimonies, there are still people that deny the genocide. They also found that a deterrent effect of the ICTY, as with other courts and tribunals as well, is very difficult to prove. The indictments of political and military leaders by the ICTY did presumably lead to more peace and security in the region because the leaders had no leeway left.

namely stipulates that the ICC and *ad hoc* tribunals can only adjudicate on individual cases if the national criminal system fails.<sup>376</sup> Since many foreign fighters are citizens from countries with a well-functioning criminal system, there might not be a necessity to refer many individual cases to the ICC or an *ad hoc* tribunal.

Moreover, the Yazidis' wish for prosecuting all IS-members is not feasible, let alone sentencing them to life imprisonment or the death penalty. Although UNITAD identified 1,444 potential perpetrators,<sup>377</sup> this does not mean that everyone will be convicted. Solid evidence is needed for convictions and there is no capacity to find evidence of the criminal acts every IS-member committed. There will likely be difficulties in linking IS-members to specific crimes and some will undeniably escape justice altogether. Leyla Ferman acknowledges this issue: "I'm very sure that not everyone will get a life sentence."<sup>378</sup> The wish of several Yazidis to execute all perpetrators of the genocide is not feasible either. Although the death penalty is supported by the dominant public opinion in Iraq and its government, it is a human rights violation.<sup>379</sup> If the UN or other countries aim to stay involved in the justice process, challenges will undoubtedly present itself.<sup>380</sup> My anonymous expert, a legal researcher, stated: "I'm not sure how Yazidis would be accepting IS criminals to be tried in international tribunals without having a death penalty."<sup>381</sup> It is therefore important that the Yazidi community is aware of these limitations, so disappointment in the justice process will be limited. This would also mean that the Yazidis can build a stronger case and advocate for wishes that are feasible.

### 4.3 TRUTH-SEEKING

*"I can't handle it, the details of what happened."*<sup>382</sup>

From my interviews, I understood that the Yazidis firmly wish to know the truth about the genocide. They specifically want to know where the missing people are, who is still alive and who is not, and who was involved in the disappearances. Besides wanting to find the truth out themselves, the Yazidis strongly wish for the international community to know about the genocide. Murad Ismael thinks that publishing the truth would assure visibility of the genocide and the Yazidi community: "We need the truth to come out, not only on a paper somewhere that nobody can see. The truth needs to come out: who did it, why they did it, how they did it, who are the victims, who are the perpetrators, how big it

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<sup>376</sup> See article 17 Rome Statute.

<sup>377</sup> UNSC, *Sixth Report UNITAD 2021*, paras. 10 and 13.

<sup>378</sup> Interview Leyla Ferman, 24 May 2021, online. Ferman emphasized the courts should decide on this matter, rather than her.

<sup>379</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 548.

<sup>380</sup> *Ibid.*

<sup>381</sup> Interview anonymous experts, 10 June 2021, online.

<sup>382</sup> Interview Nibras Khudaida, 11 April 2021, online.

is, how systematic it was.”<sup>383</sup> The Yazidis hope no future atrocities can be committed against their people if the truth is published and the genocide is recognized.

These findings correspond with the results of researchers. Pham and others found that 80% of their respondents wanted to know what happened during the conflict and 93% wanted the world to know what happened.<sup>384</sup> Akhavan and others concluded that from the 1,000 primarily Yazidi IDPs they interviewed in 2016 the image emerged that their respondents “focus to a greater extent on truth-telling, local reconciliation, and individual healing.”<sup>385</sup> The research by the Harvard Humanitarian Initiative shows that 16 till 35% of the Iraqis assume unity and trust can be created if the truth about the IS-conflict is established.<sup>386</sup>

The truth-seeking process about the genocide is not only relevant for the Yazidi community. For decades, academics have analyzed why people radicalize and turn to violence and founded numerous theories to explain this behavior. It is crucial for facts to be established and understood about IS to expand our knowledge of violent conflicts. Leyla Ferman emphasized countries should learn how to prevent the emergence of terrorist groups: “[I]t's important to have these courts because then it becomes public who is IS, who are the members, where are they from, and why they joined IS. If we don't understand the issue, unfortunately, we cannot learn from this conflict.”<sup>387</sup> Understanding where IS came from, how their ideology grew stronger, and what drove people to betray their neighbors could perhaps prevent future conflicts.

Having explained for what reasons the Yazidi community wants to know the truth, I will detail in the following sections what this truth exactly entails and how they want the truth-seeking process to proceed.

#### 4.3.1 Events of and reasons for the genocide

As discussed in section 3.3.1, most Yazidis I interviewed know the broad contours of the genocide, such as who attacked them (IS), what happened (every Yazidi in the Sinjar region was forcibly displaced, killed, or captured), and why (IS saw the Yazidis as infidels and devil worshippers). However, much is yet unknown about who was involved in financing IS or which leaders ordered the Peshmerga to withdraw. Many interviewees talked about wanting to find out the truth and answer these questions and any other they have. This does not mean that every Yazidi wants to know everything. Nibras Khudaida, a 22-year-old Yazidi student in the US and volunteer for the Free Yazidi Foundation, wants

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<sup>383</sup> Interview Murad Ismael, 21 March 2021, online.

<sup>384</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 545.

<sup>385</sup> Akhavan et al., *Human Rights Quarterly* 2020, p. 42.

<sup>386</sup> Harvard Humanitarian Initiative, *Never Forget 2020*, p. 47.

<sup>387</sup> Interview Leyla Ferman, 24 May 2021, online.

to know a lot but not about the experiences of the female survivors in their captivity: “I can’t handle it, the details of what happened. Especially [regarding the] women, I haven't been able to listen.”<sup>388</sup>

#### 4.3.2 Missing people

Many of my interviewees indicated that finding the captured people is one of the main priorities of the Yazidi community, naming it often together with other pressing needs, such as safety in the Sinjar region, the reconstruction of the area, and return of the IDPs. This finding seems to correspond with research by academics. Pham and others concluded that the “primary preoccupation” of the Yazidis refugees in Germany they interviewed is to find their missing family members or to reunite with those they have contact with.<sup>389</sup> Akhavan and others similarly concluded about the wish of their respondents for freeing the captives of IS that “there was a sense of immediacy and urgency that was more dominant than the desire for punishment.”<sup>390</sup>

The interviewees discussed thoroughly whose responsibility they think it is to find the missing people. Only one interviewee, Shahab Ahmed, a Yazidi man living in Iraq, believes that searching for the kidnapped people is the sole duty of the Iraqi government.<sup>391</sup> Everyone else contends that both the Iraqi government and the international community should put more effort in finding the missing people. Dalya Dakhil, a 30-year-old Yazidi teacher living in Iraq, thinks special search teams should be made by the Iraqi government and the UN, to which the family members or other Yazidis can contribute.<sup>392</sup> Several interviewees argued that Iraq should work together with its neighboring countries, where possibly a lot of Yazidis are still captured, to set up a search team. Others contended that states like the US, the UK, Germany, or the Netherlands should pool resources with the Iraqi and Syrian governments to get a team on the ground. One interviewee, Vian Darwish, also suggested that the international community should pressure the Iraqi government into taking steps to find the missing people.<sup>393</sup> A reason for the assumed shared responsibility of Iraq and the international community could be that not many abducted Yazidis are, presumably, in Iraq anymore. A transnational search team would thus be more effective. Another reason could be that those Yazidis think the international community took too little actions during the conflict by neglecting to stop their citizens from joining IS and should make up for it now.

Almost every interviewee pointed to the al-Hol camp in Syria as the first place where a search team should attempt to locate the people. They believe many missing Yazidis may be located in this camp.

