

RECONCILIATION PROCESSES IN IRAQ

THE POTENTIAL OF TRUTH COMMISSIONS
TO BRING DEMOCRACY

Master of Arts in Law and Diplomacy - Capstone Project

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Abstract

After many years of civil war and conflicts, Iraq is still currently involved in increased levels of sectarian violence. The American intervention in Iraq in 2003 and the more recent withdrawal of the international troops from the country have directly contributed to the crescent instability in the country. Achieving reconciliation within and between the different sectarian groups living in Iraq is missing. The implementation of a reconciliation process can bring not only knowledge and understanding about past crimes and violations of human rights committed, but also it can help building a new institutional democratic structure. In this regard, truth commissions on a national level have proven to be effective reconciliation instruments in contexts of grave violation of human rights, such as Iraq. Approaching a past history of violation of human rights with both the government and communities directly affected can have the potential to establish the bases for a long-term democratic system.

“...genuine national reconciliation will be difficult as long as the issues and effects of the Anfal campaign remain unresolved” (UN Special rapporteur report p.37)

Introduction

After many years of intervention and civil war in Iraq, and mostly after the Iraq war in 2003, there were hopes for the establishment of the bases for a new stable democracy in different moments. The creation of interim local governments with the financial support of the international community – and specially the role of the US – during the past ten years created a hope among the international community for the evolution of the country towards a more stable and democratic regime. But currently the events that have taken place in Iraq mostly since 2003 are the evidence that Iraq is far from achieving this goal. In June 2012, the violence caused by the Iraqi insurgency was the highest registered in the past few years, with approximately 200 people reported killed, mostly civilian pilgrims.¹

Recently, and a week before the Arab League held a meeting in Iraq, more than 50 people were killed across central Iraq in a new wave of violence.² This attack followed a series of other attacks which are prove of the increased violence that the country has registered for the past year.³ In April this year, as many as 15 Sunni candidate leaders running for the provincial elections were assassinated and many others have been wounded, disappeared or received menacing calls and messages.⁴ Al-Qaeda’s Islamic State of Iraq – a Sunni extremist organization – has claimed the responsibility for these attacks.⁵

In addition to these events, the results of the last elections held have indicated a growing polarization, in alignment with the increased levels of violence registered during the month of May, when the United Nations claimed that nearly 2,000 people had been

1 CNN news, “11 killed in attacks north of Baghdad” at <http://www.cnn.com/2012/06/29/world/meast/iraq-violence>, last accessed August 18th, 2013

2 Brookings Institution “The Arab League Summit 2012”, at <http://www.brookings.edu/blogs/up-front/posts/2012/03/27-arab-league-wittes>, last accessed August 18th, 2013

3 Reidar Visser, “Maliki brings the Arab league to town. The Bagdad gamble”, Foreign Policy, March 23, (2012), at <http://www.foreignaffairs.com/articles/137350/reidar-visser/maliki-brings-the-arab-league-to-town>

4 Arango, Team. “Assassinations Grow as Iraqi Elections Near” New York Times, at http://www.nytimes.com/2013/04/16/world/middleeast/killings-grow-as-iraqi-elections-near.html?_r=0, April 15, 2013

5 Jaboori, Rafid. “Sectarian tensions stalk Iraq elections”, BBC UK, at <http://www.bbc.co.uk/news/world-middle-east-22215632>, April 19, 2013

killed in violent attacks, which " ... is a sad record," as Martin Kobler, the U.N. envoy in Baghdad, said in a statement.⁶ The Iraqi context, the withdrawal of US troops, the dropping levels of economic wellbeing and the continuous clashes between Sunni and Shia population (especially after the Samarra bombing in 2006), and Iraqi and Kurd populations, is having a negative impact on security levels and complicates any prospects of democratization process.⁷

One of the major historical reasons that influence the Iraqi context is the heritage of Saddam Hussein's regime. The continuous violations of human rights committed by officials of the Ba'ath party, mainly against Kurds and against the Shiia population, are recognized as crimes against humanity and, in the case of the Anfal campaign (1988) as genocide against the Kurd population. These episodes of violence and the government structure responsible to implement these violations have shaped Iraq today and will influence the definition of a transitional justice process in Iraq. This will be especially complex, due to aspects such as lack of justice, accountability, and the role the international community have played in Iraq. Also the implementation of some measures, such as Saddam's trial, have had a negative impact on the Iraqi society by focusing on the prosecution of one main actor and not approaching a broader range of perpetrators and crimes. In addition to this, the existence of asymmetries of power between Sunni and Shia populations, and also between Iraqis and Kurds, deepens the structural inequality and instability in the country. These asymmetries, as we will see, have the potential to reactivate the conflict. As Lake and Rotchild⁸ pointed out: "fear, inequality and a concrete sentiment of inequality and injustice can lead parties to engage in an active violent conflict."⁹

⁶ Markey, Patrick, "More than 1,000 killed in Iraq violence in May", Reuters at <http://www.reuters.com/article/2013/06/01/us-iraq-violence-idUSBRE95004P20130601>, Baghdad, Jun 1, 2013

⁷ Since the Samarra bombing in Iraq (2006) the levels of sectarian violence increased, causing an increase on the number of internal IDPs, a demographic evolution on the geographic distribution (sunni / shia areas) and a lasting change to Iraq's social and demographic make up.

⁸ Lake and Rothschild, "Containing fear: The origins and management of ethnic conflict". International Security, 1996, 21 (Fall): 41-75

⁹ Lake and Rothschild, "Containing fear: The origins and management of ethnic conflict". International Security, 1996, 21 (Fall): 41-75, 45

No initiative of democratization in Iraq has had a transformative impact in the society and government. Iraqi society is still characterized by inequality and asymmetry in power relations between different sectarian groups. In the longer term, this deep structural inequality and instability is leading to a reactivation of conflict and violence. In this regard, reconciliation has proven to be highly effective in achieving its goals in contexts with a high level of violence, crimes, and mass violations of human rights.

This paper will look at the role of reconciliation in post conflict societies in general, and also how this process can contribute to the establishment of a democracy in Iraq. The purpose of this study is to analyze and establish the relationship between an effective reconciliation process and the establishment of a strong durable democracy in Iraq. At the end, the goal is to identify how reconciliation can contribute to overcome the weakness of the state¹⁰. The structure of this paper will be the following. First, we will establish a methodological framework to define the concept of reconciliation and to differentiate reconciliation from other interventions of conflict resolution in post conflict settings – such as mediation, negotiation or conflict resolution itself. Within this framework, we will identify the relationship between reconciliation and democracy. We will focus on the elements essentially understood as the main pillars of a deep-rooted reconciliation process: truth and justice; historical responsibility and restructuring the social and political relationship between the parties involved in the conflict. Second, we will focus our analysis on the mass violations of human rights committed by Saddam's regime during his years of government, especially on the violations of human rights committed against the Kurd population in the Anfal campaign. Third, this paper will focus on the incomplete approach on achieving reconciliation and justice in Iraq. The Iraqi Tribunal and the prosecution against Saddam Hussein have proven not to bring justice and reconciliation to the crimes committed under his regime, and they lack of a long-term peace-building and reconciliation perspective. The fourth section of this paper will focus on the benefits of these applied to

¹⁰ We will understand weakness as institutional and political weakness, as well as lack of social and ethnic unity in Iraq, mainly driven by the separation between Sunni, Shia and Kurdish populations.

the Iraqi case and how putting into place a Truth Commission can contribute to the establishment of strong bases for democracy in Iraq.

Chapter 1. Theory and Methodology Framework

1.1 What is Reconciliation?

The term reconciliation has been used both in the conflict and peace-building literature with different meanings and approaches. Reconciliation means either a process of bringing people together or the final outcome of solving a conflict. These two can take place within a state (intrastate conflicts) and for disputes between states. Kelman identifies reconciliation as the next step in a post conflict society. Rouhana himself points out that still today, there is an “ambiguity” of the term, maybe due to the multiple existences of definitions given “its novelty in the conflict resolution literature and political discourse”.¹¹ Other authors, such as Philpott, highlight the relationship between reconciliation and justice. He identifies reconciliation with the contemporary restorative movement and the idea that reconciliation does not just bring parties together to overcome the conflict, but is also able to create political mechanisms that will impede crimes and violations that from happening again.¹² This definition is more aligned with the definition of transitional justice in the field of transitional justice. Kelman also defined reconciliation as the “development of working trust, the transformation of the relationship towards partnership based on reciprocity and mutual responsiveness, and an agreement that addresses both parties’ basic needs.”¹³ As he indicates, the combination of transformation of the relationship, trust and addressing the parties’ basic needs are highlighted as three main pillars of the reconciliation process.

¹¹ Nadim Rouhana, “Group identity and Power asymmetry in reconciliation processes: the Israeli-Palestinian case”, in *Peace and Conflict: Journal of peace psychology*, 10(1), 33-52, 34

¹² Philpot, Daniel, “An Ethic of Political Reconciliation” *Ethics and International Affairs*, Winter 2009, 23, 4, 389-407, 390

¹³ Kelman, (2004) *Reconciliation and Identity Change: A social Psychological perspective*. In Y.Bar-Siman-Tov (ed.) *From conflict resolution to reconciliation*, Oxford: Oxford University Press, 112

Although it is true that there seems to be a major consensus on a general definition of the germ, the main differences from one author to another rely on emphasizing certain attributes over others. For example, Baron points out the reconciliation's "healing quality", originated from putting the parties together and bringing them to overcome their differences.¹⁴ Others such as Ross highlight the positive instrumental and emotional change that parties in conflict take in a reconciliation process in order to envision a joint future¹⁵. Although both definitions look at specific aspects of reconciliation, the major idea behind reconciliation is to bring parties together by overcoming mutual differences. It is important to mention that these are just two main examples of the reconciliation literature, and they reflect just one part of the increased reference to this field in the past few years. Also, during the past years the increase of politics of independence and separation within countries has motivated the appearance also of politics of reconciliation that have the power to bring coexistence between the parties in conflict.¹⁶

Moreover, reconciliation has been identified as a two level intervention. First, reconciliation is an intervention directed to the individual level, where people within the groups in conflict eliminate the barriers that impede them from establishing normalized relationships with individuals in other groups. Secondly, reconciliation can be a group level or state level intervention, also described as political reconciliation. This intervention is directly related with the political order itself and the "relationship among the citizens, between citizens and states and between the states and the international system."¹⁷ This level of analysis is linked with the state level of conflict.

