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Yazidi Women and their Rape-Born Children: Outcasts of their Community and Iraqi Law

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Abstract

The Islamic State "ISIS" committed heinous crimes against the Yazidi community. Kidnapped "women & girls", and sex slaves for the fighters and raped them. Many of the kidnapped women returned home, suffering from psychological and physical illnesses. Others were pregnant or had given birth due to the rape. The Yazidi women forced to abandon their children due to the Yazidi community's rejection of them, and the legal obstacles that would face them. If the mother decides to keep the child, she will face a legal obstacle in registering the children and obtaining identification documents for them. The study collects and analyses data from various sources and conducts extensive research. The article aims to shed light on a legal gap that causes the separation between a mother and her child., and proposes amending the law in proportion to the rights of the child and allowing them to register in the name and religion of the mother, to foster a culture

in which human rights can take root in society.

Keywords

Yazidi, Sex Slavery, Rape-Born Children, ISIS Crimes, Ethnic Cleansing, Women Child Rights.

Introduction

The Yazidis are an ethnic religious group (Garnik, Victoria 2014) based in Iraq and Syria (Nelida, 1999: 9). Most of them live near Mosul and the Sinjar mountains in Iraq (Human Rights Watch, 2009), smaller groups live in Turkey, Syria, Germany, Georgia (Centre ethnicity studies CSEM 2016) and Armenia. The Yezidis speak Kurmanji language (Christine 2004) [one of the Kurdish dialects], and Arabic language (Eva, Siamend 2005:11-12) especially the Yezidis of Bashiqā [near Mosul] and the Yezidis of Syria (Christine 2004). Their name, Yezidism, was undoubtedly known and spread before the sixth century of migration (Mahmoud 1961: 431). The overwhelming majority of the Yazidis live in Iraq, where they are religiously affiliated with Lalish land, which is sacred to all Yazidis in the world (Zouher, Abbod 2005: 27). Statistics for this Iraqi minority range from 500,000 to 700,000 (American Committee 2013: 89). This minority is located in northern Iraq, the two large populations are in the city of Sheikhan, north of Mosul [where the shrine of Uday bin Musafir] and Sinjar on the Syrian-Iraqi border 80 kilometers west of Mosul (Sami Nada 2016: 8). Yazidis believe that God exists in everything (Roger 2001: 47). It is the foundation of their pantheism, that creatures are parts of the Supreme Spirit, and the part belongs to all. Their sanctification of cosmic phenomena such as the sun, light and moon is based on the idea that these phenomena are part of the divine self and the embodiment of his supernatural power.

The Yazidi religion is monotheistic (Elizabeth 2017), their prayers and all their rituals are in the Kurmanji dialect and their ancient religious books are written in Syriac. Their qibla and religious center is Lalish, where the holy shrine of Sheikh Uday bin Musafir in northern Iraq (Eszter Spät 2013: 347). The Yazidi community is divided into three classes (Christine 2007): the sheikh, the bir, and the murid, and it prohibits marriage between classes (Aida 2018: 269). In their prayers, the Yezidis face the sun and believe in the reincarnation of souls and seven angels. Yazidis fast forty days a year starting in January. The Yezidi religion is non-missionary, as people of other faiths cannot belong to it, and thus many [including the Yazidi prince Tahseen Bek] regarded it as an independent religion and ethnic group (Ahmet, Çakır 2021), while many Yazidis see themselves as of Kurdish nationality (Human Rights Watch, 2018).

The Yazidis are called the devil worshipers (Raya 2014) and the basis of this creed is they do not partake in condemning the Devil for not bowing to Adam. To them, the Devil did not forget the commandment of the God [forbid bowing down to others], while the Angels deemed to have forgotten. They believed that, the

adoration to Adam was just a test, the Devil has succeeded in this test and it is the first unified (Andalusia Magazine 2011).

The Yezidi mythology believes that God had commanded all angels to kneel to Adam, with the intention to test them. According to their mythology, all angels bowed down to Adam, except a king peacock who did not prostrate, and when God asked him, why you did not prostrate? He said; when you created us, you commanded us to worship no one but your face, O God. Here Peacock king passed the test and God rewarded him by making him the closest creature to him and entrusted him with the rule of the universe.

This story is very similar to that in the biblical narratives on Creation: Islamic, Christian and Jewish (Human Rights Watch 2007) that a king peacock was defined by the non-Yezidis as devil himself. From this basis they were described as Satanists. The Yezidis reject this description, they do not believe in the existence of an evil being like Satan that entangles and seduces humans, but believes that evilness stems from person himself (Tony 2007: 128). The Yazidis believe that Peacock king is an angel created from the light of God, so he is a good being, and any analogy to Satan in other religions is an insult to their sanctities. The Yezidis believe that spirits travel within successive bodily forms, gradual cleansing is possible through new breeding and succession of generations (Sami Nada 2016: 27). The worst thing for a Yazidi is to be expelled from his community, it means that his soul cannot be renewed, so he is out of his religion. Despite centuries of harassment and persecution, the Yazidis never left their religion, an evidence to the strong adherence to their faith.

Other than oral tradition above, there is no written basis on this Yazidi religion. The clergy retain their religious origins by oral memorization and thus their knowledge is preserved in the heart rather than on paper (USDOS 2006). The Yazidi society is closed one and their fear of foreigners and strangers is a result of the wars and oppression against them, made them surround their religion with an aura of secrecy. Throughout history, the Yezidis have been subjected to 72 extermination campaigns against them for various reasons (Loveday Morris 2014). These wars and massacres have taken root in the Yazidis social fabric and mentality, their isolation from the world, social retreat and fear of strangers became their key features. The Yezidis have been subjected to repeated attacks by ISIS, including targeted bombings and assassinations in Iraq. The fall of Mosul and ISIS controlled-areas of northern Iraq, and the fall of the Yezidi city of Sinjar to the ISIS militants led to killings of hundreds, and captivity of large numbers of women and children. While thousands fled their cities and villages to escape ISIS brutality.

