



## Kirkuk Status Referendum Operational Concept



### **Kirkuk and Other Disputed Territories Status Referendum Operational Concept**

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The Center for Democracy and Civil Society at  
Georgetown University

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## I. Purpose

The purpose of this document is to describe an operational concept for the conduct of the upcoming status referendum for Kirkuk. An operational concept defines the critical policy elements that will shape the referendum process, assess options for those policy elements, and assemble them into a scenario that provides organizers of the referendum of a common vision of issues, obstacles, and processes. In so doing, referendum organizers can make better-informed policy decisions to enhance the democratic quality and technical efficiency of referendum administration.

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### III. Executive Summary

During the drafting of the Constitution of Iraq, a grand bargain was struck. The northern governorates,<sup>1</sup> which had long been marginalized under the rule of the ousted Ba'ath regime, would support the constitution's adoption—and remain a part of Iraq—if that constitution mandated a referendum vote to determine the legal status of the governorate of Kirkuk. Kirkuk<sup>2</sup> rests in north-central Iraq and shares a border with the provinces of Iraqi Kurdistan,<sup>3</sup> a semi-autonomous region that makes up the north of Iraq and shares borders with Turkey, Iran, and Syria.

The Kirkuk and Disputed Territories Referendum is the forthcoming plebiscite which will determine the future legal status of the Kirkuk governorate. Along with Kirkuk, the referendum may extend legal governance or boundary changes to four other governorates. The conduct and outcome of this referendum will be of tremendous importance to the people of Kirkuk in particular, and throughout the rest of Iraq more generally.

Kirkuk is an ethnically-diverse province home to large Kurdish, Arab, and Turkmen<sup>4</sup> populations. The area is rich in history and culture but has seen many tragedies including ethnic cleansing, ethnic violence, and forced migrations. Much of the strife in the governorate is a consequence of Kirkuk's economic importance to Iraq and to the region, having extensive stores of oil and natural gas. We consider conflicts to be primarily economic and political in nature rather than strictly ethnic, though these economic and political conflicts frequently map onto ethnic cleavages.

The legal basis for the Kirkuk Referendum is anchored in Article 140 of the Constitution of Iraq, which calls for the status referendum and stipulates the prerequisite steps to undertake before the vote. By law, the demographics of the area in question must be normalized<sup>5</sup> and a census must be conducted before the referendum can take place. The constitution contained a hard deadline by which the referendum should be held—a date which has since passed without a vote. Consequently, the date for the Kirkuk Referendum will have to be resolved through political negotiations, as constitutional guidance no longer applies in a clear-cut fashion. The vote cannot be delayed forever; the parties responsible for the article's inclusion in the first place stress this point consistently.

This document considers in depth the current political negotiations, the history leading up to the current situation, the ethnic and economic politics involved, the legal framework, the

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<sup>1</sup> Alternatively referred to as provinces—the terms are equivalent. These are the second-tier administrative units in Iraq.

<sup>2</sup> References to Kirkuk in this document refer to the governorate. The city of the same name is referred to as Kirkuk City; other source documents do not always follow this convention.

<sup>3</sup> Iraqi Kurdistan is administered largely by the Kurdistan Regional Government, centered in Erbil. Iraq being a semi-federal state, Baghdad also dictates some policies and negotiates others with the KRG.

<sup>4</sup> Iraqi Turkmen are alternatively called Turkomens and Turcomans.

<sup>5</sup> "Normalization" is sometimes considered a loaded term, though it is constitutionally-correct. It refers to the repatriation of those forced to leave Kirkuk during the Ba'athist regime. The process is also referred to as de-Arabization, as the program of forced migration was called Arabization by Baghdad.

role of various political institutions, the current security situation, the level of civic and voter education, the process for establishing a voter roll, electoral costs, and the process of adjudicating complaints, among many other topics. The chief concerns here are operational; this document was designed to pair best practices with an honest appraisal of the challenges to the referendum. If preparations for the referendum are undertaken honestly, and the difficult questions are negotiated in a way that the Iraqi people find appropriate, then the referendum will be a legitimate exercise.

We estimate the population of Kirkuk to be 1,255,000 as of November 2012 with an eligible voting age population of roughly 740,000. All population figures, however, are estimates. Kirkuk lacks a recent census which complicates referendum preparations. Leaders in Iraq have found it very difficult to initiate a census, especially in disputed territories such as Kirkuk. Each of the major ethnic groups—and importantly their respective political parties—have historical and contemporary claims of ownership over the governorate and Kirkuk City in particular. Even though conducting a census would not change demographics in any way, maintaining a predictable ethnic (and consequently political) balance of power in the governorate is so important that many leaders are reticent to cooperate.

Nonetheless, a census would almost certainly exclude questions of ethnicity and instead focus on creating a trustworthy population count and a verifiable voter registry. On the electoral front, the conduct of the census will be the next major step to conduct.

The Independent High Electoral Commission is the independent electoral management authority responsible for holding all elections in Iraq. Appointed by and under the direct supervision of the Council of Representatives, it is comprised of eight permanent election officers and one chief electoral officer. All told, we anticipate the referendum will cost approximately \$23 per voter, although it has not yet been negotiated how that cost burden would be distributed.

Determining eligibility criteria will be among the biggest early concerns in preparing for the referendum. Our analysis indicates that the specific voter eligibility policies adopted will in large part determine the outcome of the referendum. One of the most salient outstanding unknowns is who will be considered a permanent resident of the governorate. Many of those displaced during the Ba'athist regime returned to the region following the 2003 American invasion, however the following years of violence and unrest has created a new group of internally displaced people in Kirkuk who previously had no ties to the region. These concerns are only compounded by the growing civil war in neighboring Syria which has resulted in a considerable refugee influx to Kirkuk and Iraqi Kurdistan.

Article 140 of the Constitution does not naturally lend itself to the creation of residency requirements for voter eligibility. However some general principles in terms of voter eligibility are largely accepted. For example, it is generally agreed that individuals with no prior connection to Kirkuk, including those displaced by fighting elsewhere in Iraq who arrived in Kirkuk in the past few years, should be precluded from registration. Additionally, stakeholders concur that a good faith attempt should be made to include both

formerly-expelled Kurds who have returned to Kirkuk, in addition to newly-displaced Arabs and Turkmen who had previously called Kirkuk home for decades.

The Kirkuk Referendum could have the effect of transforming regional politics, should regional powers allow it to move forward. Syria and Turkey in particular are wary of the referendum's potential outcome. They fear if Kirkuk were to join with the Kurdistan Regional Government or become its own autonomous region, their own Kurdish populations would be empowered to push for greater autonomy; something both have long sought to avoid.

Because matters of ethnicity and political affiliation will doubtlessly be of great concern throughout the referendum process, organizers must work to create credible security institutions that are not seen as biased insofar as concerns the results of the referendum. The Iraqi Army, Iraqi Police Service, Kirkuk police, and *Peshmerga*<sup>6</sup> must present a unified front in calling for peace and protecting voters from violence. Where possible, these groups must also work together operationally to lower the political and ethnic stakes.

We also recommend the creation of a Kirkuk Electoral Dispute Council made up of community leaders to promptly handle basic "green" level electoral complaints surrounding the referendum. More serious complaints will be the responsibility of the Independent High Electoral Commission, but this council would work to investigate alleged corruption and work to defuse complaints quickly before they escalated into violence.

It is also increasingly-important for referendum planners and the international community to consistently evaluate what impact external actors are having on the security picture in northern Iraq and what implications that security picture will have for the referendum's conduct. The civil war in Syria raises the serious concern that complete failure of the Syrian state could once again leave the area replete with heavy weapons, enabling spoilers to perpetuate violence to achieve political ends in the governorate.

Preparing for a referendum is often undertaken by the international community at a somewhat frantic pace. Best practices can be out of reach when the timeframe dictated by politics is compressed, or when critical operational questions remain unanswered until the last minute. This document provides information, both general and highly specific, within the context of an operational framework for negotiators, referendum organizers, diplomats, observers, monitors, academics, and electoral support professionals. Our efforts to provide the best analysis and data are ongoing, and our network continues to contribute forward-looking research that facilitates better planning and can provide policymakers with the data and procedural frameworks they need.

## **- The CKRO Document Management Team**

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<sup>6</sup> The *Peshmerga* are Kurdish armed forces which report to Erbil.



Map 01



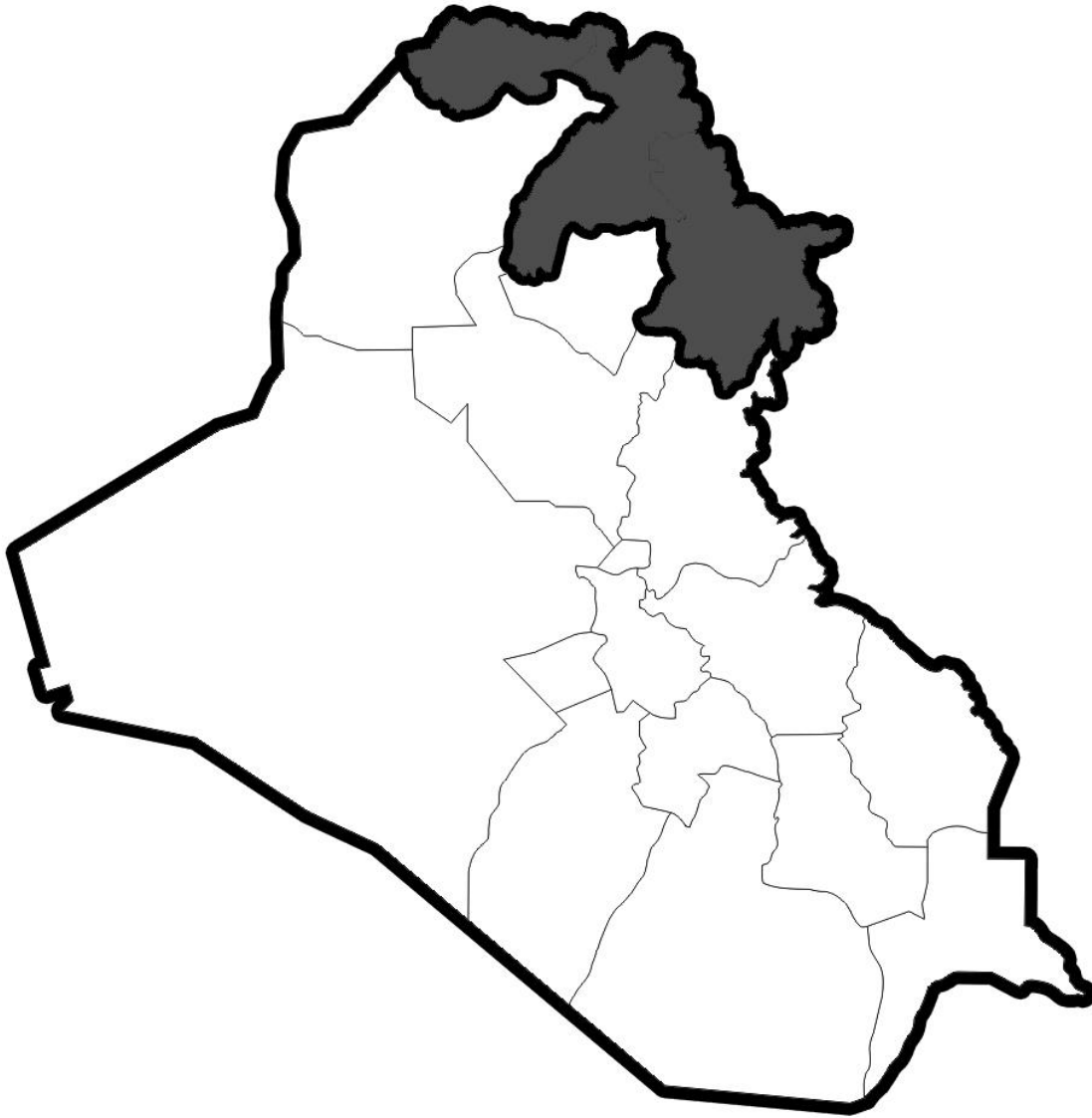
Iraq with provincial boundaries and political centers

Map 02



Iraq with Kirkuk Governorate highlighted

Map 03



Iraq with Iraqi Kurdistan highlighted

## IV. Situation Assessment

### A. *The Importance and Implications of the Kirkuk Referendum*

Article 140 of the 2005 Constitution of Iraq calls for a referendum to determine the status of Kirkuk and other disputed territories. The vote is to be undertaken to determine the will of the citizens of the areas in question. Importantly, it should be noted that the wording of the referendum itself remains under negotiation, as the constitution does not spell out the exactly what the question posed to voters should be. The referendum will likely result in one of four options: Kirkuk may choose to fully join the Kurdistan Regional Government (KRG); it may choose to join the KRG but maintain a degree of autonomy; it may choose to be declared a special (or autonomous) governorate within Iraq; or it may choose remain a standard governorate within Iraq.

All options will change the power dynamic within Kirkuk and the disputed territories, but the first three options would have a significant impact on Iraq's federal distribution of power. If the vote favors Kirkuk to become an independent region, it would likely result in Kirkuk forging closer ties with the Kurdistan Regional Government or simply joining the KRG outright. These two options would be ideal for most Kurdish parties, though both would likely be met with concern by ethnic Turkmen and Arab voters who have in the past expressed apprehension about closer ties to the KRG.

The option for Kirkuk to be considered a "special governorate" is something of a middle ground between the "KRG-centric" options and the "standard governorate" option. While Turkmen parties would likely respond positively to this option, it would not be ideal for either the national government stakeholders or for the Kurdish parties involved. The government in Baghdad sees such an option as destabilizing, and Arab parties view such a possibly as being a harbinger of the dissolution of Iraq while Kurdish parties, on the other hand, favor closer ties with the KRG over autonomy within Iraq. Though not ideal, this option could decrease the tensions by keeping the best-case and worst-case scenarios for each party off the table. This type of system would be set up pursuant to Article 123 of the Iraqi Constitution, which allows for a power-sharing relationship between the governorate and the national government. If this option prevails, the government in Baghdad would (for this purpose at least) be considered a *federal* government, and the exact power dynamic between Baghdad and Kirkuk would be open to negotiation, while allowing Kirkuk to more-closely associate with the KRG.

The fourth option is for the referendum to be defeated, which would mean that Kirkuk's status would essentially remain as it is today. This would be a huge blow for Kurdish parties such as the Kurdistan Democratic Party (KDP), the Patriotic Union of Kurdistan (PUK), and the other members of the Kurdistan Alliance (the chief coalition of parties from KRG areas). This outcome would result in increased strength for the national government in Baghdad, possibly rendering it the *central* government, rather than the *federal* government. Nevertheless, this government would still have to address the question of governing Kirkuk and the disputed territories, as Kurdish parties would continue to press for a model focused on local control.

The sensitivity surrounding the vote is also driven by economics; it is estimated that Kirkuk is home to as much as one quarter of Iraq's oil and natural gas reserves. If the outcome of a vote results in Kirkuk having structurally-weaker ties with Baghdad, the national government may lose access to some or all of Kirkuk's oil wealth. Presently, all proceeds accrue in Baghdad and funding is subsequently distributed to the governorates according to their population. The KRG believes that Kirkuk is getting a bad deal, and would lobby for oil revenue to stay in the region. Though recent negotiations between the KRG, Baghdad, and international energy companies have resulted in a profit sharing mechanism that the parties all agreed upon, if Kirkuk splits from the national government, there is no doubt that Baghdad's funding from oil exports would be at risk. There is cause for optimism as to the capacity of leaders in Erbil and Baghdad to work productively on economic issues such as oil production. In September 2012, a new bilateral deal was signed which will see Baghdad partner with the KRG by covering costs of oil exploration projects in exchange for retaining an ongoing percentage of the revenue.

There are regional concerns stemming from the referendum, too, and many of these extend well beyond the realm of economics. In addition to worst-case fears of general violence or regional instability resulting from a hotly contested vote, Syria, Iran, and Turkey are all wary of the referendum's potential outcome, even if it is held under completely-peaceful conditions. Syria and Turkey in particular do not want to see Kirkuk join with the KRG and bolster the size and strength of Kurdistan. Both believe such a move would increase the pull, legitimacy, and resources of a quasi-state that poses a threat to regional stability.

In Syria, ethnic Kurds make up nearly 15% of the total population. Largely settled in the Northeast, the administration in Syria has historically regarded Kurdish communities with unease. Syrian officials have limited the political and civil rights of members of these communities and marginalized them socially through systemic discrimination. Some 200,000 Syrian Kurds are deprived of citizenship and are unable to obtain passports, identity cards, or birth certificates, which in turn prevents them from owning land, obtaining government employment, and voting. To keep visibility and organization to an absolute minimum, Kurdish political parties have also been banned and public association is often tracked and discouraged. The mass protests that began in Syria in 2011 forced numerous concessions to the Kurdish population in attempt to prevent their support for the Syrian opposition. None of these changes in posture (especially given their halting nature) are likely to change the official position of the Syrian regime towards Kurdish political aspirations in Iraq, however.

With intense fighting between the Free Syrian Army and loyalists to Bashar al-Assad common throughout Syria, much of the military and administrative presence of the central government in traditionally-Kurdish areas has evaporated. These areas, once under a tight grip by the Syrian Ba'ath Party, are now largely held uncontested by the rebels and are, at least for the time being, administered autonomously by Kurdish leaders. This will no doubt fuel fears of separatism in the minds of the Syrian regime, although it is difficult to imagine that hypothetical consequences of a vote held in Iraq, separatist desires or not, will be a top concern for the elite in Damascus. Remaining in power is clearly their top priority

and the future of the largely-Kurdish Northeast is a tertiary concern at best. Still, leaders in Baghdad, Ankara, and Tehran will likely hold similar fears of separatism if any substantive movement on permanent autonomy takes place. Irrespective of the outcome of the spiraling violence in Syria, the pro-independence sentiment among long-repressed Kurds in northeastern Syria will almost certainly remain a facet of life in the region.

Across the border, as many as 15 million Kurds live in Turkey, primarily in the South and Southeast of the country. Though Turkey is far more liberal in its politics and in the rights it affords to its Kurdish population, the country still has concerns with ethnic Kurds, especially over the issue of Kurdistan. Turkey has been engaged in a long battle against the separatist group the Kurdistan Workers' Party (PKK), which is considered by most states to be a terrorist group with the stated end of establishing an independent Kurdistan by any available means.

In addition to Turkey's concern with the enormous human rights crisis in Syria and the potential for regional destabilization being caused by refugee populations and a civil war right on its doorstep, Turkey's military is doubtlessly mistrustful of the influx of PKK fighters into Syria and the towns in the Northeast of Syria which have raised the flag of the PKK in the wake of retreat by the Syrian military.