In addition to these conceptions of reconciliation, there is agreement between authors on distinguishing reconciliation as a different process from those of mediation, conflict resolution and negotiation. Mediation is a voluntary process focused on conflict

¹⁴ Reuben M. Baron, "Reconciliation, trust and cooperation: Using bottom -up and top -down strategies to achieve peace in the Israeli-Palestinian conflict", In *The social psychology of intergroup reconciliation*, by Nadler, Malloy and Fisher (eds.); Oxford University Press, 275-297, 278

¹⁵ M. Ross, "Rituals and the Politics of Reconciliation", In *From Conflict resolution to reconciliation*, by Y. Bar-Siman-Tov (ed.). Oxford: Oxford University Press, 197-223,200

¹⁶ B. Bashir & A. Kymlicka, "Introduction: Struggles for inclusion and reconciliation in modern democracies", In *The Politics of reconciliation in multicultural societies*, by W. Kymlicka and B. Bashir (eds.), Oxford: Oxford University Press, 1-24, 2

¹⁷ Daniel Phillipot, "An Ethic of Political Reconciliation", In *Ethics and International Affairs*, Winter 2009, 23, 4, 389-407, 392

management, which involves the assistance of a third party - whether an individual, an organization, a group or a state - to change their perceptions or behavior without using physical violence or authority of law.¹⁸ This process differs from a negotiation process, where two or more parties with initially different positions and interests in the same issue try to achieve their own interests through a negotiated process.¹⁹ At the same time, these two interventions differ from conflict resolution itself.

Although the role these theories play in the explanation of social and human interaction has proven to be strong, they stand incomplete when it comes to explaining complex conflict dynamics today. These theories serve to explain one of the drivers of conflict – human relations - though additional elements play an important role to the disputes themselves and blur the social component to them. Brown, in “*Ethnocentrism and Hostility*” explains that by reaffirmation of the personal identity within one group, we can create the conditions under which we can achieve an improvement in our given status in society. But also, in doing this, humans emphasize even more the differences that may exist already in comparison with the out-group. This happens in cases involving ethnic or religious minorities, such as the Copts in Egypt or the Black African-Americans in the US. However, this idea itself does not explain how differences between two groups that coexist transform themselves into a violent conflict and also under what circumstances this can happen. In my opinion, other elements come into play and the combination of those elements can increase what Duckitt calls *inequality* between the parties and facilitate an escalation of the conflict between the groups. Some of the elements we refer to are religion, political values, natural resources and also territorial disputes over areas with a strong significance for one of the groups.²⁰

¹⁸ Bercovitch, J. (1997). “Mediation in International Conflict: An Overview of Theory, A Review of Practice” In *Peacemaking in International Conflict: Methods and Techniques*, by Zartman & Rasmussen (eds.), Washington DC: United States Institute of Peace Press, (125-150)

¹⁹ Carrie Menkel-Meadow, “Chronicling the Complexification of Negotiation Theory and Practice”, In *Negotiation Journal*, Volume 25, Issue 4, (415–429), October 14 (2009)

²⁰ Some examples could be Sunni – Shia confrontations in Iraq; the Spanish civil war; the disputes over the Sinai

Reconciliation is a tool that allows addressing deep emotions and perceptions related with a conflict, deepen in its past history.²¹ Here is where the transformative power of reconciliation relies on, approaching subjective perceptions of truth and past events in conflicts that are complex in nature. An integrative reconciliation process will consider institutional changes on the post-conflict society where the process is taking place in order to be successful, such as building socially just government institutions, acknowledgment of the suffering from a certain group, reparations - as a material compensation of victims-, punishment, apology, and forgiveness.²² In this regard, reconciliation needs to address both the competing interests of the parties and the identities of the groups in conflict in order to be effective. The relationship between these two is extremely important, furthermore in cases where the objective of reconciliation is not just “to connect former adversaries emotionally but to build institutions and practices to meet their instrumental needs as well”.²³ Formal institutions will need to be included into the process, so they can contribute to achieve the goals of reconciliation, which at the end, is to foster integration and peace-building in post-conflict societies.²⁴

Reconciliation techniques have proven to be more effective in the aftermath of conflicts with a high level of violence and extreme violations of human rights.²⁵ The potential of reconciliation to promote deep changes in root causes of conflict and to change the relationship between the parties has proven to be clear when contributing to bring long lasting peace in conflicts based on ethnicity, religion or political views, as well as racial differences.²⁶ These elements strongly determine the membership of the individuals to each specific group – intragroup membership - which is at the root not only of the conflict but also needs to be the entry point to approach the problem.

²¹ Lasana T. Harris and Susa T. Fiske, “Diminishing vertical distance: power and social status as barriers of intergroup reconciliation”, In *The Social Psychology of Intergroup Reconciliation*, by Nadler, Malloy and Fisher (Eds.); Oxford University Press, 301-315, 301

²² Daniel Phillipot, “An Ethic of Political Reconciliation”, In *Ethics and International Affairs*, Winter 2009, 23, 4, 389-407, 398

²³ M. Ross, (2004) Rituals and the politics of reconciliation, In *From conflict resolution to reconciliation*, by Y. Bar – Siman – Tov (Ed), Oxford, Oxford University Press, (197–223), 199

²⁴ Daniel Bar – Tal and Gemma H. Bennik, “The nature of reconciliation as an outcome and as a process”, In *From Conflict resolution to reconciliation*, by Bar-Siman – Tov, Oxford University Press, (2004), (11-38), 14

²⁵ Dan Bar – On (Ed), “Bridging the gap. Storytelling as a way to work through political and collective hostilities”, In cooperation with Sussane Kutz and Dirk Wegner, 24

²⁶ Here, we refer to the examples of Rwanda (gacaca) and Cambodia, between others

For the purposes of this case study, we will take Kelman's definition on reconciliation before mentioned. But given the limitation of scope of this definition, we will combine it with goals of a successful process, benchmarks, and societal and individual beliefs that will constitute our theoretical framework.

1.2 Theoretical Framework

As we have mentioned before, reconciliation is a process that contributes establishing a long-lasting peace through working on common history, memory, and history of exclusion. It does it mainly through voicing the collective exclusion, taking responsibility and sometimes, including apology. Through these aspects, reconciliation is able to go deep into the roots of conflict and tries to bring parties together. This is done from the perspective that reconciliation does not just happen as a consequence of a reached peace agreement between parties in conflict, but from a deeper transformation of the dynamics of interaction between the parties. In the past years, many peace agreements have fallen short in achieving long lasting peace and reconciliation instruments look to compensate gaps on these agreements by working on aspects that the regular peace process has not been able to work on before. In this sense, it is important to mention that although political processes held in post conflict settings help in achieving formal political integration, sometimes these procedures are not successful on the establishment of institutional structures that contribute to structural equality and justice, and observance of human and civil rights²⁷.

1.2.1 Elements of a successful reconciliation process

How to define a successful reconciliation process will depend on the benchmarks and elements that will be chosen in each case to measure the outcomes of the process. But in general, there are two main elements that we can identify as successful signs of a

²⁷ D. Bar-Tal and Gemma H. Bennik, "The nature of reconciliation as an outcome and as a process", In *From conflict resolution to reconciliation*, by Bar –Siman – Tov, Oxford University press, (2004) (11-38), 12

reconciliation process and which will drive the process. First, the parties in conflict must see a common benefit in participating in the reconciliation process. The parties must understand that the reasons to maintain the conflict must have weakened considerably or become irrelevant for the parties. Both parties must understand the reconciliation process as a way to change the current *status quo* and change the relationship dynamics. The second element is the recognition by each of the parties involved in the conflict of the “the identity of the other.”²⁸ This is one of the most complex elements to work with and requires not just the recognition of the existence of that identity but accommodating each ones’ identity to that of the other group. This is extremely difficult in protracted social conflicts such as the Palestinian – Israeli conflict, where one of the fundamentals of the conflict is the negation of the existence of each other.²⁹ When both the identity of the other and the accommodation happen, the parties will be able to interact based on equality and symmetry, in comparison to a situation during the conflict where inequality and asymmetry defined their relationship and that was one of the main drivers of the conflict.

This phenomenon is as challenging as the reconciliation process itself. Kriesberg has argued that this process-the identification and accommodation- is defined by the influence of power asymmetry between the parties and the severity and asymmetry of the past conflict between the parties.³⁰ Here, the benchmark to identify a successful reconciliation process will be related with both the conceptions of intergroup and intrastate reconciliation. As previously mentioned, intergroup reconciliation intends to “lead to a stable end of the conflict and is predicated on changes in the nature of adversarial relations between the adversaries of each of the parties’ conflict related needs, emotions and cognitions”.³¹ In this regard, Bar Tal identified five spheres of societal change that will

²⁸ H. Kelman, “Reconciliation as identity change: A social psychological perspective” In *From conflict resolution to reconciliation*, by Y. Bar-Siman-Tov (Ed.). Oxford: Oxford University Press, (2004), 119

²⁹ Personal knowledge

³⁰ I. Kriesberg “Comparing reconciliation actions within and between countries” In *From conflict resolution to Reconciliation*, by Y.Bar-Siman-Tov (Ed.), Oxford. Oxford University Press, (2004), 95

³¹ Ariel Nadler, Thomas E. Malloy, and Jeffrey D. Fisher, “Intergroup reconciliation: dimensions and themes”, In *The Social Psychology of Intergroup Reconciliation*, by Nadler, Malloy and. Fisher (Eds.), March 20, (2008)

need to happen to have an impact on the context where groups in conflict operate and contribute this way to achieve reconciliation.³² These are:

- Beliefs about the group's goals and what is that each group is trying to achieve. This consideration is made not only about the reconciliation process itself but also in the long-term.
- Beliefs about the rival group and what are the ideas, stereotypes and knowledge that each of the parties have from the other group.
- Beliefs about one's own group, and what does it constitute its own identity. In this regard, it is important not just to reflect on the own identity but on the other's group identity and how that one is different.
- Beliefs about the relationship in the past and the need to evolve towards a relationship driven by cooperation and friendly relations.
- Beliefs about peace and a realization that a long lasting peace comes with the realization of the importance of the other side's interest

In order for the change to happen, and for the interactions between parties to be different, the actions to accomplish these changes have to take place from a bottom-up approach (from the society to the government institutions) and up-bottom (from the institutions towards the society)³³. This means that ideally, all individuals, groups and the government need to be fully and actively involved in making the reconciliation process successful and to contribute to long-lasting peace, as it has been shown in the literature³⁴. In a recent study of the civil wars of the twentieth century, 12 cases were found in which genuine reconciliation events happened. In 8 out of those 12 cases, (67 %) war did not

³² D. Bar-Tal and G-Bennik, "The Nature of Reconciliation as an outcome and as a process", In *From conflict resolution to reconciliation*, by Bar-Siman-Tov, Oxford University Press, (2004), (11-38), (20-21)

³³ D. Bar-Tal and G-Bennik, The Nature of Reconciliation as an outcome and as a process, In *From conflict resolution to reconciliation*, by Bar-Siman-Tov, Oxford University Press, (2004), 27

³⁴ Louis Kriesberg, "Comparing reconciliation actions within and between countries" In *From conflict resolution to reconciliation*, by Y.Bar-Siman-Tov (Ed.), Oxford. Oxford University Press, (2004), 97

recur; but in only 9% of the cases without reconciliation attempts war did not recur.”³⁵

Furthermore, authors such as Wiebelhaus mentions that conflicts have rarely restarted after the use of reconciliation instruments, such as truth commission.³⁶

Within the reconciliation focus, there are five main elements that can be used as instruments to bring reconciliation:

