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# **Born of ISIS Genocide: Risk of Statelessness and Stigmatised Nationality Acquisition for Children of Yezidi Survivors**

Thomas McGee

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## **Abstract**

Children born to Yezidi survivors of genocidal rape during Islamic State (ISIS) captivity are likely to face a future interspersed with difficult realisations about the tragic circumstances of their coming into this world. In the shadow of the trauma endured by their mothers, many are subject to the legacy of genocide. One such manifestation is their civil documentation predicament, as they are trapped between the risks of statelessness and the possibility of acquiring a dangerously stigmatised nationality that associates the children with their perpetrator fathers. Considering the human rights and best interests of such children, this article unpacks the legal, religious and social dimensions that complicate their ability to access the right to a nationality, and traces the evolving community discourse on the issue. The central claim is that in exceptionally tragic circumstances, accessing a stigmatised form of nationality may be just as problematic as the plight of remaining stateless. Despite some initial ‘creative’ informal solutions to the problems the laws have failed to solve, the article concludes by turning to the international community to fill the gap in protection available to these children.

**Keywords:** Statelessness; Civil Documentation; Genocide; Yezidis; Iraq

## **Introduction**

*‘This is my son. He is now one year old and I named him "Xemgin" [Kurdish for “Misery”] because he was born there under the Islamic State, in those terrible circumstances. He doesn't have a birth certificate or an ID card. He was my only comfort when I was in captivity but now I have no idea what will be his future.’*

These are the words of a female Yezidi survivor from Sinjar (Iraq) as she lovingly cuddled her child during an interview I conducted during November 2016 in Duhok governorate of the

Kurdistan Region of Iraq (KRI). The name ‘Misery’ has here been changed to protect the identity of the infant and mother – though it reflects the observation that a number of babies born in such contexts had been given names depicting the plight of their mothers.<sup>1</sup> When I suggested that another (more neutral and less stigmatising) name might be better for the child’s future, the mother insisted simply, ‘his name is Misery [...] Our people will never forget the misery of this world. This is why I gave him this name.’

In August 2014, the Islamic State extremist group launched a brutal attack on the Yezidi-majority area of Sinjar in a region of Iraq contested between the central government and the federal Kurdistan Regional Government. ISIS forced Yezidi men to convert to Islam or executed them on the spot, while it sold thousands of women and girls into captivity at slave markets. Almost two years on, more than 3,200 Yezidi women and children were reported to still be held by the extremist group.<sup>2</sup> The unparalleled atrocities experienced by the Yezidis at the hands of the Islamic State, which according to the United Nations amount to ‘genocide’,<sup>3</sup> have left severe psychological impacts on the survivors who have eventually escaped.<sup>4</sup>

Reflecting on the situation of “Xemgin” from this point of departure, a number of general questions naturally arise. For example, how can the human rights of children conceived in contexts of wartime captivity and sexual violence be secured? What about the rights of the mothers as they seek to recover from the experience? Can they reintegrate into their communities and how will their new-born children be received? A response to these questions in the case of children born to Yezidi survivors held captive and abused by ISIS since August 2014 must integrate legal and religious considerations, and balance protection concerns for both survivors and the children born as a result of their ordeal.

Such children may well grow up realising that they are different from others: stigmatised, more vulnerable perhaps, possibly undocumented and at risk of statelessness. At some point, they will begin to ask about their absent father, and consequently may turn to question their own identity. In most cases, a future interspersed with difficult realisations about the tragic circumstances of their coming into the world lies ahead. This article will consider the risk of statelessness and issues relating to acquisition of nationality and their implications for ensuring the human rights and best interests of these children. The central claim of this article is that in exceptionally tragic circumstances, accessing a stigmatised form of nationality may be just as problematic as the plight of remaining stateless.

The civil documentation issues faced by these children are considered as both a manifestation and trigger of the widespread identity-based discrimination enacted against the vulnerable Yezidi minority in the genocidal and post-genocide context. Ultimately, the article argues that children born to Yezidi survivors are currently obliged to grow up in a state of limbo between two problematic paradigms. The first is the risk of becoming stateless, while the second is the possibility of accessing a dangerously stigmatised Iraqi citizenship. Patrilineal citizenship can stigmatise children born of genocidal rape by associating the new-born with the identity of the perpetrator father. Moreover, for those born to Yezidi survivors held captive by ISIS, the fact that

Iraqi law considers any child of an unknown father to be Muslim by religion is especially problematic given the sensitive religious dimensions of the genocidal persecution.

