



POSITION PAPER ON AN ISIL ACCOUNTABILITY MECHANISM IN IRAQ

AUGUST 2022

“Iraq is where the terror started for us, Yazidis; It is from where most ISIL leaders are from; It is where we were killed or abducted from.

If ISIL members are not persecuted in Iraq, then where will they be prosecuted?

It is important that this justice takes place in Iraq, only then will we be able to trust our country again. We have been waiting for this for eight years, until when will we need to wait?”

The Yazidi Survivors Network

TABLE OF CONTENTS

INTRODUCTION AND BACKGROUND.....	4
1. BASIC DEMAND.....	4
2. PURPOSE AND RELATIONSHIP WITH OTHER TRANSITIONAL JUSTICE PROCESSES	6
3. HOW SHOULD A CRIMINAL MECHANISM BE ESTABLISHED?.....	6
4. WHO SHOULD BE CONSULTED?	7
5. JURISDICTION: SCOPE OF AN ACCOUNTABILITY MECHANISM	7
5.1 SCOPE OF CRIMES: WHAT CRIMES SHOULD BE PROSECUTED?	7
5.2 TEMPORAL JURISDICTION: WHAT TIME FRAME SHOULD BE COVERED?	8
5.3 TERRITORIAL AND PERSONAL JURISDICTION: WHO SHOULD BE PROSECUTED?	8
6. HOW SHOULD SURVIVORS PARTICIPATE IN PROCEEDINGS?	9
7. WHAT ABOUT REPARATIONS FOR SURVIVORS?	9
8. WHAT ABOUT SAFETY, WELL-BEING, DIGNITY AND PRIVACY OF SURVIVORS?	10
9. HOW SHOULD THE INTERNATIONAL COMMUNITY SUPPORT PROCEEDINGS IN IRAQ?	10
10. HOW SHOULD JUDGES AND OTHER PERSONNEL BE SELECTED AND SUPPORTED?	11
11. HOW TO ENSURE FAIR TRIAL RIGHTS?.....	11
12. WHAT PENALTIES SHOULD BE APPLIED?	12
13. HOW SHOULD THESE ACTIONS BE FUNDED?.....	12
CONCLUSION	13

INTRODUCTION AND BACKGROUND

The Coalition for Just Reparations (C4JR) presents this paper with the aim of bringing fresh momentum to the pursuit of criminal accountability in Iraq for international crimes committed by the so-called Islamic State in Syria and the Levant (ISIL) also known *as Da'esh*, eight years after the genocide. The goal of establishing a path to justice for these crimes, a high priority for survivors and one that Iraq has committed itself to, has so far proved challenging to deliver.

C4JR is an alliance of Iraqi NGOs who came together to call for comprehensive reparations for survivors of atrocity crimes perpetrated during the ISIL conflict in Iraq. C4JR seeks to provide a collaborative and safe space where grievances of survivors belonging to all affected groups (Yazidi, Turkmen, Shabak, Kakai, Christians, Shia, Sunnis, and others) are adequately addressed. C4JR also strives to make available access to good practices, refer to international standards, and learn from the mistakes and successes of other post-conflict initiatives.

This Position Paper was initiated by Yazda in response to the lack of action and consultation with the Iraqi civil society on ISIL accountability mechanisms and the rejection of the Kurdistan Region of Iraq (KRI) draft law to establish an ISIL tribunal in KRI. It is an outcome of yearlong intensive discussions between C4JR members that took place both online and in person.

The Position Paper aims at identifying principles on which the long overdue criminal accountability mechanism for ISIL should be based. The discussion was informed by the views of survivors and by past experiences of accountability processes for atrocity crimes in Iraq and was grounded in Iraqi as well as international law and best practices. For the Coalition, involvement of survivors in any accountability process is the guiding principle.

The Coalition recognizes that Iraq has different options for establishing an accountability mechanism to bring ISIL members responsible for genocide, war crimes and crimes against humanity to justice for their crimes, and that doing so is a complex undertaking. In this paper, we do not seek to set out a comprehensive blueprint, but the following represents the consensus of the involved Coalition members on what should be the basic legal, policy and practical contours of a criminal accountability mechanism for ISIL that complies with international human rights standards.¹

The undersigned organizations remain available to meet the relevant members of the Iraqi government once it is established to discuss this important issue. Survivors working with these organizations have also on numerous occasions expressed a wish to attend such a meeting and move this topic forward.