In late 2011, Turkey opened a ground and air offensive against PKK targets located in Iraqi Kurdistan, nearby the Turkey-Iraq border. The campaign was triggered after a cross-border raid blamed on the PKK killed two dozen Turkish soldiers and wounded 20 more. All told, as many as 10,000 Turkish troops were involved after NATO endorsed the action. Throughout, Baghdad remained relatively quiet on the issue. While the offensive was short-lived, it does prove illustrative of Turkey's willingness to intervene when violence occurs in its territory or when crucial shifts occurring in neighbors present an imminent danger. Clearly, the referendum does not pose such a threat, but an empowered PKK either in Syria or in Kurdistan might well provoke similar action in the future.

Turkey does not want to lose any territory or sovereignty to Kurdistan and Turkey has lobbied the government in Baghdad to postpone the referendum in the past. It is important to consider throughout the operational planning phase that Turkey and Syria may have very strong incentives to interfere with the Kirkuk Status Referendum if it appears likely that their interests will be undermined.

With the long delay in forming a government following the March 2010 national elections, and the government's focus on containing revolutionary sentiment in early 2011, no official negotiations on the matter have recently taken place. Given early signs that the newly formed and highly fragmented Iraqi government will be characterized as one of gridlock and political impasse, it is not likely that agreement on the terms of the Kirkuk referendum will be reached soon. While the issue may not be at the top of the new government's agenda, it certainly has not faded in importance to Kurdish politicians, who have kept the issue alive by making statements in the media pushing for the vote. Local elections were scheduled to take place after the referendum, according to the long-disregarded schedule, but due to the delays, Kirkuk politicians proposed holding them during the 2009

governorate elections. The electoral law they proposed would have been based on a power-sharing formula that gave Arabs and Turkmen what Kurds considered "disproportionate representation," so the elections were never organized as a result of disagreement over the legal framework. Plans for governorate-level elections began stalling in 2010, but as of the publication of this document, are slated for early 2013. It remains possible that governorate council elections will be able to break some of this deadlock by providing a clearer policy mandate.

## ***B. Political Context***

In theory, Kirkuk at the present is a regular governorate like any other in Iraq which is not organized into a region. In this view, it is a subordinate sub-unit administratively with no special powers. However, *de facto*, Kirkuk is already assuming a "special status" of sorts, and day-to-day governance in the province is politicized with proponents of unity and autonomy each trying to establish facts on the ground in their favor with service and security provision.<sup>7</sup> Since 2003, dual (and sometimes competing) administrative arrangements have developed in Kirkuk between the federal government and the KRG. Kirkuk is often considered the administrative heart of the KRG, although its legislative and executive functions are housed in Erbil, which is the Region's official capital.

Even in nationally-administered areas of the province of Kirkuk, the KRG now provides funding for infrastructure and reconstruction projects, schools, clinics and salaries for ministry officials and teachers. Similarly, security arrangements for Kirkuk have been split (often haphazardly) between the Iraqi Army, *Peshmerga* (the ethnically-Kurdish security forces), Iraqi Police (IPS), Kirkuk Police, Kurdish *asayesh* (secret police), and the remaining elements of the Awakening Councils."<sup>8</sup>

Overlapping security jurisdictions and competing claims have been particularly worrisome insofar as regards the relationship between the *Peshmerga* and the Iraqi Army. In March of 2011, during the height of Arab Spring protests across the Middle East and North Africa, Kurdish *Peshmerga* forces deployed around Kirkuk City and set up a light quarantine. Kurdish political parties contended that the troops were necessary to prevent bomb attacks on the city. At the same time, Arab and Turkmen groups in Kirkuk expressed concern that the deployment was an occupation. The International Crisis Group warned during the deployment that there was a growing risk of a stand-off occurring between the Iraqi Army and the *Peshmerga* as the central government in Baghdad came under political pressure to force the *Peshmerga* out. Prime Minister al-Maliki, needing to retain the confidence of Kurdish members of his coalition, did no such thing, thereby avoiding an altercation.

Yet before the end of the year, a standoff had occurred during a handover of an American-operated airbase in the country's North. Local security forces were wary of allowing troops to Baghdad to take possession of a military installation so close to Kirkuk and the

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<sup>7</sup> Sean Kane. USIP Peace Brief # 31 *Finding Common Ground: Kirkuk as Special Governorate under Article 23*.

<sup>8</sup> *Ibid.*

KRG border region. Senior military officials from the Army were prevented from entering the base and taking control until an agreement was struck between the two parties and the remaining U.S. military commanders.

Clearly, coordination between forces loyal to Baghdad and forces loyal to Erbil will need to occur if the security situation is to be improved in Kirkuk. At the same time, electoral incentives often drive the two sides apart.

Iraq's March 2010 national elections delivered a surprise in Kirkuk with almost a fifty-fifty split of the vote between Kurdish and Arab parties. In previous elections, the Kurdistan Alliance enjoyed a comfortable majority of the vote, with no other list<sup>9</sup> receiving more than 14 percent. In 2010, however, the secular Sunni-backed national Iraqiya List led by Ayad Allawi rivaled the Kurdistan Alliance creating a virtual tie. The closeness of these results raises the prospect of a divisive 51 to 49 result if a referendum were to be held today.<sup>10</sup> These results also raise the question of malfeasance undertaken simultaneously by either side, which possibly could have balanced itself out in the 2010 vote, but would not necessarily do so in the future. Irregularities could have potentially been caused by problems with the voter registry and/or an influx of money from Turkey to influence the outcome.<sup>11</sup>

### ***C. Referendum Legitimacy***

Because of the importance of the status referendum, determining both the actual and perceived legitimacy of the vote is of tremendous significance. There exist issues of legal legitimacy, perceived legitimacy, and philosophical legitimacy. The vote's legal legitimacy can be questioned because of the rift between the constitutional deadline for a vote and the actual prospects for a vote in the near-term. The voting public has questioned the process' legitimacy because of the delays and because of the historically-questionable integrity of voter rolls. Further, the legitimacy of the referendum will be questioned at a basic level; can such a vote be anything more than an ethnic census? If the vote simply comes down to demographics, then the worth of the referendum would be a reflection of the policies that determine who will be allowed to participate, and the accuracy with which the voter rolls reflect demographic realities.

Legally, Article 140 of the Constitution of Iraq mandated that demographic redress, a census, and the plebiscite all take place "by a date not to exceed the 31st of December 2007." In the final days before the 2007 constitutional deadline, the United Nations Special Representative for Iraq negotiated a deal between the stakeholders to delay the vote until June 30th 2008. Necessitated by logistical and security concerns, as well as a

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<sup>9</sup> Lists are groups of parties that have formed the electoral coalitions popular in Iraq. Major lists include the National Iraqi Alliance (NIA), the Democratic Patriotic Alliance of Kurdistan (Kurdistan Alliance or KA), al-Iraqiya List (Iraqi National Movement), and the Iraqi Turkmen Front.

<sup>10</sup> Sean Kane. USIP Peace Brief # 31 *Finding Common Ground: Kirkuk as Special Governorate under Article 23*.

<sup>11</sup> Interview with Dr. Peter Bartu, October 11, 2010.



political impasse between competing political groups, the delay's legal underpinning remains a topic of debate.

After this revised date slipped, along with the second and third reschedules, and all without constitutional sanction, the legal outlook became increasingly uncertain. Outside observers naturally wondered if this meant that the referendum no longer had a legally-binding basis. The process of preparing for the status referendum is interpreted herein as constitutionally legitimate, as eventually holding the referendum will fulfill the objective of Article 140, the specific time requirement notwithstanding. Though the legal framework is of tremendous importance, deciding a date for the Kirkuk Referendum will have to be resolved through political negotiations, as constitutional guidance no longer applies in a clear-cut fashion.

This is not to say that the prospects for the referendum are bleak. The Iraqi public still expects that the referendum will eventually be held. Those in positions of authority within the Iraqi government are still, by-in-large, looking to bring the issue to a vote, albeit several years behind schedule. In late 2010, the newly-formed government of Iraq revised the Committee for the Implementation of Article 140, and in 2012 the committee's membership was reduced to 17 MPs in order to expedite its work. For all of the parliament's maneuvering however, the state of negotiations is not much changed from days of the Article's drafting. To this day, the Kurdistan Democratic Party (KDP) and the KRG continue to hold firmly that such a vote is an absolute necessity, yet little motion is apparent from Baghdad.

Given the stark ethnic divisions in Northern Iraq, one must also consider how legitimate a vote would be if it is cast strictly along such lines. Ultimately, this difficult question must be addressed by the Iraqi people as referendum negotiations continue. The chief concerns here are procedural; this document was designed to pair best practices with an honest appraisal of the challenges to the referendum. If preparations for the referendum are undertaken honestly, and the difficult questions are negotiated in a way that the Iraqi people find appropriate, then the referendum should be a philosophically legitimate exercise. Of course, questions of eligibility must also be negotiated in an equitable way. There must also be safeguards to ensure that voter registration is honest and reliable, the integrity of the voter registry needs to be enhanced and protected, and all operations before and after the vote must strive to meet with international best practices.

In preparing for the referendum, organizers and partners in the international community much tackle the philosophical and political intersection here between security and self-determination. While avoiding or postponing the referendum may provide tranquility now, it also suppresses the desire of the people of the region for self-determination. One of the chief lessons of the Arab Spring has been that stability purchased at the price of a suppressed public is only a temporary stability. Self-determination and security can co-occur, but leadership must be transparent, honest, and deliberate.

## V. Historical Background

There cannot be a solution to the seemingly intractable problems in Kirkuk Governorate without an understanding of the history that shapes the current situation in the province. The vast web of geopolitical alliances cannot be sorted out unless applied through the filter of history. To address the deadlock over the status of Kirkuk, policymakers must first confront Kirkuk's past.

### A. *Kirkuk's Early History*

In 1879 the Ottoman government created the Mosul Vilayet.<sup>12</sup> While this did not include Kirkuk, the city remained an important trade town and was a valuable recruitment center for Ottoman civil servants. With the conclusion of World War I, the Ottoman Empire fell, and Iraq fell under the purview of Great Britain. England ruled until 1932, at which time Iraq was granted independence.

The notion that hostilities between the various ethnic groups are rooted in history is misleading. There was not a significant sense of ethnic tension in Kirkuk during this time. Representation in the local administrative government in the early 20<sup>th</sup> century was based on population, not ethnic quotas. During the 1921 referendum regarding Amir Faysal, some Kirkukis supported Faisal but *most* refused to participate and instead requested that Kirkuk be administered as an independent province.<sup>13</sup> By 1935 the Baghdad Parliament even appointed Kirkukis to represent the province in the central government, with the composition of the Kirkuki delegation being four Kurds, one Turkmen, and one Arab.<sup>14</sup>

Today's ethnically-charged divisions in Kirkuk cause the casual observer to assume that such ethnic divisions existed in the region from the beginning, but history contradicts this perception and demonstrates that the ethnic problems did not arise until exogenous forces instilled division.

Nevertheless, modern day Kirkuk faces severe challenges that largely break down along ethnic lines. One of the historical issues feeding the tension is the lack of consensus among Iraqis as to Kirkuk's original inhabitants. This is an important question because it is bound up with historical policies of ethnic cleansing, current contradictory claims, and the legal requirements for *normalization*. Each of these points are considered at length elsewhere in this document, but at the present it is important to examine the "original inhabitant" question in more depth.

Kurds posit that the Kurdish people predate all other resident groups and that after being settled in the region; the Turkmen later migrated to Kirkuk. Not surprisingly, Turkmen claim that descendants of the Turkish people settled in Iraq between the 11<sup>th</sup>-13<sup>th</sup> centuries.<sup>15</sup> In fact, Gertrude Bell, the Oriental Secretary to the British Civil Administrator

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<sup>12</sup> Vilayets were large, second-tier administrative divisions (a kind of quasi-province) of the Ottoman Empire.

<sup>13</sup> "The Iraqi Turkomen and Turkey." Petrosian, Vahram. *Iran and the Caucasus*, Vol 7 pp 279-308

<sup>14</sup> "The Kirkuk Conundrum." Natali, Denise. *Ethnopolitics*, Vol 7, No.4, 433-443, November 2008

<sup>15</sup> "The Kurds of Iraq." Edmonds, CJ. *Middle East Journal*, Vol 11 pp 52-62

in the 1920s, stated that “the inhabitants of Kirkuk are largely of Turkish blood, descendants of Turkish settlers dating from the time of Seljuks.”<sup>16</sup> Bell’s assessment is buttressed by the late historian Hanna Batatu: “Kirkuk had been Turkish through and through in the not too distant past; but by degrees, Kurds moved into the city from the surrounding villages... by 1959, they had swollen to more than one-third of the population, and the Turkmen had declined to just over half.”<sup>17</sup> Unfortunately no dependable census can corroborate either side’s arguments.

The year 1927, while still under British administration, brought about an event that would change the trajectory of Kirkuk entirely: the discovery of significant oil reserves. In an effort to obtain the petroleum riches, the central government began sending Arab tribes to settle in Kirkuk and offered Arab officers positions in the local administration. For the first time, ethnicity is introduced by foreign governments as a wedge to preclude any one group from consolidating power. To prevent the Kurdish claims of Kirkuk, both the British and Central Iraqi governments made use of the Kurdish-Turkmen controversy over Kirkuk. The international complexity of Kirkuk led later observers to dub the city the “Jerusalem of Iraq.”<sup>18</sup> In 2011, the claim that Kirkuk was the Jerusalem of *Kurdistan* got the president of Iraq, Jalal Talabani, into hot water with the governing coalition which opposed such a notion.

### ***B. Kirkuk during the Ba’athist Regime***

Arab Ba’athist rule from 1968-2003 created a heightened sense of Arab nationalism, which reshaped Kirkuk’s relationship with the central government. As mentioned above, Kirkuk became the center of the state’s Arabization program, especially considering the aforementioned desire to obtain Kirkuk’s oil. In 1972, Baghdad nationalized the petroleum industry,<sup>19</sup> and the Arab government expelled Kurds and Turkmen from their homes, replacing them with Arab settlers to alter the demographic balance in key provinces. By 1987, Kirkuk had become an Arab-majority province, proving Baghdad’s Arabization efforts successful.

The Ba'athist al-Anfal Campaign of the mid-to-late-1980s resulted in the deaths of hundreds of thousands of people belonging to ethnic minority communities in the North of Iraq. The Kurdish minority suffered the greatest number of deaths and displacements and their plight has been the most recognized in recent years. The Arabization program of displacement and forced demographic change in the North did not truly halt until after the First Gulf War at which point the central government lost the ability to operate militarily in the area. Similarly, brutal attacks on Kurdish civilians were common until the late 1980s—perhaps most notorious to the international community were the March 1988 mustard gas and sarin nerve gas attacks on the city of Halabja which killed as many as 5,000 people.

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<sup>16</sup> <http://www.meforum.org/1074/who-owns-kirkuk-the-Turkomen-case>

<sup>17</sup> <http://www.meforum.org/1074/who-owns-kirkuk-the-Turkomen-case>

<sup>18</sup> “The Iraqi Turkomen and Turkey.” Petrosian, Vahram. *Iran and the Caucasus*, Vol 7 pp 279-308

<sup>19</sup> “The Kirkuk Conundrum.” Natali, Denise. *Ethnopolitics*, Vol 7, No. 4, 433-443, November 2008

Despite the Ba'athists' oppressive and often violent approach to the region, Baghdad realized from a very early date that the Kurds were a significant force in the region and could not be ignored and marginalized altogether. As a result of political calculation, the Iraqi central government came to an agreement with the Kurds to create an autonomous region consisting of three Kurdish governments and other adjacent districts that had been determined to be of Kurdish majority.<sup>20</sup> The Autonomy Agreement of 1970, as it was known, excluded Kirkuk from the three Kurdish regions, which therefore led to the immediate collapse of the agreement.

Turkey, meanwhile, did not approve of an autonomous Kurdistan, and instead supported the Turkmen in their claim over the region. President Turgut Ozal of Turkey even tried to annex northern Iraq to create a federation between Turkey and Iraqi Kurdistan in order to preclude it from becoming an autonomous region. Turkey shrewdly employs the Turkmen as an important pawn to be leveraged against Baghdad; whenever the question of Kurdish autonomy becomes real, Ankara publicly deplores the “mistreatment” of Turks in Iraq. Turkey understands that if it can keep the region unsettled, then an agreement in favor of the Kurds remains illusory.

In many respects, Turkey has a right to cry foul about the treatment of the Turkmen in Iraq. In 1998, the Russian Source Book stated that the whole population of Iraq was 22.1 million people, of which Arabs are 76%, Kurds 19%, and Turkmen 2%.<sup>21</sup> The Iraqi government, however, does not consider Turkmen to be a separate ethnic group; Article 5b of the Interim Iraqi Constitution of 1990 states that the Iraq people are composed of two principle nations: the Arabs and the Kurds. The utter disregard for Assyrians, Mandaeans, Shabaks, Roma, and Iraqi Turkmen in particular further exacerbated the existing animosity between the central government, the Kurds, and the Turks, and did nothing to settle the status of Kirkuk. Instead, it aggravated Turkey which has lobbied against an independent North in Iraq. The Kurdish parties, meanwhile, believe they deserve to have an autonomous region with Kirkuk included, but they are halted by the central government.

### ***C. Kirkuk after the United States' Invasion***

In 2003, a United States-organized coalition invaded Iraq and toppled the Ba'athist government. To the surprise of many observers, Kurdish leaders were among the first to arrive in Baghdad to participate in the work of rebuilding the state. The Kurdistan Regional Government (KRG) and Baghdad worked to arrange power sharing agreements in post-Saddam Iraq, but the two parties cannot negotiate the status of Kirkuk. In 2005 a constitution was drafted to replace the *Law of Administration for the State of Iraq for the Transitional Period* (TAL), and is approved by referendum on October 15, 2005. The Kurds are united around the reversal of the *Arabization* policies of the Ba'athist regime; the reversal of this process is referred to as “*normalization*” in the 2005 constitution.

During the Coalition Provisional period (CPA), the United States banned development work and infrastructure improvements in Kirkuk so as to maintain the status quo in the

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<sup>20</sup> <http://www.meforum.org/1074/who-owns-kirkuk-the-Turkomen-case>

<sup>21</sup> “The Iraqi Turkomen and Turkey.” Petrosian, Vahram. *Iran and the Caucasus*, Vol 7 pp 279-308

governorate to avoid complicating competing claims. While ostensibly the United States tried to avoid further exacerbating the political imbalances in Kirkuk, the lack of activity left many Kirkukis without basic services. The disregard of Kirkuk by the central government and by the United States caused "a shared feeling of deprivation" among residents of Kirkuk for many years, also fostering the notion that they are part of a special province.

