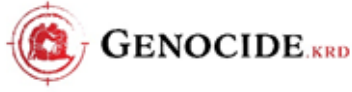


Proceeding Conference

International Scientific Conference
on the Genocide of the Kurdistan Nation
(Genocide of Kurdish Faily)



Salahaddin University



University of Dohuk



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Series (1): Genocide against the Kurdish Faily



International Scientific Conference
on the Genocide of the Kurdistan Nation
(Genocide of Kurdish Faily)

Proceeding Conference

**International Scientific Conference
on the Genocide of the Kurdistan Nation
(Genocide of Kurdish Faily)**

E rbil 2-4/5/2023

Supervision

Prof. Dr. Salem Jassim Hajy

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International Scientific Conference on the Genocide of the Kurdistan Nation Genocide of Kurdish Faily (4)

Supervision: Prof. Dr. Nashwan Shukri Abdullah

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Proceeding Conference

International Scientific Conference
on the Genocide of the Kurdistan Nation
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Introduction

Genocide is considered the mother of all crimes. It is a crime against groups of people, perpetrated for different reasons such as, nationality, ethnicity, race, or religion. Many crimes have been committed against these different human groups in history, leaving an impact on the fate, cultural and biological make up, environment, life, and the ideals of targeted groups.

Kurds are one of the oldest nations on earth. They have settled and lived on their ancient land since the beginnings of history. A wealthy nation with different cultures and religions. After World War I, part of Kurdistan was annexed to the Iraqi state and faced many atrocities, including, war crimes, hostility, crimes against human rights, and genocide.

The genocide of the Faily Kurds was carried out in several different phases; until finally, Ba'athists systematically implemented the crime and expelled dozens from their homes, deprived them of their citizenship, and expelled them to the Iranian border in the worst conditions. The cities and towns of the Faily Kurdish areas were destroyed and Arabized, their properties were confiscated; and their family homes were dissolved.

Much of this crime was committed in the Iraqi capital, in the sight of the Iraqi, regional, and international communities. Although 43 years have passed since the last phase of the genocide, a large number of survivors remain without citizenship, and they have not been compensated for the loss of their properties. Thousands of them still live in exile. The fate of more than 22,000 missing people remains unknown. After the fall of the Ba'ath regime, this crime was recognized as genocide by the Iraqi High Criminal Court, but the Iraqi government has not apologized, and they have not been compensated for their losses.

The idea for this conference stems from a sense of historical, moral and scientific responsibility. It also works through scientific methods and under the slogan of "revealing the facts to achieve justice". It is significant not to forget this abominable crime and to understand its causes, motives and impacts. Therefore, we attempt

to arrive at appropriate solutions via scientific ways to prevent it from happening again and to call for compensating the victims and for holding the perpetrators accountable.

From an academic perspective, we aim to have this crime scrutinized, which will constitute the right step for the establishment of the field of genocide studies in Kurdistan; a region that has been considered the center of genocide by local and foreign genocide scholars. Hundreds of researchers have been contacted nationally and internationally. For this conference, 109 research papers in the field of the genocide of Faily Kurds have been accepted. Many others could not unfortunately attend the conference in person due to technical issues. Fortunately, all this has brought the case of the Faily Kurds to the table once again, and once again it has become the focus of study by official, academic, organizational and national stakeholders.

When this project was introduced to his Excellency, President Masoud Barzani, it was met by his excellency's enthusiasm and support, resulting in this academic achievement today. This goal was also worked for through the partnership of three universities, «Salahaddin University-Erbil, Duhok University, and Soran University», in collaboration with several other universities and academic institutions, in addition to the valuable efforts of the High Committee, Joint Organizing Committee, Scientific Committee, Advisory Committee and all the committees and researchers who worked

tirelessly to make this conference a success.

Asst. Prof. Dr. Abdulrahman K. Darwesh

Table of Contents

Banjaluca and Baghdad The Cases of Ethnic Cleansings of Bosniaks and the Faili Kurds Ibrahim Sadiq Malazada (PhD) and Alek Barovic	15
Genocide and the Assimilation of the Faylee Kurds from the Perspective of the Sociological Theory	39
Faily Genocide as an International Law Issue Dr. Sanh Shareef Qader	53
The Kurds Extermination Crimes of Genocide and The Kurdish prospected Contribution in Portraying the Universal Vision to Suppressing Them Dr. Hiwa Ali Hussein	85
The International Perspective of the Crime of Genocide: The Case of Faili Kurds Iman Abdullah Omer - Hoshang Dara Hama Ameen	103
The Manifestation of the Concept of Statelessness in the Case of the Faili Kurds Assist. Prof. Dr. Saeideh Shariati Najafabadi - Hoshang Dara Hama Ameen	123
«The Role of the International Prosecutors in the Genocide of Faily Kurds» Goran Hussein Ahmed, University of Garmian, Department of Law.....	

Faily Genocide as an International Law Issue

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Abstract

Genocide is an international crime against humanity under international law. The legal and international framework of genocide is stated in the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) of 9 December 1948. Likewise, the international community is duty bound to obligate the legal framework of genocide. The Faily Kurdish people were subjected to mass killings, disappearance, chemical weapon attack, homelessness and expatriation, as well as being forced to evacuate their hometowns due to their fight for political, ethnic, economic, and cultural rights since decades ago. Thus far, the international community has not acknowledged such tragic events as genocide under international law. Therefore, this paper examines whether the mass killings of the Faily Kurdish People are an international crime of genocide under international law, whether the International Criminal Court can hear the case, and whether the Iraqi federal government is legally bound to compensate the families of the genocide victims. The paper explores and utilizes secondary source materials to cross-examine arguments and draw conclusions.

Keywords: Faily Kurdish people, Iraqi Ba'ath government, Genocide, International Law.

1. Introduction

Genocide is a crime against humanity that is perpetrated by the mother state or other states against a group of people due to their demands for political, cultural,

economic, ethnic, religious, and national rights. Genocide is perpetrated in several different stages: classification, symbolization, dehumanization, organization, polarization, preparation, extermination, and denial. Each stage reinforces the others (Anderton & Brauer, 2016). The crime of genocide was so horrendous that the international community was compelled to define it as an international crime in the framework of international law. In this context, this study seeks to determine whether the mass killings of the Faily Kurdish people are an international crime of genocide and look into the commitment of the Iraqi federal government regarding compensations to the families of the genocide victims. Two questions arise from these objectives. First, is the genocide of the Faily Kurds a crime under international law? Second, is the Iraqi federal government committed to compensating the families of the genocide victims? Accordingly, this paper will illustrate the emergence of genocide, types of genocides, and genocide crime under international law by examining the international treaties and resolutions, as well as the International Criminal Court (ICC). Subsequently, this paper will apply the international law principles and Supreme Iraqi Criminal Tribunal provisions to the genocide of the Faily Kurdish people perpetrated by the Ba'ath government of Iraq.

2. Research Methodology

This paper uses the doctrinal legal approach. It is the most popular research methodology among the researchers who conduct legal studies. The doctrinal legal approach poses the question of, "What is the law in a given circumstance?" It is focused on analyzing the legal principles and how the principles were created and utilized. The essential data constitutes both primary and secondary sources that are considered authoritative (Kharel, 2018). Therefore, this approach is used to analyze and present the genocide of the Faily Kurds as an issue of international law. The primary data of this paper includes the rules of the Iraqi federal government and international law sources, including the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) and ICC. Secondary sources include textbooks, articles, and reports, among others.

3. Conceptual Clarification of Genocide

Linguistically, genocide is the assassination of a collection of people, particularly an entire nation-state, ethnicity, or religious collection (Cambridge Dictionary)

while in the Oxford Lexico dictionary, genocide is the intentional massacre of a huge set of people, particularly of a specific nation state or racial group (Oxford Lexico dictionary). Meanwhile, genocide is defined by Collins English Dictionary as the purposeful killing of an entire society or ethnicity, and claim that genocide and suffering are perpetrated (Collins English Dictionary). Genocide is also a conceptualized norm and consists of two words, including *Genos*, which is a Greek word meaning tribe or descendant or race, and *Cide* which is a Latin word meaning kill or annihilation. In Kurdish, both pairs come together, which mean killing generation or race. (Gull, 2003).

The concept of the word genocide and its terrible impact on humanity must be understood. Before 1944, the term for 'genocide' was 'massacre', 'offences against mankind', and 'extermination' (C. E. & J. R, 1999) to define mass, purposeful murders. In 1941, when defining the German attack of the Soviet Union, Winston Churchill described it as "a crime without a name" ("Prime Minister Winston Churchill's Broadcast to the World", 1941).

Raphael Lemkin coined the word genocide in 1944. He defined genocide in general as an act that not necessarily implies instant devastation of a nation although all the inhabitants of a country are massacred. Rather, it implies a systemic policy of various activities meant to destroy the vital pillars of the lives of a national group to intentionally obliterate the communities themselves. Such policy probably aims to dissolve certain social and political groups or the culture, language, national sentiments, religion, and the financial life of national communities, and to destroy private safety, freedom, health, dignity, and even the lives of the people linked to such groups (Lemkin, 2005). Accordingly, genocide was a deliberate strategy to ruin a group of individuals achievable through complete annihilation and elimination of important aspects of the core of a community, including language, culture, and financial infrastructure.