1. BASIC DEMAND

The Iraqi authorities should act immediately to:

1. Incorporate genocide, crimes against humanity and war crimes into national law;
2. Establish a survivor-friendly criminal accountability mechanism meeting international standards with jurisdiction over international crimes committed by ISIL.

These actions are necessary to support and contribute to a robust transitional justice mechanism for the following reasons:

¹ The focus of this paper is the criminal responsibility of individuals and legal persons; the Coalition is aware that steps are also needed to ensure the accountability of relevant states for their role in ISIL crimes. This is addressed for instance in the recent report of the Yazidi Justice Committee, [State Responsibility and the Genocide of the Yazidis](#).

1. In order for Iraq to comply with its international obligations to exercise criminal jurisdiction over those responsible for international crimes including genocide, crimes against humanity and war crimes;
2. To demonstrate Iraq's commitment to accountability, redress and justice for survivors;
3. To accurately capture the nature and extent of the crimes committed by ISIL from 2014 until 2017, including sexual violence and crimes against children: while [German courts have convicted](#) two ISIL members on genocide charges, including an Iraqi national², an Iraqi court has yet to do so;
4. To promote a survivor-centred justice approach where victims' voices can be heard to facilitate healing;
5. To mitigate and deter future human rights abuses.

There has been a recognition and actions towards incorporating international crimes in domestic Iraqi legislation and establishing mechanisms to investigate and prosecute ISIL for these crimes. In July 2021, Iraq adopted a five year Human Rights National Action Plan that includes both elements.³ In March 2021 the Iraqi Government enacted the [Yazidi Survivors Law](#) which in Article 7 declared crimes committed by ISIL against Yazidi and other groups to be genocide and crimes against humanity and committed to initiate criminal proceedings against the perpetrators. In response to a [2017 Iraqi call](#) for international assistance in ensuring those responsible are held accountable, the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL ([UNITAD](#)) has been conducting investigations into ISIL crimes in Iraq since 2018 and is in the process of building case files in support of Iraqi efforts to hold ISIL accountable. When renewing the mandate of the UN Assistance Mission for Iraq (UNAMI) in May 2021, the [UN Security Council](#) reiterated the need to hold perpetrators of conflict-related sexual and gender-based violence accountable.

The Iraqi Federal Supreme Court has declared that a KRI draft law to establish a criminal tribunal for ISIL crimes in the Kurdistan Region of Iraq could not move forward on [constitutional grounds](#). So far, the Iraqi government has not acted to provide an alternative criminal accountability mechanism with jurisdiction over genocide, crimes against humanity and war crimes. The Iraqi authorities and the international community must therefore now urgently identify another way to comprehensively provide justice for victims of these crimes, in a way that meets international standards. Any other way can only provide a partial solution: countries prosecuting on the basis of universal jurisdiction can only pursue those few who come within their jurisdiction, and the International Criminal Court (ICC) would only prosecute a very few top leaders. A coordinated national and international strategy to prosecute these crimes is therefore needed.

The Iraqi government must also codify international crimes in its national law, without which it will not have a basis to prosecute these crimes in relation to ISIL. In doing so, it will be necessary to consider the principle of legality. Like many legal systems, Iraq's Constitution prohibits the application of substantive criminal law retroactively; no one should be punished for an act that the law had not criminalised at the time it was committed. Many international and national criminal courts since the Nuremberg Tribunal have nevertheless put people on trial for genocide, crimes against humanity and

² Yazda, [German court hands down first genocide conviction against ISIS member](#), 30 November 2022; Yazda, [German court hands down second genocide conviction against ISIS member following enslavement and abuse of Yazidi woman in Syria](#), 27 July 2022.

