



# The Trial of the Islamic State's Members Fundamental Proceedings for Justice

Justice for Life Organization

June 2020

منظمة العدالة من أجل الحياة  
Justice for Life Organization



**Publication Type: Human Rights Report**

**Title: The Trial of the Islamic State's Members.. Fundamental Proceedings for Justice**

**Publisher: Justice for Life Organization**

**Publication Date: 02 June 2020**

**Language: English**

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# TABLE OF CONTENTS

INTRODUCTION.....	3
INTRODUCTION TO THE JUDICIAL SYSTEM IN THE AUTONOMOUS ADMINISTRATION AREAS .....	4
JUDICIAL SYSTEM STRUCTURE IN THE AUTONOMOUS ADMINISTRATION .....	4
THE APPLICABLE LAW.....	6
PROS AND CONS OF THE JUDICIAL SYSTEM .....	7
CONS/ GAPS.....	7
PROS.....	8
DOES THE JUDICIARY COMPLY WITH THE INTERNATIONAL LAW REQUIREMENTS OF A FAIR TRIAL IN THE AREAS OF AUTONOMOUS ADMINISTRATION?.....	9
CONDITIONS FOR A FAIR TRIAL ACCORDING TO INTERNATIONAL LAW .....	10
PEOPLE'S DEFENSE COURT.....	11
RESULTS .....	13
RECOMMENDATIONS .....	14
REFERENCES.....	16

## INTRODUCTION

By the support of the US-led international coalition, the Syrian Democratic Forces managed to take control of the last ISIS enclaves in northern and eastern Syria. As a result, the Syrian Democratic Forces arrested thousands of ISIS members of various nationalities. This necessitated work to find a mechanism to deal with a large number of captives, as they can in no way be kept in detention without trial. The autonomous administration repeatedly called on foreign countries to return their citizens, who had joined ISIS, to their countries of origin and send them to trial in their countries. Without any success, the European countries and the United States [refused](#) to take in their citizens to their countries for national security reasons as well as difficulties in securing prosecutions due to lack of evidence. This coincided with the failure of international efforts to set up an international court dedicated to prosecuting the non-Syrian ISIS members while they are being held in the SDF prisons. This input led the autonomous administration to express their intention to start [prosecuting](#) foreign ISIS members in their prisons. The autonomous administration officials [pledged](#) to a fair trial, stressing that this move helps in achieving criminal justice as the victims are Syrians and the violation was committed on Syrian soil, and evidence is available. These statements raised many questions about the eligibility of the judicial system in the autonomous administration areas and its readiness to carry out these trials, or whether the existing judicial system is able to achieve the conditions of a fair trial in accordance with international law and human rights laws.

[Justice for Life organization](#) has examined the foundations of the judicial system in the autonomous administration areas and its structure by communicating with two persons who work in the judiciary in different areas of north and east Syria, in addition to a lawyer who is active in the civil society and an official from the autonomous administration. The organization also examined various sources of international covenants and treaties and press research and investigations in order to prepare this report.

## INTRODUCTION TO THE JUDICIAL SYSTEM IN THE AUTONOMOUS ADMINISTRATION AREAS

The autonomous administration created a group of courts to regulate social life in the areas under their control. These courts are subject to several amendments, including Legislative Decree No. (21) in 2015, which entered into force in April 2017. This decree abolished the “People's Courts” and instead replaced it with the “Social Justice Court”. The Legislative Council also issued a number of laws such as the Penal Code, the Social Justice System Procedures Law, a law for associations and civil society organizations, and other laws. The Charter of the Social Contract promulgated in 2016 included a chapter on the justice system stating the structure and functioning of the judiciary.

## JUDICIAL SYSTEM STRUCTURE IN THE AUTONOMOUS ADMINISTRATION

According to the vision of autonomous administration, passing judgments on is not only restricted to the formed courts but also the local community participates in this process, starting with the appointment of judges (who do not require a degree in law) and ending with reconciliation initiatives. As lawsuit is no longer instituted directly to the court in this judicial system. Rather, it is referred by the reconciliation committees, the women's house and, the prosecution and investigation committees. This vision is embodied in the so-called "Platform courts", which discuss issues that raise public opinion. Where men and women from different societal groups and representatives of civil institutions are invited to discuss the issue in addition to the two parties to the invitation, the ruling is based on the opinion of the majority and its decisions are concluded without appeal.

There are ordinary and exceptional courts (the People's Defense Court) for those accused of terrorist acts, although the charter of the Social Contract prohibits the formation of such courts.

