

ARTICLE

A DECADE OF IMPUNITY: FINDING JUSTICE FOR  
THE YAZIDI WOMEN VICTIMS OF THE ISLAMIC  
STATE

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### I. INTRODUCTION

Kocho, a town at the foot of Sinjar Mountain in Iraq, was among the Yazidi towns targeted and attacked by the Islamic State (IS)<sup>1</sup> in August 2014.<sup>2</sup> IS invaded Kocho, murdered the men, and then transported the younger women to a wedding hall before eventually taking them to a makeshift prison facility where they were forced to live in squalor.<sup>3</sup> These women were bound for the slave market IS had established specifically for Yazidi women and children. They spent their time in captivity in constant fear of being raped or murdered by their captors.<sup>4</sup> The women were forced into sexual slavery, sold

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1. The transnational jihadist group known as the Islamic State (IS) is also known as Daesh, ISIL, and ISIS. Faisal Irshaid, *Isis, Isil, IS or Daesh? One group, many names*, BBC NEWS (Dec. 2, 2015), <https://www.bbc.com/news/world-middle-east-27994277> [<https://perma.cc/35VH-XVV5>]. For the purposes of this paper, the group will be referred to as the Islamic State (IS).

2. See CATHY OTTEN, *WITH ASH ON THEIR FACES: YEZIDI WOMEN AND THE ISLAMIC STATE* 6 (2017). See also Cameron Glenn et al., *Timeline: the Rise, Spread, and Fall of the Islamic State*, WILSON CTR. (Oct. 28, 2019), <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state> [<https://perma.cc/7VRH-4D2B>]; Rep. of H.R.C., “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, at 3, U.N. Doc. A/HRC/32/CRP.2 (2016).

3. “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 11–12.

4. See *id.* at 21. See also Samantha Hechler, *Prosecuting Islamic State Members for Sexual and Gender-Based Crimes Committed Against Yazidi Women and Girls*, 25 CARDOZO J. INT’L & COMP. L. 595, 600 (2017); Rukmini Callimachi, *ISIS Enshrines a Theology of Rape*, N.Y. TIMES (Aug. 13, 2015), <https://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html> [<https://perma.cc/8AAP-RJVB>].

multiple times, and given as gifts to IS warriors.<sup>5</sup> They were forced to endure violent rapes, beatings, and gang rapes.<sup>6</sup>

We have just marked the ten-year anniversary of the Islamic State's invasion of Sinjar and the start of their crusade of violence against the Yazidi people, and yet very little has been done to achieve justice for this community.<sup>7</sup> Instead, the horrific and inhumane treatment of the Yazidis who suffered at the hands of IS has seemingly faded from public consciousness.<sup>8</sup> The survivors of these atrocities and their community have not, however, given up their desire to see the perpetrators of these crimes brought to justice, and the international community has the capability to aid them in this goal.<sup>9</sup> Given that we have seen very few prosecutions of IS perpetrators within existing international and domestic criminal justice systems, there needs to be an impetus to reinvigorate global dedication to bringing these perpetrators to justice. This Article will analyze whether a people's tribunal could serve as that much-needed stimulus and potentially even achieve a form of interim justice for these women.

The crimes that IS has committed against the Yazidi people have been characterized as violent and systematic.<sup>10</sup> Although the entire population were victims of horrible crimes, this Article focuses

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5. See Hechler, *supra* note 4, at 597; BETH VAN SCHAACK, IMAGINING JUSTICE FOR SYRIA 2 (2020).

6. Press Release, Human Rights Council, UN Commission of Inquiry on Syria: ISIS is committing genocide the Yazidis (June 16, 2016), <https://www.ohchr.org/en/press-releases/2016/06/un-commission-inquiry-syria-isis-committing-genocide-against-yazidis> [<https://perma.cc/VVA5-3NFG>] [hereinafter HRC Press Release].

7. See Alannah Travers, *Nine Years after the Yazidi Genocide, What's genocide, what's next for survivors?*, AL JAZEERA (Aug. 3, 2023), <https://www.aljazeera.com/news/2023/8/3/nine-years-after-the-yazidi-genocide-what-next-for-survivors> [<https://perma.cc/FG59-DVLM>]; *ICMP Marks the 7<sup>th</sup> Anniversary of Da'esh Invasion of Sinjar with Yazidi NGOs in The Hague*, INT'L COMM'N ON MISSING PERSONS (Aug. 3, 2021), <https://www.icmp.int/uncategorized/icmp-marks-the-7th-anniversary-of-daesh-invasion-of-sinjar-with-yazidi-ngos-in-the-hague> [<https://perma.cc/X45P-YFZH>]. See also *More countries recognize Yazidi Genocide on 9<sup>th</sup> anniversary of Islamic State invasion of Shigar (Sengal/Sinjar)*, SYRIAC PRESS (Aug. 2, 2023), <https://syriacpress.com/blog/2023/08/02/more-countries-recognize-yezidi-genocide-on-9th-anniversary-of-islamic-state-invasion-of-shigur-sengal-sinjar/> [<https://perma.cc/G43P-5RPA>].

8. See Travers, *supra* note 7.

9. See *id.*; Nadia Murad, *ISIS slaughtered my Yazidi community. We don't want your pity – we want justice.*, CNN OPINION (Aug. 16, 2021, 10:52 AM), <https://edition.cnn.com/2021/08/16/opinions/nadia-murad-yazidi-genocide-op-ed/index.html> [<https://perma.cc/B3KA-7RL6>].

10. See Travers, *supra* note 7; Murad, *supra* note 9.

specifically on the female victims. While the entire group was targeted because of their religion, the Yazidi women were targeted for both their religion and gender, causing them to be “doubly victimized.”<sup>11</sup> These women were victims of intersectional discrimination in its most extreme and violent form, providing further reason for why the global community should support their call for justice.<sup>12</sup>

There has been a great deal of discussion surrounding the proper approach to ensure that IS members are held accountable for the crimes they have committed against Yazidi women.<sup>13</sup> The UN has stated that it does not believe, at this moment, that there is a viable international justice mechanism, including the International Criminal Court (ICC), to adjudicate these crimes, and that the best avenue to justice is through domestic courts in the countries where these crimes took place.<sup>14</sup> This option, however, leaves a lot to be desired, particularly following the recent closure of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Daesh/ISIL (UNITAD).<sup>15</sup>

Domestic courts in Iraq and Syria face many challenges in trying such cases. First, there needs to be legislation in place criminalizing the

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11. “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 24.

12. See generally Isaac Conrad Herrera Sommers, *Suffering for Her Faith: The Importance of an Intersectional Perspective on Gendered Religious Persecution in International Law*, 61 HARV. INT’L L.J. 511 (2020); Jennifer Venis, *Justice for the Yazidis*, INT’L BAR ASS’N (Sept. 27, 2022), <https://www.ibanet.org/Justice-for-the-Yazidis> [<https://perma.cc/ELT8-93WH>].

13. See INTERNATIONAL FEDERATION FOR HUMAN RIGHTS, AND KINYAT IRAQ: SEXUAL VIOLENCE AGAINST YAZIDIS, (Georgetown Institute for Women, Peace and Security) (2018), <https://giwps.georgetown.edu/resource/iraq-sexual-violence-against-yazidis/> [<https://perma.cc/U75P-QC9T>].

14. See HRC Press Release, *supra* note 6.

15. The U.N. Security Council authorized the creation of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Daesh/ISIL (UNITAD) in 2017 with the goal of supporting domestic efforts to gather evidence and promote accountability. Arthur Traldi, *What UNITAD’s Closure Means for Justice and Accountability*, LAWFARE (June 18, 2024, 2:04 PM), [https://www.lawfaremedia.org/article/what-unitad-s-closure-means-for-justice-and-accountability#:~:text=Nine%20months%20ago%2C%20the%20Security,UNITAD\)%20effective%20Sept.%202017](https://www.lawfaremedia.org/article/what-unitad-s-closure-means-for-justice-and-accountability#:~:text=Nine%20months%20ago%2C%20the%20Security,UNITAD)%20effective%20Sept.%202017) [<https://perma.cc/L88W-FVVV>]. UNITAD closed its doors on September 17, 2024. *UNITAD Shares Detailed Findings of International Crimes Committed against Christians by ISIL (Da’esh)*, UNITAD (Sept. 16, 2024), <https://www.unitad.un.org/news/unitad-shares-detailed-findings-international-crimes-committed-against-christians-isil-da%20esh> [<https://perma.cc/PM5P-RUH5>].

acts in question.<sup>16</sup> These countries have been encouraged to codify the international crimes of genocide, war crimes, and crimes against humanity to enable proper prosecutions,<sup>17</sup> but to date, the cases that have been tried in local jurisdictions have mostly focused on prosecuting IS membership (in other words terrorism-related crimes), rather than prosecuting the specific atrocity crimes committed.<sup>18</sup>

Additionally, there are further logistical concerns that need to be considered. Leading scholars have recognized that the plausibility of this method of accountability must be evaluated in light of the post-conflict and political environment of each of the countries that could obtain jurisdiction.<sup>19</sup> Stability and safety must be taken into account when analyzing the feasibility of this route, which, given the current climate in the Middle East, is not particularly predictable or secure.<sup>20</sup>

There are other options for accountability aside from the ICC and domestic courts. Ad hoc tribunals and truth commissions, for instance, are among them. Universal jurisdiction is another option which would allow domestic courts of third-party countries to prosecute these crimes. Each option has its benefits and drawbacks, particularly when considering the feasibility of utilizing these mechanisms and the likelihood of success each would have in meeting the accountability goals of those seeking justice.

There is precedent for an additional, less traditional approach to accountability. In the case of the Korean “comfort women,” a people’s tribunal was utilized to provide justice against the Japanese perpetrators of the “comfort women” system.<sup>21</sup> The Women’s International War Crimes Tribunal offers an example of how a people’s

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16. See Tanya Mehra, *Bringing (Foreign) Terrorist Fighters to Justice in a Post-ISIS Landscape, Part I: Prosecution by Iraqi and Syrian Courts*, INT’L CTR. FOR COUNTER-TERRORISM – THE HAGUE (Dec. 22, 2017), <https://icct.nl/publication/bringing-foreign-terrorist-fighters-to-justice-in-a-post-isis-landscape-part-i-prosecution-by-iraqi-and-syrian-courts/> [https://perma.cc/ST37-2ZVE].

17. HRC Press Release, *supra* note 6.

18. See Mehra, *supra* note 16.

19. See Mehra, *supra* note 16; van Schaack, *supra* note 5, at 401.

20. See Mehra, *supra* note 16; van Schaack, *supra* note 5, at 401; See The Judge Advocate General’s Legal Center & School, U.S. Army Center For Law And Military Operations, *Rule of Law Handbook: A Practitioner’s Guide for Judge Advocates* 6 (2015), [https://maint.loc.gov/rr/frd/Military\\_Law/pdf/rule-of-law\\_2015.pdf](https://maint.loc.gov/rr/frd/Military_Law/pdf/rule-of-law_2015.pdf) [https://perma.cc/DMH4-GB5H].

<sup>21</sup> See Christine M. Chinkin, *Women’s International Tribunal on Japanese Military Sexual Slavery*, 95 AM. J. INT’L L. 335, 335–36 (2001).

tribunal can be used to bring justice to victims of international crimes, and more specifically to victims of sex crimes.<sup>22</sup> This Article will analyze, from a victim-centered transitional justice lens, the feasibility and effectiveness of domestic and international criminal law mechanisms, as well as a people's tribunal, in the context of the Yazidi women victims of the Islamic State and determine which path forward would achieve the form of justice that this community and these women seek.

Part II will describe the importance of a victim-centered approach to transitional justice processes, as well as how this translates to the Yazidi community by defining what "justice" means according to the Yazidi women survivors of these crimes and their community as a whole. Part III will provide a brief background of the crimes the Islamic State committed against the Yazidi women, describe the international legal implications of these crimes, and analyze the positives and negatives of more conventional accountability mechanisms. Part IV explores the peoples' tribunal mechanism and provides a case study of the Women's International War Crimes Tribunal. Part V analyzes whether the people's tribunal approach would achieve justice based on the goals set forth by the survivors, and whether, alternatively, it could achieve interim justice based on those same goals. Part VI will summarize the recommendations from Part V and conclude.

## II. WHAT DOES JUSTICE MEAN TO THE YAZIDIS?

### A. *The Importance of Victim-Centered Transitional Justice*

Transitional justice often refers to how a post-conflict and post-atrocity society moves forward from its past in a manner designed to bring about peace and stability. Various approaches to transitional justice have been increasingly used around the world since the 1980s.<sup>23</sup> Scholars have increasingly written on the subject and have taken various avenues to try to establish a normative understanding of

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22. *See id.*

23. Marie Soueid, Anne Marie Willhoite & Annie E. Sovcik, *The Survivor-Centered Approach to Transitional Justice: Why a Trauma-Informed Handling of Witness Testimony is a Necessary Component*, 50 GEO. WASH. INT'L L. REV., 125, 125 (2017). Ruti G. Teitel places the start of the rise of transitional justice at the post-World War II period and delineates its growth into different phases. *See* Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69 (2003).

transitional justice.<sup>24</sup> Despite a lack of a clear, normative definition of transitional justice, it is widely acknowledged that transitional justice typically comprises, to varying degrees depending on the situation, economic, political, and legal reform.<sup>25</sup>

Former United Nations Secretary-General, Boutros Boutros-Ghali described the “notion of ‘transitional justice’ . . . as the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice[,] and achieve reconciliation.”<sup>26</sup> There are many tools of transitional justice that can be used to achieve that reform, including criminal and civil trials, reparations, truth commissions, and memorialization.<sup>27</sup> In selecting which of these tools is most appropriate in each context, the regime rising to power will consider a host of factors. Domestic politics as well as the characteristics of the local culture and the previously established legal system are considered.<sup>28</sup> Globalization has also made international politics and relations increasingly important factors in this decision-making process.<sup>29</sup> An underrepresented factor, which Boutros-Ghali acknowledged merits incredibly strong consideration in this selection process, is the desires and goals of the victim-survivor community.<sup>30</sup>

The broader goals of the post-conflict society are often very influential in determining which transitional justice tools should be utilized. Ivan Šimonović, for instance, has described the continuum of the “attitudes and reactions” of post-conflict and post-atrocity societies as it relates to transitional justice approaches by addressing the extremes in each direction. Transitional justice can be seen to have four distinct goals: “to forget,” “to pardon,” “to establish the truth,” and “to

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24. Pablo de Grieff, “Theorizing Transitional Justice,” in 51 *TRANSITIONAL JUSTICE* 31, 32 (2012).

25. Eric A. Posner & Adrian Vermeule, *Transitional Justice as Ordinary Justice*, 117 *HARV. L. REV.* 762, 766 (2004).

26. U.N. Secretary-General, *The Rule Of Law And Transitional Justice In Conflict And Post-Conflict Societies*, ¶¶ 5–8, 19–22, U.N. Doc. S/2004/616 (Aug. 23, 2004).

27. *See id.*; Soueid, Willhoite & Sovcik, *supra* note 23, at 134.

28. *The Rule Of Law And Transitional Justice In Conflict And Post-Conflict Societies*, *supra* note 26, ¶ 14.

29. *See* Teitel, *supra* note 23, at 73, 88.