### **Research Framework and Ethical Considerations**

The research for this article was conceived within the context of the humanitarian response to support vulnerable individuals from the internally displaced community in Duhok, KRI. The design of the study was informed by the author's previous experiences working with legal assistance programmes run by humanitarian organisations alongside the Yezidi community in the area from July 2015 to January 2017. Formal interviews for the purpose of this article commenced with Yezidi survivors, community representatives and humanitarian/legal actors in spring 2017 and continued until September of that year. Thereafter, several rounds of follow-up interviews were conducted at subsequent points in order to ensure up-to-date information and to trace the evolution of the issues under study.

Grounded in the 'protection principles' fundamental to humanitarian work, this research draws on established best practices for working with survivors of Sexual and Gender-Based Violence (SGBV).<sup>5</sup> Beyond the standard ethical imperative of obtaining informed consent, note was taken of concerns reported by human rights organisations about intrusive approaches by some actors when interviewing survivors in Iraq.<sup>6</sup> As such, a 'trauma-informed interviewing' methodology was employed depending on open-ended questions in order to avoid compelling affected individuals to re-narrate specific details of their traumatic past experiences. The author conducted the interviews directly in Arabic or Kurdish according to the preference of the interviewee, while taking written notes. A total of eighteen survivors were interviewed. A further nineteen interviews were held with key stakeholders (lawyers, representatives of the Yezidi religious leadership etc). For the most part, interviewee names have been anonymised in order to protect the identities and wishes of research participants.

The author recognises the sensitivities and great emotional difficulties around the research subject, not only for the individual survivors who have suffered unimaginable physical and psychological violence, but also for the entire Yezidi community and its religious leadership who must endure the legacy of the Islamic State's attempts to destroy their collective existence. As such, for both individual Yezidi survivors and the community at large, silence around the issue of children born of genocide can be a conscious coping mechanism and is (at times) an effective protection strategy, given the conservative attitudes towards the concept of chastity and 'honour' (*namûs* in Kurdish) among women.

Nonetheless, as Carpenter compellingly argues, more research is needed to gain a fuller understanding of 'under what conditions silence is an adequate protection mechanism'.<sup>7</sup> This article similarly subscribes to the rationale that there is significant value in scholarship sensitively approaching this subject in order to increase awareness within the (broadly defined) humanitarian and human rights community about the potential consequences and protection risks at play. This will better inform engagements intended to provide support by ensuring that a 'Do No Harm'

approach is maintained with respect to the survivors and their children.<sup>8</sup> It is hoped that this understanding will be particularly useful for practitioners and wider readership interested in legal assistance, SGBV and Child Protection responses.

The present research seeks to counter the frequently sensationalised media representations of what Allison and Buffon have referred to as the ‘hyper-visibility’ of the abducted Yezidi woman, highlighting the tendency to assume and privilege certain narratives survivors and their communities may find uncomfortable.<sup>9</sup> Further, the ultimate motivation behind this study has been the task of exploring potential avenues to secure the human rights for both survivors and their children by acquisition of a non-stigmatising nationality for the latter.

In terms of structure, this article proceeds with a presentation of the key legal (Iraqi) and religious (Yezidi) considerations surrounding the issue under study. The remaining part of the article reflects chronological developments characterising the Yezidi community’s differentiated response towards the issue of children born to the survivors. Here, a first period is examined based on the field work conducted in 2017, and informed by earlier observations. This period is characterised by an official denial and down-playing of the problem of ‘children born of genocide’ among both Yezidi community figures and government officials in the Kurdistan Region. Survivors who had escaped from ISIS captivity with a young child prior to this period were met with a certain degree of flexibility with regards to facilitation of the birth and civil registration for the child. A number of ‘creative’ *ad hoc* solutions were pursued by various stakeholders in order to accommodate the perceived best interests of the child.

While in retrospect it is clear that the shape of the community response was still emerging during this period, credit is due to Yezidi activist and religious minorities expert, Professor Khidher Domle, for his foresight that the issue would likely evolve significantly as increasing numbers of survivors would seek to escape ISIS captivity with children thereafter.<sup>10</sup> This critical shift began to take place during 2018 due to an intensification of the international coalition’s efforts to combat ISIS militarily in Syria and Iraq, allowing an opportunity for many survivors to make escape attempts. In this context and with the passing of time, the plausibility of the ‘creative’ solutions implemented previously began to wear thin, limiting the possibility to accommodate the situation of such children. Influenced by increased advocacy for more sustainable solutions to the issue, in April 2019 the Yezidi religious leadership led by the Rohani (Spiritual) Council issued an official statement to accept the children of the survivors as belonging to the Yezidi faith. This action was unprecedented for the closed, endogamous community, and in turn it has led to a counterproductive backlash from within the conservative Yezidi community, and arguably further stigmatised the situation of the children.

