

Crimes and Penalties Related to the Protection of Historical Antiquities in Iraq

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This study addresses crimes and penalties related to the protection of historical antiquities in Iraq, considering them an essential component of the country's cultural heritage and national identity, deeply rooted in ancient civilizations such as the Sumerian, Babylonian, and Assyrian civilizations. The research aims to elucidate the legal framework governing the protection of antiquities in Iraq and to analyze the most significant crimes committed against this national wealth, including theft, smuggling, vandalism, encroachment upon archaeological sites, as well as the illicit trafficking of antiquities.

The study also highlights relevant Iraqi legislation, particularly the Antiquities and Heritage Law No. (55) of 2002 (as amended), which establishes a set of stringent legal provisions for the protection of antiquities by criminalizing acts that infringe upon them and imposing penalties ranging from financial fines to imprisonment. In certain cases, penalties may be aggravated, especially in instances of cross-border smuggling or the infliction of substantial damage to archaeological sites. The research further examines the role of competent authorities, such as the State Board of Antiquities and Heritage and security agencies, in enforcing these laws.

Moreover, the study discusses the challenges facing antiquities protection in Iraq, most notably weak oversight, unstable security conditions, the spread of corruption, and a lack of societal awareness regarding the importance of preserving cultural heritage. It also addresses the role of the international community and international conventions, such as the 1970 UNESCO Convention, in supporting Iraq's efforts to recover looted antiquities.

The study concludes that although Iraqi legislation provides a solid legal framework, its effective implementation remains insufficient. It recommends strengthening monitoring mechanisms, enforcing stricter penalties, enhancing international cooperation, and raising public awareness to ensure the preservation of Iraq's invaluable archaeological heritage for future generations.

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Introduction

This section aims to outline the criminal and punitive framework established by the Iraqi legislator to address violations against historical antiquities, based on their classification as public property of an exceptional nature, the protection of which is intrinsically linked to the cultural public order of the state. The Antiquities and Heritage Law No. (55) of 2002 (as amended) regulates various forms of crimes affecting archaeological sites, such as unauthorized excavation, smuggling, destruction, and unlicensed alteration, and couples these offenses with custodial penalties and substantial financial fines. This regulatory approach reflects a criminal policy oriented toward both specific and general deterrence, with the objective of preserving the national civilizational legacy.

Historical antiquities in Iraq constitute one of the most significant cultural and civilizational assets possessed by the state. They reflect the depth of human history and the rich cultural diversity that has characterized this land across successive eras—from the Sumerians and Akkadians to the Babylonians and Assyrians, and extending to the Islamic and modern periods. These antiquities form an integral part of national identity and the shared heritage of humanity, while also representing an important cultural and touristic resource contributing to economic and social development.

Significance of the Study

The significance of this study stems from the urgent need to understand the legal framework governing crimes related to historical antiquities and the penalties prescribed for them, particularly in light of the increasing incidents of looting and destruction witnessed in Iraq during past periods due to wars, internal conflicts, and terrorism, in addition to the illegal trade in antiquities. The study aims to shed light on the role of Iraqi legislation, including Law No. (55) of 2002 concerning the protection of antiquities and cultural heritage, as well as relevant international conventions—such as the 1970 UNESCO Convention on prohibiting and preventing the illicit import and export of cultural property—in deterring such crimes and safeguarding heritage.

Research Problem

The research problem centers on the question of the effectiveness of Iraqi legislation and penalties in protecting historical antiquities, and whether these sanctions are sufficiently deterrent and effective in addressing the challenges threatening cultural heritage. It also examines how effectively the Iraqi judiciary enforces these penalties, the extent to which competent authorities comply with and implement the law, and seeks to identify weaknesses that may allow violations to occur—whether at the level of legal texts or in judicial and supervisory application. Furthermore, the study raises the question of the compatibility of Iraqi legislation with international standards and the necessity of establishing effective mechanisms for cooperation with the international community to prevent the smuggling of antiquities and to hold perpetrators accountable.

