



The

YAZIDI SUPREME SPIRITUAL COUNCIL

It's failures to protect
the Yazidi women's
and children's rights

SYRIAN ACCOUNTABILITY PROJECT



Syracuse University College of Law & University of Michigan Law School's Syrian
Accountability Project Present:

**THE YAZIDI SUPREME SPIRITUAL COUNCIL: ITS FAILURES TO PROTECT THE YAZIDI
WOMEN'S AND CHILDREN'S RIGHTS**

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Map No. 3835 Rev. 6 UNITED NATIONS
July 2014

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Map of Iraq and its governorates, July 2014. Photo courtesy to the United Nations.

EXECUTIVE SUMMARY

The ISIS campaign to commit genocide on the Yazidi people began seven year ago. In August 2014, ISIS fighters brutally invaded the Sinjar region of Iraq and sought to kill the Yazidi population, in an effort to eradicate the small community. In less than two months, ISIS soldiers killed approximately 9,000 Yazidis. These soldiers captured and sold thousands of others into slavery markets across the Levant and regularly used rape as a war weapon. They forced the Yazidi women to marry ISIS militants, and pregnant women in captivity to abort their future Yazidi children. The horror that unfolded upon the Yazidi people was no accident, as ISIS specifically planned this genocide campaign to eradicate the Yazidi people solely based on religious reasons.

After surviving these atrocities, the Yazidi women faced another challenge, when their own community shunned children with ISIS paternity, sired during the women's captivity. In April 2019, the Yazidi Supreme Spiritual Council declared that the children with a Muslim father will not be considered as a part of the Yazidi community, forcing the mothers to choose between their home or child(ren).

This report discusses the consequences of the Yazidi Supreme Spiritual Council's decision and the correlation between Yazidis and Iraq, and Iraq's obligations to protect its women and children under the treaties it has ratified. The analysis is a commentary on how the decision reflects poorly on the Iraqi government's commitments and how the Yazidi community can better support victims of crimes against humanity. Moreover, the report analyzes the international treaties that Iraq is party to in order to understand how and why the decision is not in compliance with the treaties.

The report begins with an introduction to the Yazidi community and the conflict with ISIS, followed by a historical background of the Yazidi community, their religion and its significance, and the evolution of the Yazidi Supreme Spiritual Council's decision. The following section demonstrates how the decision violates Iraq's obligations under Convention on the Elimination of All Forms of Discrimination Against Women, Convention Against the Rights of the Child, Convention Against Torture, and International Covenant on Civil and Political Rights. The analysis and relationship of these treaties are used as a mechanism to demonstrate the Iraqi government's obligations to protect its women and children and in turn, the Yazidi Supreme Spiritual Council. Going further, this paper strongly recommends that the Iraqi government must ask the secular community to rethink on its decision.

The report then highlights the Iraqi government's response and how the proposed legislation can be amended to better protect Yazidi women and children. Finally, the report outlines recommendations for policy actions that the Iraqi government can implement within its legislation.



Yazidi refugees who escaped IS, at the Newroz camp in Iraq, August 2014. [Rachel Unkovic/International Rescue Committee, CC BY-SA](#).

I. INTRODUCTION

The Yazidi community is a Kurdish speaking ethno-religious group living primarily in the Sinjar Province of northern Iraq.¹ The Yazidi people have a long history of ethnic and religious persecution that spans over the past 700 years.² In recent years, the increased tension of both politics and religions in the region has contributed to a surge of violence against the group.³

In the summer of 2014, the Islamic State of Iraq and Syria (ISIS) used force to occupy the Sinjar Province.⁴ An estimated 40,000 to 50,000 Yazidis fled before ISIS captured Sinjar, but many were captured.⁵ Under ISIS occupation, between August and September 2014, the

¹ Yasmine Hafiz, *Yazidi Religious Beliefs: History, Facts & Traditions of Iraq's Persecuted Minority*, THE HUFFINGTON POST (Sept. 6, 2016), http://www.huffingtonpost.com/2014/08/13/yazidi-religious-beliefs_n_5671903.html.

² *Yazidi*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/Yazidi>.

³ Hafiz, *supra* note 1; Raya Jalabi, *Who are the Yazidis and why is ISIS Hunting Them?*, THE GUARDIAN (Aug. 11, 2014), <http://www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains>; Avi Asher-Schapiro, *Who are the Yazidis, the Ancient, Persecuted Religious Minority Struggling to Survive in Iraq?*, NAT. GEO. (Aug. 11, 2014), <http://news.nationalgeographic.com/news/2014/08/140809-iraq-yazidis-minority-isis-religion-history/>.

⁴ Off. of the United Nations High Comm'r for Hum. Rts. [hereinafter OHCHR], REPORT ON THE PROTECTION OF CIVILIANS IN ARMED CONFLICT IN IRAQ: 6 JULY – 10 SEPTEMBER 2014 (2014), http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC_Report_FINAL_6July_10September2014.pdf.

⁵ *Id.*

Yazidi community experienced campaign of genocide and crimes against humanity, including mass killings, torture, rape, forced abortions, forced pregnancies, human trafficking, and sexual slavery.⁶ During that period, ISIS soldiers kidnapped thousands of Yazidi women from the region and sold them as sex slaves to other ISIS fighters in parts of Iraq and Syria.⁷ ISIS soldiers who occupied the territory of Sinjar initially selected any woman and/or girl they wished.⁸ Those unselected were sold to individual fighters or transported to various slave markets.⁹ Many survivors recounted brutal sexual violence experienced at the hands of ISIS fighters once purchased.¹⁰ Women were beaten, raped, threatened, forced to take birth control or given no birth control, and sold to fighters multiple times.¹¹

Since 2015, some of the Yazidi women who escaped from the ISIS hold were able to talk about their brutal experience.¹² Others, specifically children and the elderly, were released in groups by ISIS during 2015 and 2016.¹³ In the following years, with ISIS losing control of much of its territory, including the cities of Mosul and Raqqa, approximately 120,000 Yazidis returned to Sinjar but reside without basic resources, including water and electricity.¹⁴

Former enslaved women continue to face many challenges when returning to their families.¹⁵ Prior to 2019, only women who willingly gave up the children fathered by ISIS fighters could return.¹⁶ However, in late April 2019, the Yazidi Supreme Spiritual Council issued what was considered a landmark ruling at the time, allowing women and their children to return to their community.¹⁷ A few days later, the Council clarified their position specifying that while the children are welcome into the community with their mothers, they would not be considered or accepted as Yazidis.¹⁸ “No one can convert to Yazidism. The

⁶ Ctr. of Holocaust and Genocide Studies, *Mass Violence and Genocide by the Islamic State/Daesh in Iraq and Syria*, UNIV. OF MINNESOTA: CTR. FOR HOLOCAUST AND GENOCIDE STUDIES, <https://cla.umn.edu/chgs/holocaust-genocide-education/resource-guides/mass-violence-and-genocide-islamic-statedaesh-iraq-and-syria>.

⁷ OHCHR, *supra* note 4; Isabel Coles, *Mass Yazidi grave discovered after Iraq's Sinjar taken from Islamic State*, REUTERS (Nov. 14, 2015), <http://www.reuters.com/article/us-mideast-crisisiraq-yazididUSKCN0T312B20151114>.

⁸ Paulo Sérgio Pinheiro, “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, HUM. RTS. COUNCIL, A/HRC/32/CRP.2, 1, 6 (June 15, 2016), http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf.

⁹ *Id.* at 12.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 14–15.

¹² *Iraq: ISIS Escapees Describe Systematic Rape*, HUM. RTS. WATCH (Apr. 14, 2015), <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>.

¹³ *Elderly Yazidis released by IS militants in Iraq*, BBC (Jan. 15, 2015), <https://www.bbc.com/news/av/world-middle-east-30869163>.

¹⁴ Ben Barkawi, *Six years on: Yazidi survivors see ‘only empty promises’ in aftermath of massacre*, REUTERS (Aug. 4, 2020, 1:31 PM), <https://www.reuters.com/article/iraq-war-yazidis/six-years-on-yazidi-survivors-see-only-empty-promises-in-aftermath-of-massacre-idINL8N2DW0XI>.

¹⁵ Martin Chulov, *Yazidi leaders to allow ISIS rape survivors to return with children*, THE GUARDIAN (Apr. 27, 2019, 2:00 PM), <https://www.theguardian.com/world/2019/apr/27/yazidi-leaders-to-allow-isis-survivors-to-return-with-children>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

children of the Yazidi victims are born from a Muslim father, and our religious rules can't accept them as Yazidis.”¹⁹

This speaks to part of the resistance to integrating these children into the Iraqi Yazidi community comes from the idea, canonized in Iraqi law, that children belong to the religion of their fathers.²⁰ Many in the Yazidi community follow this patrilineal ideology, believing that children born of ISIS rapists are Muslim.²¹ For an insular community besieged and terrorized by ISIS, these children are reminders of the community's pain and perceived as a threat to the community's survival as an ancient non-Muslim minority in Iraq.²² Meanwhile, the Iraqi government refuses to amend the national laws that assign children the religion of their fathers; instead, even laws like the Yazidi Female Survivors' Law enshrine the status quo by declaring that “the existing laws [concerning religious identity] shall apply to the new-born of a Yazidi female survivor.”²³

Despite this option, many survivors are reluctant to return.²⁴ Many women and children find it difficult to locate their families once they are freed.²⁵ Often they have immigrated to other countries or they are simply unable to account for them.²⁶ In some cases, women have sought to reunite with their family members in new countries.²⁷ Many are reluctant to return to the Sinjar region because they do not feel safe returning after years of trauma.²⁸ Even though immigration has been an avenue sought by survivors, most survivors of the ISIS genocide languish in displacement camps in Iraq.²⁹ The Iraqi government has pledged to help the survivors but little concrete action has been taken thus far.³⁰ Dr. Neman Ghafouri, who runs aid projects in many of the displacement camps, likened it to living in limbo, “They are coming back to life in a camp and they are between two worlds — the emptiness of when they came back and the heaviness of what they were forced to go through.”³¹

This paper analyzes the effect of the Yazidi Supreme Spiritual Council's decision through the lens of several treaties that Iraq is signatory to. The human rights treaty bodies have expert members who monitor the implementation of the treaties that the states are party to.³² For example, here, Iraq signed and ratified Convention on the Elimination of All Forms

¹⁹ *Id.*

²⁰ See Anne Speckhard & Molly Ellenberg, *Perspective: Can We Repatriate the ISIS Children?*, HOMELAND SEC. TODAY (July 7, 2020), <https://www.hstoday.us/subject-matter-areas/counterterrorism/perspective-can-we-repatriate-the-isis-children/>.

