



The Kurdish Genocide

Achieving Justice through EU Recognition



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Introduction

On 28 February 2013, a unanimous vote was taken before the **British parliament**, establishing overwhelming support, to formally recognise that the crime of genocide was committed against Iraqi Kurds by senior officials of the government of Saddam Hussein, based on a policy of extermination targeting Iraqi Kurds during the Anfal and Halabja military campaigns in 1988.¹

The Kurdish Regional Government has called the vote “a significant landmark” for the victims of the genocide that are seeking past atrocities committed against them to be acknowledged internationally.²

The British vote follows similar expressions of support by the **Norwegian and Swedish parliaments** last year.³ A draft resolution to recognise the Kurdish genocide has been approved by the Swedish parliament.⁴ There is great support and significant efforts being made by these two countries as well as the British parliament to internationalize the Kurdish genocide.

Both the **United Nations** and the **European Parliament** have hosted commemorative events in the past years. A conference to commemorate the attack on Halabja as genocide was hosted in the European Parliament on 8 March 2012.⁵

Moreover, the City of Peace and Justice, **The Hague** has recently approved plans to build a memorial site to commemorate the victims of the Kurdish Genocide.

That the crimes committed against Iraqi Kurds constitute genocide is uncontroversial in Iraq, which is the only state to have officially recognised the crimes of its former government accordingly.

These developments are an important and timely step forward for facilitating wider debate as well as much needed action, to recognise the atrocities committed by Saddam Hussein’s regime against Iraqi Kurds, within the European Parliament.

This advocacy strategy has been developed to facilitate the process of recognition through debate and to ultimately achieve **formal recognition from the European Parliament**. The strategy provides a brief account of the relevant acts amounting to genocide in the context of the carefully planned and executed Anfal and Halabja military campaigns. It will then highlight the legal status of these acts in relation to the law of genocide, followed by a discussion on the geo-political importance of recognizing genocide in the context of Iraqi Kurds.

A **Roadmap** follows this discussion, outlining the pathway or steps to be taken by the European Parliament for achieving recognition.

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What is the Anfal genocide?

Introduction

The Kurdish genocide was mounted between February and September 1988 on the winding up of the Iran-Iraq war. Central to the atrocities that were perpetrated against Iraqi Kurds was the Anfal campaign. Anfal was the codename used by the Iraqi government in public pronouncements and internal memoranda for a series of military campaigns mounted by Iraq's Ba'ath Arab Socialist Party, which gradually intensified over a six-month period, against the mostly Kurdish civilian population, with the principle aim of exterminating Iraqi Kurds.

"Arabisation"

Anfal was part of a broader policy that was initiated in the 1960s on Saddam Hussein's ascent to power to ethnically cleanse the Kurdish population from northern Iraq. This policy known as "Arabisation" spanned the years from the early 1960s to 1991 and succeeded in substantially driving Kurdish families out of their homes in the Kurdish region to desert areas of Iraq. One of the key factors in the creation of this policy was the presence of strategically valuable oil fields in the Kurdistan region of Iraq and Kurdish Peshmerga rebel activity that was considered a threat to Iraq's control over the region.

The "Arabisation" process entailed the systematic eviction and mass deportation of Iraqi Kurds from the Kurdish region to government-controlled camps in the south, essentially the middle of the desert, where the Iraqi army could closely monitor their movements and daily activity. Little provision for food and clothing led many to die a year after they were settled.

Poor Arabs previously living in Iraq's southern regions were then moved into the empty homes of Iraqi Kurds where they were relocated next to strategically important oil resources in the Kurdish region under the lure of inexpensive housing. As a result of this process, many Arabs now live among Iraqi Kurds in Kurdistan region.

