

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	1279
Land:	Irak
Kilde:	Minority Rights Group International
Titel:	Report on the situation in Mosul before and after the Islamic State (IS) group occupation and on reparations for civilian harm
Udgivet:	21. januar 2020
Optaget på baggrundsmaterialet:	6. maj 2020



Mosul after the Battle

Reparations for civilian harm and the future of Ninewa



Cover photo:

A woman peeks out of a gate peppered with bullet marks after fighting between the Iraqi Army and ISIS militants in Al-Qadisiyah district, Mosul, Iraq.

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January 2020

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Report designed by Staša Sukic.

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1

Introduction

On 10 July 2017, after nearly nine months of intense fighting between the Iraqi Security Forces, their allies and the Islamic State of Iraq and al-Sham, the city of Mosul was declared liberated. The intensity and length of the battle left much of the city reduced to rubble and caused thousands of civilian casualties.

Mosul, a metropolis of 1.5 million people, had served as the capital of the self-proclaimed caliphate of the Islamic State of Iraq and al-Sham (ISIS) for some three years. While ISIS was responsible for a litany of crimes against the population of the city during its occupation, the military campaign to recapture Mosul also saw violations against civilians carried out by the Iraqi government, the international coalition supporting it, and pro-government militias.

The result was destruction on a massive scale. The city of Mosul, especially the old historic town, was about 65 per cent destroyed as a result of the conflict with ISIS.¹ Over 138,000 houses were damaged or destroyed, including 53,000 in West Mosul alone.² The buildings and laboratories of the University of Mosul were 70 per cent destroyed and the main library, which contained 3 million books, was burnt. Total damage to the housing sector alone was estimated to amount to around US \$6 billion.³

These figures, however, do not fully capture the extent of the wounds inflicted on the city. The death toll continues to rise as mass graves are discovered and rubble from the city of Mosul is removed. It is currently impossible to say how many people were victims of ISIS and of the military operations that led to its fall. The fate of many people is still un-

known, notably the 3,000 Yazidis that are still missing to this day.⁴ The brutality and psychological harm inflicted on the population, especially on minorities and on residents of the old city, have ruptured the social fabric and left an open wound.

Mosul's diversity and its centrality in the conflict with ISIS make it a testing ground for the future of transitional justice in Iraq. An important part of this agenda is to provide civilians with adequate, prompt and effective reparations for the 'hell on earth'⁵ they survived. So far, the responsibility for reparations has primarily been assumed by the government of Iraq. Iraq's Law 20 on Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions aims at compensating those who suffered personal or property damage as a result of terrorist attacks and military operations.

As of November 2019, in Ninewa governorate 5,859 families had used this national mechanism to claim compensation for the death of one of their loved ones, as well as 2,700 injured persons. In addition, 26,000 families had filed a claim for loss of property.⁶ While the high number of claims is evidence of the urgent need for compensation felt by the population, the Iraqi state appears unable to cope with the

profound desperation that is spreading among civilians. The cumbersome procedure required to file a claim, combined with the significant processing delays and alleged corruption, result in a failure to provide civilians with effective and prompt compensation. Although recent amendments to the law promise to reduce some of these administrative hurdles, the process of implementing the new measures will undoubtedly cause further delays for civilians. Moreover, while the military campaign to recapture Mosul led to massive destruction and civilian casualties, the current reparation mechanism fails to acknowledge the full responsibility of the Iraqi government and the international coalition.

This report aims to assess the current state of reparations in Iraq for victims of the conflict with ISIS, focusing on Mosul as a case study. It looks particularly at Iraq's Law 20 mechanisms, but also considers international mechanisms accessible in Ninewa, such as the United Nations (UN) Special Investigative Team on the Crimes of Daesh. In addition to assessing implementation, the report also considers the gaps in the current framework as a mechanism for providing reparation to victims both of the ISIS occupation and the destruction caused during the recapture of Mosul.

Methodology

This report was written on the basis of in-depth interviews conducted in Ninewa governorate between November and December 2019. Interviewees included civilian victims, professors, lawyers, members of the Ninewa Provincial Council, and members of the Martyrs' Foundation. The interviews were conducted face to face, mostly in Arabic, and based on a list of open questions concerning reparation mechanisms in Ninewa. The purpose of the research was clearly stated to the interviewees. To protect their

anonymity, only a general descriptor of each interviewee is given throughout the report.

This report aims to give an overview of the availability of national and international reparation mechanisms in Ninewa governorate. Both the perspectives of civilians who are potential beneficiaries of these mechanisms as well as the officials who administer them are explored to give a rounded insight on their implementation. It follows an earlier report published by Ceasefire Centre for Civilian Rights (Ceasefire) and Minority Rights Group International (MRG) on *Reparations for the Victims of Conflict in Iraq*.⁷ The current report focuses on Mosul, as Iraq's second city and the epicentre of the war against ISIS. Civilian reparations are an essential component in reconciliation and recovery after conflict. How they are implemented in Ninewa will be a key indicator of the post-conflict future of the governorate and of Iraq as a whole.

2

A region torn by war: Mosul before and after the ISIS occupation

With a history going back at least six thousand years, the lands of Ninewa have in recent decades endured the 'Arabization' campaigns of Saddam Hussein, the conflicts that followed the 2003 invasion of Iraq by the United States and its allies, and, from 2014, occupation by ISIS.

Ninewa governorate, located in north-eastern Iraq and home to more than 2.8 million people,⁸ is the second largest governorate in the country in terms of population, after Baghdad. Its name comes from the ancient Assyrian city of Nineveh, next to which Mosul, the current capital city of the governorate, was built. Unique in its diversity, the city and its governorate were dragged into the torment of war with the 2003 US-led invasion of Iraq and the sectarian conflict that followed, succeeded by the occupation of Mosul by ISIS in 2014. The military operations launched in 2016 by the Iraqi Security Forces (ISF), supported by the Popular Mobilization Forces (PMF)⁹ and the US-led air coalition, resulted in the recapture of the governorate from ISIS but left behind a high casualty toll.

Mosul is one of Iraq's oldest cities and is steeped in the history of the region. With its ancient temples, mosques and churches, the cultural heritage of the city mirrors the diversity of Ninewa's population. While no official census of the ethno-religious composition of the governorate exists, it was estimated in 2009 that about 80 per cent of the population was Arab Sunni, followed by Kurds, Christians, Turkmen, Shabak and Yazidis.

The Ninewa plains have traditionally been inhabited by ethno-religious minorities, including Christians, Turkmen,

Shabaks, Yazidis and Kaka'i. The city of Mosul itself has historically been a mosaic of ethnicities and religions, with some groups concentrated in particular neighbourhoods. The Right Bank (West Mosul) was traditionally the home of Christians and is where many of the city's historic churches are located, while Shabaks and Kurds lived mainly on the Left Bank (East Mosul).¹⁰

Living under ISIS occupation

'The women, children and men of Mosul have lived through hell on earth, enduring a level of depravity and cruelty that is almost beyond words,' declared UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein in 2017.¹⁶ Under the occupation of the city by ISIS, which started in June 2014, Mosul was the theatre of systematic human rights violations, war crimes, crimes against humanity¹⁷ and genocide.¹⁸ For ISIS, occupying Mosul was a chance to turn their self-proclaimed caliphate into a state. As one interviewee recounted, 'After a month, ISIS forced all government employees to go back to work under their terms. After a year, they started to collect taxes.'¹⁹ They created a brutal administration to maintain their grip on the city.

Spotlight on ethno-religious minorities in the governorate

- **Christians:** Christians in Ninewa are mainly Chaldo-Assyrians. Descendants of ancient Mesopotamian peoples, Chaldo-Assyrians traditionally speak Syriac, which is derived from Aramaic, and are mainly businesspeople or independent farmers.¹¹
- **Shabaks:** There is evidence of Shabak presence in Ninewa governorate dating back to 1502.¹² Most lived in villages east of Mosul between the Tigris and Khazir rivers, while a small per-

centage of their population used to inhabit the west. Recognized as a distinct ethnic group by the Iraqi government since 1952, they have their own language, which is a mix of Arabic, Farsi, Kurdish and Turkish. They have their own sect, which blends elements of Islam with local beliefs, although the majority of Shabak identify as Shi'a.¹³

- **Turkmen:** Turkmen inhabit Tal Afar and surrounding villages in the Ninewa plains, and some neighbourhoods on the Right Bank of Mosul.¹⁴ While most of the Turkmen in Iraq are Sunni Muslims, Turkmen from Ninewa are traditionally Shi'a. They are often bilingual or trilingual,

speaking Arabic, Kurdish and the Turkmen dialect.

