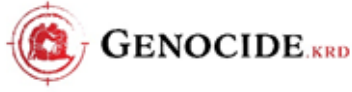


**Proceeding Conference**

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



Salahaddin University



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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  
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**E rbil 2-4/5/2023**

**Supervision**

Prof. Dr. Salem Jassim Hajy

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Prof. Dr. Nashwan Shukri Abdullah

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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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# 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**

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# The International Perspective of the Crime of Genocide: The Case of Faili Kurds

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## Abstract

Genocide has internationally been recognized as the crime of the crimes. It is strongly forbidden and known as a crime against humanity too. However, recognizing a crime as genocide or one against humanity is a complex process. This recognition is considered a first step to taking measures against those who committed the crime. The crime of genocide is always motivated by more political and ethnic reasons than legal ones. Domestically, courts, parliaments and governments can more easily recognize a crime as genocide compared to international institutions, such as courts. According to the 1948 Genocide Convention, genocide is recognized as an international crime and its elements are defined. This paper addresses the question of how the crimes of the Iraqi Baathist regime against Faili Kurds can be internationally recognized as an act of genocide. The research uses analytical data analysis within the framework of international criminal law.

Keywords: Faili Kurds, Genocide, International Criminal Law, Iraq.

## **1. Introduction and Methodology**

### **1.1. Introduction**

The crimes of genocide are among the crimes against humanity and have a long history. Committing such crimes has increased especially during World War I and II. The first court to try to deal with such a crime is backed to when a court was formed in Nuremberg, which defined international crimes such as murder, extermination, slavery, deportation, and any other actions against any civilian populations before and during the war. There have always been political, ethnic, or religious reasons when taking these repressive actions and persecutions under a crime against peace or a war crime in connection with those actions. Genocide in international law is that concerns many societies. It is an important topic because it is related to human life, as individuals and groups of people. Also, it is an international crime against humanity which affects liberty, rights and human dignity.

Genocide is one of the crimes against the human race. Rather, it can be described as the most serious international crime and as the crime of crimes. That is because it poses a threat to human life, health and dignity. Its danger appears as it threatens to exterminate an entire group or groups for religious, racial, ethnic reasons or the like. Genocide takes either a physical form, as in attacking life or health, or a biological form, as in hindering offspring and depriving a group of offspring to reproduce through sterilization and miscarriage, or genocide is focused on a cultural form, as in depriving a community of its language or culture.

### **1.2. Research problem**

The importance of the study lies in the importance of criminology, as genocide has so many effects on a nation, society and individuals. It requires full attention at the domestic and international levels. Efforts should be made to analyze the crimes committed against a particular nation or group to destroy them classify them as genocide at the international level and recognize them as crimes of genocide. Even with the presence of some research and many studies in this field, it is believed that it is not enough for such a heartless crime against the Faili Kurds.

What was included in the 1948 Genocide Convention and the provisions of the Rome Statute of the International Criminal Court are considered sufficient and cover all cases of genocide. However, the problem lies in the practical application

of these texts. The relations between states and the intertwining of interests led to the non-application of these texts; in addition to that, those in charge of wars did not abide by these rules, which led to an increase in killings among civilians.

### **1.3. Research question and methodology**

The research question is how the crimes committed by the Iraqi Baath regime against Faili Kurds can internationally be recognized as an act of genocide. Addressing such a question requires discussing the issue of how is the crime of genocide dealt with under international law. The research uses qualitative methods within the framework of international criminal law. It analyses different primary and secondary sources, including documents of international law.

## **2. Genocide as an International Crime**

Raphael Lemkin was the first legal scholar who use the term genocide in 1943. Gens is a Latin word which is meaning race, clan, or tribe; and cide is also a Latin word meaning massacre or kill. In the opinion of Lemkin, genocide does not essentially mean the direct destruction of a nation, but when accomplished by mass killings of all members of a nation. It is planned rather to show a harmonized plan of different actions aiming at the destruction of critical basics of the life of national groups, to destroy the groups themselves. The goals of such plans are to dismantle the political and social institutions, culture, language, national feeling, religion, and economic existence of ethnic groups and to destroy the personal security, freedom, health, dignity, etc. of individuals belonging to such groups.

