

Lund University  
Department of Political Science  
Peace and Conflict Studies

FKVK02  
Spring 2024  
Supervisor: Pinar Dinc

# Inclusionary Justice for the Yazidi:

*A Social Justice Approach to the Inequalities Before, During, and  
After the Yazidi Genocide of 2014-2017 in Sinjar, Iraq*

Nike Andersson

# Abstract

ISIS committed mass atrocities against the Yazidis (Kurdish: Êzîdîs) in Sinjar (Kurdish: Şingal), Iraq, in 2014-2017. Several international and regional observers have qualified the acts as genocide under international law. Yet the numerous social, cultural, and political preconditions of the genocide are not recognized in the 1948 Genocide Convention. To answer the line of question, Susan Opatow's Social Justice Theory has been adopted along with conducting a critical discourse analysis on the Iraqi Penal Code (IPC), the Yazidi Survivors Law, and a Status of Sinjar Report 2023 from Nadia's Initiative. This paper aims to critically examine the Yazidis' exclusion from the scope of justice before, during and after the genocide. This approach challenges the narration that genocide is a solely criminal matter, where justice is reduced to criminal responsibility. Together, the legal texts and the report present a comprehensive picture of historical internal oppression, and broad needs according to Yazidis residing in Sinjar. The study suggests that the Genocide Convention, the IPC, and the Yazidi Survivors Law legitimizes an exclusionary justice. A social justice approach recognizes the root causes of the marginalization – and, crucially, the inclusion of Yazidis as a way to achieve justice.

*Keywords:* Iraq, Yazidi, genocide, social justice, moral exclusion

*Word count:* 9671

# Table of Contents

<b>1 Introduction.....</b>	<b>1</b>
1.1 Contextual background .....	1
1.2 Purpose and research question .....	2
<b>2 Previous Scholarship .....</b>	<b>4</b>
2.1 The concept of Genocide.....	4
2.2 The Yazidi genocide in 2014-2017 .....	5
2.3 Social justice within Genocide Studies .....	6
<b>3 Theoretical framework.....</b>	<b>8</b>
3.1 A theory of Social Justice.....	8
3.2 Operationalization of Opatow’s theory .....	9
3.3 Important concepts and definitions .....	10
<b>4 Research design.....</b>	<b>12</b>
4.1 Empirical case .....	12
4.2 Method .....	12
4.3 Data and Material .....	13
<b>5 Findings and analysis .....</b>	<b>15</b>
5.1 Discourse analysis: domestic efforts for justice .....	15
5.1.1 Iraq: Penal Code .....	15
5.1.2 Yazidi Survivors Law.....	16
5.1.3 Rebuilding Amid the Ruins: Status of Sinjar Report 2023 .....	18
5.2 Interpreting the case through Opatow’s theory .....	20
5.3 Summary .....	24
<b>6 Discussion .....</b>	<b>26</b>
<b>7 Conclusion .....</b>	<b>28</b>
<b>8 Bibliography .....</b>	<b>30</b>

# 1 Introduction

## 1.1 Contextual background

Social injustice in the Yazidi (Kurdish: Êzîdî) community in Sinjar (Kurdish: Şingal), Iraq, stands out for numerous reasons. Many attempts to define their ethnic identity have been politically motivated, and structural violence is rooted in the denial of their rights as a distinct ethno-religious minority. The Yazidi people have historically been subject to sharp persecution, and state actions of forced displacement and destruction of their villages. These conditions have facilitated discrimination through the absence of guardianship, where there is no authority present to ensure their security or to interdict or punish the commission of crimes (Moradi & Anderson, 2016: 122).

On August 3rd in 2014, the Islamic State of Iraq and Syria (ISIS, or *Daesh*) attacked Iraq's Nineveh Governorate and conquered the region of Sinjar (Akhavan et.al., 2020: 2). Sinjar is one of several regions of the Nineveh Governorate in northern Iraq and home to a large Kurdish-speaking Yazidi population, and various other religious minorities migrating and retreating on the Sinjar mountains (Schmidinger, 2020: 220). When ISIS attacked, more than 250,000 Yazidis were forced to abandon their homes to flee (UN Habitat, 2015: 4), and more than 50,000 could only flee to seek refuge on the sacred Mount Sinjar (Schmidinger, 2020: 216).

Allegations of genocide were accompanied by ever-louder calls for accountability, with the International Criminal Court (ICC) as a chosen forum. Yet, the justice promised to the survivors has proven elusive and remains circumscribed at best. Trials before the ICC have been largely abandoned due to political and legal constraints, and the national courts of Iraq have no legislation in place to incorporate international crimes into domestic law. Prosecutions under anti-terror laws have been initiated against thousands of ISIS detainees in Iraq and Kurdistan, however, efforts in Iraqi courts have more closely resembled revenge than a proper reckoning for the survivors (Akhavan et.al., 2020: 3-4, 39). The Yazidi Survivors Law was legislated in 2021 and was initially regarded as ground-breaking in many respects, particularly

for recognizing the genocide (Amnesty International, 2023). Still, a whole community is dealing with protracted displacement, deep rooted distress, and many lack resources to meet basic needs (Nadia's Initiative, 2023: 13). Little has happened to ensure that their religious identities are preserved in the region, and it begs the question if only institutional punitive justice is an appropriate response to address the inequalities of the genocide.

## 1.2 Purpose and research question

It is puzzling to me that the genocide of the Yazidi community in Sinjar, Iraq, was not prevented, they were not protected by either local authorities or the international community, despite being persecuted for centuries. As of the annual *Status of Sinjar Report 2023* (Nadia's Initiative), the struggle for social justice continues for the Yazidi community after the genocide that took place in 2014-2017. The continued plight of the Yazidis who survived is yet to be fully addressed.

For that reason, I am interested in understanding social justice as integral to the Yazidi genocide, and in the broad context of genocide. Social justice is rarely explicitly in the center of discussion as a way to address justice in the context of genocide, even though social injustice can be understood as a root cause of violence (Zimmerer, 2008: 185). It is therefore necessary to expand our understanding of justice beyond the judicial approach because the purpose of criminal law is to define individuals' responsibilities for their actions, but it does not address the political and social issues that frames genocide (Shaw, 2013: 26). This is not to say that no one should be held responsible for the violence. Rather, criminal acts of mass violence involve politics that devises, supports, and conceals human rights abuses – suggesting that sometimes there is a political and social problem that needs to be addressed precedent to or alongside criminal responsibility (Mamdani, 2013). Moreover, the implications of judicial justice when constituted under limitations in the legal framework is that it may not produce justice that is sustainable to victim's groups, which is arguably the case in Iraq (Van Schaak, 2018: 117). That should further draw our attention to a wider study of justice in the context of genocide, as expanding our view on the scope of justice widens the applicability of justice.

Judicial measures for justice are failing to address the structural inequalities experienced by the Yazidi community before, during and after the genocide. Therefore, I would like to make a case for a Social Justice approach to justice within Genocide Studies. The aim of this paper is to answer the following question:

*How can a Social Justice approach understand current and historical inequalities of the Yazidi genocide in Sinjar 2014-2017, and how does it challenge current perceptions of justice framed by dominant legal discourse on genocide?*

I seek to add to the understanding of the inequalities of the Yazidi genocide by approaching the question of justice as an issue of social injustice, both before, during and after it took place. This paper aims to challenge the dominant discursive construction of what justice is for genocide victims according to the Genocide Convention (1948), because that is one of the practices that shapes an exclusionary scope of justice. Though, importantly, none of this should be read as undermining any attempt to achieve justice.