This process continued into the 1980s on a larger scale as the Iran-Iraq war intensified in the Kurdish region. In order to achieve the goals of extermination, the Anfal operation utilized not only heavy population redistribution requiring the mass displacement, deportation of Iraqi Kurds, but also mass disappearances. This involved the rounding up of Kurdish men, women and children



Government Strategy

Captured Ba'ath military documents reveal the following pattern of conduct was directed against Iraqi Kurds:

1. In the first stage, the village was marked for destruction after a military directive was introduced, designating the area a "prohibited zone".
2. The military then subjected the village (a confined area) to military attack by bombing including, chemical gas attacks, by warplanes, helicopters, and heavy artillery. In the process, civilians were killed and village infrastructure was destroyed.
3. The army and irregular forces then rounded up the survivors and took them to designated military bases, separating men from women and children.
4. Many of these captured civilians were later transported to desert areas in the south of Iraq.
5. These civilians were then executed by firing squad and buried in mass graves.
6. Some were taken to infamous prisons such as Nugra Salman where the majority died from the harsh conditions.

and their separation into male and female groups before they were taken to clandestine areas never to be seen again. Women and children were held in detention centres under harsh conditions while men of military age were generally executed in cold blood and buried in mass graves.⁶

Mass deportation

The process of mass deportation and forced evictions characterized elements of decades of ethnic cleansing of Iraqi Kurds from the Kurdish region. It gradually evolved into a manifest pattern of mass disappearances and killings of Iraqi Kurds, as shown above, during the Anfal phase of the Arabisation policy, culminating in an escalation of extreme violence aimed at putting an end to the Kurdish ‘problem’ once and for all.

Chemical attacks

The crimes reached a peak between February and September 1988 when chemical attacks were intensified against Iraqi Kurds as a measure of collective punishment for Kurdish rebel support to Iran. The Halabja chemical attacks drew worldwide attention, because of the presence of foreign journalists. However, it did not result in international pressure on Iraq to prevent further attacks.

It is estimated that in 1988 alone, 182,000 Kurds were disappeared and are feared were summarily executed as a result of the Anfal genocide.⁷ 90% of the total number of Kurdish villages and more than 20 small towns and cities were completely destroyed as a direct consequence of Anfal.⁸

According to conservative estimates by Human Rights Watch, at least 50,000 people were killed out of hand between February and September 1988, although it is estimated that the figure was probably closer to 100,000.⁹ These deaths were not part of any “collateral damage” in Iraq’s war against Kurdish rebels, but rather were part of a systematic attack to put Iraqi Kurds to death in large numbers based on orders from the central government in Baghdad. In total, the Kurdish Regional Government estimates that roughly one million Kurds have disappeared since the 1960s, with all presumed dead or missing.¹⁰

Mass graves

In July 2011, up to 7 mass graves and 400 bodies, mostly male Kurds, were found in southern Iraq.¹¹ Of the total victims of Anfal, an estimated 70% were men, approximately aged 15 to 50.¹²

The Iraqi Ministry of Human Rights has itself excavated 10 graves, 8 of which have been Kurdish graves containing 3,000 to 4,000 bodies. The Ministry estimates at least 400 mass graves exist in the country, relating the Anfal operation.¹³

The Medico-Legal Institute in Baghdad reports that it receives an average of 800 bodies per month since 2003 and is unable to identify a significant proportion of these.¹⁴

The Iraqi Human Rights Ministry and Kurdish Regional Government in cooperation with the International Commission of Missing Persons is continuing work to identify missing persons.

What human rights violations did the Anfal operation entail?

Saddam Hussein’s cousin, Ali Hassan al-Majid, who, in March 1987, was put in charge of the government’s northern region with unlimited powers, headed the Anfal genocide. Al-Majid, who conceived of the “final solution” to Iraq’s Kurdish problem, is better known to Kurds as ‘Chemical Ali’ for ordering the chemical attacks on Kurdish towns and villages that killed and injured thousands of civilian women, children and men.

A number of egregious human rights violations and atrocities were committed as a result of the Anfal operation, include¹⁵ (note this list is illustrative and by no means exhaustive):

- the arbitrary arrest, interrogation and detention of villagers captured in designated ‘prohibited zones’ in areas where Kurdish homes and lands were located. A shoot-to-kill policy was applied to anyone found in the ‘prohibited zones’;
- mass disappearance of many tens of thousands of civilians, including large

numbers of women and children, and sometimes entire populations;

- mass summary executions, particularly men of military age and young boys;
- the interrogation and torture of captured men between the ages of 15-70 based on orders issued by Al-Majid;
- the wholesale destruction of some 2,000 villages which, according to Iraqi government records from the Anfal period, were 'burned', 'destroyed' and 'purified';
- the wholesale destruction of civilian property including schools, religious buildings and livelihood structures in the targeted villages;
- the use of chemical weapons, including mustard gas, nerve agent, Sarin or a toxic combination against the town of Halabja

and dozens of other Kurdish villages, killing and injuring many thousands of civilians;

