

# Is there a safe haven? Experiences of female Ezidi refugees in Fidanlık refugee camp

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## Abstract

On 3 August 2014 the Islamic State of Iraq and the Levant (ISIS) attacked the Ezidi<sup>1</sup> religious minority in Sinjar, northern Iraq, resulting in the displacement of the overwhelming majority of the community. The study considers whether the reasons for the displacement of Ezidi women from Sinjar (who, by December 2016, were living in Fidanlık Camp, Diyarbakır, Turkey), are consistent with International Refugee Law (IRL) principles. It also lays down their experiences as refugee women, trying to offer an insight into the gendered aspect of their day-to-day lives. To this end, interviews with Ezidi women living in one of the refugee camps, and local service providers, form the basis of this study. It also briefly reviews the evolution of a dominant interpretation of IRL and its critics, while examining the extension of the refugee regime's ability to provide protection to women claiming asylum, offer solutions to the problems they face, and provide information about the local legal framework and practices.

## Keywords

Ezidi refugees, Turkey, International Refugee Law, IRL, gender-related persecution, refugee women

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<sup>1</sup> Throughout the study the word 'Ezidi' is used instead of the more common designation 'Yazidi' because Ezidis prefer it due to the stigma associated with the word 'Yazidi': in Islamic history Yazid I, the second caliph of the Umayyad caliphate, is perceived to be the symbol of evil and treachery.

## 1. Introduction

### 1.1 Research focus and hypothesis

This paper seeks to assess the effectiveness of the refugee system in Turkey in dealing with and being able to offer short- and long-term solutions to the plight of Ezidi women from Sinjar, Iraq who have been displaced to Turkey. Based on this premise, its main objectives are: to assess whether Ezidi women are refugees, exploring the reasons for displacement, focusing on gendered aspects of persecution; and to identify the main challenges faced by the refugees from a gender lens, the responses of various actors including the host state, the UN Refugee Agency (UNHCR), local authorities and civil society as well as the refugees' own coping mechanisms. To this end, the research starts with providing background information on Ezidis and the attacks in Sinjar in 2014, then provides a summary of criticisms that have been made and of the evolution of dominant interpretations of international refugee law (IRL). It also summarises the extension of the refugee regime's ability to provide protection to women claiming asylum and offers solutions to the problems that they face; briefly lays down IRL's relationship with international and regional human rights law and international humanitarian law; and provides information on refugee protection in Turkey, Ezidi displacement there from August 2014 to 2017 and the role of UNHCR representation in the country. Finally, the research proposes measures that shall be taken by local, national and international actors.

### 1.2 Academic relevance

Various studies argue that although the rights of refugee women have pushed their way up the international agenda, in practice impediments still remain to their being fully enjoyed.<sup>1</sup> For example, Elena Fiddian-Qasmiyeh recognises that a gendered approach to forced migration has not yet been fully established and there is a dire need to strengthen the recognition of gender-based persecution.<sup>2</sup> As stressed by Oosterveld, the feminist project within refugee law is 'unfinished work'<sup>3</sup> and this continues to be relevant as laws, regulations and policies change, and as practices evolve.<sup>4</sup> Furthermore, Bartolomei et al. have argued that:

Although all women are subject in some manner to discrimination based on gender, this is compounded for some women when gender discrimination 'intersects' with discrimination on other grounds ... Refugee women suffer from both the internalized and external consequences of their often already marginalized identities as women and ethnic, national or racial minorities.<sup>5</sup>

There is little academic literature apart from a few reports from non-governmental organisations (NGOs)<sup>6</sup> and some news articles about Ezidis displaced from Sinjar in Iraq to Turkey. Ezidi women present a unique case in relation to gender-related persecution and the gender-specific forms of harm from which they have fled, as well as the lack of response from Turkey, the country in which they seek asylum, to their plight. The study, in light of these circumstances, evaluates experiences of gender-based violence in a conflict-induced mass displacement context that arose recently according to IRL. It also aims to dispel confusion in terms of refugee law around the status of Ezidi women on the ground. Additionally, the interdisciplinary research design and multi-method approach provides additional insights in relation to problems and formulation of solutions.

In the case of Ezidis displaced to Turkey, the response of municipalities in southeastern Turkey and NGOs are also unique in being the only bodies to conduct documentation and provide shelter and other services in the absence of an adequate government and UNHCR response. Thus, the study also aims to map the situation on the ground in terms of the delivery of protection and assistance as well as the formation of new forms of community, political organisation and gender roles<sup>7</sup> in Fidanlık Camp, Diyarbakır, Turkey. In light of the above, the study will make a contribution to the literature in the field.

1 See, e.g., Alice Edwards, 'Transitioning gender: feminist engagement with international refugee law and policy, 1950–2010', *Refugee Survey Quarterly* 29 (2) (2010): 21–45.

2 Elena Fiddian-Qasmiyeh, 'Gender and forced migration', in Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long and Nando Sigona (eds.), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford: Oxford University Press, 2014).

3 Valerie L. Oosterveld, 'The Canadian Guidelines on Gender-Related Persecution: an evaluation', *International Journal of Refugee Law* 8 (4) (1996): 569–96.

4 Edwards, 'Transitioning gender', at 45.

5 Linda Bartolomei, Eileen Pittaway and Emma Elizabeth Pittaway, 'Who am I? Identity and citizenship in Kakuma Refugee Camp in Northern Kenya', *Development* 46 (3) (2003): 87–93.

6 Support to Life International Humanitarian Aid Association, 'Situation report, Ezidi asylum seekers in Turkey' (2014), <http://panel.stgm.org.tr/vera/app/var/files/1/4/141016-ezidi-raporu-stl-tr.pdf> (accessed 7 Sep. 2017); Türkiye Psikiyatri Derneği 'Ezidi Siğincılara Yönelik Değerlendirme Raporu' (2014), [www.madde14.org/index.php?title=T%C3%BCrkiye\\_Psikiyatri\\_Derne%C4%9Fi\\_-\\_Ezidi\\_S%C4%B1%C4%9F%C4%B1nmacılara\\_Y%C3%B6nelik\\_De%C4%9Feriendirme\\_Raporu](http://www.madde14.org/index.php?title=T%C3%BCrkiye_Psikiyatri_Derne%C4%9Fi_-_Ezidi_S%C4%B1%C4%9F%C4%B1nmacılara_Y%C3%B6nelik_De%C4%9Feriendirme_Raporu) (accessed 24 Sep. 2015); İnsan Hakları Derneği, 'Diyarbakır-Şanlıurfa/Viraneşehir-Şırnak-Siirt-Batman/Beşiri Ve Batman/Merkez'de Bulunan Ezidi Mülteci Kamplarına İlişkin Gözlem Ve Tespit Raporu' (2015), [www.ihd.org.tr/diyarbakir-sanliurfaviraneşehir-sirnak-siirt-batmanbeşiri-ve-batmanmerkezde-bulunan-ezidi-multeci-kamplarına-iliskin-gozlem-ve-tespit-raporu-12-13-14-haziran-2015](http://www.ihd.org.tr/diyarbakir-sanliurfaviraneşehir-sirnak-siirt-batmanbeşiri-ve-batmanmerkezde-bulunan-ezidi-multeci-kamplarına-iliskin-gozlem-ve-tespit-raporu-12-13-14-haziran-2015) (accessed 24 Sep. 2015); Research Centre on Asylum and Migration (IGAM), 'Situation report, Ezidi asylum seekers in Turkey' (2016), [www.igamder.org/wp-content/uploads/2015c/Ezidi.pdf](http://www.igamder.org/wp-content/uploads/2015c/Ezidi.pdf) (accessed 1 Aug. 2018).

7 Darini Rajasingham-Senanayake, 'Between victim and agent: women's ambivalent empowerment in displacement', in Philomena Essed, Georg Frerks and Joke Schrijvers (eds.), *Refugees and the Transformation of Societies. Agency, Policies, Ethics and Politics* (New York, NY: Berghahn Books, 2004), pp. 151–66; Joke T. Schrijvers, 'Fighters, victims and survivors: constructions of ethnicity, gender and refugeeness among Tamils in Sri Lanka',

### 1.3 Methodology

The primary data for this research were collected through semi-structured interviews with ten female Ezidi refugees residing in Fidanlık Refugee Camp and five female service providers to the camp in December 2016. Due to the camp being under threat of closure, data collection was prioritised and the analysis followed.

An oral history of the causes of displacement was put together through the single-issue testimonies of the female refugees, which traced the line of events from their point of view. These testimonies also helped to explore their access to rights as well as the coping mechanisms and living conditions they encounter. Additionally, a brief questionnaire used at the end of the interviews obtained demographic details and other information including the number of attempts they had to make to receive basic services. Interviewees were chosen from different quarters of the camp, namely Büyük Şehir, Bağlar, Kayapınar and Sur Quarters, so as to ensure any differences in accessing services were reflected in the study. None were found. The interviews were conducted in Kurdish and were simultaneously translated into Turkish by a bilingual interpreter (female, due to the gendered nature of the persecution the interviewees were enduring, and visible to increase thoroughness and credibility). Interviewees were accessed via gatekeepers at a women's initiative, working for the liberation of Ezidi women who had been captured by ISIS, in order to gain the trust necessary to discuss highly sensitive topics. In order to further gain interviewees' trust and increase rapport with them, they were asked to choose the place of the interview. All the interviews were, as a result, conducted at the camp, in the interviewees' individual tents.

Interviews with service providers at civil society and municipal level were conducted with the aim of gaining an overall understanding of adult female refugees' problems. Interviews with service providers were conducted in Turkish and transcripts were translated into English.

Field notes were also taken in order to support the overall analysis and for the inclusion of data that could not be recorded.

Furthermore, desk research was conducted on international, regional and local legal instruments and policies applicable to refugees in Turkey, and reports and statistics from relevant organisations and media sources as secondary sources, all of which were validated for credibility. In terms of the desk research on the legal framework, feminist methodology was adopted in order to take a more holistic approach by trying to avoid traditional fragmentary thinking. The latter has arguably led to the division of international law in human rights, humanitarian law and refugee law leading to a danger that certain 'grey' zones will be created in the international legal framework which will disadvantage women.<sup>8</sup> Also based on this premise, various sources from different disciplines as well as sources were used.

### 1.4 Ethical considerations and limitations

Due to their vulnerabilities, the refugee participants were informed of the research's purpose and its limited ability to change their lives. This was done in order to ensure that their hopes were not falsely raised and that their desire to change their plight did not affect their answers. At the beginning and end of their interview all participants were asked to sign a consent form to be recorded while being interviewed; these were read to them and they were also offered the option to amend their answers if they wished to do so. Nine interviewees did not give consent for interviews to be recorded, stating that they did not feel comfortable with it, so notes were taken during the process. Due to the closure of the camp in January 2017, follow-up sessions could not be conducted. Furthermore, prior to doing the interviews, the researcher collected information about appropriate and available counselling providers in the area to whom they could refer participants, in case the interviews provoked psychological and emotional trauma. This precautionary measure did not prove necessary in the end.

It should also be noted that, as is the case for most qualitative studies, the generalisability of the findings is limited. This research did not bring together an entirely representative sample of female Ezidi refugees and could not be expected to do so. Thus, the goal of the research was to study experiences of a particular group of Ezidi refugees in Turkey. The study is necessarily limited due to the small sample, however, the similarity in patterns that arose during interviews does indicate that the research project was able to capture a picture of the experiences of people from the same group.

The role of the researcher and the interpreter should also be kept in mind when interpreting responses. The primary driver of this research is the author's personal interest and voluntary engagement in the plight of the Ezidi refugees. However, it should also be borne in mind that positivist methodological approaches requiring emotional detachment and impersonalisation has long been criticised for being 'eurocentric' and 'masculine'.<sup>9</sup> Additionally, the interpreter was involved in a women's NGO, which prior to the camp's closure used to run arts and crafts courses and awareness-raising training in Fidanlık Camp. However, she had not been involved in these activities for a year at the time interviews were

*Journal of Refugee Studies* 12 (3) (1999): 307–33; Alice Szczepanikova, 'Gender relations in a refugee camp: a case of Chechens seeking asylum in the Czech Republic', *Journal of Refugee Studies* 18 (3) (2005): 281–98; Erine K. Baines, 'Gender construction and the protection mandate of the UNHCR: responses from Guatemalan women', in Mary K. Meyer and Elisabeth Prügl (eds.) *Gender Politics in Global Governance* (London: Rowman & Littlefield, 1999).

<sup>8</sup> Maja Kirilova Eriksson, 'Att gå på två ben eller ett, betraktelsesätt på mänskliga rättigheter', *Feministiskt perspektiv* 1/00, 5–12, at 9, quoted in Annette Lyth, 'Where are the women? – a gender approach to refugee law', in Ineta Ziemele (ed.) *Expanding the Horizons of Human Rights Law* (Leiden: Martinus Nijhoff Publishers, 2005) p. 109.

<sup>9</sup> Harsh Mander, 'Words from the heart': researching people's stories', *Journal of Human Rights Practice* 2 (2) (2010): 252–70.

conducted. Efforts were made to mitigate any potential impact on responses via expressly stating that the study should not be associated with any organisation, and the researcher would use responses for academic purposes only.

Finally, as the researcher and the interpreter have previously been involved in activities conducted in Fidanlık Refugee Camp, has realised that memories of the interviewees might be communally and contextually restructured and/or distorted. It is the researcher's opinion that, generally speaking, the individual testimonies of the refugees staying in Camp used to be more detailed and diverse when they were first arrived. The researcher did not previously engage with the women that were interviewed for this study, such a tendency in general is observed.

### 1.5 Background information on Ezidis and the Sinjar attacks in August 2014

Ezidis are an ancient ethnic and religious group, indigenous to northern Mesopotamia, in the Middle East.<sup>10</sup> Most speak Kurmanji, a Kurdish dialect. Ezidis believe in a Creator God, who they consider to be the executive organ of the divine will, called Malak Ta'us, also translated as Peacock Angel.<sup>11</sup> Because of the similarity of the story of this angel to Christian and Muslim accounts of Satan, adherents of those religions tend to have the misconception that Ezidis are devil-worshippers.<sup>12</sup>

Throughout history, Ezidis have been subjected to persecution in their homeland, which is currently divided between different nation states. It is reported that the community has faced 74 genocidal campaigns, 72 of them during the Ottoman Empire in the 18th and 19th centuries.<sup>13</sup> Many Ezidis were forced to convert to Islam during the period of Ottoman rule. Out of more than an estimated 8,000 Ezidis living in Turkey up to the 1970s, only 350 remain following significant migration to Europe and the displacements of 2014 described above.<sup>14</sup> In Iraq, under the Ba'ath regime, Ezidis were reported to have been forced to change their religions in order to obtain identification documents.<sup>15</sup> Prior to 2014, it was reported that the community was subjected to arbitrary arrest, discrimination and other abuses in Iraq.<sup>16</sup> Ezidis have also been targeted by various Islamist fundamentalist groups regarding them as 'devil-worshippers' and not 'people of the book'.<sup>17</sup> 'Religious scholars' of ISIS also believe that Ezidis are infidels and they have indicated in their publications that Ezidis must be eliminated.<sup>18</sup> Ezidi population in Iraq, which was 700,000 in 2005, had fallen to around 500,000 prior to 2014.<sup>19</sup>

### 1.6 An overview of protection of refugee women in the international and regional legal framework

It is important to lay down a historical overview of the status of gender in international law and a brief discussion of the ability of the international refugee regime to correspond with the reality of women's experiences before assessing whether Ezidi women's experiences are consistent with the principles of IRL and elaborate on their experiences as beneficiaries of protection. To this end, this section shall briefly reveal the patriarchy behind refugee law and then move on to discuss developments in international law that were introduced with a view to rectify this.

It has been widely acknowledged that, due to patriarchy and thus gender inequality, international displacement impacts women differently than men. Thus, they have different protection needs and associated problems which can be divided in three subheadings. The first relates to the current refugee definition, second to physical insecurity surrounding women that have not settled permanently and third to the solutions offered.<sup>20</sup>

The Refugee Convention and its 1967 Protocol lay down a general refugee definition<sup>21</sup> and set up the major rights and duties of refugees and the way host countries should treat them. The five grounds in the refugee definition noticeably

10 The Institute for International Law and Human Rights (IILHR), Minority Rights Group International (MRG), No Peace Without Justice, The Unrepresented Nations and Peoples Organization (UNPO), 'Between the millstones: the state of Iraq's minorities since the fall of Mosul' (2015).

11 Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples – Iraq: Yazidis* (Refworld, Oct. 2014), [www.refworld.org/docid/49749d0641.html](http://www.refworld.org/docid/49749d0641.html) (accessed 11 Sep. 2017).

12 Yasmine Hafiz, 'Yazidi religious beliefs: history, facts and traditions of Iraq's persecuted minority', *Huffington Post* (13 Aug. 2014), [www.huffingtonpost.com/2014/08/13/yazidi-religious-beliefs\\_n\\_5671903.html](http://www.huffingtonpost.com/2014/08/13/yazidi-religious-beliefs_n_5671903.html) (accessed 27 Sep. 2017).

13 'Who are the Yazidis and why is IS hunting them?' *The Guardian* (Iraq, 11 Aug. 2014), [www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains](http://www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains) (accessed 11 Sep. 2017).

14 Yazda (global youth organisation), 'An uncertain future for Yazidis: a report marking three years of an ongoing genocide' (Sep. 2017), [www.yazda.org/wp-content/uploads/2017/06/Yazda-Report-2017\\_an-Uncertain-Future-for-Yazidis\\_A-Report-Marking-Three-Years-of-an-Ongoing-Genocide.pdf](http://www.yazda.org/wp-content/uploads/2017/06/Yazda-Report-2017_an-Uncertain-Future-for-Yazidis_A-Report-Marking-Three-Years-of-an-Ongoing-Genocide.pdf) (accessed 11 Sep. 2017).

15 IILHR, 'Iraq's minorities and other vulnerable groups: legal framework, documentation, and human rights' (2013).

16 United States Commission on International Religious Freedom (USCIRF), Annual Report 2013, p. 89 (2013).

17 IILHR, MRG, No Peace Without Justice, UNPO, 'Between The millstones: the state of Iraq's minorities since the fall of Mosul' (2015).

18 Yazda, 'Yazidi refugees in Greece, Turkey, Syria and Iraq seek legal admission to Germany' (2016), <https://www.yazda.org/wp-content/uploads/2017/07/Yazidis-Refugees-in-Greece-Turkey-and-Syria-6.10.2015finalversion.docx.pdf> (accessed 27 Sep. 2017).

19 USCIRF, 'Annual Report 2013', p. 89 (2013).

20 Ninette Kelley, 'Report on the International Consultation on Refugee Women Geneva, 15–19 November 1988, with particular reference to protection problems', *International Journal of Refugee Law* 1 (2) (1989): 233–41, at 237.

21 Article 1 definition of a refugee is 'a person who is outside his or her country of origin or habitual residence and is unable or unwilling to return there owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion'.

lack gender,<sup>22</sup> since the drafters 'did not deliberately omit persecution based on gender – it was not even considered.'<sup>23</sup> Arguments put forward for the reasons behind this are:

- the drafters were all men<sup>24</sup>
- the treaty's direct focus on European refugees displaced by World War Two,<sup>25</sup> and the perceived basis of the persecution conducted by Nazi-Germany<sup>26</sup>
- the west's ideological agenda in terms of protecting political dissidents from Eastern European communist regimes during the Cold War<sup>27</sup>
- the human rights philosophy at the time being 'gender deficient'<sup>28</sup>
- drafters' failure to acknowledge that women were being harmed due to their status as women; gendered public/private dichotomy in international law has resulted in the latter growing within a male paradigm; thus, male needs were cared for while factual circumstances of females were ignored<sup>29</sup>
- the characterisation of women's experiences of harm as a private matter,<sup>30</sup> hence their experiences were not considered to be internationally relevant.<sup>31</sup>

In short, this explicit omission was twofold: the masculine experience was set as the norm; consequently women and their experiences were demoted. As a result, they faced difficulties in being recognised as refugees as well as in achieving access to rights, services and assistance even after gaining recognition.

