

Nation Building in Kurdistan

Memory, Genocide and Human Rights

Mohammed Ihsan



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The Kurdish people and the Kurdish Regional Government faced huge challenges rebuilding their nation and identity after the atrocities and human rights abuses committed by Saddam Hussein and his regime. In 2005 a new Iraqi constitution recognized as genocide the persecution of Faylee Kurds, the disappearance of 8,000 males belonging to the Barzanis and the chemical attacks of Anfal and Halabja paving the way to the investigations and claim by Kurdish people. This book provides in-depth analysis of the tensions caused by the Kurdish experience, the claim for the independence of a united Kurdistan and the wider tendency towards political fragmentation in Iraqi society.

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Dedicated to all victims of past and present genocides

Contents

[*List of figures and maps*](#)

[*List of tables*](#)

[*List of abbreviations*](#)

[*Preface*](#)

[*Acknowledgements*](#)

Introduction

1 A country in the making: memory and human rights in the Kurdistan region

[*A government for the Kurdistanis: the Kurdistan regional government 1991–2014*](#)

[*A government in the making*](#)

[*The Kurdish experiment in democracy: the Kurdistan Regional Government*](#)

[*Kurdish political thought: between federalism and independence*](#)

[*UN Security Council Resolution 688 and the Kurdish question in Iraq*](#)

[*Human rights abuse: a difficult past*](#)

[*Circumstances underlying Resolution 688*](#)

[*Investigation into human rights abuse in Iraq*](#)

2 Arabization as ethnic cleansing

[*Rebuilding Kurdistan: a difficult past, a challenging present*](#)

[*Displacement and Arabization through state intervention*](#)

[*A constitution for the Kurdistanis*](#)

[*Kirkuk for the Kurds: heritage and oil*](#)

[*Kirkuk: a blueprint for forced Arabization*](#)

[*Normalizing the Kirkuk governorate*](#)

[*Kirkuk after 2003*](#)

[*The state of negotiations with Baghdad until 2014*](#)

[*Peace in the future?*](#)

3 Propagating hate, inciting murder

The Faylee Kurds: a silent crime

The Kurdish middle class: the demographic and economic reality of Faylee Kurds

The Ba'athist anti-Kurdish policy against Faylee Kurds

Citizenship laws and deportation

Disturbing parallels with recent European history: does 'Arabization' equal 'Aryanization'?

Gathering the evidence: was it genocide? A legal insight

The KRG and negotiating compensation: the challenge of coexistence

4 Blueprint of a genocide

The massacre of the Barzanis and the difficult quest for the truth

Documentary evidence

The history of a persecution

Setting up the crime scene

The court's decision

5 A state-engineered national project

The Anfal campaign

The background to the Anfal campaign

The state crime of Anfal

Premeditated crime

The Anfal campaign plan and the implementation phases

The eight phases of Anfal

The first Anfal (21 February 1988–18 March 1988)

The second Anfal (22 March 1988–2 April 1988)

The third Anfal (7 April 1988–20 April 1988)

The fourth Anfal (3 May 1988–5 May 1988)

The fifth, sixth and seventh Anfal (15 May 1988–7 June 1988)

The eighth Anfal (8 August 1988–6 September 1988)

The Anfal mass graves

The prosecution of detainees

6 Death from the sky

Chemical weapons (Halabja): the birth and development of the Iraqi chemical weapons

Chemical weapons in Iraq

The development of the Iraqi chemical weapons

The organized use of Iraqi chemical weapons

The international ban on the use of chemical weapons

The historical aspect

International ban compliance

Actus reus

Mens rea

The international element

Eyewitnesses

The official documents

The court's ruling

The defendants' testimonies

7 A new horizon?

A view from Kurdistan

Transitional justice in Iraq

The Kurdish political experiment

Conclusion

A future for Kurdistan

The threat of ISIS and the future of Kurdistan in the region: a path towards independence?

Appendix

Arabization

Faylee Kurds

Barzanis

Anfal

Halabja

Bibliography

Index

Figures and maps

Figures

[4.1 A Barzani Kurd's blindfolded skull at Busaya, 2 November 2013](#)

[5.1 Excavations at Hatra 1, 2008](#)

Maps

[2.1 The directions of Arabization from central and southern Iraq to Kurdistan](#)

[2.2 Arabization of Kurdistan before 1991](#)

[2.3 Arabized areas of Kurdistan at the borders with Iran, Turkey and Syria until 1991 \('No Kurdish Zone'\)](#)

[2.4 Disputed areas between Baghdad and Erbil](#)

[3.1 The Faylee Kurd population's distribution](#)

[3.2 The Faylee Kurds' concentration camps during their displacement](#)

[4.1 Barzani Kurds' forced displacement from 1975 to 1983](#)

[5.1 The eight stages of the Anfal campaign](#)

[5.2 Anfal campaign: stage 1](#)

[5.3 Anfal campaign: stage 2](#)

[5.4 Anfal campaign: stage 3](#)

[5.5 Anfal campaign: stage 4](#)

[5.6 Anfal campaign: stages 5, 6 and 7](#)

[5.7 Anfal campaign: stage 8](#)

Tables

4.1 Damage in the Barzan area

5.1 The cost of the Anfal campaign

6.1 Budgets spent by the Ministry of Defence, Ministry of the Interior and other security agencies, 2005–2014

C.1 The responsibilities and verdicts for the crimes investigated in this book

Abbreviations

ADM	Assyrian Democratic Movement
BTWC	International Convention on the use of Biological and Toxin Weapons
CPA	Coalition Provisional Authority
IAEA	International Atomic Energy Agency
ICC	International Criminal Court
ICMP	International Commission on Missing Persons
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Former Yugoslavia
IHT	Iraqi High Tribunal
IKR	Iraqi Kurdistan Region
IMOHR	Iraqi Ministry of Human Rights
INC	Iraqi National Council
IPC	Iraq Petroleum Company
IRC	Islamic Revolutionary Council
ISIS	Islamic State of Iraq and Syria
IST	Iraqi Special Tribunal
KDP	Kurdistan Democratic Party
KRG	Kurdistan Regional Government
MCC	Military Command Centre
NGO	Nongovernmental organization
OPC	Operation Provide Comfort
OPEC	Organization of the Petroleum Exporting Countries
PUK	Patriotic Union of Kurdistan
RCC	Revolutionary Command Counsel

TAL	Transitional Administrative Law
UN	United Nations
UNAMI	United Nations Assistance Mission for Iraq
UNSCOM	United Nations Special Commission

Preface

During the years that have been dedicated to the investigation of the crimes committed against the Kurds by the Ba'ath party and Saddam Hussein, it became more than obvious that a link had to be established between the suffering of the Kurdish people and their efforts to build their own nation. This book is an account of a series of persecutions and the long-term impact they had on the process of nation building undertaken by the Kurds since 1991. To the author's knowledge, no book has dealt with these atrocities and placed them in a wider historical perspective. One hundred years have passed since the end of World War I and the division of the Middle East between the European countries that won the war. One hundred years are a blink of an eye in historical terms, however, for the Kurdish people the process leading to a successful experiment in nation building in a region, the Middle East, which included a high number of failed states, has been a long one; but of these, the Kurdish region has proved to be the most important achievement. The Kurdish region is the only 'state' that introduced a democracy from the bottom up without the imposition of a police state. At this moment in time it is the only region where a free press and freedom of speech prevails, despite the enormous pressure on the institutions from inside and outside. More recently, with the advent of ISIS, the Kurds were also called to defend their nation and the democratic values upon which it is built. It is hoped that this phase will not be as painful for them as their experience under the Iraqi regime was, and furthermore, that it will strengthen their confidence in a common future.

There is another important reason why this book is distinct from others written on the same topic. All the data contained in the account come from first-hand investigation and most of them have never been released to the general public before. The data gathered during the years that the author spent as minister for Human Rights and of Extra-Regional Affairs for the Kurdish region allowed the author to link the research on the ground directly to the process of reconciliation and transitional justice necessary in any nation-building process. The author believes that the process of denouncing those responsible for the atrocities by exposing the failings of the Iraqi judicial system that dealt with the trials of the perpetrators will interest researchers, politicians and common citizens alike.

The author wants to thank all those from the current and former regimes in Iraq and Kurdistan who collaborated with the investigation by providing vital information. Without their testimonies these crimes would have never been fully investigated and no reconciliation, not even partial, would be possible. In particular, we want to thank the families of the victims

who had the courage to re-open wounds that had never healed and to share their painful memories with me. Their humanity and their sorrow became the main driving force behind this effort. This book is therefore primarily dedicated to them.

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Introduction

Iraq's road to reconciliation was bound to be long and full of disappointments, as is the case for any country that has experienced a long dictatorship. However, for Iraq the whole idea of reconciliation was hindered from the beginning by the deep sectarian divisions within it that jeopardized any possibility of a transitional justice system working properly, or working at all. Every trial carried out by the Iraqi High Tribunal (instead of an international one) called for by the U.S. administration failed to take into account the final purpose of this postwar effort: the reconstruction of Iraqi society.

The events that unfolded in Iraq and Syria, starting from June 2014, with the advance of ISIS, are a striking reminder of the dangers posed by the exclusion of different parts of Iraqi society. The federal government's inability to carry out a reconciliation process, particularly the government led by Maliki for eight years, is considered by many, including the Iraqi Kurds, to be one of the main causes of the current situation; and this will impose long-lasting detrimental effects on the present and future of Iraq and the whole region.

This book is a testimony to the quest for the truth, through the analysis of some of the crimes committed by the Ba'ath regime and Saddam Hussein against the Kurds. It represents the efforts made by the Kurdistan Regional Government in the twenty-two years of its existence to embark on the healing process necessary to rebuild a new society. This step has been completely ignored by both the federal governments and the international forces, mainly the United States, in favour of their support for a unified and centralised Iraq.¹ As Samantha Power clearly explains in her book entitled *A Problem from Hell: America and the Age of Genocide* (2010), it took a long time for the U.S., and consequently other countries, to ratify the genocide convention suggested by Raphael Lemkin in 1948. This delay was due to the Cold War and the reluctance of the U.S. and the West in general who, since they were afraid of a law that could prosecute crimes committed on foreign soil, created a void in international legislation that hindered any attempt to recognize, after the Holocaust, genocides committed outside Europe. Writing in particular about the Kurdish genocides, the author suggests that in this case, U.S. connivance with the Ba'athist regime was the cause of the unwillingness to recognize as genocide the massacres against the Kurds. However, there were other factors that impeded the recognition of genocides, including the Kurdish one – for example, the idea that human beings cannot cause harm on such a large scale without leaving evidence; and most of the time it was the lack of evidence that led even the most sensitive observers to doubt the testimonies of the victims.

Even when a genocide has been recognized as such, it is sometimes difficult for the observers to understand its scale. This is because, as in the case of the Kurds, most of the journalists and historians who analyzed the genocides focused on the Anfal campaign and on the gassing at Halabja. These events are the easiest ones to recognize owing to the massive amount of evidence gathered by the media that covered the events. However, most of them failed to analyze, in a comprehensive way, the sequence of genocides that took place in Iraq starting from the 1960s, following which Anfal and Halabja were just the logical, tragic climax.

The Kurds realized that if they wanted to build a new country and break the cycle of violence in which they lived, they had to deal with their past; further, they needed to investigate the genocides committed against them in the awareness that recognition would smooth the road to self-determination and independence that the Kurds have always travelled.

It is in this context that the Kurdish contribution to the drafting of the 2005 constitution has to be read. The Kurds, as Peter Galbraith explains in his book *The End of Iraq: How American Incompetence Created a War without End*,² managed to influence this process to their advantage by tackling the issues that could constitute an impediment to the necessary reconciliation process between the Iraqi and Kurdish societies. One of those was Article 140 of the constitution, which related to the disputed areas and in particular to Kirkuk. The Arabization process carried out in those areas is the first crime analyzed in this book. It constituted then and still constitutes one of the main obstacles to an understanding between the two parties, since other articles included in the constitution have not been implemented. After the Kurds took control of the areas from a melting Iraqi army during the advance of ISIS, the discussion on Arabization and the implementation of article 140 gained momentum. It became obvious that the failure of successive regimes in Baghdad to settle the status of these territories by agreement had created 'unsure pockets' that have been exploited by insurgent groups and with most success by ISIS. At various times, Baghdad has failed to realize that the dispute over the territories is directly linked to all the main issues between the Kurds and the federal government, including oil and security. At the time of writing, a great part of Iraq has been handed to ISIS and one of the reasons for the current situation is the failure to implement Law 140. The investigation into the process of Arabization must offer a solution to the problem. The recent events also affected the way the Kurds have to look at this law. The demography of the territories changed considerably and it is not possible, unless the Kurdistan Regional Government wants to commit the same mistake that the regime committed, to impose a Kurdish presence in the territories. For this reason, the Kurds should consider holding a referendum locally, which guarantees the local population a power-sharing solution that takes into account the new reality. This would be a very controversial step to take, but it is also the way the Kurdistan Regional Government has to show its commitment to a peaceful and tolerant coexistence with the various parts of Iraqi society. Unless this dispute is resolved, there will be no more Iraq and a war in this area will ensue worse than the one

against ISIS. It would, however, be a process that can only be supported by a very difficult, and at this moment compromised, healing process.

The account of these crimes, together with the analysis of the evidence presented in court and published here for the first time outside a court of law, offers the possibility of showing the road that led the Ba'ath regime to commit the atrocities confident of its complete impunity. There is a thread that links the Arabization, the persecution of the Faylee Kurds, the massacre of the Barzanis, the Anfal campaign and the gassing of Halabja. It is that all the crimes committed were actually part of a carefully engineered project. An account of each crime will show how the plan became a national project that took place in different chronological sequences between 1963 and 1991. The escalation of violence is evident from a comparison between the four crimes. The Arabization and the persecution against the Faylee Kurds took place over many decades, while in all the other crimes, from the abduction and murder of the Barzanis to Anfal and Halabja, the strategies implemented by the state show a consistent change in the time scale in which they were carried out. The Barzanis were abducted and killed in the space of a month, and their case constituted a blueprint that led the state to increase the level of violence which culminated in the attacks on Anfal and Halabja. In time, and in this way, the regime increased its skills, scope and number of atrocities. The documents presented in this book establish the fact that the Iraqi authorities' purpose was the annihilation of a minority by threatening its very existence and values.

Very little has been written on the persecution, mass deportation and killing of Faylee Kurds and the chapter dedicated to them constitutes the first organized effort to investigate their persecution and genocide. Furthermore, the documents disclosed here show how the persecution against Faylee Kurds was the first calculated mass killing carried out by the Ba'ath regime and how, with the removal of an estimated 100,000 members of the Iraqi community,³ it paved the way for genocide on a larger, more sophisticated scale. Since the Ba'ath regime still needed legal support to justify its actions, this crime was carried out via the dissemination of different national decrees. Thus, this case has a striking resemblance to the first phases of the persecution against the Jews carried out by the Nazis during their regime. As in the case of the Jews, the Faylee Kurds were singled out, arrested and their properties confiscated; and they were stripped of their citizenship and forced to leave the country if they did not want to be killed. This sort of violence needs the collaboration of the entire population, since it is a kind of spiral that involves participation from those 'above' and those 'below', supported by very strong propaganda that is intended to distinguish 'us' from 'them'. This crime was carried out in silence, with the tacit approval of the other sectors of the population, including the Kurds.

Amongst all the cases presented in court during the series of trials carried out against Saddam Hussein and his accomplices, the one involving the disappearance of the Barzani males was the most difficult. In September 1983 the authorities ordered, in absolute secrecy,

the detention and killing of 8,000 Barzani men. The Ministry of Human Rights of the Kurdistan Regional Government launched an investigation that started in 2001 and is still going on in 2014. Due to the secrecy with which it was carried out, the investigation consisted of gathering all the possible documentation linking the crime with the regime, along with a series of expeditions to find the forensic evidence to present the case to the Iraqi High Tribunal. It found that the state had targeted a single group in a very short span of time, as a pilot project carried out by a regime that had grown confident in its perpetration of genocide. Thanks to the documentary evidence that links Saddam Hussein directly to the crime, and to the evidence gathered through an extensive forensic investigation, the Iraqi High Tribunal was able to try some of those responsible for this massacre as well as to denounce the participation of the regime.⁴

The Anfal campaign is one of the most well-known crimes committed by the regime. The indiscriminate use of internationally banned chemical weapons meant the involvement of various state agencies and the use of the policy of secrecy that characterized the previous crimes. Its impact on the Kurdish population is still evident in their daily lives due to the destruction of the entire infrastructure and economy, as well as the loss of entire families and villages. As one of the legal experts in charge of building up the legal case against the defendants, the author had privileged access to documentation which proves the state's responsibility for this massacre and its consequences on the civil population affected by it. This book offers a reading of the different phases of the massacre focusing in particular on the development of the events. It is also an analysis of the development of the legal frame in which those responsible were tried that shows the premeditation of this crime. In contrast with the other crimes analyzed up until now, this one and the one committed in Halabja involved the complicity of many military and political authorities. This is the first time that this crime has been investigated from a legal point of view in an attempt to understand all the different stages that led the state's machine to commit a crime against its own citizens and the social, psychological and political consequences that these events still have on them. As in the other cases, the different Iraqi federal governments showed no will to heal the wound caused by these events that had exacerbated the divide between Baghdad and Erbil, with the exception of some ineffective legal decisions.⁵

As for the Anfal case, until now nobody has run an investigation on the bombing of Halabja that focuses on the production of chemical weapons and establishes a direct link between chemical weapons and genocide. To do so is to demonstrate to the international community that the use of banned chemical weapons against a civil population cannot be ignored and has to be punished in order to prevent history from repeating itself. The evidence gathered was enough to try some of those responsible for the crimes. However, as in the other cases, justice has been very limited and has left the Kurds deprived of the compensation to which they were entitled, as well as feeling betrayed by Baghdad and its judicial system.

These investigations have also offered the opportunity to reflect on the limits of the Iraqi High Tribunal. It is not within the scope of this book to embark on a useful comparison between the Iraqi case and other cases such as the Yugoslavian or Rwandan genocides with regard to the legal frame in which the investigations and trials were conducted. It is worth saying, though, that in the Iraqi case, the absence of an international tribunal resulted in a fracture within Iraqi society with the consequences we are witnessing at this moment in time.

During the writing of this book, many events took place whose consequences will not be clear for many years to come. The role of the Kurdistan Regional Government is now different and the possibility of complete independence is not as close as it seemed at the beginning of this crisis. The situation is too unstable and unpredictable and the variables too many. Due to its role in this crisis and being one of the first interlocutors of the international forces involved in the region, the Kurdistan Regional Government has to project values that include religious and political tolerance and democracy, which is a huge shift from the ethno-centric self-determination it was pursuing just a few months ago. This is the challenge for a region that has been able to build a secular, democratic state in an area plagued by religious and political sectarianism. Memory can help to prevent atrocities in the future, and these investigations aim at contributing to the fight against their repetition.

Until now the Kurds have been very successful in reorganizing their society not only by building a nation but, equally importantly, by defending it against other attempts from different forces to hinder the whole process. The fight against ISIS found them unified in this still ongoing and difficult effort.

The author of this book does not think that merely denouncing the crimes despite the evidence can make them disappear. However, like Lemkin he believes that the only power against the repetition of genocides is a strong and effective international set of laws that guarantee the security of the minorities in the countries in which they are threatened.

Notes

- ¹ The unwillingness of the United States to take into consideration the social and cultural composition of Iraq in favour of the idea of a unified country under the control of Baghdad, as well as its political consequences, have been discussed in Peter Galbraith's *The End of Iraq: How American Incompetence Created a War without End*, London: Simon & Schuster, 2007.
- ² Galbraith, *The End of Iraq*.
- ³ The findings of this investigation confirmed the official number estimated by the Faylee Kurds Centre in Erbil and can be found at <http://www.faylee.org/english/>
- ⁴ This investigation, carried out by the author and his collaborators, including the search for the documents regarding this massacre among the thousands of archives left astray by the former regime, was the subject of a BBC documentary

directed by Gwynne Roberts entitled *Saddam's Road to Hell* broadcast in the UK in 2006. The documentary, broadcast all over the Middle East, was nominated for an Emmy Award in the United States in the same year.

[5](#) As will be explained more in detail in the chapter dedicated to the Anfal campaign, all the documents regarding this massacre are part of the evidence gathered by the author during his investigation.

1 A country in the making

Memory and human rights in the Kurdistan region

A government for the Kurdistanis: the Kurdistan regional government 1991–2014

When in 1991, after the Gulf War, the Iraqi government decided to withdraw its presence from the Kurdish populated areas, Kurds were suddenly left to face the consequences of years of war, forced displacement, oppression, genocide and lack of self-government. Paradoxically, the vacuum of power left by Baghdad did not cause the catastrophic consequences envisaged by the central government. On the contrary, due to the support of an international community sympathetic to their demands and to their tragedies, the media coverage of the 1991 exodus and the dissemination of the atrocities committed by the Ba'ath regime, together with the contribution of the vast Kurdish community in the diaspora, Kurds managed to organize themselves into a basic, traditional political organization based on the experience of the guerrilla war and its military logic.

The appearance of the Kurdistan Regional Government (KRG) after a controversial election in November 1992 signalled a pivotal moment in the history of Kurdistan. However, in the beginning, this government was still very fragile and did not have a clear identity. Its power was shared by major parties belonging to the Kurdistan Front, established in 1987, which in different historical moments supported the Kurds' struggle against the government in Baghdad. Despite the common task of finally giving land to the Kurdish people, it was not clear, due to the situation on the ground, which were the geographical boundaries of the new region, nor what its relationship with Iraq was going to be. The currents present in the KRG varied from a clear declaration of independence from Iraq to the proposal of a federal system.¹

Once in power and enjoying some legitimacy, the KRG had to face different challenges in addition to the tensions caused by its presence in the regional context.² The first, more important one was the difficulty of re-building a proud Kurdish identity after the tragic events experienced by the Kurds in the previous decade. Without any previous experience in administration, the members of the KRG, who had previously been insurgents on the battlefield, had to become politicians and administrators dealing with the severe lack of infrastructure caused by the conflicts and difficult social and political issues at internal and

regional level. The internal civil war in the KRG between 1994 and 1998, was another factor that led it to rethink its role in the area. After a war that had undermined its already feeble legitimacy within the Kurds themselves, the KRG had to rework its strategy and to focus its effort on state building. Despite the differences in the idea of what Kurdistan should become in the future, it was immediately clear to all parties that in order to maintain their identity, Kurds had to go through a painful journey of remembrance in order to reconstruct their past.

This book aims to be an account of the efforts made by the KRG and the Kurdish people to preserve the memory of their past in the hope that it would break the cycle of violence in which they found themselves. The author wants to highlight that Kurdish people underwent a courageous journey that led to the discovery of the uncomfortable truth of the genocides committed by the Ba'ath regime.

After 2003 and the fall of Saddam's regime, the urge to know the fate of the thousands of Kurds who had disappeared during the dictatorship led the KRG to start a series of investigations into these crimes. This was triggered by a series of trials against Saddam Hussein and his accomplices and by the doubts that this process had raised within Kurdish society as to whether justice had been done. This book aims to fill this gap by offering the results of the investigations of five crimes recognized by the Iraqi government and Western countries as genocides against the Kurds: the Arabization, the forced displacement of Faylee Kurds, the disappearance of eight thousand Barzanis in 1983, the Anfal campaign and the chemical attack on Halabja. All the evidence that was gathered on the ground by the author as Minister for Human Rights between 2001 and 2005 and later as Minister of Extra Regional Affairs and the KRG representative in Baghdad until May 2014, shaped the way he personally, and the KRG, related to the victims of these atrocities.

Through these investigations the KRG and Kurdish people acquired a better understanding of the population's basic needs, and it actually helped to improve their living conditions. This knowledge also contributed to the not always peaceful negotiations between Erbil and Baghdad over disputed territories and over the compensations to the Kurdish people that were proposed in the 2005 constitution and never fulfilled. This book also aims to offer a reading of the various attitudes towards the difficult relations between Erbil and Baghdad over agreements which have never been implemented.

[A government in the making³](#)

In order to understand the process that led to the KRG and its evolution it is necessary to mention the reception of the events that unfolded in Iraq after the first Gulf War. With the encouragement of the West, and at the same time over-estimating their own political capabilities, the Iraqi Kurds conducted a popular uprising against the Iraqi president, Saddam Hussein, in March 1991. At the beginning of the uprising, the Kurds were able to liberate all

Kurdish land. Unfortunately, due to General Norman H. Schwarzkopf's inability to deal with Saddam, the uprising failed. In a very clever move, Saddam managed to convince the American general to lend him helicopters with the excuse that they would be used for transportation.⁴ With the helicopters in his grasp, Saddam was able to threaten the Kurds who, with the Anfal campaign still fresh in their memory, sought refuge in the mountains. This was a repetition of a scenario that took place in very similar circumstances in the past, when the Kurdish leadership believed in the support of the United States⁵ after receiving the Bush administration's encouragement.⁶ During this phase, as had happened in the past, the uprising was short-lived, and after one month, the central government in Baghdad retaliated militarily against the Kurds in the north and the Shias in the south, forcing nearly two million Iraqi Kurds to flee into the mountains of Turkey and Iran. The refugee crisis that ensued brought the world's attention to the displaced Kurds, as well as assistance that the Kurds had never before received in the whole of their history. The repatriation of refugees to Iraqi Kurdistan created an environment suffused with humanitarian relief activities. United Nations (UN) organizations, nongovernmental organizations (NGOs) and relief agencies soon established operations in Kurdistan, where many remained for the next six years.

After 1991 the British Prime Minister, John Major, proposed the idea of a safe haven including only a reduced part of the governorate to secure the refugees where the coalition forces could help them. At the beginning, this safe haven included a small area in the Duhok governorate, but thanks to this the Kurds started to descend the mountains in order to deal with the deep refugee crisis. Later, this idea was extended further and included a no-fly-zone but not the thirty-sixth parallel. Some political analysts proposed a similar solution for the thousands of refugees fleeing Syria to escape from ISIS. Unfortunately, the conditions are very different from those that facilitated this solution back in 1991. One of the main problems is that in 2014, the United States was not the sole dominant power and any decision had to involve the participation of other regional and extra-regional powers like the Gulf countries, Russia and China.

A critical component of the humanitarian relief package to Iraqi Kurdistan was the role of Operation Provide Comfort (OPC) and the Coalition Forces. In addition to UN guard contingents, the coalition maintained its own security and no-fly zones in portions of Iraqi Kurdistan to protect parts of the Iraqi Kurdish population. The security zone included all of Dohuk but excluded the Erbil and Sulaymaniyah governorates.

The Coalition Forces maintained a small military presence at the Military Command Centre (MCC) in Zakho, a town along the Iraqi Kurdish-Turkish border. An important function of their presence was to meet the Iraqi military authorities, liaise with UN agencies, NGOs and local populations, and conduct daily patrols throughout the Dohuk governorate to display the Western commitment. Without the presence of international embassies in Iraqi Kurdistan, the MCC had unintentionally served as a diplomatic and political representative of Coalition

interests, and in particular, a conduit of United States policy in northern and southern Iraq.⁷

The no-fly-zone referred to the Kurdish-controlled territory north of the thirty-sixth parallel in Iraq. It included Dohuk, Erbil and parts of the Sulaymaniyah governorate and of the Mosul governorate in Iraqi-controlled territory. It is important to note, however, that the Iraqi Kurdish de facto zone or area under Iraqi-Kurdish control lay primarily in the eastern and south-eastern regions and included the cities of Erbil and Sulaymaniyah. It did not include the city of Kirkuk, although parts of the Kirkuk governorate were divided between Iraqi-controlled and Kurdish-controlled territories.

Between 1991 and 1996, these security provisions provided a sense of reassurance to local populations and NGOs. The presence of coalition forces maintained a modicum of stability in an otherwise precarious environment and it ensured a sufficient level of security to prevent another mass migration of the Iraqi Kurds across Turkish and Iranian borders. For the Iraqi Kurds, OPC was another sign of international support for the reconstruction of, and resettlement on their lands.

It is important to note that neither the U.S. government nor coalition or international governments recognized the Kurdistan Regional Government (KRG) as an official political entity. This was true until 2005, when the new Iraqi constitution recognized its existence. In addition, Article 53A of the TAL acknowledged the KRG's legal and administrative authority. However, from the beginning, U.S. policy and the policies of the coalition partners sought to ensure the territorial integrity of Iraq.⁸ One of the main stipulations of this policy prevented government support to the KRG, either through direct funding, or the provision of material goods. International humanitarian assistance, economic reconstruction, and other rehabilitation activities were conducted in coordination with 'local authorities'. However, ultimate decision-making and long-term planning were implemented separately and often without consulting Iraqi Kurdish political objectives. Thus, since 1991, Western officials and the humanitarian relief community have been required to work within a narrow political framework which supports Iraqi Kurds on a humanitarian and security level but not on a political one. In some cases Western officials did not deal with Kurds directly but with Iraqi opposition groups such as the INC.⁹

Without international and regional support, the Kurdish political parties headed by the two main Kurdish leaders, Masoud Mustafa al-Barzani (Kurdistan Democratic Party, or KDP) and Jalal Talabani (Patriotic Union of Kurdistan, or PUK), conducted meetings with Saddam in an attempt to reach a postwar autonomy agreement. Ultimately, after seven months, from April to October 1991, the negotiations failed. This was for two main reasons: the first was that Saddam Hussein did not have anything to offer to the Kurds except the 1970 agreement; and the second was that at no time did he acknowledge the crimes committed or show any regret. Baghdad responded by withdrawing central government support to the North, including financial, administrative and economic assistance. Saddam then imposed a blockade against

the Kurds, which created an internal border and further separated government-controlled from non-government-controlled territory. By November 1991 the Iraqi Kurds faced a double embargo: UN sanctions against Iraq and an internal embargo against the Kurds, which restricted commercial trade and traffic and the economic development of the region. All this caused a major shift in the Kurdish people's perception of their identity. Psychologically, the Kurds started to feel that they did not belong to Iraq and that their social, political and cultural destiny did not have any link with Baghdad.

[The Kurdish experiment in democracy: the Kurdistan Regional Government¹⁰](#)

The creation of the Kurdistan Regional Government (KRG) in 1992 was as much a response to the increasingly desperate situation as it was a determined effort towards realizing Kurdish autonomy. It also reflected the Iraqi Kurds' attempts to attract the political attention of the West, whose efforts to export democracy into former communist countries created hopes for a similar political transformation in the North. To further encourage participation in self-rule and to encourage Kurds to return to their land, the KDP leader Masoud Barzani issued a general amnesty, which pardoned anyone accused of collaborating with the Iraqi government before 1991. Masoud Barzani also proposed the idea of holding elections, and the Kurdistan Front added to the groundwork by preparing election laws, manifestos and policies for a future government. This was a remarkable moment because it was the first time that the idea of a general amnesty had been introduced in Kurdish and Middle Eastern history. Masoud Barzani understood some years before Nelson Mandela that there are two mechanisms which underpin any process of transitional justice: amnesty and truth telling. By announcing a total amnesty for the 470,000 Kurds who collaborated with the regime, Masoud Barzani strengthened the nation-building imperative. The amnesty went as far as to include the two Iraqi army corps occupying the country who were able to leave the region and return to their families. Without that pardon Kurdistan would not have survived the cycle of violence. This was a step that had to be taken in the current, dangerous and volatile situation in order to reduce the threat of an ethnic and sectarian conflict due to the change in the demography of the region and the ever pressing need for peaceful coexistence.

On 19 May 1992, the Iraqi Kurds conducted democratic elections, the first of their kind in Iraq and the Middle East with the exception of Israel, with the purpose of selecting a leader and national assembly for the Kurdish people. It was a critical moment in Kurdish political history, which brought hundreds and thousands of Kurds from rural villages and urban centres to the polling stations. Political fervour penetrated everyone and everywhere, and voting continued hours after the deadline to accommodate the remaining voters. Further, despite

some problems with voting, over 600 Western observers and UN monitors considered the election free and fair. The election signalled the high expectations that had developed in Kurdistan in anticipation of Iraqi Kurdish self-rule. It was the first time in history that the Kurdistanis had the opportunity to elect their own representatives without foreign interference.

The outcome of the election was as presidential as the process itself. The KDP received 25,863 more votes than the PUK; however, neither candidate secured the majority necessary to control the leadership position. Barzani and Talabani agreed to put aside their political rivalries and accepted a joint leadership position. This arrangement left both leaders occupying the same seat at the head of, but outside, the government, at least until a new election could be conducted at a future date. Additionally, both political parties failed to achieve a decisive victory in assembly seats. After reallocating votes of five parties that did not achieve the 7 percent threshold, the KDP obtained only 1.6 percent more votes than the PUK. To resolve the situation as quickly as possible, and avoid further political destabilization, the KDP and PUK agreed to compromise and administer the government together. The KDP willingly ceded one of its assembly seats to the PUK, which gave each party fifty seats in the National Assembly. Five remaining seats were allocated to the Assyrian Democratic Movement (ADM), giving the first National Assembly a total representation of 105 people.

Meticulous rules and regulations of democracy dictated the government-creation phase. Kurdish political entrepreneurs, many of whom were highly educated and fluent in Western political processes and procedures, attempted to show the world their capacity to live under democratic rules. They imported foreign political systems and superimposed these onto Kurdish society, which was largely unaware of the changes underway. Within weeks, the architects built their own Kurdish parliamentary system, which included a speaker of the house and a president of assembly. A ministerial cabinet was also created to include one prime minister and fifteen ministries. Interestingly, there was no opposition party, as Kurdish officials aimed to minimize any potentially divisive mechanisms. Impractical and contradictory technicalities did not matter at the time. Most new officials were extremely optimistic and preoccupied with the administrative tasks of staffing ministries, furnishing offices and creating jobs for civil servants.

The power-sharing system, or the so-called 50–50 split, was based on a rigid framework of political compromise. Political architects placed particular emphasis on maintaining the perception of an even balance of power. From the ministerial cabinet to local village councils, Iraqi Kurdish officials divided political and administrative life evenly between the KDP and the PUK. For example, the PUK Minister of Industry and Energy was required to appoint a KDP deputy, and the KDP Minister of Reconstruction and Development selected a PUK deputy minister. Ministers did not have the authority to devise policies nor implement programmes without the approval of their deputies. Similarly, at the village level, school

headmasters were mandated to hire assistants from an alternate party so that classrooms represented either the KDP or the PUK, but not both. Hospital and health centre staff, police departments and checkpoints were mixed, with KDP and PUK employees. Nearly all aspects of political life were split 50–50.¹¹

Several necessary components of a viable and legitimate political system were missing from this project. First, the KRG lacked a constitution; a constitutional framework devised by a delegation of Iraqi Kurdish lawyers was never officially formulated nor implemented. Thus, the KRG lacked an important source of political legitimacy from the outset. Election laws provided no mechanism for incorporating tribal leaders officially into the system, although many of them administered and secured large territories in Iraqi Kurdistan. Consequently, they felt politically disenfranchised and socially alienated from the KRG. KDP and PUK officials eventually incorporated tribal leaders into political positions on an ad hoc basis, either as commanders of the local Peshmerga in their territories or through quasi-governmental positions. However, the situation remained a source of contention between tribal groups and political party officials.

In addition, the process was designed to encourage a strong two-party political system and discriminated against individuals interested in political participation outside the KDP–PUK arena. According to election laws, candidates were required to join party lists, which entailed a nomination process by party officials. Although independent candidates were tolerated, the rules strongly encouraged KDP or PUK party list registration. They also left many non-KDP or non-PUK party members at a political disadvantage and tainted the notion of political freedom and toleration promised by political leaders. Further, party list requirements resulted in only 0.5 percentage of total valid votes (501 votes) being given to independent candidates for seats in the National Assembly. Consequently, the KRG was a composition of highly politicized individuals representing the KDP and the PUK. Post-election political appointments exacerbated the partisan politics of the KRG. The KRG appointed former political party public relations officials and Peshmerga leaders to high level posts and local political offices. Yet, there was no neutralization of political loyalties to complement this process. Despite the transfer of administrative and political responsibilities from the Kurdish political parties to the KRG, the government largely remained a party-controlled system. This situation lasted until 1998, when the Washington agreement put an end to a shameful and destructive civil war with the birth of a united government.¹²

Moreover, the leadership issue had not been resolved. Although election laws mandated that another election be held to select one leader of the Iraqi Kurdish people, Barzani and Talabani retained dual leadership positions throughout the two-year period. This issue was a source of political debate immediately after the elections, and was never fully addressed by either party.

Additionally, although the KRG had been created as a decentralized political system,

decision making was highly centralized. Barzani and Talabani often consulted with their Politburo members, many of whom formed the Presidential Council in 1993. However, they ultimately had minimal political accountability. Since both leaders remained outside and above the KRG, their authority undermined the roles and decision-making of the prime ministerial cabinet and the appointed members of the National Assembly.

Kurdish leaders and parliamentarians acknowledged these unresolved issues. However, they also recognized their lack of viable alternatives at the time. Another election would have been too costly, and it would only have exacerbated the existing unstable situation that could cause another destructive civil war. Furthermore, after the elections, Iraqi Kurdistan was a region ringing with boundless hope. The Iraqi Kurds had accomplished a near impossible feat; they had returned from the mountains as refugees, and within fourteen months were conducting democratic elections and creating a new government. Thus, the complications of their political system were seconded to immediate peace and compromise. It was this sense of hope, and the memory of the historical tragedies under Saddam's dictatorship, that pushed the Iraqi Kurds forward with their experiment.¹³

During the first year of the experiment, Kurdish officials focused on transitioning individual party apparatuses into a centralized administrative structure. This task involved merging party Peshmerga, or local militias, into the Unified Peshmerga Force under the direction of the Ministry of Peshmerga Affairs. Individual media and telecommunications systems remained within party control in order to ensure freedom of speech and expression. The KDP and the PUK maintained their own television and radio stations under the auspices of their respective party relations departments. The KDP and PUK delegated its major responsibilities to ministries and local departments until it was gradually subsumed into the KRG.

Kurdish political thought: between federalism and independence

After the elections held in 1992, it was clear that if the KRG wanted to survive it had to make an effort to establish a relationship with its own citizens. This was achieved by providing security, improving the economy and providing a new sense of common identity to all citizens. Its political thought was not very clear, even if the option of a federalist solution was widely accepted as a way of finally solving the Kurdish question to the extent that the Kurdish parliament adopted this solution on 4 October 1992. However, this solution called attention to the complexities and dangers posed by the Kurdish question not only in Iraq but also at a regional level. At the beginning of the 1990s, the adoption of federalism as a model for the relationship with the Iraqi population seemed to be the most reasonable response to the need for Kurdish independence. The Kurdish parliament chose federalism in the understanding that

cementing the relationship with Baghdad would pave the way to a stable Iraq once Saddam Hussein had been defeated. This constituted the first step towards the current federal system in Iraq; and this vision received its final endorsement in September 1992, when, during a preliminary meeting that the Iraqi opposition forces held in the towns of Salahuddin and Shaqlawa, a declaration endorsing the right of the Kurdish people to self-determination within a “unified democratic Iraq” was issued.¹⁴ The final communiqué issued in the meeting was very clear in endorsing the concomitance between the establishment of a democratic system in Iraq and the solution of the Kurdish problem. The Kurdish government at the conference of the Iraqi National Council held one month later endorsed federalism, declaring that it “acknowledged the respect for the will of the Kurdish people in choosing the form of the relationship they want to enjoy with the other partners in the unified homeland represented by federalism. This requires a rethink of state structures in Iraq through constitutional means.”¹⁵ At the same time, the INC emphasized “the establishment of a federal, democratic, parliamentary, and pluralistic system which respects human rights within the framework of constitutional institutions, the rule of law, and judicial independence.”¹⁶

At that time the opposition parties, including the ones that did not take part in the conference, such as the Al Dawa party, were still undecided about a possible solution to the Kurdish problem. Some of them were still anchored in the past and struggled to deal with the changes occurring at internal, regional and international level. At the same time, the fact that the belief in self-determination had to pass through the idea of federalism raised questions which needed answers impossible to tackle at that point in time. Some of the opposition forces believed that the idea of federalism meant a return of nationalism and would have eventually meant fragmentation and cessation. Other opposition groups believed that federalism meant, not fragmentation, but a viable route towards a pacific coexistence between Arabs and the other minorities present in the territory. They also thought that federalism could only be realized within the framework of a democratic system, that it represented a step towards a voluntary relationship between Arabs and Kurds, and that it implied a reorganization of the Iraqi state on a new basis in a united Iraqi homeland as stipulated in the constitution of 14 July 1958. At the time it seemed as though the idea of federalism meant a widening of Kurdish participation in political decision-making and in running the state according to the proportion of their presence in the country. The faith in federalism as a way of unifying an otherwise fragmented country was based on the experiences of other countries, and the opposition thought that this could work in Iraq in the future. The opposition was also sure that the coexistence between the two groups would nullify the military option favoured until then by all Iraqi governments to solve the problem of the minorities.¹⁷

On a regional level, states like Turkey and Iran, with a considerable presence of Kurds, feared that the idea of federalism would spread in their countries and endanger their national unity. The foreign ministers of Syria, Turkey and Iran expressed their negative opinions on this

in a meeting held in Ankara on 19 November 1992. This situation lasted until meetings to discuss this topic were held in 2003. The meetings saw some kind of opening on behalf of these countries, which in any case kept their position regarding the federal organization of the Kurdish region. Despite all this, at that time, the idea of self-determination was widely accepted by opposition groups acting as representatives of the Kurdish people, and they proposed that the acceptance of this right had to be taken into consideration in conjunction with the international situation and the existing balance of powers in the Middle East.

UN Security Council Resolution 688¹⁸ and the Kurdish question in Iraq¹⁹

Since the first days of adoption on 5 April 1995, the author dubbed the United Nations Security Council Resolution 688 'the orphaned resolution'. In fact, no one accepted legal responsibility for its implementation. Resolution 688 is the only resolution that the Security Council adopted concerning Iraqis in general and Iraqi Kurds in particular after the invasion of Kuwait and the outbreak of the Gulf War that was not adopted according to the seventh chapter of the UN Charter. Despite this, it was the first time in its forty-six-year history that the world body had so explicitly addressed the Kurdish question in Iraq. David McDowall²⁰ also described the resolution as historic; it was the first time since the league's arbitration of the Mosul *vilayat* in 1924/25 that the Kurds were explicitly mentioned. It was also the first time the United Nations had insisted on the right of interference in the internal affairs of a member state. This meant a powerful shift in the idea of sovereignty because it opened the doors for the international community to intervene in a country's political life if it constituted a threat to the political stability of the region or the international community.

At that time it was remarkable that all the other Security Council resolutions concerning Iraq were adopted within the framework of sections 39 and 40 of the charter, which led to the implementation of sections 41, 42 and 43. These sections were concerned with punitive measures. These resolutions, more than 30 in number, were all compulsory and called for all means, including the use of force, for their implementation, with the sole exception of Resolution 688, the drafting of which was closer to the sixth chapter of the UN Charter dealing with the peaceful solution of international disputes, without this being explicitly stated. Although Resolution 688 was binding (as are all Security Council resolutions), it did not require the use of force for its implementation. This raised legitimate legal and political questions concerning the Security Council's true motives for adopting the resolution in the first place, especially if its ambiguity on the one hand, and the lack of mechanisms for its implementation on the other, are taken into account.

It is realistic to assume that the resolution was adopted in response to the pressures

generated by the alarming Kurdish refugee exodus from Iraq at the end of the Gulf War, and to the increasing international calls for the observance of human rights. It is not clear why the Security Council and 'international legitimacy' forced the Iraqi regime to hold free and fair elections under the auspices of the UN and observed by a neutral body in cooperation with the Arab League. The UN has, in the past, overseen elections in Nicaragua, Cambodia, Angola, El Salvador, Haiti and South Africa. At that time the elections, held under specific conditions and according to international precedents, could have allowed the Iraqi people to choose genuine representatives, especially as the current regime, with universal admission, was declared to have lost its credibility and thus placed itself outside international legitimacy both externally and internally. The South African experience, despite the conditions specific to that country, was a new model that demonstrated the possibility of forcing rulers to abide by internal popular will and international legitimacy.

[Human rights abuse: a difficult past](#)²¹

Resolution 688 had three important dimensions. The first was its humanitarian face, the second its legal phrasing and the third its political objectives. As to its first dimension, the resolution reviewed, in its preamble, the plight of the civilian population of Iraq and the flood of Kurdish refugees across its borders, and expressed the concern felt by council members about these events. It referred to letters to the council from the Turkish, French and Iranian representatives to the UN on 3 and 4 April 1991 concerning the situation in Iraq in general. After emphasizing its commitment to the territorial integrity of Iraq, the council proceeded to outline its course in eight articles that turned out to be weaker than its previous resolutions, and threatened to put Iraq under UN tutelage. Resolution 687, especially the so-called mother of all resolutions, certainly was to that effect. Resolution 688 condemned the repression practised by the regime against the civilian population, including Kurdish population centres, and demanded that this repression cease, as it considered that its consequences constituted a threat to international peace and security. This linkage of the respect for human rights with international peace and security was a significant theoretical development in human rights ideology, although it did not fulfil the ambitions of the Iraqi case. On the other hand, it was a step forward as far as the issue of repression in Iraqi Kurdistan was concerned, which was hitherto ignored by the international community at a time when its dangers and evils were proliferating and taking on visible manifestations in the Anfal operations in Kurdistan: the use of chemical weapons against the town of Halabja, the campaigns of the displacement of Faylee Kurds on the premise of alleged 'Iranian origins', and the disgraceful record of human rights violations in Iraq.

The council also insisted that the Iraqi authorities allow the entry of humanitarian aid provided by international organizations. It asked the Secretary-General to continue his

humanitarian efforts and to report on the plight of the civilian population, especially the Kurds and the displaced, and it also asked the member states to provide them with aid. The council decided to keep this matter under consideration. The Secretary-General, however, did not submit the report required of him in the resolution, nor did he despatch any delegation to the area, nor was the matter reviewed as it was supposed to be. All these aspects of the resolution were overshadowed by its commitment to the territorial integrity of the country.

In the second legal dimension, Resolution 688, which was rightly termed the human rights resolution, called for the respect of human and political rights. This matter was no longer a purely internal matter under the unofficial U.S. jargon of the New World Order. The concept of absolute sovereignty was somehow eroded, and the scope of human rights, as a basic concern, an independent principle, and a mandatory precept, i.e. *jus cogens* in international law, was widened. The concept of human rights, since it gained widespread international recognition, was no longer restricted to the relationship between government and the governed in a given state. It became the duty of states to abide by the international norms and guidelines concerning human rights, and in particular the Universal Declaration of Human Rights of 1948 and the two international covenants concerning 'Political and Civil Rights' and 'Economic, Social, and Cultural Rights' of 1966. Thus, hiding behind article 2, [chapter 7](#) of the UN Charter, which forbids interfering in the internal affairs of member states – the essence of sovereignty – was somehow overlooked. On the contrary, interference with the purpose of enforcing the respect of human rights became an international issue on which the participating states agreed to relinquish part of their sovereignty and accept outside interference in order to monitor and disclose their human rights record. This 'interference' has positive and negative aspects in the light of prevailing international norms. It may be used negatively for political purposes to damage a state's sovereignty, especially in the absence of justice on the international stage.

The Iraqi regime may have complained of interference, but at that time it was a well-known fact that Iraqi sovereignty had been non-existent for the previous six years, ever since the same regime accepted humiliating and unjust terms in the cease-fire agreement which ended its Kuwait adventure. The regime accepted the terms contained in Security Council Resolution 687 which laid Iraq open to all manner of interference, whether in the fields of armaments, reparations, etc., which detract from Iraqi sovereignty, in exchange for sparing the regime itself and its leader.

The forces of the international coalition and the UN enjoyed all the rights accorded to occupying powers by international law, but they shirked the duties expected of such powers as stipulated in international conventions and especially the Geneva Convention of 1949, which guaranteed protection for civilians by not allowing criminals to escape justice and to continue to jeopardize their lives and their fate. The coalition forces thus added another responsibility to those already incurred by their aggression.

Circumstances underlying Resolution 688

Resolution 688 was issued after the Security Council had issued 14 other resolutions against Iraq between 2 August 1990, the date of the invasion of Kuwait, and 5 April 1991, the end of the first Gulf War. It came two days after Resolution 687 was passed. Resolution 687 was the longest and most far-reaching resolution in the history of the UN. It contained 34 articles dealing with the sovereignty of Kuwait, demarcation of the Iraq-Kuwait border, weapons of mass destruction, the payment of war reparations and the renunciation of violence, among others. Resolution 688 was passed after the defeat suffered by Iraq on the one hand, and on the other, the crushing of the popular uprising which followed that defeat and the Kurdish exodus to Turkey and Iran. It was passed at a period in which a new international balance of power was in the making, and in which the US became the major player on the world stage and the sole manipulator of international relations. Ronald Newman, the Assistant U.S. Secretary of State for the near east and northern gulf regions, in his report of 27 January 1994, three years after the resolution was passed, reiterated his country's priorities vis-à-vis Iraq as being Resolution 687, Resolution 715 (dealing with disarmament), and Resolution 833 (border demarcation). Only at the end of the list of priorities did he mention Resolution 688, without even going into Resolutions 706 and 712, which were the original 'oil for food' resolutions, and the precursors for Resolution 986. Iraq rejected 706 and 712, just as it had initially rejected the improved version, 986, passed in April 1995, but which it finally accepted after protracted negotiations lasting more than a year.

