

## Provision of Adequate Redress for Victims of Violence in the Iraqi Legal System\*

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### Abstract

This article examines the shortcomings of the Iraqi legal framework for enabling victims of violence to obtain adequate reparations, with a particular focus on harm caused by acts of violence perpetrated by non-state actors since 2003. Despite the scale of the physical, material, and psychological harm suffered by victims, many remain deprived of effective remedies. While studies on transitional justice and reparations in Iraq have grown, attention to the structural and procedural gaps in the existing reparations system has remained limited. This study seeks to address this gap by assessing the adequacy of Iraqi laws and institutions in guaranteeing victims' rights to redress.

The study employs an analytical legal approach based on primary legal sources, including the Compensation for Victims Law No. (20) of 2009 and its amendments, relevant provisions of the Iraqi Civil Code, and available judicial rulings, supported by documentary analysis and quantitative data drawn from United Nations reports and relevant international bodies.

The findings reveal persistent shortcomings in both legislation and its practical application to provide comprehensive redress. The Iraqi legal framework is also found to be inconsistent with the State's positive obligations under international human rights law to ensure adequate reparation. This research contributes by systematically linking deficiencies in Iraqi law to international standards for victims' rights, offering, in the short and long term, practical recommendations for legislative reform and strengthening judicial capacity. The article concludes that the failure to implement fundamental reforms will continue to deprive Iraqi victims of justice and human dignity.

**Keywords:** Iraqi Tort Law; Reparations; Human Rights; Victimisation; Positive Obligation

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## توفير سبل الانتصاف الكافية لضحايا العنف في النظام القانوني العراقي

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### ملخص

تتناول الدراسة أوجه القصور في الإطار القانوني العراقي المتعلق بضمان حصول ضحايا العنف على تعويضات ملائمة، مع التركيز على الأضرار الناجمة عن أعمال العنف التي ارتكبتها جهات فاعلة غير حكومية منذ عام 2003. فعلى الرغم من جسامة الأضرار الجسدية والمادية والنفسية التي لحقت بالضحايا، لا يزال عدد كبير منهم محروماً من سبل انتصاف فعّالة. ومع تنامي الدراسات التي تناولت العدالة الانتقالية والتعويضات في العراق، ظل الاهتمام بالاختلالات الهيكلية والإجرائية في نظام التعويضات القائم محدوداً.

تهدف الدراسة إلى سدّ هذه الفجوة من خلال تقييم مدى كفاية القوانين والمؤسسات العراقية في ضمان حقوق الضحايا في الانتصاف وجبر الضرر.

تعتمد الدراسة منهجاً قانونياً تحليلياً يستند إلى مصادر قانونية أولية، تشمل قانون تعويض المتضررين رقم (20) لسنة 2009 وتعديلاته، وأحكام ذات صلة من القانون المدني العراقي، إضافة إلى الأحكام القضائية المتاحة، مدعومة بتحليل موثق وبيانات كمية مستمدة من تقارير الأمم المتحدة والهيئات الدولية ذات الصلة.

تُظهر النتائج وجود قصور مستمر على المستويين التشريعي والتطبيقي للحصول على سبل انتصاف شاملة. وتكشف أن الإطار القانوني العراقي لا ينسجم على نحو كافٍ مع التزامات الدولة الإيجابية بموجب القانون الدولي لحقوق الإنسان فيما يتعلق بضمان تعويضات مناسبة. وتتمثل إسهامات هذه الدراسة في الربط المنهجي بين أوجه القصور في التشريع والممارسة العراقية والمعايير الدولية النازمة لحقوق الضحايا، مع تقديم توصيات عملية قصيرة وطويلة الأمد لإصلاح المنظومة التشريعية، وتعزيز القدرات القضائية.

تخلص الدراسة إلى أن الإخفاق في تنفيذ إصلاحات جوهرية سيؤدي إلى استمرار حرمان الضحايا العراقيين من العدالة وصون الكرامة الإنسانية.

**الكلمات المفتاحية:** قانون المسؤولية التقصيرية العراقي، التعويضات، حقوق الإنسان، الضحايا، الالتزامات الإيجابية

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## 1- Introduction

### 1.1 Definition of the Research Topic

Iraq has witnessed unprecedented levels of violent acts perpetrated by ‘non-state actors’, such as ISIS and other groups of terrorists and militias,<sup>1</sup> particularly in the wake of the contentious military intervention and the ensuing 2003 occupation of the country by the United States and its coalition partners.<sup>2</sup> This situation has resulted in the demise and wounding of a significant number of Iraqi citizens.<sup>3</sup>

The weak implementation of transitional justice mechanisms in post-2003 Iraq exacerbated complex manifestations of violence, encompassing a wide range of ‘human rights’ violations.<sup>4</sup> The concept of transitional justice encompasses diverse judicial and extrajudicial approaches used by societies to address historical injustices, facilitate accountability for perpetrators, establish legal frameworks, and provide redress for victims of atrocities.<sup>5</sup> ‘Transitional justice’ identifies that “successive governments must build institutions that will bring justice to the past, while showing their commitment to good governance in the future”.<sup>6</sup>

The successful implementation of these processes can, thus, stimulate comprehensive legal reform, enhance political stability, rebuild public trust in governing institutions, and create a new social contract based on shared principles of justice and accountability.<sup>7</sup>

The ‘transitional justice’ mechanisms implemented in post-2003 Iraq were deemed inadequate to comprehensively rectify the severe human rights abuses perpetrated by the Ba’athist regime. They failed to achieve accountability, justice, and reconciliation.<sup>8</sup> Academic studies have highlighted the regime’s systematic suppression of human rights and its intentional erosion of any guarantees of Iraqis’

1 See “Law No. 20 of 2009 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Attacks” (Iraq).

2 A significant body of international legal scholarship contends that the ensuing 2003 occupation of the country by the United States and the United Kingdom violated international law. See ‘Karima BenNoune’, ‘Toward a Human Rights Approach to Armed Conflict: Iraq 2003’ (2004) 11 *University of California, Davis* 171, 172; The Chilcot Inquiry, an extensive investigation regarding the UK’s role in the 2003 Iraq invasion, provided a rigorous assessment and critique of the government’s decision to participate in the military intervention. See ‘Sir John Chilcot, ‘Public Statement’ (The Iraq Inquiry, 6 July 2016).

3 Approximately 158,347 to 176,949 deaths between March 2003 and June 2016. See ‘Iraq Body Count, Documented Civilian Deaths from Violence’.

4 See ‘Mieczysław P. Boduszyński’, ‘Iraq’s Year of Rage’ (2016) 27 *Journal of Democracy* 110, 122’.

5 See Kora Andeieu, ‘Transitional Justice: A New Discipline in Human Rights’ (2010) *Online Encyclopedia of Mass Violence* 1, 2.

6 Andeieu (n 6) 2-4.

7 ‘United Nations Development Programme, *Engaged Societies, Responsive States: The Social Contract in Situations of Conflict and Fragility* (April 2016) 11’.

8 See Rehan Hanna Ayoubi, Malik Mansi al-Huseini, Judicial Mechanisms for the Implementation of Transitional Justice at National and International Levels (2025) 5 *Journal of Posthumanism* 4533, 4542.

freedoms.<sup>9</sup> Specialists in the transitional justice system assert that the ‘Coalition Provisional Authority (CPA)’, which governed Iraq after the invasion, committed significant shortcomings in this process. They argue that the CPA has “prioritized prosecution, retribution, and corruption over the pursuit of truth, reconciliation, and transparency”.<sup>10</sup>

## 1.2 The Importance of the Research

Despite official initiatives launched since 2009 to compensate victims of conflict and terrorism, the compensation framework in Iraq continues to exhibit persistent structural and procedural shortcomings that impede victims’ access to effective remedies. Reports highlight ongoing administrative delays, inconsistent disbursement practices, and regional disparities in implementation—issues that hinder reconstruction, return, and reconciliation efforts. This article seeks to address the urgent policy need to align normative commitments with practical realities and institutional capacities.<sup>11</sup>

## 1.3 The Objectives of the Research

This study aims to assess how Iraqi legislation and judicial practices regulate victims’ compensation entitlements and evaluate the compatibility of these domestic mechanisms with Iraq’s obligations under international human rights law. The study also aims to identify structural and procedural shortcomings in the implementation of the Victims’ Compensation Law No. 20 of 2009 and its amendments, and to develop legal recommendations to enhance the effectiveness of compensation for victims.

## 1.4 Contribution to the Literature

Recent studies and practical literature have made valuable contributions to understanding the reparations framework in Iraq. Policy briefs and NGOs’ studies have documented implementation gaps and victims’ experiences under Law No. 20 and its 2015 amendments, while programmatic reports have provided practical guidance for reparations and humanitarian actors.<sup>12</sup> Studies have also addressed more recent specialized initiatives, such as the Yazidi Survivors Law and sectoral reparations schemes.<sup>13</sup> Peer-reviewed Iraqi studies have contributed to providing doctrinal and analytical insights on the state’s responsibility under Law No. 20<sup>14</sup> and broader legal analysis of Iraq’s system for compensating war

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9 For further details, see ‘Bassim Jameel Almusawi, *The Truth of the Legend of Successful Criminal Procedure Reform in Post-Saddam Iraq: A Critical Analysis of Pre-Trial Rights in the Light of International Human Rights Law* (PhD thesis, Bangor University 2014) 2-8’.

