



# STATE RESPONSIBILITY AND THE GENOCIDE OF THE YAZIDIS

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The Yazidi Justice Committee is an *ad hoc* body composed of the following organisations: Accountability Unit, Women for Justice, IBA Human Rights Institute, Bar Human Rights Committee of England and Wales, and Geoffrey Nice Foundation.

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## I. CONTENTS

I.	FOREWORD	i
II.	ACKNOWLEDGMENTS	ii
III.	EXECUTIVE SUMMARY	1
	1. Ongoing failure to prevent genocide - Iraq, Syria and Turkey	1
IV.	INTRODUCTION	12
V.	JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE	23
VI.	FINDINGS ON GENOCIDE	24
A.	<i>Background</i>	24
	1. ISIS' Incursion from Syria into Iraq – Timeline	24
B.	<i>Yazidis as a "Protected Group"</i>	33
C.	<i>Commission of Prohibited Acts against the Yazidis as a Protected Group</i>	35
	1. Article II(a) - Killing Members of the Protected Group	36
	2. Article II(b) - Causing Serious Bodily or Mental Harm	42
	3. Article II(c) - Deliberately Inflicting Conditions of Life	52
	4. Article II(d) - Imposing Measures Intended to Prevent Births Within the Group	57
	5. Article II(e) - Forcibly Transferring Children of the Group to Another Group	61
D.	<i>Specific Intent to Destroy the Yazidis, in Whole or in Part, As Such</i>	63
	1. Specific Intent - Evidence of Direct Intent to Destroy the Yazidis	64
	2. Specific Intent - Relevant Surrounding Facts and Circumstances	66
	3. Specific Intent - Targeting in Whole or in Part	75
	4. Specific Intent - Conclusions	76
VII.	LAW RELATING TO STATE RESPONSIBILITY	79
A.	<i>Disputed Territory and Questions of State Responsibility</i>	79
B.	<i>State Responsibility for the Conduct of Non-State Actors</i>	82
C.	<i>Primary Obligations of States under the Genocide Convention</i>	83
	1. Obligation to Prevent Genocide	83
	2. Obligation Not to Commit Acts of Genocide	85
	3. Prohibition of Complicity in Genocide	85
	4. Obligation to Punish Acts of Genocide	87
	5. Obligation to Enact Necessary Legislation	88
VIII.	CONSIDERATIONS OF STATE RESPONSIBILITY BY STATE	89
A.	<i>Syria Country Report</i>	89
	1. Obligation to Prevent Genocide	89
	<b>Summary Findings on the Obligation to Prevent</b>	116
	2. Obligation Not to Be Complicit in Genocide	119

3.	Obligation to Punish Perpetrators of Genocide	119
	<b>Summary Findings on the Obligation to Punish</b>	121
4.	Obligation to Enact Legislation Giving Effect to the Convention	121
	<b>Summary Findings on the Obligation to Enact Legislation</b>	125
5.	Attribution of Prohibited Acts of Genocide	125
<b>B.</b>	<b><i>Iraq Country Report</i></b>	<b>126</b>
1.	Obligation to Prevent Genocide	126
	<b>Summary Findings on the Obligation to Prevent</b>	142
2.	Obligation to Not Be Complicit in Genocide	143
3.	Obligation to Punish Perpetrators of Genocide	143
	<b>Summary Findings on the Obligation to Punish</b>	147
4.	Obligation to Enact Legislation Giving Effect to the Convention	148
	<b>Summary Findings on the Obligation to Enact Legislation</b>	152
5.	Attribution of Prohibited Acts of Genocide	152
<b>C.</b>	<b><i>Turkey Country Report</i></b>	<b>153</b>
1.	Obligation to Prevent Genocide	153
	<b>Summary Findings on the Obligation to Prevent</b>	189
2.	Obligation to Not Be Complicit in Genocide	190
	<b>Summary Findings on Complicity</b>	203
3.	Obligation to Punish Perpetrators of Genocide	205
	<b>Summary Findings on the Obligation to Punish</b>	211
4.	Attribution of Prohibited Acts of Genocide	212
	<b>Summary Findings on Attribution of Prohibited Acts to Turkey</b>	214
<b>IX.</b>	<b>SUMMARY FINDINGS ON ALLEGATIONS RELATING TO OTHER STATES</b>	<b>216</b>
<b>A.</b>	<b><i>France Country Report</i></b>	<b>216</b>
1.	Obligation to Prevent Genocide	216
2.	Obligation to Not Be Complicit in Genocide	219
3.	Attribution of Prohibited Acts of Genocide	220
4.	Obligation to Punish Perpetrators of Genocide	220
<b>B.</b>	<b><i>Iran Country Report</i></b>	<b>221</b>
1.	Obligation to Prevent Genocide	221
2.	Obligation to Not Be Complicit in Genocide	226
3.	Attribution of Prohibited Acts of Genocide	226
4.	Obligation to Punish Perpetrators of Genocide	226
<b>C.</b>	<b><i>Russia Country Report</i></b>	<b>226</b>
1.	Obligation to Prevent Genocide	226
2.	Obligation to Not Be Complicit in Genocide	228
3.	Attribution of Prohibited Acts of Genocide	229
4.	Obligation to Punish Perpetrators of Genocide	229
<b>D.</b>	<b><i>Saudi Arabia and other Gulf Cooperation Council (GCC) States</i></b>	<b>230</b>
1.	Obligation to Prevent Genocide	230
2.	Obligation to Not Be Complicit in Genocide	236
3.	Attribution of Prohibited Acts of Genocide - Saudi Arabia	237
4.	Attribution of Prohibited Acts of Genocide - Other GCC States	238
5.	Obligation to Punish Perpetrators of Genocide	239

<b>E.</b>	<b><i>United Kingdom Country Report</i></b>	<b>241</b>
1.	Obligation to Prevent Genocide	241
2.	Obligation to Not Be Complicit in Genocide	243
3.	Attribution of Prohibited Acts of Genocide	243
4.	Obligation to Punish Perpetrators of Genocide	243
<b>X.</b>	<b>CONCLUSION AND RECOMMENDATIONS</b>	<b>246</b>
1.	Obligation to Prevent Genocide	246
2.	Obligation to Not Be Complicit in Genocide	246
3.	Obligation to Punish Perpetrators of Genocide	247
4.	Ongoing Risk of Genocide and the Obligations of All States	248
5.	Recommendations	249
<b>XI.</b>	<b>AFTERWORD</b>	<b>253</b>
<b>XII.</b>	<b>ABBREVIATIONS</b>	
<b>XIII.</b>	<b>ANNEX ON METHODOLOGY</b>	

*In tribute to Yazidi survivors and victims - as well as witnesses, journalists, and investigators - who through their courage brought, and continue to bring, to light the information necessary for the international community to take note of the crimes against the Yazidis so that there may be efforts towards urgent, concrete, and practical action.*



## I. FOREWORD

The atrocities at the hands of the so-called Islamic State in Iraq and Syria (ISIS), or Daesh, shook the world. The haunting images of the crimes committed against the Yazidis, which involved the enslavement and repeated rape of Yazidi women and girls, the beheading and slaughter of men and boys and the burning of people in cages, will remain with us forever. We cannot forget those horrific atrocities and have a duty to ensure there is justice and accountability, as promised in the international instruments that were signed by States following the Holocaust and the Second World War.

Unfortunately, as time goes by and particularly since the harrowing attacks on Sinjar in August 2014, we see little happening on the issue of the Yazidi genocide, which this Report of the Yazidi Justice Committee has meticulously documented. We have celebrated a handful of prosecutions of individual Daesh fighters in Germany and elsewhere and recognise them as successes in this fight for justice, but we must not forget that these are but a drop in the ocean when it comes to wider legal responsibility. An ocean of impunity exists in relation to the Yazidi genocide. As ISIS is a fictional state, it is deemed in law to be “a non-state actor” and, therefore, cannot be prosecuted for genocide under current international law, as it is drafted to address the conduct of a recognisable State. However, there is legal responsibility under the Genocide Convention if a State knowingly fails to prevent genocide, fails to punish perpetrators, or is complicit in genocidal action.

As the Report emphasises, State responsibility goes beyond the role of direct perpetration of genocide, and, as is clear from the legal and factual findings, certain States knew and failed in their duty to act for a variety of inhumane reasons. This Report is the first to address the responsibilities of States in the attempt to destroy the Yazidis. If we are serious about the obligations on States under the Genocide Convention, and about ensuring justice for the Yazidi victims and survivors of the Daesh genocide, we must tackle this difficult topic of responsibility and complicity and failure to act in accordance with the Convention, when ample opportunity was available. We must do so now before those horrors are repeated. This means using this Report to begin proceedings at the International Court of Justice, which is the only available mechanism to ensure responsible States are held to account under the Convention for failing to honour their binding obligations. The promise of those words ‘never again’ rings hollow if no effort is made to challenge this impunity.

We call upon the international community to adopt and follow the recommendations set out in this Report and we remain able and willing to assist in any capacity necessary to secure justice and accountability for the Yazidi people.

**BARONESS HELENA KENNEDY QC**  
LONDON, JULY 2022

**PROFESSOR LORD DAVID ALTON**  
LONDON, JULY 2022

## II. ACKNOWLEDGMENTS

This Report has been produced by the Yazidi Justice Committee (“Committee”). It was co-authored, and contributed to, by a leading group of human rights barristers, researchers, and academics, who were members of Accountability Unit; Women for Justice; the International Bar Association’s Human Rights Institute; the Geoffrey Nice Foundation; and the Bar Human Rights Committee of England and Wales.

The Report was edited by Aarif Abraham, Dr Aldo Zammit Borda and Dr Tatyana Eatwell who were the primary contributing authors among the following contributing authors (*alphabetically by surname*): Aarif Abraham, Erk Acarer, Soraya Bauwens, Tatyana Eatwell, Leyla Ferman, Thomas Francis, Daniel Grütters, Rehab Jaffer, Jacqueline Jahnel, Alessia Mercuri, Sean Summerfield, Nursin Uysal, Aldo Zammit-Borda, Monika Zakrzewska, and many others who wish to remain anonymous. Administrative, proof-reading and type-setting support was provided by: Jacqueline Jahnel, Josie Fathers, and Marilena Stegbauer (who also provided some project assistance). Gratitude is owed to Jacqueline Jahnel for her contributions to both the Report and the detailed proof-reading.

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The Committee wishes to thank *City, University of London* who sponsored the launch of the Report in Parliament on 6 July 2022.

## ABOUT THE YAZIDI JUSTICE COMMITTEE ("COMMITTEE")

The Committee is an *ad hoc* committee formed of members of the following organisations: Accountability Unit; Women for Justice; International Bar Association's Human Rights Institute; Geoffrey Nice Foundation; and the Bar Human Rights Committee (England and Wales). The Committee has, since March 2020, been investigating and assessing evidence of whether any States have failed to comply with their obligations under the Genocide Convention with respect to the ongoing genocide of the Yazidis in Iraq and Syria. This evidence relates to a number of States Parties to the Genocide Convention who do not maintain any 'reservations' to Article IX of the Convention. The focus on these States Parties is not because the Committee considers that a reservation to the Convention precludes a State's responsibility for any breach of the terms of the Convention, which it does not. Rather, the Committee has focused on those States that may be held accountable before the International Court of Justice for any breaches of the Convention.

The work of the Committee was advanced through the following sub-committees: Legal Sub-Committee: Aarif Abraham as Convener; Research Sub-Committee: Aldo Zammit-Borda as Convener; State Sponsorship Sub-Committee: Tatyana Eatwell as Convener. There was an *ad hoc* Executive Committee consisting of: Sir Geoffrey Nice QC as Chair, Aarif Abraham, Tatyana Eatwell, Ewelina Ochab, and Aldo Zammit Borda.

The YJC's Chair was Sir Geoffrey Nice QC. YJC had two very generous Patrons, namely: Baroness Helena Kennedy QC and Professor Lord David Alton. The External Adviser was Ewelina Ochab. The YJC had a Main Committee consisting of the following representatives of all five founding organisations who had oversight over the functions of the YJC: Sir Geoffrey Nice QC, Baroness Helena Kennedy QC, Aswini Weeraratne QC, Leyla Ferman, Aarif Abraham, in addition to Aldo Zammit Borda, and Tatyana Eatwell. The Committee was founded by Aarif Abraham and its co-founder was Dr Leyla Ferman.

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### III. EXECUTIVE SUMMARY

1. The Yazidi Justice Committee (“Committee”) has, since March 2020, been investigating and assessing evidence of whether any States have failed to comply with their obligations under the Genocide Convention with respect to the ongoing genocide of the Yazidis in Iraq and Syria. This evidence relates to a number of States Parties to the Genocide Convention who do not maintain any reservations under the Convention.
2. The evidence and the Committee’s conclusions have been compiled in this comprehensive fact-finding report (“Report”) supported by an associated electronic evidence database. The Report’s findings indicate that there are strong grounds to conclude that genocide against the Yazidis, as a protected religious group, was committed by the armed group, the Islamic State in Iraq and Syria (“ISIS”), in contravention of the Convention.
3. The Report further finds that there are reasonable grounds to conclude that at least three States have failed in discharging one or more obligations under the Genocide Convention with respect to the genocide committed by ISIS. The three States are Iraq, Syria and Turkey. The Report’s findings are based on publicly available reports, findings and decisions emanating primarily from international organisations, reputable NGOs and other credible sources. The Report’s findings are likely to be further, and possibly significantly, substantiated by large repositories of evidence held by States and international organisations such as organs of the United Nations.

#### A. *Summary Findings of the Committee*

##### 1. **Ongoing failure to prevent genocide - Iraq, Syria and Turkey**

4. The information, from publicly available sources, provides reasonable grounds to conclude that Iraq, Syria and Turkey are in breach of the obligation to prevent genocide.
5. With respect to Iraq, there are reasonable grounds to conclude that, from at least April 2013, Iraq knew, or should have known, of the serious risk of genocide against the Yazidis in Iraq. By June 2014, Iraq itself acknowledged ISIS was committing genocide, called upon the UN to recognise the atrocities committed by ISIS as genocide, and made a formal request to the United States to launch air strikes against ISIS as the group had seized control of Mosul. There are, however, reasonable grounds to conclude that Iraq failed to use all means reasonably available to protect the Yazidis and prevent the commission of genocide by ISIS. In particular, Iraq’s Federal Government failed to coordinate diplomatically, and/or militarily, with the Kurdistan Regional Government in order to ensure the Yazidis’ safety and security in the Sinjar and other regions before 3 August 2014 and took no measures to evacuate the Yazidis to safety in the light of the clear risk of ISIS’ advance to Sinjar, following its capture of Mosul in June 2014. Moreover, there is a serious concern in

respect of the continuing failure by Iraq to ensure the security of the Ninewa and Dohuk Governorates and the Sinjar district in particular, and thereby protect the Yazidis - who remained, have returned or who are now seeking to return to the region - from continuing attacks, which still threaten the survival of the Yazidis as a protected group.

6. With respect to Syria, there are reasonable grounds to conclude that Syria knew, or should have known, of the serious risk that ISIS would commit genocide against the Yazidis in Syria, and in Iraq. The nature of ISIS' acts, and genocidal intent, became well known from June 2014, at the very latest, and from at least April 2013. ISIS' ideology towards the Yazidis was communicated to the Syrian Government by the United Nations, other international organisations, and others. The publicly available information, however, supports the conclusion that Syria failed to take measures to prevent the genocide. Despite its extensive capacity, Syria failed to prevent and/or disrupt ISIS' activities in Syria, and to prevent the transfer and detention of enslaved Yazidis on its territory. The publicly available information supports the conclusion that no attempt was made by the Syrian Government to provide any form of protection to the Yazidis in any context prior to the commission of prohibited acts, during the commission of prohibited acts and/or after the commission of prohibited acts. That remains the case to this day.
7. With respect to Turkey, there are reasonable grounds to conclude that Turkey knew or should have known of the serious risk that ISIS would commit genocide against the Yazidis in Iraq and Syria by April 2013, and by July 2014 at the latest, and thereafter. The publicly available information, however, supports the conclusion that Turkey failed to take all means reasonably available that could have prevented the commission of genocide against the Yazidis up to and including August 2014, and failed to take steps following that date to stop continuing acts of genocide. Turkey had the capacity to influence the situation in neighbouring Iraq and Syria and not least because of its proximity and influence at the border. Turkey, however, failed to take all available measures to:
  - a. police its borders and enforce measures to halt the flow of ISIS fighters through Turkey (including significant numbers of Turkish nationals joining ISIS), as well as the trafficking of *materiel* and resources to ISIS;
  - b. prevent the sale, transfer and enslavement of Yazidi women and children that occurred on its territory; and
  - c. restrict the illicit oil trade, which financially benefitted ISIS and allowed it to fund its commission of prohibited acts.
8. Turkey has continued to fail to take measures to prevent the ongoing genocide of the Yazidis. There are reasonable grounds to conclude that, after Turkey gained control of the relevant regions in northern Syria during Operation Euphrates Shield, and during the operations that followed in northern Syria, and Iraq, Turkey provided assistance to, and/or allowed, Turkish-backed

militants and organised non-state actors (such as the Free Syrian Army and Syrian National Army), and, at the least, Turkey knew that there was a serious risk that they would engage in the commission of prohibited acts of genocide against the Yazidis. Such acts included killings, enslavement, and torture.

### 1.1 *Complicity in genocide – Turkey*

9. With respect to Turkey, the publicly available information supports a *prima facie* case that Turkey was complicit in prohibited acts of genocide committed by ISIS on the basis that there are reasonable grounds to conclude that some acts by Turkey were undertaken knowing that they would aid or assist the commission of prohibited acts by ISIS or that Turkey was wilfully blind to the fact that ISIS would use such aid or assistance to commit prohibited acts.
10. In that respect, the Committee finds:
  - a. There are reasonable grounds to conclude that: (a) ISIS had trafficked Yazidi women and girls across the borders with Turkey; (b) that between 2014 and 2015, Yazidi women and girls in Turkey were forced into marriages, human trafficking, sexual slavery and/or other forms of sexual violence; and (c) Turkey failed to take measures to prevent these acts. Further, there are reasonable grounds to conclude that, from at least June 2014, Turkish officials turned a blind eye to, or deliberately allowed, the trafficking and sale of enslaved Yazidi women and girls in Turkey and did so with knowledge that the persons assisted held the specific intent to commit genocide, and/or were wilfully blind to clear evidence of ISIS' specific intent to destroy the Yazidis, in whole or in part.
  - b. The Turkish armed forces, and/or intelligence services, provided some military training to individuals affiliated with ISIS. The training continued even after August 2014, in spite of widespread reporting that such acts had been committed. Such training of individuals affiliated with ISIS continued to be provided even when Turkish officials knew and/or were wilfully blind to evidence that these individuals would use this training to commit prohibited acts against the Yazidis.
  - c. Turkey, at best, failed to restrict and, at worst, actively promoted the smuggling of oil across its border for subsequent sale that went on to financially benefit ISIS in the lead up to, and after it had committed, prohibited acts of genocide against the Yazidis in Sinjar. This could have enabled ISIS to acquire sufficient resources to commit genocide against the Yazidis. Furthermore, there are grounds to conclude that Turkey deliberately allowed the transfer of fighters, military supplies, and equipment across its border during the years that ISIS were operating from northern Iraq and Syria and that this continued for a number of months after August 2014 up to

as late as July 2015. There are grounds to conclude that Turkish officials - whose conduct is attributable to Turkey - were complicit in genocide by furnishing aid or assistance with knowledge that the principal perpetrators were engaged in genocide and would use that aid or assistance in the commission of genocide.

*1.2 Failure to enact domestic legislation necessary to fulfil obligations under the Convention and failure to punish acts of genocide – Iraq, Syria*

11. Both Iraq and Syria have failed to enact the domestic criminal legislation necessary for them to fulfil their obligations to punish genocide, and, accordingly, are in breach of both the obligation to enact the legislation necessary to give effect to the Convention in domestic law, and the obligation to punish genocide.

*1.3 Failure to punish acts of genocide – Turkey*

12. With respect to Turkey, there are reasonable grounds to conclude that Turkey is in breach of its obligation to punish perpetrators of genocide. Unlike Iraq and Syria, Turkey has enacted the criminal legislation necessary to prosecute and punish perpetrators of genocide. Further, Turkey has implemented a large-scale programme for processing returnees from the Syrian conflict who have been associated with ISIS. There is no evidence, however, of prosecutions of alleged perpetrators of genocide. There is some evidence of failed investigations and failed prosecutions for offences related to the trafficking of enslaved Yazidi women and girls in Gaziantep, Turkey. During those investigations, however, the alleged acts were not charged as genocide but as terrorism-related offences. From the publicly available sources, it appears that, if any perpetrator of the Yazidi genocide has been punished for their actions in the Syrian conflict, it is not for genocide itself but for other illegal acts such as membership of a terrorist organisation, possession of illegal firearms or unlawful border crossing.
13. On the basis of the above findings, the Report highlights the preliminary steps that could be taken at the International Court of Justice (“ICJ”) by a State (“Applicant State”) against another State (“Respondent State”) alleged to be legally responsible for breach of its obligations under the Convention, on the basis of credible evidence in the Report, for the failure to prevent or punish genocide and/or complicity in the genocide of the Yazidis perpetrated by ‘ISIS’ in Iraq and/or Syria.

***B. State Responsibility for Breaches of the Genocide Convention***

14. A State is responsible for its acts and omissions that amount to a failure to comply with the obligations owed under the Convention. Those obligations include:



- a. the obligation not to commit genocide (or being complicit in the acts of other State or non-state actors who commit genocide);
  - b. the obligation to use all means reasonably available to prevent genocide;
  - c. the obligation to punish perpetrators of genocide where it occurs; and
  - d. the obligation to enact legislation giving effect to the provisions of the Convention.
15. The obligation to prevent is particularly important. The obligation stands in equal measure to the obligation to punish perpetrators. It is an important obligation: it requires a State to take measures to prevent the commission of genocide, the instant a State learns, or should have learned, that there is a serious risk of genocide. Therefore, integral to the fulfilment of the obligation to prevent is the assessment of the serious risk of genocide. In this regard, the obligation requires States to implement effective atrocity prevention strategies that address human rights abuses and discrimination against minority groups in times of peace and in times of war. Failing to do so, and to prevent the seeds of genocide to grow in times of peace, will always mean that States will take measures when it is too late: when genocide is already underway.
16. Every State with a capacity to effectively influence the actions of persons likely to commit, or already committing, genocide has an obligation to deploy all means reasonably available to it, to prevent genocide or stop a continuing one. It overlaps with obligations to punish (due to its deterrence effect) and the obligations to prohibit and enact legislation to give effect to the Convention. The obligation to prevent has extraterritorial scope. The obligation is one of conduct (in taking measures) rather than result (in preventing the commission of genocide). It is owed by all States and is part of customary international law (*Bosnia v. Serbia, ICJ judgment, 2007*).

### **C. Scope, Aims and Objectives**

17. On account of jurisdictional limitations, there are no international courts or tribunals before which ISIS, as a non-state actor, may be brought. In addition, and apart from returning foreign fighters, there is currently no international tribunal that has jurisdiction to prosecute individual ISIS fighters for their crimes, in particular, given the lack of jurisdiction of the International Criminal Court over the relevant territories. Prosecution of individual perpetrators for genocide before domestic courts of certain States is possible, provided the existence of appropriate domestic legal frameworks, although this has rarely happened. For example, in Iraq, prosecutions of ISIS fighters have been predominately for terror-related offences. This is an issue that needs to be addressed. Equally, however, it is important to recognise that it is highly likely that ISIS could have been prevented from perpetrating these atrocities if States had fulfilled their obligations to prevent genocide, or not to be complicit in

acts of genocide. Engaging the responsibility of States in respect of the crimes of ISIS is important in closing the current gap in the legal accountability framework, and in ensuring the integrity of the international legal order.

18. The main objective of the Committee is to provide States Parties to the Genocide Convention with the preliminary analysis of the information publicly available that may be used to support a claim before the ICJ. The ongoing case of *Gambia v Myanmar* at the ICJ sets an important precedent. The Committee considers that the experience of this case, together with the extensive evidence the Committee has collected, could and arguably should, serve to stimulate an Applicant State to launch proceedings asserting breach of the obligations under the Genocide Convention by one of the three Respondent States. This would serve four purposes:
  - a. To have the alleged genocide of the Yazidis recognised in a court of law. While there have been several legislative declarations recognising the genocide against the Yazidis, this genocide has only, to date, been recognised in a very small number of domestic criminal cases relating to low-level individual perpetrators. It is, therefore, imperative to legally establish the full scope of the responsibility for this genocide, including that of any Respondent State that is responsible for failing to meet its obligations under the Genocide Convention, with respect to ISIS' genocide of the Yazidis. Such responsibility is incurred, for instance, where States have failed to protect Yazidis, or to stop the inflow of weapons/fighters, or to prevent widespread, and continuing, sexual violence against, and enslavement of, Yazidi women and girls by ISIS.
  - b. To hold any Respondent State legally responsible for its failure to comply with its obligations under the Genocide Convention, thereby underlining, clarifying and reinforcing the obligation of States, which owe legal obligations to each other and the world-at-large, to prevent and/or punish genocide.
  - c. To assist victims or survivors of the genocide by requiring the Respondent States to provide 'just satisfaction' to survivors or victims by way of: remedial actions, reparations, commitments for non-repetition, and steps to make effective in domestic law the 'justice' provisions of the Convention (not least civil and criminal mechanisms which facilitate prosecution of alleged perpetrators and allow for actions for damages) among others, including by way of provisional measures (where applicable).
  - d. To ensure the Respondent State takes steps to prevent an ongoing genocide, given that the Report finds that the genocide *is* ongoing. This will ensure that prohibited acts of genocide against the Yazidis (and/or others) that continue to live in Iraq or Syria do not recur.

19. The Committee wishes to note that Iran, France Saudi Arabia, Gulf Cooperation Council ("GCC") States (Kuwait, Qatar, the UAE, Oman and Bahrain), Russia, and the United Kingdom are the other States that have not made a reservation to the Genocide Convention in respect of which the following allegations were made by NGOs, media outlets, international organisations, and academics:
- a. Saudi Arabia and GCC States (primarily Qatar) are alleged to have materially supported ISIS or its affiliates as an organisation prior to, during or after the alleged genocide in Iraq and Syria – i.e., during the period in which genocide took place *circa* 2014 and continuing thereafter.
  - b. All the above States are alleged to have failed to prevent genocide as and when it was occurring in Iraq and Syria.
  - c. All the above States are alleged to have failed to apprehend or take any action (by way of legislation, policy, or practice) to punish possible perpetrators knowing that they could have been perpetrators of genocidal acts.
20. However, as indicated in the Report, the publicly available information does not provide a sufficient evidential basis to support a finding that there are reasonable grounds to conclude that the above States are in breach of their obligations to prevent genocide, or have been complicit in the Yazidi genocide. It appears that Saudi Arabia has not enacted legislation necessary to give effect to its obligations under the Convention, including the obligation to punish, and that Russia, has demonstrated an unwillingness to take steps to investigate and prosecute alleged members of ISIS in its territory for genocide.

#### **D. Recommendations**

21. The treatment of members of the Yazidi community by Iraq, Syria and Turkey raises substantial and alarming concerns about the grave violation of human rights and *jus cogens* norms, including failures to comply with their obligations under the Genocide Convention. It should be a matter of grave concern to the international community as a whole. It is the responsibility of all States to take all available measures to prevent any grave violations of international law from occurring, to seek to bring any ongoing violations to an end, and to call upon all responsible States to immediately cease any and all alleged practices and policies - violating its obligations and responsibilities - towards the Yazidis. In addition, and as a matter of urgency, responsible States should provide reparations and restitution (so far as is possible). As such, the main recommendations of the Report are as follow below.

## FOR ALL STATES GENERALLY

- a. As a matter of grave urgency, institute steps preparatory to proceedings, and proceedings themselves, against any of the Respondent States before the ICJ to ensure the proper interpretation, application and fulfilment of the obligations under the Genocide Convention in relation to their obligations to prevent and punish genocide, in this case against the Yazidi protected group and ensure provisional measures are obtained to protect the Yazidis in the context of their ongoing genocide.
- b. Take all measures reasonably available, including the use of available offices and legal means, to protect the Yazidis from ongoing and future acts of genocide and prevent further violations of international law.
- c. Identify, document, and preserve all evidence relating to alleged perpetrators and use all available offices and legal means to investigate and prosecute those individuals allegedly responsible for prohibited acts of genocide against the Yazidis.
- d. Condemn the targeted attacks, including airstrikes, against the Yazidis by Turkey, and call upon Turkey to immediately cease such attacks.
- e. Take concrete steps to implement an effective atrocity prevention strategy that includes a continuous assessment of the risk of genocide in times of peace and in times of conflict.
- f. Ensure that atrocity prevention is a core principle of the conduct of international relations.
- g. Take steps to ensure the responsibility of all States whose acts or omissions undermine the integrity of the Convention, and in particular Iraq, Syria and Turkey for the failure to fulfil their obligations under the Convention with respect to the genocide of the Yazidis.
- h. Create and apply Magnitsky-style sanctions on individuals, whether state or non-state actors, where there are reasonable grounds to suspect the person is involved in serious human rights violations against Yazidis in Turkey, Iraq and/or Syria.
- i. Invoke responsible States' international responsibility for alleged violations of peremptory norms of international law, engaging relevant dispute resolution mechanisms under relevant treaties including the Genocide Convention.
- j. Specifically, call upon all responsible States to:
  - i. cease and desist all and any violations of obligations and responsibilities under the relevant treaties and customary international law;

- ii. make effective in domestic law the provisions of the relevant treaties in order to honour obligations to respect, protect and fulfil the obligations and responsibilities thereof;
- iii. investigate - and permit, support, and strengthen independent and impartial investigation by others - all allegations of prohibited acts of genocide; and
- iv. provide 'just satisfaction' to survivors/victims in the form of individual and/or general measures which may, inter alia, include remedial actions, reparations, and commitments for non-repetition.

#### FOR INTERNATIONAL ORGANISATIONS AND THE INTERNATIONAL COMMUNITY

- a. Publicly condemn the responsible States' actions as grave violations of international law and of their obligations to use all means reasonably available to prevent the ongoing genocide against the Yazidis.
- b. Call upon all States to take prompt and effective action in accordance with their obligations under the Genocide Convention to prevent and punish acts of genocide, to not be complicit in genocide in any way, and their general responsibility to act against crimes under international law, including by:
  - i. taking all steps to prevent the commission of prohibited acts of genocide by State organs, agents or officials or non-state actors within their jurisdiction and/or control;
  - ii. condemning all and any forceful operations against Yazidi civilians or civilian infrastructure and calling for the immediate cessation of all military operations against Yazidi defence forces absent strong and cogent evidence indicating an immediate and present risk of attack against their State or their nationals (which to date has been wholly without basis).
- c. Urge all States, and in particular those with a capacity to effectively influence the situation, to cooperate to bring the serious breaches relating to genocide committed by ISIS against the Yazidis to an end.
- d. Urge all States to ensure all victims, survivors, and witnesses of possible violations of international law have immediate access to: psycho-social support, independent legal representation and processes/procedures that will allow full and meaningful remedies and legal redress including compensation, restitution and reparations in accordance with international law.
- e. Call upon Turkey to comply with its obligations under international human rights law ("IHRL"), and to immediately cease the unlawful

targeting of, and indiscriminate attacks against, civilians and civilian objects, and persons *hors de combat*, in northern Iraq and northern Syria.

- f. Call upon Turkey to immediately cease all forceful operations against the Sinjar Resistance Units (“YBS”) - which are ostensibly characterised as ‘counter-terrorism’ operations - that have resulted in the unlawful targeting of civilians and persons *hors de combat*, in violation of international human rights law and, where applicable, international humanitarian law, absent strong and cogent evidence indicating an immediate and present risk of armed attack against the Turkey or its nationals (which to date has been wholly without basis), and that the use of lethal force is necessary and proportionate.
- g. Draw the attention of the UN High Commissioner for Human Rights to this serious situation that warrants immediate attention, and in particular Turkey’s targeting of Kurdish and Yazidi civilians and/or persons *hors de combat* in violation of international human rights law, and Turkey’s obligation to prevent the ongoing genocide against the Yazidis.
- h. Include the situation and the concerns raised herein in the annual reports of Special Rapporteurs to the Human Rights Council and the General Assembly.

#### FOR SYRIA, IRAQ AND TURKEY

- a. Take immediate steps to prevent, by using all means reasonably available, ongoing, and continuing acts of genocide against Yazidis.
- b. Take prompt and effective action in accordance with their obligations under the Genocide Convention to prevent and punish acts of genocide, to not be complicit in genocide in any way and, generally, to comply with their obligations under the Genocide Convention and customary international law, including by:
  - i. taking all steps to prevent the commission of prohibited acts of genocide by State organs, agents or officials or non-state actors within their jurisdiction and/or control;
  - ii. immediately ceasing all and any operations against Yazidi civilians or civilian infrastructure and ceasing all military operations against Yazidi defence forces except where there is a lawful basis for such operations (which to date has been wholly without basis).
- c. Cooperate to bring the serious breaches relating to genocide committed by ISIS, which are continuing, against the Yazidis to an end.

- d. Comply with their obligations under international law, and immediately cease the targeting of Yazidis in Iraq, Turkey, or Syria, either directly or indirectly, except where lawful grounds exist.
- e. Ensure all victims, survivors, and witnesses of possible violations of international law have immediate access to: psycho-social support, independent legal representation and processes/procedures that will allow full and meaningful remedies and legal redress including compensation, restitution and reparations in accordance with international law.
- f. Take all steps to enact and implement domestic criminal legislation necessary to document, investigate and prosecute genocide according to international best practice in line with international human rights law.
- g. Take proactive steps to investigate and prosecute genocide, in particular where victims and/or alleged perpetrators are within jurisdiction and/or control of the State.

## IV. INTRODUCTION

1. This Report concerns prohibited acts committed and condoned by ISIS, on the territory of the Syrian Arab Republic and the Republic of Iraq, against members of the Yazidi<sup>1</sup> protected group, as a distinct ethnic and/or religious group.<sup>2</sup> These prohibited acts, which include killing, causing serious bodily and mental harm, deliberately inflicting conditions of life that are calculated to destroy, imposing measures to restrict births, and forcibly transferring children from the Yazidi group to other groups, are genocidal in character because they are intended, by the perpetrators, to destroy the Yazidi group in whole or in part. They were carried out from at least April 2013 until the present day, and they have been perpetrated in manifest violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide ("Convention").<sup>3</sup>
2. This Report has identified that, on the available evidence to date, the Syrian Arab Republic ("Syria"), the Republic of Iraq ("Iraq") and the Republic of Turkey ("Turkey") bear some legal responsibility, as States Parties to the Genocide Convention, for the genocide (which is continuing) of the Yazidi protected group, on account of their failure to discharge their obligations under the Convention. There is sufficient evidence allowing reasonable grounds to conclude the following.
  - a. Syria failed to discharge an obligation to prevent the commission of prohibited acts of genocide against the Yazidis on Syrian territory, as a continuum from at least April 2013 onwards, leading to the substantial commission of prohibited acts on Iraqi soil by ISIS in and around August 2014. ISIS and its pre-cursors began and developed in Syria and crossed over into Sinjar.<sup>4</sup> As such, Syria bears responsibility for failing to take *any* steps reasonably available to it, including:
    - i. failure to take pre-emptive protection, humanitarian and other assistance to civilians, evacuations of at-risk groups, and/or military assistance that would have prevented commission of prohibited acts.

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<sup>1</sup> Please note that the term 'Yazidi' is the preferred usage in this Report but quotations using other terminology, i.e. Yezidi and Ezidi, are not edited and, therefore, these terms are used interchangeably in the Report.

<sup>2</sup> ISIS appeared under complex circumstances but in its formal form as considered in this Report it can be considered to have emerged in April 2013. ISIS is variously referred to as Islamic State in Iraq and the Levant ("ISIL"), the Islamic State ("ISIS" or "IS") and "Daesh". The term ISIS is the preferred usage in the Report but quotations using other terminology are not edited and, therefore, these terms are used interchangeably in the Report. Please refer to [Section VI on Findings of Genocide - 'ISIS' incursion from Syria into Iraq - Timeline](#) for a brief evolution of ISIS.

<sup>3</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 1948, 78 UNTS 277 (entered into force 12 January 1951).

<sup>4</sup> Please refer to [Section VI on Findings of Genocide - 'ISIS' incursion from Syria into Iraq - Timeline](#) for a brief evolution of ISIS.



- ii. failure to identify, investigate and/or punish any perpetrators of the Yazidi Genocide, despite repeated pleas from the international community, following the commission of prohibited acts of genocide by perpetrators predominantly belonging to or affiliated with ISIS.
    - iii. failure - notwithstanding resource constraints and up to and including the present day - to give effect to the obligation to enact relevant domestic laws, practices, and policies to ensure compliance with the Convention.
  - b. Iraq failed to discharge an obligation to prevent genocide of the Yazidis on Iraqi soil notwithstanding significant knowledge, since April 2013, of the serious risk to Yazidis because of prohibited acts that occurred to them in Syria and Iraq prior to the commission of the majority of prohibited acts in August 2014. As such, Iraq bears responsibility for failing to take *any* steps, reasonably available to it, including:
    - i. failure to commission evacuations, provide military assistance or pre-emptive protection that would have prevented commission of prohibited acts.
    - ii. failure to punish perpetrators of the Yazidi Genocide, despite repeated pleas from the international community, following the commission of prohibited acts of genocide by perpetrators predominantly belonging to or affiliated with ISIS.
    - iii. failure - notwithstanding continued engagement with the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIS ("UNITAD") in the investigation of crimes committed by ISIS against the Yazidis in Iraq, to the present day - to give effect to the obligation to enact relevant domestic laws, practices and policies to ensure compliance with the Convention.
  - c. Turkey failed to discharge an obligation to prevent genocide of the Yazidis in Iraq and Syria, having known of the serious risk to them since April 2013, *inter alia*, by:
    - i. failure to stop (and/or allowing) ISIS fighters conducting business and operations from within its territory at a time when Turkey would have known of the serious risk of genocide or, indeed, after ISIS fighters had begun to commit prohibited acts of genocide against the Yazidis.
    - ii. failure to stop (and/or allowing) ISIS fighters to freely cross the Turkish border and allowing the supply of oil, *materiel* and resources to ISIS within Iraq and Syria at the time where prohibited acts were occurring, thereby facilitating the commission of such acts.

- iii. failure to take action to curtail the trade in its territory of women and girls taken into slavery by ISIS as well as investigate or prosecute perpetrators thereof.
3. Further, there are reasonable grounds to conclude that Turkey was also complicit in the commission of genocide (which is ongoing) by allowing fighters to cross its borders to join ISIS and allowing this group to smuggle oil, *materiel*, and other resources to fund its operations and commit prohibited acts against the Yazidis, and allowing ISIS to trade Yazidi women and girls as slaves in its territory, in the knowledge that permitting these acts would contribute to the commission of acts of genocide by ISIS. Moreover, Turkey's conduct after July 2015 and continuing today, in particular its airstrikes in the regions of Iraq and Syria where there were large numbers of Yazidis, further compounded the harm that the Yazidi victims suffered, preventing the community's regrowth and recovery, and allowing the continuation of prohibited acts against the Yazidis, which have contributed to the continued physical destruction of this protected group. Furthermore, while Turkey has prosecuted some ISIS fighters on terrorism-related charges, it has failed to identify, investigate and/or punish any perpetrators of the Yazidi Genocide under Article 76 of the (domestic) Turkish Penal Code, which criminalises genocide.
4. The Committee is particularly cognisant of the important role of third States as guardians of the Genocide Convention, especially in the absence of any international criminal tribunal with jurisdiction over individuals associated with the acts of genocide described in this Report. For this reason, and to assist any third State in the exercise of its grave responsibility, this Report provides a more detailed account of the relevant facts and their context than might otherwise have been necessary.
5. Some of the facts in this Report have already been extensively documented by independent investigative efforts conducted under the auspices of the United Nations and corroborated by international human rights organisations and other credible sources. This Report has utilised all publicly available evidence to substantiate its analysis, identifying relevant methodology behind the evidence sources, to make relevant factual findings.<sup>5</sup> This publicly available evidence is only a fraction of the evidence available privately and confidentially as collected, catalogued and assessed by non-governmental and international organisations which, among others, include: UNITAD, the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 ("IIIM"), and the Independent International Commission of Inquiry on the Syrian Arab Republic ("Commission of Inquiry").<sup>6</sup>

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<sup>5</sup> Please see [Methodology Annex](#).

<sup>6</sup> The evidence held in private could be made available to the Committee should it be instructed by a relevant State to prepare a case before a competent international body.

6. This Report establishes that, from at least April 2013 and certainly May 2014, perpetrators belonging to, or affiliated with, ISIS<sup>7</sup> carried out a whole range of prohibited acts against the Yazidis, as a protected religious group, as such. The prohibited acts included:
- a. commission of killings of Yazidi men of fighting age and young boys, including those who refused to convert;
  - b. commission of acts of serious bodily and mental harm against detained Yazidi men and boys and, in particular, women and girls. These acts of harm included widespread and extensive acts of sexual violence, including, but not limited to, sexual slavery, forced marriage, enforced pregnancy, rape, and sexual assault;
  - c. deliberate creation of conditions of life calculated to destroy by detention or siege or by placing into bondage, slavery or indentured labour women and girls and forcing, at the pain of death, men and young boys to convert;
  - d. transfer of children from the Yazidi group into ISIS families through forced conversion and/or assimilation or through sale. Young boys were frequently forced to convert and fight on the frontlines with ISIS perpetrators. Young girls were either forcibly married and then raped and/or placed into sexual slavery or sold for the same purpose; and
  - e. imposition of measures intended to restrict births through the acts described in b. to d. above. These acts included: the commission of rape so that Yazidi women would give birth to “their Masters,” i.e., young children indoctrinated into ISIS ideology, enforced pregnancy, sale into bondage or slavery; forced separation of Yazidi men and boys from Yazidi women and girls; and forcible marriage of women and girls to non-Yazidi men and boys.
7. Multiple investigations (including under the auspices of the United Nations) have underscored unequivocally the genocidal or “specific” intent of these crimes.<sup>8</sup>
8. Based on its meticulous collection and review of the evidence, UNITAD made a finding of genocide of the Yazidis, after issuing its Sixth Report to the UN Security Council (“UNSC”) on 3 May 2021, when its then Head, Karim Khan QC, stated that: “I am able to announce that based upon independent and impartial investigations, complying with international standards and UN best

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<sup>7</sup> Please refer to [Section VI on Findings of Genocide - ‘ISIS’ incursion from Syria into Iraq - Timeline](#) for a brief evolution of ISIS.

<sup>8</sup> The *mens rea* required for genocide is a specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. The term “destroy” is limited to the physical or biological destruction of the group. ICTY, *Prosecutor v. Radislav Krstić*, Appeal Judgment, Case No. IT-98-33-A, Appeals Chamber, 19 April 2004, para. 25.

practice, there is clear and convincing evidence that the crimes against the Yazidi people clearly constituted genocide.”<sup>9</sup>

9. The UN Human Rights Council, supported by the Commission of Inquiry, after extensive analysis of evidence, found in 2016 that “ISIS has committed the crime of genocide as well as multiple crimes against humanity and war crimes against the Yazidis”.<sup>10</sup>
10. The UN Commission of Inquiry Report 2016 (“Commission of Inquiry Report 2016”) found that “ISIS sought to destroy the Yazidis” through all manner of prohibited acts including killings, sexual slavery, enslavement, torture, measures to restrict births through forced separation and conversion and the erasing of the Yazidi identity.”<sup>11</sup> The finding on specific intent was unambiguous: “public statements and conduct of ISIS and its fighters clearly demonstrate that ISIS intended to destroy the Yazidis of Sinjar, composing the majority of the world’s Yazidi population, in whole or in part.”<sup>12</sup> The report concluded, ominously, that the “genocide of the Yazidis is on-going.” At the time of publication on 15 June 2016, its report found that thousands of women were still being held captive in Syria where they are subjected, as the report identified “to almost unimaginable horrors”. To date, many thousands of Yazidis remain missing (with estimates of women missing ranging upwards of 3000).<sup>13</sup>
11. On 3 August 2017, the Commission of Inquiry reiterated that “genocide is on-going and remains largely unaddressed, despite the obligation of States Party to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 to prevent and to punish the crime”.<sup>14</sup> This declaration has been restated on 3 August every year since.
12. The Office of the United Nations High Commissioner for Human Rights’ United Nations Assistance Mission for Iraq (“UNAMI”) issued a report in 2016 (“UNAMI Report 2016”) finding that evidence from witnesses and survivors of mass killings of the Yazidis, along with other acts, show that prohibited acts “appear to have been committed as part of a systematic pattern of similar conduct carried out with the intent to destroy the Yazidi as a group.”<sup>15</sup> The

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<sup>9</sup> UN News, *ISIL Crimes Against Yazidis Constitute Genocide, UN Investigation Team Finds*, 10 May 2021, available at <https://news.un.org/en/story/2021/05/1091662> (accessed 27 June 2021). See also, UNITAD, *Sixth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant, S/2021/419*, 3 May 2021.

<sup>10</sup> Independent International Commission of Inquiry on the Syrian Arab Republic (“Commission of Inquiry”), *“They Came to Destroy”: ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016 at Summary.

<sup>11</sup> *Ibid.*, at Summary.

<sup>12</sup> *Ibid.*

<sup>13</sup> Commission of Inquiry, *Commission of Inquiry Note on the Situation of Yazidi IDPs in the Kurdistan Region of Iraq*, May 2019, available at <https://www.refworld.org/pdfid/5cd156657.pdf> (accessed 2 January 2021).

<sup>14</sup> Commission of Inquiry, *Commission of Inquiry on Syria Calls for Justice on the Occasion of the Third Anniversary of ISIL’s Attack on the Yazidis*, Statement, 2 August 2017.

<sup>15</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 12.

report concluded by finding that “[...] ISIL also expressed its intention in relation to either annihilate the Yazidi, either by killing them or forcibly converting them. In many cases, the intent to destroy the Yazidi as a group can be inferred not only from the acts themselves and their circumstances, but also from statements and positions openly taken by ISIL.”<sup>16</sup>

13. In March 2016, then US Secretary of State, Senator John Kerry and his office noted that, on the basis of a review of the information gathered by the US State Department, by the intelligence community, and by outside groups, he had reached the view that “Daesh is genocidal by self-proclamation, by ideology, and by actions - in what it says, what it believes, and what it does.”<sup>17</sup> That determination in 2016 was presaged by then US President Barack Obama, who had warned of genocide of the Yazidis on 7 August 2014 when he authorised airstrikes against ISIS who were boasting of the killing and/or ethnic cleansing of the Yazidis.<sup>18</sup>
14. In 2015, after a detailed fact-finding mission in Iraq which included interviews with over 100 victims and witnesses,<sup>19</sup> the UN Human Rights Council issued a report which found that evidence “pointed to the intent of ISIL to destroy the Yazidi as a group when perpetrating those acts and to the existence of a manifest pattern of attacks against that community, whose identity is based on its religious beliefs. If confirmed, such conduct may amount to genocide”.<sup>20</sup> As identified above, confirmations from many sources have followed. The report also identified “a manifest pattern of conduct aimed at the destruction of the

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<sup>16</sup> *Ibid.*

<sup>17</sup> US Secretary of State J. Kerry, “Remarks on Daesh and Genocide”, Press Briefing Room, Washington DC, 17 March 2016, available at <https://2009-2017.state.gov/secretary/remarks/2016/03/254782.htm> (accessed 1 June 2016); See also, V. D. S. Saeed et al., Calling ISIL Atrocities Against the Yazidis by their Rightful Name: Do they Constitute the Crime of Genocide?, *Human Rights Law Review*, 17 (2), 2017, 261-283, pp 261-283.

<sup>18</sup> President Obama said this: “As ISIL has marched across Iraq it has waged a ruthless campaign against innocent Iraqis. And these terrorists have been especially barbaric towards religious minorities, including Christians and Yazidis, a small and ancient religious sect. Countless Iraqis have been displaced and chilling reports describe ISIL militants rounding up families, conducting mass executions, and enslaving Yazidi women. In recent days, Yazidi women, men, and children from the area of Sinjar have fled for their lives. And thousands, perhaps tens of thousands, are now hiding high up in the mountain with little but the clothes on their backs. They’re without food. They’re without water. People are starving and children are dying of thirst. Meanwhile, ISIL forces called for the “systematic destruction of the entire Yazidi people below which would constitute genocide...”: *Dabiq*, “A Call to Hijrah”, Al-Hayat Media Center [An Islamic State production], Issue 3, September 2014, 29, available at <https://www.ieproject.org/projects/dabiq3.pdf> (accessed 10 April 2021).

<sup>19</sup> UN Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq in the light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, A/HRC/28/18, 13 March 2015, (“UN Human Rights Council Report 2015”), paras 9-11. In its methodology section, the report states “[t]he mission reviewed all available information, including testimony from witnesses and victims and documentation from the Government of Iraq, Member States, and relevant United Nations and non-governmental organisations. It followed up on reports of violations of international human rights and humanitarian law in Iraq to verify their veracity and establish further facts. The mission conducted investigations in Chamchamal, Dohuk, Erbil, Kalar, Suleimaniyah, and Zakho and camps for internally displaced persons (IDPs) in these areas”.

<sup>20</sup> UN Human Rights Council Report 2015.

[Yazidis]”;<sup>21</sup> and concluded that “[m]embers of ISIL may have perpetrated genocide against the Yazidi community by killing, causing serious bodily or mental harm, and forcibly transferring members of the group, including children.”<sup>22</sup>

15. The Commission of Inquiry, as early as November 2014, in its report (“Commission of Inquiry Report November 2014”) concluded that “[t]he nature of [ISIS’] attacks on the Yazidis, taken together with ISIS’ public statements over social media, suggests a denial of this religious group’s right to exist.”<sup>23</sup> It noted that the “evidence shows a manifest pattern of violent acts directed against certain groups with the intent to curtail and control their presence within ISIS areas.”<sup>24</sup> The report also clarified that “sexually enslaving” Yazidi women and girls and/or forcing them to bear children “prevents another generation of Yazidis from being born”<sup>25</sup> and that these practices “affect the ethnic and religious composition of the group.”<sup>26</sup>
16. The UNAMI Report 2016 in its conclusions specifically referenced its previous public reports and, in particular, its second 2014 report on the protection of civilians (“UNAMI POC Report No. 2 of 2014”), which found sufficient contemporaneous evidence (considering that the majority of the prohibited acts by ISIS began on 3 August 2014) that in “targeting diverse ethnic and religious communities, these appear to have been deliberately and systematically perpetrated with the intention of suppressing these communities or cleansing them permanently from areas under ISIL control, or in some instances of destroying some communities.”<sup>27</sup>
17. On 18 June 2014, the Special Advisers to the Secretary-General on the Prevention of Genocide, Adama Dieng, and on the Responsibility to Protect, Jennifer Welsh, expressed deep concern at the situation of the Yazidis and the risk to them from ISIS and called on all States to comply with obligations under international law.<sup>28</sup>
18. UNAMI was specifically mandated by the UNSC to promote the protection of human rights and strengthen the rule of law in Iraq.<sup>29</sup> Even before ISIS started

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<sup>21</sup> UN Human Rights Council Report 2015, para. 78.

<sup>22</sup> *Ibid.*

<sup>23</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27/CRP.3, 19 November 2014, para. 57.

<sup>24</sup> *Ibid.*, para. 24.

<sup>25</sup> *Ibid.*, para. 55.

<sup>26</sup> *Ibid.*, para. 57.

<sup>27</sup> UNAMI, *Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July - 10 September 2014*, 26 September 2014, (“UNAMI POC Report No. 2 of 2014”), p. 5. See also, p. 11 and the Summary.

<sup>28</sup> United Nations, Statement by Adama Dieng, Special Adviser to the Secretary-General on the Prevention of Genocide, and Jennifer Welsh, Special Adviser to the Secretary-General on the Responsibility to Protect, on the situation in Iraq, 14 June 2014.

<sup>29</sup> In Resolution 1770 of 10 August 2006, the United Nations Security Council, at paragraph 2(c) specifically requested UNAMI to “promote the protection of human rights and judicial and legal reform in order to strengthen the rule of law in Iraq;...” UNAMI mandate was extended in the same terms for 2014/2015 by Security Council Resolution 2169 of 30 July 2014. In accordance with its mandate,

carrying out the majority of prohibited acts against the Yazidis in early 2014, UNAMI had put on notice all States (and specifically Iraq)<sup>30</sup> and the bodies of the United Nations, of the very serious risks to the Yazidis from ISIS taking over parts of Iraq after its recent “successes” and documented crimes in Syria, in its first report in 2014 on the protection of civilians (“UNAMI POC Report No. 1 of 2014”).<sup>31</sup> The report specifically outlined that international law binding on the Government of Iraq required it to protect civilians from international crimes and to prevent them through appropriate means and in a prescient warning stated:

*imposition of misinterpretations of Shari’a law (particularly takfiri) by ISIL and associated armed groups within areas under their control does not bode well for the respect and protection of the rights of members of minority groups within those areas. Many of the minority groups could face dire consequences given ISIL’s past attitude and behaviour concerning members of non-Sunni religious groups or those not conforming to their strict interpretation of Islam.*<sup>32</sup>

That warning was not heeded, and by December 2014, in its third report in succession on the protection of civilians (“UNAMI POC Report No. 3 of 2014”), had warned of genocide: “UNAMI/OHCHR notes that many of the violations and abuses perpetrated by ISIL may amount to war crimes, crimes against humanity and possibly genocide.”<sup>33</sup> In respect of the Yazidis in particular, it stated:

*ISIL[’s] targeting of these communities appears to be part of a systematic policy aimed at destroying, suppressing or expelling these communities permanently from areas under its control.*

Already in March 2014, the Commission of Inquiry had warned that ISIS was committing crimes against humanity in the northern Syrian provinces of Raqqqa.<sup>34</sup> A UNAMI Human Rights Report concerning the period from 1 January - 30 June 2014 states that the Yazidis were being directly targeted by ISIS in Iraq and that no protection was offered to them as the “draft law on the Protection of Religious and Ethnic Minority Group Rights remained stalled

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UNAMI Human Rights Office conducted a range of activities aimed at promoting the protection of civilians in armed conflict, including undertaking independent and impartial monitoring of, and reporting on, armed violence and its impact on civilians and violations of international humanitarian law and international human rights law.

<sup>30</sup> UNAMI, *Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq: 5 June - 5 July 2014*, 18 July 2014, (“UNAMI POC Report No. 1 of 2014”), pp 6-7, 21-22.

<sup>31</sup> UNAMI POC Report No. 1 of 2014.

<sup>32</sup> UNAMI POC Report No. 1 of 2014, p. 18.

<sup>33</sup> UNAMI, *Report on the Protection of Civilians in Armed Conflict in Iraq: 11 September - 10 December 2014*, 15 December 2014, (“UNAMI POC Report No. 3 of 2014”).

<sup>34</sup> UNAMI POC Report No. 1 of 2014, p. 9.

before the Committee for Minority Rights of the Council of Representatives.”<sup>35</sup>  
 The Report provided three separate incidents of killings of Yazidis in early May 2014.<sup>36</sup>

19. These warnings and notifications of risks were not hypothetical or isolated incidents, but rather pointed towards ISIS’s genocidal policies against the Yazidis. A whole series of UNAMI Human Rights Reports, in its pre-2014 catalogue, documented meticulously the continuous commission of prohibited acts, such as killings, including from ISIS and/or affiliated groups that the Yazidis, among other minorities, had to directly contend with, including being ignored or discriminated against by the Iraqi and/or regional governments.<sup>37</sup> These reports often contained detailed recommendations to the State on protecting minorities, which were not heeded.<sup>38</sup>
20. A series of reports emanating from the Commission of Inquiry in 2013 addressed to members of the General Assembly had also indicated the commission of prohibited acts by ISIS in Syria, including discriminatory targeting of Kurds, Christians and those of other ethnicities and urging Member States to protect civilians.<sup>39</sup> For instance,
  - a. in July 2013, during a raid by ISIS, Jabhat Al-Nusra, the Islamic Front and Free Syrian Army (“FSA”) battalions, fighters killed a Kurdish Yazidi man in Al-Asadia who refused to convert to Islam;<sup>40</sup>

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<sup>35</sup> UNAMI, *Report on Human Rights in Iraq: 1 January - 30 June 2014*, August 2014, p. iii; See also, reports available at <https://www.ohchr.org/en/countries/menaregion/pages/unamihreports.aspx> (accessed 27 June 2021).

<sup>36</sup> UNAMI, *Report on Human Rights in Iraq: 1 January - 30 June 2014*, August 2014, p. 19.

<sup>37</sup> The first of these reports is: UNAMI, *Report on Human Rights in Iraq: July - December 2013*, June 2014 “UNAMI Report 2014”. Reports such as one from 2009 stated this: “Minorities, however, continued to report frequent attacks on their members, some of which appear to have been perpetrated by state or political party organs with an explicit aim to influence their political affiliations and votes. Representatives of the Yezidi, a group that inhabit the mountainous regions of northern Iraq, have informed UNAMI that their population has been reduced to 300,000 from more than 500,000 prior to March 2003. During the reporting period, sporadic attacks occurred against Yezidi villages in the area of Sinjar, west of Mosul by the Peshmerga, the armed forces of the KRG.” UNAMI, *Report on Human Rights in Iraq: 1 January - 30 June 2009*, 14 December 2009, p. 15.

<sup>38</sup> See for instance, UNAMI, *Report on Human Rights in Iraq: July - December 2013*, June 2014, pp vii, 23.

<sup>39</sup> See reports available at <https://www.ohchr.org/en/hrbodies/hrc/iicisyrria/pages/documentation.aspx> (accessed 27 June 2021).

<sup>40</sup> Commission of Inquiry, *7th Report of the Commission of Inquiry on the Syrian Arab Republic*, A/HRC/25/65, 12 February 2014 (published 5 March 2014). Since the beginning of the Commission of Inquiry mandate there has been a complex and shifting set of allegiances between extreme “Islamic” armed groups and many were part of or were affiliated to what morphed formally into ISIS. As to Jabhat al-Nusra, which emerged in January 2012, the Commission of Inquiry noted: “[...] Jabhat Fatah al-Sham undertook certain major operations in concert with some armed groups, despite ideological or political divergences. Notwithstanding these operational tactics and its change of name from “Jabhat al-Nusra” in July 2016, the Commission continues to regard Jabhat Fatah al-Sham as a terrorist entity as designated by Security Council resolution 2170 (2014). After the Astana talks, the terrorist group united with a number of extremist factions under the umbrella coalition of Hay’et Tahrir al Sham (HTS), thus severing its links with several armed groups with whom it used to cooperate.” UN Human Rights Council, *Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016 - 28 February 2017*, A/HRC/34/CRP.3, 10 March 2017, p. 17. Similar to ISIS, Jabhat Fatah al-Sham and its umbrella, Hay’at Tahrir al-Sham (HTS), strictly interpret tenets of



- b. in August 2013, the Yazidi villages of Al-Asadia and Cava near Ras al-Ain, and several others in the area of Afrin, were attacked by Jabhat al-Nusra and ISIS;<sup>41</sup>
  - c. in December 2013, Yazidis were fleeing from villages between the Turkish and Syrian border in Al-Hasakah Governate.<sup>42</sup> Then Al-Qaeda-linked groups and pre-cursors to ISIS, Jabhat al-Nusra and the Islamic State of Iraq (“ISI”)<sup>43</sup>, were targeting the Yazidis for killings as infidels.
21. ISIS, which was later to become independent of Al-Qaeda, by late 2013 and early 2014, was itself publicly publishing and distributing its genocidal policies against the Yazidis, by issuing videos, edicts, and publications of the commission of prohibited acts against Yazidis and the justifications for their destruction.<sup>44</sup> This was again communicated to UN Member States.
22. The UNHCR May 2012 *Eligibility Guidelines*, relied upon by all State border agencies, noted that groups such as ISI were specifically targeting Yazidis and minorities such as them “faced extinction” at their hands.<sup>45</sup> The April 2009 *Eligibility Guidelines* noted that the Yazidis were being targeted repeatedly for prohibited acts since at least 2003 in Iraq and Syria<sup>46</sup> by Islamic extremists.<sup>47</sup> Even as early as August 2007, the UNHCR *Eligibility Guidelines* referred to 215 Yazidis having been killed since the 2003 US invasion of Iraq, and that most of

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Islamic law (shari’a) in a manner which systematically discriminates against women and girls, subjugating their status in both the public and private spheres. They have also systematically carried out prohibited acts against minority groups in Syria although that is beyond the scope of this Report. See also, Commission of Inquiry, “I Lost My Dignity”: *Sexual and Gender-Based Violence in the Syrian Arab Republic*, A/HRC/37/CRP.3, 8 March 2018, p. 19 / paras 88-89.

- <sup>41</sup> A. Glioti, Yazidis Benefit from Kurdish Gains In Northeast Syria, *Al Monitor*, 18 October 2013, available at <https://www.al-monitor.com/originals/2013/10/syria-yazidi-minorities-kurds.html> (accessed 16 June 2021).
- <sup>42</sup> J. Wood, The Syrian Refugees Who Know They Can’t Go Home, *Al Jazeera America*, 19 December 2013 available at <http://america.aljazeera.com/articles/2013/12/19/the-syrian-refugeeswhoknowtheycantgohome.html> (accessed 16 June 2021).
- <sup>43</sup> Please refer to Section VI on Findings of Genocide - ‘ISIS’ incursion from Syria into Iraq - Timeline for a brief evolution of ISIS.
- <sup>44</sup> See also the substantive section of the Report relating to Specific Intent and the Country Reports of Iraq and Syria.
- <sup>45</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, available at <https://www.refworld.org/docid/4fc77d522.html> (accessed 30 December 2021).
- <sup>46</sup> The UNHCR Syria reports referred to minorities being targeted on religious grounds generally by sectarian groups including ISIS and ISIS precursors. See, for instance, UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update II*, 22 October 2013, available at: <https://www.refworld.org/docid/5265184f4.html> (accessed 30 December 2021); UN High Commissioner for Refugees (UNHCR), *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III*, 27 October 2014, available at <https://www.refworld.org/docid/544e446d4.html> (accessed 30 December 2021).
- <sup>47</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, available at <https://www.refworld.org/docid/49f569cf2.html> (accessed 30 December 2021), p. 171.

the killings “were perpetuated on religious grounds as fundamental and Islamist groups see Yazidis as infidels who either have to convert or be killed.”<sup>48</sup>

23. Any suggestion that States such as Syria, Iraq, and Turkey did not know, or could not have known, of the serious risk of genocide of the Yazidis, at least from a date as late as April 2013, cannot be properly countenanced, as evidenced in this Report. Nevertheless, and in spite of such knowledge, these States failed to take all measures reasonably available to them to prevent genocide and/or to legislate for the prosecution of, and/or indeed prosecute, known perpetrators of the genocide in their territory. Moreover, as this Report demonstrates, one State - Turkey - has been complicit in the commission of the genocide of the Yazidis at the hands of ISIS.
24. The Committee, noting the aforementioned, urges that third States, mindful of the *jus cogens* character of the prohibition of genocide and the *erga omnes* and *erga omnes partes* character of the obligations that are owed under the Genocide Convention, should institute proceedings - individual and/or collectively - to establish Syria, Iraq and Turkey’s responsibility for violations of the Genocide Convention, to hold them accountable under international law for failure to comply with their obligations under the Convention, as a result of which genocide against the Yazidi group occurred. It is for this reason that third States should seriously consider recourse to the ICJ to ensure the fullest possible protection for those who remain at grave risk from ongoing acts of genocide.

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<sup>48</sup> United Nations High Commissioner for Refugees, UNHCHR’s Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, August 2007, p. 80, <https://www.refworld.org/pdfid/46deb05557.pdf> (accessed 5 November 2021).

## V. JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

1. It is possible that steps could be taken at the ICJ by a State (“Applicant State”) against another State (“Respondent State”) alleged to be legally responsible, on the basis of credible evidence documented in this Report, for complicity in and/or the failure to prevent or punish the genocide of the Yazidis perpetrated by ISIS in Iraq and/or Syria.
2. A Respondent State would be responsible for its own acts and omissions that amount to a failure to comply with the broad duties that States owe under the Convention. Those duties include the following:
  - a. not committing genocide (and/or being complicit in the acts of other State or non-state actors who commit genocide);
  - b. using all means reasonably available to prevent genocide;
  - c. punishing perpetrators of genocide where it occurs; and
  - d. enacting legislation giving effect to the provisions of the Convention.
3. Article IX of the Convention permits any State Party (that has no reservation on Article IX) to bring another State Party before the ICJ to face allegations of failure by that State Party to apply, interpret or fulfil the terms of the Convention.
4. Only States may bring proceedings before the ICJ. Two or more States may make a joint application to institute proceedings or may make separate applications which may be joined together by the ICJ. Once proceedings have been instituted, other States Parties may also join proceedings as Interveners.
5. An application to the ICJ may be brought as soon as there is “a dispute” between the parties. A dispute between States exists where they hold clearly opposite views concerning the question of the performance or non-performance of certain obligations under international law. The Applicant State can “trigger” a dispute by making representations, through a simple *note verbale*, about why the other State has failed to apply, interpret, or fulfil any of their obligations under the Convention. The Applicant State may do more to demonstrate it has taken steps to ensure that States, and in particular the State concerned, have fulfilled their responsibilities, such as in multilateral settings, including at the UN General Assembly/Human Rights Council/Security Council, Council of Europe, Organization for Security and Co-operation in Europe and so forth. The Applicant State may ask the State to take all necessary actions (as set out in the Executive Summary) to comply with its obligations. Failure to respond within a specified time frame, or to provide any response, to the Applicant State’s claims would trigger a formal dispute.<sup>49</sup>
6. Once an application is made, then a request may be made for provisional measures requiring the Respondent State to take all available measures to prevent the continuing genocide. Unless discontinued, proceedings are concluded by binding judgments with recourse to the UNSC for enforcement.

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<sup>49</sup> ICJ, *The Gambia v Myanmar*, Request for the Indication of Provisional Measures, Order, 23 January 2020, para. 28.

## VI. FINDINGS ON GENOCIDE

### A. Background

1. The facts of the Yazidi Genocide are extensively documented in reports of the Commission of Inquiry, the Human Rights Council, the Office of the High Commissioner for Human Rights (“OHCHR”), UNAMI, as well as NGO and media reports. These reports, many of which were issued contemporaneously with the commission of prohibited acts, establish that the Yazidis, an ethnic and religious minority group, have been subjected to decades of discrimination in Iraq, and neighbouring Syria as well as in Turkey.
2. Most recently, since 2003, the Yazidis were declared as “impure” by extremist groups in and around Mosul, subjected to death threats,<sup>50</sup> and were increasingly targeted, often with impunity.<sup>51</sup> The long history of discrimination against the Yazidis, and the neglect of the economic development in the Ninewa Governorate, where the majority of the Yazidi community in Iraq reside, by the Federal Government, created an environment conducive to their persecution and genocide.<sup>52</sup>
3. The Yazidis in Syria, similarly, have faced systematic persecution under successive governments, especially at the hands of the Ba’ath party, despite being present in Syria for centuries.<sup>53</sup> This persecution significantly enabled and assisted the neglect they suffered at the hands of the Syrian Government, the risk to which they were put at the hands of ISIS and the fate they ultimately suffered in terms of the commission of the prohibited acts of genocide.

#### 1. ISIS’ Incursion from Syria into Iraq – Timeline

4. ISIS emerged from the remnants of Al-Qaeda in Iraq (“AQI”), an off-shoot of Al-Qaeda founded in 2004 by Abu Musab al Zarqawi following the US-led invasion of Iraq.<sup>54</sup> After Zarqawi was killed in a US airstrike in 2006, Abu Ayyub

<sup>50</sup> P. Taneja, *Assimilation, Exodus, Eradication: Iraq’s Minority Communities since 2003*, *Minority Rights Group International*, 2007, p. 13, available at <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-280-assimilation-exodus-eradication-iraqs-minority-communities-since-2003.pdf> (accessed 17 April 2021).

<sup>51</sup> UNHRC, *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, p. 176, available at <https://www.refworld.org/docid/49f569cf2.html> (accessed 10 April 2021).

<sup>52</sup> UN, *Framework Analysis for Atrocity Crimes: A Tool For Prevention*, 2014, Risk Factor 9.

<sup>53</sup> Yazidi Council in Syria, *The Program*, 10 March 2012, available at [http://ezidenrat.de/?page\\_id=196](http://ezidenrat.de/?page_id=196) (accessed 17 April 2021). See also, Democracy, 19 November 2013, available at <http://www.dimoqrati.info/?p=7938> (accessed 17 April 2021); Aranews, *The Yazidis in Syria*, 16 June 2015, available at <http://aranews.org/06/2015/الهج-الى-الوجود-الى-الهج> (accessed 17 April 2021 but no longer available).

<sup>54</sup> A. Y. Zelin, *Al-Qaeda in Syria: A Closer Look at ISIS (Part I)*, *The Washington Institute for Near East Policy*, 10 September 2013, available at <https://www.washingtoninstitute.org/policy-analysis/al-qaeda-syria-closer-look-isis-part-i> (accessed 5 April 2022); C. Glenn et. al., *Timeline: the Rise, Spread, and Fall of the Islamic State*, 28 October 2019, *Wilson Center*, available at <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state> (accessed 5 April 2022).

al-Masri took his place and announced the creation of the Islamic State in Iraq ("ISI") in the same year with Abu Omar al-Baghdadi as its new leader. In April 2013, Abu Bakr al-Baghdadi, successor to Abu Omar al-Baghdadi, moved to Syria and declared the creation of the Islamic State in Iraq and the Levant ("ISIL") with the intention of merging ISI with Al-Qaeda-backed militant group in Syria, Jabhat al-Nusra (Nusra Front), which emerged at the onset of the Syrian Civil War in 2011. Jabhat al-Nusra's then leader, Abu Muhammad al-Jawlani, rejected the absorption and declared allegiance to Al-Qaeda. In February 2014, Al-Qaeda officially renounced ties with ISIL which then became known as ISIS, the Islamic State in Iraq and Syria.<sup>55</sup>

5. At the beginning of the civil war in 2012, Syrian Government forces substantially withdrew their presence from the north-east region of Syria.<sup>56</sup> This was done in coordination with Kurdish forces that were operating and controlling large parts of the region. Syrian Government forces did retain a presence in the region but not a sufficient presence to remain in control and enforce security across the whole region, leaving a security and power vacuum.<sup>57</sup>
6. After withdrawal of Syrian Government forces from the Kurdish regions, the Kurds established a self-rule administration and established cantons based on the principle of local self-government. These Autonomous Regions are envisaged to be a part of a future decentralized federal governance structure in Syria.<sup>58</sup>
7. The porous nature of the Syria-Iraq border was already considered by some to be a priority issue in 2009 as the United States started shifting efforts in Iraq from improving the country's internal security environment to stop the cross-border flow of foreign fighters, *materiel* and contraband from Iraq's neighbours.<sup>59</sup>
8. The UNHCR, including in its authoritative *Eligibility Guidelines for Assessing International Protection*, provided in-depth information on the situation of religious and ethnic minorities, including Christians, Yazidis, Turkmen, Shabak,

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<sup>55</sup> *Ibid.* J. Cafarella, Jabhat Al-Nusra in Syria, Institute for the Study of War, December 2014, available at <https://understandingwar.org/report/jabhat-al-nusra-syria> (accessed 5 April 2022); D. L. Byman and J. R. Williams, ISIS vs. Al Qaeda: Jihadism's global civil war, 24 February 2015, available at <https://www.brookings.edu/articles/isis-vs-al-qaeda-jihadisms-global-civil-war/> (accessed 5 May 2022).

<sup>56</sup> See Section VIII A. Syria Country Report – Syria's Willingness and Ability to Exercise Control over ISIS in North-Eastern Syria.

<sup>57</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/25/65, 12 February 2014, p. 6, p. 30; J. Cafarella, Jabhat Al-Nusra in Syria, Institute for the Study of War, December 2014, available at <https://understandingwar.org/report/jabhat-al-nusra-syria> (accessed 5 April 2022).

<sup>58</sup> L. Radpey, Kurdish Regional Self-rule Administration in Syria: A new Model of Statehood and its Status in International Law compared to the Kurdistan Regional Government (KRG) in Iraq, *Japanese Journal of Political Science*, 17 (3), 468-488, p. 474.

<sup>59</sup> Ltc S Oluic, Iraq's Border Security: Key to an Iraqi Endstate, CTC Sentinel, 2(1), 2009, 21-23, p.21, available at <https://ctc.usma.edu/wp-content/uploads/2010/07/ctcsentinel-vol2iss1.pdf> (accessed 21 December 2021).

Kaka’l, Sabaeen-Mandaeans, Baha’i and Jews, since 2003.<sup>60</sup> The UNHCR in its April 2009 *Eligibility Guidelines* noted that the Yazidis were being targeted repeatedly by prohibited acts since at least 2003 in Iraq and Syria.<sup>61</sup>

9. On 14 August 2007, ISI carried out a massive attack on Yazidis in northern Iraq (primarily Til Ezer (al Qahtaniyah) and Siba Sheikh Khidir (al-Jazirah)).<sup>62</sup> Four suicide truck bombers killed more than 400 people and destroyed hundreds of houses in the Yazidi villages of Kahtaniya and Al-Jazeera in the Sinjar District.<sup>63</sup> Prior to the 2007 attack, some Yazidis living in the area received threatening letters calling them "infidels" and leaflets were being distributed denouncing Yazidis as "anti-Islamic" and warning them that an attack was imminent.<sup>64</sup> UN, US, and Iraqi officials all condemned the attacks with a US general suggesting it was an act of genocide.<sup>65</sup> In 2008, 2009 and 2010, several major attacks against Yazidis were recorded.<sup>66</sup>
10. From 2012, ISIL, as it was then, began making inroads into Syria, sending fighters across the border from its strongholds in northern and western Iraq.<sup>67</sup>

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<sup>60</sup> UN High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, April 2009, available at <https://www.refworld.org/docid/49f569cf2.html> (accessed 30 December 2021), p. 171.

<sup>61</sup> The UNHCR Syria reports referred to minorities being targeted on religious grounds generally by sectarian groups including ISIS and ISIS precursors. See, for instance, UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update II*, 22 October 2013, available at: <https://www.refworld.org/docid/5265184f4.html> (accessed 30 December 2021); UN High Commissioner for Refugees (UNHCR), *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III*, 27 October 2014, available at <https://www.refworld.org/docid/544e446d4.html> (accessed 30 December 2021); for detail of prohibited acts see [Section on Obligation to Prevent Genocide in the Syria Country Report](#).

<sup>62</sup> C. Lister, *The Islamic State: A Brief Introduction*. Brookings Institute, 2015, p. 12.

<sup>63</sup> *Ibid.*, p. 12.

<sup>64</sup> Damon et al., Iraqi officials: Truck bombings killed at least 500, *CNN*, 18 November 2007, available at [https://web.archive.org/web/20071118172345/http://edition.cnn.com/2007/world/meast/08/15/iraq\\_main/index.html?ref=topnews](https://web.archive.org/web/20071118172345/http://edition.cnn.com/2007/world/meast/08/15/iraq_main/index.html?ref=topnews) (accessed 20 December 2021); Howard, Michael, They won't stop until we are all wiped out.' Among the Yezidi, a people in mourning, *The Guardian*, 18 August 2007, available at <https://www.theguardian.com/world/2007/aug/18/iraq.topstories3> (accessed 20 December 2021).

<sup>65</sup> Damon et al., Iraqi officials: Truck bombings killed at least 500, *CNN*, 18 November 2007, available at [https://web.archive.org/web/20071118172345/http://edition.cnn.com/2007/world/meast/08/15/iraq\\_main/index.html?ref=topnews](https://web.archive.org/web/20071118172345/http://edition.cnn.com/2007/world/meast/08/15/iraq_main/index.html?ref=topnews) (accessed 20 December 2021); Howard, Michael, They won't stop until we are all wiped out.' Among the Yezidi, a people in mourning, *The Guardian*, 18 August 2007, available at <https://www.theguardian.com/world/2007/aug/18/iraq.topstories3> (accessed 20 December 2021).

<sup>66</sup> UNHCR 2012 Eligibility Guidelines record the following incidents:

- On 3 June 2010, a bomb placed in a car exploded near a liquor shop in the predominantly Yazidi town of Sinjar, killing two Yazidis and injuring 10 others; Xinhua, 2 killed, 10 injured in northern Iraq's car bombing, 4 June 2010.
- On 29 August 2009, a bomb placed in a truck exploded at a market in the Yazidi town of Sinjar, killing at least three persons and injuring 40 others; CNN, Iraq explosions kill 14, 29 August 2009.
- On August 13, 2009, two suicide bombers detonated explosives in a popular café in the town of Sinjar, killing 21 Yazidis and injuring 30 others; AP, Double Suicide Bombing Kills 21 in NW Iraq, 13 August 2009.

For further details of prohibited acts committed in that period, see [Section on Obligation to Prevent Genocide in the Syria Country Report](#).

<sup>67</sup> House of Commons, *ISIS and the Sectarian Conflict in the Middle East*, Research Paper 15/16, 19 March 2015, p. 14 available at <https://researchbriefings.files.parliament.uk/documents/rp15-16/rp15-16.pdf> (accessed 2 December 2020).

ISIL began to infiltrate into the area; initially coordinating their activities with established militant groups such as the Al-Nusra Front but later operating as an independent entity.

11. The Syrian conflict transformed the country's borders extensively.<sup>68</sup> Since 2012, as the country became increasingly entangled in a spiral of internal armed conflict, Syrian borders no longer delineated "a coherent territory under the control of the state" (particularly by 2016).<sup>69</sup> The territorial and political fragmentation of the area into territories controlled by different and rival armed parties to the conflict accelerated this fluctuation of internal borders and hence fragmentation of external borders into segments controlled by these factions.<sup>70</sup>
12. The *UNHCR's 2012 Eligibility Guidelines* noted that groups such as ISI were specifically targeting Yazidis and that minorities such as them "faced extinction."<sup>71</sup> Radical Islamist groups were well known to single out Yazidis for killings and other prohibited acts particularly when armed conflict was raging.<sup>72</sup> In 2011 and 2012, news media reported several incidents in which members of the Yazidi community were kidnapped and/or killed.<sup>73</sup>
13. In April 2013, following the breakdown of its alliance with the armed group Jabhat Al-Nusra, ISIS emerged as a highly organised armed group and

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<sup>68</sup> L Vignal, *The Changing Borders and Borderlands of Syria in a Time of Conflict*, *International Affairs*, 93(4), 2017, 809-827.

<sup>69</sup> *Ibid.*, p. 810.

<sup>70</sup> *Ibid.*

<sup>71</sup> UN High Commissioner for Refugees (UNHCR), *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, available at <https://www.refworld.org/docid/4fc77d522.html> (accessed 30 December 2021).

<sup>72</sup> F. V. T., *Yazidis in Iraq - A Tough Time - A Threatened Minority*, *The Economist*, 13 November 2013, available at <https://www.economist.com/pomegranate/2013/11/13/a-tough-time> (accessed 16 June 2021).

<sup>73</sup> UNHCR 2012 Eligibility Guidelines record the following incidents:

- On 28 January 2012, gunmen using guns with silencers shot dead a man and his wife from the Yazidi minority after storming in their house in a village near Sinjar (Ninewa); Reuters Alertnet, FACTBOX-Security developments in Iraq, January 28, 28 January 2012.
- On 11 October 2011, gunmen broke into a house in Al-Jazeera compound in Baaj District (Ninewa) and shot dead a Yazidi man and his wife; NINA, Ezidi citizen, his wife killed northwestern Mosul, 11 October 2011.
- On 25 September 2011, gunmen kidnapped two men from the minority Yazidi sect from their car in Sinjar; Reuters Alertnet, Security developments in Iraq, September 25, 25 September 2011.
- On 19 September 2011, Elias Badal, a Yazidi leader, was shot dead by ISF in his home near Sinjar; AKnews, Nineveh criticizes security raid of Yezidi leader, 20 September 2011, available at <http://cdn.aknews.com/en/aknews/4/262796/> (access 16 June 2021).
- On 8 June 2011, police said they found the body of a kidnapped man from the minority Yazidi sect with gunshot wounds in an area west of the city of Mosul; Reuters Alertnet, Security developments in Iraq, June 8, 8 June 2011.
- On 15 March 2011, gunmen in military uniforms using civilian cars kidnapped five men from the Yazidi sect in a village in Baaj district (Ninewa); Reuters Alertnet, Security developments in Iraq, March 15, 15 March 2011.
- On 29 January 2011, security forces found a Yazidi young man strangled to death in Sinjar town; Assafir Press, Yazidi young man strangled to death in Sinjar, 29 January 2011.
- On 16 January 2011, police found the dead bodies of three female Yazidis from the same family on the road between Telkeif and Al- Sheikhan districts; Aswat al-Iraq, 3 female Yazidi bodies found in Mosul, 17 January 2011.



dominant force in control of vast swathes of territory in Syria and Iraq.<sup>74</sup> From April 2013, the Yazidis of Syria began to suffer the commission of prohibited acts at the hands of ISIS. By 2013, ISIS had already around 2,650 fighters of which 30% were not Syrian citizens.<sup>75</sup>

14. Between February and July 2013, the Commission of Inquiry was frequently warning of minority groups being targeted by anti-government armed groups including ISIS and ISIS pre-cursors (Al-Qaeda and Jabhat al-Nusra).<sup>76</sup> In August 2013, the Yazidi villages of Al-Asadia and Cava near Ras al-Ain, and several others in the area of Afrin, were attacked by Jabhat al-Nusra and ISIS.<sup>77</sup> In December 2013, Yazidis were fleeing from villages between the Turkish and Syrian border in Al-Hasakah Governate.<sup>78</sup> Then Al-Qaeda-linked groups, Jabhat al-Nusra and ISI, were targeting the Yazidis for killings as infidels.
15. By April 2014, ISIS had captured and were in control of Ar-Raqqa located in north-eastern Syria, which later became ISIS' capital<sup>79</sup> and had claimed nine provinces in this region<sup>80</sup> including the province of Al-Hasakah, where the remainder of the very significant Yazidi populations lived.<sup>81</sup> By 2014, ISIS had taken control of large parts of the north-eastern region of Syria and, following the capture of the cities of Mosul and Tikrit in Iraq, declared itself a caliphate.<sup>82</sup> In conjunction with advances in Syria, ISIS had also been making substantial territorial gains in Iraq during the early part of 2014.<sup>83</sup>

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<sup>74</sup> Commission of Inquiry, *Report Submitted to the Human Rights Council Pursuant to Council Resolution S-17/1, A/HRC/28/69*, 5 February 2015, para. 33.

<sup>75</sup> M. A. Ruman, *ISIS: Propaganda and Mobilization*, Friedrich Ebert – Foundation (in Arabic), 2016, available at [www.library.fes.de/pdf-files/bueros/amman/12553-20160728-pdf](http://www.library.fes.de/pdf-files/bueros/amman/12553-20160728-pdf) (accessed 31 August 2020).

<sup>76</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/23/58*, 18 July 2013, p. 23.

<sup>77</sup> A. Glioti, *Yazidis Benefit from Kurdish Gains in Northeast Syria*, *Al Monitor*, 18 October 2013, available at <https://www.al-monitor.com/originals/2013/10/syria-yazidi-minorities-kurds.html> (accessed 16 June 2021).

<sup>78</sup> J. Wood, *The Syrian Refugees Who Know They Can't Go Home*, *Al Jazeera America*, 19 December 2013 available at <http://america.aljazeera.com/articles/2013/12/19/the-syrian-refugeeswhoknowtheycantgohome.html> (accessed 16 June 2021).

<sup>79</sup> Deutsche Welle, *Die IS-Hauptstadt Rakka ist gefallen - der Machtpoker in Syrien geht weiter* (engl. IS's Capital Raqqa Has Fallen - the Power Poker Moves on), 21 October 2017, available at <https://www.dw.com/de/die-is-hauptstadt-rakka-ist-gefallen-der-machtpoker-in-syrien-geht-weiter/a-41056917> (accessed 31 August 2020); Tagesschau, *Rakka vor Befreiung: IS-Hauptstadt in Trümmern* (engl. Raqqa before Liberation: IS Capital in Ruins), available at <https://www.youtube.com/watch?v=XYsuXKr57is> (accessed 31 August 2020).

<sup>80</sup> Wilson Center, *ISIS After the Caliphate*, 28 November 2017, available at <https://www.wilsoncenter.org/article/isis-after-the-caliphate-0> (accessed 25 October 2020).

<sup>81</sup> A Syrian study estimated that there were between 20,000 to 25,000 in Al-Hasakah province; See K. Res, *Ezidiyen li Ciyaye Kurmenc (Efrine)*, *Kurdish Institute*, 13 December 2010, available at [www.kurdishinstitute.be/kurdi/minor\\_ku/788.html](http://www.kurdishinstitute.be/kurdi/minor_ku/788.html) (accessed 16 April 2021).

<sup>82</sup> Commission of Inquiry, *Report Submitted to the Human Rights Council Pursuant to Council Resolution S-17/1, A/HRC/28/69*, 5 February 2015, para. 34; BBC News, *ISIS Rebels Declare "Islamic State" in Iraq and Syria*, 30 June 2014, available at <https://www.bbc.com/news/world-middle-east-28082962> (accessed 27 June 2021).

<sup>83</sup> This is noted, in detail, in the [Section relating to the Obligation to Prevent in the Iraq Country Report](#).



16. The executions in the village of Al-Talaliyah of persons believed by ISIS fighters to be Yazidis in May 2014<sup>84</sup> demonstrated ISIS' intention to implement the *takfiri* ideology against the Yazidis, if there was any doubt given the killings of Yazidis by ISIS (in its earlier iterations) and ISIS pre-cursors pre-2014.
17. As ISIS advanced across the Ninewa Governorate, Iraqi soldiers retreated and the Peshmerga expanded their control of disputed territories, an *ad hoc* border between them and ISIS was established across hundreds of kilometres.<sup>85</sup> Contemporary reports noted that the Peshmerga suffered from shortages of weapons and ammunition.<sup>86</sup>
18. On 10 June 2014, ISIS captured Mosul, a large metropolitan area in northern Iraq, in the Ninewa Governorate that borders Syria.<sup>87</sup> The Iraqi army provided little resistance, with thousands of soldiers and officers reported as fleeing on the first day of the assault.<sup>88</sup> After taking control of the city, ISIS seized a sizeable portion of the Iraqi national weapons stockpile. Research has suggested that access to this stockpile played an important role in the subsequent military gains by ISIS.<sup>89</sup>
19. The United States Holocaust Memorial Museum ("USHMM") Report notes that, after the fall of Mosul in 2014, "it was increasingly apparent that the area between the Syrian border and Mosul would be targeted next, as it seemed that IS sought to create a passageway between Mosul and Raqqa via the Syrian city of Deir al-Zour, which it controlled."<sup>90</sup>
20. According to the Kurdish Regional Government, hundreds of Yazidi families had fled to the Kurdistan region in 2013 because of security threats.<sup>91</sup> UNAMI's Human Rights Report, for the period January - June 2014, identified ISIS as responsible for the kidnapping of Yazidis.<sup>92</sup> The report states that between January and June 2014 "[m]embers of Iraq's ethnic, religious and linguistic groups continued to face attacks directed against them due to their religious

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<sup>84</sup> Commission of Inquiry, *Syria's Brutal War Threatens International Peace and Security: UN Commission of Inquiry*, A/HRC/27/60, 13 August 2014, p. 39.

<sup>85</sup> J. Glen, Kurds Battle to Keep ISIS at Bay, *New Zealand Herald*, 1 July 2014, available at <https://www.nzherald.co.nz/world/kurds-battle-to-keep-isis-at-bay/2utgmvhdqk4bobbark4hroizy/> (accessed 27 June 2021).

<sup>86</sup> L. Morris, Islamic State Seizes Town of Sinjar, Pushing out Kurds and Sending Yazidis Fleeing, *The Washington Post*, 3 August 2014, available at [https://www.washingtonpost.com/world/islamic-state-seize-town-of-sinjar-pushing-out-kurds-and-sending-yazidis-fleeing/2014/08/03/52ab53f1-48de-4ae1-9e1d-e241a15f580e\\_story.html](https://www.washingtonpost.com/world/islamic-state-seize-town-of-sinjar-pushing-out-kurds-and-sending-yazidis-fleeing/2014/08/03/52ab53f1-48de-4ae1-9e1d-e241a15f580e_story.html) (accessed 27 June 2021).

<sup>87</sup> Commission of Inquiry, "They Came to Destroy": *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, p. 6.

<sup>88</sup> M. Chulov, Iraq's Largest Christian Town Abandoned as Isis Advance Continues, *The Guardian*, 7 August 2014, available at <https://www.theguardian.com/world/2014/aug/07/isis-offensive-iraq-christian-exodus> (accessed 27 June 2021).

<sup>89</sup> Conflict Armament Research, *Weapons of the Islamic State: A Three-Year Investigation in Iraq and Syria*, December 2017, p. 32.

<sup>90</sup> N. Kikoler, *Our Generation is Gone. The Islamic State's Targeting of Iraqi Minorities in Ninewa*, 2015, p. 12, available at <https://www.ushmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 18 April 2021).

<sup>91</sup> UNAMI, *Report on Human Rights in Iraq: 1 January - 30 June 2014*, August 2014, p. 23.

<sup>92</sup> UNAMI, *Report on Human Rights in Iraq: 1 January - 30 June 2014*, August 2014, p. 20.

or ethnic affiliations.”<sup>93</sup> Attacks against Yazidis and other minority religious and ethnic groups increased in and around Mosul following ISIS’ takeover of the city and the extension of the armed conflict to Salah al-Din, Kirkuk, and Diyala Governorates.<sup>94</sup>

21. On 11 June 2014, ISIS captured Tikrit, the hometown of Saddam Hussein. The next day, ISIS claimed it had executed 1,700 Shi’a members of the army at Majid al Tamimi Airbase in Tikrit. In subsequent investigations conducted by Human Rights Watch, the number of dead was estimated to be between 560 and 770 men.<sup>95</sup>
22. On 12 June 2014, the Peshmerga took control of Kirkuk as the Iraqi Army relocated to defend Baghdad against an ISIS attack. Aside from being a city with significant oil reserves, Kirkuk had long been regarded by Iraqi Kurds as their historical capital, as reflected in Article 5 of the Iraqi Kurdish Constitution. Kirkuk is considered a disputed territory under Article 140 of the Constitution of Iraq, necessitating a plebiscite to decide whether it should become part of the Kurdistan Region.<sup>96</sup>
23. On 16 June 2014, and after a two-day battle, ISIS captured Tal Afar, which is located approximately halfway between Mosul (63km) and Sinjar Town (52km).<sup>97</sup> Human Rights Watch reported that following the capture, ISIS had kidnapped certain Shi’a Turkmen.<sup>98</sup> The report also noted that ISIS had destroyed nine Shi’a mosques and shrines and that more than 90% of the local Shi’a Turkmen population had fled.<sup>99</sup>
24. On 18 June 2014, the Special Advisers to the Secretary-General on the Prevention of Genocide, Adama Dieng, and on the Responsibility to Protect, Jennifer Welsh, expressed deep concern at the situation of the Yazidis and the risk to them from ISIS and called on all States to comply with obligations under international law.<sup>100</sup> This stark warning was preceded by earlier statements by the UN Genocide Office on 8 July 2013, 20 December 2012, and 14 June 2012

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<sup>93</sup> UNAMI, *Report on Human Rights in Iraq: 1 January - 30 June 2014*, August 2014, p. 19.

<sup>94</sup> UNAMI, *Report on Human Rights in Iraq: 1 January - 30 June 2014*, August 2014, Executive Summary, p. iii.

<sup>95</sup> Human Rights Watch, *Iraq: Islamic State Executions in Tikrit, New Analysis Triples Toll*, 560-770, 2 September 2014, available at <https://www.hrw.org/news/2014/09/02/iraq-islamic-state-executions-tikrit> (accessed 17 April 2021).

<sup>96</sup> F. Hawramy, *Kurdish Peshmerga Seize a Chaotic Victory in Kirkuk*, *The Guardian*, 12 June 2014, available at <https://www.theguardian.com/world/2014/jun/12/kurdish-peshmerga-kirkuk-iraq-maliki> (accessed 27 June 2021).

<sup>97</sup> M. Chulov, *Iraqi City of Tal Afar Falls to Isis Insurgents*, *The Guardian*, 16 June 2014, available at <https://www.theguardian.com/world/2014/jun/16/iraq-tal-afar-falls-isis> (accessed 27 June 2021).

<sup>98</sup> Human Rights Watch, *Iraq: ISIS Kidnaps Shia Turkmen, Destroys Shrines Pillaging, Threats in Capture of Villages near Mosul*, 27 June 2014, available at <https://www.hrw.org/news/2014/06/27/iraq-isis-kidnaps-shia-turkmen-destroys-shrines> (accessed 17 April 2021).

<sup>99</sup> Human Rights Watch, *Iraq: ISIS Kidnaps Shia Turkmen, Destroys Shrines Pillaging, Threats in Capture of Villages near Mosul*, 27 June 2014, available at <https://www.hrw.org/news/2014/06/27/iraq-isis-kidnaps-shia-turkmen-destroys-shrines> (accessed 17 April 2021).

<sup>100</sup> UN Press Release, *Statement by A. Dieng, Special Adviser to the Secretary-General on the Prevention of Genocide, and J. Welsh, Special Adviser to the Secretary-General on the Responsibility to Protect, on the situation in Iraq*, 18 June 2014.

in respect of the situation in Syria;<sup>101</sup> warning of sectarian conflict and the possibility of large-scale atrocities against minorities.

25. The Special Advisers' warnings were well-founded and repeated by the OHCHR.<sup>102</sup> On 24 June 2014, Rupert Colville, OHCHR spokesperson, provided a briefing on the situation in Iraq since ISIS commenced its advance across Iraq.<sup>103</sup> The briefing noted that:

*ISIL has broadcast more than a dozen videos showing beheadings and shootings of hors combat soldiers and police officers, as well as apparent targeting of people based on their religion or ethnicity, including Shia and minority groups such as Turcomans, Shabak, Christians, and Yezidis.*

26. On 25 June 2014, Iraq's Minister for Foreign Affairs, Hoshiyar Zebari, wrote to the Secretary-General of the United Nations, informing the Secretary-General of the commission of mass executions and the persecution of minorities and women by ISIS, and requesting the support of the United Nations and the international community, short of military intervention, "in order to defeat ISIL and protect our territory and people".<sup>104</sup> The letter requested the United Nations to consider the acts of ISIS and AQI as genocide.
27. According to several reports, the Turkish military was frequently allowing ISIS and other Islamist groups to transit through Turkish territory into Iraq and Syria.<sup>105</sup> In June 2014, the then Turkish Interior Minister, Muammer Güler, ordered the Governor of Hatay to provide accommodation for and assist with the border crossings of members of "the El-Nusra fighters" and/or "Islamist groups".<sup>106</sup>
28. In July 2014 UNAMI confirmed several reports of Yazidi men being taken before ISIS self-appointed courts, forced to convert, and executed if they refused.<sup>107</sup>

<sup>101</sup> United Nations, Statement by Adama Dieng, Special Adviser to the Secretary-General on the Prevention of Genocide, and Jennifer Welsh, on the situation in Syria, 8 July 2013, 20 December 2012, and 14 June 2012.

<sup>102</sup> OHCHR, Press Briefing Note on Iraq, 24 June 2014, available at <https://www.ohchr.org/en/newsevents/pages/displaynews.aspx?newsid=14761&langid=e> (accessed 17 April 2021).

<sup>103</sup> *Ibid.*

<sup>104</sup> UN Security Council, Letter dated 25 June 2014 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General, S/2014/440, 25 June 2014.

<sup>105</sup> B. Guiton, "ISIS Sees Turkey as Its Ally": Former Islamic State Member Reveals Turkish Army Cooperation, *Newsweek*, 7 November 2020.

<sup>106</sup> Haberler, Özkes'ten "Diyaret Misafirhanesinde El Nusra' Genelgesi", 12 June 2014, available at <https://www.haberler.com/chp-li-ozkes-ten-el-nusra-genelgesi-iddiasi-6147518-haberi/> (accessed 10 October 2020); Radikal, MİT, IŞİD'i Muammer Güler'in emriyle ağırladı, 13 June 2014, available at <http://www.radikal.com.tr/politika/mit-isidi-muammaer-gulerin-emriyle-agirladi-1196924> (accessed 10 October 2020); Sozcu, MİT, IŞİD'i misafir etti mi?, 14 June 2014, available at <https://www.sozcu.com.tr/2014/gundem/mit-isidi-misafir-etti-mi-531540/> (accessed 10 October 2020).

<sup>107</sup> UNAMI POC Report No. 2 of 2014, p. 12, N.B. Exact locations of the self-appointed courts are not provided; Executions took place in Mosul after Defendants were sentenced.

29. As ISIS advanced into Iraq the targeting of the Yazidis increased. Shortly after ISIS' assault on Sinjar, beginning 3 August 2014, reports emerged of the massacre of thousands of Yazidis and the abduction and enslavement of Yazidi women and children. However, as will be detailed in Section C of this Report, there exist reports of Yazidis being targeted by ISIS before that date and as early as 2013.
30. In September 2014, hundreds of civilians in and around Kobane were killed by ISIS. This attack is referred to as the second-largest massacre against civilians committed by ISIS.<sup>108</sup> Despite the serious crimes committed in this area, Turkey refused any military aid to the support of civilians. Turkey also prevented Kurdish fighters from accessing the area on the basis that such Kurdish fighters were viewed as "terrorists".<sup>109</sup> In July 2015, Turkey amassed significant ground forces along the Turkish-Syrian border, in territory controlled by the Kurdish People's Protection Unit ("YPG").<sup>110</sup>
31. On 20 July 2015, ISIS fighters bombed Suruc, resulting in the killing of 33 and injured more than 100 people close to the Turkish-Syria border.<sup>111</sup> On 22 July 2015, the PKK allegedly killed two Turkish police officers in the Ceylanpinar district of Şanlıurfa Province.<sup>112</sup> According to Kurdish militants, the attack is said

<sup>108</sup> CNN, Rights group: ISIS Attack on Kobani is "Second Largest", 26 June 2015, available at <https://edition.cnn.com/2015/06/26/middleeast/isis-syria/> (accessed 16 July 2020), N.B. Yazidis, who sought refuge in Kobani (Rojava region) at the time, were not specifically mentioned as being targeted in the attack.

<sup>109</sup> P. Zalewski, Turkey Decides to Hit Kurdish Rebels Instead of ISIS, Time Magazine, 14 October 2014; S. Khan, Turkey Has its Own Good Reasons for not Intervening in Kobane, The Conversation, 13 November 2014, available at <https://theconversation.com/turkey-has-its-own-good-reasons-for-not-intervening-in-kobane-33896> (accessed 24 July 2020). Note that the HDP strongly protested Turkey's policy towards Kobane siege. It called on its supporters to hold protests against this to prevent a disastrous siege that would claim lives of many, including Kurds. The security forces intervened in the protests brutally. Due to the sensitivity of the matter, ultra-nationalist powers were provoked which resulted in violent clashes that took place between 6-8 October. At the time of writing, there are several HDP politicians (including its former co-chairs Selahattin Demirtas, Figen Yuksekdag and others) who have been detained on remand 6 years later and tried for the allegation that they organised the violent clashes and are responsible for the crimes committed during the events. The Grand Chamber of the ECtHR has found that HDP's call was for peaceful protests and therefore the allegations were baseless: <http://hudoc.echr.coe.int/spa?i=001-207173> (accessed 20 April 2022)

<sup>110</sup> G. Bisoukis, Turkish Military Forces Bombed ISIS and PKK Positions in Syria And Northern Iraq, DCSS News - Plymouth University, 27 July 2015, available at <http://blogs.plymouth.ac.uk/dcsc/2015/07/27/turkish-military-forces-bombed-isis-and-pkk-positions-in-syria-and-northern-iraq/> (accessed 20 October 2020); B. Misztal, B. Thomson, Turkish Posturing on Syrian Border Raises Questions About Intervention, Bipartisan Policy Centre, 7 July 2015.

<sup>111</sup> K. Kanat, K. Ustun, US-Turkey Realignment on Syria, Middle East Policy Council, Volume XXII, Winter, 4, 2015; International Crisis Group ("ICG"), *Turkey's PKK Conflict: The Death Toll*, Europe & Central Asia Commentary, 20 July 2016, available at <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/turkey-s-pkk-conflict-death-toll> (accessed 12 November 2020).

<sup>112</sup> Middle East Eye, PKK claims responsibility for killing of 2 Turkish police officers, 22 July 2015, available at <https://www.middleeasteye.net/news/pkk-claims-responsibility-killing-2-turkish-police-officers> (accessed 28 April 2022); DW, Alleged PKK attack in Turkey kills two police officers, 31 July 2017, available at <https://www.dw.com/en/alleged-pkk-attack-in-turkey-kills-two-police-officers/a-18619839> (accessed 28 April 2022); BBC, Suruc massacre: At least 30 killed in Turkey border blast, 20 July 2015, available at <https://www.bbc.co.uk/news/world-europe-33593615> (accessed 28 April 2022); Middle East Eye, Turkey PM says suspect identified over suicide bombing, 21 July 2015, available at

to be in retaliation for Turkey's lack of action against ISIS.<sup>113</sup> In reaction to the alleged attack in Ceylanpınar, Turkey committed airstrikes on a Kurdish camp in northern Iraq on 25 July 2015.<sup>114</sup> Furthermore, several incidents occurring during this period brought the ceasefire between Turkey and the Kurdish Worker's Party ("PKK") to an end.<sup>115</sup> It was from this moment that Turkey actively started to attack areas of northern Iraq and northern Syria in a manner that impacted Yazidis (directly and indirectly).

32. The following section, Section B, considers the basis upon which the Yazidis may be identified as a "protected group" for the purposes of the Genocide Convention. Section C delineates the applicable law relating to each of the five prohibited acts and then applies that law, in outline, to the commission of prohibited acts. The crime of genocide requires that the prohibited acts be committed with the requisite specific intent. Section D, therefore, considers and outlines the evidence, including evidence drawn from the surrounding facts and circumstances in which prohibited acts were carried out, that members of ISIS acted with the specific intent to destroy the Yazidis, in whole or in part, as such.