The Clinton administration, since coming to power, insisted on continuing the blockade of Iraq, which has resulted in untold losses to the civilian population of the country and infringements of their human rights, without any hope of a political settlement appearing on the horizon which would guarantee the implementation of Resolution 688 through the responsibility of the U.S. as a world power and as a permanent member of the UN Security Council. The objective of the U.S. policy of dual containment of Iraq and Iran was to destabilize Iran and weaken Iraq without discussing change or having a complete blueprint for change, while it continued with its policy of sanctions. This was the political dimension of the resolution.

What is still remarkable today about the drafting of Resolution 688 is its ambiguity and the great degree of caution in its phraseology. At times it seemed contradictory. After emphasizing the need to respect sovereignty, territorial integrity and political independence, it called for an end to repression, respect for the human and political rights of all citizens (a cornerstone of sovereignty) and non-interference, which has been demolished in the interests of human rights as a binding principle. Thus, the task of implementing the resolution in its present state according to its different interpretations was very difficult. The Iraqi government, which totally rejected the resolution, wanted to minimize its effects by exploiting the element

of ambiguity which it contained, especially as the positions of some states, including some of those that had a part in passing it, reflected the cautious nature of its drafting. They feared that interference in the matter of human rights might create a precedent, as in the case of China, for example.

While the Iraqi government took this stance, the Security Council, and especially some of the more influential of its member states, wanted to restrict the resolution to narrow its humanitarian aspects without elaborating on political and legal interpretations which would guarantee genuine changes in the nature of the political regime in Iraq and the manner with which it dealt with its citizens. The regime tried to manoeuvre itself out of international condemnation by carrying out a fake presidential referendum and fake parliamentary elections. Whatever was said about these measures being fraudulent, they still illustrate the readiness of the regime to comply with some of the conditions, albeit in its own way, without accepting Resolution 688. The task of widening the interpretation of the text of the resolution and embodying its spirit in order to reach its objectives and open the doors to a fundamental change was not an easy one. It depended on the degree of political polarization it would cause within the regime and among the opposition.

In 1996, the opposition felt that there were many opportunities to link the UN resolution with the human rights issue in Iraq. For example, the implementation of Resolution 986, the 'oil for food' resolution, could have been linked to Resolution 688 under UN supervision. This would have included the victims of repression in jails and refugees in border areas, and would have paved the way for monitoring human rights violations in Iraq. Resolution 688 expressed the hope of establishing an open dialogue to guarantee the respect of human and political rights. But this principle was not clearly stated. It did not specify who should take part in this dialogue, that is, whether it would be the regime or the opposition. There were other questions to be asked. Was it to be held under the auspices of the UN, or would the UN be a participant? When and where would this dialogue take place? What would be the mechanisms for holding it? The Iraqi regime believed, rightly, at that time that its acceptance of Resolution 688 would mean the beginning of its end, especially if the implementation of the resolution was under direct UN, or any other trustworthy international or regional, supervision. That is why the Iraqi government tried to delay the end by not accepting it.

It can be argued that delving into the meanings behind the texts in order that their interpretations may be widened in a pragmatic fashion constituted an extremely important political matter. Thus, respect for the human and political rights of all citizens meant, among other things, the holding of legislative elections within the framework of pluralism and the rule of law, as well as the abrogation of all legislation which legitimized the violation of human rights as part of the ongoing political conflict. At that time, this should have been done within balances of power and with suitable international guarantees. Resolution 688, therefore, required people to cultivate and care for it and make its implementation their responsibility,

whether they were Security Council members or the parties which benefited from its implementation. The KRG's main target in the investigation of human rights abuses against the Kurds was to gather enough evidence of the genocides in order to avoid a repetition in the future. The revision of the past led to a re-thinking of the relations between the different parties involved and forced them to understand the reasons for the conflict, and to find a solution. The investigation into the crimes also had the purpose of educating new generations of the dangers posed by any dictatorship. This did not happen, and many resources and opportunities have been lost in an important area of humanitarian assistance which could have alleviated the suffering of the people of Iraq and rescued them from their ongoing tragedy.

[Investigation into human rights abuse in Iraq](#)

After all these years it seems that the urge to carry out an investigation into human rights abuses in Iraq against the Kurds comes from the disappointment of Resolution 688 and the lack of clarity and implementation by the international community. The resolution, despite its lack of clarity, was welcomed at the beginning as an unambiguous invitation to respect human rights in defence of the Iraqi people. At the same time it was seen as a means to achieve Kurdish self-determination internally, regionally and internationally.

However, it was only after four years of civil war had weakened the Kurdish cause that the KRG started to make a shift in its political thought, and to leave aside its most extreme views and its claim to an independent status. Due also to the dramatic civil war that lasted from 1994 to 1998, the Kurds had to change their minds and deal with their past. This meant a major shift in the way they read their recent history. Some of them, due to the mistrust derived from the Anfal campaign, gained the perception that their relationship with Iraqi Arabs could not ignore the abuses suffered during the regime. Along with the need for a revision of the KRG, its role in Iraqi Kurdistan and its political forms, the cease-fire gave the KRG the opportunity to re-establish a link with its citizens and to start a series of initiatives that would allow their unification into a new society. As for any other nation that went through the same process of reconstruction, the Kurdish people started with a revision of their historical links with the rest of Iraq. However, in 1998, due to the dangers still posed by Saddam's regime, it was difficult to conduct a real investigation. This had to wait for a better moment. In the meantime, the international events, in particular the war in Europe, paved the way for a new phase in Kurdish and Iraqi relations.

Notes

¹ Alex Danilovic in his *Iraqi Federalism and the Kurds*, London: Ashgate, 2014, offers a very detailed analysis of how and

why the idea of federalism was embraced by the Kurds.

- [2](#) Scholars such as David McDowall in *A Modern History of the Kurds* (2000), offered a very extensive study of the regional tensions caused by the establishment of the KRG and the forming of a secessionist aspiration within Turkey, Syria and Iran.
- [3](#) The following pages are based on unpublished writing about the birth of the KRG written by the author in his role as legal expert in London during the 1990s for all Iraqi opposition leadership, including the Kurdistan front.
- [4](#) This is a very famous episode of the war reported by different sources, including the already quoted books by Peter Galbraith and Samantha Power.
- [5](#) It is well known that the policy implemented by then US Secretary of State Henry Kissinger betrayed the Kurds by supporting the Algiers agreement in 1975. In addition, the Kurds still remember how Henry Kissinger, answering the Barzanis about his promises, said that the policy was “no more than a covert operation”.
- [6](#) David McDowall, *A Modern History of the Kurds*, London: I.B. Tauris, 2004.
- [7](#) A detailed analysis of the historical events that led to the formation of the no-fly zone and, as a consequence, of the semi-autonomous region of Kurdistan in Northern Iraq, can be found in McDowall.
- [8](#) Peter Galbraith makes a very good case talking about the obsession of the U.S. administration for maintaining the status quo in Iraq even against the advice of some of its advisors.
- [9](#) The author, as Minister for Human Rights and Minister for Extra-Regional Affairs, can confirm the unwillingness on the American side to take into consideration the reality on the ground – an opinion also shared by Galbraith.
- [10](#) Part of the following account of the birth of the KRG and the role played by Masoud Barzani is based on the author’s unpublished personal notes.
- [11](#) McDowall, *A Modern History of the Kurds*.
- [12](#) Ibid.
- [13](#) Galbraith, *The End of Iraq*.
- [14](#) Danilovic, *Iraqi Federalism and the Kurds*.
- [15](#) Ibid.
- [16](#) Ibid.
- [17](#) Ibid.
- [18](#) A complete text of the resolution is available at <http://www.casi.org.uk/info/undocs/scres/1991/688e.pdf>.
- [19](#) The reflections on Resolution 688 are based on the author’s unpublished notes.
- [20](#) McDowall, *A Modern History of the Kurds*.
- [21](#) The following analysis of the impact of Resolution 688 on the history of the Kurds is based on the author’s personal notes written at the time and revised for this book. An analysis of Resolution 688 can be found in Michael Rear’s *Intervention, Ethnic Conflict and State-Building in Iraq: A Paradigm for the Post-Colonial State*, London: Routledge, 2008.

2 Arabization as ethnic cleansing

Rebuilding Kurdistan: a difficult past, a challenging present

It was on 30 December 2006 that the ex-dictator was executed. Saddam was wearing a black coat and civilian clothes like every detainee who has been held illegally, which gave the impression that he was a victim and not a defendant. The official verdict was that he was condemned for the killing in Dujail of 148 of his own citizens who Saddam believed were guilty of plotting against him. In the wake of the video recorded and uploaded by the Iraqi Ministry of the Interior on the Internet for everybody to see, a routine that reminded one too closely of the obsession of the security forces for recording the torture of political detainees during the regime, President George W. Bush released the following statement: "Fair trials were unimaginable under Saddam Hussein's tyrannical rule. It is a testament to the Iraqi people's resolve to move forward after decades of oppression that, despite his terrible crimes against his own people, Saddam Hussein received a fair trial."¹ In reality, from the Shia point of view, this was a way of dealing with a figure who, according to misleading intelligence information, was going to be brought back to power by an American complot or was going to be freed from prison by Ba'athist insurgents. According to Judge Mohammed Al Uraibi,² a member of the IHT, and other observers, this was an act of revenge and, on the American side, a quick way of dealing with him.

In the eyes of the lawyers and judges working on the cases of genocide, including the ones in the Iraqi High Tribunal, the majority of whom were excluded from the decision and kept in the dark about the execution, any attempt to build a credible judicial system in Iraq was severely undermined by this event.³ Some of the leaders of the opposition were present at the execution.⁴ Watching the video after some years, there are various elements that sustain this view, both legal and cultural. From a strictly legal point of view, the execution took place when Saddam was still the number one defendant for Anfal and many other cases. In addition, this early execution, carried out against Muslim religious custom as that evening was Eid al-Adha, the end of Ramadan, meant that he was not going to be tried for these crimes and that justice had been hijacked by the sectarian fight between Shias and Sunnis. The video shows one of those present praising Shia cleric Muqtada al-Sadr. Immediately, the Sunni Saddam mocks him, in a last, sad exchange of words.⁵

It was as early as June 2001 when the Ministry of Human Rights of the KRG started to investigate, for the first time in a professional way and out of the reach of the media, the

crimes committed against the Kurds. Its priority was to promote human rights culture and education as well as peace education in the region. This was done by organizing workshops and curriculum development activities for educators and civil society activists in order to promote children's and women's rights. But besides this, the main purpose was to gather enough evidence in order to take the perpetrators of the crimes to court. However, during the 2003 war against Iraq, the main focus of the ministry was Saddam Hussein and his cruelty. Still, the language of Kurdish politics was the language of the opposition, dictated more by the need for propaganda than by a concrete plan of action on the territory. So, at the beginning the KRG Ministry of Human Rights, with the help of NGOs and very little support from the Americans, started to gather an immense amount of documentation related to Arabization, Faylee Kurds, Barzanis, Anfal and Halabja. For some of the crimes, such as Arabization and those against Faylee Kurds, this process had started years before and was fairly easy. It was the same for the Anfal case, for which the ministry gathered more than 30,000 documents considered relevant by a court of law. In its obsession with recording every movement and every decision made, the regime left many traces behind. The real puzzles were the two cases concerning the Barzanis and Halabja. Twenty years of investigations were necessary in order to start to dig out the truth about the deportation and killing of 8,000 Barzani males. Years of investigation were also necessary to shed some light on those responsible for the attack on the district of Halabja during the Iran–Iraq war. In both cases, the documents were non-existent or not enough to bring the cases to court and the investigation had to wait until the end of the war and the toppling of the regime to organize and single out the possible sources of information among collaborators, Iraqi ex-military personnel, UN people and representatives from the media in and outside Iraq. It was only after 2003 that a real investigation on the ground could take place.

After a dictatorship, society ought to think about justice in order to deal with the victims and the past. This was the first law to be dealt with by the Iraqi Special Tribunal in 2003. It was necessary because in the Iraqi legal system it was impossible to take the persecutors to court for international crimes because there was no court in charge of judging international crimes, and genocide was not considered a crime according to Iraqi law. At the same time, given the international disagreement over the intervention in Iraq, the establishment of an international court, as in the cases of Yugoslavia or Rwanda, for example, was unthinkable, since France, Russia and China would have opposed it. This is in addition to the traditionally tepid U.S. attitude towards the establishment of any international tribunal, especially in territories under its control. So the Coalition Provisional Authority (CPA) was obliged to establish a court without international support. At the beginning it was called the Iraqi Special Tribunal and it was in charge of investigating the crimes committed by the Ba'ath party between 1968 and 2003. Later, since the name was a reminder of the special tribunals during the regime, they changed it to the Iraqi High Tribunal. The first session opened in November

2004 with the Dujail case. Later, the IHT started to deal with other major cases: Anfal, Halabja, Barzanis, Faylee, Arabization, the uprising in 1991 and the killing of Islamic opposition party members.

From its beginnings and from the way it was formed, it was easy to predict how the court would function. The way the judges were recruited was not based on international legal standards.⁶ They lacked the experience to deal with such high-profile cases, and for most of them, taking on the position was a way of earning the high salaries offered. This meant that corruption was rampant and favouritism and sectarianism started to surface from the beginning. In particular, the failure of the IHT – that is, its lack of credibility – was due to the mismanagement of the rivalries between Shias and Sunnis, which was due to the fact that the Sunnis started to present themselves as the heirs of the former regime. The harsh reality is that in the end, the IHT became the means of allocating jobs to the family members of the judges and the officials involved instead of the means of obtaining justice. With the exception of the Kurdish judges, most were not professionals and therefore they were unable to trigger a real reconciliation process through the justice system.

In addition, the constant interferences prevented the court from being impartial, and the fragmentation of society was reflected in its work. Both Sunnis and Shias intervened in the court. For example, the main Shia figure, Abdulah Aziz Al Hakim, in charge of the Islamic Revolutionary Council (IRC) of Iraq, interfered with the work of the court daily until the Kurdish Judge Rezgar, the first to give in to political pressure, resigned.⁷ On the other hand, on the Sunni side, there is a letter written by then Iraqi Vice President Tariq al Hashemi⁸ to the court in defence of the Sunni former minister of defence Sultan Hashim, a top army official accused of taking part in the Anfal campaign, among others. This letter invited the court to respect the Iraqi army symbols during their sentencing, an invitation that sounded like a threat in the case of a death sentence. So the court was used for political propaganda despite the cases of genocide committed by Saddam's regime. This is an overt violation of the independence of the Court of Justice.⁹ In July 2011 his transfer from American to Iraqi custody reignited the conflict between his supporters who saw him as a 'national hero', and the ones, including the Kurds, who would have liked to see him executed for the crimes committed against them. Judge Rezgar was the first Kurdish judge from Sulaymaniyah to participate in the first stages of the IHT. During the trials that were broadcast live on Iraqi TV, his professionalism and the fact that he was running the trial without showing any sectarian bias irritated the Shia politicians. The pressure was so high that he resigned from the court. Abdullah Aziz al Hakimi, one of the main members of the Shia party, started to interfere in the court after the Dujail case, saying that it was not fit for its purpose. He criticized the judge because the judge was polite to the defendants. Incapable of understanding that the court should be independent and act according to the law, he did not understand that revenge was not the final purpose of the trials. This made legal experts feel that this was not a fair trial. The

court was not intended to be a tool for one group to take revenge on the other, but a means to provide a revision of the past in order to build the basis for a coexistence among the different groups and to avoid the rise of a new dictatorship. Unfortunately, Iraqi society had missed this opportunity and had to endure another eight years of dictatorship under Maliki. This cost the country millions of dollars and led to the death of innocents and a further, now unstoppable fragmentation of society that prevents any possibility of dialogue. Before 2003 the country suffered from eighty cases of cruelty and genocide followed by eight years of loss and corruption during Maliki's government.

All this also undermined the other mechanisms put in place in order to build a credible Iraqi judicial system present in the constitution that had been approved via a popular referendum in 2005. For example, in [Chapter 2](#) of the transitional provision, Article 128 declares that the State guarantees fair justice to political prisoners and would condemn the oppressive practices carried out in a previous dictatorial regime. From a legal point of view, this is a very general article according to which the state should guarantee justice, including compensation and civil rights, to all the victims of the regime.

Article 131 of the TAL stated that the commission for the de-Ba'athification of society should be independent. This commission was charged with verifying that senior members of the Ba'ath party belonging to the former regime received public, political or military charges. Despite this commission, members of the Ba'ath party can still be seen now in 2016. For example, 85 percent of the military are Shias, while the majority of the officers are ex-Ba'athists. In addition, Article 132 set up the Property Claim Capital Commission in charge of returning the properties confiscated, in particular in Kirkuk, by the Ba'ath regime. However, the commission focused all its effort in the south of the country, leaving the question of the disputed territories basically unresolved and creating a situation of permanent conflict between the KRG and Baghdad. The commission's budget has been used as another source of corruption and a tool for buying votes from Shia communities. Instead of being the means of solving a complicated and delicate budget issue, this commission became a source of corruption to the point that its commissioner Ahmad Al Barak was jailed for eight years under corruption charges. A commission for political prisoners was also created. However, this commission did not manage to bring justice to the victims in a transparent way, but instead became a tool for pursuing sectarian and personal interests. For example, in order to be considered for compensation, the victim had to provide a letter stating the time they had spent in detention during the regime. This process was often jeopardized by sectarian rivalries between Shias and Sunnis. A famous example of this is the case of Salah Al Shaichly, spokesman for the Iraqi national congress in London from 1994 to 1998 who, after the war, became Iraqi ambassador in London. It took him eight years to get a letter from this commission stating that he was part of the opposition during the regime, and this was because he was Sunni.¹⁰

It is not an understatement to say that the transition period failed to bring justice to the victims. During this time the legal system was not reformed, nor was society educated to respect human rights, democracy and justice. Also during this period, few of the perpetrators were adequately punished. This, along with the permanence of laws in force during the regime, weakened the image of the tribunal for Iraqi citizens. In addition, no appropriate measures were taken to deal with the victims of the crimes in order to restore their dignity and integrate them into a reconciled and unified community. Furthermore, the truth was not pursued, a very important element in every post-conflict nation-building process. Most of the families of the victims are still waiting for an answer, and what is worse, they have not been aware of the work of the IHT and the commissions or of their rights. The transition period saw no attempt to reform the governmental institutions. The most shocking examples of this are that former Ba'athists are in the federal government and soldiers and officials who participated in the Anfal campaign are in the army. These are worrying signs because, as the last events show very clearly, the machine that produced the dictatorship has not been disarmed.

The judicial system has been subject to threats and abuse. In 2011 seven judges were killed and another seven wounded. In the same year in July, the IHT was dissolved and with it the Investigative and Trial Chambers. According to the dry language of the U.S. Department of State, Trial Chambers One and Two concluded all pending cases with 175 convictions and 133 acquittals. Apparently there are no pending appeals.¹¹

[Displacement and Arabization through state intervention](#)¹²

Since the beginning the KRG tried to overcome this situation by conducting its own investigations into the crime of genocide committed during the regime. This was in the belief that Kurds had to know their past in order to build a new society based on new values and in order to distance themselves from the violent history of Iraq. The term *Arabization* refers to the imposition of Arab political values, beliefs and demographic changes. It occurred first when Islam was brought to Kurdish territories in the sixth century, and it stayed active in Arab political culture throughout Iraq's history. History sheds light on the fact that Arabization started when the Arab invaders, under the banner of Islam, invaded the regions.

Since its inception in 1921,¹³ Iraq has been a multi-ethnic, multi-religious and multi-sect society. Nonetheless, it has been ruled under pan-Arab ideologies with no regard for the identity of other ethnicities in Iraq. Instead of adopting a democratic constitution to represent the various peoples with different cultural or religious affiliations, the Iraqi governments implemented a policy of Arab nationalism and declared that Iraq was a part of the greater Arab nation with literally no viable constitutional recognition of non-Arab identities.

King Faisal I, the imposed king of the people of Iraq, saw Iraqis as groups of people with nothing in common. As the head of state, he failed to build bridges amongst the two major nationalities and other smaller ethnic groups in the country; rather, he laid a foundation and precedent to promote Arab nationalism and culture. As a result of such myopic policies, Kurds, Turkoman, Assyrians and others suffered much and were deprived of their democratic, national and cultural rights.

During the 1960s, Arabization was used by the consecutive regimes in Iraq to change the demography of Kurdistan. It was first adopted early in 1963, when the pan-Arab nationalists came to power. The policy was gradually implemented in the historically Kurdish territories. Slowly but steadily Arabization continued until the Ba'ath Socialist Party took over again through a military coup in 1968. Nonetheless, at the beginning, this policy was implemented in a less visible fashion. Under the Ba'ath regime, particularly after Saddam Hussein became the president of Iraq in 1979, Arabization of Kurdistan intensified, and it continued until the collapse of his despotic rule in 2003.

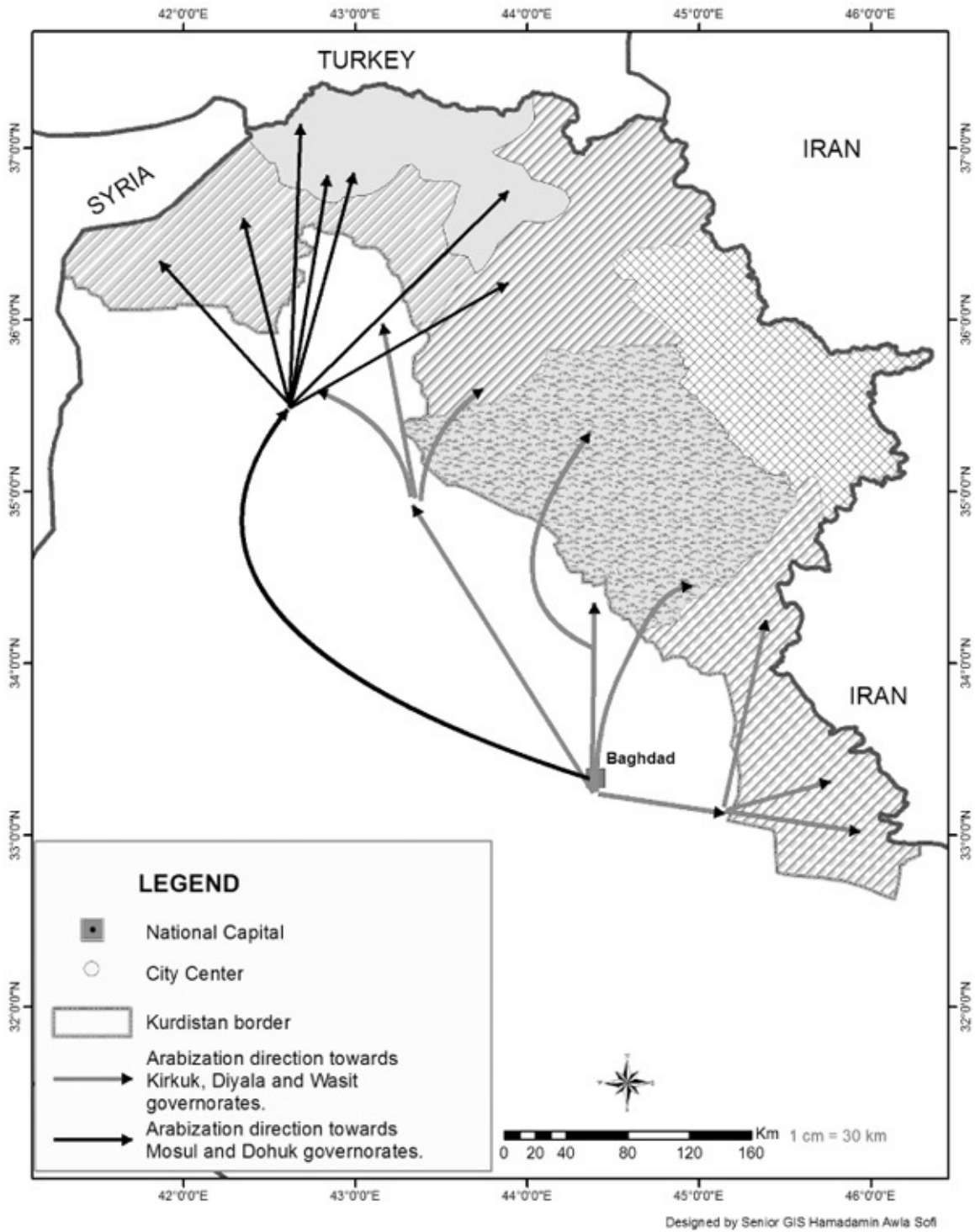
In order to complete the Arabization of Kurdistan, the Arab nationalist Ba'athist regime used the educational and judicial systems as well as the police and security forces as tools to implement their policies. The aim was to promote Arab culture and history, while banning anything related to Kurdish culture and identity. This policy slowly turned into an ethnic cleansing operation aimed at destroying the Kurdish presence in the country. This meant that in the Kurdish case there is a direct link between Arabization and genocide since this policy was adopted by the Ba'ath regime and by the pan-Arab nationalists in order to suppress Kurdish people and culture. Genocide has been used as a means to Arabization, and this is consistent with the psychology of the dictator whose main purpose is to guarantee his own exclusive control on the land and the fulfilment of the pan-Arab ideology.¹⁴

Arabization was implemented in two ways: the first entailed massive forced deportation and the destruction of the livelihoods of Kurdish people. The second can be seen in the context of the Iraq–Iran war with the indiscriminate use of the Iraqi army against Kurdish civilians in the Anfal campaign. The displacement or forced deportation was somehow socially acceptable to Arab public opinion, perhaps because Kurdish territories were distributed amongst the Arabs who were brought to Kurdistan from central and southern parts of Iraq. Both these extreme measures were intended to literally destroy Kurdish daily lives and cultural bonds amongst original Kurdish communities in the targeted areas.

In 1971 the Ba'ath Party in its newly adopted charter declared that the Iraqi Kurds must adhere to the political and social unity of Iraq and accept that Iraq was an inseparable part of the Arab nation. This position was even more strengthened during the third conference of the Ba'ath party held in Baghdad on 27 July 1980, in which the party identified Kurdistan as part of the Arab world and Kurds as part of the Arab nation. [Maps 2.1](#), [2.2](#) and [2.3](#) provide a timeline of the Arabization process.

[A constitution for the Kurdistanis¹⁵](#)

Article 140 of the constitution of the Republic of Iraq, signed on 15 October 2005, establishes the legal foundation for a resolution to the issue of Kirkuk and other disputed territories. These areas include territories inside the present-day governorates of Kirkuk, Nineva (Mosul) Diyala, Wasit (Kut), Sahaladin, Erbil and Dohuk. They are 'disputed' because they have been the objects of various changes during the Arabization process carried out between 1963 and 2003 in particular by the Ba'ath party and Saddam Hussein's policies against the Kurds. These changes affected the regions' boundaries as well as their administrative units and their access to resources. In addition, they caused a sharp decrease in the number of Kurds living in each region by confiscating lands from Kurds and Turkoman and redistributing them to Arab settlers (*wafidens*).



[Map 2.1 The directions of Arabization from central and southern Iraq to Kurdistan](#)

Source: Hamadamin Awla Sofi

In order to understand the impact of Arabization, it is important to present the administrative, demographic and territorial changes from the colonial period of the Iraqi state to the present period. The transformations in administrative units and demographics over time reveal the extent to which Arabization processes affected different ethnic and religious communities in each region, and the nature and scope of the normalization process proposed

in Article 140. The impact of the political fragmentation resulting from not solving this problem has been evident in recent events and the proliferation of different insurgent groups, of which ISIS is the most powerful expression.



[Map 2.2 Arabization of Kurdistan before 1991](#)

Source: Hamadamin Awla Sofi



[Map 2.3 Arabized areas of Kurdistan at the borders with Iran, Turkey and Syria until 1991 \('No Kurdish Zone'\)](#)

Source: Hamadamin Awla Sofi

[Kirkuk for the Kurds: heritage and oil](#)

Petroleum plays a decisive role in determining the future development of the Kurdistan region in general and the Kirkuk governorate in particular. During the colonial period in Iraq, the British-mandated government made special efforts to retain the Kirkuk region for strategic and economic purposes. The governorate is rich in natural minerals, fertile land, much-needed

rural crops and forests, and important oil reserves. Oil was first produced from the Kirkuk fields in 1927 in Baba Gurgur (well K172) and has become an essential resource for the Iraqi state. It was exported through the main northern pipeline system (Banias and Tripoli in Syria and Lebanon) on the Mediterranean coast, to Turkey through the Iraqi-Turkish line, to the Terminal Porto, Cihan and the Mediterranean, and to Basra southward through the strategic line at Haditha. From this southern port the petroleum was exported through two sea terminals: the deep terminal of Al-Bakir and the terminal of Khor Al-Amaya. Another option for transporting the petroleum was via the Iraqi line across Saudi Arabia to the Red Sea terminal. Only very recently, thanks to the changes in the economic and political relations with Turkey, the Kurdish region has guaranteed a route for the exportation of its oil through this neighbouring country.¹⁶ Since 1927, when oil was discovered for the first time under Kurdish soil, its profit was used to smooth out the differences between Sunnis and Shias. It was only after 2003 that despite the differences with Baghdad, Kurdistan's oil, now officially on the international oil map, has been used for the Kurds. This is why the United States intervened against ISIS and looked for international support. The Kurdish region has become a strategic area that the West cannot afford to lose. In this delicate moment, the international community is supporting Kurdistan not only because of the war against ISIS (which reached Europe's shore with the deadly attacks in Paris in January 2015, confirming it could turn into one of the most dangerous and deadly wars the West has had to face since WWII), but also because tolerance together with the defence of minority rights is a major feature of Kurdistani society.

In the early 1970s the export capacity of the main pipeline system reached around 72 million tons per year (about 475 million barrels/year). However, the absence of scientific plans, the limited export capacity of the pipeline system and the injection of water into the oil fields damaged the productivity of the wells in Kirkuk. The federal government built plants to exploit and produce liquefied gas (produced with oil) and extract sulphur from the gas for industrial purposes and exportation. A pipeline was also constructed to transport the liquid gas from Kirkuk to Baghdad.

Kirkuk became the base for the Iraq Petroleum Company (IPC), which initially included an ethnically mixed labour force representative of the diverse composition of the governorate: Kurds, Arabs, Turkoman and Christians (Chaldean, Assyrian and Armenian). However, with the conclusion of the 50–50 profit-sharing agreement between the ICP and the Iraqi government in 1952, the IPC's largely British staff was gradually replaced by trained Iraqis. This change was part of the larger movement for Iraqi independence, and after the assumption of Ba'athist power in 1963 it became linked to the state's Arabization processes. The mixed ICP staff was transferred outside the Kirkuk governorate and replaced by large numbers of Arab settlers. In one single decision the central government transferred 2,500 Kurdish employees from the company and other establishments outside the governorate. With the

nationalization of the IPC and the oil industry in 1972, followed by the Yom Kippur War and the OPEC crisis, the role of petroleum in Iraqi politics and economic life gained increasing significance. The central government used its petroleum revenues to finance state-led development and social welfare programs, while neglecting other sectors.

But for the Kurds, Kirkuk is about more than oil. Kurdish history and honour ties are deeply rooted in these lands that were confiscated from the original families without compensation. For Kurds, Kirkuk symbolizes decades of forced displacement, the destruction of their homes and the occupation of their lands by Arab settlers. The human rights abuses linked to these Arabization processes have only underlined the historical, territorial and symbolic value of these territories to the Kurdistan region and its populations. Kirkuk is key to peace settlement and the key to restoring justice to the people. In 1970 the Iraqi regime failed to find a solution within the frame of the March agreement.¹⁷ It could have been resolved by census, peacefully, by accepting that every area with a Kurdish presence of at least 51 percent should be part of the Kurdish autonomous region. Instead, in 1974 the Ba'athists continued the forced Arabization despite the fact that the majority of the citizens in the disputed areas were Kurdish. This is the source of the current disagreement between Baghdad and Erbil.

On 6 September 1975 the Algeria accord between Saddam Hussein, the Shah of Iran and Hawari Bonidian of Algeria put an end to Iranian military and logistic assistance, but this agreement was overthrown in 1979 by Saddam shortly before the beginning of the hostilities with Iran, a war that lasted eight years and one that drained the country's economy. Later, in 1990 Saddam embarked on another war against Kuwait that ended with the intervention of the liberation forces and a deadly international embargo that lasted until 2003. After 2003 Baghdad underwent a very tough democratic exercise and the idea of settling the question of the disputed territories through a census and a referendum was proposed and included in the new 2005 constitution. However, Baghdad failed to comply and Malikilism substituted Saddamism with the institution of another authoritarian government that excluded any possibility of coexistence, since there were no Shia populations and sometimes no Dawa party members. That is why Kirkuk, with its pluralistic composition, is the heart of the peace and the place from where it is possible to restore justice. It is the only area where the coexistence of the different Iraqis, at war at this very moment, can find a common ground for the future.¹⁸ If we look at all the disputed areas in one block, it is evident that no one can change the identity of the land. Some areas of the governorate of Kirkuk with at least 60 percent of a specific population are already administrated by their own people. In order to settle the question of the disputed areas, the country needs a power-sharing law stating that if you have 2 percent Kurds and 98 percent Arabs, the area should be run with a representation of Kurds and vice versa if the percentages were reversed in another area. This would guarantee a real power-sharing situation in which nobody would actually lose anything and every section of society would feel included in the political process. According to this win-win strategy, for example,

Al Huwaja should be an Arab governorate, Tuz Khomato a Turkoman one. Kirkuk as a city should be part of Kurdistan with a special status, and this would guarantee long-term peace. The idea in the current Shia government in Baghdad that force will resolve the political process is not realistic and, as we have seen between 2011 and 2016, can only bring more violence and instability. For example, before ISIS took control of Mosul and threatened Baghdad, the government led by Maliki was waiting for F-16s and preparing for war against factions of its own citizens by deploying troops and weapons to these areas, weapons that are now in the hands of ISIS.¹⁹ Sunnis and Kurds do not trust Baghdad because it did nothing for them. After 2003 the Shias thought they could govern and ignore the other parts of the population, and they failed in the exercise of democracy they were called to realize. The current wave of violence demonstrates how the Sunnis felt excluded. On the Kurdish side, the KRG became partners to a government, without partnership. That is why it is so important to address the question of the disputed areas if the country wants to have some hope of existing as a unified one. It is important to remedy wounds and remove pain, but also to build trust in the federal government. On the contrary, it seems probable after the recent events, that these last events could signify the end of Iraq as a unified country. Up to now Iraq has not succeeded in changing its political path. The increasing alienation of major Shia parties and of the Sunnis by Maliki led to a situation in which it is difficult to foresee the unity that the country needs in order to face the security challenges posed by ISIS. That is why the intervention of the international community is fundamental to the region's facing this threat on different levels of intervention besides the obvious military one.²⁰

The West, mainly the United States, is calling on the Iraqi politicians to include in the new government those groups (firstly Sunnis) that have been excluded. But it is very improbable, after more than ten years, that the other groups have regained their trust in Baghdad. Democracy, coexistence, the sense of citizenship cannot be imposed from above, but can come only from examples drawn within society itself. For this reason, the investigation into the crimes committed by the previous regime should have been a priority for the new Iraqi government. Its support of the investigation and the will to settle the Kurds' requests and those of other minorities constituted an opportunity to show that the principles of democracy fell on fertile soil. On the contrary, sectarianism and authoritarianism has ruled since 2003 and has been exacerbated since the Obama administration decided to withdraw troops from the country. As mentioned before, it was a mistake of the Bush administration to leave the country without resolving the issue of the disputed areas. This happened because the Bush administration never had a real postwar plan in place and it was merely looking for easy exit policies. This was probably due to the fact that since the beginning of the postwar era in 2003, the West has always thought of Iraq as a unified country and every decision regarding its new political structure has been taken on this premise. However, this is a gross underestimation of the divisions within the country. It also stems from the Bush administration's ignorance of the

history of Iraq and its multicultural population, which has led them to think that the settlement of the territories was just a border matter. They failed to realize the deeper social and political implications that could jeopardize the building of the unified Iraq that the West longed for. That is why a study of the Arabization carried out by the Ba'athist regime in Kirkuk and other areas is fundamental to an understanding of the extent of the social destruction it caused.²¹

Kirkuk: a blueprint for forced Arabization²²

The most important administrative changes occurred after 1975. The central government: (1) annexed the two districts of Chemchemal and Kelar from the Kirkuk governorate and attached them to the governorate of Sulaymaniyah; (2) annexed the district of Toz Khormato and attached it to the governorate of Salahadin; and (3) annexed the district of Kifri and attached it to the governorate of Diyala (Republican Decrees Nos. 608 and 42, dated 15 December 1975 and 1 January 1976, respectively). The governorate also gained new, Arab-populated territories. The district of Zab was annexed from the Mosul governorate and attached to the governorate of Kirkuk (Republican Decree No. 111 on 16 November 1987).

In January 1976 the Iraqi central government changed the name of the Kirkuk governorate to Tameem, meaning 'nationalization' (Republican Decree No. 41). At that time, the governorate measured 10,319 square kilometres and had a population of 492,615, which increased to 752,743 in 1997 and then to 1,280,000 by 2007.

The population of Kirkuk includes four main ethnic groups: Kurds, Arabs, Turkoman and Assyrian 'Christians' Prior to the central government's Arabization campaign that commenced in the early 1960s, the Kurds constituted more than 64 percent of the total population of the Kirkuk governorate and 53 percent of the population of Kirkuk district. By 1977 they represented 37 percent, while Arabs represented 44 percent and Turkoman represented 16 percent. The Christian population declined from about 9 percent to less than 2 percent.

The number of Kurdish and Christian workers decreased and Arab workers increased, while Turkoman manpower remained nearly static. No major population shifts occurred in Kirkuk from 1996 to 2003. However, after the fall of Saddam Hussein and the Ba'athist regime in April 2003, population movements occurred in two directions: a return of Kurdish families to Kirkuk (224,544 persons) and an exit of Arab families (except Arab Waffidins) from Kirkuk about 5,986 for a total of 52,973 people, based on the data provided by the Iraqi Ministry of Planning in August 2005. The population of Kirkuk is 705,014, based on the food supply forms of 30 April 2007. In the residential Kurdish quarters of Raheem Awa, Iskan, Imam Qasim, Rizgari and Shorfja, the number of Kurds is 263,012. Added to the number of Kurds in the mixed quarters of 163,700, the total number of Kurds in the city of Kirkuk is 399,712, or 60

percent of the total population.

At present the governorate of Kirkuk consists of three districts – Kirkuk, Haweeja and Dibis – and the sub-districts of Toz Khormato, Daqoq, Al-Riyadh, Alton Kopri and Sengaw. The districts of Chemchemical, Kifry, Kelar and Toz Khormato that were part of the Kirkuk governorate prior to administrative changes in 1976 have become part of the Sulaymaniyah, Diyala and Salahadin governorates.

As part of the Kirkuk governorate, the district was subjected to a vicious ethnic cleansing campaign by the Iraqi government against Kurdish and Turkoman populations. The Iraqi central government issued various decrees and decisions that forcibly caused demographic changes which altered the ethnic composition of the city.

Normalizing the Kirkuk governorate

Until 12 June 2014, when the Peshmerga forces took over from a dismantled Iraqi army, the negotiations for the process of normalization of Kirkuk focused on a re-integration to the Kurdistan region of the four districts of Kirkuk prior to the administrative changes of 1976. These are the districts of Chemchemical, Kelar, Toz Khormato and Kifri. By returning these four districts to the governorate of Kirkuk, the Kurds would form an effective majority, except for that mentioned in Article 143 of the constitution.

Despite the decreased number of Kurds living in the city, the governor of Kirkuk before the fall of the regime in 2003 was still concerned about the number of Kurds living within the province. In a letter dated 8 November 1996 to the commander of the Northern Bureau of the Ba'ath party and member of the Revolutionary Command Council (RCC), the governor of Kirkuk complained that the Kurds formed about 60 percent of the population.²³ He added, "There are whole Arab quarters which have become solely Kurdish, such as Karama in Iskan and the police quarter in Shorja." In this letter he also stated that "trade and economic matters in the city are still in the hands of the Kurds, so are the contractors and artisans and public facilities and services." On such advice, the RCC became concerned that the Arabization policies were not adjusting the demographic make-up in favour of Arabs as efficiently as possible. The RCC, therefore, intensified its Arabization and deportation policies, going as far as forbidding Arabs to hire Kurds.

Kirkuk after 2003

At present the province of Kirkuk consists of six districts and sub-districts: Kirkuk, Haweeja, Dibis, Daqoq, Alton Kopri and Sengaw. The districts of Chemchemical, Kifry, Kelar and Toz Khormato, which were part of Kirkuk province prior to administrative changes in 1976 have become part of the Sulaymaniyah, Diyala and Salahadin provinces. It constitutes one of the

most controversial cases of disputed territories in Iraq between the KRG and the federal government.²⁴ At this moment Kurdish forces, in the wake of ISIS's intervention and because of the meltdown of the Iraqi army, have gained complete control of the area.

*The state of negotiations with Baghdad until 2014*²⁵

In 2005 the American administration and the interim Iraqi government established a high committee to implement Article 58 of the TAL (Transitional Administrative Law) in Iraq.²⁶ The author was the Kurdish representative in this committee and could verify that, unfortunately, the deliberations of this committee were short lived because of the lack of funding and also because neither the American nor the Iraqi side had the commitment to resolve the issue. In 2007 the new government established another committee, this time named the High Committee of the Implementation of the Article 140, because Article 58 of TAL had changed to Article 140 of the new constitution. According to Article 140 of the 2005 Iraqi constitution, this area, like others that experienced the tragedy of forced displacement, should go through three main steps: (1) Normalization – a return of Kurds and other residents displaced by Arabization; (2) A census to determine the demographic makeup of the province's population; (3) A referendum to determine the status of the disputed territories. Obviously, whether a territory is home to mainly Kurds or mainly Arabs would have an effect on who could lay claim to the area. Unfortunately, none of these steps were implemented, except for part of the normalization, and this caused political and social tensions in the area that risked degenerating into civil war. Various negotiations have taken place in order to solve this issue, but until now the unwillingness of the federal government to tackle the problem has exacerbated the situation.²⁷

As Minister for Extra Regional Affairs, the author represented Kurdistan in the negotiations and worked for the implementation of Article 140 of the constitution, and he witnessed that none of the steps mentioned above had been implemented with the exception of the normalization stage. The normalization, which requires restitution to the Kurds of the properties confiscated during the different phases of Arabization, happened only partially, and this created a long-lasting mistrust of Baghdad. A census is long due as the last one was carried out before Arabization in 1957, but the federal government is very reluctant to order one. The idea of having a referendum about the disputed areas remains an extremely sensitive issue because it would probably provide a legal basis for the annexation of Kirkuk. This would show the size of each community in the area, and in addition, it would stop the bleeding of Iraq and the manipulation of the rivalries among communities by the federal government.

In April 2013 the KRG Prime Minister Nechir Van Barzani visited Baghdad and had many meetings with Iraqi members of Parliament with the purpose of implementing Article 140 of the constitution. The government promised a round of negotiations, but up until now nobody

has shown any will to tackle the problem. It seems that there is a lack of leadership in resolving this issue since the federal government does not feel confident enough to tackle it. In addition, people who took part in the Arabization and genocide campaigns are still in the civil service and in the military structure of the government, and this lack of de-Ba'athification makes any attempt to negotiate very difficult. However, in contrast to the past, today the federal government is weak and does not have the military power to engage in a war against the Kurds. Moreover, the international and regional political situation does not favour a solution by force. The Americans made a mistake by leaving such an important issue unsolved before their exit from Iraq. Their support would have ensured that the agreements reached before the war were implemented. This would have helped to prevent future breaches of human rights against the Kurds and it would have also promoted a safer route towards a peaceful coexistence and a stable democracy in the country.

Other provinces have been affected heavily by the Arabization process and have seen their economies and social structures destroyed by the continuous forced displacements and Arabization policies. Analyzing them in detail helps to calculate the extent of the damage caused by the central government in Baghdad before and during the Ba'ath regime. On 3 September 1970, the name of the governorate was changed from al-Mosul to Nineva. According to the census of 1977, the population was 1,099,809. Ethnic distribution consisted mainly of Arabs (939,666), Kurds (143,300), Faylee Kurds (2,489), Turkoman (9,487), and Assyrians (1,178). In the 1987 census the population increased to 1,479,430, and in the 1997 census the population increased again to 2,037,602.

These changes in the population meant a change of the administrative units and districts. In this area they adopted the same policy they implemented in Kirkuk. They changed the identity of all Chaldeans and Yazidis by registering them as Arabs. In the area of Sinjar, 300 villages were destroyed and the population was confined to eleven concentration camps, thus losing its identity and its link with the land. All this was the result of the racial discrimination and the forced demographic changes that the Nineva governorate suffered through the years. In Nineva's case, it is possible to trace back some of the policies that made possible the Arabization of this particular area. With decision 50, dated 28 January 1989, the central government barred the courts from hearing claims regarding the transfer of ownership of estates and transferred them to Mosul. Only one year later, in 1990, the situation of the Kurds living in the area worsened. Letter 1733, dated 4 April 1990, reveals the deportation of Kurds and the liquidation of their properties. The same year, letter 1714, dated 10 April, documents the deportation of Shabak (Kurds) from Nineva and the subsequent demolition of their houses. As a consequence the estate registration office demands that the committee in charge of liquidating the properties of the deported Kurds in Mosul co-ordinate the process by providing signs of impounding them (letter 1720 of 8 July 1990). The committee asks the local authorities to provide the exact number of properties to be liquidated. All this documentation proves that

the central government actively deported Kurdish citizens with the purpose of redistributing their properties to Arab residents.

The same fate was shared by other important districts and sub-districts in different grades, for example the districts of Mosul, Sinjar, Tel'afar, Shaikan, al-Hatra, Khaneqin, Moqdadiya and Baladroz. All these districts suffered from various discriminatory policies that seriously affected their economies until today. It is clear from the data reported below that this process occurred over a considerable time and that it increased in scale and scope. In the district of Sinjar, for example, according to telegram no. 21347 of the Committee of North Affairs, dated 18 August 1974, Kurdish properties were confiscated. Ten years later, decision no. 730 of the RCC established the evacuation of the confiscated estates, a move reiterated with decision 2883 of September 1990 and the order to account for those responsible for failing to implement the orders. Only four years later, with decision 9420, dated 17 October 1994, the RCC ordered the destruction of the villages of Gamesh Tapa and Kazana and the deportation of their inhabitants. Their properties were confiscated and redistributed to Arabs. By 1999 the Land Registration Office refused to register the land of a Kurdish citizen, despite the fact he was a Ba'athist, following decision 2487, dated 6 November 1999. Only one year later, with decision 11490 of 22 February 2000, the residential lands confiscated were sold to war heroes or to friends of the president. That same year, with decision 1/14/484 of 3 March, the central authorities decided to confiscate the lands belonging to the Kurds deported from Sinjar, a trend reiterated with decision 187 of 11 June 2001. This followed decision 1908, dated 10 September 2000, which allowed Arabs to own estates in the districts of Makhmour and Sinjar regardless of their birthplace. In addition, according to the minutes of the meeting of the security committee held on 22 October 2001, in Sinone 1,200 houses were removed.

The district of Shaikhan is another example of the indiscriminate Arabization policy implemented over the years, in particular during the 1990s. In 1993, following decision 21/1392, dated 14 November, 1,100 residential lots of land were assigned and registered to Arab families in Shaikhan. This redistribution made them permanent residents of Shaikhan by transferring their ID cards (decision 21/1392 of 14 November 1993). The following year, decision 2868, dated 7 May 1994, granted pieces of land to Arabs, a trend confirmed later in October with decision 8939. In the same month, 1,200 lots of land, in particular Azasin, Hadidin and Tay, were redistributed to Arab tribes following decision 8335 of 15 October. During the same month decision s/158 allowed the distribution of land to tribal chieftains. Decision 2334 of November 1994 allowed the settling of Arab tribes in the Makhmour axis, Makhmour-Gwer axis, Shaikhan district and the district of Fayda. Decision 9923 of 11 November 1994, urged Arabs to settle in the centre of Shaikhan district. At the end of the year, decision 9821 established the preparation of 1,829 pieces of residential land to settle Arabs in the centre of Shaikhan district and on the Mosul-Shaikhan axis. A few years later, documentation recovered shows a letter written by the governor of Nineva asking the authorities to provide him with

the names of Arab peasants who signed contracts on the Makhmour-Shaikhan-Fayda axis line in accordance with the letter of the Committee of the North, no. 1449 of 2 September 1997, lending money to members of Arab tribes who were settled in Kirkuk (Tameem) governorate and the districts of Makhmour, Shaikhan and Fayda. This exempted them from the provisions of decision 21/2198 of 9 December 1997. It also shows that conditions were contracted with Arab farmers in the districts of Shaikhan, Talafar and Makhmour stipulating that they were not to give land to Kurdish farmers (decision 803, 10 September 2000).

