The Yazidi Genocide in the Court of Frankfurt an Analytical Legal Study on The Case of Taha Al-Jumaili

Awara Husein Ahmed

University of Halabja, Kurdistan
E-mail: Awara.ahmad@uoh.edu.iq

Received: 09-05-2023 Revised: 23-05-2023 Accepted: 18-06-2023

Abstract

The Yazidis are one of the oldest ethnic and religious communities originating from the Middle East. The majority of Yazidis reside in northwestern Iraq, in the areas around Mount Shingal and the Shekhan district. Throughout their history, Yazidis have faced genocide and many international crimes, most notably the 2014 Genocide by the Islamic State in Iraq and Syria (hereafter referred to as ISIS or IS), which had a significant international impact. The United Nations has recognised these atrocities as genocide in several of its reports. Moreover, several ISIS perpetrators have been prosecuted in various states. However, the verdict of the Frankfurt regional high court in Germany (hereinafter referred to as the Frankfurt Court) to sentence Taha Al-Jumaili is considered the first decision acknowledging crimes against Yazidis as genocide based on absolute universal jurisdiction and, from a legal perspective, as a result of intensive efforts. This research aims to conduct a clear legal evaluation of the Frankfurt court's decision to sentence Taha Al-Jumaili and compare it with internationally recognised criminal law standards.

The method used is a legal analysis method to examine the relevant international conventions, laws, and court rules. The research findings indicate that the aforementioned decision has a valuable legal basis, as the Frankfurt Court, in its decision, concluded that Genocide can be committed by killing just one person if the legal conditions of Genocide exist in the crime, which they did in the case of Taha Al-Jumaili. In this sense, a genocide crime can be committed by killing a single person. Taha Al-Jumaili's criminal liability was the murder of a Yazidi girl, and he received a life sentence as a Genocide criminal. This sentence is in line with internationally recognised criminal law standards.

Keywords: Genocide of the Yazidis, ISIS, criminal Liability, universal jurisdictions, Frankfurt court, Germany.
Introduction

The Yazidis, as a religious-ethnic group, have faced international crimes many times throughout history, but the most prominent and largest of these is the 2014 crime committed against them by ISIS. Not only genocide but also international crimes such as war crimes and crimes against humanity were committed against them in a very dangerous manner, which still has legal, social, and psychological impacts. The accused have not yet been tried in an international criminal tribunal, and the victims have not accessed justice. In addition, several ISIS members have been tried and punished in the municipal courts of several states for crimes against the Yazidis. The Frankfurt court's decision will be the first to recognise crimes against the Yazidis as genocide and order compensation. This important decision proves that the crime against the Yazidis was undoubtedly genocide and will encourage the courts that have jurisdiction over the case to follow the judicial process and try the ISIS suspects and restore the rights of the victims.

This research aims to provide a brief and comprehensive understanding of the Yazidis and the genocide committed against them in 2014, an analysis of the legal principles on which the Frankfurt court relied to obtain jurisdiction to try Taha Al-Jumaili, and a clear legal evaluation of the Frankfurt tribunal's decision to sentence Taha Al-Jumaili, comparing it with the acknowledged standards of international criminal law.

Many studies have been conducted regarding the Yazidi genocide, such as the Yazidis' perceptions of reconciliation and conflict,1 towards justice and security: principles and policies for the Yazidis;2 trauma and

---


perceived social rejection among Yazidi women and girls who survived enslavement and genocide;\(^3\) and the 2014 Yazidi genocide and its effect on the Yazidi diaspora.\(^4\) However, the current research focuses on a different aspect of the Yazidi genocide that has not been explored before.

Based on the explanations above, the most important questions that this study aims to answer are as follows: Do ISIS’s crimes against the Yazidis fall within the scope of genocide? On what basis did the Frankfurt court acquire jurisdiction to try and punish Taha Al-Jumaili? Taha Al-Jumaili is involved in the murder of only one person. Does the murder of a single person constitute genocide?