³ Iraq National Human Rights Plan 2020-2024. Branch 7 includes legislating to hold perpetrators of sexual violence accountable. Branch 10 includes enacting a law prohibiting international crimes including genocide, war crimes and crimes against humanity. The plan lists, at page 62, "working with international partners, such as the United Nations investigations team, to strengthen accountability for crimes committed by the terrorist ISIS organization, with a view to bringing charges against those who have committed genocide crimes, war crimes and crimes against humanity."

war crimes for past acts, finding that prosecuting acts as crimes under international law did not offend the principle of legality.⁴

2. PURPOSE AND RELATIONSHIP WITH OTHER TRANSITIONAL JUSTICE PROCESSES

A criminal mechanism is just one element of what should be a comprehensive transitional justice response to ISIL crimes in Iraq, and its relationship to any other justice processes, including the Yazidi Survivors Law, should be defined. When the mechanism is established, its wider purposes should be clearly spelled out, and should include achieving justice for ISIL crimes, uncovering the truth, contributing to institutional reform by strengthening the Iraqi justice system and fair trial rights, and meeting international standards for prosecuting international crimes. Promoting reconciliation between different groups in Iraq and avoiding future atrocities should also be a stated aim. It should be a stated objective to satisfy the rights of victims and take a survivor-centred approach.

It is important to explicitly define how a criminal mechanism established in the aftermath of mass atrocities relates to other responses such as truth telling, reparation and institutional reform. Experience from other contexts shows the importance of considering how different transitional justice processes relate to each other rather than setting them up in isolation, which can lead to legal uncertainties later on. It will also be important to clarify the basis on which a [person already tried in Iraqi courts](#) for acts such as membership in a terrorist organisation could also be tried in the tribunal for other acts amounting to international crimes.

Setting out the purposes of a mechanism in the founding legislation helps ensure that those purposes continue to guide interpretation going forward.

3. HOW SHOULD A CRIMINAL MECHANISM BE ESTABLISHED?

The Iraqi government must enact legislation to establish a jurisdiction to prosecute ISIL for genocide, crimes against humanity and war crimes, applying Iraqi law insofar as it is consistent with international standards of human rights and fair trial principles. There are several possible ways Iraq could do this within the current legal structure or establishing a tailored mechanism. As a first step, the Iraqi government must request cooperation from the United Nations. A mechanism established without international involvement will not attract the cooperation and support of the international community that will be essential for its success.

The Iraqi government will need to identify a means of establishing a jurisdiction that is compatible with both the Iraqi Constitution and international law. There have been several examples where either the UN Security Council or the General Assembly have formed an agreement to set up a hybrid tribunal upon the request of the relevant national government. These include the [Special Court for Sierra Leone](#), the [Special Tribunal for Lebanon](#) and the [Extraordinary Chambers in the Courts of Cambodia](#).

While the [Iraqi Supreme Court](#) has indicated that aspects of the KRG draft law would contravene the Iraqi Constitution, Iraqi legal experts should consider whether it would be possible for the Iraqi government to establish a hybrid mechanism with international cooperation, just as it already [sought](#)

⁴ Many national courts with similar constitutional provisions to Iraq's have decided that the acts in question were already considered criminal offences under international law at the time they were committed, and as such did not offend the non-retroactivity principle. Among other things, courts have relied on Article 15 of the International Covenant on Civil and Political Rights, which states the principle of non-retroactivity but provides that this should not prevent prosecution for "any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

[international assistance](#) to take the first step in the process of ensuring criminal accountability for ISIL crimes, conducting investigations, which was achieved through the establishment of UNITAD. Since 2016, the Iraqi government has [expressed its commitment](#) to cooperate with the United Nations in ensuring accountability for sexual violence through strengthening the capacity of national and regional authorities to investigate and prosecute such crimes. The trials before the Iraqi High Tribunal, as well as more recently before the Iraqi anti-terrorism courts, have both been [viewed by the international community](#) as flouting fair trial standards. Only a mechanism that is objective and legitimate will be [perceived by survivors](#) as satisfactory and able to contribute to healing in society.

4. WHO SHOULD BE CONSULTED?

Involve survivors, civil society and Iraqi and international experts in the process of designing and implementing a draft law establishing the accountability mechanism and related documents. This must include survivors' and women's associations representing affected communities.

Involving survivors and civil society in all stages of creating and implementing a criminal accountability mechanism is considered an essential [precondition](#) for any successful effort to provide justice for genocide and other mass atrocity crimes.

5. JURISDICTION: SCOPE OF AN ACCOUNTABILITY MECHANISM

5.1 SCOPE OF CRIMES: WHAT CRIMES SHOULD BE PROSECUTED?

The criminal accountability mechanism should have jurisdiction over genocide, war crimes and crimes against humanity, as defined in the Rome Statute of the ICC. It should include, at a minimum, all crimes of sexual and gender-based violence as well as crimes against children included in the Rome Statute.

