



**NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF LAW
MASTER'S PROGRAM**

MASTER'S THESIS

**ANFAL CRIME AS KURDISH GENOCIDE IN
INTERNATIONAL LAW**

SIRWAN HAMASHARIF AHMED

**NICOSIA
2016**

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Department of Law Master's Program**

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LAW**

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DECLARATION

I hereby declare that this master's thesis titled as "*Anfal Crime as Kurdish Genocide in International Law*" has been written by myself in accordance with the academic rules and ethical conduct. I also declare that all the materials benefited in this thesis consist of the mentioned resources in the reference list. I verify all these with my honour.

1 /1 /2016

Sırrwan Hamasharif Ahmed

DEDICATION

1. I dedicate my study for children who did not have any sins and they had been taking them under the darkness of the sand in the deserts of Iraq, which it was written the cradle of the first law in the history of mankind!! And near the Saudi it is the Muslims direction!!
2. I can't forget the sadness of both my grandparents that they suffered from the missing their both daughters and 11 children with them in the Anfal crime!

ABSTRACT

Despite the measures and steps taken by the international community after World War II to prevent the commission of the crime of genocide, under the shadow of the international public law but Criminals has done committing this crime, which some called it mother of all crimes (Moshman, 2001), cruelty this genocide show that criminals don't made separate vary among children, women and the elderly, which do not have any sin!

Therefore, the international community should be prevent the recurrence of this crime, as happened in Iraq and the Kurdish people, their victims were lives on the land of their ancestors.

Iraq regime performed Genocide against the Kurdish people, unfortunately any of the counters did not move actor to condemn the crime, and described as part of "genocide" until the end of Saddam Hussein's rule in 2003, and when this ruling fell, accused of many crimes, and after that voices, Kurdish and international effort to select a fair extermination as a crime, endeavor and faced some procedural problems related to characterization and definition of the legal and air conditioning.

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LIST OF ABBRIVIATIONS

CPPCG:	Convention on the Prevention and Punishment of the Crime of Genocide
UNGA:	United Nations General Assembly
No. :	Number
IL :	International law
ISCC:	Iraqi Supreme Criminal Court
WW 1:	First World War
WW2:	Second World War
UDHR:	Universal Declaration of Human Rights.
ICTR:	International criminal tribunal of Roma
LG:	League of Nations
ICTY:	International Criminal Tribunal for the former Yugoslavia
UNSC:	United Nation Security Council
ILC:	International Law Commission
ICC:	International Criminal Court
IPC:	Iraqi Petrol Company
KDP:	Kurdistan Democratic Party
(PBUM):	peace be upon him

CHAPTER ONE

INTRODUCTION

1. Introduction

Genocide is a specialty of crimes against humanity, crimes on humanitarian image can include murder, slavery, and the deportation, and other inhumane acts committed versus the citizens, persecution and political reasons or ethnic or religious (Schabas W. A., 2007) while engaged in such activity or persecution in implementation of any crime against peace or any war crime or a link to any of them.

The crimes which are characterized by its strength and destroy not only for humans, but the long and destructive of nature and animal power, And it coincided with the burning of villages and the destruction of refresh water sources and the destruction of homes, in addition to the forced booking for individuals and intentionally subjected to tough living conditions and harsh actual intent to destroy them total or partial.

Despite all the legal and political, social and economic measures, taken by national and international levels but violations provisions of international humanitarian law keeps always possible whether by States Parties, or their natural persons (Anees Ahmed and Merryn Quayle, 2008), Which in turn calls for deterrent complementary measures to prevent it, in particular, and that the failure to take such measures in a timely manner can create the proper soil, not only to repeat their commission, but may lead to the commission of Violations the most serious and more terrible than the previous violations.

The International Convention on the Prevention of Genocide and Punishment issued by the United Nations General Assembly in its resolution No. 2670 and dated in

December 1948 and applicable at January 12, 1951, and ratified by all parties and including Iraqi state, is that control of criminal acts, where constitute the crime of genocide committed in the intention of physically embodied for destruction of all or part of a human group, and national or ethnic religious both of them committed in time of peace or war crimes of international law.

Iraq regime performed Genocide against the Kurdish people, unfortunately any of the counters did not move actor to condemn the crime, and described as part of "genocide" until the end of Saddam Hussein's rule in 2003, and when this ruling fell, accused of many crimes, and after that voices, Kurdish and international effort to select a fair extermination as a crime, endeavor and faced some procedural problems related to characterization and definition of the legal and air conditioning,

And as the facts of the crime and procedures Iraqi Supreme Criminal Court has set the legal adapted as a crime against humanity and sentenced her on this basis, and when the case was submitted to the Commission Supreme discriminatory, sentenced it to as a genocide crime (Ahmad, 2014 p 18).

1.2. Statement of the Problem

The important points of the subject of genocide consecutive full-fledged in Iraq and the silence of the international community and overlook them at the time, which requires study the crime of genocide, to determine:

1-Official and non-official bodies responsible for the criminal

2-The target to get any victim

3-The time of the crime

Selections of great importance in showing the extent of racial provide criminal act and criminal intent on the crimes that the Iraqi government committed against the Kurds in the period of time, which lasted from 1987-1990 year in which the new variables to the invasion of Kuwait and approve the siege began, changed the political role of the government in the system regional and international relations, and necessitated the passage in Iraq paved the stage twice to overthrow the regime after more than a decade from the period of date.

However, this research does not first of the field of identification, characterization and proof of genocide at the level of the international community, which popularized research in its field after the Second World War, in particular, the impact of the persistent significant for some countries and groups, leaders and armies in the commission of crimes of genocide.

1.3. Question of the research

I tried in my research to find the answer key questions: are the crimes committed by the ruling Baath Party in Iraq against the Kurdish people is genocide?

Under the key questions of the light here, do the perpetrators of genocide may be pardoned and statutory limitations offer to them in the international and domestic law? Or are the Officials have a personal responsibility? If our study evolved out of her questions about this question is rounded on the tires we match them in order to adapt the legal part of public international law.

1.4. The aim of the research

The aims of the current research achieve to follow:

1. Answer the questions raised about the fact of the genocide of the Kurds.
2. Review of the reality of the crimes committed against the Kurds, according to the historical sequence it helps us to prove the classification Genocide and mass public accordance with the international law.
3. Legal conditioning of the crimes taking place in the light of contemporary public international law because it's over the domestic law, and by the Universal Declaration of Human Rights.
4. To know the reasons and justifications that, prompted by the Iraqi government to commit these crimes and Classified as genocide.

1.5. The scope and limits Search

genocide is a new crime in its description and legal adaptation, which emerged after the Second World War and in Iraqi Kurdistan, which was ruled absolute authority by the Baath Party and the crime of genocide against the Kurdish, people despite the fact that the international community was not condemned of the crime and after they came down of Saddam Hussein and the formulate of the Supreme Iraqi Criminal Court and the court decided In the period time between 1987- 1991 killing the Kurdish people by the former Iraqi regime it was genocide.

1.6. Problem of the Research

Despite the presence of some research and various studies in this area, but we believe it is not sufficient for such a brutal crime against the Iraqi Kurdish people, because in the course of this phase of the Iraqi Kurdistan, including Iraq, as an independent state history there are many problems such as successive wars at the end of the twentieth century Even within the fall of the Baathist regime in 2003. After the formation of the federal Iraqi government, and the participation of the Kurdish parties and the acquisition of some of the evidence credible that show us how to commit genocide in Kurdistan Iraq crimes .with all the that it will not to become recognized in an international crime by the international community, and its need for more studies searching.