Suffice to say, the Kurdish parties want to establish an independent economy that is not based on the central government, which up to this point is providing 95 percent of Kirkuk's funding. Kurdish control of the oil revenue would provide the economic autonomy necessary to break from the central government. But aside from Baghdad's disapproval of this idea, Turkey's refusal to recognize the KRG as a legitimate political entity in Iraq means that it would only deal with Baghdad over oil and thus undermining the KRG's bid for economic autonomy. Yet there are tentative moves in a cooperative direction between Turkey and Kurdistan insofar as concerns oil exports and new pipeline deals. If the relationship becomes stronger over the coming years, it will become increasingly likely that Turkey will ease its opposition to a referendum, especially if Ankara believes such a vote will demobilize elements of the PKK.

It is claimed that 80% of the Kurds voted for Iraq's constitution, and leads some to believe that the Kurds desire unity for Iraq. Kurdish leaders, however, state that their assistance in rebuilding the state is on the precondition that Iraq's system be federal. But the type of federalism is also extremely important. The United States and the Arabs support a mono-national federalism that would envisage a measure of self-government for the 18 Iraqi provinces.<sup>22</sup> This model of federalism encourages further integration in a much divided country, which benefits the United States' interests in building a reliable ally in the region, and is also auspicious for the central government as it ensures governability over the various regions.

However, the Kurds see mono-national federalism as a tactic to strip them of their own autonomous region; the Kurds would not be able to hold either the head of government or the head of state in any one region, and would thus have little influence over the decision making process. Kurds are surveyed in 2004 saying that they would agree with federalism only if it included Kirkuk as one of the provinces.<sup>23</sup> The increasing number of stakeholders makes the Kirkuk question extremely convoluted.

In some ways, the question of Kirkuk is still on the table because of the Sunni-Shi'a gap over many issues in Iraq. A lack of political consensus between these groups protects the Kurds from facing a unified front over Kirkuk. But a lack of agreement between the Sunnis and the Shi'as also creates a perverse incentive for both the Sunnis and Shi'as; if control of Kirkuk is ceded to the Kurds, then the Sunnis lose valuable oil revenues from Kirkuk, and would thus turn all of their attention to the oil-producing Shi'a-dominated south. The Shi'as, not wanting to draw this sort of attention and potential hostility to their region, are incentivized to keep the issue of Kirkuk from being resolved, because it keeps Kurdish

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<sup>22</sup> [http://www.uniraq.org/documents/iraqi\\_constitution.pdf](http://www.uniraq.org/documents/iraqi_constitution.pdf)

<sup>23</sup> <http://www.meforum.org/1074/who-owns-kirkuk-the-Turkomen-case>

pressure on the Sunnis and keeps the Sunnis at the negotiating table. Furthermore, a Kurdish-dominated Kirkuk would destroy the Sunni's dreams of an Arabic identity for Iraq.

Indeed, there are many stakeholders competing over the status of Kirkuk and the other disputed territories. Foreign powers, such as the United States, Saudi Arabia, Iran, Syria, and Turkey, each have their own contrasting desires for the region, and each exercise their influence to obtain a favorable solution vis-à-vis their interests. Any solution to Kirkuk must take into account the historical complexity of the region as well as these myriad competing interests.

## VI. Legal Framework

### A. Definition and Purpose

This chapter enumerates the legal framework currently in place which requires and regulates the referendum which is to take place in Kirkuk and the other disputed territories. Among the documents included in the framework are relevant clauses in the Constitution of Iraq, electoral and other laws, relevant decisions of the Supreme Court of Iraq, and United Nations Security Council resolutions.

These documents discuss several important legal issues, such as the status of Kirkuk, the prerequisites for the referendum, boundary issues, voting rights, power sharing, and the like. This section will consider the most-pressing legal issues concerning the referendum.

**Table I**

**Referendum Legal Framework Summary**

<b>Legal document</b>	<b>Status of Kirkuk</b>	<b>Boundaries and voter registry</b>	<b>Other issues</b>
Transitional Political Agreement	Lays out the three steps to determine the status of Kirkuk	Outlines the forced deportation and emigration during the Saddam era.	
Iraqi Constitution	Elaborates the three steps: normalization, census, and referendum		Stipulates that the power of the federal government can be delegated to the governorates.
Election Laws and Amendments		Regulates "special voting", the voting rights for military employees, prisoners and detainees, patients in hospitals, and perhaps most importantly, Internally Displaced People and emigrants abroad.	
Law on Executive Procedures to Form Regions			Stipulates the procedures for forming a region in detail, including referendum procedures
Provincial	Regulates the power		

Elections Law	distribution in the Kirkuk local election committee and requires a demographic enquiry in Kirkuk		
Law on Elections of Kirkuk Governorate Council		Stipulates how to establish a voter registry in Kirkuk	Regulates power-sharing among different ethnic groups
2010 Budget Law	Bestows rights to the governorates to enjoy the proceeds of resources extracted locally. As a resource-rich governorate, Kirkuk stands to benefit greatly from this law.		

### ***B. Supreme Court Decisions***

Few cases brought before the court are related to the situation in Kirkuk. The most noteworthy is a ruling made in October 2010. This case was in response to a request of the Maliki government as to the relation between the upcoming census and the validity of Article 140. The question was “Does the census planned for December, which includes a field called “ethnicity” on its questionnaire, have any relationship to article 140 of the constitution [on disputed territories such as Kirkuk]?” The court ruled that the census was not required to include the question of ethnicity and that the conduct of the census should be seen as separate from the "disputed territories" question.<sup>24</sup>

The census date has slipped repeatedly since the court's ruling, but the judicial underpinning remains very helpful in at least one way. By removing the requirement that ethnicity be included in the census, participants can feel safer in participating and political parties can harbor less suspicion as to the potential outcome of such a tally. In the estimation of our researchers, asking questions of ethnicity on the census would be counterproductive. The ethnic questions regarding normalization can be answered through statistical analysis of the numbers of returning families and tracking the departure of those compensated to relinquish land to previous owners. If a population count is conducted and data as to the ethnic composition of the governorate becomes available, political stakes are raised and expectations for the outcome of the vote will mirror ethnic breakdown rather than political inclination. Focusing census operations on ethnicity would encourage

<sup>24</sup> Ruling available online, English translation and summaries from Zedalis, Rex. *Oil and Gas in the Disputed Kurdish Territories: Jurisprudence, Regional Minorities, and Natural Resources in a Federal System*. 2012.



violence and discourage a legitimate vote by validating one group's claim to ownership and invalidating the claims of the others.

### ***C. United National Security Council Resolutions***

There have been five Security Council resolutions, entitled or extended the mandate of United Nations Assistance Mission for Iraq (UNAMI). UNAMI has been involved in the discussion of the future of Kirkuk. Resolution 1483 in 2003 was the legal document the Coalition Provisional Authorities cited to vest itself the authority over the Iraqi government until June 2004.

### ***D. Critical Legal Issues***

#### ***1. Special Status of Kirkuk***

In the simplest sense, Kirkuk is a governorate similar to others that are not part of a region. However, numerous legal documents and formalized government actions have bestowed something of a special status on the governorate of Kirkuk and its districts.

In the Constitution of Iraq, Kirkuk was the only governorate that was specifically named as "disputed". After the Law on Executive Procedures to Form Regions, Article 23 of the Provincial Election Law, introduced power-sharing and "demographic enquiry" in the case of Kirkuk, it was rendered different from the other governorates. In the amendment to the Election Law, Article 5 and 6 specifically mentioned Kirkuk and opened up the possibility for examination of the voter registry, thereby separating local elections from the referendum in procedural terms.

The special status of the governorate affects the options available for the future of Kirkuk. It provides ground for an autonomous Kirkuk no matter whether it joins a region or not. This means that even if Kirkuk joins the Kurdistan Region, it should still enjoy a different status from the rest of region, including entitling maximum autonomy to the Arab and Turkmen communities, as well as retaining its unique power-sharing system of government. If the referendum's outcome opposes joining the Kurdistan Region, Kirkuk governorate should enjoy the same level of autonomy that is enjoyed by *regions*, not simply the level of governorates.

One obstacle for an independent autonomous Kirkuk is the Law on Executive Procedures to Form Regions, which stipulates that a region has to be composed of more than one governorate. This prevents Kirkuk, as a single governorate, from enjoying the same level of autonomy as the Kurdistan Region. But Article 123 of the Constitution of Iraq states that "powers exercised by the federal government can be delegated to the governorates..." with the consent of both governments.

Consequently, there seems to be a fair deal of legal ambiguity here caused by conflicting legal clauses. Legal conflicts such as these should be resolved in order to make Kirkuk

eligible to become an autonomous governorate, should the voters choose that as their preferred outcome in the referendum.

## *2. Kirkuk Boundaries*

There has been a lack of discussion over the boundaries issue in the current legal framework. In Article 58 of the Transitional Administrative Law (TAL) and Article 140 of the Constitution, there was no clear definition of the phrase “disputed territory”, which technically meant any dispute over territory in any part of Iraq. In Section B of Article 58, there was an outline of the procedure for “remedying the unjust changes” to administrative boundaries made by the previous regime. For Kirkuk, this included losing three districts of Kirkuk province: Chamchamal, Kalar, and Kifri.<sup>25</sup> To change the boundaries, three other governorates, Salah al-Din, Diyala, and Sulaimaniya will be involved.

But this way of thinking is also troublesome, as the alteration of boundaries did not only occur to Kirkuk. During the rule of the Ba’athist regime, the provincial boundaries in the whole nation were altered several times, in most cases not due to ethnographic reasons. Oversimplifying this history will bring an unfair advantage to one ethnic group.

A more serious problem is the discrepancy between the mechanisms established to resolve territorial disputes and the nature of the territory the Kurds sought to reclaim. Article 140 establishes a census/referendum mechanism resolving all of the problems associated with disputed territory, but fails to identify the administrative level at which these are supposed to take place.

## *3. Delay of Referendum*

The Kurds’ insistence on the inclusion of a hard deadline in Article 140 of the constitution has caused considerable legal trouble for implementation of the provision. Five years after the deadline, the referendum has still yet to be held. A week before the expiration of the article 140 deadline, the UN special envoy to Iraq, Stefan De Mistura, proposed a delay of six months in the implementation of Article 140. The deal was endorsed by a large majority of the Kurdish parliament, but its actual legal implications are unclear, given the different jurisdictions involved and the ongoing violation of the constitution caused by non-compliance with the referendum clause. Clearly, the constitution has supremacy, and the authority of the Iraqi Kurdistan Parliament to modify even operational details of a national-level law is questionable.

Many political groups believe that, as the deadline has passed without a vote, the referendum should not be held at all because any referendum's provisions will be null and void irrespective of the outcome. The unofficial De Mistura proposal, endorsed only by

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<sup>25</sup> The district of Tuz is also included on occasion in lists of lost territory. The hierarchical structure of administrative units in Iraq, in decreasing order, is: State, Governorate / Province, District, Municipal. Chamchamal, Kalar, Kifri, and Tuz districts were removed from the governorate of Kirkuk, while Kirkuk, Al-Hawiga, Daquq, and Makhmur districts remained. Chamchamal is now a district of the Sulaymaniyah Governorate, as is the district of Kalar. Kifri is now a district of the Diyala Province.

the Kurdish Parliament, cannot alter the terms of a constitutional article. At the same time, Article 142, which also missed constitutional deadlines, was extended by a vote in the council of representatives.

Still, as mentioned throughout this document, and as argued by many supporters of the referendum, the Kirkuk Status Referendum can claim a far greater pre-existing legal basis than can claim most status referendums in history. The constitutional demand for a vote and the level of de-facto autonomy enjoyed by the Kirkuk governorate both lend considerable weight to this claim. Nonetheless, one of the major questions yet to be resolved legally is that of ballot language. What, precisely, will be the question put to voters when the referendum does take place?

#### 4. Ballot Language

There are no less than four general options that can be put in front of Kirkuk's voters:

- **One** – Rejection of the referendum question. Remaining under the direct control of the Iraqi government, as with the other governorates that have not joined any region.
- **Two** - Establishing a special Kirkuk autonomous governorate that does not belong to any region. The governorate should enjoy the same autonomy as other regions, and power is to be shared by different ethnic groups.
- **Three** - Joining the Kurdistan Region, but Kirkuk still enjoys a high level of autonomy that allows power-sharing among ethnic groups.
- **Four** - Joining the Kurdistan Region, and coming under the direct control of that regional government, as with the other governorates in the Kurdistan Region.

**Table II**  
**Referendum Ballot Language Options**

	Special Status	No Special Status
Inside KRG	Three	Four
Outside KRG	Two	One

The pre-existing *special status* of the province of Kirkuk gives a strong legal ground for the second and third options.

#### ***E. Additional Legal Issues***

Other important legal issues including voter registration, dispute resolution, institutional responsibilities, and voting procedures will be covered in their respective section. Other relevant jurisprudential information and documents can be found in the annexes to this document.

## VII. Institutional Responsibilities

### A. Electoral Operations and Management

The actual and perceived legitimacy of the conduct of the Kirkuk referendum will be a critical factor in ensuring both that the vote remains free of violence, and that the results are accepted by all interested parties. Therefore, the electoral management body must execute the referendum in the most professional, impartial, and transparent manner possible, ensuring that the vote is conducted in line with technical best practices.<sup>26</sup>

As in previous elections and referenda, the national Independent High Electoral Commission (IHEC) will administer the Kirkuk referendum. Appointed by, and under the direct supervision of the Iraqi Council of Representatives, IHEC is a highly-competent and professional body comprised of eight permanent election officers and one chief electoral officer. It has nineteen offices in the governorates, including two in Bagdad and a regional office in Kurdistan. Though the Kurdistan Regional Government (KRG) continues to debate the establishment of its own regional electoral management body (EMB), one has not yet been formally established with the authority to conduct operations in Kirkuk.<sup>27</sup> As such, the IHEC remains the only national-level institution capable of undertaking the referendum. Should the referendum be delayed further and the KRG formally establish its own EMB, the structures explicated below would need to be revisited.

Under the overall authority of the IHEC Board of Commissioners and oversight of the Article 23 committee, IHEC will establish implementation teams for the Kirkuk referendum in parallel to, and drawing upon, existing IHEC management structures:

**Kirkuk Referendum Task Force**, within IHEC management structure and staffed by IHEC officers, charged with overseeing all aspects of the conduct and execution of the referendum, including forming and managing the teams described below. The Referendum Task Force will also manage all public affairs, press releases and relations with international and domestic media regarding the operations and outcome of the referendum.

**Operations, Procurement and Logistics Team** charged with all aspects of establishing voting operations. These functions will include planning and designing polling centers, readying polling centers, recruiting and training polling center staff, distributing voting material and computer technology, and conducting domestic and international procurements.

**Voter Registration Team** charged with overseeing all aspects of voter registration for the referendum. The team will be composed of sub-working groups whose task is to ensure

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<sup>26</sup> See the International IDEA Code of Conduct for the Ethical and Professional Administration of Elections, [http://www.idea.int/publications/conduct\\_admin/upload/adm\\_english.pdf](http://www.idea.int/publications/conduct_admin/upload/adm_english.pdf)

<sup>27</sup> E-mail with Sarah Olsen, UNAMI Office of Electoral Assistance, 11/27/2010. IHEC order number 22 lays out the functional procedures for establishing a regional electoral management body in Kurdistan (see <http://ihec-iq.com/en/index.php/news/3213.html>), though the Kurdish Regional Government has yet to pass an electoral law legally establishing the regional EMB due to ongoing political wrangling over its composition (see <http://www.kurdiu.org/ar/hawal/?pageid=48941>)

the execution of the following functional areas: public information dissemination, domestic registration, international registration, and database and information management. Decisions on voter registration will follow previous practices of determining the Kirkuki electorate. The team will benefit from the technical expertise described in further detail below.

**Complaint and Appeals Team** charged with adjudicating disputes involving voter registration, campaigning, organized complaints and election results issues. As necessary, the Complaint and Appeals Team will refer cases to the Iraqi Supreme Court for further adjudication.

**Verification Team** charged with providing the first line of referendum results verification, and formulating a recommendation for final verification to the Iraqi Supreme Court.

**Liaison Team** charged with coordinating IHEC operations with local, municipal and regional government authorities, and other interested stakeholders. This liaison function includes coordination with both national and international security and military services, where appropriate. Finally, the liaison team will work with civil society organizations, as discussed below, to augment voter education efforts.

## ***B. Technical Assistance***

Technical assistance for the Kirkuk Referendum will be provided under the umbrella of UNAMI's Electoral Assistance Team (EAT). The UN EAT is composed of a range of organizations and stakeholders, including UNAMI Civil Affairs, non-governmental organizations, and a small number of operational donor agencies.

For the unique circumstances of the Kirkuk Referendum, the UN EAT will establish an internal Kirkuk Referendum Support Group charged with supporting parallel IHEC structures formed for executing the referendum. Regular referendum support coordination meetings, chaired by UN and IHEC representatives, will manage the coordination of assistance. Specific assistance sectors will include:

- Provision of technical assistance experts to advise IHEC's Kirkuk Referendum Central Committee
- Funding and logistical assistance for the Voting Operations, Procurement and Logistics Team
- Training and technical assistance support to the Voter Registration Team

A range of international donors will provide funding for international technical assistance. The UN, through the UN Development Program (UNDP) will initiate a Kirkuk Referendum Support fund for managing and disbursing donor contributions directed specifically for the referendum. The administration of this fund will be done by the Kirkuk Referendum Support Group within the UN Electoral Assistance Team.

### ***C. Electoral Observation***

In order to provide the Iraqi voters, IHEC, political parties, civil society, and the international community with assessments, evaluations, and observations of the Kirkuk referendum process, a new structure, modeled largely on the successful International Mission for Iraqi Elections (IMIE) will be formed. This new body - the Kirkuk Referendum Monitoring Group (KRMG) – will be designed to provide a politically neutral, impartial assessment of the conduct of the referendum, utilizing existing best practices for electoral monitoring.