Some argue that in order to overcome the difficulties in obtaining recognition as a refugee, a sixth ground should be added to the refugee definition.<sup>32</sup> Supporters of this view argue that women asylum seekers bear the extra weight of fitting their claims within the restricted, existing refugee definition.<sup>33</sup> Others argue that the use of the 'membership in a particular social group' ground, as well as gender-sensitive interpretation of the refugee law as it is, would suffice to deal with cases in which women are persecuted as women and/or because they are women.<sup>34</sup>

Also, women as refugees face specific problems, especially in the camp settings,<sup>35</sup> due to material factors and gendered political and power structures, which in particular deprive them of protection on the ground of their gender, as women,

22 Refugee Convention, art. 1(A)(2).

23 Judith Kumin, 'Gender: persecution in the spotlight', *Refugees, 50th Anniversary, the Wall Behind Which Refugees Can Shelter, the 1951 Convention* (123) (2001): pp. 12–13.

24 Jenny-Brooke Condon, 'Asylum law's gender paradox', *Seton Hall Law Review* 33 (1) (2002): 207–56, at 214.

25 Kumin, 'Gender: persecution in the spotlight', 12–13.

26 Namely on the basis of people's race, religion and political beliefs as elaborated in Condon, 'Asylum law's gender paradox' at 214; Jack Garvey, 'Toward a reformulation of International Refugee Law', *Harvard International Law Journal* 26 (2) (1985): 483–500; Joan Fitzpatrick, 'Revitalizing the 1951 Refugee Convention', *Harvard Human Rights Journal* 9 (1996): 229–54; However it is also known that Nazi Germany persecuted people on the basis of their sexual orientation and gender identity but that was little talked about at the time. See United States Holocaust Memorial Museum 'Persecution of homosexuals in the Third Reich' (*Holocaust Encyclopedia*), <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005261> (accessed 30 Sep. 2017).

27 James C. Hathaway, 'A reconsideration of the underlying premise of Refugee Law', *Harvard International Law Journal* (31) (1) (1990): 129–284.

28 Nancy Kelly, 'Gender-related persecution: assessing the asylum claims of women', *Cornell International Law Journal* 26 (3) (1993): 625–74; Andrea Binder, 'Gender and the "Membership in a particular social group" category of the 1951 Refugee Convention', *Columbia Journal of Gender and the Law* 10 (2) (2001): 167–94.

29 Heaven Crawley, 'Women and refugee status; beyond the public/private dichotomy in UK asylum policy', in Doreen Indra, (ed.) *Engendering Forced Migration: theory and practice* (New York, NY: Berghahn Books, 1998), p. 310; Anthea Roberts, 'Gender and Refugee Law', *Australian Yearbook of International Law* 22 (2002): 159–200.

30 Crawley, 'Women and refugee status', in Indra (ed.) *Engendering Forced Migration*; Binder, 'Gender and the "Membership in a particular social group" category', 167–94, at 170; Deborah Anker, 'Refugee status and violence against women in the "domestic" sphere: the non-state actor question', *Georgetown Immigration Law Journal* 15 (3) (2001): 391–402; Deborah Anker, 'Refugee law, gender, and the human rights paradigm', *Harvard Human Rights Journal* 15 (2002): 133–54, at 140; Aftam Alam, 'Towards gender sensitive International Refugee Law', *ISIL Year Book of International Humanitarian and Refugee Law* 8 (2008): 104–43, at 105; Deepti Asthana, 'Gender politics: refugee definition and the Safe Third Country Agreement', *Georgetown Journal of Gender and the Law* 12 (1) (2011): 1–42.

31 Kumin, 'Gender: persecution in the spotlight', 12–13.

32 Mattie L. Stevens, 'Reorganizing gender-specific persecution: a proposal to add gender as a sixth refugee category', *Cornell Journal of Law and Public Policy* 3 (1) (1993): 179–220; Deborah Anker et al., 'Defining "Particular social group" in terms of gender: the Shah Decision and U.S. Law', *76 Interpreter Releases* 1005, 1006 (1999).

33 Condon, 'Asylum law's gender paradox', art. 7 (2003).

34 Anker, 'Refugee law, gender, and the human rights paradigm', 138; Crawley, 'Women and refugee status', in Indra, (ed.) *Engendering Forced Migration*, p. 311; Jacqueline Greatbatch, 'The gender difference: feminist critiques of refugee discourse', *International Journal of Refugee Law* 1 (4) (1989): 518–27; Alam, 'Towards gender sensitive International Refugee Law', 104–43, at 106; Alice Edwards, 'Age and gender dimensions in International Refugee Law', in Erika Feller, Volker Türk and Frances Nicholson (eds.) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge: Cambridge University Press, 2003), p. 56.

35 Jane Freedman, *Gendering the International Asylum and Refugee Debate* (London: Palgrave Macmillan, 2007), p. 35; Women's Refugee Commission, 'Falling through the cracks: refugee women and girls in Germany and Sweden' (2016), [www.womensrefugeecommission.org/gbv/resources/1308-protection-germany-sweden](http://www.womensrefugeecommission.org/gbv/resources/1308-protection-germany-sweden) (accessed 14 Mar. 2017).

and also their migration status, as refugees.<sup>36</sup> Jane Freedman has argued that the organisation of camp spaces and routines disregards the specific needs and vulnerabilities of women.<sup>37</sup> For example, concentration of services in one area, in a way that is convenient for the camp staff, may be inconvenient and possibly dangerous for refugee women.<sup>38</sup> They also, due to persisting gender roles, carry the principal responsibility for the food and sanitation needs of the family, bearing an unequal burden in the face of scarce resources and facilities.<sup>39</sup> In light of this, finding and implementing survival strategies may lead to a change in gender roles in a way that is empowering for women; but at the same time this may have detrimental results, such as the reinforcement of gender roles and females' subordinate position in their countries of origin,<sup>40</sup> and them having to bear the burden of extra duties in addition to existing ones that do not bring any economic benefit.<sup>41</sup> Additionally, refugee camps are not exempt from the phenomenon of violence against women prevalent in almost all societies and places.<sup>42</sup> This may be further aggravated due to the above-mentioned reasons and also the 'disruption of family and community structures during forced migration and from the continuation and reproduction of previously experienced violence whilst in exile.'<sup>43</sup> Agnès Callamard has argued that, within refugee camps, international, national and local actors directly and indirectly politically determine discrimination and violence against women.<sup>44</sup> Negative practices to this end include militarisation and criminalisation of refugee camps,<sup>45</sup> and control and management of the camps from a distance.<sup>46</sup>

Elena Fiddian-Qasmiyeh has put forward the additional argument that the three durable solutions, namely local integration, repatriation and resettlement, are gendered in relation to access, experiences and implications.<sup>47</sup> Repatriation may have gendered results as certain elements of *status quo ante* in the country of origin that also includes patriarchy.<sup>48</sup> These might constitute the underlying reasons for (or contributory factors towards) the flight from persecution, or the situation of the refugee(s) might stay the same, or they could end up in a stronger position.<sup>49</sup> It was in 2006 that gender bias in resettlement processes was acknowledged.<sup>50</sup> It is also important to note that the UNHCR resettlement category of 'woman at risk' was criticised for regarding women as inferior, equating their survival to the presence of male family members who can protect them.<sup>51</sup> Women may also face 'new or repeated forms of exclusion and marginalisation' while integrating into the country in which they have sought asylum or have resettled almost as well as if they were back in their countries of origin.<sup>52</sup>

Since the 1980s, law and policy have developed with regards to the recognition of women as refugees as well as in the provision of protection and support targeted to their specific needs.<sup>53</sup> Soft law guidelines issued by the UNHCR and state parties, case law at the national level and decisions from international courts from other regimes have played an important role for the evolution of IRL. Developments in soft-law instruments have been especially noticeable, as discussed in more detail below. Although soft law instruments are not binding on states, they form an important part of the international framework. Furthermore, they are binding on UN agencies such as UNHCR, when undertaking refugee status determination (RSD), camp coordination and camp-management activities, and promoting for durable solutions based on its mandate. The UNHCR Handbook, Guidelines, Executive Committee Conclusions and Notes on Protection are considered to be soft law instruments.

36 Freedman, *Gendering*, p. 35; Agnès Callamard, 'Refugee women: a gendered and political analysis of the refugee experience', in Danièle Joly (ed.), *Global Changes in Asylum Regimes. Migration, Minorities and Citizenship* (London: Palgrave Macmillan, 2002).

37 Freedman, *Gendering*, p. 35.

38 Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism* (Minneapolis MN: University of Minnesota Press, 2000).

39 Freedman, *Gendering*, p. 36; Linda Kreitzer 'Liberian refugee women: a qualitative study of their participation in planning camp programmes', *International Social Work* 45 (1) (2002): 45–58.

40 Freedman, *Gendering*, p. 37.

41 Alastair Ager, Wendy Ager, Lynellyn Long, 'The differential experience of Mozambican refugee women and men', *Journal of Refugee Studies* 8 (3) (1995): 265–87; Callamard 'Refugee women', in Joly (ed.), *Global Changes in Asylum Regimes*.

42 Cynthia Cockburn, 'The continuum of violence: a gender perspective on war and peace', in Wenona Gile and Jennifer Hyndman (eds.) *Sites of Violence: Gender and Conflict Zones* (Berkeley, CA: University of California Press, 2004).

43 Freedman, *Gendering*, p. 37; see Oxfam, 'Foreign territory: the Internationalization of EU asylum policy', p. 63 (2005), [www.scribd.com/document/52828575/Foreign-Territory-The-internationalisation-of-EU-asylum-policy](http://www.scribd.com/document/52828575/Foreign-Territory-The-internationalisation-of-EU-asylum-policy) (accessed 3 Oct. 2017); Susan Forbes Martin, *Refugee Women* (Lanham, MD: Lexington Books, 2004), pp. 13–17; Hyndman, *Managing Displacement*; Marie Anne Fitzgerald, 'Firewood, violence against women, hand choices in Kenya' (Refugees International, 1998), [www.refworld.org/pdfid/47a6ebaba.pdf](http://www.refworld.org/pdfid/47a6ebaba.pdf) (accessed 3 Oct. 2017); Alice Szczepanikova, 'Gender relations in a refugee camp: a case of Chechens seeking asylum in the Czech Republic', *Journal of Refugee Studies* 18 (3) (2005): pp. 281–98.

44 Callamard 'Refugee women', in Joly (ed.), *Global Changes in Asylum Regimes*.

45 *Ibid.*, p. 138.

46 Hyndman, *Managing Displacement*.

47 Fiddian-Qasmiyeh, 'Gender and forced migration', in Fiddian-Qasmiyeh et al. (eds.), *The Oxford Handbook of Refugee and Forced Migration Studies*, p. 404.

48 As well as homophobia and transphobia regarding lesbian, bisexual and trans women

49 Fiddian-Qasmiyeh, 'Gender and forced migration', in Fiddian-Qasmiyeh et al., *The Oxford Handbook of Refugee and Forced Migration Studies*, p. 405.

50 UNHCR, Conclusion on Women and Girls at Risk no. 105 (LVII) – 6 Oct. 2006.

51 Edwards, 'Transitioning gender', 21–45, at p. 33; Lenore Manderson, Margaret Kelaheer, Milica Markovic et al., 'A woman without a man is a woman at risk: women at risk in Australian humanitarian programs', *Journal of Refugee Studies* 11 (3) (1998): 267–83, at 272.

52 Fiddian-Qasmiyeh, 'Gender and forced migration', in Fiddian-Qasmiyeh et al. (eds.) *The Oxford Handbook of Refugee and Forced Migration Studies*, p. 406.

53 Edwards, 'Transitioning gender', 21–45.

The UNHCR's first 'Conclusion on Refugee Women and International Protection'<sup>54</sup> was adopted in 1985, and in 1988 it held its first Consultation on Refugee Women.<sup>55</sup> The conclusion recognised that 'women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society' fall within the Refugee Convention's refugee definition. However, adopting this interpretation was left to states' discretion.<sup>56</sup> Nevertheless, in 1984<sup>57</sup> and 1996<sup>58</sup> the European Parliament approved two resolutions relating to this issue.<sup>59</sup>

In 1990 the UNHCR's executive committee adopted Conclusion no. 60 on Refugee Women,<sup>60</sup> which touched on the issues of effective access to RSD procedures, irrespective of the existence of male family members and the provision of skilled, female interviewers.<sup>61</sup> That same year, the UNHCR issued its Policy on Refugee Women.<sup>62</sup> The document underlined that displacement may have a different impact on men and women and this should be taken into account when protection responses and strategies are produced<sup>63</sup> which call for women's participation in 'planning and implementation processes'.<sup>64</sup> In 1991, the UNHCR's 'Guidelines on the Protection of Refugee Women'<sup>65</sup> was issued with a view to ensuring the protection of victims of gender-persecution through the Refugee Convention. It assured states that 'women fearing persecution or severe discrimination on the basis of their gender should be considered a member of a social group for the purposes of determining refugee status',<sup>66</sup> and indicated that 'special efforts may be needed to resolve problems faced specifically by refugee women'.<sup>67</sup> Other states followed up on these advances by issuing their own national guidelines, the first being Canada's Immigration and Refugee Board, in 1993.<sup>68</sup> Moreover, some specifically identified 'sex', 'gender', and/or 'sexual orientation' as grounds for obtaining refugee definition,<sup>69</sup> while others referred to forms of gender-specific persecution<sup>70</sup> in their national laws or published orders<sup>71</sup> to this end.<sup>72</sup>

In 1993, Conclusion no. 73 on Refugee Protection and Sexual Violence was adopted.<sup>73</sup> Subsequently, in 1995, 'Sexual Violence against Refugees: Guidelines on Prevention and Response' was issued, proposing a range of preventive and remedial measures in order to combat sexual violence against refugee women.<sup>74</sup> However, it was not particularly effective in practice, especially in camp settings, for a number of reasons: relief workers were overwhelmed as most refugee situations are crisis-driven; staff working with refugees had little knowledge about the guidelines or their own patriarchal perception led them to consider violence against women as 'a private matter' or 'an inevitable by-product' of the conflict; and no internal mechanisms or institutionalised procedures had been developed to deal with these cases.<sup>75</sup>

In 1995 and 1996, further emphasis was made on states' development and implementation of criteria and guidelines on gender-based persecution.<sup>76</sup> In 2002, the UNHCR issued 'Guidelines on International Protection: Gender-Related

54 UNHCR, *Refugee Women and International Protection* no. 39 (XXXVI) (1985).

55 Kumin, 'Gender: persecution in the spotlight', 112–13.

56 UNHCR, *Refugee Women and International Protection* no. 39, para. (k).

57 European Parliament, *Resolution on the Application of the Geneva Convention Relating to the Status of Refugees* (1984) OJ C 127.

58 European Parliament, *Resolution on the Council Resolution on Minimum Guarantees for Asylum Procedures* (1996) 5585/95 – C4-0356/95, A4-0315/96.

59 Heaven Crawley, *Refugees and Gender: Law and Process* (London: Jordan Publishing, 2001), p. 14.

60 UNHCR EXCOM Conclusion no. 64 (XLI) 'Refugee women and international protection' (1990).

61 *Ibid.*, para. a(iii).

62 UNHCR Policy on Refugee Women (Geneva, 1990).

63 *Ibid.*, p. 5.

64 *Ibid.*, p. 5.

65 UNHCR, *Guidelines on the Protection of Refugee Women* (1991) UN Doc. ES/SCP/67 [hereinafter 'Gender Guidelines'].

66 Gender Guidelines, para. 54.

67 *Ibid.*, para. 4.

68 UNHCR, *The Refugee Convention at 50* (2001), [www.unhcr.org/news/editorial/2001/7/3b4c06f0d/refugee-convention-50.html](http://www.unhcr.org/news/editorial/2001/7/3b4c06f0d/refugee-convention-50.html) (accessed 3 Oct. 2017); see Immigration and Refugee Board Canada, *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* (1993); United Kingdom Home Office, *Gender Issues in the Asylum Claim* (2010), [www.refworld.org/docid/4cc7ff092.html](http://www.refworld.org/docid/4cc7ff092.html) (accessed 4 Oct. 2017).

69 E.g.: Panama, South Africa and Venezuela.

70 E.g.: Switzerland, Guatemala; also on Council Directive 2004/83/EC of 29 Apr. 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (2004) OJ L 304/12 arts. 9(2)(f); also 4(3)(c) sets gender as a factor to be considered in refugee status determination and arts. 8(7) and 41 places some procedural safeguards.

71 E.g.: Australia.

72 Edwards, 'Age and gender dimensions in International Refugee Law', in Feller et al. (eds.) *Refugee Protection in International Law*, p. 56.

73 UNHCR EXCOM Conclusion no. 73 (XLIV) *Refugee Protection and Sexual Violence* (1993).

74 UNHCR, *Sexual Violence Against Refugees: Guidelines on Prevention and Response* (8 Mar. 1995), [www.refworld.org/docid/3ae6b33e0.html](http://www.refworld.org/docid/3ae6b33e0.html) (accessed 4 Oct. 2017) [hereinafter 'Guidelines Against Sexual Violence'].

75 Human Rights Watch (HRW), 'Protection of the Rights of Refugee Women' (1997), [https://www.hrw.org/reports/1997/gen3/General-04.htm#P234\\_59237](https://www.hrw.org/reports/1997/gen3/General-04.htm#P234_59237) (accessed 4 Oct. 2017).

76 UNHCR EXCOM, *General Conclusion on International Protection*, EXCOM Conclusion no. 77 (XLVI), 20 Oct. 1995, para. (g). EXCOM, *General Conclusion on International Protection*, EXCOM Conclusions nos.: 79 (XLVII), 11 Oct. 1996, para. (o); 81 (XLVIII), 17 Oct. 1997, para. (t); and 87 (L), 8 Oct. 1999, para. (n).

Persecution.<sup>77</sup> They concede that gender can ‘influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims.’<sup>78</sup> The Gender Guidelines were criticised on the ground that although they aim to tackle gender,<sup>79</sup> with Alice Edwards pointing out that they mainly elaborate on women’s claims and strengthen a patriarchal perception of ‘refugee women as principally social and cultural in nature’<sup>80</sup> In the same year, the UNHCR issued ‘Guidelines on Membership of a Particular Social Group’,<sup>81</sup> which expressly stated that women could constitute a particular social group with respect to the refugee definition,<sup>82</sup> along with other grounds. However, both sets of guidelines placed emphasis on the former.<sup>83</sup> The overemphasis on the ‘particular social group’ have been criticised for underpinning the political agency of women,<sup>84</sup> reinforcing gender stereotypes,<sup>85</sup> reproducing normative structures of IRL that are paradigmatically masculine.<sup>86</sup>

In 2003 ‘Guidelines for Prevention and Response to Sexual and Gender-Based Violence’<sup>87</sup> was issued, updating the 1995 Guidelines and particularly emphasising sexual violence against women in armed conflicts. The humanitarian community criticised the Guidelines for feeding into the conceptualisation of refugees as vulnerable and dependent – and women refugees doubly so.<sup>88</sup>

In 2008, the ‘Handbook on the Protection of Displaced Women and Girls’<sup>89</sup> replaced the 1991 Guidelines. The Handbook identified protection of women and girls as ‘a core activity’ and ‘an organizational priority’.<sup>90</sup> Again Edwards offered criticisms, this time on grounds of employing a ‘patronizing tone’, an ‘essentialist discourse’, and of portraying women as ‘vulnerable’.<sup>91</sup> In 2012 the ‘Guidelines on International Protection no. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity’ was published,<sup>92</sup> elaborating on the situation of lesbian, bisexual and trans women.