1.7. Methodology

In my research I used comparative analytical method, taking advantage of its properties to reach results its best in studies that try to combine the facts of history and pension analysis steps required for the events, and the adoption of the legal adjustment formulas, to enhance the results.

CHAPTER TWO

GENERAL DESCRIPTION ABOUT GENOCIDE CRIME

2.1. The term of Genocide

The term genocide used by Raphael Lemkin first time in 1943 (Hughes, 2010), that is a new crime of "barbarity" in international law, it has officially appeared first time in December 11 /1946, in the recommendation of the General Assembly of the United Nations No. 96/1 General Assembly condemned this crime, and account of crimes of international law.

Raphael Lemkin, who would later coin the word "genocide," was born into a Polish Jewish family in 1900. His memoirs detail early exposure to the history of Ottoman attacks against Armenians (which most scholars believe constitute genocide (Goldman, 2012).

Genocide includes any of the acts mentioned in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, when committed with intent to destroy, in whole or in part a national, ethnical, racial or religious (TATIANA, 2012)group as such.

In the beginning of human history since nowadays, millions of people murdered by dictator's governments or groups were Organization or local authorities. Mass killings usually happened for reasons of race, ethnic, religious communal or nationalist, and sometimes just by different, The genocide on the basis of the mentioned behavior is set in They followed each other by an aggressor hand of the victim groups targeted with a view destroy it Biology a social or a culture (Ferreira, 2013)

2.2. History of genocide

Genocide counted by policy, researchers and jurists, one of the worst crimes of the legal and moral aspects committed by governments or ruling authorities, as well as the rebels and terrorist organizations and the occupation authorities, in the history of mankind, also described as the most international serious crimes as stated in Article 6 of Rome Statute of the International criminal Tribunal for 1998 quoted in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948.

After the First World War Turkish authorities beginning to kill and displace more than a million and a half million Armenian men, women and children, after that period of time and near the Turkey border in the Iraq performed the first genocide in 1933 where Killing more than three thousand Assyrians in the stubble Semel in the Iraqi Kurdistan by military government authorities on a completely religious basis.

At these times when Adolf Hitler was German Chancellor on Jan 30, 1933, the overcome of Germany In October, German deputies walked out of disarmament talks in Geneva and Nazi Germany retreat from the League of Nations.

In October, at an international legal conference in Madrid, Raphael Lemkin proposed legal measures to protect groups. His suggestion did not (SAINATI, 2012)receive assist World War II began on September 1, 1939, when Germany violates Poland, triggering an agreement-mandated Anglo-French proclamation of war on Germany.

On 9 17, 1939, the Soviet army taken the eastern half of Poland Lemkin fled Poland, run away across the Soviet Union and finally arriving in the United States. On June 22, 1941, Germany violates the Soviet Union. As the German forces advanced further east, SS, police, and military personnel carried out atrocities that moved Winston Churchill to start in August 1941: “We are in the presence of a crime without a name.” In 12 1941, the US got to WW II on the side of the Allied forces. Lemkin, who arrived in the United States as a refugee in 1941, had heard of

Churchill's speech and later alleged that his introduction of the word "genocide" was an answer to Churchill's statement.

Hitler embarked on a variety of inhabitation policies aimed at restructuring the ethnic composition of Europe by force, use mass murder as a tool. Including among these policies and involving mass murder was the attempt to (Hopkins, 2010) murder all European Jews, which we now refer to as the Holocaust, the attempt to murder most of the Gypsy "Roma" population of Europe, and the attempt to physically liquidate the leadership classes of Poland and the former Soviet Union.

The fight of the former Yugoslavia was marked by war crimes, massive and crimes against humanity. The struggle in Bosnia "1992-1995" brought some of the harshest fighting and worst massacres to Europe ago WW II. In one small city, Srebrenica, as many as 8,000 Bosnian boys and men was killed by Serbian forces. In response to the atrocities occurring in Bosnia, the UNSC issued resolution 827, establishing the International Criminal Tribunal for the former Yugoslavia "ICTY" in The Hague. It was the firstly, international criminal tribunal since Nuremberg Crimes The ICTY can prosecute and try are: grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity. Its jurisdiction is limited to crimes committed on the territory of the former Yugoslavia.

From April until mid-6, between 500,000 and a million Rwandans, mainly Tutsis, were murdered in Rwanda. It was killing on an extravagant scale, scope, and speed. In October, the UNSC outspread the mandate of the ICTY to include a separate but linked tribunal for Rwanda

2.3. Differences between Genocide and other crimes

Crimes against humanity meant any of the actions in Article 7 of the Statute of the International Criminal Court, when committed in a widespread or methodical manner against citizens. The background of this definition is Article 6 (Ferreira, 2013) of the Statute of the Nuremberg Tribunal, Control Council Law No. 10, resolutions 3 "I" and 95 of the General Assembly of the UN, and the legal basics contained in those documents "codified by the International Law Commission ILC in 1950 as the Nuremberg Principles".

The difference between genocide and crimes against humanity is that genocide aims at the destruction of a group, and not just individuals within the group. Genocide discriminates against a group while crimes against humanity are directed indiscriminately against any civilian population (Schabas W. A., *The Odious Scourge Evolving Interpretations of the Crime of Genocide*, 2006).

The fundamental difference between crimes against humanity and genocide is the type of the victims: the first case, the victims are chosen randomly; secondly, they are well differentiated. The victims are indiscriminate when criminal action falls on anyone, regardless of their condition or state of affairs – anyone, whoever they may be - and they are discriminated against when the criminal activity is directed not at an undifferentiated subject, but at a subject defined as belonging to a specific group.

Crimes against humanity differ from offenses instead the law of nations in their fields of validity. In turn, each of their fields of legitimacy has certain characteristic features:

- Material scope: non-derogability / prohibition (Marcelo, 2005).

- Personal scope: singular obligation or individual responsibility / exclusion of the inadmissibility of the defenses of superior orders and authority limit.
- Timescale: non-applicability of statutory limitations / retroactive application.
- Territorial scope: universal jurisdiction.

For that, crimes against humanity are more than just a set of offenses grouped under the similar name and designate something extra.

Crimes against humanity are a *nominee iuris* for a set of conditions under which the principles of domestic law can be replaced by those of international law "e.g. suspending the rule of the non-retroactive nature of criminal law".

The reasoning is as follows:

- Under certain circumstances "the catalog of crimes in question",
- And certain conditions "widespread or systematic attack against a civilian population",
- Domestic law rules are displaced by international legal norms relating to due process of law.

crimes against humanity shows on several historical sources , including the more seasoned thought of wrongful acts illegal of the region, however, it was the Nuremberg process that always offered ascent to a class of criminal acts pertinent to all States, against any individual and at all times and spots, even without or against the will of individual States. Conversely, offenses illegal of countries included practices, for example, theft alternately the slave exchange yet did not have the degree at present ascribed to unlawful acts against humankind "crimes against humanity".

Similarly, genocide is not a separated class, separate from crimes against humanity, yet a specific type of these unlawful acts. All genocide includes the commission crimes against humanity despite the fact that the inverse is not generally genuine.

Accordingly, all the lawful results portrayed above are too appropriate to the crime of genocide.

Genocide incorporates any of the demonstrations specified in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, when carried out with expectation to destroy in whole or in part a national, Ethnic, racial or religious group. The distinctions among crime against humanity and genocide is that crimes against humanity are coordinated aimlessly against any citizen while genocide goes for the demolition of a gathering, and not simply people inside of the gathering. Genocide victimizes a gathering while.