### **B. Yazidis as a "Protected Group"**

33. On the basis of the evidence below, the Committee is satisfied that the Yazidis constitute a "protected group" within the meaning of Article II of the Convention on both objective and subjective criteria.
34. A prohibited act against a person is required to be committed on the basis of that person's membership of a religious, national, racial or ethnic group and because the person belonged, or was perceived to belong by perpetrators, to that group.<sup>116</sup>

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<https://www.middleeasteye.net/news/turkey-pm-says-suspect-identified-over-suicide-bombing>  
(accessed 28 April 2022).

<sup>113</sup> Middle East Eye, PKK claims responsibility for killing of 2 Turkish police officers, 22 July 2015, available at <https://www.middleeasteye.net/news/pkk-claims-responsibility-killing-2-turkish-police-officers> (accessed 28 April 2022).

<sup>114</sup> The Irish Times, Turkey launches heaviest air strikes yet on Kurdish forces, 29 July 2015, available at <https://www.irishtimes.com/news/world/europe/turkey-launches-heaviest-air-strikes-yet-on-kurdish-forces-1.2300882> (accessed 28 April 2022).

<sup>115</sup> *Ibid.* Note that this was not the sole incident which brought the ceasefire to an end. It was one of the several incidents that led to it: the Suruc attack targeting the youth group; Musellim Unal's killing; killing of two police officers in Ceylanpınar; and Turkey's military operation of 25 July as is referred below. See also, <https://odatv4.com/iste-cozum-surecinin-kronolojisi-1108151200.html>; L. Kafanov, End of Turkey-PKK ceasefire puts HDP in a tough spot, *Al Jazeera*, 10 August 2015, available at <https://www.aljazeera.com/news/2015/8/10/end-of-turkey-pkk-ceasefire-puts-hdp-in-a-tough-spot> (accessed 1 June 2022); A. Yaman, Turkey peace talks flounder after week of deadly violence, *Al Jazeera America*, 1 August 2015, available at <http://america.aljazeera.com/articles/2015/8/1/turkey-peace-process-floundered-by-violence.html> (accessed 1 June 2022).

<sup>116</sup> ICTR, *Prosecutor v Muhimana*, Trial Judgment, Case No. ICTR-95-1B-T, Trial Chamber III, 28 April 2005, ("Muhimana Trial Judgment"), para. 500; ICTR, *Prosecutor v Kajelijeli*, Trial Judgment, Case No. ICTR-98-44A-T, Trial Chamber II, 1 December 2003, ("Kajelijeli Trial Judgment"), para. 813.

35. The Yazidis are often identified as an ethno-religious group<sup>117</sup> and, therefore, fall possibly within two of the four protected group categories. The jurisprudence has defined an ethnic group as one “whose members share a common language or culture”<sup>118</sup> and a religious group as one “whose members share the same religion, denomination or mode of worship”.<sup>119</sup>
36. There is extensive evidence that the Yazidis constitute a distinct religious group.<sup>120</sup> As an indigenous religion, it has existed for over 7,500 years. The Yazidi faith has similarities with other religious groups in the region - including Zoroastrianism, Judaism, Christianity, and Islam - while maintaining its own religious traditions.<sup>121</sup> Without exception, members of the Yazidi community, including those interviewed by the Commission of Inquiry, self-identify as a separate religious denomination with distinct modes of worship and maintain that it remains as such to this date.<sup>122</sup>
37. The jurisprudence provides that the beliefs of those perpetrating crimes may also be taken into account for the purpose of determining membership of a protected group.<sup>123</sup> Alleged perpetrators, and ISIS in particular, perceive and indeed consider the Yazidis not only as a different religious group but one which is proscribed, not immutable and beyond the bounds of the acceptable designating them, as they have been by extremist religious organisations for centuries, as “devil worshippers”.<sup>124</sup> ISIS indeed sought to convert some Yazidis, indoctrinate others (such as children) and even later decided that conversions of Yazidi adults were not effective as they believed them to have been feigned.<sup>125</sup> That the perpetrators identify the Yazidis as a religious group, as distinct and also irreconcilable with Islam, is clear. An article in ISIS’s ‘official’ news outlet, *Dabiq*, noted in this vein: “Their creed is so deviant from the truth

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<sup>117</sup> See also, UNHCR’s Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-seekers. The Report of the UN High Commissioner for Human Rights has described the Yazidis as a “community whose identity is based on their religious beliefs”: UN Human Rights Council Report 2015, para. 17.

<sup>118</sup> ICTR, *Prosecutor v Akayesu*, Trial Judgment, Case No. ICTR-96-4-T, Chamber I, 2 September 1998 (“*Akayesu* Trial Judgment”), para. 513.

<sup>119</sup> *Ibid.*, para. 515.

<sup>120</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 103; C. Allison, *The Yazidi Oral Tradition in Iraqi Kurdistan*. Richmond, UK: Curzon Press, 2001, pp 40-42.

<sup>121</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 103.

<sup>122</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 102.

<sup>123</sup> ICTY, *Prosecutor v Stakić*, Appeal Judgment, Case No. IT-97-24-T, Trial Chamber II, 31 July 2003, (“*Stakić* Appeal Judgment”), para. 25; ICTR, *Prosecutor v Gacumbitsi*, Trial Judgment, Case No. ICTR-2001-64-T, Trial Chamber III, 17 June 2004 (“*Gacumbitsi* Trial Judgment”), para. 255; ICTR, *Prosecutor v Musema*, Trial Judgment, Case No. ICTR-96-13-A, Trial Chamber I, 27 January 2000 (“*Musema* Trial Judgment”), para. 161.

<sup>124</sup> B. Açıkyıldız, *The Yazidis: The History of a Community, Culture and Religion*. London, UK; New York: I.B. Tauris & Co Ltd, 2010, p. 79.

<sup>125</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 104.

that even cross-worshipping Christians for ages considered them devil-worshippers and Satanists.”<sup>126</sup> In another *Dabiq* article, ISIS declared that:

*Upon conquering the region of Sinjar [...] the Islamic State faced a population of Yazidis, a pagan minority existent for ages in the regions of Iraq and Sham [Syria]. Their continual existence to this day is a matter that Muslims should question as they will be asked about it on Judgment Day [...]*

ISIS in an earlier article in *Dabiq* boasted about killing and/or ethnically cleansing the Yazidis.<sup>127</sup>

38. As the question of a distinct religious identity for the Yazidis is clear and remains non-contentious, the Committee need not consider the issue of the Yazidis of Iraq and/or Syria as a distinct and distinguishable ethnic group. Whether the Yazidis are a separate ethnic group is contentious within the community itself, depending on where the community reside. Indigenous communities of Yazidis are found in Syria, Iraq, Armenia, and Turkey (with smaller communities elsewhere) and have as their native tongue a form of Kurdish with a heavy reliance on the oral tradition.<sup>128</sup> Many of these communities, with the exception of the Armenian Yazidis, are regarded (either by the group or sometimes by outsiders) as *ethnically* Kurdish but followers of the Yazidi *religion*, although the situation in respect of ethnicity is far more complex. Where Yazidis hold the view of themselves as an ethnically distinct group (such as the Yazidis in Armenia), sometimes this is in the context of the social, political and cultural milieu and repression and discrimination against the Yazidi community particularly by surrounding majority “Muslim” communities.<sup>129</sup>

### C. *Commission of Prohibited Acts against the Yazidis as a Protected Group*

39. Article II of the Convention lists five acts that, when committed with the requisite specific intent to destroy the protected group, in whole or in part, will constitute acts of genocide. It is generally accepted that this definition of “genocidal acts” corresponds to the definition of genocide in customary international law.<sup>130</sup> Article II provides:

<sup>126</sup> ISIS *Dabiq*, Issue 4, p. 14.

<sup>127</sup> ISIS *Dabiq*, A Call to Hijrah, Al-Hayat Media Center [An Islamic State production], Issue 3, September 2014, 29, available at <https://www.ieproject.org/projects/dabiq3.pdf> (accessed 10 April 2021).

<sup>128</sup> V. D. S. Saeed et al., Calling ISIL Atrocities Against the Yezidis by their Rightful Name: Do they Constitute the Crime of Genocide?, *Human Rights Law Review*, 17 (2), 2017, 261-283, pp 5-6.

<sup>129</sup> *Ibid.*

<sup>130</sup> R. O’Keefe, *International Criminal Law*. Oxford: Oxford University Press, 2016, pp 4, 67. This definition of the crime of genocide is also applied for the purpose of the statutes of the international criminal courts and tribunals, namely: Article 6, Rome Statute of the International Criminal Court, 1998; Article 4, Statute of the International Criminal Tribunal for the Former Yugoslavia, 1993 (updated September 2009); Article 2, Statute of the International Criminal Tribunal for Rwanda, 1994; Article 4, Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, as amended on 27 October 2004.

*In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

- a. *Killing members of the protected group;*
- b. *Causing serious bodily or mental harm to members of the protected group;*
- c. *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- d. *Imposing measures intended to prevent births within the protected group;*
- e. *Forcibly transferring children of the group to another protected group.*

40. The following sections consider whether, based on publicly available information, including information contained in contemporaneous reports of the Human Rights Council, Commission of Inquiry, and UNAMI, there are reasonable grounds to suspect that the conduct of ISIS amounts to genocide.

## **1. Article II(a) - Killing Members of the Protected Group**

### *1.1 Applicable Law Relating to Killing Members of the Protected Group*

41. The *actus reus* of “killing” for the purposes of Article II(a) of the Convention refers to unlawful and intentional killing (often defined as “murder”)<sup>131</sup> and comprises two material elements:
- a. the death of the victim;
  - b. resulting from an unlawful act or omission of the accused, or a subordinate.<sup>132</sup>
42. According to the International Criminal Court (“ICC”) Elements of Crimes, the perpetrator must have killed one or more persons who are members of the group.<sup>133</sup>

### *1.2 Application of Law to Facts*

43. In his statement to the UN Security Council on 10 May 2021, Special Adviser Karim Khan QC announced that, through its independent criminal investigations, UNITAD had established “clear and convincing evidence that genocide was committed by ISIL against the Yazidi as a religious group.”<sup>134</sup>

<sup>131</sup> ICTY, *Prosecutor v Krstić*, Trial Judgment, Case No. IT-98-33-T, Trial Chamber, 2 August 2001, (“*Krstić* Trial Judgment”) para. 485; *Akayesu* Trial Judgment, para. 501.

<sup>132</sup> *Krstić* Trial Judgment, paras. 485, 543; *Akayesu* Trial Judgment, paras 501-502, 589.

<sup>133</sup> ICC Elements of Crimes, Article 6(a)(1).

<sup>134</sup> UNITAD, Special Advisor Khan Briefs the Security Council on UNITAD Investigations, 10 May 2021, available at <https://www.unitad.un.org/news/special-adviser-khan-briefs-security-council-unitad-investigations> (accessed 27 June 2021).



UNITAD's findings confirm the findings of earlier reports by UNAMI and the Commission of Inquiry that there is a sufficient basis upon which it may be concluded that the attacks by ISIS against the Yazidis constitute genocide.

44. The UNAMI Report 2016 concluded that evidence of survivors and witnesses to mass killings of Yazidis and other prohibited acts carried out by ISIS appear to show that they "have been committed as part of a systematic pattern of similar conduct carried out with the intent to destroy the Yezidi as a group."<sup>135</sup> The Commission of Inquiry Report November 2014 warned that "[t]he nature of [ISIS's] attacks on the Yazidis, taken together with ISIS's public statements over social media, suggests a denial of this religious group's right to exist."<sup>136</sup> It noted that the "[e]vidence shows a manifest pattern of violent acts directed against certain groups with the intent to curtail and control their presence within ISIS areas."<sup>137</sup> The Commission of Inquiry, the OHCHR and UNAMI have documented numerous incidents involving the killing of Yazidi men, women, and children.
45. The UNAMI Report on Human Rights in Iraq: July - December 2013, following its visit to Ba'ashiqa and Shikan districts to meet the Yazidis in December 2013, indicated the vulnerability of the Yazidis to targeted attacks by 'extremist groups' as early as 2012 and 2013.<sup>138</sup> Members of the Yazidi community reported to UNAMI the killing and abduction of Yazidis,<sup>139</sup> citing, in particular, the abduction of a Yazidi man in May 2012 in close proximity to an Iraqi army checkpoint.<sup>140</sup>
46. On 2 May 2014, unidentified gunmen stopped a vehicle in the Sinjar District of the Ninewa Governorate and shot and killed the two Yazidi occupants.<sup>141</sup> In a separate incident on 5 May 2014 and on the road running between Sinjar and Mosul, unidentified gunmen attacked a vehicle carrying five Yazidi passengers, killing one passenger and injuring two others.<sup>142</sup> On 25 May 2014, a 23-year-old Yazidi man who worked for the Kurdistan Democratic Party was killed by an unidentified gunman as he walked through a market in eastern Mosul.<sup>143</sup>
47. On 29 May 2014, ISIS fighters entered the village of Al-Talaliyah, in the Al-Hasakah Governorate in Syria that borders Iraq.<sup>144</sup> While it was originally a

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<sup>135</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 12.

<sup>136</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27/CRP.3, 19 November 2014, para. 57.

<sup>137</sup> *Ibid.*, para. 24.

<sup>138</sup> UNAMI, *Report on Human Rights in Iraq: July - December 2013*, June 2014, p. 23.

<sup>139</sup> UNAMI, *Report on Human Rights in Iraq: July - December 2013*, June 2014, [Executive Summary](#), p. vii.

<sup>140</sup> UNAMI, *Report on Human Rights in Iraq: July - December 2013*, June 2014, p. 23.

<sup>141</sup> UNAMI, *Report on Human Rights in Iraq: 1 January - 30 June 2014*, August 2014, p. 19.

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup> Commission of Inquiry, *Syria's Brutal War Threatens International Peace and Security: UN Commission of Inquiry*, A/HRC/27/60, 13 August 2014, p. 39.

Yazidi village, the population had fled when ISIS had begun to assert itself in the region. After the Yazidis took flight, the village was occupied by Sunni Arabs, many of whom had been displaced themselves following bombardments of Al-Safira, in the Aleppo Governorate. ISIS fighters began to execute villagers, including women and young children.<sup>145</sup> Reports suggest that the fighters believed the villagers to be Yazidis. According to survivors, the villagers, desperate to show that they were Muslims, began to recite verses from the Quran. Except for a single fighter from Iraq, none of the ISIS fighters spoke Arabic. The Iraqi fighter intervened, preventing further killings. Approximately 15 people were killed before he could translate to the other ISIS fighters that the residents were Sunni Arabs.<sup>146</sup>

48. As ISIS advanced into Iraq, the targeting and killing of Yazidis increased. On 3 August 2014, ISIS launched an attack upon Sinjar, Iraq, that resulted in thousands of Yazidi civilians fleeing to find refuge on Mount Sinjar. ISIS fighters were met with little resistance due to the withdrawal of the Peshmerga in the face of ISIS' advance.<sup>147</sup> According to the Commission of Inquiry, with few military objectives in the region as a result of the Peshmerga's withdrawal, "ISIS fighters focused their attention on capturing Yazidis... Within hours, Yazidis who had been unable to escape to the nearby city of Dohuk found themselves encircled by armed, black-clad ISIS fighters".<sup>148</sup> Within 72 hours, the villages surrounding Sinjar were "emptied", apart from Kocho village which was "emptied" on 15 August.<sup>149</sup>
49. One study estimates that at least 3100 Yazidis were killed following the attack on Sinjar, by execution during the ISIS siege on Mount Sinjar, where thousands of Yazidis had sought refuge.<sup>150</sup> Another report estimates that approximately 9000 Yazidis were killed by ISIS fighters in less than two months that followed ISIS' assault on Sinjar.<sup>151</sup> According to a retrospective survey of Yazidi

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<sup>145</sup> Commission of Inquiry, *Syria's Brutal War Threatens International Peace and Security: UN Commission of Inquiry*, A/HRC/27/60, 13 August 2014, p. 39.

<sup>146</sup> *Ibid.*

<sup>147</sup> Commission of Inquiry, "They Came to Destroy": *ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, para. 24.

<sup>148</sup> *Ibid.*, para. 26.

<sup>149</sup> Commission of Inquiry, "They Came to Destroy": *ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, para. 29; L. Morris, Islamic State Seizes Town of Sinjar, Pushing out Kurds and Sending Yazidis Fleeing, *The Washington Post*, 3 August 2014, available at [https://www.washingtonpost.com/world/islamic-state-seize-town-of-sinjar-pushing-out-kurds-and-sending-yazidis-fleeing/2014/08/03/52ab53f1-48de-4ae1-9e1d-e241a15f580e\\_story.html](https://www.washingtonpost.com/world/islamic-state-seize-town-of-sinjar-pushing-out-kurds-and-sending-yazidis-fleeing/2014/08/03/52ab53f1-48de-4ae1-9e1d-e241a15f580e_story.html) (accessed 27 June 2021).

<sup>150</sup> V. Cetorelli et al., Mortality and Kidnapping Estimates for the Yazidi Population in the Area of Mount Sinjar, Iraq, in August 2014: A Retrospective Household Survey, *PLoS Medicine*, 14 (5), 2017, available at <https://doi.org/10.1371/journal.pmed.1002297> (accessed 27 June 2021); According to Cetorelli et al's study, at least 6,800 women and children were kidnapped; T. McCoy, The Islamic State's Bloody Campaign to Exterminate Minorities: Even Genghis Khan Didn't Do this, *The Washington Post*, 7 August 2014, available at <https://www.washingtonpost.com/news/morning-mix/wp/2014/08/07/the-islamic-states-bloody-campaign-to-exterminate-minorities-even-genghis-khan-didnt-do-this/> (accessed 27 June 2021).

<sup>151</sup> K. Carbajal et al., Report on the Yazidi Genocide: Mapping Atrocity in Iraq and Syria, Syrian Accountability Project, Syracuse University College of Law and Newhouse Center for Global Engagement Syracuse University, p. 1.

households in the Sinjar region conducted in November and December 2015,<sup>152</sup> children (male and female) were as likely as adults to be executed and constituted approximately 95% of those who died during the siege of Mount Sinjar.<sup>153</sup>

50. Following ISIS' occupation of Sinjar and surrounding villages, it was reported that ISIS fighters summarily executed boys deemed to have reached puberty and men, having separated them from the women, girls,<sup>154</sup> and young boys assessed to not yet have reached puberty.<sup>155</sup>
51. On 3 August 2014, at least 80 men and boys from the village of Qani were rounded up and taken to a nearby ditch where they were shot.<sup>156</sup> A survivor of the massacre told Amnesty International that ISIS fighters had separated the men and boys of 12 years and older from the women and other children and marched them for approximately 15 minutes in the direction of Mount Sinjar and to the edge of a big hole.<sup>157</sup> He continues:

*They opened fire and some people tried to run away. I let myself fall in the hole, and others fell on top of me. I stayed still. After the continuous fire stopped, IS militants fired individual shots at those they saw were not yet dead.*<sup>158</sup>

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<sup>152</sup> V. Cetorelli et al., Mortality and Kidnapping Estimates for the Yazidi Population in the Area of Mount Sinjar, Iraq, in August 2014: A Retrospective Household Survey, *PLoS Medicine*, 14 (5), 2017, available at <https://doi.org/10.1371/journal.pmed.1002297> (accessed 27 June 2021).

<sup>153</sup> *Ibid.* According to the report, with respect to attacks against Yazidis in Sinjar in August 2014, the data collected by the authors shows that Yazidis were targeted by ISIS regardless of age and sex, whereas nearly all those who died on Mount Sinjar were children. Females were as likely to be executed as males, and to die on Mount Sinjar. According to a contemporaneous report by UNICEF, around 40 children had died as a result of hunger, thirst and dehydration and up to 25,000 children were stranded on Mount Sinjar. See also, "Statement on child deaths in Iraq, attributable to Marzio Babilie, UNICEF representative", 5 August 2014, available at [https://www.unicef.org/media/media\\_74676.html](https://www.unicef.org/media/media_74676.html) (accessed 27 June 2021); Amnesty International, *Ethnic Cleansing on a Historic Scale: The Islamic State's Systematic Targeting of Minorities in Northern Iraq*, September 2014, MDE 14/011/2014, pp 8-16, 26.

<sup>154</sup> For the purposes of this report "girls" refers to females below the age of 18.

<sup>155</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, paras 32-36. See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 9, 12-13.

<sup>156</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, 27 March 2015, A/HRC/28/18, para. 19; Amnesty International, *Ethnic cleansing on a Historic Scale: The Islamic State's Systematic Targeting of Minorities in Northern Iraq*, September 2014, MDE 14/011/2014, pp 12-15. (In its report Amnesty International uses the spelling "Qiniyeh" for Qani village).

<sup>157</sup> Amnesty International, *Ethnic Cleansing on a Historic Scale: The Islamic State's Systematic Targeting of Minorities in Northern Iraq*, September 2014, MDE 14/011/2014, p. 14. (In its report Amnesty International uses the spelling "Qiniyeh" for Qani village).

<sup>158</sup> *Ibid.*

52. On the same day, it is reported that ISIS fighters surrounded a farm in Tal Azer and told the Yazidis hiding there to convert to Islam or be killed. Approximately 20 Yazidi men who refused to convert were shot in the head and killed.<sup>159</sup>
53. The UNAMI POC Report No. 2 of 2014 notes that on 10 August 2014, Iraq's former Human Rights Minister Mohammed Shia al-Sudani told *Reuters* that ISIS fighters had killed at least 500 members of Iraq's Yazidi community in northern Iraq. The Report states that the former Minister "claimed that the Ministry had evidence that ISIL fighters had thrown the Yezidi into mass graves, adding that some of those were women and children who had been buried alive. Additionally, 300 women had been forced into slavery."<sup>160</sup>
54. At least 700 men from Kocho were killed in August 2014.<sup>161</sup> On or around 15 August 2014, ISIS gathered all the residents of Kocho. Men and women were separated, and their valuable items taken from them. ISIS members then separated the older women from the younger women and children.<sup>162</sup> The older women were executed.<sup>163</sup> The OHCHR reports that:

*[...] a survivor from one of the several Kocho village (Sinjar) massacres recounted how, around 11 August, Yezidi men who refused to convert were separated from the women and then taken to a farm. An ISIL fighter told them 'you will see now that will happen to you, you pagans and peacock worshippers'.*<sup>164</sup>

55. Amnesty International reported in 2015 that residents of Kocho village that had been in touch with the organisation in the week before the massacre reported being told that they would be killed if they refused to convert to Islam.<sup>165</sup> The incident is reminiscent of an earlier report of the killing of a Yazidi man during a raid by ISIS, Jabhat Al-Nusra, Islamic Front and FSA battalions on Al-Asadia, Syria, in July 2013, after he refused to convert to Islam.<sup>166</sup>

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<sup>159</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL, August 2016*, p. 14; Amnesty International, *Ethnic Cleansing on a Historic Scale: The Islamic State's Systematic Targeting of Minorities in Northern Iraq*, September 2014, MDE 14/011/2014, pp 15-16.

<sup>160</sup> UNAMI POC Report No. 2 of 2014 p. 13 fn. 19. See also, A. Rasheed, Exclusive: Iraq Says Islamic State Killed 500 Yazidis, Buried Some Victims Alive, *Reuters*, 10 August 2014, available at <https://www.reuters.com/article/us-iraq-security-yazidis-killings-iduskbn0ga0ff20140810> (accessed 27 June 2021).

<sup>161</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, 27 March 2015, A/HRC/28/18, para. 19.

<sup>162</sup> Yazda, *Working Against the Clock: Documenting Mass Graves of Yazidis Killed by the Islamic State*, 2018, p. 17.

<sup>163</sup> *Ibid.*

<sup>164</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, 27 March 2015, A/HRC/28/18, para. 19.

<sup>165</sup> Amnesty International, *Ethnic Cleansing on a Historic scale: The Islamic State's Systematic Targeting of Minorities in Northern Iraq*, September 2014, MDE 14/011/2014, p. 22.

<sup>166</sup> Commission of Inquiry, *7th Report of the Commission of Inquiry on the Syrian Arab Republic*, A/HRC/25/65, 12 February 2014 (published 5 March 2014), para. 28.

56. The Yazidi men who refused to convert were divided into four groups of 15 and ordered to sit or lie on the ground and were shot.<sup>167</sup> Several survivor witnesses stated that the executions carried out by ISIS fighters were upon direct orders, received via telephone.<sup>168</sup> The bodies were buried by bulldozers in a mass grave.<sup>169</sup>
57. According to a report of the incident by Yazda<sup>170</sup> documenting mass graves of Yazidis killed by ISIS, the younger women and children were kidnapped and sold into slavery.<sup>171</sup> (See further, the Sub-Section on Causing Serious Bodily and Mental Harm).
58. In its 2016 report, the Yazda Documentation Project confirmed 19 suspected mass grave sites of the Yazidis in the Sinjar area.<sup>172</sup> In its updated 2018 report, Yazda confirmed an additional 21 mass graves and identified one potential mass grave at “Sibr Sheikh Khidr 5”.<sup>173</sup> In 2019 the Government of Iraq, working with UNITAD, commenced the exhumation of a mass grave site at Kocho village, Sinjar, during which the remains of up to 30 persons were exposed.<sup>174</sup> The excavation of another mass grave site in Solagh by UNITAD and the Government of Iraq, has revealed the remains of approximately 80 Yazidi women from Kocho village who, UNITAD’s fifth report states, were

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<sup>167</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, 27 March 2015, A/HRC/28/18, para. 19; See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 13; Yazda, *Working Against the Clock: Documenting Mass Graves of Yazidis Killed by the Islamic State*, 2018, p. 17.

<sup>168</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, 27 March 2015, A/HRC/28/18, para. 19.

<sup>169</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 13.

<sup>170</sup> Yazda is an international non-governmental organisation founded by Yazidi students and professionals in response to the attacks by ISIL on the Yazidi in Sinjar, 3 August 2014. Yazda’s aim is to “prevent future genocides against the Yazidi community and other minorities and to assist them in recovery from the 2014 genocide”.

<sup>171</sup> The Commission of Inquiry Report 2016 found that on 16 August 2014, a group of older women (approximately 60 years old and above), taken from a group of women forcibly transferred from Kocho to Solagh Technical Institute. It may be that this is the same incident reported by Yazda as occurring on 15 August. Commission of Inquiry, *“They Came to Destroy”: ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, para. 48.

<sup>172</sup> Yazda, *Mass Graves of Yazidis Killed by the Islamic State Organization or Local Affiliates on or After August 3, 2014*, 28 January 2016, p. 7. The report lists 35 suspected mass grave sites in total. In addition to the 19 confirmed sites, three had been reported by survivors but had not yet been identified, three are located in liberated territories not yet visited by Yazda, and ten were located in territory then still under ISIS control.

<sup>173</sup> Yazda, *Mass Graves of Yazidis Killed by the Islamic State Organization or Local Affiliates on or After August 3, 2014*, 28 January 2016, p. 44.

<sup>174</sup> UNITAD, *Government of Iraq, UNITAD Conclude First Sinjar Mass Grave Exhumation in Kojo Village*, 21 March 2019, available at <https://reliefweb.int/report/iraq/unitad-working-government-iraq-commence-exhumation-mass-grave-site-kojo-sinjar-region> (accessed 18 April 2021); UNITAD, *Second Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant*, S/2019/407, 17 May 2019, paras 34-4, available at [https://www.unitad.un.org/sites/www.unitad.un.org/files/general/17.05.2019\\_0.pdf](https://www.unitad.un.org/sites/www.unitad.un.org/files/general/17.05.2019_0.pdf) (accessed 18 April 2021).

“considered by ISIL to be past childbearing age and executed as part of mass killings carried out in August 2014”.<sup>175</sup> At the time of writing its report, other mass graves sites have been identified by UNITAD for excavation in Mosul district, Zaghrutiyah, Badush Prison, and in Anbar Governorate, north of Ramadi.<sup>176</sup>

## 2. Article II(b) - Causing Serious Bodily or Mental Harm

### 2.1 Applicable Law Relating to Serious Bodily or Mental Harm

59. For the purposes of Article II(b) of the Convention the serious bodily or mental harm caused need not be permanent and irredeemable.<sup>177</sup> According to the jurisprudence of the International Criminal Tribunal for Rwanda (“ICTR”) and International Criminal Tribunal for the Former Yugoslavia (“ICTY”) “causing serious bodily or mental harm” may include, and is not limited to, deportation, acts of torture, rape, sexual violence, inhuman or degrading treatment.<sup>178</sup> In *Akayesu* the Trial Chamber of the ICTR drew upon the findings of the District Court of Jerusalem, Israel, in its judgment of 12 December 1961 in the case against Adolf Eichmann.<sup>179</sup> In the *Eichmann* case the District Court of Jerusalem held that “serious bodily or mental harm” can be caused:

*[...] by the enslavement, starvation, deportation and persecution [...] and by their detention in ghettos, transit camps and concentration camps, in conditions that were designed to cause their degradation, deprivation of their rights as human beings, and to suppress them and cause them inhumane suffering and torture.*<sup>180</sup>

60. In *Krstić* the ICTY approved the following definition of “causing serious bodily or mental harm” set out in *Blaškić*:
- a. The victim must have suffered serious bodily or mental harm; the degree of severity must be assessed on a case-by-case basis with due regard for the individual circumstances;
  - b. The suffering must be the result of any act of the accused or his subordinate;

<sup>175</sup> UNITAD, *Fifth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant, S/2020/1107*, 11 November 2020, para. 57.

<sup>176</sup> *Ibid.*, para. 60.

<sup>177</sup> *Krstić* Trial Judgment, para. 513; *Akayesu* Trial Judgment, para. 502.

<sup>178</sup> *Akayesu* Trial Judgment, para. 504. See also, ICTR, ICTR, *Prosecutor v Kayishema et al*, Trial Judgment, Case No. ICTR-95-1-T, Trial Chamber II, 21 May 1999, para. 108; *Stakić* Appeal Judgment, para. 516; *Krstić* Trial Judgment, para. 513; ICC Elements of Crimes, Article 6(b), fn. 3.

<sup>179</sup> *Akayesu* Trial Judgment, para. 503. The ICTR Trial Chamber acknowledged that Adolf Eichmann was prosecuted for crimes against the Jewish people, a crime of genocide under a different legal definition.

<sup>180</sup> *Attorney-General of the Government of Israel v Adolf Eichmann*, District Court of Jerusalem, 12 December 1961, International Law Reports Vol. 36, 1968, p. 340, applied in *Akayesu* Trial Judgment, para. 503.

- c. When the offence was committed, the accused or his subordinate must have been motivated by the intent to inflict serious bodily or mental harm upon the victim.<sup>181</sup>

61. "Mental harm" must "go beyond temporary unhappiness, embarrassment or humiliation".<sup>182</sup> It "must be harm that results in a grave and long-term disadvantage to a person's ability to lead a normal and constructive life".<sup>183</sup>

## 2.2 *Applicable Law Relating to Serious Bodily or Mental Harm - Sexual Violence*

62. Rape and sexual violence, committed with the requisite specific intent to destroy the particular group may constitute "the causing of serious bodily or mental harm" for the purposes of Articles II (b) of the Convention.<sup>184</sup> In *Akayesu*, the Trial Chamber of the ICTR explained the basis upon which rape and sexual violence may constitute an act of genocide:

*Rape and sexual violence certainly constitute infliction of serious bodily and mental harm of the victims and are even, according to the Chamber, one of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm... The rapes resulted in the physical and psychological destruction of the Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.*<sup>185</sup>

## 2.3 *Application of Law to Facts - Rape and Sexual Violence, including Sexual Slavery*

63. The acts of rape and sexual violence, including sexual enslavement, committed against Yazidi women and girls clearly constitute the infliction of serious bodily or mental harm contrary to Article II(b) of the Convention. As the Commission

<sup>181</sup> ICTY, *Prosecutor v Blaškić*, Trial Judgment, Case No. IT-95-14-T, Trial Chamber, 3 March 2000, para. 243 applied in *Krstić* Trial Judgment, para.512.

<sup>182</sup> *Krstić* Trial Judgment, para. 513.

<sup>183</sup> *Ibid.*

<sup>184</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia Herzegovina v Serbia and Montenegro*), Judgment, ICJ Reports 2007 p. 43, paras. 300-303; *Akayesu* Trial Judgment, para. 731; ICTY, *Prosecutor v Furundžija*, Trial Judgment, Case No. IT-95-17/1-T, Trial Chamber, 10 December 1998, para. 172. Rape may also fall under Article II(c) and (d) of the Genocide Convention. According to the ICJ in Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v Serbia*), Judgment, ICJ Reports 2015 p. 3, para. 364, rape and sexual violence may constitute an act of Genocide contrary to Article II(c) when committed "on such a scale as to amount also to inflicting conditions of life of the group that were capable of bringing out its physical destruction in whole or in part".<sup>184</sup> However, the ICJ was not clear on the scale at which the commission of rape and sexual violence will be capable of bringing out a group's physical destruction in whole or in part.

<sup>185</sup> *Akayesu* Trial Judgment, para. 731.

of Inquiry Report 2016 concludes, quoting the test provided by the ICTR Trial Chambers in *Akayesu*:

*rape and sexual violence committed by ISIS against Yazidi women and girls, and the serious physical and mental harm it engenders, is a clear 'step in the process of destruction of the spirit, of the will to live, and of life itself'.<sup>186</sup>*

64. Sexual violence is a persistent feature of the armed conflict in Syria and Iraq, and the commission of acts of rape and sexual violence is not unique to ISIS fighters. However, the rape and sexual violence, including sexual slavery, of Yazidi women and girls by ISIS fighters was systemic as much as systematic. There is substantial evidence to suggest that the practice became a central tenet of the ISIS theology that claimed the Quran justified and encouraged the use of rape and sexual violence against “non-believers”.<sup>187</sup> As Kaya explains:

*ISIS justified its aggressive strategies towards the Yazidi community (killing, hostage taking and forced conscription) through its interpretation of certain Islamic rules and practices. According to Dabiq, the group's official publication, ISIS members, as 'true believers', sit at the top of the societal hierarchy, followed by other Muslims who are yet to become true believers. Then come Christians and Jews. At the bottom of the hierarchy are the mushriks (non-believers), which includes the Yazidis as 'a pagan minority' whose existence Muslims should question 'as they will be asked about it on Judgment day'.<sup>188</sup>*

65. The assault on Sinjar on 3 August 2014 appears to mark the formal introduction and crystallisation of sexual slavery as a matter of ISIS' policy and practice.<sup>189</sup> As the Commission of Inquiry observed, “[t]he conduct of ISIS fighters, on capturing thousands of Yazidis as they fled, cleaved closely to a set and

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<sup>186</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, 15 June 2016, A/HRC/32/CRP.2, para. 123.

<sup>187</sup> Z. Kaya, *Iraq's Yazidis and Isis: The Causes and Consequences of Sexual Violence in Conflict*, *LSE Middle East Centre*, November 2019, p. 11; R. Callimachi, *ISIS Enshrines a Theology of Rape*, *The New York Times*, 13 August 2015, available at <https://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html> (accessed 27 June 2021).

<sup>188</sup> Z. Kaya, *Iraq's Yazidis and Isis: The Causes and Consequences of Sexual Violence in Conflict*, *LSE Middle East Centre*, November 2019, p. 11, quoting from *Dabiq*, *The Failed Crusade*, Issue 4, 11 October 2014, p. 14. See also, A. I. Ahram, *Sexual Violence and the Making of ISIS*, *Survival*, 15 (3), p. 66; S. Abdelaziz, *ISIS States its Justification for the Enslavement of Women*, *CNN*, 13 October 2014, available at <https://edition.cnn.com/2014/10/12/world/meast/isis-justification-slavery/index.html> (accessed 27 June 2021); M. Chulov, *After ISIS, Yazidi Women Forced to Leave their Children Behind*, *The Guardian*, 16 October 2020, available at <https://www.theguardian.com/world/2020/oct/16/after-isis-yazidi-women-forced-to-leave-their-children-behind> (accessed 27 June 2021).

<sup>189</sup> N. Al-Dayel, A. Mumford, *ISIS and Their Use of Slavery*, *International Centre for Counter-Terrorism The Hague*, 27 January 2020, available at <https://icct.nl/publication/isis-and-their-use-of-slavery/> (accessed 18 April 2021).



evidently pre-determined pattern, with only minor deviations.”<sup>190</sup> Nevertheless, there are reports of the abduction of women and girls from religious minorities, including the Yazidis, and acts of sexual violence against them by ISIS and associated armed groups occurring before August 2014.<sup>191</sup> Women’s rights groups in Iraq reportedly documented 13 cases of kidnapping and rape of women in Mosul between 9 - 12 June 2014, and following ISIS’ capture of the city.<sup>192</sup> Of the 13, four women had committed suicide following the ordeal.<sup>193</sup> However, following the assault on Sinjar, the abduction of Yazidi women and girls became more organised and systematic.

66. On 12 August 2014, Special Representative of the Secretary-General Bangura and Special Representative of the Secretary-General Mladenov expressed their “grave concern” following reports of sexual violence against women, girls and boys belonging to Iraqi minorities, including Yazidis, by ISIS.<sup>194</sup>
67. There exists substantial credible evidence that Yazidi women and girls as young as six years old, who were abducted by ISIS fighters, were subjected to repeated and numerous acts of rape and sexual violence, and sexual slavery on an organised scale.<sup>195</sup> The Commission of Inquiry Report 2016 notes that the “underpinning of [the Yazidi’s] enslavement [by ISIS] are incremental steps in the destruction of the individual, and ultimately the group.”<sup>196</sup> It is estimated that in August 2014 alone more than 6000 Yazidis, predominantly women and children, have been kidnapped by ISIS.<sup>197</sup> As of July 2019, nearly 3000 reportedly remained unaccounted for.<sup>198</sup>

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<sup>190</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 29.

<sup>191</sup> UNAMI, *Report on Human Rights in Iraq: January - June 2014*, August 2014, p. 1.

<sup>192</sup> Z. Radwan, Z. Blumenfeld, Op-Ed: Surging Violence against Women in Iraq, *Inter Press Service News Agency*, 27 June 2014, available at <https://www.thenation.com/article/archive/surging-violence-against-women-iraq/> (accessed 27 June 2021).

<sup>193</sup> *Ibid.*

<sup>194</sup> UN Iraq, SRSB Bangura and SRSB Mladenov Gravely Concerned by Reports of Sexual Violence Against Internally Displaced Persons, 12 August 2014, available at [https://www.uniraq.org/index.php?option=com\\_k2&view=item&id=2373:srsg-bangura-and-srsg-mladenov-gravely-concerned-by-reports-of-sexual-violence-against-internally-displaced-persons&Itemid=605&lang=en](https://www.uniraq.org/index.php?option=com_k2&view=item&id=2373:srsg-bangura-and-srsg-mladenov-gravely-concerned-by-reports-of-sexual-violence-against-internally-displaced-persons&Itemid=605&lang=en) (accessed 18 April 2021).

<sup>195</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 114-115. See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 14; OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, A/HRC/28/18, 27 March 2015, para. 40.

<sup>196</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 128.

<sup>197</sup> V. Cetorelli et al., Mortality and Kidnapping Estimates for the Yazidi Population in the Area of Mount Sinjar, Iraq, in August 2014: A Retrospective Household Survey, *PLoS Medicine*, 14(5), 2017, available at <https://doi.org/10.1371/journal.pmed.1002297> (accessed 27 June 2021).

<sup>198</sup> L. Sly, The kidnapped Yazidi Children who Don’t Want to Be Rescued From ISIS, *The Washington Post*, 14 June 2019, available at [https://www.washingtonpost.com/world/the-kidnapped-yazidi-children-who-dont-want-to-be-rescued-from-isis/2019/06/13/ef051578-87a1-11e9-9d73-e2ba6bbf1b9b\\_story.html](https://www.washingtonpost.com/world/the-kidnapped-yazidi-children-who-dont-want-to-be-rescued-from-isis/2019/06/13/ef051578-87a1-11e9-9d73-e2ba6bbf1b9b_story.html) (accessed 27 June 2021).

68. Captured Yazidi women and girls were openly referred to by ISIS fighters as “*sabaya*” or slaves and were bought and sold as slaves.<sup>199</sup> Indeed, ISIS has openly confirmed that sexual slavery is an acceptable practice with respect to female captives. The UNAMI/OHCHR Report 2016 documents references made by ISIS to female captives as “spoils of war” and “slaves” in a number of public statements.<sup>200</sup> This includes a pamphlet published around October 2014 titled “Questions and Answers on Taking Captives and Slaves”, in which it is stated that sexual intercourse with a girl who has not yet reached puberty is permissible and that the “slave” is the property of the owner, to be distributed after the latter’s death as part of his estate.<sup>201</sup>
69. Once captured, Yazidi women and girls would be treated as chattel.<sup>202</sup> Captured women and girls were detained at holding sites - in Mosul, Badoush Prison, Galaxy Wedding Hall, and houses in the Al-Arabi neighbourhood<sup>203</sup> - registered by their captors, “valued” and sold at slave markets established by ISIS in Al Shaddi, Raqqa, and Tadmur in Syria,<sup>204</sup> and in online auctions.<sup>205</sup> According to the Commission of Inquiry, ISIS fighters from Tel Afar and Mosul, operating under pseudonyms, were in direct command of the holding sites and supervised the transfer of Yazidi women and girls from these sites to Syria.<sup>206</sup> The UNAMI/OHCHR Report 2016 states that women and girls were priced according to their age group, with children aged between one and nine years old fetching the highest price of 300,000 Iraqi Dinar.<sup>207</sup> Witnesses who managed to escape captivity reported being sold several times, and in some cases in quick succession, to ISIS members and men who originated from different States, including Egypt, Palestine, Saudi Arabia, Syria, and Turkey.<sup>208</sup> According to the Commission of Inquiry Report 2016, any attempts to refuse to be sold, or to prevent other women being sold, or attempts to escape, were met with severe beating,<sup>209</sup> and in the latter case with “extreme violence

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<sup>199</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 55.

<sup>200</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 14.

<sup>201</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 14; K. Roth, *Slavery: The ISIS Rules*, Human Rights Watch, 5 September 2015, available at <https://www.hrw.org/news/2015/09/05/slavery-isis-rules> (accessed 27 June 2021).

<sup>202</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, paras 54, 118.

<sup>203</sup> *Ibid.*, para. 49.

<sup>204</sup> N. Al-Dayel, A. Mumford, *ISIS and Their Use of Slavery*, International Centre for Counter-Terrorism The Hague, 27 January 2020, available at <https://icct.nl/publication/isis-and-their-use-of-slavery/> (accessed 16 April 2021).

<sup>205</sup> *Ibid.*, para. 118.

<sup>206</sup> *Ibid.*, para. 49.

<sup>207</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 14-15.

<sup>208</sup> *Ibid.*, p. 16.

<sup>209</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 118.

including the killing of the women's children, gang rape, rape, and beatings."<sup>210</sup>

70. Yazidi women interviewed by the Commission of Inquiry stated that once captured, they had no autonomy over their own person or the fate of their children. The UNAMI/OHCHR Report 2016 documents the accounts of Yazidi women captured and enslaved by ISIS between August 2014 and June 2016 who suffered multiple rapes at the hands of their "owners" and severe beatings if they attempted to prevent their children from being taken away.<sup>211</sup> According to the Commission of Inquiry Report 2016:

*Those interviewed stressed that once they were captured, they had no choice over where they were taken, what happened to any children they had, to whom they were sold and resold, and how they were treated...Captured women and girls - including girls as young as nine - have no ability to decide the conditions in which they engage in sexual activity. Locked into houses and apartments by their ISIS fighter-owners, Yazidi women and girls are often handcuffed and tied to the beds and raped. Many are subjected to physical and psychological violence, including beatings and/or threats against themselves and their children.*<sup>212</sup>

71. Women and girls, including girls as young as six years old, were sold into sexual slavery and systematically raped by ISIS fighters.<sup>213</sup> The Commission of Inquiry Report 2016 describes ongoing acts of rape and sexual violence against the Yazidis:

*The serious physical and mental harm that ISIS perpetrates against captured Yazidi women and girls extends beyond rape itself. From the perspective of the victims, perpetrators and those involved in documenting violations, captured Yazidi women and girls are subjected to entrenched sexual violence, in that they are sexually enslaved by ISIS and by its fighters.*<sup>214</sup>

72. Information gathered by the Commission of Inquiry reveals that the commission of rape and sexual violence was tightly controlled by ISIS leadership. There are reports of women and girls held at "holding sites" in Tel

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<sup>210</sup> *Ibid.*, para. 119.

<sup>211</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 16.

<sup>212</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, paras 121-122.

<sup>213</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, A/HRC/28/18, 27 March 2015, para. 40.

<sup>214</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 115.

Afar and Mosul who were raped before being sold; however, it appears that mass rapes did not occur.<sup>215</sup> The Commission of Inquiry Report 2016 concluded that:

*This serves to emphasize the rigid system and ideology governing ISIS' handling of Yazidi women and girls as chattel, as well as the control it exerted over the majority of its fighters. The sexual violence, including the sexual slavery, being committed against Yazidi women and girls is tightly controlled by ISIS, occurs in a manner prescribed and authorised, and is respectful only of the property rights of those who "own" the women and girls.*<sup>216</sup>

73. The tight control was further demonstrated by rule changes by the ISIS leadership as to what could happen to children. As the Commission of Inquiry has highlighted:

*Until mid-2016, ISIL did not allow their members who "owned" Yazidis to sell the Yazidi children separately. This rule was changed in mid-2016 and resulted in the separation of children from their mothers and subsequent sale of young boys as house servants, and girls as young as nine years as sexual slaves. Such children are often then given Muslim names. Identifying their ancestry remains problematic.*<sup>217</sup>

74. These prohibited acts continue to this day: thousands of Yazidi women and children are still believed to remain in ISIS detention as slaves: in November 2018, some 3,117 Yazidis were believed to remain in ISIS captivity (1,452 women, including girls and 1,665 men, including boys).<sup>218</sup>

#### *2.4 Serious Bodily Harm of Women and Girls Detained by ISIS*

75. The acts of physical and sexual violence committed against Yazidi women and girls detained by ISIS constitute the infliction of serious bodily or mental harm contrary to Article II(b) of the Convention. Women and girls held by ISIS fighters suffered repeated sexual violence in captivity. Most of the women and girls, including girls as young as six years old, who had escaped captivity between 2014 and 2015 and who were interviewed by the Commission of Inquiry and the OHCHR, respectively, reported being raped on a daily basis,

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<sup>215</sup> *Ibid.*, para. 54.

<sup>216</sup> *Ibid.*

<sup>217</sup> Commission of Inquiry, *"I Lost My Dignity": Sexual and Gender-Based Violence in the Syrian Arab Republic*, A/HRC/37/CRP.3, 8 March 2018, paras 88-89.

<sup>218</sup> UNAMI, *Unearthing Atrocities: Mass Graves in Territory Formerly Controlled by ISIL*, 6 November 2018; Yale McMillan Center, Genocide Studies Program, *Before it's Too Late - A Report Concerning the Ongoing Genocide and Persecution Endured by the Yazidis in Iraq, and their Need for Immediate Protection*, 30 July 2019.

some with their hands and feet tied to the bed or bound behind their backs.<sup>219</sup> Women and girls were threatened with gang rape if they showed any resistance.<sup>220</sup> One woman reported that she was threatened that if she resisted, she would be thrown off the roof of the house.<sup>221</sup> Others were told that their children would be sold and/or beaten.<sup>222</sup> Women who resisted rapes were reportedly severely beaten.<sup>223</sup>

76. The Commission of Inquiry Report 2016 states that ISIS fighters regularly beat and mistreated women and girls held in their possession and denied them access to medical treatment to treat resulting injuries.<sup>224</sup> Attempts to escape were punished severely. In one case reported by the Commission of Inquiry, the ISIS fighter killed several of a woman's children after she attempted to escape.<sup>225</sup> In other cases, ISIS fighters ordered and supervised the gang rape of those who attempted escape.<sup>226</sup>

### 2.5 *Serious Mental Harm of Women and Girls Detained by ISIS*

77. ISIS inflicted serious mental harm on women and girls in their detention, contrary to Article II(b) of the Convention. Women and girls captured by ISIS fighters and held for the purposes of selling them into slavery reported to the Commission of Inquiry feelings of "mounting terror" on hearing footsteps of their captors in the corridors as they came to select women or girls, they wished to take with them.<sup>227</sup> The Commission of Inquiry 2016 states:

*Women and girls scrambled to the corners of the room, mothers hiding their daughters. The selection of any girl was accompanied by screaming as she was forcibly pulled from the room, with her mother and any other women who tried to keep hold of her being brutally beaten by fighters...Yazidi women and girls began to scratch and bloody themselves in an attempt to make themselves unattractive to potential buyers. Some committed suicide at holding sites in Tel Afar, Mosul and in Raqqah city. At the main holding site in Raqqah city, a Yazidi girl attempted to kill herself by throwing herself from the second floor of the building. Severely injured, ISIS fighters forbade the other Yazidi captives from helping her. Some women and girls killed*

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<sup>219</sup> Commission of Inquiry, "They Came to Destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, para. 64.

<sup>220</sup> *Ibid.*, para. 65.

<sup>221</sup> *Ibid.*

<sup>222</sup> *Ibid.*

<sup>223</sup> Commission of Inquiry, "They Came to Destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, para. 66.

<sup>224</sup> *Ibid.*

<sup>225</sup> Commission of Inquiry, "They Came to Destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, para. 67.

<sup>226</sup> *Ibid.*, para. 68.

<sup>227</sup> *Ibid.*, paras 52-53.

themselves by cutting their wrists or throats, while others hanged themselves using their headscarves.<sup>228</sup>

78. Captured women and children bore witness to the execution of male and elderly relatives (either seen or heard),<sup>229</sup> the separation of boys considered to have reached puberty from their mothers,<sup>230</sup> and the fear of rape, sexual and physical assault by their captors,<sup>231</sup> or being taken away by ISIS fighters to whom they had been sold.<sup>232</sup> Children with their mothers were often aware of their mothers being the victims of prolonged and intense violence.<sup>233</sup> As the Commission of Inquiry Report 2016 describes:

*From the moment that Yazidi women and girls entered the holding sites, ISIS fighters came into the rooms where they were held in order to select women and girls they wished to take with them. Interviewees described feelings of abject terror on hearing footsteps in the corridor outside and keys opening the locks. Women and girls scrambled to the corners of the rooms, mothers hiding their daughters. The selection of any girl was accompanied by screaming as she was forcibly pulled from the room, with her mother and any other women who tried to keep hold of her being brutally beaten by fighters.<sup>234</sup>*

79. Assaults by ISIS fighters would often be accompanied by verbal abuse specifically directed at their Yazidi faith, the perpetrators calling their victims "devil-worshippers" and "dirty kuffar".<sup>235</sup>
80. The trauma resulting from the abuse and violence suffered by Yazidi women and girls, and the witnessing of the abuse and killing of others, has had lasting consequences on survivors who fear returning to their families for fear of bringing shame to them.<sup>236</sup> A study of the mental health of Yazidi survivors of sexual slavery published in BMC Medicine in 2016 stated that almost all of

<sup>228</sup> *Ibid.*, paras. 52-53. See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 15-16.

<sup>229</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, paras. 47-48.

<sup>230</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 90. See also, Commission of Inquiry, *"I Lost My Dignity": Sexual and Gender-Based Violence in the Syrian Arab Republic*, A/HRC/37/CRP.3, 8 March 2018, para. 89.

<sup>231</sup> Commission of Inquiry, *"I Lost My Dignity": Sexual and Gender-Based Violence in the Syrian Arab Republic*, A/HRC/37/CRP.3, 8 March 2018, paras 74, 84.

<sup>232</sup> *Ibid.*, para. 52.

<sup>233</sup> *Ibid.*, paras 74, 84.

<sup>234</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 52.

<sup>235</sup> Commission of Inquiry, *"I Lost My Dignity": Sexual and Gender-Based Violence in the Syrian Arab Republic*, A/HRC/37/CRP.3, 8 March 2018, para. 74.

<sup>236</sup> Z. Kaya, *Iraq's Yazidis and Isis: The Causes and Consequences of Sexual Violence in Conflict*, LSE Middle East Centre, November 2019, pp 13-14; A. I. Ahram, *Sexual Violence and the Making of ISIS*, *Survival*, 15 (3), p. 67.

those formerly enslaved were diagnosed with Post-Traumatic Stress Disorder (“PTSD”).<sup>237</sup> The study concludes that:

*the high exposure to adversities in [the Yazidi] population is associated with very high rates of mental ill-health, which confirms previous reports of excessive rates of mental disorders in extremely traumatized war populations.*<sup>238</sup>

Yazidi survivors of sexual enslavement reported “even more severe PTSD and depression symptoms” and an “exceptionally high” prevalence rate of PTSD.<sup>239</sup> Another study reported high rates of self-reported suicidal thoughts amongst survivors of sexual enslavement who took part in the study.<sup>240</sup> The study concludes, “[e]xposure to enslavement has significant impact on mental health outcomes leading to greater rates of depression, generalized anxiety and PTSD.”<sup>241</sup>

81. The Commission of Inquiry Report 2016 concludes that the sexual and physical violence suffered by captured Yazidi women and girls, together with the mental trauma, “rises to the level of torture, causing them serious physical and psychological harm”.<sup>242</sup>

## 2.6 Other Acts of Serious Bodily and Mental Harm

82. The forced displacement of the Yazidis, that resulted in their subjection to inhuman and degrading conditions of life, and without access to adequate food, shelter or medicine, have had the following long-term, harmful consequences on the members of the group.
  - a. Recent studies of Yazidi internally displaced persons (“IDPs”) by clinical psychologists show the pattern of harm suffered by those forcibly transferred. For instance, one study in 2017, involving 400 Yazidi women and girls, reveals that “85.1% of participants reported that they had experienced food and water deprivation, 63.7% had direct exposure to armed- and combat-related events, and half of the participants were separated from their family members by force.”<sup>243</sup>

<sup>237</sup> H. Ibrahim et al., Trauma and Perceived Social Rejection among Yazidi Women and Girls who Survived Enslavement and Genocide, *BMC Med*, 16, 2018. A sample of 416 Yazidi women was interviewed, of which 65 had survived sexual enslavement.

<sup>238</sup> *Ibid.*

<sup>239</sup> *Ibid.*

<sup>240</sup> P.H. Taha, S. Slewa-Younan, Measures of Depression, Generalized Anxiety, and Posttraumatic Stress Disorders amongst Yazidi Female Survivors of ISIS Slavery and Violence, *International Journal of Mental Health Systems*, 14 (18), 2020.

<sup>241</sup> *Ibid.* See also, J. I. Kizilhan, Impact of Sexual Violation of ISIS Terror against Yazidi Women after Five Years, *JSM Sexual Med*, 4(1), 2020, p. 1025.

<sup>242</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 130.

<sup>243</sup> H. Ibrahim et al., Trauma and Perceived Social Rejection among Yazidi Women and Girls who Survived Enslavement and Genocide, *BMC Medicine*, 16, 2018, p. 154. See also, V. Ceri et al., Psychiatric Symptoms and Disorders among Yazidi Children and Adolescents Immediately after Forced Migration

- b. Of that sample study of IDPs, some 15% had been sexually enslaved and all participants registered severe levels of trauma. These traumas were compounded by perceived gender roles within Yazidi society both for men and women. For instance, “strongly patriarchal cultures, violence - and particularly sexual violence - against a group's female members is also often perpetrated and understood as a means of deliberate attack on the group's men, or more specifically on the gender roles that men are expected to play.”<sup>244</sup>
- c. Many women and girls who escaped ISIS captivity reported having been subjected to sexual violence.<sup>245</sup>
- d. The effect of the severe trauma on the Yazidis has been lasting. In 2020 the United Nations Development Programme and partner agencies were still working to restore “vital services” that include “rebuilding key infrastructure, support reintegration, and offer protection, mental health and psychosocial support, and livelihood support”.<sup>246</sup>

### 3. Article II(c) - Deliberately Inflicting Conditions of Life Calculated to Bring About Physical Destruction in Whole or in Part

#### 3.1 Applicable Law Relating to Conditions of Life Calculated to Destroy

- 83. Article II(c) of the Convention provides that “deliberately inflicting conditions of life on the group calculated to bring about its physical destruction in whole or in part” when committed with the specific intent to destroy the group in whole or in part, will constitute genocide.
- 84. The “deliberate infliction of conditions of life calculated to destroy” does not entail the immediate killing of members of the protected group and does not require actual death to result. It therefore “covers methods of physical destruction, other than killing, whereby the perpetrator ultimately seeks the death of the members of the group”.<sup>247</sup>
- 85. “Destruction” is understood only in its material sense.<sup>248</sup> The term refers to the physical and biological destruction of a particular group. The term does not refer to “cultural destruction”, for example, the destruction of a national,

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following ISIS Attacks, *Neuropsychiatrie*, 30 (3), 2016, pp 145-150; P. Jäger, Stress and Health of Internally Displaced Female Yazidis in Northern Iraq, *Journal of Immigrant and Minority Health*, 2018, pp 1-7.

<sup>244</sup> Yale McMillan Center, Genocide Studies Program, Before It's Too Late - A Report Concerning the Ongoing Genocide and Persecution Endured by the Yazidis in Iraq, and Their Need for Immediate Protection, 30 July 2019, para. 29.

<sup>245</sup> UNAMI POC Report No. 3 of 2014.

<sup>246</sup> *Ibid.*

<sup>247</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v Serbia*), Judgment, ICJ Reports 2015, p. 3, para. 131 (“*Croatia v Serbia*”); *Akayesu* Trial Judgment, para. 505; ICTR, *The Prosecutor v Rutaganda*, Trial Judgment, Case No. ICTR-96-3-T, Trial Chamber I, 6 December 1999, para. 52.

<sup>248</sup> *Stakić* Appeal Judgment, para. 518; ILC, *Report of the International Law Commission on the Work of its Forty-Eighth Session, 6 May - 26 July 1996, A/51/10*, ILC Yearbook, 1996, Vol. II (2), pp 45-46.



linguistic or religious identity.<sup>249</sup> Thus, the international criminal tribunals, upon whose jurisprudence the ICJ draws heavily, have held that conditions of life calculated to destroy include systematic rape,<sup>250</sup> starvation, failure to provide adequate water, medical care or hygienic sanitation, inhuman living conditions, “withholding sufficient living accommodation for a reasonable period”,<sup>251</sup> and forced labour.<sup>252</sup> Systematic expulsion of members of the group from their homes may amount to conditions of life if “conducted under such conditions or accompanied by such measures that it can be said to be calculated to bring about the physical destruction of at least part of the group”.<sup>253</sup> There is no prescribed period over which such conditions need be imposed in order to amount to conditions calculated to destroy the group, an offence that envisages the possibility of a “slow death”.<sup>254</sup>

86. Unlike other acts of genocide listed in Article II of the Convention, the act of “deliberately inflicting conditions of life calculated to destroy” includes two subjective or mental elements additional to the specific intent requirement. The infliction of conditions of life must be “deliberate”, and it must be “calculated” to bring about the physical destruction of the group.
87. The term “calculated to bring about the physical destruction” has been interpreted so as to limit the scope and application of Article II(c) to circumstances in which the perpetrator seeks the ultimate death of the members of the protected group upon whom the conditions of life have been inflicted.<sup>255</sup> Evidence that conditions of life are “merely” calculated to inflict pain and suffering or the “mere dissolution of the group, its cultural disappearance, or displacement”<sup>256</sup> is not, according to this interpretation of the provision, sufficient.

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<sup>249</sup> *Ibid.*

<sup>250</sup> In *Croatia v Serbia*, para. 364, the ICJ held that Croatia had failed to show that the occurrences of rape committed by JNA and Serb forces against Croat women “were on such a scale as to have amounted also to inflicting conditions of life on the group that were capable of bringing about its physical destruction in whole or in part”.

<sup>251</sup> ICTR, *The Prosecutor v Kayishema and Ruzindana*, Trial Judgment, Case No. ICTR-95-1-T, Trial Chamber II, 21 May 1999, para. 116.

<sup>252</sup> ICC Elements of Crimes, Article 6(c), fn. 4; ICTY, *The Prosecutor v Karadžić*, Trial Judgment, Case No. IT-95/18-T, Trial Chamber, 24 March 2016, para. 547; ICTY, *The Prosecutor v Brdanin*, Trial Judgment, Case No. IT-99-36-T, Trial Chamber II, 1 September 2004, para. 691; *Stakić* Appeal Judgment, para. 517; ICTR, *The Prosecutor v Kayishema and Ruzindana*, Trial Judgment, Case No. ICTR-95-1-T, Trial Chamber II, 21 May 1999, paras. 115-116; *Akayesu* Trial Judgment; *Croatia v Serbia*, para. 161 (relying upon the case law of the ICTY); C. Kreß, *The Crime of Genocide under International Law*, *International Criminal Law Review*, 6, 2006, 461-502, p. 482.

<sup>253</sup> C. Kreß, *The Crime of Genocide under International Law*, *International Criminal Law Review*, 6, 2006, 461-502, p. 482-483; ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 43, para. 190. (“*Bosnia Genocide*”) and *Croatia v Serbia*, para. 163 with respect to the circumstances in which acts commonly described as “ethnic cleansing” will satisfy Article II(c).

<sup>254</sup> W. Schabas, *Genocide in International Law: The Crime of Crimes*. Cambridge, UK: Cambridge University Press, 2009, p. 191.

<sup>255</sup> G. Mettraux, *International Crimes: Law and Practice: Volume I: Genocide*. Oxford, UK: Oxford University Press, 2009, para. 10.2.1.3.

<sup>256</sup> ILC, *Report of the International Law Commission on the Work of its Forty-Eighth Session, A/51/10*, 6 May-26 July 1996, pp 45-46.

88. In the absence of direct evidence that the conditions of life are calculated to bring about the physical destruction of the group, the ICTY has considered “the objective probability of these conditions leading to the physical destruction of the group in part” may infer that the conditions were calculated to destroy.<sup>257</sup> This will include consideration of the nature of the conditions imposed, the length of time the victims were subjected to them, vulnerability and other specific characteristics of the targeted group. However, conditions that are inadequate by any number of standards, but are adequate for the survival of the group, and therefore do not contribute to the destruction of the group, will not satisfy the requirements of the offence.<sup>258</sup>
89. The forcible transfer or displacement of a protected group does not, in and of itself, constitute genocide.<sup>259</sup> However, the systematic expulsion of members of the group from their homes may amount to conditions of life calculated to destroy,<sup>260</sup> if “conducted under such conditions or accompanied by such measures that it can be said to be calculated to bring about the physical destruction of at least part of the group”.<sup>261</sup> For example, where the expulsions are calculated to result in the persons expelled being deprived of resources indispensable for survival, such as adequate food, medicine and shelter.

### 3.2 Application of Law to Facts

90. There are reasonable grounds to conclude that the driving of the Yazidis out of their homes in Sinjar, and the treatment of Yazidis captured by ISIS, including denial of any or any adequate medical treatment and access to food and water, taken together, constituted acts calculated to bring about the physical destruction of the group in whole or in part.
91. It is estimated that up to 200,000 still remain displaced from their homes as a result of the assault by ISIS on Sinjar region.<sup>262</sup> ISIS destroyed up to 80% of public infrastructure and 70% of civilian homes in Sinjar city and its surrounding areas.<sup>263</sup> Some homes were also looted after being marked as belonging to

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<sup>257</sup> ICTY, *Prosecutor v Karadžić*, Appeal Judgment on Rule 98bis Motion for Judgment of Acquittal, Case No. IT-95-5/18-AR98bis.1, Appeals Chamber, 11 July 2013, paras 40,45, approving the legal test applied by the Trial Chamber to the assessment of evidence.

<sup>258</sup> ICTY, *Prosecutor v Karadžić*, Appeal Judgment on Rule 98bis Motion for Judgment of Acquittal, Case No. IT-95-5/18-AR98bis.1, Appeals Chamber, 11 July 2013.

<sup>259</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia Herzegovina v Serbia and Montenegro*), Judgment, ICJ Reports 2007, p. 43, para. 190.

<sup>260</sup> *Ibid.*

<sup>261</sup> ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v Serbia*), Judgment, ICJ Reports 2015, p. 3, paras 161-163; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia Herzegovina v Serbia and Montenegro*), Judgment, ICJ Reports 2007 p. 43, paras 190. See also, ICTR, *The Prosecutor v Kayishema et al*, Trial Judgment, Case No. ICTR-95-1-T, Trial Chamber II, 21 May 1999, para. 116; C. Kreß, The Crime of Genocide under International Law, *International Criminal Law Review*, 6, 2006, 461-502, pp 482-483.

<sup>262</sup> UN Development Programme, Six Years after Sinjar Massacre, Support is Vital for Returning Yazidis, 2 August 2020, available at <https://undp.medium.com/six-years-after-sinjar-massacre-support-and-services-are-vital-for-returning-yazidis-82b87ba36dbd> (accessed 18 April 2021).

<sup>263</sup> *Ibid.*

Yazidis.<sup>264</sup> In 2020 the United Nations Development Programme and partner agencies were still working to restore “vital services” that include “rebuilding key infrastructure, support reintegration, and offer protection, mental health and psychosocial support, and livelihood support”.<sup>265</sup>

92. Yazidis who fled their homes in Sinjar to escape the attack by ISIS on 3 August 2014, sought refuge on Mount Sinjar. ISIS encircled and laid siege to the mountain, trapping the Yazidis on the barren mountain in 50°C heat and depriving them of access to food, water, and medical supplies.<sup>266</sup> Many of those who were captured by ISIS, including the elderly or infirm, were executed<sup>267</sup> or enslaved.<sup>268</sup> It is estimated that 1700 Yazidis, mainly children, died on Mount Sinjar during the siege due to starvation, dehydration, or injury.<sup>269</sup> The attacks by ISIS on coalition airplanes seeking to air drop essential supplies and helicopters seeking to evacuate Yazidis from the mountain<sup>270</sup> support the allegation that the infliction of life-threatening conditions on the Yazidis trapped on Mount Sinjar was deliberate.
93. As well as destroying the Yazidis’ homes, ISIS deliberately and systematically destroyed Yazidi shrines, cemeteries and temples in Sinjar.<sup>271</sup> As held by the ICTY Appeals Chamber in the *Krstić* case, “[t]he destruction of cultural property may serve evidentially to confirm an intent, to be gathered from other circumstances, to destroy the group, as such”.<sup>103</sup> The destruction of Yazidi religious sites and property (in the context of long-standing and widespread discrimination of the Yazidis as a group in Iraq) is of important, contextual relevance. Such acts, directed at the destruction of cultural and religious heritage of the group, may be relied upon as evidence of the specific intent to

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<sup>264</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, p. 30, para. 157. See also, UNAMI POC Report No. 2 of 2014, p. 9; UNAMI POC Report No. 3 of 2014, pp 12,15; UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 4,18.

<sup>265</sup> *Ibid.*

<sup>266</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 138; R. Abouzeid, *When the Weapons Fall Silent: Reconciliation in Sinjar after ISIS: Policy Brief*, European Council on Foreign Relations, available at [https://www.ecfr.eu/publications/summary/when\\_the\\_weapons\\_fall\\_silent\\_reconciliation\\_in\\_sinjar\\_after\\_isis](https://www.ecfr.eu/publications/summary/when_the_weapons_fall_silent_reconciliation_in_sinjar_after_isis) (accessed 18 April 2021).

<sup>267</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 14; Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 48.

<sup>268</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, paras 42-80.

<sup>269</sup> V. Cetorelli et al., *Mortality and Kidnapping Estimates for the Yazidi Population in the Area of Mount Sinjar, Iraq*, in August 2014: A Retrospective Household Survey, *PLoS Medicine*, 14 (5), 2017, available at <https://doi.org/10.1371/journal.pmed.1002297> (accessed 27 June 2021).

<sup>270</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 138.

<sup>271</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 157. See also, UNAMI POC Report No. 2 of 2014, p. 9; UNAMI POC Report No. 3 of 2014, pp 12,15; UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 4,18.

destroy the Yazidis, in whole or in part, as such.<sup>272</sup> As the ICJ has observed, such acts will often occur simultaneously with acts intended to (physically and biologically) destroy the protected group and “may legitimately be considered as evidence of an intent to physically destroy the group”.<sup>273</sup>

94. There are reasonable grounds to conclude that, taken together, the large scale, systematic expulsion of the Yazidis out of their homes in Sinjar, and the treatment of captured or besieged Yazidis, that included the denial of any medical treatment, food or water, constitute the deliberate infliction of conditions of life calculated to destroy the Yazidis, in whole or in part.<sup>274</sup> The fact that the Yazidis were relentlessly pursued even after fleeing Sinjar points to the acts being more than the “mere” crime against humanity of forcible transfer, and supports the allegation that the ultimate aim of the expulsion was the group’s physical destruction.
95. Captured and kidnapped Yazidis were also deliberately subjected to conditions of life capable of resulting in their slow death. The Commission of Inquiry Report 2016 found that captured Yazidi women and girls held in severely overcrowded conditions in “holding sites” in Iraq - schools, prisons, houses or wedding halls<sup>275</sup> - before being transferred into Syria, were denied sufficient food and access to clean drinking water.<sup>276</sup> Survivors interviewed by the Commission of Inquiry reported being given food infested with insects and being forced to drink water from the toilets.<sup>277</sup> Children and infants were given limited food and denied medical care.<sup>278</sup> Imposing such conditions on a group of persons over an extended period of time is highly likely to be fatal. Due to the conditions of detention suffered by those detained by ISIS, many young children and infants in particular became very sick and were denied medical care.<sup>279</sup> As described above in relation to Article II(b), ISIS subjected captured Yazidi women and girls to rape, sexual violence, and sexual slavery. The commission of rape and sexual violence was organised and carried out on a

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<sup>272</sup> *Bosnia Genocide*, para. 344 endorsing the dicta of the Appeals Chamber of the ICTY in *Prosecutor v Radislav Krstić*, Appeal Judgment, Case No. IT-98-33-A, Appeals Chamber, 19 April 2004, paras 25-26, confirming para. 580 of the Trial Judgment: “Where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of intent to physically destroy the group. In this case, the Trial Chamber will thus take into account as evidence of intent to destroy the group, the deliberate destruction of mosques and houses belonging to members of the group”. See also, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v Serbia*), Judgment, ICJ Reports 2015, p. 3, paras 386-390.

<sup>273</sup> *Ibid.*

<sup>274</sup> A conclusion also drawn by the Commission of Inquiry. See also, Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 141.

<sup>275</sup> Reports mention the Galaxy wedding hall in Mosul, Iraq.

<sup>276</sup> Human Rights Watch, Iraq: Forced Marriage, Conversion for Yazidis, 11 October 2014, available at <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yazidis> (accessed 18 April 2021).

<sup>277</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 51.

<sup>278</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 140.

<sup>279</sup> *Ibid.*

considerable scale, to the extent that women and girls would suffer multiple acts of rape and sexual violence by their fighter-owners.<sup>280</sup> Female survivors of sexual violence and sexual slavery have been deeply affected, with many experiencing suicidal thoughts and intense feelings of rage interspersed with periods of deep depression and listlessness.<sup>281</sup>

96. There are reasonable grounds to conclude that the imposition of such conditions, and the infliction of serious sexual and physical violence against women and girls, was deliberate. First, the deprivation of food and medicine is likely, in the long-term, to be fatal. Second, food and medicine were deprived in circumstances where ISIS fighters and their families had access to both. Third, and moreover, evidence gathered by the Commission of Inquiry shows that the capture, detention, and enslavement of Yazidi women and girls was systematic and organised, “committed pursuant to an explicit ideological policy of the terrorist group, whose radical religious interpretation does not permit the existence of Yazidism within the territory it controls.”<sup>282</sup> According to the Commission of Inquiry Report 2016, “[t]he fighters abuse of the Yazidis closely follows and is supported by ISIS’ stated organizational policy”.<sup>283</sup>

#### 4. Article II(d) - Imposing Measures Intended to Prevent Births Within the Group

##### 4.1 Applicable Law Relating to Measures Intended to Prevent Births

97. Article II(d) of the Convention requires that the measures imposed by perpetrators were done so in order to prevent births within the group, with the specific intent to destroy the group, in whole or in part.<sup>284</sup>
98. Article II(d) is concerned with acts of reproductive violence. The phrase “imposing” measures indicates that there must be an element of coercion,<sup>285</sup> such as a programme of forced sterilisation, birth control, the separation of the sexes, sexual mutilation, and the prohibition of marriages.<sup>286</sup> Other acts of reproductive violence could include forced pregnancy, forced castration, forced breastfeeding and forced abortions.
99. In *Akayesu* the ICTR considered Article II(d) to also include rape where the woman is deliberately impregnated by the perpetrator in circumstances where

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<sup>280</sup> *Ibid.*

<sup>281</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 177.

<sup>282</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 167.

<sup>283</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 167.

<sup>284</sup> *Croatia v Serbia*, paras 399-400; W. Schabas, *Genocide in International Law: The Crime of Crimes*. Cambridge, UK: Cambridge University Press, 2009, p. 204.

<sup>285</sup> ILC, *Report of the International Law Commission on the Work of its Forty-Eighth Session*, 6 May-26 July 1996, A/51/10, ILC Yearbook, 2 (2), 1996, p. 46.

<sup>286</sup> ICTR, *The Prosecutor v Rutaganda*, Trial Judgment, Case No. ICTR-96-3-T, Trial Chamber I, 6 December 1999, para. 53; *Akayesu* Trial Judgment, para. 507. See also A. Zammit Borda, ‘Putting Reproductive Violence on the Agenda: A Case Study of the Yazidis’ *Journal of Genocide Research* (forthcoming).

the membership of the group is determined by the identity of the father “with the intent that the mother give birth to a child that will consequently not belong to its mother’s group”, to fall.<sup>287</sup> The ICTR has also held that the measures may be mental as well as physical, stating that:

*For instance, rape can be a measure intended to prevent births when the person raped refuses to subsequently procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.*<sup>288</sup>

100. The prohibited act is one of conduct and not of result. Therefore, it is not a requirement that the number of births within the protected group are in fact reduced as a result of the measures imposed.<sup>289</sup> Nevertheless, the ICJ has held that circumstances in which the measures imposed, and their consequences, must be “such that the capacity of members of the group to procreate is affected”.<sup>290</sup> As Mettraux explains, this means that “the conduct in question must at least have the demonstrated potential to contribute to its destructive goal”.<sup>291</sup> Moreover, the ICJ has found that “the systematic nature of such acts has to be considered” in determining whether they fall within Article II(d) of the Convention. The ICJ’s interpretation of the nature of the prohibited act, that requires that the act be committed on a certain scale, is consistent with the ICC Elements of Crimes that requires the measures intended to prevent births are imposed “in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction”.<sup>292</sup>
101. The act of imposing measures to prevent births may also qualify as an act of causing serious bodily harm prohibited under Article II(b) of the Convention. However, while Article II(b) is concerned with serious bodily or mental harm (which, as noted above, may include rape and sexual violence), Article II(d) is specifically concerned with *reproductive violence*. Moreover, a further distinction between the two acts is that under Article II(d) the measures must be imposed to prevent births within the group. Article II(b) requires only the infliction of serious bodily harm. On the other hand, Article II(d) does not

<sup>287</sup> Akayesu Trial Judgment para. 507. The ICTR did not, however, find Mr Akayesu guilty of genocide on this basis. See also, *Croatia v Serbia*, para. 397, in which the Court held that there was not sufficient evidence that rape was committed “in order to prevent births within the group, within the meaning of Article II(d)”.

<sup>288</sup> *Ibid.*, para. 508; ICTR, *The Prosecutor v Rutaganda*, Trial Judgment, Case No. ICTR-96-3-T, Trial Chamber I, 6 December 1999, para. 53; ICTR, *The Prosecutor v Musema*, Trial Judgment, Case No. ICTR-96-13-A, Trial Chamber I, 27 January 2000, para. 159.

<sup>289</sup> F. Jeßberger, *The Definition and Elements of the Crime of Genocide* in P. Gaeta (ed.), *The UN Genocide Convention: A Commentary*. Oxford, UK: Oxford University Press, 2009, p. 102.

<sup>290</sup> ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v Serbia*), Judgment, ICJ Reports 2015 p. 3, para. 166.

<sup>291</sup> G. Mettraux, *International Crimes: Law and Practice: Volume I: Genocide*. Oxford, UK: Oxford University Press, 2019, para. 10.5.1.1.

<sup>292</sup> ICC Elements of Crimes, Article 6(d)(5).

require proof that measures imposed to prevent births caused serious bodily or mental harm to the victim.

#### 4.2 Application of Law to Facts

102. ISIS publications welcomed the enslavement of Yazidi women, declaring one of the signs of the Hour (or Apocalypse) to be when “a slave girl gives birth to her master”.<sup>293</sup> As the Commission of Inquiry observed in its 2014 Report:

*In sexually enslaving Yazidi women and girls and forcing them to bear the children of ISIS fighters, the armed group views the offspring as belonging to the father, superior to the mother, and prevents another generation of Yazidi from being born.*<sup>294</sup>

103. From the perspective of the Yazidi tradition, sexual contact with a non-Yazidi, whether consensual or non-consensual, would result in rejection by the Yazidi community of both the mother and any child born as a result of rape.<sup>295</sup> As explained by Kaya:

*Female survivors who were held captive by ISIS and exposed to sexual and other forms of violence were initially hesitant about returning to their families and communities, fearing that they would be rejected, or that their male family members would kill them. One of the factors in this is that sexual contact with a non-Yazidi - non-consensual or otherwise - is grounds for leaving the faith. Moreover, according to Yazidi tradition, if someone leaves the community and converts to another religion, they are no longer accepted back into the community or Yazidism.*<sup>296</sup>

104. The OHCHR has reported that one Yazidi survivor interviewed for the purposes of its 2015 Report explained that she was repeatedly raped by an ISIS “doctor”

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<sup>293</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27/CRP.3, 19 November 2014, para. 55.

<sup>294</sup> *Ibid.*

<sup>295</sup> Z. Kaya, *Iraq’s Yazidis and ISIS: The Causes and Consequences of Sexual Violence in Conflict*, LSE Middle East Centre, November 2019, p. 14.

<sup>296</sup> Z. Kaya, *Iraq’s Yazidis and Isis: The Causes and Consequences of Sexual Violence in Conflict*, LSE Middle East Centre, November 2019, pp 13-14. According to Kaya, such fear of rejection was eased by a declaration of Baba Sheikh, the spiritual father of the Yazidi in September 2014, welcoming back Yazidis who had been forced to convert to Islam by ISIS. Survivors of rape and sexual violence were re-baptised in Lalish, thus “paving the way for wider community acceptance”. However, it has been reported that Yazidi survivors of sexual slavery have been told that they must give up their child born of rape or to stay away. Some have, as a result, given up their children for adoption: L. Loveluck, M. Salim, *Yazidi Women Raped as ISIS Slaves Face Brutal Homecoming Choice: Give up their Child or Stay Away*, *The Washington Post*, 30 July 2019.

whilst she was pregnant.<sup>297</sup> The doctor also sat on her stomach, telling her that “this baby should die because it is an infidel; I can make a Muslim baby”.<sup>298</sup>

105. Other women were subjected to forced abortions.<sup>299</sup> One survivor recalled to the OHCHR that she overheard an ISIS fighter saying, “we do not want more Yazidis to be born”.<sup>300</sup>
106. Scholars have noted that the systematic rape of Yazidi women and girls by ISIS was particularly devastating on account that membership of the Yazidi group come from both parents and cannot be changed.<sup>301</sup> Children born to Yazidi mothers and ISIS (non-Yazidi) fathers have been rejected by the Yazidi community; their mothers told that they will not be welcomed back into the community if they keep their children.<sup>302</sup> As a result, some Yazidi women have given up their children for adoption.<sup>303</sup>
107. As a consequence of the separation of Yazidi men and women, and in many cases the execution of men and boys who had reached puberty, ISIS stymied the possibility of births within the Yazidi group. Upon their capture, ISIS systematically separated Yazidi men and women. There is credible evidence to support the allegation that men and older boys, aged over 12 years old, who refused to convert to Islam and those discovered with weapons on their person, were summarily executed.<sup>304</sup> The eye-witness accounts of survivors, documented by the Commission of Inquiry, describe hearing gunfire after men and boys were led away by ISIS fighters.<sup>305</sup> None of these men and boys have been seen since August 2014.<sup>306</sup> The Commission of Inquiry found that:

*Regardless of where Yazidi families were captured, ISIS fighters swiftly ordered the separation of males and females, with the exception of boys who had not reached puberty, who were allowed to remain with their mothers... In the process of capture and transfer, hundreds of ISIS fighters operating across a vast territory in the Sinjar region*

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<sup>297</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, A/HRC/28/18, 27 March 2015, para. 39.

<sup>298</sup> *Ibid.*

<sup>299</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, A/HRC/28/18, 27 March 2015, para. 40.

<sup>300</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, A/HRC/28/18, 27 March 2015, para. 41.

<sup>301</sup> V. D. S. Saeed et al., *Calling ISIL Atrocities Against the Yazidis by their Rightful Name: Do they Constitute the Crime of Genocide?*, *Human Rights Law Review*, 17 (2), 2017, pp 261-283, 276.

<sup>302</sup> L. Loveluck, M. Salim, *Yazidi Women Raped as ISIS Slaves Face Brutal Homecoming Choice: Give up their Child or Stay Away*, *The Washington Post*, 30 July 2019.

<sup>303</sup> *Ibid.* M. Chulov, N. Mando, *Cast out: the Yazidi Women Reunited With their Children Born in Isis Slavery*, *The Guardian*, 12 March 2021.

<sup>304</sup> Commission of Inquiry, *“They Came to Destroy”: ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 33.

<sup>305</sup> Commission of Inquiry, *“They Came to Destroy”: ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 108.

<sup>306</sup> *Ibid.*, para. 108.



systematically separated Yazidis into three distinct groups: men and boys aged approximately 12 and above; women and children; and later, drawn from the pool of male children who had remained with the women, boys aged seven and above.<sup>307</sup>

## 5. Article II(e) - Forcibly Transferring Children of the Group to Another Group

### 5.1. Applicable Law Relating to Transfer of Children from a Protected Group to Another Group

108. The International Law Commission has commented that the forcible transfer of the children of the group “would have particularly serious consequences for the future viability of the group as such”.<sup>308</sup> The prohibited act of forcibly transferring the children of the protected group away from the group is based upon the assumption that, when transferred to another group, the children of the protected group cannot, and do not, grow up as part of the protected group and become estranged from the protected group as the language, culture, religion and other traditions of the group “become or remain alien to them”.<sup>309</sup>
109. For the purposes of international criminal law, the children need not be transferred to the perpetrator’s group, it is sufficient that they are transferred away from the protected group that the perpetrator intends to destroy in whole or in part.<sup>310</sup>
110. The Convention is silent as to the age limit relevant to the definition of “children”. During the negotiation of the ICC Elements of Crimes, States initially disagreed on the relevant age limit but eventually agreed a limit of 18 years old,<sup>311</sup> in line with the definition provided by Article 1 of the UN Convention on the Rights of the Child.<sup>312</sup> However, in the light of a lack of jurisprudence and State practice on this point, it is not clear whether this age limit is customary international law.<sup>313</sup>
111. According to the jurisprudence of the ICTR, the term “forcibly” includes threats or trauma that would lead to the forcible transfer of the children of the protected group away from the group. “With respect to forcibly transferring

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<sup>307</sup> *Ibid.*, paras 30-31.

<sup>308</sup> ILC, *Report of the International Law Commission on the Work of its Forty-Eighth Session, 6 May - 26 July 1996*, A/51/10, ILC Yearbook, 1996, vol. II (2), p. 46.

<sup>309</sup> F. Jeßberger, *The Definition and Elements of the Crime of Genocide* in P. Gaeta (ed.), *The UN Genocide Convention: A Commentary*. Oxford, UK: Oxford University Press, 2009, p. 103.

<sup>310</sup> ICC Elements of Crimes, Article 6.

<sup>311</sup> G. Mettraux, *International Crimes: Law and Practice: Volume I: Genocide*. Oxford, UK: Oxford University Press, 2019, para. 10.6.1.3.

<sup>312</sup> Article 1 Convention on the Rights of the Child provides: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

<sup>313</sup> G. Mettraux, *International Crimes: Law and Practice: Volume I: Genocide*. Oxford, UK: Oxford University Press, 2019, para. 10.6.1.3.

children of the group to another group, the Chamber is of the opinion that, as in the case of measures intended to prevent births, the objective is not only to sanction a direct act of forcible physical transfer, but also to sanction acts of threats or trauma which would lead to the forcible transfer of children from one group to another.”<sup>314</sup>

112. This interpretation of “forcibly” is reflected in the ICC Elements of Crimes. Here, “forcibly” is not restricted to physical force and may include “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such a person or persons or another person, or by taking advantage of a coercive environment”.<sup>315</sup>

## 5.2. Application of Law to Facts

113. There are numerous reports documenting the forcible transfer of Yazidi children to different locations in Iraq and Syria.<sup>316</sup> Boys between the ages of eight and 15 were forcibly separated from their mothers and sent to ISIS military training camps in Iraq and Syria<sup>317</sup> where they were indoctrinated, trained to fight and then sent into battle.<sup>318</sup> The Commission of Inquiry Report 2016 found that these separations were often witnessed by younger children, who would also witness their mother being subjected to beatings as she tried to prevent her older children from being taken from her.<sup>319</sup> A propaganda video made and released by ISIS in 2017 suggests that in some cases, Yazidi boys were sent as suicide bombers to attack their own Yazidi community.<sup>320</sup>
114. Girls were sold into slavery and forcibly transferred to various locations in Iraq and Syria.<sup>321</sup> The Commission of Inquiry Report 2016 states that between 50-300 women and girls were forcibly transferred to Syria for sale to ISIS fighters

<sup>314</sup> Akayesu Trial Judgment, para. 509. See also, ICTR, *The Prosecutor v Rutaganda*, Trial Judgment, Case No. ICTR-96-3-T, Trial Chamber I, 6 December 1999, para. 54; Musema Trial Judgment, para. 159; F. Jeßberger, *The Definition and Elements of the Crime of Genocide* in P. Gaeta (ed.), *The UN Genocide Convention: A Commentary*. Oxford, UK: Oxford University Press, 2009, p. 103.

<sup>315</sup> ICC Elements of Crimes, Article 6(e), fn. 5.

<sup>316</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, A/HRC/28/18, 27 March 2015, paras 42, 45.

<sup>317</sup> Yazidi boys were sent to training camps in Mosul, Tel Afar, and Baaj in Iraq, and Raqqah, Tabqa, Tel Abyad, and Suluk in Syria.

<sup>318</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, paras 82, 93, 147; OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, A/HRC/28/18, 15 June 2016, para. 45; UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 12.

<sup>319</sup> *Ibid.*

<sup>320</sup> R. Hussein, *Alleged IS Video Shows Two Kidnapped Yazidi Teens in Suicide Bombing Plot*, *Voice of America*, 16 February 2017, available at <https://www.voanews.com/extremism-watch/alleged-video-shows-two-kidnapped-yazidi-teens-suicide-bombing-plot> (accessed 18 April 2021).

<sup>321</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, A/HRC/28/18, 27 March 2015, para. 42; Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, paras 42-43, 50.

there.<sup>322</sup> The OHCHR 2015 Report states that girls were forcibly transferred to Al-Hassakeh, Al-Shadadiyah, Deir-ez-Zoor, Ghazna, Membij, Raqqa, and Tel Abyad in Syria.<sup>323</sup>

115. The Commission of Inquiry Report 2016 concludes that by these transfers of children in these different ways, “achieved through physical force at the time these children were taken from their mothers, remov[ing] children from their community and the practice of their faith... ISIS intentionally seeks to destroy Yazidi children’s concept of themselves as Yazidi, erasing their attachment to the Yazidi religion”.<sup>324</sup>

#### **D. Specific Intent to Destroy the Yazidis, in Whole or in Part, As Such**

116. The Committee describes below the evidence of direct intent of ISIS to destroy the Yazidis, in whole or in part, as well evidence of intent inferred from the surrounding facts and circumstances in which prohibited acts against the Yazidis were committed. (See further, Section C which relates to the Actus Reus for Genocide).
117. The surrounding facts and circumstances may include the perpetrators’ conduct by way of deeds and utterances, considered together, as well as perpetration of other culpable acts systematically directed against the same group.<sup>325</sup> Relevant conduct may include, among other things, solely targeting (physically) the protected group or their property, the use of derogatory language towards members of the targeted group, the weapons employed and the extent of bodily injury, the methodical way of planning and the systematic manner of any killing.<sup>326</sup>
118. The surrounding facts and circumstances were set in the context of wider discriminatory and persecutory policies and practices faced by the Yazidis at the hands of the three States, among others, who had responsibility for them as citizens and/or refugees or displaced people; Iraq, Turkey and Syria. Whilst the treatment was context- and time-specific (as the perpetrators varied),<sup>327</sup> the Yazidis had faced such systematic discrimination and persecution in Iraq and Syria long before the conduct, which resulted in prohibited acts; this included

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<sup>322</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 56.

<sup>323</sup> OHCHR, *Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, A/HRC/28/18, 27 March 2015, para. 42; Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, paras 42-43.

<sup>324</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 148.

<sup>325</sup> ICTR, *The Prosecutor v Gacumbitsi*, Trial Judgment, Case No. ICTR-2001-64-T, Trial Chamber III, 17 June 2004, para. 252.

<sup>326</sup> ICTR, *The Prosecutor v Kayishema and Ruzindana*, Trial Judgment, Case No. ICTR-95-1-T, Trial Chamber II, 21 May 1999, para. 93.

<sup>327</sup> See also, KurdWatch, *Yazidis in Syria: Between Acceptance and Marginalization*, December 2010, p. 6.

long-term religious persecution.<sup>328</sup> The UN Framework of Analysis for Atrocity Crimes (“Framework”) shows that genocides are facilitated and occur over time and are rarely instantaneous and, as such, the conditions which are calculated to destroy often have a long history and context rooted in systematic discrimination and extreme inequality.

119. The Framework specifies that “[s]ocieties that have a history of violence and serious violations of international human rights and humanitarian law or atrocity crimes, or where these are currently taking place, can be more prone to further atrocity crimes. As history has demonstrated, atrocity crimes in general and genocide, in particular, are preceded by less widespread or systematic serious violations of international human rights and humanitarian law. These are typically violations of civil and political rights, but they may include also severe restrictions to economic, social and cultural rights, often linked to patterns of discrimination or exclusion of protected groups, populations or individuals.”<sup>329</sup> The Framework proceeds to set out 14 risk factors which may create the context for genocide to occur. These include eight ‘common’ or structural risk factors and six ‘specific’ or situational/dynamic risk factors. Each stage is itself a complex process. However, what the Framework demonstrates, as noted above, is that genocides are facilitated and occur over time and are rarely instantaneous. For example, the pivot from persecution to extermination in the Holocaust took years.<sup>330</sup>
120. ISIS’ commission of prohibited acts are, therefore, to be seen within this context. Whilst in isolation systematic and widespread discrimination, whether at the hands of ISIS or other perpetrators, may go towards a finding of the crime against humanity of persecution the latter *could* also be relevant in demonstrating specific intent of perpetrators carrying out prohibited acts.
121. The evidence of ISIS’ specific intent emanates from public determinations made by the various UN bodies investigating ISIS crimes as well as public policies, practices, statements, and acts of ISIS itself.

### **1. Specific Intent - Evidence of Direct Intent to Destroy the Yazidis [in Whole or in Part] As Such**

122. The Commission of Inquiry Report 2016 found that ISIS explicitly holds its treatment of the Yazidis to be mandated by its religious interpretation, and its public statements and conduct have been directly demonstrative of its intent.<sup>331</sup>

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<sup>328</sup> See for instance, Yale McMillan Center, Genocide Studies Program, *Before it’s Too Late - A Report Concerning the Ongoing Genocide and Persecution Endured by the Yazidis in Iraq, and their Need for Immediate Protection*, 30 July 2019.

<sup>329</sup> UN, *Framework Analysis for Atrocity Crimes: A Tool for Prevention*, 2014, Risk Factor 9.

<sup>330</sup> A. Jones, *Genocide: A Comprehensive Introduction*, Abingdon: Routledge, 2016, p. 441.

<sup>331</sup> Commission of Inquiry, *“They Came to Destroy”: ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 151.

123. ISIS, in an article published in its English language magazine, *Dabiq*, on 11 October 2014 entitled “*The Revival of Slavery Before the Hour*”, indicated that prior to the attack on Sinjar being launched, it had sought to determine (and did presage) how the Yazidis should be treated under ISIS’ ideology - they were either to be *mushrikin* (hypocrites) or apostates - both possibly subject to the ultimate penal sanction: death.<sup>332</sup> In the same article, ISIS declared that:

*Upon conquering the region of Sinjar [...] the Islamic State faced a population of Yazidis, a pagan minority existent for ages in the regions of Iraq and Sham [Syria]. Their continual existence to this day is a matter that Muslims should question as they will be asked about it on Judgment Day [...]*

In an earlier article from September 2014, ISIS boasted about killing and/or ethnically cleansing the Yazidis.<sup>333</sup>

124. Having determined that the Yazidis were a *mushrik* group, judged not to believe in God as worshipped by the *Ahl Al-Kitab* (People of the Book), ISIS stated that it:

*dealt with this group as the majority of fuqaha [religious scholars] have indicated how mushrikin should be dealt with. Unlike the Jews and the Christians, there was no room for the jizyah payment [a tax to be paid to avoid conversion or death]. Also, their women could be enslaved unlike the female apostates who the majority of the fuqaha say cannot be enslaved and can only be given an ultimatum to repent or face the sword. After capture, the Yazidi women and children were then divided according to the Shariah [religious law] amongst the fighters of the Islamic State who participated in the Sinjar operations, after one fifth of the slaves were transferred to the Islamic State’s authority to be divided as khums [spoils of war] ... The enslaved Yazidi families are now sold by the Islamic State soldiers as the mushrikin were sold by the Companions.<sup>334</sup>*

125. This interpretation, although ISIS fighters frequently referred to Yazidi as *kuffar* [non-believers],<sup>335</sup> determined the behaviour of its fighters during the initial

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<sup>332</sup> ISIS *Dabiq*, *The Revival of Slavery Before the Hour*, Issue 4, 2014, pp 14-16. At p. 14: “Prior to the taking of Sinjar, Shari’ah students in the Islamic State were tasked to research the Yazidi group to see if they should be treated as an originally mushrik group or one that originated as Muslims and then apostatized...”

<sup>333</sup> ISIS *Dabiq*, *A Call to Hijrah*, Al-Hayat Media Center [An Islamic State production], Issue 3, September 2014, 29, available at <https://www.ieproject.org/projects/dabiq3.pdf> (accessed 10 Apr 2021).

<sup>334</sup> *Ibid.*, p. 15.

<sup>335</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 159. See also, ISIS *Dabiq*: *A Call to Hijrah*, Al-Hayat Media Center [An Islamic State production], Issue 3, September 2014, 29, available at <https://www.ieproject.org/projects/dabiq3.pdf> (accessed 10 Apr 2021).

attack on Sinjar and their subsequent commission of prohibited acts against Yazidi men, women and children in both Syria and Iraq. ISIS' killing of the men and boys (some because they did not convert), its sexual enslavement and enslavement of Yazidi women and girls, and its forced abduction, indoctrination and recruitment of Yazidi boys to be used in hostilities, *de facto* converting them, adhered seamlessly to the religious mandates set out by its "scholars" concerning how to treat Yazidi captives.<sup>336</sup> The objectives for the capture and enslavement of Yazidis have been set out in various ISIS statements and documents.<sup>337</sup> The pattern of prohibited acts (see further, Section C) committed by ISIS and the surrounding facts and circumstances in which those acts occurred indicate a *specific intent* to destroy the Yazidis, as a group, in whole or in part.<sup>338</sup>

## 2. Specific Intent - Relevant Surrounding Facts and Circumstances - Statements and Utterances; Planning and Coordination; Commission of Other Culpable Acts; Pattern of Commission of Prohibited Acts

126. From the very first contact with the Yazidis in Sinjar, ISIS fighters focussed their attack on individual Yazidis precisely because they were Yazidis.<sup>339</sup> Yazidi men and older boys were forced to convert or die and in many cases killed because their "sincerity" in conversion was doubted; in all cases, this led to their destruction as Yazidis, given the nature of the prohibited acts - whether killings with an intent to destroy or conversion precluding pro-creation in a patrilineal Yazidi society (as will be noted later). In any case, the majority of Yazidi men were executed at the place of their capture, often in public locations where families were forced to watch, which together with statements and remarks by perpetrators indicate an intention to impact the group existentially.<sup>340</sup> Such actions were even taking place formally in ISIS courts as early as May 2014, as confirmed by UNAMI.<sup>341</sup>

<sup>336</sup> Commission of Inquiry, "They Came to Destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, para. 155. See also, UNAMI POC Report No. 3 of 2014, p. 6 in relation to forcible recruitment of children.

<sup>337</sup> See for instance, Unseen Islamic State Pamphlet on Slavery, translated by A. J. Al- Tamimi, available at <http://www.aymenjawad.org/2015/12/unseen-islamic-state-pamphlet-on-slavery> (accessed 17 April 2021).

<sup>338</sup> There is some cross-over in the following sub-paragraphs with the *actus reus*. This is because the surrounding facts and circumstances in which the prohibited acts occurred are relevant to the issue of specific intent.

<sup>339</sup> Commission of Inquiry, "They Came to Destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, para. 159. See also V. Dakhil, A. Zammit Borda and A.R.J. Murray, "'Calling ISIL Atrocities Against the Yezidis by Their Rightful Name": Do They Constitute the Crime of Genocide?' (2017) 17 *Human Rights Law Review* 261, 17.

<sup>340</sup> The Cairo Review of Global Affairs, They Yazidi Genocide: Essay by United Nations Independent International Commission of Inquiry on the Syrian Arab Republic, 2016, available at <https://www.thecaireview.com/essays/the-yazidi-genocide/> (accessed 4 April 2021).

<sup>341</sup> *Ibid.* See also, UNAMI POC Report No. 2 of 2014, p. 12.

127. Mothers, trying to prevent ISIS from taking their sons to be indoctrinated and trained as fighters, were told that ISIS would make their sons Muslims.<sup>342</sup> One boy, taken for training, was told by his ISIS commander, “even if you see your father, if he is still Yazidi, you must kill him.”<sup>343</sup> Yazidi boys who were taken for indoctrination and training by ISIS suffered outbursts of rage, and were traumatised by prolonged exposure to violence, either directly at the hands of their instructors or in combat, or by witnessing it on the battlefield or in training videos.<sup>344</sup> With hundreds of Yazidi men missing or dead, Yazidi women faced, and continue to face, a precarious existence in a society that has not encouraged their independence or given many of them the tools to live autonomously.<sup>345</sup>
128. The idea of ISIS-interpreted Islam as a source of purity or its actions having purifying force is present throughout all ISIS fighters’ interactions with the Yazidis.<sup>346</sup> From schools in Tel Afar, Iraq, to houses in Ar-Raqqah city, Syria, fighters repeatedly told captured Yazidi women and girls, held as slaves, that they were “dirty Yazidis” and “kuffar”.<sup>347</sup> The *Dabiq* article continues in this vein: “Their creed is so deviant from the truth that even cross-worshipping Christians for ages considered them devil-worshippers and Satanists.”<sup>348</sup>
129. ISIS itself confirmed that sexual slavery was acceptable regarding female captives. ISIS refers to them as “slaves” or “spoils of war” in several public statements.<sup>349</sup> For instance, in October 2014, ISIS issued a pamphlet entitled “Questions and Answers on Taking Captives and Slaves”, which states that it is permissible to have sexual intercourse with a girl who has not reached puberty and that the “slave” is considered as merely a property of the owner that, after his death, could be distributed as part of his estate.<sup>350</sup> ISIS also issued, around October 2014, a detailed document for the sale of captive women and children by age and gender.<sup>351</sup> The document instructed that only foreign fighters from Turkey, Syria and the Gulf states are permitted to buy

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<sup>342</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 159.

<sup>343</sup> *Ibid.*

<sup>344</sup> *Ibid.*, para. 178.

<sup>345</sup> *Ibid.*, para. 180.

<sup>346</sup> *Ibid.*, para. 160.

<sup>347</sup> *Ibid.*

<sup>348</sup> ISIS *Dabiq*, Issue 4, p. 14.

<sup>349</sup> Referred to by ISIL as *ma malakat aymanukum* “that which your right hand possesses”; See also, ISIS *Dabiq*, The Failed Crusade, 1435, Issue 4, p. 14 available at <https://www.ieproject.org/projects/dabiq4.html> (accessed 4 April 2021).

<sup>350</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 14. The document is cited in English translation on the following website <https://www.hrw.org/news/2015/09/05/slavery-isis-rules> (accessed 16 April 2021).

<sup>351</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 14-15. See also, ISIS *Dabiq*, The Failed Crusade, 1435, Issue 4, p. 14 available at <https://www.ieproject.org/projects/dabiq4.html> (accessed 4 April 2021).

- more than three captives.<sup>352</sup> Evidence of men from the Gulf, Turkey and ISIS fighters from Syria coming to purchase women and girls is well documented.<sup>353</sup>
130. At the time of the Commission of Inquiry Report 2016, on 15 June 2016, over 3,200 women and children were still held by ISIS, primarily in Syria, where Yazidi women and girls continued to be sexually enslaved and otherwise abused, and Yazidi boys, indoctrinated and trained.<sup>354</sup> As it noted at the time: “Thousands of Yazidi men and boys were missing and remain so today. ISIS’s trade in women and girls and its recruitment and use of boys have never ceased. The genocide of the Yazidis is on-going.”
131. Children above the age of five years old were forcibly converted to Islam, given Muslim names and were taken to schools where they were forced to learn the Quran.<sup>355</sup> ISIS was teaching all of the Yazidi boys who were above the age of 12 how to use weapons.<sup>356</sup> Later, these trained, “converted” boys were made to fight as part of ISIS.
132. The commission of prohibited acts was planned, controlled and methodically mandated by ISIS’ organisational structure. Conduct of ISIS fighters was aligned with ISIS’ ideological stance concerning the existence of Yazidis.<sup>357</sup> This included the coordination of the near-identical treatment of Yazidis by fighters across Sinjar, the transferring of thousands of Yazidi captives to clearly designated primary and then secondary holding sites, the systematic separation of men from women with careful categorisation, and the complex system of registering and selling Yazidi women and children.<sup>358</sup> As the Commission of Inquiry Report 2016 concludes “The public statements and conduct of ISIS and its fighters clearly demonstrate that ISIS intended to destroy the Yazidis of Sinjar, in whole or in part.”<sup>359</sup> It is emphatic that:

*This is the genocide accomplished through the destruction of a nine-year-old girl in a slave market, surrounded by men waving their bids; of a woman and children locked in a room, beaten and starved; of a little*

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<sup>352</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 14-15.