Chapter One: Crimes Committed Against Historical Antiquities

Crimes committed against historical antiquities constitute one of the most serious forms of infringement upon cultural property, as they involve a direct violation of the civilizational identity and historical value of the state. These crimes take multiple forms, including unauthorized excavation, illicit trafficking and cross-border smuggling, the destruction or defacement of archaeological sites, as well as the unlawful appropriation of antiquities. The Iraqi legislator has addressed these acts through specific legal provisions that explicitly criminalize them and prescribe stringent penalties, recognizing that the harm resulting from such acts extends beyond material loss to encompass the irreversible loss of a part of the national memory.

Section One: Smuggling and Deliberate Destruction of Antiquities

The smuggling of antiquities represents one of the most dangerous forms of infringement upon cultural heritage, as it entails the unlawful removal of a component of the state's civilizational memory and its transfer beyond the scope of national sovereignty for the purposes of trade or concealment. Archaeological property is not merely a tangible asset subject to circulation;

rather, it is an essential element of historical identity. Accordingly, its smuggling constitutes a dual violation—against public ownership and against the cultural entity of the nation. The Iraqi legislator has recognized this gravity and, therefore, stipulated in the Antiquities and Heritage Law No. (55) of 2002 (as amended) the criminalization of the removal of antiquities from Iraq without official authorization.

Article (43) of the aforementioned law provides that any person who smuggles an antiquity out of Iraq, or attempts to do so, shall be subject to a severe criminal penalty¹. Furthermore, Article (44) stipulates the confiscation of seized antiquities and their restitution to the state, in addition to the confiscation of the means of transport or tools used in the commission of the crime. This provision demonstrates that the legislator did not confine the sanction to custodial penalties but also imposed financial and in rem measures that enhance the deterrent effect. Criminal law jurisprudence has further established that confiscation in crimes involving public property constitutes a preventive measure aimed at depriving the offender of the proceeds of criminal activity².

The smuggling of antiquities is also closely connected to customs offenses as regulated under the Customs Law No. (23) of 1984 (as amended), since the unauthorized export of antiquities constitutes a form of customs smuggling. This gives rise to the possibility of prosecuting the offender on two legal grounds, thereby strengthening the position of the public prosecution and enhancing penal protection. However, the application of the stricter provision remains subject to judicial discretion in accordance with the rules of legal classification³.

Moreover, the crime of antiquities smuggling may be linked to money laundering where the proceeds of illicit sales are introduced into the financial system with the intent of concealing their origin. In such cases, the act falls under the provisions of the Anti-Money Laundering and Counter-Terrorism Financing Law No. (39) of

2015⁴. This connection demonstrates that antiquities-related crimes are no longer merely simple individual acts, but may form part of organized transnational criminal activity.

The establishment of the crime of smuggling requires the presence of two essential elements: first, the archaeological nature of the property that constitutes the subject matter of the crime; and second, the intent to unlawfully remove it. The technical report issued by the State Board of Antiquities and Heritage constitutes decisive evidence in determining the archaeological character of the property, while intent is inferred from the circumstances and surrounding facts of the case. One criminal law study has emphasized that the specific nature of archaeological property necessitates precise technical expertise to ensure the correctness of legal classification.⁵

Iraqi legislation in the field of combating antiquities smuggling demonstrates clear strictness, both in terms of criminalization and the imposition of severe penalties, as well as the expansion of confiscation measures. However, the effectiveness of these provisions remains contingent upon the capacity of the competent authorities to control border crossings and to activate international cooperation mechanisms for the recovery of smuggled artifacts⁶.

While the smuggling of antiquities leads to the depletion of national heritage and its removal beyond the scope of sovereignty, the deliberate destruction of archaeological sites represents an even more serious form of violation, as it results in the irreversible eradication of cultural value. In such cases, the crime does not involve the transfer of archaeological property, but rather its annihilation, distortion, or the infliction of substantial damage in a manner that deprives it of its historical and scientific character. Accordingly, the Iraqi legislator has afforded these acts special criminal protection, in addition to the general protection provided under the Penal Code.

The Antiquities and Heritage Law No. (55) of 2002 (as amended) criminalizes the destruction, vandalism, or defacement of any antiquity or

¹ See: Article (43), Antiquities and Heritage Law No. 55 of 2002, as amended.

² See: Article (44), Antiquities and Heritage Law No. 55 of 2002, as amended.

