Genocide in the Middle East

COMPACT REPORT

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Executive Summary

The situation in Syria and Iraq is catastrophic and has led to one of the worst humanitarian crises in decades. The persecution of religious minorities has entered a critical stage, starting a debate about whether this persecution has reached the threshold of genocide.

In early 2016, the Parliamentary Assembly of the Council of Europe and the European Parliament both adopted resolutions declaring the atrocities committed by ISIS/Daesh in the Middle East as genocide and calling upon states to take actions in line with their obligation to “prevent” genocide. In March 2016, the United States Administration also denounced ISIS atrocities committed against Christians and other religious minorities in the Middle East as genocide. Subsequently, Australia and Poland made such recognitions.

Nonetheless, no decisive steps have been taken in response. A pro-active action plan is needed to stop the atrocities from continuing, to investigate the crimes, and to prosecute the perpetrators.

This memorandum scrutinizes the situation in Syria and Iraq and the atrocities committed by ISIS/Daesh in both countries. It then analyzes the international response to the atrocities. Lastly, it outlines the Iraqi plea for help and steps that can be taken within the international legal framework to prevent and punish acts of genocide.
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(a) Situation in the Middle East

Syria

1. In 2011 the population of Christians was assessed at over 2 million and constituted 10 percent of the Syrian population. In early 2015 the population of Syria was estimated at 20 million. 92.8 percent of the population was Muslim, 5.2 percent Christian and 2 percent other.1 Accordingly, the population of Christians fell from over 2 million in 2011 to less than 1 million in 2015.

2. In mid-January 2015 there were over 3.9 million registered Syrian refugees in Lebanon, Jordan, Turkey, Iraq and Egypt. Over 9.3 million Syrians required basic assistance, and over 6.5 million were internally displaced.2 It is estimated that in 2015 alone over 700,000 Christians in Syria sought refuge in the neighbouring countries.3

3. The persecution of Christians in Syria is extreme. Examples include three Christian men executed for refusing to convert to Islam,4 a Catholic priest beheaded by the rebels,5 at least 15 Assyrian Christians beheaded or shot,6 three Christians executed,7 and at least 10 Christians executed for their faith by order of a self-proclaimed religious court.8 Numerous Christians and Christian religious leaders have been kidnapped. Greek Orthodox Archbishop Boulos Yazigi and Syrian Orthodox Archbishop Yohanna Ibrahim are still missing.9

4. In September 2013, 36 Muslim religious leaders issued a fatwa allowing Sunni Muslims to seize the property of Christians and members of other non-Muslim

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3 Aid to the Church in Need on Syria, above (n 1).
9 Ibid.
religious groups. Additionally, Jabhat al-Nusra attacked the predominantly Christian town of Maaloula, killing 20 people, abducting 15, and destroying Christian religious places. Crosses were pulled down from the monastery of Saint Serge. No Muslims were attacked.

5. In October and November 2013 Jabhat al-Nusra held hostage over 1,500 families in the Christian village of Sadad. 45 people were killed and multiple families were destroyed—brothers, sisters, grandparents and spouses.

6. The bodies of student Ranim, 18, and her 16-year-old brother, Fadi, were discovered at the bottom of a well, with the remains of their mother, Njala, 45, and their grandparents, Mariam, a 90-year-old widow, as well as Matanios El Sheikh, 85, and his wife, Habsah, 75.

7. In October 2014, Jabhat al-Nusra kidnapped Franciscan Father Hanna Jallouf and 20 Christians. They were eventually freed.

8. In January 2015 it was reported that the Armenian Catholic Father Michel Kayyal and Greek Orthodox Father Maher Mahfouz were killed.

9. In February 2015 ISIS/Daesh seized 35 Assyrian Christian villages, kidnapping over 300 Christians. ISIS/Daesh released 23 people in March 2015 and demanded £15 million for the release of an additional 230. The remaining villagers, amounting to over 1,200, fled to Hassake and Qamishli. For months the 35 villages remained deserted. The Assyrian Christians started returning in June 2015 when Christian and Kurdish fighters liberated the area.

