

UC Berkeley

Reports

Title

Iraqi Voices: Attitudes Toward Transitional Justice and Social Reconstruction

Permalink

<https://escholarship.org/uc/item/5h6636qx>

Author

Human Rights Center

Publication Date

2004-05-01

DOI

doi:10.6078/J85Q4T1V

Copyright Information

This work is made available under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives License, available at <https://creativecommons.org/licenses/by-nc-nd/4.0/>



international center for
**TRANSITIONAL
JUSTICE**

**Human
Rights
Center**
UNIVERSITY OF
CALIFORNIA
BERKELEY

**OCCASIONAL
PAPER
SERIES**

IRAQI VOICES

Attitudes Toward Transitional Justice
and Social Reconstruction



*the International Center
for Transitional Justice
and the Human Rights
Center, University of
California, Berkeley*

May 2004



Front cover: Halabja Memorial Cemetery, comprising more than 1000 family headstones commemorating the deaths of over 5000 Kurds on March 16, 1988. On that day, Iraqi government jets bombed the town of Halabja with a lethal cocktail of mustard gas and chemical nerve agents. Thousands of survivors and their offspring continue to suffer from physical deformities, respiratory ailments, and cancers. February 2004. Photo by Eric Stover.

Above: Leaflets posted on the walls of the Committee for Free Prisoners' headquarters by relatives of missing persons seeking information about their loved ones. Adhamiya, Baghdad, August 2003. Photo by Patrick Vinck.

IRAQI VOICES

Attitudes Toward Transitional Justice and Social Reconstruction

EXECUTIVE SUMMARY

In a society ravaged by a legacy of brutal authoritarian rule, political violence, and massive human rights abuses, and currently under foreign occupation, the challenges to rebuilding a society and effectively addressing the past are manifold. Every country's transitional justice experience is unique and shaped by its history, as well as its current political, legal, social, and economic circumstances. Accordingly, understanding local populations' needs, attitudes, and perceptions of transitional justice and social reconstruction is integral to the development of legitimate processes that help ensure stability, peace, and justice.

This report is based on data obtained from extensive interviews and focus group discussions conducted in July and August 2003 with representatives from a broad cross-section of the Iraqi population, collected by a team of researchers from the International Center for Transitional Justice (ICTJ) and the Human Rights Center (HRC) at the University of California, Berkeley.

Taking place months after the fall of Baghdad but before the capture of Saddam Hussein and the establishment of the Iraq Special Tribunal, this survey provided many participants with the first opportunity to offer their opinions on these critical issues. Those working to develop justice, truth, and peace-building structures should take into account Iraqi needs and desires, profiled in this comprehensive, yet nuanced, portrait of Iraqi perspectives on the issues critical to their country's peaceable development.

The report's conclusions and recommendations are divided into seven main areas: past human rights abuses, justice and accountability, truth-seeking and remembrance, amnesty, vetting, reparations, and social reconstruction and reconciliation. These mechanisms, taken together, comprise a comprehensive and coordinated approach to social repair and transitional justice that underscores the importance of exploring the individually valuable role each plays in a particular context. Implementing piecemeal processes in transitional societies runs the enormous risk of failing to adequately address the past, arrive at the truth, achieve justice, and rebuild trust.

This study reveals a shared national experience of widespread exposure to **human rights abuses**, but also shows that Iraqis were mostly aware of the violations perpetrated by the regime's intelligence, security, and military forces against victims from different ethnic, religious, and political groupings. Most participants portrayed "human rights" as the reverse of their personal experience of suffering and as a set of preconditions for a life with dignity and respect. In light of these findings, the ICTJ and the HRC urge that institutions and procedures be implemented to prevent such abuses from recurring, including: reforming the police, security, and intelligence services and providing personnel international human rights training; ensuring that all military and policing policies are consistent with international human rights standards; and ensuring that all legislation complies with international human rights standards, including universal equality and nondiscrimination. The state of Iraq should also ratify the United Nations Convention Against Torture and adopt legislation to implement the International Covenant on Civil and Political Rights. Further, public education on the meaning of human rights as a legal framework for human dignity and justice must be an important component of societal reconstruction measures.

Respondents viewed the concept of **justice** as the inverse of the previous regime and a just society as everything that the old system was not. Many strongly supported holding accountable those responsible for human rights violations through fair and public trials that ensure that punishments fit the crimes. Most identified Saddam Hussein, his family, and his closest supporters as those who should be held accountable, and they stressed the need to differentiate between Ba'ath party leadership and mere party members. Comments indicated distrust of the United States because of the historical support provided to Saddam Hussein and the disorder, lack of security, and looting that followed the end of his regime.

Generally, attitudes toward international participation—including that of the United States, other Arab states, and the United Nations—in the trials of members of the former regime were driven by a variety of conflicting feelings: mistrust of international politics; anger and resentment toward the international community; disappointment, distrust, and wounded pride toward the U.S. for its previous support of Saddam Hussein and as an Occupying Power; a desire for fair trials, but swift and vengeful justice; a strong demand for an Iraqi-controlled accountability process, but a lack of belief in the fairness of the Iraqi judicial system; and mixed feelings about judges and lawyers from the old regime, recognizing the need for international expertise and assistance. An additional source of anger and mistrust toward the international community emerges from the impact of years of sanctions and the Oil for Food Program. The opinions expressed made it clear that belief in the legitimacy of a trial process will have to be built gradually.

Although the Iraqis conveyed a strong desire to bring to justice those responsible for past human rights abuses, it is critical that the process is, and is perceived to be, fair and legitimate. To ensure legitimacy and fairness, the U.S. role must be reduced, while assistance and expertise should be extended to include independent actors via an independent mechanism that channels support and expertise to Iraqis. Standards and conditions that would enable the creation of an accountability process must be set, including: Saddam Hussein and the responsible leadership should be charged with the most serious crimes under international law (genocide, crimes against humanity, or war crimes); the trials should be independent, impartial, public, and fair; a witness protection program should be developed; and, in concert with appropriate Iraqi representatives, international technical assistance in the area of judicial input and/or advice should be offered. Given the public's overwhelming desire for the death penalty, international advisers will need to work closely with the appropriate Iraqi authorities about the international trend toward the abolition of the death penalty.

The survey indicated broad support for an official **truth-seeking** and historical memory-preservation process, largely springing from desires to reveal to the rest of the world the truth about what happened in Iraq; prevent a repetition of the past; process personal experiences through a larger national narrative; and obtain information from perpetrators on those missing. Although some respondents suggested various ways in which a truth-seeking process should be started, several questioned the wisdom of opening and directing their energies to examining old wounds, while most felt that such a process should not be perceived as a substitute for holding those responsible for the crimes legally accountable.

Given the possibility that only a small amount of the total number of perpetrators can be prosecuted before the Special Tribunal and domestic courts, a truth commission could help provide a comprehensive account of past human rights abuses; provide victims with a forum that acknowledges their suffering; make recommendations about preventive measures; explore the possibility of providing reparations; and promote the rebuilding of trust and understanding without sacrificing accountability. The decision as to whether to establish this particular truth-seeking mechanism should be made by Iraqis, including victims, their families, nongovernmental

organizations, and other civil society actors. Once that decision is made, the process of creating a truth commission should be based on education, consultation, and coordination, and must be independent of political considerations.

Interviewees' responses indicated that they do not consider **amnesty** an option for those found to be guilty of serious crimes, while they tended to agree that amnesty was possible for perpetrators of lesser crimes. Indeed, in keeping with international legal standards, no Iraqi suspected of committing acts of genocide, war crimes, or crimes against humanity should be offered any form of amnesty.

While most respondents blamed the Ba'ath party for various crimes and felt that those responsible should be dismissed, they also felt it was unfair to penalize individuals solely on the basis of their party membership and tried to distinguish between mere members and supporters of Saddam. Some expressed concern that large-scale deba'athification might deplete Iraq of crucial human resources. **Vetting** is an incomplete solution to human rights abuses and should be accompanied by broader, more systemic reforms, such as in processes of selection and training. The initial deba'athification process administered by the U.S. and the Iraqi Interim Governing Council offered too few distinctions and safeguards to comply fully with international standards and should be stopped until a thorough review is undertaken. In its stead, a new, independent, and transparent vetting process that adheres to strict procedures and standards of evidence should be established. The implications for raising the specter of new dissident movements and violence must be considered if any form of vetting is to be contemplated. Thus, this particular approach must be weighed against other justice options in a comprehensive package.

While recognizing that their suffering and losses were incalculable and, therefore, unable to be truly compensated, interviewees expressed widespread support for both material and symbolic compensation—to be provided for by an “oil-rich” Iraqi state—and rehabilitation as ways of rebuilding lives, restoring dignity, and moving beyond the legacy of the old regime. Given the scale of human rights violations, several steps should be taken to begin the **reparations** process in Iraq. A commission comprising Iraqis and international experts as advisers should be formed to create a reparations program via a transparent and consultative process. That commission should investigate the various forms of material and symbolic reparations and examine individualized and collective distribution of either form. A reparations program should be designed in coordination with other transitional justice mechanisms, including accountability, truth-seeking, vetting, and institutional reform. Furthermore, the international community has an obligation to provide resources for the reconstruction of Iraq, which can be used to fund the reparations program.

The respondents understood **reconciliation** as meaning “unity,” although there was disagreement on whether unity already existed among Iraqis, with some believing that it did and that reconciliation was therefore unnecessary, and others feeling that the current divisions between groups was the construct of the previous regime. Nonetheless, many responses indicated that some process is desirable for national reconciliation through education, media, and community programs. Securing basic needs, maintaining security and stability, and improving economic conditions were the three most pressing issues in **social reconstruction** for all groups. Overall, hope for the future and eagerness to control their own destiny was balanced by caution over short-term challenges and concern about the occupation and lack of a long-term plan for Iraq.

In order for social reconstruction to be achieved, it is essential that attention be directed to the economic, cultural, and social rights of Iraq's varied ethnic and religious groups through a concerted effort of collecting ongoing population-based data that genuinely reflects their needs

and expectations. A focus on educating the population about human rights must occur at multiple levels—not only for adults, but within the school system itself, along with comprehensive education reform that addresses teaching history and literature, stereotyping, and tolerance. Piecemeal approaches to school reform are doomed to fail if the goal is preparing Iraqi youth for an active role in a democratic society. Education reform must be undertaken in concert with Iraqi educators, historians, writers, and artists.

Access to accurate and unbiased information is critical and requires respect for a free press. An active educational program for print and broadcast journalists must be undertaken in conjunction with the media community, world media, and, especially, the Arab media.

Cross-ethnic and religious group engagement is essential for building trust and a commitment to a unified Iraq. If one group is uncritically singled out at the expense of others, inevitable dissension will lead to further bloodshed and a terminally weak state. Our data suggest that elements of unity do exist and must be actively supported. Freedom of movement will be an important dimension of the process.

Local community efforts to build trust and unity should be supported. No assumptions should be made about what contributes to “reconciliation.” These will vary from community to community and will proceed at different rates.

Finally, legal justice (including exhumation of mass graves), security, and rule of law are the underpinnings of social reconstruction but should not be thought of as the sole focus of intervention. A comprehensive plan for social reconstruction should be developed that incorporates input from all segments of society and promotes Iraqi ownership of the process. This design and implementation should be based within the Iraqi government as it evolves, not within the international community or international NGOs. These organizations can serve as technical advisers or implementing partners.

Although respondents did not characterize transitional justice mechanisms as critical aspects of one comprehensive and coordinated strategy, they did express support, to varying degrees, of each approach. As Iraqis look to secure a peaceful and just future, it will be vital that they, with the help of independent experts, think of the transition to a society based on the rule of law as a necessarily holistic process, and engage in serious consultation, planning, and coordination from the earliest stages.

INTRODUCTION

In light of the long history of grave human rights violations and extreme political violence in Iraq, the challenges of devising legitimate and effective processes for confronting the past are immense. Hundreds of thousands killed or missing, hundreds of mass graves, crippled state institutions, and a political culture shaped by three decades of one-party rule and dictatorship are but four contemporary realities. Added to this are the circumstances of the transition itself, which is the product of a foreign-led military invasion and occupation undertaken without the express authorization of the United Nations (UN) Security Council.

The integrative, restorative, and peace-building functions of transitional justice measures are most effectively realized when the strategies closely reflect the population's (often conflicting) needs, attitudes, and perceptions. Accordingly, understanding local attitudes toward transitional justice and social reconstruction is critically important for the formulation of legitimate strategies that may contribute to the development of a stable, peaceful society. This is particularly important where the transition has not been the result of domestic political developments, and where the society is stratified along ethnic, religious, and political lines.

By inquiring into "Iraqi attitudes toward transitional justice," this study seeks to shed light on the following questions:

- What are Iraqi conceptions of terms like "justice" or "human rights"?
- How do Iraqis understand "justice" and what are their expectations for justice being carried out?
- How do Iraqis perceive their experiences under the regime of Saddam Hussein?
- What do Iraqis of different religious affiliations, ethnicities, political orientations, and social standing regard as effective and legitimate ways of dealing with the legacy of human rights violations?
- What is the extent of Iraqi knowledge about various transitional justice processes and other societies' experiences in dealing with the past?
- Which kinds of transitional justice measures have relative priority?
- What kinds of persons and institutions are regarded as trustworthy and legitimate for implementing such measures?
- What should be the role of the international community, and specifically the UN, in any such processes?

This report is based on data that emerged from extensive interviews and discussions about how Iraqis would like to deal with their legacy of human rights violations and political violence, conducted by a joint team from the International Center for Transitional Justice (ICTJ) and the Human Rights Center, University of California, Berkeley (HRC). The research used a qualitative study design aimed at eliciting the opinions of representatives from a broad spectrum of the Iraqi population. Semi-structured questionnaires and focus group guided discussions were used to sample selected sectors of society (see Annex 1). In total, 395 people were surveyed, through 38 key respondent interviews and 49 focus group discussions, conducted between July 18 and August 13, 2003.

Key respondents were typically individuals who held a position of responsibility or authority within a political, social, or cultural grouping or who were regarded as having special expertise on Iraqi society. They included senior religious figures from all the major religions, leaders of

political organizations, representatives of victim groups and civil society organizations, legal experts, and educators. They were selected in each region and city visited.

Participants in focus group discussions were selected from three sets of groups broken down by age and gender. These included individuals from specified ethnic, religious, or political groups (e.g., Sunni, Shi'a, Christian, Kurd/KDP, Kurd/PUK, Marsh Arab, Turkoman, etc.); individuals who were victims of imprisonment, displacement, or suffered the loss of at least one close family member; and representatives of specified social and civil society groups—nongovernmental groups, the Bar Association, ex-military, or unemployed.

Data collection took place approximately three months after the fall of Baghdad, when the security situation was tenuous. It was carried out before the capture of Saddam Hussein or the establishment of the Iraq Special Tribunal, both of which occurred in December 2003.

This was the first opportunity for many participants to discuss these issues in a semi-structured way, an opportunity that most seized with enthusiasm. Despite the hardships of daily life in Iraq and the difficulty of meeting basic needs, the researchers found that the issue of how to address past atrocities—including prosecutions of those responsible, the fate of the disappeared, and reparations—is of singular importance.

We hope that this report can give some profile to the perspectives of the many Iraqis with whom we spoke, and serve as a constructive contribution to the challenge of securing justice and truth and rebuilding trust among the Iraqi people.

Acknowledgements

The Iraq Research Team comprised Phuong N. Pham, Nehal Bhuta, Patrick Vinck, and Nida Alahmad. The team would like to thank its local Iraqi colleagues and Abdul Razzaq Al-Saidy for his dedicated assistance and friendship.

Phuong N. Pham, Harvey M. Weinstein, Nehal Bhuta, and Eric Stover were involved in questionnaire design. Data analysis was led by Phuong N. Pham, Harvey M. Weinstein, Meg Sheahan, Monica D. Carlson, Tina Hinh, Patrick Vinck, and Jenny Wu.

A great many people contributed to the writing and editing of the report, most notably Nehal Bhuta, Hanny Megally, Harvey M. Weinstein, Phuong N. Pham, Eric Stover, Paul van Zyl, Suzana Grego, and Sarah Rutledge.

Special thanks are extended to William E. Bertrand, Tulane University.

About the ICTJ

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved. It provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments, and others. The ICTJ assists in the development of strategies for transitional justice comprising five key elements: prosecuting perpetrators, documenting violations through nonjudicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and advancing reconciliation. The Center is committed to

building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so.

About the Human Rights Center

Founded in 1994 with the assistance of the Sandler Family Supporting Foundation, UC Berkeley's Human Rights Center is a unique interdisciplinary research and teaching enterprise that reaches across academic disciplines to conduct research in emerging issues in international human rights and humanitarian law. While basing its programs in the legal framework that defines the field, the Center has deliberately chosen not to situate its work within a law school but within the larger University, where it draws upon the creativity and expertise of scholars in such diverse programs and departments as anthropology, demography, education, ethnic studies, geography, journalism, law, political science, and public health.

BACKGROUND

Human Rights Violations and Political Violence in Iraq, 1968–2003

The arrest and detention in December 2003 of former Iraqi dictator Saddam Hussein has shone a bright spotlight on the question of how Iraq will deal with its legacy of grave human rights violations. The regime Saddam Hussein presided over was the most recent and brutal in a largely unbroken succession of authoritarian governments that employed extralegal violence as means of maintaining their grip on power. The stated objective of the Occupying Powers (in the form of the Coalition Provisional Authority, CPA)¹ and the Iraqi Interim Governing Council (IGC)² is to create conditions conducive for the establishment of a democratic sovereign Iraqi state in which the rule of law is upheld. It is likely that the mechanisms and processes that are established to grapple with the causes and effects of large-scale human rights violations will have important consequences for the realization of a democratic order in Iraq.

While political violence and brutal repression have been an all-too-common feature of Iraq's modern history,³ the ascendancy of Saddam Hussein inaugurated a period in which human rights violations steadily grew to unprecedented levels, exacerbated in part by Iraq's unprovoked wars against Iran (1980–1988) and Kuwait (1990–1991). Following its seizure of state control in 1968, the Ba'ath party progressively intensified internal political repression and consolidated the functioning of the intelligence services as instruments of domestic pacification against a backdrop of armed internal revolts against the Iraqi state by Kurdish and Shi'a groups. Employing terror against political enemies, the Ba'ath party nevertheless maintained in the 1970s a degree of internal democracy in decision-making and administrative rationality.⁴ Saddam Hussein's orchestrated removal of his mentor, President Ahmad Hasan al-Bakr, in 1979 was accompanied by widespread purges of the Ba'ath party, completing the party's transformation into an extension of Hussein's personal power that would function both as a system of patronage and social control.

Hussein's success in maintaining his position as president longer than any previous ruler was partly a result of the ruthless terror inflicted by a variety of intelligence and security apparatuses. These mechanisms, along with Ba'ath party organizations and special military units, formed a vast network of agents and operatives who penetrated all layers of Iraqi society. This network was responsible for protecting the president, crushing domestic dissent, blocking coups, and countering external threats.⁵ All agencies maintained a network of informers from whose surveillance few Iraqis could escape. Persons suspected or accused (with or without evidence) of any of the large number of criminal offenses "against the internal security of the state"⁶ would often be tried before secret "special courts" composed of intelligence agents or Ba'ath party officials, and sentenced to imprisonment or death after summary trials.⁷ Persons detained by intelligence agents on suspicion of political offenses were routinely tortured, before and after

¹ See www.cpa-iraq.org.

² See www.cpa.gov/government/governing_council.html.

³ See generally Charles Tripp, *A History of Iraq*, Cambridge University Press, 2001; Said K. Aburish, *Saddam Hussein: The Politics of Revenge*, Vintage, 2000.

⁴ Amatzia Baram, "Impediment and Advantage: Saddam's Iraq," United States Institute of Peace, Special Report No. 34, June 1998.

⁵ Ibrahim al-Marashi, "Iraq's Security and Intelligence Network: A Guide and Analysis," *Middle East Review of International Affairs*, Vol. 6, No. 3, Sept. 2002.

⁶ Iraq Penal Code, Law No. 111 of 1969, Ch. 2.

⁷ Human Rights Watch, "Iraq: Background on Human Rights Conditions, 1984–1992," Aug. 1993, Vol. 5, Issue 5.

trial,⁸ and the number of persons “disappeared” by the intelligence agencies since 1979 is unknown. Relatives of persons imprisoned or disappeared for political reasons also suffered confiscation of property and the deprivation of the means of subsistence.

Over and above the vigilant repression practiced by the instruments of the Ba‘athist police state, Hussein’s rule was characterized by savage campaigns of violence against ethnic and religious groups in Iraq. In an attempt to destroy Kurdish guerilla forces operating in northern Iraq since the 1970s, the regime embarked on several campaigns to systematically destroy Kurdish villages and exterminate their inhabitants. In 1983, the Iraqi military seized villages occupied by displaced Kurds of the Barzani clan, whose leader is Mas’oud Barzani (now a member of the IGC). Between 5000 and 8000 males over the age of 12 from the Barzani clan were abducted and “disappeared.” These practices were extended and enlarged in the Anfal Campaigns of 1987–1989, in which 2000 Kurdish villages were razed, hundreds of thousands of Kurds forcibly displaced, and more than 100,000 Kurds (mostly men and boys) trucked to remote sites and executed. During the Anfal Campaigns, the Iraqi army—under the command of Ali Hassan al-Majid (cousin of Saddam Hussein and secretary general of the Northern Bureau of the Ba‘ath party)—deployed chemical weapons against civilian populations on at least 60 occasions.⁹ The attacks on the Kurds could be regarded as falling within the international law definition of genocide.