- the arbitrary detention and 'ware-housing' for months in conditions of extreme deprivation of tens of thousands of women, children, and elderly people without judicial order, for no other reason than their opposition to the Iraqi government. Many of whom died of malnutrition and disease;
- mass forced displacement of hundreds of thousands of villagers upon demolition of their homes, their release from jail or return from exile. These civilians were usually trucked to clandestine areas in remote locations and dumped there with minimal or no provision for relief, housing, clothing or food. They were banned from returning to their villages. Many died within a year of their displacement; and
- the destruction of the rural Kurdish economy and infrastructure.

What happened to the town of Halabja?

The Anfal extermination operation culminated in the largest-scale chemical attacks since World War I directed against a civilian population in the town of Halabja in March 1988. The horror of the Halabja attacks is representative of the systematic terror mounted by the Iraqi regime on the Kurdish population that began with chemical bombardments and moved into a ground offensive to gain control of the area.

It resulted in the indiscriminate, mass gassing of an entire town that killed at least 5,000 civilians. At least 7,000 people were injured or suffered long term illness from exposure to the nerve agents of Tabun, Sarin, VX as well as mustard gas.¹⁶ It is significant that these were crimes involving the use of a banned weapons by the terms of the UN Chemical Weapons Convention¹⁷.

In 2005, the case against Frans van Anraat, a Dutch national businessman who sold raw materials for the production of chemical weapons to Saddam's regime was sentenced to 15 years in prison. The Dutch court ruled that the killing of thousands of Kurds in Halabja was part of a genocidal campaign.¹⁸



The Anfal and Halabja acts of genocide and especially the chemical bombardments have had detrimental health consequences for Iraqi Kurds. Almost twenty-five years later, the chemical attacks still manifest in health problems today. Some survivors remain blinded from corneal scarring from mustard gas burns. Women suffer miscarriages and birth defects and children are born with cleft palates and hare lips.¹⁹

Why the Anfal and Halabja operations can be legally defined as genocide

The Iraqi High Court has recognised that the crime of genocide was committed in Halabja. It convicted and sentenced al-Majid to death by hanging for his commission of the poison gas attacks on Halabja.²⁰

Under international law, the crime of genocide refers to violent crimes committed against groups, with a “special” intent to destroy, either “in whole or in part”, the existence of a national, ethnic, racial or religious group, by means of five punishable acts:

1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its Physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group;
5. Forcibly transferring children of the group to another group.²¹

The Anfal and Halabja operations targeted Iraqi Kurds as members of a specific group, and specifically because they were perceived as belonging to this group by their perpetrators. On account of their ethnic or collective identity, rather than their individual status, they became targets of Saddam’s Arabisation campaign in which many

thousands were executed in cold blood and thousands of villages and civilian buildings were destroyed in order to annihilate Iraqi Kurds in blatant disregard of core international humanitarian legal principles.

Moreover, Iraqi military operations specifically targeted Kurdish towns, cities and villages in northern Iraq, under Kurdish control, knowing of the existence of Kurdish civilian population centres in the region, as confirmed by Iraqi censuses in prior years. Iraqi military forces were engaged in an internationalized armed conflict with Kurdish rebel groups and Iran to gain control of the Kurdistan region, which was controlled by Kurdish rebels.

Taking these factors into account, the prerequisite element of belonging to a (targeted) group protected by the Genocide Convention can be demonstrated.

With respect to the mental element of special intent or *dolus specialis*, a form of aggravated criminal intention,²² it demonstrates that the perpetrator clearly intended to cause the offence and did so with the knowledge that the commission of the conduct would further the implementation of the genocidal plan. This feature of genocide is what differentiates and elevates genocide from other international crimes. Hence, why it is the ‘crime of crimes’.



