




## Amnesty for Kurdish Genocide Perpetrators in the Perspective National and International Law

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### Abstract

The concept of amnesty has long been a subject of debate, especially when it concerns those responsible for heinous crimes such as genocide. This study aims to analyze the legal implications of the 1991 general amnesty issued by the Kurdistan Council, focusing on its impact on victims' rights and transitional justice from both national and international legal perspectives. Employing a legal analysis method, the research examines laws, court decisions, conventions, and relevant statutes, as well as academic studies and legal documents. The findings reveal that, based on legal principles at both domestic and international levels, perpetrators of international crimes in general, and genocide in particular, cannot escape legal accountability. Amnesty is inconsistent with the principles of equality and the protection of all individuals before the law. However, if amnesty must be chosen as a last resort and is entirely unavoidable, this legal flaw can be rectified by prosecuting the perpetrators in court.

Keywords: Amnesty, Kurdish Genocide, National law, Transitional justice



## Introduction

In all Genocides, there are people who acted as participants, instigators and collaborators of the main perpetrators of the crime, some of whom belonged to the victim group. From the point of view that we have been studying, reading and conducting research in the field of international criminal law, Genocide and international crimes against Kurds and humanity for years, except the Kurdish as a victim group of Genocide none of the targeted groups have pardoned Genocide perpetrator.<sup>1</sup> They have been brought to justice and punished if they are found guilty. The perpetrators of Genocide and international crimes do not deserve amnesty, not because the victims of genocide are no longer alive to be forgiven and in international criminal law, pardon does not apply to them, but because forgiveness means forgetting crimes that must never be forgotten, they must be embedded in the minds of individuals and remembered for the sake of humanity, revival, prevention and non-repeating of Genocide and international crimes.

Many studies have been conducted regarding the Kurdish Genocide and its question, such as Operation Provide Comfort: A Perspective in International Law,<sup>2</sup> Genocide in Iraq: the Anfal campaign against the Kurds,<sup>3</sup> Life and human dignity, the birthright of all human beings: An analysis of the Iraqi genocide of the Kurds and effective enforcement of human rights,<sup>4</sup> A preamble to the Kurdish question: The politics of Kurdish identity,<sup>5</sup> The Tricky Nature of Proving Genocide against Saddam Hussein before the Iraqi Special Tribunal,<sup>6</sup> Genocide of

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<sup>1</sup> Awara Hussein, *Kurdish Genocide in the perspective of international criminal law* (Baghdad: Hamdi press, 2017), 123.

<sup>2</sup> Harrington, M. E., "Operation Provide Comfort: A Perspective in International Law.," *Connecticut Journal of International Law* 8, no. 2 (1992): 635.

<sup>3</sup> Black, G., "Genocide in Iraq: The Anfal Campaign Against the Kurds (Human Rights Watch Report, 1993)," t.t., <https://www.hrw.org/reports/1993/iraqanfal/ANFALINT.htm>.

<sup>4</sup> Knowles, C. S., "Life and human dignity, the birthright of all human beings: An analysis of the Iraqi genocide of the Kurds and effective enforcement of human rights," *Naval L. Rev.*, 1998, 152.

<sup>5</sup> M. Hakan Yavuz, "A preamble to the Kurdish question: the politics of Kurdish identity," *Journal of Muslim Minority Affairs* 18, no. 1 (1 April 1998): 9–18, <https://doi.org/10.1080/13602009808716390>.

<sup>6</sup> Michael J. Kelly, "The Tricky Nature of Proving Genocide Against Saddam Hussein Before the Iraqi Special Tribunal," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 3 August 2006), 398, <https://papers.ssrn.com/abstract=920858>.

