



**When Culture Meets Gender:
Rethinking Transitional Justice
Through the Yazidi Case**

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Summary

Purpose: This thesis investigates the intersection between culture and gender and their impact on the transitional justice process for the Yazidi community after the genocide committed by ISIL. It provides an in-depth analysis of key transitional justice mechanisms, such as the Sinjar Agreement and the Yazidi Survivors Law. Hence, this thesis examines both legal and non-legal mechanisms in order to offer a comprehensive understanding of Yazidi experiences with justice in Iraq. **Method:** The thesis employs a qualitative case study approach, drawing on feminist legal theories such as Feminist Jurisprudence, the scholarly debate on gender inclusivity, and intersectional feminist theory. Feminist Jurisprudence provides a critical lens for assessing how women are frequently excluded from decision-making within judicial systems. The concept of gender inclusivity introduces a broader analytical framework that incorporates the perspectives of both women and men, ensuring a more inclusive understanding of diverse experiences. Intersectional feminism further expands the analysis by accounting for additional identity dimensions, such as culture, and examining how these intersect with gender. The thesis predominantly relies on secondary sources, including reports, journals, case law, and interviews conducted by Yazidi NGOs and humanitarian organisations. It also incorporates original interviews to provide greater depth in areas where secondary sources proved insufficient. **Conclusion:** The key findings indicate that transitional justice for the Yazidi community must be examined through a holistic lens. The research demonstrates that gender and cultural dynamics significantly influence how Yazidis engage with transitional justice processes. For instance, gender norms, roles, and expectations deeply embedded in culture have profoundly affected Yazidi women, who often find themselves in vulnerable positions. In the aftermath of the conflict, their perspectives were not adequately included in decision-making processes, which contributed to transitional justice efforts falling short. Moreover, the thesis underscores the importance of extending research to other marginalised groups, such as the LGBTQ+ community and men who experience gender-based violence, whose experiences have been almost entirely excluded from existing studies. This gap highlights the need for greater inclusivity and survivor-centred approaches in both research and practice. Thus, while this thesis has succeeded in investigating the impact of culture and gender on transitional justice, it also concludes that further, deeper research is required to capture the full range of dynamics at play. Ultimately, the most pressing issue is not the existence of these dynamics but the lack of acknowledgement of them, which risks perpetuating further exclusion and discrimination.

Acknowledgment

This thesis would not have been possible without the courage and resilience of the Yazidi community.

I am deeply grateful to the Yazidi survivors and community members whose testimonies, statements, and stories have been documented and made publicly available by human rights organisations, investigative bodies, and researchers. Their willingness to speak about their experiences has made it possible for the world to understand the atrocities they endured, and it has been essential for shaping the knowledge and perspectives that form the foundation of this thesis.

Their strength in preserving their culture, seeking justice, and advocating for recognition despite immense suffering has been a constant source of inspiration throughout my work. It is my sincere hope that this thesis can, in some small way, contribute to honouring their voices and supporting ongoing efforts toward justice and healing for the Yazidi people.

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List of Abbreviations

CEV – Commission for the Clarification of Truth, Coexistence and Non-Repetition (Colombia)

C4JR – Coalition for Just Reparations

CCAIL – Code of Crimes against International Law (Germany’s domestic implementation of international crimes, 2002)

ECHR- European Convention on Human Rights

FJ – Feminist Jurisprudence

FL – Feminist Legal Theory

GI – Gender Inclusivity

ICC – International Criminal Court

ISIL – Islamic State of Iraq and the Levant

JEP – Jurisdicción Especial para la Paz (Special Jurisdiction for Peace, Colombia)

SGBV – Sexual and Gender-Based Violence

TJ – Transitional Justice

UN – United Nations

UNHRC – United Nations Human Rights Council

UNSC – United Nations Security Council

UNITAD – United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL

WHO – World Health Organization

YSL – Yazidi Female Survivors Law

1.Introduction

“True peace is not merely the absence of war; it is the presence of justice.”

— Martin Luther King J. ¹

In a world full of conflict, where human rights are violated every day, the search for justice never ends. Martin Luther King Jr.’s quote powerfully captures this reality and underscores the importance of transitional justice (TJ) in our societies today. There is an urgent need for a holistic approach to justice in post-conflict contexts, one that ensures survivors of war have the opportunity to voice their truths, experiences, and traumas through both restorative and retributive processes.² In doing so, TJ enables communities to move from war and conflict toward reconciliation with the past and the possibility of a more peaceful future. This vision, however, remains distant in Iraq, which has faced significant challenges in its transition from conflict. After June 2014, the Islamic State of Iraq and the Levant (ISIL) attacked the country and its population.³ Although ISIL killed and captured thousands of people, the Yazidi community was specifically targeted. On 3 August 2014, ISIL launched a coordinated assault on Sinjar, the Yazidis’ cultural and religious homeland. Here, they committed numerous atrocity crimes, including mass killings, sexual slavery, and other forms of sexual and gender-based violence (SGBV). Following the attack, thousands of Yazidis were taken into captivity, many enduring years of enslavement. To this day, more than 2,700 Yazidis remain in the hands of their captors, forced to relive the horrors of ISIL’s violence.⁴ Since the conflict, Iraq has attempted to establish its own TJ processes to address the crimes committed against the Yazidis and other marginalized groups. Yet these efforts have faced strong criticism from the Yazidi community, who argue that the recognition and retributive justice they seek has not been delivered. When examining the Yazidi experience in Iraq, it becomes evident that culture and gender were central to ISIL’s genocidal campaign.⁵

¹ Martin Luther King Jr, “*True peace is not merely the absence of tension; it is the presence of justice.*”, inscribed on the South Wall of the Martin Luther Hero Memorial (*National Park Service*, 1958 <https://tinyurl.com/5xrwwfk3>).

² International Bar Association’s Human Rights Institute, ‘IBAHRI Calls for Justice and Support for Yazidi Community on 11th Anniversary of Genocide’ (*International Bar Association*, 3 August 2025 <https://tinyurl.com/wfv7t7s8>).

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

This raises the critical question of whether these same factors also influence the Yazidi community's current engagement with Iraq's TJ process. Building on this, this thesis seeks to explore whether cultural and gender dynamics impact the Yazidi community's perception of Iraq's TJ process, and whether these dynamics help explain why many Yazidis remain dissatisfied with the Iraqi government's efforts.

1.1 Thesis Statement

1.1.2 Research Question

In line with this and what has been set out above, this thesis seeks to address the following research question: *How do gender and cultural dynamics impact the Yazidi community's engagement with transitional justice in Iraq?*

1.1.3 Sub-questions

To be able to answer this thesis central research question, the thesis will be guided by three sub-questions. Collectively, these sub-questions aim to provide both the descriptive and analytical framework necessary to assess how gender and culture shape the Yazidi community's engagement with TJ mechanisms:

Sub-question 1: How has the Yazidi community uniquely experienced SGBV, violence, and persecution at the hands of ISIL?

Sub-question 2: What specific barriers or challenges do Yazidi survivors face in engaging with transitional justice mechanisms?

Sub-question 3: In what ways can transitional justice in Iraq be adapted to better reflect the gendered and cultural needs of Yazidi survivors?

1.1.4 Clarifications

Throughout this thesis, reference will be made to the concept of culture, which can be understood in many ways. The notion followed here refers to the understanding of culture as consisting of behavioural traditions that emerge through social interaction rather than being biologically inherited, and it is this definition that will be applied in this thesis.⁶ The same applies to the concept of gender, which will likewise be referred to multiple times throughout the thesis. This thesis acknowledges that there are many different understandings of what gender is and is not; however, it draws on the definition provided by the World Health Organization. According to this definition, gender refers to the characteristics of women, men, girls, and boys that are socially constructed. These characteristics include behaviours, roles, norms, and the ways in which individuals interact with one another.⁷

1.1.5 Composition of the Thesis

To answer the central research question and the accompanying sub-questions, this thesis is structured as follows. **Section two** addresses Sub-question (1) by providing a contextual overview of the crimes endured by the Yazidi community during ISIL's genocidal campaign. This establishes why gender and culture are crucial factors in understanding their experiences and in framing the TJ process. **Section three** presents the methodology of the thesis, reflecting on the research design choices. **Section four** provides the literature review, offering an overview of existing research on how gender and cultural dimensions impact TJ processes. This forms the foundation of the thesis and clarifies what this study seeks to contribute to the wider scholarly debate. **Section five** sets out the theoretical framework, drawing on critical feminist approaches to examine the implications of gender and law through Feminist Legal Theory (FL), Feminist Jurisprudence (FJ), and Gender Inclusivity (GI). Furthermore, Intersectional Feminist Theory (IF) highlights why gender cannot be examined in isolation but must be understood alongside cultural dynamics in order to capture the full extent of the Yazidi community's experiences. **Section six** addresses Sub-question (2), focusing on the cultural and gendered barriers that Yazidi survivors face in engaging with TJ mechanisms. This contributes directly to answering the central research question by examining how these dynamics shape survivors' engagement with justice mechanisms. **Section seven** addresses Sub-

⁶ Encyclopaedia Britannica, 'Culture' (2025) <https://tinyurl.com/589aky86>.

⁷ World Health Organization, 'Gender' (2025) <https://tinyurl.com/2dtr58ym>.

question (3), discussing how TJ processes could become more inclusive of the Yazidi community when considering gender and cultural dynamics. Finally, **Section eight** presents the conclusion of the thesis.

2. Contextual Framework

This section will address **Sub-question (1)**: *How has the Yazidi community uniquely experienced SGBV, violence, and persecution at the hands of ISIL?*

2.1 Understanding the Yazidis

The Yazidis are a Kurdish-speaking ethno-religious minority primarily located in the Sinjar Mountain region of northern Iraq, as well as in Armenia, Turkey, and Syria. With a global population of approximately 700,000, they have a long history of persecution and have often been targeted because of their culture and religious beliefs.⁸ The Yazidis follow the ancient religion of Yazidism, considered one of the oldest in the world. This belief system is rooted in ancient pre-Zoroastrian Iranian traditions and is largely transmitted through oral traditions and stories. The overall mystery and frequent misunderstandings surrounding their religion and culture have contributed to their persecution.⁹

Membership in this faith is closed to converts; one must be born into it, and both parents must be Yazidi for the child to be recognized as such. As a result, mixed marriages are discouraged and socially frowned upon.¹⁰ Yazidi culture is characterized by a variety of traditional and communal practices, many of which carry deep symbolic meaning.¹¹ For instance, traditional clothing and turbans are color-coded, symbolizing spiritual and social status within the community. Another central aspect of Yazidi culture is hospitality, which is considered a vital component of their identity. Guests are often treated with the utmost respect, as “kings and queens”, reflecting the Yazidi understanding of hospitality as an essential cultural value. Although mixed marriages are not permitted, this restriction does not equate to hostility toward people from other cultures. On the contrary, hospitality reflects a welcoming and open attitude embedded in their cultural worldview.¹² The unique nature of Yazidi culture and religious beliefs also became a cornerstone of ISIL’s genocidal campaign. ISIL deliberately exploited these beliefs, labeling the Yazidis as “devil

⁸United Nations Human Rights Council, ‘*They Came to Destroy*’: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2 (2016) paras 23–30 <https://tinyurl.com/5nw5c35p>.

⁹ Encyclopædia Britannica, ‘Yazidi’ (2025) <https://tinyurl.com/3zahte7y>.

¹⁰ UN Human Rights Council (n8) paras 19–20.

¹¹ Yazidis International, ‘Traditions/Culture’ (Yezidis International, 2025) <https://tinyurl.com/34wzrwjt>.

¹² *ibid*.

worshippers” and using this false characterization to justify horrific acts of violence, including mass killings, sexual violence, and enslavement.¹³

2.2 Gendered Dimensions of ISIL’s Genocide

On 3 August 2014, ISIL launched a brutal attack on the Yazidi community in Iraq in the Sinjar region, near the Syrian border. According to the Office of the High Commissioner for Human Rights, ISIL committed crimes against humanity, genocide and war crimes, including mass executions, forced conversions of Yazidis to Islam, enslavement, and widespread SGBV against women and even young girls.¹⁴

2.2.1 The Experiences of Yazidi Women and Girls

From the very beginning of the genocide, ISIL implemented a deliberate and highly organized strategy. Their attacks often began with the separation of Yazidi detainees by sex and age, categorizing individuals according to the roles ISIL intended them to fulfil.¹⁵ Female captives were frequently transferred to temporary detention sites, where the process of categorization began. It was at these locations that the selection of sex slaves took place, carried out in a systematic and organized manner described by Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD) as ISIL’s “separation policy”.¹⁶ Women and girls were classified according to age, marital status, and virginity. After registration by name, they were distributed into sexual slavery among ISIL members. This distribution occurred through various means, including lotteries in which names of Yazidi women were drawn and assigned, auctions where they were sold to the highest bidder, and as ‘gifts’ to fighters on the front lines. The most vulnerable to sexual enslavement were Yazidi virgins and unmarried girls, who were specifically targeted. ISIL even conducted virginity tests to confirm their status.¹⁷ According to UNITAD, ISIL

¹³ Hope Rikkelman, ‘Who are the Yazidis?’ (Yazidi Legal Network, 2021) <https://tinyurl.com/y5uhcj64>.

¹⁴ Office of the United Nations High Commissioner for Human Rights, ‘Ten Years after the Yazidi Genocide: UN Syria Commission of Inquiry Calls for Justice, Including Accountability and Effective Remedies’ (press release, 2024) <https://tinyurl.com/vk4jknan>.

¹⁵ United Nations Investigative Team to Promote Accountability for Crimes Committed by ISIL (Da’esh) (UNITAD), ‘The ISIL Attack on Sinjar in August 2014 and Subsequent Acts Committed Against the Yazidi Community in Iraq’ (2024) paras 265–266 <https://tinyurl.com/3rbr9t9h>.

¹⁶ *ibid* paras 266–272.

¹⁷ *ibid* paras 270–272.

employed SGBV with the intent to destroy Yazidi women's capacity to procreate within their community.¹⁸

ISIL members were guided by several manuals detailing how to treat captives, including the pamphlet 'Questions and Answers on Taking Captives and Slaves', published by ISIL's Office of Research and Fatwas. This documentation highlights the systemic nature of the sexual enslavement of Yazidi women, it was not the result of isolated incidents, but rather an official policy implemented by ISIL as an organization.¹⁹ The management of Yazidi slaves fell under the authority of the ISIL Department of Spoils of War, which oversaw the "slave trade". Under this policy, Yazidi captives were regarded as the property of ISIL. If the ISIL captor died, the woman's ownership was transferred back to the Department of Spoils of War, from where she was sold again to another captor. This level of regulation and control underscores the deliberate and systematic nature of ISIL's use of SGBV during the conflict.²⁰ However, Yazidi women were subjected not only to rape but also to other forms of SGBV, including forced marriages, which typically occurred when ISIL members could not afford to marry free women. Under ISIL policy, such members were permitted to forcibly marry their *sabaya*, the term ISIL used for enslaved women.²¹ Marriage to an ISIL fighter did not improve the women's treatment, they continued to suffer sexual, psychological, and physical abuse.²²

2.2.2 The Experiences of Yazidi Men and Boys

Another component of ISIL's violent campaign against the Yazidi community was the mass forced conversion and indoctrination of Yazidi women and men. Here, differences in treatment between genders become clear. Yazidi women were compelled to convert, forced to pray, and subjected to continuous religious indoctrination. If they resisted, they were threatened with SGBV or with being sold into sexual slavery to another ISIL member. For Yazidi men, the threat was often death if they refused to convert. According to UNITAD, the forced conversion of Yazidi men and boys was generally more systematic than that of women. This demonstrates that the methods of coercion ISIL employed to force conversion varied significantly depending on whether the victim was male or

¹⁸ *ibid* para 585.

¹⁹ *ibid* paras 273–312.

²⁰ *ibid*.

²¹ *ibid*.

²² *ibid*.

female.²³ ISIL employed the forced conversion of Yazidi men and boys in a systematic manner, often sending them to training camps in Syria where they were indoctrinated into ISIL's beliefs and policies. After this, many were deployed to combat zones to fight for ISIL. Those who refused to convert were executed and never seen again. Yazidi men and boys who agreed to conversion but were not sent to the front lines or military training camps were forced into labour, such as cleaning streets, herding livestock, and other agricultural work.²⁴ Younger boys, often prepubescent, were initially held captive with the women and girls.

However, once they reached the ages of roughly 7 to 14, they were sent to be child soldiers.²⁵ ISIL's military training of Yazidi child soldiers included religious instruction and exposure to violence, such as execution videos, in an attempt to desensitize them. Many were also used in suicide attacks, regardless of their age, meaning even very young boys could be sent on such missions.²⁶ This indoctrination left deep psychological scars. Boys who had spent years in captivity often struggled to rediscover their Yazidi identity after the conflict. Some, having been captured at a young age, had almost completely forgotten their religious beliefs. In certain cases, they even referred to their Yazidi families as 'infidels' and were reluctant to reunite with them, as they still retained ISIL's teachings. ISIL's strategy effectively turned some Yazidi children against their own community by eradicating their faith and culture through systematic indoctrination.²⁷ Consequently, many Yazidi children face significant dilemmas when they are freed and return to their families.²⁸ Although many Yazidis have been rescued, as of 2024 approximately 2,600 remain missing and have not been seen for years; they are believed to still be held captive by ISIL.²⁹

²³ *ibid.*

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ Zahra Fatima, 'Yazidi Woman Rescued from Gaza after Decade in Captivity' *BBC News* (2024) <https://tinyurl.com/yv3jukmy>.

2.3 International Crimes Committed Against the Yazidi Community

This section outlines how the crimes described above constitute grave international crimes, including war crimes, crimes against humanity, and genocide.

2.3.1 War Crimes & Crimes Against Humanity

UNITAD has provided a comprehensive overview of the grave crimes perpetrated by ISIL against the Yazidi community. According to their findings, there is substantial evidence demonstrating that both crimes against humanity and war crimes were committed.³⁰ This includes proof of rape, sexual slavery, forced transfer, torture, enslavement, enforced prostitution, forced pregnancy, and other forms of SGBV and other violent acts, many of which UNITAD argues meet the gravity required for classification as war crimes and crimes against humanity. UNITAD employs multiple legal frameworks and interpretations to establish that serious international crimes have indeed been carried out. Some of this reasoning is outlined below to provide a legal perspective on the crimes described above.³¹ UNITAD asserts that ISIL's widespread use of rape can be considered a war crime under Common Article 3 of the Geneva Convention, which is recognized as customary international law and is therefore universally binding.³² Although Common Article 3 does not explicitly mention rape, it is widely interpreted to fall under the prohibitions of paragraph 1(a), 'cruel treatment and torture', and paragraph 1(c), 'outrages upon personal dignity'.³³ This interpretation has strong precedent. For example, in the case of *Prosecutor v. Duško Tadić* in the International Criminal Tribunal for the former Yugoslavia (ICTY), Common Article 3 was applied to prosecute Tadić for rape and other forms of SGBV. This case demonstrates that international prosecution has long recognized that rape constitutes a war crime under Common Article 3 of the Geneva Convention.³⁴

³⁰ UNITAD (n15) paras 310–323.

³¹ UNITAD (n15) para 421.

³² *ibid.*

³³ *ibid* para 440; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, common art 3(1)(a), (c) <https://tinyurl.com/2u9j6n6n>.

³⁴ *Prosecutor v Duško Tadić* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) Case No IT-94-1-AR72 (ICTY Appeals Chamber, 2 October 1995) para 103 <https://tinyurl.com/6uz5uxd8>; Christopher Greenwood, 'International Humanitarian Law and the Tadić Case' (1996) 7 *European Journal of International Law* 265, 266 <https://tinyurl.com/3zu95e2e>.

Furthermore, UNITAD highlights that ISIL's strategy and policy of carrying out murder, rape, forced transfer, torture, and enslavement against the Yazidi community can be considered crimes against humanity, as codified in Art 7 of the Rome Statute.³⁵ UNITAD argues that ISIL carried out these crimes as a widespread and systematic policy targeting the civilian population of the Yazidi community. Therefore, they contend that these acts qualify not only as individual war crimes but also as part of a broader strategy to commit grave crimes on a widespread scale.³⁶ Therefore, it can be contended that ISIL not only committed large-scale war crimes in violation of both Common Art 3 of the Geneva Convention and Art 8 of the Rome Statute, but also that, when considering the gravity of these crimes, the evidence points to their conduct reaching the level of crimes against humanity. The widespread and strategically implemented policy of violence demonstrates that these acts cannot be viewed merely as isolated incidents, but rather as part of a systematic structure of destruction.³⁷

2.3.2 The Crime of Genocide

According to the United Nations Human Rights Council (UNHRC) report A/HRC/32/CRP.2, "*They Came to Destroy: ISIS Crimes Against the Yazidis*", the crimes mentioned above were part of a deliberate strategy to destroy and disperse ethnic and religious communities.³⁸ The report further states that ISIL used SGBV as a tool of genocide, aiming to erase Yazidi identity through systematic forced marriages, forced conversions, forced transfers, mass killings, torture, psychology abuse, measures to prevent the birth of Yazidi children, and exclusion from practicing their own beliefs and culture.³⁹ The UNHRC asserts that ISIL's aim to specifically prevent the birth of Yazidi children, combined with its broader policy to destroy the Yazidis as a religious group, meets all the criteria set out in the Genocide Convention art II.⁴⁰ Although proving genocide is often challenging, particularly in establishing the required *dolus specialis*⁴¹ to destroy a protected group

³⁵ Geneva Convention (IV) (n31) common art 3(1)(a), (c); UNITAD (n 15) paras 476–477; Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 7 and 8 <https://tinyurl.com/nhd8hmwc>.

³⁶ *ibid.*

³⁷ *Ibid.*

³⁸ United Nations Human Rights Council, (n8), paras 100–104; *Convention on the Prevention and Punishment of the Crime of Genocide* (1948) 78 UNTS 277, art 11 <https://tinyurl.com/ytudevj6>

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *Dolus specialis* refers to the required element of specific intent to destroy, in whole or in part, a protected group: *Prosecutor v Jean-Paul Akayesu* (Trial Judgment) ICTR-96-4-T (International Criminal Tribunal for Rwanda, 2 September 1998) para 498 <https://tinyurl.com/bpbxu7u7>

in whole or in part, the UNHRC concluded that ISIL members' actions, statements, and policies clearly demonstrate such *dolus specialis* to destroy the Yazidi community, in whole or in part, and therefore could constitute genocide.⁴² Hence, according to the UNHRC report, it seems clear that the crimes mentioned above not only constitute war crimes and crimes against humanity but have also reached the gravity of genocide against the Yazidi community.⁴³

2.4. Interim Conclusion

Striving to answer **sub-question (1)**: *How has the Yazidi community uniquely experienced SGBV, violence, and persecution at the hands of ISIL?* This thesis finds that ISIL employed different forms of violence against Yazidi men and women. They operated an almost two-tiered system: women were subjected to a highly systematic, categorized, and organized trade in sexual slavery among ISIL members, whereas Yazidi men and boys were processed through a separate system in which they were either killed or forcibly converted. Thus, when examining the violence carried out by ISIL, gender and SGBV were central components of their strategy. The unique experiences of the Yazidi community at the hands of ISIL cannot be overlooked, as SGBV was deliberately used as a tool to systematically attempt to destroy the community's beliefs and culture.