For the first time, the United Nations General Assembly (UNGA) defined the crime of genocide in Resolution 96(1). It mentioned genocide as an international crime under international law. They planned to form a genocide convention, which they gave to the United Nations Economic and Social Council to draft a resolution on genocide. It has drafted convention a to describe the crime of genocide and it has a good and quite technical definition for genocide as a crime against humanity even if it happens in times of war and in times of peace by the 1948 Genocide Convention.

## 2.1. Definition of the Crime of Genocide

Many scholars have tried to define and analyze genocide as a concept and as an act. The American sociologist Erving Louis Horowitz defined it as a systematic extermination of innocent groups by the state bureaucracy. Jack Porter, former president of the International Association of Researchers Specializing in Genocide, defined it as “the intentional destruction, in whole or in part, by the government and its institutions against groups targeted based on gender, race, religion, tribe, or political tribe”. The Lebanese researcher Musa Prince concludes that genocide is a deliberate crime against the public right, and it is unique from similar crimes in that it imposes a criminal policy practised by the authority on a group with a different ethnic, cultural or religious characteristic, or practised against foreigners. It also combines all the crimes included in the list of international penal codes, starting with the attempt to harm the human personality and ending with the attempt to harm private or public property. Although the word ‘genocide’ is often used colloquially, as shorthand for the deliberate mass murder of civilians, its definition under international law is more specific.

Article 2 of the Genocide Convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part; d) Imposing measures intended to prevent births within the group; e) Forcibly transferring children of the group to another group”. Given that, the crime of genocide is described as the most dangerous and cruel international crime, even if it is labelled a criminal offence, this definition is the same as in both the 1993 Rules of Procedure of the International Criminal Court for the former Yugoslavia in Article 4 , and its Rules of Procedure the 1994 International Criminal Court for former Rwanda in its Article 2, and finally in the Article 6 of the Statute of the International Criminal Court.

## **2.2. Dimensions of the Crime of Genocide**

The crime of genocide, like other international crimes, has different dimensions:

### **1. Material dimension**

The material or physical dimension of the crime of genocide is the extermination of the human race, if there is one of the acts stipulated in Article 2 of the Genocide Convention, as follows:

A. Killing individuals or members of the group, which means the killing of a certain number of the group and not one individual from it, and it is equal to genocide or partial genocide, as well as the occurrence of the act in a positive or negative capacity.

B. Causing serious bodily or mental harm or harm to members of the group. Here, it is required that the act is of a degree of seriousness, which affects the presence of organs in the group, and this act is achieved by every material or moral means that has an impact on the member group, such as beating or mutilation that leads to permanent disabilities, or torture.

C. Subjecting the group to harsh living conditions intended for its destruction or actual destruction totally or partially, an example of this is residing in a place devoid of all means of life, where there is neither crop nor water; or under harsh climatic conditions that bring diseases without offering avenues for life.

D. Imposing measures aimed at preventing or hindering offspring within the group. This act is the subjection of members of the group to the operations of obstruction of birth or procreation is like castrating their men and sterilizing their women with drugs that make them unable to conceive childbearing and forcing them to have an abortion when it is achieved.

E. Forcefully or forcibly transferring the children or minors of the group from their group to another group. The act implies a kind of cultural genocide, as these children represent a future.

The cultural community and its social continuity should be noted that Article 3 of the Convention on the Prevention of Genocide is equal in terms of criminal responsibility between the complete crime and the attempt, as stipulated in the contribution and so conspiracy and incitement.

## **2. Moral Dimension**

The material dimension alone is not considered sufficient for the realization of a crime in light of modern criminal legislation. Rather, the moral dimension must be present, which is intended to refer to the psychological aspect of the crime. The latter is not based on the mere occurrence of the material acts that make it up, but rather a causal relationship must exist between the will of the offender and the act he committed. The responsibility of the perpetrator for the acts committed is determined through their sinful will, which they rely on to attribute the criminal acts to them and punish them.

For the crime of genocide to take place, as for other international crimes, the general intent, which is knowledge and will, must be present. However, the general intent alone is not sufficient to achieve the crime of genocide. Rather, it must be accompanied by a special intent on the part of the perpetrator.

## **3 . The legal dimension**

It is the dimension that must be available for this criminal act to be considered internationally prohibited, as there must be an international law specialized in combating the crime of genocide and making it a criminal act punishable by anyone who committed it. There is the principle that 'there is no crime and no punishment except by the text'. In the sense that the punishment for the crime of genocide must be lawful and the criminal act committed must be illegal by law and this is what is meant by the legal dimension.

