



Speech of Ms. Naomi Prodeau  
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Excellencies, Ladies and Gentlemen,

I would like to thank the Council of Europe for convening this important session, and I would especially like to thank Mr. Pieter Omtzigt for his continuous support for and attention to the pursuit of justice regarding the crimes committed by foreign members of the so-called Islamic State (ISIS).

I am grateful to participate in this session on behalf of the Free Yezidi Foundation, a civil society organisation led by Yezidi women. I want to acknowledge my Yezidi colleagues for their work to achieve justice in the aftermath of the genocide, particularly my project counterpart Waheeda Omer.

### **FYF Justice Methodology**

I have just arrived from Iraq, where I am based as the lead lawyer of FYF's justice and accountability project. Specifically, this project has two objectives:

- Analysing the crimes committed in under-documented or undocumented locations of Sinjar district in Iraq (where the Yezidi Genocide commenced), and
- identifying individual perpetrators to the maximum extent possible.

We do this primarily by collecting information from Yezidi survivors - women and men - abiding by an ethical, survivor-centred approach based on witnesses' informed understanding and consent to engage in the process.

As part of this, FYF conducted the first comprehensive analysis of atrocities committed in Hardan village, the site of a harrowing massacre in Sinjar district. This report was shared with prosecutors from nine countries, including several members of the Council of Europe, and two UN mechanisms (IIM, UNITAD). This information is instrumental in providing foreign prosecutors with an understanding of the type, and scale of violations, and substantial information on individual perpetrators. Importantly, this provides the key legal element of context to the genocidal acts. International crimes require proof of three elements: a criminal act, criminal intent, and proof of the context in which the crime was committed. For the crime of genocide, the context is the intent to destroy a protected group. In our analysis of the organized ISIS attack against the Yezidi village of Hardan, and the crimes committed against women and men, the Hardan report provided prosecutors with this indispensable context.

### **Acknowledging Ongoing Efforts**

Before addressing steps forward, I want to acknowledge existing and ongoing efforts. Justice efforts spearheaded by Germany's federal prosecutors have led to the first and thus far only genocide conviction in relation to the atrocities committed against Yezidis. We are grateful to



Christian Ritscher, the former Germany prosecutor who now leads UNITAD, and his team for their tireless pursuit of justice and success in building cases. More broadly, various mechanisms are beginning to work together to investigate the crimes by ISIS committed in Iraq and Syria. **UNITAD** and the **IIM** both have a U.N. mandate to collect evidence across the territory taken over by ISIS. The counter-terror work of **law enforcement agencies** provides further information on perpetrators. FYF is also in touch with **prosecutors** from several European countries, including Belgium, Germany, France, the Netherlands, and Sweden to cooperate in developing and advancing prospects of indictments. We as FYF would like to warmly acknowledge the will and effort of UN investigators and national prosecutors.

In the absence of systematic efforts to achieve justice, the Free Yezidi Foundation and other Yezidi civil society groups have made considerable contributions to collecting and preserving evidence. This civil society work has been critical: as time goes by, memories wane, evidence is lost, and survivors' belief in justice erodes. Civil society engagement is key in maintaining the link between the community and investigative efforts but can only be pursued with the confidence that these investigations be taken seriously by judicial authorities. That is why we call for greater resources to support these vital civil society efforts.

## **II. Need for Coordinated & Comprehensive Judicial Solutions**

Despite valiant efforts, an objective assessment of the situation illustrates that justice and accountability in the aftermath of the Yezidi Genocide remain woefully inadequate in comparison to the violations committed by Iraqi, Syrian, and foreign ISIS members.

### **Issue 1. Responsibility of Council of Europe Members**

We believe States have the obligation to investigate and appropriately prosecute suspected perpetrators of genocide, crimes against humanity, war crimes, and other international crimes.

Thousands of European citizens joined ISIS. The effort to attract foreign fighters was a key element of ISIS propaganda, because foreigners contributed operationally essential resources, expertise, and manpower to ISIS. This helped enable ISIS atrocities, including kidnapping, torture, a system of mass rape, crimes against humanity, and genocide. We believe European States therefore bear a solemn moral responsibility to bring their nationals to justice for the crimes they committed or facilitate abroad. Collecting necessary evidence for indictments is difficult, time consuming, and costly. That is why we strongly urge you, at the Council of Europe, to ensure that justice efforts are properly funded, with a special focus on your countries' international crimes and war crimes units, so that violations committed by European citizens do not go unpunished.

Members of the Council of Europe who are also Party to the Rome Statute bear further responsibility to hold their nationals accountable. The ICC can only act when States with territorial or personal jurisdiction are unwilling or unable to investigate and prosecute. The Prosecution offices of Members of the Council of Europe must therefore investigate and prosecute these crimes or refer the matter to the ICC if they are unable to do so.



Currently a significant number of ISIS members remain in detention centers in Northeast Syria. European states have the capacity to allocate resources to investigate, prosecute, and detain their nationals, whereas the authorities in Northeast Syria struggle with the detention of ISIS members. The ISIS-led prison break in January of this year demonstrates the continued volatility of the situation.