In 2004, the UNHCR introduced an Age, Gender and Diversity Mainstreaming Policy,<sup>93</sup> with the aim of ensuring ‘that all persons of concern enjoy their rights on an equal footing and are able to participate fully in the decisions that affect their lives and the lives of their family members and communities’<sup>94</sup> emphasising ‘multifaceted protection risks and capacities of individuals and communities’.<sup>95</sup> This is generally perceived to be a positive development as it embraces intersectionality<sup>96</sup> and, via stressing the risks and the identification of the factors that cause them, it has the potential to produce policies that aim to prevent sexual and gender based violence instead of developing responses *post facto*.<sup>97</sup>

Furthermore, there is growing recognition that men are also subject to gender-specific and gender-related harms, and that men are targeted, via harms that are usually categorised as gendered, through the bodies of ‘their’ women.<sup>98</sup> This indicates a departure from the essentialist position.

77 Gender Guidelines.

78 Gender Guidelines, para. 6.

79 Gender is a social construct; it relates to the characteristics that society delineates as masculine or feminine, while sex is about biological differences; chromosomes, hormonal profiles, internal and external sex organs. UNHCR also implies in its 2003 Guidelines on Gender-Related Persecution that sex is static and innate. This can be criticised on grounds of biological determinism.

80 Edwards, ‘Transitioning gender’, 21–45, at 25.

81 UNHCR, Guidelines on International Protection no. 2: ‘Membership of a particular social group’ within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, UN Doc. HCR/GIP/02/02, 7 May 2002 [hereinafter PSG Guidelines].

82 PSG Guidelines, paras. 1, 6, 7, 12, 15.

83 Edwards, ‘Transitioning gender’, 21–45, at 27.

84 S. Kneebone, ‘Women within the refugee construct: “Exclusionary Inclusion” in policy and practice – the Australian experience’, *International Journal of Refugee Law* 17 (7) (2005): 7–42.

85 Edwards, ‘Transitioning gender’, 21–45, at 27.

86 Crawley, ‘Women and refugee status’, in Indra (ed.) *Engendering Forced Migration*, pp. 308, 326.

87 UNHCR, Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced Persons. Guidelines for Prevention and Response (May 2003), [www.refworld.org/docid/3edcd0661.html](http://www.refworld.org/docid/3edcd0661.html) (accessed 4 Oct. 2017).

88 Edwards, ‘Transitioning gender’, 21–45, at 33.

89 UNHCR, UNHCR Handbook for the Protection of Women and Girls (Jan. 2008), [www.refworld.org/docid/47cfc2962.html](http://www.refworld.org/docid/47cfc2962.html) (accessed 4 Oct. 2017).

90 *Ibid.*, p. 5.

91 Edwards, ‘Transitioning gender’, 21–45, at 32.

92 UNHCR, Guidelines on International Protection no. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (23 Oct. 2012) UN Doc HCR/GIP/12/01, [www.refworld.org/docid/50348afc2.html](http://www.refworld.org/docid/50348afc2.html) (accessed 4 Oct. 2017).

93 UNHCR, ‘Age, gender and diversity approach’, 5 Jun. 2012, EC/63/SC/CRP.14, [www.unhcr.org/excom/standcom/500e570b9/age-gender-diversity-approach.html](http://www.unhcr.org/excom/standcom/500e570b9/age-gender-diversity-approach.html) (accessed 4 Oct. 2017).

94 UNHCR, Age, Gender and Diversity Policy, 8 Jun. 2011, [www.refworld.org/docid/4def34f6887.html](http://www.refworld.org/docid/4def34f6887.html), para. 1 (accessed 4 Oct. 2017).

95 *Ibid.*, para. 6.

96 Edwards, ‘Transitioning gender’, 21–45, at 39.

97 Fiddian-Qasmiyeh, ‘Gender and forced migration’, in Fiddian-Qasmiyeh et al. (eds.) *The Oxford Handbook of Refugee and Forced Migration Studies*, p. 402.

98 Edwards, ‘Transitioning gender’, 21–45, at 41.



Over the years, by means of case law,<sup>99</sup> state practices and academic research,<sup>100</sup> there have been attempts to rectify the gender deficiency of refugee law.

Furthermore, developments in international human rights law and standards have influenced developments in IRL in relation to gender.<sup>101</sup> Indeed, there is an overlapping interrelationship between IRL and international human rights law which can provide complementary and cumulative protection for refugees, as well as mechanisms through which refugee rights are interpreted. Although an express prerequisite of what constitutes persecution under the Refugee Convention does not exist, the rules in human rights law contribute to its clearer identification.<sup>102</sup> Deborah Anker has pointed out that, 'As the Supreme Court of Canada signalled in *Ward*,<sup>103</sup> refugee law increasingly refers to, and more explicitly acknowledges its roots in international human rights law.'<sup>104</sup> Anker also argues that development of a gender perspective in refugee law necessitated a human right framework, while this in turn increased use and recognition of the human rights paradigm in refugee law.<sup>105</sup> International human rights law also safeguards the rights and dignity of all, including refugees in host countries, without discrimination on grounds of sex or other status.<sup>106</sup> Moreover, the *non-refoulement* principle provided in the Refugee Convention has been complemented by international human rights law, notably by the 1984 Convention against Torture (CAT)<sup>107</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>108</sup>

The key convention that specifically addresses discrimination against women and violence against them is the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>109</sup> Since the international human rights framework does not adequately address women's rights, CEDAW's purpose is to condemn and end discrimination against them<sup>110</sup> in all its forms. General Recommendation no. 19<sup>111</sup> acknowledges that gender-based violence amounts to discrimination.<sup>112</sup> General Recommendation no. 32<sup>113</sup> urges states to adopt a more gender-sensitive approach throughout the displacement cycle.<sup>114</sup>

Another document signalling the acknowledgement of violence against women as an issue that needs to be dealt with under public human rights law is the Declaration on the Elimination of Violence against Women (DEVAW), adopted

99 See for *Islam v. Secretary of State for the Home Department* and *R. v. Immigration Appeal Tribunal, ex parte Shah*, [1999] 2 AC 629 (victims of domestic violence who are not protected by their state may constitute members of a particular social group and attain refugee status); *Minister for Immigration and Multicultural Affairs v. Khawar* (2002) 210 CLR 1, [2002] HCA (female genital mutilation when condoned, tolerated by states or when they are unable to prevent it may amount to persecution and victims may attain refugee status); *Vidhani v. Canada (Minister of Citizenship & Immigration)*, [1995] 3 F.C. 60 (Can. Fed. Ct) (forced marriage was considered to be persecution on the basis of gender hence deserving refugee protection); *Cheung v. Canada (M.E.I.)* [1993] 102 D.L.R. (4th) 214 (forced sterilisation was considered to be persecution); *HJ (Iran) v. Sec'y of State for the Home Dep't (HJ and HT)*, [2010] UKSC 31, [3], [2011] 1 A.C. 596, 619–20 (claimants cannot be expected to hide their sexual orientation in order to avoid persecution).

100 Gender Guidelines, para. 12.

101 Refugee law's definition of who shall be protected underneath is delineated by human rights standards; *Islam v. Secretary of State for the Home Department* [1999] 2 AC 629 (non-discrimination); *Attorney General v. Ward* [1993] 2 SCR 689 (the gravity of risk required for persecution); *Minister for Immigration and Multicultural Affairs v. Respondents S152/2003* (2004) 222 CLR 1 failure of state protection; James C. Hathaway, *The Law of Refugee Status* (London: Butterworths, 1991), pp. 99–134; Alam, 'Towards gender sensitive International Refugee Law', 106.

102 Edwards, 'Age and gender dimensions in International Refugee Law', in Feller et al. (eds.), *Refugee Protection in International Law*, p. 80.

103 *Attorney General v. Ward* [1993] 2 SCR 689, 733.

104 Anker, 'Refugee law, gender, and the human rights paradigm', 133–54, at 133.

105 *Ibid.*, p. 138.

106 For example, 1966 International Covenant on Civil and Political Rights and 1966 International Covenant on Economic, Social and Cultural Rights explicitly prohibit discrimination against women enjoying their right as set in the documents; International Covenant on Civil and Political Rights (adopted 16 Dec. 1966, entered into force 23 Mar. 1976) 999 U.N.T.S. 171 [hereinafter: 'ICCPR']; International Covenant on Economic, Social and Cultural Rights (adopted 16 Dec. 1966 entered into force 3 Jan. 1976) 993 U.N.T.S. 3.

107 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 Dec. 1984 entered into force 26 Jun. 1987) 1465 U.N.T.S. 85 [hereinafter: 'CAT'] art. 3.

108 ICCPR arts. 6 and 7; Human Rights Committee in its General Comment no. 20: art. 7, Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (10 Mar. 1992) UN Doc. HRI/ GEN/1/Rev.7, para. 9; General Comment no. 31 on the Nature of the General Legal Obligation on States Parties to the Covenant (26 May 2004) UN Doc. CCPR/C/21/Rev.1/Add.13, para. 12.

109 Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 Dec. 1979 entered into force 3 Sep. 1981), UN Treaty Series, 1249 U.N.T.S. 13 [hereinafter 'CEDAW'].

110 'Discrimination against women' is defined in art. 2 of CEDAW as 'any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'

111 The Committee is the body composed of independent experts that monitors implementation of CEDAW; reviews regular reports submitted by the parties on the implementation of rights enshrined in CEDAW; issues concluding observations addressing concerns and recommendations on the basis of reports; formulates general recommendations and suggestions directed to states on CEDAW articles or themes. Also under the Optional Protocol to the Convention, for those states that accepted it, the Committee has a mandate to receive claims of violations of rights protected under CEDAW from individuals and initiate enquiries into situations of grave or systematic violations of women's rights. These procedures are optional and are only available where the state concerned has accepted them; arts. 17–22 of CEDAW.

112 UN Committee for the Elimination of All Forms of Discrimination against Women, General Recommendation no. 19 (1994) UN Doc HRI/GEN/1/Rev.1.

113 *Ibid.* no. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014) CEDAW/C/GC/32.

114 *Ibid.*, paras. 9–49.

in 1993.<sup>115</sup> The declaration, particularly focused on expressing concerns about refugee women, requiring states to 'condemn violence against women', and not to 'invoke any custom, tradition or religious consideration to avoid their obligations.'<sup>116</sup> Furthermore, the World Conferences in Nairobi in 1985,<sup>117</sup> Beijing in 1995,<sup>118</sup> and the follow-up 'Beijing Plus 5'<sup>119</sup> also noted the impact displacement has on women and the relationship it has with the inequality and violence perpetrated against them.

Regional refugee law<sup>120</sup> and human rights law are also part of the international legal framework that protects refugee women. Regional human rights treaties,<sup>121</sup> the European Convention on Human Rights (ECHR),<sup>122</sup> in particular, embody the prohibition *refoulement* to a risk of serious human rights violations.<sup>123</sup> The Istanbul Convention<sup>124</sup> is also a significant regional human rights instrument, which openly refers in its text to refugee women. It legally upholds important developments in IRL developed hitherto in soft law instruments and jurisprudence. Its Article 60 calls for the adoption of a legislative framework with the aim of recognising gender-based violence as a ground of persecution within the meaning of Article 1 of the Refugee Convention; requires that the Convention grounds are interpreted in a gender-sensitive manner; and obliges state parties to develop gender-sensitive services and procedures. Article 61 safeguards the application of principle of *non-refoulement* in relation to victims of gender-based violence.

In cases of conflict-induced displacement, IRL is further complemented by International Humanitarian Law. The core instruments are the four Geneva Conventions of 1949,<sup>125</sup> which are universally accepted, and their two additional Protocols.<sup>126</sup> The Geneva Conventions focus on international armed conflicts, while Common Article 3 relates to non-international armed conflict, such as civil wars. David Cantor, among others, has argued that state parties to the 1949 Geneva Conventions have an obligation not to return persons fleeing from violations of Common Article 3.<sup>127</sup> Also discrimination on grounds of sex is prohibited under the Common Article.

Further clarification regarding the international position on gender-based harms is provided by the Jurisprudence of the International Criminal Tribunals for the former Yugoslavia<sup>128</sup> and Rwanda<sup>129</sup> as well as the Statute of the International Criminal Court (ICC),<sup>130</sup> which has also informed refugee law.

Furthermore, literature exists on the relationship 'Responsibility to Protect' (R2P) has with the Refugee Convention. Some, including Susan Edwards, have argued that R2P has the potential to expand the responsibility of states and UNHCR towards internally displaced persons (IDPs) and 'war refugees' that fall outside the definition enshrined in

115 UN General Assembly, Declaration on the Elimination of Violence against Women (1993) UN Doc. A/RES/48/104.

116 Ibid. at art. 4.

117 UNHCR, Refugee Women and International Protection no. 39 (XXXVI) (1985), para. (b).

118 Fourth World Conference on Women, Beijing Declaration and Platform for Action, (1995) UN Doc. A/CONF.177/20 and A/CONF.177/20/Add.1, paras. 36, 58(l), 60(a), 82, 116 and 125.

119 UN General Assembly, Women 2000: Gender Equality, Development and Peace in the Twenty-First Century, 23rd Session (2000) UN doc. A/55/341, 5–9 Jun. 2000.

120 See, e.g., OAU, Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 Sep. 1969, 1001 U.N.T.S. 45; Cartagena Declaration on Refugees, 22 Nov. 1984, OAS/Ser.L./V/II.66, doc. 10, rev. 1.

121 American Convention on Human Rights Women (adopted 22 Nov. 1969 entered into force 18 Jul. 1978). O.A.S.Treaty Series no. 36, 1144 U.N.T.S. 123, art. 22(8); Inter-American Convention to Prevent and Punish Torture (9 Dec. 1985) O.A.S.Treaty Series, no. 67 art. 13(4).

122 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols nos. 11 and 14, 4 Nov. 1950, ETS 5.

123 *Soering v. United Kingdom* (Application no. 14038/88) (1989) 11 EHRR 439 and subsequent cases, including *Cruz Varas v. Sweden*, Application no. 15567/89) (1991) 14 EHRR 1.

124 The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2014) ISBN 978-92-871-7990-6.

125 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 Aug. 1949, 75 UNTS 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 12 Aug. 1949, 75 UNTS 85; Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 Aug. 1949, 75 UNTS 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 Aug. 1949, 75 UNTS 28.

126 Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 Jun. 1977, 1125 UNTS 3.

127 David James Cantor, 'Does IHL prohibit the forced displacement of civilians during war?', *International Journal of Refugee Law* 24 (4) (2013): 840–9; David James Cantor, 'The laws of war and the protection of "war refugees"', *Journal of International Criminal Justice* 12 (5) (2014): 931–51; Jean-François Durieux, 'Of war, flows, laws and flaws: a reply to Hugo Storey', *Refugee Survey Quarterly* 31(3) (2012): 161–76; Hugo Storey, 'Armed conflict in asylum law: the war flaw', *Refugee Survey Quarterly* 31(2) (2012): 1–32; Reuven Ziegler, 'Non-refoulement between "Common Article 1" and "Common Article 3"', in David James Cantor and Jean-François Durieux (eds.) *Refuge From Inhumanity? War Refugees and International Humanitarian Law* (Leiden: Brill, 2014), pp. 386–408; Vincent Chetail 'Armed conflict and forced migration: a systemic approach to international humanitarian law, refugee law and human rights law', in Andrew Clapham and Paola Gaeta (eds.) *The Oxford Handbook of International Law in Armed Conflict* (Oxford: Oxford University Press, 2014).

128 *Prosecutor v. Kunarac, Kovac and Vukovic* case no. IT-96-23-T and IT-96-23/1-T, 22 Feb. 2001.

129 *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, 2 Sep. 1998.

130 UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 Jul. 1998, ISBN no. 92-9227-227-6 Articles 6(d), 7(1)(c), 7(1)(g), 7(2)(c), 8(2)(b)(xxii) rt. 8(2)(b)(xxii), art. 8(2)(e)(vi).

Refugee Convention.<sup>131</sup> Others, including E. Tendayi Achiume, have argued that pillars two and three of R2P entail international cooperation in sharing the cost and responsibility of protecting refugees fleeing a risk of 'R2P crimes'.<sup>132</sup>

### 1.7 An overview of refugee protection in Turkey

Although Turkey was one of the drafters as well as being among the first signatories of the Refugee Convention in 1968, when it ratified the attendant Protocol Relating to the Status of Refugees, the nation state opted for the geographical limitation pursuant to Article 1b of the Convention. Thus, the Convention's scope has been limited to 'persons who have become refugees as a result of events occurring in Europe'. Consequently, the Refugee Convention applies to European<sup>133</sup> asylum seekers and refugees *stricto sensu*.

Turkey has ratified the ECHR and is a state party to several UN human rights treaties, including the ICCPR, CAT and CEDAW. Thus, the country has obligations relating to prohibition of *refoulement* to places where asylum seekers and refugees, wherever they come from, may be exposed to threats to their life, to torture and to inhuman and degrading treatment and is obliged to offer certain minimum standards of treatment to asylum seekers and refugees.<sup>134</sup> Furthermore, Turkey also signed the Istanbul Convention on the first day it was opened for signature on 11 May 2011; it was ratified on 14 March 2012.<sup>135</sup> Turkey is a state party to the 1949 Geneva Conventions and the Genocide Convention.

In April 2013, Turkey adopted the 'Law on Foreigners and International Protection' (LFIP), the country's first comprehensive act about migration-related issues,<sup>136</sup> which became effective in April 2014. The new law continues to conserve the geographical limitation in relation to the Refugee Convention. As such, the term 'refugee' is now applied to refugees originating from Europe (in the past non-Europeans seeking protection were referred to as 'conditional refugees'). The current definitions of both 'refugee'<sup>137</sup> and 'conditional refugee'<sup>138</sup> repeat the one used in 1951. However, the latter adds that '[c]onditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country', indicating that Turkey does not intend to provide the prospect of long-term legal integration to 'conditional refugee' status holders. Indeed, this is reflected in the rules governing residence permits in the sense that 'conditional refugees'<sup>139</sup> are not allowed to obtain long-term residence permits, which prevents the possibility of naturalisation in the long run.<sup>140</sup> Additionally 'conditional refugees' are provided with a lesser set of rights and entitlements, compared to 'refugee' status holders, and they are excluded from the right to 'family unification'. These, in turn, together with the fact that the long duration of the process and low resettlement numbers,<sup>141</sup> mean that obtaining a conditional refugee status is not a durable solution for non-European refugees, which in turn forces people to keep moving and renders them vulnerable to human smugglers.<sup>142</sup>

The law also establishes application and determination procedures for international protection with procedural safeguards, lays out reception rights, and sets up a new specialised agency, that is, the Directorate General of Migration Management (DGMM), which is responsible for dealing with all international protection applications, irrespective of applicants' country of origin. Being based on the EU asylum *acquis* to a large extent, it also in certain circumstances embodies controversial concepts such as 'safe third country', 'first country of asylum', 'accelerated procedures' and 'administrative detention'.<sup>143</sup>

131 Susan Martin, 'Forced migration, the refugee regime and the responsibility to protect', *Global Responsibility to Protect* 2 (1) (2010): 38–59.

132 E. Tendayi Achiume, 'Syria, cost-sharing, and the responsibility to protect refugees', *Minnesota Law Review* 100 (2) (2015): 687–762.

133 Europe in this context includes all Council of Europe members including Russia and ex-Soviet states west of the Urals including the Caucasus; UNHCR, *Facts and Figures* (Madhya Pradesh: Anil Publishing, 2010), p. 7.

134 Under arts. 2, 3, exceptionally under arts. 5, 6, 8 Protocols 6 and 13 of ECHR; see *Chahal v. the United Kingdom* (App. no. 22414/93) (1996) 23 EHRR 413; *Ramzy v. the Netherlands* (App. no. 25424/05) (ECHR, 27 May 2008); *M.S.S. v. Belgium and Greece* (App. no. 30696/09) (2011) 53 EHRR 2; arts. 6 and 7 of ICCPR; UN Human Rights Committee, CCPR General Comment no. 15: the Position of Aliens Under the Covenant (11 April 1986) UN Doc. A/RES/45/158; UN Human Rights Committee, CCPR General Comment no. 20: art. 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) (10 Mar. 1992) UN Doc. HRI/ GEN/1/Rev.7, para.: 3; *Charles Chitang Ng v. Canada* (1994) CCPR/C/49/D/469/1991, paras: 9, 6.1, 6.2; art. 3 of CAT.