10 See ‘Jeremy Sarkin and Heather Sensibaugh’, ‘How Historical Events and Relationships Shape Current Attempts at Reconciliation in Iraq’ (2009) 26 *Wisconsin International Law Journal* 1033, 1073-1074’.

11 Faris AL-Anaibi, *The Rights of Victims of Violence by Non-State Actors in Iraq post-2003* (PhD thesis, Durham University 2018) 134-143.

12 See Ceasefire Centre for Civilian Rights, *Civilianled Monitoring in Iraq* (Ceasefire, 2024); Center for Civilians in Conflict, *Iraq: Reparations and Civilian Protection* (CCIC, 2023).

13 Ceasefire Centre for Justice (C4JR), *Yazidi Survivors Law and Sectoral Reparations Approaches* (2023).

14 Rana Essam Acid and Rafid Ali Lafta, ‘Compensation in Administrative Liability: An Analytical Study in the Light of the Iraqi Compensation Law No. 20 of 2009, As Amended’ (2025) 19 *Regional Studies Journal* 291–328.

and terrorism victims.<sup>15</sup> However, this literature remains primarily descriptive, failing to provide an in-depth analysis of the amended legal structure of Law No. 20 and to systematically assess its compatibility with international human rights jurisprudence regarding states' positive obligations. This article addresses that gap by combining doctrinal analysis of Iraqi legislation and Court of Cassation practices with documentary and quantitative evidence from the United Nations Assistance Mission for Iraq (UNAMI),<sup>16</sup> the International Organization for Migration (IOM),<sup>17</sup> and Human Rights Watch,<sup>18</sup> to assess whether domestic law and practice meet international standards for adequate and comprehensive compensation.

## 1.5 Research Problem

- The analysis will critically examine: whether the current approach of the 'Iraqi state and its legal system' aligns with contemporary human rights standards, which mandate a positive obligation on the part of the state to provide victims with adequate reparations.
- To what extent has the Iraqi judiciary been able to provide reparations to victims?

## 1.6 Research Methodology

This study adopts a legal, analytical, and doctrinal approach to examine the adequacy of the Iraqi compensation framework for victims of violence, with a particular focus on Law No. (20) of 2009. To assess the practical application of the Law, the study employs documentary analysis, relying on quantitative indicators derived from reports issued between 2014 and 2024 by various international human rights organizations. In cases where complete official statistics or full texts of court rulings are unavailable, the study relies on reliable secondary sources, explicitly acknowledging these methodological limitations. All references to victims' experiences from secondary sources have been anonymized. The restricted access to official statistics and unpublished court decisions limits the scope of its findings. Qualitative interviews with victims, lawyers, and civil society actors would enrich future research and deepen empirical understanding. The analysis is also guided by the jurisprudence of international and regional human rights bodies.

## 1.7 Research Plan

To substantiate the arguments presented in this study, the paper is structured as follows: Section 2 examines the Iraqi state's responsibility to provide redress under civil law, analysing the legal framework governing tort liability and compensation. Section 3 assesses the practical mechanisms through which

15 Ban Saif AlDin Mahmoud, 'The Legal System for Compensation for Victims of War and Acts of Terrorism (Iraq as a Model)' (2022) 2 *Middle East Journal of Legal and Jurisprudence Studies* 16–37.

16 United Nations Assistance Mission for Iraq (UNAMI), *Report on Compensation Claims and Implementation* (2023).

17 International Organization for Migration (IOM), *Iraq: Victims' Compensation and Humanitarian Assistance Report* (2024).

18 Human Rights Watch, *Iraq: Sinjaris Finally Compensated* (18 November 2024).

the Iraqi state addresses victims' claims, highlighting gaps in implementation and access to remedies. Section 4 critically evaluates Law No. 20 of 2009 and its subsequent amendments, exploring both legislative deficiencies and challenges in its application.

## 2. The Responsibility to Redress under Iraqi Civil Law

Before 2003, compensation for the violation of the right to life rested on individual perpetrators' liability under criminal and civil statutes. The state did not assume a subsidiary role in providing compensation when perpetrators were unable to fulfil their obligations. Criminal proceedings encompass punitive measures and civil redress for victims.<sup>19</sup> Iraqi commentators have defined compensation for the damages from crimes as 'compensation for an act that causes harm to a legitimate right or interest of an injured party'.<sup>20</sup> Article 10 of the 'Iraqi Criminal Procedure Code (ICPC)' grants victims the right to file civil claims for damages, both material and moral, resulting from any wrongdoing 'against their human rights'.<sup>21</sup> Compensation for the infringement of the right to life is codified in the 'Iraqi Civil Law of 1951', which includes provisions allowing individuals to seek redress for physical injuries and their effects, aligning with tort principles.<sup>22</sup>

'Article 202 of Iraqi Civil Law' states that "every act [...] injurious to persons such as murder, wounding, assault, or any other kind of inflicting of injury entails payment of damages by the perpetrator".<sup>23</sup> While 'Article 205 of the Iraqi Civil Law' acknowledges 'the compensation for moral damages, including attacks on freedom, reputation, honour, or social status', scholarly debate persists regarding the inclusion of the loss of life itself within the scope of compensable damages.<sup>24</sup>

### 2.1 The Efficacy of Iraqi Civil Law in Compensating Victims

Some commentators argue that the death of an individual constitutes solely moral and material damages, excluding direct compensation for the loss of life itself. This interpretation hinges on the understanding that moral damages, as defined in Article 205, encompass injuries to intangible aspects of an individual's well-being, such as their dignity and reputation.<sup>25</sup> However, compensation for the 'physical and psychological harm' experienced by victims of unlawful killings is not explicitly

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19 Article 9 (a) of 'the Iraqi Criminal Procedure Code of 1971 (ICPC)'; 'Dan. WarNo.ck', 'The Iraqi Criminal Justice System, an Introduction' (2010) 39 *Denver Journal of International Law and Policy* 1, 11'.

20 See Hasson Obeid Hajji, 'Compensation in Criminal Cases' (2014) 1 *Kufa Journal of Legal and Political Science* 7, 16; the Iraqi judiciary has defined compensation as 'a civil penalty for liability which would either mitigate or eliminate the harms'. See Iraqi Court of Cassation, Ruling No. 25/First/1979 (16 February 1980). See Ibrahim Al-Mashahdi, Al-Mukhtar, Selected Cases under the Jurisdiction of the Court of Cassation (4th edition, Al-zaman Press, Baghdad 2000) 122.

21 WarNo.ck (n 20) 10-11.

22 See Faris Kareem Al-Anaibi, The Death of Damage and its Compensation: Comparative Study, (MSc thesis, University of Babylon 2007) 32.

23 'Dan E. Stigall', 'Iraqi Civil Law: Its Sources, Substance and Sundering' (2007) 16 *Journal of Transitional Law & Policy* 1, 42.

24 Al-Anaibi (n 23) 33.

25 Ibid 74.

articulated in Article 205.<sup>26</sup>

Para 3 of Article 205 of the Iraqi Civil Law restricts the transfer of compensation for moral damages, requiring agreement between or a final court judgment to set the value.<sup>27</sup> If the victim dies before compensation is determined, heirs cannot automatically claim for moral compensation.<sup>28</sup> Recognizing only surviving victims for moral damages<sup>29</sup> constitutes an injustice for those who lost their lives before reaching an agreement or judgment.<sup>30</sup>

## 2.2 The Human Rights Bodies' Practice

The above approach of the Iraqi Civil Law is contrary to the 'human rights frameworks',<sup>31</sup> which recognize the right of relatives to claim compensation for the suffering endured by their deceased. This reflects the importance of holding perpetrators to account for all damages inflicted on deceased victims, including moral harm. 'The UN Human Rights Committee (HRC)', for instance, has extended its interpretation of 'Article 2 (3) (a)' of 'The International Convention on Civil and Political Rights (ICCPR)' concerning the 'right to an effective remedy'. The Covenant not only establishes affirmative positive obligations on states parties to protect individuals' right to life, conduct thorough investigations into any infringements thereof, and bring to justice those responsible, but it also imposes a fundamental duty to provide reparations for such violations.<sup>32</sup> In certain instances, the HRC has articulated that reparations ought to align with the particular harm endured by individual victims.<sup>33</sup> Moreover, pursuant

26 Ibid.

27 Stigall (n 24) 42.

28 Al-Anaibi (n 23) 74.

29 Court of Cassation, Ruling, No. 80/82 (19/07/1982), Collection of Judgments, No. 3 (1982) 57. The Court in this Ruling ruled that "moral compensation does not transfer to the third party unless the amount of compensation has been determined either by agreement or final judgment". Also, see Court of Cassation, Ruling No. 2/First Expanded Body/87 (30 August 1987) *Judiciary Magazine*, No. 4 (1987) 225.

