



**SPECIAL FOCUS: REVISITING LEGACIES OF ANFAL AND RECONSIDERING
GENOCIDE IN THE MIDDLE EAST TODAY: COLLECTIVE MEMORY,
VICTIMHOOD, RESILIENCE AND ENDURING TRAUMA**

The Past Explains the Present: Dealing with Anfal in the Kurdistan Region

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Abstract

“Transitional justice” refers to a set of strategies for promoting reconciliation in societies that have been ravaged by conflict and human rights abuses in the recent past. In some cases, however, the political leaders of post-conflict societies choose not to pursue transitional justice, instead preferring to keep the status-quo peace. This essay explores the situation in the Kurdistan region of Iraq after the genocidal Anfal campaign of the late 1980s. The Kurdish political authorities at the time did not use any transitional justice measure against the Kurds who collaborated in the persecution and killing of their fellow Kurds. Instead, they declared a unilateral amnesty for all collaborators, without the consent of the victims’ families. This paper argues that this grant of “blanket amnesty,” which protected the accused from legal liability at the expense of victims’ right to justice, brought neither justice nor peace. Conversely, it negatively affected the process of democratization, rule of law, and social reconciliation in the region. The paper concludes that justice and lasting peace will not be realized in the region if the abuses of the past are left unaddressed.

Keywords: Anfal; amnesty; Kurdistan; peace; reconciliation; transitional justice

One of the main challenges facing nations that have suffered war crimes is how to reconcile themselves to what happened in the past without upsetting the current, often uneasy, political order that maintains stability. Under authoritarian governance, atrocities are committed with impunity. These acts divide people into two broad classes of perpetrators and victims. In the period following authoritarian rule, the difficult past and the perpetrators–victims binary should be investigated. A common strategy for doing so is usually one or more mechanisms of transitional justice.

Mechanisms of “transitional justice” include both judicial and non-judicial responses, such as criminal trials, vetting and lustration processes, truth commissions, political recognition, reparations, amnesty, and institutional reforms.



Different societies choose different paths, for there is no one-size-fits-all solution. Despite their variations, instruments of transitional justice share a common set of goals to establish accountability for the perpetrators and to “avoid ‘repeating, reenacting, or reliving past horrors’; deter future violations; and restore the dignity of citizens victimized by atrocity.”¹

Amnesty is one such method of transitional justice. Granting legal immunity to those accused of war crimes or human rights violations may disappoint expectations in terms of meting out retribution and justice, but what it loses in lack of punishment, it gains from attracting support for the new political order, facilitating reconciliation, and encouraging the wrongdoers to come clean about what they did.² In cases like Spain, however, there was a generally accepted amnesia with regard to the years of repression and human rights abuses under the Franco regime for the sake of ensuring a peaceful transition toward parliamentary democracy.³ Whatever course of transitional justice is taken, the purpose is to achieve either justice or a peaceful transition to more democratic government, or both.

The Kurds in Iraq suffered years of repression and genocidal violence under Saddam Hussein’s regime. After the first Gulf War and the establishment of the Kurdistan region in 1991, this painful past was a pressing issue to deal with at the time. From all the possible options, the Kurdish leadership decided to grant blanket amnesty to all those accused of involvement in the Ba’thist regime’s Anfal campaign, also known as the Kurdish Genocide. Much has been written about how and why the 1988 Kurdish Genocide happened⁴ and on the post-genocide Kurdistan Regional Government,⁵ the 1990s civil war,⁶ and the political and economic position of the Kurdistan region in the post-2003 era of Iraq, after the United States invaded and deposed Hussein.⁷ Some studies explore

¹ Olsen TD, Payne LA, Reiter AG, “Transitional Justice in the World, 1970-2007: Insights from a New Dataset,” *Journal of Peace Research* 47.6 (November 2010): 803.

² James L. Gibson, “Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa,” *American Journal of Political Science* 46.3 (July 2002): 540.

³ For more information about the amnesty and collective amnesia in Spain, see: Andrew Rigby, “Amnesty and amnesia in Spain,” *Peace Review* 12.1 (2000): 73-79.