- Apology: traditionally defined as a “speech that seeks forgiveness” (Tavuchis, 1991), apology has been considered extremely useful in achieving reconciliation. Apology has a strong emotional value in the individual sphere, but also in the collective *imaginarium* of a group. As Cohen indicates,³⁷ the importance of apology derives from the fact that painful acts and memories cannot be just simply ignored. They need to be confronted. Apology makes reference to the emotional and psychological aspects of conflict, which are as relevant and as important as the material reasons, which originate conflict.
- Truth commissions: used as a political strategy to deal with past violations and violence through a concept of truth.³⁸ Truth commissions have been part of successful peace-building processes, such as in the case of South Africa or El Salvador. Truth commissions have been defined as “ad hoc, autonomous, and victim-centered commissions of inquiry set in up in an authorized by a state for the primary purposes of (1) investigating and reporting on (...) causes and consequences of relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule of conflict, and (2) making recommendations for their redress and future prevention.”³⁹

³⁵ Louis Kriesberg, “Comparing reconciliation actions within and between countries,” In *From conflict resolution to Reconciliation*, by Y.Bar-Siman-Tov (Ed.), Oxford. Oxford University Press, (2004), 97

³⁶ Wiebelhaus, 2010, 24

³⁷ Raymond Cohen, “Apology and Reconciliation in International Relations”, In *From conflict resolution to Reconciliation*, by Y.Bar-Simamntov (Ed.) Oxford: Oxford University Press, (2004), (177-195), 177

³⁸ Elisabeth Stanley, “Evaluating the truth and Reconciliation Commission”, *Journal of Modern African Studies*, 39, (2001) (525-546), 526

³⁹ M. Freeman “Truth Commissions and Procedural Fairness” 1st Ed, New York: Cambridge University Press, (2006), 18, In *Truth Commissions and Transitional Societies. The impact on human rights and democracy*, by Eric Wiebelhaus-Brahm, 3-4

- Public trials: whether civil or criminal, national or international, domestic or foreign. They are a governmental instrument to identify, investigate and pushing deep violations of human rights⁴⁰.
- Reparations: which can be either material or symbolic. Reparations are a way to hold the State accountable for the past crimes, and in most of the cases, these are the origin of disputes and controversies in reconciliation and transitional justice processes.⁴¹
- Rewriting a common history, education, and other informal initiatives, such as mass media use, meeting, non-governmental projects or cultural exchanges.

The decision in implementing one or a combination of these instruments will depend on a deep analysis of the context of the conflict, the violations and crimes committed, and the identification of what are the most important elements that need to be approached to solve the conflicts. The implementation of any of these within the reconciliation process will have a double effect. Directly, they approach the issues from the past, trying to encourage the parties in conflict to redefine their relationship. Indirectly, they will have an impact on the following aspects:⁴²

- Truth of the key events and crimes occurred in the past. The complexity of this component relies on the absence of one unique truth for all parties involved in the conflict. There is an absence of one shared view on the past, and the challenge is to achieve an agreement on a common history.
- Justice - on its three dimensions: rule of law, rectificatory and distributive justice. Although these three are interconnected, there is an emphasis on rectificatory justice, which refers to physical violence suffered during the conflict. Furthermore, it is important to mention that the focus on one over the others can undermine the

⁴⁰ Mark Freeman, "Truth Commissions and Procedural Fairness. Cambridge", University Press, (2006), 5

⁴¹ Lisa Laplante and, Kimberly Theidon, "Truth with Consequences: Justice and Reparations in Post Truth Commission Peru", Human Rights Quarterly, Volume 29, Number 1, February 2007, (228-250), 245

⁴² Louis Kriesberg, "Comparing reconciliation actions within and between countries", In Y. Bar-Siman-Tov (Ed.), From Conflict resolution to reconciliation-Oxford: Oxford University Press, (81-85)

accomplishment of reconciliation. Justice needs to be approached as both a symptom and consequence of the conflict and reconciliation has to work with all three dimensions in order to bring peace to the conflict and bringing back a stable post-conflict environment.⁴³

- Social and political responsibility for the abuses committed, which differs from the individual action and responsibility taken against the individual perpetrators of massive crimes and human rights violations.⁴⁴
- Security and safety, both intergroup and intragroup. Security has been frequently identified as one of the main achievements of a successful reconciliation process. Reconciliation increases the likelihood of equitable and enduring relations, which implies an increased level of security. This happens, as Kriesberg mentions, because the way to achieving a settlement is frequently less confrontational.⁴⁵

The mutual acknowledgment of the other's nationhood and humanity, the confrontation with history, and acknowledgment of responsibility of the crimes and violations of human rights committed have been pointed out as the main three issues that indicate that a reconciliation process is on its way to be successful.⁴⁶ These contribute to transform the relation between the parties in conflict towards a new one characterized, as Rouhana points out, by "mutual recognition, trust, mutual granting of legitimacy and security".⁴⁷ In the long term, the final overall goal of these is to build up the optimum scenario to bring a democratic government, where the violent acts from the past can never longer happen and the government is accountable. In relation to our specific case study, in societies traditionally defined by political sectarianism - a system of governance that promotes

⁴³ Rama Mani, "Beyond Retribution. Seeking Justice in the Shadows of War", Polity Press, Cambridge, UK, 5-7

⁴⁴ Nadim Rouhana, "Group Identity and Power asymetry in Reconciliation Processes: the Israeli-Palestinian Case", In *Peace and Conflict: Journal of Peace Psychology*, 10(1) (33-52), 37

⁴⁵ L. Kriesberg, "Comparing reconciliation actions within and between countries", in *From Conflict resolution to reconciliation*, by Y. Bar-Siman-Tov (Ed.), Oxford: Oxford University Press, 105

⁴⁶ H. Kelman, "Reconciliation as identity change: A social psychological perspective", In *From Conflict resolution to reconciliation*, Y. Bar-Siman-Tov (Ed), Oxford: Oxford University Press, (2004), 120

⁴⁷ Nadim Rouhana, "Group Identity and Power asymetry in Reconciliation Processes: the Israeli-Palestinian Case", In *Peace and Conflict: Journal of Peace Psychology*, 10(1) (33-52), 37

governmental structures based on sectarian identities⁴⁸, reconciliation can contribute to transition from that systems based on sectarian and divisive structures to another system based on a democratic structure.

In addition to this, the relationship between reconciliation and democracy becomes highly relevant in contexts of previous authoritarian regimes. Reconciliation processes and especially some of the techniques such as truth commissions, have the potential to support the disappearance of authoritarian powers and to create opportunities for alternative systems of governance.⁴⁹ The reason behind it, as Hayner argues, is the clear contribution of truth commissions and reconciliation processes themselves to produce a “more knowledgeable citizenship” that will be able to identify and oppose any future violation of human rights. In doing this, people will rebuild a sense of shared destiny and will be able to identify and delegitimize the non-democratic exercise of authority.⁵⁰

Transition to democratic systems is complex and not an easy phenomenon in the aftermath of a conflict. The instability that often characterizes post-conflict societies can evolve towards the reactivation of the conflict. Mansfield and Snyder pointed this out, referring to the weakness of the central state and the effect of bringing different groups to the political arena, which were not initially included as two of the main factors that contribute to this instability.⁵¹ They also added: “incomplete democratic transitions are more likely to stimulate the outbreak of war in countries marked by weak and fragmented institutions”.⁵² Empirical data from their studies show a causal relationship between the institutional strength and the predicted probability of war in post –conflict societies. The less is the institutional strength, the higher is the risk of reactivating conflict in a given

⁴⁸ Mona Damluji, “Securing Democracy in Iraq”: Sectarian Politics and Segregation in Baghdad, (2003-2007), in TDSR Berkeley, Volume XXI, Number II, 2010, (71-87), 72

⁴⁹ Eric Wiebelhaus-Braham, “Truth Commissions and transitional societies – the impact on human rights and democracy”, Routledge, 2010, 24

⁵⁰ Priscilla Hayner, “ Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions. A comparative Study”, Routledge, New York, 2002

⁵¹ Edward Mansfield and Jack Snyder, “Turbulent Transitions. Why emerging democracies go to war”, In *Leashing the dogs of war. Conflict Management in a Divided World*, by Chester Crocker, Fer Osler Hampson and Pamela Aal (Eds.), United States Institute of Peace Press. Washington DC, (161-176), 169

⁵² Edward Mansfield and Jack Snyder, Turbulent Transitions. Why emerging democracies go to war, In *Leashing the dogs of war. Conflict Management in a Divided World*, by Chester Crocker, Fer Osler Hampson and Pamela Aal (Eds.), United States Institute of Peace Press. Washington DC, (161-176), 163

context.⁵³ This data, although is based on previous historical cases, can be also used as a theoretical framework to explain the recurrence of conflict in current post-conflict societies, such as our case study.

Ten years after the Operation “Iraqi Freedom”⁵⁴, and based on various Freedom House reports and other scholar’s opinions, Iraq is not an electoral democracy today. This is because although Iraq has achieved to celebrate elections, the political participation of all relevant constituencies in the country has been “mainly impaired and insurgent violence, widespread corruption, and the influence of foreign powers sectarian violence”.⁵⁵ The prospects for Iraq in the near future are not any better. With the withdrawal of the US troops by the end of 2011, the instability in the country has increased. The tensions between Sunni and Shia are rising, both in the social and political spheres. Furthermore, the lack of inclusion of Kurd population into the formal political debate is also a cause of conflict. The combination of all the elements mentioned before, together with the “ongoing sectarian, terrorist and political violence” is impeding Iraq from achieving a full democracy today.⁵⁶ Iraq’s construction of stability requires building national unity and “political reconciliation between ethno-sectarian groups”⁵⁷. As pointed out in a report by the Center of Strategic and Peace Studies, “Peaceful reconciliation of differences is perhaps the most important step in achieving long-term security and stability, and eliminating the risk of a violent civil war”

⁵³ Edward Mansfield and Jack Snyder, “Turbulent Transitions. Why emerging democracies go to war, In *Leashing the dogs of war. Conflict Management in a Divided World*, by Chester Crocker, Fer Osler Hampson and Pamela Aal (Eds.), United States Institute of Peace Press. Washington DC, (161-176), 164

⁵⁴ Between 19 March and 1 May 2003, the Iraq War, or Operation Iraqi Freedom, started. A combination of troops from different countries - the United States, the United Kingdom, Australia and Poland- invaded Iraq and toppled the regime of Saddam Hussein in 21 days of major combat operations. The invasion phase consisted of a conventionally fought war which concluded with the capture of the Iraq capital Baghdad by United States forces

⁵⁵ Freedom House, Iraq overview 2012, last modified 2012, at <http://www.freedomhouse.org/report/freedom-world/2012/iraq>

⁵⁶ Freedom House, Iraq overview 2012, last modified 2012, at <http://www.freedomhouse.org/report/freedom-world/2012/iraq>

⁵⁷ Freedom House, Iraq overview 2012, last modified 2012, at <http://www.freedomhouse.org/report/freedom-world/2012/iraq>

Chapter 2. Iraq and Political violence under Saddam's regime

“Thirty years of tyranny do terrible things to people: it breeds a culture of dependency; it breaks the spirit of civic responsibility; it forces people to fall back upon tight-knit familial, ideological and sectarian groups for safety and support...Freedom, democracy and rights are not magic words” (John Agresto, CPA Senior advisor for Higher education, November 17, 2003)

2.1 The Iraqi context

Even taking into account the measurable progress that Iraq has shortly done in the past few years, Iraq can be taken as an example of a failed state. After years of civil wars and conflict, and the withdrawal of the US troops from the country, Iraq's government today is characterized by corruption and use of violence, not only executed by the security forces of the state but also executed by the political leaders to maintain the control and to intimidate the population.⁵⁸ Lately, the levels of violence, identified specifically as “sectarian violence” have increased in the country. On June 10th, 39 people were killed in a car bombing. This attack occurs in a context of continuous protests by the Sunni Arab minority against the Shiite-led government.⁵⁹

In 2010, Iraq held the first period of elections after the beginning of the US occupation. For many scholars and experts on the matter, this was an initial sign of evolution of the country towards a democracy after almost 20 years of dictatorship, war and occupation by foreign military troops.⁶⁰ But the initial hopes of evolution turned to be not as successful as they seemed to be. After six months of popular protests, President Maliki went to the Supreme Court of Justice to appeal the electoral vote⁶¹. The result: the main political parties were pushed to reach an agreement in November electing Maliki as Prime Minister and Talabani as a President.