30. *The Rule Of Law And Transitional Justice In Conflict And Post-Conflict Societies*, *supra* note 26, ¶ 18.

punish.”<sup>31</sup> Šimonović continues to explain how taking on an attitude of “willful ignorance” achieves the goals to forget and to pardon, creating a “historical record” establishes the truth but still pardons, seeking “pragmatic retribution” achieves the goals to forget and to punish, and taking the stance of “no peace without justice” achieves establishing the truth and punishing the perpetrators.<sup>32</sup> Each of these attitudes corresponds to a specific transitional justice “reaction,” or in other words the appropriate transitional justice mechanism to be selected:

- (1) “Willful ignorance” corresponds to amnesty;
- (2) “Historical record” corresponds to truth commissions;
- (3) “Pragmatic retribution” corresponds to lustration or substitute criminal charges; and
- (4) “No peace without justice” corresponds to proceedings based on individual or collective responsibility.<sup>33</sup>

There is a clear correlation between the goals, the “attitudes,” and the “reactions” of the post-conflict society. As Šimonović discusses, these specific descriptions represent the extremes in each direction, but in reality, there exists a spectrum of goals and attitudes. Therefore, a variety of tools may be needed to react appropriately.<sup>34</sup>

In addition to considering the goals of the post-conflict society more generally, it is critical that there is a focus on the goals and attitudes of those who were victims of human rights violations and atrocities during the pre-transition period when selecting which mechanism(s) should be used in the transition.<sup>35</sup> The aim of transitional justice is to provide a means for a post-conflict society to move forward. This cannot be achieved if the most affected members of the society cannot, and do not, trust the institutions and people being given the power to prevent the repetition of the harms they suffered.<sup>36</sup>

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31. Ivan Šimonović, *Attitudes and Types of Reaction Toward Past War Crimes and Human Rights Abuses*, 29 *YALE J. INT'L L.* 343, 345 (2004).

32. *Id.* at 345–47.

33. *Id.* at 350–51.

34. *Id.* at 345 n.4; de Greiff, *supra* note 24, at 34–39.

35. “If transitional justice is to be successful in reconstructing social norms, the process must incorporate the perspective of the victims of the atrocities.” Jaya Ramji-Nogales, *Designing Bespoke Transitional Justice: A Pluralist Process Approach*, 32 *MICH. J. INT'L L.* 1, 17 (2010).

36. Soueid, Willhoite & Sovcik, *supra* note 23, at 129.

In his report before the 34<sup>th</sup> session of the Human Rights Council the UN Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence described how victim “[p]articipation in itself provides a measure of recognition to, and empowerment of, victims.”<sup>37</sup> In another report, the Special Rapporteur further stated that “providing recognition to victims, fostering trust and strengthening the democratic rule of law . . . [could not] happen . . . without [victims’] meaningful participation.”<sup>38</sup> There are many different interpretations of what participation, and what meaningful participation at that, means in the transitional justice context. Impunity Watch defined the phrase “victim participation” to mean “the public or publicly acknowledged participation in T[ransitional] J[ustice] efforts by those who have individually or collectively suffered harm as a result of large-scale human rights violations” and uses the phrase “victim participation” to refer to “the modalities in which victims, both individually and collectively, play a role in the shaping of T[ransitional] J[ustice] processes, either directly or through legitimate representation.”<sup>39</sup> David Taylor in a report for Impunity Watch defined “meaningful participation” as “requir[ing] victim involvement at the very beginning of the design of T[ransitional] J[ustice], but also an understanding of how different forms of participation can respond to different or changing circumstances.”<sup>40</sup>

Victim participation is often delineated by scholars into two categories: “invited spaces” and “popular spaces.”<sup>41</sup> Scholars have described invited spaces as those created and operated by the government or other top-down organization. These spaces are often

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37. Rep. of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Nonrecurrence, ¶ 26, UN Doc. A/HRC/34/62 (Dec. 27, 2016).

38. Rep. of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Nonrecurrence, ¶ 54, UN Doc. A/HRC/21/46 (Aug. 9, 2012).

39. Ralph Sprenkels, *Research Report: ‘Restricted Access’ Promises and Pitfalls of Victim Participation in Transitional Justice Mechanisms*, Impunity Watch: A Comparative Perspective, IMPUNITY WATCH, 14 (2017).

40. David Taylor, *Victim Participation in Transitional Justice Mechanisms: Real Power or Empty Ritual?*, IMPUNITY WATCH, 31–32 (2014).

41. Mijke de Waardt and Sanne Weber, *Beyond Victims’ Mere Presence: An Empirical Analysis of Victim Participation in Transitional Justice in Colombia*, 11 J. HUM. RTS. PRAC. 209, 213 (2019); Andrea Cornwall, *Spaces for Transformation? Reflections on Issues of Power and Difference in Participation in Development*, in PARTICIPATION: FROM TYRANNY TO TRANSFORMATION? EXPLORING NEW APPROACHES TO PARTICIPATION IN DEVELOPMENT 75, 75–91 (Samuel Hickey and Giles Mohan eds., 2004).

criticized as not necessarily allowing victims “meaningful” participation by providing them a say in the design, implementation, and other aspects of the process.<sup>42</sup> Whereas popular spaces, or “claimed spaces,” are “chosen or created by people at their own instigation,”<sup>43</sup> and arguably allow for more involvement early on to create that sense of ownership in the process that is necessary for meaningful participation. Even further, meaningful participation varies depending on the mechanism being pursued. For instance, victim participation in truth-seeking, prosecutions, and local or traditional methods of justice will all look very different. However, that does not make one form of participation more meaningful than another; it is simply the result of the nature of each approach.<sup>44</sup>

It is important to consider victims in the transitional justice process, particularly when it comes to survivors of rape and sexual violence.<sup>45</sup> Gender-based violence, rape, and sexual violence, particularly in the context of conflict, have historically gone unpunished.<sup>46</sup> Although the discourse surrounding these acts has evolved over time to place greater emphasis on the prosecution of rape and sexual violence, they are still not prosecuted at nearly the same rate at which they are committed.<sup>47</sup> Similarly to how scholars and

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42. De Waardt & Weber, *supra* note 41, at 213; Cornwall, *supra* note 41; Elke Evrard, Gretel Mejía Bonifazi, & Tine Destrooper, *The Meaning of Participation in Transitional Justice: A Conceptual Proposal for Empirical Analysis*, 15 INT’L J. TRANSITIONAL JUST. 428, 432 (2021).

43. Evrard, Bonifazi, & Destrooper, *supra* note 42, at 432.

44. Rep. of the Special Rapporteur on The Promotion of Truth, Justice, Reparation and Guarantees of Nonrecurrence, *supra* note 38.

45. Although such crimes are not committed exclusively against women, since the majority of these instances, particularly in the case of the Yazidis, were committed against women, this article will focus on the experience of women victims.

46. This is for a variety of reasons—it was seen as collateral damage, it was taboo for the victims to speak of, etc. See Margot Wallstrom, *Introduction: Making the Link between Transitional Justice and Conflict-Related Sexual Violence*, 19 WM. & MARY J. WOMEN & L. 1, 2 (2012).

47. It took until 2016 for the International Criminal Court to convict a perpetrator of rape as a war crime. Prosecutor v. Bemba, ICC-01/05-01/08-3343, Judgment (March 21, 2016). *UN Welcomes ICC’s First Conviction for Rape as War Crimes*, UN NEWS (Mar. 22, 2016), <https://news.un.org/en/story/2016/03/525132-un-welcomes-iccs-first-conviction-rape-war-crime#:~:text=Secretary%2DGeneral%20Ban%20Ki%2Dmoon%20today%20welcomed%20the%20judgement%20issued,%2Dpresident%20Jean%2DPierre%20Bemba> [<https://perma.cc/3L5K-RSJH>]. This conviction was then later overturned on appeal. Prosecutor v. Bemba, ICC-01/05-01/08-3636-Red, Appeal (June 8, 2018). It then was not until 2019 that the ICC successfully convicted Bosco Ntaganda of war crimes and crimes against humanity

practitioners actively advocate for a gender strategy that not only encompasses prosecution of gender-based violence but also promotes gender diversity and inclusivity on the prosecutor's team,<sup>48</sup> it is critical that survivors of gender-based violence, particularly women, are involved in the transitional justice process. Their involvement in the selection and design of the justice mechanisms to be used is essential because they represent a greatly and uniquely affected population within the community.<sup>49</sup>

Furthermore, when discussing the experiences of women during conflict and times of mass human rights abuses, it is important to consider the impact of their entire identity. Historically, as seen at the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, women victims of sexual violence were used exclusively as witnesses, which reduced their role in the process and diminished their experience to that which was helpful in securing a conviction.<sup>50</sup> The wider repercussions of the reality of the life of a widow, victim of rape, and other key components of the life experiences of these individuals within their societies were not considered, and their witness testimony was often limited to only what was deemed "relevant" to the prosecution.<sup>51</sup> Victim participation that is not fully encompassing of their experience and is not guided by the goals and desires of the victims risks causing more harm than good. Experiences like those of the survivors offering testimony before the ICTY and ICTR can be retraumatizing and disempowering rather than healing and empowering. Therefore, it is critical that these survivors are involved in the decision-making process early on, to ensure that they are able to design a transitional justice mechanism that will best allow them to benefit from the process by empowering them to express their full identity and experience.

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including counts of rape, sexual slavery, and sexual violence. Prosecutor v. Ntaganda, ICC-01/04-02/06-2359, Judgment (July 8, 2019).

48. See Patricia Viseur Sellers, *Gender Strategy is Not Luxury for International Courts*, 17 AM. U. J. GENDER SOC. POL'Y & L. 301, 311 (2009).

49. See S.C. Res. 1325, pmb. & ¶ 2 (Oct. 31, 2000); Catherine O'Rourke, *Dealing with the Past in a Post-Conflict Society: Does the Participation of Women Matter - Insights from Northern Ireland*, 19 WM. & MARY J. WOMEN & L. 35, 38-39 (2012).

50. See Susana SaCouto, *Victim Participation at the International Criminal Court and the Extraordinary Chambers in the Courts of Cambodia: A Feminist Project*, 18 MICH. J. GENDER & L. 297, 304-317 (2012).

51. See *id.*

All in all, meaningful participation by survivors can take a variety of different forms. It is most important to consider the goals and “attitudes” of the survivor community, and especially of uniquely victimized populations within the community, such as women victims of sexual and gender-based violence, to determine what meaningful participation would look like in each individual context.

### *B. The Yazidis’ Desired Method of Justice*

Although Šimonović’s commentary on this issue does not explicitly address the weight that should be given to the desires and goals of the victims, this author holds the view that a victim-centered approach to transitional justice is crucial in a situation like that of the Yazidi women victims of the Islamic State.<sup>52</sup> There is no real need to utilize amnesty as a tool to bargain for peace, and there is no international pressure or call for any specific alternative like a truth commission. If anything, there is a fervent discourse among the international community to end impunity and to punish perpetrators of crimes such as those committed against the Yazidis.<sup>53</sup> This is also a historically isolated and persecuted group,<sup>54</sup> which further emphasizes the importance of a victim-centered approach. Therefore, it is critical that the goals of this community, and particularly these women, are the guiding force in selecting the appropriate “reaction”—in other words, in finding an appropriate path to justice.

The world has ample access to the desires and justice goals of the Yazidi people and of its women in particular. There are various survivor accounts detailing the strong call for international criminal justice within the community. For instance, Nadia Murad, a survivor, activist, and spokesperson for the Yazidi community, has repeatedly called for justice in the form of “condemning ISIS perpetrators for crimes of genocide and sexual violence with the full force of the law,”<sup>55</sup>

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52. *See generally*, Šimonović, *supra* note 31.

53. *See* Rome Statute of the International Criminal Court, pmb., July 1, 2002, 2187 U.N.T.S. 3 [hereinafter Rome Statute].

54. VALERIA CETORELLI & SARETA ASHRAPH, A DEMOGRAPHIC DOCUMENTATION OF ISIS’S ATTACK ON THE YAZIDI VILLAGE OF KOCHO 8 (London Sch. of Econ. Middle East Ctr., 2019).

55. Nadia Murad, *America, Take a Stand for the Yazidis*, NEWSWEEK (June 4, 2021, 6:00 AM), <https://www.newsweek.com/america-take-stand-yazidis-opinion-1597261> [https://perma.cc/4MHH-RTMM].

“taking perpetrators to open court and publicly trying them for their crimes,”<sup>56</sup> and wanting “the international community to take responsibility for protecting the basic rights of Yazidis by investing in Sinjar’s redevelopment and holding ISIS accountable.”<sup>57</sup> Although Ms. Murad expands upon what she believes her community needs to heal by including requests for things such as investment in development,<sup>58</sup> the common thread is the demand for accountability through prosecution.<sup>59</sup> Other survivors have expressed this same sentiment.<sup>60</sup> In fact, sixty-two percent of Yazidis feel that judicial accountability is pertinent to achieving justice.<sup>61</sup>

The actions of the main non-governmental organizations working on this issue further support this claim. Nadia Murad founded Nadia’s Initiative, a non-profit organization which actively engages in work and advocacy to achieve this goal of justice through judicial accountability.<sup>62</sup> The late Jameel Chomer, who was the non-governmental organization Yazda’s former Country Director, is quoted in the documentary *This Is Still Genocide: A Yazidi-Led Short Documentary* as saying “[e]veryone needs to understand that there will be no reconciliation without justice.”<sup>63</sup> The documentary goes on to describe how, to the survivors of the Islamic State’s atrocity crimes, “genocide is not an act of the past,” because “until justice is achieved, every day is still genocide.”<sup>64</sup>

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56. Nadia Murad, *Seeking Justice and Dignity for Survivors*, UN CHRONICLE (Dec. 9, 2019), <https://www.un.org/en/seeking-justice-and-dignity-survivors> [https://perma.cc/4FFF-LPSQ].

57. Murad, *supra* note 9.

58. *See id.*

59. *See id.*; United Nations, *Nadia Murad (Nobel Laureate) on Delivering Accountability through Innovation and Partnership*, YOUTUBE (May 13, 2021), <https://www.youtube.com/watch?v=8Mesqqkiu5U&t=1s> [https://perma.cc/BL4F-JF49].

60. The Middle East Research Institute conducted interviews and focus groups with members of the Yazidi community to determine what justice meant to them—the majority of those polled very clearly prioritized fair criminal trials resulting in appropriate punishment. *See* DAVE VAN ZONEN & KHOGIR WIRYA, *THE YAZIDIS PERCEPTIONS OF RECONCILIATION AND CONFLICT*, 15–16 (Oct. 2017).

61. *Advocacy*, NADIA’S INITIATIVE, <https://www.nadiasinitiative.org/advocacy> [https://perma.cc/GL3G-XV8R] (last visited July 30, 2024).

62. *See id.*

63. Zovighian Public Office, *This is Still Genocide – A Yazidi-led Short Documentary in Partnership with Yazda*, YOUTUBE, 5:18-5:24 (Aug. 15, 2022), <https://www.youtube.com/watch?v=FN9y6Fd8ffk> [https://perma.cc/2QSW-Q9Y6] [hereinafter *This is Still Genocide*].

64. *Id.* at 7:27-7:40.

