

FROM BLUEPRINT TO GENOCIDE?

An Analysis of Iraq's Sequenced Crimes of Genocide Committed against the
Kurds of Iraq

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ABSTRACT

Through an analysis of the Iraq's engineered genocides against Kurds during the years of Saddam Hussein's regime, this work aimed to reveal the weakness of the current political and social situation in Iraq. The purpose was to offer an overview of the dangers posed by the current difficult coexistence between the Federal Government in Baghdad and the Kurdish Regional Government in Erbil. The birth of a new political system after the fall of Saddam's regime meant that every institutional power had to be built from scratch in a political and social reality new to most Iraqis. This process of renovation, already witnessed in Europe after World War II, in particular in Italy and Germany, implied the writing of a new constitution and of a new set of legal frames with the purpose to give the country a strong and reliable democratic base.

In the case of Iraqi Kurds, who suffered discrimination, death and, ultimately genocide, it is important to revisit their recent past in order to feel they are an integral part of the new country born after the last Gulf War in 2003. Despite the international interest in the Kurdish case, Kurdish people did not have the opportunity to see the ones responsible of the crimes committed against them brought to international justice, as happened in the past in the case of Rwanda and Bosnia.

The execution of Saddam Hussein in 2006 meant that the charges against him and his commanders related to the Kurdish case were not discussed in court preventing Kurdish people not only from obtaining the justice they were entitled to but, most importantly, from gaining access to the truth about the massacres and human rights abuses carried out by Saddam's regime between 1963 and 2003.

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List of Abbreviations

ADM	Assyrian Democratic Movement
BTWC	International Convention on the use of Biological and Toxin Weapons
CPPCG	United Nations Convention on the Prevention and Punishment of the Crime of Genocide
FIG	Federal Iraqi Government
HRW	Human Right Watch
ICC	International Criminal Court
ICMP	International Commission on Missing Persons
ICP	Iraqi Communist Party
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Former Yugoslavia.
ID	Iraqi Diners
IHCC	Iraqi High Criminal Court
IHT	Iraqi High Tribunal
IPC	Iraq Petroleum Company
IST	Iraqi Special Tribunal
KDP	Kurdistan Democratic Party
KPDP	Kurdistan Popular Democratic Party
KRG	Kurdistan Regional Government
IMOHR	Iraqi Ministry of Human Rights
MRND	Mouvement Republican National pour la Democratie et le Development (National Republican Movement for Democracy and Development)
PASOK	Kurdish Socialist Party
PUK	Patriotic Union of Kurdistan
RCC	Revolutionary Command Counsel
RPF	Rwanda Patriotic Front
SPKI	Socialist Party of Kurdistan-Iraq
STR	Short Tanden Repeats are genetic markers that may be used to identify a DNA sequence
TAL	Transitional Administrative Law
UNAMI	United Nation Assistance Mission for Iraq
UNSC	United Nation Security Council

Kurds in the Middle East

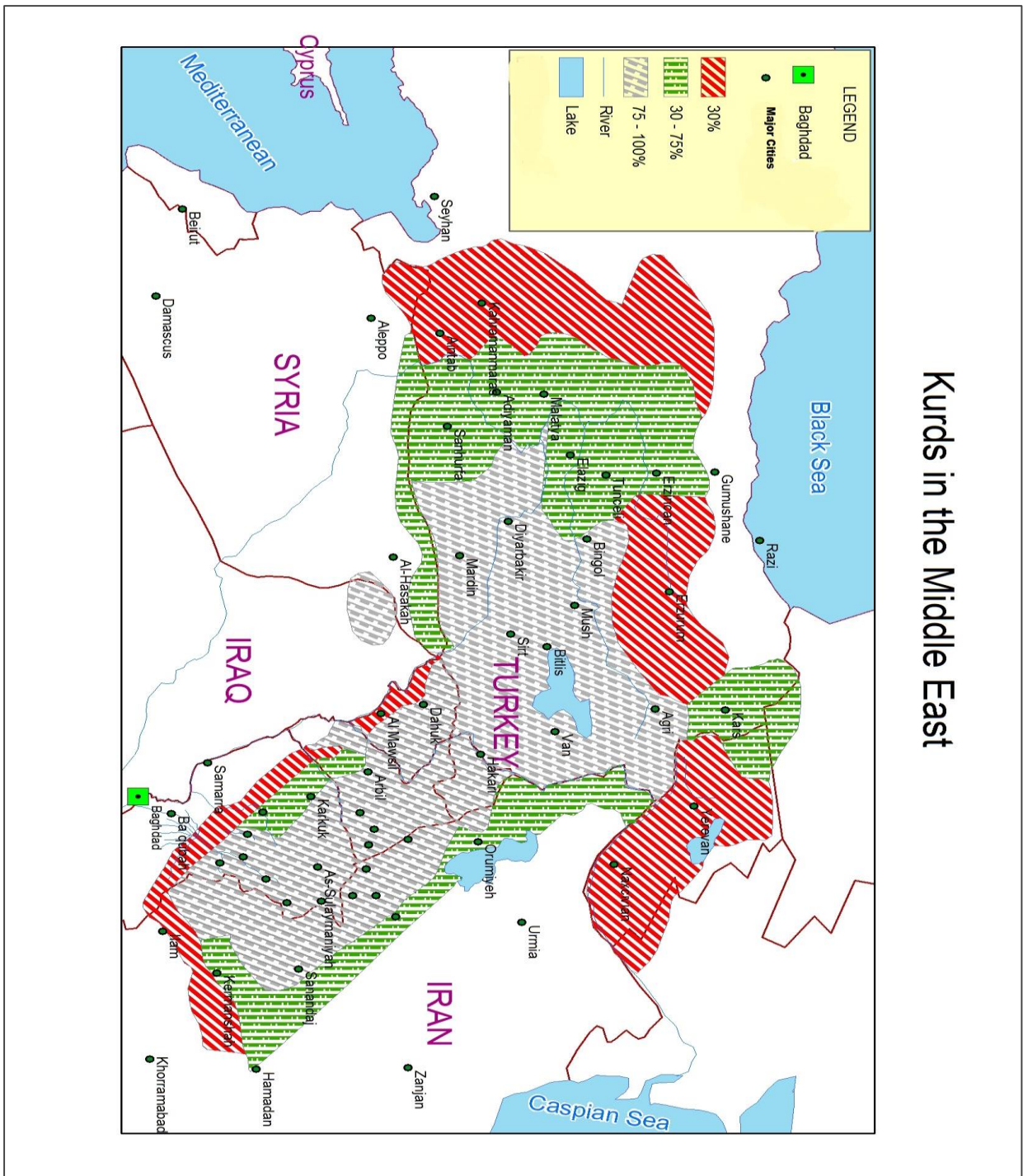


Figure 1. Map No. (1) Distribution of Kurds in the Middle East. Source: Author

IRAQI GOVERNORATES



Figure 2 Map No. (2) Iraqi Governorates. Source: Kurdistan Regional Government.

Introduction

The idea of this thesis originated from a combination of personal and collective experiences lived since September 2001 in Iraq by the Kurds. The defeat of Saddam Hussein changed the history of Iraq and of its multi-ethnic and multi-cultural groups that shared its destiny. For the Kurdish people living in Iraq, this change represented an opportunity to look back at their dramatic recent past and to finally gain national and international recognition. However, as for any other country that lived the dramatic experience of a long dictatorship, along with the experience of discrimination and genocide, Kurdish people are still struggling to get the recognition they deserve.

The birth of a new political system after the fall of Saddam's regime meant that every institutional power had to be built from scratch in a political and social reality new to most Iraqis. This process of renovation, already witnessed in Europe after World War II, in particular in Italy and Germany, implied the writing of a new constitution and of a new set of legal frames with the purpose to give the country a strong and reliable democratic base.

Despite the apparent international interest in the Kurdish case, the people of Kurdistan did not have the opportunity to see those responsible for the crimes committed against them, brought to international justice as happened in the case of Rwanda and Bosnia. The execution of Saddam Hussein in 2006 meant that the charges against him and his commanders related to the Kurdish case were not widely published or discussed in court preventing Kurdish people not only from obtaining the justice they were entitled to but, most importantly, from gaining access to the truth about the massacres and human rights abuses

carried out by Saddam Hussain's regime. Since the creation of the State of Iraq the Kurds suffered many atrocities committed by the Iraqi state in different different historical moments (mandate, monarchy, and republic) with the purpose of oppressing their demands. The researcher chose the cases analysed in this work because they were the first ones to be recognised as genocides and ethnic cleansing by the Iraqi state judicial system. Therefore this research aims to:

- 1- Illustrate the details of the crimes committed by the Iraqi government against the Kurds. In particular, this study will focus on five different crimes: Arabization, forced deportation of Faylee Kurds, the detention and disappearance of 8,000 males belonging to the Barzanis tribe, the Anfal campaign and the using lethal gas in Halabja. For each crime the study will focus, based on evidence gathered during the fieldwork, on how this evidence has been used in court in order to legally recognise these events as genocide and ethnic cleansing.
- 2- Analyse the legal implications of crimes committed by the Ba'ath regime within the current international law in order to establish the administrative and personal responsibilities of the government of Saddam Hussein.
- 3- Define the thinking and political ideology that lead to commit such crimes.
- 4- Offer Iraqis working in the legal profession and human rights area a legal framework as well as the knowledge of the specific case of genocides and human right abuses in Iraq.
- 5- Offer a series of helpful recommendations that might contribute to the current difficult process of reconciliation and nation building in Ira as well as prevention of future genocides.

The premise on which this thesis was built is that all the atrocities committed were actually part of a carefully engineered project by Saddam Hussein's regime. Each chapter 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 the comparison among the crimes: the Arabization and the persecution against the Faylee Kurds took place over many decades, while in all other crimes, from the abduction of the Barzanis to Anfal and Halabja the strategies implemented by the state show a consistent change in the timescale in which they were carried out. The Barzanis were abducted and killed in the space of a month and their case constituted to be a blueprint that led the state to increase the level of violence culminating with the attacks of Anfal and Halabja. The following chart shows how in time the state increased its skills, scope and atrocities in committing these crimes.

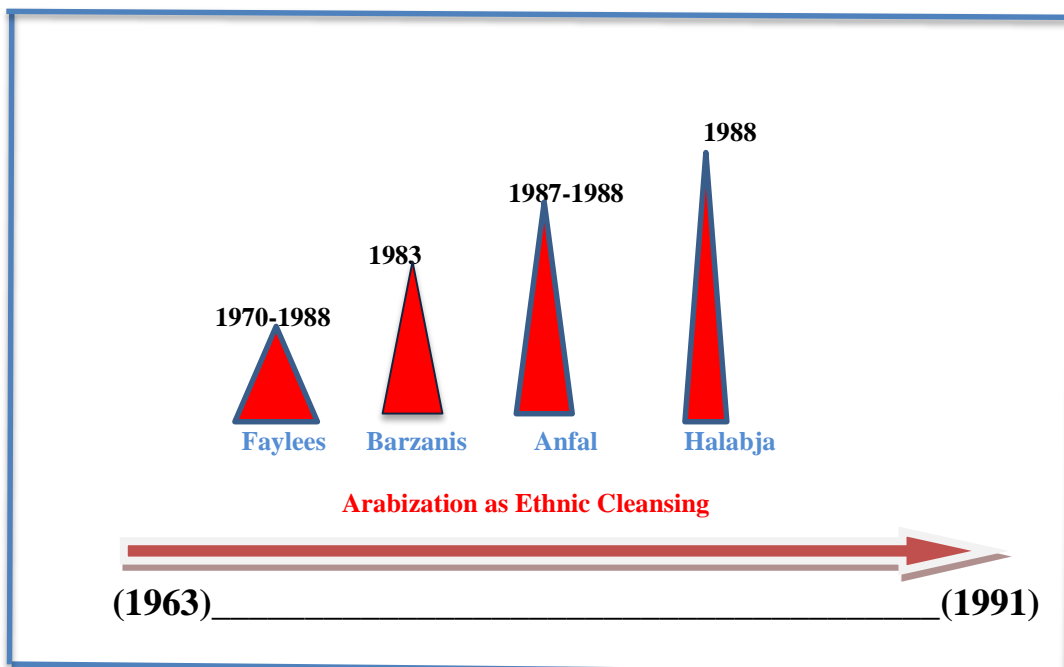


Figure 3 Chronology and scale of the crimes.

This analysis will be based on first-hand experience of the researcher as minister of Human Rights for the Kurdish Regional Government between 2001 and 2005, and on his current role in the same government as Minister of Extra Regional Affairs. Part of his role was to find out the truth about the massacres that took place during the Iraq-Iran war as well as the mass deportation suffered by the Kurdish population during those years and the process of forced Arabization carried out by the Ba'ath regime during that period. This included an investigation aimed at discovering the locations of the mass graves on different territories.¹ In addition, this investigation had the purpose to gather official documents exchanged between the different governmental powers involved in the process. As it will be explained in more depth in the methodology section, these documents will reveal details unknown until now as well as individual and institutional responsibilities. In order to give a comprehensive idea of the scale of human rights breaches perpetrated by Saddam's government in the decade considered, this study is based mostly on the fieldwork carried out by the researcher and on the original documents that he managed to gather during almost twenty years of research. In particular it will focus on five crimes, which was aimed at the ethnic cleansing of the Kurdish population in Iraq. All these crimes will be analysed according to the categories set by the International Convention on the Prevention and Punishment of the Crime of Genocide adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948. For this purpose, and in order to lead the reader through the different crimes scenes, the researcher will focus in particular on the 1) forced deportation

¹. See Chapter 8 for the locations of Kurdish mass graves in Iraq.

of the Faylee Kurds and the arabization process.² 2) the Anfal campaign and the use of chemical weapons with an emphasis on Halajba,³ 3) the Barzani⁴ case with the massacre and disappearance of 8,000 male members of the same tribe. The researcher will provide information about the geographical locations where the crimes took place including the sites of the mass graves used by the regime, as well as official, previously undisclosed documentation to support the conclusions.

This study is relevant both at local and international level. Its publication will contribute, one hopes, to the formation of a political leadership trained and educated so to avoid the temptation of dictatorship with the unavoidable repetitions of the crimes committed by the previous governments.

At the international level, this research aims to gain international recognition for the prevention of such crimes in the future. By determining the criminal responsibility of the single institutions of state in the genocide, this study offers a political frame for the shaping of a much needed social coherence for Iraq in its present statehood, and it also constitutes one of the basis for the new democratic federal system.

Chapter 2 will analyse the concept of genocide starting from its simultaneous appearance in the international language and legal system. It will then analyse the difficulties encountered by the international criminal justice due

² .The study deals with the forced deportation of Faylee Kurds from their original areas (Khanakeen, Jalao Laa, Al-Saadia, Mendeli, Zurbatya, Badra) and other areas of Iraq like Baghdad, Al-Kut, Al-Imara, Najaf, Karbala as well as other central and southern cities where they used to live in before and after the establishment of the Iraqi State.

³ . Halabja is part of the Governorate/province of Sulaimanyah and belongs administratively to Iraqi Kurdistan. It is about 12-15 kilometres from the Iranian Borders and 225 kilometres from Baghdad.

⁴ . The Barzani is a federation of tribes from and around the Village of Barzan – centre of the religious school of the Sheiks (clerics) descendants of the Amdia Princess. Barzan is one of the most numerous Kurdish tribes in Iraqi Kurdistan, they live in the town of Barzan –Governorate of Erbil- an area previously inhabited by the followers of the Nakhshabandi's School which with its Sufi message attracted many different tribes which coexisted with the Barzani.

to the ambiguity of its earlier definitions focusing on the analysis and on the concepts of purpose and intent and in the importance that these two elements had in the specific cases of Rwanda and Yugoslavia. Through a study of the investigations and the trials carried out by the International Criminal Tribunal of Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), and of the Iraqi High Tribunal (IHT), this study aims to demonstrate that the international community has failed in recognising genocide in the case of the Kurdish people massacred in Iraq.

Chapter 3 offers an overview of the Kurdistan question in from the twentieth to the twenty first century with a particular emphasis on the influence that foreign powers had on its self-determination. Following the analysis of the Treaty of Sèvres and the Treaty of Lausanne which constituted the basis for the geographical division of the Kurdish population amongst four different countries, it will give special attention to the historical events starting in 1963 to the seize of power by the Ba'ath regime in 1968 which led to Saddam Hussein's era and the atrocities against the Kurds. In addition, through an analysis of the expectations raised by the new, still unstable Iraq and the role played by the most numerous minorities in the country, this chapter will show how the past organization of the Kurdish Regional Government could eventually lead the way to a true federal, democratic country.

Chapter 4 offers a detailed analysis complete with graphs and maps of the Arabization process carried out by the Ba'ath regime since 1968. Focusing on the province of Kirkuk, it is evident from the statistics provided that this process had very detrimental effects on the Kurdish population forced to relocate in different areas with great damage to their culture and traditions. The documentation

shows how the authorities encouraged this migration with the use of force and by dividing entire families and tribes. The chapter shows how this sensitive area still poses a threat to the process of democratization of Iraq.

Chapter 5 analyses the mass deportation of Faylee Kurds during Saddam's regime and the gradual changes of citizenship laws that led to starting from the 1970s. This chapter is based mainly on the documentation collected by the researcher during his fieldwork since little or no literature has dealt specifically with this case. The chapter analyses the ideological basis in support of the genocide crimes that took place in the following three decades. Since 1979, when Saddam came into power, the Iraqi state committed genocide crimes not only against Faylee Kurds, but also against any minority looking for recognition within the country. The documents provided show without any doubt that the attacks against them were the first concentrated and calculated mass killing carried out by the Ba'ath Regime. The killing of 10,000 men and the removal of up to 100,000 members of the Iraqi Kurdish Faylee community, paved the way for genocide on a larger, more sophisticated scale. For this reason, the researcher will refer to the expulsion of the Faylee Kurds as "concept approval", because on that occasion, the regime and the state apparatus under its boundless control began to accept the concept of mass killing, indiscriminate assassination and kidnapping.

Chapter 6 will show the genocide against the Barzanis led by the regime. Since the beginning of the twentieth century until 1991, the Barzani Kurds have been victims of approximately 46 campaigns of collective forced displacement inside and outside Kurdistan. Because Barzani Kurds have always played a leadership role in Iraqi Kurdistan history, and even during Ottoman rule, they

have been targeted and persecuted for over a century. This chapter will analyse the massacre of the Barzanis and how it represented an escalation in the policy of violence and repression against the Kurds. Through his fieldwork the researcher was able to gather a substantial body of evidence to sustain the perpetration of genocide against the Kurdish population and Barzani in particular between 1975 and 1991. Their systematic forced displacement, their imprisonment in concentration camps until the disappearance of 8,000 men belonging to the Barzani tribe has been documented thanks to the discovery of undisclosed documents and their mass graves. Forensic evidence will be presented along with a detailed, original map of the mass graves recently discovered and photos from the fieldwork. At this regard, the researcher will demonstrate that this case was the blueprint of genocide against Kurds and that it was the more advanced and sophisticated case of killing against Kurds before Anfal.

Chapter 7 will present the Anfal campaign and the use of chemical weapons against Kurdish population during the Iran-Iraq war. The chapter will show how, in contrast with the previous cases, the regime involved in this massive operation all officers in chain of command of the army authorizing the indiscriminate use of internationally banned chemical weapons. Unfortunately in this case it was very difficult to find clear evidence that could lead to the arrest of a single individuals who can be directly accountable. Due to the military nature of the attacks, the IHT was presented with a great amount of evidence that linked directly the higher ranking officers of the army with the crimes committed therefore establishing a direct link between the ongoing war and genocide. In addition and due to the high level of organization and the involvement of different divisions of the Iraqi army,

more than four hundred people were charged in relations to these crimes. The conclusion of this chapter will explain how the IHT, lacking an outreach program, was not able to communicate the result of the trial outside the walls of the court. This left the international community, the Iraqis and most Kurds without any knowledge of the IHT judgement. In addition, the execution of Saddam Hussein condemned for the Dujail trial, left the IHT without one of the main defendants and the opportunity to make to trial more transparent.

Chapter 8 deals with the events of Halabja. It will not rely on the information already given by other sources but it will focus mainly on how chemical weapons, as instruments of war, have been used in order to commit genocide against Kurdish people establishing a direct link between chemical weapons and genocide. All this in order 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 chapter will focus on the development of the production of chemical weapons in the country and how this instrument has become a deadly weapon to use against its own citizens. As in the previous case of Anfal, the level of organization displayed in the use of chemical weapons campaign shows very clearly the intent and the moral responsibility of all the chain of command of the country.

Based on the entire investigation, Chapter 9 offers a series of recommendation that should, if applied, lead to a healing and reconciliation process. It will also suggest recommendations for the victims, in particular how both the Iraqi Federal Government and the Kurdish Regional Government should approach their concerns. It will also deal with the perpetrators of the crimes

committed and those who supported them implicitly by proposing the appropriate legal as well as political and social measures to deal with them.

All chapters offer an evaluation of the legal outcomes of the trials along with recommendation for a peaceful coexistence between the Federal Government and the Kurdish Regional Government.

The final chapter will summarise the research and its outcome and will offer further recommendations for policy makers working for the future of Iraq and the Kurdistan Region.

Literature review

In order to carry out this study, the researcher had to consult both primary and secondary multidisciplinary sources as well as interviews with experts and politicians. Legal resources were also indispensable in order to offer a more comprehensive view of the Kurdish genocide under Saddam Hussein's regime in a wider legal and international context.

The researcher has collected a large amount of primary sources, many of which will be made public for the first time in the course of this thesis. Fortunately, for the purposes of this research, the Ba'athist regime recorded and documented every decision made and implemented by all branches and levels of Government. Unlike other acts of genocide and crimes against humanity, the Ba'athists did not attempt to conceal any of their discriminatory or criminal policies, but rather left a paper trail detailing precisely who was responsible for the implementation of each distinct decree. These documents were collected by the researcher in preparation for the prosecution of the perpetrators and the

crimes they committed. These acts will be described in detail in the course of this thesis.

The researcher has also conducted interviews with survivors of the Ba'athist policies and the widows of the Barzani men killed in the 1980s. These interviews have provided details regarding the policies of capture, forced deportation, forced relocation and killings.

Secondary Sources

The secondary literature has been split into three groups, all of which have guided the researcher with his thesis. The first section includes general literature concerning the history and politics of Iraq and Iraqi Kurdistan. The second section includes material on genocide more generally, and legal texts have been included in this review. The volume of scholarship available is significant, and the work of the two ad hoc tribunals, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) have served to intensify academic interest on more recent genocide studies. Finally, a much more modest amount of literature focused on the fate of the Iraqi Kurds under the Ba'ath regime has been relied on. Although this material is limited, it nevertheless marks an important start in recognizing and documenting the atrocities that affected so many Iraqi Kurds between 1968 and 1991.

During his research the author made references to the decisions of the Iraqi High Tribunal (IHT). However, reference to the Court's decision should not necessarily reflect the researcher's endorsement and should certainly not reflect an adoption of the legal reasoning contained in the written judgments. Whilst the Court symbolizes an important milestone towards an official recognition of the

atrocities suffered by Iraq's Kurds, the decision has not led to international recognition of state-led crimes.

It was necessary, in order to organise the project to consult the literature produced in the last few years on the topic of genocide. This involved the contributions by various scholars. In particular that of Raphael Lemkin which has been particularly useful because it helped to introduce the history of genocide from the historical and legal point of view. In his article entitled '*Acts Constituting a General (Transnational) Danger Considered as Offences Against the Law of Nations*' Lemkin meant to offer additional clarifications to the Special Report presented to the 5th Conference for the Unification of Penal Law held in Madrid between the 14th and 20th October 1933. In this article, Lemkin proposed the international recognition of 'acts of barbarity' which cause offence to all nations and that have to be treated at the international level by an international court of justice. In his article he also pointed out to the Nations the need for the intervention of the international community in case of a clear breach of human rights in individual countries. At this point, the word genocide, as well as the need for its definition was not a reality and the international community was still unable to understand the need for its prevention. It was only after World War II and the tragedy of the Holocaust that the international community, following Lemkin's contributions and based on the analysis that the scholar published in 1944 entitled *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, accepted his recommendations and in 1948 the United Nations Convention on the Prevention and Punishment of the Crime of Genocide finally produced a definition for genocide in Article II.

This definition, which came to us basically unchanged, has been the focal point of a debate that went on for the last seventy years. Due to its ambiguity, the literature on the subject is very extensive and it would be difficult to quote every study in depth. However, it is important to mention that the general trend, due to the ambiguity of the definition proposed by the Commission, favoured a legal approach leaving aside the social and political consequences of genocide. In addition, the introduction of the term genocide sparked a new historical debate on its cultural and social consequences in history. For example, Phillip Spencer in *Genocide Since 1945* offers an estimate of how many victims can be attributed to genocide since it was accepted by the Convention in 1948. Spencer's figures suggest that with the addition of the intentional killing of Fur, Masalit, and Zaghawa civilians in Darfur, it is possible that genocides have persisted since 1948 with no more than a five years lapse between any two campaigns. On the same trend, Christopher Powell in his book *Barbaric Civilisation – A Critical Sociology of Genocide* denounces that it is exactly in the twentieth century, after the recognition of genocide, that it reached the highest levels of efficiency and frequency.

For the purpose of this study, these contributions are fundamental but they do not offer a complete framework in order to advocate the case of Kurdish genocide during the Saddam Hussein's regime. For this purpose, the reading of Adam Jones' *Genocide: A Comprehensive Introduction (2006)*, offers a wider opportunity for analysing the case in question. Adam Jones approaches the theme of genocide from a different perspective. Without neglecting the cultural and social approach, at the same time admitting that he is sitting on the shoulders of giants, Adam Jones proposes a new way to see the social issues

rising from genocide. He mentions Frank Chalk and Kurt Johassohn's *History and Sociology of Genocide* and *Century of Genocide: Eyewitness Accounts and Critical Views* by Samuel Totten et al. as well as basic contributions to the study of genocide such as *Genocide* by Kuper among others. However, Jones' approach differs from the others because of the inter-disciplinarity of his work, drawing from psychology, sociology, anthropology and political studies with a particular focus on international relations. It is this new, more comprehensive way to see the various facets of genocide that makes it the more valuable basis for the present study. In addition, Jones applying this approach to different case studies occurred in very different cultural and social settings, offers the researcher a flexible set of references for the specific Kurdish case. Another reason for considering Jones as a main point of reference for this work is his understanding of the emotional impact and personal involvement that people who immersed them into the investigation of genocide experience. In particular, the anthropological approach favours the use of sources and the active participation of the researcher through a fieldwork. In this particular investigation, the researcher in his position as minister of Human Rights for the Kurdish Regional Government had privileged access to witnesses and a series of documentations that could be gathered only through his physical presence where the genocide took place.

In a study of this kind, it was extremely important to analyse the historical background that led to the formation of Iraq in 1921 and to analyse the history of the Kurdish presence in the country. The reading of Gareth Stansfield's *Iraqi Kurdistan: Political Development and Emergent Democracy* (2003) constituted a text of reference in order to understand the history of Kurdish political

organization in particular the birth of the KDP and PUK and their influence in Kurdish politics.

The main point of Stansfield's analysis, written shortly after the invasion of Iraq by the coalition led by the United States is the identification, in Kurdish case, of the existence of a political structure, the only one in a country that experienced dissolution of every political institution. The Kurdish Regional Government, because its semi autonomous status, became an example of political coexistence.

David McDowall's study *A Modern History of the Kurds* was championed as the first comprehensive account of the history of the Kurds now living between Iraq, Iran, Turkey and Syria. The author detailed the experiences of the Kurds from the eighteenth century under Ottoman Rule up until their recent developments taking place in the four countries. Considerable emphasis was deliberately placed on the period between 1918 and 1925 where McDowall argues Kurds lost their single greatest opportunity for statehood following the collapse of the Ottoman and Qajar empires. According to McDowall, the missed opportunity in the post-Ottoman years prevented Kurdish populations in the newly created states of Iraq, Iran, Turkey and Syria from establishing any meaningful autonomy or control over lands considered by Kurds to be 'Kurdistan' up until today. In reference to Iraq, McDowall argues that inter-tribal disagreements within Iraqi Kurdistan frustrated British attempts at resolving the issue of Kurdistan from the outset. Although all agreed that Turkish authority should not return to Iraqi Kurdistan, there existed staunch disagreements as to how British assistance may be delivered, if via Baghdad or a distant, yet less influential, London. British-Kurdish relations were promptly strained by the

consequences of an insufficient British military presence on the Kurds that offered to support them. For McDowall, however, the functioning of a British-administered Kurdistan seemed inherently troubled from the start. According to the author, the "fundamental conflict between institutionalized government on the one hand, in which officials were appointed on merit and owed their loyalty to an abstract idea – the state, the administration, the Crown or whatever – and, on the other hand, the highly personalized form of government based on patronage still existing in the religious and tribal strata of Kurdish society" meant any leader that sought to represent all Kurds would be crippled by the competing political ideals. The researcher has considered these challenging beginnings as they developed over the century. Whilst Kurds have been criticized for their lack of clear vision or ideology for the future of Kurdistan in Iraq's early years, it is certain that Kurds were united by one idea: that Arabs should not rule Kurdistan. In this regard, the promises made by Britain and France to the Kurds in 1918 for a complete and final liberation of the peoples who have for so long been oppressed by the Turks, and the setting up of national governments and administrations that shall derive their authority from the free exercise of the initiative and choice of the indigenous populations" grew further from reality. Whilst Kurds sought British protection in the early twentieth century, they by no means relinquished their drive for autonomy. Clearly, the Kurds were to be betrayed by the British and outrage soon spread among Iraqi Kurds when Britain negotiated with Baghdad, trading independence for rent-free military bases in the country, and ultimately supported Iraq's entry into the League of Nations on October 3rd 1932.

Gregory H. Stanton, President of Genocide Watch, offers another fundamental theoretical contribution to this study. In his writings he has argued

for some time that genocide develops in eight, non-linear, stages: classification; symbolization; dehumanization; organization; polarization; preparation; extermination; and denial.⁵ What has come to be commonly referred to as 'The Eight Stages of Genocide' was first presented as a Briefing Paper to the US State Department in 1998. According to Stanton, all eight stages identified by his work continue to occur throughout a genocide campaign, and prompt recognition of one or more stages of genocide can be an effective preventative tool. Much of Stanton's work since drafting the eight stages framework has included the analysing of former and current genocide processes through the lens of this framework. Stanton's contribution to genocide studies has been significant. His collation of numerical data on a global scale, and up-to-date record keeping and monitoring of genocidal movements provide an invaluable research tool. The researcher has relied on the framework heavily, and indeed it has been adopted as the framework in which the thesis is presented. In this regard, Stanton's work serves to punctuate each detail or record of events arising during the Ba'athist rule with a reference point common to all genocide campaigns.

Following the interdisciplinary approach suggested by Jones, the researcher had to rely on a varied set of literatures in order to carry out his study. As mentioned earlier, one of the aims of this thesis was to present a comparative legal framework that analysed the ambiguities of the definition of Genocide stated by the Convention based on Lemkin's suggestions as well as the different interpretations in which this definition has been applied since 1948, and in particular the reading of the first two statutes produced by the Convention when establishing the International Tribunal for Yugoslavia (ICTY) and the International

⁵ Further elaboration of the 'eight stages of genocide' is provided in Chapter 2.

Tribunal for Rwanda (ICTR). The reference to the legal literature is important because, even if the focus of this research is to show the sociological and historical background of the Kurdish case for genocide, its legal recognition is necessary in order to propose ways to prevent these same events to repeat themselves. In addition, the comparative approach that arises from the analysis of the only two cases in which the Commission has intervened is important in order to set a series of precedents towards the Kurdish case. The analysis of the legal documentation regarding first the two statutes, and later the outcomes of the trials, were fundamental in order to analyse the specific, local reality in which the Iraqi High Tribunal (IHT) was born and had to operate. As will be analysed in the following chapters, this tribunal, established in 2003 in a moment of difficult relationship with the international community due to the civil war and to the US military presence in the country, failed to give Kurdish people their opportunity to make their case.

As it will be explained more in detail in Chapter 2, the Ba'ath regime carried out a systematic plan of ethnic and cultural cleansing towards Kurds in Iraq, however, after Saddam Hussein's fall, these crimes have not been investigated in depth. Of course, there is a vast literature on the subject, for example, Michael Kelly, the former chief investigative judge for the Iraqi High Tribunal, in his book *Ghosts of Halabja* (2008) offers an analysis of a very specific crime, the chemical gassing of a Kurdish village in Northern Iraq in 1988. The researcher's approach differs from Kelly's because it does not limit itself to a mere recount of the events as they were presented in the tribunal. Following Adam Jones's approach he, on the contrary, focused on the consequences that these events had on the Kurdish population and on the way they currently perceive their relationship with the Iraqi

Arab population and with the institutions which represent them starting from 2003.

William Schabas in *Genocide in International Law, The Crime of Crimes* (2000) offers a pertinent overview of the application of the genocide convention in international law. The text was used primarily as a reference guide in particular for Chapter 2 where the legal elements of the crime of genocide are discussed. Schabas' compilation of jurisprudence is presented in a manner accessible to lawyers and non-lawyers alike and is thus an excellent reference for readers seeking to understand the extent of Ba'athist liability by comparison to the most notable international criminal prosecutions heard by the ICTR and the ICTY.

Methodology

As already mentioned, the five crimes analysed in this thesis needed a multidisciplinary approach in the methodology because of their different nature and circumstances in which they took place. In addition, the different legal outcomes of the trials against the perpetrators of each single crime had a different long lasting impact on Kurdish population and on the relationship between the current Iraqi Federal Government and the Kurdish Regional Government, therefore all of them required a different methodological approach in terms of the gathering of the material in order to build up the cases against the defendants. As already mentioned at the beginning, each of the crime treated in this thesis constitutes a state planned strategy towards the ethnic cleansing of Kurdish people in the country. A plan carried out with a constant increase in the scale of the atrocities and that culminated in mass murder.

The first crime analysed is Arabization. This is particularly interesting because it has been carried out during a considerable number of years, between 1963 and 2003, and it constitutes the beginning of all the other crimes committed against the Kurds. It aimed to change the demography of the areas originally inhabited by Kurds by systematically destroying all their cultural and social background.

The second crime considered is the forced deportation of Faylee Kurds. In order to reconstruct the events that led to this mass deportation, the researcher had to rely on two main sources of information. The first one was the recompilation of Iraqi documentation gathered after 1991. The researcher accessed these sources mainly through Kurdish intelligence in the opposition groups. The second is the information provided by the victims through the Faylee Cultural Centre in Erbil. As it will be analysed later in detail; it is important to note that in order to carry out this massive deportation, the regime relied on judgements issued by the legal system. All the orders were given prior the publications of decrees that authorized the deportation and the confiscations of Faylee Kurds' properties.

The next crimes investigated in the thesis are the relocation and mass murder of 8,000 men from the Barzani tribe; the Anfal campaign and the events that took place in Halabja. Despite the differences, which will be analysed later, in all three cases the investigation required a more multidisciplinary approach that involved not only the recompilation of official documents and interviews with witnesses, but also an intense forensic investigation once the mass graves have been identified. The forensic evidence contributed strongly to the building up of the cases against the perpetrators. The methodology applied by the researcher,

trained in forensic investigation, included a study of the reasons why mass graves could be found all over Iraq. The researcher found out that before these atrocities were committed, Iraqis did not have any collective memory of mass graves and that their existence has to be attributed to the unlimited powers enjoyed by the Iraqi security and intelligence services.

Bearing these factors in mind, the researcher had to come forward with a classification of mass graves that included all the different *modus operandi* followed in each crime starting from the description of each mass grave and how to recognise it. The mass graves were catalogued according to criteria which included the number of victims, the time in which the crime was committed, the agencies responsible and the information gathered on site from witnesses who escaped the genocide, local people, occasional witnesses, and members of the armed forces or of the security agencies. In addition, some information about the existence and the locations of some mass graves had been gathered before the fall of Saddam Hussein by members of the intelligence of the Kurdish opposition groups as well as by members of the Ba'athist party.

Sites of mass graves until November 2013.

Sites	Open Sites		Graves	Remain	
	By Suggestion	By Opening		Confirmed	Not Confirmed
145	56	62	120	18	9
	Total: 118			Total: 27	

Source: Author

The location and distribution of the mass graves constituted a very good source of information and, for the purpose of this study, they have been catalogued into

three groups: the ones found in the gardens and graveyards of military camps or security agencies, the ones found in the countryside and the ones located deep in the desert. The researcher has worked mainly on the first and third categories.

In order to gather evidence for the Barzanis' case the researcher had to investigate the existence of mass graves in remote deserted areas. Without a nearby area where the team of scientists could be based, the main challenge was to provide infrastructure, including sufficient water supply, sanitation, food and shelter, working areas transportation and storage facilities for the remains and equipments. Security and safety is paramount, and does not only apply for the investigators, but also for the gravesite and the human remains. Sometimes the investigators will attract the attention of the local population and provoke curiosity or even hostility. It is paramount to undertake a mass grave investigation with sufficient professional security on the site on a reliable 24/7 basis. A mass grave, whatever its location, is a crime scene and as such the evidence needs to be protected from unauthorized access. The investigation leader must at all times ensure the integrity of the chain of custody and limit the access to the grave to authorized personnel only. However, the interest of the public and the media should be taken into account and controlled with an effective information policy: e.g. the relevant media outlets could be contacted and informed prior to the investigation. An agreement should make that the media have exclusive access for one day towards the end of the excavation. The public should be included and their concerns should be taken very seriously. The investigators could invite the public at the beginning and the end of the investigation to a religious service to honour the victims. Depending on the demands of the population, a regular public press release could be considered. Secrecy and depriving the public access to

information on the investigation is counterproductive and not in line with a policy of transparency and impartiality when dealing with missing persons. The public has the right to be informed.

In 2005 in the Busaya district, about 240 km from Samawa, a mass grave with 513 bodies was found. They were mostly male wearing typical Barzani Kurds cloths. Another mass grave has been found in November 2013 in Busaya (Long.: 45 58 11.07 Lat.: 29 50 30.17) where another 93 bodies of males (aged between 9-80 years old) wearing Barzani cloths were found. This discovery was made after the disclosure of a very important document reproduced in the appendix at the end of Chapter 6. In it the authority mentioned that the Barzanis were executed in the area of Busaya, a remote district belonging to Al Salman near the Saudi – Kuwaiti Border. Busaya has a size of about 24,532 square km, is surrounded by the Distric of Zubair from the east, Sok Al shyukh district from the north, Samawa district from the northwest, from the west by Al Salman district, from the south by the Saudi Arabia and from southeast by Kuwait. The total size of Samawa governorate is 51,740 square km, which means that the size of Busaya is about 47,5% of the Muthana size 5.6% of the total size of Iraq (435,052 square km). Because of the size of the province, it has been very difficult to look for mass graves without the support of the local authorities. The expedition in Busaya lasted three months from January to April 2005. The research involved meeting local people, shepherds, nomads as well as any official who worked for the government in the area. Unfortunately, due to the mistrust of the locals, initially it was very difficult to find the graves. Only four months later the researcher was informed by some locals about the location of possible mass graves and he was finally able to find some of them containing

Barzani Kurds killed by Iraqis during the 1983 genocide campaign.

The team was able to exhume 513 corpses from Busaya 1 mass grave. After recovering some personal belongings and identified some of the victims with the help of the families, the researcher was able to return them back to Kurdistan and give them proper and respectable burials. One of the interesting aspects of this discovery was to find that the men had been killed in groups and with automatic weapons; this could be deduced from the number of bullets on their corpses. In addition, the depth of their graves was no more than 1.5 meters; this means that they were buried very quickly after their death. During the investigation we found out that they were held prisoners at AbuJad and Al Laaya concentration camps, about 40 km away from the mass graves. The researcher travelled back to the area in November 2013, and in that occasion he managed to discover another mass grave named Busaya 2.

The researcher has also carried out forensic investigation, on site, for the Anfal case uncovering the mass graves later named Hatra 1 and Hatra 2. The outcomes of his investigations were then used by IHT to build up the case against the perpetrators. In contrast with the mass graves of Busaya, these were located in less remote areas but were very deep, around 3.5 metres. This shows the extreme secrecy in which this crime was committed and the intent to conceal any possible evidence. Hatra 1 contained 123 remains: 25 adult women, 8 infants, and 90 children, all of them had been executed. Hatra 2 contained the remains of 46 men.

Another mass grave, named Muthana 2, containing around 500 remains was found in Dhabiya at (N 30 40 18.97 E 44 57 38.86) in Muthana Governorate, suburb of Samawa City, towards Nigrat Al Salman, 8 km on the road between

Smawa and Al Salman in the heart of desert. According to some witnesses, the victims were killed in 1988. During the excavation, the team was able to find 114 remains: 2 males, 27 females and 85 children, 28 of them were between 3-7 years old, all of them from the Anfal campaign. This information was presented by Mr. Kovin Tramble⁶ and used by the IHT during the trial.

In the area of Nigrat Al Salman, nearly 300 meters on the right on the road from Salman Prison at (N 30 30 31 .45 E 44 39 27.29), the team found another mass grave containing between 300 and 350 remains. According to the police Sergeant Khalaf Abdul Aaall Al Jabouri who worked there, all of them were imprisoned and died of torture. At the Al salama Health Centre the researcher was able to find 94 original death certificates of Kurds from the area of Sulaimaniya who died during Anfal. The doctor confirmed that they issued these certificates without seeing the dead body, an operation that the authorities carried out in order to cover their crimes.

Also related to Anfal, in the area of Al Hatra, near Mosul the team found another 2 mass graves after interviewing an ex Iraqi military officer named Colonel Salim Mahmoud. After the excavation 123 remains were found all of them killed by a single bullet in the head: they were 25 males, 98 children almost all them were under 13 years old. That mass grave was very deep, around 3.5 metres to testify the efforts made by the authorities to deny eventual discovery and accusations to compromise any investigation. In the grave the researcher found the body of a woman with her 6-7 month child (see photos in the appendix to Chapter 7). Hatra 2 is the name of the second mass grave found in the same area. In there the team found 64 remains all of them were Kurdish men randomly

⁶. Pages 618 -622 of the court decision regarding the Anfal case by IHT on 24/6/2007.

shot by Kalashnikovs.

A skeleton in a grave cannot tell by itself if the individual was black or white, a combatant or a civilian a Christian or a Muslim, a Sunni or a Shi'a, a Kurd or an Arab. Hence, the missing persons issue bears great potential of political abuse, propaganda while deepening the breaches between religious or ethnic groups. Ultimately, it only brings more grief and suffering for the families of the disappeared, especially if the victims went missing during a civil war scenario. The truth is always the first victim of war therefore; it was paramount to apply impartiality and transparency during all the phases of the exhumation.



Figure 4. Map No. (3) Kurdish mass graves in Iraq. Source: Author.

Chapter 2

The Concept of Genocide

Introduction

This chapter will analyse the concept of genocide starting from its first simultaneous appearance in the international literature and legal system. It will then analyse the difficulties encountered by the international criminal justice due to the ambiguity of its first definitions. It will focus on the analysis, definition of purpose and intent and on the importance that these two elements had in the specific cases of Rwanda and Yugoslavia. Through a study of the investigations and the trials carried out by the International Criminal Tribunal of Rwanda (ICTR), the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Iraqi High Tribunal (IHT), this study aims to demonstrate that the international community has failed in recognising genocide in the case of the Kurdish people massacred in Iraq.

The Origin of Genocide and the Process of Naming

It was on 9 December 1948, after World War II and the horrors of the Holocaust that the international community was urged to name this crime as genocide. Until then it had remained without a name. A legal definition was found in 1948 by United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) (hereinafter 'the Convention'). In Article II of the Convention, genocide is defined as any of the following acts committed with intent to destroy in whole or in part, a national, ethnic, racial or religious group:

Killing members of the group.

Causing serious bodily or mental harm to members of the group.

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

Imposing measures intended to prevent births within the group.

Forcibly transferring children of the group to another group.¹

This definition was confirmed without erasure or modification by the Security Council in drafting the Statute of the International Criminal Tribunal for the former Yugoslavia and the Statute of the International Criminal Tribunal for Rwanda, and by the State Parties to the Rome Statute establishing the International Criminal Court.² No state has ever advocated that genocide is not a crime. The definition contained in Article II is considered to be binding international law, a universal (interdict) that permeates the mask of the state sovereignty.

In 1933, Raphael Lemkin, a jurist and scholar of international law wrote a paper entitled '*Acts Constituting a General (Transnational) Danger Considered as Offences Against the Law of Nations*', this article was meant to offer additional clarifications to the Special Report presented to the 5th Conference for the Unification of Penal Law held in Madrid between the 14th and 20th October 1933.³ In it he focuses on the crime of barbarity as a crime against international law. At the time, the idea that the international law could override single states internal

1. Article 2 of CPPCG.

2. See Article 4 of the Statute of the ICTY, Article 2 of the Statute of the ICTR, Article 6 of the Rome Statute. The same definition was adopted by the Statute of the Iraqi High Criminal Court, Article 11. See Appendix No.1 of this chapter for the complete Statute of the Iraqi High Criminal Court of 18 October 2005.

3. Raphael Lemkin, *Key Writings of Raphael Lemkin on Genocide* Available at: <http://www.preventgenocide.org/lemkin.online> [Accessed 22 March, 2013].

jurisdiction was completely new. This innovative proposal was based on a few episodes that anticipated the tragedy of World War II and the Holocaust, in particular the Semel massacre that took place in August 1933 where hundreds of Assyrians civilians were killed indiscriminately in Iraq.⁴ Lemkin's article, stimulated by these events, proposed the international recognition of 'acts of barbarity' and 'acts of vandalism'. According to Lemkin the first ones were acts that:

Taken as a whole, all the acts of this character constitute an offence against the law of nations which we will call by the name "barbarity". Taken separately all these acts are punishable in the respective codes; considered together, however, they should constitute offences against the law of nations by reason of their common feature which is to endanger both the existence of the collectivity concerned and the entire social order'.⁵

Acts of Vandalism are, on the other hand, crimes against the culture and works of art and can be considered as:

An attack targeting a collectivity can also take the form of systematic and organized destruction of the art and cultural heritage in which the unique genius and achievement of a collectivity are revealed in fields of science, arts and literature. The contribution of any particular collectivity to world culture as a whole, forms the wealth of all of humanity, even while exhibiting unique characteristics.⁶

⁴. Just a year later, in *The Assyrian Tragedy*, published by Annemasse in 1934 describes what happened: "The Assyrian population of the village of Semel was indiscriminately massacred; men women, and children alike. In one room alone, 81 Assyrians from Baz were barbarously massacred. Priests were tortured and their bodies mutilated. Girls and women were raped and made to March naked before the Iraqi Army Chief of the Staff Brigade General Bakir Sedqi. Holy books were used as fuel for burning girls. Children were run over by military cars. Pregnant women were bayoneted. Children were flung in the air and pierced on to the points of bayonets. In Dohuk 600 Assyrians were killed." (*The Assyrian Tragedy*, pp. 53-54).

⁵. Raphael Lemkin, *Key Writings of Raphael Lemkin on Genocide* by PreventGenocide.org Available at: [http:// www.preventgenocide.org/lemkin.online](http://www.preventgenocide.org/lemkin.online) selection of Lemkin's core work on genocide [Accessed 22 March, 2013].

⁶. Ibid.

Both these crimes, according to Lemkin, have to be considered transnational and an offence against the law of nations because they threatened the stability and the heritage of all humanity. At the end of his analysis, Lemkin proposed a project of legislative texts divided into seven articles containing the starting point for a future international legislation on Human Rights. For the moment, in 1933, the law of nations was not prepared to accept or implement his propositions.

It was only in 1943, when the extent of the horrors of the Holocaust were fully known, and World War II was going through its last, tragic, epilogue, that Lemkin first coined the term genocide. He referred to the Plato's use of Greek word (génos) for a "race" or "tribe", and then he added the Latin-cide, which means "killed" or "act" of killing, as in homicide or suicide. Later on, in 1944, Lemkin wrote his most important book titled *Axis Rule in Occupied Europe*.⁷ In it included an extensive legal analysis of German rule in countries occupied by Nazi Germany during World War II. Later, in 1945, this study constituted one of the legal bases of the Nuremberg trials. Lemkin worked hard to persuade a number of countries to sponsor the resolution for a genocide convention treaty, and with the help and support of the newly formed United Nations, the resolution was placed before the General Assembly for consideration and approved in 1948.

The Phenomena of Genocide

"The word is new, the crime is ancient".⁸

⁷. Raphael Lemkin, *Carnegie Endowment for International Peace*, Division of International Law, Washington, D.C., 1944.

⁸. Leo Kuper, *Genocide: Its Political Use in the Twentieth Century*, Penguin Books, 1981, p.11.

The dramatic experience of World War II and the atrocities committed against an ethnic minority, and in particular against Jews, sparked a reflection about the idea of genocide in human history. Whilst international recognition and acceptance of the crime of genocide only came about with the adoption of the Convention, it is argued that the acts of targeting and killing identifiable groups within societies are an age-old practice. Accounts of mass killings and the destruction of peoples and their communities were recorded in the Bible, in Greek and Roman tragedies, throughout antiquity, and during the Crusades in the Middle Ages.⁹ By the 12th century, Genghis Khan had set about conquering Eurasia killing as many as 30 million people along the way. Whilst it is outside the scope of this thesis to recount historical instances of genocide, the fact that genocide has, and continues to stain human history, demonstrates the ease with which genocidal ideology is formulated, supported, and implemented, with or without a Genocide Convention. This section will discuss what is termed ‘the phenomena of genocide’, identifying the alarming frequency with which genocide campaigns occur, and discussing certain characteristics common to most campaigns. In the aftermath of World War II, the international community was compelled to adopt a legal definition of genocide and proclaimed that the atrocities committed by Nazi Germany would never be allowed to occur again. On 9 December 1948, the newly established United Nations adopted the Convention extending universal jurisdiction for the prosecution of both ‘peacetime’ and ‘wartime’ acts of genocide.¹⁰ However, the events of the 20th century swiftly discredited the United Nations’ commitment to “never again”.

⁹. For a concise summary, see Leo Kuper, *Genocide: Its Political Use in the Twentieth Century*, Penguin Books, 1981, pp.11-18.

¹⁰. The following day, 10 December 1948, the United Nations adopted the Universal Declaration of Human Rights.

Instead, horrifying and frequent genocidal campaigns, targeting and killing groups protected by the Convention, were seen over and over again, across a number of continents and cultures. Phillip Spencer in *Genocide Since 1945 (which published on 2012)* estimates that at least 9 million people have been killed as a result of genocide since the Convention was adopted in 1948, and this figure could be as high as 13.5 million.¹¹ Relying on Spencer's figures with the addition of the intentional killing of Fur, Masalit, and Zaghawa civilians in Darfur, it is possible that genocides have persisted since 1948 with no more than a five years lapse between any two campaigns.¹² Eloquently, yet disturbingly, summarised by Christopher Powell in his book *Barbaric Civilisation – A Critical Sociology of Genocide*, "the era in which genocide was made criminal for the first time is also the era in which it achieved effects of scale, efficiency and frequency that stun the imagination."¹³

Genocides almost always occur in the context of, or immediately following, violent political instability. As Adam Jones points out in *Genocide: A Comprehensive Introduction* all three of the 20th century's most well-known genocides – that of the Armenians in Turkey, the Jews in Nazi-occupied Europe, and the Tutsi in Rwanda – have occurred in the context of violent civil and/or

¹¹. These figures exclude Marsh Arabs killed in Iraq during 1992 where the number of victims is unknown. See Philip Spencer's *Genocide since 1945* Routledge, 2012, p.19. See also G. Stanton's 'Building an Anti-Genocide Regime' in Totten, S. (ed.) *The Prevention and Intervention of Genocide: A Critical Bibliographic Review* 6th ed. Rutgers, 2008, p. 281.

¹². According to Philip Spencer, there is disagreement as to whether the atrocities committed in Darfur constitute genocide (see International Commission of Inquiry on Darfur, Pursuant to Security Council Resolution 1564, 18 September 2004, and also the Second Warrant of Arrest of Omar Hassan Ahmad al Bashir confirming an indictment for genocide, ICC-02/05-01/09-95, 7 December 2010).

¹³. Powell, C, *Barbaric Civilisation – A Critical Sociology of Genocide*, Montreal, McGill-Queens University Press, 2011, p. 72.

international warfare.¹⁴ When armed violence moves from being legitimate warfare to genocide can often be difficult to identify. Most agree, however, that the presence of war is the single biggest aide to genocide.¹⁵ Jones explains that the collective struggle and sacrifices of communities during times of war nurture intra-communal bonds and exacerbate fear and distrust of the 'enemy'.¹⁶ In such circumstances, genocide campaigns that would usually be rejected by the collective conscience may be tolerated, or even actively encouraged, as hatred is only a small step from the dangerous mixture of fear and distrust:

Psychological and social inhibitions diminish, often to be replaced by blood lust...Fear fuels hatred of the one allegedly responsible for the fear, and dependence on the authority that pledges deliverance from the threat...Societies grow more receptive to state vigilance and violence, as well as to suspensions of legal and constitutional safeguards.¹⁷

Such circumstances must be particularly so during civil wars or internal conflicts where a large proportion of the local populations are intimately connected to the pain and passion of armed warfare. It is a common but truthful saying that "nothing unites people like a common enemy". Disparate groups of society come together during times of war, allowing the gap between "us" and "them" to be exaggerated.¹⁸ The forging of common identities, both of the threatened, and threatening groups is made easy. As this thesis argues, this process of *identification* is a crucial element on the road to genocide. Understanding the 'phenomena of genocide' involves consideration of the transnational security threats that spread so ferociously before, during, and after a genocide takes

¹⁴. Jones, A. *Genocide: A Comprehensive Introduction* (2nd ed.) Routledge, 2006, p. 81.

¹⁵. *Ibid.*, p.81.

¹⁶. *Ibid.*, p. 82.

¹⁷. *Ibid.*, pp. 82-83.

¹⁸. *Ibid.*, p. 84.

place. In doing so, it makes it even harder to comprehend how a strong, credible, international mechanism for the identification, prevention, and intervention of and during genocide remains so far from reach.

Traditionally, acts of genocide have been considered by nation states to be tragedies, but not security threats. This perception dangerously neglects the transnational characteristics of genocide campaigns, and ignores the clear 'spill over' of security threats. Although most genocides now occur in the context of civil, or internal wars, the movement of security threats across borders is profound. Before and during genocide the exodus of refugees to neighbouring states typically occurs at an alarming rate, providing tense and often unsustainable conditions for the host state. Refugee camps often provide a venue for the preparation of reprisal attacks, and the organisation and arming of exiled groups present clear security issues for the host state.¹⁹ Further, absorption of the refugee population by the host or a third state is a significant and costly burden.

The United States has recently acknowledged that their traditional perspective on genocide has been misguided. On 8 December 2008 the Genocide Prevention Taskforce, co-chaired by former Secretary of State, Madeline K. Albright, and former Secretary of Defense, William S. Cohen, released *Preventing Genocide: a blueprint for policymakers* recommending steps the US government could take to prevent genocide.²⁰ According to the report, the recognition of genocide as a threat to US security, and indeed international peace and security, was long overdue. In support of their position, the report

¹⁹. See for example Medecins Sans Frontiers, 'Deadlock in the Rwandan Refugee Crisis: Repatriation Virtually at a Standstill', Special Report, 20 July 1995, available at: <http://www.doctorswithoutborders.org>.

²⁰. Full Report available at www.ushmm.org.

drafters' referred to the widespread instability that followed genocide campaigns, where exiled populations in refugee camps present vulnerable breeding grounds for extremist views and terrorist recruitment.²¹ Furthermore, the report linked contexts of instability with drug, arms, and human trafficking.²²

Why then, has the international community tolerated ineffective genocide prevention measures? Some may assume that the problems of genocide are problems of “the other”; genocide does not occur in my backyard and it is a distant or foreign problem I cannot understand or influence. But over the course of the 20th century, instances of mass killings and genocide have occurred in almost all of the world's geopolitical regions as the following examples show:

Australia. By the early 1920s British colonists in Australia had reduced the native Aboriginal population from an estimated 750,000 to just 31,000 in approximately 100 years.²³ More brutal, however, was the program of forced relocation of Aboriginal children from their biological parents to white Australian (British settler) families during the 19th and 20th century in a deliberate effort to exclude Aboriginal children from their native culture, language and customs. The policy was recognised as genocide following an in-depth report by the Australian Human Rights Commission in 1997.²⁴

Africa. At the turn of the 19th century, German colonial forces were directed to brutally annihilate the “revolting tribes” of the Hereros and Namas in

²¹ . Genocide Prevention Taskforce, *Preventing Genocide: A Blueprint for Policy-makers*, December, 2008.

²² . Ibid.

²³ . A. Jones, *Genocide: A Comprehensive Introduction* (2nd ed.) Routledge, 2006, p. 119.

²⁴ . Australian Human Rights Commission ‘Bringing them Home: A National Inquiry into the Separation of Aboriginal and Torres Strait Island Children from their Families’ 1997, available on www.humanrights.gov.au.

what is present day Namibia²⁵. Records suggest that up to 15,000 Hereros and 2,200 Namas were incarcerated in camps resulting in a loss of approximately 7,700 people²⁶. Later (1994) in the same century, Hutus killed approximately 800,000 Tutsi and moderate Hutu in Rwanda in just over 100 days. Armed with machetes and loaded on the rhetoric of the distinctly genocidal ruling party (the MRND; Mouvement républicain national pour la démocratie et le développement), the Interahamwe set up road blocks throughout the country killing, raping, and beating Tutsi civilians that tried to cross through. Tutsis and moderate Hutus sought refuge in churches and schools later the sites of fatal massacres. The scale of atrocities that occurred in Rwanda between April and July 1994 ultimately led the international community to establish an international criminal tribunal (the International Criminal Tribunal for Rwanda) in order to try the perpetrators according to international law.

The Middle East. World War I was on Turkey's doorsteps and the Allied Forces were preparing to mount their naval campaign in the Dardanelles, Turkish Army attacked the Armenian population labelled as traitors and supporters of the Russian enemy.²⁷ The first stage of what is now accepted by all nations excluding Turkey as the Armenian Genocide, targeted men capable of fighting against their Turkish counterparts. By July 1915, up to 200,000 men had been murdered.²⁸ The remaining population were transferred to the Deir el-Zor desert in Syria in a calculated effort to ensure the death of tens of thousands of civilians

²⁵. J.Bridgan, *The Revolt of the Heros*, New York, Berkley, 1981, pp.111-12.

²⁶. B. Madley, 'From Africa to Auschwitz: How German South West Africa Incubated Ideas and Methods Adopted and Developed by the Nazis in Eastern Europe', in *European Historical Quarterly*, vol. 35, no. 3, 2005, p. 43.

²⁷. A. Jones, *Genocide: A Comprehensive Introduction* (2nd ed.) Routledge, 2006, p. 155.

²⁸. M. Mann, *the Dark Side of Democracy: Explaining Ethnic Cleansing*, Cambridge University Press, 2005, p.148.

along the way.²⁹ As a final measure, some Kurdish tribesmen and the *chetes* (groups of violent prisoners responsible for killing Aegean Greeks) were released and set about killing the remaining Armenians.³⁰

Europe. The most well-known genocide – the Holocaust – requires little factual expansion. Under the direction of Adolf Hitler, between 5 and 7 million Jews in Nazi occupied Europe were killed during World War II (1939-1945).

North East Asia. Shortly after the end of World War II, Chinese and ethnic Tibetans found themselves victim to Mao Tse-tung's communist regime. Between 1949 and 1987, an approximate 35 million Chinese citizens were killed at the hands of the Communist Party of China under Mao Tse-tung. Capitalists, intellectuals, and Christians were particularly targeted, although relatively modest landowners were also among the victims.³¹ Prominent scholar and analyst of state-led mass killing, Rudolph J. Rummel, estimates that approximately 375,000 of the 35 million killed were victims of genocide.³² The overall figure of 35 million more than doubles if the 45 million deaths caused by famine between 1958 and 1962 during Mao's 'Great Leap Forward' policy were included.³³

South East Asia. Between 1975 and 1978 Cambodia's Khmer Rouge, led by Pol Pot, killed an estimated 1.7 to 1.9 million Cambodians, ethnic Vietnamese,

²⁹. A. Jones, *Genocide: A Comprehensive Introduction* (2nd ed) Routledge, 2006, p. 157.

³⁰. Many resources mentioned that some Kurdish tribesmen were involved in Armenians genocide but at the same time they have neglected the Kurdish involvement of protecting the majority of Armenians who crossed the border to Iraqi Kurdistan after World War I. For example the researcher's family helped the majority of the Armenians until his ancestry Mohammed Agha received the knighthood of Pius IX Order from Pope Pius XI in 1924 reproduced in this thesis. This is Papal award for merits in defence of the faith and sometimes it is also awarded to non-Catholics.

³¹. A. Jones, *Genocide: A Comprehensive Introduction* (2nd ed) Routledge, 2006, pp. 205.

³². R. J. Rummel, 'Power, Genocide, and Mass Murder' in *Journal of Peace Research*, vol. 31, no. 1, 1994, pp.1-10, p.3. Also see, Rummel, R.J., *Research Genocide and Mass Murder*, Honolulu: University of Hawaii, 1993.

³³. F. Dikotter, 'Mao's Great Leap to Famine' in *The New York Times* 15 December 2010.

Chinese and Muslim Chams.³⁴ The regime targeted the wealthy and the educated, and also refused to tolerate those Cambodians considered traitors of the revolution.³⁵

Application of the Convention

The word 'genocide' shakes the conscience evoking shocking images of mass destruction and human suffering. The crime of genocide involves a scale and magnitude of victims, perpetrators, and atrocities that exceeds that of all other crimes. It is rightly referred to as the 'crime of all crimes'.³⁶ The acceptance of a legal definition of genocide with the adoption of the 1948 Convention has not, however, necessarily transcribed into a seamless application of the law. Rather, the experiences of the two ad hoc International Criminal Tribunals – the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda have demonstrated the difficulty judges, lawyers, and legal commentators have in interpreting and applying the definition of genocide. Central to most debates is how to interpret the defining feature of genocide: 'specific intent'. The following section will briefly outline the background to the establishment of tribunals and the legal elements of the crime of genocide, including a discussion of some of the pertinent arguments surrounding the 'specific intent'. The experience of the Iraqi High Tribunal will also be considered with particular reference to the 'Anfal Case' concerning the prosecution of five former Ministers in Saddam Hussein's government during the genocide of the Kurds. It is noted that this thesis does not set out to analyse the Kurdish

³⁴. A. Jones, *Genocide: A Comprehensive Introduction* (2nd ed.) Routledge, 2006, pp. 289-293.

³⁵. *Ibid.*, p. 289.

³⁶. *Prosecutor v Kambanda* ICTR-97-23-S (4 September 1998) Trial Judgement and Sentence paragraph 16.

experience through a legal prospective or through the 1948 Convention. Indeed, the successful prosecution of the ‘master minds’ of the Anfal campaign has not been completed. In attempting to provide a more comprehensive account of the fate of the Kurds under Saddam’s regime, however, it has been considered necessary to provide some background to international criminal jurisprudence and evaluate how the law has influenced genocide scholarship.

Whilst the phenomena of genocide appeared to be widely discussed by international lawyers and within the newly established United Nations during the 1940s, it was not until the early 1990s that the Genocide Convention was re-considered. In 1993, following the widespread violence that occurred within the former Yugoslavia, the UN appointed a Commission of experts to investigate alleged acts of genocide and war crimes in the region. Ultimately, it was this assignment that reignited discussion on the law of genocide and the 1948 Convention.

The Commission produced two Interim Reports dated 9 February 1993 and 5 October 1993, and a Final Report dated 27 May 1994. Following the First Interim Report of the Commission of Experts, Security Council Resolution 827 established the International Criminal Tribunal for the former Yugoslavia on 25 May 1993. The ad hoc Tribunal was granted jurisdiction over the territory of the former Yugoslavia from 1991 onwards to try individuals responsible for serious breaches of international humanitarian law, violations of the laws and customs of war, genocide and crimes against humanity that had taken place with the collapse of communist structures in the region.³⁷

³⁷. Statute of the International Criminal Tribunal for the Former Yugoslavia, Articles 2, 3, 4, and 5.

The Commission's Final Report presented an important preliminary evaluation of the evidence of events that occurred within the former Yugoslavia, and an assessment of the international legal regimes that could govern prosecutions of those most responsible for the atrocities. According to the Commission, genocide did not require the extermination of an entire group, rather, the words "in whole or in part" were used to ensure genocide did not only involve killing every member of a protected group.³⁸ The Commission referred to the targeting of a group's leadership (political, religious, academic, administrative or intellectual leaders) as offering "a strong indication of genocide regardless of the actual numbers killed."³⁹ The Commission went on to advocate for a contextual analysis when determining whether or not genocide had occurred:⁴⁰

The character of the attack on the leadership must be viewed in the context of the fate or what happened to the rest of the group. If a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example deported on a large scale or forced to flee, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose... Thus, the intent to destroy the fabric of a society through the extermination of its leadership, when accompanied by other acts of elimination of a segment of society, can also be deemed genocide.

When considering the legal requirement that the victims of genocide must belong to a protected group (national, ethnic, racial or religious), the Commission adopted a broad interpretation of the Convention. Where a genocidal campaign is launched against a number of protected groups the Commission considered that

³⁸. Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992) S1994/674, 27 May 1994, Part I.

³⁹. Ibid.

⁴⁰. Ibid.

it might be appropriate to view all of the victim groups as a larger singular identity. In that regard, the analysis would turn to the actions of the perpetrating government or entity against groups that do not belong to the perpetrating state or entity. This 'one against all' carries a striking resemblance to Saddam's Arabization programme where his rhetoric promoted an Iraqi Arab versus all non-Iraqi Arab national propaganda. The Appeals Chamber of the ICTY, however, has conclusively rejected such a broad interpretation of the targeted group and it remains incumbent on the Prosecution to prove the elements of genocide in relation to each distinct target group.⁴¹

Finally, in reference to intent to commit genocide, the Commission determined that intent to destroy a group in whole or in part requires actions to be directed at a group's collective identity or capacity rather than against a number of individuals.⁴² The Commission accepted that intent will often be inferred from a number of "sufficient facts", and in some cases evidence of a perpetrator's conduct may be used to infer that they were "aware of the consequences of his or her conduct, which goes to the establishment of intent, but not necessarily motive".⁴³

Within 11 months of the establishment of the ICTY, civil war broke out in Rwanda with the shooting down of a plane carrying Rwandan President Juvenal Habyarimana and President Cyprien Ntaryamira of Burundi on 6 April 1994. The events that followed the assassination of President Habyarimana left between 500,000 and 1,000,000 ethnic Tutsi and moderate Hutu slaughtered by an

⁴¹. Prosecutor v Stakic, Case No. IT-97-24-A, Judgement AC, 22 March 2006, paragraphs 20-28.

⁴². Ibid.

⁴³. Ibid.

organised, machete wielding youth wing of the MRND government;⁴⁴ the *Interahamwe*. Similar to the procedure that led to the establishment of the ICTY, the Security Council requested the Secretary General to appoint a Commission of Experts to investigate the events that occurred in Rwanda prior to the establishment of the ad hoc Tribunal by Resolution 935 dated 1 July 1994.⁴⁵ In its final report dated 9 December 1994, the Commission concluded that there existed overwhelming evidence that Hutu elements committed genocide against ethnic Tutsi in a concerted, planned and methodical fashion.⁴⁶ Furthermore, the Commission concluded that evidence did exist of grave breaches of the Geneva Conventions and international humanitarian law by both sides (Hutu elements under the direction of the MRND government and the Tutsi led Rwandan Patriotic Front (RPF)).⁴⁷

On 8 November 1994, the Security Council passed Resolution 955 establishing the International Criminal Tribunal for Rwanda. The Tribunal was granted jurisdiction for crimes committed in the territory of Rwanda between 1 January and 31 December 1994 and, specifically, for the prosecution of individuals responsible for genocide, crimes against humanity, violations of the Geneva Conventions and international humanitarian law.⁴⁸ In its final report, the Commission of experts discussed issues relating to specific intent that they foresaw as raising issues for the ad hoc Tribunal. First, the Commission

⁴⁴. MRND is the French acronym for *Mouvement Républicain National pour la démocratie et le Développement*, or in English, the National Republican Movement for Democracy and Development.

⁴⁵. Security Council Resolution 935 (1994), 1 July 1994.

⁴⁶. Final Report of the Commission of Experts established pursuant to Resolution 935, 1994 (S/1994/1405).

⁴⁷. *Ibid.*

⁴⁸. Statute of the ICTR, annexed to Security Council Resolution 955, 8 November 1994 (S/RES/955 (1994) Articles 2, 3 and 4.

questioned whether the Tribunal could find that an accused held the necessary specific intent where the evidence suggested he or she only intended to destroy part of the national, ethnic, religious or racial group. Second, the Commission questioned how the Tribunal would distinguish between murder or mass murder, and genocide; again a question of special intent. Whilst the Commission of Experts appointed to investigate breaches of international law in the former Yugoslavia commented on their interpretation of the law of genocide, the Commission of Experts appointed to investigate the atrocities in Rwanda did no more than raise potential issues. However, it was to be the ICTR that delivered the first judgement on the law of genocide when it convicted Jean Paul Akayesu on 2 September 1998.⁴⁹ Before this judgement is discussed, it is necessary to outline the physical elements of genocide; the *actus reus*.

Actus Reus

The five acts listed in subparagraph (a) of Article II of the 1948 Convention constitute the physical elements of the crime of genocide:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group; and
- (e) Forcibly transferring children of the group to another group.

Where one or more of the above-listed acts is committed with the requisite intent – against a protected group – a finding of genocide may be made. The *actus reus*

⁴⁹. Jean-Paul Akayesu was the mayor of Taba during the Rwandan Genocide. He was convicted of genocide and direct and public incitement to commit genocide, along with crimes against humanity. See part 7 of the Trial Chamber Judgement: *Prosecutor v Akayesu* ICTR-96-4-T.

may be completed by positive commission or omission of one of the above listed acts. The *actus reus* of 'killing' involves proof that at least one person, from the target group of the genocide campaign, was killed as the result of the perpetrator's unlawful actions or those of his or her subordinate.⁵⁰ International jurisprudence has held that a body does not need to be recovered in order to prove that a death has occurred, but the fact that death has occurred can be inferred.⁵¹

Actions that constitute "serious bodily or mental harm" were not listed in the Convention and their definition has largely emerged from the jurisprudence of the ICTR and the ICTY. In *Akayesu*, the Trial Chamber held that serious bodily or mental harm includes – but is not limited to – "acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution."⁵² In *Kayishema* the Trial Chamber of the ICTR defined serious bodily or mental harm as "harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses."⁵³ At the ICTY, the Trial Chamber in *Stakic* interpreted the act as meaning, inter alia "acts of torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or injury. The harm inflicted need not be permanent or immediate".⁵⁴ The Elements of Crimes document created by the International Criminal Court references acts of torture, rape, sexual violence and inhuman or

⁵⁰. William Schabas, *Genocide in International Law, The Crimes of Crimes*, Cambridge University Press, 2000) p.179 citing Prosecutor v. Akayesu (Case No. ICTR-96-4-T), Judgment, 2 September 1998, paragraph 588.

⁵¹. Ibid., p.180.

⁵². *Prosecutor v. Akayesu* (Case No. ICTR-96-4-T), Judgment, 2 September 1998, paragraph. 503.

⁵³. *Prosecutor v. Kayishema et. al.*, paragraph. 109.

⁵⁴. *Prosecutor v. Stakic* (Case No. IT-97-24-T), Judgment, 31 July 2003, para. 516.

degrading treatment.⁵⁵ Again, the list was specifically non exhaustive. For the *actus reus* of inflicting serious bodily or mental harm to be made out, the Prosecution must prove that one or more victims – from the targeted group – suffered physical or mental harm. It is not required that the acts of violence *actually* destroy the targeted group in whole or in part.⁵⁶

Actions that deliberately inflict conditions of life calculated to bring about physical destruction include “subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirements.”⁵⁷ The Prosecution is not required to prove that the actions of the perpetrator caused the destruction of the targeted group *in fact*,⁵⁸ but must demonstrate that deliberate actions were taken that *could themselves affect* the physical destruction of the group.⁵⁹

The fourth way in which genocide may be committed is by imposing measures intended to prevent the births of children of the targeted group (Article II (d) of the Convention). The Trial Chamber of the **ICTR** in *Akayesu* discussed acts that would constitute genocide under this limb: “For purposes of interpreting Article 2(2) (d) of the Statute [and Article II (d) of the Convention, the Chamber holds that the measures intended to prevent births within the group, should be considered as sexual mutilation, the practice of sterilization, forced birth control,

⁵⁵. International Criminal Court, *Elements of Crimes* available at <http://www.refworld.org/docid/4ff5dd7d2.html> 2011)

⁵⁶. William Schabas, *Genocide in International Law, The Crimes of Crimes*, Cambridge University Press, 2000, p.187.

⁵⁷. *Prosecutor v Akayesu* paragraph 505.

⁵⁸. William Schabas, *Genocide in International Law, The Crimes of Crimes*, Cambridge University Press, 2000, p.192.