As presented below, the changing community responses to the issue of children born to female survivors of ISIS genocide overlays the (Iraqi) legal and (Yezidi) religious frameworks. Both frameworks present areas of historic incompatibility with regards to achieving a non-stigmatising citizenship solution for these children. Ultimately, the intersections between legal obstacles, religious doctrine and conservative community attitudes have co-produced a constellation of challenges to the infant’s fundamental human rights. A study of each of the legal

and religious frameworks is provided for context and with a view to exploring possibilities of navigating the landscape of exclusion and marginalisation experienced by survivors and their children.

### **Risk of Statelessness and Legal Obstacles to Nationality for Children of Survivors**

One understudied issue among the many entangled factors inhibiting the recovery of Yezidi survivors is the challenge that many have faced in accessing (replacement) civil documentation, and consequently proof of nationality for their new-born children. For those who managed to escape captivity, the ISIS legacy has added a new dimension to the existing crisis of documentation for the displaced in Iraq. King and Ardis describe the challenges for internally displaced persons (IDPs) to acquire documentation in a system that is ‘largely paper-based and location-specific,’ where applicants are subjected to ‘complicated procedures, fees, administrative backlogs and a high burden of proof.’<sup>11</sup> Many IDPs, including survivors of abduction, report facing difficulties in accessing replacement documentation in their place of current residence, with procedures becoming ‘more lengthy and complex’ after 2014.<sup>12</sup> Challenges experienced by undocumented IDPs in Iraq include inability to access humanitarian aid and government services, limited freedom of movement and restricted work opportunities.<sup>13</sup>

Due to the prominence of the (primarily male) head of the household within the Iraqi legal/administrative system,<sup>14</sup> women whose male relatives are ‘*mafquod*’ (meaning ‘missing’, which includes those presumed dead) often face significant bureaucratic obstacles relating to acquisition and/or replacement of civil documentation. Further, the legislation relating to nationality in Iraq compounds the challenges of registration for the children conceived to Yezidi survivors under ISIS control due to an intersection of discrimination on the basis of gender and religion. Such children face critical situations, growing up at risk of being stateless if their registration problems remain unresolved. While these cases have received little attention in the literature, globally much advocacy has been conducted on the right of every child to acquire a nationality, highlighting the detrimental effects of childhood statelessness. Multi-actor efforts have culminated in the establishment of a Coalition on Every Child’s Right to a Nationality.<sup>15</sup> In this spirit, it is essential to work on (legal) solutions for nationality and identity issues surrounding registration of the children born to Yezidi survivors under Islamic State captivity.

Unlike many states in the Middle East, the current Iraqi nationality regime has overturned many elements of the historic patrilineal logic governing nationality acquisition that had meant children could only inherit Iraqi nationality through an Iraqi father.<sup>16</sup> Following the fall of Saddam Hussein in 2003, the new constitution and Nationality Law permit children born in the country to inherit nationality from their mothers as well as fathers.<sup>17</sup> While these measures represent positive steps in moving towards equal nationality rights, and establishing safeguards to prevent statelessness, a number of provisions remain problematic in particular cases. The situation of

children born to Yezidi survivors of unknown fathers highlights the dilemmas caused by the presence of religious bias embedded within Iraq's nationality regime.

According to Iraqi law, when the father is absent or of unknown identity, the child is referred to as being of 'undetermined paternal lineage' (that is *majhoul al-nasb* in Arabic). In any such case, the legal provisions instruct that the child is to be considered as an Iraqi national of Muslim religion.<sup>18</sup> This arrangement has been consolidated by the recent adoption of the National (ID) Card Law, which considers 'a foundling or *majhoul al-nasb* as Muslim Iraqi unless proven otherwise.'<sup>19</sup> The same law also sanctions the Juvenile Court to confidentially provide personal details of the child (name, date/place of birth, parentage etc) to the Civil Status Directorate,<sup>20</sup> and it is understood that in practice the Court exercises significant discretion to choose these details,<sup>21</sup> and to invent a father's name to be recorded on the child's documents.<sup>22</sup>

Registering children growing up with their Yezidi mothers and extended Yezidi family in often entirely Yezidi-populated camps or unfinished building as Muslim based on an arbitrary prescription in law can do nothing but increase stigma for these children. Given that the Yezidis were singled out and persecuted by the Islamic State on grounds of their religious identity, this legal practice can be seen as a victim-insensitive remedy, and could even be argued to be a continuation of the genocide against the Yezidis by targeting their communal identity and 'forcibly transferring children of the group to another group.' This, according to the Genocide Convention, is one of the acts considered as genocide when 'committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group'.<sup>23</sup> Moreover, labelling the child with the same religious identity as the persecutors of the community presents a heightened risk of family rejection, ostracism and other harm towards infant and/or mother from within the traumatised Yezidi community, thus adding to their vulnerability. Humanitarians promoting civil documentation acquisition in such cases, therefore, have a duty to be cautious in 'Doing No Harm.'