Based on this evidence, the Yazidi community has taken a “no peace without justice” attitude and therefore the proper reaction is to pursue “proceedings based on individual or collective responsibility” in the form of criminal trials.

### III. LEGAL IMPLICATIONS OF ISLAMIC STATE CRIMES

#### A. *The Islamic State’s Attack on the Yazidi People*

The Islamic State formed in 2004 from a fragmented group of al Qaeda in Iraq, which was led by Abu Musab al Zarqawi.<sup>65</sup> In 2011, after a few years of reduced activity due to the United States increasing its presence in Iraq in 2007, the group grew and expanded its control until it eventually held roughly a third of Syria and forty percent of Iraq.<sup>66</sup> As of December 2017, IS had lost ninety-five percent of its land, and in December of 2019, then-President Donald Trump declared that IS had been defeated.<sup>67</sup> This is very much not the case, however, as IS has continued to maintain a small presence.<sup>68</sup> The prime minister of Iraqi Kurdistan, Masrour Barzani, has been quoted saying, “ISIS is still very much intact . . . they have lost much of their leadership. They have lost many of their capable men. But they’ve also managed to gain more experience and to recruit more people around them. So, they should not be taken lightly.”<sup>69</sup>

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65. See Cameron Glenn et al., *supra* note 2.

66. *Id.*

67. See *id.*; see also Frances Weaver, *A Brief History of ISIS*, *THE WEEK* (Jan. 8, 2015), <https://theweek.com/articles/445651/everything-need-know-about-isis> [<https://perma.cc/XVY2-GVN4>].

68. ISIS claimed responsibility for the deadly attack that took place in Iran on January 3, 2024. See Vivian Yee, Hwaida Saad, & Eric Schmitt, *Islamic State Claims Responsibility for Deadly Bombings in Iran*, *N.Y. TIMES* (Jan. 4, 2024), <https://www.nytimes.com/2024/01/04/world/middleeast/us-isis-iran-general-suleimani.html> [<https://perma.cc/KR7G-H5GK>]; See also Mike Giglio & Kathy Gilsinan, *The Inconvenient Truth About ISIS*, *THE ATLANTIC* (Feb. 14, 2020), <https://www.theatlantic.com/politics/archive/2020/02/kurdish-leader-isis-conflict-iraq-iran/606502/> [<https://perma.cc/A48A-QBS2>]; Sarhang Hamasaeed, *ISIS Iis a Problem of Yesterday, Today and Tomorrow*, *UNITED STATES INSTITUTE OF PEACE* (July 28, 2022), <https://www.usip.org/publications/2022/07/isis-problem-yesterday-today-and-tomorrow> [<https://perma.cc/JST2-687Z>]; Charles Lister, *Trump Says ISIS Defeated. Reality Says Otherwise.*, *POLITICO MAGAZINE* (Mar. 18, 2019), <https://www.politico.com/magazine/story/2019/03/18/trump-isis-terrorists-defeated-foreign-policy-225816/> [<https://perma.cc/H566-9VER>].

69. See Giglio & Gilsinan, *supra* note 68.

IS has attained infamy for its inhumane and cruel treatment of its victims, among whom are the Yazidis.<sup>70</sup> The Yazidis are a minority religious group that has been subject to persecution in the Middle East dating back centuries.<sup>71</sup> The majority of Yazidis live in Iraq, specifically in the northwest of Iraq in what is known as the Sinjar region.<sup>72</sup> In 2013, it is estimated that there were 550,000 to 600,000 Yazidis living in Iraq.<sup>73</sup>

Yazidism is an ancient monotheistic religion that has been described as having links to Islam, Christianity, and Zoroastrianism.<sup>74</sup> Despite these similarities, the Yazidis have their own unique belief system and traditions.<sup>75</sup> The Yazidis abide by a strict caste system within their community.<sup>76</sup> One can only be born into this religion; conversion is not possible, and one must have two Yazidi parents in order for the line to continue.<sup>77</sup> One particularly unique aspect of Yazidism is that they believe in one God who is represented by seven angels.<sup>78</sup> The Yazidis believe that their archangel, known as Tawusi Melek, was sent to earth by God to act as the link between God and earth,<sup>79</sup> and to help guide humanity in its decisions between good and

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70. See Diana Durk & Robert Leutheuser, *Who, What, Why: Who Are The Yazidis?*, BBC NEWS (Aug. 8 2014), <https://www.bbc.com/news/blogs-magazine-monitor-28686607> [<https://perma.cc/YW36-3H6M>].

71. Ishaan Tharoor, *Who are the Yazidis?*, WASHINGTON POST (Aug. 7, 2014), <https://www.washingtonpost.com/news/worldviews/wp/2014/08/07/who-are-the-yazidis/> [<https://perma.cc/9LVD-QDWZ>].

72. "They came to destroy": ISIS Crimes Against the Yazidis, *supra* note 2, at 3; Zoonen & Wirya, *supra* note 56, at 7.

73. VAN ZOONEN & WIRYA, *supra* note 60, at 7.

74. Durk & Leutheuser, *supra* note 70; Emma Graham-Harrison, 'I was sold seven times': The Yazidi Women Welcomed Back into the Faith, THE GUARDIAN (July 1, 2017), <https://www.theguardian.com/global-development/2017/jul/01/i-was-sold-seven-times-yazidi-women-welcomed-back-into-the-faith> [<https://perma.cc/EUX7-VDHY>].

75. They believe there is one source of good and evil. God is not seen to represent good, and Satan is not seen to represent evil, rather the Yazidis believe people's choices determine good and evil. This power of choice is one of the main tenets in Yazidism. VAN ZOONEN & WIRYA, *supra* note 60, at 8.

76. Rania Abouzeid, *When the Weapons Fall Silent: Reconciliation in Sinjar After ISIS*, EUROPEAN COUNCIL ON FOREIGN RELATIONS (Oct. 2018), [https://ecfr.eu/wp-content/uploads/when\\_the\\_weapons\\_fall\\_silent\\_reconciliation\\_in\\_sinjar\\_after\\_isisFINAL.pdf](https://ecfr.eu/wp-content/uploads/when_the_weapons_fall_silent_reconciliation_in_sinjar_after_isisFINAL.pdf) [<https://perma.cc/T7QT-J9SL>].

77. Durk & Leutheuser, *supra* note 70.

78. Tharoor, *supra* note 71.

79. VAN ZOONEN & WIRYA, *supra* note 60, at 8; NADIA MURAD & JENNA KRAJESKI, THE LAST GIRL: MY STORY OF CAPTIVITY AND MY FIGHT AGAINST THE ISLAMIC STATE 27 (2006).

evil.<sup>80</sup> The story of Tawusi Melek is said to bear a resemblance to the story of Satan in Islam and therefore has been the source of much of the misunderstanding about their beliefs.<sup>81</sup> This misconception of the Yazidi religion has led to discrimination against the Yazidis in Iraq.<sup>82</sup> It has led outsiders to label them “kuffar,” meaning “unbelievers worthy of killing,”<sup>83</sup> or “devil-worshippers.”<sup>84</sup> It also resulted in the Islamic State’s brutal attack on their community.<sup>85</sup>

IS has persecuted the Yazidis for being non-Muslim infidels and “devil-worshippers.”<sup>86</sup> IS ruthlessly attacked the Sinjar region of Iraq and targeted the Yazidis.<sup>87</sup> August 3, 2014 is a date that lives in infamy for this community as the date that IS initiated their attack on the Sinjar region.<sup>88</sup> The Kurdish Peshmerga, who had been stationed in Sinjar to protect the communities there, evacuated the area without giving notice to those they were meant to protect.<sup>89</sup> Thus, IS faced little resistance during their incursion.<sup>90</sup> Those who were able attempted to flee to the top of Sinjar Mountain or to the Kurdish Region of Iraq.<sup>91</sup> The IS forces attacked the upper and lower villages all along the region seeking out the Yazidis.<sup>92</sup> Upon taking the villages, they focused their efforts on capturing Yazidi people.<sup>93</sup>

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80. Tawusi Melek is often depicted as a peacock and is frequently called the peacock angel. VAN ZOONEN & WIRYA, *supra* note 60, at 8.

81. *See id.*

82. *See id.*

83. MURAD & KRAJESKI, *supra* note 79, at 5.

84. VAN ZOONEN & WIRYA, *supra* note 60, at 8.

85. *See id.* at 8–10.

86. *See id.*

87. CETORELLI & ASHRAPH, *supra* note 54, at 7.

88. “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 6–7; *see also This is Still Genocide*, *supra* note 63, at 3:15-3:40.

89. *See “They came to destroy”*: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 6–7; *see also* MURAD & KRAJESKI, *supra* note 79, at 57; FARIDA KHALAF & ANDREA C. HOFFMAN, *THE GIRL WHO ESCAPED ISIS: THIS IS MY STORY* 36–37 (Jamie Bulloch trans.) (2016).

90. *See “They came to destroy”*: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 6–7; *see also* MURAD & KRAJESKI, *supra* note 79, at 57; KHALAF & HOFFMAN, *supra* note 89.

91. *See* MURAD & KRAJESKI, *supra* note 79, at 56–59; CETORELLI & ASHRAPH, *supra* note 54, at 95–96; *see also About the Genocide*, NADIA’S INITIATIVE, <https://www.nadiasinitiative.org/the-genocide> [<https://perma.cc/Y42U-9TVA>] (last visited Aug. 22, 2024); KHALAF & HOFFMAN, *supra* note 89, at 45–47.

92. *See “They came to destroy”*: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 3.

93. *See id.* at 7.

Within seventy-two hours, IS had either killed or removed the Yazidis living in many of the smaller villages.<sup>94</sup> The main town in the region, Kocho, was under IS control for roughly two weeks while the Yazidi community leaders attempted to negotiate their safe release from the town.<sup>95</sup> On August 15, 2014, the negotiations came to an end and the Yazidi residents of Kocho were ordered to the schoolhouse.<sup>96</sup> IS forces separated the men and older boys from the women and children.<sup>97</sup> The men and older boys were driven a short distance away from the schoolhouse, where all those who refused to convert to Islam were executed.<sup>98</sup> These mass shootings occurred within earshot of the women and children and with family members bearing witness.<sup>99</sup>

After the separation, IS began transferring the women and girls to various sites with the intent of entering them into the expansive slave markets that they had created for this explicit purpose.<sup>100</sup> The crimes committed against the Yazidi women are numerous. One account describes a mass killing of women, all approximately over the age of sixty, at one of the temporary holding sites.<sup>101</sup> The women were treated horribly at these holding sites: they were given insect-infested food, forced to drink water out of toilets, stuck in overcrowded cells, and denied access to medical care.<sup>102</sup>

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94. *See id.*

95. *See* KHALAF & HOFFMAN, *supra* note 89, at 46–54.

96. MURAD & KRAJESKI, *supra* note 79, at 88; KHALAF & HOFFMAN, *supra* note 89, at 55–56.

97. *See* CETORELLI & ASHRAPH, *supra* note 54, at 10–11; Donatella Rovera, *Testimonies from Kocho: the Village ISIS tried to wipe off the map*, AMNESTY INT’L (Aug. 18, 2014), <https://www.amnesty.org/en/latest/news/2014/08/testimonies-from-kocho-the-village-isis-tried-to-wipe-off-the-map/> [<https://perma.cc/2TQG-GT4W>]; *See also* MURAD & KRAJESKI, *supra* note 79, at 99–107.

98. *See* CETORELLI & ASHRAPH, *supra* note 86, at 9–11; *see also* MURAD & KRAJESKI, *supra* note 79, at 99–107.

99. *See* “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 7–8; Rovera, *supra* note 97, at 92 (“In the school, we could hear the gunshots that killed the men. They came in loud bursts and lasted for an hour.”); MURAD & KRAJESKI, *supra* note 79, at 108. *See also* KHALAF & HOFFMAN, *supra* note 89, at 60.

100. *See* “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 9–13. *See also* Press Release, Security Council, Presidential Statement Says Human Trafficking Might Constitute War Crimes, as Members Consider Issue for First Time, U.N. Press Release SC/12165 (Dec. 16, 2015).

101. *See* “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 11.

102. *See id.*

The slave trade that IS conducted through these holding cells was extensive and systematized.<sup>103</sup> Women were sold and taken from the holding sites, at slave markets, and through online slave auctions in both Iraq and Syria.<sup>104</sup> When an IS fighter purchased a woman, he was given full property rights over her, and many women were sold or gifted multiple times during their captivity.<sup>105</sup> For instance, one woman who was held in captivity for one year was sold approximately fifteen times.<sup>106</sup> These women were victims of unimaginable torture for prolonged periods.<sup>107</sup> Survivors have described being raped daily.<sup>108</sup> If a woman was caught trying to escape, she was subjected to brutal beatings and often forced to endure gang rape as punishment.<sup>109</sup> These women suffered numerous injuries from beatings and sexual violence, including rape, and they were not offered medical treatment for such injuries.<sup>110</sup> Many survivors also speak about being forced to take some form of birth control.<sup>111</sup>

In addition to the physical and sexual violence these women endured, they were psychologically tormented as well. Many women attempted or committed suicide while in captivity.<sup>112</sup> Women who were sold with their children describe how their captor would threaten to harm or kill their children and would occasionally beat the children if the mother resisted following an order or submitting to daily rapes.<sup>113</sup> There are also accounts of children being killed as a form of

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103. See *id.* at 10; Jane Arraf, *A Yazidi'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> [https://perma.cc/GD7M-ER56].

104. See “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 10.

105. See *id.*; Shona Murray, *One Woman's Journey from ISIS Slave to Human Rights Activist*, VICE NEWS (Oct. 26, 2016, 1:00 AM), <https://www.vice.com/en/article/qvwd5b/one-womans-journey-from-isis-slave-to-human-rights-activist> [https://perma.cc/R8HH-GT48].

106. See “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 10.

107. See *id.* at 23–27.

108. See *id.* at 14–15.

109. See *id.* at 17; MURAD & KRAJESKI, *supra* note 79, at 173–75.

110. See “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 23–27.

111. See *id.* at 15.

112. Media Lab Experiments, *THE LAST DANCE OF KOCHO . . . and its missing girls (ORIGINAL)*, YOUTUBE (Sept. 19, 2017), <https://www.youtube.com/watch?v=tS3cFF1kOsM> [https://perma.cc/Y644-58N7].

113. See “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 26–27.

punishment.<sup>114</sup> Their captors would often verbally abuse the women by calling them and their children “dirty kuffar” and emphasizing that they were “infidels.”<sup>115</sup> Many were forced to convert to Islam and to “marry” their captors, outwardly stripping them of their faith and purity, or true marriage.<sup>116</sup> There are also accounts of these men making comments about how they had released the Yazidi men and boys the women hadn’t seen since the attack back in Sinjar, when in reality, they were most likely dead.<sup>117</sup>

The effects of the physical and psychological torture these women endured continue to linger in survivors long after they have escaped or been rescued.<sup>118</sup> Many suffer from post-traumatic stress disorder and other forms of anxiety and depression.<sup>119</sup> There is also the ongoing psychological toll of not knowing what happened to many family members,<sup>120</sup> not knowing where they are, or being unable to locate the bodies of those known to be dead.<sup>121</sup> Other survivors suffer prolonged physical pain from the brutal beatings and rapes they experienced.<sup>122</sup> Many do not return home, rather they escape to refugee camps in the

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114. *See id.*

115. *See id.* at 15.