- **Yazidis:** Yazidis practise a 4,000-year-old dualist religion, divided between a God creator, who is now passive, and Malak Ta'us (the Peacock Angel), who is the active messenger of God's will. Their religion incorporates pagan, Zoroastrian, Manichaeism, Jewish, Christian and Muslim elements. They have lived mainly around Sinjar Mountain, located 150 km west of Mosul. A smaller proportion of their community can be found in Shikhan district, especially in the villages of Ain Sifne, Bashiqa and Bahzan, where their holiest shrine of Shaykh Adi is located.¹⁵

Any attempt at writing an exhaustive list of the crimes inflicted by ISIS on the population of Mosul and the Ninewa governorate could never reflect the scale of suffering and trauma. According to the United Nations Assistance Mission for Iraq (UNAMI), ISIS deliberately and repeatedly targeted civilians and civilian infrastructure, with the intention of killing whoever would not submit to them. They perpetrated assassinations and abductions of political and religious leaders, including Sunni Muslims who refused to pledge allegiance, people who tried to escape the city, members of the ISF and government employees,

as well as targeting Shi'a, Christians, Shabaks, Turkmen and Yazidis.²⁰

The attacks carried out against ethnic and religious minorities were egregious and sometimes perpetrated with the intention of eradicating communities entirely. Many were murdered in mass killings, forcibly expelled from their land or threatened with death if they did not convert. Women were turned into sexual slaves, and children as young as 13 years old were conscripted by force. In addition to targeting communities that did not conform to their religious and political

ideology, ISIS also destroyed many important cultural and religious heritage sites: churches, monasteries, Yazidi shrines and Kaka'i shrines, but also Sunni and Shi'a mosques.

Escaping from the battle for Mosul

Called 'Qadimun Ya Ninewa' ('We are Coming, Ninewa'), the military campaign to recapture Mosul was announced by the Iraqi government on 16 October 2016.²¹ Two days after the announcement, Kurdish Peshmerga forces retook control of nine villages around Mosul. By January 2017, the Left Bank of Mosul was fully recaptured by the ISF. The operation to recapture the Right Bank then commenced in February 2017, leading to six further months of urban combat between ISIS and the ISF, backed by the US-led coalition, the Peshmerga and the PMF. The Prime Minister of Iraq, Haidar Al-Abadi, announced the liberation of the city in July 2017.

While the Iraqi government has not provided an official number of civilians killed during the military operations, it is clear that the use of heavy explosive weapons in populated areas by both sides led to a high death toll. Associated Press estimated the number of civilians killed during the battle of Mosul to be between 9,000 to 11,000, with one-third of the deaths linked to attacks carried out by pro-government forces.²² In just three weeks in June–July 2017 UN Habitat recorded the heavy damage or complete destruction of 5,393 residential buildings.²³ By the end of the conflict Ninewa suffered over 24 million m² of damage to urban housing and the cost of damage to the housing sector in the city of Mosul was estimated to range between USD 5.1 and 6.9 billion, according to the World Bank.²⁴

The high levels of civilian casualties and material destruction raise questions over the application of international humanitarian law (IHL) during the military operation. IHL mandates the protection of civilians and those placed *hors de combat*, and imposes limits on the conduct of hostilities, including the principle of distinction, which requires parties to conflict to distinguish at all times between civilians and combatants or fighters, and the principle of proportionality, which

prohibits any attack 'which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'.²⁵

There is strong evidence that all parties to the conflict in Ninewa were responsible for failures to meet the IHL obligation to take precautions in attack in order to avoid or minimise incidental loss to civilian life, injury to civilians and damage to civilian objects. Furthermore, there is evidence that all parties to the conflict committed unlawful attacks that might amount to war crimes. These began during the first phase of the campaign in the Sinjar region between October 2015 and May 2016. Human Rights Watch (HRW) documented 'numerous cases of destruction of buildings and homes by fire, heavy equipment and explosives after ISIS forces had been forced to retreat and the villages had come under Peshmerga control'.²⁶ While the Kurdish Regional Government claimed that most of the damage was linked to US-led coalition strikes or the detonation of improvised explosive devices (IEDs) that were placed in civilian objects by ISIS, the destruction might have had other objectives. The area was historically inhabited by many Kurds and other ethno-religious minorities and underwent a period of 'Arabization' during Saddam Hussein's regime. The fact that most of the houses destroyed by Peshmerga forces were Sunni Arab properties²⁷ might indicate an effort to punish the civilian population, or to reaffirm the Kurdish presence in the region and to send a strong message to other communities living there.

In addition to the grave violations committed during the ISIS occupation, during the battle for Mosul ISIS continued deliberately to violate IHL, carrying out summary killings of hundreds, if not thousands, of civilians, preventing them from evacuating, using them as human shields, and destroying their properties.²⁸ One interviewee related how all the cars on his street, including his, were set on fire by ISIS to fill the neighbourhood with smoke and thus enable their fighters to hide during international coalition air strikes.²⁹

But while the cruelty of ISIS has been well-documented, the exactions of pro-government forces are still under-researched. Pro-government

forces might also be responsible for violations of IHL amounting to war crimes.³⁰ As one interviewee stated, ‘the liberation campaign is not seen as fully positive among the population’.³¹

The PMF have been repeatedly accused of committing serious violations, sometimes acknowledged by members of the Iraqi government, including committing summary killings, forcibly displacing civilians, and burning villages in Ninewa,³² including some Yazidi villages.³³ They also targeted the Sunni population, with some civilians saying that there were similarities between their *modus operandi* and that of ISIS.³⁴ For example, in Sinjar, they were accused of kidnapping 53 Sunni Arabs, including 27 women, infants and elderly people. These attacks were denounced in the Iraqi parliament by MP Ali Al-Mtiouti, who declared: ‘it became clear to us that their affiliation [with the coalition against ISIS] was for the sake of revenge with the weapons of the Iraqi state.’

In addition, significant civilian casualties, and damage to civilian property and city infrastructure, are attributable to the international coalition, which has supported the Iraqi government’s military campaign against ISIS. The Global Coalition to Defeat Daesh (ISIS) was formed in September 2014 and as of December 2019 comprises 81 members.³⁵ In order to formalize ongoing military action against the threat posed by ISIS in Iraq and Syria, in October 2014, the US Department of Defense established the Combined Joint Task Force – Operation Inherent Resolve (CJTF-OIR).³⁶ According to its December 2019 report, the US-led coalition conducted 34,706 strikes between August 2014 and the end of October 2019, and it assesses that at least 1,347 civilians have been unintentionally killed by coalition actions.³⁷ However, human rights groups are concerned that the coalition’s reporting mechanism fails to adequately reflect the extent of civilian casualties caused by its members and, in fact, the toll is allegedly as much as eight times higher.³⁸

‘The women, children and men of Mosul have lived through hell on earth’

– UN High Commissioner
for Human Rights, July 2017

According to UNAMI and the Office of the High Commissioner for Human Rights (OHCHR), the second highest number of civilian casualties in the battle for Mosul were attributed to airstrikes.³⁹ A single airstrike by the coalition, targeting two ISIS fighters, resulted in the death of up to 200 people.⁴⁰ Of the more than 5,000 residential buildings in the old city of Mosul reported by UN Habitat as being heavily damaged or completely destroyed during the retaking of the city, it is unclear how many were caused by the coalition, since it does not track and publish the damage to property and infrastructure caused by its military operations.

According to human rights groups, the civilian death toll in Mosul suggests that the international coalition likely took inadequate precautions to avoid civilian casualties and further investigation is needed.⁴¹ Amnesty International has concluded that the international coalition carried out a series of unlawful attacks in Mosul amounting to repeated violations of IHL, and in some instances, war crimes. Having investigated and documented individual attacks, it highlighted that ‘even in attacks that seem to have struck their intended military target, the use of unsuitable weapons or failure to take other necessary precautions resulted in needless loss of civilian lives and in some cases appears to have constituted disproportionate attacks’.⁴² The monitoring group Airwars has estimated that between 1,066 and 1,579 civilians likely died from coalition air and artillery strikes during the battle for Mosul, ‘out of a total of somewhere between over 6,000 to nearly 9,000 deaths alleged by local sources against Coalition forces’.⁴³

Reparations under international law

It is a basic principle of international law that reparation is to be made for violations of international law.⁴⁴ This stems from the customary obligation of states to afford reparations for internationally wrongful acts, a duty reflected in Article 31 of the 2001 International Law Commission's Draft Articles on State Responsibility. To the extent possible, reparation is meant to wipe out the consequences of an illegal act and re-establish the situation which would have existed if that breach had not been committed.⁴⁵ Reparation can take different forms: *restitution* (such as return of property); *compensation* (such as monetary payments); *rehabilitation* (such as psychological care); *satisfaction* (such as an apology); and *guarantee of non-repetition* (such as institutional reforms).

For many years, the right to reparations was understood to apply principally to states. However, the emergence of human rights under international law has helped to modify this traditional approach. Nowadays, the same obligation is considered to be owed towards individuals affected by international law violations. The duty to provide individual reparations is well-established today under international human rights law⁴⁶ and has also been recognized under international criminal law.⁴⁷

As for IHL or the law of armed conflict, the same *duty* is in place but without a clear path of *enforcement* for victims. States'

obligation to provide reparations under IHL was laid down in Article 3 of the Hague Convention (IV) on respecting the Laws and Customs of War on Land and its Annex (1907). The same norm is largely reproduced in Article 91 of Additional Protocol I. It should be noted that the text of both of these provisions refers to liability 'to pay compensation'.

Rule 150 of the International Committee of the Red Cross (ICRC) study on *Customary International Humanitarian Law* reads as follows: 'A State responsible for violations of international humanitarian law is required to make *full reparation* for the loss.' Here, payment of compensation is not singled out. The ICRC, the leading authority on interpreting IHL, notes that state practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts (IAC and NIAC).⁴⁸ With regard to NIAC, this rule is controversial for the omission of the duty of compensation in Additional Protocol II applicable in such conflicts.⁴⁹ However, such differentiation is not supported by customary IHL.