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<sup>388</sup> Interview Nibras Khudaida, 11 April 2021, online.

<sup>389</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 546.

<sup>390</sup> Akhavan et al., *Human Rights Quarterly* 2020, p. 18.

<sup>391</sup> Interview Shahab Ahmed, 1 April, e-mail.

<sup>392</sup> Interview Dalya Dakhil, 3 May 2021, e-mail.

<sup>393</sup> Interview Vian Darwish, 29 April 2021, online.

The al-Hol camp holds thousands of IS-families, which may have had Yazidi slaves with them at the time of their apprehension. The interviewees argued that an investigation team should attempt to find out if there are still Yazidis held in captivity by the IS-families in the camp. Nibras Khudaida said: “I know they're there. It's just a matter of doing a deep search and see who's there, who's not, what's their background, where did they come from, stuff like that. And that's a job of the federal government. But are they doing that? No, it's a camp and they're not doing that.”<sup>394</sup>

However, many interviewees themselves reflected on the possibility that it is not easy for the captives in al-Hol to reveal they are, in fact, Yazidi. If there are any in the camp, they are presumably under threat by their captivators and this revelation could be life-threatening. Others discussed the difficulty that, since many Yazidis were young when they were captured, they may not know to which ethnic-religious group they belong or may be influenced by the IS-ideology. According to my anonymous TJ expert at an international organization in Iraq, it is furthermore unclear what the dynamics are in the camp and who executes de facto control.<sup>395</sup> This makes going into the camp with a military team easier said than done.

#### 4.3.3 Feasibility of the truth-seeking wishes

Having analyzed the Yazidis' wishes for the truth-seeking process, it could be useful to outline some ways of finding out the truth. Perhaps their advocacy for justice could include complementary forms of justice like a truth commission.

From my interviews, it seems as if the focus of the Yazidis so far has been on trials, rather than a truth commission to find out the truth. One explanation for this might be that most of my interviewees do not know about the existence of truth-seeking tools other than trials. Indeed, Pham and others discovered that 86% of their respondents had not heard about a truth commission, but after being provided with a definition, 85% believed it would be appropriate for the Yazidi case.<sup>396</sup> Leyla Ferman also acknowledges the unfamiliarity of her Yazidi interviewees with truth commissions as a mechanism.<sup>397</sup> She nevertheless argues to use trials for truth-seeking, emphasizing the strength of those outcomes in comparison to those of a truth commission.<sup>398</sup>

However, trials have many limitations, as explained in section 4.2.4, and implementing an additional truth commission might strengthen the truth-seeking process. Akhavan and others contend that the

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<sup>394</sup> Interview Nibras Khudaida, 11 April 2021, online.

<sup>395</sup> Interview anonymous expert, 10 June 2021, online.

<sup>396</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 545.

<sup>397</sup> Interview Leyla Ferman, 24 May 2021, online.

<sup>398</sup> *Ibid.* Trials end in convictions (or acquittals), while truth commissions can only issue recommendations in their final report.

current favoring of retributive justice in Iraq is not victim-friendly nor suited for truth-telling.<sup>399</sup> Trials aim to prove the guilt or innocence of the suspect, making testimonies only necessary if they can contribute to this end.<sup>400</sup> Truth commissions, they argue, instead focus on the victim and their suffering, allowing for a more beneficial participation by them.<sup>401</sup> Although prosecuting the Peshmerga leaders is impossible in international law,<sup>402</sup> a truth commission could perhaps formally investigate their role in the genocide and give recommendations to the Iraqi government. Olivia Wells acknowledges the present aim for global justice, while emphasizing the need for dialogue between the Yazidis and their neighbors. She proposes “having community-led trials, which are truth-telling sessions, where families can confront their neighbors and have a dialogue about the trauma they've been through and try to move towards healing and reconciliation.”<sup>403</sup> Drawing the comparison with the *Gacaca courts* in Rwanda and Truth and Reconciliation Commission (TRC) in South Africa, she argues these sessions could be cathartic and reconciliatory.

#### 4.4 REPARATIONS AND RESTORATIVE MEASURES

*“We are a community that needs everything.”<sup>404</sup>*

The Yazidis I interview emphasized the great necessity for certain reparations and restorative measures. Together with finding the missing people, the main priority of the interviewees is for the IDPs to return home. After seven years, many Yazidis still live in a very distressing situation in the IDP camps in Iraq and Kurdistan without much food, water, or psychological help. The Yazidis I interviewed are very concerned about the well-being of their friends, relatives, or community members who are in the camps. Even though there are very harsh conditions in the camps, the IDPs cannot return home. The interviewees pointed to several things that need to be improved first: there is limited access to water, electricity, and employment in Sinjar, most of the infrastructure and houses in the area are destroyed, and the area is still unsafe.

Only after these basic needs are met, will the Yazidis start prioritizing higher order needs, which may consist of truth-seeking, accountability, and justice.<sup>405</sup> Leyla Ferman similarly states that individuals and communities can only overcome a trauma after they have safe living conditions with access to electricity, water, and housing.<sup>406</sup> This explanation also fits within the theory of transformative justice

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<sup>399</sup> Akhavan et al., *Human Rights Quarterly* 2020, p. 43.

<sup>400</sup> *Ibid.*

<sup>401</sup> *Ibid.*

<sup>402</sup> See footnote 344.

<sup>403</sup> Interview Olivia Wells, 30 March 2021, online.

<sup>404</sup> Interview Ghazi Murad, 15 April 2021, online.

<sup>405</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 547.

<sup>406</sup> Interview Leyla Ferman, 24 May 2021, online.

by Gready and Robins, described in chapter 2. They argued socio-economic concerns are key to addressing local needs and preventing future conflicts.<sup>407</sup> Apart from that, it is difficult to establish which specific basic need has priority for the Yazidi community, as they are mentioned in different orders by the interviewees. My anonymous expert indicated this as well: “All of [their requests] are really competing priorities where we cannot say one is more important than the other. It's rather one reinforcing the other.”<sup>408</sup> Ghazi Murad emphasized this as well: “We are a community that needs everything.”<sup>409</sup>

In the following sub-sections, I will outline which specific wishes the Yazidis I interviewed have for reparations and restorative measures.

#### 4.4.1 Rebuilding Sinjar

The wish for improving the living conditions of the Yazidis in the IDP camps and helping them return home is intertwined with the hope of rebuilding Sinjar.<sup>410</sup> After all, how can the IDPs return home if half of the region is still in ruins? Indeed, almost all Yazidis I interviewed stated that there is a great need for rebuilding their homeland. According to Pham and others, the Yazidis have a special connection to their homeland and geographical location, which they explain is the reason why the community is adamant on returning to Sinjar.<sup>411</sup> Several interviewees, however, asserted that all Yazidis want to leave Iraq because their rights are not respected in the country. Ghazi Murad also stated: [T]he [Yazidis] want to emigrate and leave the country. Because the authorities, the people, all of them, they betrayed us.”<sup>412</sup> It is not possible for the majority of the Yazidi community to leave Iraq due to financial constraints or lack of documentation. The IDPs cannot return to Sinjar either because their houses and the infrastructure are still destroyed. The reconstruction of the area is thus one of main priorities of the interviewees.

Different opinions exist on whose responsibility it is to rebuild the area. Although the Yazidis are glad some humanitarian organizations currently help rebuild the area, they emphasize bigger projects are needed. Most people concluded it is the obligation of the Iraqi government. Nishtiman Awsman stated: “The [Iraqi] government has to rebuild the city, because they didn't protect it when people from outside, a terrorist group, came and destroyed it. Now the government really has to take some actions to rebuild it and bring its people back to the city.”<sup>413</sup> Many interviewees criticize the Iraqi government

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<sup>407</sup> Gready & Robins, *International Journal of TJ* 2014, p. 348.