⁴² *ibid*

⁴³ *ibid*

3. Research Methodology

The following section of the thesis outlines the overall methodological framework and exemplifies how the thesis seeks to answer the research question, while justifying the choices made throughout the study.

3.1 The Interdisciplinary Approach

According to Lydia A. Nkansah and Victor Chimbwanda, when one seeks to research a legal concept beyond the boundaries of law and incorporate different fields of study to comprehend a legal issue, the paper must adopt an interdisciplinary and explorative research approach.⁴⁴ Hence, this project employs an interdisciplinary approach in order to examine the complex situation of TJ for the Yazidi community, exploring how cultural and gender dynamics may influence its outcomes and the extent to which it meets the needs of those it seeks to help⁴⁵. This allows the project to seek understanding beyond the narrow confines of legal study. Consequently, this thesis draws on perspectives from international public law, gender studies, and cultural concepts to provide a comprehensive analysis of the multifaceted nature of the issue. The holistic nature of the research question requires such a multifaceted approach.⁴⁶ Without it, or if confined to a purely disciplinary perspective, there is a risk of overlooking the underlying causes and complexities necessary for understanding TJ for the Yazidi community. Therefore, this thesis emphasizes how the interconnectedness of legal studies with the social sciences and humanities can offer deeper insights, viewing law as a social phenomenon.⁴⁷

⁴⁴ Lydia Nkansah and Victor Chimbwanda, 'Interdisciplinary Approach to Legal Scholarship: A Blend from the Qualitative Paradigm' (2016) 3(1) *Asian Journal of Legal Education* 55, 62 <https://doi.org/10.1177/2322005815607135>.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *ibid.*

3.2 A Case Study Approach

Furthermore, Nkansah and Chimbwanda note that there are five primary traditions in qualitative studies: grounded theory, phenomenology, ethnography, case study, and biography.⁴⁸ This project employs a single case study focusing on the Yazidi community, as it aims to explore a specific and complex case in depth. A case study is considered particularly appropriate when examining a phenomenon bounded by a particular system or a specific timeframe⁴⁹. Accordingly, this project seeks to understand the relationship between the Yazidi community and TJ mechanisms in the period following the genocide perpetrated by ISIL, spanning from 3 August 2014 to the present.⁵⁰ Thus, a case study approach was deemed the most suitable for this research, as it allows for the examination of a specific community within a clearly defined temporal framework. By analysing the Yazidi community's relationship with TJ, this study explores TJ as a social phenomenon within its natural setting.⁵¹ While focusing on a single case presents certain limitations, particularly with respect to generalisability, this approach is preferred for its ability to provide a complex, holistic, and in-depth understanding of how TJ operates in practice when examined through the lens of gender and cultural dynamics.⁵²

3.3. Data Collection

Given the interdisciplinary approach, data will be collected from a variety of sources, both legal and non-legal, including reports, case law, secondary interviews, original interviews, and relevant articles.⁵³ The Thesis employs qualitative research methods, enabling an in-depth interpretation of the collected data. This approach has been chosen because of the complexity of the research question, which necessitates a nuanced understanding of multiple perspectives and interpretations of the issue.⁵⁴ A purely quantitative method would not allow the project to capture the complexity of the topic or provide the answers required to address the research question effectively. The

⁴⁸ *ibid* 64.

⁴⁹ *ibid*.

⁵⁰ *ibid*.

⁵¹ *ibid* 62.

⁵² Margaret R Roller, 'Generalizability in Case Study Research' (Research Design Review, 8 December 2020) <https://tinyurl.com/3my9y4ex>.

⁵³ Lydia Nkansah and Victor Chimbwanda (n44) 64.

⁵⁴ *ibid*.

qualitative approach is therefore essential to gaining a deeper understanding of the diverse experiences and interpretations of the Yazidi community regarding TJ.⁵⁵

3.3.1 Secondary Qualitative Inquiry

The incorporation of interviews for this thesis primarily relies on existing interviews conducted by other scholars, journalists, and organizations with members of the Yazidi community. This approach is taken mainly from an ethical standpoint, as interviewing individuals who have experienced war crimes, crimes against humanity, and genocide carries a significant risk of re-traumatization.⁵⁶ Additionally, the researcher lacks a background in psychology or specialized training in trauma-sensitive interviewing, which may compromise the well-being of participants.⁵⁷ It is also important to note that the situation for the Yazidi community remains ongoing, with various security challenges still present.⁵⁸ Conducting direct interviews under these circumstances could place participants in an even more vulnerable position, further increasing the difficulties they face.⁵⁹ Therefore, after discussions between the researcher and the supervisor, it was determined that collecting original interviews with survivors of genocide, war crimes, and crimes against humanity would not serve the best interests of either the thesis or the Yazidi community.⁶⁰ However, according to He-In Cheong, Agnieszka Lyons, and Arnab Majumdar, when primary data collection is not possible, a secondary qualitative inquiry methodology is preferred, as it allows the researcher to gain insight into complex and in-depth issues without conducting the interviews themselves.⁶¹ Therefore, secondary interviews were chosen because the research question seeks to understand TJ from the perspective of individuals in the Yazidi community, allowing the interviewees to serve as experts of their own experiences.⁶²

⁵⁵ Alan Bryman, *Social Research Methods* (5th edn, Oxford University Press 2016) 378–80.

⁵⁶ Nicola Palmer, Julia Viebach, Briony Jones, Zoe Norridge, Andrea Grant, Alisha Patel, Leila Ullrich, Djeyhoun Ostowar and Phyllis Ferguson (eds), *Transitional Justice Methods Manual: An Exchange on Researching and Assessing Transitional Justice* (2013) 33–34.

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ He-in Cheong, Agnieszka Lyons, Robert William Houghton and Arnab Majumdar, 'Secondary Qualitative Research Methodology Using Online Data within the Context of Social Sciences' (2023) 22(2) *International Journal of Qualitative Methods* 1, 1–

2 <https://doi.org/10.1177/16094069231180160>.

⁶² *ibid.*

However, there are notable disadvantages and limitations to relying solely on a secondary qualitative inquiry approach, such as misinterpretation. This risk is particularly present when employing secondary sources like interviews, as there is no opportunity to verify the original data, which may impact the trustworthiness of the material used.⁶³ Another concern highlighted by Cheong et al. is the potential for disproportionate representation due to the limitations of existing interviews in the research field. Since this research relies on purposive sampling to select relevant material, there is also a risk of confirmation bias, where data that supports the thesis's narrative may be favored.⁶⁴ While acknowledging these limitations, efforts have been made to enhance the credibility and trustworthiness of the selected interviews and to minimize bias as much as possible. This will be achieved by incorporating a triangulation research approach, which was carried out by comparing a diverse range of opinions and perspectives shared by multiple sources.⁶⁵ Moreover, triangulation was employed to avoid selecting only the accounts that align with the thesis's narrative, thus enabling the identification of both consistencies and contradictions in the data.⁶⁶

3.3.2 Original Interviews

This thesis primarily relies on secondary interviews as discussed above, as direct interviews was deemed ethically inappropriate due to the researcher's lack of trauma-sensitive training. Therefore, this thesis sought to include individuals with knowledge of the issue without being direct survivors of the conflict. Accordingly, four original interviews were conducted, two of which were with Yazidis who had not directly experienced the atrocities but have positions that exposed them to survivor accounts.⁶⁷ This provided valuable community insights without risking retraumatization and thus ensuring a more ethical process. The other two interviews were with legal experts, who offered critical perspectives on TJ, including challenges related to gender and culture dynamics.

⁶³ ibid 5-6.

⁶⁴ ibid.

⁶⁵ Cem Harun Meydan and Handan Akkaş, 'The Role of Triangulation in Qualitative Research: Converging Perspectives' in Ali Elhami, Anita Roshan and Harish Chandan (eds), *Principles of Conducting Qualitative Research in Multicultural Settings* (IGI Global 2024) <https://doi.org/10.4018/979-8-3693-3306-8.ch006>.

⁶⁶ ibid.

⁶⁷ Alan Bryman (n55) 468-469.

These interviews enabled the researcher to ask follow-up questions in order to clarify and deepen the understanding of topics insufficiently addressed in secondary sources.⁶⁸

3.3.2.1 Sampling Methods

For these four original interviews, a mix of purposive sampling and snowball sampling was employed. This approach was chosen primarily because the purposive sampling method enabled the researcher to identify individuals who were particularly informative and possessed substantial experience-based knowledge.⁶⁹ As a result, the thesis provides insights into the Yazidi community's perceptions of the issue, contributing to the overall purpose of the thesis. Additionally, snowball sampling was used, as the second Yazidi interviewee was reached through the first, who employed his network to facilitate access to another participant with significant insight. This provided the thesis with a combination of interviewees, some chosen directly by the researcher and others identified indirectly through networks.⁷⁰

3.3.2.2 Navigating Research Biases

When employing purposive sampling to conduct original interviews, there is an inherent risk of bias, as the researcher deliberately selects participants deemed most relevant for the thesis's objectives, thus creating the possibility of confirmation bias.⁷¹ To mitigate this, snowball sampling was combined with purposive sampling to allow others, besides the researcher, to influence the selection of interviewees. This mixed approach was also applied to expert interviews, where experts were contacted through organizations and asked to recommend knowledgeable individuals about the Yazidi case; the interviewees were then randomly assigned.⁷² Therefore, when using purposive sampling, it is critical to be aware of potential researcher biases, as these can impact the validity of the data.⁷³ Such biases may result in the subjective selection of participants considered vital for addressing the issue, which can in turn affect how the subject is portrayed throughout the thesis. For example, if the chosen interviewee felt that violence against men was the most important aspect of

⁶⁸ *ibid.*

⁶⁹ Steve Reid and Bob Mash, 'African Primary Care Research: Qualitative Interviewing in Primary Care' (2014) 6(1) *African Journal of Primary Health Care & Family Medicine* 632, 2–3 <https://doi.org/10.4102/phcfm.v6i1.632>.

⁷⁰ *ibid.*

⁷¹ Bella Williams, 'Limitations of Purposive Sampling in Research' (Insight7, 2024) <https://tinyurl.com/3p3ymncm>.

⁷² *ibid.*

⁷³ *ibid.*

the conflict, then the violence against women might be underrepresented or overlooked.⁷⁴ Hence, while purposive sampling can provide valuable insights into in-depth and complex issues, it also introduces significant biases. However, mixing sampling methods can increase validity and help minimize these biases to some extent⁷⁵. Additionally, cross-checking interview statements with other sources can reduce bias by fact-checking the information. Although some measures can be taken to minimize bias, it can never be completely eliminated, making it crucial to remain aware of these limitations throughout the entire project.⁷⁶

3.3.2.3 Detailed Profiles of Interview Participant

3.3.2.4 Insights from Yazidi Interviewees

The two Yazidi interviewees consisted of one woman and one man. Both are kept anonymous in this thesis and are given pseudonyms names, Nella Maria for the woman and Thomas Carter for the man, and from this point onward will only be referred to by their pseudonym surnames.⁷⁷ This precaution was taken due to the highly sensitive and potentially traumatic nature of the topics discussed, as well as the fact that there are still members of ISIL at large. Therefore, anonymity was maintained to protect their safety and the confidentiality of their statements.⁷⁸

The male Yazidi interviewee has lived in Denmark for many years and has not personally experienced the genocide or the direct conflict with ISIL. However, he is a board member of an organization for the Yazidi community, which has given him valuable insight into how the community has experienced the conflict, both for those who fled to Denmark and for those who remain in Iraq. While he did not have any first-hand personal experience with the atrocities, his position in the organization provided him with significant second-hand knowledge of the events and

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ Hadjer Mirza, Fouzi Bellalem and Chahrazed Mirza, 'Ethical Considerations in Qualitative Research: Summary Guidelines for Novice Social Science Researchers' (2023) 11(1) *Social Studies and Research*

⁷⁸ *ibid.*

their impact on the community. Thus, his knowledge provided an insider perspective that was valuable in answering the research question.

The Yazidi woman who was interviewed had also lived in Denmark for many years but maintained close contact with the Yazidi community by several times acting as a translator for Danish media traveling to Iraq to interview Yazidi survivors and gather first-hand accounts. Through this role, Maria gained direct exposure to the stories and experiences of those who had endured ISIL's violations, giving her significant insight into the conflict. Moreover, she has extended family members who have themselves been victimized by the conflict, giving her a closer and more sensitive connection to the events and their impact. With Maria arise the same issue as with Carter, when reaffirming second-hand accounts.⁷⁹

3.3.2.5 Insights from Expert Interviewees

According to Michael Brown are expert interviews highly valuable when seeking an in-depth understanding of complex topics in order to gain a nuanced perspective.⁸⁰ For this reason, this thesis employed expert interviews primarily to address its focus on complex legal questions. These interviews were particularly aimed at exploring how gender and culture may impact the TJ process. Furthermore, they provided insight into how TJ can be approached in ways that are more inclusive of gender and cultural considerations.⁸¹

The first expert interviewee, who did not request anonymity, is Catherine E. van Kampen. She is a U.S. senior counsel attorney and serves as Managing Director and Staff Attorney at Bernstein Litowitz Berger & Grossmann LLP in New York. In addition to her work in corporate law, she is actively involved in pro bono work. Currently, she serves as a legal advisor for Netherlands Helps Yezidis, an organization that provides support and guidance to Yazidis in both the Netherlands and Iraq. The contact with her was established through the organization Netherlands Helps Yezidis, which referred the researcher to their legal advisor.⁸² van Kampen proved to be an essential

⁷⁹ *ibid.*

⁸⁰ Michael Brown, 'How to Effectively Conduct an Expert Interview' (*GLG Insights*, 2025) <https://tinyurl.com/2suscbx> .

⁸¹ *ibid.*

⁸² *ibid.*

interviewee, offering deep insights into the challenges faced by Yazidis in their legal cases. She provided informed opinions on various international efforts in Iraq and explained the complications Iraq faces in obtaining legal support due to its current legal framework. While expert insights were also gathered through secondary sources, those did not allow for follow-up questions or deeper elaboration. Therefore, this interview provided valuable insights and clarifications that enriched the analysis beyond what could be obtained from secondary materials.⁸³

The other expert interviewee requested to remain anonymous and will be referred to by the pseudonym Jenna Rasmussen. She is a professor and deputy director at a school of law, holding both a PhD and an LLM in Human Rights Law. She is an expert in global peace, security, and justice. Moreover, she is particularly well-versed in the field of TJ and contributed valuable insights on how TJ processes could be made more inclusive.⁸⁴ She shared her perspectives on key elements to consider when analyzing and adapting other TJ models. Rasmussen's input was especially helpful for the discussion section of this thesis, which ultimately explores recommendations for how Iraq could establish a more gender and culture inclusive TJ model.⁸⁵

3.3.2.6 Interview Guide

Given that this thesis purpose is to highlight the voices of the Yazidi community, the semi-structured interview format was chosen.⁸⁶ This approach provided a flexible interview guide, enabling the researcher to ask key questions while allowing the conversation to naturally explore other relevant topics and perspectives. It ensured that essential questions were addressed without strictly limiting the discussion.⁸⁷ This format was well suited to the project's goal of empowering Yazidi participants to share their experiences in their own words. The Yazidi interviewees had much to share, and the researcher wanted to offer them the flexibility to tell their stories while maintaining focus on the core topics.⁸⁸ The flexibility of semi-structured interviews also enabled the study to uncover issues that were not initially planned or directly asked about but nonetheless

⁸³ *ibid.*

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ Alan Bryman (n55) 468-469.

⁸⁷ *ibid.*

⁸⁸ *ibid.*

provided valuable insights into participants' experiences with TJ in Iraq. These unexpected contributions enhanced the depth of the analysis and brought attention to subjects that might have otherwise been overlooked in a more fixed, structured interview format.⁸⁹ Therefore, semi-structured interviews were preferable, as they allowed the project to obtain detailed insights and personal accounts of the Yazidi experiences.⁹⁰ However, employing a semi-structured interview strategy does have implications for the validity of the interviews, as it can be difficult to compare interviewee responses and establish any form of generalizability. Nevertheless, this thesis does not aim to compare responses or draw general conclusions. Instead, it focuses on individual experiences and personal perspectives on the topic.⁹¹

3.3.2.7 Ethical Considerations in Conducting Interviews on Sensitive Topics

Before conducting the interviews, the researcher consulted best practices for interviewing on sensitive topics, for example, the guide from the Social Change Library and the research by Hadjer Mirza, Fouzi Bellalem, and Chahrazed Mirza on ethical considerations in qualitative research.

⁹²These sources provided the foundation for how the interviews were conducted, offering practical guidance on approaching emotionally charged or potentially traumatic subjects.⁹³

Firstly, the interview guide was structured so that the initial questions were broad and general, focusing on the interviewees' backgrounds and their connection to the Yazidi community, or their experiences with TJ. This allowed the interviews to begin gradually, without immediately delving into difficult topics, and gave interviewees the opportunity to ease into the conversation at a comfortable pace.⁹⁴ Following the guidance from the reports mentioned above, one step the researcher took to help prepare interviewees was offering them the opportunity to review the interview guide in advance.⁹⁵ This allowed them to identify any questions they preferred not to

⁸⁹ *ibid.*

⁹⁰ *ibid.*

⁹¹ Tegan George, 'Semi-Structured Interview | Definition, Guide & Examples' (*Scribbr*, 2022) <https://tinyurl.com/3mjxswy3>.

⁹² Hadjer Mirza, Fouzi Bellalem and Chahrazed Mirza (n77) 442; 3CR, 'Tips for Conducting Interviews about Sensitive Topics' (*Commons Library*, 2022) <https://tinyurl.com/2jm36p93>.

⁹³ *Ibid.*

⁹⁴ 3CR (n92).

⁹⁵ *ibid.*

answer and gave them time to mentally prepare, hence minimizing the risk of unexpected or uncomfortable moments during the conversation. Three of the interviewees accepted this offer, which clearly contributed to a greater sense of readiness and comfort during the interview.⁹⁶

3.4 Scope and Limitations of the Study

Although this thesis employs an interdisciplinary approach, drawing on FL, FJ, IF and the concept GI, which allows the project to integrate insights from several theoretical fields, it does not account for all the complex aspects of TJ in relation to the Yazidi community. For instance, this thesis does not address the religious dimension of TJ, which could have been a crucial aspect to consider, given that the Yazidis are an ethno-religious minority in which religion and culture are deeply interconnected.⁹⁷ However, this thesis cannot account for every aspect of the issue due to space constraints. It is therefore essential to remain aware of the limitations in scope and time to ensure that the research remains achievable.

Furthermore, another limitation that this project has encountered is the issue of translating legal documents such as case law and other legal tools, which in this case were often written in Arabic or other languages.⁹⁸ While translating such documents into English, there is a risk of missing some of the meaning, which could lead to misinterpretations and affect the overall quality of the Thesis. Since the Yazidi community is in the Sinjar Mountain region of northern Iraq, as well as in Armenia, Turkey, and Syria, it would have been impossible to avoid documents written in other languages.⁹⁹ However, through my network, I have sought help in understanding these documents. Despite these efforts to minimize misinterpretation, it is important to note that when translating from one language to another, there is always the possibility of some meaning being lost in the process.¹⁰⁰

⁹⁶ *ibid.*

⁹⁷ Encyclopædia Britannica (n9)

⁹⁸ Fenna van Nes, Tineke A. Abma, Hans Jonsson and Dorly J H Deeg, "Language Differences in Qualitative Research: Is Meaning Lost in Translation?" (2010) 7(4) *European Journal of Ageing*, 1-2. DOI: [10.1007/s10433-010-0168-y](https://doi.org/10.1007/s10433-010-0168-y).

⁹⁹ *ibid*; Encyclopædia Britannica (n 9).

¹⁰⁰ Fenna van Nes, Tineke A Abma, Hans Jonsson and Dorly JH Deeg (n98).

3.5 Utilizing AI Tools for Enhanced Research and Writing

This section will outline how AI tools such as Grammarly and ChatGPT have been employed throughout the project. Mainly, Grammarly and ChatGPT have been used throughout the entire assignment to aid in correcting grammatical errors, suggesting synonyms, improving word choice, and enhancing the overall flow of the text.¹⁰¹ Accordingly, this thesis follows the guidelines of the University of Southern Denmark (SDU), which require that the use of AI be clearly stated in the thesis, along with an explanation of how it has been employed.¹⁰²

¹⁰¹ University of Southern Denmark (SDU), 'Brug af generativ AI i undervisning og eksamen – Korrektur på sprog eller sproglig feedback' (*MitSDU*) <https://tinyurl.com/bdfkzhhe>.

¹⁰² *ibid.*

4. Literature Review

This section of the thesis explores scholarly perspectives on TJ processes and examines how cultural, and gender dynamics may influence both TJ itself and those expected to engage with it.

4.1 The Role of Culture and Gender in Post-Conflict Contexts

According to Dana Zartner, Lieselotte Viaene, and Eva Brems, TJ is a framework designed for countries recovering from severe human rights violations and undergoing political transitions in post-conflict settings. These scholars further assert that TJ often covers both judicial and non-judicial methods, including individual prosecution, reparations, truth-seeking, truth commissions, and institutional reform.¹⁰³ Thus, TJ should be viewed as a combination of various justice mechanisms that seek justice in multiple ways. It is essential to acknowledge not only the judicial processes but also the restorative ones, as both are vital for achieving reconciliation.¹⁰⁴

4.1.2 Culture Implications

According to the Center for International Transitional Justice (ICTJ), it is essential to consider cultural components in both judicial and restorative TJ processes.¹⁰⁵ In their research, the ICTJ highlights that accounting for culture at the outset of a TJ process enables a deeper understanding of the consequences of past crimes.¹⁰⁶ Without such consideration, it becomes significantly more challenging to fully comprehend the impact of violations on a population, which can ultimately undermine the effectiveness of the TJ process. Furthermore, the ICTJ emphasizes that employing a culturally sensitive approach when initiating TJ processes helps give voice to those who are often neglected or invisible in mainstream mechanisms.¹⁰⁷

Zartner further emphasizes that considering traditional and cultural implications can be achieved by integrating traditional and cultural mechanisms into TJ processes, ensuring inclusivity and better

¹⁰³ Lieselotte Viaene and Eva Brems, 'Transitional Justice and Cultural Contexts: Learning from the Universality Debate' (2010) 28 *Netherlands Quarterly of Human Rights* 199–200.