### **Yezidi Religious Framework**

In addition to the Iraqi legal framework outlined above, the Yezidi religion presents its own, largely parallel, prescriptions about who may be considered to belong to the community. Due to the predominantly oral transmission of the faith, it is often difficult to separate elements of religious doctrine from socio-cultural practices among the Yezidis.<sup>24</sup> Nonetheless, one essential pillar of Yezidi identity that cuts across religion and social attitudes is the belief that a Yezidi must have been born to two Yezidi parents. As a distinct religious group that has suffered a history shaped by persecution and attempted forced conversions, strict endogamous practices and a closed identity framework have been a central tenet and particularity of Yezidi faith, described by Açıkyıldız as part of a 'self-protection and self-preservation mechanism.'<sup>25</sup>

Yezidi identity is further maintained through strict rules around permissible marriage options. Belonging to a highly stratified community composed of three castes: *murid* (laypersons), *pir* and *sheikh* (both clerical figures), regulations prohibit inter-caste marriage. With the concept of honour (*namûs*) closely associated with the religion, and deeply enshrined as a key social value

for the community,<sup>26</sup> Yezidis who violate these prohibitions may be severely ostracised. In extreme cases, relatives have undertaken ‘honour killings’ of women engaged in extra- and pre-marital sexual relations, highlighted most infamously by the stoning to death of 17-year old Du’a Khalil Aswad in Bashiqa for relations with a Muslim teenager in 2007.<sup>27</sup> As a more general rule, Yezidi women engaging in relationships with outsiders prior to 2014 were regarded as no longer belonging to the community, which had stubbornly resisted any change on this front.<sup>28</sup>

The sexual violence perpetrated by ISIS since 2014 has consequently been destructive to the continuity of the Yezidi identity marker. As part of its pre-meditated programme of institutionalised rape, ISIS undertook to forcibly convert to Islam the Yezidi women under its control. These atrocities on a mass scale presented an existential threat to the Yezidi community. With (re-)conversion into the religion and inter-faith marriages/relationships theologically and socially outlawed as outlined above, the Yezidi leadership issued a bold, innovative and praise-worthy statement in early 2015 to ‘affirm that the survivors – male and female [who had been coerced to convert to Islam] – remain unblemished Yezidis.’<sup>29</sup> This initiative was deemed necessary given the scale of women captured by ISIS, and it has been widely welcomed by the international humanitarian community. It thus serves as a demonstration of the important role the religious leadership can play in positively shaping and de-stigmatising perceptions of innocent victims.<sup>30</sup>

However, the issue of the children born to Yezidi women during ISIS control and captivity remains unresolved. Propaganda pamphlets produced by ISIS reveal the group’s conviction that ultimately this ‘[s]lavery serves to increase the ISIS community because Y[e]zidi women will give birth and the children will be brought up among its fighters.’<sup>31</sup> According to this ideology, the practice of forced pregnancy through rape may be considered as directly genocidal in view of conceptualising the new-borns as belonging to the group of the perpetrator due to prevalent notions of patrilineal heritage espoused by ISIS. This crisis posed by the fate of such children emerged as women slowly managed to escape from the Islamic State in the years following 2014. This was at a time when the community was facing, and seeking to adapt to, other unprecedented challenges as the result of insecurity, prolonged displacement from Sinjar, and inability to return.<sup>32</sup>

Such challenges added to the existing strains the community, and particularly the religious leadership, had faced in previous years due to the perceived threat against its identity and traditional way of life through what Yezidi scholar Mamo Othman had already described as the ‘gradual alienat[ion] from Yezidi society and melting into a European one’ as the result of large emigration from Iraq over recent decades.<sup>33</sup> It is consequently understood that the religious leadership, represented by the Rohani Council, has suffered from significant challenges to its authority and relevance when it comes to providing coherent and convincing instruction to an increasingly cosmopolitan Yezidi community.<sup>34</sup> Additionally, it has long been in an officially inferior position vis-à-vis the Muslim majority that wields influence over institutions of the state. For instance, while the Muslim and Christian communities have their own personal status codes and religious courts to regulate matters related to marriage, divorce and custody of children, the

Yezidi faith has no code recognised by Iraqi law despite the efforts of Yezidi activists to lobby for one prior to 2014.