The duty to make reparations for violations of IHL is also explicitly referred to in the Second Protocol to the Hague Convention for the Protection of Cultural Property: 'No provision in this Protocol relating to individual criminal responsibility shall affect the responsibility of states under international law, *including the duty to provide reparation.*' According to the ICRC, the same duty is also implied in the

rule contained in the Geneva Conventions according to which states cannot absolve themselves or another High Contracting Party of any liability incurred in respect of grave breaches.⁵⁰ The ICRC further notes 'an increasing trend in favour of enabling individual victims of violations of international humanitarian law to seek reparation directly from the responsible State.'⁵¹

Moreover, treaty law, as described above, has been complemented and strengthened by the agreement by the UN General Assembly in 2005 of 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 (Basic Principles).⁵² The Basic Principles helped to consolidate a common view about the obligation to provide reparation, both at the procedural and at the substantive level. Therefore, despite the lack of enforcement mechanisms under IHL treaties, the entitlement of victims to receive reparations and the duty of states to provide them are clear.

Iraq itself has significant experience in providing reparations to victims. The UN Compensation Commission (the UNCC) was set up by the Security Council in 1991 in order to provide reparations to victims of Iraq's invasion of Kuwait. Notably, the UNCC mandate included reparations for violations of IHL suffered by individuals. It has awarded compensation to former prisoners of war held by

Iraq and subjected to ill treatment in breach of the Third Geneva Convention.⁵³ The UNCC was followed by an Iraq Property Claims Commission⁵⁴ created to deal with land-related violations committed under the Saddam Hussein regime.

Lastly, Law No. 20 of 2009 on Compensating Victims of Military Operations, Military Mistakes and Terrorist Actions (amended in 2015 and 2019) provides redress to victims who have suffered violations since 2003.

3

Emerging from the ruins: implementation of reparations in Mosul and Ninewa

The level of destruction caused by the ISIS conflict is greatest in Ninewa among all Iraqi governorates. Residents of the governorate, including in Mosul, urgently need reparation to be able to create a liveable present and a durable future.

‘We need comprehensive support to rebuild ourselves and our city,’ one Mosul resident summarized in an interview.⁵⁵ The national Reconstruction and Development Framework, led by the Ministry of Planning, is the principal governmental strategy for rebuilding Iraq after the conflict, and is structured around five key pillars: governance; reconciliation and peacebuilding; social and human development; infrastructure; and economic development.⁵⁶ The framework is itself based on an extensive damage and needs assessment of affected governorates undertaken with the support of the World Bank, which concluded that overall damages incurred totalled US \$45.7 billion and estimated the overall reconstruction and recovery needs at US \$88.3 billion.⁵⁷ However, the slow pace of implementation and the widespread perception of corruption in the allocation of resources have led to growing resentment among the Iraqi population that they are not seeing the benefit of reconstruction efforts. Disaffection more widely with Iraqi governance has led to unprecedented mass protests (although to date these have not centred on the governorates most affected by the conflict).

By comparison, the sums involved in the award of compensation to individual victims of the conflict, running to hundreds of millions of dollars, have been relatively small. However, by reaching directly civilians who have been most affected by the conflict, such awards provide an important

official acknowledgement of loss and an essential contribution to reparation. Iraq’s Law 20 is currently the main instrument in existence that could bring reparation to the population of Ninewa governorate and the city of Mosul.

Compensation under Iraq’s Law 20 of 2009

Iraq’s Law 20, entitled Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions, was first enacted in 2009 and subsequently amended in 2015 and 2019. Applying retroactively, Law 20 aims to compensate the Iraqi population for losses suffered through the different wars that ravaged the country beginning on 20 March 2003. A crucial instrument in the process of reparation for victims, Law 20 enables all natural and legal persons, as well as their family members, to claim reparation for six different types of damages: death (‘martyrdom’) or disappearance, kidnapping, full or partial disability, injuries resulting in temporary medical treatment, damages to property, and damages to employment and education.

In order to process these claims, Law 20 and its amendments establish a complex mechanism composed of a Central Com-

mittee in Baghdad and sub-committees (located in Baghdad, Kurdistan Region, and one in every region and governorate) responsible for processing claims. The Central Committee is composed of representatives of seven ministries and one representative of the Kurdistan Region, and chaired by a judge nominated by the Supreme Judicial Council. The 2015 amendment further designated the Martyrs' Foundation⁵⁸ as responsible for processing claims forwarded by sub-committees and holds the mandate over claims from families of people killed by the Baath regime, those who were killed fighting with the Peshmerga and the PMF, and those killed by ISIS. A second amendment to the law in December 2019 increased the number of central committees from one to three and allowed for the creation of additional sub-committees in each governorate. However, at the time of publication, this amendment had not yet been implemented in practice. The procedure of granting compensation under Law 20 conducted as follows:⁵⁹

- Any civilian can submit a compensation request to a compensation office or court in his or her region or governorate. He or she must bring all appropriate documentation to support the case, mainly civil documentation and death certificate in the case of martyrdom, and civil documentation and pictures of the damages with a detailed statement of the event in case of damage to property.
- The compensation office then processes the documents and in case of damage to property, sends the local police to visit the property.
- The applicant then meets with the compensation sub-committee and is given an application file. The sub-committee verifies that the applicant and his or her relatives are not in the database of ISIS suspects and reviews all the documents of the claim.
- Then, the procedure is divided into two different branches depending on the nature of the damage:

- Material damage claims require the sub-committee to appoint a damage assessment expert to value the property. The sub-committee has to approve the application and suggest a compensation award. This is then forwarded to the Central Committee, which decides the compensation amount and sends the file to the Ministry of Finance. Under the 2019 amendment, compensation claims of IQD 30 million or less do not need to be forwarded to the Central Committee, and can instead be approved by the Appellate Court in the same governorate.
- In the case of martyrdom, injuries, missing persons or kidnapping claims, the 2015 amendment requires that the Martyrs' Foundation approves the claim and forwards its decision to the Ministry of Finance.
- The Ministry of Finance is then responsible for transferring the compensation amount to the compensation sub-committee.
- The compensation should then be obtained by the applicant from the sub-committee.

The main purpose of Law 20, then, is to allow victims to be granted monetary compensation for their suffering. While there are 'a lot of things money cannot bring back', as one interviewee pointed out,⁶⁰ compensation can help families pave the way for a better future. The amount of money granted depends on the nature of the loss:⁶¹

- In case of the loss of a family member, the widows, children, parents, and siblings can receive up to IQD 5 million, which amounts to US \$4,200. They can also receive a monthly allowance, depending on factors including whether the deceased was part of the liberating forces, his previous employment, and whether he was the only provider of income for the family.

- In case of disability of 75 to 100 per cent, victims can be granted either a one-time payment of IQD 5 million, or a monthly allowance based on the same criteria as for a deceased family member.
- In case of disability of 50 to 75 per cent, the grant is IQD 3 million to 4.5 million.
- In case of disability less than 50 per cent, the grant is IQD 2.5 million.

The Ninewa Sub-committee

In all of Iraq's governorates, the mechanisms of compensation under Law 20 were only implemented in 2011, since the required directives were not issued before that date by the Ministry of Finance.⁶² The Ninewa Sub-committee processed 15,500 claims from 2011 to 2014, but was forced to halt its activity on 10 June 2014, when Mosul fell to ISIS.⁶³ After taking control, ISIS allowed only a few essential parts of the local administration to continue their activities, mainly provision of basic services such as water, electricity and municipal services.

The Ninewa Sub-committee was only able to resume work in February 2017. The first compensation office to process claims after the recapture of the city was the one located in Al-Hamdaniya district, 30 km from Mosul, which reopened in February 2017. The compensation office located on the Left Bank in Mosul reopened in July 2017. The Martyrs' Foundation offices in Ninewa governorate also recommenced their operations in 2017.⁶⁴ However, the Real Estate Office, which is in charge of issuing the property titles needed to support compensation claims, only reopened in February 2018.⁶⁵ Since many of Mosul's residents had their properties and titles confiscated by ISIS, and most of the public documentation and registry files were lost in the rubble of the destroyed city, many compensation claims were delayed.

The Ninewa Sub-committee now works on a full-time basis, employing more than twenty administrative staff. While an amendment to Law 20 passed in December 2019 could allow for the creation of additional sub-committees in the future, at the time of publication the Ninewa Sub-committee remained understaffed to process the backlog of claims made before 2014 and the new claims related to ISIS occupation. From the general resentment perceived during the interviews

conducted, the weaknesses in the process in Ninewa are similar to those experienced in other governorates.⁶⁶ The compensation mechanism, which was already subject to criticism before 2014, still suffers from the same problems. However, the ISIS occupation and the severe destruction inflicted on the city of Mosul and its infrastructure deepened the deficiencies, leading to strong resentment from civilians.

Application of Law 20 since the defeat of ISIS

'The first bullet that hit my house was not shot at the walls, but directly in my heart,' related one of the civilians interviewed for this report.⁶⁷ He had been living in his house since the day he was born, and had inherited the property from his father, who had inherited it from his own father. After three generations, the destruction of parts of his house signified much more than just material damage. He expected to be able to rebuild his house to a proper condition in order to pass it on to his own children. By destroying buildings, the war destroyed not only financial assets, but with them the history they contained.