135 Kadriye Bakirci 'İstanbul Sözleşmesi' (*Ankara Barosu*, 2015), [www.ankarabarsu.org.tr/siteler/ankarabarsu/tekmakale/2015-4/7.pdf](http://www.ankarabarsu.org.tr/siteler/ankarabarsu/tekmakale/2015-4/7.pdf) (accessed 1 Oct. 2017).

136 Republic of Turkey, Law on Foreigners and International Protection, Law no. 6458 Official Gazette [Resmi Gazete = R.G.], 11 Apr. 2013 no. 28615, enacted: 4 Apr. 2013 [hereinafter 'LFIP'].

137 LFIP art. 61 (1).

138 *Ibid.*

139 This also applies to subsidiary protection and temporary protection beneficiaries and holders of humanitarian residence permits.

140 LFIP art. 42 (2); art. 25 Temporary Protection Regulation explicitly excludes beneficiaries of temporary protection from long-term legal integration in Turkey.

141 Refugees International, "'Except God, we have no one": lack of durable solutions for non-Syrian refugees in Turkey', 7 Feb. 2017, <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/58e2a4a3893fc0a495c993c2/1491248298175/2017.2.8+Turkey.pdf> (accessed 1 Oct. 2017).

142 Cavidan Soykan, 'The new draft law on foreigners and international protection in Turkey', *Oxford Monitor of Forced Migration* 2 (2) (2012): 38–47, <http://oxmofm.com/wp-content/uploads/2012/11/Cavidan-FINAL.pdf> (accessed 1 Oct. 2017).

143 [www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey](http://www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey) (accessed 25 Jul. 2018).

Turkey has a dispersal policy, according to which applicants for international protection have to stay in 'satellite cities'; that is, designated provinces assigned by DGMM,<sup>144</sup> where applicants need to secure their own accommodation.<sup>145</sup> Under Article 95, DGMM has discretion to establish reception and accommodation centres, prioritising those with special needs, but it has not done so.<sup>146</sup>

Nevertheless, the new law extended the protection to other groups that are not covered by the Refugee Convention. The 'Law on Foreigners and International Protection' allows for renewable one-year humanitarian residence permits in certain situations.<sup>147</sup> Additionally, in cases of a mass influx of displaced people, they may benefit from temporary protection.<sup>148</sup> Currently, under Provisional Article 1 of the regulation, temporary protection is only provided to 'Syrian nationals, stateless people and refugees originating from Syria.'<sup>149</sup> Article 37 of the Regulation authorises Disaster and Emergency Management Authority (AFAD)<sup>150</sup> under the prime minister's office to set up camps, officially called 'temporary accommodation centres'. It is for DGMM to decide who shall be referred to the camps and who shall be allowed to reside outside under their own arrangements under Articles 23 and 24. According to Amnesty International, local and international NGOs are not allowed to enter AFAD Camps.<sup>151</sup>

It can be said that LFIP's definition of 'person with special needs' incorporates a gender perspective as it includes individuals who have been subjected to rape or other serious psychological, physical or sexual violence, as well as pregnant women and single mothers with accompanying children, among others.<sup>152</sup>

According to DGMM data, in 2016 66,167 people applied for international protection while, from 2005 to 2015 the total number of applications was 282,518.<sup>153</sup> Moreover, by the end of 2016, 2,834,441 Syrians had been registered as beneficiaries of temporary protection.<sup>154</sup> Data provided for people residing with long-term, humanitarian and human trafficking victim residence permits are not segregated, and the total number is said to be 35,930.<sup>155</sup> According to UNHCR, as of June 2017, there were more than 3.2 million refugees in Turkey,<sup>156</sup> while according to the European Commission there were more than 3.4 million,<sup>157</sup> with 3 million of them coming from Syria. More than 90 per cent were living outside of the 23 camps run by AFAD in urban and peri-urban areas.<sup>158</sup>

### 1.8 Ezidi displacement in Turkey between August 2014 and 2017

In August 2014, upon arrival in Turkey, most Ezidis sought refuge in makeshift camps in different districts, set up and run by municipalities and civil society organisations (CSOs). Only a few were allowed to live in a camp previously allocated to Assyrian refugees from Syria, run by AFAD. According to data provided by the Republic of Turkey vice-president's office, by 9 October 2014, 22,062 Ezidis had sought refuge and asylum in the country. The distribution of Ezidi refugees living in various different camps and districts were as follows:<sup>159</sup>

Diyarbakır	5,360
Batman	2,857
Mardin	2,487
Şırnak	5,675
Siirt	1,686
Midyat, Mardin (AFAD camp)	2,984

144 Ibid.

145 LFIP art. 95; [www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey](http://www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey).

146 See [www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey](http://www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey).

147 LFIP art. 46.

148 LFIP art. 91.

149 Republic of Turkey, Temporary Protection Regulation, Decision no.: 29153 Official Gazette [Resmi Gazete = R.G.] 22 Oct. 2014 no. 29153, enacted: 13 Oct. 2014.

150 AFAD is responsible for taking necessary measures for emergency management and civil protection.

151 Amnesty International, 'Struggling to survive. Refugees from Syria in Turkey', p. 6 (2014), [www.amnestyusa.org/wp-content/uploads/2017/04/eur\\_440172014.pdf](http://www.amnestyusa.org/wp-content/uploads/2017/04/eur_440172014.pdf) (accessed 25 Jul. 2018).

152 LFIP art. 3(l).

153 Göç Politika Ve Projeleri Dairesi Başkanlığı, '2016 Türkiye Göç Raporu' (Genel Müdürlüğü Yayınları, 2017), p. 73; it should be borne in mind that a significant number of asylum seekers still continue to approach and register with UNHCR Turkey, as its Refugee Status Determination (RSD) mandate there has not ceased.

154 Ibid., p. 77.

155 Ibid., p. 54.

156 UNHCR, Jun. 2017 fact sheet (2017), file:///C:/Users/USER/Downloads/TurkeyFactSheetJune2017-EN.pdf (accessed 2 Oct. 2017).

157 European Commission, 'European civil protection and humanitarian aid operations fact sheet' (2017), [http://ec.europa.eu/echo/files/aid/countries/factsheets/turkey\\_syrian\\_crisis\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/turkey_syrian_crisis_en.pdf) (accessed 2 Oct. 2017).

158 UNHCR, 'Turkey June 2017 fact sheet' (2017), <https://reliefweb.int/report/turkey/unhcr-turkey-factsheet-june-2017-entr> (accessed 2 Oct. 2017); European Commission, 'European civil protection and humanitarian aid operations fact sheet', details as above.

159 'Türkiye'ye gelen Ezidilerin sayısı; 22.062 olarak açıklandı', *Zete*, (3 Nov. 2014, <https://zete.com/turkiyeye-gelen-ezidilerin-sayisi-22-062-olarak-aciklandi/index.html> (accessed 27 Sep. 2017)).

It is important to note that, in Turkey, municipalities are not expected to run refugee camps. In fact, the Turkish government's only support to the municipality and the CSO-run camps housing the majority of the displaced, was the provision of 100 tents, 500 blankets and 500 toys.<sup>160</sup> This may be because the municipalities involved were run by the opposition, pro-Kurdish Democratic Regions Party (DBP) and affiliated CSOs. Indeed, the ruling party had accused the municipalities of 'trying to get political profit' out of the situation by promoting a Kurdish rights agenda.<sup>161</sup> On the other hand, evidence suggests that Turkey may have intended to contain the displaced Ezidis in northern Iraq through building a camp for internally displaced Ezidis in Zakho, as well as by transferring humanitarian aid to the region.<sup>162</sup> Indeed, this attitude shows similarities with Turkey's reaction during the 1991 influx of Iraqi Kurdish refugees: Turkey, having insisted on dropping aid packages on the Iraqi side of the border and on the creation of no-fly zones and safe havens for the displaced outside its territory, inside Iraq, dropped leaflets to the displaced stating that they should not cross the border.<sup>163</sup> The reasoning back then included the fear that 'an influx of additional Kurds from Iraq would threaten its assimilation of its own Kurdish population.'<sup>164</sup> This may continue to be relevant to this day, especially in light of the fact that YBŞ,<sup>165</sup> the Ezidi militia, fighting for liberation of Sinjar, and its all-women branch, YJÊ,<sup>166</sup> operate in concert with PKK<sup>167</sup> which demands Kurdish autonomy in Turkey and has been involved in armed clashes with Turkish security forces since the 1980s.

By 16 October 2014, according to information supplied by the Union of South-eastern Anatolia Region Municipalities, the number of Ezidi refugees living in various different camps and districts was as follows:<sup>168</sup>

Diyarbakır	5,652
Batman	2,525
Mardin	646
Şırnak	5,907
Siirt	1,195
Şanlıurfa-Viranşehir	1,242
Midyat, Mardin (AFAD camp)	2,840
TOTAL	20,007

Regarding the numbers provided above, the information provided also stated that 55 per cent of the people living in camps run by municipalities and CSOs were children under 17 and 52 per cent of the adults were women.

In November 2014, AFAD allocated another camp to Ezidis in Nusaybin, Mardin. In AFAD camps, in addition to shelter and basic needs, Ezidi refugees were provided with 'AFAD cards', through which they could access health services in the camps; they had to pay for surgeries and 20 per cent of the cost of prescribed medicines.<sup>169</sup>

In a study conducted in March 2015, it was estimated that about 19,000 Ezidi refugees remained in Turkey and 13,000 were living in camps and compounds.<sup>170</sup> The distribution of refugees was as follows:<sup>171</sup>

160 Amy L. Beam, 'Mass exodus of Iraqi Yazidis to Turkey', *The Kurdistan Tribune*, 20 Nov. 2014, <https://kurdistantribune.com/turkeys-refugee-law-as-applied-iraqis/> (accessed 27 Sep. 2017).

161 Dorian Jones, 'Yazidi refugees at center of political fight between Turkey, Kurds', *VOANEW*, 20 Jan. 2015, <https://www.voanews.com/a/yazidi-refugees-center-fight-turkey-kurds/2607002.html> (accessed 24 Sep. 2017); Roy Gutman, 'Turkish government, Kurdish authorities argue over Yazidi refugees', *MCCLATCHYDC*, 20 Nov. 2014, [www.mcclatchydc.com/news/nation-world/world/article24776578.html](http://www.mcclatchydc.com/news/nation-world/world/article24776578.html) (accessed 24 Sep. 2017).

162 'Türkiye Irak'taki insanlık dramına sessiz kalmadı', *Anadolu Ajansı* (Ankara, 16 Aug. 2014), <http://aa.com.tr/tr/turkiye/turkiye-iraktaki-insanlik-dramina-sessiz-kalmadi/131056> (accessed 24 Sep. 2017).

163 Suna G. Ihlamur-Öner, 'Turkey's refugee regime stretched to the limit? The case of Iraqi and Syrian refugee flows', *Perceptions* 18 (3) (2013): 191–228; Carol McQueen, *Humanitarian Intervention and Safety Zones: Iraq, Bosnia and Rwanda* (London: Palgrave Macmillan, 2005), p. 30.

164 McQueen, *Humanitarian Intervention*, p. 30.

165 Sinjar Resistance Units.

166 Êzidxan Women's Units.

167 Kurdistan Workers' Party.

168 Support to Life International Humanitarian Aid Association, 'Situation Report, Ezidi asylum seekers in Turkey' (2014), <http://panel.stgm.org.tr/vera/app/var/files/1/4/141016-ezidi-raporu-stl-tr.pdf> (accessed 7 Sep. 2017).

169 'Second-class refugees in Turkey: Ezidis', *ANF* (Mardin, 4 Jun. 2017), <https://anfenglish.com/human-rights/second-class-refugees-in-turkey-ezidis-20300> (accessed 27 Sep. 2017).

170 The Research Centre on Asylum and Migration, 'Situation Report, Ezidi asylum seekers in Turkey' (IGAM, 2016), <http://panel.stgm.org.tr/vera/app/var/files/1/4/141016-ezidi-raporu-stl-tr.pdf> (accessed 7 Sep. 2017).

171 Ibid.

Diyarbakır	3,383
Batman	1,060
Şırnak	853
Siirt	470
Şanlıurfa-Viranşehir	400
Midyat, Mardin (AFAD camp)	2,357
Nusaybin, Mardin (AFAD camp)	3,706
TOTAL	12,247

In less than a year, a drastic fall in numbers of people residing in camps run by municipalities and CSOs can be observed. There may be various reasons for this. An NGO report published in 2015<sup>172</sup> sheds some light. It states that municipalities lacked experience in running refugee camps and did not have a comprehensive policy in place. It also noted that CSOs' support and solidarity towards the camp were based on temporary projects and volunteer work, and argued that consequently such support was not durable. Shortages of food, barriers to accessing education, healthcare and documentation were detected. Furthermore, the report observed that many refugees, especially young people, did not intend to return to Iraq, even if conflict were to cease, due to the persecution the community has faced, based on its religious beliefs and ethnic origin over centuries. Instead, they wanted to go to Europe.

It was estimated that through time, a number of Ezidis had returned to Iraq, especially following the liberation of Sinjar's city centre in 13 November 2015.<sup>173</sup> Also, some moved irregularly to Europe with the help of smugglers, while others moved to larger cities, overwhelmingly to coastal cities and İstanbul, where they were able to make smuggling arrangements to enter Europe and to make bargains for women who had been captured and enslaved by ISIS.<sup>174</sup> Additionally, some refugees opted to be settled in individual housing villages in Batman and Mardin districts,<sup>175</sup> previously inhabited by Turkey's few Ezidis. The settlement process was conducted through relevant municipalities.

In March 2016, all Ezidi refugees living in camps and compounds, set up and administered by municipalities together with other civil society actors, were brought together in Fidanlık Camp. This was due to financial constraints, a fall in the number of refugees in camps, and the relatively better infrastructure of Fidanlık Camp compared to other camps. In addition, Diyarbakır Metropolitan had plans to build more durable accommodation for the refugees than the tents that were available in the Diyarbakır, Fidanlık Camp area.<sup>176</sup>

By May 2016, 1,542 people were living in Fidanlık Camp.<sup>177</sup> Their age and sex composition was as follows:<sup>178</sup>

Age range	Female	Male	Total
0–2	53	44	97
3-5	56	56	112
6-12	124	163	287
13-18	156	155	311
19-25	130	100	230
26-31	67	54	121
32-39	68	47	115
40 +	153	116	269
Total	807	735	1,542

The above figures show that 53 per cent of the camp comprised children below the age 18 while 57 per cent of the adults were women. The latter rise in percentage may indicate that men took the option of irregular migration or return, at a higher rate.

172 İnsan Hakları Derneği, 'Diyarbakır-Şanlıurfa/Viranşehir-Şırnak-Siirt-Batman/Beşiri Ve Batman/Merkez'de Bulunan Êzidi Mülteci Kamplarına İlişkin Gözlem Ve Tespit Raporu' (2015), pp. 15–18, [www.ihd.org.tr/diyarbakir-sanliurfaviransehir-sirnak-siirt-batmanbesiri-ve-batmanmerkezde-bulunan-ezidi-multeci-kamplarina-iliskin-gozlem-ve-tespit-raporu-12-13-14-haziran-2015](http://www.ihd.org.tr/diyarbakir-sanliurfaviransehir-sirnak-siirt-batmanbesiri-ve-batmanmerkezde-bulunan-ezidi-multeci-kamplarina-iliskin-gozlem-ve-tespit-raporu-12-13-14-haziran-2015), pp. (accessed 24 Sep. 2015).

173 Feleknas Uca, 'Feleknas Uca'nın Ezidilerin yerlerinden edilmek istenmesine ilişkin önergesi' (HDP, 2016), [www.hdp.org.tr/tr/guncel/haberler/feleknas-ucanin-ezidilerin-yerlerinden-edilmek-istenmesine-iliskin-onergesi/9628](http://www.hdp.org.tr/tr/guncel/haberler/feleknas-ucanin-ezidilerin-yerlerinden-edilmek-istenmesine-iliskin-onergesi/9628) (accessed 7 Sep. 2017).

174 The Research Centre on Asylum and Migration, 'Situation Report, Ezidi asylum seekers in Turkey' (IGAM, 2016), <http://panel.stgm.org.tr/vera/app/var/files/1/4/141016-ezidi-raporu-stl-tr.pdf> (accessed 7 Sep. 2017).

175 Ibid.

176 Diyarbakır Metropolitan Municipality, 'Êzidi (Yazidi) refugees in Diyarbakır' (2016).

177 Ibid.

178 Ibid.

Following the start of clashes in various areas in South-eastern Turkey between the Turkish government and Kurdish people in the region, a military base was established in 30 September 2015 inside the AFAD-run Nusaybin Refugee Camp, causing much anxiety among the Ezidi refugees.<sup>179</sup>

Following the arrest of Diyarbakır Yenişehir co-mayor on 6 December 2016,<sup>180</sup> and the appointment of a trustee in his place,<sup>181</sup> the camp was handed over to AFAD.<sup>182</sup> Subsequently, municipality council members and staff, and representatives of political parties and CSOs, were banned from entering the camp and ongoing activities were terminated.<sup>183</sup> Most of the 1,029 people remaining in Fidanlık Camp, before its closure,<sup>184</sup> were transferred to the AFAD Camp in Midyat, against their wishes, while some reportedly moved to other cities. Complaints have been reported in the press about the treatment of Ezidis in Midyat Camp. News reports indicated that Ezidis were not allowed to practise their religion, the language of education was Arabic, not Kurdish, hygiene conditions were poor, and ISIS militants and sympathisers were housed in the camp.<sup>185</sup>

In a report issued in September 2017, the total number of Ezidi refugees in Turkey was stated as 1,800.<sup>186</sup>

### 1.9 Evolution of the role of UNHCR representation in Turkey

Although it is the states that bear the primary obligations with regard to refugee law, a mandate was granted to the UNHCR for, inter alia the international protection of refugees.<sup>187</sup>

Historically, because of the geographical limitation Turkey has opted for in the Refugee Convention, and the lack of an efficient national asylum system in the country, UNHCR representation in Turkey assumed the task of identifying persons in need of international protection and of offering a long-term solution through resettlement.<sup>188</sup> The first legal instrument addressing refugees in Turkey was the 1994 Asylum Regulation. Although it did not expressly refer to the UNHCR, it was built upon the understanding that asylum in Turkey was temporary and resettlement as a long-term solution would be offered via UNHCR assistance.<sup>189</sup> Thus, its reflections in practice were that asylum seekers would make two applications, one to UNHCR representation in the state and the other to the Foreigners' Police of Turkey; the former for RSD and eventual resettlement in a third country, and the latter for regularising their stay in Turkey until a durable solution had been found through resettlement.<sup>190</sup> The government's status determination procedure reflected the outcome of UNHCR RSD procedure, which was in effect operated as a surrogate mechanism, UNHCR continuing to be the de facto decision maker.