At this complex intersection between stigmatising provisions within the legal framework at the level of the central government and conservative socio-religious values, Yezidi survivors and other members of the community began to navigate the question of civil registration for the children of the survivors. Based on field research, community and stakeholder responses following the ISIS assault on the community can be characterised according to two rough time periods: up to 2017 and thereafter, as detailed in the following sections. As presented, the landscape within which solutions may be found for the children to avoid both statelessness and stigmatised nationality has evolved over time.

### **2014 – 2017: ‘Humanitarian’ Solutions and ‘Suspension of Disbelief’**

Following August 2014, approximately 6,430 Yezidi individuals had been identified as missing due to ISIS’s take-over of the Sinjar region.<sup>35</sup> During the first years following the occupation, Yezidis managed to flee from ISIS captivity through their own escape attempts or via the intervention of smuggler-coordinators and the indirect facilitation of the Kurdistan Regional Government. By October 2016, 998 women had joined their communities living in displacement within the Kurdistan region.<sup>36</sup> According to the Head of the Duhok Office of Kidnap Affairs that had been mandated to follow up on cases related to abducted Yezidis, the vast majority of those who returned from captivity lacked any civil documentation.<sup>37</sup>

A number of returning women brought with them children born during their captivity. The period up to 2017 was, however, largely characterised by an official non-recognition of this phenomenon among government and the Yezidi leadership, with a representative from the Duhok-based Directorate of Health stating that ‘although there might be some such cases, we have not encountered any.’<sup>38</sup> While operating in this sensitive context as a researcher, I was careful to refer to children ‘born *in* war’ rather than ‘*of* war’ or similar in order to avoid implying a potentially problematic paternal association with a member of ISIS. While never asking the survivors about the paternity of their children, a number of those interviewed nonetheless confided that their child was the result of rape. In other cases, it was clear from the survivor’s narrative and the period of time spent in captivity that the child had been conceived to a non-Yezidi while in ISIS captivity. The overwhelming majority of mothers encountered during this period appeared to embrace their children, and sought to bring them up as their own, sometimes despite significant community pressures – especially in IDP camp settings.

Alongside the non-recognition of the problem of children born of ISIS rape by government officials in the Kurdistan region, Yezidi community figures as well as providers of humanitarian assistance reported to the author being familiar with a number of such cases. In particular, legal assistance actors had encountered cases of children for whom there were challenges in issuing birth certificates due to the inability of the mother to legally establish the identity of the father. Nonetheless, this period was characterised by discrete efforts to find ‘creative solutions’ for such

problems in cases where mothers wanted to remain with their children, primarily driven by ‘humanitarian’ motivations to serve the perceived best interests of the child and family. For instance, one judge in Duhok stated that in cases where the mother had been married to a (now missing) Yezidi husband prior to August 2014, he would look to ‘confirm’ this man as the father on the child’s documents on the condition that all family members expressed their willingness for this to happen.<sup>39</sup> Knowing that this was a blatant violation of the law, the judge explained that in what he saw to be the interest of the child and family’s future, he was willing to ‘suspend his disbelief’ regarding the age of the child as long as witnesses were willing to ‘testify’ to the agreed proposition.

The situation was further challenging when the Yezidi mothers had not been married before August 2014 given the social unacceptability to have children outside marriage. However, a Yezidi lawyer working on a *pro bono* basis through NGOs was sometimes similarly able to find creative ‘solutions’ for such cases by creating entirely new parental relations for the child for the purposes of documentation (e.g. through an aunt and uncle).<sup>40</sup> This often required appealing to the good faith of officials. The lawyer explained, ‘we have been able to find solutions *within the law* for a number of cases like this. We want to help the family so sometimes we have to bend the law (*qanûn nerm bikim*). I have to use my humanitarian discretion and work with the sympathetic officials.’ Clarifying further, it was here explained that the biggest obstacles during this period were often not those presented by the law, but by the community: ‘If all members of the family are convinced to take a certain action, and will not change their mind, then we can always find a solution *within the law*.’ Having earned its trust, the Yezidi religious leadership seemingly was willing to ‘turn a blind eye’ and permit this particular lawyer to engage in registering children born to ISIS fathers as Yezidi despite the official prohibition according to both Iraqi law and the Yezidi doctrine.