²¹ *See id.*

²² Jane Arraf, *A Yazidi Survivor's Struggle Shows the Pain That Endures After ISIS Attack*, NPR (Aug. 8, 2020, 8:00 AM), <https://www.npr.org/2020/08/08/898972162/a-yazidi-survivors-struggle-shows-the-pain-that-endures-after-isis-attack>.

²³ Guley Bor, *Iraq's Reparation Bill for Yazidi Female Survivors: More Progress Needed*, LONDON SCH. OF ECON. BLOG (Apr. 26, 2019), <https://blogs.lse.ac.uk/mec/2019/04/26/iraqs-reparation-bill-for-yazidi-female-survivors-more-progress-needed/>.

²⁴ Barkawi, *supra* note 14.

²⁵ Barkawi, *supra* note 14.

²⁶ Barkawi, *supra* note 14.

²⁷ Barkawi, *supra* note 14.

²⁸ Barkawi, *supra* note 14.

²⁹ *See* Arraf, *supra* note 22.

³⁰ Arraf, *supra* note 22.

³¹ Arraf, *supra* note 22.

³² United Nations Human Rts. [hereinafter UNHR], *Human rights treaty bodies*, UNHR, <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

of Discrimination Against Women, Convention on the Rights of the Child, Conventions against Torture, and Convention of Civil and Political Rights so, it has an obligation to take steps to ensure that everyone in its country can enjoy the rights put forth in the treaty. The effect of Iraq signing these treaties and how it should comply moving forward will be discussed starting Section V.

These four treaties were chosen due to the relevancy of the topic and in relation to what the Yazidi women are facing from their own community. Every state party to each of these treaties, including Iraq, must submit progress reports to the Committee of the respective treaty. For example, the CRC asks that the report be submitted every five years after the initial report two years after ratification,³³ whereas, the CEDAW committee asks one for every four years.³⁴ At the end of every session for every nation that is under review, the Committees of each treaty body formulates a concluding observations, which are significant part of the human rights treaty bodies' process for "enforcing" human rights.³⁵ The concluding observations is an accessible, official document from the UN.³⁶ It methodically sets forth what the Committees assessed from the reports the nation submitted and recommends measures for better implementation of the respective rights.³⁷

II. HISTORICAL BACKGROUND

A. THE YAZIDI COMMUNITY

The Yazidis are an ethnic-religious minority who live in various states within the Middle East. Although there is some disagreement about their origin, most scholars and the majority of the Yazidi community state that Yazidis are ethnically Kurdish and speak the northern Kurdish language of Kurmanji, in addition to the host state's dialect.³⁸ While the Yazidi community regionally dispersed after WWII, "[t]he largest group of Yazidis (about 2% of the population in Iraq) live in northern Iraq, which is also home to their main sanctuaries and places of pilgrimage."³⁹ Most of the Yazidi community in Iraq live in the Sinjar mountains, "about two-thirds in the district of Sinjar and most of the remaining third in the district of Sheikhan."⁴⁰ However, the Iraqi government's "Arabization" policy in the 1970s-1980s forced many of the Yazidi to leave their villages and move to mujammas (collective towns) like Qahtaniya or Jazeera, where they forcibly remained after their villages were either destroyed or reappropriated by the government.⁴¹

³³ Laura Theytaz Bergman et al., *The Reporting Cycle of the Committee on the Rights of the Child: A Guide for NGOs and NHRIs*, CHILD RTS. CONNECT 1, 5,

https://www.ohchr.org/Documents/HRBodies/CRC/GuideNgoSubmission_en.pdf.

³⁴ UN Women, *Convention on the Elimination of All Forms of Discrimination Against Women: Reporting*, UN, <https://www.un.org/womenwatch/daw/cedaw/reporting.htm#:~:text=The%20Convention%20obliges%20States%20parties,whenever%20the%20Committee%20on%20the>.

³⁵ Optional Protocol on a Communications Proc., *Concluding Observations*, CHILD RTS. CONNECT, <https://crrreporting.childrightsconnect.org/convention-on-the-rights-of-the-child-concluding-observations/>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Sebastian Maisel, *Social Change Amidst Terror and Discrimination: Yazidis in the New Iraq*, THE MIDDLE E. INST. POL'Y BRIEF 1, 1 (Aug. 2008), https://www.files.ethz.ch/isn/90905/No_18_Social_Change_Amidst_Terror.pdf.

³⁹ *Id.*

⁴⁰ Eva Savelsberg et al., *Effectively Urbanized: Yazidis in the Collective Towns of Sheikhan and Sinjar*, 186 ÉTUDES RURALES 101, 101 (2010), <https://www.jstor.org/stable/41403604>.

⁴¹ Maisel, *supra* note 38, at 2.

Yazidis are a religious minority within Iraq, and they “practice a 4,000-year-old religion that contains elements of Zoroastrianism, Judaism, Christianity, and Islam.”⁴² Yazidism is mostly passed on through oral tradition, rather than written text, which has factored into how the Yazidi community has become ‘one of the more misunderstood groups of the Middle East’.⁴³



Ali Aliyas, the new Spiritual Leader, November 2020. Photo courtesy to [BBC News](#).

It is important to note that the Yazidis face conflicts both externally and internally.⁴⁴ Externally, there is tension between the Yazidi community and the Sunni Arab population because of ISIS’s genocide campaign and brutality towards the Yazidi women.⁴⁵ In addition, the Kurdistan region and the Iraqi government have their own set of agendas that do not include that of the Yazidi community.⁴⁶ Internally, some of the Yazidis consider themselves as a separate ethnic group instead of as Kurds.⁴⁷ This is exacerbated because of the lack of community and political representatives within the Kurds’ legal arena.⁴⁸

ISIS targeted the Yazidis in its campaign to spread its own ideologies and eliminate the Yazidi community. According to ISIS propaganda, Yazidism is a ‘deviant’ religion.⁴⁹ ISIS’s atrocities on the Yazidi community within the Sinjar mountains in 2014 demonstrated

⁴² Naomi Kikoler, “*Our Generation is Gone*”: *The Islamic State’s Targeting of Iraqi Minorities in Ninewa*, SIMON-SKJODT CTR. FOR THE PREVENTION OF GENOCIDE (2015), <https://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf>.

⁴³ Vian Dakhil et al., ‘*Calling ISIL Atrocities Against the Yazidis by their Rightful Name*’: *Do they Constitute the Crime of Genocide?*, 17 HUM. RTS. L. REV. (ISSUE 2) 261, 266 (2017).

⁴⁴ Dave Van Zoonen & Khogir Wirya, *The Yazidis: Perceptions of Reconciliation and Conflict*, MIDDLE E. RSCH. INST. 4 (Oct. 2017), <https://www.usip.org/sites/default/files/Yazidis-Perceptions-of-Reconciliation-and-Conflict-Report.pdf>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, UN HUM. RTS. COUNCIL, para. 37 (Nov. 19, 2014), A/HRC/27CRP.3.

ISIS's denial of the Yazidis' right to exist.⁵⁰ Specifically, ISIS' mass rape of Yazidi women and girls attacked on the Yazidi community's culture and religion because Yazidism puts high value on relations within the faith and the survivors would be ostracized from the community.⁵¹

Additionally, the "intent of ISI[S] to destroy the Yazidi as a group" was evident by testimonies of Yazidi peoples subjected to forced conversions to the Islamic faith on the threat of death.⁵² ISIS published its justifications for the attack on the Yazidi in issues 3 and 4 of the *Dabiq*, ISIS's propaganda magazine, which "exposed ISI[S]'s underlying goal of destroying the Yazidi religious identity in order to supplant its own."⁵³ The *Dabiq* promulgated ISIS's view that the Yazidi should be subject to extreme violence including rape, death, sexual slavery because they were "mushrikin" or polytheists, and unless they converted to ISIS's faith, then the Yazidi should be "kill[ed] . . . wherever you find them."⁵⁴

B. DISCRIMINATION AGAINST THE YAZIDI COMMUNITY

The Yazidi people in northern Iraq have been persecuted for hundreds of years because of misunderstandings of Yazidi beliefs and culture; ISIS has been one of more recent actors that have persecuted against the Yazidi people.⁵⁵ Significantly, discrimination of the Yazidi community predates the formation of current day Iraq and can be traced back to the Ottoman Empire, when forced conversions to Christianity were the norm.⁵⁶ This historical practice continued into the post-colonial formation of the Iraqi state, as the Yazidi community in Sinjar was subjected to "decades of discrimination, [marginalization], and neglect during Saddam Hussein's regime."⁵⁷ His strict Arabization policies seized the Yazidi's lands, forced the Yazidi to move into collective towns, registered the Yazidi as Arab, and made it unlawful to speak Kurdish.⁵⁸

In modern day Iraq, the Yazidis are not only persecuted because of their values, but also because of their critical location in the disputed territory claimed by both Arabs and Kurds.⁵⁹ Prior to the 2014 ISIS attack, both the Arabs and Kurds manipulated the Yazidi community, often using violence "in order to gain power over the territories where this minority is settled."⁶⁰ Due to the Arabization of the Yazidis, many identify as Arab, rather than ethnic Kurds, which challenges Kurdish authority over the regions of Sinjar and Sheikhhan and leads to the Kurd's increase of discrimination against the Yazidis.⁶¹

⁵⁰ *Id.* at para. 57.

⁵¹ Dakhil, *supra* note 43, at 274.

⁵² *Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups*, UN HUMAN RIGHTS COUNCIL, (Mar. 13, 2015), A/HRC/28/18.

⁵³ Dakhil, *supra* note 43, at 275.

⁵⁴ Dakhil, *supra* note 43, at 279.

⁵⁵ Kikoler, *supra* note 42.

⁵⁶ Savelsberg, *supra* note 40, at 103; *see also* Pinheiro, *supra* note 8.

⁵⁷ Valeria Cetorelli et al., *Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey*, 14 PLOS MED. (ISSUE 5) (May 9, 2017), https://link.gale.com/apps/doc/A493733315/HRCA?u=nysl_ce_syr&sid=HRCA&xid=3dddb813.

⁵⁸ Savelsberg, *supra* note 40, at 104.

⁵⁹ Savelsberg, *supra* note 40, at 104.

⁶⁰ Savelsberg, *supra* note 40, at 104.

⁶¹ Savelsberg, *supra* note 40, at 105.

III. THE YAZIDI SUPREME SPIRITUAL COUNCIL'S DECISION

A. EVOLUTION OF THE DECISION

Starting in the early hours of August 3, 2014, hundreds of ISIS fighters swept through the Sinjar region of Iraq, which is home to the Yazidi ethnic group.⁶² Met with little resistance, ISIS fighters focused on capturing as many Yazidis as they could, installing roadblock checkpoints and deploying smaller patrols to round up those who had fled.⁶³



Photo courtesy to [Rodi Said/Reuters](#).