116. MURAD & KRAJESKI, *supra* note 79, at 149-51; *Iraq: Forced Marriage, Conversion for Yezidis*, HUMAN RIGHTS WATCH (Oct. 11, 2014, 11:45 PM), <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis> [<https://perma.cc/7HCB-3QG8>].

117. *See “They came to destroy”: ISIS Crimes Against the Yazidis*, *supra* note 2, at 8.

118. *See Escaping ISIS* (PBS FRONTLINE Season 2015, Episode 12), <https://www.pbs.org/wgbh/frontline/documentary/escaping-isis/> [<https://perma.cc/VT9F-CEMX>].

119. *See generally* Sophia Lobanov-Rostovsky & Ligia Kiss, *The Mental Health And Well-Being Of Internally Displaced Female Yazidis In The Kurdistan Region Of Iraq: A Realist Review Of Psychosocial Interventions And The Impact Of COVID-19*, 9 *Glob. Mental Health Cambridge* 508 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9806966/> [<https://perma.cc/V36B-LU4B>]; Emilienne Malfatto, *Iraq: Yazidi Survivors of Violence are Facing a Mental Health Crisis*, DOCTORS WITHOUT BORDERS (Oct. 4, 2019), <https://www.doctorswithoutborders.org/latest/iraq-yazidi-survivors-violence-are-facing-mental-health-crisis> [<https://perma.cc/WP8P-3BYK>].

120. Beyond the difficulties that come with mass displacement and relocating family afterward, there are still 2,800 women and children missing. *See About the Genocide*, *supra* note 91.

121. Travers, *supra* note 7.

122. *See Iraq: Yazidi child survivors of ‘Islamic State’ facing unprecedented health crisis*, AMNESTY INT’L (July 30, 2020), <https://www.amnesty.org/en/latest/news/2020/07/iraq-yezidi-child-survivors-of-islamic-state-facing-unprecedented-health-crisis/> [<https://perma.cc/XP9M-HSGC>].

region<sup>123</sup> and some eventually leave the area. Nearly a decade after that initial attack, this community continues to suffer as they try to rebuild their lives.<sup>124</sup>

*B. International Criminal Law and Other Legal Violations*

The crimes that IS committed against the Yazidis, and in particular the Yazidi women, are numerous. There is ample evidence of the commission of three major international crimes: genocide, crimes against humanity, and war crimes.<sup>125</sup>

The status of genocide as an international crime which the global community has an obligation to prevent is considered a peremptory norm of international law.<sup>126</sup> It was first codified in the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), and later enumerated in the Statutes for the International Criminal Tribunals for the former Yugoslavia and Rwanda, as well as the Rome Statute of the ICC.<sup>127</sup> The crime of genocide has been defined as:

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

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123. There are still 200,000 survivors displaced in northern Iraq. *About the Genocide*, *supra* note 91.

124. 150,000 have returned to the Sinjar region and are working to rebuild. *See id.*; Travers, *supra* note 7.

125. *See "They came to destroy": ISIS Crimes Against the Yazidis*, *supra* note 2, at 4–5.

126. *See* Reservations to Convention on Prevention and Punishment of Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15, 23 (May 28) (“It follows that the rights and obligations enshrined by the Convention are rights and obligations *erga omnes*.”); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), Preliminary Objections, Judgment, 1996 I.C.J. Rep. 595, ¶ 31 (July 11); *see also* Armed Activities on the Territory of the Congo (New Application 2002) (Dem. Rep. Congo v. Rwanda), Judgment, 2006 I.C.J. Rep. 6, ¶ 64 (Feb. 3).

127. *See* Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention]; Statute of the International Tribunal for Rwanda, S.C. Res. 955, art. 2, U.N. Doc. S/RES/955 (Nov. 8, 1994); Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, S.C. Res. 827, art. 4, U.N. Doc. S/25704 (May 25, 1993); Rome Statute, *supra* note 53, art. 6.

- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>128</sup>

The actions committed by IS against the Yazidi people satisfied all of the elements of the crime of genocide.<sup>129</sup> There was clear evidence of intent to target this group for religious reasons and that the intent was to destroy the group in whole. This is evidenced by the fact that the men were mostly killed or forcibly converted, and IS was well aware of the fact that the only way to become Yazidi was through birth.<sup>130</sup> Each act enumerated in the Convention was committed by IS against the Yazidis.<sup>131</sup> Looking exclusively at the crimes committed against the women of the group, IS was responsible for: killing, including the many women who took their own lives while in IS captivity;<sup>132</sup> causing both serious bodily and mental harm through their sexual enslavement of these women;<sup>133</sup> imposing poor conditions of life by withholding medical attention and providing inadequate nutrition;<sup>134</sup> and imposing measures to prevent births by separating the sexes, raping the women, forcing the women to take birth control, and subjecting them to sterilization and sexual mutilation.<sup>135</sup>

Crimes against humanity have been prosecutable since the Nuremberg Tribunal. The definition in the Rome Statute has been in large part replicated in the Draft Articles on Prevention and Punishment of Crimes Against Humanity, reflecting an international

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128. Genocide Convention, *supra* note 127, art. 2; Rome Statute, *supra* note 53, art. 6.

129. See “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 31, 36.

130. See *id.* at 28–30.

131. See generally *id.*

132. See *id.* at 21. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has held that suicide may amount to killing if the perpetrator’s acts “induced the victim to take actions which resulted in his death.” *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Judgment, ¶ 329 (Int’l Crim. Trib. for the Former Yugoslavia, Mar. 15, 2002).

133. See “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 22–26.

134. See *id.* at 26–27.

135. See *id.* at 27–28.

acknowledgment of consensus on this definition.<sup>136</sup> Among the enumerated acts listed in this definition are the crimes of enslavement, rape, and sexual violence.<sup>137</sup> The Rome Statute and Draft Articles define enslavement as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”<sup>138</sup> IS fighters exercised powers of ownership over Yazidi women and girls by buying and selling them at will, and by forcing them to cook, clean, complete household chores, and assist the fighters’ families.<sup>139</sup> The UN Commission has found that these actions clearly constitute the crime against humanity of enslavement.<sup>140</sup>

The sexual violence that constitutes a crime against humanity includes “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.”<sup>141</sup> The UN Commission has found that IS committed such sexual crimes against Yazidi women through systematized sexual enslavement and persistent abuse.<sup>142</sup> The Commission also found these acts against Yazidi women and girls constituted the crimes of torture, other inhumane acts, and severe deprivation of liberty.<sup>143</sup> Furthermore, the Commission found that, because IS committed the crimes against the Yazidis with

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136. Rome Statute, *supra* note 53, art. 7. *See also* Int’l Law Comm’n, Draft Articles on Prevention and Punishment of Crimes Against Humanity, in Int’l Law Comm’n, Rep. on the Work of Its Seventy-First Session, art. 2, U.N. Doc. A/74/10, at 3–4 (2019) [hereinafter Draft Articles]. “Virtually all States that provided comments, as well as the European Union, supported the definition of crimes against humanity contained in draft article 3, especially as it is almost verbatim the definition provided in the Rome Statute of the International Criminal Court.” Sean Murphy (Special Rapporteur), Fourth Rep. on Crimes Against Humanity, Int’l Law Comm’n Seventy-First Session, ¶ 55, U.N. Doc. A/CN.4/725 (2019).

137. *See* Rome Statute, *supra* note 53, art. 7. *See also* Draft Articles, *supra* note 136, at 3–4.

138. Rome Statute, *supra* note 53, art. 7(2)(c); Draft Articles, *supra* note 136, art. 2(2)(c).

139. *See* “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 24–25.

140. *See id.*

141. Rome Statute, *supra* note 53, art. 7(1)(g).

142. *See* “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 24–25, 31.

143. *See id.* at 31.

discriminatory intentions based on their religion, their actions also amount to the crime against humanity of persecution.<sup>144</sup>

The UN Commission also investigated whether IS's actions amounted to war crimes.<sup>145</sup> The laws surrounding war crimes have been developing for centuries and our current conception of them is codified in the Geneva Conventions and their Additional Protocols, and criminalized in the Rome Statute.<sup>146</sup> IS committed the war crime of targeting a civilian population with its initial attack on the Yazidi community.<sup>147</sup> The UN Commission also found that IS committed the war crimes of murder, rape, sexual violence, sexual slavery, torture, among several others.<sup>148</sup>

Lastly, the UN Commission looked to see whether IS violated other international treaties or legal customary norms during the process of their violence against the Yazidis.<sup>149</sup> Many aspects of international human rights law are regarded as peremptory norms of international law (*jus cogens*), meaning no one can be granted immunity for violating such norms, and no derogation from such protections is allowed.<sup>150</sup> The International Law Commission has stated that the prohibition of torture, genocide, crimes against humanity, and slavery are among these norms.<sup>151</sup> Although the prohibition of rape and sexual

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144. *See id.*

145. *See id.* at 32.

146. *See* Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Dec. 8, 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Dec. 8, 1949, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Dec. 8, 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Dec. 8, 1949, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Aug. 6, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Aug. 6, 1977, 1125 U.N.T.S. 609; Rome Statute, *supra* note 53, art. 8.

147. *See* "They came to destroy": ISIS Crimes Against the Yazidis, *supra* note 2, at 32.

148. *See id.*

149. *See id.*

150. *See* Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 144 (July 20).

151. *See Analytical Guide to the Work of the International Law Commission: Peremptory Norms of General International Law (Jus Cogens)*, INT'L L. COMM'N, [https://legal.un.org/ilc/guide/1\\_14.shtml](https://legal.un.org/ilc/guide/1_14.shtml) [<https://perma.cc/2GUM-Y3HA>] (last updated Apr. 16, 2020). Dire Tladi, Int'l Law Comm'n, Fifth Rep. on Peremptory Norms of General Int'l Law (*jus cogens*), U.N. Doc A/CN.4/747 (2022).

violence has not yet been given the status of a peremptory norm, several international bodies have determined that it falls under the category of torture.<sup>152</sup> The Rome Statute also makes clear that rape and sexual violence fall under the categories of crimes against humanity and war crimes.<sup>153</sup> Furthermore, sexual slavery is a form of slavery.<sup>154</sup> This enhances the seriousness of IS's crimes, as they constitute violations of *jus cogens* prohibitions.<sup>155</sup> In sum, the UN Commission has found that IS has violated the right to life, liberty and security of the person, freedom of religion, prohibition against slavery, prohibition of human trafficking, and prohibition of enforced disappearance.<sup>156</sup>

Beyond the work of the UN Commission of Inquiry, various NGOs and non-profit organizations including Nadia's Initiative, Yazda, and Amnesty International, , as well as IGO bodies such as the United Nations Investigative Team to Promote Accountability for Crimes Committed by Daesh/ISIL (UNITAD) and the International, Impartial, and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for Crimes under International Law Committed in the Syrian Arab Republic (IIIM), have been working to document and gather evidence of the above crimes and violations.<sup>157</sup> Additionally, we are operating in a world in which sexual and gender-based crimes and violations have been prosecuted by various courts, providing ample precedent for any criminal justice

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152. Patricia Viseur Sellers, *Sexual Violence and Peremptory Norms: The Legal Value of Rape*, 34 CASE W. RES. J. INT'L L. 287 (2002). *See, e.g.*, Aydin v. Turkey, 1997-IV Eur. Ct. H.R. 23178/94; Mejia v. Peru, Case 10.970, Inter-Am. C.H.R. 157, OEA/ser. L./V/II 91, doc. 7 rev. (1996); Prosecutor v. Delalic, Judgement, I.C.T.Y., No. IT-96-21/T (1998) at 7–25.

153. Rome Statute, *supra* note 53 Art. 7, Art. 8(2)(b)(xxii).

154. Sexual slavery and sex trafficking are often categorized as “modern slavery.” *What is Modern Slavery?*, U.S. DEP'T OF STATE, <https://www.state.gov/what-is-modern-slavery/> [https://perma.cc/M9XS-DQWK ] (last visited August 23, 2024).

155. *See “They came to destroy”: ISIS Crimes Against the Yazidis*, *supra* note 2, at 31.

156. *See id.*

157. *Our Approach*, NADIA'S INITIATIVE, <https://www.nadiasinitiative.org/our-approach> [https://perma.cc/R7Q2-33M6]; *Who we Are*, YAZDA, <https://www.yazda.org/yazda> [https://perma.cc/2J7Y-WEAG]; *Testimonies from Kocho: the Village ISIS tried to wipe off the map*, AMNESTY INTERNATIONAL (Aug. 18, 2014), <https://www.amnesty.org/en/latest/news/2014/08/testimonies-from-kocho-the-village-isis-tried-to-wipe-off-the-map/> [https://perma.cc/7QMY-SFDG]; *Who We Are*, UNITED NATIONS INVESTIGATIVE TEAM TO PROMOTE ACCOUNTABILITY FOR CRIMES COMMITTED BY DA'ESH/ISIL (UNITAD), [https://www.unitad.un.org/who\\_we\\_are\\_](https://www.unitad.un.org/who_we_are_) [https://perma.cc/Y4RQ-GYDU]; *Who We Are At A Glance*, INTERNATIONAL, IMPARTIAL AND INDEPENDENT MECHANISM, <https://iiim.un.org/who-we-are/at-a-glance/> [https://perma.cc/H9ER-AJGK].

mechanism to draw upon in prosecuting IS perpetrators for these crimes and violations.<sup>158</sup>

*C. The Various Criminal Justice and Other Accountability Mechanisms*

1. Existing International Tribunal Routes

Although the Rome Statute provides the most recent and widely accepted definitions of these crimes, neither Syria nor Iraq (where most of this conduct occurred) are parties to the Rome Statute.<sup>159</sup> This means that the ICC does not have territorial jurisdiction over the crimes committed.<sup>160</sup> The Prosecutor considered exercising jurisdiction over nationals of other state parties (such as France, the United Kingdom, and Germany), but given that IS leadership is primarily composed of nationals of Iraq and Syria, the Prosecutor found that the prospects of prosecuting those most responsible were minimal.<sup>161</sup> Another potential option for obtaining jurisdiction over crimes committed in these territories would be for the United Nations Security Council to pass a resolution, authorized by the UN Charter, to refer crimes committed in these countries to the ICC prosecutor.<sup>162</sup> In 2014, Russia and China blocked a resolution that would have referred crimes committed in

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158. *See generally* Women Victims of Sexual Torture in *Atenco v. Mex.*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. Series (ser. C) No. 371, ¶¶ 208–09 (Nov. 28, 2018) (finding that the eleven women involved in the case had been subject to torture and sexual violence); *Maslova & Nalbandov v. Rus.* App. No. 839/02, ¶¶ 106–08, (Jan. 24 2008), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-84670%22%7D> [<https://perma.cc/FQ7F-9W52>] (finding applicant had been subjected to repeated rape and abuse and Russia had failed to prohibit torture, etc.); *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Communication 279/03-296/05, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶¶ 157, 228–29 (May 27, 2009), <https://achpr.au.int/en/decisions-communications/sudan-human-rights-organisation-centre-housing-rights-and-evictions-27903> [<https://perma.cc/3M9T-BJMW>] (finding that rape of women and girls was committed during the Darfur conflict).

159. *See* Rome Statute, *supra* note 53.