⁵⁹. International Criminal Court, *Elements of Crimes* (available at <http://www.refworld.org/docid/4ff5dd7d2.html> 2011).

separation of the sexes and prohibition of marriages.”⁶⁰ Professor William Schabas provides some important comparisons between limbs (c) and (d) in his comprehensive book *‘Genocide in International Law: The Crime of Crimes’*:

In contrast with paragraph (c), paragraph (d) does not require that the measures to restrict births be ‘calculated’ to bring about the destruction of the group in whole or in part, only that they be intended to prevent births within the group. Such measures can be merely ancillary to a genocidal plan or programme, as it was, for example in the case of the Nazis.⁶¹

Finally, the forced transfer of children from the targeted group to another group makes up the final physical element or action within the crime of genocide. This limb has received relatively little jurisprudential attention, indicating its comparative infrequency against other more prominent acts of genocide. The International Criminal Court’s Elements of Crimes document discussed the parameter of forcible transfer as not being restricted solely to physical force, but including “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, by taking advantage of a coercive environment”.⁶²

Mens Rea

In his book *Genocide: A Comprehensive Introduction*, Adam Jones carries out a thorough analysis of different social and political definitions of genocide, identifying common elements and prerequisites for a finding of genocide. Astutely, Jones concludes that the majority of scholars and legal theorists agree

⁶⁰. *Prosecutor v Akayesu*, paragraph 507.

⁶¹. William Schabas, *Genocide in International Law, The Crimes of Crimes*, Cambridge University Press, 2000, p. 201.

⁶². International Criminal Court, *Elements of Crimes* (available at <http://www.refworld.org/docid/4ff5dd7d2.html> 2011)

that intent defines genocide⁶³, but what defines intent? This is a question that continues to be debated, and perhaps will be for some time. Proving the ‘crime of crimes’ necessitates a convincing finding of an accused’s intent to carry out the most horrendous and destructive crime. The following section will present an overview of how *mens rea* or ‘specific intent’ has been interpreted and applied within the parameters of international criminal law, and some of the popular criticisms of the approach that has been adopted.

Hugo Adam Bedau, who was the Austin B. Fletcher Professor of Philosophy at Tufts University (1966-1999), offered one of the earliest interpretations of the Genocide Convention’s specific intent requirement, in his article “Genocide in Vietnam?”⁶⁴ In trying to determine whether the United States was guilty of genocide during the Vietnam War, Bedau first attempted to discern the meaning of genocide as put forth by the Genocide Convention. According to his essay, genocide can be divided into two parts: (1) the *actus reus* which includes the genocidal acts as enumerated in (a)-(e) of Article II; and (2) the necessary genocidal intent.⁶⁵ In Bedau's view, one could only be found guilty of genocide if the perpetrator had committed one of the enumerated acts and had the specific intent to destroy the national, racial, ethnic or religious group as such, in whole or in part he says:

It is not enough to kill persons belonging to a different race or religion, but these murders must be committed as part of a plan to destroy the given group [...] Where such specific intent is lacking there is no genocide.⁶⁶

⁶³. A. Jones, *Genocide: A Comprehensive Introduction* (2nd ed.) Routledge, 2006, p. 37.

⁶⁴. H. A. Bedau, ‘Genocide in Vietnam’, *Boston University Law Review*, 1973, pp. 574-622.

⁶⁵. *Ibid.*, p. 580.

⁶⁶. Testimony of the deputy Legal advisor to the US State Department, in 1970 Genocide Hearings 44.

In a 1991 report, the International Law Commission explained that the prohibited acts must be “volitional ... general intent to commit one of the acts ... and general knowledge of the consequences of such acts on immediate victims in not enough”.⁶⁷ Thus, the actor must have knowledge of the ultimate objective of the massive criminal conduct,⁶⁸ such that the actor’s purpose is the destruction of a nation, racial, ethnic or religious group, i.e. one’s action must be carried out with purpose.

More recently, the definition of ‘specific intent’ to commit genocide has been tested and applied in the two ad hoc Tribunals, the ICTR and the ICTY (and by the Iraqi High Criminal Court IHCC). The jurisprudence of the three Tribunals has placed a firm emphasis on the requirement that the prosecution establishes that each accused held a ‘specific intent’ to destroy a protected group in whole or in part. Knowledge of a higher plan or policy to cause such destruction – without evidence of the defendants’ own intent as to the destruction of a group – has failed to secure convictions for genocide. Within legal commentary, a division has developed between those that support the Tribunal’s ‘*purpose*-based’ inquiry, from those advocating for a ‘*knowledge*-based’ approach, where an accused may be found guilty of genocide based on his/her knowledge of the effect of overarching plan or policy, but where they lack personal genocidal purpose.⁶⁹

The adopted *purpose*-based approach looks directly to the words of the 1948 Convention and the common law concept of *dolus specialis*.⁷⁰ The inquiry

⁶⁷. Ibid.

⁶⁸. Robinson, Nehemiah, *The Genocide Convention: A Commentary*, 63, New York: Institute of Jewish Affairs, 1960.

⁶⁹. A prominent campaigner for this approach is Alexander Greenwalt’s ‘Rethinking Genocidal Intent: The Case for a Knowledge-Based Approach’ in number 99 *Columbia Law Review*, 2259, 1999.

⁷⁰. William Schabas, *Genocide in International Law, The Crimes of Crimes*, Cambridge University Press, 2000, pp. 256-260.

seeks proof that an accused carried out one or more of the prohibited acts with the intent that in doing so, the targeted group would be destroyed in whole or in part. Put differently, the specific interpretation asks whether an accused held the aim of precluding the survival of the targeted group as a distinct, identifiable unit. The International Law Commission (ILC), in commenting on its Code of Crimes against the Peace and Security of Mankind, stated, in this regard:⁷¹

The prohibited acts enumerated in subparagraphs (a) to (c) are by their very nature conscious, intentional or volitional acts which an individual could not usually commit without knowing that certain consequences were likely to result. These are not the type of acts that would normally occur by accident or even as a result of mere negligence. However, a general intent to commit one of the enumerated acts combined with a general awareness of the probable consequences of such an act with respect to the immediate victim or victims is not sufficient for the crime of genocide. The definition of this crime requires a specific intent with respect to the overall consequences of the prohibited acts.

Because – as a general rule – *genocidaires* do not go about documenting their guilt, proof of specific intent is often deduced or inferred from circumstantial evidence. This is not to be misunderstood as a dampening of the legal requirement as to intent. The ICTR has ensured that reliance on circumstantial evidence in proving intent is made only when no other reasonable explanation exists.⁷² Facts deemed relevant to a finding of intent based on circumstantial evidence include “the general context, the perpetration of other culpable acts systematically directed against the same target group, the scale of atrocities

⁷¹. ‘Report of the International Law Commission on the Work of Its Forty-Eighth Session’, 6 May-26 July 1996, UN Doc. A/51/10, 88, p.87.

⁷². *Nahimana et al. v. Prosecutor* (Case No. ICTR-99-52-A) Appeals Chamber Judgment, 28 November 2007, paragraph 524.

committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts”.⁷³

Whilst the existence of a plan or policy to commit genocide is not a legal element of the crime found in the 1948 Convention, it has nevertheless found itself to be crucial to a successful genocide conviction. Indeed, Professor William Schabas has noted that no court has ever rendered a genocide conviction in the absence of evidence of a plan.⁷⁴ This is in large part due to the fact that it seems impossible that genocide – a crime characterised by atrocities on a massive scale – could be committed without a plan. It is therefore unsurprising that the Trial Chambers of the ad hoc Tribunals typically consider the existence of an organised plan or policy and evaluate the accused’s intent based on his or her knowledge of, and subscription to the plan.⁷⁵

In contrast to the *purpose*-based approach, the *knowledge*-based approach directs its inquiry not to the goal or aim of an individual accused, but to whether or not an accused had knowledge of the overarching plan or policy when they committed one of the prohibited acts listed in subparagraphs (a) to (e).⁷⁶ Alexander Greenwalt is a known advocate of the *knowledge*-based approach. In a comprehensive article ‘Rethinking Genocidal Intent’, Greenwalt proposes an alternative to the *purpose*-based approach:

In cases where a perpetrator is otherwise liable for a genocidal act, the requirement of genocidal intent should be satisfied if the perpetrator acted in furtherance of a campaign targeting members of a protected group and knew that the goal or manifest effect of

⁷³. *Prosecutor v Jelusic* (IT-95-10-A) Trial Chamber Judgment, 5 July 2001, paragraph 47.

⁷⁴. William Schabas, *Genocide in International Law, The Crimes of Crimes*, Cambridge University Press, 2000, p. 267.

⁷⁵. *Ibid.*, p. 247.

⁷⁶. *Ibid.*, p. 264.

the campaign was the destruction of the group in whole or in part.⁷⁷

In support of this approach, Greenwalt refers to the overall purpose of the Genocide Convention as contained in its preamble: to prevent the permanent losses to humanity caused by genocide. Rather than focusing on what may have led a perpetrator to commit acts of genocide, Greenwalt suggests that a *knowledge*-based approach emphasises the destructive result of genocide, offering a more objective standard of liability.⁷⁸ For Greenwalt, the *mens rea* element of the crime would be met where a perpetrator selects members of a protected group on the basis of their group identity, and has knowledge of the destructive consequences of their actions on the survival of that group.⁷⁹

However, this proposal has been criticised for its potential to blur the line between genocide and crimes against humanity. David Phillips argues that broadening the scope of intent to include what he refers to as a '*results*-based' analysis will run the risk of including certain crimes against humanity within the ambit of genocide.⁸⁰ To be guilty of a crime against humanity, a perpetrator must commit one of the eleven prohibited acts as part of a widespread or systematic attack against a civilian population, with knowledge of the attack.⁸¹ According to this school of thought, the wording of the genocide definition "*with intent to destroy in whole or in part*" demands a much higher threshold than "*with knowledge of the attack*".

⁷⁷ A. Greenwalt, 'Rethinking Genocidal Intent: The case for a knowledge-based interpretation' *Columbia Law Review* 99 (1999) 2259-2294.

⁷⁸ *Ibid.*, p. 2288.

⁷⁹ *Ibid.*, p. 2289.

⁸⁰ D. Phillips, 'Clarifying Genocidal Intent: A New Interpretive Doctrine' (2011) http://works.bepress.com/david_phillips/1, accessed March 2013.

⁸¹ Rome Statute of the International Criminal Court, Article 7.

The Iraqi High Criminal Court

Although Kurdish genocide is not an internationally accepted and discussed event like the genocide against the Jews during the Holocaust, or against the Tutsi in Rwanda, the prominent perpetrators of the *Anfal* campaign, the genocide of Faylee Kurds, the genocide of the Barzani Kurds, and the Halabja chemical attack, have not avoided prosecution. On 10 December 2003, the Iraqi Interim Governing Council adopted the Statute of the Iraqi Special Tribunal IST (later re-named the Iraqi High Criminal Court IHCC). Described as an “internationalised domestic court”, the Court was provided with jurisdiction to try Iraqi citizens and residents for alleged acts of genocide, crimes against humanity, war crimes, serious violations of the laws of war, and violations of stipulated Iraqi laws.⁸² The temporal jurisdiction of the Court covered the period of Ba’ath rule 17 July 1968 – 1 May 2003 when President George W. Bush announced that major combat operations in Iraq had ceased.⁸³

The Statute establishing the Court provided that it would be guided by the jurisprudence of the ICTY, the ICTR and the ICC, and foreign expertise (particularly from the US) played a significant role in the training and appointment of judges, prosecutors and defence counsels.⁸⁴ However, the Court retained its former internal structure with the inclusion of the jurisdiction for crimes established in the 1958 Iraqi Criminal Code (including the crime of wastage of natural resources and the squandering of public assets), this in addition, due to its location in Baghdad.⁸⁵

⁸². The Statute of the Iraqi Special Tribunal, 10 December 2003, Articles 11-14.

⁸³. <http://www.hrcr.org/hottopics/iraqitribunal.html>

⁸⁴. Newton, M. and Scharf, ‘The Iraqi High Tribunal’s Dujail Trial’ in *American Society of International Law*, Dec. 2006, vol. 10, 34) available on www.asil.org

⁸⁵. Ibid.

The first trial conducted by the Iraqi High Criminal Court was the Dujail trial where the Prosecution alleged that Saddam Hussein, and seven co-accused, were guilty of crimes against humanity and war crimes for the “widespread and systematic attacks” on residents of Dujail following the attempted assassination of Saddam Hussein in the Salahaddin region – Dujail subdistrict in 1982.⁸⁶ The prosecution alleged that, between 1982 and 1985, up to 800 civilians were forcibly detained, tortured, and transferred to different internment facilities as part of official retaliations for the assassination attempt.⁸⁷ Over 100 men were executed in 1985.⁸⁸ On 5 November 2006, The Court convicted Saddam Hussein and his seven co-accused (three former Senior Government Officials, and four former Ba’ath party members) for crimes against humanity in the form of torture, forced deportation, imprisonment, wilful killing, and other criminal acts.⁸⁹

Prior to the Tribunal’s first judgement in the Dujail case, the second major trial to take place before the Court – the Anfal trial – commenced on 21 August 2006. The prosecution alleged that Saddam Hussein, his cousin, Ali Hassan-al-Majid, and five co-accused involved in the Anfal campaign; planned, authorised, and implemented a series of large scale attacks against Kurdish population in northern Iraq in 1988 causing the death of 182,000 Kurds through the deliberate and repetitive use of chemical weapons, the forced displacement of thousands of

⁸⁶. Human Rights Watch, ‘Judging Dujail: The First Trial before the Iraqi High Tribunal’, Report 18/9, November, 2006, p. 2.

⁸⁷. Ibid. According to the researcher’s own fieldwork, the location of the internment facilities to which the Dujali people were transferred include the Samawa Governorate, Busaya sub district (Lat: N30.113333 Long: E46.108889), Shihiyal (Lat N29.90000 Long: E45.45000), and Layyahh (Lat: N29.85556 Long: E45.95000) concentration camps. For the location of these concentrate camps see appendix no. (2) of this chapter.

⁸⁸. Ibid.

⁸⁹. B. Van Esveld, ‘The Anfal Trial and the Iraqi High Tribunal’, Report of the International Centre for International Justice, 2009, available on www.ictj.org It is outside of the scope of this essay to discuss the Dujail trial, or the Tribunal’s judgement, in any detail. It must be noted, however, that the trial did receive international criticism, particularly in relation to the protection of fair trial rights.

civilians, and the destruction of Kurdish villages and infrastructure.⁹⁰ The Court convicted seven high Iraq officials including Saddam Hussein on the 24th June 2007. The Cassation Chamber confirmed the convictions on 4 September 2007 although the first bill of indictment was released for 424 accused Iraqis.⁹¹

The Dujail case and the Anfal trial raised concern within the international community. The Court's written judgement has been described by one prominent commentator as "frequently unclear in its logic, rambling in its analysis, disorganised, and occasionally lacking discussion of the elements of some of the crimes".⁹² However, despite their limited experience in dealing with this kind of complex trials, the overwhelming task of the Court's judges and Counsels has been fairly acknowledged.⁹³

It is outside of the scope of this thesis to discuss the achievements and shortcomings of the Iraqi High Criminal Court in any detail. The author, instead, sets out to present an account of what occurred in Iraqi Kurdistan under the Ba'ath rule. The significance of the trials to this research is the fact that they represented the first official Iraqi forum in which all aspects of the campaigns were heard together in a genuine effort to record the horrifying events that took place in Iraqi Kurdistan during the Ba'ath rule under Saddam Hussein.⁹⁴

The Court found that Saddam Hussein's trusted cousin, Ali Hassan al-Majid (known as 'Chemical Ali'), was the "absolute leader of the northern area"

⁹⁰. Prosecutor's Opening Statement 21 August 2006, recorded by Van Esveld, 'The Anfal Trial and the Iraqi High Tribunal' Report of the International Centre for International Justice, 2009, available on www.ictj.org

⁹¹. See appendix No. 2 of this chapter for Anfal Case Cassation Panel Opinion.

⁹². Trahan, J. 'A Critical Guide to the Iraqi High Tribunal's Anfal Judgment: Genocide against the Kurds' in *Michigan Journal of International Law*, 2009, pp. 305-412.

⁹³. Ibid. p. 315.

⁹⁴. The Court heard the testimony of 77 witnesses, 9 'fact' witnesses, 1 forensic expert, admitted 4935 documents into evidence, the evidence of the accused themselves, and 5 witnesses called by the Defence, Trahan, pp. 311-313.

during the *Anfal* campaign.⁹⁵ He was convicted of genocide as a principal perpetrator on the basis of his membership and participation in a joint criminal enterprise with Saddam Hussein and others.⁹⁶ Unfortunately, the Court dropped the case against Saddam Hussein after he was executed in December 2006. The Court nevertheless found that Ali Hassan al-Majid was criminally responsible for ordering others to commit genocide.⁹⁷

Ali Hassan al-Majid was held to be criminally responsible for three acts or underlying crimes of genocide: killing members of the Kurdish ethnic group; causing serious bodily or mental harm to members of the Kurdish ethnic group; and deliberately inflicting on the Kurdish ethnic group living conditions calculated to bring about their physical destruction in whole or in part.⁹⁸ Although the Trial Chamber's Judgement has been criticised for its lack of clarity and coherence, Jennifer Trahan, who established that the convictions appeared well founded, carried out a comprehensive review of the Chamber's factual findings but without challenging the validity of the convictions based on the lack of fairness of the court.

Alternatives to the Legal Definition

In his *Genocide: A Comprehensive Introduction*, Adam Jones, following a new, comparative approach to genocide studies, states:

I see genocide as inseparable from the broad thrust of history, both ancient and modern – indeed, it is among history's defining features, overlapping a range of central historical processes: war, imperialism, state-building, class struggle. I perceive it as intimately linked to key institutions, in which states or broadly political authorities, are often

⁹⁵. *Al Anfal Trial Chamber Judgement*, Case No. 1/CSecond/2006, at para.478, cited by Trahan on page 320. This relied on Revolutionary Council Decree dated 29 March 1987, No. 160.

⁹⁶. *Al Anfal Trial chamber Judgement*, para. 517.

⁹⁷. *Al Anfal Trial Chamber Judgement*, para. 512.

⁹⁸. *Al Anfal Trial Chamber Judgement*, para. 517.

but not always principal actors: forced labor, military conscription, incarceration, and female infanticide.⁹⁹

Adam's approach is innovative because it overcomes what he considers a more conservative approach in the 1980's and 1990's proposed by researchers such as Leo Kuper's *Genocide: Its Political Use in the Twenty Century* (1981) or, more recently, *The History and Sociology of Genocide by Frank Chalk and Kurt Jonahsson* (1990).

One of the advantages of Jones' innovative approach is that, by comparing different cases, he broadens the definition of genocide and in doing so, he points out the ambiguities inherent to the original ones approved by the UN in 1948. In his book he offers an overview of the definitions of genocide proposed by different researchers from Peter Drost in 1959 to Steven Katz in 1994.¹⁰⁰ It is not a purpose of this study to analyse its evolution through modern history, but it is evident that Jones' approach means a breakthrough in the field for its inclusion and discussion on the validity of the definition approved in 1948 in the light of the new dramatic events of the last few decades since the 1970's. It is evident, and this is a point that will be adopted by this study, that Jones favours a more sociological approach to the topic of genocide focusing on the consequences that the act has on the population and on the different strategies of genocide.

One of the fundamental differences taken by sociologists, political scientists and other 'non-legal' scholars of genocide is the expansion of groups that may be victims of genocide. Whilst the 1948 Convention limits the victims of genocide to ethnic, national, religious or racial groups, contemporary scholars

⁹⁹. A. Jones, *Genocide: A Comprehensive Introduction* (2nd ed.) Routledge, 2006, p. xxvii.

¹⁰⁰. Ibid.

advocate for a significant widening of groups that may suffer genocide.¹⁰¹ Notably, Jones adopts a modified version of Steven T. Katz's 1994 definition of genocide: "[Genocide is] the actualisation of the intent, however successfully carried out to murder [*in whole or in part*] any national, ethnic, racial, religious, political, social, gender or economic group, as these groups are defined by the perpetrator, by whatever means."¹⁰²

Definitions of genocide outside of the 1948 Convention also depart from the distinct acts of genocide enumerated in subparagraph II of the Convention (discussed as the *actus reus* above). Rather than limit the 'strategies of genocide' to only those acts listed in the Convention, genocide scholars have favoured a definition arguably more reflective of Lemkin's initial work:

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except where accomplished by mass killings of all members of a nation. It is intended rather to signify a co-ordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion and the economic existence of national groups, and the destruction of personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.¹⁰³

Techniques of Genocide

Raphael Lemkin (1945) wrote in the article presented to the United Nations that there are many techniques used in torturing and committing genocide against a national, racial, ethnic or religious group. He put forward the following techniques and applied them directly to the experience of Nazi Germany:

¹⁰¹. For a concise summary of different definitions of genocide see Jones, pp. 16-25.

¹⁰². See A. Jones, p. 24, the italic are mine.

¹⁰³. R. Lemkin, *Axis Rule in Occupied Europe* (1944), p.79.

1) **Political:** The Political cohesion of the conquered countries was intended to be weakened by dividing them into more or less self-contained and hermetically enclosed zones, as in the four zones of France, the ten zones of Yugoslavia, the five zones of Greece by partitioning their territories to create puppet states such as Croatia and Slovakia; and by detaching territory for incorporation in the Greater Reich, as was done with western Poland, Alsace-Lorraine, Luxembourg, and Slovenia. Artificial boundaries were created to prevent communication and mutual assistance by the national groups involved.

2) **Social:** The social structure of a nation is vital to its national development. Therefore the German occupant endeavoured to bring about changes that weakened national spiritual resources. The focal point of this attack had been the intelligentsia, because this group provided leadership. In Poland and Slovenia the intellectuals and the clergy were to a large extent either murdered or removed for forced labour in Germany. Intellectuals and those resistant of all occupied countries were marked for execution. Even among the blood-related Dutch some 23,000 were killed, the greater number of them being leading members of their communities.

3) **Culture:** The Germans sought to obliterate every reminder of former cultural patterns. In the incorporated areas, the local language, place names, German inscriptions supplanted personal names, public signs and inscriptions. German was to be the language of the courts, of the schools, of the government and of the street. In Alsace-Lorraine and Luxembourg, French was not even permitted as a language to be studied in primary schools. The function of the schools was to preserve and strengthen Nazism. Attendance at a German school was compulsory through the primary grades and three years of secondary

school. The same techniques had applied to Kurds by Iraqi regime in all over Kurdistan before 1991.

4) **Religious:** Wherever religion represented a vital influence in the national life, the spiritual power of the Church was undermined by various means. In Luxembourg law against criticism protected children over 14 if they should renounce their religious affiliations for membership in Nazi youth organizations. In the puppet state of Croatia an independent, but German-dominated, Orthodox Church was created for Serbs in order to destroy forever the spiritual ties with the Patriarch at Belgrade. With the special violence and thoroughness reserved for Poles and Jews, Polish church property was pillaged and despoiled and the clergy subjected to constant persecution.

5) **Moral:** Hand in hand with the undermining of religious influence went devices for the moral debasement of national groups. Pornographic publications and movies were foisted upon the Poles. Alcohol was kept cheap although food became increasingly dear, and peasants were legally bound to accept spirits for agricultural produce. Although under Polish law gambling houses had been prohibited, German authorities not only permitted them to come into existence but relaxed the otherwise severe curfew law.

6) **Economic:** The genocide purpose of destroying or degrading the economic foundations of national groups was to lower the standards of living and to sharpen the struggle for existence that no energies might remain for a cultural or national life. Jews were immediately deprived of the elemental means of existence by expropriation and by forbidding them the right to work. Polish property in western Poland was incorporated confiscated and Poles denied licenses to practice trades or handicrafts, thus reserving trade to the Germans.

7) **Biological:** The genocide policy was far-sighted as well as immediate in its objectives. On the one hand an increase in the birth rate, legitimate or illegitimate, was encouraged within Germany and among the *Volksdeutsche* in the occupied countries. Subsidies were offered for children born from German military men and women of related blood such as Dutch and Norwegian. On the other hand, every means to decrease the birth rate among "racial inferiors" was used. Millions of war prisoners and forced labourers from all the conquered countries of Europe were kept from contacting their wives.

8) **Physical:** The most direct and drastic of the techniques of genocide was murder. It may have been slow and indirect murder by mass starvation or the swift but no less scientific murder by mass extermination in gas chambers, wholesale execution or exposure to disease and exhaustion. Food rations all territory under German domination were established on racial principles, ranging in 1943 from 93 per cent of its pre-war diet for the German inhabitants to 20 per cent of its pre-war diet for the Jewish population. A carefully graduated scale allowed protein rations of 97 per cent to German, 95 per cent to the Dutch, 71 per cent to the French, 38 per cent to the Greeks and 20 per cent to the Jews.

These categories constitute a starting point for an analysis of the different ways in which Kurdish people have been victims of genocide from a social and political point of view. Using the findings of his fieldwork along with secondary sources, the researcher intended to apply these same categories and to add new ones where the particular circumstances suggested it.

Stages of genocide

In 1998 Gregory H. Stanton, the president of Genocide Watch presented a paper at the United States State Department in which he explained that there are eight stages through which the causes and conditions for genocide develop and gradually degenerate into genocide. For genocide to happen there must be certain preconditions, including a national culture that does not place a high value on human life. Assuming that the government is authoritarian or totalitarian, such stages are the following:

1. **Classification:** The main preventive measure at this early stage is to develop universalistic institutions that transcend divisions. People are categorized by type, and classified into different groups, such as whites, blacks, Asians; or into Christians and Jews; or into communists, leftists, or rightist; or into Arab or Kurds, Ba'athist or non-Ba'athist, Ottoman origin or Savawian origin. In Kurdish case there were also sub classifications like Barzani Kurds and Faylee Kurds. People are divided into "them" and "us". Kurdish history demonstrates that the Iraqi state, since its creation by the League of Nations (who won World War I most notably the British), has always classified Kurds as a distinct ethnic minority. King Faisal I, the first King of Iraq who reigned from 23 August 1921 to 8 September 1933, mentioned in his speech at his inauguration that Iraq consisted of groups of people, with different background and ethnic origins, a trend still visible nowadays in Iraqi society. It was only in 1924 that 'Iraqi Nationality Law' identified Iraqis of Ottoman and Iranian origin.

2. **Symbolization:** Different groups are given names, such as Chinese, Jews, Hindus, or Marxists. Particular clothes, (like a Turban), their food (like rice), physical characteristic (like long noses), or behaviour (like inscrutable) may

become ways of stereotyping the group's members. In Iraq, the Ba'athist regime distinguished Kurds from non-Kurds by classifying them as 'traitors to the regime' or as supporters of Iraq's adversaries, Iran and Israel. In the context of the Iraq-Iran war, Kurds were portrayed by Saddam's regime as "a Trojan horse, working for an Iranian victory" and thus traitors to the State of Iraq (McDowall pp. 352-3). Also through their history they labelled and symbolized Kurds as "rebels", "Fifth columnist", "saboteur", "destructive", and often "separatists".

3. **Dehumanization:** Members of the out-groups or targeted group are dehumanized, as in calling them apes, monkeys, cockroaches, parasites, rats, vermin, traitors, treacherous, disloyal and the like. In this way, members of the out-group are made to appear clearly outside of "our" moral universe. As vermin and such, members of the out-group have been stripped of the moral in-group protection against extermination. The use of the term '*al-anfal*' by Saddam's regime to describe their campaign to end Kurdish resistance evokes images of human inferiority, particularly to Muslim audiences in Arab and Kurdish Iraq. The historical reference '*al-anfal*' refers to a holy war in which the Prophet Mohammed led a battle to kill non-believers (*anfals*). The forced deportation and killing of Faylee Kurds, the second punishment and genocide of Barzani Kurds, all atrocities committed during Anfal campaign were great examples of Iraqi regime's dehumanization performance.

4. **Organization:** Officials, sympathetic in-group leaders, and intellectuals organize to repress, murder out-group members, or entirely destroy the dehumanized group. Weapons are stacked or handed out; militia, security forces, or military are selected and trained; preliminary plans are made in order to carry out the killings. Genocide cannot occur without a 'killing machine'. As will be

addressed in the following chapters, Saddam's regime ensured they had developed the army's technical skills, intelligence and security, and an air force capable of convincingly suppressing any uprisings against the regime. Whilst the interference of Iran in Iraqi affairs attracted considerable attention, Saddam was equally concerned with internal threats to his regime. After determining that Kurdish resistance in the north of Iraq had become intolerable, Saddam as the Chairman of Revolutionary Command Council and president appointed his cousin, General Ali Hasan al Majid to 'deal with' the Kurdish problem.¹⁰⁴

5. **Polarization:** Officials, extremists, propagandists, or demagogues undertake a systematic campaign to maximize the social, psychological, and moral distance between "us" and "them". At this stage, moderate intellectuals and leaders are silenced either through intimidation, beatings, arrests, and assassination. In most totalitarian regimes the neutral or the moderate groups are silent mainly in divided or fragmented society like Iraq and the best encouragement for dictators is the silence of the majority.¹⁰⁵

6. **Preparation:** All is ready for genocide and the final step is to tag those to be killed. They may be forced to wear identifying cloths or symbols, or be segregated in ghettos. Those who might lead the resistance to genocide, such as

¹⁰⁴. After the 1958 Revolution, Iraq had a series of interim or temporary constitutions. The Revolutionary Command Council as a legislative power came into being in 1963, pursuant to Law No. 25 of 1963 which was replaced by Law No. 61 of 1964, amended by Law No. 173 of 1964 and then repealed by Law No. 137 of 1965. Under the 1970 interim constitution, the Revolutionary Command Council (**RCC**) was declared in Article 37 to be "the supreme institution in the state". It was the highest legislative authority in Iraq, headed by Saddam Hussein. While Saddam involved himself personally in operational aspects of all genocides against Kurds through the Office of the Presidency of the Republic, supreme powers for handling Kurdish affairs between 1987 and 1989 were vested in his cousin, Ali Hassan Al-Majid. See RCC decree No. 160 on 29 March 1987 and RCC decree No. 244 on 20 April 1987. See Appendix No. (3) of this chapter.

¹⁰⁵. Batatu H. *The Old Social Classes and The Revolutionary Movement in Iraq*, London: Saqui, 2004.

young men, may be conscripted into the military and segregated for subsequent execution, or simply jailed. General Ali Hasan al Majid, arguably the man driving the genocide against the Kurds, declared large areas of Kurdish land as prohibited areas. In article 5 of his memo no. 4008 dated 20th June 1987, General Hassan al Majid declared: "Within their jurisdiction, the armed forces must kill any human being or animal present within these areas." He also ordered to take action in order to cut off the *Peshmergas* from any source of food or shelter.

7. **Extermination:** It is genocide to the killers because they do not believe their victims to be human. They are always extreme in their implementation and they forget that their victims are human beings.

8. **Denial:** The last stage is the perpetrator's denial of their genocide. They deny that they committed any crime. They destroy or hide the relevant official evidence, burn bodies, leave unmarked graves or invent a reasonable rational for the killing. The denial by itself is a crime. Arguably, denial is the most important stage of any genocide. The more perpetrators deny their involvement – or the more acts of genocide remain unrecognized by the national and international community – the more intangible justice is for the victims. The Kurds were presented as an intractable problem where the only solution was extermination. The process of isolating, stereotyping, and dehumanizing Kurds meant that those involved in the task of killing Kurdish populations believed they were not committing a 'crime', but admirably participating in a holy war in the name of Iraq or of the Ba'ath party. Perhaps one striking example of Iraqi denial is the failure of any former state combatants to come forward and admit their part in the genocide, or even those who observed acts of genocide to provide their accounts not even after 42 years (1971-2013) the Faylee Kurds genocide, 30 years (1983-

2013) the Barzani Kurds genocide and 25 years (1988 - 2013) the Anfal campaign no one from the Iraqi army or the Ba'ath party members has come forward or admitted their participation in the genocides.

History of genocide in Iraq

In order to provide a new analysis of Kurdish genocide it is necessary to refer back to Adam Jones' approach to genocide mentioned at the beginning of this chapter in which he leaves some legal ground in favour of an historical and sociological approach. This study aims to review the case of Kurdish genocide following the same path by analysing the gaps in the investigations left by the Court due to its lack of international supervision and support. In order to achieve this goal it is necessary, as Jones did in his study, to forget for a moment the various definitions of genocide offered by different scholars since the fifties, where most of the emphasis was on the physical suppression of the victims, and to refer back to the original categories of genocide strategies proposed by Lemkin in the analysis of the German occupation in Europe. In his revision of Lemkin's work, talking about different definitions of genocide, Jones states that:

Crucially, there is a growing agreement that group “destruction” must involve mass killing and physical liquidation (see, e.g., Fein [1993], Charny, Horowitz, and Katz/Jones). But to repeat: this is not a feature of either Raphael Lemkin's original formulation or of the UN Convention. In both these definitions, mass killing is only one of the panoply of strategies, available to *génocidaires*; the emphasis is on the destruction of the group “as such”, not necessarily the physical annihilation of its members. (Jones, p 24.)

Iraq has its own philosophy of genocide from the early years of its creation until 2003. This is due to many factors; its tribal nature,¹⁰⁶ the sociological structure,¹⁰⁷

^{106.} Ali Alwardi, *Social Glimpses of Modern Iraqi History: The Ottomans, Safavids and Mamluks* (Baghdad, 1969). His first volume of *Social Glimpses of Modern Iraqi History* is a detailed

and psychological nature of society,¹⁰⁸ of the ruling administrations in Baghdad. After 1975, the Iraqi government transformed an ancient barbarity into a principle (policy) of government by justifying genocide as a sacred purpose of the Iraqi people. Arab Ba'ath Socialist Party was the doctrine of the biological superiority of the Iraqi people. Long before the Iraq – Iran war the Ba'ath leaders were announcing to the world and conducting propanganda campaign aimed at the Iraqis themselves about the program of genocide they had elaborated. Saddam Hussein and his associates like Hitler, von Rundstedt and the official Nazi philosopher Alfred Rosenberg seemed convinced that history and the mission of the future no longer meant the struggle of class against class, or the struggle of dogma against dogma, but the clash between blood and blood, race and race. As the Iraq war machine placed more and more occupied areas under the full control of Ba'ath authorities; Kurdish civilian populations found themselves exposed to the bloody and methodical applications of the Ba'ath regime's systematic plan of genocide. In Iraq the situation was not far from German's philosophy of genocide. The Ba'ath party in Iraq (1963-1991) was adopting the system of Arabization against all non-Arab peoples or ethnicities (mainly Kurds) in the country. If not all "others" were considered as enemies or a threat to national interests or part of conspiracy against the state.

analysis of Iraqi politics, history, culture and society between the rises of the Ottoman Empire to the demise of the Mamluks in the mid-19th century. Influenced by Ibn Khaldun, William Ogburn and Robert MacIver, al-Wardi argues that the conflict between nomadism and urbanity and the dual personality of the Iraqi individual, all combine to explain the nature of Iraqi society. Al-Wardi also argues that Iraq has always been plagued by sectarianism ever since the introduction of Islam itself, but the violence peaked during the Ottoman-Safavid war that raged for almost three centuries. Iraqis saw these powers not as foreign invaders, but as vanguards of their respective faiths. Al-Wardi focuses on the societal aspect of this turbulent era in Iraqi history. His arguments are informed by sociological theory, archival material and, most interestingly, personal experience and observation.

107. Batatu, H. *The Old Social Classes and The Revolutionary Movement in Iraq*, London, Saqui, 2004.

108. Saad Ubaidi, *Psychological and Political Reading of Iraq after the Change*, Beirut: Arab Scientific Publisher, 2007, pp. 293-302.

Similarity can easily be found between the Kurdistan and the Rwanda cases in the issues related to intent. In fact, the Iraqi leaders had knowledge of and then preached about killing and deportation of Fyilee Kurds (1971 – 1980), massacre of Barzani Kurds (1983), conduct Anfal Campaign (1987-1988) and the use of chemical weapons in Kurdistan in 1988, as Akayesu had in Rwanda. In order to analyse further the condition and mechanism of Genocide against Kurds in Iraq, it is necessary to introduce a brief history of the Kurds in Iraq.

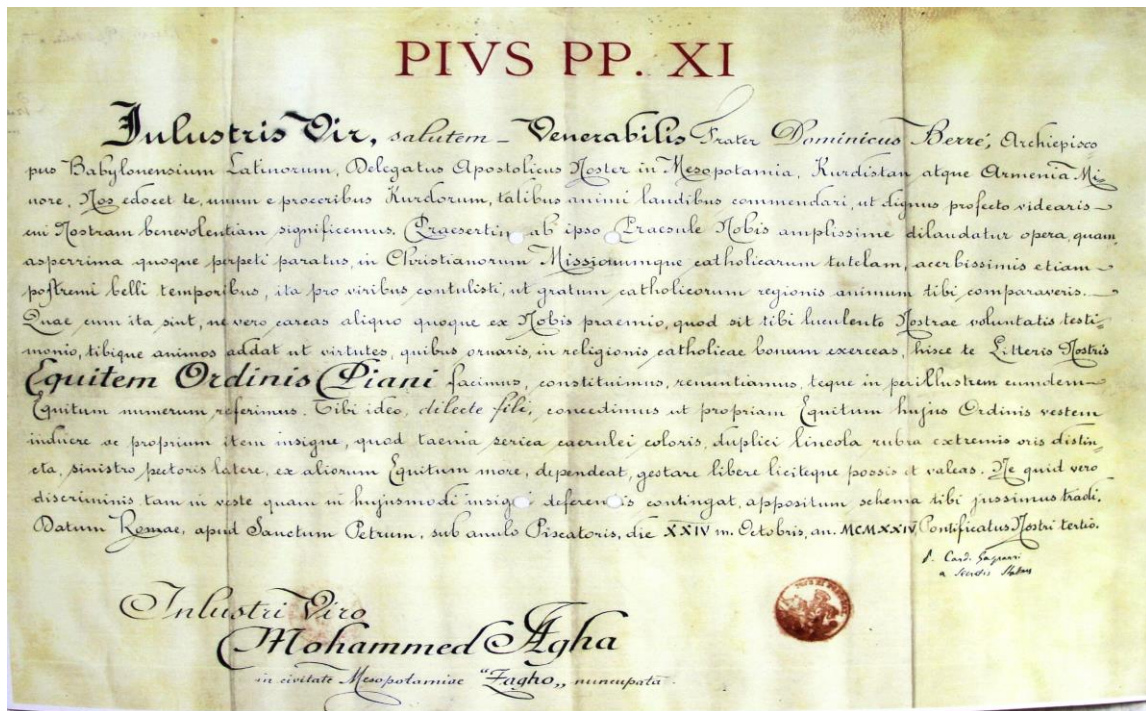


Figure 5 Copy of the medal received by the researcher ancestry from Pope Pio XI in 1924 based on the family attitude on protecting Armenians.

Dear Sir, greetings. The venerable brother Domenico Berre' bishop of Babylonia, apostolic ambassador in Mesopotamia, Kurdistan and Armenia Minor, informed us that you, the only one among the Kurdish nobility, are worth of our praise. In particular, our representative, praised your heroic commitments in saving the Christians and in defending the Catholic mission in the darkest times of war, you devoted so much to men that you conquered the gratitude of the Catholics of the region. And to show you our immense gratitude as testimony of our will, and since add to your courage those virtues proper of religion and you practice the good values of Catholicism, we proclaim you Knight of the Piano Order and we count you within the number of those illustrious knights. And in the same way, beloved son, we grant you the honour to wear the uniform of the order as well as the correspondent silk blue ribbon decorated with a double red line, on the left side of the uniform, according to the custom of other knights, so you can wear it freely and legally. In order for this to happen according we ordered for it to be delivered to you.

Dated in Rome, sealed with Saint Peter's ring, on 24 October 1924 of our third Pontificate.

To the illustrious

Mohammed Agha Mayor of Zakho.

Chapter Three

Kurds in Iraq from Creation to Genocide

Introduction

This chapter offers an overview of the Kurdistan question from 1921 to 1988 with a particular emphasis on the influence that foreign powers had on its self-determination. It will analyse the two important treaties, the treaty of Sèvres and the treaty of Lausanne which constituted the basis for the geographical division of the Kurdish population into four different countries: Turkey, Syria, Iran and Iraq. Special attention will be given to the historical events starting in 1963 and culminating in 1968 with the Ba'ath regime, which led to Saddam Hussein era and the atrocities against the Kurds. All this will constitute the basis for a debate on the history of Kurdish people and their struggle for recognition after the fall of the Ba'ath regime and the consequent civil war.

Through an analysis of the expectations raised by new administration and still unstable country and the role played by the most numerous minorities in Iraq, this chapter will show how the past organization of Kurdish Regional Government could eventually lead the way to a federal, democratic country. In conclusion, it will offer an overview of the current situation of the Kurdish region and the role of the Kurdish Regional Government and its struggle for international recognition.

The Origin of the Kurdish Question

For many centuries, Kurds and Arabs lived under the domination of the Ottoman Empire. In exchange for their loyalty, Sunnis Kurds, culturally more close to the Ottomans than to the Persian Shi'a, were able to preserve a degree of autonomy

under their tribal chiefs. Despite this, Kurdistan was always at the centre of the fierce struggle between the Ottoman and Persian empires.

At the end of the 19th century, a number of Kurdish uprisings against both Turks and Persians were contained harshly. The Ottomans destroyed the autonomous principalities and imposed a centralized rule. In the revolt of 1880-81, led by Sheikh Ubaidullah al-Nahri, Kurds declared their independence from both Ottomans and Persians.¹

At the beginning of the 20th century, this brief experience of independence from the Ottoman Empire favoured the birth of the Kurdish nationalist movement. Following the example of other minorities, Arabs, Armenians, Bulgarians, Albanians and Greeks, now free from the Ottoman yoke, Kurdish nationalists started to cooperate with Turkish reformers and Persian constitutionalists in the hope of gaining some form of self-rule for Kurdistan. In 1908 a group of Ottoman Kurds, including tribal leaders, officers, intellectuals, and students formed a society called Al - Taali wa al- Taraqi (Turkish Reformers) and published a newspaper entitled *Kurdistan*² along with a number of magazines. There was also an effort to open schools and education centres. Unfortunately, the beginning of World War I gave the central government an excuse to put an end to these initiatives. Furthermore, the Young Turks were not sympathetic to the nationalistic aspirations of ethnic groups within the Ottoman Empire and pursued a repressive policy towards them. As a result, the Kurds moved their operations

1. Kinnane Derek, *The Kurds and Kurdistan*, London: Oxford University Press, 1924, p.14.

2. Kurdish intellectuals founded many secret organizations against Sultan Abdul Hamid and they also played an important role with The Young Turk Liberal Congress and "its upshot held in Paris in 1902". Abdul Rahman Badr Khan, Hikmet Baban, represented the Kurds. Sheikh Abdul Qadir Al-Nahri (son of Sheikh Ubaidullah ALnahri) was implicated in the committee's abortive plot to overthrow the Sultan (see: E.E Ramsour Jr. L. *The Young Turks*, Princeton University Press, 1957, p. 26).

outside Turkey. After World War I, Kurdish leaders asked for British protection demanding the full recognition of their independence.³

The Kurds and the Treaty of Sèvres

After the end of World War I and the dissolution of the Ottoman Empire, Armenian and Kurdish committees created in Cairo and Istanbul⁴ presented territorial claims over Turkey at the Paris Peace Conference in 1919 with a joint memorandum.⁵ Kurds, Armenians and Assyrians were rewarded when the Allies signed the Treaty of Sèvres on 10 August 1920. This Treaty located a Kurdish national state within Turkish territory, and this is regarded as a milestone in Kurdish history. It recognized in articles 62, 63, and 64⁶, the rights of these peoples to form their local autonomy (independent states)⁷. Provision 62, perhaps the most important part of the treaty for the Kurds, stated:

A commission existing at Constantinople and composed of three members appointed by the British, French and Italian governments respectively, shall draft within six months from the coming to force of the present Treaty a scheme of local autonomy for the predominately Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia⁸.

Provisions 63 and 64 forced the Turkish government to accept the decisions of the Commission. This independence would be granted provided that it were ratified by the majority of the population living in the Kurdish area, and that the

³. J. Talabani, *Kurdistan and National Movement*, Beirut: Dar Al Talia, 1971, pp. 95-97.

⁴. In particular, the Society for the Rise and Progress of Kurdistan founded in Istanbul in 1918 worked in this direction.

⁵. After the armistice, "Sureya Bader Khan" formed the Committee of Kurdistan Independence in Cairo, many other societies were formed to the same purpose. (B. Nickitine, *Les Kurds, Etude Sociologique et histoire*, New York, 1939, p. 196.

⁶. For article 62, 63 and 64 of Sèvres Treaty see appendix No.1 of this chapter.

⁷. Zaki, Mohammed Amin, *Khulaut Tarikh al-Kurd WA Kurdistan* (The History of Kurds and Kurdistan), Cairo, 1936, pp. 282-283.

⁸. Hasan Arfa, *The Kurds: An Historical and Political Study*, Oxford University Press, 1966, pp. 29-30.

Council of the League of Nations considered the Kurds capable of such independence. In addition, the treaty stipulated that if Turkey were to give up this area, the Allies would not be opposed to a voluntary union between the Kurdish state and part of the Mosul region where the Kurdish presence was the majority. Unfortunately, the emergence of the USSR within the international arena, along with the defeat of Greece by Mustafa Kemal Ataturk led to the Treaty of Lausanne on July 1923 putting an end to Kurdish aspirations and the idea of creating a Kurdish state was abandoned.⁹

The Sèvres - Lausanne period was a tragic incident in the Kurdish struggle for self-rule. The recurring and unfulfilled promises led many Kurds to consider that they were expendable tools in the hands of the great powers. Moreover, after Sèvres, the creation of new national boundaries, which distributed the Kurds among several countries - Turkey, Iran, Syria and Iraq - further complicated the Kurdish problem.

The Formation of the Iraqi State and the Reaction of the Kurds

The creation of Iraq was substantially a result of the Sykes-Picot Pact (18 May 1916).¹⁰ It was Britain's intention to retain the former vilayat of Mosul and the region of Kirkuk within their control in order to maintain Britain's hegemony over the oil fields (during Ottoman Empire the administration system was divided into vilayats instead of regions, governorates, or provinces). The break-up of the Ottoman Empire as a result of its total defeat in World War I allowed the British

⁹. Lausanne Conference (1923), Cmd. 1814; Treaty of Lausanne, 24 July 1923. Cmd. 1929. Also see David McDowall, *A Modern History of the Kurds*, Minority Group International, London, 1997, p. 15.

¹⁰. Great Britain and France signed the Sykes-Picot agreement with Russia's silent consent, in 1916 when the outcome of the war was still uncertain. Sir Mark Sykes of Britain and Georges Picot of France agreed to design a post-war Middle East after the defeat of the Ottoman Empire. The Sykes-Picot Agreement granted France and Britain huge territories stretching from modern Turkey to Iraq and south into the Arabian Peninsula and the Gulf.

Empire to take control of the vilayats (provinces) of Basra and Baghdad. The inclusion of the Mosul vilayat, with a Kurdish majority population, as part of Iraq was decided because of the presence of oil in this province.

It was not until after the armistice of Mudros on the 30th October 1918 that the British occupied the vilayet of Mosul.¹¹ In fact, it was only a partial occupation because of the Kurdish nationalist movement led by Sheikh Mahmud Barzinji, which held the Sulaimaniya region for some time. In order to form the Iraqi State the British called upon Emir Faisal (20 May 1885-8 September 1933), the Hashemite ex-king of Syria, who had been driven out of Damascus in July 1920, to accept Iraq as his Kingdom.¹² In May 1921 a popular referendum was held, following a Provision 64 included in the treaty, to decide on a “voluntary” union. Since the suffrage was granted based on property ownership, British used the poor turnout as a pretext for annexation. A second ballot was equally manipulative, allowing the election of Faisal as king of the whole of Iraq. Once in power, he began to push for effective control of the vilayat of Mosul that, until then, had been under British rule.

The coming to power of the Kemalist (Kamal Ataturk) in 1922 led to the reopening of the Mosul question. Turkey initiated a campaign in the area that forced British troops out of Sulaymania in September. In order to control Turkish movements, Great Britain found an ally in Sheikh Mahmud Barzinji, appointing him their governor of the territory around Sulaymaniya in 1918. In 1922 the British made a joint declaration with Iraq in which they recognized the right of Kurdish people to have their local autonomy within the Iraqi borders. Almost

¹¹. The province of Mosul included virtually all the predominantly Kurdish areas under British occupation. Turkey very reluctantly conceded the loss of Mosul in 1926.

¹². McDowall, David, *The Kurds, Minority Rights Group International*, Cambridge, 1997, p.23.

immediately in the same year, Sheikh Mahmud announced the formation of a cabinet and proclaimed himself "Hukmdar (Governor) of Kurdistan".¹³ An embryonic administration was formed and a newspaper Roj-e-kurdistan (Sun of Kurdistan) was founded.

The failure of the first Lausanne conference in February 1923 led the British government to change its policy. The British accused Sheikh Mahmud of indulging in partisan unrest and of having contacts with the Shi'a rebels in the south. Sheikh Mahmud withdrew from Sulaymania on the 4th March 1923 and took refuge in the mountains with some of his followers to continue the struggle. British forces then launched an offensive to prevent Sheikh Mahmud joining forces with the Turks, who at the end, decided not to fight. After that the nationalist leader was forced to flee to Persia.

After the Treaty of Lausanne was signed on 24 July 1923 the council of the League of Nations sent an international commission of inquiry to the vilayat of Mosul. The commission stayed there from January to March 1925 and undeniably established the existence of a Kurdish language and a Kurdish identity. In the end, on 16 December 1925, the council of the League of Nations decided in favour of the attachment of Mosul to Iraq and fixed the international frontier between Turkey and the newly created Iraq. The commission was invited to report to the League of Nations on the conditions of administration of the vilayat of Mosul and to guarantee Kurds their autonomous rights.¹⁴ The only concrete application was Baghdad's promulgation in 1926 of the local Languages

¹³. After the battle of Derband Bazyan, Sheikh Mahmud was found among the wounded men. He was tried by a court and sentenced to death. However, the British Mucun reduced his sentence to life imprisonment after that he was sent into exile to India. (See, A. Wilson: *Loyalties*, pp.148-139). He was sent to India, in September 1922 he was brought to Kuwait, to Baghdad, and finally back to Kurdistan.

¹⁴. Report on Iraq administration. April 1922 - March 1925. p. 38.

Law that allowed Kurds in Sulaymania and Erbil, exclusively, to have primary education in their own language and to print books in Kurdish.

In 1925, the Iraqi government had launched a campaign against deserters who had sought refuge with friendly tribes in Iran. In 1926 a similar operation was attempted with the collaboration of an Iranian column that suffered a painful defeat. In 1926 once again British Royal Air Forces attacks Sheikh Mahmud in order to negotiate with the British emissary and advisor to Iraqi Ministry of Interior, Mr. Kinahan Cornwallis (1883 – 1959). However, they were unable to reach any agreement.¹⁵ From the very beginning the whole of Iraqi Kurdistan refused to accept an Arab administration, despite Baghdad's promises regarding the use of Kurdish as an official language. Various Kurdish cultural societies were formed between 1926 and 1927 and they contributed to the future political debate.

The Anglo-Iraqi treaty of 1930, by which the colonial government had fixed a date for the termination of the mandate, made no mention of the rights of the Kurds. In response, the notables of Sulaymaniya, referring to the 16 December 1925 agreement when the League of Nations decided in favour of the attachment of Mosul to Iraq, sent a petition to the council of the League of Nations.¹⁶ Tension mounted and on 6 September 1930, troops shot into the crowd at Sulaimaniya, killing dozens of people. The Iraqi government then initiated series of arrests amongst Kurdish nationalists. Sheikh Mahmud decided to put pressure on the League of Nations by organizing a petition campaign. Alongside this diplomatic effort, he attempted, without success, to take the village of Panjwin.

¹⁵. C.J. Edmonds, *Kurds, Turks and Arabs: Politics, Travels and Research in North-Eastern Iraq*, Oxford University Press, 1957, pp. 315 -316.

¹⁶. Kamal Mozhir, *Pages of Kurdish History*, Erbil: Mokeryani Press, 2001, pp.101 -115.

The repression of the Kurds did not begin until the League of Nations had rejected Kurdish demands. In April 1931, Sheikh Malunud's troops suffered a severe defeat and he crossed over into Iran. Later, he was forced to give himself up to the government in Baghdad, which kept him under house arrest mostly in the southern Iraqi City of Nasirya and later in the capital, Baghdad.¹⁷

Mulla Mustafa Barzani and the Kurdish National Movement

The most prominent and glorious name in the history of Kurdish national movement is that of Mulla Mustafa Barzani (14 March 1903 - 1 March 1979). He was the leader of the nationalist movement and was destined to become almost synonymous with Kurdish revolt until his death in March 1979. Barzani was important, not only for his prolonged resistance to Baghdad, but also because he was a classic representative of the shaikh establishment,¹⁸ combining the secular power of an agha with that of religious and charismatic leadership.¹⁹ In addition, he was the only Kurdish leader prepared to fight for a united Kurdistan. His grandfather Abdulsalam I and his father Muhammed, had been prominent in the Naqshabandi order,²⁰ and they were the first Barzanis to bring the family to prominence. Their descendants became temporal and spiritual leaders in the area.

¹⁷. C.J. Edmonds, *Kurds, Turks and Arabs: Politics, Travels and Research in North-Eastern Iraq*, Oxford University Press, 1957.

¹⁸. Shaikh is a word as a term means an Islamic scholar or sometimes an elder of the tribe and for Barzanis this term is used as religious and tribal leader. Barzani is the only tribe in Kurdistan combined both title on the same family.

¹⁹. Agha is a word of Ottoman origin used first for high level military or public service people and later for tribal leaders.

²⁰. An order of Sufism founded by Mohammed son of Mohammed Bahadin (1317 – 1389). His name, which signifies "Painter", is interpreted as (drawing incomparable picture of divine science) was born in Bukhara. He travelled extensively and his teaching spread westward and reached Kurdistan on the 17th century. It took its roots in Bahdinan region, and Shaikh of Barzan is noted as one of its men "Kutbs", the religious form of their followers "Murids". (See *Encyclopaedia of Islam*, A. Nakaband. Also B. Nikitine (pp.150 –151). *Damalogue: Bahdinan* (Mosul 1957) pp. 90-190.

The Barzani rebellion of 1931-32, led by Sheikh Ahmad and Mulla Mustafa was in fact not, as the Iraqi Government and some writers had claimed, the result of the government's attempt to settle Assyrian Christian refugees from Hakkari inland adjacent to Barzan. It was instead an attempt to introduce police control by building permanent barracks in the area and impose taxation.²¹ In short, the immediate reaction to the intrusion of the external authority of the government was seen as similar to that of the Ottoman Empire. Mulla Mustafa, his elder brother, Ahmad, and their family surrendered to the Turks over the border, but were granted an amnesty in 1933.²² Ten years later he escaped from Sulaimaniya when he was exiled and returned to Barzan to resume his conflict with the government, assisted by Kurdish nationalists. This was an indication that the Barzani family had acquired a more nationalist stance.²³ By 1945 Mulla Mustafa was the effective ruler in a wide area, intervening in inter tribal disputes, in the government distribution of supplies, and repelling attempts by the Iraqi army to defeat him. However, in 1945, he was forced to abandon the struggle and to cross the border into Iran, where he got in touch with the Iranian Kurdish Democratic Party (IKDP) in Mahabad. He spent the next twelve years in exile in the former USSR after the collapse of Kurdish Mahabad Republic in Iran.

²¹. Space does not allow a discussion of the Assyrian Christians condition. They also were victims of the collapse of the old order and the creation of nation states in the region. Hoping for assistance from Christian countries, notably Russia and Britain, they rebelled against the Turks in their traditional areas, around Hakkari, Tur Abdin and also against the Iranian in Urmiya. The remnants that survived war and massacre ended up under British protection in Iraq where they suffered another massacre in 1933.

²². O'Ballance Edgar, *The Kurdish Struggle*, New York: St. Martin's Press, 1996, p.20. Also see Michael Gunter, *The Kurds of Iraq*, New York: St. Martin's, 1992, pp. 6-8.

²³. Hasan Arfa, *The Kurds: An Historical and Political Study*, Oxford University Press, 1966, pp. 119-124.

Following the 1958 coup carried out by General Abdulkarim Qasim toward the Hashemite monarchy, Mulla Mustafa was able to return to Iraq from Russia.²⁴ Barzani's relationship with Qasim and with neighbouring Kurds reflected the need of any aspiring chief to recognition. From the moment of his return Barzani established a close and friendly relationship with Qasim.²⁵ On the other hand, as the head of the Kurdish Democratic Party (KDP) since its formation in 1947, he immediately took a vigorous part in the still not legalized Party. Using the prestige that rested on his own tribal followers and allies (at least 6,000 battle - aged men) who outnumbered any other Kurdish force, he persuaded the KDP politburo to accept his protégé and party secretary, Hamza Abdullah. He then managed to defeat Abdullah by force. Barzani's alliance with Qasim against the Arab nationalist and pro-monarchist enemies, granted him the legalization of the KDP.

In 1960, the assassination of the Zibari chief, Ahmad Zibari,²⁶ was an unmistakable sign for Qasim that his authority as a "sole leader" was being challenged with the physical elimination in Kurdistan of all those loyal to him. The end of the 1960s saw the final rupture of their alliance.

In 1961 Barzani tried to fulfil Kurdish expectations from the new Constitution by demanding a substantial degree of autonomy for the Kurdish region. But by then he probably realized that Qasim was unlikely to co-operate further with him, not least because accepting Barzani's demands would raise the

²⁴. See Michael Gunter, *the Kurds of Iraq*, p.11. Also see Barzani, Masoud, *al Barzani WA al-haraka al-tahaririya al-Kurdiya (Barzani and the Kurdish National Movement)* (Kurdistan, 1992) pp. 52-66.

²⁵. Abdul Rith, Majed, *The Kurdish Question in Iraq: 1958- 1975*, Beirut, 1975, p.163.

²⁶. Zibari is a neighbouring tribe to the south of Barzan who had been in conflict with Barzanis for a long time. At the beginning of 1945, they joined their forces with Barzanis and allied themselves for the uprising and fought bravely alongside the rebels under Ahmad Agah's leadership, but suddenly changed sides, leaving the field and joining the government forces. Mulla Mustafa and his brother Shaikh Ahmad had the only option to cross the borders into Iran with the whole tribe and warriors.

prestige and power of the latter in Kurdistan circles still further granting the KDP an unprecedented position. The provisional constitution of Iraq in 1958 (article 3), produced by Qasim clearly stated that: "The Kurds and Arabs are partners within this nation. The Constitution guarantees their rights within the framework of the Iraqi Republic". This article could have been used by the Kurds to demand some sort of autonomy.²⁷

Kurdish national feeling had become more developed with the spread of education and the introduction of western technology. Although some Kurdish tribes still favoured the government, and many young Kurds from tribes previously opposed to the Barzanis now supported them, as did a number of Kurdish soldiers in the Iraqi army. Supported by these forces, Barzani assembled as many as 7,000-armed combatants and started to occupy strategic points and expelled the government police and small garrisons. Full hostilities began when the government bombed Barzan in September 1961. The cruel and indiscriminate bombing of Kurdish villages, in which the majority of casualties were women, children and old people, brought still more supporters from all over Kurdistan to Barzani.²⁸

Despite their numerical superiority in troops and equipment, Qasim was not able to contain the uprising. Barzani successfully fought a classic guerrilla war by refusing to defend fixed positions. Even Barzan was abandoned, as Barzani correctly realized that he was winning as long as he continued to exist. Knowing virtually every inch of the terrain, the Kurdish Peshmergas²⁹ (those who are willing to face death for their cause), never allowed them to be surrounded

²⁷. Abdul Ritha, Majed, *The Kurdish Question in Iraq: 1958 - 1975*, Beirut, 1975, p. 163. See also G. Fathallah, *Iraq under Qazim*, Beirut: Dar Aljamal, 2012, pp. 430-449.

²⁸. Abdul Ritha, Majed, *The Kurdish Question in Iraq: 1958 - 1975*, Beirut, 1975, pp. 96-98.

²⁹. *Peshmerga* or Peshmerga is the term used by Kurds to refer to arm Kurdish fighters.

and always managed to slip away before the government forces could entrap them.³⁰

The Iraqi Ba'ath regime and the Kurdish question³¹

On February 8, 1963 the Ba'ath party overthrew the Qasim regime, following a general unrest in the Middle East led by Jamal Abdul Nasser. The Arab world's other political players, like the communist party in Iraq, strongly resisted the Ba'athist take over. The Baath party fell from power nine months later, but resumed power in July 1968³². Throughout the 1960's, conflict between the Baghdad government and the Kurdish national movement continued. Although outnumbered and out gunned, the Peshmargas intervened successfully, withstanding major offensives in June 1963, May 1966, and again at the end of 1968. Indeed, in late May 1966, the Kurds won such a spectacular victory near Mt. Hindarin, north east of Rawanduz, that the civilian prime minister, Abdulrahman al-Bazzaz, made the "29th June Declaration" that specifically recognized Kurdish national rights. Although Barzani accepted it as a basis for negotiations, the Iraqi military disagreed with Prime minister al-Bazzaz and forced him to resign.

When the Ba'ath seized power in July 1968 the new government realised that, based on previous experience, it would be wise to make some concessions to the Kurds while they consolidated their political position. After some

³⁰. O'Ballance Edgar, *The Kurdish Revolt 1961-1970*, London, Faber and Faber, 1973, p.74.

³¹. It is out of the scope of this research to emphasize the role and the impact that the Ba'ath regime and its ideology had in the escalation of violence that led the Iraqi authorities to commit genocide. However, an exhaustive study on the subject can be found in Joseph Sasoon's *Saddam Hussein's Ba'ath Party: Inside an Authoritarian Regime* published by Cambridge University Press in 2012.

³². Brifcani, Mostafa Barzani: *The Leader of the Kurdish National Movement*, Egypt: Al- Aharam Press, 1996, p. 184-186.

negotiations the “29th June Declaration” was replaced with the “11 March 1970 Accord”.³³ This agreement, stipulated that “The Iraqi people are made up of two nationalities; the Arab nationality and the Kurdish nationality”. In addition, Kurds to have legislative power in a manner proportionate to its population in Iraq; a Kurd to be one of two vice-presidents; unification of areas with a Kurdish majority as a self - governing unit; the use of Kurdish, alongside Arabic, as the official language and also the medium of school instruction in Kurdish majority areas to be Kurdish; implementation of the agrarian reform (still incomplete from 1958); and provision of a Kurdistan development budget.³⁴

Unfortunately, the regime failed to form a National Assembly as it had promised, and it was clear that it had few political friends inside Iraq. Kurds began to realize how important their non-co-operation was in order to isolate the regime. At the end of the year an assassination attempt was made against Mulla Mustafa’s son, Idris, in Baghdad. A dispute arose over Kirkuk, Khaniqin and Sinjar, three sensitive areas where Mulla Mustafa believed the regime was deliberately settling Arabs to change the demographic balance. Kirkuk, in particular, with its vast oil resources became a sensitive and emotive issue on both sides.³⁵ Later the researcher will discuss and provide better understanding of that Arab Settlement policy and how it become ethnic cleansing policy adopted by the Ba’ath Regime against Kurds.

A month later, in April 1972, the Iraqi-Soviet Treaty of Friendship was signed and the US decided to help Iran to contain Soviet influence in the region

³³. For full text see appendix no. 2 of this chapter.

³⁴. David McDowell, *A Modern History of The Kurds*, New York: I. B. Tauris & Co. Ltd., 1997, pp. 327 - 330.

³⁵. Chapter four will explain in detail, using primary sources, the impact that this process had on Kurdish society and culture.

as part of the Cold War. In June, Iraq nationalized its oil facilities and the US had an even more important reason for undermining the regime in Baghdad. In June 1973 Barzani made a public statement about awarding Kirkuk's oil rights to the US if it supported him.³⁶ According to the Pike Commission Report to the United States House of Representatives dated 19 January 1976, both Iran and the US hoped to benefit from Iraq's instability due to the Kurdish refusal to give up their semi-autonomy.³⁷ Until today, Kirkuk is a disputed area despite article 140 of the new Iraq constitution of 2005.³⁸ As will be described in more detail in Chapter 4, this research found that a main sensitive issue for Saddam Hussein and his government was the demographic situation in Kirkuk (and other mixed areas), and that he was personally monitoring its implementation. The increase in Iraq's oil revenues following nationalization and oil price increase after the 1973 Arab-Israel war also hardened the Iraqi position.³⁹

In March 1974 the regime published its Kurdish Autonomy Law on a "take it or leave it" basis (According to the information gathered,⁴⁰ that step was the last attempt to solve the question following a negotiation route, from that moment both sides polarized into their positions). The March 1974 law did not include Kirkuk and granted the regime the right to appoint its own officials. Mulla Mustafa

³⁶. Al Barak, Fathel, *Mustafa Barzani*, Baghdad: Dar al Shounal Thakafiya, 1989, pp. 239 -240.

³⁷. See CIA, *The Pike Report*, Nottingham, Spokesman Books, 1977, pp.16-17, 141-148, 195-198, 211 -217.

³⁸. Article 140: First: The executive authority shall undertake the necessary steps to complete the implementation of the requirements of all sub paragraphs of Article 58 of the Transitional Administrative Law. Second: The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this First Constitution, provided that it accomplishes completely normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens, by a date not to exceed the 31st of December 2007. For more information see (www.com140.com).

³⁹. Interview with Jargis Fatthulla, KDP senior member in Baghdad during 1970-1975, held in Salahadin, in August, 2009.

⁴⁰. Mohammed Ihsan, *Kurdistan and War Dilemma*, London, Dar Al Hikma, 2000, pp. 253-286.

and the KDP rejected it. Barzani planned to fight a conventional war, despite of his non-trust of Iran and the Americans.

By autumn the Iraqi army had already captured Amideya, Aqra, Qala Diza, Raniya and Rawanduz. Despite this, the regime found itself in a very bad position and they failed to win the military confrontation with the Kurds. On 6th March 1975 Saddam Hussein, then vice-president, struck a deal with the Shah of Iran in Algiers, conceding the *thalweg* (deepest point) demarcation of the heavily disputed Shatt al-Arab waterway that borders Iran and Iraq, in return for the Shah's undertaking to withdraw all assistance to the Kurds.⁴¹ Offered a cease-fire by Baghdad to re-consider his position, Mulla Mustafa gave up the struggle and went into exile in Karaj, a suburb of Tehran.⁴²

The war claimed a large human and financial loss.⁴³ In retaliation for Kurdish collaboration with Iran, the regime razed at least 500 villages and moved 600,000 refugees to collective resettlement camps creating a sanitary cordon along the Iranian border, while the families of recalcitrant were exiled to southern Iraq.⁴⁴ These events constituted a strong setback for the Kurdish national

⁴¹. The 1975 Algiers Agreement (commonly known as the Algiers Accord) was an agreement between Iran and Iraq to settle their border disputes (such as the Shatt al-Arab –known as Arvand Rud in Iran– and Khuzestan and stop Iran's support for Iraqi Kurds), and served as basis for the bilateral treaties signed on 13 June and 26 December 1975. Less than six years after signing the treaty, Iraq attacked Iran to invade its borderlands. However, that invasion was quickly countered with fierce resistance. The Iran–Iraq War lasted eight years, and finally ended with a United Nations ceasefire imposed by the United Nations Security Council Resolution 598, which was accepted by both sides. Friction remains along the border, despite the currently binding treaty and its detailed boundary delimitation [1] remaining in force since signed by both nations in 1975 and ratified by both nations in 1976. Under international law, one nation cannot unilaterally reject a previously ratified treaty, and the treaty had no clause providing for abrogation by one nation only. Iraqi Parliament after 2009 started to ratify that treaty again.

⁴². Meeting with Fazil Mirani high rank leader of KDP, Erbil 2012.

⁴³. No one is sure of the total casualties during the Iran-Iraq war, but estimates range from 500,000 to 1 million dead, 1-2 million wounded, and more than 80,000 prisoners. There were approximately 2.5 million refugees, and whole cities were destroyed. The financial cost is estimated at a minimum of 200 billion dollars.

⁴⁴. Some of the researcher's relatives were among those deported to Amara in the south of the country.

movement but, at the same time, they had the power to give the Kurdish cause international prominence and recognition.

The Kurds and the Iraq - Iran War (1980-1988)

It is important, in order to fully understand the Kurdish condition pre-genocide stages, to analyse the Iraq-Iran conflict. On 4th of September 1980 Iraq invaded Iran, beginning of the bloody war that dragged on until 8 August 1988. In July 1983 the KDP, working in conjunction with Iranian forces, seized Haji Umran (on July 1983),⁴⁵ an important border town on the road of Rawanduz. Further south, Iranian forces seized Panjwin and the high ground overlooking Qala Diza.

Suddenly Iraq appeared to be in great danger. Saddam Hussein reacted in two ways. He took vengeance on the Barzani clan for the KDP involvement in the loss of Hajj Umran. Eight thousand men of the clan living mostly in Qushtapa, Harir, Bahrika and Shaklawā were seized, paraded through the streets of Baghdad, and then executed in the southern village called Busaya.⁴⁶ Saddam Hussein also sought respite from the Kurdish threat, in order to release the large number of troops stationed in Kurdistan for redeployment against Iran. Since 1982 he concentrated his efforts in breaking Kurdish resistance through his intelligent organizations hoping that one of the main parties could be persuaded to abandon the struggle. In December 1983 he agreed a cease-fire with Jala

⁴⁵. Ibid. p. 38.

⁴⁶. For an insight of the fieldwork see the BBC documentary 'Saddam's Road to Hell' released on September 5, 2006. The researcher gathered all the material during his time as minister for Human Rights in Kurdistan Regional Government from 2001-2005. His responsibility was to find out and document what have been done against the Kurds by Iraqi governments from 1968-2003, in order, after studying and collecting the material, to produce an assessment of Kurdish society through the drafting and creation of educational and social programs.

Talabani, negotiating the autonomy law on a basis acceptable to the Patriotic Union of Kurdistan (PUK).⁴⁷

Since it was so controversial, why did the PUK entertain this negotiation and agreement with the Iraqi regime? Unlike the KDP, the PUK did not enjoy Iranian friendship. Indeed, when Iranian forces took Panjwin the PUK had to flee the area. They were frightened of being trapped in the Iraq - Iran war. Like Saddam, Talabani badly needed a respite. And if he had succeeded in negotiating the autonomy law satisfactorily, he would have brought peace to Kurdistan and cut the ground from under the feet of his rival, Masuod Barzani. However, the discussion failed, partly because no agreement could be reached over Khanaqin, Kirkuk and Sinjar, but more importantly because Saddam no longer needed to negotiate. Fearing an Iranian victory, the United States decided to provide Saddam with intelligence and weapons, and in 1985 the ceasefire negotiated with the PUK collapsed.⁴⁸

The Patriotic Union of Kurdistan (PUK) now found itself isolated and in great difficulty. Having lost the backing of its external supporters, including Syria, and having forfeited the confidence of the great mass of Kurds, tried to make an alliance with Tehran. With Iranian assistance, Talabani was able to obtain the PUK re-admittance into the resistance movement, and this was formalized in 1988 with the formation of the Kurdistan Front,⁴⁹ a co-coordinating body composed of the KDP, PUK and six other smaller parties.⁵⁰

⁴⁷. Interview with Dr.Barham Salih, held in Erbil in 2011.

⁴⁸. Ibid., p. 39.

⁴⁹. The Kurdish Front was founded in principle in July 1987 but it entered into action formally in May 1988. All Kurdish Political parties agreed to work together against the dictatorship following Idris Barzani's leadership.

⁵⁰. These six parties were: The Socialist Party of Kurdistan in Iraq (SPKI) led by Rasul Mamand and Mahmud Uthman as a prominent member, The Kurdistan Popular Democratic Party (KPDP) led by Muhammad Mahmud " Sami Abdul Rahman", The Kurdish Socialist Party

While the Iranian offensive in the south slowly grounded to a halt, the Kurdish front became more important. By mid-1987, the Kurds held virtually the whole border area. After dark most of the countryside in Kurdistan was a no entry zone for the government's army. The Kurdish Front was now a major player in the war against Iran since it controlled a vast area of the border. In order to defeat Kurdish military forces, the regime in Baghdad started a series of attacks against the civilian population. After the collapse of negotiations with the PUK, it adopted a systematic policy of razing villages and killing civilians. In September 1985, for example, it rounded up approximately 500 children (aged 10 to 14) in Sulaymania and tortured and killed a substantial number of them apparently to extort information about Peshmerga movements, and to make Peshmarga relatives give themselves up. In October, a similar round - up took place in Erbil.⁵¹

In 29 March 1987 Saddam appointed his cousin, General Ali Hassan al - Majid governor of the north based on the Revolutionary Council decree no.160. ⁵² He immediately began using chemical weapons (mustard gas, nerve gas, and cyanide) against Kurdish targets.⁵³ Civilian survivors of such attacks who sought medical assistance were taken away and executed. He also decided on a scorched earth policy. As seen earlier, in June 1987 with memo no. 4008 released on June 20, 1987 he declared a large part of Kurdistan a prohibited area. This is one of the two main "smoking gun" found to date about Iraq's policy

(PASOK) headed by a collective leadership, The Kurdistan Branch or Section of the Iraqi Communist Party (ICP) led by Aziz Muhammed, The Assyrian Democratic Movement and The Kurdish Toilers Party led by Kadir Jabari.

⁵¹. Interview with Dr.Barham Salih, held in Erbil, March 2013.

⁵². Based on the Revolutionary Council decree No.160 of 29/3/1987 Ali Hassan Majid appointed as sole leader of the Kurdish autonomy region.