In the days following August 3rd, ISIS fighters captured and killed thousands of Yazidis in the Sinjar region.⁶⁴ Upon capture, male and female Yazidis were separated and taken to holding sites.⁶⁵ Men and boys over the age of 12 were either forced to convert to Islam or executed.⁶⁶ Executions usually ranged from 2–12 victims, except on two occasions when 80–100 male Yazidis were killed.⁶⁷ Those who converted were forced to work, digging trenches and laboring on construction projects.⁶⁸ Any Yazidi who attempted to escape was executed.⁶⁹

Women and girls aged 9 and above were also taken to holding sites and separated into two different groups: married and unmarried.⁷⁰ Once in a holding site, ISIS fighters selected any woman or girl they wished.⁷¹ Those unselected were sold to individual fighters or

⁶² Pinheiro, *supra* note 8.

⁶³ Pinheiro, *supra* note 8, at 7.

⁶⁴ Pinheiro, *supra* note 8, at 7.

⁶⁵ Pinheiro, *supra* note 8, at 7.

⁶⁶ Pinheiro, *supra* note 8, at 8.

⁶⁷ Pinheiro, *supra* note 8, at 8-9.

⁶⁸ Pinheiro, *supra* note 8, at 9.

⁶⁹ Pinheiro, *supra* note 8, at 9.

⁷⁰ Pinheiro, *supra* note 8, at 10.

⁷¹ Pinheiro, *supra* note 8, at 11.

transported to various slave markets.⁷² Many survivors recounted brutal sexual violence experienced at the hands of ISIS fighters once purchased.⁷³ Women were beaten, raped, threatened, forced to take birth control or given no birth control, and sold to fighters multiple times.⁷⁴

As of August 2020, about 200,000 Yazidis remain displaced.⁷⁵ Meanwhile approximately 120,000 have returned to Sinjar but reside without basic resources, including water and electricity.⁷⁶ Former enslaved women face many challenges when returning to their families.⁷⁷ The Yazidi Supreme Spiritual Council in 2019 only added to their suffering.⁷⁸

B. EFFECT OF THE DECISION

Yazidi women have since responded to the Spiritual Council's decision in a variety of ways. Despite the possibility of returning home, many survivors are reluctant to do so for other reasons.⁷⁹

For example, many women and children find it difficult to locate their families as they remain unaccounted for.⁸⁰ Moreover, if their families have immigrated to another country, some Yazidi women choose to reunite with their family members there instead of returning to Sinjar.⁸¹ Other women, however, are reluctant to return to the Sinjar region because they do not feel safe after experiencing years of trauma.⁸² As a result, many survivors of the ISIS genocide remain in displacement camps in Iraq; while the Iraqi government has pledged to help the survivors, little concrete action has been taken thus far.⁸³

Other women opted to remain with their children, avoiding repatriation to Iraq and denying their Yazidi heritage.⁸⁴ Very few, if any, Yazidi women have elected to live elsewhere in Iraq with their children because of the socioeconomic and cultural barriers.⁸⁵

The Yazidi women who choose to return to the Sinjar region are often separated from their children. Some mothers willingly leave their children behind as they serve a reminder of being raped and brutalized by ISIS members.⁸⁶ Other women who leave their children in orphanages are told that they will be able to retrieve their children once they settle in their community in Iraq.⁸⁷ However, they often discover that their children have been adopted or have disappeared altogether,⁸⁸ leaving some mothers to beg to see pictures or plead for any

⁷² Pinheiro, *supra* note 8, at 12.

⁷³ Pinheiro, *supra* note 8, at 14.

⁷⁴ Pinheiro, *supra* note 8, at 14–15.

⁷⁵ Barkawi, *supra* note 14.

⁷⁶ Barkawi, *supra* note 14.

⁷⁷ Chulov, *supra* note 15.

⁷⁸ Chulov, *supra* note 15.

⁷⁹ Barkawi, *supra* note 14.

⁸⁰ Barkawi, *supra* note 14.

⁸¹ Barkawi, *supra* note 14.

⁸² Barkawi, *supra* note 14.

⁸³ Arraf, *supra* note 22.

⁸⁴ Arraf, *supra* note 22.

⁸⁵ Arraf, *supra* note 22.

⁸⁶ Arraf, *supra* note 22.

⁸⁷ Chulov, *supra* note 15.

⁸⁸ Nafiseh Kohnavard, *A Mother's Heart-Breaking Choice*, BBC (Aug. 1, 2019) <https://www.bbc.co.uk/news/extra/gNcHgmLgmv/yazidi-mothers-choice>.

news.⁸⁹ Many Yazidi women have been driven to commit suicide as a result of being forcibly separated from their children.⁹⁰

While some leave their children behind in orphanages or halfway houses, others are forced to separate from their children due to pressure or deception from their family and broader community.⁹¹ From the elders within their faith to members of their family, pressure to sever that part of their lives is widespread among the community.⁹² Children of rape serve as a reminder of the trauma the community experienced and are framed as a risk to the survival of the Yazidi society.⁹³ For example, in some cases relatives place the child in an orphanage once they discover the child's identity.⁹⁴ Other women have been told by Yazidi authorities that taking their children with them back to Sinjar would result in harm for the child as the community would remind the child of his or her paternal connection to ISIS and potentially deny the child rights because of that connection.⁹⁵

The rejection of these children by the Yazidi community can be understood as an attempt to preserve the identity of the community, which is surrounded by a Muslim population.⁹⁶ The Yazidi community has always rejected children fathered by non-Yazidis, and, in this case, the pressure to reject the children is even greater because the fathers are the same Sunni Muslim radicals who aimed to wipe out the Yazidi population.⁹⁷

Despite the desire some women have in reuniting with their children, there still remains no clear solution from both the Iraqi government and the Yazidi community.⁹⁸ Although many Yazidis have been granted asylum in Europe, those who have children fathered by an ISIS fighter report that most governments remain unwelcoming.⁹⁹ Notably, a recent decision from the Iraqi Judiciary held an ISIS member accountable for his actions as a rapist has brought about hope for justice.¹⁰⁰ This was the first time in Iraq that the Islamic State's crimes against Yazidis were recognized, in addition to the first time a Yazidi victim was able to confront her rapist.¹⁰¹ The rape charge is a step forward in the right direction as it illustrates the seriousness of the crime and its standing within the Iraqi Judiciary while providing victims with an opportunity to have their day in court.¹⁰²

⁸⁹ See, e.g., Arraf, *supra* note 22.

⁹⁰ Arraf, *supra* note 22.

⁹¹ See Louisa Loveluck and Mustafa Salim, *Yazidi Women Raped as ISIS Slaves Face Brutal Homecoming Choice: Give Up Their Child or Stay Away*, THE WASH. POST (July 30, 2019), https://www.washingtonpost.com/world/middle_east/yazidi-women-raped-as-isis-slaves-face-brutal-homecoming-choice-give-up-their-child-or-stay-away/2019/07/30/f753c1be-a490-11e9-b7b4-95e30869bd15_story.html; see also Jane Arraf, *Freedom from ISIS Means Yazidi Women Must Abandon their Children*, NPR (Apr. 3, 2019), <https://www.npr.org/2019/04/03/709348198/freedom-from-isis-means-yazidi-women-must-abandon-their-children>.

⁹² Gina Vale, *Liberated, Not Free: Yazidi Women After Islamic State Captivity*, 31 SMALL WARS AND INSURGENCIES 511, 529 (2020).

⁹³ Vale, *supra* note 92, at 530.

⁹⁴ See Hamza Hendawi, Qassim Abdul-Zahra, and Salar Salim, *Iraqi Minority Shuns Children Born of IS Rape, Enslavement*, AP NEWS (Oct. 28, 2018), <https://apnews.com/article/7b9a8ff33b8c40c38deb9f210408608d>.

⁹⁵ See, e.g., Arraf, *supra* note 22.

⁹⁶ Arraf, *supra* note 22.

⁹⁷ Arraf, *supra* note 22.

⁹⁸ Chulov, *supra* note 15.

⁹⁹ Chulov, *supra* note 15.

¹⁰⁰ Alissa Rubin, *She Faced Her ISIS Rapist in Court, Then Watched Him Sentenced to Death*, THE NEW YORK TIMES (Mar. 2, 2020), <https://www.nytimes.com/2020/03/02/world/middleeast/isis-iraq-trial.html>.

¹⁰¹ *Id.*

¹⁰² *Id.*

In the Iraqi Judiciary case, the victim, Ms. Haji Hamid, was raped up to three times a day after being “married” to her captor without her consent.¹⁰³ Such a harrowing experience caused her to contemplate suicide as the only way out of her situation.¹⁰⁴ However, she persevered and escaped to the Sinjar mountains.¹⁰⁵ She is one of the few who did not become impregnated from her captor and does not have to face the difficult decision of giving up her child.¹⁰⁶ She did not become pregnant because she had her captor take her to the hospital by pretending she was ill. Then, she begged the doctor for birth control pills which she took secretly.¹⁰⁷

IV. IRAQI LEGISLATION AND ITS EVOLUTION

In April 2019, the Iraqi government submitted “The Yazidi Female Survivors Law” to Parliament to address the plight of Yazidi women.¹⁰⁸ If enacted, it would be the first time Yazidis were recognized as a distinct group from the rest of Iraqis in the country’s history.¹⁰⁹ It also recognizes the crimes committed against the ethnic group as genocide and stipulates offenders should not be given amnesty and be held liable under criminal proceedings.¹¹⁰ The legislation, as drafted, seeks to provide monetary compensation, medical treatment, and economic support to ISIS kidnapping victims.¹¹¹ The draft has various components to aid in rehabilitation such as: monthly stipends, free housing, educational rights, and other measures.¹¹² If passed, the legislation would also establish a General Directorate for Survivors Affairs headed by a Yazidi civil servant appointed by the Council of Ministers.¹¹³ Additionally, the legislation puts an emphasis on placing female survivors into public posts.¹¹⁴

As drafted, the legislation only provides help to female survivors of the ISIS kidnappings and does not consider male and child survivors.¹¹⁵ Many Yazidis suffered from ISIS’s actions in 2014 including: women who died both in captivity or after they were freed, men who were killed and thrown into mass graves, and children who were forced to become fighters.¹¹⁶ Activists believe the legislation should acknowledge and compensate all the victims affected.¹¹⁷ Yet, some still admit the legislation is moving in the right direction to solve problems of the perpetrators’ accountability and compensation and justice for the Yazidis.¹¹⁸

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Rubin, *supra* note 100.

¹⁰⁶ Rubin, *supra* note 100.

¹⁰⁷ Rubin, *supra* note 100.

¹⁰⁸ Saad Salloum, *Iraqi bill on Yazidi female survivors stirs controversy*, AL-MONITOR (Apr. 25, 2019), <https://www.al-monitor.com/pulse/originals/2019/04/iraq-yazidi-isis-minorities.html>.