<sup>408</sup> Interview anonymous expert, 10 June 2021, online.

<sup>409</sup> Interview Ghazi Murad, 15 April 2021, online.

<sup>410</sup> The return of property, or compensation thereof, is a form of redress, namely restitution, UNSG, *Guidance Note on TJ 2010*, p. 9.

<sup>411</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 547.

<sup>412</sup> Interview Ghazi Murad, 15 April 2021, online.

<sup>413</sup> Interview Nishtiman Awsman, 9 April 2021, online.

for not taking any tangible actions for the whole Yazidi community. Farhan Ibrahim even goes as far to state that “until now the Iraqi government is doing the same thing as IS did but instead, they are not killing us. They never had any plans for reparations for the area or the people.”<sup>414</sup> Besides the Iraqi government, one interviewee, Zidan Kheder, assumes the KRG should also play a role in rebuilding Sinjar and providing protection, as he contends it is a strong actor in the country.<sup>415</sup> Furthermore, many interviewees critique the international community for not helping reconstruct the area. Even though they understand it is not their responsibility, some nevertheless ask the international community to assist in rebuilding their destroyed and corrupt country.

#### 4.4.2 Psychological and medical rehabilitation

Almost every interviewee indicated that there is a need for psychological help.<sup>416</sup> Most of them asked specifically for psychological support for the survivors, as they have presumably endured the most severe traumas. Psychological treatment would allow the survivors to get back to their normal lives and integrate into society, as far as possible. Zidan Kheder mentioned the (according to him) successful humanitarian program by the German state of Baden-Württemberg that treats survivors with psychological traumas, stating more survivors require this kind of assistance.<sup>417</sup> Many Yazidis also expressed the wish for psychological help for the entire Yazidi community. Everyone was victimized by the genocide in some way and suffers a collective trauma due to the events. Dalal Ghanim explained that she arrived in the Netherlands before the start of the genocide but still had to get PTSD treatment.<sup>418</sup> Ghazi Murad asserted that six years of living in an IDP camp and working as a translator of survivor testimonies takes a toll on him too.<sup>419</sup>

Several interviewees brought up the Yazidi community needs medical support. They mainly referred to better health care facilities in general, rather than a call for medical services for specific individuals. This can be explained by the fact that the genocide was committed seven years ago and no direct medical help for wounded people is needed anymore. Some interviewees expressed the wish for more and better hospitals as there are currently only two small health centers in Sinjar: the Sinuni General Hospital in the north and Sinjar General Hospital in the south. The Yazidi INGO Nadia’s Initiative is improving those by building new surgical and maternity wards and is supplying trainings to medical

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<sup>414</sup> Interview Farhan Ibrahim & Ghazala Jango, 5 April 2021, online.

<sup>415</sup> Interview Zidan Kheder, 25 April 2021, online.

<sup>416</sup> Medical and psychological care is a form of redress, namely rehabilitation, UNSG, *Guidance Note on TJ 2010*, p. 9.

<sup>417</sup> Interview Zidan Kheder, 25 April 2021, online.

<sup>418</sup> Interview Dalal Ghanim, 24 May 2021, online.

<sup>419</sup> Interview Ghazi Murad, 15 April 2021, online.

personnel.<sup>420</sup> However, some communities are far removed from these hospitals and have issues accessing them in case of emergency.

The Yazidis hold different opinions about who should pay for both the psychological and medical rehabilitation. Several interviewees argued that Iraq is responsible. Faris Khalaf, for instance, claimed Iraq has enough oil-generated funds to pay for it. Others determined the international community should contribute: Zidan Kheder maintained that it will take too much time for the Iraqi government to provide psychological help, pointing to the void other countries or the UN could fill,<sup>421</sup> while Wahhab Hassoo stated that those countries that let their citizens travel to Iraq and Syria to fight for IS should pay as well.<sup>422</sup>

#### 4.4.3 Employment support

Several interviewees also specified that more support is needed to find employment for the Yazidi community in the Sinjar region.<sup>423</sup> The Yazidis have traditionally been an agricultural community and after IS destroyed their farmlands, the job opportunities in the area are lacking. Ghazi Murad said: “Many, many Yazidi people are unemployed. And even those Yazidis who work are used by the employers. I know some people who work from the morning until the evening, and they work for about \$7 a day.”<sup>424</sup> The Yazidis cannot return to Sinjar to rebuild their houses if they do not have (enough) income. According to Nibras Khudaïda, the Iraqi and Kurdish governments should implement a quota for hiring Yazidis for public service positions since discrimination of minorities is apparent in employment.<sup>425</sup>

#### 4.4.4 Symbolic reparations

Only a few Yazidis touched upon the wish for specific symbolic reparations,<sup>426</sup> besides the material ones outlined above. Their wishes concern the symbolic reparations of the YSL,<sup>427</sup> but also go a bit further. There are wishes for a temple of the Yazidis to be built, to receive an official apology of the Peshmerga and Iraqi government, and the far-away dream of an event to celebrate the diversity of minorities in Iraq. Although symbolic reparations are considered very important, it is likely that not many interviewees reflected on them because they have more urgent matters to settle first.

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<sup>420</sup> Interview Olivia Wells, 30 March 2021, online.

<sup>421</sup> Interview Zidan Kheder, 25 April 2021, online.

<sup>422</sup> Interview Wahhab Hassoo, 10 April 2021, Amsterdam

<sup>423</sup> Restoration of employment is a form of redress, namely restitution, UNSG, *Guidance Note on TJ 2010*, p. 9.

<sup>424</sup> Interview Ghazi Murad, 15 April 2021, online.

<sup>425</sup> Interview Nibras Khudaïda, 11 April 2021, online.

<sup>426</sup> Public apologies, commemorations, and tributes to victims are forms of redress, namely satisfaction, UNSG, *Guidance Note on TJ 2010*, p. 9.

<sup>427</sup> Article 10 Yazidi Survivors Law. This article provides that 3 August will be a national commemoration day of the genocide and that statues, museums, and exhibitions will ‘immortalize’ the Yazidi victims.

#### 4.4.5 Monetary compensation

Besides the preceding communal wishes, several Yazidis also discussed whether individual reparations in the sense of monetary compensation are necessary.<sup>428</sup> The YSL already deals with this: it will grant the female survivors and child survivors of abduction a monthly salary if the law is implemented correctly.<sup>429</sup> A few Yazidis argued that not only these survivors require a monthly payment, but also children orphaned as a result of the genocide. Others think reparations should not take the form of direct payments, but rather be instrumentalized by means of rebuilding the destroyed houses and getting a sustainable source of income from employment. Ghazi Murad assumes the survivors do not want to accept the payments because they want more: justice. He said: "I know that they will suffer even if they accept them. Because they are going to feel like somebody is paying them in exchange of their sufferings. And all the money and all the riches of the world cannot equal that."<sup>430</sup>

#### 4.4.6 Feasibility of the reparation and restorative measure wishes

The interviewees prioritize the fulfillment of the basic needs of the whole Yazidi community. Many reparations proposed by the interviewees are covered by the YSL, like the monetary compensation, psychical and medical rehabilitation and employment support for female and child survivors, and symbolic reparations for the whole community. It does not determine to reconstruct Sinjar, however, even though this is highly necessary. The Yazidi community should advocate for reconstruction, whether through a form of distributive reparations of TJ or as general investment in infrastructure. Moreover, reparation programs often take 15 till 20 years to be completely executed.<sup>431</sup> The Yazidis should strengthen their advocacy to ensure that faster implementation by the Iraqi government is guaranteed.