The [ICC Rome Statute](#) is widely considered to [reflect the current state of international law](#) as regards defining the international crimes of genocide, crimes against humanity and war crimes. Iraq can incorporate and prosecute those crimes even though it is not a member state of the ICC. The Rome Statute codifies a wider range of [sexual and gender-based crimes](#) than any previous international treaty including rape, sexual slavery, forced pregnancy and other forms of sexual violence. Even though Iraq is not a State Party to the ICC statute, its national law can use the same definitions especially since they are considered to reflect international law.

The vast body of evidence collected by UNITAD, civil society and others demonstrates clearly that atrocities committed by ISIL amount to Rome Statute crimes. [UNITAD has announced](#) that there is clear and convincing evidence that the crimes against the Yazidi constituted genocide and that crimes committed against predominantly Shia unarmed cadets and personnel from the Tikrit Air Academy constituted war crimes. Prosecuting them as crimes such as membership of a terrorist organisation falls far short of recognizing their true extent, nature and the impact on their victims. It also sets a flawed legal precedent and contributes to inaccuracies in historical recording.

Moreover, German courts have already convicted two ISIL members for genocide and other ISIL members for [war crimes and crimes against humanity](#). Expert organizations such as the [Genocide Network](#) and a network of European investigators and prosecutors have also called for [cumulative prosecution](#) of ISIL members for core international crimes and terrorism-related offences.

5.2 TEMPORAL JURISDICTION: WHAT TIME FRAME SHOULD BE COVERED?

The mechanism should have jurisdiction over all crimes committed by ISIL, at the very least covering the period starting from 9 June 2014 when ISIL effectively controlled part of Iraqi territory. This is also consistent with the period covered by UNITAD's investigations. Individuals taken captive during the indicated period, subsequently trafficked in or outside of Iraq and still not released shall be recognized as survivors as well.

The temporal jurisdiction of the mechanism should be defined in relation to the period of the ISIL campaign against Iraqi minorities. This campaign started in [June 2014](#) when ISIL launched an offensive on Mosul and Tikrit, beginning a period of effective control over part of Iraqi territory. The [Yazidi Survivors Law](#) mentions a starting date of 3 August 2014, but this excludes some violations amounting to international crimes committed before that date, notably against members of the Turkmen minority.

For the avoidance of doubt, it is necessary to specify that crimes involving persons taken captive during the campaign but trafficked and/or released after that period of effective control ended or still not released should be included.

5.3 TERRITORIAL AND PERSONAL JURISDICTION: WHO SHOULD BE PROSECUTED?

The mechanism should have jurisdiction over crimes committed by ISIL in Iraq or outside of Iraq against Iraqi nationals or non-Iraqi nationals residing in Iraq.

This provision is consistent with established jurisdictional principles and is appropriate to the nature of ISIL crimes. Many crimes committed by ISIL against the Yazidi and other members of Iraqi minority communities were committed partially on the territory of other states, particularly Syria. For instance, women and girls were abducted in Iraq and taken to Syria where they were held captive and subjected to sexual violence and other forms of torture and ill-treatment. Some victims of ISIL crimes were not Iraqi nationals but were nationals of other states or stateless persons residing in Iraq at the time, including as refugees. This is consistent with Iraqi law which provides, in Article 6 of the Penal Code, for a broad basis of criminal jurisdiction.

The mechanism should have jurisdiction over natural persons who were aged 18 or over at the time the crimes were committed and over legal persons in accordance with Iraqi law. Due regard should be given to international child rights standards and protections that should be afforded children associated with armed groups. In recognition of the fact that serious crimes were also committed by persons aged under 18, other measures in line with international standards should be taken to address such crimes.

While the age of criminal responsibility varies under domestic law, the ICC and most international or hybrid criminal tribunals have not prosecuted children, meaning those under the age of 18 at the time the crime was committed. They have largely treated children as victims, and [prosecuted adults who recruit children](#) to fight in armed groups. Because of the strong protections for children in criminal justice systems under [international human rights law](#), including the possibility to prosecute children aged under 18 as adults would jeopardise international support for the tribunal. Additionally, UNITAD is not collecting evidence and building case files against perpetrators under the age of 18.