Historically, Iraq’s majority Shi‘a population has been excluded from important institutions of political power in Iraq, beginning with British colonial strategies of relying on Sunni tribal leaders as the instruments of indirect rule.¹⁰ The stirrings of an organized Shi‘a resistance to Hussein’s rule, which coincided with the (Shi‘a) Islamic Revolution in Iran and the beginning of the Iran-Iraq War, made Shi‘a loyalty to the Hussein regime suspect.¹¹ In early 1980, thousands of Shi‘a in southern Iraq were arrested and disappeared, and hundreds of thousands were forcibly displaced on the grounds that they were allegedly of Iranian origin. Shi‘a religious leaders were executed, Shi‘a Imams and Mosques placed under surveillance, and membership of the Shi‘a opposition group *al-Da‘wa al-Islamiyya* made punishable by death.

The three-week Shi‘a uprising that erupted in southern Iraq in the aftermath of the first Gulf War (March 1991) was brutally crushed by the Iraqi army, Ba‘ath party cadres, and tribal irregulars. During the retaking of southern towns and cities, forces loyal to Saddam Hussein indiscriminately shelled residential areas, executed civilians *en masse*, and used helicopters to attack fleeing civilians. In the months following the uprising, security services disappeared thousands of men and women in southern Iraq.¹² It is estimated that 30,000 individuals were killed during this period, many of whom are buried in the dozens of mass graves located in southern Iraq since April 2003.¹³ Three leading Shi‘a Ayatollahs were assassinated in the latter half of the 1990s. Shi‘a religious sites, cemeteries, and places of religious instruction were destroyed, and certain Shi‘a religious practices were restricted or banned.

⁸ Amnesty International, “Iraq: Victims of Systematic Repression,” MDE 14/010/1999 (1999); Amnesty International, “Iraq: Systematic Torture of Political Prisoners,” MDE 14/008/2001 (2001).

⁹ Human Rights Watch, “Genocide in Iraq: The Anfal Campaign Against the Kurds,” 1993.

¹⁰ See generally Toby Dodge, *Inventing Iraq: The Failure of Nation Building and a History Denied*, Columbia University Press, 2003.

¹¹ Tripp, *supra* note 3, at 215–225.

¹² Human Rights Watch, “Endless Torment: The 1991 Uprising in Iraq and Its Aftermath,” June 1992.

¹³ Human Rights Watch, “The Mass Graves of Al-Mahawil: The Truth Uncovered,” May 2003.

Inhabitants of southern Iraq were also punished collectively by the denial of electricity and infrastructure rehabilitation after the first Gulf War. Many thousands of deserters who participated in the March 1991 revolt sought refuge among the Shi'a Marsh Arabs. Apart from suffering the violence inflicted upon the Shi'a generally, the Marsh Arabs were also subjected to a policy calculated to specifically destroy their means of subsistence and way of life. The Iraqi government drained the wetlands, upon which the Marsh Arabs based their existence, and conducted a counterinsurgency campaign against Marsh Arab villages, attacking them with helicopters, aircraft, and artillery and laying mines. Between 100,000 and 190,000 persons are estimated to have been displaced by this persecution, and an unknown number killed.

Throughout the 1980s, the Iraqi government also pursued a policy of "Arabization" in Kurdish regions, in which Kurdish property was confiscated and sold at reduced prices to Arabs, some of whom were paid cash incentives to settle in ethnically Kurdish areas in order to alter the demographic makeup. In southern Iraq, Shi'a expelled or displaced by the government also had their property expropriated and sold to supporters of the Hussein regime.

In the 1990s, the government imposed harsh new penalties of mutilation and amputation on Iraqi soldiers who deserted or refused compulsory military service.¹⁴ Conscription has long been practiced in Iraq, but its enforcement was selective and certain populations, such as the southern Shi'a, were targeted for extremely harsh penalties—including execution—for failure to serve in the military. The death penalty and mutilation were also used widely as punishment for common crimes.

After the Ba'ath seizure of power, the party developed a tight grip on all aspects of associational life in Iraq. Ba'ath party membership was a precondition for access to graduate education, government employment, access to certain prestigious professions, and many other kinds of social and economic advantages. The party functioned not only as an organ of political repression, but also a system of patronage and the privilege through which loyalty to the regime could be cemented. Not unlike the communist parties of the former Soviet Union and Eastern Europe, party membership was a form of social security for those who desired a decent standard of living within the parameters set by the regime. And as in Eastern Europe, not all Ba'ath party members can be held accountable for the policies and practices of the government of Saddam Hussein.

¹⁴ Amnesty International, "State Cruelty: Branding, Amputation and the Death Penalty," MDE 14/03/96, April 1996.

CONTENTS

- I. Past Human Rights Abuses
 - A. A Common National Experience of Suffering
 - B. Diversity Within a Common Experience of Abuse
 - C. Perceived Reality of the Shi'a/Sunni Division
 - D. The Arbitrary Nature of the Abuse
 - E. Impact on Iraqi Society
 - F. Victims' Conception of Human Rights
 - II. Justice and Accountability
 - A. Who Should Be Tried?
 - B. Differentiation Between Saddamis and Ba'athis
 - C. Amnesty
 - D. The Responsibility of the International Community
 - E. The Basis for Distrust of International Involvement
 - F. The Capacity of the Iraqi Legal System
 - III. Nonjudicial Measures: Deba'athification, Truth-seeking, and Reparations
 - A. Deba'athification
 - B. Truth-seeking and Historical Memory
 - C. Reparations
 - IV. Social Reconstruction and Reconciliation
 - V. Summary Findings, Conclusions, and Recommendations
 - A. Past Human Rights Abuses
 - B. Justice and Accountability
 - C. Truth-seeking and Remembrance
 - D. Amnesty
 - E. Vetting
 - F. Reparations
 - G. Social Reconstruction and Reconciliation
 - H. Policy Recommendations
 - 1. Past Human Rights Abuses
 - 2. Justice and Accountability
 - 3. Truth-seeking and Remembrance
 - 4. Amnesty
 - 5. Vetting
 - 6. Reparations
 - 7. Social Reconstruction and Reconciliation
- ANNEX 1 Methodology
- ANNEX 2 Focus Group Questions
- ANNEX 3 Questions for Individual Interviews

IRAQI VOICES

Attitudes Toward Transitional Justice and Social Reconstruction

I. PAST HUMAN RIGHTS ABUSES

A. A Common National Experience of Suffering

*“The whole of Iraq was in jail.”*¹⁵

The scale of human rights abuses and political violence under the Ba‘ath regime was unparalleled in Iraqi history. Throughout the 1980s and 1990s, the violations were among the worst in the world. Therefore, it is not surprising that a household-based survey conducted in southern Iraq in July 2003 yielded more than 1000 individual reports of serious human rights abuses attributed to the former regime.¹⁶ The sense of a widespread exposure to or knowledge of violations was confirmed in the focus group discussions and respondent interviews across all religious and ethnic groups and in all regions where research was conducted. While there were several important differences of emphasis, which are considered below, there is a striking unanimity in respondents’ view that Saddam Hussein’s regime was brutal, ruthless, and intolerably unjust. It is possible that this unanimity was partly reluctance to openly support the regime so soon after its fall and in light of the revenge killings that characterized the early months of the post-Saddam period. But even among those who compared life under Saddam favorably to the problems of insecurity and disorder under occupation, there was an acceptance that the old order was characterized by repression, systematic abuse, discrimination, corruption, and a degeneracy of social values induced by the Ba‘ath party’s stranglehold over all aspects of life in Iraq.

What way, other than “injustice,” is there to describe the former regime? There was oppression of freedom, mouths were silenced....The Iraqi people were forced to join the ranks of the ruling party, or their livelihoods and jobs were to be cut off, as well as educational scholarships and travel abroad....If they did ask for their rights, the results were either imprisonment and torture or murder. (Senior Sunni cleric, Baghdad)

Saddam was an executioner; we could not say no to him. Anyone who said no was beheaded. The authority and the power are in his hands...we are afraid. (Sunni woman, Baghdad)

You must join [the Ba‘ath party]; if you do not, you will end up in the mass graves. (Shi‘a man, Najaf)

People in all fields suffered from human rights violations. (Turkoman woman, Kirkuk)

They know that when Saddam was in office, we used to be afraid of the walls. (Marsh Arab, outskirts of Nassiriyah)

¹⁵ Some of the translated respondent quotes may be edited for clarity only.

¹⁶ Physicians for Human Rights, “Southern Iraq: Reports of Human Rights Abuses and Views on Justice, Reconstruction and Government,” Washington, D.C., and Boston, Sept. 18, 2003. The survey was limited to the southern governorates of Iraq and a predominantly Shi‘a population.

If someone opened his mouth and expressed his or her view about [human rights] violations, they would come to the family and persecute them; all the women would be raped and men would be tortured. (Kurdish woman, Sulaimaniyah)

Experiences and knowledge of abuses that were common to all groups and interviewees ranged from the denial of basic civil liberties (freedoms of speech, association, political activity, travel) and discrimination in education and employment on the basis of party membership, to forced eviction, torture, sexual violence, prolonged arbitrary detention, disappearances, extrajudicial execution, and mass killing. Respondents vividly described a climate of fear created by the regime's frequent demonstrations that it would use any means necessary to eradicate dissent and opposition. Pervasive surveillance, collective punishment, and the arbitrary and capricious use of violence by persons in positions of influence inculcated feelings of vulnerability and unpredictability and, thus, a heightened sense of anxiety in all spheres of daily life.

The regime and the government had oppressive agencies such as the police, the intelligence, military intelligence, or general agencies. They would arrest and beat people and kill, just for having suspicions about someone. They would hurt people for no reason. (Assyrian Christian, Baghdad)

When I was a student at the college in the fourth grade, security officers took me, jailed me and tortured me...I don't even know [why]. I said something and someone working for the security agency wrote a report and so they hurt me a lot, God only knows...I was accused of being an Iranian spy or that I was trying to find out information, I don't really know what or for who. (Kurdish man, Erbil)

As far as Saddam's time is concerned, anyone who had an opinion and wanted to express it got arrested. (Sunni woman, Baghdad)

There is no freedom of opinion, no freedom to choose a belief or a religion, not even the freedom to travel among countries. In other words, there were no freedoms at all. We were allowed to say only what they wanted us to say. (Sunni man, Baghdad)

Before Saddam, if somebody became a communist or a nationalist they would put him in jail. After Saddam, if someone uttered one word against the regime, the whole family, the whole clan...would go to jail. (Shi'a woman, Baghdad)

The direct experience, or knowledge of a family member's experience, of severe human rights violations surfaced in a number of focus group discussions. There were seemingly infinite ways to provoke the wrath of the security forces; thus, few respondents were untouched by persecution or political violence. The imprisonment, torture, or execution of family members, neighbors, and acquaintances was common knowledge and never far from the surface in any discussion of life under Saddam.

My brother is a civil engineer specialized in constructing bridges...Saddam asked him to build a bridge and a lake for him. There were mistakes in the blueprints. My brother tried to correct it but they arrested him. They tortured him for three months and hanged him from the ceiling. Only after five months in jail they discovered that he was innocent. (Shi'a woman, Baghdad)

Just because my sister's husband was a peshmerga...Iraqi security arrested [my sister], blindfolded and handcuffed [her], and put her in jail. She was pregnant at the time, and

she delivered her baby in jail and bled so much during the delivery. The child was named "Jail" after the incident, for remembrance. (Kurdish woman, Erbil)

I have a brother, 16 years old, who has been executed. He was like a son to me—I raised him. They came and took him and executed him. He had no political involvement and he was not interested in politics. (Former military officer, Baghdad)

Families of the missing and former political prisoners described in detail the traumas they underwent. A woman who lost her son remarked on the impermeable wall of silence that she confronted when inquiring about why he was arrested and whether he was still alive. *"On the first of May in 1991 he left home to go to work in his Mitsubishi car and a car chased him and they took him from his car after blindfolding him...Until now we know nothing of his whereabouts...We submitted requests to the Defense Minister and General Security...and they did not respond at all. My son is married and he has a son and until now we know nothing about him."* A man who was arrested in Najaf for political reasons recounted that in 1980, his father and uncle were both arrested and disappeared, *"and since that day and up to date, we don't know anything about them both. It's been 23 years."* Experiences of severe torture, arbitrary legal proceedings before "special" (political) courts, and ritual humiliation were common among all former political prisoners interviewed in each of the three major regions. A Kurdish former political prisoner observed that persecution took three forms: severe punishment to crush the spirit, constant harassment and surveillance after release, and the deprivation of economic resources through employment dismissal and the confiscation of property. Continuous harassment and property seizures were also common for political prisoners interviewed in Baghdad and southern Iraq. *"And even after the release from prison the ex-prisoner is not allowed to participate in any activity and he is not covered by any benefits, so he loses everything."* One former political prisoner compared his experiences to being stripped of his citizenship.

More than one respondent referred to Iraq under Saddam as a "jail." A participant in a focus group comprising families of the missing remarked that *"we have all been harmed and Saddam was fair in his injustice."* Overall, focus group discussions and individual interviews revealed a degree of commonality in Iraqi consciousness of the kinds of violations that occurred in various parts of the country. Some respondents mentioned or showed awareness of human rights violations suffered by particular religious or ethnic groups. For example, respondents in Baghdad were familiar with the violations suffered by Kurds in the north, while some interviewees in the Kurdish north referred to the sufferings of the southern Shi'a: *"These terrible cases were not only against Kurdish people but also Arabs and other minorities...Our Arab brothers were in jail with us."* The nearly universal exposure to human rights abuses and persecution under Saddam Hussein's regime may have fostered a kind of common national experience of suffering, a sense of unity in the injustice inflicted in the name of a readily identifiable individual figure.

B. Diversity Within a Common Experience of Abuse

Nevertheless, particular ethnic and religious groups emphasize different kinds of violations. Kurds experienced the Anfal Campaign and the use of chemical weapons against Kurdish villagers as genocide,¹⁷ a systematic attempt to exterminate them as a people.

¹⁷ The Convention on the Prevention and Punishment of the Crime of Genocide, entered into force on Jan. 12, 1951, defines "genocide" in Art. 2 as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing

I saw with my own eyes the victims of the chemical weapons in Badirsan. ...In one family, there are 33 missing persons. This has, of course, affected everyone. (Lawyer, Erbil)

During the Anfal campaign, using all types of methods, Saddam wanted to annihilate us—with chemicals, aircrafts, and bombing. (Anfal widow, Erbil)

The violations that took place were the genocidal actions against the Kurdish people. I call it a holocaust—that which Hitler did to the Jews. Saddam killed our people; it was genocide. (Kurdish woman, Sulaimaniyah)

The armed conflict between Kurdish insurgents and the Iraqi Army also occasioned persecution in the course of attempts to suppress the main Kurdish political groupings and erode their support in Kurdish regions. One strategy was the forced dispossession of Kurds from their land and homes and the resettlement of Arabs on those properties. “*The Ba’ath party kicked us out of Kirkuk. We went to the suburbs, to the villages, but then they deported us to Chamchamal. I lost everything, all my properties and belongings.*” Direct experience or knowledge of expropriation and forced displacement as a result of Arabization was common among Kurdish respondents, and one of the principal bases for demands for compensation (see Section III(C) below, concerning reparations).

Kurds, Turkomans, and Assyrian Christians all noted that the Ba’athist state promoted an Arab identity that resulted in overt discrimination against non-Arabs. In strategic areas, Kurds were ordered to renounce their Kurdish identity on pain of deportation: “*The Ba’ath told us to change [our] nationality or leave Kirkuk. We did not want to change our nationality because we are Kurds, so they told us you to get out.*” Several respondents also stated that Kurds were treated as “second-class citizens,” denied the expression of their cultural and linguistic particularity, and subject to economic discrimination.

In Iraq there was an administration...that would deprive the Kurds [from] getting employed in very sensitive positions despite their excellent qualifications (for instance, [in] the oil companies). ...If a Kurd was in the Air Force, he was not allowed to be a pilot. (Kurdish man, Sulaimaniyah)

We couldn’t express our opinion freely; the curriculum was all in Arabic. (Kurdish woman, Sulaimaniyah)

While acknowledging human rights violations such as execution, torture, and imprisonment, Turkoman respondents stressed their experiences of discrimination because of their non-Arab identity. These included uncompensated expropriation as part of the “Arabization” policy, and discrimination on the basis of ethnicity in the fields of employment, education, and language.

As a Turkoman citizen living in Kirkuk...I have a home that they took in 1990 and gave to...the Arabs who migrated from the south. They brought them on purpose so as to increase the percentage of Arabs in Kirkuk. (Turkoman woman, Kirkuk)

I graduated from the college of civil engineering, and my grades qualified me to apply for postgraduate studies. But the Dean’s secretary told me that I had no right to continue my

measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.”

studies because my name is “M.K.” and that I was from the “Turkoman” nationality.
(Turkoman man, Kirkuk)

Assyrian Christians¹⁸ expressed similar sentiments about the denial of opportunities based on ethnicity, and the sense that their identity has never been recognized in any part of the country. *“I am Assyrian, I have a language, tradition, and culture but I was forced to speak Arabic....According to the majority, they say the Assyrian vanished. but...we have our language, tradition, and Assyrian culture, so how is that true?”*

Not unlike the Kurds, the Shi‘a Arabs of the southern wetlands of Iraq (Marsh Arabs) suffered persecution and focused on their experiences of dispossession, forced relocation, and the destruction of their means of existence through the draining of the marshes. Economic deprivation went hand in hand with political persecution, and was inflicted—and *experienced*—collectively.

Q. What forced you to move here?

A. (All): Water. Because they cut off the water.

Man: The water and electricity.

Man: Saddam Hussein and the former regime.

Man: Because of the water. El Ahwar was packed with people; there were 400 tribes inside El Ahwar; they were deported by using force or without force.

(Marsh Arab community, outskirts of Nassiriyah)

When the intifada took place in 1991, we participated in it against the oppressive rulers and some of us were kicked out of Iraq. The government fought the others who stayed here and deported us to other regions. Whoever had a job, lost it. I lost my job and was imprisoned in El Radwania. Some of my friends were executed.

(Marsh Arab man, outskirts of Nassiriyah)

C. Perceived Reality of the Shi‘a/Sunni Division

In innumerable desktop policy analyses of Iraq, much has been made of the Shi‘a/Sunni division, which is often characterized as a fundamental fault line in Iraqi society. The research underlying this report suggests a more complex picture of the nature of sectarian divisions in Iraq. There is no doubt that the distinction between Shi‘a and Sunni is a dimension of social consciousness. But, Shi‘a respondents and focus groups did not support the concept of an intrinsic and inevitable social rift. Rather, respondents who addressed this issue considered sectarian divisions (to the extent that they were admitted to exist) as the product of the old regime’s deliberate strategy to divide Iraqis against themselves and perpetuate Saddam Hussein’s rule. Three months after the U.S. invasion, there existed a civic or national identity that transcended ethnic groups. Nevertheless, the responses evoked a clear sense that the regime disproportionately targeted the Shi‘a, and that the Shi‘a religious institutions and practices faced harsher discrimination. Respondents also complained about discrimination in state sector employment and education.

Most people suffered from those violations, but some did not. There were two criteria to determine on which side one is: sect and loyalty. With all respect to other sects, the Shi‘a

¹⁸ Current Census figures in Iraq are highly unreliable. It is difficult to estimate the size of the Turkoman and Assyrian populations, and the claims tend to be highly politicized. The U.S. Department of State estimates that Turkomans and Assyrians comprise less than 5 percent of the population (see www.state.gov/r/pa/ei/bgn/6804.htm).

suffered most because the regime targeted them the most. As for loyalty, many have served the regime either for benefits or because of fear for their lives. Those did not suffer. Even some Shi'a were among them, but they were mostly from Tikrit and El Ramadi. (Former political prisoner, Baghdad)

I wish you to document the countless injustices that befell the Shi'a...I wish you to document what the Shi'a had to endure. They confiscated my family's property—the real estate, money and houses. They took everything we had. (Shi'a woman, Baghdad)

There is no point to continue to say, this one is Sunni and this one is Shi'a. It is true that the Shi'a suffered more—we all know this—but I say bigotry does not help. The truth must be said about everyone who did wrong, even if he is Shi'a. (Shi'a woman, Baghdad)

There were pilgrims to Al-Hussain¹⁹ and the boys went to buy something; they did not do anything, they just said, "We swear by God that we will not forget Hussain."²⁰ All of a sudden, the security forces came and started beating people. (Shi'a woman, Najaf)

At that time, people who were found with Islamic books or lectures and these sorts of texts were tortured and jailed. (Shi'a man, Najaf)

In terms of education and schooling, the first and preferred students were from the northern governorates. (Shi'a man, Najaf)

I joined the army in 1994....They invited us to attend a training course on computers. I waited for an hour and then they took all my information and they asked me where I live. I answered, in the Al-Thawra area in Baghdad, which is a poor Shi'a residential area. They refused me. (Former military officer, Baghdad)

I would like to add that the northern areas like Tikrit and others were not experiencing comfort and happiness the way European countries experience it, and there was pressure on them. In spite of their loyalty to the regime and their proximity to it, at the end of the day it appears that there was one policy adopted, which was "starve your dog and it will follow you." (Shi'a man, Najaf)

Statements such as these, and the tendency to assert that the Iraqis "are all one people," lend weight to Farouk-Sluglett and Sluglett's observation that a more meaningful fault line in Iraqi society is "the one between the Takriti power-holders and the majority of the disenfranchised and disenfranchised population, both Sunni and Shi'i. Most Iraqi Shi'is consider themselves Iraqi Arabs first and foremost...and deeply resent the ghettoisation to which successive regimes have subjected them."²¹ The question of national unity and reconciliation is considered further in Section IV below.