**Research Method**

The current study has utilised an academic method, namely the method of legal analysis, to analyse relevant international conventions, statutes, and rules of relevant courts. It also includes an analysis of German criminal law, German law for crimes contravening international law, the decision of the Frankfurt Court against the criminal, and the relevant decisions of other courts. In this article, we have referred to over 25 sources, such as previous papers that have been conducted regarding the Yazidi Genocide and various international and national judgements that are related to the content of this research.

---


A Summary of the Crimes Against the Yazidis and The Legal Assessment of Genocide

Yazidis are one of the oldest ethnic and religious communities indigenous to the Middle East. The majority of Yazidis live in the northwest of Iraq, in areas surrounding Shingal Mountain and Shekhan District. Additionally, there are some Yazidi villages and towns in the Talkeef and Bashiqa districts, as well as in the Duhok governorate in the Kurdistan Region of Iraq (KRI). Approximately 550,000 to 600,000 Yazidis reside in Iraq, making them the second-largest religious minority in the country after Christians. The language used in their religious texts, books, songs, and prayers is Kurmanji Kurdish. While Kurdish is the recognised original language of the Yazidi community, many also speak Arabic due to their proximity to Arab neighbourhoods and the Ba’athist Arabization campaign. The Genocide of the Yazidis refers to the Genocide and other international crimes committed against them by ISIS in 2014.

The Yazidis were among the many minorities in Iraq and Syria who suffered at the hands of ISIS. The mass violence inflicted by ISIS on the Yazidi population of Iraq represents one of the most recent modern genocides. The extremist group perpetrated severe forms of sexual violence against this small, ancient ethno-religious Yazidi group. By 2014, they had also taken control of significant parts of northeastern Syria.

---

including Mosul on June 10, 2014, and Tikrit on June 11, 2014, subsequently declaring their caliphate.8 On the early morning of August 3, 2014, IS fighters launched an organised attack on Sinjar (Shangal) from Mosul and Tel Afar. This well-coordinated attack involved hundreds of IS soldiers seizing towns and villages surrounding Mount Sinjar. Systematic and widespread attacks were carried out against Yazidi-populated areas, resulting in ethnic cleansing, mass executions, forced conversions to Islam, the destruction of temples, and the abduction and enslavement of thousands of Yazidis. These attacks led to the displacement of more than 400,000 Yazidis.9

Yazidi women and children were held captive in various sites, which were often severely overcrowded. Conditions at these sites were dire, with limited food and water provided, leading to malnourishment and illness, particularly among infants and young children. Medical care was nonexistent.10

Furthermore, ISIS forcibly transferred Yazidi children based on their sex. Girls aged nine and above were taken from their mothers and sold as sex slaves to ISIS fighters, while Yazidi boys, upon reaching the age of seven, were separated from their mothers and sent to ISIS training bases to be indoctrinated and trained as fighters. Later, these "converted" Yazidi boys would participate in battles as part of ISIL forces.11

The sexual enslavement and trafficking of girls, as well as the forced recruitment of boys under the age of fifteen, constitute international crimes

---

such as crimes against humanity and war crimes, for which ISIS bears international criminal responsibility. Yazidi men and boys were executed, while women and girls as young as nine were kidnapped, sold, sexually enslaved, and subjected to physical abuse and forced labour. Rape was used as a weapon of war, and Yazidi women were sold in slave markets. Gynaecologists examined the captives, checking for virginity and pregnancy. Pregnant women were forced to undergo abortions.\textsuperscript{12}

Yazidi women were also subjected to forced birth control and abortions through the use of pills and injections by ISIS. However, not all women received birth control, indicating that it may have been selective, with some fighters wanting Yazidi women to bear Muslim children. Forced abortions were carried out to prevent births within the Yazidi group.\textsuperscript{13} This demonstrates that ISIS forcibly aborted the pregnancies of Yazidi women and, upon capturing them, impregnated them to produce children belonging to their own religious group. In a society like Kurdistan and Iraq, group membership is determined by the father's identity, hence the intention to give birth to children who belong to the father's religious group.