For civilians, compensation from the government of Iraq is more than just an amount of money received, it is a symbolic recognition of the impact of war on their life, and an instrument to start rebuilding their communities. 'I was living in Baghdad in 2017, but right after the liberation of Mosul I got messages from my neighbours saying we should all come back. I don't belong there, in Baghdad, I come from Mosul, and if all the citizens of Mosul don't come back to rebuild the city, who will do it?'⁶⁸ said a civilian while explaining his choice to come back to Mosul a few weeks after it was recaptured. 'The compensation grants will never bring me back the loved ones I lost, nor will they allow me to rebuild my house as if nothing happened. But they will help us all to rebuild the city and bring back life into it. It's not only about reconstructing buildings, it's about rebuilding a neighbourhood and bringing back the people who used to live here with us,'⁶⁹ he continued.

In minority neighbourhoods that were completely ransacked and heavily damaged, paying compen-

sation to those whose houses were destroyed would symbolize that these communities belong in the city of Mosul. The process of compensation would of course never fully heal them from the persecution they suffered, but it would at least send a signal that they are welcome back in the city and are considered as part of its social and historical fabric. With 78 per cent of internally displaced people (IDPs) reporting that their houses had been damaged or destroyed,⁷⁰ reconstructing the city is an enormous task for the Iraqi and regional authorities. 'I believe that no one has been truly compensated for their sufferings in Iraq,' declared one interviewee.⁷¹

Amounts allocated

One interviewee, who himself suffers from a major injury, referred to the case of a neighbour who was injured by a car explosion and was considered 80 per cent handicapped. He was granted a monthly allowance of US \$800. Since the application of the pension is retroactive and starts at the day of the injury, he is awaiting around US \$20,000, as his injuries date back to the recapture of Mosul in 2017. Many civilians are actually waiting for this payment to cover their health care bills and to obtain appropriate medical advice. Since most payments have not been made yet, many civilians have been forced to use their savings or borrow money to be able to pay for medical help to recover from their wounds.

The compensation amount in cases of property damage is based on the previous value of the property. The house is thus visited many times as part of the compensation process applied in Ninewa: first by the local police to assess that the property actually was damaged or destroyed; second by the civil defence; and third by a damage assessment expert once the application has been sent to the sub-committee. The sub-committee, however, has the final say in the amount of compensation awarded. Claimants related that usually only 50 per cent of the damages evaluated is awarded in the end.⁷²

However, in the region of Ninewa, given the long delays encountered in the process of reparation, many people have already started rebuilding their houses with their own money before the damage assessment expert has had time to evaluate the loss. One interviewee criticized the mechanism,

'I believe that no one has been truly compensated for their sufferings in Iraq'

saying that it was actually preventing civilians from rebuilding their houses before damages were properly assessed, and thus delaying even more the reconstruction of the governorate.⁷³ 'My father came back here 15 days after the city was liberated, I couldn't stop him.... His house is so much more than a mere building, it's part of his family history. So even before applying for compensation, I had to rebuild part of it so my father could live in dignity,' recounted a civilian who said his house was destroyed by a coalition strike.⁷⁴

Another civilian interviewed saw his house in the Right Bank of Mosul destroyed on 18 March 2017 at 9:35 p.m. by a coalition airstrike. He insisted on the time, remembering that he started screaming at the same moment. He came back after a few days, while the fighting was still ongoing. Indeed, some families came back to live in their destroyed houses immediately after the battle. Some were unwilling to stay in other parts of the city or in camps located in the region, while others were not able to leave the city at all, due to fear of summary executions carried out by ISIS on civilians trying to escape from Mosul. They needed, therefore, to rebuild walls and to re-furnish their houses before any assessment could be made. Thus, significant damage is not taken into account in the assessment and much of the cost of repair is borne by the families. The interviewees expected in general to receive from IQD 5 million to 10 million, while a modest house usually costs around IQD 60 million.⁷⁵

It has been estimated that Ninewa governorate needs at least US \$6 billion to rebuild housing in the city of Mosul.⁷⁶ The 2019 federal budget, however, surprised members of parliament from the governorate. Despite a large overall increase on the previous year's budget, the allocations to war-affected governorates were constrained.⁷⁷ Ninewa MPs pointed out that constitutionally, the alloca-

tion of the budget should be based proportionally on the population distribution in the governorates and that Ninewa, one of the areas of Iraq most affected by the war, has the second largest population in the country, and has the highest number of IDPs. The former governor of Ninewa, Atheel al-Nujaifi, declared that the budget was not even enough to cover the provision of basic public services, making it impossible to base any reconstruction effort on the general budget.

Delays and administrative capacity

One of the problems referred to most often by interviewees was the long wait for their claims to be processed, often leading to additional expenses, while Ninewa suffered from an economic crisis. The conflict triggered mass displacement of residents across the Tigris or to other parts of the governorate. Rents thus exploded in the face of the influx and some people had to share houses with other families to be able to afford accommodation.⁷⁸ Since many people are still unemployed, reconstruction in Mosul is a major preoccupation of the families whose houses were destroyed and who are unable to afford rent on the other side of the city. In November 2018, severe floods in Ninewa governorate forced tens of thousands of displaced people residing in camps outside of Mosul to seek refuge elsewhere.⁷⁹ Going back to their destroyed houses in Mosul, or returning even before basic public services, such as water and electricity, were restored, was not a choice for many families.

With over a year and a half of delays in the processing of claims, many of them had to find funds to rebuild their houses by other means. One of the interviewees, whose house was destroyed by shelling by pro-government forces and whose car was incinerated by ISIS, said he was still waiting for a positive answer on his claim, submitted in 2018 when the Real Estate Office reopened.⁸⁰ As an elderly civilian said, while talking about the delays and her need to go back to her home: 'I want to die in my house, not on someone else's door step.'⁸¹

When it was drafted in 2009, Law 20 was conceived as an extraordinary measure to fill a gap in Iraqi legislation, which did not contain any provisions on reparation.⁸² It was thus deemed sufficient at the time to have only one sub-committee per region. However, since their implementation

in 2011, the mechanisms have suffered from a dramatic backlog. Before 2014 and the occupation of Mosul by ISIS, 2,000 applications were still waiting for effective compensation, pending the transfer of funds.⁸³ However, due to the massive number of victims during the occupation and the recapture of the city, and the level of destruction in Mosul and Ninewa governorate, the numbers of people submitting claims drastically increased at the reopening of the sub-committee's operations.⁸⁴

Even if the 2015 amendment, enacted while the conflict was still ongoing, was intended to deal with future destruction, it was not enough to reverse the backlog. The amendment was implemented straight after the conflict in Ninewa and the sub-committee began working full time with additional staff. Nevertheless, it was still limited by the number of administrative steps required and the fact that only one sub-committee could process the numerous claims. In December 2019, the Iraqi parliament passed a second amendment to Law 20, with the aim of increasing the efficiency of the compensation process and reducing the burden on civilians. The amendment increases the number of central committees to three and allows for the creation of additional sub-committees in each governorate, among other changes. However, it is likely to take time before these changes are adopted in practice.

While only 15,500 claims were processed from 2011 to 2014, the committee seems to have accelerated the process from 2017 to 2019.⁸⁵ However, with an average of a year and a half of waiting time per claim, the reparation process remained cumbersome. According to the director of the compensation sub-committee in Ninewa governorate, 35,000 applications from residents of Ninewa who suffered under the ISIS occupation or the liberation campaign had been processed and completed from the reopening of the sub-committee until November 2019. Among these claims, 8,550 were processed by the Martyrs' Foundation in Ninewa, including 5,850 related to martyrdom, and 2,700 related to physical injuries leading to disability. The 26,000 claims remaining were thus all linked to property damage or destruction; about 24,000 of them were sent to the Central Committee for approval according to the compensation sub-committee.⁸⁶

A former member of the Provincial Council, interviewed for this report, sharply criticized the mechanism of Law 20, and the implementation of the law in Ninewa. ‘Since the beginning, the governorate has been weak and delayed implementing logistics and administrative measures needed for the mechanism to be efficient.’ To him, the mechanism should have been better supported by Ninewa governorate, since representatives of eight provincial ministries sit on the sub-committee. When he visited the sub-committee a few months after the recapture of Mosul, 25,000 applications had been made, but only 200 had been effectively examined. To him, it is not only the federal government and the legislators that are to blame, but also the governorate, which should at least have opened more offices to receive claims and start investigating. He recalls proposing to open facilities to bring the number of offices in the governorate to 32, which would have been possible through the enactment of an administrative act in the region. It was rejected by the Provincial Council, which saw it as an abuse of jurisdiction against the Iraqi federal government and parliament.⁸⁷

Obstacles to access

Many of the interviewees pointed out that the long delays in their compensation claims were linked to the many administrative steps that had to be fulfilled to complete the claim. The Law 20 mechanism was designed and implemented to avoid false claims and corruption. However, the numerous types of administrative proof required can be impractical in light of the current situation in the province. Moreover, the mechanism entails the payment of several fees that can prevent some families, and especially women who lost their husbands, from accessing the compensation mechanism at all.