## 2 Previous Scholarship

### 2.1 The concept of Genocide

Existing literature within the field of Holocaust and Genocide Studies debate the conceptualization of genocide. A significant number of researchers follow the UN definition of the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948). However, many scholars are still struggling to find an acceptable definition for genocide (Feierstein, 2011: 259-260). Significantly, nearly all of these scholarly definitions take Article II of the 1948 Genocide Convention as their starting point:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

Dirk A. Moses questions whether the house of international criminal law was built on “shaky conceptual foundations” as coined by Raphael Lemkin, following the programs of mass murder carried out by the Nazis during World War II (Moses, 2021: 13-14, 27). The UN definition of genocide is intrinsically linked to the Holocaust, which implicates mass violence but excludes any political motivations of persecution and irrational race hatred. By defining genocide as “acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group” (1948), the concept is depoliticized because it defines murderous attacks on people “solely on the basis of their hated group membership: merely for who they are” (2021: 17). This means that politically rather than racially defined victims are not protected by the Convention. In his words, “the social fact of racial or religious difference or even

prejudice does not cause genocidal violence” (2021: 42), because people have multiple, layered identities. It ignores the dynamic that religious difference only becomes a public, political identity in particular circumstances. Moreover, the institutionalization of Lemkin’s concept also implies that non-governmental organizations (NGOs), the UN, and states have correctly identified the “illness” and devised a “remedy” (Moses, 2021: 4, 12, 19, 26-27, 46).

Much like Moses, Martin Shaw finds that the “remedy” has become criminal justice which is dependent on “the convention’s emphasis on acts committed with ‘intent’ to destroy a group, is entirely understandable from the point of view of criminal law whose purpose is to define individuals’ responsibilities for their actions” (Shaw, 2013: 25). As Daniel Feierstein has pointed out, “legal definitions tend to be narrowly focused, rooted in specific historical contexts, and difficult to modify. Law requires unambiguous categories as well as clear and convincing evidence to reach a judgment of guilty or not guilty” (Feierstein, 2014: 13). This model of justice and of genocide ignores systemic causes and therefore has serious consequences for how genocide is understood and the means by which to prevent it, argues Jürgen Zimmerer (2014).

## 2.2 The Yazidi genocide in 2014-2017

The Yazidi genocide in 2014-2017 has previously been discussed in its historical context. Fazil Moradi and Kjell Anderson brings forth many of the exclusionary processes that led to the genocide. First, in early modern history (circa a.d. 1500 to 1800), Yazidis were subjected to massacre, displacement and forced conversion. At that time, the expanding Ottoman Empire defined Yazidis as renegades (Arabic: *murtadd*, ‘one who turns away’) and unfairly “devil worshippers” because of a misunderstanding of Yazidi theology and the blend of various belief systems known as syncretism. Thus, they had to either eliminate or convert the Yazidi to Islam (Moradi & Anderson, 2016: 122; UN Habitat, 2015: 5). Secondly, the United Nations Human Settlements Programme (UN-Habitat) discusses the Yazidi genocide in the context of emerging land tenure issues among displaced Yazidi people from Sinjar. Having lived through Ba’athist rule in Iraq during the policy of Arabization in the 1970s – a process aimed to increase the prominence of Sunni Muslims through ethnic “dilution” of Yazidis – forced almost 100,000 Yazidis to migrate away from their ancestral mountain villages on Mount Sinjar and register as Arabs, despite their objections. The Yazidi were to live in “collectives” where they were deliberately not kept together according to their tribal affiliations, an otherwise integral part of Yazidism (UN Habitat, 2015: 5; Nadia’s Initiative, 2023: 19). This compulsory displacement



campaign of the Yazidi people from the Nineveh Governorate also includes Saddam Hussein's genocidal Anfal campaign, and the repression against the Kurdish people during the 1980s (Akhavan et.al., 2020: 41).

In 2014, ISIS targeted the Yazidi community for annihilation, committing atrocities by brutal incursion and occupation. The militants exterminated thousands of men, teenage boys and some women who were deemed past childbearing age. Younger boys were spared – only to be indoctrinated and forced to fight for ISIS. Yazidi women and girls were kidnapped, abused, trafficked, and forced into a life of sexual enslavement and violence. ISIS glorified these acts of unconscionable cruelty as a necessary religious purification in pursuit of a utopian Caliphate – acts that the June 2016 Report of the UN commission of Inquiry on the Syrian Arab Republic and several other regional and international observers have qualified as genocide under international law (OHCHR, 2016; Akhavan et.al., 2020: 3, 10). While the north of Mount Sinjar was liberated by the end of 2014, the city of Sinjar was not liberated until November 2015. ISIS controlled Yazidi villages south of the city of Sinjar until May 2017 (Schmidinger, 2020: 217).

ISIS is exhaustively discussed in literature as actors of extreme terror violence. Janaby and Alfatlawi (2021) argues that their brutal campaign in Iraq and Syria happened due to the political and social instability brought about by the prolonged period of armed conflict and sectarian violence following the American invasion and occupation of Iraq in 2003-2011. The outbreak of civil war in Syria that followed thereafter created conditions wherein ISIS were able to rapidly seize territory in Iraq and Syria (Janaby & Alfatlawi, 2021: 1105-1106). ISIS attacks in Northern Syria and Iraq during the Syrian civil war have also been discussed as a humanitarian and refugee crisis by Ceri et.al. (2016), and as forced migration and displacement in IDP camps in Kurdistan by Schmidinger (2020), a situation exacerbated by the drought and sectarian violence in the region (UN-Habitat, 2015).

## 2.3 Social justice within Genocide Studies

Much scholarship on Justice within Genocide Studies have mainly examined the forms that justice takes; a holistic restorative conception of justice as brought forth by Akhavan, Ashraph, Barzani and Matyas (2020); or domestic prosecutorial efforts for justice that has proven to be elusive due to limitations in Iraq's legal frameworks, as brought forth by Beth Van Schaack (2018). Though a variation in the applicability of justice has been observed in literature, less

commonly examined is whether justice is applied equally to different social groups. However, Susan Opatow's seminal research particularly theorizes factors that modify the scope of justice and asks: What social psychological contexts shrink or widen the scope of justice? To examine this, she has theorized *moral exclusion* as a construct with a range of manifestations, as well as the relevance of the *scope of justice*. Her work describes the limits on the applicability of justice. Opatow's previous research includes, but is not limited to, examining past exclusionary processes that led to the Holocaust. She suggests the importance of individuals, governmental agencies, the political system as a whole, and the larger society in supporting genocide as social policy (Opatow, 2011: 206-207, 214). James A. Tyner's book, *The Killing of Cambodia: Geography, Genocide and the Unmaking of Space* (2008) is a scholarly contribution on exclusionary attitudes among perpetrators of genocide in Cambodia, building on Opatow's construct of moral exclusion. Asking questions such as: Who is to be included, or excluded from, the desired society? What is the most effective way of achieving the desired society? (i.e., relocation or the elimination through death of people) (Tyner, 2008: 15).

Within existing scholarship, it is more common to find a body of literature focusing on retributive, transitional, distributive, or restorative justice rather than social justice as an approach to genocide. Particularly for the Yazidi genocide of 2014. However, Jürgen Zimmerer called for a global Social Justice approach to the prevention of genocide in 2008, suggesting the need to look at the preconditions of genocide and in particular the social ones. Social and economic inequality is regarded as a major root cause for violence, meaning that effectively addressing social injustice would be a means of preventing genocide. Particularly as these inequalities destabilize social communities and increase the likelihood of war and intra-societal fights for wealth distribution and resources (Zimmerer, 2008: 184-186). Mahmood Mamdani explores the intersection between politics and culture, the history and theory of human rights, and the politics of knowledge production. In *The Logic of Nuremberg* (2013), Mamdani accounts for how mass violence is not just a criminal matter as it involves political repercussions. Mamdani signals that a judicial solution for what is also, fundamentally, a political problem, does not address the social and political problem that frames the crime.

Nevertheless, there have been calls for a social justice approach to genocide prevention, and there have been calls for re-evaluating genocide as a concept because it affects measures for prevention and justice. There seems to remain research to be done to make a more holistic call for a Social Justice approach to Genocide Studies and in turn acknowledging and addressing systemic causes and inequalities of genocide. By focusing on social justice for the Yazidi genocide of 2014, this paper will try to examine the possibilities of such an approach.