¹⁹ Revered Shi'a Imam.

²⁰ Recitation of loyalty and remorse for the suffering of the Imam Hussein, son of 'Ali, a mark of Shi'a faith.

²¹ Marion Farouk-Sluglett and Peter Sluglett, *Iraq Since 1958: From Revolution to Dictatorship*, I B Tauris: London and New York, 2001, at 300. See also H. Batatu, *The Old Social Classes and the Revolutionary Movements of Iraq*, Princeton University Press, c.1975, at 40–50.

D. The Arbitrary Nature of the Abuse

Apart from severe physical abuse and the denial of civil and political rights, a recurring theme in many discussion groups and interviews was a view of the Ba'athist state as pervasively discriminatory, corrupt, and subject only to the will of Saddam Hussein and his inner circle. The portrait that emerges is of a social life in which Iraqis lived in fear not only of political violence and persecution, but also of arbitrary and unrestrained conduct of the powerful. Basic goals, such as education and employment, and access to basic public services like electricity and water, depended on the whims of Ba'ath party cadres, venal state functionaries, and the increasingly paranoid political decisions of the ruling clique. Respondents blamed Saddam for degrading the social and cultural life of Iraqi society, and reducing it to a point where the moral fabric was in tatters, causing citizens to behave in ways that brought shame upon themselves.

The previous regime promoted backward values in society and corrupted the ethical values. The obvious example is the corruption of the school system and the health system. (Shi'a man, Baghdad)

[Saddam] tarnished the reputation of the Iraqi people. He made us appear a barbarous and cruel nation where individuals conquered and killed each other. On the contrary, we are like all Arab countries; we are still the trustee of one common civilization but what shall we do? This ruler came, got full control of us, and used the army and the guards unfairly for his personal benefit. (Shi'a woman, Najaf)

The Ba'athist cells take bribes from people and abuse the families who have imprisoned members, who have executed members, who have members living abroad. (Turkoman woman, Kirkuk)

I did not have party membership. So they told me you have to be a Ba'athist, so I told them I do not want to be a Ba'athist; I am a peaceful person. They said you have to join the party according to your place of residence, and you have to be a member of a cell. Because I was not a Ba'athist I spent a year-and-a-half without a job and my party application was delayed. (Assyrian Christian man, Baghdad)

We have been suffering for 20 to 25 years. On a daily basis, an official from the party or from Tikrit would come wanting a sacrifice or livestock and we would give it to him. (Tribal shaikh, Nassiriyah)

And the law was like a piece of rubber: when they wanted something for themselves they would stretch it, and when they finished, they would release it. They act as it pleases them. (Former political prisoner, Najaf)

It is not a question of who is the dominant and who is the subordinate. It was a gang and [Saddam] was their leader. (Former military officer, Baghdad)

The anger and sense of injustice at the arbitrariness, patronage, and clientage that characterized life under Saddam was evident in relation to access to education and military conscription. Children of Ba'ath party members were given priority for places in the most prestigious university faculties and professional schools, and entry to graduate study required Ba'ath party membership. Others spoke of being denied educational opportunities because members of their families had been persecuted by the regime and their family names were thus "blacklisted."

The president created this classism. Why should a Ba'ath party member get to enjoy special and exclusive privileges? Even in the educational and school system, this applies to the president's friends and martyrs' sons who got extra grades. School systems are not supposed to be affected by anything. For instance, a student who got 90 percent and who wants to go to medical school could be joined by another student who only got a 65 percent grade just because he knows a friend of the president or his father is a comrade [in the Ba'ath party]. (Sunni man, Baghdad)

There were extra grade points given to some students not by merit, but for their closeness to the former regime. (Assyrian Christian woman, Baghdad)

There are so many things that are prohibited to Iraqis; only the men of the ruling system were in control, they were the only ones that lived their lives. (Sunni woman, Baghdad)

Our destiny and life was in their hands; you have to sign [with the Ba'ath party] to continue your life or anything else. (Kurdish woman, Sulaimaniyah)

We had no choice when we went to school—it was not optional. We could not choose our universities or colleges. When we were students at the university, we had to sign to join the Ba'ath party—we couldn't receive our degree or diploma certificate without signing with or joining the party. (Kurdish woman, Sulaimaniyah)

As for me, I dropped out of school in 1991 because of what happened to my brother. If I go to school, they will find out my name and they will ask the whereabouts of my brother, so I couldn't go. (Shi'a woman, Baghdad)

This sense of lost opportunity and stifled potential to shape one's own future was evident in discussions concerning conscription, which was mentioned in many discussion groups as an onerous and unfairly imposed burden that destroyed some of the best years of men's lives. The requirement that all eligible males carry documents proving that they had undertaken their military service created more opportunities for harassment and extortion by security services and police, who would threaten to challenge the authenticity of documents or destroy them unless a bribe was paid.

A simple example of human rights violations is the military service. If a young man's age reaches 17 years and he has not completed his studies, he has to go the military and they will give him a salary that does not suffice for a day. If his financial situation is weak, he is forced to run away. If he runs away, his ears are cut off. (Assyrian woman, Baghdad)

The problem is that once anyone graduates at age 18, he enters the military conscription and that chokes us and silences us.... We were not allowed to learn; we had to serve in the army. (Chaldean Christian man, Baghdad)

I couldn't continue with my education because at the time Saddam wanted me to be a soldier to fight. (Kurdish man, Erbil)

In 1995, I skipped joining military service for three years and two months. When they caught me, they assigned me to a border station above Mosul called Sinjar. Inside the station is all torture...I was harmed with poison and I caught a pulmonary inflammation and then they moved me to the farthest point in Iraq....I completed military service, which

is three years...but they wanted me to serve [another] period equal to the time I skipped joining the army, which was three years and two months, so the whole period would become six years. (Shi'a man, Baghdad)

E. Impact on Iraqi Society

Numerous respondents mentioned family members or relatives of friends who left the country, fleeing either persecution or the stagnation engendered by almost 20 years of uninterrupted war and a decade of economic sanctions. *“All these circumstances made us think of one goal, and that is to leave Iraq”* (Sunni woman, Baghdad). The demands of obedience, loyalty, and ideological conformity were a heavy burden. *“To summarize what all my colleagues here have said, the Iraqi person did not know what ‘rights’ were, he only knew what ‘duties’ were”* (Male lawyer, Baghdad). A tribal shaikh in Nassiriyah described the tragicomic aspects of the obligations: *“You start your day by going to work. Then they ask you to leave and go join a protest in the streets against America. So you go, then you go back to your home to rest. In the evening, they ask you to go to train with the volunteer army and at night they tell you there is a physical and technical training. ...The next morning, you want to go to work, but you face the same situation again.”*

Many discussion groups and interviews dwelled on the long-term psychological and societal effects of the systematic human rights violations. While the questions did not focus on the psychosocial aspects of Iraqi experiences, many of the participants volunteered this information. This suggests a high degree of trauma, manifesting itself in pervasive feelings of fear, despair, cynicism, and mistrust of all claims to authority. This must be taken into consideration when determining what kinds of transitional justice processes will be most effective in helping to repair the social fabric of Iraqi society.

The success of the former regime in terrorizing the populace was evident in the number of respondents who referred to their ongoing sense of fear. But equally pervasive were the corrosive effects of fear on family and social life, engendering suspicion, mistrust, anger, and resentment. Wars, imprisonment, emigration, and economic deprivation broke up families and made “normal” life very difficult. Former political prisoners and families of the missing spoke about specific physical traumas and psychological consequences.

Our life was full of lies and fear. Our life was a big lie. Everyday the children chant in schools, “Long live our leader, long live our hero.” (Shi'a woman, Baghdad)

I swear by God that the injuries of our souls cannot be healed. We underwent the incidents of 1991....These things are deep inside the Iraqi soul. I think that even if they repair the injustices with money or houses, we cannot forget the tragedy that we lived; we were running in terror in the streets, we did not know where the bombs came from or where they fell, we were anxious about our men and youth. (Shi'a woman, Najaf)

Saddam put fear into the Iraqi people. After the U.S. entered Baghdad, we were watching a video about Saddam's crimes when my mother asked us to switch it off, because she was afraid that the Ba'athis would come and arrest us. We told her that Saddam is gone, but this shows you how he made us scared. (Former military officer, Baghdad)

We spent our life crying tears of pain and suffering and we became really fed up or disappointed and we gave up. Actually, we are still afraid because they say these circumstances are fragile and things might go bad. (Kurdish woman, Erbil)

My husband was lost in 1991 and I had three daughters, the oldest of whom was 6. After my husband was gone, his parents gave us a piece of land, so we built a house on it, but they came and took everything. That caused me a shock, and this is the medication I take. (Wife of a missing person, Baghdad)

Saddam did not succeed in killing the Iraqi person, but he succeeded in terrifying the Iraqi spirit. (Kurdish lawyer, Erbil)

The theme of irreparably damaged human relations also surfaces in discussions of the ways in which the climate of terror engendered a breakdown of trust and confidence at all levels of society. One participant reiterated the notion that honesty was a dangerous vice under the old order and noted that “*lying has become a habit for us, out of fear*” (Sunni man, Baghdad); another Sunni man in Mosul stated that “*there was no confidence between friends,*” while a Turkoman in Kirkuk bluntly stated that “*there is no trust, trust is entirely nonexistent.*” A respondent from the University of Mosul gave an insight as to how Iraqis taught themselves not to trust.

I used to have students from the south, and they used to come to my offices sometimes, over the past 20 years, telling me things about their fathers and brothers being killed. One has to show sympathy, but I, at the time, knew the risks if I showed sympathy toward a person, and I don't know who this person is; he may be a party member or an intelligence person. I don't know to ever express my feelings. And when you don't express your feelings at the right moment, you will have this secret.

At the family level, another respondent noted that a father might not discuss issues freely even in the home, because “*he was afraid that his child would go to school and talk about it innocently...This is the ultimate disaster*” (Iraqi Communist party member, Baghdad). Conversely, the father might not believe the son: “*Even your son, if he tells you something is true, you might not believe him*” (Shaikh, Nassiriyah). A Kurdish respondent summed it up by saying that “*Saddam didn't let anyone trust even themselves, let alone their brother or mother.*”

Many participants saw this destruction of trust as part of a wider degeneration in ethical and moral values that the dictatorship created. A Kurdish respondent from Erbil observed that the “*sequel is to be seen in the destruction that was left behind in Iraq and the deformation of Iraqi society: the smirching of its morality, its psyche, a personal deformation.*” A Chaldean Christian woman from Baghdad concluded that the “*sensitive emotions and thought of the Iraqi man are destroyed, not only those who were tortured in prisons by the security and intelligence agencies but our youth now are stifled. They dried up the Iraqi man so he became very fragile.*” Looking to the future, a Shi'a man from Baghdad argued, “*We need a moral revolution. Saddam has been in power for 35 years and he has destroyed all social values.*”

When recounting their experiences, some respondents stressed their fatigue from decades of war. A number of participants between 20 and 35 years of age (a large proportion of the Iraqi population is younger than 30) observed that they had seen nothing but war, terror, and hardship for almost their entire lives. This endless state of emergency was blamed for a sense of exhaustion and a depressed outlook on life.

We got tired; 35 years of torture. What have we Iraqis seen of our lifetime? I am 24 years old. What have I seen but war and problems? (Sunni woman, Baghdad)

In short, no one lived their life in Iraq. No child lived their childhood, and no youth enjoyed his youth; no elderly lived through their old age. (Sunni woman, Baghdad)

We are tired. We fought the Iran-Iraq war for nine years and after that the mother of all wars came and we were unable to fight....In my 36 years I have never possessed a car, a house, a bank account. We are tired. Since the age of 16 I have been enduring wars. Twenty years of war and destruction. We want to be able to live in the world and in modernity; we want real democracy. (Shi'a man, Najaf)

I was born in 1979. I do not remember anything except that my father was in the army in the Iran war. My uncle was martyred during the war and my other two uncles were disabled. Then we faced the period of [sanctions], which caused terrible separations and immigration. (Chaldean Christian woman, Baghdad)

All our life is suffering. Look at our situation and life. Our spirit is drained. (Marsh Arab, Nassiriyah)

F. Victims' Conception of Human Rights

In light of these experiences of repression and isolation from the international community, it is not surprising that the respondents' definition of "human rights" was not informed by technical definitions contained in recognized human rights instruments, such as the Universal Declaration of Human Rights. Respondents made almost no reference to international instruments or internationally recognized definitions of rights.

However, the concept of human rights is nonetheless meaningful for Iraqis. Responses indicate that it is broadly understood as a set of social and moral goods that are a precondition for a life with dignity. As such, respondents' ideas coalesced around core concepts such as employment and basic services (electricity, water, health); essential associational freedoms that are prerequisites for democratic activity (freedom of speech and communication, freedom of conscience, freedom of political association); legal protections against arbitrary conduct (freedom from arbitrary imprisonment, freedom from confiscation of property, fair trials); and protection from political violence and persecution. Among Kurdish women in particular (but also some women in Baghdad and in the south), participants articulated concerns about gender-specific rights issues, such as spousal abuse, denial of equal opportunity in employment and education, and the effects of current conditions on the well-being of children. "*Absolutely, there is discrimination against women*"; "*Why are people ignoring us as women? Why are people ignoring our opinion?*" (Kurdish women, Erbil); "*None of the Kurdish children are getting help from their government*" (Kurdish woman, Sulaimaniyah).

Because human rights were conceived as the basis for a decent life with dignity, some respondents also referred to Islamic teachings, which clearly informed their concepts. The severe personal insecurity and disorder that followed the fall of the regime has also left an indelible impression, leading many, particularly women, to refer to "security" as foremost among human rights. The focus of human rights understanding was on respect and recognition of basic humanity and the need to restore dignity to those whose humanity was stripped away.

We are not in a position to answer because since our birth we have not seen or known human rights, and so our answers will be uninformed. (Shi'a man, Najaf)

Safety is very important and a human right. (Sunni woman, Baghdad)

Security is part of human rights, but before everything else, freedom in your country. No one should control you except you. (Sunni man, Baghdad)

The most basic ones are food and medicine. (Shi'a man, Baghdad)

The simplest human rights, such as electricity and water, are not available to us. (Chaldean Christian woman, Baghdad)

Human rights means treating a man according to the way Allah has created him and endowed him with dignity. (Sunni man, Baghdad)

The most important issue is children's rights. The children are malnourished. Over the past decade, these rights deteriorated badly. (Shi'a woman, Baghdad)

I want the one who I like to represent me, to be able to say no, that I do not want a certain person. A person to express his opinion with all honesty and without fear. (Shi'a woman, Baghdad)

It means choosing a way of life that is far away from egoism, selfishness, racism, and tyrannies; prevention of domination and away from jungle law, which means that the big dominate the weak. (Kurdish man, Erbil)

My freedom, my right to choose my clothes, my companion, my party, my right to secure a suitable standard of living and to express my opinion. (Turkoman woman, Kirkuk)

To me, "human rights" means to live in dignity and find all that we need so that we can live in dignity and freedom. (Chaldean Christian woman, Baghdad)

[Human rights means] the freedom of a person in living the way he likes. The ruling regime used to choose everything. It chose the book you read, the program you watched, the food you ate, and it chose the newspapers and your way of life. Its choice was through arbitrary commands, so it treated you like a military person who had no choice. (Family member of the missing, Baghdad)

Kurds, Assyrians, and Turkomans also stressed minority rights, such as freedom from discrimination based on ethnicity, the right to use their own language, and the right to practice their culture and have the government recognize it at both regional and national levels. Assyrian Christians referred to religious freedom, as did some Shi'a respondents.

Human rights means to us that every sect and ethnic group in Iraq can practice its cultural and religious life without fear or oppression, and all sects, ethnic groups, and political parties to exist and work under the law. (Turkoman man, Kirkuk)

Before anything, a human being should be free to express his feeling, his nationality, and the religion that he chooses, and to practice his culture and traditions and study his language. (Assyrian man, Baghdad)

This is not against the Arabs, not against the Sunnis, not against the Shi'a. Really, the Kurds, as a nation, have the right to self-determination. (Doctor, Sulaimaniyah)

We have our own language. We have our own culture. We would like to stay with that culture....We have not become Iraqis here, we are still Kurds and we want to stay that way. We want to stay in Iraq. That's a different issue. But that doesn't mean that Iraq is going to impose their language or their culture. (Kurdish woman, Erbil)

Iraqi conceptions of human rights correlate closely with their experiences of oppression and the kinds of violations that they suffered under Saddam Hussein's regime; i.e., it is a view that emerges out of personal experiences of human rights violations. Rather than being seen as a separate body of principles with a determinate content, "human rights" is defined in opposition to or as the obverse of the concrete experiences of injustice. Whereas the old regime was characterized by arbitrary violence, patronage, clientage, exclusion from education and employment, dispossession, deprivation, and the abuse of power, the notion of "human rights" expresses a hope for the realization of everything that the old order was not—legality, basic human security, transparency, and accountability of power holders. The emphasis on social and economic rights may be read as a reflection of the severe economic hardship that most Iraqis endured as a consequence of 20 years of unrelenting war, economic sanctions, and crumbling infrastructure.

II. JUSTICE AND ACCOUNTABILITY

"The trials should be public, in front of the people, so that they feel that they have truly been liberated and that their rights have been returned to them by those who stole them."
(Sunni cleric, Baghdad)

Among Iraqis, concepts of "justice" gravitate toward ideas about what constitutes a just society. Common formulations of this ideal revolve around civic equality and nondiscrimination, good governance and the rule of law under a constitution, freedom from arbitrary imprisonment, and respect for women's and children's rights. Once again, this can be seen as the inverse image of the old regime—a just society is everything the old order was not. However, there is also a clear recognition of what a society should be. As one Sunni man from Baghdad expressed it, *"We wish that justice would be achieved now, because during the Saddam period there was no justice."*

When asked more specifically about forms of legal justice and how to handle individuals who committed human rights violations under the old order, there was considerable support for holding perpetrators accountable through legal trials. Respondents commonly saw legal justice vis-à-vis the old regime as an important part of building a just government and society for the future. Respondents from all parts of the country generally supported a trial process that was just, in accordance with law, and in which the punishment matched the offense and the crimes and those who committed them would be publicly exposed.

I think I was very upset when they said Qusay and Uday had been killed. We were all very upset....Saying that they shouldn't have done that...I wanted them to come out. I wanted [Qusay and Uday] to see what they had done. I wanted them to be in court, so we could ask all these questions that needed to be asked about what they did, how they did it....So we can see their faces, how they feel. (Kurdish woman, Erbil)

All of them should be tried. Tried, but not in a revolutionary court, like Saddam's. We should have civil courts, and open courts for all the people, and they should punish them.
(Assyrian Christian leader, Baghdad)

They should be tried in an open, public trial, and their punishment should be defined according to law. (Shi'a cleric and religious jurist, Baghdad)

Our relationship with [the previous regime] was that of executor-victim...What we do not need is to exchange roles: they become victims and we become executioner. They are humans, just like us. We should establish Iraqi courts and try [them] according to the newly drafted laws, not according to the laws they drafted for us. (Lawyer, Erbil)

Trials are important because they may be unfairly accused. The court is the master of decisions, and justice is the basis for the sentence. (Tribal shaikh, Nassiriyah)

Participants in focus group discussions supported the idea of trials, although comments indicated revenge and retribution as principal motivating forces among some, particularly those who suffered most directly at the hands of the regime (such as former political prisoners and survivors of the Anfal campaign). Nevertheless, there was a common strand across focus groups from various regions, sects, and ethnicities that responsible individuals be punished *according to law* and through a court process. A trial of some form was seen as a means of ensuring the *publicity* of the regime's crimes and giving a measure of satisfaction through visible accountability. Not everyone believed in the idea of a "fair trial," as they felt that leaders of the old order should be tried in accordance with the harsh laws they applied to everyone else. In most groups, the majority of respondents believed that summary justice—in the form of execution and or torture without trial—would be preferable. The feeling that "everyone knows that Saddam is guilty, so what is there to prove?" was also common.

They will not be punished the same way they acted with the people; rather, they will be tried by a just judiciary inside Iraq. (Shi'a man, Baghdad)

They must be judged. There must be a legal trial. (Shi'a women, Najaf)

Oppressed Iraqi citizens should be given the chance to stand before the court, and sentences should be based on what they have to say. (Sunni man, Baghdad)

In a democratic way, they should be referred to an independent criminal court to be tried. (Kurdish man, Sulaimaniyah)

Those who are accused must be tried in a lawful manner. Those who are sentenced to death must be executed. Those who are not given any sentences, well then that is their justice if that is the decision of a just and legitimate court that has been set up to determine the guilt of these criminals. (Kurdish man, Erbil)

A trial. At least everyone will feel that he gets his due. The least thing is imprisonment, and to put them on television to say that they killed, executed, and buried people and that nobody knew of this. (Sunni woman, Mosul)

At least we want to give them the right to a trial, even though the former regime did not extend this right. (Assyrian woman, Baghdad)

Saddam must be tried according to the same law that he used to try Iraqis....So, for example, in 1982 I was sentenced to death and I got out. When the lawyer came, he said, "I do not have the honor to defend this criminal." We should bring the same lawyer for Saddam. (Former political prisoner, Baghdad)

We want justice and we want revenge. We don't care about any laws. We agree with any legal system; we just need revenge. (Anfal widow, near Erbil)

God willing, it will not need a trial. God willing, like the killing of his sons. In this case, we will not need a court or lawyers or judges; Saddam is a criminal.
(Kurdish lawyer, Erbil)

Do you need more proof?...It is obvious that they are criminals.
(Representative, Da'wa party)

Who will judge him? I have thought of a punishment for Saddam, which is to put him in a cage...and every person that Saddam hurt can punish him as he sees fit and we Iraqis would be spectators, including the dead ones. (Shi'a woman, Baghdad)

Once you get him, bring him to us—we want to torture him.
(Kurdish woman, Sulaimaniyah)

I would like to say that I support and agree with human rights principles, but not for these criminals. (Kurdish man, Sulaimaniyah)

A. Who Should Be Tried?

When asked whom they regarded as responsible for human rights violations and who should be tried in court, most respondents identified “Saddam and his followers” or “Saddam and his family” as *most* responsible. As noted in Section I, Iraqis see Saddam Hussein as the embodiment of the old order and identify him with the injustices and violations that were committed. Apart from Saddam, others mentioned specifically were Ali Hassan Al-Majeed (Chemical Ali), who oversaw the Anfal Campaign and was referred to by several Kurdish respondents, Izzat Ibrahim Al-Douri (vice-chair of the Revolutionary Command Council), and Uday and Qusay Hussein (killed by Coalition Forces in July 2003), as well as collective descriptions such as “the national leadership” and “the cabinet.”