¹⁰⁹ Nisan Ahmado, *Push for Reparation Bill in Iraqi Parliament*, VOICE OF AMERICA (Feb. 19, 2020, 12:08 AM), <https://www.voanews.com/extremism-watch/yazidis-push-reparation-bill-iraqi-parliament>.

¹¹⁰ Kristen Smith & Sonali Dhawan, “*Yazidi Female Survivors Law*” in Iraq is groundbreaking but not enough, OPEN GLOBAL RTS. (Oct. 13, 2020), <https://www.openglobalrights.org/yazidi-female-survivors-law-in-iraq-is-groundbreaking-but-not-enough/>.

¹¹¹ Salloum, *supra* note 108; Smith, *supra* note 110.

¹¹² Salloum, *supra* note 108.

¹¹³ Salloum, *supra* note 108.

¹¹⁴ Salloum, *supra* note 108.

¹¹⁵ Salloum, *supra* note 108.

¹¹⁶ Salloum, *supra* note 108.

¹¹⁷ Salloum, *supra* note 108.

¹¹⁸ Salloum, *supra* note 108.

A controversial aspect of the legislation concerns the status of children born to Yazidi survivors. The law states “[c]hildren of ... female Yazidi survivor[s] shall be subject to applicable laws.”¹¹⁹

The Council has again waded into the dilemma by calling on Parliament to amend the legislation to delete the article that stipulates Yazidi children be registered in compliance with the Juvenile Welfare Law.¹²⁰ If the legislation is not amended and the provision remains, many Yazidi women would face the dilemma of either giving their children up or returning home with a child that would be characterized as a Muslim and not a Yazidi and therefore not accepted into the community.¹²¹

The American Bar Association (ABA) outlined additional details that could make the Iraqi legislation more nuanced, inclusive, and compliant with Iraq’s international obligations.¹²² One proposal highlights the necessity of a victim’s privacy and confidentiality when seeking reparations.¹²³ The ABA also advocates for a broader scope of the word “victim” to better address the scale of the 2014 sweep and the lasting impact it had on the individuals, families, and communities.¹²⁴ Furthermore, the article pushes for the Iraqi government to consult with the victims to ensure the legislation is efficiently drafted in a manner that provides the necessary support to the victims as well as fill in the gaps of discrimination and gender inequality.¹²⁵

Since it was first introduced, the bill has had two readings in Parliament, but has failed to pass because of pushback from the members of the Parliament.¹²⁶ In hopes to reform the legislation, a special committee was formed¹²⁷ and the title of the bill was changed to “Iraqi Women Survivors’ Law” so other minorities who suffered at the hands of ISIS could be included.¹²⁸ Several activists are concerned this measure and other reforms could lead to a further watering down of the legislation.¹²⁹ While the bill waits on a vote in Parliament, the government has held workshops to include the input of Yazidis to better improve articles of the legislation.¹³⁰ Mr. Saeed Allo, Executive Director of the Springs of Hope Foundation, stated it is crucial for Yazidi activists to work with their community members to better educate them about their rights as the legislation continues to be debated and reformed in parliament.¹³¹

¹¹⁹ Salloum, *supra* note 108.

¹²⁰ Sura Ali, *Iraqi President receives Nadia Murad as Yazidi women reparation bill sees continued delay*, RUDAW (Feb. 1, 2021), <https://www.rudaw.net/english/middleeast/iraq/010220212>.

¹²¹ See Chulov, *supra* note 15; see also Elizabeth Tsurkov, *Yazidi Community Struggles to Grapple with Children*, THE FORUM OF REGIONAL THINKING, <https://www.regthink.org/en/articles/Yazidi-children-ISIS>.

¹²² Kristin Smith & Güley Bor, *Reparations Bill for Victim of Sexual Violence During Conflict: Recommendations to Ensure Compliance with International Standards*, AM. BAR ASS’N 1, 2 (June 2020), https://www.americanbar.org/content/dam/aba/administrative/human_rights/iraq-reparations-report-english.pdf.

¹²³ *Id.* at 2.

¹²⁴ *Id.* at 3.

¹²⁵ *Id.* at 14.

¹²⁶ Ali, *supra* note 120.

¹²⁷ Ali, *supra* note 120.

¹²⁸ Ali, *supra* note 120.

¹²⁹ Ali, *supra* note 120.

¹³⁰ Ali, *supra* note 120.

¹³¹ Ali, *supra* note 120.

The bill was most recently introduced for a vote in early February 2021 but failed to meet the quorum requirement.¹³² After its failure, Iraqi President Barham Salih also met with Yazidi activist and Nobel Peace Prize recipient Nadia Murad to further spur on passing the legislation.¹³³ In a statement published by Iraqi News Agency, President Salih called on Parliament to “expedite the legislation of the Yazidi female survivors law by the House of Representatives, and expand it to include other affected segments.”¹³⁴

V. THE YAZIDI SUPREME COUNCIL’S DECISION VIOLATES IRAQ’S OBLIGATIONS UNDER CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

A. THE CONVENTION, THE COMMITTEE, AND IRAQ’S RESERVATIONS

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly on 18 December 1979.¹³⁵ Iraq ratified it on 13 August 1986, entering a reservation not to be bound by Article 2(f) and (g), Article 9, Article 16, and Article 29 of the convention.¹³⁶

Articles 2(f) and (g) require parties to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” and to “repeal all national penal provisions which constitute discrimination against women.”¹³⁷ Article 9 requires states to “grant women equal rights with men to acquire, change or retain” their nationality or the nationality of their children.¹³⁸ Article 16 provides a series of rights which parties shall ensure “to eliminate discrimination against women in all matters relating to marriage and family relations.”¹³⁹ The reservation to Article 16 was made “without prejudice to the provisions of the Islamic Shariah according women rights equivalent to the rights of their spouses.”¹⁴⁰ Finally, Article 29(1) provides for the settlement of disputes between parties through arbitration.¹⁴¹ In 2014, Iraq withdrew its reservation to Article 9.¹⁴²

State parties to CEDAW must “undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized [by CEDAW].”¹⁴³ Part V of CEDAW established the Committee on the Elimination of Discrimination against Women (“Committee”) “[f]or the purpose of considering the progress made in the implementation of the present Convention.”¹⁴⁴

¹³² Ali, *supra* note 120.

¹³³ Ali, *supra* note 120.

¹³⁴ Ali, *supra* note 120.

¹³⁵ *Status of Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&lang=en (last visited Feb. 12, 2021) [hereinafter CEDAW Status].

¹³⁶ *Id.*

¹³⁷ Convention on the Elimination of All Forms of Discrimination Against Women, Art. 2(f) and (g), Dec. 18, 1979, 1249 U.N.T.S. 13, 19 I.L.M. 33 [hereinafter CEDAW].

¹³⁸ *Id.* at Art. 9.

¹³⁹ *Id.* at Art. 16.

¹⁴⁰ CEDAW Status, *supra* note 137.

¹⁴¹ CEDAW Status, *supra* note 137.

¹⁴² CEDAW Status, *supra* note 137.

¹⁴³ CEDAW, *supra* note 137, at Art. 24.

¹⁴⁴ CEDAW, *supra* note 137, at Art. 17.

Every four years, countries must submit progress reports to the Committee addressing the “legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of [CEDAW].”¹⁴⁵ The Committee meets once a year to review and issue recommendations on these reports.¹⁴⁶ However, the Committee’s recommendations are only soft law, and are therefore not binding on treaty parties.¹⁴⁷ Iraq is not a party to the Optional Protocol that allows the Committee to hear and investigate individual claims of violations of rights protected by the Convention.¹⁴⁸ Nonetheless, claims of violations can reach the Committee via NGO shadow reports.¹⁴⁹ These reports are utilized by the Committee when it makes its recommendations to states concerning compliance with CEDAW.¹⁵⁰

B. IRAQ’S OBLIGATIONS UNDER CEDAW

Article 1 of CEDAW defines discrimination against women as

"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."¹⁵¹

The Committee has stated that discrimination includes gender-based violence, such as coercion or deprivation of liberty directed at women because they are women, or that affects women disproportionately.¹⁵² Discrimination also includes acts that infringe on rights such as: the right to liberty and security of person; the right to equal protection under the law; the right to equality in the family; the right to the highest standard attainable of physical and mental health.¹⁵³ The Yazidi Council’s decision infringes on all these rights and therefore constitutes discrimination against women within the meaning of Article 1 of the Convention.

Since Iraq entered reservations on Articles 2(f) and (g) and 16, the most relevant CEDAW obligation in this case comes from Article 5, which provides:

States Parties shall take all appropriate measures:

(a) To modify the *social and cultural patterns* of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

¹⁴⁵ CEDAW, *supra* note 137, at Art. 20.

¹⁴⁶ CEDAW, *supra* note 137, at Art. 20.

¹⁴⁷ See Catherine O’Rourke & Aisling Swaine, *CEDAW and the Security Council: Enhancing Women’s Rights in Conflict*, 67 INT’L & COMP. L.Q. 167, 174 (2018).

¹⁴⁸ See Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Oct. 6, 1999, 2131 U.N.T.S. 83, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-8-b.en.pdf>.

¹⁴⁹ Committee on the Elimination of Discrimination Against Women, *Working Methods*, U.N. HUM. RTS., <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/WorkingMethods.aspx> (last visited Feb. 12, 2021).

¹⁵⁰ *Id.*

¹⁵¹ CEDAW, *supra* note 137, at Art. 1.

¹⁵² Comm. on the Elimination of Discrimination against Women, Gen. Recommendation No. 19, U.N. Doc. A/47/38 (1992) [hereinafter Gen. Recommendation No. 19].

¹⁵³ *Id.*

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that *the interest of the children is the primordial consideration in all cases*.¹⁵⁴

On the basis of this Article, the Committee rejects discrimination against women “that flows from the official recognition of religious or customary laws.”¹⁵⁵ Direct discrimination can result from “the state party’s *de facto* recognition of customary, traditional, or religious laws and practices” and from state administrative or judicial authorities that do not stand up against religious or community leaders arguing that their practices allow for discrimination against women.¹⁵⁶ The Committee is “firm about the necessity of intervention by the State party when women’s rights are violated based on culture, including religious practices or belief.”¹⁵⁷

C. IRAQ’S RESPONSIBILITIES FOR NON-STATE ACTORS UNDER CEDAW

It is important to note that the Yazidi Supreme Spiritual Council is not part of the Iraqi government. However, the Committee has stated that states may be responsible “for private acts if they fail to act with due diligence to prevent violations of rights...”¹⁵⁸ States must regulate non-State actors by “prevent[ing], investigat[ing], punish[ing] and ensur[ing] redress for the acts of private individuals or entities that impair the rights enshrined in the Convention.”¹⁵⁹ The requirement that states exercise due diligence to prevent human rights violations is longstanding in international law, and is measured by ratification of international human rights instruments, constitutional guarantees of equality, national legislation, accessibility of support services, and measures aimed at remedying discriminatory practices.¹⁶⁰ The Special Rapporteur on Violence Against Women has even argued that the obligation to act with due diligence in addressing violence against women is part of customary international law.¹⁶¹

Iraq has attempted to address its due diligence obligations toward victims of sexual violence by collaborating with the UN on areas such as legislative and policy reform and social services and reparations.¹⁶² However, this collaboration has not been sufficient to ensure that the rights of Yazidi survivors of sexual violence, and their children, are protected.¹⁶³ For example, Iraq’s National Identity Card Law directly contributes to the harmful nature of the Yazidi Supreme Spiritual Council’s decision. Under this 2015

¹⁵⁴ CEDAW, *supra* note 137, at Art. 5 (emphasis added).