<sup>353</sup> *Ibid.*, pp 15-16.

<sup>354</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 205.

<sup>355</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 12.

<sup>356</sup> *Ibid.*

<sup>357</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 156.

<sup>358</sup> *Ibid.* See also UNAMI POC Report No. 3 of 2014, pp 14-15; UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 14. The UNAMI Report 2016 notes that: “Often, after the women and children had been deprived of their liberty, ISIL would then take the younger girls away. Witness information indicates that most girls under approximately eight years old would be left with their mothers, while those above that age were taken. Women with younger children, or those who were pregnant, were often not spared from sexual harassment, rape or other conflict related sexual violence.”

<sup>359</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 202.



*boy trained to kill his father. It is a genocide perpetrated by male fighters so ideologically enslaved that they believe that by committing some of the most horrific crimes imaginable, they are bettering the society in which they live.*<sup>360</sup>

133. During the commission of the majority of prohibited acts, from at least the 3 August 2014 Sinjar attack and earlier in 2013 in Iraq and Syria, the Yazidis were being targeted by ISIS with other culpable acts. ISIS deliberately and systematically destroyed Yazidi shrines, cemeteries and temples in Sinjar.<sup>361</sup> Some homes were also looted after being marked as belonging to Yazidis.<sup>362</sup> As held by the ICTY Appeals Chamber in the *Krstić* case:

*[t]he destruction of cultural property may serve evidentially to confirm an intent, to be gathered from other circumstances, to destroy the group, as such.*<sup>363</sup>

This dictum was endorsed by the ICJ in the 2007 case of *Bosnia and Herzegovina v. Serbia and Montenegro*.<sup>364</sup>

134. There may be many “motives” ascribed to individual ISIS perpetrators of prohibited acts as to why they may have committed them. Such motivations, however, such as the desire for territorial control of the Sinjar region, gifts of women and girls to induce fighters to join ISIS or continue to fight, and/or the sexual gratification that resulted from the sexual enslavement of Yazidi women and girls - which may or may not exist - do not preclude ISIS perpetrators from having the specific intent to commit genocide.<sup>365</sup>
135. That ISIS specifically targeted the Yazidis with prohibited acts because they were Yazidi is evidenced throughout various United Nations reports based on detailed eye-witness testimony from survivors and victims as well as ISIS’ own statements and documentation.<sup>366</sup> The pattern and manner in which the

<sup>360</sup> Commission of Inquiry, *“They Came to Destroy”*: ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, para. 204.

<sup>361</sup> *Ibid.* See also, UNAMI POC Report No. 2 of 2014, p. 9; UNAMI POC Report No. 3 of 2014, pp 12, 16; UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 4, 18.

<sup>362</sup> *Ibid.*

<sup>363</sup> ICTY, *Prosecutor v Radislav Krstić*, Appeal Judgment, Case No. IT-98-33-A, Appeals Chamber, 19 April 2004, paras 25-26. This confirmed para. 580 of the *Krstić* Trial Judgment, which read, “Where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of intent to physically destroy the group. In this case, the Trial Chamber will thus take into account as evidence of intent to destroy the group, the deliberate destruction of mosques and houses belonging to members of the group.”

<sup>364</sup> *Bosnia and Herzegovina v. Serbia and Montenegro*, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, ICJ Judgment, 26 February 2006, (“*Bosnia v Serbia Judgment*”), para. 344.

<sup>365</sup> ICTY, *Prosecutor v Jelisić*, Appeal Judgment, Case No. IT-95-10-A, Appeals Chamber, 5 July 2001, para. 49.

<sup>366</sup> See Annex on Methodology.

prohibited acts were committed, and in light of the surrounding facts aforementioned, indicated an intent to destroy:

- a. As soon as Yazidis began to be surrounded by ISIS in Sinjar and surrounding regions, and from 2 August 2014 onwards, many were in need of urgent humanitarian assistance, including water, food, shelter and medicine, which was withheld.<sup>367</sup> As many as 200,000 predominantly Yazidis (some 75%), sought safety on Jabal Sinjar (Sinjar Mountain) and faced dire conditions in temperatures up to 50 degrees;<sup>368</sup> they were surrounded by ISIS and in need of urgent assistance.<sup>369</sup> Up to 6,300 Yazidis, however, were abducted or killed by ISIS before they could reach safety.<sup>370</sup> On 5 August 2014, UNICEF reported that 25,000 children on the mountain needed immediate access to water and sanitation services, and at least 40 children died as a consequence of hunger, thirst or dehydration by 5 August 2014.<sup>371</sup> Some women had thrown themselves off the mountain in desperation.<sup>372</sup> These dire conditions continued on the mountain until the raising of the siege on 14 August 2014.<sup>373</sup> Men on the mountain and generally in Sinjar were being killed by ISIS fighters if caught and women and children captured; ISIS during this period, together with associated groups, were systematically hunting down and killing Yazidis who remained in their homes.<sup>374</sup>
- b. Evidence of mass killings of Yazidi men has been found to be systematic in dozens of sights in and around many cities, town and villages taken over by ISIS (in Sinjar and elsewhere in Ninewa Governorate) from at least 3 August 2014.<sup>375</sup> By 2018 UNAMI/OHCHR documented 202 mass grave sites, with the largest numbers located in Ninewa (95), Kirkuk (37), Salah al-Din (36) and Anbar (24) Governorates, and estimated that from 6000 to more than 12,000 victims are buried at these sites.<sup>376</sup> Killing sites and/or mass

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<sup>367</sup> UNAMI POC Report No. 2 of 2014, p. 4.

<sup>368</sup> At least up to 35,000-50,000 individuals trapped on the mountain by 4 August 2014, surrounded by ISIL: OCHA Flash Update: Iraq Crisis - Significant Displacement from Sinjar, No. 2 | 4 August 2014. UNAMI reports that were contemporaneous with the events reported from sources estimating that as many as 200,000 individuals may have sought refuge on the Mountain.

<sup>369</sup> UNAMI POC Report No. 2 of 2014, pp 4, 12-13.

<sup>370</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 8.

<sup>371</sup> UNAMI POC Report No. 2 of 2014, p. 4. See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 9.

<sup>372</sup> *Ibid.*, p. 14.

<sup>373</sup> *Ibid.*

<sup>374</sup> *Ibid.*, p. 12-13.

<sup>375</sup> *Ibid.*, pp 13-15; UNAMI POC Report No. 3 of 2014, p. 16; UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 10, 12-13. In these documented instances of mass killings in August 2014, perpetrators are frequently identified as ISIS perpetrators from Iraq and Syria. Fighters speaking with "Syrian" accents frequently feature in descriptions. The self-proclaimed leaders, or "Emirs", are often identified as Iraqi.

<sup>376</sup> UNAMI, *Unearthing Atrocities: Mass Graves in Territory Formerly Controlled by ISIL*, 6 November 2018, p. 1.

graves have been discovered across the Sinjar District, as well as in areas of Tel Afar and Mosul Districts.<sup>377</sup> By January 2016, a local NGO had documented up to 35 suspected sites of mass graves containing Yazidi remains in the Sinjar area, distinct from killing sites, some of which are located in territory that recurrently fall under ISIS', or groups associated with ISIS', control.<sup>378</sup> New sites continue to be found, with the UN stating that dozens of mass graves are yet to be exhumed.<sup>379</sup> According to extrapolation of data taken from a retrospective household survey, approximately 10,000 Yazidis were either killed or kidnapped during the assault on Sinjar.<sup>380</sup>

- c. The forced conversion or die policy was always under the pain of death; killing in the event of refusal to convert was immediate and often in front of other captured Yazidis.<sup>381</sup> Those who complied under this extreme duress were nonetheless subjected to severe ill-treatment and sexual violence.<sup>382</sup> The policy was often overridden because perpetrators wished to kill fighting age Yazidi men, as *kuffar*, in line with their declared ideology of "kill them wherever you find them [*kuffar*]" and enslave the women and children;<sup>383</sup> execution was the easier of the two methods of destruction where "conversion" could not be guaranteed to be sincere; conversion could only be an option after the Yazidis were either captured or detained civilians or were otherwise *hors de combat*. The prospect of death was ever-present even after conversion. The mass killings and mass graves of Yazidi men also belie an adherence to a "sincere" forced conversion policy. The systematic killing of several hundred men and adolescent boys in the village of Kocho is one such example where no

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<sup>377</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 17; UNAMI, *Unearthing Atrocities: Mass Graves in Territory Formerly Controlled by ISIL*, 6 November 2018, p. 1.

<sup>378</sup> Yazda Documentation Project, *Mass Graves of Yazidi Killed by the Islamic State Organization or Local Affiliates on or after 3 August 2014*, 28 January 2016 and *Working against the Clock: Documenting Mass Graves of Yazidis Killed by the Islamic State*, 2018.

<sup>379</sup> See also, National Iraqi News Agency (NINA), *Mass Grave for Yazidis Found Northwest of Mosul*, 25 February 2019, available at <https://bit.ly/2j4ubku> (accessed 2 January 2021); UNAMI, *Unearthing Atrocities: Mass Graves in Territory Formerly Controlled by ISIL*, 6 November 2018, p. 1, available at <http://bit.ly/2icpli8> (accessed 2 January 2021); Al-Monitor, *Genocide still Haunts Iraq's Yazidis*, 8 August 2018, available at <http://almon.co/33cr> (accessed 2 January 2021); Human Rights Watch, *Four Years on, Evidence of ISIS Crimes Lost to Time*, 3 August 2018, available at <https://bit.ly/2o69lhk> (accessed 2 January 2021); UN News, *Six Years After Genocide, International Community Must Prioritize Justice for Yazidi Community*, 3 August 2020, available at <https://news.un.org/en/story/2020/08/1069432> (accessed 2 January 2020).

<sup>380</sup> V. Cetorelli et al., *Mortality and Kidnapping Estimates for the Yazidi Population in the Area of Mount Sinjar, Iraq in August 2014: A Retrospective Household Survey*, *PLoS Medicine*, 14 (4), 2017, available at <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002297> (accessed 20 August 2020).

<sup>381</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 10.

<sup>382</sup> *Ibid.*

<sup>383</sup> *Ibid.*, p. 9.

“meaningful” option was given to convert.<sup>384</sup> Incidents of ISIS carefully monitoring Yazidi for “true conversions” are well documented.<sup>385</sup> Reports have shown that, as will be noted later, ISIS came to believe no Yazidi conversions could be reliably sincere and, therefore, the execution of the majority of the Yazidi men at their sites of capture was the result.<sup>386</sup>

- d. In almost all cases, young women and girls did not have an option to convert (under duress) to avoid sexual violence, sexual enslavement and other manifestations of gendered prohibited acts.<sup>387</sup> Forced conversion and indoctrination often formalised and made permanent the infliction of those prohibited acts. Enslavement and forcing the Yazidi women to bear “Muslim” children (as ISIS called them, “children of the Islamic State”) was in fulfilment of misinterpreted prophecy ushering in the “coming of the hour [apocalypse]”: In an article titled “*The Revival of Slavery before the Hour*”, published in its English-language magazine *Dabiq* in 2014, ISIS welcome enslavement of the Yazidi women and presented its adherence to this manifestation of patrilineage in the harrowing phrase, “the slave girl gives birth to her master.”<sup>388</sup> ISIS issued a Q&A pamphlet providing in its view a legal justification for immediate sexual violence against a female captive: “If she is a virgin, he [her master] can have intercourse with her immediately after taking possession of her. However, if she isn’t, her uterus must be purified [first]...”<sup>389</sup> This included “guidance” on permitting intercourse with a pre-pubescent child “if she is fit for intercourse”.
- e. Many to most villages inhabited by Yazidi in Iraq and Syria were virtually surrounded by ISIS and associated armed groups.<sup>390</sup> Two thirds of those displaced were also located in areas under the control of ISIS and associated armed groups or areas affected by the conflict.<sup>391</sup> Provision of humanitarian assistance was, therefore,

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<sup>384</sup> V. Cetorelli, S. Ashraph, A Demographic Documentation of ISIS’s Attack on the Yazidi Village of Kocho, *LSE Middle East Centre*, 2019, pp 9-11.

<sup>385</sup> UNAMI POC Report No. 2 of 2014, pp 11-16.

<sup>386</sup> The Cairo Review of Global Affairs, *The Yazidi Genocide: Essay by United Nations Independent International Commission of Inquiry on the Syrian Arab Republic*, 2016, available at <https://www.thecairoreview.com/essays/the-yazidi-genocide/> (accessed 4 April 2021).

<sup>387</sup> See for instance, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 9 - the forcible conversation of a family with their 13-year-old daughter being taken and later sold.

<sup>388</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27CRP.3, 19 November 2014, para. 55.

<sup>389</sup> Human Rights Watch, *Slavery: The ISIS Rules*, 5 September 2015, available at <https://www.hrw.org/news/2015/09/05/slavery-isis-rules> (accessed 2 January 2021).

<sup>390</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27CRP.3, 19 November 2014, para. 55.

<sup>391</sup> *Ibid.* See for instance, in August 2014, 25% of the populations of Sinjar District fled to the KRI but almost 27% remained trapped within the district.

difficult but exacerbated by direct attacks by ISIS on Yazidis and the fact that ISIS cut electricity and water to many of these areas.<sup>392</sup>

- f. Those captured and held by ISIS provided testimony that only Yazidis were present at the various holding sites in Iraq and Syria to which they were being transported (sometimes transported across the then non-existent border multiple times).<sup>393</sup> It was only Yazidi women and girls who are being “gifted” as rewards or sold at slave markets throughout Iraq, Syria, and Turkey predominantly.<sup>394</sup> Until a change in rules in mid-2016, ISIS did not allow their members who “owned” Yazidis to sell the Yazidi children separately.<sup>395</sup> This resulted in the separation of children from their mothers and subsequent sale of young boys as house servants and girls as young as nine years as sexual slaves.<sup>396</sup> Such children were often given Muslim names, which means that identifying their ancestry remains problematic.<sup>397</sup>
- g. In Syria, in cities in Ar-Raqqah, Aleppo, Homs, Hasakah and Dayr az-Zawr in particular, Yazidi women, abducted from Iraq, were bought and sold (and re-sold) in markets or distributed to ISIS fighters as “war booty” or “concubines”; one of the earliest ISIS convoys of women and children crossed on 17 August 2014.<sup>398</sup> Those bought in groups by their fighter-owners or held on ISIS military bases as sex slaves (*malak yamiin*) for its fighters stated they were only ever held with other Yazidi females, including girls aged nine and above.<sup>399</sup>
- h. Those captured were frequently subjected to severe ill-treatment as well as a lack of basic necessities, including food and water, even upon forced conversion.<sup>400</sup> Mistreatment included systematic forced

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<sup>392</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27/CRP.3, 19 November 2014, pp 4-5.

<sup>393</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 10, 11, 16; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27/CRP.3, 19 November 2014, paras 38, 53-54.

<sup>394</sup> Commission of Inquiry, “*They Came to Destroy*”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 161. See also, UNAMI POC Report No. 2 of 2014, p. 15; UNAMI POC Report No. 3 of 2014, p. 16; Commission of Inquiry, *Report Submitted to the Human Rights Council Pursuant to Council Resolution S-17/1*, A/HRC/28/69, 5 February 2015, pp 10, 49, paras 63, 188; The [section of the Report relating to Turkey](#).

<sup>395</sup> Commission of Inquiry, “*I Lost My Dignity*”: *Sexual and Gender-Based Violence in the Syrian Arab Republic*, A/HRC/37/CRP.3, 8 March 2018, paras 88-89.

<sup>396</sup> *Ibid.*

<sup>397</sup> *Ibid.*

<sup>398</sup> Commission of Inquiry, *Report Submitted to the Human Rights Council Pursuant to Council Resolution S-17/1*, A/HRC/28/69, 5 February 2015, pp 10, 49, paras 63, 188; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/30/48, 13 August 2015, paras 114-116; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/31/68, para. 141; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/33/55, 11 August 2016, para. 110.

<sup>399</sup> *Ibid.*

<sup>400</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 11.

labour, beatings, electrocution, prolonged isolation, withholding of food, natural light, and water to such an extent captives were forced to drink toilet water; such treatment was often accompanied by ISIS perpetrators telling them that the Yazidis are “infidels” and “pigs”.<sup>401</sup> The most vulnerable captives, such as children, the elderly, and people with disabilities did not escape such treatment.<sup>402</sup> ISIS would frequently come and take girls and women outside of the municipal buildings in which they were most often detained,<sup>403</sup> often by pulling their hair and beating them, seemingly to rape and assault the girls.<sup>404</sup> Some were as young as five years old.<sup>405</sup> A Commission of Inquiry report from 2015 stated that “without exception, all interviewees described multiple rapes by several men, including incidents of gang rape” and that significant numbers of victims have been girls under 18.<sup>406</sup> ISIS also reasserted what it saw as “appropriate” gender roles; women in detention were forced to undertake domestic work - cooking and cleaning in the living quarters of their fighter owners. They were “owners” because the enslaved women were merely chattel.

The treatment suffered by the Yazidis at the hands of ISIS, as outlined above, could be distinguished as different in scale and nature in comparison with other religious or ethnic groups present in ISIS-controlled areas of Syria and Iraq.<sup>407</sup> Arab villagers who did not flee Sinjar in advance of the ISIS attack were allowed to remain in their homes, and were not captured, killed, or enslaved (and are in fact entitled to protection upon payment of *jizyah* [i.e. tax on “People of the Book”]).<sup>408</sup> Under ISIS’ radical misinterpretation of Islam, however, it is impermissible for Yazidis to live as Yazidis inside its so-called caliphate because they are not People of the Book.<sup>409</sup> ISIS also confiscated all

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<sup>401</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 11-12, 15-16; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27CRP.3, 19 November 2014, para. 38.

<sup>402</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 11.

<sup>403</sup> *Ibid.* See also, Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27CRP.3, 19 November 2014, paras 38, 54.

<sup>404</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 14.

<sup>405</sup> *Ibid.* See also, Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/30/48, 13 August 2015, paras 114-116.

<sup>406</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/30/48, 13 August 2015, paras 114-116.

<sup>407</sup> Commission of Inquiry, *“They Came to Destroy”: ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 162.

<sup>408</sup> *Ibid.*

<sup>409</sup> *Ibid.*

identity cards of Yazidi when captured.<sup>410</sup> That the Yazidis are considered 'unforgivable'/unacceptable is evidenced in a prohibited act of killing as early as 29 May 2014, when ISIS attacked Al-Taliliyah (Al-Hasakah), which used to contain a Yazidi community (although major targeted killings of Yazidis by ISIS precursors began as early as 2007).<sup>411</sup> The village had been taken over by IDPs, most of whom were women and children, from Al-Safira (Aleppo). ISIS fighters – mainly foreign fighters who did not speak Arabic and, thus, could not understand the protestations of those they were killing – believed their victims to be Yazidis. The executions halted only when an Iraqi fighter arrived and translated to the other ISIS fighters that the civilians were Sunni Arabs.

### 3. Specific Intent - Targeting in Whole or in Part

136. The public statements, policies and conduct of ISIS strongly indicate that ISIS intended to destroy the Yazidis of Iraq, the majority of the world's Yazidi population, as well as the Yazidis of Syria in whole or in part.<sup>412</sup> In the aftermath of ISIS' attack, the Yazidi population in the Sinjar and Shekhan Districts (of the Governorate of Ninewa in north-western Iraq), which previously had the largest concentration of Yazidis in Iraq, was devastated.<sup>413</sup> The approximately 400,000-strong community had been entirely displaced, captured, or killed.<sup>414</sup>
137. ISIS deliberately targeted all the Yazidis of Iraq and Syria. For instance, the estimated population of Sinjar District in 2014 was 308,315, who were mainly members of the Yazidi community.<sup>415</sup> From 4 to 8 August, nearly 200,000 people fled to the KRI or to the disputed border areas inside the Ninewa Governorate that remained under control of the Peshmerga.<sup>416</sup> It is estimated that at least 200,000 Yazidis remain displaced from their homes as a result of the initial assault by ISIS on Sinjar.<sup>417</sup> Upon seizing control of the predominantly/majority Yazidi regions, ISIS destroyed up to 80% of public

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<sup>410</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, p. 14; UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, pp 9, 13. Money and gold was also taken; for instance, one pregnant woman tried to hide some of her gold and was shot in the stomach and died. (UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 9).

<sup>411</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27/CRP.3, 19 November 2014, para. 37.

<sup>412</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 163.

<sup>413</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 175.

<sup>414</sup> *Ibid.*

<sup>415</sup> OCHA Flash Update: Iraq Crisis - Significant Displacement from Sinjar, No. 1 - 3 August 2014, available at <http://reliefweb.int/report/iraq/ocha-flash-update-iraq-crisis-significant-displacement-sinjar-no-1-3-august-2014> (accessed 17 April 2021). See also, UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 6.

<sup>416</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 6.

<sup>417</sup> UN Development Programme (UNDP), *Six Years After Sinjar Massacre, Support is Vital for Returning Yazidis*, 2 August 2020.

infrastructure and 70% of civilian homes in Sinjar city and its surrounding areas as well as many important religious sites.<sup>418</sup>

138. ISIS besieged the tens of thousands who sought refuge on Sinjar Mountain,<sup>419</sup> attacking those who sought to leave and killing and capturing the Yazidis from elsewhere, wherever it had control, as set out above. The UNAMI Report 2016 stated, although it could not independently verify, that: between 2,000 and 5,500 Yazidi were killed by ISIS since 3 August 2014; approximately 6,386 Yazidi were abducted by ISIS members on or after 3 August 2014 (3,537 women and 2,859 men).<sup>420</sup> The Commission of Inquiry has estimated that “thousands” of Yazidi women, girls, and boys “who were the focus of ISIL’s campaign of genocide have also been detained in Syria, all of whom suffered enslavement and indoctrination.” It found that after the weakening of ISIS’ control, centres in Dayr al-Zawr by pro-Government forces in September 2017, and the fall of its *de facto* capital of Ar Raqqa city to Syrian Defence Forces in October 2017, the whereabouts of many of these Yazidi captives remains unknown.<sup>421</sup>

#### 4. Specific Intent - Conclusions

139. In view of the above evidence, the Committee is satisfied that ISIS committed the prohibited acts against the Yazidis with an intent to destroy them, as such. This is evident from the declared aims, ideologies, and policies of ISIS towards the Yazidi, as a group, as well as its pattern of conduct and the systematic manner in which ISIS committed the prohibited acts (by all levels of perpetrators but enforced by high-level ISIS perpetrators and its court system). ISIS perpetrators from early April 2013 – and, at the very least, from June 2014 onwards – knew of ISIS’ aims and policies and adhered to the strict code of conduct mandated by it. The gendered nature of the prohibited acts speaks for itself and demonstrates the chilling efficacy of executing its objectives: men and older boys were disproportionately killed; male children co-opted and indoctrinated into the ISIS fighting forces – often deployed against their own as a test of loyalty to the new group; older Yazidi women past child-bearing age were predominantly killed and younger women and girls were forced into sexual slavery and/or enforced labour or servitude.
140. This was an attack not just on individual Yazidis but on the group, as such. ISIS targeted the Yazidis as a protected religious and/or ethnical group with the intention to destroy this group, in a manner in which the future ability to physically or biologically reconstitute itself was irreparably compromised.

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<sup>418</sup> *Ibid.*

<sup>419</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 6.

<sup>420</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 7. Note the report added that: “By mid-May 2016, 2,587 Yazidi had reportedly managed to escape ISIL captivity (934 women; 325 men; 658 girls; 670 boys). At the time of writing some 3,799 remained in ISIL captivity (1,935 women and 1,864 men).”

<sup>421</sup> Commission of Inquiry, *Detention in the Syrian Arab Republic: A Way Forward*, 8 March 2018.



These attacks included targeting the women and girls for sexual violence, enforced pregnancy and sexual slavery. Such attacks were intended not only to “dishonour” them in the eyes of the perpetrators, who saw them as dehumanized. But ISIS perpetrators committed such attacks knowing and intending that they would ostracize and have lasting psychological effects on these women and girls (not least because of the high value the Yazidi religion places on endogamy).<sup>422</sup> The Commission of Inquiry Report 2016 explained the long-term impact of sexual violence on some women:

*[...] the Yazidi women and girls under treatment did not want to marry, or to contemplate relationships with men now or in the future. This was compounded by a sense that they had lost their honour.*<sup>423</sup>

This effect was consistent with remarks and statements made by some perpetrators of those prohibited acts and ISIS policy pronouncements; this reinforces the intent to destroy and remains relevant to conditions of life calculated to destroy form of genocide. The patriarchal and patrilineal cultures in which men would have socially/economically/religiously/politically dominant roles (or at least that was how ISIS would have subjectively perceived the Yazidis - their target group) practically manifested in asserting that male ISIS dominance<sup>424</sup> over the women and children and ultimately the entire Yazidi group - past, present and future.<sup>425</sup> In Yazidi communities, for a child to be considered part of the Yazidi religious group, both parents must be Yazidi by birth. Strict endogamy prohibits not only conversion and marriage to non-Yazidis, but also marriages between members of different ‘castes’ (comprising *murids* (lay persons), *pirs* and *shaykhs*).<sup>426</sup> The very act of separating men from women - a separation made permanent by killing - makes it impossible for a new generation of Yazidis to be born. On 24 April 2019, the Yazidi Supreme Spiritual Council issued a declaration accepting all rescued survivors. The

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<sup>422</sup> Even upon freedom from ISIS, Yazidi women and girls have feared repercussions and consequences of being forced to live in ISIS families: “Along with ISIL family members, a large number of Yazidi women, girls and boys surfaced from the last ISIL stronghold in Baghuz and were taken by SDF to Al-Hol camp. Often accompanied in the camp by the families of their captors, many concealed their ethnic and religious identities fearing retaliation by ISIL supporters and threats that the group might return. Others feared that the stigma emanating from the myriad atrocities committed against them, including sexual slavery and rape, 24 would exclude them from the Yazidi community, as they had often been told by ISIL fighters while in captivity.” Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/42/51*, 15 August 2019, para. 86.

<sup>423</sup> Commission of Inquiry, *“They Came to Destroy”: ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2*, 15 June 2016, para. 28.

<sup>424</sup> Instances of ISIS perpetrators executing the entire captured group of male Yazidi men because the Yazidi leader (identified, of course, by ISIS) refused to countenance forced conversion is one such example. (UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016).

<sup>425</sup> See also, S. Ashraph, *Acts of Annihilation, Cairo Review of Global Affairs, Winter Essays*, 2017.

<sup>426</sup> Yalkut-Breddermann, S. *Banu Bleib hier in Deutschland, Kurdische Yezidi im deutschen Exil in Kurden im Exil: Ein Handbuch kurdischer Kultur, Politik und Wissenschaft*, Berlin: Berliner Institut für Vergleichende Sozialforschung, 1991, paras 2.2.1.–2.2.24.

decision was, however, reversed three days later to exclude children born to ISIS fighters.<sup>427</sup>

141. The predominant killing of the men and the sexual enslavement of the women and the displacement of the remaining Yazidi population (who managed to evade and flee ISIS) throughout the world has had a long-lasting, continuing and permanent biological effect.<sup>428</sup> Still today, thousands of Yazidi women, children and men remain missing, held in captivity or displaced.<sup>429</sup> Whilst ISIS' presence has diminished considerably countrywide in Iraq and Syria, it still remains an active fighting force.<sup>430</sup> As documented by both UNAMI and the Commission of Inquiry, ISIS and former ISIS affiliates continue to carry out crimes against civilians, in particular minorities, which fall within their control.
142. This leads to an inevitable conclusion, found in the evidence assessed by the Committee, that ISIS has committed and, as will be specified below, continues to commit, the prohibited acts with the intent to destroy, in whole or in part, the Yazidis of Iraq and Syria, and ISIS perpetrators have, therefore, committed the crime of genocide.<sup>431</sup>

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<sup>427</sup> Already significantly traumatised due to ISIS violations against them, survivors who sought to return upon being freed from former ISIL territory in Syria, faced the painful dilemma of either leaving their children in orphanages in Syria or be exiled from the community. They have faced even further harm as they are targeted for prohibited acts by so-called "Syrian National Army forces." See also, Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/45/31, 14 August 2020; Al Jazeera, Yazidis to Accept ISIL Rape Survivors, but Not Their Children, 29 April 2019, available at <https://www.aljazeera.com/news/2019/4/29/yazidis-to-accept-isil-rape-survivors-but-not-their-children> (accessed 2 January 2020).

<sup>428</sup> For instance, the Commission of Inquiry has found that: "When Yazidi survivors described the crimes that they had experienced and witnessed, it is the loss of identity and sense of belonging, in addition to fear, harm and pain, that emerged as the most common narrative among them, in particular for Yazidi girls. Yazidi boys narrated similar accounts, in addition to denying their ethno-religious origins and forgetting their birth families, names and mother tongue." Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/42/51, 15 August 2019, para. 88.

<sup>429</sup> UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p. 18.

<sup>430</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/40/70, 31 January 2019, paras 36-49.

<sup>431</sup> UNAMI, Report on Human Rights in Iraq: 1 January - 30 June 2014, August 2014, p. 19; UNAMI POC Report No. 2 of 2014, 26 September 2014, p.12; Commission of Inquiry, "They Came to Destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016; UNITAD, 6th Briefing to the UN Security Council, 10 May 2021; European Parliament, Resolution of 4 February 2016 on the systematic mass murder of religious minorities by the so-called 'ISIS/Daesh' (2016/2529(RSP)), 4 February 2016; US Secretary of State J. Kerry, Remarks on Daesh and Genocide, Press Briefing Room, Washington DC, 17 March 2016, available at <https://2009-2017.state.gov/secretary/remarks/2016/03/254782.htm> (accessed 1 June 2016); UNAMI, *A Call for Accountability and Protection: Yazidi Survivors of Atrocities Committed by ISIL*, August 2016, p.12; Yazda, *An Uncertain Future for Yazidis: A Report Marking Three Years Of An Ongoing Genocide*, September 2017, p.27; V. D. S. Saeed et al., *Calling ISIL Atrocities Against the Yazidis by their Rightful Name: Do they Constitute the Crime of Genocide?*, *Human Rights Law Review*, 17 (2), 2017, 261-283, pp 5-6; UNAMI, *Unearthing Atrocities: Mass Graves in Territory Formerly Controlled by ISIL*, 6 November 2018; Yale McMillan Center, *Genocide Studies Program, Before it's Too Late - A Report Concerning the Ongoing Genocide and Persecution Endured by the Yazidis in Iraq, and their Need for Immediate Protection*, 30 July 2019; W. Van Wilenberg, *Iraq's Parliament Ratifies Survivor Law in Major Recognition of Yazidi Genocide*, *Kurdistan24*, 2 March 2021, available at <https://www.kurdistan24.net/en/story/24023-iraq-sparliament-ratifies-survivor-law-in-major-recognition-of-yezidi-genocide> (accessed 14 April 2021); UN, 'ISIL/Da'esh Committed

## VII. LAW RELATING TO STATE RESPONSIBILITY

1. In *Bosnia Genocide* the ICJ affirmed that the commission of genocide is not only a matter of individual criminal responsibility. According to the ICJ, the obligation to prevent genocide “necessarily implies the prohibition of the commission of genocide” by a State.<sup>432</sup> The “commission” of genocide includes the commission of conspiracy, incitement, attempt and complicity in genocide.<sup>433</sup>
2. The law of State responsibility, as codified by the International Law Commission in its Articles on the Responsibility of States for Internationally Wrongful Acts (“ILC Articles on State Responsibility”),<sup>434</sup> provides the circumstances in which a State will have committed an internationally wrongful act (a violation of its international obligations, by act or omission) and the consequences thereof.
3. As a general rule, a State is not responsible for the conduct of non-state or private persons or entities.<sup>435</sup> Subject to the certain exceptions, considered below, a State will only be responsible for the conduct of its (*de jure* or *de facto*) organs<sup>436</sup> or the conduct persons or entities empowered by the law of the State to exercise elements of the governmental authority, acting in that capacity.<sup>437</sup> This includes *ultra vires* conduct.<sup>438</sup> According to the ICJ, a *de facto* organ is a person or entity who in fact acts as an organ of the State, although they are not recognised as such in domestic law, because they are “in fact under strict control” of the State and are “completely dependent” upon the State<sup>439</sup> “of which they are ultimately merely an instrument”.<sup>440</sup> The underlying presumption is that non-state actors act on their own account, and not on the will or at the instigation of the State.<sup>441</sup>

### A. *Disputed Territory and Questions of State Responsibility: Federal State of Iraq and the Kurdistan Autonomous Region*

4. Prior to ISIS’s genocide of the Yazidis, almost the entire Yazidi population of Iraq lived in northern Iraq, in the Dohuk and Ninewa Governorates. The district

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Genocide of Yazidi, War Crimes against Unarmed Cadets, Military Personnel in Iraq, Investigative Team Head Tells Security Council’, 10 May 2021, available at <https://www.un.org/press/en/2021/sc14514.doc.htm> (accessed 10 March 2022).

<sup>432</sup> ICJ, Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia v Serbia*), Judgment, ICJ Reports 2007, p. 43 at para. 166 (“*Bosnia Genocide*”).

<sup>433</sup> *Ibid.*, para. 167.

<sup>434</sup> ILC, Articles on the Responsibility of States for Internationally Wrongful Acts, with Commentaries, November 2001, Supplement No. 10 (A/56/10), chapter IV.E.1 (“ILC Articles on State Responsibility”).

<sup>435</sup> Commentary to Article 8, ILC Articles on State Responsibility, para. 1.

<sup>436</sup> Article 4, ILC Articles on State Responsibility.

<sup>437</sup> Article 5, ILC Articles on State Responsibility.

<sup>438</sup> Article 7, ILC Articles on State Responsibility.

<sup>439</sup> *Bosnia Genocide*, para. 391; Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States*), Judgment, ICJ Reports 1986, p. 14 at paras 109-110 (“*Nicaragua*”).

<sup>440</sup> *Bosnia Genocide*, para. 392.

<sup>441</sup> Commentary to Chapter II, ILC Articles on State Responsibility, para. 2.

of Sinjar, in the Ninewa Governorate, was home to approximately 500,000 Yazidis before ISIS' attack in August 2014.<sup>442</sup> Much of the Ninewa Governorate is formally classified as "disputed territory" by Article 140 of the Constitution of Iraq, 2005,<sup>443</sup> the governance of which is the subject of an ongoing dispute between the Federal Government and the Kurdistan Regional Government ("KRG") of the Kurdistan Autonomous Region since 2003.<sup>444</sup> Before addressing the question whether the information available supports or undermines the allegation that Iraq failed to prevent the Yazidi Genocide, it is first important to consider the political system of Iraq since 2003, and the relevance or otherwise disputed territory has on questions of Iraq's responsibility for the conduct of the KRG and its organs or agents, or for the failure to prevent the unlawful acts of non-state actors in the disputed territory.

5. The KRG administers three provinces in north-east Iraq, namely Dohuk, Irbil and Sulaymaniyah. The draft Kurdish Regional Constitution, approved by the Kurdistan Parliament in June 2009,<sup>445</sup> states that the Iraqi Kurdistan Region includes the district of Sinjar.<sup>446</sup> However, whether the Ninewa Governorate, in which the district of Sinjar is located, is part of the Kurdistan Region or not has been a matter of dispute between the KRG and the Federal Government of Iraq since 2003.<sup>447</sup> This conflict has materialised around the boundaries of the KRG-administered governorates of Dohuk and Irbil in particular. Ninewa as a whole, however, remained officially administered by the Federal Government of Iraq, and outside of the formal Kurdish-controlled areas of northern Iraq.<sup>448</sup>

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<sup>442</sup> Estimates of the size of the Yazidis population in northern Iraq vary but are typically cited as between 400,000-600,000.

<sup>443</sup> Constitution of Iraq, 2005 (English), adopted by referendum 15 October 2005, available at [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en) (accessed 27 June 2021).

<sup>444</sup> N. Kikoler, *Our Generation is Gone. The Islamic State's Targeting of Iraqi Minorities in Ninewa*, 2015, p. 9, available at <https://www.usmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf> (accessed 18 April 2021); C. Van Den Toorn, Public Authority and Iraq's Disputed Territories, *LSE*, 4 September 2018, available at <https://blogs.lse.ac.uk/mec/2018/09/04/public-authority-and-iraqs-disputed-territories/> (accessed 13 April 2021).

<sup>445</sup> Draft Constitution of the Iraqi Kurdistan Region, 23 June 2009, published by the Global Justice Project: Iraq, Legal Reform in Iraq's Post-War Period (2008-2010), available at <https://collections.lib.utah.edu/details?id=318858> (accessed 18 April 2021).

<sup>446</sup> *Ibid.*, Article 2(1).

<sup>447</sup> N. Kikoler, *Our Generation is Gone. The Islamic State's Targeting of Iraqi Minorities in Ninewa*, 2015, p. 9, available at <https://collections.usmm.org/search/catalog/bib259181> (accessed 27 June 2021); European Asylum Support Office, Country Guidance Iraq 2021, Last Updated January 2021, available at <https://euaa.europa.eu/country-guidance-iraq-2021/ninewa> (accessed 4 November 2021); The International Organization for Migration (IOM) Iraq Mission, Rural Areas in Ninewa – Legacies of Conflict on Rural Economies and Communities in Sinjar and Ninewa Plains, 28 November 2019, p.12, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/iom%20rural%20areas%20in%20ninewa.pdf> (accessed 4 November 2021)

<sup>448</sup> It should be noted that sources show that the area around Mount Sinjar was outside of the formal Kurdish-controlled area in 2014. Therefore, although the Iraqi central government may have been the *de jure* authority in the region, it appears that the Kurdish forces may have had *de facto* control of the area. But given that most sources stress how both sides vied for years for parts of the area, it is difficult to ascertain conclusively whether the KRG had full control of the area. V. Cetorelli et al., "Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey", *PLoS Medicine* 14(5) 2019, Figure 1: Map of Northern Iraq,

Nevertheless, the Peshmerga maintained bases and checkpoints throughout the Sinjar district and were the primary security force operating in the region on and around 3 August 2014.<sup>449</sup>

6. The ongoing dispute between the Federal Government and KRG has resulted in a lack of clarity over the provision of security in the Ninewa Governorate and a lack of sense of responsibility for the protection of minority groups, further increasing the vulnerability of these groups to attack.<sup>450</sup>
7. However, for the purposes of international law, the lack of clarity in domestic law as to which authority - the Federal Government or the KRG - was responsible for providing security to the Ninewa Governorate does not preclude the attribution of the conduct of the KRG, its organs or agents to the State of Iraq, and Iraq's international responsibility for any unlawful acts committed by the KRG, its organs or agents.
8. Pursuant to the secondary rules of attribution, as provided by the ILC Articles on State Responsibility,<sup>451</sup> the conduct of the regional authorities of a federal State are considered organs of that State, and therefore their acts are considered acts of the State.<sup>452</sup> As the Commentary to Article 4 of the ILC Articles on State Responsibility (conduct of organs of a State) states:

*It does not matter for this purpose whether the territorial unit in question is a component unit of a federal State or a specific autonomous area, and it is equally irrelevant whether the internal law of the State in question gives the federal parliament power to compel the component unit to abide by the State's international obligations...The French-Mexican Claims Commission in the Pellat case reaffirmed "the principle of international responsibility... of a federal State for all the acts of its separate States which give rise to claims by foreign States and noted specially that such responsibility "...cannot be denied, not even in cases where the federal Constitution denies the central Government the right*

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available at [https://www.researchgate.net/publication/316798636\\_mortality\\_and\\_kidnapping\\_estimates\\_for\\_the\\_yazidi\\_population\\_in\\_the\\_area\\_of\\_mount\\_sinjar\\_iraq\\_in\\_august\\_2014\\_a\\_retrospective\\_household\\_survey](https://www.researchgate.net/publication/316798636_mortality_and_kidnapping_estimates_for_the_yazidi_population_in_the_area_of_mount_sinjar_iraq_in_august_2014_a_retrospective_household_survey) (accessed 20 June 2021); The Guardian, "Who are the Yazidis and why is Isis hunting them?", 11 August 2014, available at <https://www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains> (accessed 20 June 2021).

<sup>449</sup> Commission of Inquiry, "They Came to Destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, para 21.

<sup>450</sup> N. Kikoler, *Our Generation is Gone. The Islamic State's Targeting of Iraqi Minorities in Ninewa*, 2015, p. 10, available at <https://www.usmmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 27 June 2021); UNAMI, *Report on Human Rights in Iraq: July - December 2013*, June 2014, p. 23; Remarks by the President on the Situation in Iraq, The White House, Office of the Press Secretary, 19 June 2014, available at <https://obamawhitehouse.archives.gov/the-press-office/2014/06/19/remarks-president-situation-iraq> (accessed 18 April 2021).

<sup>451</sup> Draft Articles on the Responsibility of States for Internationally Wrongful Acts with Commentaries, Yearbook of the International Law Commission, 2001, Vol. II (2), as corrected.

<sup>452</sup> Article 4 and Commentary, para. 9, Draft Articles on the Responsibility of States for Internationally Wrongful Acts with Commentaries, Yearbook of the International Law Commission, 2001, Vol. II (2), as corrected; *LaGrand (Germany v United States of America)*, Provisional Measures, Order of 3 March 1999, ICJ Reports 1999, pp 9, 16, para. 28.

*of control over the separate States or the right to require them to comply, in their conduct, with the rules of international law". That rule has since been consistently applied.*<sup>453</sup>

9. The Constitution of Iraq, 2005, established Iraq as a federal State "made up of a decentralized capital, regions, and governorates, as well as local administration".<sup>454</sup> According to this federal system, regional governments are entitled to their own laws, however, the Constitution is the "preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception".<sup>455</sup>
10. The Iraqi Constitution expressly recognises the Kurdistan Autonomous Region, along with its existing authorities, as a federal region of Iraq<sup>456</sup> and provides that it shall be responsible for the establishment and organisation of the internal security forces of the region.<sup>457</sup> The internal security of the Kurdistan Autonomous Region is provided by the region's own military forces, the Peshmerga.
11. Nevertheless, pursuant to Article 4 of the ILC Articles on State Responsibility, considering the Iraqi Constitution's express recognition of the Kurdistan Autonomous Region as a federal region of Iraq, the KRG, its organs and agents, including the Peshmerga, are considered organs of the State of Iraq, and their acts considered acts of the State of Iraq.

## **B. State Responsibility for the Conduct of Non-State Actors**

12. As a general rule, the conduct of non-state actors not empowered by law to exercise governmental authority, is not attributable to the State and the State will not be responsible for it. As stated above, the underlying presumption is that non-state actors act on their own account, and not on the will or at the instigation of the State.<sup>458</sup> However, there are exceptions to the general rule.
13. The ILC Articles on State Responsibility identify five exceptions to the general rule of non-attribution of the conduct of non-state actors to the State. The conduct of non-state actors (either persons or entities) will be attributable to the State, and the State will, therefore, be responsible for any violations of its international obligations resulting from that conduct, in circumstances where the non-state actor: acts on the instruction, direction or under the effective

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<sup>453</sup> Article 4 and Commentary, para. 9, Draft Articles on the Responsibility of States for Internationally Wrongful Acts with Commentaries, Yearbook of the International Law Commission, 2001, Vol. II (2), as corrected; *Estate of Hyacinthe Pellat (France) v. United Mexican States*, Decision No. 34 of 7 June 1929, 5 RIAA 534, p. 536.

<sup>454</sup> Constitution of Iraq, 2005, Articles 1 and 116.

<sup>455</sup> *Ibid.*, Article 13. See also, Article 141: "Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan... shall be considered valid..., provided that they do not contradict with the Constitution".

<sup>456</sup> *Ibid.*, Article 117.

<sup>457</sup> *Ibid.*, Article 121(5).

<sup>458</sup> Commentary to Chapter II, ILC Articles on State Responsibility, para. 2.

control of the State;<sup>459</sup> in fact exercises elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority;<sup>460</sup> is an insurrectional movement that becomes the new Government of the State or an insurrectional or other movement that succeeds in establishing a new State;<sup>461</sup> and in circumstances where the State acknowledges and adopts the conduct of the non-state actor as its own.<sup>462</sup>

14. Article 41 of the ILC draft Articles on State Responsibility provides that, in circumstances where it can be shown that a State has committed a serious breach arising under *jus cogens* (peremptory) norms of international law, all States should cooperate, through lawful means, to bring those breaches to an end.<sup>463</sup> Cooperation to bring to an end a violation may take a number of forms, depending on the particular situation, and applies to all States, whether or not they are directly affected by the serious breach.<sup>464</sup>

### C. *Primary Obligations of States under the Genocide Convention*

#### 1. *Obligation to Prevent Genocide*

15. Pursuant to Article I of the Genocide Convention, all State Parties to the Convention have undertaken to prevent and punish the crime of genocide, whether committed in times of peace or war. The obligations to prevent and punish genocide are two legally distinct, but closely connected, obligations.<sup>465</sup>
16. The obligations to prevent and punish genocide are obligations *erga omnes*<sup>466</sup> and *erga omnes partes*.<sup>467</sup> All States, including States not party to the Genocide Convention, therefore, have a legal interest in ensuring that all other States comply with their obligations to prevent and punish genocide.<sup>468</sup>
17. A State can be held responsible for breaching its obligation to prevent a genocide only if genocide is in fact committed.<sup>469</sup> In accordance with the general rule of the law of State responsibility, the breach of the obligation to

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<sup>459</sup> Article 8, ILC Articles on State Responsibility; *Nicaragua*, para. 115, affirmed in *Bosnia Genocide*, para. 400.

<sup>460</sup> Article 9, ILC Articles on State Responsibility.

<sup>461</sup> Article 10, ILC Articles on State Responsibility.

<sup>462</sup> Article 11, ILC Articles on State Responsibility.

<sup>463</sup> Article 41, ILC Articles on State Responsibility. "Lawful means" limits measures that States should take to those that comply with international law.

<sup>464</sup> Commentary to Article 41, ILC Articles on State Responsibility, para. 2.

<sup>465</sup> ICJ, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia v Serbia)*, Judgment, ICJ Reports 2007, p. 43, para. 166; *Bosnia Genocide*, para. 425.

<sup>466</sup> An obligation binding on all States and owed to all States, including States not a party to the Genocide Convention.

<sup>467</sup> An obligation owed by each State party to the Genocide Convention to all other State parties to the Convention: *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, ICJ Reports 2012, p. 422, para. 69.

<sup>468</sup> *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* (Merits) 1970, ICJ Reports 3, paras 33-34; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections*, Judgment, ICJ Reports 1996, p. 595, at pp 615-616, paras 31-32.

<sup>469</sup> *Bosnia Genocide*, para. 431.

prevent will occur the moment a genocide begins, and over the entire period that the genocide is being committed, and the State continues to fail to comply with the obligation.<sup>470</sup>

18. This does not mean that States are only under an obligation to prevent genocide once genocide has occurred. As the ICJ has commented, "that would be absurd, since the whole point of the obligation is to prevent, or attempt to prevent, the occurrence of the act".<sup>471</sup> Rather, the obligation to prevent genocide is engaged the moment a State learns, or should have learned, of the existence of a serious risk that genocide will be committed.<sup>472</sup> Therefore, it is incumbent upon all States to conduct due diligence and to consider, in light of the information available to them, whether there is a serious risk that genocide may be committed, or indeed whether genocide is being committed, and if so, to take all available diplomatic, legal and other lawful measures to prevent genocide.
19. The obligation to prevent genocide is an obligation of conduct and not of result.<sup>473</sup> Thus, a State is not under an obligation to successfully prevent a genocide. However, a State will be in breach of the obligation in circumstances where it has "manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide".<sup>474</sup> From the moment the obligation to prevent is engaged, a State is under an obligation to employ all means available to it that are "likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent" as the circumstances permit.<sup>475</sup>
20. In its assessment of whether a State has failed to comply with its obligation to prevent genocide, the ICJ will consider whether the State has or had the "capacity to influence effectively the action of persons likely to commit, or already committing genocide", a factor that the ICJ acknowledges will vary greatly from one State to another.<sup>476</sup> In this respect, a State's capacity to influence may be affected by a number of facts, including its geographical distance from the place where the genocide occurs, its military capabilities, and the strength of its political or economic links with the State or entity responsible for the commission of the genocide. Importantly, a State's capacity to influence must be assessed according to law - "a State may only act within the limits of international law".<sup>477</sup>

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<sup>470</sup> *Ibid.* Article 14(3), ILC, Draft Articles on State Responsibility, with Commentaries, November 2001, Supplement No. 10 (A/56/10), Chapter IV.E.1.

<sup>471</sup> *Bosnia Genocide*, para. 431.

<sup>472</sup> *Bosnia Genocide*, para. 431.

<sup>473</sup> *Ibid.*, para. 430.

<sup>474</sup> *Ibid.*, para. 430.

<sup>475</sup> *Ibid.*, para. 431.

<sup>476</sup> *Ibid.*, para. 430.

<sup>477</sup> *Ibid.*, para. 430.



21. Utilising the Framework and other tools,<sup>478</sup> which all States would have not only been aware of but required to engage with in some form under the obligation to prevent genocide (Article I of the Genocide Convention), denotes exactly how obligations of the relevant States were to identify the prohibited acts at the earliest stages and ensure steps were taken *before* the prohibited conduct of perpetrators resulted in the harrowing and predictable result.

## 2. Obligation Not to Commit Acts of Genocide

22. The obligation of States not to commit genocide is not expressly included in the terms of the Genocide Convention. However, it is uncontroversial that genocide is prohibited as a matter of customary international law and is a *jus cogens* norm of international law.<sup>479</sup> In *Bosnia Genocide* the ICJ considered whether State Parties to the Genocide Convention are prohibited, according to the terms of the Convention, from committing acts of genocide enumerated in Articles II and III of the Convention. The ICJ held that “the obligation to prevent genocide necessarily implies the prohibition of the commission of genocide”.<sup>480</sup> This prohibition, born out of the obligation to prevent, extends to the prohibition of the acts enumerated in Article III of the Convention, namely conspiracy, incitement, attempt and complicity in genocide.<sup>481</sup> As the ICJ explained:

*It would be paradoxical if States were thus under an obligation to prevent, so far as within their power, commission of genocide by persons over whom they have a certain influence, but were not forbidden to commit such acts through their own organs, or persons over whom they have such firm control that their conduct is attributable to the State concerned under international law.*<sup>482</sup>

## 3. Prohibition of Complicity in Genocide

23. The prohibition of commission of genocide includes the prohibition of complicity in genocide.<sup>483</sup> Accordingly, States Parties bound to the Genocide Convention are “bound not to commit genocide, through the actions of their organs or person or groups whose acts are attributable to them, and any other acts enumerated in Article III”.<sup>484</sup>

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<sup>478</sup> See for instance, Jacob Blaustein Institute for the Advancement of Human Rights (JBI), *Compilation of Risk Factors and Legal Norms for the Prevention of Genocide*. New York: JBI, 2011.

<sup>479</sup> *Barcelona Traction, Light and Power Company, Limited*, Second Phase, Judgment, ICJ Reports 1970, p. 32, para. 33.; ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, November 2001, Supplement No. 10 (A/56/10), Chapter IV.E.1.

<sup>480</sup> *Bosnia Genocide*, para. 166.

<sup>481</sup> *Bosnia Genocide*, para. 167.

<sup>482</sup> *Ibid.*

<sup>483</sup> *Bosnia Genocide*, para. 166-167.

<sup>484</sup> *Ibid.*, para. 167.

24. The conclusion that the obligation to prevent genocide “necessarily implies” the prohibition of complicity in genocide does not mean that the requirements of a State’s obligation to prevent and not to be complicit are the same. The ICJ has stressed the differences between the failure to prevent genocide and complicity in genocide are “so significant as to make it impossible to treat the two types of violation in the same way”.<sup>485</sup>
25. First, complicity requires a positive act “taken to furnish aid or assistance to the perpetrators of genocide, while a violation of the obligation to prevent results from mere failure to adopt and implement suitable measures to prevent genocide from being committed”.<sup>486</sup>
26. Second, “complicity” requires a deliberate act.<sup>487</sup> The State organs or agents must furnish the perpetrator of the genocide with aid or assistance in “full knowledge” of the facts: namely, that genocide was about to be committed or was underway, and that the aid and assistance supplied enabled or facilitated the commission of genocide.<sup>488</sup>
27. “Knowledge” that genocide was about to be committed or was underway includes “at the least” knowledge of the specific intent of the perpetrator to commit genocide acts with the intention to destroy, in whole or in part, the protected group, as such.<sup>489</sup>
28. This requirement of proof of knowledge of the specific intent of the perpetrator sets a high evidential bar. Thus, in *Bosnia Genocide*, despite finding that the former Federal Republic of Yugoslavia (Serbia and Montenegro) (“FRY”) supplied substantial military and financial aid to the armed forces of the Republika Srpska (“VRS”) before and during the genocide, the ICJ held that there was insufficient evidence to support the allegation that the FRY was complicit in the genocide at Srebrenica committed by the VRS, as there was insufficient proof upon which the Court could be certain that the FRY knew that a genocide would or was taking place.<sup>490</sup>
29. The ICJ did not resolve the question in *Bosnia Genocide* as to whether the assisting State must also have specific intent to commit genocide. However, the use of the term “at the least” suggests that knowledge of the perpetrators’ specific intent will be sufficient.<sup>491</sup>
30. Complicity requires a causal nexus between the provision of aid or assistance and the commission of the act of genocide. However, the nature of this casual nexus requires clarification. According to the Commentary to Article 16 of the ILC Articles on State Responsibility, applied by analogy by the ICJ to the question of State complicity in genocide committed by non-state actors,

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<sup>485</sup> *Ibid.*, para. 432.

<sup>486</sup> *Ibid.*, para. 432.

<sup>487</sup> *Ibid.*, para. 432.

<sup>488</sup> *Ibid.*, para. 432.

<sup>489</sup> *Ibid.*, para. 421.

<sup>490</sup> *Ibid.*, para. 422.

<sup>491</sup> *Bosnia Genocide*, Declaration of Judge Keith, paras 5-7 and Declaration of Judge Bennouna, p. 361, who suggests that the State must have “actual or constructive knowledge of the nature of the crime which the principal is preparing to commit”.

"[t]here is no requirement that the aid or assistance should have been essential to the performance of the internationally wrongful act, it is sufficient if it contributed significantly to that act".<sup>492</sup> However, with respect to the assisting State's liability to pay compensation, the Commentary states that the assistance "may only have been an incidental factor in the commission of the primary act, and may have only contributed to a minor degree, *if at all*, to the injury suffered".<sup>493</sup> This comment suggests that a State may be responsible for complicity even if its aid or assistance given to the principal perpetrator was only "incidental" to the commission of genocide.<sup>494</sup>

31. Some scholars, referring to Article 16 of the ILC Articles on State Responsibility, have argued that a finding that a State is responsible for aiding or assisting the commission of an unlawful act on the basis that its aid or assistance provided some indirect or remote contribution to the unlawful act is not advisable.<sup>495</sup> Without a causal nexus that requires the State's aid or assistance to significantly contribute to the commission of the unlawful act, the scope of Article 16 would be extremely wide.<sup>496</sup>

#### 4. Obligation to Punish Acts of Genocide

32. As stated above, all States Parties to the Genocide Convention have undertaken to punish the crime of genocide. In addition, Article VI of the Genocide Convention provides, "Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."
33. Article VI, therefore, only requires States to exercise territorial criminal jurisdiction, although as the ICJ has noted, it does not prohibit States from conferring jurisdiction on their criminal courts based on other criteria which are compatible with international law.<sup>497</sup>
34. The obligation to prosecute alleged perpetrators under Article VI of the Convention, therefore, applies only to the State in whose territory the prohibited act was committed. However, the obligation to punish in a broader sense may also have implications for other States.<sup>498</sup> For example, the ICJ held that Serbia-Montenegro had failed to comply with its obligation to punish genocide because it had failed to cooperate with an international penal

<sup>492</sup> Commentary to Article 16, ILC Articles on State Responsibility, para. 5.

<sup>493</sup> Commentary to Article 16, ILC Articles on State Responsibility, para. 10.

<sup>494</sup> M. Jackson, *Complicity in International Law*. Oxford, UK: Oxford University Press, 2015, p. 158.

<sup>495</sup> H. P. Aust, *Complicity and the Law of State Responsibility*. Cambridge, UK: Cambridge University Press, 2011, p. 197; M. Jackson, *Complicity in International Law*. Oxford, UK: Oxford University Press, 2015, p. 158.

<sup>496</sup> V. Lowe, Responsibility for the Conduct of Other States, *Japanese Journal of International Law and Diplomacy*, 101 (1), 2002, p. 5; M. Jackson, *Complicity in International Law*. Oxford, UK: Oxford University Press, 2015, p. 158.

<sup>497</sup> *Bosnia Genocide*, para. 442.

<sup>498</sup> G. Mettraux, *International Crimes: Law and Practice: Volume I: Genocide*. Oxford, UK: Oxford University Press, 2019, para. 5.1.2.2.

tribunal, the ICTY, to arrest alleged perpetrators of genocide committed in Bosnia-Herzegovina.<sup>499</sup>

35. This obligation requires serious consideration by responsible ministries, such as Foreign Ministries, of States Parties to the Convention. States should, as a minimum:
- i. investigate allegations of crimes suffered by victims who are within their jurisdiction;
  - ii. carry out appropriate due diligence on prohibited acts being committed against the Yazidis and assess whether genocide is being committed by individual perpetrators;
  - iii. ensure legal and natural persons who are nationals of the State are not, in any way, complicit in possible acts of genocide against the Yazidis;
  - iv. put into place all necessary measures to provide that agents, organs and officials of the State do not directly or indirectly contribute to possible acts of genocide against the Yazidis; and/or
  - v. apprehend possible perpetrators within their jurisdiction.

## 5. Obligation to Enact Necessary Legislation to Give Effect to the Provisions of the Convention

36. Connected to the obligation to punish acts of genocide is the obligation to enact the necessary legislation to give effect to the provisions of the Genocide Convention-, and, in particular, to provide effective penalties for persons guilty of any acts of genocide, as prohibited by the Convention (Article V of the Genocide Convention).
37. The Genocide Convention remains silent on what constitutes an “effective penalty”. The Rome Statute provides a period of life imprisonment as the maximum penalty for serious international crime.<sup>500</sup> Penalties adopted by State Parties have historically ranged from periods of imprisonment to the imposition of the death penalty.<sup>501</sup>
38. When considering the scope of an “effective penalty”, the purpose and nature of punishment within the scope of International Criminal Law should be noted.<sup>502</sup> Indeed, a significant body of legal scholars have argued that the primary purpose of penalisation in International Criminal Law is deterrence and the prevention of recidivism, with secondary purposes being retribution and punishment.<sup>503</sup> Other important purposes of criminal punishment include expressivist/pedagogical functions.

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<sup>499</sup> *Bosnia Genocide*, paras 443-449.

<sup>500</sup> Article 77, Rome Statute of the International Criminal Court 1998.

<sup>501</sup> F. Z. Ntoubandi, What Specific Actions Does the Genocide Require from States, *The Sentinel Project*, 1 August 2013, available at <https://thesentinelproject.org/2013/08/01/what-specific-actions-does-the-genocide-convention-require-from-states/> (accessed 1 August 2020)

<sup>502</sup> F. Hassan, The Theoretical Basis of Punishment in International Criminal Law, *Case Western Reserve Journal of International Law*, 15(1), 1983, 39-60.

<sup>503</sup> *Ibid.*, p. 60.

## VIII. CONSIDERATIONS OF STATE RESPONSIBILITY BY STATE

1. This section of the Report provides the factual analysis upon which the findings of the Committee are based. The section is divided into three parts: Part A - the Syria Country Report; Part B - the Iraq Country Report; and Part C - the Turkey Country Report. In each Country Report the factual analysis is divided into five sections that consider, with respect to each State, the facts relevant to the question of each State's compliance with: (1) the obligation to prevent genocide; (2) the obligation not to be complicit in genocide; (3) the obligation to punish genocide; and (4) the obligation to enact legislation necessary to give effect to the Convention. Section (5) in each Country Report provides the Committee's findings on the attribution of prohibited acts to the relevant State. A summary of the Committee's findings on each issue is presented at the end of each section.
2. The final section of this Report then provides the factual analysis, and a summary, of the Committee's findings with respect to Iran, France Saudi Arabia, Gulf Cooperation Council ("GCC") States (Kuwait, Qatar, the UAE, Oman and Bahrain), Russia, and the United Kingdom.

### A. Syria Country Report

#### 1. Obligation to Prevent Genocide

1. The attack on the Yazidi community by ISIS in north-western Iraq in early August 2014, including the assault on Mount Sinjar, was launched from Iraq and north-eastern Syria, specifically the towns of Al-Shaddadi and Tel Hamis.<sup>504</sup> It is necessary to consider, for the obligation to prevent, whether the Government of Syria knew, or should have known, about the serious risk that ISIS posed to minority communities, such as the Yazidi protected group, in Syria itself and the wider risk to the group in neighbouring Iraq. That risk needed to relate to the possible commission of genocide. It raises the question of whether Syria should, therefore, have acted prior to the majority of the prohibited acts of genocide on the Yazidis in early 2014 in Syria and Iraq and the large number of attacks on the Yazidis on Mount Sinjar, Iraq, in August 2014 in order to prevent those acts occurring.
2. Many of Syria's Yazidis lived in two distinct areas. The first geographical area is called 'Afrin or Jabal al-Akrad and is located (north-)west of the city of Aleppo; it is situated in the Aleppo Governorate and includes the districts of 'Afrin and 'Azaz.<sup>505</sup> The second main Yazidi settlement area, the so-called Jazirah, is located in north-eastern Syria, in Al-Hasakah province. The majority of the Yazidis in both regions live in rural areas.<sup>506</sup> The data on the population size of the Yazidis prior to ISIS prohibited acts remains contested, and the

<sup>504</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, pp 3, 6.

<sup>505</sup> KurdWatch, *Yazidis in Syria: Between Acceptance and Marginalization*, December 2010.

<sup>506</sup> *Ibid.*

difficulty in determining precise population numbers is compounded by a lack of official statistics.<sup>507</sup> A Syrian study estimated that there were between 45,000 and 50,000 Yazidis - 20,000 to 25,000 in Al-Hasakah province and 25,000 in 'Afrin and 'Azaz in 2010, with another that estimated there were around 10,000 Yazidis in the districts of 'Afrin and 'Azaz.<sup>508</sup> The Yazidi Council in Syria estimated that 150,000 Yazidis inhabited 110 villages and towns in the Aleppo and Hasakah regions until unrest erupted in 2011.<sup>509</sup> An estimated 95 Yazidi settlements existed across Syria.<sup>510</sup> Today, the international NGO, Yazda, estimates there are only 2,000 to 5,000 Yazidis remaining in Syria.<sup>511</sup>

3. The Yazidis faced systematic persecution under successive governments in Syria, especially at the hands of the Ba'ath party, despite being present in Syria for centuries.<sup>512</sup> The pervasive discrimination included: not being able to self-identify other than as Muslims in official ID;<sup>513</sup> being prohibited from building religious centres or practising their faith freely; being forced to study Islam at school and follow Islamic Sharia law; not being allowed to give testimony in court; being considered impure including their food; not being allowed to obtain Syrian nationality and, thereby, being stateless.<sup>514</sup>
4. It is well established that at least since April 2013, and as early as 2012 (if not earlier), pre-cursors to ISIS, groups affiliated to ISIS, and ISIS, including its previous iteration the Islamic State of Iraq and the Levant ("ISI"), was committing prohibited acts against civilians, and in particular minorities such as the Yazidis, of north-eastern Syria, including Ar-Raqqa, Al-Hasakah, Tel

<sup>507</sup> See, for instance, KurdWatch, Yazidis in Syria: Between Acceptance and Marginalization, December 2010. The numbers do have real significance for the crime of genocide and further investigations are required surrounding the contestation.

<sup>508</sup> K. Res, Ezidiyen li Ciyaye Kurmenc (Efrine), Kurdish Institute, 13 December 2010, available at [www.kurdishinstitute.be/kurdi/minor\\_ku/788.html](http://www.kurdishinstitute.be/kurdi/minor_ku/788.html) (accessed 16 April 2021); K Res, Ezidiyen Cizire, Tirbespiye, Amude, Sere Kaniye u Heseke, 12 July 2010, available at [www.dergush.com/modules.php?name=news&file=article&sid=2094](http://www.dergush.com/modules.php?name=news&file=article&sid=2094) (accessed 16 April 2021). KurdWatch (2010) notes that "the number 50,000 corresponds to information from Shaykh Husayn Birimo from the town of Khaznawiya ('Afrin'), who is considered one of the Yazidi leaders in Syria. The number 45,000 comes from an interview with Shaykh Sa'id, son of Shaykh Hitoye Shaykh Jindo from Sharqiye."

<sup>509</sup> Yazidi Council in Syria, 10 March 2012, available at [http://ezidenrat.de/?page\\_id=196](http://ezidenrat.de/?page_id=196) (accessed 4 April 2021).

<sup>510</sup> A. Austin Holmes, Syrian Yazidis under Four Regimes: Assad, Erdogan, ISIS and the YPG, *Wilson Centre*, 37, July 2020, p. 3, available at [https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/mep\\_200710\\_occ%2037\\_final.pdf](https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/mep_200710_occ%2037_final.pdf) (accessed 20 May 2021).

<sup>511</sup> Yazda, *An Uncertain Future for Yazidis: A Report Marking Three Years of An Ongoing Genocide*, September 2017; Yazda, *Yazda Statement on the Identity of Yazidis*, 5 December 2016.

<sup>512</sup> Yazidi Council in Syria, 10 March 2012, available at [http://ezidenrat.de/?page\\_id=196](http://ezidenrat.de/?page_id=196) (accessed 27 June 2021). See also, Democracy Website, 19 November 2013, available at <http://www.dimoqrati.info/?p=7938> (accessed 16 April 2021); Aranews, The Yazidis in Syria, 16 June 2015, available at <http://aranews.org/06/2015/لايزيديون-في-سوريا-من-الوجود-الى-الهج> (accessed 16 April 2021 but no longer available).

<sup>513</sup> A. Austin Holmes, Syrian Yazidis under Four Regimes: Assad, Erdogan, ISIS and the YPG, *Wilson Centre*, 37, July 2020, p. 4.

<sup>514</sup> Yazda, *An Uncertain Future for Yazidis: A Report Marking Three Years of An Ongoing Genocide*, September 2017, p. 27; KurdWatch, Yazidis in Syria: Between Acceptance and Marginalization, December 2010.

Hamis, Homs, Aleppo, Al-Shaddadi and Idlib.<sup>515</sup> As reported by the Commission of Inquiry, by “[...] 2014, the conflict was marked by the rapid rise and expansion of ISIS, which took over large parts of the north-east in the Syrian Arab Republic”.<sup>516</sup> This would have been well-known to the Syrian Government, not least because of extensive communiqués being issued by the Commission of Inquiry, and other UN bodies, to the Syrian Government. Whilst the nature and extent of their control of the territory was not fixed or necessarily defined, as ISIS control continued to experience resistance from Syrian Government and Kurdish forces, the control was substantial enough for it to declare the area part of the caliphate in early 2014.<sup>517</sup>

5. The existence of attacks by ISIS against civilians and religious minorities had been identified prior to the attack on Mount Sinjar and, indeed, before majority control of various Syrian governorates by ISIS, as noted in detail in the Section on the Findings on Genocide. Therefore, it is clear, for the reasons given below, that the Syrian Government would, or should have known the serious risk that ISIS posed of committing genocide against the Yazidis.
6. Reports were widely available and communicated to Syria by the Commission of Inquiry, that ISIS (including Al-Qaeda affiliated-fighters and “Salafi-jihadi” fighters) were targeting Yazidis from at least April 2013 in the Al-Hasakah Governorate, Syria, which also led to some fleeing the Governorate.<sup>518</sup> This was in line with these groups’ *takfiri* ideology (as noted in the Section on the Findings on Genocide). That ideology manifested in direct attacks on Yazidis because they were Yazidi.<sup>519</sup> Syria would have also had extensive information from its own and its allies’ intelligence sources that this was the case. This Report makes findings only on publicly available sources, but more extensive evidence exists in private repositories held by UN bodies and other international and non-governmental bodies.
7. The Commission of Inquiry, from the very beginning of its mandate, and as specified from its first report on 23 November 2011 to its most recent reports, required Syria to protect civilians, prevent crimes and give effect to obligations under international law and hold perpetrators of crimes accountable; these recommendations became increasingly forceful as the conflict raged and

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<sup>515</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27CRP.3, 19 November 2014, paras 73-78.

<sup>516</sup> Commission of Inquiry, *Report Submitted to the Human Rights Council Pursuant to Council Resolution S-17/1*, A/HRC/28/69, 5 February 2015, p. 6.

<sup>517</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27CRP.3, 19 November 2014, p. 3.

<sup>518</sup> ACAPS, *Syria Needs Analysis Project - SNAP: Regional Analysis Syria - Part I: Syria*, 26 September 2013, p. 21, available <https://reliefweb.int/report/syrian-arab-republic/scenarios-syria-needs-analysis-project-snap-september-2013> (accessed 1 April 2021); Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27CRP.3, 19 November 2014, paras 73-78.

<sup>519</sup> United Nations High Commissioner for Refugees, *UNHCHR’s Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, August 2007, p.80-82, available at <https://www.refworld.org/pdfid/46deb05557.pdf> (accessed 5 November 2021)

included, *inter alia*, recommendations that Syria: “honour its binding legal obligation to protect its citizens from crimes against humanity and other grave violations”;<sup>520</sup> and that all parties to the conflict “take immediate steps to de-escalate the violence and to increase the protection of civilians [and] End all human rights abuses and violations of international humanitarian law.”<sup>521</sup>

8. There was specific evidence, as noted below, that ISIS or ISIS pre-cursors (such as Al Qaeda and Jabhat al Nusra) had already committed prohibited acts against the Yazidi community in Syria well before 2014. By early 2013, it was already very well known, in publicly available documents, what ISIS’ position was in respect of the Yazidis; the minority group which was often being expressly or indirectly referred to in almost every UN report concerning Iraq and Syria.
9. The UNHCR, including in its authoritative *Eligibility Guidelines for Assessing International Protection*, provided in-depth information on the situation of religious and ethnic minorities, including Christians, Yazidis, Turkmen, Shabak, Kaka’l, Sabaeen-Mandaeans, Baha’i and Jews, since 2003.<sup>522</sup> The UNHCR in its April 2009 *Eligibility Guidelines*, relied upon by border agencies such as the UK Government’s Home Office,<sup>523</sup> noted that the Yazidis (among other minorities) were being targeted repeatedly by prohibited acts since at least 2003 in Iraq and Syria<sup>524</sup> by Islamic extremists:

*Iraq’s Yazidis, who are often considered “infidels” and “devil worshippers” by Islamic extremists, have been targeted since 2003 with*

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<sup>520</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27/CRP.3, 19 November 2014, p.13.

<sup>521</sup> *Ibid.*, pp 13-14; Commission of Inquiry, *Syria’s Brutal War Threatens International Peace and Security: UN Commission of Inquiry*, A/HRC/27/60, 13 August 2014, pp 22-27; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/24/46, 16 August 2013 p. 23; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/23/58, 18 July 2013, pp 24-26; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/22/59, 5 February 2013, pp 25-26; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/21/50, 16 August 2012, pp 23-25; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/16/69, 22 February 2012, pp 21-24; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/ S-17/2/Add.1, 23 November 2011, pp 21-23.

<sup>522</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, available at <https://www.refworld.org/docid/49f569cf2.html> (accessed 30 December 2021), p. 171.

<sup>523</sup> See, for instance, UK Home Office, *Border Agency, Country of Origin Information Report, Iraq*, 15 May 2008, available at <https://www.refworld.org/es/pdfid/488efda42.pdf> (accessed 30 December 2021).

<sup>524</sup> The UNHCR Syria reports referred to minorities being targeted on religious grounds generally by sectarian groups including ISIS and ISIS precursors. See, for instance, UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update II*, 22 October 2013, available at: <https://www.refworld.org/docid/5265184f4.html> (accessed 30 December 2021); UN High Commissioner for Refugees (UNHCR), *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III*, 27 October 2014, available at <https://www.refworld.org/docid/544e446d4.html> (accessed 30 December 2021).



"killings, kidnappings, intimidations, and public campaigns to convert or kill them, as well as political and economic trespasses," usually committed with impunity. In addition, they have been targeted for their (perceived) ethnic identity as Kurds as well as their (perceived) support for the US invasion and foreign presence in Iraq.<sup>568</sup> On 14 August 2007, they were targeted in the deadliest attack since the fall of the former regime, when four suicide truck bombers killed more than 400 people and destroyed hundreds of houses in the Yazidi villages of Kahtaniya and Al-Jazeera in the Sinjar District. In the first half of 2008, UNAMI HRO recorded at least five Yazidis murdered in Sinjar. In the second half of 2008, several targeted attacks were reported in the media. On 2 November 2008, police found the bodies of a Yazidi couple strangled to death inside their house in Al-Bijaaj area west of Mosul. On 7 December 2008, gunmen shot down two Yazidis inside their liquor store in northern Mosul. And on 15 December 2008, gunmen killed seven Yazidis, all from the same family, in the town of Sinjar. In recent years, the Yazidis' most important ritual, the annual pilgrimage to the holy shrine in Lalish (Cejna Cemayya), has not been held or only with restrictions due to ongoing threats and attacks.

10. The UNHCR's 2012 *Eligibility Guidelines* noted that groups such as ISl were specifically targeting Yazidis and minorities such as them "faced extinction."<sup>525</sup> Radical Islamist groups were well known to single out Yazidis for killings and other prohibited acts particularly when armed conflict was raging.<sup>526</sup> For instance, in April 2007, gunmen stopped a bus carrying workers home from a textile factory in Mosul, dragged 23 Yazidis out of the vehicle, lined them up against a wall and summarily executed them.<sup>527</sup> Shortly after, between 14 and 17 Aug 2007, truck bombs targeted the Yazidi towns of Kahtaniya and Jazeera in Sinjar province near the border with Syria.<sup>528</sup> They were poor towns, and many houses were flattened by the blasts with upwards of 800 people killed.<sup>529</sup> These targeted killings were the context in which the UN warnings to Syria and other states were being provided from 2013 onwards.

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<sup>525</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, available at <https://www.refworld.org/docid/4fc77d522.html> (accessed 30 December 2021).

<sup>526</sup> F. V. T., Yazidis in Iraq - A Tough Time - A Threatened Minority, *The Economist*, 13 November 2013, available at <https://www.economist.com/pomegranate/2013/11/13/a-tough-time> (accessed 16 June 2021).

<sup>527</sup> J. Wood, The Syrian Refugees Who Know They Can't Go Home, *Al Jazeera America*, 19 December 2013, available at <http://america.aljazeera.com/articles/2013/12/19/the-syrian-refugeeswhoknowtheycantgohome.html> (accessed 16 June 2021).

<sup>528</sup> *Ibid.*

<sup>529</sup> J. Wood, The Syrian Refugees Who Know They Can't Go Home, *Al Jazeera America*, 19 December 2013, available at <http://america.aljazeera.com/articles/2013/12/19/the-syrian-refugeeswhoknowtheycantgohome.html> (accessed 16 June 2021); F. V. T., Yazidis in Iraq - A Tough Time - A Threatened Minority, *The Economist*, 13 November 2013, available at <https://www.economist.com/pomegranate/2013/11/13/a-tough-time> (accessed 16 June 2021)

11. Between February and July 2013, the Commission of Inquiry was frequently warning of minority groups being targeted by anti-government armed groups including ISIS and ISIS pre-cursors (Al-Qaeda and Jabhat al-Nusra).<sup>530</sup> In August 2013, the Yazidi villages of al-Asadia and Cava near Ras al-Ain, and several others in the area of Afrin, were attacked by Jabhat al-Nusra and ISIS.<sup>531</sup> In December 2013, Yazidis were fleeing from villages between the Turkish and Syrian border in Al-Hasakah Governate.<sup>532</sup> Al-Qaeda-linked groups, ISIS pre-cursors Jabhat al-Nusra and ISI, were targeting the Yazidis for killings as infidels.
12. The Commission of Inquiry reported, and communicated to States, in March 2014 an incident involving the killing of a Yazidi man during a raid by ISIS, Jabhat Al-Nusra, Islamic Front and FSA battalions on Al-Asadia, Syria, in July 2013 after he refused to convert to Islam.<sup>533</sup> The executions in the village of Al-Talaliyah of persons believed by ISIS fighters to be Yazidis in May 2014<sup>534</sup> demonstrated ISIS' intention to implement the *takfiri* ideology against the Yazidis; this was again communicated to UN Member States.
13. On 18 June 2014, the Special Advisers to the Secretary-General on the Prevention of Genocide, Adama Dieng, and on the Responsibility to Protect, Jennifer Welsh, expressed deep concern at the situation of the Yazidis and the risk to them from ISIS and called on all States to comply with obligations under international law.<sup>535</sup> This stark warning was preceded by earlier statements by the UN Genocide Office on 8 July 2013, 20 December 2012, and 14 June 2012 in respect of the situation in Syria;<sup>536</sup> warning of sectarian conflict and the possibility of large scale atrocities against minorities. Mr Dieng, following an increasingly serious series of warnings, told Syria on 20 December 2012 that:

*The Government of Syria is manifestly failing to protect its populations. The international community must act on the commitment made by all Heads of State and Government at the 2005 World Summit to protect populations from genocide, war crimes, ethnic cleansing and crimes*

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<sup>530</sup> Commission of Inquiry, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/23/58, 18 July 2013, p. 23.

<sup>531</sup> A. Glioti, Yazidis Benefit from Kurdish Gains In Northeast Syria, Al Monitor, 18 October 2013, available at <https://www.al-monitor.com/originals/2013/10/syria-yazidi-minorities-kurds.html> (accessed 16 June 2021).

<sup>532</sup> J. Wood, The Syrian Refugees Who Know They Can't Go Home, Al Jazeera America, 19 December 2013 available at <http://america.aljazeera.com/articles/2013/12/19/the-syrianrefugeeswhoknowtheycantgohome.html> (accessed 16 June 2021).

<sup>533</sup> Commission of Inquiry, *7th Report of the Commission of Inquiry on the Syrian Arab Republic*, A/HRC/25/65, 12 February 2014 (published 5 March 2014), para. 28.

<sup>534</sup> Commission of Inquiry, Human Rights Council: Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/27/60, 13 August 2014, p. 39.

<sup>535</sup> United Nations, Statement by Adama Dieng, Special Adviser to the Secretary-General on the Prevention of Genocide, and Jennifer Welsh, Special Adviser to the Secretary-General on the Responsibility to Protect, on the situation in Iraq, 14 June 2014.

<sup>536</sup> United Nations, Statement by Adama Dieng, Special Adviser to the Secretary-General on the Prevention of Genocide, and Jennifer Welsh, on the situation in Syria, 8 July 2013, 20 December 2012, and 14 June 2012.

*against humanity, including their incitement [...] I also reiterate the calls of the international community for the Security Council to refer the situation in Syria to the International Criminal Court and stress the importance of taking steps now to facilitate future transitional justice processes in Syria to reduce the risk of retribution, promote reconciliation and provide all communities with a sense of justice and dignity.*<sup>537</sup>

14. It was reported by the Commission of Inquiry in February 2014, a few months prior to the assault on Mount Sinjar, that “[d]uring a raid by ISIS, Jabhat Al-Nusra, the Islamic Front and FSA battalions, fighters killed a Kurdish Yazidi man in Al-Asadia who refused to convert to Islam”.<sup>538</sup> It was also recorded that:

*[t]he rise in torture and the inhumane treatment of the civilian population in areas controlled by ISIS and affiliated groups provide reasonable grounds to believe that such groups promote the widespread and systematic attack on the civilian population.*<sup>539</sup>

15. The Commission of Inquiry reported that on 29 May 2014, ISIS fighters entered the village of Al-Talaiyah in the western Al-Hasakah Governorate and “began to execute villagers, including women and young children, believing them to be Yazidis”.<sup>540</sup> In June 2014, the UN OHCHR was continuing to report that ISIS was targeting Yazidis:

*ISIL have broadcast dozens of videos showing cruel treatment and beheadings and shootings of hors combat soldiers, police officers, as well as people apparently targeted because of their religion or ethnicity, including Shia and minority groups such as Turcomans, Shabak, Christians, and Yezidis.*<sup>541</sup>

Furthermore, ISIS’ magazine, *Dabiq*, in its June 2014 edition, referred to the Yazidi community and it was highly critical of the Islamic Front movement for its stated commitment to protecting all religious minorities which included the Yazidi community, from which it could be safely inferred that it was the position of ISIS that the Yazidi community should not be protected (see further, [Section on the Findings on Genocide](#)). This publication was widely reported and well known at the time of publication as well as having been reported by the UN

<sup>537</sup> United Nations, Statement by Adama Dieng, Special Adviser to the Secretary-General on the Prevention of Genocide, and Jennifer Welsh, on the situation in Syria, 20 December 2012.

<sup>538</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/25/65, 12 February 2014, p. 8.

<sup>539</sup> *Ibid.*, p. 11.

<sup>540</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/27/60, 13 August 2014, p. 39.

<sup>541</sup> OHCHR, Press Briefing Note on Iraq by Rupert Colville, Geneva, 24 June 2014.

contemporaneously. Therefore, it would have been known to the Syrian Government and its contents would likely, or certainly should, have been considered.

16. In July 2014, UNAMI confirmed several reports of Yazidi men being taken before ISIS self-appointed courts, forced to convert, and executed if they refused.<sup>542</sup> ISIS, successor to ISI, which was later to become independent of al-Qaeda, by late 2013 and early 2014, was also issuing videos, edicts and publications of the commission of prohibited acts against minorities including Yazidis and the justifications for their destruction thereof.<sup>543</sup> This was again communicated to UN Member States.
17. There are earlier examples of targeted and specific hostility towards Yazidis as a group, including a May 2004 incident in which posters in several areas of Mosul announced that it was religiously permitted, or *halal*, to kill Yazidis, Jews, Christians, and Americans.<sup>544</sup> Although this specific incident took place on the Iraqi side, it is evidence of the existence of such ideology in the region long before the vast majority of the prohibited acts against the Yazidis at the hands of ISIS in 2014. It was already well understood in the region that "Yazidis may be discriminated against by segments of the Muslim population based on the widespread perception that Yazidis are 'unclean' or 'non-believers'."<sup>545</sup> The UNHCR in its 2007 *Eligibility Guidelines* notably referred to a quote from a 2007 report, by *Turkish Daily News*, which stated that 215 Yazidis had been killed since the 2003 US invasion of Iraq, and that most of the killings "were perpetuated on religious grounds as fundamental and Islamist groups see Yazidis as infidels who either have to convert or be killed."<sup>546</sup>
18. These events were long after the extraordinary and massive attack on Yazidis on 14 August 2007, when four ISI car-bomb attacks against Yazidi villages in northern Iraq (primarily Til Ezer (al Qahtaniyah) and Siba Sheikh Khidir (al-Jazirah)), killed over 400 people and wounded 1,500 others.<sup>547</sup> The 2007 attacks were preceded by some Yazidis living in the area receiving threatening letters calling them "infidels" and leaflets being distributed denouncing Yazidis as "anti-Islamic" and warning them that an attack was imminent.<sup>548</sup> UN, US and Iraqi officials all condemned the attacks with a US general suggesting

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<sup>542</sup> UNAMI POC Report No. 2 of 2014, p. 12.

<sup>543</sup> See also, the substantive section of the Report relating to Specific Intent and the Country Reports of Iraq and Syria.

<sup>544</sup> United Nations High Commissioner for Refugees, UNHCHR's Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, August 2007, p.80, <https://www.refworld.org/pdfid/46deb05557.pdf> (accessed 5 November 2021)

<sup>545</sup> *Ibid.*, p.82

<sup>546</sup> *Ibid.*, p.82.

<sup>547</sup> C. Lister, *The Islamic State: A Brief Introduction*. Brookings Institute, 2015, p. 12.

<sup>548</sup> Damon et al., Iraqi officials: Truck bombings killed at least 500, *CNN*, 18 November 2007, available at <https://web.archive.org/web/20071118172345/http://edition.cnn.com/2007/world/meast/08/15/iraq.main/index.html?ref=topnews> (accessed 20 December 2021); Howard, Michael, They won't stop until we are all wiped out.' Among the Yezidi, a people in mourning, *The Guardian*, 18 August 2007, available at <https://www.theguardian.com/world/2007/aug/18/iraq.topstories3> (accessed 20 December 2021).

it was an act of genocide.<sup>549</sup> In 2009 and 2010, three major attacks against Yazidis were recorded.<sup>550</sup> In 2011 and 2012, media reported several incidents in which members of the Yazidi community were kidnapped and/or killed.<sup>551</sup> Such early incidents of targeted killings or other prohibited acts against Yazidis, or the attempts to justify the commission of these prohibited acts can be deemed to be revealing of early elements of ISIS' position towards Yazidis. These incidents are evidence that the "*takfiri*" mentality and hostility towards the Yazidi minority in particular were already present among certain Sunni groups or communities across the region.

19. Prior to the targeting of Yazidis in Sinjar, the UN continued to issue warnings to States and reminded them of their international obligations. In June 2014, the Commission of Inquiry had identified that ISIS was targeting minority

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<sup>549</sup> Damon et al., Iraqi officials: Truck bombings killed at least 500, *CNN*, 18 November 2007, available at [https://web.archive.org/web/20071118172345/http://edition.cnn.com/2007/world/meast/08/15/iraq\\_main/index.html?iref=topnews](https://web.archive.org/web/20071118172345/http://edition.cnn.com/2007/world/meast/08/15/iraq_main/index.html?iref=topnews) (accessed 20 December 2021); Howard, Michael, They won't stop until we are all wiped out.' Among the Yezidi, a people in mourning, *The Guardian*, 18 August 2007, available at <https://www.theguardian.com/world/2007/aug/18/iraq.topstories3> (accessed 20 December 2021).

<sup>550</sup> UNHCR 2012 Eligibility Guidelines record the following incidents:

- On 3 June 2010, a bomb placed in a car exploded near a liquor shop in the predominantly Yazidi town of Sinjar, killing two Yazidis and injuring 10 others; Xinhua, 2 killed, 10 injured in northern Iraq's car bombing, 4 June 2010.
- On 29 August 2009, a bomb placed in a truck exploded at a market in the Yazidi town of Sinjar, killing at least three persons and injuring 40 others; CNN, Iraq explosions kill 14, 29 August 2009.
- On August 13, 2009, two suicide bombers detonated explosives in a popular café in the town of Sinjar, killing 21 Yazidis and injuring 30 others; AP, Double Suicide Bombing Kills 21 in NW Iraq, 13 August 2009.

<sup>551</sup> UNHCR 2012 Eligibility Guidelines record the following incidents:

- On 28 January 2012, gunmen using guns with silencers shot dead a man and his wife from the Yazidi minority after storming in their house in a village near Sinjar (Ninewa); Reuters Alertnet, FACTBOX-Security developments in Iraq, January 28, 28 January 2012.
- On 11 October 2011, gunmen broke into a house in Al-Jazeera compound in Baaj District (Ninewa) and shot dead a Yazidi man and his wife; NINA, Ezidi citizen, his wife killed northwestern Mosul, 11 October 2011.
- On 25 September 2011, gunmen kidnapped two men from the minority Yazidi sect from their car in Sinjar; Reuters Alertnet, Security developments in Iraq, September 25, 25 September 2011.
- On 19 September 2011, Elias Badal, a Yazidi leader, was shot dead by ISF in his home near Sinjar; AKnews, Nineveh criticizes security raid of Yezidi leader, 20 September 2011.
- On 8 June 2011, police said they found the body of a kidnapped man from the minority Yazidi sect with gunshot wounds in an area west of the city of Mosul; Reuters Alertnet, Security developments in Iraq, June 8, 8 June 2011.
- On 15 March 2011, gunmen in military uniforms using civilian cars kidnapped five men from the Yazidi sect in a village in Baaj district (Ninewa); Reuters Alertnet, Security developments in Iraq, March 15, 15 March 2011.
- On 29 January 2011, security forces found a Yazidi young man strangled to death in Sinjar town; Assafir Press, Yazidi young man strangled to death in Sinjar, 29 January 2011.
- On 16 January 2011, police found the dead bodies of three female Yazidis from the same family on the road between Telkeif and Al- Sheikhan districts; Aswat al-Iraq, 3 female Yazidi bodies found in Mosul, 17 January 2011.

communities in Syria at a time Syria was using weapons provided by other States for the perpetration of war crimes and violations of human rights.<sup>552</sup>

20. The Commission of Inquiry in its Report in July 2014 reported that: “armed men believed to be members of ISIS were reported to have abducted two civilians on the grounds of non-adherence to their interpretation of the Islamic dress code.”<sup>553</sup> It was stated “restrictions on civil liberties tightened while human rights violations significantly increased in these areas under the group’s control.”<sup>554</sup> The UNAMI POC Report No. 1 of 2014,<sup>555</sup> issued on 18 July 2014 and communicated to all States, specifically outlined that international law required States to protect civilians from international crimes and to prevent them through appropriate means and in a prescient warning stated:

*imposition of misinterpretations of Shari’a law (particularly takfiri) by ISIL and associated armed groups within areas under their control does not bode well for the respect and protection of the rights of members of minority groups within those areas. Many of the minority groups could face dire consequences given ISIL’s past attitude and behaviour concerning members of non-Sunni religious groups or those not conforming to their strict interpretation of Islam.*<sup>556</sup>

In addition, UNAMI in the same report noted that ISIS had previously been accused of “committing gross human rights violations, including crimes against humanity” and that ISIS:

*[...] have also carried out many of these attacks in a systematic manner heedless of the impact on civilians, or have systematically targeted civilians and civilian infrastructure with the intention of killing and wounding as many civilians as possible. Targets have included markets, restaurants, shops, cafés, playgrounds, schools, places of worship and other public spaces where civilians gather in large numbers. ISIL and associated armed groups have also continued to target systematically civilians using a range of improvised explosive device (IEDs), and to perpetrate targeted assassinations (community, political, and religious leaders, government employees, education professionals, health workers, etc.), sexual assault, rape and other forms of sexual violence*

<sup>552</sup> Commission of Inquiry, *Impact of Conflict and Lack of Humanitarian Access on Civilians*, A/HRC/26/CRP.2, 17 June 2014, p. 10; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/22/59, 5 February 2013, p. 39.

<sup>553</sup> Commission of Inquiry, *Without a Trace: Enforced Disappearances in Syria*, 19 December 2013, p. 6, available at <https://www.ohchr.org/documents/hrbodies/hrcouncil/coisyrria/thematicpaperedinsyria.pdf> (accessed 25 October 2020).

<sup>554</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/25/65, 12 February 2014, p. 30.

<sup>555</sup> UNAMI POC Report No. 1 of 2014.

<sup>556</sup> UNAMI POC Report No. 1 of 2014, p. 18.

*against women and girls, forced recruitment of children, kidnappings, executions, robberies, attacks on installations with the potential of unleashing dangerous forces, and the wanton destruction or plundering of places of worship or of cultural or historical significance.*<sup>557</sup>

21. In conjunction with advances in Syria, ISIS had also been making substantial territorial gains in Iraq during the early part of 2014 (as noted, in detail, in the Section relating to the Obligation to Prevent in the Iraq Country Report). In July 2014, governments had been further warned by the UN that minorities in Iraq faced a grave risk of mass atrocities (see further, Introduction to the Report). The United States Holocaust Memorial Museum (“USHMM”) Report notes that:

*[i]n May, one month before Mosul was seized, Iraqi security forces reportedly arrested seven IS fighters in the city who told them that an attack was imminent”.<sup>558</sup> The report goes on to state that it became increasingly apparent that after the fall of Mosul in 2014, where attacks including against Christians, had taken place: “it was increasingly apparent that the area between the Syrian border and Mosul would be targeted next, as it seemed that IS sought to create a passageway between Mosul and Raqqa via the Syrian city of Deir al-Zour, which it controlled. This meant that IS would target the largely Turkmen city of Tal Afar and the predominantly Yazidi area of Sinjar. This meant that IS would target the largely Turkmen city of Tal Afar and the predominantly Yazidi area of Sinjar. Yet again, security forces were not proactively deployed to protect vulnerable populations or to systematically evacuate at-risk communities. Only in August was protective action taken when warnings that Yazidis faced a risk of genocide emerged.”<sup>559</sup>*

22. As a result of ISIS’ advances within Iraq and, more particularly, its capturing of Mosul, Mount Sinjar fell between ISIS’ stronghold of Mosul in Iraq and ISIS controlled areas of Syria.<sup>560</sup> Further, taking into account the historic persecution of the Yazidi community and ISIS’ approach to minority groups, it would have been evident that the Yazidi community was at a serious risk of being targeted for further prohibited acts in Iraq by ISIS as the group would have sought to consolidate its territorial gains and link together its territory in Iraq with its territory in Syria. Indeed, the August 2014 ISIS attack came from

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<sup>557</sup> UNAMI POC Report No. 1 of 2014, p. 9.

<sup>558</sup> N. Kikoler, *Our Generation is Gone. The Islamic State’s Targeting of Iraqi Minorities in Ninewa*, 2015, p. 12, available at <https://www.ushmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 18 April 2021).

<sup>559</sup> N. Kikoler, *Our Generation is Gone. The Islamic State’s Targeting of Iraqi Minorities in Ninewa*, 2015, p. 12, available at <https://www.ushmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 18 April 2021).

<sup>560</sup> Commission of Inquiry, *“They Came to Destroy”*: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, p. 6.

the direction of Mosul and Tel Afar in Iraq and Al Shaddadi and the Tel Hamis region in Syria, thus besieging the civilian Yazidi population on all four sides.<sup>561</sup> It was a long-standing policy of ISIS and ISIS affiliates to overthrow the Iraqi government.<sup>562</sup> See further, Section relating to the Obligation to Prevent in the Iraq Country Report.

23. Furthermore, as was stated in the USHMM Report, “an abundance of information emerged that - if properly discerned - could have prompted a more concerted discussion of options for early prevention and response”.<sup>563</sup> It was stated that “Iraq’s ethnic and religious minorities have been the targets of gross human rights violations and mass atrocities in Iraq for decades”<sup>564</sup> and that there was an awareness that ISIS had a deliberate policy of seeking to “cleanse” the areas it controlled of minorities. It was stated that:

*it also appears that atrocities are perpetrated strategically and tactically to advance a range of interests, including to generate new recruits (especially foreign fighters), to secure income, enslave women, force civilians from population centers to ease their administration, and maintain order in territory that it controls.*<sup>565</sup>

24. In light of the above, the Syrian Government knew or ought to have known of the serious risk of genocide of the Yazidis, early in 2013, and certainly by June 2014 at the latest, when the Special Advisers to the Secretary-General on the Prevention of Genocide and on the Responsibility to Protect expressed deep concern at the situation of the Yazidis and the serious risk to them from ISIS.

### 1.1 Syria’s Willingness and Ability to Exercise Control over ISIS in North-Eastern Syria

25. From 2012, the Islamic State of Iraq and the Levant (as it was then) started making inroads into Syria, sending fighters across the border from its strongholds in northern and western Iraq.<sup>566</sup> ISIS began to infiltrate into the area initially coordinating their activities with established militant groups such as the Al-Nusra Front but later operating as an independent entity. In 2013,

<sup>561</sup> Fobbe et al., *Destroying the Soul of the Yazidis: Cultural Heritage Destruction during the Islamic State’s Genocide against the Yazidis*, Rashid International, 2019, p. 33, available at <https://zenodo.org/record/3826126#.ycnpti-l06u> (accessed 20 December 2021).

<sup>562</sup> A. S. Hashim, *The Islamic State: From Al-Qaeda affiliate to caliphate*, *Middle East Policy Council Journal*, 21 (4), 2014.

<sup>563</sup> N. Kikoler, *Our Generation is Gone. The Islamic State’s Targeting of Iraqi Minorities in Ninewa*, 2015, p. 6, available at <https://www.ushmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 15 September 2020).

<sup>564</sup> *Ibid.*, p. 6.

<sup>565</sup> *Ibid.*, p. 10.

<sup>566</sup> House of Commons, *ISIS and the Sectarian Conflict in the Middle East*, Research Paper 15/16, 19 March 2015, p.14 available at <https://researchbriefings.files.parliament.uk/documents/rp15-16/rp15-16.pdf> (accessed 2 December 2020)



ISIS had already around 2,650 fighters of which 30% were not Syrian citizens.<sup>567</sup> The Syrian conflict transformed the country's borders extensively.<sup>568</sup> Since 2012, as the country became increasingly entangled in a spiral of internal armed conflict, Syrian borders no longer delineated "a coherent territory under the control of the state [...]".<sup>569</sup> The territorial and political fragmentation of the area into territories controlled by different and rival armed parties to the conflict accelerated this fluctuation of internal borders and hence fragmentation of external borders into segments controlled by these factions.<sup>570</sup> As early as August 2013, the Commission of Inquiry was making representations to the Syrian Government identifying the risks of its porous border:

*196. The porous borders of the Syrian Arab Republic have facilitated the involvement of regional armed actors, increasingly along sectarian lines. The dynamics of the conflict are extremely complex and extend well beyond its borders. The overtones of sectarianism present in many of the violations find their roots in politics. It is politics that pushes sectarianism, engenders violence and empowers its perpetrators.*

*197. These violations have been the focus of 10 reports and updates. The perpetrators are not deterred and do not fear future accountability.*<sup>571</sup>

26. By January 2014, ISIS had captured and were in control of Ar-Raqqa as well as the town of Al-Shaddadi, despite attempts by the Syrian armed forces to defend it.<sup>572</sup> Ar-Raqqa later became ISIS' capital.<sup>573</sup> As stated in the Report of the Commission of Inquiry in February 2014:

*Since August 2013, the Islamic State of Iraq and Sham (ISIS) reinforced its control of captured areas in northern Syria, particularly in Al-Raqqa, Aleppo and Idlib countryside as foreign fighters continued to join its*

<sup>567</sup> M. A. Ruman, *ISIS: Propaganda and Mobilization*, Friedrich Ebert - Foundation (in Arabic), 2016, available at [www.library.fes.de/pdf-files/bueros/amman/12553-20160728-pdf](http://www.library.fes.de/pdf-files/bueros/amman/12553-20160728-pdf) (accessed 31 August 2020).

<sup>568</sup> L Vignal, *The changing borders and borderlands of Syria in a time of conflict*, *International Affairs*, 93(4), 2017, 809-827.

<sup>569</sup> *Ibid.*, p.810.

<sup>570</sup> *Ibid.*

<sup>571</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/24/46, 16 August 2013, p. 23.

<sup>572</sup> C. C. Cris, S. Reynolds, *Middle East Security Report 22: ISIS Governance in Syria*, *Institute for the Study of War*, July 2014, p. 11, available at [http://www.understandingwar.org/sites/default/files/isis\\_governance.pdf](http://www.understandingwar.org/sites/default/files/isis_governance.pdf) (accessed 16 April 2021).

<sup>573</sup> Deutsche Welle, *Die IS-Hauptstadt Rakka ist gefallen - der Machtpoker in Syrien geht weiter* (engl. IS's Capital Raqqa Has Fallen - the Power Poker Moves on), 21 October 2017, available at <https://www.dw.com/de/die-is-hauptstadt-rakka-ist-gefallen-der-machtpoker-in-syrien-geht-weiter/a-41056917> (accessed 31 August 2020); Tagesschau, *Rakka vor Befreiung: IS-Hauptstadt in Trümmern* (engl. Raqqa before Liberation: IS Capital in Ruins), available at <https://www.youtube.com/watch?v=XYsuXKr57is> (accessed 31 August 2020).

ranks. ISIS, then an Al-Qaeda affiliate, ran areas under its control through local administrations governed by the strict application of Sharia Law. Those areas were meant to form the foundation of a future Islamic state extending beyond Syria's borders.<sup>574</sup>

27. By April 2014, ISIS had *claimed* - although it did not strictly *control* - nine provinces in north-eastern Syria including Al-Hasakah, Tel Hamis and Homs.<sup>575</sup> This would have included the remainder of the very significant Yazidi populations in Al-Hasakah. In June 2014, ISIS proclaimed itself a caliphate and this included the territory that it held in north-eastern Syria.<sup>576</sup> In August 2014, ISIS controlled 2,000 to 4,000 square km (770-1,540 square miles) of Syria which is about 5-10% of the country.<sup>577</sup> As ISIS made significant territorial gains in Syria, they gained control over areas that were key to cross-border movement and communications. Thus, the European Parliament observed in a resolution of 18 September 2014 that "the disintegration of the Iraqi-Syrian border [had] provided IS with opportunities to enhance its presence in both countries," and that ISIS had, over the past months, "extended its territorial conquest from eastern Syria into north-western Iraq, including Iraq's second-largest city, Mosul".<sup>578</sup>
28. Syrian Government forces had attempted to resist ISIS advances in north-eastern Syria in 2013 and 2014, including in Raqqa, Al-Hasakah, and Al-Shaddadi. In July 2013, with the exception of Raqqa, "the Government [has] held all major cities despite facing serious challenges in Aleppo, Dara'a and Dayr az Zawr...it launched ground operations in the Damascus countryside and in Dara'a and Homs governorates".<sup>579</sup> It is also noted, however, that direct confrontation with ISIS was rare and often limited to strategic aerial bombing as Government forces focussed their efforts elsewhere and at other military targets, such as anti-regime forces.<sup>580</sup> In fact, it was estimated that only about 6% of 982 Syrian counter-terrorism operations conducted between November

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<sup>574</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/25/65, 12 February 2014, p. 30.

<sup>575</sup> Wilson Center, *ISIS After the Caliphate*, 28 November 2017, available at <https://www.wilsoncenter.org/article/isis-after-the-caliphate-0> (accessed 25 October 2020).

<sup>576</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/28/69, 5 February 2015, p. 6.

<sup>577</sup> BBC, *What is "Islamic State"?*, 2 December 2015, available at <https://www.bbc.com/news/world-middle-east-29052144> (accessed 23 August 2020).

<sup>578</sup> European Parliament resolution of 18 September 2014 on the situation in Iraq and Syria, and the IS offensive, including the persecution of minorities (2014/2843(RSP)) available at [https://www.europarl.europa.eu/doceo/document/ta-8-2014-0027\\_en.html](https://www.europarl.europa.eu/doceo/document/ta-8-2014-0027_en.html) (accessed 22 December 2021)

<sup>579</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/23/58, 18 July 2013, p.6.

