

KG Lobby Center



Recognition or Denial?

The Quest to Recognize the Kurdish Genocide

KG Lobby Center Report on the Kurdish Genocide

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Introduction

The history of the Kurdish people in Iraqi Kurdistan dates back to ancient times. Before the Arab Muslims conquered the Kurdistan region in the 7th century AD, numerous Kurdish tribes and small Kurdish empires flourished. Islamic rule over the Kurdish homeland by the Ottoman Empire came to an end after WWI, but several countries partitioned the land of the Iraqi Kurds, who had lived between the Euphrates and Tigris Rivers as a result of the Sykes-Picot agreement that split the Middle East into British and French “influence zones.” This partition resulted in the Kurds seeking refuge in the cities and towns of Northern Iraq. While the Kurds were of different tribes, they would continue to seek sovereignty. They fought for autonomy, which was initially granted, but then inevitably revoked. Cyclically, the Kurds re-organized, rearmed and revolted and were forcibly crushed again.¹ Their strong spirit would not surrender which angered those who wanted to destroy them; as such, this conflict prompted the genocide of its people which still goes on today.

This report will first explain the legal elements of genocide under the Genocide Convention. It will then explain why certain actions of the Iraq government under Saddam Hussein and ISIS (DAESH) constituted genocide, including the stripping of Iraqi citizenship and forcible deportation to Iran of 22,000 Feyli Kurds from 1980 to 1988, the 1983 massacres against the Barzanis wherein Saddam Hussein’s regime was responsible for killing 8,000 Barzani Kurds, the 1988 Anfal campaign from February 1988 to September 1988 wherein Saddam Hussein’s regime was responsible for killing 182,000 Kurds, the March 16, 1988 chemical attack on Halabja wherein Saddam Hussein’s regime was responsible for killing 5,000 Kurds, and the genocide by ISIS (DAESH) between 2014 and 2018 against the Yazidis, Shi’a, and Christians. It will also discuss the recognition of each genocide by governments, multinational institutions, think tanks, and NGOs.

1. THE LEGAL ELEMENTS OF THE GENOCIDE CONVENTION

Under international law, the crime of genocide refers to violent crimes committed against a group, with the “special” intent to destroy, either “in whole or in part,” the existence of a national, ethnic, racial or religious group, by means of five punishable acts. Such punishable acts include: (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; and (e) forcibly transferring children of the group to another group.²

There are two constitutive elements for the crime of genocide: the physical act (*actus reus*) that constitute the crime and the mental state (*mens rea*) of the perpetrator.³ The *actus reus* is depicted in Article 2 (2) (a)-(e) of the Genocide Convention. The initial phrase in Article 2 (2)

¹ “Kurdish History,” THE KURDISH PROJECT [Learn About Kurdish History | The Kurdish Project](#) (last accessed May, 28, 2023).

² Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

³ *Prosecutor v. Brdjanin*, Case No. IT-99-36-T, Trial Chamber Judgment, ¶ 681 (Int’l Crim. Trib. for the Former Yugoslavia September 1, 2004); *Prosecutor v. Jelusic*, Case No. IT-95-10, Trial Chamber Judgment, ¶ 62 (Int’l Crim. Trib. for the Former Yugoslavia December 14, 1999); *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Trial Chamber Judgment, ¶ 55 (Int’l Crim. Trib. for Rwanda June 7, 2001); *Prosecutor v. Kamuhanda*, Case No. ICTR-95-54A-T, Trial Chamber Judgment, ¶ 622 (Int’l Crim. Trib. for Rwanda June 7, 2001/January 22, 2004).

states that the *mens rea* requirement comprises of two elements, intent and knowledge with regards to the objective elements of the crime and specific intent described as “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”⁴

While proving the *actus reus* element under the Genocide Convention is straightforward, proving the *mens rea* element under such convention is not. The *Prosecutor v. Akayesu* Trial Chamber court held that “intent is a mental factor which is difficult, even impossible, to determine.”⁵ As such, the ICTR determined in the *Akayesu* case that because concrete evidence of genocidal intent is most likely unavailable, intent must be inferred from other factual circumstances.⁶ Thus, as early as *Akayesu*, international courts recognized the necessity to infer genocidal intent.

Both the International Criminal Tribunal for Rwanda (ICTR) and International Tribunal for the Former Yugoslavia (ICTY) courts held that in the absence of explicit, direct proof, the genocidal intent may be inferred from the relevant facts and circumstances.⁷ The *Kayishema and Ruzinda* chamber determined that the following indicators showed genocidal intent; “the physical targeting of the group or their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, [and] the systematic manner of killing.”⁸ Other factors to consider when examining whether genocidal intent exists include: “the scale and nature of the atrocities, the discriminatory targeting of only particular groups, methodical and systematic planning of the killings and other genocidal acts, weapons employed and the extent of victims’ injuries, and documents which may reflect participation in or knowledge of the atrocities.”⁹ Courts should consider the totality of such evidence.¹⁰

The *Prosecutor v. Karadžić* court found defendant (Karadžić) guilty of genocide for the Srebrenica killings. In this decision, the ICTY Trial Chamber found that Karadžić had the specific intent to order the killings, but reached this conclusion based on inferences.¹¹ In fact, the prosecution was never able to find concrete evidence that Karadžić knew that the killings would occur and intended for such killings to take place.¹² Instead, the prosecution’s case was circumstantial.¹³ In its reasoning, the Trial Chamber depicted the development of the common plan to eliminate all Bosnian Muslims from Srebrenica, which eventually morphed into an

⁴ *Prosecutor v. Seromba*, Case No. ICTR-2001-66-A, Appeals Chamber Judgment, p. 175 (Int’l Crim. Trib. for Rwanda March 12, 2008).

⁵ *Prosecutor v. Akayesu*, Case No. ICTR 96-4-T, Judgment ¶ 523 (Sept. 2, 1998).

⁶ *Id.*

⁷ *Prosecutor v. Seromba*, Case No. ICTR-2001-66-A, Appeals Chamber Judgment p. 176 (March 12, 2008).

Prosecutor v. Nahimana, Barayagwiza and Ngeze, Case No. ICTR-99-52-A, Appeals Chamber, p. 524 (November 28, 2007); *Prosecutor v. Jelisić*, Case No. IT-95-10A, Appeal Chamber Judgement, ¶ 47 (July 5, 2001); *Prosecutor v. Krstić*, Case No. IT-98-33-A, Appeals Chamber Judgment, ¶ 34 (April 19, 2004).

⁸ *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Trial Chamber Judgment, ¶ 93, 527 (May 21, 1999).

⁹ David L. Nersessian, *The Contours of Genocidal Intent: Troubling Jurisprudence from the International Criminal Tribunals*, 37 TEX. INT’L L.J. p. 276 (2002).

¹⁰ *Nahimana, Barayagwiza and Ngeze*, Appeals Chamber Judgment, ¶ 524 (28 November 28, 2007).

¹¹ Marko Milanovic, *ICTY Convicts Radovan Karadzic*, EJIL: TALK! (Mar. 25, 2016), <http://www.ejiltalk.org/icty-convicts-radovan-Karadzic/>.