⁵⁸ Ned Parker, “The Iraq we left behind. Welcome to the World's next failed state”, Foreign Affairs.. March, April (2012), at <http://www.foreignaffairs.com/articles/137103/ned-parker/the-iraq-we-left-behind>

⁵⁹ “Iraq hit by wave of bombing”, USA Today, at <http://www.usatoday.com/story/news/world/2013/06/10/car-bombs-iraq/2407327>, June 10, (2013)

⁶⁰ Al Jazeera, “Iraq: After the Americans” In <http://www.aljazeera.com/programmes/faultlines/2012/07/2012724124452974165.html>, July 31st, 2012

⁶¹ Maliki's opponent, Allawi, got 25.87% of the votes = 91 representatives) and after having obtained the majority in all Sunni provinces in Iraq.

The turbulence of the process and the complexity of the political dynamics in the country today are not only the result of a complex socio-political context. The past dynamics between different groups and events occurred in Iraq in the past 20 years and the violence occurred under Saddam's regime, as well under the US occupation define the relationships between political parties and social groups. The result on those elections reflected sectarian divisions, as pointed out by organizations such as Human Rights Watch or authors such as R. Scheneller. In her book "*No place like home*" she mentions, "[t]he population displacement that has occurred in Iraq (...) has exacerbated sectarian and ethnic tensions and greatly decreased incentives for negotiation and compromise"⁶². This displacement of population has been originated by the increased tensions and violence occurred in the country and has a clear impact on the potential to make political compromises to bring together a government of national unity.

Currently, Iraq has been listed as the 9th most instable country in the world.⁶³ After the Iran – Iraq war (1980) Iraq invaded Kuwait in 1990, and as a consequence, the role and image of the country as a regional power started to weaken to finally, end up being the object of the US military invasion in 2003. This intervention, as explained before, was the first action that initiated the increase of instability in the country, instead of impeding the escalation of violence.⁶⁴ Ayoob pointed out that the US invasion had a strong influence on the failure of the Iraqi state by debilitating the conditions for democracy and the Iraqi institutional apparatus and it did fail also to create the conditions for an effective structure".⁶⁵ But in fact, the debilitation of the Iraqi democracy is caused by a combination of various historical, political and sociological aspects, together with the current levels of violence.

⁶² Human Rights Watch – World Report 2011 (events on 2010). Iraq (530-535), 530, and In "No place like home: Iraq's refugee Crisis Threatens the Future of Iraq" by Rachel Schneller, 284

⁶³ Failed States Index 2011

⁶⁴ Human Rights Watch – World Report 2011 (events on 2010). Iraq (530-535), 530

⁶⁵ Mohammed Ayoob, "State Making, State Breaking and State Failure", In *Leashing the Dogs of War. Conflict Management in a Divided World*, 95 – 114, by Chester A. Crocker, Fen Osler Mapson and Pamela Aall. (Eds.), US Institute of Peace Press, Washington DC, 109

Iraq is a mosaic of ethnic and religious groups. Based on current data, between 75% and 80% of the population is Arab and between 15% and 20% is Kurdish. Also, there is another 5% of the population composed by Turkoman, Assyrian or other ethnic groups. Both Arabic and Kurdish are official languages and the rest – Assyrian, Armenian and Turkmen – are official in the regions where they are spoken. In addition to this, 97% of the population is Muslim – out of which 60% -65% are Shia and 32%-37% are Sunni- and the rest are Christian or from other confessions.⁶⁶ Traditionally, the geographical distribution of population with different confessions in Iraq followed a homogeneous distribution and, in fact, the country had a tradition of “cross-community integration”.⁶⁷ This circumstance allowed groups from different ethnic groups and religions to coexist in similar environments, contributing to an increased level of security and avoiding a high level of social clashes, as well as reducing the levels of violence between them. This changed in 2006, as a consequence of the Samarra bombing, when the Shia Al-Askari Mosque was targeted by a bomb attack caused by Al-Qaeda in Iraq. This attack was followed by a violent ethnic response against Sunni population. Over one hundred bodies were found just the next day, and numbers rose to 1,000 on the following days.⁶⁸ As a consequence, massive displacements of populations took place after the event, and the demographic distribution in Iraq changed, increasing sectarian divisions in the country.⁶⁹ This fact became more relevant in Iraq, due to the nature of the Iraqi nationalism, Arab and Islamic identities, tribal families, profession, urban or rural provenance and socioeconomic conditions.

At the same time, these social distinctions overlap with the Sunni and Shi'a religious identities in the country. But, even given this overlap, it has been the coincidence

⁶⁶ Mark Lattimer, “Challenges for establishing inclusive democracy” In *Building Democracy in Iraq*, Report by Yash Ghai, Mark Lattimer and Yahia Said, Minority Rights Group International, 2003, 5

⁶⁷ Mark Lattimer, “Challenges for establishing inclusive democracy” In *Building Democracy in Iraq*, Report by Yash Ghai, Mark Lattimer and Yahia Said, Minority Rights Group International, 2003, 5

⁶⁸ Irin News Iraq, “Sectarian violence and displacement follow Samarra attack” at <http://www.irinnews.org/report/72731/iraq-sectarian-violence-and-displacement-follow-samarra-attack>, Bagdad, June 14th, 2007

⁶⁹ Rachel Schneller, “No place like home: Iraq’s refugee Crisis Threatens the Future of Iraq, 280; and Ronen Zeidel “Sunni discontent in Iraq. An historical perspective”, (29-145), In “Post Saddam Iraq. New realities, old identities, changing patterns”, by Amnon Cohen and Noga Efrati (eds.), Sussex Academic Press, 2011,131

of sectarian and political lines that has worked to bring Iraqis into conflict⁷⁰. This idea was in origin brought up by Minority Rights Group in 2003, referring to an article published in the Wall Street Journal. This leading report, published on December 2002 began saying that "If a US-led force succeeds in ousting Iraqi president Saddam Hussein, the victors would inherit a traumatized society full of festering conflicts that did not start with him and would not suddenly fade with his departure...How can the nation avoid being dismembered by its neighbors or breaking up in spasms of violence like the former Yugoslavia?"⁷¹. And although some authors mention that the discourse has not been sectarian in nature, the practices in Iraq have been sectarian themselves, contributing to the separation of the different groups in the country⁷².

The demographic distribution, together with the social composition, the political scenario and the different wars and military interventions contributed to the understanding of the current Iraqi context. But also, Saddam's regime left a heritage of mass atrocities, violations of human rights, and institutional machinery that shaped the socio political context of Iraq today and added historical complexity to the current scenario. To have a better understanding of the Iraqi context, we will analyze three main elements of Saddam's regime: the Ba'ath Party structure, the violence exerted by Saddam as a tool of control and government – specially the violence against Kurds and the Anfal campaign - and the conflict with the Kurdish region. These are essential to understand the current obstacles in Iraq to overcome violence and implement reconciliation instruments that contribute to a stable democracy in the country.

Ba'ath Party

Saddam Hussein's government was characterized by the use of institutional instruments of violence, control, and terror for the most part of its regime. Saddam himself

⁷⁰ Peter J. Munson. Foreword by Steven Metz, "Iraq in Transition, *The Legacy of Dictatorship and the Prospects for Democracy*, Potomac Books, Inc, Washington DC, 2009.

⁷¹ Building democracy in Iraq, 6

⁷² Ronen Zeidel, "Sunni discontent in Iraq. An historical perspective", (129-145), In *Post Saddam Iraq. New realities, old identities, changing patterns*, by Amnon Cohen, and Noga Efrati (Eds.), Sussex Academic Press. 2011, 129

used the ruling political party, the Ba'ath Party, as an instrument of dictatorial power and social mobilization.⁷³ A prove of the level of violence committed by his party is reflected on the statement made by the Special Raporteur on Violation of Human Rights on Iraq, Mr. Max van der Stoel. He said that these [violations committed under Saddam's regime] had no comparison since World War II.⁷⁴

The establishment of the Ba'ath regime in 1968 was the beginning of an era of control and fear, and the constitution of an institutional and military machinery that had as main goal the ruling of a "totalitarian top down building strategy based on a monopolizing state power and controlling the country's resources".⁷⁵ These origins have an explanation on the underground nature of the Ba'ath party before 1968. Then, the Ba'ath party was extremely hierarchical, secretive, and often used violence as a political tool.⁷⁶ When the party became institutionalized, Saddam's regime was constituted around a strong security system, which would reach the society and use also the same techniques of intimidation and active violence as the two main sources of control. In consequence, Saddam's security forces have been named as one of "the most violent members of the old order".⁷⁷ He surrounded himself with people who would never question his power or his position. Furthermore, networks and clientelism were two of the main pillars of Saddam's regime. Religious affiliation also contributed to increase sectarianism and tribal separation during Saddam's regime. In other words, the regime's brutal authoritarianism, combined with the religious affiliation became a focal point of politicization⁷⁸. "Saddam was committed to building a modern state, although he basically sought this goal primarily to improve the

⁷³ W Andrew Terril, "Lessons of the Iraqi De-Ba'athification Program for Iraq's Future and the Arab Revolutions", U.S. Army war college, Strategic Studies Institute, May 2012, 10

⁷⁴ Max van der Stoel, Excerpts from the Report of the United Nations Special Rapporteur on Violation of Human Rights in Iraq", In World Affairs, Vol 155. No 1. Summer 1992. (45-46), 3

⁷⁵ State, society Relations in Ba'thist Iraq- Facing dictatorship. Achim Rohde. SOAS. Routledge on the Middle East, 2010, 24

⁷⁶ W. Andrew Terril, "Lessons of the Iraqi De-Ba'athification Program for Iraq's Future and the Arab Revolutions", In U.S. Army war college, Strategic Studies Institute, May (2012), 7

⁷⁷ Achim Rohde, "State, society Relations in Ba'thist Iraq. Facing dictatorship", In SOAS / Routledge on the Middle East, (2010), 27

⁷⁸ Achim Rohde, "State, society Relations in Ba'thist Iraq. Facing dictatorship", In SOAS / Routledge on the Middle East, (2010), 31

efficiency of the dictatorship rather than to benefit the Iraqi people” By the time of the US invasion, the Ba’ath party was formed by between 2 and 2.5 million members⁷⁹.