Evidence of intent to commit genocide

The special intent to commit genocide can be inferred on a number of grounds, including, that:

- The Anfal phase of the Arabisation programme involved a comprehensive plan over eight stages of military operations that was carefully planned, organized and implemented by military officials.
- In June 1987, al-Majid issued two successive sets of military orders that were central to the destruction of the Kurdish population. These orders governed the conduct of Iraq's security forces towards Iraqi Kurds.²³
- In the first order, the term 'saboteurs' was redefined to include all Kurds in rural areas by which it legally qualified their execution and that of persons directly related to them. Order SF/4008 dated 20 June 1987, leading up to the Anfal campaign, deemed 'prohibited zones' in areas where Kurdish homes and lands were located and applied a shoot-to-kill policy against any person found in these zones.²⁴
- Order SF/4008 entailed summary executions of Kurdish adult males on the basis of their 'military age'. Thousands of men between these ages were captured en masse and executed by the national authorities, or disappeared and were never seen again.
- The Anfal operation also targeted women and children. Like their male counterparts, women and children were rounded up and disappeared or held in detention camps under conditions of cruel and inhumane treatment and humiliation before they were killed in cold blood. In determining who lived and who died, a selection process was put into place where factors taken into account included what ethnic group the person belonged to, their place of surrender, political stance, and whether the military had encountered armed resistance by them.²⁵
- From this analysis, a manifest pattern of conduct by Iraqi military forces directed against Kurdish civilians can be demonstrated based on the existence of a policy to destroy Iraqi Kurds.
- In addition, the powerful use of chemical weapons against Iraqi Kurds by their nature played a hand in destroying the group either in whole or in part. According to the 1993

Human Rights Watch report, the Iraqi regime appears to have used chemical weapons for at least three purposes:

- To attack base camps and concentrations of Kurdish people, including Kurdish rebels;
- To inflict exemplary collective punishment on civilians for their support for Kurdish rebels. The most dramatic case is the bombing of Halabja after the seizure of the town by *peshmerga* and Iranian revolutionary guards. Others include the 1987 attacks on Sheikh Wasan and Balisan, and the Anfal attacks on Sayw Senan and Goktapa;
- To spread terror amongst the civilian population as a whole, flushing villagers out of their homes to facilitate their capture, relocation and killing. The opening of almost every phase of the Anfal campaign was marked by attacks of this sort, but they are most apparent in the final phase of Anfal in the Badinan region, where more than thirty villages were bombed simultaneously along an east-west strip on the morning of 25 August 1988.²⁶
- Many thousands died as a result of chemical attacks and many thousands more were injured as a direct consequence. The chemical attacks on Halabja, for example, have had dire consequences on the population, because it has manifested in long-term health problems. Given the destructive nature of chemical weapons, particularly poison gas, their use could clearly lead to the destruction of the group.²⁷ Iraqi military forces could not have failed to know that the use of these weapons would undermine the existence of the group.

Although the number of deaths, injuries and destroyed civilian infrastructure is not decisive in determining whether genocide occurred, a genocidal intent will be inferred where there has been a greater destruction of the members of a

group.²⁸ When comparing the total number of Iraqi Kurds in the Kurdistan region, roughly 3.7 million the number of disappeared and presumed dead at roughly 182,000 is significant.²⁹

Overall, there is strong ground to establish that the crimes committed by the Iraqi regime were aimed at the destruction of the Kurdish group in Iraq and amount to acts of genocide.

Why formal recognition of the genocide by the EU is crucial

For the victims of Iraqi Kurdistan, formal EU recognition of the legacy of massive human rights violations is crucial to achieve a sense of justice and preserve the memory of the past. Iraqi Kurds seek recognition for victims and the promotion of possibilities for peace, reconciliation and the rule of law in a country in which systematic abuses has been pervasive.

The atrocities committed by Saddam's regime are a powerful symbol of the failure of the international community to safeguard the individual and collective rights of the Kurdish people. At the time, these atrocities were taking place, and after worldwide attention, no effective pressure was put on the Iraqi government to stop further violations.

A statement given on 6 March 2013 by the Chair of the European Parliament's Delegation to Iraq, Mr Struan Stevenson MEP, recently underscored the importance of recognising the crimes against the Kurds as genocide: "*In current Iraq, under the rule of Prime Minister Maliki, the danger of a genocide happening again is present and therefore it is even more important now to keep the remembrance of Halabja alive*".³⁰

This statement poignantly highlights that recognition can play a key role in prevention of atrocity crimes, especially considering the current climate of ongoing interethnic tensions in Iraq. The broader implications for stability in the region and democratization mean great value should be placed on recognition as a tool of prevention in Iraq, but also the region.