The idea of genocide was foreshadowed in a subjective refinement made by the Nuremberg Tribunal, through two introductions contained in there Statute:

- Extermination, enslavement, murder, deportation and other acts submitted against any nonmilitary citizens, before or amid the war, or
- oppressions on political, racial or religious grounds in execution of or regarding, any of the law violations under the purview of the Tribunal, regardless of whether they constitute an infringement of the domestic law of the nation where they had executed.

Hence, a qualification is made between two classes of victims:

- Particular gatherings mistreated deliberately "specific groups persecuted intentionally: victims of discrimination.
- Any nonmilitary citizens: indiscriminate victims.

2.4. Elements of the crime of genocide

And the light of what is stated in terms of the Convention on the crime of genocide consists of two components: -

A. Criminal act.

B. willful or criminal intent Firstly: criminal act: already intended Reus:

1. Constituting the crime of acts consists of several acts which lead to the murder of all kinds, regardless about the means used either as a direct shot dead or bombs or hunger or disease. Whether directly or indirectly, to the members of the national group because the text was never absolute, and being on the launch, and whether the murder was committed in time of peace or in time of war as stated in Article 1 of the Convention (William L Saunders Jr Yuri G Mantilla, 2002)

2. The second category of knowledge and will varieties, which are the acts, rules of the crime of genocide, is causing serious bodily or mental harm to a serious national or ethnic group

The intention is to hurt pain or damage as a result of conduct by a State to individuals and to be a displacement or disease or malnutrition, anxiety or to deprive the community of their presence through displacement or acts of torture and inhuman degrading treatment and persecution (Mahmoud, 1960).

Secondly: the second pillar of racial genocide is an element of destruction in whole or in part of a group ethnic or national of any criminal intent of the crime and in the light of the paragraphs in Article "II a-c" and because the criminal intent is a key element of the elements of the crime if we know that this element confirmed by Article 30 of the International Criminal Court system and that it was

person in respect of the result and the reason therefore commit any of the acts listed in Article 2, paragraph 2 of the Convention is a key element in the formation of crime, it can be concluded this corner through the contents or conditions and through

the actions carried out by the occupier, according to the theory of cause and effect (Schabas A, 2007).

Physical corner: is intended to acts or omissions which constitute an international crime is any intentional act dangerous in itself, such as the destruction of villages and the environment, and make people hide biological and chemical weapons experiments against them, which Saddam's regime did it against the Kurdish.

CHAPTER THREE

GENOCIDE CRIME AGAINST KURDISH PEOPLE

3.1. Genocide was a silent crime against the Kurds

When the Iraqi government led by the Baath Party until the genocide against the Kurdish people, but firstly it began by his silent way after that performed it openly without any fear and hesitation of the international community and public international law.

The idea of the crime of genocide put forward by Saddam Hussein in the secret meeting for a limited number of Baathists trusted had attended the friend in charge, and if he wanted to test the reactions of psychological present, and the distance to accept the content of the idea of political, moral and religious legitimacy, Content: How exterminate the Kurds in the whole of Iraq as a species ... the idea came Brochure question did not come in war or worsening stressful conditions, but by talking about a chemical it seems that Saddam intends to manufacture, and intended to be used by following the piped drinking water reservoirs in the target area with the intent to cause infertility among drinkers, This article chemical-saturated water they are Kurds, of course.

True of trends Arabization of the Kurds, which indicates clearly began in the Iraqi ruler's behavior with the beginnings of the establishment of the modern Iraqi state, and specifically after the flow of oil from Baba gurgur region of Kirkuk (Talabany n. , 2012) and in 1927, and the establishment of an oil company that managed the oil and then the North Oil Company in 1972, a way that pushed Iraq to the IPC that oil plays in itself, a decisive role in the production localization in the implementation of the idea of change plans The demographic of the area .

As it was clear the quest to keep the Kurds for their areas where oil is available in various ways, as well as the deportation of Kurdish origins of the staff for their work in the oil level institutions in the region to authorize the Director of the North Oil Company, for example, the power to refer the Associate of the non-Arab minorities "Kurds and Turkmen" to retirement security considerations face value and purpose Arabization and ethnic cleansing.

3.2. The Arabization of the Kurdistan zone

The primary stage involving driving Kurds from the city and governorate of Kirkuk, either through the managerial exchange of the individuals who were respectful hirelings and oil organization workers, or through the others' intimidation We must recall that the Kurd, who leaves Kirkuk city either willful or automatic, is not permitted to return despite the fact that he is enrolled in the governor's "common status" statistics registry.

second stage was proficient by settling countless Arab families from southern and center Iraq in the city of Kirkuk and neighbor regions and giving them lodging and business in the police office, military, the knowledge and security benefits, the Baath party association and the " popular army" which helped the consistent armed force by keeping an eye on the perception posts and protective positions that encompass the city and rule the include zone (Gul, slimani).

The aim of Arabization clearly confirmed by the Reduce Kurds staff in the North Oil Company landmarks, the Arabs in 1958: 1% of the total number of the employees, while the Kurds 38% and Turkmen 16 and Christians 40% In that year, but these percentages changed succession of years to become in 2000: 73% of the Arabs in

exchange for 1% for the Kurds and the Turkmen 19% and 6% for the Christians (Ahmad, 2014).

In addition, localization processes that took place in pan-western and northern regions of Iraqi Kurdistan, collectively destroy for the inhabitants of these areas in particular, and the pursuit by the government of being uprooted from their lands and robbing them of the status of the Iraqi citizenship, precious and group of people living below the pain and lack of permanent pressure , worried enveloping their daily lives, and this result has become clear in the government directives represented by the Deputy President of the Republic Chairman of the North where he interpreted the localization procedure does not justify to the concerned resident of the provinces of autonomy "of Kurdish and Turkmen" residence in Kirkuk.

The localization a was silent mass destruction process as some steps associated with the measures, the government requires keeping them secret, as is the intervention requested by the governor of the nationalization of the Baath Party branch in the subject of the nomination of Arab elements for membership about the Chamber of Commerce of Kirkuk implementation of the directives of the Committee on the north for an increase of the proportion of Arabs in which at least 50 % and confidentiality in such an acts indicate the existence of your intent as an element of the crime of genocide silent, continuous has taken steps speed of an era is different to the other, but beginning with the extensive destruction has in the period between 1980- 1990, according to plans well thought out led to the changing demographic clearly defined, and in contravention of International law in this area.

3.3. The displacement of Kurds from their homes

The displacement of Kurds from their home areas of origin and resettlement of Arabs rather they marched in parallel with the localization trends, and began to like him since the monarchy and continued as well, such as continuing to Covenant 1961 were displaced groups – the first Republican reign of Abd al-Karim Qasim Between 1960 several villages Kurdish from Kirkuk to the outside Housing and Arabs came from the rest of the provinces instead them. It has forced them after then-commissioned army attacked Kurdish villages and the destruction of 150 one hundred fifty villages.

in 1975 in Jalawla, 1193 Kurdish family from inside the area took them to the outside, and continued in this orientation scatter Kurds scattered groups of the rest of the Iraqi provinces Arabs, using various means and methods that disturb humanitarian standards, and often What was resorting to assemble several families puts them in cars A private, guarded by armed police in an exciting convergence of operations in the details and results of conduct to deal with the enemies are not Iraqis.

total towns were destroyed in Iraqi Kurdistan 3839 since 1989, including 1957 schools, 2457 mosques and 271 little centers, and that the total number of families removed from their towns, and towns were 219,828 for the most part cultivating families, it turns out to be clear that one fourth of the towns destroyed in Kurdistan were in the Kirkuk governorate because this is one of the most important economic and petroleum governorate in Kurdistan (Talabany n. 2012).