Following the RCC's decision 180 of 2 February 1980, Kurdish citizens were deprived of their citizenship and stripped of their civil rights. Among the documentation gathered regarding this district, there is a letter, no. 15.5 3352, dated 3 December 1997. It contains instructions from the Ba'athist leaders in Khanegin to their party division to deport Kurdish families outside the district. The same process followed two years later with letter 5/2/24, which ordered not only their deportation but also the redistribution of their properties. Letter 1469, following the previous orders, establishes a committee in charge of selling the houses of the deported families in both Khanegin and Jalwla (letter 1469, 3 November 1986). According to the instructions given by Taha Yasin Ramadan in letter 25/363, dated 24 March 1999, the local authorities had to reduce the ratio of Kurds in Khaneqin to 20 percent and transfer Kurdish teachers outside the district from the Qaimaqam of Khaneqin to the leadership of the party, following the instructions of Taha Yasin, the deputy prime minister in charge of the Arabization policy. Instructions to the municipality of Khaneqin to demolish the Kurdish quarters of the city (by Taha Yasin Ramadan, chairman of the North Committee of the RCC, letter of the survey 177, 28 February 1999). There are also letters demanding the deportation of Kurdish families outside the governorate of Diyala (S/1/150 of 20 February 1972, S/1/1681 of 15 November 1997, S/1/38 of 19 January 2002, S/1/813 of 23 June 1997, S/1/855 of 6 July 1997).²⁸

[Peace in the future?](#)

The advance of ISIS, which engulfed Iraq and the whole of the Middle East, has completely changed the situation. Now, with Kurdistan in control of the area and defying the federal government in Baghdad and the West, Masoud Barzani said in an interview: "We waited for 10 years for Baghdad to solve Article 140. Now it has been accomplished because the Iraqi army pulled out and our Peshmerga forces had to step in, so now the problem is solved. There will be no more conversation about it."²⁹ Article 140 also makes provision for a referendum in the formerly disputed areas regarding their inclusion in the Kurdish region, and Masoud Barzani asked members of Parliament "to promptly create an independent electoral commission to begin preparations for holding a referendum."³⁰ He added, "The time has come

for us to determine our future.”³¹ This is a very strong statement that apparently leaves a weakened Baghdad with no choice. At present three drafts of a referendum are being studied: one is with Iraq, one with the UN and another one with the international community.³² All this is to guarantee that the Kurds’ requests do not aggravate the situation in a country that is already unstable; and ensure that they are willing to collaborate on a legislative level with all the parties concerned. The dispute over the implementation of Article 140 of the 2005 constitution claimed by the Kurds as their constitutional right is not over, in particular in the current fluid situation. It is true that the Peshmerga forces control the previously disputed areas, but there are some downsides to this. The demographic composition of Kirkuk could compromise this historical gain and could draw the Kurdish region into the religious and sectarian dispute that is now wrecking the country. Immediately after the annexation, and despite the reassurance of the Kurdish authorities that all minorities’ rights would be respected, Arabs and Turkoman living in these areas have voiced their fear about this possibility. This makes the situation very difficult because the Kurdish region is facing enemies, not only in the federal government, but also on the ground. Just after the Peshmerga took control of the city, the Iraqi Turkmen Front in Kirkuk announced through its leader Arshad Salihi the mobilization of the militia in the city if Kirkuk was not returned to the central government.³³ The size of other sensitive oil field areas also raised concerns, not only in Baghdad, and has increased the security challenges that Kurdish forces have to face. Only a few days after these events, a twin bomb exploded in the area of Tuz Kharmato causing thirty-one deaths, and even if no group claimed responsibility for it, the perception of the people living in the area is that the Kurdish claim over this land could trigger a new, deadly sectarian war. But after the war with ISIS and the loss of 1,001 Peshmerga martyrs, it would be very hard for the Kurds to leave their lands again to strangers.

The KRG and the Kurdistan region do not merely face a military challenge. They have to show the non-Kurdish population living in these areas that belong to the Kurdish region that their fundamental rights will be respected and that the secularity proper of Kurdish politics will not be held in place with military force. In this respect, the referendum could help, because it is part of a political and democratic process inclusive of all the minorities. This is why the drafting of the referendum law has to be clear from the beginning and has to ensure that the integration of these areas happen within the law. This gives the Kurdish claim to self-determination a wider scope and could avoid Kurds being drawn into the cycle of violence that has plagued Iraq for decades. The annexation does not have to resemble the Arabization carried out by Saddam’s regime. In parallel to the military presence in the area, Kurdish authorities reminded the neighboring countries of the peaceful and democratic nature of the region as well as the economic and social stability they achieved in the twenty years of its existence. It is very important to show the neighboring countries that Kurdistan has been a model of stability and that it was able to introduce a successful example of governance

showing that it has a better system than the rest of Iraq. If the Kurdish region wants to maintain these achievements, it has to keep itself out of the sectarian war and in particular out of the Sunni/Shia rivalry. It has to offer its present and future citizens security, peace and economic development. This is a very difficult task in the current situation, a task that can be addressed, starting from a recognition of the mistakes committed by the past regime. This implies a fundamental change in the ethno-political rhetoric of Kurdish people, including a revision of their role as an example of democracy in the Middle East. This is a change that can come only from a knowledge of the past and the establishment of new rules of coexistence in order to avoid a repetition of the crimes committed during the dictatorship. [Map 2.4](#) shows the disputed areas currently claimed by the KRG.



[Map 2.4 Disputed areas between Baghdad and Erbil](#)

Source: Hamadamin Awla Sofi

Notes

- [1](http://edition.cnn.com/2006/WORLD/meast/12/30/hussein/index.html?section=cnn_latest) CNN, available at http://edition.cnn.com/2006/WORLD/meast/12/30/hussein/index.html?section=cnn_latest
- [2](#) Judge Mohammed Al Uraibi interviewed by the author (Erbil, March 2014).
- [3](#) Ibid.
- [4](#) Ibid.

- 5 A complete video of Saddam Hussein's execution can be found on the following link in YouTube https://www.youtube.com/watch?v=UbfPWENZN_k
- 6 The following account of the challenges posed to the IHT are based on the author's personal experience assisting the court in his role of international expert on genocide crimes in charge of gathering the forensic and documentary evidence for the cases discussed by the tribunal, as well as on interviews with judges and lawyers who have been granted anonymity.
- 7 Judge Mohammed Al Uraibi, Judge Rezgar, interviewed by the author (Erbil, April 2013).
- 8 The Central Criminal Court of Iraq sentenced him in absentia to death for murder on 9 September 2012. He is now living in Ankara.
- 9 Tariq Al-Hashim's letter has not been made public. The author had the opportunity to see the original during his interview with Judge Mohammed Al Uraibi mentioned above.
- 10 S. Al Shaichly, interviewed by the author (London, 2012).
- 11 U.S. Department of State, *Iran and Iraq Human Rights Reports 2011*, Kyle T. Hunt and Alfred Ferguson, eds., New York: Nova Publishers, 2012.
- 12 Research shows that the Arabization policies began when Iraq became a country and continued until the Ba'ath Regime was overthrown in 2003. (See, for example, Nouri Talabani, Khalil Ismail). After 1968, for the first time, the state formally adopted and implemented a process of ethnic cleansing. This chapter is based on material found by the author in his role as Minister of Human Rights and Minister of Extra-Regional Affairs in the Kurdistan Regional Government.
- 13 It is well known that the Treaty of Sèvres (1920) followed by the Treaty of Lausanne (1923) definitely frustrated any possibility for the Kurds to achieve self-determination. See McDowall, *A Modern History of the Kurds*.
- 14 Toby Dodge, *Iraq: From War to a New Authoritarianism*, London: Routledge, 2012.
- 15 All the documents proving the crime of Arabization are the result of the author's investigation as Kurdistan representative for the High Committee for the Implementation of Article 140 in Baghdad. All copies of these documents are currently with the committee.
- 16 The route of the oil through Turkey developed in 2014 after the ISIS invasion. The Kurdish media network Rudaw reported the event. See 'Kurdistan Region Begins Exporting Kirkuk Oil', available at <http://rudaw.net/english/kurdistan/271120142>, published on 27 November 2014.
- 17 In the aftermath of the Kurdish-Iraqi war, in March 1970 the Iraqi government and the Kurds signed an agreement that guaranteed the Kurds the right to an autonomous region. This first agreement was never fulfilled because of their divergence on the borders of Kurdistan. In addition, the agreement did not include all Kurdish territories.
- 18 See Dodge's *Iraq*.
- 19 In July 2011 Reuters announced that Maliki was willing to purchase 36 F-16s from the United States, raising concerns for the safety of the Kurdish region. Article available at <http://www.reuters.com/article/2011/07/30/us-iraq-fighters-idUSTRE76T16Y20110730>
- 20 From an interview with the author broadcasted by Rudaw on 16 June 2014, available at https://www.youtube.com/watch?v=VK9BJ_njckQ
- 21 A complete record of the changes suffered in each district can be found in *Report on the Administrative Changes in Kirkuk and the Disputed Regions* from the now dismantled Ministry for Extra-Regional Affairs in 2014, available at

<http://drmohammedihsan.com/Books.aspx>

- 2 The following data regarding the forced Arabization of the area of Kirkuk can be found in *Report on the Administrative Changes in Kirkuk and the Disputed Regions*.
- 3 All these details can be found in the transcriptions of the court hearings.
- 4 Much has been written on the topic. See, for example, Liam Anderson, *Crisis in Kirkuk: The Ethnopolitics of Conflict and Compromise*, Gareth Stansfield, ed., Philadelphia: University of Pennsylvania Press, 2009. These pages are based on the findings and thinking of the author as the Kurdish representative in the negotiations with Baghdad.
- 5 As Minister for Extra-Regional Affairs for the KRG, the author has been in charge of the negotiations between Erbil and Baghdad. This section is based on his experience and on the data gathered in his role.
- 6 See Decree no. 15, signed by Dr Alyad Alawi (first Iraqi prime minister after the occupation) on 9 February 2005, Wakaiea, Iraqia, no. 3995, 3 March 2005. Gazeta.
- 7 See the map of the disputed areas between the Iraqi federal government and Kurdistan Regional Government until December 2013.
- 8 All the documents mentioned have been gathered by the Ministry of Extra-Regional Affairs of the KRG.
- 9 'Iraq's Kurds Rule Out Giving Up Kirkuk', available at <http://www.aljazeera.com/news/middleeast/2014/06/iraq-kurds-rule-out-retreating-from-kirkuk-20146271440878594.html>.
- 10 The commission was created just a few weeks after this interview.
- 11 'Iraq's Kurds Rule Out Giving Up Kirkuk', available at <http://www.aljazeera.com/news/middleeast/2014/06/iraq-kurds-rule-out-retreating-from-kirkuk-20146271440878594.html>.
- 12 In the moment of this writing, the author is a member of the Commission for the Organisation of the Referendum and responsible for its drafting.
- 13 <http://www.aljazeera.com/news/middleeast/2014/06/kurdish-turkmen-tension-rise-kirkuk-2014617122142958412.html>.

3 Propagating hate, inciting murder

The Faylee Kurds: a silent crime¹

The crimes against the Faylee Kurds have been largely overshadowed by the terrible massacres carried out against the Kurds by the Ba'ath regime. Their suffering and deportations are mentioned by many scholars and researchers; in 1993 Human Rights Watch dedicated a whole report to the tragedy.² However, very little has been written on this case and most of the material has been released without a proper and deep investigation into its causes and consequences for both the Kurdish people and Iraq.

The persecution and diaspora of the Faylee Kurds has a striking resemblance to the process of 'Aryanization'³ carried out in Germany between 1933 and 1938, the years leading to World War II. It was a process that constituted the blueprint for the ensuing extermination policies extended all over Europe by the Nazi regime. In Europe, this persecution seems to have been carried out during a long period of time and in a non-linear way. It is impossible, though, not to see Arabization as an all-encompassing displacement process detached from a political and historical context. For this reason, it was important to tackle this genocide as a process that was not carried out only from 'above' but also on the local level, from 'below',⁴ with the complicity of entire sectors of the Iraqi population. In order to achieve this level of analysis, it is important to understand why, apart from ideological reasons, a single group of Kurdish people had been singled out, forcibly removed from their cities, despoiled of their wealth and ultimately arrested and killed. This crime constituted a starting point for the escalation of violence against the Kurds, supported by the regime. Therefore, it is important to ask why this particular group was targeted and to understand the 'legal' policies adopted at local levels to carry out the violence. Furthermore, the crime provides a unique insight into Iraqi society and its collaboration with the regime. When the regime started to single out Faylee Kurds, it did not seem to be against the law. This was because the crime was committed through the implementation of a series of decrees issued by the government itself, a procedure characteristic of this specific crime.

Faylee Kurds played a central role in the business community in Baghdad since they conducted their business in the area of Al Shorja, in the heart of the Iraq's economy until the 1970s. In addition, Faylee Kurds controlled the export of goods from Iraq to other countries. Therefore, it is obvious that they were singled out by the authorities for their economic importance.

The Kurdish middle class: the demographic and economic reality of Faylee Kurds

But who are the Faylee Kurds? The Faylee Kurds are a distinct group of ethnic Kurds and Shi'ite Muslims originating from the Iranian region of Kirmanshah who lived in Iraq before its creation as early as 539 bc, mainly in Baghdad but also in other areas of the country.⁵ On the Iranian side of the border they can be found in Kramansha, Ellam, Khoziztan, Khesrowi, Qasr Sherin, Serbil Zahab and Irania Badra.⁶ The historian George Kersan stated that the name means 'revolution',⁷ while according to an American archaeologist, Henry Field, who worked in both Iraq and Iran at the beginning of the twentieth century, it means 'rebellion'.⁸ Hugo Grottee, who travelled to Iran at the beginning of the same period, wrote that the Faylee Kurds' origin went back to Old Ellameins and the name 'Faylee' came from the Peli King who established his own kingdom in Ellameins. During the Ottoman Empire, Faylee Kurds living in Iraq chose to apply for Persian citizenship to avoid mandatory military service. This happened because in the Ottoman Empire military service was compulsory and meant that most of the men, deployed to the various territories of the empire, left for the army without any possibility of coming back. Consequently, when the Ottoman Empire fell after World War I, Faylee Kurds, along with others who had opted for Persian citizenship, were left without a country and their Iranian citizenship became the source of deep distrust and even hatred, especially under the Ba'ath regime.

In Iraq, Faylee Kurds lived mainly in Baghdad in what was known as Agid Al Akrad, a Kurdish quarter. However, during the 1950s, they started to move to more affluent areas, such as Etefiya, Jamila, Shari' Falastin and Palestine Road. Their economic fortune began to change when, after 1948, the Jewish community living in Baghdad left for the newly constituted Israel and sold all their businesses and possessions to them. This strengthened their trade and commerce presence that was already recognized by the contracts they had with the British authorities to build roads in the areas south of Baghdad.⁹

It is logical to suppose that their persecution was driven by mere ideological reasons, but the economic factor was an important element. The economic reasons for their persecution can also be found in a famous narration regarding the last phase of their deportation. In July 1970 some Faylee business and economic elite were summoned to the Chamber of Commerce in Baghdad with the excuse of granting them commercial licences. They were rounded up and stripped of their documents, arrested and deported without any communication with their families. All their properties and belongings were confiscated and redistributed to other Iraqi Ba'athists.¹⁰ This episode shows how local authorities and institutions, completely infiltrated by the web built by Saddam, collaborated in the persecution of a group of citizens. They were motivated by the ever more rampant propaganda campaign against the Faylee Kurds but also

by the possibility of enriching themselves and Arabizing the economy of the country. This sort of collaboration, and the escalating persecution, was revealed through the official documents that have not been analyzed before. All this was put in motion by the Chamber of Commerce, an institution established in 1936 by a group of Iraqi, Arab and Jewish merchants that had a Kurdish president in the 1950s.¹¹ This detail confirms the strong relationship between different groups in the country and its deterioration under the separation policies formulated by the Ba'ath regime.



Map 3.1 The Faylee Kurd population's distribution

Source: Hamadamin Awla Sofi

Deported Faylees also suffered the confiscation of all their movable and non-movable property. The state confiscated their homes, land, factories and bank accounts, and it prohibited deportees from taking any personal items with them from Iraq. In an interview with one of the brigadier generals who preferred to stay anonymous, Saddam bluntly said that the first Faylee Kurds had come empty-handed to Iraq with bare feet, and thus these generations should return to their roots without possessions as well. RCC Decree No. 1131, issued on 18 August 1980, authorized the minister of the interior to sell all the Faylee Kurds' properties and to deprive them of all their rights. In each governorate, a 'Committee of Inventory and Clearance of Belongings of Iranian Deportees' was set up by the Security Office and overseen by the Ministry of the Interior and the Office of the Deputy Prime Minister (Tarik Azziz, who had survived an assassination attempt only months before). Also at that time, Faylee Kurds were described by Iranian officials as 'uninvited guests'.¹²

After the establishment of the KDP in 1946 and the return of Barzani from Russia in 1958, Faylee Kurds, in addition to being successful businessmen, were also very active in the Kurdish liberation movement, which they supported economically. For this reason, the authorities, particularly in the capital and especially during Saddam's regime, distrusted their presence. This is in addition to the fact that, being Shias, it was easy for the regime to refer to their Iranian origins, a detail that had great resonance, especially during the 1980s when the rhetoric against them became a tool to incite the country against Iran.

[The Ba'athist anti-Kurdish policy against Faylee Kurds](#)¹³

After the Ba'ath revolution in February 1963 and the killing of Abdul Karim Kassim, Faylee Kurds were the only remaining group standing against the Ba'athists. Faylee Kurds always appreciated Kassim for being a socialist and democrat and for his belief in human dignity, having himself come from a very poor background. It was at that moment that the Ba'athist authorities contacted the headquarters of the KDP in Baghdad looking for the Kurdish party's support to convince Faylee Kurds not to fight for a man that had been killed. The KDP managed to stop the fighting. However, the Ba'athists never forgot that episode of rebellion and Faylee Kurds became a target for their nationalistic views. The campaign against Faylee Kurds reached its apex when in April 1980, a Faylee Kurd, Samir Mir Gullam, made an attempt on the life of the deputy prime minister in an attack at Mustansiria University that killed several students and left the intended victim unharmed. This attack provided Saddam Hussein and the Ba'ath party with evidence to support their propaganda against Faylee Kurds. In a public speech following the fatalities at Mustansiria University, Saddam declared: "I swear to God, I swear by every single drop of Iraqi blood, I swear by every single drop of water of the two great rivers, I swear by every single grain of Iraqi soil, I swear I will not allow the

blood of Mustansiria victims to go without punishment.”¹⁴ On the same day, Saddam amended the citizenship laws and issued Decree No. 180 to prevent anybody of Iranian origins from applying for citizenship. This led to the mass deportation of Faylee Kurds, and sometimes even of Iraqi citizens. An interview with Brigadier General Saad Thuthir revealed that after the Mustansaria incident, Saddam Hussein met senior members of the Ba’ath party in Baghdad. He wanted to hear their reactions to what had occurred at the university.¹⁵ The first Ba’athist speaker was a woman named Sanna al-Umari, and her reaction was that only the criminal should be punished, not his entire family. She was the only one who held that view. Saddam decided to punish all Kurds in Iraq, not only Samir Mir Gullam’s family. And indeed Saddam fulfilled his promise. According to telegram 10493, dated 18 October 1987, sent from the Security Office of Al Kanat to the Security Directorate in Saddam City:

Criminal Samir Mir Gullam was captured with all the members of his family in 1980, and their names are Noor Ali Gullam, Amir Mir Ali Gullam, Farid Mir Ali, Faik Mir Alli, Latifa Mir Ali, Suham Mir Ali, and all of them were executed because they are the criminal family of Samir Mir Gullam and were behind the crime of Mustansiria against Ba’athist students.

On 28 April 1980, Saddam Hussein delivered the following message on Iraqi TV:

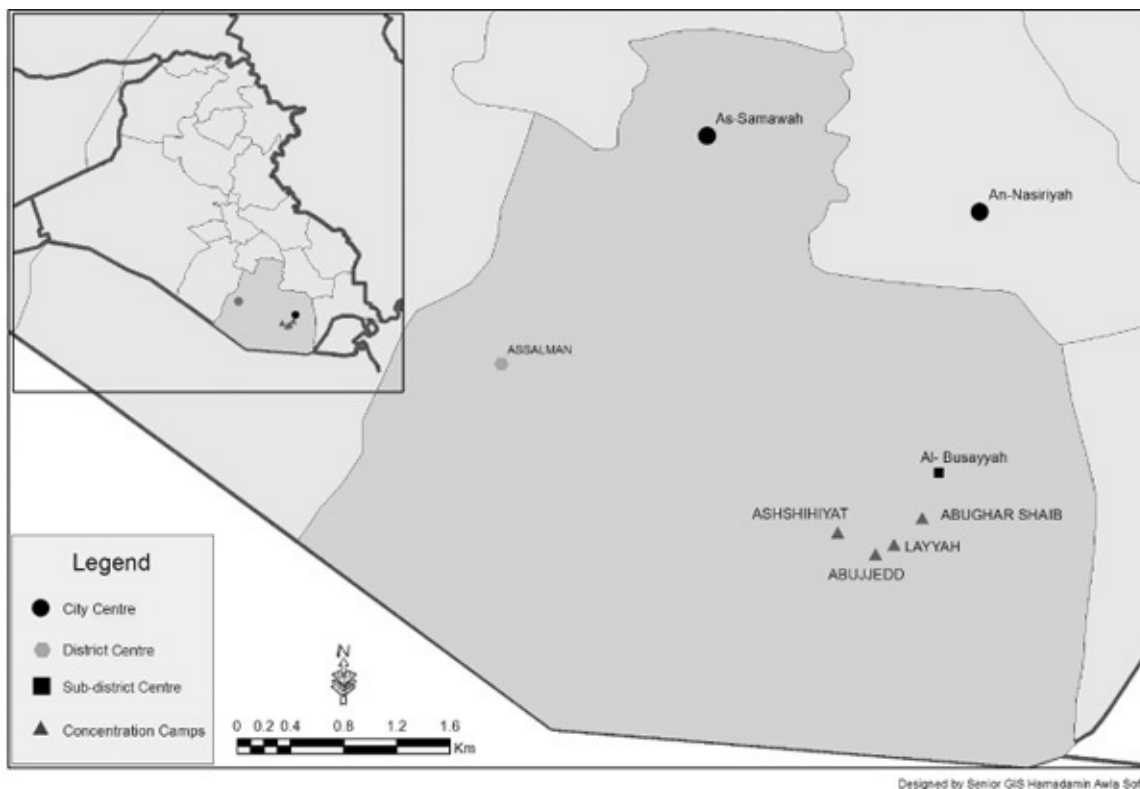
Yesterday our youths’ and women’s blood was shed in Mustansiria. The man responsible was Samir Mir Gullam, a foreign agent in the eyes of Iraqi intelligence. He and his masters thought that they achieved a great thing by their criminal acts. We want to tell them, the foreigners, the Imperial Forces, and those who think they can beat us, ‘come and fight us’. Iraq is a strong mountain, it will not be shattered by all their bombs. I swear to God, I swear by every single drop of Iraqi blood, I swear by every single drop of water of the two great rivers, I swear by every single grain of Iraqi soil, I swear I will not allow the blood of Mustansiria victims to go without punishment.¹⁶

There are three main points in this speech that deserve to be analyzed: the first is the assumption that Samir Mir Gullam was not acting alone, but as a representative of a larger terrorist group that intended to undermine Iraqi sovereignty. Second, the linking of this hypothetical group to ‘foreigners’ and Imperial Forces suggests that ‘Samir Mir Gullam and his masters’ are not just an internal Iraqi security threat. Finally, the reference to the ‘pure blood of our people’, meaning the Arab victims killed in the attacks, elevates Arabs over Samir and the Faylee Kurds. On the same date, the Ministry of the Interior issued a telegram (no. 2284) to all governorates on the Iranian border in which he said: “We would like to reassure our order of opening fire on any deportees who try to enter Iraqi land again.”¹⁷

On 7 May 1980, in order that Iraqi blood would not be lost in vain, Saddam issued RCC Decree No. 666.¹⁸ Through this decree, he determined to punish all Faylee Kurds. The first step was to strip of their citizenship all Iraqi citizens of foreign origin who were considered disloyal to the state. It was a threatening as well as ambiguous message because it was unclear how such disloyalty could be measured. In any event, Saddam set about stripping Iraqi citizenship from all Faylee Kurds and deporting them from Iraq. Kurds from the districts of Bab Al Shaikh, Kifah Street, the Kurds District, Palestine Street in Baghdad and Kut, Badra,

Jassan, Khanakin, as well as Faylee Kurds from Kirkuk, were targeted and expelled in this wave of deportations.

By August 1980 Iraq and Iran were openly exchanging fire, and in September Iraq invaded Iran. The number of deportees fluctuated depending on the outcome of the conflicts. The scale of the deportation of Faylee Kurds to Iran increased with the victories reported by the Iraqi army. On 16 February 1981, the *Al Thawra* newspaper published an article quoting Saddam Hussein's justification for the expulsion of Faylee Kurds to Iran. He said: "[...] uproot them from the land of Iraq so they cannot spill more, and disgrace, Iraqi blood, air and soil. The revolution uprooted them to put an end to their presence and to purify the Iraqis who are noble and do not accept humiliation."¹⁹ In order to avoid an uprising, the authorities gave orders to arrest every Faylee Kurd male able to use a weapon. These men and young boys were imprisoned in Nigrat Al Salman jail in the Salman district in Samawa governorate, as shown in [Map 3.2](#).



[Map 3.2 The Faylee Kurds' concentration camps during their displacement](#)

Source: Hamadamin Awla Sofi

In the Ba'ath Party Ninth National Conference Report of June 1982, Saddam Hussein spoke of the threat posed by the Faylee Kurds. He said:

When, in April 1939 the Shah of Iran cancelled the 1937 Treaty between Iran and Iraq, Iran started threatening the sovereignty of Iraq over Shat al Arab and to work against our Revolutionary system. They did it by financially supporting the Barzani group as well as the Iranians living in Iraq and Iraqi citizens of Iranian origin. All these groups

formed a fifth column inside Iraqi society. They were behind any anti-Ba'ath campaign, and any sabotage operation inside the country. These people were supporting Iranian and Zionist intelligence against the Iraqi economy providing them with sensitive military secrets. They worked against the unity and stability of Iraq and, when the enmity between them and the Shah of Iran reached its highest point, the fifth column clearly stood against the revolution, and accelerated its activities in the country. As part of its preventative action, the revolution started to deport a couple of thousands of them to Iran in order to put an end to their conspiracy and to punish any traitor to this country. This process started at the beginning of 1971 and continued for some time.²⁰

It is estimated that when Saddam delivered this report, over 50,000 Faylee Kurds had already been deported from Iraq.²¹ The president's open enmity towards Faylee Kurds was shared by a close group of influential statesman around him. In 1985, the general director of Iraqi security at the time, Dr Fadhil al-Barak, published a book entitled *Jewish and Iranian Schools in Iraq (Al madaris al irania wa al yahodiya fi al Iraq)* in which he discussed the threat posed by Faylee Kurds. In it he said: "Despite the fact that Iranian Kurds, or Faylee Kurds, had been living in Iraq since 539 bc, historically, psychologically, socially, politically and economically, they are linked to Iran." For Dr Fadhil al-Barak, being of Iranian descent meant that Faylee Kurds would instinctively act against the 'national interest' and all Arab national hopes and aspirations.²²

Although Faylee Kurds have never enjoyed full Iraqi citizenship rights, the Arab nationalist movements and the rise to power of the Ba'ath party in 1968 meant an intensification of the persecution against them as enemies of the state. Beginning in 1968, the citizenship laws were amended several times with the purpose of denying Faylee Kurds Iraqi nationality and, at the same time, to justify their systematic forced deportation from Iraq. It is estimated that up to 100,000 Faylee Kurds were deported or disappeared from 1971 until the fall of the regime in 2003. Their property was confiscated and inventoried for redistribution to Arab Iraqi Ba'athists. During the Iraq-Iran war, tens of thousands of young men were imprisoned or disappeared. The bodies of an estimated 10,000 men aged 18-28 who were imprisoned during the war have never been found. The expedition with the purpose of identifying their mass grave has not been successful, partly because of the lack of information about their displacement and because nobody from the previous regime came forward to provide this information. In February 2013 an expedition to the prison of Samawa Nigrat Al Salman led by the author confirmed their presence there during the 1980s. Their names carved into the prison walls tell us a story of suffering and desperation. The names of these prisons will appear many times in the dramatic history of the genocide of the Kurds, analogous to the most notorious concentration camps of World War II in Europe. This episode inevitably links with the killing of the Barzanis, the Anfal campaign and the Halabja events, and constitutes a concept of approval that the regime put into action to strengthen confidence in its power and its logistical ability to strike against a targeted sector of the population. On the other hand, it confirmed the power of the centre's capacity to dismember the social fabric by involving the whole Iraqi population in the crime.

It is paramount to establish some differences between the reasons for, and the strategies used, by the Ba'ath regime to justify the crimes against the Faylee Kurds. In their case, in producing the texts of the decrees issued by the Iraqi government, it is evident that there is a strong relationship between this genocide and legislation, since every step towards the forced deportation of the Faylee Kurds was taken within the law. This allowed the regime to act with impunity, and it created a deep divide within the Iraqi population whilst it offered justification for its acts. When the Ba'ath party seized power in 1968, genocide was not on the agenda. It was only later, with the need for the creation of an all-Arab state, that the regime started to persecute minorities and found, in genocide, a way to fulfil its goal.

Citizenship laws and deportation

The Treaty of Lausanne, signed on 24 July 1923, by the Allies and the Ottoman Empire, dealt only with the transfer of citizenship of former Ottoman citizens to the newly created states. Article 30 stipulated that the new-formed states should have automatically granted citizenship to the former Ottoman citizens living in their territories.²³ The treaty was silent, however, on the status of people living within the newly created states who had not held Ottoman citizenship during the Empire, as in the case of Faylee Kurds.

In 1924 the newly formed Iraqi state adopted its first domestic nationality law (Nationality Law No. 42). The law reiterated automatic citizenship for former Ottoman citizens and required that Iraqi identification documents should be issued that stated their former nationality. In order to apply for Iraqi citizenship, those without former Ottoman nationality had to prove that at least one of their parents was born in Iraq. As for the others, their foreign origin would appear on their identification. Iraqi citizens with a second nationality were automatically deported.²⁴

The Ba'ath Party used the nationality laws in order to change the demography of Iraq and to undermine the minorities present in the country, granting or revoking it depending on the political circumstances and their loyalty to the regime. For example, in 1963, the Ba'ath party immediately revoked Law No. 42 of 1924, replacing it with Nationality Law No. 43.²⁵ This law change was an effort to monitor Faylee Kurds and record their whereabouts as well as their political loyalties. As early as 1971 the first group of Faylee Kurds was deported to Iran. Most of them came from Baghdad and were living in the districts of Kanbar Ali, Qishla, Bab al Shaikh, Khalani and Akid al Akrad. The Iraqi state justified the deportation with the Iranian occupation of three islands (Great Tumb, Lesser Tumb and Abu Muza) in Hurmiz, at the gate of the Persian Gulf. A few KDP representatives in Baghdad tried to stop the deportation. They managed to stop the forced displacement of Gowi Kurds from Mosul to Turkey but failed to hinder the deportation of Faylee Kurds from Baghdad to Iran. It is estimated that 50,000 Faylee Kurds were deported during the decade.²⁶

This was the situation when Saddam Hussein came to power. Many Faylee Kurds were ineligible for Iraqi nationality, and those who had gained it were registered as having 'Iranian origin'. Through the Revolutionary Command Council (RCC), Saddam issued Decree 180, dated 3 February 1980.²⁷ This decree granted the Minister of the Interior the power to accept the nationality application on condition of three requirements: (1) the citizen lived in Iraq before 14 July 1958 and had never left the country until 3 February 1968; (2) one of their blood relatives had Iraqi nationality; (3) their stay in Iraq was not a threat to the security and safety of the republic. This law was intended to be valid for six months only, before reverting to the previous Nationality Law 42. Anyone who did not apply for citizenship within the six-month period, and who after six months lacked Iraqi nationality and an Iraqi ID card, would be expelled. This six-month period allowed the Iraqi state to record and monitor the Faylee Kurds, and the information gathered contributed to the implementation of more systematic deportation policies.

Many Iraqis of Saddam's generation were educated to hate Iran or people of 'Iranian origin' and thought that Iran constituted a threat to the Eastern Gate of the Arab world. Khairall Tolfah (1910–1985), the author of an overtly racist book entitled *Anatomy of Khomeini Religion (Tashrih al diyani al Khomayniya)* praised Saddam Hussein, who was his uncle and, later, his father-in-law. In it he criticizes the Shia harshly, condemning the way they prayed, their marriage system and even the way they performed sexual activity. He also refers to the difficulty of understanding why God created three creatures: Jews, flies and Persians, since in his view the Jews stand against God, flies transfer diseases and Persians had converted to Islam in order to destroy it.

In 1980 Saddam ordered the deportation of Faylee Kurds, 'Iranian descendants' offering 10,000 ID, approximately US\$30,000, to Iraqi people already married to Faylee Kurds to divorce their spouses and to remain in Iraq while their families were deported. This sum of money was in addition to the 4,000 ID (US\$12,000) for the military and 1,500 ID (US\$3,000) for civilians provided by Decree No. 474 of 15 April 1971 to anyone who could present proof of deportation, and a new marriage certificate proving remarriage to an Iraqi national. With Decree No. 150 issued by the RCC on 28 January 1980, any woman who refused to divorce her Iranian husband would automatically be banned from holding any public office.

In 1975 the Algeria Treaty between Saddam Hussein and the Shah of Iran meant a partial ease of the deportations. With this treaty both Iran and Iraq temporarily settled their dispute regarding territorial issues. Iran gained control of a few islands in the Persian Gulf and in return it agreed to stop the supply of weapons to the Barzanis and the KDP which paved the way for the Iraqi government to repress the Kurdish rebels on the Iranian border.

Whilst the deportation of Faylee Kurds may have slowed down, the Arabization process intensified after the Algeria Treaty. Decree No. 5, dated 11 January 1975, granted the minister of the interior the power "to give Iraqi citizenship to any adult Arab from the Arab world

without taking into consideration the conditions of the citizenship mentioned on the first part of Article 8, Iraqi Nationality Law 43 of 1963".²⁸ The ease with which Arabs could apply for, and be granted, Iraqi citizenship directly contrasts with the experiences of undocumented Kurds who had resided in Iraq for centuries but remained ineligible for Iraqi citizenship. To avoid any judicial regulation, Decree No. 413 was passed to make sure that no court had the jurisdiction to consider any case regarding the issue of nationality made under Nationality Law No. 43.

After the 1979 Iranian revolution, Iraq's relations with Iran deteriorated dramatically, especially because Iran threatened to export its revolution to other areas of the Arab world. The Ba'ath party considered themselves to be Arab socialist and nationalist guards of the Eastern Gate of the Arab world, and could not tolerate such rhetoric from their Persian and Shi'ite neighbours. In addition, the Iraqi regime thought it was its duty to prevent the Iranian Revolution from influencing the rest of the area, at a time when most of the Arab world, with the exception of Syria and Libya, referred to Iraq as the 'Eastern Gate of the Arab world'. Egypt, Saudi Arabia, Kuwait and the Emirates sent money, arms and manpower to Iraq in order to protect the Arab world from Iran.²⁹

During the Iraq–Iran war, the Kurds were forced to fight openly against Saddam. With both the KDP and the PUK openly supporting Iran, the Kurds in the north of Iraq threatened the stability of the regime. As was common in Iraqi history, Saddam responded by amending citizenship laws, and, through massive military intervention, encouraged the stripping of Iraqi nationality and forced deportation of opponents to the regime. He said:

We decided to continue the deportation of Iranian descendants, even for the people who are not included in the deportation lists that had been previously compiled. The orders were to strip them of their Iraqi Nationality if it was found that: (1) they are members of an opposition party, (2) they have started to form political groups, (3) they are against the Ba'ath Party, and its revolution. If anyone was found who was not included in deportation lists before, and any of these three conditions applied to them, they were to be deported.

(Presidency Office 4248/7/C, 5 April 1986 to the Ministry of Interior)

On 27 April 1986 Decree 363 granted the minister of interior the power to withdraw Iraqi citizenship from any Iraqi if it had been proved that he is or was not faithful to the state and its people.

In an imitation of the racial laws promulgated by the fascist regimes in Europe, the expulsion of Faylee Kurds became a real 'national project' for all of Iraq's bureaucracy. They started to request all government employees to bring their national identification card to the security office of their workplace. They asked all students in school to bring their and their parents' national identification cards to the teachers for documentation. All members of the Ba'ath party, military security forces, and intelligence organizations had to present their nationality card and those of both parents to the security offices to be re-checked. Decree No. 11274, from the General Directorate of Military Intelligence to the Second Corps of the Iraqi

Army, dated 27 July 1984, stated that any intelligence or security employee of Iranian origin must be expelled, as he/she could not be trusted. In addition to that, each Iraqi had to complete his/her family tree up to seven generations.³⁰

Disturbing parallels with recent European history: does 'Arabization' equal 'Aryanization'?

Based on the dramatic European experience and with the purpose of preventing such events happening in the future, Professor Gregory Stanton, president of Genocide Watch, proposed a list of ten stages which are very useful when discussing the policies implemented against the Faylee Kurds: classification, symbolization, discrimination, dehumanization, organization, polarization, preparation, persecution, extermination and denial.³¹ Gregory Stanton identifies classification as the first stage of the genocidal process. This involves inflicting clear, distinguishable boundaries between 'us' and 'them', and, in a genocidal situation, between the *genocidaires* and their targets. In Iraq, members of society were classified along ethnic lines: Arab, Kurdish, Caldian, Assyrian, Turkoman and Armenian. There were also classifications within classifications, for example Faylee Kurds or people belonging to Arab tribes. In some cases Kurds were classified according to their tribe. Further division and classification was made according to religion, making a distinction between Sunni and Shi'ite Muslims, Christians and Jews. Ethnic origins were recorded on identity cards and in available census data. In the case of this study, the target group is classified as 'Faylee Kurds'. The second stage was implemented by the use of symbols that were used as markers of the classified groups. In Ba'athist Iraq, Faylee Kurds (classified as Iranian) were referred to as 'traitors' of Arab nationalism, the 'fifth column of Iraq', as aides to Iranian and Zionist intelligence gathering inside Iraq, as profane or disrespectful and as a contamination of Iraqi blood.

According to Gregory Stanton, the stage of dehumanization is crucial because it transforms the classification and symbolization stages from societal division into genocide. In Ba'athist Iraq, Kurds and Faylee Kurds, or 'Iranians' as they named them, are not likened to vermin or cockroaches as Jews were in Nazi Germany or Hutus in Rwanda. However, Saddam dehumanized Faylee Kurds with the imagery of their contamination of Iraqi blood, and the justification for deportation was the cleansing of Iraq from impurities. By doing this, the regime proceeded to the stage of discrimination in which, according to Stanton, it could justify the use of law, custom and political power in order to deny rights, including stripping people of their citizenship in much the same way that Nazi Germany treated the Jews.

One of the most striking characteristics of Iraq's deportation policies was the efficiency and, to use the stages proposed by Stanton, the organization with which they were implemented. The branches of state that came together to implement them and eventually to kill the men held in custody included the Republican Guard, the General Security Office, the General

Nationalisation Directorate, all Ba'ath party offices, the police, the army, the Popular Army and Saddam Hussein himself. In order to locate Faylee Kurds, Iraq's extensive bureaucracy demanded the presentation and recording of all national identity cards. Lists of Faylee Kurds to be deported were compiled, transport to the border was organized, men of military age were held in custody and confiscated property was inventoried and redistributed under the supervision of the deputy prime minister. This phase in particular was a deadly combination of violence from above and from below because the compilation of the lists of Faylee Kurds, as for the Jewish citizens in Germany or Italy, for example, was usually delegated to the local authorities, the police, commercial institutions and professional organizations, which were ready, for economic and professional reasons, to comply with the directives from above. The episode that took place in the Chamber of Commerce in Baghdad is an example of the level of complicity between local institutions led by individuals eager to enrich themselves as a consequence of these policies.

The regime's propaganda machine, along with a traditional fear of the 'Iranian' threat to Iraqi interests, polarized the citizens and left very little room for moderates who were systematically eliminated from the political scene. This happened in Iraq, as well as in Nazi and Fascist Europe, or more recently in the regimes of the Eastern bloc, with the existence of a capillary net or collaboration in society itself. Gareth Stansfield describes the intensification of state control under Saddam's regime with the following words:

Saddam remained wholeheartedly committed to the more violent attributes of state control, creating a sophisticated network of security and intelligence organizations. Five primary agencies constituted the Iraqi security apparatus: *Jihaz as-Amn al-Khas* (Special Security); *al-Amn al-'Amn* (General Security); *al-mukhabarat* (General Intelligence); *al Istikhbarat* (Military Intelligence); and *al-Amn al-'Askari* (Army Intelligence). In addition to these organisations, there also existed a number of party security agencies, police forces, paramilitaries and special units, all armed to protect the regime from any actual, perceived, or threatened form of opposition. These organisations formed an Orwellian web of mistrust, fear and coercion which comprehensively permeated every aspect of Iraqi life, and new formations of civil or political life could exist in such an environment, least of all the fragile institutions necessary for representative democracy to emerge.³²

As shown above, affiliation with or support of any party other than the Ba'ath party was punishable with the removal of citizenship and expulsion from Iraq, or, in the case of the Da'wa party, punishable by death. There was little opportunity for moderates to emerge, and the political environment crafted by the Ba'ath party was certainly no environment in which opposition to deportation could be voiced safely.

Preparation for genocide includes identifying targets, preparing lists of maps, logistics and training of armed forces or militia to carry out the act. As stated in the discussion on the organization stage of the deportation of Faylee Kurds, the massive state machine was able to efficiently identify and compile lists of names of Faylees to be deported. The intensity of control of citizens' lives in Iraq meant that state institutions could find information on the whereabouts, occupations and political views of any citizen. Transport was arranged so that

Faylee Kurds could be taken directly to the Iranian border and their deportation verified. Military-age Faylee men (18–28 years) were held in Samawa and Nigrat Al Salman prisons in the south of the country. The army that had originally been strengthened in order to address problems within Iraq's borders was prepared to carry out orders and by 1971 had experience in suppressing and killing Iraqi nationals at the directions of the regime.³³ The army understood and were proud of their role in protecting the Arab nationalist movement from the Shi'ite sect, the Kurdish drive for autonomy and other internal security threats.³⁴ The persecution stage was ready to begin.

Perhaps uncharacteristically for Ba'athist Iraq's unquestioned brutality towards its citizens, this proved to be a disproportionately smaller aspect of the overall treatment of Iraq's Faylee Kurds. Whilst up to 100,000 men, women and children were forcibly uprooted from Iraq and expelled to Iran, without any of their personal property or moveable assets, it is estimated that a more modest figure of 10,000 men were killed while imprisoned during the Iraq–Iran war. The killings were nevertheless mass killings, and most certainly had an effect on the exiled Faylee community in Iran with an inevitable demographic impact on the Faylee population. In the context of the Iraq–Iran war, killing the men would have easily been justified when the state had deliberately classified and symbolized them as enemies of the pure Iraqi Arab homeland. When the stage of extermination arrived, the perpetrators did not believe in the humanity of their victims and they proceeded to obey the orders given by the regime.

The last stage indicated by Stanton is denial. This implies the destruction of evidence that could lead to the discovery of the crimes, including, as we have seen in almost all the cases considered, leaving unmarked mass graves, burning bodies, or threatening the survivors into denying what they witnessed. This is a very destructive stage because the accused try to deny the events and this makes it difficult to build legal cases against them which jeopardizes the possibility of justice. Although the Iraqi High Criminal Court has legally recognized the treatment of the Faylee Kurds as an act that amounts to genocide, the Ba'ath regime has never disclosed where the bodies of the men can be found.

The new Iraqi constitution of 2005 was the first to be voted through an open referendum with the intention of dealing with the Iraqis' unjust past. In the Preamble to the new Iraqi constitution, which was overseen by most political parties and components of Iraqi society, it acknowledges what Kurds and others have been through and it invokes “the pains of sectarian oppression inflicted by the autocratic clique and inspired by the tragedies of Iraq's martyrs, Shiite and Sunni, Arabs and Kurds and Turkoman and from all other components of the people, and recollecting the darkness of the ravage of the holy cities and the South in the Sha'abaniyya uprising and burnt by the flames of grief of the mass graves, the marshes, Al-Dujail and others and articulating the sufferings of racial oppression in the massacres of Halabja, Barzan, Anfal and the Fayli [sic] Kurds”.³⁵ It also mentions that we have to take “lessons from yesterday for tomorrow.” The new constitution is also the second one to

recognize that “Iraq is a country of multiple nationalities, religions, and sects.” Article 7 goes even further by condemning the Ba’ath philosophy and “any entity or programme that adopts, incites, facilitates, glorifies, promotes, or justifies racism or terrorism or accusations of being an infidel (takfir) or ethnic cleansing, especially the Saddamist Ba’ath in Iraq and its symbols, under any name whatsoever, shall be prohibited. Such entities may not be political pluralism in Iraq.”

Unfortunately, until now for the reasons discussed above, the constitution has not been fully implemented. Sectarianism and de-Ba’athification have not been fulfilled and it is difficult to see a new multi-ethnic and multi-culture being a reality in the near future. In addition, there are some worrying patterns that are repeating themselves that give the impression that history can repeat itself. Article 9 of the constitution mentioned that all Iraqis, no matter their ethnicity, should join the new Iraqi army and, most importantly, that it would be subject to the control of the civilian authority. This is to avoid any interference in political affairs and any transfer of authority. After 2003 a new Iraqi army was formed with the participation of Kurds, Arabs, Turkomen and others, but if we look at it today it is easy to find that it is under Shia Arab domination. In addition, many high-ranking Ba’athists are in office and occupy military positions. For example, the general who was one of the main commanders during the Anfal campaign, Brigadier Abdul Amir Al Zaidi, thanks to Decree No. 372 of the Iraqi Council Ministers, is now in command of the Tigris Forces based in Kirkuk, a very daring and symbolic step by the federal government considering that in 1988 Wafiq Al-Samarra’I, deputy director of the Military Intelligence Directorate, is known to have said: “you can kill half a million Kurds in Erbil but that won’t do anything. It would still be Kurdish. But killing 50,000 Kurds in Kirkuk will finish the cause forever.” Currently, the Iraqi army consists of 15 divisions with a total of about 350,000 soldiers, most of them belonging to the former Iraqi military forces. In addition to that, the Iraqi interior ministry has more than one million policemen.

As shown in Articles 132, 134, 136 and 140, the constitution guarantees care for the families of the victims of the dictatorship, including the constitutional duty to look for the missing Iraqis; the independence of the IHT; the institution of a Property Claim Commission in charge of returning the property confiscated to the Faylee Kurds during the genocide; and the duty to resolve the disputed areas, respectively. Yet these have not been implemented.

[*Gathering the evidence: was it genocide? A legal insight*](#)

It was only after the end of the Ba’ath regime that all these documents, along with the ones gathered on the ground during the second phase of writing this book, could be archived and analyzed in order to build up a court case regarding the genocide of the Faylee Kurds. The newly established Ministry of Human Rights of the Kurdistan Regional Government was in charge of investigating this and other cases and of gathering the evidence necessary to

establish personal and institutional responsibilities for these events. Unstructured interviews with Sami Faylee, director of the Faylee Kurds' centre in Erbil, helped to gather material from additional private sources. In addition, interviews with judges Munir Hadad, Mohammed Sahib, Azzo Mohammed Sofi and Raed Juhi contributed to the reconstruction of the different phases of the Faylee Kurds' case.³⁶

As will be proved through the evidence presented here for the first time out of a court of law, the crime against the Faylee Kurds can be defined as genocide because it covers points (b) and (c) of Article II of the 1948 convention mentioned earlier. By deporting the Faylee Kurds in repeated stages, the Iraqi government is guilty of causing them 'serious bodily or mental harm' and of deliberately 'inflicting on the group conditions of life calculated to bring physical destruction in whole or in part'.

The trial regarding the experiences of the Faylee Kurds was heard by the Iraqi High Criminal Court over 44 sessions commencing on 26 January 2009 and ending on 29 November 2010, when the verdict was delivered.³⁷ The trial was presided over by Judge Saad Yahya Abdul Wahid and four sitting members: Basil Abdul Latif Mohammed Ali, Sami Sajad Abdul Abbas, Mahdi Mohammed Ali and Asso Mohammed Sofi. Because Saddam Hussein was executed before the case began, his culpability for the treatment of Faylee Kurds was not directly considered. The following is a summary of the people convicted of these crimes. It was proved that the victims were persecuted on ethnic and religious sectarian grounds. Their only crime, therefore, was their ethnicity and religious views. Bystanders of the crimes included the international community, the Arab world, the Islamic world, Iranians and Iraqis in general. The most convincing encouragement for the regime would likely have been the silence of all bystanders as the horrific crimes committed against Faylee Kurds unfolded. Among the few persecuted were:

Sadon Shakir Mohammed Ahmad Alubaidi (1939–) General Director of Iraqi Intelligence 1973–1979, Minister of the Interior 1979–1986. Sadon Shakir was a member of Saddam's inner circle of trust and was a well-known political figure across Iraq. In relation to RCC Decree No. 666, dated 7 May 1980, as Minister of the Interior he was in charge of implementing the decree ordering the withdrawal of Iraqi nationalities and the deportation of Faylee Kurds. Under his command, the policy was implemented and tens of thousands of people were deported or killed. He personally authorized the signing of the deportation orders of entire lists of Faylee Kurds. In addition, the court found that Sadon Shakir was also responsible for judging those citizens "not faithful to the nation, to the country and to the highest national social value of the revolution" (RCC Decree No. 666).³⁸ Finally, Sadon Shakir was in control of the redistribution of the property of the Faylee Kurds, and of the allocation of Faylee commercial and residential buildings as well as their registration in the name of

the president of the Intelligence Service.³⁹

Ahmed Hussein Khuthair Awath Al Samarae (1939–) Chief of Staff in the Presidency Office 1984–1991 and 1995–2003. The court found that Ahmed Hussein did not play a role in drafting or implementing RCC Decree 666. However, the court found that Ahmed Hussein was responsible for concealing and denying what happened to Faylee Kurds, particularly those killed during the war with Iran when Faylee Kurds were used as human shields and sent across the heavily mined Iraqi-Iranian border. Ahmed Hussein drafted a denial policy and oversaw the payment of retirement salaries to the families of those Faylee Kurds left behind in Iraq who made enquiries about the whereabouts of their male family members. The state responded to such enquiries by saying that the men must have been kidnapped by the Popular Army, sent to war and died whilst serving in the army. He signed telegram no. 9489, dated 8 March 1983, from the Presidency Office to the general director of security stating that the names recorded in the telegram were Iranian descendants and prisoners of Nigrat Al Salman but were not members of the treacherous Al-Dawa party. In the same telegram he suggested that the general director of security register them as dead as a result of the war. Further, he directed that the general director of security put their names on the retirement roll to make their deaths official.