Institutions, such as the security and intelligence services and police and judges, were also identified as responsible for human rights violations, particularly by former political prisoners who experienced torture at the hands of their interrogators. A group of Anfal widows singled out the Kurdish mercenaries (*jaysh*), engaged by the former regime to fight the Kurdish insurgency, as acting more brutally than the Iraqi army. A number of respondents in Kurdish discussion groups stated that the Kurdish political parties (the PUK and KDP) committed human rights abuses during the inter-Kurdish conflict of the 1990s, and that these parties' militias and intelligence services continued to violate human rights and repress political opposition in the Kurdish-controlled regions.

The president of the regime, the Revolutionary Command Council, the regional command chairman, and every person who was a violator should be within reach of the court.
(Shi'a man, Najaf)

The ruling family is responsible. They had an influence over every sphere: the army, religion, the party, the tribes. (Sunni man, Mosul)

Look at what Saddam and his cronies did. We say Saddam, but Saddam makes up the entire regime, the entire regime is Saddam. He ordered everything that took place...Saddam also represented all the organizations of terrorism, destruction, and violence. (Kurdish man, Erbil)

The whole leadership. The Ba'ath party leadership, including the party branch members and the high ranks. They are all responsible with Saddam. They are the beneficiaries. (Marsh Arab, outside Nassiriyah)

Man: The Mukhabarat, the security forces, the police, even the civilian police [are responsible].

Man: Even the Mukhtar and the person responsible for distributing the food rations were informers of the regime.

Man: For every 10 households there is a party member who is affiliated with the local and regional organizations of the Ba'ath party, which, in turn, report to the Mukhabarat. For every 1000 households there is one Mukhtar assigned to watch them and report directly to the local security branch. (Former political prisoners, Baghdad)

B. Differentiation Between Saddamis and Ba'athis²²

It is significant that most respondents differentiated between the Ba'ath party leadership and those who actually ordered or committed human rights violations, and Ba'ath party *members* in general. With a few exceptions, respondents were reluctant to place the entire Ba'ath party membership on trial, and there was widespread recognition that Ba'ath party membership was a technique for survival under the old regime that did not necessarily mean direct participation in human rights crimes. At the same time, there were conflicting views about whether persons who did not plan or order human rights crimes, but participated in their commission, should be tried and punished. In light of the vast apparatus of security services, respondents, detention centers, and paramilitary forces, persons falling into this category could run into the tens of thousands. Some respondents were adamant that anyone who committed a crime had to be tried; others were more sympathetic toward lower-level perpetrators who may have been acting under duress. In the rural south, where tribal institutions continue to play a role in day-to-day affairs, several tribal shaikhs stated that they were already resolving grievances against low-level officials through mediation and tribal arbitration. But for those who lost a family member or were imprisoned and tortured, the demand for accountability is strong.

The small ones in power had no choice, but the directors and the officials have to be punished. For example, if I worked in the security agency and disobeyed any order, I would be punished; so that would not be my fault. (Assyrian Christian man, Baghdad)

Only those who were in the leadership and the ones who pressured the people must be tried by the authorities. (Marsh Arab, outskirts of Nassiriyah)

²² The term "Ba'athis" must be considered in context. It sometimes is used to indicate those who were the closest associates and active supporters of Saddam Hussein; at other times, it means rank-and-file Ba'ath party members who used membership to get ahead but were not ideologically and politically committed to the party or to Saddam Hussein.

Of course, the army, the intelligence and investigative agency, the security apparatus, even the simple soldier in the camp. That simple soldier learned to violate and he must be punished. I say that they all must be [tried].
(Representative of Anfal victims' group, Erbil)

When I tell you someone was working in the security [services] for 20 years...what was he doing in the security? Just playing football? ...He was killing people! Torturing! In Iraq, working in security means torturing! (Da'wa party representative, Baghdad)

Saddam really mixed all this together, so now it is difficult to say who is innocent, who is a good man, who is a bad man, who is criminal, who is not criminal, who was willing to do crimes, who was not willing. (Doctor, Sulaimaniyah)

If you don't write a report to cut off my head, someone will come along to cut off your head. So what will you do? You will cut off my head because you are more concerned with preserving your own. For example, if you work in the security forces or the intelligence agency or the political party, you have to write reports. I don't blame this person; it is not his fault and he cannot do anything about it. He is merely following orders. (Tribal shaikh, Nassiriyah)

C. Amnesty

Amnesty was also a topic in the discussions of levels of responsibility. On the one hand, some respondents applauded the virtue of forgiveness, citing it as an Islamic virtue that Iraqi Muslims would respect. *"From an Islamic perspective, particularly Shi'a, we have the option of forgiveness. It is an Islamic or Arab option"* (Shi'a man, Najaf); *"I say Allah forgives what has come before and Allah is the best judge"* (Sunni woman, Baghdad). On the other hand, participants vehemently rejected amnesties for any senior regime figures, and those who suffered most directly—such as political prisoners—disapproved of amnesties for any perpetrators. A participant of a lawyers' focus group in Baghdad stated, *"In terms of the crimes committed by the Saddamists, the courts should be prepared not to lower the punishments. As for the rest, pardons can be considered."* Among key respondents in all regions, there was a willingness to accept "forgiveness" or amnesty for individuals who may have had diminished responsibility for their criminal conduct because of coercion or other mitigating circumstances. Some participants were forward-looking, suggesting that amnesties or pardons for lower-level perpetrators would be a way to conserve resources and move ahead with rebuilding. *"Punishment is not always necessarily the best way. How can you put on trial all the members of the Iraqi army, and the intelligence agency? From a practical perspective, that is not possible and not logical"* (Kurdish lawyer, Erbil). However, some felt that amnesty could be granted only *after* a trial had established the facts, or after the accused person accepted responsibility for the act and was banned from occupying public positions. *"There should be some power in society against him, to make him remember that he was a part of a policy that destroyed our country, which destroyed our society"* (Assyrian Christian leader, Baghdad).

D. The Responsibility of the International Community

When addressing the question of responsibility at a higher level, many respondents pointed to the role of the United States in supporting Saddam Hussein, and the ineffectiveness of the United Nations in restraining the regime's human rights violations. Most respondents also regarded Arab states as culpable for supporting the old regime and profiting from the desperate circumstances of the Iraqi people. Suspicion and distrust of the UN was most evident among respondents from the

north (both Kurdish and Turkoman), who believed the UN's actions entrenched the regime's grip on power through the Oil for Food Program. In the central and southern regions, some criticized the UN for its inaction concerning human rights abuses.

Saddam Hussein was the same as before 1988. The United Nations didn't issue any resolution and no report had referred to the violations perpetrated against the Iraqi people until the [Anfal] operations and the Halabja incident took place. Though the United States issued a decision in 1988 to put a unilateral economic embargo on Iraq, the United Nations did not issue any resolution and its institutions didn't show any reaction. (Turkoman man, Kirkuk)

When they give a baby a bottle of milk, they get their money back from Iraqi oil, and this is not help. It doesn't mean that they are helping us. They are stealing our money and they give it back to us in the name of help and support, but...they did not care or have concern about Iraqi people. (Former political prisoner, Erbil)

The UN was representing the Iraqi government....In my opinion, [in] these areas, which were out of the Iraqi government's reach since 1991, the UN repressed our people in different ways; they were here just for the money. (Kurdish man, Sulaimaniyah)

[The UN] are thieves; they steal our money and look after their own interest. (Kurdish man, Sulaimaniyah)

Had it not been for the actual siege imposed on Iraq by the United States and the United Nations, we would never have had a Saddam. Saddam and members of the Ba'ath party pressured people for fear that outside pressure would lead to an internal explosion. (Sunni man, Baghdad)

I don't believe in the United Nations: it's just mere talk. (Union of the unemployed, Baghdad)

The United Nations did not interfere during the former regime; it imposed on us food sanctions. (Sunni man, Baghdad)

The UN is also responsible for our suffering. (Shi'a man, Baghdad)

Comments indicated distrust of the U.S. relating to two main issues: the nation's history in supporting Saddam Hussein's regime and the collapse of order and the difficult conditions of daily life that emerged with the fall of the regime and the beginning of the occupation. The failures of postwar planning in Iraq appear to have left a legacy of bitterness and suspicion concerning the U.S. motives, while the daily friction of being under occupation by a foreign military force seem to have eroded goodwill flowing from the overthrow of the regime. An undercurrent in negative attitudes toward the U.S. is the sense of humiliation and wounded national pride arising from the being under occupation.

Regarding the trial of the regime and its accomplices, those behind the regime must be tried, and I think you know who it is. America. She should be tried in an international trial. (Shi'a man, Baghdad)

The United States caused this when American planes were patrolling the south, yet she left Saddam to crush the uprising. (Shi'a woman, Baghdad)

Let me say this: from 1990 Bush the father announced that he knew about Saddam's crimes, and in 2000 Bush the son also announced that he was aware of Saddam's atrocities. So, from 1990 to 2002, how many millions have died, how many millions have been killed? If they knew this about Saddam since 1990, how do you trust them to come here and bring about justice? (Shi'a man, Baghdad)

Bush should be tried because he killed and hurt and destroyed the entire country and until now he himself, on this very day, is proud of the airpower, and says that they left their mark....He is proud of them because they destroyed Baghdad or destroyed Iraq and caused suffering among the Iraqi people. (Sunni man, Baghdad)

Yes, the United States is behind it, because the U.S. is just thinking of its own interests. They helped Saddam. (Kurdish man, Erbil)

I hope that the United States of America did not come here for its own interest only and I hope that they will prevent such things from happening again. Because I believe that what happened here in the past 30 years was 90 percent the fault of America, because they created Saddam. They would always look the other way regarding his crimes because of its own interests. (Kurdish man, Sulaimaniyah)

The bad conditions that we have suffered until now have not improved. On the contrary, the situation gets worse. So where are the promises and where are the dreams that [Americans] have been promising? (Shi'a woman, Najaf)

It is an occupation with more vices than virtues. We do not support them, because we are Arab and we have other leaders, but conditions are difficult and the door is closed to us and we cannot do anything. Revolution is in our hearts. (Shi'a man, Najaf)

E. The Basis for Distrust of International Involvement

These perceptions of and experience with international institutions and foreign actors help to explain respondents' largely negative attitude regarding international involvement with any trial process established to prosecute members of the former regime. There was a clear and emphatic preference for any court to be established in Iraq and to operate under Iraqi control. International "assistance" was seen as desirable, even welcome, but most respondents found international participation that might derogate from Iraqis' final decision-making power to be unacceptable. Some focus group participants accepted the involvement of international judges sitting alongside Iraqi judges, but most preferred international involvement in the form of observers and expert advice.

In line with the views concerning the UN and the U.S., respondents were conflicted about where any international involvement should come from in the event that the trial process involved international actors. One point of decisive unanimity was that personnel from other Arab countries should not be involved as judges or advisers, on the grounds that Arab states supported Saddam Hussein and generally benefited from Iraqi misery. "*All the Arabs are with Saddam, how are they going to indict him?*" (Shi'a man, Baghdad); "*Arabic countries contributed to Saddam's tyrant and brought [it] upon us. They considered him a hero*" (Sunni woman, Baghdad). Attitudes toward U.S. involvement were more ambivalent and varied according to region. Kurdish respondents, although skeptical of U.S. motives for being in Iraq, were open to U.S. involvement in the trial process and more open generally to international involvement. Shi'a and

Sunni respondents from Baghdad tended to carry over their negative views of the U.S. occupation into a mistrust of a U.S.-dominated trial process for former regime figures, as did respondents in the southern region. Smaller minority groups, such as Turkomans, Assyrian Christians, and Chaldean Christians, all expressed conflicting views about U.S. participation, although Assyrian and Chaldean respondents were more predisposed to UN involvement. Those that disdained a U.S. role, however, did not necessarily support UN participation in the trial process.

Apart from distrust of international actors and occupation forces, a commonly articulated reason for the emphasis on an *Iraqi* process is that Iraqis understand best what they have suffered over the past 35 years, and so Iraqis should sit in judgment. This is likely related to the feeling that the international community neglected the situation in Iraq and, hence, should not interfere now. Alternatively, the demand for Iraqi control could also form part of a wider demand to allow Iraqis to govern themselves, a reaction to the abeyance of self-determination that characterizes not only the occupation, but previous three decades of dictatorship: beginning the process of “solving our own problems” is part of reclaiming national sovereignty. Among Iraqi lawyers and judges, there was a clear feeling of professional and national pride and a desire to restore the dignity of the Iraqi legal system, which was sidelined by the dictatorship’s use of “revolutionary” and “special” (i.e., political) courts.

People living outside Iraq have never suffered from our problems.
(Turkoman woman, Kirkuk)

For 35 years we did not see international involvement, and we do not want it now.
(Shi’a man, Najaf)

We look at Iraq as one family that has a problem. Outsiders do not deal with a problem in the family. (Shi’a man, Baghdad)

International organizations did not interfere when Saddam was killing us, and they will not interfere in Saddam’s trial. (Sunni man, Baghdad)

There is no opposition to having international judges supervise the proceedings and aid the Iraqi judges in applying the law at this stage. The final word, however, should remain with the Iraqis. (Lawyer, Baghdad)

Where were international bodies when the atrocities were being committed in Iraq? That’s why we don’t trust any quarter. (Turkoman man, Kirkuk)

I do not want an international court that would put him on an island where he would drink, eat, and live normally. (Shi’a woman, Baghdad)

On the whole, respondents were more open to a greater degree of international involvement, premised on the court being based in Iraq and controlled by Iraqis. Respondents from the north expressed distrust in the UN, but were willing to countenance a UN role in the appointment of judges and supervision of standards. This ambivalence was summed up by a social worker from Erbil: “*I think [the UN] needs to come back and say, ‘We will support whatever you are doing; maybe this is a good way to do it.’ I think people are not happy about the United Nations because we have not had any support from them, really, and they always supported Saddam when he was here.*” At the same time, this group of respondents was largely reluctant to see a trial process with heavy U.S. participation. As one Kurdish respondent stated, “*America liberated Iraq, but it has no right to interfere in Iraqi courts.*” Another Kurdish lawyer expressed the need to learn from

the transitional experiences of other countries: “*We should turn to international communities, like what happened in South Africa, like what happened in other countries after changing regimes—like Eastern Europe, when they changed from communist to liberation. We can take lessons from them.*”

Participants from the southern and central regions generally were more positive toward the UN, and most expressed a desire for a variety of noncontrolling forms of international involvement, including training for lawyers and judges, assistance in the collection and preservation of evidence, and the presence of international observers and oversight during the court proceedings. Some also accepted the participation of international judges in deciding cases, provided the “final say” is Iraqi. Attitudes toward the U.S. among southern and central key respondents ranged from mistrust to outright hostility, with most citing the failures of the occupying forces to live up to their prewar promises. Several respondents faulted U.S. military personnel for violating human rights and for their ignorance of Iraqi culture, stating that they were acting as occupiers, not liberators. As a result, respondents from these regions either rejected U.S. involvement in any trials or preferred that involvement be limited to auxiliary functions, such as supporting the court’s needs and providing security.

Help is welcome from anyone. But not interfering. Including Coalition Forces.
(Islamist political party representative, Baghdad)

Yes, you know, we don’t want one country to do this. Especially with the circumstances we are living with now. It will give more legitimacy to the court.
(Assyrian Christian leader, Baghdad)

The trial, in terms of administration, needs to be 100 percent Iraqi, but in terms of the investigation, and the collection of evidence, we need to take advantage of the international community’s experience in this kind of matter.
(Bar Association representative, Baghdad)

I am not convinced of what [the Americans] are doing because there were mistakes from the beginning. I believe they are satisfied with the pain that we are in.
(Tribal shaikh, Nassiriyah)

The UN must have a role in this process. We are asking the UN to be active in these cases, and I ask the UN to cooperate with the Iraqis and Iraqis must join with and participate with the UN. (Senior cleric, Najaf)

F. The Capacity of the Iraqi Legal System

Notwithstanding the strong preference for an Iraq-based trial process, many respondents in focus group discussions lacked trust in the Iraqi judicial system as it functioned under Saddam. Distrust and discouragement appear to underlie the Iraqi psyche and the distrust is as much for their own as it is for the international community. This may be seen as part of a broader distrust of institutions of authority under the dictatorship, but a number of participants commented that judges were susceptible to bribes and could not be independent because of fear and the way they were trained and appointed under the dictatorship. “*Most of them take bribes and don’t follow the law. My great-uncle...is the chief of the appeals court and he is the biggest bribe-taker. There’s maybe one [honest judge] in a hundred*” (Sunni man, Baghdad); “*Those judges and lawyers execute and follow laws that had been written and implemented by the Ba’ath party*” (Kurdish man, Sulaimaniyah). Former political prisoners and victim groups were more vehement in their

criticism, having experienced firsthand the consequences of the old legal order. “*When I was brought to court, they told me that I do not have a lawyer because my family did not know that I was arrested. So, the court appointed a lawyer to defend me. When he stood to defend me, he said, ‘I demand the rotten heads be chopped off’*” (Former political prisoner, Baghdad).

However, respondents distinguished between the practical reality of the legal system under the old order, and the potential to create a new system from among lawyers and judges in Iraq. Despite the problems of the old legal system, many believed that there were sufficient “clean” (i.e., uncorrupted) and competent lawyers and jurists within Iraq who could be drawn upon in order to reconstitute a robust legal system. Thus, expressions of confidence in the legal system were principally forward-looking—expectations that a good legal order could be created in Iraq because of respondents’ faith (and pride) in the capacities of the Iraqi people. Shi’a respondents in both Najaf and Baghdad expressed interest in having Islamic clerics participate as judges, perhaps reflecting the Shi’a tradition of combining religious and jurisprudential responsibilities in the person of the *mujtahid* (Islamic scholar and law-giver). Iraqi lawyers believed that the Iraqi legal framework is essentially sound, with a Civil Code that derives from the French-inspired Egyptian legal system. The problem, in their view, was that the laws were either not followed or altered in an unconstitutional manner by decrees of the Revolutionary Command Council, which also disciplined judges who failed to obey political commands.

The Iraqi legal system is good as long as it is far away from political interference.
(Kurdish woman, Erbil)

I think if we check their background first, we can find qualified judges.
(Kurdish woman, Sulaimaniyah)

If the judges are elected from the experienced and fair ones, there is no problem.
(Shi’a man, Baghdad)

Iraq has scholars, lawyers, and independent people from all religious backgrounds.
(Assyrian Christian woman, Baghdad)

We will give [the judges from the old regime] a temporary chance. In the past, we didn’t trust them. (Sunni man, Baghdad)

A new government needs to be formed because we have jurists in Iraq and we have people with very high capabilities. ...But they need to have their chance.
(Family member of the missing, Baghdad)

The justice system [in Iraq] is approximately 90 years old—since the establishment of the national government in 1920—and has accumulated experience and has men capable of telling the truth, so I don’t think the issue is difficult to the extent that we are unable to solve it. (Judge, Baghdad)

As noted above, motives of revenge and retribution are an important part of Iraqi desire to put Saddam Hussein and other senior members of the former regime on trial. Support is overwhelming for sentencing these individuals to death. For some, even death was too lenient, and they wanted to prolong the suffering through torture. The demand for the death penalty was often justified by the principle of “an eye for an eye,” and participants from both Sunni and Shi’a sects referred to the Koranic injunction that those who murder should themselves be killed. Opposition to the death penalty was not entirely absent, with a handful of respondents arguing

that death would allow the guilty to escape responsibility for their crimes, or that to kill them would replicate the practices of the old regime. One respondent suggested that the death penalty be retained for senior regime figures, but then be abolished.

Saddam used to issue orders and destroy our loved ones. He must not live.
(Sunni woman, Baghdad)

He does not deserve mercy; he did not have mercy on us. (Sunni woman, Baghdad)

The worst-case scenario is that the public remains apprehensive of the dangers [of the old regime] until they can view the execution of those who dirtied their hands with the people's blood....Saddam Hussein went on to kill, pillage, and shed blood, and so to rule realistically and with justice to both humankind and the legal system, the court should rule to have him executed. (Shi'a cleric, Najaf)

In Iraq there is execution. In international law there is no execution. They must be executed. (Sunni woman, Mosul)

They must be punished for as much damage as they did. (Turkoman woman, Kirkuk)

Please do not kill Saddam. We want him in a cage and we will cut him—a piece every day. (Anfal widow, near Erbil)

For the ones who took away our children, spouses, siblings, I wish for him the same as what they used to do to the criminals: torture them in the public square and then hang them. (Family member of the missing, Baghdad)

III. NONJUDICIAL MEASURES: DEBA'ATHIFICATION, TRUTH-SEEKING, AND REPARATIONS

A. Deba'athification

Among the first regulations the Coalition Provisional Authority (CPA) issued concerned "deba'athification." The regulation provided that Ba'ath party members above a certain rank were barred from employment in the CPA and state institutions under CPA control. The original regulation was subsequently amended to permit greater discretion in the application of the prohibition. In February 2004, it was reported that the Iraqi Interim Governing Council (IGC) had created its own deba'athification order that required the dismissal of Ba'ath party members above a certain rank from government employment, with an allowance that they be paid an unknown amount of compensation upon discharge.