Occupation of the Yazidi Regions

After the fall of Mosul in June 2014 by ISIS fighters, the Yazidi cities, especially Sinjar, were attacked by ISIS operatives who quickly took control of the area after the withdrawal of national forces responsible for protection. The ISIS gunmen killed a large number of people and captured others (Steve Hopkins 2014).

Thousands fled to the Sinjar mountain to escape the ISIS terrorists (BBC News 2014). They were besieged without food, water or medical care (Laura 2014) and faced famine and drought (UNAMI_OHCHR_POC 2014: 25). In this incident, 3,000 Yezidies were killed, 5,000 others were kidnapped, and 400,000 were fled to other safer areas such as "Duhok, Erbil and Zakho" (Al-Alam TV 2014). In addition, ISIS kidnapped 3,500 Yezidi women when invaded Sinjar (Akhbaralaan News 2019). Later, videos published by ISIS showed hundreds of Yazidis had entered Islam, with a group of them perform al- shahada and pray, as they were surrounded by ISIS fighters (Osama, 2014). According to the latest census of the Directorate General of Yazidi Affairs in the Ministry of Awqaf in the Kurdistan Region of Iraq, the number of Yazidis kidnapped reached 6,417, of whom 3,425 survived (france24 2019). Some of whom returned to Iraq after the fall of the extremist organization in the Baghouz region of eastern Syria, the fate of the others remains unknown.

ISIS exterminated the Yezidis and buried them in mass graves of up to about [75 cemeteries] (Jamal Pira 2019), and resort to captivity of adult Yezidis and children for the battles (Shaam Network 2019). Children were particularly targeted for killing, sexual violence and recruitment by ISIS forces (OHCHR and UNAMI 2014: 17-18). The United Nations considered that the ISIS actions could be classified as war crimes and crimes against humanity, and that the Yazidis were subjected to an extermination attempt (Richard 2014). A 2017 report by the PLOS Medical Journal estimated between 2,100 and 4,400 deaths and 4,200 to 10,800 abductions (Valeria 2017). The ISIS inflicted atrocities on the Yezidi minority is common during its control of large areas in Syria and Iraq.

Since June 2014, thousands of people belonging to this sect have been killed and abducted, and an unknown number of women and girls have been forced into marriage and sexual slavery. Crimes against humanity and genocide have been committed, including execution, murder, burning, mutilation, rape, sexual violence, torture, cruel treatment, recruitment of children, outrages upon personal dignity, destruction of centuries-old religious cultural heritage, looting of money and property (Ceasefire Centre 2016). Most Yazidis have been forced to leave their land and lost their homes and livelihoods as they are displaced within Iraq or have fled the country altogether. The basic conditions for the return of IDPs to their homes are missing. Although some time has passed since the liberation of their areas (Tasnim News Agency 2017), security and basic services have not been met in most areas. In addition, there is a general loss of confidence between this minority, the central government and the Kurdistan region in terms of ability or willingness to protect the minority.

Vulnerability of Women under ISIS Occupation

In an article published by ISIS entitled "Revival of Slavery" in the English-language magazine Dabiq, the ISIS regarded the Yazidis as belonging to a turncoat sect that worshiped Satan, that it is permissible to kill or imprison them; and they are not eligible for the protection like Muslim or Christian tribes, and therefore their

women can be kept in captivity [Sexual slavery], and they are warned, the either repentance or death (Shereen 2017). Women who accepted to enter Islam received preferential treatment, they turned into wives for fighters on condition of observing their Islam. Those who refused to convert to Islam, were considered Ma malakat aymanukum (Thomas 1885)¹. Yazidi women and their children were divided among ISIS fighters who participated in the Sinjar operations (UNAMI 2014: 25), some of them were sent to Syria, and sold in slave market (UNAMI 2014: 14-15). While older women were executed to get rid of them (Charlotte Alter 2015).

A testimony of a 17-year-old Yazidi teenager revealed details of what she had been subjected to since when she was captured by ISIS forces in August 2014. Together with 10-year-old sister, they were transferred from Sinjar to Raqqa, the capital of ISIS, where they were examined with dozens of other girls and women to confirm their virginity. She and other virgins were brought into a room, with forty men to choose them [It looks like a special auction]. There she thought, she was lucky because she was "not as beautiful as the others", but within 10 minutes she and her 10-year old sister and two other girls were bought, by an ISIS fighter of Chechen origin. The Yazidi teenager says that, this Chechen fighter stripped them daily in the morning, "smelling" them to decide which one he would have sex with, while the guards would get the rest. A girl when chosen by the Chechen fighter was likely lucky to be beaten less. This teenager says she wanted to kill herself after months of torment. There was no hope of resistance, on one occasion when she tried to resist, a guard poured boiling water on her thighs (Shereen 2017). The girl was three months pregnant with a child of one of those fighters. She concluded her testimony by saying: What do I have to live for? I try to forget, but... whenever I close my eyes I see them in front of me, I want to kill myself (Jane 14 March 2019).

All the individual testimonies of Yazidi women and girls who managed to escape from ISIS are similar (Khodr Dumeli 2016). Testimonies of gang rape, brutality and slavery are repeated accounts of and details of physical abuse, torture by beatings, electric shocks, food deprivation, and rapes, and severe torture if the ISIS fighters discovered any suicide attempts by the girls. Not only did Yazidi women suffer from appalling physical and psychological trauma as a result of the horrific sexual violence; worse, some were burned to death when they refused to have sex with its fighters (Jennifer Newton 2016). ISIS terrorists openly burned 19 Yazidi women alive. They were burned to death in iron cages, when they refused to have sex with ISIS fighters. According to an eyewitness in Mosul, 19 girls were burned to death, while hundreds of people were watching (Fox News 2017). Nobody could do anything to save them from the brutal punishment. Even more, one of the grim situations was finding the bodies of 50 Yazidi girl captives, the sex slaves of violent extremist group near the Baghouz area of Syria (Mark Nicol 2019). Their bodies were found in garbage cans by the international coalition forces. Adding to the psychological suffering of survivors is that they have to deal with the loss of dozens of relatives, who were killed or captured by ISIS forces, in addition to their

precarious asylum situation away from their homes.