10. In March-April 2015 ISIS/Daesh seized Idlib. It was reported that two Christians were killed for selling alcohol. Father Ibrahim Farah and members of a Greek Orthodox Church were detained by an Islamic court.

11. In May 2015 a Jesuit priest was kidnapped. In June 2015 a Jesuit priest, Father Paolo Dall’Oglio, was killed.

12. On 28 August 2015, ISIS/Daesh murdered 12 Christians for refusing to renounce their faith. Some of the victims were brutally raped before the execution. A 12-year-old boy was tortured. The bodies of the victims were hung on crosses.

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10 Aid to the Church in Need on Syria, above (n 1).
11 Ibid.
12 Ibid.
13 Ibid.
14 Ibid.
15 Ibid.
16 Ibid.
17 Ibid.
18 Ibid.
19 Ibid.
20 Ibid.
21 Ibid.
22 Shianee Mamanglu-Regala, ‘ISIS executes 12 Christians—including boy and 2 women who were raped in public and beheaded—for refusing to renounce Jesus’, Christian Today [online news] (5 October 2015) <http://www.christiantoday.com/article/isis.executes.12.christiansincluding.boy.and.2.women.who.were.raped.in.public.and.beheadedfor.refusing.to.renounce.jesus/66532.htm> accessed 5 May 2016.

14. The Syrian Government has failed to take adequate steps to stop the abuse and the unlawful executions and to respect the right to life as protected under international law. As a result, Syria is ranked 4th on the 2015 and 5th on the 2016 World Watch List, which ranks the top 50 countries where Christians are persecuted.  

15. UN Human Rights Council established the Independent International Commission of Inquiry on the Syrian Arab Republic (the Commission of Inquiry) to investigate the situation in Syria. In its 13 August 2015 report, the Commission of Inquiry presented the following examples of persecution of Christians and other religious minorities:

All of the Syrian Arab Republic’s religious and ethnic communities are suffering as a result of the conflict.

Some communities have been specifically targeted, with discriminatory intent, on the grounds of their actual or perceived religious and/or ethnic background, by ISIS and Jabhat Al-Nusra.

Hundreds of Yazidi women abducted during the ISIS August 2014 attack on the Sinjar region of northern Iraq were forced over the border into the Syrian Arab Republic. One of the earliest ISIS convoys of women and children crossed on 17 August 2014.

In mid-February, ISIS fighters entered Assyrian Christian villages, including Tel Hermes, along the Khabour River in Hasakah. They forced villagers to remove all Christian imagery from their churches, homes and cemeteries. Fighters threatened to impose jiza—a tax imposed on non-Muslims living in an Islamic caliphate—and to kill the local priest if residents did not comply.

16. In its report from 11 February 2016 the Commission of Inquiry concluded that ISIS/Daesh has committed crimes against humanity. The Commission of Inquiry confirmed that Christians and other religious minorities are specifically targeted because of their faith.

17. The Commission of Inquiry explained that Christians and other religious minorities are not protected in the region and even if receiving some assistance from the People’s Protection Unit (YPG), they are not safe.


26 Ibid., 109.

27 Ibid., 110.

28 Commission of Inquiry, above (n 2) 114.

29 Ibid., 119.
18. The report substantiated the information that many of the religious minorities are given an ultimatum to convert or to die.

19. The Commission of Inquiry also confirmed that ISIS/Daesh use Yazidi women as sex slaves and Yazidi boys as child soldiers.

20. In May 2016, the UN Security Council assessed the death toll at 470,000.

Iraq

21. In 2003 the Christian population in Iraq was estimated at 1.4 million. In early 2015 the population of Iraq was estimated at 32.6 million comprising 98 percent Muslims, 1 percent Christians and 1 percent other religious minorities. Currently the Iraqi Christian population is estimated at 260,000.