160. *See Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Alleged Crimes Committed by ISIS*, INTERNATIONAL CRIMINAL COURT (April 8, 2015), <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-alleged-crimes-committed-isis#:~:text=However%2C%20Syria%20and%20Iraq%20are,crimes%20committed%20on%20their%20soil> [<https://perma.cc/8GYF-A5UW>].

161. *See id.*

162. *See* Rome Statute, *supra* note 53, art. 13(b).

Syria to the ICC.<sup>163</sup> The UN Commission of Inquiry found that the elements of genocide, crimes against humanity, and war crimes were all satisfied by IS's actions and recommended that the Security Council refer the situation to the ICC.<sup>164</sup> Therefore, if the ICC one day obtains jurisdiction then it could pursue criminal prosecutions of perpetrators.<sup>165</sup>

States parties to the Genocide Convention could also potentially bring Syria or Iraq before the International Court of Justice (ICJ) for failing to abide by the obligations to prevent and punish genocide under the Convention.<sup>166</sup> However, this path would not hold IS members personally accountable for their crimes against the Yazidis, which we know is critically important to the victim-survivors.

## 2. Alternative International Tribunals

Establishing a new international tribunal is another option for addressing the crimes committed against the Yazidi women. There are many examples of this type of justice mechanism. For instance, the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL) were all newly formed ad hoc or special tribunals established to address crimes committed during specific moments in time in particular countries or regions.<sup>167</sup> The UN drafted a statute that enumerated the crimes within each tribunal's jurisdiction and laid out their procedural processes.<sup>168</sup> Each statute was tailored to the specific tribunal, with the crimes and aspects of each crime often unique to each.<sup>169</sup> These tribunals also played a major role in establishing violence against women as an international crime, as they

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163. See *How the ICC Works*, ABA-ICC PROJECT, <https://how-the-icc-works.aba-icc.org/> [<https://perma.cc/6H9Y-X243>] (last visited Apr. 15, 2020).

164. See *infra* Part III.B.

165. See *id.*

166. See Genocide Convention, *supra* note 127.

167. See *UN International Law Documentation*, DAG HAMMARSKJÖLD, <https://research.un.org/en/docs/law/courts> [<https://perma.cc/U229-FJ7L>] (last updated Jan. 8, 2020).

168. See *id.*

169. For instance, the SCSL took extra care to discuss child soldiers, and the criminal accountability related to the recruitment and use of children in this manner. See Statute for the Special Court of Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 137.

were active prior to the final drafting of the Rome Statute and included sexual violence among the crimes to be adjudicated.<sup>170</sup>

Establishing an ad hoc tribunal to address the international crimes that IS has committed is an appealing option, and one that was also recommended to the Security Council by the Commission of Inquiry.<sup>171</sup> However, there are obstacles that make it less conceivable. Once again, political turmoil in the region poses many challenges to the establishment of such a tribunal if it were to be located locally. Even if this was not a consideration, there would still be challenges in drafting the statute and determining the tribunal's jurisdiction. The temporal jurisdiction of the tribunal, for instance, must be considered, especially given IS remains active and many Yazidi women are still in captivity.<sup>172</sup> Additionally, it must be determined how this type of tribunal would be established. The UN Security Council established both the ICTY and ICTR,<sup>173</sup> whereas the government of Sierra Leone requested that the UN establish a special court to address certain crimes.<sup>174</sup> Syria has taken a strong stance of non-involvement on this matter, so it is highly unlikely to petition to establish a court. Iraq, although taking steps towards prosecutions, is also unlikely to petition for the tribunal given that the Iraqi Supreme Court blocked the domestic establishment of such a tribunal.<sup>175</sup> The Security Council is also unlikely to succeed in establishing an ad hoc tribunal given that Russia and China would most likely vote no. Regardless, the Commission made the recommendation in 2016 and there has been no international momentum towards creating a new tribunal.<sup>176</sup> Additionally, the establishment of the ICC was intended, to a certain extent, to mitigate the need for these types of tribunals.<sup>177</sup> This is not to

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170. The statute for the ICTY, for example, explicitly listed rape as one of the crimes against humanity that it would be prosecuting. *See* S.C. Res. 827 (May 25, 1993). The statute for the SCSL further expanded on the sexual violence crimes by including the language “any other form of sexual violence” in its description. *See* Statute for the Special Court of Sierra Leone, *supra* note 169.

171. *See* “*They came to destroy*”: *ISIS Crimes Against the Yazidis*, *supra* note 2, at 37.

172. *See* *About the Genocide*, *supra* note 91.

173. *See* *UN International Law Documentation*, *supra* note 167.

174. *See* RESIDUAL SPECIAL COURT FOR SIERRA LEONE, <http://www.rscsl.org/> [https://perma.cc/U3AV-X3UJ] (last visited Aug. 2, 2024).

175. *See* *infra* Part III.C.3.

176. *See* *How the ICC Works*, *supra* note 163.

177. *See* *UN Documentation: International Law*, *supra* note 167.

say that the ICC completely precludes the use of ad hoc tribunals,<sup>178</sup> but it may decrease international support for such a tribunal, particularly among Rome Statute state parties.

### 3. Domestic Criminal Court Options

Another option available to the Yazidi women is to pursue justice in domestic courts in the countries where many of these events occurred. This would most likely mean Syria (where they were abused) and Iraq (where they were taken captive and abused). There are still many security concerns in this region that make this option less viable.<sup>179</sup> The fact that IS continues to maintain a presence in that part of the world creates a significant risk of corruption in the courts.<sup>180</sup> It puts the justice system in a precarious position that could result in victims feeling less comfortable to prosecute or testify, the mishandling and disappearance of crucial evidence, and possibly even allowing convicted prisoners a greater chance of escaping detention.<sup>181</sup> Additionally, after so many years of conflict in these places, the court systems are understaffed, underfunded, and generally lack the knowledge and experience critical to maintaining a fair judicial system.<sup>182</sup>

Syria has proven over the years that it is both unwilling and unable to oppose and bring to justice the terror groups operating within its borders, which of course includes IS.<sup>183</sup> Meanwhile, in Iraq, there have been attempts by both the central government of Iraq and the semi-autonomous Kurdistan Regional Government to prosecute individuals,

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178. Many states are in support of creating an ad hoc tribunal to try individuals for Russia's crime of aggression towards Ukraine. See *U.N. Member States: Support the Establishment of ad hoc Criminal Tribunal to Prosecute Russian Crime of Aggression*, FORTIFY RIGHTS (Apr. 18, 2024), <https://www.fortifyrights.org/ukr-inv-2024-04-18/> [<https://perma.cc/N3NT-TNKJ>].

179. See Massaab Al-Aloosy, *The Iraqi Judiciary: Undermined by Violent Intimidation, Corruption, and Politicization*, THE ARAB GULF STATES INSTITUTE OF WASHINGTON (Jan. 30, 2023), <https://agsiw.org/the-iraqi-judiciary-undermined-by-violent-intimidation-corruption-and-politicization/> [<https://perma.cc/SN8Y-CTFZ>].

180. *Id.*

181. See *Rule of Law Handbook: A Practitioner's Guide for Judge Advocates*, *supra* note 20 at 31.

182. See Mehra, *supra* note 16.

183. See The White House, *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations* 15 (Dec. 2016), [https://www.justsecurity.org/wp-content/uploads/2016/12/framework.Report\\_Final.pdf](https://www.justsecurity.org/wp-content/uploads/2016/12/framework.Report_Final.pdf) [<https://perma.cc/YMS7-N9YU>].

but these attempts have consistently fallen short.<sup>184</sup> Credit must be given to the Iraqi government for calling for international support in prosecuting the crimes committed by IS during their occupation, which led the UN Security Council to establish the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) to aid in investigations.<sup>185</sup> However, UNITAD closed its doors in September 2024.<sup>186</sup> Ahead of its closure, they published several remaining reports containing findings related to international crimes IS committed in Iraq and worked to share their findings with the government.<sup>187</sup> The Special Advisor had expressed concerns about their ability to complete its ongoing lines of inquiry.<sup>188</sup> In her closing remarks, Acting Special Advisor Ana Payró Llopis detailed the accomplishments of UNITAD in being able to work with Iraqi officials to investigate crimes and build Iraq's capacity to investigate and prosecute the international crimes IS committed.<sup>189</sup> A key portion of UNITAD's archive, including interviews, forensic reports, etc., has been turned over to the Iraqi officials.<sup>190</sup> The comprehensive archive is being securely held at the UN headquarters, but Payró Llopis mentions the hopes that this evidence will one day be used to pursue justice against IS perpetrators.<sup>191</sup>

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184. See generally Office of the United Nations High Comm'r for Human Rights & United Nations Assistance Mission for Iraq, *Human Rights in the Administration of Justice in Iraq: Trials Under the Anti-Terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL* 6 (Jan. 2020), [https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI\\_Report\\_HRAdministrationJustice\\_Iraq\\_28January2020.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAdministrationJustice_Iraq_28January2020.pdf) [<https://perma.cc/JPH6-D53K>].

185 See *Who We Are*, UNITED NATIONS INVESTIGATIVE TEAM TO PROMOTE ACCOUNTABILITY FOR CRIMES COMMITTED BY DA'ESH/ISIL (UNITAD), *supra* note 157.

186. Ana Peyró Llopis (Acting Special Adviser) *Briefing to the UNSC, 12th Report* (June 4, 2024), <https://www.unitad.un.org/briefing-12report-EN> [<https://perma.cc/JG88-RVR7>].

187. UNITAD has shared many of its findings with third states. See Press Release, Security Council, Sudden End to Team Investigating Da'esh Crimes in Iraq Could Impact Ongoing Inquiries, Justice for Victims, Special Adviser Warns Security Council, U.N. Press Release SC/15514 (Dec. 4, 2023), <https://press.un.org/en/2023/sc15514.doc.htm> [<https://perma.cc/UJ52-MRUE>]. See *infra* text accompanying notes 194–199.

188. See Sudden End to Team Investigating Da'esh Crimes in Iraq Could Impact Ongoing Inquiries, Justice for Victims, Special Adviser Warns Security Council, *supra* note 187.

189. UN Iraq, *Statement from Ana Peyró Llopis, Acting Special Adviser, Head of the Investigative Team UNITAD*, YOUTUBE, <https://www.youtube.com/watch?v=AMsRSgm9QfU> [<https://perma.cc/FC7J-TBL6>] (Oct. 23, 2024).

190. *Id.*

191. *Id.*

Beyond its work with UNITAD, the central government is prosecuting IS actors primarily under its counterterrorism laws, focusing on the prosecution of membership in IS as opposed to the specific crimes being committed.<sup>192</sup> Because Iraq is not party to the Rome Statute, it is not bound by that treaty to include the crimes from the Statute in its domestic criminal code.<sup>193</sup> Therefore, the egregious crimes committed by IS actors are not codified in Iraqi law, which means IS courts cannot prosecute IS actors for the atrocity crimes they committed against Yazidi women.<sup>194</sup> Furthermore, the central government has not been discerning in its prosecutions or punishments, so these actions are viewed more as revenge than justice.<sup>195</sup>

The Kurdistan Regional Government has established a Commission for Investigation and Gathering Evidence to build cases against IS individuals for the crimes committed against the Yazidis.<sup>196</sup> There is no national plan, however, to coordinate the prosecution of these cases, and, according to a Senior Investigating Judge on this Commission, there is no suitable judicial body to hear them.<sup>197</sup> In 2020, the Kurdish Regional Government attempted to pass a law establishing a special tribunal for this purpose, but it was blocked by the Iraqi Federal Supreme Court.<sup>198</sup>

Bringing perpetrators before the domestic courts of third-party countries is another option that has been considered in the context of IS. There are certain jurisdictional concerns with this approach, however. Countries such as Spain and Germany can obtain jurisdiction over a defendant through the active nationality principle (if the crime was committed by one of their nationals), the passive nationality

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192. See Payam Akhavan et al., *What Justice for the Yazidi Genocide?: Voices From Below*, 42 HUM. RTS. Q. 1, 4 (2020); see also Tatiana Rouhana, *Is Criminal Justice Enough to Address the Yazidi Genocide?*, THE TAHRIR INSTITUTE FOR MIDDLE EAST POLICY (Aug. 16, 2022), <https://timep.org/commentary/analysis/is-criminal-justice-enough-to-address-the-yazidi-genocide/> [https://perma.cc/LTB7-7WB4].

193. See *Human Rights in the Administration of Justice in Iraq*, *supra* note 184, at 6.

194. See *id.*

195. See Akhavan et al., *supra* note 192, at 4. See generally HUMAN RIGHTS WATCH, *FLAWED JUSTICE: ACCOUNTABILITY FOR ISIS CRIMES IN IRAQ* (Dec. 5, 2017), <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq> [https://perma.cc/UG7P-3MK4].

196. See *This is Still Genocide*, *supra* note 63.

197. See *id.*

198. See *id.*

principle (if the crime was committed against one of their nationals),<sup>199</sup> or the territoriality principle (if a crime has been committed within their borders).<sup>200</sup> The countries that have undertaken this process already have exemplified the limitations of this approach. First, like Iraq, these countries prosecute based on their own domestic terrorism laws rather than for the much more serious international crimes that these individuals have committed.<sup>201</sup> It is also relatively rare that these countries prosecute anyone other than their own nationals.<sup>202</sup> The jurisdictional limitations of this option make it unlikely to be a plausible method for achieving justice for the Yazidi women. Neither the passive nationality principle nor the territoriality principle could grant jurisdiction to these courts, and, as the ICC Prosecutor noted, those most responsible for these crimes are of Iraqi and Syrian nationality. Therefore, even the active nationality principle would likely fall short of achieving the type of justice that these women desire.<sup>203</sup>

The final option in domestic courts is the use of universal jurisdiction. Universal jurisdiction allows domestic courts in any country to exercise jurisdiction to prosecute certain, egregious international crimes, regardless of where the events took place, the nationality of the perpetrator, or the nationality of the victim.<sup>204</sup> This form of jurisdiction is based on the recognition by international law

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199. Umm Sayyaf and her husband, a senior leader in ISIL, are said to have held a U.S. aid worker, Kayla Mueller, among others in their home where Mueller was forced to undergo beatings, torture, rape and other forms of sexual violence. In 2016, U.S. prosecutors filed a criminal complaint against Umm Sayyaf in the Eastern District of Virginia under 18 U.S.C. §2339(b). This charge is for “knowingly and intentionally . . . conspir[ing] to provide material support to a terrorist organization.” The Kurdistan Regional Government in Iraq had her in custody and they charged and convicted her of a crime related to her membership in ISIL. As of 2021 no efforts to extradite Sayyaf have been made and the charges in the U.S. remain open. See *ISIL Atrocities against the Yazidis*, <https://cja.org/what-we-do/litigation/u-s-v-umm-sayyaf/> [<https://perma.cc/F2E5-GSDH>]; see also Press Release, U.S. Dep’t of Just., *Wife of Dead ISIL Leader Charged in Death of Kayla Jean Mueller* (Feb. 8, 2016), <https://www.justice.gov/opa/pr/wife-dead-isil-leader-charged-death-kayla-jean-mueller> [<https://perma.cc/E5Y5-9QU8>].