Respondents were not asked specifically about the CPA's first deba'athification order. However, they were invited to give their views about how Ba'ath party members should be dealt with and whether they recognized different levels of culpability among Ba'ath party members. Most respondents differentiated between those who were active and enthusiastic supporters of the former regime, and those who either joined the Ba'ath party for self-preservation or did not act unjustly while holding their positions. The former were frequently referred to as "Saddamis" (followers of Saddam), rather than "Ba'athis." Most respondents in all regions felt that it was unfair to penalize individuals solely on the basis of their party membership, and believed that those who joined the party out of fear or in order to work should not be made to suffer for it. On

the other hand, there was clear support for the dismissal of Ba'ath party members who had participated in criminal or corrupt activity, as a means of reforming Iraqi institutions.

All institutions of the previous regime were unjust, but there were individuals within them who worked for the people. The fact that we were able to succeed in many issues proves that. Were it not for those honest people, we would not have been able to get anything.
(Shi'a man, Baghdad)

In some areas, the Ba'ath members oppressed people, while in others they helped. I do not think it is a question of being a Ba'ath party member. (Sunni man, Baghdad)

All of Iraq is Ba'athist because an employee couldn't get a job if he wasn't a Ba'athist, but not all of them are criminals. There are those that are innocent.
(Marsh Arab, outskirts of Nassiriyah)

We know who was a Ba'athist and who was independent. Sometimes, an independent person is more harmful to the people. (Lawyer, Baghdad)

I know some [low-ranked] Ba'athists have committed more human rights violations than [higher-ranked] persons. (Kurdish lawyer, Erbil)

It is not going in a beneficial way for our country...[F]or our own people there should be a distinction between the Saddam regime and the Ba'ath party. And divide the people according to this way: are you a Ba'athist or a Saddamist?
(Psychiatrist and lapsed Ba'athist, Baghdad)

These responses do not mean that participants generally had a favorable opinion of the Ba'ath party and its ideology. The party as a social institution was clearly identified as an instrument of oppression and control that was the means by which Saddam Hussein entrenched his grip over all aspects of Iraqi life. A Kurdish participant blamed the Ba'ath party for entrenching authoritarian habits among Iraqis, leading to a perpetuation of oppression. “[The Ba'ath party] created and converted the thinking of the people to become [like] dictators, so that even after the fall of the regime everyone is like a dictator.” Even the relatively few respondents who defended the ideas of Ba'athism believed that the party under Saddam bore no resemblance to its founding principles and ideology. “When we talk about the Ba'ath party we have to differentiate between the party before Saddam and after Saddam. Before Saddam, the party had a nationalist focus. But Saddam had a different understanding and he changed a lot. The Ba'ath party was led by Saddam and his followers only” (Assyrian Christian woman, Baghdad). But any Iraqi who wished to have a decent standard of living, educational opportunities, and good employment prospects had to join. As one focus group participant from Najaf explained:

I mean, we are students and youths with ambition. You aspire to complete your studies at an institution of education or the college of science. Then you want to be the manager of the hospital, but you need to be highly ranked in the party...The party must approve the salary in any industry...and thus you, an ambitious youth, are forced into interacting with them and abiding by their orders.

At the same time, attention was drawn to the difficulty of identifying those who were complicit in preserving an unjust state of affairs. Respondents in the Kurdish regions were more predisposed to a thorough purging of Ba'ath party members from government institutions than were those from Baghdad and southern Iraq.

The Ba'athists who signed the document to join the party are, in an indirect way, partners in the crimes, because they knew the realities that were going on [due to] Saddam and how he violated human rights. (Kurdish lawyer, Erbil)

They've been used by Saddam, although a lot of them were victims of his policies. But [to] a different degree, they participated in all these crimes that happened in Iraq...I think they have to be managed, as after the Second World War. So, it is reasonable to say, "Yes, there was a good man, Mr. So-and-So, in Berlin. Although he was a Nazi, he never committed a crime." Yes, but he was a participant. (Kurdish man, Sulaimaniyah)

All the members and the leaders...must be held responsible, as they were part of the authority. They should all stay at home and we can give them monthly pensions. (Kurdish man, Erbil)

Some participants, particularly key respondents in the university system, worried that blanket "deba'athification" would deprive Iraq of crucial human resources needed to rebuild its state and society. Several participants also criticized the imprudence of disbanding the army.

Collective punishment is wrong. And they should deal with individuals and not the whole institution...and I told the Americans this two weeks ago. Baghdad fell in a dramatic fashion because the army did not believe in the battle. (Staff member, Baghdad University)

[W]hat is being currently proposed is the application of the German example in Iraq with regards to what happened to the Nazi party...and I believe this is wrong. The "deba'athification" is not the right approach. (Law professor, Mosul)

The decision to dismantle the Iraqi army was wrong in the way it was done because it created a reaction and gave negative results. (Chaldean Christian representative, Erbil)

Paul Bremer is the most ignorant man. He was brought to Iraq. They should have brought scholars. Upon his arrival, he dismissed the Ba'ath people, the ministry of information, and the army, although he could have benefited by their experiences. (Sunni man, Mosul)

This is wrong. Not every individual who belongs to the party should be expelled. (Tribal shaikh, Nassiriyah)

B. Truth-seeking and Historical Memory

Some respondents were in favor of trials, noting the need to publicly expose and record past crimes and identify those responsible. The level of interest in a public account of violations through prosecutions also surfaces through broad support for an official process of truth-seeking and preservation of historical memory. Secrecy, disinformation, and the manipulation of historical memory were salient features of Iraqi life under Saddam Hussein, perhaps inspired by Saddam's admiration for Stalinist political organization. The systematic distortion of history through its crude appropriation to legitimize Saddam Hussein's rule, as well as the Ba'ath party's domination of the "cultural sector" since 1968, made open debate about historical events impossible. At the same time, it may also have led to disaffection and deep suspicion of any attempts to create and vindicate "official" histories. The grandiose mobilization of symbols and

monuments was one of the ways in which the Ba'athist state sought to overawe its citizenry and inculcate an adulation underwritten by fear.²³

Most respondents in focus group discussions supported a process of truth-seeking, culminating in a form of remembrance and memorialization of the experience of the Iraqi people. A strong theme that emerged among respondents was that documentation and preservation of historical memory was necessary *to show the world* the truth of what happened in Iraq. It was regularly asserted that the Iraqi people knew all too well what they had suffered, but that the international community had turned a blind eye or refused to recognize the severity of the situation, reflecting again the sense of isolation and neglect that arose in discussions of international responsibility for human rights violations.

The events that took place throughout the past 40 years [are] imprinted in our hearts and we will convey it from one generation to another. The outside world was tricked. They didn't know what happened in Iraq when they came to Iraq; they don't believe what happened, and many stories are stranger than can be imagined. We must document these events so the world will know about them. (Sunni man, Baghdad)

Another prominent reason for supporting truth-seeking and remembrance is that these efforts may help to curb recurrence by ensuring that future generations know what happened and what mistakes were made. Others emphasized the importance of recording people's experiences for future generations as important in itself so that there would not be a slow erosion of memory over time.

Saddam Hussein wanted to immortalize his name. He wrote his name even on the old Babylonian archaeological sites, as if he was a good ruler. But these records will show the contrary: an opportunistic, ruthless dictator who cared only for staying in power at the expense of his people. (Shi'a woman, Baghdad)

It is very important for the upcoming generations to know that the Iraqi people suffered and to see the pain that we have tasted. (Sunni woman, Baghdad)

We have to record history and expose it to every ruler and minister to make him learn from the past. (Sunni man, Mosul)

The Iraqi people need to learn from the lessons of the past to be able to create the future—not merely say that we remember the past. (Sunni man, Baghdad)

I think we should remember our past in order to prevent it from happening again in the future. (Kurdish man, Sulaimaniyah)

On the contrary, if we maintain files and records, it will be a lesson for the governments to come. (Assyrian Christian man, Baghdad)

We should remember it like a big-screen TV. We see those mass graves—how they show it. How could I forget such a thing? My own sister was executed. Families and relatives in Halabja were gassed and killed. Our relatives in prison were tortured, their nails

²³ See generally Eric Davis, *Memories of State: Politics, History and Collective Identity in Iraq* (forthcoming, University of California Press), Ch. 6–7.

pulled out and their lives lost forever. ...How could I forget? I have to remember all the time. (Anfal widow, Erbil)

For political prisoners and families of the missing, truth-seeking and documentation was a way to preserve their very personal experiences and vindicate their personal traumas through a larger national narrative. A former political prisoner in Erbil stated, “*We, the political prisoners, are like an ID card for this nation; we represent the nation.*” Another former prisoner in Baghdad spoke of his anxiety that people would not believe what he went through unless it was documented and corroborated.

When we tell any reporter about the atrocities, the first thing he asks [is], “Is this story documented?” I once accompanied a reporter who works with a humanitarian organization to a cemetery where some graves had the name and a picture of the buried, while others had only a number on them. Those were the ones who were executed or died under torture. Because there were no names or pictures, no one believes what happened. That is why we have to document everything.

A member of a focus group of victims’ families stressed the importance of allowing them to tell their stories and have them recorded.

By meeting with the families of the victims and listening to the stories of what they experienced. We do not know what human rights are until we are able to speak about them. We know executions and punishments around the clock but we do not know human rights. We know that they take our youths and imprison them, and we go to look for them and we do not find them.

However, participants in a number of groups questioned both the wisdom and the necessity of such an undertaking. For a Shi‘a woman from Baghdad, reopening old wounds would obstruct the wish to move on and rebuild a comfortable life after years of hardship. “*Of course, we want to forget all the past and live a better life.*” A Chaldean Christian man expressed a sense of exhaustion with the unrelenting sorrow of the past, echoing the feelings of fatigue and demoralization described in Section I. For him, it was better to close the book on the past and do something constructive to improve present conditions.

We are sick of words. Since I was 13 years [old] I never enjoyed or relaxed during a summer vacation. When I was very young I was taken as a [military] reservist. We are sick of this and we do not want to remember the events that happened. We do not want to go back to them. They are painful memories that you feel like you do not want to ever remember.

Marsh Arab respondents were also more likely to be ambivalent about the need for remembrance, noting their fatigue and desire to rebuild their lives after this “dark period.” Others were suspicious that the process of recording the past would be susceptible to political manipulation or might unwittingly “immortalize” Saddam Hussein. A number of those who were skeptical about the value of truth-seeking felt that the exercise was somewhat redundant because the Iraqi people already knew the truth and could never forget what had happened. “*Saddam has committed so many atrocities against Iraqi people. How could they be forgotten?*” (Kurdish man, Sulaimaniyah).

A separate but urgent dimension of truth-seeking is the identification of the missing and the return of human remains contained in more than 250 mass graves throughout Iraq. A social

worker in Erbil who worked with survivors of the Anfal campaign described the severe psychological consequences of not knowing the final fate and resting place of loved ones.

I think [learning the truth about the missing] is extremely important. I really do think that, for example, the Anfal people, they have still not accepted that their families have disappeared for good. They are living in black, and they are still waiting...even after the mass graves. I remember when this Anfal woman said, "My mom, when Iraq was liberated, she went out and bought clothes for my sister and brother and she said to me—well, Iraq is liberated now and they're [the men] going to come back, and they have to have new clothes." And this is not just this woman. Every single woman I meet in Anfal, they're still waiting...I mean, if you see the Anfal children, girls...they're still like, dead. They're not very happy people. They need to live. They need to move on.

Respondents suggested a variety of methods for fact-finding. They demonstrated little familiarity with the concept of a truth commission, nor did they know of the particular experiences of commissions in South Africa, Chile, Peru, or elsewhere. But, a number of respondents suggested establishing committees in every locality, composed of reputable people, to gather testimony and document the names of the dead and missing. Others suggested that nongovernmental organizations might play a role, while some felt it should be entrusted to professional historians. In light of the lack of knowledge of experiences in other countries, most suggestions were fairly vague. Participants did offer diverse and creative suggestions for memorializing the past and victims of the regime, including: the declaration of days of remembrance as national holidays; the establishment of memorials in every town and region; the creation of museums and documentation centers, photographic and videographic displays, and artistic works of literature, cinema, and theatre; and the preservation of detention centers and instruments of torture. Consistent with the reasoning that remembering the past was a way of preventing the recurrence of political oppression, many groups suggested that the historical record of the dictatorship's tyranny be incorporated into school curricula.

C. Reparations

There was widespread support among participants for *material* and *symbolic* compensation for victims of human rights violations. A number of respondents recognized that the losses suffered were incalculable and that no amount of money could replace a family member (or in some cases, an entire family) who was killed by the regime. The sense of trauma, disrupted lives, and lost livelihoods is evident from the experiences recounted in Section I. The magnitude of the violations and suffering is perhaps the greatest single challenge for any reparations process in Iraq. One Sunni man from Baghdad despaired, "*Forty years was lost from [Iraq's] life, a complete generation was destroyed; nothing will fix it.*" Nevertheless, most respondents felt that programs for rehabilitation and compensation were essential if Iraqi society was going to be able to move beyond the legacy of Saddam Hussein.

The kinds of material compensation that were suggested tended to be in the nature of assistance toward social reintegration and the recuperation of lost livelihood, rather than single-instance *ex gratia* financial payments. A common thread was a call for assistance that would allow survivors and victims' families to rebuild their lives and restore their sense of dignity and autonomy in society, and recover some of the opportunities that the former regime stripped away. Respondents suggested forms of material compensation that included providing physical and mental health services and access to education and employment; meeting basic needs for shelter, food, and clothing; and returning property that the regime had confiscated.

If they were starving, at least let them live a dignified life and feel that what was lost has something equivalent in return. It is true that [the loss of a relative] cannot be compensated. (Shi'a woman, Baghdad)

They have to have special advantages. Those who were oppressed need to enjoy certain privileges. (Sunni man, Baghdad)

There are so many orphans who lost their fathers and mothers. We need to support them [so that they do not] get lost in society and help them to recover and heal their wounds. (Kurdish woman, Erbil)

They need a lot of things as compensation for what they lost. You will see people who have no place to live or are just living in unaffordable rental houses, and some families have no clothes for their children. They need financial, emotional, and psychological support. (Kurdish woman, Sulaimaniyah)

For example, the employee who was fired from his job was humiliated, so he should be returned to his job. (Assyrian Christian woman, Baghdad)

Victims of Arabization campaigns in the north and Marsh Arabs in the south focused specifically on their losses resulting from dispossession and forced relocation. It has already been reported that the property disputes are a source of conflict in some parts of Iraq,²⁴ and the urgency of establishing a mechanism for restitution of lands, or compensation in lieu thereof, emerges from comments by members of these groups. Marsh Arabs also felt aggrieved by the damage they suffered at the hands of coalition forces during the ground invasion, and demanded compensation for these losses.

Since the Saddam period we have suffered losses, where our homes were destroyed and we lost our livestock and cattle, and we have not been compensated yet. The Americans destroyed everything and we have not been compensated. (Marsh Arab man, outside Nassiriyah)

We lost our land. We lost our houses, our families. We lost everything. We want to return to our land, we want physical support. (Anfal widow, near Erbil)

Most [families of the Ba'ath party members] are occupying Kurdish houses. [The Ba'ath] themselves are hiding, but their families are still in these houses. We need a solution for that and compensation. (Former political prisoner, Erbil)

If their money and their rights were taken from them, then they should be returned. (Turkoman man, Kirkuk)

Former political prisoners and victims' relatives emphasized those aspects of material compensation that would assist their reintegration into society as full members, as well as treatment for the physical and mental injuries they suffered. The underlying objective of this compensation seems to be restoring lost opportunities and overcoming ostracization and stigmatization.

²⁴ Human Rights Watch, "Iraq: Impending Inter-ethnic violence in Kirkuk," March 28, 2003, available at hrw.org/press/2003/03/iraq032703.htm.

First, material compensation, because most of them do not own houses to live and they were denied a salary for 20 or 23 years and they were deprived of food and good clothing, and they were not appointed in work positions...So, they were subject to questioning at any time and in any station of the security stations. All these families were deprived of education. (Family member of victim, Baghdad)

We need both money and moral support because many victims suffer mentally and psychologically. (Former political prisoner, Erbil)

I think it's very, very important for the [Anfal] women to accept what happened to their [sons and husbands]. I think it needs to be followed by counseling...[W]hen the chemical attack happened, all the people died, but all the people around them were affected...There are lots of women, children, and men who are suffering from cancer. (Social worker, Erbil)

We hope priority [will be given] to those families who sacrificed their fathers, brothers, sisters, and mothers. (Former political prisoner, Najaf)

Political prisoners and victims' families also stressed *symbolic* measures that would help restore their dignity and social esteem. Many respondents reiterated the idea that those who have suffered must be valued and given a sense that their suffering was not without meaning as an important part of the process of rehabilitation and recovery.

The first thing is moral [compensation], because the people had their souls broken by the former regime. (Sunni man, Baghdad)

For me, moral compensation is to be given a certificate of appreciation because you lost you son. (Shi'a woman, Baghdad)

Attention needs to be paid to them and their suffering and they need to be treated better in society and they need to be paid visits...These [people] need to be shown as heroes against the regime and not spies for foreigners. (Victims' group, Baghdad)

The symbolic means of compensation that respondents mentioned include days of commemoration, memorials inscribed with victims' names, and campaigns to educate others about who suffered and how—measures that overlap, to some extent, with the forms of remembrance that were discussed. A member of the Anfal victims' focus group rejected symbolic measures (“*all lies*”) and asked, “*Where are the pensions and assistance that we were promised?*,” indicating the risk of disaffection if lofty statements and symbols are not matched by concrete forms of assistance. The potential for cynicism over symbolic measures that are not well conceived was evident in a former military officer's view that, “*This issue of building of statues, we do not like it. We have had enough.*”

Almost all respondents believed that the financial costs of material and moral compensations can and should be borne by the Iraqi state. The common perception was that Iraq is a wealthy country, and that if that wealth is used for the people's benefit, rather than monopolized by one man, it would be more than sufficient to pay for reparations. A minority view recommended that the international community should assist with reparations.

All countries that helped Saddam in preserving his rule for 35 years should contribute financially to help the people that were harmed by the former regime, just like Germany paid to the Jews. (Lawyer, Baghdad)

IV. SOCIAL RECONSTRUCTION AND RECONCILIATION

Social reconstruction has been defined as a process that reaffirms and develops a society and its institutions based on shared values and human rights.²⁵ Securing basic needs, maintaining security and stability, and improving economic conditions were the three most pressing issues for all groups. Education was a widely mentioned topic with multiple dimensions, encompassing education for youth, human rights, re-education for adults, skills training, and culture/value inculcation. Many perceived it as a cornerstone to help Iraq step into the future.

Establishing a new government and reforming existing legal/institutional systems emerged in most groups, although there was no consensus on the form of government desired (e.g., federation, monarchy, or democracy). What is certain is that Iraqis hoped for a just government, with officials selected based on merit, and a legal framework that guarantees human rights, personal freedom, and equal rights. Notably, Shi'a respondents tended to differentiate between the western idea of freedom and freedom within the Islamic context. They believed in freedom and rights, but felt strongly about implementing them in accordance with their cultural values.

The extent to which "reconciliation" is perceived as desirable or necessary depended on how the respondents understood the question and where they thought it appropriate to apply the concept. At a societal level, several issues were addressed: intra-Muslim sectarian divisions (Shi'a/Sunni), interethnic divisions (Arab, Kurd, Turkoman, and Assyrian), and, on an individual level, forgiveness between victim and perpetrator. There was no clear consensus on where to apply the idea of "reconciliation" on the social fault line. The divergent interpretations may also be a consequence of the fact that the equivalent word in Arabic is not in common usage and often had to be paraphrased. Thus, the question was sometimes phrased in terms of whether participants thought there was a need to build "trust and unity" between people in Iraq. It was left open to respondents to reflect on the question in terms of whichever social division they chose. For the purposes of this report, we are assuming that the concept of "reconciliation" as commonly used internationally is similar to the concept of "trust and unity" as phrased by our interpreters and understood by the respondents.

Shi'a and Sunni respondents disputed the need for reconciliation between the two sects. As noted in Section I, Shi'a respondents were aware that the Shi'a as a religious denomination were targets of political violence and discrimination. At the same time, it should be recalled that the vision of Iraq disseminated by the ideological apparatus of the Ba'athist state was not expressly sectarian, stressing instead the national unity of Iraqis as *Arabs and Muslims*. Sectarian discrimination was a social practice and a means of concentrating power in the hands of the kinship networks of Saddam Hussein,²⁶ not an ideologically consecrated principle.²⁷ During the Iran-Iraq war, however, official pronouncements against the "Persian enemy" carried an undertone of anti-Shi'ism that cast doubt on the national loyalty of Iraqi Shi'a.²⁸ These contradictory social realities

²⁵ Eric Stover and Harvey Weinstein, *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, (forthcoming, Cambridge University Press, 2004).

²⁶ It was also a principle of state-building by Iraq's British colonizers in the 1920s. See Dodge, *supra* note 10, at Ch. 2.

²⁷ The most comprehensive historical analysis of sect in Iraqi politics is in Batatu, *supra* note 21.