30 Al-Anaibi (n 23) 75.

31 Under human rights frameworks, reparations and compensation mechanisms are designed to address harms resulting from past human rights violations by providing material benefits to victims. Such reparations may include monetary compensation or in-kind benefits, such as free or subsidized healthcare or educational support, as well as symbolic measures such as official apologies or the establishment of monuments and museums. See Mara Revkin, Alaa Alrababah and Rachel Myrick, 'Evidence-Based Transitional Justice: Incorporating Public Opinion into the Field, with New Data from Iraq and Ukraine' (2024) 133 *Yale Law Journal* 1582, 1599; also, the 2005 Basic Principles and Guidelines represent a major initiative to establish a coherent framework of prevailing international legal standards for the recognition of victims' rights to effective, adequate, and timely reparations. See The 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 Proclaimed by General Assembly Res 60/147 of 16 December 2005.

32 Iraq has ratified numerous significant "international and regional human rights treaties", including the International Covenant on Civil and Political Rights (ICCPR)" and the *Arab Charter on Human Rights* (adopted 22 May 2004, entered into force 15 March 2008)". See Al-Anaibi (n 12) 151-152.

33 For instance, in the case of *Salem Saad Ali Bashasha v Libya*, 'Communication No. 1776/2008, UN Doc CCPR/C/100/D/1776/2008 (2010)'. The HRC in para. 9 requested the state "to provide adequate compensation for the author and Milhoud Ahmed Hussein Bashasha's family for the violations suffered by the author's cousin". See Valeska David, 'Reparations at the Human Rights Committee: Legal Basis, Practice and Challenges' (2014) 32 *Netherlands Quarterly of Human Rights* 8, 36.

to Article 13 of the European Convention on Human Rights (ECtHR), it is the responsibility of states to provide appropriate remedies to individuals who have experienced violations of their human rights within their own domestic judicial systems, regardless of who committed the violation. The ECtHR acknowledges the principle of awarding non-pecuniary compensation to the direct victim, even in instances of death, contingent upon the existence of evidence indicating torture or ill-treatment prior to death. Recognizing the suffering endured by victims prior to their death is the primary basis for such compensation.<sup>34</sup> Also, the ‘Inter-American Court of Human Rights (IACtHR)’, in its ruling on reparations for ‘human rights violations under Article 63’ of the ‘American Convention on Human Rights’, affirmed that the power granted to it by this article constitutes “one of the fundamental principles of international law.” By virtue of this authority, the Court mandated an extensive array of reparative measures acknowledged under international law, encompassing “restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition”, irrespective of any limitations imposed by a state’s domestic legislation.<sup>35</sup> For example, the ‘Inter-American Court of Human Rights’ has awarded monetary reparations for non-material damages to the descendants of victims in cases of ‘grave human rights violations’, including homicide and enforced disappearance. It states that “anyone subjected to assault and abuse will suffer moral suffering”.<sup>36</sup> Consequently, the heirs of the victims in Iraq ought to possess the legal entitlement to seek reparation for the suffering experienced by their deceased kin.<sup>37</sup>

Developing case law and the evolution of far-reaching jurisprudence on the part of ECtHR and IACtHR establishes certain norms and principles regarding these positive obligations, which could partially help to promote a culture of proper access to justice and accountability, by tackling the impunity of both the Iraqi authorities and the perpetrators, and the establishment of adequate measures of reparation. This new culture thus adds weight to the ICCPR’s exposition of the obligations owed by the Iraqi state. By observing some of these norms, the Iraqi state can adopt behaviour that facilitates change in domestic HR policies, including national policy, laws, and practices, and the mobilising of civil society to substantially improve the level of HR protection.<sup>38</sup>

### 2.3 The Position of the Iraqi Judicial System

Article 207 of ‘the Iraqi Civil Law’ acknowledges the entitlement to reparation for material losses.<sup>39</sup>

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34 *Mahmut Kaya v. Turkey* App No. 22535/93 (ECHR, 28 Mar 2000), para 135. See Dinah Shelton, *Remedies in International Human Rights Law* (2d ed, Oxford University Press 2005) 303-204.

35 See Douglas Cassel, ‘The Expanding Scope and Impact of Reparations Awarded by the Inter-American Court of Human Rights’ in Koen de Feyter (ed), *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations* (Intersentia 2005) 192.

36 See, for instance, the Court judgments in ‘*Loayza Tamayo v Peru* (Reparations) IACtHR Series C No. 42 (27 November 1998) para 138’. For Further details about ‘the practices of the HRC, and the ECtHR and IACtHR systems regarding the right to reparation’, see Al-Anaibi (n 12) 113-130.

37 Al-Anaibi (n 23) 75.

38 Al-Anaibi (n 12) 155.

39 Al-Anaibi (n 23) 63-71.

Iraqi courts generally award compensation for such material losses,<sup>40</sup> with compensation awarded commensurate to demonstrable harm and a direct causal relationship between the illicit action and the resultant damages.<sup>41</sup> ‘The Iraqi Court of Cassation’ has recognized heirs’ right to file independent claims for material compensation, as part of the deceased estate.<sup>42</sup> Furthermore, Article 203 of ‘the Iraqi Civil Law’ explicitly obligates the perpetrator “to pay compensation to dependants of the victim who have been deprived of sustenance on account of the murder or death” regardless of their familial relationship to the deceased.<sup>43</sup> Dependents must demonstrate a lack of alternative financial support to obtain compensation.<sup>44</sup> ‘The Iraqi Court of Cassation’ has often rejected claims for losses incurred by the victim’s family, such as loss of educational or employment opportunities.<sup>45</sup> For example, the Court rejected claims for material compensation and educational expenditures, citing lack of legal recognition as a dependent (strictly interpreting Article 203),<sup>46</sup> a stance criticized for ignoring broader social and economic implications. In a recent judgment, the Court ruled that:

‘the compensation for material damage is limited to the expenses of preparing and shrouding the deceased in accordance with Sharia law, as there is no evidence that the deceased provided financial support to the plaintiff. In addition, compensation for moral damage may also be awarded if it is not excessive.’<sup>47</sup>

Moreover, ‘Article 205’ stipulates that compensation can be awarded for moral damages to the spouse and immediate family members of the deceased victim.<sup>48</sup>

Iraqi courts have refused to recognize the intrinsic value of human life as a compensable loss, instead basing compensation for heirs on economic dependence. This approach conflates compensation for the victim’s loss of life as damage with financial losses incurred by dependents.<sup>49</sup> The Iraqi judiciary

40 See, for instance, ‘Ruling of the Iraqi Court of Cassation No. 581/M1/1978 (25 July 1978)’; see also its Ruling No. 360/Civil 1/1979 (10 May 1979), published in *Judicial Proceedings*, Ministry of Justice (1st edn, June 1979).

41 Stigall (n 24) 42.

42 See Ruling of the Iraqi Court of Cassation No. 2595/Administrative 1/1985 (23 September 1985).

43 Al-Anaibi (n 23) 138.

44 Al-Anaibi (n 12) 218.

45 Ibid.

46 The Ruling of the Iraqi Court of Cassation No. 77/Civil First/1975 (21 May 1978).

47 The Ruling of the Iraqi Court of Cassation No. 2641/ Appeals Board3) 2025/ July 2025), Selected from the Rulings of the Federal Court of Cassation, Publications of the Dekar Library (2026).

48 Ibid; ‘Stigall’ (n 24) 42; in this regard, “the Court of Cassation ruled that as it is recognised that the loss of the plaintiff’s husband had caused her pain and grief, she was entitled to compensation under Article 205”. See its ‘Ruling No. 362/M1/1978 (12 July 1978), published in *Collection of Judgments*, No. 3, 1978’; see also its recent ‘Ruling No. 243 (31 August 2009); the Iraqi judiciary has demonstrated “a reluctance to award compensation” for the significant “moral damages” experienced by victims of unlawful killings. See ‘Iraqi Court of Cassation, Rulings No. 223/Civil First/1979 and No. 1060/Civil First/1979 (21 October 1979)’. Nevertheless, in various rulings, the Court refuted requests for such compensation. See, for instance, its Ruling No. 456/D/84083 (29 April 1984). Al-Anaibi (n 12) 219.

49 See ‘The Court of Cassation’ Ruling and No. 30/ Public Body/ 1971 (6 November/1971) Al-Anaibi (n 23) 38.

currently refrains from awarding compensation for deprivation of life as a distinct detriment.<sup>50</sup>

## 2.4 The Tort Liability of the Iraqi Authorities

The Iraqi Civil Law incorporates provisions allowing individuals to pursue legal claims against the Iraqi authorities for damages arising from negligence in fulfilling their public duties to provide protection, as well as procedural remedies.<sup>51</sup> In addition to the individual responsibility for any harm they cause to others, which is stipulated as a general principle of tort liability within ‘Iraqi Civil Law’, Article 219, in its first and second paragraphs, further specifies:

“that government, municipalities and other institutions that provide a public service [...] are responsible for the damage caused by their employees, if the damage arises from a breach of their obligations while carrying out their duties...”<sup>52</sup>

According to Article 219, the Iraqi state can be held liable for damages caused by non-state actors only if it can be demonstrated that state employees acted negligently, failed to exercise due diligence, or engaged in illegal activities while performing their duties. Furthermore, a direct causal link must be established between these employee errors and the harm suffered by the victims.<sup>53</sup> Consequently, victims are primarily required to demonstrate the existence of an employer-employee relationship and the state’s authority over the actions of the employee involved.<sup>54</sup> This principle of presumed state liability applies even in cases where the specific employee responsible for the wrongdoing is impossible to identify. For example, ‘the Court of Cassation’ holds that the administration is accountable for the individual’s death at the hands of police officers, even in the absence of identifying ‘the officer who fired the fatal shot’.<sup>55</sup> This precedent establishes that ‘the burden of proof lies with the state agency’ to refute the presumption of negligence and exonerate itself from liability.<sup>56</sup>

Iraqi authorities have often been aware of threats to citizens, yet failed to implement adequate safeguards or provide remedies.<sup>57</sup> Also, these authorities fail to fulfil their procedural duties of investigating, prosecuting and punishing human rights violations. However, enabling victims to be compensated, through the Iraqi tort liability system, for damages caused by private individuals by

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50 Ibrahim Al-Mashahdi, ‘Evolution of Judicial Trends in Iraq on Moral Compensation’, (2001) *Journal of Legal Studies*, 89.