⁵³. More details about Iraq's use of chemical weapons will be discussed on Chapter 7.

toward the Kurds. This key directive, from June 1987, reinforces the existing total embargo on designated “prohibited areas” throughout those parts of the Kurdistan inhabited countryside outside government control. In paragraph 5, it orders a shoot on-sight policy in those areas. What is interesting here is that (according to the eyewitness testimonies) this policy had been in forced for several years. This is the first explicit admission of its actual existence. The document also refers to the policy of amalgamating villages that had remained under governmental control. The inhabitants were forcibly moved into housing complexes and their villages destroyed. This campaign was well under way at the time this order was issued. During that summer Al Majid destroyed more than 500 villages.⁵⁴

By January 1988 the threat to Baghdad had deepened, with Iranian forces entered Kurdistan. A breakthrough onto the Mesopotamian plain once the snows had melted became a serious threat. However, the failure of Iran’s exhausted forces to break through the southern front, released Iraqi troops that could now be deployed to fight in Kurdistan. With substantial reinforcements, al-Majid started “Operation Anfal”.⁵⁵ In February his forces bombarded and swept the Janata valley near Sulamaniya. Virtually all adult men and teenage boys who were arrested disappeared. On 15 March Iranian and PUK forces captured Halabja, strategically situated above the Darbandikhan Dam. The following day

⁵⁴. On Iraq’s usage of chemical warfare, see Valerie Adams, (*Chemical Warfare, Chemical Disarmament*, Bloomington: Indiana University Press, 1990), pp. 85-90; and Edward M. Spiers, *Chemical Weaponry: A Continuing Challenge* (New York: St. Martine’s Press, 1989), pp.121-25. See also Middle East Watch, *Human Rights in Iraq*, New Haven, Yale University Press, 1990, pp. 75-85.

⁵⁵. The name “Anfal” derives from a verse (sura) of the Quran referring to the right to plunder an enemy of wealth and property. The “plunder” includes taking the lives of the enemy people, their goods and their women. For the Ba’ath Party, anfal was a military code-name for the operation of genocide launched against the Kurds in Iraq between 1987 and 1988. Saddam Hussein exploited the sura to justify the campaign. For the phases of Anfal see Kanan Makiya, *Cruelty and Silence: War, Tyranny and Uprising and the Arab World*, Jonathan Cape, London, 1993, and Middle East Watch, *Genocide in Iraq: The Anfal Campaign against the Kurds*, (New York, 1993).

Iraq retaliated with a massive chemical attack on the town. Over 50,000 civilians perished. Baghdad's savagery had a shattering effect on Kurdish morale, for it indicated both the capacity and intention of Baghdad to slaughter on a scale previously unimaginable. The following week Iraqi troops destroyed the whole Kurdish presence in Qara Dakh, south of Sulaimaniya. Then they turned to the district of Garmiyan, south of Kirkuk, before moving northwards to "cleanse" the area between Erbil, Kirkuk and Koi-Sanjak. There, additional Anfal operations during the course of the summer removed the population from Balizan and the mountains east of Shaqlawa. In each case a chemical attack preceded a massive land attack of the surrounded areas. In order to get a better understanding of Anfal operation as the "final solution" for Kurdish Issue in Iraq, this thesis will dedicate a whole chapter on the analysis of the Anfal campaign and its political and social impact.

On 22 July 1987 Iran accepted UN Resolution 598 after recalling Resolutions 582 and 588⁵⁶, setting out the requirements for a cease-fire. During the next four weeks Iraq massed its forces around Bahdinan, the territory still held by the KDP. On 25 August, it launched a huge assault, including chemical attacks, the worst of which killed approximately 3,000 refugees fleeing to Turkey along the Bazi gorge. Approximately 60,000 Kurds found their way into Turkey and some 100,000 fled into Iran where they reached the Kurdish population already living there. By April 2003 more than 182,000 civilian Kurds were abducted and murdered by Iraqi troops. Turkey accepted the refugees with great reluctance, conscious of their potential effect on the Kurdish population already

⁵⁶. For the full text of the UN Resolution 598, see, <http://www.un.org/docs/scres/1987/scres87.htm>

living in the country. In both Iran and Turkey, the Kurdish refugee movements were highly restricted.

Nothing illustrated more clearly the vulnerability of the Kurdish people than the utterly supine failure of the international community to take any substantive steps to curb Iraq's atrocities. Most western government were aware of Iraq's use of chemical weapons, as well as the brutal treatment of those Kurds who was taken prisoners. No nation tried to enforce UN Security Council Resolution 620 of 26 August 1988⁵⁷; specifically adopted to ensure that steps are taken against any country (but clearly with Iraq in mind) using chemical weapons. Western governments were far too interested in the enormous trade possibilities implicit in Iraq's reconstruction. In Spring 1989 most of these countries participated in a military fair in Baghdad, indicating the level of hypocrisy adopted by the West when discussing concepts like "regional security", "stability" and "good governance" in addition to that many researches and column writers were doubting the use of chemical weapons by Iraq against the Kurds.⁵⁸

The Gulf War and the establishment of the Kurdish Regional Government

It is indispensable, in order to complete this historical background, to make reference to the development of the Iraqi state, the American invasion and the fall of the Ba'ath regime. It is not the purpose of this thesis to analyse the still ongoing process of state building that followed, however, it is important to establish a few points that can be useful to understand the context in which the Kurdish question exists. The 2005 constitution was the result of long negotiations and it did not guarantee a stable route towards peace and stability. The

⁵⁷. For the full text of UN Security Council Resolution 620, see <http://www.un.org/docs/scres/1988/scres88.htm>

⁵⁸. Khalid Salih, *Anfal: The Kurdish Genocide in Iraq*, Goteborg, Ricardo Gutnik, 2012.

segmented Iraqi society, exacerbated by a long civil war, still struggling for a unified identity. However, the existence of a federal government constituted a fundamental change for the Kurdish region. Kurdistan is now the only and most important federal region in the country. The region has existed since 1991 and has become a point of reference for the building of the new political and legal infrastructure of the country. In 2003, Gareth Stansfield wrote in his book *Iraqi Kurdistan: Political Development and Emergent Democracy*:

September 11 removed the blinkers of parochialism from the eyes of the Kurdish leaders. For the Kurds, the issue was no longer the development of the Iraqi Kurdish de facto state, it was now much larger and related to the future of Iraq. The PUK and the KDP faced a serious issue of survival. Regime change in Iraq would remove the forces which kept the Kurdish de facto state viable. (Stansfield 2003:183)

The 2005 constitution stipulated the formation of federal regions. The Kurdistan region and because of its past political and administrative infrastructure became a unique example of a model federal system (David Cameron 2007:158).⁵⁹ The Kurdish Regional Government web page mentions this moment as a pivotal one in the peaceful recognition of a Kurdish region stating, as part of its history, that in 2005 in a national referendum, Iraqis voted in favour of a new constitution. The new constitution, which was approved by 78% of voters, recognises the Kurdistan Region's institutions including the Kurdistan Regional Government and Kurdistan Parliament. (www.krg.org) and (www.kna.org)

The same source indicates as a major issue in its history that in 2006 'At the start of the year, the PUK and KDP agree to unify the two administrations. On 7th May, Prime Minister Nechirvan Barzani announces a new unified cabinet'

⁵⁹. David Cameron, 'Making Federalism Work' in Iraq: Preventing a New Generation of Conflict, ed. Markus Bouillon, David Malone and Ben Roswell, 2007, Lynne Rienner: Boulder, Colorado.

(www.krg.org).⁶⁰ This means the end of the rivalries between the two parties and the beginning of a united effort to reconstruct Kurdistan within an Iraqi context. It is difficult to predict what the future of Iraq will be, but for the time being it looks like that Kurdish future is more predictable and secure. This means a change in perspective from the present political confrontation to an amicable coexistence towards building a new country. This also means that the Kurdish government has to assume a leading role in solving the security issues and in stopping the endless cycle of violence that still affects Iraq. In order to do so, and to secure a space for the Kurdish people within a peaceful Iraq, it is necessary to rewrite the Kurds most recent and dramatic history.

⁶⁰. www.krg.org accessed April 28, 2013.

Chapter Four

Arabization as Ethnic Cleansing

Introduction

The first crime analysed in this thesis is Arabization. This crime is directly linked with all the others that will be presented in this thesis. As already mentioned in the introduction, Arabization constituted the first stage of the state engineered campaign aimed at the ethnic cleansing of Kurdish population in the country. This episode took place from 1963 to 2003.

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 stayed active in the Arab political culture throughout Iraq’s history.¹ History sheds light on the fact that Arabization started, when the Arab invaders, under the banner of Islam invaded the regions. According to Yaqut Al Humary (1178 -1229), many people in Erbil were arabized (Muajam Al boldan "Encyclopedia of Town" part one). Later, during the Ottoman Empire, Madhat Pasha (1869-1872), settled the Shamars and Aniza tribes around Mosul and Baghdad.

Since its inception in 1921, Iraq has been a multi-ethnic, multi-religious and multi-sect society. Nonetheless it has been ruled under pan-Arab ideologies with no regards for the identity of other ethnicities in Iraq. Instead of adopting a

¹. Research shows that the Arabization policies began when Iraq became a country and continued up until the Ba’ath Regime was overthrown in 2003. (See for example Nouri Talabani, Khalil Ismail). The researcher shares this belief, but focuses on the Arabization process after 1968 because then, for the first time, the state formally adopted and implemented a process of ethnic cleansing. This chapter is based on material found by the researcher in his role as Minister of Human Rights and Minister of Extra-Regional Affairs in the Kurdish Regional Government, in addition to the fieldwork carried out for the purpose of this thesis.

democratic constitution to represent all various people with different cultural or religious affiliations, they implemented a policy of Arab nationalism and declared that Iraq was a part of greater Arab nation with literally no viable constitutional recognition of non-Arab identities.

On the one hand, King Faisal I, the imposed king over the people of Iraq, saw Iraqis as "groups of people with nothing in common". On the other hand, he as the head of State failed to build bridges amongst the two major nationalities and other smaller ethnic groups in the country, but rather he laid a foundation and precedent to promote Arab nationalism and culture. As a result of such myopic policies, Kurds, Turkmen, and Assyrians and others suffered a lot and were deprived of their democratic, national, and cultural rights. Arabization as an institutionalized policy intensified under the Ba'ath regime after the Ba'athists came to power in July 1968, and Kurdistan was the main target of that policy. Nonetheless, at the beginning, this policy was implemented in a less visible fashion.

During the 1960s, Arabization has been a policy 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. Arabization, slowly but steadily continued until the Ba'ath Socialist Party took over again through a military coup in 1968. Under the Ba'ath regime, particularly after Saddam Hussein became the president of Iraq in 1979, Arabization of Kurdistan intensified and continued strongly 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 the Arab culture and history, while banning anything related to Kurdish culture and identity. This policy slowly turned into an ethnic cleansing operation aimed to destroy 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. It was the first step towards more sophisticated and more dangerous phases of genocide.

As it will be explained more in detail in the following chapters, Arabization was implemented in two ways: the first with massive forced deportation and the destruction of the livelihood of Kurdish people. The second, in the context of the Iran-Iraq 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 by the 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 adapted 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 on 27 July 1980 in which the party identified Kurdistan as part of the Arab world and Kurds of the Arab nation. This process is illustrated in the maps reproduced below.



Figure 6 Map no. 4 Directions of Arabization from Central and Southern Iraq to Kurdistan. Source: Author.

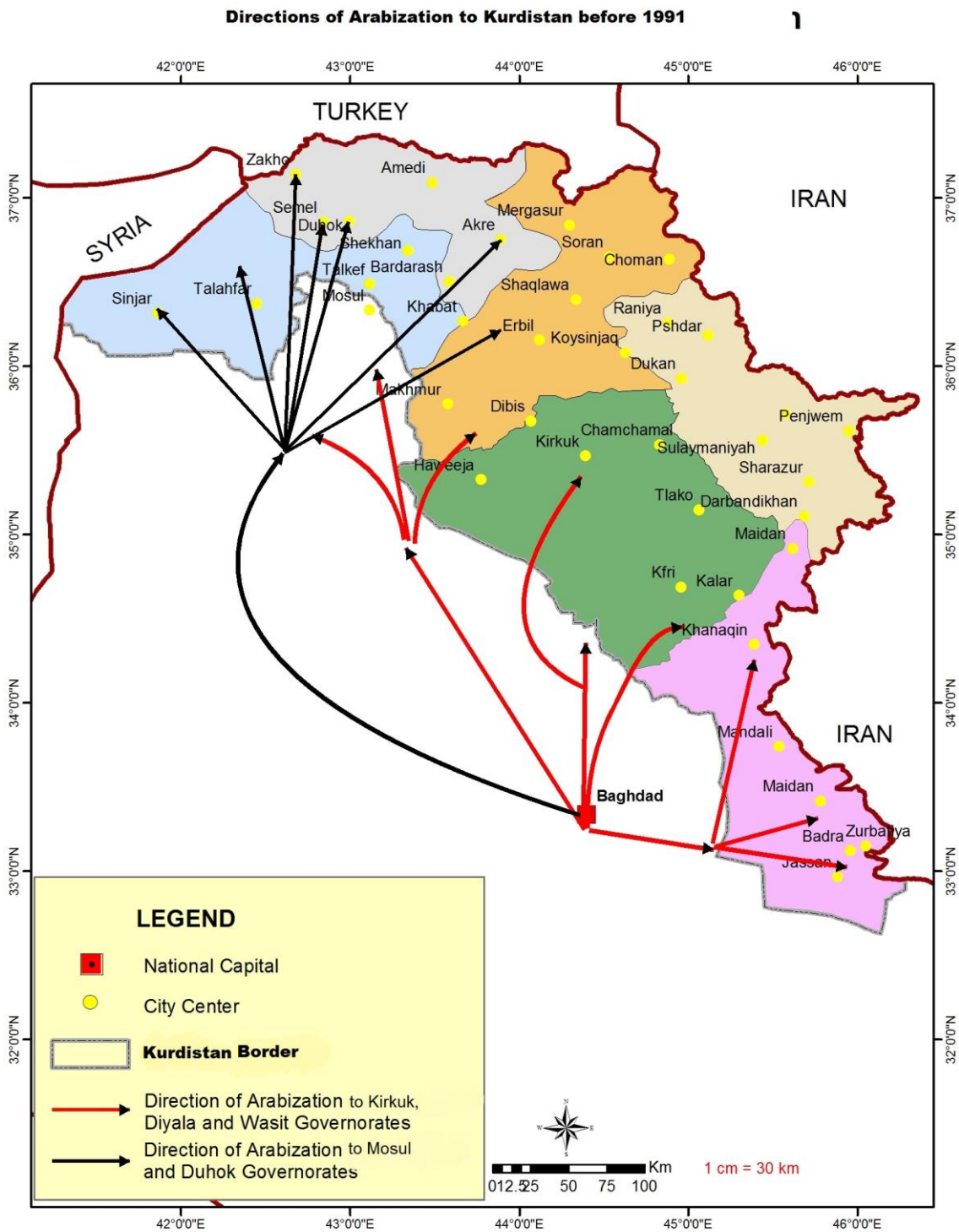


Figure 7 Map No. (5) Arabization towards Kurdistan before 1991. Source: Author.

No Kurdish Zone in Iraq before 1991



Figure 8. Map No. (6) Arabized areas of Kurdistan at the borders with Iran, Turkey and Syria until 1991(No Kurdish Zone). Source: Author.

Ethnic Cleansing in Iraq

Raphael Lemkin in his book *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* already mentioned in Chapter 2, stated that during World War II, the terms "Germanization", "Italianization" and "Magyarization" are often used to connote the imposition of Germany, Italy, Hungary their superior national cultures. In Iraq the same political culture was implemented to destroy Kurdish culture and identity. Using similar propaganda machines employed by the Nazis, the Ba'ath regime utilized the same derogatory methods to promote the Arabs as a superior race. However, there is a difference of the genocidal policies implemented in Iraq and Yugoslavia in relation to ethnic cleansing. In the Kurdish case, the policy of ethnic cleansing was embedded in the policies of the Ba'ath regime, while in Yugoslavia these crimes took place after the end of the Cold War. In Iraq, the ethnic cleansing against non-Arabs was integrated into the nation building strategy to create a nation to reflect Arab ideologies. The term "cleansing" implies purification (in Arabic language *tat'heer*), which is corresponding to "cleansing" in English.

Kirkuk Province

It would be very long and out of the scope of this thesis to provide district-by-district all the demographic changes that had occurred in Iraq due to the Arabization policies implemented by the Ba'atist regime. However, one case is emblematic because it involves disputed territories that until now risk to severely hinder Iraq's path to stability and democracy: Kirkuk. Since before the last Gulf War, petroleum played a decisive role in determining the boundaries of future Kurdistan region in general and Kirkuk province 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 province is rich in natural minerals, fertile land, much-needed rural crops and forests, and important oil reserves. Oil was first piped out in Kirkuk in 1927 in Baba Gurgur (well K172) and since then it has become an essential resource for the Iraqi state.

In the early 1970s the export capacity of the main pipeline system reached around 72 million tons per year (about 475 million barrel/year). However, due to the lack of strategic plans Iraq's capacity to export was always very limited. Despite this, 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, Turcoman 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 after the Ba'ath regime gained power in 1963. The new regime linked oil industry to the state's Arabization processes paving the way for future genocide in the area. The mixed IPC staff was transferred outside Kirkuk province 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 out of the province. Due to 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 consolidate its power base while neglecting social welfare and other programs. However, for the people of Kurdistan, Kirkuk meant more than mere petroleum.

Like other Kurdish regions, Kirkuk is deeply rooted in the Kurdish history and heritage. It symbolized decades of forced displacement. In addition, the occupation and redistribution of Kurdish lands to Arab settlers made life unbearable for Kurds in Kirkuk. This led to more human rights abuses, while the Arabization process was intensified.

Changes in Administrative units and internal borders

From 1929 to 1987 the administrative units of Kirkuk province underwent some drastic demographic changes that eliminated some districts while adding others.²

In 1929 the province included:

1. The district of Kirkuk, including the sub-districts of Kirkuk, Daqq, and Alton Kopri.
2. The district of Chemchemal, including the sub-district of Chemchemal.
3. The district of Kifri (Salahiya), including the towns of Kifri, Toz Khormato, Qere Tape, Sherwana Castle, Shibicha.
4. The district of Gil, including the sub-districts of Gil and Sangaw.

In 1936 the administrative units of the province changed to include:

1. The district of Kirkuk, including the sub-districts of Kirkuk, Alton Kopri, and Milha.
2. The district of Chemchemal, including the sub-districts of Aghjalar, Shwan, and Sangaw.
3. The district of Kifri, including the towns of Toz Khormato, Qere Tepe, and Sherwana Castle.
4. The district of Gil, including the sub-districts of Qader Karam and Daqq.

² See maps of Kirkuk from 1957, 1997 and 2003 for a demographic overview of the area at the end of this chapter.

In 1948 the administrative units changed again and included:

(f) The district of Kirkuk, including the sub-districts of Qara Hassan (Laylan), Alton Kopri (Prde), Milha, and Shwan.

(g) The district of Kifri, including the sub-districts of Kifri, Bebaz, Qere Tepe and Sherwan.

(h) The District of Toz, including the sub-districts of Toz, Daqq, and Qader Karam.

In 1957 Kirkuk province underwent yet other additional changes in its administrative units and internal borders. According to 1957 census, the province included:

1. The district of Kirkuk, including the sub-districts of Haweeja, Shwan, Alton Kopri, and Qara Hassan.

2. The district of Kifri, including the sub-districts of Bebaz, Sherwana, and Qara Tepe.

3. The district of Chemchemical including the sub-district of Aghjar and Sangaw.

4. The district of Toz including the sub-districts of Qader Karam, and Daqq.

The most important administrative changes occurred after 1975 when via the Revolutionary Command Council (RCC) decrees no. 608 and 42 dated Dec. 15, 1975 and Jan. 1, 1976 respectively the central government annexed the two districts of Chemchemical and Kelar to the province of Suleymaniya; the district of Toz Khormato to the province of Salahadin; and the district of Kifri to the province of Diyala. Later, via decree no. 111 issued on 16 November 1987 the district of Zab was annexed from Mosul province and attached to Kirkuk. While in January 1976, the Iraqi central government changed the name of Kirkuk province

to Tameem, which means nationalization (RCC decree no. 41). At that time, the province measured 10,319 sq/km and had a population of 492,615, which increased to 752,743 in 1997 and then to 1,280,000 by 2007, by November 2013 was 1,425,781.

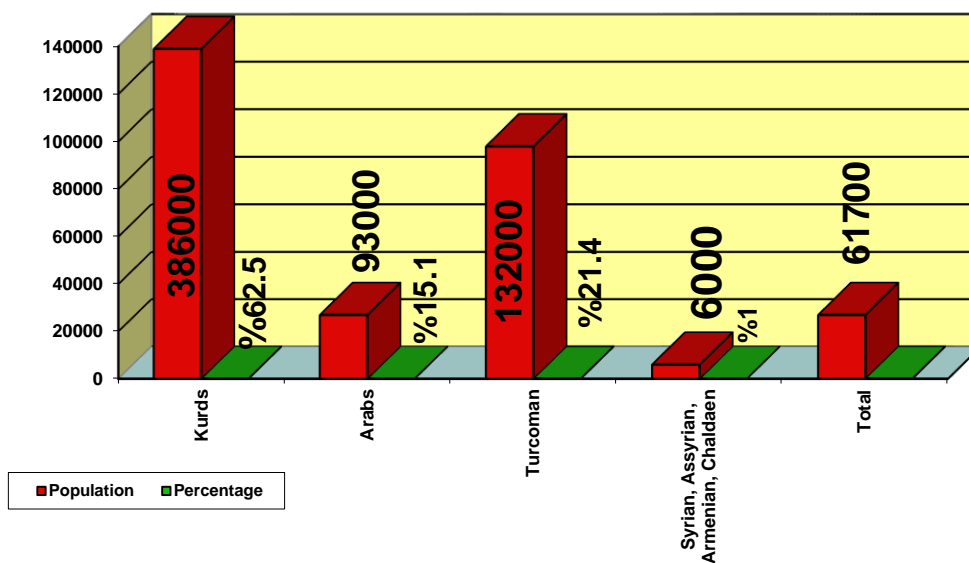
Demographic Changes

The population of Kirkuk includes three main ethnic groups: Kurds, Turkmen, and Arabs. Prior to the central government's Arabization campaign that commenced in the early 1960s, the Kurds constituted more than sixty-four percent of the total population of Kirkuk province and fifty-three percent of the population of Kirkuk district. By 1977 they represented thirty seven percent while Arabs represented forty-four percent and Turcoman represented sixteen percent. The Christian population declined from about nine percent to less than two per cent. The following graphic show the variation in the population by ratio between 1922 and 1977.

Table No. 1 Ratio of the Ethnic Population of Kirkuk governorate, 1922-1977. Source: Ministry of Planning, Baghdad, 2004.

Ethnicities	1922-1924	1957	1965	1977
Kurds	65.1	48.3	36.1	37.6
Arabs	20.9	28.2	39	44.4
Turkomans	4.8	21.4	19.5	16.3
Chaldeans, Syrians, Assyrians, Armenians, and others	9.2	2.1	5.4	1.7

As mentioned previously in Chapter 2, in 1974 the number of Kurds increased inside Kirkuk City due to the Peace Agreement between Baghdad and Barzani. The Agreement collapsed in 1975 with the signing of the already mentioned Algeria Agreement (6 March 1975) between Iraq and Iran.³ This meant a shift in the population reflected in the ethnic distribution of the group as in the following chart.



³. The source of this data is Kurdistan Democratic Party Political Bureau, Kirkuk Office, 1974.

The previous data are important because they offer an overview on the population shift towards an increasing presence of Arabs from 1977 to 1997. The same shift can be observed in the population distribution by ethnicity of the workers of the Northern Oil Company in Kirkuk between 1958 and 2003 as in the following tables:

Table 2. Number of workers in the Northern oil company in Kirkuk, 1958-2003. Source: Iraq Northern Oil Company, Staff Records. 2009.

Year	Arabs	Kurds	Turcomans	Christians	English	Total
1958	40	850	370	900	70	2230
1960	55	1350	500	1100	65	3070
1963	100	1150	700	1400	60	3410
1965	170	1000	800	1350	55	3375
1968	300	875	850	1000	50	3075
1972	900	700	900	1000		3500
1978	2700	500	1200	850		5250
1982	4500	400	1500	800		7200
1988	5200	300	1700	750		7950
1995	6600	260	1800	700		9360
2000	200	119	1920	600		9839
2003	7300	610	2100	500		10,510

Table 3. Ratio of Ethnic composition of the Northern Oil Company workforce, 1958-2003. Source: Iraq Northern Oil Company – Staff Record 2009.

Year	Arabs	Kurds		Turcoman	Christians	English
1958	1	38		16	40	3
1960	1	43		16	35	2
1963	2	33		20	41	1
1965	5	29		23	40	1
1968	9	28		27	32	1
1972	25	20		25	28	
1978	51	9		22	16	
1982	62	5		20	11	
1988	69	3		21	19	
1995	70	2		19	7	
2000	73	1		19	6	
2003	69.45	5.8		19.98	4.75	

The preceding tables reveal a negative relationship between Arab, Kurdish, Turkoman and Christian workers over time. That is, as Kurds and Christian employees decreased, Arab workers increased while Turkmen manpower remained nearly the same. No major population shifts occurred in Kirkuk from 1996-2003, this is probably due to the fact that after 1991 Kurdistan has been liberated with the support of the US, the UK, France and Turkey. However, after the fall of Saddam Hussein and the Ba'athist regime in April 2003, population movements have been in two directions: a return of Kurdish families to Kirkuk (224,544) and an exit of Arab families from Kirkuk (about 5,986 families

numbering 52,973). The population of Kirkuk was 705,014, based on the food supply forms on April 30, 2007, but today is 1,425,781 and the total number of families is 299,132. 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 at 163,700, the total number of Kurds in the city of Kirkuk is 426,712, sixty percent of the total population. The following statistics explains the demographic situation in Kirkuk province until 2003.

Table no 4. Ethnicities between 1977 and 1997. Source: Ministry of Planning –Baghdad- 2009.

Ethnicities	1977	1978	1997
Arabs	218,755		544,596
Kurds	184,875		155,861
Faylee Kurds	388		1,105
Turcoman	80,347		500,99
Armenians	581		116
Syrian, Chaldean	4,050		758
Others	180		205
Unknown	3,439		3
Total	492,615	601,219	752,743

Despite the figures presented in the table above, 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 November 8, 1996 to the commander of the Northern Bureau of the Ba’ath Party and member of the (RCC), the governor of

Kirkuk complained that the Kurds formed about sixty percent of the population. 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."⁴ 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 disallowing Kurds to be hired by Arabs.

Kirkuk after 2003

At present the province of Kirkuk consists of six districts, subdistricts: Kirkuk, Haweeja, and Dibis, Daqoq, Alton Kopri, and Sengaw. The districts of Chemchemal, Kifry, Kelar, and Toz Khormato that were part of Kirkuk province prior to administrative changes in 1976 have become part of Suleymaniya, Diyala, and Salahadin provinces. It constitutes one of the most controversial cases of disputed territories in Iraq between the KRG and the Federal Government.⁵

State of the negotiation with Baghdad

In 2005, the American administration and the interim Iraqi Government established a high committee to implement article 58 of the TAI (Transitional

⁴. Khafour Makhmori, *Arabization and de Arabization* (Erbil: Aras Publisher, 1998) p. 211.

⁵. A lot has been written on the topic. See for example *Crisis in Kirkuk: the Ethnopolitics of Conflict and Compromise* by Liam Anderson and Gareth Stansfield, University of Pennsylvania Press, 2009. In this pages the researcher will refer his findings and thinking as Kurdish representative in the negotiations with Baghdad.

Administrative Law) in Iraq.⁶ The researcher was the Kurdish representative in this committee and could verify that, unfortunately, the deliberations of this committee was short lived because of the lack of funding and also because both sides Americans and Iraqis did not have the commitment to sort out this issue. In 2007, the new government established another committee, this time named High Committee of the Implementation of the article 140 because 58 of TAL has changed to 140 of the new constitution. According to the article 140 of the 2005 Iraqi constitution this area, as 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 taken to determine the demographic makeup of the province's population. 3) A referendum to determine the status of disputed territories. Obviously whether a territory is home to mainly Kurds or mainly Arabs will have an effect on who can lay claim to the area. Unfortunately, none of these steps has been implemented and this caused political and social tensions in the area that risked degenerating into a civil war. Various negotiations had taken place in order to solve this issue, but until now the unwillingness on behalf of the Federal Government to tackle the problem has exacerbated the situation.⁷

As minister of Extra Regional Affairs, the researcher represents Kurdistan in the negotiation and worked for the implementation of article 140 of the constitution and he witnessed how none of the three steps mentioned above have been implemented. The normalization, which requires the restitution to the

⁶. See Decree No 15th signed by Dr. Alyad Alawi (First Iraqi Prime Minister after the occupation) on 9th February 2005, Wakaiea iraqia, no.3995 date, 3 March 2005. Gazeta.

⁷. See map no.7 for the disputed areas between Iraqi Federal Government and Kurdistan Regional Government until December 2013.

Kurds of the properties confiscated during the different phases of the Arabization, did not happened and this created a long lasting mistrust towards the Federal Government. A census is long due since the last one before Arabization was done in 1957, but the Federal Government is very reluctant in ordering 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.

In April 2013, KRG PM Mr. Nechir Van Barzani visited Baghdad and had many meetings with Iraqi PMs with the purpose to implement article 140 of the constitution. The government promised a round of negotiation, but up until now nobody has shown any will to tackle the problem. It seems there is lack of leadership to sort out this issue. The Fedral Government does not feel confident enough to tackle the problem. In addition, people who took part in the Arabization and genocide campaigns are still in office both in the civil service and in the military structure of the government and this lack of de-Ba'athification makes any attempt of negotiation very difficult. However, in contrast with the past, today the federal government is weak and it does not have the military power to engage in a war against the Kurds. In addition, the international and regional political situation does not favor a solution by force. The researcher reckons that 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 would have been implemented. This would have helped in the prevention of 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.

Peace for the Future?

In the last chapter the researcher will offer some recommendations in this subject. For the moment, regarding the analysis of Arabization and its consequences, the current mentality and culture makes the idea of peace in this area almost impossible. Without a strong reform of education, without a fairer division of wealth and power among the different sections of the society, the reality of a peaceful coexistence is still far away. The vacuum of power and the persistence of the old mentality and divisions still pose a real threat to the future of a country which seemed destined to experience the tragedy of dictatorship and struggles to break this cycle of violence. The following chapters will deal with other four genocides directly linked to the policy of forced Arabization exacerbated by Saddam Hussein's regime.

The following chapters will show how Arabization constituted the beginning of the state engineered policy genocide against Kurds in order to eliminate them from Iraqi society.

Disputed Areas between KRG and Baghdad



Figure 8 Map no. (7) Dispute areas between Baghdad and Erbil until December 2013.

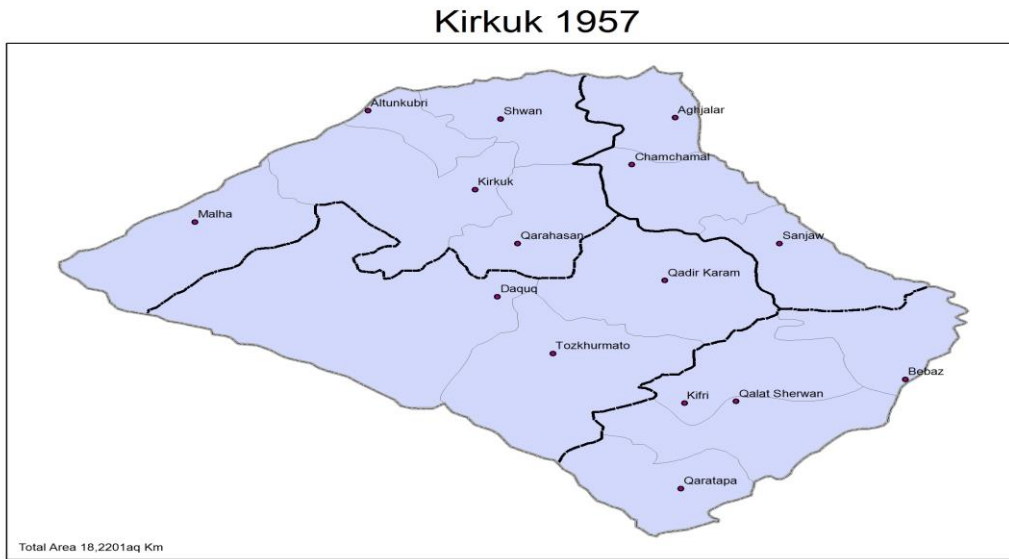


Figure 9 .Map No. (8) Kirkuk in 1957 before Arabization, the size was 18,220 square km. Source: Author.

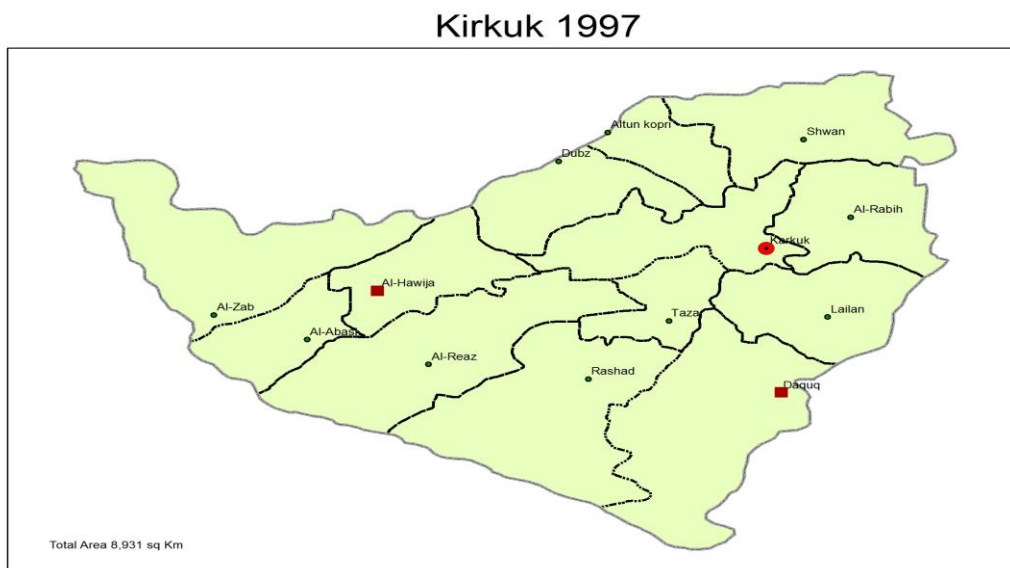


Figure 10 Map No. (9) Kirkuk in 1997 after Arabization. Its size decreased to 8,931 square km. Source: Author.

Kirkuk 2003

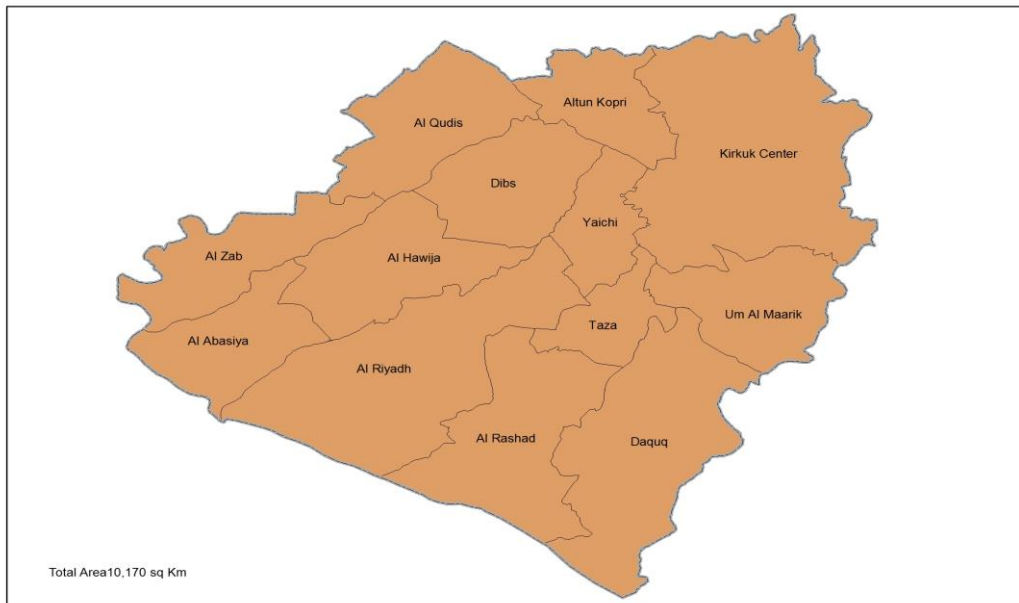


Figure 11 Map No. (10) Kirkuk in 2003. Its total area is now 10,170 square km. Source: Author.

Chapter Five

The Faylee Kurds (Genocide concept approval)

Introduction

The second crime analysed in this work is the mass deportation of Faylee Kurds during the Saddam's regime and the gradual changes of citizenship laws that led to it. This crime constitutes the second stage of a state engineered genocide against a targeted group. This chapter is based mainly on the documentation gathered by the researcher in two different phases of his work. The first phase coincides with the researcher's participation in one of the opposition groups acting outside Iraq. During those years, as Legal Advisor at the Amnesty International European Institutions Office the researcher was able to gather primary sources on the Faylee Kurds case. It was only after the end of the Ba'ath regime that these documents, along with the ones gathered on the ground during the second phase of the research, could be archived and analysed in order to build up the court case on the Faylee Kurds genocide. The researcher had the opportunity as minister for Human Rights of the new established Kurdish Regional Government to gather more material from private sources. 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 the judges Munir Hadad, Mohammed Sahib, Azzo Mohammed Sofi and Raed Juhi contributed to the reconstruction of the different phases of the Faylee Kurds case.¹

¹. The judges mentioned worked at IHT (as judges and investigating magistrates) from the beginning of its creation and in many occasions the researcher worked with them on different Kurdish cases.

As it 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 the article II of the 1948 Convention mentioned at the beginning of chapter 2. 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 researcher will argue, linking this chapter to the other crimes presented in this work, which all these different steps caused an escalation of violence that, after the killing of the Barzanis, culminated in the Al Anfal campaign and the Halabja events. He also reckons that the campaign against Faylee Kurds constituted a sort of pilot project towards mass murder and genocide.

As already said in the introduction, in particular regarding the mass deportation of Faylee Kurds, it is paramount to establish some differences between the reasons and the strategies used by the Ba'ath regime to justify these crimes. In the Faylee Kurds' case the researcher will argue, producing the texts of the decrees issued by the Iraqi government, that in this instance it is evident a strong relationship between existed genocide and the laws legislated since every step towards the forced deportation of the Faylee Kurds was taken within the law. This allowed the regime to act with impunity creating a deep divide within the Iraqi population and, at the same time, offering a justification for its acts creating what the researcher will call a 'concept of approval' new to the regime. 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.

In addition to the decrees issued by the Ba'ath government, the researcher had access to a series of telegrams exchanged among various authorities, in different areas of the country that shared orders and information regarding the deportations. These documents reveal that the authorities were aware of the persecution and the resettlement of the Faylee Kurds population and proved to the IHT the clear responsibility of the regime. As it will be explained more in detail at the end of the chapter, and the documents provided in the appendix helped the researcher to present a convincing case.² After the deliberation of the IHT, the Resolution of the Council of Ministers No. 426 of 2010 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 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 *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).

As already anticipated in the introduction, it is not the purpose of this study to report in detail the trial against the perpetrators of this crime. However, this

². The researcher reproduced different documents in appendixes for this chapter besides the Resolution of Council Ministers no. 426 and resolution no. (6) of the Presidency office. All of them show how the 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 crime of genocide 'by all measures'. Unfortunately, these documents are a striking reminder of how their content has never been implemented. See appendix No (1) A - B of this chapter.

chapter will deal with the legal outcomes of this trial and of what the researcher reckons is their social impact on Iraqi society in its effort towards reconciliation and state building. All this in an attempt to find a balance between the scale of the crime, the limit of the new justice system and the failure to fulfil the second point mentioned in the above declaration.

Faylee Kurds historical background

According to Michael Gunther, Faylee Kurds are a distinct group of ethnic Kurds and Shi'ite Muslims originating from the Iranian region of Kirmanshah who lived in Iraq as early as 539 BC, mainly in Baghdad but also in other areas of the country.³ Michael Gunther defined Faylee Kurds as a group of some 150,000 Kurds originally from the Iranian region Kirmanshah. On the Iranian side of the border they can be found in Kramansha, Ellam, Khoziztan, Khesrowi, Qasr Sherin, Sarbil Zahab, and Irania Badra.⁴ The historian George Kersan stated that their name means 'revolution',⁵ while according to an American archaeologist Henry Filed who worked in both Iraq and Iran at the beginning of the 20th century means 'rebellion'.⁶ Hugo Grottee, who travelled to Iran at the beginning in the same period, wrote that the origin of Faylee Kurds went back to Old Ellameins and the name Faylee came from the Peli King who established his own Kingdom in Ellameins.

³. Fathel Barak, *Iranian and Jewish School in Iraq*, (Baghdad, 1984). For further information on the origin of Faylee Kurds, see Hana Battatu, *Social Structure and Revolutionary Movements During the Ottoman Empire*, (Beirut, 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, 1992), pp. 152-161.

⁴. For more information on Faylee Kurds areas or locations see map No (11).

⁵. Kerson, G., *Iran wa Al Kathiya al iranica*, translated by Ali Jawad Kalam (Tahrán, Ibin Sinna , 1936)

⁶. Filed, H, *Marifat al akwam al iranica* (Seweden: Al Mazda, 2001) p. 98.

During the Ottoman Empire, Faylee Kurds living in Iraq chose to apply for Persian citizenship to avoid mandatory military service. Consequently, when the Empire fell after World War I, Faylee Kurds, along with others that had opted for Persian citizenship were left without a country and their Iranian citizenship became the source of a deep distrust and even hatred especially under the Ba'ath regime. Although Faylee Kurds have never enjoyed full Iraqi citizenship rights, the Arab nationalist movements and the rise of the Ba'ath Party to power in 1968 meant an intensification of the persecution against them as enemies of the state. Since 1968 the citizenship laws were amended several times with the purpose of denying them the Iraqi nationality and, at the same time, of justifying 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 were confiscated and inventoried for redistribution to Arab Iraqis. During the Iraq-Iran war, tens of thousands of young men were imprisoned and disappeared. The bodies of an estimated 10,000 men aged between 18 and 28 imprisoned during the war have never been found.⁷ This chapter documents the evolution of state policy towards the Faylee Kurds and identifies particular moments of brutality in Iraqi history.

⁷ The researcher has conducted fieldwork across Iraq searching for the bodies of the Faylee Kurds. In February 2013, the researcher visited Samawa, Nigrat Al Salman (N30 30 31.45 E44 39 27.29), and the prisons where most of the imprisoned Faylee Kurds were kept during the 1980s. The researcher witnessed the names of Faylee Kurds carved into the prison walls, but has been unable to find the bodies, however, he was able to draw a map of the concentration camps where they were imprisoned.

Faylee Kurds' Areas



Figure 12 Map No. (11) Faylee Kurds population's distribution.

Citizenship Laws and Deportation

The Treaty of Lausanne signed 24 July 1923 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 automatically have granted citizenship to the former Ottoman citizens living in their territories.⁸ 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 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 an Iraqi ID should be issued stating their former nationality. In order to apply for the 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 ID. Iraqi citizens with a second nationality were automatically deported.⁹

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, immediately in 1963, the Ba'ath party revoked Law No. 42 of 1924 replacing it with Nationality Law No. 43.¹⁰ This law change was an effort to monitor Faylee Kurds and record their whereabouts as well as their

⁸. 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".

⁹. Articles 9, 13 of law no. 42 of 1923.

¹⁰. Some Kurdish leaders such as Ali Sinjari and Fazil Mirani think that the main motive behind this law was Faylee Kurds' support to General Abdul Karim Kassim before the 1963 military coup.

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 it 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 intervene in an effort 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.¹¹ It is estimated that 50,000 Faylee Kurds were deported during the decade.¹²

This was the situation when Saddam Hussein came to power. Many Faylee Kurds were ineligible for Iraqi nationality, and those who had gained Iraqi nationality were registered as of Iranian origin. Through the Revolutionary Command Council (RCC), Saddam's issued Decree 180 dated 3 February 1980.¹³ This decree granted the Minister of Interior the power to accept the nationality application on 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

¹¹. Gowi Kurds were Sunni Muslims without Iraqi nationality or ID cards living on the border Iraqi-Turkish border. The KDP successfully avoided their deportation, meeting with Mr. Ali Sinjari KDP representative in Baghdad during 1970s, Dohuk, October 2012.

¹². David McDowall, (1997) *A Modern History of the Kurds*, Minority Group International, Cambridge: Cambridge University Press, p. 330

¹³. Saddam Hussein as the chairman of the Revolutionary Command Council issued many other decrees regarding Faylee Kurds such as RCC decree No.907 dated 9/6/1980, 916 dated 10/6/1980, RCC decree No. 1134 dated 11/24, RCC No. 873 date 31/7/1984, RCC No. 28 dated 9/1/1985, RCC No. 1167 dated 18/10/1984, RCC No. 1370 dated 12/12/1984, RCC No. 1227 dated 1985, RCC 1250 dated 14/11/1984, RCC 1209 dated 18/11/1984, RCC 784 dated 1984, RCC 855 dated 25/7/1985, RCC 49 dated 12/1/1983, RCC 120 dated 27/1/1983, RCC 253 dated 13/3/1982, RCC 533 dated 9/5/1983.

months only before reverting to previous Nationality Law 42. Anyone who did not apply for citizenship within the six months period, and who after six months lacked Iraqi nationality and an Iraqi ID card would be expelled. This six months 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' generation were educated in the hatred of Iran or people of “Iranians origin”. Khairall Tolfah (1910 -1985), the author of an overtly racist book entitled *Anatomy of Khomeini Religion* raised Saddam Hussein being his uncle and later his father in law. In it he criticizes Shi'ite 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 Persian, since in his views the Jewish stand against God, flies transfer diseases, and Persians converted to Islam in order to destroy it.

In 1980 Saddam ordered the deportation of Faylee Kurds “Iranian descendants” offering 10,000 ID, approximately \$30,000 USD, 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 (\$12,000) for a military and 1,500 ID (\$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 his 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 finally settled their dispute on territorial issues. Iran got 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; paving the way for the Iraqi government to a harsh repression of 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 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”.¹⁴ The ease with which Arabs could apply for, and be granted, Iraqi citizenship directly contrasts 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 jurisdiction to consider any case regarding the issue of nationality made under Nationality Law No. 43.

After the 1979 Iranian revolution Iraq relations with Iran deteriorated dramatically, especially because Iran threatened of exporting its revolution to other areas of the Arab World. The Ba’ath Party considered themselves as Arab

¹⁴. 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.

socialist and nationalist (guards of 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 their duty to prevent Iranian Revolution from influencing the rest of the area, in 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.¹⁵

In April 1980 the attempted assassination of Deputy Prime Minister Tarik Azziz by Faylee Kurd Samir Mir Gullam provided an additional pretext for further deportations. Samir Mir Gullam planted explosives at Mustansiria University killing several students but failed to kill the Deputy Prime Minister. This attack provided Saddam Hussein and the Ba'ath party the evidence in support of their propaganda against Faylee Kurds. In a public speech following the fatalities at Mustansiria University, Saddam declared: "I swear to God, I swear by single 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 On the same day of the explosions, Saddam amended the citizenship laws, issuing Decree No. 180, preventing anybody of Iranian origins from applying for citizenship and opening to mass deportation of Faylee Kurds, sometimes even of Iraqi citizens. In an interview with Brigade General Saad Thuthir, the researcher found out 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

¹⁵. Brigade 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.

¹⁶. *Al Thawra* daily newspaper, the spokesman of Baath Party newspaper, no. 3602, 5 April 1980.

university.¹⁷ The first Ba'athist speaker was a woman named, Sanna al-Umari, and her reaction was that only the criminal should be punished, not the perpetrator's entire family. She was the only one that held that view. Saddam decided to punish all Kurds in Iraq, not only Samir Mir Gullam's family.¹⁸

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

Yesterday our youth and women's blood was shed in Mustansiria, the responsible was an agent named Samir Mir Gullam, 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 whom 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 the smallest grain of Iraqi soil that the pure blood of our people in Mustansiria will not go without punishment or in vain.¹⁹

There are three main points in this speech that deserved to be analysed: the first is the presumption that Samir Mir Gullam was not acting alone, but as a representative of a larger terrorist group with intent on 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' – being the Arab victims killed in the attacks – elevates Arabs over Samir and the Faylee Kurds. On the same date, the Ministry of Interior issued a Telegram (No. 2284) to all governorates on the Iranian Border where he said:

¹⁷. Meeting Brigade General Saad Khuthar, director of psychological warfare during Iraq-Iran war, Baghdad, November 2011.

¹⁸. Samir Mir Gullam and five members of his family were caught and killed, see Telegram cabled 10493, dated 18 October 1987, from Security Office of Ikanat Office to Security Directorate of Saddam City: "Criminal Samir Mir Gullam, was captured with all members of his family in 1980, and their names are Noor Ali Gullam, Amir Mir Ali Gullam, Farid Mir Ali, Faik Mir Ali, 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." Appendix No. (2)

¹⁹. Iraqi Channel No 1, 8 pm News, Full Speech of Saddam Hussein, 28 April 1980.

“We would like to reassure our order of opening fire on any deportees who try to enter Iraqi land again”.²⁰

On 7 May 1980, in order that Iraqi blood would not go in vain, Saddam issued RCC Decree No. 666.²¹ Through this decree, he determined to punish all Faylee Kurds. The first step was to strip all Iraqi citizens of foreign origin considered not loyal to the state from their Iraqi Nationality. 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 strip Iraqi Nationality from all Faylee Kurds, and deport them from Iraq. Kurds from the districts of Bab Al Shaikh, Kifah Street, 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. The first group of deportees was a group of Faylee businessmen from Baghdad. The party invited them to the Ba’ath Party headquarter under the pretext of a legitimate business meeting, where they were captured, loaded into trucks and taken to the Iranian border where they were forced to walk across.²²

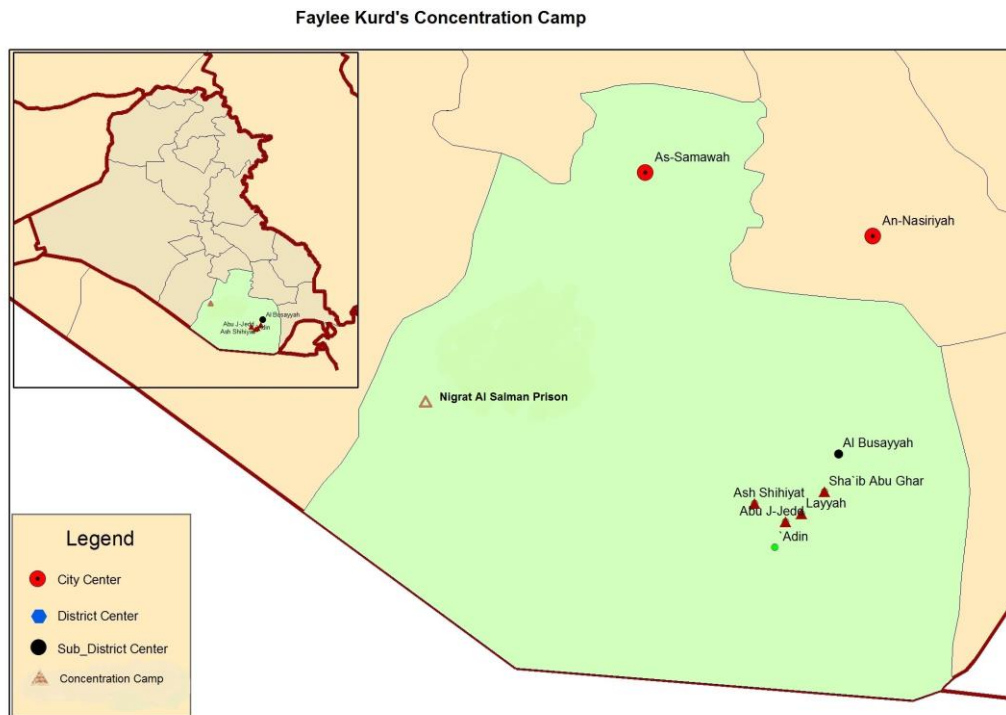
By August of 1980, Iraq and Iran were openly exchanging fire and in September Iraq invaded Iran. The number of deportees fluctuated depending on the outcomes of the conflict. The scale of the deportation of Faylee Kurds to Iran increased with the victory reported by the Iraqi army. On 16 February 1981, Al Thawar 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 spillary more and disgrace Iraqi blood, air and soil. The

²⁰. See Appendix no (3) of this chapter for the original and translation of telegram no. 2248.

²¹. See Appendix no (4) for the RCC decree no 666 of 7 May 1980.

²². Ahmed Nassir Faylee, *Al Failyon, History and Destructive Citizenship*, (Erbil, Aras Publishers, 2012), pp. 215-217.

revolution uprooted them to put an end to their presence and to purify the Iraqis who are noble and do not accept humiliation”.²³ 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 the map follow.



*Figure 13 Map No. (12) Faylee Kurd's concentration camps during their displacement.
Source: Author*

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 Shah of Iran cancelled the 1937 Treaty between Iran and Iraq, Iran started threatening the sovereignty of Iraq over Shat al Arab and to working against our Revolutionary system, they did it by financially supporting the Barzani's group as well as the Iranian living in Iraq and Iraqis citizens of Iranian origin. All these groups formed a fifth column inside Iraqi society.

²³. Article in *Al Thawra* newspaper No. 2342, 16 February 1981, p.5.

They were behind any anti-Ba'ath campaign, 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 got to its highest point, the fifth column stood against the revolution in a very clear way, and accelerated its activities in the country. As part of this preventive 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 of this country. This process started at the beginning of 1971 and went on in different moments.²⁴

It is estimated that when Saddam delivered this report over 50,000 Faylee Kurds had already been deported from Iraq.²⁵

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*, discussing 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 an Iranian descendant meant Faylee Kurds would instinctively act against the 'national interest' and all Arab national hopes and aspirations.²⁶

During the Iraq-Iran war, the Kurds were openly fighting against Saddam. With both the KDP and the PUK openly supporting Iran, the Kurds in the north of the Iraq threatened the stability of the regime. As it was common in Iraqi history, Saddam responded by amending citizenship laws, encouraging the stripping of

²⁴. The term 'fifth column' deliberately suggested that Faylee Kurds were clandestinely assisting the Iranian behind enemy's lines.

²⁵. David McDowall (1997) *A Modern History of the Kurds*, Minority Group International, Cambridge: Cambridge University Press, p. 330.

²⁶. First version printed in 1980 (Baghdad), the researcher relies on the second version printed in 1985 (Baghdad).

Iraqi nationality and forced deportation of opponents to the regime saying that: “We decided to continue the deportation of Iranian descendants, even for the people who are not included in the deportation lists previously compiled. The orders are to strip them of their Iraqi Nationality if you find 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 you find anyone who was not included in deportation lists before, and any of these three conditions apply to them, deport them” (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 proved that he is or was not faithful to the state and its people.

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 ID or nationality card to the Security Office of their workplace. They asked all students in school to bring their national ID and nationality cards of both parents to the teachers for documentation. Any member of the Ba’ath Party or Military Security Forces, or Intelligence Organizations, had to present their national ID or nationality card, and that of both of their 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.²⁷

²⁷. 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.

The war against Iran ended with Iran's acceptance of Security Council Resolution 598 and with a ceasefire between the parties. While Iraq claimed victory, it continued to persecute Iranian descendants and anyone opposed to the regime in accordance with Saddam's aspirations. On that occasion the authorities said: "Based on the Presidents (God Bless Him) directions, we should continue the process of deportation of those who cannot be approved by military organizations and security organizations, those remaining should be deported as soon as possible. Anyone who is reluctant to fulfil the orders of this telegram will receive punishment to the highest order" (40268/C from Presidency Office on 9 November 1988).

Before the Iran-Iraq war, the state's policy was to deport entire families in which at least one member was of Iranian origin. However, the massive deportation along with the open support of Iran by the Kurds in the North, soon presented itself as a real problem for Saddam. The regime realized that deporting Faylee young men would only serve to strengthen Iranian manpower since many deportees had joined the Iranian army. In April 1980, months before Iraq invaded Iran, the Ministry of Interior issued a telegram ordering all male Faylee Kurds aged between 18 and 28 eligible for deportation, should be imprisoned until further notice (see telegram No. 2884 reproduced in appendix). In addition, any military officer of Iranian descent, no matter his rank, should be handled to the military police in Baghdad to be detained until further notice. It is estimated that approximately 10,000 men were imprisoned as a result of this telegram. Their bodies have never been found.²⁸

²⁸. At the time, Amnesty International published many press releases and sent many letters of condemnation to the Iraqi state.

Deported Faylees also suffered the confiscation of all their movable and non-movable property. The state confiscated their homes, lands, factories, bank accounts, and prohibited deportees to take any personal items with them from Iraq. From an interview with Brigade General, Najib al-Salahi, the researcher found out that Saddam had openly said that the first Faylee Kurds had come to Iraq with bare feet and were not carrying anything, and thus these generations should return back to their roots without anything as well.²⁹ RCC Decree No. 1131 issued on 18 August 1980, authorized the Minister of Interior to sell all the properties of Faylee Kurds, 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 Interior and the Office of the Deputy Prime Minister (Tarik Azziz, who had survived an assassination attempt only months before). At the same time they have described by Iranian officials as uninvited guests.³⁰

It is interesting to notice that all the above measures against Faylee Kurds have a striking resemblances with the ones put in place during Nazi fascism in Europe, in particular in Germany and Italy. In both countries the persecution against the Jews starting with the publication of racial laws aimed at denying their civil rights. The authorities started to single them out in schools and in working places compiling lists of citizens to target. As for the Faylee Kurds, they were stripped of their jobs, properties, and of every civil rights until they were segregated in ghettos before deportation or death. What it is more interesting is that all this happened within the law and with the complicity of the other citizens.

²⁹. Meeting Brigade General Najib Al Salihi, Baghdad, March 2013.

³⁰. Based on many interviews with Faylee Kurds who have been back from Iran or at some stages of their deportation they were in Iran, all confirmed that they were "non invited guests" to Iran as they have heard every day from Iranian officials.

This was possible thanks to a rhetoric that tended to distinguish “us” from “them” and to diminish them as not being part of the human race and as enemy of the State. In Iraq, the ideology of the pure race and of pure blood promoted in Europe during Nazi fascism was adopted by Saddam when mentioning that Faylee Kurds’ blood was polluted and that they should not be allowed to contaminate Iraqi blood through marriage. As we have seen earlier, following this ideology entire families were disrupted and forced to leave or disappear. While on the political side Faylee Kurds as Jews before them, were accused of being enemies of the state and to their deportation was to prevent another conspiracy.

This brief parallel between the European case and the Iraqi one is particularly significant if we keep in mind that the same extreme ideology can thrive in different historical realities. This should warn us about future dangers and the international community to put in place policies for the prevention of genocide crimes.

IHT decision

The trial regarding the experiences of the Faylee Kurds was heard by the Iraqi High Criminal Court over 44 sessions, commencing 26 January 2009 and ending on 29 November 2010 when the verdict was delivered.³¹ The trial was presided 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 had been executed before the case began his culpability for the treatment of Faylee Kurds was not directly considered. This is a summary of the people convicted for these crimes.

³¹. IHT decision 29 November 2010 Case No. 2/C/2008.

Sadon Shakir Mohammed Ahmad Alubaidi (1939-) General Director of Iraqi Intelligence 1973-1979. He served as the Minister of Interior from 1979 to 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 666, dated 7 May 1980, as the Minister of Interior he was in charge of implementing this decree ordering the withdrawal of Iraqi nationalities and deportation of Faylee Kurds. Under his command, the policy was implemented and tens of thousands of people were deported or killed. He personally authorized signing 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 666).³² Finally, Sadon Shakir was in control of the redistribution of properties of the Faylee Kurds, and for the allocation of Faylee commercial and residential buildings as well as for their registration in the name of the President of the Intelligence Service.³³

Ahmed Hussein Khuthair Awath Al Samarae (1939 -) Chief of Staff in the Presidency Office from 1984 until 1991, and again from 1995 until 2003. The Court found that Ahmed Hussein did not play a role in drafting or implementing RCC Decree 666 of 1980. However, the Court found that Ahmed Hussein was

³². He issued many decrees to that effect, Decree 16395, dated 15 December 1982, Decree 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 of them in the name of the President of the Iraqi General Intelligence (*Mokhabarat*).

³³. Sadon Shakir has been sentenced to death for genocide, sentenced to 15 years imprisonment for committing the crime of forced deportation as a crime against humanity, sentenced to 7 years for committing the crime of imprisonment as a crime against humanity, 7 years for committing the crime of torture as a crime against humanity, 6 years for the crime of oppression as a crime against humanity, 10 years for committing crimes against humanity. At the time of writing, Sadon Shakir had not been executed. See appendix (5) of this chapter for the details of the court decision regarding criminal Sadon Shakir.

responsible for concealing and denying what occurred to Faylee Kurds, particularly those killed during the war with Iran where Faylee Kurds were used as human shields and sent across the heavily mined Iraqi-Iranian border. Ahmend Hussein drafted denial policy and oversaw the payment of retirement salaries to the families of those Faylee Kurds left behind in Iraq who made enquiries of the whereabouts of their male family members. The state would respond to such enquiries by saying that the men must have been kidnapped by the Popular Army, sent to war, and died whilst serving 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 traitor Daawa Party. In the same telegram he suggested the General Director of Security to 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 role, to make their deaths official.

Mozban Khothir Hadi, (1938 -) originally a school teacher at the beginning of the revolution in Najaf governorate, in 1981 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 of 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.³⁴

³⁴. Mozban was sentenced to death for committing genocide against Faylee Kurds, 15 years for deportation as a crime against humanity, 7 years for imprisoning people, 7 years for committing the crime of torture as a crime against humanity, 6 years for oppression as a crime against humanity, and 10 years as inhuman treatment as a crime against humanity. For the full court decision regarding his involvement see the) appendix no. (6) of this chapter.

Azziz Salih Hassan Noman Al-Khafaj (1941-) Deputy Minister of Interior between 1978 until 1979. Later he was in charge of the Ba'ath Party Headquarters in 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.³⁵

The victims were persecuted on ethnic and religious sectarian grounds. Their only crime was thus 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.

Application of the Eight Stages of Genocide framework

The eight stages listed by Professor Gregory Stanton are very useful in order to discuss the policies implemented against the Faylee Kurds in relation to each of the eight stages below.

Classification: Gregory Stanton identifies classification as the first stage of the genocidal process. Classification involves inflicting clear, distinguishable boundaries between “us” and “them”, and in a genocidal society, between the genocidaires and their targets. In Iraq, members of society were classified along ethnic lines; Arab, Kurdish, Iranian, Assyrian, Turkomen, and Armenian. Further

³⁵. Aizi Salih Mohan sentenced to death for committing the crime of genocide, 15 years imprisonment for committing the crime of deportation as a crime against humanity, 7 years for illegally imprisoning people 7 years for committing the crime of torture as a crime against humanity, 6 years for committing the crime of oppression as a crime against humanity, 7 years for committing inhuman activities as a crime against humanity. For the full court decision regarding his involvement on Faylee Kurds Genocide see the appendix no. (7) of this chapter.

division and classification was made according to religion, identifying Sunni from 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".

Symbolization: Symbols are used as markers of the classified groups. In Ba'athist Iraq, Faylee Kurds (classified as Iranian) were referred to as 'traitors' of Iraqi nationalism, the "fifth column of Iraq", as aides to Iranian and Zionist intelligence gathering inside Iraq, as a profane or disrespectful, and as an impurity of Iraqi blood.

Dehumanization: For Gregory Stanton, dehumanization is the crucial third step that transports classification and symbolization from societal division to steps of genocide. In Ba'athist Iraq, Kurds and Faylee Kurds, or Iranians as they named them, are not likened to vermin or cockroaches as they were by Nazi Germany or Hutus in Rwanda. However, Saddam dehumanized Faylee Kurds with imagery of their contamination of Iraqi blood, and the justification for deportation being the cleansing of Iraq from impurities. Faylee Kurds were herded into trucks, humiliated and tortured during their deportation.

Organization: One of the most striking characteristics of Iraq's deportation policies was the efficiency with which they were implemented. The branches of state that came together to implement the deportation policies and eventually to kill the men held in custody included 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 names of Faylee Kurds to be

deported were compiled, transport to the border was organized, men of military age were separated and held in custody, and confiscated property was inventoried and redistributed under the oversight of the Deputy Prime Minister.

Polarization: Polarization refers to the systematic elimination of moderates, or those that could interfere to slow the genocidal process down. Again, this process was apparent in Iraq, and the institutions limiting moderation or opposition to Ba'athist ideology were well established when Faylee Kurds came to be deported. 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.³⁶

As shown above, affiliation 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 with 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.

³⁶. Stansfield, G. *Iraq* (UK, Polity Press, 2007), pp. 97-98.

Preparation: Preparation for genocide includes identifying targets, preparing lists of maps, logistics and training armed forces or militia to ultimately carry out the acts of genocide. 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 state institutions could find information on the whereabouts, occupations, and political views of any of its members. Transport was arranged so that Faylee Kurds could be taken directly to the Iranian border and their deportation verified.³⁷ Military-age Faylee men aged between 18 and 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 suppressing and killing Iraqi nationals at the directions of the regime.³⁸ 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.³⁹

Extermination: Perhaps uncharacteristically for Ba'athist Iraq's unquestioned brutality towards its citizens, this is the element of the eighth stages of genocide analysis that proves 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

³⁷. Due to space restrictions it is not possible to reproduce those list in this study, however the researcher has found them during his fieldwork and he included them in the report written for the IHT.

³⁸. 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 McDowall, D. *A Modern History of the Kurds* (London, I.B. Tauris & Co. Ltd, 1997), pp. 323-327.

³⁹. Stansfield, G. (2007), p. 87.

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 found easy justification when the state had deliberately classified and symbolized them as enemies of the pure Iraqi Arab homeland.

Denial: Although the Iraqi High Criminal Court has legally recognized the treatment of the Faylee Kurds as an act amounting to genocide, the Ba'ath regime has never disclosed where the bodies of the imprisoned men can be found.

Conclusion

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 inflicted to the Iraqi society. There are legal considerations that reverberated in political and social reality of post 2003 Iraq. From a legal point of view, the limitations of the IHT, born under the occupation, made a balance impossible 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. This impossibility of pursuing a more balanced trial was also due to the high politicization of the Court, which could not be seen, favouring a group over another.

This lack of justice is having a detrimental effect on the Iraqi society as a whole. This also because of the political unwillingness of the Iraqi governments

ruling during and after the 2003 invasion and occupation of Iraq. They have not fulfilled the second point of the 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 a national ID.⁴⁰ This, while most of the “moveable and unmoveable assets” has not been returned to them. The decree was not workable also because people working as civil servants during the time of deportation are still in charge in the new administrations. In addition, the issuing of citizenships and national ID is competence of the federal government and the fact that the Faylee Kurds are geographically distributed all over Iraq (see map at the bottom), mainly outside the Kurdistan Region, makes difficult a decisive intervention of the regional government regarding this issue. This explains also the absence of any decree issued by the Iraqi government regarding the other genocides treated in the thesis. The chapter dedicated to the recommendation will deal more in detail with this, for the moment it is fair to say that the failures of the Iraqi government are still hindering the reconciliation and healing process of Iraqi society.

After analysing this crime, it is evident how the existing judicial system has been used in order to implement the state engineered policy against Kurds. Time scale is also very important in order to understand how the state apparatus proceeded. As from the chart in the introduction, the operations took place from

⁴⁰. From a meeting with Mr. Dindar Doski, Iraqi Minister for Immigration, London, 5 October, 2013.

1970 to 1988 showing that the state was still very slow in implementing its policies. However, with the persecution against the Faylee Kurds, the state started to approve the concept of genocide in order to deal with the Kurdish issue. The same pattern, with substantial differences due to the scale and particular characteristics of the crime, can be found in the building of the Barzanis' case, topic of the next chapter.

Faylee Kurds' population

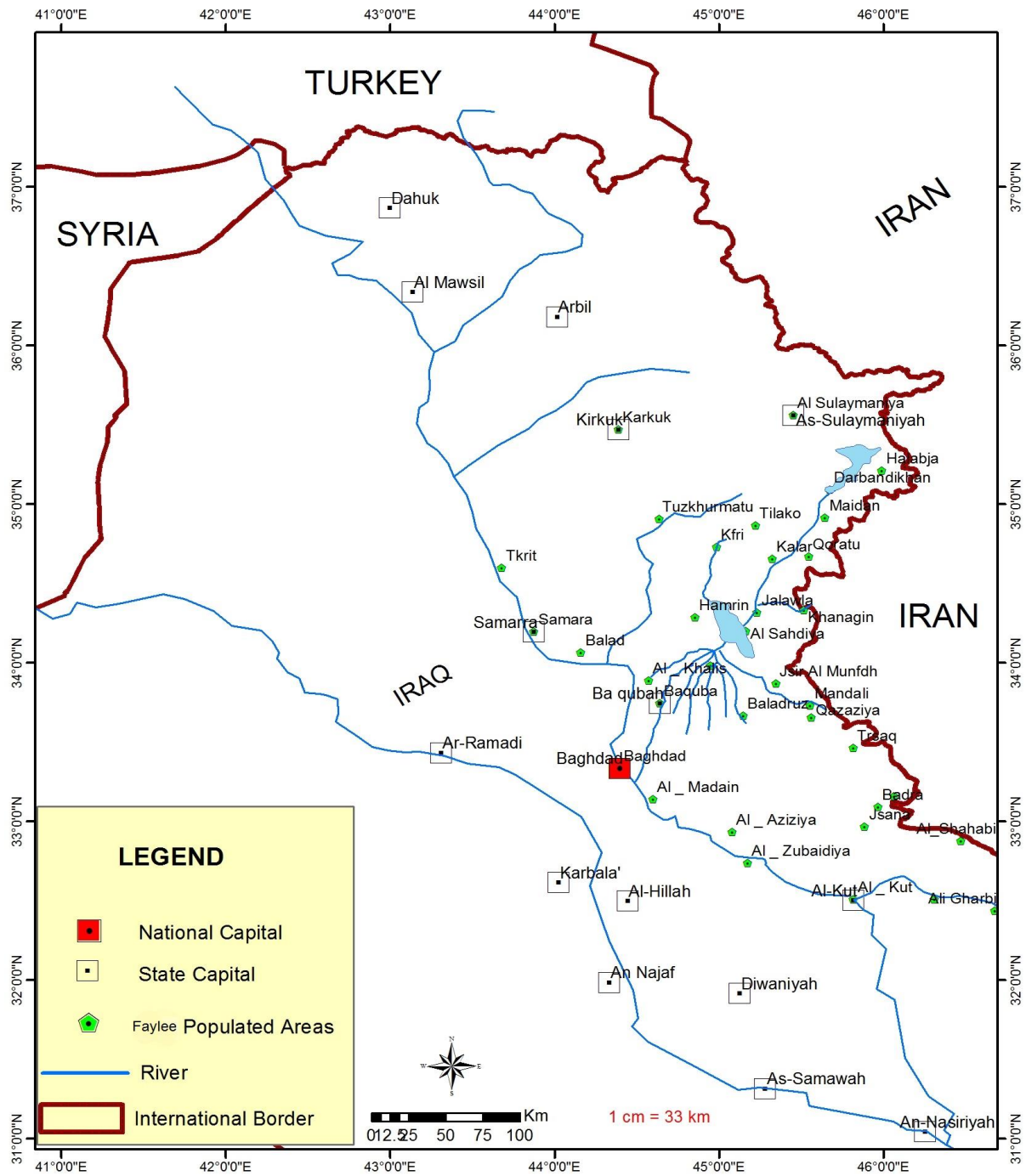


Figure 14 Map No.(13) Faylee Kurds Areas inside Iraq. Source: Author.

Chapter Six

Barzani Kurds Genocide (Blueprint of Genocide)

Introduction

This chapter will present the third crime against the Kurds analysed in this thesis, the massacre of the Barzanis, a Kurdish tribe who led an independent movement since the Ottoman Empire. This section will deal in particular with the role they played in the construction and defence of Kurdish identity. Discrimination against Barzani Kurds was not a policy unique to the Ba'athist, or Saddam Hussein's regime. From the beginning of the twentieth century until 2003, Barzani Kurds have been victims of approximately 46 campaigns of collective forced displacement inside and outside Kurdistan. Because Barzani Kurds have always played an antagonistic role in Iraqi history they have been targeted and disrupted for over a century.

This crime constituted an escalation of the planned genocide of the regime both in scope and chronology. The regime targeted only men belonging to the most powerful and influential Kurdish clan. By doing so the regime aimed at socially humiliating the Barzanis in order to curb any attempt of resistance. It is important to note that, from the evidence gathered, the Barzanis abducted were all civilians with no link with any insurgency group. The chronology of this crime also shows how the regime had learned to act quickly. The Barzanis were abducted and murdered in a month, between July and August 1983 (see chart in the introduction) in high secrecy and with the only involvement of the General Security (Amn Alam). In addition, in comparison to the Faylee Kurds case, this crime was carried out without the support of the judicial system. From document

number 4 reproduced in appendix no. 4 (page 364), it is also evident that there was an attempt to cover up this crime with the creation of false evidence. This document dated 29 March 1989 signed by Lieutenant Colonel Haqi Ismail, in charge of political affairs at the Iraqi Security General Office, contains an order from the former Director of Public Security to

Fabricate charges for the important ones, total of 667 charges were laid for 16 cases. The cases were sent to the Presidency of the Revolution Court, the verdict was death penalty. No death certificate was sent out.