³ Samer Mahmoud Abdullah, *Confiscation in Economic Crimes*, 1st edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2016, p. 133.

⁴ See: Customs Law No. 23 of 1984, as amended.

⁵ Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015.

⁶ Karim Nasser Abdul Karim, *Criminal Responsibility for Antiquities Smuggling*, Master's Thesis, College of Law, University of Mosul, Iraq, 2019, p. 158.

archaeological site and imposes custodial penalties and financial fines on any person who intentionally causes damage to archaeological property⁷. It is evident from the wording of the provision that the offense is constituted upon the mere occurrence of the act of destruction or vandalism, without requiring that the damage reach a specific threshold of severity, provided that the act has affected the archaeological value of the site or the artifact.

The material element of this crime consists of a positive act manifested in demolition, breaking, burning, defacement, or any conduct that results in damage to an archaeological site. It is noteworthy that the legal provision is formulated in general terms encompassing various forms of infringement, thereby enabling the judiciary to subsume multiple acts within the scope of criminalization.

Section Two: Illicit Trafficking in Historical Antiquities

Illicit trafficking in historical antiquities represents one of the most serious forms of criminal activity associated with cultural heritage. Its impact is not limited to harming archaeological property as public property; rather, it extends to transforming civilizational value into a commodity subject to the logic of the black market, thereby stripping it of its cultural dimension and reducing it to a means of generating unlawful profit. An antiquity in its original context constitutes a historical document; however, within the framework of illicit trade, it becomes merely a material object detached from its civilizational environment. This justifies decisive intervention by the criminal legislator.

The Antiquities and Heritage Law No. (55) of 2002 (as amended) expressly addresses this conduct. Article (42) criminalizes the sale, purchase, display, or possession of an antiquity for the purpose of trade in violation of the provisions of the law. It is evident from the wording of the provision that the legislator did not confine the offense to the act of sale alone⁸, but expanded the scope of criminalization to

include purchase, display, and possession with the intent of trade. This reflects a clear legislative intent to eliminate the sources of illicit markets. Such an expansion is consistent with modern criminal policy, which targets all stages of circulation rather than focusing solely on the principal offender.

The material element of the crime of illicit trafficking consists of any positive conduct involving dealings in archaeological property outside the legally regulated framework, whether through direct sale, mediation, or offering through electronic or traditional means. The mental element requires the existence of general criminal intent, namely the offender's knowledge of the archaeological nature of the property and the direction of their will toward dealing in it for material gain. A specialized study has emphasized that knowledge of the archaeological nature of the property constitutes the cornerstone of criminal liability, and that a claim of good faith is insufficient where surrounding circumstances indicate otherwise⁹.

Furthermore, Article (3) of the same law provides that all discovered antiquities are the property of the state, rendering any disposition thereof outside the legal framework an infringement upon public property. Accordingly, illicit trafficking is not merely a regulatory violation but a criminal offense affecting public ownership and subject to severe penalties. In addition, confiscation constitutes a mandatory consequence of conviction, whereby the antiquities are returned to the state and the proceeds derived from the crime are confiscated¹⁰.

Chapter Two: Criminal Penalties in Iraq for Crimes Committed Against Historical Antiquities

The criminal penalties prescribed under Iraqi legislation for crimes committed against historical antiquities reflect a strict approach aimed at achieving both general and specific deterrence, in light of the particular nature of cultural property and its significance to national identity. The Antiquities and Heritage Law No. (55) of 2002 (as

⁷ See: Antiquities and Heritage Law No. 55 of 2002, as amended.

⁸ See: Article (42), Antiquities and Heritage Law No. 55 of 2002.

⁹ Ahmed Abdul-Razzaq Al-Ani, Criminal Responsibility for the Illegal Trade of Antiquities,

Master's Thesis, College of Law, University of Tikrit, Iraq, 2018, p. 137.

¹⁰ See: Article (3), Antiquities and Heritage Law No. 55 of 2002.

amended) provides for custodial penalties that may extend to severe imprisonment, in addition to substantial financial fines and confiscation, depending on the gravity and nature of the act, such as cases of smuggling, unauthorized excavation, or intentional destruction. This strictness demonstrates the legislator's conviction that the protection of heritage is not merely an administrative option but a criminal obligation that admits no leniency.