⁴ For reviews see: George Black, *Genocide in Iraq: the Anfal Campaign against the Kurds* (Washington: Human Rights Watch, 1993). Available at: <https://www.hrw.org/reports/1993/iraqanfal/>; Bruce P. Montgomery, “The Iraqi Secret Police Files: A Documentary Record of the Anfal Genocide,” *Archivaria* (2001); Kerim Yildiz, *The Kurds in Iraq: The Past, Present and Future* (London: Pluto Press, 2007); David McDowall, *A Modern History of the Kurds* (London: IB Tauris, 2004).

⁵ For example, see: Denise Natali, *The Kurdish Quasi-State: Development and Dependency in Post-Gulf War Iraq* (Syracuse: Syracuse University Press, 2010); Gareth R. V. Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy* (London: Routledge, 2003); Benjamin MacQueen, “Democratization, Elections and the ‘de facto State Dilemma’: Iraq’s Kurdistan Regional Government,” *Cooperation and Conflict* 50.4 (December 2015).

⁶ Michael M. Gunter, “Civil War in Iraqi Kurdistan: The KDP-PUK Conflict,” *Middle East Journal* 50.2 (Spring, 1996).

⁷ Brendan O’Leary, John McGarry, and Khaled Salih, eds., *The Future of Kurdistan in Iraq* (Pennsylvania: University of Pennsylvania Press, 2006); Elisheva Machlis, “Shi’i-Kurd Relations in Post-2003 Iraq: Visions of Nationalism,” *Middle East Policy* (November, 2021); Michiel Leezenberg, “Iraqi Kurdistan: Contours of a Post-Civil War Society,” *Third World Quarterly* 26.4-5 (May 2008).

the use of Anfal in the genocide recognition politics and as an instrument for secession and gaining independence.⁸ But no studies have specifically focused on how the 1991 blanket amnesty affected the attainment of justice and peace within Kurdish society.

This essay examines this question. It first outlines the Kurdish experience of the transitional period after 1991 when political elites unilaterally gave blanket amnesty and immunity to offenders of *Anfal* and other heinous atrocities committed during the Ba'ath era. Then it analyses how that amnesty failed to bring about justice. In the third section, it discusses the nexus between amnesty and subsequent instability and unresolved political questions in the Kurdistan region. Finally, the essay considers a new way forward.

The Kurdish Experience: Amnesty or Impunity?

During the twentieth century, Iraqi Kurds faced brutal political repression, which culminated in Saddam Hussein's notorious Anfal campaign in 1988. Anfal comprised a series of eight, carefully planned genocidal campaigns against the Kurdish population in the Kurdistan Region of Iraq (KRI) by the Ba'ath regime. It lasted from February 23rd, 1988, to September 6th, 1988.⁹ While figures vary, it is estimated that between 50,000 and 182,000 people, mainly civilians, were killed as a result of the Anfal campaigns.¹⁰ On May 3rd, 2011, the Iraqi High Criminal Court deemed the Anfal massacre a "crime against humanity."¹¹ Thousands of Kurdish *Jash* (collaborators) and *Mustashar* (advisors) aided the regular army in sending thousands of their fellow Kurds to their deaths during the campaigns.¹² Following the Gulf War in 1990–91, Iraqi Kurds achieved real autonomy. In the new era, the problem of the recent past had to be addressed, and in particular the cases of the *Jash* and *Mustashars* who had abetted the Anfal campaigns three years ago had to be disposed.

The Iraqi Kurdistan Front, an alliance of Kurdish political parties, was in charge of Kurdistan at the time. In 1991, the Kurdistan Front declared a general amnesty for all *Jash* and *Mustashars*. In 1992, the Front held parliamentary and presidential elections and established the Kurdistan Regional Government. Since then, subsequent governments have never taken any action against the accused collaborators of the Ba'ath regime. Thus, the 1991 amnesty has shielded

⁸ Renad Mansour, "Rethinking Recognition: The Case of Iraqi Kurdistan," *Cambridge International Law Journal* 3.4 (January 2014); Bahar Baser and Mari Toivanen, "The Politics of Genocide Recognition: Kurdish Nation-Building and Commemoration in the post-Saddam Era," *Journal of Genocide Research* 19.3 (June 2017).

⁹ For a detailed account on the Anfal campaigns, see: Black, *Genocide in Iraq*.

¹⁰ Anfal Campaign and Kurdish Genocide, accessed 10 December 2021, <https://us.gov.krd/en/issues/anfal-campaign-and-kurdish-genocide/>.