200. See Mehra, *supra* note 16.

201. See *id.*

202. See *id.*

203. See *id.*; see *infra* Part III.c.3.

204. See *What is Universal Jurisdiction?*, THE CENTER FOR JUSTICE AND ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction/#:~:text=What%20is%20Universal%20Jurisdiction%3F,crimes%2C%20genocide%2C%20and%20tortuto> [<https://perma.cc/2R97-UN6W>] (last accessed August 19, 2024).

that “certain crimes are so serious that the duty to prosecute them transcends all borders” and that those who commit crimes such as crimes against humanity, genocide, and war crimes are “*hostes humani generis*, or ‘enemies of all mankind.’”<sup>205</sup> Germany enacted a universal jurisdiction statute in 2002, and has used this jurisdiction to prosecute and convict several former IS members for crimes committed against the Yazidis.<sup>206</sup> On its face, this serves as an effective way of prosecuting these crimes. However, several downsides must also be considered. First, countries may have differing definitions of the various crimes that qualify, such as torture, which may result in major gaps in accountability.<sup>207</sup> Another issue is that universal jurisdiction may be perceived as an infringement upon sovereignty of the country where the events took place.<sup>208</sup> Additionally, countries have varying requirements for the presence of the individual in their territory to be arrested and prosecuted. In countries where physical presence is required, gaining this type of access to perpetrators could be an obstacle. In countries where this is not a requirement, there are ongoing debates about fair trial and defendants’ rights in such circumstances.<sup>209</sup> Lastly, even in the countries that have had success with these prosecutions, there have only been a handful, and many more would be needed to achieve the widespread justice the community seeks.

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205. *Id.*

206. *See Venis, supra* note 12. In November 2021, the Higher Regional Court in Frankfurt convicted Taha al-Jumailly of genocide, crimes against humanity resulting in death, war crimes, aiding and abetting war crimes, and bodily harm resulting in death. This case marked the first time a person had been found guilty of genocide for their mistreatment of the Yazidis. *See* Avanti Deshpande, *Ending Impunity For International Crimes: The Pursuit Of Justice Through Universal Jurisdiction*, HUMAN RIGHTS PULSE (May 27, 2022), [https://www.humanrightspulse.com/mastercontentblog/ending-impunity-for-international-crimes-the-pursuit-of-justice-through-universal-jurisdiction\\_](https://www.humanrightspulse.com/mastercontentblog/ending-impunity-for-international-crimes-the-pursuit-of-justice-through-universal-jurisdiction_) [<https://perma.cc/M9DA-CRUD>]; *Ex-IS Member Guilty of Genocide for Chaining up Yazidi Girl to Die in the Sun*, THE GUARDIAN (Nov. 30, 2021), <https://www.theguardian.com/world/2021/nov/30/ex-is-member-guilty-of-genocide-for-leaving-yazidi-girl-to-die-in-the-sun> [<https://perma.cc/6BHM-WHMS>]. *See also* *Germany/Iraq: World’s First Judgment on Crime of Genocide against the Yazidis*, AMNESTY INTERNATIONAL (Nov. 30, 2021), <https://www.amnesty.org/en/latest/news/2021/11/germany-iraq-worlds-first-judgment-on-crime-of-genocide-against-the-yazidis/> [<https://perma.cc/3PKT-MF5R>].

207. *See What is Universal Jurisdiction?*, *supra* note 204.

208. *See Venis, supra* note 12.

209. *See generally* Ryan Rabinovitch, *Universal Jurisdiction in Absentia*, 28 *FORDHAM INT’L L.J.* 500 (2004).

#### 4. Truth Commissions and Community Based Justice Options

The other option available to Yazidi women is using some form of truth commission or community-based justice approach. The goal of a truth commission is to “determine the facts, causes, and consequences of past human rights violations.”<sup>210</sup> This is often done through gathering extensive evidence, typically in the form of victim testimony.<sup>211</sup> This method offers victims recognition for their suffering and typically reveals the wrongs that individuals committed.<sup>212</sup> Commissions can recommend policy changes in an attempt to prevent a repeat of the atrocities, work in tandem with criminal prosecutors to pave the way for future prosecutions, and, if following the example set forth by the South African Truth and Reconciliation Commission, grant amnesty to the perpetrators who admit their guilt.<sup>213</sup> However, this approach may not achieve the notion of justice that the Yazidi community is seeking, particularly if amnesty is offered, as they desire criminal prosecutions and appropriate punishment for the perpetrators. Various Truth and Reconciliation Commissions have placed an emphasis on gender inclusivity and have had success in dealing with conflicts and abuses related to gender and sexual based violence.<sup>214</sup> However, the women and many women’s groups in those circumstances also sought prosecutions after the fact.<sup>215</sup> Furthermore, the success of this mechanism depends on its legitimacy within the local community, its independence, and, to a certain extent, the

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210. TRUTH SEEKING: ELEMENTS OF CREATING AN EFFECTIVE TRUTH COMMISSION 9 (Eduardo Gonzalez & Howard Varney eds., 2013).

211. *See id.* at 9–11.

212. *See id.* at 9–12.

213. *See Truth Commissions*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, <https://www.ictj.org/sites/default/files/ICTJ-Global-Truth-Commissions-2008-English.pdf> [https://perma.cc/QQS8-PCBW] (last visited Apr. 15, 2020).

214. Gender issues played a major role in the Truth Commissions in South Africa, Guatemala, Peru, and Sierra Leone stemming from either their mandates or advocacy. *See* Jeremy Sarkin & Sarah Ackermann, *Understanding the Extent to Which Truth Commissions Are Gender Sensitive and Promote Women’s Issues: Comparing and Contrasting These Truth Commission Roles in South Africa, Guatemala, Peru, Sierra Leone and Liberia*, 50 GEO. J. INT’L L. 463 (2019).

215. Following the Guatemalan Truth Commission, several civil society organizations created a Tribunal of Consciousness in the hopes that it would lead to prosecutions. Women’s groups in Peru also sought prosecutions. *See id.* at 512–13.

participation of perpetrators.<sup>216</sup> It is unclear if any of this would be possible in the context of IS.<sup>217</sup>

Community-based justice depends significantly more on the culture of the group that is attempting to take advantage of this type of justice mechanism than the alternative options. The Gacaca courts of Rwanda, for example, combined “local conflict-resolution traditions with a modern punitive legal system to deliver justice.”<sup>218</sup> The goal of these courts was to focus on the local community by distributing justice quickly and then turning their attention towards reconciliation within their community.<sup>219</sup> There were, of course, concerns of corruption and bias from the local judges that served on the courts, as well as concerns that their procedures would not lead to fair trials and that judges might misapply the laws relating to genocide.<sup>220</sup> While the exact model of the Gacaca court could not be replicated in the case of the Yazidi women given its specific cultural aspects, a similar, community-based approach inspired by this system could be considered. However, the same concerns that were expressed about the Gacaca courts would still remain true in the case of a community-based justice system for the Yazidi women. Additionally, unlike in Rwanda, where courts were established and supported by the government, it is unlikely that Syrian or Iraqi government officials would support the establishment of such a justice mechanism.<sup>221</sup> Even more importantly, just as a truth commission would likely not satisfy the justice goals of the Yazidis, a community-based justice mechanism would also fall short, as it would not be a true criminal prosecution.

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216. Lisa J. Laplante & Kimberly Theidon, *Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru*, 29 *HUM. RTS. Q.* 228, 235 (2007).

217. See Leslie Haskell, *Truth Commissions*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, <https://www.ictj.org/sites/default/files/ICTJ-Global-Truth-Commissions-2008-English.pdf> [<https://perma.cc/8KGE-BEQY>] (last visited Apr. 15, 2020).

218. See *Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*, HUMAN RIGHTS WATCH 1 (May 31, 2011), <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts> [<https://perma.cc/QX7Y-6NJE>].

219. See *id.* at 2.

220. See *id.* at 3.

221. See *id.* at 15.

#### IV. THE PEOPLE'S TRIBUNAL MECHANISM

In addition to the aforementioned paths to justice, there is another, less conventional, quasi-legal mechanism that can be used to achieve recompense for victims of large-scale crimes: the people's tribunal.<sup>222</sup> People's tribunals are "forums of justice" often initiated by non-governmental organizations or other human rights groups, designed to adjudicate cases that may not have access to any other judicial forum.<sup>223</sup> The cases heard by people's tribunals frequently involve massive human rights violations. Although the decisions of these courts do not hold any legal weight per se, they amplify the voices of the victims, acknowledge their suffering, and increase awareness of situations deserving public attention.<sup>224</sup>

These tribunals increasingly cropped up during the latter half of the twentieth century. The International War Crimes Tribunal, for instance, took place in 1966 and was established to analyze whether or not the governments of the United States, Australia, New Zealand, and South Korea had engaged in the crime of aggression or committed any war crimes and other violations during the Vietnam War.<sup>225</sup> This people's tribunal inspired the creation of several others, such as the Russell Tribunal of 1973 in Latin America, which investigated human rights violations perpetrated by Latin American governments.<sup>226</sup> People's tribunals have since been established and used to address human rights abuses in Palestine, Chile, Iraq, Brazil, the Philippines, and other regions.<sup>227</sup> There is even a Permanent People's Tribunal, established in 1979 in Rome.<sup>228</sup>

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222. A People's Tribunal may also be colloquially referred to as a mock trial.

223. See Azadeh Shahshahani, *People's Tribunals: Holding Power to Account*, 116 AM. SOC'Y INT'L L. PROC. 202, 202-03 (2022).

224. See *id.* at 209.

225. The International War Crimes Tribunal was organized by Bertrand Russell following his "Appeal to the American Conscience" regarding the horrendous abuses being committed in Vietnam. Sam Rosenwein, *International War Crimes Tribunal - Stockholm Session*, 26 GUILD PRAC. 141, 141-42 (1967).

226. See CIA Doc., *Constitution of Second Russell Tribunal on Repression in Brazil, Chile, and Latin America* (Nov. 6, 1973), [https://www.cia.gov/readingroom/docs/DOC\\_0005431000.pdf](https://www.cia.gov/readingroom/docs/DOC_0005431000.pdf) [<https://perma.cc/S2N3-PU6B>].

227. See Shahshahani, *supra* note 223.

228. See PERMANENT PEOPLES' TRIBUNAL, <https://permanentpeopletribunal.org/?lang=en> [<https://perma.cc/5W9T-FG2Q>].

Although this mechanism lacks enforcement power without the backing of a state's legal system, it serves several important purposes. As previously mentioned, these tribunals provide victims with a platform to tell their stories by utilizing victim testimony in the adjudicatory process.<sup>229</sup> People's tribunals will also issue decisions, or "verdicts," that can acknowledge the violations the victims experienced and call attention to ongoing injustices, particularly those resulting from the lack of full accountability for the perpetrators of these abuses.<sup>230</sup> The International War Crimes Tribunal, for instance, issued a "verdict" finding that the United States was committing war crimes in Vietnam, as well as genocide against the Vietnamese people, and that Australia, New Zealand, Japan, the Philippines, South Korea, and Thailand were all accomplices.<sup>231</sup>

People's tribunals can also call for more official action from states or the international community in the decisions that they issue. For example, the International People's Tribunal, held in 2018 in Brussels, issued a call to action along with its verdict.<sup>232</sup> This tribunal was analyzing the then-ongoing human rights violations in the Philippines perpetrated by the Duterte government.<sup>233</sup> The tribunal not only found the Duterte administration and Donald Trump, who was President of the United States at the time, guilty of human rights violations,<sup>234</sup> but also called for the ICC and various regional human rights bodies to further investigate and punish these crimes.<sup>235</sup> In addition to calling for further, formal action, such tribunals can assist in the collection of evidence that may be used at future criminal prosecutions.<sup>236</sup>

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229. See Shahshahani, *supra* note 223 at 203.

230. See *id.* at 202–203.

231. See *International War Crimes Tribunal Records*, NYU LIBRARIES, [http://dlib.nyu.edu/findingaids/html/tamwag/tam\\_098/bioghist.html](http://dlib.nyu.edu/findingaids/html/tamwag/tam_098/bioghist.html) [<https://perma.cc/D2LV-KQ6X>] (last visited August 23, 2024).

232. See Shahshahani, *supra* note 223 at 205–06.

233. See *id.*

234. See *International People's Tribunal on the Philippines Issues Verdict on Duterte and Trump*, INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS (Sept. 20, 2018), <https://iadllaw.org/2018/09/international-peoples-tribunal-on-the-philippines-issues-verdict-on-duterte-and-trump/> [<https://perma.cc/WCX8-76B7>].

235. Azadeh Shahshahani, *People's Tribunals Deliver Justice for Victims of Human Rights Violations*, GUILD NOTES, <https://www.nlg.org/guild-notes/article/peoples-tribunals-deliver-justice-for-victims-of-human-rights-violations/> [<https://perma.cc/5KLD-HUZ8>] (last accessed August 20, 2024).

236. See Shahshahani, *supra* note 223, at 202–03.

People's tribunals continue to be used in a variety of contexts. In November 2023, a people's tribunal was initiated to hold U.S. weapons manufacturers accountable for their part in the commission of crimes against humanity.<sup>237</sup> In May 2024, a people's tribunal was hosted in Brussels, Belgium entitled "KATARUNGAN: The Filipino People vs the US Government and the Marcos and Duterte regimes."<sup>238</sup> Each tribunal tends to focus on a particular event, and many are focused solely on crimes against women, particularly crimes related to sexual violence. For instance, the Court of Conscience on Sexual Violence against Women during the Internal Armed Conflict focused on the experiences of the women who were subjected to sexual violence during the internal conflict in Guatemala.<sup>239</sup> This section will use another example, the Women's International War Crimes Tribunal, as a case study to analyze whether this mechanism would prove useful in addressing the experiences of Yazidi women victims of the Islamic State.

#### A. Case Study: Korean Comfort Women Finding Justice

Like the Yazidi women, the victims of the Japanese comfort women campaign were victims of sexual crimes and wanted justice for the atrocities committed against them.<sup>240</sup> During their campaign in China during the Sino-Japanese War, Japanese military leaders installed "comfort stations" in the territories they controlled.<sup>241</sup> One reason for this was to prevent the spread of venereal diseases, which they believed were rampant in the local brothels.<sup>242</sup> The stations were also intended to prevent the mass rape of local populations.<sup>243</sup> The leaders in charge of the stations shied away from using local women at

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237. *About the Tribunal*, MERCHANTS OF DEATH WAR CRIMES TRIBUNAL, <https://merchantsofdeath.org/about/> [<https://perma.cc/TP9W-Y6TZ>] (last accessed August 20, 2024).

238. *KATARUNGAN: The Filipino People vs the U.S. Government, and the Marcos and Duterte Regimes*, INT'L PEOPLES TRIBUNAL (2024), <https://peopletribunal.net/resources/ipt-2024-primer/> [<https://perma.cc/BX5G-JBZR>].

239. *Court of Conscience on Sexual Violence Against Women*, INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA (Mar. 5, 2010), <https://www.cicig.org/history//index.php?page=court-of-conscience-on-sexual-violence-against-women> [<https://perma.cc/3CAN-63K8>]. *See generally supra* Part III.c.4.

240. *See* YUKI TANAKA, JAPAN'S COMFORT WOMEN 11 (2001).