At the same time, many lawyers, community figures and religious leaders interviewed during the period from 2015-2017 expressed their belief that ultimately a fully non-stigmatising legal solution exists only in exile. There, it would be possible for the child to live, and be registered, without the need to declare a religion. Thus, it was argued that children born to Yezidi survivors of genocide should be given prioritised consideration for resettlement programmes, including those managed by the United Nations Refugee Agency (UNHCR). However, in practice many receiving states were unwilling to consider children born of ISIS fighters within their resettlement quotas due to perceived security concerns. In this difficult context, Baba Chawish, the guardian of Lalish sanctuary, provided particularly helpful personal reflections on the subject.<sup>41</sup> While recognising that an official position can only be taken by authority of the Rohani Council, he argued that ‘we must show humanity to these children,’ adding that it was his fear that should there be a negative response from within the community over this issue (i.e. an honour crime targeting the child or mother), it would have catastrophic impacts on the Yezidis as a whole: ‘we would be seen as the perpetrators of violence rather than the victims of genocide.’

## 2018 Onwards: The Limits of ‘Humanitarian’ Solutions

From late 2017 until spring 2019, the US-led international coalition intensified its military campaign against ISIS in Syria. In this context, many Yezidi survivors held captive by the group inside Syria looked for opportunities to escape and return to their community in the Kurdistan region of Iraq. As increasing numbers of female survivors emerged with children (sometimes more than one after up to four years in captivity), the increased visibility for the issue meant it was no longer feasible for actors to maintain the ‘creative’ solutions they had previously been delivering to facilitate registration of these children in cases where the mother wished to keep the child(ren). Also, the greater passing of time between the point of entering captivity and point of release added to the incredulity of stating that a child born in captivity belonged to an original Yezidi husband from before August 2014. In the new context with greater scrutiny, the legal provisions reverted to their original inflexible basis, whereby should a mother wish to keep her child of *undetermined paternity*, she too would end up having to convert to Islam.<sup>42</sup> This has added further sensitivities to the issue as it appears to validate the genocidal process enacted by ISIS.

As the issue grew in magnitude, sections of the Yezidi community began to crystallise a position to reject the children – claiming that they do not belong to the Yezidi religion and culture, but rather that they carry the identity of the Muslim extremists who terrorised the community. In this context, community activists took to lobbying the Yezidi religious leadership to take other measures in order to secure solutions for such children. This eventually led to the Rohani Council issuing a statement similar to the one embracing the female survivors; again this was done based on a ‘humanitarian’ conviction towards the best interests of the children. However, only days later the Council issued a clarifying statement to annul the first measure.<sup>43</sup> Yezidi survivor and activist Salwa Khalaf considers that the adoption of the statement had not been carefully considered and the religious leadership lacked a strategy to manage the community backlash.<sup>44</sup> Other community figures argued that the Rohani Council sought with this statement to put pressure on the Iraqi government to find a legal solution. This led numerous women to feel torn between the dilemma of returning to the community without their child, or staying away and keeping the child. The situation is reflected in the titles of a good many news headlines during the period of 2019.<sup>45</sup>

With the passing of time, the initial solutions to find ‘creative’ ways to register the children born to the survivors of captivity as Yezidis became no longer tenable. At the same time, the ‘humanitarian’ appetite to flexibly manoeuvre the legal system had lessened as the host community in the Kurdistan region suffered from fatigue due to protracted displacement and its economic impacts. Meanwhile, the central government remains resolute in implementation of its laws that consider any child of undetermined paternity as a Muslim Iraqi. Given the strong Muslim majority within the Iraqi parliament, it seems unlikely that any of the proposals raised for review that focus on solutions to the problem of Yezidi survivors and their children will be seriously considered. As Dr Falah Hasan Issa, a Yezidi activist who has played a significant role in advocating for such measures to be considered, put it, ‘now our only hopes for a solution from Baghdad lie with the

international community putting pressure on the government.’<sup>46</sup> He added that France has played a key role in advocating on this point, but stated that as yet the results are unclear.

## **Conclusion**

In search of solutions to the civil documentation predicament of children born to Yezidi survivors of ISIS captivity, this article has assessed that accessing a stigmatised form of nationality may be equally as harmful as being deprived of nationality altogether. The article highlights how the fate of children born to Yezidi women in contexts of ISIS captivity and genocidal rape oscillates between risks of statelessness and dangers of holding a stigmatised and stigmatising Iraqi nationality; a nationality that based on religious identification would associate the child with the perpetrator father. This creates protection risks for the child due to possible retaliation from Yezidi relatives or community members who have been traumatised by extremists of the Islamic State.

Although creative ‘solutions’ could initially be found to accommodate some such situations while navigating the law, the challenges posed by legal and religious frameworks have intersected to trigger more restrictive community responses over time. Although this issue is clearly a dynamic one, an ultimate solution appears to still be a tragically long way off. Faced with an impasse, community activists have called on the international community to step up efforts to find a solution. Beyond simply promoting the importance of birth registration and access to nationality in abstract terms, in such cases it is necessary to advocate for decisive reforms to Iraqi legislation. Recognising the improbability of success here, however, local NGOs continue to advocate for inclusion of such cases in international resettlement programmes, with one organisation stating, ‘These mothers and children will not find safe haven in Iraq. [...] To provide relief and any prospect of a life for these mothers and children, options in foreign countries should be provided as soon as possible.’<sup>47</sup>

In the meantime, most of the children remain with their mothers in internal displacement camps and continue to be at risk of statelessness. As they begin to pass the age of school enrolment, their lack of identity registration and statelessness status is proving all the more critical.