The displacement process of extermination took place silently, the government did not announce the details and did not allow the announcement of her, used force in the implementation of steps under the pretexts security and the orders of the Supreme government agencies, and the same time the arrest of the deportees, as well as those who are sheltering evacuees and the operations of displacement this crime applies

corners on the crime of genocide according to the Convention on the Prevention and Punishment of the Crime of Genocide reasons following:

Displacement has been accompanied by excessive use of force that caused the events physically abused "death and disability" moral and other "live in fear situation and anxiety extreme" for long periods of time and the majority of the Kurds (shorsh, 2013).

in 1963 government troops raided the homes and neighborhoods in Slaimani and the arrest of thousands of Kurds from doctors, lawyers, engineers and ordinary people, and then conducted a sorting them it was a communist or belongs to the KDP party or suspected of belonging to one singles on the spot and shot dead by soldiers in place without trial, then was digging a trench large equipment digging mechanism Bulldozer and buried the victims collectively in a secret location near the camp.

3.4. Anfal crime

After all the crimes against the Kurdish people, the Iraqi government started a great crime against the civilian population and called the process "Anfal", and shows that Anfal was not his decision quickly, but it was a campaign strategy was planned earlier.

The term Anfal is an Arab of origin and means booty and the roots of the meaning to grant the spoils, and the word Anfal known before the advent of Islam and it meant plunder and looting and fighting in wars.

Eighth Sura of the holy Quran called Anfal and indicates: "they ask you about Anfal spoils say the spoils "Anfal" belong to Allah and the messenger ..." (Allah), that sent it down of the Madina while the battle of Badr in the second year after the migration.

And Anfal means an increase in wealth and money and Islamic scholars say the Anfal Booty is bestowed upon the Muslims from the funds of the war. And its meaning all the money and booty obtained on the battlefield.

Absolutely that the Baathist regime chose this name was succeeded by significant political and financial support from Arab and Islamic countries and attract public opinion to Islamic countries that the Kurds are infidels and enemies of religion and to make the Muslim in world silence and neighboring countries and to hide his genocide by false big cover religion.

Anfal operations have included an eight-stage or a military operation, launched on each label Anfal, it began the first Anfal, and concluded the eighth Anfal, and used in the implementation of various weapons, including chemical weapons internationally banned, and the victims or their proceeds 182000 thousand victims, and destroyed more than 4,000 thousand of the village.

in addition to thousands of Disappeared Persons and those who are led, and the destruction of thousands of villages and civilian institutions, such as schools, power plants, the looting of property and forced displacement , localization , destruction of economic infrastructure in the region and polluting the environment (Essa, 2012).

That the offer contained in the above, including shows and does not accept the doubt:

Of prior intent to exterminate the Kurds racially motivated "national" and that the Anfal campaign ordered by Saddam Hussein, and planned by the General Command of the Armed Forces, and carried out by army units and various its types, the evidence of this intent Based on this presence in the intent to see that the term genocide, in line with the actions identified by the Convention as the basis to describe the acts committed in the operations of the Anfal genocide and across the main clauses and also comes.

3.5. Legal description of the Anfal crime

Anfal crimes, which it called out the Anfal operation was started in the days Limited between 02/23/1988 to 06/09/1988 in military operations, by the Special form Forces and Republican Guard, security, emergency "qua tawary", commando, detachments own, regiments of National Defense and Army military forces People (Ali).

Saddam Hussein, the former President of the Republic of, Iraq, has received his cousin Ali Hassan al-Majid, known as "Ali kimiawy" at date of 02.29.1987 Secretary of organizing the north of the Baath Arab Socialist Party office, and that the decision of the Iraqi Revolutionary Command Council No. "160" 29 / 3/1987 and full grant him absolute authority to Iraqi Kurdistan, and received an exceptional additional power on 20/4/1987 and make it an absolute ruler in northern Iraq and put him a special budget at his disposal for the implementation of the Anfal campaigns without reference to the Ministry of Finance or the public treasury or controls the accounts state.

Ali Hasan majeds authorities' Document

Page 1

In the name of God the merciful the compassionate

[Republic of Iraq]

No: 160

date: 29/3/1987

In the name of the people
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 Baath party on 18/3/1987, The revolutionary command council decided in its meeting on 29/3/1987 the following (Shorsh, Anfal the Iraqi states genocide against the kurds , 2013):

First: the comrade Ali Hassan al-Majid, the member of the regional command of the Baath party, will represent the regional command of the party and the revolutionary command council in implementing their policies in the entire northern region, including the autonomous region of Kurdistan, in order to protect the security and order and guarantee stability and the implementation of the autonomy law in the region.

Second: the comrade, a member of the regional command, will have authority over of the civil forces, military and security apparatus 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 unit 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, a member of the regional command, concerning everything pertaining to the first paragraph of this decision.

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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

CHAPTER FOUR

STAGES AND PURPOSE OF ANFAL CRIME

4.1. Stages of Anfal operation

First Anfal: Sergalou and Bergalou, February 23-march 19, 1988.

Second Anfal: Qaradagh, March 22- April 1, 1988.

Third Anfal: Germian, Qader karam, tuz Khurmatu, and Sengaw April 7-20, 1988.

Forth Anfal: Taqtaq, Shwan and Agjeler, May 3-8, 1988.

Fifth, sixth and seventh Anfal: the mountain valleys of Shaqlawa and Rwanduz, may 15-august 26, 1988.

Finally Eight Anfal: Badinan areas Amedy, Akre, Zhako, Sheikhan, Dohuk, from 25th of February to 6th of September 1988 (Mahmud, 2013).

The definition of the crime of genocide applies to the Anfal massacres committed by the Baathist regime.

Surly genocide concept in the new international law has its specificity and dispersed with the rest of the crimes which are two features are important "goal and the number of victims" and have the look of these two trends to be identified genocide:

1. Objective: This crime genocide varies with the rest of the other crimes, because the goals in this crime that kill all or part of the group of people, from here we look just to the existence of genocides goal.

2. The number of victims: the goal in the genocide is the loss of the spirit of man and kill, we do not look at the number of victims of the extermination process, once an intention erases a group of people counted as a crime of genocide and we do not look at the number of victims (Goldsmith, 2010), only Existence goals of kill enough for a count this crime.

If we want to look to a neutral view of the harsh crimes by Saddam Hussein's regime against the Kurdish people we understand that the purpose and intention to kill and erase a section of the sons of the oppressed people and their fault only differences of language and thinking to life and we try to explain that later.

If we compare the relationship between the will of the President and his intentions prior to do in the Anfal operations, and the nature of the implementation of these actions and the results destructive effects on them, underscores provide mental element "intentional" in all of these crimes and other committees in Kurdistan, which are classified as genocide according to Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948, which is available for the crimes of:

1. The killing of members of the nationalist group "Kurdish"
2. Causing serious bodily harm to them and many of the members of the Kurdish nationalist group.
3. Subjected Kurdish nationalism as a group to living conditions "displaced to Arab areas" in a move intended to assimilate "physically destroy them" on future ranges.
4. Killing of young men in particular, is imposed by the government measure, aimed at preventing the continuation of reproduction "to have children" within the Kurdish nationalist group.

It crimes indicate methods of implementation and results of the implementation, including confusion do not accept that the will of committing in advance are available to get to the result of a "perceived" required access to it, has already been accessed.