¹² *Id.*

¹³ *Id.*

agreement to kill all Bosniak adult males while forcibly transferring the women and children out of the area.¹⁴

As shown *supra*, both the ICTR and the ICTY have recognized the necessity to infer genocidal intent based on the overall factual circumstances of a particular conflict. It is essential to note that the Genocide Convention emerged after World War II with the Holocaust paradigm as a backdrop.¹⁵ It is fair to assume that the Genocide Convention drafters did not envision modern day conflicts wherein leaders would target citizens of their own countries and members of their own societies in a genocidal manner. It is also reasonable to recognize that most rogue leaders, prone to engaging in genocidal behaviors, do not publish decrees and other documents demonstrating specific genocidal intent.¹⁶ While Hitler meticulously documented his plans to persecute Jews,¹⁷ other leaders such as Pol Pot, Slobodan Milošević, Radovan Karadžić, and Jean-Paul Akayesu neither engaged in such written planning nor left the same type of evidentiary trail behind them.¹⁸ As such, the ICTR and ICTY Trial and Appellate Chambers had to infer genocidal intent from specific patterns of acts and behaviors.¹⁹

2. THE KURDISH GENOCIDES

a. THE FEYLI KURD GENOCIDE

FACTUAL BACKGROUND

In 1969, the Iraqi government launched a campaign of forced deportations and exile that targeted the Feyli Kurds. In 1970, the Iraqi government deported between 40,000 to 70,000 Feylis to Iran and revoked their citizenship.²⁰ The government attacked prominent and high-level Feyli Kurdish merchants and academics in Baghdad.²¹ Activists reported numerous disappearances and executions between 1970 and 1973.²²

¹⁴ *Id.*

¹⁵ Incitement to Genocide in International Law, HOLOCAUST ENCYCLOPEDIA, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007839> (last accessed May 29, 2023).

¹⁶ Kok-Thay Eng, Redefining Genocide, GENOCIDE WATCH: THE INT’L ALLIANCE TO END GENOCIDE, <http://www.genocidewatch.org/redefininggenocide.html> (last visited Jan. 30, 2017).

¹⁷ “Final Solution”: Overview, HOLOCAUST ENCYCLOPEDIA, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005151> (last accessed May 29, 2023).

¹⁸ STEVEN R. RATNER & JASON J. ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY 237 (1st ed., 1997); MICHAEL J. KELLY, PROSECUTING CORPORATIONS FOR GENOCIDE 76 (Oxford Univ. Press 2016); Steve Coll, In the Shadow of the Holocaust, WASH. POST (Sept. 25, 1994), <https://www.washingtonpost.com/archive/lifestyle/magazine/1994/09/25/in-the-shadow-of-the-holocaust/8a08e0b4-c929-4694-9f68-7597b5e254dc/>.

¹⁹ INT’L CRIMINAL LAW SERVS., INTERNATIONAL CRIMINAL LAW & PRACTICE TRAINING MATERIALS: GENOCIDE 10-11, http://wcjp.unicri.it/deliverables/docs/Module_6_Genocide.pdf.

²⁰ *Minorities and Indigenous Peoples in Iraq: Faili Kurds*, Minority Rights Group (2017) <https://minorityrights.org/minorities/faili-kurds/> (last accessed June 15, 2023).

²¹ Elizabeth Campbell, “The Faili Kurds of Iraq: Thirty Years Without Nationality,” *Refugees International* (2010), <https://reliefweb.int/report/iraq/faili-kurds-iraq-thirty-years-without-nationality>. (last accessed on June 15, 2023).

²² *Id.*

In April 1980 the first deportations and killings of the Feyli Kurds transpired when the Iraqi government forcefully relocated myriad Feyli Kurds to Iran; this process lasted until May 1990. Regime officials assumed control over many homes and belongings of the Feyli Kurds after their disappearances. The regime under Saddam Hussein rendered the Feyli Kurds as non-citizens. It also threw numerous young people into mass graves alive.²³

On May 7, 1980, Saddam Hussein signed decree number 666 which legalized and ordered the confiscation, detention, forced deportation, and exile of the Feyli Kurds. Saddam justified the decree by accusing the Feyli Kurds of having “foreign origin” and “disloyalty to the people and father land and to the political and social principles of the Revolution.”²⁴ In the same year, Saddam Hussein’s regime deported more than 300,000 Feyli Kurds to Iran and confiscated their property and official papers. When the Iraqi military kidnapped myriad Feyli Kurds from their homes, schools, government offices, workplaces, shops, and military units, they forbade the deportees from taking anything with them apart from the clothes on their backs. Hussein’s government also detained adult males and sent them to various prison complexes in the country with no due process before incarceration.²⁵ It is estimated that around 25,000 Feyli male Kurds died due to captivity and torture.²⁶

LEGAL ANALYSIS

During the persecution of the Feylis, the Iraqi government under Saddam Hussein committed many acts qualifying as “punishable acts” under Article 2 (2) (a)-(e) of the Genocide Convention; such acts were also known as the *actus reus* as depicted *supra* in Section 1. These acts included, “killing members of the group,” “causing serious bodily or mental harm for members of the group,” and “deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part.”²⁷

The Saddam Hussein regime perpetrated various punishable acts under the Genocide Convention. Such regime “kill[ed] members of the group” when it massacred 25,000 Feyli Kurds after captivity and torture. The regime also “caus[ed] serious bodily and mental harm to the group” when it forcefully deported between 300,000-500,000 Feyli Kurds to Iran and stripped them of their citizenship. It also randomly detained male Feyli adults and sent them to the various Iraqi prisons. The regime also “deliberately inflict[ed] on the group conditions of life calculated to bring about physical destruction in whole or in part” when Saddam Hussein signed decree number 666 which legalized and ordered the confiscation, detention, forced deportation, and exile of the Feyli Kurds. He also deliberately ordered the confiscation of their papers and prevented them from taking anything but the clothing on their backs when deported.

Furthermore, the targeted groups or “national, ethnic, racial, or religious group[s]” were the Feyli Kurds. The Saddam Hussein regime targeted the Feyli Kurds as members of such group

²³ Hanan Jiyad, “Ethnic Cleansing of Iraqi Fayli Kurds,” IRAQ NOW, (February 4, 2022) <https://irqnow.com/fayli-kurds/> (last accessed June 15, 2023).

²⁴ National Legislative Bodies / National Authorities, *Iraq: Resolution No. 666 of 1980 (nationality)*, 1980, accessed via Refworld April 4 2023, <https://www.refworld.org/docid/3ae6b51d28.html>.

²⁵ *Id.*

²⁶ Dr. Sahib Al-Hakeem, UNTOLD STORIES OF MORE THAN 4000 WOMEN RAPED, KILLED, AND TORTURED IN IRAQ, THE COUNTRY OF MASS GRAVES, 489–492 (2003).

²⁷ Genocide Convention, *supra* note 2.

because they were perceived as outsiders who were disloyal to the regime. Due to their ethnic or collective identity, rather than their individual status, they became targets of Saddam's Arabization campaign in which Saddam Hussein's regime stripped the Feylis of citizenship and deported them in blatant disregard of core international humanitarian legal principles.

As already discussed, genocidal intent must be inferred from the factual circumstances when direct evidence of such intent is scant. In the case of the Feyli Kurds, the intent was inferred from the evidence of the systematic or widespread character or nature of the genocidal acts and evidence of the existence of a plan or policy against the Feylis. As regards the systematic or widespread character of the genocidal acts against the Feyli Kurds, there was evidence of forced transfer of the Feyli Kurds, evidence of disposal of their bodies, evidence of detention and mistreatment of the Feylis and evidence of killing a large number of Feyli Kurds that in totality showed genocidal intent.²⁸ With respect to the existence of a plan or policy to destroy the Feylis, there was evidence of the involvement of public officials in the planning of attacks against them and the involvement of public officials and soldiers in carrying out such attacks which also showed genocidal intent.²⁹ These factors demonstrated clear intent when factoring in the evidence at hand.