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<sup>1</sup> The phenomenon of mothers assigning pejorative or stigmatising names to their babies has similarly been noted in the context of the northern Uganda conflict since 1986. See: Apio, Eunice (2007) 'Uganda's forgotten children of war' in R. Charli Carpenter (ed.) *Born of war: protecting children of sexual violence survivors in conflict zones* (Bloomfield: Kumarian), p. 101.

<sup>2</sup> Human Rights Council, Office of the United Nations High Commission for Human Rights (15 June 2016) "They Came to Destroy": ISIS Crimes Against the Yezidis. Thirty-second session, Agenda item 4, A/HRC/32/CRP.2.

<sup>3</sup> Ibid.

<sup>4</sup> Jäger, Pia; Rammelt, Claudia; Ott, Notburga and Angela Brand (2019) 'Narrative Review: The (Mental) Health Consequences of the Northern Iraq Offensive of ISIS in 2014 for Female Yezidis', *International Journal of Environmental Research and Public Health* 6 (13), pp. 1-17.

<sup>5</sup> United Nations High Commissioner for Refugees (2003) *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, accessed 14 April 2020, <https://www.unhcr.org/3f696bcc4.html>.

<sup>6</sup> Amnesty International (December 2014) 'Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq', accessed 17 March 2020, <https://bit.ly/2YClD7LCopy>.

<sup>7</sup> Carpenter, Charli R (2007) *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones* (Bloomfield: Kumarian) p. 14.

<sup>8</sup> 'Do No Harm' has developed as a key concept within humanitarian action since the 1990s. See: Anderson, Mary (1999) *Do No Harm: How Aid Can Support Peace - or War* (London: Lynne Rienner Publishers).

<sup>9</sup> Buffon, Veronica and Christine Allison (2016) 'The gendering of victimhood: Western media and the Sinjar genocide', *Kurdish Studies*, 4 (2), pp. 176-195.

<sup>10</sup> Khidher Domle is an independent trainer and Yezidi researcher working in human rights, media and peace-building at the University of Duhok. Author interview conducted 30 March 2017.

<sup>11</sup> King, Julia St. Thomas and Dennis Ardis (November 2015) 'Identity crisis? Documentation of the displaced in Iraq', *Humanitarian Exchange* 65, pp 9-12.

<sup>12</sup> Norwegian Refugee Council (April 2019) *Barriers from Birth: Undocumented children in Iraq sentenced to a life on the margins*, p. 3.

<sup>13</sup> Norwegian Refugee Council, Danish Refugee Council and International Rescue Committee (August 2019) *Paperless People of Post-Conflict Iraq: Denied rights, barred from basic services and excluded from reconstruction efforts*.

<sup>14</sup> Iraqi law considers the head of the household to be the 'husband, or in the case of the husband's death, the wife, or the oldest of the sons': The National (ID) Card Law, No. 3 of 2016, Article 1.16.

<sup>15</sup> United Nations High Commissioner for Refugees, Campaign Webpage, accessed 23 March 2020, <https://www.unhcr.org/ibelong/unicef-unhcr-coalition-child-right-nationality>; See also: Institute of Statelessness and Inclusion (2017) *The World's Stateless: Children* (Oisterwijk: Wolf Legal Publishers).

<sup>16</sup> Previous provisions contained gender-discriminatory provisions determining that Iraqi nationality depended in the main part upon having an Iraqi father irrespective of the nationality of the mother. See: Iraqi Nationality Law No. 42 of 1924, Article 8; Iraqi Nationality Law No. 46 of 1963, Article 4.1, accessed 27 March 2020, [www.refworld.org/docid/3ae6b4ec38.html](http://www.refworld.org/docid/3ae6b4ec38.html).