Overall, ISIS massacred approximately 5,000 Yazidis, abducted 7,000 individuals, and forcibly displaced and resettled 90\% of the Yazidi community. They also destroyed 42 Yazidi religious sites and plundered their property,\textsuperscript{14} revealing their clear intent to eliminate the Yazidis as a religious group.

Genocide, crimes against humanity, and war crimes are the international crimes committed by ISIS against the Yazidis. However, this paper specifically focuses on the Genocide aspect and aims to prove that the crimes against the Yazidis are considered Genocide under international


\textsuperscript{13} Jenni Porkka, “Terrorism and Genocide, the Islamic state and the case of Yazidis,” 63.

\textsuperscript{14} Jenni Porkka, 44.
criminal law and German law. This is reinforced by Germany's trial and punishment of Taha Al-Jumaili, who was recognised as having committed Genocide.

**Definition of Genocide**

The definition of genocide, as enshrined in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, Article 6 of the Rome Statute of the International Criminal Court, and Section 6 of the Federal Republic of Germany Act to Introduce the Law of Crimes against International Law, encompasses the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group:\(^{15}\) (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting conditions of life calculated to bring about its physical destruction, in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

Based on this definition, it is evident that the crimes committed by ISIS against the Yazidis constitute genocide. ISIS perpetrated all five acts of genocide: killing, causing bodily or mental harm, subjecting them to conditions of life aimed at their physical destruction, implementing measures to prevent their reproduction, and forcibly transferring their children. These actions demonstrate their clear intent to destroy the Yazidis in whole or in part.

Under both international criminal law and German law, protected groups of genocide include national, ethnic, racial, or religious groups. The

---

\(^{15}\) “Convention on the Prevention and Punishment of the Crime of Genocide Article II,” t.t.
Yazidis, often referred to as an ethno-religious group, all within the scope of protected groups under these legal frameworks. An ethnic group is defined as a group whose members share a common language or culture, while a religious group is defined as a group whose members share the same religion, denomination, or mode of worship.

Therefore, the Yazidis are considered a protected group under the category of genocide. Despite the perpetrators’ primary motive being religious differences, even a single religious distinction is sufficient to classify the crimes committed against the Yazidis as genocide. The Yazidis, as an ethno-religious group distinct from the main perpetrators, have suffered from the destruction inflicted by ISIS due to these religious differences.

Criminal Responsibility of ISIS and The Legal Basis For The Trial of Taha Al-Jumaili

As mentioned in the first chapter, the crimes committed against the Yazidis, such as genocide, crimes against humanity, and war crimes, constitute international crimes. These crimes give rise to international criminal responsibility for the perpetrators and fall within the scope of universal jurisdiction.

In light of the ISIS genocide against Iraq’s Yazidi minority and the calls for prosecutions before the International Criminal Court (ICC), Iraqi courts,
or other national courts, there is a need to establish the legal basis for Taha Al-Jumaili's trial.

**First: The principle of Universal Jurisdiction**

The first principle of the Princeton Principle on Universal Jurisdiction defines universal jurisdiction. According to this principle, universal jurisdiction is a criminal jurisdiction solely based on the nature of the crime, disregarding the location where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction. This means that states have jurisdiction to prosecute individuals involved in international crimes solely based on the nature of the crime itself.

The second principle determines the serious crimes that fall under universal jurisdiction, including piracy, slavery, war crimes, crimes against peace, crimes against humanity, genocide, and torture. Therefore, the principle of universal jurisdiction grants national authorities the right to prosecute individuals for international crimes regardless of the place of commission or the nationality of the accused or victim. In the case of the crimes committed against the Yazidis, which are covered by universal jurisdiction, every state has the authority to investigate the crimes and prosecute the perpetrators. Consequently, the International Criminal Court (ICC) and the United Nations Security Council (UNSC), as judicial and enforcement institutions of criminal and public law, further emphasise the

---

obligation of states to investigate international crimes and prosecute those involved.