22. After ISIS/Daesh proclaimed a so-called caliphate in many regions of Iraq, the situation of Christian minorities in Iraq deteriorated and continues to be critical. Iraq was ranked 3rd on the 2015 World Watch List. In 2016 Iraq was listed 2nd on the World Watch List.

23. In June 2014 ISIS/Daesh took over Mosul. The Christian population, over 30,000 people, was given an ultimatum: to convert to Islam, pay a ‘protection’ tax, leave Mosul, or face death. Christian homes were marked with the Arabic letter N for Nazarene. Thousands of Christians fled to the Nineveh Plains.

24. In July 2014 ISIS/Daesh assassinated Professor Mahmoud Al-Asali for speaking out against Christian persecution and arguing that such atrocities are contrary to Islamic doctrine.


26. In August 2014 ISIS/Daesh took over Qaraqosh. Over 100,000 Christians fled. The same fate has met the Christian population of al-Kosh. Numerous Christian sites were destroyed by the extremists.

27. In August 2014 ISIS/Daesh moved to Sinjar in the Nineveh province and massacred Yazidis, Assyrian Christians, Shi’a Muslims and other minorities. Over 200,000 people, mostly Yazidis, escaped to the mountains. However, ISIS/Daesh surrounded the mountains, cutting off access to food, water, and medical care. ISIS/Daesh murdered over 500 Yazidis and many others died of starvation or dehydration.

28. In September 2014 Mosul schools with Christian affiliations were forced to stop teaching Christian religious education and remove any Christian references from the

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31 Ibid.
32 Ibid.
34 United States Commission on International Religious Freedom, above (n 2) 96.
35 Aid to the Church in Need on Iraq, above (n 30).
36 Ibid.
37 Ibid.
38 Ibid.
schools’ names.\textsuperscript{39} ISIS/Daesh destroyed the Assyrian Green Church in Tikrit and other religious shrines in Kirkuk, Nineveh, and Salahuddin.

29. Subsequently, in December 2014, Christian churches began to be used as prisons and torture chambers for Christians.


31. In July 2015 four Christians were abducted. Two were killed despite the fact that their families paid the requested ransom.

32. Due to the ongoing persecution of Christians, Yazidis, and other religious minorities in Iraq, the United States Commission on International Religious Freedom (USCIRF) recommended in their 2015 Annual Report that the US government designate Iraq as a country of particular concern under the \textit{International Religious Freedom Act of 1998}.\textsuperscript{40}

33. On 27 March 2015 the Office of the United Nations High Commissioner for Human Rights released a report on the human rights situation in Iraq. The report is particularly focused on the abuses committed by ISIS/Daesh against religious and ethnic groups. The Office of the High Commissioner for Human Rights found that it was ‘reasonable to conclude, in the light of the information gathered overall, that some of those incidents may constitute genocide.’\textsuperscript{41} On the basis of the evidence available at the time the report contains the following determinations:

Members of ISIL may have perpetrated genocide against the Yezidi community by killing, causing serious bodily or mental harm and forcibly transferring members of the group, including children, in the context of a manifest pattern of conduct aimed at the destruction of the group.

Members of ISIL may have committed crimes against humanity by perpetrating murder, enslavement, deportation or forcible transfer of population, severe deprivation of physical liberty, torture, rape, sexual slavery, sexual violence and persecution, committed as part of widespread or systematic attacks directed against civilian populations pursuant to or in furtherance of an organisational policy to commit such attacks.

Members of ISIL may have committed war crimes by perpetrating murder, mutilation, cruel treatment and torture, outrages upon personal dignity, taking of hostages, the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, directing attacks against the civilian population, directing attacks against buildings dedicated to religion or against historic monuments, pillaging a town or place, committing rape, sexual slavery and other forms of sexual violence, conscripting or enlisting children under the age of

\textsuperscript{39} Ibid.
\textsuperscript{40} United States Commission on International Religious Freedom, above (n 2), 95.
15 years or using them to participate actively in hostilities, ordering the displacement of the civilian population or destroying or seizing the property of an adversary.