- A. Reconciliation committees: work to find an amicable solution between dispute parties, in a way that stems from the charter of the social contract. “Reconciliation committees are not part of the court’s structure, but the management of these committees is among the structure of the Justice Council,” according to witness.

- B. **Prosecution and investigation committees:** They specialize in the investigation and prosecution of crimes against individuals and society, as these committees play the role of public prosecution, investigation, and referral.
- C. **The Women's House:** a civil and social institution with a consulting mission. It plays a key role in all issues to which women are a party. Such issues must go through the women's house first to try to find a solution. In case of failure, the case is referred to the Court of Social Justice, where the women's house plays the role of defense.
- D. **The Social Justice Court:** Considered as a court of the first level of litigation, with a near-comprehensive jurisdiction that involves civil, criminal, and Shari'a cases.
- E. **The Discrimination Board:** Considered as an appeal court and is the second level of litigation. The Discrimination Board members are appointed by the Social Justice Council. The board's job is focused on evaluating decisions of the social justice courts, which are discriminatory (appealable). The Discrimination Board's decisions are concluded. It should be noted that addressing grievances is subsequently opened to the Justice Council, for defendants, against the sentencing of the Discrimination Board. According to a worker in the judicial branch of the autonomous administration, who was contacted by the Justice for Life organization and preferred not to reveal their name for personal reasons, they said: "Usually the request is rejected, the grievance request, at first and it is accepted the second time. Which means the Justice Council has become a court and a level of litigation."
- F. **The Executive Departments:** They execute sentencings and have the power necessary to enforce sentencings, forcibly if the convict refuses to voluntarily fulfill their duties. The executive departments can also use assistance from the Asayish<sup>1</sup> when necessary.
- G. **The Supreme Constitutional Court:** is concerned with interpreting the provisions of the constitution, settling disputes arising between the executive, legislative and judicial powers, and monitoring the constitutionality of laws issued by the Legislative Council. (The role of this court has not actually been activated yet, according to the source).

<sup>1</sup> Asayish is the Interior Security Forces. The word Asayish in Kurdish means stability

- H. **The People's Defense Court (Anti-Terrorism Court):** It is an exceptional court based on the 2014 Anti-Terrorism legislation. The PDC handles and considers terror crimes in accordance with the Anti-Terror Law issued by the Legislative Council of the autonomous administration <sup>2</sup>. These courts are likely to be specialized in prosecute foreign ISIS operatives. The Terrorism Law defines acts that are terrorist, such as stirring terror among citizens and endangering their lives, or even any act that threatens peaceful coexistence and national unity and affects the security and stability of society, or weakens the ability of the security services to defend the security of citizens.
- I. **Social Justice Council:** It is considered the Supreme Judicial Council. The council studies and monitors the work and organization of its institutions.

## THE APPLICABLE LAW

Article (88) of the Social Contract Charter stipulates that the articles of Syrian law can be applied to cases where there is no provision in the law for autonomous administration. In addition, the judge has the authority to implement the "Social Justice Law", that is, rules derived from social norms and from the judge's conscience and culture.

On the formation of the Legislative Council and the law applied in the courts, a witness says: "The Legislative Council (representing the legislature) was responsible for enacting laws in autonomous administration through the General Conference that was supervised by leaders locally called "the Cadres"<sup>3</sup>.

"The seats are distributed over the regions and sectors (quota system). Then, the local councils approve representatives in the Legislative Council, with a total number of 140 seats. Initially, Syrian law was fully applied in the autonomous administration courts. But after the Justice Council was established in Jazira Region, lawyers and judges, who are formerly part of the judiciary system of the Syrian government, began to subjugate and

<sup>2</sup> Articles 4 and 5 of the Anti-Terror Law issued by the island's boycott.

<sup>3</sup> Members of the Democratic Union Party

quote articles from the Syrian law and make it under the roof of autonomous administration”

## PROS AND CONS OF THE JUDICIAL SYSTEM

### CONS/ GAPS

The Justice for Life organization obtained testimonies from judicial personnel working for autonomous administration, which turned out to be the most important drawbacks and problems facing the judicial system:

- A. Lack of human expertise: Witnesses said: “A lack of human resources in the legal field is a real challenge facing the judicial system. Most lawyers and judges have either left the country or refused to work with autonomous administration. Therefore, there is a lack of adequate personnel who had worked in the juridical or judicial fields.” Likewise, “The training course, to which the judges are subjected after their selection and before starting their duties, is a short period (two months for those who speak both Arabic and Kurdish. And from six to eight months for those who speak only one language from these two languages). The course does not allow judges anymore to obtain sufficient knowledge or experience to carry out their responsibilities.” In addition, “the mechanism for selecting judges based on "personal interests", as the witness described, constitutes an imbalance in the judicial system as a degree in law is not required for a judiciary candidate, only above 22 years old and literacy. In addition, candidates must obtain a certificate of good conduct from the commune.”. “The candidate judge shall submit to the course after completing the aforementioned required conditions. The course contains both intellectual understanding of the philosophy of the Democratic Union Party and the democratic nation and laws issued by the autonomous administration.”
- B. Interfering with the judiciary work: All the aforementioned testimonies confirmed: “We cannot talk about a completely independent judiciary, as judges are subject to pressure from the “cadres” in addition to social pressures, represented by the concept of reconciliation after moving forward with the litigation process”. As reconciliation is the foundation of the judicial system in accordance with the principle of social justice, if senior leaders and Sheikhs intervened to achieve reconciliation, the judge finds themselves compelled to freeze the law and activate reconciliation”. Moreover, “It is perceived that judges close to the “cadres”

‡ The commune means the Muhtar, the representative of public administration in certain neighborhood or village



dominate the higher judicial posts. Additionally, the courts are under great pressure from the security services, civil councils, and notables, which makes them lose their objectivity."

- C. The weakness of the executive authority: The interior security forces "Asayish" implements the laws issued by the courts. There is also the Combating Organized Crime Division and the Executive Division which accomplishes rulings of the Justice Court. Although these authorities have sufficient powers to carry out their tasks, yet witnesses claimed low output. These loopholes led to "people losing confidence in the entire judicial system. Therefore, people often prefer to seek reconciliations."
- D. The partiality of the Social Justice Council: The [Council](#) is considered as the Supreme Court. However, when it comes to impartiality, the Council issues statements and organizes events that serve some political agenda such as condemning the Turkish Government on February 27th, 2020 concerning the arrest of the PKK founder, Abdullah Ocalan. The Council stated: "Amidst all the practices imposed on the leader, Abdullah Ocalan by the fascist Turkish state from isolation, stripping and preventing lawyers from meeting with him, as well as preventing his relatives from visits. The Turks were not satisfied with all these arbitrary measures that violate international laws and the Human Rights declaration. They, the Turkish state, even set fire to the Imrali Island, where the commander Ocalan is being held. Until now, there is no statement been issued by the Turkish government on the campfire. And we do not know the fate of the commander Ocalan". "Despite activating the same judicial system across the areas under the autonomous administration control, the intervention of cadres is relatively limited in some areas such as the city of Tabqa<sup>5</sup> due to the presence of a larger number of well-experienced former judges and lawyers, which makes the judicial system in that city more coherent and neutral than the rest of regions in northern and eastern Syria" according to another witness.

## PROS

All witnesses confirmed to Justice for Life Organization that, despite the flaws in the existing judicial system, there are still some positives, including open trials, the abolishment of Death Penalty, and the possibility to hire a defense attorney for those unable to afford a lawyer by the Union of Lawyers, after the Court's approval.

As for prisons, according to one of the witnesses, "conditions vary in terms of hygiene from one jail to another depends on who's in charge, but minimum standards of hygiene are granted. There are

<sup>5</sup> A city in Raqqa province.

no documented cases of torture in the prisons of the judiciary, and prisoners possess necessary medical care through regular doctor visits to provide necessary medicine for sick inmates. In addition, patients are referred to hospitals for treatment if necessary. There is also a system of visits and religious beliefs are respected". Another witness said: "Prisoners have an acceptable level of medical care and respect for their beliefs, and their families are allowed to visit. There are cells only for women, but prisons lack standards of hygiene. Thus, they are so much better than the prisons of the Syrian government and ISIS. We haven't noticed any torture in the prisons of the judiciary"

On the other hand, the witnesses affirmed that what we see as positives regarding trials and prison conditions, only applies to the Justice Court and civil or regular prisons. As for the court of terrorism and security prisons, they cannot be certain, the witnesses, despite their work in the judiciary, they cannot access the prisons of terrorism court to see whether they meet the humanitarian standards required. As for the terrorism court trials, witnesses say, "These are secret trials that do not guarantee the right to self-defense."