<sup>580</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/23/58, 13 August 2013, p. 4

2013 and November 2014 targeted ISIS.<sup>581</sup> According to the same source, only 13% of ISIS attacks were directed at Syrian Government targets.<sup>582</sup> Beyond having chosen, at times, to avoid attacking rebels from ISIS (or the Al-Nusra Front) when they had the opportunity to do so, to rather focus on more moderate elements of the opposition, the Syrian authorities were also accused of engaging in energy deals<sup>583</sup> with these two groups, “purchasing oil and gas from territory the militant groups controlled”.<sup>584</sup> ISIS and the government were said to be “cooperating in certain domains without actively conspiring together since, in the end, each seeks to limit the other’s military capabilities and geographic sphere of influence”,<sup>585</sup> but in the end, “not having to focus their energies on the Assad regime - except when they desire - has allowed IS and [the Al-Nusra Front] to secure their territorial gains, eliminate hostile opposition, and even begin the process of building Islamist governmental and societal institutions”.<sup>586</sup>

29. This seems to indicate that, at this stage, ISIS was not a priority target of the Syrian Government. It has been surmised that the Syrian regime might have benefitted from the radicalisation of the rebellion, since it suited the “Assad’s narrative that its opponents were terrorists,” and that the Government might even have, to a degree, developed a policy of fomenting a jihadi element in the rebellion.<sup>587</sup> At the same time, the rise of ISIS not only had the advantage of “distracting more secular rebels from their fight against the government,” but also of re-focusing the attention of the West on fighting ISIS, thus perhaps “downgrading the removal of Bashar al-Assad”.<sup>588</sup>
30. Belated efforts by the Syrian Government to resist ISIS were ultimately unsuccessful (although this matters little as the obligation to prevent relates to *conduct* rather than result) and ISIS established control over large areas of north-eastern Syria. This was particularly because the Syrian Government did not, and chose not to, have a consolidated military presence in the region. As was recorded by the Commission of Inquiry in its August 2014 Report:

*[f]ar better organized and financed owing to the seizure of considerable resources and military equipment in Iraq, the group has consolidated control over large areas in northern and eastern governorates, in particular oil-rich Dayr az Zawr. ISIS is increasingly battling anti-*

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<sup>581</sup> House of Commons, ISIS and the Sectarian Conflict in the Middle East, Research Paper 15/16, 19 March 2015, p.15 available at <https://researchbriefings.files.parliament.uk/documents/rp15-16/rp15-16.pdf> (accessed 2 December 2020)

<sup>582</sup> *Ibid.*

<sup>583</sup> M. Levitt, *The Assad Regime’s Business Model for Supporting the Islamic State*, The Washington Institute, 26 September 2021, available at <https://www.washingtoninstitute.org/policy-analysis/assad-regimes-business-model-supporting-islamic-state> (accessed 27 January 2022).

<sup>584</sup> M. Becker, When Terrorists and Target Governments Cooperate: The Case of Syria, *Perspectives on Terrorism*, 9(1) February 2015, 95-103.

<sup>585</sup> *Ibid.*

<sup>586</sup> *Ibid.*

<sup>587</sup> *Ibid.*, p. 13.

<sup>588</sup> *Ibid.*

*Government armed groups, including Jabhat al-Nusra, Kurdish armed groups, and, to a lesser extent, Government forces.*<sup>589</sup>

31. By early spring of 2014, large swathes of north-eastern Syria were under ISIS control (save for the major cities), given that the Syrian Government forces were either not present or were repelled from the areas. By late 2014, the Syrian Government no longer had complete or sufficient control of the territory in order to allow it to necessarily disrupt *militarily* ISIS' activities, including the activities that would result in ISIS' assault on Mount Sinjar. This is particularly so in the context of the ongoing civil war where Syrian Government forces were fighting on numerous fronts.
32. Early in the conflict and in 2014, the Syrian Government did not maintain a substantial military presence in the area, instead relying, on the Kurdish forces to provide security, and deliberately began to withdraw from northern Syria in July 2012.<sup>590</sup>
33. The Commission of Inquiry in 2016 unequivocally identified the failures that may be attributed to Syria and Iraq in respect of their obligations under the Genocide Convention:

*192. With the exception of US President Obama's statement, which related solely to military action on Mount Sinjar, no State operating in Iraq or Syria has indicated that its actions are guided by the need to prevent the commission of genocide by ISIS.*

*193. Where there is evidence of States having any political or other links to ISIS, this too must be scrutinised to see if those States have violated their obligations under the Genocide Convention.*

*194. In order to determine whether States have violated their obligations under the Genocide Convention, further investigation is required as to whether States – and notably Syria and Iraq, being the territories in which ISIS is committing genocide – are taking all measures to prevent genocide which are within their power. Of particular concern is an examination of the circumstances of the withdrawal of the*

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<sup>589</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/27/60, 13 August 2014, pp 4-5.

<sup>590</sup> A. Austin Holmes, *Syrian Yazidis under Four Regimes: Assad, Erdogan, ISIS and the YPG*, *Wilson Centre*, 37, July 2020, p. 4, available at <https://5g.wilsoncenter.org/publication/syrian-yezidis-under-four-regimes-assad-erdogan-isis-and-ypg> (accessed 20 May 2021); Commission of Inquiry, "They Came to Destroy": *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016 at Summary.; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/25/65, 12 February 2014, p. 6.; M. Hoffman, A. Makovsky, *Northern Syria Security Dynamics and the Refugee Crisis*, *Center for American Progress*, May 2021, p. 45, available at <https://www.americanprogress.org/article/northern-syria-security-dynamics-refugee-crisis/> (accessed 27 January 2022); TIME, P. Zalewski, *By Ceding Northeastern Syria to the Kurds, Assad Puts Turkey in a Bind*, 27 July 2012, available at <https://world.time.com/2012/07/27/by-ceding-northeastern-syria-to-the-kurds-assad-puts-turkey-in-a-bind/> (accessed 24 March 2022).

*Peshmerga from the Sinjar region as the ISIS attack commenced. Further, there is as yet no information available concerning any steps being taken by the Governments of Syria and Iraq to free Yazidi women and children being held by ISIS on their territory.*

*195. Article I of the Genocide Convention imposes an obligation to punish the crime of genocide. To date, there appear to have been no concrete steps taken by any State to investigate or prosecute ISIS fighters, religious leaders or supporters for committing genocide, conspiring to commit genocide, directly and publicly inciting others to commit genocide, attempting to commit genocide, or being complicit in genocide.<sup>591</sup>*

34. Moreover, Syrian authorities continually used ambivalent responses to ISIS' presence and strategically used ISIS' military and commercial activities in the North of Syria to weaken opponents:

*IS benefited from the relatively ambivalent response of the Assad regime who used IS's presence in the north to force rebel groups into a two-front war. In early 2014, IS suffered losses in northern Syria but retained its stronghold around Raqqa. In the second half of 2014, the group began using weaponry captured from victories in Iraq to gain new momentum in Syria. The group retook territory in northern Syria and attacked a Kurdish militia around the border town of Kobane. In addition to Assad's strategic use of IS to create a war on two fronts, the group benefited from the willingness of the Assad regime to purchase oil from its territories. Turkey, and the Free Syrian Army also acquired oil from IS, implicitly funding the organization. (...) IS faced additional setbacks in Syria. The Syrian Democratic Forces (SDF) led the fight against IS in Syria, cutting off IS supply routes to the Turkish border and consolidating territory in the northeast.<sup>592</sup>*

35. The question is whether the Syrian Government had taken sufficient action to protect the Yazidi community and to prevent a looming attack upon them in both Syria and Iraq. This must be answered in the negative. The Syrian Government did not take all necessary action ("all means reasonably available") that was in its power and capacity to undertake to provide security within its north-eastern territory and, thereby, disrupt ISIS activities and prevent the attacks that the organisation perpetrated. An analysis from the

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<sup>591</sup> Commission of Inquiry, "They Came to Destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, p. 35.

<sup>592</sup> Center for International Security and Cooperation, Profile: The Islamic State, August 2019, available at [https://cisac.fsi.stanford.edu/mappingmilitants/profiles/islamic-state#text\\_block\\_18356](https://cisac.fsi.stanford.edu/mappingmilitants/profiles/islamic-state#text_block_18356) (accessed 23 August 2020). See also, A. Baker, Why Bashar Assad Won't Fight ISIS, *Time*, 26 February 2015, available at <https://time.com/3719129/assad-isis-asset/> (accessed 23 August 2020).

USHMM on the failure to utilise any early warning system is instructive and consistent with the findings of the Committee in each of the Iraq, Syria and Turkey Country Reports:

*Since 2003, an abundance of information emerged that - if properly discerned - could have prompted a more concerted discussion of options for early prevention and response. First, there was a pattern of mass atrocities perpetrated by both Sunni and Shia extremists since 2003 against minorities in Iraq. This suggested that minorities faced a heightened risk and revealed that they had few protective strategies - neither self-defense nor from external actors. Flight was their only option. Second, threatened communities in Ninewa faced a strong Sunni extremist presence in the region as well as confusion over the provision of protection for minorities by Iraqi and Kurdish regional authorities. Third, IS was active in Ninewa prior to its campaign in June 2014 and had expressed expansionist aspirations and a predatory stance toward minority groups, among others. It is difficult to know whether identifying and acting upon even one of the early warning signs would have had a mitigating effect on the ensuing violence against minorities, but delayed action surely allowed the circumstances for future violence to emerge.<sup>593</sup>*

36. Some analysts have suggested that the Syrian Government made a strategic choice to effectively abandon north-eastern Syria to its fate in order to focus upon battlefronts in other parts of the country as well as to take advantage of the situation militarily and commercially.<sup>594</sup> The Institute for the Study of War suggests that Assad's military strategy has been driven by the objective to uphold his regime in a post-war Syria without a military victory but also fewer risks involved.<sup>595</sup> The Institute specifies that Assad pursued the approach of an "army in all corners", as Assad himself mentioned in an interview,<sup>596</sup> "by maintaining remote regime outposts throughout Syria which pin the outer bounds of a unified and contiguous Syrian state".<sup>597</sup> The complexity of the Syrian armed conflict, however, forced the regime to prioritise among military fronts which allowed jihadist rebel groups to flourish and advance in multiple locations. As noted above, the surge of rebel groups provided an opportunity for Assad to "reinforce his own political legitimacy as the only viable alternative

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<sup>593</sup> N. Kikoler, *Our Generation is Gone. The Islamic State's Targeting of Iraqi Minorities in Ninewa*, 2015, p. 6, available at <https://www.ushmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 15 September 2020).

<sup>594</sup> C. Kozak, *An army in all corners*, Middle East Security Report No 26, Institute for the Study of War, April 2015, available at <https://www.understandingwar.org/report/army-all-corners-assads-campaign-strategy-syria> (accessed 23 March 2022).

<sup>595</sup> *Ibid.*

<sup>596</sup> J. Tepperman, *Syria's President Speaks: A Conversation With Bashar al-Assad*, Foreign Affairs Vol. 94, No. 2, March 2015, available at <https://www.foreignaffairs.com/interviews/2015-01-25/syrias-president-speaks> (accessed 23 March 2022).

<sup>597</sup> *Ibid.*, p. 10.

to a failed, jihadist-dominated Syrian state" by framing the conflict as an incursion of 'terrorists' posing a transnational threat.<sup>598</sup> Furthermore, the regime's ability to control all of Syria was deliberately limited by Assad's reliance on a small core of trusted, mostly Alawite, military units.<sup>599</sup> By deploying only one third of the Syrian Army, the government's combat power was considerably undermined and, thus, unable to regain control over northern Syria, let alone protect threatened populations, including the Yazidis, in this area.<sup>600</sup> However, the military's strength was simultaneously honed by being concentrated to limited but the most strategically significant geographical areas of the country, namely Damascus and Homs.<sup>601</sup> As such, Assad's decision to only deploy a fraction of its military capacity in certain parts of the country not only exacerbated the conflict by entrenching sectarian divisions and enabled jihadist rebels to expand, but also failed to adhere to Syria's international obligations and ongoing obligation to prevent genocide.

37. It is evident that the Syrian Government focused its substantial military resources elsewhere in the country, but that it could have used those resources to target ISIS if it had so wished. As was stated by a member of the Union of Yazidis from Syria ("YES"):

*The loss of control of Syrian State over Raqqa and taking over control by ISIS was important in strengthening ISIS at all and enabled them to attack Sinjar area. At the beginning of Yazidi Genocide, the Raqqa district has not been under the control of Syrian State. The State was caring of their own problems and was challenged by opposition rebels, Al Nusra and ISIS. There was no plan to protect Yazidis. (...) Syria State could not protect its borders with Iraq and its territorial integrity.<sup>602</sup>*

38. The porous nature of the border and the lax border controls by the Syrian and Iraqi border officials facilitated ISIS in using the border to pass goods, members and fighters between Syria and Iraq.<sup>603</sup> The evidence was mounting and communicated to the Syrian and other governments of the serious risk of mass atrocities:

*In early 2014, United Nations officials shared warnings with the Iraqi and other governments that minorities in Iraq faced a*

<sup>598</sup> *Ibid.* See also House of Commons, ISIS and the Sectarian Conflict in the Middle East, Research Paper 15/16, 19 March 2015, p.13 available at <https://researchbriefings.files.parliament.uk/documents/rp15-16/rp15-16.pdf> (accessed 2 December 2020).

<sup>599</sup> J. Holliday, The Assad Regime: From Counterinsurgency to Civil War, *Institute for the Study of War*, March 2013, available at <https://understandingwar.org/report/assad-regime> (accessed 23 March 2022).

<sup>600</sup> *Ibid.*

<sup>601</sup> *Ibid.*

<sup>602</sup> Interview with one YÊS (Kurdish Yekîtiya Êzdiyên Sûriyê, engl. Union of Yazidis from Syria) Member, 16 August 2020.

<sup>603</sup> BBC, Will ISIS End in Syria (in Arabic: الأخرى الرواية: انتهى هل "داعش" في سوريا؟), 10 May 2020, available at <https://www.youtube.com/watch?v=ezp6uvilgwk> (accessed 31 August 2020).



grave risk of mass atrocities. Months before Mosul was attacked, senior Kurdistan Regional Government officials warned the Iraqi Prime Minister that the city was under threat, according to people we interviewed. In May, one month before Mosul was seized, Iraqi security forces reportedly arrested seven IS fighters in the city who told them that an attack was imminent. We were told by former residents that reinforcements were not sent to the city, nor were other genuine preventive measures taken.

All of the warning signs indicated that IS had the motivation and means to attack Ninewa. The warnings indicated that if IS did so, it would continue its pattern of perpetrating mass atrocities against vulnerable communities in an effort to, in the words of the United Nations, suppress, expel, or eliminate these groups. By June, the warnings were too late. Forced displacement, kidnapping, and killing had begun in earnest and the strategies that were needed, but proved lacking, were those that provided immediate physical protection to vulnerable communities. Opportunities for preventing atrocities that existed before IS seized Mosul shrank considerably.

After the fall of Mosul in June 2014, the international community paid increasing attention to the plight of minorities in Ninewa. Some of those we spoke with said it was increasingly apparent that the area between the Syrian border and Mosul would be targeted next, as it seemed that IS sought to create a passageway between Mosul and Raqqa via the Syrian city of Deir al-Zour, which it controlled. This meant that IS would target the largely Turkmen city of Tal Afar and the predominantly Yezidi area of Sinjar. Yet again, security forces were not proactively deployed to protect vulnerable populations or to systematically evacuate at-risk communities. Only in August was protective action taken when warnings that Yezidis faced a risk of genocide emerged. In response to these “potential acts of genocide,” US President Barack Obama authorized air strikes near Mount Sinjar to assist Yezidi populations fleeing IS’s assault (see further, [page 17](#)).<sup>604</sup>

39. Furthermore, there is no evidence of the Syrian Government seeking any external assistance to make gains within north-eastern Syria and to address the rise of ISIS within its territory. In August 2014, the US and other coalition States began bombing raids in Iraq and Syria in an attempt to disrupt and degrade the activities and capabilities of ISIS in respect of the commission of prohibited acts against the Yazidis. While the Iraqi Government agreed to such assistance, the Syrian Government did not from its own allies or any available mechanism

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<sup>604</sup> N. Kikoler, *Our Generation is Gone. The Islamic State’s Targeting of Iraqi Minorities in Ninewa*, 2015, p. 6, available at <https://www.usmmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 15 September 2020).



under the auspices of an international organisation such as the UNSC or bodies of the UNGA.<sup>605</sup> If the Syrian Government had accepted such assistance and/or worked with other states assisting the Assad government, and/or sought the support of international organisations the attacks on ISIS would arguably have been another means reasonably available to it to prevent the ongoing commission of prohibited acts against the Yazidis. Again, this was a political choice made by the Syrian Government not to prevent the growth of ISIS within its territory at the expense of any protection of Yazidis as a group at serious risk. As a Yazidi political actor in Rojava explained:

*The Syrian State officially never mentioned the Yazidi Genocide. They were taking care of themselves: trying to protect themselves and to get rid of IS. There has never been any statement from Syria on Yazidis. They are a State. They could ask for support from abroad and outside [other States, international institutions]. They only observed it. They don't care that people are escaping. This is the case with their own population and as well as us. They were only caring about holding on to their own power. The people escaped here and the Syrian Government never mentioned it.*<sup>606</sup>

### 1.2 August 2014 Onwards – Sexual Slavery in Syria

40. Following the attack on Mount Sinjar in August 2014, it is well known that thousands of women and children, predominantly girls, were abducted and forcibly transferred into ISIS controlled areas of north-eastern Syria. The details of these prohibited acts are extensively set out in the Section relating to Findings on Genocide. The Report of the Commission of Inquiry of August 2014 states that:

*[h]undreds 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. The majority were taken to Raqqah governorate, though some were moved into Dayr Az-Zawr and Aleppo governorates. More convoys followed.*<sup>607</sup>

41. The victims were either sold to ISIS fighters in slave markets that were held throughout ISIS controlled territory in Syria, including Tel Hamis, Tadmur, Al Tabqah, Manbij, Dayr az-Zawr, Aleppo, Homs, Ar-Raqqah city, Al-Bab, Al-

<sup>605</sup> M. P. Scharf, How the War Against ISIS Changed International Law, *Case Western Reserve Journal of International Law*, 48 (1), 2016, p. 3.

<sup>606</sup> Interview with a Yazidi political actor in Rojava, 8 August 2020.

<sup>607</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/27/60, 13 August 2014, p. 15.

Shaddadi, Al-Mayadin and Tadmur.<sup>608</sup> Numerous reports of the Commission of Inquiry documented, in detail, the prohibited acts being committed against the yazidis contemporaneously and each report made public representations to Syria; many long after the destructive prohibited acts of August 2014 (see further, [Introduction to the Report and the Section relating to the Obligation to Prevent Genocide in the Syria Country Report](#)). For instance, in the February 2016 Report of the Commission of Inquiry stated that:

*ISIS has set up markets where fighters and civilian supporters buy Yazidi women and girls, some as young as nine years of age. Female Yazidis are treated like chattel and held in sexual slavery. The presence of de facto slave markets has been documented in cities in Ar Raqqa, Dayr az-Zawr and Aleppo. Smaller markets, as well as a considerable amount of sales to individuals, are organized throughout territory controlled by ISIS.*<sup>609</sup>

42. Some individuals were not sold to individual fighters but were instead retained by ISIS units as collective slaves at ISIS bases including in Al-Shaddadi and Tel Hamis in Hasakah, Aleppo, Homs, and Raqqa (and sometimes they were repeatedly transferred across State borders).<sup>610</sup> It is well-documented that these individuals suffered the most horrific physical and sexual abuse and were held in servitude.<sup>611</sup> It has been stated by the Commission of Inquiry that:

*[w]hile in captivity, Yazidi girls endured brutal rapes and physical violence, were denied access to adequate food and medicine, and severely punished by severe beatings and gang rapes when they attempted to escape.*<sup>612</sup>

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<sup>608</sup> Commission of Inquiry, “They Came to Destroy”: ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, p. 13; N. Al-Dayel et al., Not Yet Dead: The Establishment and Regulation of Slavery by the Islamic State, *Studies in Conflict & Terrorism*, 2020, pp 8-9. The details about the markets are documented in many documents emanating from the Commission of Inquiry. See, for instance, Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/31/68, 11 February 2016; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/30/48, 13 August 2015.

<sup>609</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/31/68, 11 February 2016.

<sup>610</sup> Commission of Inquiry, “They Came to Destroy”: ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, p. 12; N. Al-Dayel et al., Not Yet Dead: The Establishment and Regulation of Slavery by the Islamic State, *Studies in Conflict & Terrorism*, 2020, pp 8-9.

<sup>611</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27CRP.3, 19 November 2014, p. 9. See also, Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/28/69, 5 February 2015, p. 10; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/33/55, 11 August 2016, p. 17.

<sup>612</sup> Commission of Inquiry, “They Have Erased the Dreams of My Children”: Children’s Rights in the Syrian Arab Republic, A/HRC/43/CRP.6, 13 January 2020, p. 16.

43. It is suggested that the Syrian Government did not play any role in the rescuing of Yazidi victims in Syria, as has been stated by one member of YES:

*Only SDF played an important role in rescuing victims of IS enslavement. After rescuing them SDF brought them back to their families. Syrian State had no control over areas under IS control. In Syria only Rojava government<sup>613</sup> and people in Rojava supported Yazidi refugees, especially who were rescued though a corridor organized by the Kurdish YPG/YPJ which saved thousands of lives of Sinjar people who have been surrounded in Sinjar Mountain by IS. They prevented a humanitarian catastrophe and prevented a fatal degree of pain of Yazidis. Later again, SDF, supported by US airstrikes in Rojava, could successfully fight against IS occupation in Rojava and resulted actively and passively in rescuing Yazidi women from enslavement. I know of cases where Yazidis from Sinjar got in touch with YPG directly or via Yazidi House when they were aware of their enslaved relatives in Syria so that when operation against IS took place YPG was informed and could care of civilians while fighting. I also know of cases where SDF successfully tricked IS fighters who offered to hand over Yazidi slaves if they would let them escape to Turkey. Thanks to successful tricks at the end enslaved women got free and IS fighters were arrested. Rojava authority organized a refugee camp, first with its own capacity. In regard to their conditions, Rojava played a big role in preventing a bigger degree of Yazidi Genocide. Syrian forces did nothing specifically to rescue Yazidis from enslavement. There was much fighting between Syrian armed forces and IS but no one ever heard that Syrian forces rescued Yazidis. Also, many Yazidi women have been rescued in Holê camp in Rojava prison and have been forwarded to Sinjar Governing Council. Women's department in Rojava supported Yazidi survivors. Also Yazidi House in Afrin was caring of Yazidi survivors preparing them going back to their families.<sup>614</sup>*

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<sup>613</sup> The Democratic Autonomous Administration, otherwise known as Rojava was announced by the Kurdish Democratic Union Party ("PYD") on 9 January 2014 and self-proclaimed autonomous status on 16 March 2016. At the time of publication, the Rojava administration does not enjoy formal status as an autonomous region of Syria in domestic law.

<sup>614</sup> Z. Awad, Der Alzor after ISIS: Ties between Self-Government of Northern Syria and the Regime (in Arabic), March 2018, available at [https://cadmus.eui.eu/bitstream/handle/1814/52824/rpr\\_2018\\_02.pdf?sequence=1&isallowed=y](https://cadmus.eui.eu/bitstream/handle/1814/52824/rpr_2018_02.pdf?sequence=1&isallowed=y) (accessed 31 August 2020). See also, W. Van Wilgenburg, Missing Yazidi Victims Continue to be Freed from ISIS in Syrian Refugee Camp, 29 August 2019, *Kurdistan24*, available at <https://www.kurdistan24.net/en/news/242a79da-6051-44dc-ba43-a35715b0d3b> (accessed 23 August 2020); Shiawaves, SDF forces liberate 7 Ezidi, 4 Iraqi Shia children from ISIS, 7 March 2019, available at <http://www.shiawaves.net/english/islam/7175-sdf-forces-liberate-7-ezidi-4-iraqi-shia-children-from-isis> (accessed 23 August 2020); ANF News, SDF fighters free two Ezidis from ISIS captivity, 6 June 2018, available at <https://anfenglish.com/features/sdf-fighters-free-two-ezidis-from-isis-captivity-27258> (accessed 23 August 2020).

44. Hundreds of women and more than 2,500 children associated with foreign fighters are meanwhile living in camps for displaced people in SDF-controlled areas as opposed to being provided with any protection or support by the Syrian Government.<sup>615</sup> The SDF announced in May 2019, that they rescued 491 Yazidis from captivity and forwarded them to the Sinjar Governing Council.<sup>616</sup> The YPJ announced in 2019 that they, together with SDF, had rescued 52 Yazidi women and 178 Yazidi children from ISIS enslavement.<sup>617</sup> A group of 25 Yazidis, mainly women and children, were liberated by SDF during an offensive against ISIS in Baghouz, Syria, on 23 March 2019 and brought to Sinjar to be handed over to their families.<sup>618</sup> The only support for Yazidi refugees was organised by Rojava authorities with a camp in Dêrik. It is unclear if this camp was supported by UN institutions.<sup>619</sup> Due to a joint operation of the SDF and the US, ISIS' leader Abu Bakr al-Baghdadi was killed in October 2019 in a village close to Idlib. The Syrian Government was not involved. While the death of Baghdadi was welcomed by Yazidis as a sign of hope that the situation might change for the better, they did not see the ISIS issue being resolved and they did not see this as an act of justice to Yazidis.<sup>620</sup> In a press statement on Al-Baghdadi's killing, the SDF stated: "This operation was to take revenge of the Yazidi women who have been held in captivity and to take revenge mass killings in Kobane, Sinjar, Xabûr, Ninova, Kerkuk, Xanegîn and Mexmûrê."<sup>621</sup>

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<sup>615</sup> BBC, IS 'Daliphate' Defeated but Jihadist Group Remains a Threat, 23 March 2019, available at <https://www.bbc.com/news/world-middle-east-45547595> (accessed 23 August 2020); BBC, What's happening in Syria?, 16 October 2019, available at <https://www.bbc.co.uk/newsround/16979186> (accessed 23 August 2020); Rojava Information Center, Bring ISIS to Justice: Towards an International Tribunal in North East Syria, 2019, p. 14, available at <https://rojvainformationcenter.com/storage/2019/07/bringing-isis-to-justice-rojava-information-center-report-2019-website.pdf> (accessed 23 August 2020).

<sup>616</sup> Ronahi, Document (Arabic), 30 May 2019, available at <https://ronahi.net/?p=36555> (accessed 31 August 2020).

<sup>617</sup> ANF News, Têkoşîn û berxwedana YPJ'ê ya sala 2019'an, 5 January 2020, available at <https://anfkurdi.com/rojawa-sUriye/tekosin-u-berxwedana-ypj-e-ya-sala-2019-an-122805> (accessed 23 August 2020).

<sup>618</sup> Kurdistan24, Kurdish Forces Deliver 25 Yezidis to Rescue Office in North Eastern Syria, 13 April 2019, available at <https://www.kurdistan24.net/en/news/87fdf10a-b3d3-4b4f-a5ca-e8c745bb118a> (accessed 23 August 2020).

<sup>619</sup> Interview with a Yazidi political actor in Rojava, 8 August 2020.

<sup>620</sup> Associated Press, Yazidi Survivors Welcome Al-Baghdadi's Death (Kurdish language), 3 November 2019, available at <https://www.youtube.com/watch?v=xyxe6sudnca> (accessed 23 August 2020); Reuters, For Yazidis, Baghdadi's Death "Doesn't Feel Like Justice Yet", 9 October 2019, available at <https://www.voanews.com/middle-east/yazidis-baghdadis-death-doesnt-feel-justice-yet> (accessed 23 August 2020); NPR, Yazidi Advocate Reacts To ISIS Leader's Death, 3 November 2019, available at <https://www.npr.org/2019/11/03/775818743/yazidi-advocate-reacts-to-isis-leaders-death?t=1596910660879> (accessed 23 August 2020); CBC, Abu Bakr Al-Baghdadi Presided over the Systematic Rape and Enslavement of Yazidi Women and Girls, 29 October 2019, available at <https://www.cbc.ca/radio/asithappens/as-it-happens-tuesday-edition-1.5339960/isis-leader-killed-in-u-s-raid-should-have-faced-war-crimes-tribunal-yazidi-activist-1.5339963> (accessed 23 August 2020); ANF News, Hevserokê MXDŞ'ê: Em Spasiya QSD'ê Dikin (engl. Co-chair of MXDŞ: We thank SDF), 29 October 2019, available at <https://anfkurdi.com/kurdistan/hevseroke-mxds-e-em-spasiya-qsd-e-dikin-120215> (accessed 23 August 2020).

<sup>621</sup> ANF News, QSD'ê Derbarê Kuştina Bagdadî Daxuyani Da (engl. SDF Gave a Press Release Concerning Killing of Bagdadî), 27 October 2019, available at <https://anfkurdi.com/rojawa-suriye/qsd-e-derbare-kustina-bagdadî-daxuyani-da-120151> (accessed 23 August 2020).

45. In light of the fact that, as explored above, the Syrian regime was not in territorial control of the region of north-eastern Syria by August-September 2014, when many of the victims of the assault on Mount Sinjar were transported to Syrian territory, the territory being largely in the control of ISIS, it would have been difficult, for the Syrian regime to have automatically prevented the transfers and women and children being sold in slave markets and held in servitude. That is, however, far from the end of the matter.
46. It is crucial to consider whether the Government of Syria would, or should, have known about the transfer of people at the time and whether it could have taken measures to prevent or disrupt it, if it so wished. First, considering the numerous contemporaneous reports of the attack on Mount Sinjar and the holding of hostages and extensive UN reports and calls for action (directed specifically at the Syrian Government), it is incontrovertible that the Syrian Government would have known and, certainly, it should have known what was happening well before the commission of the vast majority of prohibited acts. (These contemporaneous reports are extensively cited in the [Iraq, Syria and Turkey Country Reports](#) and the [Section on Specific Intent](#)). Second, even if the Syrian Government did not have substantive control over the territory being utilised by ISIS, the Syrian Government could have certainly taken much more decisive action, including through military action, humanitarian assistance to survivors and victims or other displaced Yazidis, public acknowledgements to commit to addressing the prohibited acts, identification and investigation into perpetrators among other things. The question is what were *all means reasonably available* to the Syrian Government in preventing ongoing genocide on its territory?
47. As discussed above, it had extensive military capacity and it could have directed that at ISIS, in concert with its then powerful allies, in order to disrupt its activities and to prevent its transfer and holding of slaves.<sup>622</sup> It is, therefore, very likely that its failure to prevent or, at the very least, disrupt ISIS' activities was the result of a decision by the Syrian Government not to do so. If the Government had taken the matter seriously and wanted to prevent such egregious atrocities by ISIS, it could have directed very specific resources at ISIS at that time, but there is no evidence publicly available of such considerations and action by the Syrian Government. Instead, it appears that the Syrian Government effectively abandoned the captured Yazidis to their fate, which is in clear breach of its responsibility to protect and prevent.
48. After August 2014, further convoys transporting Yazidi women and children arrived at ISIS controlled areas of north-eastern Syria. It was estimated that in June 2016, at least 3,200 Yazidi women and children remained in Syria as ISIS

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<sup>622</sup> J. Holliday, *The Assad Regime: From Counterinsurgency to Civil War*, *Institute for the Study of War*, March 2013, available at <https://understandingwar.org/report/assad-regime> (accessed 23 March 2022); C. Kozak, *An army in all corners*, Middle East Security Report No 26, *Institute for the Study of War*, April 2015, available at <https://www.understandingwar.org/report/army-all-corners-assads-campaign-strategy-syria> (accessed 23 March 2022).

captives, the majority of which were held in ISIS controlled areas.<sup>623</sup> Further detailed data is provided in the Section of the Report relating to the Findings on Genocide and in the Iraq Country Report.

49. The question that then arises is whether the Syrian Government took steps to prevent the victims continuing to be held as slaves in Syria, sold and further trafficked, including out of the country, on the basis that it must have been known to the regime that such activities were taking place in ISIS controlled territory given that it was being widely reported, including by the UN in its official reports of the conflict.
50. It is noted herein that ISIS fighters forced both Syrian Government forces and the YPG, later the SDF, from areas once controlled by them. ISIS then occupied such areas and established control over them, declaring them part of the caliphate in 2014. It is the case that Syrian Government forces attempted to retake those areas that had been occupied by ISIS.<sup>624</sup> This was also true of the YPG and, later, the SDF.<sup>625</sup> The Commission of Inquiry recorded in its February 2016 Report:

*ISIS remains in control of large swathes of the Syrian eastern and north-eastern governorates, while maintaining smaller pockets in other areas, including around Damascus. Recently, the terrorist group has come under mounting military pressure from different belligerents, including, in particular, SDF in Hasakah and Ar Raqqa, and pro-government forces in Homs and Aleppo.*<sup>626</sup>

51. In 2016, ISIS continued to lose territory in north-eastern Syria. The SDF recaptured the Al-Shaddadi region<sup>627</sup> and made gains in Raqqa,<sup>628</sup> eventually declaring Ar-Raqqa liberated on 20 October 2017.<sup>629</sup> The Syrian Government deployed increased resources in order to recapture ISIS territory, including in Aleppo, Homs and Ar-Raqqa and its newly captured areas extended to the

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<sup>623</sup> Commission of Inquiry, *"They Came to Destroy": ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, p. 4. See also, Commission of Inquiry, *"They Have Erased the Dreams of My Children": Children's Rights in the Syrian Arab Republic*, A/HRC/43/CRP.6, 13 January 2020, p. 16.

<sup>624</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/30/48, 13 August 2015, p. 4; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/31/68, 11 February 2016, p. 5.

<sup>625</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/30/48, 13 August 2015, p. 4; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/31/68, 11 February 2016, p. 5.

<sup>626</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/31/68, 11 February 2016, p. 6.

<sup>627</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/33/55, 11 August 2016, p. 5.

<sup>628</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/36/55, 8 August 2017, p. 5.

<sup>629</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/37/72, 1 February 2018, p. 8.

Iraqi-Syrian border.<sup>630</sup> In 2017, the Syrian Government took full control over Dayr al-Zawr.<sup>631</sup>

52. In 2015, the Syrian Government also enlisted the military assistance of the Russian government. The Russian military contributed to the Syrian Government's military activities mainly through strategic bombing.<sup>632</sup> As stated by the Commission of Inquiry in its Report of February 2016, "Russian sorties also attacked ISIS command centres, logistical assets and training camps in Ar-Raqqah, Homs and Dayr az-Zawr".<sup>633</sup> This, however, appears to have had a limited effect on ISIS territorial gains and the majority of ISIS' territorial losses were affected by the work of the YPG.<sup>634</sup> It is also the case that the majority of Russian airstrikes were not directed in the north-east of the country and at ISIS positions, and were largely directed at rebel forces across the country.<sup>635</sup> It has been stated that whilst Russian forces concentrated on attacking ISIS for a short period of time, "Russia returned to fighting against other Islamist and moderate opposition".<sup>636</sup> This again appears to have been a deliberate choice on the part of the Syrian Government not to utilise resources on effectively attacking ISIS fighters committing prohibited acts and to instead use its available resources to fight the rebel groups that threatened its continued control of Syria.
53. Despite the Syrian Government seeking to obtain military advantages over ISIS and regain control of territory in the north-east of the country, no publicly available evidence has been identified to suggest that such offensives were undertaken with the express (or even the indirect) purpose of seeking to prevent the ongoing genocide and further enslavement, violent abuse, sale and trafficking of Yazidi victims which constituted prohibited acts of genocide. There is no publicly available evidence that any resources went into assisting or providing security or attempting to free areas with significant Yazidi

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<sup>630</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/36/55, 8 August 2017, p. 4.

<sup>631</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/37/72, 1 February 2018, pp 8, 12.

<sup>632</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/31/68, 11 February 2016, p. 5; Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/33/55, 11 August 2016, p. 4.

<sup>633</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/31/68, 11 February 2016, p. 5.

<sup>634</sup> M. Czuperski et al., *Distract, Deceive, Destroy: Putin at War in Syria*, Atlantic Council, 2016, available at <https://publications.atlanticcouncil.org/distract-deceive-destroy/assets/download/ddd-report.pdf> (accessed 14 April 2021).

<sup>635</sup> Institute for the Study of War, *Russian Air Strikes in Syria*, 30 September 2015 – 19 September 2016, available at <http://www.understandingwar.org/sites/default/files/russian%20airstrikes%20maps%20sept%202015-sept%202016.pdf> (accessed 14 April 2021).

<sup>636</sup> A. Lavrov, *Russian Aerial Operations in the Syrian War* in R. E. Hamilton, C. Miller, A. Stein (eds.), *Russian's War in Syria: Assessing Russian Military Capabilities and Lessons Learned*, Philadelphia, Foreign Policy Research Institute, 2020, 89-109, p. 85, available at <https://www.fpri.org/wp-content/uploads/2020/09/russias-war-in-syria.pdf> (accessed 25 October 2020).

populations, i.e., in Al-Hasakah and Aleppo Governorates. It was stated by the Commission of Inquiry in 2016 that:

*there is not yet information available concerning any steps being taken by the governments of Syria and Iraq to free Yazidi women and children being held by ISIS on their territory.*<sup>637</sup>

54. Where territory has been taken back by the Syrian Government, however, it has seemingly not been possible for victims/survivors to have been rescued from their ISIS captors. It is reported that victims/survivors have been taken by their captors as they retreated from the government or other offensives.<sup>638</sup> It appears that other Yazidi victims/survivors have been killed in air strikes or sold back to their families.<sup>639</sup>

### Summary Findings on the Obligation to Prevent

55. There are reasonable grounds to conclude that the Syrian Government knew, or should have known, of the serious risk that genocide against the Yazidis would occur early in 2013, and with absolute certainty by June 2014 at the latest.
56. The Syrian Government, in particular, would, or should, have known, about the serious risk of genocide that ISIS posed to the Yazidi community in Syria itself, notwithstanding the systematic discrimination Yazidis faced historically at the hands of Syria.<sup>640</sup> While misunderstandings of Yazidism have perpetuated cycles of discrimination and persecution of the Yazidis, dating back to the Ottoman Empire, there has been widespread discrimination against the Yazidis under successive governments in Syria in modern times.<sup>641</sup> As discussed above, Yazidis suffered from persistent identity-based discrimination, including violations of their civil and political rights, as well as long-term religious persecution in Syria.<sup>642</sup> Discrimination manifested in various forms, including: not being allowed to obtain Syrian nationality and, thus, being stateless;<sup>643</sup> not

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<sup>637</sup> Commission of Inquiry, *“They Came to Destroy”: ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, p. 35.

<sup>638</sup> *Ibid.*

<sup>639</sup> *Ibid.*

<sup>640</sup> See for instance Yazidi Council in Syria, 10 March 2012, available at [http://ezidenrat.de/?page\\_id=196](http://ezidenrat.de/?page_id=196) (accessed 27 June 2021). See also, Democracy Website, 19 November 2013, available at <http://www.dimoqrati.info/?p=7938> (accessed 16 April 2021).

<sup>641</sup> Commission of Inquiry, *“They Came to Destroy”: ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016; OHCHR, Yazda’s submission to Sustainable Development Goal 16, Religious Freedom and The Yazidi Genocide, available at <https://www.ohchr.org/documents/issues/religion/submissions/csos/75.yazda.pdf> (accessed 23 March 2022).

<sup>642</sup> See [Section on Obligation to Prevent in the Syria Country Report](#).

<sup>643</sup> Yazda, *An Uncertain Future for Yazidis: A Report Marking Three Years of An Ongoing Genocide*, September 2017, p. 27; KurdWatch, *Yazidis in Syria: Between Acceptance and Marginalization*, December 2010.



being able to self-identify other than as Muslim in official ID;<sup>644</sup> being prohibited from building religious centres or practising their faith freely; being denied access to the justice system; and being considered impure<sup>645</sup> due to a deeply rooted misunderstanding of the Yazidi faith.<sup>646</sup> Discrimination and marginalization of the Yazidis also occurred in Iraq under its Arab-nationalist majoritarian rule where widely held misconceptions of the Yazidi religion, with an active effort to exclude information and education to improve the cultural understanding of the Yazidis, have fostered historical and present violence.<sup>647</sup> For decades leading up to the 2014 attack in Sinjar, members of the religious minority were subjected to death threats<sup>648</sup> and were lethally targeted, often with impunity, by Islamic extremist groups, some of which were ISIS' precursors.<sup>649</sup> This is discussed further in the Iraq Country Report. As noted above, genocides are rarely instantaneous, instead they occur over time, and are facilitated by a hostile environment embedded in systematic discrimination, marginalization, and inequality.<sup>650</sup> Moreover, genocides are typically preceded by violations of civil and political rights in synergy with patterns of discrimination and marginalization of minorities.<sup>651</sup>

57. The legal test does not concern knowledge of specific events but of a serious risk, generally, of the commission of prohibited acts of genocide against the Yazidis. The Syrian Government should also have known of the serious risk of genocide to the Yazidis in Iraq in light of their treatment in Syria, should ISIS have taken control of the Yazidi communities located in neighbouring Sinjar through the porous border it was long warned about, as noted in detail in the

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<sup>644</sup> A. Austin Holmes, Syrian Yazidis under Four Regimes: Assad, Erdogan, ISIS and the YPG, Wilson Centre, 37, July 2020, p. 4.

<sup>645</sup> Yazda, An Uncertain Future for Yazidis: A Report Marking Three Years of An Ongoing Genocide, September 2017, p. 27; KurdWatch, Yazidis in Syria: Between Acceptance and Marginalization, December 2010.

<sup>646</sup> OHCHR, Yazda's submission to Sustainable Development Goal 16, Religious Freedom and The Yazidi Genocide, available at <https://www.ohchr.org/documents/issues/religion/submissions/csos/75.yazda.pdf> (accessed 23 March 2022).

<sup>647</sup> OHCHR, Yazda's submission to Sustainable Development Goal 16, Religious Freedom and The Yazidi Genocide, available at <https://www.ohchr.org/documents/issues/religion/submissions/csos/75.yazda.pdf> (accessed 23 March 2022); Commission of Inquiry, "They Came to Destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016; D. Van Zoonen and K. Wirya, The Yazidis: Perceptions of Reconciliation and Conflict, *Middle East Research Institute*, 2017, pp 8-9, available at <https://www.usip.org/sites/default/files/yazidis-perceptions-of-reconciliation-and-conflict-report.pdf> (accessed 23 March 2022).

<sup>648</sup> P. Taneja, Assimilation, Exodus, Eradication: Iraq's Minority Communities since 2003, *Minority Rights Group International*, 2007, p. 13, available at <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-280-assimilation-exodus-eradication-iraqs-minority-communities-since-2003.pdf> (accessed 17 April 2021).

<sup>649</sup> UNHRC, Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, April 2009, p. 176, available at <https://www.refworld.org/docid/49f569cf2.html> (accessed 10 April 2021).

<sup>650</sup> UN, *Framework Analysis for Atrocity Crimes: A Tool for Prevention*, 2014.

<sup>651</sup> UN, *Framework Analysis for Atrocity Crimes: A Tool for Prevention*, 2014, Risk Factor 9.

Section on Obligation to Prevent, and which was known to be used by ISIS for the commission of prohibited acts and for military advantage.<sup>652</sup>

58. This conclusion is reached on the basis that there were extensive and substantial reports being provided by the United Nations and other organisations prior to August 2014, and which intensified beginning at mid-2013 and in early 2014, which identified the views that ISIS held towards religious minorities, and specifically the Yazidi community, and the prohibited acts that ISIS had perpetrated against the civilian population, religious minorities and, importantly, against Yazidis living in both Syria and Iraq. Furthermore, the Syrian Government would have known that ISIS had made substantial advances in both Syria and Iraq, and that Mount Sinjar, with a large population of Yazidis, was located between ISIS territory in Iraq and Syria and that it would have wanted to take over that territory in order to link-up the areas under its control. A serious risk of genocide would, therefore, have been foreseeable, as ISIS had made its destructive ideology against the Yazidis amply clear in its “official” publications. Based on the publicly available evidence, the Syrian Government either knew, or should have known of the serious risk of genocide of the Yazidis.
59. It is also important to consider whether the Syrian Government would likely have known about the forced transfer and sexual slavery of Yazidis and whether it could have taken action to prevent or disrupt it, in line with its international obligations and ongoing obligation to prevent. First, in light of the numerous contemporaneous reports of prohibited acts of genocide including the attack on Mount Sinjar and the holding of hostages, it is very likely that the Syrian Government would have known and, certainly, should have known what was happening. Second, even if the Syrian Government did not have substantive control over the territory being utilised by ISIS, the Syrian Government had the means reasonably available to it to take steps to prevent what became an ongoing genocide; as discussed above, among other things, it had an extensive military capacity (including external capacities bolstered by Russia since 2015) and it could have directed that at ISIS in order to disrupt its activities and to prevent its transfer and holding of slaves; it could have provided humanitarian assistance to victims and survivors; and it could have condemned or attempted to act to prevent the commission of prohibited acts. It is, therefore, very likely that its failure to prevent or, at the very least, attempt to disrupt ISIS’s activities, was the result of a decision by the Syrian

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<sup>652</sup> See, for instance, Ltc S Oluic, Iraq’s Border Security: Key to an Iraqi Endstate, CTC Sentinel, 2(1), 2009, 21-23, p.21, available at <https://ctc.usma.edu/wp-content/uploads/2010/07/ctcsentinel-vol2iss1.pdf> (accessed 21 December 2021); Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/24/46, 16 August 2013, p. 23; House of Commons, ISIS and the Sectarian Conflict in the Middle East, Research Paper 15/16, 19 March 2015, p.14 available at <https://researchbriefings.files.parliament.uk/documents/rp15-16/rp15-16.pdf> (accessed 2 December 2020); ACAPS, Syria Needs Analysis Project - SNAP: Regional Analysis Syria - Part I: Syria, 26 September 2013, p. 21, available at <https://www.acaps.org/country/syria/special-reports#container-687> (accessed 1 April 2021); Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27CRP.3, 19 November 2014.

Government not to do so. If the Government had taken the matter seriously and wanted to prevent the commission of prohibited acts, it could have directed, at the very minimum, resources at ISIS at that time, but there is no evidence publicly available of such considerations and action by the Syrian Government. Instead, it appears that the Syrian Government effectively abandoned the targeted and captured Yazidis to their fate. No attempt at all was made to provide any form of protection to the Yazidis in any context prior to the commission of prohibited acts, during the commission of prohibited acts and/or after the commission of prohibited acts. That remains the case to this day.

60. Finally, although the Syrian Government joined international efforts to repel ISIS, including from Syrian territory, such concerted action was taken after the genocide against the Yazidis had commenced and there is no evidence publicly available that the Syrian Government forces' offensive against ISIS controlled territory from 2014 onwards was done with the express (or even indirect) purpose of preventing genocide against the Yazidis.

## **2. Obligation Not to Be Complicit in Genocide**

61. The information available in the public domain does not support a conclusion that Syria was complicit in the Yazidi genocide, by providing aid or assistance to ISIS with knowledge that the aid or assistance would be used to commit acts of genocide.

## **3. Obligation to Punish Perpetrators of Genocide**

62. In relation to those areas of the country that have remained under Government control, the Commission of Inquiry concluded back in 2013 that:

*[I]t has not yet identified any evidence that Syria is making a genuine and credible effort to punish severe crimes. In fact, given the protracted and increasingly sectarian nature of the conflict, it seems highly improbable that effective and independent prosecutions that meet essential international standards could be carried out in Syria anytime in the near future. There is not only a lack of willingness to institute proceedings, a country torn by almost two years of bloody and destructive conflict is also unlikely to be capable of such an effort.<sup>653</sup>*

63. There has been no evidence that Syria has taken any steps to investigate, let alone prosecute any crimes committed against the Yazidis in Syria even after significant cessation of hostilities. The Commission of Inquiry, in its March 2018 report, re-iterated that thousands of Yazidi men, women, girls and boys, "who were the focus of ISIL's campaign of genocide," were detained in Syria. Yet,

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<sup>653</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (Syria Commission Report)*, A/HRC/22/59, 5 February 2013, Annex XIV.

- the Commission of Inquiry notes that “After the severe weakening of ISIL’s bastions in Dayr al-Zawr by pro-Government forces in September 2017, and the fall of its *de facto* capital of Raqqah city to SDF in October, the whereabouts of majority of these Yazidi captives remains unknown.”<sup>654</sup>
64. In the public domain there is some, albeit limited, information available regarding the identity of individual alleged perpetrators of atrocity crimes, including genocide, within ISIS.
  65. In 2015, the International Centre for the Study of Radicalisation and Political Violence in partnership with King’s College London and the University of Pennsylvania, *inter alia*, published “Victims, Perpetrators, Assets: The Narratives of Islamic State Defectors.”<sup>655</sup> Although not concerned with allegations of genocide as such, the report includes a list, including names and nationalities, of 58 ISIS defectors, a plurality of whom are/were Syrian. The report notes with concern that defectors may, in some cases, have downplayed the nature or extent of their involvement with ISIS, including, potentially, in the commission of serious international crimes.<sup>656</sup>
  66. The defendants in the *Koblenz, Germany*, trial [the “*Al-Khatib*” trial] of two former Syrian security officials - the first of its kind - were arrested after defecting from the Syrian Government and claiming asylum in Germany; in accordance with German privacy law, their full names have not been published.<sup>657</sup>
  67. On 9 October 2019, the accused, pursuant to an arrest warrant issued by the Federal Court of Justice (*Bundesgerichtshof*) in Karlsruhe, was transferred from Greece to Germany to stand trial for, *inter alia*, the alleged crime of genocide (albeit the impugned conduct is alleged to have taken place in Iraq, not Syria).<sup>658</sup> That trial commenced in April 2020.<sup>659</sup>
  68. However, there does not appear to be any information in the public domain suggesting that the Syrian Government has provided assistance to the prosecutions taking place in third States exercising jurisdiction over the crime of genocide.
  69. Nor does there appear to be any evidence of Syria taking measures to initiate domestic investigations and/or prosecutions for the crime of genocide committed by ISIS.

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<sup>654</sup> Commission of Inquiry, *Detention in the Syrian Arab Republic: A Way Forward*, 8 March 2018, p. 5.

<sup>655</sup> P. R. Neumann, *Victims, Perpetrators, Assets: The Narratives of Islamic State Defectors*, ICSR, 2015, available at <https://icsr.info/wp-content/uploads/2015/10/icsr-report-victims-perpetrators-assets-the-narratives-of-islamic-state-defectors.pdf> (accessed 16 April 2021).

<sup>656</sup> *Ibid.*, p. 7.

<sup>657</sup> European Center for Constitutional and Human Rights (ECCHR), *First Criminal Trial Worldwide on Torture in Syria before a German Court*, 2020, available at <https://www.ecchr.eu/en/case/first-criminal-trial-worldwide-on-torture-in-syria-before-a-german-court/> (accessed 14 October 2020). See also, ECCHR, *Trial Updates*, available at <https://www.ecchr.eu/en/case/trial-updates-first-trial-worldwide-on-torture-in-syria/> (accessed 14 April 2021).

<sup>658</sup> Doughty Street Chambers, *Amal Clooney Represents Victim in First ISIS Genocide Trial*, available at <https://www.doughtystreet.co.uk/news/amal-clooney-represents-victim-first-isis-genocide-trial> (accessed 14 October 2020).

<sup>659</sup> BBC, *Genocide trial: IS Suspect in Court in Germany*, available at <https://www.bbc.co.uk/news/world-europe-52409406> (accessed 14 October 2020).

### Summary Findings on the Obligation to Punish

70. There is limited information, in the public domain, about whether Syria is making any genuine and credible effort to punish the crime of genocide.
71. There has been no evidence that the Syria has taken any steps to investigate, let alone prosecute any crimes committed against the Yazidis in Syria even after significant cessation of hostilities. As such it remains in violation of the obligation to punish perpetrators.

### 4. Obligation to Enact Legislation Giving Effect to the Convention

72. In the public domain there is no Syrian domestic legislation, let alone specific implementing legislation, giving effect to the provisions of the Genocide Convention or enshrining in law the obligations imposed on Syria by reason of its accession thereto.
73. Likewise, there does not appear to be - as provided for in the database of laws maintained on the website(s) of the Syrian Parliament (Majlis Al-Sha3b) and/or Ministry of Justice (Wizarat Al-3Adl) - any laws passed since the events described above providing for the investigation of and/or prosecution of the commission of the most serious crimes under international law, including genocide.
74. This includes a search for laws introduced but not yet passed into law and for laws passed in the discrete periods 2012-16 and 2016-20.
75. Neither the 1953 Syrian Penal Code nor the 1950 Military Penal Code contain provisions for the prosecution of war crimes, crimes against humanity, or genocide.<sup>660</sup> The Military Penal Code is merely concerned with the conduct of members of the Syrian armed forces without reference to international criminal law. In the Universal Periodic Review ("UPR") to the Human Rights Council dated 5 July 2004, Syria represented that violations of the International Covenant on Civil and Political Rights ("ICCPR") are punishable under the Penal Code.<sup>661</sup> Reference, however, was only made to abuse of authority, defined as an aggravating circumstance in Syria's Penal Code.<sup>662</sup> The Syrian Penal Code, while providing for fair trial standards in theory, is often circumvented by the judiciary and state authorities through enactment of various legislative decrees. In January 2022, human rights organisations represented their findings about the ongoing human rights violations in Syria for the consideration of the UNHCR UPR of Syria.<sup>663</sup> In their joint report, attention was drawn to effectively non-existent fair trials in the country. For instance, while the Syrian Constitution prohibits arbitrary arrest and detention,

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<sup>660</sup> See for instance, Amnesty International, *Universal Jurisdiction: A Preliminary Survey of Legislation Around the World-2012 Update*, 9 October 2012, p. 111.

<sup>661</sup> Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant (Syria), CCPR/C/SYR/2004/3, 19 October 2004.

<sup>662</sup> *Ibid.* Article 247 and 367 of the Syrian Penal Code.

<sup>663</sup> United Nations Human Rights Council's Universal Periodic Review of Syria 2022 Joint Report, 21 January 2022, available at <https://stj-sy.org/en/recommendations-for-the-united-nations-human-rights-councils-universal-periodic-review-of-syria/> (accessed 25 March 2022).

Legislative Decree 55 (enacted on 21 April 2011) allows detention for up to 60 days without charge on suspicion of "terrorism" or related offences, frequently resulting in violations of fair trial standards and procedural rules.<sup>664</sup> By law, any person has the right to challenge the legality of an arrest or detention, yet this right is often denied in practice.<sup>665</sup> This is associated with the lack of independence of the judiciary: courts are under political influence and both prosecutors and defence lawyers are subjected to obstruction and intimidation.<sup>666</sup> In most cases where persons have been arrested by Syrian intelligence services, defendants were reportedly denied access to counsel and held incommunicado throughout their detention.<sup>667</sup>

76. The UN General Assembly Resolution 71/248 of 21 December 2016 established the International, Impartial, and Independent Mechanism ("IIIM") to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011.<sup>668</sup> This mechanism, however, was created without the consent or participation of the Syrian Government or civil society organisations within Syria, which has been criticized by the latter.<sup>669</sup> Furthermore, the IIIM is only authorised to share case files, evidence and data with courts or tribunals that respect and comply with international human rights law and standards, including the right to a fair trial.<sup>670</sup> In view of the state of Syria's justice system and documented human rights abuses, this may limit the

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<sup>664</sup> United States Department of State, Country Reports on Human Rights Practices for 2020: Syria, Bureau of Democracy, Human Rights and Labor (2020), available at <https://www.state.gov/wp-content/uploads/2021/03/syria-2020-human-rights-report.pdf> (accessed 25 March 2022); United Nations Human Rights Council's Universal Periodic Review of Syria 2022 Joint Report, 21 January 2022, available at <https://stj-sy.org/en/recommendations-for-the-united-nations-human-rights-councils-universal-periodic-review-of-syria/> (accessed 25 March 2022).

<sup>665</sup> United States Department of State, Country Reports on Human Rights Practices for 2020: Syria, Bureau of Democracy, Human Rights and Labor (2020), available at <https://www.state.gov/wp-content/uploads/2021/03/syria-2020-human-rights-report.pdf> (accessed 25 March 2022); United Nations Human Rights Council's Universal Periodic Review of Syria 2022 Joint Report, 21 January 2022, available at <https://stj-sy.org/en/recommendations-for-the-united-nations-human-rights-councils-universal-periodic-review-of-syria/> (accessed 25 March 2022).

<sup>666</sup> United States Department of State, Country Reports on Human Rights Practices for 2020: Syria, Bureau of Democracy, Human Rights and Labor (2020), available at <https://www.state.gov/wp-content/uploads/2021/03/syria-2020-human-rights-report.pdf> (accessed 25 March 2022); United Nations Human Rights Council's Universal Periodic Review of Syria 2022 Joint Report, 21 January 2022, available at <https://stj-sy.org/en/recommendations-for-the-united-nations-human-rights-councils-universal-periodic-review-of-syria/> (accessed 25 March 2022).

<sup>667</sup> *Ibid.*

<sup>668</sup> UN General Assembly, Resolution 71/248, 11 January 2017, A/RES/71/248, available at <https://iiim.un.org/who-we-are/mandate/> (accessed 23 March 2022).

<sup>669</sup> Syria Justice Accountability Centre, A memorandum to the Secretary General of the United Nations regarding the new United Nations mechanism for investigation and prosecution, 19 January 2017, available at <https://syriaaccountability.org/updates/2017/01/19/a-memorandum-to-the-secretary-general-of-the-united-nations-regarding-the-new-united-nations-mechanism-for-investigation-and-prosecution/> (accessed 23 March 2022).

<sup>670</sup> International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, Frequently Asked Questions, available at <https://iiim.un.org/who-we-are/faqs/> (accessed 25 March 2022).

ability of the IIIM to effectively assist Syria in this area.<sup>671</sup> The Syrian Government is directly hostile to any such investigation or international efforts and spoke against the resolution that established the IIIM.<sup>672</sup>

77. On 3 September 2013, the Commission of Inquiry reported that it had:

*not yet identified any evidence that Syria is making a genuine and credible effort to punish severe crimes. In fact, given the protracted and increasingly sectarian nature of the conflict, it seems highly improbable that effective and independent prosecutions that meet essential international standards could be carried out in Syria anytime in the near future. There is not only a lack of willingness to institute proceedings, [but] a country torn by almost two years of bloody and destructive conflict is also unlikely to be capable of such an effort.*<sup>673</sup>

Whilst this assessment pre-dated ISIS' atrocities in Iraq and Syria the conclusion still holds true.<sup>674</sup> "[c]riminal provisions too broadly define, and often outlaw, the mere exercise of rights and freedoms protected by international human rights law."<sup>675</sup> It is further reported that the judiciary fails to properly monitor the national justice system and to provide "effective remedy for victims of violations attributable to the State, with individuals not daring to challenge abuses for fear of retribution."<sup>676</sup>

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<sup>671</sup> Al Jazeera, N. Aboueldahab, Will Assad ever be tried for his crimes?, 31 January 2017, available at <https://www.aljazeera.com/opinions/2017/1/31/will-assad-ever-be-tried-for-his-crimes/> (accessed 23 March 2022); See also Syria Justice Accountability Centre, A memorandum to the Secretary General of the United Nations regarding the new United Nations mechanism for investigation and prosecution, 19 January 2017, available at <https://syriaaccountability.org/updates/2017/01/19/a-memorandum-to-the-secretary-general-of-the-united-nations-regarding-the-new-united-nations-mechanism-for-investigation-and-prosecution/> (accessed 23 March 2022).

<sup>672</sup> Statement of Mr Ja'afari (Syrian Arab Republic) to the UN General Assembly, Agenda Item 31, Prevention of Armed Conflict, Draft resolution (A/71/L.48), 21 December 2016, A/71/PV.66, p. 21; IIIM, Report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, 13 February 2019, A/73/11, para. 13, available at <https://documents-dds-ny.un.org/doc/undoc/gen/n19/040/26/pdf/n1904026.pdf?openelement> (accessed 4 May 2022); IIIM, International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, 11 February 2022, A/76/690, para. 18, available at <https://documents-dds-ny.un.org/doc/undoc/gen/n22/256/36/pdf/n2225636.pdf?openelement> (accessed 4 May 2022).

<sup>673</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/22/59, 3 September 2013, p. 124.

<sup>674</sup> Human Rights Council, Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic, 3 February 2016, A/HRC/31/CRP.1; United Nations Human Rights Council's Universal Periodic Review of Syria 2022 Joint Report, 21 January 2022, available at <https://stj-sy.org/en/recommendations-for-the-united-nations-human-rights-councils-universal-periodic-review-of-syria/> (accessed 25 March 2022); See also for instance Al Jazeera, N. Aboueldahab, Will Assad ever be tried for his crimes?, 31 January 2017, available at <https://www.aljazeera.com/opinions/2017/1/31/will-assad-ever-be-tried-for-his-crimes/> (accessed 23 March 2022); Syrians for Truth and Justice, Responding to Misconceptions Regarding the IIIM, 3 August 2017, available at <https://stj-sy.org/en/167/> (accessed 23 March 2022).

<sup>675</sup> Human Rights Council, Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic, 3 February 2016, A/HRC/31/CRP.1.

<sup>676</sup> *Ibid.*



78. This view was confirmed by international organisations, including Human Rights Watch, which opined that even if there existed the political will to prosecute individuals responsible for the commission of the most serious international crimes in Syria, considerable “reforms and external assistance” would be required before domestic criminal trials could meet international fair trial standards, let alone appear sufficiently credible and independent to “satisfy” the local population.<sup>677</sup> Possible perpetrators may also be individuals who once held, or continue to hold, senior positions in Syrian armed forces and/or are influential leaders in non-state armed forces.<sup>678</sup> Prosecutions, even if they were to take place, would be within the context of a court system which knows no due process or protection of the rights of the accused.<sup>679</sup>
79. According to the International Legal Assistance Consortium (ILAC), a consequence of the government’s loss of territory over the period 2011-17 has been considerable variability in the application of justice across the country, with many courts - including “non-state” courts created to fill the vacuum - operating beyond the reach of governmental control.<sup>680</sup> (It is unclear whether such prosecutions as are taking place are for serious crimes under international law.)
80. Since August 2014,<sup>681</sup> attempts by the UN Security Council to refer the situation in Syria to the ICC failed,<sup>682</sup> after China and the Russian Federation vetoed them. While Syria is not a State Party to the Rome Statute of the ICC, the Syrian government is empowered to refer the situation in Syria to the ICC but has not done so. In view of this and considering the limited efforts to establish a hybrid or *ad hoc* tribunal outside the purview of the UNSC, European domestic courts have emerged as the most promising short-term fora for the prosecution of international crimes committed in Syria.<sup>683</sup>

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<sup>677</sup> Human Rights Watch, *Syria: Criminal Justice for Serious Crimes under International Law*, 17 December 2013, available at <https://www.hrw.org/news/2013/12/17/syria-criminal-justice-serious-crimes-under-international-law> (accessed 16 April 2020).

<sup>678</sup> Human Rights Watch, *Syria: Criminal Justice for Serious Crimes under International Law*, 17 December 2013. The HRW Report notes that: “In Syria, security services currently benefit from extensive legal immunity. For example, Legislative Decree No. 14, of January 15, 1969, and Legislative Decree 69, provide immunity to members of the security forces, by requiring a decree from the General Command of the Army and Armed Forces to prosecute any member of the internal security forces, Political Security, and customs police.”

<sup>679</sup> See for instance, Amnesty International, *Syria: Human Slaughterhouse: Mass Hangings and Extermination at Saydnaya Prison*, 7 February 2017, available at <https://www.amnesty.org/en/documents/mde24/5415/2017/en/> (accessed 16 April 2021).

<sup>680</sup> M. I. Edman (ed.), *ILAC Rule of Law Assessment Report: Syria 2017*, pp 6-7, available at <https://ilacnet.org/publications/syria-rule-of-law-assessment/> (accessed 16 April 2021).

<sup>681</sup> UN Security Council, *Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution*, SC/11407, 22 May 2014.

<sup>682</sup> Referral by Security Council resolution was necessary as neither Syria nor Iraq has ratified the ICC statute and thus the Court has no jurisdiction over the situation in either country.

<sup>683</sup> B. Van Schaack, *Domestic Courts Step Up: Justice for Syria One Case at a Time*, *Just Security*, 25 March 2019, available at <https://www.justsecurity.org/63289/domestic-courts-step-up-justice-for-syria-one-case-at-a-time/> (accessed 16 April 2021).



81. This appears to have been encouraged by calls both from the Commission of Inquiry<sup>684</sup> and from the European Union<sup>685</sup> for Member States to prosecute:
- i. their own nationals,
  - ii. those under their jurisdiction, and
  - iii. to apply the principle of universal jurisdiction to investigate and prosecute those non-nationals accused of serious international crimes.

However, publicly available evidence suggests that the indictments in the majority of these cases are generally for terrorism-related offences, as opposed to atrocity crimes.<sup>686</sup>

82. There have been several foreign trials involving events in, and actors from, Syria. This serves to further highlight the failure of the Syrian Government proactively to enact appropriate legislation, to provide the legal framework on which to investigate and prosecute allegations of genocide.

### **Summary Findings on the Obligation to Enact Legislation**

83. With respect to Syria's obligation to enact the necessary legislation to give effect to the provisions of the Genocide Convention, there is no Syrian domestic legislation giving effect to the provisions of the Genocide Convention or enshrining in law the obligations imposed on Syria by reason its accession thereto. Neither the 1953 Syrian Penal Code nor the 1950 Military Penal Code contain provisions for the prosecution (domestic or international) of war crimes, crimes against humanity, or genocide.

## **5. Attribution of Prohibited Acts of Genocide**

84. The information in the public domain is insufficient to support any allegation that prohibited acts are attributable to Syria.

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<sup>684</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/28/69, 5 February 2015, p. 15 ff.

<sup>685</sup> Official Journal of the European Union, *Addressing Human Rights Violations in the Context of War Crimes, and Crimes Against Humanity, including Genocide*, 4 July 2017, para. 52.

<sup>686</sup> Eurojust, *Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences*. The Hague, May 2020, p. 5, available at [https://www.eurojust.europa.eu/sites/default/files/partners/genocide/2020-05\\_report-on-cumulative-prosecution-of-ftfs\\_en.pdf](https://www.eurojust.europa.eu/sites/default/files/partners/genocide/2020-05_report-on-cumulative-prosecution-of-ftfs_en.pdf) (accessed 1 June 2021).

## B. Iraq Country Report

### 1. Obligation to Prevent Genocide

1. In order to assess whether the obligation to prevent genocide is engaged, it is necessary to consider whether the Government of Iraq knew, or should have known, about the serious risk of genocide that ISIS posed to the Yazidis, as a protected group. If Iraq knew, or should have known, of this serious risk, it was compelled, under the Genocide Convention, to take all measures reasonably available to it to seek to prevent genocide of the Yazidis, at the latest, by early 2014.
2. As discussed in the Section entitled Disputed Territory and Questions of State Responsibility: Federal State of Iraq and the Kurdistan Autonomous Region, the Yazidi population of Iraq lives predominantly in northern Iraq, in the Dohuk and Ninewa Governorates. Their ancestral homeland is located 150km from Mosul, and mainly in the district of Sinjar, as well as Al-Shikhan district, the villages of Bahzani and Baashiqa near Mosul and the Dohuk Governorate. It is estimated that the Yazidi population in Iraq ranged “from 300,000 to between 550,000 and 700,000” before ISIS’ invasion of Iraq in 2014.<sup>687</sup> The ISIS attack on Sinjar resulted in the mass displacement of an estimated 360,000 Yazidis, Arab and Christians, with 200,000 Yazidis remaining displaced as of July 2020.<sup>688</sup> As of September 2021, over 2,500 Yazidis of the 6,417 thought to have been kidnapped and captured by ISIS remained missing.<sup>689</sup>
3. Much of the Ninewa Governorate is formally classified as “disputed territory” by Article 140 of the Constitution of Iraq, 2005,<sup>690</sup> the governance of which is the subject of an ongoing dispute with the KRG of the Kurdistan Autonomous Region since 2003.<sup>691</sup> The ongoing dispute between the Federal Government and the KRG, and the failure of the parties to agree to a mutually acceptable political framework for the long-term governance of the region,<sup>692</sup> has had damaging political, economic, and security consequences for the region, that

<sup>687</sup> European Asylum Support Office, Country Guidance Iraq 2021, (updated January 2021), 2.15.2, available at <https://easo.europa.eu/country-guidance-iraq-2021/2152-yazidi> (accessed 15 April 2021).

<sup>688</sup> *Ibid.*

<sup>689</sup> E. Ochab, The Missing Yazidi Women And Children Must Be Located And Rescued, Forbes Online, 25 September 2021, available at <https://www.forbes.com/sites/ewelinaochab/2021/09/25/the-missing-yazidis-women-and-children-must-be-located-and-rescued/?sh=50c888a41697> (accessed 9 March 2022). See also Shafaq News, The Yazidi Rescue Office: 360 Thousands Displaced, 82 Mass Graves, 6417 Kidnapped, 15 February 2021, available at <https://shafaq.com/en/kurdistan/the-yazidi-rescue-office-360-thousands-displaced-82-mass-graves-6417-kidnapped> (accessed 15 April 2021).

<sup>690</sup> Constitution of Iraq, 2005 (English), adopted by referendum on 15 October 2005, available at [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en) (accessed 20 April 2021)

<sup>691</sup> N. Kikoler, *Our Generation is Gone. The Islamic State’s Targeting of Iraqi Minorities in Ninewa*, 2015, p. 6, available at <https://www.ushmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 29 June 2021); C. Van Den Toorn, Public Authority and Iraq’s Disputed Territories, LSE, 4 September 2018, available at <https://blogs.lse.ac.uk/mec/2018/09/04/public-authority-and-iraqs-disputed-territories/> (accessed 13 April 2021).

<sup>692</sup> C. Van Den Toorn, Public Authority and Iraq’s Disputed Territories, LSE, 4 September 2018, available at <https://blogs.lse.ac.uk/mec/2018/09/04/public-authority-and-iraqs-disputed-territories/> (accessed 13 April 2021).

have enabled an environment in which extremist activity thrived following the US-led invasion of Iraq in 2003.<sup>693</sup>

4. Nevertheless, as discussed above, for the purposes of international law, the lack of clarity in domestic law as to which authority - the federal authority or the KRG - was responsible for providing security to the Ninewa Governorate does not preclude the attribution of the conduct of the KRG (including its organs, officials or agents) to the State of Iraq, and Iraq's international responsibility for any wrongful acts committed by the KRG (including its organs, officials or agents).

### 1.1 *An Overview of Threats and Violence Against the Yazidis Before June 2014*

5. Before June 2014, approximately 3 million people lived in the Ninewa Governorate. Although predominantly Sunni, Ninewa has been described as the most ethnically diverse region in Iraq, with approximately 10-20% of the population belonging to minority groups, including Christians, Shabak, Turkmen and Yazidis.<sup>694</sup> These minority groups, including the Yazidis, were vulnerable to attacks from Sunni extremists before 2014, many of whom had been driven out of Anbar Province by coalition armed forces in 2007 during the so-called "Sunni Awakening" that resulted in large numbers of "battle-hardened" Sunni fighters living in close proximity to minority groups.<sup>695</sup> This combination left minority groups, including the Yazidis, particularly vulnerable to attacks. As a 2019 report of the European Asylum Support Office (EASO) has observed, ISIS' occupation of the region was preceded by "years of overlapping violent extremism and organized crime by militia groups, some of which were IS progenitors and/or rivals".<sup>696</sup>

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<sup>693</sup> D. Van Zoonen, K. Wirya, *The Yazidis: Perceptions of Reconciliation and Conflict*, Middle East Research Institute, 2017, p. 11, available at <https://www.usip.org/sites/default/files/yazidis-perceptions-of-reconciliation-and-conflict-report.pdf> (accessed 29 June 2021); UNAMI, *Human Rights Report 1 July - 31 December*, 2008, para. 49.

<sup>694</sup> N. Kikoler, *Our Generation is Gone. The Islamic State's Targeting of Iraqi Minorities in Ninewa*, p. 8, available at <https://www.ushmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 29 June 2021); Rise Foundation, *Mosul and Tel Afar Context Analysis*, December 2017, p. 6, available at <http://rise-foundation.org/wp-content/uploads/2017/12/rise-mosul-and-tel-afar-context-analysis-rise-december-2017.pdf> (accessed 29 June 2021); European Asylum Support Office, *Country of Origin Information Report: Iraq, March 2019*, p. 114, available at [https://coi.easo.europa.eu/administration/easo/plib/iraq\\_security\\_situation.pdf](https://coi.easo.europa.eu/administration/easo/plib/iraq_security_situation.pdf) (accessed 20 April 2021).

<sup>695</sup> N. Kikoler, *Our Generation is Gone. The Islamic State's Targeting of Iraqi Minorities in Ninewa*, p. 9, available at <https://www.ushmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 29 June 2021).

<sup>696</sup> European Asylum Support Office, *Country of Origin Information Report: Iraq, March 2019*, p. 114, available at [https://coi.easo.europa.eu/administration/easo/plib/iraq\\_security\\_situation.pdf](https://coi.easo.europa.eu/administration/easo/plib/iraq_security_situation.pdf) (accessed 29 June 2021); Rise Foundation, *Mosul and Tel Afar Context Analysis*, December 2017, p. 6, available at <http://rise-foundation.org/wp-content/uploads/2017/12/rise-mosul-and-tel-afar-context-analysis-rise-december-2017.pdf> (accessed 21 April 2021).

6. Yazidis in Iraq suffered discrimination, threats and attacks long before ISIS' invasion of Iraq and occupation of the region.<sup>697</sup> For years, the Iraqi school curriculum did not include study of the history and culture of Iraq's minority groups, including the Yazidis, leading to a wide-spread lack of knowledge and understanding of their religious beliefs, culture and traditions.<sup>698</sup> In the context of the Saddam Hussein's "Arabisation" policies in the 1970s and 1980s, large numbers of Yazidis were forcibly displaced from their homes and into newly constructed "collective towns", severely disrupting their pastoral way of life.<sup>699</sup> Yazidis were impoverished and became dependent on the central government for food and essential services,<sup>700</sup> a situation that continued after Saddam Hussein was deposed.<sup>701</sup> As a disputed territory, the Ninewa Governorate suffered from "underdevelopment and systemic negligence in public investment and service provision".<sup>702</sup>
7. Following the US-led invasion of Iraq in 2003, the Yazidis became increasingly subjected to sectarian violence.<sup>703</sup> In 2003, extremist groups declared the Yazidis "impure" and propaganda leaflets distributed throughout Mosul called for the death of all Yazidis.<sup>704</sup> Yazidis were not only threatened, but also lethally targeted, often with impunity.<sup>705</sup> In addition, Yazidis were targeted because of their perceived identity as Kurds, and perceived support for the US-led

<sup>697</sup> UNAMI, *Human Rights Report 1 July - 31 December 2008*, para. 48; P. Taneja, *Assimilation, Exodus, Eradication: Iraq's minority communities since 2003*, Minority Rights Group International, 2007, p. 13, available at <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-280-Assimilation-Exodus-Eradication-Iraqs-minority-communities-since-2003.pdf> (accessed 20 April 2021).

<sup>698</sup> D. Van Zoonen and K. Wirya, *The Yazidis: Perceptions of Reconciliation and Conflict*, Middle East Research Institute, 2017, pp 8-9, available at <https://www.usip.org/sites/default/files/yazidis-perceptions-of-reconciliation-and-conflict-report.pdf> (accessed 20 April 2021).

<sup>699</sup> UN Habitat, *City Profile of Mosul, Iraq. Multi-section Assessment of a City under Siege*, p. 22, available at [https://reliefweb.int/sites/reliefweb.int/files/resources/un-habitat\\_mosulcityprofile\\_v5.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/un-habitat_mosulcityprofile_v5.pdf) (accessed 29 June 2021); D. Van Zoonen, K. Wirya, *The Yazidis: Perceptions of Reconciliation and Conflict*, Middle East Research Institute, 2017, p. 9, available at <https://www.usip.org/sites/default/files/yazidis-perceptions-of-reconciliation-and-conflict-report.pdf> (accessed 20 April 2021).

<sup>700</sup> S. Maisel, *Social Change Amidst Terror and Discrimination: Yazidis in the New Iraq*, MEI@75, 1 August 2008, available at <https://www.mei.edu/publications/social-change-amidst-terror-and-discrimination-yezidis-new-iraq> (accessed 20 April 2021).

<sup>701</sup> Q. Khidhir, *Mixed Fortunes of Yazidis in New Iraq*, *Institute for War & Peace Reporting*, 14 January 2009, available at <https://iwpr.net/global-voices/mixed-fortunes-yazidis-new-iraq>; D. Van Zoonen, K. Wirya, *The Yazidis: Perceptions of Reconciliation and Conflict*, Middle East Research Institute, 2017, p. 11, available at <https://www.usip.org/sites/default/files/Yazidis-Perceptions-of-Reconciliation-and-Conflict-Report.pdf> (accessed 20 April 2021).

<sup>702</sup> D. Van Zoonen, K. Wirya, *The Yazidis: Perceptions of Reconciliation and Conflict*, Middle East Research Institute, 2017, p. 11, available at <https://www.usip.org/sites/default/files/yazidis-perceptions-of-reconciliation-and-conflict-report.pdf> (accessed 20 April 2021); UNAMI, *Human Rights Report 1 July - 31 December, 2008*, para. 49.

<sup>703</sup> Q. Khidhir, *Mixed Fortunes of Yazidis in New Iraq*, *Institute for War & Peace Reporting*, 14 January 2009, available at <https://iwpr.net/global-voices/mixed-fortunes-yazidis-new-iraq> (accessed 20 April 2021).

<sup>704</sup> P. Taneja, *Assimilation, Exodus, Eradication: Iraq's minority communities since 2003*, Minority Rights Group International, 2007, p. 13, available at <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-280-Assimilation-Exodus-Eradication-Iraqs-minority-communities-since-2003.pdf> (accessed 20 April 2021).

<sup>705</sup> UNHRC, *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, p. 176, available at <https://www.refworld.org/docid/49f569cf2.html> (accessed 10 April 2021).

invasion and subsequent foreign military occupation of Iraq.<sup>706</sup> On 22 April 2007 unidentified gunmen summarily executed 23 Yazidis in the Kurdish town of Bashika.<sup>707</sup> After the incident, members of the Yazidi community in Mosul began to receive threatening letters, causing them to flee the city.<sup>708</sup> In August 2007, four coordinated suicide car bombing attacks carried out in the Yazidi villages of Til Ezer (Qahtaniya) and Siba Sheikh Khidr (Jazeera), located in southern Sinjar, reportedly killed between 350 and 796 people<sup>709</sup> and seriously injured 1,562.<sup>710</sup> The attacks were again accompanied or followed by a leaflet campaign that condemned the Yazidis as “infidels” and “anti-Islamic”, exacerbating tensions between the Sunni and Yazidi communities.<sup>711</sup>

8. According to UNAMI, on 7 December 2008, seven members of a Yazidi family were assassinated in Sinjar.<sup>712</sup> In August 2009, two suicide bombers attacked a café in Sinjar City, a city where Yazidis were in the majority, killing 21 and wounding 32 people. In 2013, Yazidi students at Mosul University received anonymous threats that they should leave the university or be killed.<sup>713</sup> As a result of threats and insecurity, the UNHRC reported in 2009 that “in recent

<sup>706</sup> UNHRC, *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, p. 176, available at <https://www.refworld.org/docid/49f569cf2.html> (accessed 10 April 2021).

<sup>707</sup> US Commission on Religious Freedom, *Report of the United States Commission on Religious Freedom on Iraq*, December 2008, p. 12, available at <https://www.uscirf.gov/sites/default/files/resources/iraq%20report%20final.pdf#page=20> (accessed 20 April 2021).

<sup>708</sup> US Commission on Religious Freedom, *Report of the United States Commission on Religious Freedom on Iraq*, December 2008, p. 12, available at <https://www.uscirf.gov/sites/default/files/resources/iraq%20report%20final.pdf#page=20> (accessed 20 April 2021).

<sup>709</sup> Reports of the number of people killed in the attacks vary, ranging from 350, to 500, to 796. See for instance, S. Maisel, *Social Change Amidst Terror and Discrimination: Yazidis in the New Iraq*, MEI@75, 1 August 2008, available at <https://www.mei.edu/publications/social-change-amidst-terror-and-discrimination-yezidis-new-iraq> (accessed 20 April 2021); O. Oehring, *Christians and Yazidis in Iraq: Current Situation and Prospects*, Konrad Adenauer Stiftung, 2017, p. 15, available at [https://www.kas.de/documents/252038/253252/7\\_dokument\\_dok\\_pdf\\_49220\\_2.pdf/bfc19076-af7c-f2a4-bbb8-1a3e8d7f4c39#page=14](https://www.kas.de/documents/252038/253252/7_dokument_dok_pdf_49220_2.pdf/bfc19076-af7c-f2a4-bbb8-1a3e8d7f4c39#page=14) (accessed 29 June 2021); US Commission on Religious Freedom, *Report of the United States Commission on Religious Freedom on Iraq*, December 2008, p. 12, available at <https://www.uscirf.gov/sites/default/files/resources/iraq%20report%20final.pdf#page=20> (accessed 29 June 2021); D. Cave, J. Glanz, *Toll in Iraq Bombings Is Raised to More than 500*, *The New York Times*, 22 August 2007, available at <https://www.nytimes.com/2007/08/22/world/middleeast/22iraq-top.html> (accessed 20 April 2021).

<sup>710</sup> O. Oehring, *Christians and Yazidis in Iraq: Current Situation and Prospects*, Konrad Adenauer Stiftung, 2017, p. 15, available at [https://www.kas.de/documents/252038/253252/7\\_dokument\\_dok\\_pdf\\_49220\\_2.pdf/bfc19076-af7c-f2a4-bbb8-1a3e8d7f4c39#page=14](https://www.kas.de/documents/252038/253252/7_dokument_dok_pdf_49220_2.pdf/bfc19076-af7c-f2a4-bbb8-1a3e8d7f4c39#page=14) (accessed 20 April 2021); US Commission on Religious Freedom, *Report of the United States Commission on Religious Freedom on Iraq*, December 2008, p. 12, available at <https://www.uscirf.gov/sites/default/files/resources/iraq%20report%20final.pdf#page=20>, (accessed 20 April 2021).

<sup>711</sup> US Commission on Religious Freedom, *Report of the United States Commission on Religious Freedom on Iraq*, December 2008, p. 12, available at <https://www.uscirf.gov/sites/default/files/resources/iraq%20report%20final.pdf#page=20> (accessed 20 April 2021).

<sup>712</sup> UNAMI, *Human Rights Report 1 July - 31 December 2008*, para. 48.

<sup>713</sup> N. Kikoler, *Our Generation is Gone. The Islamic State's Targeting of Iraqi Minorities in Ninewa*, p. 9, available at <https://www.ushmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 20 April 2021).

- years” the Yazidis’ annual pilgrimage to the holy shrine of Lalish (Cejna Cemayya) was either halted or carried out with restrictions.<sup>714</sup>
9. Yazidi leaders have also suffered threats and intimidation due to their political activities, finding themselves caught up on the ongoing dispute between KRG and the Federal Government over control of the Ninewa Governorate.<sup>715</sup> In December 2008, UNAMI reported that over 50 Yazidis had been arrested and prevented from carrying out peaceful political activities by the Peshmerga.<sup>716</sup> In June 2013, a number of Yazidi leaders had been detained by different Kurdish forces demanding they signed a commitment to reduce relations with certain political parties opposed to Kurdish control of the area.<sup>717</sup>
  10. It was clear that treatment of civilians by ISIS in territories under its control correlated directly with their place within ISIS’ binary view of the world.<sup>718</sup> In early July 2014, ISIS unambiguously announced that its intention to establish a caliphate for those it considered to be Muslim, at the expense of those it deemed should be excluded.<sup>719</sup> The consequences of this binary view on civilians who did not follow ISIS’ ideology had become clear from a series of reports of attacks, kidnappings, and summary executions, originating from territories under ISIS control.<sup>720</sup>
  11. The position taken by ISIS and similar groups to those they consider polytheists (*mushrikeen*) and disbelievers (*kuffar*) is well documented.<sup>721</sup> ISIS rely on misinterpretations of the passage from the Qu’ran known as the “verse of the sword” to argue that all peaceful verses in the Qu’ran have been abrogated and that Muslims must fight the *mushrikeen* and *kuffar* and kill them unless they convert.<sup>722</sup> Muslims who do not accept ISIS’ interpretation of Islam are

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<sup>714</sup> UNHRC, *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, p. 177, available at <https://www.refworld.org/docid/49f569cf2.html> (accessed 10 April 2021); US Commission on Religious Freedom, *Report of the United States Commission on Religious Freedom on Iraq*, December 2008, p. 12, available at <https://www.uscifr.gov/sites/default/files/resources/iraq%20report%20final.pdf#page=20> (accessed 20 April 2021).

<sup>715</sup> US Commission on Religious Freedom, *Report of the United States Commission on Religious Freedom on Iraq*, December 2008, p. 6, available at <https://www.uscifr.gov/sites/default/files/resources/iraq%20report%20final.pdf#page=20> (accessed 20 April 2021).

<sup>716</sup> UNAMI, *Human Rights Report 1 July - 31 December 2008*, para. 49.

<sup>717</sup> UNAMI, *Report on Human Rights in Iraq: July - December 2013*, p. 23.

<sup>718</sup> For a detailed analysis of *takfir* to explain the world in terms of a dichotomy between belief and non-belief, see J. Kadivar, *Exploring Takfir, Its Origins and Contemporary Use: The Case of Takfiri Approach in Daesh’s Media*, *Contemporary Review of the Middle East*, May 2020, pp 1-27.

<sup>719</sup> In his first official speech, Al-Baghdadi announced: “Therefore, rush O’Muslims to your state. Yes, it is your state. Rush because Syria is not for the Syrians, and Iraq is not for the Iraqis.” *Dabiq*, *The Return of the Khilafah*, Issue 1, Ramadan 1435, 5 July 2014, p. 11.

<sup>720</sup> See further, the [Section relating to the Actus Reus](#), above.

<sup>721</sup> In an ISIS document issued in May 2017, the group declared that it considered “the making of the Takfir of the Mushrikin as one of the utmost principles of the religion.” See J. Kadivar, *Exploring Takfir, Its Origins and Contemporary Use: The Case of Takfiri Approach in Daesh’s Media*, *Contemporary Review of the Middle East*, May 2020, p.12.

<sup>722</sup> In fact, it was this exact and well-rehearsed argument which was invoked by ISIS in their public communications about their treatment of the Yazidis. *Dabiq*, *The Failed Crusade*, Issue 4, Dhul-Hijjah 1435, 11 October 2014, pp 14-17.

declared apostates and infidels (i.e. they declare *takfir*).<sup>723</sup> So-called “nullifiers of Islam” are “[w]hoever does not hold the polytheists (mushrikeen) to be disbelievers (kuffar), or has doubts about their disbelief or considers their ways and beliefs to be correct, has committed disbelief.”<sup>724</sup>

## 1.2 Knowledge of Serious Risk of Genocide

12. Reports were widely available and communicated to the Government of Iraq that ISIS (including Al-Qaeda affiliated-fighters and “Salafi-jihadi” fighters) were targeting Yazidis from at least April 2013 (as identified in the Sections on Obligation to Prevent Genocide in the Syria and Turkey Country Reports). As further discussed below, these reports, seen in the context of a long history of discrimination against the Yazidis and the high frequency of targeting of Yazidis by extremist groups since 2003, support the view that the Government of Iraq knew, or should have known, about the serious risk that ISIS posed to Yazidi in its territory.
13. The long-history of discrimination against the Yazidis, and the neglect of the economic development the Ninewa Governorate as a disputed territory by the Federal Government, created an environment conducive to their persecution.<sup>725</sup> As stated above, the Yazidis had been subjected to threats and sectarian attacks since 2003, and had been the subject of extremist propaganda campaigns that labelled Yazidis as “impure” and called for the death of all Yazidis.<sup>726</sup> Moreover, the lethal attacks against the Yazidis were carried out by Islamic extremist groups, “some of which were IS progenitors and/or rivals”.<sup>727</sup>
14. By the end of 2013, ISIS had established itself as a well-organised armed group that had the capability to carry out attacks against military and government installations, as well as deliberate and indiscriminate attacks against civilians and civilian infrastructure that included markets, places of worship, schools and hospitals.<sup>728</sup> By the beginning of 2014, it would have been clear that ISIS would

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<sup>723</sup> See J. Kadivar, Exploring Takfir, Its Origins and Contemporary Use: The Case of Takfiri Approach in Daesh’s Media, *Contemporary Review of the Middle East*, May 2020, p. 9.

<sup>724</sup> J. Kadivar, Exploring Takfir, Its Origins and Contemporary Use: The Case of Takfiri Approach in Daesh’s Media, *Contemporary Review of the Middle East*, May 2020, p.9.

<sup>725</sup> UN, Framework Analysis for Atrocity Crimes: A tool for prevention, 2014, Risk Factor 9.

<sup>726</sup> P. Taneja, Assimilation, Exodus, Eradication: Iraq’s Minority Communities since 2003, Minority Rights Group International, 2007, p. 13 available at <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-280-assimilation-exodus-eradication-iraqs-minority-communities-since-2003.pdf> (accessed 20 April 2021).

<sup>727</sup> European Asylum Support Office, Country of Origin Information Report: Iraq, March 2019, p. 114, available at [https://coi.easo.europa.eu/administration/easo/plib/iraq\\_security\\_situation.pdf](https://coi.easo.europa.eu/administration/easo/plib/iraq_security_situation.pdf) (accessed 20 April 2021); Rise Foundation, Mosul and Tel Afar Context Analysis, December 2017, p. 6, available at <http://rise-foundation.org/wp-content/uploads/2017/12/rise-mosul-and-tel-afar-context-analysis-rise-december-2017.pdf> (accessed 20 April 2021).

<sup>728</sup> UNAMI, *Report on Human Rights in Iraq: July - December 2013*, June 2014, pp 1-4; A. Bilger, ISIS Annual Reports Reveal a Metrics-Driven Military Command, *Institute for the Study of War*, 22 May 2014, available at [http://www.understandingwar.org/sites/default/files/iswbackgrounder\\_isis\\_annual\\_reports\\_0.pdf](http://www.understandingwar.org/sites/default/files/iswbackgrounder_isis_annual_reports_0.pdf) (accessed 20 April 2021).



attempt to expand the territory under its control. Indeed, it had publicly communicated this intention.<sup>729</sup> A statistical analysis conducted by the Institute for the Study of War, published in May 2014, showed that 37.6% and 32.9% of ISIS' attacks in 2012 and 2013 respectively had focused on the Ninewa Governorate.<sup>730</sup> The report concluded that ISIS was "behaving as a proper military organization" and, not simply a terrorist organisation but "an armed insurgency moving to control terrain".<sup>731</sup>

15. ISIS was able to steadily increase the area under its control throughout the first half of 2014, with the Governorates of Ninewa, Sala al-Din, Kirkuk and Diyala experiencing "a sustained level of violence that had taken a high toll on civilians" in the period before June 2014 and the capture of Mosul on 5 June 2014.<sup>732</sup> On 19 June 2014 ISIS' leader, Abu Bakr Al Baghdadi announced the establishment of the caliphate of the "Islamic State", stretching from Aleppo, Syria to Diyala, Iraq.<sup>733</sup> In light of its rapid incursion into northern Iraq, it would have been foreseeable that ISIS would be seeking to expand the area under its control, including the territory that traverses the frontiers of Iraq and Syria.
16. Any lingering doubts about these objectives would have dissipated on 16 June 2014, when ISIS attacked and conquered Tal Afar, located east of Mosul.<sup>734</sup> Sinjar Town sits between Tal Afar and the Syrian boundary. Given these advances, it would have been reasonably foreseeable to the Government of Iraq that Sinjar Town - and the wider district of Sinjar - would be ISIS' next target as it sought to consolidate its control of the region. And, bearing in mind ISIS' previously declared destructive ideology against the Yazidis, the Government of Iraq knew, or should have known, that there was a serious risk that ISIS would commit genocide against the Yazidis in the areas it took over.
17. Moreover, it had become clear that the failure to resolve political deadlock and sectarian division in Iraq was being exploited by ISIS and other armed groups and the continued uncertainty may have contributed to an enabling environment leading to an increase in violence and attacks against civilians.<sup>735</sup> In light of the increasing violence against civilians in Iraq during the period of July to December 2013, and the "considerable difficulties" the Government of Iraq faced in confronting armed groups, UNAMI stressed that the Government "must do all it can to protect civilians and to ensure the perpetrators of such

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<sup>729</sup> Dabiq, The Return of the Khilafah, Issue 1, Ramadan 1435, 5 July 2014, p. 13.

<sup>730</sup> A. Bilger, ISIS Annual Reports Reveal a Metrics-Driven Military Command, *Institute for the Study of War*, 22 May 2014, pp 4-5, available at [http://www.understandingwar.org/sites/default/files/iswbackgrounder\\_isis\\_annual\\_reports\\_0.pdf](http://www.understandingwar.org/sites/default/files/iswbackgrounder_isis_annual_reports_0.pdf) (accessed 20 April 2021).

<sup>731</sup> *Ibid.*, p. 11.

<sup>732</sup> UNAMI, *Report on Human Rights in Iraq: January - June 2014*, August 2014, p. 4.

<sup>733</sup> Wilson Centre, *Timeline: Rise, Spread, and Fall of the Islamic State*, 28 October 2019, available at <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state> (accessed 14 April 2021); BBC News, *ISIS Rebels Declare "Islamic State" in Iraq and Syria*, 30 June 2014, available at <https://www.bbc.co.uk/news/world-middle-east-28082962> (accessed 14 April 2021).

<sup>734</sup> M. Chulov, *Iraqi City of Tal Afar Falls to ISIS Insurgents*, *The Guardian*, 16 June 2014, available at <https://www.theguardian.com/world/2014/jun/16/iraq-tal-afar-falls-isis> (accessed 28 June 2021).

<sup>735</sup> UNAMI, *Report on Human Rights in Iraq: July - December 2013*, June 2014, p.4.



crimes are brought to justice".<sup>736</sup> However, on the information available, there is no indication that the Government of Iraq took steps to resolve the political deadlock and to collaborate with regional security forces in order to bolster its ability to confront ISIS.

18. The advance of ISIS fighters into Sinjar posed a clear and serious risk of crimes against humanity and genocide against the Yazidis of Sinjar.<sup>737</sup> In June 2014, the UN Special Adviser to the Secretary-General on the Prevention of Genocide raised his specific concerns about the well-being of the Yazidis, and these concerns would have been known by the Government of Iraq.<sup>738</sup> UNAMI raised similar concerns in July 2014 and expressly identified the ideological basis of the risk the Yazidis faced (i.e. *takfiri* approach to the Shari'a).<sup>739</sup> As detailed further below, by 25 June 2014 at the latest, Iraq knew about the serious risk of genocide that ISIS posed to the Yazidis in Iraq and, in fact, should have known of the risk from at least April 2013.<sup>740</sup>

### 1.3 Evidence Crimes Were Being Committed

19. Section A (Background) of Part III of this Report (Findings on Genocide) provides details of ISIS' increasingly brutal approach towards, and the commission of prohibited acts of genocide against, the Yazidis in the period leading up to and including July 2014, as well as the existence of a serious risk of genocide. As noted, and documented in the Syria Country Report (above), it was well established that at least since April 2013, and as early as 2012, precursors to ISIS, groups affiliated to ISIS, and ISIS (including its previous iteration ISI) were committing prohibited acts against civilians, and in particular minorities such as the Yazidis, in north-eastern Syria and northern Iraq.<sup>741</sup> By way of example evidence of the serious risk of genocide that would have not only been available to the Iraqi State but would have been communicated to it included the fact that:
  - a. The UNHCR in its August 2007 *Eligibility Guidelines*, relied upon by all State border agencies, referred to 215 Yazidis having been killed since the 2003 US invasion of Iraq, and that most of the

<sup>736</sup> *Ibid.* Reference to the "considerable difficulties" faced by the Government of Iraq is repeated in UNAMI's subsequent report covering the period January - June 2014: UNAMI, *Report on Human Rights in Iraq: January - June 2014*, August 2014, p.4.

<sup>737</sup> This could also have been derived from the longer history of persecution of and attacks on the Yazidis in the region, such as the truck bombings in 2007, which killed 300 people, wounded 700 and destroyed 400 homes. See for instance, N. Kikoler, *Our Generation is Gone. The Islamic State's Targeting of Iraqi Minorities in Ninewa*, p. 9, available at <https://www.usmmm.org/m/pdfs/iraq-bearing-witness-report-111215.pdf> (accessed 20 April 2021).

<sup>738</sup> UN Press Release, Statement by Adama Dieng, Special Adviser to the Secretary-General on the Prevention of Genocide, and Jennifer Welsh, Special Adviser to the Secretary-General on the Responsibility to Protect, on the situation in Iraq, 18 June 2014.

<sup>739</sup> UNAMI POC Report No. 1 of 2014, p. 18.

<sup>740</sup> Annex to the letter 25 June 2014 from the Permanent Representative of Iraq to the United Nations Addressed to the Secretary-General, S/2014/440, 25 June 2014.

<sup>741</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27/CRP.3, 19 November 2014, paras 73-78.

- killings “were perpetuated on religious grounds as fundamental and Islamist groups see Yazidis as infidels who either have to convert or be killed.”<sup>742</sup>
- b. The UNHCR in its April 2009 *Eligibility Guidelines*, relied upon by all State border agencies and by way of example in this instance the UK Government’s Home Office,<sup>743</sup> noted that the Yazidis were being targeted repeatedly by prohibited acts since at least 2003 in Iraq and Syria<sup>744</sup> by Islamic extremists.<sup>745</sup>
  - c. The UNHCR’s 2012 *Eligibility Guidelines* noted that groups such as ISI (which later became ISIS) were specifically targeting Yazidis and minorities such as them “faced extinction” at their hands.<sup>746</sup>
  - d. Between February and July 2013, the Commission of Inquiry was frequently warning of minority groups being targeted by anti-government armed groups including ISIS and ISIS pre-cursors (Al-Qaeda and Jabhat al-Nusra).<sup>747</sup> In August 2013, the Yazidi villages of al-Asadia and Cava near Ras al-Ain, and several others in the area of Afrin, were attacked by Jabhat al-Nusra and ISIS.<sup>748</sup> In December 2013, Yazidis were fleeing from villages between the Turkish and Syrian border in Al-Hasakah Governate.<sup>749</sup> Then Al-Qaeda-linked groups, Jabhat al-Nusra and ISI, were targeting the Yazidis for killings as infidels.
  - e. The Commission of Inquiry reported, and communicated to States, in March 2014 an incident involving the killing of a Yazidi man during a raid by ISIS, Jabhat Al-Nusra, Islamic Front and FSA

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<sup>742</sup> United Nations High Commissioner for Refugees, UNHCHR’s Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, August 2007, p.80, <https://www.refworld.org/pdfid/46deb05557.pdf> (accessed 5 November 2021)

<sup>743</sup> See, for instance, UK Home Office, *Border Agency, Country of Origin Information Report, Iraq*, 15 May 2008, available at <https://www.refworld.org/es/pdfid/488efda42.pdf> (accessed 30 December 2021).

<sup>744</sup> The UNHCR Syria reports referred to minorities being targeted on religious grounds generally by sectarian groups including ISIS and ISIS precursors. See, for instance, UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update II*, 22 October 2013, available at: <https://www.refworld.org/docid/5265184f4.html> (accessed 30 December 2021); UN High Commissioner for Refugees (UNHCR), *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III*, 27 October 2014, available at <https://www.refworld.org/docid/544e446d4.html> (accessed 30 December 2021).

<sup>745</sup> UN High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, April 2009, available at <https://www.refworld.org/docid/49f569cf2.html> (accessed 30 December 2021), p. 171.

<sup>746</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, available at <https://www.refworld.org/docid/4fc77d522.html> (accessed 30 December 2021).

<sup>747</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/23/58, 18 July 2013, p. 23.

<sup>748</sup> A. Glioti, Yazidis Benefit from Kurdish Gains In Northeast Syria, *Al Monitor*, 18 October 2013, available at <https://www.al-monitor.com/originals/2013/10/syria-yazidi-minorities-kurds.html> (accessed 16 June 2021).

<sup>749</sup> J. Wood, The Syrian Refugees Who Know They Can’t Go Home, *Al Jazeera America*, 19 December 2013, available at <http://america.aljazeera.com/articles/2013/12/19/the-syrian-refugeeswhoknowtheycantgohome.html> (accessed 16 June 2021).

- battalions on Al-Asadia, Syria, in July 2013 after he refused to convert to Islam.<sup>750</sup> The executions in the village of Al-Talaliyah of persons believed by ISIS fighters to be Yazidis in May 2014<sup>751</sup> demonstrated ISIS' intention to implement the *takfiri* ideology against the Yazidis; this was again communicated to UN Member States.
- f. ISIS (the successor to ISI), which was later to become independent of al-Qaeda, by late 2013 and early 2014, was also issuing videos, edicts and publications of the commission of prohibited acts against minorities including Yazidis and the justifications for their destruction thereof.<sup>752</sup> This was again communicated to UN Member States.
  - g. On 18 June 2014, the Special Advisers to the Secretary-General on the Prevention of Genocide, and on the Responsibility to Protect, expressed deep concern at the situation of the Yazidis and the risk to them from ISIS and called on all States to comply with obligations under international law.<sup>753</sup>
  - h. In July 2014, UNAMI confirmed several reports of Yazidi men being taken before ISIS self-appointed courts, forced to convert, and executed if they refused.<sup>754</sup>
20. ISIS' activities, as such, against the Yazidis in the period from 2012 (if not earlier) were widely reported and extensive communiques were being issued by the Commission of Inquiry, and other UN bodies, to all Member States and in particular Iraq. (See further, the Sections relating to the Obligation to Prevent Genocide in the Turkey and Syria Country Reports, which extensively set out the date by which States should have been on notice about the serious risk of genocide of the Yazidis).
21. As stated above, Iraq certainly knew that ISIS planned to commit genocide against the Yazidis in Iraq, in the areas under ISIS control, by 25 June 2014 when it appealed to the international community, via the UNSC, or technical military assistance on that basis and should have known over a year before, if not earlier.<sup>755</sup> Iraq also knew or should have known that genocidal acts were taking place or would take place in Sinjar against the Yazidis within days, if not hours, of its capture by ISIS. Reports detailing the forced conversion and massacres of Yazidi men and the enslavement of Yazidi women by ISIS fighters emerged within hours and days following the capture of Sinjar Town on 3

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<sup>750</sup> Commission of Inquiry, *7th Report of the Commission of Inquiry on the Syrian Arab Republic*, A/HRC/25/65, 12 February 2014 (published 5 March 2014), para. 28.