With many public services still not completely functional and many administrative files lying under the rubble of the city, compensation is a complex administrative journey for civilians. A resident of the Christian-majority city of Hamdaniya reported that the property registration office in the city was still closed, preventing him from applying for compensation.⁸⁸ This is a particular problem for people whose houses were occupied during the time of ISIS and whose ownership titles were stolen or destroyed during the con-

flict.⁸⁹ Although the December 2019 amendment to Law 20 instructs the responsible authorities to facilitate the issuance of documents proving death in cases where the family members could not ‘for reasons beyond their control’, it is silent on the other types of administrative proof.

Some civilians also reported that the security clearance that must be obtained in order to retrieve any official document was a major obstacle to their reparation claims.⁹⁰ With social trust in the region heavily affected by the ISIS occupation, security clearance is seen as a prerequisite to ensure that no money is given to members or families that had links to ISIS. However, many applicants suffered from the process, which greatly impaired their access to compensation, especially for civilians from the Sunni majority.⁹¹ Some of the claimants interviewed even had to go through security clearance several times.⁹² With an average of three months for each one of them, they felt as if the process would never end.

One of the interviewees related that his father, whose house was confiscated and used by ISIS as an operations base, had to go through security clearance three times during his compensation claim, since he was suspected of collaboration. While normally it is National Security that is mandated to complete the security clearance in an average of three months, his profile was subject to additional investigation by intelligence officials, which took a year.⁹³ His claim has now been with the sub-committee for two years, but he has no hope of seeing the money any time soon. He further explained that since many people have the same names in the region, the process is even longer for some families and that mistakes were made by security officials, confusing people bearing the same names.

For Mosul’s majority Sunni community, there is a reluctance to complain openly or voice their sense of loss for fear of being labelled supporters of ISIS or Al-Qaeda. One former Mosul resident who survived the ISIS occupation commented: ‘When you lose your civil status, you lose your ability to speak. Young people are more positive – they know the city is destroyed but they look at the positive side: we can rebuild our city. Older people feel they have lost everything, their memories, their city.’⁹⁴

For many Sunnis, their participation in the debate on reparations depends on them being recognized as victims too, and this is placed in doubt: 'There is a categorization of victim – you start with Yazidis, Christians, Shi'a.... But Sunnis? There is immediately a question. It is no longer just being second-class citizens, the question is now are you a victim or not?'⁹⁵

Access to reparations for displaced persons

Out of the more than 1 million people recorded as displaced by the fighting in Ninewa governorate by August 2017, there were about 300,000 still displaced in 2019 according to the International Organization for Migration.⁹⁶ Most of these were displaced either to the West Bank of Mosul during the recapture of the East side of the city, or outside of the city during the battle for West Mosul. In addition, some Iraqis fled from the governorate or the country altogether, especially Christians, Yazidis and other religious minorities.

However, the mechanisms of compensation are built on the premise that compensation claims must be made in person in the region where the damage occurred. Moreover, the system requires that claimants repeatedly attend the compensation office to bring their documents, and to go to civil documentation offices, sometimes with witnesses when they are needed, and follow up on their cases regularly. For many IDPs, or refugees who have managed to leave Iraq, these requirements mean that in practice compensation is completely out of reach.

For claimants who are still present in Ninewa governorate, the process is possible but often logistically complicated. Even if a trip to Mosul would allow them to open a compensation request, they would need to undertake several other journeys to see the promise of compensation finally materializing into an actual payment. Many families saw their cars turned to ashes through their use as vehicle-borne IEDs or smoke-cover by ISIS. Transportation generally remains very difficult in the region. With few buses running and poor road infrastructure, some people struggle to follow up and finalize their claim.⁹⁷ It is particularly problematic for widowed women, who are usually the only ones caring for their children and are vulnerable to sexual harassment in the streets of the city.

Perceptions of the reconstruction and reparations processes in Ninewa

Beyond the Law 20 compensation process, perceptions of reconstruction and reparation in Ninewa are also mixed. Many interviewees emphasize being forced to rely on their own initiatives, or those of their community. Corruption and discrimination in the disbursement of funds are also common themes.

One team of volunteers interviewed for this report has been collecting donations since January 2017. They aim at supporting orphans and widows with children. Thirty families from the old city of Mosul currently rely on them for their everyday subsistence, but many others are currently recorded in their database of families in need and are waiting for allowances. The manager of the team emphasized that there is an urgent need for international funds.⁹⁸

Another civilian coming from a Christian-majority district related that his church institution supported members of the community, saying that 'they help you to rebuild if you promise to come back'. The church institution created a system in which houses were divided into three categories: A for completely destroyed houses, B for burnt houses (2,400 in Qaraqosh district, according to him), and C for houses that suffered partial destruction or ransacking. They then fund up to 60 per cent of the reconstruction efforts through five different payments.

Two interviewees reported getting help from foreign non-governmental organizations (NGOs). One resident of Mosul whose house was destroyed by the international coalition was able to get support from a German NGO, while another from the district of Hamdaniya mentioned a US-funded project that helped them clear the rubble of several houses in his city.⁹⁹

In terms of immediate humanitarian needs, the 2019 UN humanitarian response plan totalling US \$701 million was over 90 per cent funded by the last part of the year.¹⁰⁰ The reconstruction budget

required, as noted at the start of this chapter, is however of a different order. Moreover, as an MP from Ninewa related, international funds are prone to being diverted by corruption.¹⁰¹ He gave the example of an amount of money given by UN Development Programme (UNDP) that was meant to fund 50 housing reconstruction projects across the governorate. According to him, the Iraqi contractors who were in charge bought the cheapest materials and did questionable work. One unit, for example, was built in Sinjar but is still completely empty.¹⁰²

Corruption is still widespread in Ninewa province and in Iraq overall, with the country ranking at 168 out of 180 countries in Transparency International's 2018 *Corruption Perceptions Index*.¹⁰³ The Iraqi Integrity Commission announced in 2019 that US \$60 million had been diverted from Ninewa's budget.

Allegations of corruption, albeit on a smaller scale, have also been made concerning the compensation process in Ninewa.¹⁰⁴ The stringent administrative requirements that were put in place to avoid corruption can themselves create opportunities for corruption. Some civilians reported that people with financial means were paying administrative staff to speed up their applications through the mechanism, delaying the claims of those who couldn't afford to pay *baksheesh* (bribes). Several interviewees reported hearsay of corruption within the system.¹⁰⁵ Allegations included the bribery of employees to speed up claims and local officials asking claimants for a percentage of the money in order to release the payment. Although the 2019 amendment to Law 20 requires the Public Prosecutor to undertake a compliance check on compensation claims for the stated purpose of 'protecting public funds', it appears unlikely that this step would be enough to eliminate corruption at all levels of the process.

A 2017 report on the reparations process in Iraq by Ceasefire and MRG related that the Martyrs' Foundation was reported to show preferential treatment to the mainly Shi'a families of martyrs persecuted under the previous Baath regime.¹⁰⁶ However, a lawyer familiar with the process interviewed for the current report said that the re-

'People in Mosul think the destruction of the city was planned, that they did it to destroy the city deliberately'

cent overload of requests coming from Mosul as a result of the ISIS conflict seems to have put an end to the pattern, establishing a balance between Sunni and Shi'a claimants.¹⁰⁷

Nor is dissatisfaction with the processes of reconstruction and reparation exclusive to any particular community. For civilians who were targeted by ISIS, including members of minorities, the delays in instituting a justice process are creating anger and resentment against the government. Yazidi activists, for example, point to the fact that over five years after the genocidal attacks against their community began in 2014, not one perpetrator has been brought to justice in Iraq for crimes against the Yazidis. Meanwhile, many Yazidis remain displaced as the lack of security and services means they cannot return to their homes in Sinjar or the Ninewa plains.

For civilians whose family members were killed or homes destroyed in the assault to recapture Mosul, resentment is joined by the belief that they were being unfairly punished for the crimes of ISIS. Members of the Iraqi government often ascribe exclusive blame for civilian casualties or physical destruction to ISIS, and suggest any collateral damage was unavoidable, given ISIS' tactics of hiding in residential areas and using human shields. The US-led coalition maintains that all feasible precautions were taken to avoid civilian injury or damage to civilian objects. However, this narrative does not appear to be widely accepted by the city's inhabitants. A former Mosul resident commented: 'Most people in Mosul think the destruction of the city was planned, that they did it to destroy the city deliberately. Some see it as a religious thing – the intention was to destroy the last great Sunni city in Iraq. I haven't seen such anger in Mosul since 2003. It is a very dangerous situation.'¹⁰⁸

4

‘They did not take my body but my soul is gone’: filling gaps in the reparations process

Violations of fundamental rights have long-lasting effects on victims, which can even be passed on to future generations. While the main framework for reparation in Iraq is centred on monetary compensation for material loss, deaths and injuries, other forms of suffering or means of reparation seem to have been ignored.

Effective reparation cannot be based on monetary compensation alone. To give the civilians of the city of Mosul and the governorate of Ninewa effective reparation for their pain and loss, the Iraqi government should devote efforts to diversifying the types of damages covered by Law 20 and to offering reparation through means other than compensation. Official recognition of the suffering of victims by their national governments should never be undervalued, as it is a first step in a comprehensive strategy to alleviate pain and rebuild society.