Based on new documentary evidence, this chapter will prove how their deportation, imprisonment and massacre constituted an escalation in the process of annihilation of the Kurdish people carried out by the Iraqi government. In 2005, the researcher, in his role as Minister of Human Rights in the Kurdish Regional Government, was in charge of organising an investigation in order to find out the truth about the killing and disappearance of 8,000 men belonging to the Barzani tribe. As we saw in the previous chapter the regime and the state apparatus under its boundless control began to normalize the targeting and killing of huge groups of citizens. This new scale of events represented what the researcher called a “blueprint”, meaning that the vast organization needed to carry out such a crime required a certain degree of acceptance by the military forces and some sector of the civil service. The documents show that the scale of the crime, the higher number of victims in comparison with the massacre of the Faylee Kurds, along with the official, public celebration of the perpetrators of the attacks by the regime meant a change in the organization of their forced displacements and killings. As we can see from the document provided, the persistent denial of the persecution supported by official channels strengthened the government's

confidence in the success of future genocide campaigns as well as the conviction of its impunity. Through an analysis of the evidence in support of the accusation of genocide against the Iraqi government and Saddam Hussein, this chapter will consider the history of Barzani Kurds and, particularly, how they were treated by the Iraqi state since its formation. It will demonstrate how genocide was committed against the tribe under Saddam Hussein's direction. The researcher has been able to gather a significant amount of forensic evidence in 2005 and more recently in 2013 in order to prove the Iraqi government's responsibility for the Barzanis' disappearance and murder. This evidence was central in order to build up the case against Saddam Hussein and his accomplices for the IHT and later for the international community. In the appendix the researcher has reproduced the documents accusing the defendants and some of photos from his fieldwork. If, as stated earlier, the genocide against the Faylee Kurds can be considered a "genocide concept approval" in preparation to the other cases considered here, and it has been conceived and carried out with an unconventional and extensive use of the law, the Barzanis' case shows a direct link between war and genocide and can be compared with the most recent cases of mass slaughter of civilians in Bosnia and Rwanda.

It is not the purpose of this study to point out parallelism of this case with the genocides occurred in Yugoslavia and Rwanda, however, one common feature is that these mass killings took place when the country was experiencing a war amongst different ethnic groups present on the territory. In the specific Iraqi context, in contrast with the genocide committed with the deportation of the Faylee Kurds, the crime against the Barzani followed different strategies and had different deep motivations. While, as mentioned in the previous chapter, every

step of the campaign against the Faylee Kurds was carried out justifying it through the issuing of decrees, in the Barzanis' case the main motivation was revenge and terror; revenge for the Barzanis' support to the Iranian during the Iran-Iraq war and their leading role in the Kurdish Nationalist Movement. In fact, this crime presents different characteristics from the one against the Faylee Kurds. While in the last one the regime deported indiscriminately whole families, in this one it targeted only males of the same group. In this context the role of culture in the planning and implementation of the genocide was very strong, since in Middle Eastern culture leaving wives, mothers, and children without men leads to the possible social and economic disruption of the group.

The case of the disappearance of the Barzanis presented different challenges to the researcher. First, in order to build up the court case it was necessary to present a convincing set of evidence on a case difficult to prove because of the lack of relevant documentation. In fact, the main difference between the previous two cases and this one is the secrecy and the conspiracy of silence surrounding the Barzanis' disappearance. When after the fall of Saddam's regime all the political prisoners were finally released, none of the missing Barzanis made his return home. This reaffirmed the suspicious about their fate and an investigation supported by the new established Kurdish Regional Government started.

During the first stages of the investigation only a few documents, some of them produced in the appendix, have been found which refers directly to the case and they constituted the first step towards the reconstruction of the events. One of the documents is a video in which Saddam Hussein in September 1983, just one month after their disappearance talks to the Iraqis about the Barzanis.

Calling them “traitors”, he tells the audience that they have been punished and that finally they “had gone to hell”.¹ Words that confirmed what until that moment was only a suspicion: that the Barzanis had been abducted and killed. But it was from one of the documents that the researcher had the first clue of the whereabouts of the Barzanis mass graves. Document number 4 reproduced in appendix is a letter dated March 3, 1989 addressed to Mr M. M. H. for Political Affairs from Lieutenant Haqi Ismael who is informed about the detention of 2,225 Kurds transported by buses to Buseya. The document also reveals that the prisoners (2,225) were executed in Al-Muthana governorate, Buseya region in coordination with the Director of General Security in Baghdad. The letter contains other details about the detainees, but the geographical location of these victims was useful for the organization of the forensic expedition to the area. Document 1 reproduced in appendix (page 349) is from the Director of General Security and addressed to the Secretary of the 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 are from the Barzani tribe and that a special top secret mission commenced on 1 August 1983 by a unit formed by member of the security from unites and directorates of the autonomous region. This special unit surrounded Al-Queds, Al-Qadissiya, 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 state that their cases where referred to the Presidency of the Revolution Court whose verdict was the death penalty. This

¹. This video was included in the BBC documentary film “Saddam’s Road to Hell” mentioned above.

document is also important because it establishes without any doubt the leadership's responsibility of this killing:

Since the criminal Massud 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 member 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 one and specified that “nobody knows nothing 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.²

This quotation is reported literally from a top secret communication between the Secretary of the President of the Republic with Comrade Ali Hassan Al Majeed dated 24 August 1987 in which, facing the possibility of negotiation with Masoud Al-Barzani, the Secretary advises in this sense establishing a direct link between these events and Saddam Hussein. It is important to note the time in which these exchange of correspondence among different authorities took place. In 1987 the Anfal campaign against the Kurds was under way and in 1989 it was already over and now the regime felt safe and there was no need for keeping these details secrets. However, as already mentioned, these documents did not constitute enough evidence to build a sustainable court case for the IHT.

Setting up the Crime Scene

It was a challenge to start a forensic investigation on the crimes committed by the regime for different reasons, not least the fact that since the toppling of Saddam Hussein in 2003 several attempts had been made in order to tackle the issue of the disappearance of Iraqi citizens. The Coalition Provisional Authority was completely unprepared to deal with the sudden revelation of mass graves

². Document 1 appendix to Chapter 6.

locations, which were stormed by thousands of desperate families in search for 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, destroying evidence that could have been essential for investigating the circumstances of the crime and possibly providing clues for the identification of the individuals.

Only after many attempts that the random digging could be gradually contained through public awareness campaigns and cooperation with local and religious leaders and 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 person issue would take considerable time to be addressed. The United Nations Assistance Mission to Iraq UNAMI lobbied in 2004 and 2005 with relevant authorities of the Interim Government of Iraq for the establishment of a 'National Centre for Missing and Disappeared Persons',³ a centralized institution that would cover the missing persons issue in Iraq from the assessment of a mass grave to the return of the identified bodies of the “missing persons” to their families for a dignified reburial. Unfortunately this centre was never formed and the investigation had to continue without this support.

³. 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 MoFA, MoD, Ministry of Social Affairs, Ministry of Municipalities and Public Works, Council of Ministers, National Assembly, Supreme Judiciary Council; the Kurdish Regional Government: delegations of the MoHR, 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 EU expert team; representatives of ICRC, ICMP, DePaul University, Human Rights Watch, Physicians for Human Rights, Archaeologists for Human Rights, Inforce Foundation, UNMIK, UNDP.

Nevertheless, it was due to these efforts that in 2006 the 'Law on the Protection of Mass Graves' was ratified in Parliament. This is 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 establishes the intentional and unauthorized disturbance or destruction of a mass grave location as a criminal offence. As the law relies to a large extent on witnesses coming forward with information on mass grave locations, it also states in Chapter 1, Art. 13 that providing information on a mass grave shall be considered as a legal extenuating excuse for a criminal should he or she report to the Ministry (IMOHR) information on its victims or perpetrators of crimes against the victims." This article is taking into account that the most reliable information on a mass grave site comes from the perpetrator himself or collaborators, present at the scene, but assumingly not directly involved the crime, such as heavy equipment operators, bus and truck drivers, low-ranking guards, etc.

In December 2010 the Iraqi government signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED). The convention obliges the Iraqi Government to adjust national legislation according to the convention and to take steps to effectively protect its citizens from enforced disappearance. It also gives Iraq legal advice to prosecute those committing the crime in the present and in the past. The convention also allows civil society representatives to hold their government accountable and demand justice and transparency in front of an international body, namely, the UN Committee of Enforced Disappearance. The ratification also obliges 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 the technical and forensic side for the excavation of the mass graves. The Iraqi population could be stopped from undertaking unauthorized excavations. However, the problem needed to be addressed quickly as the pressure from the population to get answers was growing. The main players initially dealing with the technical and forensic side of the mass graves were the Ministry of Human Rights in Baghdad and the Medico-Legal Institute 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 introducing the Barzanis and entering into the details of the disappearance of the 8,000 men, it is necessary to talk about the sensitive fieldwork carried out by the researcher and the training he received in order to investigate on the ground this specific case. The skills required to carry out an investigation which includes the search and discovering of mass graves, does not rely solely on documentation. As we already saw in Chapter 2, forensic investigation has been a powerful tool in the discovery and then in the trial of the ones responsible for the atrocities committed in different countries over the years such as Argentina and more recently in Bosnia. Human Rights was one of the first areas to be involved in this new scientific area and, as well as the researcher himself, many professionals involved in these kind of cases had to be trained in order to acquire the necessary skills to carry out the investigation and also to

form a team of experts to support the multidisciplinary knowledge that these investigations require.

The first step to initiate the investigations of mass graves in Iraq was to immediately increase the forensic expertise. Therefore both institutions started in 2005 to send selected staff to several trainings in Bosnia introducing them to international standards of forensic archaeology and forensic anthropology by renowned experts in the field, the researcher was among the first group from Iraq despite his knowledge and relations with the ICMP before that date.

As suggested by Peggy Thomas in her book *Forensic Anthropology* (2003) and as previously mentioned in Chapter 2, three are the main steps necessary to collect ante mortem data in a human rights work: interviewing family members, excavating the graves, and analysing the remains (Thomas, 182). The researcher's knowledge of the culture and the territory where the massacres took place has been important for his search allowing him to deal with the informants, the families of the victims and also the population who lived closed to the mass graves. The cultural knowledge of the territory helped him to deal with the cultural and linguistic differences on the territory in order to collect as much ante mortem information possible for a positive identification of the victims. In order to submit hard evidence to the Iraqi High Tribunal, the researcher focused not on identifying remains of single individuals but on establishing the chains of events that led to the killings and on collecting evidence to individuate and identify the ones responsible.

Human Rights Watch supported this investigation in 2003 just after Saddam's Hussein fall. Due to the unstable political situation in Iraq the investigation faced many obstacles including the impossibility to reach the

geographical regions where the crime took place, in particular the region at the border with Saudi Arabia and Kuwait. Once the investigation team was ready, security had to be organised in order to guarantee the safety of its members. The team included the researcher and the security personnel and excavations.

The first step was interviewing surviving family members. In the Bazanis case most of them were women looking for their sons, brothers and husbands. This allowed the researcher to collect even the smallest detail as little as a recognised medical condition or a piece of cloth fundamental for the investigation. The forensic experts at a later stage documented all these details in logs, which constituted the basis for a later identification of the victims. For the moment, it was important to find the mass grave everybody was talking about and collect evidence. The researcher started to travel all over Iraq from Mosul, Baghdad, Najaf, Nasiriya, Ammara, Diwaniya, Basrah, Samawa, Karbala, Kut, Kirkuk and Diyala. On November 8th 2005 he attended a training in Baghdad organized by CPA under the title Investigation of Mass Graves: Excavation, Recovery of Evidences and Identification of Remains. The training included: introduction to Mass Grave Action Plan, Basic principle of Forensic investigations, specific roles of Mass grave investigations, Basic principles of archaeology / mass gave excavation, Basic Skeletal anatomy and identification techniques, principle of recording and continuity of evidence. After the formation of the Government of Iraq, following the Interim Government, in 2006, the Ministry of Human Rights in Baghdad continued the cooperation with the ICMP and sent selected staff to another training course in Bosnia in 2007. The first excavation of a mass grave under Iraqi law and authority of the Ministry of

Human Rights, Baghdad, took place in al Haidarija, an-Najaf, in 2008, with internationally trained staff.

It is not the purpose of this study to explain all the details linked to the forensic investigation carried out in the Barzanis' case. However, it is important to say that both the documental evidence and the forensic investigation were fundamental in order to understand all the different phases of the abduction and disappearance of the Barzanis.

Who are Barzani Kurds?

Barzan area is a mountainous area located 100 km from Erbil in the heart of the triangle connecting Turkey, Iraq and Iran. The area is divided into fourteen regions: Baroshi, Nizari, Dolla byari, Sarem Mazinan, Mamshdyan, Mamdolan, Dashkeri, Shwerwan Dere, Dollamari, Walate Roshi, Walate Sheri, Zinya Barkale, Davara Gardiyan and Harkien Bnajehe. These fourteen regions contain approximately 265 villages.⁴ Within the Barzan area live a confederation of seven tribes (clans), Sherwani, Mizori, Dolamari, Baroshi, Nezari, Harki and Gardi.

Some scholars linked the origin of the word Barzani to the ancient Hurrian God Barzani. The sheikhs of Barzan are descendants of Amedia princes.⁵ Massoud Barzani, moved to the village of Nafneka, near Barzan, where he settled and married. His son continued his work and his grandson, Taj al-Din, a talented religious scholar, attracted a great number of followers, and eventually founded his own tekkeyeh (special place for praying) in Barzan. His son, Sheikh

⁴. See map No. (14) Barzan Location inside Kurdistan.

⁵. This family is rooted in the village of Barzan, in Iraqi Kurdistan (but was for centuries the Ottoman Empire). Unlike the Shemzini or the Barzinji shaykhs, the Barzanis do not claim any famous genealogy; they were obscure mullahs until Taj ad-Din became the khalifa (deputy) of Mawlana Khalid (died 1826), who introduced the Naqshbandi tariqa (Sufi order) to Kurdistan. For more information see family tree of Barzani Sheikhs.

Abdul Rahman, inherited the sheikhdom, and passed it on to his son Sheikh Abdullah, who was known for his asceticism and piety. However, it was Abdul Salam Barzani that ultimately brought together the seven tribes living in Barzan, and forged a common identity for Barzani Kurds. He subscribed to the Nakhshbandi School of Islam and was one of the earliest Kurds to offer a tribal and religious leadership (Aga and Sheikh). The relative isolation of Barzan from other parts of Kurdistan, and the centrality of tribal allegiance in Kurdish society, meant that Kurds from Barzan soon adopted the same culture and customs under Abdul Salam Barzani, since then they are called 'Barzani'.

After the death of his father, Sheikh Abdul Salam led the Barzan Tekkeyeh and the number of his followers grew immensely. He founded a seminary in Barzan, which became famous throughout the region. After him, his son Mohammad administered the Barzan Tekkeyeh that became an asylum for the oppressed and the persecuted of the tribes adjacent to Barzan. He had four sons: Sheikh Abdul Salam, Sheikh Ahmed (Khudan), Mohammed Siddique and Mustafa Barzani. Sheikh Ahmed Barzani is considered the architect of contemporary Barzan. He was a social reformist, and brought changes to the way in which members of the tribe expressed loyalty to the Aghas. In particular, refusing to accept money or payment from the members of the tribe, breaking with the tradition, Sheikh Ahmed endorsed the collective ownership of land and resources.

People from Barzan soon became known for their spirit of independence and for their continuous struggle against the Iraqi state seen as an occupier. This spirit prepared them to defend Kurdish rights and values against any outside interference. Traditionally, most tribes in Kurdistan held power and influence

according to their respective relationships with the governments of the state in which they were living. On the contrary, Barzani Kurds did not follow this pattern and they always avoided affiliating themselves with the government. For example, in the early 20th century, the Barzanis opposed the Ottoman Empire and refused to pay taxes to the government in Istanbul. In 1916 Abdul Salam Barzani was hanged in Mosul after leading a campaign against the government in Istanbul. From 1921 to 1925, Barzani Kurds opposed the creation of Iraq refusing to participate in the referendum carried out by the British, instead seeking an alternative autonomous Kurdish region in which the Barzanis would lead. As their protests failed to secure autonomy, they continued to oppose the British representatives between 1925 and 1932. In 1932, Iraqi and British authorities decided to build and operate military barracks on Kurdish soil, in response to the Barzanis hostile opposition to the project the Royal Air Force was deployed to bomb the Barzan area. In February of 1936, the Iraqi government launched a significant military operation against the Barzanis. Sheikh Ahmed and Mulla Mustafa Barzani responded to the military offensive, but after a relatively short battle in June of 1936 the Barzanis were forced to retreat into the mountains. Mulla Mustafa sought refuge in Turkey, and upon his return was held under house arrest in Sulaimaniyah from 1936 until 1943. In 1943, Mulla Mustafa escaped house arrest in Sulaimaniyah, and led his second uprising against the Iraqi Government. Upon returning to Barzan, he closed the road accessing the region and prevented all government operations and ventures in the area. Thanks to this success Mulla Mustafa was able to negotiate a peace settlement with Baghdad in January 1944. However, the peace and prominence of Mulla

Mustafa was short lived. By October 1945, the Iraqi Army had invaded Barzan and burned entire villages and agricultural land.

In 1946, the Barzanis defied once again Iraqi authorities when Gazi Mohammad formed the Kurdish Republic in Mahabad, Iran. Mulla Mustafa Barzani became a Chief of Staff of their armed forces bringing with him 560 Peshmerga from Iraqi Kurdistan. Mulla Mustafa was in charge of the armed forces in Mahabad until the Iranian and the British intervention forced the collapse of the Republic in December 1946. Mulla Mustafa fled Iran with more than 560 Peshmergas, and found asylum in Russia. Whilst in exile he began to campaign publicly in defence of the collective Iraqi Kurdish population.⁶

When Mulla Mustafa Barzani returned to Iraq after the 1958 coup, he was welcomed as a Kurdish hero and since then has been considered the liberator of Iraqi Kurds. The name Barzani has therefore become synonymous with the Kurdish nationalist movement and of the Kurdish independence in the region. The Barzanis were targeted for two reasons: the first one is due to Mulla Mustafa Barzani's legacy. After his death his two sons Massoud Barzani and Idris Barzani assumed the leadership of the Kurdish Democratic Party (KDP). The second is the strength of the Peshmerga fighting in support of the Barzani's cause. Approximately 1,000 Peshmerga came from Barzan alone, and the regime saw the Barzani's leadership within the Kurdish community as a primary target on the road to crushing Kurdish resistance altogether. The devastation of the social structure within Barzan was intended to cause a domino effect, whereby the weaker Kurdish tribes would certainly crumble without their impassioned leader.

⁶. Shawkat Sheikh Yazdin, *La Araz wa bo Mohabad* (Erbil, Aras Publishers, 2003).

When Saddam Hussein took over the Presidency of Iraq, the Barzanis soon came to occupy a prominent role on his internal security agenda. Under Saddam's direction and close supervision, tens of thousands of Kurdish children, women, elderly, and disabled individuals were executed between 1963 and 1991. Saddam Hussein, Sadon Shakir, Tarik Aziz, Hikmat Mizban Hadi, Sufyan Mahir Hussain and Hamid Yousif Hamadi were held responsible for crimes against the Barzani Kurds and have been prosecuted by the Iraqi High Tribunal in relation to the attacks.⁷ The Iraqi government launched more than 50 extermination campaigns against the Kurds and the Barzanis were no exception.

Forced Relocation and Displacement prior to the Ba'ath Regime

As explained previously, the Barzanis have witnessed 46 occasions of forced relocation, mass displacement and mass exiling from the time of Iraq's creation up until 2003.⁸ This chapter will focus only on the events leading to the

7. In Addition to these perpetrators, there many more who involved in this genocide: Brigadier General Jawad Thanon, Brigadier General Mahir Abdul Rashid Mohammed Rashid, Brigadier General Mahmoud Shakir said Shahin, Security Colenel Haki Ismael Izat, Abdullah Ali Baria (General Security Director of Baghdad), Security Brigadier General Khairi Salih Dawoud (named as Khairi Chelmiran), Security Brigadier Genral Abdul Mihsen Khalil Ibrahim, Abdul Fatah Mohammed Amin and General Staff Abdul Rahman Khalf Jasem.

8. In 1975, after the Algiers Agreement, some of the Barzanis were expelled Iran and many others were forcibly relocated to the central and southern areas of Iraq. In Iran, the former Shah of Iran, Mohammed Riza Pahlawi, followed the same method of the former Soviet government by isolating the Barzanis away from each other and relocating them in areas distant from one another. Thus, every two or three families were removed to a distant city or village. They were kept very remote from Kurdistan and 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. 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 newly established Iraq 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 British Royal Air Force fighter jet airplanes, shelled 79 villages in Barzan. All of them were destroyed and more than 2,382 families were made homeless. On 11 November 1945, after the second uprising of the Barzanis and after the fierce battles between the Barzanis and Iraqi Army,

displacement, imprisonment and final death of 8,000 men carried out by the Iraqi regime just before and during the Iraq-Iran war. The researcher will analyse each crime attributed to the Iraqi government by stating the reason for committing it and the different stages in which it was carried out. This effort will be supported by new, previously undisclosed documents that the researcher has gathered during his fieldwork in search for evidence of the crimes against the Barzanis. As already anticipated in the introduction, as minister of Human Rights of the Kurdish Regional Government, the researcher had the opportunity to lead a team to the places where these atrocities took place. His research lasted various years and has been the source for the award winning BBC documentary entitled 'Saddam's Road to Hell', broadcasted in 2006. The material gathered by the researcher was used as evidence during the trial against Saddam's and his generals in front of the IHT. Each of the crimes is analysed here along with the causes and consequences for the Barzanis.

Forced Relocation

Forced relocation is a crime according to the 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

the British Air Forces shelled their villages three times on one date using 7-14 fighter aircrafts. This caused the destruction of 35 villages and the killing of hundreds of innocent civilians as well as wounding hundreds more. More than 15,000 women and children lost their homes and were forced to find shelter in caves and secluded areas in Iran. On April 10th 1947, the Iranian Army attacked the Barzanis with tanks and artillery, forcing them to return to Kurdistan. They were 4,567 people under the leadership of Sheikh Ahmad Barzani, and included 1,550 men, 1,688 women and 1,329 children. They were kept in detainment facilities, and imprisoned for 2-12 years in the jails of Kirkuk, Mosul, Baghdad and Basra. Their families were scattered and relocated among the villages of the governorate of Dohuk and Erbil. On May 6th 1947, Mulla Mustafa Barzani accompanied by 560 Barzani men, started their march to free themselves from the clutches of the three states of Iraq, Iran and Turkey. They headed towards the former Soviet Union. The Soviet government dealt with them according to the "Divide and Rule" policy so they were scattered and relocated far away from each other in distant Soviet regions.

areas within and outside Iraq in order to disperse them. As we have seen in more detail in Chapter 4, forced displacement was part of a broader plan to integrate and 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 overtly breach of human and civil rights, including their being too close to oil fields, for example in Kirkuk, Khanaqin, and Makhmor, or because they occupied a territory involved in major infrastructure projects as dams, for example Hasinani Areas and Zumar. However, it was in particular during the Iraq-Iran war that forced deportation of Kurds escalated. With the pretext that they were too close to the border areas (1975-1978), many Kurds have been uprooted from their land and many villages have been 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 with the intervention of the Peshmarga fighters in the war on the Iranian side caused the persecution by the regime. In each of these occasions they were imprisoned in different concentration camps the most famous of which was Nigrat Al Salam. In all cases the deportation of the Barzanis aimed at dividing Kurdish unity and the relations between them, 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 avoiding that Barzan became a heaven for Peshmerga fighters. Ruining Barzan economy and social infrastructure also had a detrimental effect on the prisoners held in the concentration camps who suffered physical and psychological torture. It is necessary, in order to

understand the escalation of the persecution against the Barzanis to analyse each one of these phases.

Forced Displacement due to the Closeness to the Border (1975-1978)

First Stage

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

Second Stage

The forced displacement campaign continued on 26 June 1978. The entire population of Argush Village, more than 300 families, was deported to the concentration camp in Harir. On 7 July 1978, the entire population of Mizuri tribal villages was deported along with other the population of some Sherwani villages. They were taken to five concentration camps in Erbil city and the adjacent areas. At this stage, 77 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.

Forced displacement due to the Iraq-Iran war (1980-1988)

When the war between Iraq and Iran broke out, a large part of Kurdistan turned into a battlefield. On January 1982 people from the administration centre of Sherwan Mazin along with the inhabitants from Kirkamo village were deported to the SeBiran concentration camp adjacent to Erbil City. 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 Harir area:

In July, 1983 during an Iranian, Zionist aggression on Haj Umran front and as substantiated the participation of the clique descendants of treason the group who are mostly from 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 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 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 large army vehicles prepared for this mission accompanied by military force.

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

The Barzani clan is known for their disloyalty to the Party, Revolution and the 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.

A detailed map of the forced displaced suffered by barzani Kurds can be found below.

Barzan Area and Stages of Forced Displacement



Figure 15 Map No. (14) Forced Displacement of Barzani Kurds (1975 –1978- 1982).

Source: Author.

First Stage

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”⁹ and instead they reinforced their own Peshmerga forces. Peshmerga’s 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 in Delziyan. After the increase of Peshmerga activities, a forced displacement campaign took place. The people of 34 Mazne villages, with a large number of Dolamaris, were deported to the concentration camp of Sardaw.

In a top secret and personal telegram number 5783 dated 24 August 1987 reproduced in the appendix of this chapter, the Secretary of the Presidency of the Republic writes to “Comrade” Ali Hassan Al Majeed regarding Barzani families. The orders are to ignore any attempt by any part to investigate the destiny of the people deported in the concentration camps. The telegram recommends:

Due to the persistence the criminal Masoud Al-Barzani holds on the issue of Bazani families from Erbil governorate in Qushteppa complex and upon the indirect communication 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

⁹. Saddam Hussein named his eight years war with Iran as “Qadisiyat Saddam” he returned back the name of the first Qadisiya in Islam of Saad Bin Waqas the Islamic leader who occupied Iran - Iraq during the Islamic era.

crucial than those families). This should be the response to any enquiry should anyone ask about the whereabouts of these families.

This document is important because it reconstructs the chronology of the deportations in the different movements, but it also shows very clearly that the government was aware of what was going on in the area and that it gave orders to ignore any attempt of investigation by third parties.

Second Stage

At the beginning of 1990, the Ba'athist regime informed the people of Mergasor district and the inhabitants of Goretu collective village both inhabited by the deportees from the Mizuri since 1978, that they would be deported again to the concentration camps of Besirme and Shakholan within the Erbil governorate and Shaqlawa district. This plan was implemented on 6 June 1990, only a few months from 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. The following table shows the data collected on the forced displacements carried out from the Barzani area from 1975 to 1990 complete with the number of individuals, family and infrastructure destroyed.

Barzan Area Forced displacement Data:

Date	Villages Destroyed	Head families	Schools destroyed	Mosques destroyed	Clinic destroyed
18 th .11.1975	76	1479	5	27	3
7 th .7.1978	77	2136	15	28	4
1 st .1.1982	2	165	5	1	1
10 th .5.1989	34	485	2	4	
6 th .6.1990	8	440	3	3	2
Total	197	4705	30	63	10

Source: Author

Mining Barzan Area

In addition to the forced deportation and the destruction of their territory, in order to prevent the Barzanis to return to their land, the regime in obvious breach of international laws, planted millions of mines all over Kurdistan. It is estimated that this policy caused approximately 13,000 mine victims between 1991 and 2006. Between 75-100 mine fields can be found in the following areas: Piran Mountains and the surrounding areas, Pîrfat, Sherwan Mazin, Keri Spindare, Segrkan, Khware Gweza, Soura, Gali Balinda, Pires Mountans, Bermeeze, Mergasur, Sere Bedarin, Marrane, Ber Siyav, Zeeniya Sarke, Kulekan, Resu Meran, Kala Salimkhan, Kaniya Linja, etc.¹⁰ Thousands of mines of various types were planted in the farms and cornfields and many areas close to the Iranian border are still littered with mines. This in flagrant breach of human rights and against the UN resolutions that forbid planting mines at a massive scale in populated areas. As a consequence, more than 788 square km of territory is polluted and cannot be used for agriculture.¹¹

The percentage of the mined areas accordingly to the survey undertaken by the Kurdistan Regional Mine Program assisted by NGOs between 2004 and 2006 appears in the table below. Fortunately, after the liberation of Kurdistan, NGOs, the UN and the Kurdistan Region Mine Program cleared many minefields in a united effort.¹²

Table of damages caused by mines from 2004 to 2006

¹⁰. Report of the Kurdistan Region Mine Action, Annual Report 2010.

¹¹. Ako Aziz Mohammed, "Mine Problem in Kurdistan" (in Kurdish) Khazir magazine, No. 1222 date 22 July 1998.

¹². Kurdistan Region Mine Program, 2007 Report.

Township	Mined Areas	Size in KM2	Killed	Wounded
Mergasor	25	11,544,5	22	23
Barzan	1	6.0	29	64
Piran	25	7,56	18	5
Sherwan	19	14,640,5	34	48
Mazene	10	8,247,5	12	3
Total	80	42,592,5	115	153

Source: Anfal Center in Barzan, 2007.

Concentration Camps

Kurdish villages were always the sources of powerful support for the Kurdistan Liberation Movement because they supplied the revolution with food and other life 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".¹³ In addition, under these pretext the Ba'athist built more than 100 concentration camps in Kurdistan some of them with the misleading names of "Modern Villages", "Socialist Villages" and "Civilised Villages".

¹³. Dr. Aza Shekhani, 'Al Anfal in the framework of Building Concentration Camps (in Kurdish), Brayati Centre Magazine, no. 24, p.438.

According to the evidence gathered, the inhabitants of Barzan were deported from 18 November 1975 until 6 June 1990 to 13 collective villages near the cities of Erbil, Shaqlawa and Soran: Gortu, Sardaw, Delziyan, Diyana, Harir, Basirme, Kesneza, Bahrike, Shaklawa, Sebiren, Qushtapa, Qadisiya and Qushtapa Quds. These collective state-built villages were really like concentration camps or jails in open space lacking all the basic life conditions. The prisoners were always under the surveillance and 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 avant-garde groups of the Ba'athists and join the "Qadisiya Saddam" to be later sent to the front line to fight against Iran.

In the camps the Ba'athists arrested and tortured people arbitrarily and they managed to control everybody's moment through a vast web of intelligence that made life in the camps very insecure. Detainment, disappearance, oppression and death under torture became daily routine. The Ba'athists murdered so many people under torture and handicapped others forever. Hundreds of old men and women, children, mothers and infants were imprisoned under the suspicion that their fathers, husbands, sons, daughters or relatives 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 relatives, friends and families. This sort of summary execution happened to other people

detained in other concentration camps. Others were arrested or disappeared and never to be found again.¹⁴

Genocide

Barzanis' displacement and incarceration in concentration camps constituted only the first steps towards their organised mass killings and disappearance. The reasons for such an escalation in violence are to be found in the powerful relationship between the Barzanis and their Sheikhs as well as their loyalty to the Kurdish nationalist cause and refusal to participate in the state killings ordered by the government. Traditionally the Barzanis have been very active supporters of the Kurdish national movement. Ofra Bengio talking about the influence of the Barzanis on the Kurdish national movement in 1980s says:

But there were still unmistakable echoes in statements by Kurdish leaders of the belief that the division of Kurdish territory was a historical injustice. The term *wahda wataniyya Kurdiyya* (Kurdish national unity) was still employed, and the influence of Kurdish movements in Iraq, and of the leadership of Mustafa Barzani, extended to Kurdish areas outside Iraq. (Bengio, 120)

The Iraqi troops lost part of the strategic area of Hajji Omeran near the border with 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.

The *Middle East Human Rights Watch* in their 1994 report "Genocide in Iraq and Anfal Operation against the Kurds"¹⁵ stated that the reason for arresting

¹⁴. Photos of the mass graves discovered by the researcher can be found in the appendix to this chapter.

¹⁵. Human Rights Watch, *Genocide in Iraq, The Anfal Campaign against the Kurds* (United States, HRW, 1993).

the Barzanis was because the town of Haji Omeran was taken by Iranian troops. But the whole thing was no less than a Ba'athist conspiracy.

First stage

On July 29th 1983, Sheikh Othman, son of Sheikh Ahmad Barzani (one of the main leaders of all Barzan), was deported with his son Sheikh Emad from Erbil to Baghdad under the pretext of a meeting with the regime. The following day, on 30 July 1983, the Barzani Sheikhs and the Barzanis living in Baghdad and 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 those 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.

Second Stage

A huge Republican Guard Brigade, supported by helicopters, surrounded the concentration camp of Quds and Qadissyia in Qushtapa Township. The Ba'athist soldiers and officers entered the camp and spoke through loud speakers calling on the people to attend a meeting in Kirkuk city 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 each one of them and arresting everyone between 10 and 90 years old. Later, buses with black curtains on the windows deported them to an unknown place¹⁶.

¹⁶. Interviews with many female eye witnessed from victims' families.

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 led by the Republican Guards in order to surround the three main components of Barzanis, Al Quts, Al Qadasir, 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 Al Muthana governorate.¹⁷

Third Stage

On 10 August 1983, the same method was used to siege the concentration camp of Behrike, Harir and Dianna where most of the houses were searched¹⁸. The men were arrested and taken in army buses to Baghdad, and from there, to Al-Muthana governorate. According to the researcher's fieldwork, these two groups, a total of 2,225, were taken from Baghdad by a special unit to Nigrat al Salman, more than 300 km south of Baghdad (N 2951, 14.24, E 4557, 13.08) then they were moved to Abu Aljad (N 2949, 13.00, E 4555 11.83) and Laya (N 2951, 2375, E 4554, 0330). Originally, these two locations were collection camps built by Abdul Karim Qasim to settle Bedouins moving between Saudi Arabia and Iraq. The researcher has discovered that the Barzanis were killed in Busaya, between 40-45 km from the two locations and their bodies were found in mass graves 35 km from the triangle border of Iraq, Saudi Arabia, and Kuwait.

¹⁷. 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 of this chapter.

¹⁸. For the details of this operation see the appendixes at the end of the thesis.

Document No. 84 mentioned earlier stated the following:

By orders from the former Director of Public Security to fabricate charges for the important ones, total of 667 charges were laid for 16 cases. These cases were sent to the Presidency of Revolutionary Court, the verdict was the death penalty, no death certificates were sent out and no charges were laid for the rest of the group, 1558 persons. The sum of 194,648,440 Iraqi Dinar was received from the deportees and deposited to the account of the Director of Public Security Office.

Fourth Stage

On 10 October 1983, the Security Forces put the concentration camps of AL Qudis and Qadissiya under siege. The young teenagers who were hidden in the previous stage in wardrobes and refrigerators by their mothers were now arrested and taken to unknown places.

Fifth Stage

From 1983 to 1990 the Ba'athist assassinated individual Barzanis, and 8,000 male Barzanis disappeared without a trace. The researcher has (individuated) their mass graves in an investigation lasted fourteen years and still on going.

Sixth Stage

On 23 August 1988, another genocide campaign against the Barzanis came to an end with the shelling of Barzan with chemical weapons as part of the last face of Anfal campaign, which ended on 6 September 1988. The Anfal campaign will be analysed in the following chapter.

The following map summarizes the previous phases.

Barzanis Forced Displacement and Genocide

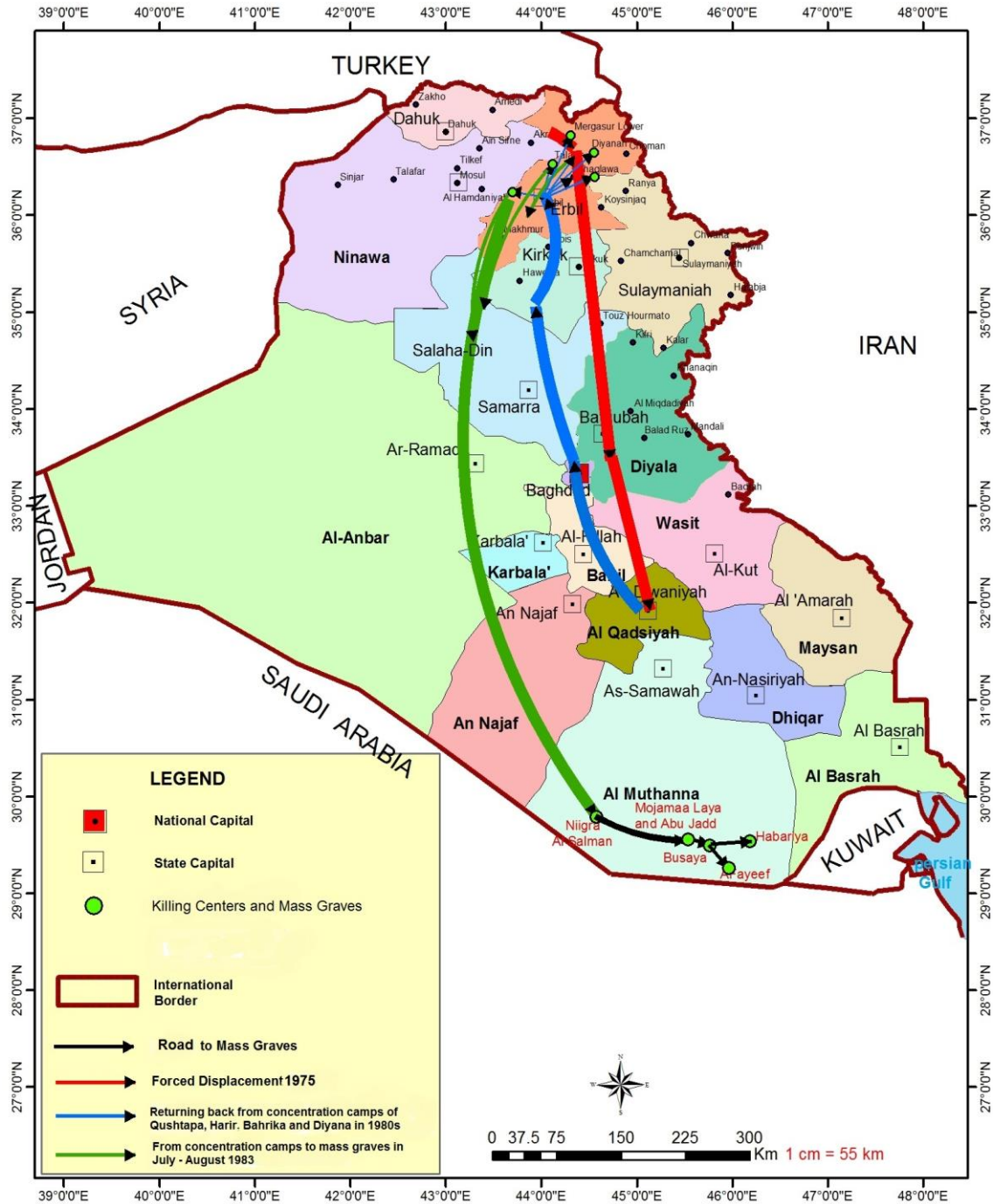


Figure 16 Map No. (15) Forced Displacement and Genocide of Barzani Kurds (1975-1980- 1983) Source: Author.

Court Decision

The evidence gathered by the researcher was used against the defendants and contributed to the final verdict. It was fundamental in order to establish individual and institutional responsibilities for all the charges contested as from 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 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 for committing inhumane acts which cost high pain and psychological and physical harm against humanity under Article 12(1)(I) of the Statute. Sofyan Mahir Hassan, in charge of the Republican Guard Brigade was convicted for 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 for committing inhumane acts causing serious psychological and physical harm as a crime against humanity under Article 12(1)(I) of the Statute.¹⁹

¹⁹. See pages (36,37, 38) of the Case No 4/C2/2009 of Barzani Genocide (dated 3/5/2011) at IST. The researcher was invited as an International forensic expert for this case in order to present his findings at Busaya 1 mass grave.

Conclusion

It is evident from this case that the state increased its skills, scope of operation and atrocities by targeting a single group in a very short span of time. It did this by neglecting the judicial system and by acting in secrecy. The murder of 8,000 Barzanis constituted the blueprint, a sort of pilot project, for a regime that grew more confident in the perpetration of genocide.

As for the two cases presented before, there is a lack of balance between the crime and punishment of the crimes committed. The organization required to carry out a similar operation relied on the complicity of different sections of Government. In addition, the direct link of these crimes to the leadership is demonstrated by the documents found, which points directly to the political high command. Unfortunately, Saddam Hussein's early death after he was sentenced for a minor crime, prevented Kurdish people and Barzanis from having their justice. Only few individuals, mentioned above have been charged and tried for the disappearance and mass murder of the Barzanis denying Kurdish of their right to know the whole truth about these events. As for the previous cases this hindered profoundly any possibility of reconciliation and it is also making difficult the integration among the different populations in the country.

Enforced disappearance has a long-lasting effect on the families of the missing person, way beyond the actual crime. The large-scale, state-organized deportations of whole groups of populations had a devastating effect on the society. The impact is lingering on even after the oppressive regime has been toppled off. Therefore the crime of enforced disappearance is defined as 'ongoing crime' and there should be no time bar for the prosecution of the perpetrators. However, this is not applicable in Barzanis case. Most of these

responsible have not been charged or tried and the families are still waiting for some kind of closure and justice. In the final chapter the researcher will provide some recommendations regarding the policies that the Iraqi federal government along with the strategies the KRG should adopt in order to foment the reconciliation among between Iraqi Kurds and Arabs. For the moment it is important to say that investigating these atrocities constituted an important step in order to tell people the truth and to avoid the repetition of these crimes in the future.

This research and its fieldwork constitute the only effort made in order to exhume and identify the missing Barzanis. Mass graves were discovered in 2005 and 2013. The remains of 606 victims were returned to Kurdistan for burying with dignity.

Photos from Barzanis' mass graves



Figure 17 Barzani Kurd Blindfolded Head at Busaya 1 mass grave 2005. Source: Author.



Figure 18 .Barzani Kurd Blindfolded head at Busaya 2 November 2013.Source: Author.



Figure 19 Barzani ID and Iraqi notes and coins. From Busaya 1 2005. Source: Author.



Figure 20 Watch and wedding ring Busaya 1 2005. Source: Author.



*Figure 21 Piece of Koran for prayers from Busaya 1 mass grave for Barzani Kurds.
Source: Author.*



*Figure 22 Damaged Head of Barzani Kurds from Busaya 2 mass graves, November 2013.
Source: Author.*



Figure 23 The researcher at Barzani Kurds Mass Grave Busaya 1, July 2005. Source: Author.



Figure 24 Researcher at Barzani mass grave Busaya 2, July – November 2013. Source: Author.



Figure 25 The Researcher cleaning human remains in Busaya 2 Mass Grave. November 2013. Source: Author.



Figure 26 The Researcher is preparing the remains of a Barzani Kurd from Busaya 2 Mass Grave (November 2013).Source: Author.

Chapter Seven

Anfal Campaign (State Engineered National Project)

Introduction

The fourth crime considered in this thesis is the Anfal Campaign. After accepting the concept of genocide with the persecution of Faylee Kurds and implementing a blueprint policy with the mass murder of the Barzanis, the state was ready to engineer its national project against the Kurds. As will be explained more in detail later in the chapter and in contrast with the previous crimes analysed, the state did not abuse the judicial system nor acted 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 supported by a wide and strong propaganda campaign against the Kurds were portrayed as traitors of Iraq and Islam.

As for the previous cases, the researcher was directly involved in the process to gathering all the evidence to present the case in front of the Iraqi High Tribunal. It is important before introducing the events, to highlight that, because of the fieldwork carried out by the researcher the sources used in this chapter are mainly primary sources some of which still undisclosed. Most of them were gathered by the researcher in his role as minister of Human Rights of the Kurdish Regional Government between 2001 and 2005. All the information has been collected in two different stages: the first one pre 2003, were documents held in the United States since the uprising of 1991. The researcher accessed them in order to organize the fieldwork on site. The second lot of information was gathered after 2003 and the fall of Saddam Hussein. These came from former collaborators of the regime and from people working with the Ba'ath party. In

order to investigate these events, the researcher as in the case of the Barzanis participated in a fieldwork whose purpose was to dig the mass graves in order to gather the forensic evidence necessary and to build up the case against the Iraqi government and to identify personal and institutional responsibilities. Some of the photographs taken during the excavation are reproduced in the appendix to this chapter. After a short background to the Anfal campaign, this chapter will reconstruct, through the evidence gathered, how it has been considered genocide by the IHT and more recently by the international community. Later, it will explain the legal outcome of the trial and their consequences for the current coexistence of Iraqi Arabs and Kurds and the challenges of the Kurdish Regional Government in trying to heal this fracture in post 2003 Iraq.

Background to 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 word(s) used, the way the regime defined its friends and its enemies, the influence of the philosophy of ‘Arab Unity’, was always present in the regime’s discourse. However, the manipulation of the different discourses used by the regime during its years in power reflect the inevitable changes in the balance of power and the particular historical circumstances in which they find themselves. 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 was promoting the identification between being an Arab and a Muslim. It was during the Iran-Iraq war that the Ba’ath party broke its silence on religion and the rhetoric started to change. Bengio describes this change as follows:

This approach – implying the secular character of the state and the separation of state and religion – remained official policy for only a few years, until the early 1980s. Cracks started to appear in it even earlier, caused by the pressures of domestic developments. The above warning against the politicization of religion notwithstanding, the association for Religious Guidance (*Jam'iya al-dini*) “in the light of Ba'ath principles” became active in the middle of 1977, if not earlier. Set up by the party, it apparently served as an instrument of domestic intelligence gathering in religious quarters. Later, it was renamed the Committee for Religious Indoctrination (*Lajnat al-taw'iya al-diniyya*) (Bengio, 178).

This trend becomes even more evident at the beginning of the 1980s and the war with Iran. In that moment in history Saddam and the Ba'ath party needed to divert the 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 that started portraying all the enemies of Iraq as infidels and non-Muslims justifying the war in religious term. For example, as referred by Bengio, on one occasion Saddam quotes the battle of Badr (13 March 624 or 17 Marathan 2nd of the Hegira) making a direct reference to an episode in which a small group of Muslim defeated an enemy three times their number quoting directly from Al-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: starting from this moment they were not a nation struggling against western imperialism along with the Soviet Union. As of that point in time an enemy of the state would be defined as those who are against Saddam, the defender of real Islam. This 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 this 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.¹ This had the purpose to condition the army's psychology around the material gain when implementing the operation rewarding the soldiers for their combat performance and victory. In fact the Al-Anfal Surat verse 41 in the manipulated version of the regime was intended to incite Muslims to fight against the infidels with the promise of the booty. It says:

Know that whatever spoils you take, a fifth of it belongs to God and the prophet, and to 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* in the translation by Arthur J. Droge, p. 110)

As well as to incite Iraqis to fight war, these words were intended to scare the enemy in this case the Kurds with the threat of depriving them of their land and wealth. According to the Qur'an, 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 Considering himself the custodian of Islam and the representative of Mohammed, Saddam's intent was that of justifying 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 the prophet Mohammed did with the tribes that opposed him "Bani Qinqaa" and "Bani Natheer". By using the same words⁴ to address the Kurds and their national movement, Saddam and his numerous security organizations created the ideological conditions and

1. Mahdi Razak Allah Ahmad, *Al Sira Al Nabawiya fi thawe al Masader al asliya*, Riyad 2011.

2. Al Sheikh Mohammed AL Khothari, *Nour AL Yakin fi Sirat Said Al Morslin*, Beirut 2004.

3. Abdul Aziz Rashid Al Ubaidi, *Min Maarek Al Muslimin Fi Ramathan*, Al Riyad, 1994.

4. Abdul Malik Bin Hisham, *Al Sira Al Nabawiya, Tahkik Mustafa Al Saka wa Al Akhareen*.

justification for their annihilation. In addition, the reference to the Al-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 suggest to who ever is listening that this war against the infidels is a holy and legitimate one.

The State Crime of Al-Anfal

The fact that the Kurdish region has been at the centre of the war against Iran contributed greatly to the planning and staging of the Al-Anfal campaign. In addition, by 1988 the Iraqi government, confident of the support of the Arab countries counted on the international support as well due to the balance of power existing in the area⁵. 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 the 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 in achieving Kurdish national goals. International politics and the interests of the superpowers have hindered the Kurds from seeking their full rights as well as been unable to secure its full national rights. The conflict between both parties was not resolved not even when international diplomacy could be used⁶. Regarding a possible reaction by the international community; it is interesting to report a conversation that Arif Qurbani mentioned in his book

⁵. Cameron R. Hume, *The United Nations, Iran, and Iraq: How Peacekeeping Changed*, An Institution for the Study of Diplomacy, Indiana University Press, 1994.

⁶. Aida Ali Sir Aldeen, *Al Masalla Al Kurdiya fi Malaf Al Siyasa Al Dawliya* (Beirut: Dar Al Itifak Al Arabiya, 2000).

entitled *Shahid Halakani Anfal* published in Sulaimaniya in 2002, a 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 it would happen to the Kurds at the end of the war against Iran:

We will not fall down, never miscalculate, because we have full back up from 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 not you do 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 far away from the combat line with Iran in order to achieve military and psychological gains on the ground, to govern the torn post-war Iraq and get rid of the frustration that accompanied them throughout the eight years of war.⁷ In fact, the war against Iran diverted the attention from the internal insurgence. Saddam Hussein decided that this was the moment to eliminate the Kurds and to guarantee a smooth post war period. The central government in Kurdistan during and after the campaign had huge military presence including three military corps, reserve of Republican Guards backed by Kirkuk and Mosul air force bases and strategically Al-Bakr airbase, also supported by field Wings Aviation army helicopters from Erbil, Suleimania and Mosul. Further, it consisted of intelligence backed by the North and East intelligence office as well as by the Autonomous Region Intelligence Directorate and the Military Intelligence from every brigade and corps and Erbil, Suleimania

7. Abdul Halim Abu Gazala, *Iraq-Iran War 1980-1988* (Cairo, Al Ahram Publisher, 1993) pp. 135-140.

and Dohuk Security Directorates. They all have the skill and unlimited capacity reporting to one united military, political body. There was also a network of light regiments (some times named National Defense Battalions, National Defense Regiments, in Kurdish they have been named as Jash) from local faithful to the regime covering the region, who could move in the battlefield without restriction. As for the Kurdish side in the battlefield, it comprised no more than 35,000 Peshmerga fighters from the two leading leadership of Kurdistan Democratic Party, and Patriotic Union of Kurdistan, however, the constant conflict between the two parties it undermined the unity of the combat efforts. They were armed with light machine guns “Berno or Kalashnikov”, mortars and anti-tank launchers (RPG7) and some fixed anti-aircraft. Despite the superiority of the central government forces; there was no room for negotiations, and the Kurds were inevitably drawn to war.⁸

The government chose a suitable time to carry out the Anfal campaign, the Iraqi forces had achieved tangible success in the battlefield with Iran and adjusted the balance of forces with Iranians. The Iraqi army was aware that a curtain of primary and supportive fire that will cause a shock in the opponent and lift their morale. It prepared for the fight in the spirit of anticipation to gain rewards the leadership has promised which will give them further combat motivation. To sustain morale, the leadership mobilised a huge media, administrative and psychological effort to create a challenging atmosphere.

As for the Kurdish side, it entered the battleground and had no choice but to defend themselves. In the circumstances, the whole Iraq was silent as if this is irrelevant to them; the international community was silent as the perpetrators

⁸. Meeting with Ezzadin Barwari, member of KDP political Bureau was in charge of Kirkuk sector during Anfal campaign, Erbil, October 2011.

wished. The Peshmerga prepared to defend the land, but unfortunately, due to the overwhelming power of the Iraqi army they had to retreat.⁹

Premeditated Crime

It is important, in order to understand the development of the events and also to analyse the legal frame in which the responsible were tried to present evidence that show the premeditation of this crime. In contrast with the other crimes analysed until now, this one and the one committed in Halabja, involved the complicity of many military and political authorities. As we will see more in detail later in the chapter, the reason lies in the evidence that Saddam Hussein himself as the Supreme Command of the Armed Forces ordered to formation of Special Forces to carry out the operation. The outcome was a huge combat force formed by three corps based in Kirkuk, Mansouriet Al-Jabal and Erbil. When orders were handed down from the General Command to commence the operation, the Air force, and started a propaganda campaign on two fronts: the first one had the purpose to convince the Iraqis and the international community of the need for this campaign, in order to keep peace and guarantee the unity of the country. The second one 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 occurred in the immediate aftermath of the Anfal campaign prove the intent of resolving the Kurdish issue by destroying them. In fact, the

⁹. Meeting Ezzadin Barwari, Ibid.

documents show that this amnesty was used to trap the Kurdish youth in concentration camps. In addition Ba'ath Party Committees were formed supported by intelligence and security units in order 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.¹⁰ All these organisations had the intent to weaken 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 and then execute 1,800 youths who posed a risk to the country. They were executed on 21 December 1988.¹¹

The Anfal Campaign Plan and Implementation Phases

The General Command of the Armed Forces identified two areas for their operations; the first stretched from Kalar (Lat. 34.638 Long 45 03 30) in Diyala (Lat. 33.735 Long 45 03 36), south to the east of Tuz (Lat. 35. 303333 Long. 44.3308333) in Salahaddin extending to east of Tobzawa and Dibs (Lat. 35. 7 Long. 44 .11) in Kirkuk (Lat. 35 468 long. 44 35400), then to Shaqlawa (Lat. 36 398 0 Long 44 33 777) in Erbil in the north to further stretch eastward to the Iran-Iraq border to descend toward the south to Rania (Lat. 36 258 Long. 44 88100) then Dokan lake (Lat. 35 929 Long. 44 9620) north of Suleimania (Lat. 35 56 17 Long. 45 44110). In the south-west down to the west of Halabja (Lat. 35 5617 Long. 45 4411) then Qaratu (Lat. 34.6066667 Long. 45.49 22 22 2) and Kalar (Lat. 34.638 Long. 45 32 22) composing a rectangular battlegrounds

¹⁰. Genocide in Iraq: The Anfal Campaign Against the Kurds, A Middle East Watch Report, Human Rights Watch, New York, 1993.

¹¹. *ibid.*

occupying a large part of Kurdistan. The second area stretched from North of Mosul towards Duhok and Zakho, to move towards to the east and end in the south creating a semi-circle shape as outlined in the map below:

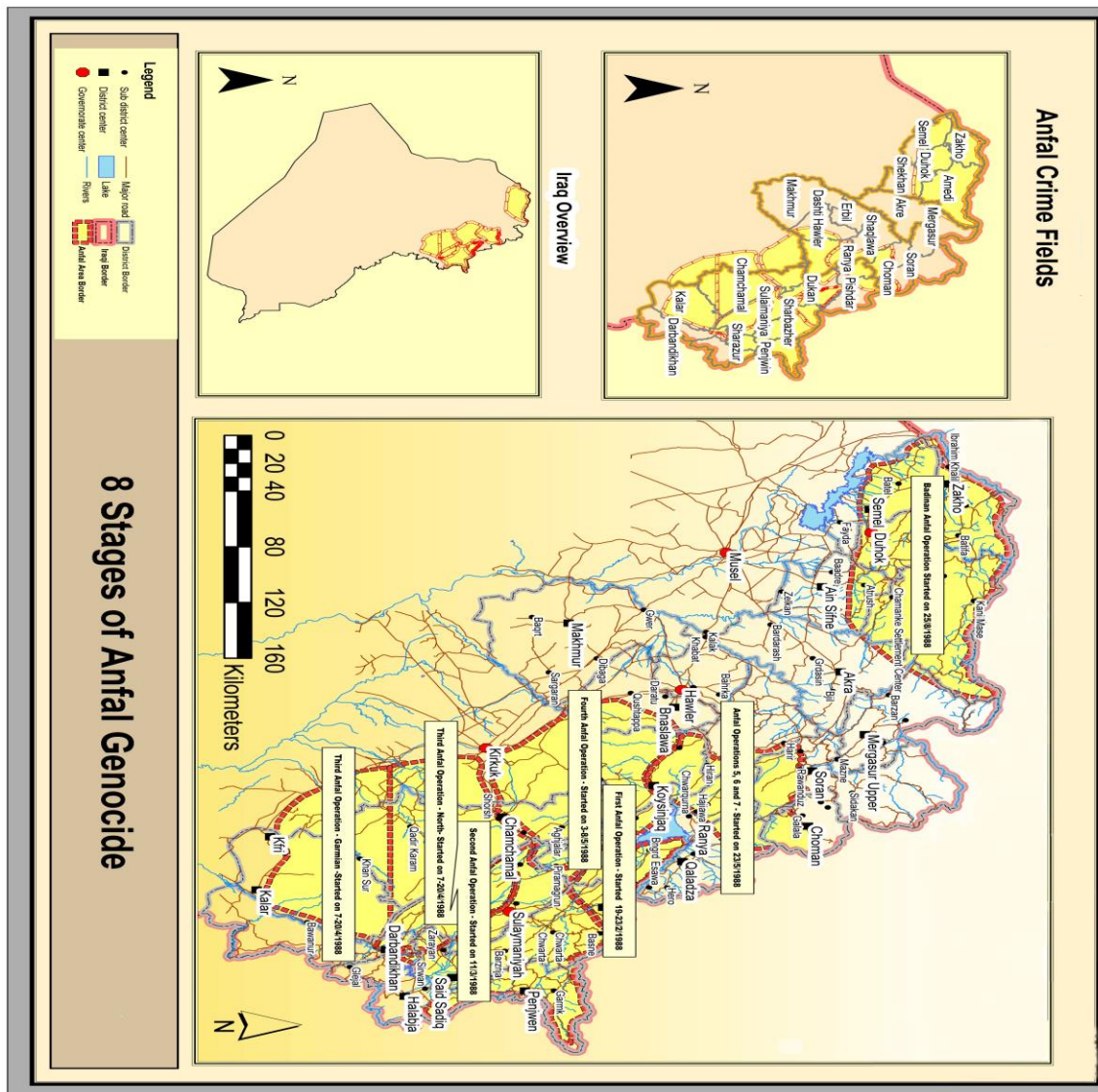


Figure 27 Map No. (16) 8 Stages of Anfal. Source: Author.

The government prepared the battleground to achieve the greatest possible physical and psychological destruction to the Kurds, bolstered by the intention to

clear the area and to make it uninhabitable. The authorities did not only bomb villages but flattened especially the ones that resisted and burned them to prevent the residents from returning.¹² Ali Hassan Al-Majeed¹³ was given the full authority as the commander of the security, military and ground operations. He was given the absolute power from the president and the Supreme Commander of the Armed Forces.¹⁴

The military operations began on 23 February 1988 and expanded gradually to include the First 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 (Lat. 35.53400 Long. 44 8310), Bazian (Lat. 35 5999 Long. 45 137 11), Qaradagh (Lat. 35 31 00 Long, 45 39 99) to Kalar border and the surrounding areas depending on infantry backed by tanks and armoured personnel carriers. Jet fighters were involved in the attack. Their mission was to attack the Peshmerga with close range air raids and with guided rockets and machine guns.

The Eight Phases of Anfal

First Anfal (21 February 1988 – 18 March 1988)

Artillery and air bombardment started in the morning of 23rd of February 1988. After several hours in the same day the first corps attacked the headquarters of the Patriotic Union of Kurdistan and its command centres in Sergelo and Bergelo.

¹². Rauff Akrawi, *Al Hamla Al Badinan wa Awtha al lajjeen* (Erbil: Dar Aras, 2002).

¹³. Ali Hassan Al Majid (30 November 1941 - 25 January 2010), He was first cousin of Saddam Hussein. He was appointed to many positions during Ba'ath Party's era in Iraq such as Interior minister, Defence minister, and chief of Iraqi intelligence service and governor of Kuwait during Iraq's invasion.

¹⁴. See RCC decree No. 160 on 29 March 1987.appendix no.(1)

The troops continued their close fight backed by heavy artillery and air support for three weeks. The Peshmerga resistance was intense. As the map below shows during this stage the battlegrounds covered about 1,154 square kilometres.

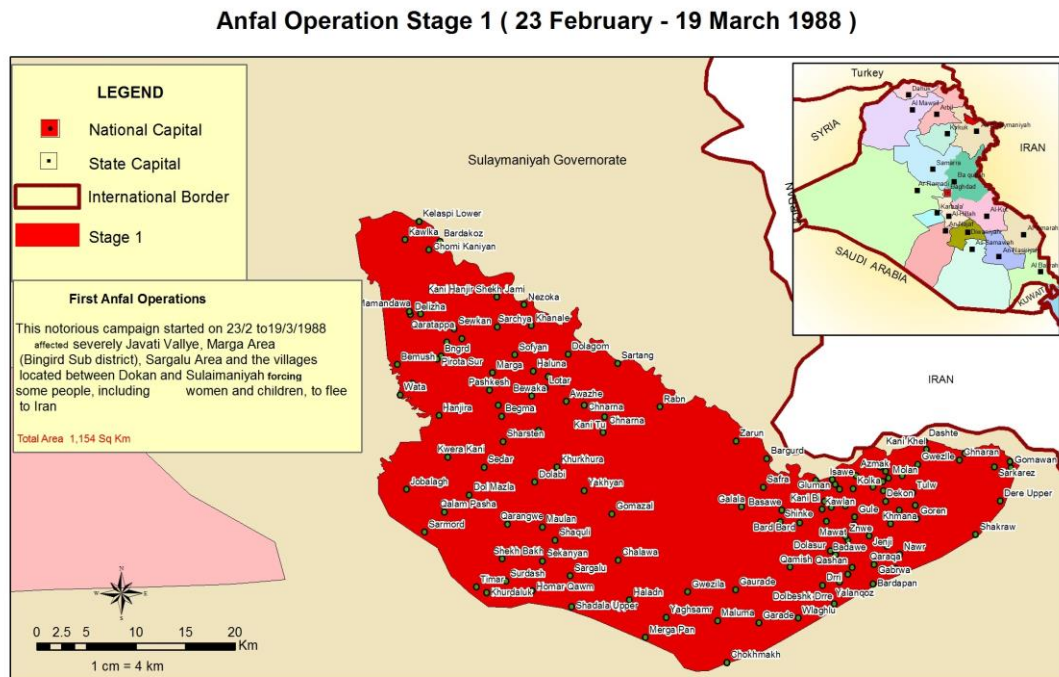


Figure 28 Map No. (17) Anfal Campaign Stage 1. Source: Author.

Second Anfal (22 March – 2 April 1988)

After the Iraqi troops achieved some success to invade the area mentioned in the first Anfal, they took a few days to get re-organised and to count their losses before re-grouping. The second phase started on 22nd of March where Qaradagh, Bazian and Darbandikhan (Lat. 35 10700 Long. 45 68722) in Suleimanyia governorate were attacked. The fight continued until April 1. 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 for this stage lasted until the end of March, 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 showed in the map below:

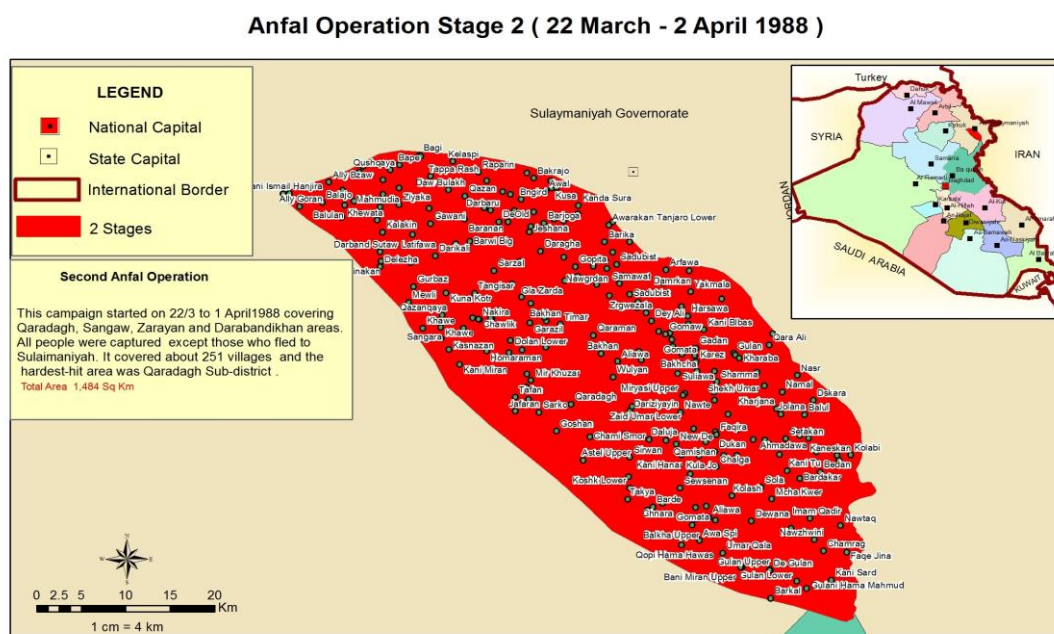


Figure 29 Map No. (18) Anfal Campaign Stage 2. Source Author.

Third Anfal

On April 7 the corps involved concentrated in the area they 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 to carry out further attacks and invade Garmian the region east of Kirkuk, Kalar, Bawnoor (Lat. 34 8240 Long. 45 5090), Kafri (Lat. 34.6890 Long.

44 9570), Dooz, Singaw (Lat. 35 2870 Long. 45 1750) and Qadir Karam (Lat. 35.20333 Long. 44.89444). The Iraqi armed occupied most of the countryside in the Kurdistan region until the 20th of the same month.

This was the most devastating stage and the most effective amongst other Anfal stages due to the heavy casualties on the Kurdish side in the battlefields. In addition most of the deportation of civilians were carried out in this phase. The purpose to make Kurdistan's countryside a barren land in order to annihilate the Kurdish National Movement and continue the Arabization campaign the government has started before. This extensive campaign has contributed, according to some sources, to the killing of some 150,000 from the total number of 180,000 who disappeared in the Anfal campaign. This stage covered 3,273 square kilometres in total as showed in the map below.

Anfal Operation Stage 3 (7 - 20 April 1988)

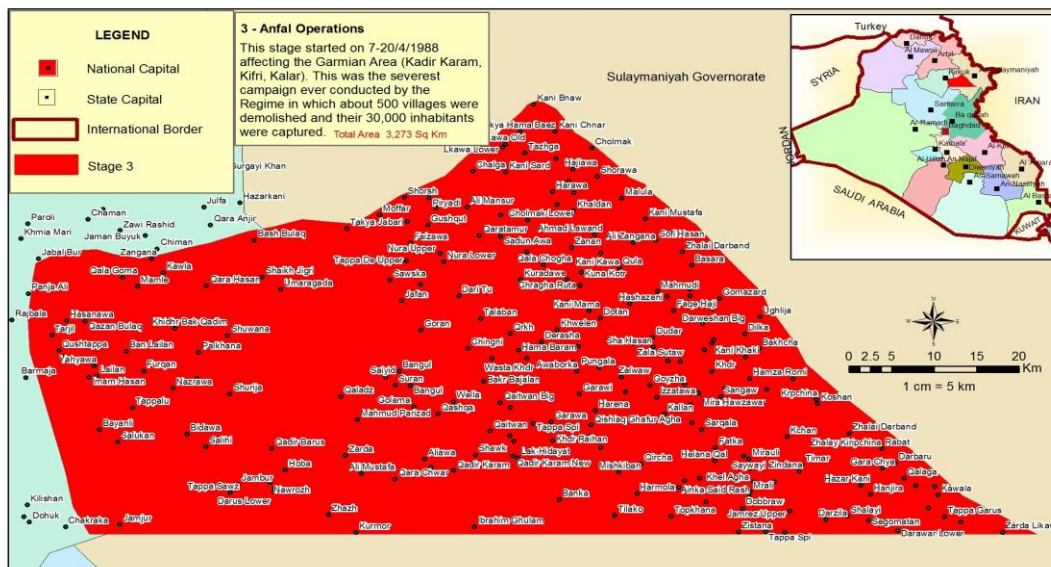


Figure 30 Map No. (19) Anfal Campaign Stage 3. Source Author.

Fourth Anfal

The fighting started on the first of May to include all the targets in Small Zab basin, in the plains of Zai Bichuk and the surrounding area including Koya region (Lat. 36 0840 Long. 44 6280), Taktak (Lat. 35 8900 Long. 44 5860), Aghjiler, Nawshwan, and concluded after a week on May 8. This stage covered roughly about 2,818 square kilometres as in the map below.

Anfal Operation Stage 4 (3 - 8 May 1988)

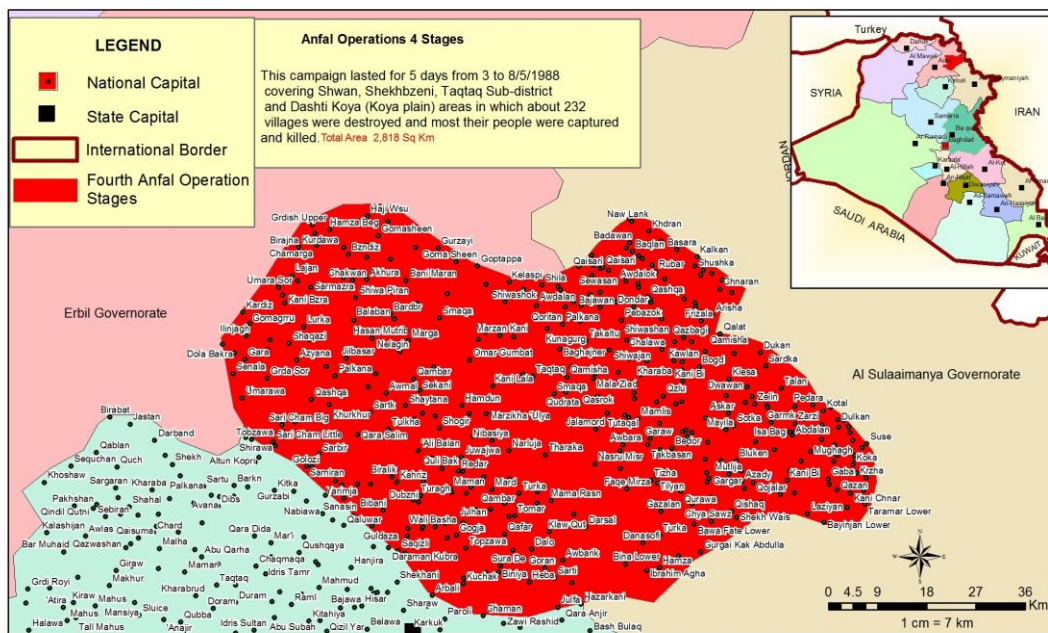


Figure 31 Map No. (20) Anfal Campaign Stage 4. Source: Author.

Anfal five, six and seven

These three stages overlapped to cover most of the mountainous area in Erbil governorate. The forces embarked on attacks on 15th of May until the 7th of July. These stages witnessed the harshest fight between the two parties. The government mobilized all 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 the first week of August and the Iraqi army announced the cleansing of the region from what it called “Saboteurs”. A map of these three phases is available below:

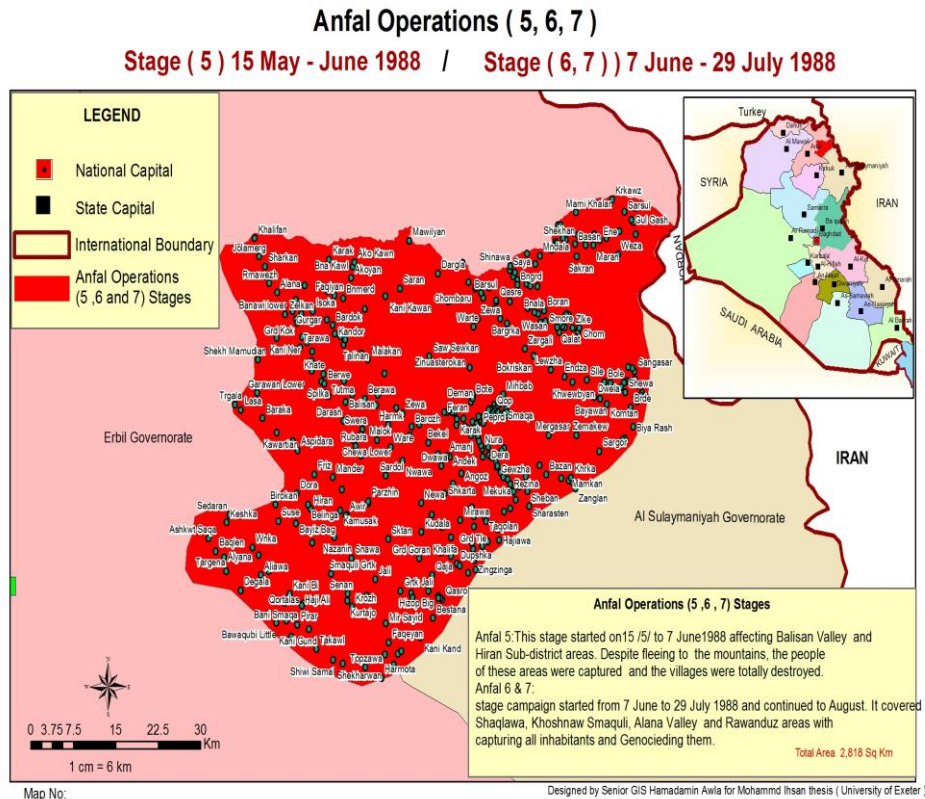


Figure 32 Figure 30. Map No. (21) Anfal Campaign Stages 5, 6 and 7. Source: Author.

Eighth Anfal

At the conclusion of the seventh Anfal which covered parts of the governorates of Diyala, Sallahuddin, and rural areas of Kirkuk, Suleimaniya and Erbil, and the cease fire in the Iran-Iraq war, the General Command felt relieved from the burden of war and had more time for revenge. This stage of the aggression included the Bahdinan region, the area between north of Mosul to Amedi, Akre, Zakho, Shekhan, Duhok to the Turkish-Iraqi border, this was the eighth stage and called the “Final Anfal” and lasted from 25th of August to the 6th of September. At

this point the general Command announced the 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 showed in the map below.