Numerous ICTY and ICTR cases held that genocidal intent can be inferred from evidence of public officials planning and carrying out attacks against a specific group like the Feyli Kurds. For example, in *Prosecutor v. Juvenal Kajelijeli*, the ICTR Court inferred genocidal intent from Kajelijeli's planning and his military carrying out attacks against the Tutsis when he commanded, organized, supervised, and participated in such attacks within the Mukingo *commune* and neighboring areas as *bourgmestre* (mayor) of Mukingo commune and founder and leader of the *Interahamwe*-MRND. One such example was when Kajelijeli and others planned an attack at a meeting in the Nkuli *Commune* Office against approximately 12 Tutsi families living in the Kinyababa cellule. The Defendant then directed this attack by ordering his military to effectuate the plan. As another example, the Defendant planned an attack against Tutsi civilians wherein he directed the *Interahamwe* forces to kill 80 Tutsi families in Busogo Cellule, Mukingo *Commune*.³⁰

Similarly, in the instant case, Saddam Hussein signed decree number 666 which legalized and ordered the forced deportation of the Feyli Kurds; such decree also redistributed the properties of the Feylis to his associates. He directed his army to deport more than 300,000 Feyli Kurds to Iran wherein the army confiscated their property and official papers. The army also detained Feyli males and sent them to myriad prisons throughout the region. Ultimately, 25,000 Feylis died from such deportations and detentions.

Our case has stronger facts than *Kajelijeli* because besides planning and carrying out orders, the Iraqi regime also killed the Feyli Kurds *en masse*, forced transfer of the members of the Feylis, disposed their bodies in mass graves, as well as detained and mistreated the male Feyli Kurds. Therefore, genocidal intent can be inferred from such evidence inferred from the acts perpetrated by Saddam Hussein and his military.

RECOGNITIONS OF THE FEYLI GENOCIDES

²⁸ *Genocide*, Case Matrix Network, art. 6, §§ 31.1, 31.2, 31.3 <https://www.casematrixnetwork.org/cmn-knowledge-hub/proof-digest/art-6/common-elements/2/#p-56> (last accessed June 16, 2023)

²⁹ *Id.* at §§ 26.2, 26.3.

³⁰ *Prosecutor v. Juvenal Kajelijeli*, Case No. ICTR-98-44A-T, Judgment ¶ 19, 822 (December 1, 2003).

Besides the fulfillment of all legal requirements under the Genocide Convention for the Feyli genocide, the Iraq Supreme Court, Iraq Council of Representatives, and the Iraq Parliament also determined that the Feyli killings constituted genocide.³¹ These recognitions only further legitimized the classification of Saddam Hussein's brutal acts against the Feyli Kurds as genocide.

b. THE BARZANI GENOCIDE

FACTUAL BACKGROUND

In an act of collective punishment for the leadership of the Barzanis in the Kurdish resistance movement, the Saddam Hussein regime forcefully re-settled approximately 3,000 families of the Barzani tribes from their homes in Barzan to Harir, Qushtapa wherein they lived under the surveillance of Iraqi soldiers. The situation only escalated at the Qushtapa camps in late July 1983. As such, on July 31, 1983, under the orders of Saddam Hussein, the Iraqi army raided numerous camps near Erbil and further north in Iraqi Kurdistan and abducted 8,000 Barzani men and boys, some as young as 10 years of age and some as old as 80 years old. Their mothers, wives, and daughters would never see them again because the regime executed the Barzani men and boys in the deserts of southern Iraq and buried them in mass graves.³² Only some remains of these men and boys were found after 2003 with 689 bodies transferred to the Kurdistan Region for proper burial. The remaining bodies are either in mass graves or are unknown. The genocide of the Barzanis became a blueprint for Saddam Hussein's Anfal campaign five years later.³³

Furthermore, the Iraqi security forces placed myriad Barzani women and children into oppressive compounds. As a result, such forces left thousands of children and women without their fathers and husbands. In a society where the patriarchy dominated their homelife, single mothers were left with the challenges of taking up the role of their male partners. As such, these women experienced emotional turmoil and suffering not only due to losing their husbands, but also from the new roles they would now occupy. Unfortunately, the outside world did not realize that these mass kidnappings were happening. The Barzani tribe still deeply feels the emotional pain these kidnappings caused.³⁴

LEGAL ANALYSIS

³¹ Minority Rights, "Minorities and Indigenous Peoples in Iraq: Faili Kurds," 2017, accessed April 4, 2023, <https://minorityrights.org/minorities/faili-kurds/>.

³² *Commemorating the Genocide of the Barzanis*, Justice for Kurds (July 31, 2021), <https://justiceforkurds.org/2021/07/31/commemorating-the-genocide-of-the-barzanis/>, (accessed June 21, 2023).

³³ *The Tragedy of the Missing Barzanis*, The Kurdistan Memory Programme (2023), <https://kurdistanmemoryprogramme.com/the-tragedy-of-the-missing-barzanis/> (accessed June 21, 2023).

³⁴ Ibrahim Sadiq and Media Fattah, "Gender Roles and Feminism: The Experience of Barzani Single Mothers". Review of Middle East Studies, 5 (2023), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/56D88AF98305451A8774AAC3F3E98E24/S2151348122000271a.pdf/gender-roles-and-feminism-the-experience-of-barzani-single-mothers.pdf> (accessed June 21, 2023)

During the Barzani genocide, the Iraqi regime under Saddam Hussein perpetrated many acts qualifying as the *actus reus* under the “punishable acts” section in Article 2 (2) (a)-(e) of the Genocide Convention. Such acts included, “killing members of the group,” “causing serious bodily or mental harm to members of the group,” “deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part,” and “imposing measures intended to prevent births within the group.”³⁵

Such regime “killed members of the group”³⁶ when its military executed 8,000 Barzani men and boys, and then buried them in mass graves. The regime also caused serious bodily or mental harm to members of the group”³⁷ when it placed Barzani, widowed women and fatherless children into compounds controlled by Iraqi security forces. It also “deliberately inflicted on the group conditions of life calculated to bring about its physical destruction in whole or in part”³⁸ when it purposely placed such women and children in extreme deprivation. Lastly, it “imposed measures intending to prevent births within the group”³⁹ because the women and girls lost their husbands and future husbands, thereby preventing them from procreating future generations of Barzani’s. Thus, the *actus reus* requirement for genocide was satisfied by the above acts.⁴⁰

Furthermore, the targeted groups or “national, ethnic, racial, or religious group[s]” were the Barzani Kurds. The Barzani genocide targeted the Barzani’s as members of a specific group because they were perceived as belonging to this group by their perpetrators.⁴¹ Due to their ethnic or collective identity, rather than their individual status, they became targets of Saddam Hussein’s desire to take revenge upon the Barzani's by massacring them in contravention of core international humanitarian legal principles.⁴²

As discussed above, the genocidal intent must be inferred from the factual circumstances when direct evidence of such intent is lacking. In the case of the Barzani genocide, the intent was inferred from both evidence of the existence of a plan by the Iraqi government to destroy the Barzani's and evidence of the systematic or widespread character of the genocidal acts against them.

As regards the evidence of such plan to destroy the Kurds, there was evidence of the involvement of the Iraqi government and military in both the planning and implementing of the attacks against the Barzani's.⁴³ With respect to the systematic or widespread character or the nature of the genocidal acts, there was evidence of the systematic disposal of the Barzani men’s and boys’ bodies, evidence of selecting the Barzani victims based on their membership in the Barzani Kurd group, and evidence of selecting Barzani civilians on the basis that their death would be detrimental to the survival of the group.⁴⁴

³⁵ Genocide Convention, *supra* note 2.