Mozban Khothir Hadi (1938–) originally a schoolteacher at the beginning of the revolution in the Najaf governorate. In 1981 he became the governor of Najaf, and was in charge of sending Faylee Kurds from his governorate in the south of Baghdad to Nigrat Al Salman prison and deporting others to Iran. In 1977 Mozban was in charge of the Ba'ath Party Organization in Waast governorate, and from 1979 until 1982 he was a senior member of the Ba'ath Party Headquarters of Iraq.⁴⁰

Azziz Salih Hassan Noman Al-Khafaj (1941–) Deputy Minister of Interior 1978–1979. Later he was in charge of the Ba'ath Party Headquarters in the Najaf governorate until 1982. After 1982 Azzis Salih moved to Baghdad and became a senior member of the Ba'ath party. The court found that Azziz Salih ordered the killing and deportation of Faylee Kurds as a result of his position within the governorate.⁴¹

The KRG and negotiating compensation: the challenge of coexistence

Despite the massive amount of information gathered and the recognition by the judicial and political authorities that Faylee Kurds were victims of genocide, very little has been accomplished in order to heal the fracture in Iraqi society. There are legal considerations that reverberated in the political and social reality of post-2003 Iraq. From a legal point of view, the limitations of the IHT, born under the occupation, made impossible a balance between the number of convictions and the scale of the crime. According to the figure gathered, around

150,000 Faylee Kurds were deported and stripped of all their properties, and for this crime only four individuals were convicted. The impossibility of pursuing a more balanced trial was also due to the high politicization of the court, which could be seen to favour one group over another.

This lack of justice is having a detrimental effect on Iraqi society as a whole. This is also because of the political unwillingness of the Iraqi governments that ruled during and after the 2003 invasion and occupation of Iraq. Furthermore, they have not fulfilled the second point of Resolution No. 426 of the Council of Ministers (mentioned earlier) which recommended the elimination of 'all negative impacts' suffered by Faylee Kurds. In fact, according to the last statistics gathered by the Minister for Immigration, from April 2003 to July 2013, of over 150,000 Faylee Kurds affected, only 16,580 of them had their Iraqi nationality restored and only 6,853 are in possession of national identification documents. Also, most of the 'moveable and unmoveable assets' have not been returned to them. The decree was impossible to implement because people working as civil servants during the time of the deportation are still in charge in the new administrations. In addition, the issuing of citizenships and national identification documents is in the hands of the federal government. The fact that the Faylee Kurds are geographically distributed all over Iraq and mainly outside the Kurdistan region makes difficult a decisive intervention of the regional government regarding this issue. It also explains why the investigation has failed to uncover a decree issued by the Iraqi government regarding the other genocides.

In addition to the decrees issued by the Ba'ath government, the telegrams exchanged among various authorities in different areas of the country that shared orders and information regarding the deportations revealed to the court that the authorities were aware of the persecution and the resettlement of the Faylee Kurd population and proved to the IHT the clear responsibility of the regime.

The documents provided in the Appendix helped to build a convincing case.⁴² After the deliberation of the IHT, resolution no. 426 (2010) of the Council of Ministers, reproduced in the Appendix, stated the following:

First: The Council of Ministers welcomes the decision of the Supreme Iraqi Criminal Tribunal, issued on 29/11/2010, ruling that the case of the Extermination and Displacement of the Faylee Kurds shall be deemed a crime of Genocide by all measures, reiterating that which was resolved by the Council of Representatives and confirmed by the Presidency Council in its Resolution No. 26 of 2008, published in the Al-Waqaea Al-Iraqia gazette, edition 4087 dated 22/9/2008.

Second: The Council of Ministers undertakes to eliminate all of the negative impacts resulting from the oppressive resolutions issued by the former regime against the Iraqi people from the Faylee Kurds (such as the Deprivation of Iraqi Nationality and the Confiscation of Moveable and Immoveable Property, in addition to other violated rights).

Citizenship was a nebulous word in Saddam's regime as the fragmentation of society did not favour the birth of a unified Iraqi identity. After the genocides, the failure of the Iraqi government after 2003 to cement this sentiment by taking an active role in compensating the

victims of the past regime did not stop this trend. On the contrary, under Maliki's government, the schism between Sunnis and Shias and between Arabs and Kurdish widened, compromising any route towards a real national reconciliation.

Notes

- [1](#) For all the cases analyzed in this book, the documentation, telegrams and decrees presented in favour of the case of genocide of the Faylee Kurds has been gathered by the author in his role of Minister of Human Rights of the KRG.
- [2](#) Human Rights Watch, *Iraq's Crime of Genocide*, New Haven, CT: Yale University Press, 1994, pp. 266–268.
- [3](#) The term *Aryanization* comes from a book by Frank Bajohr, '*Aryanisation*' in *Hamburg: The Economic Exclusion of Jews and the Confiscation of Their Property in Nazi Germany*, Oxford: Berghahn Books, 2002.
- [4](#) Ibid.
- [5](#) Fadhil al-Barak, *Iranian and Jewish School in Iraq*, Baghdad, 1984 (publisher unknown). For further information on the origin of Faylee Kurds, see Hana Battatu, *Social Structure and Revolutionary Movements during the Ottoman Empire*, Beirut: Maktabat Al Bostan, 1990, pp. 60–69; Mossa Shah Baudar, *A Memoir of Baghdad*, Cyprus: Dar Al Rais, 1993; and Khasro Guran, *Kurdistan through History Part One*, Stockholm: Khabat, 1992, pp. 152–161.
- [6](#) For more information on the Faylee Kurds' areas or locations see Map 3.1.
- [7](#) G. Kerson, *Iran Was Al Kathiya al Irania*, translated by Ali Jawad Kalam, Tehran: Ibin Sinna, 1936.
- [8](#) H. Filed, *Marifat al akwam al iranica*.
- [9](#) Information available at <http://www.faylee.org/english/studies/doc3.php>
- [0](#) Ahmed Nassir Faylee and Al Failyon, *History and Destructive Citizenship*, Erbil: Aras, 2012, pp. 215–217.
- [1](#) Joshua Castellino and Kathleen Cavanaugh, *Minority Rights in the Middle East*, Oxford: Oxford University Press, 2013.
- [2](#) This is confirmed by many interviews with Faylee Kurds who were in Iran at some stage of their deportation, or who returned from Iran. They indicated that Iranian officials described them every day as 'non-invited guests' to Iran.
- [3](#) All the documents presented here are currently with the court. They are the result of a team effort at the Ministry of Human Rights of the KRG.
- [4](#) *Al Thawra*, the official Ba'ath party newspaper, no. 3602, 5 April 1980.
- [5](#) Brigadier General Saad Khuthar, Director of Psychological Warfare during the Iraq-Iran War, interviewed by M. Ihsan (Baghdad, November 2011).
- [6](#) Iraqi Channel 1, 8 p.m. news. Saddam Hussein's speech, 28 April 1980.
- [7](#) See Appendix for the original and translation of telegram no. 2248.
- [8](#) See Appendix for RCC Decree no. 666.
- [9](#) Article in *Al Thawra* no. 2342, 16 February 1981.
- [0](#) The term "fifth column" deliberately suggested that Faylee Kurds were clandestinely assisting the Iranians behind enemy lines.
- [1](#) David McDowall, *A Modern History of the Kurds*.
- [2](#) The first version was printed in 1980 (Baghdad). The researcher relies on the second version printed in 1985 (Baghdad).

- ¹³ Article 30 of the Lausanne Treaty stipulated that “Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become ipso facto, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.”
- ¹⁴ Articles 9, 13 of law no. 42 of 1923.
- ¹⁵ Some Kurdish leaders such as Ali Sinjari and Fazil Mirani think that the main motive behind this law was the Faylee Kurds’ support of General Abdul Karim Kassim before the 1963 military coup.
- ¹⁶ David McDowall, *A Modern History of the Kurds*, Minority Group International, Cambridge: Cambridge University Press, 1997, p. 330.
- ¹⁷ Saddam Hussein, as the chairman of the Revolutionary Command Council, issued many other decrees regarding Faylee Kurds such as RCC Decree No. 907 dated 9 June 1980, 916 dated 10 June 1980, RCC Decree No. 1134 dated 24 November 1980, RCC No. 873 dated 31 July 1984, RCC No. 28 dated 9 January 1985, RCC No. 1167 dated 18 October 1984, RCC No. 1370 dated 12 December 1984, RCC No. 1227 dated 1985, RCC No. 1250 dated 14 November 1984, RCC No. 1209 dated 18 November 1984, RCC No. 784 dated 1984, RCC No. 855 dated 25 July 1985, RCC No. 49 dated 12 January 1983, RCC No. 120 dated 27 January 1983, RCC No. 253 dated 13 March 1982, RCC No. 533 dated 9 May 1983.
- ¹⁸ Article 8 of Nationality Law No. 43 of 1963 held that any Arab national may be naturalized provided that (a) he has attained majority; (b) he has entered Iraq legally, and was residing in Iraq at the time when he applied for naturalization; (c) he has been residing in Iraq legally for at least ten successive years before submitting the application. The Minister may not put himself under the obligation to perform this item, if it is required by the common interest; (d) he is of good conduct and reputation and has never been sentenced for felony or a misdemeanour prejudicial to honour, unless he has formerly been rehabilitated; (e) he has an obvious means of living; (f) he is safe from infections, diseases, physical and mental deficiencies; (g) Palestinians are excepted from granting Iraqi nationality, until the liberation of Palestine and going back thereto.
- ¹⁹ Brigadier General Wafik Al Samarai, *Destruction of Eastern Gate*, Kuwait: Kabas Press House, 1997. He was the Deputy Director of Iraqi Military Intelligence during the Iraq–Iran war.
- ²⁰ Other non-Arab minorities such as Assyrians, Chaldeans and Armenians (even those of Iranian origin) were not treated with the same intensity of suspicion as Faylee Kurds.
- ²¹ A complete explanation of the ten points presented by Gregory Stenton are available at <http://genocidewatch.org/genocide/tenstagesofgenocide.html>.
- ²² Gareth Stansfield, *Iraq*, London: Polity Press, 2007.
- ²³ The Iraqi army had been engaged almost continuously throughout the 1960s in armed conflict with the Kurdish Peshmerga in the north of the country. See D. McDowall, *A Modern History of the Kurds*, London: I. B. Tauris, 1997, pp. 323–327.
- ²⁴ Ibid.
- ²⁵ A complete text of the 2005 Iraqi constitution is available at http://www.iraqnationality.gov.iq/attach/iraqi_constitution.pdf
- ²⁶ The judges mentioned worked at IHT (as judges and investigating magistrates) from the beginning of its creation, and on many occasions the researcher worked with them on different Kurdish cases.
- ²⁷ IHT decision 29 November 2010, Case No. 2/C/2008.

- [18](#) Sadon Shakir issued many decrees to that effect, Decree 16395, dated 15 December 1982, F 16396, 25 December 1982, Decree 326, dated 8 January 1983, Decree 444, dated 10 January 1983, Decree 580 dated 13 January 1983, Decree 774, dated 18 January 1983, Decree 1449, dated 1 February 1983, Decree 584, dated 10 January 1983, Telegram 6353, dated 5 June 1980, all written by Sadon Shakir and including lists of names of Faylee Kurds unfaithful to the regime and requesting to re-register most of the confiscated properties in the name of the President of the Iraqi General Intelligence (*Mokhabarat*).
- [19](#) Sadon Shakir has been sentenced to death for genocide, to 15 years imprisonment for committing the crime of forced deportation as a crime against humanity, to 7 years for committing the crime of imprisonment as a crime against humanity, to 7 years for committing the crime of torture as a crime against humanity, to 6 years for the crime of oppression as a crime against humanity and to 10 years for committing crimes against humanity. At the time of writing, Sadon Shakir had not been executed. See the Appendix for the details of the court decision regarding Sadon Shakir.
- [10](#) Mozban was sentenced to death for committing genocide against Faylee Kurds, to 15 years for deportation as a crime against humanity, to 7 years for imprisoning people, to 7 years for committing the crime of torture as a crime against humanity, to 6 years for oppression as a crime against humanity and to 10 years for inhuman treatment as a crime against humanity. For the full court decision regarding his involvement see the Appendix.
- [11](#) Aizi Salih Mohan was sentenced to death for committing the crime of genocide, to 15 years imprisonment for committing the crime of deportation as a crime against humanity, to 7 years for illegally imprisoning people, to 7 years for committing the crime of torture as a crime against humanity, to 6 years for committing the crime of oppression as a crime against humanity and to 7 years for committing inhuman activities as a crime against humanity. For the full court decision regarding his involvement in the Faylee Kurds genocide, see the Appendix.
- [12](#) All the documents reproduced in the Appendix show how all the stages regarding the deportation and the discrimination against Faylee Kurds have been recognized both by the Iraqi federal government and by the KRG as the crime of genocide 'by all measures'. Unfortunately, these documents are a striking reminder of how their content has never been implemented.

4 Blueprint of a genocide

The massacre of the Barzanis and the difficult quest for the truth¹

The desert sands of southern Iraq kept the death of 8,000 Barzani males secret for more than twenty-two years. When, after the fall of Saddam's regime, all the political prisoners were finally released, not one of the missing Barzanis made his return home. This reaffirmed suspicions about their fate and so the investigation, supported by the Kurdistan Regional Government, started.

The only memory of the tragedy was the sorrow of the women that witnessed their men's deportation and who as a result suffered from destitution and poverty. After so many years, this is still an open wound in the community, especially among women who, in poverty and banned from their own society, had to mourn their sons, husbands and brothers in solitude.

The author started his investigation by interviewing some of the women involved. It was very difficult to penetrate the veil of grief and the desperation that inevitably accompanied every word spoken by those women. Hafza Hassan Hendai² tells that she had five sons, three of them married, who disappeared with their father on that day. She does not speak of anything but the incident. After the invasion (or, for some people, the liberation), she was watching TV and saw Saddam Hussein in court, accused of genocide. She cannot understand why a court case was needed. There was no court when Saddam decided to abduct the Barzanis, so why now? Another woman asks what she is supposed to say to her child when he grows up. She regrets that she will not be able to tell him what happened, or where his father is buried, because his grave does not have a sign on it. Mala Yougob,³ mullah of Ble village, is of the few lucky men who managed to escape his fate because he was not at home when Saddam's forces surrounded the camps. He calls this a crime against Islam, and notes that for twenty-two years most of the women have cried and waited every day for their relatives to come back.

It was difficult to gather the information necessary to reconstruct the events. Some of the mothers, sisters and wives remembered how the Iraqi army surrounded the Quashtappa camp where they were held at around five in the morning. A few of them started to say the morning prayers although they were far away from their homes, twenty kilometres from Erbil. They remembered that the Iraqi army arrested all the males between the ages of ten and ninety. Other witnesses remembered that some of the villagers tried to stop the military

from leaving with their prisoners by following them. They were killed in cold blood and the women were left to wash and bury their bodies. Then some witnesses placed the prisoners in Baghdad where the army made them parade as Iranian prisoners of war before they disappeared for ever. However, it was possible, with the help of some witnesses, to reconstruct, even if in an approximate way, their long journey from Baghdad, where they were seen for the last time. They went to the remote prison at Nigrat Salman in the Busaya area, around 800 kilometres south of Baghdad in the middle of the desert, a real inferno due to the climate of the area, where they were killed. They were transported in trucks in a long non-stop journey. The trucks were crowded and without any protection from the July sun. Despite this, the military responsible for the operation had to be very efficient in keeping the operation secret. Nobody heard from the prisoners again.

[Documentary evidence](#)⁴

The Barzanis were abducted and murdered between July and August 1983 in high secrecy and with only the involvement of the General Security (Amn Alam). No other agency of the state was aware that this operation was going on, and documents regarding that period are almost non-existent. The only references to the crime were found years later, when the regime was confident of its impunity. For example, one of the documents reproduced here shows that there was an attempt to cover up this crime with false evidence. Dated 29 March 1989 and signed by Lieutenant Colonel Haqi Ismail, who was in charge of political affairs at the Iraqi Security General Office, it contains an order from the former director of public security to “fabricate charges for the important ones; a total of 667 charges were laid for 16 cases. The cases were sent to the Presidency Revolution Court, and the verdict was the death penalty. No death certificate was sent out.”

During the first stages of the investigation, only a few documents were found by the military intelligence of the KDP from the third section of the Iraqi military intelligence⁵ which refer directly to the case, and they constituted the first step towards the reconstruction of the events. One video documents that in September 1983, just one month after the men’s disappearance, Saddam Hussein gathered some Kurds together and delivered a speech on air. He wanted to show the Kurds that no one could stand against him. Calling them traitors, he told the audience that these Kurds had been punished and that finally they “had gone to hell.”⁶ To an Arabic audience, these words confirmed what until that moment had been only a suspicion, that the Barzanis had been abducted and killed. But the documents made it possible to obtain the first clue to the whereabouts of the Barzanis’ mass graves. In a letter dated 3 March 1989, reproduced here and addressed to Mr M.M.H. for Political Affairs from Lieutenant Haqi Ismael, Mr M.M.H. is informed about the detention of 2,225 Barzani Kurds

transported by buses to Busaya. The document also reveals that the prisoners were executed in the Al-Muthana governorate, in the Busaya region, in coordination with the director of general security in Baghdad. The letter contains other details about the detainees, but the geographical location of the victims' bodies was useful in organizing the forensic expedition to the area. One document reproduced in the Appendix is from the director of general security and addressed to the secretary director of public security on the same date and offers more details about the abduction and death of the Barzanis. It states that most of the 'traitors' of the country are from the Barzani tribe and that a top secret mission commenced on 1 August 1983, conducted by a special unit assembled from units and directorates of the autonomous region. This special unit surrounded the Al-Quds, Al-Qadissiya and Qushtappa compounds and, the letter continues, "All males from Barzani families over the age of 15 were arrested and transported using big vehicles prepared for this mission accompanied by military force." The letter continues to say that their cases were referred to the Presidency of the Revolution Court, whose verdict was death. This document is also important because it establishes, without any doubt, the leadership's responsibility for this killing:

Since the criminal Massoud Barzani insists on this issue, the Presidency of the Republic, the Secretary, has instructed in file number 2651k on 24/8/1987 that the employees and members of the Public Security who are in charge of the Kurdish issue, in case they were contacted by a third party, that the response be, that 'nobody knows anything about them except the country's leadership and that the main issue is more important than these families'. This shall remain the only answer should anyone ask about the whereabouts of these families.

This is reported from top secret communication no. 5783 between the secretary of the president of the Republic and Comrade Ali Hassan Al Majid dated 24 August 1987. Facing the possibility of negotiations with Masoud Al-Barzani, the secretary's advice, in a sense, establishes a direct link between these events and Saddam Hussein. It is important to note the time in which these exchanges of correspondence among different authorities took place. In 1987 the Anfal campaign against the Kurds was underway and in 1989 it was already over. Therefore, at this time the regime felt safe and there was no need to keep these details secret. However, as already mentioned, these documents did not constitute enough evidence to build a sustainable court case for the IHT.

The evidence that the crime had been committed was so slim that during the third session, called in order to present the evidence to the court, one of the judges insisted on saying that he did not have enough information and that it was probably best to link this case to the Anfal one instead of treating it as a separate one. At this point a forensic investigation was crucial in order to prove that the crime could not be associated with any other, based on the time, location and operation names. It was necessary to locate possible witnesses and the locations where the victims had been held, killed and then buried. The abductions were carried out following a pattern known to the local population. The Barzanis' displacement and incarceration in concentration camps constituted only the first steps towards their organized

mass disappearance and killings. The reasons for such an escalation in violence are to be found in the powerful relationship between the Barzanis and their sheikhs and their loyalty to the Kurdish nationalist cause as well as in their refusal to participate in the state killings ordered by the government. In addition, traditionally the Barzanis have been very active in supporting the Kurdish national movement through military operations and active politics. The Iraqi troops lost part of the strategic area of Hajji Omeran near the border of Iran, so, instead of admitting that the Iraqi troops were not in control, the Ba'athists tried to justify their losses by accusing the Barzanis. This is a normal move in Iraqi culture where the political system always blames others for its mistakes and losses.

At that point, a huge Republican Guard Brigade, supported by helicopters, surrounded the concentration camps at Al Quds and Al Qadissya in the Qushtapa Township. The Ba'athist soldiers and officers entered the camp and used loudspeakers to call the people to attend a meeting in Kirkuk and advising that they would be brought back afterwards. However, the inhabitants did not believe these words and did not respond to this call. Therefore, the troops attacked the houses, searching every one and arresting every male between 10 and 90 years old. Buses with black curtains on the windows transported them to an unknown place.⁷

Document no. 84, from the Director of Public Security, dated 29 March 1983, to the secretary of the Commander in Chief (the personal secretary of Saddam Hussein) reproduced in the Appendix, confirmed the events:

Upon your Excellency's request, find below information at hand about the town of Harir in the governorate of Erbil. Al-Barak, the Director of Public Security, who ordered the Directorate of General Security in the Autonomous Region, and Directorate of General Security in Erbil, to form a special unit covered by Republican Guards in order to surround the three main components of Barzanis, Al Quds, Al Khadasir, and Qushtapa in order to capture all males from Barzani families who are over 15 years old, and transfer them to Baghdad in order to be received by Sector 3 of the Directorate of General Security in Baghdad, who can transfer these detainees to the Al Muthana governorate.⁸

On 10 August 1983 the same method was used to siege the concentration camps at Behrike, Harir and Dianna, where most of the houses were searched. The men were arrested and taken in army buses to Baghdad, and from there to the Al-Muthana governorate. As mentioned earlier, according to the documentation gathered during the investigation, these two groups, a total of 2,225, were taken from Baghdad by a special unit to Nigrat al Salman, more than 300 kilometres south of Baghdad close to, Abu Aljad and Shihiyat. Originally, these locations were collective camps built by President Abdul Karim Kasim to settle Bedouins moving between Saudi Arabia and Iraq. The Barzanis were killed in Busaya, 40–45 kilometres from the three locations, and their remains were found by the author in mass graves 35 kilometres from the triangle of borders of Iraq, Saudi Arabia and Kuwait.

Document no. 84, mentioned earlier, confirms the events:

By orders from the former Director of Public Security to fabricate charges for the important ones, a total of 667 charges were laid for 16 cases. These cases were sent to the Presidency Revolutionary Court, and the verdict was the death

penalty, no death certificates were sent out and no charges were laid for the rest of the group, 1,558 persons. The sum of 194,648,440 Iraqi Dinars was received from the deportees and deposited in the account of the Director of Public Security Office.

[The history of a persecution](#)

The persecution of the Barzanis did not start with the Ba'ath regime, as it can be traced back in time. The following are only a few examples. On 10 June 1932, approximately 400 Barzani families deserted their properties and possessions when the government troops attacked them due to their first uprising against the newly established Iraqi government. Women and children scattered inside Turkish territories, and some 250 armed men stayed within the borders to defend their land. Between 1932 and 1934, the Iraqi army, backed up by Royal Air Force fighter jets, shelled seventy-nine villages in Barzan. All of them were destroyed and more than 2,382 families had to flee the area. On 11 November 1945, after the second uprising of the Barzanis and after the fierce battles between the Barzanis and the Iraqi army, the RAF shelled the Barzani villages three times on one day using 7-14 fighter aircrafts. Thirty-five villages were destroyed and hundreds of innocent civilians were killed. Hundreds more were wounded. Over 15,000 women and children lost their homes and were forced to find shelter in caves and secluded areas in Iran. On 10 April 1947, the Iranian army attacked the Barzanis with tanks and artillery, forcing them to return to Kurdistan. There were 4,567 people under the leadership of Sheikh Ahmad Barzani, including 1,550 men, 1,688 women and 1,329 children. They were imprisoned in detainment facilities and held between two and twelve years in the gaols at Kirkuk, Mosul, Baghdad and Basra. Their families were scattered and relocated among the villages of the governorates of Dohuk and Erbil. On 6 May 1947, Mulla Mustafa Barzani and 560 Barzani men started a march to free themselves from the clutches of the three states of Iraq, Iran and Turkey. They travelled towards the former Soviet Union. The Soviet government dealt with them according to a 'divide and rule' policy so they were relocated far away from each other in distant Soviet regions.⁹ In 1975, after the Algiers Agreement, some of the Barzanis were expelled to Iran and many others were forcibly relocated to the central and southern areas of Iraq. In Iran, the former shah, Mohammed Riza Pahlawi, followed the same method used by the former Soviet government to isolate the Barzanis and relocate them in areas distant from one another. Thus, every two or three families were removed to a distant city or village. They were kept in an area that was very remote from Kurdistan. The nearest point of residence was the city of Tabriz in Iran. In 1980 the Barzanis in Iraq and Iran were able to return to their land. Those who were in Iran returned to Uriah (also known as Rizaiya), and those who were banished to southern Iraq returned to the Erbil governorate.

Forced relocation is a crime according to international law and is illegal under all Iraqi

constitutions. However, from the day of Iraq's creation, the state has sought to uproot various groups of citizens and forcibly relocate them to other areas within and outside Iraq in order to assimilate them. Forced displacement was part of a broader plan to assimilate Kurds into the Arab population. Step by step, the process of Arabization and forced displacement included almost all of Kurdistan, with 4,500 villages destroyed. Over the years, before and after the Ba'ath regime, different pretexts have been put forward in order to justify this overt breach of human and civil rights, including their proximity to oil fields, for example in Kirkuk, Khanaqin and Makhmor, or because they occupied a territory involved in major infrastructure projects, such as dams at Hasinani and Zumar. However, the forced deportation of Kurds continued to escalate, particularly during the Iraq–Iran war. During the period 1975–1978, on the pretext that they were too close to the border areas, many Kurds were uprooted from their land and many villages were destroyed. In 1982, due to the Iraq–Iran war, Barzanis experienced another forced displacement. However, it was between 1987 and 1990 that their overt support of the intervention of the Peshmerga fighters in the war on Iran resulted in persecution by the regime. In all cases the aim of the deportation of the Barzanis was to hamper Kurdish unity and the relations between Kurds and in particular between the northern and eastern parts of Kurdistan. At the same time, the regime aimed at destroying one of the traditional strongholds of struggle and resistance against the central power as well as preventing Barzan from becoming a heaven for Peshmerga fighters. The ruin of the Barzan economy and social infrastructure also had a detrimental effect on the prisoners held in the concentration camps, who suffered physical and psychological torture. In order to understand the escalation of the persecution against the Barzanis it is necessary to analyze each of these phases.¹⁰

As part of the Algiers Agreement of 1975, Iraq, Iran and Turkey agreed to create a security belt and to move the population living within 10–20 kilometres from the border. The Ba'athist regime implemented this plan immediately and started deporting the Barzanis by moving the clans of Harki Binejeh, Nizari Baroshi and a few Mizurians to the south of Iraq via helicopters, military personnel carriers and also by train from Mosul. The deportees were imprisoned in the concentration camps numbered 1, 2, 3, 4 and 5 in the villages of Jehaysh, Al Khayria and Merejweya, which were adjacent to the towns of Al Shanafiya, Al Ghadeer and Al Faware around Diwaniya. As part of this process, the regime destroyed 76 villages in the Barzan area with explosives. Anyone who attempted to return to Barzan was killed.

The forced displacement campaign continued until 26 June 1978. The entire population of Argush Village, more than 300 families, was deported to the concentration camp at Harir. On 7 July 1978, the entire population of the Mizuri tribal villages was deported along with the population of some Sherwani villages. They were taken to five concentration camps in Erbil and the adjacent areas. At this stage, seventy-seven villages were destroyed. However, this forced displacement was quite different from the previous one as the deportees were given a nominal compensation and were allowed to stay in Kurdistan.

When the war between Iraq and Iran broke out, a large part of Kurdistan turned into a battlefield. In January 1982 people from the administration centre of Sherwan Mazin along with the inhabitants of Kirkamo village were deported to the SeBiran concentration camp, adjacent to Erbil. The deportation continued into July 1983 when, according to a letter to the secretary of state dated 29 March 1989, the director of general security reports on the situation in the Harir area:

In July, 1983 during an Iranian, Zionist aggression on the Haj Umran front and as substantiated, with the participation of the clique descendants of treason the faction who are mostly from the Barzani family, an order from the former Director of Public security 'Dr Fadhel Al-Barrak' to the Directorate of General Security in the autonomous region was to assemble a big unit from members of the security from units and directorates of the autonomous region on a top secret mission to commence at dawn on the next day. The mission commenced on 1/8/1983 with members of the Republican Guards to surround the Al-Quds, Al-Qadissiya, Qushtappa compounds, which were specifically built for Barzani families. All males from Barzani families over the age of 15 were arrested and transported using big vehicles prepared for this mission accompanied by military force.

This document shows that massive deportation of Barzanis started at the very beginning of the war and with it the campaign to denigrate them. At the end of the letter, the director of general security gives assurance that the security situation in the region is good and free from penetration, but, more interestingly, he makes final remarks on the Barzanis in particular. He says:

The Barzani clan has been known for its disloyalty to the Party, Revolution and country for decades; they have persistently resisted the unity of the nation and they were the real traitors. They consider themselves the legitimate representatives of the Kurdish people; they are full of hatred and animosity.

The Kurds were aware of the fact that this was not their war and that it would not serve Kurdish nationalist interests. They rejected 'Saddam's Qadisiya'¹¹ and instead they reinforced their own Peshmerga forces. The Peshmerga presence across Kurdistan diminished Iraqi control over a strategic part of the border and allowed Iranian forces to enter the country supported by the insurgents. On 22 April 1989, the Iraqi army attacked the villages of Girkal, Kulefan and Maydan, adjacent to Mazne, and set fire to them. The people of these areas were rounded up in the concentration camp at Delziyan. After Peshmerga activities increased, a forced displacement campaign took place. The people of 34 Mazne villages, with a large number of Dolamaris, were deported to the concentration camp at Sardaw.

At the beginning of 1990, the Ba'athist regime informed the people of Mergasor district and the inhabitants of the Goretu collective village, all deportees from the Mizuri since 1978, that they would be deported again to the concentration camps at Besirme and Shakholan within the Erbil governorate and the Shaqlawa district. This plan was implemented on 6 June 1990, several months before the Spring Uprising of 1991. All the population was deported and the buildings of Mergasor district together with those of Gorato collective village were destroyed. [Table 4.1](#) shows the data collected on the forced displacements carried out in the Barzani area

between 1975 and 1990 with the number of families, important structures and villages destroyed.

[Table 4.1 Damage in the Barzan area](#)

<i>Year</i>	<i>Villages destroyed</i>	<i>Families</i>	<i>Schools destroyed</i>	<i>Mosques destroyed</i>	<i>Clinics destroyed</i>
1975	76	1479	5	27	3
1978	77	2136	15	28	4
1982	2	165	5	1	1
1989	34	485	2	4	–
1990	8	440	3	3	2
Total	197	4705	30	63	10

Source: Dr Mohammed Ihsan

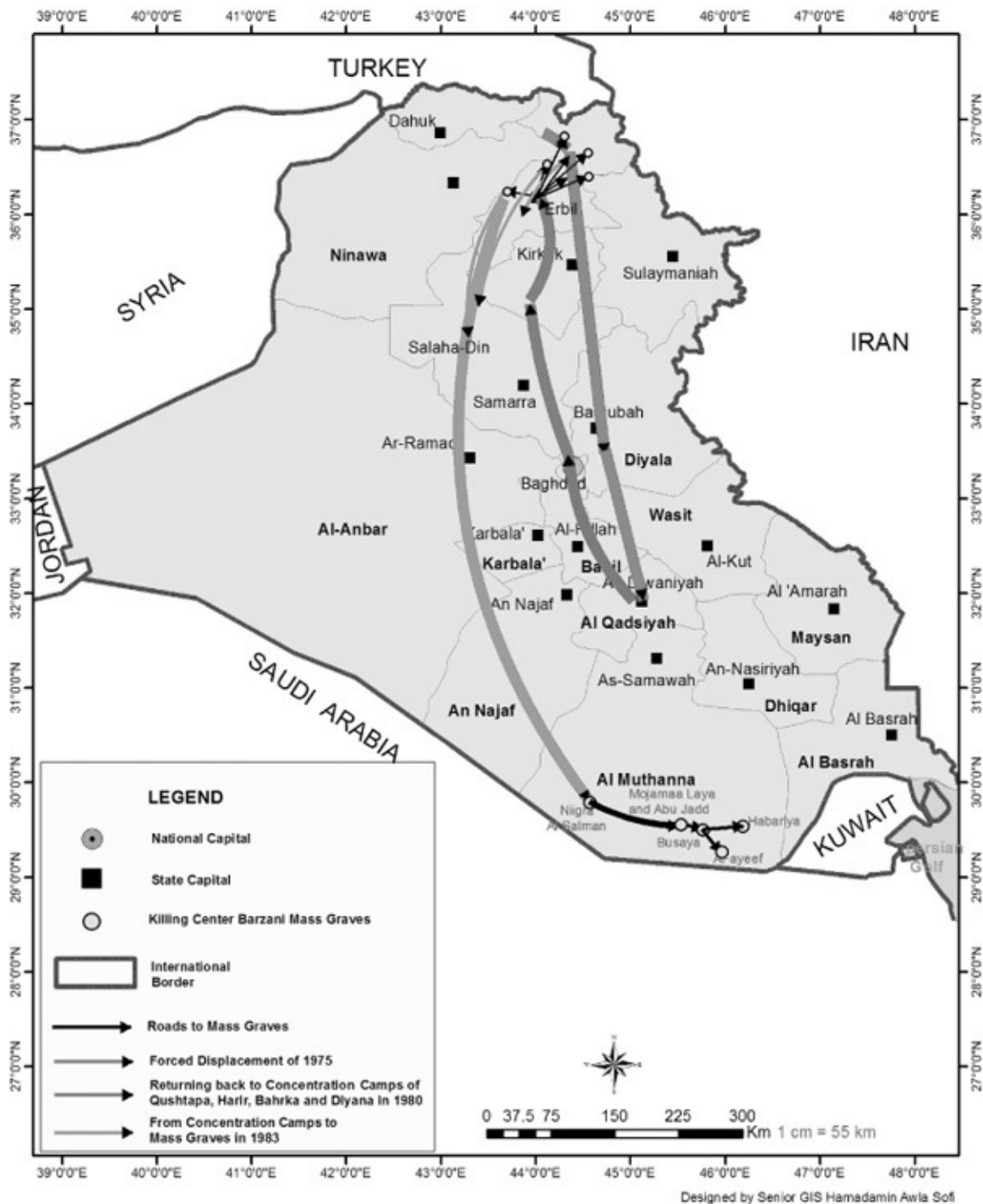
Kurdish villages were always sources of powerful support for the Kurdistan Liberation Movement because they supplied the revolution with food and other necessities, as well as offering a strong recruitment base. As a consequence, the Ba’athist regime planned to destroy every Kurdish village in order to cut off the revolutionaries’ lifeline and to defeat the Kurdish National Liberation Movement. After 1974, as a result of a series of consultations, the regime conceived the plan of deporting the inhabitants of the Kurdish villages to the concentration camps under the misleading name of Agricultural Reform. In addition, under this pretext the Ba’athists built more than 100 concentration camps in Kurdistan, some of them with the misleading names of Modern Villages, Socialist Villages and Civilised Villages.

According to the evidence gathered, the inhabitants of Barzan were deported from 18 November 1975 until 6 June 1990 to twelve collective villages near the cities of Erbil, Shaqlawa and Soran: Gortu, Sardaw, Delziyan, Diyana, Harir, Basirme, Kesneza, Bahrike, Shaklawa, Sebiren, Qadisiya and Qushtapa Al Quds. These collective state-built villages were very like concentration camps, located in desolate areas and lacking all the basic facilities. The prisoners were always under the watchful eyes of the security authorities. All their movements were strictly watched and they could not go anywhere without prior written permission. The men were forcibly recruited as soldiers in the Iraqi army or the popular army. The teenagers were forced to join the Ba’ath Youth Organizations and the children had to be trained as the vanguard of the Ba’athists and join the Qadisiya Saddam, later to be sent to the front line to fight against Iran.

The Ba’athists arrested and tortured people arbitrarily and managed to control everybody’s movements through a vast web of intelligence that made life in the camps very insecure. Detainment, disappearance, oppression and death under torture became routine. Hundreds of old men and women, children, mothers and infants were imprisoned under the suspicion that their fathers, husbands, sons, daughters or relatives had joined the Peshmerga forces or

escaped to Iran. The inhabitants of these camps demonstrated against the inhuman treatment they received from the authorities, but the Ba'athists reacted by shooting them in cold blood. In the Harir camp, for example, they executed six men and women without trial in front of their friends and families. This sort of summary execution was the fate of many other people detained in other concentration camps.¹²

The Middle East Human Rights Watch, in a report titled 'Genocide in Iraq and Anfal Operation against the Kurds',¹³ states that the reason for arresting the Barzanis was that the town of Haji Omeran had been taken by Iranian troops. In reality, the whole thing was no less than a Ba'athist conspiracy. On 29 July 1983, Sheikh Othman, son of Sheikh Ahmad Barzani (one of the main leaders of all Barzanis), was deported with his son Sheikh Emad from Erbil to Baghdad under the pretext of a meeting with the regime. The following day, 30 July 1983, the Barzani sheikhs and the Barzanis living in Baghdad and the surrounding areas were rounded up and detained. Prior to the genocide, a small group of Barzanis moved voluntarily to Baghdad to avoid the continuous violence and uprisings occurring in Kurdistan. Some of them relocated close to Mulla Mustafa's immediate family. However, despite their active disassociation from the Kurdish rebellion in the north of the country, they were the first to be targeted by the regime, with tragic consequences.



[Map 4.1](#) Barzani Kurds' forced displacement from 1975 to 1983

Source: Hamadamin Awla Sofi

[Map 4.1](#) shows the direction of the forced displacement of the Barzanis.

[Setting up the crime scene](#)

Even though the few documents in the hands of the investigators indicated that the area of Busaya was where the detainees had most likely been killed and buried, finding them was not

an easy task. Busaya is an area of 24,000 square kilometres, equivalent to one-sixth the size of Iraq. It is also a desert area, and this complicated the work of the forensic team. However, the invasion and the fall of the regime changed the situation and made it possible to start the investigation, although there were difficulties. From the beginning it was clear to the forensic experts trained in Yugoslavia that the reality on the ground in Iraq was different. In Yugoslavia everybody was aware of the location of the mass graves, since the killings actually happened in the villages. This made the work of the investigators easier and made possible an accurate and relatively rapid identification of the victims. In Iraq, the situation was more complicated. This particular crime was carried out by the regime in complete secrecy. The first thing to be done was to identify possible witnesses, including some of the perpetrators. The first one to be located because his name appeared in one of the documents was Baraa Al Janabi, the head of security in Baghdad in 1983. Posing as a Lebanese journalist in search of news about the American occupation in 2003, the author managed to gain the people's confidence. Once in Baraa Al Janabi's house in Saidiya, with the help of some friends, the author pretended to be part of the LBC TV crew. When asked for some information about the Barzanis, Baraa Al Janabi said that Saddam committed only two mistakes: the first one was to withdraw from Kuwait, and the second was that he failed to kill all the Kurds. The following day, when the Peshmerga went to arrest Al Janabi, he had already fled.

One of the witnesses who helped the investigation was Haji Jabbar, a policeman in Busaya during the crime who remembered Lieutenant Baaje on the day the killings started. Baaje arrived at his house very early in the morning and asked the policeman to prepare breakfast for him. The policeman asked the lieutenant why he was up so early and the lieutenant answered that for the rest of the week he had to work from dawn to dark because something important was going on at the prison. The witness said that one night after that week, while driving in the desert, he ran into some bodies. He was scared, but decided to cover them before leaving. More than twenty years later, in a courageous attempt to find those remains, he accompanied the expedition to twelve different locations, but the shifting sands of the desert made it impossible to find the remains.

One of the most useful informants during the first expedition to Busaya was a shop owner in Busaya. She told the investigators that one day some soldiers came into her shop and bought all the fabric she had. After the discovery of the mass graves, she recognized the fabric that the soldiers used to tie the victims' hands and to blindfold them before their execution.¹⁴

The first successful expedition took place in 2005. At the entrance of the prison, along the arch that leads to the interior, is a warning to the Barzanis: welcome to hell. For the investigators going to the prison, it established a bond with all who suffered waiting for their death. On the walls was a striking testimony from the past. In a last desperate attempt not to fall into oblivion, some of the prisoners wrote of their sorrow and desperation. It felt as though their souls were still lingering there, still incredulous of the barbarity of their

tormentors. They used any tool in a desperate attempt to communicate with their relatives. They wrote short pieces of poems, they drew pictures or wrote prayers to God. Zubir asked about his wife and his daughter. Ali asked what happened to his wife, who was sick when he left. Mohammed wanted news of his mother, who had cancer when he left. All of them seemed to ask what was going on in Kurdistan and if the violence and the rapes continued. All these writings seemed to blame the members of the expedition for having taken so long to look for them. These testimonies, together with the remains, meant much to the Barzani women who, after twenty-two years of waiting, could finally find closure. This was another stage of the tragedy lived by those women whose desperation was brilliantly reported in 2009 in a documentary titled *All My Mothers*, directed by Abbas Ghazali and Ebrahim Saeedi. In their film the directors convey the effort to survive the sorrow and desperation that each disappearance causes in the family, together with their dispossession following the loss of the men of the family.

For various reasons, the forensic investigation of the crimes committed by the regime presented a challenge. Not least was the fact that, since the fall of Saddam Hussein in 2003, several attempts had already been made to tackle the issue of the disappearance of Iraqi citizens. The Coalition Provisional Authority (CPA) was completely unprepared to deal with the sudden revelation of mass grave locations, which were stormed by thousands of desperate families in search of their loved ones. Hence, the missing persons issue started out in Iraq with the worst-case scenario of emotionally distressed families digging for their loved ones in mass graves, thus destroying evidence that could have been crucial for investigating the circumstances of the crime and possibly providing clues for the identification of the individual perpetrators.

The random digging was gradually contained through public awareness campaigns and cooperation with local and religious leaders who launched a fatwa for this purpose, as well as other representatives of civil society appealing to the local population to wait for international support. At the same time, the Iraqi population had to understand that the mass graves and missing persons issue would take considerable time to be addressed. In 2004 and 2005 the United Nations Assistance Mission for Iraq (UNAMI) lobbied relevant authorities of the Interim Government of Iraq for the establishment of a National Centre for Missing and Disappeared Persons.¹⁵ This was to be a centralized institution that would cover the missing persons issue in Iraq from the assessment of a mass grave to the return of identified bodies to the families for a dignified reburial. Unfortunately, this centre never became a reality and the investigation had to continue without its support.

Nevertheless, it was due to these efforts that in 2006 the Law on the Protection of Mass Graves was ratified in Parliament. This was the first and only law to define technical and legal procedures and responsibilities of state agencies dealing with the mass graves in Iraq. It also defined the intentional and unauthorized disturbance or destruction of a mass grave location

as a criminal offence. As the law relies on a vast number of witnesses coming forward with information on mass grave locations, it also states in [Chapter 1](#), Article 13 that providing information on a mass grave shall be considered a legal extenuating excuse for a criminal should he or she report to the Iraqi Ministry of Human Rights (IMOHR) information on its victims or perpetrators of crimes against the victims. This article takes into account that the most reliable information on a mass grave site comes from the perpetrator himself or collaborators present at the scene who are assumed not to have directly committed the crime, such as heavy equipment operators, bus and truck drivers, low-ranking guard personnel and the like.

In December 2010 the Iraqi government signed the International Convention for the Protection of All Persons from Enforced Disappearance. The convention obliged the Iraqi government to adjust national legislation according to the convention and to take steps to effectively protect its citizens from forced disappearance; and it also gives Iraq legal advice about prosecuting those believed to have committed the crime in the present and in the past. It bears immense potential for civil society representatives to hold their government accountable and demand justice and transparency before an international body, namely, the UN Committee of Enforced Disappearance. The ratification also obliged Iraq to report to relevant UN bodies on the implementation of the convention in the country.

Iraq undertook numerous successful measures in accordance with its domestic legislation and with international support to address the gruesome legacy of the Ba'athist regime. After the ratification of the Law on the Protection of Mass Graves in 2006, the government of Iraq sought international assistance for technical and forensic aid for the excavation. It was possible to stop the Iraqi population from undertaking unauthorized excavations, but the problem needed to be addressed quickly as the pressure from the population to find answers was growing. The main players initially dealing with the technical and forensic side of the mass graves were the Ministry of Human Rights and the Medico-Legal Institute, both located in Baghdad. Both institutions sought the assistance of the International Commission on Missing Persons (ICMP), an inter-governmental organization based in Bosnia and Herzegovina.

Before the actual forensic enquiry could start, due to the vast territory and the remoteness of the location the investigators had to surmount different logistical challenges. The first one was the security of a team composed of only four members: the author, the only forensic expert: Azad Ihsan; the bodyguard Sabah Haji Naaman; and Bayar Ahmad Smou. The second challenge was to reach the place and establish the presence of the team. This also involved providing security for the investigators. Various insurgency groups operated in the area linking the Busaya borders with Saudi Arabia and Kuwait. This made travel from the chosen location to the nearest point of supply very dangerous. The remoteness of the excavation also meant that the team had to spend long months on site to ensure that all the security measures were in place.

From the very beginning it was important to distinguish the search for the missing Barzanis from a more general effort to locate the 274 mass grave sites scattered all over Iraq. All the mass graves found until that moment were chronologically classified: (1) pre-1983, (2) 1983, (3) pre-1987, (4) 1987–1988, (5) 1991. During the investigation to find the Barzanis, this helped to check the indications of the various sightseers interested in the work of the team. Some of them led the investigators to mass graves from the Anfal campaign, which was very useful at a later stage to establish a map of the mass graves all around the country. In this case, if the team wanted to convince the court that the crime was genocide in its own right, investigators had to search for very specific evidence based on their previous knowledge in order to distinguish the Barzanis from the victims of other crimes. First of all, the mass graves had to contain only male victims, and the victims had to be identified by their clothes, their belongings and of course by the date. Inaccurate or false information was going to be a challenge for the investigation and the team always had to be careful to evaluate the authenticity of the sources.

The clues to finding the missing Barzanis led the expedition deep into the southern desert at the border with Saudi Arabia. In this area, despite the isolation, the rivalry between Shias and Sunnis divided the small population and the investigation had to face local hostility. A meeting was organised with the local authorities in order to buy their collaboration. The local *Mukhtar* (mayor) was the important attendee. Money was offered to the participants in exchange for information regarding the location of possible mass graves, but even this, at least at the beginning, did not seem to break their silence. Some \$5,000 was offered to the Mukhtar without any result, plus another \$800 to other possible informants. However, he did not help because he had been in his position since 1965, and was probably involved in the whole process in 1983 when the massacre took place.¹⁶

During the first trip the excavation had to be performed at night because of the intense heat of the day. The dim light of the torches that had been transported to the middle of the desert and the dust produced by the excavator made the place surreal. For days, nothing was found, and soon the expedition received news that insurgency groups were in the area. Since it was too dangerous to stay, the team decided to leave the area for the time being. Only a few months later they received a call from the area informing them of the possible location of mass graves. This time the information was trustworthy, and only a few feet from the previous site the bodies of the first Barzanis started to emerge after more than twenty years. When the first plastic bag was placed where the first skull had been found, the map of the mass grave started to appear and with it the scale of the atrocities committed. It was clear that the prisoners had been transported to this remote part of the desert from Nigrat Salman, as a few witnesses confirmed. They were blindfolded and then killed, as indicated by the range and number of bullets that riddled their bodies. A closer analysis of their skulls also indicated that after being shot some of them had been stabbed with a bayonet as seen from the holes found

in their skulls. From the beginning the forensic investigators realized that these were the mass graves they were looking for. One by one the remains were recovered from the graves, and it was immediately clear that they belonged to the Barzanis. They were all males aged eight to ninety years old. Their clothes also indicated that these men came from the Barzan area. They wore the typical red *chafiya* (*shashig*) that on some occasions had been used to blindfold them. Their bones were retrieved from the sand and cleaned carefully, and their clothes matched with the remains. This was the longest phase of the forensic investigation. All the corpses found were catalogued, along with the belongings found next to them. Sometimes these were simple objects like watches and coins. Sometimes more compelling evidence, such as identification cards, would facilitate the painful task of identifying the bodies. The belongings recovered during the excavation allowed the identification of some of the victims. Usually, these were personal items such as a *chafiya* or the watch cases that are handmade by women in the family, and for some of them this offered a closure to their seemingly endless wait.

The 2005 expedition was not the last one. Another six were organized in the Busaya area: March–April 2009, January 2010, July 2011, January 2012 and January and August 2013. But it was only in November 2013 that a former contractor in Samawa came forward with some useful information. In 1986 he had been digging clear water wells in Busaya and came across Kurdish mass graves. The area he indicated was near the Saudi border in the Anbar governorate. It is a very isolated area that is controlled by the Iraqi army because of the presence of insurgents. On that occasion, the mayor of Busaya offered his help and we were able to discover new mass graves.