Although DGMM, under new legislation, is the sole decision-making authority regarding RSD, the old system of parallel procedures is still in effect. The purpose of UNHCR registration in the contemporary context is for UNHCR to be informed of the persons in need of international protection in Turkey; to supervise their access to newly introduced protection mechanisms in order to allow the organisation to implement 'complementary' protection interventions whenever needed; and to continue its role in the resettlement proceedings.<sup>191</sup>

It has recently been reported that the UNHCR is prevented from having regular access to refugee camps in Turkey.<sup>192</sup> Indeed, a similar practice was followed in the late 1980s and early 1990s, during another case of mass displacement when UNHCR access to the camps sheltering Iraqi Kurds was limited and on a discretionary basis.<sup>193</sup>

179 Yazda, 'Yazidi refugees in Turkey and Syria seek legal admission to third countries via refugee resettlement programs' (2015), <https://www.yazda.org/wp-content/uploads/2017/07/Report-about-Yazidi-Refugees-survivors-of-genocide-in-Turkey-and-Syria.pdf> (accessed 11 Sep. 2017); Hacı Bişkin, 'Midyat'taki Ezidi: Kimseye kötülük etmedik ama cezaevinde gibiyiz', *Gazete Duvar*, 5 Mar. 2017, [www.gazeteduvar.com.tr/turkiye/2017/03/05/midyattaki-ezidi-kimseye-kotuluk-etmedik-ama-cezaevinde-gibiyiz/](http://www.gazeteduvar.com.tr/turkiye/2017/03/05/midyattaki-ezidi-kimseye-kotuluk-etmedik-ama-cezaevinde-gibiyiz/) (accessed 11 Sep. 2017); 'Mardin'deki kampta IŞİD'liler mi var?', *Evrensel* (Diyarbakır, 2 Jun. 2017), <https://www.evrensel.net/haber/322051/mardindeki-kampta-isisliler-mi-var/> (accessed 11 Sep. 2017).

180 'Diyarbakır'da iki belediye başkanına gözaltı' *Cumhuriyet*, 6 Dec. 2016, [www.cumhuriyet.com.tr/amp/haber/turkiye/640827/Diyarbakir\\_da\\_iki\\_belediye\\_baskanina\\_gozalti.html](http://www.cumhuriyet.com.tr/amp/haber/turkiye/640827/Diyarbakir_da_iki_belediye_baskanina_gozalti.html) (accessed 27 Sep. 2017).

181 Feleknas Uca, 'Feleknas Uca'nın Ezidilerin yerlerinden edilmek istenmesine ilişkin önergesi' (HDP, 2016), [www.hdp.org.tr/tr/guncel/haberler/feleknas-ucanin-ezidilerin-yerlerinden-edilmek-istenmesine-iliskin-onergesi/9628](http://www.hdp.org.tr/tr/guncel/haberler/feleknas-ucanin-ezidilerin-yerlerinden-edilmek-istenmesine-iliskin-onergesi/9628) (accessed 7 Sep. 2017).

182 Ibid.

183 Ibid.

184 Ibid.

185 Medine Mamedoğlu, 'Zorla AFAD'a götürülen Ezidiler'e 'Türkçe eğitim' dayatılıyor, konuşmak "yasak"', *Gazete Sujan*, 28 Jul. 2017, <https://www.gazetesujin.net/tr/2017/07/zorla-afada-goturulen-ezidilere/> (accessed 11 Sep. 2017).

186 Yazda, 'An uncertain future for Yazidis: a report marking three years of an ongoing genocide', Sep. 2017, p. 18, [www.yazda.org/wp-content/uploads/2017/06/Yazda-Report-2017\\_an-Uncertain-Future-for-Yazidis\\_A-Report-Marking-Three-Years-of-an-Ongoing-Genocide.pdf](https://www.yazda.org/wp-content/uploads/2017/06/Yazda-Report-2017_an-Uncertain-Future-for-Yazidis_A-Report-Marking-Three-Years-of-an-Ongoing-Genocide.pdf) (accessed 11 Sep. 2017).

187 UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 Dec. 1950, A/RES/428(V).

188 Refugee Rights Turkey, 'Introduction to the asylum context in Turkey' (2015), [www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey](http://www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey) (accessed 2 Oct. 2017).

189 Ibid.

190 Ibid.

191 Ibid.

192 Catherine Stupp, 'Turkey blocks UNHCR access to Syrian refugees', *EURACTIV*, 19 Jan. 2017, [www.euractiv.com/section/global-europe/news/turkey-blocks-unhcr-access-to-syrian-refugees/](http://www.euractiv.com/section/global-europe/news/turkey-blocks-unhcr-access-to-syrian-refugees/) (accessed 2 Oct. 2017).

193 HRW, 'Whatever happened to the Iraqi Kurds?' (1991), [www.hrw.org/reports/1991/IRAQ913\\_org.htm](http://www.hrw.org/reports/1991/IRAQ913_org.htm) (accessed 2 Oct. 2017).

In 2016, more than 33,000 persons were registered for RSD with the UNHCR in Turkey.<sup>194</sup> The UNHCR implements 'a resettlement programme based on a rigorous prioritization of cases with the most acute vulnerabilities or protection risks.'<sup>195</sup> In 2017, the tentative resettlement target was set as 32,000, but by the sixth month, only 9,135 (29 per cent) departures had taken place.<sup>196</sup>

## 2. Ezidi women as refugees: reasons why Ezidi women in Fidanlık Camp were displaced and refugee definition in Refugee Convention

According to Article 1A(2) of the Refugee Convention, in order to identify a person as refugee, that person should have a 'well-founded fear' of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. As long as a person meets the inclusion criteria in Article 1A, provided that the exclusion criteria stated under Article 1F and cessation clause under Article 1 C does not apply, and his/her situation is not covered under Article 1 D and 1 E, then that person is a refugee, irrespective of formal recognition as such.<sup>197</sup>

Persons displaced from their homelands due to armed conflicts are not automatically considered as refugees under the Refugee Convention or 1967 Protocol. Nevertheless, conflicts in all or some parts of a country may result in persecution for reasons specified in the Refugee Convention.

This section evaluates whether the reasons of displacement of Ezidi women from Sinjar are consistent with IRL principles. To do so, it makes use of the individual interviews with Ezidi women carried out for this study, the Refugee Convention, cases decided by national or international courts and tribunals, and soft law instruments such as the UNHCR Handbook, Guidelines and Background Papers, and academic literature. As UNHCR sources are extensively relied on here, it is important to note that, although they are non-legal and non-binding, they nevertheless have a normative purport and reflect clarifications on treaty obligations and developments in refugee law.<sup>198</sup>

### 2.1 Persecution

Persecution is not defined in any international instrument including the Refugee Convention. According to the UNHCR, it can be inferred from the Convention's language that a threat to life or freedom or other serious human right violations may amount to persecution.<sup>199</sup> In addition, '[w]hether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case ... [t]he subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned.'<sup>200</sup> It is well established that persecution has two elements: serious harm and failure of state protection.<sup>201</sup>

#### 2.1.1 Serious harm

All interviewees stated that they fled during or right before the ISIS attack of 3 August in Sinjar. All expressed the fear that they would be killed or enslaved and be subjected to sexual violence if they did not escape. One said that '*As a woman I thought if I cannot escape, I could no longer feel alive*';<sup>202</sup> another elaborated that '*If I did not escape I would either be killed or kidnapped. When they came to our region they kidnapped women and girls. ISIS, especially when it comes to women, they sell them, rape them*'.<sup>203</sup> Some had family members living in nearby villages that were captured by ISIS. One woman said, '*My uncle's family is still in the hands of ISIS. Only one of them was freed. She told us that they took her from one village to another for a month, raped her*'.<sup>204</sup> Another said, '*My two nieces, one nephew and one sister in law was captured by ISIS. The nieces could escape later on. They were from Tal Qasab*'.<sup>205</sup>

The Ezidi women indicate in these statements that they fled from gender-specific forms of persecution including, domestic slavery, trafficking, and sexual violence and abuse and rape. Gender-specific forms of persecution have

194 European Council on Refugees and Exiles, 'Turkey: 2016 asylum statistics in DGMM Annual Report' (2017), <https://www.ecre.org/turkey-2016-asylum-statistics-in-dgmm-annual-report/> (accessed 2 Oct. 2017).

195 UNHCR, 'Turkey June 2017 fact sheet' (2017), <https://reliefweb.int/report/turkey/unhcr-turkey-factsheet-june-2017-entr> (accessed 2 Oct. 2017).

196 Ibid.

197 UNHCR, Note on Determination of Refugee Status under International Instruments (1977) UN Doc. EC/SCP/5.

198 See Alexander Betts, 'Towards a "soft law" framework for the protection of vulnerable irregular migrants', *International Journal of Refugee Law* 22 (2) (2010): 209–36.

199 UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugee* (2011) UN doc. HCR/1P/4/ENG/REV. 3 [hereinafter UNHCR Handbook], para. 51.

200 UNHCR Handbook, para. 52.

201 Hathaway, *The Law of Refugee Status*, p. 125; *Islam v. Secretary of State for the Home Department* and *R. v. Immigration Appeal Tribunal, ex parte Shah*, [1999] 2 AC 629, 653F; *Horvath v. Secretary of State for the Home Department* [2001] 1 AC 489 at 515H; Refugee Appeal no. 71427/99 [2000] INLR 608, para. 67; *Minister for Immigration and Multicultural Affairs v. Khawar* (2002) 210 CLR 1, [2002] HCA, paras. 31 and 118.

202 Interviewee EWR1, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016.

203 Interviewee EWR8, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

204 Interviewee EWR9, Büyükkşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

205 Interviewee EWR7, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.



been used as 'an integral and tactical part of the arsenal of weapons deployed to brutalize, dehumanize, and humiliate women and demoralize their kin and community.'<sup>206</sup> Gender-specific forms of harm may constitute a grave breach of the right to life and security of person and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, as laid down in, inter alia, Article 7 of ICCPR, Article 3 of ECHR and in the CAT.<sup>207</sup> The legal position regarding such gender specific harm is also clarified in judgements handed down by international tribunals for the former Yugoslavia and Rwanda, which confirm enslavement, rape, and torture as crimes against humanity<sup>208</sup> and genocide.<sup>209</sup> Furthermore, the Rome Statute of the ICC also defines rape as a war crime and crime against humanity.<sup>210</sup> Recently, in the Bemba case, the ICC convicted sexual violence crimes, including rape, as war crimes and crimes against humanity.<sup>211</sup>

### 2.1.2 Failure of state protection / non-state agents of persecution

The Refugee Convention's refugee definition under Article 1(A)(2), specifies the groups who inflict persecution. Accordingly, The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status states that persecution may originate from both state and non-state actors, provided that persecutory acts are 'knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to provide effective protection.'<sup>212</sup> A comparative analysis by Crawley and Lester argues that the reasoning behind this approach stems from the understanding that international protection is a form of compensation, a surrogate protection in the absence of effective national protection.<sup>213</sup> Thus it shall be available not only in cases in which the state is the perpetrator, but also when it is unwilling or unable to provide such protection.<sup>214</sup>

In the past, some states, especially Germany, have taken a position based on the 'accountability/complicity view', which limited refugee protection to cases in which the state could be held accountable for human rights violations, irrespective of its ability.<sup>215</sup> This further led to the conclusion that in the absence of state authority, there could be no persecution.<sup>216</sup> However, this position is contrary to that outlined in the Gender Guidelines and is heavily criticised by Crawley and Lester, who stress the fact that 'absence of effective State structures should not preclude recognition of a need for protection.'<sup>217</sup>

It is accepted in Crawley and Lester's analysis that when a group of people are persecuted for reasons of race or ethnic identity, its manifestation may differ according to gender.<sup>218</sup> It states that 'persecutor may choose to destroy the ethnic identity and/or prosperity of a racial group by killing, maiming or incarcerating the men, while the women may be viewed as propagating the ethnic or racial identity and persecuted in a different way, such as through sexual violence or control of reproduction.'<sup>219</sup>

In the testimonies collected during the course of this research, all the women said that they left Sinjar, Iraq due to the ISIS attacks which took place on 3 August 2014. Most of them stated that it was the ISIS attacks in nearby areas that triggered their decision to leave, while some said they had escaped from clashes in their village. The UNHCR acknowledge ISIS as a non-state actor that intentionally and systematically targets religious minorities.<sup>220</sup>

None of the interviewees indicated that the Iraqi authorities had made any effort to protect them prior to or during the attacks. Indeed, a US Commission on International Religious Freedom report stated that 'religious minority communities, especially the [Ezidi] population, doubt the Iraqi government's willingness, ability, or both to protect them from [ISIS].'<sup>221</sup>

Some interviewees expressly stated that they had been abandoned by the Kurdish Regional Government of Iraq (KR-I). One interviewee said that '*Peshmerga escaped before we fled*',<sup>222</sup> and another that '*KDP<sup>223</sup> promised to protect us, told us not*

206 Audrey Macklin, 'Refugee women and the imperative of categories', *Human Rights Quarterly* 17 (2) (1995): 213–77, at 226.

207 Heaven Crawley, *Refugees and Gender: Law and Process* (London: Jordans Publishing, 2001), p. 44; Gender Guidelines, para. 14; *Aydin v. Turkey* (App. no. 23178/94) (1998) 25 EHRR 251.

208 *Prosecutor v. Kunarac, Kovac and Vukovic* case no. IT-96-23-T and IT-96-23/1-T, 22 Feb. 2001.

209 *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, 2 Sep. 1998.

210 UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 Jul. 1998, ISBN no. 92-9227-227-6, arts. 7 and 8.

211 *Prosecutor v. Jean-Pierre Bemba Gombo* (Judgement) ICC-01/05-01/13 (12 Nov. 2015).

212 UNHCR Handbook, para. 65.

213 Heaven Crawley and Trine Lester, *Comparative Analysis of Gender-related Persecution in National Asylum Legislation and Practice in Europe* (Geneva: Evaluation and Policy Analysis Unit, UNHCR, 2004), UN Doc. EPAU/2004/05, 1 May 2004, para. 245.

214 *Ibid.*

215 80BverfGE (10 Jul. 1989); Crawley and Lester, *Comparative Analysis of Gender-Related Persecution*, pp. 270–1.

216 Crawley and Lester, *Comparative Analysis of Gender-Related Persecution*, para. 272.

217 *Ibid.*, para. 290.

218 *Ibid.*, para. 237.

219 Gender Guidelines, para. 7.

220 UNHCR, 'Position on returns to Iraq' (2014), para. 3, [www.refworld.org/docid/544e4b3c4.html](http://www.refworld.org/docid/544e4b3c4.html), (accessed 27 Sep. 2017).

221 USCIRF, '2016 Annual Report, Iraq', p. 106 (2016), [www.uscirf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf](http://www.uscirf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf) (accessed 27 Sep. 2017).

222 Interviewee EWR6, Kayapinar Quarter, Fidanlik Refugee Camp, 10 Dec. 2016.

223 The Kurdistan Democratic Party; traditional KDP Peshmerga-controlled zones include Erbil and Dohuk Provinces.

to leave, then they abandoned us.’<sup>224</sup> One interviewee claimed that ‘Peshmerga did not allow PKK fighters to help us during clashes in the village. They blocked the way so they could not come.’ Another argued that KDP Peshmerga forces collected the guns from the houses in her village and escaped, making it impossible for the villagers to defend themselves against ISIS.<sup>225</sup> One claimed that KDP Peshmerga blocked the PKK’s access to prevent them from defending the Ezidi villages under attack.<sup>226</sup>

Nine of the women interviewed said that, following their departure from their homes in different villages, they had fled to the Sinjar Mountain, where they were besieged by ISIS for seven days and had no food and water. They recalled experiences from that time such as trying to eat leaves from the trees and dripping blood into infants’ mouths so they would not die of thirst. They reported that many, especially infants, young children and the elderly had died during those seven days. It is important to note that, taking their motherhood role into account alongside their assigned gender roles, these women suffered really harsh experiences during the siege as they could not save their infants’ lives and had to leave them behind.

Eight of the women interviewed<sup>227</sup> stated that the PKK and YPG guerrilla forces provided assistance to them at that time by fighting with ISIS, breaking the siege, opening a corridor for safe passage, and escorting them into Syria and then to Turkey.

It was also reported that KDP Peshmerga and the Iraqi security forces failed to protect religious and ethnic minorities within the disputed territories of Iraq including Sinjar.<sup>228</sup> Further reports stated that ISIS fighters faced little or no resistance as the Peshmerga withdrew leaving the region defenceless.<sup>229</sup>

Whether the above-described inaction was intentional or whether they simply could not intervene is an issue beyond the scope of this paper and is irrelevant in the context of assessing refugee claims. But it is worth noting that the local population was not informed of the withdrawal decision and the authorities did not issue any evacuation orders leading to locals being initially unaware of the approaching threat and unprepared for it.<sup>230</sup> It is also important to underline that most of the women interviewed felt that they had not been protected because of their ethnic and religious identities.

### 2.3 ‘Particular social group’ and the other grounds

In order to establish the required causal link under the Convention, the feared persecution and/or the lack of state protection has to be based on a Convention ground.<sup>231</sup> More than one Convention ground may be applicable in the case of persecution.<sup>232</sup>

In defining what constitutes a social group, UNHCR suggests a standard which incorporates protected characteristics and social perception approaches predominantly used in the past by common-law jurisdictions in interpreting the Convention:<sup>233</sup>

a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.<sup>234</sup>

A group of people cannot be considered to be a particular social group (PSG) ‘merely by reason of their common victimisation as the objects of persecution.’<sup>235</sup>

The PSG Guidelines also explicitly state that ‘sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are

224 Interviewee EWR7, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

225 Interviewee EWR2, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016.

226 Interviewee EWR4, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016.

227 Interviewee EWR1, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR2, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR3, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR4, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR5, Kayapınar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR6, Kayapınar Quarter, Fidanlık Refugee Camp, 10 Dec. 2016; Interviewee EWR7, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016; Interviewee EWR8, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

228 Bureau of Democracy, Human Rights and Labor, ‘International Religious Freedoms Report for 2014, Iraq’ (US State Department, 2015), [www.state.gov/j/drl/rls/irf/2014/nea/238456.htm](http://www.state.gov/j/drl/rls/irf/2014/nea/238456.htm) (accessed 27 Sep. 2017).

229 UN Human Rights Council, ‘“They came to destroy”: ISIS crimes against the Yazidis’ (2016), A/HRC/32/CRP.2.

230 *Ibid.*, para. 24.

231 Gender Guidelines, para. 21.

232 *Ibid.*, para. 23.

233 Crawley and Lester, *Comparative Analysis of Gender-Related Persecution*, paras. 373–5.

234 PSG Guidelines, para. 11.

235 *Attorney General v. Ward* [1993] 2 SCR 689, para. 279; also followed in *Islam v. Secretary of State for the Home Department* [1999] 2 AC 629; *A v. Minister for Immigration and Ethnic Affairs* [1997] HCA 4, 71 ALJR 381.

frequently treated differently to men.<sup>236</sup> This position is also emphasised in the Gender Guidelines,<sup>237</sup> which criticise the fact that the 'size of the group has sometimes been used as a basis for refusing to recognise 'women' generally as a particular social group.<sup>238</sup>

Additionally, the emphasis on 'individual circumstances of the asylum seeker'<sup>239</sup> as well as arguments stating that refugee criteria are individualistic<sup>240</sup> has led to an erroneous interpretation of Article 1(A)(2) of the Refugee Convention which requires a person to have been 'singled out' for persecution or to have faced a 'differential risk' in order to be recognised as a refugee.<sup>241</sup> The correct interpretation should be that, in cases involving an individual having a well-grounded fear based on being a member of a group in which every person is subject to persecution, all of the group's members may be considered individually as a refugee.<sup>242</sup>

The ISIS attack in Sinjar on 3 August was conducted within the framework of a systematic military campaign, during which dozens of other towns and cities were seized. However, the Ezidi population was particularly brutalised due to its religious beliefs. Additionally, according to interviewee statements, confirmed by various reports, when ISIS attacked the Ezidi villages, it separated the population according to age and gender. The group summarily executed men and boys that had reached puberty.<sup>243</sup> Young boys were forced to convert to Islam and recruited as ISIS soldiers.<sup>244</sup> Women and girls were enslaved and subjected to various forms of sexual and physical violence, including rape, sexual and domestic enslavement; they were repeatedly bought and sold, were not allowed access to medical care; and were executed when they failed to comply with demands.<sup>245</sup> Many interviewers mentioned that ISIS also killed old women whom they believed were not fit for their purposes for domestic and sexual slavery. Indeed, one mass killing of Ezidi women aged about 60 and older was documented at a primary holding site, to which women and children had been forcibly transferred after all the men had been killed.<sup>246</sup> Reports indicate that enslavement had been planned because women and girls were forcibly transferred to places, which had already been prepared to house hundreds of them.<sup>247</sup> Indeed, ISIS actively promotes enslavement of Ezidi women in fatwas and other publications the militant group has issued.<sup>248</sup> Its state-like structure includes 'war spoils' departments and one of these is responsible for dealing with captured slaves, coordinating their sale and movement.<sup>249</sup>

Hence, not only were Ezidis, on the basis of their religious beliefs targeted for persecution, in the form of mass killings, but Ezidi girls and women were singled out for a prolonged and different form of persecution. Thus, interviews and the available evidence suggest that Ezidi women, because of their religious beliefs and gender, feared gendered forms of persecution.<sup>250</sup>

## 2.4 Well-founded nature of the fear

The term 'well-founded fear' entails subjective and objective elements.<sup>251</sup> While the subjective element involves an assessment of what has motivated fear such as an individual's personality,<sup>252</sup> 'the personal and family background ...