³⁶ Genocide Convention, art. II, § (2)(a).

³⁷ *Id.* § (2)(b).

³⁸ *Id.* § (2)(c).

³⁹ *Id.* § (2)(d).

⁴⁰ *Id.*

⁴¹ European Parliament, *The Kurdish Genocide: Achieving Justice through EU Recognition*, (2014), 5, accessed March 27, 2023. https://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-ig/dv/03_kurdishgenocidesofanfalandhalabja_/03_kurdishgenocidesofanfalandhalabja_en.pdf

⁴² *Id.*

⁴³ *Genocide*, Case Matrix Network, art. 6., §§ 26.2, 26.3

⁴⁴ *Id.* at §§ 27.1, 29.1, 29.4.

In *Prosecutor v. Ildephonse Nizeyimana*, the Trial and Appellate Chambers held that the Defendant had requisite intent to destroy the Tutsi group due to his planning and carrying out the killing of Rosalie Gicanda and the massacre of the Tutsis at the roadblocks in Butare town. Regarding the planning and implementing of these killings, the Defendant participated in the planning of the military operation and authorized the ESO soldiers to kill the Tutsis at the roadblocks at Gikongoro / Cyangugu and Kigali roads junction.⁴⁵ He also ordered the removal of the Ruhutinyanya family with the knowledge that the implementation of this order would lead to the slaughter of this family.⁴⁶ Lastly, Nizeyimana ordered Bizimana, a higher military commander, to kill Rosalie Gicanda.⁴⁷

In the case at bar, Saddam Hussein ordered the Iraqi army to raid numerous camps near Erbil, abduct 8,000 Barzani men and boys, and execute them out of revenge on the Barzanis. Such a plan became a blueprint for Saddam Hussein's Anfal campaign five years later. The instant case is stronger because the Iraqi regime purposely eradicated the men and sequestered the women and children to prevent births within the Barzani group. As such, it can be inferred that the Saddam Hussein regime had requisite genocidal intent to kill the Barzani men and boys to prevent future births with the intent of eradicating the Barzani group.

RECOGNITIONS OF THE BARZANI GENOCIDE

Not only can it be legally proven that the brutal acts against the Barzani's by the Saddam Hussain regime were genocide as shown *supra*, but the Iraq Supreme Court, the Iraq Council of Representatives and the Iraq Parliament also acknowledged that the Barzani massacres were acts of genocide and crimes against humanity.⁴⁸ Like the Feyli genocide, these recognitions only validated that the cruel acts against the Barzanis by the Iraqi regime were genocide.

c. THE 1988 ANFAL GENOCIDE

FACTUAL BACKGROUND

THE ANFAL CAMPAIGN

From February to September of 1988, the Iraqi government implemented the Anfal campaign, which was a comprehensive plan for destroying all life in the rural areas of Kurdistan in eight stages of military operations. Ali Hassan al-Majid, a cousin of President Saddam Hussein (nicknamed "Chemical Ali" for the chemical attacks) headed the campaign.⁴⁹ Each stage started with a military attack on a limited area. Bombings including chemical gas attacks,

⁴⁵ *Prosecutor v. Ildephonse Nizeyimana*, Case No. ICTR-2000-55, Judgment (TC) ¶1506 (June 19, 2012)

⁴⁶ *Id.* at ¶1499.

⁴⁷ *Id.* at ¶ 1503.

⁴⁸ "Anfal and Halabja: A Dark Period of Kurdish History." Kurdistan Regional Government-Iraq. November 14, 2013. Representation in Austria. [Anfal and Halabja: A dark period of Kurdish history – Kurdistan Regional Government-Iraq Representation in Austria \(krg.org\)](http://www.krg.org).

⁴⁹ Kanan Makiya, *CRUELTY AND SILENCE: WAR, TYRANNY, UPRISING, AND THE ARAB WORLD* 163-168 (1994).

by warplanes and helicopters; heavy artillery crushed these areas.⁵⁰ Chemical Ali guided the army and irregular forces to gather up the Kurdish people and transport them to designated military bases where they separated the men from the women and children.⁵¹ These forces collected many Kurds, moved them to the desert areas in the south of Iraq, executed them and buried them in mass graves. They also took them to prisons such as Nugra Salman and kept them in intolerable conditions wherein the majority died.⁵²

During the Anfal campaign the Iraqi regime under Saddam Hussein killed approximately 182,000 Kurds and destroyed thousands of villages and several towns; the destruction erased such towns and villages from the earth. Since the 1970s through the Anfal campaign, the Iraqi government destroyed 4,500 villages.⁵³ The Anfal campaign also targeted the Christians, Shabaks, Yazidis, Assyrians, Turkmen people and Mandeans. The regime under Saddam Hussein demolished many villages belonging to these groups.⁵⁴

THE HALABJA CHEMICAL ATTACK: FIRST STAGE OF THE ANFAL

The Halabja chemical attack occurred during the first stage of the Anfal campaign.⁵⁵ During this attack, the Iraqi military implemented ground attacks by army units, aerial bombing, concentration camps, mass executions and chemical warfare that targeted the Kurdish people.

On March 14, 1988, Iranian troops and Kurdish guerrillas took control of the Iraqi military base in Halabja. Two days later, the Iraqi Air Force fired rockets and napalm into Halabja's residential areas followed by a poison gas attack. The five-hour attack began on the evening of March 16, 1988, following a series of indiscriminate conventional (rocket and napalm) attacks. Iraqi Mig and Mirage aircraft began dropping chemical bombs on Halabja's residential areas, far from the besieged Iraqi army base on the outskirts of the town. According to regional Kurdish rebel commanders, Iraqi aircraft, coordinated by helicopters, conducted up to 14 bombings in sorties of seven to eight planes each. Eyewitnesses saw clouds of white, black, and then yellow smoke billowing upward and rising as a column of about 150 feet (50 m) in the air.⁵⁶ Such attacks killed 3,000-5,000 innocent civilian Kurds, mostly women and children, and severely injured 10,000 or more. It was the most brutal gas attack since poison gas was outlawed after World War 1. The incident was the largest chemical weapons attack directed against a civilian-populated area in history.^{57 58 59}

⁵⁰ *Id.*

⁵¹ Choman Hardi, GENDERED EXPERIENCES OF GENOCIDE: ANFAL SURVIVORS IN KURDISAN-IRAQ 16-17 (2011).

⁵² George Black GENOCIDE IN IRAQ: THE ANFAL CAMPAIGN AGAINST THE KURDS 226 (1993).

⁵³ *Iraqi Kurds Remember Anfal Tragedy: 35 Years Seeking Justice and Recognition*, BNN (March 2023), <https://bnn.network/breaking-news/iraqi-kurds-remember-anfal-tragedy-35-years-of-seeking-justice-and-recognition/>.

⁵⁴ *Remembering Operation Anfal*, VOICE OF AMERICA (April 13, 2018), [Remembering Operation Anfal \(voa.gov\)](https://www.voanews.com/story/iraq/2018/04/13/remembering-operation-anfal-151212101).

⁵⁵ *Hardi* at 19.