¹⁰⁴ *ibid.*

¹⁰⁵ Dana Zartner, 'The Culture of Law: Understanding the Influence of Legal Tradition on Transitional Justice in Post-Conflict Societies' (2012) 22(2) *Indiana International & Comparative Law Review* 297.

¹⁰⁶ *ibid.*

¹⁰⁷ *ibid.* 20.

addressing the needs of affected populations.¹⁰⁸ She further suggests that understanding local concepts of justice is vital for meeting the unique needs of post-conflict societies. Zartner even contends that tribunals like the ICTY have had little long-term impact and failed to foster harmony and peace, as they did not consider the inter-ethnic culture context.¹⁰⁹ Georg Kasapas agrees with this assessment, attributing the ICTY's limited success to its lack of understanding of the complexities of inter-ethnic culture and cross-border relations in the Western Balkans.¹¹⁰ These misunderstandings made it difficult to implement TJ mechanisms, such as truth commissions, effectively. Kasapas asserts that a greater focus on inter-ethnic culture and relations would have been crucial in tailoring TJ processes to better meet the needs of affected communities.¹¹¹ Despite these critiques of TJ, some scholars argue that TJ can successfully integrate traditional justice mechanisms, thus considering and respecting local cultures. For instance, Kai Ambos, Judith Large, and Marieke Wierda examined the International Criminal Tribunal for Rwanda (ICTR).¹¹² They noted that, although this case did not fully align with the traditional TJ framework, it did incorporate cultural, religious, and ethnic considerations.¹¹³ According to Ambos, Large, and Wierda, this was achieved by employing and incorporating the Gacaca courts, a customary dispute resolution mechanism traditionally used for local conflicts over land and financial matters.¹¹⁴ In the aftermath of the Rwandan genocide, the Gacaca courts were used to address cases related to genocide and war crimes.¹¹⁵ Despite criticism from international organizations such as Amnesty International, the Gacaca courts enjoyed strong domestic legitimacy. In 2002, 82% of the Rwandan population expressed confidence in the Gacaca courts' ability to handle genocide and war crime cases.¹¹⁶ Moreover, Ambos, Large, and Wierda argue that integrating such mechanisms into the TJ process can enhance its effectiveness by aligning it with the population's traditional and cultural understanding of justice and reconciliation.¹¹⁷

¹⁰⁸ Dana Zartner (n105) 301.

¹⁰⁹ *ibid.*

¹¹⁰ George Kasapas, 'An Introduction to the Concept of Transitional Justice: Western Balkans and EU Conditionality' (UNISCI Discussion Paper No 18, Social Science Research Center (CSIC) & Universidad Complutense de Madrid) (2008) 73.

¹¹¹ *ibid.*

¹¹² Kai Ambos, Judith Large and Marieke Wierda, 'Justice Mechanism and the Question of Legitimacy: The Example of Rwanda's Multi-Layered Justice Mechanism' in Kai Ambos, Judith Large and Marieke Wierda (eds), *Building a Future on Peace and Justice: Studies on Transitional Justice, Conflict Resolution and Development* (Springer 2009) 188.

¹¹³ *ibid.*

¹¹⁴ *ibid.* 192.

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*

4.1.3 Gender Implications

Cultural context is not the sole factor influencing TJ processes. The lack of gender sensitivity in the implementation of TJ has been widely questioned and criticized by several scholars. Susan McKay, for instance, argues that women's experiences with TJ are shaped by factors such as sex, ethnicity, and class.¹¹⁸ She contends that these factors have created systemic barriers to achieving gender justice, particularly in contexts of armed conflict and post-conflict.¹¹⁹ McKay further asserts that the concept of justice has been historically shaped through a patriarchal lens, resulting in judicial ignorance of how women experience war and its aftermath. Justice, according to McKay, has been defined and constructed by a privileged, predominantly elite, wealthy, and white male group, which has led to the exclusion of marginalized groups, including women, people of color, and those living in poverty.¹²⁰

These groups, McKay argues, have been left out of discussions about what justice entails, rendering their experiences invisible to the legal system, which has never been designed to account for their realities.¹²¹ McKay highlights the significant impact this lack of gender sensitivity has had on the TJ process, in which many women are either silenced or feel ashamed to speak due to stigma and taboos.¹²² Consequently, they often withhold testimony in reconciliation bodies during the post-conflict period, resulting in the local and international denial of the importance of women's experiences in war and post-conflict contexts. This concern was also echoed by the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), which has conducted research on how to meaningfully include women in the TJ process.¹²³ UN Women stresses the importance of women participating in decision-making, mechanisms, and positions of power, without fear of retribution.¹²⁴ UN Women argues that incorporating gender-sensitive dynamics into TJ processes is the only way to ensure justice for all. This approach challenges the narrative that

¹¹⁸ Susan McKay, 'The Effects of Armed Conflict on Girls and Women' (1998) 4(4) *Peace and Conflict: Journal of Peace Psychology* 561, 562, DOI: [10.1207/s15327949pac0404_6](https://doi.org/10.1207/s15327949pac0404_6).

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

¹²¹ *ibid.*

¹²² *ibid.* 565.

¹²³ Lorena Mellado, Emily Kenney and Hariwa Adil, *Women's Meaningful Participation in Transitional Justice: Advancing Gender Equality and Building Sustainable Peace* (UNDP & UN Women, March 2022) 22–23.

¹²⁴ *ibid.*

women are mere victims of war, instead recognizing them as active agents capable of influencing the definition of justice.¹²⁵

McKay further contends that patriarchal impacts on TJ processes, such as reconciliation mechanisms, have created an expectation for women to forgive or forget SGBV experienced during wartime. According to McKay, this is an unrealistic expectation that marginalizes women and undermines the overall goal of achieving justice for all.¹²⁶ Vjollca Krasniqi agrees with McKay's perspective, emphasizing that women, sexual minorities, and men experience different forms of violence in armed conflict, with SGBV being particularly prominent.¹²⁷ She notes that SGBV has been used as a tool of war, both as a physical and psychological weapon against women and girls. Krasniqi highlights that although women are marginalized in the TJ process, the international community has recognized crimes such as rape as weapons of war, particularly in the definitions provided by the ICTY and ICTR tribunals.¹²⁸ Additionally, she mentions that the United Nations Security Council has made efforts to address the specific experiences of women during war, particularly through the adoption of Resolution 1820, which affirms that rape and other forms of SGBV constitute war crimes and can amount to crimes against humanity.¹²⁹

Nahla Valji agrees that SGBV have gained more attention in recent years.¹³⁰ While acknowledging these advancements, Valji concurs with Krasniqi that much remains to be done before justice becomes truly equal for all. She observes that despite the increased focus on gender-sensitive TJ mechanisms, there have been few concrete actions specifically addressing gender-based violence.¹³¹ This, according to Valji, is because these crimes still do not receive the attention they deserve, and consistent prosecution and support are critical for TJ to succeed.¹³² Valji argues that one way to achieve justice for women in the TJ process is through their inclusion in all stages, including decision-making and policy development. She contends that such inclusion would enable

¹²⁵ *ibid* 17.

¹²⁶ *ibid* 569.

¹²⁷ Vjollca Krasniqi, 'Gender and Transitional Justice: Recognition and Reparations of Wartime Sexual Violence in Kosovo' (2024) 9(3) *Journal of Human Rights and Social Work* 417, 421, DOI: [10.1007/s41134-024-00318-y](https://doi.org/10.1007/s41134-024-00318-y).

¹²⁸ *ibid*.

¹²⁹ *ibid*; UNSC Res 1820 (2008) UN Doc S/RES/1820, para 4.

¹³⁰ Nahla Valji, 'Gender Justice and Reconciliation' (Occasional Paper No 35, Dialogue on Globalization, Friedrich-Ebert-Stiftung, Berlin 2007) 8.

¹³¹ *ibid* 8-9.

¹³² *ibid* 9-10.

women to obtain some remedy for their suffering.¹³³ Hence according to Valji, Krasniqi, and McKay, the inclusion of gender in the TJ process is vital. Gender equality in TJ processes not only contributes to justice and peace for women but also improves outcomes for society. A gender-sensitive approach to TJ will contribute to more inclusive, sustainable peace. As these scholars collectively argue, the inclusion of SGBV and the active participation of women are essential to the success of the TJ process.¹³⁴

4.2 Identifying Gaps

It is evident that there is already a vast body of research on the gender and cultural implications for the TJ process. Across the literature, there is a consensus that these factors are crucial considerations, as they can significantly hinder the TJ process, particularly in relation to the restorative, reconciliation, reparation, and judicial aspects, potentially halting the process altogether.

However, a gap in the current body of research is that discussions around gender and cultural effects are often treated as two separate issues, rather than as interconnected factors that must be considered together. For instance, the Yazidi community is an ethno-religious minority in which cultural and gender dynamics are closely intertwined.¹³⁵ Therefore, this thesis aims to explore the cultural and gender implications for the TJ process within the Yazidi community. By adopting an integrated approach, this research will demonstrate that to truly understand the gender dynamics of the Yazidi community, one must also consider the cultural context, as these aspects cannot be separated into distinct arguments.¹³⁶

In doing so, this project seeks to contribute to the extensive body of existing research by offering a perspective that emphasizes the interconnectedness of cultural and gender dynamics in the Yazidi community's pursuit of justice through the TJ process.

¹³³ *ibid.*

¹³⁴ *ibid*:Vjollca Krasniqi (n127) 421; Susan McKay (n118) 562.

¹³⁵ Encyclopædia Britannica (n9).

¹³⁶ *ibid.*

5. Theoretical Framework

This section introduces the theoretical frameworks utilized to address the overall research question. It begins with an overview of FL theory and its branch, FJ which are outlined, underscoring their role and significance of integrating a gender perspective into legal analysis. The concept of GI is similarly employed to provide a more thorough understanding of gender within the Yazidi community. Subsequently, the IF theory is presented, offering insight into why, when examining gender or specific identity axes, it-is necessary to also consider other identity components

5.1 Feminist Legal Theory

According to Katharine T. Bartlett and Rosanne Kennedy, the last decade has seen a significant growth in research examining the vital role that gender plays in legal settings and processes.¹³⁷ This body of research is commonly referred to as Feminist Legal Theory. However, according to FL theory, the judicial process has long tended to reflect the interests of privileged groups in society, such as white men and the middle class.¹³⁸ Martha Albertson Fineman further elaborates that the primary concern of FL theory is the recognition that law is not gender neutral. Instead, FL theory seeks to challenge the principle that laws and policies often perpetuate gender-based discrimination, arguing that discussions of gender are almost always relevant in any discipline, including law.¹³⁹

FL is therefore fundamentally about understanding how certain gender groups, such as women and other marginalized gender identities, are subordinated by the law and exploring what can be done to create change. The recognition that law is not gender-neutral, and that gender is an essential element in understanding how legal systems may perpetuate discrimination, has been one of the key factors influencing the way contemporary societies address issues such as sexual assault and domestic violence within legal frameworks.¹⁴⁰

¹³⁷ Katharine T Bartlett and Rosanne Kennedy, 'Introduction' in Katharine T Bartlett and Rosanne Kennedy (eds), *Feminist Legal Theory: Readings in Law and Gender* (Routledge 1991) 1.

¹³⁸ *ibid* 15

¹³⁹ Martha Albertson Fineman, 'Feminist Legal Theory' (2005) 13(1) *Journal of Gender, Social Policy & the Law* 13, 14, SSRN <https://tinyurl.com/23h7m6u6>.

¹⁴⁰ *ibid* 18.

5.1.1 Feminist Jurisprudence

As noted above in the literature review, there is an extensive body of scholarship on how gender can shape legal processes such as TJ. One scholar who further develops this argument is Chelsea Wallis, who discusses FJ as a branch within the broader framework of FL.¹⁴¹ FJ focuses particularly on applying feminist insights to legal doctrine, judicial reasoning, and the processes of law creation.¹⁴² Wallis describes FJ as a shared recognition of the numerous barriers that ultimately hinder gender equality in the context of changing social, cultural, and political landscapes.¹⁴³ She further highlights that FJ offers valuable insight into how the traditional division between the public sphere, often coded as masculine, and the private sphere, often coded as feminine, continues to shape and influence the law. This separation reflects deeply ingrained societal norms embedded within legal frameworks.¹⁴⁴

Importantly, FJ does not solely examine law from a gender perspective; it also critiques capitalism and patriarchy, recognizing that achieving justice and equality for all genders is interconnected with the broader pursuit of social justice.¹⁴⁵ Wallis emphasizes that FJ is not merely a tool for critiquing law but also a call to action. She asserts that women, and, more broadly, marginalized genders, must be included in lawmaking processes and should not be excluded from legal process.¹⁴⁶ FJ thus challenges traditional legal structures and advocates for a more inclusive approach to law.¹⁴⁷ It adopts a holistic and intersectional perspective, striving to challenge normative gender assumptions by amplifying the voices of those who are oppressed or excluded, including non-cisgender or non-heterosexual women, disabled women, refugees, and other marginalized groups.¹⁴⁸ Employing an FJ perspective enables a deeper exploration of layers of oppression, patriarchy, and gender hegemony.¹⁴⁹

¹⁴¹ Chelsea Wallis, 'Contemporary Feminist Jurisprudence' (Oxford Law Faculty, *The Law That Shapes Us*, 2 March 2023) <https://tinyurl.com/2p9tzrn5>.

¹⁴² *ibid.*

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*

¹⁴⁷ *ibid.*

¹⁴⁸ *ibid.*

¹⁴⁹ *ibid.*

5.1.2 Philip Schulz's Concept of Gender Inclusivity

Thus, this project strives to be as inclusive as possible, attending not only to how gender impacts the TJ process for Yazidi women, but for the Yazidi community as a whole. However, FL often focuses mainly on women's experiences in legal settings. Therefore, this thesis also incorporates Philipp Schulz's concept of GI in post-conflict settings and TJ processes.¹⁵⁰ Schulz advocates for a broader and more inclusive gender lens that considers the experiences of all individuals and is comprehensive in scope.¹⁵¹ He notes that existing frameworks, such as feminist legal approaches, contain significant blind spots, as they often fail to account for men, women, and other gender minorities' experiences of conflict-related harms.¹⁵² Schulz argues that excluding men and other marginalized groups leads to the exclusion of how male survivors of SGBV experience trauma.¹⁵³ His empirical work in Northern Uganda demonstrates that men subjected to SGBV face social exclusion, stigma, and other difficulties within TJ processes.¹⁵⁴

To address this, Schulz proposes a shift away from macro, top-down TJ mechanisms toward more micro-level, community-based approaches. Such approaches allow for the inclusion of marginalized genders, such as male survivors of SGBV or queer individuals, by giving them space to articulate how their gendered experiences shape their encounters with TJ.¹⁵⁵ Schulz further discusses the concept of 'masculinity nostalgia', which refers to research showing that in post-conflict contexts some men seek a return to pre-conflict conditions, where they were regarded as the primary providers, decision-makers, and heads of households.¹⁵⁶ According to Schulz, these dynamic risks re-establishing the unequal gender systems that existed prior to the conflict.¹⁵⁷ Schulz also states that when applying a micro-level approach to TJ to include the experiences of all genders, there is a risk of reinforcing patriarchal norms.¹⁵⁸ Drawing on his research in Northern Uganda, Schulz notes that it was often male elders who participated in local and traditional justice mechanisms when a

¹⁵⁰ Philipp Schulz, 'Towards Inclusive Gender in Transitional Justice: Gaps, Blind-Spots and Opportunities' (2020) 14(5) *Journal of Intervention and Statebuilding* 1.

¹⁵¹ *ibid.*

¹⁵² *ibid* 1-2.

¹⁵³ *ibid* 5-6.

¹⁵⁴ *ibid* 16-17.

¹⁵⁵ *ibid* 3.

¹⁵⁶ *ibid* 6-7.

¹⁵⁷ *ibid* 16.

¹⁵⁸ *ibid*

micro-level approach to TJ was adopted.¹⁵⁹ As a result, it was predominantly men who shaped discussions about gendered conflict experiences.¹⁶⁰ He therefore emphasizes that while micro-level approaches to TJ are valuable for capturing the lived gendered experiences of affected communities, they also risk reproducing and reinforcing hegemonic structures.¹⁶¹

5.1.3 The Application of Theories to This Study's Context

The frameworks of FL and FJ theory and the concept of GI will be employed in this thesis to provide a critical foundation for understanding how gender-based issues can influence the TJ process.¹⁶² This integrated approach enables the thesis to explore in depth the gender-related challenges that may arise when a community such as the Yazidis seeks justice.¹⁶³ Gender was chosen as a critical lens for examining TJ because, as noted in the conceptual framework, it is a vital component in understanding the ISIL genocide against the Yazidi community. Consequently, it was necessary to also focus on the gender perspective in the post-conflict context, as excluding it would risk overlooking how ISIL's use of SGBV has shaped the Yazidis' experiences with the TJ process, and how it may ultimately impact the implementation of TJ mechanisms.¹⁶⁴ Applying a feminist critical perspective allows for an examination of whether the TJ process in Iraq has adequately considered gender dynamics, and, if not, how this omission may affect both the process and its outcomes for the Yazidi community.¹⁶⁵ The FJ perspective further provides a lens to critically evaluate whether there are gender-related barriers to including the Yazidi community in shaping how the TJ model should be implemented to best serve their needs.¹⁶⁶ Furthermore, it is crucial to clarify that this thesis employs FL and FJ not solely to assess how women, as a gender category, are included or excluded from legal, retributive, and restorative justice mechanisms.¹⁶⁷ Rather, they are used as critical tools to understand the experiences of various survivor groups who may fall within gender minorities, whether women excluded from decision-making processes or male survivors of SGBV. In this regard, the thesis also draws significantly on Schulz's concept and

¹⁵⁹ *ibid.*

¹⁶⁰ *ibid.*

¹⁶¹ *ibid.*

¹⁶² *ibid.*: Chelsea Wallis (n137); Katharine T Bartlett and Rosanne Kennedy (n141); Martha Albertson Fineman (n139).

¹⁶³ *ibid.*

¹⁶⁴ *ibid.*

¹⁶⁵ *ibid.*

¹⁶⁶ *ibid.*

¹⁶⁷ *ibid.*

research on gender inclusivity to examine the Yazidi experiences of gender. Relying only on FL and FJ is not sufficient for capturing the different gender dimensions that may influence the TJ process as a whole.¹⁶⁸

5.2 Intersectional Feminist Theory

However, can one only look at gender and then fully understand the complex situation of the Yazidi community with TJ in Iraq? According to Kimberlé Crenshaw, who in 1989 created the term intersectionality feminist theory, focusing on a single axis of identity such as gender, is insufficient to capture the complexity of discrimination and disadvantage.¹⁶⁹ Instead, she argues that issues such as the impact of gender dynamics on the Yazidis' experiences with TJ, as explored in this thesis, must be understood within a multi-axial framework.¹⁷⁰ Other elements, such as religion, ethnicity, cultural norms, and minority status, also play an essential role in shaping survivors' experiences.¹⁷¹ Hence, when examining how gender dynamics may create implications for Yazidis' engagement with TJ, gender cannot be treated as an isolated component.¹⁷²

According to Crenshaw, one must take a holistic view of the issue under research, as different elements are often interconnected. For instance, she explains throughout her study 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics' that there are significant legal limitations to employing a single-axis approach. She notes that Black women often lose trial cases because their issues are viewed either only as a gender issue or only as a race issue, but never together.¹⁷³ This is also supported by the scholar Valji from the literature review, who asserts that the impact of gender on TJ should not be understood solely through the lens of gender dynamics.¹⁷⁴ Doing so risks excluding other factors and ultimately limits the understanding of how gendered experiences are shaped in post-conflict societies. Valji's position aligns with Crenshaw's argument

¹⁶⁸ *ibid.*

¹⁶⁹ Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) *University of Chicago Legal Forum* 139, 139–40.

¹⁷⁰ *ibid.*

¹⁷¹ *ibid.*

¹⁷² *Ibid.*

¹⁷³ *ibid* 140.

¹⁷⁴ Nahla Valji (n130) 11.

that no single identity axis should be explored in isolation, as this risks producing an incomplete and exclusionary understanding of how gender may influence TJ in post-conflict settings.¹⁷⁵ It is also widely argued in the scholarly debate that TJ should not exclude the cultural impact on justice processes. Both Zartner, Fionnuala Ní Aoláin and Micheal Hamilton highlight the importance of incorporating cultural considerations into TJ design.¹⁷⁶ Zartner argues that TJ processes need to demonstrate inclusivity, and to achieve this, the TJ model must consider the needs of affected populations. She further stresses that understanding and engaging with local customs and culture is a vital step in ensuring that TJ measures respond to the lived realities of communities affected by conflict.¹⁷⁷ Aoláin and Hamilton further elaborates on the issue by explaining that TJ frameworks which fail to consider gender dynamics within cultural contexts may end up being exclusionary in practice.¹⁷⁸ She contends that patriarchal cultural customs can severely limit women's access to truth-telling processes, reparations, and broader legal participation. Even when mechanisms are formally open to all, these norms can restrict women's ability to fully engage, ultimately hindering the inclusivity and effectiveness of TJ measures.¹⁷⁹

5.2.1 Applying Intersectional Feminist Theory

As established above, both in the theoretical arguments of IF theory and in the scholarly debate on the cultural dimension of TJ, it is preferable to adopt a holistic, multi-axial approach, as this allows consideration of the different factors that may have an impact. In the context of this thesis, such an approach enables understanding of how the interconnection between gender and culture may influence the Yazidi community's experiences with TJ in Iraq.¹⁸⁰ The cultural element was chosen because, as established in the conceptual framework the Yazidi community's cultural identity is one of the most important aspects of their collective life, an element the community itself holds very dear.¹⁸¹

¹⁷⁵ *ibid.*

¹⁷⁶ Dana Zartner (n 105) 301; Fionnuala D Ní Aoláin and Michael Hamilton, 'Gender and the Rule of Law in Transitional Societies' (2009) *SSRN Electronic Journal* 101, DOI: 10.2139/ssrn.1357727 <https://tinyurl.com/272zu7k5>.