Second: ICC

The Rome Statute of the International Criminal Court (ICC) emphasises the complementary nature of the ICC with national criminal jurisdictions. The ICC aims to complement national judicial systems rather than replace them. Complementarity is intended to address the gaps in prosecuting perpetrators of international crimes.23

In the preamble of the Rome Statute, it establishes the duty to prosecute by recognising that every state has the obligation to exercise its criminal jurisdiction over those responsible for international crimes.24

This duty places a responsibility on states while granting jurisdiction to national courts to establish and implement the principles of universal jurisdiction alongside the only permanent international criminal tribunal.

Third: UN Security Council (UNSC)

The main purpose of the UN Security Council (UNSC) as an executive body is the maintenance and restoration of international peace and security.25

One year after the crimes committed against the Yazidis, the UNSC adopted Resolution number 2242 in 2015,26 which focused on women,

---

26 “UNSC, resolution number (2242),” 13 Oktober 2015.
peace, and security. This resolution was dedicated to addressing the specific challenges faced by women and girls who experienced the most severe international crimes in the Yazidi case.

In the preamble of the resolution, it stated that the objectives and principles of the UN Charter, as well as the primary mandate of the Security Council to maintain international peace and security, were taken into consideration.

The resolution "urges member states to strengthen access to justice for women in conflict and post-conflict situations through prompt investigations, prosecutions, and punishment of perpetrators of sexual and gender-based violence, as well as appropriate reparations for victims." It also recognises that the fight against impunity for the most serious crimes committed against women and girls has been strengthened through the work of the International Criminal Court (ICC), ad hoc and mixed tribunals, as well as specialised chambers in national tribunals. The resolution reiterates the intention of the UNSC to continue vigorously fighting impunity and upholding accountability using appropriate means.27

This demonstrates that the prompt investigation and prosecution of individuals involved in Genocide, crimes against humanity, and war crimes, particularly those committed against women and girls, are not solely under the jurisdiction of the ICC or other ad hoc, hybrid, special, and mixed criminal tribunals. National criminal courts in UN member states also have the right and duty to exercise their jurisdiction and initiate investigations and trials. This clarifies that the Frankfurt court in Germany, as a UN member state that has undertaken the responsibility of investigating, trying, and punishing Taha Al-Jumaili, has a solid legal foundation, and the UNSC has granted it the necessary legal authority.

---
27 “UNSC, resolution number (2242),” 14.
Fourth: German Criminal Code

In addition to the aforementioned legal bases, the German criminal code establishes that German criminal law shall also apply to offences that, based on an international agreement binding on the Federal Republic of Germany, must be prosecuted even though committed abroad. This implies that international crimes organised within the framework of an international treaty to which Germany is a party are considered crimes under German criminal law. As a result, German courts have jurisdiction to investigate such crimes and prosecute the perpetrators.

Fifth: German Code of Crimes Against International Law

In addition to the German Criminal Code, the German law on crimes against international law also determines the scope of its application. The code establishes that this act shall apply to all criminal offences against international law designated under this act, even when the offence was committed abroad and has no relation to Germany.

The crimes designated under this law include Genocide, crimes against humanity, and war crimes. Based on this, it can be stated that each of the three aforementioned crimes is considered a crime under the German law of crimes against international law, and German courts have jurisdiction to try individuals accused of these international crimes. This explains that the trial and sentencing of Taha Al-Jumaili in the Frankfurt court as a Genocide criminal had a legal basis in Germany, and it was the court's duty to carry out the investigation and trial.

---

29 “Federal republic of Germany act to introduce the code of crimes against international law,” 2022, 1.
30 “Federal republic of Germany act to introduce the code of crimes against international law,” 6–12.
This chapter concludes that even one basis is sufficient to grant jurisdiction to the German courts as the state responsible for trying and punishing Taha Al-Jumaili. However, in this case, there were multiple legal bases supporting the trial.

