

# Transitional Justice in Iraq: The Challenges of National Healing and Recovery

by Rend Al-Rahim



Ministry of Foreign Affairs  
and International Cooperation

## ABSTRACT

Transitional justice in Iraq is a record of squandered opportunities and compromised institutions. Over five decades, Iraqi society has endured human rights abuses on a wide scale, perpetrated by state and non-state actors. The post 2003 era offered a chance to heal wounds and promote national recovery by adopting policies of transparent judicial accountability, equitable reparations, truth-telling and documentation, and national reconciliation to repair the torn social fabric. Instead, in the immediate aftermath of the war of 2003, a victor's justice prevailed, which deformed the principles of transitional justice and undermined its mechanisms through rampant sectarianism, clientelism and corruption, leading to new abuses, increased strife and deepening social fissures. Twenty years into the new political order, Iraqi policy-makers must reconsider their policies and reform their mechanisms to achieve social cohesion, or risk further social fragmentation and conflict.

*Iraq | Human rights | Transitional justice*

keywords

# Transitional Justice in Iraq: The Challenges of National Healing and Recovery

by Rend Al-Rahim\*

## Introduction

The United Nations Human Rights Commission provides a working description of transitional justice as covering “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past conflict, repression, violations and abuses, in order to ensure accountability, serve justice and achieve reconciliation”. It further elaborates by outlining processes that

may include both judicial and non-judicial mechanisms, including truth-seeking, prosecution initiatives, reparations, and various measures to prevent the recurrence of new violations, including: constitutional, legal and institutional reform, the strengthening of civil society, memorialization efforts, cultural initiatives, the preservation of archives, and the reform of history education.<sup>1</sup>

At the core of transitional justice is the protection of human rights. As the phrase indicates, there are two crucial components: *justice*, understood as a form of accountability for perpetrators and restitution for victims and survivors who can witness justice being done; and *transition*, or a process that can lead to a more

<sup>1</sup> UN Office of the High Commissioner for Human Rights (OHCHR) website: *Transitional Justice and Human Rights*, <https://www.ohchr.org/en/node/3451>.

\* Rend Al-Rahim is co-founder and President of the Iraq Foundation, a non-profit organisation committed to the support and promotion of democracy, human rights and civil society in Iraq and former Iraqi ambassador to the US (2003–2005). Al-Rahim has collaborated with leading academic and research institutions and is the co-author, with Graham Fuller, of *The Arab Shi’a. The Forgotten Muslims*, published in 1999 by St. Martin’s Press.

· Paper produced in the framework of the project “Iraq: From Crisis Hotspot to Promoter of Inter-Regional Dialogue and Reconciliation”. This paper has benefited from the financial support of the Policy Planning Unit of the Italian Ministry of Foreign Affairs and International Cooperation pursuant to art. 23-bis of Presidential Decree 18/1967. The views expressed in this report are solely those of the author and do not necessarily reflect the views of the IAI or the Italian Ministry of Foreign Affairs and International Cooperation.

peaceful and democratic political and social culture. The various mechanisms of these components are meant to be complementary, working in tandem to achieve the aim of national healing, leading to peaceful coexistence, national reconciliation and protection of human rights. It is necessary for these mechanisms to be transparent, equitable and unbiased in order to be credible and effective.

It is within this framework that efforts to determine whether Iraq has implemented transitional justice processes and mechanisms since 2003 should commence. This can lead to assessments on the key limits and challenges affecting these efforts, while reflecting on how successful they have been in establishing reconciliation and peaceful co-existence within Iraqi society today, two decades after the US-led invasion.

## 1. A dual perspective

During the past five decades, Iraq suffered repeated waves of violence and human rights abuses, with tragic consequences for individuals and communities, and for the social cohesion and stability of the nation. From 1968 to 2003, the former Ba'ath regime committed gross human rights violations, including use of chemical weapons, extrajudicial killings, arbitrary detentions and torture, against large segments of the civilian population. These have been well documented by the international community, including by the United Nations in the 1990s.<sup>2</sup> Since the US-led invasion and occupation of Iraq in 2003, human rights abuses have been rooted in politico-sectarian violence. Iraqis have endured foreign invasion, insurgencies, sectarian conflicts, organised terrorism and human rights violations allegedly committed by agencies of the state. These successive episodes of violence, affecting multiple localities and layers of society, have left deep scars. A discussion of transitional justice must take the history and evolution of violence in Iraq into account and evaluate efforts at promoting justice and reconciliation from a historical perspective.