¹⁷⁷ Dana Zartner (n105) 301.

¹⁷⁸ Fionnuala D Ní Aoláin and Michael Hamilton (n176) 105–07.

¹⁷⁹ *ibid.*

¹⁸⁰ *ibid.*

¹⁸¹ *ibid.*

5.3 The Interplay of Theoretical Perspectives

The theoretical framework outlined in this thesis establishes the relevance of the selected theories as tools for critical reflection throughout the study. While FL, FJ, and GI each provide valuable insights individually, employing them in an integrated manner enables a more comprehensive and layered analysis.¹⁸² GI addresses dimensions that FL and FJ do not fully capture, thus offering the thesis a more nuanced lens for understanding the gendered dimensions of how the Yazidi community experiences TJ.¹⁸³ Additionally, incorporating IF on top of these theories allows the thesis to demonstrate why both gender and culture must be treated as interconnected elements when examining the Yazidi community's experiences with TJ. As highlighted in the literature review, and in line with Crenshaw's work, scholarly debates often address cultural identity and gender in TJ processes separately. However, by adopting an integrated approach this thesis develops a more holistic understanding of how multiple identity axes interact and shape the Yazidi community's experiences with TJ.¹⁸⁴

5.4 Critiques and Limitations

However, this holistic integrated approach is not without limitations and critiques. A key critique directed particularly at FL and FJ lies in their reliance on essentialist assumptions about women as a fixed category.¹⁸⁵ Rosemary Hunter, for instance, argues that feminist legal theories are often developed from the perspective of a white, middle-class female norm. This, according to Hunter, is problematic because it excludes marginalised women, including those who identify with the LGBTQ+ community, as well as others who identify as women but do not fit into this fixed category.¹⁸⁶ Hence, when applying FL theory, one must consider the risk of assuming that all women share the same needs, constraints, or life circumstances. Furthermore, Deborah Rhode shares these concerns and emphasizes that FL and FJ often fail to adequately consider the power imbalances that may exist between different groups.¹⁸⁷ Rhode highlights that factors such as race,

¹⁸² *ibid*; Chelsea Wallis (n141); Katharine T Bartlett and Rosanne Kennedy (n137); Martha Albertson Fineman (n139); Philipp Schulz (n150).

¹⁸³ *ibid*

¹⁸⁴ *ibid*.

¹⁸⁵ Jane Wong, 'The Anti-Essentialism v Essentialism Debate in Feminist Legal Theory: The Debate and Beyond' (1999) 5 *William & Mary Journal of Women & the Law* 281.

¹⁸⁶ *ibid* 282.

¹⁸⁷ *ibid*.

age, culture, class, or ethnicity significantly influence women's legal experiences. She therefore concludes that applying a single overarching framework to represent gender-related issues in law does not truly reflect the diversity of social experiences.¹⁸⁸ Instead, she suggests that when engaging with FL and FJ standpoints, one must be highly self-critical and context-sensitive, avoiding overgeneralized conclusions and instead approaching each case as unique.¹⁸⁹ The incorporation of IF theory allows the thesis to examine how other identity axes interact and to move towards a more multidimensional framework, which may be important for understanding the Yazidi community's experiences with TJ. However, IF as a theory and framework is not without its limitations. Jennifer C. Nash highlights that the methodology of IF, and how it should be researched, remains vague.¹⁹⁰ While it is clear that one must account for multiple axes of identity, it is less clear how many should be included, or whether some are more important than others.¹⁹¹ Nash further critiques that the theory may sometimes risk reinforcing existing power structures. For example, in Crenshaw's research, the focus on Black women's experiences in relation to gender and race rightly underscores the importance of these categories in shaping legal experiences.¹⁹² However, this also risks treating all Black women as belonging to the same category, without fully acknowledging individual differences or the power imbalances among them. Thus, according to Nash, IF provides a valuable framework to understand the different categories that may impact individuals when interacting with law and TJ processes, but its methodology remains vague and underdeveloped.¹⁹³ This thesis positions itself within this critique and strives to remain aware of the various limitations that may arise when applying such theories to the context of the Yazidi community. To address these concerns, the thesis attempts to frame people's relationship with law and judicial processes through a cultural dimension, broadening the understanding that interactions with law and TJ are shaped not only by gender but also by culture. However, this project does not encompass all the components Rhode highlights, such as class, age, or other identity markers, which inevitably creates limitations in understanding how different genders experience the TJ process in Iraq. The choice to focus on gender and culture was made because the data gathered around the Yazidi community highlighted these dimensions as vital components for understanding their engagement with TJ.¹⁹⁴ Nevertheless,

¹⁸⁸ *ibid.*

¹⁸⁹ *ibid* 281-282.

¹⁹⁰ Jennifer C Nash, 'Re-Thinking Intersectionality' (2008) *Feminist Review* 89, 4-5.

¹⁹¹ *ibid.*

¹⁹² *ibid*: Kimberlé Crenshaw (n169).

¹⁹³ Jennifer C. Nash (n190) 5-6.

¹⁹⁴ Jane Wong (n185).

other factors, such as their religion, could also have been considered. Thus, this thesis does not claim that culture and gender are more important than other components but rather acknowledges them as among the factors influencing Yazidi experiences.

6. Analysis

This part of the thesis aims to address the overall research question by answering analytical **sub-question (2)**: What specific barriers or challenges do Yazidi survivors face in engaging with transitional justice mechanisms? This will be examined through a thematic analysis of academic articles, journals, news sources, secondary data, and original interviews. Hence, the analysis is guided by existing research on Yazidi experiences as well as by the survivors' own voices, which determine the themes explored.

6.1 Analytical Framework

The analysis is structured into three sections. **The first section:** examines how gender and cultural implications shape the Yazidi community's pursuit of justice at the domestic level and is divided into three themes: Iraq's judicial proceedings of ISIL fighters and their implications for the Yazidi community, the Sinjar Agreement as a pathway to restorative TJ, and the YSL Framework.

The second section: focuses on UNITAD's role in supporting inclusive justice processes in Iraq and is therefore organised under the theme UNITAD's Efforts in Iraq. These themes were selected because they represent the main issues that consistently emerged across interviews, scholars, and academic literature on the Yazidi community. **The third section:** provides an overall Interim conclusion and addresses the second sub-question of the thesis.

Section 1 Domestic efforts

6.2 Iraq's Judicial Proceedings of ISIL Fighters

6.2.3 Limitations of Iraq's Judicial Framework

Iraq's prosecution of ISIL perpetrators is primarily governed by the Federal Anti-Terrorism Law No. 13 of 2005, a special legal framework, since the Iraqi penal code does not specifically address such crimes.¹⁹⁵ As a result, former ISIL fighters are prosecuted under the terrorism framework. While this allows some accountability, it fails to address other serious offenses, such as rape, war crimes, crimes against humanity, and genocide.¹⁹⁶ Furthermore, it is well-documented that most ISIL fighters tried under the FAT framework are subjected to torture, ill-treatment, or coerced confessions. In cases where defendants do not plead guilty, the judicial system often relies on secret informants or confessions from other suspects and witnesses, frequently resulting in convictions carrying the death penalty.¹⁹⁷ The sanction of the death penalty in the framework is apparent in Article 1, which states:

“Anyone who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator.”¹⁹⁸

This article makes it clear that even though someone may not have been a direct party to ISIL, if they helped a former ISIL-fighter, they also face the risk of being sentenced to death.¹⁹⁹

¹⁹⁵ Iraq, Anti-Terrorism Law No 13. (2005), VERTIC translation

¹⁹⁶ *ibid.*

¹⁹⁷ Amnesty International, *Iraq: The Road to Justice – A Long Way to Go* (Submission to the UN Universal Periodic Review, 34th Session, March 2019) Index: MDE 14/0316/2019, 5.

¹⁹⁸ Iraq (n195) Art 1.

¹⁹⁹ *ibid.*

6.2.4 The Silencing of Yazidi Voices in the Justice Process

Although the Iraqi judicial system's method of prosecuting former ISIL fighters has severe consequences for the accused, who are often denied a fair trial and face the death penalty without due judicial process, it also carries significant repercussions for the survivors of ISIL's crimes.²⁰⁰ Since the Iraqi government prosecutes ISIL members solely under the framework of terrorism, other grave crimes such as rape, sexual violence, murder, slavery, forced conversion, and forced marriage are not addressed in court.²⁰¹ These crimes, therefore, remain unacknowledged and unprosecuted, leaving survivors without a sense of retributive justice or recognition.²⁰²

According to the Yazda organization that have interviewed survivors, true justice cannot be achieved until these crimes are formally recognized and prosecuted. None of the Yazidi women or men have been called to testify in court to share their experiences of the atrocities committed by ISIL.²⁰³ As one Yazidi survivor expressed:

“Survivors should be active in ensuring women's peace and security for both themselves and others; they should lead the activities that provide them with peace and security so that they feel like collaborators rather than victims”.²⁰⁴

This quote highlights how Yazidi women, many of whom were abused, enslaved, and sold, are being denied a voice in the Iraqi judicial process.²⁰⁵ Their lack of inclusion also reflects the theoretical perspectives of FL and FJ, which argue that legal systems often overlook or exclude women's experiences. This dynamic is evident in Iraq, where Yazidi women are largely disregarded throughout the whole legal process. As a result, the Yazidi community experiences a deep sense of injustice and marginalization, ultimately weakening the broader TJ process. Yazidi women feel forgotten, and the crimes committed against them appear secondary to the government's focus on labeling perpetrators as terrorists.²⁰⁶

²⁰⁰ Natia Navrouzov, Lynn Zovighian and Yazda Yazidi Survivors Network, *Yazidi Genocide Survivors Reveal the Challenges to Fully Achieve Transitional Justice* (2022).

²⁰¹ *ibid.*

²⁰² *ibid.*

²⁰³ *ibid.*

²⁰⁴ *ibid.*

²⁰⁵ *ibid.*

²⁰⁶ Chelsea Wallis (n137: Katharine T. Bartlett and Rosanne Kennedy (n133): Martha Albertson Fineman(n135).

6.2.5 Reclaiming Agency

Moreover, it is evident from Yazda's interviews that if Yazidis were included in the judicial process, their role as victims or survivors could shift toward becoming active agents in the pursuit of justice. Such a shift is crucial for the community to reclaim some control over their own narrative and trauma, as reflected in this interview quote:

“Women's peace and security increases when women are supported to play an active role in post-conflict peace-building processes, and this is what we need as women who have survived Da'esh captivity”.²⁰⁷

This statement from a Yazidi survivor demonstrates the importance of inclusion and recognition as agents capable of shaping their own narratives and defining what justice means for them. This perspective aligns with the approach advocated by UN Women, as referenced in the literature review, which emphasizes that viewing women solely as victims in post-conflict settings is unsustainable. Granting survivors autonomy over their own journey is a meaningful way to incorporate women into judicial processes from which they have often been excluded. Thus, Iraq does not employ best practices for prosecuting perpetrators, and Yazidi women are treated as a marginalized group, denied agency over their own experiences.²⁰⁸

Furthermore, the interview statement underscores many of the concerns raised by Schulz's who argue that TJ processes should be carried out at the micro, community-based level, where the affected community plays an active and central role in shaping what justice should look like. If this is not done, there is a risk of undermining survivors' experiences.²⁰⁹ This is evident in the Yazidi case, where the Iraqi government employs a top-down approach, paying little to no attention to the Yazidi community's lived experiences. As Schulz asserts, such top-down approaches tend to disadvantage the most vulnerable in society, as seen with the Yazidi in Iraq.²¹⁰

²⁰⁷ Natia Navrouzov (n200).

²⁰⁸ Lorena Mellado, Emily Kenney and Hariwa Adil (n123).

²⁰⁹ Philipp Schulz (n150).

²¹⁰ *ibid.*

It can therefore be argued that employing the FAT as the framework for prosecuting ISIL fighters in pursuit of retributive justice for the Yazidi community was done without accounting for the specific nature of crimes experienced by communities like the Yazidis. The law does not include provisions for crimes such as rape, sexual violence, or slavery, which were central to ISIL's genocidal campaign. Thus, the retributive aspect of the TJ efforts for the Yazidi community in Iraq, has not truly delivered justice, as their complete exclusion from the process has created a situation where they do not feel that ISIL fighters are being punished for the crimes committed against them. Instead, they are left with a profound sense of impunity, which deepens the void in their quest for justice.

6.3 The Sinjar Agreement as a Pathway to Restorative TJ

The issue of exclusion, and how cultural and gender dynamics create barriers that affect TJ mechanisms, is evident in the case of the Sinjar Agreement between the Iraqi government and the Kurdistan Regional Government (KRG). The Sinjar agreement was initially seen as a positive step toward restorative justice, peacebuilding, and reconciliation, as Sinjar is the Yazidi homeland with deep cultural and religious significance.²¹¹ The intention behind the agreement was to stabilize the region and pave the way for the reconstruction of the Yazidi community. As such, it received significant praise from the international community, which viewed it as an effort by Iraq to provide some form of reparation to the Yazidi people.²¹² From the perspective of IF theory, it can be argued that the Iraqi government recognized that Yazidi culture and their homeland connection mean a great deal to their identity axis, and through this understanding, sought to address the Yazidi community's cultural dimension in the restorative justice process. However, as with the judicial proceedings in Iraq, the agreement was made with good intentions but without truly including the Yazidi community or considering their perspectives, particularly regarding their return to Sinjar.²¹³

²¹¹ Free Yazidi Foundation, *Evaluating the Progress and Impact of the Sinjar Agreement* (July 2024) 5.

²¹² *ibid.*

²¹³ Kimberlé Crenshaw (n169).

6.3.1 Gendered Implications in Post-Conflict Contexts

Many Yazidi women, who lost male family members during the genocide and endured widespread SGBV, continue to fear that Sinjar is not secure and that returning could expose them to renewed atrocities. This is particularly highlighted in an interview in the Free Yazidi Organization's report evaluating the Sinjar Agreement, where a Yazidi woman states: "I do not feel comfortable with the idea of going back to my home again after my children and I were captured".²¹⁴

This quote demonstrates the uncertainty and fear survivors feel about returning to Sinjar after enduring such atrocities at the hands of ISIL. The Iraqi government has not adequately considered that women, especially those who have already experienced severe trauma, are often more vulnerable in both conflict and post-conflict settings.²¹⁵ This highlights a critical oversight, where the government has failed to account for how gender dynamics and the SGBV they have endured impact the efforts of reparation and reconstruction. The absence of Yazidi community voices in the planning and implementation remain absent, leaving key concerns unaddressed and severely limiting the effectiveness of the process. Although the agreement is in place, most Yazidis have yet to return to their homeland, as their safety concerns and emotional readiness have not been fully acknowledged. This has ultimately stalled progress in rebuilding the community. Hence, the Iraqi government and the KRG demonstrate that not only are women and survivors excluded from gaining self-determination in their own path to justice through judicial proceedings, but this exclusion also severely impacts the restorative justice process.

6.3.2 Interconnections Between Gender and Cultural Dynamics

The Iraqi government has also neglected to account not only for the gendered experiences of the community but also for the cultural implications when attempting to relocate the Yazidi community back to their homeland in Sinjar. For example, one major issue the Iraqi government has not considered is that in Yazidi culture it is often only men who have legal control over deeds. As mentioned in the conceptual framework, many Yazidi women lost their husbands after ISIL captured them.²¹⁶ This creates a significant challenge when they return to their homeland, as they

²¹⁴ Free Yazidi Foundation (n211) 4.

²¹⁵ Chelsea Wallis (141); Katharine T. Bartlett and Rosanne Kennedy (n137); Martha Albertson Fineman (n139).

²¹⁶ Free Yazidi Foundation (n211) 7.

face immense difficulties since, according to cultural traditions, they do not have access to their land deeds. According to the Free Yezidi Organization, only 2% of women in Sinjar hold household or land deeds.²¹⁷ This creates a significant issue, as the Iraqi government has not considered the cultural and gender dynamics involved in the return of Yazidi women to Sinjar.

Furthermore, the report states that because of this cultural aspect of gender in their community, many other problems also arise. For example, in Yazidi culture, it is common for women not to attend school and instead take care of the home and children, while men are the sole providers. However, after the genocide, many women lost their primary financial providers and are now left with significant burdens.²¹⁸ All of these issues can be examined and understood through the lenses of FL, FJ, GI, and IF theory. It is clear that IF theory's argument about individuals having multiple identity axes is particularly relevant in the Yazidi case. For the Yazidi community, cultural and gender dimensions are two interconnected axes essential for understanding their experiences with TJ. This also explains why Yazidi women's cultural and gendered dimensions create experiences that differ significantly from those of Yazidi men in relation to TJ mechanisms. Hence, when examining the Yazidi community's experiences with TJ mechanisms, it is vital to recognize that their cultural and gender dynamics are interconnected and cannot be analysed as separate dimensions, but rather as a collective impact on their lived experiences.

Furthermore, Schulz's GI concept argues that TJ reparation efforts often risk re-creating patriarchal power imbalances that existed pre-conflict. This is evident in the Yazidi case, as the Iraqi government wants to restore and relocate the Yazidi community back to Sinjar but has not considered the cultural gender dynamics that make this particularly difficult for Yazidi women. Without control over deeds and with limited access to education, Yazidi women find it difficult to secure housing or employment.²¹⁹ Without accounting for these struggles, the government risks re-creating the same patriarchal power dynamics as before the conflict, arguably in an even worse form, as many Yazidi women now lack the support of their husbands and are placed in even more vulnerable economic and housing situations than pre-conflict. This again demonstrates, as GI concept suggests, that when TJ restorative and reparation efforts are carried out at the macro level, they often overlook practical difficulties that would be more visible if a micro-level, community-

²¹⁷ *ibid.*

²¹⁸ *ibid.*

²¹⁹ *ibid.*

based approach were implemented.²²⁰ Such an approach would clarify what truly works for the Yazidi community. Therefore, while the Iraqi government has created a restorative framework to return the Yazidi community to their homeland, which holds immense religious and cultural importance, without adopting a community-based approach that acknowledges how gender and cultural implications are deeply embedded and interconnected within their society, these efforts may never be successfully implemented. Thus, while the intention to return Yazidis to Sinjar may be well-meaning, it is evident that significant gender-related implications make it nearly impossible for some Yazidi women to go back. Consequently, the Sinjar Agreement faces considerable challenges and barriers in its implementation process.

6.4 YSL Framework

6.4.1 Tracing the Development of the YSL Framework

Another vital domestic tool that Iraq has attempted to implement in pursuit of TJ following the genocide of the Yazidi community is Iraq Law No. 8 of 2021, also known as the Yazidi Female Survivors Law (YSL). The process began in April 2019, when Iraqi President Barham Salih submitted the first draft of the bill to the Iraqi Parliament for review.²²¹ This marked a significant step for the Yazidi community, especially since Art 7 of the law explicitly recognized that the atrocities committed against the Yazidis constituted genocide and crimes against humanity.²²² This recognition was monumental, as such acknowledgment had previously been absent from Iraq's judicial proceedings. Thus, the YSL represents a crucial step in recognizing the distinct and severe violence that the Yazidi community endured under ISIL rule.²²³

While the initial bill was a step in the right direction regarding reparations and the pursuit of justice for the Yazidi community and others violated by ISIL, it also had significant shortcomings. The drafting process followed a largely top-down and macro-level approach, failing to include the voices of survivors who had directly experienced the atrocity crimes.²²⁴ As a result, the bill did not

²²⁰ *ibid.*

²²¹ Bojan Gavrilović, *More Than "Ink on Paper": Taking Stock Two Years After the Adoption of the Yazidi [Female] Survivors Law* (Jiyan Foundation for Human Rights & Coalition for Just Reparations 2023) 12; Iraq, Yazidi Female Survivors Law (Law No 8 of 2021, 2 March 2021) Refworld <https://tinyurl.com/2vrkdp9>

²²² Iraq, Yazidi Female Survivors Law (n 221) art 7.

²²³ *ibid.*

²²⁴ Bojan Gavrilović (n221)12.

fully reflect their needs. For instance, the various crimes experienced by different communities were not comprehensively addressed in the law. One of the most critical priorities for the Yazidi community has been for the world to recognize the horrendous mistreatment they endured at the hands of ISIL. While the introduction of the YSL demonstrated Iraq's intention to create a reparations law for marginalized communities, this first step excluded survivors and key stakeholders.²²⁵ This reflects a broader issue, noted by Schulz, that employing a top-down, macro-level approach which excludes communities from restorative and judicial proceedings, lawmaking, and key decision-making results in TJ mechanisms that fail to reflect communities' needs. This dynamic can be seen in the exclusion of the Yazidi community from the legislation of the initial version of the YSL, which did not accurately or sufficiently represent the suffering of the community.²²⁶

Ultimately, the YSL was amended to include a broader range of crimes that the Yazidi community experienced. For example, Art 1 states that it refers to female survivors as women or girls who have experienced one or more of the following: sexual abuse, kidnapping, sexual enslavement, being sold in slave markets, separation from parents, forced conversion, forced marriage, forced pregnancy, forced abortion, or physical and/or psychological harm inflicted by ISIL since August 3, 2014.²²⁷ Art 2 further outlines the groups to whom the law applies. These include Yazidi female survivors, Turkmen, Christian, and Shabak female survivors; Yazidi child survivors who were under 18 years old at the time of abduction; and Yazidi, Turkmen, Christian, and Shabak men who survived the mass killings carried out by ISIL.²²⁸ It is evident that the YSL functions as a TJ tool aimed at providing restorative justice through reparations, primarily in the form of compensation and rehabilitation, to enable these communities to be reintegrated into society. The law uses reparations as a mechanism for reconciliation. According to Art 6, eligible survivors are entitled to a monthly salary not less than twice the minimum retirement salary as defined by the Retirement Law No. 9.²²⁹ Furthermore, Article 6(2) stipulates that survivors are eligible to receive a plot of residential land or a free housing unit. Article 6 (3) provides that women have the right to resume their education without being restricted by age limits.²³⁰ Moreover, in Article 6(3), the woman is allowed

²²⁵ *ibid.*

²²⁶ *ibid.*

²²⁷ Iraq, Yazidi Female Survivors Law (n222) art 1.

²²⁸ *ibid* art 2.

²²⁹ *ibid* art 6.