Tribalism and sectarianism during Saddam’s regime

The term sectarianism (*ta’ifiyya*) was initially used by the Ba’ath regime and it emerged as a political movement among Iraqi Shia regime in the 90’s⁸⁰. Saddam’s regime was characterized by a tribal structure, which helped creating a cohesive and unified regime that had been created by access to power by force and to support the existence of this tribal regime.⁸¹ Although this tribal structure is not a unique feature of the Iraqi regime – it is common to many other Arab countries – Saddam used this tribal tie as a way to connect the regime – the political and institutional power - with the society. One of the ways in which the Ba’ath party did this was through the recruitment of farmers who worked in the state-owned collective farms during the 70’s and who were often forced to work together against the grain of their tribal affiliations.⁸² By doing this, the state created a strong connection between the different elements of the institutional machinery. And therefore this was strongly supported by the society. This strong connection assured a stability of the political regime and contributed to the elimination and potential insurgence of groups opposed to the government.

This slightly changed in 1991, when Saddam’s regime took one more step into establishing an institutional control over the society. Tribes continuously strengthened their power and became the main support to Saddam’s regime. Tribal divisions increased and tribal leaders received arms from the government to perform security functions and, this way, becoming “subcontractors” of the state.⁸³ The levels of violence and separation

⁷⁹ W. Andrew Terril, “Lessons of the Iraqi De-Ba’athification Program for Iraq’s Future and the Arab Revolutions”, In U.S. Army war college, Strategic Studies Institute, May (2012),11

⁸⁰ Peter J. Munson, “Iraq in Transition. The Legacy of Dictatorship and the Prospects for Democracy”, Potomac Books, Washington DC, (2009), 22

⁸¹ Peter J. Munson, “Iraq in Transition. The Legacy of Dictatorship and the Prospects for Democracy”, Potomac Books, Washington DC, (2009), 43

⁸² Achim Röhde, “State, society Relations in Ba’thist Iraq. Facing dictatorship”, In SOAS / Routledge on the Middle East, (2010), 25.

⁸³ Achim Röhde, “State, society Relations in Ba’thist Iraq. Facing dictatorship”, In SOAS / Routledge on the Middle East, (2010), 58 and 59

between tribes and ethnic groups increased immediately. Saddam's personal security personnel would often commit direct violent acts not just against people from other tribes, but also committed crimes against people from their own tribes. "This (...) placed them at the mercy of tribal vendettas if they ever tried to leave the regime"⁸⁴. This extreme security control reached to the bottom of the society. More than 500,000 Iraqis were part-time informants for state security institutions, both volunteer but many coerced. Conversations at home were even unsafe. The resulting generation of children knew only Saddam's propaganda, reinforced by parent's feigned loyalty. In addition to the tribal element, the religious designation – Saddam's regime was ruled by Sunni Arabs, which was the minority in the country – added complexity to the relationships between the government officials and the population in Iraq.⁸⁵

As a result of this institutional and socio political structure, trust and social cohesion shrunk to ever-smaller circles in both society and government. Society acted in reduced social trust groups to preserve life and to maintain security. Without noticing, separation between social groups increased and the essence for a complex reconciliation and future democracy was set. But, if this was not enough, the mass violation of human rights committed by years of dictatorship by Saddam and the Ba'ath structure contributed to the challenges to bring different communities and groups together.

2.2. Violations of Human Rights under Saddam's regime

The Anfal Campaign ⁸⁶

The Anfal campaign is well known as being one of the most grave episodes violations of human rights in Iraq. This campaign was constituted by five different military actions that took place in Iraq in 1988, between February 23rd and September 6th. Anfal, which is

⁸⁴ Achim Rohde, "State, society Relations in Ba'thist Iraq. Facing dictatorship", In SOAS / Routledge on the Middle East, (2010), 30

⁸⁵ W. Andrew Terril, "Lessons of the Iraqi De-Ba'athification Program for Iraq's Future and the Arab Revolutions", In U.S. Army war college, Strategic Studies Institute, May (2012), 9

⁸⁶ UN report on the situation of Human Rights in Iraq, by the Special Rapporteur of Human Rights, February 25th, 1994, Commission of Human Rights, 50th Session, starts page 37; and Human Rights Watch, "The Anfal Campaign in the Iraqi Kurdistan. The Destruction of Koreme", Middle East Watch and Physicians for Human Rights

named after the eight Sura of the Koran, is recognized today as a genocide campaign executed by Saddam's government against the Kurdish population on the northern region of Iraq. Mass executions, disappearances, and widespread indiscriminate use of chemical weapons (mostly Sarin and Mustard gas) took place for seven months against civilians.⁸⁷

Documents from the Iraqi intelligence offices demonstrate that the crimes committed were planned, and the decisions over them were directly centralized in the government.⁸⁸ Al-Majid, Saddam's cousin and Secretary General of the northern bureau of Iraq's Ba'ath Arab socialist party was directly responsible on defining and implementing the Anfal campaign. As put by different reports, Al-Majid's policy against the Kurds started a few months after his mandate started: he planned and defined the population groups he would be targeting through the Anfal campaign.⁸⁹ This evidence was pointed by the reports written by Human Rights Watch and by the UN Special Rapporteur in 1993.⁹⁰ Overall, "[t]he regime aim was to *destroy the group* (Iraqi Kurds) *in part*, and it had done so. Intent and act had been combined, resulting in the consummated crime of genocide."⁹¹ An amnesty declared by the government put to an end the Anfal campaign in September 6, 1988.⁹² This amnesty recognized "a general and comprehensive amnesty for Iraqi Kurds... both inside and outside of Iraq", with the exception to Al – Talabani, an Iraqi Kurd citizen who was declared a traitor by the Iraqi regime.⁹³ But the crimes committed had already a big impact on both Iraqis and Kurds overall.

In addition to the mass killings and disappearances, there were unintended consequences within Iraq and other bordering countries, as well as long-term impacts on the Kurdish collective memory. Massive internal displacements of population, as well as

⁸⁷ Human Rights Watch, "The Anfal Campaign in the Iraqi Kurdistan. The Destruction of Koreme", Middle East Watch and Physicians for Human Rights, (1993), 3, 4

⁸⁸ Middle East Watch. A Division of Human Rights Watch. "Genocide in Iraq. Anfal Campaign against the Kurds" July (1993), New York, 14

⁸⁹ Both United Nations reports and independent investigations from Human Rights Watch

⁹⁰ Human Rights Watch, "The Anfal Campaign in the Iraqi Kurdistan. The Destruction of Koreme", Middle East Watch and Physicians for Human Rights, (1993)

⁹¹ Middle East Watch. A Division of Human Rights Watch. "Genocide in Iraq. Anfal Campaign against the Kurds" July 1993. New York, 20

⁹² Established by the Decree no.736 of the Revolutionary Command Council

⁹³ Al – Talabani is a Kurdish politician who Kirkuk and Silemani battle fronts and organized and led separatist movements in Mawat, Rezan and the Karadagh regions. Later on he would become President of Iraq in 2005. Supportive with the Kurdish Independence, Al-Talabani currently suffers from health problems and moved to Germany in 2012 to be treated. In Middle East Watch, A Division of Human Rights Watch, "Genocide in Iraq. Anfal Campaign against the Kurds" July (1993), New York, 297

refugees fleeing to Turkey and Iran, increased the instability both inside Iraq and in the region. Fear, hate and distrust ruled the relationship between Kurds and Iraqis from there on. Saddam's regime perpetuated this relationship of asymmetry, hate, and fear between groups, for example by yearly celebrating the Anfal campaign on the local media.⁹⁴ The Anfal campaign has been internationally recognized as genocide against the Kurdish population in northern Iraq, under the definition of Article 2 of the "Convention on the Prevention and Punishment of the Crime of Genocide".⁹⁵

The existent information gives clear evidence of the crimes were committed⁹⁶, but still today there are discrepancies on specific details of the massacres. The most conservative numbers talk about 50,000 disappearances, but this number has been estimated other times as much as double.⁹⁷ Both men and women were clearly targeted by the regime, but the way the population was selected – and in consequence the specific reasons why certain areas of Kurdistan were targeted – is still today not clear. The UN Special Rapporteur in a Human Rights Committee report recognized the intention and the patterns behind the crimes in 1993.⁹⁸

2.3 Other violations of human rights

In addition to the Anfal campaign, there were also other episodes of generalized violence committed against specific populations in Iraq. Shia population (especially Turkomans Shiite and Marsh Arabs of southeastern Iraq) was the main groups targeted also by Saddam's regime during the same period of time.⁹⁹ Discriminatory policies, as well as destruction of holy sites with a strong religious meaning for the Shia population, were

⁹⁴ Middle East Watch. A Division of Human Rights Watch, "Genocide in Iraq. Anfal Campaign against the Kurds" July 1993, New York, 11

⁹⁵ Convention on Genocide, Art. 2, at <http://www.hrweb.org/legal/genocide.html>. Definition:

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

⁹⁶ Both United Nations reports and independent investigations from Human Rights Watch

⁹⁷ UN Report on the situation of Human Rights in Iraq, by the Special Rapporteur of Human Rights, February 25th, 1994, Commission of Human Rights, 50th Session, par. 119, and Middle East Watch. A Division of Human Rights Watch. "Genocide in Iraq. Anfal Campaign against the Kurds" July 1993, New York

⁹⁸ UN report on the situation of Human Rights in Iraq, by the Special Rapporteur of Human Rights, February 25th, 1994, Commission of Human Rights, 50th Session, par 124

⁹⁹ Head, Tom. "The War Crimes Against Saddam Hussein". About.com Liberties. At http://civilliberty.about.com/od/internationalhumanrights/p/saddam_hussein.htm

frequent. As per UN reports, approximately 105 scholars disappeared in custody under Saddam's regime over those years.¹⁰⁰ Saddam's government also used its monopoly to implement media campaigns of disinformation to ridicule and humiliate the Shia population. Numbers talk about an approximate disappearance of these populations from about 250,000 people to 300,000 people of this group in Iraq during Saddam's regime. The main goal of this policy was to discredit the Shias and their beliefs, and to create a dynamic of power control and asymmetry between the Sunni and the Shia population in Iraq.¹⁰¹ In this regard, the scale of human rights abuses during Saddam's period has no precedent in the history of Iraq. "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."¹⁰²

Previous cases of grave violations of human rights have shown that implementing transitional justice processes can make a significant difference in promoting stability, reconciliation, and democracy. But mostly, transitional justice mechanisms can contribute to bring truth to what happened in the past. In the cases of East Timor and Cambodia, Lambourne highlighted how justice and accountability acted as essential pillars for those societies to recover. In this regard, transitional justice process supports a change over time, looking to the future reconstruction of the societies.¹⁰³ Because transitional justice is often defined as "the main way of addressing legacies of massive human rights abuses or atrocities"¹⁰⁴, Iraq represents a context in which the violations of human rights, genocide and mass crimes can be addressed from this framework. But the identification of the right

¹⁰⁰ UN report on the situation of Human Rights in Iraq, by the Special Rapporteur of Human Rights, February 25th, 1994, Commission of Human Rights, 50th Session, par.132

¹⁰¹ UN report on the situation of Human Rights in Iraq, by the Special Rapporteur of Human Rights, February 25th, 1994, Commission of Human Rights, 50th Session, par.135

¹⁰² "Iraqi Voices. Attitude towards Transitional Justice and Social Reconciliation." Report. International Center for Transitional Justice and Human Rights Center, University of California Berkeley, May 2004, 13

¹⁰³ Wendy Lambourne, "Transitional Justice and Peace building after Mass Violence". *The International Journal of Transitional Justice*, Vol. 3, 2009, 28–48, 31 January 2009

¹⁰⁴ Alexander Laban (Ed.) "Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence", Rutgers University Press, New Brunswick, New Jersey, And London. 2010, 249

approaches, techniques and measures within a transitional justice process will outline a successful or failed reconciliation process.