### 4.5 GUARANTEES OF NON-RECURRENCE

*[T]hey don't consider us citizens.*<sup>432</sup>

The prevention of future atrocities is one of the themes that appeared most prominently throughout the interviews I conducted. The Yazidis find this especially relevant as their community speaks of experiences in dozen violent attacks. As discussed before, several TJMs are desired by the interviewees partly to ensure history does not repeat itself.

The interviewees did not paint a bright picture of their future in Iraq: if nothing changes, it will be precarious. Leaving the Sinjar area or IDP camps is not an option for many of its members. However,

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<sup>428</sup> Compensation is a form of redress, UNSG, *Guidance Note on TJ 2010*, p. 9.

<sup>429</sup> Article 8 (1) Yazidi Survivors Law.

<sup>430</sup> Interview Ghazi Murad, 15 April 2021, online.

<sup>431</sup> US Holocaust Memorial Museum, *Pursuing Justice for Mass Atrocities 2021*, p. 14.

<sup>432</sup> Interview Farhan Ibrahim & Ghazala Jango, 5 April 2021, online.

the Yazidis distrust their neighbors and the government significantly. Not enough has changed to safeguard the community from future harms, like Ronny Saeed, a 22-year-old Yazidi woman studying at the University of Duhok in Iraq, euphemistically said: “[W]hen a genocide takes place, that means there are some problems. And after the genocide, these problems should be stopped. But if the problems are not solved, it means it is still not safe. And it is. There's no guarantee that the genocide will not be repeated.”<sup>433</sup>

In the following sections, I will describe which specific guarantees of non-recurrence the Yazidis wish to see implemented and how they envision change for the future.

#### 4.5.1 Recognition of the genocide

The recognition of the genocide by Iraq and the international community is of great importance for the Yazidis I interviewed. A recognition implies that a state draws their attention to the Yazidi case. For my interviewees, the responsibility of the state does not end there, however. I understood that a political recognition of the genocide should undoubtedly entail further actions from that particular state. A statement by Aliya Jamel, a Yazidi woman working as a managing assistant in Iraq, illustrates this: “[T]he recognition without real steps does not mean anything.”<sup>434</sup> Murad Ismael similarly stated: “Most people tell me the only thing they want is for the genocide to be recognized. But I know what they really want is what will come after the recognition: that the Yazidis will be similar to the other citizens, that they will have administrative rights, security rights, religious rights, equality, protection, all that. To them that are assurances that for the future this will not happen again.”<sup>435</sup>

The interviewees have different ideas about what further steps the governments that recognize the genocide should take, ranging from conducting trials, revealing the truth about the genocide, and making Sinjar a district to receiving international protection, being heard, and having their rights respected. In short, a recognition should include support in all the areas where it is necessary. Several of these areas will be discussed below in more detail.

#### 4.5.2 Military protection

Many Yazidis talked about the necessity of military protection for future harms in multiple forms. Since the Yazidis are very distrustful towards other communities, most wish for a Yazidi security force in Sinjar. Oliva Wells supported this idea: “[Y]ou need the Yazidi community to be enlisted in the police forces, so that they are involved in their own security.”<sup>436</sup> Other Yazidis talked about making Sinjar a

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<sup>433</sup> Interview Ronny Saeed, 3 June 2021, online.

<sup>434</sup> Interview Aliya Jamel, 1 June 2021, e-mail.

<sup>435</sup> Interview Murad Ismael, 21 March 2021, online.

<sup>436</sup> Interview Olivia Wells, 30 March 2021, online.

safe zone, similar to the autonomous region of Kurdistan. If that would be the case, the international community would protect the Yazidis against any future harms, they argued. Ghazala Jango, a 25-year-old Yazidi student specialized in journalism at the American University of Iraq, draws the comparison with the IS attack on Kurdistan, which led to an intervention of the US and UN.<sup>437</sup> Several other interviewees suggested that the international community should support the security of the Yazidis in the region, since they do not trust the Iraqi and Kurdish governments to protect them after their (lack of) actions in 2014. Pham and others similarly found that a protected region or independent homeland was often suggested by their respondents to secure future protection.<sup>438</sup>

#### 4.5.3 Local governance

Several interviewees proposed local governance for the Yazidi community to prevent recurrence of future harms. They discussed the unfairness and inequality in the current governance system in Iraq for the Yazidi community. Farhan Ibrahim talked about the lack of power of the Yazidi inhabitants in Sinjar: “Yazidis are 90% of the population [in Sinjar] but you can see the Yazidis don’t run the administrative institute or other institutes. They are not even 50% of the administrative local government in Sinjar.”<sup>439</sup> Certain interviewees therefore wish for Sinjar to become a province. The advantages of turning a district into a small province are that it could provide stability, it could fight corruption more efficiently, and it could enhance economic growth.<sup>440</sup> Important for the Yazidi community, turning Sinjar district into a province could allow them to have more power in local governance. According to Wells, this is indeed required: “The Yazidi community needs to be empowered and have the agency to govern themselves.”<sup>441</sup> Besides, Ferman recommends power sharing arrangements on a national level that include smaller communities, like the Yazidis.<sup>442</sup> Several Yazidis also asserted in the interviews that they should at least be heard in decisions about their region and community.

#### 4.5.4 Removal of inequality and intercommunal tensions

Another prevalent topic discussed in the interviews is the inequality of the Yazidis in Iraq. With a big majority of Muslims living in the country, Iraq’s legal system is based on the Sharia laws in Islam.<sup>443</sup> This has far-reaching consequences for the Yazidi community according to the interviewees. Several laws in place directly discriminate minorities. One law that was thoroughly brought up by experts and

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<sup>437</sup> Interview Farhan Ibrahim & Ghazala Jango, 5 April 2021, online.

<sup>438</sup> Pham et al., *Journal of Human Rights Practice* 2019, p. 12.

<sup>439</sup> Interview Farhan Ibrahim & Ghazala Jango, 5 April 2021, online.

<sup>440</sup> Salloum, *AL-Monitor*, 22 December 2015.

<sup>441</sup> Interview Olivia Wells, 30 March 2021, online.

<sup>442</sup> Interview Leyla Ferman, 24 May 2021, online.

<sup>443</sup> Article 2 (1) of the Iraqi Constitution states: Islam is the official religion of the State and is a foundation source of legislation: A. No law may be enacted that contradicts the established provisions of Islam.

mentioned by some Yazidis is the previously discussed 2015 Iraqi Nationality Law.<sup>444</sup> Wells criticized the law extensively for the effects it has on the survivors: “These women have already been through so much trauma, they've been through hell and back, and now they're forced to identify their child in a certain way that creates stigma among the community and ostracizes them from their community”.<sup>445</sup>

Furthermore, several Yazidis complained of the laws that do not allow Yazidis to own a house in Iraq. Adopted by the Ba'ath party of Saddam Hussein in the 1970s, several decrees dispossessed Yazidis of their agricultural land and denied them the right to register land in their names.<sup>446</sup> Since then, the only way to prove ownership of the houses is by actual occupation and electricity bills, which obviously became impossible after people had to flee from their houses and leave all their documents behind in 2014.<sup>447</sup> Yazidis have an occupancy right to the houses, but the state has the possibility to take these lands at any time.<sup>448</sup> Many Yazidis denounce their government for the unequal treatment they receive, as Ghazala Jango expressed with following sentiment: “[T]he Iraqi Government in the media says that we are citizens of Iraq, but they don't consider us citizens. An example of that is that we don't own even our houses. They are not registered in our names. [...] The [government] can take it whenever they want.”<sup>449</sup>