²³⁰ *ibid* art 6(2) - 6(3)

to return to her studies without age restrictions, and in Article 6(6), the woman also has priority in employment opportunities by 2%.²³¹

Hence, it is evident that the YSL law strives to facilitate the reintegration of the Yazidi community into society. This law aims to support both women and men in gaining a sense of justice and receiving reparations for some of the atrocities they have endured, while also addressing many of the issues that the Sinjar Agreement did not account for, such as housing and education, particularly for women. Based on this, the YSL framework can indeed be considered a restorative TJ tool that addresses critical needs within the Yazidi community. By doing so, it increases the potential for reconciliation and justice. As Schulz argues, TJ mechanisms should be implemented at the micro-level, through direct engagement with affected communities. The Yazidi case demonstrates that this approach is not merely theoretical but produces tangible results when applied thoughtfully to a unique context.

6.4.2 Cultural and Gender Implications

Although there has been significant progress in implementing the YSL framework, serious complications remain, particularly concerning the sensitive intersection of gender and cultural dynamics. The YSL is intended to function as an administrative restorative and reparations program rather than a judicial process.²³² As such, it should allow for more flexible evidentiary standards, similar to the approach applied in Kosovo, where the Commission for the Verification and Recognition of Sexual Violence Victim Status determined survivor eligibility through applications supported by documentation such as medical reports, legal evidence, and witness statements.²³³ This model reflects international best practices in TJ, helping to avoid re-traumatization by not requiring survivors to file criminal complaints. In Peru and Colombia, for example, the principle of “presumption of good faith” was applied, meaning that the state bore the responsibility of disproving survivors’ statements rather than forcing survivors to prove their experiences.²³⁴

In contrast, Iraq has required survivors to file a criminal complaint and submit to an investigative process. This has caused serious issues for Yazidi women in particular, including stigmatization and

²³¹ *ibid* art 6(3)-6(6)

²³² Coalition for Just Reparations, ‘Statement on the Implementation of the Yazidi Survivors Law’ (2023) <https://tinyurl.com/56rp7nea>.

²³³ *ibid*.

²³⁴ *ibid* 2-4.

harassment.²³⁵ In the article “C4JR Urges Committee Established Under Yazidi Survivors Law to Drop Requirement of Filing Criminal Complaint to Receive Reparations” by C4JR, Yazidi women describe their traumatic experiences when filing criminal complaints.²³⁶

One survivor shared:

“That she was screamed at by an investigator who accused her of lying and threatened to imprison her. She later said, ‘I will never come back [to provide a statement], even if they give me all the money in the world’.”²³⁷

This quote clearly illustrates how women attempting to report these crimes are often met with profound stigma and harassment. In Iraq, crimes such as rape are frequently perceived as the woman’s fault, and survivors risk losing their social standing and honor.²³⁸ Here once again, as Schultz points out in his concept, the Iraqi government re-creates the patriarchal norms that characterized society prior to the conflict. This results in Yazidi women being confronted by these same patriarchal dynamics when interacting with the YSL framework, a mechanism that was supposed to provide care, reparations, and support. However, because the government has failed to account for the deeply rooted gender and cultural dynamics within both Iraqi and Yazidi communities, the restorative justice mechanism falls short of fulfilling its intended purpose.

It is evident from this testimony that the survivor was deeply discouraged from continuing the process out of fear that she would not be believed. The Iraqi government must recognize the underlying gender dynamics and cultural implications that create an unwelcoming environment for women attempting to file criminal complaints. This example shows once again that women are systematically excluded from judicial processes and remain overlooked in the design of systems intended to support them. This demonstrates that FJ and FL are not merely theoretical notions suggesting the exclusion of women, but rather reflect the lived reality, particularly in the Yazidi case. Therefore, the criminal complaint process must be tailored to be trauma-sensitive and to ensure that women are taken seriously. Had Yazidi survivors been properly consulted, they could have expressed their fears of re-traumatization and of the harassment they might face due to cultural

²³⁵ *ibid.*

²³⁶ Coalition for Just Reparations, ‘Report on the Status of the Yazidi Community and Survivors in Iraq’ (2023) <https://c4jr.org/0604202327288>.

²³⁷ *ibid.*

²³⁸ UK Home Office, *Country Policy and Information Note: Iraq – Blood Feuds, Honour Crimes and Tribal Violence* (2024)

and gender-related barriers. Ultimately, as this testimony demonstrates, such treatment drives survivors to disengage from the process entirely, cutting them off from the reparations that the YSL is meant to provide.

Moreover, the Iraqi government should have considered the cultural implications, particularly how gender dynamics are deeply tied to societal beliefs about women and the perception of SGBV. This issue is clearly illustrated in the article “For Yazidi Women, Escaping ISIS Doesn't Mean the Ordeal Is Over” by Leila Fadel, which includes the voices of Yazidi survivors, advisers, and experts²³⁹. In the article, a Yazidi adviser states:

“As a community, we have societal rules. Some of these families have accepted the reality, the de facto situation they've been put in. We're more concerned about what will happen later to these women, will they face discrimination or violence from their families?”²⁴⁰

This quote highlights how closely gender norms and cultural expectations are intertwined. The Iraqi government should have considered this, as it is clear that Yazidi women's struggles do not end with escaping ISIL. First, they endure violent trauma, and then they face an uphill battle to gain recognition and justice, both from the state and their own communities. Fadel also notes that many survivors of rape and enslavement choose not to speak publicly about their trauma due to the conservative and patriarchal norms of the communities they return to.²⁴¹

The YSL framework does not adequately reflect the challenges these women face when reintegrating into society, nor does it address how cultural pressures hinder their access to justice, reparations, and healing. Furthermore, the fear of violence from their own families and communities, as expressed in the testimony above, is entirely absent from the YSL framework. This means that women who have survived SGBV are burdened not only by the memory of ISIL's atrocities but also by the fear of rejection, stigmatization, or even harm from within their own communities. Yet the law provides no tools or protections to help them navigate this reality. Thus, while the Iraqi government has attempted to account for certain gender dimensions of survivors' experiences, it has not approached them through the lens of IF theory. This lack of understanding of

²³⁹ Leila Fadel, 'For Yazidi Women, Escaping ISIS Doesn't Mean the Ordeal Is Over' (NPR, 2014) <https://tinyurl.com/2bj3b953>

²⁴⁰ *ibid.*

²⁴¹ *ibid.*

how cultural and gender dimensions are interconnected ultimately affects the YSL framework's ability both to redress past injustices and to provide effective protections moving forward.

6.4.3 Children Born Out of Rape

This lack of understanding is particularly evident in the issue of children born as a result of rape by ISIL. These children are not mentioned anywhere in the YSL framework, even though they are equally victims of genocide and torture.²⁴²

Moreover, both women and their children face additional discrimination and complications. For instance, Iraq's National Card Law, enacted in 2015, stipulates in Art 26(2) that all children born to at least one Muslim parent must be registered as Muslim.²⁴³ In addition, Art 20(2) of the same law provides that children whose parents are unknown, absent, missing, or deceased should be considered Muslim unless proven otherwise.²⁴⁴ Even when the mother is present, if the father is not, the child is automatically considered Muslim.²⁴⁵ This law has caused significant issues for Yazidi women, particularly. As mentioned in the contextual background, for someone to be considered Yazidi, both parents must be Yazidi. This creates enormous challenges for Yazidi women who were raped by ISIL and became pregnant, as the law automatically classifies their children as Muslim. This particular law and its consequences have had a severe impact on Yazidi women's ability to reintegrate into their communities. This is reflected in Fadel's article, where a Yazidi adviser to the Speaker of Parliament stated:

“The women who come back are innocent. They did nothing wrong; they were raped,” Mandekan says. “We will accept them.” But when it comes to pregnancy, that's something he and his tribe cannot accept, he says”.²⁴⁶

This quote clearly illustrates that women who have had children as a result of rape by ISIL are not welcomed back into the Yazidi community. The reasoning behind this exclusion is further highlighted in a Just Security article titled “No Way Home: How an ISIS-era Law Prevents Yazidi Women and Their Children Born of Conflict from Returning to Sinjar, Iraq,” where a deputy to

²⁴² Iraq, Yazidi Female Survivors Law (n222).

²⁴³ Iraq, National Card Law (Law No 3 of 2016, 2016) Refworld art 26(2) <https://tinyurl.com/jkusz3uy>

²⁴⁴ *ibid* art 20(2).

²⁴⁵ *ibid*.

²⁴⁶ Leila Fadel (239).

senior Yazidi leader Prince Hazem stated: “[W]e cannot accept children of [ISIS]. They are automatically born as Muslims according to Iraqi laws.”²⁴⁷ This statement underscores how the Iraqi National Card Law is one of the key reasons why Yazidi women who were raped and became pregnant cannot return to their homeland and communities. Once again, it becomes evident how legal frameworks can reproduce gender-based discrimination by failing to consider women lived experiences. The Iraqi government has not adequately accounted for women’s experiences in the post-conflict context, particularly the complex realities of pregnancy resulting from rape and how this affects their position within society and community.²⁴⁸ Not only does the YSL Framework fail to address the experiences of women with children born out of rape and the complications this causes in rejoining the Yazidi community, but the Iraqi National Card Law also effectively silences these women.²⁴⁹ Since this law disregards the mother’s status, reinforcing the marginalization of Yazidi women and their children. Furthermore, Yazidi women cannot simply opt out of obtaining a National Identity Card, as it is essential for access to healthcare, education, banking, and other critical services.²⁵⁰ This exclusion disproportionately affects women who were raped and became pregnant, as it may prevent them from participating in TJ processes such as the YSL, which seeks to reintegrate women into their communities through financial and social incentives.

Once again, this demonstrates that gender and cultural dimensions are inseparable in the Yazidi case. By failing to adopt an IF approach, the Iraqi government has reinforced unequal power dynamics for Yazidi women, forcing them into an unbearable situation where they must choose between their children and their community. This reality underscores the importance of adopting an approach that incorporates IF, GI, FL, and FJ. As shown, even within the restorative mechanisms of TJ, reproduces patriarchal structures that exclude Yazidi women.

²⁴⁷ Michelle Xiao Liu, Suchita Uppal and Kinga Ewa Nastal, ‘No Way Home: How an ISIS-Era Law Prevents Yazidi Women and Their Children Born of Conflict from Returning to Sinjar, Iraq’ (*Just Security*, 25 March 2025) <https://tinyurl.com/5t3zcpXu>

²⁴⁸ Iraq (243).

²⁴⁹ *ibid.*

²⁵⁰ *ibid.*

6.4.4 The Exclusionary Nature of Community-Based Approaches

Furthermore, according to Schultz's concept of GI, even when a micro-level, community-based approach to TJ is employed, it often privileges the voices of elders and men while excluding women from decision-making. This issue is particularly evident in the Yazidi case. As Fadel's article points out, the question of children born of rape was in fact raised during the formation of the YSL framework.²⁵¹ However, it was ultimately excluded, reportedly due to concerns that including such a provision would create social conflict within the Yazidi community. A lawmaker from the Kurdish Change Movement and member of the parliamentary legal committee explained: "They believed such a reference would create social friction and conflict within the Yazidi community".²⁵² This demonstrates how, in practice, the design of a TJ tool meant to support the Yazidi community was led predominantly by male elders, even though the issues under discussion directly impacted women and children. Schulz's warning thus proves accurate: even when community participation is pursued, it is crucial to ask which parts of the community are being consulted and whether this process truly reflects gender dynamics, cultural struggles, and barriers in a post-conflict setting. In this case, the Yazidi micro-level approach placed women in an unbearable position, forced either to abandon their children or remain in displacement, unable to return to their families. As a result, the YSL framework and related initiatives risk creating additional barriers and complications for those they were intended to help.

Thus, tragically the Iraqi National Card Law perpetuates some of the same outcomes as the ISIL campaign of genocide, erasing Yazidi identity. By denying Yazidi women the right to pass on their identity to their children, the state continues what ISIL began, but now under the authority of law. As a Yazidi journalist stated in the Just Security article: "What ISIS did to them by force, this [National Card] Act does by law".²⁵³ This underscores that when creating legal processes, it is vital to integrate gender-sensitive approaches and ensure the meaningful inclusion of Yazidi. Had Yazidi women been part of the YSL Framework's development, it may have addressed the unique trauma of children born from rape. Instead, male Yazidi elders explicitly requested the government to exclude this issue from the YSL Framework, further marginalizing the women most affected.

²⁵¹ Leila Fadel (n239).

²⁵² *ibid.*

²⁵³ Michelle Xiao Liu (247).

However, in the article Fadel made it is vital to mentioned that an expert Mustafa Gurbuz, a sociologist at the American University in Washington stated this:

“Even if Baghdad makes an exception in the Iraqi law and legally recognises the children as Yazidis, there is a major risk that these children, especially the males, would face retribution within the Yazidi community for their fathers’ guilt”.²⁵⁴

This quote makes it clear that even if children born out of rape, and the women who gave birth to them, were included in the YSL Framework and allowed legal recognition of their children as Yazidis, they would still face significant rejection from their communities. As Gurbuz asserts, the Yazidi community would struggle to fully accept these children. Therefore, according to Gurbuz, women who have children born from rape should be given the opportunity to resettle in a new country.²⁵⁵Hence, this calls for either an amendment or a call to action to include those excluded. Only then would such a solution have a realistic chance of being effectively implemented.

If women are not legally permitted to identify their children born of rape as Yazidi and still face exclusion or threats of violence upon returning to their communities, then the YSL framework is clearly failing in its implementation for them. It is therefore essential to address not only the exclusion of women from the legal process but also how cultural norms and stigmas undermine the law’s real-world application. Moreover, if resettlement outside Iraq becomes necessary for these women, this presents an immense challenge, as it requires support beyond the scope of Iraq’s domestic legal efforts.

6.4.5 The Marginalization of Other Gender Groups

When viewed through the lenses of GI, FJ, FL, and IF theory, it becomes clear that Yazidi women have faced significant challenges under the YSL, primarily due to its lack of inclusivity and its perpetuation of pre-existing cultural and gendered patriarchal structures. In practice, this has both re-created and produced new barriers for Yazidi women, despite the framework being designed to be explicitly gender sensitive for women.

²⁵⁴ Leila Fadel, (239).

²⁵⁵ *ibid.*

However, as Schultz argues, when a process is framed as highly gender-sensitive, it can risk silencing the experiences of men and other marginalized gender groups, such as the LGBTQ+, particularly in relation to crimes such as SGBV. This dynamic is evident in Art 2 of the YSL framework which only explicitly recognizes men who survived mass killings but fails to account for other forms of violence endured by Yazidi men, including SGBV.²⁵⁶ Moreover, the framework entirely overlooks the experiences of Yazidis who identify as part of the LGBTQ+. This narrow recognition excludes the broader range of atrocities suffered by men and completely erases the voices of LGBTQ+ Yazidis. Most documentation focuses almost exclusively on Yazidi women's experiences of SGBV during the ISIL conflict. For LGBTQ+ individuals, the situation is even more complex. Although ISIL's crimes against people who identify as LGBTQ are well documented in general, there is a complete absence of testimonies or data on Yazidis who identify as LGBTQ+ and their experiences under the conflict. This lack of evidence is likely tied to Iraqi cultural norms, which often do not acknowledge or accept non-heteronormative identities, and to the extreme taboo surrounding male experiences of SGBV.²⁵⁷

The Iraqi legal environment further enhances this silence. In April 2024, Iraq adopted legislation criminalizing same-sex relationships with penalties of up to 15 years in prison.²⁵⁸ Furthermore, reports suggest that Iraqi authorities have, at times, downplayed or even protected perpetrators of crimes against the LGBTQ+ community during the conflict.²⁵⁹ Within such a hostile legal and cultural environment, it becomes nearly impossible for Yazidis who identify as LGBTQ+, or for Yazidi men who have suffered SGBV, to safely testify about their experiences. Their voices are systematically erased, leaving them the most vulnerable yet the most silenced. Because of this marginalization, Yazidi men and LGBTQ+ survivors are excluded not only from the YSL framework but also from the broader TJ process. If Yazidi men or LGBTQ+ individuals were to come forward, they would likely face severe stigmatization and social exclusion. In the case of LGBTQ+ Yazidis, speaking out could even expose them to prosecution by the state itself.²⁶⁰

²⁵⁶ Iraq, Yazidi Female Survivors Law (n222) Art 2.

²⁵⁷ UK Home Office (n238).

²⁵⁸ Spencer Ackerman, 'Iraqi Militias Target Gay Men in Campaign of Systematic Murders' (*The Guardian*, 19 November 2014)

<https://tinyurl.com/4hrn5jap>; Al Jazeera, 'Iraq Criminalises Same-Sex Relationships with Maximum 15 Years in Prison' (*Al Jazeera*, 27 April 2024)

<https://tinyurl.com/3knddvyr>.

²⁵⁹ *ibid.*

²⁶⁰ *ibid.*

This issue illustrates the critiques raised by Hunter in the theoretical framework regarding the problem of essentialism within FL and FJ. While both theories provide this thesis with a critical lens for understanding how women is not a fixed category and how power imbalances operate both between and within genders, they also risk overlooking certain intersections of identity. For example, women may be excluded from TJ processes because of their gender, but women who also identify as lesbians may face a dual form of discrimination: once on the basis of their gender, and again due to their sexual orientation. Similarly, men who identify as homosexual, or individuals who identify with another gender identity, also experience layers of exclusion that are not adequately captured if gender is analysed in isolation. This is precisely why this thesis employs Schultz's GI concept. As Schulz himself emphasizes, it is challenging to equally represent every struggle when certain groups are systematically left out of the equation. In the Yazidi case, the absence of testimonies from survivors who identify as LGBTQ+ makes it extremely difficult to fully comprehend their experiences or the unique struggles they face.

6.4.6 The Issue with Criminal Complaints for Marginalized Gender Groups

For Yazidi men who experienced SGBV, the same problem arises as for women. As mentioned above, under the YSL framework survivors are required to file a criminal complaint in order to prove their cases and access the benefits of the law. Similar to women, this requirement risks traumatization and further complicates the process, particularly for men, whose experiences of SGBV are heavily stigmatized and therefore even less likely to be disclosed.²⁶¹ Had Iraq adopted the principle of "presumption of good faith," the burden of proof would not fall on survivors themselves.²⁶² This would likely have created a safer and more supportive environment, potentially opening the door for men to come forward about their experiences of SGBV. For the LGBTQ+ community, however, the issue is even more complex. Since testimonies could expose them to prosecution under Iraq's anti-LGBTQ+ laws, meaningful inclusion in the YSL framework would require domestic legal reforms to ensure that survivors are not criminalized for speaking about their experiences.

According to this thesis's original interviewee, Carter, while he has not personally encountered testimonies of Yazidi men describing SGBV, he believes it is "almost unthinkable that they did not

²⁶¹ Coalition for Just Reparations (n232).

²⁶² *ibid.*

experience it to some degree”.²⁶³ When asked why there is so little data on male SGBV survivors, he explained that this is likely because most of the men captured by ISIL were executed and thus could not share their experiences. As Carter stated:” I believe that most, if not all, of the men were killed, and many of them were sexually abused before they were killed”.²⁶⁴ He further suggested that for those men who may have survived SGBV, cultural expectations around masculinity create additional barriers to disclosure:” I believe it is part of what it means to be a man down there, the masculine ideal. They need special professional treatment, which I don’t think is very available in Iraq”.²⁶⁵

Here, Schulz’s statement and IF theory once again made evident, that the lack of attention to men’s experiences of SGBV is closely tied to the stigma surrounding such violence. This reinforces the argument emphasized in IF theory, that understanding the cultural setting is crucial for grasping the complex barriers faced by the Yazidi community. As IF theory highlights, their experiences must be examined through multiple intersecting axes of identity in order to fully comprehend the barriers they have endured.²⁶⁶ Therefore, it can be concluded that although it is essential to emphasize that Yazidi women were targeted as sex slaves, raped, and excluded from law-making processes, the YSL framework has focused so heavily on women’s experiences of SGBV that it has entirely overlooked the experiences of men and the LGBTQ+, thereby proving the critiques raised by Schulz and Hunter to be valid. Nevertheless, this is not to suggest that the focus on Yazidi women is misplaced. Women’s suffering during the ISIL conflict was immense, and they continue to face stigmatization and harassment despite the law recognizing them as survivors of crimes beyond their control. However, the disproportionate attention to women’s experiences has rendered men’s suffering and the struggles of LGBTQ+ Yazidis invisible.

²⁶³ Thomas Carter, Original interviews, Appendix 1.

²⁶⁴ *ibid.*

²⁶⁵ *ibid.*

²⁶⁶ *ibid.*

Section 2 International Support

6.5.1. UNITAD's Efforts in Iraq

6.5.2 UNITAD's Contribution to TJ

It all began on August 9, 2017, when the government of Iraq called on the international community to provide aid and assistance in prosecuting ISIL fighters for the crimes they committed on Iraqi territory, including crimes against humanity, genocide, war crimes, and other serious offenses. This request was met by the UNSC, which subsequently adopted Resolution 2379.²⁶⁷ The resolution requested the Secretary-General to establish an investigative team, under the leadership of a Special Adviser, to support domestic efforts in achieving accountability for ISIL's crimes in Iraq by collecting, preserving, and storing evidence related to crimes against humanity, genocide, and war crimes. As a result, the Secretary-General established the UNITAD. The mandate of UNITAD is to operate with full respect for the sovereignty of the Iraqi government while acting consistently with the Charter of the United Nations and relevant international law.²⁶⁸

Resolution 2379 represents an alternative route for Iraq to receive international assistance in its domestic efforts to hold ISIL accountable. Since as already mentioned the Iraq's legal framework does not currently include core international crimes such as genocide, crimes against humanity, and war crimes, UNITAD was also established to support Iraq in incorporating these crimes into its domestic legislation.²⁶⁹ This would allow the evidence collected by UNITAD to be used in prosecutions aligned with international legal standards. Although Iraq is a party to the Genocide Convention, it has yet to incorporate the crime of genocide into its domestic legal system. This legal gap is one of the key areas UNITAD aimed to address, helping Iraq to align its judicial framework with international obligations and standards.²⁷⁰

²⁶⁷ UNSC Res 2379 (2017) UN Doc S/RES/2379 (establishing an Investigative Team to support domestic accountability for ISIL crimes)

²⁶⁸ Hawre Ahmed, 'UNITAD's Unfulfilled Goals for ISIS Accountability in Iraq' (Justice Info, 2024) <https://tinyurl.com/bddxpww5>.

²⁶⁹ *ibid.*

²⁷⁰ *ibid.*

6.5.3 UNITAD's Efforts to Foster Inclusivity

As illustrated in the first section of the analysis, Yazidi survivors face severe cultural and gender-related barriers in testifying before the Iraqi government, which makes it difficult for them to benefit from the restorative justice mechanisms Iraq has established. These barriers largely stem from stigma surrounding SGBV and the influence of cultural norms.