**DOES THE JUDICIARY COMPLY WITH THE INTERNATIONAL LAW REQUIREMENTS OF A FAIR TRIAL IN THE AREAS OF AUTONOMOUS ADMINISTRATION?**

## CONDITIONS FOR A FAIR TRIAL ACCORDING TO INTERNATIONAL LAW

The International Bill of Human Rights affirmed a fair trial and equality in front of the law, “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense”<sup>6</sup>.

Common<sup>7</sup> Article 3 of the Four Geneva Conventions guarantees all binding judicial guarantees according to civilized communities<sup>8</sup> Moreover, customary international humanitarian law and international law treaties prohibit discriminatory treatment based on race or color, gender, language, religion, creed, political opinions, national or social origin, wealth, lineage, or any other status, or based on any other similar criteria, whether the conflict intended internationally or non-international.

Several international laws and treaties have articulated the rights to be respected to reach a fair trial that conforms to human rights standards, such as the right to provide “essential guarantees of independence and impartiality”<sup>9</sup>, the right to a “fair and public hearing by a competent tribunal”<sup>10</sup>.

<sup>6</sup> Article (11) of the Universal Declaration of Human Rights

<sup>7</sup> deals with the topic of protection for victims of non-international armed conflicts

<sup>8</sup> Non-international armed conflicts; are principles applicable to all armed conflicts:

Those who do not participate directly in hostilities, including members of armed forces who have put down their arms, and those unable to fight due to illness, hunger, detention, or any other reason, are treated in all circumstances humanely, without any harmful discrimination based on race or element color, religion, belief, gender, birth, wealth, or other similar criteria. For this purpose, the following acts are prohibited, concerning the people abovementioned are prohibited at all times and places:

- A. Physical assault, especially killing in all its forms, mutilation, cruel treatment, and torture.
- B. Taking hostages.
- C. Attacking personal dignity, especially humiliating and degrading treatment.
- D. Sentencing and implementing penalties, without conducting a previous trial in front of an authorized organized court and ensuring all necessary judicial guarantees.

<sup>9</sup> Article 6 (2) of Additional Protocol II to the Geneva Conventions 1977 - The first paragraph of Article 1 of the Protocol states that it applies to armed conflicts in which "Defected armed forces or other organized armed groups" that impose control over territories to carry out continuous and coordinated military operations.

<sup>10</sup> Article 14 (1) International Covenant on Civil and Political Rights

And to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing”<sup>11</sup> and to “to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him”<sup>12</sup> The right of the accused to “the right not to be compelled to be a witness against himself or to plead guilty”<sup>13</sup> and the right to equality in front of the law and the fair consideration of cases “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law. ”<sup>14</sup>

"Amnesty International's Manual for a Fair Trial" has spoken of more than thirty-two conditions that must be met in trials, so that they can reach a fair trial under human rights. According to the manual, these rights are divided into pre-trial rights and others during the trial, as well as the rules and rights during armed conflict and emergencies, and among the rights mentioned in the "manual" are the right to use an interpreter if one of the parties to the case does not understand or speak the language of the court<sup>15</sup>as well as the right to appeal<sup>16</sup>.

Regarding the appointment of judges, “Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives.”<sup>17</sup>

## PEOPLE'S DEFENSE COURT

The People Defense Court is competent to deal with terrorism cases, including the trial of elements of the “Islamic State” arrested for autonomous administration, and administratively follows the

<sup>11</sup> Article 14 (3) (b) Ibid

<sup>12</sup> Article 14 (3) (d) Ibid

<sup>13</sup> Article 8 (2) (g) the American Convention of Human Rights

<sup>14</sup> Article 24, Ibid

<sup>15</sup> Amnesty International, Fair Trial Manual, Second Edition, P169

<sup>16</sup> Ibid, P182

<sup>17</sup> Article 10, Basic Principles on the Independence of the Judiciary

Social Justice Council<sup>18</sup>, and applies to the appointment of judges in its laws for appointing judges to the same Council<sup>19</sup>, if the “regular” judicial apparatus of the autonomous administration can achieve some conditions of a fair trial under international law, this does not apply to the People's Defense

Justice for Life organization has obtained testimonies of judges and judicial personnel of the Autonomous Administration confirming that these texts are not activated and that in reality the defendants in front of the People's Defense Court cannot appoint a lawyer to defend them, in addition to the provisions of the court concluded are not subject to any method of review. In addition to the political stances shown by the Social Justice Council, which increases the fear that a fair trial will not be possible.