- <sup>17</sup> Constitution of the Republic of Iraq, 15 October 2005, Article 18.2, accessed 17 March 2020, [www.refworld.org/docid/454f50804.html](http://www.refworld.org/docid/454f50804.html); Iraqi Nationality Law No. 26 of 2006, Iraqi Official Gazette (7 March 2006) 4019, Article 3.a, accessed 26 April 2020: <https://www.refworld.org/docid/4b1e364c2.html>.
- <sup>18</sup>See: The Civil Status Law, No. 65 of 1972, Article 32.2; The Juvenile Welfare Law, No. 76 of 1983, Article 45. For further analysis of this point, see: Al-'Akili, Rahim Hassan (2011) *darous fi tatbiqat al-qawanin [Studies in the Application of the Laws]* (Baghdad and Najaf: Law Press & Abu Leith Press).
- <sup>19</sup> National Card Law, No. 3 of 2016, Article 20.2, accessed 23 April 2020, <https://arb.parliament.iq/archive/2015/10/27/قانون-البطاقة-الوطنية/>
- <sup>20</sup> Article 20.1.
- <sup>21</sup> Author interview with Judge Raid Hamid al-Maslah, Sheikhan Court/Iraq, April 2017.
- <sup>22</sup> Anecdotes relayed to the author suggest that it is common practice to use the name Mustafa for the father of *majhoul al-nasb* in Iraq.
- <sup>23</sup> Convention on the Prevention and Punishment of the Crime of Genocide (1948), Article 2(e).
- <sup>24</sup> Kreyenbroek, Philip (1995) *Yezidism: Its Background, Observances and Textual Tradition* (Lewiston: Edwin Mellon Press), p. 145.
- <sup>25</sup> Açıkyıldız, Birgul (2015) *The Yezidis: The History of a Community, Culture and Religion* (London: I.B Tauris), p. 198.
- <sup>26</sup> Kreyenbroek, Philip and Khanna Omarkhali (2016), 'Introduction to the Special Issue: Yezidism and Yezidi Studies in the Early 21st Century', *Kurdish Studies* 4(2), p. 124.
- <sup>27</sup> Amnesty International (2 May 2007) *Iraq: 'Honour Killing' of teenage girl condemned as abhorrent*, accessed 24 March 2020, <https://bit.ly/3eoHmMC>.
- <sup>28</sup> Omarkhali, Khanna (2016) 'Transformations in the Yezidi tradition after the ISIS attacks: An interview with Ilhan Kizilhan', *Kurdish Studies* 4 (2), p. 152.
- <sup>29</sup> Statement 28 [official translation from the Arabic], signed by Baba Sheikh Khurto Hajji Ismail (Spiritual Father and Religious Authority of Yezidism worldwide), 6 February 2015.
- <sup>30</sup> For further context on the statement, see: George, Susannah (15 June 2015) 'Yazidi women welcomed back to the faith', *UNHCR*, accessed 14 February 2020, <https://bit.ly/3j2P8iO>.
- <sup>31</sup> Otten, Cathy (2017) *With Ash on Their Faces: Yezidi Women and the Islamic State* (New York/London: OR Books), p. 125.
- <sup>32</sup> Spät, Eszter (2016) 'Hola Hola Tawûsî Melek, Hola Hola Şehidêt Şingalê: Persecution and the development of Yezidi ritual life' *Kurdish Studies* 4(2).
- <sup>33</sup> Othman, Mamo (2013) 'The Identity and Horizons of the Izidy Individual in Diaspora', *Lalish Magazine*, 38, pp. 3-7.
- <sup>34</sup> Ackermann, Andreas (2008) 'Diaspora, Cyberspace and Yezidism: The use of the internet among Yezidis in Germany', *Journal of Kurdish Studies* 6, pp. 54–83.
- <sup>35</sup> Figures provided to author by Hussein Qaidi of the Duhok Office of Kidnap Affairs, 14 October 2016.
- <sup>36</sup> Ibid. For further details on the displacement, see: Dulz, Irene (2016) 'The displacement of the Yezidis after the rise of ISIS in Northern Iraq' *Kurdish Studies* 4(2), pp. 131-47.
- <sup>37</sup> Hussein Qadi, 14 October 2016.
- <sup>38</sup> Author interview, January 2017.
- <sup>39</sup> Interview conducted in January 2017. Identity anonymised due to the sensitivity of this information.
- <sup>40</sup> Interview conducted in Duhok on 5 November 2017.
- <sup>41</sup> Author interview with Baba Chawish in Lalish sanctuary on 22 April 2017.
- <sup>42</sup> Interview testimony provided by Yezidi survivors. See also: Fatah, Khalid (2019) 'Children Born of ISIS Violence Stuck in Religious and Legal Limbo', *Navanti*, July 10, accessed 10 July 2020, <https://www.navantigroup.com/news-1/2019/7/10/a-generation-without-identity>.
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<sup>46</sup> Author interview, online, 20 April 2020. Interviewee consented to the use of his name.

<sup>47</sup> Free Yezidi Foundation Statement, (29 April 2019) 'Yezidi Children Born from Rape: Rights of Yezidi Women'.