## **4. International dimension**

To achieve the international dimension (international aspect), the action or omission leading to it affects the interests or values of the international community. In most cases, this crime is committed by senior officials and with the encouragement of the state to destroy a group or a group whose members have national, racial, ethnic, or religious ties; and it can be that the victims belong to another country or belong to the same state. This crime is also committed in times of peace and war following the crime of the convention against the crime of genocide. The acts constituting the crime of genocide neglected the provision of protection, and what can be inferred from the text of the agreement is that political groups are subjected to violations.

### **2.3. The International Nature of the Crime of Genocide**

Flexibility and development are considered among the most important features of public international law. Thus, jurists have adopted the criterion of international interest as a basis for differentiating between international crime and internal crime. Where the crime is considered international if the illegal behaviour is exposed to an international interest protected by international criminal law. The crime is considered internal if this interest is not prejudiced, and the international interests protected by international criminal law differ.

This difference contributed to the diversity and multiplicity of international crimes. Concerning the fundamental interest protected under international criminal law, which is attacked by committing the crime of genocide, it is the preservation of the human race from any aggression, since the lives of individuals constitute a supreme value that international and national laws prepare to infringe upon. Committing this crime exposes the human race to annihilation. When the genocide was committed over time, the intention behind it was to eliminate certain groups that were coherent with religious, racial, national, or ethnic ties. These groups have been recognized and guaranteed by international covenants the right to life and continuity, thus gaining immunity from any attack. Any attack on these groups and their acquired rights, such as the right to life, reproduction, preservation of dignity, and their right to physical and mental integrity, among other rights, constitutes illegal behaviour, classified by international criminal law under the category of genocide, and exposes its perpetrators to international criminal responsibility that results in the signing of a criminal penalty for it.

The crime of genocide is considered an international crime. Throughout the ages, as it left heavy losses, it required the cooperation of all countries to liberate humanity from its evils. The Convention on the Prevention and Punishment of the Crime of Genocide entered into force on January 21, 1951, according to the text of Article 13/2 of the same convention. And, the convention established legal principles and provisions that all countries are committed to implementing, regardless of their enjoyment of the description of the party to the agreement.

The characteristic of internationalism was derived not because the perpetrator must be a state, but because the characteristic of internationalism resides in two things. The international interest and thus derive protection from the international

community and this crime is criminalized in all countries' law. Therefore, it is more appropriate for it to be subject in its provisions to general international law. This crime is intentional, there is no room for error in it, and it is not committed by mistake, which is a natural matter, because it is not possible to imagine the extermination of a group of people belonging to one group - whatever its type: and some argue by mistake. For example, the nuclear bombs did not fall inadvertently or by mistake on the islands of Hiroshima and Nagasaki in 1991, which wiped out the entire population of the regions simply because they were citizens of the enemy state.

According to Article 1 of the Genocide Convention, directing acts of genocide by a state against its national citizens is no longer an internal issue, but rather an international issue in which the state bears full responsibility before the international community. The same is the case in the International Criminal Court system, where Articles 5 and 6 of the Statute of the Court consider that the crime of genocide is an international crime that poses a threat to the international community even if it occurred within the country itself by state authorities.

These principles and provisions are considered among the recognized principles, and what is meant is that the aforementioned crime is an international crime by its nature. The responsibility resulting from it is a double responsibility that rests on the state on the one hand and the natural persons on the other hand; who commit this crime, as they are crimes considered criminal and punishable according to Nuremberg Regulations.

### **3. The Case of Faili Kurds under International Law**

The international community has looked for ways to lessen and spread these international crimes due to the numerous violations and dangerous practices that have been seen in some parts of the world, as well as the severe damage they have left behind that has become a threat to international peace and security. The Genocide Convention must serve as the foundation for all of these deeds and initiatives. Nevertheless, even though the majority of nations, including Iraq, have ratified or joined that agreement that outlaws the crime of genocide and its globalization; there are still many serious crimes committed against a group or group of people that are not internationally recognized as genocide. Although some crimes are internationally recognized as genocide, there are others that, despite all elements and dimensions of the crime of genocide, are not yet recognized as genocide.

