

Syrian Democratic Council
Ein Essa



مجلس سوريا الديمقراطية
عين عيسى

International trials for detainees of the Islamic State in Iraq and Syria under the custody of the Syrian Democratic Forces and the local administration in North East Syria.

I) Introduction

This brief relates to the prosecution of ISIS fighters detained by the Syrian Democratic Forces (SDF), in North East Syria. This brief will cover the principles allowing for the prosecution of ISIS detainees as well as provisions required to ensure fair trial conditions and the participation of national agencies in the process.

The Islamic State in Iraq and Syria (ISIS, AKA ISIL, AKA Daech), is a proscribed terrorist organisation which was established in 2013 in Syria and Iraq. Headed by (nom de Guerre) Abou Bakr Al Baghdadi, the organisation which adopts the takfiri Jihadist doctrine, is rooted in the global Jihad movement spearheaded by the proscribed AL Qaeda organisation(2001), Al-Qaeda fi Bilad Al Rafidayn(2003), and the Islamic State in Iraq(2008).

In 2013 the group announced its unification with Al Qaeda's branch in Syria, Jabhat Al Nusra, largely active in North Western Syria, as the Islamic State in Iraq and Syria. That was however rejected by Al Qaeda's international leadership, causing a rift within the Syrian Jihadists as well as within international jihadists in Syria. ISIS then moved its forces East, forcibly taking territory from the rebel group the Free Syrian Army (FSA), the Syrian Regime, and Iraqi government, and the Kurdistan Regional government (KRG).

By July 2014, the leader of the group, which is composed of local and international jihadist fighters, including Jihadists from EU countries, declared the establishment of a caliphate over territory in both Iraq and Syria, to be known as the Islamic State. Abu Bakr Al Baghdadi called on followers in the group to join the self-declared caliphate in his declaration speech, many of whom citizens and/or residents of EU countries.

The group continued to take on territory and subject the residents of its areas of control to the worst types of terror tactics and brutal rule, amounting to war crimes and crime against humanity, and genocide. The group particularly targeted minority groups, western nationals, and launched attacks on several European cities and civilian targets.

An international coalition to combat ISIS was established and led by the United States and its allies in response to the group's takeover. The Syrian Democratic Forces, became the local partner of the International coalition. The SDF has managed, with coalition support, in widely defeating the group and liberating entire communities and territories from its control. This resulted in a large number of detainees currently in the custody of the Syrian Democratic Forces, and the Local administration in North East Syria.

The Local administration is the administration composed of local populations living in territories in North East Syria which exercises local governance functions and stabilisation efforts to counter the group's resurgence and ensure a peaceful solution to the Syrian crisis.

Regional geopolitical military developments in recent months, has led to increased pressure on the SDF and the local administration in North East Syria, and the processing of detainees currently in the custody of the SDF and the local administration in North East Syria is becoming a priority in order to avoid any re-emergence of the group and the threatening of national, regional, European, and international security.

II) The courts of the Local administration in North East Syria: The Social Justice Council

The current local administration in North East Syria was established in 2016 following the announcement of the Federal Democratic Social contract by a group of local parties representing different components of the area. In the absence of a political peace deal in Syria, and the withdrawal of Syrian regime forces and their institutions from Northern Syria in 2012, the local administration is



the de-facto administrator in Northern Syria. The local administration provides basic services, defence, and the rule of law in the areas controlled by the Syrian Democratic Forces.

The Social Justice Council is the legal body in charge of the Judiciary in North East Syria. The Terrorism Courts are a special body created by the local administration in order to manage the trials of the ISIS and other terrorism detainees. It is run by Judges and lawyers who have been active judicial professionals in Syria and received their degrees from Syrian law faculties. In addition to Syrian codified law, the judges of the Social Justice Council also apply international conventions that are not necessarily recognised by Syrian law, such as the abolition of capital punishment, and Human rights conventions to ensure that trials are fair and equitable in accordance with international law principles.