²⁸ See Davis, *supra* note 23, at Ch. 7.

may help explain the conflicting attitudes about the need for “reconciliation” between Shi‘a and Sunni. Many respondents asserted that “unity exists” and blamed the dictatorship for fomenting discord in order to maintain control. Such divisions were blamed on the old order and were expected to diminish with the end of the regime. Hence, “reconciliation” was seen as desirable in order to mend what were regarded as *artificial* splits that the former government had created.

Woman: Saddam knew how to create discrimination among the nation.

Woman: He created a separation between the Iraqi people, between Sunnis and Shi‘a. (Sunni women, Baghdad)

Man: The Sunnis do not like the Shi‘a.

Man: [Only] the Sunnis of Baghdad. The Sunnis themselves have been wronged, like the Kurds have, and they are greater victims of injustice than are the Shi‘a. We are one. (Shi‘a men, Najaf)

I do not think there is discord. The discord that used to exist was created by Saddam and his supporters. They expected civil war to break out between the Sunnis and the Shi‘a after Saddam was ousted, but thank God it did not. (Sunni man, Baghdad)

Woman: [Reconciliation] is a must.

Woman: During the former regime, there used to be a divide and rule policy between the Kurds and the Arabs, the Shi‘a, the Sunnis. This practice should be amended. (Sunni women, Mosul)

I wish that we would unite and begin a fresh start. If we stayed like this—this is mine and that is yours; this is Sunni and that is Shi‘a—we will not accomplish anything. (Shi‘a woman, Baghdad)

Marsh Arab respondents, who are Shi‘a by denomination, largely rejected the need for reconciliation (“*there is no difference between the north and south*”), blaming all divisions on the former regime. These statements suggest, as of July 2003 (about three months into the occupation), reserves of good will existed and any sect-based divisions were far from unbridgeable. Professions of national unity—in part, unity of suffering under Saddam Hussein—were evident. However, an undercurrent of sectarian tension was detectable, suggesting that these identities *might* become politically salient and mobilized if parties or leaders seek to exploit them. It may be that U.S. policymakers’ overestimation of the Shi‘a/Sunni division as politically salient has exacerbated it, encouraging political organization on this basis as a means of gaining positions in the transitional governing arrangements. Reports suggest evidence of a hardening and politicization of sectarian division since July 2003, particularly as a result of the intense power struggle that has developed over the interim constitution and the process by which a new government will be established.²⁹

Arab respondents, as whole, did not focus on a need for reconciliation with other ethnic groups, stressing that national unity already existed. For minority ethnic groups, however, the answer was

²⁹ See, e.g., Nir Rosen, “It’s all bad news—Chaos in Liberated Iraq,” March 26, 2004, available at www.reason.com/hod/nr032604.shtml; Suleiman al-Khalidi, “Attacks on Baghdad’s Sunni Mosques Fuel Fear,” Reuters, March 13, 2004; Neela Banerjee, “Rifts Increase Iraqis Fears for the Future,” N.Y. Times, Feb. 10, 2004; David Rieff, “The Shiite Surge,” N.Y. Times Magazine, Feb. 1, 2004; Dilip Hiro, “Sectarianism in Iraq,” The Nation, Feb. 2, 2004; R. McCarthy, “Iraqi Protestors Demand Election as Ayatollah Threatens Fatwa,” The Guardian, Jan. 16, 2004.

not as clear. Among Kurds, “reconciliation” was understood as both improving relations between Arabs and Kurds and recreating trust in society as a whole. In regard to the former, Kurdish participants were divided on the necessity of repairing relations between Arabs and Kurds. Some felt that the division was a result of the previous regime’s policies and that no active measures were required to repair relations now that the regime was gone. *“In my opinion, the Arab people and the Kurdish people, we always lived together in peace. The only thing that makes trouble between us is the government. Like Saddam and his party making these discriminations between us”* (Kurdish man, Erbil). Others felt that a process of reconciliation was needed because Arabs and Kurds had become estranged from one another during the period in which the Kurdish regions were under blockade, or because the former government had succeeded in creating ill will between Arabs and Kurds.

Yes, we do need this kind of reconciliation. For instance, my husband is wounded. He was hit by a car in Mosul because he is Kurdish. Yes, we need reconciliation.
(Kurdish woman, Erbil)

During this regime, Iraqi people learned how to loath and to kill, so that’s why we need to rebuild trust and heal the wounds among this nation. (Former political prisoner, Erbil)

A minority of respondents stated that reconciliation was “useless” or unachievable because of the amount of blood that had been spilled, or because the Shi’a Arab majority would tyrannize the minorities. Among those who saw reconciliation as necessary, a popular idea was that good governance and a “fair system” would be the best way to achieve it. *“If we establish a new and elected government. Also, the use of Iraq’s revenue and resources for [the] Iraqi people, without excluding anybody [from] enjoy[ing] these achievements—then we can [achieve reconciliation]”*; *“Eradicate racism, discrimination among the people. All human beings to be free and equal”* (Kurdish men, Sulaimaniyah). Even with the achievement of equal rights, a few respondents were pessimistic and reflected on the bitter Kurdish civil war that cost thousands of lives over the 1990s. *“Even with a new system, it will take a lot of time. We had this experience in Kurdistan and it was not successful because we saw a lot of disputes among the Kurdish parties”* (Kurdish woman, Sulaimaniyah). Kurdish key respondents tended to echo the view that protection of minority and cultural rights would be necessary for reconciliation to be achieved. *“We should be equal...I don’t think anyone in Kurdistan still feels like an Iraqi”* (Social worker, Erbil). Several respondents mentioned a federal solution as one way to guarantee Kurdish rights, although most felt that education, communication, and commerce could be effective in promoting interethnic understanding.

Turkoman and Assyrian respondents were similarly divided on the necessity of reconciliation. Common responses reprised the view that divisions were Saddam’s creation, although several felt that steps needed to be taken to heal these divisions, including reform of the educational system, individuals, and institutions, and creation of a “good, just” framework of government. However, it is clear from their responses to questions about human rights violations (see Section I) that minority rights and freedom from discrimination are important concerns, and a few respondents touched upon these topics when discussing reconciliation. *“We only want the authorities to be fair when it comes to job opportunities and not prefer one ethnic group to another”* (Turkoman woman, Kirkuk); *“They [the people] should all have the same freedom”* (Assyrian man, Baghdad). Others saw “reconciliation” as relevant only to “national unity” and so dismissed it as unnecessary. It should be noted, however, that among Turkoman respondents in Kirkuk there was a strong sense of grievance against Kurds based on alleged conduct against Turkomans and Arabs after the fall of the regime.

It only got worse [after the fall of the regime]. Kurds grew better than Turkomans. Violations increased within the districts. When we raised the Turkoman flag in the school, a relative of Jalal Talabani's [leader of the PUK] tore it apart and the Turkoman school was attacked. (Turkoman woman, Kirkuk)

Ethnic tensions in Kirkuk, which the main Kurdish parties have claimed as falling under the authority of the autonomous Kurdish government, have flared on more than one occasion since July 2003,³⁰ suggesting that a need for “reconciliation” may be created by the postwar situation. The conflicts are, in part, caused by the Arabization policies of the previous government, with Kurds claiming that their displacement in the 1980s and 1990s eroded Kirkuk’s Kurdish majority. Turkomans and Arabs bitterly contest that a Kurdish majority ever existed in Kirkuk, but the absence of any credible census data makes adjudication difficult.

A number of participants interpreted the idea of reconciliation in terms of repairing the damage to social trust and reconstituting the moral fabric of society. Among those who adopted the idea of reconciliation as social reintegration were respondents from victim groups and former political prisoners, who mentioned that economic improvements, security, and democracy would all contribute to this objective. Equal rights, good governance, and reparations were seen as conducive to rebuilding social relations. “*I think if they create a new system in Iraq, a new government, then the real reconciliation will start and will be effective. And according to this solution, every minor and major problem will be solved*” (Kurdish man, Sulaimaniyah); “*Democracy is the only solution for all levels of the population*” (Lawyer, Baghdad). As a religious minority, Chaldean Christians were divided about the necessity of reconciliation. They nevertheless urged that measures be taken to rebuild relations of respect and care in Iraqi society, particularly—but not exclusively—between ethnic groups and in terms of gender relations. These measures included educational reform and an infusion of cultural resources to help Iraqis learn about their respective traditions.

Some interpreted “reconciliation” to mean a victim’s forgiveness of the perpetrator, or an accommodation with the old regime. The idea of forgiving senior leadership figures was unacceptable to almost everyone, and former political prisoners and victim groups rejected the suggestion that they could or should forgive those who inflicted harm upon them and their families. These responses are consistent with the discussion in Section II that accountability is important to Iraqis. However, focus group members from various backgrounds endorsed the *principle* of forgiveness, but did not clarify the conditions under which it might be applied.

I personally go according to the saying of the Imam Ali (may Allah bless him)...for he said: Forgiveness when possible. But I do not know what I would do if I saw Saddam. (Shi’a woman, Baghdad)

Because the Iraqi people are one and it is built on forgiveness. (Sunni man, Baghdad)

Allah may forgive him [Saddam], but I cannot. (Sunni man, Baghdad)

If someone has harmed me, I will not forgive him.
(Family member of the missing, Baghdad)

³⁰ Babak Dehghanpsheh, “Refereeing in Hell,” Newsweek, Jan. 19, 2004; Scheherezade Faramarzi, “Mass Migration Redraws Northern Map,” AP News wire, Feb. 16, 2004; “Iraqi Turkoman leader says civil war possible,” Reuters News wire, Feb. 24, 2004.

[Forgiveness] is very important, but not for criminals. Forgiveness, in general, is needed, and asking for forgiveness among the Iraqi people is an important and necessary request. (Shi'a cleric, Najaf)

Anyone who has betrayed the people must be punished; I can't imagine the people agreeing to forgive them. (Turkoman woman, Kirkuk)

Unity is already there and forgiveness needs to be achieved. There is no reason to hold on to the remnants of 35 years. (Tribal shaikh, Nassiriyah)

A group of political prisoners from Baghdad suggested that if former intelligence agents and informers had come forward and volunteered information about the fate of the missing, they would have forgiven them. But, as no help was forthcoming, the former prisoners felt that they could not forgive. No other group or respondent suggested the idea of truth for amnesty. One self-declared "human rights organization," comprising mainly academics, stressed that only forgiveness would allow Iraqis to move forward. Bearing in mind respondents' strident opposition to amnesties for perpetrators (see Section II), it seems unlikely that "forgiveness" of persons who are suspected of human rights violations would be widely accepted. However, given the extent to which Iraqis identify the evils of the previous government with a handful of individuals, forgiveness for lower-level perpetrators will emerge after public trials of senior regime figures, provided these trials are widely perceived as legitimate and effective.

On the whole, however, if we look at participants' responses, there was sense of hope among all groups that a more positive future was possible. Respondents expressed a strong sense of pride in their cultural heritage and felt confident of their abilities to build Iraq into a modern and civilized society. However, several groups were cautious about short-term challenges (stability and basic needs) and were concerned with the current occupation and the lack of a long-term plan by Iraqis for Iraq. Although it has been widely acknowledged that time is required for events to unfold, few were willing to remain patient. Some advised that prolonged indecision might undermine the legitimacy of the governing authority and lead to further social unrest. Feeling underrepresented in the current decision-making body, the Turkomans remained reserved about their future. The Kurds, however, displayed hope for Kurdish self-government under federalism, although there may be a variety of interpretations of what an acceptable federal solution would look like.³¹ In the summer of 2003, a window of opportunity appears to have existed to work across the various groups in pursuit of a common goal.

V. SUMMARY FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

A. Past Human Rights Abuses

This report reveals what can be described only as a common national experience of widespread exposure to human rights abuses. The survey also shows that Iraqis were mostly aware of the violations suffered by different ethnic, religious, or political groupings at the hands of the regime's intelligence, security, or military forces in other parts of the country. For example, Kurds knew of the abuses suffered by the Shi'a in the south, and residents of Baghdad were knowledgeable about the Anfal and the Arabization campaigns in the north.

³¹ See International Crisis Group, "Iraq's Kurds: Toward an Historic Compromise," April 8, 2004, for further political analysis of the different positions on federalism, autonomy, and independence.

Equally, within this shared experience, various groups emphasized different types of violations. Kurds focused on the systematic effort to eradicate them as a people through such methods as the repeated use of chemical weapons, forced displacement, and appropriation of their homes and lands. Kurds, Turkomans, and Assyrians described overt discrimination and denial of equal opportunities. The Marsh Arabs living in southern Iraq perceived their persecution in terms of the destruction of their means of existence and livelihood through the drainage of the Marsh lands, forced relocation, and dispossession.

The overall impact of decades of brutal oppression was expressed in terms of a breakdown of confidence and trust in each other, including within families, but also in continuing fears that the regime might still be spying on them, listening to them, and, at some future date, coming back to punish them.

The data suggests a strong relationship between Iraqis' conception of human rights and their lengthy and persistent experience of oppression. When asked to describe what they understood by the term or concept of "human rights," most portrayed such rights as the opposite of their personal experience of suffering or denial. Rights were seen as the reverse of dispossession, discrimination, arbitrary violent behavior by those in authority, and the abuse of power. Kurds, Assyrians, and Turkomans also spoke about minority rights in terms of freedom from discrimination based on ethnicity and the right to use their own language.

In a forward-looking way, human rights were broadly understood as a set of preconditions for a life with dignity and respect and, in that sense, were viewed positively and associated with a hopeful future. They were represented by such ideas as employment, provision of basic services, legal protection from arbitrary action by the state, or freedom to speak and associate without fear of persecution. While there was a great deal of emphasis on the restoration of civil and political rights, many reflected on economic, cultural, and social rights, such as the right to education, the right to be treated with dignity, support for women, and an equitable share in the country's resources.

B. Justice and Accountability

Similar to their understanding of human rights, participants also saw the concept of justice as an inverse image of the old regime—a just society is everything that the old order was not. A just society was described in terms of nondiscrimination, good governance, transparency, rule of law, and respect for women's and children's rights.

There was strong support across the various regions and groups for holding accountable through a legal process those responsible for human rights violations. In this respect, it is worth noting that, at the time of the survey, respondents could not easily define what a fair legal process would look like, other than in terms of what it should *not* be (i.e., the antithesis of what they had experienced in the past) and who should be in charge of it. Examples referred to open and public trials, judgments in accordance with the law, and judges who are not corrupt.

Many viewed a public trial as the means of ensuring publicity for the regime's crimes. Some expressed dissatisfaction with the killings of Uday and Qusay Hussein because they would not be forced to stand in court and be confronted with their crimes. Revenge and retribution were principal motivating forces, especially among victims and their families, and were expressed in terms of the need for punishments that fit the crime.

Most respondents pointed to Saddam Hussein, his family, and his closest followers and supporters as those who should be held most accountable. Ali Hassan al-Majid (Chemical Ali), Izzat Ibrahim al-Douri (vice-chair of the Revolutionary Command Council), and Uday and Qusay Hussein were among those specifically named. Most stressed the need to differentiate between Ba'ath party leadership and mere members, pointing to the fact that membership was often a strategy for survival and not necessarily evidence of direct participation in violations.

Responsibility for the violations in Iraq over the past few decades was also laid squarely at the doorstep of the international community and the United States for the support given to Saddam's regime. Comments indicated distrust of the U.S. on two main counts: the historical support provided to the former regime, and the disorder, lack of security, and looting that followed its demise and the beginnings of the occupation. The shortcomings of the postwar planning made daily living conditions difficult and also raised suspicions about the U.S. motivations in going to war. Additionally, the daily friction with occupation forces fed feelings of humiliation. Respondents from Baghdad and the southern regions expressed mistrust of a U.S.-dominated trial process for the former regime figures.

The UN was specifically criticized for its ineffectiveness in restraining the violations of the previous regime. Suspicion and distrust was most evident among respondents from the north—both Kurdish and Turkoman—who regarded the UN as further strengthening the hold of the regime through the role it played in what is widely perceived as a corrupted process, involving kickbacks and “shady” transactions during the Oil for Food program. In the central and southern regions, the UN was criticized more for its inaction and ineffectiveness.

Participants were nearly unanimous in their criticism and resentment at the support Arab states gave to the regime of Saddam Hussein, and the perception that those states had profited in a variety of ways from the suffering of the Iraqi people.

The anger and disappointment at the failure of the international community, particularly the UN, to effectively protect Iraqis may explain the negative attitude toward international involvement in, for example, the prosecution of Saddam Hussein and those around him. The research findings in this area are worth noting, given the continuing debate about the ability of Iraq to mount trials involving charges such as genocide or crimes against humanity without extensive international involvement.

Respondents expressed strong preference for an Iraqi-controlled process of accountability, presenting this in terms of the need for Iraqis to be in charge of decision-making. Iraqi lawyers and judges also spoke about the need to restore the dignity of the legal system and saw such trials as a way to re-establish such professional and national pride.

At the same time, respondents—to varying degrees—were open to and recognized the need for international assistance. This was often expressed in terms of international “technical assistance” or in a supportive role, such as “observers” or “expert advisers.” Some expressed a readiness to have international judges sit alongside Iraqi judges in a tribunal, but respondents stressed the need for Iraqis to have the “final say.”

Respondents from the north expressed the most distrust of the UN, but were willing to countenance a UN role in appointing judges and supervising standards. In the central and southern regions, there was a less negative attitude and a greater desire for international involvement in training judges and lawyers, assistance in collecting and preserving evidence, and international expertise.

Generally, respondents expressed a lack of trust in the Iraqi judicial system, citing corruption and fears that judges were easily intimidated by those in authority. However, many believed that “clean” and competent judges and lawyers could be found to reconstitute the legal system. Again, there was near unanimity in respondents’ outright rejection of personnel from Arab countries serving as judges or expert advisers, reflecting resentment at the support Arab states gave to Saddam Hussein’s regime.

Overall, it appears that attitudes toward international participation in trials are driven by a variety of conflicting feelings: a profound mistrust of international politics and anger and resentment toward the international community, matched by feelings of disappointment, mistrust, and wounded national pride toward the U.S. as an Occupying Power; a desire for fair trials, but a demand for speedy and vengeful justice; a demand for an Iraqi-controlled process, but mixed feelings about judges and lawyers from the old regime. Responses generally indicated little specific knowledge—even among lawyers—about other countries’ experience of trials for mass atrocity or developments in international criminal law and practice. Most respondents had heard of the International Criminal Tribunals for the former Yugoslavia and Rwanda, but had almost no knowledge of their functioning or what might be entailed practically in trials for crimes such as genocide and crimes against humanity. A judicial sector assessment by the CPA³² and a separate assessment by the UN³³ have concluded that the Iraqi judicial system is unlikely to have its own technical capacity to conduct trials of this magnitude, implying that *some* form of external assistance is inevitable if the trials are going to meet minimum human rights and evidentiary standards.

The attitudes toward international involvement suggest that international actors, whether they be from the U.S., the UN, other states, or the Arab world, will not necessarily benefit from any presumptions of legitimacy among the Iraqi population, and that trust in a trial process and belief in its legitimacy will have to be developed step by step.

Finally, on the issue of retribution, there was overwhelming support for the application of the death penalty, justified by the “eye for an eye” principle and reference to Islamic law. However, opposition to the death penalty was not entirely absent, with some arguing that its application would replicate the actions of the former regime, and others suggesting that death would allow the guilty to escape punishment for their crimes.

C. Truth-seeking and Remembrance

One major reason for the overwhelming support for a “public” legal process of accountability was that it would expose the full details of the regime’s crimes. Consistent with the level of interest in a public accounting of violations through prosecutions was broad support for an official process of truth-seeking and preservation of historical memory.

A number of specific needs were articulated, which respondents felt could be achieved only through a process of truth-seeking culminating in a form of remembrance. These ranged from special days to honor those who had died under Saddam to teaching children to establishing museums that would tell the stories of the Ba’athist era. Participants expressed a desire for the rest of the world to be shown the truth. This was seen as necessary because the “outside world”

³² Coalition Provisional Authority, “Report of the Iraq Judicial Assessment Team,” June 2003.

³³ Office of the High Commissioner for Human Rights, “World Bank—UNDG Legal Needs Assessment Mission to Iraq,” Sectoral Report, Aug. 2003.

either did not know the full details or, worse, turned a blind eye. It was also seen as a way of ensuring nonrecurrence and constantly reminding future generations not to repeat those mistakes. Truth-seeking processes and memorials were also seen as ways that victims and their families, especially those with missing relatives, could process personal experiences through a larger national narrative. Families of the missing were anxious to institute a process by which perpetrators of human rights violations could come forward and reveal information about their whereabouts.

Notwithstanding their limited or nonexistent knowledge of truth and reconciliation processes elsewhere in the world, respondents were quick to suggest their own versions of how a truth-seeking process should commence. These included establishing local committees of reputable individuals to gather testimony and document the names of the dead and missing, using the growing number of nongovernmental organizations for assistance, or calling on the help of professional historians. Diverse and creative suggestions for memorialization and included declaring days of remembrance as national holidays; establishing memorials in every town and region; creating museums and documentation centers, photographic and videographic displays, and artistic works of literature, cinema, and theatre; and preserving detention centers and instruments of torture.

It should be noted that several individuals questioned the wisdom of opening old wounds and counseled for energies to be put into more forward-looking or constructive exercises. Most felt that such a process would not be viable if it was seen to replace holding accountable those responsible for the most serious violations. Some participants, mostly Marsh Arab and Chaldean Christians, expressed opposition to going back over the past. Instead of keeping records, some preferred a pragmatic approach oriented toward moving on and rebuilding a normal daily life. There was also a concern that a truth-seeking process might become politicized.

