Naming the Harm

How International Law Quietly Overlooks the Religious in Religious Persecution

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In July 2026, an Iraqi couple was convicted and sentenced by the *Oberlandesgericht München* (Munich Higher Regional Court) for war crimes, genocide, and crimes against humanity. They had held captive two Yazidi girls on whom they inflicted torture, forced labor, religious indoctrination, and sexual assault. One of their aims, the Court noted, was to contribute to the destruction of the Yazidi community and Yazidism as a faith by permanently severing the girls from their fellow Yazidis. The sexual assault in particular would, they knew, have the effect of ostracizing them from their community. The Court held that it was a form of persecution intended to destroy the victims' religious identity.

In the Munich case, the crimes were committed against identifiable individuals. But the tactic of targeting religion itself was mobilized on a community level as well, and international law has struggled to clearly identify and name this crime. One tactic much talked about but not yet prosecuted in the Yazidi cases is the destruction of religious property. As the Kurdistan Regional Government has documented, ISIS systematically destroyed 68 Yazidi religious sites across Iraq. The world watched in horror, condemning the violence and mourning the wanton destruction of their heritage. Scholars have pointed to the destroyed temples and shrines as evidence of genocidal intent.

That framing is legitimate, but it underestimates what such attacks on religious infrastructure mean to the affected communities. For the Yazidis, the temples and shrines were more than just heritage. Yazidism has no sacred text; it focuses on oral transmission of traditions and collective worship at sacred sites. It is more about practice than doctrine. Thus, to destroy their temples was to render the practice of their faith virtually impossible. Yazidism, as an active form of worship, was effectively silenced in Sinjar.

The Pursuit of Accountability

Much has been done to bring ISIS to justice. An independent UN commission of inquiry concluded in 2016 that the campaign of violence against the Yazidis was genocide, and the UN Security Council later established a dedicated investigative team, UNITAD, to gather evidence of ISIS crimes in Iraq. No international tribunal has yet been set up to make use of that evidence, but some domestic courts have stepped into the gap using a variety of legal doctrines to obtain jurisdiction. The German judicial system has been very active in pursuing former ISIS members, and boasts the first conviction of an ISIS member for genocide in 2021 as well as the above-mentioned Munich case. The Netherlands and Sweden have also tried various crimes against the Yazidis, and in March 2026 a French court convicted Sabri Essid, a French citizen, *in absentia* and sentenced him to life in prison for his role in ISIS's campaign of genocide. These cases are an important step in establishing accountability for ISIS atrocities.

Individual Suffering, Collective Harm

Prosecutors in Europe have focused on crimes committed against individual Yazidi victims of genocide, persecution, murder, and enslavement. What they have not addressed is the near-total elimination of the practice of the Yazidi religion in Sinjar resulting from ISIS's deliberate campaign of religious persecution. ISIS considered the Yazidis to be *mushrikeen* – polytheists who could be shown no mercy. They broadcast this view as widely as possible in information campaigns and glossy English-language publications such as *Dabiq* and *Rumiyah*. These public statements show that

the destruction of individual Yazidi religious sites was deliberate and systematic. Militants were instructed to destroy Yazidi shrines and to kill or enslave Yazidis and to force the survivors to convert. The result was the elimination of Yazidi religious life in areas controlled by ISIS. In Sinjar, the effect was near total.

The suppression of religious life is often a component of campaigns of genocide, and religious persecution has appeared in the case law of international criminal tribunals in that context. In the *Krstić* judgment, the International Criminal Tribunal for the Former Yugoslavia used the destruction of mosques in Bosnia as evidence of genocidal intent. But the broader attempt to eliminate Muslim religious life in the region was not charged as a crime in itself. This framing persisted in commentary on ISIS atrocities against the Yazidis, in which the suppression of Yazidi religious life has appeared as narrative background, regrettable but clearly secondary to the crime of genocide or other atrocities.

Naming the Harm

The collective harm done by rendering religious practice impossible can be usefully distinguished from genocide. Attacks on religious life, when widespread and driven by discriminatory intent, can meet the criteria of persecution as a crime against humanity. The Rome Statute defines persecution as the "severe deprivation of fundamental rights" on discriminatory grounds such as race or religion. Freedom of religion is a fundamental, non-derogable right guaranteed by the International Covenant on Civil and Political Rights, although religious manifestation is limitable for certain prescribed purposes. UNITAD's investigators concluded that the destruction of Yazidi religious infrastructure constituted "a blatant and gross denial of the right to freedom of thought, conscience and religion."