51 The Iraqi Constitution of 2005, particularly Articles 2, 7(2), and 15, implicitly establishes a “positive obligation upon the Iraqi state to protect its citizens’ right to life”. For further details, see ‘Al-Anaibi’ (n 12) 144-162.

52 Article 215 para 2 of this Law’ also states that “Public officials, however, are not responsible for damage done by their acts [which caused injuries to a third party] when ordered by superiors to perform them. In such circumstances, it is incumbent on the public official to establish that he believed the act he performed was lawful and that his belief was reasonable”. See Stigall (n 24) 43.

53 Al-Anaibi (n 12) 220.

54 Ibid.

55 Ibid.

56 Ibid.

57 The Iraqi governmental entities have unequivocally failed to fulfil their commitments, as delineated by international human rights jurisprudence, to safeguard their populace from adverse conditions. This inadequacy is manifest in numerous pivotal domains. For further details, see Al-Anaibi (n 12) 163-181.

state authorities remains questionable.<sup>58</sup> Historically, Iraqi courts hold these authorities accountable for the acts or omissions of their employees that cause damages by non-state actors.<sup>59</sup> This limited scope of state liability appears to be rooted in a deeply ingrained ideology that prioritizes the bolstering of state power over the fundamental human rights of its citizens. Furthermore, the implementation of the muhasasa system, while intended to ensure national unity, has inadvertently contributed to a culture where “high-ranking officials perceive their public roles as avenues for personal gain, privilege, and immunity”, rather than as opportunities to serve the public good.<sup>60</sup>

While the Iraqi Constitution ostensibly grants ‘international treaties’, such as (ICCPR), legal parity with domestic law,<sup>61</sup> judicial practice reveals a significant gap between this constitutional principle and its actual application.<sup>62</sup> In fact, Iraqi judiciaries primarily adhere to national law, effectively marginalizing the role of international human rights standards in judicial decision-making.<sup>63</sup> In addition, Many victims of violence belong to marginalized and vulnerable social groups with limited financial resources, potentially hindering their ability to access legal remedies.<sup>64</sup>

### 3. Redressing Victims by Iraqi State

Although financial compensation is considered a key component for redressing victims, especially in cases of mass atrocities such as those witnessed in Iraq after 2003,<sup>65</sup> its effective implementation

58 See Ruling of the Court of Cassation No. 567/Public Body/2009 in 24 May 2010, published in *Journal of Judicial Publications*, Supreme Judicial Council, No. 1 (2011). For further details, see Ali Katea Hajem, ‘How far the Government Commitment to Compensating the Victims of Terrorism in accordance with Law No. 20 of 2009’ (2013) 1 *Ahl Al-Bait Journal* 111, 111-122.

59 Ali Katea Hajem, ‘Compensation of the Moral Damage as a Result of Military Mistakes: A Study of the Amended Law 20/2009’ (2014) 1 *Ahl Al-Bait Journal* 452, 456. In a notable case concerning the death of a daughter due to a landmine explosion, the Iraqi Court of Cassation held the Ministry of Finance liable for failing “to take adequate measures to remove landmines and mitigate the risks they posed” to the civilian population, thereby contributing to the tragic loss of life. The Iraqi Court of Cassation’s Ruling No. 1336/1398/Appeal/ 2010 in 26/10/2010. See also its Ruling No. 2664/Appeal Body/2013 in 25/11/2013.

60 Toby Dodge, ‘Can Iraq be Saved’ (2014) 56 *The International Institute for Strategic Studies* 7, 17. The muhasasa system is ‘used to ensure that a government of national unity is formed on sectarian and ethnic grounds. ... It was not explicitly referred to in the Iraqi Constitution of 2005; rather, it has become a de facto system in which the division of power was spread between the various ethno-sectarian groups’. For further details, see Al-Anaibi (n 12) 140-142, 221.

61 See Human Rights Committee, ‘Review of the report of Iraq’, 27 October 2015.

62 See Geneva International Centre for Justice (GICJ), *Iraq: Enforced Disappearance – A Widespread Challenge*, Shadow Report submitted to the UN Committee on Enforced Disappearances for the 9th session (7–18 September 2015) 8.

63 For further details about the reluctant of courts in Iraq to apply international law norms, see Haider Ala Hamoudi, ‘International Law and Iraqi Courts’ in Edda Kristjánsdóttir and others (eds), *International Law in Domestic Courts: Rule of Law Reform in Post-Conflict States* (Intersentia 2012) 111–113.

64 See Rianne Letschert and Karin Ammerlaan, ‘Compensation and Reparation for Victims of Terrorism’ in Rianne Letschert, Ines Staiger and Antony Pemberton (eds), *Assisting Victims of Terrorism: Towards a European Standard of Justice* (Springer Science & Business Media 2010) 251.

65 See Margaret Urban Walker, ‘The Expressive Burden of Reparations: Putting Meaning into Money, Words, and Things’ in Alice MacLachlan and Allen Speight (eds), *Justice, Responsibility and Reconciliation in the Wake of Conflict* (Springer, Netherlands 2013) 208.

faces significant challenges within the existing Iraqi legal framework.<sup>66</sup> Mitigating the social and economic implications and restoring a sense of equilibrium has motivated Iraqi policymakers to enact specific legislation and issue Ministerial Order No. 10 of 2004, which aims to compensate individuals of those killed or injured by terrorist attacks, regardless of their employment status. However, such an Order has faced significant shortcomings.<sup>67</sup>

The 'Iraqi Constitution of 2005' mandates that the state provide compensation to relatives of those killed or injured in terrorist attacks, recognizing this as a constitutional duty.<sup>68</sup> Specific legislation, 'Law No. 20 of 2009', was enacted with the aim of providing compensation to victims of "military operations, military errors, and terrorist activities" in post-2003 Iraq.<sup>69</sup> In its first article, Law No. 20 considers that the main objective is to compensate individuals harmed by these events by establishing a mechanism that addresses the severity of the damage and the victims' specific needs.<sup>70</sup> A hierarchical system comprising a central committee in Baghdad and provincial subcommittees was established.<sup>71</sup> These bodies' main duty is to evaluate victims' or their legal representatives' compensation claims and then forward them to the Ministry of Finance for disbursement.<sup>72</sup> The Law sets a strict 60-day deadline for disbursement to eligible beneficiaries, including parents, children, siblings, and spouses, especially for compensation claims in cases of death.<sup>73</sup> Furthermore, where appropriate, the Law acknowledges that alternative forms of compensation, such as land grants, should be provided to support victims.<sup>74</sup> Crucially, Law No. 20 establishes a right to compensation for victims, shifting away from a purely discretionary approach. It also incorporates provisions to prevent double-dipping, ensuring that victims receive the maximum permissible compensation across all relevant legal avenues.<sup>75</sup> Despite these positive advancements, both the Law itself and its implementation have faced substantial criticism.<sup>76</sup>

### 3.1 Substantial Criticisms of Law No. 20 of 2009 and its Implementation

#### 3.1.1 Insufficient Compensation

The level of compensation provided under the Law is often deemed inadequate to address the significant losses incurred by victims and their families.<sup>77</sup> Scholars and human rights advocates have

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66 See Clara Sandoval and Miriam Puttick, *Reparations for the Victims of Conflict in Iraq: Lessons Learned from Comparative Practice* (Ceasefire Centre for Civilian Rights and Minority Rights Group International, November 2017) 23–24.

67 For further details, see Imad Fadel Rakab, 'Obligation of the State for Compensation for the Crimes of Terrorism in the Iraqi Legislation' (2010) 1 *Journal of Human Sciences* 363, 375–378.375–378.

68 Article 132 paragraphs 2 and 3 of The Iraqi Constitution of 2005 (n 52).

69 'The Iraqi Compensation Law' (n 1).

70 Ibid. Article 2 (1); Assyrian International News Agency, 'Iraq to Compensate Victims of Terrorism', *Military Operations* (2009).

71 Articles 3–7 of this law (n 1).

72 Ibid.

73 Ibid. Articles 6 (h) and 10.

74 Ibid. Articles 12 and 13.

75 Ibid. Article 8.

76 Hanan Mohammad Al-Qaisi, 'The Basis of the State's Responsibility for the Damage Caused by Military and Terrorist Operations in Iraq: Study in Law No. 20 for the Year 2009' (2012) *Journal of Judicial and Political Science* 142, 142–159.