236 PSG Guidelines, para. 12.

237 Gender Guidelines, para. 30.

238 Ibid., para. 31.

239 UNHCR Handbook, para. 37.

240 Thomas Spijkerboer, 'Subsidiarity in asylum law', in Daphné Bouteillet-Paquet (ed.) *Subsidiary Protection of Refugees in the European Union: Complementing the Geneva Convention?* (Brussels: Bruylant, 2002); Jean-François Durieux, 'Salah Sheekh is a refugee: new insights into primary and subsidiary forms of protection', Oxford University Refugee Studies Centre Working Paper series no. 49 (2008), p. 11.

241 *Adan v. Secretary of State for the Home Department* [1999] AC 293; Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* 3rd edn. (Oxford: Oxford University Press, 2006), pp. 126–8; Durieux, 'Salah Sheekh is a refugee', p. 11.

242 UNHCR Handbook, para. 44; Durieux, 'Salah Sheekh is a refugee', p. 11.

243 UN Human Rights Council, 'They came to destroy': ISIS crimes against the Yazidis' (2016), UN Doc. A/HRC/32/CRP.2, para. 33.

244 Ibid., paras. 90–7.

245 Ibid. paras. 42–80; Rukmini Callimachi, 'ISIS enshrines a theology of rape', *New York Times*, 13 Aug. 2014, [www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html](http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html) (accessed 30 Sep. 2017).

246 UN Human Rights Council, 'They came to destroy': ISIS crimes against the Yazidis' (2016) UN Doc. A/HRC/32/CRP.2, para. 48.

247 Callimachi, 'ISIS enshrines a theology of rape'; Kirk Semple, 'Yazidi girls seized by ISIS speak out after escape', *New York Times*, 14 Nov. 2014, [www.nytimes.com/2014/11/15/world/middleeast/yazidi-girls-seized-by-isis-speak-out-after-escape.html](http://www.nytimes.com/2014/11/15/world/middleeast/yazidi-girls-seized-by-isis-speak-out-after-escape.html) (accessed 30 Sep. 2017).

248 Emily Chertoff, 'Prosecuting gender-based persecution: the Islamic State at the ICC', *The Yale Law Journal* 126 (4) (2017): 1050–117; 'ISIS sex slaves guide Mars International Human Rights Day', *Al-Arabiya News*, 10 Dec. 2014, <http://english.alarabiya.net/en/perspective/features/2014/12/10/ISIS-sex-slaves-guide-mars-international-human-rights-day.html> (accessed 30 Sep. 2017); Adam Withnall, 'ISIS releases "abhorrent" sex slaves pamphlet with 27 tips for militants on taking, punishing and raping female captives', *Independent*, 10 Dec. 2014, [www.independent.co.uk/news/world/middle-east/isis-releases-abhorrent-sex-slaves-pamphlet-with-27-tips-for-militants-on-taking-punishing-and-9915913.html](http://www.independent.co.uk/news/world/middle-east/isis-releases-abhorrent-sex-slaves-pamphlet-with-27-tips-for-militants-on-taking-punishing-and-9915913.html) (accessed 30 Sep. 2017); Jonathan Landay, Warren Strobel and Phil Stewart, 'Exclusive: Islamic State ruling aims to settle who can have sex with female slaves', Reuters, 29 Dec. 2015, [www.reuters.com/article/us-usa-islamic-state-sexslaves-exclusive-idUSKBN0UC0AO20151230](http://www.reuters.com/article/us-usa-islamic-state-sexslaves-exclusive-idUSKBN0UC0AO20151230) (accessed 30 Sep. 2017).

249 Jonathan Landay, Warren Strobel and Phil Stewart, 'Exclusive: seized documents reveal Islamic State's department of "war spoils"', Reuters, 28 Dec. 2015, [www.reuters.com/article/us-usa-islamic-state-documents-group-exc-idUSKBN0UB0AW20151228](http://www.reuters.com/article/us-usa-islamic-state-documents-group-exc-idUSKBN0UB0AW20151228) (accessed 30 Sep. 2017).

250 It has also been argued that sex-selective killing of all males of fighting age could also constitute a form of gender-based violence. See R. Charli Carpenter, 'Recognizing gender-based violence against civilian men and boys in conflict situations', *Security Dialogue* 37 (1) (2006): 83–103.

251 UNHCR Handbook, paras. 37–9.

252 Ibid., para. 40.

membership of a particular racial, religious, national, social or political group ... own interpretation of his situation, and ... personal experiences';<sup>253</sup> the objective element necessitates an analysis of the context of the relevant background situation in the country of origin.<sup>254</sup> There is no requirement for the fear to be based on a person's own experience, but that of friends, family or other members of group may also be relevant.<sup>255</sup>

The fears felt by the women interviewed was mainly based upon the experiences of other adult females from the same religious group as well as family members. In terms of the objective element, the reports and news elaborating on the crime of genocide, crimes against humanity and war atrocities perpetrated against Ezidis need to be considered.<sup>256</sup>

## 2.5 Internal flight possibilities

Although there is no requirement that a person needs to seek protection in another area of his/her country of origin, state parties have held that whenever internal relocation is possible, that person may not satisfy the inclusion criteria with regards to having 'a well-founded fear of persecution'<sup>257</sup> or being 'unwilling or unable to avail himself of the protection of that country'.<sup>258</sup>

The approach adopted in this analysis would be to see whether 'whether national protection is available to counter the well-founded fear shown to exist in the applicant's region of origin'.<sup>259</sup>

In considering internal flight, a specific area needs to be identified and a claimant should be given sufficient opportunity to respond.<sup>260</sup> Since the relevant fear of persecution arose due to an ISIS invasion in a specific part of the country, in the case of the Ezidi women interviewed, the availability of internal flight possibilities will be discussed in relation to the areas effectively under the control of KR-I. It is important to underline a statement issued by UNHCR in March 2016 that 'in light of massive new internal displacement coupled with a large-scale humanitarian crisis, mounting sectarian tensions and reported access restriction, particularly into the Kurdistan Region of Iraq, UNHCR does in principle not consider it appropriate for States to deny persons from Iraq'.<sup>261</sup> Nevertheless, if such an assessment is to be made, it requires an analysis of reasonableness and relevance.<sup>262</sup>

Regarding the relevance test, the elements that need to be considered include: legal, practical and safe accessibility of the area (based on individual circumstances); risk persecution by state or non-state agents; other risk of serious harm, in light of the objective situation in the area of relocation.<sup>263</sup> In relation to access to the area, the UK Home Office has reported that Ezidi IDPs face fewer restrictions than other minorities.<sup>264</sup> However, this situation has to be reviewed in line with recent developments after the independence referendum was held and restrictions put in place in relation to the general movement of persons from Turkey to northern Iraq.<sup>265</sup> Despite statements from an Ezidi religious leader that women freed from ISIS captivity should be welcomed into the community and not harmed, reports have come out of suicides and attempted suicides among these women.<sup>266</sup> Violent attacks against Ezidis have been reported in different

253 Ibid., para. 41.

254 Ibid., para. 42.

255 Ibid., para. 43.

256 UN Human Rights Council, 'They came to destroy': ISIS Crimes Against the Yazidis' (2016), UN Doc. A/HRC/32/CRP.2; HRW, 'Iraq: forced marriage, conversion for Yazidis' (2014), [www.refworld.org/publisher/HRW,,,543d09a44,0.html](http://www.refworld.org/publisher/HRW,,,543d09a44,0.html) (accessed 27 Sep. 2015); HRW, 'Iraq: ISIS escapees describe systematic rape' (2015), [www.refworld.org/docid/5530fdbe4.html](http://www.refworld.org/docid/5530fdbe4.html) (accessed 27 Sep. 2015); HRW, 'Slavery: the ISIS rules' (2015), [www.refworld.org/docid/55ed6f124.html](http://www.refworld.org/docid/55ed6f124.html) (accessed 27 Sep. 2015); Zehra Doğan, 'DAİŞ'in esir pazarlarında kaçan Ezidi kadınlar çılığı', *Jinha* (Duhok, 3 Mar. 2015), <http://jinha.com.tr/Dosya-Haber/content/view/38> (accessed 27 Sep. 2015); Callimachi, 'ISIS enshrines a theology of rape' *New York Times* (13 Aug. 2015), [www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html](http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html) (accessed 30 Sep. 2017); Semple, 'Yazidi girls seized by ISIS speak out after escape'.

257 The approach, 'Existence of an internal alternative defeats the existence of a well-founded fear of being persecuted', has been criticised on the ground that it is contrary to basic notions of refugee law, not justified by the text of the 1951 Convention and has led to negative consequences in case law; James C. Hathaway and Michelle Foster, *The Law of Refugee Status* 2nd edn, (Cambridge: Cambridge University Press, 2014), pp. 332–42; *Karanakaran v. Secretary of State for the Home Department* [2000] 3 All ER 449, at 473–4.

258 UNHCR, Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees (2001), para. 12; UNHCR, Guidelines on International Protection no. 4: 'Internal flight or relocation alternative' Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees (2003) HCR/GIP/03/04 [hereinafter UNHCR IFA Guidelines], para. 3.

259 Hathaway and Foster, *The Law of Refugee Status*, p. 381.

260 UNHCR IFA Guidelines, para. 6.

261 UNHCR, Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA) for Yazidis in the Kurdistan Region of Iraq (KR-I), p. 3 (2016), [www.refworld.org/docid/575537234.html](http://www.refworld.org/docid/575537234.html) (accessed 2 Oct. 2017).

262 UNHCR IFA Guidelines, para. 7.

263 UNHCR, Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA) for Yazidis in the Kurdistan Region of Iraq, details as above.

264 Ibid., United Kingdom Home Office, 'Country Information and Guidance – Iraq: return/internal relocation' version 5.0, pp. 42–52 (2017), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646734/iraq\\_return\\_internal\\_relocation\\_v5\\_0\\_september\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646734/iraq_return_internal_relocation_v5_0_september_2017.pdf), (accessed 3 Oct. 2017).

265 Rod Nordland and David Zucchino, 'As Kurdish borders close, war of words heats up', *New York Times* (29 Sep. 2017), <https://www.nytimes.com/2017/09/29/world/middleeast/iraq-kurds-referendum.html> (accessed 3 Oct. 2017).

266 UNHCR, 'Yazidi women welcomed back to the faith' (2015), <http://rfg.ee/N8Brc> (accessed 3 Oct. 2017); HRW, 'Iraq: ISIS escapees describe systematic rape' (2015), [www.refworld.org/docid/5530fdbe4.htm](http://www.refworld.org/docid/5530fdbe4.htm) (accessed 3 Oct. 2017).

districts of the KR-I.<sup>267</sup> It has also been reported that ‘research suggests that the existence of Islamic movements in Kurdistan is a source of great concern for [Ezidis].’<sup>268</sup>

The reasonableness test requires an assessment of ‘whether or not, in all the circumstances, the particular claimant could reasonably be expected to move to the proposed area to overcome his or her well-founded fear of being persecuted.’<sup>269</sup> This entails evaluation of ‘personal circumstances,’<sup>270</sup> the existence of past persecution,<sup>271</sup> safety and security, respect for human rights,<sup>272</sup> and the possibility of economic survival.<sup>273</sup> Looking at the possibility of internal location of Ezidis to KR-I, in particular, it is evident that the following criteria need to be taken into account: the availability of traditional support mechanisms, basic infrastructure, essential services; the ability to access shelter and livelihoods opportunities; and the present scale of internal displacement.<sup>274</sup> It is unlikely that family members will be willing or able to provide an informal safety net<sup>275</sup> in light of the fact that many Ezidis in the proposed area are internally displaced, and often living in precarious living conditions without access to livelihood opportunities.<sup>276</sup> Most of the women interviewed for this report did not have first-degree family members in the proposed areas; only one interviewee<sup>277</sup> had a sibling living in an IDP Camp. According to the Humanitarian Country Team and the World Bank, in light of the persisting humanitarian crises in the region, basic infrastructure and access to essential services, including health, water and education, are overwhelmed, circumstances which affect both the IDPs and the host community.<sup>278</sup> Reports reveal that unemployment among IDPs is prevalent, with the majority not having a regular income. Food insecurity has also been deteriorating.<sup>279</sup> Indeed, one interviewee initially sought refuge in Zakho, Iraq, but moved to Turkey later on, due to the harsh living conditions they encountered in the IDP camp there.<sup>280</sup>

### 3. Ezidi refugee women as beneficiaries of protection

This section considers the experiences of Ezidi women from Sinjar living in Fidanlık Refugee Camp in Diyarbakır. To this end, it lays down the response of civil society and municipality actors, the organisation of life in the camp and the main challenges faced by the Ezidi women living there. In order to do so it relies on individual interviews with them and with members of civil society and municipality staff who provide services in Fidanlık Camp, reports produced by civil society organisations (CSOs) and Diyarbakır Metropolitan Municipality, field notes and media sources.

#### 3.1 Municipalities and CSOs as actors of protection

According to one interviewee, the flight of some Ezidis to Turkey during the ISIS attack in Mosul, Iraq, prior to August 2014, was the first alert received by CSOs.<sup>281</sup> This group was sheltered by civil society actors at various CSO and municipality premises, namely in the Chamber of Commerce, Kayapınar and Bağlar municipalities and some in Sümerpark, a complex that contains a closed factory building enclosing green space in Diyarbakır, Turkey.<sup>282</sup>

267 ‘Muslim Kurds demonstrate against Yazidis in Iraqi Kurdistan’, *Ekurd Daily* (25 Nov. 2015), <http://bit.ly/1UtOSYW> (accessed 3 Oct. 2017); ‘Some Kurdish Yazidis leave Akre Refugee Camp after clashes with Iraqi Muslim Kurds’, *Ekurd Daily*, 27 Sep. 2015, <http://bit.ly/1TKiXD0> (accessed 3 Oct. 2017); ‘Kurdish police arrest Yazidi demonstrators in refugee camps’, *AINA News*, 26 Mar. 2015, <http://bit.ly/1oVBDEK> (accessed 25 Jul. 2018).

268 Saad Salloum et. al. At crossroads: human rights violations after ISIS’ (Masarat Institute, 2015).

269 UNHCR IFA Guidelines, para. 23.

270 It should not be unduly harsh for a specific claimant; *Secretary of State for the Home Department v. AH*, [2007] UKHL 49, 14 Nov. 2007; *Januzi v. Secretary of State for the Home Department* [2006] 2 WLR 397, [2006] UKHL 5.

271 *Thirunavukkarasu v. Minister of Employment and Immigration* [1994] 1 FC 589, (1994) 109 DLR (4th) 682.

272 *Rasaratnam v. Minister of Employment and Immigration* [1992] 1 FC 706.

273 UNHCR IFA Guidelines paras. 24, 27–30.

274 UNHCR, Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA) for Yazidis in the Kurdistan Region of Iraq (KR-I) (2016), [www.refworld.org/docid/575537234.html](http://www.refworld.org/docid/575537234.html), [www.refworld.org/docid/575537234.html](http://www.refworld.org/docid/575537234.html) (accessed 2 Oct. 2017).

275 UNHCR IFA Guidelines, para. 29.

276 UNHCR, Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA) for Yazidis in the Kurdistan Region of Iraq (KR-I), p. 7, details as above.

277 Interviewee EWR2, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016.

278 Humanitarian Country Team, ‘Iraq Humanitarian Response Plan 2016’, pp. 22, 23 (2015), [http://reliefweb.int/sites/reliefweb.int/files/resources/final\\_iraq\\_2016\\_hrp.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/final_iraq_2016_hrp.pdf) (accessed 2 Oct. 2017); World Bank, *The Kurdistan Region of Iraq – Assessing the Economic and Social Impact of the Syrian Conflict and ISIS*, p. 7 (2015), <http://bit.ly/1LtqRzb> (accessed 2 Oct. 2017); Cathy Otten, ‘Iraqi Kurdistan nears breaking point’ *IRIN* (Erbil, 20 Mar. 2015), <http://bit.ly/21vN5YI> (accessed 2 Oct. 2017); ‘Once booming, the statelet is now in crisis’, *The Economist*, (Erbil, 25 Feb. 2016), <http://econ.st/1QmqS79> (accessed 2 Oct. 2017).

279 Humanitarian Country Team, ‘Iraq Humanitarian Response Plan 2016’, pp. 23–4, details as above; WFP/FAO/REACH Initiative ‘WFP and FAO concerned about worsening humanitarian conditions of displaced Iraqis in Kurdistan’ (2015), <https://shar.es/1C653f> (accessed 2 Oct. 2017); International Organisation for Migration (IOM), ‘Sulaymaniyah Governorate Profile May–August 2015’, p. 2 (2015), <http://iomiraq.net/file/2241/download> (accessed 2 Oct. 2017); IOM, ‘Erbil Governorate Profile May–August 2015’, p. 1, as in previous item; OCHA/UN Country Team, *Iraq Humanitarian Response Plan 2016*, pp. 23–4, details as above.

280 Interviewee EWR10, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

281 Interviewee CSO1, Ceren Women’s Association, 9 Dec. 2016.

282 Ibid.; Interviewee CSO5, Free Women’s Congress (KJA), 11 Dec. 2016.

Later on a few Ezidi families arrived in South-eastern Turkey seeking refuge following an ISIS attack on Qiniyeh, Kocho and Xanesor.<sup>283</sup> Subsequently, CSO actors formed a delegation that included the Ceren Women's Association, the Human Rights Association (İHD), the Trade Union of Employees in Public Health and Social Services (SES), the Diyarbakir Bar Association, the Chamber of Commerce and individual business people.<sup>284</sup> The delegation went to Zakhko and Duhok in northern Iraq in order to assess the scale of displacements and the situation of Ezidi IDPs after PKK and YPG fighters had rescued them from Sinjar Mountain.<sup>285</sup> They had meetings with a member of the Iraqi Kurdistan Parliament, and consulted with the Iraqi Kurdish authorities. The delegation also visited Ezidi IDPs, who since IDP camps had not yet been established and refugees were still on the move, were living in a variety of places such as schools, roadsides, parks and border crossing points between Syria and Iraqi Kurdistan.<sup>286</sup>

Upon the delegation's return, based on their observations, they expected refugees to arrive within a few days. Thus, arrangements were made to prepare for this arrival.<sup>287</sup> A coordination group was formed among CSOs which included the original delegation as well as other CSO actors such as professional chambers, trade unions and South-eastern Anatolia region municipalities.<sup>288</sup>

A few days later, Ezidis arrived in South-eastern Turkey in large groups and Yenişehir Fidanlık Camp area in the Diyarbakir region was chosen to receive them. Those involved in the decision-making process stated that the size of the area, availability of communal toilets, green spaces and recreational areas influenced their decision.<sup>289</sup> The Diyarbakir Metropolitan Municipality (DMM), the Bağlar, Sur, Yenişehir and Kayapınar municipalities and the CSOs set up and ran the camp.