### 3.1. Faili Kurds

Here is an attempt to discuss why the Faili Kurds have been subjected to crimes and explain that the crimes committed against them include elements of genocide at the international level. Faili Kurds are an ethnoreligious group that has historically lived on both sides of the Iraq-Iran border in the Zagros Mountain region. They can be regarded as a cross-border population. Iraq's Faili Kurds are concentrated in Baghdad and the eastern regions of the governorates of Diyala, Wassit, Missan, and Basrah. There are between 1.5 million and 2.5 million Faili Kurds in Iraq, according to estimates.

Faili Kurds started emigrating from the Iran-Iraq border region to the west of Iraq in the nineteenth century, settling in Baghdad and other Iraqi cities. They thrived as traders, becoming significant people in Baghdad's commercial life as a result of their links with trade routes between Baghdad and Iran. Faili Kurd businessmen filled the gap left by the establishment of the state of Israel in 1948 and the emigration of many Jewish trading families; then they were soon rising to the middle and upper classes of Iraqi society. They eventually gained control of many of Baghdad's major bazaars, including the Shorja and Jamila markets. Despite their economic and social dominance, they had historically been seen as Iranians, and some had taken on the Iranian nationality to avoid being in the Ottoman army. Between 1970 and 2003, the Faili Kurds were subjected to systematic persecution during the Saddam Hussein dictatorship. The persecution campaigns forced the Faili Kurds to leave Iraq, escape, and ultimately go into exile. The persecution began when the dictatorship issued order number 666 in May 1980 which denaturalised many Faili Kurds from Iraqi citizenship and regarded them as Iranians. The execution operations began in Khanaqin and Baghdad before spreading to other Kurdish and Iraqi provinces. Due to persecution efforts, around 500,000 Faili Kurds were expelled to Iran and at least 22,000 of their bodies were never found.

Iraq's population was classified into three groups based on religion and ethnicity by the Iraqi Nationality Law of 1924. Systematically placed in the lowest group were the Shi'a Kurds. Government representatives who claimed that Faili Kurds were Shi'as and hence originally from Iran regularly targeted them. The Baathist regime discriminated against them because it was afraid of future of the resistance and dissidence in the country. The Iraqi Ba'ath regime used this designation in the late 1960s to deny

citizenship to and expel those that considered Iranian, disloyal to Iraq, and antagonistic to the government. Shi'a Arabs and Faili Kurds were among them. Beginning in 1969, mass deportations persisted throughout the Iran-Iraq War (1980 - 1988). According to reports, the main processes of deportations were in two phases: the first one occurred between 1969 and 1971, and the second one occurred in 1980.

### **3.2. Reasons for the Crimes Committed against the Faili Kurds**

Several factors had a role in committing the genocide crime against the Faili Kurds. The Iraqi government had no legal justification for committing this crime except that they were foreigners and dependent on foreign parties. However, there were other reasons why the Iraqi government or the Ba'ath regime committed a crime against the Faili Kurds, to ultimately result in their destruction or removal from Iraq. Listed below are a few of them:

1. The Faili Kurds, as mentioned before, live in the border area between Iraq and Iran, and it is the same border area that the Kurds inhabited since ancient times between the Ottomans and Iranians. This made the Iraqi government look at the Faili Kurds more suspiciously, as they were able to reach agreements and provide more assistance to neighbouring countries because of their position, which it considered a threat to itself.

2. Iraq after 1968 and upon the success of the Baathist military coup, it sought to transform the Iraqi state into a security state. Thus, it invested in the field of security first, and because Saddam's mentality was afflicted with persecution and suspicion, he considered the possibilities of the influence of the Faili Kurds as border dwellers on war preparations and its course through their relationship with their Kurdish brothers of the same origins who live on the other side of the border, so he considered them in the light of his doubts. As a type of security measure for which Saddam and his dictatorship were renowned during his rule in Iraq, he turned to measures of deportation and mass relocation of the Faili Kurds to miss the chance for this dubious application.

3. The Faili Kurds belong to the Shiites, and because of it and their open social nature, they established good relations with Iraqis of the same sect. They even preferred to live during their displacement and forced migration to the Iraqi Arab provinces, heading towards the Shiite regions. They were counted on the Shiites in the sectarian balances within the composition of Iraqi society. And because

the «Sunni Arab» minority runs the country, and seeks to remain at the same pace in its administration even after the Arab Socialist Ba'ath Party took power. As a result, the state initially put obstacles in the way of all Faili Kurds obtaining citizenship and later deported those who had done so under the pretext of having Iranian ancestry. It did so right up until the final moments before the fall of 2003. The problem of the Faili Kurds is their doubts about their patriotism, as they are accused of being loyal to the Shiites, and because Iran is a Shiite state ruled by the Jaafari sect, the Baathist state and some of its sectarian symbols have tried to accuse everyone.