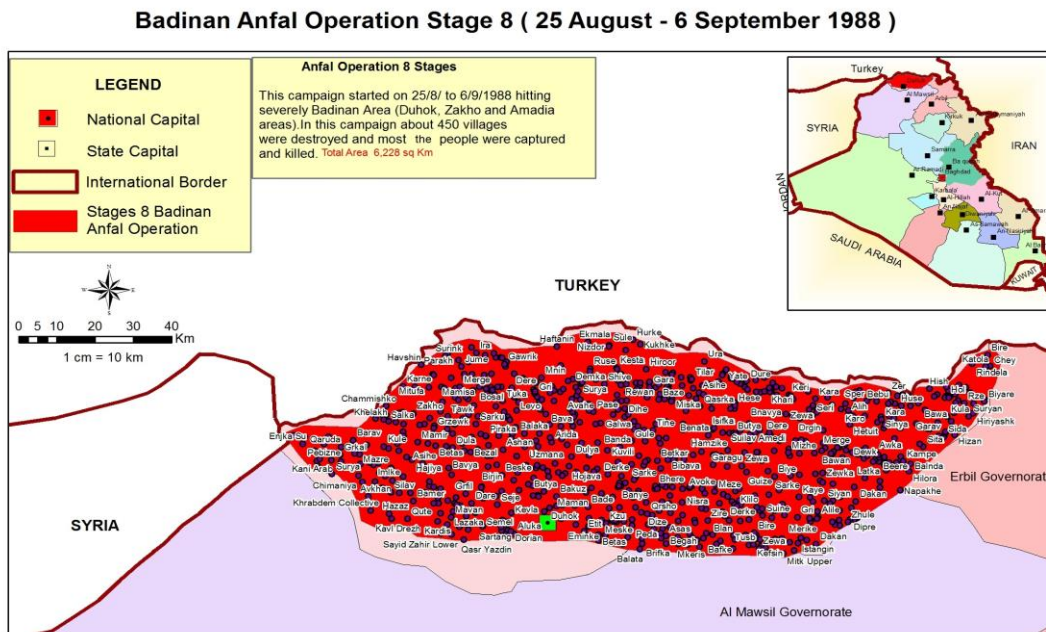


Figure 33 Map No. (22) Anfal Campaign Stage 8. Source: Author.

After 2003, and with extensive efforts from the researcher, a few mass graves of innocent people, victims of Anfal were found. The researcher managed to find out of 103 victims of Anfal at Nigrat Al Salman during his fieldwork for this thesis.¹⁵ The Iraqi Supreme Criminal Court used the evidence gathered during this research in order to build up the Anfal case.¹⁶

¹⁵. Mohammed Ihsan, *Mass Graves in Iraq*, KRG Council of Ministers, 2008.

¹⁶. Some photographs taken during the excavation of the Anfal mass graves have been reproduced in the appendix at the end of this chapter, including one example of the 103 death certificates.

As seen the Anfal military operations required the involvement of a long chain of command and this contributed to the evidence towards the charge for genocide. This is evident from official documents, including decree 160 issued by the Revolutionary Command Council authorising Ali Hassan Al-Majeed to kill the largest number of villagers and eradicate all signs of life, including all human and livestock.¹⁷ In addition to this evidence the intent of the government to commit genocide is proven by the existence of another documentation that the researcher found during his fieldwork and that he reproduces partially in the appendix to this chapter. As already mentioned, when when hostilities were over, the government, with the excuse of the amnesty, gathered surviving Kurds and deported them to Nigrat Al Salman near the Saudi border. Upon their arrival at Nigrat Al Salman, a concentration camp in the middle of the desert they were forced to live in appalling conditions. During his fieldwork, the researcher found more than 325 graves of Kurdish people who were at Nigrat Al Salam¹⁸ and died of torture between 1987 and 1989.¹⁹ The evidence above is a clear indication this happened in clear 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 1st Corps), Sabir Al Dori (the Director of Military intelligence), Farhan Motlik Aljebori (Director of Eastern directorate of Intelligence), Hussain Rashid (Deputy to chief of the staff for operations), Tahir

¹⁷. See document no. 4008 dated 20th June 1987 from the Northern Bureau of the Ba'ath Party, headed by Ali Hassa Al Majid to all corps and security and intelligent organizations regarding how to deal with the Kurdish prohibited areas. See appendix no. 2 of this chapter.

¹⁸. See photographs of the prison at the end of this chapter.

¹⁹. Interview with Mr. Jabar Thanoon, military driver at Nigrat Al Salman jail. From Samawa, interviewed, August, 2011.

Tawfil Al Ani (Secretary for Northern Bureau of Baath Party) and others committed genocide against the Kurds.²⁰

The Prosecution of Detainees

The military operations concluded on 20 April 1988 and they were followed by the explicit orders to flatten any remaining house and detain any survivor. 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 transport of “elderly, women and children” to concentration camps in open/exposed trucks “Eva type” in severe cold rainy weather. Witnesses reported that they were exhausted, most haven’t had any food or drink as if they were been enslaved. The documents found also reported the formation of special committees from the Topzawa camp leadership, North Military Intelligence, Directorate of Security of Autonomous region, intelligence of North, and Kirkuk hospital to oversee the immediate execution of detainees in concentration camps and other tasks related to prosecution.²¹ According to the witnesses men between 14 and 45 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 45 were transferred to the concentration camp of Dibis. While some women were killed and some other prisoners were displaced to unknown locations.²²

²⁰. See appendix no. 3 of this chapter for the list of the accused members of Ba’ath Party who participated in Anfal Campaign including many Kurds.

²¹. Testimony of the accused Farhan Al Jabouri, Anfal Case at Iraqi High Criminal Tribunal, pp. 305-963. Also see document no. 1467 of 6 April 1989 from Taemim Mukhbaral Office regarding the execution of the elderly people after checking that they no more important information.

²². Bill of indictment for Anfal case, Iraqi High Criminal Tribunal, No. 1/2nd C/dated 24/6/2007.

According to the evidence mentioned above the Anfal campaign was judged as genocide in line with the letter and spirit of the International Convention. Therefore, all who took part in it were found guilty. In addition to the gathered evidence, the regime admitted to the crimes openly when during a visit by a Kurdish delegation to Baghdad, asked about the fate of 1,800 missing in Anfal operations, Ali Hassan Al-Majeed said “why is all this exaggeration when the number didn’t actually exceed 100,000”.²³ The Swedish and Norwegian parliaments already recognised Anfal campaign as genocide and a crime against humanity and the British parliament voted unanimously along these times on 28/2/2012²⁴.

Conclusion

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 fomenting the hatred towards the Kurds. In addition, the involvement of most of the 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, main target of the Arabization campaign described in Chapter 4. In addition, the time of the continuous genocide was longer than any other crime described in this work. The following table shows the extent of the size of the atrocities committed by the state of Iraq against the Kurdish population during the Anfal campaign.

²³. Meeting with Dr.Mahmud Othman, member of the negotiation team with Baghdad after 1991 uprising, Erbil. February 2011.

²⁴. www.krg.org. Accessed 11 July 2013.

Death-toll	182,000 Kurds
Villages destroyed	2,451
Mosques destroyed	2,027
Deportation and refugees to Turkey and Iran	1,000s
Confiscations including land properties, etc.	Millions of dollars
Huge damage to the environment and nature	
Destruction of water springs	100
Mines	More than 25 million mines planted in Kurdistan during the state engineered genocides

As explained more in detail later, 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 his 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 witnesses and evidence. It would be too long and out of 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 in restoring the trust in the federal government by the Kurdish population. The first one is that the number of people convicted was completely disproportionate to the amount of the killings committed and to

the charges against the defendants and this despite a tremendous amount of physical evidence and witnesses. These crimes were not perpetrated in secrecy with the complicity of the intelligence service and with an efficient, but limited use of logistic organization.

These series of crimes that included 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. This required, as we have seen, a noticeable logistic and organizational effort and for this reason the impact on the population affected is even greater as well as its right to look for answers. The second point is that the tribunal that was acting during a state of occupation and civil war was lacking an outreach program. This meant that the trial passed almost unnoticed by the majority of the Kurdish population and in this way it failed in its role communicating its activities. Jennifer Trahan, analysing 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 and this could be indicated as a fundamental factor because most of the lower rank military personnel involved did not face any trial and are still living in the society without paying for their crimes making difficult the coexistence between Kurds and Arab Iraqis. The propaganda made by the regime against the Kurds depicting them as infidels and enemies of Islam has long-term consequences and it is still a source of distrust between the two groups. On the other hand, the Kurdish Regional Government has 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.

The lack of an outreach program by the IHT comes with a lack of efforts in

this direction. Some recommendations about how to regain the trust and guarantee a peaceful coexistence between the two groups will be offered later in the conclusive chapter. For the moment it is fair to say that the victims deserve that the public know about these crimes by the former Iraqi regime, and that the government make an effort in order to raise the awareness in this sense. The international recognition by Finland, Norway and Great Britain is a first step towards this goal.

Photos from the fieldwork for Anfal



Figure 34 The researcher at Hatra 1 Mass Grave of Anfal Victims. Source: Author.



Figure 35 In Hatra 1 Mass Grave of Anfal Victims, The researcher find out a pregnant lady with 7 months baby. Source: John Tample.



Figure 36 The Researcher during his fieldwork on Anfal Case in the south of Iraq August 2007 Source: Author.



Figure 37 Hatra 1 mass grave before the exhumation. Source: Author.



Figure 38 Blind folded Anfal victim at Hatra 2 mass grave. Source: Author.



Figure 39 The researcher during his fieldwork on Anfal Case mass graves near Diwaniya in the south of Iraq, March 2010. Source: Author.



Figure 40 Remains of woman pregnant with seven months baby found at Hatra 1. Source: Mrs. Sinje.



Figure 41 Remains of a child killed in Hatra. Source: Author.



Figure 42 The Researcher inside Nigrat Al Salman Prison following the stories of Faylee Kurds genocide. Source: Author.

الجمهورية العراقية
وزارة الصحة
قسم الاحصاء الصحي والحياتي

شهادة وفاة

رقم الشهادة: 075515 تاريخ التنظيم: / /

١ - اسم المتوفى ولقبه:	٢ - الجنس:	٣ - الجنسية: عراقية	٤ - الدين:	٥ - المهنة:
٦ - الحالة الزوجية: اعزب	متزوج	ارمل	مطلق	٧ - تاريخ الولادة: ١٩ / /
٨ - محل الولادة: قضاء	محافظة	٩ - لغته الدائمة: رقم الدار:	رقاق	الحلقة او القرية:
١٠ - محل الوفاة:	الحلقة او القرية:	١١ - تاريخ الوفاة (كتابة): الساعة:	يوم:	شهر:
١٢ - اسم والد المتوفى:	١٣ - اسم والدة المتوفى:	١٤ - اسم المبلغ عن الوفاة:	١٥ - صلته بالمتوفى:	١٦ - عنوان المبلغ الكامل:

١٧ - شهادة الوفاة الطبية

(١) المرض او الحالة التي ادت للوفاة مباشرة
 (ب) الحالات المرضية (ان وجدت) والتي ادت للسبب
 (ج) اعلان مع ذكر السبب الاصل في النهاية
 (٢) حالات مهمة اخرى ساعدت على الوفاة ولا صلة لها بالمرض او الحالة التي سببت الوفاة:

١٨ - حدثت الوفاة في: البيت المستشفى مكان آخر:

١٩ - اشهد ان الوفاة قد حدثت من الاسباب المثبتة اعلاه
 عنوان اشتغال الطبيب:

٢٠ - شهادة طبية عدلية (تلا وتوقع من قبل الطبيب العدلي)
 ان الموقع ادناه الدكتور الطبيب في
 والمرسلة من قبل حسب الاستشارة المرقمة
 بتاريخ ١٩ / / فوجدت سبب الوفاة
 وتوقع الطبيب (تحت الطابعة العدلية)

٢١ - معلومات خاصة بمديرية الجنسية والاحوال المدنية: (تؤخذ من هوية الاحوال المدنية)
 رقم السجل رقم الصحيفة المحافظة

ملاحظة: توضع علامة (x) في المكان المناسب

سجلات لدى السلطة الصحية في نجرات سلمان
تم تسليط
للسنة ١٩٨٨

الجمهورية العراقية
وزارة الصحة
قسم الاحصاء الصحي والحياتي

شهادة وفاة

رقم الشهادة: 075511 تاريخ التنظيم: / /

١ - اسم المتوفى ولقبه:	٢ - الجنس:	٣ - الجنسية: عراقية	٤ - الدين:	٥ - المهنة:
٦ - الحالة الزوجية: اعزب	متزوج	ارمل	مطلق	٧ - تاريخ الولادة: ١٩ / /
٨ - محل الولادة: قضاء	محافظة	٩ - لغته الدائمة: رقم الدار:	رقاق	الحلقة او القرية:
١٠ - محل الوفاة:	الحلقة او القرية:	١١ - تاريخ الوفاة (كتابة): الساعة:	يوم:	شهر:
١٢ - اسم والد المتوفى:	١٣ - اسم والدة المتوفى:	١٤ - اسم المبلغ عن الوفاة:	١٥ - صلته بالمتوفى:	١٦ - عنوان المبلغ الكامل:

١٧ - شهادة الوفاة الطبية

(١) المرض او الحالة التي ادت للوفاة مباشرة
 (ب) الحالات المرضية (ان وجدت) والتي ادت للسبب
 (ج) اعلان مع ذكر السبب الاصل في النهاية
 (٢) حالات مهمة اخرى ساعدت على الوفاة ولا صلة لها بالمرض او الحالة التي سببت الوفاة:

١٨ - حدثت الوفاة في: البيت المستشفى مكان آخر:

١٩ - اشهد ان الوفاة قد حدثت من الاسباب المثبتة اعلاه
 عنوان اشتغال الطبيب:

٢٠ - شهادة طبية عدلية (تلا وتوقع من قبل الطبيب العدلي)
 ان الموقع ادناه الدكتور الطبيب في
 والمرسلة من قبل حسب الاستشارة المرقمة
 بتاريخ ١٩ / / فوجدت سبب الوفاة
 وتوقع الطبيب (تحت الطابعة العدلية)

٢١ - معلومات خاصة بمديرية الجنسية والاحوال المدنية: (تؤخذ من هوية الاحوال المدنية)
 رقم السجل رقم الصحيفة المحافظة

ملاحظة: توضع علامة (x) في المكان المناسب

سجلات لدى السلطة الصحية في نجرات سلمان
تم تسليط
للسنة ١٩٨٨

Figure 43 Samples of death certificates regarding Anfal victims found by the researcher in Nigrat Al Salman dated 1988. Source: Author.

Chapter 8

Genocide and Chemical Weapon (Halabja): The Birth and Development of the Iraqi Chemical Weapons

Introduction

The fifth and last crime considered in this thesis is the chemical attack by the Iraqi forces on the civil population of Halabja. This crime differs in nature from the others. First because of the international exposure it had received since the beginning, and also because of the excessive use of military power. Halabja gassing constitutes the extreme use of chemical weapons against the civilian population in Iraq. The scene of the crime was limited to a single city targeted for its closeness to the Iranian border and suspected for its collaboration with the enemy. Due to the smaller size of area involved, the level of damage caused by the attack is still visible in the area. The city was completely destroyed and so the environment. The consequences of this attack are due to remain for generations to come.

As for the other crimes considered, the researcher will base his analysis on two different sets of sources: primary sources will include unpublished interviews with former Iraqi Government personnel, former Kurdish leaders from the resistance against the regime and on undisclosed official documents. Comparing their testimonies with the ones heard by the IHT during the trial, the researcher will 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 researcher will also refer to the legal requirements necessary to prove the

physical evidence of the attack as well as the presence of the intent to wipe out a targeted group of Iraqi citizens, referring to actus rea and to mens rea respectively.

A lot has been mentioned about Halabja's chemical attack because it was the first time that international media managed to cover such horrendous crime.¹ For this reason, this chapter will not rely on the information already given by other sources but it will focus mainly on how chemical weapons, as instruments of war, have been used in order to commit genocide against the Kurdish establishing 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.² All this in order 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. In order to achieve this goal, this chapter will show how, according to international law on the use of chemical weapons, all the chain of command must be held responsible for the crime committed. A recount of the legal outcomes of the trial for the Halabja campaign will be presented in order to offer the reader an analysis of the long-term consequences of this crime. The chapter will then conclude by explaining 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 belongs to Sulaimaniya governorate. 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, March 13, 1988, Iranian forces began shelling Iraqi military positions in

1. See *Ghosts of Halabja* by Michael Kelly, London: Praeger Security International, 2008.

2. <http://www.fas.org/nuke/guide/iraq/cw/program.htm>. Accessed 16-10-2013.

and around the city of Halabja, and by Tuesday, March 15, Iranian advance forces (Pazdaran)³ already reached the Zalim River 5 kilometres south of Halabja where they started to destroy the bridge in order to prevent Iraqis' return. At the same time the Iraqi government started to cut the electricity, water and telephone lines from the city. 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.⁴ On the same day Iraqi helicopters started to bomb the mountains around the city while aircrafts bombed inside it. The People of Halabja described that day as if it was the end of the world.⁵ They tried to hide themselves down into tunnels, cellars and basements in order to escape certain death. As we will see more in detail from the interviews mentioned later, by 11 am the same day the Iraqi army started bombing the city with chemical weapons. Saddam's Hussein direct responsibility for this crime can be found in the secret memo no.153 date March 16 1988 sent from the Office of the chief of staff to the headquarter of the 1st Corps, signed by Brigade General Staff Nazar Abdul Karim Faizal Al Khazraji reproduced in appendix.⁶ According to another memo no. 7371 dated March 31, 1987 sent from the General Military Intelligent to the Headquarter of Military Staff, hand written for security purposes, this was not the first time that Iraqi forces used chemical weapons against their own citizens, this happened before in the areas of Siyosinan, Askar Goptapa, Balisan and Shaikh setting a dangerous precedent.⁷

³. Pazdaran was the Persian word for the Revolutionary Guards during the Iraq-Iran War.

⁴. Taha Baban, *alam al kurd al morab* (Erbil: Aras Publisher, 2008) pp.10-24.

⁵. Interview with Harne Faraj Abdula. She was 12 years old girl hiding in basement with some relatives during that day and she lost all members of her family during that attack, Sulaimaniya, April 2012.

⁶. See appendix no. 1 of this chapter for the original copy.

⁷. For the original copy, see appendix no. 2 of this chapter for memo no. 7371 of 31 March 1987.

A survivor named Aras Abed Akra, who was 20 years old at the time of the events told his story to a reporter of 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 the birds in the cage of our neighbour were all dead. 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.⁸

Kaven Golestan, a Pulitzer Prize Winning Iranian photographer, witnessed the Iraqi MiG-26 sortie from outside Halabja: "it was not as a nuclear mushroom cloud, but several smaller ones: thick smoke." Golestan then entered the city after the bombing with a gas mask and protective suit to cover the story via military helicopter:

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 women holding a knife where 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.⁹

Despite of all what Iraqi did to Kurds in Halabja, they started to campaign that Iranians were behind that attack. This campaign lasted until March 1991 uprising during the first Gulf War when the Kurds and the coalition forces gathered the documentation related to this case. Only then, the Kurds were able to access most of the documents related to that attack and the international community started to accept the fact Iraq used chemical weapons against the Kurds. Saddam Hussein admitted during the first half of the Anfal trial that he used chemical weapons

⁸. Guy Dinsmore, 'The Enduring Pain of Halabja', *The Financial Times*, July 10, 2002.

⁹. Ibid.

against Iran but he denied attacking Iraqi Kurds. This despite all the evidence produced and despite Ali Hassan Majid admitted that he had used them and he will never hesitate to do it again.¹⁰ Saddam Hussein was never tried for Anfal despite all the evidence against him.

It is important, in order to analyse these facts and their consequences, to understand how the idea of the use of chemical weapons, banned by the international community became acceptable during Saddam's regime. Two are the fundamental aspects of this exercise: the first one is that it is paramount to understand how a regime with no prior history of use of chemical weapons is able not only to produce them, but also to use them despite its ban by international law. Second, how this can 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 researcher opted for a different approach starting with the history of the development, production and use of chemical weapons narrated by the military personnel, some of who 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 during World War I and their consequent ban agreed by western countries in 1925. This lack of interest was due to different reasons: the first one is that since its foundation up to the mid-20th century Iraq did not have enough scientists specialized in pharmacology and chemistry. Even the scientists

¹⁰. For Iraqi's allegations, see Zanders, John Pascal. Iranian Use of Chemical Weapons: A Critical Analysis of Past Allegations. SIPRI Chemical and Biological Warfare Project (March 7, 2001), briefing available at <http://cns.miis.edu/pubs/programs/dc/briefs/030701.htm>

who were established were merely teachers and traditional pharmacists. Iraq also lacked the infrastructure for the chemical or alternative industries. Even the significant oil revenues, in the first half of the last century, were not enough to support the infrastructure necessary for the chemical weapons. In addition, its lack of political instability prevented Iraq and most of its neighbouring countries from allocating sufficient funds for scientific research. For example, in the eighties Iraq allocated no more than 0.02% of its internal revenue to science against the 4.2% spent by Israel.¹¹

Until 1958 the Iraqi Governments was aware of their limits imposed by the international community and did not want to cause an international imbalance in the operation of conflict management, therefore, 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 originally established, and in large part is still the same, in order to deal with internal opposition, and border protection has always been a second priority. This explains the defensive ideology of the army prior to 1968. Even in 1964 when the Iraqi military establishment started thinking of introducing chemical warfare in its multiple fields, it was just for a defensive purpose. In fact the main focus was on the production of military equipment to protect soldiers in case of a chemical attack. According to one of the witnesses interviewed, this was a widely common practice within all armies similar to the Iraqi one at the time.¹² In addition, Iraq being a developing country, its military capability depended strongly on other,

¹¹. Ahmad Thabit, *Jawanib al Siraa al arabi al Israeli wa majalatih*, Al Jazirah, 3 October 2004.

¹². Meeting Staff General S. A. from Iraqi Chemical Branch, former Iraqi Officer, Baghdad, November, 2012.

more developed countries that did not have any interest in giving Iraq the possibility of building chemical weapons.

The Development of the Iraqi Chemical Weapons

After 1958 and the falling of the monarchy, Iraq became closer to the eastern block and in this way was able to distance itself from the boundaries set by the western countries regarding the control on armaments. In the mid-sixties it bought from the Soviet Union defensive chemical equipment and started sending officers to be trained for 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 founded a school where the officers could be trained. The school was named first "Atomic and Mass Warfare School".¹³ They selected "Al-Tajee Camp" as a permanent base for the school and the department and then later it was transferred to "Khan Bani Saad Camp" 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 and until the end of the Iran-Iraq war. One of them was a chemical platoon at battalion level and was in charge of the decontamination of the soldiers, the second for the decontamination of equipment and machineries, the third one of chemical reconnaissance. According to a general of the former Iraqi army interviewed there were also with the Corps Staff Members a Chemical Staff Officer, while in the headquarters there were two Chemical Platoons and a Napalm Squad attached to

¹³. Iraq's Armed Forces: An Analytical History, London and New York: out Ledge. ISBN 0-415-40078-3.

the Chemical Branch Department whose duty was to support the military units with chemical weapons when needed.¹⁴

In 1968, with the Ba'ath party, the interest for chemical weapons spiralled for political reasons. That same year, the party established, within the Public Relation Office, the base for the Intelligence Service - Mukhabarat - for Chemical matters.¹⁵ According to the documents found, they transferred staff member's 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 40 students to the United States to specialize in chemistry. These became the first scientists trained abroad to collaborate, in the mid-seventies, in the production of chemical weapons in a location called Al-Kamalia east of Baghdad. In 1979 CS¹⁶ was manufactured and this success resulted in the building of a new facilities called Al-Muthana. It was built close to Samara'a and these facilities equipped with laboratories were devoted entirely to producing material for military use. In the following years they managed to expand the production from the simple CS to Mustard Gas, Bubble Factors, Nerve Agents, Sarin and Zouman.¹⁷ This facility was under the supervision of Husain Kamil¹⁸ who, with the collaboration of some German and Dutch companies protected

¹⁴. Meeting with Brigade General F. H. Division commander in Former Iraqi Army.

¹⁵. The researcher has found documents from Iraqi Mukharabat confirming the existence of chemical branch at their headquarters since 1971.

¹⁶. A gas causing tears, salivation, and painful breathing, used in civil disturbances; *ortho*-chlorobenzal malononitrile. Formula: C₆H₄ClCH₂C(CN)₂

<http://www.collinsdictionary.com/dictionary/english/cs-gas> Accessed: 17/10/2013.

¹⁷. Meeting with Chemical Brigade Khalid Ali Maho Al Sufi, Mosul, March 2012.

¹⁸. Hussain Kame (1954 – 23 February 1996) was the son-in-law and second cousin of Iraqi leader Saddam Hussein. He defected to Jordan and assisted 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 special amnesty from Saddam Hussain. Ali Hassan Almajid and his relatives killed him with all the members of his family.

under a semi-open budget which provided them equipment and basic material,¹⁹ provided the army chemical weapons during the Iran-Iraq war and the attack on Halabja.

The organized use of Iraqi Chemical Weapon

Chemical Weapons were used for the first time in Iraq at the beginning of the seventies during the security interrogations 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.²⁰ On the military side, this weapon was used during the Iran-Iraq war. The Iranian side 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 a white smoke with a strong smell covering a wide area of the battle zone. This caused some of the fighters to feel drowsiness and nausea.²¹

It is worth mentioning that the use of chemical weapons at the beginning of the Iraq-Iran war was limited and ineffective and this use was intended for intimidation and retaliation purposes. 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 Mustarad, Taboun and Sarin gasses in huge

¹⁹. After the 1991 embargo the establishment stopped working and become 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, for many years, on 24 April 2013, the convicted businessman Frank van Aarat acted as illegal dealer in chemicals for the Iraq’s chemical weapons program.

²⁰. Nadhim Gzar was the General Director of Security during 1968, after he had been assassinated by Saddam Hussein on 1973.

²¹. UN Report S/16433 of 29 March 1984.

amounts thanks to the success in manufacturing special bombs that can be airborne, its use became more effective as seen in Halabja.²² In addition to that, the Iranians confirmed that from that date until March of 1984, the Iraqi Army used chemical weapons around 65 times.²³

The use range and its effectiveness had increased between the years 1985-1986 where the Iranians mentioned that during the battle of Al-Howayza Marches around 2,000 fighters were wounded, while in 1986 during the battle of Al-Fao around 7,000 artillery bombs filled with chemical materials were launched. On the occasion, according to Iranian sources, Iraqi jets dropped 1,000 Chemical bombs on the battlefield and on the troops that causing 1,200 injuries.²⁴

The regime used the war period between 1980 and 1988, when less monitoring was in place, to change the use of chemical weapons use 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 where the use of chemical weapons was not only limited to attack the gathering site of the Peshmergas and Al-Ansars (the fighters from the Communist Party) in areas of Halabja, Balisan and Bahdinan, but it extended to Kurdish villages in May of 1987.²⁵

The regime referred to the chemical weapons 'Special Ammunition' to add some secrecy on its use as well as to spread terror amongst soldiers. The authority for its use was limited to the Armed Forces General Commander Saddam

²². Meeting with Brigade General N.M. Brigade Commander in Former Iraqi Army, Erbil, September 2013.

²³. Mr Sabah Kanji's testimony was presented to the International Tribunal in The Hague regarding the investigation of the use of Chemical Weapons by the Iraqi Regime.

²⁴. UN Report No. S/19711 of 1986.

²⁵. The Directorate of the General Military Intelligence latter labelled Classified and personal no. 808 date 12 March 1987.

Hussein who, 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 – the director of Al-Muthana Facility as well as another officer from the directorate of planning and another one from the General Military Intelligence.²⁶ The committee continued its work until 1990 where 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 the Chemical Weapons stockpile.²⁷ An analysis of the pattern in the use of chemical weapons by the Iraqi army shows clearly how the chain of command worked at the vigil of a strike. The higher political authorities proposed the use of chemical weapons both against 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 the execution of chemical strikes because they needed the support of the artillery to carry out the attack. The same thing happened for Stalin Organ Rocket Launcher Battalions: the Air Force received chemically charged bombs designed to fit the military airplanes and these would be delivered to the aviation before the strike and used only under strict orders.²⁸ 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

²⁶. Meeting with Chemical Brigade Khalid Ali Macho Al Sufi, deputy director of Iraqi Chemical branch 1980-1985.

²⁷. Mr Sabah Kanji’s testimony that presented to the International Tribunal in the Hague regarding the investigation of the use chemical weapons by Iraqi Regime during the war with Iran.

²⁸. Meeting with Chemical Brigade Khalid Ali Maho Al Sufi, Mosul, March 2012.

preventing any potential enemy strike or to monitor the direct or indirect consequences of the strike. For example, it was in charge of monitoring the direction of the wind in order prevent the chemical substances from reaching the Iraqi forces. The criminal responsibility of the use of chemical weapons both against the Iranian soldiers and against the Kurds lies almost entirely on the Armed Forces General Command as well as on the General Commandership who suggested the strikes. It should be taken into consideration that all 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.

International Ban on the Use of the Chemical Weapons

The Historical Aspect

Chemical Weapons have been used in many forms since ancient times. Some historical sources indicate that around 2000 B.C. the Indians used toxic “chemical” fumes to influence their enemies’ activities in the battlefield.²⁹ Since that day to our present time, humans continued to use it 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 building and the infrastructure.³⁰ In addition, this kind of weapons have the advantage of neutralizing the enemy who most of the time is not equipped to respond to the attack or might not have the time to use it if available. The first organized use of the chemical weapons within the frame of what is so-called chemical warfare in the modern time was during World War I where the German army in April of 1915 deployed a “Cloud of Chlorine Gas” over their enemies’ areas causing the death of 15,000 soldiers. The German continued to

²⁹. Malcom N. Shaw QC. *International Law*, 5th edition, Cambridge University Press, UK 2003.

³⁰. B. Bollecker- Stren, *Le Prejudice dans la theries de la responsabilite internationale*, Pedone, Paris, 1973.

use this weapon until a study found out that it was the cause of about 800 thousands to one million deaths from the Russian, French, British and American sides.³¹

The huge loss caused by the active use of chemical weapons by Germany who lost World War I 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 their use internationally and was ratified by the “Geneva Protocol” in 1925 with the ban on the use of Chemical and Biological Weapons without mentioning specific substances.³² This ban was repeated in the Conference on Disarmament held in 1932 and 1934. It was also emphasized in the International Ban on the use of Biological and Toxin Weapons (BTWC) in 1972 signed by 170 as part of the Ban on Development.³³

International Ban Compliance

The 1925 protocol signed by most of the western countries has been very successful in preventing the repeating of the horrors caused by chemical weapons on a large scale. The events of World War II are known for the level of discipline and compliance with the ban since it started and ended without a noticeable use of them. On the other end, they used it in some regional wars. For example, the United States of America had used some of these weapons in Vietnam in order to remove the obstacles caused by the nature of the territory and to destroy

³¹. Michael Freemantle, *Gas! Gas! Quick, Boys!: How Chemistry Changed the First World War*, (The History Press, 2013).

³². Shareef Atlim Mohammed Mahir & Abdul Wahid, *The Encyclopaedia of the International Humanitarian Law*, The Official texts for the treaties and the states signing them, International Red Cross Committee Publication, Cairo, 2002.

³³. Sharif Altam and Mahir Abdul Wahid, *Encyclopaedia of Humanitarian International Law Treaties*, Red Cross, Cairo, 2002.

agricultural crops and in this way influencing the course of the war. The compliance of the majority of the western countries was due to the fact a mere killing of the enemy was not the first purpose any war until 1918.³⁴ Not every country followed this trend. Iraq, for example, after 1968 moved in the opposite direction from this internationally prevailing logic, and in order 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 the total control of the country.

Other countries that produce and sell weapons of mass destruction like chemical weapons set very strict regulations on its use. They rely on their deterrent power in order to avoid an unsuitable use. In Iraq, it was very different, so when the government owned a weapon, it did not hesitate in using it without calculating the side effects or considering the unavoidable international reactions.³⁵ For example, the Iraqi Army under Saddam Hussein's command on the third year of the war with Iran used chemical weapons even though it did not need to from a strategic point of view. It used in a time where it did not have enough stockpile to resolve the conflict or affect the outcome of the fight. Saddam Hussein and his higher political leadership's indiscriminate use of chemical weapon show their ignorance of its military, political and psychological effects. The use of this weapon resulted in an increase in the hostility of the enemy to the level led to improve their fighting performance and hindered any possibility of a negotiated ending of the hostilities. In fact, the military and political power balance "performance- Morales- Steadfastness in the battlefield" between the fighting sides had shifted in favour of

³⁴. Joseph Nye, *Understanding Global Conflict and Cooperation: An Introduction to Theory and History* (USA, Pearson, 2012).

³⁵. Edward Willett, *the Iran-Iraq War, War and conflict in the Middle East*, The Rosen Publishing Group, 2004.

the Iranian side in a noticeable way during that period and the aftermath until 1987 until when the indirect American intervention in favour of the Iraqis forced the Iranians to accept the cease fire with the known result of negative tie for both sides.

On the internal front, the use of chemical weapon 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 the International Law did not decide the conflict between the Central Government and the Kurds. On the contrary, the distance became far apart where 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 them with a psychological trauma.

The desire to take revenge upon the peaceful Kurdish people is confirmed by the testimonies heard during the Higher Iraqi Criminal Court hearings from people charged of the crime main defendants such as Saddam Hussein, Ali Hassan Al-Majeed, 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 in the chapter, the testimonies of some of the witnesses will confirm that at the moment of the attack no Peshemerga or Iranian forces were present. This shows that the Iraqi government intentionally attacked the Kurdish population to take revenge for their support to the insurgents. In addition and according to the

documents and to their same testimonies they thought that the chemical weapons could mean a final solution for 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 that covered the strike and its effects on the civilians excluded the presence of fighters from Iran or of Kurdish Peshamergas inside the city during the attack. It also confirmed the non-existence of bodies of Iranian military personnel among the ones that remained scattered between houses, allies 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, which was not a fit place for defensive fighting against the organized Iraqi forces that exceeded them in equipment and number. These facts from the field confirm that the strike driven by the psychological hatred in the hearts of the Ba'ath's Commanders. The news circulating about the presence of Iranians troops and Pershmergas fighters in Halabja led the authority represented by Saddam Hussein and those close to him to carry out the strike to retaliate against the Kurds

The strike on Halabja did not provide the Ba'ath regime the results it was looking for. It actually increased the number of volunteers who joined the Peshmergas to fight the regime's forces all over Kurdistan. This presented a ready made propaganda material for the Kurdish Leadership and its media 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 genocide, to the public opinion who looked increasingly more sympathetic until, in 1991, western countries intervened by imposing a no-fly zone

that offered protection to Kurdistan.³⁶ It is worth mentioning that Iraq's use of chemical weapons in its war with Iran and against the Kurds in Halabja in the eighties of the last century motivated the International Community to sign the Treaty of Paris in 1993 fully banning the production, stockpile and use of Chemical Weapons.³⁷

Actus reus: as already mentioned in the introduction, according to Article 2 of the Genocide Convention, killing members of a group is considered a basic element towards the recognition of a crime of genocide,³⁸ and in this specific case Kurdish people killed in Halabja provided to the court all the physical evidence in support of this point. The international law does not specify a number of victims nor establishes by which means the killings had to be carried out in order to commit genocide because the legal case focuses on providing the evidence that a severe bodily or mental harm has been inflicted to the members of a specific group.³⁹ What happened in Halabja on March 16, 1988 proved the case: according to the documentation presented in this research, 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 their war planes based in Kirkuk and Al-Bakir bases armed with special chemical bombs to carry out air strikes on the city of Halabja in the afternoon.⁴⁰ Then the Military Airforce passed the same order to its headquarters in Kirkuk. The mission was executed using PC7

³⁶. See UNSC resolution 688 of 5th April 1991.

³⁷. Helen Chapin Metz, Iraq: A Country Study, Kissinger Publishing. First Edition. 2004

³⁸. Abdul-Ftah Bayoumi Hijazi (2005) al mahkama al jinaeya al dawliya, Dar Al-Fikr Al-Jamiee, Beirut.

³⁹. Abdul-Wahid Mohammed Al-Far (1996) al jaraem al dawliya wasultat al ekab alaiha. Dar Al-Nahdha AL- Arabiya, Cairo.

⁴⁰. Testimony under oath for the Former Iraqi Pilot Hamid Raja Shelah Al-Hadithe in the Higher Iraqi Criminal Court on Halabja case.

airplanes, which started their attacks within the same time-period and in coordination with the Air Force aircrafts. Stalin Organs rockets were distributed to the artillery and the battalions that shelled the city during the bombing. The violence of the strike did not offer the civil population the opportunity to shelter and this caused the death of around 5,000 Kurdish citizens. The Kurds being a subgroup of the Iraqi citizens the physical element need to prove of a genocide crime had been fulfilled.⁴¹ 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 from all ages and represented the traditional population of Kurdish society. The crime scene showed how mothers, children and elderly were taken by surprise by the attack, their corpses piled up in the alleys and streets in the 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 mental diseases even today .All these details can be found in Dr. Christine Gosden's report, which analysed from a medical point of view the expected impact on the injured.⁴² 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.⁴³ Those who survived the strike or the gasses did not reach them, were forced to live in detention camps

⁴¹. The number related to the casualties was confirmed by the Higher Iraqi Criminal Court during the court's hearing and sentencing, which were about 5,000 civilians.

⁴². Halabja Post Graduate Medical Institute (HMI) and Dr. Christine Gosden, August 1992.

⁴³. Christine M. Gosden, 'The 1988 Chemical Weapons attack on Halabja, Iraq', in *Super Terrorism: Biological, Chemical, and Nuclear* (Yonath Alexander and Milton Hoening, eds.) (Transnational Publishers, 2001).pp 7-11.

or in special housing compounds where they faced all types of humiliations, insults and physical torture. When the perpetrator forces a group to endure harsh living conditions with the intent of destroying it in whole or partially preventing the victims to live their normal lives, the physical element required by the international law is fulfilled and the intent proved.

Mens Rea

Saddam Hussein and Ali Hassan Al- Majeed, the Air force Commander, the Military Aviation, the 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 are accessories to the crime.⁴⁴ This proved without any doubt in this case there are both individual and institutional responsibilities. In addition, during the trial it has been proved that all the high command of the army was aware that this attack would breach international laws.⁴⁵ The trial also proved that besides the high commanders individual responsibilities could include also members of the armed forces in lower ranks. This is because the treaty states that can be charged for genocide all individuals, constitutional rulers, civil servants and lower rank employees who participated in the implementation of the plan.⁴⁶ This fulfils the Immaterial Element for this crime and all of its consequences and the legal framework defined by the Treaty and International Conventions .The criminal intent of the crime is proven from the fact that the perpetrators aimed to destroy the group totally or partially and that the witnesses have confirmed the strike was not the result of a military reaction in the

⁴⁴. Mohammed Mansousi Al-Sawi, International Law Articles, Earlier source.

⁴⁵. Ali Yousif Al-Shukri, International Criminal Law in a changing world. Earlier source.

⁴⁶. Rome Statute of the International Criminal Court and the Statute of Iraqi High Tribunal no.10 2005.

battlefield, but a cruel act of retaliation against unarmed civilians. The Iraqi leadership did not have the right to use the internationally banned weapon on a city where its people were still living there and it is considered an Iraqi city.⁴⁷ As the action of the deliberate murder had not happened as an accident using traditional weapons that had missed its targets as it happens sometimes in the battlefield. The following points supported this thesis:

First: The leadership responsible for the attack specifically suggested the use of 'Special Ammunition.'

Second: The armed forces General Commandership confirmed the strike or suggested changing it or postponing it.

Third: The Special Technical Military Committee studied the plan to verify its technical viability.

Fourth: Saddam Hussein as armed forces High Commander, accepted the plan and gave orders to execute it and wanted to be informed about its progress.

Fifth: The Special Ammunition were transferred from their location in al-Muthana to the air base from where the aircraft started their deadly journey towards Halabja. Every stage of the attack has been carefully planned and executed proving the intent of striking against the civilians. This also refuted 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 analyse a the Crime of Genocide within the international law, it is necessary to introduce along with the Physical and Moral Elements an

⁴⁷. The Special Treaty related to adhering to traditions of the Land Wars.

International Element: first, genocide crimes in general are well-planned⁴⁸ as we have just 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 the authority or are well connected to the authority. Second, if as in this case, the responsibility of the ruler is proven, he has to face all the legal consequences and be tried under the international law. In the Halabja case, Saddam Hussein responsibility was proven. This is why the crime was taken to the international court⁴⁹ that determined first that the chemical attack on Halabja was a pre-planned and that it was the climax of the Anfal campaign as described in Chapter 7. 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%) proves “The intent to destroy” and “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.⁵⁰

The Criminal intent as a non-physical element in Halabja Crime is parallel with the physical element of the crime, both became one unit that appears in a 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. In this context, Saddam Hussein was considered a dangerous international criminal according to the

⁴⁸ . <http://www.genocidewatch.org/aboutgenocide/8stagesofgenocide.html>, accessed 19 October 2013, Amja Haykal, al masoliya al jinaeya al fardiya al dawliya amama al kazae al jinaee al am, Dar al Nahza, Cairo, 2008.

⁴⁹. Abbas Hasham Al saedi, MAsoliyat al fard al jinaeya an al jarima ala dawliya, Cairo , Dar al matboat aljamiaeya, 2002.

⁵⁰. Mahmod Salih Al adli, al jarima al dawliya, Ibid.

definitions adapted by the Nuremberg Court Principals⁵¹. In addition, the Crime of genocide in Halabja is described in the ruling as awful crime because it took place under the supervision and with the covering of the higher officials of the state.⁵²

In addition to the evidence presented above, the researcher during his fieldwork managed to gather further information that can help to build up the case against the defendants. It was important for this purpose to offer a field description of the crime scene and a new version of the events. The Iranian army led an offense on the Iraqi forces defensive lines located on the border between the two parties close to the town of Halabja in March 1988, this despite the heavy shelling during which Halabja became a target. They 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 could leave their houses and attended their necessary livelihood needs.⁵³ That same morning, at about 11:45 am, the Iraqi airforce leaving from the airbase of Al-Bakir base close to Balad district in Salahaddin province and from the airbase of Al-Huriya in Kirkuk and from Saddam Base in Mosul started an air raid against the city using highly explosive napalm bombs. The raid lasted until 15:00 pm. When the inhabitants of Halabja realized that the attack would not stop they started fleeing with any means available, at the same time then 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 elders. Those who were able to flee and reached the adjacent villages were also attacked and died along with their

⁵¹. Juda, Muntasir Saeed (2006) *al mahkama al jinaeya al dawliya*, Dar Al-Jamiaa Al-Jadida, Alexandria, Egypt.

⁵². Rulings of the permanent People's Court in Paris, April 1984.

⁵³. The testimonies of 438 witnesses and complaints in the Iraqi High Criminal Court, which started its hearings on Dec. 21, 2008.

inhabitants; this was the case of Al-Naee and Abo Ubaida.⁵⁴ The families who managed to cross the border with Iran were reached by the deadly gas that spread all over the area, and those who received help in camps specially built for the refugees of Halabja and received the medical attention died because of the injuries suffered during the attacks.⁵⁵

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. Due to the big media coverage of the attacks, the Iraqi government in order to avoid international condemnation due to the presence of NGOs and international rescue organizations, issued a pardon to the people of Halabja. Many refugees decided to return to their home, 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 just offered in this study. 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 in accused of the crime: Ali Hassan Al-Majeed, 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 Sulaimanyah prison.⁵⁶

⁵⁴. Farhang Rajaei, *Iranian Prospective on Iran-Iraqi War*, 1st edition, University Press of Florida, 1997, p. 35.

⁵⁵. The testimony of the petitioner: Luqman Abdul Qadir Mohammed in the special claim about the chemical attack on Halabja dated July 5, 2009.

⁵⁶. Documents of Case number 2/C/Second/2008. Meeting with Judge Mohammed Al Uraibi, Erbil, and October 19, 2013.

Eye Witnesses

Many of the witnesses who deposed in the trial were high-ranking military personnel who had the opportunity to eyewitness the different phases of the crime but there were not directly involved in it. The most important testimonies were the ones that proved the Iraqi government under its leader Saddam Hussein gave the explicit order to attack the city of Halabja on the afternoon of March 16, 1988 and that Ali Hassan Al-Majeed was given the full authority to direct the military operations all over Kurdistan including the power of using special ammunition and detain prisoners. The most important witness in this case was Staff General Waleed Naif Shabeeb Ibrahim Al-Aalousy, director of the Northern Area Military Intelligence Organization, witness in the cause #: 1/E/2005/ dated August 4, 2005. The witness had worked in many positions in the Military Intelligence among them he was a staff officer for the third branch and the director of the Northern Area Intelligence Organization. His testimony was given in front of the Investigative Judge at the High Iraqi Criminal Court where he confirmed that the Iraqi Forces used 'Special Ammunition' in the whole Al-Anfal Operations and also confirmed how that use led to shifting the results to the Iraqi army's side. He also talked about the mechanism of the Special Ammunition use by the Armed Forces General Leadership, he explained the role of the military intelligence and their part in discussing the use as it was represented by its director as a member the general leadership. In the testimony, he confirmed the detention of the Kurds in areas covered by the fighting and that they were sent in groups to special camp in Tobzawa close to Kirkuk and then to other places. This was an operation under the direct supervision of Ali Hassan Al-Majeed and implemented by the Directorate of General Security. He also confirmed that Ali Hassan Al-Majeed 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 of executing Kurdish Groups⁵⁷. 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 November 31, 2005

The witness was a Pilot Officer who worked as The Commander of Aviation Wing at the AL-Bakir Air Base before his last position as the Air Defense Commander, he gave his testimony in the Aviation Technical Aspect and its uses. He elaborated in his testimony the methods of issuing orders and the implementations of the special orders related to the air missions and how to deal with the limited use of 'Special Ammunition' in limited missions and how such weapon is not stored in the Air Basis and how the remainder "unused" is returned ONLY to the place it came from. He confirmed the actual participation of Al-Bair Based as well as Al-Hurriya and Saddam Basis in many air strikes on the northern areas "Kurdistan" without naming the struck targeted for quite some time after it took place.⁵⁸

Mahoud Faraj Bilal Abdullah Al-Samaraee

Date of birth: 1948

Al-Muthanna General Facility Research Director.

Case number: None date December 26, 2005.

The witness was an Officer in the Chemical branch with a PhD degree in chemical biology that worked first in the Chemical branch of the Iraqi Army then as a

⁵⁷. The Special Criminal Court, The investigative Judges, Pages 4379-4401.

⁵⁸. Iraqi High Criminal Court, Investigative Judges, Pages 4472-4477.

researcher and director of researches in the facility specialized in the production of chemical weapons. This testimony is considered important in order to prove the details of the chemical weapon used in Halabja. He explained in his testimony that the facility he was directing called “Al-Muthanna” specialized in the production of the Chemical Weapons like Taboun, Sarin, Mustard, VX and SC, and he also provided details of how these weapons were loaded into bomb shells, Stalin Organs rockets and airborne bombs. He confirmed its use in the northern area of Kurdistan and also confirmed the presence of a special committee in the Armed Forces General Commandership that dealt with requesting special weapons and gathered information on their use in the aftermath of the attacks. He also confirmed that in the case of Halabja this committee granted permission to use the Nerve Gas-Sarin. He also explained which the symptoms were caused by the inhalation of this gas: shivering of the body, loss of control on the body organs, injury of the iris, loss of vision and death. The description of these symptoms matches the testimonies of some of the people of Halabja.⁵⁹

Their Yousif Abbo

Date of birth: 1961

Active Soldier

The testimony provided the court a different insight since he was a soldier who had not witnessed the chemical attack but he could testify about some of the effects of the attack on the environment. With some of his colleagues in the army unit he had entered an orchard and since they were very hungry with their rifles picked and eat some of the fruits from the trees. Only a few days after he could notice that some

⁵⁹. Iraqi High Tribunal, Investigation Judges, pp. 2032-2041.

bubbles appeared on their bodies. When they consulted a doctor he diagnosed as being exposed to a chemical agents used a month before.⁶⁰

The Official Documents

Despite the secrecy in which this operation were carried out, the official correspondence, found, clearly, supports the versions offered by the witnesses. This study will reproduce some of them. The first one is a classified personal letter from the Armed Forces General Command Secretary to the Armed Forces Deputy General Commander to 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 Al-Anfal Operations Sector ...you must continue attacking the enemy and the saboteurs with fires, shelling and air bombardment, they should not be given the chance to settle down or re-gain their breaths. It is preferred to use the Special Ammunition through shelling at night as a surprise element, or loading regular shelling with strikes of the Special Ammunition”.⁶¹ The use of the name ‘Special Ammunition’ is confirmed in this letter as well as the intent of the General Commander to commit genocide to a specific ethnic group.

The second document is also a letter labelled “Classified and Personal” 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 with the subject “Directives” it 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

⁶⁰. Halabja Case documents in the Iraqi High Criminal Court, p. 4481.

⁶¹. The Presidency’s Office the Armed Forces General Commandership Secretariat letter, Classified and personal numbered A/13/177 dated March 20, 1988. See appendix no. (2) and no. (3) to this chapter. Memo no. 2405, dated 22 March 1988.

rockets/ Helicopter before 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 hand-written letter, which shows the importance and secrecy of the subject. The last phrase of the letter, paragraph (w) quoted above shows how the Armed Forces General Leadership who is the only person who has the authority to use the 'Special Ammunition', is granting permission to use them against the Kurds which he kept labelling as "saboteurs", in addition and he is the one who identified the sites for the attacks. This was not enough identification to prevent this chemical weapon to reach the local civilians because the Peshmergas were moving between sites and those make shift fixed sites used for fighting where usually locate close to the villages and populated area. The Iraqi authority were aware of the dangers of a chemical attack close to an inhabited areas since the gas can spread into a much wider area than the intended one. This is clear from some documents from the military that did not recommend the use of chemical weapons close to the Turkish border in order to avoid an international uproar.⁶²

Another 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 huge and about 3,000 people were killed by the Guards and Bassej.⁶³ Their corpses have been transferred to the city of Bawa along with a high number of injured people. The civilian loss was of about 4,000 people all from

⁶². The Armed Forces General Commandership letter numbered review/ 349 dated April 27, 1988. pp. 9653-654) of the documents of High Criminal Court.

⁶³. Iranian special units.

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. It is a hand-written-letter evaluation of the chemical strike that took place against Halabja. This letter is the proof 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 March 16 and it constitutes a clear and undeniable admission of the use of the chemical weapon.⁶⁴

On page 17 of this 23 pages long letter obtained from the general military intelligence and presented to the High Criminal Court, 7th paragraph it 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 to 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 both on the external and on the internal front. Internally, they were offered a propaganda weapons against the infidels Iraqi who did not hesitate in acting against Islam by killing their own people. Internationally, they could show the whole world the atrocities committed by Saddam Hussein’s regime.⁶⁵

⁶⁴. A letter from The Intelligence Organization Eastern Area labelled Highly Classified numbered /S1/Q1/3405 dated March 22, 1988. Pages (2499-2501) from the documents of the High Criminal Court.

⁶⁵. Page 2511 from the documents of the High Iraqi Criminal Court.

The last letter produced here is a highly classified one from the Intelligence Organization for the Eastern Area to the Third Branch of the Military Intelligence. The subject again is information. In the second paragraph of this letter he 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 Guards and the Baseej in the city and its suburbs. This in addition to 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 estimated number could be reached only through the witnesses' accounts or after a reconnaissance visit by external NGOs or other organizations.⁶⁶

The Ruling of the Court

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 in attacking Halabja using chemical weapons. The defendants Ali Hassan Al-Majeed, Sultan Hashim Ahmed, Sabir Abdul Aziz Al-Douri, and Farhan Mutlak Al-Jibori were tried. The first one was convicted under the paragraph numbered 12/First/A) code and 14/First/Second/Third/Forth) 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

⁶⁶. A letter from The Intelligence Organization Eastern Area labelled Highly Classified numbered /S1/Q1/3552 dated March 27, 1988, page (2502) from the documents of the High Criminal Court.

Chapters of the mentioned above court statutes. They were sentenced to 7 years for the forced deportation of civilians. They all were 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 their crime the forced deportation as a crime against humanity. The accusers and petitioners appealed their personal right in accordance with the bill dated January 27, 2010. Their objection focused on the decision related to the strike on Halabja with chemical weapons considered as a crime against humanity and for this reason 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 of annihilation of a specific ethnic group according to articles (11/First/A) of the High Iraqi Criminal Court numbered 10 dated 2005.⁶⁷

The defendants' testimonies

In the case of Halabja Ali Hassan Al-Majeed during the first hearing dated June 16, 2009 admitted his crime saying that that if it was proven that Iraq is the one who attacked Halabja using Chemical Weapons, then he will 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) ⁶⁸.

⁶⁷. For a full statement from the Iraqi High Tribunal regarding the Halabja case see the text of the sentence mentioned.

⁶⁸. The Iraqi High Criminal Court records in the Halabja Case. The researcher has all recorded copies of the case sessions.

Conclusion

Looking back at the previous crimes analysed, it is evident that Halabja constitutes the peak of the state engineered genocide against Kurds. In the eighth year of war against Iran, the regime distanced itself completely from an indifferent international community and international law. The attack on Halabja was carried as a revenge against a population traditionally against the regime. What happened in Halabja is not disconnected act from the Al-Anfal Operations that started the night of February 22-23 and ended on September 9, 1988. All the official letters that discussed the use of the “Special Ammunition” were hand-written for security reasons. The researcher has translated and reproduced them in the appendix to this chapter.

Chapter Nine

Recommendations for Prevention of Genocide in Iraq

With the failure of the Iraqi state and society in 2003, the country had to deal with different challenges. The most important of these challenges was and still is the security issue along with healing the wounds of the victims of genocide and their remaining families. The federal government born after the fall of Saddam's regime under the protection of the United States has not been able until now to contain the wave of sectarian violence, which is the main obstacle to a unified Iraq. In this context, the Kurdish case is particularly significant because the new country will have to deal with its uncomfortable and unjust past. In the case of Iraq, in contrast to what happened in other cases around the world, the violence is still engulfing the whole society. This makes it difficult to propose effective changes in order to prevent these events from happening in the future. The researcher, directly involved in building the case for some of the crimes considered in this thesis, thinks that the route to reconciliation has to pass through the equation

Truth+Justice=Reconciliation

In order to establish truth and justice it is paramount to deal with all the individuals and institutions involved in preventing the crimes. In a schematic but useful simplification the actors of this drama are the victims of the perpetrators and the bystanders. Each of this group and the relation among them in term of justice has to be taken into account. In this chapter the researcher will deal with each of them, explaining, in the light of the events, how the new government should recognise the rights and wrongs of each group.

Victims

A victim has name, a face, a past, hope and aspiration for the future. In an amorphous mass, however, the victims become nameless and faceless statistics. The humanity of the victims is lost in the vastness of the crime. We must strive to remember the human dimension of these crimes, and not forget that these numbers, aggregated into sterile and abstract totals, represent human lives brutally and tragically cut short for ideological, 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 have committed but for who they are; such as Faylee Kurds, Barzani 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 crime of genocide not for their behaviour but for their identity.

The Social and psychological consequences of genocide against the Kurds still affect the victims in their daily life. As we already mentioned earlier, Dr. Christine Gosden, who testified before a US Senate Judiciary subcommittee hearing in 1998, prepared a study on the long-term consequences of the Kurdish genocide. Preliminary studies have concluded that people Halabja experienced a dramatic higher rate of cancers, vision and respiratory problems, miscarriages, and children born with deformities compared to other towns that did not suffer the chemical attacks. Access to sophisticated healthcare treatments has been limited, and many people, especially women, suffer from depression. The people of Halabja are frustrated with the lack of assistance they have received from both Kurdistan Regional Government's officials as well as Iraqi Federal Government. For this reason they should be provided with better medical care in order to lead a normal life. However, in order to rebuild the civil society, a series of steps are

necessary. For example, the state should return to them their rights. As we have seen in Chapter 5 on Faylee Kurds, the Iraqi government failed in fulfilling its own promises included in resolution No. 426 of the Council of Ministers the elimination of all negative impacts caused by their forced deportation. The statistics mentioned at the end of the chapter show that very few Faylee Kurds saw their Iraqi nationality and even less are in possession of a national ID card. In addition, their “moveable and unmoveable assets” has not been returned to them. All this is having a detrimental effect on society. The unwillingness of the Federal Government to take the route of reconciliation is evident in its attitude towards all the other cases analysed here. The victims of the Barzanis’ killing, for example, pose different challenges. In their case, recognising them as victims implies much more than material compensation. The secrecy in which the crime was carried out calls for a major effort from the government in order to establish the truth of what happened and assist the victims in dealing with their loss. The Federal Government should propose a law dealing with missing person in tandem with international law. It is recommended that a high-level inter-institutional work group established that includes decision-makers and legal experts, as well as representatives of the families of missing persons to initiate a wide consultative process in order to discuss this law. In addition, a simplified process should be enforced in order to allow the families of the victims with all the support during the different stages of the process. In particular, it is important that their rights when dealing with the forensic aspects of the search for the missing persons. Up until now, the Federal Government did not have any credible plan in place in order to identify the victims of genocide. Any discovery of mass grave, and leak of documentation regarding the mass killing committed by the former regime have

been left to private initiatives. As we will see in more detail later, this stance by the Federal Government is due mostly to the fact that the most of the civil servants were working for the previous regime and may be accessory to the killings. To overcome this situation the government should establish local and civil society groups in order to outreach the victims' families and involve them in the process of discovering the truth. This would imply the protection of personal data, in particular genetic information used of the identification of the missing persons. Until now this process has been very flawed if we think that over 1,000,000 victims only 30,000 DNA samples have been collected. In this moment a Search Commission for the victims of forced disappearance does not exist.

The role of the Search Commission should be strengthened, ensuring that high-ranking representatives from its member institutions regularly attend meetings and that the institutions implement its decisions. In this moment the only governmental office in charge is the Minister of Human Rights that lacks the facilities and the administrative capacity to deal with this issue. The collaboration with the families of the victims would also help to restore confidence in the Federal Government and in its willingness not to perpetrate genocide in the future. For this purpose the Federal Iraqi Government should adopt a consistent definition of who constitutes a victim of enforced disappearance. While it is generally acknowledged that the victims of enforced disappearance include not only the disappeared persons themselves, but also their family members, this is not uniformly prescribed by Iraqi law. The Search Commission should also lead to the creation of an inter-institutional plan for information to be entered and/or transferred into the National Registry and be verified by relevant institutions. The possibility of incorporating data collected and maintained by associations of family members of missing

persons and other NGOs into the National Register, in line with security concerns, should be explored. The Search Commission should issue periodic public reports on the compliance of Federal Iraqi Government institutions in transfer and verification process.

The Federal Iraqi Government should also provide reliable and accurate information regarding the process of searching for missing persons as well as conducting a comprehensive review to determine the magnitude of the issue of enforced disappearance, including a determination of the general characteristics of the issue. This includes a compilation and verification of all existing information with the relevant institutions, which should result in enhancing the search and identification efforts, as well as the provision of assistance to the victims. In addition, a centralised information system able to store all the information gathered on the issue of forced disappearances should be put in place. This would guarantee the protection of all genetic information obtained from the families of missing persons.

It is imperative that during the judicial proceedings and the search process all crimes committed in relation to the crimes of genocide (e.g. torture, sexual violence, and mutilation) are properly recorded and investigated. The effective right to remedy should be strengthened. Further, the right to reparations should be implemented equally for all victims of enforced disappearance, without regard to the perpetrators of the crime.

A Federal Iraqi Government strategy for addressing the rights of victims during the search process and judicial proceedings is necessary. Such strategy should clarify which Federal Iraqi Government institutions are responsible to implement specific rights, establish a single standard for the entire country, as well

as provide for better inter-institutional coordination on the issue. The Prosecutor's Office should assess the level of urgency for the exhumation of a site. It should also regulate the access to the mass grave in order to avoid the application of poorly applied forensic procedures as happened in 2003 after the revelation to the public the existence of various mass graves. In these cases the exhumation should be postponed until sufficient investigative information is available in order to ensure the proper application of forensic procedures. All this should be done with the active participation of the international community that should provide a coordinated and sustainable assistance to the associations of the families of the missing to ensure that they are educated and engaged in addressing their rights and in raising awareness about enforced disappearances.

Create a Law on Missing Persons

There is a clear need for a legislation to holistically address the issue of enforced disappearance and the specific needs of the victims. It is recommended that a high-level inter-institutional work group be established, that includes decision-makers and legal experts, as well as representatives of the families of the disappeared, to initiate a wide consultative process to formulate such a law in support of the victims. The creation of a centralised National Register of Missing Persons is also recommended to house all information relevant in order to locate, recover and identify the missing persons. When launching an investigation, the prosecutor should ensure that available information concerning the victim of enforced disappearance is incorporated into the National Register.

The government should provide sustainable funding to institutions responsible for incorporating data. This will enable them to handle the increase in information that needs to be incorporated in the system, as well as the transfer of

the existing backlog of information registered in hard copies, or their internal databases.

Technical Recommendations

Along with the legal and administrative organization, some technical provisions have to be guaranteed in order to deal with forced disappearances. For example, the government should provide funding in order to support the daily work of ad hoc facilities for the exhumation and identification of the victims. This involves an increasing of personnel and administrative staff. As forensic anthropologists are vital to both the exhumation and examination process, provisions should be made to compensate for the draw on personnel from laboratories. Hiring additional anthropologists and/or including well-managed lower-level staff can facilitate this. An increase in staff will require an increase in equipment and supplies, which should be constantly available due to the high turnover of sites and limited preparation time.

Revision and Standardization of Field Activities and Examinations

Existing protocols, report formats and methods of documentation relevant to the recovery and post mortem examination of the remains, should be reviewed and standardized. Exhumations should be postponed until sufficient investigative information on the potential identity of the victims is available, and/or until or logistical and operational conditions allow for best exhumation practices to be followed, in line with provisions of protections of graves/sites.

Continuous and reliable security with adequate and comprehensive procedures for assessing and ensuring site safety with regard to unexploded ordinance and landmines must be provided for the exhumation teams. The practice of exhuming sites near areas of on-going hostilities should be

reconsidered. Despite the emphasis on recovery of human remains, it is imperative that all sites are treated as crime scenes, and as such are fully investigated and documented. The sites should be reliably secured 24 hours a day during the recovery.

The routine implementation of stratigraphic archaeological approaches to exhumation and evidence recovery, and the use of 3D topographic site surveys for evidentiary documentation should be considered. Detection and investigation of pre mortem and post mortem trauma, with an emphasis on documentation of torture, should be strengthened and consistently applied. Chain of custody requirements must be consistently adhered to during the entire process, from the recovery to final burial.

Standardization of Protocols, DNA Testing Kits, Population Databases, and Development/validation Across DNA Laboratories

It is imperative that a single multiplex STR (Short Tandem Repeats) system is used by all laboratories. Appropriate industry standards include the ABI Identifier kit and the Promega PowerPlex16 kit. One of these should be selected and used consistently.

Each of the DNA laboratories should work towards the optimization of the existing methods or the implement of new ones, in an attempt to increase throughput and/or success. It is highly recommended that the laboratories proceed in a coordinated manner. A division of labour should be agreed, with different laboratories evaluating particular candidate protocols, new instrumentation, or technical improvements. When improved techniques are identified through a systematic process, a single selected laboratory should conduct and document the requisite formal developmental validation. The new protocols can then be

established in all laboratories, with minimal modifications for lab-specific Standard Operating Procedures (SOPs) and a greatly reduced set of experiments to establish internal validation. Application of such a process will establish much greater uniformity between the laboratories.

Improvement of the DNA Laboratory throughout by Revision of Process Flow

A revised approach to work flow should be considered by the various DNA laboratories. The current model of sample processing falls far short of the capacity of the facilities, and the labs should evaluate how they can turn to a modular approach or otherwise modify their workflow. For example, the International Commission of Missing Person DNA laboratory is a single molecular biology lab, supported by a separate, smaller laboratory, which concentrates on bone cleaning and grinding. The combined ICMP staff totals 26 (e.g. technicians, analysts, team leaders). Since 2002, the ICMP laboratory has generated 85,853 family reference DNA profiles, 25,458 bone/tooth DNA profiles, and generated 23,073 DNA match reports representing 15,023 individuals. The high output of ICMP's laboratory is based on a modular work flow, where particular teams work exclusively on one segment of the DNA typing process, which permits each team to focus on effective processing of a high volume of samples, with an overall flow through the system averaging approximately 65 bone samples per day. Provision of training should also be provided for any stage of the investigation. All these actions should guarantee a wider transparency in the relationship between the Federal Government and the victims of the genocides perpetrated by the regime. It should also restore the confidence in the system that in the current situation is lacking because of the Federal Government unwillingness to make sure that the new constitution is implemented.

All these measures should aim at forming new citizens who are aware of their past and in this way they are able to stop the cycle of violence of Iraqi society. In order to do this, the Federal Government should promote and support a wide reform of education not only of the families of the victims, but also of all Iraqis. This would help the reconciliation among the different groups and would also provide the country with specialised professionals who can make a difference in the society as a whole. For example, fomenting education in forensic anthropology could be a way to deal with the massive amount of work in the area and would show the public that the government is actively searching for the victims. In addition, a comprehensive and uniform education system should be implemented all over the country making education a platform towards the creation of a common sense of belonging to a shared society and united country. This would educate the new generation in a unified meaning of justice and rights along with the awareness of what their responsibilities are as citizens. This education should guarantee the respect for other people's right to their beliefs and religion paving the way for a peaceful coexistence among the different sections of society.

Perpetrators

It is very important, in order to build a new country, to guarantee that the victims of genocide receive justice. In Iraq this process has been compromised from the beginning because the institutions in charge of the administration of justice after 2003 experienced a lot of 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 US, which provided 150 million

dollars, tight security and lawyers from the Justice Department. For this reason, the IHT was not an international tribunal and its independence and authority was dubious. In addition, the IHT lacking of external support was formed by judges heavily compromised with Saddam's regime and without any experience in dealing with genocide. The result was that for every crime analysed here the number of defendants was completely disproportionate to the scale of the crime.

If we look at all the cases of the Kurdish genocide in Iraq we can find out that they were planned and implemented by thousands of people. However, looking at the legal outcomes of the all these cases we can find that they are so limited that it is very difficult to talk about justice.

Case of Study	Agencies participating in the crimes	No. of final verdicts
Arabization 1963-2003	All government's 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 Government's Military, Security Intelligence and Ba'ath Party agencies	6
Halabja(1988)	Military, Air forces and Baath 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, in which he was charged with the killing 148 Shi'a men and boys in

southern Iraq after a failed assassination attempt against him in 1984. Saddam Hussein 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 and swiftly hanged on 30th December 2006. Three other former officials, including his half-brother Barzan Ibrahim al-Tikriti, were also hanged. Many felt that his Shi'a enemies executed the ex-president before he was made to pay for crimes against Kurds. This led most Kurds to think that justice had been hijacked by the tensions between Sunni and Shi'a leaving the Kurds without the possibility to see 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 principle architect. Al-Majid was found guilty of genocide, war crimes, and crimes against humanity and 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 to be executed within 30 days from the verdict. The death sentences of two other defendants-former Defence Minister Sultan Hashem Ahmed al-Jabouri al-Tai and former Iraqi Military Deputy Commander of Operations Hussein Rashid were also upheld. It appears at this point that Sultan Hashem, who is widely respected by senior US military officials, may have his sentence reduced. Two other officials in the military intelligence – Abdul-Aziz Al-Duri and Farhan Motlak Al-Jabouri – received life imprisonment for their roles in the Anfal campaign.

In the autumn 2007, a trial specifically focusing on the attacks at Halabja had been 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 Shi'a – and not the Kurds – and “Chemical Ali” for the Anfal – not Halabja. If al-Majid was executed before the Halabja trial began, then middle – rank military officers and government officials have been prosecuted for their supportive roles in the March attacks.

But while former Iraqi officials have been publicly paraded into 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, 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 Drogoul, was convicted of fraud for illegally granting Saddam Hussein more than 5 billion dollars in secret loans largely used to make arms purchases. Drogoul was sentenced to three years and one month in prison. Alcolac, a Baltimore, Maryland – based chemical manufacturer, pled guilty to federal export violations and paid a 438,000 dollars fine for its role in supplying chemical precursors used in mustard gas to the region.

Some companies that have eluded accountability include Al Haddad Enterprises, which supplied a component of Sarin nerve gas to Saddam Hussein. German companies supplied Iraq with much of its CW equipment and technology. Employees of Pilot Plant, a subsidiary of Karl Kolb, were charged with export violations but were found not guilty. All these will not satisfy the victims or their families if they will not be compensated or forced to directly spend extra money on their destroyed villages.

Bystanders

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 consummation of genocide requires not only the active participation of the perpetrators but the willingness of the great part of the society to do nothing, thus the best encouragement for the perpetrators is the silence of the bystanders mainly in divided – fragmented - society such as Iraq. Edmund Burke mentioned that “the only thing necessary for the triumph of evil is for good men to do nothing”,¹ this is why, as stated before, the government should make an effort to educate the new generation into a new way of being good citizens in order to build a democratic society. However, justice would not be completed until the whole society admits its active or passive participation in the killings. As we have seen this investigation has been able to show that the responsibilities lay much beyond the top of the regime.

In Chapter 7 dedicated to the Anfal campaign, for example, it is evident, besides the involvement of the armed forces and of different governmental agencies, that the campaign was preceded by a well-organised massive propaganda against the Kurds. In his article entitled ‘Genocide: Responsibility of Bystanders’, Arne Johan Vetesen talks about the role of intellectuals in the building up of the genocide in Bosnia. The famous or infamous *Manifesto* signed by prominent intellectuals and university professor paved the way and justified the coming genocide to the citizens promoting the demonization of the Muslims living in the country. This provided the public with some kind of justification for what it

1. http://www.goodreads.com/author/quotes/17142.Edmund_Burke

was going to come and prevented any action against it. In Iraq, as we have seen previously, something very similar happened. By demonizing the Kurds on religious grounds, the regime was able, thanks to its total control of the media, to demonize the Kurds as enemy of the State, the latter being portrayed as the defendants of Islam. This was orchestrated in collusion with civil servants as well as journalists and intellectuals. According to Article 3 of the convention, the participation, even if not active, to genocide is a crime that should be punished. The application of Article 3 would allow Iraqi society to recognise 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 is compromised by the divisions between Sunni and Sh'ia.

One of the aims of this study was to identify in the Kurdish case the eight stages that lead to genocide according to Gregory Stanton. The analysis of the different crimes presented in the thesis show how these stages acted simultaneously in the Kurdish case. According to Stanton the early stage of the genocide is characterized by a sort of classification, people are typed into different groups according to race, religion or political creed. As we have seen in the chapters dedicated to different crimes, Kurdish people were categorized into sub groups: Arabization, Faylee, Barzanis, Anfal and Halabja. In all four cases these groups have suffered different kind of genocides and have been targeted in different ways. In order to prevent this first stage to happen in the future it is important in the process of nation building to overcome these divisions. In front of the law everybody is just a citizen with all the rights and responsibilities

independently from his/her group of origin. This can be done through a capillary system of civic education, through the awareness of citizenship and peace programs. The second is a symbolization stage. This is when the propaganda machine of the regime becomes more intense and paves the way to the justification of its future crimes. The different groups are stereotyped or presented as enemy of the state and its citizens. It was the case of the Jews accused of being part of a world conspiracy, and the same happened with the Kurdish people who, as we saw in the case of the Faylee, the Barzanis, Anfal and Halabja, were for different reasons accused of belonging to a non-existent fifth column, or addressed as traitors or non believers. In order to prevent this to happen agains symbols of hate should be banned as it happened in Europe after World War II where the symbols of the Swastika or the ones reminding Nazi fascism have been banned by law.

The third stage is dehumanization. Calling people belong to other groups denying them their humanity is dangerous because it makes them appear out of our moral universe. As animals, the members of the out-group have been stripped of the moral in-group protection against extermination. In the Kurdish case the consequences of this process of dehumanization translated into forced deportation of Faylee Kurds to Iran, forced detention in Nigrat Al Salman prison for the Barzanis, and the destruction with chemical weapons of their towns and villages in the case of Anfal and Halabja. In these cases local and international leaders should condemn racial hatred and the leaders who incite or support genocide should be banned from travelling abroad and should have their wealth frozen. In addition, in many countries like the United Kingdom, for example, the incitement to

racial hatred in any form is an indictable offence. In this way, any citizen is responsible for the peaceful coexistence of the different groups in the society.

Organization is another of the stages indicated by Stanton. Officials or sympathizers of the regime organized in order to destroy the targeted group. In all the crimes analysed in this thesis, from Arabization to Halabja the level of organisation included the issues of decrees ad hoc as the in the Faylee Kurds' case as well as the military planning and training of personnel in order to carry out detentions and mass killings as in the Barzanis' case or military attacks on a big scale as in Anfal or Halabja. In these cases, when the international community is aware of the genocide, the UN should impose embargos on weapons imports by the governments and the citizens of the countries involved in the massacres. It should also create a commission to investigate the crimes. International public opinion is very important because it could exercise pressure through the media to stop the events from happening.