**Legal Assessment of the Judgement Sentence of the Frankfurt Court Against Taha Al-Jumaili**

The prosecution of perpetrators of international crimes in German tribunals and the restoration of rights for victims have significantly expanded. Eleven individuals have been tried and convicted in German courts, nine of whom were based on universal jurisdiction.\(^{31}\)

The trial and conviction of Taha Al-Jumaili will be the 12th case based on universal jurisdiction, as he was an Iraqi citizen. Taha Al-Jumaili left Iraq in September 2015 and settled in Samsun, Turkey. Between late October and early November 2018, he left Turkey for Greece and settled in Athens. On May 16, 2019, he was arrested there and later transferred to the Federal Republic of Germany in October of the same year.

The proceedings were highly complex, involving a large number of witnesses and experts. Among them was the joint plaintiff, Nora B., the mother of the murdered child. Additionally, two female witnesses had to travel from Iraq to Frankfurt under the challenging circumstances of the COVID-19 pandemic. After 58 days of the main trial, which started on April 24, 2020, the Frankfurt court, treating the case as a Genocide crime, sentenced Taha Al-Jumaili to life imprisonment on November 30, 2021.\(^{32}\)

In the court's decision, it is stated that Taha Al-Jumaili bought Nora B. and her five-year-old daughter, Reda, as slaves after they were captured

---


\(^{32}\) “HRCF, 2021” (t.t.).
during the attack on the Sinjar region in the summer of 2014. The defendant then took Nora B. and her daughter to Fallujah in Iraq, which was another stronghold of ISIS. They resided in the defendant's shared household, where Nora B. was forced to perform all the household chores without compensation. The defendant compelled her and her daughter to adhere to Muslim rules during prayer. He changed the name of the Yazidi child to "Rania." In order to maintain compliance and discipline, the defendant punished them on various occasions, sometimes without a specific reason, including physical abuse. The defendant also subjected the child to beatings during prayer.33

On an unspecified day, around noon, the defendant forced the joint plaintiff to stand barefoot on the stone floor of the courtyard under the scorching sun as a form of punishment and discipline. This took place in Fallujah, where the daily temperatures reached as high as 38.1 to 51 degrees Celsius in the shade. The courtyard's floor, exposed to direct sunlight, was even hotter.34

The defendant was angered because the child had urinated on a mattress due to illness. In order to further punish and discipline the child, the defendant tied her, at five years old, to the outside grille of the living room window in the courtyard using a cable, leaving her exposed to direct sunlight. The defendant then returned inside the house, sitting on the living room sofa while the child remained tied outside without access to food or water. After some time, the defendant returned to the yard and discovered that the child was no longer moving. He untied her, but by then, her body had already become rigid. The child had suffered a heat stroke due to being restrained in direct sunlight. As a result, Reda died from the heat stroke

33 HRCF, 2021.
34 HRCF, 2021.
either immediately or shortly thereafter, without any other material
circumstances being taken into account.\textsuperscript{35}

The Frankfurt court reached a decision and established that the
defendant's actions were detrimental to the joint plaintiff and her daughter,
with the intent to eliminate the Yazidi religious minority. This intent is a
prerequisite for the criminal offence of Genocide.\textsuperscript{36} The testimony presented
by the plaintiff demonstrated that the accused harmed the mother and the
child with the intention of killing them. Although only the child died as a
result of his criminal behaviour, the court recognised the crime as Genocide.

The question that arises is whether the killing of a single person
constitutes the crime of Genocide. The answer is yes if the conditions for the
commission of the crime of Genocide are present, as they were in this case.
These conditions are as follows:

First: The act of murder, which resulted in the death of the child.
Second, The victims belonged to one of the protected groups from
Genocide. The child who was the victim in this case belonged to the Yazidi
religious group, which is a protected group. Third: The offender had the
intention to completely or partially eliminate members of the group, and in
this case, the accused had the same intention, even though only one person
was killed as a result of his actions.

It is important to address whether this decision is consistent with the
standards for recognising a crime as Genocide under international criminal
law, even if only one person was killed. Considering the conditions
mentioned, it can be said that the decision of the Frankfurt Court is fully
compatible with international criminal law.