A steering group composed of technical experts from international stakeholders will oversee KRMG operations in all phases of referendum operations, including recruiting referendum monitors from stakeholder nations and interested organizations, and compiling and disseminating KRMG reports to interested parties. While the composition of the KRMG steering committee may be altered to include representatives from regional electoral bodies, in order to ensure full impartiality, its members will be chosen on the basis of technical professionalism, from a geographically diverse set of countries, and will not include any state with direct or significant political, economic or security interests in Kirkuk or the Kurdistan region more broadly.<sup>28</sup>

### ***D. Out-of-Country Voting***

Given their previous experience with numerous elections and referenda both outside and within Iraq, including the January 2005 elections for the Iraqi National Assembly, the Governorate councils and the Kurdistan National Assembly,<sup>29</sup> the International Organization for Migration (IOM) will be in charge of organizing out-of-country voting (OCV) for the Kirkuk referendum, pending finalization of a Memorandum of Understanding with IHEC.

As in previous Iraqi elections, IOM will first conduct an assessment to ascertain the distribution of eligible international voters based on the criteria identified above, as well as options for OCV operations in light of this assessment. Final decisions about the locations and procedures of IOM OCV operations will rest with IHEC, which will also provide staff to monitor IOM OCV operations.

### ***E. Security***

Throughout all phases of the referendum process, national, regional and municipal law enforcement structures, including Iraqi military and intelligence agencies, will be the

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<sup>28</sup> The IMIE Steering Committee was comprised of members from Canada, Association of Central and Eastern European Election Officials (ACEEEO), Albania, Australia, Bangladesh, Mexico, Panama, Romania, United Kingdom, Yemen, Ghana and Indonesia (<http://www.imie.ca/steering.html>). A similar distribution of countries can be expected for the KRMG.

<sup>29</sup> J. Thompson “Iraq: a large diaspora and security concerns,” *Voting from Abroad*, International IDEA, [http://www.idea.int/publications/voting\\_from\\_abroad/upload/chap7-iraq.pdf](http://www.idea.int/publications/voting_from_abroad/upload/chap7-iraq.pdf)

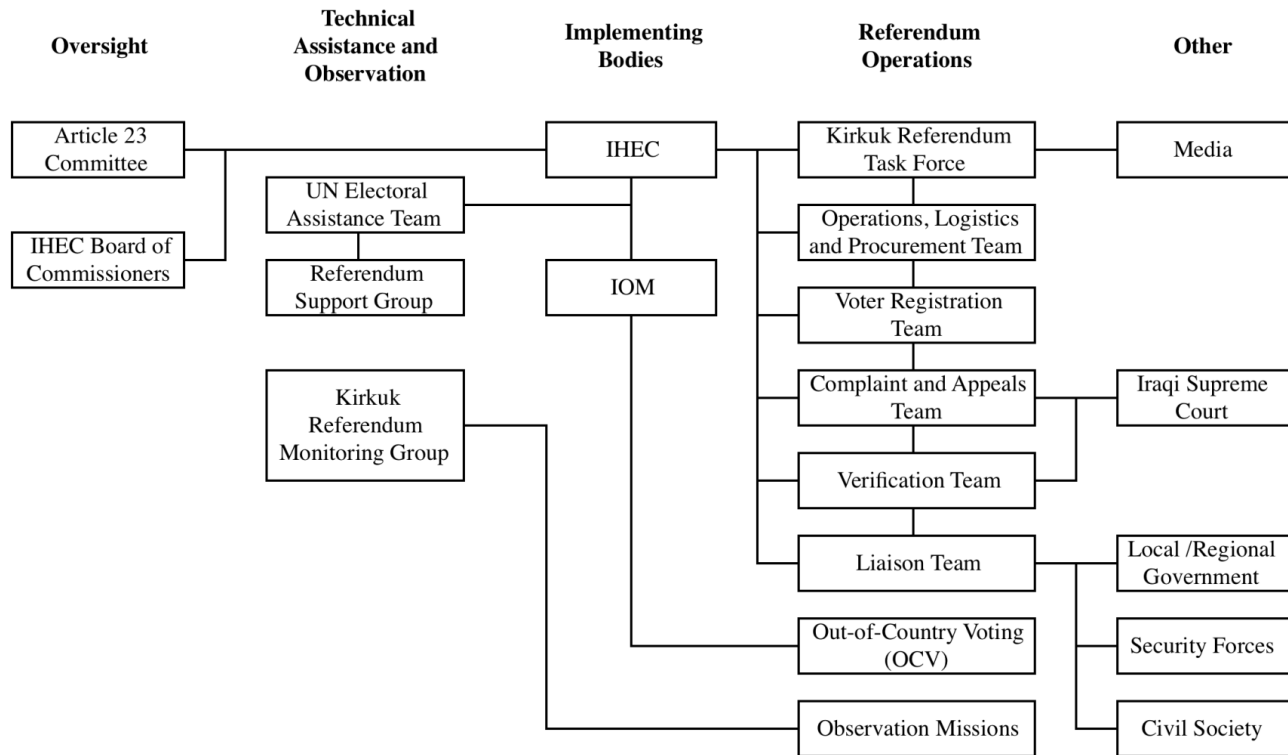
primary actors involved in ensuring security. Iraqi law enforcement will be the primary focal point for ensuring security during all phases of the referendum, including at polling centers during the vote. The next chapter of this operational concept will deal with security arrangements at greater length.

#### ***F. Voter Education***

IHEC, and specifically the Voter Registration and Liaison teams identified above, will be primarily responsible for voter education and information regarding the conduct of voter registration operations, operations of polling centers and other important pieces of information. As in previous elections, civil society will also play a large role in voter education efforts. Organizations such as the Bethnahrain Free Women's Union, the Iraqi Institute for Human Rights (Kirkuk city) and the Kurdish Institute for Elections will liaise regularly with IHEC outreach staff, KRMG monitors and others, and provide an additional means for transmitting information about referendum preparations and highlighting issues.

For a hierarchical diagram of institutional responsibilities, see Figure 1 on page 31.

**Figure 1: Kirkuk Referendum Institutional Responsibilities**





## VIII. Referendum Security

### A. Threat Assessment

The security situation in Kirkuk remains tenuous as a result of deep ethnic cleavages and history of violence in the region. Kirkuk was once known as one of the most-violent hotspots in all of Iraq, and the prospect of a referendum is likely to instigate further political conflict and violence. Though bloodshed has declined remarkably from its high point, the ethnic conflicts between Kurds, Arabs, and Turkmen, and their ongoing struggle for power, fuel insecurity in Kirkuk and make security preparations for the referendum of exceptional importance.

Each of the three major ethnic groups at play in Kirkuk stake a claim to historical and contemporary ownership of the Kirkuk region. The struggle for power intensified throughout the 1900s, particularly as the Arabization of Northern Iraq<sup>30</sup> inflamed cultural and ethnic differences. After World War I, “class, nationalism, and communism merged with the symbols and emotions of perceived ethnic differences [and thus] it was a relatively easy task for the state to engineer situations in which Kurds and Turkmen would take up arms against each other under a variety of banners.”<sup>31</sup>

The Kurd-Turkmen conflict reached its worst point in 1959 when street fights between Kurds and Turkmen transitioned into what many perceive to be planned, ethnically-motivated violence as Kurdish members of the Iraqi Army attacked Turkmen homes. Between 31 and 79 citizens were killed, nearly all of them Turkmen. This is known in the region as the Turkmen Massacre of 1959.<sup>32</sup> Since that time, oppression and violence towards the Turkmen population in all of Iraq, as well as in Kirkuk specifically, has continued - particularly throughout the Saddam Hussein regime as the state intentionally fueled the conflict between Kurds and Turkmen. Furthermore, the Kurdish population has long been embroiled in a broader nationalist movement that extends beyond Kirkuk. Some elements of this movement are simply political, as the Kurds are the largest ethnic group without a national homeland; some elements, such as the PKK, are radicalized and focused on pursuit of nationalist ends by means of violence. The broader nationalist movement has added further motivation on to bring to bear any relevant historical claims that Kurds have to the region. There remains concern that extreme elements within the nationalist movement will resort to violent measures during a referendum in order to intimidate rivals (be they ethnic Arabs, Turkmen, or even non-cooperative Kurds) and thereby gain a better political footing in the governorate.

Though it was discussed at greater length in the section on Kirkuk's history, it is important to note that antagonism between Kurds and Arabs remains visible in Kirkuk today. Memories of the Ba'athist al-Anfal Campaign in the mid-to-late-1980s, which resulted in

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<sup>30</sup> Defined here as being violent, guided demographic change “associated with the policy of removing Kurds from Kirkuk and the wider region,” Liam D. Anderson and Garth R.V. Stansfield. *Crisis in Kirkuk*. Philadelphia: University of Pennsylvania Press. 2009.

<sup>31</sup> Anderson and Stansfield, pp. 62.

<sup>32</sup> Anderson and Stansfield. Pp. 33-34.

the deaths of a tremendous number of Kurdish civilians, remain clear. The previous regime's Arabization program is also vividly remembered in the governorate. A history of forced migration, ethnic cleansing, and genocide leave the Kurd-Arab relationship in Northern Iraq fraught with historic mistrust, despite the enormous gains in cross-ethnic cooperation in recent years.

Although all three groups have been at odds with one another throughout the region's recent history, most security assessments mark the established binary conflict pattern between Kurds and Turkmen as the most-likely to spark political violence. Clearly, belligerents can come from any ethnic group and it is intensely problematic, given the delicacy of the situation, to label any group as likely perpetrators. This being said, recent Arab-Kurd conflicts in the city are largely products of land disputes and economics; Turkmen-Kurd conflicts in the city deal largely with "political ownership" and economic rents.

After the U.S. invasion of Iraq in 2003, Kirkuk and its security was managed by U.S. forces and the *Peshmerga*.<sup>33</sup> In the post-invasion chaos, the *Peshmerga* stabilized Kirkuk well before U.S. Special Forces arrived. Security in Kirkuk is now spread among the *Peshmerga*, the Iraqi national army, Iraqi Police Service, the *asayesh* (the Kurdish secret police), and the remaining elements of the groups once known as the National Councils for the Awakening of Iraq (alternatively, the *Sons of Iraq*).<sup>34</sup>

While the rest of the country faced insurgency leftover from the ousted regime and violence stemming from long-simmering sectarian divisions, Kirkuk's internal strife stemmed from persistent ethnic conflicts. Stabilizing Kirkuk demanded a distinct approach that the U.S. and its international partners established relatively slowly. The U.S. relied on Kurdish allies early on, thus consolidating *de facto* Kurdish control across much of Iraq's North, making it difficult for the United States to maintain a neutral political stance on the issues surrounding the Kirkuk Referendum. Indeed, some have described the U.S. strategy in this regard as "issue avoidance."<sup>35</sup> With coalition forces out of Iraq, the current players cannot avoid the issue much longer if a peaceful referendum is to occur and stable sub-national institutions survive in the North.

Moreover, the security situation across Iraq is such that "not all governorate and district offices [of Iraq's electoral management body, IHEC] were open or staffed at all times."<sup>36</sup> It is imperative that security forces continue recruiting and training Iraqi forces so that this problem can be ameliorated before the Kirkuk referendum and the Independent High Electoral Commission (IHEC) offices, especially in Northern Iraq, can be fully operative.

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<sup>33</sup> The ethnic Kurdish armed forces have been slowly downsizing since early 2011, but still retain close to 250,000 soldiers—a number comparable to many states' militaries in the region. The *Peshmerga* is armed with air defense systems, APCs, heavy artillery pieces, helicopter gunships, and main battle tanks. Some of their hardware was captured from the Iraqi Army prior to occupation, while other armaments were purchased by Erbil.

<sup>34</sup> Sean Kane. "Finding Common Ground: Kirkuk as a Special Governorate." Peace Brief. U.S. Institute of Peace. May 2010.

<sup>35</sup> Anderson and Stansfield, 96.

<sup>36</sup> Iraq: International Institution Design. ACE The Electoral Knowledge Network. [www.aceproject.org](http://www.aceproject.org).

Between January 1 and September 30, 2007 alone, 318 citizens were killed and another 1,376 were injured in Kirkuk. According to the Iraqi National Police, the complete incidents included<sup>37</sup>:

- Citizens Killed, 318; Injured, 1,376
- Police Killed, 54; Injured, 280
- Iraqi National Guard: Killed, 37; Injured, 66
- Bombs: Exploded, 744; Defused, 494
- Car Bombs: Exploded, 50; Defused, 76
- Mortar and Rocket Attacks: 459
- Bodies Found: 102
- Kidnappings: 103

While bloodshed is certainly down from its high point, we have continued to track persistent violence in the Governorate of Kirkuk. Car bombings, assassinations, and other violence are relatively common, particularly in Kirkuk City as of the date of publication.

In addition to ethnic and political motivations, long-standing turf wars and property disputes motivate much of the violence in Kirkuk today, primarily between Kurds and Arabs. In the post-invasion period, Kurdish families returned to areas that they had previously vacated (either by choice,<sup>38</sup> or under duress caused by Ba'athist Arabization policies<sup>39</sup>); many of these areas had since been populated by Arab families. Conflicts that began as simple property disputes escalated into full-fledged violence and “house jackings,” further intensifying the Arab-Kurd conflict in the province.<sup>40</sup>

The clearest stakeholders in the referendum are the three primary ethnic groups (Kurds, Arabs, and Turkmens) as well as the Iraqi Army, Iraqi Police Service, Kirkuk's police, Kurdish *Peshmerga*, and *asayesh*. Kirkuk's limited civil society, which includes many nascent NGOs, also stands to be dramatically-curtailed if violence prevails over a democratic referendum.

## ***B. Security Assets***

The Iraqi Army, Iraqi Police Service, Kirkuk police, and *Peshmerga* are the institutional giants with a stake in the peaceful conduct of the referendum. Competing claims between these groups have strained ethnic relations, particularly during the 2011 quarantine of

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<sup>37</sup> Ivan Watson. “Rise in Violence Puts Kirkuk’s Future in Doubt.” National Public Radio. October 10, 2007.

<sup>38</sup> “Leaving Kirkuk consensually” is an incredibly-difficult to unravel notion for the years at the height of the violence in the area. Especially when demographics were shifting in very obvious ways and concentration camps were being operated, it is quite difficult to prove intent and consent—even more so several decades after the fact.

<sup>39</sup> Much of the violence that co-occurred with Arabization, or was a direct outgrowth of Arabization and ethnic cleansing, is given treatment in sections of this document on history, and Kirkuk during the Ba'athist regime, particularly from 1979–1990.

<sup>40</sup> Anderson and Stansfield, 105-107.

Kirkuk by the *Peshmerga*, a move welcomed by ethnic Kurds and decried by ethnic Arab and Turkmen parties. Similarly, the increasing experience and competence of the police force in Kirkuk has led to a more assertive role, directing the Iraqi Army away from civilian police work. Though the Kirkuk police maintain a balance of officers from different ethnic backgrounds (36% Kurd, 38% Arab, 26% Turkmen as of late 2012), most security forces in Iraq have a particular ethnic or sectarian majority.

During the occupation of Iraq, a perennial American goal was the inclusion of more ethnic and religious minorities in the Iraqi Army and IPS so as to attain ethnic and sectarian balance. The notion was that inclusion of a greater number of minorities in the security forces would make the institutions more trustworthy and evenhanded. Attempts to merge the *Peshmerga* and Iraqi Army in 2004-2005 were failures, and while sectarian integration was largely successful, the broader campaign to also integrate larger numbers of ethnic minorities into the military did not yield complete results. Presently, the *Peshmerga* remains almost wholly ethnically Kurdish and the Iraqi Army largely ethnically Arab.

Since early 2011, there has been greater movement towards ethnic integration of the security forces. The *Peshmerga's* Regional Guard Brigade (RGB) was accredited by Baghdad and has started to be integrated into Iraqi Army. These developments are heartening, but 2011 and 2012 also saw numerous political and military standoffs between forces loyal to Baghdad and forces loyal to Erbil. Competing claims for jurisdiction around Kirkuk is to blame for much of this, as is the tenuously-demarcated border of territory under the KRG's control. Neither force wants conflict with the other, but without clear divisions in responsibilities and geographical jurisdictions, conflict remains an unfortunate possibility.

The Iraqi Army, Iraqi Police Service, Kirkuk police, and *Peshmerga* are all security assets for referendum advisors. Because matters of ethnicity will doubtlessly be of great concern throughout the referendum process, organizers must acknowledge that each of these security forces has a different ethnic composition. Voters and political leaders may be suspicious of the motives of security forces populated by members of other ethnic groups, irrespective of the degree of impartiality demonstrated by that force. Consequently, it will be important for these four security institutions to operate cooperatively to provide referendum security. No one group has the capacity to provide security unilaterally, nor does any one group have the social and political legitimacy to provide security unilaterally. Though the Kirkuk police are the smallest of these forces, numbering only around 3,500, the police are the most ethnically-representative group vis-à-vis the population of Kirkuk.<sup>41</sup>

The four forces must present a unified front in calling for peace and protecting voters from violence. Many observers note that, among the upper echelons of security leadership, ethnicity is a third-tier concern, falling after partisan affiliation and economic priorities. As most political parties have made explicit that violence is unacceptable and that a chaotic vote would result in extensive harm to economic growth, there is reason for optimism about the prospects of inter-force cooperation.

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<sup>41</sup> Force strength statistics and ethnic breakdown data are somewhat dated, having been recorded from published interviews with Kirkuk districts police Chief Brigadier General Sarhad Qadeer in spring 2010.

A useful first step will be setting up a committee of mid-level leaders within the respective security forces to coordinate their training and planning for referendum security. Ideally, the run-up to the vote would see fully integrated security forces comprised of local and national police, members of the Iraqi Army, and the *Peshmerga* providing peacekeeping in the governorate, however positive (and highly-visible) coordination between these groups on an administrative level will begin to lay the groundwork for future coordination.

### *C. Security Response*

Violence could easily undermine much of the economic and political progress made by the people of Iraq and the international community over the past several years. The future of Kirkuk will in large part determine the future of Iraq due to its social, political, and cultural centrality. Moreover, the high concentration of oil in the Kirkuk governorate makes its internal stability and well-being economically-crucial to the rest of the country. Since Kirkuk remains an unstable area, basic security is a prerequisite for a transparent and successful referendum. The United Nations Assistance Mission for Iraq (UNAMI) is tasked with assisting in preparations for vote that is as transparent and safe as possible.

The American presence was formative in changing how Iraq's security apparatus operates. While these effects were less obvious in the country's north, there remains concern that the Iraqi Army and police forces are unprepared to handle the country's security needs without being further supplemented by international military forces; the U.S. agencies at play—namely, the Defense Department and the State Department—should share their civil-military stabilization plans with authorities in Kirkuk before referendum security planning is undertaken in earnest.