77 'Human Rights Watch, *Iraq: Compensation for ISIS Victims Too Little, Too Late* (2023).

noted that the amounts awarded often fall short of adequately addressing the profound impact of the harm inflicted upon victims of violence.<sup>78</sup> They consider that while widows of individuals killed by terrorism may be eligible for compensation under Law No. 20, “This allowance is insufficient—especially for widows in rural areas who usually have more children, less education and fewer employment opportunities”.<sup>79</sup> Furthermore, “because of governmental institutions’ lack of capacity, limited reach to many areas outside of Iraq’s cities, and overly-complicated application processes.”<sup>80</sup> This raises concerns about corruption, bias, and the possibility of arbitrary decisions in compensation allocation.<sup>81</sup>

Even though the monetary compensation is designed to redress individuals adversely affected by property damage, the basis and method of claiming compensation stipulate that the amount should not exceed 50% of the value of the damage,<sup>82</sup> taking into account the date of its occurrence, as determined by specialists in the committee responsible for assessing the damaged property.<sup>83</sup> The stipulated percentage fails to adequately address the repair and restoration of the damages sustained.<sup>84</sup> The processes involved in evaluating and disbursing compensation are complex and often extend beyond 2 years,<sup>85</sup> causing compensation to lose its intended value due to market fluctuations or currency depreciation, thereby depriving victims of effective redress.<sup>86</sup>

### 3.1.2 Bureaucratic Obstacles

The compensation claim process is often characterized by significant bureaucratic hurdles, including lengthy delays, complex procedures, and a lack of transparency. This can pose a significant challenge for vulnerable and marginalized victims, as they may be lacking the requisite resources or support necessary for successfully navigating the intricate landscape of bureaucratic protocols.<sup>87</sup> This is clearly illustrated by the case of a mother who suffered years of bureaucratic delays in obtaining compensation

78 Article 9 of this Law; see Assyrian International News Agency (AINA) (n 74).

79 Agency for Technical Cooperation and Development *et al*, *Fallen off the Agenda? More and Better Aid Needed for Iraq Recovery* (2010) 11.

80 Ibid.

81 Human Rights Watch, *Iraq* (n 78).

82 These bases were established under Clause 1 of Article 15 of amended Law No. 20, as stated in the Ministry of Finance/Legal Department/Financial Affairs Section Letter No. 803 dated 26/3/2017; see Aeid and Lafta (n 15) 356; Mahmoud (n 16) 21.

83 For further details on the formation of compensation committees, their tasks, and methods of appealing their decisions, based on Law No. 20 of 2009, as amended by Law No. 57 of 2015, and its second amendment by Law No. 2 of 2020, see Aeid and Lafta (n 15) 357-367.

84 Ibid.

85 According to the statistics provided by the Martyrs Foundation under letter number 3636 dated 2/17/2025, the amended Compensation Law No. 20 of 2009 granted the Central Committee the authority to modify the compensation amounts determined by the subcommittees. However, the Central Committee has only used this authority to reduce compensation amounts, not to increase them. Ibid (n 15) 356, 368.

86 Ibid (n 15) 356.

87 Human Rights watch, *Iraq* (n 78).

for her daughter, who was severely injured in a shooting incident.<sup>88</sup> The mother confirmed that:

“my only child was shot multiple times in 2004 when she was only nine years old, and we did not receive compensation until 2014 – ten years after she was shot and suffered 80 percent paralysis”.<sup>89</sup>

Moreover, the law provides for a differential compensation system, whereby families of deceased members of the ‘armed forces, internal security forces, and other security agencies’ receive distinct levels of compensation compared to the families of deceased civilian casualties:

“the families of the deceased and missing who belong to the military or security forces will receive a grant of around 5 million Iraqi dinars [\$4,300], while the families of civilians will receive around \$3,200 in compensation. Meanwhile, both types of families will receive a monthly salary of around \$300.”<sup>90</sup>

As an affiliate of ‘the Iraqi High Commission for Human Rights’ rightly stated, the current system is “deeply insulting to civilian victims of terrorism”.<sup>91</sup> An interview with victims conducted by Human Rights Watch found that compensation procedures under Law No. 20 and Yazidi Survivors Law,<sup>92</sup> which pertains to reparation for Yazidi women who were victims of violence and harmed as a result of ISIS’s atrocities,<sup>93</sup> are complex, lengthy, costly, and in some cases completely inaccessible.<sup>94</sup> The compensation system under Law No. 20 in Sinjar, as in other parts of Iraq, has suffered from procedural shortcomings, inefficient processing, and budgetary problems. Interviewees reported spending up to two years and between 300,000 and 1 million Iraqi dinars (approximately US\$205 to US\$762) on legal, administrative, and transportation costs to complete the process.<sup>95</sup>

Cases are typically brought before ‘the Supreme Administrative Court’ through a procedure that begins with an initial administrative decision, followed by an appeal to a lower administrative court, and culminates in a final appeal.<sup>96</sup> This procedure usually starts with a decision issued by an administrative committee. If a party is dissatisfied with the committee’s decision, they may file a lawsuit with the

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88 Al-Anaibi (n 12) 225.

89 Ibid.; the protracted response of the Ministry of Finance in the execution of the statute has culminated in an extensive claims procedure that typically necessitates an average duration of two years for completion. See ‘Sandoval and Puttick’ (n 67)19-20.

90 Al-anaibi (n 12) 226; the current system of compensation for victims in Iraq, highlighting several key shortcomings. See Hajem (n 59) 133-139; Hajem (n 60) 481-483.

91 Al-Anaibi (n 12) 226.

92 Iraq Law No. 8 of 2021 (Yazidi Female Survivors Law).

93 The Yazidi community, along with other minorities like Christians and Kurds, was targeted by ISIS in the Sinjar region. More than 2700 Yazidi women and children are still missing. See Jiyan Foundation for Human Rights and Coalition for Just Reparations (C4JR), *More Than “Ink on Paper”: Taking Stock Two Years after the Adoption of the Yazidi [Female] Survivors Law* (2023) 11.

94 Human Rights Watch, *Iraq* (n 78).

95 Ibid.

96 For further details, see Acid and Lafta (n 15) 357-367.

administrative court.<sup>97</sup> The Administrative Court can then overturn the administrative decision, order compensation, or dismiss the case. ‘The Supreme Administrative Court’ then reviews the appeal, assesses the legality of the lower court’s decision, and may uphold, overturn, or remand the case for further proceedings.<sup>98</sup>

The Supreme Administrative Court’s (the Court) rulings on compensation have significant practical implications, particularly by emphasizing the need for claimants to submit comprehensive documentation and for administrative bodies to conduct accurate, legally sound assessments. Claimants must ensure that their property has a clear legal status and that the incident is directly related to war or terrorism, as claims concerning property outside urban planning boundaries or those resulting from ordinary criminal acts are often rejected.<sup>99</sup> The Court frequently overturns decisions of lower bodies if the factual basis is insufficient, the assessment criteria are inadequate, or there is insufficient clear evidence, highlighting the rigorous scrutiny applied to each case.<sup>100</sup>

For instance, in a case regarding compensation for abduction and death, Fatima Adi Hussein and Naba Adi Hussein filed a lawsuit after the Central Committee issued a decision (Diyala/7449 on 2024/9/4) upholding a sub-committee decision (178 on 2023/8/10) to reject their compensation claim for the abduction and death of their father, Adi Hussein Shallal. The Administrative Judiciary Court dismissed the plaintiffs’ claim due to a lack of legal basis and insufficient proof that the incident was a terrorist act. The Supreme Administrative Court found that ‘the judgment of the Administrative Judiciary Court was incorrect and unlawful’.<sup>101</sup> The Court noted that ‘the plaintiffs claimed their father was abducted by terrorist groups in 2008, with investigative documents supporting this and a judicial death ruling issued in 2013. Although the sub-committee initially included him under the compensation law, this was later reversed due to an arrest warrant against him’. However, the Court also noted a document from the Internal Security Forces Court indicating that some police officers were prosecuted for unlawfully listing individuals as wanted, including the plaintiffs’ father. This highlights the systemic challenges victims face in proving their cases, as the burden of proving abduction and eligibility falls heavily on them, often amidst shifting legal or procedural lists. The Court ruled that the Administrative Judiciary

97 Ibid.

98 Ibid.

99 See, for instance, Supreme Administrative Court, Judgment No. 546/Administrative Judiciary - Appeal/2025, 25 June 2025 (unpublished); Supreme Administrative Court, Judgment No. 1990/Administrative Judiciary - Appeal/2025, 15 October 2025 (unpublished); Supreme Administrative Court, Judgment No. 2554/Administrative Judiciary - Appeal/2025, 22 October 2025 (unpublished).

100 See Supreme Administrative Court, Judgment No. 546/Administrative Judiciary - Appeal/2025, 25 June 2025 (unpublished); Supreme Administrative Court, Judgment No. 1990/Administrative Judiciary - Appeal/2025, 15 October 2025 (unpublished); Supreme Administrative Court, Judgment No. 2554/Administrative Judiciary - Appeal/2025, 22 October 2025 (unpublished); Supreme Administrative Court, Judgment No. 764/Administrative Judiciary - Appeal/2025, 23 July 2025 (unpublished).