Chapter 3. Reconciliation in Iraq: an incomplete approach and influence on democratization

Impediments placed in the way of international verifiers and allegations of holding weapons of mass destruction pushed the United States to start a military offensive in Iraq, which lasted until 2011.¹⁰⁵ The main goal was to defeat Saddam's regime and thus eliminate the rule of the Ba'ath party from the government. In addition to the military offensive, the United States also led the institutional reform process through the establishment and support of local coalition governments and transitional processes that would shape a different institutional and governmental structure in Iraq. Starting with the Coalition Provisional Authority (2003), and continuing with its replacement by the Iraqi Interim Government (2004), the international community – led by the United States influenced the definition and establishment of the new structures of power within the government. The approach taken has proven to be ineffective in bringing stability, reconciliation, and dealing with both truth and justice of the crimes and violence committed under Saddam's regime. Ayad Allawi (Iraqi politician, and interim Prime Minister of Iraq prior to Iraq's 2005 legislative elections) has been even more critical with the approach taken by the US, pointing out that the dismantling of the Iraqi state, as well as getting rid of the Ba'ath party and its members "contributed to spread sectarianism across all levels of political power".¹⁰⁶

3.1 Iraqi Special Tribunal (IST)

On December 10, 2003, the Iraqi Governing Council established the Iraqi Special Tribunal (IST), which intended to "prosecut[e] acts of genocide, crimes against humanity,

¹⁰⁵ Timeline of major events in Iraq, New York Times, at http://www.nytimes.com/interactive/2010/08/31/world/middleeast/20100831-Iraq-Timeline.html?_r=0, and Al Jazeera, "Iraq gets a new government" at <http://www.aljazeera.com/news/middleeast/2010/12/201012211373655244.html> December 10, 2010

¹⁰⁶ RT News, Interview to Ayad Allawi. <http://rt.com/op-edge/al-maliki-resignation-stability-iraq-562/>, April 29, 2013

and war crimes committed in Iraq between 1968 and 2003.”¹⁰⁷ This tribunal was inspired by the previous International Criminal Tribunal of Rwanda (ICTR) and the International Criminal Tribunal of Yugoslavia (ICTY), as successful models to prosecute genocide and mass violations of human rights. The IST is independent of any Iraqi bodies and has jurisdiction to prosecute crimes committed by Iraqi nationals and residents between July 17, 1968 and May 1, 2003. This is the period in which Saddam ruled the country under the Ba’ath regime.¹⁰⁸

The establishment of the IST in Iraq has had limited positive effects on both reaching justice and assuring accountability in Iraq. First, although the IST has contributed to hold Saddam responsible for some of the crimes he committed, the tribunal has failed in achieving a higher degree of accountability and contributing to the overall reconciliation process in Iraq. The international criminal justice has the potential to provide official recognition of what happened in cases of grave violation of human rights, but in this case the IST ‘s mandate has not been able to accomplish this goal. The IST does not focus on prosecution of all crimes committed under the 24 years of rule of Saddam’s regime. This fact is especially important for victims in order to begin an acceptance of the magnitude and reality of the conflict.¹⁰⁹

The second main flaw of the IST is its lack of credibility by the local population. When comparing this tribunal with the previous ad hoc tribunals in Rwanda and in Yugoslavia, the IST in Iraq has a comparatively lower level of credibility and support. This tribunal is considered by the Iraqi population, as well as by international experts in International Law, as well as by some countries, as an instrument of US policy in the country. This tribunal is formed by US lawyers, based on US law, and has even been

¹⁰⁷ Laurel Miller, “Building the Iraqi Special Tribunal: Lessons from Experiences in International Criminal Justice”, United States Institute of Peace. (USIP) at. <http://www.usip.org/publications/building-iraqi-special-tribunal-lessons-experiences-international-criminal-justice>, June 2004, 1

¹⁰⁸ Laurel Miller, “Building the Iraqi Special Tribunal: Lessons from Experiences in International Criminal Justice”, United States Institute of Peace, at. <http://www.usip.org/publications/building-iraqi-special-tribunal-lessons-experiences-international-criminal-justice>, June 2004, 2

¹⁰⁹ Anna Triponel, “Can the Iraqi Special Tribunal Further Reconciliation in Iraq?”. Public International Law & Policy Group, Social Science Research Network, Tomorrow’s Research Today, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1305273 286, 299

considered as not impartial.¹¹⁰ This lack of credibility negatively impacts the ownership of the prosecution processes by the local community. Therefore, its results and findings in a post conflict setting have the potential to be weaker. Although the intentions behind the creation of this tribunal were to prosecute and to bring to justice the crimes committed by Saddam, the approach taken has not contributed to achieve accountability and democracy. Some organizations, such as the United States Peace Institute (USIP), have already warned of the potential consequences of this approach and of the implementation of the death penalty, to have a negative impact “on the reconciliation process in Iraq if most of those prosecuted are from one particular ethnic or religious group.”¹¹¹ This is a clear victor’s justice approach to the judgment process.¹¹²

Although the initial idea behind the creation of the tribunal was successful, the final result has not been currently successful. A tribunal created to prosecute genocide crimes and grave violations of human rights, and especially in the Iraqi case, have the potential to contribute to reconciliation within Iraq, between the communities and with its past.¹¹³ But modifications on the scope of the judgments and cases taken by the tribunal, the availability of more resources, the increase of local support to the mission and existence of the tribunal, as well as its complementarity with other instruments of transitional justice will improve the effectiveness of the tribunal and would promote reconciliation.

3.2 Saddam Hussein’s Trial

Saddam Hussein’s trial is another key element to look at from this analysis of transitional justice. The intention of the judgment, prosecution, and final execution of Saddam was to make justice and prosecute him for crimes committed during his years of

¹¹⁰ Ramsey Clark (lawyer), The International Action Center, at <http://www.iacenter.org/Iraq/hussein-2-102006.htm>, last accessed August 18th 2013

¹¹¹ Anna Triponel, “Can the Iraqi Special Tribunal Further Reconciliation in Iraq?”, Public International Law & Policy Group, Social Science Research Network, Tomorrow’s Research Today, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1305273, 300

¹¹² Anna Triponel, “Can the Iraqi Special Tribunal Further Reconciliation in Iraq?”. Public International Law & Policy Group, Social Science Research Network, Tomorrow’s Research Today, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1305273, 301

¹¹³ Anna Triponel, “Can the Iraqi Special Tribunal Further Reconciliation in Iraq?”. Public International Law & Policy Group, Social Science Research Network, Tomorrow’s Research Today, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1305273, 298

mandate. But the manner in which this judgment took place, as well as the crimes against he was declared guilty, represent overall a failure both of bringing justice and of reconciling the groups directly affected by his acts. First, Saddam's judgment was very limited. He was condemned mainly just for the crimes committed against 148 Shia Muslims in Dujail, in the 1980's.¹¹⁴ But Saddam was not prosecuted for other crimes and grave mass atrocities committed during the 45 years he was in power.¹¹⁵ In this regard, as the UN Special Rapporteur Mr. Alston pointed out "the trial and execution of Saddam Hussein were tragically missed opportunities to demonstrate that justice can be done, even in the case of one of the greatest crooks of our time."¹¹⁶

Second, the way the execution took place, together with its media coverage, were humiliating. These did not benefit the clarification of truth or reconciliation. This has been specially mentioned by UN reports, which highlight how the prosecution and final death penalty were carried out, especially the media coverage the event had around the world, as a "morbid, public spectacle".¹¹⁷ This is a negative example of the impact of media in processes of transitional justice. By focusing on the immediate need of revenge and prosecution of an individual, the long-term goals of the broader process of transitional justice are minimized.

Studies published by academics, international and human rights organizations, and governments have pointed out the grave, systematic and serious violations of human rights committed under Saddam's Ba'ath regime for 45 years. And although there have been specific prosecutions on this matter, these have been limited to high-level mandatories and people within high ranks of the Ba'ath party. These instruments have been put into place by the occupying force, which intended to bring immediate justice and

¹¹⁴ Q & A: Saddam on Trial, BBC News, at http://news.bbc.co.uk/2/hi/middle_east/3850989.stm, last modified Wednesday, 27 December 2006

¹¹⁵ Although Saddam was judged also by the Anfal campaign crimes committed, the lack on the uniformity on the judgment procedures, as well as the way the application of the local law – death penalty – against standards of human rights, have been widely criticized. As an example, Iraqi local law establishes that executions must take place after 30 days of having being set, which does not allow much room to legal recourses.

¹¹⁶ UN News Centre, at <http://www.un.org/apps/news/story.asp?NewsID=21155&>, January 4, 2007

¹¹⁷ UN News Centre, at <http://www.un.org/apps/news/story.asp?NewsID=21155&>, January 4, 2007

bring closure to the military occupation. But from a transitional justice point of view, what is missing in Iraq?