Moreover, Lemkin argued that cultural genocide, sometimes called ethnocide, should also be recognized. A group of individuals may persist to remain, but when they are excluded from propagating their racial identity through banning of their cultural and religious processes upon which their personality is based, this can also be regarded as a method of genocide (Sautman, 2003).

Aside from being defined as a crime, genocide is a topic of studies by public researchers and academics. For example Chalk and Jonassohn identified genocide as

a type of biased massacre in which a state or other power plans to ruin a collective group and its affiliation (Chalk & Jonassohn, 1990). Meanwhile, Fein defined genocide as an offender's deliberate operation to sexually ruin a national community, explicitly or implicitly, by prohibiting the genetic and environmental recreation of members of the group, which was maintained irrespective of the victim's renunciation or absence of risk (Fein, 1993).

Israel believed that genocide is the massacre of a massive number of humans whether through a series of soldierly operation to counter an alleged opponent's armed legions, in the survivors' essential defense (Israel, 1994). However, according to Horowitz, genocide is an organized and methodical devastation executed by a government bureaucratic institution of conscienceless individuals (Cited from Pennell, 2000). Feierstein stated that the notion of genocide only occurs where there is an existing, but effectively accomplished, intent to sexually ruin a whole community as and when the offenders identify an actual group (Cited from Shaw, 2014).

Lewis believes that royal and foreign forms of genocide have been implemented in two primary respects, whether by deliberately wiping the regions of their initial residents with the goal of drawing resources out, by foreign clearances, or by enrolling native folks as forced workers in foreign or imperialistic supply removal schemes (Maybury-Lewis).

The definitions provided by scholars may differ in legal, linguistic, social, and human terms. Nonetheless, all these definitions revolve around the same meaning of mass destruction and the existence of a purpose for its occurrence. Further, it should be noted that the international community agrees with the definition provided in Article 2 of the CPPCG, which includes the deliberate killing and physical and psychological torture of a targeted group. This definition has become the basis of international law, which is discussed further in the following sections (Ehsan, 2017).

The above conceptual explanation illustrates the nature of genocide as an extremely dangerous operation against people's lives. While all scholars on genocide agree that genocide is the murder and destruction of human beings, the legal and legitimate public opinion regarding the definition of genocide is as stated in the CPPCG.

4. Types of Genocide

The crime of genocide not only includes the physical aspects or destruction of human beings but also encompasses the cultural and biological aspects. Therefore, the crime of genocide can be classified into three types, as elaborated in the following subsections.

4.1 Physical Genocide

Physical genocide is mainly executed by racial discrimination in feeding, endangering of health, and outright mass killings (Schabas, 2009). Some examples of physical genocide are killing a group of people via poison gas, death penalty, burying people alive, and bombing by aircraft, missiles, and other weapons (Al-Morshedi, 2017). Physical genocide is a physical obliteration of a group by murdering and mutilating its members, performed in either a short or an extended term (Nersessian, 2003). Therefore, the definitions of genocide are rigorously limited to the presence and development of the strength of physical genocide, as if death merely marks on being and causes the destruction of actual virtuoso of group life (Woolford, 2013).

4.2 Biological Genocide

This type of genocide is executed by separating the men from the women and the children from their families, or performing miscarriage on pregnant women through various means. Likewise, intervention in human creation with the political and religious goal of eliminating the human element is another operation of biological genocide (Al-Morshedi, 2017). Biological genocide is the execution of encroachment policies aimed at reducing a group's general propagative ability or fertility (Nersessian, 2003). In other words, the sexual ability of the group is demolished by biological genocide (Taylor, 2015). For instance, the operation can be carried out through slow and gradual eradication of the members of a group to prevent reproduction and breeding among them, thus preventing their community from growing and continuing (Al-Kahwaji, 2001).

4.3 Cultural Genocide

The demolition of a people frequently started with a brutal attack on culture, especially linguistic, religious, and cultural symbols of individuals and societies (Isa, 2009). Cultural genocide can thus be defined as the devastation of buildings and practices that enable individuals to remain as a community. State governments are engaged in cultural genocide with the goal of annihilating the intended group's political and social bodies. Land is confiscated, compelling people to relocate and restrict their movement. Moreover, languages are prohibited, mystical leaders are intimidated, religious beliefs are prohibited, and spiritually valuable items are seized and demolished. Meanwhile, households are disrupted to avoid cultural norms and identification by being transferred from one group to another (Gehl, 2016). Cultural genocide is to destroy a particular element of the targeted group(s) achievable by destroying or expropriating the group's financial continuation, prohibiting or curtailing its language, and abolishing its religious, social, or political activities. Besides that, cultural genocide is also achieved by destroying or denying the group(s) access to their religious sites, temples or bodies; by destroying or preventing access to holy or multicultural artifacts; by forcing the group's members to be dislocated, removed, or dispersed; or by expelling their children (Moshman, 2001). Thus, cultural genocide destroys the distinctive cultural, language, and religious features of a group (Bachman, 2019).

5. Genocide under International Law

This section explores the legal basis of genocide as an international crime in accordance with the international treaties and resolutions, as well as the ICC, as elaborated below.

5.1 Genocide under International Treaties and Resolutions

Following the Holocaust committed by Nazi Germany and its partners before and during the Second World War, genocide was considered an international crime depending on the universal recognition of international laws that define and prohibit genocides (Rubinstein, 2004, p.308). Consequently, in 1946, the UN General Assembly's first session embraced Resolution 96(1), which states:

Genocide is a denial of the right of existence of an entire human group, as ho-

micide is the denial of the right to live of an individual human being; such denial of the right of existence shocks the conscience of mankind. Thus, genocide results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and the spirit and aims of the United Nations. Many instances of such crimes of genocide have occurred when racial, religious, political, and other groups have been destroyed, entirely or in part (UN Resolution 96(1), 1946).

Accordingly, under international law, genocide is a crime. Subsequently, based on the Resolution 260 (III) of 9 December 1948, the UN General Assembly embraced the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), this Convention entered into force on 12 January 1951. It first identified the crime of genocide under Article 2 of the Convention.

Committing any of the following acts constitutes the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group:

“(a) Killing members of a group, (b) Causing serious physical or mental harm to members of the group, (c) Deliberately inflicting on the group conditions that cause physical destruction, (d) Imposing measures intended to prevent births within the group, (e) Forcibly transferring children of the group to another group” (Convention on the Prevention and Punishment of the Crime of Genocide, 1948).

Thus, the CPPCG includes an internationally acknowledged definition of genocide that has been integrated into the domestic criminal laws of many countries and also endorsed by the Rome Statute of the ICC (Gellately & Kiernan, 2003). However, it should be noted how the CPPCG, while promising to prevent the crime of genocide, is criticized for preventing genocide with impunity, which is akin to having a law without enforcement and weight. Therefore, (Gaeta, 2009) in her study, supports the view that states have failed to fulfill their international obligations, especially in imposing punishment on the perpetrators of genocide. This means that after the agreement became international law, the crime of genocide has continued to occur in several countries, including by the Iraqi state against the Kurdish population.

Gaeta further argued that those who drafted the CPPCG deliberately did not hold states responsible for the perpetrators of genocide. The United Kingdom (UK) proposed bringing cases of genocide crimes to the International Court of Justice (ICJ), but other states such as France, the United States (US), the Philip-

pinas, Ecuador, China and Canada rejected the proposal. This scenario shows that the drafters of the CPPCG deliberately held the individual, not the state, responsible for the crime of genocide (Gaeta, 2009). However, the UN General Assembly adopted a resolution based on the reports of the Eighth Commission regarding the draft convention on genocide. Hence, Resolution 96(1) of the UN General Assembly states that the crime of genocide is an international crime that subjects both individuals and states to national and international responsibility (UN General Assembly, Resolution 180(II), 1947). However, in his study, Leblanc (1998) highlighted the ambiguous and contradictory nature of Resolution 96(1). According to his argument, while the resolution states “a denial of the right of existence of an entire human group” and also cites past examples of genocide where groups had been wiped out “entirely or in part,” it does not specifically identify the groups that are or will be victims of genocide. Instead, it only addresses racial or religious groups, among others. Therefore, like Lemkin, Leblanc was not able to identify these groups specifically. More importantly, the identification of ethnic groups is not mentioned in the resolution or even in Article 2 of the CPPCG, which can be seen as a major shortcoming of the CPPCG.

In addition to not identifying the groups in the agreement, especially Article 2, there is no mention of the protection of political groups (Van Schaak, 1997). Therefore, Van Schaak believes that this deficiency will exonerate the perpetrators of the crime of genocide.

When an act is considered genocide, the government action is cited under Article 4 of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). Similarly, in international law, committing genocide has both individual and state accountability (CPPCG, 1948). However, when an individual commits a crime of genocide, a question arises as to whether or not the state is complicit in the crime. In other words, will the state be legally responsible or not? The responsibility of a state, including all its institutions, for committing the crime of genocide is that, the state’s complicity in the crime of genocide will be economically and politically confused, because if a decision is made jointly among all branches of the state to commit the crime of genocide, the whole state will definitely be held responsible, including individuals. While, without government assistance, especially in terms of funding, it will not be easy to commit the crime of genocide (Chalmers, 2015).