In light of the reconstruction of Iraq and lingering ethnic tensions between the various communities, recognition should be viewed as an opportunity for the EU to play a greater role in promoting stability in the region, particularly the unification of Iraq, and the prevention of atrocities.

The proliferation of arms in Iraq and the region is a specially worrying development. Recently Iraq concluded a huge arms deal with Russia, making it the second largest importer of arms from Russia,

the largest arms exporter in the world.³¹ The proliferation of weapons in the region, with Syria being the largest importer of Russian arms poses serious dangers with ramifications beyond the region. The current situation in Syria itself is a timely warning of the danger posed by chemical weapons. In this context, recognition can send a powerful message of support for the prevention of mass atrocity crimes and reinforce the ban on the use of chemical weapons.

Moreover, EU recognition can benefit the overall democratization process in Iraq. In combination with the EU-Iraq Partnership and Cooperation Agreement (PCA), it provides support to Iraq's transition to peaceful and democratic society by promoting trust and respect for core values of human rights and the rule of law, values which still need to be cemented into the democratic system in Iraq. Increasing accounts of arbitrary arrests, executions and torture of prisoners, particularly the torture and rape of female detainees³² are some of the serious abuses that continue to impede the rule of law in Iraq. The risk that a chain of abuses can lead to a repeat of atrocities is ever-present.

Iraqi Kurds still suffer deep trauma as victims of genocide. A great number of persons from the Anfal operation are still missing. Without a proper burial, survivors are unable to put loved ones to rest. It is still the case that the history of abuse manifests today in distrust, horizontally, between Iraqi and ethnic Kurdish communities, and vertically between Kurdish communities and the Iraqi government.

EU recognition can contribute to healing wounds of the past by promoting the possibility of reconciliation and social reconstruction in Iraq between ethnic Kurds and Iraqi communities based on a common future. Moreover, this can be done without endangering the political and rule of law transformations in the country since the Iraqi government already formally recognises the atrocities of the past regime as genocide.

What do we recommend the European Parliament should do?

Based on the above analysis, UNPO and the Kurdish Regional Government recommend steps be taken by the EU to recognise that genocide was committed in against Iraqi Kurds as a consequence of the Anfal and Halabja military operations.

In this regard, we recommend to the European Parliament adoption of the Roadmap set out in the following section.

Finally, we urge the European Parliament to adopt a resolution formally recognising the Kurdish genocide, in accordance with the Roadmap.

Additional reasons for EU recognition

- recognition means support for universal values of liberty, human dignity and respect for collective rights³³, as well as democracy and the rule of law, values on which the EU was founded;³⁴
- genocide is not simply a crime at the local or national level, but a matter of international concern entailing responsibility of the international community to intervene to protect and prevent international crimes;
- recognition strengthens and complements EU initiatives and programmes within Iraq and the Arab region that promote democratization and the rule of law, such as, the EU Rule of Law mission in Iraq;³⁵
- it reinforces and promotes EU policies and strategic objectives aimed at building security in its neighbourhood and surrounding borders by highlighting the threat of weapons of mass destruction, particularly chemical weapons;³⁶
- it reinforces compliance with international humanitarian law by state and non-state actors;³⁷
- recognition itself fosters a victim-based approach to human rights and justice. It helps restore dignity to victims, and contributes to healing wounds through rehabilitation, memory, recognition and prevention. It reinforces the rights of Iraqi Kurds as victims to be honoured and remembered. This, in turn, promotes trust between different communities. It allows them to confront the past and possibilities for the future;
- it acknowledges massive abuses, the annihilation of Iraqi Kurds, and the tragic loss of life;
- it encourages states to observe limits to their sovereignty by recognizing that they must accept primary responsibility to protect their citizens or face outside intervention in accordance with the Right to Protect (R2P) doctrine. In this regard, recognition complements R2P;³⁸
- it opens the way for learning lessons from the past in order to help deter future abuses by identifying the steps carried out in the process of destruction as early warning signs in future situations. In this regard, it sends a strong message of support and respect for the prohibition and prevention of mass atrocities;
- the EU, which covers more than 500 million people in the world, could deepen awareness and dialogue within European societies and member states of the mass atrocities that took place in order to prevent them from happening again

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