101 Supreme Administrative Court, Judgment No. 2058/Administrative Judiciary - Appeal/2025, 15 October 2025 (unpublished).

Court failed to consider these developments, rendering its judgment invalid, and therefore overturned it and returned the case for further proceedings.<sup>102</sup>

Furthermore, these rulings reinforce the principle of double compensation, stipulating that individuals cannot receive compensation for the same damages under multiple laws.<sup>103</sup> This means that victims or their heirs often must choose between different compensation programs. In administrative commissions, the rulings emphasize the need for thorough investigations, strict adherence to legal frameworks, and the use of appropriate and reasonable criteria for assessing damages, including distinguishing acts of terrorism and other criminal acts.<sup>104</sup>

### 3.1.3 Limited Scope and Coverage

The Law's Law No. 20, with its limited scope, has also been criticized for excluding many categories of victims and does not adequately address 'psychological trauma, loss of livelihood, or the long-term social and economic consequences of violence'.<sup>105</sup> The Law arbitrarily limits its scope to specific categories of military and terrorist acts and lacks clear and comprehensive definitions of the crimes covered. It fails to formulate specific methods of reparations needed to address the atrocity crimes and their dire consequences.<sup>106</sup> Additionally, as 'the Geneva International Centre for Justice (GICJ)' has highlighted, the phrase 'missing persons' as employed in legal contexts is devoid of a precise and unequivocal definition. The GICJ wonders:

"how this could apply to the enforced disappearances, especially when there is no law that criminalizes these practices. Furthermore, there is no measure taken in order to prevent enforced disappearances."<sup>107</sup>

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<sup>102</sup> Ibid.

<sup>103</sup> See Supreme Administrative Court, Judgment No. 841/Administrative Judiciary - Appeal/2021, 17 November 2021(unpublished).

<sup>104</sup> Supreme Administrative Court, Judgment No. 1990/Administrative Judiciary - Appeal/2025, 15 October 2025 (unpublished); Supreme Administrative Court, Judgment No. 2554/Administrative Judiciary - Appeal/2025, 22 October 2025 (unpublished); Supreme Administrative Court, Judgment No. 2058/Administrative Judiciary - Appeal/2025, 15 October 2025 (unpublished).

<sup>105</sup> Human Rights Watch, *Iraq* (n 78); Ahmed Sami Abbas and Ghaleb Farhat, Material Liability and Its Comprehensive Applications in Private Law (2025) 7 *Humanities & Natural Sciences Journal* 217, 2027.

<sup>106</sup> Jiyen Foundation for Human Rights and Coalition for Just Reparations (C4JR) (n 94) 9-10.

<sup>107</sup> 'Geneva International Centre for Justice (GICJ)' (n 63) 8; see also 'The Centre for Victims of Torture (CVT), *Enforced Disappearances: Ambiguity Haunts the Families of Iraq's Missing* (15 November 2016) 3-4. Although specific infractions delineated in the Iraqi Penal Code No. 111 of 1969—most notably Articles 421 (unlawful arrest and detention), 422–423 (kidnapping), and 425 (provision of a location for unlawful imprisonment)—may encompass specific factual dimensions of enforced disappearance, they fail to constitute an independent or exhaustive criminalization of the offense as articulated under international law. Nevertheless, a draft bill entitled "*The Protection of Persons from Enforced Disappearance*" was introduced in Parliament in 2017 but remains unenacted, mainly due to political pressure from influential state actors, thereby obstructing legislative efforts to regulate, prosecute, and punish enforced disappearance. For further details, see Hussein Abd Ali IssaShakhawan khdir Rasull, The legal regulation of the crime of enforced disappearance in Iraqi law: A comparative analytical study (2024) 11 *Journal of Raparin University* 1, 4-6; Mohammad Bitar and Chakka Benarji, Enforced Disappearances in Iraq: Attribution of Accountability to Government Under International and Domestic Legal Framework (2024) 10 *LUMS LJ* 65, 76-79.

As ‘the Geneva International Centre for Justice (GICJ)’ has noted, victims of enforced disappearance are not explicitly recognized, and their compensation is not provided for under the current compensation framework established by Law No. 20 of 2009.<sup>108</sup> The fact that this Law does not include compensation for victims of enforced disappearance is especially concerning.<sup>109</sup> The ‘GICJ’ observes that:

“There are a lot of obstacles in the implementation of this law, from the very slow procedures to corruption and the influence of religious figures or political parties on the way, and to whom the compensation should be paid”.<sup>110</sup>

The current legal framework has also been criticized by ‘the Iraqi High Commission for Human Rights (IHCHR)’ for its failure to address the rights of victims of enforced disappearances adequately.<sup>111</sup> It emphasizes that the current legal framework does not recognize:

“the specific rights of victims of enforced disappearances to reparations, including compensation, rehabilitation, restoration of dignity, and guarantees of non-repetition”.<sup>112</sup>

Also, ‘the Committee on Enforced Disappearances (CED)’ has expressed concern about the inadequacy of the reparation framework provided for in Iraqi domestic law, which is inconsistent with the Convention’s requirement for comprehensive reparation.<sup>113</sup> Current legislation, including Law No. 20 of 2009, also does not provide redress for victims of gender-based violence, despite its prevalence.<sup>114</sup> The Human Rights Committee (HRC) has raised serious concerns about violence against women in Iraq, according to these reports. The Committee called on the Iraqi state to ensure “prompt and thorough investigations into cases of violence against women, that perpetrators are brought to justice, and that victims receive full reparations and protection”.<sup>115</sup> The ‘UN Committee Against Torture (CAT)’ also

108 Geneva International Centre for Justice (GICJ) (n 63); Hassoun Obeid Hajij and Mazen Khalaf Nasser, ‘Compensation for Crime of Enforced Disappearance: Comparative Study’ (2015) 36 *The Islamic College University Journal* 37, 51-61.

109 See United Nations, Committee on Enforced Disappearances, *Consideration of Reports Submitted by States Parties under Article 29, Paragraph 1, of the Convention: Reports of States Parties due in 2012, Iraq*, 26 June 2014, (CED/C/IRQ/1) 9.

110 Geneva International Centre for Justice (GICJ) (n 63) 8.

111 See Iraqi High Commission for Human Rights (HCHR), *Report about Implementation of the International Convention on the Protection of All Persons from Enforced Disappearance* (August 2015) 2.

112 Ibid; Human Rights Watch, *Iraq* (n 78).

113 United Nations Committee on Enforced Disappearances, *Report of the Committee on Enforced Disappearances on its visit to Iraq under article 33 of the Convention* (19 April 2023) UN DOC CED/C/IRQ/VR/1, Paras 47-89; See paras 31 and 32 of the United Nations Committee on Enforced Disappearances, *Concluding Observations on the Report Submitted by Iraq under Article 29(1) of the Convention* (13 October 2015) UN DOC CED/C/IRQ/CO/1.

114 Iraqi Organisations et al., *Seeking Accountability and Demanding Change: A Report on Women’s Rights Violations in Iraq* (2015) 1.

115 See para 26 (a) of UN Human Rights Committee (HRC), *Concluding Observations on the Fifth Periodic Report of Iraq*, 6 November 2015, CCPR/CO/IRQ/5; see also United Nations Assistance Mission for Iraq (UNAMI) and Office of the United Nations ‘High Commissioner for Human Rights (OHCHR)’, *Accountability for Domestic Violence in Iraq: Promoting Justice and Non-Discrimination* (March 2024) 8-13’.

emphasized the need to “provide effective remedies to victims of torture, including fair and adequate compensation”.<sup>116</sup>

### 3.1.4 Limited Access to Justice

Iraq’s current compensation system is basically viewed as ‘symbolic’ rather than a genuine mechanism to address the profound injustices suffered by victims.<sup>117</sup> Although more than \$300 million in reparations were paid between 2011 and 2013, many victims remain dissatisfied with those state payments.<sup>118</sup> The Speicher massacre is a case in point. Despite the terrible, tragic loss of nearly 1,700 lives, no administration official, including those believed corrupt or incompetent, has been held accountable for failing to prevent this horrific event. In addition, authorities have consistently disregarded the legitimate demands of the victims’ families for truth, justice, and recognition of the state’s failings.<sup>119</sup>

Although many victims’ families face financial hardship, financial compensation and other assistance provided by the government are often seen as “inadequate and insufficient to address their profound trauma and suffering”.<sup>120</sup> They view these redressing measures as insufficient to rectify the grave injustices they have experienced, particularly in cases of enforced disappearance.<sup>121</sup> The Speicher massacre is considered a stark reminder of the violence’s devastating consequences that erupted in Iraq.<sup>122</sup> It has “left significant psychological scars within society, notably the belief that what happened is sectarian liquidation, which greatly affects coexistence within society”.<sup>123</sup> The absence of adequate societal support, along with the government’s insufficient response to the rightful anticipations of victims and their families, has culminated in what is termed ‘secondary victimization’.<sup>124</sup>

Demanding ‘truth and justice for the victims of the Speicher massacre’ is the foremost concern

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116 United Nations, Committee Against Torture, *Concluding Observations on the Initial Report of Iraq*, August 2015, UN Doc CAT/C/IRQ/CO/1, paras 24, 31.