The CPPCG's purpose and scope were later described by the UN Security Council. The aim and spirit of the CPPCG were eventually defined by the UN Security Council as to protect the life of assured groups of people and to affirm and demonstrate the most basic values of human life and ethics. The implied warranties to avoid genocide are acknowledged in *erga omnes* from the perspective of freedom (Amir, 2018). Hence, the CPPCG is applied to ascertain the aspects of genocide and any possible future development of a mechanism to demolish the existence of a group (Cigar & Williams, 2002). The introduction part of the CPPCG acknowledges the enormous impacts of genocide on people throughout all the times, and that dramatic acknowledgment provides the notion of its chronological developmental character (UN General Assembly, 1994).

According to Article 1 of CPPCG, genocide is a criminal act under international law irrespective of "when it is perpetrated in times of peace or in wartime." Thus, irrespective of intent whether it happens, for instance, in times of peace, interior conflict, international military conflict or whatever the general condition, genocide is a punishable international crime. Article 3 states that these actions will comprise penalty "Genocide, Conspiracy to commit genocide, Direct and public incitement to commit genocide, Attempt to commit genocide, Complicity in genocide (CPPCG, 1948). However, William Shabas emphasizes that this article puts an end to all analyses of the meaning of deterrence and punishment of the perpetrators of genocide. This is therefore a sufficient basis for the commitment to prevent this crime. Nonetheless, the application of this Article could be seen when the ICC, in 2007, found Serbia responsible for violating the CPPCG in their act of genocide against the Bosnians (cited from Heieck, 2018).

Furthermore, genocide is not only a felony under global general legislation; it is also the topic of a global legal ban placed on the states. The International Court of Justice (ICJ) contemplated on banning genocide, which was commonplace as late as 1951. Finally in 2006, the ICJ acknowledged that declaring genocide as forbidden corresponded to *jus cogens* (Kreß, 2006). However, compared to the ICC, the ICJ does not play an important role in preventing genocide crimes as defined in the CPPCG. It only deals with two types of disputes. First, the ICJ deals with a dispute between several or two states, in which the states themselves ask the court to intervene. Second, it plays an advisory role for the questions on international law referred to it by UN agencies. This means that the ICJ does not deal with the

crimes committed by individuals against a particular group within a state, for example, genocide crime (Gunawan et al., 2020).

Despite the criticism against the CPPCG, it is a legal convention that is in force in the international legal system. It recognizes that genocide, like the crime of persecution against humans, is a global crime under international law characterized by a particular aim to discriminate against a group through a series of actions frequently embodied in and accomplished through state government rules. The most severe phase of segregation is criminalization through genocide, which is an attempt to demolish a group of people (“The Genocide of the Palestinian People,” 2016).

5.2. Pillars of the Crime of Genocide

There are three pillars of the genocide crime, namely the material pillar, moral pillar, and international pillar. These pillars are elaborated on below.

1. Material pillar

The material pillar of the crime of genocide includes any crime that falls within the scope of the crime. This pillar is material in nature, and national and international criminal law do not recognize a crime without a material pillar. This pillar refers to the extermination of members of an ethnic or racial or religious group. In order for this pillar to be realized in the crime of genocide, the perpetrator must destroy all or part of an ethnic or racial or religious group through methods of genocide crime including murder, placing the targets in poor conditions, sterilization of the targets, and forced deportation of children (Hussein, 2017). Article 1(1) of the ICC’s statute emphasizes the need for the foundations of the crime. This means that it also includes the material pillar (ICC’s statute, Art 1(1), 2011). Furthermore, the material pillar of the genocide crime means that the perpetrator of this crime has committed one of the acts listed in Article 2 of the CPPCG or Article 6 of the ICC’s statute, which is the killing of individuals or members of a group or causing serious physical or psychological harm to members of the group (Jassim Muhammad, 2020).

2. Moral pillar

According to this pillar, there must be a criminal intent when the crime is committed. The offender must have sufficient knowledge and awareness of what they are doing, that is, doing such actions will lead to the destruction of the group and its annihilation, in whole or in part. Despite the offender's knowledge, they still take these actions in order to achieve the desired goal. The criminal intent must have a specific purpose for which the genocide occurs. It is based on specific reasons and may be linked to political, religious, racial, and other factors that may be the reason for the occurrence of genocide (Riyad Younes, 2021).

Moreover, there must be an intention to commit the crime. Although the means of causing the decimation of the group may be by actions that do not result in the death of individuals, the decimation defined here is physical or biological. Likewise, there are other forms of annihilation, for example, the social assimilation of one group into another, or attacks against the cultural characteristics that give the group its identity. Genocide is not a crime that may only be committed by those who lead and plan the campaign of extermination. Non-commissioned officers and private individuals can also be the main perpetrators of genocide, as long as they have the necessary intent. The specific intent required for genocide requires that the perpetrator, whether commander or soldier, intends to destroy the group or part of it when committing any of the prohibited acts (Makki & Mahmoud Al-Kamali, 2022). However, this notion differs from the usual moral pillar stipulated in Article 30 of the ICC's statute. Article 30 states that the person intends, in connection with his conduct, to commit it, and in relation to the result, to cause that result, or knows that "it will occur within the ordinary course of events" (ICC's statute, Art. 30, 2011). This requirement is less stringent than the specific intent of the crime of genocide; thus, the moral element requirement in Article 30 of the ICC's statute is not applicable to cases of genocide. This is because the crime of genocide requires an additional personal element, referred to as specific intent. Accordingly, the offender's intent is to commit a genocidal act "with the intent to destroy in whole or in part" against the target group.

This specific intent to destroy is explained in Article 2 of the CPPCG and is consistent with Article 6 of the ICC's statute, which defines genocide as the "acts committed with the intent to destroy, in whole or in part, national, ethnic, racial or

religious groups” (ICC’s statute, Art. 6, 2011).

3. International pillar

The international pillar refers to committing the crime based on a plan drawn up by the state, implemented by its senior officials, encouraged by employees, or accepted by ordinary individuals against a group whose members have national, ethnic, racial, or religious ties. Therefore, this crime can be committed by the ruling class, leaders, and high officials of the state; or the ordinary employees; or ordinary individuals; provided that it is believed or accepted by the state that naturally expresses the policy of the rulers and high officials. Therefore, there is no requirement of a specific quality in the offender. For example, the crime may not necessarily be committed by a senior leader or senior official. As for the victims, the group must have a certain belief. If the group belongs to another country, the international pillar in its original sense applies. Nonetheless, if the group belongs to the same country, the international pillar is also present. Genocide is an absolute power practiced without limits, and it has become an international issue, whether in times of peace or war (Ali, 2021). Further, the commission of the crime or the causal relationship can be another pillar of the crime of genocide. This pillar refers to the consequences of the crime committed by the offender against a target group and the results achieved. The pillar of the crime is based on acts committed against an ethnic, racial, or religious group in any manner defined in Article 2 of the CPPCG. Therefore, there must be a causal relationship between the offender’s crime and its outcome; that is, the outcome of the crime was caused by the action committed by the offender, not by an external cause (Hussein, 2017).

5.3 Genocide Under the International Criminal Court (ICC)

After genocide was declared a crime under international law, Resolution 260 of the UN General Assembly adopted the CPPCG on December 1, 1948. Article 6 of the CPPCG states that “Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international panel tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction” (CPPCG, 1948).

Several international courts such as Nuremberg, Yugoslavia, and Rwanda tri-

bunals were temporarily set up to punish the perpetrators of international crimes. However, international crimes and human rights abuses have continued to be perpetrated. Therefore, on the recommendation of the UN General Assembly, the international community increasingly considered the establishment of an international criminal court. The idea began in 1994 with the creation of an international permanent criminal court via a declaration that identified crimes related to international security. The International Law Commission then submitted to the UN General Assembly the last draft concerning the establishment of the court. The draft recommended holding a conference to discuss the consensus treaty that would form the basis of the statute of the ICC (Berg, 1996).

Subsequently, in June 1998, the UN General Assembly held a conference in Rome with the goal of concluding the convention that would facilitate the adoption of the statute of the court. The ICC's Rome Statute was accepted on July 17, 1998, by a vote of 120. However, 21 countries did not vote in favor of the statute and seven countries (including the US, China, Israel, Qatar, and Libya) were against the statute. On July 1, 2002, the Rome Statute of the ICC became effective and the ICC was legally created (Yashwi, 2010).

Article 6 of the ICC's statute provides a definition for genocide that is the same as the definition provided by Article 2 of the CPPCG. Article 21(1) of the ICC's statute states that "The Court shall apply in the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence." This means the existence of elements of the crime, especially the material elements, is a fundamental legal condition in proving the crime of genocide (Hussein, 2017).

The competences of the ICC based on time, place, and subject are the basic principles in dealing with international crimes. Article 5 of the statute stresses the subjective competence of the ICC, which investigates perpetrators of international crimes such as war and aggression crimes, genocide, and crimes against humanity. The Article clarifies that the ICC can only deal with these crimes (ICC's statute, Art. 5(1), 2011). Becker (2010) stated that, due to the broad definition of crimes against humanity as related to human rights, the ICC can view such crimes within the framework of the General Court of Human Rights, which can lead to interference in the internal affairs of countries and a great threat to countries. However, this is addressed by Article 5(1), which limits the jurisdiction of the ICC to crimes of great concern to the international community as a whole (Becker, 2010).

