

## Iraq Alert V

# Breaking the cycle of division: Justice for all Iraqis

JULY 2017

*PAX and Impunity Watch have observed worrying trends in current stabilization and transitional justice efforts in Iraq. As the military campaign against ISIS in Iraq reaches a critical stage, strategies to achieve justice for victims of grave human rights abuses tend to remain selective, ill adapted to local needs and disconnected from stabilization and reconciliation efforts. In the international and national debate on accountability in Iraq, emphasis is placed on ISIS crimes, while abuses and crimes by other perpetrators are hardly on the agenda. Iraq's recent history and its experience dealing with the legacy of the Baathist regime teach us that perceptions of selective or victors' justice are divisive, undermine peace and reconciliation efforts and could fuel new conflict.*

*To break the vicious circle of distrust and violence, Iraq needs inclusive transitional justice, which addresses crimes and abuses regardless of the background or identity of the perpetrators and victims, and provides space for all affected communities and local stakeholders to shape policy. In this policy brief, PAX and Impunity Watch outline the trends they have observed in current stabilization and justice efforts and propose the following recommendations to address them.*

Iraqi and international authorities and stakeholders should:

### **Put affected communities and victims first**

- *Iraqi authorities, and the EU and UN bodies supporting them, should prioritize inclusive transitional justice programs aimed at the participation and consultation of victims, affected communities and local civil society groups in justice efforts, without any discrimination on the basis of gender, religion, ethnicity, political affiliation or linguistic group;*
- *Develop victims' capacity to organize themselves and advocate for their rights and demands;*
- *Develop and implement measures to counter intimidation of victims' groups and the violation of their and NGOs' freedoms of association, expression, and movement;*
- *Conduct outreach and information campaigns on justice measures in a way that increases the transparency of adopted policies and strengthens local understanding;*

### **Uphold victims' rights**

- *Address the needs of victims beyond trials and prosecutions, including through truth-seeking, reparations, guarantees of non-recurrence and other measures.*
- *Address community demands with regard to property disputes, land restitution, and the return of displaced people;*
- *Investigate disappearances, determine the fate of missing persons, protect mass graves, and recover and identify human remains;*
- *Protect civilians - including in areas formerly controlled by ISIS, which are at risk of retaliation, assault, expulsion or arbitrary detention by the local population or armed groups.*

### **Link justice and reconciliation**

- *Reinforce synergies between initiatives which aim at justice, reconciliation and stabilization, including those led by UN bodies, in order to prevent the development of separate competing tracks;*
- *Design justice policies based on thorough analysis of root causes of conflict and abuse, including historic patterns of marginalization, gender-based discrimination, and violations of economic, social and cultural rights;*
- *Investigate and map alleged violations not only by ISIS, but also the Iraqi Security Forces, the Peshmerga, the People's Mobilization Forces and the Global Coalition to Counter Daesh;*
- *International donors should prioritize financial support to inclusive transitional justice programs in which the focus lies on the nature of the crimes instead of the identity of the perpetrator;*

- *The Iraqi courts should ensure that any prosecutorial initiatives strictly comply with the accused's right to a fair trial;*

#### **Coordinate transitional justice initiatives**

- *Members of the UN Security Council should debate the need for inclusive transitional justice in Iraq which would cover all grave human rights abuses in Iraq, for example by convening a side event to the UN General Assembly session with all relevant actors;*
- *Establish a national coordination platform led by civil society in Iraq which will facilitate regular exchange between actors involved in justice efforts in Iraq. This will improve the sharing of information and prevent duplication of efforts. The platform would also serve as focal point to link the many grassroots initiatives in Iraq to high-level political dialogue.*
- *Develop a strategy between all stakeholders involved in documentation efforts with clearly outlined objectives;*

#### **Reconciliation and stabilization efforts**

Since the fights against ISIS began in 2014, a plethora of peace or stabilization initiatives has emerged in Iraq. Both Iraqi and international strategies developed within the *Global Coalition to Counter Daesh* have been focusing exclusively on reconciliation as part of stabilization, thereby generally excluding justice components. This document will not seek to establish an inventory of all initiatives but will just name a few that aptly illustrate current trends.