⁵⁶ *1988: Thousands Die in the Halabja Gas Attack*, BBC NEWS http://news.bbc.co.uk/onthisday/hi/dates/stories/march/16/newsid_4304000/4304853.stm (last accessed June 13, 2023)

⁵⁷ *Id.*

The medical effects of this attack included burns, disfigurements, blindness, neurological disorders, infertility, leukemia, and other types of cancer.⁶⁰ To cover up the horrifying truth about the chemical attack, the Hussein regime abducted and murdered some of the Halabja survivors who were taken to hospitals in Erbil.⁶¹

BADHINAN GENOCIDE: THE EIGHTH STAGE OF THE ANFAL

The Badhinan genocide transpired during the eighth Anfal stage from August 25, 1988, to September 6, 1988. During this campaign, the Iraqi military targeted the villages of Wirmeli, Barkavreh, Bilejane, Glenaska, Zewa Shkan, Tuka and Ikmala with chemical attacks. On August 26, 1988, the Iraqi Army blocked the route to Turkey after tens of thousands of Kurds attempted to flee there. The army arrested those who failed to escape and separated the men from the women and children. While the army executed the men, it also brought the women and children to brutal camps.⁶² The Iraqi military destroyed more than 665 villages in the Badhinan region. The campaign also resulted in the forced disappearance of over 2,000 Kurds.⁶³

LEGAL ANALYSIS

During the Anfal campaign (which included the Halabja and Bahdinan chemical attacks), the Iraqi regime with “Chemical Ali” leading the charge, perpetrated many acts qualifying under the “punishable acts” section known as the *actus reus* in Article 2 (2) (a)-(e) of the Genocide Convention. Such acts included, “killing members of the group,” “causing serious bodily or mental harm to members of the group,” “deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part,” and “imposing measures intended to prevent births within the group.”⁶⁴

The Iraqi regime, including Chemical Ali and the military, perpetrated various acts under these Genocide Convention categories. Such regime “kill[ed] members of the group”⁶⁵ when it performed mass summary executions, particularly of military age men and young boys⁶⁶ and used chemical weapons during the Halabja and Bahdinan attacks (stage 1 and stage 8 of the Anfal campaign) which resulted in the killing of many thousands of civilians.⁶⁷

⁵⁸ 1988: *Thousands Die in the Halabja Gas Attack*, BBC NEWS

http://news.bbc.co.uk/onthisday/hi/dates/stories/march/16/newsid_4304000/4304853.stm (last accessed June 13, 2023)

⁵⁹ Richard Beeston, “Halabja, The Massacre the West Tried to Ignore,” THE TIMES (January 18, 2010).

⁶⁰ U.S. Department of State, Bureau of Public Affairs, *Saddam’s Chemical Weapons Campaign: Halabja, March 16, 1988*, March 14, 2003, [Saddam’s Chemical Weapons Campaign: Halabja, March 16, 1988 \(state.gov\)](http://www.state.gov/s/ct/record.cfm?id=111111)

⁶¹ Michael J. Kelly “ARTICLE: ‘Never Again’? German Chemical Corporation Complicity in the Kurdish Genocide”. *Berkeley Journal of International Law* 31, n. 348 (2013): 361. March 6, 2023. [ARTICLE: "Never Again"? German Chemical Corporation Complicity in the Kurdish Genocide, 31 Berkeley J. Int'l L. 348 \(lexis.com\)](https://www.berkeleyjil.com/article/never-again-german-chemical-corporation-complicity-in-the-kurdish-genocide)

⁶² Hardi at 21-22.

⁶³ *Remembering Anfal Crime in Badhinan: Fate of 2,000 Kurds Unknown*, PUKMedia (August 25, 2021) <https://pukmedia.com/EN/Details/68818> (last accessed June 19, 2023).

⁶⁴ Genocide Convention, supra note 2.

⁶⁵ Genocide Convention, art. II, § (2)(a).

⁶⁶ European Parliament, *The Kurdish Genocide: Achieving Justice through EU Recognition*, (2014), 4, accessed March 27, 2023. https://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-ig/dv/03_kurdishgenocidesofanfalandhalabja_/03_kurdishgenocidesofanfalandhalabja_en.pdf.

⁶⁷ *Id.* at 4.

The regime also “caus[ed] serious bodily and mental harm to the members of the group” when it arbitrarily arrested, interrogated and detained Kurdish villagers; ⁶⁸ tortured men between the ages of 15-70 based on orders issued by Chemical Ali; ⁶⁹ detained and ‘ware-hous[ed]’ tens of thousands of women, children and the elderly for months in conditions of extreme deprivation; ⁷⁰ and forcedly displaced hundreds and thousands of villagers upon demolition of their homes, return from jail or return from exile (these civilians were usually trucked to clandestine areas in remote locations and dumped there with minimal or no provision for relief, housing, clothing, or food).⁷¹ It also “caus[ed] serious bodily and mental harm” when the long term effects of the chemical attacks included birth defects from the chemicals; cancer of the large intestine, colon, lungs, and breasts; blood malignancy in children; and blindness.⁷² The attacks destroyed the rural Kurdish economy and culture. ⁷³

The regime also “deliberately inflict[ed] on the group conditions of life calculated to bring about its physical destruction in whole or in part” when it purposely forced the disappearance of many thousands of civilians, including large numbers of women and children, and sometimes entire populations;⁷⁴ destroyed civilian property, including schools, religious buildings and livelihood structures in the targeted villages; ⁷⁵ arbitrarily detained and ‘ware-hous[ed]’ thousands of women, children and the elderly for months;⁷⁶ and forcedly displaced hundreds and thousands of villagers.⁷⁷

The regime “impos[ed] measures intending to prevent births within the group” when it separated the woman and the children from the men at the Badhinan massacres (the first stage of the Anfal) which prohibited the future procreation of the Kurds. Thus, the *actus reus* requirement for genocide was satisfied by the above acts.⁷⁸

Furthermore, the targeted groups or “national, ethnic, racial, or religious group[s]” were the Kurds which included the Christians, Shabaks, Yazidis, Assyrians, Turkmen people and Mandaeans. The Anfal targeted Iraqi Kurds as members of a specific group because they were perceived as belonging to this group by their perpetrators. ⁷⁹ Due to their ethnic or collective identity, rather than their individual status, they became targets of Saddam’s Arabization campaign in which Saddam Hussein’s regime destroyed thousands of villages and civilian buildings to obliterate Iraqi Kurds in blatant disregard of core international humanitarian legal principles. ⁸⁰ Moreover, the Iraqi military operations specifically targeted Kurdish towns, cities, and villages in northern Iraq, under Kurdish control; it knew of the existence of Kurdish civilian population centers in the region, as confirmed by Iraqi censuses in prior years.⁸¹ The Iraqi

⁶⁸ *Id.* at 3.

⁶⁹ *Id.* at 4.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² John Muir, *supra* note 52.

⁷³ *Id.*

⁷⁴ *Id.* at 3-4.

⁷⁵ *Id.* at 4.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Ibid.*

⁷⁹ *Id.* at 5.

⁸⁰ *Id.*

⁸¹ *Id.*

military forces were engaged in an internationalized armed conflict with Kurdish rebel groups and Iran to gain control of the Kurdistan region, which was controlled by Kurdish rebels.⁸²

As discussed above, the genocidal intent should be inferred from the factual circumstances when there is inadequate, direct evidence of such intent. In the case of the Anfal campaign, the intent can be inferred from the evidence of the existence of a plan by the Iraqi government to destroy the Kurds, evidence that the Iraqi regime intended to destroy the Kurds, and evidence of the systematic or widespread character or nature of the genocidal acts.