Finally, UNAMI is mandated to play a leadership role in Iraqi elections and referenda. UN Security Council Resolution 1770, issued in 2007, mandated the UN to “advise, support, and assist the Government of Iraq and IHEC on the development of processes for holding elections and referenda.” In addition, the legal foundation for IHEC “states that IHEC must seek assistance from the UN on the different stages of preparation and conduct of elections and referenda.”<sup>42</sup>

For our purposes here, we will operate largely on the basis of the Electoral Threat and Tactic Phases set forth in the Electoral Security Framework published by USAID in July 2010.<sup>43</sup>

Phase I (the long run-up to electoral events) characterizes the current state of play in Kirkuk, although the timetable itself is imprecise due to the constant rescheduling of the referendum. As recently as November 1, 2012, violent incidents continue to hinder stabilization in Northern Iraq. On this date, a coordinated series of car bombs and other IEDs exploded in major cities including Kirkuk, killing soldiers, police, and civilians alike.

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<sup>42</sup> “Electoral Support,” United Nations Assistance Mission to Iraq. [www.uniraq.org](http://www.uniraq.org).

<sup>43</sup> USAID. “Electoral Security Framework: Technical Guidance Handbook For Democracy and Governance Officers.” July 2010.

Violent conflict continues to hamper economic development, infrastructure development, public service delivery, reconciliation, peace building, and preparations for a referendum. Consequently, security plans must not only account for the likelihood of violence stemming from electoral posturing, but such plans must also contend with the instability of the security environment throughout and the challenges this environment will pose to ordinary administrative groundwork.

Basic stabilization of the province is a first priority, yet the scope of such a task is beyond the focus of this operational concept. The following pages will focus on mitigating the risk of violence against voters, demobilizing potential belligerents by quickly and credibly responding to alleged corruption or fraud, and handling property disputes promptly before long-standing disagreements spiral into violence.

In anticipation of future electoral disputes, the international community in general, and the United States State Department and UNAMI in particular, must make use of the months leading up to the vote to strengthen the capacity of IHEC and improve security forces' ability to resolve electoral disputes and avert violence.<sup>44</sup> IHEC is expected to face numerous disputes and reports of corruption after the Kirkuk and Other Disputed Territories Referendum has occurred. It is strongly recommended that UNAMI lead the process of creating an Iraqi electoral security team. Although it will be locally staffed and operated, UNAMI is in the best position and is well-prepared to spearhead the establishment of such a team, which would oversee Iraqi forces in their stabilization missions in Kirkuk and prepare contingency plans specifically for the referendum.

Phase II is the campaign's final Lap, which anticipates bomb scares that are already a reality in Kirkuk as well as attacks and intimidation of election officials and observers. For this reason, the U.S. civilian capacity needs to be focused on more grassroots-based counterinsurgency efforts. Currently this appears in the Kirkuk Provincial Reconstruction Team (PRT), which is run by the State Department via the U.S. embassy in Iraq. Led by a Foreign Service Officer and primarily staffed by civilian State Department personnel, the PRT works to "increase ethnic tolerance, develop a sustainable economy, strengthen the rule of law, and create partnerships to build durable political solutions to status, land, and internally displaced persons disputes." The PRT works with citizens on-the-ground through a variety of avenues that include youth summer camps, teacher training, and mentoring of local NGOs.<sup>45</sup>

It is recommended the State Department bolster the Kirkuk PRT's capacity through additional staffing and resources so that it can expand its work in the months leading up to the referendum. In doing so, we will be laying the groundwork for more sustainable democratic development rather than a temporal and isolated event.

Phase III is polling day, which we anticipate to cause a significant level of violence in spite of Phase I and II preparations. Polling stations themselves are likely targets of violence. In addition, attacks by rival groups on one another should be anticipated. The electoral

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<sup>44</sup> ACE Project

<sup>45</sup> U.S. Embassy in Baghdad, Provincial Reconstruction Teams. <http://iraq-prt.usembassy.gov/kirkuk.html>

security team set up by UNAMI should protect polling stations, poll workers, and election observers.

In order to keep election day violence to a minimum, it may also be advantageous to ban all vehicular traffic on the day of the referendum vote. This prevents the possibility of car bombs—a frequent threat in Kirkuk—as well as automobile accidents (which tie up medical and police resources) from the outset. In addition, the Iraqi electoral security team and international election observers and monitors may want to consider cordoning off certain streets surrounding polling stations to deter attacks in volatile areas. Specific plans for each polling station must be drawn up well in advance of polling day.

Phase IV entails the time between voting and proclamation of the referendum’s outcome. This period will likely see additional flare-ups between belligerents belonging to any of the three ethnic groups as they attempt to influence the pending outcome of the referendum. In a worst-case scenario, the Arab population may try to exert its influence to incite violence between Kurdish and Turkmen communities.

Reports of corruption and fraud will almost certainly emerge, so the security strategy for this phase must be two-fold: first, local forces must be stationed evenly throughout the region and respond to all reports of conflict, no matter how small they seem as they may likely escalate. Second, during this time IHEC will need to begin visibly addressing reported malfeasance at the polls. For this reason, we recommended strengthening IHEC’s capacity and local rule of law initiatives early so that they will be able to adjudicate effectively in electoral disputes in a way that voters accept as credible.

In addition, all vote tabulating should take place in a previously-established “safehouse” that is outside of the major metropolitan area of Kirkuk City. In this way, it can be guarded at all times and access to the facility can be controlled. The nine members of the IHEC board will require additional, individual protection during this time through Phase V as well.

Phase V, the last phase, is comprised of post-election outcomes and their aftermath. No matter the result of the Kirkuk referendum, the three ethnic groups are expected to protest in public forums that are again likely to turn violent. The UNAMI-created Iraqi electoral security team will be responsible for stabilizing such situations. They should be prepared for post-referendum street violence and public protests. Local intelligence forces should work in tandem with Iraqi security so that security forces (including the electoral security team) are aware of protests in advance and can deploy accordingly. Although for the purpose of enriching grassroots democracy in Iraq it is not suggested that the troops shut down protests right away, they should be prepared for the demonstrations to turn violent and then intervene.

Although UNAMI will take the lead in establishing long-term security contingency plans, starting with the electoral security team itself, the U.S. will also play a role through its civilian and diplomatic strengths. The U.S. will support UNAMI’s work by tasking the State Department with focusing the work of its civilian personnel, particularly the Kirkuk

PRT, on post-referendum ethnic tolerance and education. In addition, since property disputes similar to those that emerged after 2003 are expected to increase in frequency as the referendum approaches, it is recommended that a joint civil-military team be created with the singular mission of mediating property disputes. This should be led by the Kirkuk PRT. Now that U.S. and international troops have withdrawn from the country entirely, the Kirkuk PRT will maintain responsibility for the property disputes while recruiting and training local staff to take over this particular task. It is recommended that, via the State Department, the Kirkuk PRT establish a locally-owned **Kirkuk Property Dispute Team** (KPDT) handle disputes in an orderly, fair, and predictable way.

#### ***D. External Security Concerns***

In addition to the complex situation in Kirkuk involving ethnic militias and competing jurisdictional claims between regional and national security forces, organizers must also remain aware of the security environment outside of the governorate and in Iraq's neighbors. Of present concern, the civil war in Syria threatens to destabilize the equilibrium in Northern Iraq. The Kirkuk governorate has absorbed an untold number of refugees from the prolonged fighting in Syria. An estimated 7,000 refugees have registered themselves in the Kurdistan region, although it is difficult to estimate how many unregistered refugees and migrants have taken shelter in the region. This difficulty is one familiar to those who study refugee populations, but it is also compounded by the fact that so many of those fleeing the violence are without any identity documents from their home country, owing to the exclusionary policies of the regime of the Syrian Ba'ath Party.

Because *normalization* is such a difficult and sensitive task and the ethnic balance of power in Kirkuk such a contentious matter, the large influx of refugees complicates census-taking and voter registration, to say nothing of the looming humanitarian crisis. The governorate and its people have shown immense compassion in welcoming those fleeing the violence in Syria; it will be important to document refugees so as to ensure proper service delivery and ensure that no group can use the crisis as a method to discredit voter registries or claim political malfeasance in the province.

This case is illustrative because it demonstrates clearly that even an attenuated armed conflict in a neighbor (there remains a debate as to whether the violence in Syria is civil war or civil unrest) can have significant implications for the referendum. If the situation continues to worsen, Iraq's security apparatus could be forced to spend greater resources on border security or managing the humanitarian crisis. With trans-national militias such as the PKK operating in Northeast Syria, Turkey could easily be drawn into thorny, composite fights across several borders. Syria may devolve into a proxy war between Iran and Gulf States, or worse, a strictly sectarian fight akin to Iraq in 2005-2007. Complete failure of the Syrian state could once again leave the area replete with heavy weapons on the black market, enabling spoilers to perpetuate violence to achieve political ends in the governorate. Referendum planners and the international community must consistently evaluate what impact external actors are having on the security picture in Northern Iraq and what implications that security picture will have for the referendum's conduct.



## **IX. Civic and Voter Education**

### ***A. Agency, Leadership, and Partnerships***

Under the umbrella of voter education, parallel tracks of outreach are inextricably-linked and should be through the IHEC media and publicity campaign. The tracks include (1) agency, leadership, and partnership and (2) civic and voter-specific messaging. Civic messaging will focus on bringing individuals into the process while voter-specific education will focus on logistics of disseminating information on voting mechanisms, requirements, and eligibility.

**Agency:** A context assessment for voter education conducted in advance of the referendum in Kirkuk should focus on where space exists to build local partnerships and capacity among the Arabic, Kurdish, Turkmen, and minority populations in Kirkuk; the assessment should also examine possible individual leaders who support the messaging of a peaceful referendum process. Local partnerships are important to ensure that while the international community will play a large role, there is local ownership of as much of the process and the outcome as possible. Local partnerships are also key to the development of messages and strategies for disseminating those messages among their own constituencies and among broader constituencies, in some cases this will include broader constituencies of internally displaced persons and those living abroad. The choice of individual and organizational partners is paramount given the buy-in necessary to carry out a successful voter education campaign in such a tense and conflict-prone environment.

**Leadership:** Local change agents, to include community leaders, should be identified from each ethnic group, including Kurds, Arabs, Turkmen, and minorities, based on their commitment to a peaceful referendum process; these should be respected community members who have a stronger commitment to non-violence during the referendum than to the outcome of the referendum. The international community should be prepared to provide physical and personal security, as defined by the USAID 2010 Electoral Security Framework, for leaders willing to participate. Leaders will be approached to appear together on billboards, in photos in newspaper articles, and in other appropriate media, including electronic media. Particular security concerns that must be taken into account include a backlash by Turks against Turkmen change agents publically supporting a referendum, as well as for all participants appearing together in public advertising campaigns in support of the referendum.

**Partnerships:** Organizations, formal and informal, should be identified in communities throughout Kirkuk to participate in messaging campaigns among their constituencies. The messages will be developed in consultation with the leaders and organizations initially based on the themes below, but also with the intent of encouraging locally developed messaging as a means to bring constituencies together in a peaceful way for the referendum. Organizations can include regional civil society associations focused on human rights and democracy, such as Bethnahrain Free Women's Union, Iraqi Institute for Human Rights (Kirkuk city), and the Kurdish Institute for Elections.

## ***B. Civic and Voter-Specific Information***

The type of media used is crucial to voter education and outreach. Specific outreach should target traditional media including agencies and newspapers, such as the Kurdish Globe, Hurriyet, and Aswat al-Iraq. The International Federation of Journalist Election Reporting Handbook, available through the ACE Electoral Knowledge Network, can be used as a baseline for engaging with journalists. As part of a targeted media strategy, outreach should also focus on cell phone companies operating in the region, such as Korek Telecom, Asiaccell, and Mobitel; this can include rapid SMS campaigns conducted in partnerships with organizations like MobileActive.org and Ushahidi. Radio in Arabic, Kurdish, Turkish, and minority languages should also be engaged, such as Radio Free Iraq, and billboards with messages of peace erected in public roads should focus on the peace messages in particular. Finally, while online social media and formal media can be engaged also, Freedom House reports that in 2009 just over one percent of Iraqis had access to the internet. As such, most effort should focus particularly on print, radio, billboard, and SMS text. Should Out of Country Voting take place, civic messaging can include broader online outreach, such as a formal websites by participating countries, and it should focus on civic messaging to encourage registration and voting from locations outside of Kirkuk.

## ***C. Civic Messages***

**Peace-keeping/peace-building:** Messaging, especially messaging from leaders, should focus on a peaceful process rather than the outcomes; images of leaders of different ethnic groups supporting the referendum process is one way to accomplish this. The broader media focus should be on groups coming together to participate peacefully in the process. Targeted media efforts can then focus on language groups to distribute content about the referendum itself as a means to limit secular violence from breaking out due to incensing media.

**Secrecy:** Voters need to have confidence that their voices in the referendum vote will be tallied in secret. Working with voter registration and operations, voter education should include specific mechanisms that are being put in place to ensure votes are secret and will be kept in secret when tallied.

**Security:** Voters need to have confidence that there will be security mechanisms in place to limit violence and intimidation before, during, and after the referendum. Working with the overall security sector, voter education should balance the dissemination of information necessary to build confidence in the process with the need to protect the secrecy of mechanisms in place for security.

**Inclusion:** Voters need to have confidence that all votes will be counted. This ties to the peacekeeping and peace building messaging, but should also focus on the importance “all voices matter and will be accounted for” while providing information to the public on how seek redress of grievances.

## **X. Voter Registration**

### ***A. Previous Attempts***

All things considered, the conduct of voter registration exercises in Iraq has previously been effective. The Electoral Commission of Iraq had administered voter registration through a process based on the Ministry of Interior's Public Distribution System Database (PDS), a system containing the names of Iraqis living in the country. When sorted by eligibility criteria, the database generated about 13.9 million names. Auditing was enabled by providing recipients of monthly food distribution to challenge the information as part of their monthly disbursement; individuals had the opportunity to correct any misinformation in the database. In the end, 14.3 million total registrations were generated by the system, in which the Electoral Commission had "a great deal of confidence" as to its integrity.

### ***B. Setbacks and Parameters***

Kirkuk's situation is much more nuanced. The presence of internally displaced persons (IDPs) pose general problems with running a successful campaign; experiences in places like Kenya and Sudan emphasize that IDPs are traditionally under-counted and under-represented on voter rolls, denying hundreds of thousands the right to vote and reducing the chances of electing officials or passing policies which are more accountable toward IDPs.

A failure to implement a provision in the Transitional Administrative Law of 2004 provides further complications to the voter registration process. Article 58 of this law set up a commission charged with investigating the claims of people alleging that they had been expelled from Kirkuk under Saddam Hussein. Ultimately, the law would facilitate the return to the city of those whose claims were found to be legitimate. Had this law been implemented, a paper trail of IDPs, and their claims, would be established, providing a valuable source of voter information.

Due to the volatility of the region, especially in regards to IDPs, population estimates of the adult voting age population are suspect. No census conducted since 1957 has been widely accepted, and the most recent census, 1997, was conducted well before normalization (or de-Arabization began), but long after Arabization was institutionalized. In addition, ethnic groups have been shown to exploit identity registration systems in order to boost figures to obtain funding for reconstruction and development. The practice of "returning on paper" has also been shown to be rampant, with families transferring their national identity and PDS registrations to Kirkuk without physically moving there in order to stake claim to compensation. These factors hinder exact counts of how many people are actually returning to Kirkuk. Results of an unofficial census conducted in the summer of 2012 by local authorities in Kirkuk City also indicate that a large number of families compensated to leave the region under the "normalization" process have remained, further skewing demographic projections.

Due to this reality, Article 140 stipulated that the referendum must be preceded by a census. Originally scheduled to be held no later than December 2007, as of publication, the census is anticipated for 2014.

### ***C. Creating a New Registry***

Because of the state of current voter information registries in Kirkuk along with the realities of a poorly-documented IDP population, anything less than the creation of a new registry would be a violation of political rights for those in the region. Luckily, even without a census, a rough demographic and population estimate for Kirkuk can be obtained. The Central Office for Statistics and Information Technology (COSIT) placed the 2007 estimate for the Kirkuk district<sup>46</sup> at 572,080; using percentage changes in the following years, along with PDS ration card registry and estimated Article 140 returnee claimants, the population of Kirkuk can be estimated to be just over one million. We estimate the current population of the whole province of Kirkuk to be 1.25 million as of November 2012.<sup>47</sup>

A population of a similar size, 1,200,000, was used by the OSCE during election planning in Kosovo from 2000-2002; this framework will be helpful in crafting VR policy for Kirkuk. As in Kosovo, it is our suggestion that organizers of the referendum pool existing data, such as the COSIT estimate, PDS ration card registry, and Article 140 returnee claimants, along with information gathered from demographic sources at academic institutions in Kirkuk and greater Iraq, as an exercise to determine the likely voting age population. To estimate roughly, we expect at least 750,000 residents of Kirkuk Governorate will be eligible to vote.<sup>48</sup>

It is recommended herein that the registration period be planned to last for one month, occurring five months before election day.

### ***D. Eligibility***

Disputes over eligibility in other planned referenda, such as in the Western Sahara, have the potential to significantly postpone an election or even delay it indefinitely. This should not be overlooked in Kirkuk, as the language of Article 140, which fails to precisely define the boundaries of the region, does not naturally lend itself to the creation of residency

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<sup>46</sup> The Kirkuk district includes Kirkuk City and surrounding areas, but not the whole of the governorate of Kirkuk.

<sup>47</sup> This number is derived from estimated rate of population growth (3.1%) and recorded influx of returning refugees who can claim legal status in the governorate. This statistic excludes the large refugee population currently living in the governorate, largely in Kirkuk City and the surrounding district. Kirkuk City's population is notoriously difficult to measure, however we estimate the following breakdown by district: Kirkuk, 925,000-1,000,000; Al-Hawiga, 175,000; Daquq, 50,000; Makhmur, 30,000. Total highest estimated in Kirkuk Governorate: 1,255,000. November 2012.

<sup>48</sup> Assuming the aforementioned population estimate, with a median age of 21 (November 2011 statistic) applying population-age curve (April 2011 statistic), 41% of voters are under age 18 and ineligible to vote, leaving 740,500 eligible.

requirements, and the existence of returning and newly-displaced IDPs further confuse the process.

However, according to ethnopolitics specialist David Romano, disagreements over voter eligibility are not likely to impact the results of the vote; indeed, an effort done in good faith to include the both formerly-expelled Kurds who have returned to Kirkuk, in addition to newly-displaced Arabs who had previously called Kirkuk home for decades, should yield reliable results. In any case, individuals with no prior connection to Kirkuk, including Arab Baghdadi IDPs who have arrived in Kirkuk in the past few years, should be precluded from registration.