D. Amnesty

Insight into many groups' attitudes regarding amnesty can be gleaned by understanding their feelings about punishing the guilty. While several groups did not discuss amnesty specifically, their discussion of punishment indicates that they do not consider amnesty an option for those considered guilty. (This reflects the fact that the groups tended to focus their discussions on those who committed very serious crimes.) However, respondents tended to agree that amnesty was possible, even necessary, for those who committed lesser crimes.

E. Vetting

While the research did not specifically focus on the process of deba'athification that began in May 2003,³⁴ the issue of removing individuals from positions of public authority on the basis of their conduct came up during discussions on justice and accountability. While most respondents blamed the Ba'ath party for entrenching authoritarian habits and perpetuating repression, they also felt it was unfair to penalize individuals solely on the basis of their party membership and sought to draw distinctions between members of the Ba'ath party (Ba'athis) and supporters of Saddam Hussein (Saddamis). There was, however, clear support for the dismissal of Ba'ath party members—and anyone else—who participated in criminal or corrupt activity as a means of reforming Iraqi institutions. None of the respondents referred to or drew on international

³⁴ Coalition Provisional Authority Order Number 1, Deba'athification of Iraqi Society, May 16, 2003, CPA/ORD/16 May 2003/01.

standards regarding vetting or lustration. Rather, their views were based on direct experiences of the importance of joining the party to ensure reasonable career development.

In terms of regional differences, respondents from the north were more predisposed to a thorough purging of the Ba'ath party from governmental institutions than those interviewed in the central and southern regions. This may have reflected a strong anti-Ba'ath party sentiment among a Kurdish population that suffered discrimination and acts of genocide under the party's slogan of Arabism. Some expressed concern that wide-scale deba'athification might deplete Iraq of crucial human resources at a time when they might be most needed to help rebuild the state, while others heavily criticized the total disbanding of the Iraqi army.

F. Reparations

While recognizing that their suffering and losses were incalculable and that "nothing will fix it," participants expressed widespread support for both material and symbolic compensation. Respondents spoke about reparations in terms of the need to rebuild lives, restore dignity, and help people recover lost opportunities, rather than as one-time financial payments. Much emphasis was placed on the need for assistance in social reintegration and recuperation of lost livelihood. Most felt that a program of compensations and rehabilitation was necessary if Iraqi society was going to be able to move beyond the legacy of Saddam Hussein.

The need for restitution of lost lands and property was raised by Kurds and Marsh Arabs, reflecting the impact of Arabization programs that led to more than one million internally displaced (according to international human rights groups).

Great value was also placed on symbolic measures aimed at restoring victims' dignity and social esteem. Respondents stressed that those who suffered must be valued and reassured that their pain was not without meaning. Suggestions included establishing days of commemoration or setting up memorials, although some expressed skepticism about the value of building symbolic structures, given their experiences under Saddam Hussein.

Most noted that the Iraqi state, which was perceived as wealthy because of its oil reserves, should cover the costs for a reparations program, including provision for physical and mental health services, access to education and employment, and assistance to meet basic needs for food and shelter.

G. Social Reconstruction and Reconciliation

These terms appeared to have different meanings for different respondents, who understood and interpreted them in a variety of ways. Across the groups, participants understood reconciliation in terms of unity. Other possible dimensions, such as shared vision and sense of a collective future or the need for forgiveness, were not expressed, perhaps a result of a lack of definition and/or structure of the questions asked.

Given the narrow scope of questions about reconciliation, most groups could not find agreement on the topic. Many believed that unity already exists between the Iraqi people, which implied that reconciliation was unnecessary. Others believed that the current division between the groups was the construct of the previous regime; as such, ethnic and sectarian tension would dissolve with the fall of Saddam. Several respondents reflected that, race and religion aside, they were united by the injustice endured under the previous regime. Viewing it as a process for improving relations and rebuilding trust, Kurdish respondents identified with the need for improving Kurd/Arab

relations and restoring trust. Other ethnic minorities gave less clear answers and views appeared more split than in agreement. Respondents from among the Shi'a and ex-political prisoners indicated that neighboring countries are also responsible for continued ethnic conflict in Iraq. However, responses to indirect questions demonstrated that some process for national reconciliation is desirable. For example, promoting interethnic harmony and social integration through education, media, awareness programs, and community projects was suggested as way to encourage interaction among the groups. Participants also demanded ensuring justice, security, and freedom for all.

In terms of social reconstruction, securing basic needs, maintaining security and stability, and improving economic conditions were the three most pressing issues for all groups. Without rule of law and basic necessities to sustain daily routine, the ensuing social unrest would undermine any efforts in rebuilding. Education was a widely mentioned topic, with multiple dimensions encompassing education for youth, human rights, re-education for adults, skills trainings, and culture/value inculcation. Many perceived it as a cornerstone to help Iraq step into the future.

Overall, participants in all groups articulated hope for the future and an eagerness to control their own destiny. Respondents expressed a strong sense of pride in their cultural heritage and felt confident of their abilities to make Iraq a modern and civilized society. However, several groups were cautious about short-term challenges (stability and basic needs) and were concerned with the current occupation and Iraqis' lack of a long-term plan. Although it has been widely acknowledged that time is required for events to unfold, many groups expressed impatience, and some advised that prolonged indecision might undermine the legitimacy of the governing authority and lead to further social unrest.

Feeling underrepresented in the current decision-making body, the Turkomans remained reserved about their future. The Kurds, however, displayed hope for Kurdish self-government in a federal arrangement. Opportunities appeared to exist to mobilize the various groups toward a common goal. United by their hatred of Saddam Hussein and sharing the legacy of massive human rights abuses, sectarian and ethnic differences might have been minimized. Given that these questions were posed three months after the fall of Baghdad, it may have been too soon for people to speak freely about reconciliation.

H. Policy Recommendations

In light of the findings reached after analyzing data obtained by interviews with key respondents and focus groups of representative segments of the Iraqi population, the International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley, submit the following policy-oriented recommendations to the people of Iraq and their representatives; the Coalition Provisional Authority; and, in particular, the governments of the United States of America, the international community, and the United Nations.

It should be noted that at the time the research was conducted, Saddam Hussein had not yet been captured, the Iraq Special Tribunal had not been established, no steps had been taken to initiate a process of truth-seeking or reparations, and the process of deba'athification was in its infancy. The following recommendations take into account more recent developments.

1. Past Human Rights Abuses

Institutions and procedures should be put in place that would ensure no repetition of such abuses in the future. These include:

- Reforming the police, security, and intelligence services to make them accountable to higher civilian authorities and ensure they strictly respect rule of law and international human rights standards.
- Reviewing all military and policing policies to ensure that they are consistent with international humanitarian law and international human rights standards.
- Ensuring that training curricula for the personnel of the above agencies include courses on the relevant international human rights standards, including the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Code of Conduct for Law Enforcement Officials.
- The state of Iraq signing and ratifying the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its optional protocol at the earliest possible opportunity. It should also adopt legislation to implement the International Covenant on Civil and Political Rights and the CAT within Iraq and to establish that their provisions are legally enforceable in Iraqi courts.
- Reviewing all legislation to ensure that they comply with international human rights standards. In particular, all Iraqi laws should be nondiscriminatory and treat all citizens as equal before the law.

2. Justice and Accountability

Thus far, transitional justice policies and programs have largely been shaped by an Occupying Power, principally the United States government, in consultation with the U.S.-appointed IGC. The principal contribution in the area of prosecutions has been the drafting of a statute for an Iraqi-led Special Tribunal with jurisdiction over any Iraqi national or resident of Iraq accused of the crime of genocide, crimes against humanity, war crimes, and violations of stipulated Iraqi laws³⁵ committed since July 17, 1968, until and including May 1, 2003. The CPA has also taken first steps to reform several Iraqi laws and institutions.

Notwithstanding Iraqis' clear desire to bring to justice those responsible for past human rights violations, it is very important that the process is, and is perceived to be, fair and legitimate. As such, the United States (as the Occupying Power) should be reduced and more "independent" assistance and expertise should be provided to the Iraqi people. The following recommendations are designed to set some standards and conditions to enable such a process to develop.

- In order to show the full extent of the crimes committed against the people of Iraq, Saddam Hussein and the responsible leadership should be charged with the most serious crimes under international law, such as genocide, crimes against humanity, or war crimes. These charges would fit the scale of crimes committed and do justice to the victims. As they are not fully

³⁵ Article 14 of the statute provides: "The Tribunal shall have the power to prosecute persons who have committed the following crimes under Iraqi law: a) For those outside the Judiciary, the attempt to manipulate the judiciary or involvement in the functions of the judiciary, in violation, *inter alia*, of the Iraqi interim constitution of 1970, as amended; b) The wastage of national resources and the squandering of public assets and funds, pursuant to, *inter alia*, Article 2(g) of Law Number 7 of 1958, as amended; and c) The abuse of position and the pursuit of policies that may lead to the threat of war or the use of the armed forces of Iraq against an Arab country, in accordance with Article 1 of Law Number 7 of 1958, as amended.

codified in Iraqi criminal law, the relevant courts should apply international criminal law standards.

- The trials themselves should be public and governed by the principles of independence, impartiality, and fairness. They should be independent from political influence, free of any bias or prejudice, and fair in regarding the defendants innocent until proven guilty and in affording them full rights of defense under international law.
- Prosecuting and adjudicating these serious crimes will require enormous expertise in gathering, analyzing, and using a vast amount of physical, documentary, and forensic evidence, as well as interviewing and preparing hundreds of witnesses. While Iraqis stressed the need for Iraqi “control” over this process, many also recognized the need for international assistance. Such assistance should be provided at all levels, from evidence gathering and analysis to prosecution and final adjudication. The involvement of international expertise at the level of judges should not be viewed as undermining “Iraqi control” over the process, but rather as technical assistance to ensure fairness and effectiveness.
- The United States, as the Occupying Power, should formulate an independent mechanism to channel international support and expertise to the Iraqi people. In doing so, it should actively seek to lessen the current role played by U.S. experts and to increase and internationalize the process so that it can gain legitimacy and the trust of the Iraqi people.
- The December 2003 law establishing an Iraq Special Tribunal should be reviewed at the earliest possible opportunity and amended to take into account the above recommendations.
- A witness protection program, including for defense witnesses, should be developed with the assistance of international expertise.
- While most respondents expressed a strong preference for the death penalty as the appropriate form of punishment for those responsible for the most serious abuses, the death penalty is the ultimate cruel, inhuman, and degrading punishment and a violation of the right to life. The leaders of the new state of Iraq should seek to lead by example and not only avoid using capital punishment, but also seek to abolish it in Iraqi laws.³⁶ As part of this process, the appropriate authorities must educate the Iraqi people about how other countries view the death penalty and its place in retributive punishment.

3. Truth-seeking and Remembrance

It may be that in Iraq, given the possibility that tens of thousands of individuals were involved in committing abuses, only a small fraction of the total number of perpetrators can be prosecuted before the Iraqi Special Tribunal and domestic courts. The widespread support for remembrance and the desire to ensure that the world knows what happened in Iraq suggests that some mechanism or multiple strategies of truth-telling might unite Iraqis in the revelations of a common history. A truth commission could help to provide a comprehensive account of human rights violations over the past quarter-century, provide victims with a forum to testify and have their suffering acknowledged, make recommendations about measures to prevent a recurrence of human rights abuses, and explore the possibility of providing reparations. A truth commission could also promote a common understanding within Iraqi society without sacrificing accountability or ignoring existing divisions. It could attempt to generate an official account of notorious events, such as the “Anfal” campaign and the killing and displacement of Marsh Arabs, by analyzing the vast amount of evidence gathered by organizations and individuals within and outside Iraq. Like the Guatemalan Commission for Historical Clarification, an Iraqi commission

³⁶ Amnesty International’s latest information shows that 117 countries—more than half the world’s nations—have abolished the death penalty in law or practice (web.amnesty.org/pages/deathpenalty-facts-eng).

could also explore the role of external actors in preventing or enabling human rights abuse, a commonly expressed concern among the various groups.

However, Iraqis should decide whether to establish such a truth-seeking mechanism, and all segments of society, including victims and families of victims, should be directly involved. Furthermore, any truth-seeking process in Iraq should be developed and designed through a rigorous and inclusive process of education, consultation, and coordination, and must demonstrate its independence from extraneous political considerations.

- Among Iraqis in Iraq, there is little knowledge of or exposure to the idea of a truth commission, and not much exposure to other countries' experiences. Thus, educating the emergent forces of Iraqi civil society, religious and community leaders, representatives of ethnic groups, and a broad cross-section of Iraq's (highly literate) population is an indispensable first step.
- Education, training, and information dissemination should cover the comparative experience of other countries, various models that have been used in the past, and the different options for the mandate of a truth commission and the scope of its powers. Education should carefully address all relevant sectors of society so that it is not perceived as dialogue only between "elites" or certain political groupings.
- The consultation process must extend to the very question of whether Iraqi society desires a truth commission and, if it does, what the commission's mandate and powers should be. The mandate and terms of reference should incorporate the views of victims, nongovernmental organizations, and other civil society actors, whose support for and engagement with the commission will be critical for its effective operation. This process should ensure that other alternatives to a truth commission are explored, as well as mechanisms that reflect the culture and traditions of the religious and ethnic groups.

Should there be interest or consensus among the Iraqi population on the need for a truth commission, the following steps should be taken:

- Proposed laws establishing the commission should be publicized and debated in a variety of forums to ensure public understanding and buy-in.
- The selection process for commissioners should be consultative, transparent, and nonpartisan. Those selected to serve on the truth commission should be well-respected persons of the highest integrity who represent a balance of political forces, ethnic groups, and religious communities. The commissioners' commitment to fair and impartial fact-finding must be unquestionable. It will also be important that both women and men are well represented.
- The need for consultation is related to the principle of independence, both actual and perceived. In light of the ongoing friction regarding the occupation and the religious, ethnic, and social fault lines that currently exist, confidence in a nonpartisan and impartial fact-finding process will have to be built from the ground up. Otherwise, a truth commission will be unlikely to fulfill its reconciliation and trust-building role.
- The role of civil society in the country is critical to the effectiveness and success of a truth commission. Civil society organizations (including, but not limited to, human rights organizations) should play a role in designing a commission's terms of reference; should be considered a potential source of critical information for the commission; will be an important advocate in monitoring the commission's work; may directly assist in the commission's information-gathering; should be given a role in thinking through appropriate policy recommendations; and, ultimately, after the commission ends, will be the main advocate for trying to get the recommendations implemented.

- A truth commission should be seen as one important aspect of a comprehensive and coordinated transitional justice strategy that includes prosecutions, reparations, vetting, and institutional reform. Therefore, it is vital that, from the earliest stage of design, serious planning is undertaken regarding the ways in which the commission will interact with prosecutions, reparations, vetting, and other processes.
- If there is no consensus that a truth commission reflects the interests of the Iraqi communities, a similar process of reflection should be undertaken to determine if other alternatives exist that might promote the rebuilding of trust.

4. Amnesty

As a matter of policy, no Iraqi who is suspected of perpetrating genocide, war crimes, or crimes against humanity should be offered any form of amnesty. This would be in line with international law, which prohibits granting amnesties for perpetrators of such crimes, and would also correspond with the overwhelming views Iraqis expressed during this research.

5. Vetting

- Iraqis clearly drew distinctions between members of the Ba'ath party who were also responsible for human rights abuses and those who may have joined the party for reasons of livelihood or social advancement. The former group, and indeed anyone else who was involved in serious human rights abuses, should be the subject of removal from positions of public authority or power.
- Vetting by itself, however, is an incomplete solution to human rights abuses and should be accompanied by broader, systemic reforms. These should include reforms in processes of selection and training to ensure those vetted will not return at some later stage and to ensure that those who replace them do not repeat the same mistakes.
- The deba'athification processes initially administered by the CPA and later taken over by the IGC offer too few distinctions and safeguards to comply with international standards, particularly the International Covenant on Civil and Political Rights (ICCPR), the International Labor Organization (ILO) Convention, and the European Convention, and should immediately cease to operate. A thorough review should be undertaken.
- A new vetting process should be established that would be independent of political influence, operate transparently, and follow strict procedures. Individuals should be removed from office only on the basis of full and reliable information—where possible substantiation should come from multiple sources, rather than one.
- In addition, a new appeals procedure should be instituted that allows individuals full access to the evidence used against them.

6. Reparations

At the outset, it is worth emphasizing that, from the victim's standpoint, reparations programs occupy a very important place. For victims, reparations are the most tangible manifestation of the state's efforts to remedy the harm they have suffered, whereas criminal justice is primarily aimed at dealing with perpetrators.

Respondents emphasized the importance of the various elements that can comprise a reparations program. These include restitution, the object of which is to re-establish victim rights and status in society; compensation, in monetary form or through service packages that provide education and housing; rehabilitation, including medical and psychological care, as well as social support

services; and guarantees of nonrecurrence, through processes such full public disclosure of the truth, public accountability for crimes committed, and institutional reform.

Given the scale of the human rights violations committed in Iraq, the following steps should be taken to begin the process of reparations in the country:

- A commission comprising Iraqis and international experts with experience or expertise in the development of reparations programs with massive coverage (e.g., Germany, Chile, and Argentina) should be formed with the goal of drawing up, through a transparent consultative process involving all segments of Iraqi society, a reparations program. The commission should also seek to examine the mandate and procedures of the United Nations Commissions on Truth and Reconciliation and the Compensation Fund established in 1991 by the UN Security Council to provide compensation as a result of Iraq's invasion of Kuwait.
- In recognizing that the ideal of complete reparations (*restitutio in integrum*)—restoration of the status quo or compensation in proportion to the harm suffered—is unrealizable in all cases, the commission should investigate forms of material and symbolic reparations and examine individualized or collective distribution of either form.
- A reparations program in Iraq should not be conceived as carrying the burden of restoring justice to victims. It should be designed in coordination, and seek to achieve complementarities with, the other elements of transitional justice in Iraq—namely accountability, truth-seeking, vetting, and institutional reform.
- The international community has a responsibility to provide resources for the reconstruction of Iraq so that its natural resources may be used to help fund the reparations program.

7. Social Reconstruction and Reconciliation

Social reconstruction is a slow process that involves multiple levels of a society, from individuals to communities to the state. It is a transitional dynamic that emerges once the acute conflict has subsided and requires a society that promotes interaction among all groups around a common set of goals. Social reconstruction requires attention to issues of distributive justice and must reflect the ways in which the many segments of a society define justice. Without attention to these processes, legal justice will become an isolated and fruitless endeavor that may meet the needs of some but ignore those of many others.

Given the devastation wrought by decades of human rights abuses, the impact of sanctions on the health and well-being of the most vulnerable, and the ongoing impact of the occupation, we suggest the following steps:

- Attention to the economic, cultural, and social rights of Iraq's varied ethnic and religious groups through the collection of ongoing, population-based data that genuinely reflects their needs and expectations.
- Human rights education, especially in the area of civil and political rights, with the goal of ensuring that population understands the government's obligations and the citizens' rights and duties.
- An assessment of and education about the income related to oil production and a clarification of what ordinary Iraqis can expect to receive from this income stream.
- A more comprehensive effort at school reform that moves beyond the revision of textbooks to the promotion of critical thinking in history, literature, and the arts. Support for the development of democratic classrooms will require active teacher-education programs that

are sustainable and challenge the teaching of the past decades. Education reform must be undertaken in concert with Iraqi educators, historians, writers, and artists.

- Access to accurate and unbiased information is critical and requires respect for a free press. An active educational program for print and broadcast journalists must be undertaken in conjunction with the media community, world media, and, especially, the Arab media.
- Cross-ethnic and religious group engagement is essential for building trust and a commitment to a unified Iraq. If one group is uncritically singled out at the expense of others, the inevitable dissent will lead to further bloodshed and a terminally weak state. Our data suggest that elements of unity do exist and must be actively supported. Freedom of movement will be an important dimension of this process.
- Local community efforts to build trust and unity should be supported. No assumptions should be made about what contributes to “reconciliation”; these will vary from community to community and proceed at different rates.
- Legal justice (including exhumation of mass graves), security, and rule of law are the underpinnings of social reconstruction but should not be the sole focus of intervention. A comprehensive plan for social reconstruction should be developed that incorporates input from all segments of society and promotes Iraqi ownership of the process. This design and implementation of this plan should be based within the Iraqi government as it evolves and not within the international community or international NGOs. These organizations can serve as technical advisers or implementing partners.

ANNEX 1 Methodology

STUDY DESIGN

The researchers employed a qualitative study design comprising key informant interviews and focus groups. These two methods allowed us to elicit the opinions of representatives from a broad spectrum of the population. The goal was to probe the opinions and attitudes of national and community leaders and civil society representatives, as well as the general population, concerning past human rights violations and possible responses to this history of abuse.

In total, 395 people were polled through 38 interviews and 49 focus groups conducted between July 18 and August 13, 2003. In June, prior to data collection, two members of the research team visited Iraq to assess the feasibility of implementing the study and to plan for the survey. Local staff were recruited to assist in conducting the research.

SECURITY ISSUES

The data collection process took place approximately two months after the fall of Baghdad, and the security situation throughout Iraq remained tenuous. Communication was also very difficult, with no land lines operating and satellite and limited cellular phone coverage as the primary means of communication. Cellular phone services provided by the CPA were limited to the Baghdad area and, even there, access was limited to a few thousand users. E-mail was available only in northern Iraq (Iraqi Kurdistan) and at a few places in Baghdad.

Security concerns and communication difficulties were major obstacles in this study and limited the investigators' ability to: (1) plan interviews in advance, (2) randomly select participants in certain locations, (3) choose cities that had sufficient safety for the research team at the time of data collection, and (4) freely select interview locations. Interviews often took place at one of the participants' homes. Some female participants were not permitted to travel too far from their homes, were accompanied by their husbands or a family member to the interview, and/or were not allowed to stay longer than one hour. We requested that all companions wait outside of the discussion room.