There is furthermore a lot of intercommunal tension in Iraq that is in desperate need of calming down, as several Yazidis argued in their interviews. According to some, the Muslim majority discriminates their community in many ways and the government does not do enough to stop this treatment.<sup>450</sup> Likewise, the Yazidis resent the Muslims for their actions in 2014 and the Yazidis' marginalization in the Iraqi society. Nishtiman Awsman conveyed this feeling: “There is hate in this country. And that's a fact. It's a sad fact. But it is, we hate each other. And we cannot stop genocides, we cannot stop disrespecting, we cannot stop anything in the world if we do not remove this hate deep inside ourselves.”<sup>451</sup> Ronny Saeed indicated that the Iraqi government should ensure there are no future conflicts between the Yazidis and Muslims.<sup>452</sup> As more Muslims return from IDP camps, tensions may rise again in Sinjar. Sardar Qaidi, a 21-year-old Yazidi man studying in Armenia, hopes the Iraqi

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<sup>444</sup> The law mandates that any child of a Muslim or unknown father is automatically registered as Muslim. See section 3.4.1.

<sup>445</sup> Interview Olivia Wells, 30 March 2021, online.

<sup>446</sup> Youssif Salih & Maghdid Qadr 2019, pp. 61 and 62.

<sup>447</sup> *Ibid.*, p. 65.

<sup>448</sup> *Ibid.*, p. 66.

<sup>449</sup> Interview Farhan Ibrahim & Ghazala Jango, 5 April 2021, online.

<sup>450</sup> The Yazidis, for example, talk about many Muslims that do not eat the food made by Yazidis, rather hire Muslims than Yazidis, or still call the Yazidis infidels and devil worshippers.

<sup>451</sup> Interview Nishtiman Awsman, 9 April 2021, online.

<sup>452</sup> Interview Ronny Saeed, 3 June 2021, online.

government or the international community will take actions to prevent these tensions from occurring.<sup>453</sup>

#### 4.5.5 Feasibility of the guarantees of non-recurrence wishes

The proposed guarantees of non-recurrence by the Yazidis are all practically realizable but several may be difficult to achieve politically.<sup>454</sup> The Iraqi and Kurdish governments are struggling over control in Sinjar and do presumably not want to make it an autonomous region in which they have no influence. Moreover, the laws discussed above perpetuate the image of IS that the Yazidis are lesser citizens and are thus in need of reform. The chances of accomplishing a legal reform are slim, however. The Yazidis are not represented fairly in the parliament with only one seat out of 329, as outlined in section 3.6.1. The removal of intercommunal tensions and discrimination is also a wish that might take years, if not decades before it is accomplished.

Although the wishes have some political limitations, that does not mean that the Yazidi community should refrain from advocating for them. The suggested guarantees are significant: they would provide the Yazidis with a sense of trust in safety in the region, while also giving assurances the genocide will not be repeated. The Yazidis and civil society can play a role in ensuring that they work out in practice. They can monitor the reform, raise awareness about known corruption, or work together with religious and other community leaders to encourage institutional change.<sup>455</sup>

## 4.6 NATIONAL CONSULTATIONS

*“Everyone has a voice. It's about amplifying those who want to speak and making sure their voices are heard.”<sup>456</sup>*

Like any community would, the Yazidis want to have a say in the decisions that are made about them. For the TJ process, this means they want to be consulted on the overarching strategy and contribute in separate TJMs. Sardar Qaidi emphasized this throughout his whole interview, in answers to multiple questions urging that the voices of the victims, survivors, and other Yazidis should be heard. When talking about what reparations are needed for survivors, for example, he proposed to ask them, rather than making decision about the survivors without their involvement: “[W]hat about the Yazidi survivors who escaped from IS, the women who got raped multiple times? What about them? What do they need? Do they need the same thing as other people need? What about their feelings? What

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<sup>453</sup> Interview Sardar Qaidi, 10 April 2021, online.

<sup>454</sup> It is outside the scope of this thesis to analyze the political viability thoroughly, so merely a short description on the possible limitations of the wishes will follow.

<sup>455</sup> US Holocaust Memorial Museum, *Pursuing Justice for Mass Atrocities 2021*, pp. 27 and 28.

<sup>456</sup> Interview Olivia Wells, 30 March 2021, online.

do they want in order to prevent feeling like that?”<sup>457</sup> Olivia Wells explained that everyone’s opinion matters and is worth hearing: “[S]ometimes people that we’re working with have asked if they can say ‘Nadia [Murad] gives a voice to the voiceless’. No one is without a voice. That’s not what this is. Everyone has a voice. It’s about amplifying those who want to speak and making sure their voices are heard.”<sup>458</sup> Genocide scholar Kjell Anderson finds it important that the Yazidis are considered by the Iraqi government and international community and that their local culture is understood by the decision makers.<sup>459</sup> According to him, Yazidis should therefore have the possibility to get involved in the process.

In the following section, I will analyze the wishes of the Yazidis for participation in the TJ process in general and specific TJMs.

#### 4.6.1 Participation in the transitional justice strategy and mechanisms

Several experts and Yazidis contend that the female survivors have a special role to play in the justice process. The enslavement and CRSV the women were subjected to were a part of the genocide: thousands of (mainly) older men and women were also killed and young boys were forced to train in IS camps. However, the enslavement and CRSV formed an important part of the genocide and may be necessary to prove the *dolus specialis*, the genocidal intent, in the court cases, according to Kjell Anderson.<sup>460</sup>

Until now, the Yazidi community has had no chance to testify in court against their perpetrators, something many survivors may want. As I did not interview any female survivors, I can only rely on what their fellow community members told me. Ghazi Murad believes that there are many victims who are willing and ready to testify in (international) trials: “I think there are people who are hurt more than myself. So I think it’s important that [the international community] hears them, they hear the female victims, who were forced to convert to Islam, and who everyday experienced violence, sexually and by beating.”<sup>461</sup>

Although the wish to be consulted is prominent, most interviewees were very skeptical towards the future contributions the Yazidis could bring. They do not believe the Iraqi government and international community will suddenly change their strategy and start listening to the Yazidis. When

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<sup>457</sup> Interview Sardar Qaidi, 10 April 2021, online.

<sup>458</sup> Interview Olivia Wells, 30 March 2021, online.

<sup>459</sup> Interview Kjell Anderson, 8 April 2021, online.

<sup>460</sup> Ibid.

<sup>461</sup> Interview Ghazi Murad, 15 April 2021, online.

asked about how Haidar Ghano would like to assist in the future justice process, he answered: “My problem is that I don't believe in any process. That is why I don't expect that I will have any role.”<sup>462</sup>

#### 4.6.2 Feasibility of the participation wishes

It is indeed questionable whether the Iraqi government actually wants to listen to the Yazidi community. However, it may not be a question of wanting to listen, rather than having to listen if the Yazidis present themselves from a strong, informed, and unified position and pressure the Iraqi government and international community. It is vital the Yazidis educate themselves about TJ and international law and advocate from a more informed position. The Iraqi government and international community should in turn finally start listening to the Yazidis and their wishes and truly accepting them.