Post-Rescue Shock: Yasmin [17 years old] was in a refugee camp in north Iraq for two weeks when she imagined she heard ISIS fighters outside her tent. Yasmine was extremely traumatized at the thought of facing another rape and abuse. Overwhelmed with extreme fear she poured gasoline on herself and set fire. The flames burned her hair and face, which peeled away her nose, lips and ears (World Associated Press 2016). The ISIS did not spare anyone, young or old, even a girl [8 years old] said she has been sold by ISIS eight times and has been raped 100 times in 10 months (World Associated Press 2016). Another girl [10 years old] died of her wounds after suffering rape and repeated torture for 15 days at a school near Mosul where she was being held (Ceasefire Centre 2016:16).

Attitudes of Yazidi Community towards ISIS Rapists

Escape is not the end of suffering for survivors from ISIS atrocities, more tragedies awaiting them even after. The horror continues after their liberation when they return to their community, which is considered conservative (UNHCR's 2007:81). Some families do not accept the presence of any girl who was raped to be among them, she will carry this stigma (UNHCR 2005:35-36). In extreme cases, some of them are threatened with death by relatives if it is confirmed that ISIS fighters have raped them hence "polluted" their honor (UNHCR's 2007:122). Survivors of sexual violence are increasingly traumatized by guilt-consciousness and stigma for rape. Survivors feel that their "honor" and that of their families have been tarnished. They fear that their status in society is diminishing as a result of what has happened. This explains why many have attempted suicide (Lizzie Dearden 2014).

When a raped Yazidi woman survivor returns to her community, her body becomes an issue, the Islamic State considered it a despicable body. The community would consider it a usurped body, unacceptable in the eyes of her community. The unfortunate woman is an apostate that tarnishes the honor of family, society and threatens ethnic purity (Shereen 2017). Nevertheless, massive enslavement of Yazidi women has prompted Yazidi elders to pass a decision to accept raped women and girls to return to their families. The Yazidi Spiritual Council made historic initiative to solve the problem of female survivors by issuing a decree on 24 April 2019 (Marta Rullán 2019). It says that it welcomes all the survivors of ISIS, and considers what they were subjected to beyond their control. A delegation of clerics was also dispatched to Syria to search the kidnapped women to return them to Iraq.

For centuries, Yazidis traditionally have been rejecting their women who marry people from outside the sect, even if they are married against their will. Girls who were kidnapped by ISIS in 2014 faced the same fate, were it not for the historical decree issued by the spiritual leader of the Yazidi sect, Baba Sheikh. The decree ruled that Yazidi society should honor all those who remained alive after the sexual assaults at the hands of ISIS operatives.

Despite the Supreme Spiritual Council of the Yazidi Religion decree that Yazidi survivors should be allowed to return to their families in the Sinjar region without pressure; the fate of the children of girls born of unknown parents due to captivity and rape, remained outcasts in the community and the Iraqi law.

Many Yazidi families promised their daughters the possibility of keeping their children, and yet still act on separating children from them. Suicide rates among women forced to abandon their children are high, there is little support or resources in underfunded refugee camps where the Yezidis now live, ignored and neglected (Brenda Stoter 2020).

Position of the Elders on Yazidi Children of ISIS Fighters

Children of ISIS fighters are lost children, of helpless mothers and unknown fathers. A survivor laments "I`m very worried about my family and their attitude would be in front of people if I returned to my area with a child I gave birth from my enemy." She was forced to leave her daughter in Raqqa [Syrian city], when she fled to Iraq with the help of PKK forces. She stopped talking to us, then embraced her little daughter socks, "It is impossible for a mother to abandon her child even if she gave birth to it from her enemy" (Abdul Rashid 2019). The tragedy of this girl and her child is repeated among hundreds of Yazidi victims of sexual slavery and systematic rape between [2014 - 2017]. The children of these girls are dispersed by ISIS fighters without any title or documents after they were born.

Most of the children - between weaning age and slightly older - have either been left in ISIS areas because of Yazidi society does not accept them, or killed together with their mothers while fleeing. While those returned with their mothers now face social isolation and denial of identity papers (Marta Rullán, 2019), a clear violation of the Iraqi Constitution and the Nationality Law. While the community refuses to assimilate them, the Interior Ministry is reluctant to provide them with identity documents.

There is no official census of the number of ISIS children of Yazidi mothers. But estimates of Baghdad province, the Ministry of Labor and Social Affairs and the Office of the High Commissioner for Human Rights in Iraq coincide on the placement of 80 children in care homes. Among them were four children with their mothers, who refused to abandon them in return for reintegration into Yazidi society (Abdul Rashid 2019).

Women are "not guilty" because they were forced to have children in coercive circumstances and forced to abandon their children While another "Yezidis, they voluntarily decided to hand over their children to places such as nursing homes, believing such homes will take care of their children. There were 13 pregnant women, including seven who keep their pregnancies assisted by the Yazidi Relief Organization. This is to protect the fetus until birth and consider whether the mother will keep her baby (Hossam 2019).

A declaration by the Supreme Yazidi Spiritual Council in Iraq, refused to include the children of Yazidi women who have been kidnapped and raped by ISIS

members into the Yazidi community (Sirwan Kajjo 2019). This happened only after one week of welcoming the return of ISIS survivors and considering what happened to them "beyond their control". There are religious and legal barriers facing survivors' children, the Yazidis do not recognize a child within their community, if it is merely born by a Yazidi mother and a father. The Iraqi law does not allow registration as Yazidi children, because their fathers are `Muslim`.