¹¹ Iraq: Kurdistan Regional Government demands compensation for Anfal victims, accessed April 15, 2021, <https://www.middleeastmonitor.com/20210415-iraq-kurdistan-regional-government-demands-compensation-for-anfal-victims/>.

¹² Black, *Genocide in Iraq*.

those who were complicit in committing the crimes against their fellow citizens.

As mentioned earlier, there is a range of mechanisms to address past injustices, but the Iraqi Kurdistan Front opted for amnesty, arguably the most lenient of the transitional justice standards. Since then, this has become a controversial issue. Its proponents argue that amnesty was a wise decision by the Kurdish leadership to gain the loyalty and support of the thousands of Jash and Mustashars in the March 1991 Kurdish uprising against the Iraqi army.¹³ In addition, addressing systematic abuses by Saddam's regime without endangering the political transformations that were underway was a difficult task. The practical difficulties of dealing with widespread human rights violation made the Kurdistan Front and the then-nascent regional government unwilling to pursue wide-ranging initiatives. Prior to the 1991 uprising, the number of Kurdish Jash and Mustashars collaborating with the Ba'ath regime exceeded 400,000; therefore, if the amnesty was not given the popular uprising had little chance to succeed.¹⁴ Moreover, there was a fear that taking more retributive judicial measures such as criminal trials would backfire and put the delicate stability of the post-genocide period at risk. In other words, Kurdish institutions were too weak to be able to deal with thousands of victims and perpetrators through national courts, and the main concern was to remove Saddam Hussein's regime at the time.¹⁵ Apart from judicial measures, weak institutions were obstacles to addressing these past abuses through non-judicial measures such as truth commissions as well.

Thus, thanks to the amnesty, the Jash and Mustashars did not face any retribution or punishment. On the contrary, they were integrated into KDP-PUK power structures as their military prowess was needed during the intra-Kurdish civil war from 1994–98 and their tribal connections have been significant in later elections.¹⁶ In addition, the amnesty shielded them in the post-2003 period once again. For example, in 2010, when the Supreme Iraqi Criminal Tribunal issued [arrest warrants](#) for 258 Kurdish Mustashars for their role during the Anfal campaigns, the Kurdistan Regional Government KRG protected them once again.¹⁷ Instead of taking responsibility and facing accountability, some of the Jash leaders and Mustashars have retinues of upwards of 50 guards and lucrative pension funds, whereas the victims are yet to be given reparations for the material and psychological damage inflicted on them.¹⁸ Having said that, according to essay 10 of the law of the Iraqi High

¹³ Nahwi Saeed, "Why is Reconciliation so Important in Iraqi Kurdistan? The Case of Anfal," LSE University, accessed April 28, 2021, <https://blogs.lse.ac.uk/mec/2021/04/28/why-is-reconciliation-so-important-in-iraqi-kurdistan-the-case-of-anfal/>.

¹⁴ Mohammed Haji Mahmood, "In my belief, there is no such difference between Jash and Mustashars, they all collaborated with the former regime," *Pirs*, April 14, 2021, 8.

¹⁵ *Ibid.*

¹⁶ Saeed, "Why Reconciliation."

¹⁷ "Arrest warrant for Ba'athist Kurds," *ANFNews*, accessed October 16, 2016, <https://anfenglish.com/news/arrest-warrant-for-baathist-kurds-2277>.

¹⁸ Ali Heme Salih, "KRG anti-corruption reform must keep moving in the right direction," *Rudaw*, accessed August 20, 2020, <https://www.rudaw.net/english/opinion/10082019>.

Tribunal, those Iraqis accused of crimes against humanity, genocide, and war crimes between July 7th, 1968, and January 5th, 2003 should face trials.¹⁹ Therefore, the 1991 blanket amnesty which has actually turned Kurdistan into “the zone of impunity” for the perpetrators of Anfal, has no moral legitimacy.