The International Criminal Tribunal for Rwanda, the first court to
convict perpetrators of Genocide, ruled that for an act to constitute
Genocide, it must be committed against one or several individuals

\textsuperscript{35} HRCF, 2021.
\textsuperscript{36} HRCF, 2021.
specifically because they belong to a particular group. The victim is chosen not because of their individual identity but because of their membership in a national, ethnic, racial, or religious group. Thus, the victim of the act is the group itself, not just the individual.\textsuperscript{37}

This decision not only confirms the validity of the Frankfurt court's ruling but also establishes that Reda was killed because she belonged to the Yazidi religious minority group rather than due to her individual identity as a five-year-old girl who was sexually enslaved.

The ICC has taken a similar stance and stated that for the crime of Genocide to be established, the perpetrator must have killed or caused serious bodily or mental harm to one or more persons, inflicted certain conditions of life upon one or more persons, imposed measures to prevent births within the group, or forcibly transferred one or more persons from one group to another when the person or persons are under 18 years old, all with the intention to destroy, in whole or in part, a specific national, ethnic, racial, or religious group.\textsuperscript{38}

Regarding the length of the sentence imposed by the Frankfurt court on Taha Al-Jumaili, it is fully consistent with the essence of the Federal Republic of Germany's act to introduce the law of crimes against international law, which prescribes life imprisonment for perpetrators of Genocide.\textsuperscript{39}

In the ICC, the maximum sentence for Genocide is "imprisonment for a specified number of years, which may not exceed a maximum of 30 years.\textsuperscript{40} However, if the crime was committed against a particularly defenceless victim and involved discrimination based on religion or belief, the sentence can be aggravated to life imprisonment.

\textsuperscript{37} The Prosecutor v. Jean-Paul Akayesu pada 521.
\textsuperscript{38} “Early Childhood Interagency Coordinating Council,” 2010, 6.
\textsuperscript{39} “Federal republic of Germany act to introduce the code of crimes against international law,” 6.
\textsuperscript{40} Rome Statute of The International Crimininal Court (RSICC) 1998, 77.
It can be concluded that the murdered five-year-old Yazidi girl was a victim who was particularly defenceless, and she was killed, or, in other words, subjected to genocide, because of her religious and belief differences. Therefore, the duration of Taha Al-Jumaili's sentence is in accordance with international criminal law and cannot be interpreted as an unfair sentence.

In addition to sentencing Taha Jumaili to life imprisonment as a Genocide criminal, the Frankfurt court also ordered him to pay 50,000 Euros as compensation for the non-material damage suffered by the joint plaintiff.41

Conclusion

The most important conclusions of the study can be summarised as follows: The crimes committed by ISIS against the Yazidis in 2014 are grave international crimes, including Genocide. ISIS bears international criminal responsibility for these crimes, and there should be no statute of limitations for these crimes and responsibilities. It is possible for Genocide to be committed even by killing a single person. Taha Al-Jumaili was found criminally responsible for the killing of a single Yazidi girl and was sentenced to life imprisonment as a Genocide criminal. This sentence is in line with recognised standards of international criminal law. The enactment of international crime laws, the incorporation of international crimes into national criminal and penal laws, and the establishment of the principle of universal jurisdiction empower countries to prosecute suspects of ISIS crimes.

References


41 HRCF, 2021.


Cheterian, Vicken. “ISIS genocide against the Yazidis and mass violence in the Middle East.” 


“Federal republic of Germany act to introduce the code of crimes against international law,” 2022.

German criminal code, 1998, last amended 2019 (t.t.).


Awara Husein: *The Yazidi Genocide in the Court of Frankfurt an Analytical Legal Study on The Case of Taha Al-Jumaili*

https://gsp.yale.edu/sites/default/files/class_project_final_apr21_update.pdf.

HRCF, 2021 (t.t.).


Main sentences Taha Al-J. to lifelong imprisonment for genocide and other criminal offences (Higher regional court Frankfurt 30 November 2021).

Rome Statute of The International Criminalinal Court (RSICC) 1998 (t.t).


The Prosecutor v. Jean-Paul Akayesu (International Criminal Tribunal for Rwanda (Appeals Chamber), Tanzania 1 Juni 2001).

“UNSC, resolution number (2242),” 13 Oktober 2015.