## 3 Theoretical framework

### 3.1 A theory of Social Justice

Based on the literature review, my research builds on the theoretical framework of social psychologist and justice researcher Susan Opatow's *Social Justice Theory*. As a psychological construct, *justice* encompasses attitudes, morals, and values that underlie people's beliefs about others' deserving, rights, entitlement, responsibilities, and obligations. Opatow's three psychological models of justice are distributive, procedural, and exclusionary/inclusionary justice – in which the latter will be the framework of focus for this study. Merely because distributive and procedural justice can seem irrelevant when others are already seen as outside the scope of justice, therefore moral exclusion remains the key tool in trying to understand the inequalities of the Yazidi genocide (Opatow, 2016: 42-43).

Within the theoretical framework, the *scope of justice* and two related constructs, *moral exclusion* and *moral inclusion*, direct our attention to the fundamental justice questions of who is entitled to fairness and for whom such considerations are irrelevant. Exclusion from the scope of justice (*moral exclusion*) emerges from attitudes, conventions, and norms that influence who we see as having moral import. That, in turn, influences how we perceive, think about, and behave toward others (Opatow, 2016: 44). Gender, ethnicity, religious identity, age, sexual orientation, and political affiliation are some criteria used to define moral exclusion (Opatow, 2001: 3). Those who are morally excluded can be vulnerable to harm or exploitation that is rationalized as the way things are, the way they ought to be, and as just (Opatow, 2016: 44). Many social issues are essentially moral debates about who deserves public resources, and thus, ultimately, about moral inclusion. When we see others' circumstances as a result of structural violence, moral exclusion seems unwarranted and unjust (Opatow, 2001: 3-4). Thus, Moral exclusion can become an influential dynamic in socio-political contexts characterized by power inequalities (Opatow, 2016: 45).

As opposed to moral exclusion, an empirically-derived Scope of Justice Scale identifies three attitudes consistent with including others within one's scope of justice (*moral inclusion*):

(1) believing that considerations of fairness apply to them; (2) being willing to allocate a share of community resources to them; and (3) being willing to help them, including making sacrifices to foster their well-being (Opatow, 2016: 44).

### 3.2 Operationalization of Opatow’s theory

*Morals* are the norms, rights, entitlements, obligations, responsibilities, and duties that shape our sense of justice by identifying what we owe to whom; whose needs, views, and well-being count, and whose do not (Opatow, 2001: 3). The construct of moral exclusion will be the basis of my application of Opatow’s framework for fostering inclusion and social justice. This construct will be operationalized mainly through a study of exclusionary attitudes and definitions in legal texts and Nadia’s Initiative’s report (Opatow et.al., 2005: 306-307). The structure of the analysis is formed around Opatow’s Table 1 and Table 2 (see below). Table 1 presents the conceptualization and operationalization of the forms of moral exclusion; Table 2 presents the conceptualization and operationalization of symptoms of moral exclusion.

**Table 1**  
**Forms of Moral Exclusion**

Extent of Moral Exclusion	Manifestations of Moral Exclusion	
	Subtle	Blatant
Narrow	Rudeness, intimidation, and derogation (e.g., bullying and sexual harassment)	Persecution and violence directed at particular individuals or groups (e.g., hate crimes, witch hunts)
Wide	Oppression and structural violence (e.g., racism, sweatshops, poverty, domestic violence)	Direct violence and violations of human rights (e.g., ethnic cleansing, mass murder, inquisitions)

*Note.* Adapted from Opatow, 2001.

(Opatow et.al., 2005: 306)

**Table 2**  
**Symptoms of Moral Exclusion**

Symptom	Description
Double standards	Having different norms for different groups
Concealing effects of harmful outcomes	Disregarding, ignoring, distorting, or minimizing injurious outcomes that others experience
Reducing moral standards	Asserting that one's harmful behavior is proper while denying one's lesser concern for others
Utilizing euphemisms	Masking and sanitizing harmful behavior and outcomes
Biased evaluation of groups	Making unflattering between-group comparisons that bolster one's own group at the expense of others
Contdescension and derogation	Regarding others with disdain
Dehumanization	Denying others' rights, entitlements, humanity, and dignity
Fear of contamination	Perceiving contact or alliances with other stakeholders as posing a threat to oneself
Normalization and glorification of violence	Glorifying and normalizing violence; viewing violence as an effective, legitimate, or even sublime form of human behavior while denying the potential of violence to damage people, the environment, relationships, and constructive conflict resolution processes
Victim blaming	Placing blame on those who are harmed
Deindividuation	Believing one's contribution to social problems is undetectable
Diffusing responsibility	Denying personal responsibility for harms by seeing them as the result of collective rather than individual decisions and actions
Displacing responsibility	Identifying others, such as subordinates or supervisors, as responsible for harms inflicted on victims

*Note.* Adapted from Opatow, 1990 and Opatow & Weiss, 2000.

(Opatow et.al., 2005: 307)

### 3.3 Important concepts and definitions

In this paper, the concept of *genocide* is understood in line with Jürgen Zimmerer's conceptualization, as a "crime aimed at a social collective defined by the perpetrator". Genocide is intrinsically linked to the problem of identity in which the victim and the perpetrator group are constructed in a reciprocal process of "othering" in which "hybridity, ambiguity and multiple identities are substituted by unambiguousness identities: contact and communication by separation, and communication by expulsion or murder". Accordingly, expulsion is here included as "a form of genocide since it most often leads to the destruction – physical or cultural – of the expelled group and can thus be seen as genocidal". Exclusions do not happen indiscriminately. Cultural, religious, or regional differences as well as ideology, traditions of inclusion and exclusion, and histories of violence are exploited (Zimmerer, 2014: 273, 275).

*Social Justice* is defined as the intention to create a fair and equal society in which each individual matters, their rights are recognized and protected, and decisions are made in ways that are fair and honest (Opatow, 2016: 41). *Social injustice* is understood as the ordinarily invisible harms that are inflicted but not seen in social relations, and the rationalizations and justifications that support them (Opatow, 2001: 1).

Opatow's theoretical framework lies in the intersection between violence and injustice. We can talk about what makes social injustices wrong, but at the same time we should not neglect the violence of social injustices. Thus, a proper understanding of violence is necessary to understand the injustices of genocide. *Violence* is understood in line with Johan Galtung's conceptualizations of physical (direct) violence, structural violence, and cultural violence. *Physical (direct) violence* is concrete, immediate, and physical violence as "human beings are hurt somatically, to the point of killing", committed by and on particular and identifiable people (Galtung, 1969: 169). *Structural violence* is "built into the structure and shows up as unequal power and consequently as unequal life chances" (Galtung, 1969: 171). This violence is imperceptible and determines whose voice is systemically heard or ignored, who gets particular resources, and who goes without. This type of violence normalizes unequal access to social and economic resources such as education, wealth, quality housing, civic services, and political power (Opatow, 2001: 2). *Cultural violence* is by definition "those aspects of culture, the symbolic sphere of our existence - exemplified by religion and ideology, language and art, empirical science and formal science (logic, mathematics) - that can be used to justify or legitimize direct or structural violence" (Galtung, 1990: 291).

## 4 Research design

### 4.1 Empirical case

I will be doing a qualitative single-N case study on the genocide of the Yazidi community in Sinjar between 2014-2017, as it is a site of social injustice. Much of the motivation behind selecting a single-N case study design was its advantage of allowing for an extensive examination of how genocide has been framed and justice has been addressed for the Yazidis. An extensive examination of the case also enables for my research to possibly try and say something about how social justice has an impact on sustainable genocide prevention in the broad context of genocide (Halperin & Heath, 2020: 234).