## **Issue 2. Prosecution of International Crimes in Addition to Terrorism**

Prosecutors and law enforcement reflexively seek indictment of ISIS members first and foremost for membership in a terror organization. It is true that, around the world, ISIS members are viewed primarily as terrorists. However, their crimes are beyond terror. The crimes committed against Yezidis were targeted in nature, systematic, and designed specifically to eradicate a vulnerable religious group. Individuals who committed or contributed to these crimes must also be judged through the lens of international criminal law, not only through a terror framework. This is the responsibility of law-abiding States to the surviving community. Terrorism indictments should complement but not replace investigation and indictments for violations of international law.

Furthermore, we contend that indictments for specific crimes is essential in countering violent extremism. We have seen in the last twenty years the evolution of terrorist ideology on a scale larger than ever before. Insidious ISIS propaganda can and must be countered by showing the extent of the horror of specific ISIS crimes, and that perpetrators do not walk free after committing such atrocities.

## **Issue 3. Thorough Investigation of All ISIS Members**

Most ISIS members or family members repatriated to European countries have been women and children. The Yezidi community is often alarmed by the perception that female ISIS members were naïve, victims themselves, and somehow escape culpability for the actions they have taken, often known by the euphemism: ISIS brides.

There is no doubt that male ISIS members are responsible for the rapes and most of the murders and violence perpetrated against Yezidis and other victimized individuals. However, Yezidi survivors will tell you that female ISIS members were often enthusiastic participants, brutal, committed, and willing to enable horrific abuses. In some instances, female ISIS members held Yezidi women captive or prepared them to be raped. They were involved in beating, berating, humiliating, and degrading Yezidis. This is important for justice in the aftermath of the Yezidi Genocide because European countries are now faced with the return or possible repatriation of significant numbers of female ISIS members. If we are serious about the pursuit of justice, then the actions of all European citizens who joined ISIS should be examined, and we must be cautious not to disregard culpability based on gender. We are grateful to Germany for indicting female ISIS members based on their actions. All European States should redouble efforts to investigate the crimes of their citizens and issue charges when appropriate, based on evidence and the rule of law.

At the same time, we are concerned at how few men have been prosecuted at all for crimes against Yezidis. Although the number of men killed in the battlefield is higher, we know that male ISIS

members were the architects and principal perpetrators of crimes against Yezidis. To handle these matters fairly, all ISIS members must be thoroughly investigated according to their actions.

#### **Issue 4. Inadequacy of Justice Mechanisms in Iraq and Syria**

It has been argued that justice for the crimes committed by ISIS members should be served where the crimes occurred, in Syria and Iraq. However, in Iraq, existing local justice avenues for crimes committed by foreign and national ISIS fighters are very limited. There is not yet any legislation criminalising genocide, crimes against humanity, or war crimes. A general law of this kind may not be passed for years due to fear that groups other than ISIS will be held liable under such a law. As a result, many ISIS members have been indicted for terror membership under Iraq's domestic law. This is problematic, because it only recognises the crime of joining a terror organization, instead of evaluating crimes committed against Yezidis and others.

Additionally, these trials are fundamentally flawed and do not respect the human rights norms that ensure *justice* be done, as opposed to *vengeance* be obtained. The trials for ISIS members fall far short of the legal standards, in some instances consist of 15-minute court hearings without evidence, proper legal counsel, or the ability of witnesses or victims to participate or even know about the legal proceedings. Furthermore, ISIS members may face the death penalty for their membership in a terror organization, which is not in alignment with European judicial norms.

In Northeast Syria, an overstretched autonomous authority holds thousands of ISIS members in custody. As a non-state actor, it is unclear how judicial proceedings could be undertaken, although some have proposed creative solutions. Thus far, this has not materialized, and local authorities are not yet capable of pursuing justice and accountability regarding the crimes of ISIS members.

In other parts of Syria, the Assad regime delivers its own version of justice, but it is not currently possible for the international community to work with the Syrian government to evaluate the crimes of ISIS members in their custody.

For these reasons, it must be concluded that currently available justice mechanisms in Iraq and Syria are not adequate.

A solution to this is the creation of a special, hybrid or internationalized court, with a mandate to specifically try members of ISIS for international crimes. There is some momentum behind the creation of such a court, and many of us believe this will be an important contribution to the pursuit of justice and accountability. FYF continues to argue in favour of such a court, so long as it adheres to international standards and is guided and staffed at least partly by international experts. However, this is a long-term project and is far from assured. In the meantime, evidence may be damaged or lost, and ideology breeds in detention camps. It is imperative that the international community, in coordination with Yezidi civil society, utilise currently available means to pursue justice for crimes committed by foreign members of ISIS.

## **Recommendations**

The best responses from European states include:

1. To fund and support Yezidi civil society and heighten coordination among justice actors.
2. To fund and support European international crimes prosecution offices and their investigative teams.
3. To coordinate with authorities in NE Syria to carefully identify nationals suspected of committed international crimes.
4. To pressure Iraq to pass international crimes legislation in Parliament.
5. To support comprehensive and creative solutions, such as a hybrid tribunal with a mandate over international crimes committed by ISIS members.