In addition to the Geneva Conventions, which form the core of IHL, Iraq is a party to a series of international human rights treaties, including the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Civil and Political Rights, the Convention Against Torture, the Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of the Child, with its Additional Protocol on the Involvement of Children in Armed Conflict. Together, these instruments provide a framework for the protection of the rights of, *inter alia*, civilians, including the right to a remedy and to reparation for violations.

However, the effective implementation of many of these international obligations into national law and policy is lack-

ing. While Iraq has taken steps to implement reparation with regard to compensation and restitution, there are particular gaps concerning measures of rehabilitation, satisfaction, and guarantees of non-repetition. In addition, international actors in the conflict with ISIS appear content to ignore their own obligations to make reparations to the victims of conflict and to leave the burden of paying compensation to the national government.

Addressing trauma: access to mental health care

As one interviewee summarized, ‘They did not take my body, but my soul is gone.’ He was imprisoned by ISIS for nine months and suffered severe depression afterwards. But since imprisonment is not one of the assessable forms of damage included under Law 20, no claim can be made for compensation. For this victim, the priorities of the national authorities seem to lie elsewhere. The same civilian related that while he was seeking information on potential reparation for his imprisonment, several organizations discouraged him from going further since some people who were imprisoned by ISIS were then detained by the police

when they related their stories to officials. They were questioned for several days in order to extract information on the members of ISIS or identify them.¹⁰⁹

Since free public health facilities are lacking in the country, compensation would allow many civilians to seek out appropriate mental health care. According to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, the notion of rehabilitation, which is part of the responsibilities of states, includes medical and psychological rehabilitation.¹¹⁰

Mental health policies should therefore be part of the process and should allow civilians access to proper treatment. However, members of NGOs interviewed all reported that no facilities were put in place to access mental health treatment in Ninewa.

Mental health support is also often depicted pejoratively in Iraq. 'In our society, only crazy people go to see doctors.'¹¹¹ Iraq is a conservative society where mental health care is depicted as an extraordinary need, only necessary for those with severe psychiatric disorders. The only mental health facility that existed in the city of Mosul before the occupation was the mental health section of the Ibn Sina Hospital in the West Bank.¹¹² Given the trauma of the ISIS occupation and subsequent battle, mental health should be a priority and appropriate facilities established.

Despite high demand for care, transmitted to international organizations and to the Iraqi authorities by NGOs, none of the people interviewed had received mental health care. Where some services were locally available, they were regarded with cynicism by interviewees. As one of the interviewees underlined, healing people is different from reconstructing buildings in that the results cannot easily be ascertained by an external observer. Thus, funds that are

allocated for mental health can easily be diverted from their original purpose since NGOs do not need to provide material proof of their use.

Among Yazidis the need is acute. Médecins Sans Frontières reported that 24 Yazidis, nearly half below the age of 18, admitted to their facilities in the Sinjar district had attempted suicide between April and August 2019.¹¹³ While particular attention has been given by international donors to the mental health of the Yazidi community and the funding of psycho-social care, need continues to outstrip provision. At the same time, other communities need access to mental health facilities too. One interviewee claimed that some patients pretended to be Yazidis in mental health facilities in a desperate attempt to get help.¹¹⁴

Creating a gap between communities should never be part of the process of reparation. In a region where social ties have been demolished intentionally by a terrorist organization, the local authorities and their international partners should put a special emphasis on creating the conditions to enable the rebuilding of social trust.

Rehabilitation and reintegration of child soldiers

The Additional Protocol on the Involvement of Children in Armed Conflict provides that states should prevent the recruitment of minors into armed groups operating on their territory. It also stipulates the right of child victims to 'all appropriate assistance for their physical and psychological recovery and their social reintegration'. While thousands of children were believed to have been kidnapped and forcibly conscripted by ISIS, especially Yazidi children, no public pol-

icy has been put in place to provide psychological care, support or reintegration for these children.

No official number or list exists on the *Ashbal al-Khilafa* ('Cubs of the Caliphate'), minors forcibly incorporated in the armed forces of ISIS. Many of them were members of religious minorities who were kidnapped and separated from their families. Their role was often to act as informers, but they were intensively trained and brainwashed, including in preparation for becoming human bombs.¹¹⁵ It is not known what happened to the majority of them. Some were killed, others are probably still out in society, while others are living in isolation camps with their families, notably the camps of Hammam al-Alil, Salamia and Qayara in the governorate of Ninewa. Others are hiding with their parents to escape the stigma of being enrolled by ISIS. When caught, these children are usually prosecuted and put into detention centres for minors. Human Rights Watch has estimated that Iraq is currently holding captive approximately 1,500 Sunni Muslim boys charged with being part of ISIS.¹¹⁶ Yazidi boys are currently in a legal grey zone.

The other victims: reparations for enforced disappearances and torture

Several categories of violations are not being addressed adequately or at all in the current transitional justice framework in Iraq, either by the reparations mechanism set up by Law 20 or by Iraq's existing criminal laws. These include enforced disappearances, a widespread phenomenon in the recent conflict. With 3,000 Yazidis and thousands of other people still missing, Iraq needs to respond to its international obligations and effectively investigate the fate of the disappeared. One interviewee related that in his Assyrian Christian community, 30 people were still missing.¹¹⁷ So far, 200 mass graves have been discovered in the country. With 95 sites found in Ninewa, the governorate has the highest number of mass grave sites in Iraq.¹¹⁸

The International Convention on Enforced Disappearance guarantees the right to truth for victims

and requires effective investigation into acts of enforced disappearance and the prosecution and punishment of perpetrators. It also stipulates that states that are parties to the Convention must inform victims of the truth regarding the circumstances of the enforced disappearance, and provide reparation. In 2006, Iraq enacted Law 5 on the Protection of Mass Graves to deal with one horrific legacy of the Saddam Hussein government. The law was amended in 2015 to extend the temporal scope of the law beyond 2003 and to expand the requirement of 'protection, inspection and investigation' of mass grave sites. The Mass Graves Directorate is under the direction of the Martyrs' Foundation. The procedures for the actual recognition of the fate of the missing are, however, still a burden for the families, already traumatized by their loss. The families must report to at least five authorities to complete the procedure and establish the fate of a missing person, and provide three different sources of DNA for each missing relative. The process is onerous for families and restrained by important financial constraints on the side of the Iraqi government.¹¹⁹

Moreover, thousands of men and boys were arrested, some arbitrarily, by ISF and PMF units during the displacement of the population of Mosul.¹²⁰ Suspected to be members of ISIS, some remain missing. While important efforts are being made to document violations by ISIS, both nationally and internationally, transitional justice efforts should also address properly the loss resulting from the actions of pro-government forces. Families have a right to know the fate of their relatives.

Additionally, in a context where Iraq is still criticized by international organizations for the widespread use of torture within the criminal justice system, the government has failed to acknowledge and provide support to the victims of torture related to the recent conflict. The Convention Against Torture puts the obligation on a state party to 'ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible' and that 'any individual who alleges he has been subjected to torture [...] to have his case promptly and impartially examined,'¹²¹ but none of the victims of torture interviewed had yet had access to a tribunal or to reparation. Effective

investigations should be conducted and reparation including mental health support should be provided to the victims.

Recognizing genocide and other crimes under international law

Given the gravity of the crimes committed by ISIS, no system of reparation could be considered effective without the prosecution and punishment of the perpetrators. However, the Iraqi Criminal Code has no provision for the prosecution of

crimes under international law, including genocide, crimes against humanity and war crimes. ISIS members are currently tried on the basis of the Iraqi Anti-Terrorism Law,¹²² which fails to acknowledge the systematic and targeted nature of the crimes the group committed.

Minority activists argue that the government of Iraq has also been slow to acknowledge that they are victims of genocide and crimes against humanity. This is in contrast to international inter-governmental forums. The UN Security Council has established an investigative team to promote accountability for ISIS crimes (see Box 3), and the

Documenting the atrocities of ISIS: the UN investigative team

While most suspected ISIS members in Iraq are currently tried under Iraqi terrorism laws, there is a failure to acknowledge the particular nature of the crimes committed by ISIS and the resulting needs of victims. As one interviewee noted, 'The Iraqi mechanism for compensation is the same, but there is something special in the sufferings inflicted on us by ISIS. We need mechanisms that are as special.'

On 21 September 2017 the UN Security Council unanimously passed Resolution 2379 establishing the UN Investigative Team to Promote Accountability for Crimes Committed by Daesh (UNITAD). The team's mandate is to support domestic efforts to hold ISIS accountable by collecting, preserving and storing evidence in Iraq of acts that may amount to

war crimes, crimes against humanity and genocide.¹²⁸ Funded by the international community, the initial focus of the team is on three different investigative priorities, two of which occurred in Ninewa governorate: the attacks committed by ISIS against the Yazidi community in the Sinjar district in August 2014, and the crimes committed by ISIS in Mosul between 2014 and 2016 (the third focuses on ISIS crimes in Tikrit).¹²⁹

The work of UNITAD is steered by testimony obtained from survivors. Many Iraqis have bemoaned the extremely long delays that marked the period between the team's creation and the actual start of the evidence collection, which has also been the subject of much international criticism. Following these initial setbacks, UNITAD reported in July 2019 that it had been able to gather more than 600,000 videos related to ISIS crimes and over 15,000 pages of internal ISIS documents.¹³⁰

The team's mandate has already been extended until 20 September

2020 by the UN Security Council. However, the impact of the team's work is ultimately limited by the lack of courts or tribunals in which evidence gathered by the team can be used.