This is a challenge that UNITAD has actively sought to address. One example of how UNITAD has supported marginalized communities such as the Yazidis is through its Trauma-Informed Investigation Field Guide, which acknowledges the barriers survivors may face when providing testimony that could later be used to prosecute perpetrators in court.²⁷¹ According to this guide, when investigating SGBV and violence against women, men, and sexual minorities, it is essential for investigators to remain aware of the cultural dimensions of identity and their implications for how gender is understood in Iraq.²⁷² The guide specifically notes that cultural norms often stigmatize rape and other forms of sexual violence, which can make survivors reluctant to speak with investigators. It therefore emphasizes the importance of a non-judgmental attitude, ensuring that survivors feel safe to speak freely, something not guaranteed under Iraq's criminal complaint system in the YSL framework, as discussed earlier.²⁷³ Furthermore, UNITAD underscores the need to respect survivors' preferences regarding the gender of the interviewer, as well as the importance of having a clinical psychologist or support person present during interviews.²⁷⁴ By employing a culturally and gender sensitive approach to gathering testimonies, UNITAD has created an environment where Yazidi women, men who experienced SGBV, and sexual minorities can be heard. This methodology recognizes the cultural and gendered barriers that shape survivors' experiences in Iraq and provides a platform for their truth-telling. This methodology also echoes key insights from GI and IF theory, which can be observed in the way they share the sentiment that focusing on women is crucial. However, it is equally essential for them to acknowledge the stigma faced by men, particularly male survivors of SGBV, and by sexual minorities. In this way,

²⁷¹ United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) and Human Rights in Trauma Mental Health Program at Stanford University, *Trauma-Informed Investigations Field Guide* (United Nations 2021) 40–50.

²⁷² *ibid.*

²⁷³ *ibid.*

²⁷⁴ *ibid.*

UNITAD effectively applies an intersectional approach to survivor engagement, recognizing how different axes of identity, including culture and gender, shape individual experiences.²⁷⁵

This survivor-cantered perspective has also strengthened trust in UNITAD's mandate. As expressed by a Yazidi male survivor in the C4JR report "Iraqi Civil Society and Survivor Networks' Position on the Request of Iraq to Terminate UNITAD's Mandate in September 2024":

“Most male and female survivors do not trust the government. Survivors do not want to share evidence and give their testimonies to Iraqi courts without the presence of international courts and bodies”.²⁷⁶

This statement clearly demonstrates that Yazidi survivors place greater trust in international mechanisms such as UNITAD than in their own government. UNITAD therefore actively fills a critical gap by enabling survivors to receive as much support as possible in their TJ process.

6.5.4 Survivor Testimonies and the Principle of Informed Consent

Another vital form of support provided by UNITAD is its ability to obtain testimonies from members of the LGBTQ+ community. As mentioned above, Iraq's legal framework makes it impossible for LGBTQ+ individuals to safely come forward and share their experiences within domestic TJ processes. UNITAD's mandate, however, is structured so that if a survivor does not consent to sharing their testimony with the Iraqi courts, the evidence cannot be disclosed.²⁷⁷ This creates a safer space for Yazidis who identify as LGBTQ+ to tell their truths without fear of prosecution by the Iraqi government. Hence, it can be asserted that UNITAD actively strives to confront patriarchal and discriminatory structures, which Schulz points out are often pre-created in post-conflict settings. At the same time, it remains aware that, for instance, the experiences of women who suffered SGBV may differ from those who identify differently and experienced SGBV. UNITAD therefore employs strategies and protocols that allow survivors to choose how they want to represent themselves, unlike the YSL framework, which only grants access to women who experienced SGBV and men who experienced violence, while excluding all others. While this

²⁷⁵ *ibid* 46-50.

²⁷⁶ Coalition for Just Reparations, 'Iraqi Civil Society and Survivor Networks Position on the Request of Iraq to Terminate UNITAD's Mandate in September 2024' (2024) <https://tinyurl.com/7my8ukcu>.

²⁷⁷ Coalition for Just Reparations (C4JR), 'UN Secretary-General Marks the Way Forward Towards Utilizing Evidence of ISIL Crimes in Iraq' (2024) <https://tinyurl.com/2scuyar9>

approach offers an important truth-telling space, it does not change the complicated journey survivors face in pursuing retributive justice. For meaningful prosecutions to occur, Iraq would need to reform its legal framework to become inclusive of all survivors. Yet, as noted earlier, cultural norms in Iraq stigmatize non-heteronormative identities, making such reforms highly unlikely in the near future.²⁷⁸

Nevertheless, there remains a small measure of hope. In cases where Yazidi men, women, or LGBTQ+ survivors wish to pursue retributive justice but do not feel safe sharing their experiences with the Iraqi government, their testimonies may still be used to seek accountability.²⁷⁹ For instance, the evidence collected by UNITAD can, with authorization from the Iraqi government, be shared with other states willing to prosecute these crimes. Such states may then employ either universal jurisdiction or rely on their own domestic legal systems to address crimes committed by their nationals against marginalized Yazidis. This mechanism offers survivors hope that, even if Iraqi institutions remain unresponsive, their voices may still one day contribute to justice in other jurisdictions.²⁸⁰

According to Natia Navrouzov, International Lawyer and Legal Advocacy Director at Yazda, the support UNITAD provides goes beyond ordinary assistance or hope. She emphasizes that the safe space it creates for survivors is invaluable. She explains:

“Many feared that what they had entrusted to a UN body might be misused, leaked, and politicized by their own government. The strong message sent by the UNSG and UNITAD that nothing can be shared without informed consent might bring them some relief. The other takeaway of the report is that if Iraq wants the evidence, they need to do things right and abide by UN standards. And for that, there is no shortcut: they need to give UNITAD more time and work hand in hand not only until September 2024 but beyond”.²⁸¹

Hence, it can be seen from her comment that UNITAD actively works to reduce and remove the barriers many Yazidis face, whether due to cultural implications, gender stigma, or both. By creating a safe space for the Yazidi community, UNITAD increases the likelihood that the

²⁷⁸ *ibid.*

²⁷⁹ *ibid.*

²⁸⁰ *ibid.*

²⁸¹ *ibid.*

retributive justice they seek will address the full range of crimes they experienced, beyond stigma and other barriers. In doing so, it provides the community with an essential element of the truth-telling process in TJ, enabling survivors, regardless of gender or stigma, to voice their experiences and truths. However, since the Iraqi government has not reformed its legal framework, it remains unclear when these testimonies will be used in court proceedings, or whether this will instead have to be done by other countries whose legal systems better reflect the experiences of the community.

6.5.5 UNITAD's Interfaith Dialogue Initiative

UNITAD's efforts go beyond implementing survivor, gender, and culturally sensitive approaches to investigating and interviewing Yazidi survivors. In March 2020, Under-Secretary-General Alice Wairimu Nderitu and Special Adviser Karim Asad Ahmad Khan initiated an Interfaith Dialogue series, a forum where religious leaders could come together to discuss how to respond to ISIL's crimes.²⁸² Within this forum, religious leaders addressed the barriers faced by survivors, explored how dialogue can be used as a tool to build trust and understanding, and emphasized how religious and cultural communities can deliver a collective message to prevent hate speech, discrimination, hostility, and violence against survivors who come forward.²⁸³

This effort to create an inclusive and safe space for survivors indicates that UNITAD's mandate recognizes not only that survivors, such as the Yazidis, have endured immense trauma from the crimes committed against them, but also that they continue to face significant cultural, religious, and gender-based barriers that risk retraumatizing them and casting doubt on their experiences. By initiating the engagement and dialogue of all religious leaders in the community, UNITAD seeks to acknowledge and address issues such as the re-creation of patriarchal and heteronormative structures, as Schulz highlights. In this way, UNITAD critically engages with the concerns raised by both Schulz and Crenshaw, who emphasize that an individual's experiences must be examined as multidimensional. Survivors' realities are shaped by overlapping factors, religion, culture, and gender, which the Interfaith Statement seeks to recognize and support.²⁸⁴

²⁸²United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD), *Interfaith Statement on Victims of Da'esh* (2024).

²⁸³ *ibid.*

²⁸⁴ *ibid.*

The agreement reached by the religious leaders specifically acknowledged the issue and recognized that survivors of SGBV must be met with understanding and support, rather than stigmatization.²⁸⁵ This demonstrates that the Iraqi community, in general, is aware of the high levels of stigma attached to the crimes that survivors have experienced. Although this was an important step in the right direction, as noted in the earlier section on domestic TJ efforts, it does not appear that these commitments have been translated into concrete actions within the community.

Many Yazidi survivors of SGBV continue to face stigmatization, and significant efforts are still required to ensure that the commitments outlined in the Interfaith Statement and related engagements are meaningfully implemented. Hence, it can be stated that the Interfaith Statement served as a way for UNITAD's mandate to influence TJ mechanisms in Iraq by promoting an intersectional perspective and a more inclusive approach to survivors of ISIL's attacks. However, since UNITAD itself is not responsible for carrying out the commitments, but rather the individual religious communities, its implementation remains stalled in a space where the intentions are commendable, yet concrete actions have not materialized.

6.5.6 The Abrupt Termination of UNITAD

Although UNITAD created significant efforts to educate and support TJ in Iraq, in September 2023 the Iraqi government made an abrupt decision to request that the UNSC renew UNITAD's mandate for only one year, with no possibility of extension.²⁸⁶ This decision ultimately brought UNITAD's work to a premature end. In this request, Iraq demanded that UNITAD hand over all the evidence it had collected throughout its time in the country.²⁸⁷ The sudden termination of the mandate created immense friction, leaving survivors blindsided, as they were not included in the decision-making process. This again reflects the broader strategy of the Iraqi government, where survivors' accounts and inclusivity are consistently neglected.²⁸⁸ The shock felt by Yazidi survivors is clearly reflected in the words of one survivor, who stated:

“I experienced a significant shock upon hearing this news. The first question that came to

²⁸⁵ *ibid.*

²⁸⁶ Hawre Ahmed, 'UNITAD's Unfulfilled Goals for ISIS Accountability in Iraq' (*Justice Info*, 19 November 2024) <https://tinyurl.com/bddxpww5>

²⁸⁷ *ibid.*

²⁸⁸ *ibid.*

my mind was what would happen to the investigations and evidence that UNITAD had gathered? Who would continue the work UNITAD had initiated?”²⁸⁹

This quote demonstrates how Yazidis, in particular, were left uninformed about the Iraqi government’s intentions regarding the safe handling of their testimonies. One of the main reasons behind Iraq’s decision to end UNITAD’s work lies in the fundamental clash between Iraq’s judicial system and UNITAD’s mandate. UNITAD is bound to uphold international law and UN principles, which oppose the death penalty and require fair trials. In contrast, Iraq continues to prosecute ISIL fighters under a judicial system where fair trial guarantees are questionable, and where the death penalty remains a possible outcome.²⁹⁰

This directly contradicts UN standards. Thus, the tension stems from differing expectations. UNITAD requires that its evidence be used in accordance with international standards, ensuring informed consent and prohibiting use in death penalty cases, while the Iraqi government insists on full sovereignty over prosecutions, including the use of UNITAD’s evidence. From Iraq’s perspective, this represented a violation of its sovereign right to prosecute its own nationals. However, these restrictions had been built into UNITAD’s mandate from the outset, meaning such clashes were inevitable.²⁹¹

This disconnect is also highlighted by expert interviewee van Kampen, who reflected on the structural flaws in UNITAD’s purpose:

“UNITAD is imposing a standard that is not that country’s standard. And so you have just spent tens of millions, if not a hundred million dollars, collecting evidence, to what end? What was the point of spending all that money, having victims give their testimonies? Are you creating just a historical record? Are you creating an evidence record for use at a later point? And I think because of that break, really, that disconnect between Iraq and UNITAD, it has caused a lot of distress among the victims. Because,

²⁸⁹ Coalition for Just Reparations (n276) 3.

²⁹⁰ Hawre Ahmed (n286).

²⁹¹ *ibid.*

for example, UNITAD was also going to unmark graves and collect evidence, and the work remains unfinished and things unresolved”.²⁹²

As Kampen notes, although UNITAD’s intentions were good and its purpose clearly defined in the resolution’s mandate, questions remain about how it was meant to support Iraq in reforming its framework and whether sufficient discussions on this issue took place beforehand. However, as Kampen emphasizes, the ones who lose the most in this process are the survivors, who are once again left to deal with their trauma on their own. This ambiguity has created major obstacles for its operation in Iraq and ultimately contributed to the mandate’s termination. It can therefore be argued that the legal and cultural frameworks guiding UNITAD were fundamentally different from those of Iraq. UNITAD operated under international human rights and rule-of-law standards, whereas Iraq’s legal system remains deeply embedded in cultural understandings of justice, including retributive notions such as the principle of “an eye for an eye”.²⁹³

This choice by Iraq reflects how the government again fails to prioritize survivors, moving further away from the approaches advocated by FL, FJ, and the GI concept for building an inclusive TJ and legal mechanism in post-conflict settings. By doing so, Iraq risks returning to an environment where survivors are met with misunderstanding and a lack of inclusivity, precisely the challenges UNITAD sought to overcome. This sentiment is also shared by a Yazidi survivor who, when asked for their opinion on Iraq’s request to terminate UNITAD, expressed the following concern:

“The judiciary here in Iraq doesn’t know how to treat survivors, how to manage these cases. Once I went to a court in Iraq, and I felt very uncomfortable. The judge didn’t seem to believe me and told me, ‘You are an ISIL member’”.²⁹⁴

This testimony makes clear that Yazidis have very little trust in Iraq’s retributive justice process and do not believe that UNITAD’s work has had a chance to significantly change the situation. The lack of survivor-cantered approaches, as well as the government’s unwillingness to prioritize the community, is also highlighted by this thesis own interview of Carter, who explains:

²⁹² Catherine E. van Kampen, Original Interview, appendix 3.

²⁹³ Hawre Ahmed (n286).

²⁹⁴ Coalition for Just Reparations (n273) 5.

‘It is very difficult for a community that has neither political power nor economic influence, nor any military power. They have nothing. They have always lived in the shadow of a government that rules the area. To have to carry that responsibility, I think that responsibility should rest with the governments in northern Iraq, in Kurdistan, and in central Iraq. They are the ones who should provide guidance, because it is not the civilian population that can simply say, ‘now we’ll just do it like this.’ They simply don’t have the means’.²⁹⁵

Here, Carter emphasizes how the burden of responsibility has been shifted onto the Yazidi community itself, rather than being carried by the state. This reflects how Iraq’s TJ strategy has consistently failed to place survivors at the centre of its efforts. This thesis’ other interview with Maria, when asked about the termination of UNITAD’s mandate, pointed to a different underlying reason, arguing that the issue was not simply about sovereignty but also about the risk of exposing uncomfortable truths. She explained:

“They were happy that someone came to collect data about what had happened, what this had been about, what had taken place, who had been subjected to what, what kinds of trauma, and who had committed these crimes against them. But I think the Iraqi government got cold feet, because if the names were to come out, it would cause big problems for them. Many of these ISIS members were, after all, high-ranking Iraqis”.²⁹⁶

Maria’s statement suggests that Iraq’s resistance to UNITAD’s work is also tied to the fear of exposing links between former Iraqi officials and ISIS. This interpretation is supported by a Reuters article, “How Saddam’s men helped Islamic State rule”, which documents how former Iraqi military officials joined ISIS and played a vital role in its spy networks and battlefield tactics.²⁹⁷ Taken together, these perspectives suggest that Iraq’s rejection of UNITAD may not only be about asserting sovereignty but also about avoiding accountability for uncomfortable truths that implicate former Iraqi officials. Hence, it seems that significant obstacles stand in the way of Iraq adopting a gender and culturally sensitive approach to TJ for Yazidi survivors. Issues of government secrecy and sovereignty continue to overshadow survivor-centered approaches, thereby

²⁹⁵ Thomas Carter (n263).

²⁹⁶ Nella Maria, Original Interview, at Appendix 2.

²⁹⁷ Sabel Coles and Ned Parker, ‘How Saddam’s Men Help Islamic State Rule’ (*Reuters Investigates*, 2015) <https://tinyurl.com/2x97bjpb>.

undermining the inclusive TJ mechanisms that this thesis's theoretical frameworks highlight as essential for addressing the needs of all survivors.

Therefore, it can be argued that UNITAD has reinforced Iraq's TJ process by providing a secure space for Yazidi survivors to share their testimonies. This initiative is expected to contribute to restorative mechanisms that reflect the Yazidi community's need for a culturally and gender-sensitive approach.

Over time, UNITAD's support also has the potential to significantly aid retributive justice by facilitating the collection of evidence for the prosecution of ISIL, an area in which Iraq has faced considerable challenges, as many survivors have reported harassment during judicial proceedings. Nonetheless, it remains uncertain whether such measures will ultimately prove feasible. For now, however, UNITAD has provided a platform for truth-telling in which stigma, gender, and cultural dimensions are acknowledged. In this environment, survivors are met with compassion and understanding rather than prejudice.

6.6. Interim Conclusion

Concluding the overall analysis, it is clear from **Section 1**: that Iraq's TJ mechanisms, both retributive tools such as trials and restorative tools such as the Sinjar Agreement and the YSL framework, represent some of the most recognized forms of TJ currently in place.

When examining how exclusion plays out, it becomes evident that being both Yazidi and a woman who has experienced SGBV places survivors in an especially difficult position in Iraq, as they are met with severe stigma and additional social consequences. This situation clearly illustrates what FL and FJ predict: that women are often excluded and discriminated against in judicial processes and decision-making. The Yazidi case highlights the importance of the GI concept and the necessity of implementing an intersectional framework, as emphasized by IF theory. While the YSL framework demonstrates an important focus on women's experiences, it also reflects a major gap: as the GI concept explains, this singular focus risks marginalizing others. Men who experienced SGBV, as well as other sexual minorities, have been almost completely excluded from the framework. The cultural stigmatization of male survivors of SGBV, combined with the total

disregard for LGBTQ+ survivors, shows how cultural understandings of gender erase entire groups from TJ mechanisms.

In Section 2: another important issue becomes evident in the Yazidi community's lack of trust in the support provided by the Iraqi government. This scepticism is well-founded, as the assistance provided so far has been limited and non-inclusive. Consequently, there has been a strong call for international assistance. UNITAD partly filled this gap by actively focusing on cultural and gender barriers and by creating a safe space where survivors could share their testimonies without fear of stigma. It can therefore be stated that UNITAD attempted to apply a framework that addressed many of the issues highlighted by IF, GI, and FJ theories, giving survivors, including sexual minorities, an opportunity to contribute testimonies that could potentially support future trials, something not possible within Iraq itself. However, this was cut short due to the clash between sovereignty concerns and UNITAD's principled stance against sharing evidence in cases that might result in the death penalty. As a result, Iraq refused to continue the collaboration, which has had a significant negative impact on the Yazidi community. Once again, survivors are left vulnerable to stigma, discrimination, and exclusion, as before UNITAD's intervention.

Thus, in answering **sub-question (2):** *What specific barriers or challenges do Yazidi survivors face in engaging with transitional justice mechanisms?* The analysis concludes that applying a GI, FJ, FL, and IF lens demonstrates several barriers. Gender role norms and cultural understandings of the crimes experienced have shaped how Yazidis engage with the TJ process. Survivors are often held back from coming forward and using the support available due to fear of stigmatization and restrictive societal expectations.

7. Gender and Culture in Iraq's Post-Conflict Response

This section will strive to answer **sub-question (3)**: *In what ways can transitional justice in Iraq be adapted to better reflect the gendered and cultural needs of Yazidi survivors?* This question will be addressed by offering suggestions to remedy the shortcomings and injustices identified in the analysis. These suggestions draw on secondary interviews with survivors, original interviews conducted for this thesis, and insights from other TJ models that have successfully incorporated gender and culturally sensitive frameworks. Additionally, the final chapter will explore how the prosecution of perpetrators can be conducted in a way that provides retributive justice while also ensuring the involvement of the international community.

7.1 Reimagining Retributive Justice in Iraq

The first part of the discussion will explore how the Iraqi government can adopt a retributive justice model that prioritizes recognition and ensures effective judicial trials for the crimes experienced by Yazidi survivors, with a focus on culture and gender sensitive trials.

7.1.2 Implementing a Culture and Gender Sensitive Approach in Trial Proceedings

As examined in the analysis section, the Yazidi community has emphasised that one of the first steps the Iraqi government must take to achieve retributive justice, which offers recognition and justice for Yazidi survivors and other marginalised communities, is to codify the crimes of genocide, war crimes, and crimes against humanity into the domestic penal code. Only then can Iraq begin to address gender- and culture-sensitive judicial proceedings. This point was also highlighted by the interviewee Rasmussen, who states: “For example, you may want to prioritize criminal trials, but actually you can't get there until you reform the criminal code, look at the staffing in your court system and legal profession”.²⁹⁸

Therefore, if the Iraqi government were to codify the international crimes experienced by the Yazidi community, it would represent a crucial first step toward achieving recognition and a sense of justice. However, it is equally important to ensure that any resulting judicial proceedings are both

²⁹⁸ Jenna Rasmussen, Original Interview, appendix 4.

gender and culture sensitive. When examining other TJ models that have prioritized culture and gender sensitive approaches, especially those that seek to include women and other marginalized groups who are often extremely vulnerable during conflict, Colombia stands out. Through its Special Jurisdiction for Peace (JEP), the judicial organ of its TJ model which was established in the 2016 peace agreement.²⁹⁹ Colombia has developed a unique system that Iraq could look to as a model for incorporating gender and culture considerations into the design of a retributive justice framework.³⁰⁰

7.1.3. Recognition Chamber

The JEP has many important commissions and organs, but the ones that are particularly vital for discussions on culture and gender-sensitive retributive justice is the Recognition Chamber. One of the key roles of the Recognition Chamber is to facilitate a dialogic process involving all parties connected to the criminal conduct, survivors, perpetrators, society, and the state.³⁰¹ Through this process, the Recognition Chamber strives to create a space where survivors' voices are heard and where the crimes they endured are acknowledged.³⁰² Furthermore, the Recognition Chamber encourages perpetrators to reflect on the testimonies of survivors in hopes that this will lead them to tell the full truth about their actions. Because the Colombian TJ model prioritizes restorative justice, the Recognition Chamber aims to obtain individual truths from both survivors and perpetrators.³⁰³

When perpetrators contribute to the truth and acknowledge responsibility in a timely and meaningful way, they may receive reduced sentences, such as five to eight years of community-based sanctions rather than prison.³⁰⁴

This approach reflects the Colombian model's preference for reconciliation, truth-telling, and guarantees of non-repetition over purely punitive justice.³⁰⁵ Implementing a similar Recognition chamber within Iraq's judicial proceedings could support the Yazidi community's call for

²⁹⁹ Caroline Davidson, 'Gender-Based Crimes and the Colombian Special Jurisdiction for Peace' (2025) 35 *Duke Journal of Comparative & International Law* 1, 3.