4. The problem of the central government in Baghdad since the establishment of the Iraqi state in the 1920s, and despite the difference in its severity from one era to another, is a problem of governance and a desire to control all components of Iraqi society to perpetuate the rule. On this basis, the governments before the 2003 regime change dealt with the components in a way based on their perception of the threat of the opposite groups. Because they demand their national rights and are dissatisfied with the ruler's method of power, the Kurds have always had a disproportionate share of persecution, marginalization, arbitrary killing, dependence, displacement, and deportation that are classified as genocide crimes. Therefore, succeeding governments saw Kurds as rebellious to their rules for running the country and as rebelling against those rules, and they battled them violently as a result.

The Faili Kurds were at the beginning of these confrontations. That is because they played an influential role in the Kurdish struggle. They were among the first founders of the Kurdistan Democratic Party (KDP), who led the Kurdish revolution against government oppression and contributed greatly to the success of the revolutionary media. Many Faili Kurds held senior positions in the KDP, such as Habib Mohammed Karim, who held the post of party secretary general. In addition, the Faili Kurds contributed financially to the Kurdish liberalization movement.

Decree No. 666 was revoked by the Iraqi Nationality Law of 2006, which also mandates the restoration of Iraqi nationality for all those who had been denaturalized by the previous administration. The Iraqi Ministry of Displacement and Migration reports that since 2003, the citizenship of over 20,000 families (or 100,000 people) has been restored. This is a crucial and constructive first move. The cur-

rent problem is to aim for the reinstatement of citizenship for those who lack the required documentation to demonstrate their Iraqi ancestry. Faili Kurds must provide proof that they registered for the 1957 Iraqi national census to regain their citizenship. Many people are unable to present this registration documentation. Civil documents were lost or destroyed during the war, and in some cases, people were simply left off the census.

Many Faili Kurds are still stateless, which hinders them from using public facilities, despite the Iraqi Ministry of Interior's efforts to restore their nationality rights and legal standing in 2019. Additionally, some Faili Kurds were able to obtain identity cards, which are either a different colour than those of ordinary Iraqis or list them as citizens of Iranian origins. According to some sources, after 2003, the persecution of Faili Kurds significantly diminished, leading to a substantial influx of Faili Kurds back into Iraq.

In the Iraqi supreme criminal court, the case of the genocide of the Faili Kurds began on 26/1/2009 and ended on 29/11/2011. The court held 44 hearings and heard the testimony of 100 complainants and witnesses. On January 8, 2011, the Iraqi parliament officially recognized the 1980 murder of the Faili Kurds as genocide.

### 3.3. Conclusion; or the Legal Adaptation of the Case of Faili Kurds in an International Aspect

Given the nature of the crimes committed against the Faili Kurds by the Ba'athist regime in terms of international law, it can be understood that these crimes were committed in a manner that is against human values and in violation of international law. The enforcement methods were so strict that houses were raided during the night, and those concerned were gathered in groups, and then they were detained in places from which they were sent towards the rugged semi-desert Iraqi-Iranian border and forced to cross it under the threat of shooting over their heads. Many deaths occur. The transit areas were chosen to be far from the population centres on the Iranian side. To reach the official authorities requires walking tens of kilometres in hot summer without food or water. Hundreds of them died, including the elderly, the disabled, women, and infants.

Due to the existence of both material and moral dimensions of the crimes committed against the Faili Kurds and the clear intention of the Ba'ath government to destroy and eradicate the Faili Kurds in Iraq and the methods used against the Faili

Kurds in expulsion and torture, all of this is evidence that what had been done to the Faili was a crime of genocide.