¹⁵⁵ Rikki Holtmaat, *Article 5 CEDAW*, in *THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY* 141, 155 (M.A. Freeman, C. Chinkin, B. Rudolf eds., 2012).

¹⁵⁶ Holtmaat, *supra* note 155.

¹⁵⁷ Holtmaat, *supra* note 155, at 156.

¹⁵⁸ Comment No. 19, *supra* note 122, ¶ 24.

¹⁵⁹ Comm. on the Elimination of Discrimination Against Women, Gen. Recommendation No. 30, ¶ 15, U.N. Doc. CEDAW/C/GC/30 (Nov. 1, 2013) [hereinafter Gen. Recommendation No. 30].

¹⁶⁰ Christine Gibbons, *CEDAW, the Islamic State, and Conflict-Related Sexual Violence*, 51 *VAND. J. OF TRANSNAT’L L.* 1421, 1442 (2018).

¹⁶¹ Yakin Ertürk (Special Rapporteur on Violence Against Women, its Causes and Consequences), *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, ¶ 29, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006).

¹⁶² Gibbons, *supra* note 160, at 1444.

¹⁶³ Gibbons, *supra* note 160, at 1444, at 1462-3.

legislation, a child born to one Muslim parent must be registered as Muslim, even if the child was born of rape.¹⁶⁴ This law contributes to dilemma faced by Yazidi leadership in maintaining the integrity of their dwindling community, as it means that children born of rape by ISIS members will be marked as Muslim on their National ID. As a result, Iraq has not only failed to exercise due diligence over Yazidi women's rights, but it has directly contributed to their derogation.

D. IRAQ AT THE 74TH SESSION OF CEDAW

In late October and November 2019, the Committee convened for its 74th Session to consider Article 18 submissions from a variety of states, including Iraq.¹⁶⁵ The Session took place several months after the decision from the Yazidi Supreme Spiritual Council not to accept children born as a result of rape from ISIS members.¹⁶⁶ A wide range of civil society organizations and the High Commission for Human Rights in Iraq submitted reports on the situation, which help explain how Iraq is in violation of its CEDAW obligations with respect to the Council's decision.

The initial Submission from Iraq was received on July 26, 2018, prior to the Council's decision.¹⁶⁷ The report does not mention measures to reintegrate mothers of children born of rape within the Yazidi community. However, the report acknowledges the sexual violence and slavery perpetrated by ISIS against Yazidi women.¹⁶⁸ It states that "[a]round 950 Yazidi women and girl captives were able to escape but the terrible psychological suffering they endured as a result of rape, sexual abuse, forced marriage and resulting pregnancy and abortion had a damaging effect on their health and caused several to commit suicide."¹⁶⁹ In describing the measures taken by the government, the report states that "some 1,528 Yazidi women abused by ISI[S] terrorist gangs are covered by the social assistance scheme" and that "[t]he Ministry of Labour and Social Affairs has upgraded the trafficking shelter in Baghdad to enable it to admit abused children saved from the criminal activity of ISIS gangs. The shelter is open to all children in need of help without discrimination or exception."¹⁷⁰ Further, the report mentions a joint statement signed by the Iraqi Ministry of Foreign Affairs and the Special Representative of the Secretary-General on Sexual Violence in Conflict in September 2016, where Iraq agreed to a joint plan of action committing to "[e]nsure the provision of *support services* and *compensation* for victims and children born as a result of rape" and "facilitating the return and reintegration of [sexual violence] victims in the community."¹⁷¹ However, the report does not present legislative or other administrative action to reintegrate victims of sexual violence *with* their children in the Yazidi community.

The 74th Session by civil society organizations recognized Iraq's shortcomings with respect to its obligations under CEDAW. First, the Minority Rights Group report drew attention to the Civil Status Law, which assigns Muslim identity to children with one Muslim

¹⁶⁴ Ewelina U. Ochab, *Let the Children Be Yazidis*, FORBES (Apr. 3, 2019, 4:02 PM), <https://www.forbes.com/sites/ewelinaochab/2019/04/03/let-the-children-be-yazidis/?sh=5649f59022f8>.

¹⁶⁵ Comm. on the Elimination of Discrimination against Women, Annotated Provisional agenda, ¶ 4, CEDAW/C/74/1 (Aug. 26, 2019).

¹⁶⁶ Loveluck & Salim, *supra* note 91.

¹⁶⁷ Comm. on the Elimination of Discrimination against Women, Seventh periodic report submitted by Iraq under article 18 of the Convention, CEDAW/C/IRQ/7 (Aug. 15, 2018).

¹⁶⁸ *Id.* ¶¶ 9-10, 13.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* ¶¶ 59-60.

¹⁷¹ *Id.* ¶ 68 (emphasis added).

parent, and noted its impact on women with children born of ISIS perpetrated rape.¹⁷² Second, Human Rights Watch noted the reluctance of Yazidi community leaders to accept children born of rape and encouraged the Committee to recommend that Iraq develop “programs to deal with stigma against victims and children born of rape, as well as specific guidelines on children born to women survivors.”¹⁷³ Lastly, the Iraqi Women Network highlighted the Yazidi Council decision and that several Yazidi women reportedly preferred to stay with their children in al-Houl camp in Qamishli, Syria.¹⁷⁴ Staying in the camp allowed them to stay with their children. The Network recommended that Iraq “(e)nsure the safe and voluntary return of displaced women, and involve women in the Higher Committee for Coexistence and Community Peace, as well as at the community level, and develop awareness-raising, educational and rehabilitation programs.”¹⁷⁵

Iraq’s Preliminary Statement at the 74th Session did mention that the national House of Representative “is considering ... [t]he Survivor Yazidi women Bill, under which health care, economic empowerment, inclusion and care will be provided.”¹⁷⁶ However, Iraq never discussed the issue of stigma and abandonment of children born of rape. Throughout its submissions and statements there is no mention as to how it would guarantee that they are able to integrate in the Yazidi community, either through the aforementioned bills, or through administrative action. The Committee’s Concluding Observation continued to express concern that children of ISIS rape would be at risk of statelessness but did not otherwise return to the specific issue of the treatment of Yazidi mothers and their children.¹⁷⁷

Therefore, Iraq’s obligations under CEDAW include the protection of rights of Yazidi women and their children from the actions of the Supreme Spiritual Council. Iraq has failed to protect these rights, and to take all necessary measures in that direction as required by Article 5 and other provisions in the Convention.

¹⁷² Minority Rts. Grp. Int’l, Ceasefire Centre for Civilian Rts., and Asuda for Combating Violence Against Women, *Alternative Report to the Committee on the Elimination of Discrimination Against Women (CEDAW)*, ¶ 25 (Oct. 21, 2019),

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCS%2fIRQ%2f37363&Lang=en.

¹⁷³ Human Rts. Watch, *Human Rights Watch Submission to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) of Iraq’s periodic report for the 74th CEDAW Session at 2*, (Sept. 2019),

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCS%2fIRQ%2f37338&Lang=en.

¹⁷⁴ Iraqi Women Network, *Iraqi Women challenges of Security, Peace and Justice*, ¶ 23 (2019),

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCS%2fIRQ%2f37264&Lang=en.

¹⁷⁵ *Id.* ¶ 26(c).

¹⁷⁶ Republic of Iraq, Statement by His Excellency Mr. Hussain Mahmood Alkhateeb Head of delegation, Oct. 22, 2019,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fSTA%2fIRQ%2f37530&Lang=en.

¹⁷⁷ Comm. on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Iraq, ¶ 27 CEDAW/C/IRQ/CO/7 (Nov. 12, 2019).



Young girl holding her sibling after fleeing the Sinjar region. Photo courtesy to [Rawaz Adil Nasser](#), September 2014.

VI. THE YAZIDI SUPREME SPIRITUAL COUNCIL’S DECISION VIOLATES IRAQ’S OBLIGATIONS UNDER THE CONVENTION AGAINST THE RIGHTS OF THE CHILD

Iraq ratified the Convention on the Rights of the Child (CRC) in 1994, “commit[ing] itself to making sure every child is protected, educated, and able to lead a healthy and fulfilling life.”¹⁷⁸ In the wake of the Syrian crisis, the children born of Yazidi survivors are not able to access these protected rights. Iraq is failing to meet its obligations under the CRC.

A. YAZIDI SUPREME SPIRITUAL COUNCIL’S DECISION VIOLATES CRC

The Yazidi Supreme Spiritual Council responded to the capture, enslavement, and return of Yazidi women and girls by issuing a religious edict announcing that victims would be welcomed back as pure members of the Yazidi society, prohibiting hostilities against the formerly enslaved women.¹⁷⁹ Within days, the Spiritual Council backtracked from their inclusive messaging, ISIS-Yazidi children were deemed unacceptable.¹⁸⁰

Yazidi women, even those unaware of the official decision to reject the children, knew that escaping from their ISIS captors likely meant facing an ultimatum: abandon the children born from these forced unions or risk being shunned by the Yazidi community.¹⁸¹

¹⁷⁸ Press Release, UNICEF, On the 30th Anniversary of the Convention of the Rights of the Child, UNICEF Launches an Online Petition Asking Decision-Makers to Invest More in Iraqi Children (June 25, 2019) (quoting UNICEF Iraq Representative Hamida Lasseko).

¹⁷⁹ Lin Taylor, *Rescued Yazidi Sex Slaves Will Face No Stigma, Leader Says*, REUTERS (Sept. 21, 2016), <https://fr.reuters.com/article/us-britain-women-yazidi-idUSKCN11R2A8>.

¹⁸⁰ Vale, *supra* note 92.

¹⁸¹ Kohnavard, *supra* note 88.