On a national level, the Islamic Supreme Council of Iraq of Ammar al-Hakim launched on October 31, 2016 the so-called "National Settlement" initiative which has since been supported by UNAMI. This initiative aims to promote high-level political reconciliation between the countries' main political factions. It however excludes suspected affiliates of the defunct Baath party and ISIS and has been perceived to merely serve political interests<sup>1</sup>. Another reconciliation plan has been initiated by Iraqi cleric and political leader Moqtada al-Sadr. It aims to hold primary elections in areas from which ISIS has retreated and calls for the removal of foreign troops, but does not seem to include any measures to deal with the impact of abuses on affected populations.

At a local level, local peace deals, in particular regarding the return and/or resettlement of IDPs - often accompanied by compensation payments agreed upon under tribal or customary traditions - are reached with support from the Iraqi National Reconciliation Committee<sup>2</sup> and in some cases international actors<sup>3</sup>. Some of these local deals that took place in Tikrit may have been successful in laying the groundwork for the return of displaced populations, but they did not always deal with victims' pressing demands or give them a voice in the process. Furthermore, there seems to be no national plan to replicate them in other areas of the country affected by displacement.

In addition to these locally-led initiatives, official mediation efforts facilitated by international or regional actors take place in parallel and operate behind closed doors with little communication and transparency towards the public. At the same time, other international and local civil society organizations have been implementing peace programs with reconciliation components in local communities, either with support from Coalition members or the UN through stabilization funds. These efforts appear to face serious challenges as their sustainability is compromised by short-term funding and coordination is often undermined by competition between implementing organizations and duplication of efforts. Faced with an increasing number of initiatives, a variety of actors, and multiple requests to engage in activities, local communities are not always properly informed about what to expect from such initiatives and how to effectively voice their demands.

<sup>1</sup> See for instance <http://www.middleeasteye.net/news/not-so-historic-settlement-iraq-s-post-vision-runs-trouble-1618578797> or <http://www.middleeasteye.net/columns/trump-heres-solution-iraq-after-mosul-reclaimed-3476578>

<sup>2</sup> The National Reconciliation Committee has been established in 2006 to advise PM Haider al-Abadi on reconciliation in Iraq.

<sup>3</sup> See for instance the work of USIP: [https://www.usip.org/sites/default/files/2017-04/the-current-situation-in-iraq\\_0.pdf](https://www.usip.org/sites/default/files/2017-04/the-current-situation-in-iraq_0.pdf)

Meanwhile, sectarian and ethnic tensions that ISIS attacks have generated or exacerbated, as well as those that have followed its withdrawal, continue to grow. Issues such as land and property disputes return and resettlement, and access to natural resources and public services remain unaddressed. Neither official, nor civil society-led stabilization efforts have provided for the establishment of local infrastructure to resolve such problems. In fact, military factions involved in the fight against ISIS have taken advantage of the power vacuum left after the latter's withdrawal to push forward their own agenda, attempting to ensure their control and future influence, particularly in the so-called Disputed Internal Boundaries areas (DIBs<sup>4</sup>). This often comes at the expense of local communities.

### Justice initiatives

Parallel to stabilization and reconciliation efforts, Iraq has witnessed some limited accountability efforts almost exclusively focused on the grave crimes committed by ISIS. A UN mission investigated crimes committed by ISIS and associated groups in 2014/2015<sup>5</sup>. Another report<sup>6</sup> by OHCHR and UNAMI documented crimes committed by both ISIS and Iraqi militias and security forces fighting ISIS<sup>7</sup>. However, chances for a UN-led process aiming to ensure accountability for all crimes appears to be waning due to a lack of political will from the Iraqi side<sup>8</sup>. In the absence of an agreed approach to justice, members of the *Global Coalition to Counter Daesh* have engaged in bilateral efforts to address demands from survivors in Iraq. Canada and other countries continue to financially support the OHCHR and UNAMI investigative missions. Others have tried to take a different approach: An international initiative led by the United Kingdom and Belgium seeking to hold ISIS accountable for its international crimes has apparently reached an impasse. The two states have seemingly failed to convince the Iraqi authorities to support the adoption of a UN Security Council resolution to establish an international investigative mechanism into international crimes committed by ISIS<sup>9</sup>.