### 4.7 CONCLUSION

In this chapter, I demonstrated that justice for the Yazidis includes many elements besides having prosecutions. The Yazidis wish to hold the people who committed and were complicit in the genocide accountable, but also to find the missing people, to rebuild Sinjar, the IDPs to return to Sinjar, to achieve safety and security in the area, for no more genocides to be committed, and proper psychological help to be given to those community members who need it. Regarding the justice process, most Yazidis want all IS-affiliates to be prosecuted and sentenced accordingly (which means the death sentence or life imprisonment according to some interviewees) and trials to be held internationally. Concerning the truth-seeking process, the Yazidis wish to know the truth about the perpetrators and events of the genocide to ensure it will not happen again, and most importantly, to find out where the missing people are. The reparations process is furthermore important for the Yazidis as they want the government to rebuild Sinjar, which would allow the IDPs to return, and support the Yazidi community with psychological support. With regard to the guarantees of non-recurrence, the Yazidis hope no more atrocities will be committed if more countries recognize the genocide, they get military protection in Sinjar, have power in local administration, and the inequality between the Yazidi minority and Muslim majority is removed. Lastly, the Yazidis wish to participate in the TJ strategy or specific TJMs because they want to be able to make decisions about themselves and distrust the government. However, several of these preceding wishes for the TJ process are not (entirely) feasible. It is vital that the Yazidi community is aware of the limitations, so their advocacy is well thought out and convincing.

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<sup>462</sup> Interview Haidar Ghano, 29 March 2021, online.

## 5 CONCLUSION

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In the seven years since IS committed the genocide against the Yazidi community in Sinjar, the TJ process in Iraq has not brought the much-wanted justice for and improvement of the lives of the victimized people. The community so far only gained short-lived worldwide attention after female survivors bravely told their experiences and journalists published stories about the genocide. The Iraqi government, however, left them in the lurch regarding tangible actions in addressing the genocide. In recent TJ scholarship, the focus has been on the involvement of the affected community as this would lead to a more effective TJ process. I therefore researched the reflections of some members of the Yazidi community on the current TJMs in place and portrayed their visions of justice, truth, reparations, guarantees of non-recurrence, and national consultations for the future TJ process. I formulated the following research question: *“Which transitional justice processes and mechanisms does the Yazidi community want to address the genocide IS committed against them in Sinjar, Iraq in August 2014?”*. Based on my interviews and other research,<sup>463</sup> I found that the Yazidi community has a broad vision of justice for the genocide: justice should not only address the past and punish the perpetrators, but it should also focus on their current priorities and needs and include a future component by creating safety and ensuring that the genocide will not be committed again. The answer to my research question is therefore that the Yazidi community wants all transitional justice processes and mechanisms to address the genocide IS committed against them in 2014.

I will discuss the reflections of the Yazidis I interviewed on the current TJMs, or lack thereof, and wishes for the future TJ process more thoroughly below. Afterwards, I will explain the implications of my findings, the relevance of this thesis, and outline some possibilities for future research.

### 5.1 JUSTICE

In the academic debate about the contributions of retributive justice, proponents argued prosecutions in post-conflict societies bring accountability and deterrence and establish a record of the crimes committed.<sup>464</sup> The Yazidi community has also been persistent in their fight for punitive justice since the genocide was committed for exactly those reasons. They want to make sure the perpetrators are punished for their crimes. They also hope that atrocities will not be committed again if the world knows the truth about this genocide, courts recognize the genocide, and IS-members and -supporters are prosecuted.

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<sup>463</sup> See Akhavan et al., *Human Rights Quarterly* 2020; and Pham et al., *Journal of Human Rights Practice* 2019.

<sup>464</sup> Minow 1998, pp. 49 and 50.

However, the current justice process in Iraq is not providing the Yazidis with any of these reliefs. The Yazidi community is very negative towards the current prosecution initiatives because the trials of IS-members are based on the Anti-Terrorism Law rather than genocide against their people. The international community also critiques current IS-trials in Iraq: the court hearings are not open to the public, suspects are subjected to torture, and many consequently convicted IS-members are given the death penalty.<sup>465</sup> The Yazidis I interviewed feel that the truth about the genocide is vanishing as a result of the trials held in Iraq. In addition, these trials are taking away the rights of the Yazidi community, the acknowledgement of their sufferings, and recognition of the genocide. Since the Yazidis severely distrust Iraqi authorities and find the Iraqi legal system unreliable, corrupt, and flawed, they wish to have international trials for the genocide. The Yazidis are particularly pleased with the ongoing German lawsuit of Taha Al-J., who is on trial for committing genocide against the Yazidis.

The Yazidis I interviewed have far-reaching wishes for the justice process, which may not be (completely) feasible. They hope that trials will bring accountability, peace, and deterrence. The main goal of prosecutions is to serve justice, however. Other processes, like peacebuilding efforts, institutional reform, and development, should accompany prosecutions to ensure peace and non-recurrence. Moreover, most interviewees wish that more courts in other countries would start similar trials to the Taha Al-J. case and hope that an *ad hoc* tribunal, the ICC, or a hybrid court would adjudicate over the cases. There is, however, no political will in the international community to refer the cases to the ICC or establish an international tribunal.

The Yazidi community furthermore wants all IS-members and -supporters, and the Peshmerga and Iraqi army leaders to be prosecuted for committing or being complicit in the genocide. This wish is nevertheless unachievable. Although perhaps a big number of people will be brought before a court, it will never happen that everyone will be prosecuted. There will inherently be difficulties in finding enough evidence to prosecute people or linking them to specific crimes. Prosecuting everyone would take too much time and cost too many resources which Iraq does not have. It may also be that many convictions will be based on other crimes than genocide, like war crimes or crimes against humanity. It is very difficult to prove genocidal intent in court, let alone for IS-supporters. Lastly, the Yazidis should realize that not everyone who was involved in the genocide will get a life sentence or death sentence, as there will presumably not be enough evidence. Besides, the UN intends to stay involved in the justice process and condemns the death penalty.

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<sup>465</sup> See UNAMI, *Human Rights in the Administration of Justice in Iraq 2020*; UNHRC, *Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions 2018*.

The way forward seems to be a hybrid court. A hybrid court would remove some of the obstacles the ICC or an *ad hoc* tribunal may pose, as the trials would be conducted in Iraq and many perpetrators could be tried. It is vital that Iraq includes international crimes in their legal code and the international community supports and monitors the prosecutions. With thousands of suspects in a post-conflict country, the justice process will inevitably be extremely costly and time-consuming, however. The Yazidi community should be prepared for this, but also pressure the Iraqi government to ensure appropriate steps are taken.

## 5.2 TRUTH-SEEKING

In the academic debate, a great deal of restorative justice proponents argued that Truth and Reconciliation Commissions would uncover the full truth about the crimes committed and include victims in the process, which could be cathartic for them.<sup>466</sup> Among the Yazidi community, there is indeed a firm wish to find out the truth about the genocide and make this public and known broadly. The Yazidi community wants to find out the truth about who is alive, where the captured people are, and which leaders of the Peshmerga gave the orders to withdraw. The truth-seeking process is highly valued by the Yazidis as they believe this would lead to a recognition of the genocide and preclude the genocide from recurring. Several UN institutions, such as the IICI Syria and UNITAD, researched the atrocities of 2014 and recognized them as constituting genocide. The Yazidis should realize, however, that people knowing about the genocide and recognizing it as such does not automatically guarantee that no more atrocities can be committed against them.

Much of the truth is also still unknown. The mass graves are being exhumed by UNITAD to identify the dead and bury them in dignity. Several Yazidis are positive about UNITAD's work because finally actions are being taken to document the crimes committed by IS. They hope this may ultimately lead to prosecutions. The Yazidis find the process advancing too slowly, however, and want more effort to be made. This may be difficult to achieve with the already high workload of UNITAD. Furthermore, only the Kurdistan Region's Ezidi Rescue Office is currently searching for the captured people, with support from the International Commission of Missing People.