Another stage is polarization. The propaganda machine is needed by every totalitarian regime to support the officials who undertake a systematic campaign to maximise the social, psychological and, moral distance between 'us' and 'them'. At this stage all moderate intellectuals are silenced in different ways, from exile to intimidation and torture. During the Arabization this was very clear. The Barzanis were negotiating with the government asking to stop the forced deportation and proving with demographic data how this was detrimental for the Kurds. However, no room for negotiation or discussion was granted to them when the Faylee Kurds were deported and stripped of their citizenship and properties. In all other cases considered the polarization is very clear: the Barzanis were traitors; the Kurds from Anfal and Halabja were infidels. In order to prevent this to happen the State should

allow moderate groups to participate in human rights groups and avoid any temptation of totalitarianism.

Preparation is the final stage of genocide. No massive deportation and killing can take place without an organization on a big scale. This stage was very clear when Jews in Europe were forced to wear a yellow star on their cloths and were segregated in ghettos. In addition young men who could be an obstacle can be detained or killed. Regarding the Faylee Kurds, this stage was represented by the different decrees allowing the Arabization of different areas, the publication of the decree authorizing their detention and expulsion. The preparation for the Barzanis' case meant the involvement of the State Security and Intelligence Service in order to organize their detention and mass killing. In the cases of Anfal and Halabja the RCC decrees ordered the moving of the troops to the area in preparation for the attacks. At this stage, in order to prevent the genocide, a Genocide Emergency should be declared. The international community and the Security Council should intervene under section 7 of UN mandate.² If the State is involved in genocide then it should held accountable and charged with threatening regional and international security.

When the stage of extermination arrives, the perpetrators do not believe in the humanity of their victims. They do not deal with them as human being and in the Kurdish case this was clear in all the crimes considered. At this point only an armed intervention from the international community can stop the genocide. They should guarantee safe areas or refugee escape corridors with heavily armed international protection in order to offer refuge to the potential victims.

². <http://www.un.org/en/documents/charter/chapter7.shtml>

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 the building of the legal cases against them jeopardizing the possibility of having justice.

The new Iraqi constitution of 2005 was the first to be voted through an open referendum and the intention was born for the need to deal with Iraqis unjust past. In the Preamble of the new Iraqi constitution, which was overseen by most political parties and components of the 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 Turkmen 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 Kurds”. It also mentions that we have to take “lessons from yesterday for tomorrow”. The new Constitution is also the second one to recognise 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 program 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’atification have not been fulfilled and it is difficult to see a new multi-ethnic and multi-cultural being a reality in the near future. In addition, there are some worrying patterns that are repeating themselves and gives the impression that history can repeat itself. Article 9 of the constitution mentioned all Iraqis no matter their ethnicity should join the new Iraqi army and, most important, that it would be subject to the control of the civilian authority. This to avoid any interference in the political affairs and in any transfer of authority. After 2003 a new Iraqi army was formed with the participation of Kurd, Arab, Turkoman and others, but if we look at it today it is easy to find out that it is under Shi’a 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, Brigade Abdul Amir Al Zaidi now, thanks to decree no. 372 of the Iraqi Council Ministers, is 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’l, deputy director of the Military Intelligence Directorate 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” (Hitermann, 2007). Currently, the Iraqi army is constituted of 15 divisions for a total of about 350,000 soldiers, most of them belonging to the former Iraqi military forces. In addition to that Iraqi interior ministry have more than one million policemen.

As shown in articles 132, 134, 136 and 140 the constitution guarantees the 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 Arabization; and the duty to sort out the disputed areas respectively have not been implemented.

The future from Kurdistan

The Kurdish Regional government inherited a region plagued by the consequences of the genocides against its citizens. For each crime analysed in this work the social, economic and cultural consequences are still felt in the area and abroad by the Kurdish community in the diaspora. In particular, the loss of a common identity suffered because of the forced displacement during the Arabization along with the genocide against the Faylee Kurds had caused a consistent decrease of Kurdish presence in northern Iraq.

In addition, the military intervention on Kurdish people, in particular Anfal and Halabja destroyed almost completely the Kurdish infrastructure. More than 4,500 villages were wiped out from the map and this meant that their local economy and way of living have been compromised. At this regard, according to the last statistics, the agricultural production is currently 75% less than it was before the genocides. This meant a strong change in the economy of the area that now relies most on the oil whose revenue should be invested in improving the living conditions of the victims. Another important consequence of the genocide, in particular the one committed against the Barzanis, is that the social fabric of more than 2,000 families has been destroyed because of the death of their men. For many women this meant misery and destitution.

All this changed the way Kurdish people look at them and had a big impact on any future that the region wishes for itself. For example, it changed forever the way they relate themselves to Iraq and the Middle East in general. The persistence in the society of the mentality and propaganda anti-Kurdish supported by the regime that sees Kurds as an alien presence in the country, makes difficult the idea of integration with Iraq and exacerbate Kurdish 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 valorisation of the historical heritage of the northern region is an example of this attempt. For example, the names of different cities have changed from the Arabic ones used previously to Kurdish ones. Kurdish language is more widespread used and bilingual education is now considered an option in educational institutions.

In order to establish a peaceful coexistence with the Iraqis, the KRG should show them that these were state crimes and were not the result of just one man's will. Taking responsibility for their past would help them to understand that it is their own society who created the abnormality of dictatorship and that this is likely to repeat itself. As said in different occasions when presenting the legal outcomes of the trial, the perception that justice has not been done and the presence of supporters of the past regime in key positions in the Federal Government, makes Kurdish people mistrust a country that still refuses to grant them justice by implementing the constitution and to negotiate on crucial issues such as compensation and disputed territories.

For all these reasons, in the twenty years of its existence, the KRG worked at international level in order to raise awareness about 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; this would also guarantee the prevention of these 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 make sure that the 2005 constitution is respected. Kurds should never forget that their disputes is not about having a Kurdish leader in Baghdad, such President of Deputy Prime minister, they should instead focus on the route to democracy and on the respect of human rights if they want to be part of Iraq.

With law no. 9 of 2008 ratified by the KRG, the ministry of Martyrs and Anfal victims is paying salaries of 40,000 I.D. to the families of the victims of genocide, it is also providing 250 square meters of land in the place of origin, marriage and education grants. However, this is not enough to provide them with a decent standard of living. The KRG should rebuild all the villages in Kurdistan with modern roads and infrastructure as well as providing permanent housing, clean water, paved roads, electricity, and schools.

In order to preserve the memory of what happened, Kurds should establish a National Archive Centre. This would give Kurds the opportunity to study their recent history. It should be a digital archive available to researchers from all over the world with the purpose to make Kurds aware of the dangers posed by the endless repetition of totalitarianism in Middle Eastern society. The purpose of this work has been to show how quickly a political system can degenerate into a bloody dictatorship as well as to suggest some recommendations to prevent it.

Kurdish people, along with others who suffered genocide, have to learn that “knowing the past is safeguarding the future”.

Conclusion

The purpose of this thesis was to illustrate the details of the genocides crimes committed by the state of Iraq between 1963 and 2003. In particular it analysed five crimes each one on its own right, represent different stages of a state engineered national project aimed to the annihilation of Kurds in the country. The crimes are Arabization, the persecution of Faylee Kurds, the disappearance of 8,000 males belonging to the Barzanis tribe and the events leading to the chemical attacks of Al Anfal and Halabja. The analysis was based on the first-hand experience of the researcher as minister of Human Rights in the Kurdish Regional Government between 2001 and 2005 and on his current role as minister of Extra Regional Affairs in the same government. Part of his role was to gather the evidence for the prosecution of the perpetrators of the crimes to be presented to the IHT.

After the introduction, Chapter 2 offers an overview of the concept of genocide from its introduction into the international legal system and the analysis of the definition of purpose and intent. Through a study of the investigations and the trials carried out by the International Criminal Tribunal of Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) as well as the Iraqi High Tribunal (IHT), this chapter demonstrated how the international community has failed in recognising these crimes as genocides.

With an analysis of the Treaty of Sèvres and Lausanne, Chapter 3 offers an overview of the Kurdish presence in the Middle East and especially in Iraq from the 19th to the 20th centuries focusing on the historical events starting in 1963 to the seigure of power by the Ba'ath regime in 1968 which led to Saddam Hussein's era of atrocities. In addition, this chapter offered an insight of the role played by the

most numerous minorities in Iraq, and of the role of the Kurdish Regional Government in the new reality after the fall of the regime in April 2003.

Chapter 4 offered an analysis of the first crime considered in this thesis: Arabization. Focusing primarily on the area of Kirkuk, this chapter aimed to show how this crime constituted the first stage of the state engineered ethnic cleansing against the Kurds. This crime was carried out the displacement of Kurdish people from their historical places of residence and aimed to change the demography of the region. Ethnic cleansing was the main target of the state against Kurds. Genocide and forced deportation were used to achieve this goal. The investigation proved how the area of Kirkuk is still a sensitive issue in the relationship between the Federal Government and the Kurdish Regional Government.

Chapter 5 analysed the mass deportation of Faylee Kurds between 1971 and 1988. This crime was planned and executed through the issueing of laws and decrees, which ordered their gradual marginalization from the Iraqi society. The documentation gathered show how the authorities encouraged these measures with the use of force displacing entire communitities while detaining and killing those who did not comply with the new national strategy. This crime constituted a concept approval of genocide because all the administration of the state was involved in it. In addition, due to its chronology and scale, it offered the state the opportunity to increase the scope and atrocities of the genocide.

Chapter 6 analysed the disappearance and murder of 8,000 men belonging to the Barzanis between July and August 1983. This investigation, as the following ones of Anfal and Halabja, was carried out relying on the researcher's forensic expertise. This crime, in contrast with the previous ones, was carried out in secrecy and with the only collaboration of the General Security and Republican

Guards. Only a few documents relating to the events have been found and in order to build up the case against the defendants the IHT needed forensic evidence in support of the charges. This meant a forensic investigation that led to the discovery of Barzanis' mass graves in Iraq's south desert. The researcher, thanks to his training as forensic expert, carried out various fieldworks in 2005, 2007, 2012 and 2013 in order to recover the remains of the victims and return them to their families. As an outcome of his fieldwork, the researcher managed to return a total of 606 bodies of Barzani Kurds back to Kurdistan.

Chapter 7 dealt with the crime of Anfal as a national project to destroy the Kurdish nation and with how the state started to enlarge the targeted areas by involving in the crime all the state and military agencies. This crime showed how the state developed an efficient propaganda machine in support of its genocide campaign by using religious and nationalist rhetoric. This chapter offers an analysis of the propaganda machine used by the regime to stir up the hatred against Kurdish people accused of being traitors of the faith and of the country. Forensic evidence had to be collected in order to build up the court cases against the defendants.

Chapter 8 dealt with the chemical attacks carried out by the regime against Kurdish civil population during the Iran-Iraq war. The novelty in comparison with the previous crimes is that these attacks were carried out with the involvement of different civil and military agencies and that the amount of evidence gathered was very substantial. From this chapter it is evident the level of hatred against the people of Halabja. However, as for the previous cases, the number of people found responsible has been very low, thereby hindering the healing process within Iraqi society.

After analysing Iraq's state sequenced crimes of genocide committed against the Kurds, it became evident that Iraq has been the theatre of one of the most serious cases of genocide of the 20th century. Thus, in Chapter 9 the researcher provided a list of recommendations for the prevention of future genocide in Iraq so that the society can heal its wounds and stop the history does from repeating itself. The researcher reckons that the state should implement some strategies in order to actively search for the missing people. This would imply the adoption of modern methods of identification depending on DNA analysis.

The recommendations provided in this thesis concerned with the victims of genocide and their families as well as perpetrators and bystanders. For the victims, the state should recognise their pain. As most of the analysed crimes were state engineered, Iraq state is legally and morally responsible for compensation to all the families of the victims. In addition, the families of the victims should be involved in all the decision-making process regarding their future.

After analysing the outcomes of the trials, it is evident that justice has not been done. For each crime the number of defendants tried and sentenced does not compare with the scale and level of atrocity of the crimes committed. Thus, the state should make an effort to help the families of the victims to seek more justice. The state should actively prosecute the individuals responsible for the crimes and bar them from public offices. In this way the state would guarantee a fair treatment and protection to all its citizens.

The research showed that the number of bystanders during these crimes was outstanding despite the scale of the killings. It also proved that the best encouragement for any dictatorship is their silence. Thus the state should come

out with new strategies of creating active peace education, through media, research and studies in order to create a democratic society.

The researcher found out, after analysing these state crimes, that there is mistrust between the Kurdistan Regional Government and the new Iraqi Federal Government in Baghdad, despite their partnership in the government. This is because the memory of the atrocities is still alive in Kurdish collective memory. At the same time, the new administration in Baghdad is still hostile towards Kurdish ambitions for the future. Thus KRG should make sure through all levels of education that all generations are aware of the past, based on the concept that “knowing the past, safe guarding the future.” In addition, it should provide better psychological and medical treatment for the victims. It also should improve their economic standards by re-building villages and communities and by restoring the destroyed infrastructure.

As the main part of the field work dealt with the discovery of mass graves, the researcher found out that the KRG should amend law no. (5) 2006 published on Al-Wakiy al Iraqia (Law Gazette) on 16th April 2006 in order to work side by side with the Iraqi minister of Human Rights since the majority of mass graves belong to Kurds. At this regard, the KRG should strengthen its forensic team in collaboration with the international organizations such as the ICMP.

In conclusion, after analysing these crimes, referring to the Semele massacre of Assyrians in 1933 mentioned by Raphael Lemkin and the situation of Iraq after the fall of the regime in 2003, the research proved that Iraqi society is a genocidal and fragmented one, thus the State of Iraq should take into account its unjust past in order to change the culture and education of its society by promoting

a peaceful coexistence inside and outside the country if Iraqis are to live together in a united federal state.

Appendixes for Chapter 2

Appendix No (1) Law of the Iraqi Higher Criminal Court Resolution no. (10)

In the Name of the people
The presidency Council

Pursuant to what has been approved by the National Assembly and in accordance with Article No. (33) Paragraphs A and B and Article No. (30) of the Law of Administration for the State of Iraq for the Transitional Period. The presidency Council decided in the session of October 9, 2005 to promulgate the following resolution:

Law No. (10) 2005
Law of the Iraqi Higher Criminal Court

SECTION ONE

The Establishment and Organization Of the Court

PART ONE Establishment

Article 1:

First: A court is hereby established and shall be known as The Iraqi Higher Criminal Court (the "Court"). The Court shall be fully independent.

Second: The Court shall have jurisdiction over every natural person whether Iraqi or non-Iraqi resident of Iraq and accused of one of the crimes listed in Articles 11 to 14 below, committed during the period from July 17, 1968 and until May 1, 2003, in the Republic of Iraq or elsewhere, including the following crimes:

- A. The crime of genocide;
- B. Crimes against humanity;
- C. War crimes
- D. Violations of certain Iraqi laws listed in Article 14 below.

Article 2:

The Court shall have its main office in the city of Baghdad and may hold its sessions in any governorate, on the basis of a proposal by the Council of Ministers pursuant to a proposal from the President of the Court.

Article 3: **PART TWO Organizational Structure of the Court**

The court shall consist of:

First:

A. Cassation Panel, which shall specialize in reviewing the provisions and decisions issued by one of the criminal or investigative courts.

B. One or more criminal courts. C. Investigative judges.

Second: Public Prosecution.

Third: An administration, which shall provide administrative and financial services to the Court and the Public Prosecution.

Fourth:

A. The Cassation Panel shall be composed of nine judges who shall elect a president for amongst them. The president of the Cassation Panel shall be the senior president of the court and shall supervise its administrative and financial affairs.

B. The felony court shall be composed of five judges who shall elect a president from amongst them to supervise their work.

Fifth: The Council of Ministers may, if deemed necessary, based upon a proposal by a President of the Court, appoint non-Iraqi judges who have experience in conducting criminal trials stipulated in this law, and who are of very high moral character, honest and virtuous to work in the Court, in the event that a State is one of the parties in a complaint, and the judges shall be commissioned with the help of the International Community and the United Nations.

PART THREE Selection of Judges, Public Prosecutors and their retirement

Article 4:

First: Judges and public prosecutors shall be of high moral character, integrity and uprightness. They shall possess experience in criminal law and shall fulfil the appointment requirements stipulated in the Judicial Organization Law No. 160 of 1979 and the Public Prosecution law No. 159 of 1979.

Second: As an exception to the provisions of paragraph (First) of this Article the candidates for the positions of judges at the Cassation Panel, the Criminal Court, the investigative judges and public prosecutors do not have to be active judges and public prosecutors. Retired judges and members of public prosecution may be nominated, without restrictions age requirement and Iraqi lawyers who possess a high level of experience, competence and efficiency and of absolute competence, in accordance with the Legal Profession Code No. 173 of 1965 and have served in judicial, legal and the legal profession fields for no less than (15) years.

Third:

A. The Supreme Juridical Council shall nominate all judges and public prosecutors to this Court. The Council of Ministers after approving their nomination shall issue their appointment order from the Presidency Council and will be classified as class:

(A) Judges, in an exception to the provisions of the Judicial Organization Law and the Public Prosecution Law. Their salaries and rewards shall be specified by guidelines issued by the Council of Ministers.

(B). The judges, public prosecutors and the employees appointed in accordance with the provisions of law before this legislation shall be deemed legally approved starting from the date of their appointment according to the provisions of paragraph (Third/A) of Article (4) taking into account the provisions of Article (33) of this law.

Fourth: The Presidency Council in accordance with a proposal from the Council of Ministers shall have the right to transfer Judges and Public Prosecutors from the Court to the Higher Judicial Council for any reason.

Fifth: The term of service of a judge or a public prosecutor covered by the provisions of this law shall end for one of the following reasons:

1. If he is convicted of a non-political felony.
2. If he presents false information.
3. If he fails to perform his duties without a legitimate reason.

Article 6:

First: A committee comprised of five members elected from among the Judges and public prosecutors shall be established in the Court under the supervision of the Cassation panel of the Court and they shall select a President for a term of one year. This committee shall be called "Judges and Public Prosecutors Affairs Committee". The Committee shall enjoy the authorities stipulated in the Judicial Organization Law and Public Prosecution Law. It shall consider disciplinary matters and the service of Judges and the members of the public prosecution. Its decisions shall be appealable before the extended panel of the Federal Court of Cassation if it decides to terminate the service of the judge or a member of the public prosecution.

Second: The committee shall submit a recommendations, after the appeal before the extended panel of the Federal Court of Cassation is denied, to the Council of Ministers to pass a resolution from the Presidency Council terminating the service of a judge or a public prosecutor, including the chief justice in case the provisions of Article (6) of this Law are met.

Third: At the end of the Court's work, the judges and the Public Prosecutors shall be reassigned to the Higher Judicial Council to work in the Federal Courts. Those reaching the legal age for retirement shall be retired in accordance with the Law.

Article 7: PART FOUR Presidency of the Court

First: The president of the court shall:

- A. Chair the proceedings of the Cassation Panel.
- B. Name the original and alternate judges of the Criminal Courts.
- C. Name any of the judges to the Criminal Court in case of absence.
- D. Accomplish the Court's administrative work.

E. Appoint and end the service of the Administrative Director, security director, public relations director and archive and documents keeping director in the court.

F. Name the official spokesman for the Court from among the judges or public prosecutors.

Second: The President of the Court shall have the right to appoint non-Iraqi experts to act in an advisory capacity for the Criminal Court and the Cassation Panel. The role of the non-Iraqi nationals shall be to provide assistance with respect to international law and the experience of similar Courts (whether international or otherwise). The panelling of these experts is to be done with the help from the International Community, including the United Nations.

Third: The non-Iraqi experts referred to in paragraph (Second) of this Article shall also be persons of high moral character, uprightness and integrity. It would be preferable that such non-Iraqi expert should have worked in either a judicial or prosecutorial capacity in his or her respective country or at the International War Crimes Court.

Article 8: PART FIVE Investigative Judges

First: Sufficient number of Investigative Judges shall be appointed.

Second: The Court's Investigative Judges shall undertake the investigation with those accused of crimes stipulated in paragraph (Second) Article (1) of this law.

Third: The Investigative Judges shall elect a Chief and his deputy from amongst them.

Fourth: The Chief shall refer cases under investigation to investigative judges individually.

Fifth: Each of the Investigative Judges' Offices shall be composed of an investigative Judge and qualified staff as may be required for the work of the investigative judge.

Sixth: An Investigative Judge shall collect evidence from any source he deems appropriate and question all relevant parties directly.

Seventh: An Investigative Judge shall act independently in the court since he is considered as a separate entity from the court. He shall not fall under nor receive requests or orders from any Government Department, or any other party.

Eighth: The decisions of the Investigative Judge can be appealed in cassation before the Cassation Panel within fifteen days from the date of receipt of notification or from the date notification is considered received pursuant to law.

Ninth: The Chief Investigative Judge, after consulting with the President of the Court, have the right to appoint non-Iraqi nationals experts to assist the Investigative Judges in the investigation of cases covered by this law, whether international or otherwise. The Chief Investigative Judge can commission these experts with help from the International Community, including the United Nations.

Tenth: The non-Iraqi experts and observers referred to in paragraph (Ninth) of this Article are required to be persons of high moral character, honest

and virtuous; it is preferred that the non-Iraqi expert and observer had worked in either a judicial or prosecutorial capacity in his or her respective country or in the International War Crimes Court.

Article 9: PART SIX The Public Prosecution

First: Sufficient number of prosecutors shall be appointed.

Second: The Public Prosecution shall be composed of a number of public prosecutors who shall be responsible for the prosecution of persons accused of crimes that fall within the jurisdiction of the Court.

Third: Public prosecutors shall elect a Chief and his Deputy from amongst them.

Fourth: Each office of public prosecution shall be composed of a prosecutor and such other qualified staff as may be required for the work of the Public Prosecutor.

Fifth: Each prosecutor shall act with complete independence since he is considered as a separate entity from the Court. He shall not fall under, nor receive instructions from, any government department or from any other party.

Sixth: The chief prosecutor shall assign individual cases to a prosecutor to investigate and to try in court based on the authority granted to the public prosecutors pursuant to the law.

Seventh: The Chief Public Prosecutor, in consultation with the President of the Court, shall have the right to appoint non-Iraqi nationals to act as experts helping the public prosecutors in the investigation and prosecution of cases covered by this law whether in an international context or otherwise. The Chief Prosecutor can commission these experts with the help of the international community, including the United Nations.

Eighth: The non-Iraqi experts, referred to in Paragraph (Seventh) of this Article are required to be persons of high moral character, honest and virtuous. It is preferred that such non-Iraqi experts had worked in a prosecutorial capacity in his respective country or in the International War Crimes Court.

Article 10: PART SEVEN The Administration Department

First: The Administration Department shall be managed by an officer with the title of Department Director who holds a bachelor degree in law and have judicial and administrative experience. He shall be assisted by a number of employees in managing the affairs of the department.

Second: The Administration Department is responsible for the administrative, financial and service affairs of the court and the Public Prosecution.

SECTION TWO

The Court Jurisdictions

PART ONE

The Crime of Genocide

Article 11:

First: For the purposes of this law and in accordance with the International Convention on the Prevention and Punishment of the Crime of Genocide dated December 9, 1948 as ratified by Iraq on January 20, 1959, "genocide" means any of the following acts committed with the intent to abolish, in whole or in part, a national, ethnic, racial or religious group as such:

- A. Killing members of the group.
- B. Causing serious bodily or mental harm to members of the group.
- C. Deliberately inflicting on the group living conditions calculated to bring about its physical destruction in whole or in part.
- D. Imposing measures intended to prevent births within the group.
- E. Forcibly transferring children of the group to another group.

Second: The following acts shall be punishable

- A. Genocide.
- B. Conspiracy to commit genocide.
- C. Direct and public incitement to commit genocide.
- D. Attempt to commit genocide.
- E. Complicity in genocide.

PART TWO Crimes against Humanity

Article 12

First: For the purposes of this Law, "crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- A. Wilful Murder;
- B. Extermination;
- C. Enslavement;
- D. Deportation or forcible transfer of population;
- E. Imprisonment or other severe deprivation of physical liberty in violation of fundamental norms of international law;
- F. Torture;
- G. Rape, sexual slavery, forcible prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity;
- H. Persecution against any specific party or group of the population on political, racial, national, ethnic, cultural, religious, gender or other grounds that are impermissible under international law, in connection with any act referred to as a form of sexual violence of comparable gravity.
- I. Enforced disappearance of persons.
- J. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to the mental or physical health.

Second: For the purposes of implementing the provisions of paragraph (First) of this Article, the below listed terms shall mean the stated definitions:

- A. "Attack directed against any civilian population" means a course of conduct involving the multiple panel of acts referred to in the above paragraph "First" against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack;
- B. "Extermination" means the intentional infliction of living conditions, such as the deprivation of access to food and medicine, with the intent to bring about the destruction of part of the population;
- C. "Enslavement" means the exercise of any or all of the powers attached to the right of ownership over a person and includes the exercise of such power in the course of human trafficking, in particular women and children;
- D. "Deportation or forcible transfer of population" means forced displacement of the concerned persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- E. "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; and
- F. "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

PART THREE War Crimes

Article 13 .For the purposes of this Law, "war crimes" means:

First: Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- A. Wilful killing;
- B. Torture or inhuman treatment, including biological experiments;
- C. Wilfully causing great suffering, or serious injury to body or health;
- D. Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
- E. Compelling a prisoner of war or other protected person to serve in the forces of a hostile power;
- F. Wilfully denying the right of a fair trial to a prisoner of war or other protected person;
- G. Unlawful confinement;
- H. Unlawful deportation or transfer; and
- I. Taking of hostages.

Second: Other serious violations of the laws and customs applicable in inter- national armed conflicts, within the established framework of international law, namely, any of the following acts:

- A. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- B. Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

- C. Intentionally directing attacks against personnel, installations, material, units or vehicles used in a peacekeeping missions in accordance with the Charter of the United Nations or in a humanitarian assistance missions, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflicts;
- D. Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects which would be clearly excessive in relation to the concrete and direct overall military advantages anticipated;
- E. Intentionally launching an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment, which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- F. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- G. Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion;
- H. Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- I. The transfer, directly or indirectly, by the Government of Iraq or any of its instrumentalities (which includes for clarification any of the instruments of the Arab Ba'ath Socialist Party), of parts of its own civilian population into any territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- J. Intentionally directing attacks against buildings that are dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- K. Subjecting persons of another nation to physical mutilation or to medical or scientific experiments of any kind that are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- L. Killing or wounding treacherously individuals belonging to the hostile nation or army;
- M. Declaring that no one remained alive;
- N. Destroying or seizing the property of an adverse party unless such destruction or seizure be imperatively demanded by the necessities of war;
- O. Declaring abolished, suspended or inadmissible in a court of law, or otherwise depriving, the rights and actions of the nationals of the hostile party;
- P. Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- Q. Pillaging a town or place, even when it is taken by force; R. Using poison or poisoned weapons;

- S. Using asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- T. Using bullets, which expand or flatten easily in the human body, such as bullets with a hard envelope, which does not entirely cover the core or is pierced with incisions;
- U. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- V. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity;
- W. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- X. Intentionally directing attacks against buildings, material and medical units, transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- Y. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under international law; and
- Z. Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

Third: In the case of an armed conflict, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

- A. Use of violence against life and persons, in particular murder of all kinds, mutilation, cruel treatment and torture;
- B. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- C. Taking of hostages;
- D. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

Fourth: Other serious violations of the laws and customs of war applicable in armed conflict not of an international character, within the established framework of international law, namely, any of the following acts:

- A. Intentionally directing attacks against the civilian population as such or against civilian individuals not taking direct part in hostilities;
- B. Intentionally directing attacks against buildings, materials, medical transportation units and means, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- C. Intentionally directing attacks against personnel, installations, materials, units, or vehicles used in humanitarian assistance or peacekeeping missions in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian targets under the international law of armed conflict;
- D. Intentionally directing attacks against buildings that are dedicated to religious, educational, artistic, scientific or charitable purposes, and historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

- E. Pillaging any town or place, even when taken over by assault;
- F. Committing rape, sexual slavery, forced prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity;
- G. Conscripting or listing children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- H. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- I. Killing or wounding treacherously a combatant adversary; J. Declaring that no person is still alive;
- K. Subjugation persons who are under the power of another party of the conflict to physical mutilation or to medical or scientific experiments of any kind that are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, causing death to such person or persons, or seriously endangering their health; and
- L. Destroying or seizing the property of an adversary, unless such destruction or seizure is imperatively demanded by the necessities of the conflict.

PART FOUR Violations of Iraqi Laws

Article 14

The Court shall have the power to prosecute persons who have committed the following crimes:

First: Intervention in the judiciary or the attempt to influence the functions of the judiciary.

Second: The wastage and squander of national resources, pursuant to, item G of Article 2 of the Law punishing those who conspire against the security of the homeland and corrupt the regime No. 7 of 1958.

Third: The abuse of position and the pursuit of policies that were about to lead to the threat of war or the use of the armed forces of Iraq against an Arab country, in accordance with Article 1 of Law Number 7 of 1958.

Fourth: If the court finds a default in the elements of any of the crimes stipulated in Articles 11, 12, 13 of this law, and it is proved to the Court that the act constitutes a crime punishable by the penal law or any other criminal law at the time of its commitment, then the court shall have jurisdiction to adjudicate this case.

Article 15

SECTION THREE Individual Criminal Responsibility

First: A person who commits a crime within the jurisdiction of this Court shall be personally responsible and liable for punishment in accordance with this Law.

Second: In accordance with this Law, and the provisions of Iraqi criminal law, a person shall be criminally responsible if that person:

A. Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that this person is criminally responsible or not;

- B. Orders, solicits or induces the commission of such a crime, which in fact occurs or is attempted;
- C. For the purpose of facilitating the commission of such a crime, aids, abets or by any other means assists in its commission or its attempted commission, including providing the means for its commission;
- D. Participating by any other way with a group of persons, with a common criminal intention to commit or attempt to commit such a crime, such participation shall be intentional and shall either:
1. Be made for the aim of consolidating the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 2. Be made with the knowledge of the intention of the group to commit the crime;
- E. In respect of the crime of genocide, directly and publicly incites others to commit genocide;
- F. Attempts to commit such a crime by taking action that commences its execution, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Law for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

Third: The official position of any accused person, whether as president, chairman or a member of the Revolution Command Council, prime minister, member of the council of ministers, a member of the Ba'ath Party Command, shall not relieve such person of criminal penal, nor mitigate punishment. No person is entitled to any immunity with respect to any of the crimes stipulated in Articles 11, 12, 13, and 14 of this law.

Fourth: The crimes that were committed by a subordinate do not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so, and the superior failed to take the necessary and appropriate measures to prevent such acts or to submit the matter to the competent authorities for investigation and prosecution.

Fifth: The fact that an accused person acted pursuant to an order of the Government or of his superior, shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the Court determines that justice so requires.

Sixth: Pardons issued prior to this law coming into force, do not apply to the accused in any of the crimes stipulated in it.

Article 16

SECTION FOUR: Rules of Procedure and Evidence

The Court shall apply the Criminal Procedure Law No. 23 of 1971, and the Rules of Procedure and Evidence appended to this law, which is an indivisible and integral part of the law.

Article 17

SECTION FIVE: General Principles of Criminal Law

First: In case a stipulation is not found in this Law and the rules made there under, the general provisions of criminal law shall be applied in connection with the accusation and prosecution of any accused person shall be those contained in:

- A. The Baghdadi Penal Law of 1919, for the period starting from July 17, 1968, till Dec. 14, 1969.
- B. The Penal law no.111 of 1969, which was in force in 1985 (third version), for the period starting from Dec.15, 1969, till May, 1, 2003.
- C. The Military Penal Law no.13 of 1940, and the military procedure law no.44 of 1941.

Second: To interpret Articles 11, 12, 13 of this law, the Cassation Court and Panel may resort to the relevant decisions of the international criminal courts.

Third: Grounds for exclusion of criminal responsibility under the Panel Law shall be interpreted in a manner consistent with this Law and with international legal obligations concerning the crimes within the jurisdiction of the Court.

Fourth: The crimes stipulated in Articles 11, 12, 13, and 14 shall not be subject to limitations that terminate the criminal case or punishment.

Article 18

SECTION SIX: Investigations and Indictment

First: The Investigative Judge shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from the police, or governmental and nongovernmental organizations. The Investigative Judge shall assess the information received and decide whether there is sufficient basis to proceed.

Second: The Court Investigative Judge shall have the power to question suspects, victims and witnesses, or their relatives to collect evidence and to conduct on-site investigations. In carrying out his task the Court Investigative Judge may, as appropriate, request the assistance of the relevant governmental authorities concerned, who shall be required to provide full co-operation with the request.

Third: Upon a determination that a prima facie case exists, the Investigative Judge shall prepare an indictment containing a concise statement of the facts of the crime with which the accused is charged under the Statute and shall refer the case to the criminal court.

Article 19

PART ONE: Guarantees of the Accused

First: All persons shall be equal before the Court.

Second: The accused shall be presumed innocent until proven guilty before the Court in accordance with this law.

Third: Every accused shall be entitled to a public hearing, in pursuance with the provisions of this law and the Rules issued according to it.

Fourth: In directing any charge against the accused pursuant to the present Law, the accused shall be entitled to a just fair trial in accordance with the following minimum guarantees:

- A. To be informed promptly and in detail of the content nature and cause and of the charge against him;
- B. To have adequate time and facilities for the preparation of his defence and to communicate freely with counsel of his own choosing and to meet with him privately. The accused is entitled to have non-Iraqi legal representation, so long as the principal lawyer of such accused is Iraqi;
- C. To be tried without undue delay;
- D. To be tried in his presence, and to use a lawyer of his own choosing, and to be informed of his right assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance and to have the right to request such aid to appoint a lawyer without paying the fees, case if he does not have sufficient means to pay for it; if he does not have the financial ability to do so.
- E. The accused shall have the right to request the defence witnesses, the witnesses for the prosecution, and to discuss with them any evidence that support his defence in accordance with the law.
- F. The defendant shall not be forced to confess and shall have the right to remain silent and not provide any testimony and that silent shall not be interpreted as evidence of conviction or innocence.

Article 20

SECTION SEVENTH: Trial Proceedings

First: A person against whom an indictment has been issued shall, pursuant to an order or an arrest warrant of the Investigative Judge, be taken into custody, immediately informed of the charges against him and transferred to the Court.

Second: The Criminal Court shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with this Statute and the Rules of Procedure and Evidence annexed to this Law, with full respect for the rights of the accused and due regard for the protection of the victims, their relatives and the witnesses.

Third: The Criminal Court shall read the indictment, satisfy itself that the rights of the accused are respected and guaranteed, insure that the accused understands the indictment, with charges directed against him and instruct the accused to enter a plea.

Fourth: The hearings shall be public unless the Criminal Court decides to close the proceedings in accordance with the Rules of Procedure and Evidence annexed to this Statute, and no decision shall be adopted under the session secrecy unless for extreme limited reasons.

Article 21

The Criminal Court shall, in its Rules of Procedure and Evidence annexed to this Statute, provide the protection for victims or their relatives and witnesses and also for the secrecy of their identity.

Article 22

Families of victims and Iraqi persons harmed may file a civil suit before this court against the accused for the harm they suffered through their actions constituting crimes according to the provisions of this Statute. The court shall have the power to adjudicate these claims in accordance with the Iraqi Criminal procedure Code No. 23 for the year 1971, and other relevant laws.

Article 23

First: The Criminal Court shall pronounce judgments and impose sentences and penalties on persons convicted of crimes within the jurisdiction of the Court.

Second: The judgment shall be issued by a majority of the judges of the Criminal Court, and shall announce it in public. The judgment shall not be issued except pursuant to the indictment decision. The opinion of the dissenting Judges can be appended.

Article 24

First: The penalties that shall be imposed by the Court shall be those prescribed by the Iraqi Penal Code No (111) of 1969, except for sentences of life imprisonment that means the remaining natural life of the person. With considering the provisions of Article (17) of this Statute.

Second: It shall be applied against the crimes stipulated in article (14) of this Statute the sentences provided under the Iraqi Penal Code and other punishable laws

Third: The penalty for crimes under Articles 11, 12, 13 shall be determined by the Criminal Court, taking into account the provisions contained in paragraphs fourth and fifth.

Fourth: A person convicted of sentences stipulated under Iraqi Penal Code shall be punished if:

A. He committed an offence of murder or rape as defined under Iraqi Penal Code.

B. He participated in committing an offence of murder or rape.

Fifth: The penalty for any crimes under Articles 11, 12, 13 which do not have a counterpart under Iraqi law shall be determined by the Court taking into account such factors like the gravity of the crime, the individual circumstances of the convicted person, guided by judicial precedents and relevant sentences issued by the international criminal courts.

Sixth: The Criminal Court may order the forfeiture of proceeds, property or assets derived directly or indirectly from a crime, without prejudice to the rights of the bona fide third parties.

Seventh: In accordance with Article 307 of the Iraqi Criminal Procedure Code, the Criminal Court shall have the right to confiscate any material or goods prohibited by law regardless of whether the case has been discharged for any lawful reason.

SECTION EIGHT: Appeals Proceedings

Article 25

PART ONE Cassation

First: The convicted public prosecutor has the right to contest the judgments and decisions before the Cassation Panel for any of the following reasons:

1. If a judgment issued is in contradiction with the law or there is an error in interrupting it.
2. An error in procedures.
3. Material error in the facts which has led to violation of justice.

Second: The Cassation Panel may affirm, reverse or revise the decisions taken by the Criminal Court or the decisions of the Investigative Judge.

Third: When the Cassation Panel issues its verdict to revoke the judgment of acquittal or release issued by the Criminal Court or the Investigative Judge, the case shall be referred back to the Court for retrial of the accused or for the Investigative Judge to implement the decision.

Fourth: The period of appeal shall be in accordance with the provisions of the Iraqi Criminal procedure Code No. 23 for the year 1971 that is in effect, in case there is no specific provision in that regard

Article 26

PART TWO Retrial

First: Where a new findings or facts have been discovered which were not known at the time of the proceedings before the Criminal Court or the Cassation Panel and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecution may submit to the Court an application for a retrial.

Second: The Court shall reject the application if it considers it to be unfounded. If it determines that the application has merit, and for the purpose of reaching a modification of the court decision after hearing the parties in the case, may:

1. Send case back to the original Criminal Court that issued the ruling; or
2. Send case back to another Criminal Court; or
3. The Cassation Panel takes jurisdiction over the matter.

Article 27

SECTION NINE: Enforcement of Sentences

First: Sentences shall be carried out in accordance with the Iraqi legal system and its laws.

Second: No authority, including the President of the Republic, may grant a pardon or mitigate the punishment issued by the Court. The punishment must be executed within 30 days of the date when the judgment becomes final and non-appealable.

Article 28

SECTION TEN: General and Final Provisions

Investigative judges, Judge of the criminal courts, members of the public prosecution committee, the director of the administrative department and the court's staff must be Iraqi nationals with due considerations given to the provisions of Article 4 (Third) of this statute.

Article 29

First: The Court and the national courts shall have concurrent jurisdiction to prosecute persons for those offences stipulated in Article 14 of this statute.

Second: The Court shall have primacy over all other Iraqi courts with respect to the crimes stipulated in Articles 11, 12, and 13 of this statute.

Third: At any stage of the proceedings, the Court may demand of any other Iraqi court to transfer any case being tried by it involving any crimes stipulated in Articles 11, 12, 13, and 14 of this statute, and such court shall be required to transfer such case upon demand.

Fourth: At any stage of the proceedings, the Court may demand of any other Iraqi court to transfer any case being tried by it involving any crimes stipulated in Articles 13, 14, 15, 16 of this statute, and such court shall be required to transfer such case upon demand.

Article 30

First: No person shall be tried before any other Iraqi court for acts for which the Court, in accordance with Articles 300 and 301 of the Iraqi Criminal Procedure Code, has already tried him or her.

Second: A person, who has been tried by any Iraqi court for acts constituting crimes within the jurisdiction of the Court, may not be subsequently tried by the Court except if the Court determines that the previous court proceedings were not impartial or independent, or were designed to shield the accused from criminal responsibility. When decisions are made for a retrial, one of the conditions contained in Article 196 of the Iraqi Civil Procedure Code and Article (303) of the Iraqi Criminal Procedure Code must be met.

Third: In determining the penalty to be imposed on a person convicted of a crime under the present Statute, the Court shall take into account the time served of any penalty imposed by an Iraqi court on the same person for the same crime.

Article 31

First: The President of the Court, the Judges, the Court's Investigative Judges, the Public Prosecutors, the Director of the Administration Department and their staffs shall have immunity from civil suits in respect to their official functions.

Second: Other persons, including the accused, required at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court.

Article 32

Arabic shall be the official language of the Court.

Article 33

No person who was previously a member of the disbanded Ba'ath Party shall be appointed as a judge, investigative judge, public prosecutor, an employee or any of the personnel of the Court.

Article 34

The expenses of the Court shall be borne by the State's general budget.

Article 35

The President of the Court shall prepare and submit an annual report on the Court activities to the Council of Ministers.

Article 36

The provisions of the civil service law no. (24) Of 1960, Personnel law no. (25) Of 1960, government and socialist sector employees disciplinary law No (14) of 1991 and civil pension law No. (33) Of 1966 shall apply to the court's employees other than the judges and members of public prosecution.

Article 37

Law No. 1 for the year 2003 the Iraqi Special Tribunal and the Rules of Procedure and Evidence issued in accordance with the provisions of Article (16) thereof are revoked from the date this statute comes into force.

Article 38

All decisions and Orders of Procedure issued under law No. 1 for the year 2003 are correct and conform to the law.

Article 39

The Council of Ministers in coordination with the President of the Court shall issue instructions to facilitate the implementation of this statute.

Article 40

This law shall come into force on the date of its publication in the Official Gazette.

Jalal Talabani
President of the Republic

Adil Abdul-Mahdi
Vice- President

Ghazi Ajil Al-Yawir
Vice-President

Justifying Reasons

In order to expose the crimes committed in Iraq from July 17, 1968 until May 1,2005 against the Iraqi people and the peoples of the region and the subsequent savage massacres, and for laying down the rules and punishments to condemn after a fair trial the perpetrators of such crimes for waging wars, mass extermination and crimes against humanity, and for the purpose of forming an Iraqi national high criminal court from among Iraqi judges with high experience, competence and integrity to specialize in trying these criminals. And in order to reveal the truth and the agonies and injustice caused by the perpetrators of such crimes, and for protecting the rights of many Iraqis and alleviating injustice and for demonstrating heaven's justice as envisaged by the Almighty God. ...

This law has been legislated.

The Original Copy of the Satute of the Iraqi High Criminal Court of 2005

قانون المحكمة الجنائية العراقية العليا رقم (10) لسنة 2005

قرار رقم (10)

بأسم الشعب

مجلس الرئاسة

بناء على ما اقرته الجمعية الوطنية طبقاً للمادة الثالثة والثلاثون الفقرتين (أ- ب) والمادة السابعة والثلاثون من قانون ادارة الدولة العراقية للمرحلة الانتقالية. قرر مجلس الرئاسة بجلسته المنعقدة بتاريخ 2005/10/9 م اصدار القانون الآتي :

رقم (10) لسنة 2005

قانون المحكمة الجنائية العراقية العليا

الفصل الاول

تأسيس المحكمة وهيكلها التنظيمي

الفرع الاول

التأسيس

المادة (1) :

اولاً : تؤسس محكمة تسمى (المحكمة الجنائية العراقية العليا) وتعرف فيما بعد بـ(المحكمة) وتتمتع بالاستقلال التام.

ثانياً : تسري ولاية المحكمة على كل شخص طبيعي سواء أكان عراقياً ام غير عراقي مقيم في العراق متهم بارتكاب احدى الجرائم المنصوص عليها في المواد (11، 12، 13، 14) من هذا القانون والمرتكبة من تاريخ 1968/7/17 ولغاية 2003/5/1 في جمهورية العراق او اي مكان آخر .. وتشمل الجرائم الآتية :

(أ) جريمة الابادة الجماعية

(ب) الجرائم ضد الانسانية

(ج) جرائم الحرب

(د) انتهاكات القوانين العراقية المنصوص عليها في المادة (14) من هذا القانون.

المادة (2) :

مقر المحكمة في مدينة بغداد، ولها عقد جلساتها في اية محافظة من محافظات العراق بقرار من مجلس الوزراء بناء على اقتراح من رئيس المحكمة.

الفرع الثاني

الهيكل التنظيمي للمحكمة

المادة (3) :

تتألف المحكمة من:

اولاً :

(أ) هيئة تمييزية تختص بالنظر في الاحكام والقرارات الصادرة من احدى محاكم الجنايات او قضاة التحقيق.

(ب) محكمة جنايات واحدة او اكثر.

(ج) قضاة التحقيق.

ثانياً: هيئة الادعاء العام.

ثالثاً: ادارة تتولى تقديم الخدمات الادارية والمالية للمحكمة والادعاء العام.

رابعاً:

(أ) تتألف الهيئة التمييزية من تسعة قضاة ينتخبون من بينهم رئيساً لهم يكون رئيس الهيئة التمييزية هو الرئيس الاعلى للمحكمة ويشرف على شؤونها الادارية والمالية.

(ب) تشكل محكمة الجنايات من خمسة قضاة ينتخبون من بينهم رئيساً لهم يشرف على اعمالهم.

خامساً: يجوز لمجلس الوزراء عند الضرورة وبإقتراح من رئيس المحكمة انتداب قضاة من غير العراقيين ممن لهم خبرة في مجال المحاكمات في الجرائم المنصوص عليها في هذا القانون وممن يتحلون بقدر عال من السمو الاخلاقي والاستقامة والنزاهة للعمل في المحكمة في حالة كون احد اطراف الدولة وينتدب هؤلاء القضاة بمساعدة المجتمع الدولي بما في ذلك الأمم المتحدة.

الفرع الثالث
اختيار القضاة والمدعين العامين وانهاء خدمتهم

المادة (4) :

أولاً: يشترط ان يتحلى القضاة والمدعون العامون بقدر عال من السمو الأخلاقي والنزاهة والاستقامة وتتوافر فيهم الخبرة في القانون الجنائي وشروط التعيين المنصوص عليها في قانون التنظيم القضائي رقم (160) لسنة 1979 وقانون الادعاء العام رقم (159) لسنة 1979.
ثانياً: استثناء من احكام البند (اولاً) من هذه المادة يكون المرشحون لشغل وظائف القضاة في الهيئة التمييزية وفي محاكم الجنائيات وقضاة التحقيق والمدعين العامين المستمرين بالخدمة ويجوز ان يرشح للمحكمة قضاة واعضاء ادعاء عام متقاعدون دون التقيد بشرط العمر ومحامون عراقيون يتمتعون بالكفاءة والخبرة العالية ومن ذوي الصلاحية المطلقة وفقاً لقانون المحاماة رقم (173) لسنة 1965 ولديهم خدمة قضائية او قانونية او في مجال المحاماة لاتقل عن (15) خمس عشرة سنة.

ثالثاً :

(أ) يرشح مجلس القضاء الاعلى جميع القضاة والمدعين العامين في هذه المحكمة ويتم تعيينهم بقرار من مجلس الرئاسة بعد موافقة مجلس الوزراء ويكونون في الصنف الاول استثناء من احكام قانون التنظيم القضائي وقانون الادعاء العام وتحدد رواتبهم ومكافآتهم بتعليمات يصدرها مجلس الوزراء.
(ب) يعتبر القضاة والمدعون العامون والموظفون المعينون وفق احكام القانون للمحكمة قبل هذا التشريع مصادق على تعيينهم قانوناً من تاريخ التعيين حسب احكام الفقرة (ثالثاً/أ) من المادة (4) مع مراعاة احكام المادة (33) من هذا القانون.
رابعاً: لمجلس الرئاسة بناء على اقتراح مجلس الوزراء نقل اي قاض او مدع عام من المحكمة الى مجلس القضاء الاعلى لأي سبب كان.

المادة (5)

تنهى خدمة القاضي والمدعي العام المشمول بأحكام هذا القانون لأحد الأسباب الآتية:
أولاً: اذا دين بأرتكاب جناية غير سياسية.
ثانياً: اذا قدم معلومات كاذبة او مزيفة.
ثالثاً: اذا قصر في تأدية واجباته دون سبب مشروع.

المادة (6)

أولاً: تؤلف لجنة من خمسة اعضاء ينتخبون من بين القضاة والمدعين العامين في المحكمة بأشراف الهيئة التمييزية فيها ينتخبون من بينهم رئيساً لهم وتسمى (لجنة شؤون القضاة والمدعين العامين) ولمدة سنة واحدة ولها الصلاحيات المنصوص عليها في قانون التنظيم القضائي وقانون الادعاء العام، تتولى النظر في الشؤون الانضباطية والخدمة الوظيفية بالقضاة واعضاء الادعاء العام وتكون قراراتها قابلة للطعن امام الهيئة الموسعة في محكمة التمييز الاتحادية اذا قضت انتهاء خدمة القاضي او عضو الادعاء العام.
ثانياً: ترفع اللجنة توصياتها بعد رفض الطعن من الهيئة الموسعة في محكمة التمييز الاتحادية الى مجلس الوزراء لاستصدار قرار من مجلس الرئاسة لانتهاء خدمة القاضي او المدعي العام بمن فيهم رئيس المحكمة في حالة تحقق احدي الحالات المنصوص عليها في المادة (6) من هذه المادة.
ثالثاً: عند انتهاء اعمال المحكمة ينقل القضاة والمدعون العامون الى مجلس القضاء الاعلى للعمل في المحاكم الاتحادية ويحال على التقاعد من اكمل السن القانونية وفقاً للقانون.

الفرع الرابع

رئاسة المحكمة

المادة (7):

أولاً: يتولى رئيس المحكمة المهام الآتية:

(أ) رئاسة جلسات الهيئة التمييزية.

(ب) تسمية قضاة محاكم الجنائيات الأصليين والاحتياط.

(ج) تسمية اي من القضاة لمحكمة الجنايات في حالة الغياب.
(د) انجاز الاعمال الادارية في المحكمة.
(هـ) تعيين مدير ادارة المحكمة ومدير الامن ومدير العلاقات العامة ومدير الأرشيف وحفظ الوثائق في المحكمة وانهاء خدماتهم وفقاً للقانون.
(و) تسمية ناطق رسمي للمحكمة من القضاة او اعضاء الادعاء العام.
ثانياً : لرئيس المحكمة ان يعين خبراء من غير العراقيين للعمل في محاكم الجنايات والهيئة التمييزية لتقديم المساعدة في مجال القانون الدولي والوقائع المماثلة سواء كانت دولية او غير ذلك، ويكون انتداب هؤلاء الخبراء بمساعدة المجتمع الدولي بما في ذلك الأمم المتحدة.
ثالثاً : يجب ان يتحلى الخبراء غير العراقيين المنصوص عليهم في البند (ثانياً) من هذه المادة بقدر عال من سمو الاخلاقي والاستقامة والنزاهة. ويفضل في الخبر غير العراقي ان يكون قد عمل في القضاء او الادعاء العام في بلده او في محاكم جرائم الحرب الدولية.

الفرع الخامس قضاة التحقيق

المادة (8) :

اولاً : يعين عدد كاف من قضاة التحقيق.
ثانياً : يتولى قضاة التحقيق في المحكمة التحقيق مع المتهمين في ارتكاب الجرائم المنصوص عليها في البند (ثانياً) من المادة (1) من هذا القانون.
ثالثاً : ينتخب قضاة التحقيق من بينهم رئيساً ونائباً للرئيس.
رابعاً : يحيل الرئيس القضايا الحقيقية الى قضاة التحقيق كلاً على انفراد.
خامساً : يتكون كل مكتب من مكاتب قضاة التحقيق من قاضٍ للتحقيق وملاك مؤهل يكون لازماً لعمل قاضي التحقيق.
سادساً : لقاضي التحقيق جمع ادلة الاثبات من اي مصدر يراه مناسباً ومخاطبة الجهات ذات العلاقة مباشرة.
سابعاً : يتصرف قاضي التحقيق في المحكمة باستقلالية تامة باعتباره جهازاً منفصلاً عن المحكمة ولا يخضع او يستجيب لأي طلبات او اوامر صادرة من اي جهة من الجهات الحكومية او غيرها.
ثامناً : تكون قرارات قاضي التحقيق قابلة للطعن تمييزاً امام الهيئة التمييزية خلال (15) خمسة عشر يوماً من تاريخ التبليغ بها او اعتبارها مبلغة وفقاً للقانون.
تاسعاً : لرئيس قضاة التحقيق وبعد التشاور مع رئيس المحكمة ان يعين اشخاصاً من غير العراقيين خبراء لتقديم المساعدة القضائية لقضاة التحقيق في مجال التحقيق عن القضايا المشمولة بهذا القانون سواء بمساعدة المجتمع الدولي بما في ذلك الامم المتحدة.
عاشراً : يشترط ان يتحلى الخبراء والمراقبون غير العراقيين المنصوص عليهم في البند (تاسعاً) من هذه المادة بقدر عال من سمو الاخلاقي والاستقامة والنزاهة. ويفضل في الخبر والمراقب غير العراقي ان يكون قد عمل في القضاء او الادعاء العام في بلده او في محاكم جرائم الحرب الدولية.

الفرع السادس هيئة الادعاء

المادة (9) :

اولاً : يعين عدد كاف من المدعين العامين.
ثانياً : تتألف هيئة الادعاء العام من عدد من المدعين العامين ويكونون مسؤولين عن الادعاء تجاه الاشخاص المتهمين بأرتكاب الجرائم الداخلة ضمن اختصاص المحكمة.
ثالثاً : ينتخب المدعون العامون من بينهم رئيساً ونائباً للرئيس.
رابعاً : يتألف كل مكتب من مكاتب الادعاء العام من مدع عام وملاك مؤهل يكون لازماً لعمل المدعي العام.
خامساً : يتصرف كل مدع عام باستقلالية تامة باعتباره جهازاً منفصلاً عن المحكمة ولا يخضع او يستجيب لأي طلبات او اوامر صادرة من الحكومة او اي جهة اخرى.
سادساً : يوكل رئيس هيئة الادعاء العام الى مدع عام القضية المطلوب التحقيق فيها والترافع في مرحلة المحاكمة استناداً للصلاحيات الممنوحة للمدعين العامين وفقاً للقانون.
سابعاً : لرئيس هيئة الادعاء بعد التشاور مع رئيس المحكمة ان يعين اشخاصاً من غير العراقيين بصفة خبراء لتقديم المساعدة للمدعين العامين فيما يتعلق بالتحقيق والادعاء عن القضايا المشمولة بهذا القانون

في المجال الدولي او غيره ، ولرئيس هيئة الادعاء العام انتداب هؤلاء الخبراء بمساعدة المجتمع الدولي بما في ذلك الأمم المتحدة.
ثامناً : يشترط ان يتحلى الخبراء غير العراقيين المنصوص عليهم في البند (سابعاً) من هذه المادة بقدر عال من السمو الاخلاقي والاستقامة والنزاهة. ويفضل في الخبر الدولي غير العراقي ان يكون قد عمل في الادعاء العام في بلده او في محاكم جرائم الحرب الدولية.

الفرع السابع الدائرة الادارية المادة (10)

اولاً : يدير الدائرة الادارية موظف بعنوان مدير الدائرة حاصل على شهادة البكالوريوس في القانون ومن ذوي الخبرة القضائية والادارية يعاونه عدد من الموظفين لتسيير عمل الدائرة.
ثانياً : تتولى الدائرة الادارية مسؤولية الشؤون الادارية والمالية والخدمية للمحكمة وهيئة الادعاء العام.

الفصل الثاني اختصاصات المحكمة

الفرع الاول جريمة الابادة الجماعية المادة (11)

اولاً : لأغراض هذا القانون وطبقاً للاتفاقية الدولية الخاصة بمنع جريمة الابادة الجماعية المعاقب عليها المؤرخة في 9/كانون الاول - ديسمبر/1948 المصادق عليها من العراق في 20/كانون الثاني - يناير/1959 فان الابادة الجماعية تعني الافعال المدرجة في ادناه المرتكبة بقصد اهلاك جماعة قومية او اثنية او عرقية او دينية بصفتها هذه اهلاًكاً كلياً او جزئياً.

- (أ) قتل افراد من الجماعة
- (ب) الحاق ضرر جسدي او عقلي جسيم بأفراد من الجماعة
- (ج) اخضاع الجماعة عمداً لأحوال معيشية يقصد بها اهلاكها الفعلي كلياً او جزئياً.
- (د) فرض تدابير تستهدف منع الانجاب داخل الجماعة.
- (هـ) نقل اطفال من الجماعة عنوة الى جماعة اخرى.

ثانياً : وجب العمال التالية ان يعاقب عليها:

- (أ) ابادة الجماعة
- (ب) التآمر لارتكاب الابادة الجماعية
- (ج) التحريض المباشر والعلني على ارتكاب الابادة الجماعية
- (د) محاولة ارتكاب الابادة الجماعية.
- (هـ) الاشتراك في الابادة الجماعية

الفرع الثاني الجرائم ضد الانسانية المادة (12)

اولاً : الجرائم ضد الانسانية تعني لأغراض القانون أياً من الافعال المدرجة في ادناه متى ارتكبت في اطار هجوم واسع النطاق او منهجي موجه ضد اية مجموعة من السكان المدنيين وعن علم بهذا الهجوم.

- (أ) القتل العمد.
- (ب) الابادة.
- (ج) الاسترقاق.
- (د) ابعاد السكان او النقل القسري للسكان.
- (هـ) السجن او الحرمان الشديد على اي نحو آخر من الحرية البدنية بما يخالف القواعد الاساسية للقانون الدولي.
- (و) التعذيب.
- (ز) الاغتصاب، الاستبعاد الجنسي، الاكراه على البغاء، الحمل القسري، او اي شكل آخر من اشكال العنف الجنسي على مثل هذه الدرجة من الخطورة.

(ح) اضطهاد اية جماعة محددة او مجموعة محددة من السكان لاسباب سياسية او عرقية او قومية او اثنية او ثقافية او دينية او متعلقة بنوع الجنس او لأسباب اخرى لايجيزها القانون الدولي وذلك فيما يتصل بأي فعل مشار اليه من اشكال العنف الجنسي على مثل هذه الدرجة من الخطورة.

(ك) الاخفاء القسري للأشخاص.

(ل) الافعال اللانسانية الاخرى ذات الطابع المماثل التي تتسبب عمداً في معاناة شديدة او في اذى خطير يلحق بالجسم او بالصحة العقلية او البدنية.

ثانياً : لأغراض تطبيق احكام البند(اولا) من هذه المادة نعني المصطلحات المدرجة في ادناه المعاني المبينة ازاءها:-

(أ) هجوم موجه ضد اية مجموعة من السكان المدنيين يعني نهجاً سلوكياً تضمن الارتكاب المتكرر للأفعال المنصوص عليها في البند (اولاً) من هذه المادة ضد اية مجموعة من السكان المدنيين عملاً بسياسة دولة او منظمة تقضي بارتكاب مثل هذا الهجوم او تعزيزاً لهذه السياسة.

(ب) الابداء تعني تعمد فرض احوال معيشية ، كالحرمان من الحصول على الطعام والدواء ، بقصد اهلاك جزء من السكان.

(ج) الاسترقاق يعني ممارسة اي من او جميع السلطات المترتبة على حق الملكية ، على شخص ما ، بما في ذلك ممارسة هذه السلطات في سبيل الاتجار بالأشخاص ، ولأسيما النساء والأطفال.

(د) ابعاد السكان او النقل القسري للسكان يعني نقل الاشخاص المعنيين قسراً من المنطقة التي يوجدون فيها بصفة مشروعة ، بالطرد او بأي فعل قسري آخر، دون مبررات يسمح بها القانون الدولي.

(هـ) التعذيب يعني التعمد في تسبب الألم الشديد والمعاناة ، سواء كان بدنياً او فكرياً على شخص قيد الاحتجاز او تحت سيطرة المتهم على ان التعذيب لايشمل الألم أو المعاناة الناجمة عن العقوبات القانونية او ذات علاقة بها.

(و) الاضطهاد يعني الحرمان المتعمد والشديد من الحقوق الاساسية بما يتناقض والقانون الدولي بسبب هوية الجماعة او المجموعة.

(ز) الاخفاء القسري للأشخاص يعني القاء القبض على اشخاص او احتجازهم او اختطافهم من قبل الدولة او منظمة سبيلية او باذن او دعم منها لهذا الفعل او بسكوتها عنه ثم رفضها الاقرار بحرمان هؤلاء الاشخاص من حريتهم او اعطاء معلومات عن مصيرهم او عن مكان وجودهم بهدف حرمانهم من حماية القانون مدة زمنية طويلة.

الفرع الثالث

جرائم الحرب

المادة (13)

تعني جرائم الحرب لأغراض هذه القانون مايتأتي:

اولاً : خروقات جسيمة لاتفاقيات جنيف المؤرخة في 12 آب 1949 وبالتحديد اي فعل من الافعال المدرجة في ادناه المرتكبة ضد الاشخاص او الممتلكات المحمية بموجب احكام اتفاقية جنيف ذات العلاقة.

(أ) القتل العمد.

(ب) التعذيب او المعاملة اللانسانية ، بما في ذلك اجراء تجارب بايولوجية.

(ج) تعمد احداث معاناة شديدة او الحاق اذى خطير بالجسم او بالصحة.

(د) الحاق تدمير واسع النطاق بالممتلكات والاستيلاء عليها دون ان تكون هناك ضرورة عسكرية تبرر ذلك وبشكل مخالف للقانون وبطريقة عابثة.

(هـ) ارغام اسير حرب او شخص محمي على الخدمة في قوات سلطة معادية.

(و) تعمد حرمان اسير حرب او شخص محمي من حقه في ان يحاكم محاكمة عادلة ونظامية.

(ز) الحجز غير القانوني.

(ح) الابعاد او النقل غير القانوني.

(ط) اخذ رهائن.

ثانياً : الانتهاكات الخطيرة الاخرى للقوانين والاعراف الواجبة التطبيق على المنازعات الدولية المسلحة ، في النطاق الثابت للقانون الدولي وبالتحديد اي فعل من الافعال الآتية :-

(أ) تعمد توجيه هجمات ضد السكان المدنيين بصفتهم هذه او ضد افراد مدنيين لايشاركون مباشرة في الاعمال الحربية.

(ب) تعمد توجيه هجمات ضد اهداف مدنية بضمنها مواقع لاتشكل اهدافاً عسكرية.

- (ج) تعتمد شن هجمات ضد مستخدمين ، منشآت، مواد وحدات او مركبات تستخدم في مهام المساعدة الانسانية او حفظ السلام طبقاً لميثاق الامم المتحدة ، طالما كانت مثل هذه المهام تستحق الحماية الممنوحة للمدنيين او الاهداف المدنية بموجب القانون للمنازعات المسلحة.
- (د) تعتمد شن هجوم مع العلم بكون هذا الهجوم سيسفر عن خسائر تبعية في الارواح او عن اصابات بين المدنيين او عن ألقاق اضرار مدنية يكون افراطاً واضحاً بالقياس الى مجمل المكاسب العسكرية المتوقعة الملموسة والمباشرة.
- (هـ) تعتمد شن هجوم مع العلم بكون هذا الهجوم سيسفر عن احداث ضرر واسع النطاق وطويل الأمد وشديد للبيئة الطبيعية يكون افراطاً واضحاً بالقياس الى مجمل المكاسب العسكرية المتوقعة الملموسة والمباشرة.
- (و) (المهاجمة او القصف بأية وسيلة كانت ضد المدن او القرى او المساكن او المباني التي لاتوجد لها دفاعات وهي ليست اهداف عسكرية.
- (ز) قتل او جرح مقاتل كان قد تخلى عن سلاحه او انه لم يعد يمتلك وسائل الدفاع عن نفسه واستسلم بشكل واضح.
- (ح) اساءة استعمال علم الهدنة او علم العدو او شاراته العسكرية وزيه العسكري او علم الامم المتحدة او شاراتها وازيائها العسكرية وكذلك الشعارات المميزة لاتفاقيات جنيف ممايسفر عن موت الافراد او الحاق اصابات بالغة بهم.
- (ط) قيام حكومة العراق او اي من اجهزتها (وتشمل على سبيل التوضيح اي جهاز من اجهزة حزب البعث العربي الاشتراكي) على نحو مباشر او غير مباشر ، بنقل اجزاء من السكان المدنيين الى اي ارض تحتلها او ابعاد او نقل كل او بعض سكان الارض المحتلة ضمن هذه الارض او خارجها.
- (ي) تعتمد توجيه هجمات ضد مبان لاتشكل اهدافا عسكرية ومخصصة لأغراض دينية ، وتعليمية، فنية، علمية او خيرية، او ضد اي اثار تاريخية ، مستشفيات واماكن تجمع المرضى والجرحى.
- (ك) اخضاع الاشخاص التابعين لأية دولة للتشويه البدني او لأي نوع من التجارب الطبية او العلمية التي لاتبررها المعالجة الطبية او معالجة الاسنان او المعالجة في المستشفى للشخص المعني ولاتجري ايضاً لصالحه متسببة في وفاة ذلك الشخص او الاشخاص او تعريض صحتهم لخطر شديد.
- (ل) قتل او جرح اي من افراد دولة معادية او جيش معاد بطريقة غادرة.
- (م) اعلان انه لم يبق احد على قيد الحياة.
- (ن) تدمير او الاستيلاء على الممتلكات المدنية للطرف المعادي مالم يكن التدمير او الاستيلاء أمراً ألتزمته ضرورات الحرب.
- (س) اعلان الغاء او تعليق او منع اللجوء الى القضاء بقصد حرمان مواطني الطرف المعادي من المطالبة بحقوقهم.
- (ع) اكره رعايا الطرف المعادي على المساهمة في عمليات حربية موجهة ضد دولتهم حتى وان كانوا في خدمة الدولة المتحاربة قبل اندلاع الحرب.
- (ف) نهب اية بلدة او مكان حتى وان تم الاستيلاء عليه عنوة.
- (ص) استخدام السموم او الاسلحة السامة.
- (ق) استخدام الغازات الخانقة او السامة او اية غازات اخرى وكذلك اية سوانل او مواد او معدات اخرى مشابهة.
- (ر) استخدام الرصاصات التي تتمدد او تتسطح بسهولة في الجسم البشري مثل الرصاصات ذات الاغلفة الصلبة التي لاتغطي كامل جسم الرصاص او الرصاصات المخرزة الغلاف.
- (ش) الاعتداء على كرامة الشخص وخاصة المعاملة المهنية والحاطة بالكرامة.
- (ت) الاغتصاب او الاستعباد الجنسي او البغاء القسري او الحمل القسري او اي شكل اخر من اشكال العنف الجنسي على مثل هذه الدرجة من الخطورة.
- (ث) استغلال وجود اشخاص مدنيين او اشخاص آخرين محميين لجعل بعض النقاط او المناطق او القوات العسكرية محصنة من العمليات العسكرية.
- (خ) تعتمد توجيه هجمات ضد مبان، مواد وحدات طبية، وسائط نقل واشخاص يستعملون الشعارات المميزة لاتفاقيات جنيف طبقاً للقانون الدولي.
- (ذ) تعتمد تجويع المدنيين كأسلوب من اساليب الحرب بحرمانهم من المواد التي لاغنى عنها لبقائهم بما في ذلك عرقلة امدادات الغائة كما هو منصوص عليه بموجب القانون الدولي.
- (ض) تجنيد او تسجيل اطفال دون الخامسة عشرة من العمر في قوات الجيش الوطني او استخدامهم للاشتراك بفاعلية في الاعمال العدائية.

- ثالثاً: حالات وقوع نزاع مسلح من اي نوع من الافعال التالية المرتكبة ضد اشخاص غير مشتركين فعلياً في الاعمال الحربية بما في ذلك افراد القوات المسلحة الذين القوا سلاحهم واولئك الذين اصبحوا عاجزين عن القتال بسبب المرض او الاصابة او الاحتجاز او لاي سبب اخر.
- (ا) استعمال العنف ضد الحياة والاشخاص وخاصة القتل بجميع انواعه والتشويه والمعاملة القاسية والتعذيب.
- (ب) الاعتداء على كرامة الشخص وخاصة المعاملة المهنية والحاطة بالكرامة.
- (ج) اخذ الرهائن
- (د) اصدار احكام وتنفيذ اعدامات دون وجود حكم سابق صادر عن محكمة مشكلة تشكياً نظامياً تكفل جميع الضمانات القضائية المعترف بها والتي لا يمكن الاستغناء عنها.
- رابعاً: الانتهاكات الخطيرة الاخرى للقوانين والاعراف الواجبة التطبيق على المنازعات المسلحة غير الدولية في النطاق الثابت للقانون الدولي وبالتحديد اي فعل من الافعال الآتية: -
- (أ) تعدد توجيه هجمات ضد السكان المدنيين بصفتهم هذه او ضد افراد مدنيين لايشاركون مباشرة في الاعمال الحربية.
- (ب) اعتماد توجيه هجمات ضد مبان، مواد، وحدات ووسائل نقل طبية وافراد من المستخدمين للشعارات المميزة لاتفاقيات جنيف طبقاً للقانون الدولي.
- (ج) تعدد شن هجمات ضد مستخدمين، منشآت، مواد، وحدات او مركبات مستخدمة في مهام المساعدة الانسانية او حفظ السلام طبقاً لميثاق الامم المتحدة طالما كانت مثل هذه المهام تستحق الحماية للمنوحة للمدنيين او الاهداف المدنية بموجب القانون الدولي للمنازعات المسلحة.
- (د) تعدد توجيه هجمات ضد مبان مخصصة لاغراض دينية تعليمية فنية، علمية او خيرية او ضد اثار تاريخية ومستشفيات واماكن تجمع المرضى والجرحى شريطة ألا تكون اهدافاً عسكرية.
- (هـ) نهب اية بلدة او مكان حتى وان تم الاستيلاء عليه عنوة.
- (و) الاغتصاب، الاستعباد الجنسي، البغاء القسري، الحمل القسري، او اي شكل اخر من اشكال العنف الجنسي على مثل هذه الدرجة من الخطورة.
- (ز) تجنيد او تسجيل اطفال دون الخامسة عشرة من العمر في قوات او جماعات مسلحة او استخدامهم للمشاركة فعلياً في الاعمال الحربية.
- (ح) اصدار اوامر بترحيل السكان المدنيين لأسباب تتصل بالنزاع مالم يكن ذلك من اجل المدنيين المعنيين او لأسباب عسكرية ملحة.
- (ط) قتل او اصابة احد مقاتلي الطرف المعادي غدرأ .
- (ي) اعلان انه لم يبق احد على قيد الحياة.
- (ك) اخضاع الاشخاص الخاضعين لسلطة الطرف الاخر في النزاع للتشويه البدني او لأي نوع من التجارب الطبية او العلمية التي لاتبررها المعالجة الطبية او معالجة الاسنان او المعالجة في المستشفى للشخص المعني ولاتجري ايضاً لصالحه متسببة في وفاة ذلك الشخص او الاشخاص او في تعريض صحتهم لخطر شديد.
- (ل) تدمير او الاستيلاء على ممتلكات الطرف المعادي مالم يكن التدمير او الاستيلاء امراً ألزمته ضرورات الحرب.

الفرع الرابع

انتهاكات القوانين العراقية

المادة (14)

- تسري ولاية المحكمة على مرتكبي احدى الجرائم الآتية:
- اولاً: التدخل في شؤون القضاء او محاولة التأثير في اعماله.
- ثانياً: هدر الثروة الوطنية وتبديدها استناداً الى احكام الفقرة (ز) من المادة الثانية من قانون معاقبة المتآمرين على سلامة الوطن ومفسي نظام الحكم رقم (7) لسنة 1958.
- ثالثاً: سوء استخدام المنصب والسعي وراء السياسات التي كادت ان تؤدي الى التهديد بالحرب او استخدام القوات المسلحة العراقية ضد دولة عربية وفقاً للمادة الاولى من القانون رقم (7) لسنة 1958.
- رابعاً: اذا وجدت المحكمة تخلف الركن الخاص لأي جريمة من الجرائم المنصوص عليها في المواد (11) و(12) و(13) من هذا القانون ويثبت لديها ان الفعل يشكل جريمة يعاقب عليها قانون العقوبات او اي قانون عقابي اخر وقت ارتكابها فتسري ولايتها القضائية للنظر في القضية.

الفصل الثالث

المسؤولية الجنائية الشخصية

أولاً: يعد الشخص الذي يرتكب جريمة تدخل ضمن ولاية المحكمة مسؤولاً عنها بصفته الشخصية وعرضه للعقاب وفقاً لاحكام هذا القانون.

ثانياً: يعد الشخص مسؤولاً وفقاً لاحكام هذا القانون ولاحكام قانون العقوبات اذا قام بما يأتي: -

(أ) اذا ارتكب الجريمة بصفة شخصية بالاشتراك او بواسطة شخص آخر بغض النظر عما اذا كان هذا الشخص مسؤولاً او غير مسؤول جنائياً.

(ب) الامر بارتكاب جريمة وقعت بالفعل او شرع فيها او الاغراء او الحث على ارتكابها.

(ج) تقديم العون او التحريض او المساعدة بأي شكل آخر لغرض تيسير ارتكاب الجريمة او الشروع في ارتكابها بما في ذلك توفير وسائل ارتكابها.

(د) الاسهام بأية طريقة أخرى مع مجموعة من الأشخاص بقصد جنائي مشترك , على ارتكاب جريمة او الشروع في ارتكابها, على ان تكون هذه المساهمة متعمدة وان تقدم.

1) اما بهدف تعزيز النشاط الاجرامي او الغرض الاجرامي للجماعة، اذا كان هذا النشاط او الغرض منظوياً على ارتكاب جريمة تدخل ضمن ولاية المحكمة.

2) مع العلم بنية ارتكاب الجريمة لدى هذه الجماعة.

(هـ) التحريض المباشر والعلمي على ارتكاب الجريمة فيما يتعلق بجريمة الابادة الجماعية.