With respect to the evidence of such plan to destroy the Kurds, there was evidence of the involvement of Chemical Ali in planning the attacks and evidence of Chemical Ali and the Iraqi military carrying out the attacks against the Kurds.⁸³ Regarding the systematic or widespread character of the genocidal acts, there was evidence of killing civilians *en masse* by the Iraqi military.⁸⁴ With regards to the evidence of the Iraqi government intending to destroy the Kurds, there was evidence of intent by the Iraqi government to destroy Kurdistan by physical or biological means and evidence of Chemical Ali expressing his intent to destroy the Kurds.⁸⁵

The *Rudzina* and *Kayishema* Trial Chamber held that the Defendants had the requisite genocidal intent to destroy the Tutsi group due to the number of victims that were killed during the four massacres in the Kibuye Prefecture of Rwanda in 1994, the way the killings were carried out (the methodology); and the Defendants utterances during and after the massacres.⁸⁶ With respect to the methodology of the killings, the Defendants formulated a national plan to carry out such massacres at the Complex, the Stadium and Mubuga Church effectuated by the *bourgmestres*, communal police, gendarmes and other law enforcing agencies at the massacre sites. Persons in positions of authority used hate speech and mobilized their subordinates, such as the gendarmes, the communal police, and the militias, who in turn assisted in the mobilization of the Hutu population at the massacre sites.⁸⁷ Further, such massacres took the lives of anywhere between 30,000 to 150,000 Tutsi civilians.⁸⁸ The statements made by Kayishema and Rudzina, indicating genocidal intent, included Ruzindana's anti-Tutsi utterances to the assailants, saying that the Tutsi refugees were "the enemy." Kayishema also instigated attacks by ordering the attackers to "shoot those Tutsi dogs."⁸⁹

Similarly, in the instant case, the Iraqi government planned the Anfal campaign in a coherent, methodical fashion. While power over these campaigns was highly centralized, their success depended on the orchestration of numerous agency efforts and institutions at the local, regional, and national level, from the Office of the Presidency of the Republic down to the lowliest *jahsh* unit. More specifically, Chemical Ali issued several orders which were part of a comprehensive plan over eight stages of military operations that he carefully planned, organized, and implemented with the help of military officials. Al-Majid issued two successive sets of military orders that were central to the destruction of the Kurdish population; such orders governed the conduct of Iraq's security forces towards the Iraqi Kurds. The first order redefined the term 'saboteurs' to include all the Kurds in rural areas. Leading up to the Anfal campaign, Order SF/4008 deemed 'prohibited zones' as those areas occupied by the Kurds and applied a

⁸² *Ibid.*

⁸³ *Genocide*, Case Matrix Network, art. 6., §§ 26.2, 26.3

⁸⁴ *Id.* at §§ 28.2, 29.2

⁸⁵ *Genocide*, Case Matrix Network, art. 6., §§ 15.5, 38.

⁸⁶ *Rudzina and Kayishema*, supra note 8, ¶ 148.

⁸⁷ *Id.* at ¶ 312.

⁸⁸ *Id.* at ¶ 531.

⁸⁹ *Id.* at ¶¶ 542, 556.

shoot-to-kill policy against any person found in these zones. Order SF/4008 also included summary executions of Kurdish adult males based on their ‘military age.’ The national authorities captured and executed thousands of men *en masse*; some men mysteriously disappeared never to be seen again. Further, the Iraqi military rounded up women and children and held them in detention camps under cruel and inhumane conditions until such military executed them. Lastly, during the Anfal campaign which included both the Halabja and Bahdinan chemical attacks, the Iraq government planned to utilize chemical weapons; the military implemented these attacks with warplanes, helicopters, and heavy artillery.⁹⁰ In addition to such plans, Al-Majid also utilized pejorative words that were indicative of genocidal intent. Chemical Ali stated that he wanted “to solve the Kurdish problem and slaughter the saboteur.” In one meeting, al-Majid asked why he should let the Kurds live “like donkeys who don't know anything?” and stated that he thought he might “find some good ones among [the Kurds]...but we didn't, never.” And elsewhere, he identified Kurds as “kind of dogs” whose heads he would “smash” and “crush.” On another occasion, he promised to “bury them with bulldozers.” Such plans implemented by the Iraqi military resulted in the massacre of 182,000 Kurdish civilians.⁹¹ The instant case has stronger facts than *Kayishema* and *Rudzina* because our case involved a distinct, methodical plan specifically implemented by the Iraqi regime and crushing chemical warfare unlike anything seen since World War I.

Because the case at bar is just as convincing as the *Rudzina* case, it is clear that the Anfal campaign was a genocide due to evidence of myriad Kurds perishing at the hands of the Iraqi government, evidence of public officials/soldiers planning and carrying out brutal massacres against the Kurds, evidence that the Iraqi government used chemical weapons which obliterated numerous individuals and villages, and evidence of Chemical Ali ordering others to commit genocidal acts with pejorative statements.

RECOGNITIONS OF THE ANFAL GENOCIDES

Global recognition began with the Anfal campaign. While the Iraq Special Tribunal, Iraq Supreme Court, Iraq Parliament, and the Iraq Special Presidential Council did recognize the Anfal campaign as genocide,⁹² the Norwegian, Swedish, British, and South Korean Parliaments started the global trend of recognizing the Anfal genocide.⁹³

However, the global recognitions of the Anfal genocide were not only relegated to legislative entities. The Supreme Court of Netherlands decided that Frans Anraat, a Dutch businessman, knowingly supplied chemicals for the Halabja attacks; it also held that the attacks of the 1980s against the Kurds were genocide because the Iraqi government targeted a specific group in contravention of the Dutch Genocide Convention Implementation Act.⁹⁴

⁹⁰ Human Rights Watch, *Genocide in Iraq: The Anfal Campaign Against the Kurds: A Middle East Watch Report*, (United States of America: Human Rights Watch, 1993), accessed March 27, 2023, <https://www.hrw.org/reports/1993/iraqanfal/ANFALINT.htm>.

⁹¹ *Id.*

⁹² Kurdistan Regional Government. [Gobierno Regional del Kurdistán | Genocide \(krgspain.org\)](http://www.krgspain.org).

⁹³ *Id.*

⁹⁴ Unrepresented Nations and Peoples Organization, *The Kurdish Genocide: Achieving Justice through EU Recognition*, March 6, 2023, 4, https://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-ig/dv/03_kurdishgenocidesofanfalandhalabja_/03_kurdishgenocidesofanfalandhalabja_en.pdf.

d. THE 2014-2018 ISIS GENOCIDES

FACTUAL BACKGROUND

YAZIDIS

The Yazidis are monotheists who believe in Melek Taus, a benevolent angel who appears as a peacock.⁹⁵ The self-proclaimed Islamic State of Iraq and the Levant and other Muslims in the region tend to view the peacock angel as the malevolent creature Lucifer or Shaitan. As such, they consider the Yazidis ‘devil worshippers.’ Unlike Judaism and Christianity, ISIS (DAESH) did not consider Yazidis as People of the book or eligible for Dhimmi and related protections.⁹⁶

In August of 2014, ISIS (DAESH) forced 300 Yazidi families to choose between converting to Sunni Islam or death.⁹⁷ On August 3, 2014, ISIS militants raided Sinjar in northern Iraq, a Kurdish-controlled town that was predominantly inhabited by the Yazidis.⁹⁸ ISIS militants summarily executed numerous Yazidis which led to around 50,000 Yazidis escaping to the nearby Sinjar Mountains. The ISIS militants surrounded and trapped the Yazidi people who were on Mount Sinjar. As result, they faced starvation and dehydration.⁹⁹¹⁰⁰ According to the United Nations, ISIS had massacred 5,000 Yazidi men and kidnapped about 7,000 Yazidi women and girls (who were forced into sex slavery) in Kurdistan.¹⁰¹

ISIS militants sold the abducted Yazidi women into slave markets. They used rape as a “weapon of war.” ISIS gynecologists examined these women to see if they were either virgins or pregnant. If they were pregnant, the ISIS gynecologists forced abortions on them because ISIS fighters wanted to prevent the birth of Yazidi babies; the fighters also forcedly impregnated these women because they only wanted Muslim progeny.¹⁰²

⁹⁵ Birgul Acikyildiz, THE YEZIDIS: THE HISTORY OF A COMMUNITY, CULTURE AND RELIGION (October 16, 2014).