Transitional justice in Iraq should therefore be examined both chronologically and thematically. Three specific periods in which Iraq attempted, yet failed, to deal with the legacy of gross human rights violations by embarking on processes of transitional justice will be addressed. These include the period immediately following the overthrow of the Ba'ath regime in 2003, when transitional justice meant dealing with the human rights legacy of former ruler Saddam Hussein (in power between 1979 and 2003). The insurgency that followed the fall of the regime,

<sup>2</sup> OHCHR, *Report on the Situation of Human Rights in Iraq, Submitted by Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in Accordance with Commission Resolution 1993/74 (E/CN.4/1994/58)*, 25 February 1994, <https://digitallibrary.un.org/record/226418>; OHCHR, *Situation of Human Rights in Iraq. Report Submitted by the Special Rapporteur, Max van der Stoel, in Accordance with Commission Resolution 1998/65 (E/CN.4/1999/37)*, 26 February 1999, <https://digitallibrary.un.org/record/1487632>.

aided by the terrorist network Al-Qaeda in Iraq (AQI), culminated in a sectarian Sunni-Shi'a conflict (some have called it a civil war) in 2006–2008, leaving behind social stigmas and divisions that are still visible today. The third period begins in 2016, when the Iraqi state began to wrest territory from the control of the self-styled Islamic State (also known as *Daesh* or ISIS). We can examine whether mechanisms of accountability and justice, restitution and compensation for victims, truth-telling and reconciliation were applied in each phase, and with what level of success. A final question will be whether the application of such mechanisms has led to the desired end of national healing and a peaceful democratic society that upholds the human rights of its citizens.

## 2. De-Ba'athification and insurgency, 2003–2006

The concept of transitional justice was first discussed among Iraqi expatriates prior to 2003. The question was how to deal with the crimes perpetrated by the Ba'athist regime of Saddam. These ranged from the war and use of chemical weapons against its Kurdish citizens, the torture, execution and exile of thousands of Shi'a citizens and more general practices of extreme repression against Sunni dissidents. De-Ba'athification, inspired by post-war German de-Nazification, was put forward as a necessary first step. Consequently, an order on de-Ba'athification was the first law promulgated in 2003 by the Coalition Provisional Authority (the US-led authority that governed Iraq following the invasion) and was later enshrined in the constitution of 2005 and embodied in a De-Ba'athification Commission as the implementing authority. The law was revised in 2008 and led to the establishment of the High National Commission for Accountability and Justice, as a more encompassing reflection of efforts at transitional justice. The aim of the new commission, as the previous one, was to extirpate Ba'athism and Ba'athists of senior rank from the body politic and uproot Ba'athist ideology from Iraqi culture.

The law contained intrinsic defects. It criminalised membership of the Ba'ath party and was applied as an act of collective punishment and denial of civil rights against a large segment of citizens who were not charged with committing specific criminal acts designated under existing Iraqi law. Because the law was not linked to any criminal acts, it penalised people who had not committed crimes while it ignored individuals and groups who, while not being officially members of the Ba'ath party, had nevertheless committed grievous violations of human rights under the former regime. There is no record of any lawsuit brought before the courts by a victim or survivor against a Ba'athist perpetrator who had committed crimes and human rights abuses. Accountability was limited and selective, falling short of the standards of justice.

In addition to defects in the law, its application was seriously flawed. The De-Ba'athification Commission, and later the Accountability and Justice Commission, implemented the law arbitrarily and opaquely, without recourse to judicial due

process. Hundreds of thousands of civil servants were dismissed from office, even though they had committed no crimes and were not senior members of the Ba'ath party. The consequent paralysis of the state and the shortage of experience forced post-2003 governments to selectively reinstate many civil servants who had previously been fired. For example, as early as the summer of 2003, some 20,000 employees of the Ministry of Education, including teachers, were dismissed for alleged Ba'athist affiliation even though they had been only minor members. The ministry was obliged to call back several thousand in order to operate.<sup>3</sup> As recently as December 2022, the head of the Accountability and Justice Commission disclosed that one million Iraqis were included in the de-Ba'athification programme, and that tens of thousands of cases are still pending review.<sup>4</sup>

To put this in quantitative perspective, the population of Iraq in 2003 was 27 million, of whom some 30 per cent were under the age of 25.<sup>5</sup> This meant that nearly 7 per cent of the adult population was de-Ba'athified. Although the law was not aimed at a particular religious group in Iraq, its impact fell largely on the Sunni community, who were deprived of jobs and civil rights. Its implementation was open to abuse: many were denounced as Ba'athists for the purpose of settling scores or getting rid of rivals. Because of politicisation, absence of due process and arbitrary implementation, de-Ba'athification was perceived, certainly by the Sunnis of Iraq, as a tool for vengeance by the post 2003 ruling Shi'a parties rather than justice, leading to widespread Sunni discontent and the beginnings of a Sunni/Ba'athist insurgency in 2003.

To provide compensation to victims of the Ba'athist era, the new government established a Political Prisoners' Foundation in 2005 and a Martyrs' Foundation in 2006 to "materially and morally" compensate the victims and survivors of the old regime (the Martyrs' Foundation was later expanded to cover those killed in the fight against ISIS).<sup>6</sup> Yet the operation of the two foundations was open to abuse and corruption, and was exploited by political parties. Other institutions, such as one for the restitution of property seized by the former regime, were also established at the same time, and was equally prone to corruption. Often the benefits provided by these institutions were used as a tool for patronage and illegal confiscation of property.