the Kurdish people in the light of international law,<sup>7</sup> The Anfal trial against Saddam Hussein,<sup>8</sup> Ghosts of Halabja: Saddam Hussein and the Kurdish genocide,<sup>9</sup> A Critical Guide to the Iraqi High Tribunal's ANFAL Judgment: Genocide against the Kurds,<sup>10</sup> Terror was his means to our end: US-Western support of Saddam Hussein's Genocide of the Kurds,<sup>11</sup> Reliving genocide: the work of Kurdish genocide victims in the Court of Justice,<sup>12</sup> Searching for sense: The concept of genocide as part of knowledge production in Iraqi Kurdistan,<sup>13</sup> Anfal and Kurdish Genocide,<sup>14</sup> Rethinking recognition: the case of Iraqi Kurdistan.<sup>15</sup> How international law impacts on statelessness and citizenship: the case of Kurdish nationalism, conflict and peace,<sup>16</sup> The politics of Genocide recognition: Kurdish nation-building and commemoration in the post-Saddam era,<sup>17</sup> Kurdish Genocide in the perspective of international criminal law,<sup>18</sup> The Kurdish Genocide in Iraq:

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<sup>7</sup> Marif Omar Gul, *Genocide of the Kurdish people in the light of international law* (Yarmouth: Aras press, 2007), 23.

<sup>8</sup> Michael J. Kelly, "The Anfal trial against Saddam Hussein," *Journal of Genocide Research* 9, no. 2 (1 Juni 2007): 235–42, <https://doi.org/10.1080/14623520701368628>.

<sup>9</sup> Michael J. Kelly, *Ghosts of Halabja: Saddam Hussein and the Kurdish Genocide* (Westport, Conn.: Praeger Security International, 2008), 102, <http://catdir.loc.gov/catdir/toc/ecip0822/2008028215.html>.

<sup>10</sup> Jennifer Trahan, "A Critical Guide to the Iraqi High Tribunal's Anfal Judgement: Genocide Against the Kurds," *Michigan Journal of International Law* 30, no. 2 (1 Januari 2009): 305–412.

<sup>11</sup> Patler, N., "Terror was his means to our end: US-Western support of Saddam Hussein's Genocide of the Kurds," t.t., 306–19.

<sup>12</sup> Rob Leurs, "Reliving genocide: the work of Kurdish genocide victims in the Court of Justice," *Critical Arts* 25, no. 2 (1 Juni 2011): 296–303, <https://doi.org/10.1080/02560046.2011.569081>.

<sup>13</sup> Andrea Fischer-Tahir, "Searching for sense: the concept of genocide as part of knowledge production in iraqi kurdistan," dalam *Writing the Modern History of Iraq* (WORLD SCIENTIFIC, 2012), 227–43, [https://doi.org/10.1142/9789814390576\\_0015](https://doi.org/10.1142/9789814390576_0015).

<sup>14</sup> Chnar Namiq, *Anfal and the Kurdish Genocide, first edition* (Kirkuk: Karo Press, 2013), 24; Sadiq I, *Origins of the Kurdish Genocide: Nation Building and Genocide as a Civilizing and De-Civilizing Process* (Rowman & Littlefield, 2021), 56, <https://rowman.com/ISBN/9781793636843/Origins-of-the-Kurdish-Genocide-Nation-Building-and-Genocide-as-a-Civilizing-and-De-Civilizing-Process>.

<sup>15</sup> Renad Mansour, "Rethinking Recognition: The Case of Iraqi Kurdistan," 1 Januari 2014, 1182–94, <https://doi.org/10.7574/cjicl.03.04.245>.

<sup>16</sup> Latif Tas, "How International Law Impacts on Statelessness and Citizenship: The Case of Kurdish Nationalism, Conflict and Peace," *International Journal of Law in Context* 12, no. 1 (Maret 2016): 42–62, <https://doi.org/10.1017/S1744552315000385>.

<sup>17</sup> 404-426 Mari Toivanen dan Bahar Baser, "The Politics of Genocide Recognition: Kurdish Nation-Building and Commemoration in the Post-Saddam Era," 27 Oktober 2022, <https://www.utupub.fi/handle/10024/155602>.

<sup>18</sup> *Kurdish Genocide in the perspective of international criminal law*, 65.

the Security-Anfal and the Identity-Anfal,<sup>19</sup> *Origins of the Kurdish Genocide*,<sup>20</sup> however the current research focuses on a different aspect of the Kurdish Genocide that has not been explored before.