RECRUITMENT OF KEY INFORMANTS

Key informants were recruited by "snowball," or "chain," sampling. Through discussions with international organizations then working in Iraq, as well as representatives of civil society, journalists, research institutes, and individuals with considerable experience in Iraq, we sought to identify key informants in each region and city for the study. A key informant held a position of responsibility or authority within a political, social, or cultural grouping, or was reasonably regarded as having special expertise or knowledge about Iraqi society. In accordance with these criteria, key informants selected for interviews included senior religious figures from all major religions, leaders of national and local political organizations, representatives of victim groups and civil society organizations, legal and judicial experts, and educators.

RECRUITMENT OF PARTICIPANTS FOR FOCUS GROUPS

As a security measure, we varied our selection strategies to protect our participants and research team from any potential harm. In the central/Baghdad region, we hired a local researcher to help recruit participants. In the northern and southern regions, the focus group moderator and translator recruited the participants. In general, door-to-door and snowball sampling methods

were employed. Except for the central/Baghdad region, all recruitment was done on the day of the focus group. Prior recruitment was not possible because of the day-to-day change in security status and lack of time available in each location.

1. Door-to-door Sampling

In the northern and southern regions, it was relatively safe for the focus group leader and translator to go freely to the local neighborhood and central business location to recruit participants. Using a random-walk method, the moderator and translator approached participants that seemed to reflect the selection requirements and asked questions about their demographic characteristics. If the participants met the selection requirements, they were invited to participate in the focus group discussion. If the participant agreed, the recruiters informed the volunteers of the meeting location and time. If the potential participants refused to attend a group discussion, the recruiters proceeded to the closest potential participants in the same location and repeated the procedure.

2. Snowball Sampling

This form of convenience sampling was employed in situations where it was not possible to identify easily potential participants that satisfied certain selection criteria (e.g., Marsh Arabs, victim groups, etc.). In snowball sampling, we asked a key person to help us identify individuals who might meet our selection requirements. After making contact with such an individual, we would ask for further recommendations of others who would be likely candidates for a focus group discussion. Once we identified potential candidates, we verified that they met our selection criteria and then asked them to participate in the group discussion. If they agreed, we disclosed the meeting place and time. If they declined, we asked them to recommend other potential candidates. We then repeated the recruitment protocol.

PARTICIPANT SELECTION CRITERIA FOR FOCUS GROUPS

Focus groups were formed from three major grouping categories: (1) ethnic/religious/political groups, (2) victim groups, and (3) social groups. Figure 1 below illustrates geographically how we selected focus groups in each of the three regions (northern, central, and southern).

1. Ethnic/Religious/Political Groups

For this category, we selected individuals with at least one parent who was a member of the specified ethnic, political, or religious group (e.g., Sunni Muslim, Shi'a Muslim, Kurd/KDP, Kurd/PUK, Christian, Marsh Arab, and Turkoman). We formed at least four groups stratified by age and gender (i.e., female 16–30 years of age, female >30 years of age, male 16–30 years of age, and male >30 years of age).

2. Victim Groups

We formed groups based on three criteria—loss, prison, and exile. Persons selected for the three victim groups met the following criteria, respectively: (1) loss of at least one family member, (2) imprisoned in concentration camps and/or military prisons or incarcerated for political reasons in civilian prisons, or (3) exiled during the former regime (1979–2003).

3. Social Groups

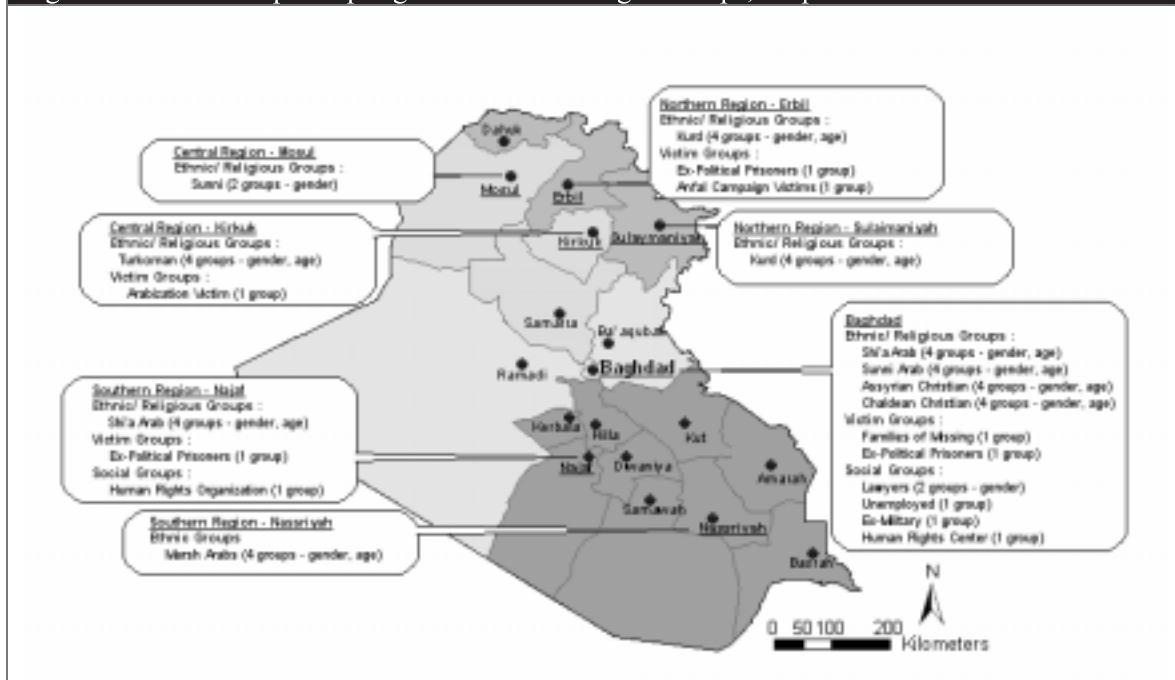
Participants represented one of the following social and civil society groups: NGOs, Bar Association, ex-military.

4. Additional Selection Criteria

Each participant also had to satisfy the following basic criteria:

1. Be a permanent resident of Iraq (except for the exile group).
2. Understand and speak the language of the group discussion.
3. Have no prior participation in group discussions for public opinion research.
4. Have good communication skills and to be willing to present their own opinions in group discussions.

Figure 1: Focus Group Sampling Location and Target Groups, Iraq



MODERATORS AND TRANSLATORS

Four focus group moderators and three translators traveled throughout the three regions to conduct the interviews and focus group discussions. The four moderators came from diverse disciplines (epidemiology, law, political science) and countries (Australia, Belgium, Jordan, and United States). They were selected based on their experience in research and/or knowledge of the region and their ability to work in an unstable environment. Only one of the moderators was fluent in Arabic. Although moderators/interviewers who were fluent in Arabic would have made the discussion more fluid and taken less time, our preliminary assessment and pilot groups indicated that most Iraqis felt more comfortable discussing sensitive issues with non-nationals, which reflected their recent experience with the former regime. We carefully screened each translator and other local personnel who helped us in this research.

RECORDING

During the briefing process, the researchers sought permission to record the discussion session, and all but one participant agreed. Therefore, one focus group was not recorded. This group was held in Mosul, where Saddam Hussein's two sons recently had been killed, and where the security situation was significantly worse than other sites.

TRANSCRIPTION/TRANSLATION

A U.S. university research team supervised the transcription and translation process. Translation of the interviews and groups was outsourced to professional translators with appropriate safeguards. During this process, one tape was found to be defective and notes taken during the discussion were used to provide the missing data.

TEXT ANALYSIS

The English versions of the transcripts were analyzed by coding key segments of transcripts from focus groups and key informant interview according to a list of established themes. Coded transcripts were then entered into Ethnograph v. 5.0, a program designed for analysis of qualitative data. The transcripts were then filed in Ethnograph v. 5.0 by group (e.g., key informants, ethnic group, social group, or victim group). For each group, text segments and topic frequency data were extracted by running analysis for each topic code. The text segments were then divided among six individuals for in-depth text analysis and cross-checked for accuracy of coding with the original transcripts.

TABLE 1 Key Respondents

Region/City	Representative
CENTRAL: Baghdad	Assyrian Democratic Movement
CENTRAL: Baghdad	Iraqi Communist Party
CENTRAL: Baghdad	Unemployed Union
CENTRAL: Baghdad	Hawzah Information Center
CENTRAL: Baghdad	Iraqi Communist Party
CENTRAL: Baghdad	Adhamiya Court
CENTRAL: Baghdad	Abu Hanifa Mosque (Sunni)
CENTRAL: Baghdad	Ex-Ba'ath party member
CENTRAL: Baghdad	Mustansiriya University
CENTRAL: Baghdad	Bar Association (Lawyer)
CENTRAL: Baghdad	Baya Court (Judge)
CENTRAL: Baghdad	Da'wa Party
NORTH: Erbil	Independent (Lawyer)
NORTH: Erbil	Independent (Lawyer)
NORTH: Erbil	Anfal Organization
NORTH: Erbil	Independent (Lawyer)
NORTH: Erbil	Independent (Lawyer)
NORTH: Erbil	Local Women's Rights NGO
NORTH: Erbil	Kurds NGO
NORTH: Erbil	Independent (Lawyer)
NORTH: Erbil	Independent (Writer)
NORTH: Erbil	Independent (Lawyer)
NORTH: Erbil	Turkoman Cultural Association
NORTH: Erbil	Local Foundation
NORTH: Erbil	(Independent)
NORTH: Mosul	Mosul University Law School
NORTH: Mosul	Mosul University
NORTH: Erbil	Chaldean Christian Cultural Center
NORTH: Sulaimaniyah	High-ranking family
NORTH: Sulaimaniyah	Women Union Kurdistan
NORTH: Sulaimaniyah	Medical College of Sulaimaniyah
NORTH: Sulaimaniyah	Human Rights Organization
SOUTH: Najaf	Shi'a Religious Leader
SOUTH: Najaf	Supreme Council of Islamic Revolution of Iraq
SOUTH: Najaf	Shi'a Religious Leader
SOUTH: Nassiriyah	Tribal Leaders
SOUTH: Nassiriyah	Tribal Leaders
SOUTH: Nassiriyah	Tribal Leaders

TABLE 2 Sociodemographic Profile of Focus Group Participants, July–August 2003

	Frequency Percentage (N=340)	
Sex		
Female	154	45.3
Male	186	54.7
Age, mean (standard deviation)	<i>Mean=34.7 SD (12.7)</i>	
Marital Status		
Single	152	44.7
Married	173	50.9
Divorced/widowed	15	4.4
Educational Status		
No school	29	8.5
Some primary school	27	7.9
Completed primary school	19	5.6
Some secondary	54	15.9
Completed secondary	51	15.0
Some university	76	22.4
Completed university or higher	83	24.4
No response	1	0.3
Religion		
Shi'a Muslim	142	41.8
Sunni Muslim	136	40.0
Christian	58	17.1
No Response	4	1.2
Ethnicity		
Arab	191	56.2
Kurd	76	22.4
Assyrian	42	12.4
Turkoman	31	9.1
Occupation		
No employment	29	8.5
Housewife	50	14.7
Seller (commercial, businessmen)	14	4.1
State/government functionary	37	10.9

Journalist	7	2.1
Teacher/professor	18	5.3
Lawyers	13	3.8
Medical/science worker	2	0.6
Artisan/skilled labor	31	9.1
Service provider	27	7.9
Student	46	13.5
Retired	11	3.2
Ex-military	6	1.8
No response	49	14.4

ANNEX 2 Focus Group Questions

Human Rights Violations

In your opinion, what are human rights?

1a: What kinds of human rights violations occurred in Iraq during the former regime?

1b: Have you personally been affected by human rights violations?

1c: What institution(s) or person(s) do you identify as responsible for the event(s) you just described?

Historical Records and Collective Memory

Do you think the population of Iraq should remember and preserve the record of what has happened?

2a: Why or why not?

(If these events should be preserved) How should the population of Iraq remember and preserve the record of what has happened to them?

Justice

How would you like to see the injustice resolved (be addressed)?

3a: For you, what constitutes justice?

3b: Is it important to you that persons responsible for injustice are held accountable for their actions? If yes, how should they be held accountable? In other words, how should they be punished?

3c: Are there leaders or individuals in Iraq who you believe could conduct fair and accurate trials into the injustices suffered by people in Iraq?

3d: What about outside Iraq?

3e: Do you have confidence in the Iraqi judicial system?

3f: What about the judges? Do you believe there are sufficient judges to conduct these trials? What about their capacity?

3g: And lawyers? Do you believe there are sufficient lawyers to conduct these trials? What about their capacity?

3h: If there are trials for those who are accused of committing human rights violations, where should these trials be held?

3i: Under which laws? Iraqi Laws? Islamic Laws? International Laws?

3j: Should the international community be involved in these trial processes? If yes, which international countries or institutions? How and what capacity?

3k: What about the involving experts from other Arab countries? If yes, which Arab countries? How and what capacity?

Reparations

What can be done to stop these injustices from being committed again?

4a: Is there a need for reconciliation between people in Iraq? Why or why not?

4b: What measures would help to forge unity and trust among the people of Iraq?

4c: What should be done to help the victims of injustice in Iraq?

4d: Have you heard of the International Criminal Court or the International Criminal Tribunals for the former Yugoslavia and Rwanda?

4e: Have you heard of a Truth Commission?

Priorities

What are your immediate concerns (e.g., food, electricity, finding missing family members, etc.)?

5a: What about justice? Is that an immediate concern?

ANNEX 3 Questions for Individual Interviews

Human Rights Violations

In your opinion, what are human rights?

1a: What kinds of human rights violations occurred in Iraq during the former regime?

1b: Have you personally been affected by human rights violations?

1c: What institution(s) or person(s) do you identify as responsible for the event(s) you just described?

Accountability

Do you think the population of Iraq should remember and preserve the record of what has happened to them?

2a: Why or why not?

(If these events should be preserved) How should the population of Iraq remember and preserve the record of what has happened to them?

How would you like to see the injustice remedied?

For you, what constitutes justice?

4a: What does “holding someone accountable” mean for you?

4b: How important is it to you that the persons responsible for injustice are held accountable for their actions?

4c: Who should be held accountable and for what kinds of conduct and injustices?

4d: Should anyone receive an amnesty or pardon?
If yes, who?

4e: Under what conditions should they receive an amnesty or pardon?

4f: If responsible people are taken to court, where should they be tried?

In Iraq: Where in Iraq?

In another country: Which country?

For domestic crimes in Iraq and for international crimes in another country (international court?)

4g: If people are tried for what they have done, which law should be applied to them?

Only Iraqi law: If yes, do you include Sharia law in “Iraqi law”?

Only international law: Iraqi and international law?

4h: What does a “fair trial” mean to you?

Do you have confidence in the Iraqi judicial system?

5a: Confidence in the law?

5b: Confidence in judges?

5c: Confidence in lawyers?

Are there leaders or individuals in Iraq who you believe could conduct a fair and accurate inquiry into the injustices suffered by people in Iraq?

6a: If yes, who?

6b: Do you believe there are enough qualified and honest judges to conduct a fair and accurate inquiry into the injustices suffered by people in Iraq?

6c: What about lawyers?

6d: Do you believe the judges need to be retrained or to update their knowledge?

6e: What about lawyers?

Are there leaders, individuals, or institutions outside of Iraq who you believe could conduct a fair and accurate inquiry into the injustices suffered by people in Iraq?

7a: If yes, who?

7b: Would you accept international assistance in any capacity? If yes, what kind of assistance would you accept (judges, lawyers, training, advisers, etc.)?

7c: Would you accept assistance from other Arab countries? If yes, what kind of assistance would you accept? If yes, which Arab countries?

Justice and Reparations

What can be done to stop these injustices from being committed again?

8a: Is there a need for reconciliation within Iraq?

8b: If yes, what measures would help to forge unity and trust among the people of Iraq?

8c: Should people who have committed human rights violations be permitted to hold public office or positions of political responsibility?

8d: What should be done to help the victims of injustice in Iraq? What about victims' families? If "compensation" is mentioned, what kind of compensation? If monetary compensation, who should pay it?

How do you feel about the deba'athification process being performed by the military forces now occupying Iraq?

9a: Do you believe there is a difference in being a Ba'ath party member and a "Ba'athi" or "Saddami"? If yes, can you explain the difference?

Tribunals and Truth Commissions

Have you heard of the International Criminal Court or the International Criminal Tribunals for the former Yugoslavia and Rwanda? If yes, where did you hear about them and what do you know about them?

10a: Is the United Nations an organization that you would trust to conduct a fair trial in Iraq?

10b: Is the United Nations an organization that you trust generally to assist Iraqis in addressing past injustices?

10c: What is your opinion about a trial process supervised by the United Nations, involving both Iraqi and international personnel?

Do you believe that the military forces now occupying Iraq could conduct a fair and proper trial of the responsible persons?

11a: Why or why not?

Have you heard of a truth commission? If yes, where did you hear about it and what do you know about it?

12a: What does it mean to “know the truth” of what Iraq experienced?

12b: Would knowing the truth about the injustices you or others have suffered make a difference to your lives or to the lives of people you know?

12c: Would you feel safe if you were asked to be a witness or complainant in a trial? Why or why not?

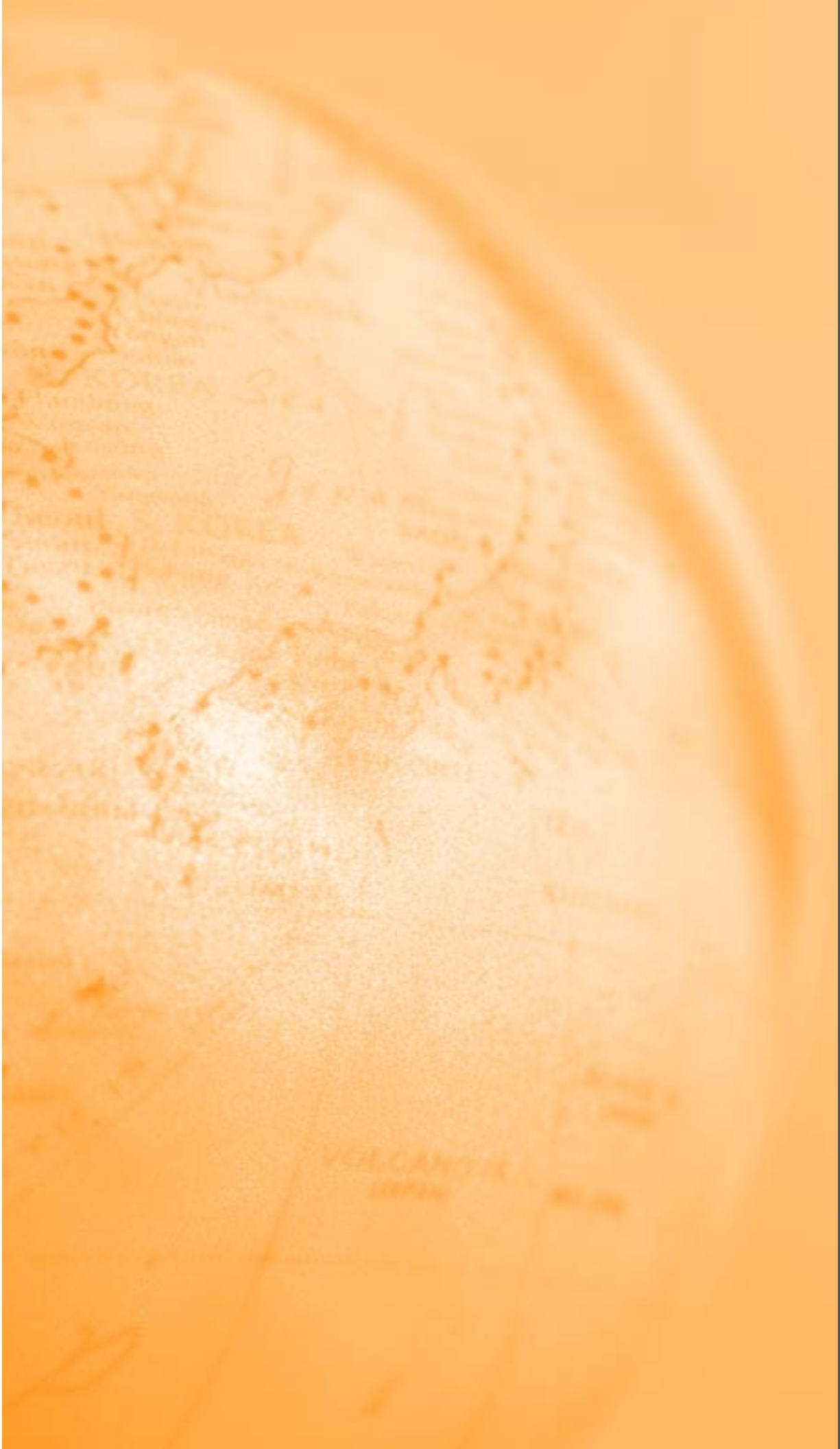
12d: Do you think the international community has a role to play in truth commission, or is it national? What role? What about the coalition forces?

Priority

What are your immediate concerns (food, electricity, water, health, etc.)?

13a: What about justice?

13b: If you could redesign the justice system, what would like the justice system to be like in the future?



international center for
**TRANSITIONAL
JUSTICE**

20 Exchange Place
33rd floor
New York, NY 10005
TEL 917.438.9300
FAX 212.509.6036

www.ictj.org | info@ictj.org