

Institution: Anglia Ruskin University
Unit of Assessment: UoA18
Title of case study: Developing an Evidentiary Framework for Genocidal Intent to Enable the Parliament of the United Kingdom and the United Nations Human Rights Council to Recognise Genocide Against the Yazidis
Period when the underpinning research was undertaken: 2015 – 2017
Details of staff conducting the underpinning research from the submitting unit:
Name(s): Dr Aldo Zammit Borda Dr Alexander R. J. Murray Role(s) (e.g. job title): Senior Lecturer Senior Lecturer Period(s) employed by submitting HEI: 2014 – Present 2013 – 2019
Period when the claimed impact occurred: October 2015 – July 2020
Is this case study continued from a case study submitted in 2014? No
1. Summary of the impact (indicative maximum 100 words) Research by Zammit Borda and Murray in collaboration with Dakhil (a Member of the Iraqi Parliament and Yazidi NGO chairperson) led the Parliament of the United Kingdom and the United Nations Human Rights Council to recognise genocide against the Yazidis. Specifically, the research developed a framework to evidence genocidal intent against the Yazidis by identifying patterns of conduct followed by Islamic State fighters. In her meetings and testimony at the above institutions, Dakhil grounded her legal advocacy on this framework. The recognition of genocide by these institutions is highly significant as it places legal obligations on States to punish genocide.
2. Underpinning research (indicative maximum 500 words) The crime of genocide requires proof of a specific intent to destroy a protected group. Evidencing this specific intent is one of the hardest aspects of proving genocide, as it requires a very high threshold. The underpinning research develops a framework to evidence genocidal intent with respect to atrocities allegedly committed by the Islamic State of Iraq and the Levant (ISIL) against the Yazidis, a religious minority living in northern Iraq, on and after 3 August 2014. In 2015, the Honourable Vian Dakhil, a Yazidi Member of the Iraqi House of Representatives and chairperson of the Yazidi NGO Sinjar Foundation for Human Development, approached Zammit Borda and Murray to request legal research on atrocities committed against her people. While there was mounting evidence of the atrocities committed against the Yazidis, there was a significant gap in the legal scholarship on whether these atrocities could be legally classified as genocide. On the basis of a detailed and systematic legal analysis of primary and secondary sources, Dakhil, Zammit Borda, and Murray co-produced and published research that developed the legal and theoretical framework evidencing genocidal intent, in order to support recognition of this crime by States and international organisations and to lay the foundations for potential future accountability. Output A was the first piece of legal scholarship to systematically analyse the atrocities committed against the Yazidis as crimes of genocide, and to develop a framework for identifying and organising patterns of conduct that could indicate genocidal intent. Using hard-to-obtain

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primary and secondary sources, including ISIL's own publications (Dabiq) and original data gathered by the Sinjar Foundation for Human Development, the research identified and mapped out a pattern of conduct from which genocidal intent against the Yazidis could be inferred. The article undertook a detailed analysis of genocide indicators, including ISIL's specific ideological justifications, and mapped out important circumstantial evidence, such as the utterances of perpetrators before attacking their victims, to develop an evidentiary framework on which genocidal intent could be grounded.

Output B is the result of a legal analysis of the status of ISIL fighters in the jurisprudence of British courts. It assesses different types of attacks in Iraq and Syria and finds that, though there is a complex patchwork of international and domestic laws that may be applicable to the attacks (criminal and terrorism laws, violations of international humanitarian law and human rights law), in specific cases, ISIL fighters may be prosecuted for the crime of genocide.

In its totality, the underpinning research develops an extensive and systematic legal framework to evidence genocidal intent with respect to the atrocities committed against the Yazidis, and sheds light on the potential avenues for prosecuting ISIL fighters for genocide under national and international law. This is of real significance because 'genocide' is a highly politicized label, which is frequently used and abused by groups for political ends. However, this research has shown that in the case of the Yazidis, the use of the label 'genocide' is justified. The recognition of this crime by States brings important legal consequences and places specific duties on States to act to prevent or punish genocide. Although as of July 2020, with the ongoing conflict in the region and other legal and political hurdles, immediate prosecutions for genocide against the Yazidis is not currently possible, by providing the framework and evidentiary basis for the recognition of the crime of genocide by States and other international organisations, this research lays the groundwork for facilitating potential prosecution of the perpetrators of genocide in the future.

3. References to the research (indicative maximum of six references)

- (A). Vian Dakhil, Aldo Zammit Borda & Alexander Murray, 'Calling ISIL Atrocities Against the Yazidis by their Rightful Name': Do they Constitute the Crime of Genocide? (2017) 17(2) *Human Rights Law Review* 26, DOI: <https://doi.org/10.1093/hrlr/ngx004> Submitted in REF2.

This is the main underlying research, which develops a comprehensive framework for assessing whether the atrocities committed against Yazidis amount to the crime of genocide, published in the *Human Rights Law Review* (Oxford). It ranks within the top 5% of over 12 million research outputs ever tracked by Altmetric.