The main aims of this research is seeks to shed light on the problem of pardoning of Kurdish Genocide perpetrators by Kurdish leaders (Kurdistan Council) and sacrificing the victims from a national and international legal perspective. The problem begins when the Kurdistan Council issued a general amnesty for those perpetrators of the Kurdish Genocide at the beginning of the 1991 Kurdish uprising in Iraqi Kurdistan. This is very important to discuss regarding this topic because this amnesty has created problems in Kurdish daily life, on one hand, the victims continue to experience victimization, while on the other hand, some survivors resort to social revenge. In some cases, perpetrators face extrajudicial killings by survivors. While in some instances, perpetrators may be seen as innocent instead of guilty if they are brought to justice. One of the victims' rights is the right to know the truth about why they faced these crimes; victims can only exercise this right by holding perpetrators accountable.

The main questions that this research wants to address and respond to include will the perpetrators of Genocide be immune from prosecution? Are there any national laws in the Kurdistan Region and Iraq, as well as international laws that provide amnesty for individuals involved in Kurdish Genocide? Apart from prosecuting the perpetrators of the Kurdish Genocide, what alternative legal mechanisms can Kurdistan employ?

## **Research Method**

The current research has utilized an academic method, namely the method of legal analysis, to analyze the Kurdistan Council's general amnesty for perpetrators of the Kurdish Genocide. It involves analyzing the relevant national and international laws as well as the judgments of national and international

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<sup>19</sup> Sherko Kirmanj dan Aram Rafaat, "The Kurdish genocide in Iraq: the Security-Anfal and the Identity-Anfal," *National Identities* 23, no. 2 (15 Maret 2021): 163–83, <https://doi.org/10.1080/14608944.2020.1746250>.

<sup>20</sup> I, *Origins of the Kurdish Genocide*, 76.

courts in order to end impunity and prosecute the perpetrators of the genocide. In this research, we have referred to over (20) sources such as previous papers that have been conducted regarding the Kurdish Genocide, various national and international laws and judgments, conventions and statutes that are related to the content of this research.

### **Amnesty for Kurdish Genocide perpetrator by Kurdistan Council**

Kurdistan Council: It was a political and armed council comprising of eight parties in Iraqi Kurdistan. The parties were: the Patriotic Union of Kurdistan, the Kurdistan Democratic Party, the Kurdistan Socialist Democratic Party, PASOK, the People's Party, the Kurdistan Tailors' Party, the Kurdistan Communist Party-Iraq, and the Assyrian Democratic Movement. This Council declared itself on May 2, 1988. The goal of the united Council was to make a collective struggle against the Ba'ath regime in Iraq, which at that time was oppressing the Kurdish people in every way and had perpetrated Genocide against them, in that Genocide the Ba'ath regime killed more than 100,000 Kurds with chemical weapons, shooting them and hiding them in mass graves.

At the beginning of the Kurdish people's uprising in 1991, the Kurdistan Council issued a general amnesty for all Kurds who had participated with the Ba'ath regime in Genocide against the Kurds.

### **Legal Opportunities for Holding Perpetrators of the Kurdish Genocide Accountable**

After the fall of the Ba'ath regime in 2003, the legal opportunity arose for Genocide perpetrators to be tried, according to law no. (10) In the year (2005) which passed by Iraqi Parliament, on October 9, 2005 (Iraqi Parliament, 2005) the Iraqi Supreme Criminal Tribunal (ISCT) was established in the light of article (134) of the Iraqi Constitution.<sup>21</sup>“The court shall have jurisdiction over every natural person whether Iraqi or non-Iraqi resident of Iraq and accused of one of the crimes listed in articles (11, 12, 13, 14) below, committed during the period

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<sup>21</sup> “Iraqi Constitution, 2005” (t.t.), 134.

from (July 17, 1968 until May 1, 2003) in the Republic of Iraq or elsewhere, including the following crimes: a) The crime of Genocide; b) Crimes against humanity; c) War crimes; d) Violation of certain Iraqi laws listed in article 14".<sup>22</sup>

In this framework, the crimes against the Kurds by the Ba'ath regime are recognized as Genocide, crimes against humanity, and war crimes by the Iraqi supreme criminal tribunal.<sup>23</sup> One of the Kurdish Genocide cases<sup>24</sup> known as the Anfal operations case, in this context on June 24, 2007 the tribunal declared Anfal operations as a Genocide, crime against humanity and war crimes and "sentenced Sultan Hashim Ahmad Al-Ta'I, Husayn Rashid Muhammad and Ali Hassan Al-Majid, to death".<sup>25</sup> and "Farhan Mutlak Salih Al-Juburi and Abd-al-'Aziz Husayn-al-Duri have been sentenced to life imprisonment by the same tribunal".<sup>26</sup>