241. *See id.*

242. *See id.*

243. *See id.* at 16.

these comfort stations out of concern for public image and the possibility that the women could be recruited as spies.<sup>244</sup> This led to a large-scale recruitment campaign in the other Japanese-occupied territories, such as Korea.<sup>245</sup>

Japan has historically denied any wrongdoing, insisting for a very long time that the recruitment of these women was voluntary and that they consented to their participation. However, the women fervently deny that this is true.<sup>246</sup> They had attempted to bring countless lawsuits in Japan, but to no avail.<sup>247</sup> As the survivors of the comfort stations grew older and continued to fail through traditional avenues for justice, they sought alternatives such as the people's tribunal. This resulted in the creation of the Women's International War Crimes Tribunal (Women's Tribunal) in December of 2000.<sup>248</sup>

The NGO Violence Against Women in War Network, Japan (VAWW-NET, Japan) led the initiative for this tribunal.<sup>249</sup> The proposal for the tribunal was made by Japan's representatives at the 1998 Asian Women's Solidarity Conference. During the preparatory conferences in 1998 and 1999, the International Organizing Committee was formed.<sup>250</sup> The Committee consisted of three groups. The first included organizations from the victimized countries/areas such as China, Taiwan, the Philippines, Indonesia, and South and North Korea.<sup>251</sup> The second group represented the offending country, Japan.<sup>252</sup> The final group, the International Advisory Committee, consisted of members from countries across North and South America, Africa, Europe, Australia, and Asia.<sup>253</sup>

The Organizing Committee drafted a charter for the people's tribunal under which prosecutors from ten countries brought

244. See *id.* at 14.

245. See *id.*

246. Chinkin, *supra* note 21, at 335; see also Alexis Dudden, *A Guide to Understanding the History of the 'Comfort Women' Issue*, UNITED STATES INSTITUTE OF PEACE (Sept. 16, 2022), <https://www.usip.org/publications/2022/09/guide-understanding-history-comfort-women-issue> [<https://perma.cc/M2UM-JEQL>].

247. See Chinkin, *supra* note 21, at 335.

248. See *id.* at 336.

249. Christine Lévy & Anne Epstein, *The Women's International War Crimes Tribunal, Tokyo 2000: A Feminist Response to Revisionism?*, 39 *GENDERED L. WAR* 125, 125 (2014).

250. See Chinkin, *supra* note 21, at 336.

251. See *id.*

252. See *id.*

253. See *id.*

indictments.<sup>254</sup> The tribunal's charter enumerated that it had jurisdiction over crimes against humanity, including rape and sexual slavery.<sup>255</sup> This emphasis was intentional because some had argued that the Military Tribunal for the Far East did an insufficient job of prosecuting sexual crimes.<sup>256</sup> This people's tribunal intended to properly address those crimes, and also listed Emperor Hirohito among the accused responsible for the policy of forcing women from several countries to serve as sex slaves.<sup>257</sup> The Charter required that the judges determine guilt or innocence, but it also included an exception to allow for an indeterminate verdict, acknowledging that much of the hardcopy evidence had been destroyed since the relevant time.<sup>258</sup>

The Organizing Committee was also very strategic in its recruitment of prosecutors, ensuring the support and participation of high-ranking female international lawyers.<sup>259</sup> This tactic exemplified that this tribunal was about more than acknowledging the Japanese crimes; rather, it was also about gaining international acknowledgment that violence against women is an intolerable crime, even during wartime.<sup>260</sup> Meanwhile, the Japanese government did not respond to the invitation to participate, so three attorneys volunteered to impartially present the defense's arguments.<sup>261</sup>

The Tribunal lasted for three days, during which the prosecutors presented survivor testimony and documentary evidence of the

254. *See id.*

255. Lévy & Epstein, *supra* note 249, at 132–33; *Annexe 2—Charter of the International Women's War Crimes Tribunal on Japan's Military Sexual Slavery*, Annexe 2, Art. 2 (Oct. 26–27, 2000), <https://journals.openedition.org/droitcultures/2189#:~:text=The%20Tribunal%20shall%20have%20jurisdiction,that%20were%20similarly%20victimized%20by> [<https://perma.cc/EC3F-Z44W>]; *see Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery (The Prosecutors and the Peoples of the Asia-Pacific Region v. Hirohito Emperor Showa et al.)*, Judgment, ¶ 509 (Dec. 4, 2001), [https://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/Japan/Comfort\\_Women\\_Judgment\\_04-12-2001\\_part\\_2.pdf](https://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/Japan/Comfort_Women_Judgment_04-12-2001_part_2.pdf) [<https://perma.cc/UYX8-RHBP>].

256. The Allied Powers prosecuted many Japanese officers and soldiers at the Military Tribunal for the Far East for a variety of crimes following World War II. *See* Chinkin, *supra* note 21, at 336–37.

257. *See* CAD, *Japan: International Tribunal Declares Guilt in 'Comfort Women' Rapes*, 31 OFF OUR BACKS 3, 3 (2001).

258. *See* Lévy & Epstein, *supra* note 249, at 133.

259. *See id.* at 133–34.

260. *See id.*

261. *See id.* at 134.

connection between the abuses committed against the women to the Japanese government and Emperor Hirohito.<sup>262</sup> Over seventy-five survivors were present, and of the sixty-four plaintiffs, thirty-five were able to testify about the harms that they suffered at the hands of the Japanese.<sup>263</sup> These witnesses talked about their experiences being removed from their homes, forced into brothels, and continuously raped and abused by Japanese soldiers.<sup>264</sup> Expert testimony was also used to demonstrate the psychological harm and long-lasting impact that these events had on the survivors.<sup>265</sup>

On the fourth day of the trial, the tribunal found all nine of the main accused guilty of crimes against humanity in the form of rape and sexual slavery.<sup>266</sup> In their final judgment, they wrote, “the Judges find that the ‘comfort system’ was designed and maintained to facilitate the rape and sexual slavery of tens of thousands of young girls and women from occupied or conquered territories in the Asia-Pacific region.”<sup>267</sup> They found that Emperor Hirohito, as the “Head of State and Supreme Commander of the army and navy . . . held a position of supreme authority over the state and the military”<sup>268</sup> and therefore “was clearly aware of crimes committed by Japanese soldiers.”<sup>269</sup> In addition to finding Hirohito and the other eight defendants guilty, the Tribunal found the Japanese government responsible for the harms committed against these women.<sup>270</sup> The judgment went so far as to recommend that the Japanese government acknowledge its responsibility, apologize for the role it played, and provide reparations to the victims.<sup>271</sup> It also called on the governments of the allied powers to declassify related documents and apologize for their failure to properly investigate and

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262. See Chinkin, *supra* note 21, at 337.

263. *Id.*; Lévy & Epstein, *supra* note 249, at 135.

264. See Lévy & Epstein, *supra* note 249, at 135.

265. See Chinkin, *supra* note 21, at 337.

266. See *The Prosecutors and the Peoples of the Asia-Pacific Region v. Hirohito Emperor Showa et al.*, INTERNATIONAL CRIMES DATABASE [hereinafter *Prosecutors and the Peoples*], <http://www.internationalcrimesdatabase.org/Case/981/The-Prosecutors-and-the-Peoples-of-the-Asia-Pacific-Region/> [https://perma.cc/N98V-3U6T] (last visited Apr. 20, 2020).

267. See Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery, *supra* note 255, ¶ 794.

268. *Id.* ¶ 818.

269. *Id.* ¶ 823.

270. LEGAL EXTRACTS FROM THE JUDGEMENT OF THE WOMEN’S INTERNATIONAL WAR CRIMES TRIBUNAL 17 (Christine Chinkin ed. 2020).

271. *Id.* at 26.

adjudicate these crimes.<sup>272</sup> Furthermore, the Tribunal requested that the United Nations take responsibility for ensuring that Japan follows through on the reparations, and for initiating proceedings at the ICJ.<sup>273</sup>

### B. *Criticisms of the People's Tribunal*

There are certain concerns and criticisms regarding the fairness and effectiveness of this mechanism. In the case of the Women's Tribunal, the fact that the Japanese government did not send its own representation is one aspect that has garnered criticism regarding its fairness.<sup>274</sup> The Women's Tribunal was careful, however, to ensure that the Japanese government's arguments were presented in its defense. A Japanese law firm sent briefs and evidence in support of the government's defense, and appointed as *amicus curiae* an attorney to present these arguments.<sup>275</sup> Additionally, the Women's Tribunal considered previous legal rulings, such as a decision from the Tokyo District Court that denied Japanese government responsibility for the Filipina women forced to serve as comfort women.<sup>276</sup> The Women's Tribunal tried to further safeguard the fairness of the procedures by ensuring that the judges and the attorneys were strictly separated, and that evidence was entered and recorded in the registry.<sup>277</sup> Despite these measures, there is still a fairness concern, particularly regarding the people's tribunal and the protection of the defendant individual's or defendant state's rights.

Criticisms of the effectiveness of people's tribunals often stem from their lack of criminal accountability for individual defendants (which is hypothetical in the case study given that the defendants were being tried post-mortem), and their inability to enforce the judgment against the defendant state.<sup>278</sup> Despite being unable to achieve justice through more traditional legal mechanisms, survivors were able to experience some level of relief by testifying to their experiences to the

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272. *Id.* at 30.

273. *See Prosecutors and the Peoples*, *supra* note 267, at 254, 263; *See Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery*, *supra* note 255 ¶¶ 1050, 2088.

274. *See Chinkin*, *supra* note 21, at 336–37.

275. *See id.* at 338.

276. *See id.* at 338.

277. *See id.* at 337.

278. *See Lévy & Epstein*, *supra* note 250, at 139.

international community at the Women's Tribunal.<sup>279</sup> The people's tribunal not only provided these women a platform to speak about the pain they experienced but also gave the women the opportunity to achieve international recognition for their suffering.<sup>280</sup>

#### V. *USING A PEOPLE'S TRIBUNAL IN THE CONTEXT OF THE YAZIDI WOMEN*

The effectiveness of an accountability mechanism can only be accurately analyzed if you consider the goal of those seeking justice. The Yazidi women are very clearly seeking criminal accountability. Unfortunately, the primary pathways to criminal accountability are either blocked, as with the ICC, or not being meaningfully pursued, as is the case with a potential ad hoc tribunal and domestic prosecutions.<sup>281</sup> Something is needed to break this standstill, and perhaps that is a people's tribunal.

##### A. *Benefits and Drawbacks*

The immediate drawback of pursuing a people's tribunal in the context of Yazidi women is that it is not a true criminal prosecution and, by itself, cannot achieve the form of justice these women seek. That being said, it could serve as an excellent path to interim justice and could serve as a catalyst in garnering international support for future prosecutions.

As far as interim justice goes, the people's tribunal would provide an excellent platform for the Yazidi women to receive international recognition for the wrongs that they suffered sooner rather than later. Between the jurisdictional and political obstacles that currently stand in the way of each of the criminal justice mechanisms, these options will not be truly viable for some time.<sup>282</sup> Just as the Korean victims of the "comfort women" system were closed out of the traditional criminal justice routes, the Yazidi women may face years of delay in accessing

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279. *See id.* at 134–35, 139–35.

280. *See* Ustinia Dolgopol, *Searching for Justice: The Tokyo Women's Tribunal*, *OPENDEMOCRACY* (May 12, 2015), <https://www.opendemocracy.net/en/opensecurity/searching-for-justice-tokyo-womens-tribunal/> [<https://perma.cc/XME2-CYVR>].

281. *See supra* Part III.C.

282. *See supra* Part III.C.

these traditional means of accountability despite it already being a decade since these crimes took place. People's tribunals, on the other hand, typically proceed faster than traditional options. The Women's Tribunal, for instance, took only two years from the time that the idea was proposed at the Asian Women's Solidarity Conference until the time that the trial actually took place.<sup>283</sup> Additionally, the trial lasted only a few days, avoiding a prolonged, anxiety-inducing ordeal that can take an emotional toll on victims who have already been suffering for such a long time.<sup>284</sup> Although it would not result in an enforceable conviction, the people's tribunal could provide the Yazidi women with some type of closure by having a quasi-judicial body declare the IS perpetrators guilty of the specific international crimes that they have committed, without requiring them to wait a seemingly endless amount of time for this to happen in a true courtroom.

Furthermore, this approach also does not preclude other mechanisms from being pursued at a later date, leaving the door open for holding these perpetrators criminally accountable once the obstacles to those venues are overcome. Some other options would prevent other avenues from being pursued. For instance, if an ad hoc tribunal were established to handle this matter, the ICC could not address it in the future. There must be procedures in place, however, to ensure that the evidence used at the people's tribunal is not tainted in any way that would render it inadmissible at a criminal trial. There is a way for the tribunal to be conducted that prioritizes acquiring evidence in a manner that would be conducive for future litigation. The procedures used at the Women's Tribunal, for instance, ensured that all evidence was cataloged and registered.<sup>285</sup> This may be a particularly opportune moment to pursue something of this nature given the closure of UNITAD. Perhaps the evidence collected by UNITAD could be put to good use by a people's tribunal while Iraq and other countries work to initiate further prosecutions.

Between the declaration of guilt and the collection and preparation of evidence that would likely result from such a tribunal, there is a strong possibility that this would reignite the international community's push for criminal accountability for the IS perpetrators.

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283. See Chinkin, *supra* note 21, at 336.

284. See *id.* at 337; see *infra* Part V.B.

285. See Chinkin, *supra* note 21 at 337.

Unfortunately, in recent years, the discussion of the horrors this community faced and how to achieve justice for them has significantly fallen by the wayside.<sup>286</sup> The Women’s Tribunal was widely publicized and was present in global media, allowing far more people to hear those women’s stories and the verdict declaring Hirohito’s and Japan’s complicity in the horrors.<sup>287</sup> If a people’s tribunal for the Yazidi women is publicized in the same manner, and particularly if the verdict includes a call to action for legitimate prosecutions, then it could reignite the conversations about this community and holding the perpetrators accountable.

Following the Women’s Tribunal as a model would also alleviate some of the concerns surrounding the more traditional mechanisms. For instance, the organizing group (whether an NGO focused on the Yazidi people such as Yazda, or another human rights group) could choose to host the tribunal in a neutral location, circumventing some of the security concerns of adjudicating these crimes in the jurisdictions where IS may still have a stronger hold. Another feature of the Women’s Tribunal that makes it more feasible to organize such a tribunal in a third-party country is its use of video streaming to enable more victim testimony.<sup>288</sup>

An important difference to note is that, at the time of the Women’s Tribunal, the government of Japan and the defendants being prosecuted were no longer a threat nor were the individuals alive. In contrast, a people’s tribunal organized to “prosecute” IS members could be seen as a threat to the security of the state that hosts this tribunal given that IS remains active. If, however, the people’s tribunal is able to follow the lead of the Women’s Tribunal by engaging a number of countries in its organization and execution, then perhaps it could alleviate some of the concerns of the host country. Nevertheless, the fact that IS continues to operate and pose a threat to the security and safety of states is likely going to affect the organization and operation of people’s tribunal in this context.

There are concerns regarding the willingness of these women to participate in this type of tribunal. Once again, the people’s tribunal

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286. See Abid Shamdeen, *How the US can help the Struggling Yazidi Community in Iraq*, JUST SECURITY (Dec. 8, 2022), <https://www.justsecurity.org/84389/how-the-us-can-help-the-struggling-yazidi-community-in-iraq/> [<https://perma.cc/XD5U-SVfy>].