### 4.2 Method

To answer my research question, the chosen methodology will be to conduct a *critical discourse analysis* (CDA) on texts, predominantly legal texts, for the empirical basis – with the aim of showing how this discourse can account for the inequalities of the Yazidi in Sinjar. CDA is an approach that assumes discursive power – control over a discourse – is a crucial constituent of social power and a major means of reproducing dominance and hegemony. This method seeks to expose connections between language, power, and ideology. It can be done through examining social power abuse, dominance and inequality in the connections between language, power and ideology in selected legal frameworks currently designed to address justice for the Yazidis (Halperin & Heath, 2020: 368, 386).

The main advantages of the chosen method for this paper revolves around its promise for understanding both the theory and the empirical case. CDA speaks to the chosen theoretical framework as exclusionary conventions, norms and definitions are at the forefront of the analysis. Particularly as judgements directed toward genocide lie in a realm of moral discourse and is a product of the political. The aim is therefore to challenge those discourses that promote,

facilitate, and legitimize an exclusionary scope of justice for victims, because discourses restrict what is or is not to be included. Whether it is to make policy, or to make judgements pertaining to particular actions of addressing justice, in the context of mass atrocities committed against civilians (Tyner, 2008: 9, 14-15).

I do need to be careful of my own positionality as a researcher when conducting my discourse analysis due to its constructive and interpretive nature. I must demonstrate a careful reading of the texts and provide an interpretation that is clearly related to the textual evidence (Halperin & Heath, 2020: 373). As an outsider's scholarly perspective differs from that of a victim and a survivor, I must not reinterpret the Yazidis' narration of justice according to my own ideas of how such atrocities should be interpreted to fit into a certain discourse. I must also avoid not to simplistically attribute social relations, political and military struggles, and crimes, to a religious confession. I must seriously respect how survivors and victims of genocide interpret their suffering and express their needs.

### 4.3 Data and Material

To answer my research question, I will be doing a secondary data analysis on predominantly legal texts by highlighting exclusionary attitudes, norms, and definitions. My focus will be to use the Genocide Convention (1948) as the main legal framework; and consequently, how it speaks to domestic efforts for justice and local-level quests for justice. This includes looking at the Iraqi Penal Code (IPC), the Yazidi Survivors Law, and an annual Status Report of needs according to Yazidis residing in Sinjar (2023) from Nadia's Initiative. The reasoning behind these frameworks and the report is to look at how two dimensions speak to each other: Yazidi people's broad perceptions of justice versus how they are provided for by institutional punitive justice. The aim is to try and empirically show what measures for justice are aimed at addressing the political and social dimension of the crime, given the scope of these frameworks. A broader period is of interest for the study in order to place the genocide in a historical context, circa a.d. 1500 to 2023 (in accordance with the date of the report).

Supplementary to the analysis of the legal frameworks will be an annual report, *Rebuilding Amid the Ruins: Status of Sinjar Report 2023* which is supported and developed by *Nadia's Initiative* and produced in collaboration with the Georgetown Institute for Women, Peace, and Security (GIWPS). *Nadia's Initiative* is an international nonprofit NGO founded by Nobel Peace Prize laureate recipient Nadia Murad, who has emerged as a spokesperson for the



Yazidi cause. Murad is one of the women who survived ISIS atrocities against Yazidis in Sinjar and has since donated her Nobel Peace Prize winnings of \$500,000 to support Nadia's Initiative (McLaughlin, 2018). Initially I was skeptical of the objectivity and credibility of using material founded and supported by one well-known voice, seeing as there can be a platitude of interests and differences within a community, although upon further research it was not as problematic as it may appear. The initiative is focusing on the sustainable and community-driven re-development of the Yazidi homeland in Sinjar, with continued investments from supporters and in partnership with INGOs, NGOs, Civil Society Organizations, and governments, including the Ministry for Foreign Affairs Sweden. These partnerships are enabling provision of services to those most in need. The 2023 status report builds upon interviews, surveys, and focus group discussions spanning from February 2021 to August 2022. The report focuses on multiple aid sectors including restoration of education, healthcare, livelihoods, WASH (Water, Sanitation, and Hygiene), culture, and women's empowerment in the region (Nadia's Initiative, 2023: 2, 20-22). However, beyond the well-known voice of Nadia Murad, the report will be combined with data from the paper *What Justice for the Yazidi Genocide?: Voices from Below* (Akhavan et al., 2020) which foregrounds in-depth interviews with Yazidi survivors' perceptions of justice after the genocide. I am aware that these may not account for the entire population in northern Iraq – but together they do offer qualitative insights on the broader problems and living conditions of several Yazidis residing in Sinjar.

# 5 Findings and analysis

## 5.1 Discourse analysis: domestic efforts for justice

As mentioned in section 2.1, the conceptualization and institutionalization of genocide in the 1948 Genocide Convention holds discursive power over the understanding and response to the crime. To gain a more nuanced understanding of justice and the victim's interests and the reality of local constraints, the following section focuses on three sites of justice in Iraq: the Iraqi Penal Code, the Yazidi Survivors Law, and Rebuilding Amid the Ruins: Status of Sinjar Report 2023. The purpose of this section is to examine the narration of genocide as only a criminal matter against the narration of needs according to Yazidis residing in Sinjar – contextualized by certain limitations in Iraq's legal framework.

### 5.1.1 Iraq: Penal Code

*Black's Law Dictionary* defines *penal code* as “a compiled list that describes and defines all the offenses, as well as the law which can be applied and the punishment that can be given” (2013). The Iraqi Penal Code (No. 111 of 1969) is made up of 506 Articles and does not incorporate international crimes, which include genocide, war crimes, and crimes against humanity (Van Schaak, 2018: 118). Prosecutors could charge much of the harm to the Yazidi people under ordinary criminal law, for example Article 423 of the Code states that: “Any person who himself or through another kidnaps a woman over the age of 18 with the use of force or deception is punishable by a death sentence. If the kidnapping is accompanied by any sexual intercourse with the victim or an attempt to have intercourse with her, the penalty will be death”. Such charges may, however, not respond to the fact that they have been victims of genocide and other international crimes committed by ISIS – it precludes broader accountability. For that reason, it appears impossible to provide criminal justice for all violations committed against every survivor. Yet, the Government of Iraq is persistent in pursuing domestic criminal proceedings, even though procedural justice can seem irrelevant when the Yazidi are seen as outside the

scope of justice. Adopting procedural justice as a response to the genocide enables them to maintain sovereignty and retain jurisdiction over the question of justice (Van Schaak, 2018: 115).

Despite all atrocity crimes committed by members of ISIS, and despite the resounding and unrelenting calls for justice for these crimes, many elements of the international community have not supported such efforts even though they would “ordinarily be advocates for such efforts” (Van Schaak, 2018: 116). Capital punishment is widely mentioned as part of the Code; Article 25 of the Code states: “A felony is an offense punishable by one of the following penalties: (1) Death; (2) Life imprisonment; (3) 5 to 15 years imprisonment”. Furthermore, the eight primary penalties of the Code include Article 85(1) “Death penalty”; and Article 86 of the Code states: “The death penalty is the hanging of the condemned person by the neck until he is dead”. The continued availability and the government’s insistence on employing the death penalty in any ISIS trial has arguably prevented many abolitionist states within the international community from fully backing efforts to bring members of ISIS to justice under Iraqi law. The death penalty complicates the provision of international assistance to domestic judicial proceedings (Van Schaak, 2018: 135). Arguably, international justice under the current political conditions of the IPC has created impunity for international crimes.

The narration of justice according to the IPC tells us that the response to the crime of genocide is non-existent under that current legal framework, and therefore excludes the Yazidi survivors from the scope of justice. Yet, the government of Iraq is still persistent in pursuing a criminal response to the mass violence. As long as justice is dealt with procedurally there seems to be a political advantage, meaning, the circumstance of the crime can be relegated to history without the need to confront underlying issues such as which sectors of society benefited from genocide and the unequal distribution of power (Feierstein, 2014: 17).