Domestically, ISIS militants suspected of the Camp Speicher mass killing of predominately Shiite air force cadets in Tikrit were brought to justice and summarily tried. A total of 36 of the alleged perpetrators were sentenced and executed. Separately, Kurdish<sup>10</sup> and Iraqi<sup>11</sup> authorities are currently collecting evidence on the crimes committed by ISIS. Recently, Iraq's Supreme Judicial Council announced that it will establish a "special judicial body to investigate the terrorist crimes committed against Yazidis." Meanwhile, some civil society actors have actively sought accountability on behalf of minority groups victimized by ISIS such as Yazidis. These efforts have included documentation as well as truth-seeking initiatives in addition to advocacy efforts aimed at supporting the aforementioned UK-Belgian initiative. They have also advocated for a referral of the situation in Iraq to the International Criminal Court<sup>12</sup>. Some NGOs gather witness accounts of women abducted and sexually enslaved by ISIS<sup>13</sup>. Other efforts seek to compile accounts of Arab neighbors helping Yazidi victims escape from ISIS with the aim of addressing the problem of dehumanization of Arab communities in areas formerly held by ISIS<sup>14</sup>.

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<sup>4</sup> The Disputed Internal Boundaries are disputed borders of the autonomous region of Iraqi Kurdistan, which according to the Iraqi constitution should be settled through a referendum.

<sup>5</sup> See UN Report on ISIL violations: A/HRC/28/18

<sup>6</sup> See [http://www.ohchr.org/Documents/Countries/IQ/UNAMI\\_OHCHR\\_4th\\_POReport-11Dec2014-30April2015.pdf](http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_4th_POReport-11Dec2014-30April2015.pdf)

<sup>7</sup> See <https://www.nytimes.com/2015/03/20/world/middleeast/isis-genocide-yazidis-iraq-un-panel.html>

<sup>8</sup> Confirmed to PAX during meetings at a number of embassies and UN bodies.

<sup>9</sup> <http://www.independent.co.uk/news/world/americas/amal-clooney-isis-genocide-yazidis-iraq-united-nations-security-council-passive-response-nadia-murad-a7621871.html>

<sup>10</sup> <http://www.iraqnews.com/features/krq-collecting-evidence-recognize-yezidi-case-genocide/>

<sup>11</sup> Iraqi authorities have established a special tribunal to address crimes against Yazidis:

<http://www.rudaw.net/english/middleeast/iraq/12062017>

<sup>12</sup> See for instance the work of Yazda: <https://www.yazda.org/amal-clooney-the-legal-case/>

<sup>13</sup> See the work of Yazda or the book on testimonies of Yazidi survivors by Yazidi activist Khider Domle:

<http://www.rudaw.net/english/kurdistan/040820152>

<sup>14</sup> The Eyzidi Organization for Documentation, for instance, collects testimonies to serve for peacebuilding in Ninewa, thereby connecting truth telling to local forms of reconciliation.

## Problematic trends

While observing current debates on accountability in Iraq and the different ongoing stabilization and justice initiatives listed above, PAX and Impunity Watch have identified some problematic trends:

### *Lack of coordination*

The lack of coordination between Iraq's central government, the Kurdistan Regional Government (KRG), international and UN agencies as well as international NGOs on issues of justice and stabilization is obvious. This has led to conflicting priorities and visions as well as duplications and overlap. This makes it difficult for local stakeholders to understand and participate meaningfully in such efforts. Also, the increasing number of initiatives and the lack of coordination between them have led to multiple requests and solicitations being addressed to affected communities and victims, often generating risks of re-traumatization or overburdening them with repeated demands for interviews, information, and help.

### *Dissociating stabilization and justice*

There seems to be little coordination or dialogue between stabilization and justice initiatives. Programs for reconciliation lack justice measures or approaches that address victims' rights. Those pushing the justice agenda have furthermore adopted a narrow approach that does not go beyond investigating or prosecuting crimes, often limiting their initiatives to abuses committed by one party to the conflict, namely ISIS.

The reluctance to include justice measures in reconciliation plans is understandable in light of the post-Saddam experience, when justice measures were perceived by large segments of Iraq's population as victor's justice. Today however, it is obvious that no reconciliation is possible if the massive crimes committed in Iraq are not addressed and if victims are not given access to adequate remedies or do not receive redress for the harm they have faced. On the other hand, those engaged in justice initiatives risk exposing themselves to some of the problems that characterized justice measures taken after the fall of Saddam Hussein's regime by seeking to deal with specific perpetrators as opposed to dealing with abuses regardless of whom the perpetrator is.