³⁰⁰ *ibid.*

³⁰¹ *ibid.*

³⁰² *ibid.*

³⁰³ *ibid.* 25.

³⁰⁴ *ibid.*

³⁰⁵ *ibid.*

recognition of the atrocities they endured, which many view as essential to achieving a sense of justice. Such a process, where perpetrators openly admit to their crimes, would give the Iraqi public the opportunity to hear the truth. This could potentially help address the denial that many Yazidis feel exists within the broader Iraqi community, where people often do not fully accept or believe what happened to them. Having perpetrators publicly acknowledge their crimes could help reduce such denial and play a crucial role in advancing the reconciliation process³⁰⁶. Maria also touches upon this sentiment about denial and its impact on survivors. She expresses that she recalls witnessing a woman telling her story:

“The woman told her version of what she had experienced, what she had been through, how many had raped her, and how many had sold her for just a cigarette, until it finally ended with her father having to buy her freedom for 20,000 dollars. Then people would just say: No. No, that is not true. Such things do not happen in Islam, and Islam does not stand for that. They are not Muslims, and you just want to destroy Islam”.³⁰⁷

It is clear from the quote that denial of Yazidi experiences deeply affects many survivors. If the Iraqi population were educated through perpetrators admitting the truth, it could greatly contribute to building a comprehensive consensus on what really happened during the conflict and encourage others to come forward as well. Such actions might also contribute to reducing the cultural stigma survivors face, particularly in relation to SGBV. If perpetrators were to publicly admit what they did, and what they forced survivors to endure, it could help decrease stigma by making it clear to the wider population that Yazidi survivors were tortured, treated inhumanely, and had no agency in the SGBV they experienced. It would also affirm to the broader population that denial has no place in Iraq.³⁰⁸

However, there is one issue with the function of the JEP as it is clear that a significant portion of the Yazidi community desires harsher punishments, such as the death penalty or long prison sentences. This difference in expectations could create tensions if a Colombian-style model were introduced, as its focus on truth-telling rather than punishment may clash with what many Yazidis view as

³⁰⁶ Nella Maria (n296) Appendix 2.

³⁰⁷ *ibid.*

³⁰⁸ *ibid.*

justice.³⁰⁹ If a similar model were to be applied in the Yazidi context, it would therefore be crucial to engage in open discussions with survivors to assess whether such a justice mechanism would feel legitimate and meaningful to them. While Yazidi survivors strongly desire truth and recognition, it is unlikely they would accept a model that offers no real punitive consequences in exchange for truth-telling. This is also supported by the research of Phuong Pham, Niamh Gibbons, Jana Katharina Denking, Florian Junne, and Patrick Vinck in their article “Justice Not Forgiveness: Perspectives on Justice and Reconciliation among Yazidi Women Refugees in Germany”.³¹⁰ Based on interviews with 104 Yazidi women, alongside a small number of participants from other backgrounds, the study found that when asked to define what retributive justice meant for themselves and their community, the majority used the Arabic term ‘*adālah*’.³¹¹ This term translates to “justice” in English and is commonly understood as the principle that justice must be balanced, that punishment must fit the crime.³¹²

This sentiment was also echoed in one of this thesis’s interviews, where Maria stated:

“That’s why I want these men to be executed. That’s my personal opinion. And I think many of these women I’ve also talked to are in favor of these men paying for what they’ve done. The highest price, yes. The highest price. It has taken the lives of their families, it has taken their lives, it has devastated the entire Yazidi community”.³¹³

This highlights a clear demand for some form of criminal accountability. A lenient sentence could then undermine survivors’ sense of justice and potentially hinder the reconciliation process, reinforcing the fear that nothing would prevent ISIL or other groups from committing similar crimes in the future. Perhaps a middle ground could be found, ensuring that Yazidi survivors still feel some retributive justice is achieved. For instance, perpetrators could be offered the opportunity to disclose the truth in exchange for avoiding the death penalty, instead receiving life imprisonment or long sentences. This would enhance accountability while still ensuring survivors hear the truth, which could help reduce denial within the broader Iraqi community. At the same time, it would

³⁰⁹ Phuong N Pham, Niamh Gibbons, Jana Katharina Denking and Patrick Vinck, ‘Justice Not Forgiveness: Perspectives on Justice and Reconciliation among Yazidi Women Refugees in Germany’ (2019) 11(3) *Journal of Human Rights Practice* 541.

³¹⁰ *ibid.*

³¹¹ *ibid.*

³¹² *ibid.*

³¹³ Nella Maria (n296) Appendix 2.

preserve an element of retributive justice that many Yazidis demand. Whether such an approach would be feasible or sufficient for the Yazidi community remains complex and would require continuous engagement with survivors as well as other groups affected by the ISIL genocide.

However, the Recognition Chamber's focus on dialogue is not only aimed at encouraging perpetrators to disclose their involvement in crimes. It also informs how judges engage with survivors who have experienced traumatic events, such as SGBV.³¹⁴ For instance, judges are instructed that when a survivor has experienced SGBV, such information should be relayed through the survivor's support team. This trauma-sensitive approach to addressing topics such as SGBV during court hearings is a valuable initiative that the Iraqi government could adopt.³¹⁵ As noted in the conceptual background and analysis, the Yazidi community, particularly women and girls, has been subjected to widespread SGBV. Implementing sensitive dialogue practices during court proceedings could represent an important step forward. Since SGBV is deeply stigmatized, for both women and men, allowing survivors to provide testimony with the assistance of support teams may facilitate more open and secure disclosures. This could also help create a safe space for Yazidi LGBTQ+ survivors, who would not be left to testify alone but supported throughout the process. Such support could play a crucial role in helping survivors confront their trauma, which is especially stigmatized in Iraq.

7.1.4 Inclusivity in Legal Definitions

Although the Colombian TJ model has developed important approaches for incorporating gender-sensitive and culture perspectives into judicial proceedings, another TJ model that made significant strides in this area is the Special Court for Sierra Leone (SCSL).³¹⁶ One of the most crucial advancements made by the SCSL was its work on expanding the legal definitions of sexual and SGBV. Drawing from the shortcomings of the ICTR, where SGBV was often narrowly understood as rape, the SCSL recognized the need for broader, more inclusive definitions.³¹⁷ It actively engaged with survivors, particularly women affected by war, to understand how they themselves defined the violations they had endured.³¹⁸ Through this survivor-centered approach, the court

³¹⁴ Caroline Davidson (299).

³¹⁵ *ibid* 29.

³¹⁶ Western University, 'Professor Helping Provide New Path to Gender Justice in Sierra Leone' (*Western News*, 2018) <https://tinyurl.com/3jhh633r>

³¹⁷ *ibid*.

³¹⁸ *ibid*.

recognized that SGBV included not only rape but also forced marriage and sexual slavery. This input led to a more accurate and inclusive legal framework, ensuring that survivors whose experiences did not fall under the narrow definition of rape were still acknowledged and included in legal proceedings. This approach directly addresses one of the main concerns raised by FL and FJ theory, which emphasizes the importance of giving survivors, especially women and marginalized groups, agency and voice within TJ mechanisms.³¹⁹ By broadening the legal definitions based on survivor input, the SCSL became the first hybrid court to convict perpetrators for crimes against humanity, including forced marriage and sexual slavery.³²⁰

Such procedures could also be highly relevant in Iraq's pursuit of justice for the Yazidi community. As explored in the conceptual framework, many Yazidi women were subjected to forced marriages and sexual enslavement by ISIL, who systematically used SGBV as a tool of genocide. Given the scale and severity of these crimes, it is essential to recognize and legally define all forms of SGBV experienced by Yazidis, so that no survivor is left unacknowledged due to narrow or outdated legal definitions. Furthermore, this would also actively address the need to employ a micro-level community approach, as Schulz highlights in the GI concept, which is essential if the TJ process is to accurately reflect the community's real experiences and issues. Therefore, such consultations would not only shape a more inclusive legal framework but could also be a healing process in which survivors regain a sense of agency and control over their narratives.

7.2 Fostering Culturally and Gender-Responsive Restorative Justice

Looking at the Colombian TJ model, there are also restorative mechanisms that could be of great importance and support for the Yazidi community. For instance, the Commission for the Clarification of Truth, Coexistence and Non-Repetition (CEV) is a mechanism that puts survivors first by preserving the memory of what they experienced and helping to uncover the truth about the crimes they endured.³²¹ One way this memory preservation has been carried out is through the establishment of a memorial site called Medellín Museo Casa de la Memoria, a space where

³¹⁹ *ibid.*

³²⁰ *ibid.*

³²¹ Adriana Rudling, *The Colombian Commission for the Clarification of Truth, Coexistence and Non-Repetition and Conflict-Related Sexual Violence* (CMI Report No 4, 2024) 21.

survivors and non-survivors can meet, share stories, and access over 2,000 capsules containing individual testimonies from survivors.³²²

Although the Yazidi community already has a memorial site in Solagh, Sinjar, created with the support of international organizations such as the International Organization for Migration (IOM), Nadia's Initiative, and the United States Agency for International Development (USAID), and with representation from Dr. Ahmed Al Badrani on behalf of the Iraqi Prime Minister at the opening ceremony.³²³ It is important to note that this site was not funded by the Iraqi government, unlike the Colombian example³²⁴. A memorial initiative directly supported and funded by the government could have signaled a greater commitment to recognition, justice, and a promise of non-repetition for the Yazidi community. If there had been support from the Iraqi government itself, it could also have demonstrated a broader cultural acceptance of Yazidi trauma and experiences. Establishing and supporting a memorial site would signal to the rest of Iraqi society that what the Yazidis endured is real and must be acknowledged, thereby fostering cultural recognition.³²⁵ Such recognition could potentially address many of the cultural implications and stigma Yazidis have faced in Iraq. A memorial site, fully backed by the state and embraced by all communities, could also encourage survivors to come forward.³²⁶ As highlighted in the analysis, many survivors were reluctant to share their experiences due to the gendered and cultural implications this might have for them. An overall societal recognition of their suffering could help reduce these barriers and create a safer environment for truth-telling.

7.2.1 Education on SGBV and Trauma

Furthermore, the Colombian restorative model also emphasized the importance of including the country's conflict history in the education system and promoting education on how to engage with

³²² *ibid*

³²³ International Organization for Migration (IOM), 'A Step Toward Healing: Yazidi Genocide Memorial Opens in Solagh, Sinjar, Iraq' (*IOM Storyteller*, 2023) <https://tinyurl.com/pwe7mtt7>.

³²⁴ *ibid*.

³²⁵ S Garnett Russell et al, 'Transitional Justice and Education in Colombia' (*Teachers College Columbia University*, 2025) <https://tinyurl.com/yh8c2576>

³²⁶ *ibid*.

survivors of SGBV through open dialogue. This approach supports truth-telling, reconciliation, and the prevention of future violence, as learning and remembering the past is crucial to ensuring such atrocities are not repeated.³²⁷

One key strategy the Colombian TJ model prioritized was incorporating survivors' stories into the education system.³²⁸ This allows younger generations to understand what happened in their country and to recognize the suffering of the communities that were targeted³²⁹. A similar strategy, introducing educational initiatives that explain what happened to the Yazidi community and other marginalized groups during the ISIL genocide, could be a meaningful step toward national reconciliation in Iraq. As noted in the analysis, the Yazidi community currently feels that both the government and the broader Iraqi society do not take their trauma or experiences seriously.³³⁰ Educating the Iraqi population through schools and other governmental institutions using real-life testimonies and factual accounts could help raise awareness and foster public acknowledgment of the atrocities committed.³³¹ This, in turn, could help ensure that such violence is not repeated. Employing such strategies would significantly benefit the Yazidi community by demonstrating that their suffering is recognized and that Iraqi society is willing to learn from their trauma and the genocide they endured. In addition, education on how to communicate with survivors of SGBV would be immensely valuable. As discussed in the analysis, many Yazidi women have encountered rudeness and dismissiveness from Iraqi police and investigators when trying to recount what they have endured.³³² Therefore, a toolkit or formal training program on how to engage respectfully and sensitively with survivors would be an excellent way to prevent further culture discrimination and traumatization.³³³

However, this would require substantial political will from the Iraqi state and a willingness from the broader population to welcome a process rooted in truth and reconciliation. Nonetheless, initiating a national truth-telling process, and acknowledging what happened to the Yazidi community, remains crucial. Such sentiments are also echoed by the interviewee Rasmussen, who states: "I would also

³²⁷ *ibid.*

³²⁸ *ibid.*

³²⁹ *ibid.*

³³⁰ *ibid.*

³³¹ Gabriel Vélez, *Teaching Truth in Transitional Justice: A Collaborative Approach to Supporting Colombian Educators* (2025)

<https://tinyurl.com/yc35zbi4>

³³² *ibid.*

³³³ *ibid.*

say that I think it's important to have truth recovery processes... Personally, I place more weight on that than I do on trials often, because trials are often very individualized.”³³⁴ She further notes that truth recovery mechanisms are valuable because, unlike trials, which tend to focus on individual perpetrators, they can reflect the broader and more systemic nature of violations. These mechanisms help communities understand that SGBV was not just something experienced by a few people but was a deliberate tool of widespread harm. This also underlines the scale of the genocide, and the depth of suffering endured. Truth commissions and truth-telling processes can therefore provide the Iraqi population with a fuller understanding of the extent of the violations committed.³³⁵

Therefore, it can be asserted that initiating conversations, dialogue, education, and truth-telling is a crucial first step toward reconciliation and gaining a clearer understanding of what truly happened during the conflict. As the Yazidis often feel that the entire Iraqi population is against them, educating the public about what happened and why may help pave the way toward a culturally and gender-sensitive approach.

7.3. Pursuing International Support

As established in both the analysis and the discussion above, the Yazidi community has very little trust in the Iraqi government and the judicial proceedings it carries out. This mistrust is well-founded, as the judicial system in Iraq is significantly affected by corruption and the unfair treatment of prisoners.³³⁶

Thus, in general, the Yazidi community lacks faith in the Iraqi government's ability to prosecute ISIL perpetrators for the crimes they endured. The current Iraqi judicial system is known to prosecute individuals who should arguably not be prosecuted under the same framework as those responsible for the most severe atrocities.³³⁷ For example, individuals who worked as ISIL garbage collectors and had no involvement in violent acts such as rape, forced marriage, or sexual slavery are being sentenced with the same severity as those who directly committed such heinous crimes.³³⁸ This indiscriminate approach means the system is overwhelmed with minor offenders, while those

³³⁴ Jenna Rasmussen (296) appendix 4.

³³⁵ *ibid.*

³³⁶ GAN Integrity, 'Iraq Country Profile' (2025) <https://tinyurl.com/25rzhvpp>

³³⁷ Akram S, 'Iraq's Courts Aren't Recognising Crimes against Yazidis' *The New Arab* (2021) <https://tinyurl.com/y28wdv59>

³³⁸ *ibid.*

most responsible for the gravest violations are not being adequately prosecuted.³³⁹ According to Iraqi judges themselves, the judicial system is overcrowded and underfunded, making it ill-equipped to handle the scale and complexity of justice needed in the aftermath of the ISIL atrocities.³⁴⁰ Hence it seems like that the Iraq judicial system need some kind of support both systematically on the codifying of the crimes mentioned above and help with funding to be able to prosecute all these violations³⁴¹.

7.3.1 Establishing a Hybrid Court

One possible way for Iraq to implement a judicial process that allows for international assistance in prosecuting those most responsible for serious violations, while still maintaining sovereignty, which, as shown in the analysis of UNITAD, is highly important for the Iraqi government, would be through the establishment of a hybrid court. This could be achieved by conducting judicial proceedings on Iraqi soil, with international oversight. A useful precedent is the SCSL, which was created through a bilateral agreement between the Sierra Leonean government and the UN. If the Iraqi government, particularly the President, were willing to request such an agreement, it could enable international oversight and support for trials within Iraq.³⁴² However, as outlined in the analysis, this would likely require Iraq to exclude the death penalty from the jurisdiction of the hybrid court, since international actors, including the UN, generally will not participate in legal processes that impose capital punishment. One possible compromise would be to preserve the death penalty within Iraq's domestic penal code, thereby maintaining a part of its legal framework, while ensuring that the statute or treaty establishing the hybrid court explicitly states that no cases under its jurisdiction may result in a death sentence. This would allow Iraq to retain an element of its legal sovereignty while complying with international standards.³⁴³ Furthermore, financially and structurally, a hybrid court could bring significant benefits to Iraq's overwhelmed and under-resourced judiciary. As noted, many Iraqi judges have pointed to a lack of resources as a barrier to prosecuting ISIL for international crimes like genocide.³⁴⁴ A hybrid court backed by the UN could

³³⁹ *ibid.*

³⁴⁰ *ibid.*

³⁴¹ *ibid.*

³⁴² Western University, (n316).

³⁴³ *ibid.*

³⁴⁴ Sophia Akram, 'Iraq's Courts Aren't Recognising Crimes against Yazidis' (*The New Arab*, 3 November 2021) <https://tinyurl.com/y28wdv59>

come with international funding, expertise, and personnel, such as experienced judges and investigators, helping to strengthen Iraq's broader judicial infrastructure.³⁴⁵

Moreover, establishing a hybrid court would also allow UNITAD's work to continue. If the evidence gathered by UNITAD were to be used specifically within this special court, it would ensure that its investigations and testimonies play a direct role in holding ISIL members accountable.³⁴⁶ Anyhow, another issue to consider is the scope of prosecutions. Hybrid courts, as seen in other contexts, often focus on high-level perpetrators of serious crimes.³⁴⁷ This concern has been raised by Ibrahim, the founder and Executive Director of the Free Yezidi Foundation, who argues that focusing only on senior ISIL commanders may create friction within the Yazidi community.³⁴⁸ He emphasizes that Yazidis view all ISIL members, regardless of rank, as perpetrators of serious violations. Therefore, limiting prosecutions to top-level commanders could clash with Yazidi expectations for justice. This challenge underscores the limitations of a hybrid court as a standalone mechanism³⁴⁹. A more comprehensive approach could involve combining a hybrid court for the most responsible perpetrators with a traditional justice mechanism for lower-level offenders who would not be prosecuted in the hybrid court.³⁵⁰ This dual system, employing a hybrid court alongside a locally developed traditional court, could better align with the Yazidi community's expectations of justice while also meeting international legal standards. However, even with such a structure, difficult questions remain. A major concern is whether the traditional courts used for lower-level ISIL members would employ the death penalty. This would create the risk that less responsible perpetrators could receive harsher punishments than senior commanders, leading to perceptions of inconsistency or injustice. Nevertheless, although there are many critical questions about how to combine a hybrid court with elements of a traditional justice system, the primary issue remains the political will required for the Iraqi government to formally request assistance from the UN. According to Ibrahim, this is one of the biggest obstacles.³⁵¹ He argues that while a hybrid court would be the most preferable option, it is also highly unlikely due to political

³⁴⁵ *ibid.*

³⁴⁶ Alda Benjamin, 'Justice and Humanitarian Support for Yezidi Survivors' (*Harvard Human Rights Journal*, 12 December 2017) <https://tinyurl.com/4j53dxcv>

³⁴⁷ *ibid.*

³⁴⁸ *ibid.*

³⁴⁹ *ibid.*

³⁵⁰ *ibid.*

³⁵¹ *ibid.*

reluctance.³⁵² However, establishing an international or hybrid court would avoid the risk of being blocked by a UNSC veto. If the Iraqi government were to voluntarily request support, it would be one of the easiest and most effective ways to gain international assistance while still preserving elements of its own legal sovereignty.³⁵³

7.3.2 Trying ISIL Nationals at Home

Although Ibrahim prefers the idea of a hybrid court, he believes it is unlikely to materialize.³⁵⁴ Instead, he suggests that a more feasible path to achieving punitive justice may lie in the prosecution of ISIL perpetrators who are nationals of countries other than Iraq. These countries can then prosecute their own citizens for the crimes they committed against the Yazidis and for other atrocities carried out in Iraq generally.³⁵⁵ One important example is the prosecution of Jennifer W., a German national who became the first German citizen convicted for crimes against the Yazidi community.³⁵⁶ Due to German legal regulations, only her first name is publicly disclosed, full surnames are not permitted in court proceedings, so she is referred to as Jennifer W.³⁵⁷ Jennifer W. was prosecuted for being complicit with her husband in holding a Yazidi woman in slavery and for failing to assist when a five-year-old Yazidi girl died of heatstroke after being tied outside in extreme heat.³⁵⁸ She was ultimately sentenced to 14 years of imprisonment.³⁵⁹ The charges included one count of a crime against humanity, enslavement resulting in death; aiding and abetting the attempted crime against humanity of murder; aiding and abetting the attempted war crime of murder; membership in a terrorist organization; and aiding and abetting attempted murder by omission.³⁶⁰ While she was convicted of serious international crimes such as crimes against humanity and war crimes, she was not prosecuted for genocide. According to court documents, the

³⁵² *ibid.*

³⁵³ *ibid.*

³⁵⁴ *ibid.*

³⁵⁵ *ibid.*

³⁵⁶ International Crimes Database (ICCT), 'Case: Jennifer W. (4th Instance Verdict – Final)' <https://interlinkagesdatabase.icct.nl/case/Jennifer8-st-918-3-str-24622-3-str-49823>.