ISIL is perpetrating serious human rights violations in areas which are under its de facto control; including torture, cruel and inhuman treatment, and extrajudicial killings.\(^{42}\)

34. The Report of the United Nations High Commissioner for Human Rights on Technical assistance provided to assist in the promotion and protection of human rights in Iraq indicates that:

UNAMI/OHCHR continued to receive numerous credible reports of gross violations and abuses of human rights and serious violations of international humanitarian law being perpetrated by ISIL against civilians in an apparent widespread or systematic manner. In some instances, these may amount to war crimes, crimes against humanity, and genocide.\(^{43}\)


ISIL continues to commit systematic and widespread violations and abuses of international human rights law and international humanitarian law. In some instances, these may amount to war crimes, crimes against humanity, and possibly genocide.\(^{44}\)

36. The report clearly states that the atrocities violate Iraqi and international law, amount to war crimes, crimes against humanity, and possibly genocide.\(^{45}\)

(b) Response of the International Community

37. **Council of Europe:** The Council of Europe was the first major international institution to condemn the actions of ISIS/Daesh in the Middle East as genocide. On 27 January 2015, the Parliamentary Assembly of the Council of Europe adopted Resolution 2091 (2016) entitled Foreign fighters in Syria and Iraq.

38. **European Parliament:** On 4 February 2016 the European Parliament adopted a resolution on the systematic mass murder of religious minorities by ISIS/Daesh. The resolution urges ‘the members of the UN Security Council to support a referral by the Security Council to the International Criminal Court in order to investigate violations committed in Iraq and Syria by the so-called “ISIS/Daesh” against Christians, Yazidis and religious and ethnic minorities.’

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\(^{42}\) Ibid., 76.


\(^{45}\) Ibid., 32.
39. As a follow-up action to the European Parliament resolution, 62 Members of Parliament wrote to the President of the European Council, Mr. Donald Tusk.

40. On 6 May 2016, President of the European Commission, Mr. Jean-Claude Juncker, announced that Mr. Jan Fige was appointed as the first Special Envoy for the promotion of freedom of religion or belief (outside the EU) with a mandate for one year.

41. **United States:** On 2 March 2016, the House Concurrent Resolution 75 (H.Con.Res.75) was passed by the House Committee on Foreign Affairs. H.Con.Res.75 recognized the atrocities committed against Christians and other religious or ethnic minorities specifically targeted because of their religious or ethnic background as war crimes, crimes against humanity, and genocide. On 14 March 2016 the House of Representatives unanimously approved H.Con.Res.75.

42. On 14 March 2016 the House of Representatives passed the House Concurrent Resolution 121 (H.Con.Res.121). H.Con.Res.121 urged promotion of the establishment of a ‘Syrian war crimes tribunal, a regional or international hybrid court to prosecute the perpetrators of grave crimes committed by the Government of Syria, its allies, and other parties to the conflict.’

43. On 17 March 2016 the US Secretary of State, John Kerry, designated ISIS/Daesh’s atrocities against Christians and other religious minorities in the Middle East as genocide.

44. **United Kingdom:** On 20 April 2015, the House of Commons passed a motion stating that ‘this House believe[d] that Christians, Yazidis, and other ethnic and religious minorities in Iraq and Syria are suffering genocide at the hands of Daesh; and calls on the Government to make an immediate referral to the UN Security Council with a view to conferring jurisdiction upon the International Criminal Court so that perpetrators can be brought to justice.’

45. **Australia:** On 2 May 2016, Australian House of Representatives passed a resolution recognizing crimes committed by ISIS/Daesh on religious minorities in the Middle East as genocide.

46. **Poland:** On 6 May 2016, Undersecretary of State, Aleksander Stepowski, indicated that Poland ‘condemn[ed] today violence and crimes of the so-called SIS/Daesh, as committed against Christians, Yazidis or Shia, Sunni. They represent crimes against humanity and often real genocide, especially in relation to Christians. This barbarism must be addressed by international community with proper legal means, as available to United Nations and particularly to the Security Council.’