The flaws in the application of the de-Ba'athification instruments were compounded by the Anti-Terrorism Law passed in 2005. The law was not part of the de-Ba'athification process but rather designed to deal with an insurgency

<sup>3</sup> Conversation with a senior official in the Ministry of Education, December 2022.

<sup>4</sup> Safaa Al-Kubaisi, "قارعة: قارعة" ذي يه لمع رارمب سا يلع رارصا: قارعة [Iraq: Insisting on the Continuation of the work of the "de-Ba'athification" body, which stands in the way of agreements to disband it], in *Al Araby*, 22 December 2022, <https://www.alaraby.co.uk/node/5849745>.

<sup>5</sup> PopulationPyramid website: *Population of Iraq 2003*, <https://www.populationpyramid.net/iraq/2003>.

<sup>6</sup> The law was revised in 2016 to include those killed in the fight against ISIS.

that began in 2003 and soon crystallised as the terrorist organisation Al-Qaeda in Iraq. The Iraqi government, along with the international forces that still controlled security in Iraq, saw AQI as another face of Ba'athism, or at least in collusion with Ba'athists, and the line between the two was blurred. The Anti-Terrorism Law was criticised by the international community on several counts: the designation of terrorist acts is broad and some of the law's articles are loosely defined,<sup>7</sup> permitting the criminalisation of legitimate dissent. It allowed secret informants to accuse suspects and accepted confessions as evidence even where torture was suspected. In the fight against terrorism, the state and its foreign allies incarcerated thousands without formal charge or due process. Though this was not the intention of the law, its practical application again fell most heavily on the Sunni population, resulting in an unspoken conflation of Sunnis with Ba'athists and terrorists. In time, the law would be applied to individuals accused of membership in ISIS.

These measures, ostensibly aiming at justice, focused on punishment, paying little heed to the parallel aim of transitioning to social peace and reconciliation. For example, the trials of Saddam and a handful of senior Ba'ath officials were a missed opportunity for telling the history of human rights abuses against all segments of society across the country, and thus providing a mechanism to overcome the trauma and seek national healing. Instead, the trials were conducted hastily in a polarised political climate, and only one charge, the execution in 1985 of Shi'a citizens from the town of Dujail, was heard in court. In the rush to punish, other crimes committed by the Ba'ath regime, such as the notorious 1988 Anfal campaign in which over 5,000 Kurds died from chemical attacks, were given short shrift. The trial and execution of Saddam drew particular international criticism, described by some as "shambolic".<sup>8</sup> Others went further: "The trial and execution of Saddam Hussein were tragically missed opportunities to demonstrate that justice can be done, even in the case of one of the greatest crooks of our time", stated the UN Human Rights Council's expert on extrajudicial executions. The statement continues: "The process to date has given the clear sense of a pre-determined rush to execute rather than of a commitment to achieve justice."<sup>9</sup> Far from being a prelude to reconciliation, the trial and execution of a dictator who had committed crimes against all social groups became a cause for deeper rifts and grievances.

Outside the proceedings of these trials, there were no truth commissions to document and understand the past and give voice to the suffering of survivors. Only modest efforts by private groups recognised the importance of giving survivors an opportunity to speak out.<sup>10</sup> There was much official talk about reconciliation

<sup>7</sup> For instance, Article 2 considers the knowledge of violence or threats against public or private institutions and venues a terrorist act. See Anti-Terrorism Law No. 13 of 2005, 7 November 2005, <https://moj.gov.iq/view.6698/>.

<sup>8</sup> See, Ewen MacAskill and Michael Howard, "How Saddam Died on the Gallows", in *The Guardian*, 1 January 2007, <https://www.theguardian.com/p/qm6f>.

<sup>9</sup> OHCHR, *Tragic Mistakes Made in the Trial and Execution of Saddam Hussein Must Not Be Repeated*, 3 January 2007, <https://www.ohchr.org/en/node/88618>.

<sup>10</sup> Notably, the Memory Foundation, an NGO working in Iraq in 2004–2005, collected and exhibited

but little political will, as groups who seized power after 2003 were reluctant to make concessions and cede any of their authority. Numerous “reconciliation conferences” were held among selected political elites, but they were rhetorical displays of slogans that yielded no actionable outcomes or state policies.

The broad sweep and uneven implementation of the de-Ba’athification law, the weakness of due process in bringing perpetrators of crimes to justice, and the absence of any parallel reconciliation measures to promote peace, were seen as “victor’s justice”, and fuelled dissent and insurrection among Sunnis. Sunni discontent was exploited by AQI and later ISIS, both of which found fertile ground for recruitment, further polarising the country along sectarian lines.