Competence of time means that the ICC has jurisdiction only over the crimes that take place after the court's statute came into force on July 1, 2002. For a state that becomes a party to the statute after the statute came into force, the ICC's jurisdiction will apply to that state only for the "crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3" (ICC's statute, Art. 11, 2011). However, Article 12(3) states that "If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9" (ICC's statute, Art. 12(2), 2011). Although the ICC's statute authorizes the UN Security Council to refer any case of the crimes mentioned in the ICC's statute to the ICC, it would be better not to rely on the Security Council's authority for the genocide case of the Kurdish people in Iraq, including the Faily Kurds. This is because the crime, which has all the pillars of the crime of genocide, occurred before the establishment of the ICC. This controversy is discussed below.

Competence of place means that the ICC can exercise its jurisdiction wherever it exists. However, the ICC has jurisdiction only for the crimes stated in Article 5. Therefore, Article 13(3) states that "The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if a situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14." Further, Article 14 states that "A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes" (ICC's Statute, Art 13(3), 2011).

The ICC has legal independence in the UN. It does not face the same constraint as the ICJ, which is a UN's organ. Nonetheless, the ICC can authorize the UN Security Council, acting under Chapter VII of the UN Charter, to refer to the Prosecutor a crime perpetrated by a state that is not a party to the ICC's statute (ICC's statute, Art. 13(2), 2011). This Article is useful for the victims of states, including Iraq, that have not ratified the Rome Statute of the ICC. On the other hand, the Se-

curity Council's authority to refer a crime to the Prosecutor General under Article 13(2) may make the ICC hesitant to implement the principle of justice. This can be considered a forced power of the Security Council.

Further, Article 12(3) states that "If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question." This Article applies to a state that is not a party to the ICC's statute but accepts the exercise of the ICC's jurisdiction for a crime that took place within that state. In this case, the ICC can exercise its jurisdiction concerning the crime due to the acceptance by the non-member state (ICC's Statute, Art. 12(3), 2011).

Another issue regarding the ICC is that Article 17(1)(a) states that "The Court shall determine that a case is inadmissible where the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution." Based on this Article, the ICC will not replace the national courts. Instead, its function will be complementary to the national courts unless the state that committed the crime fails to fulfill its obligation without any judicial justification. In other words, the Article gives priority to the national courts (ICC's Statute, Art. 17, 2011). Although the Supreme Iraqi Criminal Tribunal recognizes the genocide against the Faily Kurds perpetrated by the Ba'ath government of Iraq ("Statement issued by the Council of Ministers," 2010), the genocide still needs recognition from the ICC. The Ba'ath government ruled Iraq between 1968 and 2003 under the leadership of Saddam Hussein. In 2002, the UN Security Council passed Resolution 1441, declaring that Iraq had failed to meet the UN's demands. The US and the UK then used the resolution as an excuse to go to war with Iraq. As a result, the 2003 US-led invasion of the country led to a change of government in Iraq (Tucker, 2010). However, Article 17(1) of the ICC's statute can violate the sovereignty of the state, because it allows the ICC to decide whether or not the state will implement the trial process against its citizens. This Article has therefore been criticized by countries that are not members of the Rome Statute, including China and India (Becker, 2010).

Clearly, the ICC, together with the CPPCG, deals with international crimes including genocide, war crime, crime of aggression, and crime against humanity. However, the ICC punishes individuals as criminals who bear individual criminal

responsibility and does not bind states to responsibility for major international crimes that fall under the states' jurisdictions. The absence of a court-affiliated executive body to ensure the implementation of the ICC's decisions is considered one of its critical weaknesses, since it relies on the cooperation of states for investigators to enter the lands to be investigated to obtain the documents in order to pursue suspects, arrest, and extradite. Another criticism of the ICC is that it is difficult to discuss about the independence of the ICC in light of the powers conferred to the UN Security Council by Article 16 of the ICC's statute, in which the UN Security Council has the right to suspend cases and postpone investigations due to threats to international peace and security. Article 16 states that "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the UN, has requested the Court to that effect; that request may be renewed by the Council under the same conditions (Siam, 2022). However, Chapter VII of the UN Charter emphasizes the protection of international peace and security.

6. The Case of Genocide Against the Faily Kurds

The genocide against the Kurds in the Kurdistan region occurred in several different stages. The Ba'ath government of Iraq bore the greatest responsibility for the crimes of genocide against the Kurdish people. The genocide of the Faily Kurds is one of the most heinous crimes committed by the former Ba'ath government of Iraq during its rule from 1963 to 2003. This section attempts to shed light into the crime of genocide against the Faily Kurds in Iraq, because they were one of the Iraqi communities targeted for extermination in the Ba'athist strategy of erasure of language, culture, and identity, as well as ethnic cleansing. In other words, the regime carried out physical, biological, and cultural genocide against the Faily Kurds (Sulaiman, 2019). Therefore, the essence of this section is analyzing this crime of genocide from the perspective of the National Court on one hand and as a major issue of international law on the other hand, followed by a discussion of the solution for this issue.

6.1 Supreme Iraqi Criminal Tribunal and Genocide of the Faily Kurds

Article 6 of the CPPCG states that “Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed.” Therefore, after the collapse of the Ba’ath regime following the attack by the US and its allies, a competent criminal tribunal was set up via a specific statute under the Coalition Provisional Authority and now reaffirmed under the jurisdiction of the Iraqi Interim Government. It was renamed in 2005 after the constitution prohibited the establishment of special or exceptional courts. The court was approved by the federal parliament of Iraq under Law No. 4 of 2005 on October 9, 2005 (Laughland, 2008, p. 242; Sofi, 2014, p. 6). However, the Coalition Provisional Authority was a transitional government of Iraq that was established following the invasion of the country on March 19, 2003, by the US-led Multinational Force and the fall of Iraq Ba’athist (Henderson, 2005).

Following Article 2 of the CPPCG, Articles 11, 12, 13, and 14 of the law of the tribunal are applicable to genocide, crime against humanity, and war crime. Article 14 specifies violations of Iraqi laws (Sofi, 2014, p. 6). Competences of the tribunal include subjective, time, place, and personal competences. Article 1(2) states that the jurisdiction of the tribunal shall apply to “every natural person, whether Iraqi or non-Iraqi resident of Iraq, accused of committing any of the crimes listed in Articles 11, 12, 13, and 14 of this law, committed during the period from 17 June 1968 to 5 May 2003, in the Republic of Iraq or elsewhere.” This Article stresses time and subjective competences comprising genocide, war crime, and crime against humanity. It also highlights that the tribunal has jurisdiction over the crimes committed within the specified period. In addition, the Article states the place and personal competences that authorize the tribunal to apply its authority over the crimes committed in Iraq and the perpetrators of the crimes, whether Iraqis or foreigners.

According to the Supreme Iraqi Criminal Tribunal, the case of the Faily Kurds is a crime against humanity based on the definition of the CPPCG. Therefore, on November 29, 2010, the tribunal recognized the case as genocide in accordance with Article 11 of the tribunal’s law (“Statement issued by the Council of Ministers”, 2010). According to Article 11, the term genocide means “committing a

crime with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.” However, according to Article 7 of the ICC’s statute, crimes against humanity include acts such as murder, extermination, enslavement, deportation or forcible transfer of population, extortion and sexual crimes, torture, disappearance of individuals, and mass oppression (ICC’s Statute, Art. 7, 2011). Meanwhile, Article 6 of the ICC’s statute follows Article 2 of the CPPCG regarding the definition of genocide, as mentioned earlier.

Most importantly, the tribunal’s decision obliges the Iraqi federal government to compensate the families of the genocide victims. Further, Articles 112 and 132(1) of the Iraqi Constitution of 2005 state that the federal government shall compensate the families of the victims of the former Ba’ath regime. Article 112 states that “The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law.” Further, Article 132(1) states that “The State shall guarantee care for the families of the martyrs, political prisoners, and victims of the oppressive practices of the defunct dictatorial regime.”

Similarly, a decree issued by the General Secretariat of the Iraqi Council of Ministers on March 28, 2022, referred to the endorsement of a nine-point recommendation made by a committee from the Iraqi Ministry of Migration and Displacement with the aim of compensating the Faily Kurds. The recommendation states that the Ministry of Finance shall provide financial assistance to the Faily Kurds and allocate a share of appointments to them within the framework of the general budget for the year 2022, as well as grant them residential plots and compensate them for their property which was confiscated by the Iraqi Property Claims Commission (Decree No 19/33/, 2022). However, the Kurdish Regional Government (KRG) has criticized the federal government for not compensating the Kurdish genocide victims, including the Faily Kurds (Kurdistan24, 2022),

6. 2 Applying the Genocide Types to the Faily Kurds

Genocides, including physical, biological, and cultural genocides, are classified by international law as crimes against humanity. In this segment, the paper will illustrate the case of the Faily Kurdish people against whom a genocide operation was carried out by the Ba'ath government of Iraq using physical, biological, and cultural genocides.

The Ba'ath government had enacted a policy called "Arabization policy" . In 1963, this policy was also used against the Kurds in Kirkuk. Mzuri (2013) reported that, a total of 117 villages located in Dibis, Sargaran, Qrrachox, and Surdah were occupied by the Arabs while the Kurds were placed in compulsory campuses because Kirkuk was the Kurdish Region's richest oil city and the government wanted to change the demography of the city. Later, the policy was pursued further by changing the names of Kurdish cities from their original names to Arabic names, for example, from Qushtapa to Qadisias. Several Kurdish streets were also renamed to Arabic names, such as Sahbha Street and Askari Street.