<sup>751</sup> Commission of Inquiry, *Human Rights Council: Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/27/60, 13 August 2014, p. 39.

<sup>752</sup> See also, the substantive section of the Report relating to Specific Intent and the Country Reports of Iraq and Syria.

<sup>753</sup> United Nations, Statement by Adama Dieng, Special Adviser to the Secretary-General on the Prevention of Genocide, and Jennifer Welsh, Special Adviser to the Secretary-General on the Responsibility to Protect, on the situation in Iraq, 14 June 2014.

<sup>754</sup> UNAMI POC Report No. 2 of 2014, 26 September 2014, p. 12.

<sup>755</sup> UNAMI POC Report No. 2 of 2014, 26 September 2014, p. 12.

August 2014.<sup>756</sup>; public pleas for action by Ms Dakhil MP on 8 August 2014 in the Iraqi Parliament included explicit and unequivocal references to the commission of genocide.<sup>757</sup>

#### 1.4 Measures Taken to Prevent Genocide

22. On the information available there is little evidence that the Government of Iraq took sufficient measures to prevent genocide against the Yazidis in northern Iraq, even though as the territory on which the genocide was initiated, it had the capacity to effectively influence the action of persons likely to commit, or already committing, genocide.
23. Iraq's inaction in this respect mirrors its previous inaction with respect to previous allegations of violence against the Yazidis. In the years immediately preceding ISIS' offensive on Mosul in June 2014, UNAMI had consistently advised Iraq to undertake prompt, effective, independent and impartial investigations into extrajudicial killings and to take measures to protect the victims of such violence;<sup>758</sup> and to undertake legal and institutional reforms to ensure that all laws and policies promote equality and respect for all persons, without discrimination of any kind and ensure accountability for the incitement or promotion of hatred, acts of violence against persons based on, *inter alia*, their race, religion, or national origin or other status.<sup>759</sup> There is no indication that any effective legal, institutional or practical reforms were implemented in accordance with UNAMI's recommendations. Since 2003, violence against Yazidis was often committed with impunity, with protection largely unavailable from national security forces, law enforcement, or the judiciary.<sup>760</sup> Although the Federal Government of Iraq publicly condemned the violence,<sup>761</sup> NGO and government reports detail a failure by the Iraqi Government to take "sufficient measures to bolster security in areas where minorities are particularly vulnerable to attacks".<sup>762</sup> Community leaders reported that attacks were

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<sup>756</sup> See for instance, L. Morris, Islamic State Seizes Town of Sinjar, Pushing out Kurds and Sending Yazidis Fleeing, *The Washington Post*, 3 August 2014, available at [https://www.washingtonpost.com/world/islamic-state-seize-town-of-sinjar-pushing-out-kurds-and-sending-yazidis-fleeing/2014/08/03/52ab53f1-48de-4ae1-9e1d-e241a15f580e\\_story.html](https://www.washingtonpost.com/world/islamic-state-seize-town-of-sinjar-pushing-out-kurds-and-sending-yazidis-fleeing/2014/08/03/52ab53f1-48de-4ae1-9e1d-e241a15f580e_story.html) (accessed 28 June 2021).

<sup>757</sup> Euronews, Yazidi MP's Emotional Appeal to Save Iraq's Hunted Minority, 8 August 2014, available at <https://www.youtube.com/watch?v=yjkhbnqxyri> (accessed 10 April 2021).

<sup>758</sup> See for instance, UNAMI, *Report on Human Rights in Iraq: 2010*, January 2011, p. vi; UNAMI, *Report on Human Rights in Iraq: 2011*, May 2012, p. iii; UNAMI, *Report on Human Rights in Iraq: 2012*, June 2013, p. iii.

<sup>759</sup> UNAMI, *Report on Human Rights in Iraq: 2010*, January 2011, p. vii; UNAMI, *Report on Human Rights in Iraq: 2011*, May 2012, p. iv; UNAMI, *Report on Human Rights in Iraq: 2012*, June 2013, p. iv.

<sup>760</sup> UNHRC, Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, April 2009, pp 157,176, available at <https://www.refworld.org/docid/49f569cf2.html> (accessed 10 April 2021).

<sup>761</sup> UK Border Agency, Operational Guidance Note - Iraq, December 2012, 3.10.5, available at <https://www.refworld.org/publisher.ukho.irg.50c84d102.0.html> (accessed 10 April 2021).

<sup>762</sup> *Ibid.*

almost never thoroughly investigated.<sup>763</sup> Iraqi security forces rarely apprehended, prosecuted and punished the perpetrators of violence, creating a climate of impunity.<sup>764</sup>

24. In its POC Report No.1 of 2014 UNAMI expressed "serious concern about the extreme vulnerability of civilians caught in the cross-fire or targeted in direct, systematic attacks carried out by terrorist and armed groups, or trapped in areas under ISIL control, in particular vulnerable groups, minorities, women, children, persons with disabilities and the elderly".<sup>765</sup> UNAMI recommended that all parties to the conflict, including the Iraqi Government and the Kurdish Peshmerga, "must take all feasible precautions to protect civilians from the effects of violence, which may also amount to war crimes".<sup>766</sup>
25. Given that the Government of Iraq knew, or should have known, of the serious risk of genocide against the Yazidis, it could have taken several measures to try to prevent the genocide. The following measures have been considered in this regard: (1) a defensive military operation to protect the district of Sinjar; and (2) the evacuation of the civilian population of the district.
26. Evidence suggests that in the summer of 2014, the Iraqi military was not, on its own, capable of independently mounting a military operation to gain defensive control and protect the district of Sinjar against ISIS. In the weeks following the capture of Mosul by ISIS, commentators argued that the Iraqi military was combat ineffective, its air force minuscule, its morale low, and its leadership corrupt,<sup>767</sup> and relied on the assistance from hundreds of thousands of volunteers and several militias.<sup>768</sup> The difficulties faced by the Government of Iraq in restoring law and order were recognised by UNAMI in its July 2014 report, that noted:

*Law enforcement personnel are under attack by armed groups, which also carry out attacks through suicide/IED bombings, abductions and targeted killings and assassinations, and regularly fail to properly distinguish between civilians and military objects in the conduct of their operations.*<sup>769</sup>

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<sup>763</sup> Human Rights Watch, *At a Crossroads: Human Rights in Iraq Eight Years After the US-Led Invasion*, February 2011, p. 65, cited in UK Border Agency, Operational Guidance Note - Iraq, December 2012, 3.10.5, available at <https://www.refworld.org/publisher.ukho.,irq,50c84d102,0.html> (accessed 10 April 2021).

<sup>764</sup> Human Rights Watch, *At a Crossroads: Human Rights in Iraq Eight Years After the US-Led Invasion*, February 2011, p. 65, cited in UK Border Agency, Operational Guidance Note - Iraq, December 2012, 3.10.5, available at <https://www.refworld.org/publisher.ukho.,irq,50c84d102,0.html> (accessed 10 April 2021).

<sup>765</sup> UNAMI POC Report No. 1 of 2014, p. 21.

<sup>766</sup> *Ibid.*

<sup>767</sup> A. J. Rubin, M. R. Gordon, Iraq's Military Seen as Unlikely to Turn the Tide, *The New York Times*, 22 June 2014 available at <https://www.nytimes.com/2014/06/23/world/middleeast/iraqs-military-seen-as-unlikely-to-turn-the-tide.html> (accessed 28 June 2021).

<sup>768</sup> K. M. Pollack, Iraq Military Situation Report, Brookings Blog, 14 June 2014, available at <https://www.brookings.edu/blog/up-front/2014/06/14/iraq-military-situation-report/> (accessed 20 April 2021).

<sup>769</sup> UNAMI POC Report No. 1 of 2014, p. 7.

27. Nevertheless, having taken into account the difficulties faced by the Iraqi Government, UNAMI stressed, and reminded the Iraqi Government in particular, that “nothing permits any dilution of Iraq to comply with its obligations under applicable international human rights standards, IHL, the Constitution of Iraq, or Iraqi domestic law”.<sup>770</sup> Given the weakness of its own armed forces and law enforcement personnel, one of the measures available to Iraq to enhance its capabilities to protect the civilian population from attack was a request for military intervention from allied States. In this context, it appears that Iraq did request military support from the US in May/June 2014.
28. On 11 June 2014, the New York Times reported that Iraq had “secretly” requested the US consider carrying out airstrikes against ISIS staging areas in May 2014, a request that was reportedly denied.<sup>771</sup> That request was later confirmed to US senators by US military command Gen Martin Dempsey.<sup>772</sup>
29. On 19 June 2014 President Obama announced that the US had sent 775<sup>773</sup> “reinforcements” to secure US facilities, including US embassies, in Iraq, and to advise the Iraqi military.<sup>774</sup> The US President further announced that the US had “significantly increased our intelligence, surveillance, and reconnaissance assets so that we’ve got a better picture of what’s taking place inside of Iraq”, with the aim of providing the US with a greater understanding of ISIS’ activities in Iraq, its location, and how the US “might support efforts to counter this threat”.<sup>775</sup> This support was limited to intelligence sharing and planning through the creation of joint operation centres in Baghdad and northern Iraq. President Obama announced that “American forces will not be returning to combat in Iraq”,<sup>776</sup> however, the US would “be prepared to take, in consultation with the US Congress and “leaders in Iraq and the region” targeted and precise military action, if and when we determine the situation on the ground requires it”.<sup>777</sup> President Obama stressed the US’ position that

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<sup>770</sup> *Ibid.*

<sup>771</sup> M. R. Gordon, E. Schmitt, U.S. Said to Rebuff Iraqi Request to Strike Militants, *The New York Times*, 11 June 2014, available at <https://www.nytimes.com/2014/06/12/world/middleeast/iraq-asked-us-for-airstrikes-on-militants-officials-say.html> (accessed 20 April 2021).

<sup>772</sup> BBC News, Iraq Formally Asks US to Launch Air Strikes against Rebels, 18 June 2014, available at <https://www.bbc.co.uk/news/world-middle-east-27905849> (accessed 20 April 2021).

<sup>773</sup> This figure is not included in President Obama’s announcement, and is provided by M. C Weed, Use of Force Considerations in Iraq, CRS Insights, 15 June 2014, available at <https://fas.org/sqp/crs/natsec/in10106.pdf> (accessed 20 April 2021).

<sup>774</sup> *Ibid.*

<sup>775</sup> Remarks by the President on the Situation in Iraq, The White House, Office of the Press Secretary, 19 June 2014, available at <https://obamawhitehouse.archives.gov/the-press-office/2014/06/19/remarks-president-situation-iraq> (accessed 20 April 2021).

<sup>776</sup> *Ibid.*

<sup>777</sup> *Ibid.* Several members of the US Congress expressed concern and/or opposed over military deployment to Iraq, arguing that Congress should be informed of any decisions to use military force in Iraq and that congressional authorisation of the use of force is required by the Constitution. A bill was introduced to the House of Representatives on 19 June 2014 seeking to prohibit funds made available to the Department of Defense from being used to support any US or Iraqi combat activities in and around Iraq, with the exception of funds made available to protect the safety of or evacuate US citizens. See H.R.4912 - To limit Department of Defense funds to support United States or Iraqi combat

the “best and most effective response to a threat like ISIL will ultimately involve partnerships where local forces, like Iraqis, take the lead”.<sup>778</sup>

30. In a letter dated 25 June 2014, addressed to the UN Secretary-General, Iraq called on the UN and the international community “to recognize the serious threat [Iraq] and the international order are facing” from ISIS.<sup>779</sup> Iraq requested the support of UN Member States “in order to defeat ISIL and protect our territory and people”.<sup>780</sup> The support and assistance requested related mainly to “military training, advanced technology and the weapons required to respond to the situation with a view to denying terrorists staging areas and safe havens”.<sup>781</sup> In its request to the UN, Iraq pleaded with UN member states to consider “what Iraq and other countries are going through at the hands of the gangs of ISIL and Al-Qaida as genocide”.<sup>782</sup>
31. Having identified the acts committed by ISIS in Iraq as potentially amounting to genocide in its statement to the UN in June 2014, it was only after ISIS’ assault on Sinjar that Iraq requested the direct military intervention of allied States to protect and rescue the Yazidis trapped on Mount Sinjar. In a statement on 7 August 2014, four days after the attack on Sinjar, President Obama announced that, at the request of the Government of Iraq, the US had begun operations to assist the Yazidis stranded on Mount Sinjar, noting that ISIS had “called for the systematic destruction of the entire Yezidi people, which would constitute genocide” and that the US was acting to “prevent a potential act of genocide”.<sup>783</sup> It was not until 20 September 2014, nearly two months after ISIS’ assault on Sinjar, that Iraq notified the UNSC that it had entered into a Strategic Framework Agreement with the US, and that it had requested the US “to lead international efforts to strike ISIL sites and military strongholds, with [Iraq’s] express consent”.<sup>784</sup>
32. On the information available, there is no evidence to show that Iraq took any specific measures to prevent the continuing genocide, such as by freeing the Yazidi women and children taken captive by ISIS on Iraq territory on or after 3 August 2014.<sup>785</sup> Rather, the military operations that took place between

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activities in or around Iraq, and for other purposes, 113<sup>th</sup> Congress (2013-2014), introduced by Rep. R. M. Nolan on 19 June 2014, available at <https://www.congress.gov/bill/113th-congress/house-bill/4912/text> (accessed 20 April 2021); M. C. Weed, Use of Force Considerations in Iraq, *CRS Insights*, 15 June 2014, available at <https://fas.org/sqp/crs/natsec/in10106.pdf> (accessed 20 April 2021).

<sup>778</sup> *Ibid.*

<sup>779</sup> Annex to the letter 25 June 2014 from the Permanent Representative of Iraq to the United Nations Addressed to the Secretary-General, S/2014/440, 25 June 2014.

<sup>780</sup> *Ibid.*

<sup>781</sup> *Ibid.*

<sup>782</sup> Annex to the letter 25 June 2014 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General, S/2014/440, 25 June 2014.

<sup>783</sup> The White House, Statement by the President, 7 August 2014, available at <https://obamawhitehouse.archives.gov/the-press-office/2014/08/07/statement-president> (accessed 14 April 2021).

<sup>784</sup> Annex to the letter dated 20 September 2014 from the Permanent Representative of Iraq to the United Nations addressed to the President of the Security Council, S/2014/691, 22 September 2014.

<sup>785</sup> A conclusion also drawn by the Commission of Inquiry. See for instance, Commission of Inquiry, “They Came to Destroy”: *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 194.



September and December 2014 suggest that they were directed at strategic objectives, such as recapturing important strategic infrastructures and to prevent the advance on Baghdad. For example, in a coordinated military action, Government and Peshmerga forces, backed by US airstrikes, were able to recapture the Mosul Dam on 18 August 2014.<sup>786</sup> In October 2014, when ISIS was advancing further towards Baghdad, the US deployed Apache helicopters to strike ISIS targets near Fallujah.<sup>787</sup> Similarly, in December 2014, when ISIS was advancing towards Al Asad Airbase - where both Iraqi and US military forces were based - US ground troops, with aerial support, were deployed to force an ISIS withdrawal.<sup>788</sup> In March 2015, the Iraqi military, in coordination with the Peshmerga and the US, commenced operations to recapture the city of Mosul.<sup>789</sup>

33. As stated above, therefore, while Iraq knew, or should have known, of the existence of a serious risk that genocide being committed by early April 2013, and certainly by 25 June 2014, when it wrote to the UNSC,<sup>790</sup> it did not take all measures reasonably available within its capacity to effectively influence the action of persons likely to commit, or already committing genocide. For instance, Iraq failed to coordinate militarily with the KRG in order to bolster the security in the region before 3 August 2014. With respect to potential domestic military partners, it appears that despite the protracted dispute between the Federal Government and the KRG over the control of disputed territories, including<sup>791</sup> the Ninewa Governorate, the two authorities were able to coordinate militarily in order to recapture the Mosul Dam on 18 August 2014. This suggests that it would have been possible to coordinate a military response to ISIS' capture of Mosul, with a view to preventing the group's advance on Tal Afar and Sinjar, and so protect the Yazidi population from attack and the commission of further acts of genocide by ISIS, as recognised by Iraq in its 25 June 2014 letter to the UNSC.
34. Even though Iraq knew, or should have known, of the existence of a serious risk that genocide would be committed in Sinjar by April 2013, and certainly by 25 June 2014, the information available reveals that Iraq did not take any specific measures to evacuate the civilian population of the district of Sinjar. Iraq could have used a variety of methods to order or encourage civilians, in

<sup>786</sup> Agence France-Presse in Irbil, Iraqi and Kurdish Forces Recapture Mosul Dam from ISIS, *The Guardian*, 18 August 2014, available at <https://www.theguardian.com/world/2014/aug/18/iraqi-kurdish-forces-recapture-mosul-dam-isis> (accessed 14 April 2021).

<sup>787</sup> B. Starr, US Using Apache Helicopters against ISIS in Iraq, Defense Official Says, *Edition CNN*, 7 October 2014, available at <https://edition.cnn.com/2014/10/06/us/isis-apache-helicopters/index.html> (accessed 20 April 2021).

<sup>788</sup> R. Mohammed, Reports of U.S. Ground Fighters Emerge as ISIS Gains in Iraq, *The Fiscal Times*, 17 December 2014.

<sup>789</sup> BBC News, Iraq Troops "Retake Parts of Tikrit" from Islamic State, 10 March 2015, available at <https://www.bbc.co.uk/news/world-middle-east-31822701> (accessed 14 April 2021).

<sup>790</sup> Annex to the letter 25 June 2014 from the Permanent Representative of Iraq to the United Nations Addressed to the Secretary-General, S/2014/440, 25 June 2014.

<sup>791</sup> Agence France-Presse in Irbil, Iraqi and Kurdish Forces Recapture Mosul Dam from ISIS, *The Guardian*, 18 August 2014, available at <https://www.theguardian.com/world/2014/aug/18/iraqi-kurdish-forces-recapture-mosul-dam-isis> (accessed 14 April 2021).



particular those particularly vulnerable to be victimised by ISIS, such as the Yazidis.<sup>792</sup>

35. It has been reported that, following ISIS' capture of Mosul, many Yazidis wanted to leave Sinjar but may have been misled about the threat to them posed by ISIS. The reports suggest that Yazidis were discouraged from leaving by officials of the Kurdistan Democratic Party ("KDP"), one of the two ruling political parties in KRG, and were told the Peshmerga would protect them.<sup>793</sup>
36. According to the Commission of Inquiry Report 2016, the Peshmerga withdrew in the face of ISIS' advance on Sinjar by 3 August 2014, leaving much of Sinjar defenceless.<sup>794</sup> The Peshmerga failed to effectively communicate or give notice of their withdrawal to the local population, or at all.<sup>795</sup> It was also reported that the local population received no warning of the impending attack from the Peshmerga, the KPD or the KRG.<sup>796</sup> No evacuation order was given, and, as a consequence, most villagers were unaware of the lack of security.<sup>797</sup> The Yazidis were left to defend themselves. *Ad hoc* groups of "lightly armed" local Yazidi men attempted to defend their villages from attack, and allow their families time to flee, in the face of a well organised attack by "hundreds of ISIS fighters acting in concert with each other".<sup>798</sup>
37. Moreover, the information available raises the real concern that Iraq is continuing to fail to take measures to ensure the security of the Ninewa Governorate and, accordingly, to protect Yazidis who remained in, have returned or who are now seeking to return to the region from future attack by ISIS cells that remain active in the region. According to the European Union Agency for Asylum's Country Guidance on Iraq 2021:

*State control is weak or lacking in areas adjacent to the Iraq-Syria borders, allowing ISIL to find the means to survive and restore its capabilities in these areas... Throughout 2019 and 2020, incidents of ISIL attacks in Ninewa governorate and Sinjar district continued*

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<sup>792</sup> Indeed, the State of Iraq was also under an obligation - pursuant to customary international humanitarian law - to remove civilian persons and objects under its control from the vicinity of military objectives to the extent feasible. Sinjar Town was a military objective (i.e., by its location, it would have made an effective contribution to military action and its capture offered a definite military objective). ICRC, Customary International Humanitarian Law, 2005, Volume I: Rules, Rule 24.

<sup>793</sup> C. Van Den Toorn, How the U.S.-favored Kurds Abandoned the Yazidis when ISIS Attacked, *The Daily Beast*, 17 August 2014 (updated 14 April 2017), available at <https://www.thedailybeast.com/how-the-us-favored-kurds-abandoned-the-yazidis-when-isis-attacked> (accessed 28 June 2021).

<sup>794</sup> Commission of Inquiry, "They Came to Destroy": *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 24.

<sup>795</sup> *Ibid.*

<sup>796</sup> C. Van Den Toorn, How the US-Favored Kurds Abandoned the Yazidis when ISIS Attacked, *The Daily Beast*, 17 August 2014 (updated 14 April 2017), available at <https://www.thedailybeast.com/how-the-us-favored-kurds-abandoned-the-yazidis-when-isis-attacked> (accessed 28 June 2021).

<sup>797</sup> Commission of Inquiry, "They Came to Destroy": *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, para. 24.

<sup>798</sup> Commission of Inquiry, "They Came to Destroy": *ISIS Crimes Against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, paras 23-25.

occurring. These incidents included suicide bombers as well as rocket, mortar and IED assaults.<sup>799</sup>

38. In 2019-2020, Yazidis continued to suffer discrimination, abuse and harassment from other entities and groups including the Peshmerga, in KRG-controlled areas of Ninewa. Popular Mobilisation Units (“PMUs”), the umbrella term for mostly Shia militias formally and legally part of Iraq’s security forces since 2016, have been involved in the targeting, kidnapping, extortion, and illegal arrest of Yazidis returning to the region.

### 1.5 Measures to Locate and Free Kidnapped Yazidi Women and Children

39. While on the available information, it does not appear that the Government of Iraq took specific measures to free kidnapped Yazidi women and children, the KRG has taken some measures to locate and secure the release of kidnapped Yazidi women and children. In 2014 the KRG established an initiative to negotiate the release, upon payment of ransom of kidnapped Yazidi women and children.<sup>800</sup> The Kidnapped Yazidi Rescue Office (also referred to as the Office for Yazidi Abductee Affairs<sup>801</sup> or the Office for Rescue of Yazidis),<sup>802</sup> was established in October 2014 and is based in Dohuk in the Kurdistan Autonomous Region. The initiative reportedly receives financial assistance from the private office of the president of KRG but no support from the Federal Government of Iraq.<sup>803</sup>

### Summary Findings on the Obligation to Prevent

40. On the available information, there is evidence to suggest that Iraq knew, or should have known, of the existence of a serious risk that genocide will be committed against the Yazidis from, at least, April 2013. In June 2014 Iraq belatedly called upon the UN to recognise that ISIS was committing acts of “genocide.”
41. Furthermore, the available information supports the view that Iraq did not take all measures reasonably available within its capacity to effectively influence the

<sup>799</sup> European Union Agency for Asylum, Country Guidance Iraq 2021, January 2021, available at <https://euaa.europa.eu/country-guidance-iraq-2021/2152-yazidi> (accessed 7 June 2022).

<sup>800</sup> S. Dawod, Yazidis Still Negotiating Return of Kidnapped Women, Children, *Al-Monitor*, 19 June 2020, available at <https://www.al-monitor.com/originals/2020/06/iraq-minorities-yazidis-kidnap-syria-isis.html> (accessed 14 April 2021); Rudaw, Department for Missing Yazidis to Receive Mother Teresa Award for Fighting Modern Slavery, 3 November 2019, available at <https://www.rudaw.net/english/world/031120191> (accessed 14 April 2021).

<sup>801</sup> Rudaw, Department for Missing Yazidis to Receive Mother Teresa Award for Fighting Modern Slavery, 3 November 2019, available at <https://www.rudaw.net/english/world/031120191> (accessed 14 April 2021).

<sup>802</sup> L. Rodriguez, A Man Who Freed 5,000 Yazidi Women Is Getting the Recognition He Deserves, *Global Citizen*, 29 October 2019, available at <https://www.globalcitizen.org/de/content/mother-teresa-memorial-awards-mumbai-yazidi/> (accessed 14 April 2021).

<sup>803</sup> S. Dawod, Yazidis Still Negotiating Return of Kidnapped Women, Children, *Al-Monitor*, 19 June 2020, available at <https://www.al-monitor.com/originals/2020/06/iraq-minorities-yazidis-kidnap-syria-isis.html> (accessed 14 April 2021).

action of persons likely to commit, or already committing genocide. In particular, and in spite of ISIS' advance on Sinjar and the concomitant risk of genocide against the Yazidis, Iraq failed to take measures to coordinate militarily with the KRG, in order to bolster the security of Yazidis in the Sinjar region before 3 August 2014. While the dispute between the Federal Government and the KRG over the control of disputed territories, including the Ninewa Governorate, has been protracted, it appears that the two entities were able to coordinate militarily for the purpose of achieving other strategic objectives, such as recapturing the Mosul Dam on 18 August 2014. In view of this, it would appear that the Federal Government and the KRG failed to coordinate militarily, or otherwise, for the purpose of resisting ISIS's advance into Sinjar and preventing genocide.

42. Moreover, even though Iraq knew, or should have known, of the existence of a serious risk that genocide would be committed in Sinjar by June 2014, the information available reveals that Iraq did not take any specific measures to evacuate the civilian population of the district of Sinjar. Iraq could have used a variety of methods to warn the Yazidis to leave the area before 3 August 2014, and/or provided consular and other services to ensure they were protected.

## 2. Obligation to Not Be Complicit in Genocide

43. The available information does not support a conclusion that Iraq was complicit in the Yazidi genocide, by providing aid or assistance to ISIS with knowledge that the aid or assistance would be used to commit acts of genocide.

## 3. Obligation to Punish Perpetrators of Genocide

44. As a State in the territory of which the crime of genocide was committed, Iraq has an obligation to punish the perpetrators under Article VI of the Genocide Convention. However, while in 2021, Iraq passed a law giving recognition to the genocide suffered by the Yazidis, it has not taken steps to enact legislation, prosecute and/or punish perpetrators *specifically* for the crime of genocide, though some of the alleged perpetrators may have been prosecuted and punished in Iraq for other categories of crimes, such as terrorism.
45. On 1 March 2021, Iraq passed the Yazidi Women Survivors Law, and in so doing formally recognised the Yazidi Genocide.<sup>804</sup> The implementation of the new law will, in theory, entitle Yazidi survivors of the genocide to compensation, rehabilitation and other assistance required for reintegration into society and to prevent the recurrence of genocide.<sup>805</sup> However, as is

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<sup>804</sup> J. Snell, Iraq Passes Law Addressing Yazidi Women Survivors of Genocide, *Al Monitor*, 1 March 2021, available at <https://www.al-monitor.com/originals/2021/03/iraq-baghdad-yazidi-sinjar-islamic-state-genocide.html> (accessed 14 April 2021); W. Van Wilenberg, Iraq's Parliament Ratifies Survivor Law in Major Recognition of Yazidi Genocide, *Kurdistan24*, 2 March 2021, available at <https://www.kurdistan24.net/en/story/24023-iraq-s-parliament-ratifies-survivor-law-in-major-recognition-of-yezidi-genocide> (accessed 14 April 2021).

<sup>805</sup> S. Ali, Iraqi Parliament Passes Yazidi Survivor Bill after Years of Delays, *Rudaw*, 1 March 2021, available at <https://www.rudaw.net/english/middleeast/iraq/010320214> (accessed 14 April 2021).

discussed in more detail in the next section, Iraq has no domestic criminal law that expressly defines the crime of genocide, and provides the basis for its prosecution in the domestic criminal courts. In addition to putting the country in breach of its obligation to enact the necessary legislation to give effect to the provisions of the Genocide Convention under Article V, this failure to enact domestic legislation that criminalises genocide has severely constrained Iraq's ability to punish genocide that has occurred on its territory, as required by Articles I and VI of the Convention. This lack of an appropriate legal basis means that, to date, the Iraqi government has not brought criminal prosecutions for genocide against any alleged perpetrators of genocide. Moreover, Iraq is not a State Party to the Rome Statute of the ICC and has, therefore, not accepted the jurisdiction of the Court to investigate, prosecute and punish perpetrators of genocide on Iraqi territory, in the absence of domestic prosecutions.

46. As of December 2020, the only law that was in force in Iraq, and that covered genocide, crimes against humanity and war crimes, was the Iraqi Law Number 10 of 2005 relating to the establishment of the "Iraqi High Criminal Court" (or "Supreme Iraqi Criminal Tribunal").<sup>806</sup> This Law was enacted to try former Ba'ath party officials. However, that Tribunal only has jurisdiction over cases of offences committed between 1968 and 2003, and thus cannot address violations connected to the recent conflicts (such as the acts of genocide committed against the Yazidis after 2014). Moreover, the Tribunal only has jurisdiction over Iraqi nationals, and has not been able to prosecute members of foreign military forces accused of crimes within its jurisdiction, even if they were committed on Iraqi territory.<sup>807</sup>
47. In light of Iraq's failure to enact legislation to criminalise genocide committed after 2003 and outside the context of Saddam Hussein's former Ba'ath party, members of ISIS and other groups who have carried out grave crimes in Iraq have usually been charged under the Anti-Terrorism Law of 2005.<sup>808</sup> The Kurdistan Autonomous Region enacted separate anti-terrorism legislation in

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<sup>806</sup> Global Justice Center, Iraq's Criminal Laws Preclude Justice for Women and Girls, March 2018, Footnote No. 64, available at <https://globaljusticecenter.net/files/iraqilawanalysis.4.6.2018.pdf> (accessed 28 September 2020); Laws of the Supreme Iraqi Criminal Tribunal, Law No. 10 of 2005 (Translated to English by the International Center for Transitional Justice), available at <http://giji.org/wp-content/uploads/2009/02/iraqstatuteengtrans.pdf> (accessed 28 September 2020).

<sup>807</sup> M. Puttick, The Forever Crime: Ending enforced disappearance in Iraq, Report of the Ceasefire Centre for Civilian Rights, December 2020, p. 18, available at <https://www.ceasefire.org/after-decades-of-disappearances-iraq-preparing-to-turn-the-page-new-report/> (accessed 20 January 2021).

<sup>808</sup> Federal Anti-Terrorism Law No. 13 of 2005. UNAMI, *Human Rights in the Administration of Justice in Iraq: Trials under the Anti-terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL*, January 2020, p. 4; M. Puttick, The Forever Crime: Ending Enforced Disappearance in Iraq, Report of the Ceasefire Centre for Civilian Rights, December 2020, p. 14, available at <https://www.ceasefire.org/after-decades-of-disappearances-iraq-preparing-to-turn-the-page-new-report/> (accessed 20 January 2021). For example, an ISIS leader in Fallujah, Amma Mahdi al-Jubouri was convicted under the 2002 Counter-Terrorism Law on 12 April 2021 for his involvement in the massacre of the Sunni Abu Nimr tribe in Anbar Province in 2014: S. Ali, ISIS Leader Handed Death Sentence for 2014 Anbar Massacre, *Rudaw*, 12 April 2021, available at <https://www.rudaw.net/english/middleeast/iraq/120420212> (accessed 14 April 2021).

2006.<sup>809</sup> Both anti-terrorism laws criminalise terrorist acts such as “the use of violence to spread fear” and, in the Kurdistan anti-terror law’s case, membership of a terrorist organisation.<sup>810</sup> However, these laws do not include offences of genocide, and therefore individuals are convicted under this law for terrorism-related offences rather than their possible participation in the crime of genocide.<sup>811</sup>

48. Iraq’s failure to enact legislation that specifically criminalises genocide and its related failure to punish perpetrators of acts of genocide committed on its territory amounts to a failure to punish genocide in accordance with Article VI of the Genocide Convention. Although some of the alleged perpetrators may have been punished on different charges, such as terrorism, this is not sufficient to satisfy the requirements of Article VI of the Convention as well as the criminal law principle of ‘fair labelling.’ This principle requires “the proper characterisation of the evil committed, that is to say, calling the crime by its true name” - in this case genocide - which is part of the justice sought by the victims.<sup>812</sup> For instance, as of March 2018, Iraq had detained or imprisoned a least 19,000 people on grounds of connection to the ISIS or terror-related offenses, and had already sentenced more than 3,000 to death for such offences.<sup>813</sup> However, the charges did not include prosecution or punishment for the crime of genocide against the Yazidis.
49. UNSC Resolution 2379 (2017) called for the creation of an Investigative Team (UNITAD) to support domestic efforts to hold Da’esh accountable by collecting, preserving and storing evidence of crimes, including genocide, committed in Iraq by ISIS.<sup>814</sup> The work of UNITAD is important, as it represents an international effort to support the Iraqi judiciary in its work to fulfil its obligation to punish the crime of genocide.
50. UNITAD has no prosecutorial powers, its function is limited to assisting local, regional and national authorities in ensuring that potential evidence is fully

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<sup>809</sup> Anti-Terror Law No. 3 of 2006. UNAMI, *Human Rights in the Administration of Justice in Iraq: Trials under the Anti-terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL*, January 2020, p. 4.

<sup>810</sup> Article 3(7) Anti-Terrorism Law No.3 of 2006. The Federal Anti-Terrorism Law does not expressly criminalise membership of a terrorist organisation. UNAMI, *Human Rights in the Administration of Justice in Iraq: Trials under the Anti-terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL*, January 2020, p. 4.

<sup>811</sup> UNAMI, *Human Rights in the Administration of Justice in Iraq: Trials under the Anti-terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL*, January 2020, p. 6.

<sup>812</sup> ICC, *The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, 4 February 2021, para. 2722. See also, James Chalmers and Fiona Leverick, ‘Fair Labelling in Criminal Law’ (2008) 71 *Modern Law Review* 217.

<sup>813</sup> Q. Abdul-Zahra, S. George, Iraq Holding More Than 19,000 Because of IS, Militant Ties, *AP News*, 22 March 2018, available at <https://apnews.com/aece6571de54f5dba3543d91deed381> (accessed 20 July 2020).

<sup>814</sup> UN Security Council Resolution 2379 (2017), 21 September 2017, S/RES/2379.

explored and appropriate charges are brought.<sup>815</sup> This is also true in KRG, where all prosecutions have also proceeded under a terrorism framework, and no charges for the crime of genocide against the Yazidis were brought.<sup>816</sup> Not only that, but existing laws in Iraq appear to enable a verdict of guilty for rape or sexual violence to subsequently be vacated in the event the perpetrator marries the victim.<sup>817</sup> Where such rape and/or sexual violence would have been committed in the context of genocide, these laws would arguably further undermine the obligation to punish perpetrators of genocide under Article VI of the Genocide Convention.<sup>818</sup>

51. However, UNITAD reports some progress in its cooperation with Iraqi authorities. UNITAD's fifth report on the activities of the team to promote accountability for crimes committed by ISIS was transmitted to the President of the UNSC on 11 November 2020.<sup>819</sup> The report states that the cooperation between the committee designated by the Government of Iraq and UNITAD was strengthened significantly, which resulted in a joint framework for action on key projects.<sup>820</sup> This cooperation has continued throughout 2020, providing UNITAD with "further opportunities to strengthen cooperation with key national authorities".<sup>821</sup> For instance, the Office of the Prime Minister has provided essential operational assistance to UNITAD by "supporting 156 days of field missions during the reporting period through the coordination of relevant security assets, including the deployment of armed escorts as necessary."<sup>822</sup> The Iraqi judiciary has also been crucial to some significant progress made by UNITAD with respect to its investigations. It has notably

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<sup>815</sup> Terms of reference of the Investigative Team to support domestic efforts to hold Islamic State in Iraq and the Levant (Da'esh) accountable for acts that may amount to war crimes, crimes against humanity, and genocide committed in Iraq, established pursuant to Security Council Resolution 2379 (2011), S/2018/118.

<sup>816</sup> B. Van Schaack, *The Iraq Investigative Team and Prospects for Justice for the Yazidi Genocide*, *Journal of International Criminal Justice*, 16, 2018, p. 129; UNAMI, *Human Rights in the Administration of Justice in Iraq: Trials under the Anti-terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL*, January 2020, p. 4.

<sup>817</sup> B. Van Schaack, *The Iraq Investigative Team and Prospects for Justice for the Yazidi Genocide*, *Journal of International Criminal Justice*, 16, 2018, p. 126; Minority Rights Group International, *Ceasefire Centre for Civilian Rights & ASUDA for Combating Violence against Women*, *Alternative Report to the Committee on the Elimination of Discrimination against Women*, Review of the Periodic Report of Iraq, 74<sup>th</sup> Session of CEDAW 21 October-8 November 2019, para. 5.

<sup>818</sup> B. Van Schaack, *The Iraq Investigative Team and Prospects for Justice for the Yazidi Genocide*, *Journal of International Criminal Justice*, 16, 2018, p. 126.

<sup>819</sup> UNITAD, *Fifth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 11 November 2020, S/2020/1107.

<sup>820</sup> UNITAD, *Fifth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 11 November 2020, S/2020/1107, para. 58.

<sup>821</sup> UNITAD, *Fifth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 11 November 2020, S/2020/1107, para. 4.

<sup>822</sup> UNITAD, *Fourth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 11 May 2020, S/2020/386, para. 60.

secured the cooperation of Iraqi telephone service providers in maintaining call data records relevant to crimes committed by ISIS in or after 2014.<sup>823</sup>

52. In particular, UNITAD is working with the Government of Iraq on the potential adoption of legislation which would allow for the prosecution in Iraq of acts committed by ISIS as war crimes, crimes against humanity and genocide.<sup>824</sup> In October 2020 the Council of Representatives of Iraq formally commenced its consideration of the draft legislation.<sup>825</sup> As of 3 May 2021, the date of publication of UNITAD's sixth report to the Security Council, the Council of Representatives was still considering the draft legislation.<sup>826</sup>
53. UNITAD has also participated in developing a capacity-building programme to provide training to Iraqi investigative judges on the conduct of investigations into war crimes, crimes against humanity and genocide in accordance with international standards.<sup>827</sup> This assistance is to be provided in anticipation of the above-mentioned legislation allowing prosecution of ISIS members for atrocity crimes. Further, the capacity-building mission of UNITAD delivered to local actors covers efforts to excavate mass grave sites, along with the forensic analysis of evidence, the identification and return of the remains of victims and the application of advanced digital extraction and archiving tools, as well as specialised witness protection.<sup>828</sup> UNITAD's mandate to identify criminal perpetrators for prosecution under Iraqi law has meant that many victims and survivors (including Yazidis) have been heard by investigators. They have told their account of the atrocities inflicted on their people, in order to help establish the true nature of ISIS' crimes.<sup>829</sup>

### Summary Findings on the Obligation to Punish

54. Although Iraqi and Kurdish authorities have captured and are holding thousands of ISIS militants, many of whom may potentially have been involved

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<sup>823</sup> *Ibid.*, para. 61.

<sup>824</sup> UNITAD, *Sixth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 3 May 2021, S/2021/419, para. 131.

<sup>825</sup> UNITAD, *Fifth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 11 November 2020, S/2020/1107, paras 70-71.

<sup>826</sup> UNITAD, *Sixth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 3 May 2021, S/2021/419, para. 131.

<sup>827</sup> UNITAD, *Sixth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 3 May 2021, S/2021/419, paras 83-91; UNITAD, *Fifth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 11 November 2020, S/2020/1107, para. 66.

<sup>828</sup> UNITAD, *Fifth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 11 November 2020, S/2020/1107, paras 68-69.

<sup>829</sup> UN Security Council, *Victims' Testimony Steering United Nations Team Investigating ISIL/Da'esh Atrocity Crimes in Iraq*, Special Adviser Tells Security Council, Meetings Coverage, 26 November 2019, available at [www.un.org/press/en/2019/sc14035.doc.htm](http://www.un.org/press/en/2019/sc14035.doc.htm) (accessed 5 October 2020).



in the commission of genocide, these individuals are being charged under the Anti-Terrorism Law of 2005.<sup>830</sup> As a result, they are being prosecuted and punished not for the commission of genocide, but for “membership” of terrorist groups. This approach falls short of satisfying the obligation to punish genocide under Article VI of the Genocide Convention. As will be shown below, Iraq may have adopted this approach because it does not have appropriate domestic legislation that expressly defines, prohibits or punishes genocide, and does not, therefore, have a sufficient legal framework on which to punish alleged perpetrators for genocide. Moreover, as noted above, Iraq is not a State Party to the Rome Statute of the ICC and has not accepted the Court’s jurisdiction to investigate and prosecute crimes of genocide committed on its territory.

55. As a result of its failure to implement the relevant domestic legislation, and the fact that Iraq has not accepted the jurisdiction of the ICC, Iraq is in breach of its obligation to punish genocide under the Genocide Convention. However, it has been noted that the Government, with UNITAD’s support, is taking steps to remedy the situation and to enact legislation specifically directed at the criminalisation of genocide, crimes against humanity and war crimes. At the time of writing, this legislation, however, was still in draft stage.
56. Iraq’s obligation to punish genocide is closely linked to its obligation to take measures to prevent genocide. Considering continued tensions in the region, the ongoing failure to prosecute and punish perpetrators of genocide in Iraq is particularly problematic. In this context, there have been reports, including from Iraq’s intelligence services, that ISIS has begun to reassert itself in both Iraq and Syria, mounting increasingly bold attacks, including against the Yazidis.

#### 4. Obligation to Enact Legislation Giving Effect to the Convention

57. As noted in the Obligation to Punish Section above, to-date, Iraq has failed to implement the necessary legislative and judicial means to punish genocide. Notably, the current Iraqi legislative framework fails to incorporate the crime of genocide, as defined under the Genocide Convention.
58. Iraq became a State party to the Genocide Convention via accession on 20 January 1959.<sup>831</sup> Iraq is therefore bound by Article V of the Convention.<sup>832</sup> In 2003, Iraq enacted the Statute of the Iraqi Special Tribunal.<sup>833</sup> The statute, *inter alia*, sought to provide the Iraqi Special Tribunal for Crimes Against Humanity with the jurisdiction and ability to punish Iraqi nationals found guilty of

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<sup>830</sup> M. Puttick, *The Forever Crime: Ending Enforced Disappearance in Iraq*, Report of the Ceasefire Centre for Civilian Rights, December 2020, p. 14, available at <https://www.ceasefire.org/after-decades-of-disappearances-iraq-preparing-to-turn-the-page-new-report/> (accessed 20 January 2021).

<sup>831</sup> International Committee of the Red Cross, *Treaties, States and Commentaries*, available at [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/states.xsp?xp\\_viewstates=xpages\\_normstatesparties&xp\\_treatys\\_elected=357](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/states.xsp?xp_viewstates=xpages_normstatesparties&xp_treatys_elected=357) (accessed 13 July 2020).

<sup>832</sup> *Ibid.*

<sup>833</sup> The Statute of the Special Tribunal for Human Rights, 2003 (entered into force 10 December 2003).



international crime, including genocide, committed between 17 July 1968 and 1 May 2003.<sup>834</sup> The Statute is the only Iraqi law which explicitly acknowledges the crime of genocide but it cannot be applied to the acts of genocide committed against the Yazidis as it is time-limited to acts occurring until 1 May 2003.<sup>835</sup>

59. To date, Iraq has done little to incorporate the provisions of the Genocide Convention into its domestic legal system.<sup>836</sup> By failing to account for international crimes such as genocide, the current Iraqi Penal Code puts Iraq in violation of its obligations under the Genocide Convention.<sup>837</sup> After the liberation of Mosul in 2017, the Iraqi government sought assistance from the UNSC to facilitate accountability for the international crimes committed by ISIS.<sup>838</sup> In its letter to the UNSC, Iraq expressed its preference that criminal proceedings against perpetrators of international crimes would be carried out domestically under the Iraqi penal framework.<sup>839</sup> However, as stated above, Iraq, at the time of writing, was yet to enact legislation criminalising genocide, and thus enabling the prosecution of alleged perpetrators for genocide in the domestic courts.
60. In 2005 and 2006, both the Iraqi Federal Government and the KRG adopted laws to prosecute ISIS members under the crime of "terrorism".<sup>840</sup>
61. Both statutes broadly define terrorism, characterising it as "use of violence to spread fear" and "any act with terrorist motives that threatens the national unity of the State", or has the "aim to disturb the peace, stability and national unity", or "to bring about horror or fear among people and to create chaos to achieve terrorist goals".<sup>841</sup>
62. The definition of terrorism, therefore, is not expansive enough to cover the unique harms of the crime of genocide. Therefore, these counterterrorism laws fall short of Iraq's obligation to enact the necessary legislation to give effect to the provisions of the Genocide Convention.<sup>842</sup> In the context of punishing genocide and providing justice for Yazidi victims, the failure to explicitly criminalise genocide in the statutes, limits the ability of Iraqi courts to punish perpetrators for the commission of genocide. Punishment is instead

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<sup>834</sup> *Ibid.*

<sup>835</sup> *Ibid.* B. Gavrilovic, S. Schweininger, A Criminal Tribunal and a Wide-Ranging Reparation Programme is Necessary for the Victims of Sexual Violence and Torture in Iraq, *Torture Journal: Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 29(1), 2019, 110-124, p. 112.

<sup>836</sup> B. Gavrilovic, S. Schweininger, A Criminal Tribunal and a Wide-Ranging Reparation Programme is Necessary for the Victims of Sexual Violence and Torture in Iraq, *Torture Journal: Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 29(1), 2019, 110-124, p. 112.

<sup>837</sup> Global Justice Centre, Iraq Submission to the United Nations Universal Periodic Review Thirty-Fourth Session of the UPR Working Group of the Human Rights Council 4-15 November 2019.

<sup>838</sup> Letter dated 14 August 2017 from the Chargé d'Affaires of the Permanent Mission of Iraq to the United Nations addressed to the President of the Security Council, S/710/2017, 16 August 2017.

<sup>839</sup> *Ibid.*

<sup>840</sup> Federal Anti-Terrorism Law No. 13 of 2005, adopted by the Iraqi Council of Representatives on 7 November 2005; Anti-Terror Law No. 3 of 2006, adopted by the Kurdistan Regional Parliament on 16 July 2006.

<sup>841</sup> Federal Anti-Terrorism Law Article 1; Kurdistan Anti-terror Law.

<sup>842</sup> Human Rights Watch, Iraq: UPR Submission November 2019, 26 September 2019, available at <https://www.hrw.org/news/2019/09/26/iraq-upr-submission-november-2019> (accessed 4 July 2020).

meted out for membership of a terrorist organisation - which does not fulfil the State's obligation to enact legislation to give effect to the provisions of the Genocide Convention. This, in turn, limits the ability of Yazidi victims to seek acknowledgement of the full extent of the crimes committed against them.

63. The Human Rights Council's Universal Periodic Review of Iraq in 2014 acknowledged the need to implement new legislation that criminalises serious crimes, including crimes against humanity, war crimes and genocide.<sup>843</sup> Since then, there have been several efforts to draft new penal laws, with notable support from the international community.<sup>844</sup> In particular, UNITAD has played a key role in assisting with the reforms of the Iraqi legislative and judicial system.<sup>845</sup>
64. On November 2019, the then Special Advisor and Head of UNITAD, Karim Khan QC, transmitted his third report to the UN Security Council.<sup>846</sup> Amongst other things, the report sought to address the progress made by UNITAD in assisting with domestic efforts in Iraq to promote accountability for the serious crimes committed by ISIS/Da'esh perpetrators.<sup>847</sup> Notably, the Special Advisor noted the existing and progressive "steps" taken by the Iraqi government "towards the introduction of legislation allowing for the prosecution of acts committed by ISIL as war crimes, crimes against humanity and genocide".<sup>848</sup> However, the Special Advisor also stated that:

*The absence of an explicit legal basis in Iraq for the prosecution of war crimes, crimes against humanity or genocide also continues to limit the capacity of the Team to more effectively support domestic accountability efforts in Iraq.*<sup>849</sup>

65. The comments made by the Special Advisor largely reflect the views of the wider international community to date. For example, in the 8675<sup>th</sup> meeting of the UN Security Council on 26 November 2019, various State representatives

<sup>843</sup> OHCHR, *Universal Periodic Review - Iraq, United Nations Human Rights Council*, 11 November 2019, available at <https://www.ohchr.org/en/hrbodies/upr/pages/iqindex.aspx> (accessed 23 July 2020).

<sup>844</sup> UNITAD, *Sixth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 3 May 2021, S/2021/419, paras 131-132; B. Van Schaack, *The Iraq Investigative Team and Prospects for Justice for the Yazidi Genocide*, *Journal of International Criminal Justice*, 16, 2018, p. 25.

<sup>845</sup> UNITAD, *Sixth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 3 May 2021, S/2021/419.

<sup>846</sup> UNITAD, *Third Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 13 November 2019.

<sup>847</sup> UNITAD, *Third Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 13 November 2019, para. 69.

<sup>848</sup> UNITAD, *Third Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 13 November 2019, para. 69.

<sup>849</sup> UNITAD, *Third Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 13 November 2019, para. 69.

expressed their support for the introduction of a new Draft Law on Genocide in Iraq.<sup>850</sup> Also in 2019, the Global Justice Centre proposed amendments to the existing Iraqi criminal code in order to criminalize genocide and other serious international crimes.<sup>851</sup> Moreover, on 14 March 2020, the Global Centre for the Responsibility to Protect urged Iraq to adopt “enabling legislation to incorporate genocide, war crimes and crimes against humanity into domestic law ”.<sup>852</sup>

66. In November 2019, a new Draft Law on Genocide was presented before the Iraqi Parliament, which sought to establish the ability for Iraq to prosecute genocide, crimes against humanity and war crimes committed by ISIS before a competent domestic tribunal.<sup>853</sup> The law, pushed by former President Barham Salih, seeks to allow Iraqi courts to prosecute genocide and war crimes.<sup>854</sup> However, despite international pressures, progression of the Draft Law has been halted due to the current political climate in Iraq, as well as the COVID-19 pandemic.<sup>855</sup> In particular, the recent protests and resignation of Prime Minister Adel Abdul Mahdi, as well as the introduction of a new Parliament, have forced the current Iraqi administration to put proposals for a new Draft Law on Genocide on hold.<sup>856</sup> As of October 2020, the Council of Representatives of Iraq formally commenced its consideration of the draft legislation,<sup>857</sup> and, as noted above, as at 3 May 2021, continued to consider the draft legislation.<sup>858</sup>
67. In 2014 the KRG established “The High Committee for the Recognition against Yazidi Kurds and other Ethnic and Religious Nationalities” (“The High Committee”).<sup>859</sup> The High Committee, recognised as a “sub-committee” of the

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<sup>850</sup> UN Security Council, Security Council 8675<sup>th</sup> Meeting (AM), Victim’s Testimony Steering United Nations Team Investigating ISIL/Da’esh Atrocity Crimes in Iraq, Special Adviser Tells Security Council, SC/14035, 26 November 2019; Marc Pecsteen De Buytsverve, representative for genocide “joined others in welcoming the new draft law allowing for the prosecution of war crimes, crimes against humanity and related offences, and pledged Belgium’s strong support to UNITAD’s work.”; Representative of the Dominican Republic “also joined speakers who praised a number of legal strides made by Iraq at the national level...includ[ing] the introduction of new legislation that will allow for the prosecution of crimes committed by terrorist groups, including war crimes and genocide.”

<sup>851</sup> Global Justice Centre, Iraq Submission to the United Nations Universal Periodic Review Thirty-Fourth Session of the UPR Working Group of the Human Rights Council 4-15 November 2019, p. 2.

<sup>852</sup> Global Centre for the Responsibility to Protect, Iraq, 14 March 2020, available at <https://www.globalr2p.org/countries/iraq/> (accessed 20 July 2020).

<sup>853</sup> UN News, Six Years after Genocide, International Community Must Prioritize Justice for Yazidi Community, available at <https://news.un.org/en/story/2020/08/1069432> (accessed 11 July 2020).

<sup>854</sup> S. Kullab, UN Team Probing IS Horrors Urges Iraq to Pass War Crimes Law, 570News, 15 June 2020, available at <https://www.570news.com/2020/06/15/un-team-probing-is-horrors-urges-iraq-to-pass-war-crimes-law/> (accessed 10 July 2020).

<sup>855</sup> *Ibid.*

<sup>856</sup> *Ibid.*

<sup>857</sup> UNITAD, *Fifth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant*, 11 November 2020, S/2020/1107, paras 70-71.

<sup>858</sup> UNITAD, *Sixth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant*, 3 May 2021, S/2021/419, para. 131.

<sup>859</sup> International Federation for Human Rights, *IRAQ Sexual and Gender-based Crimes against the Yazidi Community: The Role of ISIL Foreign Fighters*, October 2018, 4-50, p. 25.

KRG Genocide Committee (similar to UNITAD), has sought to collect evidence in relation to crimes committed in Northern Iraq by ISIS/Da'esh.<sup>860</sup> The High Committee has also sought to assist the local government in providing justice for "grave crimes", via proposals for a new law and the establishment of a KRG criminal tribunal.<sup>861</sup> In April 2021, the Council of Ministers of the KRG announced its approval of a new criminal court to prosecute members of ISIS for international crimes.<sup>862</sup> As at 3 May 2021, the relevant legislation was being considered by the Parliament of the Kurdistan Region.<sup>863</sup>

### Summary Findings on the Obligation to Enact Legislation

68. Iraq has failed to enact the necessary domestic legislation to give effect to the country's obligations under Article V of the Genocide Convention, and in turn to provide the necessary domestic legal basis to give effect to the provisions of the Genocide Convention.<sup>864</sup> The existing Iraqi legal framework falls short of Iraq's treaty obligations under the Genocide Convention, particularly due to its failure to criminalise genocide as a distinct crime.<sup>865</sup> However, it appears that Iraq has begun taking some small steps to implement domestic legislation criminalising acts of genocide. While the proposed legislation criminalising genocide has been in draft form for a considerable period of time, if enacted, Iraq would move closer to complying with its international obligations under the Genocide Convention to enact the necessary legislation.

### 5. Attribution of Prohibited Acts of Genocide

69. The information in the public domain is insufficient to support any allegation that prohibited acts are attributable to Iraq.

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<sup>860</sup> B. Gavrilovic, S. Schweininger, A Criminal Tribunal and a Wide-Ranging Reparation Programme is Necessary for the Victims of Sexual Violence and Torture in Iraq, *Torture Journal: Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 29(1), 2019, p. 120.

<sup>861</sup> *Ibid.*, p. 119.

<sup>862</sup> UNITAD, *Sixth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, 3 May 2021, S/2021/419

<sup>863</sup> *Ibid.*

<sup>864</sup> B. Gavrilovic, S. Schweininger, A Criminal Tribunal and a Wide-Ranging Reparation Programme is Necessary for the Victims of Sexual Violence and Torture in Iraq, *Torture Journal: Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 29(1), 2019, p. 112.

<sup>865</sup> *Ibid.*

## C. Turkey Country Report

### 1. Obligation to Prevent Genocide

1. Turkey knew, or should have known, of the serious risk that ISIS would commit genocide against Yazidis, at the latest by July 2014, and most likely from at least April 2013.
2. Section A (Background) of Part III of this Report (Findings on Genocide) provides details of ISIS' increasingly brutal approach towards the Yazidis in the period leading up to and including July 2014, and of the existence of a serious risk of genocide.
3. As noted, and documented in the Syria Country Report, it was well established that at least since April 2013, and as early as 2012, pre-cursors to ISIS, groups affiliated to ISIS, and ISIS (including its previous iteration as ISI) were committing prohibited acts against civilians, and in particular minorities such as the Yazidis, of north-eastern Syria, including Ar-Raqqa, Al-Hasakah, Tel Hamis, Homs, Aleppo, Al-Shaddadi and Idlib.<sup>866</sup>
4. ISIS' activities, as such, against the Yazidis in the period from at least April 2013 were widely reported and extensive communiqués were being issued by the Commission of Inquiry, and other UN bodies, to all Member States and in particular neighbouring Iraq and Syria. Indeed, there were a number of official UN reports, that Turkey, together with other UN Member States should have been aware of, that detailed ISIS' activities in Iraq and Syria, and the serious risk to Yazidis, as well as other minorities in the area, to attack by ISIS. (See further, the Sections relating to the Obligation to Prevent Genocide in the Iraq and Syria Country Reports, which extensively set out the date by which States should have been on notice about the serious risk of genocide of the Yazidis).
5. Specific information relating to Iraq, and the cross-border activities of ISIS between Iraq and Syria and by extension Turkey, is contained in the UNAMI POC Report No. 2 of 2014.<sup>867</sup> In its July 2014 Report,<sup>868</sup> before ISIS started carrying out the vast majority of its prohibited acts against the Yazidi in August 2014, UNAMI put on notice all States<sup>869</sup> and the bodies of the UN of the very serious risks to the Yazidis from ISIS taking over parts of Iraq after its documented crimes in Syria.<sup>870</sup> ISIS had begun its major offensives in Iraq from early June

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<sup>866</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27/CRP.3, 19 November 2014, paras 73-78.

<sup>867</sup> In resolution 1770 of 10 August 2006, the UNSC, at paragraph 2(c) specifically requested UNAMI to "promote the protection of human rights and judicial and legal reform in order to strengthen the rule of law in Iraq;..." UNAMI mandate was extended in the same terms for 2014/2015 by Security Council resolution 2169 of 30 July 2014. In accordance with its mandate, UNAMI Human Rights Office conducted a range of activities aimed at promoting the protection of civilians in armed conflict, including undertaking independent and impartial monitoring of, and reporting on, armed violence and its impact on civilians and violations of international humanitarian law and international human rights law.

<sup>868</sup> UNAMI POC Report No. 1 of 2014.

<sup>869</sup> UNAMI POC Report No. 1 of 2014, pp 6-7, 21-22.

<sup>870</sup> UNAMI POC Report No. 1 of 2014; S. A. Fishkhabur, *Iraq Yazidis Say Sunni Muslim Neighbours Enabled Jihadist Attack*, *Agence France-Presse*, 14 August 2014.

2014, having allied or co-opted local Sunni Muslim support (either through choice, necessity or force).<sup>871</sup> The UNAMI POC Report No. 1 of 2014 specifically outlined that international law, if there was any doubt by then, required States to protect civilians and punish perpetrators meant that they were legally bound to protect civilians from, and to prevent, international crimes through appropriate means. In a prescient statement, this report stated that:

*UNAMI has grave fears for the safety and well-being of members of these groups who may be trapped in areas affected by conflict and who may not be able to leave those areas or may face increased difficulties in accessing basic humanitarian assistance.*

It also warned:

*imposition of misinterpretations of Shari'a law (particularly takfiri) by ISIL and associated armed groups within areas under their control does not bode well for the respect and protection of the rights of members of minority groups within those areas.*

6. As noted in Section A (Background) of Part III of this Report (Findings on Genocide), States, including Turkey, should also have been aware of ISIS' (and ISIS precursors') destructive intent and strategy towards the Yazidis (including its dehumanising of the Yazidis as a group in its ideological framework).
7. One notable incident that evidenced this intent to destroy, in addition to the much earlier incidents outlined above, was the prohibited act of killing that took place as early as 29 May 2014, when ISIS attacked Al-Taliliyah (Al-Hasakah), which used to contain a Yazidi community.<sup>872</sup> The village had been taken over by IDPs, most of whom were women and children, from Al-Safira (Aleppo). ISIS fighters - mainly foreign fighters who did not speak Arabic and so could not understand the protestations of those they were killing - believed their victims to be Yazidi.<sup>873</sup> The executions halted only when an Iraqi fighter arrived and translated to the other ISIS fighters that the civilians were Sunni Arabs.<sup>874</sup> Following the massacre of Yazidis in Sinjar between 3 and 14 August 2014, ISIS began the siege of the border-town of Kobane in Syria between 15 September 2014 and 26 January 2015.<sup>875</sup> The ISIS attack in Kobane culminated in the second-largest massacre committed by ISIS since it was declared a

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<sup>871</sup> S. A. Fishkhabur, Iraq Yazidis Say Sunni Muslim Neighbours Enabled Jihadist Attack, *Agence France-Presse*, 14 August 2014.

<sup>872</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria*, A/HRC/27CRP.3, 19 November 2014, p. 7, para. 37.

<sup>873</sup> *Ibid.*

<sup>874</sup> *Ibid.*

<sup>875</sup> Europe Solidaire Sans Frontières, Syria/Kurdistan: ISIS Gangs Prepare for Grand Genocide in Kobane, 3 October 2014, available at <http://europe-solidaire.org/spip.php?article33175> (accessed 16 July 2020).

caliphate in June 2014.<sup>876</sup> Both of these major incidents were relevant in respect of the acts and omissions on the part of the Turkish State, as noted further in this section of the Report.

### 1.6 Free Flow of Fighters and Military Assistance

8. There have been a number of allegations that, in addition to ISIS being able to conduct sophisticated trafficking operations of Yazidis (see further, below), Turkey allowed, acquiesced in, or failed to prevent ISIS fighters, from moving across the border with weapons and resources at a time where many prohibited acts were being or had been carried out against Yazidis.
9. In the period preceding and following the prohibited acts, Turkey continued to provide support to various Islamist groups that were, in part, operating from its territory. These included ISIS and Al-Nusra Front. With respect to the latter, it has been reported that, in June 2014, the Turkish Interior Minister of the time, Muammer Güler, ordered the Governor of Hatay (the border city with Syria) to accommodate and help the passages of “the El-Nusra fighters”/ “Islamist groups”.<sup>877</sup> Accordingly, the Minister is reported to have stated in the confidential communication that, to accommodate El-Nusra members, the Governor could use the public buildings, including the buildings that belonged to the Directorate of Religious Affairs and the Turkish National Intelligence Organization (“MİT”) in the city.<sup>878</sup> The communication is reported to have further stated that:

*Providing logistical support to the Islamic groups, their education, treatment of the injured and transit of the fighters will [be] mostly done in this place [Hatay]. The National Intelligence Organisation and other relevant authorities have been authorised in relation to this matter.*<sup>879</sup>

10. The Committee has not been able to independently verify the authenticity of the communication, although a copy was provided to the public by Ihsan

<sup>876</sup> CNN Staff, Rights group: ISIS Attack on Kobani is Second Largest, *CNN*, 26 June 2015, available at <https://edition.cnn.com/2015/06/26/middleeast/isis-syria/> (accessed 16 July 2020).

<sup>877</sup> Haberler, Özkes'ten “Diyanet Misafirhanesinde El Nusra' Genelgesi”, 12 June 2014, available at <https://www.haberler.com/chp-li-ozkes-ten-el-nusra-genelgesi-iddiasi-6147518-haberi/> (accessed 10 October 2020); Radikal, MİT, IŞİD'i Muammer Güler'in emriyle ağırladı, 13 June 2014, available at <http://www.radikal.com.tr/politika/mit-isi-di-muammer-gulerin-emriyle-agirladi-1196924> (accessed 10 October 2020); Sozcu, MİT, IŞİD'i misafir etti mi?, 14 June 2014, available at <https://www.sozcu.com.tr/2014/gundem/mit-isi-di-misafir-etti-mi-531540/> (accessed 10 October 2020).

<sup>878</sup> Sol, Muammer Güler misafirperverliği: Nusracılar'ı Diyanet misafirhanelerinde ağırlamış, 12 June 2014, available at <https://haber.sol.org.tr/devlet-ve-siyaset/muammer-guler-misafirperverligi-nusracilari-diyamet-misafirhanelerinde-agirlamis-h> (accessed 5 April 2022).

<sup>879</sup> Radikal, MİT Hosted ISIS on Muammer Güler's Order, 13 June 2014, available at <http://www.radikal.com.tr/politika/mit-isi-di-muammer-gulerin-emriyle-agirladi-1196924/> (accessed 13 July 2020). See also, S. Hacador, 2,000 ISIS Members Are Turkish: Erdogan Harbours Jihadist Terrorists, *The Kurdistan Tribune*, 21 September 2014, available at <https://kurdistantribune.com/isis-members-turkish-erdogan-harbours-jihadist-terrorists/> (accessed 13 July 2020).



Ozkes MP and was widely disseminated by journalists.<sup>880</sup> The above information supports the allegation that Turkey supported Islamist groups, including ISIS fighters. This support, however, varied over time and was driven more by a policy to support their anti-Assad political position as well as ISIS' enmity with the Kurds (and by indirect association, the Yazidis). In addition to supporting ISIS and Al-Nusra Front fighters, Turkey also supported other anti-Assad rebel groups. It is difficult to ascertain, however, with precision which rebel groups Turkey was supporting because of difficulties in differentiating the rebel groups, due to their leadership and cross-cutting and shifting allegiances (although there are clear patterns of support for certain groups in certain periods).<sup>881</sup> In a statement made during the Geneva II Conference in January 2014, Syrian Foreign Minister, Walid al-Muallem, alleged that Turkey was supporting "terrorism" during the Syrian armed conflict: "All of this would not have happened if it had not been for Erdoğan".<sup>882</sup> During this period, however, there were also indications that Turkey had tried to distance itself from these rebel groups particularly from mid-2015 onwards. There was also, in parallel, therefore, some limited movement away from official policy support for ISIS and other Islamist rebel groups.<sup>883</sup> Writing on the blog *Arms Control Wonk*, Aaron Stein claimed that Erdoğan may have had geopolitical reasons to support Islamist rebel groups against the Kurdish PYD/PKK, but that there may have also been an underlying policy of preventing bloodshed.<sup>884</sup>

11. With respect of differentiating Turkish support for Islamist groups, in January 2014, a Turkish faith-based NGO protested Western ambivalence to Turkey's support of Islamist rebels, in that "From far away, they think everyone is al-Qaeda! We also complain about ISIL; they harm people rather than help them."<sup>885</sup> In January 2014, during clashes between ISIS and the Free Syrian Army, Turkish troops opened fire on ISIS in northern Syria after a mortar shell fired from Syria landed in Turkish territory; there were no reported casualties.<sup>886</sup> The former US Ambassador to Ankara, Francis Ricciardone, admitted in

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<sup>880</sup> Sol, Muammer Güler misafirperverliği: Nusracılar'ı Diyanet misafirhanelerinde ağırlamış, 12 June 2014, available at <https://haber.sol.org.tr/devlet-ve-siyaset/muammer-guler-misafirperverligi-nusracilari-diyanet-misafirhanelerinde-agirlamis-h> (accessed 5 April 2022).

<sup>881</sup> ICG, *The Rising Costs of Turkey's Syrian Quagmire*, Europe Report No. 230, 30 April 2014, p. 32, available at <https://www.refworld.org/docid/53707da74.html> (accessed 8 August 2020); Crisis Group interviews, Gaziantep, Istanbul, February 2014. For background, see Crisis Group Report, *Blurring the Borders*, p. 36, available at <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/blurring-borders-syrian-spillover-risks-turkey> (accessed 8 August 2020).

<sup>882</sup> ICG, *The Rising Costs of Turkey's Syrian Quagmire*, Europe Report No. 230, 30 April 2014, p. 29, available at <https://www.refworld.org/docid/53707da74.html> (accessed 8 August 2020).

<sup>883</sup> BBC, Guide to the Syrian Rebels, 13 December 2013, available at <https://www.bbc.co.uk/news/world-middle-east-24403003> (accessed 25 July 2020).

<sup>884</sup> A. Stein, Turkey's Syria Policy: Why Seymour Hersh Got It Wrong, *Arms Control Wonk*, 8 April 2014, available at <https://www.armscontrolwonk.com/archive/604329/turkeys-syria-policy-why-seymour-hersh-got-it-wrong/> (accessed 20 July 2020).

<sup>885</sup> ICG, *The Rising Costs of Turkey's Syrian Quagmire*, Europe Report No. 230, 30 April 2014, p. 32, available at <https://www.refworld.org/docid/53707da74.html> (accessed 8 August 2020).

<sup>886</sup> Al Jazeera, Turkish Forces "Strike ISIL Convoy in Syria", 29 January 2014, available at <https://www.aljazeera.com/news/2014/01/29/turkish-forces-strike-isil-convoy-in-syria/> (accessed 8 October 2020).



September 2014 that “the Turks frankly worked with groups for a period including al Nusra” until the decision was made that they would no longer be willing to work with them.<sup>887</sup> This suggests that Turkish officials supported Islamist groups, including ISIS, during certain periods, when it was politically expedient for them to do so and until there was a change in official policy.

12. Evidence that emerged in 2016 in the form of testimony from an ISIS operative captured by the YPG which has been reported by two Kurdish news agencies, the Syrian-Kurdish Harwar News Agency (ANHA) based in Rojava, and the Turkish-Kurdish Ajansa Nûçeyan a Firatê (ANF News) (both are blocked in Turkey) reveals that Turkish military and security forces are facilitating and supporting ISIS operations within Syria, as well as ISIS terrorist attacks inside Turkey.<sup>888</sup> Ahmet Yayla, former counter-terrorism and crime prevention chief for the Turkish National Police, and Anne Speckhard, NATO and Pentagon counter-terrorism consultant and director of the International Center for the Study of Violent Extremism (“ICSVE”), published further testimonies in their book, *ISIS Defectors: Inside Stories of the Terrorist Caliphate*,<sup>889</sup> revealing Turkey’s complicity in allowing ISIS to transport recruits and weapons across the border to Syria.<sup>890</sup> In an interview with ICSVE, Savas Yildiz, a Turkish national who joined ISIS in 2014, claimed that Turkey has an agreement with ISIS, stating that “border outposts would be routinely disbanded of Turkish security forces between particular arranged hours to allow groups of 20–30 ISIS fighters to pass through unhindered and undetected.”<sup>891</sup> Yildiz further stated that “Turkey supports ISIS because it poses a threat to Kurds and they can use it against them.”<sup>892</sup> This claim is supported by Yayla opining that Turkey “needs ISIS as a tool to quell the PKK...”<sup>893</sup> In supporting ISIS, Turkey can use the terror group “as a geopolitical bulwark against the rising political

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<sup>887</sup> R. Spencer, Turkish Government Co-Operated with Al-Qaeda in Syria, says Former US Ambassador, *The Telegraph*, 12 September 2014, available at <https://www.telegraph.co.uk/news/worldnews/europe/turkey/11093478/turkish-government-co-operated-with-al-qaeda-in-syria-says-former-us-ambassador.html> (accessed 14 July 2020).

<sup>888</sup> N. Ahmed, Turkey’s Secret Pact with Islamic State Exposed by Operative Behind Wave of ISIS Attacks, 21 July 2016, *International Center for the Study of Violent Extremism*, available at <https://www.icsve.org/turkeys-secret-pact-with-islamic-state-exposed-by-operative-behind-wave-of-isis-attacks/> (accessed 3 May 2022); A. Yayla and A. Speckhard, Turkey’s failed coup: A victory for ISIS, 20 July 2016, *The Hill*, available at <https://thehill.com/blogs/pundits-blog/international-affairs/288452-turkeys-failed-coup-a-victory-for-isis/> (accessed 3 May 2022).

<sup>889</sup> A. Speckhard and A. Yayla, *ISIS Defectors: Inside Stories of the Terrorist Caliphate* (2016), *Advance Press*, available at <https://www.amazon.com/isis-defectors-stories-terrorist-caliphate/dp/1935866710> (accessed 3 May 2022).

<sup>890</sup> N. Ahmed, Turkey’s Secret Pact with Islamic State Exposed by Operative Behind Wave of ISIS Attacks, 21 July 2016, *International Center for the Study of Violent Extremism*, available at <https://www.icsve.org/turkeys-secret-pact-with-islamic-state-exposed-by-operative-behind-wave-of-isis-attacks/> (accessed 3 May 2022).

<sup>891</sup> *Ibid.*

<sup>892</sup> *Ibid.*

<sup>893</sup> A. Yayla and A. Speckhard, Turkey’s failed coup: A victory for ISIS, 20 July 2016, *The Hill*, available at <https://thehill.com/blogs/pundits-blog/international-affairs/288452-turkeys-failed-coup-a-victory-for-isis/> (accessed 3 May 2022).

and military power of Kurdish groups.”<sup>894</sup> According to the former ISIS operative, the Turkish military had open lines of communication with ISIS as early as June 2014, when the group captured Mosul: “...around 50 people were held captive in the Turkish consulate. They [the Turkish military] opened all roads for us [ISIS] because our guys had the captives. They gave us all kinds of freedom of movement. Those captives were exchanged with Turkey releasing 100 of our friends.”<sup>895</sup>

13. According to *International Crisis Group* (“ICG”) interviews in February 2014, support to rebels included allowing unarmed fighters from the Islamic Front or “other Jihadi” groups to “transit through Turkey or use its territory to regroup [and] Turkey would provide rest and recreation opportunities for some rebels and their families in refugee shelters or other facilities.”<sup>896</sup> There is evidence of Turkey’s failure to prevent Islamist groups from crossing its borders and/or support for the activities of Islamist groups dating back to 2011/2012. For instance, in 2012, CBS interviewed Syrian militants in Turkish Government refugee camps who advised that they regularly crossed the border to continue fighting for ISIS.<sup>897</sup> A US bulldozer salesman who returned to Syria in 2012 to fight against the Syrian regime was also interviewed; as was Hursit Gunes, a member of the opposition party, who claimed that the Turkish Government allowed ISIS to flourish because it preferred it to the Syrian regime. As a result, Gunes alleged that the Turkish authorities were prepared to ignore ISIS’ lucrative oil smuggling business on the border.<sup>898</sup> Moreover, between 2011 and 2014, Turkish families had notified officials that their sons and daughters were attempting to join ISIS, yet the authorities did little to address this.<sup>899</sup>
14. In the period from late 2011 to 10 December 2013, the International Centre for the Study of Radicalisation (“ICSR”) estimated that between 3,300 and 11,000 individuals had gone to Syria to fight against the Assad Government, with Turkish fighters making up between 63 and 500 of the total foreign fighter

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<sup>894</sup> N. Ahmed, Turkey’s Secret Pact with Islamic State Exposed by Operative Behind Wave of ISIS Attacks, 21 July 2016, *International Center for the Study of Violent Extremism*, available at <https://www.icsve.org/turkeys-secret-pact-with-islamic-state-exposed-by-operative-behind-wave-of-isis-attacks/> (accessed 3 May 2022).

<sup>895</sup> *Ibid.*

<sup>896</sup> ICG, *The Rising Costs of Turkey’s Syrian Quagmire*, Europe Report No. 230, 30 April 2014, p. 32, available at <https://www.refworld.org/docid/53707da74.html> (accessed 8 August 2020); Crisis Group interviews, Gaziantep, Istanbul, February 2014. For background, see Crisis Group Report, *Blurring the Borders*, p. 36, available at <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/blurring-borders-syrian-spillover-risks-turkey> (accessed 8 August 2020).

<sup>897</sup> H. Williams, As Turkey Turned Blind Eye, ISIS Took Advantage, CBS News, 4 September 2014, available at <https://www.cbsnews.com/news/as-turkey-turned-blind-eye-isis-took-advantage/> and at [https://www.youtube.com/watch?v=vbpfo\\_j3x54&feature=youtu.be](https://www.youtube.com/watch?v=vbpfo_j3x54&feature=youtu.be) (accessed 14 November 2020).

<sup>898</sup> H. Williams, As Turkey Turned Blind Eye, ISIS Took Advantage, CBS News, 4 September 2014, available at <https://www.cbsnews.com/news/as-turkey-turned-blind-eye-isis-took-advantage/> and at [https://www.youtube.com/watch?v=vbpfo\\_j3x54&feature=youtu.be](https://www.youtube.com/watch?v=vbpfo_j3x54&feature=youtu.be) (accessed 14 November 2020).

<sup>899</sup> ICG, *Calibrating the Response: Turkey’s ISIS Returnees*, 29 June 2020, available at <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 10 August 2020); H. Williams, As Turkey Turned Blind Eye, ISIS Took Advantage, CBS News, 4 September 2014, available at <https://www.cbsnews.com/news/as-turkey-turned-blind-eye-isis-took-advantage/> and at [https://www.youtube.com/watch?v=vbpfo\\_j3x54&feature=youtu.be](https://www.youtube.com/watch?v=vbpfo_j3x54&feature=youtu.be) (accessed 14 November 2020).

contingents in Syria.<sup>900</sup> This was prior to the height of the power and strength of ISIS and its control of vast territory across Syria and Iraq. The ICSR acknowledges that this data is difficult to verify as Middle Eastern Governments are “less forthcoming with official estimates and there is less reporting of individual cases”. Nevertheless, this suggests that Turkey knew, or should have been aware, prior to the Yazidi massacre by ISIS in August 2014, that large numbers of Islamist fighters had crossed the Turkish border with the aim of joining and/or fighting with ISIS. Turkish authorities would also have known, or should have known, ISIS’ destructive strategy / ideology against the Yazidis, as this had been widely reported (see above, paragraph [1] of this Section).

15. The Institute for the Study of Human Rights at Columbia University has compiled a detailed list of evidence of Turkish support for ISIS in Syria.<sup>901</sup> There are a number of reports within the study supporting the claim that ISIS fighters had free reign across the border and conducted various operations in Turkey, particularly up to and including 24 July 2015 when Turkey appeared to take a different policy position towards ISIS.<sup>902</sup>
16. Among the reports alleging direct or indirect Turkish support for ISIS, the following stand out:
  - a. According to a Newsweek report on 7 November 2014, the Turkish military was frequently allowing ISIS, who then controlled large parts of Iraq and Syria, to travel through Turkish territory to reinforce fighters battling Kurdish forces.<sup>903</sup> A former ISIS communications technician, “Sherko Omer”, said ISIS “commanders” had reassured him of Turkish support, and that border agents allowed his truck convoy through after a commander spoke to someone in Turkish when he was transferred to Serekaniya in February 2014 to fight Kurdish forces, before crossing back into Syria at the Ceylanpinar.<sup>904</sup> Omer said that “ISIS saw the Turkish army as its ally especially when it came to attacking the Kurds in Syria.”<sup>905</sup> During his time at the ISIS Communications bureau in Raqqa, he was connecting ISIS field captains and commanders from Syria to people in Turkey “on innumerable occasions”, and often these were Turkish officials.

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<sup>900</sup> The International Centre for the Study of Radicalisation, ICSR Insight: Up to 11,000 Foreign Fighters in Syria; Steep Rise Among Western Europeans, 17 December 2013.

<sup>901</sup> D. L. Phillips, Research Paper: ISIS-Turkey Links, Program on Peace-building and Rights, Institute for the Study of Human Rights, Columbia University, 9 November 2014.

<sup>902</sup> The reluctance to change position previously was due to a combination of factors: a need to address growing Kurdish power and control as the Turkish government saw it; to prevent blow-back from supporting “a monster out of control” who would like to carry out suicide bombing in Turkey and cripple its economy at a fragile political time; and to prevent revenge attacks on Turkish-diplomat captives held by ISIS in Mosul from June to September 2014 when they were brought back in a negotiated deal. *Ibid.*

<sup>903</sup> B. Guiton, “ISIS Sees Turkey as Its Ally”: Former Islamic State Member Reveals Turkish Army Cooperation, *Newsweek*, 7 November 2020.

<sup>904</sup> *Ibid.*

<sup>905</sup> *Ibid.*

- b. According to numerous Turkish media articles, it appears that the Interior Minister of the time, Muammer Güler, ordered the Governor of Hatay (the border city with Syria) to accommodate and help the passage of Islamist groups fighters across the border.<sup>906</sup>
- c. In July 2014, trucks were loaded with weapons at the Esenboga airport in Ankara and escorted by the MİT to the border.<sup>907</sup> An ISIS commander told *The Washington Post* on 12 August 2014 that most fighters, equipment and supplies came via Turkey at the start of the war,<sup>908</sup> and they were able to pass through the Turkish border with approval from the border guards.<sup>909</sup>
- d. On 24 August 2014, the Guardian reported that ISIS fighters had amassed on Turkey's border to pass through and obtain new recruits from abroad. Dr Hisham al-Hashimi, an Iraqi expert on ISIS, stated that "[t]he Turkish border is the only way to smuggle oil, weapons and foreign fighters into [Iraq and Syria]," and that "[i]f it's closed, it will cut three things: funding, an entrance for the foreign fighters and links to Europe which they are trying to open. If those plans are destroyed, they will aim for another gate to Lebanon".<sup>910</sup> This emphasises the critical impact that better policing of the Turkish border could have had on the growth of ISIS and the support that enabled it to commit atrocities in Iraq and Syria. Therefore, Turkey's policy of support or, at least, acquiescence with respect to ISIS, by allowing ISIS fighters to freely cross the Turkish borders and smuggle oil, weapons and other resources in the period around August 2014, served as a necessary condition for ISIS to gather sufficient fighters and weapons to carry out its atrocities against the Yazidis.
- e. The *Daily Mail*, among others, reported on 25 August 2014 that many foreign militants joined ISIS in Syria and Iraq after travelling

<sup>906</sup> Haberler, Özkes'ten "Diyanet Misafirhanesinde El Nusra' Genelgesi", 12 June 2014, available at <https://www.haberler.com/chp-li-ozkes-ten-el-nusra-genelgesi-iddiasi-6147518-haberi/> (accessed 10 October 2020); Radikal, MİT, IŞİD'i Muammer Güler'in emriyle ağırladı, 13 June 2014, available at [http://www.radikal.com.tr/politika/mit\\_ismi\\_muammer\\_gulerin\\_emriyle\\_agirladi-1196924](http://www.radikal.com.tr/politika/mit_ismi_muammer_gulerin_emriyle_agirladi-1196924) (accessed 10 October 2020); Sozcu, MİT, IŞİD'i misafir etti mi?, 14 June 2014, available at <https://www.sozcu.com.tr/2014/gundem/mit-isi-di-misafir-etti-mi-531540/> (accessed 10 October 2020).

<sup>907</sup> CHP tutanakları açıkladı: O tırlardan onlarca füze çıktı, *Cumhuriyet*, 21 July 2014, available at [http://www.cumhuriyet.com.tr/haber/turkiye/97017/chp\\_tutanaklari\\_acikladi\\_o\\_tirlardan\\_onlarca\\_fuze\\_cikti.html](http://www.cumhuriyet.com.tr/haber/turkiye/97017/chp_tutanaklari_acikladi_o_tirlardan_onlarca_fuze_cikti.html) (accessed 14 October 2020).

<sup>908</sup> Washington Post, In Turkey, a Late Crackdown on Islamist Fighters, 12 August 2018, available at [http://www.washingtonpost.com/world/how-turkey-became-the-shopping-mall-for-the-islamic-state/2014/08/12/5eff70bf-a38a-4334-9aa9-ae3fc1714c4b\\_story.html](http://www.washingtonpost.com/world/how-turkey-became-the-shopping-mall-for-the-islamic-state/2014/08/12/5eff70bf-a38a-4334-9aa9-ae3fc1714c4b_story.html) (accessed 24 October 2020).

<sup>909</sup> BirGun, Bir cihatçının itirafı: IŞİD, Türkiye Sınırında çok Rahat Biçimde Hareket Ediyor, 8 July 2015, available at <https://www.birgun.net/haber/bir-cihatcinin-itiraf-lari-isi-d-turkiye-sinirinda-cok-rahat-bicimde-hareket-ediyor-84332> (accessed 11 December 2020).

<sup>910</sup> M. Chulov, ISIS Surges Towards the Borders of Turkey as West Mulls Options, *The Guardian*, 23 August 2014, available at <https://www.theguardian.com/world/2014/aug/23/isis-islamic-state-surges-to-turkish-border> (accessed 28 October 2020).

through Turkey, and Turkey did not attempt to stop them.<sup>911</sup> Fighters, particularly from the UK would travel to Syria and Iraq via the Turkish border, nicknamed the “Gateway to Jihad.” Turkish armed forces would allegedly either turn a blind eye and allow their passage or require payment of \$10 to facilitate their crossing. Another *Daily Mail* article showed ISIS militants, on 22 October 2014, in video footage casually talking with Turkish border guards and security officials near to the town of Kobane before being allowed to go back into Syria.<sup>912</sup> The article also documented claims about foreign fighters being easily able to cross the Turkish border and an agreement allegedly allowing up to 3,000 detained Western jihadists to re-join ISIS in Syria in return for the release of 49 Turkish officials who had been held prisoner.<sup>913</sup>

- f. On 25 September 2014, the *Guardian* reported that there had been a crackdown at the Turkish border in order to prevent fighters crossing and oil smuggling, with the army imposing a curfew on border crossings.<sup>914</sup> This change of policy on the part of the Turkish State shows that, when it wanted to, Turkey had the resources to police its borders. One soldier interviewed said that he had orders “to push back everyone trying to cross from Syria.” This tightening of the Turkish border was, however, intended to make it more difficult for refugees fleeing Syria to enter Turkey. It was not intended to stop foreign fighters crossing the border, and indeed, it is uncertain what impact this had on reducing fighters who wished to join ISIS. On 20 October 2014, *Sky News’* Special Correspondent Stuart Ramsay reported from Syria, having obtained documents showing that the Turkish Government stamped passports of foreign militants who sought to cross the Turkish border into Syria to join ISIS.<sup>915</sup> This was reported by a number of news agencies, who interviewed fighters and/or collected passports from an ISIS cache, including the *BBC*, *CNN* and *France 24*, in a collection of videos (many of which are no

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<sup>911</sup> S. Greenhill, How Seven Radicalised Young Britons a Week are Taking the Gateway Jihad, *Daily Mail*, 25 August 2014, available at <http://www.dailymail.co.uk/news/article-2734239/how-seven-radicalised-young-britons-week-taking-gateway-jihad.html> (accessed 28 October 2020).

<sup>912</sup> J. Hall, Oh What a Lovely War! Remarkable Video Shows ISIS Fighters Strolling Right Up to Turkish Border Checkpoint for a Relaxing Chat with Guards, *Daily Mail*, 29 October 2014.

<sup>913</sup> *Ibid.*

<sup>914</sup> C. Letzche, Turkish Border Guards Sweep up Fuel Smugglers and ISIS Fighters Alike, *The Guardian*, 25 September 2014, available at <https://www.theguardian.com/world/2014/sep/25/turkey-syria-border-crossing-harder-movement-isis-smugglers> (accessed 14 November 2020).

<sup>915</sup> S. Ramsay, How Kurds The World Forgot Are Holding Off IS, *Sky News*, 20 October 2014, available at <https://news.sky.com/story/how-kurds-the-world-forgot-are-holding-off-is-10385832> (accessed 12 November 2020).

longer available on YouTube), which have been helpfully collated into one 4-minute video and uploaded to *Reddit*.<sup>916</sup>

- g. The *BBC* interviewed villagers, who claimed that buses would travel under cover of darkness, carrying militants to fight Kurdish forces in Syria and Iraq.<sup>917</sup> A further report details how taxi ranks have drastically increased around Kilis bus station south of Gaziantep close to the Turkish-Syrian border to meet the increased demand of passengers travelling to and from the border.<sup>918</sup> An ISIS member who spoke to *Al Monitor*, explained that “[...] taxi ranks, especially in Kilis Elbeyli, played a serious role in the organization of ISIS’ travels to and from Syria.”<sup>919</sup> Another article by *CBS News*, on 4 September 2014, details Turkey’s failure to monitor the 500-mile border.<sup>920</sup>
- h. A senior Egyptian official alleged, on 9 October 2014, that Turkish intelligence was passing satellite imagery and other sensitive data to ISIS and Turkey had released close to 700 ISIS members in exchange for the release of 49 hostages.<sup>921</sup>
17. In 2015, the *Independent* reported that an “Islam Tea House” in Adiyaman, southern Turkey, had been used to recruit large numbers of ISIS fighters.<sup>922</sup>

<sup>916</sup> *Reddit*, Video Report: Turkish Government Assisting ISIS, 2014, available at [https://amp.reddit.com/r/LevantineWar/comments/2immpg/video\\_report\\_turkish\\_government\\_assisting\\_isis/](https://amp.reddit.com/r/LevantineWar/comments/2immpg/video_report_turkish_government_assisting_isis/) (accessed 20 November 2020).

<sup>917</sup> [YouTube Video unavailable: <http://www.youtube.com/watch?v=qarnhiyhvza>] but this is available from *Reddit*, Video Report: Turkish Government Assisting ISIS, 2014, available at [https://amp.reddit.com/r/LevantineWar/comments/2immpg/video\\_report\\_turkish\\_government\\_assisting\\_isis/](https://amp.reddit.com/r/LevantineWar/comments/2immpg/video_report_turkish_government_assisting_isis/) (accessed 20 November 2020) at 2:15.

<sup>918</sup> T24, “Şu ‘İŞİD taksileri’ni araştırmaya ne dersiniz?”, 26 October 2015, available at <https://t24.com.tr/haber/su-isis-taksilerini-arastirmaya-ne-dersiniz,314233> (accessed 4 May 2022); E. Basaran, Şu “İŞİD taksileri”ni araştırmaya ne dersiniz?, 26 October 2015, available at <http://www.radikal.com.tr/yazarlar/ezgi-basaran/su-isis-taksilerini-arastirmaya-ne-dersiniz-1459501/> (accessed 8 May 2022).

<sup>919</sup> T24, “Şu ‘İŞİD taksileri’ni araştırmaya ne dersiniz?”, 26 October 2015, available at <https://t24.com.tr/haber/su-isis-taksilerini-arastirmaya-ne-dersiniz,314233> (accessed 4 May 2022).

<sup>920</sup> H. Williams, As Turkey turned blind eye, ISIS took advantage, *CBS News*, 4 September 2014, available at <https://www.cbsnews.com/news/as-turkey-turned-blind-eye-isis-took-advantage/> (accessed 20 March 2022).

<sup>921</sup> A. Klein, Turkey “Providing Direct support” to ISIS, 9 October 2014, available at <http://www.wnd.com/2014/10/turkey-providing-direct-support-to-isis/> (accessed 12 November 2020); N. Bertrand, Senior Western Official: Links between Turkey and ISIS are Now “Undeniable”, *Business Insider*, 28 July 2015; A. McDuffee, Activists: ISIS Is Now Launching Attacks From Inside Turkey, *Atlantic*, 29 November 2014; UNAMI POC Report No. 1 of 2014; *Al Monitor*, How and Why Were 46 Turkish Hostages Freed?, 21 September 2014, available at <https://www.al-monitor.com/pulse/originals/2014/09/turkey-iraq-syria-isis-turkish-consulate-hostages-freed.html> (accessed 28 June 2021); L. Williams, Turkey Shuns Key Role in Fighting Islamic State, *USA TODAY*, 18 September 2014, available at <https://eu.usatoday.com/story/news/world/2014/09/17/turkey-coalition-against-islamic-state/15668093/> (accessed 28 June 2021); C. Johnston, ISIS Militants Release 49 Hostages Taken at Turkish Consulate in Mosul, *The Guardian*, 20 September 2014, available at <https://www.theguardian.com/world/2014/sep/20/isis-releases-hostages-turkish-consulate-mosul> (accessed 20 July 2020).

<sup>922</sup> Z. Weise, Ankara bombing: Perpetrators used tea house in Adiyaman to recruit for Isis - in plain sight of authorities, *Independent*, 15 October 2015, available at <https://www.independent.co.uk/news/world/middle-east/ankara-bombing-perpetrators-used-tea->

- The tea house was run by two brothers from Adiyaman, Yunus Emre Alagöz and Seyh Abdurrahman Alagöz, the latter allegedly being responsible for the Suruc bombing in July 2015. According to Turkish media, Alagöz was on a list of suspected suicide bombers kept by the national intelligence agency MIT.<sup>923</sup>
18. In May 2014, *Cumhuriyet* produced images from a video in the investigation file proving that the MIT trucks that were stopped in an investigation in January 2014 were carrying weapons, contradicting the government's claim that they were carrying humanitarian aid to Turkmens in Syria.<sup>924</sup> Following this reporting, the then editor-in-chief of *Cumhuriyet* together with a provincial editor were detained. Their detention was found unlawful by the Constitutional Court.<sup>925</sup>
  19. Turkey's mobilization of troops along the Turkey-Syria border in July 2015 came shortly after the capture of the ISIS-held Syrian town of Tel Abyad by the YPG (The People's Protection Units/People's Defence Units, a mainly Kurdish militia in Syria) on 14 and 15 June and the subsequent ISIS counterattack on the YPG-held town of Kobane.<sup>926</sup>
  20. On 20 October 2014, Turkey changed its policy from preventing the PKK crossing the border<sup>927</sup> to allowing them access through Turkey in the fight against ISIS in Kobane.<sup>928</sup> Despite this, the Bipartisan Policy Center highlighted that "Turkish participation in coalition airstrikes ha[d] been limited and retaliatory".<sup>929</sup> Between October 2014 and June 2016, to curtail and neutralise this group, Turkey had only participated in Syrian airstrikes, and even then, Turkey's contribution was relatively minimal. Once it joined the coalition, in July 2015, rather than proactively targeting ISIS, most Turkish actions came as a direct response to attacks on Turkish territory in July 2015 (see further, below).<sup>930</sup> Soner Cagaptay, an analyst at the Washington Institute for Near East

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[house-in-adiyaman-to-recruit-for-isis-in-plain-sight-of-authorities-a6695881.html](http://www.radikal.com.tr/yazarlar/ezgi-basaran/yeni-bombali-saldiri-tahmin-ettigimizden-yakin-1401811/) (accessed 8 May 2022); E. Basaran, Yeni bombalı saldırı tahmin ettiğimizden yakın, *Radikal*, 23 July 2015, available at <http://www.radikal.com.tr/yazarlar/ezgi-basaran/yeni-bombali-saldiri-tahmin-ettigimizden-yakin-1401811/> (accessed 8 May 2022); E. Basaran, Bir Alevi genci IŞİD teröristi yapan nedir?, *Radikal*, 6 July 2015, available at <http://www.radikal.com.tr/yazarlar/ezgi-basaran/bir-alevi-genci-isis-teroristi-yapan-nedir-1391507/> (accessed 8 May 2022).

<sup>923</sup> *Ibid.*

<sup>924</sup> E. Gül, Devlet işi yapıyorduk, *Cumhuriyet*, 11 June 2015, available at <https://www.cumhuriyet.com.tr/haber/devlet-isi-yapiyorduk-296432> (accessed 8 May 2022); Today Zaman, MIT Providing ISIL Militants Safe Passage Through Turkey, *Cumhuriyet Daily Claims*, 11 June 2015, available at <https://www.kurdishinstitute.be/en/mit-providing-isil-militants-safe-passage-through-turkey-daily-claims/> (accessed 8 November 2020).

<sup>925</sup> The Constitutional Court of the Republic of Turkey, *Erdem Gül and Can Dündar [GK]*, B. No: 2015/18567, 25/2/2016, available at <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2015/18567?Dil=en>.

<sup>926</sup> B. Misztal, B. Thomson, Turkish Posturing on Syrian Border Raises Questions About Intervention, *Bipartisan Policy Centre*, 7 July 2015.

<sup>927</sup> This change took place after the protests in Turkey between 4-6 October 2014 by the Kurdish political movement. The events were later made basis of the mass trial of the HDP politicians in a case referred as 'Kobane case'. The case was still ongoing at the time of publication.

<sup>928</sup> Bipartisan Policy Center, Turkey vs. ISIS and PKK: A Matter of Distinction, July 2016, available at <https://bipartisanpolicy.org/wp-content/uploads/2019/03/bpc-turkey-isis-pkk.pdf> (accessed 8 October 2020).

<sup>929</sup> *Ibid.*

<sup>930</sup> *Ibid.*



Policy, suggested that Turkey's initial policy at Kobane was aimed at weakening the PKK and that "Ankara was intent on using the battle for Kobani to make the PKK/PYD recognize that it needs Turkey to survive in Syria."<sup>931</sup>

21. In a claim which is difficult to verify without further private investigation, it is alleged that ISIS leader Abu Bakr al-Baghdadi was found living near the Turkish border, and his family had transited through Turkey.<sup>932</sup> This claim has come with another that many ISIS members fled Raqqa for Turkey, trafficking some Yazidis they had kidnapped to Idlib in Syria (see below, about the sale of Yazidi women in Turkey).<sup>933</sup> These claims tend to indicate that Turkish authorities did not take effective action to prevent ISIS fighters from crossing their border and thereby prevent, or limit, ISIS' commission of genocide against the Yazidis, both in August 2014, when the commission of genocide began, thereafter, as prohibited acts continued.
22. The reports about Turkey allowing large numbers of ISIS and other Islamist militants to cross its borders during the period in which prohibited acts occurred are to be contrasted with reports confirming that support to Kurdish fighters, who were protecting Yazidis, was withheld on the grounds that they were proscribed "terrorist" organisations such as the PKK and YPG. During attacks against Kurds in Kobane in September 2014, hundreds of civilians were killed<sup>934</sup> by ISIS in and around Kobane. Serious crimes were conducted by members of ISIS against Kobane residents.<sup>935</sup> Even on 14 October 2014, as Kobane was under heavy attack from ISIS, Turkey refused any military aid by way of allowing the crossing of Kurdish fighters and/or weapons on grounds that these would be "civilians" in way of harm or that they would be aiding "terrorists" - Turkey equated the PKK with terrorists, and the Turkish President said the same publicly.<sup>936</sup> The ISIS attack in Kobane culminated in the second-

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<sup>931</sup> S. Cagaptay, Turkey's Kurdish Path, *Washington Institute for Near East Policy*, Policy Note No. 23, March 2015, available at [https://www.washingtoninstitute.org/uploads/documents/pubs/policynote23\\_cagaptay-5.pdf](https://www.washingtoninstitute.org/uploads/documents/pubs/policynote23_cagaptay-5.pdf) (accessed 8 November 2020).

<sup>932</sup> S. Frantzman, Turkey Carries Out Airstrikes Against Yazidi Areas of Iraq's Sinjar, *The Jerusalem Post*, 15 June 2020, available at <https://www.jpost.com/middle-east/turkey-carries-out-airstrikes-against-yazidi-areas-of-iraqs-sinjar-631514> (accessed 28 June 2020).

<sup>933</sup> *Ibid.*

<sup>934</sup> DW News, Kobani'de 120 sivil öldü, 26 June 2015, available at <https://www.dw.com/tr/kobanide-120-sivil-%C3%B6ld%C3%BC/a-18542471> (accessed 12 November 2020).

<sup>935</sup> CNN Turk, Kobani saldırısına kadar adım adım IŞİD, 8 October 2014, available at <https://www.cnnturk.com/fotogaleri/turkiye/kobani-saldirisina-kadar-adim-adim-isis?page=3> (accessed 12 November 2020).

<sup>936</sup> P. Zalewski, Turkey Decides to Hit Kurdish Rebels Instead of ISIS, *Time Magazine*, 14 October 2014; S. Khan, Turkey Has its Own Good Reasons for not Intervening in Kobane, *The Conversation*, 13 November 2014, available at <https://theconversation.com/turkey-has-its-own-good-reasons-for-not-intervening-in-kobane-33896> (accessed 24 July 2020). Note that the HDP strongly protested Turkey's policy towards Kobane siege. It called on its supporters to hold protests against this to prevent a disastrous siege that would claim lives of many, including Kurds. The security forces intervened in the protests brutally. Due to the sensitivity of the matter, ultra-nationalist powers were provoked which resulted in violent clashes that took place between 6-8 October. At the time of writing, there are several HDP politicians (including its former co-chairs Selahattin Demirtas, Figen Yüksekdağ and others) who have been detained on remand 6 years later and tried for the allegation that they



largest massacre against civilians committed by ISIS.<sup>937</sup> In early October 2014, although the US had asked Turkey to intervene in “order to prevent a massacre less than a mile from its border”, Turkey was seen to be “inventing reasons not to act to avoid another catastrophe”.<sup>938</sup> Until October 2014, the PKK had withdrawn its militant forces from Turkey (and only retained them in Iraq) under the terms of a 2013 ceasefire, but relocated them in Turkey because of Turkey’s refusal to allow it to provide support to the YPG.<sup>939</sup> The YPG were based in Syria and were largely defending Kobane.<sup>940</sup> Together, the YPG and PKK were the main forces fighting ISIS on the ground and those attempting to defend the Yazidis although the manner of their defence has come under scrutiny too.<sup>941</sup> On 20 October 2014, Turkey was said to have reversed its policy of preventing Kurdish fighters from crossing into Kobane, but this was only once ISIS began to lose ground to the sustained Kurdish resistance and increased American air support and supply drops.<sup>942</sup>

23. In this period, the People’s Democratic Party (“HDP”), a Turkish left-wing pro-Kurdish political party, called for demonstrations to protest Turkey’s policy towards the Kobane siege, which was giving rise to a massacre of civilians. However, instead of taking heed, Turkish authorities proceeded to detain several HDP politicians (including its former co-chairs Selahattin Demirtaş, Figen Yuksekdag and others) who were subsequently detained on remand and tried for the allegation that they organised violent clashes. In the case of *Selahattin Demirtaş v. Turk*, the Grand Chamber of the European Court of Human Rights found that HDP’s call was for peaceful protests (Application no. 14305/17, 22 December 2020).
24. The above paragraphs have set out some of the evidence that has been compiled from various sources, including by the Institute for the Study of Human Rights at Columbia University, detailing how Turkey failed to take effective action to patrol its border, and allowed ISIS fighters, weapons and *materiel* to freely cross it, even after it was well known that ISIS had committed prohibited acts against the Yazidis. Had Turkish authorities taken effective action to prevent ISIS fighters and resources from crossing Turkish borders, they might have, or likely would have prevented, or at least would have contributed to the preventing of, ISIS’ commission of genocide against the Yazidis.

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organised the violent clashes and are responsible for the crimes committed during the events. The Grand Chamber of the ECtHR has found that HDP’s call was for peaceful protests and therefore the allegations were baseless: <http://hudoc.echr.coe.int/spa?i=001-207173>

<sup>937</sup> CNN Staff, Rights group: ISIS Attack on Kobani is “Second Largest”, CNN, 26 June 2015, available at <https://edition.cnn.com/2015/06/26/middleeast/isis-syria/> (accessed 16 July 2020).

<sup>938</sup> M. Landler et al., Turkish Inaction on ISIS Advance Dismays the US, 7 October 2014, *New York Times*, available at <https://www.nytimes.com/2014/10/08/world/middleeast/isis-syria-coalition-strikes.html?hp&action=click&pgtype=Homepage&module=first-column-region&region=top-news&WT.nav=top-news&r=0> (accessed 16 July 2020).

<sup>939</sup> *Ibid.*

<sup>940</sup> *Ibid.*

<sup>941</sup> *Ibid.*

<sup>942</sup> BBC, Islamic State: Turkey to Let Iraq Kurds Join Kobane Fight, 20 October 2014, available at <https://www.bbc.co.uk/news/world-middle-east-29685830> (accessed 14 July 2020).