In order to draw up a clear prescription in the absence of precise information, it is our recommendation that a committee or working group be established to thoroughly examine the IDP population in Kirkuk to determine eligibility for the referendum (this committee should, at the least, be include members of IHEC and UNAMI's EAT, along with community leaders). Along with exploring ways to adequately represent the Kirkuk population, such a committee should also explore political feasibility, seeking to conduct the registration process in a manner which expedites, rather than hinders, the election.

#### ***E. Procedure***

Upon registration, registered voters will be issued a Form 111. Borrowing from existing IHEC procedure, Form 111 should be brought to the polling station with the voter; if the voter's name does not appear on the Voter List, but the individual is in possession of a genuine Form 111, he or she will be issued a ballot. The Form 111 indicates to which polling center the voter should report on election day; individuals will and should register at the location where they vote.

IDPs who have taken advantage of the voter registration period to register to vote will be allowed to vote in the referendum by absentee ballot in their place of current residence. An IDP must appear on the IDP voter list to take advantage of this.

In addition, organizers must be prepared for the approval of out-of-country voting. Voting operations, voter education, and security plans would have to be translated for international implications. It is our recommendation that organizers create a contingency plan to accommodate out-of-country voting and registration if it should be agreed upon during negotiations.

#### ***F. Validation***

In order to prove identity, a voter must present a valid official photo ID document from the list below, consistent with preexisting IHEC guidelines:

##### ***1. Iraqi Official Documents (originals)***

- Civil Identification Card

- Iraqi Nationality Card
- Iraqi passport
- Retirement Card
- Official graduation certificate issued by an Iraqi university

## 2. *Foreign or International Documents (originals)*

- Refugee Certificate issued by the UN
- Certificate issued by the Red Cross
- International passport or ID card

In addition to these documents, further documentation specifically tailoring to the needs of IDPs should be allowed. In particular, individuals should be allowed to register if they can provide an affidavit from local community leaders attesting to their residency status. Such letters of approval can be obtained from city council members, a mayor, local upper-level police officials, or officials from the Ministry of Displacement and Migration (MoDM). This method, borrowed from East Timor’s UNAMET voter validation model from 1999, is useful because of the high numbers of IDPs present in the region. UNAMET’s mandate successfully registered over 60,000 IDPs using a system under which an affidavit from local community leaders was satisfactory to identify an IDP as an eligible voter.

## ***G. Verification***

In order to verify information, a Provisional Voter List (PVL) should be used. A PVL calls for the display of the voter register at the voter registration centers for a two-day period immediate after the voter registration period. According to the Iraqi High Electoral Commission's (IHEC) Manual for Registration and Polling, “The Provisional Voter List for each Station will not be publicly displayed, but will be made available for inspection under staff supervision upon request. [...] The only persons who may inspect the Provisional Voter List are: Out-of-country registered voters, on presentation of an OCV Registration Receipt and a photo ID document; accredited political entity agents, on presentation of an accreditation badge and a photo ID document.”

## **XI. Voting Operations**

Voter Operations is involved in the practical details of carrying out the referendum, covering both the planning and the execution of the vote. Voter Operations needs to define exactly who will carry out the election (essentially, which EMB—be it IHEC or a sub-national institution), and determine the various duties and mandates of each player. Because of this, voter operations is naturally aligned with, and carries out the direct instruction of, the Election Management Body, which, in the case of the Kirkuk referendum, will be IHEC, unless a Kirkuk-specific EMB is formed and legally-empowered to perform this function. Of particular importance is the need for a clear electoral calendar to enumerate what needs to happen before the vote.

### ***A. The Planning Period***

One of the most important steps in the planning period, particularly for the Kirkuk referendum, is to identify the voting population, figure out what separates eligible voters from the rest of the population, and use those criteria to begin registration. This may be national identity document that distinguishes them as being born in a particular part of the country, some other document, or even a type of social documentation.<sup>49</sup>

For the March 2009 Iraq elections, IHEC clearly laid out the standards for deciding who may take part in the elections in Kurdistan, and it is safe to assume that similar standards will hold for the Kirkuk referendum.<sup>50</sup> Eligibility in these elections involved being a citizen of Kurdistan, being legally competent, at least eighteen years old in the year of the election, and a registered voter according to the instructions issued by IHEC.<sup>51</sup>

To prove their identity, IHEC has also provided voters with a list of acceptable identity documents. Votes may present a valid official photo identity document such as the Civil Identification Card, the Iraq Passport, Iraq national identity card, retirement card; or an official graduation certificate from any one of Iraq's universities. International voters may also present a Refuge Certificate issued by the United Nations, certificates issued by the Red Cross or an international passport or identity card approved by IHEC.<sup>52</sup>

The second step on the calendar would be registration period. The potential voters need to know when the registration will commence, and when it will end, so as to be able to

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<sup>49</sup> Traditionally, social documentation has taken one of two forms, an affidavit process or a vetting process. The affidavit process involves the voter attesting to a legal statement as the basis for registration and proof of citizenship. Vetting requires an applicant to appear before a judge or panel to answer questions that will determine eligibility. Other forms of social documentation involve statements from community elders or non-traditional forms of physical documentation.

<sup>50</sup> The Independent High Electoral Commission (IHEC) of Iraq, International electoral Assistance Team (IEAT), "Fact Sheet: Who can vote in the 2009 Elections in the Kurdistan Region?" [http://www.uniraq.org/documents/ElectoralMaterial/220709/Fact\\_Sheet\\_%20Who%20can\\_vote\\_%2020090711\\_E.pdf](http://www.uniraq.org/documents/ElectoralMaterial/220709/Fact_Sheet_%20Who%20can_vote_%2020090711_E.pdf) (accessed November 19 2010).

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

register on time. After this there should be a clearly defined campaign period, where the various interest groups get a chance to express their views to all the potential voters, leading to the election day, which should be clear on the calendar and well-communicated to the world at large.

As the actual voting and the results of the election are the focus of the whole enterprise, it is essential that they be planned thoroughly, with a clearly defined plan for the tabulation, presentation, and certification of the results, and with a clearly-defined recourse for the adjudication of disputes.<sup>53</sup>

### ***B. Electoral Administration***

When it comes to the job of electoral administration, it is crucial for local authorities, IGOs, UNAMI, and relevant NGOs to work together with Iraq's electoral administration body, IHEC, which has accrued much experience in conducting elections in the region. IHEC is the independent electoral authority responsible for holding all elections in Iraq. Appointed by, and under the direct supervision of the Council of Representatives, it is comprised of eight permanent election officers and one chief electoral officer. It has nineteen offices in the governorates, including two in Bagdad and a regional office in Kurdistan.<sup>54</sup>

Presently, IHEC has the sole legal authority to carry out all elections and referendums in the country. All electoral activity has to be either carried out by this organization or at least approved by it and carried out according to the standards clearly enumerated by IHEC. This organization sets its own financial policy, and sets all standards for the preservation of a fair electoral process. The certification and appointment of all senior officers, apart from the nine commissioners, is the sole responsibility of this body, which goes to give it a great amount of independence.<sup>55</sup>

It is also the mandate of this body to update the voter registry and to regulate the registration and certification of all political entities. It is the only authority that can declare and certify the final results of elections and referenda, with the sole exception of the results of Council of Representatives Elections.<sup>56</sup>

### ***C. Polling Center and Polling Station Design and Voting Procedures***

In order to conduct previous elections in the area, IHEC established polling centers in the three governorates of the Kirkuk, with each polling center consisting of one or more polling stations. Each polling station would serve approximately five hundred voters. A unique number was assigned to each polling center and station, and this number would be recorded on all polling and counting forms, as well as all ballot boxes and sensitive

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<sup>53</sup> This will be covered at length in the section on Referendum Dispute Adjudication Mechanisms.

<sup>54</sup> United Nations assistance Mission in Iraq, "Elections in the Kurdistan region of Iraq," <http://www.uniraq.org/electoral/Kurdistan.asp> (accessed November 19 2010)

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.



materials intended for that station. Those for special voting polling stations would be specially marked.<sup>57</sup>

For the actual polling and counting processes, in previous elections run by IHEC, each polling station would have a copy of the polling station's voter's roll, listing all the registered voters in alphabetical order. Each voter wishing to cast a ballot would sign and leave a fingerprint at a designated place next to their name and then proceed to cast their ballot.<sup>58</sup>

On election day only these categories of people are allowed to enter the polling center: polling staff, authorized IHEC staff, accredited political entity agents, accredited observers, accredited media personnel, the voters waiting to vote and, only when and if absolutely necessary, the security forces.

### *E. Polling Station Staff*

One of the main responsibilities of voting operations is to put together an extensive team of electoral employees. Recruiting these individuals is a challenging task, particularly given the delicate security situation in the region, as well as the need to eliminate bias. First and foremost, the electoral workers have to pass a basic clearance test so as to exclude criminals and known members of violent groups. Once this has been accomplished, the next stage is to establish a reasonable level of related education and experience sufficient to efficiently carry out the duties of each position. To minimize bias, teams need to be ethnically balanced so that they would not attempt to influence the outcome of the election.

According to IHEC regulations, the management of individual polling stations would be in the hands of the Polling Station Committee, each comprising of five individuals – the Polling Station Chair, Ballot Box Monitor, the Queue Controller, the Identification Officer and the Electoral Control Officer and the Ballot Issuer.

According to IHEC regulations, the duties of the Polling Station Manager include supervising polling staff and ensuring that all procedures are carried out correctly, receiving and safeguarding sensitive materials, taking decisions on the rights of voters in difficult situations, and organizing and supervising the completion of forms and the packing of materials for transfer to the GEO centers as well as opening the polling station at 08:00 in the morning and closing it at 18:00 in the evening. The Polling Station manager would also record the concerns of agents, observers and voters, together with other problems and concerns that occur during the day.<sup>59</sup>

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<sup>57</sup> Independent High Electoral Commission, "Procedures for Count Centers for the Parliamentary and Presidential Elections, Kurdistan Region- Iraq," July 2009, [http://www.uniraq.org/documents/ElectoralMaterial/270709/IHEC\\_Procedures\\_for\\_Count\\_Centres\\_Kurdistan\\_P&P\\_2009-07-26\\_English.pdf](http://www.uniraq.org/documents/ElectoralMaterial/270709/IHEC_Procedures_for_Count_Centres_Kurdistan_P&P_2009-07-26_English.pdf) (accessed November 20, 2010)

<sup>58</sup> Ibid.

<sup>59</sup> The Independent High Electoral Commission, "Procedures for polling and Counting, For Presidential and Parliamentary Elections, Kurdistan, Iraq" July 2009, [http://www.uniraq.org/documents/ElectoralMaterial/220709/IHEC\\_Procedures\\_Polling\\_and\\_Counting\\_final\\_2009-07-09\\_English.pdf](http://www.uniraq.org/documents/ElectoralMaterial/220709/IHEC_Procedures_Polling_and_Counting_final_2009-07-09_English.pdf) (accessed November 19 2010)

In Iraq, the position of the Queue Controller is occupied by two people, one male and one female.<sup>60</sup> The Queue Controller reports to the Polling Station Manager and his or her duties include checking that the voter is reporting to the correct station, ensuring that the voters form an orderly queue, controlling them so that the station does not become overcrowded and ensuring that only authorized people are entering the polling station. The Queue Controller checks each voter's hands for ink to prevent double voting, guides the voters one at a time to the Identification Officer, and ensures that no ballots leave the station.<sup>61</sup>

The Identification Officer plays the role of examining each voter's identity documents, finding the voter's name on the voter's roll and ensuring that each voter either signs or puts a thumb print against their name before guiding them to the Ballot Issuer.<sup>62</sup>

The Ballot Issuer reports to the Polling Station Officer and his duties are as follows: explaining the voting method to the voters, stamping the next ballot in the ballot book, detaching it and issuing the ballot to the voter, then guiding each voter to the next vacant voting screen. It is also his duty to safeguard the ballot at all times.<sup>63</sup>

Like the rest of the team, the Ballot Box Monitor also reports to the Polling Station Manager. His duties include safeguarding the ballot at all times, ensuring that each voter's index finger is inked and ensuring that each ballot is stamped with the official IHEC stamp.<sup>64</sup>

### ***G. Closing of Polls***

According to IHEC instructions, the polling station center should close at exactly 18:00, with the Queue Controller ensuring all voters that are in the queue and informing any new arrivals that they cannot vote. When the last voter's ballot has been cast, the Station Manager seals the top slot of the ballot, and allows observers to record the seal numbers. He then finalizes the voting process by ensuring that there are no ballots lying about, and that the station seal is placed in a tamper evident bag and sealed. The materials are then packaged for counting and or shipping to the GEO (Governorate Election Office) center.<sup>65</sup>

### ***H. Procedures for Vote Counting***

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<sup>60</sup> The duplicity is a consequence of religious concerns; except for family members, it is not permitted for any Muslim to touch a member of the opposite sex. As the Queue Controller may be forced to physically order the polling queue, it is necessary to have both men and women available to perform this function at any time.

<sup>61</sup> IHEC 2009 Procedures.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Independent High Electoral Commission, "Fact Sheets: anti-Fraud Measures for Kurdistan Elections", July 2009.

[http://www.uniraq.org/documents/ElectoralMaterial/220709/Fact\\_Sheet\\_%20Anti\\_%20Fraud\\_20090722\\_E.pdf](http://www.uniraq.org/documents/ElectoralMaterial/220709/Fact_Sheet_%20Anti_%20Fraud_20090722_E.pdf) (accessed November 20 2010)

The counting process should commence with the delivery of sensitive materials to the counting center, which, except for a few special cases, should be located in the just closed polling stations. As designated by IHEC, counting centre operations should run as follows: the process begins with the receiving of material from special polling stations as well as polling stations requiring audit. Accounting checks are then used to verify the polling process, with all total ballots being checked against the signatures on the voter's list, and making sure that all ballots, used and unused, are accounted for. After this, all ballots will be counted and documented according to the simple procedures laid out by IHEC and in the presence of electoral observers, media, and electoral agents.

## **XII. Resource Requirements**

As stated in the Institutional Responsibilities section, IHEC will be responsible for overall Kirkuk Referendum operations by establishing a Central Task Force charged with overseeing all aspects of the referendum including arrangement and management of the resources required.

According to the data available, voter registration costs for the January 2005 Election were approximately \$83 million USD. These costs were mainly for staff, printing, data entry, and secure logistics. The voter register was based on the existing Public Distribution System (PDS) database, used by the Ministry of Trade to manage a monthly rations program. However, the database required a substantial period for corrections and additions. The polling costs were approximately \$180 million. The largest line items were for polling staff, material procurement including polling kits, ballots, and voters' lists, and secure logistics.<sup>66</sup>

### **A. Human Resources**

IHEC is divided into a National Electoral Office, 18 Governorate Electoral Offices (GEO), and 542 District Electoral Offices/Voter Registration Centers. Each District Electoral Office is responsible for, on average, 10 polling centers with up to 3,000 voters each. The IHEC national office has a staff of approximately 220, the governorates a staff of 22 each, and the districts a staff of 10 each.

Kirkuk had little over 690,000 registered voters in December, 2005 (this is the most recent comprehensive statistic available). Based on this number, returning population statistics, and our adjustments for estimated rate of population growth, there are approximately 740,000 voters in Kirkuk.<sup>67</sup> There may be as many as one million voters in the governorate by the time the referendum is held. This will necessitate the establishment, by IHEC, 2,000 polling stations; each would serve five hundred voters. Since each polling station is required to have 6 members, IHEC will need to hire and train a total of 12,000 people.<sup>68</sup>

### **B. Facility Resources**

When IHEC Headquarters in Baghdad were first established, they required facilities, office furniture and equipment, communications and information technology, and other capital investments. These costs amounted to approximately \$28 million, of which approximately \$12.5 million was provided by the United Nations for office furniture and equipment and

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<sup>66</sup> According to independent research conducted by IFES in 2006.

<sup>67</sup> As of November 2012, we estimate the governorate of Kirkuk should have a voting age population of approximately 750,000 and a general population of 1.25 million, although these numbers will doubtlessly be revised following a comprehensive census in the province.

<sup>68</sup> Required staffing estimates are an estimate only and are contingent upon the veracity of the data available. Following a census and revisions to the voter rolls, IHEC can revise projected resource requirements accordingly. The scarcity of reliable population data and the uncertainty created thereby reinforce the critical need for a reliable census to be conducted in Northern Iraq.

communications and information technology and \$3.5 million was provided from Iraqi budget funds by the CPA for the renovation of a headquarters facility.

**Registration and Polling Sites** – Since roughly 2,000 polling stations need to be established, it is strongly recommended that IHEC conduct a comprehensive needs assessment to determine what kind of facilities, office equipments, materials, transportation, and other support are required to effectively administer the referendum.

**Premises** - Schools must be made available free of charge for voting purposes, which means voting station rental costs are only going to be relevant considerations in areas where no suitable free-of-charge building is available. In considering rental costs, the following factors should be taken into account:

- base rent of the building;
- any bonds to be paid;
- any additional service costs, such as electricity, lighting, heating, and cleaning.

As a cost-saving measure, it would generally be preferable to secure premises that already contain the furniture and general layout required.

**Warehousing** – It is expected that the Iraqi government may provide office and warehouse space as was in the previous elections.

**Office Equipment** - In general, it would be more cost-effective to lease, rather than purchase, additional office equipment. This will depend on opportunities for future use and comparison of the rental cost for the period required against the purchase cost. For temporary local offices equipment requirements that may need to be covered in voting operations budgets include:

- Furniture, such as tables, chairs, stands, filing cabinets.
- Photocopying facilities.
- Fax machines.

For polling stations, costs of additional furniture requirements (tables, chairs, secure cabinets for storage, barriers for crowd control, and facilities), additional lighting, portable power supply generators, portable toilets, and water supply to bring voting station layouts and facilities up to required standards may also need to be estimated. Minor office equipment items, such as calculators and box files, for voting station managers and local election administrators may also need to be included. Disposable alternatives, such as cardboard tables and queue control barriers for use in voting stations, should also be investigated to determine their cost-effectiveness compared to the leasing of durable equipment.

**Materials** - estimates of costs of materials for voting operations would include:

- Ballot papers, ballot boxes and seals;

- copies of voters' lists for use in voting stations;
- information posters and pamphlets;
- general stationery items such as packaging tape, string, notebooks, pens, pencils, glue, envelopes, rulers, and rubber bands, as well as any specific needs defined in the election legal framework, such as authentication stamps for ballots;
- signage for use in or outside voting stations;
- voting station border markings;
- packaging materials, such as heavy duty envelopes or bags, boxes or other containers for transport of election materials.
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### ***C. Transportation Resources***

Logistical planning should take into account the most cost-effective transport routes and means, considering local infrastructure conditions, time constraints and security assessments. It will be more difficult to service remote areas at low cost; use of fixed-wing or helicopter air transport, boats and similar high-cost conveyances may be necessary. Similarly, service of voting locations in foreign countries will generally require high-cost urgent air freight, if OCV operations are undertaken.