### 5.1.2 Yazidi Survivors Law

Although the issue of justice for the Yazidi people on a national level is predominantly aimed at efforts for criminal justice, the *Iraq Law No.8 of 2021: Yazidi Female Survivors Law* was legislated by the Government of Iraq in March 2021. The reasoning behind the adoption of the Yazidi Survivors Law are cited in the Law as being: “the crimes that were committed by Da’esh against the Yazidis....are considered as a genocide and crimes against humanity....because of the physical, mental, social, and financial damage to all of the victims, especially women and children....to process and fix the harm and damage....for giving the needed rights for the female

survivors and the ones who are included in this law....and reintegration into society and as compensation for harm and....for what happened to them and female survivors especially” (2021). The law has been regarded as ground-breaking in many respects as it explicitly recognized genocide against the Yazidis (Amnesty International, 2023). It allows survivors to apply for compensation in the form of a monthly salary, and includes provisions for a plot of land, continued education, employment, and the search for those who remain missing (Human Rights Watch, 2023a). The Law crucially includes addressing the Yazidis’ socioeconomic and psychological needs as a result of the crimes committed by ISIS.

Article 2 of the Law states that those who are included to reparations are: “(1) Every female Yazidi survivor that was kidnapped by the Daesh group and freed after that; (2) The women and girls from the Turkmen, Christianity, and Shabaky ethnicities who faced the same crimes that were mentioned in paragraph (1) of this article; (3) The Yazidi children survivors who were under 18 years old at the time of the kidnapping; (4) The Yazidi, Turkmen, Christian, and Shabak survivors from the killing operations and the mass killing that Daesh did in their places (2021)”.

Bearing this in mind, it is possible to consider the Yazidi Survivors Law as an attitude of the state of Iraq to include Yazidi people – those covered by the law – within their scope of justice (*moral inclusion*), by believing that considerations of fairness apply to them. Both by allocating a share of community resources to them and being willing to help the Yazidi survivors. For the Yazidi interviewees involved in a study conducted by Akhavan et.al. (2020) in 2016, justice touched specifically upon “remedying the uncertainties of what had happened to loved ones, being reunited with those still held in captivity, receiving financial support to overcome conflict-incurred debts and losses, retribution against those who had wronged them” (Akhavan et.al., 2020: 15). Thus, the law speaks to some of their perceptions of justice. Along the exclusionary and inclusionary continuum, partial inclusion can be part of a process in progress as inclusionary change is inevitably incomplete. Although inclusionary gains can be partial and deflect from deeper structural issues, gains can also be important resources no matter if they are grand or modest. *Small wins* can foster cross-group collaborations for social justice, informed by hopes and ideals attentive to the justice that has yet to be realized (Opatow, 2016: 53). Therefore, small wins such as the Yazidi Survivors Law can be a valuable resource for ensuing generations seeking to advance inclusionary change.

Inclusion may, however, also be tactical, partial, illusory, or *faux* (Opatow, 2016: 53). In an examination of the implementation of the Yazidi Survivors Law, Amnesty International together with several other experts and NGOs, including Nadia’s Initiative, found “serious

concerns regarding the recent imposition of an additional requirement for survivors to file a criminal complaint to be eligible for reparation” (2023). The undersigned organizations emphasize that it would be inconsistent with the nature of a non-judicial process to require survivors to file a criminal complaint to be eligible for reparation. This requirement risks overloading judicial mechanisms, it might not be in line with survivors’ agency to decide whether to bring their cases to the judicial forum, and can cause stigma and re-traumatisation and delay or even hinder access to adequate and effective reparation. Instead, state authorities can cross-check the credibility and reliability of survivors’ statements via State-held records, evidence collected by official bodies, or reports by experts and NGOs (Amnesty International, 2023).

Requiring survivors to file a criminal complaint in order to receive reparation is understandable from the point of view of criminal law whose purpose is to define individual’s responsibilities for their actions (Shaw, 2013: 25), although in turn, it implicitly reproduces an understanding of genocide as only being a criminal matter. It implicates that the “correct” response to genocide is criminal justice and consequently genocide is stripped of its historical and political context. The Yazidi Survivors Law narrates justice to be restorative and non-judicial, only for the implementation to become procedural, which shows an unwillingness to extend considerations of fairness to the Yazidis covered by the Law.

While the government of Iraq has publicly pledged to support the Yazidis, it has not committed the required resources to make the law operational. As of February 2023, the first group of 420 Yazidi women received financial compensation under the Yazidi Survivors Law, and although this is a positive and necessary step for those included in the Law towards addressing the committed crimes against, it only provides for the needs of a small fraction of the nearly 200,000 Sinjaris who remain displaced in camps since 2014 (Human Rights Watch, 2023b).

### 5.1.3 Rebuilding Amid the Ruins: Status of Sinjar Report 2023

The different ways of representing or narrating justice will produce different responses to the social practices of the Yazidi genocide. I will now examine an approach that questions to what extent judicial institutions can constrain and moderate the abuse of power in a structurally unequal context. The report, *Rebuilding Amid the Ruins: Status of Sinjar Report 2023* represents an overview of needs according to Yazidis residing in Sinjar after the genocide.

As of the release date of the report, eight years has passed since the onset of the genocide. However, the lingering effects of destruction and conflict, a tense political environment with growing local militias and other security threats, have left the region increasingly vulnerable to further conflict and violence. In the report, a 43-year-old woman from Sinjar is quoted saying, “we feel unstable and always ready to escape for our lives....if there was security here, we would feel safe....people are afraid not only in Sinjar, but in all of Iraq” (Nadia’s Initiative, 2023: 16, 17, 19).

Residents of Sinjar cite a variety of needs for re-establishing sustainable resettlement, including “cash support, building materials, and legal documentation to assert claims to their original homes” (2023: 26). When ISIS destroyed essential infrastructure in Sinjar, they caused considerable damage to roads, electrical sites, health facilities, schools, and other public services. Moreover, “the few effective water distribution systems that existed in Sinjar prior to the genocide have largely been destroyed” (2023: 33) and are yet to be re-instated by the Government of Iraq (Nadia’s Initiative, 2023: 26, 29, 31, 33). The report represents a reality bound up in a moral debate about the unequal distribution of resources, in turn not meeting their basic needs.

By destroying Sinjar’s agricultural lands, ISIS both decimated a significant source of income and severely limited Yazidis’ access to quality food. The report states, “families are experiencing devastatingly high unemployment rates, little access to income, and increasing poverty rates and food insecurity” (2023: 45). Consequently, displaced Yazidis are forced to remain in camps, while returnees continue to struggle to find ways to support themselves and are at risk of displacement from homes. In the aftermath of the genocide, “key documents, such as identification cards and birth certificates, have become important items needed for registering into displacement camps, accessing welfare-like support, and enrolling children in school” (2023: 54). However, many Yazidis left these documents behind during ISIS’ attacks and now struggle to successfully navigate Iraq’s bureaucratic system to access basic services. As mentioned, documentation of land ownership has historically been a challenging obstacle for Yazidis but has grown especially problematic in the aftermath of the genocide as families have been displaced and tried to reclaim their homes upon their return to Sinjar (Nadia’s Initiative, 2023: 45, 48, 54). This brings us to the key issue in this paper: if we believe that genocide is a product of irrational race hatred, or madness, existing outside any social frame of reference, it becomes a matter of controlling the bad through convictions. The inherent implications of depicting justice as such will produce different responses to the social practices involved in genocide: either empathy and ownership, or revulsion, alienation, and

dehumanization (Feierstein, 2014: 79, 84). The significance of the Report's narrative form is that it is different from the narrative forms of the Iraqi Penal Code and the Genocide Convention. The report tells us about a need for inclusion of the Yazidi in the scope of justice, and that a different – or additional – response to justice beyond criminal responsibility is arguably needed in order to account for the inequalities of the genocide. These will be further discussed in the next section.

## 5.2 Interpreting the case through Opatow's theory

The scope of justice is a construct that calls attention to naturalized injustice in social relations and in socio-political structures. Applied to the sphere of genocide, inclusionary justice is the commitment – backed by laws and actions – to remove barriers to participation, and ensure that communities who are underrepresented or otherwise excluded from meaningful participation in legal, economic, cultural, and social structures thrive and have their rights recognized and protected (Opatow, 2016: 41, 53). I will now utilize the Scope of Justice Scale as a lens to assess justice in the Yazidi genocide.