³⁵⁷ *ibid.*

³⁵⁸ *ibid.*

³⁵⁹ *ibid.*

³⁶⁰ *ibid.*

evidence used in her case was collected from several sources, including NGOs such as Yazda, testimonies from former female ISIL members, and online material.³⁶¹

It has also been reported that UNITAD collaborated with German authorities by providing evidence for such prosecutions, though this is only possible with case-by-case approval from the Iraqi government.³⁶² However, this could address the issue mentioned in the analysis, where it was argued that the evidence collected by UNITAD from the Yazidi community was feared not to be used to deliver justice for them.³⁶³ Employing other countries domestic frameworks is an approaches to justice for the Yazidi community outside of Iraq that would allow their experiences to be properly portrayed and heard. Moreover, because justice would be pursued abroad, it may be more likely that Yazidi survivors would come forward with their testimonies and provide UNITAD with informed consent, as they would not face the same cultural implications and stigmatization as in Iraq.³⁶⁴ For example, in countries such as Germany, survivors could speak more freely about their experiences without fear of severe cultural repercussions.³⁶⁵ This could also increase the likelihood that those most silenced in Iraq, such as LGBTQ+ survivors, would come forward with their stories, since in Germany they would not risk prosecution simply for disclosing their experiences.³⁶⁶

Nevertheless, as Alexandra Lily Kather, Legal Advisor at ECCHR's International Crimes and Accountability Program, has pointed out, there are notable challenges to achieving justice in other countries' domestic courts.³⁶⁷ Since these trials take place far from the locations where the crimes were committed, it can be difficult to collect sufficient evidence to prove complex charges such as genocide or crimes against humanity.³⁶⁸ Kather notes that although Germany has made significant efforts, many of the ISIL-related prosecutions focus primarily on membership in a terrorist organization.³⁶⁹ While some cases do address crimes against the Yazidi community, most do not.

³⁶¹ *ibid.*

³⁶² Federal Foreign Office (Germany), 'Germany Welcomes Verdict against IS Terrorist for Crimes against Yazidis' (2021) <https://tinyurl.com/dzp43s2e>.

³⁶³ *ibid.*

³⁶⁴ *ibid.*

³⁶⁵ *ibid.*

³⁶⁶ *ibid.*

³⁶⁷ Anna Zimmermann, 'Co-Opting Universal Jurisdiction: A Gendered Critique of the Prosecutorial Strategy of the German Federal Public Prosecutor in Response to the Return of Female ISIL Members, Part I' (*Opinio Juris*, 7 March 2019) <https://tinyurl.com/3mchzyzu>

³⁶⁸ *ibid.*

³⁶⁹ *ibid.*

This raises concerns that perpetrators may not be fully held accountable for the full scope of their crimes, particularly those targeting Yazidis.³⁷⁰ In this sense, the Yazidi community faces some of the same challenges abroad as they do in Iraq. Although encouraging other countries to prosecute their own nationals for crimes committed in Iraq is beneficial in some respects, and there is often strong political will to do so, the geographic distance from where the atrocities occurred unfortunately presents serious limitations for building strong cases.

7.3.3 Universal Jurisdiction

Another way to prosecute ISIL members, one that seems more likely than expecting the Iraqi government to do it themselves, is, according to Ibrahim, through the use of universal jurisdiction. One notable example is the case of Taha al-J., the husband of Jennifer W. Although he is not a German national but an Iraqi citizen, Germany prosecuted him under its Code of Crimes against International Law (CCAIL).³⁷¹ This legal framework allows German authorities to investigate and prosecute individuals who are not German nationals, for committing grave international crimes such as war crimes, crimes against humanity, and genocide.³⁷² Taha al-J. was tried in the German court system and became the first non-national to be prosecuted and sentenced there for genocide, crimes against humanity, war crimes, membership in a terrorist organization, and domestic charges such as murder and human trafficking.³⁷³ This approach enabled the Yazidi community's struggle for justice to be heard in a court of law. In this case, the Yazidi plaintiff was able to testify against her perpetrator and share her story, raising awareness and achieving some recognition of the atrocities they endured.³⁷⁴ This offers far more than what would be possible in their home country, providing a significant benefit by helping the Yazidi case gain global recognition for the atrocities they endured. Thus, the application of universal jurisdiction in cases where prosecution in the country of the crime (such as Iraq) is not possible, has proven to be a powerful tool to ensure accountability and recognition. However, as mentioned earlier, universal jurisdiction faces challenges, many of which mirror those faced by national prosecutions.³⁷⁵ Universal jurisdiction is only as effective as the states willing and able to employ it. In Germany's case, a well-established legal framework for

³⁷⁰ *ibid.*

³⁷¹ "International Crimes Database (ICCT), 'Case: Taha Al-J. (Higher Regional Court of Frankfurt, 2021)' <https://tinyurl.com/45u35per>

³⁷² Human Rights Watch, 'Q&A: First Syria State Torture Trial in Germany' (2022) <https://tinyurl.com/e6n7jdtf>.

³⁷³ *ibid.*

³⁷⁴ *ibid.*

³⁷⁵ Anna Zimmermann (n367).

prosecuting international crimes under CCAIL has made it possible to pursue justice against ISIL members.³⁷⁶ Still, trials held far from where the crimes occurred, can have limitations. Nevertheless, in contexts where countries like Iraq do not recognize international crimes within their own legal systems, universal jurisdiction may represent the only viable path to punitive justice and avoiding impunity.³⁷⁷ Furthermore, universal jurisdiction is heavily dependent on political will.³⁷⁸ One cannot expect every country to adopt this approach, as it requires significant political commitment, financial resources, and investigative efforts.³⁷⁹ Because of this, it is likely that only a limited number of cases, often involving those deemed most responsible, will be brought to trial.

7.4 Interim Conclusion

Colombia's model is particularly notable for initiating a bottom-up dialogue with survivors about what happened to them, how they feel about it, and how such crimes should be addressed and narrated. This approach has enabled the creation of a justice model that is more sensitive to cultural implications, SGBV, and broader gender dynamics, as it allows survivors to be agents of their own stories. Hence, it can be stated that Colombia employed a community-based approach to TJ, where judicial and governmental restorative agreements are shaped by survivors, rather than imposed upon them.

Lastly, it can be argued that Iraq can take several steps toward securing international support to hold ISIL accountable and gain recognition for the crimes committed against the Yazidi community. At present, Iraq lacks both the resources and political will to prosecute international crimes. However, with UN support, the establishment of a hybrid court, one with its own statute and legal framework operating alongside traditional domestic mechanisms, could provide a pathway for the Yazidi community to gain retributive justice. Furthermore, it is also possible that the international crimes committed in Iraq will ultimately be prosecuted only through other countries' domestic courts or under the principle of universal jurisdiction. However, this form of justice is often entangled in questions of political will and challenged by the distance from the actual crime.

³⁷⁶ *ibid.*

³⁷⁷ *ibid.*

³⁷⁸ Anna Zimmermann (n367)

³⁷⁹ *ibid.*

8. Conclusion

The atrocities carried out by ISIL against the Yazidi community can undoubtedly be considered one of the most appalling examples of the cruelty humans are capable of inflicting on one another.

ISIL's genocidal campaign was embedded in both cultural and gendered purposes. The Yazidi case illustrates how SGBV in conflict can be deliberately employed as a weapon, not only to destroy individuals but also to dismantle entire communities. In the aftermath of such atrocities, Iraq has faced the difficult task of constructing a TJ process that adequately addresses the needs of survivors.

This thesis sought to answer the overarching research question of whether the intersection of culture and gender impacts Yazidi engagement with TJ in Iraq. Through analysis of both retributive and restorative mechanisms, examined through the lenses of FJ, FL, GJ, and IF, it became possible to critically reflect on the limitations of these mechanisms. Employing these theories revealed that the TJ processes implemented in Iraq have had profound shortcomings. The most prominent finding is that, in general, TJ mechanisms, whether retributive or restorative, have failed to adequately account for Yazidi survivors' lived experiences. While initiatives such as the YSL can be commended, the absence of survivor-centred perspectives renders many of these efforts symbolic rather than truly supportive. A deeper examination reveals several issues that stem from the complex interaction of gender and cultural dynamics in Iraq. The prevailing cultural environment, both nationally and within the Yazidi community, creates a hostile space where survivors seeking justice often face stigma, harassment, and discrimination. Without sufficient efforts to analyse and understand the environments into which survivors are reintegrated, TJ initiatives risk failure. Yazidi women who have endured immense trauma through SGBV now face the continuing struggle of being believed and supported, often encountering new forms of marginalisation.

An illustrative example is the Sinjar Agreement; a restorative justice mechanism aimed at enabling Yazidis to return to their cultural homeland. Yet without addressing entrenched cultural gender roles, such as women's restricted access to property and education, the assistance provided remains unrealistic, leaving survivors feeling unheard. Furthermore, Iraqi law itself deepens and at times amplifies discrimination. The national identity card system, for example, forces Yazidi women into impossible choices between their community and their children. Similarly, anti-LGBTQ+

legislation silences the experiences of Yazidi LGBTQ+ survivors, while Yazidi men's experiences are often reduced to generalised violence without recognition of gendered harm. As a result, not only do cultural and gender dynamics shape Yazidi engagement with TJ, but Iraq's current legal framework actively perpetuates discrimination, creating an intensely complex environment for TJ. This also reinforces FJ and FL critiques that law is often not gender neutral. Iraq exemplifies how both legal frameworks and restorative processes are constructed from the perspective of the most privileged. Moreover, the analysis demonstrated that Yazidi experiences are often shaped by cultural constructions of gender. For instance, rape is regarded as an extremely stigmatised crime, leading to disbelief and exclusion of women who come forward, while men, due to cultural notions of masculinity and gender roles, are subjected to even greater stigma. Accordingly, the Yazidi case illustrates that culture and gender frequently operate hand in hand. Had this thesis only considered gender, a significant gap would have remained in explaining why Yazidi women are prevented from bringing home their children. From a gender perspective, this situation reflects women's roles as mothers. However, when applying an IF lens that incorporates culture, it becomes clear that Yazidi norms requiring both parents to be Yazidi create an even more complex situation for these women. Therefore, this thesis concludes that gender, together with culture, significantly impacts Yazidi engagement with TJ mechanisms. If the community is to achieve recognition, reconciliation, and justice, these two elements must be taken into serious consideration.

This thesis acknowledges a degree of imbalance in how men and women are portrayed throughout the analysis. The study did not explore in depth the experiences of LGBTQ+ Yazidis or men who suffered SGBV, due to the limited availability of data. Consequently, the analysis primarily reflects women's experiences. Nonetheless, it was essential to highlight this gap, since, as Schulz also notes, the silencing of particular groups is a recurrent and serious issue in TJ processes. This underscores the urgent need for further research into the experiences of Yazidi men, LGBTQ+ survivors, and others whose voices remain absent.

Acknowledging the Yazidi community is not optional - it is where justice must start

9. Bibliography

Case Law

- International Crimes Database (ICCT), ‘Case: Jennifer W. (4th Instance Verdict – Final)’ <https://interlinkagesdatabase.icct.nl/case/Jennifer8-st-918-3-str-24622-3-str-49823>.
- International Crimes Database (ICCT), ‘Case: Taha Al-J. (Higher Regional Court of Frankfurt, 2021)’ <https://interlinkagesdatabase.icct.nl/case/taha-al-j-5-3-ste-1-20-4-1-20-3-str-230-22>.
- *Prosecutor v Jean-Paul Akayesu* (Trial Judgment) ICTR-96-4-T (International Criminal Tribunal for Rwanda, 2 September 1998) <https://www.refworld.org/jurisprudence/caselaw/ictr/1998/en/19275>.
- *Prosecutor v Duško Tadić* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) Case No IT-94-1-AR72 (ICTY Appeals Chamber, 2 October 1995) <https://www.icty.org/x/cases/tadic/acdec/en/51002.htm>.

Legal Frameworks / Official Documents

- Convention on the Prevention and Punishment of the Crime of Genocide (1948) 78 UNTS 277 https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

- Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-3>.
- Iraq, *Anti-Terrorism Law No 13* (2005, VERTIC translation).
- Iraq, *National Card Law (Law No 3 of 2016)* (2016) <https://www.refworld.org/legal/legislation/natlegbod/2016/en/124167>.
- Iraq, *Yazidi Female Survivors Law (Law No 8 of 2021, 2 March 2021)* <https://www.refworld.org/legal/legislation/natlegbod/2021/en/124274>.
- Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.
- UK Home Office, *Country Policy and Information Note: Iraq – Blood Feuds, Honour Crimes and Tribal Violence* (2024).
- UNSC Res 1820 (2008) UN Doc S/RES/1820.
- UNSC Res 2379 (2017) UN Doc S/RES/2379.
- United Nations Human Rights Council, *‘They Came to Destroy’: ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2 (2016) https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf.
- United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), *Interfaith Statement on Victims of Da’esh* (2024).
- United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD) and Human Rights in Trauma Mental Health Program at

Stanford University, *Trauma-Informed Investigations Field Guide* (United Nations 2021).

Journal Articles and Books

- Kai Ambos, Judith Large and Marieke Wierda, ‘Justice Mechanism and the Question of Legitimacy: The Example of Rwanda’s Multi-Layered Justice Mechanism’ in Kai Ambos, Judith Large and Marieke Wierda (eds), *Building a Future on Peace and Justice: Studies on Transitional Justice, Conflict Resolution and Development* (Springer 2009).
- Katharine T Bartlett and Rosanne Kennedy, ‘Introduction’ in Katharine T Bartlett and Rosanne Kennedy (eds), *Feminist Legal Theory: Readings in Law and Gender* (Routledge 1991).
- Caroline Davidson, ‘Gender-Based Crimes and the Colombian Special Jurisdiction for Peace’ (2025) 35 *Duke Journal of Comparative & International Law* 1.
- Kimberlé Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) *University of Chicago Legal Forum* 139.
- Martha Albertson Fineman, ‘Feminist Legal Theory’ (2005) 13(1) *Journal of Gender, Social Policy & the Law* 13 <https://ssrn.com/abstract=2132233>.
- George Kasapas, ‘An Introduction to the Concept of Transitional Justice: Western Balkans and EU Conditionality’ (*UNISCI Discussion Paper* No 18, Social Science Research Center (CSIC) & Universidad Complutense de Madrid 2008).

- Susan McKay, 'The Effects of Armed Conflict on Girls and Women' (1998) 4(4) *Peace and Conflict: Journal of Peace Psychology* 561 https://doi.org/10.1207/s15327949pac0404_6.
- Hadjer Mirza, Fouzi Bellalem and Chahrazed Mirza, 'Ethical Considerations in Qualitative Research: Summary Guidelines for Novice Social Science Researchers' (2023) 11(1) *Social Studies and Research*.
- Lydia Nkansah and Victor Chimbwanda, 'Interdisciplinary Approach to Legal Scholarship: A Blend from the Qualitative Paradigm' (2016) 3(1) *Asian Journal of Legal Education* 55 <https://doi.org/10.1177/2322005815607135>.
- Jennifer C Nash, 'Re-Thinking Intersectionality' (2008) 89 *Feminist Review* 1.
- Steve Reid and Bob Mash, 'African Primary Care Research: Qualitative Interviewing in Primary Care' (2014) 6(1) *African Journal of Primary Health Care & Family Medicine* a632 <https://doi.org/10.4102/phcfm.v6i1.632>.
- Margaret R Roller, 'Generalizability in Case Study Research' (*Research Design Review*, 8 December 2020) <https://researchdesignreview.com/2020/12/08/generalizability-case-study-research/>.
- Phuong N Pham, Niamh Gibbons, Jana Katharina Denking and Patrick Vinck, 'Justice Not Forgiveness: Perspectives on Justice and Reconciliation among Yazidi Women Refugees in Germany' (2019) 11(3) *Journal of Human Rights Practice* 541.
- Philipp Schulz, 'Towards Inclusive Gender in Transitional Justice: Gaps, Blind-Spots and Opportunities' (2020) 14(5) *Journal of Intervention and Statebuilding* 1.
- Lieselotte Viaene and Eva Brems, 'Transitional Justice and Cultural Contexts: Learning from the Universality Debate' (2010) 28 *Netherlands Quarterly of Human Rights* 199.

- Dana Zartner, ‘The Culture of Law: Understanding the Influence of Legal Tradition on Transitional Justice in Post-Conflict Societies’ (2012) 22(2) *Indiana International & Comparative Law Review* 297.
 - Jane Wong, ‘The Anti-Essentialism v Essentialism Debate in Feminist Legal Theory: The Debate and Beyond’ (1999) 5 *William & Mary Journal of Women & the Law* 281.
-

NGO and Policy Reports

- Amnesty International, *Iraq: The Road to Justice – A Long Way to Go* (Submission to the UN Universal Periodic Review, 34th Session, March 2019) Index: MDE 14/0316/2019.
- Bojan Gavrilović, *More Than “Ink on Paper”: Taking Stock Two Years After the Adoption of the Yazidi [Female] Survivors Law* (Jiyan Foundation for Human Rights & Coalition for Just Reparations 2023).
- Coalition for Just Reparations, ‘Report on the Status of the Yazidi Community and Survivors in Iraq’ (2023) <https://c4jr.org/0604202327288>.
- Coalition for Just Reparations, ‘Statement on the Implementation of the Yazidi Survivors Law’ (2023) <https://reliefweb.int/report/iraq/statement-implementation-yazidi-survivors-law>.
- Coalition for Just Reparations (C4JR), ‘UN Secretary-General Marks the Way Forward Towards Utilizing Evidence of ISIL Crimes in Iraq’ (2024) https://c4jr.org/2101202428341?utm_source=.

- Coalition for Just Reparations, *‘Iraqi Civil Society and Survivor Networks Position on the Request of Iraq to Terminate UNITAD’s Mandate in September 2024’* (2024) https://c4jr.org/wp-content/uploads/2024/03/C4JR-report_ENG.pdf.
- Free Yezidi Foundation, *Evaluating the Progress and Impact of the Sinjar Agreement* (July 2024).
- International Organization for Migration (IOM), *‘A Step Toward Healing: Yazidi Genocide Memorial Opens in Solagh, Sinjar, Iraq’* (IOM Storyteller, 2023) <https://storyteller.iom.int/stories/step-toward-healing-yazidi-genocide-memorial-opens-solagh-sinjar-iraq>.
- Lorena Mellado, Emily Kenney and Hariwa Adil, *Women’s Meaningful Participation in Transitional Justice: Advancing Gender Equality and Building Sustainable Peace* (UNDP & UN Women, March 2022).
- Natia Navrouzov, Lynn Zovighian and Yazda Yazidi Survivors Network, *Yazidi Genocide Survivors Reveal the Challenges to Fully Achieve Transitional Justice* (2022).
- S Garnett Russell et al, *‘Transitional Justice and Education in Colombia’* (Teachers College Columbia University, 2025) <https://www.tc.columbia.edu/international-and-transcultural-studies/international-and-comparative-education/our-stories/news-stories/transitional-justice-and-education-in-colombia/>.

News and Media

- Sophia Akram, *‘Iraq’s Courts Aren’t Recognising Crimes against Yazidis’* (*The New Arab*, 3 November 2021) <https://www.newarab.com/analysis/iraqs-courts-arent-recognising-crimes-against-yazidis>.

- Alda Benjamin, 'Justice and Humanitarian Support for Yazidi Survivors' (*Harvard Human Rights Journal*, 12 December 2017) <https://journals.law.harvard.edu/hrj/2017/12/justice-and-humanitarian-support-for-yezidi-survivors/>.
- Sabel Coles and Ned Parker, 'How Saddam's Men Help Islamic State Rule' (*Reuters Investigates*, 2015) <https://www.reuters.com/investigates/special-report/mideast-crisis-iraq-islamicstate/>.
- Leila Fadel, 'For Yazidi Women, Escaping ISIS Doesn't Mean the Ordeal Is Over' (*NPR*, 2014) <https://www.npr.org/sections/parallels/2014/12/10/369636434/for-yazidi-women-escaping-isis-doesnt-mean-the-ordeal-is-over>.
- Federal Foreign Office (Germany), 'Germany Welcomes Verdict against IS Terrorist for Crimes against Yazidis' (2021) <https://www.auswaertiges-amt.de/en/newsroom/news/2675878-2675878>.
- Hawre Ahmed, 'UNITAD's Unfulfilled Goals for ISIS Accountability in Iraq' (*Justice Info*, 19 November 2024) <https://www.justiceinfo.net/en/138442-unitad-unfulfilled-goals-isis-accountability-iraq.html>.
- Al Jazeera, 'Iraq Criminalises Same-Sex Relationships with Maximum 15 Years in Prison' (*Al Jazeera*, 27 April 2024) <https://www.aljazeera.com/news/2024/4/27/iraq-criminalises-same-sex-relationships-with-maximum-15-years-in-prison>.
- Spencer Ackerman, 'Iraqi Militias Target Gay Men in Campaign of Systematic Murders' (*The Guardian*, 19 November 2014) <https://www.theguardian.com/world/2014/nov/19/militia-lgbt-iraq-report-gay-lesbian-persecution>.

- Western University, ‘Professor Helping Provide New Path to Gender Justice in Sierra Leone’ (*Western News*, 2018) <https://news.westernu.ca/2018/04/professor-helping-provide-new-path-gender-justice-sierra-leone/>.
 - Zahra Fatima, ‘Yazidi Woman Rescued from Gaza after Decade in Captivity’ (*BBC News*, 2024) <https://www.bbc.com/news/articles/cpw5v077nyjo>.
-

Other Online Sources / Academic Blogs & Policy

- Chelsea Wallis, ‘Contemporary Feminist Jurisprudence’ (*Oxford Law Faculty, The Law That Shapes Us*, 2 March 2023) <https://www.law.ox.ac.uk/content/article/law-shapes-us-contemporary-feminist-jurisprudence>.
- Michael Brown, ‘How to Effectively Conduct an Expert Interview’ (*GLG Insights*, 2025) <https://glginsights.com/articles/how-to-effectively-interview-a-subject-matter-expert/>.
- Bella Williams, ‘Limitations of Purposive Sampling in Research’ (*Insight7*, 2024) <https://insight7.io/limitations-of-purposive-sampling-in-research/>.
- Tegan George, ‘Semi-Structured Interview | Definition, Guide & Examples’ (*Scribbr*, 2022) <https://www.scribbr.co.uk/research-methods/semi-structured-interviews/>.
- 3CR, ‘Tips for Conducting Interviews about Sensitive Topics’ (*Commons Library*, 2022) <https://commonslibrary.org/tips-for-conducting-interviews-about-sensitive-topics/>.
- Anna Zimmermann, ‘Co-Opting Universal Jurisdiction: A Gendered Critique of the Prosecutorial Strategy of the German Federal Public Prosecutor in Response to the Return of Female ISIL Members, Part I’ (*Opinio Juris*, 7 March 2019) <https://opiniojuris.org/2019/03/07/co-opting-universal-jurisdiction-a-gendered->

critique-of-the-prosecutorial-strategy-of-the-german-federal-public-prosecutor-in-response-to-the-return-of-female-isil-members-part-i/.

Primary Data (Interviews)

- Thomas Carter, Original Interview, Appendix 1.
- Nella Maria, Original Interview, Appendix 2.
- Catherine E Van Kampen, Original Interview, Appendix 3.
- Jenna Rasmussen, Original Interview, Appendix 4.