"On January 8, 2007, the legal procedures against the convict (Saddam Hussein Al-Majid) had been stopped because his death was confirmed by executing the execution punishment against him for being convicted in Al-Dujayl case".<sup>27</sup> Despite the sentences issued for the aforementioned criminals, the Iraqi supreme criminal tribunal issued arrest warrants for (423) other suspects of the Anfal operations, of whom (258) are Kurds.

The tribunal sent the names of (258) Kurdish suspects to the Kurdistan Regional Government (KRG) for arrest and extradition to the tribunal. Subsequently, the KRG forwarded them to the KRG Judicial Council. On May 5, 2011, the judicial council, through the Kurdistan courts of appeal, issued arrest warrants for them under decree no. (943). Then, on May 7, 2015, the Kurdistan Judicial Council issued another set of arrest warrants for them under decree no. (270). However, until now, they have not surrendered themselves to the Iraqi supreme criminal tribunal or Kurdistan courts, nor have they been arrested by the KRG Ministry of Interior.

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<sup>22</sup> *Statute of the Iraqi supreme criminal tribunal, 2005*, t.t., 1.

<sup>23</sup> *Kurdish Genocide in the perspective of international criminal law*, 411.

<sup>24</sup> Payam Akhavan dkk., "What Justice for the Yazidi Genocide?: Voices from Below," *Human Rights Quarterly* 42, no. 1 (2020): 1–47, <https://doi.org/10.1353/hrq.2020.0000>.

<sup>25</sup> *Statute of the Iraqi supreme criminal tribunal, 2005*, 952,956, 960.

<sup>26</sup> *Statute of the Iraqi supreme criminal tribunal, 2005*, 946.949.

<sup>27</sup> *Statute of the Iraqi supreme criminal tribunal, 2005*, 965.

In the transitional justice phase, those suspects must be tried, and, in other words, criminal justice must be achieved. Additionally, the victims must feel that justice is served in practice. Transitional justice is based on several pillars: (truth, justice, compensation, remembrance, and guaranteeing that crimes will not be repeated).<sup>28</sup> These are the most important internationally recognized legal principles of transitional justice, none of which are properly, legally, and genuinely established in the Kurdistan judicial system. In this paper, we will focus on an unresolved problem from a legal perspective, namely the pardon and non-trial of Kurdish genocide suspects; we present the evidence that pardon does not cover them, and propose a solution.

The problem is the failure to prosecute the suspects of the Kurdish Genocide, who were provided shelter and rewarded by the KRG. This situation undermines both the pillars of truth and justice. Victims have a legal right to know the truth about the crimes committed against them and to see the main perpetrators tried and brought to justice. While it is true that the trial of the entire main suspects will not fully restore the situation of the Kurdish to its pre-Genocide state or achieve complete balance, it remains a crucial step towards seeking justice.

However, it ensures transitional justice, and victims earn the right to know the truth, it establishes peace and eradicates individual revenge, while pardoning and granting amnesty to the suspects, despite being contrary to international criminal law, this principle is enshrined in the Princeton principle on universal jurisdiction which states that amnesties are generally inconsistent with the obligation of states to provide accountability for serious crimes under international law, for purposes of these principles, serious crimes under international law include: (1) piracy; (2) slavery; (3) war crimes; (4) crimes against peace; (5) crimes against humanity; (6) Genocide; and (7) torture. The exercise of universal jurisdiction with respect to serious crimes under international law as specified in Principle 2 (1) shall not be precluded by amnesties which are

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<sup>28</sup> Awara Hussein Ahmed, "The Yazidi Genocide in the Court of Frankfurt an Analytical Legal Study on The Case of Taha Al-Jumaili," *As-Siyasi: Journal of Constitutional Law* 3, no. 1 (25 Juni 2023): 45–63, <https://doi.org/10.24042/as-siyasi.v3i1.16724>.

incompatible with the international legal obligations of the granting state.<sup>29</sup>We will elaborate on this point in the following paragraphs. At the same time, the pardon of these suspects has been the biggest problem that we are facing today in terms of humanitarian and legality, and it has effects on the present generation, which will continue to impact the next generation. Forgiveness, in this context, also leads to the forgetting of international crimes committed, which must not be forgotten.