The elements of the crime are the material element and the mental element and forensic corner, and material element is achieved external criminal behavior has emerged in the Anfal case the vehicle crimes against the great human group, and the back of criminal behavior by giving orders and the elimination of those groups and the implementation of those orders to kill mayors, and appear physical activity through executions without trial or investigation, and follow the ways of depreciation and starvation and the use of banned weapons in the killing of human beings.

in addition to the demolition of houses and burning crops and such as the elimination of animals, and those results negative result harmful achieved and the relationship achieved causality between the act and the result, as the mental element of the offense comes through illicit behavior with the existence of texts that criminalize such criminal acts.

That the offer contained in the above, including shows and does not accept the doubt: Of prior intent to exterminate the Kurds racially motivated "national" and that the Anfal campaign ordered by Saddam Hussein, and planned by the General Command of the Armed Forces, and carried out by army units and various its types, the evidence of this intent Based on this presence in the intent to see that the term genocide, in line with the actions identified by the Convention as the basis to describe the acts committed in the operations of the Anfal genocide and across the main clauses and also comes.

4.2. Purposed by the Iraqi government to commit the crime Anfal

Realized Saddam Hussein how did took the opportunity, to internal military move in the Kurdish region, he drew his orders to the General Command of the Armed Forces to allocate suitable for the task ahead pieces, was the outcome of the power of a huge fight strong, three military corps are legion I and II and III and the main leadership headquarters in Kirkuk and Mount Mansouriea and Erbil, and was General Command issued orders movements to the huge military units in Kurdistan was the army ready for the execution of the crime and the air force was involved in the process and limit any reply external act or internal and execution of the crime low as possible in order to do not be resonate media in out of the country and its impact on the international political situation (Ahmad, Genocide Crimes from International Law Prospective Case Study: Iraqi Kurdistan 1980-1990 , 2010).

Describe the Anfal operations stages, we have to mention the fate of the detainees from the children, elderly men and the women from the Kurdish villages where they were taking them to places were prepared for this purpose in advance such as "nwgra Salman and dubz and Topzawa" and in some cases are sorted women, Senate, children and young and after conveying young people to an unknown destiny (abuud, 2012).

and that detainees have suffered a struggling with harsh conditions as the detention center, which is not the most basic necessities of life as well as cruel treatment by officials and guards, where they were subjected to torture and excessive humiliation, in addition to the lack of food and water is not potable, causing infected a number of diseases such as diarrhea and vomiting, which led to the death of a large number of them, especially children, and who was to die in these prisons are buried by the detainees and under the supervision of tight security outside the prison and without burial and Especially in prison Nwgra Salman where the dead buried in drilling shallow, making it easier for the animals strike and dogs from digging up the graves

and ate the dead, and there was another kind of psychological torture of detainees, especially mothers, where the guards are taking their mothers, young children for period of time than was lead mothers to scream and wail and what the owner of that pain, psychological and harsh and there are other issues were happening in these prisons unspeakable humanitarian cheese and it is rapes that were affecting young girls by warlords and guards these prisons and to name a few, which suffered the detainees and the rest of the children and families of Kurdish villages that were attacked were killed.

Including thousands and strongest types of destructive weapons between the women and children and the elders and the rest of the family who were able to escape from the border to escape survived and those who did not run his fate was death.

Pregnant women have given birth in the road were dying they're born, children did not have ability to walk hundreds of kilometers to cross the Turkish border and the Iranian were died on the way, those women and elders has not tombs nobody can visit them by his family and Remembered and crying for them.

4.3. Mass graves

Were found mass graves in different parts of Iraq, for example, at the Nwgra Salman and the Al-hazar area near Mosul, specialists in mass graves had they recovered the remains of 123 victims of one of the sites in Al-hazar areas near the Mosul area, and were leaving at least "150" body and they weren't found any male bodies in there.

but all of the bodies were children, women, and children ages ranged from embryos to children under the age of puberty, the victims in those graves found in the traditional clothing worn by Kurds and found that some of them were carrying luggage, household suggesting that they had fled from their homes, as well as experts

found the luggage of a healthy personality and drugs that were found in the graves were mostly for children infant and noted the date of manufacture of such medicines, it was made in the month of August / 1987 and this is what supports the witness accounts health who appeared in court and say that those victims was carried Anfal victims.

In addition enable forensic experts to restore securities identification of mass grave and the identities of personal papers to confirm that the victims in the mass grave were victims of the second Anfal from the village "Gelmurt, and may stumble on other grave collective in at least 150 bodies again and was all the victims in these graves are male and this certainty that he was being removed from women and children, and may show that all bodies from the bodies that have been recovered from the grave that the owner was dressed in traditional clothes Kurdish and especially the bodies of women where She was wearing a well-known Kurdish clothes bright colors.

And in a cemetery "Al-Muthanna" was more than "90%" of the victims was at the age of 12 years or less and found other things personal and important and showed a personal identity that were found in the tomb of cards that the owners were from the village of "qulijan" which has attacked during in the third Anfal campaign in Garmiyan area.

Despite those children Kurds died without guilt and without knowledge Why They Died! The parents urge their children to take more stuff to love their hearts wanted them to accompany them something that reminds them of their villages.

In one of the mass graves they found a small child's body who will keep nameless until the end of history, holding a small football, was found a reclining near the body of his mother, and there is another image in the Al-hazar mass grave, a body of a girl

and near her side bottle-feeding, this image of the tragic images Kurdish children accustomed to the use of Anfal (Abud, 2008).

General Prosecutor read his legal list condemnation against criminals during the trial when they are accused and which he said:

There are more incidents of the greatest and most tragic, especially for children who have found in those mass graves and finally we can say: "In the name of Allah the All-Merciful the ever merciful: for whichever guilty deed she was killed" (Allah, Holy Quran).

Christ Jesus "PBUH" said: "Let the children come to me", but O Prophet Christ they are not having any children to come to you, their children have died of toxic gases or buried in the sands of the southern desert in the Saudi borders or killed by bullets treacherous, that wild lives pure, innocent now about the great throne at the Ultimate Tree with angels and apostles and righteous you go to them, they need to your Kindness and tenderness O Prophet of peace, love and tolerance.

4.4. Relationship between Anfal crimes and genocide against the Kurds

The relationship between Anfal as we mentioned earlier in this rebellion dumped brutality we haven't an explanation convincing, firstly the conquests purpose it was to spread the Islamic religion for non-Muslims in the Arabian Peninsula, and then between neighboring peoples and the Anfal any booty came accidental requested by type to Continuation conquests, and the campaigns that toxicity Anfal was not for that end as targeted by these campaigns they were from the Islamic religious and were not the campaigns and brutal attacks with a view to make money and booty, and clear that officials from those attacks, the leaders did not need to that property to these poor villagers scarce, despite the fact that officials leaders fired by the attackers

looted and stole money that the peasants seize them, but in fact it is not the primary motivation for those attacks.

But those inhumane attacks launched against human and in fact the Anfal different in the era of the Prophet "r" for those Anfal, because the Muslims are the top was profiting from Conquests "Jihad" those For the sake of the Muslims or the conquerors or house money or to teach the principles of the Islamic religion "Hisham", while being sent detainees to death without distinction by the campaigns that called By Anfal.

General Prosecutor Mr. Mnqz Taklif pharaoh Read a legal regulations front of Iraqi Supreme Criminal Court against the defendants (abud, The Anfal court legal reading, 2008), where he said it will hear your court distinguished the testimony of the plaintiffs the right to personal and witnesses and documentary evidence that public prosecutors sure to happen the shock of the humanity, conscience, about"9312 " Pages But those documents would be unable to imagine the full gravity of the brutal crimes on victims, tens of thousands of victims who could have come to this court in the coming days to get their hands on the Holy Quran and swear to tell the truth about their suffering instead buried in Distributed on mass graves across Iraq, but some of the victims who have the luck to stay alive will come to give testimony, what they Saw, what they heard and what they felt..