The 2013 expedition revealed the location of the remains of another ninety-three bodies and the grave was named Busaya 2. As in the previous case, all the victims were repatriated and state funerals were organized. [Figure 4.1](#) shows the level of cruelty of the Iraqi authorities toward the Kurds.



[The court's decision](#)

In 2011 the author, invited by IHT as a forensic and genocide expert, gave a one-hour presentation to the court in the presence of all the accused. The trial was broadcasted by most of the Iraqi satellite TV stations, and for the first time the truth about the missing Barzanis became known to the Iraqis. To guarantee convictions, the forensic evidence, the disclosure of the locations and the testimony had to prove that the Barzanis' massacre fulfilled all the criteria established by the Genocide Convention. All the evidence was used against the defendants and contributed to the final verdict. This was fundamental in order to establish individual and institutional responsibilities for all the charges contested as per the final ruling of the IHT. On 3 May 2011, the Iraqi High Criminal Court, Chamber 1, formed a court under the presidency of Judge Asso Mohammed Sofi and the membership of Abdul Kathim Hussain Al Sheikh, Jabar Dshar Utaiwi, Afar Asyab Ibrahim and Jalil Abbas Ala. The court found the former Minister of the Interior and member of the Revolutionary Command Council (RCC) Sadon Shakir Mahmud; former minister and member of the RCC Tarik Aziz; and director of Ba'ath Party North Branch and member of the RCC Hikmat Mozban guilty of genocide under Article 11(1)(a) of the High Iraqi Criminal Court Statute No. 10 (2005); of forced displacement as a crime against humanity under Article 12(1)(d) of the statute; of torture as a crime against humanity under Article 12(1)(j) of the statute and of the commission of inhumane acts which cost high pain and psychological and physical harm as a crime against humanity under Article 12(1)(l) of the statute. Sofyan Mahir Hassan, in charge of the Republican Guard Brigade, was convicted of genocide under Article 11(a) and torture as a crime against humanity under Article 12(1)(j). Hamid Yossif Hamadi, special secretary of Saddam Hussein, was convicted of committing inhumane acts causing serious psychological and physical harm as a crime against humanity under Article 12(1)(l) of the statute.¹⁷ In addition, Second Lieutenant Baaje, from Beji in Tikrit, was found responsible for monitoring the whole operation. He could not be charged because he managed to flee to Syria before being arrested. Another found responsible was Khairi Chelmira, from Mosul, the director of the autonomous region during the crime who was located in Qatar after 2003. In a region where the investigations on human rights were virtually non-existent, the role played by the Kurdistan Regional Government on this occasion and the exposure of the outcomes constituted a rare example.

There is a lack of balance between the crime and the prosecution of the individuals responsible for it. The organization required to carry out such an operation relies on the complicity of different sections of power. In addition, the direct link to the leadership

demonstrated by the documents found points directly to the high command. Unfortunately, Saddam Hussein's early death after he was sentenced for a minor crime prevented the Kurdish people and the Barzanis from gaining justice. Only a few of the convicted mentioned above have been charged and tried for the disappearance and mass murder of the Barzanis, which denies the Kurds their right to know the whole truth about these events. As for the previous cases, they profoundly hindered any possibility of reconciliation and also made the integration of the different populations in the country difficult.

As of this writing, a total of 606 corpses have been returned to Kurdistan to be buried with dignity.

Notes

- [1](#) All the phases of this investigation carried out by the author and his collaborators, including the search for the documents pertaining to this massacre among the thousands of archives left in disarray by the former regime, were the subject of a BBC documentary directed by Gwynne Roberts entitled *Saddam's Road to Hell*, broadcast in the UK in 2006. The documentary was nominated for an Emmy Award in the United States in the same year.
- [2](#) This testimony can be found in the documentary entitled *Dr Mohammed Ihsan: From Barzan to the Desert*, produced in collaboration with the media centre of the Ministry of Human Rights and broadcast by Kurdistan TV in 2005, available at <https://www.youtube.com/watch?v=maxLjocemoQ>
- [3](#) Ibid.
- [4](#) All the documentation presented in this chapter was gathered by the author in his role as Minister of Human Rights for the KRG during his investigation of the massacre of the Barzanis.
- [5](#) The third section of military intelligence was the main section devoted to the Kurdish issue in Iraq during the regime.
- [6](#) This video was included in the BBC documentary *Saddam's Road to Hell*, mentioned above.
- [7](#) These details were gathered from interviews held in the Barzan region in 2005 with female eyewitnesses from the victims' families.
- [8](#) See telegram no. 84, dated 29 March 1983, from the Directorate of Public Security to the Secretary of the Commander in Chief in the Appendix.
- [9](#) Masoud Barzani, *Mustafa Barzani and the Kurdish Liberation Movement, 1931–1961*, Basingstoke: Palgrave Macmillan, 2003.
- [0](#) The reconstruction of the phases of the deportation and annihilation of the Barzanis is based on the documentation gathered during the investigation.
- [1](#) Saddam Hussein named his eight years' war with Iran Qadisiyat Saddam, using the name of the first Qadisiya in Islam of Saad Bin Waqas, the Islamic leader who occupied Iran–Iraq during the Islamic era.
- [2](#) These events have been confirmed by some of the survivors. Some of them appear in the documentary *Saddam's Road to Hell*, mentioned above.
- [3](#) Human Rights Watch, *Genocide in Iraq: The Anfal Campaign against the Kurds*, New York: Human Rights Watch, 1993.

- [4](#) This evidence was presented to the IHT.
- [5](#) Conferences, working and policy groups hosted by UNAMI and the Ministry of Human Rights, Iraqi Interim Government in Amman, included participation of the Iraqi Interim Government, Baghdad, along with delegations of Ministry of Foreign Affairs, Ministry of Defence, Ministry of Social Affairs, Ministry of Municipalities and Public Works, Council of Ministers, National Assembly, Supreme Judiciary Council; the Kurdistan Regional Government: delegations of the Ministry of Human Rights, KRG, Ministry of Awqaf, Ministry of Interior; Ministry of Justice, Ministry of Education; governors of Kerbela and Kirkuk; Iraq Civil Society Initiatives (NGOs from Baghdad, al-Muthanna, an-Najaf); representatives of the Medico-Legal Institute, Baghdad; governmental delegations from Saudi Arabia, Kuwait, Sweden, USA, UK, Bahrain, Canada, Germany, Japan and a European Union expert team; representatives of International Committee of the Red Cross, ICMP, DePaul University, Human Rights Watch, Physicians for Human Rights, Archaeologists for Human Rights, Inforce Foundation, United Nations Interim Administration Mission in Kosovo, United Nations Development Programme.
- [6](#) These specific events are narrated in *Saddam's Road to Hell*.
- [7](#) See pages 36, 37, and 38 of Case No. 4/C2/2009 of Barzani Genocide (dated 5 March 2011). The Iraqi Special Tribunal invited Dr Ihsan as the International forensic expert for this case to present his findings at the Busaya 1 mass grave.

5 A state-engineered national project

The Anfal campaign

After accepting the concept of genocide in connection with the persecution of the Faylee Kurds and implementing a blueprint policy concerning the mass murder of the Barzanis, the state was ready to engineer its national project against the Kurds on a wider scale. In contrast to the previous crimes analyzed, the state did not abuse the judicial system, nor did it act with speed and secrecy in order to commit this crime. The Anfal campaign was conducted with the participation of most of the state agencies and was supported by a wide and strong propaganda campaign against the Kurds, who were portrayed as traitors to Iraq and to Islam.

All the information on this case has been collected in two different stages: the first, pre-2003, were documents that had been held in the United States since the uprising of 1991. The author accessed them in order to organize the fieldwork on site. The second bundle of information was gathered after 2003 and the fall of Saddam Hussein. These documents came from former collaborators in the regime and from people working with the Ba'ath party. The author participated in the fieldwork with the purpose of unearthing the mass graves in order to gather the forensic evidence necessary to build up the case against the Iraqi government and to identify personal and institutional responsibilities. After setting out a short background to the Anfal campaign, this chapter will reconstruct, through the evidence gathered, how the IHT, and more recently the international community, considered the crime to be genocide. Later, it will explain the legal outcome of the trial, the consequences for the current coexistence of Iraqi Arabs and Kurds and the challenges for the Kurdistan Regional Government in trying to heal this fracture in post-2003 Iraq.¹

The background to the Anfal campaign

In his book *Saddam's Word: Political Discourse in Iraq* (1998), Ofra Bengio offers a crucial analysis of the political discourse used by the Ba'ath party and Saddam Hussein in the different stages of their power. The choice of words used, the way the regime defined its friends and its enemies and the influence of the philosophy of 'Arab Unity' were always present in the regime's discourse. However, the manipulation of the different discourses used by the regime during its years in power reflects the inevitable changes in the balance of power and the particular historical circumstances in which the regime found itself. At the beginning

of its rule, the regime pretended to adopt a secular stance. There is no mention in its rhetoric of any religious content, not even when the regime promoted the distinction between Arabs and Muslims. It was during the Iran–Iraq war that the Ba’ath party broke its silence on religion and its rhetoric began to change.

This trend became even more evident at the beginning of the 1980s and the war with Iran. At that moment in history, Saddam and the Ba’ath party needed to divert attention from the internal confrontation to the external war. In doing so, their propaganda had to change in order to harvest the wider possible consensus. In this context, references to the Qur’an became very common in Saddam’s speeches, which had started to portray all his enemies as infidels and non-Muslims in order to justify the war in religious terms. For example, as Bengio mentioned, on one occasion Saddam quotes the battle of Badr (13 March 624 or 17 Ramadan 2nd of the Hegira), making a direct reference to an episode in which a small group of Muslims defeated an enemy three times their number and quoting directly from the Anfal surat.

This strategy suggested a swift change not only in the language but also in the target of Saddam’s regime and the Ba’ath party. From this moment Iraqis were not a nation struggling against western imperialism along with the Soviet Union, since at that point in time enemies of the state were defined as those who were against Saddam, the ‘defender of Islam’! This was in tune with the new rhetoric promoting the identification between Saddam and the prophet Mohammed. In an effort to wipe out external and internal resistance, the regime started to refer to the holy texts. It was in the context of high religious rhetoric that the campaign against the Kurds started. Saddam wanted to exploit the religious meaning of Anfal, which is associated with the distribution of booty amongst Muslim fighters. This had the purpose of conditioning the army’s psychology to the possibility of material gain when implementing the operation, and the suggestion that it would reward the soldiers for their combat performance and victory. In fact, the Anfal Surat verse 41 in the regime’s manipulated version was intended to incite Muslims to fight against the infidels with the promise of booty. It says:

Know that whatever spoils you take, a fifth of it belongs to God and the prophet, and to the family and orphans and the poor, and the traveller, if you believe in God and what we sent down on our servant on the Day of Deliverance, the day the two forces met. God is powerful over everything.

(Qur’an, trans. Arthur J. Droge, p. 110)

As well as inciting Iraqis to fight a war, these words were intended to scare the enemy, in this case the Kurds, with the threat of the deprivation of land and wealth. According to the Qur’an, the early Muslims fought in harsh conditions, and in order to call more people to the fight the enemy’s booty was distributed among the conquering soldiers.² Saddam considered himself the custodian of Islam and the representative of Mohammed, and by doing so he intended to justify the atrocities he was planning to commit against the Kurds.³ This was achieved by accusing them of betrayal and treachery, in the same way that the prophet Mohammed had

done to the tribes that opposed him, Bani Qinqaa and Bani Natheer. By using the same words to address the Kurds and their national movement, Saddam and his numerous security organizations created the ideological conditions and justification for their annihilation. In addition, the reference to the Anfal Surat verse 17, mentioned also by Bengio, in which the Prophet says, “You did not kill them, but God killed them, and you did not throw when you threw, but God threw, and (he did that) in order to test the believers (with) a good test from Himself. Surely God is hearing, knowing,” strongly suggested to whosoever was listening that the war against the infidels was a holy and legitimate one.

The state crime of Anfal

The fact that the Kurdish region had been at the centre of the war against Iran contributed greatly to the planning and staging of the Anfal campaign. In addition, by 1988 the Iraqi government, confident of the support of the Arab countries, counted on international support as well, due to the balance of power existing in the area.⁴ The political situation in Iraq during that period and the manner in which it managed the state as well as the regional and local circumstances of Kurdistan, required a political leadership in order to gain national rights for the Kurds. In the meantime, the Kurds called for the Peshmerga to defend them and mounted pressure on the government to respond to their demands to achieve Kurdish national goals. International politics and the interests of the superpowers had hindered the Kurds from securing full national rights. The conflict between the parties was never resolved, even when international diplomacy could be used.⁵ Regarding the possible reaction of the international community, it is interesting to report a conversation that Arif Qurbani mentioned in his book *The Witnesses of Anfal* (Shahid Halakani Anfal), published in Sulaymaniyah in 2002. This conversation occurred in 1983 between the representative of the PUK, Mr. Fraydon Abdul Kadir, and the Iraqi foreign minister, Tarik Aziz. With the following threatening words, the Iraqi minister predicted what would happen to the Kurds at the end of the war against Iran:

We will not fall down, never miscalculate, because we have the full back up of the international community in order to control Iran. One day this war will be over and if you go back to your national front you will do a good job for us and we will not forget it, but if you do not, at the end of the war which will definitely come one day, we will turn the army we have against Iran against you and we will destroy you completely, your nation and your country and nobody in the international community will hear your voice. This is what you have to tell your leaders.

(Arif Qurbani, 2002)

This encouraged the authorities to divert their troops away from the combat line with Iran in order to achieve military and psychological gains on the ground. They also wanted to govern postwar Iraq to ease the frustration that they had felt throughout the eight years of war.⁶ In fact, the war against Iran diverted attention from the internal insurgence. Saddam Hussein decided that this was the moment to eliminate the Kurds and to guarantee a smooth postwar

period. The central government in Kurdistan during and after the campaign had a huge military presence, including three military corps, the reserve of the Republican Guards backed by Kirkuk and Mosul air force bases, and, strategically, the Al-Bakr air base. It was also supported by helicopters from Erbil, Sulaymaniyah and Mosul. Further, it consisted of intelligence backed by the north and east intelligence offices, as well as by the Autonomous Region Intelligence Directorate and the military intelligence sector of every brigade and corps and the Erbil, Sulaymaniyah and Dohuk Security Directorates. They all had the skill and unlimited capacity to form one united military-political body. There was also a network of light regiments (sometimes named National Defence Battalions or National Defence Regiments; in Kurdish they are called *Jash*) from the local faithful to the regime covering the region, who could move into the battlefield without restriction. As for the Kurdish element, it comprised no more than 35,000 Peshmerga fighters from the two main leaderships of the Kurdistan Democratic Party and the Patriotic Union of Kurdistan. However, the constant conflict between the two parties undermined the unity of the combat efforts. They were armed with light machine guns (Berno or Kalashnikov), mortars, anti-tank launchers (RPG-7) and some fixed anti-aircraft weapons. Despite the superiority of the central government forces, there was no room for negotiation, and the Kurds were inevitably drawn to war.

The government chose a suitable time for them to carry out the Anfal campaign, since the Iraqi forces had achieved tangible success in the battlefield with Iran and had adjusted the balance of force with the Iranians. The Iraqi army was aware that a curtain of primary and supportive fire would shock the opponent and lift their own morale. In preparing for the fight, the army anticipated morale-building rewards promised them by the leadership. To sustain morale, the leadership mobilized a huge media, administrative and psychological effort.

As for the Kurds, they entered the battleground with no choice but to defend themselves. In the circumstances, all Iraq was silent as if this was irrelevant to them; and as the perpetrators wished, the international community was silent. The Peshmerga prepared to defend the land, but unfortunately, due to the overwhelming power of the Iraqi army, they had to retreat.

Premeditated crime

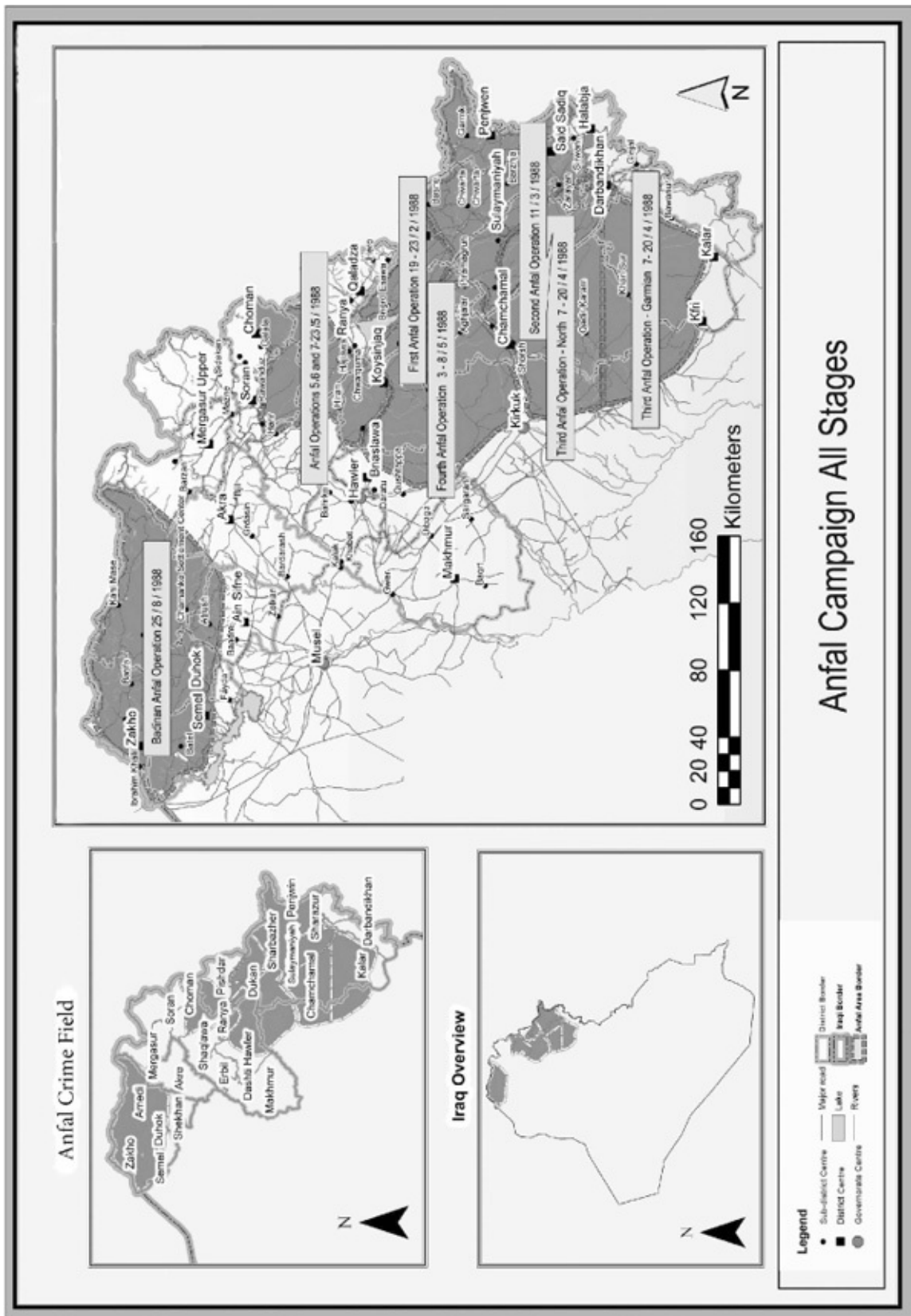
It is important to understand the development of the events and also to analyze the legal frame in which those responsible were tried in order to present evidence that shows premeditation. In contrast with the other crimes analyzed, this one and the one committed in Halabja involved the complicity of many military and political authorities. As we will see in more detail later in [Chapter 6](#), the reason for this lies in the evidence that Saddam Hussein himself, as the Supreme Commander of the Armed Forces ordered the formation of the Special Forces to carry out the operation. A huge combat force was formed with three corps based in Kirkuk (the Second Corps), Mansouriet Al-Jabal (the First Corps) and Erbil (the Fifth

Corps). Orders to the air force were handed down from the General Command to commence the operation and to start a propaganda campaign on two fronts. The first had the purpose of convincing the Iraqis and the international community of the need for this campaign: to keep the peace and to guarantee the unity of the country. The second had the purpose of reducing the strength of the Kurdish resistance by dividing and isolating them from their national movement by issuing a general amnesty to all who fought against the central government. This was achieved by issuing an explicit decree from the Revolution Command Council, the highest authority in the country, signed by Saddam Hussein himself.

The events that occurred in the immediate aftermath of the Anfal campaign prove his intent to resolve the Kurdish issue by destroying the Kurds. In fact, the documents show that this amnesty was used to trap Kurdish youth in concentration camps. In addition, Ba'ath party committees were formed, supported by intelligence and security units, to check the applicability of the amnesty on every individual case. Those committees had the power to detain and isolate whoever fell into pre-established categories, (male, female, loyal, not loyal, good tribe, bad tribe, etc.) regardless of the amnesty.⁷ All these organizations had the intention of weakening the Kurdish National Movement and its combat ability by blocking the enlisting of fighters into its ranks. After the deadline set for the amnesty, the field commanders received orders from the government to detain in concentration camps, and then execute, 1,800 youths who they felt posed a risk to the country. They were executed on 21 December 1988.⁸

The Anfal campaign plan and the implementation phases⁹

The General Command of the Armed Forces identified two areas for their operations; the first stretched from Kalar in Diyala, south to the east of Tuz in Salahaddin extending to the east of Tobzawa and Dibs in Kirkuk, then to Shaqlawa in Erbil in the north to further stretch eastward to the Iran–Iraq border to descend south to Rania, then Dokan Lake north of Sulaymaniyah. In the south-west the Armed Forces stretched down to the west of Halabja, then Qarat and Kalar forming a rectangular battleground and occupying a large part of Kurdistan. The second area stretched from the north of Mosul towards Duhok and Zakho, to move towards the east and end in the south creating a semi-circular shape, as outlined in [Map 5.1](#). The government prepared the battleground to achieve the greatest possible physical and psychological destruction of the Kurds, bolstered by the intention to clear the area and to make it uninhabitable. The authorities did not only bomb villages but flattened and burned the ones that resisted to prevent the residents from returning.¹⁰ Ali Hassan Al-Majid¹¹ was given the full authority as the commander and sole leader of the security, military and ground operations. He was given absolute power by Saddam, the president and the Supreme Commander of the Armed Forces.¹² The following reconstruction of the events is based on the investigation carried out by the author in his role as Minister of Human Rights for the KRG.



[Map 5.1 The eight stages of the Anfal campaign](#)

Source: Hamadamin Awla Sofi.

The military operations began on 23 February 1988 and expanded gradually to include the

First Corps and Fifth Corps on several fronts: Qadir Karam, Sordash, Raniya and Qaladiza. The Bahdinan region was assigned to the Fifth Corps, while the Second Corps was given a minor role in the region. The main aim of the campaign was to invade the region from Chamchamal, Bazian, Qaradagh to the Kalar border and the surrounding areas, supported by infantry backed by tanks and armoured personnel carriers. Jet fighters were involved in the attack, and their mission was to attack the Peshmerga with close-range air raids using guided rockets and machine guns.

The eight phases of Anfal

The first Anfal (21 February 1988–18 March 1988)

Artillery and air bombardment started on the morning of 23 February 1988. After several hours the first corps attacked the headquarters of the Patriotic Union of Kurdistan and its command centres in Sergelo and Bergelo. The troops continued their close fight backed by heavy artillery and air support for three weeks. The Peshmerga resistance was intense. As [Map 5.2](#) shows, during this stage the battlegrounds covered about 1,154 square kilometres.

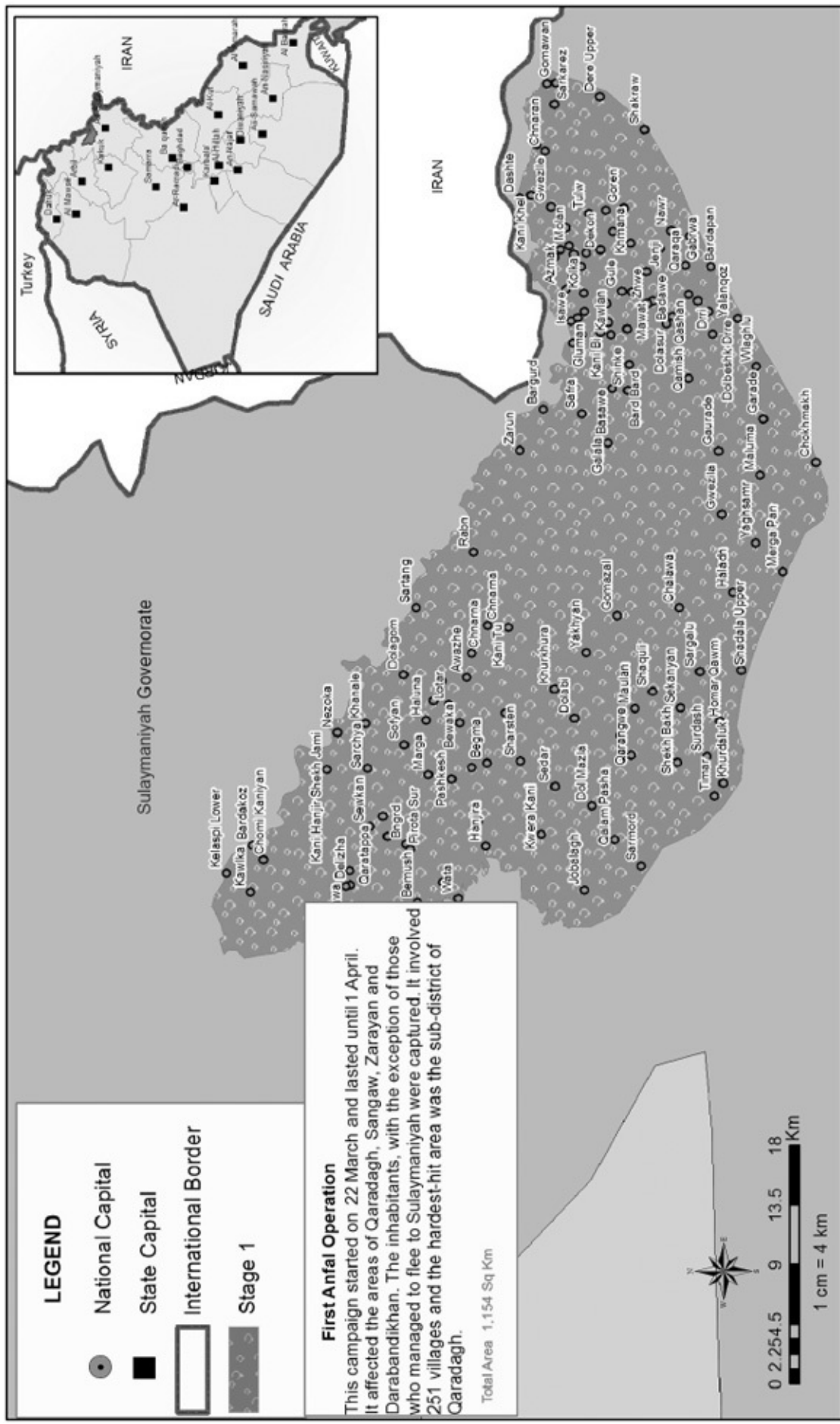
The second Anfal (22 March 1988–2 April 1988)

After the Iraqi troops achieved some success in invading the area mentioned in the first Anfal, they took a few days to reorganize and count their losses before regrouping. The second phase started on 22 March when Qaradagh, Bazian and Darbandikhan in the Sulaymaniyah governorate were attacked. The attack took place strategically after Newroz, the Kurdish celebration of the New Year. This had the purpose of taking the Peshmerga by surprise while isolating them from the civilians. The fight lasted until the end of March, and was shorter than the first Anfal due to the casualties suffered by the Peshmerga. In the meantime, the insurgents had to focus on assisting the wave of Kurdish civilians who were seeking refuge in Iran. This stage covered 1,484 square kilometres, as shown on [Map 5.3](#).

The third Anfal (7 April 1988–20 April 1988)

On 7 April the corps concentrated on the area they had captured, destroying all Peshmerga headquarters and building a barrier in order to prevent people from reaching the Iran–Iraq border. They surrounded the battlegrounds to help the First Corps carry out further attacks and invade Garmian, the region east of Kirkuk, Kalar, Bawnoor, Kafri, Dooz, Singaw and Qadir Karam. The Iraqi army occupied most of the countryside in the Kurdistan region until 20 April.

This was the most devastating and effective of all the Anfal stages due to the heavy Kurdish casualties on the battlefields. In addition, most of the deportations of civilians were carried out during this phase. The purpose of this was to make Kurdistan's countryside a barren land in order to annihilate the Kurdish National Movement and continue the Arabization campaign that the government had started. This extensive campaign contributed, according to some sources, to the killing of some 150,000 people out of a total of 180,000 who disappeared in the Anfal campaign. This stage covered 3,273 square kilometres in total, as shown on [Map 5.4](#).



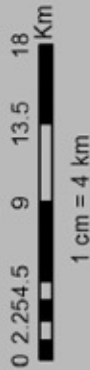
LEGEND

- National Capital
- State Capital
- International Border
- Stage 1

First Anfal Operation

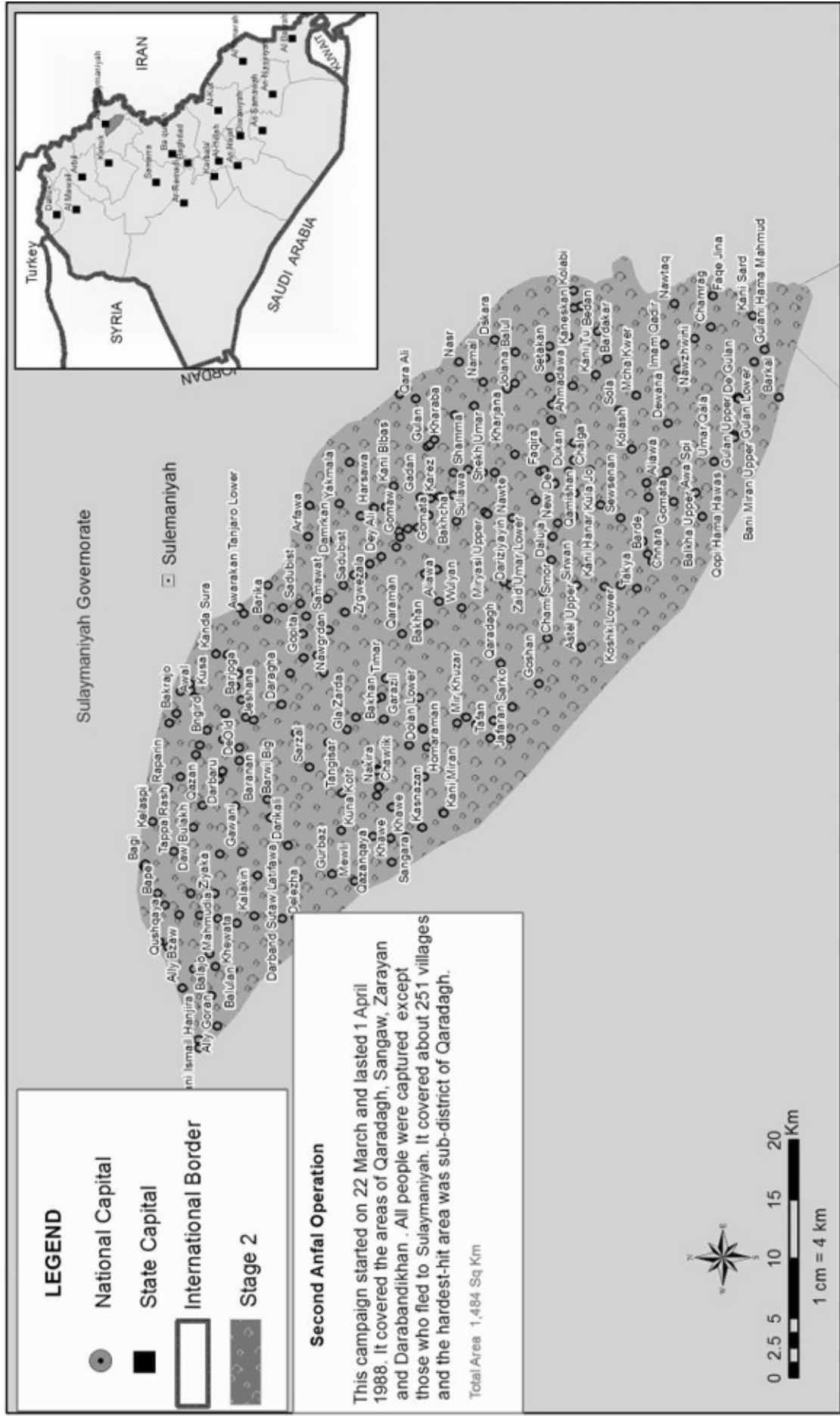
This campaign started on 22 March and lasted until 1 April. It affected the areas of Qaradagh, Sangaw, Zarayan and Darabandikhan. The inhabitants, with the exception of those who managed to flee to Sulaymaniyah were captured. It involved 251 villages and the hardest-hit area was the sub-district of Qaradagh.

Total Area 1,154 Sq.Km



[Map 5.2 Anfal campaign: stage 1](#)

Source: Hamadamin Awla Sofi.



[The fourth Anfal \(3 May 1988–5 May 1988\)](#)

The fighting started on the third of May to include all the targets in the Small Zab basin, in the plains of Zai Bichuk and the surrounding area including the Koya region, Taktak, Aghjiler and Nawshwan, and concluded after a week on 5 May. This stage covered roughly 2,818 square kilometres, as shown on [Map 5.5](#).

[The fifth, sixth and seventh Anfal \(15 May 1988–7 June 1988\)](#)

These three stages overlapped and covered most of the mountainous area in the Erbil governorate. The forces embarked on their attacks from 15 May until 7 June. These stages witnessed the harshest fighting between the two parties. The government mobilized all of its military units, and the Peshmerga resisted valiantly, forcing the attacking Iraqi units to retreat temporarily before resuming the attack at the end of July. The confrontation ended in the first week of August and the Iraqi army announced the cleansing of the region of what it called saboteurs. [Map 5.6](#) delineates these phases.

[The eighth Anfal \(8 August 1988–6 September 1988\)](#)

At the conclusion of the seventh Anfal, which covered parts of the governorates of Diyala, Sallahuddin, and rural areas of Kirkuk, Sulaymaniyah and Erbil, and upon the cease-fire in the Iraq–Iran war, the General Command felt relieved of the burden of war and had more time for revenge. This stage of the aggression included the Bahdinan region, the area north of Mosul to Amedi, Akre, Zakho, Shekhan and Duhok to the Turkish–Iraqi border. This, the eighth stage, was called the Final Anfal and lasted from 8 August to 6 September. At this point, the General Command announced an outright victory over the ‘Kurdish enemy’. At the same time, the amnesty mentioned above was announced, with the massive deportation of the survivors. This stage of Anfal covered roughly about 6,228 square kilometres, as shown on [Map 5.7](#).

[The Anfal mass graves](#)

After 2003, and with extensive efforts, the investigation team found the remains of 103 victims in two mass graves: one in an area named Thubaya in the Samawa governorate and the other in Hatra in the Mosul governorate. The team found the remains of a three-year-old boy in addition to those of many pregnant women and of some ninety-year-old men. The Iraqi

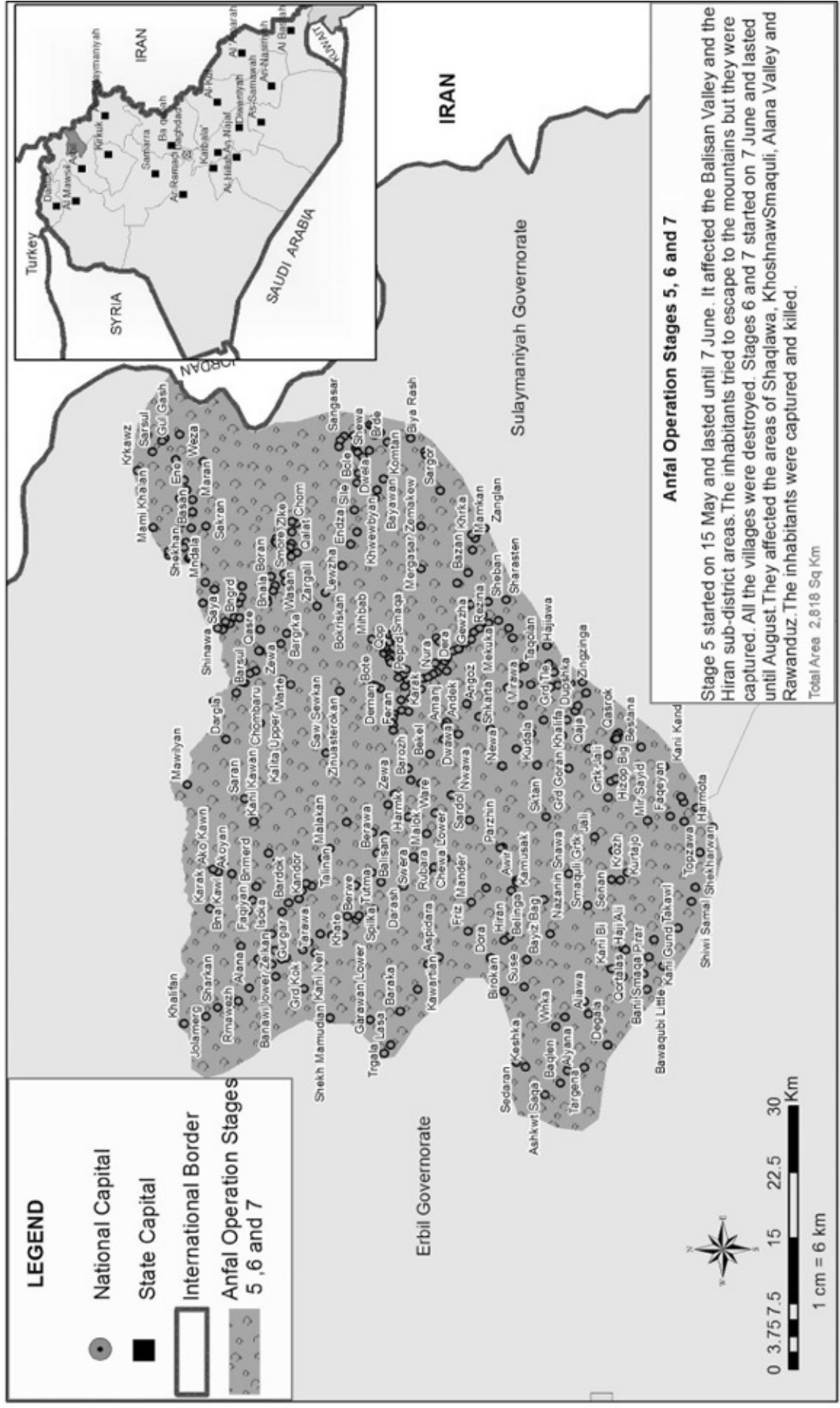
Supreme Criminal Court used the evidence gathered in order to build up the Anfal case.

[Map 5.4 Anfal campaign: stage 3](#)

Source: Hamadamin Awla Sofi.

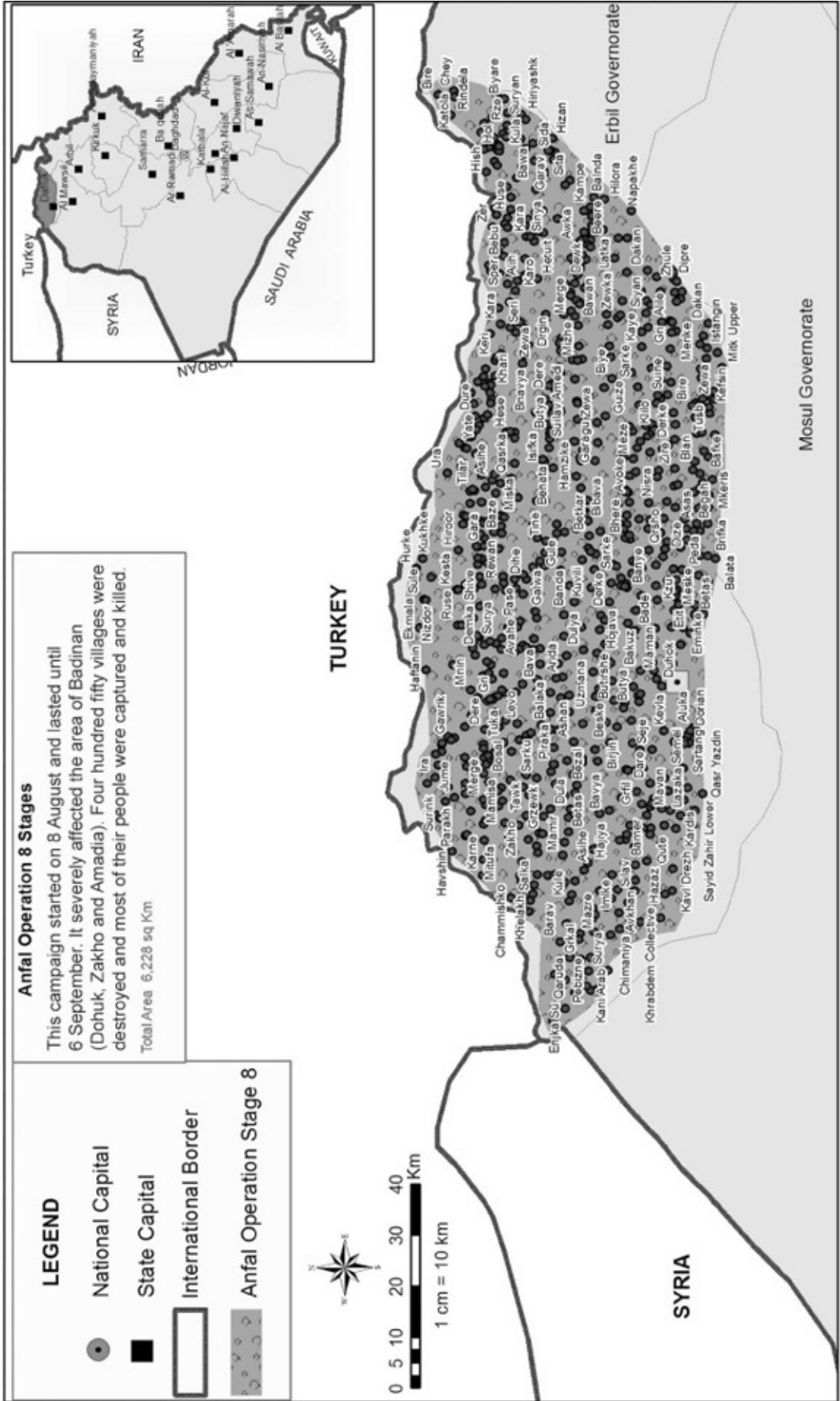
[Map 5.5 Anfal campaign: stage 4](#)

Source: Hamadamin Awla Sofi.



[Map 5.6 Anfal campaign: stages 5, 6 and 7](#)

Source: Hamadamin Awla Sofi.



Anfal Operation 8 Stages

This campaign started on 8 August and lasted until 6 September. It severely affected the area of Badinan (Dohuk, Zakho and Amadia). Four hundred fifty villages were destroyed and most of their people were captured and killed.

Total Area 6,228 sq Km

LEGEND

- National Capital
- State Capital
- International Border
- Anfal Operation Stage 8



[Map 5.7 Anfal campaign: stage 8](#)

Source: Hamadamin Awla Sofi.

As we have seen, the Anfal military operations required the involvement of a long chain of command, and this contributed to the evidence for the charge of genocide. This is evident from official documents, including decree 160 issued by the Revolutionary Command Council, which authorized Ali Hassan Al-Majid to kill the largest number of villagers and eradicate all signs of life, including livestock.¹³ In addition to this evidence, the intent of the government to commit genocide is proven by the existence of another document found during the fieldwork. As already mentioned, when the hostilities were over, the government, using amnesty as an excuse, gathered surviving Kurds and deported them to Nigrat Al Salman, a concentration camp in the middle of the desert near the Saudi border. Upon their arrival at Nigrat Al Salman, they were forced to live in appalling conditions. During the investigation more than 270 graves of Kurdish people were found in Nigrat Al Salam. They died of torture between 1987 and 1989.¹⁴ This evidence is a clear indication that this happened in violation of international laws. In addition, it proves that Saddam Hussein, Ali Hassan Al-Majid (commander in charge of the operations), Sultan Hashim (commander of the First Corps), Sabir Al Dori (the Director of Military Intelligence), Farhan Motlik Aljebori (Director of the Eastern Directorate of Intelligence), Hussain Rashid (Deputy to the Chief of Staff for Operations), Tahir Tawfil Al Ani (Secretary for the Northern Bureau of the Ba'ath party), and others, committed genocide against the Kurds.

[The prosecution of detainees](#)

The military operations concluded on 20 April 1988 and were followed by the explicit order to flatten any remaining houses and detain any survivors. Later, witnesses told the court that military vehicles transported the captives to a concentration camp in Topzawa, a region near Kirkuk. The detainees included the elderly, women and children to be transported to concentration camps in open and exposed Eva-type trucks in severe cold, rainy weather. Witnesses reported that they were exhausted, and most of them had not had any food or drink. The documents also reported the formation of special committees from the Topzawa camp leadership, North Military Intelligence, Directorate of Security of the Autonomous region, Intelligence of the North, and Kirkuk Hospital to oversee the immediate execution of detainees in concentration camps and other tasks related to prosecution.¹⁵ According to the witnesses, males between fourteen and forty-five years old were immediately isolated and executed. This led to the temporary detention of elderly men, women and children. All the rest of the detainees aged over forty-five were transferred to the concentration camp of Dibis,

while some women were killed and some other prisoners were displaced to unknown locations.¹⁶

According to the evidence mentioned above, the Anfal campaign was judged as genocide in line with the letter and spirit of the International Convention. However, not all who took part in it were found guilty. In addition to the evidence gathered, the regime admitted to the crimes openly. When asked, during a visit by a Kurdish delegation to Baghdad, about the fate of 182,000 missing in the Anfal operations, Ali Hassan Al-Majid said, “Why all this exaggeration when the number didn’t actually exceed 100,000?”¹⁷ The Swedish and Norwegian parliaments already recognised the Anfal campaign as genocide and a crime against humanity and the British parliament voted unanimously along these lines on 28 February 2012.¹⁸

There are different reasons for considering this crime as a national project engineered by the state. First, as we have seen, the use of a powerful propaganda machine made possible the backing of the rest of the population by building up hatred towards the Kurds. In addition, the involvement of most government agencies revealed the increased military capability of the state. The size of the theatre of the attack increased, involving a wider geographical area including Kirkuk, the main target of the Arabization campaign described earlier. In addition, the duration of the genocide was greater than any other crime described in this book. [Table 5.1](#) shows the extent of the atrocities committed by the state of Iraq against the Kurdish population during the Anfal campaign.

Despite the extent of the damage and the involvement of most of the state agencies, the judicial system was able to try only a small number of perpetrators of this crime. In her article entitled ‘A Critical Guide to the Iraqi High Tribunal’s Anfal Judgement: Genocide Against the Kurds’, published in volume 30 of the *Michigan Journal of International Law* (pp. 305–412), Jennifer Trahan denounces the deficiencies of the IHT along with the difficulties encountered by its judges to manage a trial with such an impressive number of witnesses and evidence. It is beyond the scope of this chapter to summarize Trahan’s findings. However, there are a few points that we have to remember in order to be able to understand fully the impact of this trial on the process of nation building and restoring the Kurdish population’s trust in the federal government. The first is that the number of people convicted was completely disproportionate to the amount of killings committed and to the charges against the defendants, and this is despite a tremendous amount of physical evidence and witnesses. These crimes were not perpetrated in secrecy but with the complicity of the intelligence service and were carried out with an efficient, but limited, use of logistic organization. This series of crimes, which includes not only genocide but also crimes against humanity and war crimes, was an indiscriminate and planned attack against the Kurds with the intent to destroy them and their land. It required, as we have seen, a noticeable logistical and organizational effort. For this reason the impact on the affected population is even greater, and the population has a

right to look for answers.

[*Table 5.1 The cost of the Anfal campaign*](#)

<i>Death toll</i>	<i>182,000 Kurds</i>
Villages destroyed	2,451
Mosques destroyed	2,027
Deportation of refugees to Turkey and Iran	1,000s
Confiscations, including land, properties, etc.	Millions of dollars
Destruction of water springs	100
Mines planted	25 million+

Source: Dr Mohammed Ihsan

The second point is that the tribunal that was acting during a state of occupation and civil war lacked an outreach programme. This meant that the trial passed almost unnoticed by the majority of the Kurdish population. In this way, it failed in its role of communicating its activities. Jennifer Trahan, analyzing the cases of the most famous defendants, also insists on the fact that the IHT was not able to fully address the question of individual responsibilities. This could be seen as a fundamental factor because most of the lower-ranking military personnel involved did not face any trial. This makes coexistence between Kurds and Arab Iraqis difficult. The propaganda disseminated by the regime depicting Kurds as infidels and enemies of Islam has long-term consequences and is still a source of distrust between the two groups. On the other hand, the Kurdistan Regional Government had to deal with an increasing anti-Islamic sentiment in the region due to the overt manipulation of Islam by the Ba'ath regime in order to discredit, persecute and kill the Kurds. In recognition of the victims, the public must be made aware of the crimes perpetrated by the former Iraqi regime, and the government should make an effort to ensure this. The international recognition by Finland, Norway and Great Britain is the first step towards this goal.