One of the most important reasons given by the KRG for not handing over those suspects to the tribunal is the decision of the Kurdistan council, which issued a general amnesty for them at the beginning of Kurdish uprising in 1991. However, this excuse is not only illegal but also disregards the legal duty of the KRG to hand over the suspects to the court for trial.

### **The Legal Duty to Prosecute in National and International Law**

There are several principles and legal obligations in Iraqi and international law that not only deny amnesty to perpetrators of international crimes but also impose a legal duty on authorities to prosecute them. In the following points, we will present the principles and legal obligations that the KRG must follow to repeal the decision of the Kurdistan council and prosecute the suspects of the Kurdish Genocide based on these principles.

First: General amnesty, also known as a criminal amnesty, is a legal procedure undertaken by the state legislature. It is clear that the Kurdistan council did not have the authority to issue this type of amnesty at the time. After the establishment of the Kurdistan Regional Government and the Kurdistan Parliament in 1992, in the years since the general amnesty laws were passed by the Parliament of Kurdistan, the Kurdistan parliament has not pardoned those who have committed international crimes, and it has no authority to pardon them. This proves that the Kurdistan council's amnesty does not comply with the laws of the Kurdistan Parliament.

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<sup>29</sup> “The Princeton principles on universal jurisdiction” (program in law and public affairs Princeton university ~ Princeton, New Jersey, USA, 2001).



In addition the Iraqi parliament passed the general amnesty law no. 19 in 2008. “According to this law by the end 2008 some 125,000 Iraqi were released from custody pursuant to the amnesty”,<sup>30</sup> however, article (2) of the law does not extend and excludes those who have committed Genocide, crimes against humanity, and war crimes.<sup>31</sup>

Second: The special amnesty, also called penal amnesty is issued by the order of the head of state or the king of the state. Also this amnesty does not apply to suspects of Genocide and international crimes. In this sense, the Iraqi constitution grants the power of special amnesty to the president of Iraq but excludes those who have been convicted of international crimes.<sup>32</sup> The Iraqi supreme criminal tribunal also reestablished the principle, mentioned that “no authority, including the president of the republic, may grant a pardon or reduce the penalties issued by this tribunal. Penalties shall be enforceable within thirty days of the sentence or decision reaching finality”.<sup>33</sup>

Moreover, the Extraordinary Chambers in the Courts of Cambodia (ECCC) in 2011 rejected the royal decree (September 14, 1996) of Norodom Sihanouk, the former king of Cambodia. The decree had issued an amnesty for those who committed international crimes during the Cambodian Genocide, one of whom was Leng Sary. “The trial chamber found that Royal decree not to debar the ECCC's jurisdiction over the accused Leng Sary, and interpreting the Royal decree as granting IENG Sary an amnesty for crimes such as genocide, torture, grave breaches of the Geneva conventions and crimes against humanity would be inconsistent with Cambodia's international treaty obligations to prosecute and punish authors of such crimes and to afford their victims an effective remedy. Absent any indication that the King intended to disregard Cambodia's international obligations, the Royal decree cannot be interpreted as granting an amnesty for these crimes”.<sup>34</sup> This means that even if the amnesty is a decision of

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<sup>30</sup> Sarah Williams, “hybrid and internationalized criminal tribunals: jurisdictional issues” (PhD Thesis, England, Durham University, 2009), 206.

<sup>31</sup> “Iraqi amnesty Law no. (19), 2008” (t.t.), 2.

<sup>32</sup> Iraqi Constitution, 2005, 73.

<sup>33</sup> *Statute of the Iraqi supreme criminal tribunal, 2005, 27:2.*

<sup>34</sup> Extraordinary chambers in the courts of Cambodia (hereafter ECCC), trial chamber, case file/dossier no. 002/19-09-2007/ECCC/TC, decision on Ieng Sary's rule 89 preliminary

the King of the State, as long as it is incompatible with the implementation of international obligations, and the decision is to grant amnesty to those accused of international crimes, it is not applicable and must be annulled.