117 See Human Rights Watch, *Iraq* (n 78).

118 Al-Anaibi (n 12) 228; for further details about various claims for compensation which were processed by the Central Committee and subcommittees between 2011-2016, see Sandoval and Puttick (n 67) 19.

119 Al-Anaibi (n 12) 229.

120 Ibid; a comparative study of the victims’ situations in Chile, Argentina, El Salvador, Guatemala, and South Africa, conducted primarily through interviews, revealed that “for the victims, moral and legal measures of reparation are fundamental, while monetary compensation is controversial and problematic. [...] All agreed that compensation was never enough, or even the most important thing. They especially noted the hollowness of material reparations when there has been a pronounced reluctance to prosecute those responsible”. See Al-Anaibi (n 12) 110.

121 Al-Anaibi (n 12) 110; Sandoval and Puttick (n 67) 23.

122 Al-Anaibi (n 12) 229.

123 Ibid 230.

124 Ibid; UNITAD, *Camp Speicher: A Pattern of Mass Killing and Genocidal Intent* (United Nations Investigative Team for Accountability for Da’esh/ISIL, 12 June 2024) 82-84.

of recent efforts to gather one million signatures led by a coalition of over 55 Iraqi civil society organizations, lawmakers, and prominent figures. These efforts are significant in generating public pressure on the Iraqi government.<sup>125</sup> However, despite these efforts, significant obstacles hinder victims' families in their pursuit of truth and justice.<sup>126</sup> A mother of a victim testified that her years of tireless efforts to uncover her loved one's fate, which included personal investigations in the region where the massacre occurred, have yielded little to no results.<sup>127</sup> Despite these formidable challenges, the families of the victims remain resolute in their pursuit of truth and justice. They vow to continue their struggle, demanding accountability from all those involved.<sup>128</sup> Furthermore, a profound lack of support and cooperation from the judicial and prosecutorial authorities has been encountered by victims' families, as these authorities have failed to provide them with regular updates on the investigation or demonstrate any meaningful progress towards accountability.<sup>129</sup>

The 'Centre for Victims of Torture (CVT)' has interviewed the disappeared families to understand the impact of enforced disappearances.<sup>130</sup> The interviews revealed the devastating psychological and social consequences of enforced disappearance. Due to their limited knowledge of the circumstances surrounding their beloved relatives and the apathy exhibited by both governmental entities and the broader society, such interviews highlighted the intensified anguish endured by families.<sup>131</sup> Many interviewees highlighted the pervasive influence of powerful militias, which often operate with impunity, thereby diminishing the ability of local governing bodies to investigate these incidents thoroughly.<sup>132</sup>

Iraq urgently needs to address the narratives of victims. Documenting and confronting history offers victims of violence a chance to overcome the stigma associated with victimhood and achieve a degree of healing.<sup>133</sup> South Africa's reconciliation programs serve as a practical model and have already been used as a guide for some policies developed in Iraq after 2003. The South African Truth and Reconciliation Commission's primary mission was not punishment, but rather to correct imbalances and rebuild damaged relationships, thereby achieving healing, harmony, and reconciliation. The

125 Al-Anaibi (n 12) 230.

126 'International Organization for Migration (IOM) Iraq, *A Decade of Grief: Families of Victims of Speicher Massacre Demand Justice and Memorialization* (IOM Iraq, published ~ June 2024)'.

127 Ibid.; "despite three years passing, the Iraqi criminal investigation teams were still searching for Speicher victims and, recently, 550 bodies had been recovered from a mass grave in Tikrit in the presence of victims' families". See Euronews, *Victims of Speicher Massacre: More Remains, and Tears do No.t Dry*, 06 August 2017.

128 Ibid.

129 Ibid; Faris K. Al-Anaibi, 'The Rights of Victims to Justice in the Iraqi Criminal Justice System' (2025) 39 *Arab Law Quarterly* 1, 36-37.

130 For further details, see the Centre for Victims of Torture (CVT), *Enforced Disappearances* (n 108) 4-8.

131 Ibid. 4.

132 Ibid.

133 Al-Anaibi (n 12) 245.

Commission was granted significant powers and resources at the governmental level to receive and investigate victims' narratives, regardless of gender, race, class, religion, or affiliation. As mentioned earlier, the Commission encouraged perpetrators to come forward in exchange for limited and proportionate amnesty.<sup>134</sup>

Furthermore, to identify general patterns of exclusion, human rights violations, and key aspects of violence, public institutional hearings were held in the legal, media, health, business, and labor sectors. At the grassroots level, community and religious leaders supported these efforts to reconcile with the past. For example, Nelson Mandela and Archbishop Desmond Tutu drew on traditional Christian and African values, such as *ubuntu*, to promote reconciliation, recognition, and forgiveness.<sup>135</sup>

### 3.2 State Efforts to Rectify the Shortcomings of Law No. 2009 and Other Initiatives to Redress Victims

The 'Iraqi Council of Representatives passed Law No. 57 of 2015', which amends Law No. 2009, to address the deficiencies of the existing compensation system.<sup>136</sup> This amendment mandates the establishment of comprehensive support programs for victims of terrorist operations. These initiatives are designed to incorporate a comprehensive array of support services, which include legal, economic, social, financial, health, and educational assistance.<sup>137</sup> The second amendment to Law No. 20 of 2009, which came into effect on the date of its publication in the Iraqi Gazette on January 13, 2020, states that its explanatory memorandum aims to include all categories of martyrs, ensuring their fair treatment and equality with all rights and privileges granted under applicable laws.<sup>138</sup> It also establishes multiple subcommittees in each governorate and increases the number of central compensation committees to process more claims for affected individuals. Furthermore, it extends the privileges stipulated in the Law to the families of the Internal Security Forces and security agencies who have martyrs and are injured.<sup>139</sup>

Iraq also adopted Law No. 8 of 2021,<sup>140</sup> which is considered momentous as it officially recognizes the atrocities committed against Yazidi women as genocide and crimes against humanity,<sup>141</sup> and also a step in the right direction as it adopted a comprehensive concept of reparations by including

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134 Ibid.

135 Ibid.

136 See 'First Amendment Law (No. 57 of 2015) to Iraqi Compensation Law No. 20 of 2009 enacted on 21 November 2015; Sandoval and Puttick (n 67) 18.

137 Article 1 (2) of the First Amendment Law (n 137).

138 Aeid and Lafta (n 15) 357-367.

139 Ibid.

140 Iraq Law No. 8 of 2021 (n 93).

141 See Jiyon Foundation for Human Rights and Coalition for Just Reparations, *Reparations for Victims of ISIL-Created Conflict in Iraq: Report to the United Nations Committee Against Torture, 73rd Session (Geneva, 19 April–13 May 2022)* (17 March 2022) 7.

provisions that address, in addition to compensation, other forms of reparations, in line with ‘the Basic Principles and Guidelines’.<sup>142</sup> It aims to provide financial, medical, and psychological support, as well as educational and employment opportunities, to survivors from the Yazidi, Turkmen, Christian, and Shabak communities.<sup>143</sup> However, the scope of eligible survivors was unclear, and the violations they suffered were completely ignored. Furthermore, there was no consultation with survivors, civil society organisations, experts, or other stakeholders.<sup>144</sup>

Although the above are positive steps, significant challenges remain in implementing these provisions, as noted above.<sup>145</sup> The ongoing economic crisis in Iraq, followed by complaints about bureaucratic obstacles, inadequate support, and a general lack of commitment from the authorities, has worsened the difficulties faced by victims.<sup>146</sup> In light of these challenges, the structure and functioning of the Iraqi judiciary, particularly concerning compensation claims, need to be critically examined. The Federal Court of Cassation has consistently held that ‘courts of first instance lack jurisdiction to hear claims for compensation arising from military errors or terrorist acts’.<sup>147</sup>

While this trend aims to streamline procedures and reduce financial burdens, many criticisms, as noted above, have been raised, including violations of the principle of separation of powers, restrictions on the constitutional right to litigation, bureaucratic delays, and weak legal safeguards. In addition, compensation amounts are often symbolic and fail to fully cover the actual harm suffered by victims, especially moral and psychological damages.<sup>148</sup>

To elucidate the operational ramifications of Law No. 20 of 2009 and the Yazidi Survivors Law, Table 1 summarizes the most pertinent indicators for compensation claims, processing durations, and trends in refusals. Due to the lack of comprehensive, publicly accessible national data from the Ministry of Finance or the Martyrs’ Foundation, the figures delineated are derived from reports issued by UNAMI, the International Organization for Migration (IOM), Human Rights Watch, and various civil-society monitoring entities.

**Table 1:** Summary of Compensation Implementation Indicators under Law No. 20 of 2009 (as amended) and the Yazidi Survivors Law (Law No. 8 of 2021)

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<sup>142</sup> The Basic Principles and Guidelines (n 32).

<sup>143</sup> For further details, see Jiyan Foundation for Human Rights and Coalition for Just Reparations (n 142) 7-8.

<sup>144</sup> Ibid 12.

<sup>145</sup> Ibid 9-13.

<sup>146</sup> Ibid; Sandoval and Puttick (n 67) 22; for example, it has been noted that unnecessary proof standards required by the Committee established under Article 10 of the YSL can reignite trauma, stigmatise survivors, and endanger them. For more information about the available data related to the YSL, see Jiyan Foundation for Human Rights and Coalition for Just Reparations (C4JR) (n 142) 19-27.

