





*“When ISIS  
attacked Sinjar,  
they came to  
destroy.”*

—Yazidi religious authority

# ISIS AND THE CRIMES AGAINST THE YAZIDIS PEOPLE

FRANCESCA BRAGA

**N**adia Murad<sup>1</sup> is a 26-year-old Yazidi woman who was captured by the so-called Islamic State of Iraq and Al-Sham (ISIS).<sup>2</sup> She was a victim of war crimes and has refused to accept the social norm that women should remain silent and ashamed of the abuses to which they have been subjected. She has shown uncommon courage in recounting her own sufferings and speaking up on behalf of other victims.<sup>3</sup>

The Norwegian Nobel Committee has decided to award the Nobel Peace Prize for 2018 to Murad and Denis Mukwege for their efforts to end the use of sexual violence as a weapon of war and armed conflict.<sup>4</sup>

But who are the Yazidis? And why is ISIS persecuting them?

## About the Yazidis

The Yazidis are an Iraqi ethnic and religious minority that numbers around 700,000 people globally. Predominantly ethnically Kurdish, they are found primarily in northern Iraq in and around Sinjar (where the vast majority live),<sup>5</sup> as well as southeastern Turkey, northern Syria, the Caucasus region, and parts of Iran. Their religion “includes elements of ancient Iranian religions as well as elements of Judaism, Nestorian Christianity, and Islam.”<sup>6</sup>

They have kept their syncretic religion alive for centuries, despite many years of oppression and threatened extermination.<sup>7</sup> They do not want to be identified as Kurdish because they think of themselves as an entirely separate group.

The Yazidis were denounced “as infidels and ‘dirty kuffar’”<sup>8</sup> by

Al-Qaida in post-Saddam Iraq, which sanctioned their indiscriminate killing. ISIS has referred to them as a “pagan minority” and add that Yazidi women can be enslaved as spoils of war.<sup>9</sup>

On June 10, 2014, ISIS captured Mosul and started a campaign to “purify” the region of its “non-Islamic” and Shiite communities.

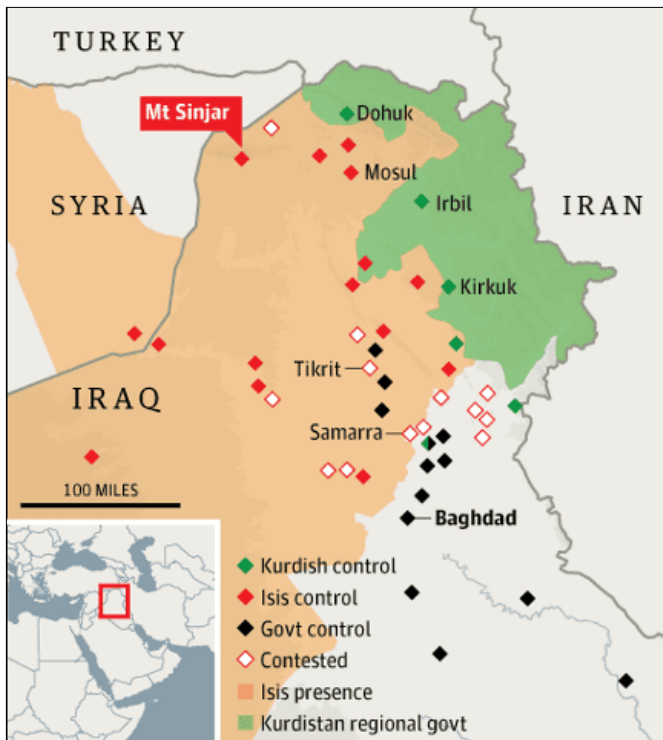
Since the Sinjar District attack on Aug. 3, 2014, when ISIS publicly cited the Yazidi faith as the basis for the attack, ISIS has committed the crime of genocide as well as multiple crimes against humanity (CAH) and war crimes<sup>10</sup> against the Yazidis.<sup>11</sup>

The U.N. Independent International Commission of Inquiry on the Syrian Arab Republic<sup>12</sup> determined that ISIS’ violence against the Yazidis of Sinjar constitutes a case of genocide<sup>13</sup> defined by Article 2 of 1948 Convention on the Prevention and Punishment of the Crime of Genocide,<sup>14</sup> to which the Syrian Arab Republic is a state party.

