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# ISIS Victims Find Maze of Challenges in Appeals for Justice

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by [KATIE WORTH](#) Tow Journalism Fellow, FRONTLINE/Columbia Journalism School Fellowships

When the Islamic State of Iraq and Syria invaded Yazidi territory in northern Iraq last summer, the Haji family fled their village by foot. But their son, Naif Haji, who had been paralyzed since childhood, could not walk. Fearing for their lives, they were forced to leave him behind and hope for the best.

Naif crawled slowly after them as ISIS moved in. Before he reached safety, militants found him and shot him in the head. ISIS massacred hundreds of other Yazidi men, and took an estimated 5,000 women and children captive, enslaving some and raping others. Today, an esti-

children captive, enslaving some and raping others. Today, an estimated 400,000 Yazidis have been displaced from their homes in Iraq.

"This," said Naif's cousin, Murad Ismael, "This is exactly why we have to go after them to the gates of hell, until every terrorist on this planet is brought to justice."

Justice is what United Nations Secretary General Ban Ki-Moon insisted upon in a speech to the U.N. general assembly on Monday, saying there "must be no impunity for atrocious crimes" like those committed against the Yazidis.

Members of the religious minority have spent the last year trying to convince the International Criminal Court (ICC) in The Hague to investigate and prosecute the genocide they say was committed against them, but what they've found is that pursuing justice amounts to navigating a maze with no exit.

The Yazidis, like many other groups targeted by ISIS, have approached the ICC to ask for an investigation of the group's alleged war crimes. The court, however, has said that its jurisdiction only reaches to territory controlled by the 123 countries that are members of the ICC, and neither Iraq nor Syria count among them.

There may be a way around this limitation: The U.N. Security Council can refer a situation they feel is threatening global security to the ICC, even if it is out of the natural jurisdiction of the court. The council has done this once before, in 2005, when it referred the situation in Darfur.

Ban has been advocating this option for months, and called for it yet again in his [address](#) this week to the U.N. General Assembly.

But such a step would require the approval — or at least, the lack of a veto — of all five permanent members of the U.N. Security Council, and therein lies sundry obstacles. If the Syria and Iraq situation were referred to the court, prosecutors wouldn't be limited to investigating only ISIS — they could probe war crimes committed by any party within the territory.

And in Syria and Iraq, there are many potentially guilty parties, explained Kevin Jon Heller, a professor of criminal law and an expert in international justice at the University of London. Russia, allied with Syrian President Assad, won't agree to any deal that would open his regime up for scrutiny. The Chinese government is not enthusiastic about expanding precedent for human rights investigations, since they have been accused of such violations themselves. Kurdish groups and the Turkish government, both crucial U.S. allies in the fight against ISIS, have each been accused of untoward battle practices.



“Everybody has clients in that area, everybody’s got allies they want to protect,” Heller said.

Indeed, when the Security Council proposed referring the situation in Syria to the ICC, both Russia and China vetoed the resolution.

The Yazidis have been attempting an end-run around those politics, taking advantage of a loophole in the ICC’s mandate that allows the court to prosecute crimes committed by citizens of any of its 123 member states. Last year, for instance, it opened a preliminary examination into alleged detainee abuse by British officers in Iraq.

Foreigners with passports from Europe, Tunisia, Jordan, and other ICC member states have all joined the ranks of ISIS, but so far, the ICC’s chief prosecutor, Fatou Bensouda, has not been swayed. In April, Bensouda released a statement saying that although she is “profoundly concerned” about the “crimes of unspeakable cruelty” ISIS is reported to have committed, the evidence so far indicates that ISIS is “primarily led by nationals of Iraq and Syria.” Foreign fighters may be involved in atrocities, but it’s unclear if they are “most responsible,” she said.

“What Bensouda wants is someone worth investigating, not an investigation into a bunch of low-level fighters,” said Heller.

Last week, two Yazidi groups and the Kurdistan Regional Government of Iraq came back with evidence they hope will sway the court. A 2014 Congressional report estimated that foreign fighters made up 16,000 members — or nearly half — of the ISIS force. Of those, perhaps between 5,000 and 7,500 hail from ICC member states, the Yazidi report estimates. These fighters play crucial roles for ISIS, according to the Yazidi report, operating the media machine ISIS has used for recruitment and fundraising, and overseeing the trade and abuse of Yazidi women as sex slaves.

“There are fingerprints of the foreign fighters in all the crimes perpetrated against our people,” said Ismael, cofounder and global operations manager of the Yazidi advocacy group Yazda, who traveled to The Hague last week with members of the Free Yezidi Foundation and the Kurdistan Regional Government of Iraq to present the report

It’s a “pretty compelling argument,” said Carrie Comer, permanent representative to the ICC for the International Federation for Human Rights.

But, Comer said, an ICC investigation would present yet another challenge: The court would only have purview to prosecute foreign fighters, not Iraqi and Syrian militants too. Also, if the Yazidis can prove that for-

eigners participated in crimes against their people, but other groups cannot, then it could create a multi-tiered ranking of victims, some of whom can pursue justice while others cannot.

“We need to make sure that other communities that have been specifically targeted in this conflict also have access to justice,” Comer said.

There are other options open to the Yazidis, experts say, but they’re all seen as remote. And with fighting still raging in much of Iraq and Syria, it could be years before a win at the ICC would even lead to prosecutions or any other tangible result.

“That shouldn’t stop us,” said Luis Moreno Ocampo, a former chief prosecutor for the ICC. “The Yazidis are in shock. They cannot believe what has happened to them. They feel abandoned. So if the ICC takes the case, it is symbolically important.”

It “wouldn’t necessarily solve anything at the moment,” conceded Lyal S. Sunga, head of the Rule of Law Program at The Hague Institute for Global Justice, but it would at least “send a clear signal that the international community cares about enforcing humanitarian law.”

For Ismael, that would still count as progress.

“The International Criminal Court was established to stand up when it comes to things like this,” he said. “It’s important to me that what happened to my people will be recognized forever. It will be taught in the university, taught to our children.”

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