### 3. The sectarian conflict of 2006–2008

Between 2006 and 2008, the war against Al-Qaeda in Iraq morphed into a sectarian conflict between Shi’a and Sunni militias, with death squads on both sides engaging in reciprocal acts of violence. The conflict resulted in gross human rights abuses on both sides, with reports of torture, extra-judicial killings, mass incarceration, disappearances and ethnic cleansing.<sup>11</sup> Millions of families were displaced due to abductions, assassination or intimidation in ethnic cleansing reprisals. A weak state was unable to control the violence, and indeed government agencies or rogue elements within the Iraqi security services were complicit in some of the abuses.<sup>12</sup> The sectarian war resulted in social fragmentation and severe damage to Iraqi social cohesion and national identity. The conflict generated rival victimhood narratives. By the time it ended in 2008, it had become difficult to separate victim from victimiser or to hold anyone accountable since so many of Iraq’s political actors and social forces were implicated either directly or by providing political protection to perpetrators. The UN Assistance Mission to Iraq (UNAMI), painstakingly compiled and published reports of the crimes committed during this internecine warfare. The government, for its part, refused to disclose data, provide information on crimes, account for victims or culprits, or hold perpetrators accountable. The only records are those compiled by international organisations and the memories of survivors.

The Iraqi state and the political class refused to disclose or acknowledge the full extent of human damage caused by the conflict, and in private citizens were usually fearful of recalling its atrocities. As a consequence, unlike the measures

---

documents and produced television programmes with narratives from survivors.

<sup>11</sup> “Iraq Death Squad Caught in Act”, in *BBC News*, 16 February 2006, [http://news.bbc.co.uk/2/hi/middle\\_east/4719252.stm](http://news.bbc.co.uk/2/hi/middle_east/4719252.stm).

<sup>12</sup> Human Rights Watch, “Iraq”, in *World Report 2007. Events of 2006, 2007*, p. 469–475, <https://www.hrw.org/world-report/2007/country-chapters-6>. For a full report, see UN Assistance Mission for Iraq (UNAMI), *Human Rights Report, 1 April–30 June 2007*, <https://www.ohchr.org/en/node/71642>. On arbitrary detention, secret informants and suspected torture in prisons, see for instance Amnesty International, *Iraq: A Decade of Abuses*, 11 March 2013, <https://www.amnesty.org/en/?p=42481>.

taken against senior Ba'ath regime officials, no perpetrators of crimes were brought to justice, no restitution was provided to victims and no truth commission was established to provide a measure of atonement and reconciliation. The sectarian conflict left deep and unhealed scars in the collective national psyche. Consequently, grievances were allowed to fester, and the silence that still surrounds this most corrosive period of human rights abuses only deepened the sectarian rift between the Shi'a and Sunni communities, arguably facilitating the rise of the so-called Islamic State in 2014.<sup>13</sup>

## 4. Post-ISIS transitional justice, 2017–2022

The most recent wave of widespread conflict began in 2014, when ISIS occupied one third of Iraqi territory, inflicting unprecedented destruction, enslavement, human trafficking and wholesale murder. ISIS cruelty was most severely felt by religious minorities, such as Yezidis and Christians, with minority women suffering most. Because its deadly impact affected principally Sunni areas and mixed Kurdish and Christian areas of Iraq, it caused more complicated social divisions and grey areas of both resistance and co-optation than those created by AQI or the Sunni-Shi'a conflict of 2006–2008, in which religious divisions were more pronounced. While ISIS found some support among discontented Sunni communities, there was also a local Sunni backlash against its murderous practices, raising intra-sectarian hostilities. Thousands of families fled their homes. According to the International Organization for Migration, at the height of ISIS control, 3.3 million Iraqis were displaced from their homes, principally in provinces occupied by the terrorist organisation. At the end of December 2022, there were still some 1.17 million internally displaced persons (IDPs) in Iraq.<sup>14</sup>

During the war on ISIS and following the liberation of territory from ISIS control, tens of thousands of fighters were captured and hundreds received summary trials in federal criminal courts under Iraq's Anti-Terrorism Law.<sup>15</sup> Under the provisions of the law, most convictions carried the death penalty. The judicial system has been overwhelmed by sheer numbers. Victims have not been called to provide testimony. The trials have been shrouded in anonymity: there are no official reports of the names or numbers of those executed or the charges against them, and few witnesses came forward. As a result, if justice was done, it was not seen to be done, and therefore there was no comfort for victims. In a January 2020 report,

<sup>13</sup> Anthony H. Cordesman and Emma Davies, "Iraq's Sectarian and Ethnic Violence and the Evolving Insurgency. Developments through late-January 2007", in *CSIS Analysis*, 26 January 2007, <https://www.csis.org/node/19181>.