Amnesty vs. Justice Dilemma

Serving justice is crucial in post-genocide societies to heal the wounds of the past.²⁰ Apart from socioeconomic justice, four types of justice have significance in post-conflict societies: retributive, distributive, restorative, and procedural justice. Retributive justice refers to “the subjectively appropriate punishment of individuals or groups who have violated rules, laws, or norms and, thus, are perceived to have committed a wrongdoing, offence, or transgression.”²¹ It is seen by to be “older, more primitive, more universal, and socially more significant than any other justice feeling.”²² One reason for proportionately punishing the offender is to restore the moral order disrupted by the wrongdoing and make sure the offenders get what they deserve.²³ Another reason is that punitive responses yield benefits for society as they can act as a deterrent and prevent the recurrence of human rights violations in the future.²⁴

That said, blanket amnesty subverts retributive justice insofar it provides the perpetrators immunity from prosecution or trials. Granting blanket amnesty without even requiring the wrongdoers to publicly confess their deeds is unfair: it appears not only to excuse their misdeeds, but also to reward them. Therefore, for amnesty to be compatible with justice, it should be conditional, not absolute. South Africa is a good case in point. The parliament granted the Truth and Reconciliation Commission the right to give amnesty to those whose acts were motivated by political objectives, but blanket amnesty was rejected from the beginning.²⁵ There was no group amnesty, rather “every perpetrator was to be identified individually and acknowledge the truth – confess his or her guilt – before receiving amnesty.”²⁶ In other words, the amnesty was conditional as “those whose actions were committed for personal

¹⁹ Essay 10 of the law of the Iraqi High Tribunal, <https://iraqld.hjc.iq/LoadLawBook.aspx?SC=210220061156077>.

²⁰ For further details, see: Wendy Lambourne, “Post-conflict Peacebuilding: Meeting Human Needs for Justice and Reconciliation,” *Peace, Conflict and Development* 4 (April 2004); Geneviève Parent, “Reconciliation and Justice After Genocide: A Theoretical Exploration,” *Genocide Studies and Prevention* 5.3 (December 2010); Patricia Lund and Mark McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” *Journal of Law and Society* 35.2 (2008); David Mendeloff, “Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice,” *Human Rights Quarterly* 31 (2009).

²¹ Michael Wenzel and Tyler G. Okimoto, “Retributive Justice,” in *Handbook of Social Justice Theory and Research*, eds. Kłarah Sabag and Manfred Schmitt (New York: Springer, 2016), 238.

²² Gibson, “Truth,” 544.

²³ Wenzel and Okimoto, “Distributive Justice,” 241.

²⁴ *Ibid.*

²⁵ For more details on the fairness of the South African amnesty, see: Gibson, “Truth,” 540-56.

²⁶ Mahmood Mamdani, “Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC),” *diacritics* 32.3/4 (Autumn–Winter 2002): 33.

gain or out of ‘personal malice, ill will or spite’ were not eligible for amnesty.”²⁷ The amnesty was given only after the perpetrators took responsibility for their involvement in the human rights abuses. In Kurdistan, however, the Kurdistan Front, as a political body, not parliament, issued the blanket amnesty, a political decision that has denied justice to the victims.

Reparations, or distributive justice, is another means of redressing historical harms in post-genocide societies. Compensating the victims is essential to counterbalance amnesty. A victim is “a person or a collective group of persons who suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of their fundamental legal rights.”²⁸ A victim is not only the direct victim of a genocide for example, but the immediate family or a dependant or household of the direct victims are also considered victims.²⁹ One of the victims’ rights is to get remedy through a monetary award of damages for physical, mental, and economic harms. Reparation measures can be financial and non-financial, individual and collective.

The government is the authority which takes responsibility and pays the damages award to the victims in exchange for agreeing to settle their disputes and not file complaints against perpetrators. This can have a healing effect on the victims. In the case of Kurdistan, both the KRG and government of Iraq should compensate the victims. As mentioned earlier, the Kurdistan Front’s blanket amnesty prevented the victims of Anfal from prosecution of the accused perpetrators. As the KRG was the successor-in-interest of the Front, it should take responsibility for the Front’s deprivation of the victims’ rights by providing compensations. The government of Iraq is the successor of Saddam Hussein’s regime and thus, in accordance with international legal norms, it should also take responsibility for the abuses committed by the previous regime. That said, the families of Anfal victims are yet to be morally and materially compensated by the two governments.³⁰

Restorative justice is another type of justice which refers to the restoration of dignity to the victims and rehabilitation of the criminals to society. Restorative justice and retributive justice are opposites. The former focuses on restoring peace while the latter privileges feelings of anger, resentment and revenge. One way of bringing back dignity is a sincere apology by the perpetrators, such as official expressions of remorse and admissions of guilt. Apology is important, if not necessary, for absolving the apology-maker in

²⁷ Gibson, “Truth,” 541.