A large part of this cultural genocide and Arabization policy was inflicted on the Faily Kurds. The genocide of the Faily Kurds dated back to 1924 when the Iraqi Citizenship Law divided the Iraqis into three categories on the basis of religion and ethnicity. Since the Faily Kurds were followers of the Shiite sect and were registered as of Iranian origin, they were constantly attacked by Iraqi rulers, whether by killing, imprisonment, or looting their property and expulsion. While they had been subjected to genocide and ethnic cleansing by the Ba'ath government since 1963, the massacre of the Faily Kurds began in the early 1970s when 40,000 Faily families were deported to Iran (Saman, 2022).

In 1980, in accordance with Decree No. 666 passed by the Revolutionary Command Council, the Iraqi Interior Minister ordered the deportation of the Faily Kurds. The decree stated that Iranians in the country who did not have an Iraqi citizenship, as well as those who had dealt with the Failis, would be deported. The decision included the arrest of Faily Kurdish youth aged 18 to 28 and their indefinite detention in provincial prisons. The Iraqi Interior Minister's decision also stated that any Faily Kurds smuggled to Iran would be shot dead if they tried to return the country (Salim & Mohiuddin, 2021). As a result of this decision, about 600,000 Faily Kurds were deported to Iran within 10 years, their property was

confiscated, and about 20,000 of their youth went missing. Even more horrific, on April 4, 1980, more than 5,000 Faily Kurdish businessmen and workers were buried alive (Jabar, 2016).

The Faily Kurdish residential areas on both sides of the Iraqi–Iranian border, especially Mandali, Khanaqin, Badr, and Baghdad, were rich in natural resources, especially oil. Therefore, the issue for successive regimes on both sides of the border in modern times became sensitive and uncompromising, with the Iraqi side challenging the Faily Kurds’ Iraqi origin and calling them Persians, whereas the Iranian side challenging their Iranianness and attributing them to the Arabs. This was interpreted that by a mutual agreement between the Iraqi and Iranian regimes, they were dispersed and their social structure was torn up so that they could not settle in their native homes and control the assets in those areas. The regime tried to destroy them, distort their national identity, and force them to obey and pledge allegiance through different ways, such as by joining the Arab tribes and taking on the names of the tribes, signing a treaty with the Arab tribes to defend the tribes, paying any taxes attributed of the tribes, and sharing in the tribes’ sorrows and joys. Therefore, many Faily Kurds were forced to bear Arab tribal nicknames such as al-Asadi, al-Khazali, al-Ra’i, al-Ta’i, al-Hakim, al-Abadi, al-Ruba’i, al-Jumaili, and al-Zuhayrin (Zagrozplatform, 2016 & Ahmad, 2023).

The Faily Kurds in Iraq were denied Iraqi citizenship from 1963 to 2003 due to the ethnic cleansing by successive Ba’athist governments. Although, after 2003, the Governing Council passed Resolutions 111 and 117 regarding the restoration of Iraqi citizenship to citizens who lost it from 1958 onwards, the Faily Kurds are still facing issues because not all can benefit from these resolutions (Dara, 2013). Thus, the Ba’ath government’s policy, in addition to resulting in physical genocide, also led to cultural genocide perpetrated against the Faily Kurds to deprive them of their identity, ethnicity, and economic and political rights.

Shuani, a researcher in Ancient History assumes that the atrocious genocide against the Failis was because they were Kurds. His study found that the approaching Iraq–Iran war was simultaneous with an increase in the genocide of the Faily Kurds, especially among those who remained in their own territories. The Faily Kurds controlled a large part of the Baghdad market. Like the Jewish deportees in Germany during Hitler’s Nazi regime, they were arrested, separated from their youth, and then destroyed and massacred. The elderly, disabled, women, and chil-

dren were sent by military vehicles to the Iraqi–Iranian border, beaten, and deported out of Iraq (Shuani, 2020).

According to a report published on February 26, 1981, by Al-Thawra, an official newspaper of the Ba’ath government, the former president of Iraq Saddam Hussein was quoted as saying, “Eradicate the Faily Kurds from Iraq so that they do not pollute the Iraqi soil and air and pollute the blood of Iraq when their blood is mixed with the blood of the Iraqi people.” Therefore, it appears that the Ba’ath regime and its leaders intended to destroy the Faily Kurds because they held different views from the regime’s and had different nationalities. There are various sources with various data concerning the genocide of the Faily Kurds. According to the report “Genocide in Iraq after 2003” by the Board of Lawyers for the Defense of the Failis, as published on the Kurdish History website, based on witness accounts most of those massacred were young Faily Kurds. The website also pointed out that some of the Faily youth were tortured and killed using chemical weapons (cited from Othman, 2019).

Another way of killing them was by forcing them to walk through minefields to pave the way for the attacking military units. Many also reported horrific methods of torture in regime prisons. When the Faily Kurds were deported to Iran, the Ba’ath regime paid 10,000 Iraqi dinars and 30,000 US dollars to Iraqis who were married to Faily Kurdish women to separate and deport them. Additionally, the regime separated thousands of young people from their families, imprisoning them in prisons known as Nughrasalman, Abu Ghraib, and other prisons in other parts of Iraq. During Saddam’s rule, other horrific acts were also committed against the Faily Kurds, including separating children from their mothers, men from their wives, and elders from their children, as well as torturing their youth in Iraqi prisons (Al Najim, 2019; “Iraq Faily Kurds”, 2017; Abboud, 2007). Therefore, it is evident that the Ba’ath government perpetrated different types of genocide, comprising biological and physical genocide, against the Faily Kurds where children, boys, men, and women were separated from each other and killed in separate groups.

The above explanation unveiled that the Ba’ath governments of Iraq from 1924 to 1981 perpetrated cultural, biological, and physical genocides against the Faily Kurds, and in the process, caused the displacements, killings, and disappearances of 5,000 to 600,000 people, in addition to destroying their homes.

7. Application of the Genocide of Faily Kurds Under International Law

The CPPCG and the Rules of Procedure of the ICC have been criticized for not ensuring adequate justice in cases of crimes of genocide. At the same time, it cannot be said that the CPPCG and the international judicial system have done nothing to prevent the crimes of genocide and punish the perpetrators. Therefore, this section applies the situation of the genocide of the Faily Kurds within the framework of the international legal rules that are still in force.

7.1 Findings and discussions under international treaties and resolutions

This section examines the status of the Faily Kurdish people's genocide from the perspective of international law. As explained earlier, Article 2 of the Genocide Convention defines the genocide crime as "a violent act that takes place against a group, based on a special intent to exterminate, whether in whole or in part, the existence of a national, ethnical, racial, or religious group by:

- i) Killing members of the group;
- ii) Causing serious bodily harm or harm to mental health of members of the group;
- iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- iv) Imposing measures intended to prevent births within the group; and
- v) Forcibly transferring children of the group to another group."

The Faily Kurds are members of a particular group who were targeted for genocide by the Ba'ath government. They were killed due to their ethnic and communal identity regardless of their individual status. Civilians' homes were destroyed to eliminate them without any regard to the values of humanitarian law. Moreover, the Ba'ath government forced the Faily Kurds to leave their homes, especially in Mandali, Khanaqin, Badr, and Baghdad. They were arrested regardless of their innocence and age. The perpetrator of the genocide against the Faily Kurds carried out the operation against them with the intent of committing a violent act as defined in the CPPCG. Thus, this shows that the Ba'ath government intended to destroy the Faily Kurds, who did not fit in the Ba'ath regime's policy (United Nations

& Peoples Organization [UNPO], n.d.).

Moral and causation pillars are the essential elements in establishing the crime of genocide. The first one considers the intention in committing a crime that aims to destroy a different group of people due to a religious, racial, or national element as stated in Article 2 of the CPPCG. This element was present in the case of the Faily Kurds since the Ba'ath government intended to destroy them because they are of a different nation. The causation element considers the related reason between the outcome and the offender. This pillar was also present in the case of the Faily Kurds because of the occurrences of criminal acts stated in Article 2 of the CPPCG. There was also an internal reason that motivated the offender to commit genocide against the Faily Kurds.

The genocide operations were regarded as human rights violations because the operations entailed the mass murder and mass disappearance of thousands of civilians comprising men, women, children, and elders. The operations are also consistent with the definitions provided by international researchers Peter Drost and Vahkan Dadrin. Peter believes that genocide is the deliberate destruction of the lives of a group of people because of their membership in one group, and Dadrin defines genocide as the successful attempts of dominant groups to kill and destroy other groups that have been targeted in whole or in part (Cited from Ehsan, 2017).

In 1970, 40,000 Faily Kurdish families were deported to Iran, and 20,000 of their youth disappeared. In addition, an extensive operation via Ba'ath government's Decree No. 666 of 1980 led to the massacre and disappearance of thousands of Faily Kurds. This is another violation of international human rights under Article 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Language Minorities (1992). This Article states that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity." However, as mentioned in the first section, international scholar Horowitz emphasizes that if a group is destroyed in an organized manner and method by unscrupulous individuals of a bureaucratic state institution, the act is considered genocide.

These two main examples provide sufficient evidence that proves that the Faily Kurds were subjected to genocide as defined under international law, including Article 2 of the CPPCG. First, in 1980, the Ba'ath government issued Decree No.