International courts, however, have only rarely identified the systematic denial of religious practice as a distinct form of persecution. The International Criminal Tribunal for the Former Yugoslavia held that the destruction of religious monuments can rise to the level of a crime against humanity, but it situated the harm primarily in the destruction of the world's cultural heritage, not the denial of the capacity to worship. The ICC treated the destruction of shrines the same way in the *Al Mahdi* case: the crime was viewed through a cosmopolitan lens, as the destruction of the heritage of all humankind, rather than as the elimination of a religious practice for the people of Timbuktu. More recently, in the *Al Hassan* case the ICC handed down a conviction for religious persecution by jihadists in Timbuktu. In that case, the persecution recognized by the Court involved occupying forces demanding conformity to their own vision of orthodox religious practice, regulating dress, music, and the timing of prayer, as well as engaging in the destruction of mausoleums deemed contrary to their vision of Islam. Their aim was not to eliminate the religion of the population they governed but to compel conformity to their own version of orthodox Islam. The court concluded that this was a disproportionate restriction of the right to manifest one's religion.

The closest parallel to Sinjar comes from Cambodia. In 2018 the Extraordinary Chambers in the Courts of Cambodia convicted Khmer Rouge leaders of religious persecution for their treatment of Buddhists in the Tram Kak cooperatives. The Khmer Rouge had requisitioned pagodas, destroyed Buddha images, and banned the practice of religion. The Chamber found that this constituted the "complete abolition of Buddhist practices, not a mere restriction on certain manifestations of Buddhism" (Sec. 1184). On that basis, the Chamber considered the acts, taken in context, reached a level of gravity comparable to other crimes against humanity in spite of the fact that none of the monks in that district were killed. In contrast, when the same Chamber addressed the persecution of the Cham, where murder and extermination were also charged, it convicted for religious persecution without naming freedom of religion among the rights infringed. Thus, in the Cambodia case the harm to religious practice was named only where nothing graver was available to support the conviction. Sinjar is better analogized to Tram Kak than to Timbuktu because ISIS, like the Khmer Rouge in Tram Kak, left no Yazidi collective religious practice to regulate. Yet no court

has applied the Tram Kak reasoning to ISIS's elimination of Yazidi religious life in Sinjar.

A Narrowing Window of Opportunity

UNITAD's mandate came to an end in 2024 and was not renewed. Its findings, thousands of pages of evidence and testimony, have been archived. Iraq lacks the international crimes legislation necessary to bring such prosecutions. Iraqi prosecutors have been making do with using anti-terrorism laws, but these laws do not adequately address the nature of this particular crime. Several European countries continue to bring prosecutions of members of ISIS, but none have recognized the specific form of persecution of eliminating a group's capacity to practice its faith.

This may appear to be a fine distinction, but it matters. When Raphael Lemkin coined the term genocide on the eve of the Nuremberg trials, he advocated for a broader conception of the term than what ended up in the Genocide Convention. He also wanted to criminalize the destruction of a culture. The so-called "cultural genocide" debate has raged ever since, but thus far advocates of this broader conception have lost the battle. Persecution as a crime against humanity offers an avenue by which at least one subset of Lemkin's cultural genocide can be prosecuted. It offers a path to recognizing the destruction of the infrastructure of religious practice as a crime in its own right, rather than merely as evidence of another crime or as an attack on the world's cultural heritage. By honoring the functional value of religious heritage, we can do justice to a reality that Lemkin understood and that the Yazidi people have suffered, but that courts have thus far failed to capture in Sinjar.

And the distinction is not merely theoretical. Yazidi survivors and the organizations representing them have consistently demanded accountability for the destruction of their religious and cultural sites. Many Yazidi families have refused to return to their villages until the shrines are rebuilt, not because they mourn the loss of historical monuments but because those sites were integral to the fabric of their religious life. Moreover, the reparations order issued on 28 April 2026 in the *Al Hassan* case shows what naming the harm correctly can accomplish. The convictions for torture, mutilation, and related crimes identified fourteen direct victims. In contrast, the persecution conviction identified the entire population of Timbuktu at the time of the occupation as victims since Ansar Dine and AQIM had targeted everyone in the city. The Chamber found that the persecution had damaged the community's religious identity and collective cohesion and counted the destruction of the city's mausoleums among the persecutory acts, even though Al Hassan had been acquitted of the war crime of attacking them. It ordered collective symbolic measures to acknowledge the violation of the victims' rights, and held that the public recognition of their harm in its judgments was itself a form of reparation.

If we have learned anything since Nuremberg, it is that international criminal justice is insufficient when it simply aims for convictions. It must honor the victims, rather than simply focus on the perpetrators. The precise characterization of harm is crucial because it shapes who is recognized as a victim and helps define what they are owed. Moreover, it honors what communities actually suffered. In this light, justice is not just about retribution, or even reparations; it is about recognition. To annihilate the means of practicing one's faith is a form of persecution, one serious enough to be considered a crime in its own right. The ongoing universal jurisdiction cases involving the persecution of the Yazidis offer courts a chance to recognize it.

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