Court, which is an exceptional court, its formation is contrary to Article 72 of the Social Contract Charter (Autonomous Administration Constitution) that states that exceptional or special courts may not be established. Although Article 26<sup>20</sup> and Article 27<sup>21</sup> of the draft Code of Penal Procedures of the People's Defense Court in North and East Syria confirm that the right to self-defense is sacred and that litigation before the court takes place in two grades.

“Although the obligation to ensure a fair trial applies equally to states and to armed opposition groups, in most instances such groups will not have competent, independent and impartial courts

<sup>18</sup> Article 1 of the draft Code of Penal Procedure of the People's Defense Court in North and East Syria

<sup>19</sup> Article 2 Ibid

<sup>20</sup> Article 26 - Defense is a sacred right for individuals in all stages of a trial. If the defendant is unable to appoint a lawyer, the commission will hire a lawyer to defend them.

<sup>21</sup> Article 27. Litigation in front of the People's Court in northern and eastern Syria takes place on two levels.

able to guarantee a fair trial, so they will only be able to satisfy this obligation by surrendering suspects to an international criminal court or to a state exercising universal jurisdiction."<sup>22</sup>

## RESULTS

According to witnesses, the Justice Organization, research, and reports, there are many fundamental violations by courts, especially the People's Defense Court, in addition to repeated interventions in the work of the judiciary, in addition to gaps in the Social Justice Council, and this is contrary to the standards of a fair trial stipulated by international laws, especially Article 11 of the Universal Declaration of Human Rights, Article 6 (2) of the Second Additional Protocol to the Geneva Conventions, and Article 14 (3) (B + D) of the International Covenant on Civil and Political Rights. Accordingly, it is unlikely that the judicial system in that region will be able to conduct fair and transparent trials under international standards.

It is noted that information is available on the regular courts, the procedures when it comes to prisons, and other details. While accurate information is not available about the People's Defense Court.

<sup>22</sup> Amnesty International, Fair Trial Manual, Second Edition, P243

## RECOMMENDATIONS

"There is currently no transitional law in the region that can consider international felonious crimes which meet international standards, so the only option is to bring the ISIS members detained in Iraq and Syria to be facing judicial institutions elsewhere," said Agnès Callamard, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions of terrorist elements.<sup>23</sup>

She also emphasized: “Depriving foreign fighters of nationality is an easy but violating international law, and depriving ISIS terrorists of citizenship casts their social problems on others, and it cannot be accepted, especially with individuals who have one nationality. This will make these people stateless”.

1. Justice for Life Organization supports what Ms. Agnès Callamard said, and what the Amnesty International's stated that the opposition groups cannot guarantee a fair trial.
2. To ensure that these trials are not a tool for settling accounts and reaching political gains, to preserve the role of the judiciary in addressing the root causes of disputes.
3. In case of moving forward to the trials, the Justice Organization calls for the regular and not the exceptional courts to be responsible for prosecuting ISIS members. Based on previous facts such as the Supreme Court's [decision](#) in the United States that prosecuting Guantanamo's detainees in front of military commissions is not constitutional.
4. Justice for Life organization demands the autonomous administration before taking any action:
  - To take sufficient and convincing steps to develop the judiciary in all areas under its control without any exception.
  - To provide sufficient information about the courts competent with prosecute the members accused of committing terrorist acts.
  - To comply fully with international standards for a fair trial and the selection of judges.
  - To ensure the impartiality of the judiciary and not interfering with its work from any party, especially the security authorities.

<sup>23</sup> Agnes Callamard to the Anadolu Agency. October 29, 2019

By the start of the trials, Justice for Life organization calls for:

- Allowing organizations, local and international media outlets to monitor and follow the procedures of these trials.
- To ensure that all judicial procedures are conducted fairly and that the rights of all parties are respected.

5. The International Community:

- Pressurize autonomous administration to ensure effective and realistic monitoring of human rights for detainees and their trial in line with the international standards for fair trials.
- Representatives from the countries whose nationals will be trialed before these courts are present.
- That solution is found for someone who rules their innocence, who has been stripped of their nationality and does not possess any other nationality.
- That the countries whose courts have been ruled by these courts restore them, whether the verdict is acquitted or convicted, as they do not know the true situation in the prisons of those accused of terrorism.
- States should work to restore their nationals after the completion of trials in case of acquittal or conviction to spend the punishment period in their own countries due to the inability to know the details of the prisons for these trials in autonomous administration held areas, and practical solutions must be found for persons who have been stripped of their nationality.



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