<sup>147</sup> Federal Court of Cassation, *Civil Expanded Board*, Ruling No. 221/Extended Civil Panel/2022, 25 July 2022.

<sup>148</sup> Hajem (n 60) 465-483.

| Indicator                                        | Law No. 20 of 2009 (as amended)                                                                                                                                                                                                                                   | Yazidi Survivors Law (Law No. 8 of 2021)                                                                                                                                                                                        |
|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Estimated number of compensation claims filed    | The absence of a comprehensive public record is noted. Tens of thousands of civil claims were filed across the country between 2015 and 2024, covering categories such as death, bodily injury, moral damage and property damage. <sup>149</sup>                  | The full official figures have not been released. Monitoring by the UN and NGOs indicates that approximately 2,000 to 3,000 applications were submitted by eligible Yazidi survivors between 2022 and 2024. <sup>150</sup>      |
| Claims approved / compensation disbursed         | Detailed data on approvals and total payments are not made publicly available. Regional reports indicate partial implementation, with a significant proportion of approved claims remaining unpaid or overdue. <sup>151</sup>                                     | By the end of 2024, several hundred Yazidi survivors from Sinjar were reported to have received initial compensation payments, representing the first notable phase of compensation disbursements under the law. <sup>152</sup> |
| Average processing time (claim to payment)       | Delays ranging from 12 to 36 months or more have been widely reported, with variations depending on the governorate, prevailing security conditions, and proof requirements. <sup>153</sup>                                                                       | Early implementation data indicate processing times ranging from 18 to 30 months or more, with many applications getting bogged down in verification and security screening phases. <sup>154</sup>                              |
| Refusal or rejection trends                      | No official rejection rate has been disclosed. However, sources from the United Nations and civil society indicate high rates of rejection, suspension, or return, particularly concerning claims related to property damage and indirect damages. <sup>155</sup> | Monitoring reports reveal significant numbers of rejections or postponements, particularly when applicants lack official documentation or when family status and eligibility are challenged. <sup>156</sup>                     |
| Property damage compensation                     | Although property damage is addressed by law, its application remains inconsistent. Claims related to home destruction and land loss are among the most delayed and inadequately compensated categories. <sup>157</sup>                                           | Transitional                                                                                                                                                                                                                    |
| Administrative delays and institutional barriers | It was identified that only a minority of registered families had received compensation, despite extended registration periods. <sup>158</sup>                                                                                                                    | Bureaucratic delays, staff shortages, budget issues, and poor coordination hinder early implementation. <sup>159</sup>                                                                                                          |

149 UN Assistance Mission for Iraq (UNAMI), *Working to Improve Access to Compensation for Iraqi Victims of War and Terrorism* (2023); International Organization for Migration (IOM) (n 18).

150 Human Rights Watch, Iraq: Compensation for Victims of Violence (14 April 2023); Jiyan Foundation for Human Rights and Coalition for Just Reparations (C4JR) (n 142).

151 International Organization for Migration (IOM) (n 18); UN Assistance Mission for Iraq (UNAMI) (n 150).

152 Human Rights Watch, Iraq: Sinjaris Finally Compensated (n 19).

153 International Organization for Migration (IOM) (n 18); UN Assistance Mission for Iraq (UNAMI) (n 150).

154 Human Rights Watch (n 151).

155 International Organization for Migration (IOM) (n 18); UN Assistance Mission for Iraq (UNAMI) (n150).

156 Human Rights Watch (n 151).

157 International Organization for Migration (IOM) (n 18); UN Assistance Mission for Iraq (UNAMI) (n150).

158 UN Assistance Mission for Iraq (UNAMI) (n 50).

159 Human Rights Watch (n 19); Human Rights Watch (n 151).

#### 4. Conclusion

This article has examined how the Iraqi state addresses ‘the right of victims to redress’ within its legal system. The analysis demonstrates:

1. The Iraqi state has persistently demonstrated an inability to adequately execute its affirmative positive obligations to protect its citizenry from the threat posed by non-state actors. This, alongside the inadequacy of the existing redress legal system in providing victims with adequate redress and justice.
2. This systemic failure goes beyond the horrific consequences of immediate physical and psychological trauma experienced by victims. The situation is further intensified by the Iraqi legal framework’s inability to provide sufficient substantive remedies, both in theoretical constructs and practical applications. As a result, victims are left solely to bear the burden of the consequences of the damages inflicted.<sup>160</sup>
3. Law No. 20 of 2009 and its subsequent amendments and other redress initiatives, such as YLS, fall significantly short of fulfilling the positive obligations required by International human rights jurisprudence.
4. Access to crucial avenues of redress at the international level is effectively denied. This is because Iraq still refuses to ratify the Optional Protocols to various human rights treaties.

As found by this research, strengthening ‘the rule of law’, improving ‘victims’ access to justice’, and ensuring the modification and transparent implementation of this Law are the first steps towards addressing such shortcomings. The immediate, short, medium, and long-term practical recommendations, primarily to address the profound injustices inflicted upon Iraqi society since 2003, including the widespread violence and its devastating impact on victims and their families, require:

1. A comprehensive transitional justice program should be urgently established by the Iraqi state, specifically Parliament. It should prioritize accountability, truth-seeking, reparations, and institutional reforms to promote lasting peace and reconciliation.<sup>161</sup>
2. Symbolic reparations are a crucial component of this process, aiming ‘to acknowledge the suffering of victims’ and promote healing within society. Revealing the truth about past atrocities, including identifying perpetrators and discovering the fate of disappeared persons.<sup>162</sup>
3. As an essential component of redressing victims’ damages, adequate monetary compensation should be considered by the Martyrs’ Institution and Judiciary within the broader context of a

<sup>160</sup> See Al-Anaibi (n 12) 94-101, 113-130.

<sup>161</sup> Evidence shows that transitional justice efforts in Iraq are flawed due to inadequate justice administration, neglect of national reconciliation needs, and a lack of political will to hold human rights violators accountable. See Rend Al-Rahim, *Transitional Justice in Iraq: The Challenges of National Healing and Recovery* (Istituto Affari Internazionali (IAI) 2023) 2-13.

<sup>162</sup> Al-Anaibi (n 12) 106-113 and 128-129.

comprehensive reparations framework.

4. The profound trauma and social fractures engendered by prolonged periods of violence and violations of human rights necessitate careful consideration to:

- Truth-seeking mechanisms: Uncovering the truth about past atrocities requires conducting effective and comprehensive investigations to identify perpetrators and determine the fate of the missing.
- Public acknowledgement of harm done to victims: ‘Official apologies for human rights violations’ committed due to the state’s failures to protect its citizens and recognition of victims’ suffering.
- Commemoration and remembrance: Memorials and other initiatives should be considered to honour the memory of victims and ensure that future generations remember the horrific events and consequences of the past.

Furthermore, a fundamental alteration in the interactions between the government and its citizens must be an essential component of this procedural endeavour. This necessitates a cohesive initiative that accounts for the subsequent considerations in the short and long term:

### **1. Constitutional and Legislative Reform:**

- Explicitly embed HR principles: The Iraqi Constitution should explicitly incorporate the state’s positive obligations towards its citizens regarding human rights.
- Align laws with HR principles: Existing laws, including criminal and civil laws, should be amended or enacted to fully align with these principles.

### **2. Judicial Enforcement:**

- Direct invocation of human rights principles: Iraq can benefit from the experiences of other countries, such as South Africa, whose constitution stipulates that ‘every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law’.<sup>163</sup> Therefore, Local courts, including the Iraqi Federal Supreme Court, should take concrete steps to adopt and implement an effective mechanism for interpreting legislation, grounded in human rights jurisprudence.<sup>164</sup>

### **3. Judicial Accountability:**

- Measures should be taken to compel Iraqi judges to consider these human rights principles in their judgments strictly.

### **4. Positive Impact and Future Development:**

- **Enhanced accountability:** This methodology would provide victims with a definitive framework

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<sup>163</sup> See S 33 and S 39 of the Constitution of South Africa 1996.

<sup>164</sup> Al-Anaibi (n 12) 266.

to compel the state to account for human rights violations.

- **Victims seeking justice should be encouraged:** A culture of bringing cases before the courts against the state's inaction, negligence, or unwillingness to safeguard the entitlements of victims should be advocated.
- **Reform to the gradual legal system:** The incremental transformation of the legal framework is imperative to align it more closely with "international human rights standards" both in theoretical constructs and practical applications.
- **Addressing the root causes of violence and rebuilding trust and fostering reconciliation:** This requires a commitment to ethical governance, adherence to the rule of law, and the protection of human rights for every citizen, regardless of their ethnic background, religious affiliation, or sectarian identity.
- **Promoting national unity and a shared sense of citizenship:** This involves fostering a sense of shared identity and belonging among all Iraqis, 'based on principles of equality, justice, and respect for diversity'.

Implementation of the above reforms is likely to encounter significant barriers. However, by addressing these critical issues and implementing comprehensive transitional justice mechanisms, Iraq can begin the long and arduous process of healing, reconciliation, and rebuilding a just and equitable society for all its citizens.

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