ISIS pursued a brutal campaign to eliminate the Yazidis and committed violations on a massive scale, including forced conversions to Islam, separation of families, and enslavement of the surviving women and children.<sup>15</sup> ISIS widely publicized the crimes committed against the Yazidis, using them as propaganda to attract new recruits and to terrorize civilians.<sup>16</sup>

In addition to the crimes of genocide, CAH, and war crimes, the underlying acts committed against the Yazidis constitute, in and of themselves, serious violations of international human rights law. Those acts include violations of the right to life, the freedom of movement, the liberty and security of the person, the prohibition against torture and other cruel and inhumane acts, the freedom of religion or belief, and the prohibition against slavery.<sup>17</sup>

The U.N. commission’s findings are based on interviews with survivors, religious leaders, smugglers, activists, lawyers, medical personnel, and journalists. Many Yazidi women were illiterate and had never engaged with the media nor had access to the internet before meeting journalists, lawyers, or investigators following their



captivity.<sup>18</sup> Some Yazidi women and girls, as young as 9 years old, were sold at market and held in sexual slavery by ISIS fighters. Survivors “reported violent daily rapes by their fighter-owners. Some were handcuffed behind their backs during the rapes while others had their hands and legs tied to the corners of the beds.... Girls as young as 9 were raped, as were pregnant women.”<sup>19</sup> Many were injured as a result, suffering bleeding, cuts, and bruising.<sup>20</sup> The commission also heard accounts of how some Yazidi women and girls committed suicide to escape the torment.

ISIS has used Sexual and Gender-Based Violence (SGBV) against Yazidi women and girls as an integral part of their military strategy, as a weapon of war, and as a tool of genocide and CAH. Most are held in Syria where Yazidi females continue to be sexually enslaved<sup>21</sup>; raped; forcibly transferred; and persecuted on ethnic, religious, and gender grounds.<sup>22</sup> U.N. investigators estimate that more than 5,000 Yazidis have been rounded up and slaughtered and some 7,000 women and girls forced into sex slavery.<sup>23</sup> It is estimated that around 120,000 Yazidis have sought refuge in Europe since 2014.<sup>24</sup>

SGBV, in an international criminal law context, is usually public—it is designed for an audience, to maximize the direct harm to the victim while also sending an indirect message to everybody else.<sup>25</sup> If you rape a woman on the street corner or at a checkpoint, it is a clear message to everybody that they have no protection whatsoever.<sup>26</sup> In this way, families and communities (social and religious ones) are under attack and are damaged. There are multiple direct and indirect victims and, from the perpetrator’s point of view, it is cheaper, more effective, and more destructive than a bullet or any other weapon you have.<sup>27</sup>

### What Can We Do?

Victims have a right to justice under international law, and the path to justice can take many forms—one of which is criminal prosecution. National, regional, and international courts can hold individuals criminally responsible for their actions and sentence them to pun-

ishment. It is important to respect the principles of territoriality and complementarity to the national criminal jurisdiction.<sup>28</sup> The International Criminal Court (ICC) is considered a court of last resort.

Iraq is not a signatory to the Rome Statute, so ICC has no jurisdiction there. The commission repeated its call for the U.N. Security Council to urgently refer the situation to the ICC (China and Russia have opposed) or to establish an *ad hoc* tribunal to prosecute the myriad violations of international law committed during the non-international armed conflict.

Without evidence, impunity prevails. Impartial, timely, and professional investigations are the first step toward justice for survivors of sexual and gender-based crimes. They have a right to tell their stories in a safe and empowering environment. Investigators need special skills and tools to ensure that this happens. Gender-sensitive approaches are necessary to evidence collection.<sup>29</sup>

Murad is a symbol of courage. Those who speak out and share their experiences of violence and abuse, despite their fears and traumas, are milestones in the fight against human rights violations and discrimination—but we’re still a long way to recognizing justice for these victims.