The development of the Syrian conflict has been the catalyst for the creation of a tribunal that can abide by the rules of international law and the right to an independent justice. The first tribunals were established in 2012 – initially known reconciliation committees, but with the intensification of the conflict there has been a necessity to create a structured justice (Prosecutor General, First degree, Second degree), which culminated in the Social Justice System in NES. This has had a direct impact on the welfare of people in NES. The courts of the Social Justice council apply Syrian criminal law, which is based on French and Roman law. With the increase of attacks on the general population in Syria by terrorist organisations, the Social Justice Council established a specific court for terrorism (People Defense Court). These courts include Prosecution, First Degree and Second Degree (Appeal) litigation in accordance with international standards.

The Social Justice Council collaborates with international evidence experts in order to ensure compliance with international standards of evidence collection and analysis instead of relying on extracted confessions as is the case in most national jurisdictions in the region. The Council also works jointly with the Asayish (the local administration internal police force) and SDF intelligence (Military intelligence) which facilitates and protects the court procedure and conducts investigations at the direction of the Social Justice Council.

The courts also seek the participation of victims in the proceedings where they benefit from their presence in the territory where the crimes are committed. This facilitates efforts for restitution and damages to the victims when applicable and ensure the transitional justice peace building efforts of the local administration in North East Syria.

The Terrorism Courts of the local administration can also be supported by international and national legal experts supporting the process through bilateral agreements (Mutual Legal Assistance Treaties) which recognise the sentencing of the local administration in national jurisdictions ensured through direct participation of national prosecutors, defence lawyers and other legal practitioners involved in the process (Physically or via Video Technology). Extra-territoriality can also be used as a legal basis for prosecutors seeking evidence directly from the courts of the Social Justice Council.

The trials of ISIS members aims to seek prosecutions on crimes committed in addition to the crime of belonging to proscribed organisations.

III) The legal basis for the conduction of trials in North East Syria

The absence of a Syrian constitutional solution to the conflict in Syria has caused pressure on the local courts to ensure basic rights to the detainees such as ensuring the freedom from arbitrary detention, the rights to a fair trial and the right to claim double jeopardy should a convicted terrorist be moved to another jurisdiction following the completion of their sentence. The Local administration's Social Justice Council was accordingly established to avoid the legal vacuum in the North East Syria territory and to replace with a judicial system that is compatible with international conventions and principles of equitable and fair trial.



The Local administration's Social Justice council is seeking the support of national authorities in EU and other countries whose citizens are currently detained by the SDF for terror charges.

This can be achieved based on the following:

- 1) Bilateral agreements (Mutual Legal Assistance Treaties) and recognition of the courts by national legal authorities.
- 2) Direct participation in trials (Physical or via Video Technology) of legal and defence representatives of national jurisdiction and/or recognised international legal experts.
- 3) Coordination between national prosecutors in the relevant countries and the prosecutors in North East Syria over the preparation of detainees files and evidence collection to ensure fair trials and due justice.

Whilst awaiting direct recognition of the local administration's special terror courts by national authorities, principles of international law are used a priori:

- 1) International criminal law has dealt with the issue of recognition particularly when national or regional courts such as the European Court of Human Rights were called on to assess proceedings conducted by the courts of a de facto regime in light of the applicable treaties and legal principles.
- 2) Based on the current case law, the courts no longer consider that the nature of a de facto regime or sovereign body is in itself sufficient to determine whether the courts can be recognised or not. When assessing the recognition, what mattered was i) the need to avoid a legal vacuum particularly for claims related to freedom from arbitrary detention and the right to a fair trial at the merits stage and ii) whether, in substance, the judicial system could be considered compatible with the applicable principles and treaties.
- 3) Moreover, and of particular relevance to this case given the crimes committed by ISIS in North East Syria, are the legal principles and international case law related to genocide, crimes against humanity and war crimes such that constitute grave breaches to international law and to which particularly those prescriptions arising out of general customary international law of jus cogens should be applied.
- 4)

It is evident, based on the above principles, that the Social Justice Council's Terrorism Courts should benefit from immediate cooperation and recognition as these courts have been established in response to a legal vacuum, and an imminent threat of genocide and war crimes and as they conduct the trials with full respect for their due-process rights pursuant to International Human Rights law, set out most especially in the International Covenant of Civil and Political Rights.

Syrian Democratic Council – SDC

Chairman Of Executive Body
Ilham Ahmed

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