[Figure 5.1 Excavations at Hatra 1, 2008](#)

Source: Mohammed Ihsan

Notes

- [1](#) A reconstruction of the Anfal campaign can be found also in *Genocide in Iraq: The Anfal Campaign against the Kurds*, New York: Human Rights Watch, 1993.
- [2](#) Al Sheikh Mohammed Al Khothari, *Nour Al Yakin fi Sirat Said Al Morstin*, Beirut: Al Maktaba Al Shamila, 2004.
- [3](#) Abdul Aziz Rashid Al Ubaidi, *Min Maarek Al Muslimin Fi Ramathan*, Al Riyad: Aluka, 1994.
- [4](#) Cameron R. Hume, *The United Nations, Iran, and Iraq: How Peacekeeping Changed*, Bloomington: Indiana University Press, 1994.
- [5](#) Aida Ali Sir Aldeen, *Al Masalla Al Kurdiya fi Malaf Al Siyasa Al Dawliya*, Beirut: Dar Al Itifak Al Arabiya, 2000.
- [6](#) Abdul Halim Abu Gazala, *Iraq-Iran War 1980–1988*, Cairo: Al Ahram, 1993, pp. 135–140.
- [7](#) *Genocide in Iraq: The Anfal Campaign against the Kurds*, New York: Human Rights Watch, 1993.
- [8](#) Ibid.
- [9](#) The reconstruction of the Anfal campaign presented in this book is based on the documents gathered to build up the court case by the author in his role as Minister of Human Rights and also as an expert on genocide.
- [10](#) Rauff Akrawi, *Al Hamla Al Badinan wa Awtha al lajjeen*, Erbil: Dar Aras, 2002.
- [11](#) Ali Hassan Al Majid (30 November 1941–25 January 2010), was Saddam Hussein’s first cousin. He was appointed to many positions during the Ba’ath party’s era in Iraq, among them interior minister, defence minister, chief of the Iraqi intelligence service and governor of Kuwait during Iraq’s invasion.
- [12](#) See RCC Decree no. 160 (29 March 1987) in the Appendix.
- [13](#) See in the Appendix document no. 4008, dated 20 June 1987, from the Northern Bureau of the Ba’ath party, headed by

Ali Hassa Al Majid, to all corps and security and intelligence organizations regarding how to deal with the Kurdish prohibited areas.

- [4](#) Interview with Mr. Jabar Thanoon, military driver from Samawa at Nigrat Al Salman prison, conducted during the fieldwork in August 2011.
- [5](#) Testimony of the accused Farhan Al Jabouri, *Anfal Case at Iraqi High Criminal Tribunal*, pp. 305–963. Also see document no. 1467 (6 April 1989) from Taemim Mukhbaral Office regarding the execution of the elderly people.
- [6](#) Bill of indictment for the Anfal case, Iraqi High Criminal Tribunal, No. 1/2nd C/dated 24 June 2007.
- [7](#) Dr Mahmud Othman, member of the negotiation team with Baghdad after the 1991 uprising, interviewed by M. Ihsan (Erbil, February 2011).
- [8](#) www.krg.org. Accessed 11 July 2013.

6 Death from the sky

Chemical weapons (Halabja): the birth and development of the Iraqi chemical weapons¹

This chapter constitutes the first investigation into the stages that led to the chemical bombing of Halabja. This crime differs in nature from the others: first, because of the international exposure it received from the beginning, and also because of the excessive use of military power. The Halabja gassing constitutes the extreme use of chemical weapons against the civilian population in Iraq. The target of the crime was a single city chosen because of its closeness to the Iranian border and because its citizens were suspected of collaboration with the enemy. Due to the small size of the area, the level of damage caused by the attack is still visible. The city was completely destroyed and also the environment. The consequences of this attack will be felt for generations to come. This investigation constitutes the first attempt to reconstruct all the phases of the build-up of Iraq's chemical arsenal through unpublished interviews with former Iraqi government personnel, former Kurdish leaders from the resistance against the regime and undisclosed official documents. By comparing their testimonies with the ones heard by the IHT during the trial, it was possible to reconstruct the development of the chemical arsenal in Iraq and the events that led to its indiscriminate use against a specific sector of the Iraqi population, the Kurds. The investigation also offered the legal requirements necessary to prove the physical evidence of the attack as well as the intent to wipe out a targeted group of Iraqi citizens, referring to *actus reus* and *mens rea*, respectively.

Much has been mentioned about Halabja's chemical attack because it was the first time that the international media managed to cover such a horrendous crime.² For this reason, the investigation did not rely on the information already given by other sources but on how chemical weapons, as instruments of war, had been used in order to commit genocide against the Kurds and to establish a direct link between chemical weapons and genocide. According to the Federation of American Scientists, this crime was, and still remains, the largest chemical weapons attack directed against a civilian-populated area in history.³ All this was in order to demonstrate to the international community that the use of banned chemical weapons against a civilian population cannot be ignored and has to be punished to prevent history from repeating itself. In order to achieve this goal, the legal case had to show how, according to international law on the use of chemical weapons, the whole chain of command must be held

responsible for the crime committed. Also, the legal outcomes of the trial for the Halabja campaign would explain how these events hindered the relationship between the federal government and the KRG as well as the whole process of nation building in Iraq.

Halabja is a Kurdish district that belonged to the Sulaymaniyah governorate until February 2015 when it became a governorate itself. It lies roughly 10 miles inside Iraq from the Iranian border in southern Kurdistan. In 1988 the population of Halabja was roughly 75,000. During the Iraq–Iran war, on Sunday, 13 March 1988, Iranian forces began shelling Iraqi military positions in and around the city of Halabja, and by Tuesday, 15 March, Iranian advance forces (Pazdaran)⁴ had already reached the Zalim River, five kilometres south of Halabja where they started to destroy the bridge in order to prevent the Iraqis’ return. At the same time the Iraqi government started to cut the city’s electricity, water and telephone lines. With the town completely isolated and disarmed, Saddam’s forces counterattacked the next day, first with napalm, then with conventional bombs and artillery, and finally with gas, killing 5,000 and wounding 15,000 civilian Kurds.⁵ On the same day, Iraqi helicopters started to bomb the mountains around the city while aircraft bombed the city itself. The people of Halabja described that day as being like the end of the world.⁶ They tried to hide themselves in tunnels, cellars and basements in order to escape certain death. As we will see in more detail from the interviews mentioned later, by 11 a.m. the Iraqi army started to bomb the city with chemical weapons. Saddam Hussein’s direct responsibility for this crime can be found in the secret memo no. 153, dated 16 March 1988, sent from the Office of the Chief of Staff to the headquarters of the First Corps and signed by Brigadier General Staff Nazar Abdul Karim Faizal Al Khazraji (reproduced in the Appendix).⁷ According to another memo, no. 7371, dated 31 March 1987, sent from General Military Intelligence to the headquarters of the Military Staff and handwritten for security purposes, this was not the first time that Iraqi forces used chemical weapons against Iraqi citizens, since it had happened before in the areas of Siyosinan, Askar Goptapa, Balisan and Shaikh Wasan, setting a dangerous precedent.⁸

A survivor named Aras Abed Akra, who was 20 years old at the time of the events, told his story to a reporter from the *Financial Times* in 2002. He said:

We could smell something strange like rotten eggs. Down in our shelter we felt short of breath. A soldier went out and next door he saw that our neighbour’s birds had all died in their cage. We stayed in the shelter until evening, but then I just wanted to escape. We wrapped our faces in wet towels. It was hard to breathe. One friend became blind immediately when he removed his towel. We were confused and lost, we couldn’t see more than a meter ahead.⁹

Kaven Golestan, a Pulitzer Prize–winning Iranian photographer, witnessed the Iraqi MiG-26 sortie from outside Halabja: “It was not like a nuclear mushroom cloud, but several smaller ones: thick smoke.” After the bombing, Golestan, wearing a gas mask and protective suit, entered the city via a military helicopter to cover the story:

It was life frozen. Life had stopped, like watching a film and suddenly it hangs on one frame. It was a new kind of death

to me. You went into a room, a kitchen and you saw the body of a woman holding a knife as she had been cutting a carrot. The aftermath was worse. Victims were still being brought in. Some villagers came to our shop. They had 15 or 16 beautiful children, begging us to take them to the hospital. So all the press sat there and we were each handed a child to carry. As we took off, fluid came out of my little girl's mouth and she died in my arms.¹⁰

Despite all that the Iraqis had done to Kurds in Halabja, the campaign blamed the Iranians for this attack. This campaign lasted until the March 1991 uprising during the first Gulf War when the Kurds and the coalition forces gathered the documentation related to this case. Only then were the Kurds able to access most of the documents related to that attack, and the international community able to accept the fact that Iraq had used chemical weapons against the Kurds. Saddam Hussein admitted, during the first half of the Anfal trial, that he used chemical weapons against Iran but he denied attacking Iraqi Kurds. This was despite all the evidence produced and despite Ali Hassan Majid admitting that he had used them and he would not hesitate to do it again.¹¹ Saddam Hussein was never tried for Anfal despite all the evidence against him.

In order to analyze these facts and their consequences, it is important to understand how the idea of the use of chemical weapons, banned by the international community, became acceptable during Saddam's regime. There are two fundamental aspects to this: the first one is that it is paramount to understand how a regime with no prior history of the use of chemical weapons is able, not only to produce them, but also to use them despite the ban by international law. Second, how can this be prevented in the future and what was the culture of violence behind it? Since, as mentioned earlier, the facts are available and the different phases of the crime are in the public domain, the author opted for a different approach, starting with the history of the development and the production and use of chemical weapons narrated by the military personnel, some of whom did not want to be mentioned for security reasons.

Chemical weapons in Iraq

Neither Iraq nor its army, established in 1921, was interested in chemical weapons despite their extensive use during World War I and the consequent ban agreed to by Western countries in 1925. There were different reasons for the lack of interest. The first is that since its foundation until the mid-twentieth century, Iraq did not have enough scientists specializing in pharmacology and chemistry. Even the established scientists were merely teachers and traditional pharmacists. Iraq also lacked the infrastructure for chemical or related industries. Even the significant oil revenues in the first half of the past century were not enough to support the infrastructure necessary for chemical weapons. In addition, its lack of political stability prevented Iraq and most of its neighbouring countries from allocating sufficient funds for scientific research. For example, in the 1980s, Iraq allocated no more than 0.02 percent of its internal revenue to scientific research, compared to the 4.2 percent spent by Israel.¹²

Until 1958 the Iraqi government, aware of the limits imposed by the international community, did not want to cause an international imbalance in the operation of conflict management, and so it focused mainly on internal issues. This situation continued even after 1968 and the rise to power of the Ba'ath party. Iraqi governments were not interested in establishing huge armies because the Iraqi army was established to deal with internal opposition (and still is meant to), and border protection has always been secondary. This explains the army's defensive ideology prior to 1968. Even in 1964 when the Iraqi military establishment started to think about introducing chemical warfare in its multiple fields, it was just for defensive purposes. In fact, they focused on the production of military equipment to protect soldiers in case of a chemical attack. According to one of the witnesses interviewed, this was common practice for all armies similar to Iraq's at the time.¹³ In addition, because Iraq was a developing country, its military capability depended strongly on other, more developed countries that did not have an interest in giving Iraq the possibility of building chemical weapons.

The development of the Iraqi chemical weapons

After 1958 and the fall of the monarchy, Iraq became closer to the eastern bloc and thus was able to distance itself from the boundaries set by the Western countries regarding the control on armaments. In the mid-1960s it bought defensive chemical equipment from the Soviet Union and started to train officers in its use. On their return the officers started working in two directions: first, they founded a new unit separated from the Military Corps of Engineers and a school where the officers could be trained. It was first named the Atomic and Mass Warfare School.¹⁴ They selected the Al-Tajee Camp as a permanent base for the school and the department, and then later it was transferred to the Khan Bani Saad Camp, which was closer to Baghdad. This branch developed slowly before 1968 and then accelerated after that, in harmony with the fast development of all other branches of the Iraqi army. In each military division, including aviation, new chemical platoons and squads were formed until the end of the Iraq–Iran war. One of these was a chemical platoon at battalion level that was in charge of the decontamination of the soldiers, the second was in charge of the decontamination of equipment and machineries and the third was in charge of chemical reconnaissance. According to a general of the former Iraqi army who was interviewed, a Chemical Staff Officer was also in charge, while in the headquarters there were two chemical platoons, and a napalm squad attached to the Chemical Branch Department whose duty was to support the military units with chemical weapons when needed.¹⁵

In 1968 the Ba'ath party's interest in chemical weapons spiralled upward for political reasons. That same year, the party established within the Public Relations Office the base for the Intelligence Service – Mukhabarat – for chemical matters.¹⁶ According to the documents

found, they transferred staff officers from the Chemical Department as well as pharmacists who worked in special laboratories connected to this office. The General Directorate of Security made a similar effort, sending forty students to the United States to specialize in chemistry. These became the first scientists trained abroad to collaborate, in the mid-1970s, in the production of chemical weapons at a location called Al-Kamalia, east of Baghdad. In 1979 CS gas¹⁷ was manufactured, and this success resulted in the building of a new facility called Al-Muthana. It was built close to Samara'a and was equipped with laboratories that were devoted entirely to the production of material for military use. In the following years they managed to expand the production from simple CS to mustard gas, bubble factors, nerve agents, sarin and soman.¹⁸ This facility was under the supervision of Husain Kamil¹⁹ who, with the collaboration of some German and Dutch companies that were protected under a semi-open budget providing them with equipment and basic material,²⁰ furnished the army with chemical weapons during the Iraq–Iran war and the attack on Halabja.

The organized use of Iraqi chemical weapons

Chemical weapons were used for the first time in Iraq at the beginning of the 1970s during the security interrogations in order to gain confessions and retaliate against political opposition members. Some of the opposition members reported having seen politicians being thrown in tanks full of acid in the General Directorate of Security during Nadhim Gzar's management.²¹ Chemical weapons were used during the Iraq–Iran war. The Iranians recorded the first use during the battle of Al-Shalamja, close to the city of Al-Muhamarra, in March 1983. The Iranians reported the explosion of multiple Iraqi artillery, producing white smoke with a strong smell covering a wide area of the battle zone which caused some of the fighters to feel drowsy and nauseous.²²

The use of chemical weapons at the beginning of the Iraq–Iran war was limited and ineffective as they were intended primarily for intimidation and retaliation. The officers who participated in the war during that time never mentioned a decisive order regarding the use of chemical weapons in any battle until 1984. However, after that date, as a result of the development in the production of mustard, tabun and sarin gases in huge amounts, and thanks to the success in manufacturing special bombs, its use became more effective, as was seen in Halabja.²³ In addition, the Iranians confirmed that from that date until March 1984, the Iraqi army used chemical weapons approximately sixty-five times.²⁴

Their use, range and effectiveness increased between 1985 and 1986, since the Iranians mentioned that during the battle of Al-Howayza Marshes, about 2,000 fighters were wounded, while in 1986, during the battle of Al-Fao, about 7,000 artillery bombs filled with chemical material were launched. On that occasion, according to Iranian sources, Iraqi jets dropped 1,000 chemical bombs on the battlefield and on the troops, wounding 1,200.²⁵

The regime used the period between 1980 and 1988, when less monitoring was in place, to shift the use of chemical weapons from the battlefield to the opposition forces that were fighting in the mountains of Kurdistan and the fighters in the marshes in the south. Witnesses from that era recorded incidents in which the use of chemical weapons was not limited to an attack on the gathering site of the Peshmerga and Al-Ansars (the fighters from the Communist Party) in Halabja, Balisan and Bahdinan, but also on Kurdish villages in May 1987.²⁶

The regime referred to the chemical weapons as 'Special Ammunition' to add some secrecy to its use as well as to spread terror amongst soldiers. The authority limited its use to the armed forces. General Commander Saddam Hussein, through a special committee headed by the deputy army operations chief of staff, planned the attack and suggested its implementation. This committee had other members, including the director of Al-Muthana Facility as well as another officer from the Directorate of Planning and yet another from the General Military Intelligence.²⁷ The committee continued its work until 1990 when it was detached from the Operations Department and attached to the Directorate of the Chemical Branch. Its operations were stopped after the Gulf War and the destruction of Iraq's chemical weapons.²⁸ An analysis of the pattern in the use of chemical weapons by the Iraqi army clearly shows how the chain of command worked at the onset of a strike. The higher political authorities proposed the use of chemical weapons against both external and internal enemies. Then, through the special committee, they evaluated the importance and effectiveness of these suggestions and decided whether it was advisable to proceed or not.

Although the Chemical Branch and its sub-branches were coordinated, they were not directly involved in chemical strikes because they needed the support of the artillery to carry out the attack. The same thing happened in the 'Stalin's Organ' rocket launcher battalions: the air force received these chemically charged bombs designed to fit the military airplanes before the strike and used them only under strict orders.²⁹ In addition, the artillery and the air force were separate entities that worked under the Military/Political Higher Command. Therefore the 'Chemical Department' had a coordination and advisory role, and the purpose of its troops was always that of preventing any potential enemy strike or monitoring the direct or indirect consequences of the strike. For example, it was in charge of monitoring the direction of the wind in order to prevent the chemical substances from reaching the Iraqi forces. The criminal responsibility for the use of chemical weapons against both the Iranian soldiers and the Kurds lies almost entirely on the Armed Forces General Command as well as on the General Commandership that suggested the strikes. It should be taken into consideration that all the troops followed the orders of the General Commandership, of the field implementers from the Chemical Branch staff, the artillery, the air force and the military aviation.

The international ban on the use of chemical weapons

The historical aspect

Chemical weapons have been used in many forms since ancient times. Some historical sources indicate that around 2000 bc the Indians used toxic fumes to influence their enemies' activities on the battlefield.³⁰ Since then, they have been used when available. The reason is obvious: chemical weapons can disseminate panic and death in the enemy's lines but, at the same time, they save buildings and the infrastructure.³¹ In addition, these kinds of weapons have the advantage of neutralizing an enemy that, most of the time, is not equipped to respond to the attack or might not have the time to use anti-chemical-weapon equipment if available. The first organized use of chemical weapons in modern times was during World War I, when the German army in April 1915 deployed a cloud of chlorine gas over their enemies' territory, causing the death of 15,000 soldiers. The Germans continued to use this weapon until a study discovered that it was the cause of about 800,000 to one million deaths of Russian, French, British and American troops.³²

The huge losses caused by Germany's use of chemical weapons, along with the gravity of the injuries and their physical and psychological consequences, led to the establishment of a political, social and legal lobby whose purpose was to ban their use. A legal framework was created in order to ban them internationally. It was ratified by the Geneva Protocol in 1925 without mentioning specific substances.³³ This ban was repeated in the World Disarmament Conferences held in 1932 and 1934, and at the Biological and Toxin Weapons Convention (BTWC) in 1972, which was signed by 170 members as part of the ban on development.³⁴

International ban compliance

The 1925 protocol signed by most of the Western countries has been very successful in preventing a repeat of the horrors caused by chemical weapons on a large scale. World War II is known for the level of discipline and compliance with the ban, since it started and ended without a noticeable use of chemical weapons. On the other hand, they have been used in some regional wars. For example, the United States used some of these weapons in Vietnam in order to defoliate the territory and to destroy crops, and in this way influenced the course of the Vietnam War. The compliance of most Western countries was due to the fact that merely killing the enemy was not the first purpose of any war until 1918.³⁵ However, not every country followed this trend. Iraq, for example, after 1968 moved in the opposite direction from this internationally prevailing logic. To fulfil its nationalist ideology, and due to its total lack of understanding of global conflicts, the Arab Ba'ath Socialist Party and its leadership introduced

the chemical factor in order to achieve total control of the country.

Other countries that produce and sell weapons of mass destruction such as chemical weapons set very strict regulations on their use and they rely on their power of deterrence to avoid an unsuitable proliferation. In Iraq it was very different: when the government owned a weapon, it did not hesitate to use it and it did not calculate the side effects or consider the unavoidable international reaction.³⁶ For example, under Saddam Hussein's command, the Iraqi army used chemical weapons in the third year of the war with Iran, even though it did not need to from a strategic point of view. Furthermore, it used them at a time when it did not have enough stock to resolve the conflict or affect the outcome of the fight. Saddam Hussein and his higher political leadership's indiscriminate use of chemical weapons shows an ignorance of the weapons' military, political and psychological effects. Their use resulted in an increase in the enemy's hostility and an improvement in its fighting performance, which hindered any possibility of a negotiated ending to the hostilities. In fact, the military and political power balance between the fighting sides had shifted in favour of the Iranians in a noticeable way during that period and in the aftermath, until 1987 when the indirect American intervention in favour of the Iraqis forced the Iranians to accept the cease-fire.

The use of chemical weapons was not a successful strategic intervention in Halabja either. Although the international community considered the loss of 5,000 Kurdish lives a humanitarian disaster, the fact that the Iraqi government violated international law did not decide the conflict between the federal government and the Kurds. On the contrary, the Kurds insisted on continuing their political and military fight in order to put an end to Saddam's criminal regime. In addition to the military reasons presented by the accused to justify their attack on Kurdish civilians, during the trial their depositions revealed a will to take revenge on their enemies by inflicting psychological trauma on them. The desire to take revenge on the peaceful Kurdish people is confirmed by the testimonies heard during the Higher Iraqi Criminal Court from people charged with the crime, including the main defendants, such as Saddam Hussein, Ali Hassan Al-Majid, Sabir Al-Douri, Sultan Hashim and Farhan Mutlak Al-Jibouri. All of them testified that the Iranian enemy had entered Halabja with the Peshmerga fighters from the Patriot Union of Kurdistan and the city had collapsed militarily. Later, the testimonies of some of the witnesses confirmed that at the moment of the attack, no Peshmerga or Iranian forces were present. This shows that the Iraqi government intentionally attacked the Kurdish population to take revenge for their support of the insurgents. In addition, according to the documentation of their testimonies they thought that the chemical weapons would offer a final solution to the Kurdish issue.

All the evidence presented in court by the people of Halabja, as well as the photographs published by the media and articles about the strike and its effects on the civilians, excluded the presence of fighters from Iran or of Kurdish Peshmerga inside the city during the attack. It also confirmed that no bodies of Iranian military personnel were found among the ones

scattered between houses and escape routes. This confirms that the Iranian forces left the city in order to fight the Iraqi army from a more favourable position. The same can be said for the Peshmerga, who left the city as it was not a fit place for defensive fighting against organized Iraqi forces that exceeded them in equipment and number. These facts from the field confirm that the strike was driven by a psychological hatred in the hearts of the Ba'ath commanders. The news that was circulated about the presence of Iranian troops and Peshmerga fighters in Halabja led the authority, represented by Saddam Hussein and those close to him, to carry out the strike against the Kurds.

The strike on Halabja did not provide the Ba'ath regime the result it was looking for. It actually increased the number of volunteers who joined the Peshmerga to fight the regime's forces all over Kurdistan. This presented ready-made propaganda material for the Kurdish leadership and its media, which exposed the true nature of the regime and its ruthless actions. It gave the Kurdish political leadership a chance to present the Kurdish cause, the sufferings of the Kurds from oppression to genocide, to public opinion, which looked increasingly sympathetic. In 1991 Western countries intervened by imposing a no-fly zone that offered protection to Kurdistan.³⁷ It is worth mentioning that Iraq's use of chemical weapons in its war with Iran and against the Kurds in Halabja in the 1980s motivated the international community to sign the Treaty of Paris in 1993, which fully banned the production, stockpiling and use of chemical weapons.³⁸

Actus reus

According to Article 2 of the Genocide Convention, killing members of a group is considered a basic element in the recognition of the crime of genocide,³⁹ and in this specific case, Kurdish people killed in Halabja provided all the physical evidence in support of this point to the court. The international law does not specify a number of victims, nor does it establish a means of carrying out the killings that would constitute genocide because the legal case focuses on providing the evidence that severe bodily or mental harm has been inflicted on the members of a specific group.⁴⁰ What happened in Halabja on 16 March 1988 proved the case: according to the documentation gathered, on that day, the armed forces general commander gave the specific order to carry out an air strike on Halabja using special chemical weapons. These orders were followed by different divisions of the army: first, the air force commander ordered that war planes based at Kirkuk and Al-Bakir bases be armed with special chemical bombs to carry out air strikes on the city of Halabja in the afternoon.⁴¹ Then the Military Air Force passed the same order to its headquarters in Kirkuk. The mission was executed using PC7 airplanes, which started their attacks within the same time period and in coordination with the air force aircraft. 'Stalin's Organ' rockets were distributed to the artillery and the battalions that shelled the city. The violence of the strike did not offer the civilian population

the opportunity to shelter, and this caused the death of about 5,000 Kurdish citizens. As the Kurds are a sub-group of Iraqi citizens, the physical element needed to prove the crime of genocide had been fulfilled.⁴² In addition, all the documentation provided to the tribunal by civic societies and NGOs, including photographs, medical exams and forensic analysis, showed that the victims were of all ages and represented the traditional population of Kurdish society.

The crime scene showed how mothers, children and the elderly were taken by surprise by the attack, their corpses piled up in the alleys and streets in their attempt to escape death. The long-term consequences of this attack were immediately clear, with many survivors suffering from loss of vision and physical deformities. Some of them are still suffering from psychological disorders even today. All these details can be found in Dr Christine Gosden's report, which analyzed, from a medical point of view, the expected impact on the injured.⁴³ Dr Gosden, from the University of Liverpool, who initially treated the survivors, decided to conduct a study in order to assess the aftermath and long-term effects of the chemical attack on the Kurdish population of Halabja. She found that congenital malformation, long-term neurological and neuropsychiatric effects and cancers in women and children are particularly frequent.⁴⁴ Those who survived the strike or were out of reach of the gas were forced to live in detention camps or in special housing compounds where they faced all types of humiliation, insults and physical torture. When the perpetrator forces a group to endure harsh living conditions with the intent of destroying it wholly or partially, or prevents the victims from living normal lives, the physical element required by international law is fulfilled and the intent proved.

Mens rea

The documentation gathered shows that Saddam Hussein and Ali Hassan Al-Majid, the air force commander, the Military Aviation unit in charge of leading the operations in the area, and Armed Forces General Command members were fully aware of the nature of the strike on Halabja and for this reason they were accessories to the crime. It was proved that there is both individual and institutional responsibility. In addition, during the trial it was proved that all the high command of the army was aware that this attack would breach international laws. The trial also proved that besides the high commanders' individual responsibilities, members of the armed forces in the lower ranks could be included. This is because the treaty states that in the case of genocide, all individuals, constitutional rulers, civil servants and lower-ranking employees who participated in the implementation of the plan can be charged.⁴⁵ This fulfills the immaterial element for this crime and all of its consequences and the legal framework defined by the treaty and international convention. Criminal intent is proved by the fact that the perpetrators aimed at destroying the group totally or partially and that the witnesses confirmed that the strike was not the result of a military reaction in the battlefield but a cruel

act of retaliation against unarmed civilians. The action was not an accident, as might be the case where traditional weapons missed their targets, as sometimes happens in battle; the action was murder. The following points support this thesis:

- 1 The leadership responsible for the attack specifically suggested the use of 'Special Ammunition'.
- 2 The armed forces' General Commandership confirmed the strike or suggested changing it or postponing it.
- 3 The Special Technical Military Committee studied the plan to verify its technical viability.
- 4 Saddam Hussein, as armed forces high commander, accepted the plan, gave orders to execute it and wanted to be informed about its progress.
- 5 The Special Ammunition was transferred from al-Muthana to the air base from where the aircraft started their deadly journey towards Halabja. Every stage of the attack was carefully planned and executed, proving the intent of striking against the civilians. This also refutes the government's argument, supported by the witnesses for the defendants, that this was a strike against the Iranian and the Peshmerga forces that entered the city.

The international element

In order to analyze a crime of genocide in international law, it is necessary to introduce, along with the physical and moral elements, an international element: first, genocide crimes in general are well planned,⁴⁶ as we have seen in the case of Halabja. These crimes are usually committed against social, racial or religious oppressed groups by rulers or social sects that are in control, have authority or are well connected to those who have authority. Second, if, as in this case, the responsibility of the ruler is proved, he has to face all the legal consequences and be tried under international law. In the Halabja case, Saddam Hussein's responsibility was proved. This is why the crime was taken to the international court⁴⁷ which determined that the chemical attack on Halabja was pre-planned and that it was the climax of the Anfal campaign, as described earlier. Second, it established that the loss of 5,000 civilian Kurds in one chemical strike in a city of a population of 9,000 (52 percent) proves the intent to destroy either partially or totally. According to international law, the intent and not its fulfilment is important in order to establish responsibilities. In this case, for example, a high percentage of the group has been destroyed, and this has been enough to prove the intent to annihilate it.

Criminal intent as a non-physical element in the Halabja crime is parallel to the physical element of the crime; they became one unit that produced criminal behaviour that matches the definition of genocide adopted by the international community. The crime committed in

Halabja is considered a crime against humanity because it violated Kurds' human rights. Saddam Hussein was thus considered to be a dangerous international criminal according to the definitions adopted by the Nuremberg Court Principles.⁴⁸ In addition, the genocide in Halabja is described in the ruling as an awful crime because it took place under the covert supervision of the higher officials of the state.⁴⁹

In addition to the documentary evidence, the investigation was to gather further information that helped to build up the case against the defendants. For this purpose, it was important to offer a field description of the crime scene and a new version of the events. The Iranian army led an attack on the Iraqi forces' defence lines located on the border between the two parties close to the town of Halabja in March 1988 in spite of the heavy shelling during which Halabja became a target. The Iranians entered on 15 March, and the next morning they retreated without leaving any military unit behind. According to many witnesses, this was comforting for the people there, because they felt they could leave their houses and attend to their livelihoods.⁵⁰ That same morning, at about 11:45, the Iraqi air forces left from the Al-Bakir base close to the Balad district in Salahaddin province, from the Al-Huriya air base in Kirkuk and from Saddam Base in Mosul and started an air raid against Halabja using highly explosive napalm bombs. The raid lasted until 3:00 p.m. When the inhabitants of Halabja realized that the attack would continue, they started to flee by any means available, and at the same time the Iraqi air force launched a chemical strike on the city centre, blocking the main exits and causing the death of thousands of victims, mainly women, children and the elderly. Those who were able to reach the adjacent villages were also attacked and died along with the inhabitants; this was the case at Al-Naee and Abo Ubaida.⁵¹ The families that managed to cross the border to Iran were reached by the deadly gas that spread all over the area, and those who reached specially built refugee camps received medical attention but died because of the injuries suffered during the attacks.⁵²

It was not only the use of chemical weapons against international law that turned the crime against Halabja into genocide. The attacks were immediately followed by a detention operation. After the huge media coverage of the attacks, in order to avoid international condemnation due to the presence of NGOs and international rescue organizations, the Iraqi government issued a pardon to the people of Halabja. Many refugees decided to return to their homes, but they were detained and deported to detention camps by the military forces surrounding the city.

The evidence on which the IHT based its sentence confirmed the field description offered here. This was confirmed by the Second Criminal Court of the Iraqi Criminal High Tribunal headed by Judge Mohammed Al-Arabi, who convicted four main defendants accused of the crime: Ali Hassan Al-Majid, Sultan Hashim Ahmed, Sabir Abdl Aziz Al-Dourim and Farhan Mutlak Al-Jibory. The papers regarding the fifth defendant, Tariq Ramadan Al-Azawi, were transferred to another court because he escaped from Sulaymaniyah prison.⁵³

[Eyewitnesses](#)

Many of the witnesses deposed in the trial were high-ranking military personnel who had the opportunity to witness the different phases of the crime but were not directly involved in it. The most important testimonies were the ones that proved that the Iraqi government, under its leader Saddam Hussein, gave the explicit order to attack the city of Halabja on the afternoon of 16 March 1988, and that Ali Hassan Al-Majid was given full authority to direct the military operations all over Kurdistan, including the power to use special ammunition and detain prisoners. The most important witness in this case was Staff General Waleed Naif Shabeeb Ibrahim Al-Aalously, director of the Northern Area Military Intelligence Organization, witness in the case number 1/E/2005/ dated 4 August 2005. The witness had worked in many positions in military intelligence, including as a staff officer for the third branch and the director of the Northern Area Intelligence Organization. He gave his testimony before the Investigative Judge at the High Iraqi Criminal Court, where he confirmed that the Iraqi forces used Special Ammunition during the whole operation and also confirmed how that use led to a shift in the result of the battles in favour of the Iraqis. He also talked about the mechanism of the Special Ammunition use by the Armed Forces General Leadership. He explained the role of military intelligence in the discussion of Special Ammunition use represented by its director, a member of the general leadership. In the testimony he confirmed that Kurds were detained in areas covered by the fighting and that they were sent in groups to a special camp in Tobzawa close to Kirkuk, and then to other places. This was an operation under the direct supervision of Ali Hassan Al-Majid and implemented by the Directorate of General Security. The staff general also confirmed that Ali Hassan Al-Majid had issued orders to the attacking military units to kill any person in the banned area (no-man's-land), and the evidence was the actual killing orders from the Northern Organization. He personally signed the records relating to the execution of Kurdish groups.⁵⁴ Other key witnesses were:

Pilot Staff General Hamid Rajaa Shalah Hasoun Al-Hadithi

Date of birth: 1951

Air Defense Commander

Case number: 1/E/ 2004/ dated 31 November 2005.

The witness was a pilot officer who worked as the commander of the Aviation Wing at the Al-Bakir Air Base before his last position as the air defence commander. He gave his testimony regarding the aviation technical aspect and its uses. In his testimony he explained the methods of issuing orders and the implementations of the special orders related to the air

missions. He also explained how the authorities dealt with the storage of such weapons by sending back to their point of origin every unused one. He confirmed the actual participation of Al-Bakir Air Base as well as Al-Hurriya and Saddam Bases in many air strikes on the northern areas of Kurdistan.⁵⁵

Mahoud Faraj Bilal Abdullah Al-Samaraee

Date of birth: 1948

Al-Muthanna General Facility Research Director

Case number: 1/E/2004: dated 26 December 2005.

The witness holds a PhD degree in chemical biology and first worked in the Chemical Branch of the Iraqi army and then as a researcher and director of research in the facility that specialized in the production of chemical weapons. This testimony is considered to be important in proving the details of the chemical weapons used in Halabja. He explained that the facility he directed was called Al-Muthanna and that it specialized in the production of such chemical weapons as Taboun, sarin, mustard gas, VX gas and CS gas. In addition, he provided details of how these weapons were loaded into bomb shells, 'Stalin's Organ' rockets and airborne bombs. He confirmed their use in the northern area of Kurdistan, and confirmed the presence of a special committee in the Armed Forces General Commandership that dealt with requests for special weapons, gathering information on their use in the aftermath of the attacks. According to the defendant, in the case of Halabja, this committee granted permission to use the nerve gas sarin. He also explained the effects of inhaling this gas: shivering, loss of control of the organs, injury to the iris, loss of vision and death. The description of these effects matches the testimonies of some of the people of Halabja.⁵⁶

Their Yousif Abbo

Date of birth: 1961

Active soldier

Case number: 1/E/2004

The testimony of this soldier provided the court with a different insight, since he had not witnessed the chemical attack, but he could testify about some of the effects of the attack on the environment. The witness reported that he entered an orchard with other soldiers and ate some of the fruit from the trees. Only a few days after, he noticed blisters appearing on their bodies. When they consulted a doctor, he diagnosed that they had ingested a chemical agent a month earlier.⁵⁷

[The official documents](#)

Despite the secrecy in which this operation was carried out, the official correspondence that was found clearly supports the versions offered by the witnesses. This book reproduces some of the documents. The first one is a classified personal letter from the Armed Forces General Command Secretary to the Armed Forces Deputy General Commander of the Minister of Defence and to the Army Chief of Staff. This letter contains a series of orders issued by the armed forces general commander. In paragraph 2 it says: “In Darbandi Khan Sector and in Anfal Operations Sector ... you must continue attacking the enemy and the saboteurs with fire, shelling and air bombardment, they should not be given the chance to settle down or regain their breaths. It is preferable to use the Special Ammunition by shelling at night as a surprise element, or loading regular shelling with strikes of the Special Ammunition.”⁵⁸ The use of the name ‘Special Ammunition’ is confirmed in this letter, as well as the general commander’s intent to commit genocide on a specific ethnic group.

The second document is also a letter labelled ‘Classified and Personal’. This one is from the Army Staff Leadership, addressed to the Commander of the First Brigade, Staff General Sultan Hashim, and the Fifth Brigade Staff General Ayad Khalil. Again, its subject, ‘Directives’, shows the hostile activities of the operation. In paragraph (w) of article (2) the letter says, “The use of the ammunition against the enemy’s troops as much as possible using the air bombardment/ shelling/ pipe rockets/ Helicopter with a pre-emptive strike before they start their operations against our troops you can also attack the saboteur’s sites using ‘Special Ammunition.’” This is a handwritten letter, which shows the importance and secrecy of the subject. The last portion of the letter, paragraph (w), quoted above, shows how the Army Staff Leadership, holding sole authority to use the ‘Special Ammunition’, is granting permission to use it against the Kurds, who he kept labelling as ‘saboteurs’. In addition, he is the one who identified the sites for the attacks. This identification was not precise enough to prevent this chemical weapon reaching the local civilians because the Peshmerga were moving between sites and the ones used for fighting were usually located close to the villages and populated areas. The Iraqi authorities were aware of the dangers of a chemical attack close to an inhabited area since the gas can spread into a much wider area than the intended one. This is clear from some of the military documents that recommended chemical weapons not be used near the Turkish border in order to avoid an international uproar.⁵⁹

Another handwritten letter presented as evidence was one from the Intelligence Organization for the Eastern Area addressed to the Fifth Assisting Branch in the Military Intelligence Directorate. The subject was ‘Information’. In paragraph 5 the letter says: “The enemy’s loss due to our air strikes against the city of Halabja as well as our shelling were [sic] huge and about 3,000 people were killed by the Guards and Bassej.⁶⁰ Their corpses have been transferred to the city of Bawa along with a high number of injured people. The civilian loss

was about 4,000 people, all from the city of Halabja and the residential camps and villages around it. Most of the losses were the result of the chemical strike.” This letter also shows that Halabja was under the jurisdiction of the Intelligence Service. Evaluating the chemical strike that took place against Halabja, this letter proves that the strike was on the city centre and neighbouring areas as well as on the road leading to the city, and along with the testimonies that place the Iranian troops out of Halabja before the afternoon of 16 March it constitutes a clear and undeniable admission of the use of chemical weapons.⁶¹

On page 17 of this 23-page letter obtained from the General Military Intelligence and presented to the High Criminal Court, the seventh paragraph says: “On the next day after our troops struck Halabja with the ‘Special Ammunition’, Mir Hassan Mosawi, the Prime Minister of the Farsi Regime arrived accompanied by the criminal ‘Mala Ali’ the head of the Military Wing of the Islamic Movement in Kurdistan with Iranian Journalists as well as Journalists from France and Italy; then they all left for the Iranian city of Bawa after visiting the area.” This is a clear admission from an official intelligence authority of the use of the chemical weapons against Halabja. With this visit Iran took advantage of the attack on Halabja on both the internal and international fronts. Internally, they were offered propaganda weapons against the infidel Iraqis who did not hesitate to act against Islam by killing their own people. Internationally, they were able to show the whole world the atrocities committed by Saddam Hussein’s regime.⁶²

The last letter reproduced here is a highly classified one from the Intelligence Organization for the Eastern Area to the Third Branch of the Military Intelligence. Again, the subject is ‘information’. The second paragraph of this letter mentions the losses resulting from the chemical strike. According to a special estimate made by a source working for the organization in the city of Halabja during the strike, around 1,200 people died in the Armed Guard and the Baseej in the city and its suburbs. In addition, there were 2,500 victims among the residents.

Despite the difficulty in calculating the exact number of losses, the tribunal took into consideration the evidence presented to the court. It is worth mentioning that in the aftermath of a strike of this proportion, it is very difficult to agree on an exact number of victims and that an estimate could be made only through the witnesses’ accounts or after a reconnaissance visit by external NGOs or other organizations.⁶³

The court’s ruling

The complaint was filed at the Iraqi High Criminal Court against some Iraqi officials, under the number 2/C the Second/2008 for the action of attacking Halabja using chemical weapons. The defendants, Ali Hassan Al-Majid, Sultan Hashim Ahmed, Sabir Abdul Aziz Al-Douri and Farhan Mutlak Al-Jibori were tried. Ali Hassan Al-Majid was convicted under paragraph

number 12/First/A) code and 14/First/Second/Third/Fourth) articles of the Iraqi High Criminal Court numbered (10) dated 2005 for the first charge. He was sentenced to be hanged for his participation in murder and crimes against humanity. The other defendants were convicted under Article 12/First-D and article 15/Second/A, B, C and Third, Fourth Chapters of the above-mentioned court statutes. They were sentenced to seven years for the forced deportation of civilians and were all convicted in accordance with articles 12/First – T and article 15/ First and Second of the Courts Code. They were sentenced to 15 years in prison for the crime of forced deportation, as a crime against humanity. The accusers and petitioners appealed their personal right in accordance with the bill dated 27 January 2010. Their objection focused on the decision related to the chemical strike on Halabja considered as a crime against humanity. They felt this was illegal.

The appellate body at the High Iraqi Criminal Court accepted these appeals and confirmed the strike against Halabja was indeed a crime of genocide. After evaluating all the evidence, the court acknowledged a clear intent to annihilate a specific ethnic group according to articles 11/First/A of the High Iraqi Criminal Court, numbered 10 and dated 2005.⁶⁴

The defendants' testimonies

In the case of Halabja, during the first hearing on 16 June 2009, Ali Hassan Al-Majid admitted his crime, saying that if it was proven that Iraq is the country that attacked Halabja using chemical weapons, then he would bear some responsibility along with the Armed Forces General Leadership. He also confessed in front of the accusers and other witnesses, saying, “I attacked and then why are you still alive ... I am the ruler of the Kurds and President Saddam Hussein is the Ruler of Iraq and Halabja is a setback that needs to be purified by sea water.”⁶⁵ Looking back at the previous crimes analyzed, it is evident that Halabja constitutes the peak of the state-engineered genocide against the Kurds. In the eighth year of the war against Iran, the regime distanced itself completely from an indifferent international community and international law. The attack on Halabja was carried out as a revenge against a population that traditionally fought against the regime. What happened in Halabja is not a disconnected act from the Anfal operations that started on the night of 22–23 February and ended on 9 September 1988. All the official letters that discussed the use of the Special Ammunition were handwritten for security reasons.

The investigation into the genocides committed against the Kurds has to be read against the events that started in June 2014 with the intervention of ISIS and the resurgence of a possible sectarian war in the country leading to its final division into three main areas. The recognition of these crimes by the international community and by the Iraqis themselves constitutes the first step towards preventing them from happening again. Ignoring these tragic events risks slipping back into a regime that the Kurds hope to have left behind forever. Unfortunately, the

images that come from the areas occupied by ISIS show that the supposed new caliphate acclaimed by its leader has the power to evoke the ghosts of the past: summary executions, forced displacement of Christians, massive refugee camps. This is a failure not only of the international community but also of the supposed new Iraq born after the U.S. invasion. On the contrary, the invasion accelerated the development of a proper Sunni identity versus a dominant Shia one, and hastened the new order in Baghdad. Like many a persecuted group, the Sunnis feel that their claims of injustice suffered during the regime have not been addressed by a central government, which they feel is deaf to their voice. As did most of the Kurdish people, the Sunnis saw Maliki's government as a mechanism to protect the interests of a particular group over the other. This did little to overcome the fear of new reprisals and a repetition of the dictatorship under another name. In this sense it is fair to say that Iraq, as a unified nation, has lost the historical opportunity to transform its society, institutions and laws in the past ten years. The non-implementation of the constitution in favour of the minorities, the open opposition to the establishment of an independent, modern judicial system and the rampant corruption have hindered any social development and communal identity. Fanar Haddad, in an article titled 'Sunni Politics and the Post-2003 State', argues that the new Iraq revolved around a communal sense of 'victimhood' in the present and the past and this is exacerbated by the sectarian nature of Maliki's government.

It is in this context that the failure of post-2003 Iraq has to be read and interpreted. The most visible example of this failure has been the collapse of the army at the advance of ISIS, even as the army is completely absorbed into the corrupt system supported by the federal government. Maysoon Salem Al-Damluji, a member of the Council of Representatives for the Iraqi National List, was quoted by Al-Jazeera as saying, "Why the Iraqi army left is still an enigma."⁶⁶ On the contrary, an explanation can be found in the corruption and sectarian culture that pervaded many institutions, the army included. In his article published in the *Iraq Times* on 23 June 2014, titled 'Why Did al-Maliki's Army Collapse before It Reached Da'ash (ISIS)?', Ali Al-Yasri⁶⁷ offers a detailed and striking picture of the inside mechanisms that rule the army in post-2003 Iraq. The higher ranks of the army were not chosen on merit; rather they were all nominated directly by Maliki. This guaranteed a predominance of Shias in its ranks to the exclusion of other ethnic groups. But more striking was the corruption that led to the nominations from the generals down to the lower ranks. According to Ali al-Yasri, Maliki nominated 20 generals with a monthly salary of \$1 million. Each of them would sell the next lowest position in the ranks for \$500,000. They would make \$2 million a month and give half to Maliki. The same pattern of buying and selling positions was repeated down the chain of command, turning the army into a business run exclusively by Maliki's Shia members. In addition, each rank gives false information about the effective number of soldiers under its command. For example, they can say that they are in command of 1,000 troops when in reality the effective number of soldiers in service is only 600–700. This allows them to handle

a payroll for 1,000 soldiers and keep the extra money for themselves. Dr Ali al-Yasri also reports an interview with a representative of a real estate company who told him that all these army members had been buying very expensive properties in Baghdad and that he had just sold an eighth house to one of the lower-ranking soldiers. It is clear that an army built on personal interest and corruption cannot fight terrorists. It will be unprepared, and it will lack the motivation to intervene in the fight against terrorism.

This mechanism also proves that Maliki's government increased the budget spent by the Ministry of Defence, the Ministry of the Interior and other security agencies. [Table 6.1](#) shows how from 2005 to 2014 the budget amounted to a total of ID136,317,000,000,000, equivalent to US\$177,000,000,000. These figures prove, not only the corruption imbedded in the system, but also that the priority of Maliki's government was to strengthen the agencies in charge of controlling any potential internal enemy. Starting from 2007, three years after the draft of the constitution, new voices were added to the budget and that increased with time, in particular the voice regarding the Iraqi Intelligence Service and the National Security Council. The high cost of security and defence is not only to be attributed to the corruption explained above, but it is also an indication that the Iraqi political elite did not change after the U.S. invasion. As for the judicial system, the de-Ba'athification of the main institutions did not work out, which hinders any change in the political thought and leaves the 2005 constitution a void legal document.

[Table 6.1 Budgets spent by the Ministry of Defence, Ministry of the Interior and other security agencies, 2005–2014](#)

<i>Year</i>	<i>Ministry of Defence</i>	<i>Interiors Ministry</i>	<i>Iraqi Intelligence Service</i>	<i>General Command Office of the Armed Forces</i>	<i>National Security Council</i>	<i>De-armed and Militaries Unification Directory</i>	<i>Total Trillion / ID</i>
2005	3,020,900	1,983,250					5,004,150
2006	5,163,702	2,878,798					8,042,500
2007	5,218,030	4,010,531		27,515	13,109		9,269,185
2008	6,351,944	6,844,788	214,649	39,000	24,086	234,592	13,709,059
2009	4,863,012	6,469,255	169,950	29,984	21,345	199,745	11,753,291
2010	5,733,825	7,188,385	188,722	61,994	18,126	41,770	13,232,822
2011	6,839,031	7,386,698	204,909	69,993	9,511	228,688	14,738,830
2012	7,060,708	9,570,998	223,979	62,800	11,430	239,399	17,169,314
2013	9,206,856	9,929,494	274,320	65,181	19,800	206,645	19,702,296
2014	11,411,425	11,077,234	330,798	70,471	300,358	506,053	23,696,339
Total	64,869,433	67,3369,431	1,607,327	426,938	417,765	1,656,892	136,317,786

Source: Iraqi Ministry of Defence

From this example it is easy to extrapolate that Maliki's government is not capable of forming a new coalition inclusive of all ethnicities, nor to restore the strength and credibility

of the central government unless it becomes a trustworthy interlocutor for Sunni and Kurdish representatives. Post-2003 Iraq has lost a unique opportunity to restore the confidence of its own citizens by reforming the political and judicial system. This is why the recognition of these crimes could prevent these events from happening again. It is important to deter the cycle of sectarian and religious extremism in which Iraq was and still is mired. This would also guarantee a legal framework and the international intervention that would avert any temptation to dictatorship of future leaders.