Third: amnesty does not cover genocide, crimes against humanity, war crimes, and other international crimes under international criminal law. The trial of Genocide perpetrator was included in the UN Genocide convention for the first time. "Persons charged with Genocide shall be tried by a competent tribunal of the state in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction".<sup>35</sup> An important principle of this convention, which is mentioned in article 7, is that Genocide is not considered a political crime for the purpose of extradition.

Iraq has been a party to the Genocide convention since January 20, 1959. According to Article 117(1) of the Iraqi constitution, the Kurdistan region is recognized as a federal region of Iraq. In this sense, the KRG has a treaty obligation under international criminal law to extradite those perpetrators who have an arrest warrant issued by the Iraqi supreme criminal tribunal or must try them in Kurdistan criminal courts.

Fourth: If we view the amnesty by the Kurdistan council as a triumph of the Kurdish uprising, returning refugees and the termination of the military conflict, then it should not encompass individuals who were in any way implicated in the Kurdish Genocide.

Peace treaties signed to end military conflicts cover numerous domestic and common crimes, but they do not encompass those who have committed international crimes. Because of another interpretation, those crimes committed by these perpetrators fall under universal jurisdiction.<sup>36</sup> When the Lomé peace agreement in Sierra Leone was adopted in 1999, the special representative of the

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objections (Ne Bis In Idem and Amnesty and Pardon), accused (Noun Chea, Leng Sary, Leng Thirith, Khieu Samphan), on November 3, 2011. Conventions, Constitutions, Statutes and laws (t.t.).

<sup>35</sup> "UN convention on the prevention and punishment of the crime of Genocide, 1948." (t.t.), 6.

<sup>36</sup> Awara Hussein, *The victimization of victims and the question of transitional justice in Kurdistan* (Kurdistan times, 2023).

Secretary-General of the UN mentioned that “The UN holds the understanding that the amnesty provisions of the agreement shall not apply to international crimes of Genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law”.<sup>37</sup> It is an important and immortal message being sent to all those who have been involved in international crimes, not only in Sierra Leone but in the entire world. This message emphasizes that amnesties do not cover those who have committed international crimes.

Fifth: the amnesty in the Iraqi supreme criminal tribunal does not apply to those accused of Genocide, and it is stated that “pardons issued prior to this law coming into force, do not apply to the accused in any of the crimes stipulated in it”.<sup>38</sup> The crimes stipulated in the law of this tribunal mentioned above comprise: Genocide, crimes against humanity, war crimes, and violations of certain Iraqi laws.

This unequivocally demonstrates that the amnesty issued by the Kurdistan council is not applicable and does not absolve the criminal responsibility of the perpetrators of Genocide.

Sixth: international criminal law affirming that those crimes which have been committed by them must not go unpunished.<sup>39</sup> Because those committed crimes are the gravest crimes that impact the global community at large.<sup>40</sup> And each of the crimes that have been committed by those perpetrators, for which the Kurdistan Council has granted pardon, is not subject to any statute of limitations, even if they were committed a long time ago.

“No statutory limitations shall apply to Genocide, crimes against humanity, and war crimes irrespective of the date of their commission”.<sup>41</sup> The

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<sup>37</sup> “Sierra Leone TRC - Witness to Truth - Volume Three B (Chapter 3: Women and the Armed Conflict in Sierra Leone ),” t.t., [https://www.sierraleonetrc.org/index.php/view-the-final-report/download-table-of-contents/volume-three-b/item/witness-to-the-truth-volume-three-b-chapter-3?category\\_id=14](https://www.sierraleonetrc.org/index.php/view-the-final-report/download-table-of-contents/volume-three-b/item/witness-to-the-truth-volume-three-b-chapter-3?category_id=14).

<sup>38</sup> *Statute of the Iraqi supreme criminal tribunal, 2005*, 15:6.

<sup>39</sup> Awara H. Ahmed dan Zana R. Saeed, “Basis and Advantages Performing Principle of Complementarity by the International Criminal Court,” *Halabja University Journal* 6, no. 1 (20 Maret 2021): 177–96, <https://doi.org/10.32410/huj-10368>.