²⁸ Chris Cunneen, “Exploring the Relationship between Reparations, the Gross Violation of Human Rights, and Restorative Justice,” in *Handbook of Restorative Justice: A Global Perspective*, eds. Dennis Sullivan and Larry Tifft (New York: Routledge, 2008), 358.

²⁹ Chris Cunneen, “Exploring Relationship,” 358.

³⁰ See: “Parliament calls for better services and compensation for Anfal survivors and families in Garmian and Chamchamal,” accessed April 17, 2021: <https://www.parliament.krd/english/parliament-activities/latest-news/posts/2021/april/parliament-calls-for-better-services-and-compensation-for-anfal-survivors-and-families-in-garmian-and-chamchamal/>; and “KRG demands material and moral compensation for Al-Anfal victims,” *Shafaq*, April 14, 2021, accessed April 20, 2021, <https://shafaq.com/en/kurdistan/krg-demands-material-and-moral-compensation-for-al-anfal-victims>.

the eyes of the aggrieved party to whom the apology is owed, for ending their need to blame, and thus it is expected to contribute to forgiveness and reconciliation.³¹ It gives some amount of psychological comfort to the victims. Moreover, it restores some power to them to either forgive or not, although it can be difficult to know whether apologies are sincere or not. Nevertheless, an apology can certainly soften the sense that amnesty unfairly protects the wrongdoers. Again, in the Kurdistan Region, the collaborators in the Anfal campaign have not shown regret by formally asking for forgiveness from victims or apologizing to them. Thus, the Anfal victims and their families have been denied even this most basic counterweight to blanket amnesty.

Another way of realizing justice within post-conflict societies is to give voice to the victims, which is a form of procedural justice. For example, the Truth and Reconciliation Commission hearings emphasize the stories of the victims and their families to unburden their grief publicly.³² This helps the post-genocide society to identify those responsible for the wrongs and to recognize the pain and suffering endured by the victims. This type of justice has not been realized in Kurdistan either: No formal commissions have been instituted to collect and give proper expression to the painful stories of the victims and survivors of the Anfal campaigns. Thus, perpetrators have not only avoided legal punishment, but they have also escaped public scrutiny and even knowledge of their crimes, both inside and outside Kurdistan. This probably makes the case of Kurdistan unique in that victims are still undiminished in their victimhood while perpetrators have been rewarded directly and indirectly.

Amnesty vs. Peace and Reconciliation

One of the purposes of transitional justice is to strengthen peace and reconciliation. For example, truth commissions are intended to foster national reconciliation through reconciling conflicting narratives over the past and arriving at some objectively true facts about what happened. Reconciliation can be defined as “a process through which a society moves from a divided past to a shared future.”³³ However, it is exceptionally difficult to achieve reconciliation “in the context of deeply divided societies fractured by cycles of extreme violence and/or genocide.”³⁴ Some post-conflict societies have prioritized peace and reconciliation over justice so strongly as to risk ignoring an ignominious past altogether.

In Spain, for instance, following Francisco Franco’s death in November 1975, there was an “unwritten agreement” and generally accepted “collective amnesia” to forget about the past human rights abuses and repression,³⁵ although at

³¹ Gibson, “Truth,” 543.

³² Ibid.

³³ David Bloomfield, Teresa Barnes, and Luc Huyse, eds. *Reconciliation After Violent Conflict: A Handbook* (Stockholm: Bulls Tryckeri AB Halmstad, 2003), part one, 12, <https://www.idea.int/sites/default/files/publications/reconciliation-after-violent-conflict-handbook.pdf>.

³⁴ Geneviève Parent, “Reconciliation and Justice After Genocide: A Theoretical Exploration,” *Genocide Studies and Prevention* 5.3 (December 2010): 279.

³⁵ For more details on amnesty and collective amnesia in Spain, see: Rigby, “Amnesty,” 73.

the very least, the Assembly of Bishops and Priests issued an apology to the Spanish people in 1971 for its partisanship in the civil war, seeking a pardon.³⁶ Cambodia is another case in point. A compelling reason for pursuing amnesty over justice and retribution is to ensure a peaceful transition toward democracy, as reopening the wounds of the past can endanger the often-fragile peace that holds the post-conflict society together.