According to international crimes standard Anfal inter, within genocide crimes and after reading Convention on the prevention and punishment of the crime of genocide, which ratified by the League of Nations in January 9 1948, where Article II of the Convention that the mass murder includes all acts aimed at destruction in whole or in part, a national or religious groups, killing members of the group, causing bodily or mental harm to members of the group, inflicting on the group to Living situation difficult living intended to kill its members, to prevent giving birth to the child, keep children from their families and relatives to another area.

4.5. High Criminal Courts Decision

Second Criminal Court of Iraq's Supreme Criminal Court was formed in the date on 06/24/2007, headed by Judge Mohammed al-Orabi Majeed al-Khalifa and in its entirety, and decisions issued against the defendants take them about the criminal Ali Hassan al-Majid.

O Ali Hassan al-Majid in the period between March 1987 and September 1988 you were a member of the dissolved Revolutionary Command Council and the official of the organization's Northern Bureau, under resolution 160 in 1987 carried out the both Dissolved Baath Party policy and the Revolutionary Command Council, and goals convicted Saddam Hussein in the Kurdish region in the north Iraq and gave all the power to report binding on all state , military, civilian security, party organs and granted the powers of the National Security Council and of the Commission they wanted North

The court decision: To sentence Ali Hassan al-Majid to death by hanging to death for the crime of murder and causing serious bodily harm or mental harm to members of the group and inflicting on the group deliberately conditions of life with a view to its physical amortized whole or in part as a crime of genocide in accordance with the provisions of Article "11" First / A b c, and secondly / a, E, and in terms of Article 15 / I, II and Article 24 of the Supreme Iraqi Criminal court Law No. "10" In 2005 and identified the punishment according to the provisions of Article (406/1) and in terms of materials Subscribe "49, 48, and 47" of the Iraqi Penal Code No "111", i 1969(111, 1969).

CHAPTER FIVE

LIMITATIONS AND AMNESTY IN LAW

5.1. The statute of limitations in Iraqi law

The meaning of the statute of limitations: a period of time of the crime (mnzr, 2010), and called the passage of the crime or the obsolescence of the criminal case, or lapse of a period of time the verdict in the criminal case and called the passage of the sentence and the lapse of the prescribed period the expiry of the criminal case first and finally the fall of the Punish crime

There is no doubt that the introduction of the statute of limitations would system of impunity and the seriousness of this result was the Iraqi accelerator balance between the requirements of the introduction of the system and the most important of which folded last pages painful memory and give priority to the principle of legal stability, and between the interests of justice to die from bad reward on the other hand.

And an Iraqi legislator has taken this system as part of the statute of limitations, limited in the code of Criminal Procedure, and in a wide range in the Juvenile Welfare Act also explains these

- A) The statute of limitations in the Code of Criminal Procedure: the text of Article "6": "does not accept the complaint in the built crimes -in article "3" of this Article, three months after the day declared the victim to the crime or the demise of the excuse-compulsive disorder, which prevented submission the complaint " (mnzr, Abdallatef Explain the Code of Criminal Procedure , 2010). This article addresses two issues, first the offenses covered by the statute of limitation system and secondly the limitation period

B) The statute of limitations in the Juvenile Welfare Act: Maybe it is not necessary to keep the perpetrator Reus psychological concern throughout his life and has to be stability to find a place that would put an end to that concern, and whether to be subject to sanction delinquent about to do, the anxiety experienced by the accused and for long enough to achieve deterrence considerations and reform often, and at the same time decays social impact of the crime. For these reasons, for seeking criminal policy to devote statute of limitations in adults legislation and events alike, and has been interested in many Iraqi lawmakers this system Events in the laws of the largest and most broadly.

Article "70": First, passage of the criminal case shall expire ten years in felonies and five misdemeanors in the heavens. Second, the measure falls if it does not implement the lapse of fifteen years in felonies, and the lapse of three years at the end of the duration of the measure decided by the court in other cases.

And it is known that the Juvenile Welfare Act took Supporter to this system, and take the passage of the lawsuit and obsolescence of the measure, but in the Penal Code and due process to take Iraqi legislator on a limited scale.

5.2. Amnesty in the Iraqi law

Amnesty in its concept and its meaning: a general amnesty or pardon for the crime intended to relinquish the state's right to punish the offender, and issued a law (Abdallatef, 2010). And designate a general amnesty because it is not about a certain person or certain people by themselves, but issues in general and in the process of unspecified offenses committed before the entry into force in connection with crimes or determine its kind in the amnesty law committed by force, or committed during the specified period.

Article 153 of the Iraqi penal law text:

1. General amnesty issued by law and result in the expiration of the lawsuit and erases the guilty verdict, which have been passed in, and the fall of all the original sanctions and dependency and complementary and precautionary measures and do not have an impact on the foregoing, the implementation of sanctions that the amnesty law did not provide otherwise.
2. And if the law of amnesty for part of the sentence was issued in the special pardon was considered judgment and Apply by its provisions.
3. General amnesty does not affect the rights of non-personal. (xoshnaw, 1969)

Iraqi lawmaker has said in also in the Code of Criminal Procedure in substance law 300 "shall expire criminal case amnesty for the crime," and in Article 305: "If a law was passed amnesty stopped the investigation and the trial against the accused requested a recycle final and is the victim Crime of the right to review the civil court.

Based on these texts from Iraqi law the effects of the amnesty expires criminal case, whether at the stage of investigation or trial, also expire unresolved criminal case and did not acquire the degree of bits.

Also, there are exceptions to the non-application of Iraqi law, the legislator also noted in Article 11: "This law Easier to offenses committed in Iraq of persons enjoying immunity established under international conventions or international law and domestic law." This means if someone committed a crime that those on the territory of the State may not be prosecuted for not undergoing the legal and judicial competence of the state (Khalaf, 2010). And these are the President of the Republic and the Prime Minister and members of Parliament and litigants in lawsuits and there are other people excluded from international custom and here is not the subject of our research.

5.3. The legal statute of limitations in the Iraqi Supreme Criminal Tribunal

Formation of the Iraqi competent crimes against humanity Criminal Court under the Law No. 1 of 2003 published in the Gazette of Iraq No. 3980 by the Iraqi Governing Council and the Commissioner by establishing competent crimes against humanity Iraqi Criminal Court under it (48) issued by the Managing Director of the Provisional Authority splurge , and this law has been abolished in the issuance of Law No. 10 of 2005 in Article 37 (The Iraqi High Criminal Courts Law, No. 10 2005).Which was approved by the National Assembly according to the provisions of Article (33) of the State Administration Law for the transitional period.

This law has been published in the Gazette of Iraq in 18/10/2005 number 4006, and the new law referred to in Article (38) that all the decisions and orders issued under the procedures under the previous law to be valid and the approval of the law.

Supreme Iraqi Criminal Tribunal formation of an elite of judges and Iraqis lawyers, and keep track within the rules of the general procedures in the Code of Criminal Procedure, and have the text of Article 1 in the second paragraph of the mandate of the Court shall apply to any natural person, whether Iraqi or non-Iraqi resident in Iraq is accused of a crime in the history of 07.17.1968 up to 01.05.2003 and in the Republic of Iraq, or elsewhere, and include the following offenses: (a) genocide, (b) crimes against humanity, "c" war crimes , "d" Violations of laws.