During an interview Murad said, “Survival is a kind of serendipity, one that empowers you to fight for the survival of others.”<sup>30</sup>



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### Endnotes

<sup>1</sup>Nadia Murad is a human rights activist who has helped bring to the world’s attention the horrors of the Yazidi genocide in Iraq. She is the author of *THE LAST GIRL: MY STORY OF CAPTIVITY, AND MY FIGHT AGAINST THE ISLAMIC STATE* (2017).

<sup>2</sup>In 2015, in Resolution 2249, the U.N. Security Council determined that ISIS “constitutes a global and unprecedented threat to international peace and security.”

<sup>3</sup>*Nobel Peace Prize Award to Congolese Mukwege, Iraq’s Murad*, REUTERS (Oct. 5, 2018), <https://www.reuters.com/article/us-nobel-prize-peace-fulltext/nobel-peace-prize-award-to-congolese-mukwege-iraqs-murad-idUSKCN1MF13D>.

<sup>4</sup>The Nobel Peace Prize was announced by Berit Reiss-Andersen, chair of the Norwegian Nobel Committee, on Oct. 5, 2018.

<sup>5</sup>Raya Jalabi, *Who Are the Yazidis and Why is ISIS Hunting Them?*, GUARDIAN (Aug. 11, 2014), <https://www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains>.

<sup>6</sup>*Yazidi*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Yazidi> (last visited Aug. 7, 2019).

<sup>7</sup>See *supra* note 5.

<sup>8</sup>HUMAN RIGHTS COUNCIL, “THEY CAME TO DESTROY”: ISIS CRIMES AGAINST THE YAZIDIS ¶ 104 (June 15, 2016), A/HRC/32/CRP.2, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A\\_HRC\\_32\\_CRP.2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf).

<sup>9</sup>*Id.* at ¶¶ 76, 153, 154.

<sup>10</sup>Articles 6-8 of the Rome Statute. INT’L CRIM. CT., *ROME STATUTE OF THE*

defending the verdict. We were also presenting the argument in his cross-appeal contending that the district court had improperly granted summary judgment to other defendants. The moot court panel's questions came fast. She was answering them well. Then a panel member hit her with a question and she drew a blank (as we all do). She started to cry. We broke for a couple of minutes, she composed herself, returned, and knocked the question out of the park. All four of us reassured her that the blank moment happens. Although she was ready to face the Court of Appeals, I held a seventh moot in order to restore her confidence.

The last moot is held no later than a few days before the oral argument. This offers time for the student to reflect, to revise notes, and to review that portion of the record that offered difficulty. We have learned that, after six to seven moots, my students will have heard 95 percent of the questions that will be asked by the panel.

I never conducted an eighth moot for my students. It would have been unnecessary and the students would have lost some of the spontaneity that electrifies oral argument. Although we arrive at the location of the court the day before oral argument is to take place, I do not conduct a rehearsal then because rest is more necessary than repetition. I do, however, ensure that we visit the courtroom where the argument will take place to play with the podium, to move the chairs back and forth, and to generally get a feel for the venue. (I confess that on one or two occasions, my students sat in the judges' chairs.) If possible, we sit in on arguments the day before. (This is

less important now that courts of appeals make recordings of oral argument available online.)

In our San Quentin case, because we were cross-appellants, my student presented the second argument and the fourth (and final). Going second, she had the difficult job of responding to the prison's appeal and presenting our affirmative arguments in the cross-appeal. As with the moot court arguments, the panel's questions came fast and went to the difficult parts of our case. She answered them all well. As she sat down, I leaned over and asked, "How are you doing?" She answered, "I can't wait to get back up there." She won the case. She now practices law in a Montana town of 8,400. ☺



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## Endnotes

<sup>1</sup>Jason Steed, *Your Chances on Appeal—And How to Improve Them*, FED. LAW. 4 (Jan./Feb. 2016).