47. **UN Security Council**

48. The UN Security Council can take two different approaches to the situation in the Middle East. First, the UN Security Council could establish a commission of experts

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46 Article 7(1) of the UN Charter.
47 Article 24(1) of the UN Charter.
on genocide perpetrated by ISIS/Daesh in the Middle East to consider the evidence available, collect further information, and prepare an opinion. The UN Security Council followed this route when responding to atrocities in Bosnia and Herzegovina and Rwanda. If the commission confirms that the atrocities amount to genocide, the UN Security Council would likely pass a resolution establishing an ad hoc criminal tribunal. Both steps are interrelated. It is very unlikely that the UN Security Council would establish an ad hoc tribunal without having an opinion from a commission of experts on genocide confirming a finding of genocide.

49. There are numerous benefits to following this route. First, the UN Security Council defines the role and the responsibilities of the commission of experts and therefore can adjust them to address the needs of the specific case. This also applies to an ad hoc tribunal. Second, both the commission of experts and the ad hoc tribunal are established only to perform one targeted function. This means that their work is focused on certain issues. It follows that they may be more efficient and productive than any other body with a more general approach. The flexibility offered by this option may be the sensible approach for cases of international non-State actors and cross-border terrorism with foreign fighters.

50. Despite the existence of a permanent international court, the idea of establishing an ad hoc tribunal is not extinct and is re-introduced periodically. In 2005, after the vote on the draft resolution referring the situation in Darfur to the ICC, US Ambassador Anne Woods Patterson expressed the State’s preference for a hybrid tribunal.

51. Most recently, the establishment of an ad hoc tribunal was proposed in H.Con.Res.121 in relation to the situation in the Middle East. Such an ad hoc tribunal can be established by the UN Security Council, based on the examples of the ICTY and the ICTR. The ad hoc tribunal may be more adequate than the ICC to deal with the challenges posed by ISIS/Daesh international terrorist activities.

52. The alternative would be for the UN Security Council to pass a resolution referring the situation in the Middle East to the ICC. Despite the fact that this was attempted in 2014, there are various factors suggesting that if such a resolution was tabled now the result would be different. The draft resolution from 2014 was tabled before the ISIS/Daesh atrocities escalated and was directed against the Syrian government. A resolution focused on atrocities committed by ISIS/Daesh fighters since July/August 2014 would have better chances of success.

(d) The Iraqi Proposal

53. On 6 May 2016, H.E. Mr Mohamed Ali Alhakim, Permanent Representative of Iraq to the UN, spoke at the UN Security Council about the situation in Iraq and the struggle to combat ISIS/Daesh. He called upon the UN Security Council to:

set up a specific international legal mechanism for investigating and bringing to justice the criminals of ISIL. 48

54. This statement is a plea for help from the UN Security Council to establish a mechanism to investigate ISIS/Daesh atrocities (a commission of experts) and a mechanism to bring the perpetrators to justice (an ad hoc international criminal tribunal for ISIS/Daesh criminals).

55. The UN Security Council has not yet acted upon this plea for help.

(e) Conclusion

56. As a result of the ISIS/Daesh extermination campaign against Christians and other religious minorities in Syria and Iraq, the populations of these groups dramatically decreased due to the numerous killings and executions as well as forced migration. There is a real danger that the Christian population of Syria and Iraq will disappear altogether.

57. To date, no adequate steps have been taken to respond to the situation of Christians and other religious minorities in Syria and Iraq. Urgent action is needed to save the remnant.

58. Steps that can be taken by States:

- Urge the UN Security Council to establish a commission of experts on ISIS/Daesh genocide of Christians and other religious minorities in Syria and Iraq; and subsequently
- Urge the UN Security Council to establish an international ad hoc tribunal to prosecute the perpetrators, or
- Urge the UN Security Council to refer the situation in Syria and Iraq to the International Criminal Court.