Some women chose to leave their children behind in camps or Syrian orphanages,¹⁸² others brought them to Iraq and were coerced into abandoning them.¹⁸³ Many were told that the separation was temporary, and they would be able to retrieve their children once they were settled in their community in Iraq.¹⁸⁴ Later, the women discovered that their children were gone without a trace—adopted or disappeared.¹⁸⁵ Women were told that by leaving their children they were protecting them from the truth of their ISIS heritage.¹⁸⁶

The Council’s decision to reject these children functionally prevents them from enjoying their parent’s ethnic and religious community. In other words, it deprives the children of those cultural rights recognized by the Convention on the Rights of the Child.¹⁸⁷

The Convention asserts children’s cultural rights. The Preamble of the Convention recognizes “that the child, for the full and harmonious development of his or her personality, *should grow up in a family environment*, in an atmosphere of happiness, love and understanding.”¹⁸⁸ The Preamble further ensures that “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.”¹⁸⁹ Although the Preamble is not legally binding, it remains an important interpretative tool to clarify the meaning of the Convention.¹⁹⁰

Cultural rights relate to the right to a family environment. The Committee on the Rights of the Child (CRC Committee) has recognized the right to a family environment in the context of children (and parents) discriminated based on ethnicity.¹⁹¹ In addressing the condition of Roma minorities in Greece, the CRC Committee recommended that Greece “strengthen its efforts to protect children’s right to a family environment ... giving particular attention in this regard to children and parents from Roma communities...”¹⁹²

The broad meaning of “family” further supports finding reference to family environment as indicated of cultural rights. Article 5 signals the capaciousness of “family” for the purposes of this Convention, providing that “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the *extended family or community* as provided for by local custom.”¹⁹³ The UNICEF *Implementation Handbook for the Convention on the Rights of the Child*, relying on CRC

¹⁸² See, e.g., *Agony of Yazidi Women Torn Between Kids Fathered by ISIS Fighters and Returning Home*, THE STRAITS TIMES (July 14, 2019), <https://www.straitstimes.com/world/middle-east/agonies-of-yazidi-women-torn-between-kids-fathered-by-isis-fighters-or-return-home>.

¹⁸³ Chulov, *supra* note 15.

¹⁸⁴ Chulov, *supra* note 15.

¹⁸⁵ Kohnavard, *supra* note 88.

¹⁸⁶ See, e.g., Arraf, *supra* note 22.

¹⁸⁷ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

¹⁸⁸ *Id.* at Preamble (emphasis added).

¹⁸⁹ *Id.*

¹⁹⁰ Vienna Convention on the Law of Treaties Art. 31, May 23, 1969, 1155 U.N.T.S. 331. (Article 31 of the Vienna Convention provides that a treaty “shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” This includes preamble and annexes).

¹⁹¹ UN Committee on the Rights of the Child, Concluding Observations: Greece, 2 April 2002, CRC/C/15/Add.170 paras. 48-49, <https://www.refworld.org/docid/3d60c63019.html>.

¹⁹² *Id.*

¹⁹³ CRC, *supra* note 187, Art. 5.

Committee recommendations, notes that “Article 5 acknowledges the extended family, referring not only to parents and others legally responsible but also to the extended family or community where they are recognized by local custom.”¹⁹⁴ In other Articles, the child’s ethnic, cultural, linguistic, and religious background must explicitly be considered in implementing those rights.¹⁹⁵ Most relevantly, Article 30 provides that “[i]n those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture.”¹⁹⁶ The Council’s decision makes enjoyment of these rights a near impossibility.

The Yazidis are not party to the Convention as the group is a sect within the nation of Iraq. Thus, their decision does not inherently breach the treaty. Iraq could argue that no violation exists because these children, by merit of “local custom,”¹⁹⁷ are not considered Yazidi.¹⁹⁸ While the Yazidi Council’s decision adheres to local custom, and certainly Iraq is not positioned to force the Yazidi to alter their centuries-old genealogy traditions, these facts do not release the State from their obligations under the CRC.

Article 3 of the Convention provides that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”¹⁹⁹ The state must take appropriate legislative and administrative action to ensure the child’s well-being.²⁰⁰ What constitutes best interest is left indeterminate; it can take on different meanings in different contexts.²⁰¹ Still, commentators agree that culture cannot trump this right: if a cultural practice is inconsistent with the best interest of the child, the best interest prevails.²⁰² Correspondingly, the CRC Committee frequently notes that culture, religion, and tradition frustrate the best interest principle.²⁰³ For instance, the CRC Committee criticized domestic laws penalizing children born outside wedlock, a condition that it held was also violating the non-discriminatory principle of Article 2.²⁰⁴

General Comment 14 issued by the CRC Committee provides further insights. First, the Committee clarifies that the obligation on State Parties to protect the child’s best interest is all-encompassing: it applies to all actions and inactions taken by all (public and private) institutions.²⁰⁵ It further specifies that “assessing the child’s best interests is a unique activity that should be undertaken in each individual case,” and a primary factor to consider in that

¹⁹⁴ United Nations Children Fund, Implementation Handbook for the Convention on the Rights of the Child at 76 (3rd ed. 2007).

¹⁹⁵ CRC, *supra* note 187, Art. 4; *id.* at Art. 17; *id.* at Art. 20; *id.* at Art. 23; *id.* at Art. 29; *id.* at Art. 30; *id.* at Art. 30; *id.* at Art. 31.

¹⁹⁶ *Id.* at Art. 30.

¹⁹⁷ *Id.* at Art. 5.

¹⁹⁸ Loveluck & Salim, *supra* note 91.

¹⁹⁹ CRC, *supra* note 187, at Art. 3.

²⁰⁰ CRC, *supra* note 187, at Art. 3.

²⁰¹ Michael Freeman, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD. ARTICLE 3 THE BEST INTEREST OF THE CHILD 27 (2007).

²⁰² *See id.* at 35.

²⁰³ Freeman, *supra* note 201, at 41-42.

²⁰⁴ *Id.* at 42 (citing to the CRC Committee recommendation to Korea in CRC/C/15/Add. 51, para. 22 (1996)).

²⁰⁵ Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, May 29, 2013, CRC/C/GC/14, at IV.

instance is the “preservation of the family environment and maintaining relations.”²⁰⁶ The State Party should prevent family separations.²⁰⁷

On its face, Iraqi inaction to the consequences of the Yazidi Council decision runs against the goals of Article 3, Article 9, Article 20, Article 21, and Article 30 of the CRC. There was no specific assessment of each situation that would enable Iraq to reasonably claim that separating the mothers from the children was universally in the best interest of the child. Cultural stigma against children born of rape cannot itself be the determinative factor.²⁰⁸ Article 9 provides that “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”²⁰⁹ The Iraqi government did nothing to prevent or address the forced abandonment endured by Yazidi women and their children, as required by Article 9. Yazidi women seeking to find their children were sometimes told they were adopted.²¹⁰ Article 21 requires that in the case of adoption “State Parties shall ensure that the best interests of the child shall be the paramount consideration and they shall . . . [e]nsure that the adoption is permissible in view of the child’s status concerning parents and . . . [they] gave their informed consent.”²¹¹ Yazidi women have given heartbreaking testimony about their children disappearing from orphanages without their consent or knowledge.²¹² No action has been taken on the part of the Iraqi officials to determine the scope of this problem or adhere to their obligations under the CRC.

Arguably, Iraqi inaction to the Yazidi Council decision also violates Article 35, which requires “States Parties . . . take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”²¹³ As Yazidi women were coerced into leaving their children in camps or orphanages, the opportunity for abduction and trafficking of these children increased.²¹⁴ Iraqi officials did nothing to assess or address this heightened risk for child trafficking. As such, they have violated the CRC.

By failing to undertake appropriate measures to implement the rights recognized under the Convention considering the Yazidi Council’s decision, Iraq failed to meet their obligations under the Convention.

B. IRAQ’S SYSTEM OF LEGAL IDENTIFICATION VIOLATES IRAQ’S OBLIGATIONS UNDER THE CRC

Yazidi women returning from captivity face another set of obstacles in relation to documentation: the Iraqi legal system. Iraqis fleeing the Islamic State, or captured by ISIS

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 35 (noting that cultural norms do not overcome the best interest of the child, which requires an assessment).

²⁰⁹ CRC, *supra* note 187, at Art. 9.

²¹⁰ Kohnavard, *supra* note 88.

²¹¹ CRC, *supra* note 187, at Art. 9.

²¹² Kohnavard, *supra* note 88 (relaying the story of Jovan and her son Adam, who was adopted without her consent from an orphanage in Mosul).

²¹³ CRC, *supra* note 187, at Art. 35.

²¹⁴ See Stephen Kalin, *Iraq’s Children of Caliphate Face Stateless Future*, REUTERS (Nov. 15, 2016), <https://br.reuters.com/article/us-mideast-crisis-mosul-children-idUSKBN13A17F/>.

and enslaved, often did not have their birth certificates or national identity cards.²¹⁵ When the Yazidi women return to Iraq after escaping captivity, they lack the ability to verify their identities and must wade through the documentation crisis. Iraq’s documentation system is largely paper-based and location-specific; returnees may be required to seek help at a specific civil status office dependent on their province of origination.²¹⁶ Applicants face an arduous process that includes confusing procedures, uncertain timelines, and burdensome fees.²¹⁷

The children born “in displacement” face even more obstacles to obtaining the civil documentation necessary for their legal identity and exercise the full breadth of their rights as Iraqi citizens.²¹⁸ Hospitals sometimes refuse to issue birth certificates to prevent registration in their governorate, requiring that the Internally Displaced Persons obtain the birth certificate through a costly and lengthy judicial process.²¹⁹ These added barriers increase the risk that children born in displacement will become stateless.²²⁰ For children born of Yazidi survivors as the byproduct of ISIS rape genocide, no civil documentation specific to the children is available for proof of nationality. The child will be considered born to unmarried parents and without proof of paternity.²²¹ Children with unknown paternity are automatically registered as Muslim.²²² This means that Yazidi women who were forced to bear children to their ISIS captors, then must register those children as Muslims upon reestablishing themselves in Iraq.²²³ Furthermore, Iraqi law does not have provisions for the registration of children where proof of paternity is impossible.²²⁴ Consequently, it can be extremely difficult, or even impossible for the child to attain legal identification.²²⁵ These processes can result in the state designating the religion of the child and/or violating the rights of the child to be recognized as a legal person before the law.²²⁶ Consequently, the government of Iraq violates Articles 8, 14, and 30 of the Convention on the Rights of the Child.²²⁷

The issue surrounding documentation has another challenge: humanitarian aid and government services are tied to documentation — Internally Displaced Persons lacking documentation cannot access them. The reconstruction efforts of the Iraqi government post-“victory” over the Islamic State are not enjoyed by those who lack this civil status.²²⁸ This exclusion from public institutions includes the denial of education for undocumented children in Iraq.²²⁹ Although the Ministry of Education issued a directive to allow undocumented children to attend school in 2018, education officials at the local level are not universally

²¹⁵ Lahib Higel, *Iraq’s Displacement Crisis: Security and Protection*, CEASEFIRE CENTRE FOR CIVILIAN RIGHTS, MINORITY RIGHTS GROUP INTERNATIONAL, 18 (March 2016).