"The decision was not in my hands, I was forced to leave my daughter and joined my family, because my uncle told me that this child was born as a result of the sexual rape by ISIS militants, and this would not be acceptable in Yazidi society". Said a mother who was forced to leave her child; "My daughter like me, are innocents. I was a victim twice. The first time I was kidnapped by ISIS operatives, I was subjected to all forms of torture and abuse, rape and eventually pregnancy. Today I am also a victim of laws, customs and traditions".

The Iraqi authorities has no official figures on the children born by ISIS-raped Yazidi women. The lack of official figures that clearly indicated that the number of the victims were not registered by Iraqi government since 2014.

Murad Sheikh Kalou, a leader of the Yazidi community highlighted that the hundreds of children of unknown origin birthed by the raped Yazidi women, will face problems and uncertainty of their fate. He said that the children are in precarious situation when some was embraced by their mothers, others are being moved between the camps and orphanages without a known fate" (Yezidi crowd 2018).

Roles of the Government

Children are the innocent victims of the horrible circumstance of the armed, religions and social conflicts. It is not justifiable to put them in the center of this catastrophe. It is an obligation to save them from being victims of the bloody conflicts. It is justice to protect them for better future, keeping them safe from the horrors inflicted by ISIS. The children need to be part of the sustainable solutions to the problem.

It is a serious legal problem pertaining to the issue of acceptance of the children in Yazidi society. Even if they were accepted with their mothers among Yazidi families, they will still face legal barriers in the future. Under Iraqi law, for which Islam is a reference, these children will be registered as Muslims.

The state is required in such a complex and delicate circumstance to leave the human choice of mothers and to halt the application of Article (45) of the Iraqi Juvenile Welfare Law No. 76 of 1983 as amended. This legal issue complicates the problem and does not help in the acceptance and embrace of children by non-Muslims [Yazidis]

To consider the children as Yazidis within Yazidi community, they will have to hold baptism ceremonies to accept them. The will record for Yazidis this attitude as an advanced humanitarian position in the face of religious extremism. Yazidi society does not have the right conditions to accept children, and does not have

the luxury to adapt to the presence of these children among their families. Yazidi society is still living in a state of "genocide" and to date hundreds of thousands of Yazidis are scattered in tents set around the mountains overlooking Sinjar. So, the state and the international community must also help solve this problem, not just the families of the victims. The families are under pressure, such as the pressure of religion, existing laws, society, and the pressure of the current situation.

These issues need strong international supports for the reintegration and rehabilitation of these children in Yazidi society, in addition to providing psychological support to the mothers of children who are the rape victims. They are still the painful reality even when most of these women returned to the camps after their liberation. Out from the hell of ISIS to the hell of living in tattered tents. The community and law procedures must be simplified to ensure the survivors are able to get salvation and benefits they deserve. Gender-based laws must be reviewed, particularly, of the state law that only male family members have access to certain rights and benefits.

Women and girls should have access to medical, psychological, financial, living and other supports. The state must increase the medical and psychological services provided to IDPs fleeing the advance of the Islamic state. Agencies should pay special attention to the needs of survivors of sexual violence, who should receive comprehensive post-rape care. These services must be given high priority to the confidentiality and privacy of the victims, in accordance with international standards. It should be provided in a manner that does not enhance stigma or expose victims to abuse. There are broad legislative and institutional amendments are needed to facilitate access to justice and provide care and protection to victims during trials.

Children born in ISIS-controlled areas should have the same civil rights as any other Iraqi citizen, and the government should ensure that they are protected from marginalization and abuse. It must be ensured that they are not discriminated against on the basis of their birth certificate indicating their birth outside marriage; or of a father associated with ISIS. They should not be left unregistered and at risk of statelessness, exploitation and trafficking. There should also be a consideration for establishing an institution to adopt children who are abandoned by their mothers for various motives, justifications or pressures. Keep the children under the auspices of qualified professionals who are able to deal with this problem with a secular vision away from the framework of religion. Work for possibility of an acceptable solution that can be resorted to by the local Yazidis community, who by themselves are unable to find one.

The general security situation in the country so far is not promising and is not secure, and protection from violence is of fundamental importance to all Iraqis, the role of government agencies such as the police and the justice system remains limited². Women and girls in particular are the most vulnerable link in these less secure conditions.

Legal Provision

There were no legal provisions that can protect the women and girls in areas under ISIS control. The Yazidi women faced constant violations of human rights and international humanitarian law. They were raped and sexually assaulted, forcibly deported, abducted, deprived of liberty, enslavement, forced to convert to another religion, and cruel, inhuman and degrading treatment (Amnesty International 2014).

The Iraqi government has an obligation to domestic legislation and international human rights law. The government has to ensure that all victims have access to justice and reparation. Including prosecuting those accused of these crimes before independent and impartial courts, so that the victims can rebuild their lives and the lives of their children. They need justice and compensation for the damage they have suffered.

The children of raped Yezidi woman have been experiencing worsening problem day after day, especially after some have been separated from their mothers and placed in shelters and orphanages (Jane 6 Jun 2019).

The legal status of these children is complicated by the Iraqi Nationality Law, where children are viewed in two categories. A child born to an Iraqi mother and an unknown father in Iraq it is an Iraqi, in which case he will get citizenship. Those born to an Iraqi mother and an unknown father outside Iraq, such as the children of kidnapped Yezidi girls, for example, who will face a problem and will not obtain Iraqi citizenship. In this case, they are obliged to reside in Iraq until they are 18 years old, and they will have to submit a written request to the Minister of Interior as he is the only one who has the authority to decide on this matter. For this acquired nationality, the slot for religion, will state him/her as Muslim³ because the law of the unified national card states that a son who is born to a Muslim father, is a Muslim whatever his mother's religion.