It is generally not cost-effective for the electoral management body to maintain its own permanent transport fleet. However, there may be advantages in the hiring of some transport vehicles and drivers in urban areas for peak periods of materials delivery and pick-up. This may be necessary where other suitable transport operators or other government agencies' vehicles are not available. Where vehicles are hired, costing must include all associated costs, such as drivers, fuel and insurance.

Election materials and equipment must be transported by means that provide adequate security. The level of security required will depend on assessed security risks. In low-risk environments, normal commercial transport systems or even private vehicles can be used. In high-risk environments, special arrangements for protected convoys or transport using military, police or international agency resources may be required. Although costs in such situations may be high, adequate security of the material is the overriding consideration.

There will also be a need to provide secure transport for polling officials and there may be, in some situations of high risk, a need for secure convoys for voters. Due to the prohibitive cost of such measures and local security's relatively-low capacity to organize large-scale transportation missions of this sort, decisions regarding which populations will require these additional security measures will be made on a case-by-case basis and should be limited to those cases where threats are highly credible.

### ***D. Communications and IT Resources***

It is recommended that IHEC clearly identify how much new technology will be used and at what cost.

The IHEC offices in Baghdad have a Data Entry Center that is equipped with about 500 computers distributed across the various process areas, and 15 scanners at the scanning area. The center was used during previous elections.

Systems costing will need to take into account:

- costs of hardware (computers, monitors, printers, other peripherals and any installation costs) and additional power supplies;
- any network costs, for line or link installation and/or lease and data transfer costs;
- development, testing and implementation costs for software, and any purchase or license fees payable for externally developed software;
- maintenance and technical support costs.

### ***E. Financial Resources***

**Budget** – Approximately \$23 per voter.<sup>69</sup>

**Procurement Calendar** – Concurrent with development of the election calendar, a procurement calendar will be developed and will contain a list of "purchase items" will be identified. Without timely delivery of these items, it may be difficult to stick to the election calendar.

**Cash Flow Requirements** – Needs to be consistent with the procurement calendar. The standard finance procedures applicable to an ordinary government department are not capable of responding to IHEC's exceptional time constraints in terms of procuring election-related materials and ensuring unavoidable cash-flow disbursements during the organization of elections. Thus, IHEC should prepare accurate cash flow requirements for submission to the Ministry of Finance.

**Revenue Sources** - In addition to direct budget support, the Iraqi government may provide office and warehouse space, especially through the Ministry of Trade, and support from the security services. The Ministry of Education has provided most of the polling locations in the previous elections.

**Audits** – Since the audit capacity if IHEC is relatively untested (thus unknown), other government auditing agencies (or international agencies) should take much of this responsibility. Additional external audits may be undertaken on specific financial systems (such as procurements), or following allegations of corrupt or irregular practices within IHEC. In the latter case, the state anti-corruption body may also be involved in the external audit.

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<sup>69</sup> Pursuant to studies undertaken by IFES Center for Transitional and Post Conflict Governance and UNDP Bureau for Development Policy. <http://www.UNDP.org/CORE> or <http://www.IFES.org/CORE>. Based on the original work of Davaasuren Baasankhuu and revised to reflect increases in labor costs in Northern Iraq through September 2012.

### **XIII. Referendum Dispute Adjudication Mechanisms**

#### ***A. Background***

As a referendum on Kirkuk's status draws nearer, preparing to electoral dispute mechanisms becomes ever more important to ensuring the legitimacy of the referendum. There are three areas that this section will identify to help organize an effective and efficient way to handle electoral disputes in Kirkuk. The 2005 referendum set up methods and institutions to handle voter complaints, but there are gaps that remain in many areas of Iraq. In the Kirkuk region in particular, all of the complaints filed were thrown out for various reasons. This section will analyze past election dispute data to determine the problems that inhibited solutions, redefine the roles of the electoral justice mechanisms that will be used for the coming referendum, and finally lay out the three levels of electoral dispute adjudication for the Kirkuk region.

The first objective is to analyze the electoral dispute data from the constitutional referendum vote in the Kirkuk region seven years ago. The reason this is important is to determine which areas of the dispute process worked and which did not. The past data will also show the most common complaints that came from the Kirkuk region. This will help prepare for the likely complaints to emerge in the new referendum and will give the institutions (to be described in the next section) the readiness to handle these likely complaints quickly. This is critical because the longer it takes to handle an electoral dispute the less likely it is to be resolved.

The Center for Transitional and Post-Conflict Governance, run by IFES, issued a final report in December of 2005 on the Iraqi constitutional referendum. The section labeled "Complaints" noted a total of 1,985 complaint forms received by the now replaced Independent Electoral Commission of Iraq (IECI, the duties of which are now IHEC's). The complaints during the 2005 referendum were labeled either "red" for serious complaints that could affect the outcome of an electoral contest or they were labeled "non-red" (now labeled green) for less serious. There were 58 red complaints filed over Iraq's ten governorates and the Kirkuk region represented eight percent of these. Kirkuk also accounted for seven percent or 96 of the 1,377 green complaints filed.

The statistics stated above are not the biggest concern of this paper. In fact, in the frame of the first referendum ever held in the region, the amount of complaints isn't extremely high. The real concern is that of the red and green complaints filed from the Kirkuk region, nearly all of them were thrown out. According to the IFES report, the IECI investigation could not find enough evidence to prove the complaints and thus had to abandon it. Another reason that the IFES report does not mention but that the Independent High Electoral Commission (IHEC) does on their website is that if citizens fail to fill out a complaint form properly, it is immediately thrown out. The fact that no justice was served on any of the complaints filed by citizens of Kirkuk was a gap in the 2005 referendum that will be addressed in this paper. It must be fixed quickly to establish and maintain legitimacy for future elections in Kirkuk.



The data from the IECI complaints office found the most common “red” complaints were ballot-box stuffing, acceptance of bribes, invalidating ballots, and multiple voting. The “non-red” complaints consisted mostly of problems concerning the voter list. It is necessary to take notice of these complaints so measures can be taken to both prevent them from happening during elections and if they do occur, to be ready to pursue investigations into them immediately so justice is more likely to be served. The next section will be defining the electoral justice mechanisms that will be handling the important tasks such as this.

There are a multitude of official institutions that are capable of handling electoral disputes. IHEC, the Governorate Election Office (GEO), the Out-of-Country-Voting (OCV) Panels, and the Kurdistan Regional Electoral Offices are all commissioned to handle disputes. However, IHEC and GEO are the national institutions of Iraq and any and all electoral disputes must be sent to these two official mechanisms to be logged into a database. After this is done, IHEC and GEO can decide whether they will send out their own members to investigate a dispute or refer it to one of the regional institutions such as the OCV panels or Kurdistan Regional Electoral Offices. IHEC and the GEO always are the official mechanisms to handle “red” labeled disputes due to the fact those disputes can possibly affect the entire country. However, during the 2005 Constitutional Referendum, these mechanisms also were trying to handle “green” disputes as well. In a post-election observation mission report in early 2006, the International Mission for Iraqi Elections (IMIE) noted the slow response time of the IECI in processing complaints that probably attributed to many complaints being thrown out.

### ***B. Referendum Dispute Adjudication Mechanisms***

Electoral disputes need to be handled within days after being filed or the chance that they will be addressed, much less resolved, becomes significantly less. While there are several official institutions responsible for handling disputes, it is just too difficult to achieve this in a timely manner. In 2005, there were nearly 2000 complaints filed. There is not enough manpower from the electoral justice mechanisms to handle this. This paper proposes to put into place a regional non-state mechanism in Kirkuk to handle disputes. This unofficial mechanism or council, which will be labeled the Kirkuk Electoral Dispute Council or KEDC will be made up of citizen leaders of the region and be responsible for out of court disputes. The national institutions of IHEC and the GEO will send out a Complaint and Appeals team (as mentioned in the institutional responsibilities section) to investigate and handle “red” level complaints. However, this proposed council could handle the “green” labeled disputes. The complaints would still be logged into the database run by IHEC, but now it would not have to be overburdened by these non-serious disputes.

There are other benefits to establishing the Kirkuk Electoral Dispute Council. It would be made up of citizen leaders of Kirkuk, who would be familiar with the people and this would be beneficial in solving these disputes between Kirkuk citizens. Regional leaders of the council would garner a certain amount of respect from the people, an ingredient crucial if mediation is to occur.

The council's chair will consist of two traditional leaders representing each of the Arab, Kurdish, and Turkmen people of the region. They will all have equal say in dispute resolution. This will help foster cooperation between the different groups living in Kirkuk that carries long-term beneficial effects. Although the council will remain independent from the state institutions; they will require training from IHEC. IHEC or GEO should have an observer to make sure the regional council is handling disputes properly, but this should be temporary until the council is able to safely function independently.

Once properly established, this council will remove the burden of "green" disputes off the shoulders of the state institutions and will help solve them effectively in Kirkuk. This will then allow IHEC to send a unit to handle only the "red" disputes (if any occur) in Kirkuk and increase the chance that they will be resolved. The council should periodically hold bi-monthly meetings between the political parties of the region to establish stronger cooperation for future elections. This will serve as a preventative long-term measure so fewer complaints will be filed in future elections. These meetings, as well as all complaint adjudications will be held at a public building within the limits of Kirkuk City that is agreed upon by the members of the council.

A final note on the role of the proposed Kirkuk Electoral Dispute Council: as mentioned before, many complaints were thrown out due to the forms being filled out improperly. This regional KEDC can hold sessions to inform Kirkuk citizens how to properly fill out a complaint form. This will be a preemptive step to avoid complaints never being addressed because forms were not filled out properly. IHEC, or one of the other state institutions, will also need to ensure the Kirkuk Electoral Dispute Council is properly educating the citizens on this as well, though this latter project would be temporary.

The final section will cover electoral dispute adjudication. There are three levels that make up this process. The first level consists of the initial filing of the dispute, the investigation and the rendering of a verdict. The second level consists of an appeals process if the accused would like to. The third level is the final decision after the appeal and the publishing of the results for the general public. To reiterate the first level of this adjudication, citizens will be able to pick up and file complaints through the Kirkuk Electoral Dispute Council or directly to the official state institutions.

Either way, the complaints will pass through IHEC and GEO to be logged into the database, "red" disputes will be investigated by a unit of IHEC or GEO, as they are potentially election changing. The Kirkuk Electoral Dispute Council as described above will handle "green" disputes. If these "green" disputes turn out to be more serious than first observed, the new council will report to the Kirkuk unit to inspect further, otherwise, the council will make the final decision. Once a decision is made on the "red" disputes by IHEC, the guilty party can make appeals to the Iraq Election Panel. The Election Panel will review the evidence and will either reverse or confirm the original dispute.

The Election Panel is located in Baghdad and those disputes will be handled there. The "green" disputes, handled by the Kirkuk Electoral Dispute Council, will be settled out of court to avoid burdening the Election Panel with unnecessary appeals. The Election Panel

will record all appeals in a special registry that was established during the 2005 referendum. Once the Election Panel has rendered a verdict, it will be added to the registry and published for the general public. Disputes that were resolved and not appealed will also be made available for the public record. These records will be a vital source for future elections for Kirkuk and electoral disputes that are certain to arise.

## **XIV. Recommendations**

### ***A. Legal Framework***

#### *1. Clear the obstacles for Kirkuk to enjoy equal status as a region.*

Article 123 of the constitution provides ground for an autonomous Kirkuk outside of the Kurdistan Region, while the law on forming regions has become an obstacle for such an outcome.

To allow for the possibility of an autonomous Kirkuk outside Kurdistan, this obstacle should be cleared. This can be achieved by amending the law on forming regions to allow one governorate to enjoy the equal status as a region, or by an interpretation by the Supreme Court.

#### *2. Setting the boundaries issue as a priority in legal discussion*

Considering the absence of a legal document stipulating the boundaries of the Kirkuk Governorate, this should be set as a priority in legal discussions. The most important issue is how to determine the future of the disputed territories. Two points can be useful for the legal discussion:

First, Kurds are arguing that referenda can be held at different administrative levels depending on the territory in question. This gives them a way to make sure Kurds can have a legal majority anywhere. This argument should be challenged. Though legal ambiguity makes this technically possible, holding referenda at *ad hoc* levels sets a bad precedent. A clear legal framework will require that referenda be carried out only at specific administrative levels. No matter which level all sides can agree on, there must be some agreement to ensure the uniformity and fairness of all referenda.

Second, the referendum for Kirkuk and the other disputed territories cannot be held before an accepted demarcation of those disputed territories. Article 140 is interpreted to require a census and referendum be held within a final administrative boundary of Kirkuk. The future status of Kirkuk cannot be separated from the list and boundaries of the disputed territories. Settling these issues should be included in the normalization process.

#### *3. Provide legal support for the delay of Kirkuk referendum*

Whether unofficial proposals like De Mistura's in 2007 would be sufficient to alter the terms of a constitutional article is dubious. But there are some other options to pursue:

One option is to have a parliamentary vote to extend the deadline. This happened to Article 142, which was extended by a vote in the Council of Representatives. Legally speaking, a vote by the parliament does not equal to a constitutional amendment. But as the highest legislative body, this measure can be the most likely way to be accepted by all sides. Realistically however, it is unlikely that this resolution would be passed in the parliament, owing to enormous opposition from different factions.

The second option is to submit the article to the federal Supreme Court. Wielding the highest judicial power, the Supreme Court can adjudicate whether passing the deadline will lead to the nullification of this article. But what decision the Supreme Court will make is also unclear. In October 2010, responding to the request of the Maliki government, the court ruled that the upcoming census will have nothing to do with Article 140, failing to recognize the validity of the article.

The last option is to seek international support, such as a Security Council resolution. If the United Nations Security Council can pass a strong endorsement for the extension of Article 140, this can serve as a strong legal ground for further implementing it. But this will certainly face strong opposition from countries such as Syria, Turkey, and potentially Iran. Many other countries, such as China and Russia, will likely voice concerns over the fact that the Security Council is interfering in the internal affairs of Iraq.

#### *4. Recommended options on the ballot*

The following two options are recommended:

Establishing a special Kirkuk autonomous governorate that does not belong to any region. The governorate should enjoy the same autonomy as other regions, and power is shared by different ethnic groups.

Joining the Kurdistan Region, but Kirkuk retaining a high level autonomy that allows power-sharing among ethnic groups.

The rationale being, that there should only be two options on the ballot so that the referendum can bring a decisive result and a majority, not a plurality. With three or more options, it will be very likely that no single option will win a majority vote outright, and it becomes problematic to have an option that failed to win a majority being imposed on everyone.

There should be one option for Kirkuk to join the Kurdistan Region and one where it does not, so as to provide real options for voters from different ethnic backgrounds.

The special status of Kirkuk should be recognized no matter whether it joins the Kurdistan Region or not. Its ethnic composition is one of the most complicated in the country, and its historic and political significance has provided the legal ground for an autonomous Kirkuk

#### ***B. Referendum Security***

A referendum on Kirkuk's status is necessary for the country's constitutional rule of law, but will almost certainly incite a degree of insecurity and violence unless leaders defuse disputes early and provide a unified front that is not seen as politically or ethnically biased. For this reason, it is recommended that:

Because matters of ethnicity will doubtlessly be of great concern throughout the referendum process, organizers must work to create credible security institutions that are not seen as biased insofar as concerns the results of the referendum. The Iraqi Army, Iraqi Police Service, Kirkuk police, and *Peshmerga* must present a unified front in calling for peace and protecting voters from violence.

These four security forces should set up a committee of mid-level leaders within the respective security forces to coordinate their training and planning for referendum security. If possible, integrated security forces comprised of local and national police, members of the Iraqi Army, and the *Peshmerga* will be able to provide peacekeeping for the referendum.

UNAMI should organize local security forces into District Security Committees (DSCs) that will liaise with national law enforcement and military in order to ensure a safe and secure environment for the referendum. The UN representative who sits on the IHEC board serves as the chief liaison between the UN and IHEC for coordinating and structuring the DSCs.

The international community and U.S. State Department will work closely with the Kirkuk Provincial Reconstruction Team to establish a *Kirkuk Property Dispute Team* composed of residents of Kirkuk who will be trained and employed to handle property disputes in Kirkuk.

1. UNAMI should take the lead in establishing a locally-operated Iraqi electoral security team that will be responsible for coordinating all security forces and plans for the Kirkuk referendum.
2. The U.S. should also empower the existing Kirkuk Provincial Reconstruction Team with the resources necessary to continue its stabilization work in Kirkuk, particularly in the areas of building ethnic tolerance and adjudicating the property disputes that so often inflame violent outbursts.

Clearly, the Kirkuk referendum alone will not solve the disputes between Kurds, Arabs, and Turkmen. Undoubtedly, some will be left dissatisfied with the vote's results. As a consequence, the Kirkuk referendum should not be viewed through a teleological lens as if it is an end in itself; rather, it should be viewed as a gateway to nonviolent, open engagement among the three groups at play as they, and the rest of their country take the next steps in self-determination.

### ***C. Civic and Voter Education***

SMS platforms such as those offered by Ushahidi can provide continuous mapping during the registration and election period to disseminate security information to potential voters. This should be integrated into the overall security sector but also specifically into registration, operations, and education.

Civic education should not end following the referendum; peace and reconciliation initiatives, including training initiatives for civil society groups, teachers, officials, and other individuals should be offered immediately following the referendum to mitigate violence. Ongoing post-election education should focus on institutionalizing civic education in schools and teacher training programs as Kirkuk. Given the ethnic divisions, an ongoing sectarian divide in education is a threat to peace and stability in the region. After the referendum, care should be taken to assist in the development of institutions that promote democracy education and conflict resolution/peace building education.

#### ***D. Electoral Dispute Adjudication***

The Kirkuk Referendum is an important step in establishing governmental legitimacy in this governorate. It is vital for electoral fraud and corruption to not go unpunished. A well organized, stable, and efficient electoral dispute system for the region will ensure prompt investigation and resolution to electoral complaints. If these steps are taken, Kirkuk will be able to establish an efficient system and become a stronger governorate.

For this reason, it is recommended that:

An unofficial institution known as the Kirkuk Electoral Dispute Council will be established to handle “green” level complaints. The official institutions of IHEC and the GEO will continue to handle “red” level complaints.