3.3 What is missing? Truth, Reconciliation and Justice in Iraq

Specific mechanisms of transitional justice have been put into place in Iraq, but have been currently unsuccessful in contributing to create a stable democracy, reconciliation, and social justice in Iraq. Currently, given the strategies implemented by some US institutions to achieve justice – such as programs implemented by USAID -¹¹⁸, neither truth, reconciliation, or justice are a highlight of the current regime. Furthermore, recent events in Iraq prove that instability; violence – especially sectarian violence between the dominating government Shi'ite forces and the Sunnis– has increased. Just this past week, Al-Jazeera reported 190 civilian anti-government deaths in a four-day wave of hostilities, in addition to bombings in and around mosques.¹¹⁹ Fears of a sectarian war are increasing in the country. The memory of past violations of human rights by the Ba'ath party seem to arise again now within a government that tries to hold violence and affirm its power through the containment of Sunni population. In fact, Al-Maliki is showing intention to shift the current balance of power in the government to one “dominated almost solely by Shiites.”¹²⁰ This statement, together with the intentional targeting of high – level security forces and the judiciary, recalls to policies from the Ba'ath party, and has raised concerns in other world leaders.¹²¹

Iraqis recognize the dimension of the range of violations perpetrated by the former regime and its forces against victims from different ethnic, religious, and political

¹¹⁸ Access to Iraq Justice Program – USAID- United States Agency for International Development – at <http://iraqaccesstojustice.org/iatj/index.php/en/home>

¹¹⁹ “Deadly anti-government violence grips Iraq”, Al-Jazeera, at <http://www.aljazeera.com/news/middleeast/2013/04/201342610411101447.html>, April 27, 2013, also in “Rising Violence in Iraq Spurs Fears of New Sectarian War,”, New York Times, at http://www.nytimes.com/2013/04/25/world/middleeast/with-air-attacks-sectarian-strife-intensifies-in-iraq.html?_r=0, April 24, 2013

¹²⁰ “Rising Violence in Iraq Spurs Fears of New Sectarian War”, New York Times, at http://www.nytimes.com/2013/04/25/world/middleeast/with-air-attacks-sectarian-strife-intensifies-in-iraq.html?_r=0, April 24, 2013

¹²¹ Rising Violence in Iraq Spurs Fears of New Sectarian War,”, New York Times, at http://www.nytimes.com/2013/04/25/world/middleeast/with-air-attacks-sectarian-strife-intensifies-in-iraq.html?_r=0, April 24, 2013

groupings. And in this regard, the desires of the population on achieving justice are shown to be strong and clear. Recent research shows Iraqis have identified not only Saddam and his family as agents to be prosecuted, but also his closest supporters both from the Baath party and mere party members.¹²² Also, the distrust on the US, as well as on the international community and their approach in reconstruction in Iraq, has also influenced the perception and ownership of the process by the local community.

The achievement of a stable democracy in Iraq is at risk and the instruments put into place until now have not supported this. Reconciliation techniques as well as an overall strategy of transitional justice in Iraq can contribute to build up democracy in the country. Intergroup reconciliation is particularly directed to “lead to a stable end of the conflict and is predicated on changes in the nature of adversarial relations between the adversaries of each of the parties’ conflict related needs, emotions and cognitions”.¹²³ Stabilization of the conflict, changing in the nature of the relationship and a different approach to needs, emotions and cognitions are the main pillars of this process. In order for these to happen, specific individual and societal changes need to happen to accompany the process. Bar Tal identified different spheres of societal change, which will shift the interaction between the groups, all based in beliefs about the groups themselves and their beliefs. Reconciliation will help to achieve needed societal, individual, and psychological changes. This means that ideally, all individuals, groups and the government need to be fully involved in a successful reconciliation process, and thus, contributing to a long-lasting peace.

Sustainable peace involves psychological changes in the groups that have previously involved in conflict. These changes are not easy, neither fast to achieve, and constitute one of the major challenges on the reconciliation process. A sense of positive interdependence between the groups, a higher sense of loyalty and patriotism – both between the groups and the country itself -, a sharing of common values, and mutual

¹²² Iraqi Voices. Attitude towards Transitional Justice and Social Reconciliation.” Report. International Center for Transitional Justice and Human Rights Center, University of California Berkeley, May 2004, 3 -6

¹²³ Nadler, Ariel, Malloy Thomas E., and Fisher Jeffrey D. “Intergroup reconciliation: dimensions and themes”, the Social Psychology of Intergroup reconciliation

understanding and forgiving are the key psychological areas in which the parties must acknowledge and work towards.¹²⁴ These will contribute to create a context of interaction, cooperation, and interrelation between the parties who were directly in conflict or were somehow related with violent actions. When achieved, these changes will not only promote reconciliation but also contribute to prevent new episodes of violence. This change materializes in what some have called “ethos of peace”¹²⁵

From a psychological point of view, when parties engage in conflict resolution and reconciliation, they engage in changing their beliefs and they feel they understand better the process and the conflict. They will form “new beliefs about the former adversary, about their own society and about the relationship between the two groups”¹²⁶ The main challenges to overcoming the old beliefs are related to justice of each groups’ goals, the de-legitimization of the opponent, and the positive self image of each of the groups. These changes and the process to achieve them are not only difficult, but also painful, and threatening for each group. These changes imply a review of the group’s past actions in the conflict, goals, and interactions within the group, and with the party in conflict. Some of the aspects that can contribute to make this process happen are external supportive conditions to the process, strong leadership support and guidance, and activities that promote reconciliation.¹²⁷

In this regard, there is empirical proof that reconciliation processes contribute to long lasting peace and “stable accommodations”¹²⁸ in post conflict societies. Also Wiebelhaus mentions that conflicts have rarely restarted after the use of a truth commission. These data reflect the positive impact and opportunities that key elements, such as judicial and institutional reforms, and the establishment of instruments that will

¹²⁴ Morton Deutsch & Peter Coleman, “Psychological Components of Sustainable Peace: An Introduction, in Morton and Coleman (Eds.), “Psychological Components of Sustainable Peace” (Springer)

¹²⁵ Daniel Bar Tal, “From Intractable Conflict Through Conflict Resolution to Reconciliation: Psychological Analysis”, International Society of Political Psychology, Blackwell Publishers,

¹²⁶ Daniel Bar Tal, “From Intractable Conflict Through Conflict Resolution to Reconciliation: Psychological Analysis”, International Society of Political Psychology, Blackwell Publishers, 356

¹²⁷ Daniel Bar Tal, “From Intractable Conflict Through Conflict Resolution to Reconciliation: Psychological Analysis”, International Society of Political Psychology, Blackwell Publishers, 362, 363

¹²⁸ Louis Kriesberg, “Comparing reconciliation actions within and between countries” 2004, In Y.Bar-Siman-Tov (Ed.), “From Conflict Resolution to Reconciliation, Oxford. Oxford University Press, 97

bring truth and justice have the potential to be the main pillars of a deep rooted reconciliation process: truth and justice; reparations for victims and historical responsibility and restructuring the social and political relationship between the parties involved in the conflict. In this regard, what Transitional Justice approach, if any, would be the most effective in promoting reconciliation and democracy in Iraq?

Chapter 4. Effective approaches to reconciliation in Iraq: peace, justice and democracy in the Iraqi case

As previously mentioned, the US has put in place measures directed to achieve immediate justice to the years of crimes committed under Saddam's regime.¹²⁹ The US chief administrator of the Coalition Provisional Authority (CPA), Paul Bremer, tried to put into place different measures directed to institutionalize Transitional Justice mechanisms in Iraq. These measures have proven to be ineffective, given his failure to count with Iraqi broad local participation on the process, governmental, and non-governmental organizations present in the country. The de-Ba'athification program – to eliminate people from the Ba'ath party from the public scene- the creation of the Special Tribunal for Crimes Against Humanity, and other institutional directives had a negative impact on the country.¹³⁰

These are insufficient and ineffective measures, which lack deeper analysis of what Iraq must accomplish in a post conflict setting. A study implemented by the International Center of Transitional Justice and the Human Rights Center of the University of Berkeley-California - reveals that these measures have been unsuccessful. Iraqis interviewed for the purpose of the study were able to identify which instruments would need to be implemented in their country to improve reconciliation and increase accountability for the crimes committed.

4.1 Reconciliation and Justice: definition for Iraqis and challenges

The first outcome of the research is the variety of understanding of definitions of the conceptions of justice, accountability, and reconciliation in Iraq. Shi'a, Sunni, Kurds

¹³⁰ Eric Stover, Hanny Megally, Hania Mufti, "Bremer's "Gordian Knot": Transitional Justice and the US Occupation of Iraq" Human Rights Quarterly, Volume 27, Number 3, August 2005, 830-857

and other ethnic groups have defined these concepts in slightly different manners. But the only common thing they share is their urgent need to accomplish these – in whatever dimension – as the main pillar to rebuild a democracy in Iraq. As stated by a Sunni man interviewed in Baghdad, “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.”¹³¹ Furthermore, the various interviewees have also emphasized how this goal can be achieved.

First, reconciliation can be achieved by improving social justice: prosecution of those who committed violations of human rights, crimes against humanity, and limited in some way the execution of rights and liberties. “Public trials”, “extended justice”, “accountability”, and “independent tribunals” are frequently mentioned on the research carried on. Second, the idea that not only Saddam but others under his mandate, were perpetrators and directly responsible for crimes committed. For example, a group of Anfal widows engaged in violence against the Kurdish insurgency, acting even with more violence than the Iraqi army.¹³² Third, there is a good sense among the Iraqi population on the attributions of direct responsibilities between the Ba’ath party leadership, those who directly ordered crimes, those who directly committed them, and other party members.¹³³ Just a few interviewees were reluctant to make this distinction, which indicates that in general, Iraqis identify and analyze the historical events, and think about who and how they should be judged in order to bring the most of justice to the overall society. Trials have been mentioned as the main instrument that should be used to prosecute perpetrators of violations of human rights and crimes. But the tribunal is also seen as an

¹³¹ “Iraqi Voices. Attitude towards Transitional Justice and Social Reconciliation.” Report. International Center for Transitional Justice and Human Rights Center, University of California Berkeley, May 2004, 38

¹³² “Iraqi Voices. Attitude towards Transitional Justice and Social Reconciliation.” Report. International Center for Transitional Justice and Human Rights Center, University of California Berkeley, May 2004, 27

¹³³ “Iraqi Voices. Attitude towards Transitional Justice and Social Reconciliation.” Report. International Center for Transitional Justice and Human Rights Center, University of California Berkeley, May 2004, 28

“official process of truth-seeking and preservation of historical memory.”¹³⁴ In words of a Sunni man from Bagdad: “ 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.” “I think we should remember our past in order to prevent it from happening again in the future”, said a Kurdish man from Sulaimaniyah.¹³⁵ Finally, both material and symbolic compensations, together with the non-applicability of amnesties for most part of individuals¹³⁶ were also issues raised up by most Iraqis who took part on the research.

These statements are in alignment with those of international organizations, as well as professionals on the field of transitional justice, who have identified clear gaps on the strategies implemented in Iraq after Saddam’s rule. Aspects such as the individual trial against Saddam and the lack of global approach to the prosecution of crimes, the lack of investment on the judicial institutional capacity, as well as the current increase of instability in the country are clear indicators of the failure of the strategy implemented in the country. Some of the measures that have had a negative impact on the implementation of these strategies are political, economic, and military.