Section One: Penalties Prescribed under the Iraqi Penal Code

Crimes committed against antiquities, although regulated by specific provisions in the Antiquities and Heritage Law No. (55) of 2002 (as amended), are also subject to the general framework of penalties established under the Iraqi Penal Code No. (111) of 1969 (as amended), which serves as the general law governing criminalization and punishment. Any infringement upon archaeological property, where its legal elements are satisfied, may fall under general provisions relating to the protection of public property, destruction of property, criminal participation, or confiscation. This results in a dual system of criminal protection combining both special and general legal provisions.

Article (3) of the Antiquities and Heritage Law stipulates that all discovered antiquities are the property of the state¹¹, which means that any infringement upon them constitutes an offense against public property. Reference to the Penal Code reveals that Article (440) punishes the theft of state property with imprisonment, with the penalty being aggravated in consideration of the nature of the property involved. Accordingly, the theft of an antiquity owned by the state is not treated as ordinary theft¹², but rather as an aggravated circumstance due to the public and civilizational nature of the property concerned.

Furthermore, Article (444) of the Penal Code criminalizes the destruction of another's property and imposes a more severe penalty if the damaged property belongs to the state. This provision applies in cases such as the destruction

of an archaeological site, the breaking of an antiquity, or the defacement of a historical inscription, provided that criminal intent is established. It is noteworthy that destruction need not be total; rather, it is sufficient that damage occurs which diminishes the value of the archaeological property. Some legal scholars have argued that the value of archaeological property is not measured solely by material standards, but also includes its historical and scientific value, thereby rendering any damage to it more severe¹³.

In cases of unauthorized excavation accompanied by the appropriation of antiquities, the legal elements of both the crime of illegal excavation and the crime of theft may be simultaneously established. This necessitates the application of the rules governing multiplicity of offenses as stipulated in the Penal Code. In such instances, the judge is vested with the authority to apply the harsher provision, in accordance with the principle of proportionality between the crime and the punishment. Participation in such crimes is also governed by the provisions relating to criminal complicity, whereby each contributor to the offense is held accountable according to their role, whether as a principal offender or an accomplice.¹⁴

Another important sanction is confiscation, which is provided for under the Penal Code either as a supplementary penalty or as a preventive measure. It encompasses items derived from the crime or used in its commission. In the context of crimes committed against antiquities, confiscation extends to the seized antiquities themselves, as well as the tools used in excavation or transportation. This enhances the deterrent character of the penalty and prevents the reuse of criminal means.¹⁵

The court also possesses the authority, where mitigating circumstances are present, to reduce the penalty pursuant to Article (132) of the Penal Code. However, such mitigation must be exercised with caution in crimes affecting antiquities, given the gravity of harm inflicted upon national heritage. One study has indicated

¹¹ See: Article (3), Antiquities and Heritage Law No. 55 of 2002, as amended.

¹² See: Article (440), Iraqi Penal Code No. 111 of 1969, as amended.

¹³ See: Article (444), Iraqi Penal Code No. 111 of 1969, as amended.

¹⁴ Abdullah Nasser Al-Jubouri, *Protection of Public Funds in Iraqi Criminal Law*, 1st edition, Dar Al-Kutub Al-Qanuniya, Baghdad, Iraq, 2016, p. 183.

¹⁵ Haider Mohammed Al-Saadi, *Precautionary Measures in Iraqi Criminal Legislation*, 1st edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2017, p. 119.

that excessive reliance on mitigating circumstances in cultural property crimes may weaken the deterrent effect of penal provisions.

The general framework of penalties under the Iraqi Penal Code provides a solid foundation for strengthening the criminal protection of antiquities, as archaeological property is treated as public property deserving of enhanced protection. Nevertheless, the effectiveness of these provisions depends on their consistency with the special provisions contained in the Antiquities Law, as well as on the judiciary's awareness of the seriousness of these crimes and their impact on the civilizational identity of the state.