Deportation was a method used by the authorities to achieve their goal. There was a premeditated intention by the Iraqi government to deport, torture and destroy the Faili Kurds. In addition to the intention, the decision declared the illegitimacy of the Faili Kurds' presence in Iraq. The Revolutionary Command Council Resolution No. 518 on April 15, 1980, excluding Iranian immigrants from citizenship, was a pre-decision of the illegality of the Faili Kurds, who are all alleged to have Iranian ancestry. The belief that the presence of foreigners will harm the security of the Iraqi Republic makes the security men in power treat the Faili Kurds ruthlessly. The prior intentions for deportation the torture that took place during the deportation process, and the mass death of some of the deportees, place the deportation crime among the crimes of genocide, in which the material and moral dimensions are available. According to the international convention on Genocide, any crime that contains these two dimensions is considered genocide. Also, the same convention emphasizes the international nature of crime.

Iraq acceded to the Convention for the Prevention of the Crime of Genocide in 1958. The necessary legislative measures to confront the crime of genocide, commitment also entail ensuring accountability for human rights violations and crimes of past violations, strengthening the credibility and capacity of the concerned institutions, and building them on the foundations to be responsible for the protection of individuals, and this requires the provision of guarantees based on democratic principles and values, good governance and the rule of law.

The convention on the prevention of the crime of genocide is characterized by having a peremptory capacity under the provisions of international law. This peremptory capacity of the provisions of the convention includes all countries, whether they are signatories to it or not. Because the provisions of this convention deal with a serious issue that pervades the entire international community and concerns all states and the human community. This issue constituted an important guarantee for all human groups. Because the provisions of the Convention are a supreme law that governs all countries in the matter of protecting human groups.

For the victims of the Faili Kurds genocide, international recognition is very important, to feel justice and preserve the memories of the past. Saddam's regime's crimes against humanity serve as a stark reminder of how the international com-

munity failed to protect the individual and communal rights of the Kurdish people. Thus, recognition entails maintaining the memory of the crimes to stop the repetition. Here, it must be ensured that the culprits are despised by all nations and that the international community will always punish those who commit atrocities. However, these crimes while these crimes were happening no real action was taken to get the Iraqi government to stop more violations. The recognition should be seen as an opportunity to play a bigger role in supporting stability in the area, the reconstruction of Iraq and stopping ethnic conflicts between the various populations.

As genocide victims, Iraqi Kurds continue to experience severe trauma. The Faili Kurds still have a large number of people missing. International recognition can help heal old wounds by encouraging the potential of social reconstruction in Iraq between communities based on a shared future. Furthermore, since the Iraqi government has already publicly recognized the crimes committed by the previous administration as genocide, this can be done without compromising the country's reforms in terms of politics and the rule of law.

The crime of genocide has a major role in destroying the members of the group, and it may include seeking to exterminate a specific number of people whose choice is based on the effect that their disappearance will have on the rest of the group. People still suffer the scourge of injustice, oppression, and control of the strong over the weak, and there are still those who believe that they live in a world ruled by force, not reason, despite all the laws that are supposed to have been put in place to protect people and to regulate the relationship of individuals with each other. However, regardless of how quickly globalization is reshaping the international community, violations of international law continue to be everywhere. For the crime of genocide to be accomplished under international law rules as it is mentioned in the 1948 Genocide Convention it should have two basic elements/dimensions must be available, which are the material and moral ones. The intent is a specific criterion that distinguishes this crime from other crimes, whether in a state of peace or a state of war.

The adoption of the 1948 convention on preventing and punishing genocide is an important and necessary step in preventing and criminalizing genocide worldwide. International law has played an important role in the process of clarifying and defining the elements and nature of this crime by stipulating it in the genocide

convention. According to the genocide convention, the act of genocide has always been regarded as an international crime because it resulted in significant loss of life and called for worldwide collaboration from all nations to free humanity from its ills. Since this crime is punishable by law in every country and is thus protected by the international community, it is more fitting for its provisions to be governed by general international law.

The Baath regime persecuted the Faili people on a systematic basis as Kurds. The persecution campaigns forced the Faili Kurds to leave their native territories in Iraq and flee, thus driving them into exile. The persecution started when many Faili Kurds were subjected to a significant campaign by the dictatorship that was launched by the disbanded Iraq's Revolutionary Command Council Resolution (RCCR) decision (666), which stripped Faili Kurds of their Iraqi nationality and treated them as Iranians. In 1979, systematic executions began in Khanaqin and Baghdad, and they gradually spread to other Kurdish and Iraqi regions. As a result of the persecution campaigns, about 500,000 Faili Kurds were reportedly deported to Iran, and 22,000 of them were killed. There is no trace of their remains. Saddam Hussein's regime's 1980 slaughter of Faili Kurds was approved as genocide by the Iraqi Court and Parliament.