<sup>2</sup>Rule 34(a)(2), Fed. R. App. P. (2019).

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<sup>11</sup>See Human Rights Council, *supra* note 8.

<sup>12</sup>The Commission of Inquiry was established on Aug. 22, 2011, by the Human Rights Council through Resolution S-17/1 adopted at its 17th special session with a mandate to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic.

<sup>13</sup>HUMAN RIGHTS COUNCIL, "I LOST MY DIGNITY": SEXUAL AND GENDER-BASED VIOLENCE IN THE SYRIAN ARAB REPUBLIC (Mar. 8, 2018), A/HRC/37/CRP.3, <https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A-HRC-37-CRP-3.pdf>.

<sup>14</sup>It was approved and proposed for signature and ratification or accession by General Assembly resolution 260 A(III) of Dec. 9, 1948. Entry into force: Jan. 12, 1951, in accordance with article XIII.

<sup>15</sup>FIDH/KINYAT, IRAQ—SEXUAL AND GENDER-BASED CRIMES AGAINST THE YAZIDI COMMUNITY: THE ROLE OF ISIL FOREIGN FIGHTERS 5 (Oct. 2018).

<sup>16</sup>*Id.*

<sup>17</sup>See Human Rights Council, *supra* note 8, at ¶ 174.

<sup>18</sup>Cathy Otten, *Slaves of ISIS: The Long Walk of the Yazidi Women*, GUARDIAN (July 25, 2017, 1:00 AM), <https://www.theguardian.com/world/2017/jul/25/slaves-of-isis-the-long-walk-of-the-yazidi-women>; see also Annie Hylton, *Study: 85 Percent of Yazidi Women Interviewed Describe Unethical Journalism Practices*, WOMEN'S MEDIA CTR. (Feb. 26, 2018), <https://www.womensmediacenter.com/women-under-siege/study-85-percent-of-yazidi-women-interviewed-describe-unethical-journalism-practices>.

<sup>19</sup>See Human Rights Council, *supra* note 8, at ¶¶ 2, 64.

<sup>20</sup>*Id.*

<sup>21</sup>*Id.* at ¶ 205.

<sup>22</sup>See FIDH/KINYAT, *supra* note 15, at 40.

<sup>23</sup>Lin Taylor, *Nearly 10,000 Yazidis Killed, Kidnapped by Islamic State in 2014, Study Finds*, REUTERS (May 9, 2017, 1:04 PM), <https://www.reuters.com/article/us-mideast-crisis-iraq-yazidis/nearly-10000-yazidis-killed-kidnapped-by-islamic-state-in-2014-study-finds-idUSKBN18527I>.

<sup>24</sup>Katy Fallon, *After Condemning the Yazidi Genocide, How Can the Government Then Deny Its Victims Asylum?*, INDEPENDENT (July 30, 2018, 3:45 PM), <https://www.independent.co.uk/voices/yazidis-isis-asylum-home-office-amal-clooney-a8470071.html>.

<sup>25</sup>Niamh Hayes, *Gender Crimes in International Criminal Law*, Training Session Presented by the Association of Defence Counsel (Sept. 1, 2018) (on file with author).

<sup>26</sup>*Id.*

<sup>27</sup>*Id.*

<sup>28</sup>Article 1 of the Rome Statute. *Supra* note 12, at 2.

<sup>29</sup>*Justice Now: Ending Impunity for Sexual and Gender-Based Violence as International Crimes*, U.N. WOMEN & JUST. RAPID RESPONSE, <http://interactive.unwomen.org/multimedia/infostory/justicenow/en/index.html> (last visited Aug. 7, 2019).

<sup>30</sup>Kiran Nazish, *Nobel Laureate Nadia Murad Taught Me to the True Meaning of Courage*, TIME (Oct. 5, 2018), <http://time.com/5417220/nadia-murad-nobel-prize-courage>.