### 1.7 Turkey's Failure to Police Border Crossings Despite Availability of Resources

25. On the basis of the publicly available evidence, Turkey would have had military and other resources to monitor and police its borders to prevent, or at least limit, ISIS fighters, weapons and *materiel* from crossing the Turkish border and being used to commit prohibited acts in and after 2014. The majority of threats to Turkey's national security had previously come from internal Kurdish rebel groups, notably the PKK, since 1984.<sup>943</sup> Turkish armed forces have been deployed into northern Iraq on numerous occasions with the intention to combat the PKK, these included operations involving thousands of troops dating back to 2007 and 2011.<sup>944</sup> Peace negotiations with the PKK were ongoing between 2012 and 2015, but they broke down partly due to domestic issues and the Syrian armed conflict.<sup>945</sup>
26. The Turkish military and the PKK broadly maintained a ceasefire throughout 2014, which would have seen an increase in Turkish troops available to monitor and police the Turkish border. Indeed, by 16 August 2014, Turkey had claimed to have boosted its border security to stop the infiltration of foreign fighters, and it was publicly denouncing ISIS, albeit in muted terms.<sup>946</sup>
27. In spite of these public denunciations, however, as noted above, ISIS fighters were able to continue crossing the Turkish border and transferring weapons and resources also during this period. In making this public claim denouncing ISIS fighters, Turkey may thus simply have been making a calculated, political move given the fact that 49 of its citizens, including its consul-general in Mosul, were captured by ISIS on 11 June 2014 and remained so in August 2014.<sup>947</sup>
28. Around the beginning of July 2015, Turkey amassed significant ground forces along the Turkish-Syrian border; an area (from the city of Al-Malikiyah until the village of Shuhukh on the east bank of the river Euphrates) controlled by the YPG as well amassing forces opposite areas controlled by ISIS.<sup>948</sup> Several

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<sup>943</sup> A. Gürzel, Turkey's Role as a Regional and Global Player and its Power Capacity: Turkey's Engagement with Other Emerging States, *Journal of Sociology and Politics*, 22 (50), June 2014, available at <https://doi.org/10.1590/1678-987314225007> (accessed 10 November 2020).

<sup>944</sup> CIA, World Factbook, Turkey, Military and Security, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html> (accessed 10 November 2020).

<sup>945</sup> CIA, World Factbook, Appendix T: Terrorist Organisations, The Kurdistan Worker's Party, available at <https://www.cia.gov/library/publications/the-world-factbook/appendix/appendix-t.html> (accessed 10 November 2020).

<sup>946</sup> S. Demirtaş, Turkey, Silent but Active Against ISIL Threat, *Hurriyet Daily News*, Opinion, 16 August 2014.

<sup>947</sup> *Ibid.*

<sup>948</sup> G. Bisoukis, Turkish Military Forces Bombed ISIS and PKK Positions in Syria And Northern Iraq, *DCSS News - Plymouth University*, 27 July 2015, available at <http://blogs.plymouth.ac.uk/dcss/2015/07/27/turkish-military-forces-bombed-isis-and-pkk-positions-in-syria-and-northern-iraq/> (accessed 20 October 2020); B. Misztal, B. Thomson, Turkish Posturing on Syrian Border Raises Questions About Intervention, *Bipartisan Policy Centre*, 7 July 2015.

incidents occurring in this period brought the ceasefire between Turkey and the PKK to an end.<sup>949</sup>

29. On 20 July 2015 a Turkish suicide bomber killed 30 people and injured 100 others at a cultural centre on the Turkish border town of Suruc.<sup>950</sup> Turkey accused ISIS of the attack. In response to the attack, on 24 to 25 July 2015, Turkish military forces carried out military action against ISIS targets in Syria for the first time, comprising airstrikes and deployment of special forces.<sup>951</sup> The targets included what the Prime Minister said were the group's headquarters and an assembly point.<sup>952</sup> The Government also rounded up hundreds of suspected militants in a coordinated crackdown inside Turkey;<sup>953</sup> militants the State had long denied existed in Turkey. Turkish airstrikes and artillery also attacked, on 25 July 2015, PKK forces in Iraq close to the Turkish border. Turkey maintained that it was responding to PKK terror attacks.<sup>954</sup> The apparent agreement with the US saw numerous airstrikes by Turkey and other military operations in and around northern Iraq and Syria, particularly against the PKK and YPG.<sup>955</sup> Despite these actions, in November 2015, after the terrorist attacks in Paris on 13 November 2015, a group waving black ISIS flags appeared, honking the horns of their cars and celebrating in the streets of Gaziantep, Turkey.<sup>956</sup> The footage was shared widely on social media.

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<sup>949</sup> *Ibid.* Note that this was not the sole incident which brought the ceasefire an end. It was one of the several incidents that led to it: the Suruc attack targeting the youth group; Musellim Unal's killing; killing of two police officers in Ceylanpinar; and Turkey's military operation of 25 July as is referred below. See also, <https://odatv4.com/iste-cozum-surecinin-kronolojisi-1108151200.html>; L. Kafanov, End of Turkey-PKK ceasefire puts HDP in a tough spot, *Al Jazeera*, 10 August 2015, available at <https://www.aljazeera.com/news/2015/8/10/end-of-turkey-pkk-ceasefire-puts-hdp-in-a-tough-spot> (accessed 2 June 2022); A. Yaman, Turkey peace talks flounder after week of deadly violence, *Al Jazeera America*, 1 August 2015, available at <http://america.aljazeera.com/articles/2015/8/1/turkey-peace-process-floundered-by-violence.html> (accessed 1 June 2022).

<sup>950</sup> Turkey: Chronology – 2011, The Wilson Center, 20 July 2016, available at: <https://www.wilsoncenter.org/article/turkey> (accessed 10 May 2022).

<sup>951</sup> G. Bisoukis, Turkish Military Forces Bombed ISIS and PKK Positions in Syria And Northern Iraq, *DCSS News - Plymouth University*, 27 July 2015, available at <http://blogs.plymouth.ac.uk/dcsc/2015/07/27/turkish-military-forces-bombed-isis-and-pkk-positions-in-syria-and-northern-iraq/> (accessed 20 October 2020).

<sup>952</sup> C. Letsch et al., Turkey Carries Out First Ever Strikes Against ISIS in Syria, *The Guardian*, 24 July 2015, available at <https://www.theguardian.com/world/2015/jul/24/turkish-jets-carry-out-strikes-against-isis-in-syria-reports> (accessed 28 June 2021).

<sup>953</sup> C. Letsch et al., Turkey Carries Out First Ever Strikes Against ISIS in Syria, *The Guardian*, 24 July 2015, available at <https://www.theguardian.com/world/2015/jul/24/turkish-jets-carry-out-strikes-against-isis-in-syria-reports> (accessed 28 June 2021); Syrian Observatory for Human Rights, Turkish jets strike several Islamic State targets in Syria, 24 July 2015, available at <https://www.syriahr.com/en/26464/> (accessed 4 May 2022); Alarabiya News, Turkey arrests 251 suspected militants, 24 July 2015, available at <https://english.alarabiya.net/news/middle-east/2015/07/24/turkish-police-raid-suspected-isis-pkk-militants-in-istanbul-reports-> (accessed 4 May 2022).

<sup>954</sup> G. Bisoukis, Turkish Military Forces Bombed ISIS and PKK Positions in Syria And Northern Iraq, *DCSS News - Plymouth University*, 27 July 2015, available at <http://blogs.plymouth.ac.uk/dcsc/2015/07/27/turkish-military-forces-bombed-isis-and-pkk-positions-in-syria-and-northern-iraq/> (accessed 20 October 2020).

<sup>955</sup> S. Frantzman, Analysis: Why Is Turkey Bombing Yazidis in Iraq?, *Jerusalem Post*, 26 April 2017; Hurriyet Daily News, Earlier Intervention Could Have Prevented the Rise of ISIL, Turkish PM Tells CNN, 28 July 2015.

<sup>956</sup> U. Bulut, ISIS Selling Yazidi Women and Children in Turkey, *Gatestone Institute*, 20 December 2015, available at <https://www.gatestoneinstitute.org/7078/turkey-isis-slaves> (accessed 8 May 2022).

### 1.8 Approach to Yazidi Survivors and Refugees in Turkey

30. On 7 August 2014, Turkish Foreign Minister at the time, Ahmet Davutoğlu, announced in a televised interview with *NTV* that humanitarian aid provided by Turkey's disaster management agency ("AFAD"), was delivered by Iraq's helicopters for members of the Yazidi community trapped in the mountains of the Sinjar region.<sup>957</sup> This was the first instance of help to the Yazidis from Turkey that has been identified. As of 26 August 2014, AFAD was also sheltering around 1,500 Yazidis in a camp in the Turkish town of Midyat.<sup>958</sup> Prior to April 2014, Turkey had been transferring aid to the no-man's land or "zero point" between Turkey and Syria's border for onward shipment into Syria.<sup>959</sup> Pro-Kurdish Peace and Democracy Party ("BDP") officials complained that the "zero point" humanitarian aid deliveries excluded Kurdish areas in Syria and that Kurdish casualties were not being allowed across.<sup>960</sup> Turkish officials and several aid organisations confirmed that some aid was, however, being sent to Kurdish-controlled areas in northern Syria, mainly through the Şenyurt crossing in Mardin (across from Darbassiyeh on the Syrian side) and Mürşitpınar in Şanlıurfa (across from Ayn al-Arab/Kobane).<sup>961</sup>
31. Reports have suggested that Turkey absorbed a significant number of Yazidi refugees; by September 2014, reports from government sources suggested varying estimates of Yazidis (10,000 to 16,000) who had crossed into Turkey with many living with "relatives in Turkey" and some 2,810 being held in specially designated camps.<sup>962</sup> Turkey claims they suffered no discrimination or harm<sup>963</sup> but there are allegations that Turkey did not allow Kurdish refugees to cross with vehicles or livestock.<sup>964</sup> In October 2014, Foreign Minister Mevlüt Çavuşoğlu pleaded for assistance with the increase in refugees to Turkey.<sup>965</sup>
32. Turkey introduced temporary protection legislation on 22 October 2014 that extended protection to "citizens of the Syrian Arab Republic, stateless persons

<sup>957</sup> Hurriyet Daily News, Turkey Airdrops Aid to Internally Displaced Persons in Iraq, 7 August 2014. See also, Humanitarian Aid Boxes from Turkey Dropped into Yazidi Minority, *Daily Sabah*, 7 August 2014, available at <https://www.dailysabah.com/turkey/2014/08/07/turkey-gives-sanctuary-to-hundreds-of-yazidis-fleeing-iraq> (accessed 12 November 2020).

<sup>958</sup> P. Humeyra, Smugglers and Kurdish Militants Help Iraq's Yazidis Flee to Turkey, *Reuters*, 26 August 2014, available at <https://uk.reuters.com/article/us-iraq-security-turkey-yazidis/smugglers-and-kurdish-militants-help-iraqs-yazidis-flee-to-turkey-iduskbn0gq1mx20140826> (accessed 12 November 2020).

<sup>959</sup> International Crisis Group, Calibrating the Response: Turkey's ISIS Returnees, 29 June 2020, available at <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 10 August 2020).

<sup>960</sup> *Ibid.*

<sup>961</sup> *Ibid.*

<sup>962</sup> Y. S. Inance, Turkey Opens its Doors to Yazidis Fleeing From ISIS, *Daily Sabah*, 7 September 2014; Agence France-Presse, Number of Yazidi Refugees in Turkey Swells to 16,000: Official, 31 August 2014.

<sup>963</sup> *Ibid.*

<sup>964</sup> R. Goldman, Kurds, Turkey and the US: 5 Years of Tension, Alliances and Conflict, *New York Times*, 10 October 2019, available at <https://www.nytimes.com/2019/10/10/world/middleeast/turkey-syria-kurds-history-facts.html> (accessed 10 October 2020).

<sup>965</sup> L. Büyükelçiliği, Article by Foreign Minister Mevlüt Çavuşoğlu On Kobane, *The Guardian*, 21 October 2014, available at <http://london.emb.mfa.gov.tr/mission/showannouncement/220455> (accessed 16 July 2020).

and refugees who have arrived at or crossed our borders coming from Syrian Arab Republic as part of a mass influx or individually for temporary protection purposes due to the events that have taken place in Syrian Arab Republic since 28 April 2011.”<sup>966</sup> This, therefore, did not apply to non-Syrian refugees seeking asylum in Turkey.<sup>967</sup> Instead, Yazidis from Sinjar were to apply for “International Protection (the regular asylum procedures) or seek humanitarian residence permits”, but there was no mechanism to explain this to them, and it took over a year after the massacre in Sinjar before any UN body visited the refugee camps in South-eastern Turkey (The Maden camp (coal mines) in Şırnak (853 persons); Duderan camp in Siirt (470 persons); Gout Ezidi village in Batman (160 persons); Koruxe camp in Bitlis (900 persons); Fidanlık camp in Diyarbakir (3,383 persons)).<sup>968</sup>

33. In June 2015, the estimate of Yazidi refugees coming into Turkey was revised by independent assessments to indicate some 30,000 Yazidi refugees had fled from northern Iraq into Turkey with around 20,000 remaining in refugee camps primarily run by Kurdish municipalities who generally manifested solidarity; camps run by AFAD saw adversely differential treatment.<sup>969</sup> The vast majority of Yazidis were apparently living in poor conditions in refugee camps in Mardin and Diyarbakir municipalities, all predominantly Kurdish towns in the South-Eastern Mardin province.<sup>970</sup> Turkey also provided humanitarian assistance to meet the needs of refugees, including Yazidis, in camps in Iraq, particularly in the Dohuk region of Iraqi “Kurdistan”, close to the Turkish border.<sup>971</sup> In November 2015, the then Minister Çavuşoğlu emphasised that Turkey’s “open-door” policy was pursued regardless of ethnic or religious affiliations of those who seek refuge. There were estimated to be between 18,000 to 30,000 Yazidi refugees in Turkey, who were “mostly hosted by the local governments in the region as well as the Yazidi communities who are Turkish citizens” in 2015.<sup>972</sup>

### 1.9 Sale of Enslaved Yazidi Women and Girls in Turkey

34. There are credible allegations that: (a) ISIS had trafficked Yazidi women and girls across the borders between Turkey, Syria and Iraq with, at the least, the support or acquiescence of Turkish officials; and (b) between 2014 and 2015,

<sup>966</sup> Turkey Temporary Protection Regulation 2014 archived and translated here: <https://perma.cc/9v29-hqz5> (accessed 20 November 2020).

<sup>967</sup> U. Korkut, Pragmatism, Moral Responsibility or Policy Change: The Syrian Refugee Crisis and Selective Humanitarianism in the Turkish Refugee Regime, *Comparative Migration Studies*, 4, 2, 2016, pp 3, 20, available at <https://doi.org/10.1186/s40878-015-0020-9> (accessed 14 July 2020).

<sup>968</sup> Research Centre on Asylum and Migration (IGAM), Yazidi Refugees in Sinak, Siirt, Batman and Diyarbakir and the Factors Forcing them to Move to the Bulgarian Border, 25 June 2015.

<sup>969</sup> *Ibid.*

<sup>970</sup> J. Paraszczuk, Displaced and Traumatized by IS, Yazidis Try - and Fail - to Reach Europe, *Radio Free Europe*, 2 July 2015; U. Bulut, Displaced by Islamic State, Yazidis Find Harsh Conditions in Turkey, *VoA*, 9 October 2016.

<sup>971</sup> Hurriyet Daily News, Turkey to Build Camp Inside Iraq for Yazidis, 13 August 2014.

<sup>972</sup> P. Metni, Türkiye Artık Göçmenler Ülkesi, *Art-Izan*, 16 March 2015, available at <http://www.art-izan.org/artizan-arsivi/turkiye-artik-gocmenler-ulkesi-panel-metni/> (accessed 14 October 2020).

Yazidi women and girls in Turkey were forced by Turkish officials (or others with the permission or acquiescence of state officials) into marriages, human trafficking, sexual slavery and/or other forms of sexual violence.<sup>973</sup> The evidence points towards a failure to prevent a continuing prohibited act, namely serious bodily and mental harm as an underlying act of genocide and, furthermore, as discussed below, a continuing failure to punish those responsible.<sup>974</sup>

35. Estimates from individuals with expertise in helping coordinate the rescues of Yazidis in Iraq and Syria believe that several hundred of the women and children might have been taken to neighbouring Turkey, where many of the ISIS fighters were from.<sup>975</sup> According to Yazidi law-maker Vian Dakhil, between August and October 2014, more than 25,000 Yazidi girls were abducted by ISIS to be raped and sold,<sup>976</sup> however, the figure has recently been declared closer to 6,500 Yazidis having been held in captivity, with thousands killed or missing.<sup>977</sup>
36. Young women between the ages of 15 and 20 were most commonly forced into sex work, but girls as young as 13 were also sexually exploited. There are allegations of State-condoned marketplaces for sex work in which Syrian and Iraqi women and children are sold to much older but wealthy men in Turkey and other States in the Gulf region and forced into sex work.<sup>978</sup> In and after 2015, deputies of the Turkish Republican People's Party ("CHP") and HDP submitted many inquiries to the Turkish Parliament in order to identify and ascertain the truth behind claims of "selling Yazidi Women and young girls."<sup>979</sup> ISIS' slavery operations were reported to be up and running in three Turkish cities - Gaziantep, Urfa and Ankara - as documented by a Yazidi human rights campaigner, Ali el-Hansouri.<sup>980</sup>

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<sup>973</sup> See J. Arraf, This Man Has Freed Hundreds of Yazidis Captured By ISIS. Thousands Remain Missing, *NPR*, 18 January 2018.

<sup>974</sup> See Section C (Commission of prohibited acts against the Yazidis as a protected group) of Part III (Findings on Genocide) of this Report for the material acts of genocide.

<sup>975</sup> J. Arraf, This Man Has Freed Hundreds of Yazidis Captured By ISIS. Thousands Remain Missing, *NPR*, 18 January 2018.

<sup>976</sup> F. Jalalzai, L. Johnson, Iraq's Sole Yazidi Lawmaker Says 25,000 Girls Abducted By IS To Be Raped, Sold, *Radio Free Europe*, Radio Liberty, 9 October 2014, available at <http://www.rferl.org/content/iraq-yazidi-vian-dakhilpolitkovskaya-award-islamic-state/26627843.html> (accessed 24 July 2020).

<sup>977</sup> Prozessbeobachtung im Fall des angeklagten IS-Anhängers Taha Al-J. - Eine Bilanz des Schreckens, Kurdische Gemeinde Civaka Kurd li Almany, 29 November 2020, available at <https://kurdische-gemeinde.de/prozessbeobachtung-im-fall-des-angeklagten-is-anhaengers-taha-al-j-eine-bilanz-des-schreckens/> (accessed 11 December 2020).

<sup>978</sup> F. Jalalzai, L. Johnson, Iraq's Sole Yazidi Lawmaker Says 25,000 Girls Abducted By IS To Be Raped, Sold, *Radio Free Europe*, Radio Liberty, 9 October 2014 at <http://www.rferl.org/content/iraq-yazidi-vian-dakhilpolitkovskaya-award-islamic-state/26627843.html> (accessed 24 July 2020).

<sup>979</sup> Eevrensel, "Ezidi kadınlar Türkiye'de satılıyor" iddiası Meclis gündeminde, 4 February 2015, available at <https://www.evrensel.net/haber/103814/ezidi-kadinlar-turkiyede-satiliyor-iddiasi-meclis-gundeminde> (accessed 11 December 2020).

<sup>980</sup> E. Dunn, ISIS Opens Sex-Slave Market in Turkey's Capital, 21 November 2017, available at <https://faithkeepers.clarionproject.org/isis-opens-sex-slave-market-turkeys-capital/> (accessed 28 June 2021); S. N. Al-Deen, ISIS Opens Slave Markets to Sell Yazidi Girls in Turkey, *Sputnik Arabic*, 20 November 2017, available at [https://arabic.sputniknews.com/arab\\_world/201711201027660493-1داعش-أسواق-الذخيرة-تربكيا](https://arabic.sputniknews.com/arab_world/201711201027660493-1داعش-أسواق-الذخيرة-تربكيا) (accessed 12 November 2020).

37. In December 2015, Mahmut Togrul, a Turkish MP from the pro-Kurdish HDP said that ISIS was “moving freely in Gaziantep” and that there are individuals from all over the world who cross the Turkish border and confidently declare that they intend to join ISIS, he says “[t]his means they have hundreds of contacts here”.<sup>981</sup>
38. Togrul, in a parliamentary motion to Efkan Ala, Turkey's Interior Minister, asked about the alleged office where ISIS members engage in slavery and sex trade. His questions included:

*How many liaison offices affiliated with ISIS terror organization are there in Gaziantep? If there are, do those liaison offices have any legal basis? Under what names do these offices operate? Are those offices affiliated with any institution?*<sup>982</sup>

39. Despite the provision of some humanitarian assistance generally to Yazidis by Turkey, as summarised above, in the course of a single year, one Turkish negotiator stated that he transferred more than USD \$2.5 million to ISIS from the families of 250 Yazidi women and children in order to free them.<sup>983</sup> An ISIS liaison office dealing in slavery and sex trafficking was said to operate from Gaziantep, a city some 40km from the Syrian border.<sup>984</sup>
40. In relation to a specific set of cases, in November and December 2015, the Consortium of Public Broadcasters in Germany (“ARD”) and two German press agencies *NDR* and *SWR* aired an investigative piece on the trafficking of Yazidi women and girls by organised crime syndicates operating in Gaziantep, Turkey and the illegal transaction of money procured through the trafficking through a currency exchange office.<sup>985</sup> The report included video footage, text messages, voice records and receipts proving transaction of money under the name of a particular company. According to the report, photographs of Yazidi women held at ISIS camps in northern Iraq are published on a website controlled by ISIS. Clients in Turkey approach the traffickers through

<sup>981</sup> RT News, Turkish Bar Association Sues National Intel Agency & Police Over ISIS Slave Trade, 23 December 2015.

<sup>982</sup> C. Shakdam, Terror Profiteering: Turkey's Little House of Horrors, *American Herald Tribune*, 1 January 2016.

<sup>983</sup> C. Shakdam, Terror Profiteering: Turkey's Little House of Horrors, *American Herald Tribune*, 1 January 2016; G. Tahincioğlu, Köle pazarları ve gömlek değıştirenler, 21 August 2021, available at <https://t24.com.tr/yazarlar/gokcer-tahincioğlu-yuzlesme/kole-pazarlari-ve-gomlek-değistirenler.32173> (accessed 4 May 2022); Gaziantep haberler, Gaziantep Barosu'ndan Savcılığa MİT ve Kolluk Kuvvetleri Hakkında Suçduyurusu, 2 December 2015, available at <https://www.gaziantephaberler.com/haber/7898238/gaziantep-barosundan-savciliga-mit-ve-kolluk-kuvvetleri-hakkinda-sucduyurusu> (accessed 4 May 2022).

<sup>984</sup> C. Shakdam, Terror Profiteering: Turkey's Little House of Horrors, *American Herald Tribune*, 1 January 2016; G. Tahincioğlu, Köle pazarları ve gömlek değıştirenler, 21 August 2021, available at <https://t24.com.tr/yazarlar/gokcer-tahincioğlu-yuzlesme/kole-pazarlari-ve-gomlek-değistirenler.32173> (accessed 4 May 2022).

<sup>985</sup> Details of the company has been redacted for the purposes of this Report. Das Erste, Video: Syrien: Millionen für die Terrorgruppe IS, 29 November 2015, available at <https://www.daserste.de/information/politik-weltgeschehen/weltspiegel/videos/syrien-millionen-fuer-die-terrorgruppe-is-100.html> (accessed 4 May 2022).



intermediaries<sup>986</sup> and place their "order" upon negotiating the price for the requested women. These women are then transferred to Gaziantep. The clients and the traffickers arrange a location for the transaction to take place, using WhatsApp and Viber.<sup>987</sup> Published price lists for women and Yazidi girls issued by ISIS are well established.<sup>988</sup> 15,000 to 20,000 US dollars are a typical price. Price lists came sometimes with exceptions, such as one on 16 November 2016, which stated: "consumers are allowed to purchase only three slaves at a time, except those from Turkey, Syria and Gulf."<sup>989</sup> The traffickers hand over women to their "owners" upon receiving the agreed amount in cash. The money is then transferred via ISIS-liaison offices and middlemen to ISIS.<sup>990</sup>

41. After the investigative piece was aired, the matter was referred to the Gaziantep Public Prosecutor's Office following a complaint by Bektaş Sharqlı, the then president of the Gaziantep Bar Association ("GBA"),<sup>991</sup> and an NGO called the Progressive Women's Association<sup>992</sup> asking authorities to investigate the claims.<sup>993</sup> Reportedly, the Gaziantep Public Prosecutor's Office subsequently conducted a raid during which six Syrians were arrested for financing terrorism and membership in ISIS.<sup>994</sup> Some of the suspects denied the charges, saying that they had transferred money through foreign exchange offices from Syria where no banking service was available. The case, filed in 2015, ended a year later with an acquittal. While the verdict was appealed, the defendants who were tried without charge had already gone missing.<sup>995</sup> In the GBA's complaint to the Public Prosecutor's Office, a request was also made to file charges against MIT and Gaziantep law enforcement for their failure in taking preventive and necessary intelligence measures before the media reported that ISIS had established a slave trade in Gaziantep.<sup>996</sup>

<sup>986</sup> Details of some of these intermediaries are known but redacted for the purposes of this Report.

<sup>987</sup> C. Shakdam, Terror Profiteering: Turkey's Little House of Horrors, *American Herald Tribune*, 1 January 2016.

<sup>988</sup> J. Varghese, Shocking: ISIS Official "Slave" Price List Shows Yazidi, Christian Girls Aged "1 to 9" Being Sold for \$172, *International Business Times*, 5 November 2014.

<sup>989</sup> *Ibid.*

<sup>990</sup> C. Shakdam, Terror Profiteering: Turkey's Little House of Horrors, *American Herald Tribune*, 1 January 2016.

<sup>991</sup> G. Tahincioğlu, Köle pazarları ve gömlek değiştirenler, 21 August 2021, available at [https://t24.com.tr/yazarlar/gokcer-tahincioğlu-yuzlesme/kole-pazarlari-ve-gomlek-degistirenler.32173](https://t24.com.tr/yazarlar/gokcer-tahincioглу-yuzlesme/kole-pazarlari-ve-gomlek-degistirenler.32173) (accessed 4 May 2022).

<sup>992</sup> A Diyarbakır based organisation called Zorla Alınan Kadınlar İçin Mücadele Platformu (Platform to fight against forced retention of women) submitted a complaint on this.

<sup>993</sup> A. Bozkurt, Erdoğan's Hatred of Yazidis Takes a Toll in Turkey, *Nordic Monitor*, 31 July 2019, available at <https://nordicmonitor.com/2019/07/erdogans-hatred-of-yazidis-takes-a-toll-in-turkey/> (accessed 12 April 2021).

<sup>994</sup> *Ibid.*

<sup>995</sup> *Ibid.*

<sup>996</sup> Gaziantep haberler, Gaziantep Barosu'ndan Savcılığa MİT ve Kolluk Kuvvetleri Hakkında Suçduyurusu, 2 December 2015, available at <https://www.gaziantephaberler.com/haber/7898238/gaziantep-barosundan-savciliga-mit-ve-kolluk-kuvvetleri-hakkinda-sucduyurusu> (accessed 4 May 2022); The charges requested were: "Dereliction of Duty (TCK 257/2 and Misconduct in Office (TCK 257/1 Md.)"; Ç. Tahaoğlu, Criminal Complaint Against Selling Yazidi Women, *Bianet*, 8 December 2015, available at <https://m.bianet.org/english/women/169989-criminal-complaint-against-selling-yazidi-women> (accessed 4 May 2022).



42. The suspects were arrested, and a travel ban was imposed on them by the Criminal Court of Peace upon request of the GBA and Progressive Women's Association. The complaints from the GBA noted that:

*The case file contains thousands of cheques and invoices, which feature names of different companies. If we calculate the total amount of those cheques, they add up to 20-30 million dollars. In studying the materials of the case, it is clear that there is strong evidence of illegal processing of money, the source of which needs to be identified.*

43. In relation to the filing, when asked to comment, the then president of the GBA, Bektas Sarkli, said the following:

*The tragic reality is that Gaziantep is a crowded city; the suicide bombers easily cross [to Syria and Iraq]. Unfortunately, Gaziantep exports terrorism. When you see the ammunition captured and especially take into account the money transferred here [it is clear that] ISIS easily shelters in this city. Gaziantep is the logistic site of ISIS.<sup>997</sup>*

44. The first domestic hearing was held on 31 December 2015, during which neither the GBA nor the Progressive Women's Association were allowed to intervene.<sup>998</sup> In the second hearing, held on 15 January 2016, the suspects were acquitted due to apparent lack of evidence.<sup>999</sup>
45. The Gaziantep Assize Court was required by law to release its reasoned decision within 15 days of its ruling according to the law. The decision was promulgated on 8 April 2016. The decision did not include the GBA and Progressive Women's Association submissions relating to their intervention or any matter concerning the trafficking of women.<sup>1000</sup> The Court did not report the confiscated money to the National Treasury, which it was required to do by law. The Court only sent its reasoned decision to the National Treasury at a later date; details of which were not made public.
46. The situation with trafficking of women and girls in places like Gaziantep is very precarious, sensitive and dangerous both for victims, NGO workers and lawyers. Clear and sometimes specific threats have been made to both victims and lawyers about the consequences of attempting to investigate, document or attempt to prosecute any aspect of trafficking related crimes. Threats emanate from the criminal organisations that are responsible for trafficking, in addition to subtle warnings from local authorities or powerful local figures. A combination of the "shame" surrounding such trafficking (compounded by the

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<sup>997</sup> C. Shakdam, Terror Profiteering: Turkey's Little House of Horrors, American Herald Tribune, 1 January 2016.

<sup>998</sup> I. Emen, Yazidi Women Trade Case Closed in Two Weeks, Evidence Not Examined: Bar, *Hurriyet Daily News*, 18 April 2018.

<sup>999</sup> *Ibid.*

<sup>1000</sup> *Ibid.*

approach of authorities keen to cover-up any such activities), together with collusion on the part of local authorities with powerful criminal organisations mean that the threats to lawyers and victims are very serious. There may exist the possibility for some sensitive investigation work to document violations further, but even rudimentary access to justice is very difficult.<sup>1001</sup>

47. Women's rights organisations in Diyarbakir appealed to the Chief of Public Prosecutor Office of Gaziantep and asked them to investigate the allegations and launch a criminal case relating to various crimes and/or violations against ISIS perpetrators, however their demands were refused by the Prosecutor's Office.<sup>1002</sup> The demand for an inquiry emanating from Kurdish MPs was rejected in Parliament by the majority votes of the ruling Justice and Development Party ("AKP") and the Nationalist Movement Party ("MHP").<sup>1003</sup>

### *1.10 Ongoing Obligation to Prevent Amidst Continuing Genocide - Turkish-Backed Military Offensives in Syria and Iraq*

48. The evidence indicates that, from 2015 onwards, Turkey began conducting airstrikes and poorly orchestrated military action against Yazidi populated areas of northern Iraq and northern Syria, despite being aware of the potential serious risk to the lives and health of the Yazidi civilians in the area (and even though there was an ongoing genocide of the Yazidis). Of most concern is that militia forces trained by the Turkish military or otherwise linked to the Turkish military (including former ISIS militants now part of the Free Syrian Army) targeted Yazidis for prohibited acts. These actions, if proven, would be in direct contradiction to the ongoing obligation to prevent genocide.
49. Turkey's first direct military intervention against ISIS on Syrian soil (the "Euphrates Shield" operation) was on 24 August 2016, when Turkish backed forces (including the Free Syrian Army) captured Jarabulus from ISIS.<sup>1004</sup> The offensive concentrated on northern Syria, and the 97km region between Afrin and Manbij;<sup>1005</sup> Turkish troops and Turkish backed Syrian rebels captured several towns from Jihadists, including Jarabulus, Dabiq, and al-Bab, although the aim may have been to push Kurdish militants from Manbij before taking Raqqa.<sup>1006</sup>

<sup>1001</sup> Note on source: Accountability Unit Assessment, from field visit in 2016.

<sup>1002</sup> Haberler, IŞİD'in Gaziantep'teki Kadın Pazarına Suç Duyurusu, 8 December 2015, available at <https://www.haberler.com/isid-in-gaziantep-teki-kadin-pazarina-suc-duyurusu-7951706-haber/> (accessed 12 November 2020).

<sup>1003</sup> S. Hamed, IŞİD'in Ezidi kadınları Gaziantep'te sattığı haberi meclise taşındı, *Sputnik News Turkey*, 2 December 2015, available at <https://tr.sputniknews.com/turkiye/201512021019415516-isid-gaziantep-ezidi-felaknas-uca-efkan-ala-kole/> (accessed 11 December 2020).

<sup>1004</sup> Evrensel Daily, The How, What, When and Where of the Euphrates Shield Operation, 28 August 2017, available at <https://www.evrensel.net/daily/330752/the-how-what-when-and-where-of-the-euphrates-shield-operation> (accessed 20 November 2020).

<sup>1005</sup> *Ibid.*

<sup>1006</sup> BBC News, Turkey "Ends" Euphrates Shield Campaign in Syria, 30 March 2017, available at <https://www.bbc.co.uk/news/world-middle-east-39439593> (accessed 8 December 2020).

50. Despite condemnation from Iraqi Prime Minister Haider al-Abadi, 2,000 Turkish troops had their deployment extended across northern Iraq in October 2016, in preparation for a Mosul offensive against ISIS.<sup>1007</sup>
51. Armed groups allegedly trained by Turkish forces played a role in the clashes that broke out on 3 March 2017, between the Yazidi Sinjar Resistance Units (YBS) and the Rojava Peshmerga units<sup>1008</sup> (trained and equipped by the KDP<sup>1009</sup> and allegedly by MIT<sup>1010</sup>). With assistance from the PKK, the YBS made an attempt to enter the Yazidi populated town of Khanasor to protest the Peshmerga deployment in the northern sub-district region of Sinjar. On 14 March 2017, the Yazidi civilian protesters who came from the Sinjar area and from Newroz refugee camp in Derik, Syria, were subsequently attacked, killed and wounded by the MIT trained Peshmerga, although some protesters were photographed with guns.<sup>1011</sup>
52. Turkey's Euphrates Shield operation officially ended on 29 March 2017 when Al-Bab was taken over, and Iraqi security forces and the Hashd al-Shaabi ("PMU") drove out KDP fighters and overcame ISIS in the Sinjar region of Iraq.<sup>1012</sup> According to the Pentagon, despite ISIS losing "99%" of its territory

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<sup>1007</sup> Reuters, Turkey Says its Troops to Stay in Iraq Until Islamic State Cleared from Mosul, 12 October 2016, available at <https://www.reuters.com/article/us-mideast-crisis-iraq-turkey-iduskcn12c0kf> (accessed 23 November 2020).

<sup>1008</sup> Formed in 2012, Peshmerga Roj are under the umbrella of the so-called Kurdish National Council in Syria (ENKS), which is part of the so-called Syrian National Coalition based in Istanbul, Turkey. A. Sifo, Unfolding Facts About So-Called "Peshmerga Roj" in Zina Warti, *Hawar News Agency*, 20 April 2020, available at <http://www.hawarnews.com/en/haber/unfolding-facts-about-so-called-peshmerga-roj-in-zina-warti-h16029.html> (accessed 14 August 2020); K. Koontz, *Borders Beyond Borders*, Policy Paper 2019-21, *Middle East Institute*, October 2019, p. 24, available at [https://www.mei.edu/sites/default/files/2019-10/borders%20beyond%20borders\\_oct.%2025%2c%202019.pdf](https://www.mei.edu/sites/default/files/2019-10/borders%20beyond%20borders_oct.%2025%2c%202019.pdf) (accessed 14 August 2020).

<sup>1009</sup> eKurd Daily, Clashes Break Out between Rival Kurdish Groups in Iraq's Sinjar, 3 March 2017, available at <https://ekurd.net/clashes-rival-kurdish-sinjar-2017-03-03> (accessed 28 June 2021); Disorient Magazine, Kurden bekämpfen Kurden - offenbar mit deutschen Waffen, 21 June 2017, available at <https://www.disorient.de/blog/kurden-bekaempfen-kurden-offenbar-mit-deutschen-waffen> (accessed 12 August 2020).

<sup>1010</sup> A. Sifo, Unfolding Facts about So-Called "Peshmerga Roj" in Zina Warti, *Hawar News Agency*, 20 April 2020, available at <http://www.hawarnews.com/en/haber/unfolding-facts-about-so-called-peshmerga-roj-in-zina-warti-h16029.html> (accessed 14 August 2020). See also, Disorient Magazine, Kurden bekämpfen Kurden - offenbar mit deutschen Waffen, 21 June 2017, available at <https://www.disorient.de/blog/kurden-bekaempfen-kurden-offenbar-mit-deutschen-waffen> (accessed 12 August 2020).

<sup>1011</sup> ICG, *Winning the Post-ISIS Battle for Iraq in Sinjar*, Middle East Report No. 183, 20 February 2018, available at <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/183-winning-post-isis-battle-iraq-sinjar> (accessed 8 August 2020); Grasswire, Protestors Killed and Injured after Rojava Peshmerga Open Fire on Yazidi Demonstration in Iraq, 14 March 2017, available at <https://grasswire.com/2017/03/14/protestors-killed-injured-rojava-peshmerga-khanasor-sinjar-iraq/> (accessed 10 December 2020); Kurdistan 24, "Peaceful" Protestors in Khanasor Had Guns: Peshmerga Commander, 15 March 2017, available at <https://www.kurdistan24.net/en/story/11039-%e2%80%98peaceful%e2%80%99-protestors-in-khanasor-had-guns-peshmerga-commander> (accessed 12 January 2020).

<sup>1012</sup> A. Sifo, Unfolding Facts about So-Called "Peshmerga Roj" in Zina Warti, *Hawar News Agency*, 20 April 2020, available at <http://www.hawarnews.com/en/haber/unfolding-facts-about-so-called-peshmerga-roj-in-zina-warti-h16029.html> (accessed 28 June 2021); K. Koontz, *Borders Beyond Borders: The Many (Many) Kurdish Political Parties of Syria*, Policy Paper 2019-21, *Middle East Institute*, October 2019, p. 24, available at [https://www.mei.edu/sites/default/files/2019-10/borders%20beyond%20borders\\_oct.%2025%2c%202019.pdf](https://www.mei.edu/sites/default/files/2019-10/borders%20beyond%20borders_oct.%2025%2c%202019.pdf) (accessed 28 June 2021).

in Iraq between December 2017 and November 2018, it had not been eradicated, and mostly operated from remote rural areas, such as Anbar, Diyala, Kirkuk, Ninewa and Salah al-Din.<sup>1013</sup> However, as detailed below, Turkey's military interventions in Yazidi populated areas of Iraq and Syria continued, with an alleged focus on Kurdish threats to national security, as opposed to ISIS.

53. On 25 April 2017, Turkish Armed Forces conducted airstrikes on Mt Karachok, northeast Syria and Mount Sinjar, Iraq, with each State (according to Turkey) having been informed in advance and with the publicised intention of targeting YPG and PKK forces, respectively.<sup>1014</sup> This was the first time Turkish forces targeted the PKK based in north-western Sinjar, where Yazidi civilians were known to reside, and the airstrikes had not been authorized by the US-led coalition fighting ISIS.<sup>1015</sup> On Mt Karachok, the airstrikes hit YPG headquarters as well as a media centre, communications facilities and military institutions.<sup>1016</sup> In the KRG-controlled, agricultural areas of northern Iraq, Dohuk and Erbil Governorates, one farmer (6km South of the Turkish border) told Human Rights Watch that a projectile killed his father and wounded his cousin, both civilians, and that there were no military targets nearby.<sup>1017</sup> There were further Turkish airstrikes along Iraq's border with Turkey, locations that Turkish officials will have known are likely to hold Yazidi refugees given that northern Iraq is the "heartland" of the Yazidis<sup>1018</sup>: on 13 November 2017 near Barmiza Village; on 22 March 2018 on Sarkan Village; and, on 30 June 2018 there was shelling near Halania Village.<sup>1019</sup>
54. Turkey, either independently or in concert with the Free Syrian Army (FSA), launched (its second Syrian operation) "Operation Olive Branch" on 20 January 2018 against the YPG in northern Syria.<sup>1020</sup> Faraj, a former ISIS fighter from north-eastern Syria, told the *Independent* in February 2018 that "most of those who are fighting in Afrin against the YPG [People's Protection Units] are

<sup>1013</sup> M. Markusen, *The Islamic State and the Persistent Threat of Extremism in Iraq*, CSIS, November 2018, available at <https://www.csis.org/analysis/islamic-state-and-persistent-threat-extremism-iraq> (accessed 2 December 2020).

<sup>1014</sup> The Foreign Military Studies Office (FMSO) at Fort Leavenworth Kansas, *Operational Environment Watch*, Volume 7, 5, June 2017; Al Jazeera English, *Turkish Air Strikes Target Kurdish Fighters in Iraq and Syria*, 25 August 2017, available at [https://www.youtube.com/watch?v=atz6X\\_lw1oE](https://www.youtube.com/watch?v=atz6X_lw1oE) (accessed 2 December 2020).

<sup>1015</sup> I. Coles, J. Davison, *Turkish Jets Strike Kurdish Fighters in Syria, Iraq's Sinjar*, *Reuters*, 25 April 2017, available at <https://www.reuters.com/article/us-mideast-crisis-turkey-iraq-iduskbn17r0d2> (accessed 2 December 2020).

<sup>1016</sup> *Ibid.*

<sup>1017</sup> Human Rights Watch, *Turkey/Iraq: Strikes May Break Laws of War*, 19 September 2018, available at <https://www.hrw.org/news/2018/09/19/turkey/iraq-strikes-may-break-laws-war> (accessed 5 December 2020).

<sup>1018</sup> SOS Children's Villages, *Our Work with Children in Iraq, Kurdistan and the Yazidi People*, available at <https://www.soschildrensvillages.org.uk/iraq> (accessed 7 December 2020).

<sup>1019</sup> *Ibid.*

<sup>1020</sup> M. Gurcan, *Assessing the Post-July 15 Turkish Military Operations Euphrates Shield and Olive Branch*, Washington Institute Policy Note 59, March 2019, pp 1-8, available at <https://www.washingtoninstitute.org/uploads/documents/pubs/policynote59-gurcan.pdf> (accessed 2 December 2020).

ISIS, though Turkey has trained them to change their assault tactics."<sup>1021</sup> According to pro-government *Daily Sabah*, the FSA, backed by Turkish armed forces, took control of the Bursaya mountains in the town of Şeran on 28 January 2018; on 1 February 2018 the town of Bülbü; on 3 March 2018, the town of Racu; on 6 March 2018, the town of Şeran; and on 8 March 2018, the town of Cinderes.<sup>1022</sup>

55. Turkish presidential spokesman, Ibrahim Kalin, defended the offensive into Afrin, stating that: "Over the last year alone, more than 700 attacks have been launched from the Afrin area under PYD/YPG control against Turkish cities."<sup>1023</sup> In a "Reality Check" article, Koker of *BBC Turkey* identified that only 26 attacks over that period came from Syria - only 15 of which came from Afrin; the Turkish Ministry of Foreign Affairs responded that they hold records of 90 attacks from Afrin in that year "directly targeting Turkey," but no further details were provided.<sup>1024</sup>
56. The Syrian Observatory for Human Rights ("SOHR") monitored the shelling of targets across Afrin in January 2018 and reported on 16 January, that this included the areas of Qastal and Dikmdash, Basoufan, Villat al-Qadi, Ghazawiyah as well as other areas of Qatma, Kafr Jannah, and the villages of Qura Papa, Maskah, Jisr Hashraka in Raju Township, Iska, Basoufan, Dier Ballut, Shah Dira, Mullah Khalil, Jalma, Burj Sleiman and Jendires.<sup>1025</sup> Between 22 January and 21 February 2018, civilian Yazidis in Afrin, Syria suffered indiscriminate shellfire by Turkish troops, in addition to attacks by Kurdish forces.<sup>1026</sup>
57. There is evidence that Turkish armed forces allowed affiliated Syrian armed groups "free rein to commit serious human rights abuses against civilians in the northern city of Afrin" on "baseless accusations of affiliation to the PYD or

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<sup>1021</sup> P. Cockburn, Turkey Accused of Recruiting Ex-ISIS Fighters in Their Thousands to Attack Kurds in Syria, *The Independent*, 7 February 2018, available at <https://www.independent.co.uk/news/world/middle-east/turkey-isis-afirin-syria-kurds-free-syrian-army-jihadi-video-fighters-recruits-a8199166.html> (accessed 8 November 2020).

<sup>1022</sup> Daily Sabah, Operation Olive Branch: A Step Toward Freedom for Syria's Afrin, 17 March 2018, available at <https://www.dailysabah.com/politics/operation-olive-branch-a-step-toward-freedom-for-syrias-afirin/news> (accessed 2 December 2020).

<sup>1023</sup> I. Kalin, Turkish Official: Why US Should Partner with Turkey in Syria, *CNN*, 1 February 2018, available at <https://edition.cnn.com/2018/02/01/opinions/turkish-official-why-us-should-partner-with-turkey-in-syria-opinion-kalin/index.html> (accessed 10 December 2020).

<sup>1024</sup> I. Koker, Reality Check: How Many Attacks Did Turkey Face from Afrin?, *BBC Turkish*, 20 March 2018, available at <https://www.bbc.co.uk/news/world-middle-east-43262839> (accessed 8 December 2020).

<sup>1025</sup> SOHR, With the Turkish Military Moves on the Border after Erdogan's Statements, the Turkish Forces Re-Target Afrin in a Continuation of Escalation in the Area, 16 January 2018, available at <https://www.syriaahr.com/en/82947/> (accessed 28 June 2021).

<sup>1026</sup> Amnesty International, *Syria: Hundreds of Civilian Lives at Risk as Afrin Offensive Escalates*, 2 February 2018, available at <https://www.amnesty.org/en/latest/news/2018/02/syria-hundreds-of-civilian-lives-at-risk-as-afirin-offensive-escalates/> (accessed 28 June 2021); Human Rights Watch, *Syria: Civilian Deaths in Turkish Attacks May Be Unlawful*, 23 February 2018, available at <https://www.hrw.org/news/2018/02/23/syria-civilian-deaths-turkish-attacks-may-be-unlawful> (accessed 10 December 2020).

- YPG".<sup>1027</sup> Witnesses told the Commission of Inquiry that Turkish troops were on occasion present in the vicinity where lootings took place but had not acted to prevent them. There is credible evidence that hospitals, churches and a Yazidi shrine and Yazidi religious sites were looted and attacked with sectarian undertones and with the knowledge of Turkey's armed forces in the region.<sup>1028</sup>
58. The actions of Turkish backed FSA fighters, as well as Turkish armed forces in Afrin have contributed to the destruction of Yazidi cultural heritage. The American Schools of Oriental Research ("ASOR") published a report in March 2018 on Turkey's airstrikes on 27 January 2018 on Ain Dara in Afrin, a region in which the Yazidi presence and subsequently their heritage and shrines across the countryside date back to at least the thirteenth century.<sup>1029</sup> The report details the damage and concludes that attributing the damage to Turkish airstrikes is credible.<sup>1030</sup> Throughout this Operation Olive Branch, Yazidi temples were being destroyed, and minority groups, including Yazidis, "expelled and deported" by the invading group.<sup>1031</sup> Yazidis from Afrin reported that the Turkish-backed FSA Islamist group forced them to go to mosques and that the names of their villages had been changed.<sup>1032</sup> According to an interview with an expert from YES in August 2020, Yazidis from Afrin, as well as Ras al-Ain/Serê Kaniyê had been forced to leave their homeland, due to the Turkish airstrikes detailed above in 2018, and the land has now allegedly been taken over by radical groups.<sup>1033</sup>
59. A human rights organisation in Afrin has documented more than 20,000 archaeological artefacts as having been stolen by armed factions during the time that the Turkish backed FSA conducted its operations in the region of

<sup>1027</sup> Amnesty International, *Syria: Turkey Must Stop Serious Violations by Allied Groups and its own Forces in Afrin*, 2 August 2018, available at <https://www.amnesty.org/en/latest/news/2018/08/syria-turkey-must-stop-serious-violations-by-allied-groups-and-its-own-forces-in-afrin/> (accessed 16 July 2020).

<sup>1028</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/39/65, 9 August 2018, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/G1824615.pdf> (accessed 12 July 2020).

<sup>1029</sup> Bellingcat, Afrin: Incidents Of Desecration And Destruction Of Cultural Sites, 11 July 2019, available at <https://www.bellingcat.com/news/mena/2019/07/11/afrin-incidents-of-desecration-and-destruction-of-cultural-sites/> (accessed 20 April 2021).

<sup>1030</sup> ASOR, Cultural Heritage Initiatives (CHI) Safeguarding the Heritage of the Near East Initiative, Special Report: Current Status of the Tell Ain Dara Temple, March 2018, available at <http://archive.fo/dqxrh> (accessed 12 November 2020).

<sup>1031</sup> J. Hincks, Yazidis in Iraq and Syria Fear Fresh Persecution After Turkey's Offensive, *Time Magazine*, 24 October 2019, available at <https://time.com/5706818/yezidi-isis-turkey-syria-iraq/> (accessed 23 August 2020).

<sup>1032</sup> P. Cockburn, Yazidis Who Suffered under ISIS Face Forced Conversion to Islam amid Fresh Persecution in Afrin, *The Independent*, 18 April 2018, available at <https://www.independent.co.uk/news/world/middle-east/syria-yazidis-isis-islam-conversion-afrin-persecution-kurdish-a8310696.html> (accessed 23 August 2020); Ezidi24, Yazidis Face Forced Conversion to Islam by Syrian Islamist Rebel Fighters in Afrin, 13 September 2019, available at <https://ezidi24.com/en/?p=4754> (accessed 23 August 2020).

<sup>1033</sup> Interview with YES (Kurdish Yekîtiya Êzdiyên Sûriyê, engl. Union of Yazidis from Syria) member, 16 August 2020; Interview with a Yazidi political actor in Rojava, 8 August 2020. See also, N. Ahmado, Hundreds of Yazidis Displaced Amid Turkey's Incursion in Northeast Syria, *VoaNews*, 16 October 2019, available at <https://www.voanews.com/extremism-watch/hundreds-yazidis-displaced-amid-turkeys-incursion-northeast-syria> (accessed 23 August 2020).

Afrin.<sup>1034</sup> In addition, and by way of example, the following holy sites belonging to the Yazidis were destroyed by Turkish-backed radical Islamist groups across the Afrin District:

- i. Shrine Qere Cerna, Meydankê, Afrin Dam;
- ii. Shrine of the King of Adî, Qibar village, Shirawa district;
- iii. Shrine Parse Xatûn and Şêx Hemîd, Qestel Cindo village;
- iv. The building of the Yazidi association in Afrin city, Zerdesh statue, demolished by the Turkish army and FSA, an Islamic school was built in its place;<sup>1035</sup>
- v. Shrine Şêx Cindêd and Evdulrehman, Feqîra village;
- vi. Henan Mosque/Cemetery, Kafr Jana village in which Nuri Dersimi's grave was located and desecrated in late March 2018;<sup>1036</sup>
- vii. Destruction of the well-known holy place of Sheikh Berkat in Syria, now used for Turkish military observation;<sup>1037</sup>
- viii. On 27 March 2018, Yazidi media outlet *Ezdina News* published a video showing the desecration by men allegedly affiliated with Olive Branch forces of the Qara Jornah Shrine in the north-eastern sub-district of Sharran. The video shows several mocking the shrine and its adherents whilst burning strips of cloth tied to a tree outside, as well as before and after footage of the shrine's interior, demonstrating that some intentional destruction had occurred. Two of the people in the video are in civilian clothes, while one is wearing military webbing however, there are no marks identifying which brigade he belongs to.<sup>1038</sup>
- ix. On 21 May 2018, *Ezdina News* published a video showing the desecration of the Yazidi shrine of Sheikh Zayd, located just outside the town of Feqîra (Qarah Bash);<sup>1039</sup>

<sup>1034</sup> ARK News, The Theft of 20,000 Pieces of Antique from Afrin, 30 July 2019, available at <https://www.arknews.net/en/node/11760> (accessed 8 December 2020).

<sup>1035</sup> Rudaw, Li Efrînê çekdarên girêdayî Tirkîyê Mala Êzidiyan xerab kirin, 7 August 2020, available at <https://www.rudaw.net/kurmanci/kurdistan/0708202014> (accessed 23 August 2020).

<sup>1036</sup> Bellingcat, Afrin: Incidents Of Desecration And Destruction Of Cultural Sites, 11 July 2019, available at <https://www.bellingcat.com/news/mena/2019/07/11/afrin-incidents-of-desecration-and-destruction-of-cultural-sites/> (accessed 28 June 2021).

<sup>1037</sup> A. Hisen, R. Deniz, Report of Union of Yazidis from Syria Regarding Attacks of Turkish States and Supported Groups against Yazidis in Afrin (in Arabic), June 2020, available at <https://bit.ly/3tezyqt> (accessed 31 August 2020).

<sup>1038</sup> Bellingcat, Afrin: Incidents of Desecration and Destruction of Cultural Sites, 11 July 2019, available at <https://www.bellingcat.com/news/mena/2019/07/11/afrin-incidents-of-desecration-and-destruction-of-cultural-sites/> (accessed 28 June 2021).

<sup>1039</sup> *Ibid.*



- x. Shrine of Sheikh Ali, Basûfanê village in the Simeon mountains of Afrin, was destroyed in June 2018 by Turkish forces in order to set up a military installation;<sup>1040</sup>
  - xi. Shrine of Sheikh Rakab, one of the main Yazidi shrines, in Shadirah village, Shirawa district, destroyed on 21 June 2018;<sup>1041</sup>
  - xii. In August 2018, Turkish occupation militia were documented to have exhumed and vandalised the Yazidi Shrine of Sheikh Gharib, in Sinka village, Shiye subdistrict;<sup>1042</sup>
  - xiii. In January 2019, Sheikh Hamza's shine tree near Bulbul Village of Ze'ire was cut down by Turkish backed military police.<sup>1043</sup>
60. The Turkish trained FSA fighters that were sent to villages in Afrin, by way of example, killed and/or caused bodily or mental harm to the following Yazidi victims' details of which were given in an interview with YES:<sup>1044</sup>
- i. On 24 March 2018, Evdo Hemo Nasir and Fûad Heso Nasir of Qibar village came under indiscriminate fire;
  - ii. On 10 May 2018, Emer Şemo Memo, 66 years old, from Qibar village, was killed for refusing to convert to Islam by force;
  - iii. On 27 July 2018, Fatima Hemkê, 66 years old, Qetmê village, was killed for refusing to give her house to radicals;
  - iv. The family of Hesen Evdo, from Qestel Cindo village, five family members were killed when their car was stopped by radical groups while escaping from Afrin. Two other women with them were also killed (Fîdna Reşîd, 60 years old, and her daughter Şêrîn Simo, 26 years old);
  - v. On 17 November 2019, Nergis Dawid, 24 years old, was killed by Elî Şagorî.
61. Turkey's Operation Olive Branch ended on 18 March 2018 when Turkish forces seized control of Afrin, displacing thousands who went on to live in dire conditions, and who had already faced indiscriminate attacks by the FSA fighters sent in advance.<sup>1045</sup> The majority of Yazidis fled east to other PYD-

<sup>1040</sup> J. O'Connell, ASOR Cultural Heritage Initiatives, Incident Report Feature: Intentional Destruction Of Religious Sites In Afrin, US Dept Cooperation Agreement Number S-IZ-100-17-CA021, available at <http://www.asor.org/chi/reports/incident-report-feature/intentional-destruction-of-religious-sites-in-afrin> (accessed 20 April 2021).

<sup>1041</sup> *Ibid.*

<sup>1042</sup> Violation Documentation Center in North Syria, Violations Against Yazidis People in Afrin, 9 August 2018, available at <https://vdc-nsy.com/en/archives/2759> (accessed 8 December 2020).

<sup>1043</sup> *Ibid.*

<sup>1044</sup> Interview with YÊS (Kurdish Yekîtiya Êzdiyên Sûriyê - Union of Yazidis from Syria) member, 16 August 2020; Interview with a Yazidi political actor in Rojava, 8 August 2020. See also, N. Ahmado, Hundreds of Yazidis Displaced Amid Turkey's Incursion in Northeast Syria, VOA News, 16 October 2019, available at <https://www.voanews.com/extremism-watch/hundreds-yazidis-displaced-amid-turkeys-incursion-northeast-syria> (accessed 23 August 2020).

<sup>1045</sup> D. Meseguer, Stranded between Syria's Frontlines, Afrin's Yazidis Yearn for Lost Homelands, *Middle East Eye*, 6 October 2018, available at <http://archive.is/jfsdf> (10 December 2020). See also, Amnesty International, *Syria: Turkey Must Stop Serious Violations by Allied Groups and its own Forces in Afrin*, 2 August 2018, available at <https://www.amnesty.org/en/latest/news/2018/08/syria-turkey-must-stop-serious-violations-by-allied-groups-and-its-own-forces-in-afrin/> (accessed 16 July 2020).



controlled enclaves, such as the Shahba region of Aleppo.<sup>1046</sup> One example is the village of Shaderah/Sheikh al-Deir, 16 km south of Afrin. This Yazidi village inhabited by some Kurdish Muslims, saw most of its residents displaced due to the actions of Turkish forces and the Syrian National Army's occupation of Afrin on 18 March 2018, due to their fear of retaliation by the armed factions including groups such as the Sham Legion which carried out killings and torture of Yazidis.<sup>1047</sup> This village was later repopulated by non-Yazidis through organisations backed or funded by the Turkey.<sup>1048</sup> There are reports, including from the OHCHR and numerous NGOs, that document the fact that Turkey has permitted non-Yazidis and non-Kurds to repopulate areas of Afrin such that only some only about 20 percent of the original Kurdish population of northern Syria's Afrin (and very few Yazidis) remain in the region three years after Turkey and its allied armed groups seized the area.<sup>1049</sup>

62. Turkey's then Minister of Foreign Affairs, Çavuşoğlu, stated that its armed forces would remain in Afrin to continue working on the development of the area and then carry out a joint operation with Iraq's central government against Kurdish militants in Iraq.<sup>1050</sup> A number of residents in Afrin told *Amnesty International* that Turkish armed forces had a significant presence in the centre of the city and in several surrounding villages.<sup>1051</sup> However, according to Turkish officers and two FSA commanders from the operation, the set roles and missions throughout were insufficiently defined to FSA ground troops as they advanced West from Jarabulus, and there was poor communication with Turkish command.<sup>1052</sup>
63. On 5 April 2018, then Foreign Minister Çavuşoğlu published an article maintaining that Operation Olive Branch is an act of self-defence, and the weapons seized in Afrin "decisively prove this assessment."<sup>1053</sup>

<sup>1046</sup> D. Meseguer, Stranded between Syria's Frontlines, Afrin's Yazidis Yearn for Lost Homelands, *Middle East Eye*, 6 October 2018, available at <http://archive.is/jfsdf> (accessed 10 December 2020).

<sup>1047</sup> Ezdina Organisation (EO), A Charity Association Builds a Settlement and a Mosque Inside a Yazidi Village in Afrin Countryside to Change its Demographic, *EO News Report*, 14 May 2021, available at <https://www.ezdina.net/2021/05/video-charity-association-builds.html> (accessed 6 June 2021).

<sup>1048</sup> *Ibid.*

<sup>1049</sup> W. Van Wilgenburg, Kurds Becoming a Minority in Kurdish Region of Afrin: Statement, *Kurdistan 24*, 30 May 2021, available at <https://www.kurdistan24.net/en/story/24618-kurds-becoming-a-minority-in-kurdish-region-of-afrin-statement> (accessed 15 June 2021).

<sup>1050</sup> Republic of Turkey, Ministry of Foreign Affairs, Relations between Turkey-Syria, available at <http://www.mfa.gov.tr/relations-between-turkey%E2%80%93syria.en.mfa> (accessed 21 October 2020). See also, Reuters, Turkey's Erdogan says Syria's Afrin Town under Siege, Entry Imminent, March 2018, available at <https://www.reuters.com/article/us-mideast-crisis-syria-turkey/turkeys-erdogan-says-syrias-afrin-town-under-siege-entry-imminent-idUSKCN1GL1PP> (accessed 2 December 2020).

<sup>1051</sup> Amnesty International, Syria: Turkey Must Stop Serious Violations by Allied Groups and its own Forces in Afrin, 2 August 2018, available at <https://www.amnesty.org/en/latest/news/2018/08/syria-turkey-must-stop-serious-violations-by-allied-groups-and-its-own-forces-in-afrin/> (accessed 16 July 2020).

<sup>1052</sup> Amnesty International, Syria: Turkey Must Stop Serious Violations by Allied Groups and its own Forces in Afrin, 2 August 2018, available at <https://www.amnesty.org/en/latest/news/2018/08/syria-turkey-must-stop-serious-violations-by-allied-groups-and-its-own-forces-in-afrin/> (accessed 16 July 2020).

<sup>1053</sup> M. Çavuşoğlu, The Meaning of Operation Olive Branch, Foreign Policy, 5 April 2018, available at <http://www.mfa.gov.tr/article-by-h-e-mr-mevlut-cavusoglu-the-minister-of-foreign-affairs-of-turkey-the-meaning-of-operation-olive-branch.en.mfa> (accessed 3 December 2020).

64. On 9 May 2018, there were reports that Yazidi villagers in Ain Dera, Afrin sheltered displaced Yazidi families during the operation.<sup>1054</sup> These Yazidi families had become displaced because of acts that were committed by armed groups sent to the region under Turkish command. The acts detailed include: destruction of Yazidi shrines; abduction of Kurds and Yazidi women; the discriminatory treatment of minorities by “zealous Islamist militiamen allied to the Turkish army”; forced displacement and conversion to Islam; and civilians being prevented from returning to their homes and forced to remain in the enclave of Tel Rifaat, a town south-east of Afrin, which was rife with disease due to the horrendous humanitarian situation, described as a “de facto Turkish-backed buffer zone.”<sup>1055</sup>
65. On 15 August 2018, a Turkish state-sanctioned airstrike in Sinjar killed the high-profile, Yazidi-Turkish citizen, Ismael Özden, known by his *nom de guerre*, Zaki Shingali. Turkey described him as the most senior PKK leader in Sinjar,<sup>1056</sup> and according to a pro-government newspaper, he appeared on the country’s most-wanted “red list”.<sup>1057</sup> Whilst this airstrike had been apparently approved by the Iraqi Government, Özden was “considered a hero to many members of the embattled Yazidi minority in northern Iraq”.<sup>1058</sup> The former director of Yazda, Matthew Barber, denied that Shingali was a militant, stating that he was in fact a civilian who held a leadership position in the political wing of the PKK, and he oversaw humanitarian aid distribution to Yazidis in Sinjar after the attack in August 2014.<sup>1059</sup>
66. Allegations made by residents in Afrin against FSA militants “equipped and armed by Turkey” are further documented by Amnesty International in August 2018:

*These violations include arbitrary detentions, enforced disappearances, and confiscation of property and looting to which Turkey’s armed forces have turned a blind eye. Some of these groups, and Turkish armed*

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<sup>1054</sup> The New Arab, Turkey’s Afrin Operation Stokes Yazidi Fears and Fuels Displacement, 9 May 2018, available at <https://english.alaraby.co.uk/english/indepth/2018/5/9/turkeys-afrin-operation-stokes-yazidi-fears-and-fuels-displacement> (accessed 27 November 2020).

<sup>1055</sup> Reuters, S. Al-Khalidi FSA Commander Says 25,000 Syrian Rebels back Turkish Force in Syria, 21 January 2018, available at <https://uk.reuters.com/article/us-mideast-crisis-ria-turkey-rebels/fsa-commander-says-25000-syrian-rebels-back-turkish-force-in-syria-iduskbn1fa0ok> (accessed 4 December 2020).

<sup>1056</sup> U. Ergan, PKK Chief hit in Drone-Backed Operation, *Hurriyet*, 16 August 2018, available at <http://www.hurriyetaidailynews.com/turkey-neutralizes-most-wanted-pkk-suspect-in-northern-iraq-135849> (accessed 23 August 2020).

<sup>1057</sup> Daily Sabah, Turkish Ops in Iraq’s Sinjar Leave Senior PKK Terrorist Dead, 15 August 2018, available at <https://www.dailysabah.com/war-on-terror/2018/08/15/turkish-ops-in-iraqs-sinjar-leave-senior-pkk-terrorist-dead> (accessed 28 October 2020).

<sup>1058</sup> R. Callimachi, Turkish Airstrike in Iraqi Territory Kills a Kurdish Militant Leader, *New York Times*, 16 August 2018, available at <https://www.nytimes.com/2018/08/16/world/middleeast/turkish-airstrike-in-iraqi-territory-kills-a-kurdish-militant-leader.html> (accessed 21 April 2021).

<sup>1059</sup> J. Stocker, PKK Leader in Sinjar Killed in Turkish Airstrike, *Defense Post*, 15 August 2018, available at <https://www.thedefensepost.com/2018/08/15/turkey-airstrike-pkk-sinjar-iraq/> (accessed 21 April 2021).

*forces themselves, also have taken over schools, disrupting the education of thousands of children.*<sup>1060</sup>

67. In October 2018, armed groups from the Islamist Syrian rebel faction Faylaq al-Sham,<sup>1061</sup> who were fighting under the banner of the FSA, tried to build two mosques in the villages of Bosoufane and Burj Haider on the Shiraou side of Afrin, the resident majority of which are Yazidis.<sup>1062</sup> They forced Yazidi residents to attend religious studies, burned a sacred tree in the village of Kafrejna and a sacred religious shrine, as well as looting and digging up the Yazidi Sheikh Janeed shrine in the village of Fageera and destroying it.<sup>1063</sup> Whilst Turkey and its FSA faction continued military action, most US forces were ordered out of Syria in December 2018.<sup>1064</sup> Separatist Kurdish militants tied to the PKK allegedly attacked a Turkish army base in northern Iraq in January 2019, continuing Turkey's claims of self-defence in its military action.<sup>1065</sup>
68. There is evidence to conclude that former ISIS militants joined Turkey's operations on Kurdish controlled territory, with the (at least eventual) knowledge of Turkish armed forces, and that the militants went on to commit prohibited acts against Yazidi civilians under the banner of fighting with the FSA. In August 2019, Rojava Information Center published a database of over 40 former ISIS members, who now work in Afrin as part of Turkish-backed forces.<sup>1066</sup> The former ISIS members include commanders, brigade leaders, recruiting officers and co-ordinators said to be working directly with the MIT. The database details their role under ISIS, their new role as part of Turkish-backed jihadist forces, their current location, biographical information, and in some instances, photographs of them.<sup>1067</sup> The database shows that the former ISIS militants retrained and fought for Turkish-backed forces before 2019, and were based in Afrin, with some in the "Euphrates Shield region" and Jarabalus. Yousef Ali Meryamini had been arrested in Turkey for being an ISIS member

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<sup>1060</sup> Amnesty International, *Syria: Turkey Must Stop Serious Violations by Allied Groups and its own Forces in Afrin*, 2 August 2018, available at <https://www.amnesty.org/en/latest/news/2018/08/syria-turkey-must-stop-serious-violations-by-allied-groups-and-its-own-forces-in-afrin/> (accessed 8 August 2020)

<sup>1061</sup> Al Arabiya English, *Faylaq al-Sham: Erdogan's Favored Syrian Rebel Proxy that was Attacked by Russia*, 26 October 2020, available at <https://english.alarabiya.net/en/news/middle-east/2020/10/26/faylaq-al-sham-erdogan-s-favored-syrian-rebel-proxy-that-was-attacked-by-russia> (accessed 5 December 2020).

<sup>1062</sup> A. Insan, *Yazidis Persecuted by Rebel Groups in Afrin*, 5 October 2018, available at [https://syrianobserver.com/EN/features/46503/yazidis\\_persecuted\\_rebel\\_groups\\_afrin.htm](https://syrianobserver.com/EN/features/46503/yazidis_persecuted_rebel_groups_afrin.htm) (accessed 23 August 2020).

<sup>1063</sup> *Ibid.*

<sup>1064</sup> M. Landler et al., *Trump to Withdraw U.S. Forces From Syria, Declaring "We Have Won Against ISIS"*, *New York Times*, 19 December 2018, available at <https://www.nytimes.com/2018/12/19/us/politics/trump-syria-turkey-troop-withdrawal.html> (accessed 21 April 2021).

<sup>1065</sup> S. Hacaoğlu, *Turkey Says Kurdish PKK Members Attack Base in Northern Iraq*, *Bloomberg*, 26 January 2019, available at <https://www.bloomberg.com/news/articles/2019-01-26/turkey-says-kurdish-pkk-members-attack-base-in-northern-iraq> (accessed 21 November 2020).

<sup>1066</sup> RIC, *Database: Over 40 Former ISIS Members now Part of Turkish-Backed Forces Report*, 8 August 2019, available at <https://rojvainformationcenter.com/2019/08/database-over-40-former-isis-members-now-part-of-turkish-backed-forces/> (accessed 10 October 2020).

<sup>1067</sup> *Ibid.*

but appears to have been released without charge.<sup>1068</sup> Ahmad Muhammed Shabu was known to have been responsible for seizing property from dissidents, robbing and looting residents. Isma'il Firas al-'Abbar, was an ISIS commander in Deir-ez-Zor before leading a Turkish-backed brigade in Afrin.<sup>1069</sup> Basil Nayef al-Shehab, fought against the YPG with ISIS in Kobane before he became a commander in the Turkish-backed Sultan Murad brigade and took part in the occupation of Afrin.<sup>1070</sup> Abu al-Baraa al-Ansari, was an ISIS commander in Deir-ez-Zor who later commanded Turkish-backed militia, Ahrar al-Sharqiya.<sup>1071</sup>

69. On 7 October 2019, President Trump withdrew US troops from the Syrian border,<sup>1072</sup> and Turkish troops, and the Turkish-backed Syrian National Army, went on to displace 200,000 people and kill hundreds of civilians in Kurdish controlled regions of Syria.<sup>1073</sup> On 9 October 2019, Turkey launched its military "Operation Peace Spring", its third major operation in (northern) Syrian territory since "Euphrates Shield" (August 2016-March 2017) and "Olive Branch" (January-March 2018) mentioned above.<sup>1074</sup>
70. During this military offensive, Turkish F-16 jets destroyed YPG targets 30km deep east of the Euphrates River; Turkish airstrikes and howitzers hit 181 "terror" targets in the first night of the operation; Turkish troops advanced 7km deep into the bordering Tal Abyad town of northern Syria on 10 October. During this period, Turkish soldiers launched artillery shells on targets in Ras al-Ain.<sup>1075</sup>
71. According to a report by *SOHR*, the following is known: 71 died in the first week of the operation's launch in al-Rihaniyah village west of al-Alya area at the international highway in al-Hasaka province; Turkish airstrikes killed 19 in the city of Ras al-Ain; a child was killed in the shelling on the perimeter and the

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<sup>1068</sup> *Ibid.* Kurdish Issue, Raman Ghavami on radicalization of Syrian Refugees in Turkey's refugee camps, 30 March 2018, available at <https://kurdishissue.wordpress.com/2018/03/31/1-482/> (accessed 29 April 2022).

<sup>1069</sup> Morning Star, Turkey accused of extensive links to former Isis fighters, 8 August 2019, available at <https://morningstaronline.co.uk/article/w/turkey-accused-of-extensive-links-to-former-isis-fighters> (accessed 29 April 2022).

<sup>1070</sup> *Ibid.*

<sup>1071</sup> RIC, Database: Over 40 Former ISIS Members now Part of Turkish-Backed Forces Report, 8 August 2019, available at <https://rojavainformationcenter.com/2019/08/database-over-40-former-isis-members-now-part-of-turkish-backed-forces/> (accessed 10 October 2020).

<sup>1072</sup> M. Landler et al., Trump to Withdraw U.S. Forces From Syria, Declaring "We Have Won Against ISIS", *New York Times*, 19 December 2018, available at <https://www.nytimes.com/2018/12/19/us/politics/trump-syria-turkey-troop-withdrawal.html> (accessed 28 June 2021).

<sup>1073</sup> L. Seligman, Greenlighted by Trump, Turkey Invades Syria, *Foreign Policy*, 21 December 2019, available at <https://foreignpolicy.com/2019/12/21/turkey-syria-kurds-invasion-trump/> (accessed 21 November 2020).

<sup>1074</sup> B. Stanicek, Turkey's Military Operation in Syria and its Impact on Relations With the EU, European Parliamentary Research Service, November 2019, available at <https://www.europarl.europa.eu/eprs/eprs-briefing-642284-turkeys-military-operation-syria-final.pdf> (accessed 21 April 2021).

<sup>1075</sup> Hurriyet Daily News, "Operation Peace Spring" Enters Third Day, "Neutralizes" 342 Terrorists, 11 October 2019, available at <https://www.hurriyetaidailynews.com/operation-peace-spring-enters-third-day-neutralizes-342-terrorists-147388> (accessed 12 November 2020).

countryside of Ras Al-Ain, Al Hasakah; four were killed by Turkish air strikes on the village of Al-Bajiya, Tal Abyad, three by Turkish sniper in Tal Abyad, a girl in shelling targeting al-Qahtaniya countryside, and a man by a Turkish sniper in the city Al-Derbasiyah.<sup>1076</sup> In addition, a woman was killed by a Turkish sniper in al-Qamishli city, and a man was killed from Turkish shelling on the outskirts of "Qasr Deeb" village in al-Malikiyah countryside. In terms of targeting civilians, Turkish warplanes bombed a humanitarian support convoy in Ras al-Ain, which arrived from Tel Tamr, and included foreign and local journalists, killing 19 people, 15 of them were civilians, including a female citizen and 2 local reporters. In addition, two civilians were killed in a bombing by Turkish-backed militants in the village of al-Farat north of the city of Manbij.<sup>1077</sup> On 18 November 2019, a 23-year-old woman was also killed by Turkish-backed militants in Afrin.<sup>1078</sup>

72. In December 2019, in areas under Turkey's control, following Operation Euphrates Shield, *Genocide Watch* reported that civilians had been "subjected to horrific crimes against humanity committed by Turkish forces and Turkish supported militias".<sup>1079</sup> There have also been allegations of the use of white phosphorous in Kurdish towns and that hundreds of civilians had been summarily executed, as well as Yazidi women kidnapped and subjected to sexual slavery.<sup>1080</sup>
73. Yazidi civilians continue to be directly targeted by Syrian militants affiliated with the Turkish armed forces: on 1 April 2020, *SOHR* documented the death of a Yazidi civilian, who was killed by gunmen who tried to force him out of his home in Suffan village, Afrin.<sup>1081</sup> The perpetrator was a fighter with the Ankara-backed<sup>1082</sup> Al-Sham Corps who were fighting under the banner of the FSA in Afrin. Research has shown that Turkish-backed interventions into Syria have driven almost the entire Yazidi population in Afrin and Ras al-Ayn in Syria from their homes. All of the villages in north-west and north-central Syria with Yazidi inhabitants - some 51 villages in total - are now under occupation by the

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<sup>1076</sup> Syrian Observatory for Human Rights, Turkish Military Operation East Euphrates kills more than 70 civilians so far and forces nearly 300 thousand people to displace from their areas, 16 October 2019, available at <https://www.syriaahr.com/en/144078/> (accessed 18 November 2020).

<sup>1077</sup> *Ibid.*

<sup>1078</sup> Airwars, Turkish Military in Iraq & Syria, Yazidi Civilians database, available at [https://airwars.org/civilian-casualties/page/59/?belligerent=turkish-military&country=iraq%2Csyria&orderby=incident\\_date&order=asc](https://airwars.org/civilian-casualties/page/59/?belligerent=turkish-military&country=iraq%2Csyria&orderby=incident_date&order=asc) (accessed 23 November 2020).

<sup>1079</sup> G. Stanton, Turkey is Committing War Crimes and Crimes Against Humanity in Syria, *Genocide Watch*, 10 June 2020, available at <https://www.genocidewatch.com/single-post/2020/06/08/turkey-is-committing-war-crimes-and-crimes-against-humanity-in-syria> (accessed 12 July 2020).

<sup>1080</sup> *Ibid.*

<sup>1081</sup> Syrian Observatory for Human Rights, Yazidi Civilian Killed by Turkish-Backed Gunmen While Attempting to Force Him out of his House in Afrin, 1 April 2020, available at <https://www.syriaahr.com/en/158996/> (accessed 5 December 2020).

<sup>1082</sup> Al Arabiya English, Faylaq al-Sham: Erdogan's Favored Syrian Rebel Proxy that Was Attacked by Russia, 26 October 2020, available at <https://english.alarabiya.net/en/news/middle-east/2020/10/26/faylaq-al-sham-erdogan-s-favored-syrian-rebel-proxy-that-was-attacked-by-russia> (accessed 5 December 2020).

Turkish military and their affiliated militias, many of which espouse Islamist ideologies.<sup>1083</sup>

74. In addition to the continued killings of Yazidi civilians, Yazidi cultural heritage is still being targeted by the same militants who are present in the region with the authorisation of the Turkish-backed Syrian National Army. In April 2020, the Report of the Commission of Inquiry highlighted that:

*several Yazidi shrines and graveyards were deliberately looted and partially destroyed across locations throughout the Afrin region again, such as Qastel Jindo, Qibar, Jindayris and Sharran, further challenging the precarious existence of the Yazidi community as a religious minority in Syrian National Army-controlled regions, and impacting both the tangible and intangible aspects of their cultural heritage, including traditional practices and rites.*<sup>1084</sup>

75. Research undertaken by an expert at the Wilson Center found that:

*More than half of the sacred Yazidi shrines in Afrin have been destroyed or desecrated since the Turkish intervention, making it virtually impossible for Yazidis to openly practice their faith. Some of the militias in Afrin have kidnapped Yazidis and forced them to renounce their religion.*<sup>1085</sup>

76. The two Turkish interventions in Afrin in 2018 and Ras al-Ayn in 2019, prompted many Yazidis to flee the areas.<sup>1086</sup> Yazidi shrines, cemeteries, and cultural associations in Turkish-occupied Afrin and Ras al-Ayn have been either desecrated or destroyed. Yazidis in Afrin have been kidnapped and subjected to forced religious conversion by some of the armed groups operating there.<sup>1087</sup> The US State Department's 2020 Country Report on Human Rights Practices acknowledged the kidnappings and disappearances of women that have occurred in Afrin, citing the example of Arin Dali Hesén, a Yazidi woman from Kimar village who was kidnapped in February 2020 by the Hamza Division.<sup>1088</sup> Residents of Afrin fled in the direction of Shahba, while those from Ras al-Ayn fled to other areas under SDF control, in particular the region

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<sup>1083</sup> A. Austin Holmes, Syrian Yazidis under Four Regimes: Assad, Erdogan, ISIS and the YPG, *Wilson Centre, Occasional Paper Series No. 37*, July 2020.

<sup>1084</sup> Commission of Inquiry, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/45/31, 14 August 2020, para. 64.

<sup>1085</sup> A. Austin Holmes, Syrian Yazidis under Four Regimes: Assad, Erdogan, ISIS and the YPG, *Wilson Centre, Occasional Paper Series No. 37*, July 2020.

<sup>1086</sup> *Ibid.*

<sup>1087</sup> A. Austin Holmes, Threats Perceived and Real: New Data and the Need for a New Approach to the Turkish-SDF Border Conflict, *Wilson Center, Occasional Paper Series No. 39*, May 2021.

<sup>1088</sup> US State Department, 2020 Country Reports on Human Rights Practices: Syria, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/syria/> (accessed 15 June 2021).

around Amude and Hasakah.<sup>1089</sup> The continued existence of the Yazidi community in Syria depends to a large extent on conditions in the areas controlled by the Autonomous Administration, and whether Turkey will create conditions in Turkish-held areas that allow Yazidis who fled to return safely to their homes.

77. The US State Department's 2020 Country Report on Human Rights Practices further found that Turkish-supported Syrian armed opposition groups in northern Syria committed human rights abuses, reportedly targeting Kurdish and Yazidi residents and other civilians, including the arbitrary arrest and enforced disappearance of civilians, torture, sexual violence, forced evacuations from homes, looting and seizure of private property, transfer of detained civilians across the border into Turkey, the cutting of water to civilian populations, recruitment of child soldiers, and the looting and desecration of religious shrines.<sup>1090</sup>
78. The attitudes of those militants to Yazidis are highlighted in an interview published by the *Women Defend Rojava Channel* in May 2020. In this interview, a Yazidi refugee, Besima Daut, details how she and her daughter were forced to leave their village in Lizga village, between Serêkaniyê and Zirgan, and flee to Hasakah due to military bombardment and invaders saying that "Yazidi people are disbelievers so killing them is lawful."<sup>1091</sup>
79. Prohibited acts against Yazidis, within the jurisdiction of Turkey, have continued more recently. In July 2020, for instance, a Yazidi woman from Sinjar was rescued from enslavement in Ankara; the Iraqi Turkman who purchased her had moved her to the Turkish Capital in October 2019, highlighting that the impact of operations detailed above are still being seen today.<sup>1092</sup>
80. There are credible reports that fighters' families from these "Turkish-backed factions" were being resettled in villages in eastern Ras al-Ain countryside, under Turkish control, uprooting the pre-existing predominantly Yazidi population. There are more than ten villages in that countryside, inhabited by a population of 1,000 Yazidis who fled because of Turkey's military operation "Peace Spring". The Yazidi population is distributed geographically in Merikis, Jan Tamer, Lazka, Shukria, Java, Ldara, the tomb of Sheikh Hussein, Matala, Bir Noah and Hamidia. Several villages in the western countryside of Ras al-

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<sup>1089</sup> US State Department, 2020 Country Reports on Human Rights Practices: Syria, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/syria/> (accessed 15 June 2021).

<sup>1090</sup> US State Department, 2020 Country Reports on Human Rights Practices: Syria, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/syria/> (accessed 15 June 2021).

<sup>1091</sup> Women's Voices - Could This Be Another Shengal? Women Defend Rojava, 11 May 2020, available at [https://www.youtube.com/watch?v=vT\\_3Q8TNTWs&feature=emb\\_logo](https://www.youtube.com/watch?v=vT_3Q8TNTWs&feature=emb_logo) (English subtitles) (accessed 28 November 2020).

<sup>1092</sup> Ahval News, Yazidi family Rescues Enslaved Niece From ISIS Member in Turkey, 1 August 2020, available at <https://ahvalnews.com/yazidis/yazidi-family-rescues-enslaved-niece-isis-member-turkey> (accessed 20 November 2020).



Ain, such as Al-Assadiya, Khirbet Banat and Khirbet Ghazal, are also under the control of Turkish-backed factions.<sup>1093</sup>

81. Turkey's "Operation Claw-Eagle" was launched against northern Iraq on 15 June 2020; Turkey conducted airstrikes on Mount Sinjar upon the return of Yazidis to the area, claiming that it is targeting PKK "terrorists".<sup>1094</sup> Furthermore, Turkish airstrikes in Sinjar were reported on 25 August 2020 by Yazidi groups, which the Turkish Defence Ministry claimed successfully destroyed PKK ammunition in "terrorist hideouts".<sup>1095</sup> The repeated Turkish airstrikes in Mount Sinjar have terrified the Yazidi population, many of whom still live in makeshift tents. Turkish airstrikes hit Mount Sinjar, just as more than 150 Yazidi families had returned after living in IDP camps. Turkey justifies both the occupation of northern Syria and the airstrikes in Iraq as necessary to target PKK militants. However, Turkish military operations also deter Yazidi civilians from rebuilding their lives in the aftermath of genocide.<sup>1096</sup>
82. In August 2020, a Yazidi political actor who did not wish to be identified gave a statement in interview with an expert at the Committee, that Turkey allegedly trained ISIS militants and allowed them into Afrin, where they were shouting: "what we couldn't finish in Sinjar, we will finish here".<sup>1097</sup> This leads to questions about these individuals' specific intent, as they appear to be targeting predominantly Yazidi civilian areas during the commission of prohibited acts.<sup>1098</sup>
83. Turkey had largely failed to target ISIS terrorists prior to July 2015.<sup>1099</sup> Turkey's official motivations for targeting the region remain that Kurdish "terrorist" groups have "nested in Sinjar by taking advantage of the fight against Daesh" and blames "PKK's oppression" for "tens of thousands" of Yazidis being unable to return to their homelands.<sup>1100</sup> Turkey's targeting of these areas may derive from fears of threats to Turkey's border security if Kurdish insurgents

<sup>1093</sup> Syrian Observatory for Human Rights, Demographic Change in Rural Ras al-Ain: Yazidi Community Face Systematic Violations by Turkish-Backed Factions in More than Ten Villages, 20 April 2020, available at <https://www.syriaahr.com/en/160922/> (accessed 5 November 2020).

<sup>1094</sup> S. Frantzman, Turkey Carries out Airstrikes Against Yazidi Areas of Iraq's Sinjar, *The Jerusalem Post*, 15 June 2020, available at <https://www.jpost.com/middle-east/turkey-carries-out-airstrikes-against-yazidi-areas-of-iraqs-sinjar-631514> (accessed 28 June 2020). See also, S. Salloum, Turkey Bombs Yazidi Militia in Iraq Affiliated With PKK, *Al-Monitor*, 24 January 2020, available at <https://www.al-monitor.com/pulse/originals/2020/01/iraq-sinjar-kurdistan-yazidis-turkey.html> (accessed 28 June 2020).

<sup>1095</sup> Breitbart, Yazidis Report Fresh Turkish Bombings in Sinjar, Home of Islamic State Massacre, 26 August 2020.

<sup>1096</sup> A. Austin Holmes, Syrian Yezidis under Four Regimes: Assad, Erdogan, ISIS and the YPG, *Wilson Centre*, Occasional Paper Series No. 37, July 2020.

<sup>1097</sup> Interview with a Yazidi political actor in Rojava, 8 August 2020.

<sup>1098</sup> W. Van Wilgenburg, Turkish Drone Strike Kills 3 Women in North Syria's Kurdish City of Kobani, *Kurdistan 24*, 24 June 2020, available at <https://www.kurdistan24.net/en/news/37530bf2-3181-40f3-ae82-82d463326630> (accessed 14 July 2020).

<sup>1099</sup> *Ibid.*

<sup>1100</sup> Statement of The Spokesperson of The Ministry Of Foreign Affairs, Mr. Hami Aksoy, Turkish Embassy in London, 21 June 2020, available at <http://london.emb.mfa.gov.tr/Mission/ShowAnnouncement/372807> (accessed 28 July 2020).



maintain control, but there has been little, if any, consideration of the impact Turkey's operations have had on Yazidi civilians and refugees.<sup>1101</sup>

### Summary Findings on the Obligation to Prevent

84. The evidence reviewed in this section supports the conclusion that Turkey knew, or should have known, of the existence of a serious risk that ISIS would commit genocide against the Yazidis by, at the latest, July 2014, and most likely by April 2013. During this period, Turkey failed to take all measures reasonably available which might have contributed to preventing the commission of genocide against the Yazidis up to and including August 2014 and failed to take steps following that date to stop continuing acts of genocide.
85. There were measures that were reasonably available to Turkey, which the State could have taken, and which would likely have contributed to preventing the genocide from occurring. These measures included policing its borders and enforcing measures to halt the flow of ISIS fighters through Turkey (including significant numbers of Turkish nationals joining ISIS), as well as the trafficking of *materiel* and resources to ISIS; actions that it did later implement in order to protect its "own" interests in 2016.
86. Turkey had a special responsibility to the Yazidis given its ability to effectively influence the situation in neighbouring Iraq and Syria and not least because of its proximity and influence at the border. Turkey did not take sufficient measures to strengthen governance and control of its own networks, which in turn enabled ISIS to acquire sufficient fighters and resources prior to 2014 to enable it to commit the genocide, partly by transferring (or allowing the transfer of) such fighters and resources across the Turkish border.
87. Moreover, the Turkish Government failed to prevent the sale, transfer and enslavement of Yazidi women and children that occurred on its territory. Indeed, there is evidence that ISIS had trafficked Yazidi women and girls across the borders with Turkey, with the support or acquiescence of Turkish officials; and that between 2014 and 2015, and indeed to the present day, Yazidi women in Turkey were forced by Turkish officials (or others with the permission or acquiescence of state officials) into marriages, human trafficking, sexual slavery and/or other forms of sexual violence. The Turkish Government also failed to take measures to restrict the illicit oil trade, which financially benefited ISIS and allowed it to fund its commission of prohibited acts.
88. Turkey has continued to fail to take measures to prevent the ongoing genocide of the Yazidi. The above information supports the conclusion that, after Turkey gained control of the relevant regions in northern Syria during Euphrates Shield, and during the operations that followed in northern Syria, and northern Iraq, Turkey provided assistance, and/or allowed, to Turkish-backed militants

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<sup>1101</sup> P. Kingsley, Who Are the Kurds, and Why Is Turkey Attacking Them in Syria?, *New York Times*, 14 October 2019, available at <https://www.nytimes.com/2019/10/14/world/middleeast/the-kurds-facts-history.html> (accessed 28 July 2020).

and organised non-state actors (such as the FSA and Syrian National Army) with knowledge that there was serious risk that they would engage in the commission of prohibited acts against the Yazidis. As highlighted above, this included killings, enslavement, torture, forcible displacement.<sup>1102</sup> As such, there are strong grounds to conclude that Turkey has failed to take all means reasonably available to prevent the ongoing genocide of the Yazidis.

## 2. Obligation to Not Be Complicit in Genocide

89. Turkey, as noted at the start of this section, knew about ISIS's intention to commit genocide against Yazidis, at the latest, by July 2014 and most likely from April 2013. UNAMI POC Report No. 1 of 2014<sup>1103</sup> had put on notice all Member States of the UN before ISIS started committing the vast majority of its prohibited acts against the Yazidis in August 2014.<sup>1104</sup> Thus, there are reasonable grounds to conclude that from July 2014 at the latest, and most likely from April 2013 onwards, Turkey knew that any aid or assistance provided to ISIS would be used in the commission of genocide.
90. Rather than suspending or terminating its support for ISIS, Turkey continued to aid and assist ISIS activities both directly and indirectly in this period up to and including July 2015 when its position towards ISIS underwent a fundamental reversal: from support to disavowal. The following sections outline the information upon which there are grounds to conclude that Turkey provided aid or assistance to ISIS by deliberately allowing its territory to be used for the recruitment and training of ISIS militants, and deliberately allowing for the free flow of fighters, logistical support, weapons and ammunition across its borders, and the smuggling of oil and enslaved Yazidis across its borders by ISIS to be sold in Turkey.

### 2.1 Recruitment and Training of Former ISIS militants

91. In July 2014, the Turkish provinces of Duzce and Adapazari - locations that Turkish Armed Forces had direct access to - had allegedly become hotspots where ISIS militants would gather and train; the training videos would then be posted to Turkish ISIS propaganda website *takvhaber.net*.<sup>1105</sup> Following the uploading of a video of an ISIS affiliate holding a gathering in Omerli, CHP Deputy, Sezgin Tanrikulu, submitted parliamentary questions to Interior Minister, Efkân Ala asking whether it is "true that a camp or camps have been

<sup>1102</sup> Syrian Observatory for Human Rights, Turkish-backed Factions Atrocities: "Al-Sham Corps" Kills Yazidi Civilian in Afrin's Shirawa, 14 August 2020, available at <https://www.syriahr.com/en/179607/> (accessed 12 November 2020).

<sup>1103</sup> UNAMI POC Report No. 1 of 2014, pp 6-7, 21-22.

<sup>1104</sup> Fishkhabur, S. Assir, Iraq Yazidis Say Sunni Muslim Neighbours Enabled Jihadist Attack, *Agence France-Presse*, 14 August 2014.

<sup>1105</sup> CNN Turk, İstanbul'da Piknik Yapıp Cihat çağrısında Bulundular, 29 July 2014, available at <https://www.cnnturk.com/video/turkiye/istanbulda-piknik-yapip-cihat-cagrisinda-bulundular> (accessed 12 November 2020).

allocated to an affiliate of ISIS in Istanbul?"<sup>1106</sup> A response by the Interior Minister, in Parliament, could not be sourced by the Committee, but since the constitutional changes to a Presidential system of government, opposition members in Parliament report not being able to receive answers to their questions.<sup>1107</sup>

92. On 10 October 2014, the Kingdom of Jordan caught 16 ISIS militants attempting to enter Jordan via the Syrian border; they disclosed during interrogations that they had received training from Turkey.<sup>1108</sup> Another ISIS fighter imprisoned in Syria by the YPG, Abdurrahman Abdulhadi, confirmed that 60 ISIS members received military training in a village in Adana, in a camp advertised to the "press" as a "Free Syrian Army" camp.<sup>1109</sup>
93. As early as 2012, there were such reports of "secret camps run by the Turkish military" to train the FSA.<sup>1110</sup> Turkish citizen Ramazan Bagol was captured in November 2015 by the YPG as he tried to join ISIS from the Turkish southwest province of Konya, he informed his captors that he had been sent to join ISIS by the "Ismailia sect", which "gives jihad training in neighbourhoods of Konya and sends those trained here to join ISIS gangs in Syria."<sup>1111</sup> The İsmailağa community has benefited from looser restriction on religious activities and publications due to the rise of the Justice and Development Party ("AKP") in Turkey, and it is reportedly tied to President Erdoğan.<sup>1112</sup>

## 2.2 Materiel Support – Military Equipment and Support for Foreign Fighters

94. Former ISIS communications technician, Sherko Omer said that in February 2014 he was transferred to a battalion travelling to fight Kurdish forces in Serekaniya, north-eastern Syria, and describes travelling through Turkey in a convoy of trucks, staying at safe houses along the way, before crossing back

<sup>1106</sup> Internet Haber, İstanbul'da IŞİD Kampı Meclis Gündeminde!, 30 July 2014, available at <https://www.internethaber.com/istanbulda-isis-kampi-meclis-gundeminde-704522h.htm> (accessed 20 April 2021).

<sup>1107</sup> R. Tuncel, Minister of Interior Unaware of Attacks Targeting Armenians in Turkey, *Istanbul BIA News Desk*, 2 July 2020, available at <https://bianet.org/english/print/226766-minister-of-interior-unaware-of-attacks-targeting-armenians-in-turkey> (accessed 20 April 2021).

<sup>1108</sup> WND, Turkey Accused of Training ISIS Soldiers, 10 October 2014, available at <https://www.wnd.com/2014/10/turkey-accused-of-training-isis-soldiers/#rwkhlwojsko50o08.99> (accessed 12 September 2020).

<sup>1109</sup> IŞİD mensubunun, 'Eğitim aldığımız kamp, basına ÖSO kampı olarak yansıtıldı' açıklaması Meclis gündeminde, *Yolculuk*, 9 April 2018, available at <https://www.gazeteyolculuk.net/isis-mensubunun-egitim-aldigimiz-kamp-basina-oso-kampi-olarak-yansitildi-aciklamasi-meclis-gundeminde> (accessed 12 November 2020).

<sup>1110</sup> R. Galpin, Syria Crisis: Turkey Training Rebels, Says FSA Fighter, *BBC News*, 4 August 2012, available at <https://www.bbc.co.uk/news/world-middle-east-19124810> (accessed 20 April 2021).

<sup>1111</sup> Turkish Forum, Meet The Man Who Funds ISIS: Bilal Erdogan, The Son Of Turkey's President, 1 December 2015 at <https://www.turkishnews.com/en/content/2015/12/01/meet-the-man-who-funds-isis-bilal-erdogan-the-son-of-turkeys-president/> (accessed 20 July 2020).

<sup>1112</sup> E. Aviv, The İsmailağa Community and its Relationship With the AK Party, *Democracy and Security*, 2018 14:3, 276-299, p. 10 (286), available at [https://www.researchgate.net/publication/323433812\\_The\\_Ismailaga\\_community\\_and\\_its\\_relationship\\_with\\_the\\_AK\\_party](https://www.researchgate.net/publication/323433812_The_Ismailaga_community_and_its_relationship_with_the_AK_party) (accessed 20 September 2020).

into Syria at the Ceylanpinar border crossing.<sup>1113</sup> He explained in detail how border agents allowed his convoy through after their commander spoke to someone in Turkish.<sup>1114</sup> This lends some credence and context to the allegations of MP Demir Celik, made in September 2014, that fighters (believed to be Turkish Special Forces but not possible to independently verify) had “been staying in hotels and safe houses in Mosul for months and have travelled from Mosul to Makhmour, from Makhmour to Sinjar and are in Kobane now commanding and determining the strategy of ISIS.”<sup>1115</sup>

95. In June 2014, it was reported, according to the families of fighters, 163 Turks joined ISIS and are believed to be fighting in Syria.<sup>1116</sup> As noted above, in July 2014, *Cumhuriyet* reported that trucks were loaded with weapons at the Esenboga airport in Ankara and escorted by the MIT to the border.<sup>1117</sup> An ISIS commander told *The Washington Post* on 12 August 2014 that most fighters, equipment, and supplies came via Turkey at the start of the war.<sup>1118</sup> It was estimated that in August 2014, around 600 to 700 Turkish fighters had gone to Syria to fight for ISIS and that men were being supplied from extensive recruitment networks in Turkey.<sup>1119</sup>
96. On 7 August 2014, US President Obama announced that the US was intervening to prevent a potential act of genocide against the Yazidi in Sinjar.<sup>1120</sup> On 23 September 2014, the US Pentagon confirmed that they had begun military action against ISIS in Syria. That same day, a council member from the governing AKP (Selim Yağmur) posted on his personal Facebook page: “I am glad that ISIS exists... May God never reduce your ammunition...”. Further support for ISIS recruitment within the AKP is evidenced by the Sports Minister, Suat Kilic, in October 2014, taking photographs in a restaurant with

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<sup>1113</sup> B. Guiton, ISIS Sees Turkey as Its Ally: Former Islamic State Member Reveals Turkish Army Cooperation, *Newsweek*, 7 November 2020, available at <https://www.newsweek.com/isis-and-turkey-cooperate-destroy-kurds-former-isis-member-reveals-turkish-282920> (accessed 28 June 2021).

<sup>1114</sup> *Ibid.*

<sup>1115</sup> A Dicle reported at <http://kurdishquestion.com/.../analysis/the-kobane-war.html> on 20 September 2014 but this page was unavailable. The article is quoted here by the Workers Bush Telegraph on 21 September 2014 at <https://workersbushtelegraph.com.au/2014/09/21/tangled-turkish-kurdish-syrian-iraqi-web/> (accessed 13 July 2020). See also, S. Hacador, 2,000 ISIS Members Are Turkish: Erdogan Harbours Jihadist Terrorists, *The Kurdistan Tribune*, 21 September 2014, available at <https://kurdistantribune.com/isis-members-turkish-erdogan-harbours-jihadist-terrorists/> (accessed 13 July 2020).

<sup>1116</sup> F. Kizilkoyun, Families Say 163 Turkish Citizens Have Joined ISIL, *Hurriyet Daily News*, 27 June 2014, available at <https://www.hurriyetdailynews.com/families-say-163-turkish-citizens-have-joined-isil--68372> (accessed 4 August 2020).

<sup>1117</sup> *Cumhuriyet*, CHP tutanakları açıkladı: O tırlardan onlarca füze çıktı, 21 July 2014, available at [http://www.cumhuriyet.com.tr/haber/turkiye/97017/chp\\_tutanaklari\\_acikladi\\_o\\_tirlardan\\_onlarca\\_fuze\\_cikti.html](http://www.cumhuriyet.com.tr/haber/turkiye/97017/chp_tutanaklari_acikladi_o_tirlardan_onlarca_fuze_cikti.html) (accessed 14 October 2020).

<sup>1118</sup> *Washington Post*, In Turkey, a Late Crackdown on Islamist Fighters, 12 August 2018, available at [http://www.washingtonpost.com/world/how-turkey-became-the-shopping-mall-for-the-islamic-state/2014/08/12/5eff70bf-a38a-4334-9aa9-ae3fc1714c4b\\_story.html](http://www.washingtonpost.com/world/how-turkey-became-the-shopping-mall-for-the-islamic-state/2014/08/12/5eff70bf-a38a-4334-9aa9-ae3fc1714c4b_story.html) (accessed 24 October 2020).

<sup>1119</sup> S. Starr, A Deeper Look at Syria-Related Jihadist Activity in Turkey, *West Point*, August 2014, Volume 7, 8, available at <https://ctc.usma.edu/a-deeper-look-at-syria-related-jihadist-activity-in-turkey/> (accessed 28 June 2021); *Today Zaman*, Report: Around 700 Turks Joined ISIL, 27 June 2014.

<sup>1120</sup> Statement by the President, The White House, Office of the Press Secretary, 7 August 2014, available at <https://obamawhitehouse.archives.gov/the-press-office/2014/08/07/statement-president> (accessed 18 November 2020).

- a group in Germany, from which one out of every five people who joined ISIS from Germany was sent.<sup>1121</sup>
97. As seen above, the Turkish State failed to take effective measures to monitor and police the border with ISIS in northern Syria and northern Iraq. Even after the Sinjar massacre in August 2014, whilst refugees fled to Turkey, and despite international pressure and offers from the US to assist, on 24 August 2014, ISIS fighters were reported to have grouped together on Turkey's border in order to pass through and obtain new foreign recruits.<sup>1122</sup> On 25 August 2014, the *Daily Mail* reported many foreign militants joined ISIS in Syria and Iraq via Turkey, who made no attempt to stop them.<sup>1123</sup> Turkey was wilfully blind to ISIS recruits passing through its territory to join ISIS, even though it knew that they, as principal perpetrators, were engaged in genocide.
  98. Hursit Gunes, a member of Turkey's opposition party, told CBS in September 2014 that the Turkish Government had allowed ISIS to flourish because it prefers it to the Syrian regime, and he accused the authorities of ignoring illegal border crossing and smuggling.<sup>1124</sup> In October 2014, a number of news reporters, including *Sky News*, *France 24*, the *BBC*, and *OdaTV4*, reported from Syria on documents showing that the Turkish Government had stamped the passports of foreign militants who sought to cross the Turkish border into Syria to join ISIS.<sup>1125</sup> Salih Muslim, the head of PYD, claimed that 120 militants crossed into Syria from Turkey between 20-24 October 2014.<sup>1126</sup> The *BBC* interviewed villagers, who claimed that buses would travel under cover of darkness, carrying militants to fight Kurdish forces in Syria and Iraq.<sup>1127</sup>
  99. On 19 September 2014, the mayor of Kobane, Anwar Muslim, claimed that trains full of Turkish forces and ammunition had been delivered to ISIS on 13

<sup>1121</sup> Sozcu, AKP-İŞİD kebağçıda, 26 October 2014, available at <https://www.sozcu.com.tr/2014/gundem/akp-isisd-kebagcida-631314/> (accessed 28 October 2020).