<sup>14</sup> See for instance, International Organization for Migration (IOM), *Iraq Master List Report*, No. 128 (October-December 2022), in *IOM Displacement Tracking Matrix*, February 2023, <https://dtm.iom.int/node/24626>.

<sup>15</sup> The UNAMI report of 2020 criticises the brevity of the court hearings and sentencing. In comparison, the trial of an ISIS member in Frankfurt, Germany, on charges of war crimes, crimes against humanity and genocide, lasted 19 months.



UNAMI found the system flawed because of the broad and vague parameters of the Anti-Terrorism Law, reliance on secret informants and acceptance of confessions as evidence even when there were allegations of torture.<sup>16</sup> The UNAMI report concludes that “betrayals of justice, following flawed trials [...] can only serve a narrative of grievance and revenge”.<sup>17</sup>

In 2018, the United Nations, in coordination with the government of Iraq, formed the United Nations Investigative Team to Promote Accountability for Crimes by Da’esh/ISIL (UNITAD). UNITAD’s task is to collect evidence of crimes committed by ISIS. Unlike the trials by Iraqi courts that rely exclusively on the Anti-Terrorism Law, UNITAD documentation is based on international humanitarian law and can be used to prosecute specific crimes, such as genocide or human trafficking, either in Iraqi or international courts. Indeed, in November 2021, a court in Frankfurt, Germany, sentenced a former ISIS fighter on charges of genocide and crimes against humanity.<sup>18</sup>

In the aftermath of liberation from ISIS control, Iraqi communities were torn apart by distrust and recrimination. Families became outcasts on the flimsiest suspicion of cooperation with ISIS. IDP families wishing to return to their homes have been subjected to security scrutiny and require documentation attesting to their innocence. Returning IDPs often face rejection from their original communities, based on the allegations of being ISIS fighters or collaborators if they fled from their homes after the government’s takeover.<sup>19</sup> Paradoxically, those who remained in their homes under ISIS control are also suspected of sympathising with ISIS. These problems are compounded by the recent repatriation of families, mostly women and children, from camps in Syria against strong objections from the host communities. In the absence of serious conflict-mitigation measures by the government and with weak rule of law, personal vengeance and deadly tribal feuds become standard methods of settling hostilities. There is thus pervasive social instability at the heart of communities impacted by ISIS that is more complex than former patterns of Sunni-Shi’a divides.

No Iraqis suffered more abuse at the hands of ISIS than did the Yezidis of the Sinjar district in the governorate of Nenawa, who were summarily murdered and whose women were enslaved and trafficked. The Iraqi government has recognised the crimes of ISIS against the community as genocide, as did more recently several European countries such as Germany. Faced with this human disaster, in October 2020 the federal government and the Kurdish Regional Government signed the

<sup>16</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, <https://www.ohchr.org/en/node/71621>. See specifically the Conclusions section of the report.

<sup>17</sup> *Ibid.*, p. 14.

<sup>18</sup> “German Court Finds Former ‘IS’ Member Guilty of Genocide”, in *Deutsche Welle*, 30 November 2021, <https://www.dw.com/en/a-59976226>.

<sup>19</sup> Ouafae Sandi, *Affiliated with ISIS: Challenges for the Return and Reintegration of Women and Children*, Baghdad, UNDP Iraq, October 2022, <https://www.undp.org/node/360736>.

Sinjar Agreement to stabilise and reconstruct the district and rehabilitate its Yezidi population. On 8 March 2021 (International Women's Day) the Iraqi state adopted the Law on Yezidi Women Survivors, which provides recognition and compensation to Yezidi women survivors as well as women from the Christian, Turkoman and Shabak minorities. The law recognises the crimes of ISIS against these communities as crimes against humanity and as genocide, and adopts measures for compensation and rehabilitation, including psycho-social support. Both the Sinjar Agreement and the law remain long on aspiration but short on implementation, as they have not resulted in any court cases and convictions yet.<sup>20</sup> Yezidi women, and the Yezidi community as a whole, are still alienated, disenfranchised and exploited by armed factions. The recent German recognition of ISIS crimes against Yezidis as genocide, resulting in the first conviction issued by a court on 30 November 2021, while it does not guarantee justice or restitution, at least provides comfort and vindication to the Yezidi victims and survivors, and acknowledges their suffering.<sup>21</sup>

Confronted with a societal crisis of this magnitude, and fearful of a resurgence of terrorism, the Iraqi state and international actors, including governments and non-governmental organisations (NGOs), recognised the necessity of achieving social reconciliation and peace as a means of preventing the re-emergence of extremist violence. In January 2016, the state formed the High Presidential Committee for National Reconciliation, and governments after 2017 held reconciliation conferences, established local dialogue and reconciliation commissions and sponsored the return of IDPs to their original homes.