The Iraqi Penal Law provides for criminal liability of legal persons including corporate bodies, providing a ground to include this basis of liability. This would be consistent with current trends in international law and practice towards greater accountability for corporations. Examples are the [Guiding Principles on Business and Human Rights](#) endorsed by the UN Human Rights Council in 2011,

and the current criminal prosecution of the French company [Lafarge](#) in a French court for complicity in crimes against humanity in relation to payments to ISIL and other armed groups in Syria. While there are advantages and disadvantages to the tribunal taking on such a complex element with relatively little international precedent, it will be for the tribunal to decide whether to prioritise legal persons based on the available evidence. The fact that [UNITAD is investigating the financing](#) of ISIL crimes is likely to be a relevant factor.

As is usual in criminal law including in the Iraqi legal system, it is not only those who commit crimes directly who can be held criminally responsible, but also those who are complicit in different ways such as by ordering, aiding and abetting or otherwise contributing to the commission of the crimes.⁵ This might include, for example, those involved in human trafficking of those taken captive by ISIL.

6. HOW SHOULD SURVIVORS PARTICIPATE IN PROCEEDINGS?

Reflecting international trends towards greater involvement of victims in international criminal tribunals, survivors should be legally represented, and the mechanism's founding legislation should affirm their right to choose their legal representative and to play an active role as complainants and civil parties. As civil parties they should be equipped with the equivalent rights like the other parties, prosecution and defence. Iraq is a civil law country and provides this role to victims who join criminal proceedings. In particular, they should be entitled to join as civil parties during the pre-trial phase, have access to the case file, submit investigative requests, question witnesses, experts and the accused and submit evidence. Funds should be made available for legal aid so survivors participating as complainants or civil parties can be provided with legal representation free of charge. Survivors should be made aware of their rights.

Iraqi criminal procedure allows victims to be legally represented and provides them with rights as complainants and civil plaintiffs, but these rights should also be clearly set out in the governing statute and rules of procedure and evidence of the mechanism, so as to provide a legal basis for [victims to claim their rights](#) since the tribunal would be applying international law. Survivors will only agree to cooperate with a mechanism, by, for instance, providing evidence, if they trust the process and feel empowered by it.

As survivors and their communities cannot be expected to have the means to pay legal fees, a legal aid scheme should be set up to cover legal fees and ensure quality legal representation for survivors.

7. WHAT ABOUT REPARATIONS FOR SURVIVORS?

The mechanism should be empowered to award individual or collective reparation to victims and their families. Reparation should be defined according to international standards for these types of crimes. A Trust Fund or Compensation Fund should be established to complement reparations awards ordered by the mechanism where those convicted do not have sufficient means to make full reparation to the survivors. Reparation should be coordinated with the implementation of the Yazidi Survivors Law and other applicable legislation in Iraq.

While a criminal tribunal can only order reparation to repair harm caused by those crimes it finds defendants guilty of after a trial, and cannot therefore bring about a comprehensive approach to victim reparation for ISIL crimes, it can establish legal principles on reparations that can be useful for all survivors. The [experience of the ICC](#) has shown that it is possible for a criminal tribunal to deal with

⁵ See for instance Article 25 of the ICC Rome Statute, and Section 5 of the Iraqi Penal Code.

reparation even where there are large numbers of survivors, and to establish the liability of those found guilty of crimes even where some perpetrators have limited assets.

The YSL establishes a scheme to repair harms inflicted on certain categories of survivors, but it does not recognize all ISIL survivors as beneficiaries. Nor does it provide a means whereby those responsible for serious violations of international law can be ordered to make reparation. As it is not sufficient only to acknowledge enormous harm and suffering of the victims, one must also recognize the right to reparation for these crimes as called for under international law. According to the [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), reparation includes restitution, rehabilitation, satisfaction and guarantees of non-repetition in addition to compensation.

In recognition of the fact that many of those convicted by the tribunal will not have sufficient assets to make full reparation to the survivors, or it will not be possible to obtain assets, a Fund should be established equivalent to the [ICC Trust Fund for Victims](#), to which the Iraqi government and other states and donors could contribute.