Crimes committed against antiquities are not merely offenses against state-owned property; rather, they constitute violations of a civilizational value of a distinctive nature. This justifies the imposition of stricter penalties compared to other property-related crimes. Accordingly, the relationship between the special provisions contained in the Antiquities and Heritage Law No. (55) of 2002 (as amended) and the general provisions of the Iraqi Penal Code No. (111) of 1969 (as amended) forms the basis for understanding the mechanism of aggravating criminal penalties in this category of offenses.

The special provisions of the Antiquities Law prescribe severe custodial penalties in cases of smuggling, destruction, unauthorized excavation, and trafficking in antiquities, reflecting the legislator's awareness of the gravity of such acts and their impact on national identity. At the same time, the application of general provisions of the Penal Code may lead to further aggravation where general aggravating circumstances are present. Article (135) of the Penal Code provides for the enhancement of penalties where the offense is committed by multiple offenders or under circumstances indicating particular dangerousness. This is particularly applicable in cases involving organized groups engaged in illegal excavation or the illicit trafficking of antiquities¹⁶.

¹⁶ See: Article (132), Iraqi Penal Code No. 111 of 1969, as amended.

¹⁷ See: Article (135), Iraqi Penal Code No. 111 of 1969, as amended.

¹⁸ See: Antiquities and Heritage Law No. 55 of 2002, as amended.

Section Two: The Effectiveness of These Penalties in Combating Crimes Against Historical Antiquities

The effectiveness of the penalties prescribed under the Iraqi Penal Code and the Antiquities and Heritage Law in combating crimes against historical antiquities is not measured solely by the existence of criminal provisions, but rather by their capacity to achieve both general and specific deterrence and to provide genuine protection for cultural property as a component of national identity. From a theoretical perspective, punishment constitutes the primary means by which the legislator regulates social behavior; however, its effectiveness depends on its proportionality to the gravity of the act and the seriousness of its consequences.

The Antiquities and Heritage Law No. (55) of 2002 (as amended) provides for custodial penalties and financial fines for perpetrators of crimes such as smuggling, unauthorized excavation, and trafficking in antiquities¹⁷. It also allows for the application of general provisions under the Iraqi Penal Code No. (111) of 1969 (as amended), particularly those relating to theft and destruction of public property and confiscation. This legislative framework reflects¹⁸ the existence of an integrated penal structure aimed at ensuring enhanced protection for archaeological property.

The aggravation of penalties for crimes against public property is consistent with the principle of protecting the public interest. Article (440) of the Penal Code imposes stricter penalties in cases involving the theft of state property, which applies to antiquities owned by the state¹⁹ pursuant to Article (3) of the Antiquities and Heritage Law. However, the question arises as to whether such aggravation is sufficient to achieve effective deterrence, particularly in light of the existence of a lucrative international black market for antiquities²⁰.

Confiscation, as a supplementary penalty or preventive measure, constitutes an important tool for depriving the offender of the proceeds of criminal activity. The Penal Code permits its

¹⁹ See: Iraqi Penal Code No. 111 of 1969, as amended.

²⁰ Nihad Abdul Karim Al-Azzawi, "Practical Challenges in Applying Penal Provisions Related to the Protection of Antiquities," *Karbala University Journal of Legal Studies*, Vol. 8, No. 2, University of Karbala, Iraq, 2019, p. 112.

application to items derived from or used ²¹in the commission of a crime. This measure is considered one of the most effective mechanisms in economically motivated crimes, as it targets the financial incentive that drives such conduct. One researcher has noted that the effectiveness of confiscation depends on the state's ability to trace and seize assets in a timely manner.

However, the effectiveness of penalties is not determined solely by their severity, but also by the speed and consistency of their enforcement. A severe penalty that is not applied promptly or is enforced inconsistently may lose its deterrent effect. Furthermore, the granting of discretionary mitigating circumstances pursuant to Article (132) of the Penal Code may, in some cases, lead to a reduction in penalties in a manner that weakens deterrence, particularly where the specific nature of cultural property crimes is not adequately considered²².

Crimes against antiquities are often organized or transnational in nature, which reduces the effectiveness of local deterrence alone. Where the anticipated financial gain exceeds the perceived risk of punishment, penalties alone may not be sufficient to achieve general deterrence. Accordingly, assessing the effectiveness of penalties requires viewing them within a comprehensive framework that includes administrative oversight, international cooperation, and public awareness²³.