- (B). Alexander Murray, 'Terrorist or Armed Opposition Group Fighter? The Experience of UK Courts and the Implications for Public International Law' (2018) 20(3-4) *International Community Law Review* 281, DOI: <https://doi.org/10.1163/18719732-12341377> Submitted in REF2.

This research explores different potential avenues for prosecuting ISIL fighters under national and international law. It is published in the *International Community Law Review*, a highly reputable, peer-reviewed international law journal addressing all aspects of international law and the international community.

4. Details of the impact (indicative maximum 750 words)

The underpinning research has directly enabled the Sinjar Foundation for Human Development to successfully advocate for the recognition of genocide against the Yazidis by national and international bodies and has influenced public discourse with respect to Yazidi suffering.

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Enabling the UK Parliament to recognise genocide against Yazidis

In official meetings with members of the UK Parliament, namely Baroness Kennedy of The Shaws and Baroness Nicholson of Winterbourne, the chairperson of the Sinjar Foundation for Human Development, the Honourable Vian Dakhil, used the framework developed in the underpinning research to advocate for a change in policy by the UK Parliament with respect to the recognition of genocide against the Yazidis. Dakhil's advocacy was specifically and explicitly acknowledged as a primary reason for which members of the House of Lords supported the recognition of the crime of genocide against the Yazidis in their parliamentary debates and voting. This directly contributed to the recognition of the crime of genocide by the UK Parliament. According to Dakhil, the underpinning research "enabled me to evidence my claims that ISIL fighters had the extreme *mens rea* necessary for the crime of genocide. I also made use of [the] research to evidence my claim regarding the applicable legal regimes. I would not have been able to evidence these claims and articulate the legal arguments so persuasively without this research." [1]

On 21 March 2016, the UK House of Lords held a debate on a Bill, relating to a proposal to insert a new clause on 'conditions for grant of asylum: cases of genocide.' [2] Speaking in support of this amendment, Baroness Kennedy of The Shaws explicitly referred to her meetings and discussions with Dakhil to support her intervention and vote in favour of the amendment. In her speech, Baroness Kennedy stated:

"The testimonies we have been hearing are absolutely barbaric. **A week yesterday, I met for the second time the Yazidi Member of Parliament Vian Dakhil.** She has been trying to draw the world's attention to the plight of her people. [...] So we are talking about genocide. We are talking about the destruction of a people and their ability to procreate. [...]. **Mrs Vian** describes the mass graves that she has visited, the beheadings of children and the crucifixions that we have heard referred to by other noble Lords, and she cannot understand why western Governments are not being more vociferous about these horrors and naming them as genocidal atrocities. [...] If noble Lords were to listen to the account given by this **Yazidi Member of the Iraqi Parliament** — the only one — no one in this House could feel anything other than a sense of shame, horror and moral repugnance. We have to say, 'It's not good enough—we have to act now'." [2]

The debate in the House of Lords galvanised support for the recognition of genocide by the UK Parliament. A Motion that expressly recognised the crime of genocide committed by ISIL against the Yazidis (and other religious minorities) in Iraq and Syria was subsequently unanimously adopted by the House of Commons on 20 April 2016. The Members of Parliament speaking in support of this Motion mentioned, on several occasions, the preceding debate in the House of Lords. In her intervention, the then shadow Foreign Office Minister, the Honourable Diana Johnson, specifically referenced Baroness Kennedy's House of Lords speech, noted above. [3] This recognition of genocide by the UK Parliament is very significant because it brings legal obligations to prevent and punish perpetrators. It is estimated that ISIL actions have resulted in about 500,000 Yazidis refugees, 5,000 men killed and about 7,000 women kidnapped and tortured. In her advocacy meetings with members of the UK Parliament, Dakhil would not have been able to make her legal case, particularly as regards genocidal intent, which eventually led to the recognition of genocide by this institution, without the framework to evidence genocidal intent developed by the underpinning research. Following the passage of this Motion, in 2017 the UK Government led international efforts to establish the United Nations Investigative Team to Promote Accountability for Crimes Committed by ISIL (UNITAD) and has committed £23.5 million to support the Yazidis and other victims of ISIL to return home safely.

Enabling the United Nations Human Rights Council to recognise genocide against the Yazidis

On 21 June 2016, Dakhil was invited, as a key expert, to provide evidence before the United Nations Human Rights Council on the human rights situation in Iraq and Syria. In her expert

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testimony, she stated: “The international community has to support us, to call upon the UN Security Council to recognize what is happening to us as genocide, and to refer our case to the International Criminal Court.” [5]

Dakhil used the framework developed by the underpinning research to ground her testimony on genocidal intent. In her testimonial letter, Dakhil stated that she relied on the legal analysis of the underpinning research on the specific intent necessary for genocide in her “address to the United Nations Human Rights Council on 21 June 2016.” [1] As a key expert witness in this area, the United Nations Human Rights Council used her evidence to support the adoption of a resolution on the human rights situation in Syria in June 2016 [4]. The resolution expresses, *inter alia*, its deepest concern about the crimes committed against persons belonging to the Yazidi community by ISIL. For the Yazidis, the recognition of their cause by a United Nations body is very significant, as it represents official acknowledgment by the international community of the harms suffered by this religious minority.