For the "illegitimate and of anonymous descent"; father's name will be a pseudonym. This is for those born in Iraq and those born outside Iraq. For the Yazidis, this issue has profound social impact. In these cases, minor children born to an unknown parent from ISIS are considered to be Muslim by law. This is unacceptable to a closed conservative society like the Yazidi community.

It is appropriate to review and amend discriminatory laws to suit the current situation to enable women to transfer their family name and religion to their children. Or travel to a European country to register these children in the names of their mothers. This may help alleviate some of the difficulties the women faced. This may be a possible and acceptable solution that can be resorted to in case the local community, especially the Yazidis, are unable to find an acceptable solution for them.

Article 30 of the Iraqi Constitution and the Personal Status Law No. 188 of 1959 provide for the right of all Iraqi children to a safe environment and supporting documentation. However, the fate of children of ISIS fathers and mothers of Iraqi

Yazidis is still unknown amid the absence of solutions because the state views the whole matter as controversial and difficult situation to resolve. The unwillingness of the government to deal with the files of these children under the pretext of sensitivity and complexity shifted the issues on security outlook and ideology of the Yazidis themselves. Consequently, the Ministry cannot register children and provide them with identification documents such as birth certificates, a predicament contrary to the Constitution and the Iraqi Nationality Law, Article 18 of the Iraqi Constitution⁴. The Article provides for the possibility of registering children at birth by their mothers as Iraqi according to the Constitution. Article 19 of the Births and Deaths Act No. 148 of 1971, provides for "registration of children of unknown origin", after the court gives them a family title. The state's failure to recognize children violates Article 3 of the Iraqi Nationality Law No. 26 of 2006⁵.

Previous Similar Cases

War usually affects all children in different ways. As civilians, they can be affected physically, psychologically, and emotionally. Physically, they can be harmed by a lack of food, water, medical supplies, and injuries (Bürgin, Anagnostopoulos, Vitiello, Sukale, Schmid, Fegert 2022: 1-9). They may be psychologically traumatized for the rest of their lives due to having been exposed to bombings and fighting, as well as emotionally affected, for example, by having family members directly involved in the war or having lost family members in the war. They may have had to leave their hometown or even their country after being separated from their parents. Children are born during and after conflicts and wars in which the father served in an enemy, allied, or peacekeeping force and the mother was a local citizen. 'Children of war' are frequently stigmatized and discriminated against in their home countries, and their own interests and rights are ignored in post-conflict situations (Lee, Glaesmer, Stelzl-Marx 2021).

Rape and sexual slavery are classified as crimes against humanity and war crimes under the Geneva Convention (Geneva Convention Article 27). All actions that were committed with the intent to destroy, wholly or partially, a target group could be recognized as an element of genocide. According to the UN Children's Fund, systematic rape is frequently used as a weapon of war in ethnic cleansing and has been used in many armed conflicts throughout the twentieth century, including Bosnia, Cambodia, Uganda, and Vietnam (Victoria 2020).

In particular, during the ethnic cleansing campaigns in Bosnia, violence and terrorist-inspired actions were used against civilians of various ethnic or religious groups in specific geographical areas⁶. These include "murder, torture, arbitrary arrest and detention, rape and sexual assaults, as well as the siege of civilians living in ghetto areas, deportation of civilians, deliberate military attacks or threats of attacks on civilians and civilian areas, and deliberate destruction of property (Calic 2007: 70-106).

As a form of terrorism and part of their ethnic cleansing campaign, Bosnian Serb forces and the Serbian army committed mass rapes. During the war, an

estimated 12,000 to 50,000 women were raped. Serbian forces established "rape camps," where women were raped repeatedly and only released when they became pregnant (Freya Smith 2021).

After the 1995 Dayton Agreement ended hostilities, organizations in Bosnia worked to encourage the religious community to accept survivors and their children. Remind people that these children are no different from other children, and it is critical for the woman to decide for herself whether she wants to keep the child born as a result of sexual violence and rape in war (Pilvi 2007: 77-96).

A law based on old Yugoslavian law was adopted, with no restrictions or checks on whether children were born from a formal marriage or not, and single mothers were allowed to register their children under the name of an unknown father with full rights. This was the solution to the systematic rape of Bosnian women during the war, which forced them to become pregnant without a father (Kerry 2021:157-214).

Conclusion

The great dilemma and risks faced by many Yazidi women who sought to recover their rape-born children are endless. They are traumatized by rejection of their own Yazidi community who regarded their children as illegitimate off-springs of ISIS fighters, who are sadistic killers and captors of more than 6000 Yazidis.

Even with the release of the captured women after the last sliver of ISIS territory fell in Syria, they continued to face dreadful future. If they wanted to return to their families in Iraq, they had to leave their children behind. Promises to allow them to visit their children were never kept. Many of the children were taken to orphanages run by the Kurds. Women who opted to cross into Syria to see their children had to cut ties with their family and their community. These women crossed into Syria through an international organization authorized by the Kurdistan Regional Government and officially registered. This arrangement is in coordination with the Autonomous Administration of North and East Syria and the Kurdistan Regional Government to return the rape-born children to their Yazidi mothers. A report on one of the program activities stated that 11 women were taken from the camps to an area close to the Syrian border. There, they handed over 17 children born out of the ISIS sexual abuses. Some of these women gave birth to two or three children during their time in captivity. The entire operation was carried out with the knowledge and assistance of the security forces of the regional government.