<sup>1122</sup> M. Chulov, Turkey Sends in Jets as Syria's Agony Spills Over Every Border, *The Guardian*, 26 July 2015, available at <https://www.theguardian.com/world/2015/jul/26/isis-syria-turkey-us> (accessed 20 October 2020).

<sup>1123</sup> S. Greenhill, How Seven Radicalised Young Britons a Week Are Taking the Gateway Jihad, *Daily Mail*, 25 August 2014, available at <http://www.dailymail.co.uk/news/article-2734239/how-seven-radicalised-young-britons-week-taking-gateway-jihad.html> (accessed 28 October 2020).

<sup>1124</sup> H. Williams, As Turkey Turned Blind Eye, ISIS Took Advantage, *CBS News*, 4 September 2014, available at <https://www.cbsnews.com/news/as-turkey-turned-blind-eye-isis-took-advantage/> and at [https://www.youtube.com/watch?v=vbPfo\\_J3X54&feature=youtu.be](https://www.youtube.com/watch?v=vbPfo_J3X54&feature=youtu.be) (accessed 14 November 2020).

<sup>1125</sup> S. Ramsay, How Kurds The World Forgot Are Holding Off IS, *Sky News*, 20 October 2014, available at <https://news.sky.com/story/how-kurds-the-world-forgot-are-holding-off-is-10385832> (accessed 12 November 2020); Reddit, Video Report: Turkish Government Assisting ISIS, 2014, available at [https://amp.reddit.com/r/LevantineWar/comments/2immpg/video\\_report\\_turkish\\_government\\_assisting\\_isis/](https://amp.reddit.com/r/LevantineWar/comments/2immpg/video_report_turkish_government_assisting_isis/) (accessed 20 November 2020); *OdaTV4*, İŞİD teröristlerinin pasaportunda T.C. damgası var, 21 October 2014, available at <https://odatv4.com/isisd-teroristlerinin-pasaportunda-t.c.-damgasi-var-2110141200.html>. See also, Reuters Image available at [https://pbs.twimg.com/media/CegesiYXEAA\\_IKX?format=jpg&name=small](https://pbs.twimg.com/media/CegesiYXEAA_IKX?format=jpg&name=small)

<sup>1126</sup> PYD lideri Müslim: Türkiye'nin İŞİD'e desteği sürüyor, daha bu hafta sınırı 120 militan geçti, *Diken*, 24 October 2014, available at <http://www.diken.com.tr/pyd-lideri-salih-muslim-turkiyenin-isisde-destegi-suruyor-daha-bu-hafta-siniri-120-militan-gecti/> (accessed 12 August 2020).

<sup>1127</sup> YouTube Video no longer available at <http://www.youtube.com/watch?v=qARNhijHvZA> (accessed 20 November 2020) but this alternative is available from 2:15 at [https://amp.reddit.com/r/LevantineWar/comments/2immpg/video\\_report\\_turkish\\_government\\_assisting\\_isis/](https://amp.reddit.com/r/LevantineWar/comments/2immpg/video_report_turkish_government_assisting_isis/) (accessed 20 November 2020).

September, just two days before the breakout of war in Kobane; the trains had stopped in ISIS-controlled villages to the east of Kobane (Salib Qaran, Gire Sor, Moshrefat Ezzo), and most witnesses were IDPs.<sup>1128</sup> On 30 September 2014, a CHP delegation visited Kobane, where locals declared that everything from the clothes of ISIS militants to their guns came from Turkey.<sup>1129</sup> A video had been released at that time allegedly showing Turkish military convoys carrying tanks and ammunition moving freely under ISIS flags in the Cerablus region and Karkamis border crossing, however, the Committee has been unable to access this website to verify its content.<sup>1130</sup>

100. In October 2014, Kemal Kiliadaroglu, chairman of the CHP accused Turkey of supplying weapons to terrorist fighters via trucks supposedly carrying humanitarian aid.<sup>1131</sup> On 9 October 2014, a senior Egyptian official told the American news and opinion website, *World Net Daily*, that Turkish intelligence had been providing satellite imagery and other data to ISIS in order to expose the position of Kurdish fighters and the ammunition storage locations; the official also confirmed that Turkey had released close to 700 ISIS terrorists in exchange for the release of 49 hostages.<sup>1132</sup>
101. On 13 October 2014, in its first major airstrike on the PKK since March 2013, Turkish F-16 and F-4 warplanes bombed PKK rebel targets near the Iraqi border, in Daglica.<sup>1133</sup> This was despite the ongoing battle for Kobane having lasted for a month, with Kurdish fighters battling ISIS for control.<sup>1134</sup> This was the same month in which US Vice President Joe Biden accused Turkey of funding jihadi groups, including al-Nusra and al-Qaeda.<sup>1135</sup> On Turkey's alleged role, according to transcripts, Biden said: "President (Recep Tayyip)

<sup>1128</sup> M. Çiviroğlu, An Exclusive Interview with Premier of Kobane Anwar Moslem About Ongoing ISIS Attacks, 19 September 2014, available at [https://civiroglu.net/2014/09/19/kobane\\_isis/](https://civiroglu.net/2014/09/19/kobane_isis/) (accessed 13 July 2020).

<sup>1129</sup> OdaTV4, IŞİD saflarında savaşan Türkiye'li resmi görevliler var, 30 September 2014, available at <https://odativ4.com/isis-saflarinda-savasan-turkiyeli-resmi-gorevliler-var--3009141200.html> (accessed 26 July 2020).

<sup>1130</sup> Antakya Sokak, İşte Türkiye IŞİD çetelerine tank ve mühimmat verirken kameralara yakalandılar! İşte o görüntüler:Antakya Sokak, 25 September 2014, available at <http://antakyasokak.e-monsite.com/pages/suriye/antakya-sokak-15.html> (accessed 11 January 2021).

<sup>1131</sup> Samanyolu Haber, Kılıçdaroğlu IŞİD'e giden silahların belgesini gösterdi, 14 October 2014, available at <http://www.samanyoluhaber3.com/gundem/Kilicdaroglu-ISIDe-giden-silahlarin-belgesini-gosterdi/1064168/> (accessed 11 January 2021); HispanTV, Video Revela Que Turquía Envía Armas a Los Terroristas en Siria, 29 May 2015, available at <http://www.hispantv.ir/noticias/turquia/33309/video-revela-que-turquia-envia-armas-a-los-terroristas-en-siria> (accessed 11 January 2021); Cumhuriyet, Kılıçdaroğlu: 'Davutoğlu belge istiyordun, al sana belge', 14 October 2014, available at [https://www.cumhuriyet.com.tr/video/video/130347/kilicdaroglu\\_davutoglu\\_belge\\_istiyordun\\_al\\_sana\\_belge\\_.html](https://www.cumhuriyet.com.tr/video/video/130347/kilicdaroglu_davutoglu_belge_istiyordun_al_sana_belge_.html) (accessed 12 November 2020).

<sup>1132</sup> A. Klein, Turkey "Providing Direct Support" to ISIS, 9 October 2014, available at <http://www.wnd.com/2014/10/turkey-providing-direct-support-to-isis/> (accessed 12 November 2020).

<sup>1133</sup> BBC, Turkish Jets Bomb Kurdish PKK Rebels Near Iraq, 14 October 2014, available at <https://www.bbc.co.uk/news/world-europe-29611582> (accessed 10 July 2020).

<sup>1134</sup> BBC, Islamic State Crisis: Kurds "Recapture Key Kobane Hill", 14 October 2014, available at <https://www.bbc.co.uk/news/world-middle-east-29611673> (accessed 20 July 2020).

<sup>1135</sup> G. Ratnam, Joe Biden Is the Only Honest Man in Washington, Foreign Policy, 7 October 2014, available at <https://foreignpolicy.com/2014/10/07/joe-biden-is-the-only-honest-man-in-washington/> (accessed 10 July 2020).



- Erdoğan told me [...] “You were right. We let too many people (including foreign fighters) through.” Now they are trying to seal their border.” Erdoğan denied this and demanded an apology; Biden subsequently apologized and instead thanked Turkey for its efforts in its fight against ISIS.<sup>1136</sup>
102. Turkey’s response to allegations of assisting ISIS evidenced through photographs and videos in Turkish media reports has been to prosecute reporters rather than to investigate further. On 26 November 2015, *Cumhuriyet*’s editor-in-chief Can Dündar and its Ankara representative, Erdem Gül, were charged with espionage, revealing state secrets and assisting a terrorist organisation after publishing a report on 21 May 2015 in *Cumhuriyet* alleging that the MİT had transferred weapons to an armed group in Syria in 2014.<sup>1137</sup> *Reuters* reported that witnesses and prosecutors had alleged that MİT helped deliver arms to parts of Syria under Islamist rebel control during late 2013 and early 2014, quoting a prosecutor and court testimony from gendarmerie officers.<sup>1138</sup> Erdoğan had previously claimed that the trucks were delivering humanitarian aid.<sup>1139</sup> The senior editors were convicted and sentenced to prison for “disclosing documents concerning the security of the State”.<sup>1140</sup> After Dündar was released in May 2016, there was an attempted assassination of him outside the Istanbul Court Building, with the shooter who was ultimately detained, calling him a “betrayers of the country”.<sup>1141</sup>
103. As identified in the Section on Obligation to Prevent, there is extensive evidence that in the period before and during the Yazidi genocide of 2014, foreign fighters crossed through Turkey’s border with relative ease to join ISIS; it is clear that, had its border been better patrolled, then ISIS’ capabilities would have been restricted and it would not have received the material assistance that enabled it to commit prohibited acts. In January 2015, Turkish Foreign Minister, Mevlut Çavuşoğlu, confirmed that up to 700 Turkish nationals had joined the Islamic State.<sup>1142</sup> As highlighted above, in November 2015, Çavuşoğlu emphasised that Turkey’s “open-door” policy is pursued regardless

<sup>1136</sup> C. J. Carter et al., Vice President Joe Biden Apologizes to Turkey, UAE, *CNN*, 6 October 2014, available at <https://edition.cnn.com/2014/10/05/politics/isis-biden-erdogan-apology/> (accessed 24 July 2020).

<sup>1137</sup> Amnesty International, *Amnesty International Report 2015/16 - Turkey*, 24 February 2016, available at <https://www.refworld.org/docid/56d05b08e.html> (accessed 4 August 2020).

<sup>1138</sup> H. Pamuk, N. Tattersall, Turkish Intelligence Helped Ship Arms to Syrian Islamist Rebel Areas, *Reuters*, 21 May 2015, available at <https://www.reuters.com/article/us-mideast-crisis-turkey-arms-idUSKBN0061L220150521> (accessed 4 November 2020).

<sup>1139</sup> Amnesty International, *Amnesty International Report 2015/16 - Turkey*, 24 February 2016, available at <https://www.refworld.org/docid/56d05b08e.html> (accessed 4 August 2020).

<sup>1140</sup> The Case of Can Dündar and Erdem Gül, Global Freedom of Expression Columbia University, 6 May 2016, available at <https://globalfreedomofexpression.columbia.edu/cases/case-journalists-can-dundar-erdem-gul/> (accessed 10 August 2020).

<sup>1141</sup> Haber Turk, Can Dündar’a saldırı girişimi!, 6 May 2016, available at <https://www.haberturk.com/gundem/haber/1235842-can-dundara-saldiri-girisimi> (accessed 11 December 2020). See also, Press in Arrest, Can Dündar, available at <http://pressinarrest.com/gazeteciler/can-dundar/> (accessed 20 April 2021).

<sup>1142</sup> AFP, Up to 700 Turks Said to Join Islamic State, *Times of Israel*, 15 January 2015, available at [https://www.timesofisrael.com/liveblog\\_entry/up-to-700-turks-said-to-join-islamic-state/](https://www.timesofisrael.com/liveblog_entry/up-to-700-turks-said-to-join-islamic-state/) (accessed 12 August 2020).

of ethnic or religious affiliations of those who seek refuge, but it was this policy that has been blamed for allowing thousands of foreign fighters to join ISIS, drawing criticism that Turkey had been intentionally assisting ISIS by not sufficiently policing its border.<sup>1143</sup>

104. Given the above, it may be inferred, *prima facie* and if further corroborated, that some Turkish officials may have sought to support ISIS' activities, and at least allowed for the transfer of ammunition, logistical support and fighters across the Turkish border to the armed group and did so in the knowledge that this aid or assistance would be used in the commission of prohibited acts, including targeting Yazidis.

### 2.3 Financial Assistance Emanating from Turkey

105. According to the Financial Action Task Force's 2015 report,<sup>1144</sup> the greatest contributor to ISIS' revenue were "illicit proceeds from occupation of territory, such as bank looting, extortion, control of oil fields and refineries, and robbery of economic assets and illicit taxation of goods and cash that transit territory where ISIL operates", followed by kidnapping for ransom. There is credible evidence to suggest that Turkey was aware that its border with both Iraq and Syria was being used to smuggle ISIS and ISIS-affiliated oil from at least 2012. As will be demonstrated below, Turkey made greater efforts to stop this in October 2014 after international pressure, although companies linked to state officials appear to have continued to transport smuggled oil up to at least November 2015.
106. After oilfields were captured by ISIS in the summer of 2014, the number of intercepted oil smuggling incidents increased from around 4,000 in 2012 to 10,000 in 2014.<sup>1145</sup> The seizure of smuggled petroleum products and oil by the Turkish authorities also rose by over 6 million litres within the year that ISIS took control, suggesting that the Turkish authorities did make some effort to intercept illicit transfers.<sup>1146</sup> Turkish investigation and arrests for oil smuggling saw a steady increase between 2011 and 2014, given that the amount of oil available to be smuggled increased with ISIS control of oilfields, with the police arresting an average of 5,000 oil smugglers each year.<sup>1147</sup> However, in 2014 and until international pressure exerted on Turkey in the second half of 2014,

<sup>1143</sup> N. Tattersall, M. Karouny, Turkey's 'Open Border' Policy With Syria Has Backfired As ISIS, *Business Insider*, 26 August 2014, available at <https://www.businessinsider.com/r-turkey-struggles-as-lone-gatekeeper-against-islamic-state-recruitment-2014-8?r=US&IR=T>; J. Varghese, Militants Crossing Over from Turkey and Attacking Kobane Caught on Camera [VIDEO], *International Business Times*, 2 October 2014, available at <https://www.ibtimes.co.in/isis-militants-crossing-over-turkey-attacking-kobane-caught-camera-video-610450> (both accessed 28 July 2020).

<sup>1144</sup> The Financial Action Task Force (FATF), Financing of the Terrorist Organisation ISIL, February 2015, available at <http://www.fatf-gafi.org/media/fatf/documents/reports/financing-of-the-terrorist-organisation-isil.pdf> (accessed 10 November 2020).

<sup>1145</sup> *Ibid.*, p. 34.

<sup>1146</sup> *Ibid.*, p. 34.

<sup>1147</sup> M. Cegniz, How Organized Crime and Terror are linked to Oil Smuggling Along Turkey's Borders, *Global Initiative*, 6 July 2017, available at [https://globalinitiative.net/analysis/how-organized-crime-and-terror-are-linked-to-oil-smuggling-along-turkeys-borders/#\\_edn10](https://globalinitiative.net/analysis/how-organized-crime-and-terror-are-linked-to-oil-smuggling-along-turkeys-borders/#_edn10) (accessed 28 November 2020).



- the numbers of arrests of oil smugglers plummeted drastically, as Erdoğan's government dismissed, imprisoned, or reassigned thousands of police officers and hundreds of judges and prosecutors who had previously worked on investigating oil smuggling and graft.<sup>1148</sup>
107. The website of the Turkish Ministry of Foreign Affairs details the measures Turkey has taken to control the smuggling of ISIS oil into Turkey between 2012 and 2016.<sup>1149</sup> ISIS took control of oilfields in eastern Syria in late 2012;<sup>1150</sup> Syria's oil fields are predominantly in eastern Syria, at Deir al-Zour, near the Iraqi border, as well as in Hassakeh, which is in the north-east. Turkey's Action Plan on Countering Oil Smuggling was revised on 23 August 2012, and a Circular Order (2012/19) on enhanced measures was introduced by the Office of the Prime Minister.<sup>1151</sup> Legislation was then passed on 11 April 2013, which increased the penalties for the smuggling of oil as well as the sale of smuggled oil in gas stations in the country.<sup>1152</sup>
  108. In Hatay, a Turkish province bordered by Syria to the south and east, authorities increased efforts to prevent smuggling in May 2013, after a smuggler lit a container of diesel upon being confronted in a town near Hacipasa village.<sup>1153</sup> Before this, Turkish journalist, Fehim Tastekin, said that Turkish soldiers would simply watch without intervening.<sup>1154</sup>
  109. There may be some difficulty in differentiating between the illicit sale and transfer of oil from ISIS controlled refineries, and from those controlled by the KRG of Iraq. In October 2013, the Turkish Government, via the company BOTAS, had begun construction of a large gas pipeline towards northern Iraq,

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<sup>1148</sup> N. Tattersall, D. Butler, Turkey Dismisses Corruption Case That Has Dogged PM Erdogan, *Reuters*, 2 May 2014, available at <https://uk.reuters.com/article/us-turkey-corruption/turkey-dismisses-corruption-case-that-has-dogged-pm-erdogan-idusbrea410ne20140502> (accessed 26 November 2020); M. Cegniz, How Organized Crime and Terror are linked to Oil Smuggling along Turkey's Borders, Global Initiative, 6 July 2017, available at [https://globalinitiative.net/analysis/how-organized-crime-and-terror-are-linked-to-oil-smuggling-along-turkeys-borders/#\\_edn10](https://globalinitiative.net/analysis/how-organized-crime-and-terror-are-linked-to-oil-smuggling-along-turkeys-borders/#_edn10) (accessed 28 November 2020).

<sup>1149</sup> Republic of Turkey, Ministry of Foreign Affairs, Turkey's Contributions to Anti-Deash Coalition, available at [http://www.mfa.gov.tr/turkey\\_s-contributions\\_s-to-anti\\_deash-coalition.en.mfa](http://www.mfa.gov.tr/turkey_s-contributions_s-to-anti_deash-coalition.en.mfa) (accessed 10 November 2020).

<sup>1150</sup> House of Commons, ISIS and the Sectarian Conflict in the Middle East, Research Paper 15/16, 19 March 2015, available at <https://commonslibrary.parliament.uk/research-briefings/rp15-16/> (accessed 2 December 2020).

<sup>1151</sup> UNSC, Factsheet Regarding the Measures Taken by Turkey for Countering ISIL/Daesh Terrorism Finance, S/2015/1029, 28 December 2015, available at <http://www.derechos.org/peace/syria/doc/unsyr138.html> (accessed 15 November 2020).

<sup>1152</sup> Republic of Turkey, Ministry of Foreign Affairs, Turkey's Contributions to Anti-Deash Coalition, available at [http://www.mfa.gov.tr/turkey\\_s-contributions\\_s-to-anti\\_deash-coalition.en.mfa](http://www.mfa.gov.tr/turkey_s-contributions_s-to-anti_deash-coalition.en.mfa) (accessed 10 November 2020).

<sup>1153</sup> D. Butler, Turkey Cracks Down on Oil Smuggling Linked to IS, *AP News*, 6 October 2014, available at <https://apnews.com/article/bcf8983795b645e9be794c22d569dc5b> (accessed 28 June 2021). See also, CBS News, Turkey cracks Down on Oil Smuggling With ISIS in Mind, 6 October 2014, available at <https://www.cbsnews.com/news/turkey-cracks-down-on-oil-smuggling-with-isis-in-mind/> (accessed 28 November 2020).

<sup>1154</sup> D. Butler, Turkey Cracks Down on Oil Smuggling Linked to IS, *AP News*, 6 October 2014, available at <https://apnews.com/article/bcf8983795b645e9be794c22d569dc5b> (accessed 28 June 2021). See also, CBS News, Turkey cracks Down on Oil Smuggling With ISIS in Mind, 6 October 2014, available at <https://www.cbsnews.com/news/turkey-cracks-down-on-oil-smuggling-with-isis-in-mind/> (accessed 28 November 2020).

- and to the south eastern city of Mardin, Turkey.<sup>1155</sup> From December 2013, through the new gas pipeline to Turkey, and without the approval of the Iraqi Ministry of Oil, the KRG began to export and sell oil.<sup>1156</sup> As a result, on 23 May 2014, Iraq filed an (ongoing at the time of writing) arbitration claim with the International Chamber of Commerce against Turkey for facilitating autonomous oil exports by the KRG without the Ministry's approval.<sup>1157</sup>
110. After ISIS took control of Mosul, Iraq, in June 2014, Kurdish forces secured Kirkuk and the surrounding oilfields of Kirkuk, Bai Hassan, and Jambur.<sup>1158</sup> However, on 24 June 2014, ISIS seized Iraq's largest refinery, Baiji, near Kirkuk, until it was recaptured by Iraqi forces on 16 October 2015.<sup>1159</sup> As of 21 July 2014, according to the interim Syrian opposition government, ISIS had captured two oil fields in Iraq, south of Kirkuk, Ajeel and Hamrin, and also controlled more than 60% of Syria's oil.<sup>1160</sup>
111. In September 2014, the *New Yorker* reported that ISIS received more than \$150 million per month from smuggling oil into Turkey and neighbouring countries.<sup>1161</sup> Research by Kelsey Bolar of *The Daily Signal* confirmed that ISIS' oil revenue in early September 2014 amounted to nearly \$100 million each month and "allows ISIS to fund its military and terrorist attacks - and to attract more recruits from around the world".<sup>1162</sup> In 2014, most smuggled oil came by sea through three Turkish cities: Izmir, Kocaeli, and Mersin.<sup>1163</sup> The smuggled Syrian oil would mostly come through the border cities Hatay, Gaziantep, Adana, and Sanliurfa.<sup>1164</sup>

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<sup>1155</sup> B. Van Heuvelen, New Gas Pipeline Reinforces Turkey-KRG Ties, Iraq Oil Report, 6 October 2013, available at <https://www.iraqoilreport.com/news/hold-5-11375/> (accessed 20 November 2020).

<sup>1156</sup> Oxford Energy, Kurdish Oil and Regional Politics, January 2016, p. 12, available at <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2016/01/kurdish-oil-and-regional-politics-wpm-63.pdf> (accessed 18 November 2020).

<sup>1157</sup> HFW, The Iraq-Turkey Pipeline Dispute and the Future of Kurdish Crude, *Lexology*, August 2014, available at <https://www.lexology.com/library/detail.aspx?g=b3b6107e-58ea-4b0a-8ac9-a09e421c4c2d> (accessed 26 November 2020).

<sup>1158</sup> Oxford Energy, Kurdish Oil and Regional Politics, January 2016, p. 13, available at <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2016/01/kurdish-oil-and-regional-politics-wpm-63.pdf> (accessed 18 November 2020).

<sup>1159</sup> M. Gordon, Iraqi Forces and Shiite Militias Retake Oil Refinery From ISIS, *New York Times*, 16 October 2015, available at <https://www.nytimes.com/2015/10/17/world/middleeast/iraqi-forces-and-shiite-militias-retake-oil-refinery-from-isis.html> (accessed 19 April 2021).

<sup>1160</sup> Chatham House, ISIS and the Dangers of Black Market Oil, 21 July 2014, available at <https://www.chathamhouse.org/2014/07/isis-and-dangers-black-market-oil> (accessed 28 November 2020).

<sup>1161</sup> D. Filkins, The Fight of Their Lives, September 29, A Reporter at Large, 2014 Issue of *The New Yorker*, available at <https://www.newyorker.com/magazine/2014/09/29/fight-lives> (accessed 19 April 2021).

<sup>1162</sup> K. Harkness, The Scary Amount of Oil Money ISIS Makes Every Day, *The Daily Signal*, 11 September 2014, available at <https://www.dailysignal.com/2014/09/11/the-scary-amount-of-oil-money-isis-makes-every-day> (accessed 26 September 2020).

<sup>1163</sup> M. Cengiz, How Organized Crime and Terror are Linked to Oil Smuggling Along Turkey's Borders, *Global Initiative*, 6 July 2017, available at [https://globalinitiative.net/analysis/how-organized-crime-and-terror-are-linked-to-oil-smuggling-along-turkeys-borders/#\\_edn10](https://globalinitiative.net/analysis/how-organized-crime-and-terror-are-linked-to-oil-smuggling-along-turkeys-borders/#_edn10) (accessed 28 November 2020).

<sup>1164</sup> M. Cengiz, How Organized Crime and Terror are Linked to Oil Smuggling Along Turkey's Borders, *Global Initiative*, 6 July 2017, quoting 2013 Turkish Report of Anti-Smuggling and Organized Crime, (Ankara: KOM Daire Başkanlığı), 63, available at <https://globalinitiative.net/analysis/how->

112. Turkey seemed to “crack down” on oil smuggling along its border with Syria after international pressure in the second half of 2014.<sup>1165</sup> AP reported on 6 October 2014, following around two dozen interviews with Turkish authorities, smugglers and vendors along Turkey's border with Syria that “oil smuggling was a booming business until about six months ago, when Turkish authorities ramped up a multi-layered crackdown” seizing almost 20 million litres of oil at the border within an 8 month period, after adding “783 personnel to work in 56 locations around the province, around the clock”.<sup>1166</sup> Prior to this crack down, truckers at the Oncupinar border crossing near the Turkish city of Kilis would also smuggle illicit Syrian diesel, but the fines later dissuaded them.<sup>1167</sup> However, the police confirmed that smuggled diesel was easily identifiable, as Turkish refineries use an additive that marks legitimate diesel.<sup>1168</sup>
113. As highlighted above, therefore, ISIS was selling oil to “middlemen” in Turkey who would then transport the oil for resale.<sup>1169</sup> Despite the supposed crack down, on 23 October 2014, David Cohen, the US Under Secretary for Terrorism and Financial Intelligence threatened financial sanctions against those trading in ISIS oil, stating that some of the oil emanating from territory where ISIS operates had been “sold to Kurds in Iraq, and then resold into Turkey.”<sup>1170</sup> Whilst acknowledging that Turkey had made commitments to combat oil smuggling on their territory, Cohen insisted that the US would be working closely to “choke off cross-border oil smuggling routes and to identify those involved in the smuggling networks.”<sup>1171</sup>
114. ISIS attacked wells in the south-east of Kirkuk, Iraq, in January<sup>1172</sup> and February 2015,<sup>1173</sup> but as of 9 April 2015, it controlled only a single oil field in Iraq, the northern Qayara.<sup>1174</sup> In April 2015, ISIS controlled 80% of the oil and gas fields in Syria, Kurdish forces held 12%, and the Syrian regime retained control over

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[organized-crime-and-terror-are-linked-to-oil-smuggling-along-turkeys-borders/#\\_edn10](#) (accessed 28 November 2020).

<sup>1165</sup> H. Almohamad, A. Dittmann, Oil in Syria between Terrorism and Dictatorship, Justus Liebig University of Giessen, 17 May 2016, available at <https://doi.org/10.3390/socsci5020020> (accessed 2 December 2020).

<sup>1166</sup> H. Almohamad, A. Dittmann, Oil in Syria between Terrorism and Dictatorship, Justus Liebig University of Giessen, 17 May 2016, available at <https://doi.org/10.3390/socsci5020020> (accessed 2 December 2020).

<sup>1167</sup> *Ibid.*

<sup>1168</sup> *Ibid.*

<sup>1169</sup> US Department of the Treasury, Press Release (2014), Remarks of Under Secretary for Terrorism and Financial Intelligence David S. Cohen at The Carnegie Endowment For International Peace, Attacking ISIL's Financial Foundation, 23 October 2014, available at <https://www.treasury.gov/press-center/press-releases/Pages/jl2672.aspx> (accessed 20 November 2020).

<sup>1170</sup> *Ibid.*

<sup>1171</sup> *Ibid.*

<sup>1172</sup> The World Post, Kurds Recapture Oil Facility In Northern Iraq From ISIS, 31 January 2015, available at [www.huffingtonpost.com/2015/01/31/isis-oil-iraq\\_n\\_6584434.html](http://www.huffingtonpost.com/2015/01/31/isis-oil-iraq_n_6584434.html) (accessed 19 April 2021).

<sup>1173</sup> M. Mahmoud, Iraq Oilfield Output Suspended After IS Fighting-Oil Minister, *Reuters*, 2 February 2015, available at <http://uk.reuters.com/article/2015/02/02/mideast-crisis-iraq-oil-idUKL6N0VC1SJ20150202> (accessed 19 April 2021).

<sup>1174</sup> G. Mascolo, Versorgungsengpässe für Terrormiliz: Der IS sitzt auf dem Trockenen, *Süddeutsche Zeitung*, 8 April 2015, available at <https://www.sueddeutsche.de/politik/versorgungsengpaesse-fuer-terrormiliz-der-is-sitzt-auf-dem-trockenen-1.2425961> (accessed 28 November 2020).

- 8% after more than four years of ongoing civil war in Syria.<sup>1175</sup> Martin Chulov, of the *Guardian*, reported on 26 July 2015, that a “western official” confirmed there is “undeniable” evidence in “hundreds of flash drives and documents” that Turkish officials dealt directly with ranking ISIS members, such as Tunisian ISIS Commander, Abu Sayyaf, who had been the chief financial officer responsible for smuggling oil from Syria’s eastern fields.<sup>1176</sup> The 160 flash drives (obtained in June 2015) provided an itemised forensic account of ISIS’ cash flow, that apparently “included names and *noms de guerre* of all foreign fighters, senior leaders and their code words, initials of sources inside ministries and full accounts of the group’s finances.”<sup>1177</sup> The exact details held on these drives have not been possible to verify without direct access to them.
115. ISIS attacks on Iraq’s oilfields continued in October 2015.<sup>1178</sup> There is credible evidence that Turkey was aware that ISIS gained revenue from smuggling oil across the Turkish border with both Syria and Iraq, and Turkish officials had the means and capacity to reduce this to a greater extent than they did, during and after August 2014. Had Turkey taken action to curtail oil smuggling across the Turkish border, it could have effectively cut off one of the major sources of revenue for ISIS. This evidence of Turkey’s failure to take action is relevant to both Turkey’s obligation to prevent and to evidence of complicity.
116. After 24 November 2015, Turkish President’s son, Bilal Erdoğan, was accused by Russian Foreign Minister, Sergei Lavrov, and Retired French General Dominique Trinquand, of being involved in ISIS’ illegal oil trade after Turkey shot down a Russian fighter jet.<sup>1179</sup> Bilal Erdoğan’s BMZ was allegedly one of the main companies shipping oil from ISIS-controlled oilfields in Iraq, and major shareholders of the company include other Erdoğan family members -

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<sup>1175</sup> H. Almohamad, A. Dittmann, Oil in Syria between Terrorism and Dictatorship, Justus Liebig University of Giessen, 17 May 2016, available at <https://doi.org/10.3390/socsci5020020> (accessed 2 December 2020).

<sup>1176</sup> M. Chulov, Turkey Sends in Jets as Syria’s Agony Spills Over Every Border, *The Guardian*, 26 July 2015, available at <https://www.theguardian.com/world/2015/jul/26/isis-syria-turkey-us> (accessed 20 October 2020).

<sup>1177</sup> M. Chulov, How an Arrest in Iraq Revealed ISIS’s \$2bn Jihadist Network, *The Guardian*, 15 June 2014, available at <https://www.theguardian.com/world/2014/jun/15/iraq-isis-arrest-jihadists-wealth-power> (accessed 20 October 2020).

<sup>1178</sup> Iraq Oil Report, North Oil Facilities Face Ongoing IS Attacks, 3 February 2015, available at [www.iraqoilreport.com/news/north-oil-facilities-face-ongoing-is-attacks-16671/](http://www.iraqoilreport.com/news/north-oil-facilities-face-ongoing-is-attacks-16671/) (accessed 28 November 2020).

<sup>1179</sup> Aira, Meet The Man Who Funds ISIS: Bilal Erdogan, The Son Of Turkey’s President, *Turkish Forum*, 1 December 2015, available at <https://www.turkishnews.com/en/content/2015/12/01/meet-the-man-who-funds-isis-bilal-erdogan-the-son-of-turkeys-president/> (accessed 20 July 2020); Press release on Sergey Lavrov’s telephone conversation with Turkish Foreign Minister Mevlüt Çavuşoğlu, Consulate General of the Russian Federation in Edinburgh, 26 November 2015, available at [https://edinburgh.mid.ru/web/edinburgh\\_en/main-page/-/asset\\_publisher/123yehxbhng/content/press-release-on-sergey-lavrov-s-telephone-conversation-with-turkish-foreign-minister-mevlut-cavusoglu?inheritdirect=false](https://edinburgh.mid.ru/web/edinburgh_en/main-page/-/asset_publisher/123yehxbhng/content/press-release-on-sergey-lavrov-s-telephone-conversation-with-turkish-foreign-minister-mevlut-cavusoglu?inheritdirect=false); D. Lindsay, Maltese Ships Owned by Turkish President’s Son Being Implicated in ISIS Oil Trade, *The Independent*, 13 December 2015, available at <https://www.independent.com.mt/articles/2015-12-13/local-news/maltese-ships-owned-by-turkish-president-s-son-being-implicated-in-isis-oil-trade-6736150377> (accessed 10 November 2020).

Mustafa Erdoğan and Ziya İlgen. In an article published in November 2015,<sup>1180</sup> which connects the research of two other articles, from Dr. Nafeez Ahmed<sup>1181</sup> and F. William Engdahl,<sup>1182</sup> British researchers broke down how oil began its journey in ISIS-controlled Iraq, entered Turkey via Kurdish-controlled Iraq, and from there ended up at the port of Ceyhan, where much of it is shipped overseas by BMZ.<sup>1183</sup> Erdoğan denied the allegations, stating that “[n]obody has the right to dispute our country’s fight against Daesh or to incriminate us.”<sup>1184</sup>

117. In December 2015, Eren Erdem MP of the People’s Republican Party also stated that there is a “very high probability” that Erdoğan’s son-in-law and Turkey’s energy minister, Berat Albayrak, was linked to the supply of oil by ISIS; a lawyer for Albayrak denied Erdem’s allegations.<sup>1185</sup> On 2 December 2015, the US State Department rejected “outright the premise that the Turkish Government is in league with ISIL to smuggle oil across its borders”, stating that there was no evidence to support the accusation.<sup>1186</sup> On 5 December 2016, *WikiLeaks*<sup>1187</sup> published emails that had been released by RedHack (and subsequently banned by the Turkish government) in late September 2016,<sup>1188</sup> made available in a searchable database.<sup>1189</sup> The emails suggest that Albayrak

<sup>1180</sup> UndercoverInfo, *ISIS Oil: the Erdogan Family and UK Business Connections*, 30 November 2015, available at <https://undercoverinfo.wordpress.com/2015/11/30/isis-oil-the-alleged-erdogan-family-and-uk-business-connections/> (accessed 15 November 2020).

<sup>1181</sup> N. Ahmed, *Britain’s Secret Ties to Governments, Firms Behind ISIS Oil Sales*, *Insurge Intelligence*, 1 July 2015, available at <https://medium.com/insurge-intelligence/britain-s-secret-ties-to-governments-firms-facilitating-isis-oil-sales-210d21470e65#.h9jzh0vmh> (accessed 12 November 2020).

<sup>1182</sup> F. W. Engdahl, *Erdogan’s Dirty Dangerous ISIS Games*, *New Eastern Outlook*, 24 August 2015, available at <https://journal-neo.org/2015/08/24/erdogan-s-dirty-dangerous-isis-games/> (accessed 15 November 2020).

<sup>1183</sup> F. Taştekin, *Sınırsız sınır...*, *Radikal*, 13 September 2014, available at <http://www.radikal.com.tr/yazarlar/fehim-tastekin/sinirsiz-sinir-1212462/> (accessed 28 June 2021); Diken, *ABD Hazine Bakanlığı: IŞİD’in petrol satışına Türkler de aracılık ediyor*, 24 October 2014, available at <http://www.diken.com.tr/abd-hazine-bakanligi-isis-petrol-satisina-turkler-de-aracilik-ediyor/> (accessed 28 June 2021); OdaTV4, *IŞİD Türkiye’ye petrol satıyor*, 24 October 2014, available at <https://odatv4.com/isis-turkiye-ye-petrol-satiyor--2410141200.html> (accessed 28 June 2021); Diken, *Alman meclisi başkan yardımcısı: Türkiye IŞİD’e desteğine son vermeil*, 14 October 2014, available at <http://www.diken.com.tr/almanya-meclis-baskani-roth-turkiye-isode-destek-vermeyi-sonlandirmali/> (accessed 14 November 2020)

<sup>1184</sup> Al Jazeera, *Erdogan Denies Turkey Buys Oil from ISIL*, 27 November 2015, available at <https://www.aljazeera.com/news/2015/11/27/erdogan-denies-turkey-buys-oil-from-isis/> (accessed 28 June 2021).

<sup>1185</sup> A. Christie-Miller, *Erdogan’s Son in Law “Linked to ISIS Oil Trade”*, *The Times*, 5 December 2015, available at <https://www.thetimes.co.uk/article/erdogans-son-in-law-linked-to-isis-oil-trade-whnz3p7vb2p> (accessed 10 November 2020).

<sup>1186</sup> M. C. Toner, Deputy Spokesperson, Daily Press Briefing, Washington, 2 December 2015, available at <https://2009-2017.state.gov/r/pa/prs/dpb/2015/12/250283.htm> (accessed 10 November 2020).

<sup>1187</sup> *WikiLeaks*, *Berat’s Box*, 5 December 2016, available at <https://wikileaks.org/berats-box/article> (accessed 5 December 2020).

<sup>1188</sup> A. Yayla, *Hacked Emails Link Turkish Minister to Illicit Oil*, *World Policy Blog*, 17 October 2016, available at [https://www.researchgate.net/publication/309241489\\_hacked\\_emails\\_link\\_turkish\\_minister\\_to\\_illicit\\_oil](https://www.researchgate.net/publication/309241489_hacked_emails_link_turkish_minister_to_illicit_oil) (accessed 14 November 2020).

<sup>1189</sup> *WikiLeaks*, *Berat’s Box Database*, 5 December 2016, available at <https://wikileaks.org/berats-box/> (accessed 5 December 2020). A Turkish expert commissioned by YJC commented that: “Talking, writing and criticising Erdoğan’s policy around ISID and Syria has been treated as a criminal activity.

had unofficially been running the company Powertrans, which set up schemes in 2014 to transfer oil to the Batman refinery in Turkey, and to the Turkish international ports of Mersin, Dortyol, and Ceyhan.

118. In a UNSC Meeting on 17 December 2015,<sup>1190</sup> at which the Security Council unanimously adopted Resolution 2253 (2015),<sup>1191</sup> the representative of the Russian Federation, Vitaly Churkin, accused Turkey of failing to implement its obligations under Resolution 2199 (2015).<sup>1192</sup> The 28-page Resolution covered asset freezing, travel ban, arms embargo and listing criteria for ISIS, Al-Qaida and “associated individuals, groups, undertaking and entities.”<sup>1193</sup> Churkin stated that “the basket of resources that financed ISIL had hit \$700 million a year, with \$250 million earned from the sale of phosphates and \$100 million from the sale of cement”.<sup>1194</sup> He emphasised that the sale of oil to ISIS continued with Turkey’s knowledge and assistance, given that smugglers moved mainly through Turkey and that shipments were being carried by Turkish companies before being transported to ports on the Mediterranean Sea. Churkin’s evidence included photographs that showed oil being smuggled through the Turkish border.<sup>1195</sup>
119. In response to Churkin’s accusations, the Permanent Representative of Turkey submitted a letter dated 24 December 2015 to the United Nations.<sup>1196</sup> This declared that Turkey considers ISIS to be a national security threat, and that “ISIL/Daesh and the Al-Nusra Front have been listed by Turkey as terrorist entities since 2013”; it provided a “Factsheet” of measures and actions taken by the Government for countering ISIS financing as well as foreign terrorist fighters. Some of the figures included a claim that 322,289 gallons of

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This has prevented a free flow of information in the country on this issue. Journalists or politicians who suggested that Erdogan’s family had any ties with ISIS’ business deals have been made subject of unjust investigations and prosecutions. In one of them the journalists were accused of “attempting to create a perception that the government [Erdogan] and Berat Albayrak had links with ISIS.” Indictments and judgments of journalists Tunca Ogreten, Deniz Yucel, Can Dundar and Eren Erdem can be accessed at <http://pressinarrest.com/gazeteciler/tunca-ilker-ogreten/> (Tunca Ogreten); <http://pressinarrest.com/gazeteciler/deniz-yucel/> (Deniz Yucel); <http://pressinarrest.com/gazeteciler/can-dundar/> (Can Dundar); <http://pressinarrest.com/gazeteciler/eren-erdem/> (Eren Erdem).

<sup>1190</sup> UNSC Meeting Unanimously Adopting Resolution 2253 (2015), Security Council Expands Sanctions Framework to Include Islamic State in Iraq and Levant, SC/12168, 17 December 2015, available at <https://www.un.org/press/en/2015/sc12168.doc.htm> (accessed 10 November 2020).

<sup>1191</sup> UNSC Resolution 2253 (2015), S/RES/2253, 17 December 2015, available at [https://www.undocs.org/S/RES/2253%20\(2015\)](https://www.undocs.org/S/RES/2253%20(2015)) (accessed 10 November 2020).

<sup>1192</sup> UNSC Resolution 2199 (2015), S/RES/2199, 12 February 2015 available at [https://www.undocs.org/S/RES/2199%20\(2015\)](https://www.undocs.org/S/RES/2199%20(2015)) (accessed 10 November 2020).

<sup>1193</sup> UNSC Resolution 2253 (2015), S/RES/2253, 17 December 2015, available at [https://www.undocs.org/S/RES/2253%20\(2015\)](https://www.undocs.org/S/RES/2253%20(2015)) (accessed 10 November 2020).

<sup>1194</sup> UNSC Meeting Unanimously Adopting Resolution 2253 (2015), Security Council Expands Sanctions Framework to Include Islamic State in Iraq and Levant, SC/12168, 17 December 2015, available at <https://www.un.org/press/en/2015/sc12168.doc.htm> (accessed 14 November 2020).

<sup>1195</sup> RT News, Turkey, US Failed to Notify UN Security Council of ISIS Oil Smuggling - Russian UN Envoy Churkin, 14 December 2015, available at <https://www.rt.com/news/325826-turkey-us-isis-oil-un/> (accessed 20 November 2020).

<sup>1196</sup> UNSC, Factsheet Regarding the Measures Taken by Turkey for Countering ISIL/Daesh Terrorism Finance, S/2015/1029, 28 December 2015, available at <http://www.derechos.org/peace/syria/doc/unsyr138.html> (accessed 15 November 2020).



smuggled oil were intercepted from January to October 2015; 300 kilometres of illegal pipelines across the Syrian border were destroyed; that a “Syrian border physical security system” was being established; and a variety of measures such as miles of trenches, barbed wire and movable walls had been installed at the border.<sup>1197</sup>

120. Whilst ISIS gained \$500 million from oil and gas sales in 2015, that number fell greatly in 2016 as a result of coalition targets against its supply lines.<sup>1198</sup> ISIS lost control of the Syrian oil fields in 2017.<sup>1199</sup>

### Summary Findings on Complicity

121. The publicly available information considered above supports the conclusion that Turkey, directly and indirectly, provided aid or assistance in a number of different forms to ISIS and to individuals affiliated with ISIS. Further, there are reasonable grounds to conclude that from at least June 2014, when UN bodies put States on notice that ISIS was committing genocide against the Yazidi, and very likely from April 2012, Turkey furnished this aid or assistance knowing that it would be used in the commission of genocide and/or was wilfully blind to the evidence that ISIS held the specific intent to commit genocide and would use this aid or assistance in furtherance of the commission of acts of genocide.
122. As stated above, there are reasonable grounds to conclude that: (a) ISIS had trafficked Yazidi women and girls across the borders with Turkey; (b) that between 2014 and 2015, Yazidi women and girls in Turkey were forced into marriages, human trafficking, sexual slavery and/or other forms of sexual

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<sup>1197</sup> UNSC, Factsheet Regarding the Measures Taken by Turkey for Countering ISIL/Daesh Terrorism Finance, S/2015/1029, 28 December 2015, available at <http://www.derechos.org/peace/syria/doc/unsyr138.html> (accessed 15 November 2020). It should be noted, that according to a report by the Begin-Sadat Center for Strategic Studies (an Israeli think tank affiliated with Israel's Bar Ilan University and supported by the NATO Mediterranean Initiative, the U.S. embassy in Israel and the Carnegie Council for Ethics in International Affairs), it is untrue that Turkey officially recognised ISIS as a terrorist group in 2013. In fact, this 2013 date comes from a circular of the Turkish Council of Ministers, issued via the official journal of Turkey, T.C. Resmî Gazete on 30 October 2013, concerning the freezing of financial assets or economic resources of designated individuals, entities and organization. The decision has an appendix that contains a 133-page list of individuals, entities, and organizations whose financial assets shall be frozen, which includes the Islamic State. U. Bulut, Should Turkey Officially Designate ISIS a Terrorist Organization?, BESA Center Perspectives, Paper No. 429, 20 March 2017, available at <https://besacenter.org/wp-content/uploads/2017/03/429-is-in-turkey-bulut-final.pdf> (accessed 12 September 2020). See also, the referenced circular here: <https://www.resmigazete.gov.tr/eskiler/2014/05/20140510-29.htm>; Decision of the Council of Ministers, Decision No. 2013/5428, T.C. Resmî Gazete, 10 October 2013, available at <https://www.resmigazete.gov.tr/eskiler/2013/10/20131010-1.htm> (accessed 14 November 2020).

<sup>1198</sup> Y. Torbati, Islamic State Yearly Oil Revenue Halved to \$250 Million: US Official, *Reuters*, 12 May 2016, available at <http://reuters/1xlcj9t> (accessed 28 June 2021). See also, Cash to Chaos: Dismantling ISIS' Financial Infrastructure, House Homeland Security Committee Majority Staff Report, 14 October 2016, available at <https://www.hsdl.org/c/cash-to-chaos-dismantling-isis-financial-infrastructure/> (accessed 2 December 2020).

<sup>1199</sup> M. Carlisle, Trump Keeps Talking About Syria's Oil Fields. Here's What's Going On With Them, *Time Magazine*, 26 October 2019, available at <https://time.com/5710576/trump-oil-syria/#:~:text=isis%20lost%20control%20of%20the,fields%20are%2c%e2%80%9d%20says%20colgan> (accessed 07 December 2020).

violence;<sup>1200</sup> and (c) Turkey failed to take measures to prevent these acts. Further, there are reasonable grounds to conclude that, from at least June 2014, Turkish officials turned a blind eye to or deliberately allowed the trafficking and sale of enslaved Yazidi women and girls in Turkey and did so with knowledge that the persons assisted held the specific intent to commit genocide, and/or were wilfully blind to clear evidence of ISIS' specific intent to destroy the Yazidi, in whole or in part. Permitting and/or being deliberately blind to the trafficking of Yazidi women and girls across the Turkish border, and the sale of enslaved Yazidis in slave markets in the territory of Turkey would have contributed significantly to ISIS' slave trade and its perpetuation.

123. The Turkish armed forces, and/or intelligence services, have provided some military training to individuals affiliated with ISIS. Such training of individuals affiliated with ISIS continued to be provided even when Turkish officials knew and/or were wilfully blind to evidence that these individuals would use this training to commit prohibited acts against the Yazidi. The training continued even after August 2014, despite widespread reporting that such acts had been committed. The training provided by Turkish armed forces to ISIS fighters could be seen to have significantly assisted ISIS in committing genocide against the Yazidis.
124. Moreover, Turkey, at best, failed to restrict and, at worst, supported the smuggling of oil across its border for subsequent sale that went on to financially benefit ISIS in the lead up to, and after it had committed, prohibited acts of genocide against the Yazidis in Sinjar. This enabled ISIS to acquire sufficient resources to commit genocide against the Yazidis. Furthermore, there are grounds to conclude that Turkey deliberately allowed the transfer of fighters, military supplies, and equipment across its border during the years that ISIS was operating from northern Iraq and Syria and that this continued for a number of months after August 2014 up to as late as July 2015. The publicly available information supports the conclusion that Turkey assisted ISIS by allowing for the training of its fighters in Turkey and facilitating the group to acquire sufficient wealth, *materiel*, and resources to commit genocide against the Yazidis. There are grounds to conclude that Turkish officials - whose conduct may be, in appropriate circumstances, attributable to Turkey - were complicit in genocide by furnishing aid or assistance with knowledge that the principal perpetrators were engaged in genocide and would use that aid or assistance in the commission of genocide.
125. The Committee has not identified evidence to suggest a line of command or "ordering" between Turkish officials and ISIS or that Turkey or Turkish military officials explicitly gave instructions, directions or orders to principal ISIS perpetrators to conduct prohibited acts against the Yazidi group.

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<sup>1200</sup> See J. Arraf, This Man Has Freed Hundreds of Yazidis Captured By ISIS. Thousands Remain Missing, *NPR*, 18 January 2018.



### 3. Obligation to Punish Perpetrators of Genocide

126. Turkey acceded to the Genocide Convention on 31 July 1950. As a State Party to the Genocide Convention, Turkey is under an obligation to punish those who commit genocide or any of the other acts enumerated in Article III of the Genocide Convention. This section looks at how Turkey has dealt with its obligation to punish in the context of the Yazidi Genocide.
127. To date, there is no evidence that Turkish officials have taken any steps to investigate allegations of genocide against the Yazidis. There is, similarly, no evidence of any prosecutions for genocide by Turkish authorities, even though there is an extensive (albeit overstretched) criminal justice and policing response to processing the multitude of ISIS combatants returning to, and transiting through, Turkey.<sup>1201</sup> Notwithstanding the existence of such a response to ISIS, it is clear that this approach was not properly developed until 2016. Prior to that point, Turkish authorities were not systematically prosecuting or punishing ISIS fighters for any alleged crimes (for instance, membership in a terrorist organisation). They began to increase their investigations into ISIS operatives following a series of attacks by ISIS on Turkish soil between 2014 and 2017 and principally after major attacks in July 2015.<sup>1202</sup>

#### 3.1. Criminalisation of Genocide in Domestic Legislation

128. Turkey fulfilled its obligations under the Genocide Convention to enact domestic legislation criminalising genocide over 50 years after signing the Convention.<sup>1203</sup> Turkey did this by including genocide as a crime within the Turkish Penal Code ("TPC"). The TPC entered into force on 1 June 2005. Genocide is criminalised by Article 76 of the TPC. The Article is drafted in line with the definition stipulated in Article II of the Genocide Convention.<sup>1204</sup>
129. Article 76 of the TPC states:
- (1) The commission of any of the following acts against any member of any national, ethnic, racial, or religious group with the intent to destroy such

<sup>1201</sup> ICG, *Calibrating the Response: Turkey's ISIS Returnees*, Europe & Central Asia Report No. 258, 29 June 2020, p. 17, available at <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 21 November 2020).

<sup>1202</sup> ICG, *Calibrating the Response: Turkey's ISIS Returnees*, Europe & Central Asia Report No. 258, 29 June 2020, pp i-ii., available at <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 21 November 2020).

<sup>1203</sup> Turkey acceded to the Convention on Genocide on July 31, 1950. Convention on the Prevention and Punishment of the Crime of Genocide, 1948, 78 UNTS 277 (entered into force 12 January 1951), status as of 26 October 2020, available at [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=iv-1&chapter=4&clang=en](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-1&chapter=4&clang=en) (accessed 26 October 2020).

<sup>1204</sup> For further discussion of the crime of genocide in the TPC see, M. Koca, *The Crime of Genocide in the New Turkish Penal Code*, 42 *Annales*, 59, 2010, at 255, available at <http://istanbul.dergipark.gov.tr/download/article-file/7042>, archived at <https://perma.cc/6HRA-ZKKQ> (accessed 20 October 2020).

group, in whole or in part, through the execution of a plan shall constitute genocide:

- a) Intentional killing;
  - b) Causing serious physical, or mental, harm to persons;
  - c) Deliberately inflicting on the group living conditions calculated to bring about its physical destruction in whole or in part;
  - d) Imposing measures intended to prevent births within the group;
  - e) Forcibly transporting children of the group to another group.
- (2) Any person who commits genocide shall be sentenced to a penalty of aggravated life imprisonment. However, where the offences of intentional killing and intentional injury are committed in the course of genocide, there shall be an actual aggregation of such offences, in accordance with the number of victims identified.
  - (3) Legal entities shall be subject to security measures for these offences.
  - (4) There shall be no limitation period in respect of these offences.
130. Jurisdiction for the crime of genocide is universal under the TPC. It can be prosecuted whether the alleged offence took place in Turkey or abroad. The nationality of the victim is irrelevant, and prosecution can be of Turkish nationals or non-nationals.<sup>1205</sup> Article 13(1)(a) of the TPC states that “Turkish law shall apply to the following offences committed in a foreign country whether or not committed by a citizen or non-citizen of Turkey: a) Offences defined in Chapter I, Volume II”. The crime of genocide in Article 76 (set out in the paragraph above) forms part of Chapter I, Volume II.

### *3.2. Prosecution of Returnees from the Conflict in Syria*

131. Turkey, like many other countries, has struggled to cope with ISIS combatants returning from Syria. Some have been processed using the criminal justice system (investigation, charge or prosecution), while others are dealt with administratively and as sources of intelligence and may not be processed by the justice system (and as such they can be released or placed under heavy surveillance).<sup>1206</sup> When considering the volume of returnees that are in Turkey, either to transit or as returning nationals, the number of prosecutions for terrorist-related offending is “a fraction of the estimated returnee population”.<sup>1207</sup>

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<sup>1205</sup> TPC Article 13(1)(a) (application of the offenses in a foreign country, whether or not committed by a Turkish citizen or non-citizen).

<sup>1206</sup> ICG, *Calibrating the Response: Turkey’s ISIS Returnees*, Europe & Central Asia Report No. 258, 29 June 2020, available at <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 21 November 2020).

<sup>1207</sup> *Ibid.*, p. 17.

132. Of these returnees, many are foreign fighters using Turkey as a transit location to return to other countries.<sup>1208</sup> Alongside these non-Turkish ISIS operatives, there are a vast number of Turkish men and women who fought with ISIS in Syria and Iraq. Studies have shown that these fighters came to the conflict for a variety of reasons. Some were youth seeking glory or “purification” from petty crime or drugs. Others were fighters in previous wars who were effective recruiters. Still others were ultra-conservative Sunni Muslims seeking life under strict Islamic rule, while other Islamists, the Kurdish Islamists, sought to fight the PKK and its Syrian affiliate, the YPG.<sup>1209</sup> The final group posed a peculiar problem for the Turkish Government as it considered the PKK/YPG as “terrorist” entities.<sup>1210</sup>
133. Any Turkish efforts to uphold its obligation to punish genocide must be understood in the context of these complex criminal justice and geopolitical problems. ISIS returnees also pose a genuine threat to public security in Turkey; some 300 Turkish civilians have been killed by ISIS in attacks within Turkey from 2014 to 2017.<sup>1211</sup> Although, there has been no such attack in some three years.<sup>1212</sup>
134. In 2020, the ICG produced a report on the processing of returning jihadists in Turkey.<sup>1213</sup> It paints a picture of a system that is currently completely overwhelmed. Turkish authorities stepped up their efforts to control ISIS following the 2015-2016 attacks on Turkish soil, but they were not working at this level of intensity before this time. Indeed, the ICG notes that those critical of the Turkish Government that it interviewed “argue that in reality, Ankara simply did not count ISIS as a major threat to Turkish security before 2016. But this changed when the attacks began to take a toll on the Turkish economy and, in the case of the May 2016 attack on a Gaziantep police station, to target state institutions.”<sup>1214</sup>
135. There is a lack of consistency in how returnees are dealt with, and there are some examples of dangerous operatives being released from prison who subsequently escaped to Syria. The search for useful intelligence has meant that some ISIS operatives have allegedly gone on to commit terrorism-related

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<sup>1208</sup> Deutsche Welle, Leaving Syria, Many Islamic State Members to Transit Turkey, 21 February 2019, available at <https://www.dw.com/en/leaving-syria-many-islamic-state-members-to-transit-turkey/a-47623491> (accessed 26 October 2020).

<sup>1209</sup> ICG, *Calibrating the Response: Turkey’s ISIS Returnees*, Europe & Central Asia Report No. 258, 29 June 2020, p. 5-12, available at <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 21 November 2020).

<sup>1210</sup> Deutsche Welle, Leaving Syria, many Islamic State members to transit Turkey, 21 February 2019, available at <https://www.dw.com/en/leaving-syria-many-islamic-state-members-to-transit-turkey/a-47623491> (accessed 26 October 2020).

<sup>1211</sup> ICG, *Calibrating the Response: Turkey’s ISIS Returnees*, Europe & Central Asia Report No. 258, 29 June 2020, p. i-ii, available at <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/258-calibrating-response-turkeys-isis-returnees> (accessed 21 November 2020).

<sup>1212</sup> *Ibid.*, pp 5-12.

<sup>1213</sup> *Ibid.*, pp 5-12.

<sup>1214</sup> *Ibid.*, p. 16.

offences after being released by Turkish security operatives.<sup>1215</sup> Turkey has used surveillance and detention, alongside traditional criminal justice responses such as trial and sentence, to try to manage the vast number of returnees.<sup>1216</sup> Interviews held by the ICG also revealed that ISIS suspects have been released to be put under surveillance to track down ISIS networks with the aim of identifying other suspects.<sup>1217</sup> In an interview with the International Center for the Study of Violent Extremism, Savas Yildiz, a Turkish national who joined ISIS in 2014, stated that that “leading Turkish ISIS members move freely between Turkey and Syria because some of them are working for Turkish intelligence.”<sup>1218</sup>

136. Alongside this lack of consistency is a lack of individualization of treatment of different alleged offenders. The Turkish authorities, according to the ICG, are unable to differentiate their approaches to different groups’ risks, outlooks and needs. The threats posed by ultra-leftist groups, ISIS and the PKK/YPG are different in their immediacy and motivation and, therefore, require different responses. Turkish authorities continue to worry more about PKK threats to the State.<sup>1219</sup> This failure to differentiate makes the response to the security threats of each group less effective. The ICG, therefore, recommends more rehabilitative approaches to dealing with returning ISIS fighters as a better long-term strategy than the short sentences (3-4 years served) that are often imposed by the courts. The ICG describes the punishment of ISIS operatives as follows:

*Most ISIS returnees who go on trial are sentenced to between five and ten years for membership in a terrorist organisation - although in practice many serve only three or four years behind bars. Sentences can be reduced by a year or two during prosecution if the judge believes the defendant shows remorse or for other mitigating factors. Inmates may also be released early for good behaviour after serving three quarters of their sentence. Other returnees receive softer sentences of one to six months in jail or a fine for crossing the border illegally; between one and five years on charges of possessing illegal arms; or between one and eight years for possessing hazardous substances or providing support to or promoting a terrorist group. “Those calling the shots behind the scenes and carrying out recruitment/indoctrination work are usually not targeted because it is difficult to connect their*

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<sup>1215</sup> *Ibid.*, pp 19-21. Examples mentioned in the report include an ex-detainee being suspected of aiding plotting the 2015 Ankara railway station bombing and another key ISIS figure appeared on a video in 2016 in which ISIS militants in Syria burned two Turkish soldiers alive after release in 2015.

<sup>1216</sup> *Ibid.*, pp 19-21.

<sup>1217</sup> *Ibid.*, p. 19.

<sup>1218</sup> N. Ahmed, Turkey’s Secret Pact with Islamic State Exposed by Operative Behind Wave of ISIS Attacks, 21 July 2016, *International Center for the Study of Violent Extremism*, available at <https://www.icsve.org/turkeys-secret-pact-with-islamic-state-exposed-by-operative-behind-wave-of-isis-attacks/> (accessed 3 May 2022).

<sup>1219</sup> *Ibid.*, pp i-ii.

*activity to the criminal act committed”, one lawyer said. In some cases, ISIS suspects are given reduced sentences under an “active remorse” clause if they agree to share information.*

137. Unable to deal with the volume of ISIS returnees, Turkey appears unable or unwilling to undertake prosecutions of international crimes generally and prosecutions relating to the Yazidi genocide in particular. As with terrorist prosecutions, there is a difficulty in obtaining evidence for prosecution of international crimes that have taken place under ISIS. However, as the ICG points out, the Turkish authorities are better placed than most other countries to collect what evidence could be obtainable.<sup>1220</sup> It is submitted that this potential access to evidence means that the obligation to punish emanating from the Genocide Convention weighs particularly heavily on Turkey.
138. To date, Turkey has prosecuted ISIS fighters for terrorist offences, not for genocide. This is part of a greater international trend whereby prosecutions have focused on terrorist offences in various jurisdictions. This is because national security legislation has made it easier to investigate and prosecute terrorist offending, and it is helped by the fact that the international and national definitions of terrorism are very loose. This trend has been documented by the Swiss NGO *TRIAL International*.<sup>1221</sup> Nevertheless, in its report on this subject, *Eurojust* has shown that it is possible to cumulatively prosecute and hold foreign fighters accountable for war crimes, crimes against humanity and the crime of genocide, in addition to terrorism-related offences.<sup>1222</sup> Currently, however, if any perpetrators of the Yazidi Genocide have been prosecuted in Turkey, it seems likely that this will have been on the basis of terrorist offending rather than for breaching Article 76 of the TPC.
139. Some perpetrators of genocide may have been prosecuted in Turkey for terrorism-related offences. However, even if this were the case, it does *not* fulfil Turkey’s obligation, under the Genocide Convention, to punish individuals committing genocide or any of the other acts enumerated in Article III of the Convention.
140. There is no publicly available evidence that Turkey has investigated, charged, or prosecuted any ISIS operatives for their involvement in the Yazidi Genocide.

### 3.3. *Recognition of the Yazidi Genocide*

141. The Genocide Convention does not make the obligation to punish conditional on a State’s formal recognition of genocide. In the case of Turkey, this State has not formally recognised the Yazidi genocide.

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<sup>1220</sup> *Ibid.*, p. 17.

<sup>1221</sup> TRIAL International, *Universal Jurisdiction Annual Review 2019*, Geneva: TRIAL International, 2020, available at <https://trialinternational.org/latest-post/universal-jurisdiction-annual-review-2020-atrocities-must-be-prosecuted-soundly-and-rigorously/> (accessed 20 October 2020).

<sup>1222</sup> Eurojust, *Cumulative Prosecution of Foreign Terrorist Fighters For Core International Crimes And Terrorism-Related Offences*, The Hague, May 2020.

142. Although Turkey has not gone so far as to formally recognise the genocide in August 2020, it did accept the gravity of the 2014 atrocities against the Yazidis. According to the state-owned news agency *Anadolu*, the then sTurkish Foreign Minister Mevlut Çavuşoğlu posted on Twitter that “Grief for Ezidis [sic] massacred 6 years ago by DAESH is still vivid in our memory”. He then went on to say that having been the victim of these massacres they now faced attacks from Kurdish armed groups.<sup>1223</sup>

### *3.4. Investigation and Prosecution of those Involved in the Sale of Yazidi Women as Slaves*

143. There is credible evidence of significant crimes relating to the sale of Yazidi women as slaves in Turkey in 2014. This evidence points towards a failure to prevent an ongoing prohibited act, namely serious bodily and mental harm and, furthermore, an ongoing failure to punish those responsible.<sup>1224</sup> In November 2015, a documentary was aired on the German television stations *NDB* and *SWR*. The programme showed examples of women, including Yazidi women, being sold as slaves in the Turkish town of Gaziantep. The women can be seen on pages of the dark web with prices (as high as USD 18,000) attached to them.<sup>1225</sup> These acts could be considered as prohibited acts or acts connected to prohibited acts under the Genocide Convention.
144. In response to this documentary, according to Ahmet Yayla and Anne Speckhard, the local bar association petitioned the government for prosecutions to be initiated: “After the German video aired on the German TV channels on Nov 30, 2015, the Gaziantep Bar Association made a complaint to the Turkish justice system through the Gaziantep Prosecutor’s Office. After the complaint, the Turkish National Police raided the office featured in the news video. During the raid, the police confiscated over three hundred and seventy thousand dollars, many foreign passports, and around two thousand pages of cash receipts indicating various cash transfers between Turkey and Syria.”<sup>1226</sup>
145. At the time that Yayla and Speckhard’s 2016 report was written, two trials, for money laundering related offences linked to terrorist financing, had gone ahead against men accused of running human trafficking operations for ISIS. In both cases, prosecutors failed to secure a conviction:

*Six suspects were arrested and charged with being members of a terrorist organization, financing a terrorist organization, and human*

<sup>1223</sup> N. Yuzbasioglu, Turkey’s Top Diplomat Remembers 2014 Ezidi Massacre, *Anadolu Agency*, 3 August 2020, available at <https://www.aa.com.tr/en/politics/turkey-s-top-diplomat-remembers-2014-ezidi-massacre/1930472> (accessed 26 October 2020).

<sup>1224</sup> See Section C (Commission of Prohibited Acts Against the Yazidis as a Protected Group) of Part III (Findings on Genocide) of this Report for the material acts of genocide.

<sup>1225</sup> A. Yayla, A. Speckhardt, ISIS Sex Slave Trade Brokered in Gaziantep, Turkey, 2016, *International Center for the Study of Violent Extremism*, 2016, available at <https://www.icsve.org/isis-sex-slave-trade-in-gaziantep-turkey/> (accessed 20 October 2020).

<sup>1226</sup> *Ibid.*

*trafficking. The first trial was held on December 31, 2015. The suspects denied the allegations and claimed that they were basically transferring regular Syrian people's money to Syria via a fixed commission, as the banking system is currently collapsed in Syria. The second trial was held January 15, 2016. Based on the verdict of the court, all the suspects were released due to insufficient evidence. However, the above receipts were translated into Turkish and handed over to the court on January 27, 2016, clearly indicating that on several occasions, large sums of money were transferred routinely. and no one had bothered to wait for the translations of the receipts to arrive to the court before the final verdict.<sup>1227</sup>*

146. Notwithstanding these trials, there is no publicly available information suggesting that Turkish authorities have successfully prosecuted any perpetrator for these alleged offences. It is also of note that even these failed attempts to convict for crimes related to the Yazidi genocide are for terrorism offences rather than international crimes.

### **Summary Findings on the Obligation to Punish**

147. Turkey's proximity to Syria and the presence of ISIS members on its territory gave it special responsibility for those who have perpetrated international crimes as part of the conflict. Turkey has not discharged its obligation to punish. Although there may be some explanations for why this is the case, it is clear that the country has not prioritized the prosecution of international crimes generally, nor the punishment of those involved in the Yazidi genocide specifically. Turkey has thus failed in its obligation, under the Genocide Convention, to punish perpetrators of genocide against the Yazidis.
148. Unlike other jurisdictions, such as Iraq and Syria, Turkey has the legal framework to abide by the obligation to punish. Article 76 of the Turkish Penal Code specifically defines the crime of genocide. The definition is broadly in line with that in the Genocide Convention (and the Rome Statute). This crime, along with other international crimes, has the benefit of universal jurisdiction in Turkey. If Turkey were committed to discharging its obligation to punish in the case of the Yazidi genocide, it has the legal architecture to do so. To put it another way, at all times during the Yazidi genocide, Turkish law criminalized genocide, even if the acts that constituted the offending, the victim(s) and the perpetrator(s) were not on Turkish soil. The Yazidi genocide is a crime under the TPC and all those who perpetrated it can be prosecuted in Turkey if the State were willing to do so.
149. Notwithstanding this legal architecture, Turkey has not properly used it. There is no publicly available evidence of any prosecutions for genocidal acts related to the Yazidi genocide. There is some evidence of failed investigations and

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<sup>1227</sup> *Ibid.*

failed prosecutions for offences related to the trafficking of Yazidi women as slaves in Gaziantep (above). However, these acts were not charged as genocide but as terrorism-related offences.

150. Although Turkey has not prosecuted anyone for the Yazidi genocide, it does have a large-scale programme for processing returnees from the Syrian conflict who have been associated with ISIS. However, it is clear from the study by the ICG that this system is inadequate. It is only able to process a fraction of the number of returnees in Turkey, and it lacks the capacity needed for nuanced analysis and the ability to tailor sentences.

#### 4. Attribution of Prohibited Acts of Genocide

151. In the light of publicly available information supporting the Committee's findings that there are reasonable grounds to conclude that Turkish officials were complicit in the commission of acts of genocide, this section of the Report considers Turkey's role, involvement, or control, if any, over non-state actors and what directions, orders, or instructions were being given, if any, to its own armed forces at the time that the prohibited acts detailed in the sections above were being committed in Iraq and Syria against the Yazidi population.
152. In respect of the State's attitude to the Yazidi group, although Turkey adopted the Treaty of Lausanne in 1923, which grants minority status protections to all non-Muslims, it unlawfully restricted its scope in practice to: Armenians, Jews, and Rums, thereby excluding other non-Muslims, such as the Yazidi among others.<sup>1228</sup> As of June 2018, *Minority Rights Group International* noted that several thousand Iraqi Yazidi refugees were based in Turkey following the Sinjar massacre; and, "they reportedly face particular discrimination due to their faith as well as their status as refugees."<sup>1229</sup>
153. Given the details above, of Turkey's position in the Syrian civil war and its ongoing conflict with Kurdish rebel groups and support for Islamic factions during Syrian incursions, this may indicate a willingness to acquiesce in the destruction of the Yazidi group. Moreover, the Committee has found that there are reasonable grounds to conclude that Turkish officials were complicit in the commission of prohibited acts of genocide. However, in summary, there is insufficient evidence to suggest any acts committed by Turkey's organs, officials, or agents against the Yazidis that may fall within Article II of the Convention were committed with specific intent to destroy of the Yazidi group, in whole or in part. This is the case with respect to Turkey's continuing airstrikes in Sinjar, Iraq, and its incursions into northern Syria since August 2016.

<sup>1228</sup> Minority Rights Group International, World Directory of Minorities and Indigenous Peoples - Turkey, November 2011, available at <https://www.refworld.org/docid/4954ce3fc.html> (accessed 11 December 2020).

<sup>1229</sup> Minority Rights Group International, Minorities and Indigenous Peoples in Turkey, June 2018, available at <https://minorityrights.org/country/turkey/#:~:text=%20religious%20minorities%20%201%20alevis.%20alevi%20is.the%20language%20and%20practices%20of%20assyrians...%20more%20> (accessed 11 December 2020).



#### 4.1. Status of Turkish Special Forces as a De Jure Organ of Turkey

154. As the Turkish 'Special Forces' are an organ of Turkey, any prohibited acts committed by them would be attributable to Turkey. Lieutenant-General Zekai Aksakallı commanded the Turkish Special Forces from 4 August 2013 to 20 August 2017.<sup>1230</sup> The Special Forces Command was presided over by the General Staff. During peacetime, the Chief of the General Staff, General Necdet Özel reported directly to the President; Özel reported to President Abdullah Gül until Recep Tayyip Erdoğan took over on 28 August 2014.<sup>1231</sup> In wartime, Özel would act as the Commander in Chief on behalf of the President, representing the Supreme Military Command of the Turkish Armed Forces on behalf of the Grand National Assembly of Turkey.<sup>1232</sup> Given the relationship between the Commander of the Special Forces and the Head of State, the Special Forces undoubtedly amount to a *de jure* organ of Turkey, and any genocidal acts, if committed by the Special Forces, would be attributable to the State for purposes of international responsibility, by virtue of its internal law.<sup>1233</sup>

#### 4.2. Status of Rebel Groups as Agents of Turkey

155. In order for Turkey to be held directly responsible for acts of genocide committed by ISIS, it must be shown that, at the time the relevant acts were committed, ISIS was acting under the instruction, direction or effective control of Turkish officials. The ICJ has clearly held that the financing, organizing, training, supplying and equipping of an armed group by a State, even the selection of its military or paramilitary targets and the planning of the whole of its operation, is insufficient in itself for the purposes of attribution of the armed group's conduct to the State. This section considers allegations that Turkish Special Forces had "command[ed] and determin[ed] the strategy of ISIS" with the intention to destroy the Yazidi group.
156. It has been alleged by MP Demir Celik that Turkish Special Forces had "for months" preceding September 2014, been sent to assist ISIS. In the press conference in the Turkish Parliament, MP Demir Celik was quoted as stating:

*We have information that the majority of ISIS's fighting forces are formed of Turkish Special Forces [...] These Special Forces have been staying in hotels and safe houses in Mosul for months and have travelled from Mosul to Makhmour, from Makhmour to Sinjar and are in Kobane*

<sup>1230</sup> Sözcü News, Who is Zekai Aksakallı? Here is Lieutenant General Zekai Aksakallı's Military Career, 23 July 2020, translated, available at <https://translate.google.com/translate?hl=en&sl=tr&u=https://www.sozcu.com.tr/2020/gundem/zekai-aksakalli-kimdir-iste-korgeneral-zekai-aksakallinin-askeri-kariyeri-5948672/&prev=search&pto=ae> (accessed 12 October 2020).

<sup>1231</sup> CNN Türk, S. Güncelleme, Erdoğan, Çankaya Köşkü'nde, 28 August 2014, available at <https://www.cnnturk.com/haber/turkiye/erdogan-gorevi-bugun-devraliyor> (accessed 6 July 2020).

<sup>1232</sup> Federal Research Division, Turkey: A Country Study, Kessinger Publishing, 2004, p. 337.

<sup>1233</sup> Constitution of the Republic of Turkey, 7 November 1982, Section II, available at <https://www.refworld.org/docid/3ae6b5be0.html> (accessed 6 July 2020).

*now commanding and determining the strategy of ISIS. There are said to be around two thousand of them.*<sup>1234</sup>

157. The evidence available does not provide further clarity or substantiation to Celik's statement in respect of commanding the strategy of ISIS. The preponderance of the evidence seems to indicate that Turkey failed to adequately police its border and allowed fighters and resources destined from ISIS to freely cross the border, thereby enabling ISIS to commit prohibited acts. Such links between Turkish officials and the acts of genocide committed by ISIS are insufficient to satisfy the tests of direction, instruction, and effective control. Whereas this information is relevant to the question of Turkey's complicity in genocide and a failure by Turkey to prevent the crossing of foreign fighters, there are no other allegations that could be verified by the Committee to suggest that the Turkish Special Forces were *controlling* or *commanding* the strategy of ISIS during its commission of prohibited acts at the time this allegation was made.
158. Moreover, there is insufficient evidence to point towards the Turkish state having the requisite special intent to commit genocide against the Yazidi group. Even with the available evidence above, in respect of Turkey's current incursions into Syria and ongoing airstrikes in Iraq, and high-ranking officials financially benefitting from ISIS' oil smuggling, there does not seem to be any direct publicly available evidence to support the conclusion that Turkey specifically intended to see the Yazidi group destroyed.

#### 4.3. Turkish Control of FSA/NSA

159. There are credible allegations that members of FSA, whilst receiving support from the Turkish Armed Forces, committed prohibited acts against the Yazidi group across villages in the Afrin region. There is evidence to support the conclusion that Turkey knew that prohibited acts were being committed with the specific genocidal intent. However, there is insufficient evidence to conclude that those acts were as a result of direct command by Turkish officials who themselves had the intention of destroying the Yazidi group.

#### Summary Findings on Attribution of Prohibited Acts to Turkey

160. Given the information sourced throughout this report, there is insufficient evidence to attribute either the actions of ISIS prior to 2015, or those of the FSA or Syrian National Army post-2016, to Turkey. There is an insufficient basis upon which to conclude that Turkey controlled or directed the groups' actions. Whereas there are reasonable grounds to conclude that Turkey had knowledge of ISIS' specific intent to commit genocide, there is insufficient

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<sup>1234</sup> A. Dicle reported at <http://kurdishquestion.com/.../analysis/the-kobane-war.html> on 20 September 2014 but this page is no longer available. The article is quoted here by the Workers Bush Telegraph on 21 September 2014 available at <https://workersbushtelegraph.com.au/2014/09/21/tangled-turkish-kurdish-syrian-iraqi-web/> (accessed 2 March 2021).

evidence to conclude that Turkey held the requisite special intent. The Committee has been unable to source any materials to suggest that Turkey intended to destroy the Yazidi group in whole or in part.

## IX. SUMMARY FINDINGS ON ALLEGATIONS RELATING TO OTHER STATES

1. This Section provides summaries of findings detailed in separate Country Reports in relation to allegations made of State responsibility for the Yazidi genocide other than allegations in respect of Iraq, Syria and Turkey.
2. In this regard the YJC has focused on States Parties to the Genocide Convention that have not made a reservation to Article IX of the Convention, and thereby accept the competence of the ICJ to adjudicate disputes concerning the interpretation, application and fulfilment of the Convention. This is not because a reservation to Article IX precludes State responsibility for a breach of the terms of the Convention, which it does not. Rather, because the mandate of YJC is to consider the responsibility of those States with respect to which the adjudicatory mechanism for the resolution of disputes concerning State responsibility under the Convention is available, and by which it would be possible to hold the State concerned accountable for any breach at the ICJ.
3. Iran, France Saudi Arabia, Gulf Cooperation Council ("GCC") States (Kuwait, Qatar, the UAE, Oman and Bahrain), Russia, and the United Kingdom are the other States Parties to the Genocide Convention that have not made a reservation to Article IX, in respect of which allegations were made by NGOs, media outlets, international organisations and academics as being "responsible" in the following ways:
  - a. Saudi, GCC States (primarily Qatar) are said to have materially supported ISIS or its affiliates as an organisation prior to, during or after the alleged genocide in Iraq and Syria – i.e., during the period in which genocide took place circa 2014 and continuing thereafter.
  - b. All States failed to prevent genocide as and when it was occurring in Iraq and Syria; and/or
  - c. All States failed to apprehend or take any action (by way of legislation, policy, or practice) to punish possible perpetrators knowing that they could have been perpetrators of prohibited acts of genocide.
4. Findings of the Report indicate that Convention breaches are, with some exceptions, only substantiated, by evidence, in respect of Syria, Iraq and Turkey.

### A. *France Country Report*

#### 1. **Obligation to Prevent Genocide**

5. It is highly likely that the French Government knew, or should have known, of the serious risk faced by the Yazidis of genocide from, at the latest, early 2014. By August 2014, in any case, there was widespread coverage by international organisations, including the UN, and Western media of mass killings of Yazidis

by ISIS,<sup>1235</sup> as well as the capture of Mount Sinjar and the plight of the Yazidis stranded on the mountain.<sup>1236</sup> Documentation of killings was also provided by ISIS themselves from mid-2014.<sup>1237</sup> Indeed, it has been noted that, generally, ISIS “has not tried to hide or deny its crimes against Yazidis. On the contrary, more than any other group, it has gone to great efforts to publicize gruesome details of the atrocities perpetrated by its members against captured soldiers and civilians alike, giving them ample resonance through videos and statements widely distributed on social media, often in multiple languages.”<sup>1238</sup> ISIS began publishing its *Dabiq* magazine in July 2014. The magazine made public ISIS’ policy that any “infidels”, such as the Yazidis, present in territories under its control would have to be defeated.<sup>1239</sup>

6. On 7 August 2014, France’s Foreign Minister called for an urgent UN Security Council meeting over the crisis in Iraq, stating that “France is very deeply concerned by the latest advances of (ISIS militants) in the north of Iraq and the taking of Qaraqosh, the biggest Christian city in Iraq, as well as by the intolerable abuses that were committed”.<sup>1240</sup> He added that “given the seriousness of the situation - the first victims of which are civilians and religious minorities - France is requesting an urgent meeting of the Security Council so the international community can mobilise to counter the terrorist threat in Iraq and support and protect the population at risk.”<sup>1241</sup> The French President, François Hollande, spoke about Iraq by telephone with the head of the Kurdistan Regional Government and confirmed that France was available to support forces engaged in this battle. A French diplomatic source said the country was prepared to offer technical support to the forces of the autonomous Kurdish region of northern Iraq but would stop short of military assistance.<sup>1242</sup>

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<sup>1235</sup> L. Morris, Iraqi Yazidis stranded on isolated mountaintop begin to die of thirst, *Washington Post*, 5 August 2014, available at [https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064\\_story.html](https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064_story.html) (accessed 9 October 2020).

<sup>1236</sup> M. Chulov, 40,000 Iraqis stranded on mountain as Isis jihadists threaten death, *The Guardian*, 7 August 2014, available at <https://www.theguardian.com/world/2014/aug/07/40000-iraqis-stranded-mountain-isis-death-threat> (accessed 9 October 2020).

<sup>1237</sup> L. Morris, Iraqi Yazidis stranded on isolated mountaintop begin to die of thirst, *Washington Post*, 5 August 2014, available at [https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064\\_story.html](https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064_story.html) (accessed 9 October 2020).

<sup>1238</sup> Amnesty International, *Escape from hell: Torture and sexual slavery in Islamic State Captivity in Iraq*, 2014, available at [http://www.amnesty.org.uk/sites/default/files/escape\\_from\\_hell\\_-\\_torture\\_and\\_sexual\\_slavery\\_in\\_islamic\\_state\\_captivity\\_in\\_iraq\\_-\\_english\\_2.pdf](http://www.amnesty.org.uk/sites/default/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_-_english_2.pdf) (accessed 3 January 2021).

<sup>1239</sup> See *Iraq Country Report, Obligation to Prevent*.

<sup>1240</sup> UN calls for international action after attacks on Iraqi minorities, *France 24*, 8 August 2014, available at <https://www.france24.com/en/20140808-un-security-council-calls-action-iraqi-isis-attacks> (accessed 9 October 2020).

<sup>1241</sup> France pledges ‘support’ for forces fighting ISIS in Iraq, *France 24*, 7 August 2014, available at <https://www.france24.com/en/20140807-france-pledges-support-forces-fighting-isis-iraq> (accessed 9 October 2020).

<sup>1242</sup> *Ibid.*

7. As the crisis unfolded, President Obama announced US military action to help the Yazidis trapped on Mount Sinjar. He recognised that ISIS forces had called for the systematic destruction of the entire Yazidi people, which would constitute genocide, acknowledged the unique capabilities of the US to help avert a massacre, and committed to act, carefully and responsibly, to prevent a potential act of genocide.<sup>1243</sup> The first US airstrikes struck ISIS targets around the mountain on 8 August 2014. These were the first US airstrikes to be launched against ISIS targets in Iraq, and they were supplemented by humanitarian airdrops to Yazidis stranded on Mount Sinjar.
8. At the time (August 2014), Iraq, under the Prime Ministership of Nuri Kamal al-Maliki, had not formally given consent to foreign governments to use force in its territory against ISIS, though there had been repeated requests from Kurdish officials for weapons and assistance as ISIS militants swept across north-western Iraq.<sup>1244</sup>
9. With no clear legal basis for intervention, and with the US announcing airstrikes, France, along with the UK, opted to support US and regional efforts through the provision of humanitarian support to those displaced and military equipment and intelligence to regional actors.<sup>1245</sup>
10. On 9 August 2014, President Hollande announced the first delivery of emergency food and equipment. "The persecution of religious minorities, namely Christians and Yazidis by this terrorist group, is a crime of extreme seriousness," said a statement. French Foreign Minister, Laurent Fabius commented that France will provide "several tons" of aid to internally displaced Iraqis.
11. On 13 August 2014, France announced that it would send arms to the Kurds and ethnic Yazidis in Iraq, to help them defend their territory against ISIS: "In order to respond to the urgent need expressed by the Kurdistan regional authorities, the president has decided, in agreement with Baghdad, to deliver arms in the coming hours," Hollande's office said in a statement: "France intends to play an active role by providing, along with its partners and in liaison with the new Iraqi authorities, all the assistance required."<sup>1246</sup>
12. On 15 September 2014, at the Paris conference, the Government of Iraq welcomed the commitment that was made by 26 States to provide it with all necessary support in its war against ISIS, including appropriate military assistance, and expressed gratitude for the military assistance it was already

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<sup>1243</sup> US President Barack Obama, President Obama Makes a Statement on the Crisis in Iraq, 7 August 2014, available at <https://obamawhitehouse.archives.gov/blog/2014/08/07/president-obama-makes-statement-iraq> (accessed 13 August 2014).

<sup>1244</sup> M. Scharf, How the War Against ISIS Changed International Law, *Case Western Reserve Journal of International Law* 48, 2006, pg. 8; See also H. Cooper, M. Landler and A. J. Rubin, Obama Allows Limited Airstrikes on ISIS, *New York Times*, 7 August 2014.

<sup>1245</sup> M. Chulov, J. Borger, R. Norton-Taylor and D. Roberts, US troops land on Iraq's Mt Sinjar to plan for Yazidi evacuation, *The Guardian*, 13 August 2014.

<sup>1246</sup> J. Borger, France to send arms to besieged Yazidi community in Iraq, *The Guardian*, 13 August 2014, available at <https://www.theguardian.com/world/2014/aug/13/france-arms-kurds-isis-iraq-military> (accessed 9 October 2020). Official source no longer available.

receiving.<sup>1247</sup> On 19 September 2014, France joined the US in bombing ISIS in Iraq.<sup>1248</sup>

13. France had begun flying reconnaissance missions over Syria in September 2015, and on 27 September 2015 France launched its first airstrikes against ISIS in Syria. The expansion of airstrikes from Iraq was defended by President François Hollande as self-defence following series of terrorist attacks in France.<sup>1249</sup>
14. France, along with the US and other international and regional actors, appears to have played a key role in attempting to prevent genocide on Mount Sinjar, and resisting further attacks by ISIS. This critical intervention saved thousands of Yazidi lives and facilitated the rescue of others.
15. The French government states that France has provided humanitarian and stabilisation assistance of €90 million in Iraq since 2014, a loan of €430 million to the Iraqi government and support for various UN agencies (UNDP, WFP, UNHCR) and French NGOs operating in the field.<sup>1250</sup> In Syria, funds have been provided to meet the essential needs of liberated areas: in October 2017 to address the emergency that followed the liberation of Raqqa (€10 million), then in April 2018 to launch real stabilisation efforts (€50 million, most of which was granted to north-east Syria). However, it is not clear on the information available what quantities of this aid were provided by France in response to the international crimes perpetrated against the Yazidis.
16. In summary, from publicly available sources, there is insufficient evidence to suggest that France failed to discharge its obligation to prevent genocide against the Yazidis. In particular France played a role by conducting airstrikes against ISIS, pledging humanitarian aid and equipment to the Kurds. In addition, as noted below, France put forward and voted in favour of a draft UN Security Council Resolution that would have referred the situation in Syria to the ICC.<sup>1251</sup> However, that draft resolution was vetoed by the Russian Federation and China.

## 2. Obligation to Not Be Complicit in Genocide

17. The information available in the public domain is insufficient to substantiate any allegations.

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<sup>1247</sup> UN Security Council, Letter dated 20 September 2014 from the Permanent Representative of Iraq to the United Nations addressed to the President of the Security Council, S/2014/691, 22 September 2014, available at <https://www.securitycouncilreport.org/atf/cf/%7b65bfc9b-6d27-4e9c-8cd3>.

<sup>1248</sup> Islamic State: France ready to launch Iraq air strikes, *BBC News Online*, 18 September 2014, available at <https://www.bbc.co.uk/news/world-europe-29255711> (accessed 7 June 2022).

<sup>1249</sup> A. Crisafis, France launches first airstrikes against Isis in Syria, *The Guardian*, 27 September 2015, available at <https://www.theguardian.com/world/2015/sep/27/france-launches-first-airstrikes-isis-syria> (accessed 9 October 2020).

<sup>1250</sup> French Ministry for Europe and Foreign Affairs, Post-Daesh Iraq: France's engagement, available at <https://www.diplomatie.gouv.fr/en/country-files/north-africa-and-middle-east/post-daesh-france-s-engagement/> (accessed 31 August 2020).

<sup>1251</sup> UN Security Council Draft Res. S/2014/348, 22 May 2014, UN Doc. S/2014/348.

### 3. Attribution of Prohibited Acts of Genocide

18. The information available in the public domain is insufficient to substantiate any allegations.

### 4. Obligation to Punish Perpetrators of Genocide

19. On 22 May 2014, France put forward and voted in favour of a draft UN Security Council Resolution that would have referred the situation in Syria to the ICC and thereby provided the Court with the competence to investigate and prosecute crimes committed by ISIS against the Yazidi community.<sup>1252</sup> The Resolution was vetoed by the Russian Federation and China.<sup>1253</sup>
20. After the 2014 draft resolution failed to pass, France has continued to support the efforts of the international community to investigate and prosecute crimes committed by the Islamic State, including those crimes perpetrated against the Yazidi community. For example, France voted in favour of a number of UN Security Council resolutions which recognised that attacks were being perpetrated by ISIS against civilians due to their ethnic background and religion which included executions, the deliberate targeted killings of civilians, sexual violence against women and children, and sexual slavery.<sup>1254</sup> The resolutions also recognised that such acts constituted violations of international humanitarian law and human rights abuses, and that those responsible must be held accountable.<sup>1255</sup> French representatives have also made remarks to this effect at UN Security Council meetings.
21. On 21 December 2016, France voted in favour of UN General Assembly Resolution 71/248 to establish an independent UN mechanism to investigate and prosecute those responsible for the most serious crimes under international law in the Syrian Arab Republic since March 2011 (“the Mechanism”).<sup>1256</sup> France also contributes to the funding of the Mechanism.
22. France also voted in favour of UN Security Council Resolution 2379 which created the Investigative Mechanism for Iraq and explicitly recognised that the activities of ISIS, as identified, “may amount to war crimes, crimes against humanity or genocide”.<sup>1257</sup> On 20 September 2019, France supported the Resolution which reaffirmed the Resolution establishing the Investigative Mechanism and extended the mandate of the team until 21 September

<sup>1252</sup> UN Security Council Draft Res. S/2014/348, 22 May 2014, UN Doc. S/2014/348.

<sup>1253</sup> UN Security Council Meeting Record, 22 May 2014, UN Doc. S/PV.7180.

<sup>1254</sup> UN Security Council Res. 2233 (2015), 29 July 2015, UN Doc. S/RES/2233.

<sup>1255</sup> See, UN Security Council Res. 2170 (2014), 15 August 2014, UN Doc. S/RES/2170; UN Security Council Res. 2199 (2015), 12 February 2015, UN Doc. S/RES/2199; UN Security Council Res. 2299 (2016), 25 July 2016, UN Doc. S/RES/2299; UN Security Council Res. 2367 (2017), 14 July 2017, UN Doc. S/RES/2367; and UN Security Council Res. 2368 (2017), 20 July 2017, UN Doc. S/RES/2368.

<sup>1256</sup> UN General Assembly Res 71/248, UN Doc. A/RES/71/248.

<sup>1257</sup> UN Security Council Res. 2379 (2017), 21 September 2017, UN Doc. S/RES/2379.



- 2021.<sup>1258</sup> France has provided subsequent expert capability to the Investigative Team.<sup>1259</sup>
23. In 2016, France established an investigation in order to collect information and to identify potential French perpetrators of genocide and crimes against humanity committed against ethnic and religious minorities, including the Yazidi community, in Iraq and Syria. In 2017, French nationals were identified as having abducted and detained several Yazidi women.<sup>1260</sup> In October 2019, a case was opened against a specific individual for crimes against humanity and the crime of genocide. It was alleged that Sabri Essid had purchased, detained and raped two Yazidi women in Syria. This is the first and only prosecution in France in respect of crimes committed against Yazidis.<sup>1261</sup>
24. In summary, the French Government appears to be willing and able to support and facilitate the investigation and prosecution of ISIS members, primarily of French nationals, suspected of having committed genocide, crimes against humanity and/or war crimes. As has been noted, the French government has taken steps to support international, evidence gathering mechanisms, such as the International, Impartial and Independent Mechanism for Syria and the Investigative Mechanism for Iraq. Domestically, it has taken action at the national level to contribute to the investigation and prosecution of crimes committed against the Yazidi community, including with respect to the case against Sabri Essid, who had allegedly purchased, detained and raped two Yazidi women in Syria.

## **B. Iran Country Report**

### **1. Obligation to Prevent Genocide**

25. Iran is highly likely to have been aware, or should have been aware, of the serious risk of prohibited acts of genocide and/or atrocities carried out by ISIS, at least, in early 2014 through media coverage, communications from international organisations, as well as visual records disseminated by ISIS

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<sup>1258</sup> UN Security Council Res. 2490 (2019), 20 September 2019, UN Doc. S/RES/2490.

<sup>1259</sup> United Nations, *Third Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant*, UN Doc. 13 November 2018.

<sup>1260</sup> The Secretariat for the Network for investigation and prosecution of genocide, crimes against humanity and war crimes, supported by Eurojust, *Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism Related Offences*, May 2020, available at [http://www.eurojust.europa.eu/doclibrary/genocide-network/knowledgesharing/cumulative%20prosecution%20of%20foreign%20terrorist%20fighters%20\(may%202020\)/2020-05\\_report-on-cumulative-prosecution-of-fffs\\_en.pdf](http://www.eurojust.europa.eu/doclibrary/genocide-network/knowledgesharing/cumulative%20prosecution%20of%20foreign%20terrorist%20fighters%20(may%202020)/2020-05_report-on-cumulative-prosecution-of-fffs_en.pdf) (accessed 30 August 2020).

<sup>1261</sup> The Secretariat for the Network for investigation and prosecution of genocide, crimes against humanity and war crimes, supported by Eurojust, *Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism Related Offences*, May 2020, available at [http://www.eurojust.europa.eu/doclibrary/genocide-network/knowledgesharing/cumulative%20prosecution%20of%20foreign%20terrorist%20fighters%20\(may%202020\)/2020-05\\_report-on-cumulative-prosecution-of-fffs\\_en.pdf](http://www.eurojust.europa.eu/doclibrary/genocide-network/knowledgesharing/cumulative%20prosecution%20of%20foreign%20terrorist%20fighters%20(may%202020)/2020-05_report-on-cumulative-prosecution-of-fffs_en.pdf) (accessed 30 August 2020).

themselves. In fact, Iran should have been aware when States such as Iraq, Turkey and Syria ought to have been aware of the serious risk from April 2013 (as set out in the Obligation to Prevent Sections, Country Reports).

26. There do not appear to be any specific statements in the public domain in which the Iranian Government acknowledged that: (a) acts in preparation for the commission of genocide were taking place; and/or (b) genocidal acts were taking place in Iraq/Syria. However, given the substantial, close cooperation between Iraqi and Iranian forces,<sup>1262</sup> it is possible that the Iranian Government was aware of acts in preparation for the commission of genocide taking place in the territory of Iraq.
27. It is possible that the Iranian Government did not take any action either because of reactive policy or because it downplayed the threat. While it may be guided by broad strategic principles such as striving for regional supremacy, Tehran often develops its position reactively in response to a crisis.<sup>1263</sup> Further, in June 2014, as ISIS was making substantial advances in Syria and Iraq, the Iranian state media, along with Government officials, downplayed the threat posed by the group and the progress it made. According to one analysis, the rise of ISIS, and in particular the group's advance into Iraq, initially caught Tehran off guard.<sup>1264</sup> Iranian media even reported that the Iraqi army had successfully pushed ISIS back, and that the group's fighters were confined to a small area in Iraq.<sup>1265</sup>
28. Nevertheless, even if Iran was not aware of or downplayed the significance of such preparatory acts, it is incontrovertible that it would have become aware of genocidal acts following warnings from the UN in early 2014 and certainly following 3 August 2014, when ISIS laid siege to the Sinjar area. It would have become so aware from ISIS' own publications and announcements, from media reporting and statements made by states at the United Nations.
29. In August 2014 there was widespread coverage by international organisations, including the UN, and Western media of mass killings of Yazidis by ISIS,<sup>1266</sup> as well as the capture of Mount Sinjar and the plight of the Yazidis stranded on the mountain.<sup>1267</sup> Documentation of killings was also provided by ISIS themselves.<sup>1268</sup>

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<sup>1262</sup> *Ibid.*

<sup>1263</sup> D. Esfandiary and A. Tabatabai, Iran's ISIS Policy, *International Affairs* 91 (1), 2015 p.6.

<sup>1264</sup> *Ibid.*, p.2.

<sup>1265</sup> *Ibid.*

<sup>1266</sup> L. Morris, Iraqi Yazidis stranded on isolated mountaintop begin to die of thirst, *Washington Post*, 5 August 2014, available at [https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064\\_story.html](https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064_story.html) (accessed 9 October 2020).

<sup>1267</sup> M. Chulov, 40,000 Iraqis stranded on mountain as Isis jihadists threaten death, *The Guardian*, 7 August 2014, available at <https://www.theguardian.com/world/2014/aug/07/40000-iraqis-stranded-mountain-isis-death-threat> (accessed 9 October 2020)

<sup>1268</sup> L. Morris, Iraqi Yazidis stranded on isolated mountaintop begin to die of thirst, *Washington Post*, 5 August 2014, available at [https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064\\_story.html](https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064_story.html) (accessed 9 October 2020).

30. Several national governments began making public statements recognising the atrocities, including within the ambit of the United Nations (of which Iran is a member). For instance, on 7th August 2014, France's foreign minister called for an urgent UN Security Council meeting over the crisis in Iraq. On the same day, the UK chaired a meeting of the UN Security Council and a press statement followed, calling on the international community to support the Government and people of Iraq attacked by ISIS, reiterating that those responsible must be held accountable for potential crimes against humanity.<sup>1269</sup>
31. In September 2019, the President of the United Nations Security Council issued a Statement stressing the need for those who have committed violations of international humanitarian law or violations or abuses of human rights in Iraq to be held accountable, noting that some of these acts may constitute war crimes and crimes against humanity.<sup>1270</sup> Iran participated in the UNSC debate leading to the Statement.<sup>1271</sup>
32. According to research by Chatham House in 2015, Tehran's strategy in Iraq was initially to keep boots on the ground to a minimum and its participation as nearly invisible as possible.<sup>1272</sup> However, gradually, Iran's intervention dynamic in Iraq evolved in response to what it viewed as a growing threat. In November 2013, Tehran and Baghdad concluded an agreement for the provision to Iraq of Iranian equipment, including small arms, mortars, and tank and artillery ammunition. It is unclear whether the delivery was completed, owing to the sanctions regime prohibiting Iraqi acquisition of weapons from Iran.
33. There is evidence that forces affiliated with Iran played a role in fighting ISIS, either directly or by providing military and other support to Iraqi forces. In June 2014, Iranian Grand Ayatollah Ali al-Sistani established the predominantly Shiite Hashd al-Shaabi (Popular Mobilisation Units, PMUs), urging young men of all sects to fight ISIS out of patriotic spirit.<sup>1273</sup>
34. In October 2014, photos of Iranian Major-General Qassem Suleimani on a mountaintop alongside Yazidi elders and shaking hands with Kurdish Peshmerga fighters on battlefields in Kurdistan, began to emerge and be shared on Twitter, Facebook, and Iranian state-run media. Suleimani was also Commander of the QUDs Force, a branch of the Iranian Revolutionary Guard (IRGC) responsible for high-profile missions outside of Iran.
35. ISIS was defined by its vehement enmity toward the Shi'a, perhaps more so than any other Sunni jihadi group. The Iranian Government - the primary champion of the world's Shi'a and an obstacle to Sunni jihadi ascendancy in

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<sup>1269</sup> UN Security Council, Press Statement on Iraq, UN Doc. SC/11515-IK/683, 7 August 2014, para.2.

<sup>1270</sup> UN Security Council, Statement by the President of the Security Council, UN Doc. S/PRST/2014/20, 19 September 2014.

<sup>1271</sup> UN Security Council, Iraq Chronology of Events: Security Council Report, available at <https://www.securitycouncilreport.org/chronology/iraq.php> (accessed 1 October 2020).

<sup>1272</sup> D. Esfandiary and A. Tabatabai, Iran's ISIS Policy, *International Affairs*, 91 (1), 2015, 1-15.

<sup>1273</sup> R. Mansour and F.A. Jabar, The Popular Mobilization Forces and Iraq's future, *Carnegie Middle East Centre*, 28 April 2017, available at <https://carnegie-mec.org/2017/04/28/popular-mobilization-forces-and-iraq-s-future-pub-68810> (accessed 7 June 2022).

the Middle East - was one of ISIS's biggest enemies. ISIS's conquest of nearly one-third of Iraq and its ability to threaten Baghdad posed a direct threat to Iranian interests. Additionally, two of Shi'a Islam's holiest sites- located in Najaf and Karbala - were close to ISIS-held territory.<sup>1274</sup>

36. After the fall of Mosul in June 2014, Iran publicly provided Iraq with Ababil surveillance drones, and following further advances by ISIS, Tehran began to fly 140 tons of military equipment daily into Baghdad. One Iraqi intelligence official noted that these deliveries included rockets, heavy machine guns and multiple rocket launchers. In early July, Tehran reportedly delivered Su-25 aircraft (former Iraqi planes kept by Iran following the Iran-Iraq War) to Iraq. On 12 August 2014, ISIS captured Jalawla - a town just 20 miles from the Iranian border. In response, Tehran reportedly assisted the Kurdish counter-offensive by sending in Iranian army units. Unverified pictures of the counter-offensive include M60 tanks in Iranian camouflage patterns, most likely drawn from the Iranian 71st Mechanized Brigade at Abuzar Garrison and/or the 181st Armoured Brigade at Eslamabad Gharb. If verified, the direct involvement of Iranian army units in northern Iraq would constitute a significant increase in Iranian support to those fighting ISIS in that country.<sup>1275</sup>
37. Following weeks of ISIS victories, in September 2014 Tehran was openly credited with enabling small but notable victories against ISIS. In early September, Kurdish and Shi'a forces were able to push ISIS back from Amerli and Suleiman Beg in northern Iraq with Iranian help. According to a Peshmerga commander, Iran offered military assistance, training and advice. Iran also facilitated cooperation and communication between the different groups operating in the area by setting up joint operations centres with the Iraqi military and the Kurds. As ISIS fighters advanced further into Iraq, so Iran's strategy in response to the crisis evolved. As it became clear that the group was making considerable progress near Iran's borders, the Iranian army was reportedly sent in to push it back. If these reports are accurate, this would mark the first time that the Iranian army (as opposed to the Islamic Revolutionary Guard Corps (IRGC)) has been deployed for combat since the Iran-Iraq War.<sup>1276</sup>
38. In Syria, according to research by RUSI, one of the strategic objectives of Iran was the defeat of ISIS. Particularly since the rise of ISIS, Iran has portrayed its involvement in Syria as part of a wider effort to fight terrorism and extremism in the Middle East. For Iranian officials, Al-Nusra (which propagated a similar ideology as ISIS) also constituted a terrorist organisation, and Tehran has concentrated military efforts on attacking it and ISIS equally.<sup>1277</sup>

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<sup>1274</sup> A. Nader, *Iran's Role in Iraq: Room for Cooperation?*, RAND National Defense Research Institute, available at [https://www.rand.org/content/dam/rand/pubs/perspectives/pe100/pe151/rand\\_pe151.pdf](https://www.rand.org/content/dam/rand/pubs/perspectives/pe100/pe151/rand_pe151.pdf) (accessed 14 September 2020).