8. WHAT ABOUT SAFETY, WELL-BEING, DIGNITY AND PRIVACY OF SURVIVORS?

All parts of the mechanism must be obliged to respect the safety, physical and psychological well-being, dignity and privacy of survivors and a ‘best interests’ approach should be incorporated into all tribunal proceedings. Survivors who participate or testify as witnesses should have psycho-social support if needed. In line with international practice, confidentiality and other protection measures should be available where necessary before, during and after trials. A specialized Survivor Protection Unit with expertise in crimes of sexual violence should be established within the tribunal and codified in the tribunal statute to safeguard these rights, building on existing Iraqi law as well as experiences and best practices from elsewhere.

There is considerable experience from international, regional and national criminal tribunals dealing with serious crimes on how to enable survivors to take part in proceedings, whether as witnesses, complainants or civil plaintiffs, in a [safe and dignified manner](#). This includes providing physical and psychological support and protection when needed, as well as advising the tribunal on measures that should be taken throughout the process, from investigation to tribunal hearings and beyond. Since this requires specialized staff, including those with expertise in trauma related to crimes of sexual violence, a special unit should be established within the mechanism.

9. HOW SHOULD THE INTERNATIONAL COMMUNITY SUPPORT PROCEEDINGS IN IRAQ?

The Iraqi government already committed itself, in the Yazidi Survivors Law, to cooperate and coordinate with international entities to investigate and prosecute ISIL crimes. Iraq must now deploy diplomatic efforts to secure the necessary international cooperation for an accountability mechanism to prosecute ISIL for international crimes, including to secure evidence and extradition of suspects and related procedures such as searching for the missing. Cooperation between the Government of Iraq and the Kurdistan Regional Government will be essential.

Due to the cross-border nature of ISIL crimes, international cooperation will be essential, to conduct investigations and obtain evidence, execute arrest warrants including by securing extradition of suspects, protect victims and witnesses and conduct outreach to affected communities. This is already

envisaged in the [Yazidi Survivors Law](#), which (in Article 7.3) provides that the Ministry of Foreign Affairs will seek cooperation for the extradition of suspects to be tried before competent courts.

10. HOW SHOULD JUDGES AND OTHER PERSONNEL BE SELECTED AND SUPPORTED?

All judges, prosecutors, attorneys and other personnel should be vetted for high moral character, should demonstrate that they will act independently and impartially and should have the appropriate experience and expertise. Specialised training should be organized for all judges and other personnel of the mechanism, as well as lawyers representing the accused and victims, based on the needs. In appointing judges and other personnel, measures must be taken to ensure appointment based on competence, and due consideration should be given to fair representation of women and of different minority groups in Iraq. In the interests of continuity and to benefit from their experience and expertise, UNITAD should be part of the prosecution section of the mechanism.

It is crucial to provide confidence, to the international community, survivors and all Iraqis, that the accountability mechanism will be fair, impartial, independent and guided by international standards and best practices. [Some survivors have already expressed](#) their strong wish for international involvement in the operations of the mechanism. There is hope that international support and involvement could encourage needed justice reforms in Iraq.

Prosecuting, defending and judging international crimes requires specialist knowledge and experience acquired through practice, which domestic judges and lawyers would not have obtained as part of their regular training or practice. There will be a need to develop the capacity of Iraqi judges, prosecutors and lawyers to prosecute international crimes and defend international human rights. While experience in the relevant international law and practice, and experience from other contexts, is important, experience from other tribunals shows that it is also essential that any international personnel as far as possible have familiarity with the languages and law of the country concerned, or at least of similar legal systems.

Appointment of all judges and other personnel should be on the basis of merit, and specialist training should be provided both when they come on board and through continuing education programmes. Efforts should be made to identify qualified female judges and judges from minority communities, wherever possible. There is precedent for including [specific procedures](#) for ensuring fair representation of female and male judges, and judges with different types of experience and from different types of legal system, in the [ICC's Rome Statute \(Article 36\)](#).

11. HOW TO ENSURE FAIR TRIAL RIGHTS?

The mechanism must respect international standards of human rights and conduct proceedings fairly and impartially. Fair and impartial trials are also essential to enable revelation of the truth and perceived legitimacy that will contribute to breaking cycles of violence. This must include fully respecting all the rights of defendants accorded under international law. Legal aid should be provided where accused persons do not have the means to pay for legal counsel. Innovative ways of protecting the rights of those who interact with the mechanism should be explored, such as the establishment of an Ombudsperson. The relevant Iraqi authorities must be obliged to apply and implement decisions of the mechanism.