It should be noted that historical amnesia is a serious obstacle to achieving reconciliation. The victims do not obtain public recognition of their pain, perpetrators are allowed to deny their crimes, and future generations are deprived of meaningful knowledge of the past.³⁷ Likewise, true reconciliation takes a long time and a lot of effort, but it is crucial to moving on from the horrible events of the past. Finding out the truth about past atrocities— the identities of the perpetrators, their motivations, the causation between their actions and the suffering of the victims, and the extent of the harm – is vital “to build [ing] a shared future from a divided past.”³⁸ Thus, a policy of silence is unlikely to lead to lasting peace.

Amnesty has failed to realize peace in the post-Saddam Hussein era of Iraqi history. As explained earlier, proponents of amnesty argued that Kurdish leaders had to prioritize the political process rather than truth, justice, and reconciliation, because of the realities of political power and the need to present a united front in support of Kurdish autonomy. Moreover, the Jash leaders and Mustashars still had a lot of power, which hindered the pursuit of justice at the time. Therefore, they assert that amnesty was the only realistic option at the time. Although more than 30 years have now passed and there is a new generation of leaders, the need for a more robust transitional justice process has still been ignored. One explanation for this is that the Barzani and Talabani families still rule the Kurdistan region, which means that new leaders have no choice but to accept the status quo, or risk angering the two most powerful families in Kurdistan. Thus, reconciliation and the perpetrator-victim binary were and are still overlooked in favor of political expediency. The preference of Kurdish political leaders for general amnesty seems to have been an attempt to avoid digging up the remains of past human rights violations, whose full excavation for public viewing may have threatened to undo the new political structure. The idea was and still is to look to the future instead of dwelling on a painful past. But a peaceful and prosperous future will be out of reach as long as the wounds of the past are still viscerally present in the minds and hearts of people in Kurdistan.

The amnesty, moreover, failed to build a shared future within a divided Kurdish society, for the very divisions of the past have remained necessarily unaddressed. Such divisions continue to haunt Kurdish society. The perpetrator-victim division is one of them. The historical KDP-PUK dispute is another, and it has rent the Kurdistan region into two zones, claiming the lives of thousands of people. Although a top-down political agreement put an end to the

³⁶ Rigby, “Amnesty,” 74.

³⁷ Bloomfield, Barnes, and Huyse, *Reconciliation and Justice*, 30.

³⁸ *Ibid.*

1990s Kurdish civil war, a bottom-up healing has never been allowed to begin. Rampant corruption has created another division in the region between those with political connections and those without. Those in the first class enjoy their lives, profiting from public and private employment opportunities, while the second class, in which the majority of people fall, suffers economic and political disenfranchisement. This has been due to the sultanistic power of the KDP and PUK.³⁹ The system needs to be reformed to overcome these divisions – starting with a full commitment to discovering the truth of what happened, and who did what, during the Anfal campaign.

It is hard to imagine how Kurdistan will build a sound foundation for a more peaceful and prosperous future without addressing the past and starting a genuine reconciliation process. In the long-term, avoiding reconciliation proved to be a grave mistake. In the post-1991 period, the general amnesty enabled the former Jash and Mustashars to maintain their armed forces and to play a negative role as belligerent during the Kurdish civil war in the mid-1990s. Both KDP and PUK needed these former regime-collaborators to defeat one another, allowing them to become warlords and military officers within their respective party structures. In this way, the Mustashars did not only not face any trial for their collaboration with the Ba'th party during the 1980s, but they were also rewarded with high-ranking positions in the 1990s thanks to KDP and PUK policies. Thus, ironically in the case of Kurdistan, putting the emphasis on amnesty and ignoring reconciliation had the effect of undermining peace in the post-genocide transition.