### *(1) Believing that considerations of fairness apply to them*

The Iraqi state has historically denied the Yazidi their rights as a distinct religious minority, thus normalizing a field of representation of “us/them” in Iraq that excludes the Yazidi people from considerations of fairness in the desired larger society. In the *Narrow extent* and *Blatant manifestation*, moral exclusion is evident by the longstanding persecution and historically forced relocation from their homeland Sinjar. The normalization of exclusion started as early as the beginning of modern history when the Ottoman Empire unfairly accused them of being “devil worshippers”. The inherent demonization of the Yazidis has served as a subtle instrument to avoid the presence of genocide and has been supported by a moral framework that casts violence directed at them as appropriate (Opatow, 2001b: 155).

Their moral exclusion continued under the Ba'athist rule in Iraq with the policy of Arabization in the 1970s, which aimed toward ethnic “dilution” by forcing collectivization in an effort to lessen the threat of them as enemies (real or perceived) to the Ba'ath Party's dominance in Iraq (UN Habitat, 2015: 6). In turn, separating almost 100,000 Yazidis from their tribal affiliations. It is a form of cultural violence wherein their ethno-religious identity has been

used to legitimize this type of structural violence, directed particularly at the Yazidis as a group – rooted in the denial of their rights as a distinct religious minority and historically manifested by the national political environment.

Moral exclusion is also shown in its *Wide extent* and *Subtle manifestation*, demonstrated by the oppression and structural violence of absent guardianship. The Kurdish military (known as the Peshmerga) withdrew as ISIS advanced into the Sinjar region in August 2014 (Akhavan et.al., 2020: 26), and there was no clear jurisdictional authority and security apparatus present to ensure their safety. Following the defeat of ISIS in 2017, a power vacuum reemerged that remains unresolved. As of 2020, over 10 different security actors are operating in the region and it has become heavily militarized, posing a danger to civilians in the near vicinity and increasing distrust and instability. The Yazidis have fallen through the jurisdictional cracks of several Iraqi administrations, and are left unprotected (Nadia's Initiative, 2023: 16, 18-20, 50). Those who are morally excluded from the scope of justice are particularly vulnerable to harm or exploitation – there is no authority present to ensure the Yazidis security in Sinjar, or to interdict or punish the crimes committed by ISIS. It could therefore be concluded that considerations of fairness are not applied to the Yazidis.

In the *Wide extent* and *Blatant manifestation*, moral exclusion is evident by the direct violence and violations of human rights committed by ISIS. Their operations were systematically constituted to destroy the foundations of life of the Yazidi religious group through mass murder, enslavement of women, children and young girls, unlawful imprisonment, forced conversion, forced marriage, forced pregnancy, mass rape, torture, expropriation of land and villages, confiscation of private property and livestock, destruction of holy sites, and transfer of children to ISIS authorities. As a result, around 350,000 Yazidis were displaced or forced to migrate to the Kurdistan Region (Moradi & Andersson, 2016: 126). This is the type of direct violence that has resulted from structural conditions such as denying their rights as a religious minority and the dehumanization that has followed – which is historically intertwined in their history full of social, political, cultural, territorial, and economic issues that have remained latent, unnoticed, and “normalized”. The normalization of violence as an effective, legitimate, or even sublime form of human behaviour towards the Yazidi people has historically, even prior to the genocide, been a *symptom* of moral exclusion.

*(2) Being willing to allocate a share of community resources to them*



There is an unwillingness to allocate national and regional resources to benefit the burdened Yazidi community, for example the state is not investing in the redevelopment of the Yazidi homeland Sinjar, thus inhibiting their safe return. It is a social issue turned into a moral debate about who deserves public resources, and ultimately about moral inclusion.

In the *Wide extent and Subtle manifestation*, moral exclusion is evident in the oppression and structural violence directed at the Yazidis in Sinjar. As mentioned, the immediate humanitarian concerns and the persistent underdevelopment and devastation left by ISIS has left the region increasingly vulnerable to further violence and conflict. It has hindered the restoration of dignity and permanent resettlement of the Yazidi population. Due to the several security actors operating in the region, aid is not diverted to Sinjar. Considerable damage to key sectors and public services require extensive support, yet remains unaddressed by the Government of Iraq due to the political and jurisdictional dispute over Sinjar.

Furthermore, Sinjar's education sector has historically been neglected by consecutive Iraqi administrations and today it ranks among the lowest in educational achievement across all Iraqi provinces. Although the Iraqi education system has struggled for decades due to ongoing conflict and violence, the situation in Sinjar after the genocide is particularly devastating. ISIS fighters used school buildings as military bases, which were then targeted in air strikes, teachers were forced to flee, and vast numbers of children remained out of school for prolonged periods of time. Since the violence abated, the Government of Iraq "has provided no funding or rehabilitation support to the region's education system" (Nadia's Initiative, 2023: 39). In the *Wide extent and Subtle manifestation*, an unwillingness to allocate national and regional resources to the region's education system is oppressive and structurally violent. It is oppressive because it is a process that denies them the opportunity of participation in society. Education is a subversive force. Any situation in which "A" hinders "B" in his or her pursuit of self-affirmation as a responsible person is one of oppression. Such a situation in itself constitutes violence, initiated by those who oppress, who fail to recognize others as persons (Freire, 2000: 29, 55).

The application process for survivors in the Yazidi Survivors Law (2021) further exemplifies the limitations to access available resources. As mentioned, the Law includes clauses on rehabilitation, land, housing, continued education, employment, protection of witnesses and survivors, however, these commitments remain largely unimplemented as well. Thus, there is arguably an unwillingness to allocate a share of community resources with the Yazidi.

*(3) Being willing to help them, including making sacrifices to foster their well-being*

Fostering the well-being of the Yazidi could be done through changing existing discriminatory policies and structures. However, little has happened to ensure that their religious identities are preserved in the region and to ensure their safe return to Sinjar. Moral exclusion is evident in its *Wide extent* and *Blatant manifestation* by the discriminatory policy that affected the land tenure rights of Yazidis in northern Iraq during the Arabization campaign of the 1970s. The policy forcibly transferred hundreds of thousands of Yazidis from their ancestral villages in the mountains. In turn, today, it affects the prospects of return of the Yazidi IDP community to their homeland in Sinjar because it is a struggle to gain proper documentation of identity and land ownership, limiting their ability to access safe housing and ultimately the rights due to them.

The Arabization campaign in the 1970s also entailed prohibiting the use of minority languages in areas such as Sinjar. The government refused to register new-borns with Kurdish or other non-Arabic ethnic names – claiming that “foreign names” were alien to the heritage of Iraqi society and Islamic culture. In 1977, officials coerced Yazidi individuals to “correct” their ethnicity and register as Arabs. In the last decade there have been reported attempts to force Yazidi communities to identify as ethnic Kurds – echoing the “nationality correction” policy of the former Ba’athist government (UN Habitat, 2015: 6, 11). The normalization and justification of this structural- and cultural violence determines that the voices of the Yazidi are systemically ignored. According to Opatow’s theory, unequal access to social and economic resources such as education, wealth, quality housing, civic services, and political power has become rationalized as the way things are, as it ought to be, and as just.

Ever since the late medieval era there are several symptoms of moral exclusion of the Yazidi people that can be identified prior to the genocide: the state disregarding and ignoring injurious outcomes that the Yazidi experience; reducing moral standards by asserting that the harmful behaviour conducted towards Yazidis is proper and necessary due to their religious syncretism, Yazidi culture and ethnic identity; biased evaluation of groups by bolstering one’s own group at the expense of others, for example as Muslim/Yazidi or self/other; dehumanization of the Yazidis through denying them their rights, entitlements, humanity, and dignity; perceiving contact or alliances with Yazidis as posing a threat to oneself, as evidenced by the Ba’ath Party’s discriminatory policy; normalization and glorification of violence as a

legitimate form of human behaviour towards the Yazidis, as evidenced by multiple periods of compulsory displacement and denying their rights as an ethno-religious minority, culminating when ISIS targeted them for violence and violations of human rights in 2014 (Opatow et.al., 2005: 306-307). The point is that these symptoms of moral exclusion show how few sacrifices have been made to foster the well-being of the Yazidi community and, instead, demonstrate how many attitudes and norms are characterized by moral exclusion.