(و) الشروع في ارتكاب الجريمة من خلال البدء بتنفيذ فعل بقصد ومع ذلك يعد عذراً معفياً من العقاب اذا بذل الفاعل نشاطاً يحول دون ارتكاب الجريمة او اتمامها، ولا يعاقب على الشروع بموجب هذا القانون اذا تخلى الفاعل تماماً وبمحض ارادته عن مشروعه الاجرامي.

ثالثاً: لاتعد الصفة الرسمية التي يحملها المتهم سبباً معفياً من العقاب او مخففاً للعقوبة، سواء كان المتهم رئيساً للدولة او رئيساً او عضواً في قيادة مجلس الثورة او رئيساً او عضواً في مجلس الوزراء او عضواً في قيادة حزب البعث، ولا يجوز الاحتجاج بالحصانة للتخلص من المسؤولية عن الجرائم المذكورة في المواد (11) و(12) و(13) و(14) من هذا القانون.

رابعاً: لايعفى الرئيس الاعلى من المسؤولية الجنائية عن الجرائم التي يرتكبها الاشخاص الذين يعملون بأمرته، اذا كان الرئيس قد علم او او كان على وشك ارتكابها ولم يتخذ الرئيس الاجراءات الضرورية والمناسبة لمنع وقوع هذه الافعال او ان يرفع الحالة الى السلطات المختصة بغية اجراء التحقيق والمحاكمة. خامساً: في حالة قيام اي شخص متهم بارتكاب فعل تنفيذاً لامر صادر من الحكومة او من رئيسه فان ذلك لن يعفيه من المسؤولية الجنائية ويجوز ان يراعى ذلك في تخفيف العقوبة اذا رأت المحكمة تحقيق العدالة يتطلب ذلك.

سادساً: لاتشمل قرارات العفو الصادرة قبل نفاذ هذا القانون أيّاً من المتهمين في ارتكاب احدي الجرائم المنصوص عليها فيه.

الفصل الرابع

قواعد الاجراءات وجمع الادلة

المادة (16)

يسري قانون اصول المحاكمات الجزائية رقم (23) لسنة 1971 وقواعد الاجراءات وجمع الادلة الملحقة بهذا القانون والتي تعد جزءاً لايتجزأ منه ومكماً له على الاجراءات التي تتبعها المحكمة.

الفصل الخامس

المبادئ العامة للقانون الجنائي

المادة (17)

أولاً: في حالة عدم وجود نص قانوني في هذا القانون والقواعد الصادرة بموجبه ، تطبق الاحكام العامة للقانون الجنائي على اتهام ومحاكمة الاشخاص المتهمين المنصوص عليها في القوانين الآتية:

(أ) للفترة من 1968/7/17 لغاية 1969/12/14 قانون العقوبات البغدادي لسنة 1919 .

(ب) للفترة من 1969/12/15 لغاية 2003/5/1 قانون العقوبات رقم (111) لسنة 1969 الذي كان نافذاً سنة 1985 (الطبعة الثالثة).

(ج) قانون العقوبات العسكري رقم (13) لسنة 1940 واصول المحاكمات العسكرية رقم (44) لسنة 1941.

ثانياً: للمحكمة وللهيئة التمييزية الاستعانة باحكام المحاكم الجنائية الدولية عند تفسيرها لاحكام المواد (11) و(12) و(13) و(14) من هذا القانون للتقدم المسقط للدعوى الجنائية وللعقوبة.

الفصل السادس التحقيق والاحالة

المادة (18)

اولاً : يشرع قاضي التحقيق في التحقيق اما من تلقاء نفسه او بناء على معلومات تصله من اي مصدر خصوصاً المعلومات الواردة من الشرطة او من اية جهة حكومية او غير حكومية ، ويتولى قاضي التحقيق تقويم المعلومات الواردة اليه ليقرر ما اذا كانت الادلة كافية للبدء في التحقيق.
ثانياً: لقاضي التحقيق سلطة استجواب المتهمين والضحايا او ذويهم والشهود من اجل جمع لادلة واجراء التحقيقات الميدانية، وله من اجل تنفيذ مهمته ان يطلب المساعدة من السلطات الحكومية ذات العلاقة كلما اقتضت الحاجة ذلك، وعلى الجهات الحكومية ذات العلاقة التعاون التام وتلبية الطلبات.
ثالثاً: عند اتخاذ قاضي التحقيق قراره بكفاية الادلة فعليه احالة الدعوى الى محكمة الجنايات ويجب ان يتضمن قرار الاحالة موجزاً بالوقائع والجريمة المنسوبة للمتهم والمادة القانونية التي احيل بموجبها وفقاً لهذا القانون.

الفصل الاول

ضمانات المتهم

المادة (19)

اولاً: جميع الاشخاص متساوون امام المحكمة.
ثانياً: المتهم بريء حتى تثبت ادانته امام المحكمة وفقاً للقانون.
ثالثاً: لكل متهم الحق في محاكمة علنية استناداً الى احكام هذا القانون والقواعد الصادرة بموجبه.
رابعاً: عند توجيه اية تهمة ضد المتهم طبقاً لهذا القانون فللمتهم الحق في محاكمة عادلة ونزيهة وفقاً للضمانات التالية كحد ادنى.
(أ) ان يعلم فوراً بمضمون التهمة الموجهة اليه وبتفاصيلها وطبيعتها وسببها.
(ب) ان يتاح للمتهم الوقت ويمنح التسهيلات الكافية لتمكينه من اعداد دفاعه وان تتاح له الحرية في الاتصال بمحام يختاره بملء ارادته ويجتمع به على انفراد ويحق للمتهم ان يستعين بمحام غير عراقي، طالما ان المحامي الرئيسي العراقي وفقاً للقانون.
(ج) ان تجري محاكمته دون تأخير غير مبرر.
(د) ان يحاكم حضورياً وبالاستعانة بمحام يختاره بملء ارادته او اعلامه بأن له الحق بطلب المساعدة القضائية اذا لم تتوافر لديه المقدرة المالية ، وله الحق في طلب هذه المساعدة التي تتيح له توكيل محام دون ان يتحمل اجور المحاماة.
(هـ) له الحق في طلب شهود الدفاع وشهود الاثبات ومناقشتهم وفي تقديم اي دليل يعزز دفاعه وفقاً للقانون.
(و) لايجوز ارغامه على الاعتراف وله الحق في الصمت وعدم الادلاء بافادة دون ان يفسر هذا الصمت دليلاً على الدانة او البراءة.

الفصل السابع

المحاكمة

المادة (20)

اولاً: يجب ايداع الشخص الذي يصدر بحقه الاتهام في التوقيف استناداً الى امر او مذكرة قبض صادرة من قاضي التحقيق ويجب اعلامه فوراً بالتهم المسندة اليه ونقله الى المحكمة.
ثانياً: على محكمة الجنايات ضمان اجراءات محاكمة عادلة وسريعة وفقاً لاحكام هذا القانون وقواعد الاجراءات والادلة الملحقة بهذا القانون مع ضمان حقوق المتهم والاعتبارات المطلوبة لحماية الضحايا او ذويهم والشهود.
ثالثاً: على محكمة الجنايات تلاوة قرار الاحالة وان تقتنع بنفسها باحترام حقوق المتهم وكفالتها وعليها التأكد من ان المتهم على دراية وادراك بالتهمة او التهم المسندة اليه وعليها ان توجه السؤال للمتهم كونه مذنباً او بريئاً.
رابعاً: تكون جلسات المحاكمة علنية الا اذا قررت المحكمة جعلها سرية وفقاً لقواعد الاجراءات والادلة الملحقة بهذا القانون ولايجوز اتخاذ القرار بسرية الجلسة الا لاسباب محدودة جداً.

المادة (21)

على محكمة الجنايات ان تؤمن الحماية للضحايا او ذويهم وللشهود وفقاً لما يرد في قواعد الاجراءات والادلة الملحقه بهذا القانون بما في ذلك تأمين السرية لهوية الضحايا او ذويهم وللشهود.

المادة (22)

لذوي الضحايا والمتضررين من العراقيين الادعاء مدنياً امام هذه المحكمة ضد المتهمين عما اصابهم من ضرر من الافعال التي تشكل جريمة بمقتضى احكام هذا القانون وللمحكمة الفصل في هذه الدعاوي وفقاً لقانون اصول المحاكمات الجزائية رقم (23) لسنة 1971 والقوانين ذات العلاقة.

المادة (23)

اولاً: على محكمة الجنايات اعلان وفرض الاحكام والعقوبات على المتهمين المدانين عن جرائم تدخل ضمن ولاية المحكمة.

ثانياً: تصدر محكمة الجنايات احكامها بالاغلبية، وتنطق بها علناً ولايصدر الحكم الا بناء على قرار الادانة ويمكن ان تلحق به رأي القاضي المخالف.

المادة (24)

اولاً: العقوبات التي تحكم بها المحكمة هي العقوبات المنصوص عليها في قانون العقوبات رقم (111) لسنة 1969، عدا عقوبة السجن المؤبد التي تمتد مدى الحياة المحكوم مع مراعاة احكام المادة (17) من هذا القانون.

ثانياً: تسري على الجرائم المنصوص عليها في المادة (14) من هذا القانون العقوبات المنصوص عليها في قانون العقوبات والقوانين العقابية الاخرى.

ثالثاً: مع مراعاة احكام البندين (رابعا) و(خامسا) من هذه المادة تتولى محكمة الجنايات تحديد العقوبات الخاصة بالجرائم المنصوص عليها في المواد (11) و(12) و(13) من هذا القانون.

رابعاً: يعاقب الشخص المدان بالعقوبات المنصوص عليها في قانون العقوبات اذا :-

(أ) ارتكب جرائم القتل او الاغتصاب بموجب قانون العقوبات.

(ب) او ساهم في ارتكاب جرائم القتل او الاغتصاب .

خامساً: عند تحديد المحكمة عقوبة اية جريمة منصوص عليها في المواد (11) و(12) و(13) من هذا القانون التي لا يوجد لها مايمثلها في القانون العراقي ، فان المحكمة تاخذ بنظر الاعتبار عوامل معينة مثل خطورة الجريمة والظروف الشخصية للمدان استرشاداً بالسوابق القضائية وعقوبات المحاكم الجنائية الدولية في هذا المجال.

سادساً: لمحكمة الجنايات ان تأمر بمصادرة اي اصول او ممتلكات او عائدات متحصلة مباشرة او بصورة غير مباشرة من جريمة دون الاضرار بالاطراف الثالثة الحسنة النية.

سابعاً: لمحكمة الجنايات مصادرة اي مادة او بضاعة يحرّمها القانون بصرف النظر عما اذا كانت القضية او الدعوى قد اغلقت او انقضت لأي سبب قانوني وفقاً لاحكام المادة (307) من قانون اصول المحاكمات الجزائية.

الفصل الثامن

طرق الطعن

الفرع الاول

التمييز

المادة (25)

اولاً: للمحكوم او لادعاء العام الطعن بطريق التمييز بالاحكام والقرارات لدى الهيئة التمييزية لاي من الاسباب الاتية:

(أ) اذا صدر الحكم مخالفاً للقانون او ماشابه خطأ في تفسيره.

(ب) الخطأ في الاجراءات.

(ج) حصول خطأ جوهري في الوقائع يؤدي الى الاخلال بالعدالة.

ثانياً: للهيئة التمييزية تصديق حكم محكمة الجنايات او قرارات قاضي التحقيق او نقضها او تعديلها.

ثالثاً: عند اصدار الهيئة التمييزية حكمها بنقض الحكم الصادر بالبراءة او بالافراج من محكمة الجنايات او قاضي التحقيق فلها ان تعيد الدعوى الى المحكمة لاعادة محاكمة المتهم او اتباع قاضي التحقيق لقرارها.

رابعاً: تكون مدة الطعن وفقاً لاحكام قانون اصول المحاكمات الجزائية رقم (23) لسنة 1971 في حالة عدم ورود نص خاص بذلك.

الفرع الثاني اعادة المحاكمة

اولاً : عند اكتشاف وقائع او حقائق جديدة لم تكن معروفة وقت اجراء المحاكمة امام محكمة الجنايات او وقت نظر الدعوى امام الهيئة التمييزية التي يمكن ان تكون عاملاً حاسماً في التوصل الى القرار، للشخص المحكوم وللادعاء العام التقدم الى المحكمة بطلب اعادة المحاكمة.

ثانياً : على المحكمة رفض الطلب اذا وجدته يفتقر الى الاسس القانونية اما اذا وجدت المحكمة ان الطلب يستند الى اسباب مقنعة فللمحكمة بهدف التوصل الى تعديل قرار الحكم بعد الاستماع الى اطراف الدعوى :

(أ) ان تعيد الدعوى الى محكمة الجنايات التي اصدرت الحكم للنظر فيها مجدداً.

(ب) او ان تعيد الدعوى الى محكمة جنائيات اخرى.

(ج) او ان تتولى الهيئة التمييزية نظر الدعوى.

الفصل التاسع تنفيذ الاحكام

المادة (27)

اولاً : تنفذ الاحكام الصادرة من المحكمة وفقاً للقانون.

ثانياً : لايجوز لأية جهة كانت بما في ذلك رئيس الجمهورية اعفاء او تخفيف العقوبات الصادرة من هذه المحكمة وتكون العقوبة واجبة التنفيذ بمرور (30) ثلاثين يوماً من تاريخ اكتساب الحكم او القرار درجة البتات.

الفصل العاشر احكام عامة وختامية

المادة (28)

يكون قضاة التحقيق وقضاة المحكمة الجنائية و اعضاء هيئة الادعاء العام ومدير الدائرة الادارية ومنسوبي المحكمة من العراقيين مع مراعاة احكام البند (ثالثاً) من المادة (4) من هذا القانون.

المادة (29)

اولاً : للمحكمة وللمحاكم الوطنية ولاية مشتركة لمحاكمة الاشخاص المتهمين عن الجرائم المنصوص عليها في المادة (14) من هذا القانون.

ثانياً : للمحكمة اولوية التقدم على جميع المحاكم العراقية فيما يتعلق بولايتها على الجرائم المنصوص عليها في المواد (11) و(12) و(13) من هذا القانون.

ثالثاً : للمحكمة في اي مرحلة ان تطلب من اي من المحاكم العراقية ان تنقل اليها اي قضية منظورة امامها تخص اياً من الجرائم المنصوص عليها في المواد (11) و(12) و(13) و(14) من هذا القانون وعلى المحكمة ارسال القضية حال الطلب.

رابعاً : للمحكمة في اي مرحلة ان تطلب من اي من المحاكم العراقية ان تنقل اليها اي قضية منظورة امامها تخص اياً من الجرائم المنصوص عليها في المواد (11) و(12) و(13) و(14) من هذا القانون وعلى المحكمة ارسال القضية حال الطلب.

المادة (30)

اولاً : لايجوز محاكمة اي شخص امام اية محكمة عراقية اخرى عن جرائم تمت محاكمته عنها سابقاً امام المحكمة استناداً الى احكام المادتين (300) و(301) من قانون اصول المحاكمات الجزائية.

ثانياً : في محاكمة الشخص امام اية محكمة عراقية عن جريمة او جرائم تدخل في ولاية المحكمة فلا يحق للمحكمة اعادة محاكمته عن ذات الجريمة او الجرائم الا اذا قررت ان اجراءات المحاكمة لم تكن نزيهة ومحادية، او ان تلك الاجراءات كانت معدة لحماية المتهم من المسؤولية الجنائية، وعند اتخاذ القرارات باعادة المحاكمة ينبغي ان تتوافر لدى الحالات الواردة في المادة (196) من قانون المرافعات المدنية والمادة (303) من قانون اصول المحاكمات الجزائية.

ثالثاً : عند تحديد العقوبة التي ستفرض على شخص مدان بجريمة على وفق هذا القانون فعلى المحكمة ان تأخذ بنظر الاعتبار المدة المنقضية من اية عقوبة فرضتها محكمة عراقية على ذات الشخص اذات الجريمة.

المادة (31)

اولاً : يتمتع رئيس المحكمة وقضااتها وقضاة التحقيق والمدعون العامون ومدير الدائرة الادارية والعاملون بالمحكمة بالحصانة ضد الدعاوى المدنية فيما يتعلق بواجباتهم الرسمية.
ثانياً : يجب ان تعامل المحكمة الاشخاص الآخرين بمن فيهم المتهم المعاملة الضرورية لضمان اداء المحكمة لوظائفها.

المادة (32)

تكون اللغة العربية هي اللغة الرسمية في المحكمة.

المادة (33)

لا يحق لأي شخص منتمي الى حزب البعث ان يكون قاضياً او مدعياً عاماً او موظفاً او اياً من العاملين في المحكمة.

المادة (43)

تتحمل الموازنة العامة للدولة نفقات المحكمة.

المادة (35)

يتولى رئيس المحكمة اعداد تقرير سنوي عن اعمال المحكمة ويقدم الى مجلس الوزراء.

المادة (36)

تسري احكام قانون الخدمة المدنية رقم(24) لسنة 1960 وقانون الملاك رقم (25) لسنة 1960 وقانون انضباط موظفي الدولة والقطاع الاشتراكي رقم(14) لسنة 1991 وقانون التقاعد المدني رقم (33) لسنة 1966 على منتسبي المحكمة غير القضاة واعضاء الادعاء العام.

المادة (37)

يلغى قانون المحكمة الجنائية العراقية المختصة بالجرائم ضد الانسانية رقم (1) لسنة 2003 وقواعد الاجراءات الصادرة وفقاً لاحكام المادة(16) منه وذلك من تاريخ نفاذ هذا القانون.

المادة (38)

تكون جميع القرارات واوامر الاجراءات التي صدرت في ظل القانون رقم (1) لسنة 2003 صحيحة وموافقة للقانون.

المادة (39)

يصدر مجلس الوزراء بالتنسيق مع رئيس المحكمة تعليمات لتسهيل تنفيذ احكام هذا القانون.

المادة (40)

ينفذ هذا القانون من تاريخ نشره في الجريدة الرسمية.

الأسباب الموجبة

لأجل أضهار الجرائم التي ارتكبت في العراق منذ 1968/7/17 لغاية 2003/5/1 ضد الشعب العراقي وشعوب المنطقة, وما تمخضت عنه من مجازر وحشية, ولغرض وضع القواعد والعقوبات التي تدين مرتكبي هذه الجرائم في محاكمة عادلة عن جرائمهم في شن الحروب والابادة الجماعية والجرائم المرتكبة ضد الانسانية ولغرض تشكيل محكمة وطنية جنائية عراقية عليا من قضاة عراقيين يتمتعون بكفاءة وخبرة عالية ونزاهة, تختص بمحاكمة هؤلاء المجرمين.

ومن اجل أظهار الحقيقة وما سببه مرتكبو تلك الجرائم من عنت وظلم, وحماية لحقوق العديد من العراقيين ورفع الحيف عنهم وابرار عدالة السماء كما ارادها الله سبحانه وتعالى.

شرع هذا القانون ...

Appendix No. (2) Sentence against Saddam Hussain

Text of the sentence against Saddam Hussein for the Anfal campaigns.

**In The Name of God All Merciful All Compassionate
Iraqi High Tribunal Second Court of
Felonies Baghdad – Iraq
Ref. No 1/C Second/2006
Date: 2007 Jun 24**

The Verdict Convict Saddam Hussein Al-Majid: Head of the bygone Revolutionary Command Council and former Armed Forces' General Commander, he issued Decree [160] for the year 1987, granting Convict 'Ali Hasan Al-Majid full authorities of the president, Party commander, and Armed Forces General commander to execute command's objectives in the Northern Area.

The latter issued orders to carry on Al-Anfal operations, as per the aforementioned granted authority, especially the order to use "special ammunition" [meaning chemical weapons] which can not be used unless after an order from the president himself, as it had been mentioned on the voice record. Charges against him are:

Genocide: as per Article [11/First – Clauses (A) and C] by virtue of Article [15] of the court's law.

Crimes against Humanity: as per Article [12/First – Clauses (A), C, and 5] by virtue of Article [15] of the court's law.

War Crimes: as per Article [13/Fourth – Clauses (A), (D), and (L) by virtue of Article [15] of the court's law. (page 55 of 963

Accusing the convicts on behalf of the court:

We've already explained a detail in the previous article stating that Mr. Chief Investigative Justice had transferred 7 convicts to this court, as follow:

1. Sultan Hashim Ahmad
2. 'Ali Hasan Al-Majid
3. Saddam Hussein Al-Majid
4. Sabir 'Abd-al-'Aziz Husayn
5. Husayn Rashid Muhammad
6. Tahir Tawfiq Al-Haj Yusif
7. Farhan Mutlak Al-Juburi

to prosecute them as per articles mentioned in the referral decision.

Via trials' result, after listening to the plaintiffs' testimonies, prosecution and defense witnesses, and reviewing the huge number of documents, files, compact discs (CD's) and audio tapes, and by acknowledging that the court is not bound to charges by which the **Chief of Investigative Judges transferred the convicts, the same court, on 2007 February 20, directed to each convict a charge paper, excluding Convict Saddam Husayn Al-Majid who had been executed as per First Criminal Court's verdict in Al-Dujayl case, approved to be irrevocable by cassation court.**Chief of Judges

005240

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

العدد: ١ / ج ثانية / ٢٠٠٦
التاريخ: ٩ / جمادى الآخرة / ١٤٢٨
المصادف: ٢٤ / ٦ / ٢٠٠٧

المحكمة الجنائية العراقية العليا
محكمة الجنائيات الثانية
بغداد - العراق

قرار الحكم

السكان المدنيين من الرجال والنساء والأطفال ونقلهم إلى مكتب تنظيم الشمال ،
ومن ثم إلى المعتقلات الرهيبة المذكورة أنفاً .
عاشراً- ماذا حصل بعد عمليات الأنفال ؟ في شهر آذار من العام ١٩٩١ أجريت
مفاوضات بين رموز النظام السابق، وعلى رأسهم المتهم (علي حسن المجيد)،
وبين الجبهة الكردستانية. ومن بين الموضوعات التي طرحت في تلك
المفاوضات موضوع المحتجزين من الشعب الكوردي في عمليات الأنفال
الثمانية. وبعد سجال طويل حول هذه الموضوعات، سأل الشاهد (محمود
عثمان) المتهم (علي حسن المجيد) عن أكثر من مئة وثمانين ألف مواطن
كوردي، فأجاب المتهم (علي حسن المجيد) بانفعال- حسب ادعاء الشاهد
المذكور- إن أولئك المحتجزين لا يزيد عددهم عن المائة ألف شخص فقط!!!.

المتهمون المحالون :

أحال السيد رئيس قضاة التحقيق في المحكمة الجنائية العراقية العليا بقراره المرقم
(٢) في ٢٠٠٦/٤/٢ إلى هيئة المحكمة (المحكمة الجنائية الثانية) المتهمين كل من
الموقوف سلطان هاشم أحمد، والمرجئ تقرير مصيرهم كل من علي حسن المجيد
وصدام حسين المجيد وصابر عبد العزيز وحسين رشيد محمد وظاهر توفيق الحاج
يوسف وفرحان مطلق صالح، لأجراء محاكمتهم بدعوى غير موجزة استناداً لأحكام
المادة (١٨/ثالثاً) من قانون المحكمة الجنائية العراقية العليا رقم (١٠) لسنة ٢٠٠٥،
والقاعدة (٣٢/أولاً) من قانون الإجراءات وجمع الأدلة الجنائية رقم (١٠) لسنة ٢٠٠٥،

الرئيس
رئاسة محكمة
الجنائيات الثانية
Iraqi High Tribunal

(٩٦٣-٥٥)

005241

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

العدد: ١ / ج ثانية / ٢٠٠٦
التاريخ: ٩ / جمادى الآخرة / ١٤٢٨
المصادف: ٢٤ / ٦ / ٢٠٠٧

المحكمة الجنائية العراقية العليا
محكمة الجنايات الثانية
بغداد - العراق

قرار الحكم

والمواد (١٣٠ / ب و ١٣١ و ١٣٢ أ - ٢ و ١٣٤ / أ) من قانون أصول المحاكمات الجزائية رقم (٢٣) لسنة ١٩٧١ المعدل، وفقاً للتفصيل الآتي وحسبما ورد في قرار الإحالة:

١- المتهم سلطان هاشم احمد: أشغل منصب قائد عمليات الأنفال الأولى ثم قائد الفيلق الأول وأنيطت به مسؤولية مباشرة بتنفيذ عمليات الأنفال وهدم القرى والدور ودور العبادة وحرقتها وهجير السكان المدنيين خلاف القانون وتسليمهم إلى مقر مكتب تنظيم الشمال، وان الجرائم المنسوبة إليه هي:

أ- جريمة الإبادة الجماعية: استناداً لأحكام المادة (١١) /أولاً- الفقرات أ-ج منها) وبدلالة المادة (١٥) من قانون المحكمة.
ب- جرائم ضد الإنسانية: استناداً لأحكام المادة (١٢) /أولاً الفقرات أ-ج-٥ منها) وبدلالة المادة (١٥) من قانون المحكمة.
ج- جرائم حرب: استناداً لأحكام المادة (١٣) /رابعاً - الفقرات أ-د-ل منها) وبدلالة المادة (١٥) من قانون المحكمة.

٢- المتهم علي حسن المجيد: هو من أقارب المتهم صدام حسين المجيد، وقد شغل منصب مسؤول مكتب تنظيم الشمال خلال فترة حملات الأنفال، ويعد المسؤول عن إصدار الأوامر المباشرة بالقتل إلى القوات العسكرية ومنع الزراعة والإعدامات وذلك وفقاً للأمر المرقم (٤٠٠٨) في ٢٠/حزيران/١٩٨٧، وان الجرائم المنسوبة إليه هي:

أ- جريمة الإبادة الجماعية: استناداً لأحكام المادة (١١) -أولاً- الفقرات أ-ج منها) وبدلالة المادة (١٥) من قانون المحكمة



الرئيس

(٥٦-٩٦٣)

00-202

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

العدد: ١ / ج ثانية / ٢٠٠٦
التاريخ: ٩ / جمادى الآخرة / ١٤٢٨
المصادف: ٢٤ / ٦ / ٢٠٠٧

المحكمة الجنائية العراقية العليا
محكمة الجنايات الثانية
بغداد - العراق

قرار الحكم

ب- جرائم ضد الإنسانية: استناداً لأحكام المادة (١٢-أولاً-الفقرات أ-ج-٥ منها) وبدلالة المادة (١٥) من قانون المحكمة.

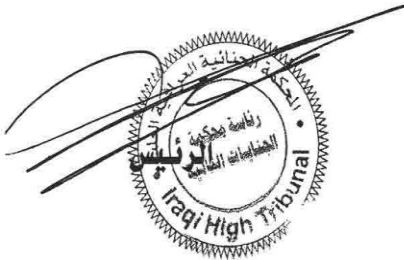
ج- جرائم الحرب: استناداً لأحكام المادة (١٣-رابعاً-الفقرات أ-د-ل منها) وبدلالة المادة (١٥) من قانون المحكمة.

٣- المتهم صدام حسين المجيد: شغل منصب رئيس مجلس قيادة الثورة المنحل، والقائد العام للقوات المسلحة المنحلة، وقد أصدر القرار (١٦٠) لسنة ١٩٨٧ ومنح المتهم علي حسن المجيد كافة صلاحيات رئيس الجمهورية وقيادة الحزب والقيادة العامة للقوات المسلحة لتنفيذ أهداف القيادة في المنطقة الشمالية، وقد أصدر الأوامر بتنفيذ عمليات الأنفال استناداً للصلاحيات الممنوحة إليه، وكذلك أمر باستخدام العتاد الخاص (السلاح الكيماوي) الذي لا يستخدم إلا بناءً على أمر حسبما جاء في التسجيل الصوتي المنسوب إليه. وان الجرائم المنسوبة إليه هي:

أ- جريمة الإبادة الجماعية: استناداً لأحكام المادة (١١-أولاً-الفقرات أ-ج) وبدلالة المادة (١٥) من قانون المحكمة.

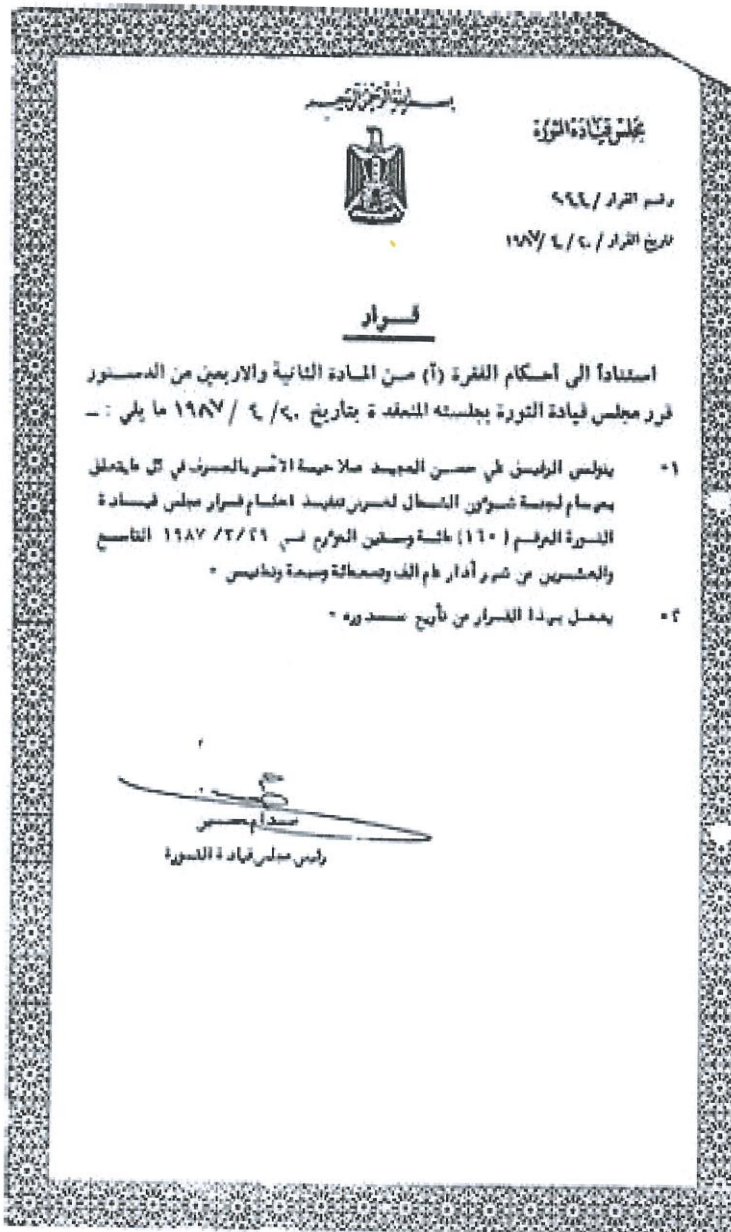
ب- جرائم ضد الإنسانية: استناداً لأحكام المادة (١٢-أولاً-الفقرات أ-ج-٥) وبدلالة المادة (١٥) من قانون المحكمة.

ج- جرائم حرب: استناداً لأحكام المادة (١٣-رابعاً-الفقرات أ-د-ل) وبدلالة المادة (١٥) من قانون المحكمة.



(٥٧-٩٦٣)

Appendix No. (3) RCC Decree no. 244.



In the name of God, most Gracious, Most Merciful

Republic of Iraq

Revolutionary Command Counsel

Decree No.244

Date: 20 April 1987

Subject: Decree

Based paragraph (a) of article 42 of the Iraqi Constitution, The Revolutionary Command Council decided during its meeting of 20th April 1987 that:

- 1- Ali Hassan Al Majid the Northern Bureau of Ba'ath Party has been appointed to assume total authority to carry out RCC decree no.160 of 29 March 1987.
- 2- This decree should be implemented officially from its publication...

Signed By

Saddam Hussein

Appendixes Chapter 3

Appendix No (1) Articles from the Treaty of Sèvres

Articles No. 62, 63 and 64 of the Treaty of Sèvres 10th August 1920

Article 62

A Commission sitting at Constantinople and composed of three members appointed by the British, French and Italian Governments respectively shall draft within six months from the coming into force of the present Treaty a scheme of local autonomy for the predominantly Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia, as defined in Article 27.II (2) and (3). If unanimity cannot be secured on any question, it will be referred by the members of the Commission to their respective Governments. The scheme shall contain full safeguards for the protection of the Assyro-Chaldeans and other racial or religious minorities within these areas, and with this object a Commission composed of British, French, Italian, Persian and Kurdish representatives shall visit the spot to examine and decide what rectifications, if any, should be made in the Turkish frontier where, under the provisions of the present Treaty, that frontier coincides with that of Persia.

Article 63

The Turkish Government hereby agrees to accept and execute the decisions of both the Commissions mentioned in Article 62 within three months from their communication to the said Government.

Article 64

If within one year from the coming into force of the present Treaty Kurdish peoples within the areas defined in Article 62 shall address themselves to the Council of the League of Nations in such a manner as to show that a majority of the population of these areas desires independence from Turkey, and if the Council then considers that these peoples are capable of such independence and recommends that it should be granted to them, Turkey hereby agrees to execute such a recommendation, and to renounce all rights and title over these areas.

The detailed provisions for such renunciation will form the subject of a separate agreement between the Principal Allied Powers and Turkey.

If and when such renunciation takes place, no objection will be raised by the Principal Allied Powers to the voluntary adhesion to such an independent Kurdish State of the Kurds inhabiting that part of Kurdistan which has hitherto been included in the Mosul vilayet.

Appendix No (2) Peace Agreement of 11 March 1970

[Extracts taken from the translation provided by the Ministry of Culture and Information of Iraq)

The Revolutionary Council, in a statement issued on 11 March 1970, announced a complete and constitutional settlement of the Kurdish issue. The President of the Republic and Chairman of the RCC made the historic announcement over Baghdad television and radio networks. The following are extracts from the statement:

The Revolutionary Command Council affirms its determination to deepen and broaden all effective measures for achieving the full means of cultural and economic resurgence and general development in the Kurdish area, seeking in the first place to enable the Kurdish masses to exercise their legitimate rights and assure their actual participation in earnest endeavours to build a homeland and struggle for the fulfilment of its major nationalist goals. Thereupon, the Revolutionary Command council has resolved on the following:

1. Kurdish language shall be alongside with the Arabic language, the official language in areas populated by a Kurdish majority. The Kurdish language shall be the language of instruction in these areas. Arabic language shall be taught in all schools, where Kurdish language is the language of instruction while the Kurdish language shall be taught in Schools throughout Iraq as a second language within the limits stipulated by law.
2. The sharing of our Kurdish brothers in Government and non-discrimination between the Kurds and others in the assumption of public offices including

sensitive and important posts in the state such as cabinet portfolios, army command, etc., have been and still remain among the important objectives which the Revolutionary Government seeks to achieve. The Revolutionary Government, in approving this principle, stresses the necessity of working for its fulfilment in an equitable ratio with due regard to the principle of efficiency the proportionate distribution of inhabitants and the inequities which had befallen our Kurdish brothers in the past.

3. In view of the state of backwardness, which in the past afflicted the Kurdish nationality from the cultural and educational standpoints, a plan shall be worked out to make good that backwardness.

A- Speeding up the implementation of the resolution of the Revolutionary Command Council concerning the language and the cultural right of the Kurdish people and placing under the jurisdiction of the Directorate General of Kurdish Culture and Information the task of preparing and steering radio and television programs concerning Kurdish national issues.

B- Reinstating all students who were dismissed or were compelled to leave the school on account of the circumstances of violence in the area regardless of their ages or producing a convenient remedy for their problem.

C- Building more schools in the Kurdish area, elevating the standards of schooling and education and admitting in just proportions Kurdish students to universities, military colleges, educational missions and fellowship.

4. In the administrative units, populated by a Kurdish majority, officials shall be from among Kurds or from among persons well versed in the Kurdish language provided the required number is available. Appointment shall be made of the principal officials - Governor, Qaimaqam, Police Commandant,

Security Director, etc. Work will promptly commence to develop state machineries in the area in consultation with the High Committee supervising the implementation of this statement in a manner assuring such implementation and cementing national unity and stability in the area.

5. The Government concedes to the Kurdish people its right to set up student youth, women and teachers organization of its own such organizations to become affiliated in the corresponding national Iraqi organizations.

A- The operative period of paras (1) and (2) of the RCC's resolution. NO.59 dated 5 August 1968, shall be extended right up to the date of the issuance of this statement and shall extend to all those that took part in the acts 'of violence in the Kurdish area.

B- Workers, officials and employees both civilian and military, shall return to service without this being affected by cadre restrictions. The civilians among them shall be put to use in the Kurdish area within the limits of its requirements.

C- A body of specialists shall be constituted to work for uplifting the Kurdish area in all spheres as quickly as possible and for compensating it for what has descended upon it in the past number of years. An adequate budget is to be set aside for this purpose. The body in question shall operate under the jurisdiction of the Ministry of Northern Affairs.

D- The economic plan shall be drawn up in such a way as to assure equal development to various parts of Iraq with due attention to the Kurdish area.

E- Pension salaries shall be made for the families of those who met with martyrdom in the regrettable circumstances of hostilities from among the

members of the Kurdish armed movement and others as well as to the persons who became disabled or deformed as a result of those conditions. This is to be enacted by a special legislation on the pattern of other legislations in force.

F- Speedy efforts shall be made to provide relief to stricken and needy persons through the accomplishment of housing projects and others assuring work to the unemployed. Appropriate in kind and cash subsidies shall also be made available and reasonable compensation offered to those stricken persons who need help. This all is to be entrusted to the High Committee. Excluded from this shall be the persons covered by the above paras.

6. The inhabitants of Arab and Kurdish villages shall be restored to their former places of habitation. As to the villagers of areas where housing units cannot be set up and which are taken over by the Government for public utility purposes under law, they shall be resettled in neighbouring areas and duly compensated.

7. Speedy measures shall be taken to implement the Agrarian Reform law in the Kurdish area and amending it in such a manner as guarantees the liquidation of feedlots relations and the acquisition of appropriate plots of land side by side with waiving for them agricultural taxes accumulating over the years of unfortunate hostilities.

8. It has been agreed to amend the Interim Constitution as follows:

A. The people of Iraq is made up of two principal nationalities; the Arab nationality and the Kurdish nationality. This Constitution confirms the national rights of the Kurdish people and the rights of all minorities within the framework of Iraqi unity.

B. The following para shall be added to Article (4) of the Constitution: the Kurdish language, alongside with the Arabic language, shall be an official language in the Kurdish area.

C. The above shall be confirmed in the Permanent Constitution.

9. The broadcasting station and heavy weapons shall be returned to the Government - this being tied up to the implementation of the final stages of the agreement.

10. A Kurd shall be one of the vice-presidents.

11. The Governorates Law shall be amended in a manner conforming to the substance of this statement.

12. Following the announcement of the statement, necessary measures shall be taken, in consultation with the High Committee supervising its implementation to unify the governorates and administrative units populated by a Kurdish majority in accordance with official census operations yet to be made. The state shall endeavour to develop this administrative unity and deepen and broaden the exercising by the Kurdish people therein of the Sunni of its national rights as a guarantee to its enjoyment of self-rule. Until this administrative unity is achieved, the Kurdish national affairs shall be coordinated through periodical meetings between the High Committee and the governors of the northern area. As the self-rule is to be achieved within the framework of the Iraqi Republic, the exploitation of national riches in the area will naturally be under the jurisdiction of the authorities of this Republic.

13. The Kurdish people shall share the legislative power in a manner proportionate to its population ratio in Iraq.

Kurdish countrymen, these gains scored by the Revolution will be nothing more than a step for the full achievement of your national goals in the shade of this beloved homeland and the unity of its great people. History will bear witness that you did not have and never will have a sincere brother and dependable ally as the Arab people. **Revolutionary Command Council 11**
March 1970

Appendixes Chapter 5

Appendix no. (1). A. Iraqi Council of Ministers Resolution no. 426 of 2010

Resolutions No. 426 of 2010

Resolution of the Council of Ministers No. 426 of 2010

Pursuant to the urgent presentation of His Excellency the Prime Minister during the meeting of the Council of Ministers, and in accordance with Article 11 of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended regarding crimes of Genocide;

The Council of Ministers has resolved at its forty-eighth ordinary session, convened on 8/12/2010, to approve the issuance of the following statement:

First: The Council of Ministers welcomes the decision of the Supreme Iraqi Criminal Tribunal, issued on 29/11/2010, ruling that the case of 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 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.)

Ali Mohsin Ismail
Secretary General of the Council of Ministers
9/12/2010

Appendix no.(1) B. Resolutions No (6)of 2012 from the Presidency of Iraq

In the Name of the People
Presidency of the Republic

Pursuant to the Council of Representatives' Resolution, in accordance with the provisions of Article 61(I) and Article 73(III) of the Constitution:

The President of the Republic resolved on 8/2/2012

To issue the following resolution:

Resolution
No. 6 of 2012

The sufferings of the Faylee Kurds, in pursuance of the decision of the Supreme Iraqi Criminal Tribunal, shall be deemed a crime of Genocide, in all that this formation signifies.

Jalal Talabani
President of the Republic

Appendix no. (2) 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.

بسم الله الرحمن الرحيم

معاونية أمن القناة

العدد : 10492

التاريخ: 1987-10-18

الى: مديرية أمن مدينة صدام – س 46

برقيتكم 28909 في 17-10-1987 .

أدناه المعلومات المتوفرة عن موضوعي بحث برقيتكم أعلاه: المجرم المقبور سمير مير علي غلام –
معلوماتنا تشير بأنه القية القبض على جميع افراد عائلته من قبل الجهات الأمنية عام 1980 و هم كل من :

نور علي غلام

أمير مير علي

فريد مير علي

فائق مير علي

لطيفة مير علي

سهام مير علي

و اعدموا جميعا كونهم عائلة المجرم سمير مير علي غلام الذي قام باجريمة البشعة ضد طلبة جامعة
المستصرية حيث قام بالقاء الرمانات اليدوية علي التجمع

نقب الامن

ضابط أمن القناة

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الجمهورية العراقية
ديوان الرئاسة
العدد / ٥٨ / ٧ / ٤٤٨
التاريخ / ١٩٨٦ / ٢ / ٥
وزارة الداخلية المنكب الحادي
٥٨ / قرار

قرار الاستعداد بتوفير التجهيز خارج القطر حتى ملت
بمعلم التوفير لابقاد نقط الحبيسة العراقية عنهم
التي تاتي -
١- انما يتم تزويد معاديه
٢- تكونهم تفكلا عنصريه
٣- بنوته في التائفات المفروضه هذا الحزب والثورة
ويكونه السفير للبلد الذي ينتمون اليه اواي بلد اخر
بصين اتخاذ ما يقتضيه مع التقدير

احمد صبيح
رئيس ديوان الرئاسة

صبا الاعلى



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 who were not deported before and 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 the place where they are originally from or anywhere else, Please activate this decree ASAP with thanks.

Ahmad Hussein

President of Republic Diwan

Appendix No (4) RCC Decree no. 666 of 7 May 1980

بسم الل الرحمن الرحيم

رقم القرار: 666

مجلس
قيادة الثورة

أستنادا الى احكام الفقرة (أ) من المادة الثانية و الأربعين من الدستور المؤقت قرر مجلس قيادة الثورة بجلسته المنعقدة بتاريخ 7-5-1980:-

- 1- تسقط الجنسية العراقي عن كل عراقي من أصل اجنبي اذا تبين عدم ولائه للوطن و الشعب و الأهداف القومية و الاجتماعية العليا للثورة.
- 2- على وزير الداخلية ان يأمر بأبعاد كل من أسقطت عنه الجنسية العراقية بموجب الفقرة (1) ما لم يقنع بناء على أسباب كافية بأن بقاءه في العراق أمر تستدعيه ضرورة قضائية أو قانونية أو حفظ حقوق الغير الموثقة رسميا.
- 3- يتولى وزير الداخلية تنفيذ هذا القرار.

صدام حسين
رئيس مجلس قيادة الثورة

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 on its meeting of 7 May 1980 decided:

- 1) Any Iraqi from 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 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 or for protecting the rights of others to stay in Iraq.
- 3) The Minister of Interior is in charge of the implementation of this decree.

Signed by Saddam Hussein the President of the RCC.

Appendix No (5) Sadoon Shaker Mehmoud Verdict.

The Defendant Sa'doon Shaker Mahmoud

Court Ruling

The First Instance Criminal Court formed in the Supreme Iraqi Criminal Tribunal, presided over by Judge Sa'ad Yahiya Abdul Wahid and authorised to rule on behalf of the Iraqi people, announces its ruling as follows:

1. The Court finds the defendant, Sa'doon Shaker Mahmoud guilty of Genocide, in accordance with Articles 11(I)(1), Article 15(I)(II)(h)(III)(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Articles 406(1)(a), 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969 and by virtue of Article 182(a) of the Iraqi Rules of Criminal Procedure No.23 of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

2. The Court finds the defendant Sa'doon Shaker Mahmoud guilty of Forced Displacement of a Civilian Population which is a Crime against Humanity, in accordance with Articles 12(I)(d), 15(I)(II)(III)(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Articles 421, 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and Article 182(a) of the Iraqi Rules of Criminal Procedure No. 23 of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publically announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

3. The Court finds the defendant, Sa'doon Shaker Mahmoud guilty of Imprisonment and Severe Deprivation of Physical Liberty which is a Crime against Humanity, in accordance with Articles 12(I)(e), 15(I)(II)(c)(III)(IV) of the Supreme Iraqi Criminal Tribunal Law No.10 of 2005, Articles 322, 33(1) and 34(b) of the Iraqi Penal Code No.111 of 1969 as amended, the Appended Articles 47(1) (2), 48 and 49 of the same Penal Code, and the provisions of Article 182(a) of the Iraqi Rules of Criminal Procedure No.23 of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

4. The Court finds the defendant, Sa'doon Shaker Mahmoud guilty of Torture, which is a Crime against Humanity, in accordance with the provisions of Article 12(I)(f(, 15(I)(II)(c)(III)(IV) of the Iraqi Supreme Criminal Tribunal Law No. 10 of 2005, as amended, Articles 333, 33(1) and 34(b), the Appended Articles 47(1) (2) 48 and 49 of the Iraqi Penal Code No. 111 of

1969 as amended, and according to the provisions of Article 182(a) of the Iraqi Rules of Criminal Procedure No.23 of 1971. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

5. The Court finds the defendant, Sa'doon Shaker Mahmoud guilty of Persecution against any specific community or specific group on political, racial, national, ethnic, cultural, religious, or other grounds that are impermissible under international law, which is Crime against Humanity, in accordance with the provisions of Articles 12(I) (h), Article 15(I)(II)(c)(III)(IV) of the Iraqi Supreme Criminal Tribunal Law No. 10 of 2005 as amended, and Article 27 of the same Act. In addition, the provisions of the Articles 33(1) and 34(b), the Appended Articles 47(1) (2), 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and the provisions of Article 182(a) of the Iraqi Rules of Criminal Procedure No.23 of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

6. The Court finds the defendant Sa'doon Shaker Mahmoud guilty of other Inhumane acts of a similar character intentionally causing great suffering, or serious physical or mental injury which is a Crime against Humanity, in accordance with Articles 12(I)(j), Article 15(I)(II)(c)(III)(IV) of the Iraqi Supreme Criminal Tribunal Law No. 10 of 2005 as amended, Articles 451, 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and the provisions of Article 182(a) of the Iraqi Rules of Criminal Procedure No.23 of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

Judicial Sentence against the Convicted Sa'doon Shaker Mahmoud

The First Instance Criminal Court formed in the Supreme Iraqi Criminal Tribunal on 29 November 2010, presided over by Judge Sa'ad Yahiya Abdul Wahid and authorised to rule on behalf of the Iraqi people, announces its ruling as follows:

- 1- In the convicted Sa'doon Shaker Mahmoud's presence, the Court has sentenced him to death by hanging for the offence of Genocide, in accordance with the provisions of Article 11(I)(a), Article 15(I)(II)(c)(III)(IV) of the Iraqi Supreme Criminal Tribunal Law No. 10 of 2005 as amended and the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No. 111 of 1969 as amended, his sentence was determined according to Article 406(1)(a) of the same Act. This sentence is unanimous, made in the presence of the convicted and

subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

- 2- In the convicted Sa'doon Shaker Mahmoud's presence, the Court has sentenced him to fifteen years in prison for the crime of Forced Displacement of a Civilian Population, which is a Crime against Humanity, in accordance with Article 12(I)(d), Article 15(I)(II)(c)(III)(IV) of the Iraqi Supreme Criminal Tribunal Law No. 10 of 2005 as amended and the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No. 111 of 1969 as amended, his sentence was determined according to Article 421 of the same Act. This sentence is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 3- In the convicted Sa'doon Shaker Mahmoud's presence, the Court has sentenced him to seven years in prison for the crime of Imprisonment or other Severe Deprivation of Physical Liberty in violation of fundamental rules of international law, which is a Crime against Humanity, in accordance with Article 12(I)(e), Article 15(I)(II)(c)(III)(IV) of the Supreme Iraqi Criminal Tribunal Law No.10 of 2005 as amended, and the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No. 111 of 1969 as amended, his sentence was determined according to Article 322 of the same Act. This sentence is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 4- In the convicted Sa'doon Shaker Mahmoud's presence, the Court has sentenced him to seven years in prison for the crime of Torture, which is a Crime against Humanity, in accordance with Article 12(I)(f) (, Article 15(I)(II)(c) (III) (IV) of the Iraqi Supreme Criminal Tribunal Law No. 10 of 2005, as amended, and the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No. 111 of 1969 as amended, his sentence was determined according to Article 322 of the same Act. This sentence is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 5- In the convicted Sa'doon Shaker Mahmoud's presence, the Court has sentenced him to six years in prison for the crime of Persecution, which is a Crime against Humanity, in accordance with the provisions of Article 12(I)(h), Article 15(I)(II)(c) (III)(IV) of the Iraqi Supreme Criminal Tribunal Law No. 10 of 2005 as amended, his sentence was determined according to Article 27 of the same Act, and the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended. This sentence is unanimous, made in the presence of the

convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

- 6- In the convicted Sa'doon Shaker Mahmoud's presence, the Court has sentenced him to ten years in prison for other Inhumane acts listed as Crimes against Humanity, in accordance with Article 12/(I)(j), Article 15(I)(II)(c) (III)(IV) of the Iraqi Supreme Criminal Tribunal Law No. 10 of 2005 as amended, and the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, his sentence was determined according to Article 451 of the same Act. This sentence is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 7- The most severe penalty, the death penalty, shall be executed against the convicted, Sa'doon Shaker Mahmoud, pursuant to Article 142 of the Iraqi Penal Code No.111 of 1969 as amended.
- 8- The period of detention for the convicted, Sa'doon Shaker Mahmoud, was not considered, since he was awaiting the verdict in this case, and was in detention for another case.
- 9- The convicted, Sa'doon Shaker Mahmoud, was informed that all the Court's case records and its rulings will be sent to the Appellate Board of the Supreme Iraqi Criminal Tribunal within 30 days, pursuant to Article 224 of the Iraqi Rules of Criminal Procedure No. 23 of 1971, as amended.

This sentence is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

Appendix No. (6) Mizban Khodr Hadi Verdict

The Defendant Mizban Khodr Hadi

Court Ruling

The First Instance Criminal Court formed in the Supreme Iraqi Criminal Tribunal, presided over by Judge Sa'ad Yahiya Abdul Wahid and authorised to rule on behalf of the Iraqi people, announces its ruling as follows:

- 1- The Court finds the defendant Mizban Khodr Hadi guilty of Genocide, in accordance with Articles 11(I)(1), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Articles 406(1)(a), 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969 and by virtue of Article 182 (a) of the Iraqi Rules of Criminal Procedure No.23 of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publically announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 2- The Court finds the defendant Mizban Khodr Hadi guilty of Forced Displacement of a Civilian Population, which is a Crime against Humanity, in accordance with Articles 12(I)(d), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Articles 421, 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and Article 182(a) of the Iraqi Rules of Criminal Procedure No.(23) of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publically announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 3- The Court finds the defendant Mizban Khodr Hadi guilty of Imprisonment and Severe Deprivation of Physical Liberty which is a Crime against Humanity, in accordance with Articles 12(I)(e), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, Articles 322, 33(1) and (34)(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended and the provisions of Article 182(a) of the Iraqi Rules of Criminal Procedure No.(23) of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 4- The Court finds the defendant Mizban Khodr Hadi guilty of Torture which is a Crime against Humanity, in accordance with Articles 12(I)(f), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Articles 333, 33(1) and 34(b), the Appended

Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and according to the provisions of Article 182(a) of the Iraqi Rules of Criminal Procedure No.(23) of 1971, as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

5- The Court finds the defendant Mizban Khodr Hadi guilty of Persecution against any specific community or specific group on political, racial, national, ethnic, cultural, religious, or other grounds that are impermissible under international law, which is Crime against Humanity, in accordance with the provisions of Articles 12(I)(h) , 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, and sets the sentence in accordance with Article 27 of the same Law. In addition, the provisions of the Articles 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and the provisions of Article 182 (a) of the Iraqi Rules of Criminal Procedure No.(23) of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010(corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

6- The Court finds the defendant Mizban Khodr Hadi guilty of other Inhumane acts of a similar character intentionally causing great suffering, or serious physical or mental injury which is a Crime against Humanity, in accordance with Articles 12(I)(j), 15(I)(II)(III)(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, Articles 451, 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969, and Article 182(a) of the Iraqi Rules of Criminal Procedure No.(23) of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

Judicial Sentence Against the Convicted Mizban Khodr Hadi

The First Instance Criminal Court formed in the Supreme Iraqi Criminal Tribunal on 29 November 2010, presided over by Judge Sa'ad Yahiya Abdul Wahid and authorised to rule on behalf of the Iraqi people, announces its ruling as follows:

1. In the convicted Mizban Khodr Hadi's presence, the Court has sentenced him to death by hanging for the crime of Genocide, in accordance with Articles 11(I)(a), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Appended Articles 47, 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and sets the

sentence in accordance with Article 406(1)(a) of the same Act. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

2. In the convicted Mizban Khodr Hadi's presence, the Court has sentenced him to fifteen years in prison for the crime of Forced Displacement of a Civilian Population which is a Crime against Humanity, in accordance with Articles 12(I)(d), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Appended Articles 47, 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and sets the sentence in accordance with Article 421 of the same Act. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
3. In the convicted Mizban Khodr Hadi's presence, the Court has sentenced him to seven years in prison for the crime of Imprisonment and Severe Deprivation of Physical Liberty in violation of fundamental rules of international law, which is a Crime against Humanity, in accordance with Articles 12(I)(e), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and sets the sentence in accordance with Article 322 of the same Code. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
4. In the convicted Mizban Khodr Hadi's presence, the Court has sentenced him to seven years in prison for the crime of Torture which is a Crime against Humanity, in accordance with Articles 12(I)(f), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Articles 333, 33(1) and 34(b), the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and sets the sentence in accordance with Article 333 of the same Act. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
5. In the convicted Mizban Khodr Hadi's presence, the Court has sentenced him, to six years in prison for the crime of Persecution which is Crime against Humanity, in accordance with the provisions of Articles 12(I)(h), 15(I)(II)(c)(III)(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended and sets the sentence in accordance with Article 27 of the same Law and in terms of the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was

publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

6. In the convicted Mizban Khodr Hadi's presence, the Court has sentenced him to ten years in prison for committing the crime of other Inhumane acts which is a Crime against Humanity, in accordance with Articles 12(I)(j), 15 (IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No.111 of 1969 as amended, and sets the sentence in accordance with Article 451 of the same Code. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 143).
7. The most severe penalty, the death penalty shall be executed against the convicted Mizban Khodr Hadi pursuant to Article 142 of the Iraqi Penal Code No.111 of 1969 as amended.
8. The period of the convicted Mizban Khodr Hadi's detention was not taken into consideration since he was awaiting the verdict in this case, and was in detention for another case
9. The convicted Mizban Khodr Hadi shall be informed that all the records and Rulings issued in this case will be sent to the Appellate Board at the Supreme Iraqi Criminal Tribunal within a period of 30 days in compliance with Article 224 of the Iraqi Rules of Criminal Procedure No.23 of 1971 as amended.

Appendix No. (7) Aziz Saleh Hassan.Verdict

This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 2

The Defendant Aziz Saleh Hassan Court Ruling

The First Instance Criminal Court formed in the Supreme Iraqi Criminal Tribunal, presided over by Judge Sa'ad Yahiya Abdul Wahid and authorised to rule on behalf of the Iraqi people, announces its ruling as follows:

- 1- The Court finds the defendant Aziz Saleh Hassan guilty of Genocide, in accordance with Article (11)(I)(1), Article 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Articles 406(1)(a), 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969 and by virtue of Article 182(a) of the Iraqi Rules of Criminal Procedure No.23 of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly

announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

- 2- The Court finds the defendant Aziz Saleh Hassan guilty of Forced Displacement of a Civilian Population which is a Crime against Humanity, in accordance with Articles 12(I)(d), Article 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Articles 421, 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969, as amended, and Article 182(a) of the Iraqi Rules of Criminal Procedure No.23 of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publically announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 3- The Court finds the defendant Aziz Saleh Hassan guilty of Imprisonment and Severe Deprivation of Physical Liberty which is a Crime against Humanity, in accordance with Articles 12(I)(e), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, Articles 322, 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No. 111 of 1969, as amended, and the provisions of Article 182(a) of the Iraqi Rules of Criminal Procedure No.23 of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 4- The Court finds the defendant Aziz Saleh Hassan guilty of Torture which is a Crime against Humanity, in accordance with Articles 12(I)(f), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Articles 333, 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No.111 of 1969, as amended, and according to the provisions of Article 182(a) of the Iraqi Rules of Criminal Procedure No.(23) of 1971, as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 5- The Court finds the defendant Aziz Saleh Hassan guilty of Persecution against any specific community or specific group on political, racial, national, ethnic, cultural, religious, or other grounds that are impermissible under international law, which is Crime against Humanity, in accordance with the provisions of Articles 12(I)(h) , 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended and Article 27 of the same Act. In addition, the provisions of the Articles 33(1), 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No. 111 of 1969, as amended, and the

provisions of Article 182(a) of the Iraqi Rules of Criminal Procedure No. (23) of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 143).

- 6- The Court finds the defendant Aziz Saleh Hassan guilty of other Inhumane acts of a similar character intentionally causing great suffering, or serious physical or mental injury which is a Crime against Humanity, in accordance with Articles 12(I)(j), 15 (IV) of the 2005 of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, Articles 451, 33(1) and 34(b), the Appended Articles 47(1)(2), 48 and 49 of the Iraqi Penal Code No. 111 of 1969 and Article 182(a) of the Iraqi Rules of Criminal Procedure No. (23) of 1971 as amended. This ruling is unanimous, made in the presence of the defendant and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

Judicial Sentence against the Convicted Aziz Saleh Hassan

The First Instance Criminal Court formed in the Supreme Iraqi Criminal Tribunal on 29 November 2010, presided over by Judge Sa'ad Yahiya Abdul Wahid and authorised to rule on behalf of the Iraqi people, announces its ruling as follows:

In the convicted Aziz Saleh Hassan's presence, the Court has sentenced him to death by hanging for the crime of Genocide, in accordance with Articles 11(I)(a), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of Appended Articles 47, 48 and 49 of the Iraqi Penal Code No. 111 of 1969 and Article 406(1)(a) of the same Act. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

- 1- In the convicted Aziz Saleh Hassan's presence, the Court has sentenced him to fifteen years in prison for the crime of Forced Displacement of a Civilian Population which is a Crime against Humanity, in accordance with Articles 12(I)(d), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No. 111 of 1969 as amended and sets the sentence in accordance with Article 421 of the same Act. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

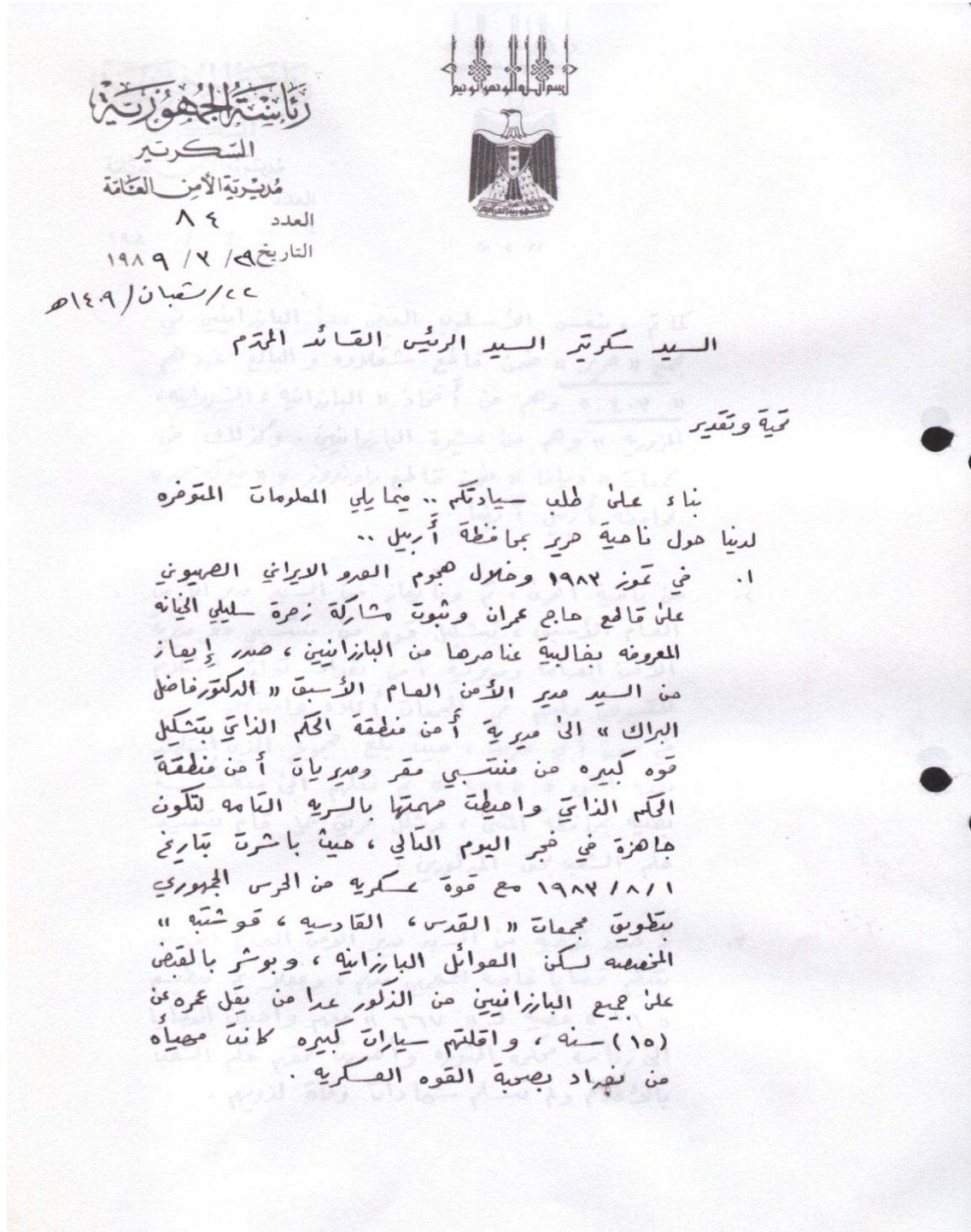
- 2- In the convicted Aziz Saleh Hassan's presence, the Court has sentenced him to seven years in prison for the crime of Imprisonment and Severe Deprivation of Physical Liberty which is a Crime against Humanity, in accordance with Articles 12(I)(e), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No. 111 of 1969 as amended, and sets the sentence in accordance with Article 322 of the same Code. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 3- In the convicted Aziz Saleh Hassan's presence, the Court has sentenced him to seven years in prison for the crime of Torture which is a Crime against Humanity, in accordance with Articles 12(I)(f), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No. 111 of 1969 as amended and sets the sentence in accordance with Article 333 of the same Code. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 4- In the convicted Aziz Saleh Hassan's presence, the Court has sentenced him to six years in prison for the crime of Persecution which is Crime against Humanity, in accordance with the provisions of Articles 12(I)(h), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended and sets the sentence in accordance with Article 27 of the same Law and in terms of Articles 47, 48 and 49 of the Appended Articles of the Iraqi Penal Code No. 111 of 1969 as amended. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).
- 5- In the convicted Aziz Saleh Hassan's presence, the Court has sentenced him to ten years in prison for committing the crime of other Inhumane acts which is a Crime against Humanity, in accordance with Articles 12(I)(j), 15(IV) of the Supreme Iraqi Criminal Tribunal Law No. 10 of 2005 as amended, the provisions of the Appended Articles 47, 48 and 49 of the Iraqi Penal Code No. 111 of 1969 as amended, and sets the sentence in accordance with Article 451 of the same Act. This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November 2010 (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

- 6- The most severe penalty, the death penalty shall be carried out against the convicted Aziz Saleh Hassan pursuant to Article 142 of the Iraqi Penal Code No. 111 of 1969 as amended.
- 7- The period of detention for the convicted Aziz Saleh Hassan was not considered, since he was awaiting the verdict in this case, and was in detention for another case.
- 8- The convicted Aziz Saleh Hassan shall be informed that all the records and the Rulings issued in this case will be sent to the Appellate Board at the Supreme Iraqi Criminal Tribunal in a period of 30 days by virtue of the provisions of Article 224 of the Iraqi Rules of Criminal Procedure No. 23 of 1971 as amended.

This ruling is unanimous, made in the presence of the convicted and subject to appeal. It was publicly announced on 29 November (corresponding to the Hijri Date 23 Dhu al-Hijjah 1431).

Appendix Chapter 6

Appendix no. (1) Document 84



رئاسة الجمهورية

السكرتير

مديرية الأمن الثالثة

العدد

التاريخ / / ١٩٨



« « »

كما تمّ ونفسي الأسلوب العقبى على البارزانيين في
مجمع « سرر » ضمن قاطع شملوه و البالغ عددهم
« ٤٠٣ » وهم من أفراد « البارزانية ، الشروانية ،
المزورية » وهم من عشيرة البارزانيين . وكذلك في
مجمعات « ديانا » ضمن قاطع راوندوز و « ميركه سرر »
بمحافظة أربيل أيضاً .

١٠٠ من ناحية اخرى ، تمّ وبأيعاز من السيد مدير الأمن
العام الأسبق ، تشكيل قوة من منسوبي مقر مديرية
الأمن العامة ومديرية أمن بغداد تولت إستلام
المقبوض عليهم في المجمعات أكله وامثالهم المحبوسين
في جناب أبي غريب ، حيث بلغ مجموع الذين إستلمتهم
هذه القوة « ٥٥٥ » تم نقلهم الى منطقة
بصية بمحافظة المثنى ، وشكل فريق عمل قام بتنفيذ
حكم الشعب بحق المذكورين .

١٠٢ ثم صدر توجيه من السيد مدير الأمن العام الأسبق
بتنظيم قضايا خاصة للمهمين منهم ، وفعلًا تمّ تنظيم
« ١٦ » قضية لـ « ٦٦٧ » منهم واهيلاً القضايا
الى رئاسة محكمة الثورة وأصدرت بحكم حكم الشعب
بالإعدام ولم تسلم شهادان وفاة لذويهم .



رئاسة الجمهورية

السكرتير

مديرية الأمن العامة

العدد

التاريخ / / ١٩٨

« ٢ »

٤. تم تسليم المبالغ التي كانت مجوزة المذكورين والبالغة « ١٩٤٠، ٦٤٨، ١٩٤ » مائة وأربعة وتسعون ألف وستمائة وثمانية وأربعون ديناراً وأربعمائة وأربعون فلماً، واودعت لدى حايات هذه الميريه.

٥. ونظراً لاستمرار تأكيد المجرم معود البارزاني على هذا الموضوع فقد أوعزت رئاسة الجمهورية - السكرتير بكاتبها الرقم ٢٦٥١/ك في ١٩٨٧/٨/٢٤ بتوجيه المسؤولين والدعوى المعنية المعنية بالقضية الكردية الذين من المحتمل الاتصال بهم من خلال طرف ثالث بأن يكون الرد صريحاً وموحد بأن « لا أحد يعرف عنهم شيء سوى قيادة الدولة وان المآله الأساسية أكبر من قضية هذه الموائيل »، وان يعتمد هذا الجواب في الرد على أي إسفار منهم قد يحصل عن مصير هذه الموائيل.

٦. تم مؤمراً القاء القبض على ثمانية أشخاص لهم علامه بالمخربين من كنية حرير ونظمت بحكم قضايا اصوليه ونفذ بحكم حكم الشعب حسب موافقات قيادة مكتب تنظيم الشمال.

رئاسة الجمهورية

السكرتير

مديرية الأمين العامة

العدد

التاريخ / / ١٩٨



« ٤ »

كما تم حجز عائلتين مكونه من أربعة أشخاص « ثلاثة نساء وطفل » كونهن من ذوي المخربين الذين قاموا بتنفيذ عملية تخريبه في الفترة الأخيرة ، ولازالوا رهن الحجز .

٧ . فيما يخص الوضع الأمني لناحية حرير في الوقت الحاضر
تعتبر حرير من المناطق القريبة من مقرات زمر التخريب لوجود طرق تمتد الى هوض باليان شرق حرير ، وطريق باتجاه بازران الذي يسير بمحاذاة جبل حرير وهي نهر الزاب الضخمة ، وتكون حرير من حوالي « ٨٠ » دار تقطنها عشار من السورجيه والجلالينه والمزوريه وعدد من العشيره البارزانيه .

في عام ١٩٧٥ تم إنشاء « مجمع حرير » وذلك بعد اختيار الجيب الصيل ، وتم إسكان البارزانيين فيه والذين تمت إعادتهم من المنطقه الجنوبيه الى حرير ، واصبحت المجمع يضم عشار من البارزانيه والشيروانييه الذي لهم فخذ من البارزانيين ، والمزوريين وباللك ولهروتي ، ويبلغ عدد نفوس المجمع « ٧٠٥٠ » نسمة .
أما المجمع الثاني فهو مجمع « باسره » الذي أنشئ على مقربة من ناحية حرير بمسافة ٤ كم في سنيان ١٩٨٧ بناء على قرار من مكتب تنظيم الشمال بعد إزالة القرى المزوره من المنطقه .



رئاسة الجمهورية

السكرتير

مديرية الأمن العامة

العدد

التاريخ / / ١٩٨

٥٥

وقد تم إكسان عوائل الشبك المرهلين من محافظة نينوا
في هذا المجمع ، واضيف له جميع من بعض قرى المنطقة
المزاليه والعشاري التي تكمن هذا المجمع هي من
الورجيه والحركيه وبالك إضافة الى الشبك ، ويبلغ
عدد نفوس المجمع « ٧٤٠٠ » نسمة .

لقد كانت حريه قبل عمليات الأتقال الأضيره من
القصابات الواهنة وكان المذبون يرددون اليها على
الرغم من تواجد أعداد كبيره من ملي اُفواج الدفاع
الوطني في الناهيه وضواحيها ، وبعد عمليات الأتقال
الخالده هرب المذبون تاركين مقراتهم وامانن تواجدهم
الا انه على الرغم من ذلك فقد كانت هناك جميع
صفيه من زمرة ليلي الخيانة والسيوعيين يرددون
الى المنطقة وقد وقعت بعض الحوادث منها إختيال أحد
مراتب الشرطه الذي قدموا مع عوائل الشبك كحايه
لهم ، وكذلك إختطاف عضو منظمه حريه الرفيق باقي
ليم عيس واطلاق سراحه فيما بعد .

ويجمل عام يقبر الوضع الامني جيد في المنطقه
لوسيا إذا ما تمت السيطرة على المنافذ المهمه المؤديه
الى حريه لقطع دابر التسال ، -



رئاسة الجمهورية

السكرتير

مديرية الأمن العامة

العدد



" ٦ "

التاريخ / / ١٩٨٠

وتعتبر العشيرة البازرائية من العشائر غير الموالية
للجزب والثورة والوطن عبر عشرين السنين ، حيث
أنتها وقفاً ولا تزال ضد وحدة الوطن وكانت بحق
« حيلبي الخيانة » وهي لا تزال تعتبر نفسها العشيرة
اللاشرعية في تمثيل الشعب الكردي ، ويميلونفوسهم
المقد والكراهية ..
الان الوضع الأمني الحالي في المنطقه
جيد جداً ..

رايين الفضل بالاطلاع .. مع التقدير .

مدير الأمن العام

١٩٨٩ / ٢ / ٢٦

١٢ / شبان / ١٩٨٩

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 Haj Umran front and as substantiated the participation of the clique descendants of treason the fraction who are mostly from 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 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 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.

In the same manner more Barzanis from Harir complex in Shaqlawa front were arrested, those included 403 from Barzani, Sherwani and Mizori fraction who are also Barzani clan. More were arrested from Diyana complex in Rawandooz front and "Mergasor" in 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 Baghdad Public Security office to receive the detainees from the previous complexes and others with similar profiles in Abu-Ghareib prison. 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

Orders were followed from Director of General Security to fabricate charges for the above. Total of 667 charges were laid in 16 cases, these cases were referred to the Presidency of the Revolution Court, the verdict was death penalty, and their relatives were not sent death certificates.

- 3- The sum of 194,648,440 dinars was received that was at the possession of these people and was deposited in the accounts of this directorate.
- 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 the Public Security who are in charge of the Kurdish issue in case they were contacted by a third party that the response be one and specified that “nobody knows nothing 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 Balsian basin east of Harir to the road towards Barzan which extends along Harir Mountain to the Great Zab River. Harir consists about 800 houses dwelt by Surchi, Khailani, and Mizori clans and some from Barzani clan.
- 7- Harir complex was built in 1975 after the defeat of the clique of treason, Barzanis were relocated here after their return from south of Iraq. Groups whose villages near the border were destroyed were relocated here as well. The complex included Barzani clan and Sherwani (which is another fraction 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 from the region.
- 8- Deported Shabak families from 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 of 7,400.
- 9- Harir was a vulnerable area before the last Anfal operations, it was frequented by the outlaws despite the fact that a 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 treasons 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 Harir branch, comrade Baqi Saleem Isa.