The Iraqi government received material and technical support from foreign governments and international NGOs, who also invested funds and efforts in what the United Nations Development Programme calls "sustainable peace and social cohesion" programmes, especially in areas recently recovered from ISIS control. However, it is important to note that national reconciliation was approached as a mechanism to combat terrorism, and not necessarily as an end in itself for the health of society. For example, Iraq's national Strategy to Combat Violent Extremism Conducive to Terrorism of 2019, subtitled "For an Iraqi Society That Is Safe, Renounces Extremism, and Trusts in Peace and Coexistence", includes among its goals

[g]rooming the citizen for a position of being one who believes in middle-grounds and moderation; believes in principles of democracy, human rights, and common human values; honors diversity of cultures; and forges positive constructive ties and rapport with their family, community, and

<sup>20</sup> For the failures of the Sinjar Agreement, see International Crisis Group, "Iraq: Stabilising the Contested District of Sinjar", in *ICG Middle East and North Africa Reports*, No. 235 (31 May 2022), <https://www.crisisgroup.org/node/19099>.

<sup>21</sup> Amnesty International, *Germany/Iraq: World's First Judgment on Crime of Genocide Against the Yazidis*, 30 November 2021, <https://www.amnesty.org/en/?p=144081>.

the world.<sup>22</sup>

Yet the National Strategy is principally security-driven, clearly stating its linkage to Iraq's National Security Strategy of 2015.

Despite these good intentions, there are serious obstacles to a transition to reconciliation and peaceful co-existence. In the five years since the liberation of territory from ISIS, there has been no published investigation of the circumstances that led to the rapid subjugation of territory;<sup>23</sup> the state has failed to give an account of the devastation inflicted by ISIS on one third of Iraqi territory and millions of Iraqis; there is no official documentation of the history of violence perpetrated by ISIS; and there is no systematic collection of testimonies from the thousands of victims of the terrorist group.

Local reconciliation initiatives by the state are limited and inconsistent. On a practical level, many survivors of ISIS violence lack documentation and therefore cannot access government services, and programmes to compensate them have been slow. The Kurdistan Regional Government has done a better job of documenting crimes perpetrated by ISIS and sharing data with the international community, and Yezidi non-governmental organisations have established databases to document atrocities committed against the Yezidi community and other minority groups in the Ninawa province.<sup>24</sup>

The unremitting waves of wars, sectarian conflict and extremist violence that have battered Iraq before and since 2003 have resulted in numbers of missing and forcibly disappeared persons that the International Committee of the Red Cross (ICRC) calls one of the highest in the world.<sup>25</sup> There are no confirmed figures because there is no national register or centrally compiled data, and indeed successive governments have avoided serious investigation: the topic is regarded as politically sensitive because in many cases enforced disappearances result from the activities of politically powerful entities. Even when families know the perpetrators of enforced disappearances, they are powerless to pursue the full truth and hold anyone accountable. Estimates of the disappeared and missing vary widely, but, in an exhaustive report, the UN Committee on Enforced Disappearances puts the number between 250,000 to one million.<sup>26</sup> Mass disappearances were reported during and following the war against ISIS, either abducted by ISIS or rounded

<sup>22</sup> Website of the National Committee for Countering Violent Extremism: *Violent Extremism Strategy*, [https://nccve.gov.iq/page/5/Violent+Extremism+Strategy+\(PDF\)](https://nccve.gov.iq/page/5/Violent+Extremism+Strategy+(PDF)) [Access is restricted].

<sup>23</sup> A parliamentary commission conducted an investigation but its report has been suppressed.

<sup>24</sup> The most active of Yazidi organisations is Yazda. See the official website: <https://www.yazda.org>.

<sup>25</sup> "Iraq Among Countries with Most Missing Persons: ICRC", in *Kurdistan24*, 31 August 2022, <https://www.kurdistan24.net/en/story/29378>; International Committee of the Red Cross (ICRC), *Iraq: Families of the Missing, between Hope and Despair, the Search Continues*, 31 August 2022, <https://www.icrc.org/en/node/106255>.

<sup>26</sup> OHCHR, *Iraq: UN Committee Urges Urgent Investigation and Legislation to Eradicate Enforced Disappearances*, 4 April 2023, <https://www.ohchr.org/en/node/105273>.

up by Iraq security forces and armed militias. The Iraqi Observatory for Human Rights, and NGO, reports that by December 2022 it had received 11,000 requests for assistance from families of the missing.<sup>27</sup>

While these reports provide a useful starting point, the scope of the problem and its social impact are beyond quantification. The families of the missing and disappeared are the “collateral damage” of conflict who suffer for years in both practical and psychological ways. On the practical level, for example, women whose husbands are missing are unable to collect pensions or re-marry unless they get a death certificate, which in most cases is impossible. Even more socially injurious are the anguish and bitterness felt by the families left behind, who are unable to obtain information or pursue suspected culprits, attain closure and peace, and move forward with their lives.