Both of the interviewees employed by the municipalities indicated that the reason why their organisations and the CSOs mobilised together was because of the long-existing cooperation that existed between them.<sup>290</sup> As for the reason why they mobilised to provide support to the displaced Ezidis, all emphasised the ethnic ties between the Kurds of Turkey and the Ezidis of Iraq. Moreover, the strong Kurdish women's movement, well organised within CSOs and the municipalities, was said to have influenced the degree of response and the form it took, especially in light of the gendered nature of the persecution from which the Ezidis had fled.<sup>291</sup> The representatives from CSOs who were interviewed expressly indicated that as women they regarded the harms ISIS perpetrated on Ezidi women to be acts against all women, themselves included.<sup>292</sup> One interviewee summarised the Kurdish women's movement's position in Turkey as *'Kurdistan was divided into four pieces by the Sykes Picot agreement, dividing the Kurdish women into eight pieces, Ezidi women specifically were divided in too many pieces.'*<sup>293</sup> Furthermore, all were highly critical about AFAD-administered camps in Turkey, especially of camp policies towards the displaced and their effects on adult females. They argued that the camp policies helped reproduce patriarchy within the displaced community, especially via their condoning of sexual and gender-based violence and polygamous and child marriages. Many argued that the Turkish state shared a similar misogynous mentality with ISIS, rooting their argument in gender-specific harms inflicted by the Turkish government on Kurdish women in the country, allegations about Turkey aiding ISIS and about the law enforcement authorities not taking any steps when they received news and official complaints about the offices in Gaziantep, Turkey where ISIS is allegedly conducting a slave trade.<sup>294</sup>

### 3.2 Organisation of life in Fidanlık Camp

Fidanlık Camp was divided into six divisions. Bağlar, Sur, Yenişehir and Kayapınar became responsible for one while DMM became responsible for two. The refugees elected from their number between ten and 15 spokespersons from each district, depending on population. These brought reports on needs, wishes and complaints to the committee. Each district had an equal number of male and female spokespersons and the camp coordination committee comprised one female and one male spokesperson from each district together with three municipality and CSO representatives. This committee had the power to make decisions about the camp. The interviewees from CSOs and municipalities indicated that such an approach was followed in order to ensure the participation of refugees, including women, into public life and to establish decision-making mechanisms, especially regarding issues of direct concern.<sup>295</sup> One of the challenges

283 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016.

284 Ibid.

285 Ibid.

286 Ibid.

287 Ibid.

288 Ibid.

289 Ibid.

290 Ibid.; Interviewee CSO3, Diyarbakir Metropolitan Municipality Center for Research and Application on Women's Issues (DIKASUM), 11 Dec. 2016; Interviewee CSO5, Free Women's Congress (KJA), 11 Dec. 2016.

291 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO5, Free Women's Congress (KJA), 11 Dec. 2016.

292 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO2, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO5, Free Women's Congress (KJA), 11 Dec. 2016.

293 Interviewee CSO5, Free Women's Congress (KJA), 11 Dec. 2016.

294 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO5, Free Women's Congress (KJA), 11 Dec. 2016.

295 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO2, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO5, Free Women's Congress (KJA), 11 Dec. 2016.

in managing the camp was said to be the fluctuation in population. The interviewees also recalled a few families that had left the region before the ISIS attack.<sup>296</sup> They believed this was because they were relatively better off financially and could then migrate onwards to Europe.

### 3.3 Main challenges faced by Ezidi women living in Fidanlık Camp

According to Jennifer Hyndman, refugee women in camps are marginalised not only because of their gender but also for 'their exclusion from national citizenship, their race and their location in the South, their marginal position in the global economy, and their spatial confinement in a refugee camp.'<sup>297</sup> In line with this argument, this section points out the main challenges faced by Ezidi women living in Fidanlık Camp in Diyarbakır, Turkey. These are based on their various intersecting identities in terms of international protection, shelter and basic needs, health, food, water and sanitation. They also take into account hygiene discrimination and violence against women and the availability of durable solutions.

#### 3.3.1 International protection

According to news reports<sup>298</sup> and individual testimonies, many Ezidis had to wait for days before they could cross the border at İbrahim Halil Border Gate, as Turkey prevented those without documentation from doing so, potentially violating the rule on *non-refoulement*. Many had to cross irregularly via unsafe routes. One of the interviewees, who came to Turkey a year later than most others after staying in IDP camps in Iraq, stated that upon crossing the border to Turkey irregularly, the Turkish authorities arrested her and family members, detaining them for 20 days in an overcrowded facility under appalling conditions where her male family members were beaten up by the authorities.<sup>299</sup>

Although, in August 2014, Ezidis came to Turkey in large numbers, they were not considered to be within the scope of 'temporary protection'. In theory, they could apply to become 'conditional refugees', but this would have entailed them moving to a satellite city, due to the country's dispersal policy. In practice this would mean they could not continue to stay in the camps run by the municipalities and CSOs and would have to finance their accommodation in the city to which they had been referred. In 2015, Ezidis from Iraq were allowed to apply for one-year, non-renewable humanitarian residence permits. Furthermore, individual refugees were not granted even these complex procedures.<sup>300</sup> The above-stated reasons indicate that Turkey was violating the principle of access to fair and efficient asylum procedures.<sup>301</sup>

Eight of the interviewees had humanitarian residence permits which had expired in 2016.<sup>302</sup> They stated that the camp staff and volunteers had helped them obtain the permits via providing transportation and translation services. Two others said the Turkish government was giving these out before they arrived but by the time they entered the country, after staying a while in IDO camps the practice had been stopped and they could not obtain one.<sup>303</sup>

Only two of the ten women interviewed stated that they had submitted an application to UNHCR, indicating that they had had to travel to Ankara, the capital of the Republic of Turkey which was a 20 to 25-hour bus ride from the camp. The UNHCR gave them interview dates for 2022. Those who had submitted an application said that they did so in order to be resettled. Both indicated that, as a long-term solution they wished to be resettled in Germany, where they each had a child already living. One of them also applied for conditional refugee status at DGMM, which the authorities later cancelled on the basis that they continued to stay in the municipality camp and had not moved to the designated satellite city. Out of the remaining eight, only one stated that she wished to submit an application to the UNHCR, but she did not know how to do so.

The only valid document the women had was their camp identification card issued by the camp administration, which also held a record book of residents. These did not have any legal power outside the camp in terms of accessing rights or preventing *refoulement*.

296 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO2, Ceren Women's Association, 9 Dec. 2016.

297 Jennifer Hyndman 'Refugee camps as conflict zones: the politics of gender', in Gile and Hyndman (eds.) *Sites of Violence*, pp. 193–212.

298 'Kadın ve çocukları diri diri gömdüler' *Amerikalı Türk* (11 Aug. 2014). [www.amerikaliturk.com/news/yasam/63702-kadin-ve-cocuklari-diri-diri-goemdueler/](http://www.amerikaliturk.com/news/yasam/63702-kadin-ve-cocuklari-diri-diri-goemdueler/) (accessed 27 Sep. 2017).

299 Interviewee EWR10, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

300 The Research Centre on Asylum and Migration, 'Situation Report, Ezidi Asylum seekers in Turkey' (IGAM, 2016), <http://panel.stgm.org.tr/vera/app/var/files/1/4/141016-ezidi-raporu-stl-tr.pdf> (accessed 7 Sep. 2017).

301 Ibid.

302 Interviewee EWR1, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR2, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR3, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR4, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR5, Kayapınar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR7, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016; Interviewee EWR8, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016; Interviewee EWR9, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

303 Interviewee EWR6, Kayapınar Quarter, Fidanlık Refugee Camp, 10 Dec. 2016; Interviewee EWR10, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

### 3.3.2 Shelter and basic needs

Shelter was provided in the form of tent accommodation. Prior to closure of the camp, DMM was trying to raise funds to build container homes or apartments for refugees.<sup>304</sup> The living areas were situated in what used to be a picnic area and generally tents were placed under trees, which provided some protection from the sun during the summer. Wooden pallets were placed underneath the tents. Health centre, women's centre, school, nursery and storage areas were prefabricated.

Each family in the camp was given a tent, one set of kitchen utensils, plastic cups and a heater, and each person had a blanket.<sup>305</sup> For heating each tent was provided with oil-filled radiators and all tents had an electricity connection. The refugees bought their own refrigerators and television sets and in addition televisions were set up in six different communal zones. Interviewees said that keeping cool was a problem in the summer but some of them managed to obtain electric fans for their tents.

The camp was 15 km away from the city centre. Refugees were freely allowed to enter and leave it whenever they wished. They could reach the city centre by using public transport and the camp shuttle.

When asked about the choice of camp choice, it appears from their responses that interviewees' decisions not to stay in AFAD camps were motivated by ethnic, linguistic and cultural ties with the Kurdish people of Turkey. They believed they would receive better treatment from people who had the same ethnic origin. Furthermore, they expressed their trust and sympathy towards the civilian organisations they felt were affiliated with the same ideological line followed by the armed groups that had rescued them from Sinjar Mountain. All those interviewed emphasised the presence and role of female fighters during the rescue operation, another apparent influence on the level of trust they felt. Two women expressly stated that 'it is because of them that we are alive.'<sup>306</sup> Distrust of the Turkish state was another reason voiced by many. Indeed one of them had Ezidi grandparents who had been displaced from Turkey to Iraq due to persecution based on their religious beliefs and ethnic origin.<sup>307</sup> Another talked about the ill-treatment she had suffered in immigration detention when she had crossed the border to Turkey.<sup>308</sup> And another said that she preferred to stay in Fidanlık Camp because she enjoyed the freedom of movement, adding that 'state camps are like prisons.'<sup>309</sup> A similar trend could also be observed in the case of Kurdish refugees from Kobane, who had also chosen to stay in municipality and CSO-run makeshift camps instead of the nearby AFAD camp with its much-better facilities.<sup>310</sup>

When asked whether they wished to live outside the camp setting, they were all hesitant. Only one indicated that she perceived her displacement as temporary, saying that '*I rather live here and then go back to Sinjar when situation gets better.*'<sup>311</sup> Four answered that they did not want to,<sup>312</sup> two of them basing their refusal on safety concerns due to their religious beliefs,<sup>313</sup> one clarifying that it would be obvious from their clothing to anyone on the street that they were Ezidis.<sup>314</sup> Three women said they would like to live outside the camp but on the condition that all camp residents moved to the same area.<sup>315</sup> When asked to assess their living conditions, four expressly mentioned difficulties associated with having to live in tents.<sup>316</sup>

### 3.3.3 Health

A health centre was established in the camp. Primary health care was initially provided by the Trade Union of Employees in Public Health and Social Services, with another CSO, Doctors Worldwide, taking over in 2015. A medical doctor and a nurse were regularly on duty at the health centre. However, it was not enough to have adequate staff and equipment; for example there were insufficient separators and the examination room had no door which hindered access especially for women.<sup>317</sup>

304 Diyarbakir Metropolitan Municipality 'Ézidi (Yazidi) Refugees in Diyarbakir' (2016).

305 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016.

306 Interviewee EWR3, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016.

307 Interviewee EWR4, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016.

308 Interviewee EWR10, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

309 Interviewee EWR7, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

310 Jasper Mortimer, 'Kurdish refugees reject government-run camp in Turkey', *Al-Monitor*, 13 Mar. 2015, [www.al-monitor.com/pulse/originals/2015/03/turkey-kobane-kurdish-refugees.html](http://www.al-monitor.com/pulse/originals/2015/03/turkey-kobane-kurdish-refugees.html) (accessed 9 Oct. 2017).

311 Interviewee EWR4, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016.

312 Interviewee EWR2, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR3, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR4, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR6, Kayapınar Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

313 Interviewee EWR2, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR3, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR6, Kayapınar Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

314 Interviewee EWR6, Kayapınar Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

315 Interviewee EWR1, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR7, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016; Interviewee EWR8, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

316 Interviewee EWR2, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR4, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR5, Kayapınar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR6, Kayapınar Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

317 Interviewee CSO2, Ceren Women's Association, 11 Dec. 2016; Interviewee EWR1, Bağlar Quarter, Fidanlık Refugee Camp.



The closest hospital was 25 km away from the camp.<sup>318</sup> Some Ezidi interviewees stated that they could access state hospitals when they had valid humanitarian residence permits, but could no longer do so now they had expired.<sup>319</sup> Two said that they had tried to access state hospitals, but were refused treatment.<sup>320</sup> Two said that they could not access treatment for their own and their relatives' chronic conditions,<sup>321</sup> while one interviewee stated she could not access emergency treatment either.<sup>322</sup> Another problem raised was with that of not having enough money to access prescribed medication.<sup>323</sup>

A CSO representative stated that the psychological health of the refugees, especially women, was really poor when they first came.<sup>324</sup> This was believed to be due to the gendered nature of the persecution from which they had fled and the loss of family members at the hands of ISIS.<sup>325</sup> She indicated that many women were carrying knives when they first arrived, intending to kill themselves if there was an ISIS attack in order to avoid enslavement.<sup>326</sup> The interviewees acknowledged that psychologists and psychological counsellors had been present in the camp from the outset, but initially they made meeting material needs such as shelter and nutrition a priority, which meant that proper psychological support was not provided for months.<sup>327</sup> Two months after Fidanlık Camp was established, a psychologist working in DMM's social services was appointed and a support tent set up to provide individual counselling sessions.<sup>328</sup> Additionally, psychologists and social workers from the local Turkish Psychologists Association and Social Services Association visited the camp daily in 2014,<sup>329</sup> and psychosocial group activities were also carried out.<sup>330</sup> In order to identify women who needed specialised psychological assistance, individual visits and group activities were conducted in 2015 by the DMM Centre for Research and Application on Women's Issues (DIKASUM).<sup>331</sup>

### 3.3.4 Food

Although everyone interviewed stated that they had not experienced a lack of food during the past month,<sup>332</sup> all also added that the food supply had shrunk considerably, especially following the arrest of Co-Mayors. Two of the interviewees also said that they had been forced to obtain financial assistance from their relatives in other countries in order to buy food.<sup>333</sup>

According to a CSO interviewee's memory of events,<sup>334</sup> the food came in the form of pre-cooked rations. Later on, a kitchen was set up and a team of municipality staff and volunteers were assigned to do the cooking. After three months, weekly and monthly nutritional material support was provided following the request of refugee women to cook their own food, as this helped them achieve a more normal life and feel better. Varying amounts of dry food, flour, eggs and vegetables, mostly acquired by municipalities and some donated by the local population, were then distributed to the camp.

Since the beginning of 2015 agricultural activities were also carried out at the camp.<sup>335</sup> Staff from DMM and refugees developed a vegetable garden over 1.5 acres of land. Additionally, poultry farming was carried out in 15 small poultry houses in the camp, which also proved useful for recycling purposes.<sup>336</sup> Prior to the camp's closure, DMM was trying to raise funds to turn four more available acres of land into vegetable gardens, and increase the number of poultry houses, with a view to increasing the camp's self-sufficiency ensuring that refugees kept making use of their gardening and farming skills.<sup>337</sup>

318 Support to Life International Humanitarian Aid Association, 'Situation Report, Ezidi asylum seekers in Turkey' (2014), <http://panel.stgm.org.tr/vera/app/var/files/1/4/141016-ezidi-raporu-stl-tr.pdf> (accessed 7 Sep. 2017).

319 Interviewee EWR2, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR4, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR5, Kayapınar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016.

320 Interviewee EWR5, Kayapınar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR7, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

321 Interviewee EWR3, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR8, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

322 Interviewee EWR6, Kayapınar Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

323 Interviewee EWR10, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

324 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016.

325 Ibid.

326 Ibid.

327 Ibid.

328 Ibid.; Interviewee CSO3, DIKASUM, 11 Dec. 2016; Interviewee CSO4, DIKASUM, 11 Dec. 2016.

329 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016.

330 Ibid.; Interviewee CSO2, Ceren Women's Association, 11 Dec. 2016; Interviewee CSO3, DIKASUM, 11 Dec. 2016; Interviewee CSO4, DIKASUM, 11 Dec. 2016.

331 Ibid.

332 From the time of the interviews.

333 Interviewee EWR7, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec 2016; Interviewee EWR9, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

334 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016.

335 Diyarbakir Metropolitan Municipality, 'Êzidi (Yazidi) Refugees in Diyarbakir' (2016).

336 Ibid.

337 Ibid.

### 3.3.5 Water, sanitation, hygiene

Cleaning products and relevant hygiene materials were supplied by the municipalities. One Ezidi interviewee stated that they had been unable to receive cleaning products for the past month due to cuts in supply, and she could not do anything about it.<sup>338</sup> The camp also had 48 washing machines. However, CSO representatives stated that the women rarely used them and instead washed clothes by hand saying that doing domestic work helped them forget their problems.<sup>339</sup>

Water was supplied to the camp through existing fountains which were placed very close to the tents. There was also a waste water and infrastructure network. A hundred portable toilets and 84 shower cabins were situated throughout the living area, and were accessible without creating security concerns for women.

### 3.3.6 Education

Until the summer of 2016, a primary school was run by the Education and Science Workers Trade Union (Eğitim-Sen) and the Kurdish Language Research and Development Association (Kurdi-Der). Dicle University students also volunteered at the school and professional teachers among the refugees also contributed to its activities. In addition the school ran six English language classes and eight Kurdish classes. The standard of education reportedly failed to meet that provided in the formal education system.<sup>340</sup> The refugees ran their own religious education classes. There was also a nursery.

Refugees were not provided with vocational or informal training. Prior to the closure of the camp, DMM was trying to raise funds to create training programmes and employment opportunities for those who may not wish to return to Sinjar after its liberation and wanted to stay in Diyarbakir.<sup>341</sup> The women's centre ran sewing and handicrafts training, while the art centre offered recreational activities ranging from yoga to home-made wooden toys.<sup>342</sup>

All Ezidi interviewees stated that they had attended educational activities at the women's centre at least once. They also said that their school-age children were not able to access education for a year, a fact that these women were particularly distressed about. Four of the Ezidi interviewees answered the question concerning what they would like to change about the camp with 'open the school again'.<sup>343</sup>

### 3.3.7 Discrimination and violence against women

Municipality staff and women's NGOs carried out various activities which specifically targeted women, the reasons being: the gender-based and gender-specific nature of the violence from which the Ezidis had escaped, which CSO interviewees perceived as femicide; the rigid religious caste system and patriarchy that exists in the Ezidi community; and the possibility of widespread violence and discrimination against women in any setting, including the refugee camp.<sup>344</sup>

Within about a month after the camp had been established, a wooden building within the camp area, initially inhabited by volunteers, was turned into a women's centre. One CSO interviewee<sup>345</sup> recalls the line of events leading up to this: a few weeks after the group's arrival in Fidanlık Camp, an old woman complained that, although clothing materials had been donated suitable for the young, the white skirts and shirts elderly women needed which were suitable to their tradition, were not available. When they were told that the CSOs would try to get them tailored somewhere, the refugee women offered to do them themselves if white fabric and sewing machines could be provided. In a few days the white fabric obtained through donations from local female CSO members and the sewing machines obtained from local women centres were placed in the above-mentioned wooden building, which subsequently became a centre where females could socialise during the day. Municipalities and CSOs provided everything the centre needed, and it was run by volunteers and refugee women. There were 60 volunteers in all, two to three of whom helped at the centre each day.

One CSO interviewee<sup>346</sup> recalls that as the number of tents increased and each nuclear family obtained one, the number of female refugees visiting the centre decreased. They realised that the men in the family had begun to limit the time women could spend outside the tents. The NGOs overcame this by making visits to individual tents and families to build trust and raise awareness.

338 Interviewee EWR10, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

339 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO2, Ceren Women's Association, 11 Dec. 2016.