666 to deport the Faily Kurds out of their own territories to outside Iraq and arrest young people aged 18 to 28 and keep them in prison indefinitely, resulting in the death and disappearance of thousands of the Faily Kurds. Second, a statement on February 26, 1981, by the former president of the Ba'ath regime to the official government newspaper Al-Thawra revealed the killing and destruction of the Faily Kurds.

Article 1 of the Convention on the Nationality of Married Women, which was issued by the UN General Assembly through Resolution No. 1040 on January 29, 1957, and entered into force on August 11, 1958, states, "Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife" (UN Treaty Collection, n.d.). According to this Article, a foreign woman who marries a native citizen of the country shall not be deprived of citizenship or their citizenship shall not be revoked for any reason specified in this Article. However, the Ba'ath government had cancelled the marriage contracts between Iraqi citizens and Faily Kurdish women by offering financial compensation to the Iraqi citizens. Therefore, this action is considered a violation of the convention.

Article 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) states that victims means "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power".

The crimes committed by the former president of the Ba'ath government against the Faily Kurds are contrary to the Declaration because he used state power against them in a deplorable way that deprived them of their fundamental rights. In addition to the international pillar of the crimes as the crimes were committed against the Faily Kurds by state officials, the material pillar of the crimes is reflected in the abuse of power, the practice of criminal acts in the name of power, and under the guise of implementing the provisions of the law. This criminal activity, carried out at his personal behest, constituted external conduct embodied in acts of displacement, deportation, expulsion, and persecution, including by execution, chemical testing, forced removal, separation of children from their parents, and imprison-

ment. Likewise, there was a causal relationship between the physical act and the criminal outcome that accompanied the displacement and illegal seizure of movable and immovable property belonging to the Faily Kurds. These crimes also had a moral element, for the perpetrator who seized the power and its means, along with his deep desires and dull emotions, had used his will to complete his criminal acts against the Faily Kurds (Abboud, 2007). Therefore, according to the principles of international law and its international obligations, the crimes committed against the Faily Kurds are described as genocide.

There is a strong basis to claim that the crimes perpetrated by the Ba'ath government under Saddam Hussein were meant to annihilate the Faily Kurds in Iraq, which amounted to genocide acts (UNPO, n.d.). Therefore, the tragic crimes as described earlier can prove that the genocide of the Faily Kurds in Iraq falls under the jurisdiction of international law.

7.2 Findings and discussions pertaining to the statute of the International Criminal Court (ICC)

This section discusses the findings concerning the genocide of the Faily Kurds in the context of the ICC's statute. It also examines the stand of the ICC concerning the genocide perpetrated by the Ba'ath government of Iraq against the Faily Kurds between 1963 and 1980.

The ICC can deal with international crimes that fall under the categories of genocide, war crime, aggression crime, and crime against humanity. The definition of genocide in Article 6 of the ICC's statute is the same as the definition provided by Article 2 of the CPPCG. Article 21(1) of the ICC's statute relates to criminal pillars, rules of procedure, and evidence. Therefore, the presence of criminal pillars, including the material element, is a main condition of the crime of genocide. This pillar can be found in the case of genocide of the Faily Kurds. Since the Ba'ath government aimed to destroy all of them, this operation fulfilled the provision of Article 6(1), which says killing members of a group is one of the acts of genocide (Hussein, 2017, p. 26).

According to Article 6(2), causing serious bodily or mental harm to members of a group is another act of genocide. Genocide through physical and mental torture was committed against men, women, children, and the elderly of Faily Kurds in Iraq. Paragraph 3 of the Article is on "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."

This act is also applicable to the Faily Kurds because they were compelled to stay in a deplorable condition. The purpose was to destroy them physically. The elderly, the disabled, men, women, and children were sent by military vehicles to the border between Iraq and Iran and were even shot (Shuani, 2020).

In the light of the above, it is clear that the mass killings and disappearances of Faily Kurds can be considered a crime of genocide under the ICC's statute. However, the ICC will not be able to deal with it due to a lack of time competence. This is because the killings and disappearances took place between 1963 and 1980, a period before the entry into force of the ICC's statute on July 1, 2002. Besides, Iraq is not a signatory to the ICC's statute. Nonetheless, based on Article 13(2) of the ICC's statute, the UN Security Council has the authority to direct the case to the ICC under Chapter VII of the UN Charter. Also, according to Article 12(3) of ICC's statute, if a non-member state of the ICC's statute approves the jurisdiction of the court, the ICC can deal with the issue of genocide in that country. Therefore, the Iraqi federal government must first accept an intervention by the ICC in the case of the genocide against the Faily Kurds in order for the ICC to deal with the case.

However, for the genocide committed by the previous prime minister of the Rwanda government against the Tutsi minority in 1994, the UN Security Council had established the International Criminal Court of Rwanda via Resolution 955 on November 8, 1994 to punish the perpetrators of the genocide crime (Neuberger, 2017). Although the perpetrators of the genocide against the Kurds, including the Failis, have been punished through the national courts, the UN Security Council can still establish a tribunal similar to the Rwanda case to investigate the crimes perpetrated by the former Ba'ath regime so that the victims could receive compensations from the current Iraqi government.

8. Conclusion and Recommendations

1. Conclusion

Genocide is a dreadful action against the lives of a group of people or individuals in society who are executed through various ways for political, religious, ethnical, and economic reasons. Genocide operations are classified into three main types: physical, biological, and cultural genocide. Each type involves a terrible massacre of individuals, people, and society involving the destruction of culture, life,

and civil and political rights. It has been illustrated that genocide is a crime against humanity and has a legal framework under international law, which prohibits any country of the international community from committing a genocide act against civilians. This framework is stated in the Convention on the Prevention and Punishment of the Crime of Genocide and confirmed by the International Criminal Court (ICC).

The genocide of the Faily Kurds was the focus of the scientific and legal discussion of this study within the framework of international law. The paper examined the types of genocide perpetrated against the Faily Kurds and demonstrated that all the genocide types were perpetrated by the regime. Furthermore, the case of the Faily Kurds reflects all the three pillars of genocidal crimes, namely material, moral, and international pillars. The study examined the position of the ICC and the Supreme Iraqi Criminal Tribunal regarding the crimes committed against the Faily Kurds. It was found that the crimes amounted to genocide. However, a main issue of international law is that the ICC cannot hear this case because the genocide occurred before the ICC was established. Therefore, in order to deal with the case, firstly, the UN Security Council must ask the ICC to hear the case. Secondly, even though Iraq is not a party to the ICC's statute, the ICC might be able to look into the case if the Iraqi federal government allows the ICC to do so, because the function of the ICC is complementary to that of the national courts. Thirdly, the ICC can hear the case if the Iraqi federal government accepts the Rome Statute of the ICC. However, even though the Supreme Iraqi Criminal Tribunal has acknowledged the case of genocide against the Faily Kurds, the genocide lacks international recognition and the Iraqi federal government has not implemented the tribunal's decision that compels the government to compensate the families of the genocide victims.

2. Recommendations

In order to attain recognition that the cases of the Kurds, including the Faily Kurds, are genocide at the international level and obtain compensation for the families of the victims, several recommendations should be considered at the highest level of the KRG. Firstly, the KRG should attempt one of the three ways mentioned above. Then, the ICC will recognize the act as genocide, and the Iraqi government will have an international obligation to carry out the ICC's decision. The decision

may include paying compensation to the families of the genocide victims, similar to the compensation awarded to the victims of the Holocaust perpetrated by the German government (Agreement between Israel & Germany, 1952). Secondly, the KRG may use civil means, such as convincing non-governmental organizations, international multimedia, and academic institutions to raise the issue of the Faily Kurdish genocide to the international community and decision-making platforms, supported by compelling evidence. Thirdly, the KRG is recommended to establish a national institution dedicated to the issue of genocide of the Kurds, including the Faily Kurds. This institution should engage scientific researchers and experts in the field of genocide, and allocate the necessary budget to carry out its mission. The main objective of this institution would be to collect historical and legal documents on the genocide of the Kurds. In addition, it can establish contacts with nations that have been subjected to genocide by their governments to benefit from their experiences in gaining international recognition.

References

Abboud, Zuhair Kazem.(2007). Legal Responsibility in the Case of Faily Kurds. Shafak Foundation for Culture and Media for Faily Kurds. <https://www.kurdipedia.org/files/books/2012/64192.PDF?ver=129817546770000000> .

Ahmad, Diyari.(2023, April). The Ba'ath regime expelled 600,000 Failis from Iraq within six years. Basnews. <https://www.basnews.com/so/babat/801638> .

Al Najim, Qais.(2019, January 12). Kill the Faily Kurds because they are indigenous!, Kurdistan Voice. <https://sotkurdistan.net> .

Ali, Lonisi.(2021, August 15). Lectures on International Crimes, University of Akli Mohand and Lahadj - Bouira - Faculty of Law and Political Sciences. https://www.elmizaine.com/2021/08/blog-post_15.html .

Al-Kahwaji, Abd al-Qadir. (2001). International Criminal Law. Beirut: Halabi.

Al-Morshedi, Amal. (2017, May 3). Great legal research on genocide. Retrieved from <https://www.mohamah.net/law> .

Amir, Ruth.(2018). Twentieth Century Forcible Child Transfers: Probing the Boundaries of the Genocide Convention. Rowman & Littlefield.

