

## **The Iraqi Special Tribunal: A Lack of Objectivity Concerns the Victim Nation**

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Putting Saddam Hussein and other perpetrators on trial for genocide and crimes against humanity is certainly a positive step toward the prevention of future similar atrocities. This is also a relief for the victims. If the Anfal campaign is recognized as genocide, it would no doubt have moral and political importance for the Kurds. However, this does not prevent anyone from revealing the negative elements of the tribunal.

The Iraqi Special Tribunal is a national tribunal that conforms with Iraqi laws from 1958, 1968, 1969, 1971, and 1979. The tribunal also includes international laws concerning genocide, crimes against humanity, and war crimes. The establishment of the tribunal was mainly carried out by the Coalition Provisional Authority (CPA), led by the United States. There has been harsh criticism about the legality of the tribunal; however, this article will focus only on the legitimacy of the tribunal in connection with the Kurds as the victim nation.

The Americans and their Iraqi allies established the tribunal without asking for the opinion or for the support of the Kurdish nation. Kurdish leaders may have been powerless in terms of the establishment of an Arab-dominated Iraqi tribunal, but Kurdish leaders did not provide any explanation on this issue either. They did not explain to the Kurdish nation the reason that an Arab-dominated Iraqi tribunal was better than an impartial international tribunal. Even with the argument that the Kurdish issue is an internal Iraqi issue, the Kurds deserve a neutral international tribunal, such as the ICTY in the former Yugoslavia. The Jewish people did not have national territory problems, so the Nuremberg tribunal was not German, nor did it have German judges.

The first few days of the trial for the Anfal genocide showed Kurdish witnesses appearing in court, surrounded by Arab judges, Arab defenders, and Arab accusers. The Iraqi constitution regards Arabic and Kurdish as equal official languages, but the language of this sensitive tribunal is Arabic. For Kurds, Arabic is the language of oppression, of the Anfal genocide, of Arabization, and of ethnic cleansing. The Kurdish language and people are again undermined by the language of the oppressor. And still, all of the legal statements in this trial are in Arabic. Many of the victims are villagers and do not understand what is being said or what is going on. Unfortunately, the translator has difficulties in translating what the victims are trying to say. This is a clear deficiency in the trial and may influence the final result.

There are a few judges that are Kurdish only by identity; they must speak in Arabic and behave like other Iraqi judges. Nobody can see any difference between them and the Arab judges. We have seen this before in the Dujail case, led by a Kurdish judge, and now the Anfal genocide trial is led by Arabs. In this way, the tribunal is attempting to demonstrate its impartiality between the different ethnic and national groups. The setup of this tribunal is also meant to demonstrate harmony between the Iraqi ethnic groups, as the "democratization" process proclaims.

First of all, neither the Arab judges nor the Kurdish judges can be impartial about past cases of ethnic conflict. An Arab judge cannot be impartial toward the Kurds, as the case is related to the Kurdish genocide committed by Arabs. The daily violence and killings between the ethnic groups shows the extent of the division of Iraqi society. The judges belong to their ethnic communities; therefore, with the lack of capacity in court, the chaotic political atmosphere, and the nature of the long-term conflict, they can hardly escape their ethnic backgrounds and political beliefs. Second, the participation of a few Kurdish judges was very likely decided in order to encourage the support of Kurdish leaders. The interests of an oppressed people were ignored here. Furthermore, this Iraqi tribunal is undermining the Kurdish issue, which is a struggle toward self-determination. A trial concerning the Anfal case led by Kurdish judges would be criticized for favouritism, as the judges would belong to the victimized group. This is understandable. The point is that Arabs should not be involved in a trial involving their own victimized group. The Arab judges, in this case, belong to the oppressors' ethnic group; they cannot be morally or legally neutral. Actually, the few Kurdish judges do not make any measurable difference.

Nevertheless, the small Dujail case is not comparable with a case like the Anfal genocide. Not all mass killings have the same characteristics. The killing of the Shiites did not have the same political motive as the Kurdish mass killings. Therefore, it is possibly acceptable for Arabs to put other Arab perpetrators on trial, but the situation is not the same for the Kurds. Mass killing of the Kurds was motivated by eliminating a non-Arab national group, while the killing of Arab groups was not occurred due to dissimilar nationality.

This tribunal makes use of rules, such as rule number 7, article 1, from 1958, which deals with the crime of occupation of another Arab country. The Arabs involve every rule that is in their own interest. This is not the same as the Kurdish interest. For instance, the Kurds have suffered under Arabization since the establishment of the Iraqi state, and there are many episodes and documents proving this. However, there is not a single article in the statute of the tribunal regarding this crime. Arabization should have a clear definition. Arabization can be seen as a type of ethnic cleansing with particular characteristics. Arabism is central for Arabization, for instance a cleansed territory of the targeted group settles *only* by Arabs; the victims in some areas are forcibly pushed to accept Arab national identity *only*, and so on. Article 12 from the statute concerns crimes against humanity, which includes crimes such as extermination, but this in itself cannot encompass the crime of Arabization. The text is vague, does not give a precise definition of ethnic cleansing, and does not sufficiently deal with the ethnic cleansing committed against the Kurds.

After annexing the southern part of Kurdistan into Iraq, the Kurdish issue was regarded as internal Iraqi problem. However, this did not change the essential nature of the Kurdish struggle for national freedom. The conflict between Arabs and Kurds has always been based on two different ethnic nationalisms, which have contradictory aspirations and aims. The Arabs – representing the Iraqi state – tried to assimilate and cleanse the weak Kurdish minority, while the Kurdish minority struggled for their lost land and national freedom. Ethnic cleansing, Arabization, and genocide are the result of a long-term ethnic conflict between these two national groups. From this point of view – as is acceptable for any ethnic conflict – neither the Arabs nor the Iraqi state have the right to judge the genocide, for which the Iraqi Arabs and the state is responsible. They do not have the right to write their own victims' history. Would the Armenian people accept a Turkish court and Turkish judges in connection with the Armenian genocide? I do not think so.