<sup>40</sup> Awara H. Ahmed dan Zana R. Saeed, “The Relation between International Criminal Court and United Nations: International Court of Justice and Security Council,” *Halabja University Journal* 5, no. 4 (30 Desember 2020): 199–212, <https://doi.org/10.32410/huj-10349>.

<sup>41</sup> “Convention on the non-applicability of statutory limitations to war crimes and crimes against Humanity, 1968” (t.t.), 1.

Rome statute of the international criminal court also reestablished the principle, as mentioned, that “The crimes within the jurisdiction of the Court, namely Genocide, crimes against humanity, war crimes, and the crime of aggression, shall not be subject to any statute of limitations”.<sup>42</sup> This principle has also been reaffirmed in the Iraqi supreme criminal tribunal, as mentioned that “The crimes stipulated in this law shall not be subject to any statute of limitations”.<sup>43</sup> This principle has become a significant tenet in international criminal law.

The question arises as to whether amnesties have the effect of preventing the prosecution of perpetrators of international crimes? They have no legal or theoretical effect. But in practice, several judgments have ruled that "if the crimes are covered by universal jurisdiction, one state cannot deprive another state of the power to try those perpetrators who have been granted amnesty."

Hence, the KRG bears a legal obligation to execute the decision of the Iraqi supreme criminal tribunal, either by surrendering the suspects to the tribunal or by prosecuting them in the criminal courts of Kurdistan. Failing to do so would preclude us from discussing a sincere commiseration with the victims of the Kurdish Genocide and hinder our efforts to vigorously and substantively advocate for the acknowledgment of the Kurdish Genocide on the international stage. Furthermore, the process of achieving social peace is impeded, and those who have suffered harm not only feel a profound absence of fairness but are also still being victimized every day.

### **Choosing Amnesty as a Last Option**

Amnesty is incompatible with the principles of equality and protection of all before the law. However, if amnesty is to be chosen as a last option and is absolutely impossible, then, as mentioned above, this legal error can be corrected by bringing them to trial. If the KRG finds this path difficult in its pursuit of achieving criminal justice, then we propose the implementation of several other conditions upon the perpetrators. This is the outcome of our research. According to our findings, we believe that if we resort to amnesty, it must be considered a

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<sup>42</sup> “Rome Statute of The International Criminal Court (RSICC) 1998” (t.t.), 29.

<sup>43</sup> *Statute of the Iraqi supreme criminal tribunal, 2005, 17:4.*

last resort for resolving the issue and should contain the following conditions. These conditions may include disarmament, confession of the crime, apology to the victims, a pledge not to commit any further crimes or acts of violence,<sup>44</sup> community service, compensation for victims, and the provision of special respect to them. This approach aims to create opportunities for reconciliation and promote social reintegration, and victim, however, receives compensation, knows about the truth, and may prevent crime, violence, and abuse from occurring in the future.

## **Conclusion**

Based on the above legal principles, we have concluded that both at domestic and international levels, the perpetrators of international crimes in general, and genocide in particular, cannot evade legal punishment, no state can grant them asylum or categorize their crimes as political offenses. And because, according to the principles of international law, every accused person is presumed innocent until proven guilty in accordance with the law and before a court, we cannot label these accused individuals as guilty until their innocence or guilt is determined by the Iraqi supreme criminal tribunal or the criminal courts in Kurdistan. The decision to pardon them was a legal error; therefore, a legal opportunity still exists to rectify the mistake by transferring the accused individuals to the Iraqi supreme criminal tribunal or the national criminal court, or by prosecuting the fugitives in foreign criminal courts under the principle of universal jurisdiction. This approach is based on the premise that the crimes were committed against all of humanity and constitute international crimes, rather than domestic offenses.

## **Authors' Contributions**

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<sup>44</sup> Naif Bezwan, "The State and Violence in Kurdistan: A Conceptual Framework," *Kurdish Studies* 9, no. 1 (2021): 11–36.

A.H.A., as the main author of this article, was responsible for the research activities, such as the data collection, presentation, and writing of the report and manuscript.

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