Notes

- ¹ This reconstruction is mainly based on informal interviews with members of the armed forces of Saddam's regime. Some of them gave the author permission to use their names, and others wanted to stay anonymous. The author also names the military personnel mentioned in the official documents that were gathered to build up the case against the perpetrators of this crime. All these documents were gathered by the author during his investigation as Minister of Human Rights and as an international legal expert at the court. The documents are currently with the court.
- ² See Michael Kelly, *Ghosts of Halabja*, London: Praeger Security International, 2008.
- ³ This information can be found at <http://www.fas.org/nuke/guide/iraq/cw/program.htm>
- ⁴ Pazdaran was the Persian word for the Revolutionary Guards during the Iraq–Iran War.
- ⁵ Taha Baban, *Alam al Kurd al Morab*, Erbil: Aras, 2008, pp. 10–24.
- ⁶ Harme Faraj Abdula, interviewed by M. Ihsan (Sulaymaniyah, April 2012).
- ⁷ See Appendix for a translation of the original.
- ⁸ For a translation of the original copy, see memo no. 7371 of 31 March 1987 in the Appendix.
- ⁹ Guy Dinmore, 'The Enduring Pain of Halabja', *The Financial Times*, 10 July 2002.
- ⁰ Ibid.
- ¹ For Iraqi's allegations, see John Pascal Zanders, *Iranian Use of Chemical Weapons: A Critical Analysis of Past Allegations*. SIPRI Chemical and Biological Warfare Project, 7 March 2001, briefing available at <http://cns.miis.edu/pubs/programs/dc/briefs/030701.htm>
- ² Ahmad Thabit, 'Jawanib al Siraa al arabi al Israeli wa majalatihi', *Al Jazirah*, 3 October 2004.
- ³ General S.A. from the Iraqi Chemical Branch, Iraqi former officer, interviewed by the author (Baghdad, November 2012).
- ⁴ Ibrahim Al-Marashi, *Iraq's Armed Forces: An Analytical History*, London: Routledge, 2009.
- ⁵ Brigadier General F.H., division commander in the Iraqi army, interviewed by the author (Erbil, June 2014).
- ⁶ The author has found documents from the Iraqi Mukharabat confirming the existence of a chemical branch at their headquarters since 1971.
- ⁷ "A gas causing tears, salivation, and painful breathing, used in civil disturbances; *ortho*-chlorobenzal malononitrile." <http://www.collinsdictionary.com/dictionary/english/cs-gas>. Accessed 17 October 2013.
- ⁸ Chemical Brigadier K.M.S., interviewed by the author (Mosul, March 2012).
- ⁹ Hussain Kame (1954–23 February 1996) was the son-in-law and second cousin of the Iraqi leader Saddam Hussein. He

defected to Jordan and assisted the United Nations Special Commission (UNSCOM) and International Atomic Energy Agency (IAEA) inspection teams assigned to look for weapons of mass destruction in Iraq. After his return to Iraq, based on a special amnesty, Saddam Hussein, Ali Hassan Al Majid and his relatives killed him with all the members of his family.

- 10 After the 1991 embargo, the establishment stopped working and came under the supervision of the UN inspection teams until 2003, when the coalition forces destroyed it completely. In the case of two Dutch companies, it is firmly established that they delivered chemicals to Iraq which, in all probability, have been used to produce chemical weapons. The two companies involved are Melchemie (Arhem, now called Melspring) and KBS Holland (Trneuzen, now called Bravenboer and Scheers). Furthermore, on 24 April 2013, the convicted businessman Frank van Aarat acted as an illegal dealer in chemicals for Iraq's chemical weapons program.
- 11 Nadhim Gzar was the General Director of Security during 1968. He was assassinated by Saddam Hussein in 1973.
- 12 UN Report S/16433 of 29 March 1984.
- 13 Brigadier General N.M., former brigade commander in Iraqi army (Erbil, September 2013).
- 14 Mr S.K.'s testimony was presented to the International Tribunal in The Hague during the investigation into the Iraqi regime's use of chemical weapons.
- 15 UN Report No. S/19711 of 1986.
- 16 The Directorate of the General Military Intelligence later labelled as classified and personal no. 808, dated 12 March 1987.
- 17 Chemical Brigadier K.M.S., *deputy director of Iraqi Chemical Branch 1980–1985*, interviewed by the author (Baghdad, 2012).
- 18 Mr S.K.'s testimony was presented to the International Tribunal in The Hague during the investigation into the Iraqi regime's use of chemical weapons during the war with Iran.
- 19 Meeting with Chemical Brigadier K.M.S., Mosul, March 2012.
- 20 Malcom N. Shaw, QC., *International Law*, 5th edition, Cambridge, UK: Cambridge University Press, 2003.
- 21 B. Bollecker-Stern, *Le Préjudice dans la théories de la responsabilité internationale*, Paris: Pedone, 1973.
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- 25 Joseph Nye, *Understanding Global Conflict and Cooperation: An Introduction to Theory and History*, Cambridge: Pearson, 2012.
- 26 Edward Willett, *The Iran-Iraq War, War and Conflict in the Middle East*, New York: Rosen, 2004.
- 27 See United Nations Security Council Resolution 688 of 5 April 1991.
- 28 Helen Chapin Metz, *Iraq: A Country Study*, First Edition, Kila: Kissinger, 2004.
- 29 Abdul-Ftah Bayoumi Hijazi, *Al Mahkama Al jinaeya Al Dawliya*, Beirut: Dar Al-Fikr Al-Jamiee, 2005.
- 30 Abdul-Wahid Mohammed Al-Far, *Al Jaraem Al Dawliya Wasultat Al Ekab Alaiha*, Cairo: Dar Al-Nahdha Al-Arabiya,

1996.

- i1 Testimony under oath by the Iraqi former pilot Hamid Raja Shelah Al-Hadithe in the Higher Iraqi Criminal Court.
- i2 The number of civilian casualties was confirmed by the Higher Iraqi Criminal Court during the hearing and sentencing.
- i3 Halabja Post Graduate Medical Institute (HMI) and Dr Christine Gosden, August 1992.
- i4 Christine M. Gosden, 'The 1988 Chemical Weapons Attack on Halabja, Iraq', in *Super Terrorism: Biological, Chemical, and Nuclear*, Yonath Alexander and Milton Hoening, eds., Ardsley, NY: Transnational, 2001, pp. 7–11.
- i5 Rome Statute of the International Criminal Court and the Statute of Iraqi High Tribunal no. 10, 2005.
- i6 <http://www.genocidewatch.org/aboutgenocide/8stagesofgenocide.html>, 19 October 2013, Amja Haykal, *Al Masoliya Al Jinaeya Al Fardiya Al Dawliya Amama Al Kazae Al Jinaee Al Am*, Cairo: Dar al Nahza, 2008.
- i7 Abbas Hasham Al Saedi (2002), *Masoliyat Al Fard Al Jinaeya An Al Jarima Ala Dawliya*, Cairo: Dar al matboat aljamiaeya, 2002.
- i8 Muntasir Saeed Juda, *Al Mahkama Al Jinaeya Al Dawliya*, Egypt: Dar Al-Jamiaa Al-Jadida, Alexandria, 2006.
- i9 Rulings of the permanent People's Court in Paris, April 1984.
- i10 The testimonies of 438 witnesses and complainants in the Iraqi High Criminal Court, which started its hearings on 21 December 2008.
- i11 Farhang Rajaei, *Iranian Perspectives on the Iran-Iraq War*, First Edition, Gainesville: University Press of Florida, 1997, p. 35.
- i12 From the testimony of the petitioner Luqman Abdul Qadir Mohammed regarding the special claim about the chemical attack on Halabja, dated 5 July 2009.
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- i14 The Special Criminal Court, The Investigative Judges, pp. 4379–4401.
- i15 Iraqi High Criminal Court, Investigative Judges, pp. 4472–4477.
- i16 Iraqi High Tribunal, Investigation Judges, pp. 2032–2041.
- i17 Halabja case documents in the Iraqi High Criminal Court, p. 4481.
- i18 The Presidency's Office, the Armed Forces General Commandership Secretariat letter, classified and personal, numbered A/13/177 and dated 20 March 1988. See Appendix. Memo no. 2405, dated 22 March 1988.
- i19 The Armed Forces General Commandership letter numbered review/349 and dated 27 April 1988. pp. 9653–9654 of the documents of the High Criminal Court.
- i20 Iranian special units.
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- i22 Page 2511 from the documents of the High Iraqi Criminal Court.
- i23 A letter from the Intelligence Organization Eastern Area labelled highly classified, numbered /S1/Q1/3552 and dated 27 March 1988. p. 2502 from the documents of the High Criminal Court.
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17 Ali al-Yasri, 'Why Did al-Maliki's Army Collapse before It Reached Da'ash (ISIS)?', *Iraqi Times*, 23 June 2014, available at: <http://aliraqtimes.com/ar/page/23/06/2014/33925>

7 A new horizon?

A view from Kurdistan

The events since June 2014 call for a reflection on the current role of the Kurdistan Regional Government in the area. The first impression would suggest that the events unfolding mean a change in the power leverage the region can exercise at this moment in time. However, the situation is still extremely unstable due to the predictable resistance facing the now-inevitable disintegration of the country.

On two occasions, one in 2005 and one in 2013, the Kurdish media broadcasted live the ceremony dedicated to those who died during Saddam's regime and whose bodies were found in mass graves. Each martyr's coffin was transported separately, wrapped in the Kurdish flag, and paraded in front of the Parliament building in order to demonstrate, through these deaths, what the Kurdish people have achieved. More recently, in June 2014, the remains of another 56 Anfal victims were repatriated to Kurdistan. Yet the investigation of the mass graves is getting more and more difficult for the team in charge of the search, due to the presence of ISIS in the territory.

But why is the Kurdish government actively seeking Western technology and experience in order to find mass graves? Are not the remains found thus far enough to symbolize the immense suffering inflicted on them? The main reason is that without satellite images, radars, metal detectors and international forensic experts, due to the geographical conditions of the area and to the lack of collaboration of the Arab population, it would have been impossible to carry out these investigations. It is clear that after these events and the fall of Saddam's regime in 2003, Kurds had to follow the rest of the country in a common effort to establish transitional justice and reconciliation. But is reconciliation possible in a country like Iraq which had been held together by a dictatorship for such a long time? As shown in the previous chapters, there are many elements that led to the conclusion that no transitional justice was implemented in the country, and that all the minorities – in particular, the Sunnis, Kurds and a portion of the Shias – felt betrayed by the federal government. The stability and unity of the country, which has been severely compromised, is not the only thing at stake here. We also have a great opportunity to create a new ruling class that is more democratic, more respectful of diversity and more likely to accept others as fellow citizens.

On the other hand, Sunni Arab Iraqis have struggled to come to terms with their past and, after 2003, were not able to take steps towards reconciliation. In addition, they have been

portrayed as the heirs of the regime and they and other communities have accepted this notion. Of course the reality is very different, since during the regime each community competed in violence in order to please Saddam. Even the 2014 elections, with their electoral fragmentation, did not do anything to ease the perception of marginalism in Iraq. In 2012 they made their voices heard by organising protests against Maliki's government in the Sunni majority areas such as Mosul, Sahaladin, part of Kirkuk and Anbar. However, this discontent has roots in the Sunni community's dissatisfaction with the Iraq that was born in 2003. As for the Kurds, the Sunnis and the victims of the regime, they did not receive the recognition that they expected as victims of the dictatorship. But after 2003 and the fall of Saddam, the antagonism between Sunnis and Shias derived from this lack of recognition. Both groups felt betrayed by the new system and, looking back, they saw their own suffering in the past decade as an entitlement to a wider share of political power.

The permanence of this sectarianism is one of the main obstacles to a national reconciliation that cannot occur unless all parties face their own past and reflect on a common future. In a sense, this process was easier for the Kurds. Their political and social background helped them to avoid being engulfed in the fight between Sunnis and Shias and to deal with their own internal reconciliation process. The Sunni discontent about the new Iraq was evident in the way they reluctantly accepted the idea of federalism; they conceded because they feared that the country would be divided. This happened in particular after 2010 when they ceased to be in favour of a federal system after Maliki rejected their request for the creation of a Sunni region. Their position, since it was fixated on Arab nationalist positions, excluded them from some of the decision-making processes of post-2003 Iraq. This did not happen to Shias, who helped to introduce the ideal of federalism into the 2005 constitution. In this context, the only guarantee of a communal identity is militancy and armed opposition to the regime, in an attempt to gain the power to which they think they are entitled. The Shias have walked a similar path. Once in power, in particular in the last few years, Nour Al-Maliki (2006–2014), worked for the reinstatement of a dictatorial regime. He managed to create schisms not only with the Sunnis and Kurds but also within the Shias by exacerbating the political idea, shared by Shias, that democracy is majority rule, and that in their case it has a demographic meaning. This ultra-sectarian vision of power does not take into account the shift in the population that has been going on in the last few years in Iraq. This is an idea that has marginalized both Shias and Sunnis living in the same areas. It is a country with no experience of democratic rule, that is, a system that involves all citizens in the decision-making process.

Unfortunately, Maliki's government did not embrace the idea of federalism, or of any other political solution involving negotiations regarding the way the country should be run. The seeds of a systematic exclusion of entire sectors of society from power have their roots in 2005 when an 'elite bargain'¹ between the winning parties started to alienate other groups on religious grounds. The 2005 political elections saw an escalation in sectarian rhetoric. In

January, for example, the local platform for politicians was undermined by the diminishing of the representatives of the single constituencies in favour of a wider national representation. This had the effect of reducing the rivalries to mere ideology and trivializing any possibility of confrontation on the local level. The voters were mobilized to vote for political parties and not for individual candidates, and this made overcoming differences more difficult. In order to gain votes, the parties did not have any other option than to play the sectarian card. Most of them did not talk about governmental programmes, jobs, security or other issues that could have unified society. On the contrary, all the parties stressed their religious differences.² This trend continued in the following elections even though, in 2009, voters were called to cast ballots for individual candidates in addition to the parties.

The rhetoric used in politics continued to poison Iraq's political life and only worsened after 2003. The 2010 elections did nothing but confirm this trend. The 'elite bargain' used the de-Ba'athification laws in order to exclude from the political campaign more than 500 candidates, most of whom were from Allawi's Iraqiyya coalition. The purpose was to curb what had probably been the first successful attempt to present a list based on a secular platform different from the other parties. This posed a threat to the traditional parties still mired in a seemingly endless sectarianism and gave Maliki an excuse to concentrate even more power in his own hands. In the 2010 elections, Maliki's party came second. However, the fragility of the political system played in his favour. By assigning important posts to people loyal to him, he was able to control the formation of the new government, which seemed dependent on his personality. This meant the gradual exclusion of Sunnis and Kurds from government positions. Until the very beginning of the ISIS invasion of Iraq on 10 June 2014, Kurdish officials denounced the gradual exclusion of Kurds from government and military positions.³

At that moment in time, the Kurdish presence in the army amounted to just 2 percent. In addition, the government refused to consider Peshmerga forces as part of the Iraqi defence system and refused to pay and equip them. In the meantime, Maliki continued to reinstate former officers from the dissolved Iraqi army, with the disastrous consequences that the world witnessed during the ISIS attack. The Kurdish opposition to this situation was too weak. The people appointed were not strong enough to fight for Kurdish rights. The passivity of Kurdish representatives before Maliki's unstoppable rise was a fact even before the 2014 elections. However, it is also true that the institutions and the control that Maliki personally exercised on them did not allow room for the other partners to manoeuvre. In the end, this attitude exacerbated the sectarian violence that is now engulfing the whole region and makes clear, once and for all, that federalism has never been a viable solution for Iraq.⁴

The difference between Shias, Sunnis and Kurds lies in their different concept of life for a citizen in a community. The rivalry between Shias and Sunnis is mainly sectarian, and everything is based on religious grounds. The idea of society is strongly linked to religion, and this isolates them from the vision the Kurds have of society, which they feel must be

democratic and, most importantly, secular. This is not just an ideological statement, but an idea that entails a different way of dealing with the past, the present and the future of an entire community. It reflects on the ability of a given society to overcome its past and to build a new future. In Iraq, the religious divide between Shias and Sunnis prevented society from undertaking the necessary steps towards reconciliation. The religious, intransigent separation of the two sects, did not help the birth of a new political system based on a respect for minorities: it led to the gradual polarization and militarization of the two parties, leaving little space for a democratic confrontation. Unlike the Kurds, Shias and Sunnis do not share an identity. They do not even share a political ideal that would unite them in postwar nation building. Neither the Shias nor the Sunnis would have gone to the trouble of digging up the mass graves for fear that it would compromise their power. Nobody would have dared to issue an amnesty for the ex-Ba'athists, as did the Kurds. On the contrary, the de-Ba'athification process initiated by Paul Bremer⁵ and the hasty way in which it was carried out resulted in the division of society instead of re-unifying it under a common goal.⁶

In this situation, any reconstruction effort was hindered by the impossibility of the U.S. having a real understanding of the situation on the ground, and the unlikelihood of the Iraqi ruling class of engaging in a process of revision, although they were partly supported by the foreign presence. All this mistrust caused a civil war with such bloodshed of Shias and Sunnis that it was impossible to implement almost any of the laws introduced first by the TAL and then re-introduced in the 2005 constitution regarding transitional justice or reconciliation.

During the investigation of these crimes (against the Faylees and the Barzanis, as well as Halabja, Anfal and Arabization) it became evident that in the case of Iraq, there was not sufficient political unity to embark on a reconciliation route. No support has been given to the citizens of any group – Shia, Sunni or Kurd – in order to shed light on the past decades and the horror of the regime, when democratic institutions were plagued by sectarianism, corruption and a disastrous race to militarization.⁷ It is not the case that since 2003 there has been an escalation in the number of militia groups acting inside and outside Iraq. Maliki has used them at different moments and in different capacities, and this has perpetrated violence rather than achieving a reconstruction effort. In particular, Shia militias, including the ones acting in Iran during the regime, had the opportunity to cross the border after Saddam's fall. The Badr Brigade is a good example of a militia from Iran. It consists of 1,500 combatants and has been used by Maliki on many occasions, sometimes to create rivalries between Shias and Sunnis and sometimes among the Shias themselves, but always in close consultation with Iran. The worrying thing is that these groups appeared in Maliki's list to underline the strong ties between militarization and politics. The two parties have a common identity and a common cause. Maliki also had strong ties with another militia group, the Madhi army. Founded in 2006 and led by Moktada Al Sadir, this group later separated into another faction led by Qais al-Khazali. The reason for the separation was Maliki's policy of divide and rule. All the militias

depended in some way on his financial support or corruption and he managed to use them for his purposes. This is the reason why the Iraqi state failed to combat ISIS, and all Iraqis failed to become one nation. The sectarian division and the race for power made Shias and Sunnis choose extra state solutions. The fact that Maliki supported them shows that he is using a sectarian policy to stay in power.

In addition to the previous ones mentioned, there are other Shia militias on the ground such as Al Badr, not all of which are funded by Maliki. However, the group that receives most funding is the one led by Asai Ahl Al haq. Maliki used this group against the Kurds in Kirkuk and Baghdad; and Maliki's support makes this group even more powerful than the Iraqi army, especially in and around Baghdad. Known currently as the League of the Righteous due to its strong links with Iran, it has been present in and out of Iraq for a very long time and for this reason it has managed to establish lasting links with Maliki's government. The rising Sunni threat in the region can only facilitate the expansion of this group before the U.S. withdrawal in 2011 to fight against the 'foreign invasion'. With the new situation on the ground, and the increased Iranian influence in Iraq, the group understood that its survival depended on its presence in the political arena.⁸ In addition, the reality on the ground suggests that this kind of coexistence between military and politics will last because it justifies the Shia population's mistrust of the central government. The increasing discontent and the permanent security crisis will sustain this group in a failing country where a non-state entity can take advantage of the lack of institutions that represent the whole country.

It is evident that the 'symbiotic' relationship between politics and militias represented by Maliki was a dangerous one. Maliki played it in a way in which the League of the Righteous did not become powerful enough to threaten him. On the contrary, he managed to use it to establish power among the Shia factions, and in particular against the Sadrists and Al Hakim, for example.

In addition to the Shia militia, there is also a Sunni one. Within this group, the disillusionment with the federal government and the idea, present in some Sunni circles, that they represent the past regime, made armed militancy seem reasonable. Sunni communities, particularly in the area of Diyala, Anbar, Salahadin and Ninewa, supported this idea. All Sunni groups – such as the Naqshband Army, founded after 2003 and led by Azzat al Duri, a former deputy president of Saddam's regime; or the Mujaidin Army, Ansar al Sunnah, for example – are derived from Al-Qaeda, but some of them go back to the Iraq-Iran war. We do not have enough information about some of them to know how many militants they count on. All of them are Islamic fundamentalist groups which operate across borders, in particular in Syria. Among them, according to the sources, is ISIS, numbering some 60,000 militants and mainly composed of former Ba'athists and international jihadists.

It is clear that, since sectarianism was exacerbated by the Shias and in particular by Maliki, the central power in Baghdad made it very difficult for anyone to build a sustainable

relationship and work for the common good. Since the beginning, the federal government has been completely deaf to the calls for a state-building and nation-building project. The internal and external divisions on both the Shia and Sunni sides have made impossible any serious attempt of reconciliation.

[Transitional justice in Iraq](#)

A shift in the situation requires a change of mentality, a ‘social learning’⁹ process that involves a transformation of the fundamental beliefs and values of the society as a whole. If we analyze the transition to democracy that took place in the different European countries in the twentieth century, it is easy to see how they took place only after very difficult conflicts and civil wars. These transitions have not always been transparent or completely successful. Sometimes, as in the case of Spain, for example, they happened without a real political commitment to pursue truth, justice, regard and security, which Yaacov Bar-Siman-Tov indicates are fundamental to the journey towards reconciliation. In this case, the transition to democracy occurred without real social learning, since the truth was never pursued, leaving a fracture in Spanish society that is still perceptible today. After Franco’s death, no tribunal was established to investigate the crimes of the regime. This meant that Spain had to live with institutions still presided over by former Franco supporters. Only a few years ago, the ostracism suffered by Judge Baltasar Garzon for his investigations into the crimes committed during the regime was a striking reminder of how a society can go through amnesty without any accountability and, worse, without any truth-telling. This is because, despite some monetary indemnifications paid to the victims of the regime, until now there have been no trials of the perpetrators of the crimes committed by the Franquists during the war or later during the regime.¹⁰

In Spain the lack of justice jeopardized any reconciliation process. In addition, no purges were carried out, and few of the civil servants in charge during the regime were expelled from their posts. This made impossible the establishment of any truth commission in charge of investigating the crimes committed during the war. However, many initiatives have been taken in the country in order to achieve the justice denied in the past. Social learning is, as the Spanish case shows, very difficult to pursue. It entails a willingness of the political establishment and of the whole country to look back at its own history. Even in this relatively peaceful case, the consequences of a mutilated transition are still visible in the society itself, as is well explained in *The Spanish Holocaust* by the historian Paul Preston.¹¹

In the Middle East, contrary to what happens in the West, mobilization is based on the past. People are considered for what they have done and this, particularly in politics, saves the politicians from the need, as in the West, to have a vision for the future – that is to say, a programme to present to the electorate. This attitude can prevent society from actually

planning ahead, and it also jeopardizes any possibility of reconciliation among different groups. Revenge, rather than justice, is usually society's oxygen.

In the case of Iraq, transitional justice was compromised from the beginning and with it the possibility of telling the truth about the dark years of the dictatorship. This was aggravated by the fact that in Iraq no mechanism was put in place to avert further revenge and bloodshed. On the contrary, the incompetence shown by the Bush administration, and their ignorance of Iraq's most recent history, simply strained Iraq's already weak social fabric. This incompetence, brilliantly explained by Peter Galbraith in his prophetic book, *The End of Iraq: How American Incompetence Created a War without End* (2006), is now more than ever evident. What has also been completely ignored is that the intervention in Iraq by Bush and later by the Obama administration has changed the political landscape of the area. The Bush administration's invasion, and Obama's sudden withdrawal, derived from foreign policy driven more by the presidents' own personal demons than by a lucid assessment of the situation on the ground. Both caused a recrudescence of the existing sectarian tensions and opened the way for direct intervention by neighbouring Turkey, Iran, Syria and Saudi Arabia, when they were called in by the different factions to fill the void left by the Americans.

The Kurdish political experiment

It was after the Anfal campaign and Halabja that the Kurds thought that they could not negotiate with Saddam anymore and both sides reached a level of polarization that blocked any possibility of dialogue. It was at that moment that Masoud Barzani, leader of the KDP and the Kurdish National Movement, called for the democratic process that would pave the way to the current political identity of the KRG. In a region where, after the withdrawal of the Iraqi administration ordered by Saddam, people continued to run schools and perform public responsibilities without salary and were forced to cut down trees to heat their houses, Masoud Barzani, the 'Middle East Mandela', issued an amnesty for all 450,000 Kurds living in the region who collaborated in some way with the regime. It was a very controversial and brave step because at first people, the younger generation in particular, who lived during the persecution together with the Peshmerga felt 'betrayed'. However, it was a very wise step, because traditional Middle Eastern culture predisposed them to revenge, not to reconciliation. This allowed the Kurds to have the first free elections in the Middle East, introducing a political experiment that threatened the stability of some of the neighbouring countries, like Turkey, for example, which looked at Iraqi Kurds through the lenses of their own Kurds and linked every new political development in Iraqi Kurdistan to the Kurdistan Workers' Party, founded in 1978 by Abdullah Ocalan as a nationalist leftist Kurdish party in Turkey. At the same time, the Kurds did not cut off their relationship with Saddam. The Kurdish Front sent a delegation to Baghdad to negotiate the peace, but once again Saddam refused to listen. It was

on that occasion that Masoud Barzani told Saddam that he saw the Iraqi capital “swimming in a sea of blood” and that it was time to put an end to the war and to grant their rights peacefully.

The consequences of American foreign policy failures are before everybody’s eyes, as it is evident that the Kurdistan region and the KRG and its political parties are playing a primary role in the development of the current situation in Iraq. Until now the focus has understandably been on the military situation. However, it is worth drawing attention to the part that the Kurdish people and the KRG played in the development of a new, innovative political reality in the Middle East. Since the beginning, the KRG has shown a commitment to human rights. They had a very deep understanding that peace is not possible without fundamental changes to the structures and institutions of the country, since it is a situation that only an ideological cultural homogeneity can guarantee. In 2005 Kurds had the opportunity to participate in the drafting of the new Iraqi constitution. It was clear that their agenda, inspired by an understandable mistrust of the Iraqis, was to retain the rights to a de facto independence from the government in Baghdad. Unfortunately, the constitution had been written in haste and did not allow the three main groups – Sunnis, Shias and Kurds – to build the necessary governing institutions to guarantee a stable, democratic and federal country. This was also due to the fact that the three groups each had a different idea of how the new Iraq should be run. For example, at first neither the Sunnis or the Shias welcomed the idea of federalism, as they believed it was the first step towards fragmentation. Only the Kurds had a positive view of federalism. Article 114 of the 2005 constitution provides for the formation of regions. It is most important to observe that the distribution of power between the regions and central government played in favour of central government. As a consequence, the constitution provides for the regions to share power with the federal government in such important areas as health, education, water resources and electricity. This meant that only strategic areas like defence, foreign relations and financial policies were actually in the hands of the federal government.¹²

Any constitution should reflect the identity of the citizens, and the laws should echo their moral and ethical beliefs. In Iraq’s case, the theme of identity could not be separated from religion. This is why Article 2 combines three non-contradictory clauses according to which no law can contradict Islam’s rulings, principles of democracy and fundamental rights. It also makes provision for a constitutional judiciary composed of judges, Islamic jurists and legal scholars to decide on any legislation. All this contrasts with the secular government of the KRG, whose multi-faith society is now applauded as a rare example of tolerance in a land that seems to disappear under the yoke of religious extremism.

The ambiguity of the constitution is even more evident in the way it tried to solve the question of the disputed territories, in particular Kirkuk. Article 140 was at the centre of a strong exchange of opinions between Nouri Maliki and Masoud Barzani just after ISIS

invaded. This article, which made provision for normalization, census and referendum, was never implemented. Kirkuk and other disputed areas were the object of extensive negotiations which deepened the Kurdish mistrust of a federal government. In a recent interview with *Al-Monitor*,¹³ President Barzani stressed that, after the Peshmerga filled the void left in Kirkuk and surrounding areas when the Iraqi army collapsed, this article of the constitution had finally been implemented. This controversy encompasses not only military operations (now completely impossible for the federal government) but also legal matters. When asked about the legitimacy of the presence of the Peshmerga in Kirkuk, Masoud Barzani asserted that the Iraqi government did not respect the constitutional changes to the terms of Article 140 without notifying the Kurds, and he accused Maliki of being the first not to respect the constitution. It is clear that the KRG's leverage changed considerably after ISIS occupied part of the country. However, the most important point was that Masoud Barzani meant to draw a line between its concept of power and that held by Maliki or Iraq. Neither the central government nor Turkey should worry about a Kurdish administration of the city because:

We have waited 10 years to be able to implement Article 140, but with our patience we reaped nothing but procrastination, fraud and ways to further complicate the problem. The unfolding developments and events have proved that those who are defending the security and safety of people without any discrimination are worthy of staying in this area. However, despite everything, we will not impose a 'reality', as I have said on many occasions. We will hold a referendum as stipulated in Article 140 to reflect the views of the people in these areas, so they can decide for themselves which area they want to be affiliated with and which identity to take.¹⁴

These words meant more than a simple recognition of Kurdish rights in the area. Between the lines, Masoud Barzani is proposing that the KRG be the defender of the Iraqi constitution, while stressing Maliki's totalitarian nature. During the interview Masoud Barzani also pointed out that the differences between the KRG and Baghdad are not personal but "rather conceptual, and related to the core philosophy and culture of state administration of caring for Iraqis' interests."¹⁵ Its different concept of the state and power leads the Kurdish claim to self-determination. Masoud Barzani is interpreting an idea common to Kurds that they do not share Iraq's authoritarian tradition. The insistence on running the referendum by consulting the population living in the previously disputed areas means implementation of the Iraqi constitution is necessary. Talking about this referendum, the head of the Kurdish region said that the presence of ISIS in the territory meant a geographical separation of the Kurds from Iraq and that "[t]he party responsible for this division is whoever disregards the constitution, excludes others and monopolizes power".¹⁶

All the differences that emerged in the drafting of the constitution raised a barrier to the process of state-building that the Bush administration had so readily envisaged. The result was a constitution full of ambiguities that tried to strike a balance between the different ideas about society, law and the relationship between the citizens and the state. This constitution was approved by the majority of the Iraqis despite strong opposition from the Sunnis, who

registered the lowest participation in the referendum and who felt excluded from the whole process. These divisions in Iraqi society were too deep, and too little time was granted to the citizens to come to terms with their recent past. In addition, the U.S. could not fulfil the basic conditions for state-building: security and economic development.

The statutes and articles of the KRG have not had sufficient study, since much attention has been given, understandably, to the Iraqi constitution. However, the latest events have switched attention to the KRG and the influence it can have on Iraq's and the whole region's future. It is time, then, to step back and analyze what the KRG has stood for since its formation in 1991. In particular, we should ask such questions as: What were the reconstruction efforts that the region had to undertake to recover its identity and a political stability unique in the country? What country did its leadership envisage? What were the inspiring principles they referred to? Why does the KRG stand for a unique example of successful nation building in the Middle East? Can this example be compared to the nation-building process in Europe after World War II?

"Christians feel safe in Kurdistan," said a Kurdish friend of the author, commenting on the wave of Christian refugees into the region due to the attack of ISIS in 2014. This statement says more than perhaps was intended. Feeling safe is a priority in a country threatened by internal and external instability. From a more political and ideological point of view, it means that Kurdish people accept that politics and religion do not have to go together, and that the secularity of the state is the basic condition of guaranteeing respect for minorities. According to a popular song which recounts in verse the history and the spirit of resistance of the Kurdish people, the division between state and religion has deep roots in Kurdish tradition. Being first Kurds and then Muslims is a common attitude among Kurds, and it opposes the theocracies still present in the Middle East that constitute a strong reason for confrontation. Besides, it shows a different attitude towards the way in which the state should be organized, that is, in its ethical principles. This would be reflected in its legislative and executive powers as well as in its judicial system. Peter Galbraith,¹⁷ in his assessment of the failure of the Bush administration, mentioned the ability of the Kurdish elite to include in the drafting of the 2005 constitution provisions for human rights and territorial issues. This resulted in the creation of a divide between the north and south regions of the country, similar to the way the political elite interacted with the UN and the NGOs that started working in the area after 1991. In particular, the implementation of the Oil-for-Food programme favoured the Kurdish area more than the other parts of the country due, among other factors, to the continuous embargo they continued to suffer from the central government.

The isolation and the open mass murder to which Saddam Hussein and his regime had condemned Kurdish people alienated them from Iraqi society and forced them to look to the international community for support. Their capacity for dealing with foreign diplomacy is evident these days, since the Iraq war seems to have shifted its centre of gravity from

Baghdad to Erbil, which has the only working parliament in the country. Consolidating ties with Europe and the U.S. means that the Kurdish region is obtaining international support and recognition of its right to defend itself against terrorism, as well as its right to self-determination. A concept that Masoud Barzani has expressed very well in the letter he addressed to the Iraqi people is that whatever new government will be created in Baghdad cannot be ignored. By claiming self-determination for the Kurds in the context of the current crisis, Masoud Barzani is interpreting their historical right since Mustafa Barzani in 1931 and 1944 claimed self-determination by founding a Kurdish province that included the cities of Kirkuk, Khaneekken, Sulaymaniyah, Erbil, and the Mosul towns (Dohuk, Zakho, Akra, Sinjar and Sheikan). At the same time, he reminds the Iraqi Kurds that their slogan was “Democracy for Iraq and self-determination for Kurdistan” – an admonition to the politicians that no agreement will be reached without these conditions having been fulfilled.¹⁸

When the Kurds were called to draft the 2005 constitution, they were the only ones who went to the negotiations prepared, because they had already written a draft constitution for the region in 1992. This meant that they had a clear vision of the kind of institutions and balance of power they wanted. They also knew that the new Iraq had to be of a federalist nature because this was the only way to avoid an endless cycle of violence.

Article 1 of the Kurdish region constitution establishes the geographical boundaries of the region that Mustafa Barzani defined in the interview mentioned above. At the same time, it also states that the Kurdish region is a parliamentary and democratic federal region which will “enter into a voluntary partnership with the Arab part of Iraq within the framework of a federal Republic of Iraqi including two federated regions enjoying equal rights”¹⁹ (Article 4). These first articles established what the relationship with Iraq had to be after the tragic events described in the previous chapters. Kurdish people claim their right to their territory, but at the same time they recognize that its future is within a federation of regions. As Nouri Talabani states, the choice of federalism is the ideal system for a multi-cultural and multi-ethnic state. This is a concept that was endorsed on 4 October 1992 by the Iraqi Kurdistan Region (IKR), as it was then known, despite the crimes committed by the Iraqi state and in particular by the Ba’ath regime. This endorsement had two main points: the first was to guarantee the safety of the Kurdish people from further atrocities, and the second was to show the desire of the Kurdish people to maintain the integrity of Iraq, a position that changed in light of the events in 2014. The idea of federalism was also accepted by the Iraqi National Council (INC), the umbrella organization of the Iraqi opposition. The draft constitution also established economic relations with the Iraqi central government by assigning to the region 25 percent of the national budget and the right to 50 percent of revenue from the oil extracted from the region’s soil. All these points will be useful as a basis for the negotiations around the 2005 constitution.²⁰

It was not easy at that point in time to overcome all the possible oppositions to this idea,

but from a legal and practical point of view, the writing of a Kurdish constitution, even in the absence of an Iraqi one and with Saddam Hussein still in power, was highly recommended by all the legal advisors, including the author. This had the double effect of sending a strong message to the central government and overcoming the internal divisions that in May 1994 led to the military confrontation between the two main parties.

The Kurdish draft constitution was outlined on the model of Western democratic constitutions. It guarantees all citizens fundamental rights and responsibilities before the law. It guarantees the freedom of speech, the free circulation of ideas and minority rights for all religions and ethnicities in Kurdish society. It also establishes three main powers: the legislative, the executive and the judicial, as those in charge guarantee the representation and the will of the citizens. None of the three powers exercises an absolute power over the citizens. Keeping in mind the Kurdish tragedy under Saddam Hussein, it is remarkable that the draft constitution stresses the importance of civil and political rights by stating in Article 21 that the privacy of every citizen, as well as his dignity and his honour have to be respected. Article 22 states that “an accused is presumed innocent until proven guilty in a court of law. 2. No one shall be sentenced to death for a crime committed for political reasons. 3. No one should be sentenced to death for a crime committed while less than twenty years of age.” Article 23 states, “Punishment is personal; no one shall be punished for another person’s crime.” In the wake of what the Kurdish people suffered, these articles constitute the will to protect any citizen from government abuse. Recently, the reference to the 2005 constitution has been very important, in particular during the negotiations with the current Iraqi Prime Minister, Haider Al-Abadi, to form a government of national unity with the participation of Kurds and Sunnis. In the negotiations, Kurds are making several demands. One very important demand is the implementation of Article 140 regarding the disputed areas, the share of Iraq’s oil revenues, and the arming of the Peshmerga forces. Najib Balatai, one of the Kurdish delegates in Baghdad, following Masoud Barzani’s appeal to all parties last April,²¹ said that Kurdish participation in the Iraq government is “secondary to the conditions Kurds have set.”²² Kurds are not going to give up their rights to self-determination. As in the past, their relationship with the Iraqi government must be as stated in the first article of their draft constitution. This means that the new Iraq, if there is going to be one, will have to assume the democratic values proposed by the Kurds, and resolve the conceptual political drift about power that Masoud Barzani in his interview mentions as being the main obstacle between the KRG and the Iraqi government. The Iraqis did not go through the healing process undertaken by the Kurdish society. The deep division between Shias and Sunnis during the regime that was aggravated by the 2006–2007 civil war did not favour the healing process that the society needed in order to overcome years of confrontation, violence and violation of human rights.

As mentioned, the negotiations between Erbil and Baghdad are dictated by the urgency of the situation on the ground and the negotiations are at a very delicate stage. The Kurds have

to face reality and accept that the implementation of Article 140 has to be partial. In order to stay in the negotiations, they should give up some of the areas which are historically Kurdish. Article 140 provides for the restoration of the lands to the Kurds, a process that implies the displacement and resettlement of the Arab population now living in some of the areas. Giving up the claims to Arab-majority towns, for example, in which Arab residents are not the consequence of Arabization, would be a first step to smoothing the negotiations with Baghdad. Some of the Arabs residing in areas like Hawija in Kirkuk province, for example, are not suited to be incorporated into the Kurdish region. A forced integration would be disastrous for them and for the Kurds because most of them living in Hawija, Rabia and even Mandali, Badra and Jassan in Wasit province, which are part of the disputed territories, were settled in those areas even before the beginning of the Arabization process in 1968. Therefore, the KRG cannot legally ask those Arabs to leave the area as, per Article 140, leaving and returning is optional. If the Kurds pursue the same policy that was pursued against the Arabs, they would put themselves in a dangerous situation and they might lose some Kurdish territories as a result. This is why any referendum on whether to incorporate areas into the Kurdistan region should be held locally. Holding a referendum on a sub-district level has the advantage of guaranteeing a Kurdish administrative presence in the area. Aside from Kirkuk, holding them at a provincial level would be to the Kurds' advantage. It is a fact that the Kurds are not the majority in Nineveh, Diyala, Salahaddin and Wasit provinces. This requires a huge effort on the Kurds' part because they cannot identify the voters on recent censuses. Instead, they have to use the 1957 census since Maliki did not allow the compilation of the voting lists prepared by the department in charge of organising the referendum.

This shows how difficult the negotiations with Baghdad are, and again it is a realistic view of the possibilities of an agreement with the federal government. At the same time it shows the willingness to follow the democratic path inaugurated in 1991 and to avoid the spiral of vengeful violence that ruined the country. The idea of avoiding conflict through a system of power sharing, with or without a federalist system, is strictly tied to the need for a peaceful and constructive coexistence.

In view of what has been discussed above, for political analysts it is clear that the confrontation between Kurds and some Arabs in Iraq has become a confrontation between two different ways of conceiving coexistence and nation building in the Middle East. The inclusion of a bill of rights always supposes a separation between religion and state. The fact that the Kurds have undertaken such a path shows that the quest for democracy had enemies outside and inside the region. It also goes against the provisions of the 2005 Iraqi constitution, which allows religious authorities control over any law. The Kurds' most recent history, their quest for independence and their fight for their identity comes before any commitment to Islam and its values. Alex Danilovic, in his book *Iraqi Federalism and the Kurds* (2014), seems to attribute to this trend a series of bills in Kurdistan's parliament, for example a ban on

honour killing and a partial ban on polygamy, which seems to go against Sharia law. This constitutes an effort to incorporate the European illuminist tradition into the Islamic world.

The separation of the state from religious power underlies European democracies. Even if different sects find a common identity in Christianity, this does not compromise their coexistence. European constitutions, in particular the ones written after the Nazi and Fascist dictatorships and the Holocaust, make freedom of religion one of the fundamental rights, and limit the ability of a majority to discriminate against and persecute a minority. The Kurdistan region seems to have adopted these ideas, and as a result it has not become involved in the religious war still plaguing Iraq. On the other hand, this political experiment made difficult the negotiations with Baghdad and the relationship with the neighbouring Islamic countries up until now.

Paradoxically, the current crisis and the leading role that the Kurdish region played in being the only safe place for the Yezidis and Christian refugees fleeing from ISIS could help this process. This is true especially since the Kurdish Peshmerga's recent intervention in the siege of Kobane. For the first time in international politics and laws, the Kurdish military were allowed to cross the Iraqi border to Turkey and then into Syria with the international blessing. If the Kurds manage, as they are already doing in the international arena, to show the other communities in Iraq that the values they proposed during the twenty years of their semi-autonomous experiment helps the creation of the basic conditions for coexistence, they will have won part of the battle against ISIS and Islamic and religious extremism. For this reason it is fundamental that the Kurdish region stood firm during the current negotiations in its demands for an inclusive new government. This can also happen with the help of the international community since this is the first time that Kurdistan has received humanitarian and military support publicly. Hopefully, this situation will have the effect of changing the relationship between Iraqis as well. Until 2014 it was clear from Maliki's refusal to follow the U.S. directives for a more inclusive government that Baghdad was against any international role, with the exception of the Iranian one. The threat posed by ISIS could have the effect of reversing this tendency and of facilitating the reincorporation of Iraq into the international community, saving it from the isolation that Saddam first and Maliki later condemned it to.

In addition, the current situation has again sparked the debate about the chances that federalism might have now, twenty years after the KRG supported it, believing in the possibility of coexistence within Iraq. In Masoud Barzani's interview with Al-Monitor, mentioned earlier, he denounced the failure of Iraqi federalism and instead promoted the idea of a confederation of states. This would signify the actual partition of the country into three main areas with considerable independence from the federal government. However, all this discussion about any future development in the relationship between Erbil and Baghdad did not have a future. Baghdad's lack of leadership and the unwillingness to solve the situation had led to a halt in the negotiations for the formation of a new government. The feeling in

Kurdistan was that it was not possible to work together any longer. There was no trust among the different groups, and this made a coordinated response to ISIS very difficult.

This crisis also caused a very acute refugee problem for the Kurdish region, with people coming from Syria, Turkey and Iran. Today, Kurdistan has 1.8 million refugees, and in some areas they outnumber the residents. In the city of Zakho on the Turkish border, a population of 230,000 has seen the sudden arrival of 250,000 refugees both internal and external. This, in a region that had not received any funds for the previous seven months, means a huge stretch of available resources. On the other hand, the internal displacement into the Kurdish region means that the Yezidis, for example, have a better understanding of Kurdish society than before; and this means a change in the way the different groups in Iraq will interact in the future. It also establishes the trust that is indispensable to nation building.

Along with a successful diplomatic effort to gain the international support needed to win the war against the terrorist state of ISIS, secret deals at intelligence level have been taking place with neighbouring countries, in particular Saudi Arabia, Jordan and Kuwait, in order to obtain logistic support. Although these countries are reluctant to intervene openly in the fight against ISIS, they feel threatened by it and have started to collaborate with and support the Kurds. The fear of engaging openly is because this crisis is in part due to their own internal problems. The Kurdish region is currently fighting against ISIS instead of the international community and regional powers. This war will be very long and cannot be won without international support. It is also obvious, because of the international ramifications of the phenomenon, that this war cannot be won without a multi-faceted approach which includes education and culture. This is a war of ideas, a war between different ways of conceiving politics and society.

Notes

- [1](#) Toby Dodge, *Iraq from War to New Authoritarianism*, London: International Institute for Strategic Studies, 2012.
- [2](#) An informed account of the 2005 and 2009 elections can be found in Dodge's *Iraq from War to a New Authoritarianism*.
- [3](#) Ibid.
- [4](#) In his capacity of representative of the High Committee for the implementation of Article 140, the author was present during the negotiations. His comments are based on this experience.
- [5](#) Paul Bremer was the administrator of the Coalition Provisional Authority. Appointed by the Bush administration, he was in office from May 2003 to June 2004.
- [6](#) Peter Galbraith, *The End of Iraq: How American Incompetence Created a War without End*.
- [7](#) The following analysis of the nature and the danger posed by the different militias present in Iraq since 2003 is based on an interview with the author broadcast by Rudaw TV on 16 June 2014. It is available at https://www.youtube.com/watch?v=VK9BJ_njckQ

- 8 In his article 'The Revival of the Shi'a Militancy in Iraq', *CTS Sentinel*, August 2011, available at <https://www.ctc.usma.edu/posts/the-revival-of-shia-militancy-in-iraq>, Ramzy Mardini offers an insight of how dangerous the situation was on the ground well before ISIS's attack in 2014.
- 9 Yaacov bar-Siman-Tov, *From Conflict Resolution to Reconciliation*, Oxford: Oxford University Press, 2004.
- 10 Ibid.
- 11 Paul Preston, *The Spanish Holocaust: Inquisition and Extermination in Twentieth-Century Spain*, London: Harper Press, 2011.
- 12 Peter Galbraith, *The End of Iraq: How American Incompetence Created a War without End*.
- 13 Interview with Masoud Barzani available at <http://www.al-monitor.com/pulse/originals/2014/07/iraq-kurdistan-region-barzani-interview-crisis-independence.html#>
- 14 Ibid.
- 15 Ibid.
- 16 Ibid.
- 17 Peter Galbraith, *The End of Iraq: How American Incompetence Created a War without End*.
- 18 Interview with Masoud Barzani available at <http://www.al-monitor.com/pulse/originals/2014/07/iraq-kurdistan-region-barzani-interview-crisis-independence.html#>
- 19 A copy of the KRG constitution is available at www.krg.com
- 20 Alex Danilovic, *Iraqi Federalism and the Kurds: Learning to Live Together*, Farnham: Ashgate, 2014.
- 21 See the letter written by Masoud Barzani to all political parties published by Al-Monitor and available at <http://www.al-monitor.com/pulse/originals/2014/07/iraq-kurdistan-region-barzani-interview-crisis-independence.html>
- 22 Extract from an interview reported in the article entitled 'Negotiators: Kurdish Demands Supersede Ministerial Posts' published by Rudaw on 23 August 2014 and available at <http://rudaw.net/english/kurdistan/230820145>

Conclusion

A victim has a name, a face, a past, and also hopes and aspirations for the future. In an amorphous mass, however, victims become nameless and faceless statistics, and that is why they are entitled to regain their dignity. This is true of the victims of the genocides treated in this book as well as those of the new violence that has been generated by ISIS. The humanity of all of the victims has been lost in the vastness of the crime. We must strive to remember the human dimension of these crimes, and not to forget that these numbers, aggregated into sterile and abstract totals, represent human lives brutally and tragically cut short for ideological, religious, sectarian, economic and political purposes. If we look at the victims of genocide in Iraq, we will find that they were killed not for a crime they had committed but for who they are; and these include the Faylee Kurds, Barzani Kurds, Yazidis Kurds or Kurds in general, and this is why we can say that genocide targets identity rather than behaviour. Thus, Kurds have been subjected to the crime of genocide not for their behaviour but for their identity. The same is happening now with ISIS' victims who are targeted for being Yazidis Kurds or Christians.

In order to build a new country, it is very important to guarantee that the victims of genocide receive justice. As we have seen in the cases we have considered in Iraq, this process has been compromised from the beginning because the institutions in charge of the administration of justice after 2003 experienced many external pressures and also because of the precarious situation experienced in the country due to the civil war. The interim government set up the Iraqi High Tribunal, also known as the Iraqi Special Tribunal, in 2004 under the watchful eye and financial support of the U.S., which provided \$150 million, tight security and lawyers from its Justice Department. For this reason, the IHT was not an international tribunal and its independence and authority was dubious. In addition, the IHT, lacking external support, was formed by judges who were heavily compromised by Saddam's regime and had no experience of dealing with genocide. The result was that for every crime analyzed here, the number of defendants was completely disproportionate to the scale of the crime.

[Table C.1](#) includes all the cases relating to the Kurdish genocide in Iraq. This clearly shows that they were planned and implemented by thousands of people. However, looking at the legal outcomes of all these cases, one finds that they are so limited that it is very difficult to talk about justice.

[Table C.1 The responsibilities and verdicts for the crimes investigated in this book](#)

<i>Case of Study</i>	<i>Agencies participating in the crimes</i>	<i>No. of final verdicts</i>
Arabization 1963–2003	All government agencies	8
Faylee Kurds 1970–1991	Security, Ba’ath Party, Mukhbarak agencies	5
Barzanis (1983)	Security and Republican Guards	4
Anfal campaign (1987–1988)	All the government’s military, security, intelligence and Ba’ath party agencies	6
Halabja (1988)	Military, air forces and Ba’ath party agencies	4

Some high-ranking members of the Ba’athist government have been tried and sentenced. The former Iraqi president Saddam Hussein was initially tried in the Dujail case, and he was also a defendant in a second trial, which focused on crimes committed during the Anfal campaign. In November 2006, while the Anfal trial was underway, Saddam Hussein was sentenced to death for the Dujail crimes. He was hanged without much delay on 30 December 2006. Three other former officials, including his half-brother, Barzan Ibrahim al-Tikriti, were also hanged. Many felt that his Shia enemies executed the ex-president before he was made to pay for crimes against the Kurds. This led most Kurds to think that justice had been hijacked by the tensions between Sunnis and Shias, leaving the Kurds without the possibility of seeing justice for the crimes committed against them.