It is evident that the penal framework in Iraqi legislation is characterized by strictness and coherence at the level of legal texts; however, its practical effectiveness depends on several factors, including the speed of legal procedures, the efficiency of enforcement authorities, and the degree of coordination among competent institutions. Regardless of its severity, punishment remains only one component within a broader system for the protection of cultural heritage.

While a theoretical assessment indicates that the penal system in Iraqi legislation is both stringent

and comprehensive, a practical evaluation requires examining the extent to which this strictness is reflected in judicial and security practice, and its effectiveness in reducing crimes against historical antiquities. Punishment fulfills its deterrent function only when accompanied by a realistic likelihood of detecting the offense, apprehending the perpetrators, and issuing an enforceable judicial ruling within a reasonable timeframe²⁴.

Conclusion

This study demonstrates that the protection of historical antiquities in Iraq constitutes a complex challenge that encompasses legal frameworks, judicial application, and the surrounding security and societal environment. National legislation, foremost among which is the Antiquities and Heritage Protection Law No. (55) of 2002, provides a strong legal basis for criminalizing all forms of infringement upon historical heritage, ranging from theft and smuggling to deliberate destruction and damage. Furthermore, Iraq's commitment to international conventions, such as the 1970 UNESCO Convention, provides additional protection and facilitates cooperation with the international community in recovering looted artifacts and combating illicit trafficking.

However, the practical implementation of these laws faces several obstacles. The study reveals that, despite the theoretical severity of the prescribed penalties, they often lack the necessary deterrent effect due to delays in judicial procedures, weak coordination between oversight and judicial bodies, and insufficient technical and material resources for monitoring archaeological sites and combating smuggling.

First: Findings

1. The Legal Framework is Theoretically Advanced

Iraq possesses a set of national laws aimed at protecting antiquities, including the Antiquities and Heritage Protection Law No. (55) of 2002.

²¹ Raad Fadel Hameed, *International Judicial Cooperation in Recovering Cultural Properties*, 1st edition, Dar Al-Kutub Al-Qanuniya, Baghdad, Iraq, 2020, p. 97.

²² Saad Abdul-Amir Kazem, *Effectiveness of Confiscation in Economic Crimes*, 1st edition, Dar Al-Kutub Al-Qanuniya, Baghdad, Iraq, 2019, p. 121.

²³ Kareem Mahmoud Abd Al-Zahra, *Crimes Committed Against Cultural Heritage in Iraqi Law*, First Edition, Dar Al-Kutub Al-Qanuniyya, Baghdad, Iraq, 2017, p. 141.

²⁴ Maitham Abdullah Al-Karkhi, "The Sufficiency of Penalties in Protecting Iraqi Antiquities," *Al-Anbar University Journal of Legal and Political Sciences*, Vol. 9, No. 1, Al-Anbar University, Iraq, 2020, p. 88.

2. Multiplicity of Crimes Against Antiquities

The study demonstrates that crimes against antiquities vary, including theft, smuggling, vandalism, and destruction of sites, and are often committed due to weak oversight or the exploitation of legislative loopholes.

3. Variability in the Effectiveness of Penalties

The legal penalties imposed on perpetrators of crimes against antiquities range from fines to imprisonment; however, practical implementation faces challenges, which reduces their capacity to achieve full deterrence.

4. Challenges in Law Enforcement

Competent authorities suffer from weak coordination between supervisory and judicial bodies, in addition to limited human and technical resources for combating smuggling and protecting archaeological sites.

Second: Recommendations

1. Legislative Development

Update national legislation to impose stricter and more deterrent penalties and to close any legal loopholes that may be exploited by offenders.

2. Enhancing Monitoring and Inspection

Establish specialized units within the Ministry of Culture and Antiquities, equipped with modern technologies to monitor archaeological sites and prevent violations and smuggling.

3. Strengthening the Judiciary

Accelerate judicial procedures related to crimes against antiquities and ensure the strict enforcement of penalties, including the establishment of specialized courts to adjudicate cultural heritage cases.

4. Public Awareness

Promote awareness programs within society regarding the importance of historical heritage and its protection, and encourage citizens to report acts of vandalism or theft.

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