The interviewed Yazidis therefore wish for the truth-seeking process to improve. As finding missing people is one of the main priorities of the Yazidi community, the lack of attention and actions towards this end is difficult to accept by most. They wish for a transnational search team to be established and look for the missing people. Many want such a team to inspect the al-Hol camp in Syria, where they think many Yazidis are held in captivity. The Yazidis that expressed this wish also pointed to the

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<sup>466</sup> Minow 1998, pp. 60, 66-79, and 167 n.34

difficulties surrounding the dynamics and control in the camp and revealing the Yazidi identity by the captured people. Among the interviewees there is also a great wish to formally investigate the role of the Peshmerga in the genocide. The focus of the Yazidis is currently on trials to find out the truth, as they may be unaware of the existence of a truth commission. Akhavan and other, Pham and others, and Olivia Wells pointed to the advantages a truth commission could bring.<sup>467</sup>

### 5.3 REPARATIONS AND RESTORATIVE MEASURES

Lately in TJ scholarship, the debate has revolved around the inclusion of distributive factors in the TJ process. Mani argued that the real concerns of the survivors of the conflict should be considered by means of redistribution.<sup>468</sup> Nagy furthermore contended that social justice and equality should be included in the TJ processes.<sup>469</sup> More specifically, Yepes called for reparations to become transformative and be applied in a distributive manner.<sup>470</sup> Especially the Yazidis' wish for several reparations and restorative measures for the whole community in a distributive manner, like the rebuilding of Sinjar, align with Yepes' arguments. It is, as one interviewee pointed out, a community that needs reparations for everything.<sup>471</sup>

The Yazidi Survivors Law (YSL) was adopted by the Iraqi government to give certain concrete remedies to the female and child survivors,<sup>472</sup> and promises to take actions for the whole community.<sup>473</sup> The Yazidi community welcomed the law, as the government finally achieved something tangible for the victims. The law nevertheless received plenty of criticisms and the community remains doubtful towards its implementation.

The Yazidi community mainly wants the reparations and restorative measures of the reconstruction of Sinjar and psychological support. After seven years, almost half of the Yazidi population in Iraq still lives in a desperate and dreadful situation in the camps. They cannot return home because Sinjar is unsafe and water, electricity, housing, infrastructure, and employment are lacking in the area. As the return of the Internally Displaced Persons (IDPs) to Sinjar is one of the main priorities of the Yazidis, they want the houses to be reconstructed. Moreover, many Yazidis want psychological rehabilitation

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<sup>467</sup> Akhavan et al., *Human Rights Quarterly* 2020, p. 43; Pham et al., *Journal of Human Rights Practice* 2019, p. 545; Interview Olivia Wells, 30 March 2021, online.

<sup>468</sup> Mani 2002, p. 127.

<sup>469</sup> Nagy, *Third World Quarterly* 2008, pp. 277 and 278.

<sup>470</sup> Yepes, *Netherlands Quarterly of Human Rights* 2009, p. 637.

<sup>471</sup> Interview Ghazi Murad, 15 April 2021, online.

<sup>472</sup> For example, a monthly salary and a piece of residential land and both female and child survivors get special educational and employment opportunities and medical and psychological support, article 8 (1) and (4), Article 5 (4) (5) and (6) Yazidi Survivors Law.

<sup>473</sup> This includes the search for the missing people and excavation of the mass graves, the recognition of the genocide, and some symbolic reparations, Articles 5 (7) (8) and (9), 9 (1) and 10 Yazidi Survivors Law.

for their community members as they are struggling with traumas and the suicide rate in the camps is rising. In addition, several Yazidis also wish for employment support, symbolic reparations, and monetary compensation. The Yazidi community is critical towards the Iraqi and Kurdish governments and international community for neglecting them in this regard and wish for the governments to provide for their basic needs. It may, however, be challenging for the Iraqi government to address these collective needs in the TJM of reparations. There should be sufficient pressure on the government to do so, either as a collective reparation or as a general infrastructure investment.

#### 5.4 GUARANTEES OF NON-RECURRENCE

TJ scholar Miller contends more attention should be paid to socio-economic issues, structural violence, and the root-causes of the conflict.<sup>474</sup> She argues that the conflict may reignite if the TJ process does not adequately address these concerns. Miller's findings align with some of the wishes of the Yazidi community for the guarantees of non-recurrence. The Yazidis frequently discussed the inequality in Iraq and other socio-economic issues that need to be addressed. The prevention of future atrocities is extremely important to the Yazidis as they talk about dozens of previous violent attacks against their community.

So far, however, the Iraqi and Kurdish governments only signed the Sinjar Agreement, which aims to reform the administration, security, and reconstruction in Sinjar. The agreement is not implemented and thus created further feelings of disillusionment for the Yazidis. There is great distrust among the Yazidi community in the government due to the lack of implementation and high level of corruption. The Iraqi and Kurdish governments furthermore disregard vetting of corrupt judges and leaders of the Peshmerga and the Iraqi security forces who did not protect the Yazidis and giving human rights trainings to lower military personnel.

The Yazidi community wants tangible actions taken by the Iraqi government and international community to ensure no future atrocities will be committed. They want more governments to recognize the genocide, hoping this would lead to military support from those governments. The Yazidis strongly wish for a security force consisting of their own community members or a safe zone with international protection, like the autonomous region of Kurdistan. However, since the Kurdish and Iraqi governments are struggling over control in Sinjar, they presumably do not want to make it an autonomous region. The interviewees also want Yazidis represented in local governance and wish for Sinjar to become a province. The Yazidis are especially adamant in their wish for removing the inequality between them and the majority of Muslims, as this is currently upheld in laws. Legal reform

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<sup>474</sup> Miller, *International Journal of Transitional Justice* 2008, p. 287.

is however difficult to achieve since the Yazidis are not fairly represented in parliament. The Yazidis should nevertheless continue their advocacy to achieve these military, administrative, and legal reforms, and pressure the Iraqi government accordingly.

## 5.5 NATIONAL CONSULTATIONS

Lately in TJ debates, scholars like Gready and Robins argued that only a bottom-up approach to TJ would lead to real transformation of the post-conflict situation.<sup>475</sup> Much progress could be made in the effectiveness of the TJ process if the Yazidis would be able to contribute. The Yazidis wish to be heard by their government and have a say in the decision-making process about the TJ strategy or individual mechanisms. My findings therefore align with Gready and Robin's standpoint, as I contend a bottom-up strategy should be used to make the TJ process more effective and have a transformative impact.

The Yazidi community's contribution has so far been disappointingly limited, however. The Yazidis feel that no one listens to their wishes for the TJ process and experience a sense of neglect because of this. All interviewees were truly grateful for the research I did for exactly that reason: they finally felt heard by someone and were glad more awareness for the Yazidi case is created. The Yazidis perceive the words of their government and the international community as empty promises. The Yazidis want the Iraqi government to listen to their voices and needs and take actions accordingly. Neglecting the Yazidi community in the justice process leads to further distrust towards the Iraqi government. Besides, the Yazidis wish to participate in the execution of certain TJMs. For some victims it could be cathartic to function as a witness in prosecutions and take part in truth-telling. Although Iraq may not want to listen to the Yazidi community, they should do so after sufficient, adequate pressure by the Yazidis. It is critical the Yazidis continue their advocacy, albeit from a more informed and educated place. That way, the Iraqi government and international community cannot turn a blind eye to the Yazidi genocide and the need for addressing it properly.