A day before the Yazidi survivors left the camp, the Iraqi parliament approved the Yazidi Survivors Law, which stipulates material and moral compensation for women who have been subjected to kidnapping and various forms of violence, with the aim of securing a dignified life for them and reintegrating them into society. Paragraphs on dealing with the issue of ISIS children were deleted from the law unanimously by Parliament at the request of the Emir of the Yazidis and the Yazidi Spiritual Council, according to a statement by a Yazidi MP in

the Iraqi parliament, Hussein Hassan Narmo. The government seemed to have closed the files on children born as a result of sexual abuse by ISIS militants. The government cannot deal with the file of these children due to its sensitivity and complexities in terms of security and ideological threats to the Yazidis themselves. On this basis, the Ministry cannot register children and give them identification documents such as a birth certificate and others, even though the Constitution in Article 30 and Personal Status Law No. 188 of 1959 stipulates the right of all Iraqi children to a safe environment and identification documents. The challenge is to find a procedure that protects these children's rights while not increasing their stigma, making them even more vulnerable or even endangering their lives.

Notes

1. ("What your right hands possess" is a Quran expression referring to slaves. "The term generally used in the Qur'ān for maids is ما ملكت ايما نكم *mā malakat aimānukum*, "that which your right hands possess."" Hughes, T. P. (1885). In *A Dictionary of Islam: Being a Cyclopaedia of the Doctrines, Rites, Ceremonies, and Customs, together with the Technical and Theological Terms, of the Muhammadan Religion*. London: W. H. Allen & Co.
2. Human Rights Watch and other human rights organizations have documented a system of rape, sexual slavery, and forced marriages by ISIS forces to Yazidi women and girls. However, no ISIS member has been held responsible or convicted for these crimes. Forced marriages violate the right to freedom to consent to marriage as stipulated in Article 23 of the International Covenant on Civil and Political Rights, and Article 10 of the International Covenant on Economic, Social and Cultural Rights.
3. The second paragraph of the second article of the Iraqi constitution states, "This constitution guarantees preservation on the Islamic identity of the majority of the Iraqi people, it also guarantees the full religious rights of all individuals to freedom of belief and religious practice, such as Christians, Yezidis, and Mandaeans". This is in contradiction with Article 26 of the National Card Law issued in 2016, which states "Children who are minors in the religion, are follow the Islamic religion from the one of parents"
4. Article 18, of the Iraqi Constitution; First: Iraqi citizenship is a right for every Iraqi and is the basis of his nationality. Second: Anyone who is born to an Iraqi father or to an Iraqi mother shall be considered an Iraqi. This shall be regulated by law.
5. Article 3 of the Iraqi Nationality Law No. 26 of 2006. A. person shall be considered Iraqi if: a. he/ she is born to an Iraqi father or an Iraqi mother. b. he/ she is born in Iraq to unknown parents. A foundling found in Iraq shall, in the absence of proof to the contrary, be considered to have been born therein.
6. Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992), 27 May 1994 (S/1994/674),

Paragraph 130, pp 33.
https://www.un.org/ga/search/view_doc.asp?symbol=S/1994/674.
(Access 9. 6. 2022)

References

- [1] Abdul Rashid al-Saleh (14 April 2019), outcasts in the homes of their mothers, <https://arij.net/daily>. (Access 9. 6. 2022).
- [2] Ahmet Kerim Gültekin, Çakır Ceyhan Suvari (2021), *The Ethno Cultural Others of Turkey: Contemporary Reflections*, Russian-Armenian University Press: Yerevan.
- [3] Aida Muhammad Badr (2018), *Social and Religious Classes of the Yazidi Society*, p. 269.
- [4] Akhbaralaan news (5. August. 2019), Yezidi women who have children of ISIS members ... have two options!. <https://www.akhbaralaan.net/news>. (Accessed 8. 6. 2022).
- [5] Al-Alam TV (10 September 2014), Yazidis delegation: Sistani reference summit in humanity and reassured, [archive.org](http://www.alalam.ir/news/1630855), (11. Sep. 2014). <http://www.alalam.ir/news/1630855>.
- [6] American Committee on International Religious Freedom (USCIRF), *Annual Report 2013 (April 2013)*, Washington, pp. 89.
- [7] Amnesty International (2014), *Ethnic Cleansing on a Historic Scale: Islamic State's Systematic Targeting of Minorities in Northern Iraq*.
- [8] Andalusia Magazine (March 2011), *Yezidi religion and Yazidis Are they Satanists or the campaign of the inheritance of the two rivers?!*. A monthly Spanish-Arabic illustrated magazine from Madrid. Wayback Machine website. <https://majalatalandalus.wordpress.com>.
- [9] BBC News (7 August 2014), "UN Security Council condemns attacks by Iraqi jihadists".
- [10] Brenda Stoter (8 May 2020), *Suicide rates increase within Iraq's Yazidi community*. <https://www.al-monitor.com/originals/2020/05/iraq-minorities-yazidis-suicide.html>. (Access 9. 6. 2022).
- [11] Bürgin, D., Anagnostopoulos, D., Vitiello, B., Sukale, T., Schmid, M., & Fegert, J. M. (2022). *Impact of war and forced displacement on children's mental health—multilevel, needs-oriented, and trauma-informed approaches*. *European Child & Adolescent Psychiatry*, 1-9.
- [12] Calic, Marie-Janine (2007). *Ethnic cleansing and war crimes, 1991–1995. Südosteuropa. Zeitschrift Für Politik Und Gesellschaft*, (01), 70-106.
- [13] Ceasefire Centre (July 2016), *The impossibility of returning home: Iraq's minorities are about to disappear*, the Centre for Civilian Rights and Minority Rights Group International, London, United Kingdom. www.minorityrights.org/ceasefire. (Accessed 8. 6. 2022).
- [14] Ceasefire Centre (July 2016), *The impossibility of returning home: Iraq's minorities are about to disappear*, the Centre for Civilian Rights and Minority