340 İnsan Hakları Derneği, 'Diyarbakır-Şanlıurfa/Viraneşehir-Şırnak-Siirt-Batman/Beşiri Ve Batman/Merkez'de Bulunan Êzidi Mülteci Kamplarına İlişkin Gözlem Ve Tespit Raporu' (2015), [www.ihd.org.tr/diyarbakir-sanliurfaviraneşehir-sirnak-siirt-batmanbesiri-ve-batmanmerkezde-bulunan-ezidi-multeci-kamplarına-iliskin-gozlem-ve-tespit-raporu-12-13-14-haziran-2015](http://www.ihd.org.tr/diyarbakir-sanliurfaviraneşehir-sirnak-siirt-batmanbesiri-ve-batmanmerkezde-bulunan-ezidi-multeci-kamplarına-iliskin-gozlem-ve-tespit-raporu-12-13-14-haziran-2015) (accessed 24 Sep. 2015).

341 Diyarbakir Metropolitan Municipality 'Êzidi (Yazidi) Refugees in Diyarbakir' (2016).

342 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO2, Ceren Women's Association, 11 Dec. 2016.

343 Interviewee EWR2, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR3, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR6, Kayapınar Quarter, Fidanlık Refugee Camp, 10 Dec. 2016; Interviewee EWR10, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

344 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO2, Ceren Women's Association, 11 Dec. 2016; Interviewee CSO5, Free Women's Congress (KJA), 11 Dec. 2016.

345 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016.

346 Ibid.

The visits were conducted by representatives from women's NGOs and female divisions of municipalities, together with women from the Psychological Counselling and Guidance Association, and psychological counsellors from Eđitim-Sen.<sup>347</sup> They recalled spending hours at each tent, introducing themselves to the families, gaining trust and undertaking activities designed to raise awareness of gender equality.<sup>348</sup> Following this, a dramatic increase in the number of women coming to the centre was observed, higher than before.<sup>349</sup> Activities included sewing, beading and crafting items for their own use. Eventually these were sold in the city, at NGO and municipality premises, at coffee shops and volunteers' workplaces.<sup>350</sup> Income generated from the sales went to the women's centre's common budget and was mainly used for Ezidi women's medical treatment following collective decision-making processes.<sup>351</sup> Other activities included health seminars, gender equality awareness workshops, first aid, English and Kurdish reading and writing courses, music classes, film screenings, choir and psychosocial activities. Women-only and mixed volleyball tournaments were also held.<sup>352</sup>

In less than a year, the women's centre could no longer accommodate the high numbers,<sup>353</sup> so additional women's tents were set up in different areas of the camp to give the activities more space.<sup>354</sup>

During the activities or tent visits, whenever municipality staff or volunteers identified women in distress, they referred them to the above-mentioned psychologists.<sup>355</sup>

The interviewees stated that activities focused on promoting gender equality were intensified following the suicide of a young female refugee in Fidanlik Camp in March 2015,<sup>356</sup> through a temporary programme initiated by DIKASUM, which ran between 23 March and 26 June 2015.<sup>357</sup> The activities involved identifying the problems faced by women and pinpointing those in need of specialised psychological or psychiatric support, as well as providing support and motivation with a view to creating a positive self-image.<sup>358</sup> The main gender-based problems identified were: feelings of guilt concerning the enslavement of Ezidi women by ISIS for being women, prolonged grief, carrying the burden of domestic work, and child marriage.<sup>359</sup> In order to obtain the trust of Ezidi women, sociologists from DIKASUM initially only talked to them in tents and other communal places. One interviewee said 'we did not even take a piece of paper or a pen in our hands because the women would be intimidated.' Another comment was that 'women found it soothing to talk about their experiences.'<sup>360</sup>

Interviewees from CSOs indicated that violence against women, including domestic violence, was expressly prohibited.<sup>361</sup> The feminist principle that 'a woman's declaration is taken as principal'<sup>362</sup> was implemented in practice.<sup>363</sup> A few cases handled via camp coordination followed this process: at the hearings concerned with claims of violence, women at the camp coordination would listen to female survivors of violence, while groups of female adults or mixed-gender groups would listen to the perpetrators. The camp coordination session would have the right to impose various sanctions.<sup>364</sup> Women could also benefit from services run by municipalities such as the women's shelter and other forms of support provided to locals. A rigid stance was taken against polygamy, which was punishable by expulsion from the camp.<sup>365</sup>

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347 Ibid.; Interviewee CSO2, Ceren Women's Association, 11 Dec. 2016.

348 Ibid.

349 Ibid.

350 Ibid.

351 Ibid.

352 Ibid.

353 Ibid.

354 Ibid.

355 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO2, Ceren Women's Association, 11 Dec. 2016; Interviewee CSO3, DIKASUM, 11 Dec. 2016; Interviewee CSO4, DIKASUM, 11 Dec. 2016.

356 Ibid.

357 Ibid.

358 DIKASUM, 11 Dec. 2016; Interviewee CSO4, DIKASUM, 11 Dec. 2016.

359 Ibid.

360 DIKASUM, 11 Dec. 2016; indeed, research carried out with refugees states that telling one's own story – narrative therapy – can be empowering; Choman Hardi 'Kurdish women refugees: obstacles and opportunities', in David Ingleby (ed.) *Forced Migration and Mental Health: Rethinking the Care of Refugees and Displaced Persons* (New York, NY: Springer Publishing, 2005), p. 161.

361 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016; Interviewee CSO2, Ceren Women's Association, 11 Dec. 2016; Interviewee CSO3, DIKASUM, 11 Dec. 2016; Interviewee CSO4, DIKASUM, 11 Dec. 2016.

362 Thus, when a woman declares that she has been subjected to gender-based violence, 'presumption of innocence' is reversed and the burden is on the perpetrator to prove that violence did not take place.

363 Interviewee CSO1, Ceren Women's Association, 9 Dec. 2016.

364 Ibid.

365 Ibid.; Interviewee CSO3, DIKASUM, 11 Dec. 2016; Interviewee CSO4, DIKASUM, 11 Dec. 2016.

### 3.3.8 Durable solutions

All three of the durable solutions for Ezidi women in Fidanlık Camp were elusive. Although at the time of writing Sinjar has been liberated from ISIS,<sup>366</sup> it was not the case then. The group is, nevertheless, still present in Iraq. Furthermore, the continued presence of the PKK in Sinjar has led to new political and military disputes between KDP Peshmerga as well as Turkey.<sup>367</sup> Some villages in the region have been captured by Shiite paramilitary forces.<sup>368</sup> Furthermore, more than 80 per cent of the region's buildings and infrastructure has been destroyed.<sup>369</sup> Four Ezidi interviewees stated that they wished to return to their homeland when conflict ends.<sup>370</sup> Three wanted to return after 'things get back to normal'.<sup>371</sup> Two interviewees said that they did not want to return at all<sup>372</sup> because the place reminded them of the horrors they fled from. One interviewee wanted to return only after Ezidis become independent because she did not feel secure under KDP or central government governance.<sup>373</sup> The enhancement of the security issue seems to be a prerequisite of long-term political efforts.

In the face of Turkey's laws and policies, local integration also does not appear to be a possibility. Indeed, none of the women intended to stay long term in the country. Six interviewees expressly stated that they wanted to go to another country, with five of them specifying Germany. Resettlement numbers are extremely low, especially for non-Syrian refugees in Turkey, and processes are extremely long and many have not yet initiated them; hence, resettlement does not seem to be feasible either.

It has been reported that sometimes families send their minors as a vanguard to European countries, where prospects for permanent solutions exist, in order to trigger the family reunification process.<sup>374</sup> Three of the interviewees had minors in Germany, aged nine, 11 and 16 respectively,<sup>375</sup> one had a son there aged 21,<sup>376</sup> while another had three adult sons and daughters and four grandchildren there.<sup>377</sup>

## 4. Conclusion

This study has demonstrated that, the situation of Ezidi women displaced from Sinjar in Iraq merits a UNHCR evaluation for mandate refugee status and, consequently, an evaluation by Turkey for conditional refugee status under the LFIP.

It further shows that, despite developments in IRL, in the face of myriad of guidelines, instructions and conclusions regarding gender-related claims for international protection, women are still fleeing from gender-based, gender-specific persecution, unable to get international protection and access to rights as well as durable solutions. The study clearly demonstrates that neither the Turkish government nor the UNHCR have taken the initiative to engage with the Ezidi refugees living in Fidanlık Camp, which is administered by the municipalities and CSOs. This incongruity is clear and perplexing, as well as insulting.

In order to overturn this situation, the breaches in the specific rights identified in this paper need to be addressed. To start with, this paper recommends that the international community expands resettlement and other paths of admission from Turkey and, in light of Turkey's own Kurdish conflict (which the study demonstrates has affected responses to refugee flows), it recommends that the international community develops ways of collaborating directly with local actors. Additionally, the study has specifically identified problems of achieving effective access to international protection, which can be overcome by Ezidis disseminating information about Turkish government and UNHCR asylum procedures. In line with this, the paper recommends that the UNHCR conducts registration for RSD in Southeastern Turkey, and that the Turkish government does not force applicants to move to satellite cities.

366 It should be noted that at the time of interviews some Ezidi villages were still under ISIS occupation.

367 'KDP forces kill, injure several pro-PKK protesters in Iraq's Sinjar', *E Kurd Daily*, 14 Mar. 2017, <http://ekurd.net/kdp-kill-pkk-protesters-2017-03-14> (accessed 10 Oct. 2017); Isabel Coles and John Davison, 'Turkish jets strike Kurdish fighters in Syria, Iraq's Sinjar', Reuters, 25 Apr. 2017, <https://www.reuters.com/article/us-mideast-crisis-turkey-iraq/turkish-jets-strike-kurdish-fighters-in-syria-iraqs-sinjar-idUSKBN17R0D2> (accessed 10 Oct. 2017); Michael Knights, 'Turkey's waiting game in Sinjar', *Turkey Scope* 1 (8) (2017).

368 Brenda Stoter, 'For many of Iraq's Yazidis, going home is not an option', *Al-Monitor* (14 Jun. 2017), <http://al-monitor.com/pulse/originals/2017/06/yazidis-iraq-minorities-sinjar-kkp-pmu.html> (accessed 10 Oct. 2017).

369 Rikar Hussein 'Routed by IS, Yazidis hope to build "new Sinjar"', *Voanews*, 25 Jan. 2017, [www.voanews.com/a/yazidi-hope-to-build-new-sinjar/3692845.html](http://www.voanews.com/a/yazidi-hope-to-build-new-sinjar/3692845.html) (accessed 10 Oct. 2017).

370 Interviewee EWR2, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR4, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR7, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016; Interviewee EWR8, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

371 Interviewee EWR1, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR6, Kayapınar Quarter, Fidanlık Refugee Camp, 10 Dec. 2016; Interviewee EWR10, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

372 Interviewee EWR3, Sur Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR5, Kayapınar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016.

373 Interviewee EWR10, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

374 Frontex Risk Analysis Unit, 'Unaccompanied minors in the migration process' (2010) Reference no: 18477.

375 Interviewee EWR1, Bağlar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR5, Kayapınar Quarter, Fidanlık Refugee Camp, 3 Dec. 2016; Interviewee EWR8, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

376 Interviewee EWR9, Büyükşehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

377 Interviewee EWR7, Yenişehir Quarter, Fidanlık Refugee Camp, 10 Dec. 2016.

Furthermore, this particular case study reflects some similarities with the gender-based issues facing other women refugees who are beneficiaries of protection. Ezidi women in Fidanlik Camp were no exception to many other refugee women bearing an unequal burden in terms of domestic work and the care of their family members.<sup>378</sup> This reflects the argument that '[a]chieving sexual equality for refugee women is a long-term goal, which will still be at work long after they cease to be refugees but continue to be women.'<sup>379</sup> On the other hand, this study shows that the strong women's rights movement and feminist discourse dominating Kurdish political structures have contributed to a gender perspective that informed responses in the camp. The day-to-day experiences of women in this study are unique in ways shaped not by those responsible under the refugee regime, but (partially) by the scarce resources of pro-Kurdish municipalities and CSOs. This cannot be attributed to developments in refugee law, as those responsible under it have failed to act. These local actors did not have knowledge of IRL, nor did they have previous experience of working with refugees. Nevertheless, what was observed in the camp can be attributed to a factor which triggered developments in refugee law and protection, that is to say the growing women's rights and feminist movements throughout the world. These confirm that feminism still is 'a powerful methodology and political strategy',<sup>380</sup> and it is the actions or the influence of various actors, including local ones, that politically ascertain discrimination and violence against women within refugee camps.<sup>381</sup>

## Primary sources

### *International and regional treaties*

Convention Relating to the Status of Refugees 189 UNTS 137

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 U.N.T.S. 171

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966 entered into force 3 January 1976) 993 U.N.T.S. 3

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984 entered into force 26 June 1987) 1465 U.N.T.S. 85

Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979 entered into force 3 September 1981), United Nations, Treaty Series, 1249 U.N.T.S. 13

OAU, Convention Governing the Specific Aspects of Refugee Problems in Africa (10 September 1969) 1001 U.N.T.S. 45;

Inter-American Convention to Prevent and Punish Torture, (9 December 1985) O.A.S.Treaty Series, no. 67

Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5

Council of Europe, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2014), ISBN 978-92-871-7990-6.

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 August 1949, 75 UNTS 31

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 12 August 1949, 75 UNTS 85

Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 UNTS 135

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 28

UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN no. 92-9227-227-6

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3

Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267

378 Freedman, *Gendering*, p. 36; Linda Kreitzer, 'Liberian refugee women: a qualitative study of their participation in planning camp programmes', *International Social Work* 45 (1) (2002): 45–58; Alice Szczepanikova, 'Gender relations in a refugee camp: a case of Chechens seeking asylum in the Czech Republic', *Journal of Refugee Studies* 18 (3) (2005): pp. 281–98.

379 Edwards, 'Transitioning gender', 21–45, at 45.

380 Ibid.

381 Callamard 'Refugee women', in Joly (ed.) *Global Changes in Asylum Regimes*, p. 138.

American Convention on Human Rights Women (adopted 22 November 1969 entered into force 18 July 1978)  
O.A.S.Treaty Series no. 36, 1144 U.N.T.S. 123

UN Documents and other Soft Law Instruments

Cartagena Declaration on Refugees, 22 November 1984, OAS/Ser.L./V/II.66, doc. 10, rev. 1.

Fourth World Conference on Women, Beijing Declaration and Platform for Action, (1995) UN Doc. A/CONF.177/20 and A/CONF.177/20/Add.1

Human Rights Committee, General Comment no. 20: Article 7, Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (10 March 1992) HRI/ GEN/1/Rev.7

Human Rights Committee, General Comment no. 31 on the Nature of the General Legal Obligation on States Parties to the Covenant (26 May 2004) U.N. Doc. CCPR/C/21/Rev.1/Add.13

UN Committee for the Elimination of All Forms of Discrimination against Women, General Recommendation no. 19 (1994) UN Doc HRI/GEN/1/Rev.1

UN Committee for the Elimination of All Forms of Discrimination against Women, General Recommendation no. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014) CEDAW/C/GC/32

UN General Assembly, 'Women 2000: Gender Equality, Development and Peace in the Twenty-First Century', 23rd Session (2000) UN doc. A/55/341, 5–9 June 2000

UN General Assembly, Declaration on the Elimination of Violence against Women (1993) UN Doc. A/RES/48/104

UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, UN Doc. A/RES/428(V)

UN Human Rights Committee, *CCPR General Comment no. 15: The Position of Aliens Under the Covenant* (11 April 1986) UN Doc. A/RES/45/158

UN Human Rights Committee, *CCPR General Comment no. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (10 March 1992) U.N. Doc. HRI/ GEN/1/Rev.7

UN Human Rights Council, "They came to destroy": ISIS Crimes Against the Yazidis' (2016), UN Doc. A/HRC/32/CRP.2

UNHCR EXCOM Conclusion no. 64 (XLI) 'Refugee Women and International Protection' (1990)

UNHCR, Guidelines on International Protection no. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees (2003) HCR/GIP/03/04

UNHCR, Guidelines on international protection: 'Membership of a Particular Social group' within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (2002) U.N. Doc. HCR/GIP/02/02

UNHCR, Guidelines on the Protection of Refugee Women (1991) UN Doc. ES/SCP/67

UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugee* (2011) UN doc. HCR/1P/4/ENG/REV.3

UNHCR, *Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (2002) UN doc. HCR/GIP/02/01

UNHCR, Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees (UNHCR, 2001)

UNHCR, Refugee Women and International Protection no. 39 (XXXVI) (1985)

UNHCR, Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA) for Yazidis in the Kurdistan Region of Iraq (KR-I) (UNHCR, 2016), [www.refworld.org/docid/575537234.html](http://www.refworld.org/docid/575537234.html) (accessed 2 Oct. 2017)

UNHCR, UNHCR Policy on Refugee Women (Geneva, 1990)

UNHCR, Note on Determination of Refugee Status under International Instruments, (1977) U.N. Doc. EC/SCP/5

### *EU documents*

Council Directive 2004/83/EC of 29 Apr. 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (2004) OJ L 304/12

European Parliament, Resolution on the Application of the Geneva Convention Relating to the Status of Refugees (1984) OJ C 127

European Parliament, Resolution on the Council Resolution on Minimum Guarantees for Asylum Procedures (1996) 5585/95 – C4-0356/95, A4-0315/96

### *National legislation*

Republic of Turkey, Law on Foreigners and International Protection, Law no.: 6458 Official Gazette [Resmi Gazete = R.G.], 11 Apr. 2013 no. 28615, enacted: 4 Apr. 2013

Republic of Turkey, Temporary Protection Regulation, Decision no.: 29153 Official Gazette [Resmi Gazete = R.G.] 22 Oct. 2014 no. 29153, enacted: 13 Oct. 2014

### **Case law**

#### *International Criminal Court*

Prosecutor v Jean-Pierre Bemba Gombo (Judgement) ICC-01/05-01/13 (12 Nov. 2015)

#### *International Criminal Tribunals for Former Yugoslavia and Rwanda*

Prosecutor v. Kunarac, Kovac and Vukovic, case no. IT-96-23-T and IT-96-23/1-T, 22 Feb. 2001

Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, 2 Sep. 1998

Prosecutor v. Anto Furundzija, case IT-95- 17/1-T, 10 Dec. 1998

#### *Human Rights Committee*

Charles Chitat Ng v. Canada (1994) CCPR/C/49/D/469/1991

#### *European Court of Human Rights*

Aydin v. Turkey (App. no. 23178/94) (1998) 25 EHRR 251

Chahal v. the United Kingdom (App. no. 22414/93) (1996) 23 EHRR 413

Cruz Varas v. Sweden (Application no. 15567/89) (1991) 14 EHRR 1

M.S.S. v. Belgium and Greece (App. no. 30696/09) (2011) 53 EHRR 2

Ramzy v. the Netherlands (App. no. 25424/05) (ECHR, 27 May 2008)

Soering v. United Kingdom (Application no. 14038/88) (1989) 11 EHRR 439

#### *Australia*

A v. Minister for Immigration and Ethnic Affairs [1997] HCA 4, 71 ALJR 381

Minister for Immigration and Multicultural Affairs v. Khawar (2002) 210 CLR 1, [2002] HCA

#### *Canada*

Attorney General v. Ward [1993] 2 SCR 689

Rasaratnam v. Minister of Employment and Immigration [1992] 1 FC 706

Thirunavukkarasu v. Minister of Employment and Immigration [1994] 1 FC 589, (1994) 109 DLR (4th) 682

#### *Germany*

80BverfGE (10 July 1989)

#### *United Kingdom*

Adan v. Secretary of State for the Home Department [1999] AC 293

Horvath v. Secretary of State for the Home Department [2001] 1 AC 489

*Islam v. Secretary of State for the Home Department and R. v. Immigration Appeal Tribunal, ex parte Shah*, [1999] 2 AC 629

*Januzi v. Secretary of State for the Home Department* [2006] 2 WLR 397, [2006] UKHL 5

*Karanakaran v. Secretary of State for the Home Department* [2000] 3 All ER 449

### *New Zealand*

Refugee Appeal no. 71427/99 [2000] INLR 608