### 5.3 Summary

Ways of narrating justice have consequences for the way we produce different responses to the genocidal social practices that are, at least potentially, involved in genocide. The most widely accepted legal definition of genocide today is the UN definition in the 1948 Genocide Convention – it is a hegemonic discourse that restricts what, or *who*, is or is not to be included in the redress of the crimes. The readings of the Iraqi Penal Code (1969) and the Yazidi Survivors Law (2021) demonstrates that Iraq has adopted a legal discourse which implicates an exclusion of genocide victims, politically defined victims, and systemic causes. In turn, it gives the state great leeway and impunity to commit internal oppression, because it excuses the backing for any genocidal process that has a political basis. This model of genocide has serious consequences for understanding genocide and also the means by which to achieve justice. When narrating genocide as a criminal matter, it does not respond to the systemic inequalities of the genocide, nor does it recognize many of the needs narrated by Yazidis. However, Nadia's Initiative's report tells us about a different approach to justice as it represents the root causes of instability and marginalization.

Having utilized the Scope of Justice Scale as a lens to assess moral exclusion from the scope of justice in the Yazidi genocide, it can be concluded that histories of political, cultural and structural violence has persecuted the Yazidis in Iraq in a process of moral exclusion (Opatow, 2016: 45). When understanding the inequalities of the genocide from Opatow's theoretical framework, the targeted mass violence of Yazidis in 2014-2017 was characterized by moral exclusion, where cultural and religious differences, political issues and internal oppression come into play. In light of this, social justice is one way to foster inclusion wherein justice could, and should, be reflected in the eyes of the Yazidi. It would consider the social and political issues that frame the crime, and in turn, meet many of the needs brought forth in this paper. Thus, if we accept that the inequalities of the Yazidi genocide are sharply marked by

moral exclusion, we should not consider it wholly appropriate to accept the Genocide Convention as the only fair response to the genocide. We should rather see inclusionary change as an elusive yet compelling and essential goal, where the needs of the Yazidi must be front and center on the justice agenda. This should go beyond the inescapable characteristic of victims' justice being only that a defendant is either innocent or guilty – “that may only be wholly appropriate in an apolitical context, where the future of a society does not hang in the balance” (Mamdani, 2013).

## 6 Discussion

On the one hand, the findings indicate that the Genocide Convention widely implies that NGOs, the UN, and states should respond to mass violence as a criminal matter, which is nonetheless one important aspect. We could call this narrower approach the dominant or hegemonic discourse. On the other hand, the analysis has identified that the Yazidi genocide was a process manifested in a violent and structurally unequal context, and several forms of moral exclusion led to the marginalization and instability. It started centuries before the genocide in 2014-2017. This implies that the understanding of genocide today, as conceptualized in the convention, produces a response that ignores the issues of social injustice and its impact on societies. The convention tells us that the understanding of genocide has implications for *who* can be a victim of genocide, and in turn who is included in the scope of justice. Again, the issue of international law is that it does not respond to genocide as a variable phenomenon embedded in larger patterns of political, cultural, economic, and military relationships. It is troubling because institutional punitive justice seems to reduce it to a binary of guilty and non-guilty and implies that the task of inclusion is done, but the Status Report of Sinjar 2023 tells us otherwise.

On a national level, justice has tended to focus on retributive justice through prosecutions, mainly before national court proceedings and in accordance with the Iraqi Penal Code. Given the local constraints of prosecutions under Iraqi Law, and the operationalization of the Yazidi Survivors Law, the results indicate that Governments should not be the sole administrators of justice. However, the analysis also indicates that the international community has lacked political will for efforts towards justice due to jurisdictional disputes or constraints in Iraqi law. Although the UN Convention was meant to be an instrument of international justice, this is an example of how it has seemingly transferred a legal model of criminal justice into the international system without serious reflection on its relations to political contexts other than the Western/northern state.

It is also important to acknowledge intersectionality within marginalized groups. ISIS' attack on Sinjar and the Yazidis centered around gender-based and sexual violence, and the gendered component of ISIS' crimes speaks to a double marginalization of Yazidi women, which should be further significant to research for fostering inclusion and social justice in Iraq

(Nadia's Initiative, 2023). This paper's approach to justice is only one perspective on a highly complex and holistic phenomenon.

Lastly, even though it has not been the aim of this study, it could be relevant to further examine the relationship between identity, justice, and peacebuilding in Iraq. According to Opatow, achieving a stable peace based on social justice requires a shift from moral exclusion to moral inclusion (2005: 306). It is pertinent because the devastation left by ISIS has left the region increasingly vulnerable to further violence and conflict, and it is essential to ask questions about: How can we ensure Yazidis' security in the region if their moral exclusion on a systemic level is not recognized in international justice? How do we prevent mass violence from targeting the Yazidis again in the national political environment? It could be significant to further study how institutional punitive justice contains potential broader implications for how peacebuilding and genocide prevention in the region can be implemented.

## 7 Conclusion

This paper has aimed to answer the following question: *How can a Social Justice approach understand current and historical inequalities of the Yazidi genocide in Sinjar 2014-2017, and how does it challenge justice framed by the dominant legal discourse on genocide?* Through critically analysing discourse of the Iraqi Penal Code, the Yazidi Survivors Law, “Rebuilding Amid the Ruins: Status of Sinjar Report 2023” and the Genocide Convention (1948) – and then interpreting the social injustices of the Yazidi Genocide through Opatow’s theoretical framework – a comprehensive overview emerges, and an understanding is reached. Namely, social justice must be understood from the context of the Yazidi genocide as the mass violence was contextualized by social and political problems such as power inequalities, conflict and internal oppression. If we accept that social injustice is part of the exclusionary processes that led to the Yazidi genocide in 2014, and social injustices remain deeply ingrained in the national political environment after the genocide, it should elucidate the importance of incorporating the inequalities of the Yazidi genocide when addressing justice.

Moreover, the legal and moral discourse around genocide legitimizes the Yazidis exclusion from the scope of justice because it frames the crime in an apolitical context. Yet, the political environment has manifested many of the social injustices experienced by the Yazidi community in Sinjar. The genocide tells us something about a community who have been victims of targeted violence, repeatedly throughout history, to the point of genocide, without protection or prevention on a national or international level. The situation for the Yazidi people in Sinjar post-genocide is up to the present time insecure, unsafe and conflict-prone due to the destruction of their land and resources as well as the absence of guardianship. It demonstrates that whoever is serious about genocide prevention will have to address the structurally violent and deep rooted social and political inequalities which perpetuates the highly unjust distribution of resources in Iraqi society.

In conclusion, the study does not intend to condemn the use of criminal justice but illustrates that we need to look more carefully at the discourses justifying the exclusion, persecution, and killing of different victims. To do so, we must challenge the construction of what justice could be for genocide survivors when framed by the Genocide Convention. This is what a social justice approach to genocide does: it unmask many of the inequalities that are

a part of the genocidal process, and the Yazidi genocide challenges how justice could be understood within that context.