In his most recent report, the Special Adviser and head of the team, Karim Khan, states: 'The absence of an explicit legal basis in Iraq for the prosecution of war crimes, crimes against humanity or genocide also continues to limit the capacity of the team to more effectively support domestic accountability efforts in Iraq. In that regard, the team welcomes the recent efforts of the government of Iraq to establish the necessary legislative framework.'¹³¹

The mandate of UNITAD has also been criticized for being limited to the crimes of ISIS. Human rights organizations have pointed out that the team's ability to appear impartial may be compromised by the fact that it will not investigate violations committed by other parties to the ISIS conflict, including pro-government forces.

European parliament has condemned acts of genocide perpetrated against Yazidis and other minorities.¹²³

Recognition of the nature of the genocide and crimes against humanity perpetrated against minorities in Iraq would both be a major initial step toward holding ISIS responsible for its crimes and open a real discussion on the future of minorities in Iraq, paving the way for collective forms of reparation for groups who suffered genocidal violence. Persecution against Yazidis and Christians started long before the occupation of Mosul by ISIS.¹²⁴ The Iraqi government should provide minorities with appropriate guarantees of non-recurrence. Building memorials or supporting the reconstruction of places of worship would be a strong sign from the Iraqi state that minorities belong and would enable survivors to build a more secure future. As one Assyrian Christian civilian said while explaining why he needed to come back after the war, 'there is no dignity outside of my land.'¹²⁵

There have already been some efforts to introduce special legislation to address the violations faced by minorities. In April 2019, Iraqi President Barham Salih presented a bill to the Iraqi parliament for review and adoption, entitled Yazidi Female Survivors Law. The law would address some of the gaps in the current reparation mechanism.

The bill is meant to apply to all female Yazidis who were abducted by ISIS after 10 June 2014, but refrains from explicitly mentioning the sexual slavery and sexual assaults to which many were subjected. The rationale of the bill states that 'the crimes that survivors were subjected to should be considered as genocide.' The forms of reparation provided for Yazidi women survivors are listed as psychological and medical care, housing, land, compensation, education as well as commemoration and memorization. Survivors would receive a monthly pension that is equivalent to the amount provided by Law 20 to people disabled up to 80 per cent. It should be noted that symbolic acts of reparation are envisaged in the designation of 3 August as a national day of commemoration of the atrocities inflicted on Yazidis, as well as the creation of a public directorate to care for Yazidi women.

The bill is an important initiative to properly address the fate of victims of conflict, including through means beyond compensation, but should be complemented by further measures. By targeting only women from the Yazidi community, the bill fails to acknowledge the sexual violence committed against other women (including those from Turkmen, Christian and Shabak communities) as well as the sexual violence that was inflicted on men of the Yazidi community.¹²⁶

It is also yet to be seen what the fate of children born as a result of the rape of Yazidi women will be. The current law on birth in Iraq makes every child born to an unknown father a Muslim, while both parents have to be Yazidis for a child to be recognized as member of the Yazidi community. A statement by the Yazidi Spiritual Council initially raised hopes that children born from rape would be accepted back into the community with their mothers, but in the context of a backlash from the community, this was later clarified to stipulate that such children would not be welcome.¹²⁷

War from above: the responsibility of the international coalition

Despite the fact that the international coalition has been responsible for significant civilian casualties and property damage in Mosul, as detailed in previous sections, the financial burden of providing reparations to victims and their families has until now been borne almost entirely by the Iraqi government. As Iraqi civilians who were interviewed pointed out, support from the government is the only help they can rely on in the aftermath of the war. Most of them feel abandoned by the international community after more than 16 years of conflict in the region and have little faith in international assistance as a viable mechanism.¹³² The level of damage caused by airstrikes conducted by the international coalition negatively affected popular perceptions of the USA in particular, which became clear during the course of interviews.¹³³ Despite playing a decisive role in the conflict, the international coalition now risks ignoring the widespread suffering caused in recapturing ISIS-held territory and the level of resentment to which that may give rise.

It is therefore paramount that the international coalition rethinks its role in reparation efforts and repairs the significant harm it has caused to civilians. Until now, however, members of the international coalition have been reluctant to assume responsibility for providing reparations to victims of their military action in Mosul, or even to admit that violations of international law occurred in the first place. The coalition's internal investigation classifies allegations of harm into 'credible' or 'non-credible' and determines itself whether it took all feasible precautions and if the decision to strike complied with the laws of armed conflict.¹³⁴ All the civilian killings for which the coalition has admitted responsibility are described as 'unintentional' and the coalition habitually states that all feasible precautions were taken.

Besides the controversy over the scale and circumstances of civilian casualties, a number of legal issues complicate responsibility for reparations. The US-led coalition began airstrikes against ISIS targets in Iraq in August 2014 upon the request of the Iraqi government. Since the armed conflict is between a state and a non-state actor, the coalition's operations against ISIS are classified as part of a non-international armed conflict under international law. Although customary international law regarding the duty of reparations does not differentiate between conflicts of an international or non-international character, reparations are due only as a result of the existence of a legal obligation which has been violated. Therefore, in any case where members of the international coalition are to be held legally bound to provide reparations, for example, compensation for loss of life, it needs to be established whether the military action taking life was in breach of international law.

Some members of the international coalition now claim the sole responsibility for reparations lies with Iraq, as the coalition has been acting at the invitation of the Iraqi government. In November 2019, the Netherlands admitted that it was involved in two airstrikes in Iraq in which at least 74 people, including civilians, were killed. However, making this declaration, the Ministry of Defence noted that the surviving relatives of the victims cannot claim compensation from the Netherlands, since the Public Prosecution Service investigated both cases and concluded that nothing

unlawful happened. Iraq, not the Netherlands, is responsible for handling individual claims, according to the ministry.¹³⁵ As for the coalition, as a matter of strategy and policy, it 'considers all civilian casualties to be the combined result of "coalition" action and jointly attributable to coalition members' regardless of the actual involvement of individual coalition members.¹³⁶

Meanwhile, in its *Annual Report on Civilian Casualties in Connection with United States Military Operations*, the US Department of Defense noted that it has a policy 'in development' according to which an ex-gratia payment together with medical care or other appropriate measures might be undertaken when US military operations injure or kill a civilian or damage or destroy civilian property. The report of the US Department of Defense highlights that the aim of such policy would be to convey condolence and payments should not be understood as an admission of wrongdoing.

However, it appears that this developing policy may not cover US military actions as part of the US-led coalition: 'in cases where a host nation government requests US military support for local military forces, it may be more appropriate for the host nation or its military to respond to the needs and requests of the local civilian population by offering condolences themselves'.¹³⁷ This might explain why, despite the high levels of civilian harm inflicted, the coalition had reportedly only received two compensation requests and issued two condolence payments over the course of the operation.¹³⁸

Treaty law and customary IHL set out the duty of providing full reparations. Even though the mechanism for enforcing this duty is not explicitly provided, the international coalition should rethink its reluctance to provide reparation to victims of the conflict with ISIS, especially considering the role in the conflict played by the coalition. Hiding behind a possible legal lacuna and the invitation of the Iraqi government would set a dangerous precedent for the accountability of future joint military operations undertaken with partner forces. If members of military coalitions operate under an understanding that their hands are clean at the expense of host states, an increase in harm inflicted upon civilians and deterioration of adherence to the laws of war will follow.

What form should a reparations programme take?

If the international coalition assumes its responsibility to provide reparations to victims of its military action, what form should such programmes take? By drawing on lessons learned from comparable situations, and considering important factors in achieving comprehensive reparations, a number of possible options emerge.

Special or combined trust fund. In light of the collective responsibility approach taken by the coalition, it could be argued that the smoothest and most logical way of implementing reparations for civilian harm caused by the coalition would be to create a special trust fund.

One previous example is NATO's relief fund established to address some of the immediate harm inflicted through its operations in Afghanistan. The International Security Assistance Force (ISAF) Post-Operations Emergency Relief Fund was set up to provide quick humanitarian assistance, such as the supply of food, water and shelter, or the repair of buildings or key infrastructure, immediately following sizeable ISAF military operations. The small fund consisted entirely of voluntary donations.¹³⁹ However, an ISAF spokesperson stated at the time that 'it is also a national responsibility and individual nations within the NATO mission have different procedures and different approaches'.¹⁴⁰ Relying on individual national compensation schemes will have the disadvantage that different communities or groups of victims are treated differently, and some may not be able to access compensation at all.¹⁴¹

But which states should provide donations to a potential international coalition trust fund? Despite the coalition's assertion that 'personnel from multiple countries take part in every strike in some manner', in practice over two-thirds of all airstrikes in Iraq were undertaken by the US and over 90 per cent by just four coalition members (US, UK, France and Australia). Should the donations be voluntary? Allocating funds may become the subject of protracted national debates. One avenue to avoid this issue might be to explore whether assets confiscated from ISIS or its members could be used to fund a reparations effort (following the example of the Trust Fund for Victims at the International Criminal Court).