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Higel, *supra* note 215.

²²¹ See, e.g., Viraj Aditya & Ssanjnna Gupta, *Yazidis in Northern Iraq: A Human Rights Crisis Within the Pandemic*, OXFORD POL. REV. (Nov. 14, 2020), <http://oxfordpoliticalreview.com/2020/11/14/yazidis-in-northern-iraq-a-human-rights-crisis-within-the-pandemic/>.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Aditya & Gupta, *supra* note 221.

²²⁷ Aditya & Gupta, *supra* note 221.

²²⁸ Alexandra Saieh & Naomi Petersohn, *Paperless People of Post-Conflict Iraq: Denied Rights, Barred from Basic Services and Excluded from Reconstruction Efforts*, NORWEGIAN REFUGEE COUNCIL, DANISH REFUGEE COUNCIL, AND INT’L RESCUE COMM., 11 (Aug. 2019).

²²⁹ UNICEF Iraq, *Humanitarian Situation Report*, December 2018.

aware of the directive or its contents and/or not adhering to the Ministry of Education’s directive despite their awareness.²³⁰ According to an August 2019 report, nearly 20 percent of undocumented/paperless Iraqi households with children report that their children were denied access to education.²³¹ Although the Ministry of Education’s directive indicates that the State of Iraq is actively attempting to provide an education for children regardless of their status, the significant denial at the local level may still amount to a violation of Article 28 which provides, “States Parties recognize the right of the child to education . . . on the basis of equal opportunity.”²³²

Lastly, children born without documentation, like those born of Yazidi survivors, face obstacles to healthcare. Although Iraqi law does not require civil documentation to access medical assistance and health care, surgeries and major procedures cannot be acquired without the necessary identification.²³³ Moreover, the belief that identification is required for emergency procedures is widespread and the reality of health care denial widely reported.²³⁴ Health in the form of nutrition is impacted by a lack of civil status.²³⁵ Without proper civil documentation, Iraqi residents cannot access the Public Distribution System which entitles Iraqi’s earning less than 1 million IQD/month to monthly food distribution.²³⁶ As a result, Iraq is violating Article 24 of the CRC, which recognizes “the right of the child to the enjoyment of the highest attainable standard of and health and to facilities for the treatment of illness and rehabilitation of health.”²³⁷

To live in Iraq without a legal identity means restricted work opportunities, housing opportunities, and property ownership.²³⁸ Freedom of movement is heavily curtailed; passing through areas previously controlled by the Islamic State requires identification and in some cases a security clearance.²³⁹ For the children born of Yazidi survivors, existing in a limbo within Iraq’s borders, the limitations on their mothers will cause intergenerational disparities. The inability to attain an education, access healthcare, participate in the culture and religion of their people, attain equal employment, own property, live in satisfactory housing, and trauma create barriers of inequity towards Yazidi women. It seems likely that the right to social security, the right to a standard of living sufficient for the “physical, mental, spiritual, moral and social development,” and the right to play are also not being protected or provided for the non-Yazidi children in Iraq.²⁴⁰

VII. THE YAZIDI SUPREME SPIRITUAL COUNCIL’S DECISION VIOLATES IRAQ’S OBLIGATIONS UNDER THE CONVENTION AGAINST TORTURE

After the Yazidi Supreme Spiritual Council’s decision, the Yazidi women had to choose between staying with their children or going back home without them. The family separations that occur as a result of this policy likely violate Iraq’s obligations under Articles 2, 5, and 14 of the Convention Against Torture (CAT).

²³⁰ Saieh & Petersohn, *supra* note 228.

²³¹ Saieh & Petersohn, *supra* note 228.

²³² CRC, *supra* note 187, at Art. 28.

²³³ CRC, *supra* note 187, at Art. 28.

²³⁴ CRC, *supra* note 187, at Art. 28.

²³⁵ CRC, *supra* note 187, at Art. 28.

²³⁶ CRC, *supra* note 187, at Art. 28.

²³⁷ CRC, *supra* note 187, at Art. 24.

²³⁸ Saieh & Petersohn, *supra* note 228.

²³⁹ Saieh & Petersohn, *supra* note 228.

²⁴⁰ CRC, *supra* note 187, at art. 26; *id.* at Art. 27; *id.* at Art. 31.

Iraq ratified CAT on July 7, 2011.²⁴¹ The CAT applies to both “torture” and “cruel, inhuman, and degrading treatment.” According to Article 1 of CAT, “torture” is comprised of three elements:

- 1) the intentional infliction of “severe pain or suffering,” either physical or mental;
- 2) for a purpose such as obtaining information, punishment, intimidation, coercion or “for any reason based on discrimination of any kind”;
- 3) “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”²⁴²

According to Article 16 of CAT, “cruel, inhuman or degrading treatment” includes acts which do not amount to the severity of torture but are committed “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”²⁴³ State parties have an obligation to prevent cruel, inhuman, and degrading treatment just as they have an obligation to prevent torture.²⁴⁴

The jurisdictional scope of CAT is quite broad. Article 2 of CAT requires that all state parties take “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”²⁴⁵ In addition, Article 5 of CAT requires state parties to establish jurisdiction over torture not only when it occurs within the state’s territory, but also “when the victim is a national of that State if that State considers it appropriate.”²⁴⁶ The Article 5 jurisdictional provision has been interpreted by some to allow for extraterritorial jurisdiction over torture committed abroad.²⁴⁷

A. FAMILY SEPARATIONS VIOLATE IRAQ’S OBLIGATIONS UNDER CAT

Forced family separations have been widely recognized as torture for affected parents and children.²⁴⁸ All three elements of the CAT definition of “torture” are present in these separations. First, the family separations are intentionally inflicted severe pain and suffering, as illustrated by research on the trauma and long-lasting psychological repercussions of separating young children from their parents.²⁴⁹ Second, the trauma of family separation in this case is being inflicted for the discriminatory reason of maintaining the religious purity of the Yazidi community.²⁵⁰ Finally, this family separation is occurring at the instigation of Yazidi spiritual leaders and with the acquiescence of Iraqi public officials.²⁵¹ As emphasized by the CAT Committee, inaction by a state party can be considered *de facto* permission for

²⁴¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

²⁴² *Id.* at Art. 1.

²⁴³ *Id.* at Art. 16.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at Art. 2.

²⁴⁶ *Id.* at Art. 5(c).

²⁴⁷ See, e.g., Michael John Garcia, CONG. RSCH. SERV., RL32438, U.N. CONVENTION AGAINST TORTURE (CAT): OVERVIEW AND APPLICATION TO INTERROGATION TECHNIQUES 2 (2009), <https://fas.org/sgp/crs/intel/RL32438.pdf>.

²⁴⁸ See, e.g., Beth Van Schaack, *The Torture of Forcibly Separating Children from their Parents*, JUST SECURITY (Oct. 18, 2018), <https://www.justsecurity.org/61138/torture-forcibly-separating-children-parents/>.

²⁴⁹ *Id.*

²⁵⁰ See Speckhard & Ellenberg, *supra* note 20.

²⁵¹ See Bor, *supra* note 23.

torture conducted by private actors.²⁵² As a result, the forced separations of Yazidi mothers and children can be considered “torture” under Article 1 of CAT.

In order to stop further family separations from occurring, Iraq has an obligation to “take effective legislative...measures” to prevent them.²⁵³ One way Iraq could take effective legislative measures would be to amend the law on religious identity, allowing the children of Yazidi female survivors to be classified as the religion of their mother. Therefore, Family Separations Constitute Torture Under Article 2 of CAT.

Most of these family separations occur in Syria, as many Yazidi women believe the Yazidi Supreme Spiritual Council’s decision means they must not bring their children into Iraq.²⁵⁴ Although these separations can be defined as torture under Article 1, they are not the direct responsibility of Iraq under Article 2. According to Article 2, states have a responsibility to prevent acts of torture in territories under their jurisdiction.²⁵⁵ However, as previously mentioned, Article 5 is sometimes interpreted to allow for state parties to exercise extraterritorial jurisdiction over CAT offenses.²⁵⁶

Even if Iraq was deemed solely responsible for acts of torture that occur within its territory, it would still be in breach of CAT. Importantly, there have been reports of Syrian-born children being separated from their Yazidi mothers on Iraqi territory.²⁵⁷ Family separations on Iraqi territory would not only constitute torture but would also represent a violation of Iraq’s CAT obligations under Article 2.²⁵⁸ If Yazidi family separations are occurring on Iraqi territory, the Iraqi government has an obligation to act to prevent these separations from continuing to occur.

B. FAILURE TO REUNITE YAZIDI VICTIMS OF TORTURE AND THEIR CHILDREN IS A VIOLATION OF IRAQ’S OBLIGATIONS UNDER ARTICLE 14 OF CAT

When Yazidi women return to Iraqi territory without their Syrian-born children, they return as victims of torture—torture in the form of sexual enslavement by ISIS, as well as torture in the form of being forcibly separated from their Syrian-born children. Under CAT, Iraq has specific obligations toward these women because of their status as victims of torture.²⁵⁹ In particular, Article 14 of CAT requires each state party to ensure legal avenues for redress, fair and adequate compensation, and the means for “as full a rehabilitation as possible” for torture victims.²⁶⁰ The scope of this requirement is not limited by the place where the torture occurred, and states are obligated to provide redress, compensation, and rehabilitation to victims of torture even when the torture occurred extraterritorially.²⁶¹

²⁵² U.N. Comm. Against Torture, General Comment No. 2, ¶ 18, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008).

²⁵³ CAT, *supra* note 241, at Art. 2.

²⁵⁴ See Chulov, *supra* note 15.

²⁵⁵ CAT, *supra* note 241, at Art. 2.

²⁵⁶ See Garcia, *supra* note 247.

²⁵⁷ See, e.g., Hendawi, Abdul-Zahra, and Salim, *supra* note 94.

²⁵⁸ CAT, *supra* note 241, at Art. 2.

²⁵⁹ CAT, *supra* note 241, at Art. 14.

²⁶⁰ CAT, *supra* note 241, at Art. 14.

²⁶¹ See Christopher Keith Hall, *The Duty of States Parties to the Convention Against Torture to Provide Procedures Permitting Victims to Recover Reparations for Torture Committed Abroad*, 18 EUR. J. OF INT’L L. 921 (2007).