## 5.6 IMPLICATIONS OF FINDINGS

The Yazidis are thus a community that wants prosecutions, the right to truth initiatives, reparations, guarantees of non-recurrence, and national consultations. They want the perpetrators of and the people who were complicit in the genocide to be put in jail. They want to find out the truth by trials and formal investigations. They want Sinjar to be rebuilt and have basic services provided. They want the IDPs to return home. They want to find their missing community members. They want to live in a safe and secure area and have ensures the genocide will not be committed again. Lastly, they want to

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<sup>475</sup> Gready & Robins, *International Journal of TJ* 2014, p. 340.

have a say in the decisions that are made about them and to be able to participate in the TJ process. These findings align with the perspective of the UN on that the TJ processes should be applied holistically. They also suggest that more attention should be paid to the social concerns of the Yazidis, like Gready and Robins argued.<sup>476</sup> It also means that the TJ process in Iraq should be accompanied by peacebuilding processes and development to fully cover the wishes of the Yazidis.

I contend it is of vital importance for the success of the TJ process that the Yazidis can contribute to its strategy and mechanisms. Participation in the TJ process empowers the victims and ensures that the TJMs incorporate wishes of different people within the community.<sup>477</sup> Members of the Yazidi community can inform the Iraqi government, the international community, and organizations working in Sinjar about their wishes, needs, and prioritize and their preferences for execution them. The Iraqi government and international community should start listening closely to the Yazidi community, and the Yazidis should be able to participate. Olivia Wells strongly asserted: “[D]evelopment is not sustainable, nor is it successful, if it doesn't involve the communities it's impacting.”<sup>478</sup> Although not every Yazidi may want to contribute, the people that wish to do so should be given the chance by the government.

Successful contribution to the TJ process starts with successful advocacy of the wishes, needs, and priorities of the Yazidi community. The Yazidis I interviewed, like many other affected people in post-conflict areas, have some misconceptions about what TJ can effectuate, however. They seem to have quite ill-informed views about the workings of international law (jurisdiction, complementarity, and its limitations), the TJMs, and the global political climate on TJ in post-conflict situations. Understandably, the Yazidi community has high expectations of the justice process. Unfortunately, however, their wishes are in many cases not fully realizable.

It is therefore vital that human rights activists, TJ scholars, or other supportive actors reach out to the Yazidi community to enhance their understanding of TJ and inform them of the limitations to their wishes. This outreach would also imply management of the expectations of what the TJ process can bring them. Together, they can build capacity to expand what is possible and ensure they improve their advocacy further. This would make the Yazidis in the near future able to press for more realistic and feasible demands of the TJ process. It would ensure that future communications with involved institutions, like the UN or government authorities, take place from a more informed position. After outreach to and (further) legal education of the Yazidi community, the Yazidis should identify their

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<sup>476</sup> Gready & Robins, *International Journal of TJ* 2014, p. 340.

<sup>477</sup> US Holocaust Memorial Museum, *Pursuing Justice for Mass Atrocities 2021*, p. 10.

<sup>478</sup> Interview Olivia Wells, 30 March 2021, online.

own realistic justice wishes and priorities and express these clearly to the decision-makers. The Yazidi advocates would have more substantiated arguments to bring forward, which would make it harder for the Iraqi government to dismiss the community's wishes. Institutions should simultaneously devote more time and effort to genuinely listen to them. The Iraqi government should work closely with civil society, create a safe space for them to launch initiatives, and involve victim groups and survivors in the TJ process.

## 5.7 RELEVANCE OF RESEARCH

Moreover, the research I conducted is socially relevant. I portrayed some perceptions of justice of the Yazidi community and assessed their main priorities. This has not been done often and recently. It also contributed socially because it interpreted the opinions of some Yazidi community members on the current TJMs, which have been neglected so far. My findings also show that a bottom-up approach to TJ should be preferred by practitioners instead of the usual top-down procedure. Affected communities want to contribute to the TJ process and it is important for its effectiveness that they are able to get involved. The elites of post-conflict areas should listen to the voices of affected communities and engage them in the design and implementation of the TJMs and overall TJ strategy.

In terms of academic relevance, my thesis provided further empirical evidence that expectation management and education of affected communities in post-conflict situations regarding the TJ process is necessary for them to perform better in their advocacy for justice. Moreover, it demonstrated that the visions of justice of the Yazidis are broader than its punitive form. Although more research needs to be done, this could mean that the inclusion of the affected community can improve the TJ process. Their considerations and visions of justice could show decision-makers how they perceive success of the process and where to focus on in the development of the strategy. TJ should be more receptive to the wishes of the communities it is impacting.

My findings are important outside of the context of the Yazidi genocide as well. There has been an emphasis in TJ efforts on prosecuting the perpetrators of gross human rights violations. This is what many people want and need to feel justice has been served. However, justice is broader than merely its punitive form. For many other people, justice also includes distributive elements as well as living equally without discrimination. People prioritize fulfilling their basic needs first, only after which justice and other aims follow. There should thus be more attention in TJ to addressing socio-economic rights. If these rights are neglected, conflicts may flare up rapidly and the TJ process runs a bigger chance of being disrupted. However, TJ on its own cannot fully transform all political, social, and economic issues after gross human rights violations. It should be implemented alongside other processes, such as development, peacebuilding measures, and humanitarian assistance. Together with these processes,

TJ should be applied to improve lives of citizens of the country on a broader level rather than merely achieving accountability.

## 5.8 FURTHER RESEARCH

There are several limitations to my research, which can be considered avenues for further research. Due to the focus of my research on the Yazidi wishes for justice, it is not clear whether my preceding arguments would adequately work in the post-conflict situation of Iraq. There is a need for empirical research into the feasibility of TJMs to address the socio-economic wrongs in Iraq. It is also important for other post-conflict situations to find out whether TJ is in fact able to transform a country into a more just and peaceful society or whether this would make TJ too broad and meaningless, as Roht-Arriaza claimed.<sup>479</sup> Furthermore, my research concerned the Yazidi genocide in general. Since the enslavement of the Yazidi women was a big part of the genocide, it may be worthwhile to research how a gender-sensitive approach can be included in the overall TJ strategy in Iraq. The resilience to achieve justice and courage of the female survivors to speak up was after all the main reason the Yazidi community gained attention and they definitely deserve a role in the TJ process. In my thesis, I was unable to reflect on certain wishes of the Yazidis for the TJ approach (sufficiently), due to its limited scope. This concerns education reform and the reconstruction of Sinjar. Future research should explore whether more Yazidis urge similar issues should improve and whether this can be done under the TJ framework or should instead be tackled in specific policies by the Iraqi government.

Since my research was exploratory, I merely interviewed the small number of 20 Yazidis. It is vital research will be conducted about the wishes of more Yazidis for the TJ process. A bigger number of interviewees should reflect members of different ages, genders, education levels, and places of residence. Perhaps accompanied by quantitative research, this could provide a more precise and thorough understanding of the wishes of the Yazidi community. In my research, it furthermore turned out difficult to analyze if some wishes of the Yazidis are influenced by their country of residence. For example, it may very well be that Yazidis living in Iraq have different perceptions to the role of the international community in the TJ process than Yazidis living abroad. It could prove beneficial to map these differences, because the direct beneficiaries of certain TJMs (some reparations or guarantees of non-recurrence, for instance) may end up being Yazidis living in Iraq. Lastly, this thesis outlined several limitations to the wishes of the Yazidi community. It is beneficial to their advocacy and the TJ process in Iraq that research will be done on other limitations and, more importantly, on the possibilities and

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<sup>479</sup> Roht-Arriaza 2006, p. 2.

future avenues for justice for the Yazidi community. The Yazidis should continue their fight for justice and deserve nothing less.

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