⁹⁶ Rukmini Callimachi, “ISIS Enshrines a Theology of Rape,” The New York Times (August 13, 2015) <https://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html> (last accessed June 23, 2023).

⁹⁷ *Islamic State Militants Tell 300 Yazidis Families: Convert or Die*, Yahoo News (August 9, 2014) <https://news.yahoo.com/islamic-state-militants-tell-300-yazidi-families-convert-161322618--finance.html> (last accessed June 23, 2023).

⁹⁸ Liz Sly, “Exodus From the Mountain: Yazidis Flood Into Iraq Following US Airstrikes,” The Washington Post (August 10, 2014) https://www.washingtonpost.com/world/exodus-from-the-mountain-yazidis-flood-into-iraq-following-us-airstrikes/2014/08/10/f8349f2a-04da-4d60-98ef-85fe66c82002_story.html (last accessed June 23, 2023).

⁹⁹ David Stout, “*Be Captured and Killed, or Risk Dying of Thirst: The Awful Choice Facing the Refugees of Sinjar*,” Time Magazine (August 6, 2014) <https://time.com/3085270/iraq-yazidi-mount-sinjar-islamic-state-refugees/> (last accessed June 23, 2023).

¹⁰⁰ *UN Security Council Condemns Attacks by Iraqi Jihadists*, BBC News (August 7, 2014) <https://web.archive.org/web/20140808001143/http://www.bbc.com/news/world-middle-east-28699832> (last accessed June 23, 2023).

¹⁰¹ *The ISIS Victims You Don’t See—World Snoozes as Yazidis Massacred*, Observer (November 18, 2015) <https://observer.com/2015/11/the-isis-victims-you-dont-see-world-snoozes-as-yazidis-massacred/> (last accessed June 23, 2023).

¹⁰² Akita Shubert and Bharati Naik, “ISIS ‘Forced Pregnant Yazidi Women to Have Abortions,’” CNN (October 6, 2015) <https://www.cnn.com/2015/10/06/middleeast/pregnant-yazidis-forced-abortions-isis/> (last accessed June 23, 2023).

ISIS militant fighters raped the younger girls and then married them off to other fighters.¹⁰³ Thus, these women and girls were subjected to extreme physical and sexual violence, including systematic rape and sexual slavery.”¹⁰⁴ As a result of this sexual violence, they committed suicide by jumping to their death from Mount Sinjar.¹⁰⁵

CHRISTIANS

ISIS fighters swept over the northern city of Mosul and seized a broad swath of the country, including towns and villages in the Nineveh plains of northern Iraq. Thousands of Christians found themselves fleeing the militants’ advance, taking refuge in Iraq’s northern Kurdish region, or leaving the country. The ISIS fighters also destroyed buildings and ruined historical and culturally significant structures they considered contrary to their interpretation of Islam, including numerous monasteries, tombs, shrines, and churches. After the fall of Mosul, ISIS demanded that the Assyrian Christians in the city convert to Islam, pay jizyah, leave the city, or face execution.¹⁰⁶¹⁰⁷ Most left the city which resulted in a complete Assyrian Christian exodus from Mosul, marking the end of 1,800 years of continuous Christian presence.¹⁰⁸ The ISIS juggernaut and the long war to drive the militants out left ransacked homes and charred or pulverized buildings across the north.¹⁰⁹¹¹⁰

In the end, the ISIS militants forced anywhere between 100,000 to 200,000 Iraqi Christians to flee, executed numerous Christians, and raped myriad Christian women.¹¹¹

SHI’AS

ISIS, which is Sunni, persecuted Shi’a Muslims, despite being the religious majority in Iraq. On June 12, 2014, ISIS killed 1,700 unarmed Shi’a Iraqi Army cadet recruits during

¹⁰³ Kira Brekke, “ISIS Is Attacking Women, And Nobody Is Talking About It, The Huffington Post (September 8, 2014) https://www.huffpost.com/entry/isis-attacks-on-women_n_5775106?cps=gravity (last accessed June 23, 2023).

¹⁰⁴ Ivan Watson, “‘Treating Like Cattle’: Yazidi Women Sold, Raped, Enslaved by ISIS,” CNN (October 30, 2014) <https://www.cnn.com/2014/10/30/world/meast/isis-female-slaves> (last accessed June 23, 2023).

¹⁰⁵ Havidar Ahmed, “The Yazidi Exodus, Girls Raped by ISIS Jump to their Death on Mount Shingal,” Rudaw Media Network (August 14, 2014) <https://www.rudaw.net/english/kurdistan/140820142> (last accessed June 23, 2023).

¹⁰⁶ *Iraqi Christians Flee After ISIS Issue Mosul Ultimatum*, BBC News (July 18, 2014) <http://www.bbc.com/news/world-middle-east-28381455> (last accessed June 22, 2023).

¹⁰⁷ Ferdinande van Tets, “ISIS Takes Iraq’s Largest Christian Town Residents Say-Leave, Convert or Die,” The Independent (August 7, 2014) <https://www.independent.co.uk/news/world/middle-east/isis-takes-iraq-s-largest-christian-town-of-qaraqosh-9653789.html> (last accessed June 22, 2023).

¹⁰⁸ Carl E. Olson, “For the First Time in 1600 Years, No Masses Said in Mosul,” The Catholic World Report (June 30, 2014) <https://www.catholicworldreport.com/2014/06/30/for-the-first-time-in-1600-years-no-masses-said-in-mosul/> (last accessed June 22, 2023).

¹⁰⁹ *Timeline of Disaster and Displacement of Iraqi Christians*, VOA News (March 5, 2021) <https://www.voanews.com/a/middle-east-timeline-disaster-and-displacement-iraqi-christians/6202902> (last accessed June 22, 2023).

¹¹⁰ Nikita Malik, “Trafficking Terror: How Modern Slavery and Sexual Violence Fund Terrorism,” The Henry Jackson Society (2017).

¹¹¹ *Iraq Christians Flee as Islamic State Takes Qaraqosh*, BBC News (August 7, 2015) <https://www.bbc.com/news/world-middle-east-28686998> (last accessed June 22, 2023).

the Camp Speicher massacre. ISIS also targeted Shi'a prisoners.^{112 113} After the militant group took the city of Mosul, they divided the Sunni prisoners from the Shi'a prisoners.¹¹⁴ The ISIS militants executed 670¹¹⁵ Shi'a prisoners.¹¹⁶

In July of 2014, ISIS militants and supporters painted Shi'a properties in Mosul and other ISIS-held areas with the letter (ر) (resh) for *Rafidah*, a derogatory term for Shi'as used by Sunni Muslims. ISIS also confiscated houses and shops owned by Shi'as and gave them to local ISIS supporters and/or ISIS foreign fighters.¹¹⁷ Thousands of Shi'a Shabaks and Turkmen fled the cities of Mosul, Tal Afar, and the rest of Nineveh Governorate to safer Shi'a-majority areas farther south. Thousands of Shi'as from villages in Salahudin and Kirkuk governorates fled to neighboring villages in Kirkuk after ISIS eviscerated three Shi'a villages. ISIS also killed at least 40 civilians including children near the town of Bashir.¹¹⁸