287. See Lévy & Epstein, *supra* note 250, at 132.

288. See *id.* at 135.

would not achieve the criminal prosecution that they desire, therefore it is entirely possible that the community would have no interest in pursuing this approach. The victims of IS's crimes have had to repeatedly relive their experiences in their retellings, and many are still working through trauma or have family members who are still in captivity or missing.<sup>289</sup> Therefore, these women may not want to tell their story again without it being at a criminal trial, where their abuser is being tried for crimes against humanity, for instance. This is why it would be important to acknowledge that this approach is an *interim* form of justice that would have the parallel goal of building global support for these desired criminal trials.

Another potential outcome of the publicity surrounding a people's tribunal, along with renewed public consciousness of the experiences of this community and the framing that this is a step to legitimate criminal prosecutions, is the possibility that it could lead to more universal jurisdiction prosecutions. Countries engaging in these types of prosecutions would likely be more willing to divert resources to these cases if public opinion supported that move. Therefore, even while waiting for more widespread and international-level prosecutions, a people's tribunal could lead to more one-off prosecutions in third party domestic courts, which would be in support of this community's justice goals.

There is a further concern about being able to collect evidence of the wrongs committed by IS, aside from victim and witness testimony. There remain about eighty mass graves that are still being excavated, and there are thousands of Yazidi people still unaccounted for (issues all exacerbated by UNITAD's closing).<sup>290</sup> This, however, could be another motivating factor for the pursuance of a people's tribunal, because it could call further attention to the need for, or even divert some of the tribunal's own resources, to complete these excavations. Also, unlike the Women's Tribunal which took place so long after the events in question that there were concerns about locating documentary evidence, in this case there is accessible documentary evidence that shows it was the policy of IS to commit acts that qualify as crimes against humanity and genocide.<sup>291</sup>

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289. See *About the Genocide*, *supra* note 91.

290. See Travers, *supra* note 7.

291. See EUROJUST, THE PROSECUTION AT NATIONAL LEVEL OF SEXUAL AND GENDER-BASED VIOLENCE (SGBV) COMMITTED BY THE ISLAMIC STATE IN IRAQ AND THE LEVANT (ISIL) 9 (2017).

If the people's tribunal could deliver on offering support to victims in their participation at the tribunal, as well as a declaration of guilt against the perpetrators and the garnering of international support for further excavations and, later, legitimate prosecutions, it would represent a strong next step in the fight for justice for the Yazidi women. For this to succeed as the next step, however, it would need to have the support of the Yazidi community.

*B. Proposed Improvements to the People's Tribunal Mechanism*

Since 2000, the international community has learned a great deal about atrocity crime prosecutions, transitional justice mechanisms, and the challenges that are inherent to these activities. If the people's tribunal were to be pursued in the context of the Yazidi women, it would be imperative to apply these lessons and improve upon the Women's Tribunal model.

First and foremost, the tribunal would need to be victim centered. This means incorporating survivors and thinking of survivors' needs at all stages of the process. It would be critical to involve survivors and survivors' advocates in the initial stages of discussing this mechanism, and on the organizing committee. While the Women's Tribunal ensured that the interests of the victimized countries were represented on the Organizing Committee, the individual who represented these interests, Yun Chung-ok, was not a survivor of the "comfort women" system but was rather known as an academic expert on the events.<sup>292</sup> Similarly to the ad hoc tribunals of the past, the survivors were mostly involved in the process when it came time to offer testimony—this lack of participation is one of the biggest criticisms of these tribunals.<sup>293</sup> Offering survivors the opportunity to take part in the planning stage of the people's tribunal would ensure that the mechanism is more victim centered.<sup>294</sup>

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292. See Chinkin, *supra* note 21, at 336; Chunghee Sarah Soh, *The Korean "Comfort Women": Movement for Redress*, 36 *ASIAN SURVEY* 1226, 1233–34 (1996).

293. See Susana SaCouto, *supra* note 50, 304–17; Jean-Marie Kamatali, *From the ICTR to ICC: Learning from the ICTR Experience in Bringing Justice to Rwandans*, 12 *NEW ENG. J. INT'L & COMPAR. L.* 89, 93–96 (2005).

294. It is important to note that this should not be implemented in a way that would compromise the integrity and impartiality of the tribunal, meaning that the selection of judges and the recruitment of a defense team would need to be conducted in an unbiased manner.

Secondly, we now have a far greater understanding of the trauma and re-victimization that many survivors experience when testifying and participating in justice processes. Particularly in the case of sexual and gender-based violence crimes, these negative experiences can be unique and severe.<sup>295</sup> Therefore, it would be critical for the organizing committee of the people's tribunal to offer resources and support for the women to protect their psychological and physical well-being. At the Women's Tribunal, where this was not a priority, there is an account of one survivor who was so "overwhelmed by her memories" that she had to be hospitalized following her testimony.<sup>296</sup> By making this tribunal more victim centered, the goal would be to avoid such occurrences, in addition to providing much needed support to these survivors.<sup>297</sup> The ICC provides an excellent model for how resources and support for women who have suffered from sexual violence can be implemented.<sup>298</sup> The charter of the people's tribunal should ensure that there are necessary protections and support mechanisms in place to lessen the potential for re-traumatization from their participation.

Along the same lines, it is crucial to incorporate a gender perspective into all aspects of such a people's tribunal. In addition to providing resources and greater sensitivity surrounding the survivors' experience in the process, and including the survivors and survivors' advocates throughout the process, the tribunal should ensure gender diversity on the organizing committee, prosecution and defense team, as well as among the judges. The organizing committee for the Women's Tribunal was careful to ensure this type of diversity. They

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295. See Fionnuala Ni Aolain, *Exploring a Feminist Theory of Harm in the Context of Conflicted and Post Conflict Societies*, 35 *QUEEN'S L.J.* 219, 232–33 (2009); Doris Buss, "Rethinking 'Rape as a Weapon of War'" (2009), 17 *FEMINIST LEGAL STUD.* 145, 146–47 (2009).

296. Lévy & Epstein, *supra* note 250, at 135.

297. Barbara Bianchini & Sara Rubert, *A Sustainable Psychosocial Model to Support the National Investigation and Prosecution of Conflict-Related Sexual Violence Crimes*, 18 *J. INT'L CRIM. JUST.* 425, 427–33 (2020).

298. Prior to the ICC, the ICTR, ICTY and Special Court for Sierra Leone also instated resources for victims and witnesses. Each of these international tribunals established Victims and Witnesses Units. *Id.* at 431. The ICC's approach is the most expansive given that victims have rights enshrined in the Rome Statute. See *INTERNATIONAL JUSTICE FOR WOMEN: THE ICC MARKS A NEW ERA*, HUMAN RIGHTS WATCH (July 1, (2002), <https://www.hrw.org/legacy/campaigns/icc/icc-women.htm> [<https://perma.cc/U8MY-CWB7>]; Rules of Procedure and Evidence of the International Criminal Court, Rules 85–99, Doc. ICC-ASP/1/3 (2002).

selected two female attorneys, Patricia Viseur Sellers and Ustina Dolgopol, as the Chief Prosecutors, who each have a great deal of experience in gender-related human rights prosecutions.<sup>299</sup> It would be important for the people's tribunal for the Yazidi women to follow this example and recruit attorneys and judges to represent diversity in gender, backgrounds, and perspectives.<sup>300</sup> It is also important for members of the organizing committee, the attorneys, and the judges to have experience with and expertise on sexual and gender-based violence and how it manifests in and can change the quality of atrocity crimes. It may also be beneficial for some participants to have previous experience with a people's tribunal. Requiring the inclusion of individuals who meet these various characteristics in a people's tribunal today would be a great deal more feasible than over twenty years ago, as the pool of potential participants with this type of diversity, experiences, and background has grown significantly since the Women's Tribunal.

Another way to improve the Women's Tribunal model and make it more victim centered is to ensure there are mechanisms in place to continue advocating for real prosecutions once this tribunal has concluded. As previously mentioned, this community is seeking justice in the form of legitimate criminal prosecutions for the atrocity crimes committed against them,<sup>301</sup> and the people's tribunal would ideally serve as a form of interim justice while continuing the push for these prosecutions.<sup>302</sup> The Women's Tribunal issued a judgment that recommended that the Japanese government acknowledge its legal responsibility, apologize, and contribute reparations and called upon the United Nations to ensure Japan made good on the reparations and to initiate proceedings at the ICJ.<sup>303</sup> Although an agreement was finally signed between Japan and South Korea in 2015, in which the Japanese government transferred one billion yen to a victims' fund and apologized for the harms done to the comfort women,<sup>304</sup> this resolution

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299. See Chinkin, *supra* note 21, at 336; Lévy & Epstein, *supra* note 250, at 133–34.

300. See Chinkin, *supra* note 21, at 336; Lévy & Epstein, *supra* note 250, at 133–34.

301. See *supra* Part II.

302. See *supra* Part V.A.

303. See *Prosecutors and the Peoples*, *supra* note 267; LEGAL EXTRACTS FROM THE JUDGEMENT OF THE WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL 31 (Christine Chinkin ed. 2020).

304. Klea Ramaj, *The 2015 South Korean—Japanese Agreement on 'Comfort Women': A Critical Analysis*, 22 INT'L CRIM. L. REV. 475 (2022).

was highly criticized as a pacifying mechanism to silence the survivors and resulted in further lawsuits and a lot of criticism from survivors.<sup>305</sup> A case was never initiated before the ICJ, and the recommendations from the Women's Tribunal seemed to go nowhere. In order to avoid a similar outcome and to achieve the justice that the Yazidi community is looking for, provisions would need to be included in the charter of the tribunal to require follow up. This may be in the form of requiring the organizing committee to continue advocacy or perhaps creating a separate body in conjunction with the tribunal to ensure that further prosecutions, whether that be domestically in Iraq, in countries utilizing universal jurisdiction, the creation of an ad hoc tribunal or having the Security Council vote on a referral to the ICC again, are continually pursued. It is pertinent that this tribunal would not represent the culmination of achieving justice, but rather serve as a catalyst to fulfilling the Yazidi's desired form of justice.

## VI. CONCLUSION

The Yazidi women suffered a great deal at the hands of the Islamic State and have been extremely outspoken about their wish to see justice in the form of criminal prosecutions, yet the international community has remained relatively stagnant on the matter. We have just marked a decade of little to no true justice being achieved for the Yazidi people. Meanwhile, many Yazidi people remain in internally displaced persons camps in the Kurdish region of Iraq, and are unable to return to their homes because conflict continues to rage in the region.<sup>306</sup> The Yazidis are further prevented from returning home because the Iraqi general government has been slow to distribute compensation to which they are entitled under Iraqi law.<sup>307</sup>

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305. See, e.g., Yuji Hosaka, *Why Did the 2015 Japan-Korea 'Comfort Women' Agreement Fall Apart?*, THE DIPLOMAT (Nov. 18, 2021), <https://thediplomat.com/2021/11/why-did-the-2015-japan-korea-comfort-women-agreement-fall-apart/> [https://perma.cc/4SBW-98MZ]; Hyonhee Shin, *South Korea Court Orders Japan to Compensate 'Comfort Women,' Reverses Earlier Ruling*, REUTERS (Nov. 23, 2023, 7:22 AM), <https://www.reuters.com/world/asia-pacific/south-korea-court-orders-japan-compensate-comfort-women-reverses-earlier-ruling-2023-11-23/> [https://perma.cc/645S-UY4Z].

306. See Travers, *supra* note 7.

307. The Yazidi Survivors Law entitles Yazidi women who survived being enslaved by IS to receive financial compensation. See *Ezidi (Yazidi) Women Survivors Law Materialized: 420 Survivors Receive Salary*, KIRKUKNOW (Feb. 27, 2023), <https://kirkuknow.com/en/news/69264> [https://perma.cc/R5HF-38EN]. This law was passed in

To make matters worse, there has been an uptick in discrimination against the Yazidis in Iraq.<sup>308</sup> The United States Department of State released its “2023 Report on International Religious Freedom: Iraq,” which describes how members of the Iraqi Popular Mobilization Forces, Federal Police, and National Security Service have targeted the Yazidis through physical and verbal harassment.<sup>309</sup> In April 2023, the Yazidis were the targets of a hate speech campaign following the false accusation that they had burned down a mosque.<sup>310</sup> The hate speech campaign included comments that made allowances for the Islamic State’s treatment of the Yazidi people.<sup>311</sup> As the world commemorated the tenth anniversary of the invasion of Sinjar and the start of the genocidal campaign against the Yazidis in August 2024, this hate speech has continued and amplified.<sup>312</sup>

Given the current climate in the region and the commemoration of such a dismal anniversary, it is perhaps more important now than ever before that there is a reinvigorated demand for justice for the Yazidi community. Without this demand, the traditional methods for accountability will continue to face political and jurisdictional challenges that will prevent them from being viable options. Something must be done to trigger an increase in public awareness and bring this issue to the forefront of global consciousness once again.

The people’s tribunal can do just that. There is already a strong example of a people’s tribunal conducted to “prosecute” international crimes related to rape, sexual slavery, and sexual violence in the form of the Women’s International War Crimes Tribunal. Therefore, organizing a people’s tribunal to try individual IS perpetrators for the

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2021 and it took until February 2023 for the first 420 women to receive any payments. *Iraq: Compensation for ISIS Victims Too Little, Too Late*, HUMAN RIGHTS WATCH (May 9, 2023 12:00 AM), <https://www.hrw.org/news/2023/05/09/iraq-compensation-isis-victims-too-little-too-late> [https://perma.cc/P87D-RDMH]. Other survivors are entitled to compensation under Law No. 20 of 2009, but despite 5,000 applications for funding being approved since 2021 no one has received these payments. *Id.*

308. *See generally* HUMAN RIGHTS WATCH, *supra* note 307.

309. U.S. DEP’T OF STATE, 2022 Report on International Religious Freedom: Iraq (last visited June 6, 2024), <https://www.state.gov/reports/2022-report-on-international-religious-freedom/iraq/> [https://perma.cc/YLU9-9WXZ].

310. *See id.*; *see also* Frankie Vetch, *Hate Speech Sparks Fears of Violence Against Yazidis in Iraq*, CODA (May 18, 2023), <https://www.codastory.com/disinformation/yazidi-hate-speech-iraq/> [https://perma.cc/7ZZH-38RC].

311. *See* Vetch, *supra* note 310.

312. *Yazda Strongly Condemns Ongoing Hate Speech Targeting Yazidis in Iraq*, YAZDA (August 8, 2024), <https://www.yazda.org/yazda-strongly-condemns-ongoing-hate-speech-targeting-yazidis-in-iraq> [https://perma.cc/FQK7-AHJQ].

crimes they have committed against the Yazidi women could follow the model already laid out before it. Another beautiful attribute of the people's tribunal is that, unlike most other judicial bodies, it can prosecute non-state actors and organizations, which leaves the possibility of prosecuting the Islamic State organization itself. Not only could a people's tribunal achieve some justice for this community in the form of an international declaration of guilt for individual IS perpetrators or for the Islamic State, but it can also bolster the international community to fight for the Yazidis to achieve the justice that they desire: legitimate criminal prosecutions, whether international or domestic, of the actual atrocity crimes committed against them so that this community can focus on their efforts to heal and rebuild.