10-In general the security situation in the region is good especially if the main paths were sealed from being penetrated.

11-The Barzani clan is known for their 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.

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

الجمهورية الجزائرية الديمقراطية الشعبية
السكرتير

١٠١٢٥
١١
١٩٨٧/٨/٢٤

العدد : ٦٥١/ك
التاريخ : ١٩٨٧/٨/٢٤

سري للغاية وتحت
٥٧٨٢
١٩٨٧/٨/٢٤

الرفيق علي حسن المجيد المحترم
م/العرائل البارزانية

نظراً لاستمرار تأكيد المجرم مسعود البارزاني على موضوع
العرائل البارزانية التي كانت تسكن محافظة اربيل - مجمع قوش تبة
وذلك من خلال الاتصالات غير المباشرة التي تحققت مع زمرة منذ
عام ١٩٨٢ وحتى الان ، حيث انه يعتبر ذلك كشرط أو مقدمات
رئيس للبدء بحوار جدي مع قيادة الحزب والثورة --
أمر السيد الرئيس القائد بتوجيه الميوليين والامهزة الامنية المعنية
بالقضية الكردية - الذين من المحتمل الاتصال بهم من خلال طرقت ثالث -
بان يكون الرد ممدد وموسع بأن (لا احد يعرف عنهم شيء سوى
قيادة الدولة وأن طسالة الاساسية أكبر من قضية هذه العوائل)
وأن يعتقد هذا الجواب في الرد على أي استفسار منهم قد يجعل عن
مسير هذه العوائل .

نرجوا انماذ ما يقتضي -- مع التقدير

صحة
سكرتير رئيس الجمهورية

مدبر م ر
٦٤٢٢
بالامر والالتفات
١٩٨٧/٨/٢٤
(٩-١)

يتبع /--

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



الجمهورية العراقية
رئاسة أمن الدولة
السكرتير

العدد :
التاريخ :

نسخة منه (1)

السيد مدير ج.ز. المباريات المتدم / كتابكم ٤٤٢٩ في ٢٢/٨/٩٨٧

لاتخاذ ما يقتضي -- مع التقدير .

السيد مدير الاستخبارات العسكرية لعامة المتدم } لاتخاذ ما يقتضي قدر تعلمه
السيد مدير الامن العام المتدم (الامر بكم -- مع التقدير .

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 the criminal Masoud Al-Barzani holds on the issue of Bazani families from Erbil governorate in Qushteppa complex and upon the indirect communication 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 stand the response to any enquiry should anyone ask about the whereabouts of these families.

Please take all the necessary... with regard

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

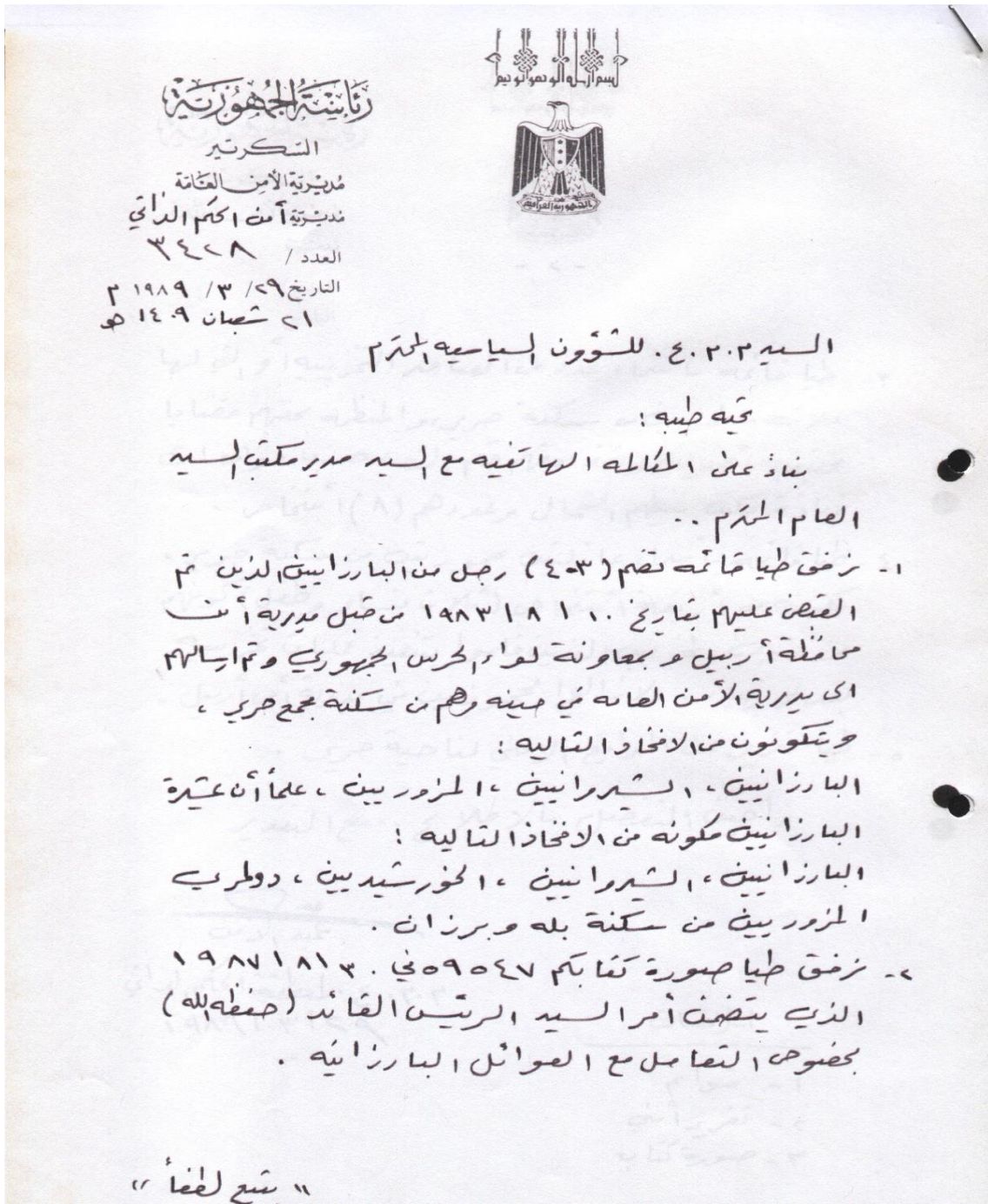
Copies to

9- Director General of intelligence / file 4439 in 23/8/1987 to take all the necessary measures.

10- Director General of military intelligence.

11- Director Of Public Security /

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





رئاسة الجمهورية

السكرتير

مديرية الأمن العامة

مديرية



- ٢ -

العدد /

التاريخ / / ١٩٨

- ٣- طياً قائمه بأسماء عدد من العناصر التخريرية أو التي لها علاقة بالمخربين من سكنة حري، والمنظره بحرقهم صفياً بحقيقته أصوله ونقده بحرقهم قام الصحب حسب موافقات قيادة مكتب تنظيم الشمال وعدد هم (٨) أشخاص .
- ٤- طياً قائمه بأسماء عائلتين محجوزتين من سكنة حري، مكونه من أربعة أشخاص (ثلاث نساء وطفل) كونهم من ذوي المخربين الذين قاموا بتنفيذ عمليات تخريرية بعد لانزها . ولا زالوا محجوزين من مديرية أمن أربيل .
- ٥- طياً تقرير عن العرائع الامني لناحية حري .

راجين التفضل بالاطلاع مع التقدير

محمد لادن

٠٣٣ ع. المنطقه الحكم الذاتي
١٩٨٩ / ٣ / ١٩٩

المنصات

- ١- قوائم
- ٤- تقرير امني
- ٣- صورة كتاب

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 Directorate of General Security in Erbil governorate in cooperation with the Republican Guards brigade, they were sent to 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) regarding dealing with Barzani families.
- 3- Attached is a list of outlaws who have connections with Harir residents, they were investigated with and proper indictments were manifested and they were executed in accordance with North Organisation Office, they were 8.
- 4- Attached a list of two families who are detained, they are Harir residents; 3 women and a child. They are relative of the outlaws who have committed crimes of sabotage after the defeat. They are detained in Erbil Directorate of General Security.
- 5- Attached 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

Appendix no.(4) Memo of 29 March 1989 from Deputy Director for political affairs.

بسم الله الرحمن الرحيم

التاريخ ٢٩ / ٣ / ١٩٨٩

السيد م م ع للشؤون السياسية المحترم

تحية وتقدير

١. في نهاية عوز سنة ١٩٨٢ بلغت مع عدد من ضباط أمن بغداد والرؤساء العامة من قبل السيد مدير أمن بغداد السابق العقيد علي عبد الله برعي باستلام عدد من الخونة البارزانيين الذين يصلون من الحكم الذاتي ولجنة العامة التابعة الثالثة وقد كان مجموعهم في حين ابي غريب.

٢. تم استلام ما مجموعه ٥٥٥٥ من الخونة وبواسطة الجاهلية تم نقلهم الى (بغية) بحرم هناك.

٣. أمر السيد مدير أمن بغداد بتكليف فريق عمل باصرته حيث أصدر أمر بتنفيذ حكم الشعب بحق هؤلاء الخونة الملاح.

٤. في بداية آب عام ١٩٨٢ تم تنفيذ حكم الشعب بحق الخونة الملاح وعددهم ٥٥٥٥ منهم في محافظة النجف منطقة (بغية) بالتنسيق مع مدير أمن المحافظة الملاح.

٥. توجه من السيد مدير لوضع الحاكم السابق الدكتور فاضل البراك بتنظيم قضايا خاصة للمهينة منهم ونفلاً تم تنظيم (١٦) قضية (١٦٧) منهم وامليت القضايا الى رئاسة محكمة الثورة وصدر بحكم حكم الاعدام. ولم يتسكع محاولات بواجباتهم لكن (١٥٥٨) الف وثمانمائة وثمانية وخمسون منهم لم تنظم لهم قضايا.

٦. تلك لجنة من عدد من الضباط لاستلام المبالغ من المهين الملاح والتي كانت جوائزهم وارسلت هذه المبالغ الصديقية لوضع العامة ثم عوجبت حصول

بسم الله الرحمن الرحيم

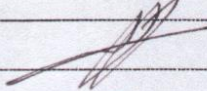
التاريخ / / ١٩

السيد م م ع للشؤون السياسية المحترم

تحية وتقدير

وعجوباً لكاتباً من بغداد في ١٤/٩/١٩٨٢
أمر السيد مدير أمن بغداد السابق بقدر الرغبة
على أي تصرف لصحة أمر من الجهات العليا والرغبة
عمرًا من قبل أمناء لوجود توجيه بذلك

اجين الفضل بالبرطاني
مع التقدير


المنعم
عضو أمناء

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 Baghdad General Security Office as well as Directorate of General Security by the former Baghdad Director of General Security Colonel Ali Abdulla Barah I would receive some Barzani traitors who are 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 de detained.
3. A team under the auspices of Baghdad Director of Public Security was assembled and the above traitors were executed.
4. In the beginning of August 1983 the traitors above (2,225 persons) were executed in Al-Muthana governorate, Buseya region in coordination with Baghdad Director of General Security.
5. By orders from the former Director of Public Security to fabricate charges for the important ones, total of 667 charges were laid for 16 cases. These cases were sent to the Presidency Revolution Court, the verdict was 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 from some officers was assembled to collect money the accused had on their possession; it was sent to 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 say that orders were followed.

Please acknowledge, with regards

Lietenant Colonel

Haqi Ismael / signature

Appendix no. (5) Memo from Deputy Director for political affairs at General security office, date 29 March 1989 Signed by Security Major Yasin Asat

بسم الله الرحمن الرحيم

التاريخ / / ١٩

السيد م م ع للشؤون السياسية المحترم

تحية وتقدير

في اوتاه معلوماتي عن تـ عبد البارز زين ١٩٨٢

و بانظار من السيد مدير الادارة العام السيد
(الدكتور فاضل البراك المحترم) فرصتاً حقه كبره
من الضباط والمنتخبين من مديريات اربيل ومقر
الأمم الذاتي واقواق الطوايف من المنظمات باصرة
السيد اللواء عبد الحمزة واللواء عبد صالح
والواء المحترم (مدير الامم الذاتي) مدير
اربيل) وتم رسم خلقه ثم عومها بقائد القوة
من اماكن قريه من الجهات ويزنه ناهه وانوه
ذلك تطوعه الجهات من قبل قوم الحرس الجمهوري
ويوخر جمع البارز زين ونلم برطلين الاولي من
مجموعات القدس والقادسية ومجتمعه القريه
من رز ما تله اربيل حيث تم تطوعه القوم من
المعلم التي سبقت تنفيذ الواجب وفرصت القوة
من اربيل من الصدام النسر والمعلم المأتم
مجموعات قمر ضمن مناطق عقار سلال وجمع
دينا ضمن ناطق رندرز وجمع ناهه من تحت قاطع
عقار الزبير حيث تم تطوعه هذه الجهات من قبل
قوة الحرس الجمهوري ومثلت قوة الاله من اماكن
قريه من هذه الجهات ويزنه ناهه ونه الصدام
تم جمع البارز زين واستمر القصف لهم من
الماكن وبه المناظم القويه التي افضتوا
على وقد كان ذلك اربيل شهر آب ١٩٨٢ ما تم
البارز زين ايمه من مديريات كسر

بسم الله الرحمن الرحيم

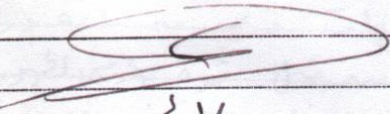
التاريخ / / ١٩

السيد م م ع للشؤون السياسية المحترم

تحية وتقدير

عمدته من نقاد لهذا الحوض ما من ضابط
به القصر الجمهوري واقترادتم الى نقاد به
الاستقرار من تحييم

راجيه التقبل بالبر من التحرير



الاية

لا يه امره

ضد در - ٢٢

٩٨٩/٢٢٤٩

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 Barzanis in 1983:

Following orders from the former Director of General Security (Dr Fadhel Al-Barak) a force comprising officers and members of 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, Qadisseyya, Qushteppa complexes which were close to the centre of Erbil governorate, the force surrounded the complexes from 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 the surrounding areas. This was in early May, 1983. The Barzani traitors were transported in big vehicles specifically brought from Baghdad for this purpose by orders from officers from the Presidential Palace. The detainees were taken to Baghdad.

Please acknowledge ... with regards

Major

Yaseen Asaad / signature

Third division

29/3/989

١٧
١٩

بسم الله الرحمن الرحيم
« مذكرة »

التاريخ / / ١٩

صافون
سيدي مدير الامن العام المحترم

تحية طيبة

م البارزيني

ترونا بين اونة واخرى طلبات من المرجع العليا
وخصوصاً من ديوان الرئاسة بطلب الوضعية فيها
بيان معبر انزاجهم واولادهم بالوضع البارزيني
الذي نالوا جزائهم ووصبوا الى الجحيم لحياتهم
تربة الوضعية

فقد وردنا الطلب المرفوع صياً من ديوان الرئاسة ولم
يذكر بالطلب بأنهم من البارزيني، اوضحنا للرئاسة
بان صولاي من البارزيني وقد تم تنفيذ حكم
الاعدام بحقهم لحياتهم الوضعية عام ١٩٨٢ بموجب كتابنا
١٢٦٥٤ في ١٤٠١٢١٤٤ وقد اعلنت ديوان الرئاسة
بموجب كتابها ٥٢٨ في ١٢ ايار ١٩٩٠ المرفوع
صياً بأنه تنسب تبليغ ذوي الوفا اليهم بأنهم فقدوا
اسماء الحرب مع العدو الارجيني

يرجى التنقل بالاضطلاع
مع التقدير

بالتفويض
السيدي

٩٩ / ٧ / ١٥

الجلت
السيدي

١٥ / ٧ / ٩٩

١٧
١٩

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 President's Office that citizens are enquiring about the whereabouts of their husbands and specifically the Barzanis; whom have been punished and went to hell for treason.

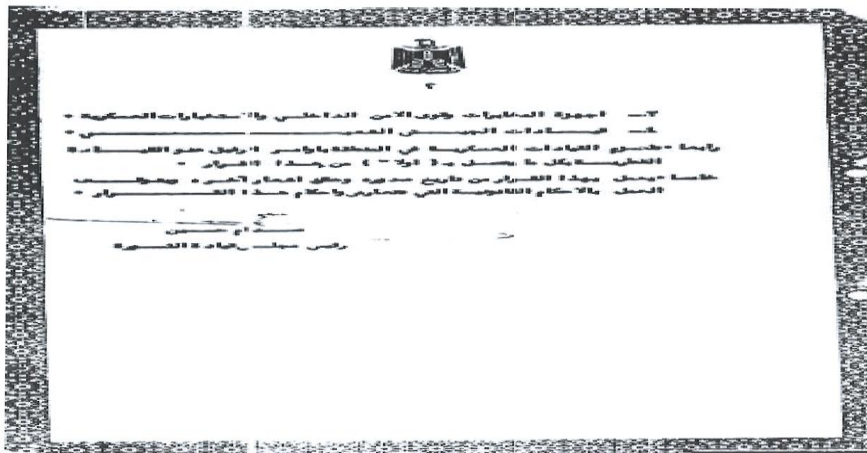
The attached was received from President's Office without mentioning that they were Barzanis, we have explained that they were Barzanis and they were executed for betraying the nation in 1983 in accordance with our file 13654 in 24/3/1990. The President's Office has informed us in their file 2390 in 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

Appendixes Chapter 7 Appendix No. (1) 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

**Appendix No (2) Memo No 4008, dated 26 June 1987, regarding dealing with
Kurdish Areas in general (Genocide Policy)**

قيادة مكتب تنظيم الشمال

مكتب السكرتارية

العدد 4008/28

التاريخ 1987/6/20

من/ قيادة مكتب تنظيم الشمال

الى/ قيادة الفيلق الأول/ قيادة الفيلق الثاني/ قيادة الفيلق الخامس

م/ التعامل مع القرى المحذورة أمنياً

بالنظر لانتهاؤ الفترة المعلنة رسمياً لتجميع هذه القرى والتي سينتهي موعدها يوم 1987/6/21 قررنا العمل ابتداءً من يوم 1987/6/22 صعوداً بما يلي

- (1) تعتبر جميع القرى المحذورة أمنياً والتي لم تزال لحد الآن أماكن لتواجد المخربين عملاء إيران وسليبي الخيانة وأمثالهم من خونة العراق
- (2) يحرم التواجد البشري والحيواني فيها نهائياً وتعتبر منطقة عمليات محرمة ويكون الرمي فيها حراً غير مقيد بأيّة تعليمات ما لم تصدر من مقرنا
- (3) يحرم السفر منها واليها أو الزراعة والاستثمار الزراعي أو الصناعي والحيواني وعلى جميع الأجهزة المختصة متابعة هذا الموضوع بجدية كل ضمن اختصاصه
- (4) تعد قيادات الفيلق ضربات خاصة بين فترة وأخرى بالمدفعية والسمتيات والطائرات لقتل أكبر عدد ممكن ممن يتواجد ضمن هذه المحرمات وخلال جميع الأوقات ليلاً ونهاراً وإعلامنا
- (5) يحجز جميع من يلقي عليه القبض لتواجده ضمن قرى هذه المنطقة وتحقق معه الأجهزة الأمنية وينفذ حكم الإعدام بمن يتجاوز عمره (15) سنة داخل صعوداً الى عمر (70) سنة داخل بعد الاستفادة من معلوماته وإعلامنا.
- (6) تقوم الأجهزة المختصة بالتحقيق مع من يسلم نفسه الى الأجهزة الحكومية أو الحزبية لمدة أقصاها ثلاثة أيام وإذا تطلب الأمر لحد عشرة أيام لا بد من إعلامنا عن مثل هذه الحالات وإذا استوجب التحقيق أكثر من هذه المدة عليهم أخذ موافقتنا هاتفياً أو برقياً وعن طريق الرفيق طاهر العاني
- (7) يعتبر كل ما يحصل عليه مستشارو أفواج الدفاع الوطني أو مقاتلوهم يؤول إليهم مجاناً ما عدا الأسلحة الثقيلة والساندة والمتوسطة، أما الأسلحة الخفيفة فتبقى لديهم ويتم إعلامنا بأعداد هذه الأسلحة فقط وعلى قيادة الجحافل ان تنشط لتبليغ جميع المستشارين وأمرأ السرايا والمفارز وإعلامنا بالتفصيل عن نشاطاتهم ضمن أفواج الدفاع الوطني مكر رئاسة المجلس التشريعي، رئاسة المجلس التنفيذي، جهاز المخابرات، رئاسة اركان الجيش، محافظو (رؤساء اللجان الأمنية) نينوى، التأميم، ديالى، صلاح الدين، السليمانية، اربيل، دهوك، أمناء سر فروع المحافظات أعلاه، مديريةية الاستخبارات العسكرية العامة، مديريةية الأمن العامة ومدير أمن منطقة الحكم الذاتي، منظومة استخبارات المنطقة الشمالية منظومة استخبارات المنطقة الشرقية، مدرأ أمن محافظات - نينوى، التأميم، ديالى، صلاح الدين، السليمانية، اربيل، دهوك .

يرجى الاطلاع والتنفيذ كل ضمن اختصاصه و انيؤنا.

توقيع

الرفيق علي حسن المجيد

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.

Notice: 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 practically in effect since 1985.

Appendix no. (3)

List of accused people for Anfal Case from IHT.

979

ئیسکولیبیدیای تومەتبارانی شالای ئەنفال لە باشووری کوردستان

Iraqi High Tribunal
Second Criminal Court
Baghdad - Iraq



المحكمة الجنائية العراقية العليا
مقتضىة الجزایات الجنائية
بغداد - العراق

((قائمة بأسماء الأشخاص المطلوب اتخاذ الإجراءات القانونية بحقهم))

ت	اسم الشخص المطلوب	الملاحظات
١	وفيق عجيل السامرائي	معاون مدير الاستخبارات العامة
٢	وليد نايف شبيب	مدير شعبة الشمال
٣	حامد يوسف حمادي	سكرتير رئيس جمهورية النظام السابق
٤	ابراهيم نصر الله	
٥	احمد ييجو	
٦	احمد جبار جباري	
٧	ارشد احمد زيباري	
٨	اسعد جانكفر هرکی	
٩	اسماعيل عزيز ناغا زنگه نه	
١٠	اسماعيل محمود رسول ناشا بشدري	
١١	الرائد (درع) (مجنس كرجي رجي)	ك د پ / ٥١
١٢	الرائد (صباح ناظم رقيب السورجي)	أمر ف ٢ دفاع دفاع وطني
١٣	الرائد (عبد الستار عطا الكبيسي)	أمين سر قيادة شعبة اربيل العسكرية
١٤	الرائد (ق خ) (عبد الحمزة اسماعيل حمزة)	أمر بطخ / ٦٤ بلغ ٢ فل ٦
١٥	الرائد (محمد سالم حسين)	أمين سر قيادة شعبة التأميم العسكرية
١٦	الرائد (مدم) (زيدان خليفة لقتة)	أمر ك مدم / ٩٥٧
١٧	الرائد (مدم) (علي كرمش حسين)	أمر ك م / ٧٩
١٨	الرائد (مدم) (ثوري حامد احمد)	أمر ك م / ٩٥٦
١٩	الرائد الركن (صادق صوب الله محمد)	لمخ ٢ فل ٤
٢٠	الرائد الطيار (ادريس ابراهيم محمد)	-
٢١	الرائد الطيار (أنور حمد أمين)	السرب / ٤
٢٢	الرائد الطيار (عبد الحميد فرحان عبد الحميد)	-
٢٣	الرائد الطيار (عمران كاظم هندي)	السرب / ٢
٢٤	الرائد الطيار (فريق محمد علوان)	-
٢٥	الرائد الطيار (مهدي علي حسن)	-
٢٦	الرائد الطيار (يونس صالح سلمان)	السرب / ٣٠
٢٧	الرائد (ت ن) (غازي مجيب خلف)	ت ن فل ١
٢٨	الفريق الرائد (أنور رحيم طه)	أمين سر قيادة الحارت العسكرية

(١٥-١)

Iraqi High Tribunal
Second Criminal Court
Baghdad - Iraq



المحكمة الدولية العراقية العليا
مكتب الجنايات الثانية
بغداد - العراق

(قائمة بأسماء الأشخاص المطلوب اتخاذ الإجراءات القانونية بحقهم)

٥٧	العميد (سمير توفيق قهوجي)	أمر ت ن ق ق جج د و/١
٥٨	العميد (علي لفته حسين لعقابي)	أمين سر شعبة خالد العسكرية
٥٩	العميد (غانم خالد سليمان الجماس)	أمين سر قيادة شعبة القمعاع العسكرية
٦٠	العميد (ق خ) (علي حسين مزعل)	أمر لش/٢٢
٦١	العميد (ق خ) (نصيف جاسم حمادي)	أمر ل٢ فل/٦
٦٢	العميد (محمد خيري محمد سعيد)	أمين سر قيادة شعبة شرحبيل العسكرية
٦٣	العميد (مدم) (حبيب خضر إبراهيم)	أمر مدم ق/٤
٦٤	العميد (مدم) (مطر محمد صالح)	أمر مدم ق/٢٣
٦٥	العميد (مثن) (طلعت سليمان ولي)	أمر قاطع دوكان
٦٦	العميد (مثن) (عارف حميد حاتم)	أمر جج د و/٤
٦٧	العميد الركن (إبراهيم خليل إبراهيم)	قائد ق/٢٧
٦٨	العميد الركن (أمر جاسم حمو)	قائد ق/٧
٦٩	العميد الركن (زهير يونس علي)	قائد قوات/٥٠
٧٠	العميد الركن (صباح إسماعيل)	قائد قوات/٤٥
٧١	العميد الركن (صباح نوري علوان)	قائد ق/٢٧
٧٢	العميد الركن (عبد الإله حامد العناز)	قائد ق/٢١
٧٣	العميد الركن (عبد الأمير علوان حسين)	قائد قوات/٢٨
٧٤	العميد الركن (عبد الجليل عبد الحميد محسن)	قائد ق/٢٩
٧٥	العميد الركن (عبد المجيد عباس وهيب)	قائد ق/٢
٧٦	العميد الركن (علي احمد محمد صالح)	قائد ق/٤٦
٧٧	العميد الركن (علي عزيز الفضل)	شعبة الأمن الداخلي فل/١
٧٨	العميد الركن (غانم صالح حسن)	قائد قوات جحفل الدفاع الوطني/٥
٧٩	العميد الركن (مدم) (عطا الله ايوب خلف)	رئيس أركان ق/٣٢
٨٠	العميد الركن (مزهري عبد مهدي)	ر أ ق جج د و/١
٨١	العميد الركن (ناصر سعيد توفيق)	قائد قوات/٥٠
٨٢	العميد الركن ق خ (دريد مصطفى شاكر)	قائد ق/٤٠
٨٣	العميد الركن مشاة (عبد هون نعمة نصور)	قائد ق/٢٤
٨٤	العميد الركن (علي صالح جمودي الدوري)	أمين سر قيادة شعبة موسى بن نصير العسكرية
٨٥	الفريق (الحكم حسن علي)	مدير طيران الجيش (عضو القيادة العامة)

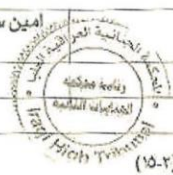
Iraqi High Tribunal
Second criminal court
Baghdad - Iraq



المحكمة الجنائية العراقية العليا
مكتبة الجنايات العنيفة
بغداد - العراق

(قائمة بأسماء الأشخاص المطلوب اتخاذ الإجراءات القانونية بحقهم)

أمين سر قيادة شعبة قوات نصر العسكرية	العقيد (أحمد سالم حاسم السامرائي)	٢٩
أمين سر قيادة فرع الرشيد العسكري	العقيد (يديوي حسن صالح)	٣٠
مدير امن السليمانية	العقيد (حاتم عبد الكريم خماس)	٣١
أمين سر قيادة شعبة الفارس العسكرية	العقيد (خلف عبد الله عميره)	٣٢
لمغ/٢٧٤	العقيد (درع) (فاروق محمد حسن)	٣٣
أمين سر قيادة شعبة المعتصم	العقيد (رشيد أحمد سدخان)	٣٤
أمين سر قيادة شعبة الشيباني العسكرية	العقيد (عبد الحكيم توفيق حسون)	٣٥
م أ م ق ق جج د و/١	العقيد (عبد الرزاق حميد محمد)	٣٦
امر كتيبة مدفعية ميدان/٧٨	العقيد (عبد القادر عبد الرحمن قنود)	٣٧
امر مدفعية ميدان/فق/٢٢	العقيد (علي عبد غزال)	٣٨
مقر مدم ق ق جج د و/١	العقيد (مدم) (حسين محمد حسن)	٣٩
مقدم نواء مدم فق/٤	العقيد (مدم) (فخري أحمد محمد علي)	٤٠
امر لمغ/٢٧٢	العقيد (مش) (شهاب أحمد علي)	٤١
امر ل/١٩	العقيد (مش) (قوزي جواد هادي)	٤٢
امر ل/٤٤٥	العقيد (مش) (قيس إبراهيم مدحت)	٤٣
امر ل/٤٢٨	العقيد (مشاة) (محمد يعقوب يوسف)	٤٤
امر ل/٣٩	العقيد (مشاة) (نزار أحمد شهاب)	٤٥
امر لمغ/١٩١	العقيد الركن (ق ق خ) (خالد بهلول العيبي)	٤٦
رئيس اركان فق/٤	العقيد الركن (مش) (علي حسين علي)	٤٧
-	العقيد الطيار (رياضي محمد عبد السعدي)	٤٨
-	العقيد الطيار (نجم عبد الرضا عبد الواحد)	٤٩
امر ج ط ج و/١	العقيد الطيار الركن (إسماعيل سعيد فارس)	٥٠
-	العقيد مشاة (صلاح داود عبد الله)	٥١
ر أ ق جج د و/١	العميد الركن (علي حسين المسفار)	٥٢
شعبة الأمن الداخلي فل/٥	العميد (أ م) محمد مصطفى إسماعيل	٥٣
أمين سر قيادة شعبة أبي ذر الغفاري العسكرية	العميد (خلف نجم حاسم)	٥٤
م ق ق/٢٢	العميد (درع) (كامل زيدان خلف)	٥٥
امر القوات الأولى	العميد (رافع حمدون ذنون)	٥٦



Iraqi High Tribunal
Second criminal court
Baghdad - Iraq



المحكمة الجنائية العراقية العليا
مقرها الجنائيات الثانية
بغداد - العراق

(قائمة بأسماء الأشخاص المطلوب اتخاذ الإجراءات القانونية بحقهم)

للقوات المسلحة)	
معاون رئيس أركان الجيش للتدريب	الضريق الركن (نعمه فارس حسين)
مدير منظومة استخبارات المنطقة الشمالية	اللواء (حسن حسين)
أمين سر فرع عمورية العسكرية	اللواء (عبد سلمان حممدي)
قائد ق ق حج/د و/١	اللواء الركن (أياد خليل زكي)
قائد فق/٤١	اللواء الركن (حميد شاكر محمود)
مدير منظومة استخبارات المنطقة الشرقية	اللواء الركن (خالد محمد عباس الجبوري)
قائد فق مش/٢٣	اللواء الركن (رمزي محمود عبد الله)
قائد ق حج د و/١	اللواء الركن (سعد شمس الدين خالص)
قائد فق/٤	اللواء الركن (عصمت صابر عمر)
قائد فق/٣٩	اللواء الركن (علي محمد شلال)
قائد القوة البحرية (عضو القيادة العامة للقوات المسلحة)	اللواء الركن (غائب حسون غائب)
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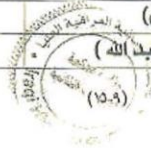
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276	حمه کریم حمه فرج	مختار قرية سيتلان
277	مصطفى سليمان وزه	أمر سرية
278	عمر حمه علي جرمکا	مستشار
279	جبار دریز	مقرزة خاصة
280	صابر سورجی	مستشار
281	مامند قشقه	مستشار
282	علي سلمة جوارتابي	مقرزة خاصة
283	حاج علي نيباوا	مقرزة خاصة
284	عقید حمید عثمان	مستشار فوج 200
285	أنور حسو	مقرزة خاصة

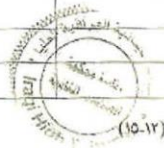
Iraqi High Tribunal
Second criminal court
Baghdad - Iraq



المحكمة الجنائية العراقية العليا
محكمة الجنايات الثانية
بغداد - العراق

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جمهورية العراق
Iraqi High Tribunal
Second criminal court
Baghdad - Iraq

المحكمة الجنائية العراقية العليا
محكمة الجنايات الثانية
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((قائمة بأسماء الأشخاص المطلوب اتخاذ الإجراءات القانونية بحقهم))

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٤٠٢	عباس حاجي اغا رسول	=
٤٠٣	فتاح كريم فتاح	=
٤٠٤	كريم عبد الله محمد	=
٤٠٥	كسرى محمد سعيد محمد فتاح	=
٤٠٦	محمد حسن علي ميرزا	=
٤٠٧	محمود حمه امين حمه صالح	=
٤٠٨	ابراهيم علي ملو الزوري	=
٤٠٩	تحسين شاويس سعيد	=
٤١٠	رشيد حمد امين عزيز	=
٤١١	رضا طه محي الدين	=
٤١٢	رفعت محمد علي	=
٤١٣	زيرك طاهر سعيد	=
٤١٤	سعاد فيض الله محمد	=
٤١٥	طاهر علي عبد الرحمن	=
٤١٦	محمد سليم قادر عثمان	=
٤١٧	مدحت توفيق منصور	=
٤١٨	معتصم عبد الكريم حسين	=
٤١٩	محمد صادق محمد شواني	منح نوط الشجاعة بموجب المرسوم الجمهوري رقم (٨٠٩)
٤٢٠	عمر محمود محمد ماموي	=
٤٢١	ابراهيم نصر الدين عزيز البرزنجي	منح نوط الشجاعة بموجب المرسوم الجمهوري رقم (١٠٤)
٤٢٢	محمد عيسى بيرويس عيسى الجاف	=
٤٢٣	محمد سعيد احمد محمد الهاروني	=



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

Republic of Iraq
Iraqi High Tribunal
Second Criminal Court

Baghdad-Iraq

Ref. List of People participated in Anfal Crimes

No.	Names of wanted perpetrators	Notice
1	Wafeeq Ejeel Al Samerria	Assistant of manager of General Intelligent
2	Wleed Neif Shabeeb	North Branch Director
3	Hamid Yousif Hammadi	Secretary of Former regime President
4	Ibrahim Nazrallah	
5	Ahmad Bejoo	
6	Ahmad Jabar Jabari	
7	Arshad Ahmad Zebari	Minister
8	Esaad Jankeer Harki	
9	Esmael Aziz Agha Zenganna	
10	Esmael Mahmood Rasoul Agha Peshdari	
11	Major Armour Muhsin Kurgy Ragi	51 Tank Batalion
12	Major Sabah Raqeeb Sourchi	Commander of 2 nd National Defense Platoon

13	Major AbdulSattar Ata Al Kubaisi	Erbil Baath Party Military Headquarter Secretary in Erbil
14	Major Special Forces Abdul Hamza Esmael Hamza	Th Corps, 64 th Special Battery of Commando Brigade commander
15	Major Mohammed Salim Hussain	Taamim Baath Party Military Headquarter Secretary in Kirkuk
16	Major armored Zaidan Khalifa Lafta	Commander of armored Battalion 957
17	Major Field Artillery Ali Karmish Hassan	Commander of artillery Battalion 79

18	Major Artillery Noori Hamid Ahmad	Commander of Artillery Battalion 956
19	Major Staff Sadik Suba Alla Mohammed	
20	Major Pilot Idress Ibraheem Mohammed	2 nd Special brigade 4 th Corps
21	Major Staff Officer Anwar Hamd Amin	4 th Squadron
22	Major Pilot Abduhamid Frhan Abdul Hamid	4 th Squadron
23	Major Pilot Emran Kadhim Hindi	2 nd Squadron
24	Major Pilot Fareeq Mohammed Alwan	2 nd Squadron
25	Major Pilot Mahdi Ali Hassan	2 nd Squadron
26	Major Pilot Younis Salih Salman	30 th Squadron
27	Major Transportation Gazi Mojbil Khalaf	1st Corp Transportaton
28	Major Comrade Anwar Raheem Taha	Secretary of Al Harith Baath Party Headquarter
29	Colonel Ahmad Salim Jasim AL Samarai	Secretary of Nazir Forces Baath Party Headquarter
30	Colonel Badawi Hassan Salih	Secretary of Al Rashid Branch of Baath Party Military Headquarter
31	Colonel Hatim AbdulKareem Khamas	Director of Sulaimaniya Security Office
32	Colonel Khalaf Abdullah Amira	Secretary of AL Faris military Branch of Baath Party Headquarter
33	Armored Colonel Farooq Mohammed Hassan	Commander of 2nd Brigade , 4th Corp
34	Colonel Rashid Ahmad Sadkhan	Secretary of Al Moatasam military Branch of Baath Party Headquarter
35	Colonel Abdul Hakeem Tawfik Hasson	Secretary of Al Shaibani Military Branch of Baath Party Headquarter
36	Colonel Abdulrazak Hamed Mohammed	Headquarter of National Defense forces
37	Colonel Abdul Kadir Abdulrahman Qaddow	Commander of 78 th field artillery battalion
38	Colonel Ali Abdul Gazal	Commander of the 33 rd field artillery division
39	Artillery Colonel Hussain Mohammed Hassan	1 st HQ , field artillery border forces
40	Artillery Colonel Fakhri Ahmad Mohammed	4 th Division
41	Infantry Colonel Shabib Ahmad Ali	4 th corps , Commander of the 2 nd Brigade Commando
42	Infantry Colonel Fawzi Jawad Hadi	Commander of the 19 th Brigade

43	Infantry Colonel Qaiz Ibrahim Midhat	Commander of the 445 th Brigade
44	Infantry Colonel Mohammed Yaqoub Yousif	Commander of the 428 th Brigade
45	Infantry Colonel Nizar Ahmad Shihab	Commander of the 39 th Brigade
46	Special Force Colonel Khalid Bhlool Loaibi	Commander of the 1 st brigade Special forces , 1 st Corps
47	Infantry Colonel Staff Ali Hassan Ali	Chief of Staff for 4 th Division
48	Colonel Pilot Riyath Mohammed AbdulSadi	4 th Division
49	Colonel Pilot Najim Abdul riza Abdul Wahid	4 th Division
50	Staff Colonel Pilot Ismael Saeed Faris	Commander of the 1 st wing of Military Helicopters
51	Infantry Colonel Salah Dawoud Abdullah	
52	Staff Brigade Ali Hussain Al Safar	Chief of Staff for the 1 st Headquarter of National Forces
53	Brigadier Intelligent Mohammed Mostafa Ismaeel	Internal Security Dept. of 5 th Corps
54	General Khalaf Najim Jasem	Secretary for Abi Ther Al Gafari military Branch of Baath Party
55	Armored Brigade Kamel Zaida Khalaf	23 th Division
56	Brigadier Rafia Hamdon Thanoon	1 st Force Commander
57	Brigadire Samir Tawfik Fathy	Commander of the National Forces Transportation Branch
58	Brigadire Ali Lafta Hussain Al Ekabi	Secretary for Khalid Baath Party Military Branch
59	Brigadier Ganem Khalid Ismael Al Jamass	Secretary of the Al Kaakak Baath Party Military Headquarter
60	Special Force Brigadier Ali Husain Mozaal	Commander of 72 nd infantry Brigade
61	Special Force Brigadier Nasif Jasim Hamodi	Commander of the 2 nd Brigade , 6 th Corps
62	Brigadie Mohammed Khairy Saeed	Secretary of Sharhabil Branch Headquarter of Baath Party
63	Brigadier artillery Habbeb Khudir Ibrahim	Commander of the 4 th Division artillery
64	Brigadier armored Matar Mohammed Salih	Commander of the 23 rd Artillery Division
65	Infantry Brigadier Talat Sulaiman Wali	Commander of Dukan Sector
66	Infantry Brigadier Arif Hamid Hatem	Commander of the 4 th National Defense

67	Staff Brigadier Ibrahim Khalil Ibrahim	Commander of the 37 th Division
68	Staff Brigadier Amir Jassem Hamoo	Commander of the 7 th Division
69	Staff Brigadier Zuhair Younis All	Commander of the 50 th Forces
70	Staff Brigadier Sabah Ismael	Commander of the 5 th Forces
71	Staff Brigadier Sabah Nori Al Wan	Commander of the 27 th Division
72	Staff Brigadier Abdul Illah Hamid Al Anazz	Commander of the 21 st Division
73	Staff Brigadier Abdul Amir Al Wan Hussain	Commander of the 38 th Division
74	Staff Brigadier Abdul Jalil Abdul Hamed Mohsin	Commander of the 38 Division
75	Staff Brigadier Abdul Majid Abbas Wahaib	Commandeer of the 2 nd Division
76	Staff Brigadier Ali Ahmad Mohammed Salih	Commander the 46 th Division
77	Staff Brigadier Ali Aziz Al Fadham	Internal Security/1 st Corps
78	Staff Brigadier Ganem Salih Hassan	Commander of 5 th National Defense
79	Armored Staff Brigadier Attalah Ayoub Khalaf	Chief of Staff /32 nd Division
80	Staff Brigadier Mozhir Abdul Mahdi	Chief of Staff 1 st National Defense Leadership
81	Satff Brigadier Nasir Saeed Tawfik	Commander of 5 th Forces
82	Special Force Staff Brigadier Diriad Mostafa Shakir	Commander of the 40 th Division
83	Infantry Staff Brigadier Abid Un Niama Nisour	Commander of the 24 th Division
84	Staff Brigadier Ali Salih Hamoudi Al Diri	Secretary of the Al Mousa Bin Nasir Baath Party Headquarter
85	Lieutenant General Hakam Hassan Ali	Director of Iraqi Army Aviation
86	Staff Lieutenant General Niama Faris Hussain	Deputy Chief of Staff for training
87	General Hussain Hassan	Director for Northern sector of Military Intelligent
88	General Abid Salman Hamandi	Secretary for Al Moriya Branch of Baath Party
89	General Staff Ayad Khalil Zaki	Commander of the Republican Guard
90	General Staff Hamid Shakir Mahmoud	Commander of 41 Division

91	General Staff Khalid Mohammed Abas Al Jabouri	Director of the Eastern sector of Military Intelligent
92	General Staff Ramzi Mahmoud Abdullah	Commander of the 33 rd Infantry Division
93	General Staff Saad Shamsadin Khaliss	Commander of the 1 st National Defense leadership
94	General Asmat Sabir Omar	Commander of the 4 th Division
95	General Staff Ali Mohammed Shalal	Commander of the 38 th Division
96	General Staff Galib Hasson Gaieb	Commander of Navy Forces
97	General Mohammed Tahir Tawfik	Commander of the 25 th Division
98	Special Forces General Ayad Ramzi Shaaban	Commander of the 42 Division
99	Advisor babaki Wasoo Mohammed	National Defense Battalion112
100	Advisor Jamal Khuthir Khalid Al Dobardani	National Defense Battalion110
101	Advisor jamal faki Hussain	National Defense Battalion97
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112	Advisor Omar Babakir Salim	National Defense Battalion114
113	Advisor Faikhri Ismael Abdul Kadir	National Defense Battalion132
114	Advisor Kadir Shafik Naaman	NDB 62
115	Advisor Kasim Faris Tahir Mostafa Aga	NDB 85
116	Advisor Latif Ahmad Mohammed Zebari	NDB 1
117	ADVISOR Mamand hamad Mawloud	NDB 51

118	Advisor Mohammed Tahir Younis Mohammed Renkawi	NDB 107
119	Advisor Mohammed Ali Rasoul	NDB 148
120	ADVISOR Mahmoud Hama Rasoul Aga	NDB 26
121	Advisor Nawzad Anwar Betwata	NDB 4
122	Advisor Mam Yahya Koya	NDB 86
123	Advisor Mirza Ismael Sharaf Raza	NDB 207
124	Advisor Hussain Mohammed Othman	NDB 175
125	Advisor Mohammed Kanabi Bano Aga	NDB 147
126	ADVISOR Idris Saed Mohammed	Secretary of Zakho Military Baath Party Branch
127	Colonel Ismael Mahmod Abid Khalaf	Secretary of Al Mansour Baath Party Branch
128	Colonel hatim Motni Al Awad	Secretary of Sulaimaniya Military Baath Party leadership
129	Colonel Hassan Ahmad Abdullah	Commander of the 1 st NDB
130	Staff Colonel Abdul Karim Abdul Mahdi Hadi Salim	Commander of the 41 Armored Division
131	Colonel Salah Sabri Mahmoud	Secretary of the second Sulaimaniya Military Baath Party Branch
132	Colonel Thari Abdul Karim Hadi	Security Office for the 1 st Leadership of ND
133	Colonel Abdul Satar Jawad Hamza Al HAdithi	Director of Amoriya Military Branch
134	Colonel (armored) Hassan fathllah Abdul Kadir	Commander of 22 nd air defense Battallion
135	Colonel Sahib Jadouh Ziyab	Commander of 10 th air defense Battallion
136	Colonel Salahadin Mohammed Abdul Karim	Commander of the 662 air defense Battallion
137	Staff Colonel Hussain Ali Hamid	Commander of 26 Brigade
138	Colonel pilot Mohammed fawzi Hassan Mahmoud	=
139	Colonel Pilot Ahmad rashid fatna Al Maathidi	=
140	Colonel Pilot Khothair Essa Jawad	=
141	Colonel Pilot Abdul Razak Ibrahim Abdul Razak	1 st Sector of Military Aviation

142	Lieutenant Farhad Mamand Hamad	NDB 51
143	Lieutenant Pilot Hussam Ibrahim Abood	107 th Squadron
144	Lieutenant Pilot Khalid Malla Lah Morad	2 nd Squadron
145	Lieutenant Pilot Razwan Gazi Ahmad	4 th Squadron
146	Lieutenant Pilot Imad Shobli Mohammed	2 nd Squadron
147	Lieutenant Pilot Imad Abbas Mohsin	2 nd Squadron
148	Lieutenant Pilot Fazil Abbas Mohsin	2 nd Squadron
149	Captain (weapons) Waad Mohammed Ali	2 nd Squadron
150	Captain Abdul Karim Salih Jawad	Representative of Military Intelligent
151	Special Force Captain Hamza Khothir Hamza	Commander of 17 division communication
152	Special Force Captain Abdula Hassan Salih	Advisor for 151 NFR
153	Captain Pilot Sabah Ali Hassan	2 nd Squadron
154	Captain Pilot Galib Shaia Ziyara	2 nd Squadron
155	Anwar Mohammed Riza Mahoud Al Jaff	
156	Burhan showani	
157	Bakir Ali Haji Moshir	
158	Bakir Karim Gafour	
159	Tawfik Jabar Karaman	
160	Thamir Nazif Jaseem	Governor of Kirkuk
161	Jasem Mohammed Zebari	
162	Jabar Sheikh Hadi	
163	Jabar Mosa Kara Henjiri (Jihad)	
164	Jaafar Abdul Karim AL barzenji	Governor of Sulaimaniya
165	Jamal Hussain Dozi	
166	Jawhar Mohyaden Harki	
167	Chiya Surchi	
168	Hajaj Abdul Gafour Khalid Dobardani	
169	Hassan Mahmoud Big Hawari	
170	Hasib Mohammed Najem Jabari	

171	Hamad Amin Hamad Shaswari	Mayor of Kani Mill Village
172	Hamza Abbas Mand Akoo	
173	Hamay Hai Hussain	
174	Khalid Mahmoud Ahmad Ali Gowara	
175	Khuthair fatah Hussain Gamesh	
176	Khairallah Dozi	Intelligent
177	Rasoul Mamand Kirdolli	
178	Zaid Surchi	
179	Saeed Adnan Jabari	
180	Saeed Mohyadeen Ahmad Zangana	
181	Advisor Saed Riza Said Taha Said Manka	
182	Saed Jinoon	
183	Saed Darwish	
184	Sahrif hamad Sharif (Shafay Khato)	
185	Sharif Mohammed Kirdawodi	
186	Shihab Ahmad Wairman	
187	Shiekh Ahmad Barzanji	
188	Sheikh Burhan	Directoer od Zirain Subdistrict
189	Sheikh Jalal Salihi	
190	Sheikh Ronak	
191	Sheikh Suad Talabani	
192	Sheikh Salah Nakshbandi	
193	Sheikh Karim Sheikh Shahab	
194	Sherzad Ali Balaka	
195	Tarik Shafia Garfoush	
196	Tahir Othman Rostam	NDB 52
197	Assif Ahmad Zebari	
198	Assi Hama Deza	Intelligent
199	Tarik Assis Riza Aga	

200	Abdul Jabar Mohsin	Director of Military propaganda at General Command Office
201	AbdulKarim Mohammed Salim Shoshi Zebari	
202	Abid Mohammed Abdulah	Security Director in Shaklawah
203	Abdulah Kak Amir	
204	Abdullah Mohsin Salih baban	
205	Abdul majid Hussain Ismael Shaikhki	
206	Adnan Abdullah najim Al Jaff	
207	Aziz Hassan Aziz	
208	Ali Hussain Aziz	Mayor of Chamchmal
209	Ali Lot Masi	
210	Omar Haji Badinan	
211	Omar Haji Salih	
212	Omar Hama Rostam	
213	Omar Khuthir Hma Sirchi	
214	Fuad Karim Baiz Hamawand	
215	Faris Mohammed Kadir Aziz Surchi	
216	Kasem rashid Draiy	
217	Kamaran Ahmad (Kamaran Sur)	Outside Iraq in Iran
218	Kamel Shiekh Hadi	
219	Kamal Hama Mam Suratni	
220	Kamal Mohammed haydar	
221	Mohammed Jawhar Goran	
222	Mohammed Shiekh AbdulKarim barzanji	
223	Mohammed Kadir Aga Zebari	
224	Mohammed Karim Shoshi zebari	
225	Mohammed Kalhe Rekani	
226	Mohyadin Hama Rahim	
227	Midhat Tawfik dawoudi	

228	Malla Hussain Rokhzabi	Intelligent
229	Malla Ozair	
230	Lieutenant Pilot Ahmad Ibrahim Ahmad	1 st Military Aviation
231	1 st Lieutenant Pilot Ahmad Salam Zanad	1 st Squadron
232	1st Lieutenant Pilot Ahmad Abid dawoud	=
233	1 st Lieutenant Pilot Iskandar Ibrahim Jomaa	=
234	1st Lieutenant Pilot Ilham Awin rafik Younis	1st Military Aviation
235	1st Lieutenant Pilot Amanj Monazil Khither	21 st Squadron
236	1st Lieutenant Pilot Anmar Mohammed Ahmad	1st Military Aviation
237	1st Lieutenant Pilot Hussain Ali Abdullah	106 Squadron
238	1st Lieutenant Pilot Hamid Mansour Khalil	4 th Squadron
239	1st Lieutenant Pilot Khalid Abdul Aziz Abdullah	1st Military Aviation
240	1st Lieutenant Pilot Khalf Hussain Allawi	1st Military Aviation
241	1st Lieutenant Pilot Ramazan Motlak Ahmad	=
242	1st Lieutenant Pilot Salim Fathi Hassan	=
243	1st Lieutenant Pilot Saad Ahmad Kasem	30 th Squadron
244	1st Lieutenant Pilot Saad Abdul Rahman Saeed	30 th Squadron
245	1st Lieutenant Pilot SHOJAA yass ROHANI	1st Military Aviation
246	1st Lieutenant Pilot Shalal Rashid Attiya	=
247	1st Lieutenant Pilot Thiya Jaafar Razi	4 th Squadron
248	1st Lieutenant Pilot Taha Fathi Salih	2 nd Squadron
249	1st Lieutenant Pilot Taha Mohammed Ahmad	2 nd Squadron
250	1st Lieutenant Pilot AbdulKarim Jadan Ali	=
251	1st Lieutenant Pilot Uday Hatim Lafta	=
252	1st Lieutenant Pilot Ali Hussain Salam	41th Squadron
253	1st Lieutenant Pilot Faris Ibrahim Rashid	=
254	1st Lieutenant Pilot Qais Habib Mostafa	=

255	1st Lieutenant Pilot Karim Yasin Zedan	=
256	1st Lieutenant Pilot Laith Abdul Aziz Abdullah	61th Squadron
257	1st Lieutenant Pilot Mohammed Khazaal faisal	
258	Namik Rakib La Surchi	
259	1st Military Aviation	1st Military Aviation
260	AbdulKarim AbdulKarim	
261	Yahya Al Jaff	Governor of Erbil
262	Yaarib Al Robaie	Director of Mosul security
263	Aswad Al Naemi	Secretary of Sulaimaniya Baath Party Branch
264	Tarik Kafi	Secretary of Dohuk Baath Party Branch
265	Saiel Al Abdalli	Secretary of Mosul Baath Party Branch
266	Nazar Younis	Secretary of Ninavah Baath Party Leadership
267	Khuthir Al Dori	Secretary of Kirkuk Baath Party Branch
268	Tahir Jalil Haboush	
269	Amid fatah Beg Al Jaff	Advisor for NDB 35
270	Thahir Aga Koya	Advisor
271	Adnan Disko	Advisor
272	Tarik kakaye	Advisor
273	Saed Gadab (Hama saeed)	Advisor
274	Majid Gadan	Assistant for Advisor
275	Shamal rafat Klii	NDB
276	Hama Karim Hama farj	Mayor of Setilan Village
277	Mostafa Sulaiman Wza	NGR
278	Omar Hama Ali Jarmika	Advisor
279	Jabar Dresh	Special mission
280	Sabir Surchi	Advisor
281	Mamand Kish ka	Advisor

282	Ali Selma Jowantaie	Special Mission
283	Haj Ali Nibyawa	Special Missions
284	Colonel Hamid Othman	Advisor for NGR 300
285	Anwar Hassou	Special Mission
286	Said Kodrat	Fighter
287	Mohammed Kawani	Special Mission
288	Hama Bokhji	Advisor
289	Ibrahim Balol Aga	Advisor
290	Omar Suffi	Special Mission
291	Omar Hussain (Omar Arab)	Special Mission
292	Kalay Hassan Nalband	Special Mission
293	Sala Shina	=
294	Mirza Hassan	Advisor
295	Mohammed Hussain Noori	Special Mission
296	Omar Aga	Advisor
297	Hussain Hama Sur Aga	Advisor
298	Awat Ahmad hassan Rash	Advisor for NGR 266
299	Ahmad Jamil Amin	Advisor for NGR 240
300	Ahmad Sufi Ismael Salih	Advisor for NGR 256
301	Ahmad Kowikha Rajab	Advisor for NGR 356
302	Asad Saed Haji Aga	Advisor for NGR 90
303	Anwar rashid Khuthir Miran	Advisor for NGR 202
304	Anwar Mirza Inrahin Kolli	Advisor for NGR 52
305	Ibrahim Ahmad Ibrahim Mintek	Advisor for NGR 209
306	Abubaki Faki Salihi	Advisor
307	Baiz Aziz Rashid Bawjan	Advisor for NGR 213
308	Bahram Mohammed Abdul Rahman bahram	Advisor for NGR 11
309	Burhan Tawfik Babakir Hawrami	Advisor for NGR 238
310	Tawfik Hma faraj Hama rostam Nawroli	Advisor for NGR 70

311	Tawfil Sulaiman yasin Barwari	Advisor for NGR 113
312	Tarik Saeed Ibrahim Mizori	Advisor of NGR 190
313	Taib Mohammed Othman (Sheikh taib0	Advisor for NGR 202
314	Jasim Mohammed Faris Mohammed	Advisor for NGR 225
315	Kurkis Hamid Haider	Advisor for NGR 156
316	Jalal Asad raza jermkaye	Advisor for NGR 79
317	Jalal Sheikh Najmadin Karim	Advisor for NGR 135
318	Jalal Mohammed Abdul rhman Hilali	Advisor for NGR 198
319	Jalal mahmod Salih Bradosti	Advisor for NGR 232
320	Jamal nasradin Aziz	Advisor for NGR 357
321	Jamil karim Majid Aga Kouri	Advisor for NGR 29
322	Jaafar Anwar Sulaiman	Advisor for NGR 205
323	Hussain Jankir Jadir Mizori	Advisor for NGR 9 th
324	Hussain Hama fatah Kadir	Advisor for NGR 120
325	Hussain Khider Hamad	Advisor for NGR 6 th
326	Helmi Saed Mohammed Kadir Jaff	Advisor for NGR 199
327	Hamod Omar Salih tajadin Mirani	Advisor for NGR 71
328	Khalid Kasim Mohammed Amin	Advisor for NGR 270
329	Khalid Shexo Morad	Advisor for NGR 226
330	Khothir Abdullah Hussain	Advisor for NGR 210
331	Khorshid Asad rasoul	Advisor for NGR 253
332	Rahim Karim Kadir	Advisor for NGR 244
333	Dilsoz Khothir Mina Bilbas	Advisor for NGR 235
334	Rashid Salih Rashid Atroushi	Advisor for NGR 227
335	Zahir Tahir Tawfik	Advisor for NGR 150
336	Smko Abdi Hassan Zedki	Advisor for NGR 54
337	Shokir Jendi Antar Mizori	Advisor for NGR 272
338	Sadik Zero Amin	Advisor for NGR 26
339	Salih Ahmad Ismael Al Romi	Advisor for NGR 355

340	Sabah Ismael Khothir	Advisor for NGR 351
341	Sadik Ali Mohammed Amin harouni	Advisor for NGR 245
342	Salahadin Khothir rasoul	Advisor for NGR 241
343	Adel Tawfik rashid	Advisor for NGR 206
344	Abdulrahman Asi Abdul Aziz	Advisor
345	AbdulKadir Mostafa Mohammed	=
346	AbdulKarim Hussain Khalid	=
347	Abdullah faisal Badullah Mawati	=
348	AbdulKarim Saedi Sulaiman Saedi	Advisor for NGR 285
349	Adnan Abdullah Ahmad jabara	Advisor for NGR 221
350	Arab Salih omar Kadir	Advisor for NGR 208
351	Alladin Mohammed Amin Issa	Advisor for NGR 206
352	Ali Ahmad haji Shaban	Advisor for NGR 92
353	Ali Sulaiman Hussain	Advisor for NGR 214
354	Ali Aboush Abdi Gazala	Advisor for NGR 59
355	Awni Haji Mostafa Jebraell	Advisor
356	Ali Ahmad Mohammed Haroni	=
357	Ali orjoman Hussain	=
358	Omar Mirkhan	=
359	Omar Mohammed Haider	=
360	Omar Bashar Salih	=
361	Omar Hussain Rasoul Kurdi	=
362	Usmat dino Beri	=
363	Gayath Tawfik sulaiman Yassin	=
364	Fatah Tahir Mostafa Abdukadir	=
365	Farouk Rashid Ali Mohammed Noroli	=
366	Fadil Mostafa Hussain Barwari	=
367	Frhad Mamand Hamd Mawloud	=
368	Kadir Mahmoud Khalifa Abdul Samad	=

369	Kadir Mohammed Rashid Abdul kadir	=
370	Kasim Karim Ahmad Mawlod	Advisor for NGR237
371	Karim Khan Mohmoud Khalifa	Advisor for NGR 40
372	Majid Sulaiman Ahmad Jaff	Advisor for NGR 264
373	Majid Sheikjh Baiz Hassa	Advisor
374	Majid jawhar Ismael	=
375	Mohammed Sheikh maarouf	=
376	Mohsin Mohammed Yasin	=
377	Mohammed Tahir Rashid Hama Amin	=
378	Mohammed hama Amin Hussain Zorari	=
379	Mohammed Saed Mahmod Shamirani	=
380	Mohammed Oma Amin Jamil Basaki	=
381	Mohammed Najib Sadik bahaadin	=
382	Mohammed Hamza Zazlaei	=
383	Mahmod Ahmad Sharif Khowara	=
384	Mahmod Hussain Mahmod Ali	=
385	Mohyadin Aziz Mohammed Baba Ali	=
386	Moshir Ibrahim Ahmad	=
387	Moshir Hadi Hama Aga	=
388	Najmadin Salih Mohammed Barzanji	=
389	Nori Hassan Morad Barzanji	=
390	Halgor AbdulKarm Kaznazani	=
391	Hushyar Salim Ahmad Pasha	=
392	Wahab Rahman Hama Amin	=
393	Younis Ramazan Gowara	=
394	Hama Khan Dara rashid	Get Honor Medal by RCC 808
395	Hama Rashid AbdulRahman Abdul Rahim	=
396	Khuthair rashid bahri	=
397	Slar Nas Rallah Kadir	=

398	Saeed Ahmad Shita	=
399	Saed Kadir Mohammed Jaff	=
400	Sheikh mahmod Sead Gull	=
401	Salih Ahmad Hussain	=
402	Abas Haji Aga Rasoul	=
403	Fatah Karim Fatah	=
404	Karim Abdullah Mohammed	=
405	Kisre Mohammed Saed Mohammed Fatah	=
406	Mohammed hassan Ali Mirza	=
407	Mahmoud Hama Amin Hama Salih	=
408	Ibrahim Ali Maho Mizori	=
409	Tahsin Shawes Saed	=
410	Rashid hama Amin Aziz	=
411	Riza Taha Mohyadin	=
412	Rifat Mohammed Ali	=
413	Zirak Tahir Saed	=
414	Suad faizallah Mohammed	=
415	Tahir Ali Abdullah	=
416	Mohammed Salim Kadir Othman	=
417	Midhat Tawfik Mansour	=
418	Moatasim BabdulKarim Hussain	=
419	Mohammed Sadik Mohammed Showani	Get Honor Modal by RCC 809
420	Omar Mahmoud Mohammed Mamowi	=
421	Ibrahim Nasradin Aziz Barzanji	Get Honor Modal By RCC 1014
422	Mohammed Isaa Birouwiss Issa jaff	=
423	Mohammed Saed Ahmad Mohammed Al Harouni	=


Appendix Chapter 8

Appendix no. (1) Memo 7371

Memo no. 7371, date 31 March 1978 for the use of special ammunitions from the Director of General Military Intelligence to Chief of Staff Leadership

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نيسكو وپيداي تومه تباراني شالاي نهفان له باشووري كوردستان


 وزارة الدفاع
 جمهورية كردستان
 سري العلية وشخصي
 (محل الطوم)
 السيد / رئاسة أركان الجيش
 الموضوع / استخدام العتاد الخاص

١٩٧٨ / ٣ / ٣١
 عدد : ٧٢٧١
 التاريخ : ١٩٧٨ / ٣ / ٣١

١. أتم السيد الرئيس القائد (مختلفه لانه) بأن تدعى مويرتتا مع
 القذافي صين توجيهية ضربة ماغنة (لقرامد عربين جيني ضمن
 مقرات صربي النوع الخول لبرق الباناني) بالعتاد الخاص والخطية
 لتخليصها بأقوى الوسائل القتالية (التيه الكوريه طيران الجيش للمضيق).
 ٢. تم جلسة أمر السيد الرئيس القائد (مختلفه لانه) مع القذافي صين
 وأقربنا حياضي -
 ٣. أوجه تتنيز الضربة على قرامد عربين جيني ضمن مقرات نوع
 الباناني حتى يجره دوران الشيل لوقوع الأهداف في منطقة
 الطريف المصدق العراقي - الشري بيشنل اختيار الأهداف
 خارج التأثير لتستل عن القذافي العمومية التوكية أو قتل التوكية
 به. للالتزم بالالتخطيط لتنفيذ عمليات صحفة مماثلة بأوجه مقرات
 عمليه إيران .
 ٤. عملت لياقته على التتبعين في زى اعنه وقامت مويرتتا بوجاسة
 أممكن توليد مارت عمليه إيران وإتقاف الأهداف، أمناه استناداً
 إلى صميم قرامد المادي فيها وبأثر هذا التواجد عن التمن الوطني
 في المنطقة الخلفية بما يتلزم والمخططات للتسرع من القمات
 القياس ومواصل الخلدق -
 ٥. مقرات عمليه إيران في منطقة عربين بيسان (قوى بيسان -
 توتمة، طي، شيق وسان) المكلثة قرب الطريف قدام ويدرقة -
 حلبسان .

(٣-٣)
 سري العلية وشخصي

2501

سري للغايب

- جميع قوات ال - هبة ماليا وهي تنظر صعدوا كدرا ليهيا كما مام
 المدونين مع عدد من الخزيين على افراج الحرس المتواجدة في
 المنطقة للاستفادة منهم بواجب الددلة .
- ٨ . قام العدو بفتح مقر رئيسه في الخزيين في منطقة احمد آره وفيه زار
 الجرح حسن رضائي وتواجد في منطقة احمد آره وقوة كبيرة من
 الحرس تقدر بحدود (٧٠٠٠) شخص وهم متجهين للقيام بالهجوم .
- ٩ . يوجد فوج مدفعية في منطقة احمد آره كما يوجد فوج مدفعية آخر
 هناك مدينة هاجية باتجاه كادار كما توجد عدد من الدبابات
 وثاقلات الذخايع المدفعية في منطقة احمد آره وفيه مال .
- ١٠ . كانت هناك الخزيين حدود (٨٠) قتل نتيجة قصف طائرات على
 مدينة هاجية ومن ضمن القتلى (١١) عنصر بارز من الخزيين وجرح
 اعداد اخرى منهم الخزيين شوكت حاج مشير من زمره عمال ايران .
- ١١ . تتواجد قوة للعدو حاليا قرب قرية دره نوفي (٩٩٣٣) وتقدر
 بحدود (١٥٠٠) مسلح جميعهم من الحرس .
- ١٢ . ما زال هناك عدد من العسكريين لم يتم اسرهم من قبل العدو
 الفارسي ويتواجدون مع الهالك قرية هاجية مرتين الزيم الكري .

يرجى التفطن بالذمير

عبد

العقيد الركن

مدير منظمة الكفالات المتطوعة الشريفة

نسخة الك /

مديرية الذمات العسكرية العامة (ش) / يرجى التفطن بالذمير

(٣-٣)
سري للغايب

IST.A4098.002.016

Secretary

Date: 31 March 1978

Directorate of General Military Intelligent

Top Secret & Personal

Memo To: Chief of Staff Leadership

Subject: **Using Special ammunition**

1- Mr. President, Let the God protect him, has ordered our directorate to study the best way of surprise strike against bases of Haras Khomainis which are included with saboteurs of the first branch of Barzani Group with special ammunition like air forces, army flights and artillery. The Study should be done with specialists.

2- Order of Mr. President, Let the God protect him, has been studied with specialist and we managed to have the following suggestions:

a- To postpone carrying out the strike against bases of Haras Khomaini(Khomaini Guards) and quarters of Barzani group till upcoming June because the above mentioned areas are on the Iraq- Turkey border belt. It is better for to pick up targeted areas away from the border in order to not 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 begins to study locations of Iran agents and has selected targets due to those their influences on our interior security in northern area and due to the availability of special ammunition and methods of shooting:

a. Bases of Iran agents in are of Balisan (Villages of Balisan, Sheikh Wasan,.....) which are near the main road 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 iran agents and Iranian forces at the same time they had enough distance from our forces for the chemical effects thus we think it is better elected and their locations are in lower areas, it is better for air forces, launcher tube and helicopters to strike during night, the effect will be perfect.

5- Our directorate has suggested to use the special ammunition toward the 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 19th March 1987 which includes the approval to direct the strike but we must get benefit from the result. What we have said is not just to harm saboteurs. Try to cooperate with the concerned corps and inform us before 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

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نیسکلوییدیای تۆمه تبارانی شالاری شهغال له باشووری کوردستان

2499

١٤٧/٥ ١٢٢٢
٢٧٢٢

١ ١١٧٦
٧٤٤

سریری للمانیة

١١٣٠ ٤٠٩٠
٢٧٤٤

منظمة استخبارات المنطقة العسكرية
العدد / الم / ق / ٢٤٠٥
التاريخ / ٢٢ آذار ١٩٨٨

الى / مديرية الاستخبارات العسكرية العامة (٥٥)
الموضوع / معلومات

المرابط : ميساف (١ / ١٠٠٠٠٠)

١. قيام النظام الفارسي حالياً بأخذ مدينة حلبجة من المواطنين كما قام بنقل جميع العوائل اثاث واليات الى داخل ايران واجه قسم من اهالي السنية الى القربا الجاورة لمنية مزاجية كما قام العدو بقتل جميع ضامته ذهابه مدينة حلبجة داخل ايران .
٢. يقوم المعالفارسي حالياً بحضروا من امام مدينة حلبجة وعضواته ووضع اسلحة من اكلة حول المواضع والنادات كما قام بحفر عدت مواضع على الطرق الرئيسية بأجاء حلبجة وفورمال وبيارة وطولبة كما قام بحلب قوات كبيرة من المدرس والمسيح من المناطق المذكورة وقد قام بضم عدد كبير من اسلحة معاومة الطائرات على اطراف مدينة حلبجة وفي منطقة بيارة وطولبة .
٣. جميع تضريرات العدو التي تصل الى المنطقة تصل لسيدوان كغزيران العدو وتملك الطرق السالمة :
 أ. طريق احمدية بأجاء فورمال .
 ب. طريق دزلي نوسور .
 ج. طريق للمانية

١٢٠٠
١٤٧/٥
١٢٢٢
٢٧٢٢
١١٣٠
٤٠٩٠
٢٧٤٤

2501

سرری للغاية

- جميع قوات ال... هبة هاليا وهي نسطر صدر الامرا ليا كما قام
المدون بتوزيع عدد من الخزيين على افواج الحرس المتواجدة في
المنطقة للاستفادة من رسم بواجب الدولة.
٨. قام العدو بفتح مقر يسكنه للورين في منطقة احمدآ وه وقد زار
الجيش حسن رضائي ويتواجد في منطقة احمدآ وه قوة كبيرة من
الحرس تقدر بحمدود (٧٠٠٠) شخص وهم متجهين للقيام بالهجوم.
٩. يوجد فوج مدفعية في منطقة احمدآ وه كما يوجد فوج مدفعية آخر
هلين مدينة هاجية باتجاه لمارا كما توجه عدد من الدبابات
وناقلات الد شفا من المدفعية في منطقة احمدآ وه وضو مال.
١٠. كانت فصائل الخزيين بحمدود (٨٠) قتل نتيجة قصف طائراتنا على
مدينة هاجية ومن ضمن القتلى (١١) عنصر بارز من الخزيين وجرم
اعداد اخرى في مخيمهم الخزيين شوكت هاج مشيرين زمره عمال باران.
١١. تقديما جرد قوة للعدو هاليا قرب قرية دره نوفي (٩٩٣٣) وتقدر
بحمدود (١٥٠٠) مسلح جميعهم من الحرس.
١٢. ما زال هناك عدد من العسكريين لم يتم اسرهم من قبل العدو
الفارسي ويتواجدون مع الهالي قرية هاجية مرتدين الزي الكردي.

يرجى التفعل بالذم لصلاح

العقيد الركن

مديرية العمليات العسكرية المتقدمة الشريفة

نسخة الى /

مديرية الاستخبارات العسكرية العامة (ش) / يرجى التفعل بالذم لصلاح.

(٣-٣)
سرری للغاية

IST.A4088.002.016

Topt 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), authentic source, has informed us as follows:

Persian Regime is evacuating the city of Halabja and moving all furniture and machines to inside Iran now. 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.

The Persian enemy is drilling positions, trenches and putting barbed wire before city of Halabja now. At the same time they drilled numbers of positions on the main roads towards Halabja, Khormal, Beyara and Tweela. Moreover they have brought big forces of Haras Khomayni (Khomaini Guards) and Paciches from the mentioned areas. The Enemy has set up large anti-aircraft and weapons around Halabja, Beyara and Tweela areas too.

All enemy reinforcement get there during the night. It goes through these roads as follows:

Ahmad Awa towards Khormal road.

Disly Nawsood

Tweela Road

Sazan and Chinara road after they set up four military bridges on the river of Sirwan.

4-The Enemy has brought his major forces by aircrafts and Helicopters.

5-As the result of raids, the city of Halabja by our aircrafts and artillery, the enemy has lost 3,000 Haras (Guards) and Pasiches, their bodies have been moved to the city of Bawa, in addition to that 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

Big Force of Barzani Group

Big force of Islamic Movement (Saboteurs)

Forces of Iranian agents

Forces of the Kurdistan Socialist Part (Saboteurs).

7-The enemy is going to attack the area of Shamiran and will push himself toward Darbandi Khan Dam in order to destroy it. Forces of Haras and saboteurs in the city of Qaradag have been told to get ready to push toward the dam of Darbandi Khan. Task of the mentioned forces is to block the road darbandi Khan, Arbat and kalar. At the same time, the enemy has brought large forces from Haras and Pasiches and saboteurs to Panjowin area in order to attack (Qaya area and Harir) and push towards Said Sadik and Shandari. Also there is huge gathering of the enemy forces in Sheikh Mareen area and waiting for order in addition to that there were groups of saboteurs guiding Haras as well.

8- The enemy has opened HQ for Haras in Ahmad Awa, Criminal Mohsin Razai has visited the area and a big force of 7,000 persons 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- Saboteurs losses were 80 as a result of raids by our aircrafts. Among those casualties 11 major elements like Shawkat Haji Moshir, from agents of Iran.

11- There is a forces of enemy 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 people of Halabja.

Please be kind to inform about ... 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.

Top Secret

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