Shaping public discourse with respect to the crimes suffered by the Yazidis

Dakhil has further used the research findings to ground her arguments for recognition of genocide in her meetings with the Oslo Freedom Forum (May 2017) and the United States Institute of Peace (August 2017). She also had interviews with the Egyptian channel Extra News (June 2017) and the American outlets National Review (July 2017), Voice of America (August 2017) which has a global audience of over 275 million, and BBC World News (February 2020).

Moreover, in 2019, the Sinjar Foundation for Human Development commissioned the translation of this research into Arabic and Kurdish in order to make it more easily and readily accessible to NGOs and students in the region. The translations were made available in all Al-Mada libraries in Iraq and Lebanon, and in other libraries, including those of the Al-Bayan University and Cihan University-Erbil. This enabled law students to access the research and to further develop the framework of the underpinning research.

Other Yazidi representatives have also benefitted from the research. The 2019 Laureate of Aurora Prize for Awakening Humanity and Founder & Head of the Air Bridge Iraq NGO, Mirza Ali, adopted the research’s framework to evidence genocidal intent in his own study of the atrocities committed against the Yazidis. [6] The framework has also been cited by NGOs studies examining modern slavery. [7]

The research has been used in art exhibitions on the Yazidis, such as “Nobody’s Listening,” to inform and impact public discourse on the legal challenges facing the Yazidis. [8] Finally, it has also influenced specialised scientific studies on the subject of the ISIL crimes against the Yazidis. [9]

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5. Sources to corroborate the impact (indicative maximum of 10 references)

1. Letter from the Chairperson of the Sinjar Foundation for Human Development of January 2020
(This testimonial letter confirms that the underpinning research enabled her to make the legal case for the recognition of the crime of genocide against the Yazidis in her advocacy meetings.)
2. Reports of the House of Lords debates, Immigration Bill - Report (3rd Day), at 7:26 pm on 21 March 2016
(This report of the House of Lords debates confirms that Baroness Kennedy of The Shaws' views and voting on this subject were directly influenced by her meetings with the Hon Vian Dakhil.)
3. Hansard: Daesh: Genocide of Minorities, 20 April 2016, Volume 608
(This Hansard report shows how the vote in favour of the recognition of genocide in the House of Commons was directly informed by the preceding debate in the House of Lords.)
4. UN Human Rights Council Resolution, Res. A/HRC/32/L.9, 28 June 2016
(This UN HRC resolution expresses the deepest concern of the Council with respect to the crimes committed against persons belonging to the Yazidi community (para. 9).)
5. UN Watch, Yazidi MP Vian Dakhil Addresses UN Human Rights Council on Genocide Report
(This report records the expert testimony of the Hon Vian Dakhil at the UN Human Rights Council.)
6. Mirza Ali, 'Recognizing Yezidi Genocide: Perspectives and Challenges of Initiating an (Inter)National Tribunal for the Crimes of ISIS against Yezidi Minority' (Maastricht University, European Master's Degree in Human Rights and Democratisation A.Y. 2018/2019)
(In this thesis, Mirza Ali cites the underpinning research to support his claim that atrocities committed against the Yazidis (such as rape and reproductive violence) should be classified as genocide.)
7. Nikita Malik, 'Trafficking Terror: How Modern Slavery and Sexual Violence Fund Terrorism' (Henry Jackson Society 2017), URL: <https://henryjacksonsociety.org/publications/trafficking-terror-how-modern-slavery-and-sexual-violence-fund-terrorism>
(This NGO report uses the underpinning research as a point of reference for evidence of genocide against the Yazidis.)
8. Programme of the Stakeholders Conference on The Yazidis and the Crime of Genocide: Seeking Recognition and Accountability, 20 February 2020
(The Nobody's Listening art exhibition was organised as part of this stakeholder conference.)
9. Specialised studies on the Yazidi genocide:
 - 9(a) Marie-Luisa Frick, Human Rights and Relative Universalism (Springer 2019)
 - 9(b) Jan Lhotský, 'The International Criminal Court and Syria: The Absence of Jurisdiction and the Pressing Need for International Criminal Justice,' in Pavel Šturma (ed.) *The Rome Statute of the ICC at Its Twentieth Anniversary* (BRILL 2019)
 - 9(c) Benjamin Isakhan and Sofya Shahab, 'The Islamic State's destruction of Yezidi heritage: Responses, resilience and reconstruction after genocide' (2019) *Journal of Social Archaeology* 0(0) 1–23. DOI: [10.1177/1469605319884137](https://doi.org/10.1177/1469605319884137)
(These scholarly works have used the evidentiary framework for genocidal intent developed in the underpinning research.)