<sup>1275</sup> D. Esfandiary and A. Tabatabai, *Iran's ISIS Policy*, *International Affairs*, 91 (1), 2015, 1-15, p. 9.

<sup>1276</sup> *Ibid.*, p. 10.

<sup>1277</sup> RUSI, *Understanding Iran's Role in the Syrian Conflict*, undated, available at [https://rusi.org/sites/default/files/201608\\_op\\_understanding\\_irans\\_role\\_in\\_the\\_syrian\\_conflict\\_0.pdf](https://rusi.org/sites/default/files/201608_op_understanding_irans_role_in_the_syrian_conflict_0.pdf) (accessed 3 January 2021).

39. Iran's presence in Iraq and Syria was based on an invitation from both Syria and Iraq. An Iranian official told Iran's semi-official Tasnim News Agency: "Iran has been present in Iraq and Syria at the invitation of the legitimate governments of these countries and sided with the regional nations based on the common interests of the countries."<sup>1278</sup>
40. Flowing from the above, it is probable that Iran had capacity to intervene to prevent genocidal acts from taking place and/or in relation to genocidal acts that were continuing. In part, it could be argued that it did intervene by providing military and other support to Iraq troops to fight ISIS. Indeed, as one columnist put it, "whether it was the US-led strikes or Iranian Major-General Qassem Soleimani's support to Iraqi forces that played a key role in defeating the militant group" remains to be determined.<sup>1279</sup>
41. What is less clear is what capacity Iran had to provide any care and support to Yazidi victims, and/or to stop any ongoing harm to survivors and/or to provide support for internally displaced persons, refugees and asylum seekers from the Yazidi community. According to one source, Iran has provided political, military, economic and humanitarian aid to key stakeholders, mainly Shi'a and Kurds in Iraq. In addition, Iranian Kurds joined Iraqi soldiers in the fight against ISIS.<sup>1280</sup> Thus, it would appear that Iran did provide some level of humanitarian aid (though the cited source does not specifically mention the Yazidis).
42. However, according to another source, some of the abducted Yazidi women and girls are currently in Iran and have been taken hostage / offered for sale. According to their claims, two girls who were abducted by ISIS fighters were moved to Syria and then transferred to Iran, allegedly by Iranian soldiers. According to the media outlet, the asking price for the release of the two girls is \$40,000.<sup>1281</sup> According to another source, "Iranian officials will only release the children after they have been identified – and for a price."<sup>1282</sup> The involvement of the Iranian government or its agents is yet to be verified.<sup>1283</sup> As a result of the concerning news from Iran, a British Parliamentarian, Lord Alton of Liverpool, called upon the U.K. government to investigate the situation and engage in a dialogue with the Iranian government to clarify the issue and to ensure the safe return of the Yazidi girls, if they have indeed been trafficked to Iran.<sup>1284</sup>

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<sup>1278</sup> T. O'Connor, Iran Tells the U.S.: We Were Invited to Iraq and Syria, What about You?, *Newsweek*, 25 May 2018, available at <https://www.newsweek.com/iran-tells-us-we-were-invited-iraq-syria-what-about-you-945166> (accessed 1 October 2020).

<sup>1279</sup> Z. Mehdi, ISIS Legacy in Iraq Has an Enduring Effect on Yazidi Survivors, *The Arab Weekly*, 12 September 2019, available at <https://the arabweekly.com/isis-legacy-iraq-has-enduring-effect-yazidi-survivors> (accessed 1 October 2020).

<sup>1280</sup> M. Hussain, Iran's shadow war on Isis, *The Intercept*, 18 November 2019.

<sup>1281</sup> E. Ochab, Are the Missing Yazidi Women and Girls in Iran?, available at <https://religionunplugged.com/news/are-missing-yazidi-in-iran> (accessed 14 September 2020).

<sup>1282</sup> *Ibid.*

<sup>1283</sup> Clarion Project, Sex Slaves Being Held for Ransom by Iran, undated, available at <https://clarionprojctg.wpengine.com/sex-slaves-being-held-for-ransom-by-iran/> (accessed 1 October 2020).

<sup>1284</sup> E. Ochab, Are the Missing Yazidi Women and Girls in Iran?, available at <https://religionunplugged.com/news/are-missing-yazidi-in-iran> (accessed 14 September 2020).

43. In summary, there is insufficient evidence based on that which is publicly available to find that Iran failed in its obligation to prevent the genocide. There is evidence that it had the capacity to intervene and that it provided military and other support to Iraq and Syria; and troops affiliated with Iran (such as IRGC) were present on the ground in Iraq and/or Syria. There is also evidence that Iran-affiliated troops did take action to counter ISIS, either by providing support to Iraqi troops and/or by directly countering ISIS.

## **2. Obligation to Not Be Complicit in Genocide**

44. The information available in the public domain is insufficient to substantiate any allegations.

## **3. Attribution of Prohibited Acts of Genocide**

45. The information available in the public domain is insufficient to substantiate any allegations.

## **4. Obligation to Punish Perpetrators of Genocide**

46. The information available in the public domain is insufficient to substantiate any allegations.

## **C. Russia Country Report**

### **1. Obligation to Prevent Genocide**

47. Russia is highly likely to have been aware, or should have been aware, of the serious risk of prohibited acts of genocide and/or atrocities carried out by ISIS in early 2014 through media coverage, communications of international organisations, as well as visual records disseminated by ISIS themselves. In fact, Russia should have been aware when States such as Iraq, Turkey and Syria ought to have been aware of the serious risk from April 2013 (as set out in the [Obligation to Prevent Sections, Country Reports](#)).
48. There were no statements, available in the public domain, emanating from the Russian government in 2014, specifically acknowledging that: (a) acts in preparation for the commission of genocide were taking place; and/or (b) genocidal acts were taking place in Iraq/Syria. This was despite a vocal and organised Yazidi diaspora in Moscow, who advocated in the summer of 2014 for recognition of the mass killings on Mount Sinjar and ultimately established as the Yazidi Congress on 28 September 2014.<sup>1285</sup>
49. According to media reports, several Russians and citizens of the North Caucasus Republics of Dagestan and Chechnya went to fight for ISIS in Syria

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<sup>1285</sup> Y. Chulkovskaya, Why Moscow won't recognise genocide against Yazidis in Iraq, *Al-Monitor*, 11 November 2016, available at <https://www.al-monitor.com/originals/2016/11/russia-recognize-yazidi-genocide-iraq-is.html> (accessed 5 June 2022).

during the period in which many prohibited acts were being carried out against Yazidis. The *Financial Times* reported that, according to Russia's Federal Security Service, the number of Russian citizens fighting with ISIS was 1,700 in February 2015 and 2,400 in September 2015.<sup>1286</sup> Data published by security consultancy the Soufan Group gives similar estimates.<sup>1287</sup> It is not known how many of these fighters were present during and prior to the attacks on Mount Sinjar.

50. Although some media reports suggested that Russian officials were slow to recognise the risks of radicals crossing over the borders,<sup>1288</sup> there is no evidence of State policy to allow or encourage such individuals to leave Russia. Available research and commentary on the Russian response to the problem strongly suggests that the Russian Government viewed radicalisation and ISIS recruitment as a serious threat.<sup>1289</sup> The Russian state did take steps to diminish the power of ISIS recruitment by engaging in counter-radicalisation strategies.<sup>1290</sup> This included sharing police intelligence with European agencies, increasing exit checks in the summer of 2014 for Russian citizens leaving for Turkey, Georgia and Azerbaijan and pursuing criminal investigations against those suspected of fighting abroad.<sup>1291</sup>
51. Russia did not take part in any military operations in Syria or Iraq against ISIS during the time of the commission of the majority of prohibited acts particularly in or around August 2014 and notably did not appear to provide any direct assistance to Yazidis in Sinjar. After becoming fully aware of ISIS's commission of prohibited acts against the Yazidis in July 2014, Russia would have had capacity to intervene prior to the Sinjar Massacre in early August 2014 but stated that airstrikes in Syria should only go forward with the Syrian government's consent.<sup>1292</sup>
52. There are reports that the Russian government provided some military support to the Iraqi army. Military planes and possibly pilots had reportedly already been sent to Iraq to fly under Iraqi markings in August 2014.<sup>1293</sup> It was also reported in July 2014 that Russia was providing military experts to aid the Iraqi army.<sup>1294</sup>

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<sup>1286</sup> K. Hille, Russia and radicalisation: Homegrown problem, *Financial Times*, 7 December 2015, available at <https://www.ft.com/content/77156ed2-9ab0-11e5-be4f-0abd1978acaa> (accessed 7 June 2022).

<sup>1287</sup> Soufan Group, *Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq*, 2015.

<sup>1288</sup> K. Hille, Russia and Radicalisation: Homegrown problem, *Financial Times*, 7 December 2015.

<sup>1289</sup> Y. Alexander and D. Alexander, *The Islamic State: Combating The Caliphate Without Borders*; K. Hille, Russia and radicalisation: Homegrown problem, *Financial Times*, 7 December 2015.

<sup>1290</sup> Russia: Extremism and Terrorism, Counter Extremism Project, available at <https://www.counterextremism.com/countries/russia> (accessed on 14 June 2021).

<sup>1291</sup> K. Hille, Russia and radicalisation: Homegrown problem, *Financial Times*, 7 December 2015, available at <https://www.ft.com/content/77156ed2-9ab0-11e5-be4f-0abd1978acaa> (accessed 7 June 2022).

<sup>1292</sup> NBC News, Which Countries Are Doing What in the ISIS Coalition?, 26 September 2014, available at <https://www.nbcnews.com/storyline/isis-terror/which-countries-are-doing-what-isis-coalition-n212596> (accessed 7 June 2022).

<sup>1293</sup> M. Evans, Russia and Iran attack IS jihadists, *CNN*, 11 August 2014.

<sup>1294</sup> K. Spence, Move Over, America: Russia Responds to IS by Sending Warplanes to Iraq, *Motley Fool*, 5 July 2014.



53. Russia did not join the U.S.-sponsored Global Coalition to Counter ISIL. In September 2014, the Kremlin's spokesman, Dmitry Peskov, stated that Russia was in talks with the UN Security Council about "possible forms of cooperation... to counter [the] Islamic state in the framework of international law".<sup>1295</sup> In the winter of 2015, Russia hosted peace negotiations among some of the parties in the Syrian conflict, to no avail.
54. Russia deployed military forces to Syria on 30 September 2015 to prevent collapse of Bashar al-Assad's regime. This followed an official invitation from Syrian authorities.<sup>1296</sup> However, Russian bombers targeted predominantly anti-Assad groups, rather than the "Islamic State" or other terrorist groups.<sup>1297</sup> On 14 March 2016, Russia started the partial withdrawal of its military contingent from Syrian territory.<sup>1298</sup>
55. Russia has faced international accusations that its military involvement in Syria is more focused on supporting Bashar al-Assad than fighting ISIS. Assad is widely seen as Putin's key ally in the Middle East<sup>1299</sup> and the two have historically had a close political and commercial relationship.<sup>1300</sup>
56. In summary, there is no evidence to suggest that Russia failed in its obligation to prevent genocide of the Yazidis. There is some evidence that Russia took action to counter ISIS, by providing support to the Iraqi government and later deploying military forces in Syria at the invitation of Bashar al-Assad, although these efforts appear to be more focussed on upholding his government than on protecting the Yazidis or other groups targeted by ISIS. Russia has also engaged in domestic efforts to prosecute ISIS fighters from Russia and Russian-controlled territories.

## 2. Obligation to Not Be Complicit in Genocide

57. The information available in the public domain is insufficient to substantiate any allegations.

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<sup>1295</sup> Putin looking at cooperation to fight Islamic State, *Jerusalem Post*, 22 September 2014, available at <https://www.jpost.com/breaking-news/putin-looking-at-cooperation-to-fight-islamic-state-376025> (accessed 7 June 2022).

<sup>1296</sup> P. Hobson, Calculating the Cost of Russia's War in Syria, *The Moscow Times*, 20 October 2015, available at <https://www.themoscowtimes.com/2015/10/20/calculating-the-cost-of-russias-war-in-syria-a50382> (accessed 7 June 2022).

<sup>1297</sup> J. Daher, Three years later: the evolution of Russia's military intervention in Syria, *Atlantic Council*, 27 September 2018, available at <https://www.atlanticcouncil.org/blogs/syriasource/three-years-later-the-evolution-of-russia-s-military-intervention-in-syria/> (accessed 7 June 2022).

<sup>1298</sup> Y. Alexander and D. Alexander, *The Islamic State: Combating The Caliphate Without Borders*, Washington DC: Lexington Books, 8 September 2015.

<sup>1299</sup> A. Włodkowska-Bagan, Syria in Russia's Foreign Policy in the 21<sup>st</sup> Century, *Teka Kom. Politol. Stos. Międzynar.*, 2017, 12/1, 27–40; International Crisis Group, Fighting ISIS: The Road to and beyond Raqqa, available at <https://d2071andvip0wj.cloudfront.net/b053-fighting-isis-the-road-to-and-beyond-raqqa.pdf> (accessed 13 June 2021).

<sup>1300</sup> A. Bratersky, Lavrov in Syria To Strongly Back Assad, *The Moscow Times*, 10 February 2012, Issue 1964, available at <https://www.themoscowtimes.com/2012/02/07/lavrov-in-syria-to-strongly-back-assad-a12462> (accessed 7 June 2022).



### 3. Attribution of Prohibited Acts of Genocide

58. The information available in the public domain is insufficient to substantiate any allegations.

### 4. Obligation to Punish Perpetrators of Genocide

59. The Russian Federation has adopted a mixed response to the investigation and prosecution of crimes against the Yazidis. On 22 May 2014, the Russian Federation vetoed a UN Security Council resolution that would have referred the situation in Syria to the ICC and given the Court the competence to investigate and prosecute crimes committed by ISIS including those crimes committed against the Yazidi population on the territory of Syria.<sup>1301</sup>
60. The Russian Federation did, however, vote in favour of several resolutions, alongside France and the United Kingdom, which recognised that attacks were being perpetrated by ISIS against civilians due to their ethnic background and religion which included executions, the deliberate targeted killings of civilians, sexual violence against women and children, and sexual slavery. The resolutions also recognised that such acts constituted violations of international humanitarian law and human rights abuses and that those responsible must be held accountable.<sup>1302</sup>
61. It is apparent that the Russian Federation has not spoken out as strongly in condemnation of ISIS' crimes and of the need for accountability, and the prosecution of perpetrators of crimes, as France and the United Kingdom. This, however, is largely consistent with the approach that the Russian Federation has taken toward international criminal law over the years. For example, during the UN Security Council meeting on 22 May 2017, the Russian Federation's representative insisted that ISIS' crimes "must be objectively investigated, including by harnessing the potential of a joint investigative mechanism in order to help the Iraqi Government put an end to this threat".<sup>1303</sup>
62. On 21 December 2016, the Russian Federation voted against UN General Assembly Resolution 71/248 which established the Investigative Mechanism for Syria. In justifying its decision to vote against the Resolution, the Russian Representative explained that the General Assembly did not have the power to "establish any prosecutorial bodies or entities that may be called on to investigate crimes committed on the territory of a Member State" and stated that "the right to determine mechanisms for investigating crimes and prosecuting their perpetrators belongs to Syria and its people".<sup>1304</sup> Russia does

<sup>1301</sup> UN Security Council Draft Res. 348, 22 May 2014, UN Doc. S/2014/348.

<sup>1302</sup> See, UN Security Council Res.2170 (2014), 15 August 2014, UN Doc. S/RES/2170; UN Security Council Res. 2199 (2015), 12 February 2015, UN Doc. S/RES/2199; UN Security Council Res. 2233 (2015), 29 July 2015, UN Doc. S/RES/2233; UN Security Council Res. 2299 (2016), 25 July 2016, UN Doc. S/RES/2299; UN Security Council Res. 2367 (2017), 14 July 2017, UN Doc. S/RES/2367; and UN Security Council Res. 2368 (2017), 20 July 2017, UN Doc. S/RES/2368.

<sup>1303</sup> UN Security Council Meeting Record, 22 May 2017, UN Doc. S/PV.7945, p.6.

<sup>1304</sup> UN General Assembly Meeting Record, 71<sup>st</sup> Session, 66<sup>th</sup> Plenary Meeting, 21<sup>st</sup> December 2016, UN Doc. A/71/PV.66.

not contribute to the funding of the Mechanism.<sup>1305</sup> It also subsequently sought to have the Mechanism defunded and closed for the same reasons as it opposed its creation in the first place.<sup>1306</sup>

63. On 21 September 2017, Russia voted in favour of UN Security Council Resolution 2379 which established the UN Iraq Investigative Team. In his remarks to the Security Council, the Russian Federation's representative stated that "we believe firmly that the crimes of the terrorists of the Islamic State in Iraq and the Levant should not go unpunished, regardless of where they are committed".<sup>1307</sup> The Russian Federation voted in favour of extending the mandate of the Investigative Mechanism.<sup>1308</sup>
64. It does not appear that the Russian Federation has taken any action at the domestic level with regard to the investigation and prosecution of crimes committed by ISIS members against the Yazidi community.
65. In summary, the Russian Federation has adopted a mixed response to the investigation and prosecution of crimes against the Yazidis. Internationally, the Russian Federation vetoed a UN Security Council resolution that would have referred the situation in Syria to the ICC. However, it voted in favour of several resolutions, alongside France and the United Kingdom, which recognised that attacks were being perpetrated by ISIS against civilians due to their ethnic background and religion which included executions, the deliberate targeted killings of civilians, sexual violence against women and children, and sexual slavery. Domestically, it does not appear that the Russian Federation has taken any action with regard to the investigation and prosecution of crimes committed by ISIS members against the Yazidi community.

#### **D. Saudi Arabia and other Gulf Cooperation Council (GCC) States**

##### **1. Obligation to Prevent Genocide**

66. Saudi Arabia is highly likely to have been aware, or should have been aware, of the serious risk of prohibited acts of genocide and/or atrocities carried out by ISIS in early 2014 through media coverage, and communications of international organisations, as well as visual records disseminated by ISIS themselves. It is likely that Saudi Arabia would have known earlier than that, given the close engagement of its military and intelligence services in northern Iraq and Syria in the years preceding the genocide (and for the reasons set out in the Iraq, Syria and Turkey Country Reports).<sup>1309</sup>

<sup>1305</sup> International, impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 – Funding, available at <https://iiim.un.org/funding/> (accessed 30/08/2020).

<sup>1306</sup> Note verbale, dated 8 February 2017, from the Permanent Mission of the Russian Federation to the United Nations addressed to the Secretary-General, 14<sup>th</sup> February 2017, UN Doc. A/71/793.

<sup>1307</sup> UN Security Council Meeting Record, 2 August 2017, UN Doc. S/PV.8017.

<sup>1308</sup> UN Security Council Res. 2490 (2019), 20 September 2019, UN Doc. S/RES/2490.

<sup>1309</sup> M. Karouny, Saudi Edges Qatar to Control Syrian Rebel Support, *Reuters*, 31 May 2013.

67. There were no statements, available in the public domain, emanating from Saudi Arabian authorities in 2014, specifically acknowledging that: (a) acts in preparation for the commission of genocide were taking place; and/or (b) genocidal acts were taking place in Iraq/Syria. Allegations have been made that Saudi Arabia contributed to, or failed to prevent, the flow of fighters and financial support to ISIS.<sup>1310</sup> Allegations have also been made of Saudi Arabia providing financial assistance to ISIS, although there is no direct evidence of this.
68. According to a number of reports, around 2,500 Saudi men moved across the border in order to fight for ISIS at a time where many prohibited acts were being carried out against Yazidis.<sup>1311</sup> The International Centre for the Study of Radicalisation (ICSR) at King's College London reviewed a huge cache of leaked documents from 2014 and 2015 detailing information on new recruits attempting to join ISIS ranks in Syria.<sup>1312</sup> These documents evidenced records for 662 Saudi Arabian foreign terrorist fighters who claimed to have entered Syria in the period preceding the Sinjar Massacre (June 2013 – August 2014).<sup>1313</sup> A 2016 report to the UN Human Rights Council, 'They Came to Destroy': ISIS Crimes Against the Yazidis,<sup>1314</sup> makes explicit claims, based on interviews of victims and others, that there were Saudi Arabian combatants involved in some of the acts which constitute the Yazidi genocide. For example, the report sets out details of a Saudi Arabian fighter showing Yazidi victims pictures of young Yazidi boys being trained to kill other Yazidis.<sup>1315</sup>
69. Allegations of financial support by the Saudi Arabian state range from direct support to ISIS (outlined in the State Complicity section) as well as indiscriminate financial support to groups opposed to Assad, with the consequence that Saudi state money ended up in the hands of ISIS.<sup>1316</sup> Allegations relating to private donors suggest that the Saudi Arabian government did not do enough to prevent financial transactions in support of ISIS taking place.<sup>1317</sup> For example, in July 2014, the *Independent* made reference to an ex-MI6 source, stating that "substantial and sustained funding

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<sup>1310</sup> Unknown Author (2016) Hilary Roddam Clinton Paid Speeches Flags, available at <https://www.documentcloud.org/documents/3130829-hrc-paid-speeches-flags.html> (accessed 14 October 2020).

<sup>1311</sup> Soufan Group, Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq, 2015; Islamic State: Where key countries stand, *BBC News*, 3 December 2015 at <https://www.bbc.co.uk/news/world-middle-east-29074514> (accessed 4 July 2020).

<sup>1312</sup> A. bin Khaled Al-Saud, Saudi Foreign Fighters: Analysis of Leaked Islamic State Entry Documents, *International Centre for the Study of Radicalisation*, 2019, available at <https://icsr.info/2019/02/05/saudi-foreign-fighters-analysis-of-leaked-islamic-state-entry-documents/> (accessed 7 June 2022).

<sup>1313</sup> *Ibid.*

<sup>1314</sup> UNHRC, 'They Came to Destroy': ISIS crimes against the Yazidis, A/HRC/32/CRP.2, 15 June 2016, available at [https://www.ohchr.org/documents/hrbodies/hrcouncil/coisyr/a\\_hrc\\_32\\_crp.2\\_en.pdf](https://www.ohchr.org/documents/hrbodies/hrcouncil/coisyr/a_hrc_32_crp.2_en.pdf) (accessed 27 March 2022)

<sup>1315</sup> *Ibid.*, para 93.

<sup>1316</sup> L Plotkin-Boghardt, Saudi Funding of ISIS, *The Washington Institute for Near East Policy*, 23 June 2014, available at <https://www.washingtoninstitute.org/policy-analysis/saudi-funding-isis> (accessed 7 June 2022).

<sup>1317</sup> *Ibid.*

from private donors in Saudi Arabia and Qatar, to which the authorities may have turned a blind eye, has played a central role in the ISIS surge into Sunni areas of Iraq".<sup>1318</sup>

70. Saudi Arabia strongly denies allegations that it encouraged or failed to prevent national fighters from joining ISIS ranks.<sup>1319</sup> The Saudi government has repeatedly drawn attention to the threat of terrorist attacks on its own soil, as well as various measures that it has introduced to punish citizens for joining extremist organisations and perpetrating acts of terrorism.<sup>1320</sup> Public reports produced by the U.S. Department of State find that Saudi Arabia expanded counterterrorism programmes in response to the threat posed by ISIS.<sup>1321</sup>
71. There is evidence to suggest that Saudi Arabia considers foreign ISIS fighters, who have been involved in several deadly attacks on Saudi soil,<sup>1322</sup> more as serious threats than allies. In response to such attacks, Saudi Arabia has made significant attempts to suppress and punish fighters by introducing a number of new counter-terrorism laws which include provisions to prevent financial support for prescribed organisations,<sup>1323</sup> as well as strict punishments for those found to have joined extremist organisations.<sup>1324</sup> According to the research carried out by the International Centre for the Study of Radicalisation into Saudi recruits to ISIS, the flow of Saudi foreign terrorist fighters did appear to reduce in 2014, having peaked in September 2013.<sup>1325</sup> The ICSR report attributes the reduction, in part, to the government's counter-terrorism measures.<sup>1326</sup>

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<sup>1318</sup> P Cockburn, Iraq crisis: How Saudi Arabia Helped ISIS Take Over the North of the Country, *The Independent*, 13 July 2014 at <https://www.independent.co.uk/voices/comment/iraq-crisis-how-saudi-arabia-helped-isis-take-over-the-north-of-the-country-9602312.html> (accessed 21 June 2020).

<sup>1319</sup> M. bin Nawaf Al Saud, Saudi Arabia does not support Islamic State terrorists – or any others, *The Guardian*, 17 August 2014, available at <https://www.theguardian.com/world/2014/aug/17/saudi-arabia-not-support-islamic-state-terrorists> (accessed 7 June 2022).

<sup>1320</sup> S. Wahab, Kingdom slams IS as destructive terror group, *Arab News*, 19 June 2014, available at <https://www.arabnews.com/news/588971> (accessed 7 June 2022).

<sup>1321</sup> U.S. Department of State, Country Reports on Terrorism 2014: Middle East and North Africa Overview, Chapter 2, June 2015.

<sup>1322</sup> Deadly attack rocks mosque in Saudi Arabia, *Al Jazeera*, 29 January 2016 at <https://www.aljazeera.com/news/2016/01/attack-rocks-mosque-saudi-arabia-160129101738777.html> (accessed 12 August 2020); Saudi Arabia attack: Islamic State claims Shia mosque bombing, *BBC News*, 22 May 2015 at <https://www.bbc.co.uk/news/world-middle-east-32843510> (accessed 12 August 2020); A. McDowall, Three Saudi guards killed in suicide, gun attack on Iraq border: ministry, *Reuters*, 5 January 2015 at <https://www.reuters.com/article/us-mideast-crisis-saudi/three-saudi-guards-killed-in-suicide-gun-attack-on-iraq-border-ministry-iduskbn0ke0g420150105> (accessed 12 August 2020).

<sup>1323</sup> Royal Decree No. M/16 of 27 December 2013; Ministry of the Interior, Statement on security and intellectual prohibitions on citizens and residents, 7 March 2014.

<sup>1324</sup> Public/Royal Order: Anyone who participates in hostilities outside the Kingdom or belonging to extremist religious and irreligious currents or groups is punished with imprisonment, available at <https://www.spa.gov.sa/report-viewer.php?lang=en&id=1194732&%20notreport=1> (accessed 18 February 2021).

<sup>1325</sup> A. bin Khaled Al-Saud, Saudi Foreign Fighters: Analysis of Leaked Islamic State Entry Documents, *International Centre for the Study of Radicalisation*, 2019, available at <https://icsr.info/2019/02/05/saudi-foreign-fighters-analysis-of-leaked-islamic-state-entry-documents/> (accessed 7 June 2022).

<sup>1326</sup> *Ibid.*

72. In addition, Saudi Arabia has vehemently denied claims that the state has failed to prevent Saudi financial support for ISIS, drawing attention to the legislation and activities it undertakes to suppress terrorist financing.<sup>1327</sup> In 2015, Saudi Arabia implemented UN Security Council Resolutions 2178 and 2199, and the UN 1267/1989/2253 ISIL (Da'esh) and al-Qaeda sanctions regime; and leveraged terrorism finance provisions of its Law for Crimes of Terrorism and Terrorist Financing (CT Law) to counter the funding of violent extremist groups in Iraq and Syria.<sup>1328</sup>
73. In its 2014 Country Report on Terrorism, the U.S. Department of State praised Saudi efforts to counter terrorism perpetrated by ISIS through counterterrorism legislation.<sup>1329</sup>
74. In a 2014 report, the Washington Institute argued against the idea that the private funding of Saudi citizens, which used to be a major source of income for ISIS, continues to be an important form of financing for the group, stating that states that "one of Riyadh's most observable counter-terrorism financing activities is its monitoring of the country's formal financial sector in order to block suspect donations".<sup>1330</sup> Further, the report noted ISIS' ability to draw significant income from its criminal activities, minimising the importance of donations from private individuals in Saudi and elsewhere.<sup>1331</sup> According to an investigation by the *Financial Times* in 2015, ISIS was earning approximately \$1.5 million a day from oil.<sup>1332</sup>
75. According to a source from the Saudi Arabian Embassy in London, many of the individuals who may have funded IS have been imprisoned, and, in 2015, 800 people with direct links to ISIS were incarcerated in Saudi Arabia,<sup>1333</sup> and according to another source, 1,850 suspects were arrested for such links in 2015 alone.<sup>1334</sup> However, this data must be approached with caution given secrecy surrounding court proceedings and credible allegations that those accused of terrorism offences do not receive a fair trial.<sup>1335</sup> The UN Special Rapporteur stated in his investigation that, whilst Saudi Arabian government representatives place emphasis on efforts to "stem the flow of terrorist financing", the "extent to which such legislation is effectively implemented is open to question".<sup>1336</sup> It is, therefore, unclear on the available evidence

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<sup>1327</sup> Royal Decree No. 44(a), 3 February 2014.

<sup>1328</sup> U.S. Department of State, Country Reports on Terrorism 2015: Middle East and North Africa Overview, Chapter 2, June 2016.

<sup>1329</sup> U.S. Department of State, Country Reports on Terrorism 2014: Middle East and North Africa Overview, Chapter 2.

<sup>1330</sup> L Plotkin-Boghardt, Saudi Funding of ISIS, *The Washington Institute for Near East Policy*, 23 June 2014, available at <https://www.washingtoninstitute.org/policy-analysis/saudi-funding-isis> (accessed 7 June 2022).

<sup>1331</sup> *Ibid.*

<sup>1332</sup> E. Solomon, ISIS Inc: How Oil Fuels The Jihadi Terrorists, *Financial Times*, 14 October 2015.

<sup>1333</sup> Is Saudi Arabia to Blame for Islamic State, *BBC News*, available at <https://www.bbc.co.uk/news/world-middle-east-35101612> (accessed 15 February 2021).

<sup>1334</sup> *Ibid.*

<sup>1335</sup> UN General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN Doc. A/HRC/40/52/Add.2, 13 December 2018.

<sup>1336</sup> *Ibid.*

whether the legal framework introduced by the Saudi government has been effective in targeting perpetrators of genuine terrorist activities, such as ISIS combatants, or whether it has been more commonly used to persecute dissidents.<sup>1337</sup>

76. There is an insufficient basis, from publicly available material, upon which to conclude that the Saudi State failed to prevent Saudi finance and fighters from moving across the border in support of ISIS. No direct evidence has become available in publicly available sources to suggest that the state has supported fighters to join ISIS and there is credible evidence to suggest that the Saudi government has made proactive efforts to punish citizens for joining extremist organisations and perpetrating acts of terrorism (although such efforts may be undermined by serious concerns around the use of terrorism laws to punish political dissidents).
77. In terms of Saudi Arabia's capacity to intervene, it is clear that it had sufficient military resources to prevent the prohibited acts committed by ISIS in 2014 (although it is not under a legal obligation to do so and neither was it invited to do so). According to HIS Jane's, Saudi Arabia was the biggest importer of arms in the world in 2014.<sup>1338</sup> The scale of subsequent military interventions, such as that in Yemen, demonstrate that it likely had significant capacity to intervene in 2014.<sup>1339</sup> However, Saudi Arabia did not take part in any military operations in Syria or Iraq against ISIS during the time of the commission of the majority of prohibited acts in August 2014.
78. Historically, Saudi Arabia's principle interest in intervening in Syria was more concerned with its strategic rivalry with Iran than with ISIS.<sup>1340</sup> In the period preceding 2014, Saudi Arabia's engagement with Syria was very much "behind the scenes", focussed on "soft" influence and the support for specific factions with finance and materiel.<sup>1341</sup> There are also numerous reports that Saudi Arabia trained Syrian opposition fighters, who were simultaneously engaged in fighting ISIS and the Assad regime.<sup>1342</sup>
79. However, in September 2014, Saudi Arabia joined the Global Coalition to Counter ISIL as a member, supporting military action in support of coalition efforts.<sup>1343</sup> News reports stated that Saudi Arabia had taken part in airstrikes

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<sup>1337</sup> *Ibid.*

<sup>1338</sup> N. McCarthy, Saudi Arabia Has Become The World's Biggest Arms Importer, *Forbes*, 10 March 2015.

<sup>1339</sup> Yemen Data Project, *Air War Dataset*, available at <https://yemendataproject.org/data.html> (accessed 8 August 2020).

<sup>1340</sup> F. Wehrey, Gulf Calculations in the Syrian Conflict, *Carnegie Endowment for International Peace*, 9 June 2014, available at <https://carnegieendowment.org/2014/06/09/gulf-calculations-in-syrian-conflict-pub-55865> (accessed 7 June 2022).

<sup>1341</sup> *Ibid.*

<sup>1342</sup> E. McClam and A. Williams, Which countries are doing what in the IS coalition?, *NBC News*, 26 September 2014; J. Holland-McCowan, War of Shadows: How Turkey's Conflict with the PKK Shapes the Syrian Civil War and Iraqi Kurdistan, *The International Centre for the Study of Radicalisation and Political Violence*, 2017, available at <https://icsr.info/wp-content/uploads/2017/08/icsr-report-war-of-shadows-how-turkey%e2%80%99s-conflict-with-the-pkk-shapes-the-syrian-civil-war-and-iraqi-kurdistan.pdf> (accessed 8 August 2020).

<sup>1343</sup> U.S. Department of State, *Country Reports on Terrorism 2014: Middle East and North Africa Overview*, Chapter 2, June 2015; BBC, Syria: US begins air strikes on Islamic State targets, 23 September 2014, available at <https://www.bbc.co.uk/news/world-middle-east-29321136> (accessed 7 June 2022).

- alongside the US.<sup>1344</sup> There is, however, little publicly available information on the specific nature of the military engagement that Saudi Arabian forces directly engaged in, beyond broad statements that they were supportive of the Global Coalition and that they had some involvement in airstrikes.<sup>1345</sup>
80. On 30 June 2014, Saudi Arabia announced a grant of US \$500 million to the United Nations to provide humanitarian assistance to Iraq people from July 2014 to March 2015.<sup>1346</sup> The UN Office for the Coordination of Humanitarian Affairs (UN OCHA) reported that this was the largest single grant the United Nations had ever received for humanitarian operations.<sup>1347</sup> By 9 September 2014, \$500 million had been disbursed and over 60 per cent had been allocated in the implementation of programmes across Iraq.<sup>1348</sup>
  81. A 2016 report to the UN Human Rights Council, 'They Came to Destroy': ISIS Crimes Against the Yazidis,<sup>1349</sup> makes explicit claims, based on interviews of victims and others, that Saudi Arabian citizens involved in multiple crimes against Yazidis, including trafficking and sexual violence. Victims interviewed described being purchased as slaves by fighters from countries including Saudi Arabia.<sup>1350</sup> The report also outlines harrowing details of rapes committed by Saudi Arabian fighters.<sup>1351</sup> A number of accounts by former slaves referring to ISIS fighters from Saudi origins have been collected since 2014,<sup>1352</sup> which tends to show that a significant proportion of ISIS militants taking part in the terror organisation's slave trafficking may be from Saudi Arabia.
  82. Although it is possible that Saudi authorities "turned a blind eye" or failed to prevent Saudi Arabia citizens from participation in the sale of women and refugees in Saudi Arabia, there is no firm evidence to suggest this to be the case. A Minister representing the UK Government stated in 2016 that her department "had seen no evidence of Saudi Foreign Terrorism Fighters trafficking Daesh sex slaves to Saudi Arabia".<sup>1353</sup>
  83. In summary, there is insufficient evidence to suggest that Saudi Arabia failed in its obligation prevent genocide of the Yazidis. Saudi Arabia played a role in the Global Coalition Against ISIS, supporting military interventions, providing considerable financial support and engaging in domestic efforts to prevent

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<sup>1344</sup> BBC, Syria: US Begins Air Strikes On Islamic State Targets, 23 September 2014, available at <https://www.bbc.co.uk/news/world-middle-east-29321136> (accessed 7 June 2022).

<sup>1345</sup> U.S. Department of State, Country Reports on Terrorism 2014: Middle East and North Africa Overview, Chapter 2, June 2015.

<sup>1346</sup> L. Grande, Iraq: "We are faced with a grim funding reality", UN OCHA, 6 June 2015.

<sup>1347</sup> UN OCHA, *Saudi Humanitarian Fund for Iraq – Final Report*, 31 August 2015.

<sup>1348</sup> *Ibid.*

<sup>1349</sup> UNHRC, *They Came to Destroy': ISIS crimes against the Yazidis*, A/HRC/32/CRP.2, 15 June 2016, available at [https://www.ohchr.org/documents/hrbodies/hrcouncil/coisyrria/a\\_hrc\\_32\\_crp.2\\_en.pdf](https://www.ohchr.org/documents/hrbodies/hrcouncil/coisyrria/a_hrc_32_crp.2_en.pdf) (accessed 7 March 2022).

<sup>1350</sup> *Ibid.*, para. 61.

<sup>1351</sup> *Ibid.*, paras 65-66.

<sup>1352</sup> UNHRC, "They Came to Destroy": *ISIS Crimes Against the Yazidis*, 15 June 2016, UN Doc A/HRC/32/CRP.2, para. 61-66, available at [www.ohchr.org/documents/hrbodies/hrcouncil/coisyrria/a\\_hrc\\_32\\_crp.2\\_en.pdf](https://www.ohchr.org/documents/hrbodies/hrcouncil/coisyrria/a_hrc_32_crp.2_en.pdf) (accessed 12 July 2020).

<sup>1353</sup> Islamic State: Yazidis, Question for Foreign and Commonwealth Office, UIN HL7947, answered on 4 May 2016.



and prosecute Saudi fighters joining ISIS. However, Saudi Arabia could have undoubtedly done more to prevent the ongoing genocide of Yazidis captured by ISIS, including by intervening diplomatically and otherwise when it first became aware (in July 2014 at the very latest) that prohibited acts were taking place.

## 2. Obligation to Not Be Complicit in Genocide

84. As outlined above, allegations have been made against Saudi Arabia and/or other Gulf countries of complicity in crimes committed by ISIS against the Yazidis on the basis that these States directly financed ISIS, indirectly financed ISIS, were wilfully blind to indirect finance by their citizens or tacitly permitted their nationals to travel to Syria for the purpose of joining and /or fighting with ISIS.<sup>1354</sup>
85. However, on the publicly available information, there is no direct evidence of Saudi Arabia or the Gulf States providing material support to ISIS generally or in support of the Yazidi Genocide in particular. For example, Lori Plotkin Boghardt of the Washington Institute for Near East Policy looked at the question of Saudi Arabian funding of ISIS in 2014. She did not find evidence that ISIS was being supported by Riyadh. Looking at the direct funding of the group from Saudi Arabia she concluded:

*At present, there is no credible evidence that the Saudi government is financially supporting ISIS. Riyadh views the group as a terrorist organization that poses a direct threat to the kingdom's security. The Interior Ministry formally designated ISIS as a terrorist entity in March, along with Jabhat al-Nusra, the Muslim Brotherhood, Yemen's Houthi rebels, and Saudi Hezbollah. The designation outlawed various forms of support to the group by residents of the kingdom.*<sup>1355</sup>

86. In summary, there is an insufficient basis upon which to conclude that Saudi Arabia and other GCC countries were officially involved in the provision of material support to ISIS for the Yazidi genocide. Although there have been numerous allegations of support to ISIS, no evidence has become available in public sources indicating direct support for ISIS by State organs, agents or officials or aid or assistance to them.

<sup>1354</sup> Unknown Author (2016) Hilary Roddam Clinton Paid Speeches Flags, available at: <https://www.documentcloud.org/documents/3130829-hrc-paid-speeches-flags.html> (accessed 14 October 2020). See also Taylor, A (2014) 'Behind Biden's gaffe lie real concerns about allies' role in rise of the Islamic State', 7 October, *Washington Post*, available at <https://www.washingtonpost.com/news/worldviews/wp/2014/10/06/behind-bidens-gaffe-some-legitimate-concerns-about-americas-middle-east-allies/>, (accessed 14 October 2020); I. Black, Saudi Arabia rejects Iraqi accusations of ISIS support, *The Guardian*, 19 June 2014, available at <https://www.theguardian.com/world/2014/jun/19/saudi-arabia-rejects-iraqi-accusations-isis-support> (accessed 7 June 2022).

<sup>1355</sup> L Plotkin-Boghardt, Saudi Funding of ISIS, *The Washington Institute for Near East Policy*, 23 June 2014, available at <https://www.washingtoninstitute.org/policy-analysis/saudi-funding-isis> (accessed 7 June 2022).



### 3. Attribution of Prohibited Acts of Genocide - Saudi Arabia

87. Whilst a large contingent of ISIS fighters originate from Saudi Arabia, there is little evidence available to support their categorisation as *de jure* or *de facto* organs, agents or officials of the State. According to the International Centre for the Study of Radicalisation's report, fighters from Saudi Arabia are frequently smuggled out of the country without the State's knowledge. The predominant reasons why fighters from Saudi Arabia join ISIS relate to political turmoil and heightened sectarianism in their regions, as opposed to any inducement or encouragement from the State.<sup>1356</sup> Further, there does not appear to be evidence to suggest that once they leave Saudi Arabia, the fighters are under any degree of control by the State, and nor does there appear to be any evidence that there is any dependence on the State once they have joined ISIS.<sup>1357</sup>
88. Evidence indicates that Saudi Arabia considers foreign ISIS fighters, who have been involved in several deadly attacks on Saudi soil,<sup>1358</sup> more as serious threats than allies. In response to such attacks, Saudi Arabia has made significant attempts to suppress and punish fighters. In 2014, the State passed a law that punishes Saudi citizens with a term of imprisonment of up to 20 years for joining an extremist organisation, or participating in military operations abroad within one.<sup>1359</sup> The KSA has also been actively engaged in the break up and prosecution of members of ISIS cells.<sup>1360</sup> Further, significant evidence suggests that the KSA has also been involved in a number of initiatives to combat ISIS's presence in the region, including the covert training of combatants and the supply of finances and arms to rival extremist groups.<sup>1361</sup> In summary, it does not appear that Saudi Arabian ISIS fighters were acting as organs, agents or officials of the State when/if they committed any genocidal acts against the Yazidi group in 2014.

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<sup>1356</sup> ICSR, *Saudi Foreign Fighters: Analysis of Leaked Islamic State Entry Documents*, available at <https://icsr.info/wp-content/uploads/2019/02/icsr-report-saudi-foreign-fighters-analysis-of-leaked-islamic-state-entry-documents.pdf> (accessed 24 August 2020).

<sup>1357</sup> See also Saudi Arabia and GCC Countries Report, State Attribution – Saudi Arabia ("ISIS Fighters as Potential Organs of the Kingdom of Saudi Arabia").

<sup>1358</sup> Al Jazeera, Deadly attack rocks mosque in Saudi Arabia, 29 January 2016, available at <https://www.aljazeera.com/news/2016/1/29/deadly-attack-rocks-mosque-in-saudi-arabia> (accessed 7 June 2022); BBC News, Saudi Arabia attack: Islamic State claims Shia mosque bombing, 22 May 2015, available at <https://www.bbc.co.uk/news/world-middle-east-32843510> (accessed 7 June 2022); A. McDowall, Three Saudi guards killed in suicide, gun attack on Iraq border: ministry, *Reuters*, 5 January 2015, available at <https://www.reuters.com/article/us-mideast-crisis-saudi-iduskbn0ke0g420150105> (accessed 7 June 2022).

<sup>1359</sup> Saudi Press Agency, Royal Decree, No. 44(a) of 2014, 3 February 2014.

<sup>1360</sup> Al Jazeera, Saudi Arabia says four ISIL cells broken up, 16 February 2017, available at <https://www.aljazeera.com/news/2017/2/16/saudi-arabia-says-four-isil-cells-broken-up> (accessed 7 June 2022).

<sup>1361</sup> K. Sengupta, Turkey and Saudi Arabia alarm the West by backing Islamist extremists the Americans had bombed in Syria, *The Independent*, 12 May 2015, available at <https://www.independent.co.uk/news/world/middle-east/syria-crisis-turkey-and-saudi-arabia-shock-western-countries-by-supporting-antiassad-jihadists-10242747.html> (accessed 7 June 2022).

89. As set out above ("Obligation to Not Be Complicit"), Saudi Arabia has been accused of providing funding to ISIS, although there does not appear to be any official documentation supporting this claim in the public domain. Further, whilst Saudi and GCC nationals appear to have been involved in fighting on behalf of ISIS, the evidence does not suggest that they were in any way endorsed by their States of origin.<sup>1362</sup>
90. There is insufficient evidence to support the allegation that private individuals that funded ISIS did so on the state's instruction, direction or under the effective control of Saudi Arabia. Moreover, there does not seem to be sufficient, or any, evidence to support the conclusion that Saudi Arabia wished to see the Yazidi group destroyed. Official statements condemned ISIS before, during, and after the Sinjar Massacre.

#### 4. Attribution of Prohibited Acts of Genocide - Other GCC States

91. There is no evidence to suggest that the Gulf Cooperation Council States held specific genocidal intent toward the Yazidi community. Following a review of UN reports, particularly individual Universal Periodic Reviews, no evidence emerged that States such as Kuwait, Qatar, the UAE, Oman and Bahrain formally or informally supported ISIS' genocidal intent toward the Yazidi group.<sup>1363</sup> In September 2014, these States, along with Saudi Arabia, joined the US-led Global Coalition against Daesh.<sup>1364</sup>
92. There is no evidence that ISIS fighters, or ISIS as a whole, operated on the instruction, direction or under the effective control of GCC states. There is some suggestion that regional and domestic sectarianism, and an unofficial foreign policy promoting Sunni hegemony, has lent itself to the fast assimilation of ISIS recruits from the Gulf region. Further, that part of the motive for providing support to non-state actors in Syria to topple the Shia-backed Assad regime would be to solidify a Sunni Muslim bloc in a large and majority Shia population.<sup>1365</sup> There is, although not considered in this report, an ongoing issue with radicalisation in the GCC that several states have sought to address as part of its work with the Global Coalition Against Daesh.<sup>1366</sup>
93. While there are allegations that Kuwait and Qatar have provided environments conducive to the financial and material support of ISIS, this evidence is insufficient to support a claim of direct state attribution.<sup>1367</sup>

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<sup>1362</sup> See also Saudi Arabia and GCC Countries Report Summary, State Attribution – Saudi Arabia.

<sup>1363</sup> See also Saudi Arabia and GCC Countries Report Summary, State Attribution – Other GCC Countries.

<sup>1364</sup> The Global Coalition Against Daesh, available at: <https://theglobalcoalition.org/en/partners/> (accessed 3 January 2021).

<sup>1365</sup> Department of Defence Information Report (declassified), available here: <http://www.judicialwatch.org/wp-content/uploads/2015/05/pg.-291-pgs.-287-293-jw-v-dod-and-state-14-812-dod-release-2015-04-10-final-version11.pdf> (accessed 3 January 2021).

<sup>1366</sup> *Ibid.*

<sup>1367</sup> See Saudi Arabia and GCC Countries Report Summary, State Attribution – Other GCC Countries.

## 5. Obligation to Punish Perpetrators of Genocide

94. There is some evidence that Saudi Arabia has transferred equipment to various factions in the Syrian conflict. In some cases, this equipment was then captured by ISIS forces and used against coalition forces and/or minorities such as the Yazidis.<sup>1368</sup>
95. As above, accusations have also been made of Saudi funding of ISIS (including by private citizens and unregulated charities) and of participation by Saudi citizens in the ISIS slave trade.<sup>1369</sup>
96. The initially complacent posture of Saudi Arabia with regards to the private funding of certain extremist Islamic groups evolved to become more stringent: the country's financial monitoring efforts have borne fruit, so much that local donors were then encouraged by terrorist groups to send money through Kuwait, which was said to be a major source of fundraising for terrorist groups in Syria.<sup>1370</sup>
97. Saudi Arabia has also sought to oppose the terrorist organisation more significantly. In addition to building what Western media have called the Kingdom's "Great Wall" – a 600-mile fence built from September 2014 along the country's Northern border with Iraq to protect it from any incursion by ISIS militants,<sup>1371</sup> and participating in the international coalition's military campaign conducted against strategic ISIS positions in Syria, the country established in 2017 the Terrorist Financing Targeting Centre (TFTC), along with the United States and other Gulf countries. The TFTC participates in joint designations, with the US Treasury Department, of entities that conduct terror financing, and assists in imposing sanctions. It also facilitates intelligence sharing and the strengthening of local banking laws, etc.<sup>1372</sup> The targeted terrorist networks initially included ISIS, Al-Qaeda, Hezbollah, Lashkar-e-Taiba, the Taliban and the Haqqani Network.<sup>1373</sup>
98. The activities of the TFTC are ongoing, and on 15 July 2020, the seven members jointly designated six new targets affiliated with ISIS, who have provided critical financial and/or logistical lifeline to the organisation and its networks. This was the fifth round of joint designations, which altogether covered more than sixty individuals and entities across the world, accused of funding various types of terrorism. The last round notably targeted significant money services businesses: al-Haram Exchange, Tawasul Company and al-Khalidi Exchange, which played an important role in transferring funds to ISIS

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<sup>1368</sup> See Saudi Arabia and GCC Countries Report Summary, Obligation to Punish – Saudi Arabia.

<sup>1369</sup> *Ibid.*

<sup>1370</sup> Funding ISIS, available at [www.washingtoninstitute.org/policy-analysis/view/funding-isis-infographic](http://www.washingtoninstitute.org/policy-analysis/view/funding-isis-infographic) (accessed 23 July 2020).

<sup>1371</sup> S. Richard, Revealed: Saudi Arabia's 'Great Wall' to keep out ISIL, *The Telegraph*, 14 January 2015.

<sup>1372</sup> Global Coalition, Saudi Arabia, available at <https://theglobalcoalition.org/en/partner/saudi-arabia> (accessed 13 August 2020).

<sup>1373</sup> U.S. Department of the Treasury, U.S. and Saudi Arabia to Co-Chair New Terrorist Financing Targeting Center, 21 May 2017, available at [www.treasury.gov/press-center/press-releases/pages/sm0092.aspx](http://www.treasury.gov/press-center/press-releases/pages/sm0092.aspx) (accessed 13 August 2020).

militants in Syria and liquidity to the organisation leadership.<sup>1374</sup> These designations and the sanctions that follow are intended to maximise the disruption of terrorist financing around the world.

99. However, the extensive 2018 “Anti-money laundering and counter-terrorist financing measures” report conducted by the Financial Action Task Force (FATF) stated that, although Saudi Arabia significantly improved its response to terrorism financing cases within the Kingdom, there was room for improvement. Notably, it highlighted that the “almost exclusive focus of authorities on domestic [terrorism financing] offences means the authorities are not prioritising disruption of [terrorism financing] support for threats outside the Kingdom,” such that the authorities focus on domestic terrorism financing offences at the expense of international networks.<sup>1375</sup> Further, prosecution has been found to often frame terrorism financing as an ancillary offence to other terrorism-related crimes. Indeed, there have been little to no convictions of individuals for financing terrorism that are independent from the prosecution of other terrorist-related crimes. Finally, the FATF also stated that Saudi Arabia had “not yet tackled the risk of financing of terrorism by third-party and facilitators, and the financing by individuals for terrorist organisations outside the country”.<sup>1376</sup> Overall, however, any prosecutions that have been conducted by the State have been for charges of terrorist financing and/or involvement in terrorism, rather than for individual criminal responsibility for genocide including complicity in genocide and/or conspiracy to commit genocide.
100. Saudi Arabia has made extensive use of its 2017 counterterrorism law to prosecute cases. As a result, thirty-eight convicts were sentenced to death for terrorism-related crimes in 2019, although the use of this law has been widely criticised as an excessively broad piece of legislation, easily misused to prosecute religious and political dissidents, women’s rights activists and prominent Saudi clerics.<sup>1377</sup>
101. However inadequate the measures and policies undertaken in recent years may be regarded, they represent a certain effort on the part of Saudi authorities to participate in the international coalition’s work against transnational terrorist networks, which clashes with the country’s previous alleged partiality towards (or alignment of interests with) certain extremist Sunni Muslim groups, including ISIS.<sup>1378</sup>
102. In summary, Saudi Arabia has enacted and enforced legislation intended to bring to justice members or accomplices of ISIS on Saudi Arabia’s territory.

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<sup>1374</sup> U.S. Department of the Treasury, *Terrorist Financing Targeting Center Sanctions Network of ISIS-Linked Financial Facilitators and Money Services Businesses*, 15 July 2020, available at <https://home.treasury.gov/news/press-releases/sm1057> (accessed 12 August 2020).

<sup>1375</sup> Anti-money laundering and counter-terrorist financing measures – Kingdom of Saudi Arabia Mutual Evaluation Report, available at [www.fatf-gafi.org/media/fatf/documents/reports/mer/MER-Saudi-Arabia-2018.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER-Saudi-Arabia-2018.pdf) (accessed 8 August 2020), p.8-9.

<sup>1376</sup> *Ibid.*, p.85.

<sup>1377</sup> U.S. Department of State, *Country Reports on Terrorism 2019: Saudi Arabia*, available at <https://www.state.gov/reports/country-reports-on-terrorism-2019/saudi-arabia> (accessed 11 August 2020).

<sup>1378</sup> See Saudi Arabia and GCC Countries Report Summary, *Obligation to Punish – Saudi Arabia*.

However, this legislation appears to be limited to terrorism-related offences and does not specifically criminalise acts of genocide, as required by the Convention. Accordingly, Saudi Arabia is in breach of its duty to enact legislation necessary to give effect to the provisions of the Convention, and therefore is also in breach of the duty to punish genocide because it does not have the domestic legal framework to do so. In respect of the fulfilment of the obligation to punish by other GCC countries, further investigations would be required to reach a conclusive finding.

## **E. United Kingdom Country Report**

### **1. Obligation to Prevent Genocide**

103. It is highly likely that the UK Government was aware, or should have been aware, of the threat faced by the Yazidis from early 2014 (if not before). In August 2014, in any case, there was widespread coverage by international organisations, including the UN, and Western media of mass killings and other prohibited acts of Yazidis by ISIS,<sup>1379</sup> as well as the capture of Mount Sinjar and the plight of the Yazidis stranded on the mountain.<sup>1380</sup> Documentation of killings and other prohibited acts was also provided by ISIS themselves.<sup>1381</sup>
104. On 7 August 2014, the UK chaired a meeting of the UN Security Council and Council President Mark Lyall Grant (UK) issued a press statement calling on the international community to support the Government and people of Iraq attacked by ISIS, reiterating that “widespread or systematic attacks directed against any civilian populations because of their ethnic background, political grounds, religion or belief may constitute a crime against humanity, for which those responsible must be held accountable.”<sup>1382</sup>
105. As the crisis unfolded, President Obama announced US military action to help the Yazidis trapped on Mount Sinjar. He recognised that ISIS forces had called for the systematic destruction of the entire Yazidi people, which would constitute genocide, acknowledged the unique capabilities of the US to help avert a massacre, and committed to act, carefully and responsibly, to prevent a potential act of genocide.<sup>1383</sup> The first US airstrikes struck ISIS targets around

<sup>1379</sup> L. Morris, Iraqi Yazidis stranded on isolated mountaintop begin to die of thirst, *Washington Post*, 5 August 2014, available at [https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064\\_story.html](https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064_story.html) (accessed 7 June 2022).

<sup>1380</sup> M. Chulov, 40,000 Iraqis stranded on mountain as ISIS jihadists threaten death, *The Guardian*, 7 August 2014, available at <https://www.theguardian.com/world/2014/aug/07/40000-iraqis-stranded-mountain-isis-death-threat> (accessed 7 June 2022).

<sup>1381</sup> L. Morris, Iraqi Yazidis stranded on isolated mountaintop begin to die of thirst, *The Washington Post*, 5 August 2014, available at [https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064\\_story.html](https://www.washingtonpost.com/world/iraqi-yazidis-stranded-on-isolated-mountaintop-begin-to-die-of-thirst/2014/08/05/57cca985-3396-41bd-8163-7a52e5e72064_story.html) (accessed 7 June 2022).

<sup>1382</sup> Security Council Press Statement on Iraq, SC/11515-IK/683, 7 August 2014, UN Doc. para.2.

<sup>1383</sup> US President Barack Obama, President Obama Makes a Statement on the Crisis in Iraq, 7 August 2014, available at <https://obamawhitehouse.archives.gov/blog/2014/08/07/president-obama-makes-statement-iraq> (accessed 13 August 2014).

- the mountain on 8 August 2014. These were the first US airstrikes to be launched against ISIS targets, and they were supplemented by humanitarian airdrops to Yazidis stranded on Mount Sinjar.
106. At the time (August 2014), Iraq, under the Prime Ministership of Nuri Kamal al-Maliki, had not formally given permission to foreign governments to use force in its territory against ISIS, though there had been repeated requests from Kurdish officials for weapons and assistance as ISIS militants swept across north-western Iraq.<sup>1384</sup>
  107. With no legal basis for intervention, and with the US announcing airstrikes, the UK, along with France, opted to support US and regional efforts through the provision of humanitarian support to those displaced and military equipment and intelligence to regional actors.<sup>1385</sup>
  108. Aid drops began on 9 August 2014 and further supplies were provided on 12 and 13 August.<sup>1386</sup> In the immediate aftermath, the UK announced £8 million in aid assistance for those displaced in Iraq, including the provision of supplies and support for charitable organisations, and NGOs, on the ground. This included emergency humanitarian supplies for 75,000 people.
  109. On 12 August 2014, the Government announced that it had agreed to transport critical military re-supplies, to Kurdish forces, from other contributing states,<sup>1387</sup> and on 24 August 2014 the Government confirmed that work was underway “to supply non-lethal equipment to Kurdish forces in the coming days, including night vision equipment and body armour.”<sup>1388</sup>
  110. A further £10 million aid package was announced by the UK on 27 August 2014, the majority of which was allocated to NGOs on the ground to enable them to continue to provide shelter, food and clean water, and provide emotional support, in particular to women and children. By the end of the summer of 2014, UK emergency humanitarian assistance had reached £23 million and by the end of 2014, a total of £39.5 million had been allocated, making the UK one of the largest net contributors of humanitarian aid to those displaced by ISIS.

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<sup>1384</sup> M. Scharf, How the War Against ISIS Changed International Law, *Case Western Reserve Journal of International Law* 48, 2006, pg. 8; H. Cooper, M. Landler and A. J. Rubin, Obama Allows Limited Airstrikes on ISIS, *New York Times*, 7 August 2014, available at <https://www.nytimes.com/2014/08/08/world/middleeast/obama-weighs-military-strikes-to-aid-trapped-iraqis-officials-say.html> (accessed 7 June 2022).

<sup>1385</sup> M. Chulov, J. Borger, R. Norton-Taylor and D. Roberts, US troops land on Iraq's Mt Sinjar to plan for Yazidi evacuation, *The Guardian*, 13 August 2014, available at <https://www.theguardian.com/world/2014/aug/13/us-ground-troops-direct-role-evacuate-yazidis-iraq> (accessed 7 June 2022).

<sup>1386</sup> UK Government Press release, UK aid drops continue over Mount Sinjar in Iraq, 12 August 2014, available at: <https://www.gov.uk/government/news/uk-aid-drops-continue-over-mountain-sinjar-in-iraq> (accessed 13 August 2020).

<sup>1387</sup> COBR Meeting on Iraq, 12 August 2014, available at: <https://www.gov.uk/government/news/cobr-meeting-on-iraq-12-august-2014> (accessed 30 August 2020).

<sup>1388</sup> Downing Street Press Release, Government Security Envoy to the Kurdistan region of Iraq appointed, 24 August 2014, available at: <https://www.gov.uk/government/news/government-security-envoy-to-the-kurdistan-region-of-iraq-appointed> (accessed 30 August 2020)

111. Moreover, from September 2014, the UK Government engaged in airstrikes against ISIS in Iraq (“Operation Shader”)<sup>1389</sup> and from December 2015 in Syria, where it has been heavily engaged militarily since.<sup>1390</sup>
112. In summary, from publicly available sources, there is no evidence to suggest that the UK failed to discharge its obligation to prevent genocide perpetrated by ISIS against the Yazidis. The UK played a particularly prominent role in preventing the genocide of Yazidis on Mount Sinjar, supporting US airstrikes by deploying military assets to the region to provide humanitarian aid drops and intelligence gathering. Humanitarian assistance continued throughout the year.
113. However, the UK could have done more to prevent the ongoing genocide of Yazidis captured by ISIS, including by recognising ISIS’ crimes as genocide. In not recognising ISIS’ atrocities as genocide, the UK has been accused of attempting to avoid triggering their legal obligations to suppress genocide under the Convention.<sup>1391</sup>

## **2. Obligation to Not Be Complicit in Genocide**

114. The information available in the public domain is insufficient to substantiate any allegations.

## **3. Attribution of Prohibited Acts of Genocide**

115. The information available in the public domain is insufficient to substantiate any allegations.

## **4. Obligation to Punish Perpetrators of Genocide**

116. On 22 May 2014, the United Kingdom voted in favour of a draft United Nations Security Council (“UN Security Council”) resolution that would have referred the situation in Syria to the International Criminal Court (“ICC” or “the Court”) and thereby provided the Court with the competence to investigate and prosecute crimes committed by ISIS against the Yazidi community. The Resolution was vetoed by the Russian Federation and China.
117. After the 2014 draft resolution failed to pass, the United Kingdom has continued to support the efforts of the international community to investigate and prosecute crimes committed by the Islamic State, including those crimes perpetrated against the Yazidi community.
118. The United Kingdom voted in favour of several UN Security Council resolutions which recognised that attacks were being perpetrated by ISIS against civilians due to their ethnic background and religion which included executions, the

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<sup>1389</sup> B. Smith, *ISIS and the Sectarian Conflict in the Middle East*, House of Commons Library Research Paper 15/16, 19 March 2015, p. 51-52.

<sup>1390</sup> BBC, *Syria air strikes: MPs authorise UK action against Islamic State*, 3 December 2015, available at <https://www.bbc.com/news/uk-politics-34989302> (accessed 9 October 2020).

<sup>1391</sup> See [UK Country Report Summary, Obligation to Prevent](#).

deliberate targeted killings of civilians, sexual violence against women and children, and sexual slavery. The resolutions also recognised that such acts constituted violations of international humanitarian law and human rights abuses, and that those responsible must be held accountable. UK representatives have also made remarks to this effect at UN Security Council meetings.<sup>1392</sup>

119. On 21 December 2016, the United Kingdom voted in favour of UN General Assembly Resolution 71/248 to establish an independent UN mechanism to investigate and prosecute those responsible for the most serious crimes under international law in the Syrian Arab Republic since March 2011 (“the Mechanism”).<sup>1393</sup> The UK also contributes to the funding of the Mechanism.
120. The UK also voted in favour of UN Security Council Resolution 2379 which created the Investigative Mechanism for Iraq and explicitly recognised that the activities of ISIS, as identified, “may amount to war crimes, crimes against humanity or genocide”.<sup>1394</sup> The UK representative also stated that the UK would “provide £1 million to establish the United Nations investigative team that will lead these efforts”.<sup>1395</sup> UK representatives made several statements at UN Security Council meetings emphasising the important work of the Investigative Team and the need for accountability.<sup>1396</sup>
121. The UK has provided subsequent assistance to the Investigative Team. The Fourth Report confirms that: “the United Kingdom of Great Britain and Northern Ireland continues to be a key source of support for the Team, with financial contributions ensuring that the Team is able to address crimes committed by ISIS across all regions of Iraq” and that “the Investigative Team has established two additional dedicated field investigation units, based on extrabudgetary contributions provided by the United Kingdom of Great Britain and Northern Ireland and the United States of America”.<sup>1397</sup>
122. However, the UK has been unwilling to take action to punish ISIS for crimes against the Yazidis on a domestic level. On 20 April 2016, the House of Commons, by a vote of 278 members, stated its belief that “Yazidis, and other ethnic and religious minorities in Iraq and Syria are suffering genocide at the hands of Daesh” and it called upon the UK Government “to make an immediate referral to the UN Security Council with a view to conferring jurisdiction on the ICC so that perpetrators can be brought to justice”. This vote took place in direct response to the Government’s refusal to label ISIS’ acts as genocide. It had previously been stated that recognition of genocides should be a matter for international courts rather than political determination and the Government directed its MPs to abstain on the vote on the basis that

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<sup>1392</sup> See [UK Country Report Summary, Obligation to Punish](#).

<sup>1393</sup> UN General Assembly Resolution, UN Doc. A/RES/71/248.

<sup>1394</sup> UN Security Council Res.2379 (2017), 21 September 2017, UN Doc. S/RES/2379.

<sup>1395</sup> UN Security Council Meeting Record, 21 September 2017, UN Doc. S/PV.8052, p.2-3.

<sup>1396</sup> See [UK Country Report Summary, Obligation to Punish](#).

<sup>1397</sup> United Nations, Fourth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant, 11 May 2020, UN Doc. S/2020/386.



it was its view that it was wrong for the state to pre-judge whether genocide was occurring.<sup>1398</sup>

123. In the absence of a specific mechanism within UK law which would provide for the independent determination of whether a genocide was occurring, a private members bill was introduced by Lord Alton, the Genocide Determination Bill, which had the stated aim to “provide for the High Court of England and Wales to make a preliminary finding on cases of alleged genocide; and for the subsequent referral of such findings to the International Criminal Court or a special tribunal”. This Bill has made little progress and has not been adopted, and it is unlikely that any progress will be made soon.
124. The Secretary of State for the Home Department has used powers under the Immigration Act 2014 to remove the citizenship of UK nationals who are known or are suspected to have been involved in terrorism overseas including membership of ISIS. In taking such action, and thereby preventing such individuals returning to the UK, the Government has shown its lack of interest and desire to investigate and prosecute those individuals suspected of having been involved in the commission of genocide, crimes against humanity and war crimes overseas through courts in the UK. The Government has also been explicit in its desire that certain individuals, such as the “ISIS Beatles” should not be subject to criminal proceedings in the UK.<sup>1399</sup>
125. In summary, the UK government is willing and able to support and facilitate the investigation and prosecution of ISIS members suspected of having committed crimes by an international criminal tribunal or other international mechanisms. As has been noted, the UK government has taken steps to support international, evidence gathering mechanisms, such as the International, Impartial and Independent Mechanism for Syria and the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh. However, it is only prepared to do so if the process takes place overseas and is clearly unwilling to facilitate the return of such individuals to the UK to be subjected to the British judicial system.

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<sup>1398</sup> P. Wintour, MPs unanimously declare Yazidis and Christians victims of ISIS genocide, *The Guardian*, 20 April 2016, available at <https://www.theguardian.com/politics/2016/apr/20/mps-unanimously-declare-yazidis-victims-of-isis-genocide> (accessed 7 June 2022).

<sup>1399</sup> See UK Country Report Summary, Obligation to Punish.

## X. CONCLUSION AND RECOMMENDATIONS

### 1. Obligation to Prevent Genocide

1. The obligation to prevent genocide is an important obligation; integral to the fulfilment of the obligation to prevent is the assessment of the serious risk of genocide. In this regard, the obligation requires States to implement effective atrocity prevention strategies that address human rights abuses and discrimination against minority groups in times of peace and in times of armed conflict.
2. Historically, the Yazidis have been subjected to systematic inequality and discrimination based on their religious and ethnic identity in Iraq and Syria, as well as by individuals and groups operating in those States. This discrimination allowed for the creation of an environment in which persecutors of the Yazidis flourished, including perpetrators of international crimes. That the Yazidi genocide was, and is, being committed by ISIS - a non-state actor and an armed group - does not absolve States from their obligations under the Genocide Convention.
3. The findings of this Report show that Iraq, Syria and Turkey, as States with the capacity to effectively influence the situation in Iraq and Syria, failed to implement the measures required to assess the serious risk of genocide of the Yazidis or were wilfully blind to that risk.
4. The Committee finds, on the information publicly available, that there are reasonable grounds to conclude that Iraq, Syria and Turkey from April 2013 onwards failed to take all means reasonably available to prevent the genocide of the Yazidis, in circumstances where they had the special capacity to effectively influence the circumstances and/or possible perpetrators of the genocide. From early 2013, and June 2014 at the very latest, these States (as well as others) knew or should have known that the Yazidis in Iraq and Syria, as a protected group, were at a serious risk of genocide by ISIS. They had an obligation to prevent from thereon yet failed. That failure is continuing to the present day.

### 2. Obligation to Not Be Complicit in Genocide

5. The Committee finds that there are reasonable grounds to conclude that, by July 2014 at the latest, and very likely from April 2013, Turkey knew ISIS, and its members, held the specific intent to destroy the Yazidis and was committing acts of genocide. Yet, in spite of clear evidence that ISIS was committing genocide against the Yazidis, Turkish officials deliberately allowed and/or turned a wilful blind eye to slave markets on Turkish territory and permitted and/or acquiesced to the transfer of fighters, weapons, *materiel* and looted oil across the Turkish border into Iraq and/or Syria. The conduct of Turkish officials, including *ultra vires* conduct, is attributable to Turkey and potentially places Turkey in violation of the obligation not to be complicit in genocide. This, therefore, creates a *prima facie* case of complicity for genocide on the

part of Turkey which (with further corroboration from private repositories of evidence) would be actionable before available international or regional accountability mechanisms.

### **3. Obligation to Punish Perpetrators of Genocide**

6. In the aftermath, or indeed in the midst, of genocide, States, individuals and non-governmental organisations will often call for the prosecution and punishment of the perpetrators. Yet, there have been too few prosecutions of alleged perpetrators of acts of genocide against the Yazidis. The Committee notes Iraq's cooperation with UNITAD, the UN organisation with a mandate to investigate and gather evidence of atrocity crimes in Iraq. However, unless and until Iraq enacts relevant legislation in line with obligations under the Genocide Convention and customary international law, it will continue to be in breach of its obligation to punish genocide, and indeed the separate but related obligation to enact legislation to give effect to the Convention.
7. The Committee finds that Syria and Saudi Arabia have failed to implement the necessary legislation to prosecute the alleged perpetrators of the Yazidi genocide, and continue to be in breach of this obligation, and its obligation to punish genocide. Although embroiled in over a decade of armed conflict, the latter has not precluded the Syrian government's ability to implement domestic criminal legislation. There are reasonable grounds to conclude that Syria has had the opportunity to investigate and, where appropriate, punish alleged perpetrators of genocide against the Yazidis. Yet, the Committee finds no evidence or information to support any claim that Syria has done so.
8. The Committee finds that there are strong grounds to conclude that Turkey is in breach of its obligation to punish genocide. Turkey has enacted the domestic criminal laws required to prosecute alleged perpetrators of genocide, whether committed in its own territory or elsewhere, and by any person under universal jurisdiction. Yet, the information considered by the Committee shows that Turkey has failed to investigate alleged perpetrators of acts of genocide committed in its own territory, with respect to the enslavement and sale of Yazidi women and girls in slave markets in Turkey, and alleged perpetrators of acts of genocide who have sought refuge in Turkey and/or are found in Turkey's territory.
9. Other States were involved in the conflict in Iraq and Syria, and certain States took measures to provide humanitarian aid to the Yazidis after the August 2014 massacres and took military action. There is no evidence that these States took measures to ensure the Yazidis were protected from the 2014 attacks. However, the information available in the public domain is insufficient to conclude that these other States considered in this Report are in breach of their obligations under the Convention.

#### 4. Ongoing Risk of Genocide and the Obligations of All States

10. The Committee stresses that it is incumbent on all States to continually assess the ongoing risk of genocide against the Yazidis and in the light of that risk, to take all available measures to prevent genocide in circumstances where they have the capacity to effectively influence the situation. Today, members of the Yazidi community are seeking to return and rebuild their lives in their homeland, Sinjar, Iraq, but also in highly significant areas elsewhere in Iraq and Syria where they have had a continual and existential connection to the land for thousands of years. But they remain under threat of attack and persecution from individuals and entities associated with ISIS that continue to operate in the region, and from airstrikes and other armed attacks carried out by Turkey or non-state actors affiliated with Turkey in the region against civilians and civilian objects, purportedly as part of a counter-terrorism operation against other unrelated groups. The Committee is deeply troubled by these ongoing attacks in and against northern Iraq and northern Syria, committed in circumstances that give rise to strong grounds to conclude that the attacks constitute grave violations of international human rights law and, where applicable, international humanitarian law.
11. The Committee puts all States on notice of their ongoing obligation to prevent the continuing genocide of the Yazidis. It observes that the continued commission of prohibited acts, or other unlawful attacks, on Yazidis threatens their security in the region and deters them from returning to their homeland and serves to perpetuate the ongoing genocide against this highly marginalised but protected group.
12. States' failure to meet their obligations to prevent genocide, in accordance with their obligations under the Genocide Convention, is not unique to the Yazidi genocide. It is a failure that has been and is repeated with respect to other situations around the world where there is a serious risk of genocide and other atrocity crimes being committed. One of the means by which States Parties to the Genocide Convention may ensure the pattern is broken, and that they and their fellow States comply with their obligations under the Genocide Convention, is by invoking the responsibility of States Parties who fail to meet the requirements of the obligation to prevent, in any given situation. It is only by States Parties, the essential guardians of the Genocide Convention, holding each other to account, that States will take notice of the obligation to prevent genocide and what that obligation in fact entails.
13. The Committee, noting the aforementioned, urges that third States, mindful of the *jus cogens* character of the prohibition of genocide and the *erga omnes* and *erga omnes partes* character of the obligations that are owed under the Genocide Convention, institute proceedings - individual and/or collectively - to establish Syria, Iraq and Turkey's responsibility for violations of the Genocide Convention and to hold them accountable under international law for failure to comply with their obligations under the Convention, as a result of which genocide against the Yazidi group occurred. It is for this reason that third

States should seriously consider recourse to the ICJ to ensure the fullest possible protection for those who remain at grave risk from ongoing acts of genocide.

## 5. Recommendations

14. The Committee makes the following detailed Recommendations.

### FOR ALL STATES GENERALLY

- a. As a matter of grave urgency, institute steps preparatory to proceedings, and proceedings themselves, against any of the Respondent States before the ICJ to ensure the proper interpretation, application and fulfilment of the obligations under the Genocide Convention in relation to their obligations to prevent and punish genocide, in this case against the Yazidi protected group, and ensure provisional measures are obtained to protect the Yazidis in the context of their ongoing genocide.
- b. Take all measures reasonably available, including the use of available offices and legal means, to protect the Yazidis from ongoing and future acts of genocide and prevent further violations of international law.
- c. Identify, document, and preserve all evidence relating to alleged perpetrators and use all available offices and legal means to investigate and prosecute those individuals allegedly responsible for prohibited acts of genocide against the Yazidis.
- d. Condemn the targeted attacks, including airstrikes, against the Yazidis by Turkey, and call upon Turkey to immediately cease such attacks.
- e. Take concrete steps to implement an effective atrocity prevention strategy that includes a continuous assessment of the risk of genocide in times of peace and in times of conflict.
- f. Ensure that atrocity prevention is a core principle of the conduct of international relations.
- g. Take steps to ensure the responsibility of all States whose acts or omissions undermine the integrity of the Convention, and in particular, Iraq, Syria and Turkey for the failure to fulfil their obligations under the Convention with respect to the genocide of the Yazidis.
- h. Create and apply Magnitsky-style sanctions on individuals, whether state or non-state actors, where there are reasonable grounds to suspect the person is involved in serious human rights violations against Yazidis in Turkey, Iraq and/or Syria.
- i. Invoke responsible States' international responsibility for alleged violations of peremptory norms of international law, engaging

relevant dispute resolution mechanisms under relevant treaties including the Genocide Convention.

- j. Specifically, call upon all responsible States to:
  - v. cease and desist all and any violations of its obligations and responsibilities under the relevant treaties and customary international law;
  - vi. make effective in domestic law the provisions of the relevant treaties in order to honour obligations to respect, protect and fulfil the obligations and responsibilities thereof;
  - vii. investigate - and permit, support, and strengthen independent and impartial investigation by others - all allegations of prohibited acts of genocide; and
  - viii. provide 'just satisfaction' to survivors/victims in the form of individual and/or general measures which may, *inter alia*, include remedial actions, reparations, and commitments for non-repetition.

#### FOR INTERNATIONAL ORGANISATIONS AND THE INTERNATIONAL COMMUNITY

- a. Publicly condemn the responsible States' actions as grave violations of international law and of their obligations to use all means reasonably available to prevent the ongoing genocide against the Yazidis.
- b. Call upon all States to take prompt and effective action in accordance with their obligations under the Genocide Convention to prevent and punish acts of genocide, to not be complicit in genocide in any way, and their general responsibility to act against crimes under international law, including by:
  - i. taking all steps to prevent the commission of prohibited acts of genocide by State organs, agents or officials or non-state actors within their jurisdiction and/or control;
  - ii. condemning all and any forceful operations against Yazidi civilians or civilian infrastructure and calling for the immediate cessation of all military operations against Yazidi defence forces absent strong and cogent evidence indicating an immediate and present risk of attack against their State or their nationals (which to date has been wholly without basis).
- c. Urge all States, and in particular those with a capacity to effectively influence the situation, to cooperate to bring the serious breaches relating to genocide committed by ISIS against the Yazidis to an end.
- d. Urge all States to ensure all victims, survivors, and witnesses of possible violations of international law have immediate access to

psycho-social support, independent legal representation and processes/procedures that will allow full and meaningful remedies and legal redress including compensation, restitution and reparations in accordance with international law.

- e. Call upon Turkey to comply with its obligations under international human rights law, and to immediately cease the unlawful targeting of, and indiscriminate attacks against, civilians and civilian objects, and persons *hors de combat*, in northern Iraq and northern Syria.
- f. Call upon Turkey to immediately cease all forceful operations against the Sinjar Resistance Units (“YBS”) - which are ostensibly characterised as ‘counter-terrorism’ operations - that have resulted in the unlawful targeting of civilians and persons *hors de combat*, in violation of international human rights law and, where applicable, international humanitarian law, absent strong and cogent evidence indicating an immediate and present risk of armed attack against the Turkey or its nationals (which to date has been wholly without basis), and that the use of lethal force is necessary and proportionate.
- g. Draw the attention of the UN High Commissioner for Human Rights to this serious situation that warrants immediate attention, and in particular Turkey’s targeting of Kurdish and Yazidi civilians and/or persons *hors de combat* in violation of international human rights law, and Turkey’s obligation to prevent the ongoing genocide against the Yazidis.
- h. Include the situation and the concerns raised herein in the annual reports of Special Rapporteurs to the Human Rights Council and the General Assembly.

#### FOR SYRIA, IRAQ AND TURKEY

- a. Take immediate steps to prevent, by using all means reasonably available, ongoing and continuing acts of genocide against Yazidis.
- b. Take prompt and effective action in accordance with their obligations under the Genocide Convention to prevent and punish acts of genocide, to not be complicit in genocide in any way and, generally, to comply with their obligations under the Genocide Convention and customary international law, including by:
  - i. taking all steps to prevent the commission of prohibited acts of genocide by State organs, agents or officials or non-state actors within their jurisdiction and/or control;
  - ii. immediately ceasing all and any operations against Yazidi civilians or civilian infrastructure and ceasing all military operations against Yazidi defence forces except where there is a lawful basis for such operations (which to date has been wholly without basis).

- c. Cooperate to bring the serious breaches relating to genocide committed by ISIS, which are continuing, against the Yazidis to an end.
- d. Comply with their obligations under international law, and immediately cease the targeting of Yazidis in Iraq, Turkey or Syria, either directly or indirectly, except where lawful grounds exist.
- e. Ensure all victims, survivors, and witnesses of possible violations of international law have immediate access to psycho-social support, independent legal representation and processes/procedures that will allow full and meaningful remedies and legal redress including compensation, restitution and reparations in accordance with international law.
- f. Take all steps to enact and implement domestic criminal legislation necessary to document, investigate and prosecute genocide according to international best practice in line with international human right law.
- g. Take proactive steps to investigate and prosecute genocide, in particular where victims and/or alleged perpetrators are within jurisdiction and/or control of the State.



## XI. AFTERWORD

Starting in 2014 - but on notice of what would come since 2013 - the Yazidis suffered genocide at the hands of ISIS, the Islamic State. Have we all forgotten that?

The Yazidis are still at risk. Do we care?

The worst of Yazidi suffering - to date - happened almost a decade ago and many dreadful things, worse perhaps, have happened elsewhere since. Is it time simply to 'move on'?

The Genocide Convention tells us why not.

The Convention was drafted in 1948 by those who had the experience of two recent world wars in which over 60 million - yes 60 million - people died who might have lived; all through the stupidity and wickedness of man.

The drafters of the Convention in 1948 had first-hand understanding that the evil of which they knew from two world wars, included the evil of attempting to destroy an entire people - a part of planet Earth itself - simply because of who they were: the Jews in the Second World War, the Armenians in the First World War.

Their understanding came without the knowledge we now have that Earth may be the only place in the galaxy of about 20 billion Earth-like planets in the Milky Way that supports intelligent life.

Taking away from an entity a part of any entity that is beautiful, individual, with its own integrity, identity and culture is bad enough. Taking away a part of a single, sometimes beautiful, planet when that planet needs every element of goodness and intelligence on its surface, the better to exist and to save it from its own self-destruction is madness heaped on evil. That is what the genocide of the Yazidis has been - madness heaped on evil.

So, what to do with this Report? Read it - properly. Learn how the mechanisms we have in place could have saved the Yazidis from what is now part of their past and part of their past partial destruction. Learn how the same mechanisms properly activated can save the Yazidis from suffering more of the same - or worse. But also learn how we risk ending intelligence itself in tragedies to come if we fail to ensure that our governments do what they can, and should, do to use law that is at hand to save the present tragedy from what may yet be done to peaceable, cultured, harmless, kind and generous people - the Yazidis.

The Yazidis - whose future is at risk just as it was with the Jews - must be saved and that can be done by naming and controlling those who would wish them dead or

who by their genocidal failings to act would see them dead and the planet impoverished as a result.

And with that the Convention may be able to help.

This Report is the result of detailed scholarship and investigative research. Its factual conclusions are those that any court will reach.

Conclusions include that there are reasonable grounds to conclude that Iraq, Syria and Turkey from April 2013 onwards failed to take all means reasonably available to prevent the genocide of the Yazidi, in circumstances where they had the capacity to influence the circumstances and/or possible perpetrators of the genocide. That failure is continuing to the present day.

Should we tolerate repetition of the same? Or should our governments take those States to task - and even to a court - that could have saved these people and that could save them still? Doing that, as the Report explains, may avoid repetition of the genocide of the Yazidis that has already happened. Seeing the law applied by other States, 'Parties to the Convention', might just help us all save planet Earth from becoming the biblical Armageddon we now more readily fear.

**SIR GEOFFREY NICE QC**  
**LONDON, JULY 2022**

## XII. ABBREVIATIONS

"AFAD"	Turkey's Disaster Management Agency
"AKP"	Justice and Development Party
"ARD"	Consortium of Public Broadcasters in Germany
"AQI"	Al-Qaeda in Iraq
"ASOR"	American Schools of Oriental Research
"BES"	Office Workers' Union
"BDP"	Peace and Democratic Party
"CHP"	Turkish Republican People's Party
"Commission of Inquiry"	Independent International Commission of Inquiry on the Syrian Arab Republic
"Commission of Inquiry Report 2016"	Commission of Inquiry, <i>"They Came to Destroy": ISIS Crimes Against the Yazidis</i> , A/HRC/32/CRP.2, 15 June 2016
"Commission of Inquiry Report November 2014"	Commission of Inquiry, <i>Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria</i> , A/HRC/27CRP.3, 19 November 2014
"Framework"	UN Framework of Analysis for Atrocity Crimes
"FRY"	Federal Republic of Yugoslavia
"FSA"	Free Syrian Army
"GBA"	Gaziantep Bar Association
"Genocide Convention"	Convention on the Prevention and Punishment of the Crime of Genocide 1948
"HDP"	People's Democratic Party
"ICC"	International Criminal Court
"ICCPR"	International Covenant on Civil and Political Rights
"ICG"	International Crisis Group

"ICJ"	International Court of Justice
"ICSR"	International Centre for the Study of Radicalisation
"ICTR"	International Criminal Tribunal for Rwanda
"ICTY"	International Criminal Tribunal for the Former Yugoslavia
"IDPs"	Internally Displaced Persons
"IIIM"	International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law committed in the Syrian Arab Republic since March 2011
"ILC Articles on State Responsibility"	International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts
"Iraq"	Republic of Iraq
"ISI"	Islamic State of Iraq
"ISIL"	Islamic State of Iraq and the Levant
"ISIS"	Islamic State of Iraq and Syria
"KDP"	Kurdistan Democratic Party
"KRG"	Kurdistan Regional Government
"MHP"	Nationalist Movement Party
"MIT"	Turkish National Intelligence
"OHCHR"	Office of the High Commissioner for Human Rights
"PKK"	Kurdish Workers' Party
"PMUs"	Popular Mobilisation Units
"PTSD"	Post-Traumatic Stress Disorder
"PYD"	Kurdish Democratic Union Party
"SOHR"	Syrian Observatory for Human Rights
"Syria"	Syrian Arab Republic
"The High Committee"	The High Committee for the Recognition against Yazidi Kurds and other Ethnic and Religious Minorities
"TPC"	Turkish Penal Code

"Turkey"	Republic of Turkey
"UNAMI"	UN Assistance Mission for Iraq
"UNAMI POC Report No. 1 of 2014"	UN Assistance Mission for Iraq Report on the Protection of Civilians in Armed Conflict Number 1 of 2014
"UNAMI POC Report No. 2 of 2014"	UN Assistance Mission for Iraq Report on the Protection of Civilians in Armed Conflict Number 2 of 2014
"UNAMI POC Report No. 3 of 2014"	UN Assistance Mission for Iraq Report on the Protection of Civilians in Armed Conflict Number 3 of 2014
"UNAMI Report 2016"	UN Assistance Mission for Iraq Report of 2016
"UNITAD"	UN Investigative Team to Promote Accountability Against Da'esh/ISIL Crimes
"UNSC"	UN Security Council
"USHMM"	US Holocaust Memorial Museum
"VRS"	Republika Srpska
"YES"	Union of Yazidis from Syria
"YPG"	Kurdish People's Protection Units
"YPJ"	Kurdish Women's Protection Units

### **XIII. ANNEX ON METHODOLOGY**

The findings presented in this Report are based on a review of publicly available sources unless otherwise indicated. This Annex will identify some of the methodologies used within some key sources utilised in the Report.

#### **1. Reports of the Independent International Commission of Inquiry on the Syrian Arab Republic (“Commission of Inquiry”)**

The methodology employed by the Commission of Inquiry, in all their reports, is based on standard practices of commissions of inquiry and human rights investigations conducted under the auspices of the United Nations. According to the Commission of Inquiry, the standard of proof was considered met when the Commission obtained a reliable body of information to conclude that there were reasonable grounds to believe that the incidents occurred as described and, where possible, that violations were committed by the party identified. Primarily relying on first-hand accounts to corroborate its findings, the Commission collected and analysed photographs, video recordings (including video footage distributed by ISIS), satellite imagery, and forensic and medical records. Reports from governmental and non-governmental sources, academic analyses and United Nations reports also formed part of their investigations. Additionally, the Commission frequently noted that its investigations were restricted by the denial of access to the Syrian Arab Republic; a facet which precluded verification of all material in this Report. Specific methodological features of Commission of Inquiry reports are delineated below.

##### **a. *Commission of Inquiry, Syria’s Brutal War Threatens International Peace and Security: UN Commission of Inquiry, A/HRC/27/60, 13 August 2014.***

The information contained in this report is based on 480 interviews conducted in the region (Syrian Arab Republic) and from Geneva. Since September 2011, the Commission has conducted 3,126 interviews (p.3, paras 4-6).

##### **b. *Commission of Inquiry, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: Rule of Terror: Living under ISIS in Syria, A/HRC/27CRP.3, 19 November 2014.***

This report is based on first-hand victim and witness accounts from over 300 interviews with men, women and children who fled or who are living in ISIS-controlled areas, describing the impact of ISIS’s rule on their lives (p.2, paras 2-4).

##### **c. *Commission of Inquiry, Report Submitted to the Human Rights Council Pursuant to Council Resolution S-17/1, A/HRC/28/69, 5 February 2015.***

In this report, the Commission charts the major trends and patterns of human rights and humanitarian law violations perpetrated from March 2011 to January 2015, drawing from over 3,556 interviews with victims and eyewitnesses in and outside of

the country, collected since September 2011. The Commission presents its findings (to be read in conjunction with its previous report A/HRC/27/60) on violations of international law committed in the Syrian Arab Republic between 15 July 2014 and 15 January 2015 based on 380 interviews conducted in the region and from Geneva (p.3, paras 3-5).

**d. *Commission of Inquiry, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/30/48, 13 August 2015.***

The information contained in this report is based on 335 interviews conducted in the region and from Geneva (p.3, paras 3-6).

**e. *Commission of Inquiry, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/31/68, 11 February 2016.***

The information contained in this report is based on 415 interviews conducted in the region and from Geneva (p.3, paras 3-6).

**f. *Commission of Inquiry, "They Came to Destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 15 June 2016.***

This report is based on 45 interviews with survivors, religious leaders, smugglers, activists, lawyers, medical personnel, and journalists. Documentary material was used to corroborate the information collected by the Commission, including hundreds of statements, photographs, satellite images, and reports, as well as the factual findings of the OHCHR Fact-Finding Mission on the human rights situation in Iraq. Where the Commission was able to determine provenance, materials disseminated by ISIS and/or its individual members have also formed part of the analysis (p.3, para 4).

**g. *Commission of Inquiry, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/33/55, 11 August 2016.***

The information contained in this report is based on interviews conducted in the region and from Geneva. Since September 2011, the Commission has conducted 4,575 interviews (p.3, paras 3-6).

**h. *Commission of Inquiry, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/37/72, 1 February 2018.***

In this report, a total of 513 interviews were conducted in person and remotely. The Commission faced numerous challenges regarding the security of interviewees, particularly those in areas controlled by ISIS. In Raqqah and Dayr al-Zawr, many interviewees had limited access to the internet and mobile phones (p.3, paras 2-6).

**i. *Commission of Inquiry, Detention in the Syrian Arab Republic: A Way Forward, 8 March 2018.***

Drawing from numerous first-hand accounts, this report emphasises the magnitude of arbitrary arrests and detention in the Syrian Arab Republic between 10 March 2011 and 20 February 2018. Its findings encompass over 800 detention-related interviews, and documentary material (p. 3, paras 8-9).

**j. *Commission of Inquiry, "I Lost My Dignity": Sexual and Gender-Based Violence in the Syrian Arab Republic, A/HRC/37/CRP.3, 8 March 2018.***

This report is based on 454 interviews with survivors, relatives of survivors, eyewitnesses, defectors, healthcare practitioners and medical personnel, lawyers, and members of affected communities. Almost without exception, interviews were conducted in person due to the sensitive nature of the subject matter. Such contact allowed for trust to be established and for a robust assessment of credibility to be conducted in the context of sexual and gender-based violence. The Commission notes that sexual and gender-based violence is consistently underreported, consequently, posing challenges to documenting such incidents. Due to the social and cultural stigma attached to such incidents, the willingness of survivors to disclose sexual violence is significantly reduced. Furthermore, the challenges posed to documentation were exacerbated by the reduction in flow of refugees able to leave the Syrian Arab Republic, thereby reducing the access to potential survivors of sexual and gender-based violence.

**k. *Commission of Inquiry, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/39/65, 9 August 2018.***

The information contained in this report is based on 402 interviews conducted in the region and from Geneva as well as on investigations conducted from 16 January to 10 July 2018 (p. 3, paras 1-3).

**2. UN Assistance Mission for Iraq ("UNAMI")**

The information contained in UNAMI's reports is primarily based on testimony obtained directly from witnesses or victims of violations and abuses of international human rights law and/or serious violations of international humanitarian law. Information was also obtained from a variety of other sources, government officials and institutions, local and international media, local NGOs, civil society actors, human rights defenders, tribal leaders, religious leaders, political figures, and United Nations entities operating in Iraq.

**a. *UNAMI, Report on the Protection of Civilians in the Non-International Armed Conflict in Iraq: 5 June – July 2014***

As of 3 July 2014, UNAMI conducted 150 interviews with internally displaced persons (IDPs) in Erbil and Dohuk, including: Khazir camp, al-Hamdaniya; Gwer, Makhmur; Erbil; Avapiroz Camp, al-Sheikhan; Garmawa camp, near Dohuk city; al-Qosh and



Salih Agha in Sulaymaniyah. Interviews were conducted with families and individuals, including women, members of minorities and children, as well as members of ISF who have sought safety in the Kurdistan Region. UNAMI has also interviewed six detainees in the Asayish detention facility in Erbil to get information on specific cases of human rights violations. All sources and information provided, were analysed for their reliability and credibility. Unless specifically stated, all reports of violations and abuses contained in UNAMI's reports have been verified or cross-checked by several independent, credible sources. Further, the mission notes that information in their reports is included only if informed consent was obtained from the survivor/witness, and then only if it has been assessed that there are no protection risk/concerns posed by its disclosure.

In UNAMI's second report from September 2014, it highlighted the effects of the deteriorating security situation in Iraq which, according to the mission, has negatively impacted its capacity to undertake direct monitoring and verification of incidents in many parts of the country. The lack of direct access and issues identifying credible sources in certain areas controlled by ISIS or Shi'a and other militias have compounded the challenge of documenting and verifying incidents and casualties arising from those incidents. UNAMI notes that unverified incidents have not been reported and advises that figures provided in their reports should, therefore, be regarded as absolute minimums. Information in their reports is thus comprehensive, but not exhaustive.

**b. *UNAMI, Report on the Protection of Civilians in Armed Conflict in Iraq: 11 September - 10 December 2014, 15 December 2014, ("UNAMI POC Report No. 3 of 2014").***

As of 4 December 2014, UNAMI had conducted 587 interviews with IDPs in KR-I, the Kirkuk and Diyala governorates and other areas of Iraq, including: Khazir (Al-Hamdaniya); Erbil city, 11th Azar Quarter in the Kasnazan Compound, Baharka, Gwer, Makhmur, Dolob (Erbil); Dohuk city, Avapiroz, Garmawa, Shariya, Yezidi Castle, Shamel, Khanake Camp, Polytechnic Institute, Zakho and surrounding areas; Khanke; Bajet Kandala IDP camp (Dohuk); Sulaymaniyah city, Kalar, Raniya and Qalat Diza (Sulaymaniyah); Khanaqin (Diyala). UNAMI/OHCHR has also interviewed 36 detainees in the detention facility of the Kurdish Intelligence (Asayish) in Erbil.

**c. *UNAMI, A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL, August 2016.***

This report was published jointly by UNAMI and OHCHR under their respective mandates. The information contained in this report is based on accounts obtained directly from survivors and witnesses of abuses of international human rights law and/or serious violations of international humanitarian law gathered by UNAMI human rights investigators since the attack on Sinjar in August 2014. Owing to the deteriorating security situation in Iraq and its negative impact on UNAMI's/OHCHR's capacity to undertake direct monitoring and verification of incidents, examples of

violations and abuses contained in this report are emblematic and do not present a comprehensive account of all abuses and violations that were reported to UNAMI/OHCHR (p.5).

**d. *UNAMI, Human Rights in the Administration of Justice in Iraq: Trials under the Anti-terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL, January 2020.***

In this report, UNAMI followed a 'hearing-based' monitoring methodology, such that "observations [were] drawn from attending single judicial hearings, at either the investigative or trial stages (at both stages, the proceedings may consist of one or more hearings). Security permitting, UNAMI human rights officers attended court hearings on a regular basis." Out of the total, 510 terrorism-related trial hearings were observed. According to UNAMI, "Data gathering focused on the observation of trial hearings and a limited number of investigative hearings. To document relevant data consistently and accurately, UNAMI designed a specific trial monitoring guidance and a documentation template, based on national and international human rights norms and standards, to ensure that observations were monitored and recorded in a consistent manner. All staff conducting trial monitoring received targeted training before commencing their work. Monitors prepared standardized hearing reports detailing their observations and analysis, from which the findings of this report were compiled. In addition, human rights officers met with judges, defence lawyers (including the Iraqi Bar Association), prosecutors and other relevant interlocutors, such as civil society activists, victims, and families of defendants, and gathered and analysed legislation and information from other official documents and reports. The teams, however, did not have access to court files, including written judgments." The report outlined general trends and patterns observed.

The scope of this report does not cover the full range of issues that may impact the effective and fair administration of justice in Iraq, such as systemic institutional or administrative problems, broader issues of the independence of the judiciary, investigation, arrest, detention, or screening practices, witness' and victims' protection and appeal proceedings where violations can be remedied. Hearing-based monitoring's inherent limitations were considered during the analysis of the information (pp 1-2).

**3. UN Human Rights Council - Office of the United Nations High Commissioner for Human Rights ("OHCHR")**

**a. *OHCHR, Report of the Office of the High Commissioner for Human Rights on the Human Rights Situation in Iraq in the light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups, 27 March 2015, A/HRC/28/18 ("UN Human Rights Council Report 2015").***

In this report, the OHCHR reviewed all available information, including testimony from witnesses and victims and documentation from the Government of Iraq, Member States and relevant United Nations and non-governmental organisations. It followed up on reports of violations of international human rights and humanitarian law to verify their veracity and establish further facts by conducting investigations in Chamchamal, Dohuk, Erbil, Kalar, Suleimaniyah and Zakho, and camps for internally displaced persons in those areas.

Due to insecurity and heightened conflict in some areas of the country, and logistical constraints, the OHCHR could not conduct investigations in many areas of Iraq where serious human rights abuses and violations had allegedly taken place, such as Kirkuk governorate and Mosul, Tel Afar and Zummar in Ninewa governorate. For areas that were physically inaccessible, the OHCHR undertook telephone interviews or, when possible, met victims and witnesses in more secure locations.

The findings in the report were based on an analysis of first-hand information obtained through in-depth interviews conducted with over 100 victims and witnesses. The credibility of information was assessed based on consistency among witness accounts and the existence of other corroborative information. As the factual certainty of the findings are not uniform; for each of its findings, the OHCHR specified the degree to which it was confident that the incident occurred. (pp 4-5, paras 9-12).

***b. UN Human Rights Council, Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016 - 28 February 2017, A/HRC/34/CRP.3, 10 March 2017.***

The information contained in this report is based on 326 interviews conducted in the region and from Geneva (p.4, paras 3-6).

**4. United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant (UNITAD)**

UNITAD collected a broad range of existing documentary and testimonial evidence obtained from actors, including Iraqi national authorities, other national Governments, victims and witness groups, civil society bodies and international and regional organisations, and then compiled and analysed this evidentiary material. UNITAD conducted targeted field-based investigations to obtain physical, forensic, and testimonial evidence to fill the gaps identified and support case development, through direct engagement with victims and witnesses. All evidentiary material collected by the Investigative Team was preserved and stored in accordance with international standards. UNITAD produced comprehensive analytical case files to support domestic proceedings, both in Iraq and other Member States.

- a. *UNITAD, Fifth Report of the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant, S/2020/1107, 11 November 2020.*

For this report six field investigation units based in Baghdad, Dahuk and Erbil were in place, with additional specialized thematic units in the areas of gender-based crimes, crimes against or affecting children, witness protection, forensic sciences and financial tracking.

[END]



"This report could not be more timely as an at-risk community of Yazidis cry for justice. Immediate, meaningful and concrete actions with regard to state responsibility will critically contribute to efforts for accountability of perpetrators and ensure prevention of recurrent crimes against Yazidis. Implementing the report's recommendations would help the healing process of Yazidis and will strengthen our belief in the idea of a fair and just world."

- Dr Leyla Ferman

"Taking away from an entity, a part of any entity that is beautiful, individual, with its own integrity, identity and culture is bad enough. Taking away a part of a single, sometimes beautiful, planet when that planet needs every element of goodness and intelligence on its surface, the better to exist and to save it from its own self-destruction is madness heaped on evil. That is what the genocide of the Yazidis has been - madness heaped on evil. So, what to do with this report? Read it - properly. Learn how the mechanisms we have in place could have saved the Yazidis from what is now part of their past and part of their past partial destruction. Learn how the same mechanisms properly activated can save the Yazidis from suffering more of the same - or worse. But also learn how we risk ending intelligence itself in tragedies to come if we fail to ensure that our governments do what they can, and should, do to use law that is at hand to save the present tragedy from what may yet be done to peaceable, cultured, harmless, kind and generous people - the Yazidis."

- Sir Geoffrey Nice QC

"We live in troubled times. The international rules based order and rule of law generally are under attack and international crimes continue to proliferate. This report provides some measure of hope that not only will violations of international law not go unheard but they will also not go unpunished. It provides the first highly detailed analysis of the Yazidi genocide and also the first evidentiary record of the failure of states in upholding their obligations under the Genocide Convention. The world cannot merely read this report and carry on as normal - we owe it to the Yazidi community, who remain in a highly precarious situation, to ensure responsible states are held accountable and we owe it to humanity to guarantee genocide does not re-occur."

- Prof. dr. Rianne Letschert

In 2020, the Yazidi Justice Committee began investigating allegations of State responsibility for the genocide committed against the Yazidis, beginning in 2013, at the hands of the so-called Islamic State in Iraq and Syria (ISIS). The Committee's primary objective was to determine whether there were reasonable grounds to conclude that the atrocities committed against the Yazidis constitute genocide and, if so, whether in addition to the individual perpetrators, certain States may be responsible for the commission of, or the failure to prevent and punish, the genocide. The evidence and the Committee's conclusions have been compiled in this comprehensive fact-finding report.

The report's findings show that there are strong grounds to conclude that genocide against the Yazidis, as a protected religious group, was committed by the armed group, ISIS, in contravention of the Genocide Convention and that this genocide, at the time of writing, is ongoing. The report finds that there are reasonable grounds to conclude that at least three States - Syria, Iraq and Turkey - are in breach of one or more obligations under the Genocide Convention with respect to the genocide committed by ISIS. The allegations in respect of other States initially considered could not, with some exceptions, be substantiated by the information publicly available.

This is not just a report. It is a call to all States Parties to the Genocide Convention to take immediate steps to ensure justice and accountability for what happened to the Yazidis, to uphold the integrity of the Convention, and to ensure that crimes committed against them are never repeated.

THIS REPORT WAS A PRODUCT OF CLOSE WORK WITH: THE YAZIDI COMMUNITY, SPECIALIST CONTRIBUTORS AND REVIEWERS INCLUDING FROM EACH YJC CONTRIBUTING ORGANISATION. ACKNOWLEDGMENTS ARE WITHIN, WITH PARTICULAR GRATITUDE OWED TO EWELINA OCHAB AND JACQUELINE JAHNEL.

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