Another, more complex, approach would be for the international community to provide technical support and streamline funds through the national budget of Iraq, which then would be distributed according to Law No. 20 on cases specifically resulting from anti-ISIS military campaign harm. However, the risk of Iraq's endemic corruption tainting the funds should be mitigated by close oversight of its distribution.

National compensation schemes and ex-gratia payments. Partnering with other military forces, including as part of an international coalition, does not remove the obligation on individual member states to make reparation where they are responsible for an internationally wrongful act. The coalition policy on joint attribution of civilian casualties has been widely criticized as a means of member



states avoiding scrutiny, and potential liability. There is also a rich history of coalition members, and others, operating schemes to make payments to victims of civilian harm, albeit generally without accepting liability. In the past, the US military has disbursed US \$4,865,851 in condolence payments to Afghan nationals.¹⁴² Likewise, Iraqi civilians received such payments for death, injury, or property damage caused by US military forces following the 2003 invasion of Iraq.¹⁴³

Australia provides ‘honor’/‘acts of grace’ payments for conflict-related harm inflicted by Australian military forces.¹⁴⁴ The Claims Commission of Poland also allocates ex-gratia payments for damage caused by Polish military forces to civilians.¹⁴⁵ In cases where international law has not been violated but harm has been incurred, the

coalition should follow this well-established practice of awarding ex-gratia payments.

Importance of combined reparation measures. The US-led coalition should not concentrate solely on compensation out of all the reparation measures. Exclusively monetary reparation might run the risk of being perceived as paying off blood money, particularly if it is not accompanied by criminal justice measures against perpetrators.¹⁴⁶ Effective, prompt, thorough and impartial investigations into all instances of civilian casualties caused by international military intervention should be conducted. Medical care, housing and educational support together with symbolic measures should not be overlooked for the purpose of reaching the maximum number of victims and addressing longer-term forms of harm.



Iraqi civil defence search for bodies under the rubble of buildings in the old city in Mosul on 16 May 2018, 10 months after dislodging ISIS.

Photo: Waleed Al-Khadlid/AFP via Getty Images

5

Conclusion

Although over two years have passed since the recapture of Mosul, most civilians are still waiting for the reparation they are owed by the government of Iraq, the US-led coalition and other parties to the conflict. The civilian population in Iraq is currently caught between the need to rebuild, in the psychological as well as material sense, and desperation with regard to the reparation mechanisms in place.

Although Ninewa's civilians can obtain some level of compensation, they do not have access to full reparation. Marred by delays and a cumbersome procedure, the national mechanism set up by Law 20 is overloaded. Moreover, it does not come close to addressing the destruction that ISIS and the military campaign inflicted on civilians. As one civilian summarized, 'What reparation? Half compensation is not reparation.'

Given the trauma left behind by the ISIS conflict, it is to be expected that recovery will be long and difficult. However, the slow pace of reconstruction, and the slowing rate of IDP returns, contribute to a popular sense that the city of Mosul, and the wider Ninewa governorate, are no longer a priority for the government and have been forgotten in Baghdad. The essential role of reparations in recovery and reconciliation – enabling individuals and families to have their loss recognized and helping them rebuild – is not being given the attention it deserves.

The Iraqi government and the international community should work on putting a transitional justice agenda in place for the population of Ninewa, and Iraq as a whole, in

which reparations should be a central component. Recognition of past suffering and acknowledgement of the responsibility of perpetrators are fundamental to social recovery. Providing reparations would allow for the recognition of the inherent humanity of victims, the restoration of their rights and dignity, and reinforce trust in national institutions and the delivery of justice. It would also allow communities to rebuild social ties and help mitigate the legacy of violence that continues to threaten the country.

Recommendations

To the government of Iraq:

- Strengthen the mechanism to 'Compensate Victims of Military Operations, Military Mistakes and Terrorist Actions' established under Law 20 by:
 - accelerating the processing of claims by creating additional sub-committees and registration offices with sufficient administrative staff, in accordance with the 2019 amendment
 - enabling displaced people to file claims outside of the governorate where the damage occurred

- easing evidentiary requirements for compensation to hasten the reconstruction of the city of Mosul
- granting compensation amounts that are proportionate to the damage suffered by civilians
- investigating allegations of corruption or misuse of compensation funds.
- Fill the gaps in Law 20 by:
 - recognizing the right to reparation for war crimes and human rights violations such as torture, sexual violence, enforced disappearance and the recruitment of child soldiers
 - putting in place appropriate mental health policies and creating mental health facilities
 - combining compensation with restitution, rehabilitation, satisfaction and guarantees of non-repetition
 - taking into account the special needs of social groups that were systematically targeted by providing appropriate access to mental health care and social reintegration assistance to survivors of sexual violence and to children forcibly recruited as ISIS fighters.
- Legislate to recognize war crimes, crimes against humanity and genocide under Iraqi criminal law and make provision for the effective investigation, prosecution and punishment of perpetrators, including by:
 - cooperating fully with the UN Investigative Team to promote accountability for crimes committed by Da'esh (ISIS)
 - conducting effective, prompt, thorough and impartial investigations into suspected violations by Iraqi Security Forces and Popular Mobilization Forces.
- Consider additional symbolic or collective reparations, in addition to individual reparation measures, in recognition of the egregious losses suffered by Iraqi minority communities, including the Yazidis.

To the Combined Joint Task Force – Operation Inherent Resolve (US-led coalition)

- Conduct effective, prompt, thorough and impartial investigations into all instances of civilian casualties resulting from its military action
- Create a comprehensive reparations programme or fund to address the harm inflicted by coalition action within the anti-ISIS campaign
- Consider, alternatively, developing jointly funded and implemented reparations programmes in cooperation with the Iraqi government
- Ensure that any reparation mechanism covers compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition for victims and families of the victims
- Ensure the awareness of victims and their families of all available reparation schemes and their accessibility and inclusiveness.

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Mosul after the Battle: Reparations for civilian harm and the future of Ninewa

In brief

Mosul, a metropolis of 1.5 million people, served as the capital of the self-proclaimed caliphate of the Islamic State of Iraq and al-Sham (ISIS) for some three years. On 10 July 2017, after nearly nine months of intense fighting between ISIS, the Iraqi Security Forces, and their allies, the city of Mosul was declared liberated. While ISIS was responsible for a litany of crimes against the population of the city during its occupation, the military campaign to recapture Mosul also saw violations against civilians carried out by the Iraqi government, the international coalition supporting it, and pro-government militias. The intensity and length of the battle left much of the city reduced to rubble and caused thousands of civilian casualties.

It is a basic principle of international law that reparation is to be made for internationally wrongful acts. The duty to provide individual reparations is well-established today under international human rights law, and increasingly under international humanitarian law. So far, the responsibility for providing reparations to civilians has primarily been assumed by the Government of Iraq, under Iraq's Law 20 on 'Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions'. For civilians, compensation from the Government of Iraq is more than just an amount of money received, but a symbolic recognition of the impact of war on their life, and an instrument to start rebuilding their communities.

When it was drafted in 2009, Law 20 was conceived as an extraordinary measure to fill a gap in Iraqi legislation. However, due to the massive number of victims during the ISIS occupation and the level of destruction in Mosul and Ninewa Governorate, the numbers of people submitting compensation claims has drastically increased. With many public services still not completely functional and many administrative files lying under the rubble of the city, compensation is a complex administrative journey for civilians. Marred by a cumbersome procedure, the national mechanism set up by Law 20 is overloaded. With over a year and a half of delays in the processing of claims, many civilians have had to rely on their own means to begin rebuilding their lives.

Consequently, although Iraqi civilians can obtain some level of compensation from their government, they do not have access to full

reparation. Despite its merits, the Law 20 framework contains significant gaps. While it covers physical harm and property damage, it does not address psychological harm or enable victims to access mental health care. It is silent on many categories of violations that occurred as part of the recent conflict, providing little recourse to child soldiers and victims of torture and enforced disappearances, for example. It also fails to recognize the systematic and targeted nature of the crimes perpetrated against Iraqi minority communities, or to provide symbolic or collective reparations. Moreover, it does not adequately acknowledge the full responsibility of the Iraqi government and the US-led international coalition for violations against civilians. Despite playing a decisive role in the conflict, the international coalition now risks ignoring the widespread suffering caused in recapturing ISIS-held territory and the level of resentment to which that may give rise.

The current report focuses on Mosul, as Iraq's second city and the epicentre of the war against ISIS. Mosul's diversity and its centrality in the conflict make it a testing ground for the future of transitional justice in Iraq. Civilian reparations are an essential component in reconciliation and recovery after conflict. How they are implemented in Ninewa will be a key indicator of the post-conflict future of the governorate and of Iraq as a whole.

This report recommends:

- Strengthening the mechanism to 'Compensate Victims of Military Operations, Military Mistakes and Terrorist Actions' established under Law 20, including by easing evidentiary requirements for compensation
- Combining compensation with restitution, rehabilitation, satisfaction and guarantees of non-repetition
- Legislating to recognize war crimes, crimes against humanity and genocide under Iraqi criminal law and making provision for the effective investigation, prosecution and punishment of perpetrators
- Creating a comprehensive reparations programme or fund to address the harm inflicted by international coalition action within the anti-ISIS campaign.