## 5. Conclusion: How the international community can help

Evidence indicates that mechanisms and processes of transitional justice in Iraq have been either deficient or non-existent owing to defects in the administration of justice, neglect of the requirements of national reconciliation, and lack of political will to hold perpetrators accountable for gross abuse of human rights. Punitive measures have been arbitrary and have not observed due process and transparency. Restitution for victims and survivors has been selective and haphazard. Reconciliation is elusive, with communities still suffering grievances, suspicion and animosities. Particularly in areas that suffered ISIS-inflicted violence, divisions run deep between sects and within local communities. These are aggravated by disparities in services and allocation of resources, as well as vested interests that exploit the inability of the state to impose law and order. Persistent perceptions of injustice encourage personal vendettas and provide fertile ground for renewed violence and foreign interference.

The largest obstacle to successful transitional justice is political. Competing interests make compromises and mutual accommodation among rival groups difficult to achieve. The absence of political will means that government agencies that work on reconciliation efforts are underfunded and lack capacity. In many liberated areas, such as Sinjar, Nenawa and Anbar, Shi'a militia groups who are not native to the district have settled in, and exploit resources or interfere in security arrangements. Services and resources are heavily tied to patronage systems, creating inequities and reinforcing grievances.

Key for the transition to a healthy society is a state that is seen as just, equitable and respectful of the rights of its citizens. This will be a long process for Iraq, but

<sup>27</sup> Iraqi Observatory for Human Rights (IOHR), *More than 11,000 Families Reported Missing Civilians between 2017 and 2022*, 10 December 2022, <https://iohriq.org/82-.html>.

steps can be taken towards recovery. Amendments to the Anti-Terrorism Law to provide narrower and more precise definitions will reduce the arbitrariness of its application. Twenty years after the fall of the Ba'ath regime, the High Commission on De-Ba'athification has outlived its usefulness and has become an obstacle to transition towards a society of equal citizenship. There are demands to disband the Commission and refer cases to the judiciary, but these are met with virulent opposition, since the Commission continues to serve as a political tool to exclude or blackmail opponents. Ending corruption in the several agencies that provide compensation for survivors will inspire confidence in restitution efforts. A commitment to rule of law, accountability and transparency in the justice system should go beyond punishment (which in any case is often selective): it should also provide national acknowledgment and disclosure of the toll on society of human rights abuses both before and after 2003. And while governments have recently been engaged in facilitating the return of IDPs, return or resettlement has to be supported by efforts at communitarian healing and acceptance.

The international community has been instrumental in urging the Iraqi government to step up its efforts at peace-building and reconciliation. Diagnosing the problems that stand in the way of national healing can point the path to the areas in which Iraq's international well-wishers might provide technical assistance and political support.

The international community can play an important role in at least three areas. First, international actors should expect higher standards of due process in the trials of the accused and continue to call out defects in the administration of justice, both in the prison system and in the courts. Strengthening the rule of law and the protection of human rights are prerequisites to transitional justice and sustainable peace.

Second, the Iraqi government must be held accountable for the welfare and rights of all its citizens: the Iraqi state should be urged to enforce equity in the access to goods, services, justice and security and in the protection of civil rights. Disparities and discrimination will only renew the cycle of grievances leading to violence.

Finally, international organisations must continue to work with relevant state agencies and local civil society to build their skills and operational expertise, and help design or fund programmes that aim at social reconciliation and reinforce a common national purpose.

*Updated 2 August 2023*

## References

Safaa Al-Kubaisi, "قارعة راصل: قارعة راصل" [Iraq: Insisting on the Continuation of the work of the "de-Ba'athification" body, which stands in the way of agreements to disband it], in *Al Araby*, 22 December 2022, <https://www.alaraby.co.uk/node/5849745>

Amnesty International, *Germany/Iraq: World's First Judgment on Crime of Genocide Against the Yazidis*, 30 November 2021, <https://www.amnesty.org/en/?p=144081>

Amnesty International, *Iraq: A Decade of Abuses*, 11 March 2013, <https://www.amnesty.org/en/?p=42481>

Anthony H. Cordesman and Emma Davies, "Iraq's Sectarian and Ethnic Violence and the Evolving Insurgency. Developments through late-January 2007", in *CSIS Analysis*, 26 January 2007, <https://www.csis.org/node/19181>

Human Rights Watch, "Iraq", in *World Report 2007. Events of 2006, 2007*, p. 469-475, <https://www.hrw.org/world-report/2007/country-chapters-6>

International Committee of the Red Cross (ICRC), *Iraq: Families of the Missing, between Hope and Despair, the Search Continues*, 31 August 2022, <https://www.icrc.org/en/node/106255>

International Crisis Group, "Iraq: Stabilising the Contested District of Sinjar", in *ICG Middle East and North Africa Reports*, No. 235 (31 May 2022), <https://www.crisisgroup.org/node/19099>