Fair and impartial trials are fundamental to the legitimacy of international criminal justice, and form an important part of institutional reform that is a core aspect of transitional justice following mass atrocity crimes. UNITAD and other entities in possession of evidence such as national war crimes units

will not be able to cooperate with a mechanism that does not respect fair trial standards. The Kosovo Specialist Chambers offers an interesting model for protecting the human rights of all who interact with the institution; it established an [Ombudsperson Office](#) as an independent function to monitor, defend and protect the fundamental rights of all those who interact with it.

The mechanism will be reliant on Iraqi national law enforcement and other agencies for its operational effectiveness. Fairness and impartiality must extend to those agencies also, and they should be obliged to implement decisions of the mechanism.

12. WHAT PENALTIES SHOULD BE APPLIED?

The mechanism should not be able to impose the death penalty. Measures should be taken to mitigate the risks involved in keeping those deprived of their liberty while awaiting and undergoing trial and those convicted by the tribunal in detention in Iraq, including seeking international assistance.

Consistent with Article 9.1 of the Yazidi Survivors Law, no general amnesty or commutation of sentence should be applied.

Many in the international community consider the death penalty to be inconsistent with international human rights standards and will not support an accountability mechanism that imposes. It follows that keeping the death penalty would rule out international cooperation and involvement, either in supporting the trials themselves or contributing to any eventual compensation fund for survivors. UNITAD and other entities in possession of evidence will not [cooperate](#) with a mechanism that imposes the death penalty.

The prospect of ISIL detainees serving long periods in detention, both pre-trial and serving sentences of imprisonment, creates significant risks that will need to be addressed. Allegations of [torture and ill-treatment](#) are frequent in Iraqi detention centres. Enhanced oversight of detention centres should be put in place including rehabilitation programmes and enhanced security measures.

13. HOW SHOULD THESE ACTIONS BE FUNDED?

The Iraqi authorities together with the international community should ensure that the mechanism has the necessary funds required to carry out its functions, and to guarantee fair, survivor-centred, efficient, and secure proceedings.

A criminal accountability mechanism dealing with genocide, crimes against humanity, and war crimes will require significant resources, far greater than courts prosecuting regular crimes. For example, the mechanism will require specialist evidence management and court management systems, expert witnesses and the capacity to seek cooperation from foreign jurisdictions. Defendants will require legal counsel with adequate resources to conduct their defence. Victim participants will require support and legal representation, and outreach to survivors and affected communities will be crucial. Other essential elements include security for judges and other personnel, victim and witness protection and translation. It will be important to ensure that funding sources are sustainable, to avoid the tribunal running short of funds during the course of its work.

A hybrid tribunal established with the cooperation of the United Nations with strong international elements is much more likely to receive funding from the international community than a purely national one.

CONCLUSION

At this point in time, remaining passive is the least favourable option for Iraq. Without taking swift action to incorporate international crimes within its legal framework and establish an accountability mechanism in line with international standards to bring those responsible to justice, Iraq will not only be letting down survivors and reneging on its own previous commitments. It will also be disregarding concluding observations of the UN Human Rights Treaty Bodies (concluding observations of the [Human Rights Committee](#) and the [Committee Against Torture](#)) and increase the risk of being held responsible before the International Court of Justice for not abiding by its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide.

[C4JR member organizations and partners endorsing the Position Paper on an ISIL Accountability Mechanism in Iraq]

1. ASUDA
2. Better World Organization for Community Development (BWO)
3. CAPNI for Humanitarian Aids in Iraq
4. Civil Development Organization “CDO”
5. Dak Organization
6. Emma
7. Eyzidi Organization for Documentation
8. Ghasin Alzaiton
9. Hammurabi Human Rights Organization (HHRO)
10. Harikar
11. HÁWAR. Help
12. Iraqi Educational Association AL Basra
13. Iraqi Institution for Development (IID)
14. Jinda Organization
15. Justice Organization for Minority Rights (JOMR)
16. Methra Organization
17. National Centre for Human Rights (NHCR)
18. Nisha Organization
19. Peace and Freedom Organization
20. TAJDID Iraq
21. The Jiyan Foundation for Human Rights
22. The Observer Human Rights Center OHRC
23. Women Leadership Institute (WLI)
24. Women Legal Assistance Organization (WOLA)
25. Yazda
26. Yazidi Survivors Network (YSN)