Anderton, C. H., & Brauer, J. (Eds.). (2016). Economic aspects of genocides, other mass atrocities, and their prevention. Oxford University Press.

Bachman, Jeffrey S. (2019). Cultural Genocide: Law, Politics, and Global Man-

ifestations. Routledge.

Becker, S. W. (2010). The objections of larger nations to the international criminal court. *Revue internationale de droit pénal*, 81(1), 47-64. <https://www.cairn.info/revue-internationale-de-droit-penal-2010-1-page-47.htm>.

Berg, B. E. (1996). The 1994 ILC Draft Statute for an International Criminal Court: A Principled Appraisal of Jurisdictional Structure. *Case W. Res. J. Int'l L.*, 28, 221. <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1559&context=jil>.

Chalk, Frank & Jonassohn, Kurt. (1990). *Kurt The History and Sociology of Genocide. Analyses and Case Studies*. New Haven/London: Yale University Press, in cooperation with the Montreal Institute for Genocide Studies.

Chalmers, W. (2015). Never Again: The Genocide Convention in Review. <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=3149&context=dissertations>.

Charny, Israel. (1994). Toward a Generic Definition of Genocide. In George J. Andreopolis (Ed.), *Genocide: Conceptual and Historical Dimensions*. (p. 66.). Philadelphia: University of Pennsylvania Press.

Cigar, N. L., & Williams, P. (2002). *Indictment at The Hague: The Milosevic Regime and Crimes of the Balkan Wars*. NYU Press.

Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948, United Nations, Treaty Series, vol. 78, No. 1021, p. 277, available from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=_en.

Dara, Farida Jasim.(2013). *Faili Kurds: the Misery of the Complex Identity and the Wounds of the Collective Memory*. In *Minorities in Iraq: memory, identity, and challenges*. Masarat Foundation for Cultural and Media Development, Bagdad - Beirut. file:///C:/Users/sanhk/Downloads/31075553.pdf .

Definition of genocide in English. Oxford Lexico dictionary. Retrieved from <https://www.lexico.com/en/definition/genocide> .

Definition of 'genocide'. Collins English Dictionary. Retrieved from <https://www.collinsdictionary.com/dictionary/english/genocide> .

Duhaime's Law Dictionary. (N.d.). Jus Cogens Definition. Retrieved from <http://www.duhaime.org/LegalDictionary/J/JusCogens.aspx>.

Ehsan, Mohamd.(2017). *Kurdish Genocide in Iraq: Failis, Barzani, Anfal, Hal-*

abja, Arabization. Shahab Printing House : Erbil.

Fein, Helen. (1993). *Genocide: A Sociological Perspective*. London: Sage Publications.

Gaeta, P. (Ed.). (2009). *The UN Genocide Convention: A Commentary*. Oxford Commentaries on Interna.

Gaunt, D. (2006). *Massacres, Resistance, Protectors: Muslim-Christian Relations in Eastern Anatolia during World War I*. Gorgias.

Gehl, Lynn (2016, March 25). *The Trc on Physical, Biological, and Cultural Genocide*. Retrieved from <https://www.lynngehl.com/black-face-blogging/the-trc-on-physical-biological-and-cultural-genocide> .

Gellately, R., & Kiernan, B. (Eds.). (2003). *The specter of genocide: Mass murder in historical perspective*. Cambridge university press.

Gull, Maarouf. (2003). *Relationship of Kurdish Issues to International Law*. Sulaimani: Sardam printing house.

Gunawan, Y., Refisyanti, S. W., Mufida, A., Takarub, K. D., & Nur, A. (2020). *Jurisdiction of International Court of Justice (ICJ) Over the Genocide Violations: with Special References to Rohingya Case*. *Fiat Justisia: Jurnal Ilmu Hukum*, 14(4), 313-336. <http://jurnal.fh.unila.ac.id/index.php/fiat/article/view/1900> .

Heieck, J. (2018). *The P5's duty to prevent genocide under the Genocide Convention*. In *A Duty to Prevent Genocide* (pp. 13-71). Edward Elgar Publishing. https://www.elgaronline.com/display/9781788117708/09_chapter1.xhtml.

Henderson, Anne Ellen.(April , 2005). *The Coalition Provisional Authority's Experience with Economic Reconstruction in Iraq*, UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT 138. <https://www.usip.org/sites/default/files/resources/sr138.pdf> .

Hussein, Awara. (2017). *Kurdish Genocide under International Law*. Sulaimani: Hamdi printing.

Iraqi Kurdistan profile. (25 April 2018). Retrieved from <https://www.bbc.com/news/world-middle-east-28147263> .

Isa, Felipe Gómez & Feyter, Koen de. (2009). *International Human Rights Law in a Global Context*. Universidad de Deusto.

Jabbar, Aso.(2016, May 12). *Massacre and Deportation of Failis Kurds*. VOA. <https://www.dengiamerika.com/a/kurdistan/3327752.html>.

Jassim Muhammad, Sarmad(2020). *The Crime of Genocide: A Socio-Anthro-*

pological Study (the Yazidis as a Model), *Studies, Humanities and Social Sciences*, 47(2),176-190. file:///C:/Users/sanhk/Downloads/107432-128900-1-SM.pdf .

Karim, Mohamad Sofi. (2014). *The Law of the Iraqi Supreme Criminal Court- NO 10, 2005.*

Katz, S. T. (1994). *The Holocaust in Historical Perspective: The Holocaust and Mass Death before the Modern Age.* New York.

Kelly, Michael J. (2008). *Ghosts of Halabja: Saddam Hussein and the Kurdish Genocide: Saddam Hussein and the Kurdish Genocide.* ABC-CLIO. <https://books.google.iq/> .

Kharel, A. (2018). *Doctrinal legal research.* Available at <https://www.readcube.com/articles/10.2139/ssrn.3130525> .

Kreß, Claus. (2006). *The Crime of Genocide under International Law.* *International Criminal Law Review*, 6, 468. <https://www.legal-tools.org/doc/8799cd/pdf/> .

Kristensen, Hans M. and Korda Matt. (May ,2019). *Status of World Nuclear Forces.* Retrieved from <https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/> .

Kurdish Hawrami Language. (n.d). Retrieved from <https://hawargaydlan.com/index.php/2021/01/10/zmany-hawramy/> .

Kurdistan 24.(2022, April 14). *Masrouf Barzani: The issue of compensation for the victims of the former Iraqi regime should not be forgotten anymore.* <https://www.kurdistan24.net/> .

Laughland, J. (2008). *A history of political trials: From Charles I to Saddam Hussein (Vol. 7).* Peter lang. https://books.google.iq/books?id=1sRMIZGX-9UMC&pg=PA242&redir_esc=y#v=onepage&q&f=false.

Lemkin, R. (2005). *Axis rule in occupied Europe: Laws of occupation, analysis of government, proposals for redress.* The Lawbook Exchange, Ltd.

Makki, Omar & Mahmoud Al-Kamali, Mohammed .(2022). *Elements of International Crimes: An Applied Study on the UAE International Crimes Law.* International Committee of the Red Cross.

Maybury-Lewis, David (2002). *“Genocide against Indigenous peoples”. Annihilating Difference: The Anthropology of Genocide.* University of California Press.

Meaning of genocide in English. *Cambridge Dictionary.* Retrieved from <https://dictionary.cambridge.org/dictionary/english/genocide>.

Memeti, Ardit & Nuhija, Bekim. (2013). *The concept of erga omnes obligations*

in international law. *New Balkan Politics*, (14), 31. <https://www.newbalkanpolitics.org.mk/item/the-concept-of-erga-omnes-obligations-in-international-law#.XU-VI0-gzbIU>.

Minority Rights Group International.(2017). IRAQ Faili kurds. Retrieved from <https://minorityrights.org/minorities/faili-kurds/>.

Moshman, David. (2001). Conceptual constraints on thinking about genocide. *Journal of Genocide Research*, 3 (3), 438. <http://digitalcommons.unl.edu/edpsych-papers/45> .

Mzuri, Rekar. (2013). *The Genocide History of Kurdish Nation*. Hewler: Kardo Printing.

Nersessian, David L. (2003). *The Razor's Edge: Defining and Protecting Human Groups under the Genocide Convention*. *Cornell International Law Journal*, 36(2), 279. <https://scholarship.law.cornell.edu/cilj/vol36/iss2/3/> .

Neuberger, Benjamin, *Genocide: Genocide in the Land of a Thousand Hills, Rwanda in 1994*(Mahabad Karadaghi, Trans.). Shahab Printing House.

Othman, Dldar. (2019, August 1). *Genocide of the Faili Kurds in Iraq, History of Kurd*. <http://www.historyofkurd.com> .

Pennell, B. (2000). *Industrialized Violence: The Origins of Genocide*. Honors Theses. Paper 162.https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1157&context=uhp_theses .

Prime Minister Winston Churchill's Broadcast to the World About the Meeting With President Roosevelt. (24 August 1941). Retrieved from <http://www.ibiblio.org/pha/policy/1941/410824a.html>.

Rahman Ahmad, Zirak.(2018, December 29). *Faily Identity, Religion, Nation, Islamic Studies*. <https://www.kurdistanc.com/Islamic/details.aspx?jmare=5384>.

Riyad Younes, Yusra.(2021, June 23). *The crime of genocide, Encyclopedia of Legal Accuracy*. <https://wadaq.info/author/yousef/> .