- Rights Group International, London, United Kingdom, pp16. www.minorityrights.org/ceasefire. (Accessed 8. 6. 2022).
- [15] Centre for the studies of ethnicity and multiculturalism "CSEM" (October 2016), Ethnic Composition of Georgia, <https://csem.ge/publications>. (Accessed 10. 6. 2022).
- [16] Christine Allison (20 February 2004), "YAZIDIS i. GENERAL". Encycloardia Iranica. <http://www.iranicaonline.org/articles/yazidis-i-general-1>. (Accessed 10. 6. 2022).
- [17] Christine Allison (January 2007), Yazidisim: A Heterodox Kurdish Religion, The Circle of Ancient Iranian Studies. <https://www.cais-soas.com/CAIS/Religions/iranian/yazidis.htm>. (Accessed 10. 6. 2022).
- [18] Dr. Osama Mahdi (1 September 2014), ISIS publishes video of hundreds of Yazidis entering Islam, Elaf News. <https://elaph.com/Web/News/2014/8/933729.html>. (Accessed 8. 6. 2022).
- [19] Elizabeth Schmermund (15 December 2017). ISIS and the Yazidi Genocide in Iraq. The Rosen Publishing Group.
- [20] Eszter Spät, (2013) Late Antique Motifs in Yezidi Oral Tradition, chap9. "The Origin Myth of the Yezidis" section "The Myth of Shehid Bin Jer", (p. 347).
- [21] Eva Savelsberg, Siemend Hajo (October 2005), Gutachten zur Situation der Jeziden im Irak [in German language], Europäisches Zentrum für Kurdische Studien, p11-12.
- [22] Fox News (6 July 2017), 19 Yazidi girls burned alive for refusing to have sex with their ISIS captors. <https://www.foxnews.com/world/19-yazidi-girls-burned-alive-for-refusing-to-have-sex-with-their-isis-captors>. (Accessed 10. 6. 2022).
- [23] France24 (28. 4. 2019), Iraq: Yazidi Council refuses to include the children of the Yazidi raped jihadists of the sect. <https://www.france24.com/ar/20190428>. (Accessed 9. 6. 2022).
- [24] Freya Smith (2021). Expanding upon the gendered continuum of violence: do gender norms in peacetime play a role in exacerbating armed conflict and violence against women during armed conflict? The cases of the Former Yugoslavia and the Democratic Republic of Congo (Doctoral dissertation).
- [25] Garnik S. Asatryan, Victoria Arakelova (2014), The Religion of the Peacock Angel. The Yezidis and Their Spirit World, 168 Pages, ISBN 9781032179759.
- [26] Geneva Convention article 27, Protocol Geneva article 76-1, Protocol Geneva article 4-2e.
- [27] Gulf News (5 August 2014), "Isil militants execute dozens from Yazidi minority". <https://gulfnews.com/world/mena/isil-militants-execute-dozens-from-yazidi-minority-1.1367034>. (Accessed 9. 6. 2022).
- [28] Hossam Abdullah (2019), documented it by Yezidi Organization for Relief Yazidis, the organization's director.
- [29] Human Rights Watch (15 October 2018), On Vulnerable Ground – Violence against Minority Communities in Nineveh Province's Disputed Territories.

- [30] Human Rights Watch (2009), *On Vulnerable Ground – Violence against Minority Communities in Nineveh Province's Disputed Territories*”, Retrieved 15 October 2018.
- [31] Human Rights Watch interview (13 February 2007) with five Yazidis (names withheld), Toronto, Canada.
- [32] Jamal Pira (March 2019), *ISIS Period*, investigative reports.
- [33] Jane Arraf (14 March 2019), *Yazidis Tell Their Stories About Life Under ISIS*. <https://www.npr.org/2019/03/14/703287508/yazidis-tell-their-stories-about-life-under-isis>. (Accessed 10. 6. 2022).
- [34] Jane Arraf (2019), *In Syria, An Orphanage Cares For Children Born To Yazidi Mothers Enslaved By ISIS*. <https://www.npr.org/2019/06/06/729972161/in-syria-an-orphanage-cares-for-children-born-to-yazidi-mothers-enslaved-by-isis>. (Access 8/6/2022).
- [35] Jennifer Newton (6 June 2016), *ISIS burned 19 Yazidi girls to death in iron cages after they refused to have sex with jihadists*. <https://www.dailymail.co.uk/news/article-3627063/ISIS-burn-19-Yazidi-girls-death-iron-cages-refused-sex-jihadists.html>. (Accessed 10. 6. 2022).
- [36] Kerry O'Halloran (2021). *Intercountry Adoption and the Hague Convention*. In *The Politics of Adoption* (pp. 157-214). Springer, Cham.
- [37] Khodr Dumeli (2016), *the "Black Death" The tragedies of Yezidi women in the grip of ISIS*, Al-Mesbar Center for Studies and Research, 160 pages.
- [38] Kurdish forces also uncovered a mass grave of about 80 elderly women who had presumably been executed because they were too old and undesirable to be sold into slavery. <https://time.com/4152127/isis-yezidi-woman-slavery-united-nations>. (Accessed 8. 6. 2022).
- [39] Laura Smith-Spark (6 August 2014). *"Iraqi Yazidi lawmaker: 'Hundreds of my people are being slaughtered'"*. CNN News.
- [40] Lee, S., Glaesmer, H., & Stelzl-Marx, B. (Eds.). (2021). *Children Born of War: Past, Present and Future*. Routledge.
- [41] Lizzie Dearden (23 December 2014), *Isis in Iraq: Yazidi girls killing themselves to escape rape and imprisonment by militants*. <https://www.independent.co.uk/news/world/middle-east/isis-in-iraq-yazidi-girls-killing-themselves-to-escape-rape-and-imprisonment-by-militants-9940870.html>. (Accessed 10. 6. 2022).
- [42] Loveday Morris (3 August 2014). *"Families flee as Islamic State extremists seize another Iraqi town, pushing back the Kurds"*. The Washington Post.
- [43] Mahmoud Fahmi Darwish (1961), *Guide to the Republic of Iraq for the year 1960*, pp. 431.
- [44] Mark Nicol (24 February 2019) for the daily mail , *'It was like Apocalypse Now': SAS troops find severed heads of 50 Yazidi sex slaves as they close in on last of barbaric ISIS 'tunnel rats*. <https://www.dailymail.co.uk/news/article-6738131/SAS-troops-severed->