In a special report released on September 2, 2014, Amnesty International described how ISIS had “systematically targeted non-Sunni Muslim communities, killing or abducting hundreds, possibly thousands, of individuals and forcing more than tens of thousands of Shi'as, Sunnis, along with other minorities to flee the areas it had captured since June 10, 2014.” The most targeted Shi'a groups in Nineveh Governorate were the Shi'a Turkmen and Shabaks.¹¹⁹

LEGAL ANALYSIS

During the 2014-2018 genocide of the Yazidis, Christians, and Shi'as, ISIS perpetrated many acts or *actus reus* qualifying under the “punishable acts” section in Article 2 (2) (a)-(e) of the Genocide Convention. Such acts included, “killing members of the group,” “causing serious bodily or mental harm to members of the group,” “deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part,” and “imposing measures intended to prevent births within the group.”¹²⁰

Such regime “kill[ed] members of the group” when it performed mass summary executions of 5,000 Yazidi men, killed hundreds if not thousands of Christians and executed 1,700 unarmed Shi'a Army cadet recruits as well as other civilians. ISIS also “caus[ed] serious bodily or mental harm to members of the group” when its actions resulted in myriad Christians, Yazidis, and Shi'as fleeing Kurdistan; its militants raped and forced Yazidi and Christian women into sex slavery. Furthermore, it caused bodily and mental harm when it subjected Yazidis

¹¹² Mohammed Tawfeeq, “Terrifying Execution Images in Iraq: US Embassy in Iraq Relocates Some Staff,” CNN (June 17, 2014) <https://www.cnn.com/2014/06/15/world/meast/iraq-photos-isis/> (last accessed June 23, 2023).

¹¹³ *Iraq Court Sentences 24 to Death Over Speicher Massacre*, Middle East Monitor (July 9, 2015) <https://web.archive.org/web/20150802184916/https://www.middleeastmonitor.com/news/middle-east/19749-iraqi-court-sentences-24-to-death-over-speicher-massacre> (last accessed June 23, 2023).

¹¹⁴ Luke Harding and Fazel Hawramy Irbil, “ISIS Accused of Ethnic Cleansing as Story of Shia Prison Massacre Emerges,” The Guardian (August 25, 2014) <https://www.theguardian.com/world/2014/aug/25/isis-ethnic-cleansing-shia-prisoners-iraq-mosul> (last accessed June 23, 2023).

¹¹⁵ *UN Accuses Islamic State of Mass Killings*, Reuters (August 25, 2014).

¹¹⁶ *ISIS Accused of Ethnic Cleansing As Story of Shia Prison Massacre Emerges*, supra note 129.

¹¹⁷ *Iraq: ISIS Abducting, Killing, Expelling Minorities*, Human Rights Watch (July 19, 2014) <https://www.hrw.org/news/2014/07/19/iraq-isis-abducting-killing-expelling-minorities> (last accessed June 23, 2014).

¹¹⁸ *Id.*

¹¹⁹ *Iraq Crisis: Islamic State Accused of Ethnic Cleansing*, BBC News (September 2, 2014) <https://www.bbc.com/news/world-middle-east-29026491> (last accessed June 23, 2023).

¹²⁰ Genocide Convention, supra note 2.

trapped on Mount Sinjar to starvation and dehydration and destroyed their homes and places of worship. In addition, the regime “deliberately inflict[ed] on the group conditions of life calculated to bring about physical destruction in whole and part” when the military raped and subjected the Yazidi and Christian women to sex slavery and killed myriad civilians. It lastly “impos[ed] measures intended to prevent births within the group” when it forced women to abort their unborn babies with their Yazidi husbands and raped them to birth only Muslim children.

Furthermore, the targeted groups or “national, ethnic, racial, or religious group[s]” were the Christian, Yazidi, and Shi’a religious groups. ISIS operations targeted the Christians, the Yazidis, and the Shi’as as members of such religious groups because they were perceived as belonging to these groups by their perpetrators.¹²¹ Due to their religious identity, rather than their individual status, they became targets of ISIS which destroyed religious buildings and homes; killed myriad civilians of such religious groups; and forced deportation of such civilians in blatant disregard of core international humanitarian legal principles.¹²²

As discussed above, the genocidal intent must be inferred from the factual circumstances when direct evidence of such intent was insufficient. In the case of the genocide of Christians and Yazidis, the intent can be inferred from evidence of the systematic or widespread character or nature of the genocidal acts. With respect to the Shi’as, the genocidal intent can be inferred from evidence of statements made by ISIS and evidence of the systematic or widespread character or nature of the genocidal acts.

Regarding the evidence of the systematic or widespread character of the genocidal acts by ISIS against the Christians and Yazidis, there was evidence of ISIS selecting victims based on their membership in the Christian and Yazidi religious groups, evidence of rape as means of destroying such groups, and evidence of forced transfer of the Yazidis and the Christians.¹²³ With respect to the evidence of systematic or widespread character or nature of the genocidal acts by ISIS against the Shi’a, there was evidence of killing civilians, pejorative words by ISIS, and the forced transfer of the Shi’as.¹²⁴

In *Prosecutor v. Mikali Muhimana*, the Trial Chamber held that the Defendant had the requisite intent to destroy the Tutsis due to the mass killings of such group and numerous rapes perpetrated by the Defendant because he took part in the attacks at Nyarutovu and Ngendombi Hills, where he shot and wounded a *Tutsi* man called Emmanuel;¹²⁵ carried out an attack at Mubuga Church, where he shot at *Tutsi* refugees and threw a grenade into the church where refugees were gathered;¹²⁶ partook in attacks at Mugonero Complex, where he raped *Tutsi* women and shot at *Tutsi* refugees;¹²⁷ engaged in attacks at Kanyinya Hill, where he pursued and attacked *Tutsi* refugees and shot a *Tutsi* man called Nyagihigi;¹²⁸ and took part in attacks at Muyira Hill, where he shot and killed the sister of Witness W, a *Tutsi*.¹²⁹

Similarly, in the instant case, ISIS extremists killed and raped the Christians and Yazidis. Furthermore, ISIS massacred 1,700 Shi’a Iraqi Army cadets during the Camp Speicher massacre. However, our case has stronger facts because the Christians, Yazidis, and Shi’as faced forced

¹²¹ *Id.* at 5.

¹²² *Id.*

¹²³ *Genocide*, Case Matrix Network, art. 6., §§ 29.1, 30.1, 31.1.

¹²⁴ *Genocide*, Case Matrix Network, art. 6., § 29.2, 31.1

¹²⁵ *Prosecutor v. Muhimana*, Case No. ICTR-95-1B-T, Judgment (TC) ¶ 473 (April 28, 2005).

¹²⁶ *Id.* at ¶ 474.

¹²⁷ *Id.* at ¶ 475.

¹²⁸ *Id.* at ¶ 476.

¹²⁹ *Id.* at ¶ 477.

CONCLUSION

The Feyli genocide, the Barzani genocide, the Anfal campaign and the 2014-2018 ISIS genocide against the Christians, Yazidis and Shi'as were proven genocides based upon the fulfilment of the *actus reus* and *mens rea* requirements of genocide as outlined under the Genocide Convention. Furthermore, case law from the ICTY and ICTR only proved that the Kurds were subjected to genocides by the Iraqi regime under Saddam Hussein and ISIS (DAESH). As such, as Nicholas Kristof stated that we will “be judged in years to come by how [we] responded to genocide on [our] watch.” We cannot fail to respond to and recognize the Kurdish genocides or we have certainly failed as a civilization.