Robinson, Geoffrey B. (2018). *The Killing Season: A History of the Indonesian Massacres, 1965–66*. Princeton University Press.

Rome Statute of the International Criminal Court. (2011). Rome on 17 July 1998, in force on 1 July 2002, United Nations, Treaty Series, vol. 2187, No. 38544, Depository: Secretary-General of the United Nations, Available at : <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> & <http://treaties.un.org>.

Rubinstein, W. D. (2004). *Genocide: A History*. Pearson Longman.

Salim , Kawa Yasin & Mohiuddin, Bazian Youns .(2021).Kurdology & Human Rights. Tabayi Library.).

Saman, Faraidun.(2022, February 27). Failis issue, language, identity, culture, Anfalistan. <http://www.anfalistan.com>.

Sautman, Barry (2003). "Cultural genocide and Tibet". *Tex. Int'l LJ*. 38(173), 173–240. <https://web.archive.org/web/20140407073958/http://www.tilj.org/content/journal/38/num2/Sautman173.pdf>.

Schabas, William A. (2009). *Genocide in international law: the crime of crimes*. Cambridge University.

Shaw, Martin.(September 24, 2014). Daniel Feierstein, 'Reorganising Genocide' and Argentina (review), *Scholarship and commentary on global politics, war and genocide*. <https://martinshaw.org/2014/09/24/daniel-feierstein-reorganising-genocide-and-argentina-review/> .

Shuani, Fatih Abdullah. (2020, May 6). The silent genocide of the Faily Kurds, ChawyKurd. <http://www.chawykurd.com/details.aspx?hewal&jmare=16936&Jor=11&Jor2=92>.

Siam, Abdul Hamid.(2022, May 21). Why is the International Criminal Court unable to prosecute war criminals? *Arabic TRT*. <https://www.trtarabi.com/opinion>.

Statement issued by the Council of Ministers,(2010, December 9). Retrieved from <http://www.fkgc.com/Faylee-Doc/Makala178.htm> .

Sulaiman, Taha.(2019, August 1). Genocide of Faily Kurds in Iraq. *History Of Kurd*. <https://www.historyofkurd.com>.

Taylor, Adam. (2015, June 5). Did Canada commit a 'cultural genocide'? *The Washington Post*. Retrieved from https://www.washingtonpost.com/news/worldviews/wp/2015/06/05/did-canada-commit-a-cultural-genocide/?utm_term=.ec5add78ec53.

The Genocide of the Palestinian People. (25 August 2016). Retrieved from https://ccrjustice.org/genocide-palestinian-people-international-law-and-human-rights-perspective#_ftn3 .

Trafzer, C. E., & Hyer, J. R. (Eds.). (1999). *Exterminate them: Written accounts of the murder, rape, and enslavement of Native Americans during the California gold rush*. MSU Press.

Tucker, S. C. (Ed.). (2010). *The Encyclopedia of Middle East Wars: The United States in the Persian Gulf, Afghanistan, and Iraq Conflicts [5 volumes]: The United*

States in the Persian Gulf, Afghanistan, and Iraq Conflicts. ABC-CLIO. <https://books.google.iq/> .

UN Commission on Human Rights, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 December 1992, resolution 47/135, available at: <https://www.ohchr.org> .

UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34, available at: <https://www.refworld.org/docid/3b00f2275b.html> .

UN General Assembly, Draft convention on genocide, 21 November 1947, A/RES/180, available at: <https://www.refworld.org/docid/3b00f09058.html> .

UN Treaty Collection. (n.d). Convention on the Nationality of Married Women. https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=X-VI-2&chapter=16&Temp=mtdsg3&clang=_en .

United Nations General Assembly (UNGA). (11 December 1946). The Crime of Genocide (96(1)[1946]). Retrieved from <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/47/IMG/NR003347.pdf?OpenElement> .

United Nations General Assembly (UNGA). (9 December 1948). Convention on the Prevention and Punishment of the Crime of Genocide 260 A (III) [1948]. Retrieved from <https://documentsddsny.un.org/doc/RESOLUTION/GEN/NR0/044/31/IMG/NR004431.pdf?OpenElement>.

United Nations, General Assembly, Letter Dated 24 May 1994 from the Secretary-General to the President of the Security Council, S/1994/674(27 May 1994), available from <https://www.legal-tools.org/en/browse/record/3a3ae2/> .

UNPO, n.d. The Kurdish Genocide: Achieving Justice through EU Recognition. Retrieved from http://www.europarl.europa.eu/meetdocs/2009_2014/documents/diq/dv/03_kurdishgenocidesofanfalandhalabja_/03_kurdishgenocidesofanfalandhalabja_en.pdf.

Van Schaack, B. (1996). The crime of political genocide: repairing the Genocide Convention's blind spot. *Yale LJ*, 106, 2259. <https://www.jstor.org/stable/797169> .

Washington Kurdish Institute. (n.d). Kirkuk and Its Arabization: Historical Background and Ongoing Issues In the Disputed Territories. <https://dckurd.org/wp-content/uploads/2021/04/Kirkuk-and-Its-Arabization-Historical-Background-and-Ongoing-Issues-in-the-Disputed-Territories.pdf> .

Woolford, Andrew. (2013). Nodal repair and networks of destruction: residential schools, colonial genocide, and redress in Canada. *Settler Colonial Studies*, 3(1), 72. <https://sci-hub.tw/https://doi.org/10.1080/18380743.2013.761936> .

Yashwi, Linda Muammar.(2010). *The International Criminal Court and its Jurisdiction*. Oman: Printing house for publishing & distribution.

ZagrosPlatform.(2016, November 10). Brief about the Faily Kurds. <http://zagrosplatform.net/ku/?p=451> .

خلاصة

الإبادة الجماعية هي جريمة دولية ضد الإنسانية بموجب القانون الدولي. الإطار القانوني والدولي (CPPCG) للإبادة الجماعية منصوص عليه في اتفاقية منع جريمة الإبادة الجماعية والمعاقبة عليها المؤرخة 9 كانون الأول / ديسمبر 1948. وبالمثل، فإن المجتمع الدولي ملزم بالزام الإطار القانوني للإبادة الجماعية. عانى الأكراد الفيليين من القتل الجماعي والاختفاء والهجمات الكيماوية والتعجير والنفي، وأجبروا على مغادرة مدنهم لعقود بسبب نضالهم من أجل الحقوق السياسية والأخلاقية والاقتصادية والثقافية. لم يعترف المجتمع الدولي قط بحدث مأساوي مثل الإبادة الجماعية بموجب القانون الدولي. لذلك، تبحث هذه الورقة فيما إذا كان القتل الجماعي للأكراد الفيليين جريمة إبادة جماعية دولية بموجب القانون الدولي، وما إذا كان بإمكان المحكمة الجنائية الدولية النظر في القضية، وما إذا كانت الحكومة الفيدرالية العراقية ملزمة قانوناً بتعويض أسر الضحايا. تستخدم الدراسة المنهج القانوني العقائدي من خلال المصادر الأولية والثانوية لفحص الحجج والاستنتاجات الكلمات المفتاحية: الشعب الكردي الفيلي، حكومة البعث العراقية، إبادة جماعية، القانون الدولي.

بوخته

به پێی یاسا نێوده و له تیبه كان، جینۆساید تاوانێکی نێوده و له تی دژ به مرۆفایه تیبه. چوارچۆیه یاسایی و نێوده و له تیبی جینۆساید له رێككه و تننامه ی رێگریكری و سزادانی تاوانی جینۆسایدی كه له 9ی كانوونی دووه می 1948 دا واژووكر، هاتوو. له گه ل ئه وه شدا كۆمه لگه ی نێوده و له تی ئه ركیبه تی پابه ندی چوارچۆیه ی یاسایی تاوانی جینۆساید بێت. گه لی كوردی فه یلی دوو چاری كوشتنی به كۆمه ل، بێسه روشوینكردن، هێرشێ كیمیایی، بئ مآل و حال و تاراوگه بوون، ههروه ها ده یان سآل له مه وه به هۆی خه باتكردن بۆ مافه سیاسی، نه ته وه یی، ئابوووری و كۆلتوو ریه كانیان ناچار بوون ناوچه كانی خۆیان به جی بێلین. تا ئیستا كۆمه لگه ی نێوده و له تی به پێی یاسا نێوده و له تیبه كان وه ك جینۆساید، دانی به رووداویكی وا دلته زینی نه ناوه. بۆیه ئه م توێژینه وه به لێكۆلینه وه له وه ده كات كه ئایا كوشتنی به كۆمه لی گه لی كوردی فه یلی به پێی یاسا نێوده و له تیبه كان تاوانێکی نێوده و له تیبی جینۆساید یان نا، ئایا دادگای تاوانی نێوده و له تی ده تاوانی سه یری ئه م دۆسیه بكات، ئایا حكومه تی فیدرالی عێراق له رووی یاساییه وه پابه نده

به قهره بووکردنه وهی بنه مالله ی قوربانیه کانی جینۆساید. توژیینه وه که سود له ریپازی یاسایی له ریگه ی مادده سهراچاوه ییه سهه تایی و لاوه کییه کان بو لیکۆلینه وه له ئارگیومینته کان و دهه نجامه کان، وه ده گریت
وشه کلیلیه کان: گه لی کوردی فهیلی، حکومه تی به عسی عیراق، جینۆساید، یاسای نیوده وله تی