- heads-50-Yazidi-sex-slaves-close-barbaric-ISIS.html. (Accessed 10. 6. 2022).
- [45] Marta Rullán Madrid (1 May 2019), Yazidi traditionalists block decree accepting children of women raped by IS. <https://www.efe.com/efe/english/destacada/yazidi-traditionalists-block-decree-accepting-children-of-women-raped-by-is/50000261-3965640>. (Access 7. 6. 2022).
- [46] Nelida Fuccaro (1999), *The Other Kurds: Yazidis in Colonial Iraq*, London & New York: I. B. Tauris. pp. 9.
- [47] Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNAMI (2014), *Protection of Civilians in Armed Conflict in Iraq*, 6 June-10 September 2014, Baghdad, pp.17-18.
- [48] Pilvi Torsti (2007). How to deal with a difficult past? History textbooks supporting enemy images in post-war Bosnia and Herzegovina. *Journal of Curriculum Studies*, 39(1), 77-96.
- [49] Raya Jalabi (11 August 2014). "Who are the Yazidis and why is Isis hunting them", *The Guardian*.
- [50] Richard Spencer (14 October 2014). "Isil carried out massacres and mass sexual enslavement of Yazidis, UN confirms". *Daily Telegraph*. <https://www.telegraph.co.uk/news/worldnews/islamic-state/11160906/Isil-carried-out-massacres-and-mass-sexual-enslavement-of-Yazidis-UN-confirms.html>. (Accessed 10. 6. 2022).
- [51] Roger Lescot (2001), *Yezidiler (The Yezidis)*. Avesta Publications, pp47.
- [52] Sami Nada Jassim Al-Duri (2016), *Yazidis of their origin and beliefs*, pp 27.
- [53] Sami Nada Jassim Al-Duri (2016), *Yazidis Origin and Beliefs*, pp 8.
- [54] Shaam Network (6. May. 2019) Iraq receives a group of Yazidi abductees found in the Hul camp in Syria, <http://www.shaam.org>. (Accessed 8. 6. 2022).
- [55] Shereen Abou El Naga (March 2017), *Citizens and then Sabaya and then survivors: the Yazidi body*, this paper was delivered at the Third Annual Conference of the Arab Council for Social Sciences, held in Beirut .
- [56] Sirwan Kajjo (29 April 2019), *Yazidis Divided Over Children Born of IS Rape*. <https://www.voanews.com/a/yazidis-divided-over-children-born-of-islamic-state-rape/4896530.html>.(access 8/6/2022).
- [57] Steve Hopkins (14 October 2014), *Full horror of the Yazidis who did not escape Mount Sinjar: UN confirms 5,000 men were executed and 7,000 women are now kept as sex slaves*, for *Daily Mail Online*.
- [58] *Tasnim News Agency* (11 July 2017), *Iraqi Prime Minister Haider al-Abadi officially announced the liberation of the city on 10 July 2017. The Iraqi prime minister congratulates the army after the defeat of ISIS in Mosul*. <https://www.tasnimnews.com/en>. (Accessed 8. 6. 2022).
- [59] Thomas Patrick Hughes 1885, *In A Dictionary of Islam*, London: W. H. Allen & Co.

- [60] Tony Lagouranis (2007). Fear Up Harsh: An Army Interrogator's Dark Journey through Iraq. New American Library. p. 128.
- [61] UNAMI_OHCHR_POC-Report (10 September 2014), on the Protection of Civilians in Armed Conflict in Iraq, pp25.
- [62] UNAMI_OHCHR_POC-Report (10 September 2014), on the Protection of Civilians in Armed Conflict in Iraq, pp 14-15.
- [63] UNAMI_OHCHR_POC-Report (6 July – 10 September 2014), on the Protection of Civilians in Armed Conflict in Iraq, pp25.
- [64] UNHCR (2005) Country of Origin Information Iraq, p. 35-36.
- [65] UNHCR's ELIGIBILITY (August 2007), Guidelines For Assessing The International Protection Needs Of Iraqi Asylum-Seekers, Geneva, pp81.
- [66] UNHCR's eligibility (August 2007), guidelines for assessing the international protection needs of Iraqi asylum seekers, Geneva, pp122.
- [67] US Department of State "USDOS"(2006), International Religious Freedom Report – Iraq.
- [68] Valeria Cetorelli (9 May 2017). "Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey". PLOS Medicine <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002297>. (Accessed 8. 6. 2022).
- [69] Victoria May Kerr (2020). Should Forced Marriages Be Categorized as 'Sexual Slavery' or 'Other Inhumane Acts' in International Criminal Law? Utrecht J. Int'l & Eur. L., 35, 1.
- [70] World Associated Press (24 August 2016), Fearing Rape Again By ISIS, She Burnt Herself To Become 'Undesirable'. <https://www.ndtv.com/world-news/fearing-rape-again-by-isis-men-she-burnt-herself-to-become-undesirable-1449535>. (Accessed 10. 6. 2022).
- [71] Yezidi crowd (26. 6. 2018), a leader of the Yezidi crowd reveals hundreds of unaccounted for children of Yezidi rapists. <https://hathalyoum.net/articles/1587090>.(access 9/ 6/ 2022).
- [72] Zouher .K. Abbod (2005), Alazidia ... Facts... Characteristics and Myths, Sweden, chapter 3, pp27.