The KEDC will also work with the political parties in Kirkuk to foster cooperation in long-term solutions to electoral disputes. In addition, the council will hold teaching sessions to prevent future problems and thus avoiding future complaints.

There will be three levels of “red” level adjudication including an appeals process for those accused. Iraq’s official institutions in electoral disputes will handle this process.

Finally, all complaints and appeals will be logged into an official database already maintained by IHEC and will be made available to the public. The KEDC will report its decisions to IHEC for the sole purpose of recording.

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## Annex One - Acronyms

CKRO	Center for Kirkuk Referendum Operations
COSIT	Central Office for Statistics and Information
CPA	Coalition Provisional Authority
DSC	(District Security Committee)
GEO	Governorate Election Office
IDP	Internally-Displaced Person(s)
IEAT	International Electoral Assistance Team
IECI	Independent Election Commission of Iraq
IFES	International Foundation for Electoral Systems
IHEC	Independent High Electoral Commission
IMIE	International Mission for Iraqi Elections
IPS	Iraqi Police Service
IRFFI	International Reconstruction Fund Facility for Iraq
ISF	Iraqi Security Forces
KDP	Kurdistan Democratic Party
KEDC	Kirkuk Electoral Dispute Council
KPDT	Kirkuk Property Dispute Team
KPRT	Kirkuk Provincial Reconstruction Team
KRG	Kurdistan Regional Government
KRMG	Kirkuk Referendum Monitoring Group
MoDM	Ministry of Displacement and Migration
OCV	Out-of-Country Voting
OSCE	Organization for Security and Cooperation in Europe
PDS	Public Distribution System
PEL	Provincial Election Law
PKK	Kurdish Workers' Party
PRT	Provincial Reconstruction Team
PUK	Patriotic Union of Kurdistan
PVL	Provisional Voter List
SMS	Short Message Service
TAL	Transitional Administrative Law
UNAMET	United Nations Mission in East Timor
UNAMI	United Nations Assistance Mission for Iraq
UNDP	United Nations Development Program
UNSCR	United Nations Security Council Resolution
USAID	United States Agency for International Development
VR	Voter Registration

## **Annex Two – Non-Governmental Organizations in Iraq**

Listed below are some of the larger NGOs operating in Iraq with missions that may be related to the conduct of the Kirkuk and Other Disputed Territories Status Referendum.

ADF - America's Development Foundation, USAID-supported mission. One of their chief missions is the Iraq Civil Society and Media Support Program (ICSP).

AKS - American Society for Kurds. A NED-funded organization focused on accountability and transparency in the KRG.

Bethnahrain Free Women's Union - Provides services and outreach for members of the disabled community within the Kirkuk Governorate.

CIPE - Center for International Private Enterprise. The primary goals are civil society support and economic capacity building through private sector development.

DHRD - Democracy and Human Rights Development Center. A NED-funded organization focused on judicial oversight and support.

HRW - Human Rights Watch. Focused on the protection of human, civil, and political rights.

Mercy Corps International - Provides humanitarian support, economic capacity building, civil society support, and services for IDPs.

ICRC - International Committee of the Red Cross (International Red Cross and Red Crescent). Provides humanitarian support for IDPs, victims of disasters, and others.

IFES - International Foundation for Electoral Support. Provides technical and electoral capacity support to IHEC, as well as public education and outreach programs.

IIHR - Iraqi Institute for Human Rights. Focused on human and political rights in Kirkuk. The IIHR provides training courses to law enforcement officers in Kirkuk and engages in civic education in the region.

IOM - International Organization for Migration, Iraq Mission, UNDP, State Department-supported mission. The primary functions are human security and stabilization, emergency management, voter enfranchisement, and security awareness training.

Iraq Civic Action Network - A NED-funded organization that provides training for NGOs operating in Iraq.

Iraqi Dar Al-Salam Center - A NED-funded organization focused on conflict resolution and mediation.

IRI - International Republican Institute. Focused on governance, voter education, electoral support, and political party support.

### Annex Three – Referendum Calendar

<b>Timelines</b>	<b>Phase I Pre-Election</b>	<b>Phase II Election</b>	<b>Phase III Post- Election</b>
Activity 1. Voter Registration			
Activity 1.1 Hiring Temp Registrar			
Activity 1.2 Operational Training for registration and elections			
Activity 1.3 Registration Revision and Correction			
Activity 2.1 Polling Station			
Activity 2.2 Operational Training for registration and elections			
Activity 3.1 Election Security Observation			
Activity 4.1 Election Observation			
Activity 4.2 International Observation			
Activity 5.1 Elections Complaints Process			
Activity 6.1 Election Audit			

## **Annex Four - Legal Framework**

### **1. Transitional Administrative Law**

**Date: March 8, 2004**

**Organization: Coalition Provisional Authority**

#### Article 53 [Kurdistan Regional Government]

(A) The Kurdistan Regional Government is recognized as the official government of the territories that were administered by the that government on 19 March 2003 in the governorates of Dohuk, Erbil, Sulaimaniya, Kirkuk, Diyala and Nineveh. The term "Kurdistan Regional Government" shall refer to the Kurdistan National Assembly, the Kurdistan Council of Ministers, and the regional judicial authority in the Kurdistan region.

(B) The boundaries of the eighteen governorates shall remain without change during the transitional period.

(C) Any group of no more than three governorates outside the Kurdistan region, with the exception of Baghdad and Kirkuk, shall have the right to form regions from amongst themselves. The mechanisms for forming such regions may be proposed by the Iraqi Interim Government, and shall be presented and considered by the elected National Assembly for enactment into law. In addition to being approved by the National Assembly, any legislation proposing the formation of a particular region must be approved in a referendum of the people of the relevant governorates.

(D) This Law shall guarantee the administrative, cultural, and political rights of the Turkmen, Chaldo-Assyrians, and all other citizens.

#### Article 58.

(A) The Iraqi Transitional Government, and especially the Iraqi Property Claims Commission and other relevant bodies, shall act expeditiously to take measures to remedy the injustice caused by the previous regime's practices in altering the demographic character of certain regions, including Kirkuk, by deporting and expelling individuals from their places of residence, forcing migration in and out of the region, settling individuals alien to the region, depriving the inhabitants of work, and correcting nationality. To remedy this injustice, the Iraqi Transitional Government shall take the following steps:

(1) With regard to residents who were deported, expelled, or who emigrated; it shall, in accordance with the statute of the Iraqi Property Claims Commission and other measures within the law, within a reasonable period of time, restore the residents to their homes and property, or, where this is unfeasible, shall provide just compensation.

(2) With regard to the individuals newly introduced to specific regions and territories, it shall act in accordance with Article 10 of the Iraqi Property Claims Commission statute to ensure that such individuals may be resettled, may receive compensation from the state, may receive new land from the state near their residence in the governorate from which they came, or may receive compensation for the cost of moving to such areas.

(3) With regard to persons deprived of employment or other means of support in order to force migration out of their regions and territories, it shall promote new employment opportunities in the regions and territories.

(4) With regard to nationality correction, it shall repeal all relevant decrees and shall permit affected persons the right to determine their own national identity and ethnic affiliation free from coercion and duress.

(B) The previous regime also manipulated and changed administrative boundaries for political ends. The Presidency Council of the Iraqi Transitional Government shall make recommendations to the National Assembly on remedying these unjust changes in the permanent constitution. In the event the Presidency Council is unable to agree unanimously on a set of recommendations, it shall unanimously appoint a neutral arbitrator to examine the issue and make recommendations. In the event the Presidency Council is unable to agree on an arbitrator, it shall request the Secretary General of the United Nations to appoint a distinguished international person to be the arbitrator.

(C) The permanent resolution of disputed territories, including Kirkuk, shall be deferred until after these measures are completed, a fair and transparent census has been conducted and the permanent constitution has been ratified. This resolution shall be consistent with the principle of justice, taking into account the will of the people of those territories.

## **2. Constitution of Iraq**

**Date: October 15, 2005**

**Organization: Iraqi Constitution Drafting Committee**

Article 123:

Powers exercised by the federal government can be delegated to the governorates or vice versa, with the consent of both governments, and this shall be regulated by law.

Article 140:

First: The executive authority shall undertake the necessary steps to complete the implementation of the requirements of all subparagraphs of Article 58 of the Transitional Administrative Law.

Second: The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007.

## **3. Order 92: The Independent Electoral Commission of Iraq**

**Date: May 31, 2004**

**Organization: L. Paul Bremer, Coalition Provisional Authority**

Section 4

The Board of Commissioners

A Board of Commissioners (“Board”) shall head the Commission. The Board shall have the exclusive authority to promulgate, implement, and enforce regulations, rules, procedures and decisions, and take any other action consistent with Chapter Two of the TAL to ensure the successful organization, planning, implementation and oversight of nationwide and local elections throughout Iraq. The Board shall act strictly within its mandate under this Order and shall not attempt to regulate or exert influence over activities that are not fairly related to the administration of elections during the Transitional Period.

#### **4. 2005 Iraqi Election Law**

**Date: September 15, 2005**

**Organization: Parliament of Iraq**

Article 4

1- Voting shall be conducted in one day.

2- Voting may be postponed in one or more districts if the security situation requires it.

Article 5

The date of the elections will be determined by a presidential decree and it shall be announced through all of the media 60 days before the date of holding the elections.

#### **5. 2009 Amendment to Election Law:**

**Date: November 8, 2009**

**Organization: Parliament of Iraq**

Article IV:

Special voting which includes:

Firstly, military employees, members of the Ministries of Defense and Interior and all other security institutions. These shall vote according to special procedures established by the Independent Electoral Higher Commission (IHEC) based on official lists containing the names and the departments. The different departments shall commit to submit these lists in a period of not less than 60 days before elections. According to these lists, the security and military employees’ names shall be deleted from the voters’ register. If these lists are not submitted according to the above procedures, they can vote in the general elections like other citizens according to the voters’ register.

Secondly, prisoners and detainees shall vote according to procedures established by IHEC upon lists submitted by the ministries of justice and interior within a period not less than 30 days before elections.

Thirdly, patients in hospitals and other clinics shall vote according to lists submitted by the concerned bodies before voting according to procedures established by IHEC.

Fourthly, immigrants; a) the displaced: are Iraqis who were forced to leave their permanent place of residency and live in another place inside Iraq after 9/4/2003 regardless of the reason. Those will vote according to the latest official statistics to be submitted to IHEC by the ministry of displacement and migration and the ministry of trade. According to these lists, the displaced persons shall have the right to vote for the electoral district which they were forced to leave on the condition that these persons did not transfer their ration card to the district where they are currently residing.

Fifth: IHEC shall have the power to establish voting procedures for Iraqis living outside Iraq.

#### Article VI:

First: elections shall take place, on time, in the province of Kirkuk and in other provinces where there are doubts regarding the records of voters.

Second: Provinces with dubious records are those with annual population increases higher than 5%. At least 50 MPs should submit a request questioning records and the request should be approved by the parliament by simple majority.

Third: The parliament shall form a committee from among its members for Kirkuk, and for any other province where there are doubts about the records. The committee shall be composed of the provinces' components, and representatives of the ministries of planning, interior and commerce and IHEC. The committee should be assisted by the UN and shall be tasked to review and check records and numbers in the election register according to official data and standards mentioned in the concluding provisions and article 2 of this law to correct the voting register. The committee shall complete its work within one year.

Fourth: The results of Kirkuk or any other province elections with dubious records shall not be taken as a base for any future or previous electoral process or a precedent for any political or administrative status.

#### Article VII:

The following criteria shall be used as the basis for the implementation of the provisions contained in Article VI.

First: The difference in the numbers of registered voters in 2004 record before updating it and that of 2010 shall be determined.

Second: The examination of the difference (as in First) and in numbers as of 2004, 2005, 2006, 2007, 2008, 2009, should focus on the following:



1. Population increase (births, deaths, change of people's records from one province to the other) for the period of 2004-2009.
2. The names of the displaced people who returned according to official records,
3. Other demographic changes during this period.
4. Deportations according to official records.

Third: The examination process shall determine the legitimacy of records, and illegitimate cases. It shall determine the differences in numbers and their impact on the number of seats.

Fourth: The number of MPs to represent Kirkuk province or areas with dubious records shall be determined by the population ration to be adopted by the council after deleting the number of seats which resulted from violations.

Fifth: The correct numbers in those provinces shall be taken into consideration. Others will be registered on the national quota.

## **6. Law of the Executive Procedures regarding the Formation of Regions**

**Date: Oct 11, 2006**

**Organization: Presidency Council**

### Chapter Two

#### Ways of Forming a Region

##### Article (2)

A region would be formed by a referendum, by one of the following ways:

First: a request presented by third of the members of each of the governorate councils, formed according to the constitution, wishing to form a region.

Second: a request presented by 1/10 of the voters in each governorate of the governorates wishing to form a region.

Third: in the case of a governorate wishing to join a region, third of the governorate council members should submit a request accompanied by the approval of third of the regions legislative council members.

### Chapter Three

#### Procedures of Forming a Region

##### Article (3)

a. A request to form a region should be submitted to the Council of Ministers signed by heads or legal representatives of governorate councils or legislative councils of regions within one week.

b. The Council of Minister would task IHEC, within 15 days of submitting the request, to start organizing a referendum for the desired regions, within three months period.

##### Article (4)

First: if the request is submitted according to Article 2/ second, it should be initially submitted by 2 % of voters to IHEC Office in the governorate explaining the shape of the region desired. IHEC should announce the request within 3 days from submitting the request, in newspapers and media. A period of one-month at minimum should be given for all eligible voters, wishing to support that request, to register in a specially prepared register in order for their votes to be calculated to achieve a quorum.

Second: if there are many requests reflecting different desires according to Article 2 of this law, then the following procedures should be followed:

A. If one of the requests is submitted according to Article 2/first and the approval by the governorate council acceded 2/3 of the members then the procedures mentioned in Article 3 should be followed.

B. IHEC office in the governorate should put a questionnaire to indicate the type of the region desired. The questionnaire should be distributed to voters, to choose the type of region, in a period of two months from the date of submitting the request. The type of region that would be approved is the one that wins the majority of votes of those participated in the questionnaire.

#### Chapter Four Referendum Procedures Article (5)

First: IHEC, through its offices in governorates or regions, should take the steps needed to have a referendum, within the period mentioned in Article 3 in this law and according to the date of the Council of Ministers delegation.

Second: IHEC has the right to extend, once, for one month provided that it notifies the Council of Ministers.

#### Article (6)

The referendum would pass if it gets the majority of the voters' votes in each governorate of the governorates wishing to join a region and the results should be announced within 15 days from the date of referendum, taking into consideration that the percentage of participants is not less than 50% of the voters.

#### Article (7)

A. All parties, who might be affected by the result of the referendum, have the right to appeal within one week of announcing the results.

The relevant authorities should announce their decision within ten days of submitting the appeal.

B. The relevant authorities should approve the final results and submit them to the Prime Minister within 3 days of their approval.

#### Article (8)

First: the Prime Minister issues an order to form the region within two weeks.

Second: PM's order should be published in the official gazette.

#### Article (9)

If the referendum did not succeed, it could be repeated a year later from the date of announcing the results and through following the same procedures.

#### Article (10)

The national office of the IHEC is responsible for organizing, conducting and supervising all the procedures related to the referendum and has the right to issue regulations and guidelines related to this matter.

### Chapter Five Forming a Region

#### Article (11)

Councils formed in the region, whether governorate or legislative council should meet in seven days of approving the formation of the region to undertake preparation for electing transitional legislative council.

#### Article (12)

Governorate councils and formed regions continue their work until the expiration of permanent constitution of the region.

#### Article (13)

First: Holding elections for transitional legislative council for the region, which is formed of number of members, representing the whole population of the region and meet all required conditions listed in the federal elections law. They should be elected in a public direct secret voting according to the following proportions:

A. One seat representing 50,000 of the population of the region formed of one governorate on condition it is not less than twenty-five members.

B. One seat representing 75,000 population of the formed region of more than a governorate or region.

Second: IHEC is responsible for preparing and supervising the legislative governorate elections for the regions.

Third: the transitional legislative council, for the region, shall exercise its authorities until the elections of their permanent legislative council of the region.

## **7. Provincial Election Law**

**Date: September 26, 2008**

**Organization: Parliament of Iraq**

Article 23 (contents summary, no official English translation)

To prepare for the local elections in Kirkuk, a committee of seven parliamentarians will be formed. This committee is made of two Kurds, two Turkmen, two Arabs and one Christian, and it is tasked with investigating power-sharing at the local government level. Other contents include the power-sharing of 32:32:32:4 among the four ethnic groups. There will also be a demographic enquiry.

## **8. Special Elections Law for Kirkuk**

**Date: Not yet passed**

**Organization: Presidency Council**

Article Three:

- a. The Independent High Electoral Commission (IHEC) shall establish a registry of voters in Kirkuk Governorate.
- b. Political entities and all stakeholders shall submit their appeals regarding the registry of voters supported by legal evidence to the (IHEC) within ten days.
- c. The Board of Commissioners is to decide on the appeals within eight (8) days of the date the appeal is filed.
- d. A stakeholder can challenge the decision of the Board of Commissioners before the judiciary.

Article Four:

- a. High-level positions including the positions of (the governor and his deputies, the chairman of the provincial council and his deputies, and the positions of directors general) shall be distributed equally among the components of Kirkuk. A majority component in the council has the right to choose each position and has no right to compete with another component for the position designated to it.
- b. Power-Sharing with regard to other posts shall be carried out through the formation of a committee by the Provincial Council for that purpose.

Article Five: The provincial council shall establish a committee to look into violations of public and private properties pre and post 2003 and define the proper mechanism to address such cases.

**9. Budget Law**

**Date: January 26, 2010**

**Organization: Parliament of Iraq**

Article 43

First: The Federal Minister of Finance and the transfer of an amount equivalent to 1 dollar:

For every barrel of crude oil producer in the province;

For each barrel of crude oil refined in the refineries province;

And all 150 cubic meters of natural gas producer in the province.

**10. Supreme Court Decisions:**

Legal case against the Prime Minister asking for annulling all decisions and orders related to appointing chairman and members of the Higher Commission of Kirkuk Normalization

**11. United Nations Security Council Resolutions**

Resolution 1483 (2003), Resolution 1546 (2004), Resolution 1770 (2007), Resolution 1830 (2008), Resolution 1883 (2009), Resolution 1936 (2010)

## Annex Five – Information Resources

1. The Independent High Electoral Commission (IHEC) of Iraq, International Electoral Assistance Team (IEAT), “Fact Sheet: Who can Vote in the 2009 Elections in the Kurdistan Region?”  
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<http://www.ifes.org/countries/Iraq.aspx> (verified December 2011)