Although Iraq has recognized the crimes committed by the former regime against the Faili Kurds as genocide, the international community has not yet recognized these crimes as genocide, despite the presence of all elements and dimensions of genocide in this crime. International recognition is significant for the Faili Kurds victims to feel justice and preserve historical memories. The atrocities committed by the Baath regime against humanity serve as a sobering reminder of how the world community failed to defend the civil and political rights of the Kurdish people. Recognizance, therefore, includes keeping a record of the offences to prevent repetition. All nations must loathe the perpetrators, and the international community must always punish those who commit atrocities.

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دیتنا ئیقفدهوله تی بو تاوانا جینۆسایدی: دۆسییا کوردین فهیلی  
پۆخته

جینۆساید له سه ر ئاستی نیودهوله تی وه ک تاوانی تاوانه کان ناسیژاوه. به توندی قه ده غه یه و به تاوانی دژی مروّقایه تیش ناسراوه. به لام ناساندنی تاوانیک به جینۆساید یان تاوانیک دژی مروّقایه تی پرۆسه یه کی ئالۆزه. ئەم دانپیدانانه وه ک ههنگاوی یه کهم داده نریت بو گرتنه بهری رپوشوین له دژی ئەو کهسانه ی که تاوانه که یان ئەنجامداوه. هه میشه تاوانی جینۆساید هۆکاری سیاسی و نه ته وه یی زیاتره نه ک هۆکاری یاسایی. له ناوخۆدا دادگا و په رله مان ده توانن به ئاسانی تاوانیک به جینۆساید بناسن به به راورد به دامه زراوه نیوده وله تیبه کان یان دادگاگان. به لام ئەمه به و مانایه نییه که تاوانه که له سه ر ئاستی نیوده وله تی دانپیدانه نریت. به لکو به پیتی ریککه وتنامه ی جینۆسایدی سالی ۱۹۴۸، جینۆساید وه ک تاوانیکی نیوده وله تی ده ناسریت و توخمه کانی پیناسه ده کریت. ئەم توژیینه وه یه باس له وه ده کات که چۆن تاوانی رژییمی عیراق له دژی کوردانی فهیلی وه ک کرده وه یه کی جینۆساید له ئاستی نیوده وله تیدا بناسریت. توژیینه وه که داتای شیکاری به کارده هینیت که له چوارچۆیه ی یاسای تاوانکاری نیوده وله تیدا شیکراونه ته وه وشه ی سه ره کی: کوردانی فهیلی، جینۆساید، یاسای تاوانی نیوده وله تی، عیراق

المنظور الدولي لجرمة الإبادة الجماعية: حالة الأكراد الفيليين

## المستخلص

الإبادة الجماعية معترف بها دولياً كجريمة. إنها محظورة تماماً وتُعرف أيضاً بأنها جريمة ضد الإنسانية. ومع ذلك، فإن الاعتراف بالجريمة كإبادة جماعية أو جريمة ضد الإنسانية هي عملية معقدة. وتعتبر هذه الاعترافات الخطوة الأولى في اتخاذ الإجراءات بحق مرتكبي الجريمة. والأسباب ما وراء جريمة الإبادة الجماعية هي دائماً سياسية وعرقية أكثر منها قانونية. وأما على الصعيد المحلي، فيمكن للمحاكم والبرلمان أن تتعرف بسهولة بأن الجريمة هي إبادة جماعية أكثر من المؤسسات أو المحاكم الدولية. ومع ذلك، هذا لا يعني أن الجريمة غير معترف بها دولياً. بدلاً من ذلك، تعترف اتفاقية الإبادة الجماعية لعام 1948 بالإبادة الجماعية كجريمة دولية وتحدد عناصرها. تناقش هذه الورقة البحثية كيف يمكن اعتبار جرائم النظام العراقي ضد الكرد الفيليين بمثابة إبادة جماعية على المستوى الدولي. تستخدم الدراسة البيانات التحليلية التي تم تحليلها في سياق القانون الجنائي الدولي. الكلمات المفتاحية: الأكراد الفيليين، الإبادة الجماعية، القانون الجنائي الدولي، العراق.