## 8 Bibliography

- Akhavan, Payam. et al., 2020. 'What Justice for the Yazidi Genocide?: Voices from below', *Human Rights Quarterly*, 42(1), pp. 1–47.
- Amnesty International, 2021. "Germany/Iraq: World's First Judgment on Crime of Genocide against the Yazidis". *Amnesty International*. <https://www.amnesty.org/en/latest/news/2021/11/germany-iraq-worlds-first-judgment-on-crime-of-genocide-against-the-yazidis/> [Accessed: March 12, 2024]
- Amnesty International, 2023. "Iraq: Statement on the Implementation of the Yazidi Survivors Law". *Amnesty International*. <https://www.amnesty.org/en/documents/mde14/6680/2023/en/> [Accessed: March 1, 2024]
- Ceri, V. et al., 2016. 'Psychiatric symptoms and disorders among Yazidi children and adolescents immediately after forced migration following ISIS attacks', *neuropsychiatrie: Psychiatrie, Psychotherapie, Public Mental Health und Sozialpsychiatrie*, 30(3), pp. 145–150.
- Feierstein, Daniel, 2011. "Leaving the Parental Home: An Overview of the Current State of Genocide Studies," *Genocide Studies and Prevention: An International Journal*: Vol. 6: Iss. 3: Article 7.
- Feierstein, D. (2014) *Genocide as Social Practice*. New Brunswick: Rutgers University Press. doi:10.26530/open\_625248.
- Freire, P. (2000) *Pedagogy of the oppressed*. 30th anniversary ed. Continuum.
- Galtung, Johan, 1990. 'Cultural Violence'. *Journal of Peace Research*, 27(3), 291–305.
- Galtung, Johan, 1969. 'Violence, Peace, and Peace Research'. *Journal of Peace Research*, 6(3), 167–191.
- Halperin, Sandra. & Heath, Oliver, 2020. *Political research. Methods and practical skills*. Glasgow: Oxford University Press.
- Human Rights Watch, 2023a. "Iraq: Flawed Implementation of Yazidi Compensation Law". *Human Rights Watch*. <https://www.hrw.org/news/2023/04/14/iraq-flawed-implementation-yazidi-compensation-law> [Accessed: March 12, 2024]
- Human Rights Watch, 2023b. "Iraq: Compensation for ISIS Victims Too Little, Too Late". *Human Rights Watch*. [Iraq: Compensation for ISIS Victims Too Little, Too Late | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2023/05/18/iraq-compensation-isis-victims-too-little-too-late) [Accessed: May 18, 2024]
- Iraq: *Penal Code*, No. 111 of 1969, July 1969, <https://www.refworld.org/legal/legislation/natlegbod/1969/en/103522> [Accessed: April 1, 2024]

- Iraq Law No.8 of 2021 - Yazidi Female Survivors Law*, 2 March 2021, <https://www.refworld.org/legal/legislation/natlegbod/2021/en/124274> [Accessed: March 31, 2024]
- Janaby, M.G. and Alfatlawi, A.A. (2021) ‘UN efforts to make ISIS accountable for international crimes: The challenges posed by Iraq’s domestic law’, *International Criminal Law Review* [Preprint].
- Mamdani, Mahmood, 2013. “The Logic of Nuremberg”. *London Review of Books*. <https://www.lrb.co.uk/the-paper/v35/n21/mahmood-mamdani/the-logic-of-nuremberg> [Accessed: March 12, 2024]
- McLaughlin, K, 2018. *A Nobel Peace Prize winner who works to help women is donating her \$500,000 winnings to victims of sex crimes*. Business Insider. Available at: <https://www.businessinsider.com/nobel-peace-prize-winner-nadia-murad-is-donating-winnings-to-sex-crime-victims-2018-10> [Accessed 9 May 2024].
- Moradi, Fazil. & Anderson, Kjell, 2016. ‘The Islamic State’s Êzîdî Genocide in Iraq: The Sinjâr Operations’, *Genocide Studies International*, 10(2), pp. 121–138.
- Moses, A. Dirk, 2021. ‘Introduction: The Problems of Genocide’. In: *The Problems of Genocide: Permanent Security and the Language of Transgression*. Human Rights in History. Cambridge: Cambridge University Press.
- Nadia’s Initiative, 2018. ‘About Nadia’s Initiative’. *Nadia’s Initiative*. <https://www.nadiasinitiative.org/nadias-initiative> [Accessed: March 12, 2024]
- Nadia’s Initiative, 2023. ‘Rebuilding Amid the Ruins, Status of Sinjar Report 2023’. *Nadia’s Initiative*. Available at: [https://static1.squarespace.com/static/5e4ed852d5526563e04b189a/t/6494994ff1507737741b0ba3/1687460176906/Nadia\\_statusofSinjarreport2023.pdf](https://static1.squarespace.com/static/5e4ed852d5526563e04b189a/t/6494994ff1507737741b0ba3/1687460176906/Nadia_statusofSinjarreport2023.pdf) [Accessed: March 1, 2024]
- Opotow, Susan. 2001. ‘Social Injustice’. In: D.J. Christie, R.V. Wagner, & D.D.N. Winter (Eds.), *Peace, conflict, and violence: Peace psychology for the 21st Century*. Englewood Cliffs, New Jersey: Prentice-Hall.
- Opotow, S., 2001b. ‘Reconciliation in Times of Impunity: Challenges for Social Justice’, *Social Justice Research*, 14(2), pp. 149-170.
- Opotow, S., Gerson, J. and Woodside, S. 2005. ‘From Moral Exclusion to Moral Inclusion: Theory for Teaching Peace’. *Theory Into Practice*, 44(4), pp. 303–318.
- Opotow, S., 2011. ‘How This Was Possible: Interpreting the Holocaust’, *Journal of Social Issues*, 67(1), pp. 205–224.
- Opotow, Susan, 2016. ‘Social justice theory and practice: Fostering inclusion in exclusionary contexts’. In P. L. Hammack (Ed.), *The Oxford handbook of social psychology and social justice* (pp. 41–56). New York: Oxford University Press.
- OHCHR, 2016. *UN Commission of Inquiry on Syria: ISIS is committing genocide against the Yazidis*. Available at: [UN Commission of Inquiry on Syria: ISIS is committing genocide against the Yazidis | OHCHR](https://www.ohchr.org/en/inquiry-commission) [Accessed 15 Apr. 2024].

- Schmidinger, Thomas, 2020. 'The World Forgot Us and Europe Doesn't Want Us: The Situation of Yazidi, Christian, and Babawat Internally Displaced Persons and Refugees from Sinjar after the Genocide of 2014', in Babar, Z. (eds) (2020), *Mobility and Forced Displacement in the Middle East*. Oxford University Press.
- Shaw, Martin, 2013. "The Concept of Genocide: What Are We Preventing?" in Ingelaere, B. et al. (eds) (2013), *Genocide, Risk and Resilience. An Interdisciplinary Approach*. Palgrave Macmillan UK (Rethinking Political Violence).
- The Law Dictionary, 2013. *PENAL CODE Definition & Meaning – Black's Law Dictionary*. Available at: <https://thelawdictionary.org/penal-code/> [Accessed 19 May 2024].
- UN-Habitat, 2015. *EMERGING LAND TENURE ISSUES AMONG DISPLACED YAZIDIS FROM SINJAR, IRAQ*. Available at: [https://unhabitat.org/sites/default/files/documents/2019-04/emerging\\_land\\_tenure\\_issues\\_among\\_displaced\\_yazidis\\_from\\_sinjar\\_iraq.pdf](https://unhabitat.org/sites/default/files/documents/2019-04/emerging_land_tenure_issues_among_displaced_yazidis_from_sinjar_iraq.pdf) [Accessed 4 Apr. 2024].
- United Nations. *Convention on the Prevention and Punishment of the Crime of Genocide*. United Nations, 9 Dec. 1948.
- Van Schaack, Beth, 2018. 'The Iraq Investigative Team and Prospects for Justice for the Yazidi Genocide', *Journal of International Criminal Justice*, 16(1), pp. 113–139.
- Zimmerer, Jürgen, 2008. 'From the Editors: genocide and global social justice: towards sustainable prevention', *Journal of Genocide Research*, 10(2), pp. 183–186–186.
- Zimmerer, Jürgen, 2014. 'Climate Change: Environmental Violence and Genocide', *International Journal of Human Rights*, 18(issue3), pp. 265-280.