So far, stabilization and justice initiatives that have emerged in Iraq in the past year, parallel to the ongoing fight against ISIS, have taken separate tracks. None of the reconciliation initiatives seem to include significant measures to address massive human rights violations in the areas occupied by ISIS and subsequently taken back from them. No measures to uphold victims' rights, provide them with redress, or address their urgent needs are included in these reconciliation plans. As for the few justice initiatives that have emerged separately, very little consideration has been given to their potential impact on Iraqi society and the risk that they may undermine reconciliation efforts if they remain selective by targeting specific perpetrators and excluding others. While it is of the utmost importance to bring to justice those responsible for crimes as serious as genocide and widespread sexual abuses, it is key, in order to avoid the divisive impact that measure such as *de-Baathification*<sup>15</sup> had in the past, to develop strategies that do not appear to be selective.

### *A narrow focus on prosecutions*

It is essential to emphasize the need to prosecute those responsible for the most serious crimes including war crimes, crimes against humanity and genocide. However, the "express" trial that followed the Speicher mass killings was marred by serious violations of the right of the accused to a fair trial, as documented by several organizations<sup>16</sup>. Any prosecutorial initiative to hold perpetrators accountable would only backfire and disserve justice if it does not comply with the conditions of a fair trial.

<sup>15</sup> On the impact of de-Baathification see for instance <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/playing-fire-iraq> or <https://www.ictj.org/sites/default/files/ICTJ-Report-Iraq-De-Baathification-2013-ENG.pdf>

<sup>16</sup> See for instance <https://www.hrw.org/news/2016/08/23/executions-iraq-not-real-justice-speicher-massacre>

Another problematic aspect of the Speicher trial has been the very limited space given to the families of those killed or disappeared during the killings to participate in the proceedings and receive information about its outcome. Victims' right to an adequate and effective remedy remains elusive if victims are not given the adequate information and space necessary for meaningful participation in court proceedings. For instance, a participant at a roundtable on transitional justice noted: "Honestly, I do not trust that the Government of Iraq has any court or laws that can deal with war crimes. It is not the ideal solution to always seek international assistance. But how can we make sure that the victim families are compensated? Criminals are and will be put to justice, but then what is the effect of that on the families of the victims?"<sup>17</sup>

Furthermore, information published on the different justice initiatives by various actors does not seem to envisage justice outside of the investigation and prosecutions of crimes. While the prosecution of perpetrators appears to be among the demands put forward by some of the affected communities, it is certainly not the only one. Such a narrow approach has in the past showed its limits in dealing with victims' rights and addressing their needs. Indeed, the approach adopted in Iraq right after 2003, that favored prosecutions over other transitional justice mechanisms such as truth-seeking or reparations, left many victims' demands and needs unaddressed.

As for the Speicher trial, although 36 alleged perpetrators were sentenced and executed, families do not feel vindicated. Many of the relatives of those killed or missing are still awaiting answers on the whereabouts of their loved ones' bodies<sup>18</sup>. The prominence of prosecutions in initiatives aimed at dealing with crimes committed against Yazidis risks repeating the mistake of the past by neglecting to integrate the broader needs of victims and affected communities. For instance, among Yazidi communities, excavation of mass graves on Mount Sinjar and identification of human remains is as urgent as initiating the lengthy process of criminal trials<sup>19</sup>. Thus, any response to the plight of the Yazidi population that will not include a mechanism to determine the fate of those who are unaccounted for or policies to deal with sexual and gender-based violence and abuses will remain insufficient and fail to address victims' needs.

#### *A top down approach*

Local perspectives and community perceptions should be central to any justice initiative. However, most justice-related initiatives have been developed with little to no participation or even consultation with victims, affected communities and local civil society at large. The absence of consultation and participation of victims might explain why many of the current justice efforts in Iraq do not reflect their concrete demands and needs, but rather seem to push standardized solutions that do not properly capture local dynamics. In Iraq, demands differ from area to area and even among different sub-groups (women, youth, political fractions, economic sectors) within the same community<sup>20</sup>. A lack of participation of all affected communities in shaping justice policies for Iraq, not only contributes to overlooking victims' demands and views, but also risks undermining the legitimacy of any such policy by depriving it of local buy-in and ownership.

#### *Lack of transparency and outreach*

As pointed out earlier with regard to the measures taken by authorities to deal with the Speicher mass killings, many of the initiatives led by government authorities or some of the external actors often lack the necessary communication strategies to make them understandable. Without this, justice initiatives are not accessible to victims, affected communities, as well as the civil society at large. Very little outreach towards victims and affected communities is conducted by those responsible for

<sup>17</sup> Roundtable on Transitional Justice organized by PAX and Impunity Watch, February 3, 2017.