The text of the article 11 in the second paragraph: should these workers be punishable by: "a" mass genocide, "b" conspiracy to commit genocide, "c" direct urbanization and the public on the commission of genocide, "d" Attempt to commit genocide collective, "e" participation in the genocide (The Iraqi High Criminal Courts Law No. 10 2005)

The text of the article 15 firstly part of this law explicitly not to exempt criminals and "the person who committed the crime within the jurisdiction of the court accountable

in her personal capacity and liable to punishment and in accordance with the provisions of this law In the second paragraph:" A person is accountable in accordance with the provisions of if the Penal Code, including the following:

- A. "If you committed the crime in a personal capacity jointly or by another person, regardless of whether that person is accountable or responsible a criminal." This means that anyone who had committed a crime doesn't amnesty of punishment.
 - B. "It is a criminal offense and already signed or initiated or seduction or induces the commission." This is referred from committing crime either already signed or initiated or induces the commission and the whole shall not be relieved or not escape from responsibility.
 - C. "To render aid or assistance or incitement to any form of another for the purpose of facilitating the commission of the crime or attempted commission, including providing the means for its commission." This explicit provision on the progress of work on the aid or incite the commission of the crime of genocide or was helped in any way to facilitate or initiated or provide a means to commit doesn't exempt from criminal punishment.
 - D. "To contribute in any other way with a group of people a common criminal purpose to commit a crime or attempted commission, that such assistance be deliberate."
1. What's the aim of promoting criminal activity or purpose of the group, where such activity or purpose or involves the commission of a crime within the jurisdiction of the Court.

2. Knowing the intent to commit the crime of the group. And we can easily understand from this paragraph that anyone who contributed in any ways with a group of people and was motivated by criminal committing them to commit a crime or attempted commission is not exempt from criminal responsibility only on condition that the act shareholder may deliberately act, either in order to promote behavior criminal activity or purpose of the support group for the crime, with the knowledge and intent to commit the crime committed in this community.

H- " Direct and public incitement to commit a crime for the crime of genocide" This paragraph particularly the crime of genocide and of works on public and direct incitement to commit a crime.

And the principle of justice of the inadmissibility of payment of official capacity in the Court Act whatever its position and enjoys legal immunity does not turn from impunity "exemption or relief" based on the provisions of Article "15 / paragraph III." In this article it was stressed the inevitability of punishment for the crime of genocide Whatever the status of the offender, the head of state or not be considered official capacity carried by the accused a reason exempt from punishment or mitigating, whether the accused head of state or the president or a member of the Revolutionary Command Council or the president or a member of the Council of Ministers or a member of the Baath Party leadership, and cannot be invoked immunity to get rid of responsibility for the crimes mentioned in the material 11, 12, 13 and 14 of this law.

Add to that the inevitability of punishment President for the crime of genocide, committed by people who order from him, if the president had knowledge or, was about to commit and did not the president take the necessary and appropriate measures to prevent such acts or to raise the case to the competent authorities in order to conduct the investigation and trial.

This text also proves the inevitability of punishment for the crimes of genocide even not to have occurred and in the case of the preparation of the commission, Supreme President is not exempt from criminal liability for people who work for him if he was about to commit crimes and did not take the necessary measures to prevent the impact of the crime measures.

In article "15 / V": "The fact that an accused person acted pursuant to an order issued by the government or from the boss, it would not absolve him of criminal responsibility, but may be considered in mitigation of punishment if the court considers justice, so requires" The implementation of the order issued by the President to the subordinate is not a circumstance unlikely to punishment for the crimes of genocide, meaning that subordinate be liable for punishment, in any case, in the case of the commission at the behest of the boss of the crime of genocide, but the court may take into account for the purpose of mitigation of punishment and not for punishment exemption.

5.4. Amnesty in the Supreme Iraqi Criminal Court

As we mentioned earlier in the definition of amnesty in the concept or meaning: amnesty or pardon for the crime intended to relinquish the state's right to punish the offender, and issue a law, and called a general amnesty because it is not about a certain person or certain people by themselves, but shall in general and in the process of unspecified offenses committed before the entry into force, in connection with crimes or determines its kind in the amnesty law committed by force, or committed during the specified period (The Iraqi High Criminal Courts Law No. 10 2005).

States may allow within his homeland in law, amnesty to people who committed the crimes, according to the homeland law in order to give them the opportunity to

rebuild their daily lives and extracted from the prison and punish and traced back to his family and relatives in order to begin a normal life and be a punishment that tested as like as a lesson to them.

But pardons cannot be the basis of exclusion punishment of crimes of genocide (Essa, 2012). And according to the law the Supreme Iraqi Criminal Tribunal in article "15 / VI" says: "do not include amnesties issued prior to the entry into force of this law none of the defendants in the commission of an offense He sets forth herein". This means that the law has stressed the inevitability of punishment in crimes of genocide, even in the case of a decision to amnesty for the perpetrators, and that such a decision was in effect prior to the issuance tribunal law, and it is an exception to the general provisions in the Iraqi Penal Code.

5.5. Individual responsibilities for the perpetrator of the crime of genocide

Since the trials of Nuremberg through the former Yugoslavia and Rwanda, took the criminal responsibility of the individual in the prosperity and stability, and this took the International Criminal Court system has Article IV of the Convention on the Prevention and Punishment of the Crime of Genocide that: "Any person who commits the crime of genocide, whether the perpetrator of the referees or officials or by private individuals."

Thus, the first rule of the crime of genocide by the International Criminal Tribunal for Rwanda, has been convicted a man named "John Paul Akayesu" for his involvement in the commission of acts of genocide when he held the post of mayor of the Rwandan town of Taba as well as the International Criminal Court system offense of genocide in articles 5 and 6 as the International Criminal Court confirmed that there is no immunity esteem or official capacity for any defendant has committed a crime within the jurisdiction of this Court was whether a head of state or

senior military commander. And it is subject to prosecution for having committed an international crime does not enjoy any immunity which applies to all persons equally without any discrimination. Article 27 of the International Criminal Court has stated that: "This Statute shall apply equally to all persons without any distinction based on official capacity and, in particular, the official capacity of a person, whether as Head of State or Government or the Government or parliament, an elected representative member or a government official does not relieve him in any way from criminal responsibility under this Statute, nor does it constitute in itself, a reason for reduction of sentence or Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law , without the Court from exercising its jurisdiction over such a person. "

Thus, the International Criminal Court system emphasized the inadmissibility invoked official capacity as a result of the commission of international crimes extreme ferocity, disgusting, degrading treatment, as history has shown that the legal deterrent does not come once to say or publish the laws, but strictly applied without discrimination, regardless of the centers defendants or their grip or their influence should not be impunity is the rule outdated, should not go unpunished commanding crime.

And the instigator of it and co-conspirator on the implementation of the leaders and presidents, and affects punishment simple soldier, who performs his superiors orders comes Irrelevance of official capacity reflection of the first paragraph of Article 27 of the Statute of the International Criminal Court on the subordination of all persons equally without distinction based on official capacity, and in particular the Head of State, or prime minister, or a member of the government or parliament.

Or an elected representative or a government official does not relieve any way from criminal liability, as this status is not a cause of commutation of the sentence in

accordance with Article 77 of the Statute of the International Criminal Court. Thus, the immunities accorded to them and the special procedures established under international law or the different national laws, does not preclude their submission to the International Criminal Court, the International Criminal justice take its normal course.