If Saddam Hussein held ultimate authority for the repression of the Kurds, Ali Hassan al-Majid was the campaign’s principal architect. Al-Majid was found guilty of genocide, war crimes, and crimes against humanity; he was sentenced to death on 24 June 2007. His sentence was confirmed by the Iraqi High Tribunal’s appellate court on 4 September 2007; he received the death penalty and was to be executed within 30 days from the verdict. The death sentences of two other defendants, the former Defence Minister Sultan Hashem Ahmed al-Jabouri al-Tai and Iraqi former Military Deputy Commander Hussein Rashid, were also upheld. At this point it appears that Sultan Hashem, who is widely respected by senior U.S. military officers, may have his sentence reduced. Two other officials in military intelligence, Abdul-Aziz Al-Duri and Farhan Motlak Al-Jabouri, received life imprisonment for their roles in the Anfal campaign.

In autumn 2007 a trial specifically focusing on the attacks at Halabja was prepared, along with at least ten other trials under the jurisdiction of the Iraqi High Tribunal. The highest authorities in the former Iraqi government are thus being held accountable for crimes against

the people of Iraq: Saddam Hussein for his repression of the Shias and not the Kurds, and 'Chemical Ali' for the Anfal and not Halabja. Although Al-Majid was executed before the Halabja trial began, middle-ranking military officers and government officials have been prosecuted for their supporting roles in the March attacks.

While former Iraqi officials have been publicly paraded in a court of law, other parties with less visible and more indirect roles, such as the companies that supplied Iraq with the means to make chemical weapons, have managed to deflect responsibility and evade prosecution. One exception is the Dutch businessman France van Anraat,¹ who was found guilty of complicity in war crimes for selling chemical weapons to Iraq and sentenced to 17 years in prison. The American Christopher Drogoul² was convicted of fraud for illegally giving Saddam Hussein more than \$5 billion in secret loans that were largely used to make arms purchases. Drogoul was sentenced to three years and one month in prison. Alcolac,³ a Baltimore, Maryland-based chemical manufacturer, pled guilty to federal export violations and paid a fine of \$438,000 for its role in supplying chemical precursors used in mustard gas to the region.

Some other companies which supplied a component of sarin nerve gas to Saddam Hussein have not been charged. German companies supplied Iraq with much of its chemical weapons equipment and technology. Some employees of German companies were charged with export violations but were found not guilty. None of this will satisfy the victims or their families if they are not compensated or the companies are not forced to spend extra money rebuilding their destroyed villages.

Genocide is not a crime that happens in dark alleys. It is too massive and all-consuming to be hidden away from the public view. All genocide crimes in Iraq must have had many witnesses. Bystanders have integral roles in the drama of genocide because the act of genocide requires not only the active participation of the perpetrators but the willingness of the greater part of society to do nothing. Thus, the best encouragement for the perpetrators is the silence of bystanders like those who live in a divided, fragmented society such as Iraq. In this case, justice will not be carried out until the whole of society admits its active or passive participation in the killings. As we have seen, this investigation has been able to demonstrate that the responsibilities lay far beyond the top of the regime.

In the Anfal campaign, for example, it is evident that the involvement of the armed forces and the various governmental agencies was preceded by a well-organized massive propaganda campaign against the Kurds. In his article entitled 'Genocide: A Case of Responsibility for Bystanders',⁴ Arne Johan Vetesen discusses the role of intellectuals in the build-up to the genocide in Bosnia. The famous or infamous manifesto signed by prominent intellectuals and university professors paved the way for and justified the forthcoming genocide to the citizens, which in turn promoted the demonization of Muslims. This justification prevented any action against the genocide. In Iraq, something very similar happened. By demonizing the Kurds on religious grounds, the regime was able, thanks to its

total control of the media, to label the Kurds as enemies of the state, with the state being portrayed as the defendant of Islam. This was orchestrated in collusion with civil servants as well as journalists and intellectuals. According to Article 3 of the convention, participation, even passive participation, in genocide is a crime that should be punished. The application of Article 3 would allow Iraqi society to recognize its responsibility towards the Kurds and other minorities. Currently, the presence in governmental offices of exponents of the Ba'ath regime is hindering the credibility of the federal government. The presence of ex-Ba'athists in the civil service is also due to the fact that the process of de-Ba'athification included in the constitution was compromised by the divisions between Sunni and Sh'ia.

[A future for Kurdistan](#)

The Kurdistan Regional Government inherited a region plagued by the consequences of the genocide of its citizens. For each crime analyzed in this work, the social, economic and cultural consequences are still felt in the area and abroad by the Kurdish diaspora. Forced displacement, the loss of a common identity and the genocide against the Faylee Kurds caused the Kurdish presence in northern Iraq to diminish steadily.

In addition, the military offensive against the Kurdish people, in particular the Anfal campaign and Halabja, almost completely destroyed the Kurdish infrastructure. More than 4,500 villages were wiped off the map – resulting, of course, in the virtual decimation of their economy and way of life. According to the latest statistics, agricultural production is currently 75 percent less than it was before the genocides. This represented a profound change in the economy of the area that now relies mostly on oil, whose revenue should be invested in improving the living conditions of the victims.

Another important consequence of the genocides, in particular the one committed against the Barzanis, is that the social fabric of more than 2,000 families has been destroyed by the death of their men. For many women this meant misery and destitution. All this changed the way Kurdish people look at themselves, and this inevitably affects any future that the region wishes for itself. For example, it changed forever the way they relate to Iraq and the Middle East in general. Persistent anti-Kurdish mentality and propaganda, supported by the regime that sees Kurds as an alien presence in the country, makes difficult the idea of integration with Iraq and diminishes the Kurds' route towards independence.

In this context, one of the main goals of the KRG has been to support Kurdish traditions and culture in order to heal the wounds caused by the genocides and to regain a sense of belonging to the land they were expelled from by force. The preservation and valorization of the historical heritage of the northern region is an example of this attempt. For example, the names of various cities have been changed from Arabic to Kurdish. The Kurdish language is more widely used now and bilingual education is considered to be an option in educational

institutions.

In order to establish a peaceful coexistence with the Iraqis, the KRG showed that taking responsibility for their past helped the Kurds to understand how their own society created the abnormality of a dictatorship, and that this is likely to repeat itself. In the twenty years of its existence, the KRG has worked at the international level in order to raise awareness of the genocides committed by the Ba'ath regime. This resulted in the international recognition of these crimes by various countries, including Sweden, Norway and the UK; and it is hoped that this will help to prevent similar crimes in the future.

From a political point of view, it is important that Kurds are represented in Baghdad in order to guarantee the interests of the victims and to make sure that the 2005 constitution is respected. Kurds should never forget that their dispute is not about having a Kurdish leader in Baghdad, such as a president or deputy prime minister; rather, they should focus on the route to democracy and on respect for human rights if they want to be part of Iraq.

When the author started to write this book, the main idea was to analyze the steps that led Saddam Hussein's regime to commit the genocide of the Kurds, to establish a starting point for a re-thinking of the relations within the different groups forming Iraqi society. The hope was that this would lead to a much-needed process of reconciliation. Unfortunately, the events of the past few months have aggravated the situation and have exposed the inability of the federal government to deal with Iraq's past as well as its lack of vision for a common future. ISIS is just the tip of the iceberg of violence. As we saw in the previous chapters, after 2003 the federal government used extra-legal means to exacerbate the rivalries between Shias, Sunnis and Kurds. This trend facilitated the creation of a new dictatorship under Nouri Maliki, which jeopardized even further any attempt of reconciliation. The cost of this has been immense, in material and human terms, because it impeded the creation of a new ruling class while favouring the permanence of old ways of conceiving power, thus isolating the country from the international community.

ISIS forced the international community to look again at Iraq and to realize the danger that its instability causes for the region and the world in general. The international character of the fighters joining the insurgents suddenly makes the threat more real for the Western world. As noted before, this war is going to be a very long one and will not be won with military intervention alone. The insurgent groups were born from the vacuum of power left by a serious and dangerous mismanagement of post-Saddam Iraq, where no effort has been made to reconstruct society on a new basis. The incapacity of the West to understand Iraqi society, as well as the impossibility of Iraqi society changing itself, created a stagnant situation in which all the aspirations and frustrations of society converged, exploding into violence.

[The threat of ISIS and the future of Kurdistan in the region: a](#)

path towards independence?

This was the situation when ISIS intervened in Iraq and compromised the balance of power in the country and the whole region. The war against ISIS definitely put Kurds and the Kurdistan region in the international spotlight and, according to some analysts, could mean that the Kurdish region, due to the impossibility now obvious to everybody of reaching a consensus in Iraq, could finally claim independence. However, despite the first enthusiasm, the Kurdish region, willingly or unwillingly, had to participate in the new government designed by the U.S. and the West. This posed new challenges to the Kurdish leaders who had to go to Baghdad to ask for some guarantees for their citizens. Unfortunately, the process did not start with the best circumstances. Even after Maliki, the Iraqi parliament is still paralyzed by the sectarianism of the past eight years. While the interest of the Kurds, fighting for survival, is to make changes that could lead to their definitive departure from a country they feel is theirs, in Baghdad the members of the new government led by Al Abadi are more concerned with the distribution of the different charges.

The Kurdish representatives have presented a set of points to the government in Baghdad and at this moment it is very difficult to say whether they will be met or not. Maliki's legacy is still poisoning the work of the government, and even some Kurdish politicians think that they should ally with the Shias. On the other hand, the relations with the U.S. changed due to ISIS, making Erbil another base together with Baghdad. In the absence of a more reliable interlocutor, the KRG offers the U.S. and the international community a more stable and pro-west point of reference. This is the reason why they needed Kurdish participation in this government.

It is difficult to see any difference between this new government and the previous one. Its composition does not reflect the necessary changes. Maliki is still there, occupying a prominent position, and there is no sign that Al Abadi could control his collaborators. Jaffari, Maliki and Abadi come from the same political tradition and it is very unlikely that a real change will take place.

It is true that in some ways this situation could favour Kurdistan. However, it is difficult to see, due to the Kurdish region's active participation in the war, how it can claim its independence. Some Kurdish politicians are very optimistic on this point, but the bigger picture does not look very promising. As we have already pointed out, this is going to be a very long war, and it is difficult to predict which society will be born after it. The negotiations in Baghdad for the participation of the new government were not favourable to the Kurds. They should have asked for their demands to be fulfilled before guaranteeing their participation in the government, but the international pressure was too much. Even the question of the budget, a Kurdish right by all means, was included in the Kurdish requests. This is due to the fact that the federal government blocked the salaries of four million people,

acting according to their absolutist mentality. At the same time the Kurds' position is weaker than before, because in the new government they no longer claim the minister for foreign affairs. (In the previous government, they had the ministries of health and trade as well as two state ministries.)

When one analyzes the new situation, it is clear that the old Iraq is over and that the Iraq some politicians have in mind is not feasible and certainly not auspicious for the Kurds. Al Abadi had the opportunity to form an Iraq with the participation of all the parties, but unfortunately he missed it. The formation of a government is hardly enough to form a nation. The challenge is in organizing a partnership with all the parties involved. Participation is the key to political success. In addition, Iraq has to tackle very serious problems. Corruption is rampant and 30 percent of the population is poor. Its future will depend on how the leadership – any leadership – will solve the problems of security, jobs, welfare and social identity. Unless they tackle these issues, the new Iraq will not have a future and will be more and more vulnerable to insurgent groups. Iraq is like a swamp, and all the parties affected by it have to make a common effort to reclaim it. This can be achieved with international and regional support that avoids any kind of political and social isolation.

By revealing the premeditated persecution and destruction of a population through the study of these crimes, the author's intention was to address the international community in the hope of raising its awareness of the dangers hidden in every totalitarian regime. The efforts to take the perpetrators to court were intended to have these crimes recognized as genocide by the international community, in order to guarantee that they will not happen again. Until now, only British, Swedish, Norwegian and South Korean parliaments have recognised the Anfal campaign as genocide. However, no government has yet done so. This is due to the fact that, in that case, governments could be held responsible for providing military support to Saddam's regime, as Margaret Thatcher did in 1981 according to secret documents made public in 2011. According to Al Jazeera, the documents show Thatcher's approval of large military contracts with Iraq and indicate that she turned a blind eye to the ongoing private sales of allegedly non-lethal military equipment, as she sought to "exploit Iraq's potentialities as a promising market for the sale of defence equipment."⁵ This allowed Saddam Hussein to build up the arsenal he used against the Kurdish civilian population.

Kurdish-British member of parliament Nadhim Zahawi, who in 2012 launched an online petition that ultimately prompted a debate in the British parliament over whether to recognize the Anfal campaign as genocide, said, "For Western governments to recognise the systematic persecution of the Kurds as genocide ... will help the Kurdish people achieve justice for the overwhelming suffering they experienced at the hands of Saddam Hussein."⁶ This step by the international community would also help the current situation in Syria, deterring the government from using the excuse of war to carry out premediated genocide against its own citizens.

There is an unwillingness on the part of the political establishment to legally recognize the genocide on the basis that this is the remit of the courts. Just after the invasion, the Allies, in their own interest, since they feared a possible future legal liability, did everything they could to avoid the establishment of an international court that would investigate and prosecute the perpetrators of the crimes. They insisted on the formation of an all-Iraqi high tribunal, which hindered any possibility of a fair judicial trial. This denial sparked a legal debate; however, many Kurdish politicians argue that it is impossible for an international judicial process to take place so many years after the facts. Gavriel Mairone, founder of MM-LAW LLC, a law firm representing the victims, says that, in the case of a recognition, a government “would have difficulty in court trying to deny that it was genocide.”⁷ It would help the victims’ cause, and it would have a positive influence on avoiding its repetition. This is why the recognition of all the crimes committed against the Kurds – from Arabization to the persecution and killing of the Faylee Kurds, the disappearance and mass murder of the Barzanis, Anfal and Halabja – would restore the people’s confidence in international laws and in the international community’s willingness to avoid the repetition of these crimes.

Notes

- ¹ A summary of the France Van Anraat trial can be found at <http://www.trial-ch.org/en/ressources/trial-watch/trial-watch/profils/profile/286/action/show/controller/Profile.html>
- ² Niel Lewis, ‘Figure in Bank Scandal Links Bush to Iraqi Loans’, *The New York Times*, 10 November 1993.
- ³ Michael Gordon, ‘U.S. Companies Tied to Chemical Sales’, *The New York Times*, 31 January 1989.
- ⁴ Arne Johan Vetesen, ‘Genocide: A Case of Responsibility for Bystanders’, *Philosophy and Social Criticism*, 1 September 2001, 27, pp. 1–33.
- ⁵ <http://www.aljazeera.com/indepth/features/2014/04/iraq-kurds-press-states-recognise-genocide-anfal-201441371637191288.html>
- ⁶ Ibid.
- ⁷ Ibid.

Appendix

Arabization

In the Name of Allah, The most merciful, the most gracious
Republic Presidency
Secretary
Directorate of General Military Intelligent

Ref. 7371
Date: 31 March 1978

Top Secret & Personal

Memo To: Chief of Staff Leadership
Subject: Using Special ammunition

- 1- Mr. President, May God protect him, has ordered our directorate to study the best way of carrying out a surprise strike against Haras Khomainis bases which include the saboteurs of the first branch of the Barzani Group, with special ammunition like the air force, army flights and artillery. Specialists should carry out the Study.
- 2- The order of Mr. President, May God protect him, has been studied by specialists and we have the following suggestions:
 - a- To postpone carrying out the strike against bases of Haras Khomaini (Khomaini Guards) and the Barzani group quarters until next June because the above mentioned areas are on the Iraq-Turkey border belt. It is better to pick targeted areas distant from the border in order not to affect the Turkish villages.
 - b- To direct our selective strikes against the agents of Iran.
- 3- The above two proposals have been approved and our directorate has begun to study the locations of Iran agents and has selected targets that influence our interior security in the northern and also because of the availability of special ammunition and methods of shooting:
 - a. Iranian agents' bases are in Balisan (Villages of Balisan, Sheikh Wasan, ...) which are near the main roads of Chuwarqurna and Kalifan.
 - b. Bases of the Iran agents in the town of Qaradage.
- 4- The above mentioned targets in (a-b) are important for Iranian agents and Iranian forces

and at the same time they are far enough away from our forces to avoid the chemical effects. Thus we think it is better to select locations in lower areas, as it is better for the air force, launcher tubes and helicopters to strike during night. The effect will be perfect.

- 5- Our directorate has suggested the use of special ammunition on the two mentioned targets with 1/3 of Zalin and 1/3 of Mustard gas and keep the rest for some urgent matters.
- 6- Letter of the Presidency – Secretary – top secret and confidential No. 953, 965 dated 19 March 1987 which includes the approval for directing the strike but the result must be of benefit to us. The directions are not only to harm saboteurs. Try to cooperate with the concerned corps and inform us of the result of the strike.

Please be informed and carry out what has been mentioned in the letter of the Presidency – Secretary with thanks

Major General Staff
Director of Gen. Military Intelligent
Signed

Top Secret and Confidential

Memo no. 2405 of 22 March 1988

Top Secret

Organization of Eastern Intelligence

No. S1/Q1/2405

Date: 22 March 1988

Memo To: Directorate of General Military Intelligence (M5)

Subject: Information

Maps: Scale: 1/100 000

Our Cooperative source (Othman Abdullah), and authentic source, has informed us as follows:

- 1- The Persian Regime is now evacuating the city of Halabja and moving all furniture and machines to Iran. Some citizens of the city have gone to villages close to the city of Halabja. The enemy has built a special complex for people of the city inside Iran.
- 2- The Persian enemy is drilling positions and trenches and putting barbed wire around the city of Halabja. At the same time they drilled numbers of positions on the main roads to Halabja, Khormal, Beyara and Tweela. Moreover they have brought huge forces of Haras Khomayni (Khomaini Guards) and Pasiches from the mentioned areas. The Enemy has set up large anti-aircraft and weapons around Halabja, Beyara and Tweela areas too.
- 3- All enemy reinforcement go there during the night and travel on roads as follows:
 - Ahmad Awa towards Khormal road.
 - Disly Nawsood
 - Tweela Road
 - Sazan and Chinara road after they have set up four military bridges on the river Sirwan.
- 4- The Enemy has brought its major forces by aircraft and Helicopters.
- 5- As a result of the raids, on the city of Halabja by our aircraft and artillery, the enemy has lost 3,000 Haras (Guards) and Pasiches; their bodies have been moved to the city of Bawa. There were many wounded in addition to the killing of 4,000 civilians, most of them from Halabja and surrounding villages and residential complexes; most of the losses were the result of chemical attacks.
- 6- Forces have participated in the attack of Halabja as follows:
 - Forces of Haras and Pesiches
 - A large Force of Barzani Group
 - A large force of Islamic Movement (Saboteurs)
 - Iranian agent forces
 - Forces of the Kurdistan Socialist Part (Saboteurs).

- 7- The enemy is going to attack the area of Shamiran and will push towards the Darbandi Khan Dam in order to destroy it. Forces of the Haras and saboteurs in the city of Qaradag have been told to get ready to push towards the Darbandi Khan Dam. The task of the aforementioned forces is to block the road to Darbandi Khan, Arbat and Kalar. At the same time, the enemy has brought large forces from Haras and Pasiches and saboteurs to the Panjowin area in order to attack (Qaya area and Harir) and push towards Said Sadik and Shandari. Also there is a huge gathering of the enemy forces in the Sheikh Mareen area waiting for orders and in addition to that, there were groups of saboteurs guarding Haras as well.
- 8- The enemy has opened a HQ for Haras in Ahmad Awa. The criminal, Mohsin Razai has visited the area and a large force of 7,000 fighters is there waiting to resume the attack.
- 9- There is an artillery unit in Ahmad Awa as well as another artillery unit behind Halabja towards Hawar. Also there are numbers of tanks and personnel armoured carriers in Ahmad Awa and Khormal.
- 10- Saboteur losses were 80 as a result of raids by our aircraft. Among those casualties 11 major elements like Shawkat Haji Moshir, from agents of Iran.
- 11- There is an enemy force near the village of Dratoofi (9,933) and it is estimated that there were 1,500 armoured members of Haras (Guards) at that location.
- 12- Still there were some Soldiers who have not been captured by the enemy, wearing Kurdish clothes and living with villagers and the people of Halabja.

Please kindly keep us informed ... with thanks.

Colonel Staff Director of eastern Intelligent Organization

Signed

Copy to: Directorate of General Army Intelligent (3rd Branch) Please be kind to inform about.

Faylee Kurds

Top Secret

Telegram No. 10492 of 18 October 1987

In the name of God, the most gracious, the most merciful

Kanat Security Office **Telegram no. 10492 18/10/1987**

To the General Security Directorate of Saddam City C-46

Your telegram number 28909 dated 17/10/1987.

Here is our information regarding the subject of your telegram. The criminal Samir Ali Gulam. Our information and sources confirmed that he has been captured with all members of his family by our security forces in 1980. Their names are:

Noor Ali Gulam

Amir Mir Ali

Farid Mir Ali

Faik Mir Ali

Latifa Mir Ali

Suham Mir Ali

All of them have been executed for being members of Samir Ali Gulam's family who committed the serious crime against the students gathered in Mustansiriya University by throwing grenades at them.

Signed by Security Captain Officer in charge of Kanat Security Office.

Barzanis

In the name of God, the Merciful, the Compassionate.

Emblem of the Republic of Iraq

Presidency of the Republic

The Secretary

Director of Public Security

Number: 84

Date: 29/03/1989, Hijra date: 22/08/1409

Mr Secretary of the Commander in Chief, the respectable

Salutations

Upon your Excellency's request, below is the information at hand about the town of Harir in the governorate of Erbil ...

1- In July, 1983 during an Iranian, Zionist aggression on the Haj Umran front which has been substantiated, with participation of the clique descendants of treason, the faction who are mostly from the Barzani family – the order from the former Director of Public security: “Dr Fadhel Al-Barrak” to the Directorate of General Security in the autonomous region was to assemble a large unit from members of the security and from units and directorates of the autonomous region on a top secret mission, to commence at dawn on the next day. The mission commenced on 1/8/1983 with members of the Republican Guards to surround Al-Quds, Al-Qadissiya, Qushtappa compounds, which were specifically built for Barzani families. All males from Barzani families over the age of 15 were arrested and transported using big vehicles prepared for this mission accompanied by a military force.

In the same manner more Barzanis from the Harir complex in Shaqlawa front were arrested, those included 403 from the Barzani, Sherwani and Mizori faction who are also of the Barzani clan. More were arrested in the Diyana complex in the Rawandooz front and “Mergasor” in the Erbil governorate.

2- Further, by orders from the former Director of Public Security a workforce was assembled from members of the Directorate of Public Security and the Baghdad Public Security office to receive the detainees from the previous complexes and others with similar profiles in Abu-Ghareib prison. The total number of detainees was 2,225; they were transferred to “Busaya” in the governorate of Al-Muthana. A special committee was assembled to execute the above and orders were followed from the Director of General Security to fabricate charges for the above. A total of 667 charges were laid in 16 cases, and referred to the Presidency of the Revolution Court. The verdict was the death penalty, and their relatives were not sent death certificates.

3- The sum of 194,648,440 dinars was received that was in the possession of these people, and

was deposited in this directorate's account.

- 4- Since the criminal Massud Barzani insists on this issue, the Presidency of the Republic – the Secretary – has instructed, in file number 2,651k on 24/8/1987 that the employees and members of Public Security who are in charge of the Kurdish issue that, in case they were contacted by a third party, the response be that “nobody knows anything about them except the country's leadership and that the main issue is more important than these families”. This shall remain the only answer, should anyone ask about the whereabouts of these families.
- 5- Eight men have been arrested lately with relation to the outlaws from Harir residents; they were indicted and executed in accordance with the Regulatory Office for North of Iraq.

Further, two families have been detained “three women and a child” that are related to the outlaws who conducted sabotage activities. They remain in detention.
- 6- As for the current security situation in Harir; Harir is considered one of the closest areas to the outlaws' centres because it connects the Balsian basin east of Harir to the road towards Barzan which extends along the Harir Mountain to the Great Zab River. Harir consists of about 800 houses dwelt in by Surchi, Khailani, and Mizori clans and some from the Barzani clan.
- 7- The Harir complex was built in 1975 after the defeat of the clique of treason; Barzanis were relocated here after their return from the south of Iraq. Groups, whose villages near the border were destroyed, were relocated here as well. The complex included the Barzani clan and Sherwani (which is another faction of Barzani), Balek and Hirooti, population of 7050. The other complex (Baserma) near Harir (4km) was built in April, 1987 as per orders from the Regulatory Office of the North division after destroying the prohibited villages in the region.
- 8- Deported Shabak families from the Nineveh governorate were also relocated here; more families from the removed villages were relocated. Surchi, Harki and Balek as well as Shabak lived here, population, 7,400.
- 9- Harir was a vulnerable area before the last Anfal operation; it was frequented by the outlaws despite the large number of National Guards in the town and suburbs. After the eternal Anfal the outlaws fled their headquarters. However, there were small cliques of traitors as well as communists that used to frequent the area. There were a couple of incidents such as the assassination of one of the police officers that was accompanying the Shabak families, as well as the abduction and release of a member of the Harir branch, comrade Baqi Saleem Isa.
- 10- In general the security situation in the region is good especially if the main paths were sealed.
- 11- The Barzani clan has been known for its disloyalty to the Party, Revolution and Country

for decades, it has persistently resisted the unity of the nation and it is the real traitor. It considers itself to be the legitimate representative of the Kurdish people; it is full of hatred and animosity.

12- However, the security situation in the region is very good.

For your reference with respect

Director of General Security, his signature

29/3/1989

22/8/1409

Document No.2651 dated 24 August 1987

Presidency of the Republic

The Secretary

10125/9115 (stamp)

Stamp of Directorate of General Security

5783 on 24/8/1987

Number: 2651/K

Date: 24/8/1987

Top secret and personal

Comrade Ali Hassan Al Majeed, the respectable

Subject/ Barzani families

Due to the persistence of the view that the criminal Masoud Al-Barzani holds on the issue of Barzani families from the Erbil governorate in the Qushteppa complex and upon the indirect communications with his entourage since 1983 until now due to this issue (Barzani families) being outlined as the main condition to start any serious negotiations with the Leadership of the Party and Revolution ... his Excellency the Commander in Chief has instructed all General Security personnel and its apparatus that deals with the Kurdish issue – whom they may be contacted by third parties – that their response be one and unified that (nobody except the country's leadership knows anything about this matter and that the main issue is more crucial than those families). This should be the response to any enquiry, should anyone ask about the whereabouts of these families.

Please take all the necessary ... with regards

Secretary of the President of the Republic / signature

Advice M 64 in the Autonomous Region and the concerned to take all the necessary measures and act upon them

Copies to

- 1- Director General of intelligence / file 4439 in 23/8/1987 to take all the necessary measures.
- 2- Director General of military intelligence.
- 3- Director Of Public Security /

All necessary measures to be taken when the issue concerns you.

Document 3428, dated 29 March 1989

In the name of God, the Merciful, the Compassionate.

Emblem of the Republic of Iraq

Presidency of the Republic

The Secretary

Director of Public Security

Number: 3428

Date: 29/03/1989, Hijra date: 21/08/1409

Mr M. M. H. for Political Affairs, the respectable

Salutations

As per the telephone conversation with the Manager of the Director's Office;

1- We attach a list which includes 403 Barzani men who were arrested on 10/8/1983 by the Directorate of General Security in the Erbil governorate in cooperation with the Republican Guards Brigade. They were sent to the Directorate of General Security, and they are Harir residents.

They include the clans below:

Barzani, Sherwani, Mizori. Please note that Barzanis include the groups below:

Barzani, Sherwani, Khorshidi, Dolmeri, Mizori who are residents of Bla and Barzan.

2- We attach a copy of your file 59547 on 30/8/1987 which includes orders from Mr President, the Commander (God protect him) about dealing with Barzani families.

3- Attached is a list of outlaws who have connections with Harir residents. They were investigated, and with proper indictments were executed in accordance with North Organisation Office. There were 8.

4- Attached is a list of two families who are detained; they are Harir residents; 3 women and a child. They are relatives of the outlaws who have committed crimes of sabotage after the defeat. They are detained in the Erbil Directorate of General Security.

5- Attached is a report about the security situation in the town of Harir.

For your reference, with regards

Brigadier General of Security, his signature M. M. H. for the Autonomous Region 29/3/1989

Attachments:

- a. Lists
- b. Security report

Memo of 29 March 1989 from Deputy Director for political affairs.

In the name of God, the Merciful, the Compassionate.

Date: 29/03/1989

Mr M. M. H. for Political Affairs, the respectable

Greetings

- 1- At the end of July 1983 I was informed along with other officers from the Baghdad General Security Office as well as the Directorate of General Security by the former Baghdad Director of General Security, Colonel Ali Abdulla Barah that I would receive some Barzani traitors who have been sent from the Autonomous Region and Third Division, as well as some who were imprisoned in Abu-Greib prison.
- 2- We received 2,225 traitors, and they were transported by buses to (Buseya) to be detained.
3. A team under the auspices of the Baghdad Director of Public Security was assembled and the above traitors were executed.
4. At the beginning of August 1983 the traitors above (2,225 persons) were executed in the Al-Muthana governorate, Buseya region in coordination with the Baghdad Director of General Security.
5. By orders from the former Director of Public Security to fabricate charges for the important ones, a total of 667 charges were laid for 16 cases. These cases were sent to the Presidency Revolution Court; the verdict was the death penalty. No death certificates were sent out.
6. No charges were laid for the rest of the group (1,558 persons).
7. A committee of officers was assembled to collect money that the accused had in their possession; it was sent to the Directorate of Public Security, Third Division as per file 47832 in 14/9/1983.
8. According to orders from the former Director of Baghdad General Security not to answer any enquiries that orders were taken from high authority but rather to say that orders were followed.

Please acknowledge, with regards

Lieutenant Colonel

Haqi Ismael / signature

Memo from the Deputy Director for political affairs at General security office, dated 29 March 1989 Signed by Security Major Yaseen Asaad

In the name of God, the Merciful, the Compassionate.

Date: / /

Mr M. M. H. for Political Affairs, the respectable

Greetings

Below, is the information regarding the deportation of the Barzanis in 1983.

Following orders from the former Director of General Security (Dr Fadhel al-Barak) a force comprising officers and members of the Erbil General Security and the Autonomous Region Centre and Emergency Regiment from governorates under the command of major general Abdul-Muhsen and Khairi Salih Daoud (Director of Erbil General Security and Director of the Autonomous Region General Security) a plan was set to have a force close to the complexes accompanied by siege by the Republican Guards. They started to detain Barzanis in two stages; first from Quds, Qadissey, Qushtepa complexes which were close to the centre of the Erbil governorate. The force surrounded the complexes the night before the actual arrest took place. The second stage: Harir complex in Shaqlawa front, Diyana complex in Rawandooz front, and Mirgasur in Zebar town front. They were surrounded by Republican Guards and General Security forces in a top secret mission. In the morning they started arresting Barzanis from their houses as well as from the surrounding areas. This was in early May, 1983. The Barzani traitors were transported in large vehicles specifically brought from Baghdad for this purpose by orders of officers from the Presidential Palace. The detainees were taken to Baghdad.

Please acknowledge ... with regards

Major

Yaseen Asaad / signature

Third division

29/3/1989

Memo from the Director of the 3th Branch, dated 19 July 1990.

In the name of God, the Merciful, the Compassionate.

Memorandum

Sh 3, K 1

Date: 15/7/1990

Deputy of Director for General Security

Salutations

Subject / Barzanis

There have been frequent enquiries from high end authorities especially from the President's Office that citizens are enquiring about the whereabouts of their husbands and specifically the Barzanis; who have been punished and went to hell for treason.

The attached was received from the President's Office with no mention that they were Barzanis. We have explained that they were Barzanis and they were executed for betraying the nation in 1983 in accordance with our file 13654 in 24/3/1990. The President's Office has informed us in their file 2390 in 13/5/1990 attached to inform the relatives of the concerned that they went missing during the war with the enemy Iran.

Please acknowledge, with regards

Head of the Third Division/ signature

Acknowledged, signature

Memo no. 4248 of 5th February 1986

Republic of Iraq
Presidency Diwan

Top Secret and Personal

No. 4248

Date: 5th February 1986

To: Ministry of Interior (Minister Office)

Subject: Decree

We have decided to continue the deportation of Tabaeya to outside Iraq including those who were not deported before, and to denationalize them if you convinced that:

- 1-They are associated with any opposition group.
- 2-They are trying to form a racist association.
- 3-They are trying to spread rumours against the Ba'ath Party and its Revolution.

The deportation should be to the place where they are originally from or anywhere else, Please activate this decree ASAP with thanks.

Ahmad Hussein

President of Republic Diwan

RCC Decree no. 666 of 7 May 1980

In the name of God, the most merciful, the most gracious
Revolutionary Command Counsel

Decree No. 666

Date: 7 May 1980

Based on paragraph A of Article 42 of the temporary constitution, the RCC in the meeting of 7 May 1980 decided:

- 1) Any Iraqi of foreign origin will be denationalized if it is proved that he is not faithful to the country, the people and the highest social and national goals of the revolution.
- 2) The Minister of the Interior should order the immediate deportation of anyone who has been denationalized based on point one if he is not convinced his presence in Iraq is necessary for some judicial or legal reason or for protecting the rights of others to stay in Iraq.
- 3) The Minister of the Interior is in charge of the implementation of this decree.

Signed by Saddam Hussein the President of the RCC.

Anfal

RCC Degree No. 160

In the Name of God, the Merciful, the Compassionate

[Emblem of the Iraqi Republic]

In the Name of the People

Revolutionary Command Council

Number of the Decree: RCC decree No. 160

Date of the Decree: 29/3/1987

In accordance with the provisions of Article 42, Paragraph (a), and Article 43, Paragraph (a), of the Constitution, and in order to execute what was decided in the joint meeting of the Revolutionary Command Council and the Regional Command of the Ba'ath Party on 18/3/1987 the Revolutionary Command Council decided in its meeting on 29/3/1987 the following:

First: The Comrade Ali Hassan al-Majid, member of the Regional Command of the Ba'ath Party, will represent the Regional Command of the Party and the Revolutionary Command Council in implementing their policies in all of the northern region, including the Autonomous Region of Kurdistan, in order to protect security and order and guarantee stability and the implementation of the Autonomy Law in the region.

Second: The Comrade, member of the Regional Command, will have authority over all the state's civil, military and security apparatuses to carry out this decree, in particular the authorities of the National Security Council and the Northern Affairs Committee.

Third: The following authorities in the northern region fall under the Comrade's authority and must implement all the decisions and directives issued by him, as by this order:

1. The Executive Committee of the Autonomous Region of Kurdistan.
2. The Governors and the heads of the administrative units under the Ministry of Local Government.
3. The Foreign Intelligence apparatus, the Internal Security Force, and Military Intelligence.
4. The Commands of the Popular Army.

Fourth: The military commands in the region must respond to the Comrade, member of the Regional Command, concerning everything pertaining to the first paragraph of this decision.

Fifth: This Decree goes into effect on the date it is issued until further notice, and any regulations contradicting this Decree are suspended.

[Signature]

Saddam Hussein
President of the Revolutionary Command Council

Memo No 4008, dated 26 June 1987: dealing with the Kurdish Areas in general (Genocide Policy)

Northern Bureau Command

The Secretariat

Date [sic]: 28/4008

Ref. [sic]: 20/6/1987

[In handwriting:] 23/6/87

From: Northern Bureau Command

To: First Corps Command / Second Corps Command / Fifth Corps Command

Re: Dealing With the Villages That Are Prohibited For Security Reasons

In view of the fact that the officially announced deadline for the amalgamation of these villages expires on 21 June 1987, we have decided that the following action should be taken, effective 22 June 1987:

- (1) All the villages in which the saboteurs – the agents of Iran [i.e. the PUK], the offspring of treason [i.e. the KDP], and similar traitors to Iraq – are still to be found, shall be regarded as prohibited for security reasons.
- (2) The presence of human beings and animals is completely prohibited in these areas, and [these] shall be regarded as operational zones in which [the troops] can open fire at will, without any restrictions, unless otherwise instructed by our headquarters.
- (3) Travel to and from these zones, as well as all agricultural, animal and industrial activities shall be prohibited and carefully monitored by all the competent agencies within their respective fields of jurisdiction.
- (4) The Corps Commands shall carry out random bombardments using artillery, helicopters and aircraft at all times of the day or night in order to kill the largest number of persons present in those prohibited areas, keeping us informed of the results.
- (5) All persons captured in those villages shall be detained because of their presence there, and they shall be interrogated by the security services and those between the ages of 15 and 70 must be executed after any useful information has been obtained from them; keep us informed.
- (6) Those who surrender to the government or Party authorities shall be interrogated by the competent agencies for a maximum period of three days, which may be extended to ten days if necessary, provided that we are notified of such cases. If the interrogation requires a longer period of time, approval must be obtained from us by telephone or telegraph or through comrade Taher al-Ani.
- (7) Everything seized by the advisers [mustashars] or fighters of the National Defense Battalions [i.e., the pro-government Kurdish militias] is considered theirs to keep, with the

exception of heavy, mounted and medium weapons. They can keep the light weapons, notifying us only of the number of these weapons. The commands of the Battalions must promptly bring this to the attention of all the advisers and company and brigade commanders, and must provide us with detailed information concerning their activities in the National Defense Battalions.

cc. Head of the Legislative Council; Head of the Executive Council; [Foreign] Intelligence Agency; Chief of the Army General Staff; Governors (Chairmen of the Security Committees) of Nineveh, al-Ta'mim, Diyala, Salah al-Din, Suleimaniyeh, Erbil and Dohuk; [Ba'ath Party] Branch Secretaries of the abovementioned Governorates; General Directorate of Military Intelligence; General Directorate of Security [Amn]; Directorate of Security of the Autonomous Region; Sub-directorate of Military Intelligence, Northern Sector; Sub-directorate of Military Intelligence, Eastern Sector; Security Directors of the Governorates of Nineveh, al-Ta'mim, Diyala, Salah al-Din, Suleimaniyeh, Erbil and Dohuk.

For your information and action within your respective fields of jurisdiction. Keep us informed.

[Signature]

The Comrade

Ali Hassan al-Majid

Member of the Regional Command, Secretary General of the Northern Bureau.

Note: This is the first important directive that indicates a genocidal intention. This Iraqi document reinforces the sanction on the areas regarded as prohibited. The decree permits the killing of residents inside the rural Kurdish areas. The annihilation of all life was permitted in those areas. This policy was in effect since 1985.

Halabja

RCC Degree No. 160

In the Name of God, the Merciful, the Compassionate

[Emblem of the Iraqi Republic]

In the Name of the People

Revolutionary Command Council

Number of the Decree: RCC decree No. 160

Date of the Decree: 29/3/1987

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[Signature]

Saddam Hussein
President of the Revolutionary Command Council

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[Index](#)

Al Ahmad, Barak [24](#), [66](#)

Al Barak, Fadhel [49](#), [152](#)

Al Dawa party [13](#), [31](#), [58](#)

Al Janabi, Baraa [72](#)

Al Majid, Ali Hassan [65](#), [83](#), [93-4](#), [104](#), [106](#), [108](#), [109](#), [112](#), [116](#), [134](#), [155](#), [158-9](#)

Anfal [2-4](#), [7-8](#), [16](#), [19](#), [21-6](#), [50](#), [56](#), [65](#), [71](#), [75](#), [79](#), [80-9](#), [90-4](#), [99](#), [107](#), [110](#), [112](#), [118](#), [121](#), [124](#), [134](#), [135-6](#), [139](#), [147](#), [155-6](#)

Arabization [2-3](#), [7](#), [21-5](#), [43](#), [52-3](#), [68](#), [88](#), [94](#), [121](#), [129](#), [134](#), [139](#), [141](#)

Arab League [15](#)

Assyrians [25](#), [36](#), [61](#)

Ba'ath [xiii](#), [1](#), [3](#), [6-7](#), [21-2](#), [24-6](#), [30-8](#), [43-4](#), [46-7](#), [49-50](#), [52-4](#), [56-9](#)

Baghdad [2](#), [4](#), [5](#), [6-9](#), [3](#), [24](#), [26](#), [30-2](#), [34-6](#), [38](#), [40-8](#), [51](#), [54](#), [58](#), [64](#), [66-7](#), [71-2](#), [78](#), [94](#), [100-1](#), [113-16](#), [122](#), [124-7](#), [129-33](#), [137-8](#), [146](#), [151-2](#), [160](#), [162](#)

Barzani, Masoud [9](#), [10](#), [20](#), [38](#), [65](#), [78](#), [124-7](#), [129](#), [131-2](#), [149](#), [161](#)

Barzani, Mustafa [9](#), [67](#), [72](#), [127-8](#)

Basra [30](#), [67](#)

Busaya [64](#), [66](#), [72](#), [74](#), [76](#), [78](#), [146](#)

Bush, George W. [21](#), [124](#)

Bush administration [8](#), [32](#), [123-4](#), [126-7](#), [132](#)

Caldian [53](#)

China [8](#), [18](#), [22](#)

Clinton administration [17](#)

Cold War [1](#), [167](#)

Diyala [26](#), [33-4](#), [38](#), [83](#), [88](#), [122](#), [130](#), [158](#)

Dohuk [8](#), [26](#), [67](#), [82](#), [127](#), [158](#)

Dujail [21](#), [23](#), [56](#), [134](#), [167](#), [171](#)

Emirates [52](#)

Erbil [4](#), [5](#), [7-9](#), [26](#), [31](#), [42](#), [44](#), [56-7](#), [60](#), [63](#), [66-9](#), [70-1](#), [82-3](#), [88](#), [96](#), [115-17](#), [127](#), [129](#), [131](#), [138](#), [146](#), [149-50](#), [152](#), [158](#), [160-1](#), [165](#), [171](#), [173](#)

Faylee Kurds [i](#), [3](#), [5](#), [7](#), [16](#), [22](#), [36](#), [43-62](#), [79](#), [133](#), [134](#), [136](#), [139](#), [145](#)

federal government [1](#), [2](#), [4](#), [25](#), [30](#), [32](#), [34-5](#), [38-9](#), [56](#), [59](#), [62](#), [94](#), [98](#), [104](#), [113](#), [118](#), [122](#), [125](#), [130-1](#), [136-8](#)

federalism [13-14](#), [20](#), [119-20](#), [125](#), [128](#), [130-2](#), [163-4](#)

Galbraith, Peter [2](#), [20](#), [124](#), [132](#), [165](#)

Ghazali, Abbas [73](#)

Gulf War [6](#), [7](#), [14-15](#), [17](#), [99](#), [102](#)

Gullam, Samir [46](#), [47](#), [145](#)

Halabja [i](#), [2-4](#), [7](#), [16](#), [22-3](#), [50](#), [56](#), [82-3](#), [97-9](#), [101-2](#), [104-12](#), [121](#), [124](#), [134](#), [136](#), [139](#), [143-4](#), [159](#)

Hashemi, Al Tariq [23](#)

Hashim, Sultan [23](#)

Hatra [36](#), [88](#), [95](#)

human rights [i](#), [iii](#), [xiii](#), [4](#), [6](#), [7](#), [13](#), [15-20](#), [22](#), [24](#), [31](#), [35](#), [43](#), [57](#), [71](#), [74](#), [77](#), [78](#), [83](#), [107](#), [124](#), [127](#), [129](#), [137](#), [168](#), [171](#)

Human Rights Watch [43](#), [60](#), [71](#), [78](#), [96](#), [167](#)

Hussein, Saddam [xiii](#), [1](#), [3](#), [4](#), [7](#), [9](#), [13](#), [1](#), [22](#), [26](#), [31](#), [33](#), [41](#), [46-9](#), [51](#), [54](#), [57](#), [63-6](#), [73](#), [79](#), [82-3](#), [93](#), [96](#), [98-9](#), [102-4](#), [106](#), [107-8](#), [111-12](#), [127-8](#), [134-5](#), [137](#), [139](#), [155](#), [159](#)

independence [i](#), [2](#), [5](#), [6](#), [13](#), [18](#), [23](#), [30](#), [56](#), [125](#), [130-1](#), [133](#), [136-7](#), [138](#)

Iran [8](#), [9](#), [14-17](#), [20](#), [22](#), [26](#), [29](#), [31](#), [41](#), [46](#), [48-9](#), [51-2](#), [55](#), [58](#), [60](#), [66-8](#), [70](#), [78](#), [80](#), [82](#), [85](#), [94](#), [96](#), [99](#), [103-5](#), [108](#), [111-12](#), [121](#), [124](#), [131](#), [141](#), [143](#), [144](#), [153](#), [157](#), [169](#), [175](#)

Iranian revolution [52](#)

Iraqi High Tribunal (IHT) [21](#), [23](#), [25](#), [59](#), [77-9](#), [94-5](#), [97](#), [108](#), [133](#)

Iraq – Iran war [26](#), [49](#), [52](#), [55](#), [60-1](#), [68](#), [88](#), [98](#), [100-1](#), [122](#)

Iraq Petroleum Company [30](#)

ISIS [xiii](#), [1-3](#), [5](#), [8](#), [28](#), [30](#), [32](#), [34](#), [38-9](#), [113](#), [118](#), [120](#), [122](#), [125-7](#), [130](#), [31](#), [133](#), [137-8](#)

Kasim, Karin Abdul [66](#)

KDP [9-13](#), [46](#), [51-2](#), [64](#), [124](#), [157](#)

King Faisal I [25](#)

Kirkuk, Iraq [vii](#), [viii](#), [9](#), [24](#), [26](#), [29-31](#), [33-9](#), [41-2](#), [48](#), [56](#), [66-8](#), [78](#), [82-3](#), [85](#), [88](#), [93-4](#), [105](#), [107](#), [109](#), [119](#), [122](#), [125](#), [127](#), [128-30](#)

KRG [6](#), [7](#), [9-13](#), [19](#), [20](#), [22](#), [24](#), [25](#), [32](#), [34-5](#), [39](#), [58](#), [83](#), [98](#), [124-7](#), [129](#), [131](#), [136](#), [138](#)

Kurdistan Workers' Party (PKK) [124](#)

Kuwait [14](#), [17](#), [31](#), [52](#), [61](#), [66](#), [72](#), [74](#), [78](#), [131](#)

Law 140 [2](#), [26](#), [28](#), [35](#), [38](#), [125-6](#), [129](#)

Lemkin, Raphael [1](#), [5](#)

Major, John [8](#)

Maliki [1](#), [24](#), [32](#), [60](#), [113-15](#), [119-22](#), [125-6](#), [130-1](#), [137-8](#)

Mosul [8](#), [14](#), [26](#), [32-3](#), [36-7](#), [51](#), [67-8](#), [77](#), [82-3](#), [88](#), [107](#), [119](#), [127](#)

Nation-building [xiii](#), [10](#), [25](#), [122](#), [127](#)
Nigrat al Salman [48](#), [50](#), [55](#), [58](#), [66](#), [93](#), [96](#)
Nineva [26](#), [36-7](#)

Obama, Barak [124](#)
Obama administration [32](#), [124](#)
Ocalan, Abdullah [124](#)

Peshmerga [11-13](#), [34](#), [38](#), [39](#), [61](#), [68-70](#), [72](#), [81-2](#), [85](#), [88](#), [102](#), [104](#), [107](#), [111](#), [120](#), [124-5](#), [129-30](#)
Power, Samantha [1](#) PUK [9-13](#), [52](#), [81](#), [157](#)

Resolution 687 [15](#), [17](#)
Revolutionary Command Counsel RCC [34](#), [36-8](#), [46-7](#), [51](#), [57](#), [58](#), [77](#), [154-5](#), [159](#)
Rezgar [23](#)
Russia [8](#), [22](#), [46](#), [103](#)
Rwanda [22](#), [53](#), [163](#), [165](#), [167](#), [173](#)

Saeedi, Ebrahim [73](#)
Sahaladin [26](#), [73](#), [119](#)
Saudi Arabia [30](#), [52](#), [66](#), [74-5](#), [78](#), [124](#), [131](#)
self-determination [2](#), [5](#), [13-14](#), [19](#), [39](#), [126-7](#), [129](#)
Stanton, Gregory [53-5](#)
Sulaymaniyah [8-9](#), [23](#), [33-4](#), [81-3](#), [85](#), [88](#), [98](#), [108](#), [127](#)
Syria [1](#), [8](#), [14](#), [20](#), [29](#), [30](#), [33](#), [52](#), [77](#), [122](#), [124](#), [130-1](#), [139](#)

Talabani, Jamal [9](#), [10](#), [12](#)
Tolfah, Khairall [51](#)
Toz Khormato [33](#), [51](#)
Trahan, Jennifer [94-5](#)
Transitional Administrative Law TAL [34](#)
transitional justice [xiii](#), [1](#), [10](#), [118](#), [121](#), [123](#)
Turkey [8](#), [14](#), [17](#), [29-30](#), [41](#), [51](#), [67-8](#)
Turkoman [25](#)

United Nations [8](#), [14](#), [73](#), [116](#), [161](#), [163](#), [173](#)
Universal Declaration of Human Rights [16](#)
Uraibi, Mohammed [21](#), [40-1](#)
U.S. [1](#), [9](#), [16-17](#), [20](#), [22](#), [25](#), [41](#), [115](#), [121-2](#), [12-17](#), [121](#), [133-4](#), [137-8](#), [175](#)

Wasit [26](#), [129-30](#)
World War II [43](#), [50](#), [103](#), [127](#)

Yazidis [36](#), [133](#)

Yugoslavia [22](#), [72](#), [162](#), [165–7](#), [177](#)

Zakho [8](#), [83](#), [88](#), [127](#), [131](#)