International Organization for Migration (IOM), *Iraq Master List Report*, No. 128 (October-December 2022), in *IOM Displacement Tracking Matrix*, February 2023, <https://dtm.iom.int/node/24626>

Iraq, Anti-Terrorism Law No. 13 of 2005, 7 November 2005, <https://moj.gov.iq/view.6698/>

Iraqi National Security Council, *Strategy to Combat Violent Extremism, Conducive to Terrorism. For an Iraqi Society that is Safe, Renounces Extremism, and Trusts in Peace and Coexistence*, Baghdad, 2019

Iraqi Observatory for Human Rights (IOHR), *More than 11,000 Families Reported Missing Civilians between 2017 and 2022*, 10 December 2022, <https://iohriq.org/82-.html>

Ewen MacAskill and Michael Howard, "How Saddam Died on the Gallows", in *The Guardian*, 1 January 2007, <https://www.theguardian.com/p/qm6f>

Ouafae Sandi, *Affiliated with ISIS: Challenges for the Return and Reintegration of Women and Children*, Baghdad, UNDP Iraq, October 2022, <https://www.undp.org/node/360736>

UN Assistance Mission for Iraq (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, <https://www.ohchr.org/en/node/71621>

UNAMI, *Human Rights Report, 1 April–30 June 2007*, <https://www.ohchr.org/en/node/71642>

UN Office of the High Commissioner for Human Rights (OHCHR), *Iraq: UN Committee Urges Urgent Investigation and Legislation to Eradicate Enforced Disappearances*, 4 April 2023, <https://www.ohchr.org/en/node/105273>

OHCHR, *Report on the Situation of Human Rights in Iraq, Submitted by Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in Accordance with Commission Resolution 1993/74 (E/CN.4/1994/58)*, 25 February 1994, <https://digitallibrary.un.org/record/226418>

OHCHR, *Situation of Human Rights in Iraq. Report Submitted by the Special Rapporteur, Max van der Stoel, in Accordance with Commission Resolution 1998/65 (E/CN.4/1999/37)*, 26 February 1999, <https://digitallibrary.un.org/record/1487632>

OHCHR, *Tragic Mistakes Made in the Trial and Execution of Saddam Hussein Must Not Be Repeated*, 3 January 2007, <https://www.ohchr.org/en/node/88618>

## Istituto Affari Internazionali (IAI)

The Istituto Affari Internazionali (IAI) is a private, independent non-profit think tank, founded in 1965 on the initiative of Altiero Spinelli. IAI seeks to promote awareness of international politics and to contribute to the advancement of European integration and multilateral cooperation. Its focus embraces topics of strategic relevance such as European integration, security and defence, international economics and global governance, energy, climate and Italian foreign policy; as well as the dynamics of cooperation and conflict in key geographical regions such as the Mediterranean and Middle East, Asia, Eurasia, Africa and the Americas. IAI publishes an English-language quarterly (*The International Spectator*), an online webzine (*AffarInternazionali*), two book series (*Global Politics and Security* and *IAI Research Studies*) and some papers' series related to IAI research projects (*Documenti IAI*, *IAI Papers*, etc.).

Via dei Montecatini, 17 - I-00186 Rome, Italy

T +39 06 6976831

[iai@iai.it](mailto:iai@iai.it)

[www.iai.it](http://www.iai.it)

## Latest IAI PAPERS

Director: Riccardo Alcaro ([r.alcaro@iai.it](mailto:r.alcaro@iai.it))

- 22 | 21 Rend Al-Rahim, *Transitional Justice in Iraq: The Challenges of National Healing and Recovery*
- 22 | 20 Marina Rudyak, *China and the Global South: Many Initiatives, One Narrative*
- 22 | 19 Tanina Zappone, *Reinventing Soft Power: The Strong Impact of China's Soft Power "Shortcomings" on the Global South*
- 22 | 18 Pier Paolo Raimondi, *Italy and Norway: Perspectives for a Further Energy Cooperation*
- 22 | 17 James A. Millward, *Sinicisation, the Tribute System and Dynasties: Three Concepts to Justify Colonialism and Attack non-Sinitic Diversity in the People's Republic of China*
- 22 | 16 Una Aleksandra Bērziņa-Čerenkova, *The China Nuclear Taboo and Russia's War in Ukraine*
- 22 | 15 Elio Calcagno, *Italy's Defence Policy and Possible Points of Contact with Norway*
- 22 | 14 Azzam Alwash, *From Threat to Opportunity: Harnessing Climate Change to Build a Prosperous Future for Iraq and the Region*
- 22 | 13 Massimiliano Frenza Maxia e Vladislav Gonta, *Information warfare: analisi della vittoria ucraina nell'operazione Kherson*
- 22 | 12 Federico Castiglioni and Michelangelo Freyrie, *European Defence and Italian-German Cooperation in the Wake of Putin's War*