

Discussing practical suggestions on how ISIL Accountability Mechanism in Iraq can best serve the cause of justice and interests of survivors and their communities

“Options for Survivor-centered Justice in Iraq”

Co-hosted by: Coalition for Just Reparations and Yazda

Date: Monday, December 19th, 16:00-18:00 CET

Remarks by Alice Wairimu Nderitu

Ladies and gentlemen,

I would like to express my sincere appreciation to the Coalition for Just Reparations and Yazda for organizing this discussion on practical suggestions on how ISIL’s Accountability Mechanism in Iraq can best serve the cause of justice and interests of survivors and their communities.

This continues to be an important subject in the area of accountability for atrocity crimes and one that is a priority for my mandate. This is not only because accountability is important to advance justice for the victims and the whole society, but also from the perspective of the prevention of future atrocity crimes - genocide, war crimes and crimes against humanity, in Iraq and other contexts.

My role as Special Adviser on the Prevention of Genocide is that of a catalyst within the United Nations system to provide early warnings of the risk of atrocity crimes and to advocate for preventive action by the UN system and Member States, including the inter-governmental bodies, in particular the Security Council and Human Rights Council. My role also includes advocating for preventative measures. In this context, I firmly believe that ensuring accountability is key to prevent atrocity crimes and their recurrence.

In May 2022, I travelled to Iraq to support ongoing efforts to ensure accountability for atrocity crimes and to protect vulnerable communities. This visit gave me the opportunity to discuss with various groups existing challenges around accountability and prevention. From my interactions it was very clear that the Yazidi and other minority communities continue to be at risk of atrocity crimes. Indeed, I understood that many risk factors from the Framework of Analysis developed by my Office are still present in Iraq, such as structural discrimination

against minority groups, widespread hate speech and a weak legal framework to address it, limited accountability for crimes committed by ISIL and other armed groups in the country, the ability of these groups to still recruit and perpetrate attacks, the absence of domestication of international crimes in the country's Penal Code, and limited progresses made in the establishment of a new government. Without any doubt, accountability for past crimes was perceived as the thorniest issue and one that was affecting populations' protection and implementation of preventative measures.

Ladies and gentlemen,

Weak or absent accountability feeds impunity and the cycle of atrocity crimes and contributes to reinforce victims' perception that justice is not a priority for a State. At the United Nations we have been encouraging the Government of Iraq to consider national and international options to hold ISIL and other perpetrators accountable and to ensure the preservation of criminal evidence for future use before a court of justice. I have myself engaged Iraqi authorities to support steps towards accountability for crimes committed in this country and encouraged the international community to provide any necessary assistance to these efforts. However, while national and international accountability endeavors undertaken so far are commendable, more needs to be done.

The 9 December 2021 sentence by Frankfurt's Higher Regional Court of a member of ISIL for the crime of genocide provides legal recognition to allegations of this crime against the Yazidi population. However, the absence of any steps taken to ensure accountability for the violence committed by other armed actors, including Popular Mobilization Forces (PMFs), raises the risk of renewed atrocity crimes, including by those seeking revenge in the absence of justice.

While Iraq ratified the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in 1959, it has yet to domesticate it. As a result, in this country allegations for genocide or crimes against humanity cannot be processed through the judicial system. Amendments to the law of the Iraqi High Tribunal permitting this Court to prosecute allegations of commission of international crimes by ISIL were proposed in 2020, but their adoption by the Council of Representatives has yet to materialize. I urged the Government of Iraq to prioritise domestication of the Genocide Convention including in the country's Penal Code and to pass legislation that would allow prosecution of atrocity crimes. It is also important for Iraq to ratify relevant treaties of which it is not party, including the Rome Statute of the International Criminal Court.

Moreover, the adoption of the Yazidi Female Survivors Law in March 2021 is an important signal that accountability, reparations and return's needs of ISIL's victims matter. I urge Government authorities to also prioritise implementation of this law to ensure survivors, many of whom are still living in IDP camps, can truly benefit from it.

I also believe that it is important to protect evidence of past atrocity crimes. This is a challenge that both Iraqi Government and Kurdistan Regional Government authorities are facing. It is essential that a proper assessment of the needs of the Iraqi authorities be conducted, with the view to facilitating any necessary technical assistance required as soon as possible. In this context, I also commend the work of UNITAD towards collecting evidence pertaining to acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL in Iraq by conducting interviews, taking witness testimony, receiving information and documentation as well as acquiring forensic material and urge the Iraqi government to continue supporting its mandate.

Moreover, as a mediator by career, I am a strong supporter of peer-to-peer learning. In this context, I believe that Iraq could benefit from enhanced exposure to the experiences and lessons learnt in the field of ensuring accountability from other post atrocities societies, including Rwanda, Bosnia and Herzegovina, Cambodia, and Argentina.

Furthermore, addressing accountability for atrocity crimes committed in Iraq could also result from other States following the example of the International Court of Justice's "The Gambia vs. Myanmar" case and seeking this Court's determination of Iraq's responsibility in failing to prevent atrocity crimes. This could be especially important in respect to crimes allegedly committed by actors other than ISIL, as a domestic venue for ISIL crimes would exist if the amendments to the Iraqi High Tribunal referred to above are adopted, but not for crimes committed by other perpetrators.

Distinguished guest,

Too many still consider pursuing justice and peace as contradictory processes. But at the United Nations we do not see things this way. On the contrary, we believe that justice constitutes a key component not only of peace but also of the prevention and recurrence of atrocity crimes.

It is my deepest belief that ensuring accountability for past atrocity crimes remains an essential element of Iraq's path to peace. In this context, it remains urgent that

the Government allows for all legal means to be in place to prevent atrocity crimes, including domesticating the Genocide Convention and developing national capacities for prosecution of atrocity crimes.

Political will also remain key to pursue accountability and I will continue to emphasize to Iraqi national authorities and international stakeholders the link between justice, peace, and atrocity prevention.

I would like to conclude by urging us all to multiply our efforts to strengthen accountability for atrocity crimes committed in Iraq. A peaceful Iraq is only possible if justice is ensured, victims' dignity is honoured, and minorities are protected and feel they are an integral part of the society.

Thank you.