First, the role of the US in the military occupation and the definition of the institutional reforms have limited the ownership of the process by the Iraqi population and local government. The need to establish security measures and to control the insurgents in the region, have reduced the capacity of investment in other institutional areas, such as judicial reforms. The International Center for Transitional Justice and other well-recognized sources in the field of transitional justice highlight this fact as the main challenge for the Iraqi context. Second, the lack of economic capacity of the local Iraqi government has demised the options to provide with a broad plan of measures, including public trials, truth commissions, and reparations for victims. The international community has potential and resources to support the implementation of instruments of transitional justice by providing

¹³⁴ “Iraqi Voices. Attitude towards Transitional Justice and Social Reconciliation.” Report. International Center for Transitional Justice and Human Rights Center, University of California Berkeley, May 2004, 37

¹³⁵ “Iraqi Voices. Attitude towards Transitional Justice and Social Reconciliation.” Report. International Center for Transitional Justice and Human Rights Center, University of California Berkeley, May 2004, 38

¹³⁶ 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,

economic and human resources to Iraq. Also this represents a challenge, due to the influence the international community has had in the country and the risk of lack of local ownership on the overall process. Third, there are concerns about the impact that the implementation of certain measures – especially those related to the public trials and truth seeking – can have today in the Iraqi society. Given the current levels of violence, the lack of legitimacy of the Iraqi government, as well as the current influence of terrorism in the country, Iraq is not ready to face these challenges. In this regard, understanding the current reality of Iraq, together with the past crimes, are both essential to accomplish a successful transitional justice process.

4.2 A Truth and Reconciliation Commissions: how they can contribute to establish democracy in Iraq

The main goal of truth and reconciliation commissions is to help bringing light to “extent and scale of serious violations of human rights, and crimes through the use of testimony”¹³⁷ But in addition to this role, these also have a tight link to the establishment of democracies. And this is because, as Pascoe mentions, strong democracies are “far less likely to lapse into civil war than undemocratic nations”.¹³⁸ Truth commissions are directly favorable to support the establishment of democratic structures in post conflict societies. They focus on the past and they investigate patterns of abuses, violation of human rights, and crimes in post conflict societies. In the long term, this role “may advance democratization and the protection of human rights”.¹³⁹ As continued by Pascoe, truth commissions are specially “designed to give a voice to victims and perpetrators alike”.¹⁴⁰ By doing this, the knowledge of past crimes, mass violations of human rights, and suffering

¹³⁷ Stanley, In “Are truth and reconciliation commissions an effective means of dealing with state-organized criminality? By Daniel Pascoe, Cross-sections 3, 2007, 93-115, and In “Why perpetrators should not always be prosecuted: Where the International Criminal Court and Truth Commissions Meet” by Charles Villa – Vicencio, 49 Emory Law Journal, 205

¹³⁸ Stanley, In “Are truth and reconciliation commissions an effective means of dealing with state-organized criminality? By Daniel Pascoe, Cross-sections 3, 2007, 93-115

¹³⁹ Eric Wiebelhaus-Braham, “Truth Commissions and transitional societies. The impact on human rights and democracy”, Routledge, 2010, 14 and Priscilla Hayner, in

¹⁴⁰ Daniel Pascoe, “Are truth and reconciliation commissions an effective means of dealing with state-organized criminality? Cross-sections 3, 2007, 93-115, 109

from victims and perpetrators is used to not only create a new history, but to build the new bases of a future democracy.

One of the ways truth commissions contribute to democracy is by identifying institutional failings, authoritative behaviors and crimes, which reveal institutional failings. Bringing up the truth and reflecting on the past crimes committed in Iraq, with the local participation of Iraqi population, can increase not only the knowledge of what happened, but heighten awareness, and contribute to deterrence of future violations from both communities and the Iraqi government. Therefore, by increasing the awareness, the process can help recommend institutional changes that can take place to increase accountability.¹⁴¹ This idea is highlighted by Wiebelhaus-Braham, specially the “long-term social, economic and political objectives that are essential to ensure a better future.”¹⁴²

The second manner in which truth commissions can establish the bases of a future democracy in Iraq is by telling the stories of crimes committed and constructing a common history, different from the previous one. In this regard, although truth commissions are traditionally victim focused, a well-defined successful truth commission should put emphasis in both victims and perpetrators. The process in which the parties get involved may help both sides to psychologically heal them and assist in reconciliation. The construction of a new common history will help reconcile the communities and institutionalize practices around a shared history of the events occurred in the past. This is done by a focus on the psychological aspects of the groups in conflict, and by creating a new common ethos between them.

Furthermore, this will help to reveal patterns of social injustice, abusive and discriminatory policies, and institutional patterns that were the origin of these violations. In the case of Iraq, a truth commission will help to identify the institutional patterns put into place by the Ba’ath regime and will help preventing from other governments to implement the same type of structures. Also, a truth commission put into place in Iraq will support the

¹⁴¹ Eric Wiebelhaus-Braham, “Truth Commissions and transitional societies. The impact on human rights and democracy”, Routledge, 2010, 14

¹⁴² Eric Wiebelhaus-Braham, “Truth Commissions and transitional societies – the impact on human rights and democracy”, Routledge, 2010, 23

public evidence of the social inequalities and abuses directed against Kurd population, as well as Sunni Arabs in the country. As Pascoe continues, the establishment of a truth commission can be “the first step in an agenda of further social change”¹⁴³

The third way truth commissions can support democratic values and the bases of a democracy is by promoting democratic values. Values such as popular participation, transparency on history and past events, accountability, and the rule of law can be encouraged by truth commissions.¹⁴⁴ This will be the case in Iraq, where the measures of transitional justice and reconciliation put into place by the US forces have tried to achieve these goals by neglecting the participation of the local population, governments, non governmental organizations and experts present in the country. In this regard, the implementation of a truth commission in Iraq would eventually have complemented the other transitional justice instruments put into place in the country.

There is an extended opinion among experts that a reconciliation and truth commission should be established in Iraq. This instrument would provide a comprehensive account for human right violations, and will contribute to truth seeking of the crimes committed under Saddam’s rule.¹⁴⁵ Furthermore, a truth commission would be specially relevant in the Iraqi context, due to the lack of spaces provided to the victims to testify or tell their truth of the violations, crimes, and disappearances, and also to acknowledge their suffering. In the long term, a truth commission would provide “ understanding within the Iraqi society without sacrificing accountability or ignoring existing divisions.”¹⁴⁶ This becomes especially relevant in this case, where Saddam himself and his institutional policies have been identified directly responsible of increasing the differences among religious sects and ethnic groups. In this case, the Iraqi population specially links the truth commission’s success to its understanding and ownership by the local population. As

¹⁴³ Daniel Pascoe, “Are truth and reconciliation commissions an effective means of dealing with state-organized criminality? Cross-sections 3, 2007, 93-115, 108

¹⁴⁴ Daniel Pascoe, “Are truth and reconciliation commissions an effective means of dealing with state-organized criminality? Cross-sections 3, 2007, 93-115, 109, 110

¹⁴⁵ The Redress Trust, “Reparation for torture in Iraq in the context of transitional justice. Ensuring justice for victims and preventing future violations. 2004, supra, par 3.5.

¹⁴⁶ “Iraqi Voices. Attitude towards Transitional Justice and Social Reconciliation.” Report. International Center for Transitional Justice and Human Rights Center, University of California Berkeley, May 2004, 56

mentioned in the case of the establishment of a hybrid court, awareness on the meaning, objectives, and goals of the truth commission will become essential.

Although the need, benefits and relationship between reconciliation and democracy have been clearly identified, there are also challenges to this process. One of the main challenges is, as we mention, the need to include the relevant social and political actors, and counting with the political will to make the process possible. It is essential that the local communities and parties involved see the both the truth commission and the reconciliation process as legitimate, capable, and directed to achieve a reconciliation and promote social reconstruction, with unbiased information, and inclusive.¹⁴⁷ This is especially relevant in the case of Iraq, where the rights of groups such as the Kurd population, or Sunnis have been ignored, and they have suffered from discriminatory politics, and direct violence from government forces. But at the same time, it is important to remember that confronting past in a multiethnic society is complex, as it comprises many different stakeholders, which all must have a voice in the process of reconciliation.¹⁴⁸

¹⁴⁷ Eric Stover, Hanny Megally, and Hania Mufti, "Bremer's "Gordian Knot": Transitional Justice and the US Occupation of Iraq" in *Human Rights Quarterly*, Volume 27, Number 3, August 2005, 830-857, 840

¹⁴⁸ Eric Stover, Hanny Megally, and Hania Mufti, "Bremer's "Gordian Knot": Transitional Justice and the US Occupation of Iraq" in *Human Rights Quarterly*, Volume 27, Number 3, August 2005, 830-857, 843

CONCLUSION

Iraq is considered today a failed state. After years of on going conflict and civil wars, the sectarian violence in the country is still present, and it has increased since the withdrawal of the American-led troops. A history of more than forty years of violations of human rights, the implementation of partial transitional justice measures by the US government, the lack of international support on the occupation and post – conflict reconstruction, and the influence of Islamic armed groups in Iraq have contributed to what Iraq is today. In this context, the establishment of a truth commission will help, not only on bringing light to the past violations of human rights and crimes committed by Saddam’s regime. It will also support the establishment of initial principles and structures to build on a democracy in Iraq. Bringing victims and perpetrators together towards reconciliation has the potential to reduce the long-term reactivation of the conflict, as it has been the case in other countries.¹⁴⁹

Although the role of truth commissions has been well recognized by scholars on this field, it has been also recognized that truth commissions, in order to be effective on bringing democracy, need to be part of a broader plan of reconciliation and transitional justice. When truth commissions are combined with different political measures – such as education, reparations, institutional reforms – combining strong local participation and international participation, a “lasting and comprehensive sense of justice and peace can result”¹⁵⁰ It is also true that there are examples of countries which have been successful on their evolution towards democracy without the establishment of truth commissions – such as Spain. But it is also true that the celebration of these have specific benefits that can support the evolution of certain countries, such as the case of Iraq.

¹⁴⁹ Such as Rwanda or South Africa. In Lake and Rothschild, “Containing fear: The origins and management of ethnic conflict”. *International Security*, 1996, 21 (Fall): 41-75

¹⁵⁰ Daniel Pascoe, “Are truth and reconciliation commissions an effective means of dealing with state-organized criminality?” *Cross-sections* 3, 2007, 93-115, 98

Hayner criticizes the role of truth commissions as instruments that contribute to reconcile communities.¹⁵¹ But specific cases in history have shown that the mechanisms used by these commissions are effective on reconciliation of communities who have suffered violation of human rights, and also are a good start point to establish strong democratic structures for a new government. This paper has shown why the measures put into place in Iraq, a context of mass violations of human rights – specially for Kurds – have not contributed to reduce instability in the country, but have contributed even to increase sectarian violence. Also, we have explained why the celebration of a truth commission, in combination with other measures, will be effective in establishing the bases for a democracy in Iraq. Further research will be needed on discovering what are the main challenges on this approach, as well as the external influences that play an essential role on this process. In the meantime, violence in Iraq is still recurrent, sectarian divisions are increasing, and the lack of a strong legitimate government affects the lack of stability in the country.

¹⁵¹ Priscilla Hayner, "Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions. A comparative Study", Routledge, New York, 2002

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