<sup>18</sup> Interview with Fatima al-Bahadly, Al Firdaws Association, March 25, 2017

<sup>19</sup> See <http://foreignpolicy.com/2017/06/01/the-battle-to-unearth-iraqs-mass-graves-isis-yezidi-kurds-baghdad/>

<sup>20</sup> An interesting example here is the new framework on 'integrated reconciliation' designed by UNDP, which will be implemented outside of the stabilization funding framework. This program will focus, among others on establishing a local infrastructure to deal with local tensions and enable citizens to reach out effectively to local authorities, following pilots with peace committees in three Ninewa districts developed by PAX and its local Iraqi partners al-Tahreer and al-Mesalla.



implementing justice initiatives as well as measure of redress. Added to the quasi absence of consultation in the design of such justice processes, the lack of proper outreach prevents stakeholders from influencing the justice debate in Iraq.

*Lack of attention to root causes including socio-economic and historic grievances*

Most justice efforts and initiatives that have been examined do not go as deep as to look into the root causes of the conflict and the abuses that have resulted. None of them have for instance explicitly integrated the discrimination that some of the victimized groups, such as Yazidis, have historically faced as a result of the “Arabization” policies of the Baathist regime. The resentment of local Sunni communities who feel neglected by the current central government, or the socio-economic situation of areas such as Ninewa that have been marginalized for decades and deprived of infrastructure and development programs have also not been considered. Situations such as those described above, explain why local communities advocate for redress of socio-economic grievances or historic marginalization, besides justice for crimes they have faced during the recent conflict<sup>21</sup>.

*Shrinking space for victims’ activism and justice advocacy*

There are several cases in which civil society organizations advocating on behalf of victims have faced repressive measures and intimidation that has limited their ability to defend victims and relay their concerns. This has included the closing down of NGOs<sup>22</sup> and limitation to the freedom of movement of civil society activists including in Kurdistan Iraq and the so-called “Disputed Territories<sup>23</sup>”. Such an atmosphere of hostility can potentially dissuade victims from organizing to advocate for their rights, voice their demands and fully participate in justice efforts in Iraq.

**Moving forward**

Transitional justice efforts in Iraq should avoid repeating past mistakes and should break from the concerning trends described above. They should instead draw on lessons learned from former efforts in Iraq and employ a new approach to transitional justice to avoid reinforcing the growing divisions within Iraqi society. On the one hand, any justice measure that is perceived by Iraqis as selective would only contribute to exacerbate sectarian tensions. On the other hand, any stabilization or reconciliation efforts that fail to address the massive legacy of human rights abuses left by both the ongoing conflict and past violence, and overlook victims’ rights and demands, will keep wounds open - thus offering a fertile ground for future discord.

The legitimacy and subsequently the effectiveness of any justice measure in Iraq will depend on the participation of all affected communities, at all levels, in shaping and implementing them. In the end, transitional justice in Iraq has to be Iraqi-made, led and driven.

The Iraq Alert is a policy brief published by the Dutch peace movement PAX and Impunity Watch.

**PAX headquarters  
Utrecht**

Thirsa de Vries  
[devries@paxforpeace.nl](mailto:devries@paxforpeace.nl)  
+31 6 48981497

**PAX EU Liaison Office  
Brussels**

Paul Musiol  
[musiol@paxforpeace.nl](mailto:musiol@paxforpeace.nl)  
+32 485181931

**Impunity Watch  
The Netherlands**

Habib Nassar  
[habib.nassar@impunitywatch.org](mailto:habib.nassar@impunitywatch.org)  
+31 30 3072283

<sup>21</sup> Participants of the roundtable on Transitional Justice (organized by PAX and Impunity Watch, February 3, 2017) repeatedly mentioned socio-economic concerns and historic marginalization among their main grievances.

<sup>22</sup> In January this year, Kurdish authorities temporarily ordered closure of Yazidi NGO Yazda. See <https://www.theguardian.com/world/2017/jan/12/charity-yazidi-survivors-isis-sexual-slavery-shut-down-kurdish-authorities-yazda-women-children>

<sup>23</sup> The Disputed Territories of Northern Iraq are regions claimed by both the Iraqi Kurdish Government and the Central Iraqi Government. Most of these territories were over-run by ISIS and have become under control of Kurdish Peshmerga during the last two years.