Finally, the connection between reconciliation and democratization processes cannot be underestimated. Reconciliation generates trust in government, hope in the possibility of peaceful co-existence with former enemies, and faith in cooperation, and thus it consolidates democracy. The early months and years of post-genocide societies are crucially important to the future prospects of building democratic institutions. In Kurdistan, blanket amnesty undermined the rule of law. Since 1991, no senior officials have faced trial for atrocities during the civil war or for widespread corruption. Indeed, today's structural and governance problems in Kurdistan are closely linked to immunity granted in 1991 to those complicit in the Anfal campaign. It helped to establish a political norm of impunity for unlawful actions. Three decades on, Kurdistan never developed a fully-fledged democracy.⁴⁰

The Way Forward

Ideally, the goal of transitional justice is to adequately redress past grievances before they can be invoked as reasons to start a new conflict. Fundamental to this process is an honest, unyielding reckoning with what happened in the past.

³⁹ "Sultanism is a particular form of rule that is based on cronyism, clientelism, nepotism, personalism, and dynasticism." For more details, see: Kawa Hassan, "Kurdistan's Politicized Society Confronts a Sultanistic System," *Carnegie Middle East Centre*, August 18, 2015, <https://carnegie-mec.org/2015/08/18/kurdistan-s-politicized-society-confronts-sultanistic-system-pub-61026>.

⁴⁰ Saeed "Why reconciliation."

The search for truth and justice was deemed unrealistic in Kurdistan over the past three decades, but that does not mean it has to be this way forever. In the case of Kurdistan, silence, not amnesia, has been the government's response to confronting the past, but the memories of the brutal past are still vivid in the minds and hearts of the victims. In other words, the mere passage of time has not alleviated their pain. Evidence shows that "the quest for truth, justice and reparation – essential stages on the way to reconciliation – does not simply disappear with time."⁴¹ Therefore, the past can be used in new conflicts if wounds are left unhealed.

Although there is no one-size-fits-all solution, reconciliation is key to addressing the unsettled past in Kurdistan and delivering truth and justice. As reconciliation is not a one-off event but a long-term and a non-linear process, it can take years and generations to fully transpire. One obstacle in the way of reconciliation in Kurdistan is that the offenders have not apologized, nor have they been encouraged to do so, and the victims have neither forgiven them nor forgotten the past. Another reason is that the Kurdish leadership in the post-1991 context had a complex agenda, including rebuilding political and social structures, holding the first free elections, organizing the civil service, and so on. Understandably in that context, they did not prioritize prosecuting human rights violations and addressing the recent violent past.

Nonetheless, reconciliation is inestimably important to the future of Kurdistan, and it cannot be delayed indefinitely, for both practical and moral reasons. For example, victims' groups and civil society organizations are now much stronger and more articulate than they were three decades ago. They constantly put pressure on governments to engage the perpetrator-victim issue in meaningful ways, to bring justice to the survivors of Anfal and to bring the war criminals of Saddam Hussein's regime to account. However, as time passes and more and more of both the survivors and culprits of Anfal die, the quality and quantity of the evidence weakens. Instead of a truth commission, material and psychological compensation for the victims may be the most effective way to move forward. This could be supported by retributive justice against the higher-level perpetrators, such as the aforementioned 258 Kurdish Mustashars for whom the Supreme Iraqi Criminal Tribunal issued arrest warrants in 2010 for involvement in Anfal.⁴² The Kurdistan Regional Government and Baghdad are the two parties that should take action. Ideally, the former should stop protecting the accused Jash leaders and Mustashars, while the latter should take responsibility for the crimes of the former regime and compensate the families of the victims.

To sum up, blanket amnesty has been counterproductive in Kurdistan. Perhaps counterintuitively as well, it has led to the domination of the present by the past. If a past memory of widespread trauma is left unaddressed, there is the danger that "the divisions and conflicts of old never die" and determine the future.⁴³ There is an obvious political division between KDP and PUK in

⁴¹ Bloomfield, Barnes, and Huyse, *Reconciliation and Justice*, 31.

⁴² "Arrest Warrant."

⁴³ Andrew Rigby, *Justice and Reconciliation after the Violence* (London: Lynne Rienner, 200).

Kurdistan, but there is another division between the collaborators and victims of Anfal campaign. These divisions have been obstacles for achieving the much-needed unity within Kurdistan. As long as there is an injustice and unaddressed past pains, the search for truth and justice is possible. This has been the case in Cambodia where many years after the end of the violence, the quest for justice and truth became a realistic possibility.⁴⁴ The same may hold true for Kurdistan as well.

⁴⁴ Bloomfield, Barnes, and Huyse, *Reconciliation and Justice*, 31.

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