5.6. The position of international criminal law from the statute of limitations

The statute of limitations is a lapse of a certain period of time from the date of commission of the crime or sentencing without implementation, leading to the fall of the right to pursue the accused or the execution of the sentence, and from this definition, it is clear that the statute of limitations in criminal law is divided into two types: aging of the case and punishment statute of limitations (Anees Ahmed and Merryn Quayle, 2008)

The statute of limitations is the laws are subject to limits in terms of time of the crime and punishment and this means that the statute of limitations in domestic criminal law two applications, the first in the field of sanctions where the statute of limitations punishment issued if passed since the verdict specified period of time without implementation, and the second in the field of criminal proceedings where the statute of limitations of criminal proceedings to lapse specific time from the date of commission of the offense without taking action where, and justify the statute of limitations in domestic criminal law is based on the passage of time on a particular crime leads to erase the physical and moral consequences of memory members of the community and therefore cannot be achieved "general deterrence" which is one of the purposes of the imposition of punishment on the perpetrator Crime, as well as that the defendant has met his punishment of sight for the duration of the statute of limitations.

The preamble of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity in 1968, the subjugation of these crimes to the rules of the statute of limitations prescribed in domestic criminal law raised public concern in order to prevent the failure to prosecute and punish those responsible for those crimes (Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1968). and even be confirmed principle of non-applicability of statutory limitations to war crimes and crimes against humanity and to secure universally applied and so on international criminal law has passed imperceptibly principle of non-statute of limitations for certain international crimes, are taken into account through which national systems variation on the introduction of the idea until it reached the principle of non-obsolescence of international crimes degree the principle of the general principles of international law Criminal, and among the most important documents that can be mentioned in the context of reinforcing the principle of non-obsolescence of international crimes, the United Nations Convention on the Non-Applicability of Statutory Limitations of war crimes and crimes against humanity, signed on November 26 1968, the European Convention on the Non-Applicability of Statutory Limitations crimes against humanity and war crimes and the Declaration of Assembly United Nations General Assembly on the Protection of All Persons from Enforced Disappearances and platforms of international criminal tribunals and special permanent.

International criminal law does not generally allow the passage of international crimes subject to its provisions no matter how long the period of time to commit. However, it was necessary to confirm this matter, especially after the absence of international conventions of the reference to the statute of limitations until those agreements and documents and official declarations on the prosecution of war crimes, crimes against humanity and genocide are reminded of these agreements the four Geneva Conventions of 1949, which did not refer to the issue of the statute of

limitations as well as the Convention on the suppression of the genocide of 1948 was also reflected in the Nuremberg principles were adopted by the General Assembly in 1950 and led this freedom to draw the attention of the General Assembly on the need to address this issue and avoid non-occurrence and frequency of international crimes and the protection of human rights and fundamental freedoms, and the subjecting these crimes to the rules of the statute of limitations established in the domestic criminal law raised public concern to prevent the prosecution and punishment of those responsible for such crimes, and even be confirmed principle of non-obsolescence of war crimes and crimes against humanity, and to secure universally applied.

CHAPTER SIX

CONCLUSION AND RECOMENDATION

6.1. Conclusion

Genocide is a specialty of crimes against humanity, crimes on humanitarian image can include murder, slavery, and the deportation, and other inhumane acts committed against the civilian population, persecution and political reasons or ethnic or religious, while engaged in such activity or persecution in the implementation of any crime against peace or any war crime or a link to any of them.

The crimes which is characterized by its strength and destroy not only for humans, but the long and destructive of nature and animals (abuud, Anfal Court legal study , 2018 p 66), And it coincided with the burning of villages and the destruction of refresh water sources and the destruction of homes, in addition to the forced booking for individuals and intentionally subjected to tough living conditions and harsh actual intent to destroy them total or partial. Participated in criminal immediate suspects who ordered and planned these crimes and some of the military leaders who carried out and agree to the commission of such crimes act, and participated in the criminal act, whether in the form groups penalty immediately or in the capture of fleeing citizens of the cruelty of the bombing and military operations

Despite all the legal, political, social and economic measures taken by national and international levels, but Violations provisions of international humanitarian law keeps always possible, whether by States Parties, or their natural persons. Which in turn calls for deterrent complementary measures to prevent it, in particular, and that the failure to take such measures in a timely manner can create the proper soil, not

only to repeat their commission, but may lead to the commission of Violations the most serious and more terrible than the previous violations.

The States Parties must abide by, in cases involving serious violations of international humanitarian law cases, and in collaboration with the United Nations and from the United Nations Charter "Article 89" (Essa H. , Two Academy on crimes of genocide , 2010 P 24-25), to take measures and deterrent measures. And commitment stems from violations of humanitarian law, Alta affect the interests of the international community. Constitute a referral guilty of such violations to justice, and the rhythm of their criminal responsibility it is one of the important measures practiced by society by the international community for the protection of the rules of international humanitarian law.

The Court granted the right plaintiffs' right to personal and affected by these crimes to review the civil courts for the damage caused to them, and obtaining the rights of them, and we find that the asylum according to the preparation of the victims to the civil courts will saddle the shoulders of the judiciary and the relationship owners, so the allocation of a judicial commission competent to consider private Anfal compensation issues.

The Baath regime burned villages one by one shelling and bombs and weapons and then has leveled to the ground as if the killing of the population were not enough, has been the destruction of thousands of villages and were distracting one family after another across the vast spaces in the land of Iraq, the wives have waited return their husbands and wait for their parents, hoping to return to their children, but to no avail, I was saddened widows and bereaved loss of loved ones and then became in turn the victims of the cruelty of merciless, then starve these people and raped and tortured and was re-transferred to other areas, they are Suffered because they are Kurds and died as Iraqis, Anfal affected forever on Kurdish dictionary, the word (Muanfal actually became still used to describe those who are still absent, the word Muanfal

remember the pain and tragedy of those days associated with the losses, the sons of Kurdish villages have lost everything except their identity as Kurds. We can draw those points:

1. The studies that exist in the province of Kurdistan in Iraq, is not sufficient to cover the broad and complex subject, it needs to be dozens of similar studies to scientifically coverage.
2. 2 - Iraq in general area unsafe for the respect of genocide crimes (alwardy, 2007), since the form of its composition and the level of ignorance prevailing among the population, and the lack of awareness of the fate of the crimes and the level of hostilities higher in the soul, making him a candidate for the commission again if they're favorable conditions for the commission.
3. The world public opinion, which puts pressure on countries prevents commit genocide collectively, and that the evolution towards formation reasonable ideas about what happened in Iraq, but they are formed or was originally founded on the positions of the policy of changing the regime of Saddam Hussein ideas and, therefore, is not enough to create pressure new prevent the government or follow the government of committing genocide in Kurdistan, whether in Iraq or elsewhere in the country crime group.

6.2. Recommendations

The Iraqi government should be Compensation in both physical and spiritual to all of the victims in Anfal cases including:

A: Physical Compensations

- a- The victims and their family should take immediate measures in the Anfal operation that had decisions by the Iraqi tribunal court. And the compensation should be with the international standards.
- b- All the areas affected by massacre should be renewed and rebuild by the Iraqi movement and it needs a special budget.
- c- The families of victims lost all of the properties; the Iraqi regime should be backing them.
- d- The public service places should be rebuilding same schools, religious, hospitals and any other.
- e- Anfal operation places affected by contamination; it should be brought new life to them and gone green.
- f- All the injured of genocide should be treated no matter in some places.

B. Spiritual Compensations

- a- The governments in Iraqi state should be formal apologies to the families of victims and Kurds peoples.
- b- Fixing a day for the victims by law to honor them through arranging yearly commemoration.
- c- As we mentioned above, most of remnants of mass grave victims should be returned to their own land and building the big places to celebrate and to receive the formal and foreign visitors who come to Kurdistan for that aim.

- d- The families of victims should be providing them a scholarship to study outside Kurdistan.
- e- It's important that the new generation should be aware of Anfal history; it should be curriculum and taught in national schools.

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