Efforts at the reintegration of Iraqi torture survivors have been extremely mixed across Iraq, with many returned Iraqi women and children denied access to essential services because of their perceived ties to ISIS.²⁶² For Yazidi women, the situation is exacerbated by the Yazidi Supreme Spiritual Council's decision regarding children born of rape. Because of that decision, ISIS-tortured Yazidi women not only lack compensation or rehabilitation but also lack access to their Syria-born children as well.²⁶³ This failure to account for the needs of returned Yazidi torture survivors directly conflicts with Iraq's obligations under Article 14, as elaborated by the CAT Committee.²⁶⁴

According to the CAT Committee, the right to "redress" includes the rights to "restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition."²⁶⁵ In this situation, the issue of restitution is the most salient. Restitution requires that the state attempt to "re-establish the victim's situation before the violation of the Convention was committed."²⁶⁶ For Yazidi women who have been forcibly separated from their Syrian-born children, restitution would include helping them to reunite as with their children and reintegrate, as a family, into the community. Until the full reintegration of Yazidi women and their Syrian-born children occurs, Iraq will be in violation of its obligations under CAT.

VIII. YAZIDI SUPREME SPIRITUAL COUNCIL'S DECISION VIOLATES IRAQ'S OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The Yazidi Supreme Spiritual Council's Decision did not itself violate Iraq's obligations as a state party to the International Covenant on Civil and Political Rights (ICCPR). The Iraqi legal framework contributes to the rejection of these children, and it fails to uphold the obligations under international law. If the Supreme Spiritual Council had embraced the initial understanding of its edict, ruling that the children born of sexual violence would be embraced by the community, it is unlikely that these legal shortcomings would have been relevant. The Yazidi women would not have been forced to choose between their community and their children, and it seems that the harm would have been unnecessary. As it is, Iraq has violated the International Covenant on Civil and Political Rights.

The ICCPR establishes the right to be recognized as a "person before the law," the right to a legal identity.²⁶⁷ In Iraq, legal recognition and access to services, such as humanitarian assistance for displaced persons, requires a national identity card.²⁶⁸ The implications are significant for those who lack civil documents; children born without a birth certificate may even be designated as stateless.²⁶⁹ Those who provide for Yazidi children are often stymied in their efforts to obtain these documents, facing delays, burdensome travel, and excessive costs.²⁷⁰

²⁶² See Amnesty Int'l, *The Condemned: Women and Children Isolated, Trapped and Exploited in Iraq*, AI Index MDE 14/8196/2018 (Apr. 2018).

²⁶³ See Tom Allinson, *Yazidi Women Seek Acceptance for Children Born of IS Rape*, DW (Apr. 30, 2019), <https://www.dw.com/en/yazidi-women-seek-acceptance-for-children-born-of-is-rape/a-48540849>.

²⁶⁴ See U.N. Comm. Against Torture, General Comment No. 3, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012).

²⁶⁵ *Id.* ¶ 6.

²⁶⁶ *Id.* ¶ 8.

²⁶⁷ G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, Art. 16, (Dec. 16, 1966).

²⁶⁸ Alexandra Saieh, *Barriers from Birth: Undocumented Children in Iraq Sentenced to Life on the Margins* NORWEGIAN REFUGEE COUNCIL 11 (Apr. 2019), <https://www.nrc.no/globalassets/pdf/reports/iraq/barriers-from-birth/barriers-from-birth---report.pdf>.

²⁶⁹ *Id.* at 7.

²⁷⁰ *Id.* at 17-23.

Additionally, proof of paternity is required for children born to unmarried parents.²⁷¹ There are no provisions addressing the registrations of children in situations where proof of paternity is impossible,²⁷² as is the case for most children born as the result of sexual violence. This results in added difficulty registering children for civil documents, which are required to for recognition as a legal person. In some situations, it may even prevent registration.²⁷³

The UN Guiding Principles on Internal Displacement asserts that authorities must issue all documents necessary “without imposing unreasonable conditions, such as requiring the return to one’s area of habitual residence in order to obtain... required documents.”²⁷⁴ As such, these obstructions violate the children’s right to be recognized as a legal person, as well as their rights to equality and nondiscrimination.

Furthermore, the ICCPR establishes the right to “adopt a religion or belief of his choice,”²⁷⁵ without being “subject to coercion which would impair his freedom.”²⁷⁶ Minorities are further protected from having their rights to “profess and practice” their religious beliefs, enjoy their culture, and use their language.²⁷⁷ Iraqi law violates these protections by requiring children born with unknown fathers be automatically registered as Muslims.²⁷⁸

This law also contributes to the rejection of Yazidi children born of sexual violence from their community.²⁷⁹ The state itself is cementing friction within a minority insular culture by requiring that they register as Muslims in order to be recognized legally by Iraq.²⁸⁰ This requirement denies Yazidi women the opportunity to register their children as Yazidi prior to returning to the community, which may have facilitated acceptance. This law violates the children’s right to adopt a religion or belief of their choice and their freedom to participate in their minority community.

In addition, ICCPR establishes the right to not face “unlawful interference with... privacy, family, [and] home” under Article 17.²⁸¹ The Covenant also recognizes that the family is the “natural and fundamental group unit of society” under Article 23.²⁸² Due to the precepts of the Yazidi religion that requires complete Yazidi parentage in order to be accepted into the community and the Supreme Spiritual Council’s decision not to upset this

²⁷¹ *Id.* at 17.

²⁷² *See id.* at 11.

²⁷³ *Id.* at 17.

²⁷⁴ Francis M. Deng (Representative of the U.N. Secretary-General on Internally Displaced Persons), *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Programme and Methods of Work of the Commission: Human Rights, Mass Exoduses and Displaced Persons*, Principle 20(2), U.N. Doc. E/CN.4/1998/53 (Feb. 11, 1998).

²⁷⁵ G.A. Res. 2200A (XXI), *supra* note 267, at Art. 18(1).

²⁷⁶ G.A. Res. 2200A (XXI), *supra* note 267, at Art. 18(2).

²⁷⁷ G.A. Res. 2200A (XXI), *supra* note 267, at Art. 27.

²⁷⁸ *Legacy of Terror: The Plight of Yazidi Child Survivors of ISIS*, AMNESTY INT’L 7 (July 30, 2020), <https://www.justice.gov/coir/page/file/1299511/download>.

²⁷⁹ *Id.*

²⁸⁰ Sirwan Kajjo, *Yazidis Divided Over Children Born of IS Rape*, VOA NEWS (Apr. 29, 2019, 6:55 PM), <https://www.voanews.com/extremism-watch/yazidis-divided-over-children-born-rape>.

²⁸¹ G.A. Res. 2200A (XXI), *supra* note 267, at Art. 17(1).

²⁸² G.A. Res. 2200A (XXI), *supra* note 267, at Art. 23(1).

tradition, women were pressured, forced, and tricked into leaving their children.²⁸³ Yazidi women have been denied the ability to contact their children; they have suffered significant mental health issues, with many examples of suicide attempts.²⁸⁴ This treatment is a violation of the children's and women's rights to a family.

Therefore, the Yazidi Supreme Spiritual Council decision to reject children born of sexual violence against Yazidi women in captivity does not itself violate the International Covenant on Civil and Political Rights. Lacking community support, the Yazidi women did not have the ability to create a life with their children in exile elsewhere in Iraq. The right to legal identity, the right to family unencumbered by state, the right to practice religion were all violated by a legal structure that offered more barriers than pathways for displaced women attempting to rebuild in Iraq.

IX. CONCLUSION

Iraq is signatory to the CRC, the CEDAW, the CAT, and the ICCPR treaties, and obligated to provide security and assistance to Yazidi survivors of conflict-related sexual violence. First, the Iraqi government is required under Articles 3 and 4 of the CRC to implement legislative, administrative and judicial measures to ensure the best interests of the child.²⁸⁵ Religious law cannot excuse the State from its obligation under this Convention.²⁸⁶ Iraq has a duty to respond to actions within its territory which violate children rights and provide an effective remedy to victims.²⁸⁷

Second, Iraq violated its CEDAW obligations when it failed to protect the rights of Yazidi women and their children from the actions of the Supreme Spiritual Council. The State should take all necessary measures to redress these violations, as required by Article 5 and other provisions in the Convention.²⁸⁸

Third, Iraq's legal structure violated the CCPR right to legal identity, the right to family unencumbered by state, the right to practice religion, when it offered more barriers than pathways for displaced Yazidi women and children attempting to rebuild in Iraq.²⁸⁹

Fourth, Family separations on Iraqi territory would not only constitute torture but would also represent a violation of Iraq's CAT obligations under Article 2.²⁹⁰ The Iraqi government has an obligation to act to prevent these separations from continuing to occur. Additionally, under CAT, Iraq has specific obligations toward Yazidi women who return to Iraqi territory without their Syrian-born children, because of their status as victims of torture.²⁹¹ States are obligated to provide redress, compensation, and rehabilitation to victims of torture even when the torture occurred extraterritorially.²⁹² Iraq's failure to account for the

²⁸³ AMNESTY INT'L, *supra* note 262.

²⁸⁴ AMNESTY INT'L, *supra* note 262, at 45.

²⁸⁵ CRC, *supra* note 157, at Art. 3-4.

²⁸⁶ Mervat Rishmawi, 4 A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 25-26 (Dec. 1, 2005).

²⁸⁷ CRC, General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, Nov. 27, 2003, CRC/GC/2003/5.

²⁸⁸ CEDAW, *supra* note 137, at Art. 5.

²⁸⁹ Saieh, *supra* note 268.

²⁹⁰ CAT, *supra* note 241, at Art. 2.

²⁹¹ *See, e.g.*, CAT, *supra* note 241, at Art. 14.

²⁹² *See* Hall, *supra* note 261.

needs of returned Yazidi torture survivors directly conflicts with Iraq's obligations under Article 14.²⁹³

Lastly, Iraq should provide restitution to Yazidi women who were forced to separate from Syrian-born children.²⁹⁴ Restitution would include helping the Yazidi women to reunite with their children and reintegrate, as families, into the community. Until the full reintegration of Yazidi women and their Syrian-born children occurs, Iraq will be in violation of its obligations under CAT.

United Nations High Commissioner for Refugees²⁹⁵ should prioritize and fast-track Yazidi women and children for resettlement or humanitarian relocation, and work with international NGOs to ensure that all women with children born of sexual violence in Syria are made aware of their rights to remain with their children.²⁹⁶ Furthermore, the UN should step in to ensure that Yazidi survivors of CRSV are receiving adequate protection and assistance, until Iraq fulfills its treaty obligations to protect Yazidi women and children. The UN may choose to continue its work by monitoring the reintegration of Yazidi survivors of CRSV or by increasing the capacity of the Iraqi government and society to reintegrate Yazidi survivors of CRSV.

²⁹³ See U.N. Comm. Against Torture, General Comment No. 3, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012).

²⁹⁴ *Id.* ¶ 8.

²⁹⁵ See UNHCR, *History of UNHCR*, <https://www.unhcr.org/en-us/history-of-unhcr.html>.

²⁹⁶ *Legacy of Terror: The Plight of Yazidi Child Survivors of ISIS*, *supra* note 248, at 56.